

STATE OF SOUTH CAROLINA

In The Court of Appeals

 ORIGINAL

APPEAL FROM CHARLESTON COUNTY

William Jeffrey Young, Circuit Court Judge

RECEIVED

JUN 01 2015

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

DAMIAN D. ANDERSON,

APPELLANT

APPELLATE CASE NO 2014-001779

RECORD ON APPEAL

WANDA H. CARTER  
Deputy Chief Appellate Defender

South Carolina Commission on Indigent Defense  
Division of Appellate Defense  
PO Box 11589  
Columbia, SC 29211-1589  
(803) 734-1330

Attorney for Appellant

ALAN WILSON  
Attorney General

CHRISTINA J. CATOE  
Assistant Attorney General  
Office of the Attorney General  
PO Box 11549  
Columbia, SC 29211

SCARLETT ANNE WILSON  
Solicitor, Ninth Judicial Circuit  
101 Meeting St., Ste. 400  
Charleston, SC 29401-2214  
fax (843) 740-5858  
(843) 958-1900

Attorneys for Respondent

## INDEX

|                                               |     |
|-----------------------------------------------|-----|
| INDEX .....                                   | i   |
| TRIAL TRANSCRIPT DATED AUGUST 4, 2014 .....   | 1   |
| TESTIMONY                                     |     |
| ERIC LIGHT                                    |     |
| Direct examination by Solicitor .....         | 6   |
| Cross examination by Defense Counsel .....    | 38  |
| Redirect examination by Solicitor .....       | 64  |
| MATTHEW SUMMERLIN                             |     |
| Direct examination by Solicitor .....         | 70  |
| Cross examination by Defense Counsel .....    | 84  |
| Redirect examination by Solicitor .....       | 88  |
| WILLIAM JOSEPH VILLENEUVE                     |     |
| Direct examination by Solicitor .....         | 89  |
| Cross examination by Defense Counsel .....    | 108 |
| JOSEPH HARVILL                                |     |
| Direct examination by Solicitor .....         | 118 |
| Cross examination by Defense Counsel .....    | 136 |
| Redirect examination by Solicitor .....       | 144 |
| WILLIAM BACKMAN                               |     |
| Direct examination by Defense Counsel .....   | 147 |
| Cross examination by Solicitor .....          | 156 |
| CYNTHIA ANDERSON                              |     |
| Direct examination by Defense Counsel .....   | 164 |
| Cross examination by Solicitor .....          | 167 |
| Redirect examination by Defense Counsel ..... | 170 |
| Recross examination by Solicitor .....        | 171 |
| DAMIAN ANDERSON                               |     |
| Direct examination by Defense Counsel .....   | 171 |
| Cross examination by Solicitor .....          | 176 |
| RENEWAL OF MOTION FOR DIRECTED VERDICT .....  | 183 |
| RULING BY THE COURT .....                     | 183 |

|                                                      |     |
|------------------------------------------------------|-----|
| CLOSING ARGUMENT BY DEFENSE COUNSEL .....            | 184 |
| CLOSING ARGUMENT BY SOLICITOR .....                  | 194 |
| POLLING OF THE JURY .....                            | 219 |
| VERDICT .....                                        | 228 |
| SENTENCING .....                                     | 240 |
| COURT'S EXHIBIT # 1 (JURY NOTE) .....                | 242 |
| COURT'S EXHIBIT # 2 (JURY NOTE) .....                | 243 |
| COURT'S EXHIBIT # 3 (JURY NOTE) .....                | 246 |
| COURT'S EXHIBIT # 4 (JURY NOTE) .....                | 247 |
| COURT'S EXHIBIT # 5 (STATE V. WILLIAMS CHARGE) ..... | 248 |
| INDICTMENT .....                                     | 249 |
| CERTIFICATE OF COUNSEL .....                         | 251 |

1     STATE OF SOUTH CAROLINA     )  
2                                     ) Court of General Sessions  
3     COUNTY OF CHARLESTON     ) Case No. 2013-GS-10-2277  
4     \_\_\_\_\_  
5     STATE OF SOUTH CAROLINA     )  
6                                     )  
7                     vs.             ) Transcript of Record  
8     DAMIAN ANDERSON,             )  
9                                     )  
10                     Defendant.     )  
11                                     ) DATE: August 4, 2014  
12     \_\_\_\_\_  
13

B E F O R E:

The Honorable W. Jeffrey Young

A P P E A R A N C E:

DAVID OSBORNE and CHAD SIMPSON  
For the State

JASON KING AND JOHN J. KOZELSKI  
For the Defendant

Karen V. Andersen, RMR, CRR

Circuit Court Reporter

19  
20  
21  
22  
23  
24  
25

|    |                                |             |
|----|--------------------------------|-------------|
| 1  | INDEX                          |             |
| 2  | EXAMINATION                    |             |
| 3  | <b>Witness Name</b>            | <b>Page</b> |
| 4  | (IN-CAMERA) ERIC LIGHT         |             |
| 5  | Direct By Mr. Osborne.....     | 29          |
| 6  | Cross By Mr. King .....        | 36          |
| 7  | Re-Direct By Mr. Osborne ..... | 44          |
| 8  | (IN-CAMERA) WILLIAM BACKMAN    |             |
| 9  | Direct By Mr. King .....       | 46          |
| 10 | Cross By Mr. Osborne.....      | 52          |
| 11 | Re-Direct By Mr. King.....     | 53          |
| 12 | ERIC LIGHT                     |             |
| 13 | Direct By Mr. Osborne.....     | 78          |
| 14 | Cross By Mr. King .....        | 110         |
| 15 | Re-Direct By Mr. Osborne ..... | 136         |
| 16 | MATTHEW SUMMERLIN              |             |
| 17 | Direct By Mr. Osborne.....     | 144         |
| 18 | Cross By Mr. King .....        | 158         |
| 19 | Re-Direct By Mr. Osborne ..... | 162         |
| 20 | WILLIAM VILLENEUVE             |             |
| 21 | Direct By Mr. Osborne.....     | 163         |
| 22 | Cross By Mr. King .....        | 181         |
| 23 |                                |             |
| 24 |                                |             |
| 25 |                                |             |

**EXAMINATION**

| <b>Witness Name</b>            | <b>Page</b> |
|--------------------------------|-------------|
| JOSEPH HARVILL                 |             |
| Direct By Mr. Osborne.....     | 192         |
| Cross By Mr. King .....        | 210         |
| Re-Direct By Mr. Osborne ..... | 218         |
| WILLIAM BACKMAN                |             |
| Direct By Mr. King .....       | 234         |
| Cross By Mr. Osborne.....      | 243         |
| CYNTHIA ANDERSON               |             |
| Direct By Mr. King .....       | 251         |
| Cross By Mr. Osborne.....      | 254         |
| Re-Direct By Mr. King.....     | 257         |
| Re-Cross By Mr. Osborne .....  | 258         |
| DAMIAN ANDERSON                |             |
| Direct By Mr. King .....       | 258         |
| Cross By Mr. Osborne.....      | 263         |

**EXHIBITS**

| <b>Exhibit</b>                            | <b>Description</b>                                 | <b>Identification</b> | <b>Evidence</b> |
|-------------------------------------------|----------------------------------------------------|-----------------------|-----------------|
| S-1, 2, 3,<br>4, 5, 6, 7,<br>8, 9, 10, 13 | Photographs                                        |                       | 28              |
| S-11                                      | Dispatch CD                                        |                       | 99              |
| D-1                                       | Incident/Investigation<br>Report Case No. 13-01807 | 59                    |                 |
| D-2                                       | Incident/Investigation<br>Report Case No. 12-20320 | 59                    |                 |

|    |                    |                                                                                                  |     |     |
|----|--------------------|--------------------------------------------------------------------------------------------------|-----|-----|
| 1  |                    |                                                                                                  |     |     |
| 2  | D-3                | Use of Force Memo dated 2/2/13                                                                   | 59  |     |
| 3  | D-4                | Sec. 3-31. Restricted                                                                            | 59  |     |
| 4  | D-5                | Sec. 21-192. Interference with public; obeying police officer's order                            | 59  |     |
| 5  |                    |                                                                                                  |     |     |
| 6  | D-6                | LexisNexis Title 16, Chapter 11, Article 7                                                       | 59  |     |
| 7  |                    |                                                                                                  |     |     |
| 8  | D-7                | HealthPort Invoice, Fax Transmittal Form, Subpoena, Medical Authorization for Release of Records | 60  |     |
| 9  |                    |                                                                                                  |     |     |
| 10 | D-8                | Report                                                                                           | 60  | 220 |
| 11 |                    |                                                                                                  |     |     |
| 12 | D-9                | Inter-Office Memorandum                                                                          | 60  |     |
| 13 | Court's Exh. 1     | Jury Note asking what constitutes "under arrest".                                                | 306 |     |
| 14 |                    |                                                                                                  |     |     |
| 15 | Court's Exh. No. 2 | Jury note requesting Mr. Anderson's testimony be played back                                     | 309 |     |
| 16 |                    |                                                                                                  |     |     |
| 17 | Court's Exh. 3     | Jury Note indicating they cannot agree                                                           | 318 |     |
| 18 | Court's Exh. 4     | Jury Note requesting transcript of officers                                                      | 319 |     |
| 19 |                    |                                                                                                  |     |     |
| 20 | Court's Exh. 5     | State vs. Williams charge                                                                        | 332 |     |
| 21 | Court's Exh. 6     | Transcript of Damian Anderson                                                                    | 332 |     |
| 22 |                    |                                                                                                  |     |     |
| 23 |                    |                                                                                                  |     |     |
| 24 |                    |                                                                                                  |     |     |
| 25 |                    |                                                                                                  |     |     |

1           So why did this have to happen? Because Damian  
2 Arnold asked why? Because he protested a little? When  
3 police officers approach citizens' vehicles like soldiers in  
4 battle, then these kind of encounters are going to happen.  
5 And I don't want to live in a place where because I question  
6 an officer or I protest, I can get jerked out of the car by  
7 my hands, and then charged with a bunch of crimes, and then  
8 charged with assault while resisting arrest.

9           This is Damian's day in court. The 12 of you are  
10 here to listen to this evidence. And you are the hope he's  
11 got, that you will listen to this and understand what's  
12 really going on, understand he was not committing any  
13 crimes, a man who was just getting a ride home, who happened  
14 to be with a driver that the police had some interest in and  
15 pulled over before. Maybe they thought Damian was going to  
16 run just like this other passenger ran back in the summer.  
17 But Damian wasn't committing any crimes. He's not guilty.  
18 So I'm going to ask you to send a message that this is not  
19 what we want in our county. Thank you.

20           THE COURT: Thank you. State may call its first  
21 witness.

22           MR. OSBORNE: State calls Sergeant Eric Light.

23                           ERIC LIGHT,

24           having been duly sworn, testifies as follows:

25           THE CLERK: State your full name and spell your

1 last name for the record.

2 THE WITNESS: Eric Light, L-i-g-h-t.

3 DIRECT EXAMINATION

4 BY MR. OSBORNE:

5 Q. Good morning, Sergeant Light.

6 A. Good morning, sir.

7 Q. Where do you work?

8 A. City of Charleston Police Department.

9 Q. How long have you worked there?

10 A. Ten years, as of yesterday.

11 Q. What had been some of the different assignments  
12 that you worked at?

13 A. Initially, I worked in Team 1 area, which is the  
14 downtown peninsula; I did that for approximately six years.  
15 Moved over to West Ashley, which was in Team 4 division,  
16 which is patrol; did that for six months. I got promoted to  
17 sergeant, and that's where I currently work now in James and  
18 Johns Island, Team 3.

19 Q. What is specifically your assignment on James or  
20 Johns Island?

21 A. I'm a supervisor of Team 3 Power Shift.

22 Q. Do you have any auxiliary assignments, other stuff  
23 that you are doing?

24 A. Yes, sir. Currently, I'm a SWAT sergeant on the  
25 SWAT team; I'm an active shooter instructor; I'm a firearms

1 instructor, and specific skills instructor. Basically means  
2 I can teach academy Powerpoints to students.

3 Q. Departmental instructor as well?

4 A. Yes, sir.

5 Q. Have you received any departmental awards or any  
6 commendations?

7 A. I've received --

8 MR. KING: Objection, Your Honor; relevance.

9 THE COURT: Overruled.

10 BY MR. OSBORNE:

11 Q. Go ahead.

12 A. I've received five individual awards just  
13 throughout my tenure, just with -- just certain arrests I've  
14 made. Also, I made team of the year in 2010 and then last  
15 year in 2013 while supervising the Power Shift, we made team  
16 of the year.

17 Q. And just tell the jury a little bit about your  
18 educational background.

19 A. I graduated from The Citadel with a master's  
20 degree, and currently working on my Ph.D. in public policy  
21 administration.

22 Q. What about any sort of police training that you  
23 might have received?

24 A. Relevant to patrol aspects, I went to a two-week  
25 DEA course, which is basic investigator school, interviewing

1   interrogation classes, I've been to gang schools, as well as  
2   interdiction training.

3       Q.   Interdiction training, what does that mean?

4       A.   Interdiction training deals with patrol level.

5   What it is, is that you have investigators that work in a  
6   building and you have police officers that work on the  
7   street.  Interdiction basically sets roadside interviews on  
8   traffic stops, person stops, it just looks for criminal  
9   indicators looking for a traffic stop or a person stop.

10      Q.   Ground level stuff?

11      A.   Ground level stuff, yes, sir.

12      Q.   Pulling over cars for minor traffic violations?

13      A.   Yes.

14      Q.   Looking for more?

15      A.   Looking for more beyond the stop, yes, sir.

16      Q.   Let's go back to February of 2013.  Where were you  
17   working then?

18      A.   I was assigned to the Team 3 Power Shift.

19      Q.   And let's talk a little bit about the Power Shift.

20   What are some of the duties and responsibilities of the  
21   members of the Power Shift?

22      A.   It's a smaller unit that's proactive.  It's called  
23   comparative statistics.  If you can imagine a big map of  
24   Charleston, any time a report is taken or an incident  
25   occurs, it's a dot on the map.  If there's certain specific

1 dots that go consistently in a small area, it becomes red.  
2 And once it becomes red, that means that there's been a  
3 consistent problem.

4 We are assigned with keeping up with the statistics  
5 so before it gets red we get there to make sure that we can  
6 either dispel the crime or essentially prevent crime from  
7 happening to protect citizens.

8 Q. If it does go red, you guys are the ones --

9 A. If it does go red, that becomes a priority of us.  
10 We get there, we make sure -- what's going on, why is it  
11 happening. Could be burglaries, could be smaller offenses,  
12 loitering, or it could also be serious offenses, like armed  
13 robberies.

14 Q. Is it fair to say that you are mostly -- when you  
15 are not answering calls for service, you are mostly  
16 patrolling in the rougher areas?

17 A. Yes, sir.

18 Q. All right. Now, specifically what are your duties  
19 as a supervisor of Power Shift?

20 A. As a supervisor, I'm not so much tasked with being  
21 the number one guy that's initiating the traffic stop. My  
22 responsibility is to make sure my officers stay within the  
23 policies and procedures of the police department, but also  
24 looking out for their safety.

25 Q. Now, if I'm a patrolman, how do I become -- or how

1 do I get into your unit?

2 A. We look for more experienced officers. I meet with  
3 the team commander, and we basically discuss -- if there's  
4 an officer, if we have an opening, we discuss, we look at  
5 the officer's background, if he has disciplinary issues, if  
6 he has good judgment, if he's very proactive. I sit down  
7 and meet with him, go over my expectations, and see if he's  
8 interested in coming up, becoming part of the team.

9 Q. Now let's go to February the 1st of 2013. Were you  
10 working that night?

11 A. Yes, sir.

12 Q. And let's talk about how you ride and how you  
13 patrol. How many officers are normally in a car, or does it  
14 vary?

15 A. It can vary, but two mostly are -- just a driver  
16 and a passenger.

17 Q. And that night, was that the arrangement?

18 A. There was a driver and passenger. And I think we  
19 had a third officer with other officers. I was by myself.

20 Q. You were riding by yourself?

21 A. Yes.

22 Q. Now, your vehicle, is it equipped with a camera or  
23 audio recordings?

24 A. No, sir.

25 Q. Did you have the occasion to conduct a traffic stop

1 that night?

2 A. I did.

3 MR. OSBORNE: Your Honor, may I approach?

4 THE COURT: You may.

5 BY MR. OSBORNE

6 Q. I want to show you what's been marked as State's  
7 Exhibit 1. Do you recognize this?

8 A. Yes, sir.

9 Q. And what is that?

10 A. That's the intersection of Fleming and Central Park  
11 Road.

12 Q. Just go ahead and describe to the jury your reasons  
13 for pulling this car over.

14 A. The vehicle was traveling this direction eastbound.  
15 We have -- Folly Road is up this direction, and Riverland.  
16 It was coming from Riverland traveling this direction. As  
17 it came up to the intersection -- this is Fleming Road right  
18 here. As it came up here, it made a sharp turn passing  
19 these double, and went directly across where it crossed  
20 these double lines, and it crossed the white double lines  
21 right there where the markers were for the stop sign on  
22 Fleming.

23 Q. What is that violation?

24 A. It's an improper lane use. When you have double  
25 lines that's clearly marked, they have to use the space

1 available.

2 Q. When you initiated that traffic stop, did you  
3 know -- were you familiar with the car?

4 A. No, sir.

5 Q. Could you see who the occupants were?

6 A. I could not. It was nighttime.

7 Q. Did you have any idea if it was male or female?

8 A. No, sir.

9 Q. Do you pull over a lot of cars?

10 A. We do.

11 Q. All right. This really wasn't the worst traffic  
12 violation, I imagine, you've ever seen?

13 A. It was not.

14 Q. You are out there looking for violent criminals.  
15 Why are you pulling over this car?

16 A. Well, in our line of work, people don't commit  
17 crimes in our presence. They just don't do it. Obviously,  
18 it's common sense to say if there's a police officer there,  
19 they go other places to do crimes. So it's on us to  
20 actually seek out the criminal element, and a lot of times  
21 we have these routine stops turn into bigger things.

22 Like routine improper lane uses, that's what we  
23 have to use as a tool to investigate one of those -- in  
24 those areas specifically for violent offenders sometimes.

25 Q. That's the interdiction training?

1           A.    That's the interdiction.

2                   MR. OSBORNE:   May I approach?

3                   THE COURT:   You may.

4   BY MR. OSBORNE:

5           Q.    I show you you what's been marked as State's  
6   Exhibit 2; do you recognize that?

7           A.    Yes, sir.

8           Q.    Not to belabor the point, but describe to the jury  
9   what this photograph is showing.

10          A.    Again, this is Fleming Road right here.   This is  
11   Central Park right here.   As the vehicle turned, this is a  
12   proper turn, because you could see as it's going, it's  
13   clearly going to clear the intersection right here, as well  
14   as the double line right here.   That's a proper turn.

15          Q.    Not a major traffic violation, but this is how you  
16   are supposed to make a turn?

17          A.    Yes, sir.

18          Q.    So you activated your police lights, I guess?

19          A.    I did.

20          Q.    And your siren?

21          A.    Yes, sir.

22          Q.    Did the car pull over?

23          A.    No.   It turned its right blinker on and continued  
24   to drive.

25          Q.    For how long do you think it continued to drive?

1           A.    It was approximately about a half mile it continued  
2   to drive.

3           Q.    And did that concern you at all when the car didn't  
4   pull over?

5           A.    It did because there were plenty of spots -- down  
6   Fleming Road as you go, there's plenty of places to turn  
7   off. It continued to drive, which made me a little nervous  
8   because a lot of times when people are continuing to drive,  
9   there could be something criminal, something in the car or  
10   they are planning something. So it just makes us  
11   uncomfortable when they don't pull over right away.

12               MR. OSBORNE: May I approach?

13               THE COURT: You may.

14   BY MR. OSBORNE:

15           Q.    I show you what's been marked as State's Exhibit 3.  
16   Do you recognize that?

17           A.    Yes, sir.

18           Q.    Just to demonstrate what you are talking about, can  
19   you just describe to the jury what we are looking at?

20           A.    Can you move it over a little bit more so we could  
21   get Central Park? Okay. So Central Park and Fleming is  
22   right here. So as it made the turn, the vehicle traveled  
23   this direction on Fleming Road. So approximately right here  
24   at Hollings, and this is Forest Lane, this is where I  
25   initiated the blue lights and sirens.

1 Q. And when you said there was plenty of opportunity  
2 for the vehicle to pull over before it got to that marker  
3 there, I guess these little turn-offs here is what you are  
4 talking about?

5 A. There's plenty of turn-offs. As you continue to  
6 drive, there's open parking spaces that are well lit all  
7 along off the roadway.

8 Q. There could be a perfectly plausible explanation  
9 for not pulling over?

10 A. There could.

11 Q. But from your line of work, that is an indicator or  
12 it can be an indicator of a problem?

13 A. It could be an indicator since -- that we have to  
14 kind of keep our guard up, that it's maybe nothing, but it  
15 could be something.

16 Q. Okay. The vehicle did finally pull over?

17 A. It did, yes, sir.

18 Q. And where did it pull over?

19 A. Right here. It's marked 266 Fleming Road.

20 Q. This area of Fleming Road, is this -- how would you  
21 describe this area?

22 A. It's a higher crime area. It's considered one of  
23 our hotspots. When we talk about the map again with the red  
24 diagrams for certain crimes that are committed there, it's a  
25 hotspot for us which would make it a priority to patrol.

1 Q. 266 Fleming Road, is that in the city and county of  
2 Charleston?

3 A. Yes, sir.

4 MR. OSBORNE: May I approach?

5 THE COURT: You may.

6 BY MR. OSBORNE:

7 Q. I show you what's been marked as State's Exhibit 4  
8 and 5. Do you recognize these?

9 A. Yes, sir.

10 Q. I show you what's been marked -- show the jury  
11 what's been marked as State's Exhibit 4. Do you work that  
12 photo?

13 A. Yes, sir.

14 Q. And what is that?

15 A. 266 off of Fleming Road.

16 Q. This is where the car pulled over?

17 A. Yes, sir.

18 Q. And just mark on there where the car pulled over.

19 A. They were traveling from this direction. And then  
20 Fleming Road -- I'm sorry. 266, the building, and it's this  
21 last parking lot, parking space.

22 Q. And just to clarify, what time did this traffic  
23 stop occur?

24 A. Approximately, 7:40 at night.

25 Q. This picture was not taken that night?

1       A.    No, sir.

2       Q.    But it does accurately show what it looked like?

3       A.    Yes, sir, it does.

4       Q.    All right.  So now the vehicle pulled over.  I  
5    don't know if you said this.  What did you do when the  
6    vehicle was driving down the road with the signal light on?  
7    You said that concerned you a little bit.  What did you do?

8       A.    As soon as it continued to drive with his blinker  
9    on, at that point right there, once it passed one point, two  
10   points, three points, I'm like, okay.  This car, it turned  
11   its blinker on so that it acknowledged I was behind him.  
12   Obviously knew I was a police officer, heard the siren,  
13   because he turned on his blinker which told me that I know  
14   for a fact there's a police officer behind me, but he  
15   continued to go.  So as he continued to pass, I got on the  
16   radio and asked for another unit.

17      Q.    So now to the traffic stop.  While you are waiting  
18   for that other unit, what did you do?

19      A.    As I waited, I approached the driver's side of the  
20   vehicle.

21      Q.    Did you talk to the driver?

22      A.    I did talk to the driver.

23      Q.    And did you ever identify the driver?

24      A.    Yes, sir, Mr. Backman.

25      Q.    Mr. --

1           A.    Mr. Backman, yes, sir.

2           Q.    And was there anyone else inside the car?

3           A.    The defendant was the passenger.

4           Q.    Front passenger?

5           A.    Front passenger.

6           Q.    Okay. Tell the jury what happened, your  
7 observations, your conversation. What happened when you  
8 went up to the driver?

9           A.    As soon as I approached the driver's side, I spoke  
10 to the driver. He rolled down the window, and I could  
11 automatically smell alcohol emanating from the vehicle.  
12 There was no question about it. In the center console I  
13 could see a plastic tumbler which had a brown liquid in it,  
14 which was indicative of possibly being alcohol in the  
15 vehicle.

16                   As soon as I mentioned about the alcohol and the  
17 smell, the driver immediately leans back and says, I just --  
18 it's not mine, I just got off work, which is kind of telling  
19 me that he's saying it's not mine. He's saying basically  
20 that that right there was possibly alcohol. He didn't want  
21 to claim it.

22                   And then when he said off work, he had kind of a  
23 maintenance shirt with his name on it, which was -- I  
24 believed he was getting off of work.

25           Q.    So you saw the alcohol in the center console. You

1 smelt the alcohol. And the driver said what again?

2 A. He says: It's not mine; I just got off work. He  
3 kind of leaned back and put his hands up.

4 Q. Is that a violation of the law?

5 A. Yes, sir.

6 Q. What is the violation?

7 A. Open liquor in a vehicle.

8 Q. You can't drink and drive?

9 A. No, sir.

10 Q. I'm going to show you --

11 MR. OSBORNE: May I approach, Your Honor?

12 THE COURT: You may.

13 BY MR. OSBORNE:

14 Q. I would like to show you what's been marked as -- I  
15 would like to show you what's been marked as State's Exhibit  
16 12. Do you recognize this?

17 A. I do, sir.

18 Q. What is that?

19 A. This is the tumbler, plastic tumbler that was in  
20 the center console at the time of the traffic stop.

21 Q. You said there was liquid inside the tumbler?

22 A. Sir?

23 Q. You said there was some sort of liquid in there?

24 A. It was a brown dark-in-color liquid.

25 Q. Did you ever find out what that was?

1           A.    Yes, we did.

2           Q.    And walk us through that.

3           A.    It was after the traffic stop, after everything had  
4 occurred, we went back and I retrieved it and clearly  
5 smelled it and clearly alcohol was emanating from it.

6           Q.    But there's nothing in it now?

7           A.    There's nothing in it now.

8           Q.    Why is that?

9           A.    Our policy states that you can't have any kind of  
10 liquid in our evidence. We have lockers, and so they won't  
11 allow alcohol in it or any kind of liquid. So we have to  
12 pour it out.

13          Q.    Do you happen to know why that is?

14          A.    No, sir.

15          Q.    All right. I think we left off with you were  
16 talking to the driver, he says it's not his. Did he make  
17 any other comments to you? I know he said he got off work,  
18 but did he say anything else?

19          A.    We had conversations. I can't remember  
20 specifically what our conversation was, but we talked.

21          Q.    About his license status?

22          A.    His license status. When I was talking back and  
23 forth, he admitted that it was suspended, that he didn't  
24 have it with him.

25          Q.    So at this point, you've got a driver with a

1     suspended license, alcohol in the car, smell of alcohol;  
2     what did you do?

3           A.     At that point right there, once he realized he was  
4     driving under suspension with alcohol emanating, I asked the  
5     driver and the passenger to step out of the vehicle.

6           Q.     Asked them both out of the car?

7           A.     Yes, sir.

8           Q.     They got out?

9           A.     So at that point right there, the driver complied,  
10    but the passenger refused.

11          Q.     Now, you are dealing with the driver. Were other  
12    officers dealing with the passenger?

13          A.     At that point, when it was a safety thing, when I  
14    was dealing with the driver, it was small-talk because I was  
15    waiting on my backup to get there. Once the backup got  
16    there and I realized, okay, he was already driving under  
17    suspension, I smelled alcohol, we were going to check the  
18    car. As soon as the backup arrived, I got the driver out  
19    while other of the backup officers, Officer Villeneuve and  
20    Harvill, dealt with the passenger.

21          Q.     Now, I just want to ask you this, Sergeant: Can  
22    you do that; can you ask people to step out of a car during  
23    a traffic stop?

24          A.     Yes. Yes, sir.

25          Q.     In fact, you routinely do that, correct?

1           A.    We do, especially under the circumstances worth any  
2    kind of investigation.  Especially if we know for a fact the  
3    driver is suspended, or we have a suspicion of alcohol being  
4    in the vehicle, we will get them out.  It's easier and  
5    simpler to conduct an investigation seeing everybody on  
6    their feet outside of the vehicle.  It's an officer safety  
7    issue.

8           Q.    Did you have to put your hands on the driver?  Did  
9    you have to pull him from the vehicle in any way?

10          A.    No.  He complied right away, got right out.

11          Q.    So the driver is coming out of the vehicle.  Two  
12   other officers are talking to the passenger.  What happened  
13   then?

14          A.    At that point right there, when I'm talking to the  
15   driver, it started getting heated on the other side of the  
16   car.  They were yelling, started to come across there.  It  
17   started elevating quickly.  So at that point right there, I  
18   put the driver in handcuffs for officer's safety and then --  
19   I'm sorry.  I put the driver in handcuffs, yes, sir.

20          Q.    Did he fight with you?  Did he resist you?

21          A.    No, he complied.  He was respectful and complied.

22          Q.    Keep going.  You put him in handcuffs, and what  
23   happened.

24          A.    As soon as we put him in handcuffs on the passenger  
25   side, the defendant was starting to become argumentative,

1 started to get really aggressive with the officers, so I  
2 began to transition over to the passenger's side to assist.

3 Q. What did you do with the driver?

4 A. At that point right there, I was by myself. We had  
5 the other officers were there. I sat him on the ground in  
6 handcuffs because, again, I didn't want him running away.  
7 He complied. I didn't think he would, but I sat him down on  
8 the ground just to ensure that he wasn't going to go  
9 anywhere.

10 Q. You said complied. I think you meant to say you  
11 didn't think he was going to run away?

12 A. Yeah, I didn't think he was going to run away. We  
13 just put him on the ground because it's just more beneficial  
14 to us. We didn't think he was going to take off.

15 Q. So you leave the driver there; you transition over  
16 to the passenger's side. Tell the jury what you see.

17 A. At the point where I come around the corner, the  
18 defendant is trying to get back in the vehicle. He has  
19 his -- one officer has one arm; the other has the other arm,  
20 and he is thrashing them back and forth. He's beating them  
21 against the car back and forth. So they are literally  
22 looking like rag dolls getting pushed back between another  
23 car. The way that the passenger's side parked, there was  
24 another vehicle that was in close proximity to the passenger  
25 door, so they were getting bounced back and forth.

1 Q. What did you think?

2 A. I was upset. As soon as I saw it, I said, this  
3 is -- blew up really, really quick where it was violent,  
4 extremely violent.

5 Q. What did you do?

6 A. So at that point right there, there was another  
7 officer, I told Officer Summerlin to stay with the driver.  
8 And at that point right there when I saw -- I struck the  
9 defendant with a closed fist in his torso, his belly.

10 Q. You hit him in the stomach?

11 A. Yes, sir.

12 Q. I'm sure he gave up then, didn't he?

13 A. No, sir.

14 Q. What happened then?

15 A. At that point right there, it was ineffective. We  
16 had to tussle. And we were trying to get him on the  
17 ground.

18 Q. All right. Did he ever go to the ground?

19 A. He eventually went to the ground.

20 Q. Let's put that on pause for one second. You've got  
21 a duty belt there with a lot of intermediate weapons and  
22 whatnot. I mean, why didn't you just Tase him or pepper  
23 spray him or any of that?

24 A. Tase -- it's difficult with a Taser because you  
25 have to be specific. It has a red dot that goes

1 specifically there. But in that close proximity, when you  
2 are going back and forth, the likelihood you are going to  
3 hit another officer is very high. So you cannot use it.

4 Q. I'm going to show you what we looked at earlier,  
5 State's Exhibit 5. You've seen this photo before?

6 A. Yes, sir.

7 Q. Is this a picture that was taken that night?

8 A. No, sir.

9 Q. So explain to the jury what this picture is trying  
10 to depict and show.

11 A. We went later on before the trial and we reenacted,  
12 we set vehicles up to get a visual demonstration of what it  
13 looked like at the time of the traffic stop, where the  
14 defendant's vehicle was parked here, and another vehicle was  
15 parked here, and this is the space we had to deal with.

16 Q. The Nissan is the vehicle the defendant was in?

17 A. Yes, sir.

18 Q. And the police car right there is actually just a  
19 car --

20 A. It was a car that was already parked there. When  
21 we pulled in, the vehicle was already stationed there, yes,  
22 sir.

23 Q. All right. So I believe you left off with the  
24 story, you bring him down to the ground. Where on this  
25 picture was he brought down to the ground?

1           A.    At this point right here.  (Indicating)  The fight  
2   occurred right here, and we got him to the ground towards  
3   the rear of the vehicle.

4           Q.    Explain to the jury what happened when you are on  
5   the ground.

6           A.    So at that point right there I'm calling for  
7   backup, because at some point right here, during the  
8   altercation, there was myself and three other units, and we  
9   still could not contain him.  Because at that point, a crowd  
10  started to dissipate from the apartment right here.  And we  
11  essentially fell to the ground, but while on the ground, he  
12  was still pushing, he was still thrashing, he was still  
13  kicking.  We were still struggling to contain him.

14          Q.    What is the strategy for an officer with bringing  
15  an individual down to the ground; why do you do that?

16          A.    If you're standing -- it could be as small as a  
17  petite female.  If they are physically fighting on their  
18  feet, you have the power in your hips and your legs to where  
19  you have the movement.  The best way to do it is to get them  
20  on the ground so they lose the hips, they lose the legs.

21                So at that point right there it is just upper body.  
22  It's almost physically impossible to arrest someone if they  
23  are standing on their feet and they have that ability to  
24  move and to actually resist.  So that's why it's beneficial.  
25  A lot of times officers will take him to the ground.  They

1     lose that mobility in their legs, and that's key for us.

2           Q.     You are doing what you were trained to do?

3           A.     Yes, sir.

4           MR. OSBORNE: Your Honor, may I approach?

5           THE COURT: You may.

6     BY MR. OSBORNE:

7           Q.     I would like to show you what's been marked as  
8     State's Exhibit 11. Do you recognize this?

9           A.     Yes, sir.

10          Q.     What is it?

11          A.     That's a CD of our dispatch.

12          Q.     You said you had called for help?

13          A.     Yes, sir.

14          Q.     And when you are talking over the radio, those  
15     calls are recorded?

16          A.     They are recorded.

17          Q.     And that's what this is?

18          A.     Yes, sir.

19          MR. OSBORNE: Your Honor, I don't believe I  
20     officially moved that CD in evidence.

21          THE COURT: Any objection?

22          MR. KING: No objection.

23          THE COURT: This will be State's 11.

24                 (State's Exhibit 11, Dispatch CD, is moved into  
25     evidence.)

1 (Whereupon, S-11, CD, is played.)

2 BY MR. OSBORNE:

3 Q. I know it was kind of soft, but what was that?

4 A. That was saying, 303 traffic stop. That's me  
5 communicating through a dispatch saying I have a traffic  
6 stop, I'm going to stop the vehicle.

7 Q. You were 303?

8 A. I was 303, yes, sir.

9 Q. And I think she said 17:39, or 19:39?

10 A. Yes, sir, I believe.

11 Q. That's 7:40 p.m.?

12 A. Yes, they are just repeating the time.

13 (Whereupon, audio is played.)

14 Q. I know again it was kind of hard to hear. Explain  
15 to the jury what's happening.

16 A. At that point right there, that's when it got  
17 physical. That's the point where I key up and say, 303  
18 needs more units. At that point right there, I realize that  
19 we are unable to hold him or we need backup. And that's me  
20 keying up.

21 Q. I think she calls back and she says 303, are you  
22 04?

23 A. That's one of our procedures; say 04, are you okay.  
24 And when I don't respond because -- I don't have the time  
25 because I have to deal, we are on the ground fighting.

1 Q. And I think you actually even heard some officers  
2 start to say they were en route?

3 A. Yes, sir.

4 (Whereupon, audio is played.)

5 Q. So what's happening there?

6 A. So at that point right there, I think it was 333,  
7 Frank, one of the officers said: Hey, I'm on scene. And  
8 they were rushing to it, because we had -- 421 was a West  
9 Ashley unit came. And also if you could hear, there was  
10 alert tone. Alert tone basically says they have priority  
11 over the radio because there's a critical incident going on.

12 Q. Now, during this fight, you were eventually able to  
13 put him in handcuffs?

14 A. Yes, sir.

15 Q. And how long do you think it took the entire -- the  
16 fight to put him in the handcuffs and actually arrest him?

17 A. It was probably two minutes of actually on -- like  
18 trying to detain him from the start. We tried to initially  
19 go from on the ground to where we were putting on handcuffs,  
20 probably two minutes.

21 Q. You said you were struggling with him for two  
22 minutes before putting him in the handcuffs?

23 A. Yes.

24 Q. I think you said earlier, or at least we heard  
25 earlier, other units coming. I think one of the units was 4

1 something?

2 A. 4 something.

3 Q. What does that mean?

4 A. I'm 303, because James Island is Team 3. So we are  
5 all assigned 3. West Ashley is Team 4. So when you have  
6 team -- West Ashley's located right next to James Island.  
7 So when we have critical incidents, someone from Team 4 will  
8 respond to Team 3 as more backup.

9 Q. So you had officers from James Island, Johns  
10 Island, everywhere?

11 A. Yes, sir.

12 (Whereupon, audio is played.)

13 Q. So, again, 04 means everything is okay?

14 A. 04 means everything is okay.

15 Q. 19:44?

16 A. That's 7:44, yes, sir.

17 Q. So from the initial traffic stop 19:39 to 19:44,  
18 now you've got him in handcuffs?

19 A. Yes, sir.

20 Q. This is happening pretty fast?

21 A. Happened pretty quick, yes, sir.

22 Q. All right. What happened after you got him in  
23 handcuffs?

24 A. Once we got him in handcuffs, it was kind of that  
25 breather moment. And then that's when Officer Harvill said,

1 Sergeant, I broke my hand.

2 Q. Did you see his hand?

3 A. I saw it. It was disgusting. His knuckle was not  
4 in place, and then there was a -- looked like a bone  
5 protruding from the upper part of his hand. He was clearly  
6 hurt.

7 Q. And what did you do?

8 A. As a supervisor -- again, goes back to safety, we  
9 put him with one of the units and immediately sent him to  
10 the hospital.

11 Q. Once he goes to the hospital, then what happened?

12 A. So at the point, once he's going to the hospital,  
13 we have to kind of try to slow things down and figure out  
14 what we have. The crowd began -- became aggravated. They  
15 ran out of 266A, the apartment -- there was some kind of  
16 family event. Everybody ran out, and it was a hostile crowd  
17 to say the least. Profanities were thrown at us. It became  
18 more of a safety issue.

19 Q. So Harvill is gone?

20 A. Harvill is gone, we sent him, but it's not over,  
21 no, sir.

22 Q. I will play one more recording for you and that  
23 will be that.

24 (Whereupon, audio is played.)

25 Q. At this point, the defendant is already in

1     handcuffs?

2           A.     In handcuffs.

3           Q.     Sounds like there's still a lot more excitement?

4           A.     We are still dealing with the crowd around us, even  
5     though we have him detained, we are still having to have the  
6     crowd come to us. We're still trying to give verbal  
7     commands. We're still trying to control the scene from what  
8     we can do.

9           Q.     Once you put him in the back seat of the car, still  
10    got the crowd going on, then what happened?

11          A.     So at that point right there, we got Damian to the  
12    car. We got the driver, the initial driver, he was a DUS,  
13    he went to the back of the car. And then Officer Harvill  
14    said he was assaulted.

15          Q.     Harvill or Villeneuve?

16          A.     I'm sorry, Officer Villeneuve.

17          Q.     What did he tell you?

18          A.     Officer Villeneuve, as soon as we were kind of  
19    collecting it, he said, the lady right there assaulted me,  
20    and he appointed to a female that was in the crowd.

21          Q.     And what did you do?

22          A.     At that point right there, I approached the female  
23    that Villeneuve said he was elbowed in the face by her  
24    during the confrontation. So at that point right there, I  
25    had my handcuffs in my hand. I told her she was under

1     arrest, and then I tried to put her hands behind her back,  
2     but her left hand was free, and she backed me into the face  
3     with her left hand.

4           Q.     Did you charge her?

5           A.     We charged her with assault and disobeying a lawful  
6     order, yes, sir.

7           Q.     One count or two counts?

8           A.     Just one count.

9           Q.     Did you ever find out who she was?

10          A.     It's the defendant's mother.

11          Q.     You could have charged her with two counts. Why  
12     didn't you hit her with two counts?

13          A.     Well, it was -- I don't want to say I asked for it  
14     in the sense of how I approached. It was bad tactics, I  
15     went with the handcuffs in my hand. You want to secure  
16     people's hands behind their back and then you bring  
17     handcuffs out. I think I was caught in the heat of the  
18     moment, went to her, I had handcuffs in my hand. She had a  
19     hand free, and that's when she came back and hit me.

20                 So I don't want to say I asked for it in the sense  
21     that it was bad tactics on my part, but at the same time,  
22     I've been hit in the face before; it's not the first time or  
23     the last time. It wasn't that big of a deal.

24          Q.     So let's go through it all. All the people that  
25     were charged, what did you end up charging everybody for?

1           A.    We took the driver for driving under suspension; we  
2   took the defendant for the open liquor in the vehicle,  
3   disobeying a lawful order, resisting arrest, and then damage  
4   to real property.

5           Q.    The rental car?

6           A.    Yeah.  Because we hit the vehicle going back and  
7   forth, the actual damage to the car that was next to us.

8           Q.    And so you said you charged the driver with driving  
9   under suspension.  When you turned on your blue lights and  
10   you turned on your siren, he drove for a half mile.  You  
11   could have charged him with failure to stop for blue lights,  
12   right?

13          A.    Failure to stop for blue lights.  If you have blue  
14   lights on and hit the sirens, if a reasonable person  
15   believes they should pull over, we can articulate that they  
16   failed to stop.  You see vehicle pursuits, that's an  
17   extreme.  We have the discretion to say, was he going to 266  
18   after the fact?  Yeah.  Was the defendant in the front  
19   passenger's seat?  Yes.  Did he live there?  It was  
20   reasonable to believe that that's where he was going.  So we  
21   could have, but it just wouldn't have been appropriate.

22          Q.    That's a lot of charges that you've talked about,  
23   yet the jury is only deciding one, assault on a police while  
24   resisting arrest?

25          A.    Yes.

1 Q. What's going on with the other charges?

2 A. The other charges with which person in particular?

3 Q. All of them.

4 A. All of them? Yeah. The driving under suspension  
5 is simple, that his driver's license was suspended at the  
6 time of the accident -- I'm sorry, of the incident.

7 The defendant's mother was charged with assault on  
8 police -- it was a municipal charge -- while disobeying a  
9 lawful order. It wasn't really -- it wasn't really a big  
10 deal to me.

11 The big deal was what happened to my officer with  
12 the defendant's actions.

13 Q. So all of those charges are going to be handled in  
14 another court?

15 A. Another court.

16 Q. Not this court?

17 A. Not this court.

18 Q. I think those charges are still pending?

19 A. Yes, sir.

20 Q. I guess the rationale is, you deal with the most  
21 serious charge first?

22 A. The felony general sessions first, and then we have  
23 the municipal.

24 Q. That's not your choice?

25 A. No, sir.

1 Q. Just the way it's set up?

2 A. Yes, sir.

3 Q. Did you smell alcohol on the defendant while you  
4 were on the ground with him?

5 A. I did, yeah. He was grossly intoxicated, like from  
6 the profanities that he was throwing towards us the entire  
7 time, you could smell -- it was like a brewery coming off  
8 him. There was no doubt he was intoxicated.

9 Q. I didn't hear you mention that you charged him with  
10 public intoxication. Why is that?

11 A. The public intoxication is -- it was the fact of  
12 what we already had right then and there. It was a  
13 simple -- we already had the charge for the open container.  
14 We already had the charge for him disobeying a lawful order.  
15 And then with the officer's hand -- we weren't trying to  
16 stack municipal charges on. Again, that's in a different  
17 court.

18 Q. Just piling on?

19 A. Just piling on, yes, sir.

20 Q. All right. When you arrested the driver, what did  
21 you do with the vehicle?

22 A. We towed it.

23 Q. I think it was towed to Turkey's?

24 A. Yes.

25 Q. That's part of your departmental policy?

1           A.    That's a policy.  Yes, sir, procedure.

2           Q.    Did you see that front seat passenger, the  
3 individual that you fought with here today?

4           A.    I do.

5           Q.    Can you point him out and describe what's he's  
6 wearing?

7           A.    He's wearing a yellow plaid shirt.

8           THE COURT:  The record will so reflect.

9           MR. OSBORNE:  Court's indulgence.

10          THE COURT:  Yes.

11         BY MR. OSBORNE:

12          Q.    All right.  Sergeant Light, I just want to ask you  
13 a couple quick questions now.  I may have asked you this  
14 before, but I want to make sure:  Did you recognize the  
15 driver from a prior traffic stop when you initiated the  
16 traffic stop?

17          A.    No, sir.  When I initiated the traffic stop, I  
18 didn't know who the driver was.

19          Q.    And is it lawful for you to ask a driver and/or a  
20 passenger out of a vehicle during a traffic stop?

21          A.    Yes.  We can ask at any time anybody to -- for  
22 anybody to step out of the vehicle at any time, yes, sir.

23          Q.    Do you consider yourself a soldier in battle?

24          A.    No, sir.

25          Q.    Do you go out looking for fights?

1           A.    No, sir, not by any means.

2           Q.    In fact, are you the -- y'all are the type of  
3 officers that when you see a minor traffic violation or a  
4 minor violation of the law -- you mentioned discretion --  
5 you have the discretion to scratch out a ticket; isn't that  
6 correct?

7           A.    Yes, sir.

8           Q.    When you asked him to step out of the car for an  
9 open container, had the defendant stepped out of the car,  
10 how do you think this would have ended differently?

11          A.    There would have been a ticket issued for the open  
12 container in the vehicle, ticket possibly for the DUS, and  
13 vehicle towed, or we could have somebody pick up the car and  
14 we would have been on our way. It would have been that  
15 simple.

16               MR. OSBORNE: No further questions, Your Honor.

17               THE COURT: Mr. King.

18                               CROSS-EXAMINATION

19 BY MR. KING:

20          Q.    Good morning, sir.

21          A.    Good morning, sir.

22          Q.    Are you considered the lead officer on the case or  
23 the case agent?

24          A.    I was the one initiated, so, yes. Yes, sir.

25          Q.    You were the highest ranking officer there?

1 A. On scene, yes.

2 Q. You were actually the on-scene supervisor?

3 A. Correct.

4 Q. Does that mean you are in charge of the case file  
5 itself, the reports and everything?

6 A. Yes, sir. I sign off of them.

7 Q. There was only one official report in this case,  
8 correct?

9 A. Yes.

10 Q. Your incident report?

11 A. Correct.

12 Q. No supplemental report from Officer Harvill?

13 A. No, sir.

14 Q. No supplemental report from Officer Villeneuve?

15 A. No, sir.

16 Q. No supplemental report from Officer Summerlin?

17 A. No, sir.

18 Q. But there were some internal documents?

19 A. Yes, sir.

20 Q. Internal memos regarding use of force that you are  
21 required to do by your policy?

22 A. Yes, sir.

23 Q. When you have your file, you are in charge of  
24 getting the solicitor -- you've got to provide them with the  
25 evidence in the case?

1           A.    We have an administrative sergeant that handles  
2   that, that works with the Solicitor's Office that -- not me  
3   in particular. We have an administrative sergeant that,  
4   once we have our paperwork, she sends -- puts the file  
5   together and gives it to the Solicitor's Office, yes.

6           Q.    That didn't include those interoffice memos?

7           A.    I don't believe so, no, sir.

8           Q.    I had to ask for those specifically; you turn those  
9   over to Detective Osborne?

10          A.    I believe so, yes, sir.

11          Q.    So you are on patrol this day pulling over this  
12   2005 Ford Taurus, right?

13          A.    Yes, sir.

14          Q.    For what it says in the report, crossing -- crossed  
15   the double solid line?

16          A.    Yes, sir.

17          Q.    Observed the vehicle cross the double solid line.  
18   You said he turned too far to the inside on that curve. You  
19   show that on the picture, correct?

20          A.    Yes, sir.

21          Q.    He wasn't speeding?

22          A.    No, sir.

23          Q.    He used his turn signal when he turned left?

24          A.    He did.

25          Q.    And you initiated the blue lights, right?

1           A.     Correct.

2           Q.     Is that about 19:39 when you call in, or you call  
3     in before you blue light or right after?

4           A.     It's simultaneous. I can't remember which one  
5     before, but almost on top of each other.

6           Q.     You said 19:39 is about the time you would have  
7     blue-lighted him?

8           A.     Yes, roughly, approximately.

9           Q.     And you had Mr. Anderson cuffed by 19:44?

10          A.     19:44, I believe that's what time everything was  
11     over with, yes, sir.

12          Q.     So you had to -- didn't pull over right away, he  
13     didn't pull over fast enough. He turned on his right turn  
14     signal, kept going for about 30 seconds before he pulled  
15     into the 266 Fleming Road. That got you -- that was sort of  
16     a red flag to you, got you a little alert?

17          A.     It's not so much a red flag. But it's just like I  
18     said, I called for more units because it's not normal.  
19     That's all.

20          Q.     You called for backup?

21          A.     Yes, sir.

22          Q.     How many officers ended up coming, do you know,  
23     when it's all over?

24          A.     After the end of it or initially?

25          Q.     Initially would have been just four of you?

1 A. It would have been a total of four, correct.

2 Q. Four total vehicles?

3 A. No. It would have been myself and then three other  
4 officers in one vehicle.

5 Q. But eventually a canine unit came?

6 A. I believe so, yes, sir.

7 Q. And other officers came from around?

8 A. From around, yes.

9 Q. How many?

10 A. I don't know. I can't --

11 Q. A lot?

12 A. It was a lot, because, again, it was nighttime.  
13 There was blue lights everywhere. So I couldn't get a  
14 specific number.

15 Q. Crowd was gathering?

16 A. Yes.

17 Q. Getting restless out there?

18 A. At what point?

19 Q. The crowd was angry because it seemed they thought  
20 you were beating up this guy in the parking lot?

21 A. Initially when we first got into the fight, yes.  
22 The crowd was surrounding, hostile, yes, sir.

23 Q. So Mr. William Backman pulls over, stops the car,  
24 and you approach the driver. And you said you smelled  
25 alcohol immediately?

1 A. Correct.

2 Q. You saw the plastic cup with amber liquid in it?

3 A. Correct.

4 Q. But you are not sure exactly what's in the cup  
5 until everything is over?

6 A. Yes, because I can't actually examine it. Yes,  
7 sir.

8 Q. And you said you were talking to him a little bit  
9 before the backup got there?

10 A. Yes.

11 Q. Backup is kind of arriving?

12 A. It's arriving. Yeah, I'm talking to them. As I'm  
13 talking to them, they are pulling in, yes, sir.

14 Q. And you realize there's a problem with the  
15 passenger at some point. So when you're talking to  
16 Mr. Backman --

17 A. Yes, sir.

18 Q. So you go around to the other side, right?

19 A. Correct.

20 Q. And you said they were already trying to pull him  
21 out of the car?

22 A. They are already -- I don't know where they were,  
23 at what point. When I was there, they had both arms, looked  
24 like he was trying to get back in the car. But that's when  
25 I observed him thrashing back and forth.

1 Q. They had their hands on him at that point?

2 A. They each had an arm, correct.

3 Q. So now, it was 19:39 when you first put on the blue  
4 lights, right?

5 A. Uh-huh.

6 Q. So you've still got to drive a little bit down and  
7 pull over, call for backup, get out of the car, approach,  
8 talk to Backman, wait on backup. And in a total of five  
9 minutes, he's on the ground in cuffs, right?

10 A. Yeah. Correct, 19:39, 19:44

11 Q. So some of that, 19:39 minute, couple minutes taken  
12 just to get to where the car stopped, to get him out?

13 A. No. It was about 30 seconds when I hit the blue  
14 light for that stretch, so it was about 30 seconds. We  
15 pulled in. I approach the driver's side. And while I'm  
16 talking to him, they're getting ready to pull in. It wasn't  
17 a long conversation.

18 Q. It wasn't a long conversation with Mr. Backman?

19 A. Yeah, correct. Like I was talking to him, he  
20 admitted what he said, and admitted to being under  
21 suspension.

22 Q. So it was relatively quick when you are talking to  
23 Mr. Backman and they are already pulling him out of the car?

24 A. It was -- I don't know. Again, you are going to  
25 have to talk to them, because I was dealing with the driver

1 at that point, talking to him. And so it was relatively  
2 quick where I decided they were going to get out of the car,  
3 that I wanted both of them out of the car. So, yes.

4 Q. Because it had to be quick because there was only  
5 five minutes total from blue lights to cuffs?

6 A. Uh-huh.

7 Q. Right?

8 A. Uh-huh.

9 Q. So you are listening to what's going on over there  
10 on the other side too?

11 A. Partially.

12 Q. And you heard Mr. Anderson ask why he had to give  
13 his ID?

14 A. I can't say I heard that. I think one of the  
15 things I heard him say is, why do you want me to get out of  
16 the car.

17 Q. But you are aware that, I think, Villeneuve asked  
18 for his ID, and eventually got his ID?

19 A. At the time of the stop, I can't say from what was  
20 going on on that side.

21 Q. But you heard him say, why do I have to get out of  
22 the car?

23 A. I heard him say that.

24 Q. Now, you wanted him out of the vehicle for  
25 officer's safety, right; would that be one reason?

1           A.    Yes, sir, it could -- yes, sir.

2           Q.    And you also wanted to talk to him and conduct an  
3 investigation, right?

4           A.    Correct.

5           Q.    Because you had a cup in there with something --  
6 you don't know what's in it; you smell alcohol; you talk to  
7 Mr. Backman; so you wanted to go around and talk to  
8 Mr. Anderson, right?

9           A.    No.   That I wanted to go around and talk to Mr.  
10 Anderson?

11          Q.    Yes.

12          A.    Not at that point.

13          Q.    Eventually, though, you were going to have him get  
14 out of the car?

15          A.    Yeah -- no.   When we were going to get out of the  
16 car, those officers were just going to talk to the  
17 defendant.   I was just going to stay with the driver.

18          Q.    So the purpose of getting him out of the car was  
19 not to arrest him right then, but just to get him out of the  
20 car and talk to him and investigate, right?

21          A.    From my perspective, when I was there, what I had  
22 was the driving under suspension.   He obviously couldn't  
23 drive the vehicle anymore.   And then when he said, it's not  
24 mine.   That's what -- my cue that there's definitely alcohol  
25 in that vehicle.   At that point, that's when I asked the

1 driver and passenger to both step out. It was -- from my  
2 perspective, I was just going to investigate that, yes, sir.

3 Q. You still wanted to talk to him, right? Because  
4 Mr. Backman could have been lying, right? It's not mine?

5 A. Could have been.

6 Q. Could have been lying, right? You don't take  
7 everything everybody tells you at face value, correct?

8 A. Yes.

9 Q. When you're chasing a suspect and someone says, he  
10 went thataway, you don't run thataway? Sometimes people  
11 lie, right?

12 A. Yes, sir, absolutely.

13 Q. So you still had some investigation to do?

14 A. Correct.

15 Q. You are the supervisor and this is your stop?

16 A. Correct.

17 Q. Did you see Mr. Anderson on the cell phone?

18 A. I did.

19 Q. Did you hear anything about that, what was said?

20 A. I told him once during the stop to turn the cell  
21 phone off and get off the cell phone. Because, again, a lot  
22 of times when people are on cell phones, they are talking,  
23 they are giving the location away, which if they are giving  
24 the location away, they are calling somebody. That just  
25 means more people could possibly come to us, which turns

1     into an officer safety issue.

2           Q.     How long would you say the struggle lasted? Like,  
3     once they are pulling him out of the car, from then until  
4     cuffs are on, how long is that?

5           A.     It was probably a minute and a half to two minutes.

6           Q.     So about two minutes? So, I mean, they are pulling  
7     him out of the car within a really short period of time,  
8     within two, maybe three minutes tops, right? Because you've  
9     only got five to work with. You've got a little bit of  
10    time, pull him over to get out, start talking to  
11    Mr. Backman, right?

12          A.     Uh-huh.

13          Q.     Backup to arrive and go ahead and say a few things  
14    to him, get his ID, ask him to step out of the car. And  
15    then two minutes in the end when there's all the struggling  
16    going on?

17          A.     Uh-huh.

18          Q.     So they had him jerked out pretty quickly, didn't  
19    they?

20          A.     Well, again, you have to ask what they were  
21    specifically saying to him. Because, again, I wasn't part  
22    of that conversation.

23          Q.     But you were there and you were aware and listening  
24    to what was going on, heard some of it, right?

25          A.     Not on the passenger's side. Again, I just started

1 realizing -- once it started getting verbal and the  
2 defendant started yelling, that's when I realized things  
3 were not going good.

4 Q. You put in the report that Mr. Anderson violently  
5 slammed his body into a parked vehicle, right?

6 A. Uh-huh.

7 Q. Explain. Tell me about that. What happened there?

8 A. Again, when he was out of the vehicle, officer had  
9 one arm, he had another arm. They looked like rag dolls  
10 when he was throwing them back and forth towards the car.  
11 They were bouncing off back and forth into it.

12 Q. You don't think he had anything personal against  
13 that car, though, right? The car just happened to be there  
14 when the struggle was going on?

15 A. I'm sorry?

16 Q. You don't think Mr. Anderson had anything personal  
17 against that car or anything? This was just the car was in  
18 the way?

19 A. The car just happened to be parked there, yes.

20 Q. Car happened to be parked there when the struggle  
21 was going on?

22 A. Yes.

23 Q. And it got dented?

24 A. It got dented, yes, sir.

25 Q. There was a canine there that alerted on that

1 vehicle that got dented, that was just some other -- Steven  
2 Lemmon's (ph.) vehicle?

3 A. That had nothing to do -- happened to be a random  
4 person actually sitting in that car during this entire  
5 thing. For whatever reason, he was sitting there in the  
6 vehicle. We had no idea somebody was in that car.

7 Q. But you ended up getting canine alert on that car  
8 and searching it?

9 A. We had the canine. I can talk about Mr. Lemmon  
10 just from prior -- well, I just know Mr. Lemmon being there,  
11 but we had a canine there anyway, and the vehicle -- canine  
12 alerted on the vehicle, yes, sir.

13 Q. You didn't find anything in Mr. Lemmon's vehicle?

14 A. No, sir.

15 Q. You didn't find anything in Mr. Backman's vehicle?

16 A. Well, except the liquor, yes, sir.

17 Q. Mr. Anderson was screaming: Mama, mama?

18 A. I believe. Again, I can't remember specifically  
19 what was said when I was on the other side and in transition  
20 to the other.

21 Q. You were -- I guess maybe later became aware that  
22 Mr. Anderson lived there and his mama lived right there?

23 A. Correct.

24 Q. And you were parked right in front of those little  
25 apartments right there, correct?

1           A.    266, yes, sir.

2           Q.    Nobody ever told Mr. Anderson he was under arrest?

3           A.    You have to talk to the other officers.  Again,  
4  like I said, I was on the driver's side dealing with the  
5  driver.  I don't know specifically what was said between the  
6  other officers that were engaging him.

7           Q.    But you didn't tell him he was under arrest?

8           A.    No, sir, I did not.

9           Q.    You didn't tell the other officers before -- when  
10  they were pulling him out of the car, you hadn't told them  
11  to arrest him?

12          A.    That wasn't my place to do that at the time.

13          Q.    You are the supervising officer?

14          A.    I'm the supervisor; however, they have the  
15  discretion to know what's going on.  I can't be everywhere  
16  at once.  When -- my priority is dealing with the driver.  
17  That's why those officers are in those positions, because  
18  they make good judgments, they have good background, and  
19  they make their -- they are decision-makers.  That's why  
20  they are there, because I trust their judgment.

21          Q.    So you come around to the passenger's side of the  
22  car now.  You said they had ahold of him to pull him out of  
23  the car?

24          A.    No.  He was already out of the vehicle.

25          Q.    Okay.  And you punched him in the stomach?

1 A. Yes, sir.

2 Q. Now he's got four police officers on him, right?

3 A. No. He has three, because Officer Summerlin went  
4 to the driver who was already in handcuffs.

5 Q. Okay. So you get the cuffs on him. He's cuffed  
6 now. Everything seems to be under control except maybe the  
7 crowd is a little restless?

8 A. Talking about the defendant in the cuffs?

9 Q. Yes.

10 A. Yes, sir.

11 Q. And you said now immediately after that Harvill  
12 came up to you?

13 A. We were -- I can't remember if we were still on the  
14 ground, but it was immediately after we got him in  
15 handcuffs.

16 Q. And this is a pretty exciting event, right?  
17 Pretty -- after all this happened, everybody is probably  
18 breathing heavy?

19 A. Yes, sir, it was exhausting.

20 Q. He comes up to you immediately after that and says  
21 to you: I broke my hand?

22 A. He says: Sergeant, I think I broke my hand. And  
23 he showed it, he lifted it up.

24 Q. Right. I'm going from your use of force report.

25 A. Yeah.

1 Q. Where it says: I broke my hand.

2 A. Correct.

3 Q. He didn't say, Damian Anderson broke my hand?

4 A. "I broke my hand."

5 Q. And then Harvill gets sent to Roper Hospital?

6 A. Yes, sir.

7 Q. And you guys remain there. And you charge him with  
8 open container --

9 A. Correct.

10 Q. -- right? Okay. At the time y'all claim he  
11 resisted and pulled him out of the car, right, you didn't  
12 have enough to charge him with open container, because you  
13 didn't even know what was in the cup at that point, right?

14 A. At that point, I had probable cause, yes, sir; we  
15 could have.

16 Q. You think you had enough to arrest Damian Anderson  
17 for open container because you saw an amber cup, a cup with  
18 amber liquid in it?

19 A. No, I'm sorry. I'm saying afterwards. As soon as  
20 I examined it, yes.

21 Q. That's what I'm saying, after you examined it. And  
22 then you found -- okay, now I've got evidence, I'm going to  
23 arrest Damian Anderson for this because there is -- I smell  
24 alcohol in this car?

25 A. Uh-huh.

1 Q. But when he was being pulled out at that point,  
2 didn't know, right?

3 A. At that point right there, I did not examine it,  
4 that's correct.

5 Q. And no one saw Damian Anderson drinking from the  
6 glass?

7 A. No, sir.

8 Q. Did you take any fingerprints of the cup?

9 A. No, sir.

10 Q. Did you do any sort of test, breathalyzer, blood  
11 test on Damian Anderson?

12 A. It wasn't necessary.

13 Q. Just take your word for it?

14 A. Yes, sir.

15 Q. No photos of the amber liquid?

16 A. Again, that's -- that was the municipal part. We  
17 didn't -- it wasn't like a major crime scene we were dealing  
18 with. It was just a tumbler with -- open container,  
19 municipal charge.

20 Q. Did you have a cell phone?

21 A. Did I have his cell phone? I don't recall if we  
22 took his cell phone or not.

23 Q. I'm asking you if you had one, personal cell  
24 phone?

25 A. Yes, sir.

1 Q. Because they've all got cameras on them. You could  
2 have taken a cell phone photo?

3 A. Our policy is we don't take cameras, because if we  
4 take photos with our cameras, our personal cameras could be  
5 subpoenaed and turned in. So that's against our policy.

6 Q. And you didn't test the amber liquid inside there  
7 for -- you have a lab on-site?

8 A. We have a lab, correct.

9 Q. But no test to see if there was any alcohol in it?

10 A. I smelt it, I know exactly what -- in law  
11 enforcement ten years, I know what alcohol smells like. So,  
12 no, we didn't test it.

13 Q. So when he's being pulled out of the car and all of  
14 this is going on, he's not under arrest for open container  
15 at that point? He's not under arrest yet?

16 A. At that point, from what my perspective was, is  
17 that, again, I don't know what was said on the other side of  
18 the car, but, no, I couldn't say he was under arrest for  
19 open container.

20 Q. Now, next thing you charged him with is malicious  
21 injury to real property?

22 A. Uh-huh.

23 Q. You said that when he was getting pulled out of the  
24 car, there was a small space where there was this other car,  
25 correct?

1 A. Right.

2 Q. During all that struggle and everything, the car  
3 got hit?

4 A. Correct.

5 Q. But you don't believe that Mr. Anderson, while  
6 during that struggle, saw that car and thought, I don't like  
7 that car, he's always parking in my spot, I'm going to kick  
8 it?

9 A. No, sir.

10 Q. That wasn't what happened, right?

11 A. No, sir.

12 Q. Are you aware that malicious injury to property  
13 requires that it be willfully and malicious toward the  
14 property?

15 A. Well, when he was throwing officers against it, I  
16 could assume that that's what he knew he was doing, was  
17 battering the car. So, yeah, he had the intent to do it.

18 Q. But, you know, there's a case out there almost  
19 exactly like that where a guy is fighting with a cop and  
20 slams him against the cop car, and our law in South Carolina  
21 is you can't charge him with malicious injury to property  
22 because they have to have a malicious intent toward that  
23 property, like keying the car. Do you want to see the  
24 statute?

25 A. No, sir.

1 Q. It requires willful and malicious damage to the  
2 property.

3 A. Okay.

4 Q. Like keying a car, I don't like this guy, I'm going  
5 to key his car, key the car, or, like I said, if  
6 Mr. Anderson was being pulled out of the car by the police  
7 and decided, I might as well kick this guy's car because I  
8 don't like him, he's always parking in my spot, that's  
9 malicious injury to property. And also, car --

10 THE COURT: Is there a question somewhere?

11 MR. KING: Sorry, Judge.

12 BY MR. KING:

13 Q. Do you agree with me about -- were you aware of  
14 that?

15 A. Yeah. His intent wasn't to destroy the car; I  
16 agree with that 100 percent.

17 Q. Did you know a car is not real property?

18 A. No, sir.

19 Q. It's personal property?

20 A. Yes, sir.

21 Q. May be even the wrong statute, but the elements --  
22 there's two different ones, right?

23 A. Real versus personal.

24 MR. OSBORNE: Objection, Your Honor.

25 THE COURT: Sustained.

1 BY MR. KING:

2 Q. Let's talk about the other charge. You charged him  
3 with a CD code charge 21-192, failing to obey an officer?

4 A. Yes.

5 MR. KING: May I approach, Your Honor?

6 THE COURT: You may.

7 BY MR. KING:

8 Q. I'm showing you Defendant's Exhibit 5. Do you  
9 recognize that? Right?

10 A. Yes, sir.

11 Q. What is that?

12 A. This is the statute charge for the -- disobeying  
13 police officer's orders.

14 Q. That's from the Charleston City Code?

15 A. Yes, sir.

16 Q. That says -- in Section B, it says, obeying police  
17 officer's order. In Section B it says, right, that: When  
18 any police officer shall exercise judgment, decide --  
19 reasonable judgment -- decide that the presence of any  
20 person or public place is causing any of the conditions  
21 enumerated in Subsection (a), right?

22 A. Okay.

23 Q. That's disorderly conduct, right? And it lists the  
24 reasons what disorderly conduct is?

25 A. Disorderly conduct, yes, sir.

1 Q. And if you believe someone is being disorderly, you  
2 ask them to leave, and they don't, then you can arrest them;  
3 isn't that what that code says?

4 A. Are you asking for disorderly conduct, or are you  
5 asking for this charge in particular?

6 Q. Let me put it this way. Does this code give you  
7 the authority to arrest anybody just because they don't obey  
8 your command?

9 A. Well, the circumstances of a traffic stop --

10 MR. OSBORNE: I'm going to object again.

11 THE COURT: Sustained. He's not on trial here.

12 BY MR. KING:

13 Q. Okay. That's three of the things you charged him  
14 with we just went over; open container, right?

15 A. Yes, sir.

16 Q. Malicious injury?

17 A. Yes, sir.

18 Q. And 21-192?

19 A. Yes, sir.

20 MR. KING: Your Honor, may I move 21-192 into  
21 evidence?

22 THE COURT: You are putting law into evidence? I  
23 will tell them the law. No, you may not.

24 BY MR. KING:

25 Q. And then the fourth thing you charged him with was

1 assault on a police officer while resisting arrest?

2 A. Yes, sir.

3 Q. And you said that was the most serious charge  
4 anybody got out there that day?

5 A. Yes, sir.

6 Q. The only one that's a felony in this courtroom?

7 A. Yes, sir.

8 Q. Damian Anderson had no illegal drugs on him?

9 A. No, sir.

10 Q. No illegal drugs found in the car or anything?

11 A. No, sir.

12 Q. No weapons?

13 A. No, sir.

14 Q. You pulled over William Backman before, right?  
15 Back on December 18th?

16 A. If that's the date; I am not familiar with the  
17 date. But, yes, sir, I had dealt with the driver before.

18 Q. You pulled him over back then for crossing the  
19 double yellow line, right?

20 A. I don't have the note.

21 MR. KING: May I approach, Your Honor?

22 THE COURT: You may.

23 BY MR. KING:

24 Q. I'm going to hand you -- I'm going to show you  
25 Defendant's Exhibit 1 and 2 for identification. I guess I'm

1 directing you to the 12/18 I'm not sure if it's 1 or 2.

2 A. It's 2, sir.

3 Q. Number 2. You pulled him over for crossing the  
4 double solid line, right?

5 A. Yes, sir.

6 Q. And used almost the exact same language in the  
7 report for this case too, right? Observed the vehicle  
8 crossing double solid line. Mr. Backman must be a bad  
9 driver?

10 A. Again, we look for little things, yes, sir.

11 Q. There was a passenger in the car. On 12/18 is what  
12 I'm referring to?

13 A. Yes, sir.

14 Q. So you pull over William Backman in the same 2005  
15 Ford Taurus on 12/18/12, right?

16 A. I'm not sure if it's the same car. Again, I can't  
17 remember.

18 Q. The information is on both reports.

19 A. That's what I'm looking for. If you just give me  
20 one second. Yes, sir, 2005 Ford Taurus.

21 Q. Same car?

22 A. Yes, sir.

23 Q. Same driver. Officer Villeneuve was there?

24 A. Yes, sir.

25 Q. Officer Harvill was there?

1           A.    I think it was just myself and Officer  
2 Villeneuve.

3           Q.    It doesn't say on the 12/18 report assisting  
4 officers, Harvill, Summerlin, Villeneuve?

5           A.    I'm saying at the initial time of the traffic stop,  
6 it was just me and Villeneuve.

7           Q.    But Harvill and Summerlin showed up too?

8           A.    Eventually, yes, sir.

9           Q.    And Tyler Richardson, the passenger, immediately  
10 flees from the car?

11          A.    He bailed from the car, yes, sir.

12          Q.    And threw down some marijuana?

13          A.    Yes, sir.

14          Q.    So you are saying you don't remember on February  
15 1st that it was the same car?

16          A.    Yes, sir, that's what I'm saying. We do a lot of  
17 traffic stops.

18          Q.    Are you familiar with your office's policies on the  
19 use of force?

20          A.    Yes, sir.

21          Q.    Isn't it a policy that force is an unusual  
22 procedure and an absolute last resort in police  
23 operations?

24          A.    Correct.

25          Q.    Advice, warnings, persuasion, are other methods

1 that you could use to get someone to comply?

2 A. Yes, sir, absolutely.

3 Q. You don't think someone could have talked to him a  
4 little more or tried some other approach?

5 A. Are you talking -- which night are we talking  
6 about?

7 Q. I'm back now to this case, back now to this case.

8 A. Okay. Okay.

9 Q. Because there's not a whole lot of time. Got it  
10 down to five minutes from blue lights to him in cuffs.  
11 There really wasn't a whole lot of time spent talking to  
12 him, right?

13 A. Well, the circumstances with that is that I could  
14 sit there for 30 seconds straight, hey, you have to get out  
15 of the car, hey you have to get out of the car, hey you have  
16 to get out of the car. That could go on for 30 seconds.  
17 And then when somebody doesn't comply, it's just the point  
18 where we are not going to say, okay, you know what, he's not  
19 going to get out of the car, we have to turn our backs and  
20 we have to walk away.

21 At some point we are going to have to put hands on  
22 him because you are just not complying. It's that simple.  
23 We can talk all day long. But, again, in that certain  
24 specific area, if somebody is not listening and we already  
25 have reason to believe that there's a criminal -- something

1 criminal going on, just comply, that was it. It would have  
2 been simple.

3 Q. If he had been in a different area, you would have  
4 maybe given him a little more leeway?

5 A. That's a different circumstance. Every  
6 circumstance is different. I'm talking about this  
7 circumstance.

8 Q. There were no cameras on any of the cars that  
9 showed up that day?

10 A. There may have been on the responding ones.

11 Q. But you don't have any of this on video?

12 A. No, sir.

13 Q. And if the camera had caught all of this, it could  
14 have caught video and audio of this whole thing, right?

15 A. Absolutely, yes, sir.

16 Q. Didn't your office just get a grant for body cams?

17 A. Yes. I'm on the committee.

18 MR. OSBORNE: Objection, Your Honor.

19 THE COURT: Sustained.

20 MR. KING: That's all the questions I have.

21 THE COURT: Any redirect?

22 MR. OSBORNE: Briefly, Your Honor.

23 REDIRECT EXAMINATION

24 BY MR. OSBORNE:

25 Q. Sergeant Light, are you an attorney?

1       A.    No, sir.

2       Q.    Are you a prosecutor?

3       A.    No, sir.

4       Q.    These other charges that he's talking about, the  
5   malicious injury to property, the disobeying a lawful order,  
6   what's going to happen with those charges?  And what I mean  
7   by that is, is there going to be another court where that's  
8   going to be addressed?

9       A.    What the difference between a municipal court --  
10   open container, disobeying a lawful order, that's in a  
11   different court with a different judge.  It's a smaller  
12   court versus the general sessions court.

13      Q.    And you didn't do any case law research on this  
14   because you don't have access to Westlaw and some other  
15   things that this attorney has access to, do you?

16      A.    No, sir.

17      Q.    So you may not be aware of conflicting case law  
18   that says other things regarding malicious injury to  
19   property or disobeying a lawful order; are you aware of  
20   that?

21      A.    Yes, sir.  I mean, we have -- we have -- we are  
22   issued case law, but it's bare minimum case law with, you  
23   know, certain things that we have to know, but not specific  
24   to --

25      Q.    Do you have the capability of researching case law?

1 A. No, sir.

2 Q. Is there a city prosecutor who basically has the  
3 same job I have that prosecutes city charges?

4 A. Yes, sir.

5 Q. What's his name?

6 A. Melinda Lucka is one of the females.

7 Q. Mark Bourdon?

8 A. Mark Bourdon, yes, sir, a couple.

9 Q. So the car, the rental car, was it damaged before  
10 the fight?

11 A. No.

12 Q. Was it damaged during the fight?

13 A. It was damaged during the fight, yes, sir.

14 Q. Now, let's talk about this disobeying a lawful  
15 order quickly. Do you have the lawful right, as a police  
16 officer, as an enforcement officer, to ask a passenger in a  
17 vehicle out of the car?

18 A. Yes, sir.

19 Q. Was this defendant asked out of the car?

20 A. Yes, sir.

21 Q. How many times, that you know of?

22 A. That I know -- I know that it was initially by me,  
23 say, hey, everybody kind of step out of the car. Driver  
24 obviously understood it; he complied right away. And the  
25 defendant refused. And, again, I don't know what happened

1 on the other side, what their verbal -- what their dialogue  
2 was.

3 Q. He disobeyed a lawful order?

4 A. Yes, sir.

5 Q. So when he was arrested, he was arrested for and  
6 charged with disobeying a lawful order and open container?

7 A. Yes, sir.

8 Q. Now, all of this stuff about PC and everything  
9 else, you are trying to answer from your perspective what  
10 you saw. And your last command to him was, get out of the  
11 car?

12 A. Yes, sir.

13 Q. And from that point, you are talking to the  
14 driver?

15 A. Yes, sir.

16 Q. We are going to need to hear from Officer  
17 Villeneuve and Officer Harvill regarding what went on from  
18 that point on?

19 A. Yes, sir.

20 Q. Let's just -- all right. Without trying to  
21 overstate the obvious here, why do you ask people to step  
22 out of the car?

23 A. If we have an investigation -- sometimes with --  
24 obviously, with open container, the smell of alcohol, we  
25 have them step out to investigate them outside. We can see

1    them on their feet, we can speak to them, we are getting  
2    them somewhat complying with us. And, again, it's easier to  
3    talk to people outside the vehicle versus an unknown of  
4    what's in the car. So it eases on the officer a little bit  
5    that we can see them versus having an unknown area in the  
6    vehicle. It's just officer's safety.

7           Q.    Since we are talking case law, are you aware of a  
8    case law that says that officer's safety is a substantial  
9    concern?

10          A.    I'm not familiar with the case law.

11          Q.    Supreme Court case. I'm not going to ask you about  
12    case law, okay, because you are not an attorney, you are not  
13    a prosecutor. But you know that you have the legal right to  
14    do that?

15          A.    Yes, sir.

16          Q.    Because there's all kinds of places in a vehicle  
17    that you can hide a weapon, that you can hide a knife, that  
18    you can hide a gun; is that correct?

19          A.    Yes.

20          Q.    Through your training and through your experience,  
21    I imagine you've seen some of those?

22          A.    Yes, sir.

23          Q.    You said -- Mr. King asked you did the defendant  
24    yell, mama, mama. Did he yell anything else?

25          A.    When we were fighting, he was using profanities

1 towards us. And, again, I'm just saying from what I saw  
2 when we were on the ground from what I could recollect.

3 Q. All right. And so he also mentioned this thing  
4 about did anyone tell him he was under arrest. Again,  
5 without talking about case law and everything else, are you  
6 required to use those magic words that you are under arrest?

7 A. No, we don't have to say you are under arrest for  
8 someone to realize that they are actually under arrest.

9 Q. To be under arrest?

10 A. To be under arrest, yes, sir.

11 Q. All right. And this comment by Officer Harvill,  
12 was Officer Harvill's hand broke before the defendant  
13 resisted arrest?

14 A. No, sir.

15 Q. When did you learn that he broke his hand?

16 A. Right after we put the defendant in handcuffs and  
17 he pulled his hand up.

18 Q. What were you all wearing that afternoon?

19 A. Full uniform. This is our standard uniform, yes,  
20 sir.

21 THE COURT: Any recross, based on his redirect?

22 MR. KING: No, Your Honor.

23 THE COURT: Thank you. You may step down. Any  
24 objection to this witness being excused?

25 MR. KING: Not from the defense.

1 MR. KING: Yes, Your Honor. I understand.

2 THE COURT: Let's bring the jury in.

3 (Whereupon, the jury returns to open court at 11:41  
4 a.m.)

5 THE COURT: State ready to call its next witness?

6 MR. OSBORNE: Yes, Your Honor. The State calls  
7 Officer Matthew Summerlin.

8 MATTHEW SUMMERLIN,  
9 having been duly sworn, testifies as follows:

10 THE CLERK: Please state your full name and spell  
11 your last name for the record.

12 THE DEFENDANT: Officer Matthew Summerlin,  
13 S-u-m-m-e-r-l-i-n.

14 DIRECT EXAMINATION

15 BY MR. OSBORNE:

16 Q. We are just going to take a moment to introduce  
17 yourself to the jury. Where do you work?

18 A. I work for the Charleston City Police Department.

19 Q. How long have you worked there?

20 A. For about six years now.

21 Q. I believe you have military service?

22 A. Yes, sir. I commissioned from The Citadel; I'm  
23 currently a captain in the Army National Guard and I did a  
24 tour in Afghanistan.

25 Q. Now, what have been some of your different

1 assignments while at CPD?

2 A. When I began, I was in Team 3 patrol, and then I  
3 moved into the Team 3 Power Shift. Since then I have become  
4 a detective in central, I worked burglary, and I'm currently  
5 now in the warrants division.

6 Q. Do you have any auxiliary assignments, anything  
7 extra you do at CPD?

8 A. Yes, sir, I'm a member of the SWAT team.

9 Q. Have you received any awards, any departmental  
10 commendations?

11 A. Yes, I have two department commendations. And I  
12 have also a member of the Team 3 -- Team of the Year for  
13 2013 was Team 3 Power Shift.

14 Q. Briefly go through some of your training that's  
15 relevant to this case.

16 A. Relevant to power squad, I've attended a couple of  
17 interdiction courses.

18 Q. Let's go back to February the 1st, 2013. Where  
19 were you working then? What was your assignment?

20 A. Team 3 power squad.

21 Q. And who were you riding with?

22 A. I was the driver and I was driving Officer Harvill  
23 and Officer Villeneuve.

24 Q. So you had three people in the car?

25 A. Yes.

1 Q. And Sergeant Light is your supervisor?

2 A. Yes.

3 Q. And he was in a separate car?

4 A. Yes.

5 Q. And y'all were on proactive patrol that night?

6 A. Yes.

7 Q. Your car is not equipped with lights or -- I'm  
8 sorry, camera or audio equipment, is it?

9 A. It doesn't have a camera or audio equipment.

10 Q. Is that your choice?

11 A. No, sir, that's the department.

12 Q. If I'm correct, I think the newer cars are being  
13 equipped, but the older cars don't; is that correct?

14 A. Right, yes, sir.

15 Q. Now, did you have the occasion to assist Sergeant  
16 Light with a traffic stop?

17 A. Yes, sir.

18 Q. Where did that occur?

19 A. 266 Fleming.

20 Q. When you arrived, what did you see?

21 A. When we pulled in, Sergeant Light parked his  
22 vehicle behind a tan sedan, I believe it was a Taurus, and  
23 he was out speaking with the driver at the time.

24 Q. And what specifically did you do?

25 A. When we pulled in, I got out of the vehicle, and I

1     approached on the driver's side to assist Sergeant Light.

2           Q.     And when you got there, did you hear Sergeant Light  
3     giving any orders to the occupants in the vehicle?

4           A.     He was asking routine questions.  And at some  
5     point, the driver began to step out so I guess he asked him  
6     to step out of the vehicle.

7           Q.     But you didn't specifically hear that?

8           A.     I don't remember what was said, no.

9           Q.     Now, your role in this traffic stop, was it primary  
10    or backup?

11          A.     Backup, sir.

12          Q.     Now, during a traffic stop, and you've got a  
13    vehicle positioned right here -- let's say the vehicle is  
14    here and then you've got Sergeant Light dealing with the  
15    driver.  As a backup officer to a traffic stop, where do you  
16    position yourself, and what do you see your role is?

17          A.     Our primary objective is just to assist -- well,  
18    when we pulled in, I would have found a point of cover to  
19    observe what was going on, and saw Sergeant Light was  
20    speaking with the driver and asking him to step out.  So I  
21    wanted to assist the person who was coming out of the  
22    vehicle.

23          Q.     So your attention is drawn to the driver?

24          A.     Yes.

25          Q.     All right.  So the individual comes out of the car,

1     what happens next?

2           A.     Individual was detained at that time by Sergeant  
3     Light.

4           Q.     The driver?

5           A.     Right, yes, sir.

6           Q.     And when you say detained, what do you mean?

7           A.     He was placed in handcuffs.

8           Q.     Did Sergeant Light have to reach into the car and  
9     physically pull the driver out of the car?

10          A.     No, sir, he was cooperative.

11          Q.     He came out on his own?

12          A.     Yes, sir.

13          Q.     So what happened after Sergeant Light put the  
14     driver in handcuffs?

15          A.     We observed that -- or I observed that Officer  
16     Villeneuve and Harvill were asking the passenger to step out  
17     of the vehicle, but he wasn't. He was refusing to, so ...

18          Q.     So you could see the driver in handcuffs, so you  
19     can hear him over there?

20          A.     Yes.

21          Q.     And you can hear Villeneuve asking him to get out  
22     of the car?

23          A.     Yes.

24          Q.     What did you do at that point?

25          A.     At that point, because the driver was detained and

1 Sergeant Light had control of that situation, I approached  
2 the passenger side to assist with the passenger.

3 MR. OSBORNE: May I approach, Your Honor?

4 THE COURT: You may.

5 BY MR. OSBORNE:

6 Q. I'm going to show you what's been marked as State's  
7 Exhibit 5. Do you recognize this photograph?

8 A. Yes, sir, it's 266 Fleming.

9 Q. Sort of walk through and tell the jury what you saw  
10 when you got around the car.

11 A. Well, the suspect or the Ford Taurus would be that  
12 black car, or where it's parked right now. Whenever I  
13 approached -- I can't remember. I believe Harvill was on  
14 the far right side, and Villeneuve would be in-between me  
15 and the driver they were speaking with, or the passenger.  
16 And the door was opened and they were asking him to come out  
17 of the vehicle, but as I could observe through the windows,  
18 that the passenger still had his phone on and he was on the  
19 phone.

20 And he was asked to put the phone down, but he  
21 didn't. And whenever they reached in to extract him from  
22 the vehicle, he was moving inside the vehicle away from  
23 their hands.

24 Q. And then you walked around to assist, I guess?

25 A. Yes.

1           Q.    What happened when you got there?  What did you  
2    see?

3           A.    At that point, Officer Harvill and Villeneuve  
4    reached inside, and he was trying to get away from their  
5    grip.  They were trying to get ahold of him and pull him  
6    out.  When they pulled him out, somehow they got him to turn  
7    around and he was facing the vehicle.  And they were trying  
8    to have him detained at that time, but he was refusing to  
9    let his hand go back behind him.

10                So Officer Harvill and Villeneuve were trying to  
11   handcuff his right hand and he was kind of thrashing around.  
12   And, you know, I was on the left side, so I had to take  
13   control over his left arm.  And I had him holding up against  
14   the car while they were working to get his hand handcuffed  
15   and behind his back.

16           Q.    All right.  Just go ahead and mark on the car --  
17   you can touch that screen right there and it will leave a  
18   mark.

19           A.    So we would have been right here.  (Indicating)

20           Q.    And you said that you were able to grab ahold of  
21   defendant's left hand?

22           A.    Yes.

23           Q.    Hold it up against the car?

24           A.    Yes.

25           Q.    While Harvill and Villeneuve were trying to get his

1 right hand while he's flailing around, I guess?

2 A. Right.

3 Q. What happens next?

4 A. I believe they were able to get one handcuff on, so  
5 they were trying to bring his right hand back. But I  
6 thought I had control over his left arm and had this vehicle  
7 -- which was I guess a bad idea, because he used the vehicle  
8 to kind of push off of him. So he pushed off and he turned,  
9 kind of violently, and ended up actually facing me at that  
10 point. So I had nothing to hold onto. So there was no work  
11 for me to be done, because Harvill and Villeneuve had his  
12 hands at that point.

13 Q. So you are standing there facing him, at this point  
14 he's already pushed off?

15 A. Right.

16 Q. All right. And Villeneuve and Harvill are still  
17 behind him?

18 A. Right.

19 Q. So what happens next?

20 A. At that point, Sergeant Light, who was still  
21 controlling the driver, he asked to swap with me. So he  
22 yelled at me, and I turned around, and I swapped places with  
23 him. So I held onto the driver and Sergeant Light went in  
24 to help with the passenger.

25 Q. So now we've got Light, Villeneuve, and Harvill who

1 are dealing with the defendant trying to get him in  
2 handcuffs, and you go back to the driver?

3 A. Yes.

4 Q. When you got back to the driver, what was he doing?

5 A. He was cooperative. He was on the ground at that  
6 point. Sergeant Light had put him on the ground so that  
7 there wouldn't be any -- so he could focus on what was going  
8 on, but also so that he wouldn't be out of patrol and decide  
9 to get up and run.

10 Q. So there was at least a short period of time in  
11 which the driver was left with no one, no officer by him?

12 A. A second maybe.

13 Q. Right. But he didn't make any attempt to run or  
14 anything?

15 A. No.

16 Q. All right. At this point, while the struggle is  
17 going on, you are with the driver; what happened next?

18 A. Well, there was a crowd that started forming. So,  
19 you know, a lot of townhomes in that area, so a lot of  
20 people started coming outside that hear the commotion. So I  
21 had to direct my attention more so to people that began  
22 approaching to keep them away from the scene as best I  
23 could.

24 Q. Did you see one person in particular that tried to  
25 interact with the altercation?

1           A.    Yes, I did.  I saw what would turn out to be  
2   Mr. Anderson's mother who -- again, she tried to come in and  
3   get into the mix of the struggle itself.

4           Q.    And this is while they were still standing by the  
5   cars?

6           A.    Right.  They were still in this area right here.

7           Q.    And the mom, I think Ms. Anderson, Cynthia  
8   Anderson, point on there where you saw her come into play.

9           A.    She came off from this side.  So I guess she had  
10   walked around from outside the house, and then came in.  I  
11   believe that's where she came from.  I just remembered that  
12   I saw her come up on the officers and the passenger.

13          Q.    When she came, how did she approach?  Was it slowly  
14   like, hey -- did it seem like everything was calm, or how  
15   would you describe her demeanor when she was approaching?

16          A.    I don't recall.

17          Q.    All right.  What did you do when she approached?

18          A.    I followed her over there to grab ahold of her so  
19   that I could get her away from what was going on.

20          Q.    Why did you do that?

21          A.    For her safety, and because I didn't know what her  
22   intentions were.  I didn't know if she was going to try to  
23   fight to get the passenger away or what was going to happen.

24          Q.    Were you concerned that she might do something to  
25   the officers as well?

1           A.    Absolutely, for their safety.

2           Q.    So you said you tried to grab ahold of her.  What  
3 happened when you did that?

4           A.    I tried to grab ahold of one of her arms to escort  
5 her away, but she snatched back away.  She snatched her arm  
6 away from me and started flailing her arms and elbows around  
7 and struck Officer Villeneuve in the face.

8           Q.    All right.  So what happened after that?

9           A.    At that point, I got more positive control over her  
10 and I was able to escort her away from the scene.  So I put  
11 her back on the perimeter.

12          Q.    She's in the background.  Has the defendant been  
13 brought down to the ground yet?

14          A.    Not at that point.  That happened after I was able  
15 to get her --

16          Q.    What did you see happen next?

17          A.    Again, a lot of people were coming around the  
18 perimeter side, a lot of people had their phones out, were  
19 filming the whole incident.  I was just trying to monitor  
20 all of that.  At some point, they came down to the ground.

21          Q.    I think that's when they were able to place him  
22 into handcuffs?

23          A.    They were, yes.

24          Q.    Now, after they placed him into handcuffs, did you  
25 have the occasion to see or speak to Officer Harvill?

1       A.    I did.  He approached me and indicated to me that  
2   his hand was hurt.  And I had my flashlight, so I had my  
3   flashlight on his hand.  And it appeared to me that it was  
4   red, but it was obviously puffy.

5       Q.    I think he was taken to the hospital then?

6       A.    Right.

7       Q.    During your brief encounter with the defendant  
8   while he was resisting, could you smell any alcohol coming  
9   from him?

10      A.    Yes, sir.

11      Q.    Was it a faint odor or how would you describe it?

12      A.    It was a strong odor.

13      Q.    After he was placed in handcuffs and arrested, did  
14   you have the occasion to ask the defendant if he was  
15   injured?

16      A.    I did.  I observed that his wrist, probably from  
17   handcuffing, had been -- had minor abrasions to it.  And we  
18   asked if he needed any medical attention and EMS or anything  
19   like that, and he declined.

20      Q.    He declined?

21      A.    Yes.

22      Q.    Had he said that he was injured, what would you  
23   have done?

24      A.    Immediately called EMS.

25      Q.    That's part of your policy; is it not?

1           A.    Yes.

2                   MR. OSBORNE: All right. May I approach, Your  
3 Honor?

4                   THE COURT: You may.

5 BY MR. OSBORNE:

6           Q.    I'm going to show you a photograph here. It's  
7 State's Exhibit No. 6; do you recognize this?

8           A.    Yes. That's the passenger.

9           Q.    Specifically, what is this picture?

10          A.    It's a booking photograph.

11          Q.    From when?

12          A.    That would have been on February 1st, 2013, as it  
13 states on top of it.

14          Q.    The night of the incident?

15          A.    It would have been after the arrest, after we had  
16 transported him to Charleston County Detention Center.

17          Q.    So this photograph was taken at the detention  
18 center on the same night that he was arrested?

19          A.    Yes.

20          Q.    Do you see the passenger here in the courtroom  
21 today?

22          A.    I do, sir.

23          Q.    Can you point him out and describe what he's  
24 wearing?

25          A.    He's there in the yellow shirt.

1 MR. OSBORNE: Your Honor, let the record reflect --

2 THE COURT: The record will so reflect that the  
3 witness pointed out the defendant.

4 MR. OSBORNE: Court's indulgence.

5 BY MR. OSBORNE:

6 Q. You work in a unit, the power shift; it's a  
7 proactive unit, isn't it?

8 A. Yes.

9 Q. So you engage people -- you engage citizens all the  
10 time?

11 A. Yes.

12 Q. And you mostly patrol in violent high-crime  
13 areas?

14 A. Right, sir. Yes.

15 Q. Now, through your experience with dealing with  
16 people in traffic stops, have you ever come across  
17 individuals who will secret or hide weapons in the car?

18 A. Yes.

19 Q. Guns?

20 A. Yes, sir.

21 Q. Knives?

22 A. Absolutely.

23 Q. And is that one of the reasons why traffic stops  
24 are just inherently dangerous?

25 A. Yes, sir.

1 Q. You don't know who you are pulling over and you  
2 don't know what you have --

3 A. Right.

4 Q. -- is that correct?

5 A. Yes, sir.

6 Q. Now, why -- from your point of view in the line of  
7 work that you do, why is it important for you to have people  
8 step out of the car?

9 A. To get them away from whatever else might be inside  
10 that vehicle.

11 Q. Is it part of your training to say that it is  
12 lawful and it's something that you can lawfully do, ask a  
13 driver and occupant to exit a vehicle?

14 A. Yes.

15 MR. OSBORNE: No further questions.

16 THE COURT: Cross-examination, Mr. King.

17 CROSS-EXAMINATION

18 BY MR. KING:

19 Q. Officer Summerlin, when you normally ask passengers  
20 to step out of a car in your average situation, they are not  
21 under arrest when they step out of the car, are they?

22 A. No, sir.

23 Q. Do you know -- do you have such thing like an  
24 investigative detention?

25 A. Yes, sir.

1 Q. Is that where you just hold somebody briefly, they  
2 are not under arrest, but you hold them briefly for -- you  
3 may have some legal reason to detain them briefly for  
4 investigation, things like that?

5 A. Yes.

6 Q. So investigative detention versus an actual  
7 arrest?

8 A. Right.

9 Q. When you arrived, you went there to assist Sergeant  
10 Light in the traffic stop, right?

11 A. Yes.

12 Q. You didn't write a supplemental report regarding  
13 this?

14 A. There would have been what we call blue team  
15 reports for use of force.

16 Q. Like a memo, use of force memo?

17 A. Right.

18 Q. You write an official supplemental report?

19 A. Not to the incident report, not something more.

20 Q. Even if you put your hands on somebody?

21 A. That's why we use the use of force reports.

22 Q. When you got there, Sergeant Light was already  
23 talking to the driver?

24 A. Yes.

25 Q. And what was going on in the passenger's side when

1     you approached?

2           A.     Well, we all kind of approached simultaneously, so  
3     there was nobody on the passenger's side at the time  
4     whenever I was approaching Sergeant Light, because we all  
5     came out of the same vehicle.

6           Q.     By "we", you mean you --

7           A.     Officer Harvill and Villeneuve.

8           Q.     So when the three of you get there, you park,  
9     Sergeant Light is already out of his car, obviously?

10          A.     Yes.

11          Q.     He's standing by the driver's door. Has he gotten  
12     the driver out at that point?

13          A.     No.

14          Q.     He's just talking to the driver at that point?

15          A.     Yes.

16          Q.     So then you go over to Sergeant Light's side, and  
17     Officer Harvill and Villeneuve go over to the passenger's  
18     side?

19          A.     Yes.

20          Q.     And it's not long after that that they begin --  
21     talking about Harvill and Villeneuve, you see them pulling  
22     Mr. Anderson out of the car?

23          A.     Well, after I approached that side, because like I  
24     said, they had asked him to step out, and he was not  
25     stepping out, he disobeyed. And he was -- he disobeyed it

1 whenever they asked him to put the phone down, and he did  
2 not do that as well. So when they reached into the vehicle,  
3 he was moving away from them, and then they were able to  
4 pull him out.

5 Q. In your interoffice memo that you wrote, you  
6 documented what happened?

7 A. Yes.

8 Q. You put that Officer Harvill injured his hand when  
9 everyone fell to the ground; is that right?

10 A. Yes.

11 Q. During the fall, Officer Harvill sustained a severe  
12 injury to his left hand. So it's your understanding that  
13 Officer Harvill broke his hand when everybody fell down to  
14 the ground?

15 A. Yes.

16 Q. You never told Damian Anderson he was under arrest,  
17 did you?

18 A. No.

19 Q. You were talking with the solicitor about traffic  
20 stops and weapons, right?

21 A. Yes.

22 Q. Did you ever see a weapon?

23 A. I didn't.

24 Q. Find a weapon?

25 A. We did not.

1 MR. KING: I have no further questions, Your Honor.

2 THE COURT: Okay. Redirect?

3 MR. OSBORNE: Just one.

4 REDIRECT EXAMINATION

5 BY MR. OSBORNE:

6 Q. When you wrote in your report, in your use of force  
7 report, that Officer Harvill broke his hand during a fall,  
8 were you basing that on your observations or your  
9 conversation with Officer Harvill?

10 A. Conversation.

11 Q. The conversation?

12 A. Yes.

13 Q. So it was your impression that the hand was broke  
14 some time while on the ground?

15 A. Yes, sir.

16 THE COURT: Any recross based on his redirect?

17 MR. KING: No, Your Honor.

18 THE COURT: Thank you. You may step down. Any  
19 objection to this witness being excused?

20 MR. KING: Not from the defense, Your Honor.

21 THE COURT: Have a good day, Officer.

22 (Whereupon the witness is excused.)

23 THE COURT: The State may call its next witness.

24 MR. OSBORNE: The State calls William Villeneuve.

25 WILLIAM VILLENEUVE,

1           having been duly sworn, testifies as follows:

2           THE CLERK: State your full name and spell your  
3 last name.

4           THE WITNESS: William Joseph Villeneuve,  
5 V-i-l-l-e-n-e-u-v-e.

6                                 DIRECT EXAMINATION

7 BY MR. OSBORNE:

8           Q. Officer Villeneuve, where do you work?

9           A. I work for the City of Charleston Police  
10 Department.

11          Q. How long have you worked there?

12          A. I graduated from The Citadel May 2010 and was hired  
13 two weeks later, so June 1st, 2010. So it's been a little  
14 over four years.

15          Q. What have been some of your different assignments  
16 while at CPD?

17          A. When I was initially hired, went on to the academy  
18 that summer, I was assigned to Team 4 for field training,  
19 which is West Ashley. I completed field training and was  
20 assigned to independent duty on James and Johns Island Team  
21 3 for the City of Charleston. I was on patrol for about  
22 five or six months and then was selected to become a member  
23 of the Team 3 Power Shift.

24          Q. Do you have any other auxiliary assignments with  
25 CPD?

1           A.    I also am a member of the SWAT team for the City of  
2    Charleston.

3           Q.    Have you receive any awards or departmental  
4    commendations?

5           A.    Yes; department commendation, numerous positive  
6    employee feedback, as well as being a member of the Team of  
7    the Year with Sergeant Light, Officer Harvill, and Officer  
8    Summerlin for 2013.

9           Q.    And, briefly, just explain to the jury some of the  
10   training that you received that's relevant to this case.

11          A.    Relevant to the case, in addition to the mandatory  
12   training that we receive from the department yearly, which  
13   is law and legal updates, domestic violence, defensive  
14   tactics. I sought out training with other agencies in the  
15   upstate and throughout the state in patrol, scenario  
16   force-on-force type training, escalation of traffic stops,  
17   interdiction, drug and narcotics investigative training, and  
18   that type of training.

19          Q.    Let's go ahead and move backwards to February the  
20   1st of 2013. Were you working that night?

21          A.    Yes, sir.

22          Q.    And did you have the occasion to assist Sergeant  
23   Light with a traffic stop?

24          A.    Yes, sir, I did.

25          Q.    Just walk the jury through that from your

1 perspective.

2 A. Yes, sir. For the time, it was about 7:38 p.m. I  
3 heard on the radio Sergeant Light conducting a traffic stop  
4 on Fleming Road. Shortly thereafter, he came on  
5 interventional radio and said specifically to us: Hey,  
6 start this way, which is indicating that I need additional  
7 units, I need backup. He told us that the turn signal was  
8 on in the vehicle, right turn signal, but it wasn't  
9 stopping. So we started en route to his traffic stop.

10 Shortly thereafter, maybe a minute after, seemed a  
11 good bit of time, he put out a final location for the stop  
12 as 266 Fleming Road, and that's where we responded.

13 Q. What happened when you got to 266 Fleming?

14 A. We got to 266 Fleming Road, I observed Sergeant  
15 Light's vehicle with blue lights on in the traditional  
16 traffic stop formation; you had the defendant's vehicle,  
17 suspect vehicle, was parked in a parking space in front of  
18 an apartment complex, with Sergeant Light's vehicle behind  
19 it with blue lights on.

20 I exited the vehicle. Officer Summerlin walked up  
21 to the driver's side to assistant Sergeant Light with the  
22 driver, and Officer Harvill and I walked to the passenger's  
23 side to speak with the passenger of that vehicle.

24 Q. What observations, if any, did you make when you  
25 got to the passenger's side?

1       A.   First approached the passenger side, I immediately  
2 detected a strong odor of alcohol emanating from the  
3 vehicle, very strong. Looking inside the vehicle, which we  
4 routinely do looking for any kind of weapons in the  
5 immediate possession, I observed a plastic Tervis tumbler  
6 cup, see-through plastic cup in the passenger's immediate  
7 possession. It had like a brown-colored liquid consistent  
8 with alcohol.

9               While I was up there, I heard Sergeant Light  
10 speaking with the driver, and I heard him bring up in  
11 conversation that his license was suspended. I also heard  
12 him bring up the alcohol, to which the driver stated, I can  
13 quote him, he said: It's not mine; I just got off work. I  
14 observed the driver was wearing, like, a work uniform. He  
15 said that coherently without hesitation.

16       Q.   I want to pause the story right here for a second.  
17 The traffic stop, please, let's stop about this.

18               MR. OSBORNE: Your Honor, may I approach?

19               THE COURT: You may.

20 BY MR. OSBORNE:

21       Q.   I'm going to just show you what's been marked as  
22 State's Exhibit 12. Do you recognize this?

23       A.   Yes. That's a Tervis tumbler cup.

24       Q.   Is it the Tervis tumbler cup you were talking  
25 about?

1           A.    Yes, sir.  Yes, sir.

2           Q.    Now, you see the cup, and from your perspective you  
3 believe there to be an alcoholic beverage or alcohol liquid  
4 in the cup?

5           A.    Yes.

6           Q.    Is that against the law?

7           A.    Yes, it is.

8           Q.    What violation is that?

9           A.    It's open container of alcohol in a motor vehicle.

10          Q.    All right.  So you saw something that you believed  
11 was evidence of a crime?

12          A.    Yes.

13          Q.    Now, when you see something that's evidence of a  
14 crime in a vehicle, are you required to bring it to the  
15 attention of the occupants in the vehicle?

16          A.    No, not at all.  We wouldn't do anything like that.  
17 Especially if it was like a weapon or we see a firearm or  
18 drugs inside a vehicle, and we see it, it would be silly to  
19 say that to him with the opportunity to destroy it or  
20 escalate the situation anymore.  So it's just an observation  
21 that I made that's -- that it's in the vehicle.

22          Q.    Or any kind of contraband, if you had saw drugs or  
23 anything like that, you wouldn't tell the occupant, hey, I  
24 see drugs in the car?

25          A.    No, sir.

1 Q. Hey, I see alcohol in the car?

2 A. Not at all. Not at all.

3 Q. So what happened then? We are back to the traffic  
4 stop, Sergeant Light is talking to him, you are standing  
5 there.

6 A. After he mentioned the driver's license was  
7 suspended and the alcohol inside the vehicle, he asked both  
8 occupants to exit the vehicle.

9 Q. Did they?

10 A. The driver did without hesitation, stepped right  
11 out, was fully compliant; the passenger did not.

12 Q. What did you do then?

13 A. I spoke with the passenger and asked for his  
14 identification, for his license.

15 Q. Did he give it to you?

16 A. He did, but he was reluctant at giving his  
17 identification.

18 Q. What do you mean? What did he say?

19 A. Specifically, I can quote, I have the report. He  
20 stated, "Why do you need my ID? I didn't do anything." And  
21 the way he said it was kind of agitated and escalated, "Why  
22 do you need my ID? I didn't do anything."

23 I asked a second time and he produced his license,  
24 didn't look at me, just kind of held it to the window like  
25 this (Indicating)

1 Q. All right. After you took the license, did he do  
2 anything else?

3 A. Yes. The second I grabbed the license, he picked  
4 up his cell phone and started a cell phone conversation.

5 Q. All right. His reluctance to give you the ID, the  
6 way that he did give you the ID, did that call concern you  
7 at all?

8 A. It did. On top of the fact that there's alcohol in  
9 the car and the driver's suspended, and the fact that the  
10 vehicle -- I don't know the exact distance of travel, about  
11 a half mile without stopping -- all of that was concerning  
12 to me.

13 Q. And smelling alcohol in the vehicle?

14 A. Yes. Yes, sir.

15 Q. So you asked him to hang up the phone?

16 A. Yes.

17 Q. What did he do?

18 A. He looked right at me and said, no. Like,  
19 specifically said, no.

20 Q. Could you hear what he was saying on the phone?

21 A. I heard him in the same tone, it was like that  
22 elevated, agitated type of speech, he said to the effect of  
23 either, get out here, or, get over here, get out here, get  
24 over here, kind of yelling into the phone.

25 Q. Did that concern you?

1           A.    Yes.

2           Q.    Why is that?

3           A.    Just when a traffic stop has a lot of the  
4 indicators, as this one did, kind of coming to -- a long  
5 time coming to a complete stop, presence of alcohol in the  
6 vehicle, suspended license, kind of reluctance to hand  
7 identification or identify himself, it made me concerned  
8 that he might be calling individuals over to kind of make  
9 the scene more troubling.

10          Q.    Do you have a right to ask occupants in a vehicle  
11 to get off their phone?

12          A.    Yes, sir. We routinely do, especially if it's a  
13 situation that's becoming kind of more escalated as this one  
14 did.

15          Q.    I know you said it, but what is the primary reason  
16 for asking an occupant to get off the phone?

17          A.    It's officer's safety. It's a safety concern for  
18 us.

19          Q.    In particular, this type of situation where he's  
20 calling for backup --

21          A.    Yes.

22          Q.    -- essentially?

23          A.    Yes. Yes, sir.

24          Q.    All right. So now you've asked him one time or two  
25 times to get off the phone?

1       A.    Twice.

2       Q.    Second time he doesn't get off the phone?

3       A.    Yes.

4       Q.    What do you do then?

5       A.    I say twice, and that's liberally.  When I asked  
6   him to get off the phone, it starts out kind of casually:  
7   Hey, sir, can you hang it up for me?  Just tell them you  
8   will call them back real quick.  Sir, can you put the phone  
9   down?  It's just repeated.  And then it gets to the point  
10   where I have to say:  Sir, I'm telling you, put the phone  
11   down, hang up the phone.  So when I say once or twice, it's  
12   more like five, six, seven.

13      Q.    You're not trying to start a confrontation?

14      A.    No, not at all, it's the opposite.  We try to  
15   de-escalate.  What's referred to in police work as verbal  
16   judo.  You are trying to handle situations through speaking  
17   and not physically.

18      Q.    Because there's actually training for that, isn't  
19   there?

20      A.    Yes, sir.

21      Q.    Nobody wants to get into a fight if you can avoid  
22   it?

23      A.    Absolutely.

24      Q.    So you've asked him to hang up the phone a number  
25   of times.  He doesn't hang up the phone.  Then what do you

1 do?

2 A. Then I opened the passenger's side door and I asked  
3 him to exit the vehicle.

4 Q. Okay. Does he?

5 A. No.

6 Q. What do you do then?

7 A. That's along the same lines of how I spoke to him  
8 about the cell phone. I started with: Hey, sir, can you  
9 hop out for me? Can you come step to the back? Just still  
10 on the phone, like: Hey, sir, I need you to hop out for me.  
11 Come step out for me. And after three or four times: Sir,  
12 I'm telling you, you need to step out of the vehicle now.  
13 And noncompliant the entire time.

14 Q. When you say noncompliant, do you remember what he  
15 was saying?

16 A. He was still on the cell phone conversation, just  
17 saying no.

18 Q. Now, he's not getting out of the car. He's not  
19 getting off the phone. You see violations of the law. What  
20 do you do?

21 A. So at the point when we are essentially at a  
22 stalemate of he's saying, no, I'm not getting out of the  
23 car, I'm not hanging up the phone; I see the alcohol in his  
24 possession, I made the decision to place him under arrest.

25 Q. All right. Walk us through that.

1       A.    After, like I said, we reached a stalemate, I  
2   reached inside the vehicle to make contact with him. I  
3   realized it reached a point where a physical -- to  
4   physically remove him from the vehicle. I didn't have a  
5   choice; that's what I had to do. Officer Harvill was  
6   standing right next to me. We both reached in.

7           As I reached in to grab his arm, if this is the  
8   passenger's seat, he kind of leaned back as if, like, trying  
9   to hop towards the driver's seat. Leaned back, and was just  
10  kind of verbally -- or, excuse me, physically I tried to  
11  grab his arms and just pull him away. What seemed like  
12  minutes, which it could have been, I'm not sure of the exact  
13  time frame, we were able to get him out of the vehicle onto  
14  his feet.

15          The entire time, just the only thing we were saying  
16  at that point was: Place your hands behind your back and  
17  stop resisting. And as we are on our feet, the defendant  
18  was literally throwing me back and forth between the two  
19  cars. It's like a tight proximity in the parking space.  
20  And with his strength and level of escalation, I was being  
21  bounced -- at 160 pounds, I was being bounced back and  
22  forth, bumping up next to a rental car that was parked next  
23  to him and bumping up against the defendant's car. The  
24  whole time we were giving verbal commands, he was yelling  
25  profanities at me: Get the F' off me. Don't F'ing touch

1 me.

2           At one point during the struggle, we were able to  
3 get one handcuff on his wrist, and I had my hands on it, we  
4 both did. As we are trying to bring it around to his other  
5 wrist, he broke free and completely ripped it out of my  
6 grip. So now he's kind of swinging us back and forth and he  
7 has one handcuff dangling on his wrist and swinging us back  
8 and forth. Again, what seemed like minutes, I don't know  
9 the exact time frame, the defendant -- either we were able  
10 to get him to the ground or he tripped and fell on the  
11 ground.

12           As we were on the ground, it's the same level of  
13 escalation of just kind of worming around, kicking. He was  
14 kicking so much that his pants had fallen to his knees or  
15 ankles. He kicked himself out of his pants as we were  
16 trying to detain and arrest. What we ended up having to do  
17 is, we got another set of handcuffs on his opposite wrists,  
18 and then we had to attach the two set of handcuffs together.

19           While we were on the ground attaching the handcuffs  
20 is when I heard Officer Harvill kind of let out a yell,  
21 like, ow, that kind of sound. We hooped the handcuffs. And  
22 I looked at Harvill and asked him if he was okay. And he  
23 said, I think I broke my hand. And then I asked him, like,  
24 let me see it. And he showed me his hand.

25           And I said, let me see your other hand. And he

1 held his two hands next to one another toward me. And his  
2 hand that had been broken was visibly twice the size of the  
3 hand -- of his other hand. And you could see like a finger  
4 was out of alignment too. It looked like a severe injury to  
5 me. I don't have a medical background, but it was a severe  
6 injury.

7 And then Sergeant Cromer, who is the patrol  
8 supervisor, arrived on scene and had to apply leg irons --  
9 which is rare that we use those, had to apply leg irons to  
10 the defendant.

11 Q. Okay. When you put your hands on the defendant and  
12 pulled him out of the vehicle, were you pulling him out of  
13 the vehicle to place him under arrest?

14 A. Yes.

15 Q. Or were you pulling him out of the vehicle for an  
16 investigative detention?

17 A. No; he was under arrest.

18 Q. You know the difference?

19 A. Yes.

20 Q. And what was the charge?

21 A. He was under arrest for open container in a motor  
22 vehicle and disobeying a lawful order.

23 Q. And the lawful order being?

24 A. There were several lawful orders. Sergeant Light  
25 initially asked him to exit the vehicle; he didn't comply.

1 I asked him to hang up his cell phone for officer's safety  
2 issues, numerous times. Like I said, that kind of  
3 escalated, hey, can you hang up, to, sir, I'm telling you to  
4 hang up. That was never complied. And then I asked him to  
5 step out of the vehicle, and he never complied.

6 Q. When you make the decision to arrest someone, the  
7 threshold that you have to meet to make that arrest, I  
8 believe, is commonly called probable cause?

9 A. Yes, sir.

10 Q. To convict someone, you need beyond a reasonable  
11 doubt; is that correct?

12 A. Yes, sir.

13 Q. Did you feel like you had probable cause to charge  
14 him with those two charges?

15 A. Yes, sir.

16 Q. What was the evidence to support your probable  
17 cause for the open container in a motor vehicle?

18 A. Just the odor of alcohol that was emanating from  
19 him; the statement from the driver, which he said without  
20 hesitation, it's not mine, I just got off work; the cup of  
21 alcohol that was located literally right next to him within  
22 his immediate possession inside the vehicle. With all those  
23 circumstances together, I felt that there was more than  
24 probable cause to affect the arrest.

25 Q. Do you have to arrest someone for open container in

1 a motor vehicle or disobeying lawful order?

2 A. Open container of motor vehicle, we can issue a  
3 criminal citation where we give a court date and release him  
4 from the scene.

5 Q. It's within your discretion?

6 A. Yes, it's our discretion.

7 Q. So at what point did you make the decision that we  
8 are past the ticket stage and I'm putting him in jail,  
9 locking him up?

10 A. Really, the defendant made that -- forced that  
11 decision on me. There was no other -- I had either two  
12 decisions; I either say, okay, you win, you can have the  
13 alcohol in the car, or to affect the arrest to enforce it.  
14 That was my only way to enforce it.

15 MR. OSBORNE: Your Honor, may I approach?

16 THE COURT: You may.

17 BY MR. OSBORNE:

18 Q. I'm going to show you what's been previously marked  
19 as State's Exhibit 7; do you recognized this?

20 A. Yes, sir. That's the residence that we were parked  
21 in front of during the traffic stop.

22 Q. Now, again, this photograph wasn't taken that night  
23 or anything like that, was it?

24 A. No.

25 Q. This is just to show the proximity of the two

1 cars?

2 A. Yes, sir.

3 Q. So, just briefly, when you walked over there to  
4 that side of the car, when you were standing on the side of  
5 the car and pulled him out, explain to the jury -- using  
6 this right here as a way to kind of guide your story,  
7 explain to them what happened.

8 A. Okay. Officer Harvill is standing approximately  
9 where I was standing during the traffic stop, making contact  
10 with the defendant. When I opened that passenger's side  
11 door, I think the vehicles were a little bit closer  
12 together, because it was to the point I couldn't extend it  
13 all the way or it would cause door dings to the door that  
14 was parked next to it. So it was like tight, confined  
15 quarters. With Officer Harvill and I standing on either  
16 side of the defendant as he's kind of throwing us, like  
17 bouncing me -- he's bouncing me where the Charger is. That  
18 was where the other people were parked. I was going back  
19 and forth into that car.

20 After he applied one handcuff, that's when Sergeant  
21 Light left the driver, came over to the passenger's side to  
22 assist, and used a closed fist strike which had zero effect  
23 on the defendant whatsoever, had zero effect on his level of  
24 aggression.

25 Also, while he was on his feet, in addition to the

1 profanities, he started screaming, mama. He was saying,  
2 mama, mama; just screaming mama while he was still on his  
3 feet. That was before we took him to the ground, or he fell  
4 to the ground, whichever.

5 Q. I think you said he was also screaming profanities  
6 as well?

7 A. Yes, to the effect of get the F' off me, don't  
8 F'ing touch me.

9 Q. Did anyone else put themselves in this situation or  
10 try to get involved in the altercation?

11 A. Yes, sir. While we were still on our feet, that's  
12 in the middle of being thrown around between the two cars,  
13 shortly after he screamed, mama, the door, which you can see  
14 -- this door opened and numerous people came out, one of  
15 which was later identified as the defendant's mother,  
16 Ms. Anderson.

17 Ms. Anderson walked over to where we were in the  
18 middle of the altercation and sandwiched herself kind of  
19 between me and the defendant. So the defendant is next to  
20 me. She kind of put herself in-between us, as if preventing  
21 me from affecting the arrest. And she was screaming. I  
22 don't recall what exactly she was saying, just elevated  
23 screaming. She looked back at me, and then threw an elbow,  
24 striking me in the face.

25 At that point, Officer Summerlin came over and was

1   able to subdue her back. And from what I remember, he was  
2   on crowd control the remainder of the time, just keeping  
3   people back from trying to prevent us from making the  
4   arrest.

5       Q.   Now, you said that you were able to place the  
6   defendant into handcuffs and you mentioned something about  
7   leg irons and that's unusual.

8       A.   Yes.

9       Q.   Why was he placed in leg irons?

10      A.   Just for the kicking, for the violent nature of his  
11   kicking, and just to subdue him from getting back on his  
12   feet. If he were to get back on his feet, even with his  
13   hands behind his back, I believe he still posed a risk to  
14   officer's safety.

15      Q.   So even after being placed in handcuffs, at least  
16   the fight wasn't out of him?

17      A.   No. His level of aggression, from the point of  
18   stepping out of the vehicle to the point of being on the  
19   ground, never ceased. I was physically exhausted after the  
20   handcuffs were affixed and Sergeant Cromer applied leg  
21   irons; I was exhausted. And the defendant's level of  
22   aggression never ceased the entire time.

23      Q.   To your recollection, did you or any other officer  
24   out there at any point tell the defendant or use the magic  
25   words: You are under arrest?

1 A. No, not that I recall.

2 Q. Are you required to do that by law?

3 A. No, we are not.

4 Q. Was he aware that he was being arrested?

5 A. Yes, sir.

6 Q. What would have been some of the clues?

7 A. Just the verbal orders: Place your hands behind  
8 your back; step out of the vehicle; place your hands behind  
9 your back. The fact that at one point he had a handcuff on  
10 his wrist and still continued to rip that out of my grip and  
11 then fight us, resist us with a dangling handcuff, is more  
12 than enough.

13 Q. Pretty obvious?

14 A. Yes, sir. Yes.

15 Q. Do you see the passenger in the courtroom today?

16 A. Yes, I do.

17 Q. Can you point him out and describe what he's  
18 wearing?

19 A. He's wearing Khaki pants and yellow plaid shirt.

20 MR. OSBORNE: Let the record reflect --

21 THE COURT: The record will so reflect the witness  
22 has pointed out the defendant.

23 MR. OSBORNE: No further questions.

24 THE COURT: Mr. King.

25 CROSS-EXAMINATION

1 BY MR. KING:

2 Q. Officer Villeneuve, I just want to ask you a few  
3 questions. You said you decided to arrest Damian  
4 Anderson?

5 A. Yes, sir.

6 Q. Did you do an arrest report?

7 A. We usually do it collectively as a team between  
8 Sergeant Light, Officer Summerlin and Officer Harvill.

9 Q. Are you aware that the arrest record has the  
10 arresting officer as Sergeant Light?

11 A. We would do that just based on it was his traffic  
12 stop. And then I'm here to testify on his behalf; he's here  
13 to testify. So we work together when doing paperwork, the  
14 paperwork sense.

15 Q. So you responded for backup of Sergeant Light?

16 A. Yes.

17 Q. And you arrived with other officers?

18 A. Yes.

19 Q. With Officer Harvill and Officer Summerlin?

20 A. Summerlin, yes, sir.

21 Q. When you got there, what did you see when you first  
22 arrived?

23 A. First arrived, I saw Sergeant Light's car had the  
24 blue lights on. Like I said, it was like a traditional  
25 traffic stop in the parking lot of the apartment. And I saw

1 Sergeant Light speaking with the driver when we first  
2 arrived.

3 Q. He was already talking to the driver?

4 A. Yes.

5 Q. And then you went around to the passenger's side --

6 A. Yes, sir.

7 Q. -- and began talking to Mr. Anderson?

8 A. Yes.

9 Q. You said you smelled alcohol, right?

10 A. Yes, sir.

11 Q. You observed the Tervis tumbler cup inside the  
12 car?

13 A. Yes, sir.

14 Q. With some liquid in it?

15 A. Yes.

16 Q. With a beer can?

17 A. I did not see a beer can.

18 Q. Or liquor bottle?

19 A. No, sir.

20 Q. So you really didn't know what was in that Tervis  
21 tumbler cup?

22 A. No, sir.

23 Q. It wasn't until after everything was over that  
24 y'all were able to inspect the Tervis tumbler cup?

25 A. Correct. We weren't able to retrieve it until the

1 defendant exited, until we had him out of the vehicle.

2 Q. So when you are talking to Damian Anderson, his  
3 side of the car, you asked him for his identification,  
4 right?

5 A. Yes, sir.

6 Q. He said: Why do I have to give you my ID; I didn't  
7 do anything?

8 A. Yes, sir.

9 Q. But he gave you his ID?

10 A. Yes, sir.

11 Q. Then you said he was talking on the cell phone?

12 A. Yes.

13 Q. You asked him to stop?

14 A. Yes.

15 Q. And you are saying that you heard what he was  
16 saying on the conversation?

17 A. Yes.

18 Q. And it was what, get over here?

19 A. To the effect of that. I can't say specifically.  
20 It was like get out, get out here, or y'all get over here,  
21 to that effect.

22 Q. Do you remember writing an interoffice memorandum  
23 on this case for use of force?

24 A. Yes. Use of force, yes, sir.

25 Q. You didn't write an official supplemental report or

1 anything, did you?

2 A. No, sir.

3 MR. KING: May I approach, Your Honor?

4 THE COURT: You may.

5 (Defendant's Exhibit 9, Use of Force Report,  
6 was marked for identification.)

7 BY MR. KING:

8 Q. I'm going to show you Defendant's Exhibit 9 for  
9 identification; do you recognize that?

10 A. Yes, sir; this is my use of force report I  
11 submitted.

12 Q. That's about one and a half pages, right?

13 A. Yes, sir.

14 Q. Single typed?

15 A. Yes, sir.

16 Q. That's where you kind of are explaining everything  
17 that happened, because I guess you have to justify any use  
18 of force within your office internally, chain of command?

19 A. Correct, yes, sir.

20 Q. Nowhere in that interoffice memorandum does it say  
21 that Damian Anderson was saying, get over here, or making  
22 those statements you are testifying to today; is that  
23 anywhere in here?

24 A. No, sir. Honestly, I did the best I could with  
25 writing it. I put in as much detail after seeing his hand

1 mangled. I'm literally writing this a couple hours after.

2 I did the best I could. I left out basic details.

3 Q. You made a big deal today that that was an  
4 important factor and a safety issue for you, right?

5 A. It's a lot easier when people specifically ask me  
6 questions, or defense attorneys or prosecutors, they  
7 specifically bring up things to remember. I wish I had you  
8 at the time I was writing the record -- or both of y'all --  
9 to ask me stuff and the report would be on point.

10 Q. So let's get to this again, because you testified  
11 you asked him more than one time to get out of the car, get  
12 off the phone; right?

13 A. A lot of it is casual, just not to escalate the  
14 situation, yes, sir.

15 Q. Because it seemed to be different in the  
16 interoffice memorandum, right?

17 A. Okay.

18 Q. I'm starting where it says -- you talked about  
19 observing a Tervis tumbler cup, odor of alcohol. And then  
20 there's a sentence that says, I asked Mr. Anderson for his  
21 identification, which he responded: Why do you need my ID?  
22 I didn't do anything.

23 A. Yes, sir.

24 Q. Mr. Anderson then began a cell phone conversation,  
25 at the time I asked him to see the phone because it imposed

1 officer safety issues?

2 A. Yes.

3 Q. That's where you could have put in the information  
4 about he was saying, get out here, get over here, right?

5 A. Yes, sir. Yes, sir.

6 Q. Based on the law enforcement training and  
7 experience, use of cell phone during traffic stops result in  
8 subject requesting assistance to evade police contact?

9 A. Yes.

10 Q. You even thought about that concept, that people  
11 can use cell phones to request assistance, right?

12 A. Yes, sir. I've been trained on that, yes, sir.

13 Q. But you didn't remember that he actually said, get  
14 over here, and put it in the report?

15 A. Just a lot of casual stuff. It would be ten pages  
16 if it were a lot of the casual stuff, but, yes, sir, you are  
17 correct.

18 Q. Next sentence: After refusing to cease the cell  
19 conversation, I asked Mr. Anderson to exit the vehicle,  
20 which he responded: No, I'm not getting out of the car.  
21 Right?

22 A. Yes, sir.

23 Q. At that point in your memo, you've asked him for  
24 his ID and he said, why, right?

25 A. Yes.

1 Q. He's on his cell phone, you asked him to cease?

2 A. Yes.

3 Q. You asked him to get out of the car, he said no?

4 A. Yes.

5 Q. And at that time, I attempted to gain control of  
6 Mr. Anderson's left hand?

7 A. Yes.

8 Q. According to your report, you didn't ask him over  
9 and over again, you asked him really to get out of the car,  
10 he said no, and then you grabbed him, based on the way this  
11 memo reads?

12 A. That's how it's written. Literally, if I put every  
13 single time I said, hey, can you hang up, tell him you will  
14 call him back, it would take me hours to do. This would be  
15 like ten pages. If all the casual kind of de-escalation  
16 statements were placed in here, it's just not practical.  
17 But I see -- yes, sir, it is black and white here.

18 Q. You could have put, I asked him numerous times?

19 A. I could have.

20 Q. Now, you are saying that his pants came down  
21 because he was kicking around?

22 A. Yes, kicking, rolling.

23 Q. It wasn't because he was dragged out of a vehicle  
24 by his hands?

25 A. No. His pants were up during the struggle. His

1 pants were up. As he was throwing us back and forth, his  
2 pants were up. They weren't down until he was on the  
3 ground.

4 Q. So then you, Harvill, and I guess three officers  
5 take him down to the ground?

6 A. Yes.

7 Q. And you put in your memo that it was when -- while  
8 thrashing his body weight, resisting arrest, Officer Harvill  
9 sustained severe injury to his left hand?

10 A. That's the point he told me -- we were on the  
11 ground, he told me, hey, I think I hurt my hand.

12 Q. But you said he continued to assist in the arrest?

13 A. Yes, to some extent. He was on the ground, kind of  
14 turned away, and I heard him say, ow. I don't know to what  
15 extent he helped assist.

16 Q. You said he was using profanity?

17 A. Yes.

18 Q. In your memorandum, he was saying -- he was  
19 screaming, mama, mama, right?

20 A. Yes.

21 Q. And get the F' off me?

22 A. Yes.

23 Q. But he's actually saying the word, right? That's  
24 profanity to you?

25 A. I say F', but just for the sake --

1 Q. But that's the nature of using profanity, get off  
2 me?

3 A. Get the F' off me, kind of F' you, don't F'ing  
4 touch me, to that extent, to that effect.

5 Q. F' you and don't F'ing touch me, that's not in your  
6 interoffice memorandum?

7 A. No.

8 Q. Just, mama, mama, get the F' off me?

9 A. Yes, sir.

10 MR. KING: I believe that's all the questions I  
11 have.

12 THE COURT: Any redirect, Mr. Osborne?

13 MR. OSBORNE: No, Your Honor.

14 THE COURT: Thank you. You may step down.

15 (Witness is excused.)

16 THE COURT: Let me see the attorneys up here for  
17 just a second.

18 (Whereupon, a bench conference takes place.)

19 THE COURT: Ladies and gentlemen, the attorneys  
20 probably think you are hungry at this point, so I'm going to  
21 dismiss you for lunch with instructions not to speak to  
22 anyone about this.

23 I will tell you a funny story, and you can judge  
24 how much you want to eat. A lot of times when jurors come  
25 back from lunch, they are a little sleepy if they've had a

1 big meal. I had a trial in Sumter where I noticed it was  
2 late in the afternoon and the testimony had been going on,  
3 and one of the juror's heads was kind of bobbling. So I  
4 said, stop everything, all the jurors stand up. They all  
5 stood up but one who was sound asleep. And that juror had  
6 had a big lunch.

7 So I'm just telling you, you don't want to be that  
8 juror. So have a nice lunch and we will see you back here  
9 at 2:00. All right. Thank you.

10 (Whereupon, the jury leaves open court at 12:36  
11 p.m.)

12 THE COURT: Court is in recess until 2:00.

13 (Luncheon recess was taken.)

14 THE COURT: Anything we need to take up before we  
15 bring the jury?

16 MR. OSBORNE: No.

17 MR. KING: No, Your Honor.

18 THE COURT: Very well, let's bring our jury.

19 (Whereupon, the jury returns to open court at 02:02  
20 p.m.)

21 THE COURT: Ladies and gentlemen, we thank you all  
22 for being on time. Nothing beats starting right on time,  
23 because the sooner we start, the sooner we get out.

24 Is the State ready to present its next witness?

25 MR. OSBORNE: Yes, Your Honor.

1 THE COURT: Go ahead.

2 MR. OSBORNE: State calls Officer Joseph Harvill.

3 JOSEPH HARVILL,

4 having been duly sworn, testifies as follows:

5 THE CLERK: State your full name and spell your  
6 last name for the record.

7 THE WITNESS: Officer Joseph Harvill,  
8 H-a-r-v-i-l-l.

9 DIRECT EXAMINATION

10 BY MR. OSBORNE:

11 Q. Officer Harvill, where do you work?

12 A. City of Charleston Police Department.

13 Q. And how long have you worked there?

14 A. Little over six years now.

15 Q. And what have been some of the different  
16 assignments that you've had?

17 A. I've been assigned to Team 3 patrol operations,  
18 flex shift, power shift, liaison, and acting as the team  
19 investigator at times. Currently, I'm assigned to the Team  
20 3 Flex Shift.

21 Q. Have you had any auxiliary assignments while you've  
22 been at CPD?

23 A. Yes, sir, I have. I'm patrol training officer; I'm  
24 a member of the civil disturbance units; I'm a certified  
25 academy basic instructor, which means that I cannot only

1 teach academy lesson plans to new recruits, but I can also  
2 build my own lesson plans and teach that to groups.

3 Q. Did you receive any departmental awards?

4 A. Several commendations, as well as 2013 Team of the  
5 Year for Team 3 Power Shift.

6 Q. What about any training relevant to this case?

7 A. I've had a 40-hour training class through  
8 Government Training Institute on gangs, terrorism, and  
9 narcotics trafficking, specifically how to interview and how  
10 to investigate those types of crimes. Through an agency in  
11 Florida, I conducted a 24-hour training class and vehicle  
12 contraband, concealment techniques, as well as gang  
13 interdiction, as well as a training class in Oklahoma City  
14 on the terrorism intervention and debriefing techniques.

15 Q. Let's go back to February 1st of 2013. Did you  
16 have the occasion to assist Sergeant Light with a traffic  
17 stop?

18 A. Yes, sir, I did.

19 Q. Just kind of walk us through that. When you  
20 arrived, what did you see; what did you do?

21 A. When I arrived, I saw Sergeant Light's unit there,  
22 standard traffic stop style behind the vehicle at the time  
23 that was being pulled over. Officer Summerlin exited the  
24 vehicle, went to Sergeant Light's side to back him up.  
25 Officer Villeneuve took primary on the passenger's side of

1 the vehicle, and I followed him up to the right side of the  
2 vehicle.

3 Q. When you got to the passenger's side of the  
4 vehicle, did you make any observations?

5 A. I did. Sergeant Light was talking to the driver; I  
6 couldn't really hear the conversation going on. There was a  
7 passenger in there, the defendant, Mr. Anderson. I also  
8 noticed that there was -- in the center console area, there  
9 appeared to be a clear plastic tumbler-type container with  
10 amber dark-in-color liquid in there. Also, the rear windows  
11 were rolled in the back of the vehicle, but the front  
12 windows were down, and an odor of alcohol was strongly  
13 emanating from inside that.

14 Q. Did you see the passenger on the phone?

15 A. I did, yes, sir.

16 Q. Could you hear what he was saying?

17 A. No, I really couldn't. I was trying to listen into  
18 it, but I could not.

19 Q. All right. So you are there with Officer  
20 Villeneuve on the passenger's side; what happened then?

21 A. Officer Villeneuve several times asked the  
22 defendant to provide his identification. Initially, he was  
23 hesitant to do so, but after multiple requests he did. He  
24 was also on his cell phone, which we've had incidents where  
25 we've had to request that people, you know, hang up the

1 call. And we try to do it as politely as possible and  
2 cordially as possible to de-escalate the situation, but  
3 Officer Villeneuve asked him several times to do so and he  
4 refused.

5 Q. Did Officer Villeneuve make any other requests from  
6 him after that?

7 A. After that, it seemed to be a period of time, I  
8 couldn't really tell you how long it was, but it was  
9 repeatedly as courteously as possible, trying to ask him to  
10 hang up the phone, please provide identification.  
11 Identification was provided, however, the cell phone  
12 conversation continued, and it started to get a little more  
13 heated, I could tell. I couldn't hear the exact wording of  
14 it, but I could hear Officer Villeneuve was going back and  
15 forth with the defendant attempting to get him to hang up  
16 the phone; and, finally, he asked him to step out of the  
17 vehicle, step out of the car.

18 Q. Did he get out of the car?

19 A. No, sir, he did not.

20 Q. What happened then?

21 A. Multiple attempts were made in order to ask Mr.  
22 Anderson to step out of the vehicle. Finally, at one point,  
23 Officer Villeneuve after numerous occasions asking him to  
24 step out of the vehicle, it escalated to the point more of a  
25 stand-off situation. We really didn't have an option, so

1 Officer Villeneuve attempted to reach in and grab at the  
2 defendant's arm in order to extract him from the vehicle.  
3 At that time, Mr. Anderson then pulled himself and withdrew  
4 himself into the vehicle further, hunching over the center  
5 console.

6 Q. So let me just ask you something. When Officer  
7 Villeneuve asked the defendant to step out of the car, had  
8 he stepped out of the car, what would have happened?

9 A. We would have conducted our investigation. As it  
10 turned out, the open container, more than likely what would  
11 have been issued was a criminal summons, which would be a  
12 promissory note-type situation to return to court at a later  
13 date in time. The business with the driver would have been  
14 conducted. I, at that time, was not aware what was going on  
15 with the driver, but we would have handled that efficiently,  
16 and probably everybody would have walked away without going  
17 into custody.

18 Q. So at one point, it went from ticket to arrest; is  
19 that fair?

20 A. Yes.

21 Q. What was that point?

22 A. At the point in time which we had the issue of the  
23 open container in the center console, but more importantly,  
24 the two requests to, one, ask the defendant to get off the  
25 phone for safety reasons, for our concerns, and, two, to

1 step out of the vehicle, When he refused to do both of  
2 those after numerous occasions, which we asked as politely  
3 as possible to do so, and physically when we had to put  
4 hands on him. At that point in time, he was under arrest.

5 Q. So once you had to put your hands on him?

6 A. Yes, sir.

7 MR. OSBORNE: Your Honor, may I approach?

8 THE COURT: You may.

9 BY MR. OSBORNE:

10 Q. Using this photograph for ID, do you recognize  
11 this? I'm showing you State's Exhibit 5.

12 A. Yes, 266 Fleming Road.

13 Q. And using this picture, walk through with the jury  
14 what happened at the point where you had to put your hands  
15 on him; pick it up from there.

16 A. Yes, sir. Essentially -- trying to illustrate this  
17 as best as possible. Initially, at the start of the stop,  
18 Officer Villeneuve was probably in this position and I was  
19 directly behind. This isn't a great representation, but  
20 shows that we were kind of stacked up on the vehicle.

21 When the door became open -- and I actually think  
22 we had less space to work with as the door would have struck  
23 the side of the Charger, or the other vehicle there at the  
24 time. The door came open, and at this point in time,  
25 Officer Villeneuve attempted to reach in and grab Mr.

1 Anderson's right arm. The concern with that was that when  
2 he pulled himself into the vehicle, at that point in time, I  
3 came around the side of the vehicle in-between the door and  
4 Officer Villeneuve, and attempted to restrain his left arm  
5 to extract him as safely as possible out of the vehicle in  
6 an attempt to get him on his ground -- or feet to detain him  
7 at that time.

8 Q. What happened then?

9 A. We attempted numerous times to pull him out of the  
10 vehicle. Struggle was ensuing, there was some kicking going  
11 on from the vehicle, seemed like he was pushing himself away  
12 from us. I would have been probably trying to grab him at  
13 his right arm. Officer Villeneuve was trying to do his  
14 left. And he was slipping back, constantly throwing himself  
15 around. Within the passenger compartment of the vehicle, he  
16 started to scoot up on the back of the seat and kick  
17 repeatedly.

18 We finally removed him from the vehicle, got him on  
19 two feet. A cuff was introduced as some point while we had  
20 him on both feet, and we were attempting to basically  
21 immobilize his arms. During the whole time, Mr. Anderson  
22 was pulling his arms up closer, tighter in here, which based  
23 on our training you have a much stronger ability to maintain  
24 control of your arms. So what we want to do is take that  
25 advantage away and try to restrain him for safety purposes,

1 so he doesn't get hurt and we don't get hurt.

2 Cuff was placed on him; however, after the cuff was  
3 placed, we were unable to restrain the second arm and attach  
4 both cuffs to him. That then created another situation,  
5 which my primary concern was that with that loose cuff, got  
6 some sharp edges on that, that can be used as a weapon of  
7 opportunity, if you will, in an altercation, whether  
8 intentionally or not.

9 Q. You say a cuff was introduced. That basically just  
10 means you were able to put one handcuff on him?

11 A. Yes, sir, one hand was detained.

12 Q. Do you know who did that?

13 A. I believe it was Officer Villeneuve at the time. I  
14 believe it was his handcuff.

15 Q. A lot going on?

16 A. At some point, when he got locked on, there was a  
17 lot of confusion going on, though, because we started to  
18 have outside bystanders that were -- I wouldn't say  
19 interfering, but starting to project themselves into the  
20 traffic stop. And at some point, Officer Villeneuve and I  
21 got turned sideways facing towards the rear of these two  
22 vehicles, and he began throwing us into the inside of what  
23 would be this vehicle over here, which is -- at the time  
24 would have been a vehicle unassociated with the traffic  
25 stop, threw us in the side of that vehicle.

1           And, essentially, we lost control at one point of  
2 his arm, and I gained control of the handcuff, like I said,  
3 to maintain control of that, prevent that from causing any  
4 further injury to Mr. Anderson or myself or Officer  
5 Villeneuve or anybody else there on scene.

6           Q.    You said you got ahold of that handcuff, you held  
7 on to the handcuff?

8           A.    Yes, sir.

9           Q.    What happened then?

10          A.    I was still attempting, as was Officer Villeneuve,  
11 to try to get that second arm behind his back so we could  
12 use the cuffs. At some point we went from all of us  
13 standing, trying to handle the altercation, to -- we ended  
14 up on the ground. When that happened, Mr. Anderson  
15 essentially pulled away, and he had basically more strength  
16 in front of him with his hands being here.

17                I got turned around and wrapped up in him. And  
18 when he got taken to -- essentially to the parking lot, to  
19 the ground at that point in time, with his body weight -- I  
20 was still trying to maintain control of the handcuff with my  
21 left hand. As we are rolling around on the ground and  
22 tussling with him, he rolled with his body weight, and that  
23 caused a twist on my hand, which also caused a sharp pain at  
24 the time. Adrenaline was going.

25                I know for a fact, at that point in time I felt a

1 strong sharp pain in my hands. And, essentially, after that  
2 point in time, I don't want to say I was ineffective at  
3 offering any assistance in the whole situation, but I was  
4 severely hampered by the fact that I only had control of my  
5 right hand at that point in time.

6 Q. Now, I mean, it's not your testimony that your hand  
7 was broke absolutely 100 percent at that moment?

8 A. I cannot guarantee that, no, sir.

9 Q. But you are saying -- your testimony is that your  
10 hand wasn't broken before the altercation?

11 A. Correct.

12 Q. Sometime during it?

13 A. Yes.

14 Q. This seems like the most plausible time?

15 A. Yes, sir.

16 Q. Let me say ask you this: Did the defendant's  
17 actions place you in fear of being hurt?

18 A. Yes, sir.

19 Q. In what way?

20 A. With the pulling away when we were initially trying  
21 to extract him from the vehicle and him trying to pull  
22 himself further into the vehicle, there's a lot of unknowns.  
23 We did not know if there was a weapon or some kind of  
24 contraband or evidence or something in the vehicle he was  
25 trying to get to. Once he was outside the vehicle and cuff

1 was placed on his wrist, at that point in time, that  
2 handcuff could cause an issue or injury to somebody else in  
3 the situation, hence why I was so strongly trying to  
4 maintain control.

5 When he began rolling on the ground, my primary  
6 concern was to get control of his hands so we could control  
7 the situation and make a stop. But also, at the same time,  
8 I wanted to control the handcuffs so it didn't get used  
9 against one of us by accident.

10 Q. And I imagine being slung up against the car wasn't  
11 fun either?

12 A. No, sir.

13 Q. You could have been hurt, or at least in your mind,  
14 that could have hurt you as well?

15 A. Yes, sir.

16 Q. So you've talked about other bystanders and other  
17 people getting involved in the incident. From your  
18 perspective of what you saw, just kind of go through that  
19 briefly.

20 A. At some point, while Officer Villeneuve and I were  
21 trying to control Mr. Anderson, Officer Summerlin was over  
22 there on that side, I could hear a loud female voice  
23 screaming and yelling. I couldn't tell you at this point in  
24 time what she was yelling, but at some point, a bystander  
25 got around Officer Summerlin and approached Officer

1 Villeneuve.

2 Up until that point, Officer Villeneuve and I were  
3 somewhat maintaining control of the situation; however, one  
4 of the bystanders got to Officer Villeneuve and caused such  
5 a distraction to him that it turned his focus from Mr.  
6 Anderson toward whatever the bystander -- whoever the  
7 bystander was at the time.

8 Q. Did you find out who it was?

9 A. After the fact, yes, sir, it was Ms. Anderson,  
10 which is Mr. Anderson's mother.

11 Q. Now, after he's placed into handcuffs, you said  
12 that you felt like your hand -- there was a problem. All  
13 right. So he's in handcuffs, what did you do then?

14 A. At that point in time, I kind of pulled myself away  
15 from the situation to catch a breath, evaluate if I had any  
16 scuffs, injuries, or anything like that. At which point in  
17 time, I was trying to clench with my hand and I realized I  
18 couldn't grasp anything with my left hand. I looked at it  
19 and, visibly, the knuckle appeared to be prolapsed away from  
20 the other three knuckles that were primarily on my hand, and  
21 there was a large raised bump in the center portion of my  
22 hand.

23 MR. OSBORNE: May I approach?

24 THE COURT: You may.

25 BY MR. OSBORNE:

1 Q. I show you what's been marked as State's Exhibit 8.

2 Do you recognize this?

3 A. Yes, sir.

4 Q. And what is that?

5 A. That is my hand after the altercation.

6 Q. I also show you what's been marked as State's

7 Exhibit 9. Do you recognize that?

8 A. Yes, sir. That's my shirt after the altercation.

9 Q. Showing the scuff marks from rolling on the  
10 ground?

11 A. Yes, sir.

12 Q. You told Sergeant Light, your sergeant, that you  
13 were injured?

14 A. Yes, sir. I approached Sergeant Light and there  
15 was a lot of things going on at the time, but I tried to  
16 quietly let him know, hey, something is wrong here, I think  
17 my hand might be broke, I might have broken it.

18 Q. And he provided transportation for you to the  
19 hospital?

20 A. Yes, sir. Another officer took me to the  
21 hospital.

22 Q. You went to the hospital and you were treated?

23 A. Yes, sir, that night.

24 Q. What hospital did you go to?

25 A. I believe it was Roper that evening, downtown.

1 Q. They gave you your medical records at some point?

2 A. They did. There was some paperwork they provided  
3 me, but also specifically they gave me two disks which  
4 contained X-rays of my hand after diagnosing that it was  
5 fractured.

6 MR. OSBORNE: May I approach?

7 THE COURT: You may.

8 BY MR. OSBORNE:

9 Q. I want to show you what's been marked as State's  
10 Exhibit 10. Do you recognize that?

11 A. Yes, sir. That's the X-ray of my fractured hand.

12 Q. Point out to the jury, because it might be kind of  
13 hard to see from this photograph, the fracture you are  
14 talking about.

15 A. This area right here. (Witness indicates.) This  
16 is predominantly where the fracture is, which for reference  
17 point, it's going to be the top portion of the hand right  
18 here, the third metacarpal, which leads to the middle  
19 finger. But, essentially, from right about closest to the  
20 knuckle where my finger starts to the back where my wrist  
21 is, that fracture extended, thus causing during the injury  
22 that bump, which was seen on top of my hand when it was  
23 fractured.

24 MR. OSBORNE: Your Honor, may I approach?

25 THE COURT: You may.

1 BY MR. OSBORNE:

2 Q. I'm going to show you what's been marked as State's  
3 Exhibit 15 for ID purposes only. You've been sitting in  
4 here during the whole trial, correct?

5 A. Yes, sir.

6 Q. Do you recognize that paperwork right there?

7 A. Yes, sir. This appears to be page 1 of my blue  
8 team memo for the altercation that evening.

9 Q. Okay. Now, you prepared that memo after the  
10 incident?

11 A. Yes, sir. I was unable to type; however, I sat  
12 next to Officer Summerlin who dictated it and typed it out  
13 for me, being I had my hand in a cast.

14 Q. Each one of you officers did your own use of force  
15 report; is that correct?

16 A. Yes, correct.

17 Q. There was one report, but then each one of you did  
18 a use of force?

19 A. Yes, sir.

20 Q. All those reports at a certain point were provided  
21 to me?

22 A. Yes, sir.

23 Q. And then provided to the defense?

24 A. Yes, sir, as far as I know.

25 Q. Can you read the part of your report --

1 MR. KING: I object, Your Honor. It's hearsay,  
2 prior inconsistent statement, bolstering.

3 THE COURT: What say you?

4 MR. OSBORNE: This is going to be in regards to  
5 Officer Villeneuve's statement -- Officer Villeneuve's  
6 statement that he only made one report, and that's what his  
7 report says. We started talking about the reports for  
8 Officer Villeneuve. This is the report by Officer Harvill  
9 that will say what Villeneuve did.

10 MR. KING: Your Honor, I brought up prior  
11 inconsistent statement with Officer Villeneuve, which is  
12 allowed, but it's different prior inconsistent statements.

13 THE COURT: I'm going to overrule it. Proceed.

14 BY MR. OSBORNE:

15 Q. What does that -- what did you document in your use  
16 of force report?

17 A. I documented the incident in its entirety, both the  
18 events leading up to it, the altercation and how it  
19 occurred, and then the events afterwards.

20 Q. And in particular, what did you document in  
21 reference to Officer Villeneuve's orders to the passenger?

22 A. I stated that Officer Villeneuve gave continuous  
23 verbal commands to exit; however, he continued to state no.  
24 He being the defendant.

25 Q. Do you see the defendant in the courtroom here

1 today?

2 A. I do, yes, sir.

3 Q. Can you point him out and describe what he's  
4 wearing?

5 A. Yes, sir. Mr. Anderson is wearing Khaki trousers  
6 and yellow plaid shirt.

7 MR. OSBORNE: The record reflect --

8 THE COURT: The record will so reflect.

9 BY MR. OSBORNE:

10 Q. Let me just ask you one other question. We talked  
11 about medical records a little bit. You've had the  
12 opportunity to review those medical records; is that  
13 correct?

14 A. Yes, sir.

15 Q. There is more than just his X-ray that's in  
16 there?

17 A. Yes, sir.

18 Q. There's some comments in there that was dictated  
19 from a nurse, because you did speak to a nurse that night,  
20 correct?

21 A. Yes, sir. There was an intake nurse there, I  
22 believe.

23 Q. Correct me if I am wrong, but I think there's  
24 something in those medical records that says something to  
25 the effect of the officer's hand was injured when it was

1 being placed up against the seat, or something to that  
2 effect; do you remember that?

3 A. There was something to that effect written by the  
4 intake nurse, yes.

5 Q. Is that how your hand was injured?

6 A. No, sir. I don't believe so, no.

7 Q. Where do you think she got that from?

8 A. I'm not entirely sure. I will say it was a busy  
9 night, it was a Friday night, and there was a lot of  
10 confusion going on there. Seemed like they were kind of  
11 rushed getting me in there. And, basically, they did not  
12 treat me, so to speak, for long-term. It was initial, just  
13 to get me an X-ray, evaluate the fracture, if there was a  
14 fracture, which they did determine there was, and get it in  
15 a cast so it was stabilized.

16 Q. And then you received treatment after that from a  
17 hand specialist, I believe?

18 A. Yes, sir.

19 Q. How long were you out of work?

20 A. Over six weeks.

21 Q. At any point when this nurse talked to you and then  
22 she did her medical records and anything, did she ever come  
23 back to you and have you look at it and then you verify it  
24 for accuracy?

25 A. No, sir.

1 Q. Do you think that they were more concerned about  
2 treating you or documenting what happened?

3 A. Treating me.

4 MR. OSBORNE: No further questions.

5 THE COURT: Mr. King.

6 CROSS-EXAMINATION

7 BY MR. KING:

8 Q. I just want to ask you a few questions.

9 A. Yes, sir.

10 Q. You responded to Sergeant Light when he requested  
11 backup for a traffic violation?

12 A. Yes.

13 Q. Sergeant Light is your supervisor?

14 A. Yes, sir, at the time.

15 Q. And the most senior officer out of his group of  
16 officers?

17 A. Yes, sir.

18 Q. What about the other -- how long have you been with  
19 the force, you said, at that time?

20 A. At that point in time, it would have been just shy  
21 of five years.

22 Q. Do you know about Summerlin?

23 A. Officer Summerlin came on, I believe, just a little  
24 bit before me, so he would have been right at about five  
25 years.

1 Q. And Villeneuve?

2 A. Officer Villeneuve would have been on the force  
3 about four years, I believe, at the time.

4 Q. So is he the -- was Officer Villeneuve the least  
5 experienced officer there, the one who had been there the  
6 least?

7 A. Time-wise, yes, sir.

8 Q. And you approached -- when you got there, you  
9 testified that you saw Sergeant Light was already there, was  
10 already out of the car speaking with the driver?

11 A. Yes, sir, to the driver.

12 Q. And you followed Villeneuve around the passenger's  
13 side while he was engaging the passenger?

14 A. Yes, sir.

15 Q. Did you hear Damian Anderson -- you heard  
16 Villeneuve ask for his ID, correct?

17 A. I did, yes, sir.

18 Q. And he said, why do I need to give you my ID, or  
19 something like that?

20 A. Something to that effect. I couldn't hear the  
21 whole course of the conversation, but something to that  
22 effect.

23 Q. But he handed over his ID?

24 A. Eventually, yes, sir.

25 Q. That took time to get the ID?

1           A.    Yes, sir.

2           Q.    And then he asked him to -- well, then a phone call  
3 was made?

4           A.    I don't know if he was on the phone at the time of  
5 the stop, prior to the stop, or when he was on the phone,  
6 but he was on the phone at some point during that -- during  
7 the conversation and after.

8           Q.    And you didn't hear what was said on the phone  
9 conversation?

10          A.    No, sir, I could not. I was more focused --  
11 because it seemed to appear that the passenger was slightly  
12 agitated about the situation. I was just focused on being a  
13 cover officer, essentially.

14          Q.    Covering for Villeneuve?

15          A.    Yes.

16          Q.    Officer Villeneuve asked him to get out of the  
17 car?

18          A.    Yes, sir.

19          Q.    He said, why do I have to get out of the car?

20          A.    I couldn't hear if he said that or not.

21          Q.    Then you and Officer Villeneuve grabbed his left  
22 and right arms, right?

23          A.    After asking him multiples times to get out of the  
24 vehicle.

25          Q.    And then grabbed his arm to pull him out of the

1 vehicle?

2 A. Eventually; yes, sir.

3 Q. Did you ever explain to him why you needed him to  
4 get out of the vehicle, to answer questions or anything?

5 A. No, sir.

6 Q. Did Villeneuve?

7 A. Initially, he was very courteous in the initial  
8 approach, asked him to please hang up the phone, we are  
9 trying to conduct business here. I mean, basically alluded  
10 to the fact that he was a part of that traffic stop. And  
11 after repeated, numerous attempts trying to ask him to  
12 comply with not only hanging up the phone, to provide his  
13 identification, also step out of the vehicle, all else kind  
14 of failed at that point, so ...

15 Q. You heard, I think it was Officer Summerlin said  
16 that during the conversation with you, you told him you  
17 broke your hand when -- during the fall?

18 A. At some point, yes, sir. It was all kind of  
19 speculative at that point.

20 Q. Today you are testifying you believe it was when  
21 you were on the ground trying to get handcuffs on Mr.  
22 Anderson?

23 A. Yes, sir, probability, it was.

24 Q. And he rolled and the leverage caused your hand to  
25 break?

1 A. That's what I believe happened, yes, sir.

2 Q. Mr. Anderson never grabbed your hand and twisted  
3 it?

4 A. No, sir.

5 Q. He didn't stomp on it?

6 A. No, sir.

7 Q. And after this was over, you went up to Sergeant  
8 Light and said, I broke my hand?

9 A. Something to that effect, yes, sir. I don't know  
10 if that was the exact wording, but something to that effect.

11 Q. That's what was in the use of force report. Did  
12 you review that?

13 A. I did.

14 Q. Would you have had an opportunity to correct  
15 anything in that if it was wrong or submit --

16 A. That was the initial statement, no, sir.

17 Q. Then you went to the emergency room?

18 A. Yes, sir.

19 Q. At that point, you didn't have time to write any  
20 kind of report or anything like that? You were just going  
21 to get your medical situation taken care of, right?

22 A. Yes.

23 Q. You said that Mr. Anderson slammed you up against  
24 the car?

25 A. Both of us. It was a push, pull, and thrashing

1 about. I believe Officer Villeneuve was the one that  
2 primarily got slammed against the vehicle. I caught the  
3 mirror at some point, but mine was very minor.

4 Q. You know, in Sergeant Light's report, his  
5 testimony, he said Mr. Anderson slammed his own body up  
6 against the car?

7 A. Yes, sir.

8 Q. You didn't write a supplemental report?

9 A. No, sir.

10 Q. Even when you put your hands on someone?

11 A. That's why the blue team is written. And it was  
12 typed by Officer Summerlin due to my hand being broken.

13 Q. That's an internal document, right?

14 A. Correct.

15 Q. Interoffice memo?

16 A. Yes.

17 Q. That wasn't included in the main case file?

18 A. I don't believe so, no, sir.

19 Q. Because what's included in the case file would be  
20 an official supplemental report?

21 A. If it needed one.

22 Q. You didn't think one was needed after an incident  
23 like this where you were injured?

24 A. My injury was documented in the initial report,  
25 from my recollection.

1 Q. Sergeant Light --

2 A. Had documented that, yes, sir.

3 Q. And you didn't have any cameras on your vehicle  
4 that you were in?

5 A. No, sir.

6 Q. The solicitor asked you about your medical records.

7 A. Yes, sir.

8 MR. KING: May I approach, Your Honor?

9 THE COURT: You may.

10 BY MR. KING:

11 Q. Do you recognize those? This is Defendant's  
12 Exhibit Number 8. This is Defendant's Exhibit Number 8 for  
13 identification.

14 THE COURT: For identification?

15 MR. KING: Yes, Your Honor.

16 BY MR. KING:

17 Q. Do you recognize that?

18 A. If you will allow me just a moment to review it,  
19 sir. Yes, sir. It appears to be my intake documentation,  
20 perhaps my completed documentation that evening.

21 Q. Right. And you discussed this in your direct  
22 examination with the solicitor?

23 A. Yes.

24 Q. You went to the doctor and they asked you what  
25 happened --

1 A. Right.

2 Q. -- right? And you told them what happened?

3 A. Yes, sir.

4 Q. And documented in their report is the suspect --  
5 this is awkwardly worded, right?

6 A. Yes, sir, very.

7 Q. The suspect, his hand became caught between a seat  
8 and a door.

9 A. Yes, sir.

10 Q. Okay. Do you remember who your treating doctor was  
11 that day?

12 A. I could not tell you, no, sir.

13 Q. Does -- Dr. Cameron Maile, does that ring a bell?

14 A. It seems familiar, yes, sir.

15 Q. Whose initials -- do you see initials beside that  
16 notation about "caught between a seat and a door"?

17 A. No, sir, I don't see any initials.

18 Q. Do you see CM 10?

19 A. Sure. Yes, sir, I do.

20 Q. That might stand for Cameron Maile?

21 A. Yes, sir.

22 Q. Are you sure you didn't tell Dr. Cameron Maile that  
23 you got your hand caught between a seat and a door, or  
24 anything like that?

25 A. No, sir. I provided a synopsis of the incident,

1 and all I can surmise, this is a summary on their basis.

2 Q. But summarizing what you said, they still included  
3 your hand getting caught between the seat and a door?

4 A. Yes, sir.

5 Q. You don't think Dr. Maile made that up; do you?

6 A. No, sir.

7 Q. Was there another police officer in the emergency  
8 room with an injured hand?

9 A. No, sir.

10 Q. That they could have gotten the two of you  
11 confused?

12 A. No, sir.

13 Q. So you really don't know how your hand was broken;  
14 is that fair to say?

15 A. Not at what point it was broken, no, sir.

16 MR. KING: Beg the Court's indulgence. Your  
17 Honor, I have no further questions for this witness.

18 THE COURT: Any redirect?

19 REDIRECT EXAMINATION

20 BY MR. OSBORNE:

21 Q. Looking at the same medical records right there,  
22 let's look at what it says in its entirety.

23 A. Certainly.

24 Q. It's only three lines: Patient complains of pain  
25 to his left hand after being in an altercation with a

1 suspect. Patient was performing -- whatever CM 10 -- his  
2 duties as a police officer when during the arrest the  
3 suspect, his hand became caught between a seat and a door --  
4 a seat and a door. Patient states pain is worse with  
5 movement, better with rest. He denies any other injury; is  
6 that correct?

7 A. Yes.

8 Q. Does it say during the detention of the suspect?

9 A. No, sir, it says during the arrest.

10 Q. During the arrest of the suspect?

11 A. Yes, sir.

12 Q. Your hand was injured during the arrest of the  
13 suspect?

14 A. Yes, sir.

15 Q. And I will ask you one more time. Did you read  
16 this or sign off on it in any way before it was submitted?

17 A. I don't remember signing anything on this. I  
18 believe this was handed to me afterwards.

19 Q. You got a broke hand, and you're just telling them  
20 your hand got hurt while you were trying to arrest --

21 A. Yes.

22 MR. OSBORNE: No further questions.

23 THE COURT: Any recross or redirect?

24 MR. KING: No questions, Judge, but I would ask to  
25 move Defendant's Exhibit 8 into evidence.

1 MR. OSBORNE: No objection.

2 THE COURT: Defense Exhibit Number 8. Okay. Very  
3 well.

4 (Defendant's Exhibit 8 is moved into evidence.)

5 (Whereupon the witness is excused.)

6 MR. OSBORNE: State rests, Your Honor.

7 THE COURT: All right. Ladies and gentlemen, I'm  
8 going to give you a short break while we take up a matter of  
9 law. I'm going to send you back. If you need to smoke, one  
10 of the bailiffs will take you to where you can smoke.  
11 Please do not discuss anything about the case while you are  
12 out.

13 (Whereupon, the jury leaves open court at 02:34  
14 p.m.)

15 THE COURT: Any motions to be made at this time?

16 MR. KING: Yes, Your Honor. Your Honor, at this  
17 time I make a motion for directed verdict. We've got a few  
18 things to argue.

19 THE COURT: All right. Take your time.

20 MR. KING: May I hand up a case? I can get  
21 started, Judge. This is State vs. Bryant. This is a case  
22 involving malicious injury to property, and I offer that up.  
23 I think that will be relevant when we get to the lawful  
24 arrest, but I'm arguing at this point that there's no  
25 evidence that the defendant knowingly and willfully

1 hope they will go pretty quickly. And at this point, I  
2 think it may be four, but if he doesn't testify, we will be  
3 putting up the other three.

4 THE COURT: That's not an issue. All right. Let's  
5 take a ten-minute recess.

6 (Whereupon, a recess transpired.)

7 THE COURT: Mr. Anderson, have you had an  
8 opportunity to speak with your attorney about whether or not  
9 you want to testify?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Do you want to testify?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Very well. Thank you. Let's bring our  
14 jury in.

15 (Whereupon, the jury returns to open court at 03:07  
16 p.m.)

17 THE COURT: All right. Mr. King.

18 MR. KING: Thank you, Your Honor. At this time the  
19 defense calls William Backman.

20 WILLIAM BACKMAN,  
21 having been duly sworn, testifies as follows:

22 THE CLERK: Speak into this mic and state your full  
23 name and then spell your last name, please.

24 THE DEFENDANT: William Backman, B-a-c-k-m-a-n.

25 DIRECT EXAMINATION

1 BY MR. KING:

2 Q. Mr. Backman, you know this fellow here in the  
3 yellow plaid shirt?

4 A. Yes, sir.

5 Q. How do you know him?

6 A. He was a friend of mine.

7 Q. How long have you known him?

8 A. Over 30 years.

9 Q. Do you remember back in February, February 1st,  
10 2013, when you were pulled over for the incident this trial  
11 is about? Do you remember that day?

12 A. Yes, sir.

13 Q. What happened? Just starting out, what happened on  
14 that day? Where were you coming from?

15 A. I was coming from Grimbball Road.

16 Q. Was anybody in the car with you?

17 A. Yes. Damian.

18 Q. How did he get in the car with you?

19 A. I went by and picked him up. He wanted me to take  
20 him to his house, to the funeral or whatever.

21 Q. There was something at his house?

22 A. Yes. His auntie had died and he asked me to take  
23 him for a ride -- give him a ride over there.

24 Q. Where was he when you took him from -- you said it  
25 was a Grimbball Road?

1           A.    Yes, he was on Grimball Road.

2           Q.    And did anything happen while you were driving  
3 Damian Anderson to his house?

4           A.    Yes.

5           Q.    What happened?

6           A.    We got pulled over.  At first, I noticed the  
7 officers at the corner of Camp Road, at Camp Road and  
8 Riverland Drive.

9           Q.    Which direction are you driving in?  You're driving  
10 on Riverland.

11          A.    I'm on Riverland.

12          Q.    Driving toward where?

13          A.    Toward Fleming Road.

14          Q.    And where did you see the officers?

15          A.    At the corner of Camp and Riverland Drive.

16          Q.    How do you know that they were officers?

17          A.    Because I saw the badge on the side, and I know the  
18 car because they pulled me over previously to this date.

19          Q.    Let's talk about that.  You recognized the same  
20 officers?

21          A.    Yes.

22          Q.    Same car?

23          A.    Yes.

24          Q.    They had pulled you over at some point before,  
25 before this?

1           A.    Yes.

2           Q.    What happened then? Do you remember what -- what  
3 was going on that day when you got pulled over by these same  
4 officers?

5           A.    I was leaving off of Grimball Road, and the car was  
6 following me, put on the blue lights. Me and another friend  
7 was in the car. And I had -- my other friend had a little  
8 bit of marijuana on him, so he jumped out of the car and  
9 ran. And when he jumped out of the car and ran, I didn't  
10 notice -- I just thought it was one officer in the car, but  
11 it was two.

12                   This other officer opened my door while the car was  
13 still in drive and pulled me out of the car while the other  
14 officer chased the other guy. And my car hit the mailbox.  
15 While my leg was still in the car, he was pulling me out of  
16 the car. And my car hit the mailbox and he instantly put me  
17 in cuffs and asked me questions and all kind of stuff. And  
18 then when I gave him my ID and stuff like that, he was --  
19 your driver's license is suspended and all that, but he  
20 didn't lock me up. He write me a ticket.

21           Q.    You said there was another passenger in the car?

22           A.    Yes.

23           Q.    And that wasn't Damian?

24           A.    That wasn't Damian.

25           Q.    Tyrone Richardson?

1           A.     It was Tyler Richardson.

2           Q.     Tyler Richardson. Okay. So now let's go back to  
3 February 1st, 2013. All right. You said you recognized  
4 those officers?

5           A.     Yes.

6           Q.     What happened then? Did the officers -- what did  
7 the officers do after you drove past?

8           A.     When I drove past them, I went about a mile down  
9 the road and I turned -- I made a right turn on Central Park  
10 Road. And I noticed they made a turn behind me. And then I  
11 went up maybe about another half mile and made a left turn,  
12 and they turned behind me. And I knew -- I know they  
13 noticed that it was my car, the same car that they pulled  
14 over. And half the way to Damian's house, that's when they  
15 put on the blue lights. And I was not going to stop right  
16 there on that curve because of the prior incident.

17          Q.     We will get to that in just a second. So you were  
18 aware police officers were behind you --

19          A.     Yes.

20          Q.     -- when you were on Riverland Drive?

21          A.     Yes.

22          Q.     So is that affecting your driving at all, knowing  
23 that police officers were behind you?

24          A.     No. I'm trying to drive as straight as possible.  
25 And I put on proper signals and everything, because I know

1 they were behind me, two miles behind me.

2 Q. Did you ever cross a center line or commit any  
3 traffic offenses that you know of?

4 A. No, sir.

5 Q. So the blue light comes on and you were saying that  
6 you didn't want to stop right away?

7 A. We were right there by the house anyway, so I'm  
8 going to pull in the yard.

9 Q. What did you do when the blue lights came on?

10 A. Just drive 10 miles an hour for maybe 10 seconds  
11 and pull in the yard, put on my signal light and pulled  
12 right in the yard.

13 Q. When you get there, Sergeant Light comes up to your  
14 window to talk to you?

15 A. Yes, sir.

16 Q. Okay. Did he ask you about a plastic cup inside  
17 the car?

18 A. Yes.

19 Q. Do you remember what you told him?

20 A. Yes. I was drinking earlier. I had a few drinks  
21 when I got off work.

22 Q. Did you tell them that that plastic cup was not  
23 yours?

24 A. No, I didn't tell them that.

25 Q. Did you tell them it was Damian Anderson's?

1 A. I didn't tell them that.

2 Q. Did you see Damian Anderson with the cup?

3 A. No.

4 Q. Or drinking out of it?

5 A. No. It was my cup.

6 Q. And while the officers are dealing with you, did  
7 you see anyone talking to Mr. Anderson?

8 A. Yes, sir.

9 Q. Tell me about that.

10 A. An officer was on the other side, and he was  
11 saying, put your phone down, or whatever. And he was like,  
12 I'm talking to my mom, or whatever. And they had some  
13 altercation. An officer snatched his hand with his phone  
14 through the window. And then by this time, the officer  
15 pulled me out, pulled me out of the car, and instantly put  
16 me in handcuffs and put me on the ground and ran around the  
17 car. And they started having some altercation over there.

18 Q. Did you hear the officers -- what did you hear the  
19 officers say to Mr. Anderson? Did you hear them say  
20 anything?

21 A. Put the phone down, and something else, ID or  
22 whatever. And didn't have a chance -- you know, he had  
23 everything on his lap. We already pulled it out. We  
24 already knew they were going to pull us over. You know what  
25 I'm saying?

1 Q. Did you ever hear Damian Anderson refuse to get out  
2 of the car?

3 A. No. He didn't have a chance.

4 Q. How come?

5 A. Because the officers were already there trying to  
6 get him out of the car.

7 Q. So they pulled -- how quickly did they pull him out  
8 after the stop when you are stopped there?

9 A. Everything happened within about 10 seconds.

10 Q. Okay. You never heard the officers repeatedly  
11 asking him over and over again to get out of the car and him  
12 refusing?

13 A. I heard them tell him, put the phone down, hang the  
14 phone up, and that was it.

15 Q. Did you ever see Damian Anderson try to hit the  
16 officers or anything like that?

17 A. No, sir.

18 Q. Try to kick them?

19 A. No, sir.

20 Q. Was he slinging them around like rag dolls?

21 A. No, sir.

22 Q. What did you see going on?

23 A. I just saw one hand going this way and his body  
24 going that way and everybody just -- officers just running  
25 on top of him.

1 Q. Is there any reason you think why they were so  
2 quick to jerk him out of the car like that?

3 A. Because of the prior incident. I'm thinking they  
4 were thinking it was Tyler Richardson in the car because  
5 what happened to me prior to this.

6 Q. You saw the whole thing?

7 A. Most of it.

8 Q. How close were you to what's going on?

9 A. From here to the table.

10 Q. What part -- any part of it you may not have seen?

11 A. Once all the officers came and was on top -- I  
12 couldn't see what was happening. All I could hear was --  
13 hear him saying, they are choking me, they are choking me.  
14 I couldn't see them actually choking him, but I could see  
15 all the officers on top of him, and I could hear him  
16 screaming.

17 Q. Did you hear him screaming anything else?

18 A. Calling his mama.

19 Q. Was Mr. Anderson drunk, from what you could tell?

20 A. No.

21 MR. KING: Beg the Court's indulgence.

22 THE COURT: Yes.

23 BY MR. KING:

24 Q. Let me ask you about the cup, plastic cup that was  
25 in the car. You said that was your cup?

1 A. Yes.

2 Q. Was there anything in the cup?

3 A. No. We already dranked (sic) it all before I  
4 started driving.

5 MR. KING: Okay. I have no further questions, Your  
6 Honor.

7 THE COURT: Mr. Osborne.

8 MR. OSBORNE: Thank you, Your Honor.

9 CROSS-EXAMINATION

10 BY MR. OSBORNE:

11 Q. All right, Mr. Backman. You were driving the  
12 vehicle --

13 A. Yes.

14 Q. -- is that correct?

15 A. Yes, sir.

16 Q. The only other person in the vehicle was the  
17 defendant --

18 A. Yes, sir.

19 Q. -- is that correct? And he's your friend of 30  
20 years?

21 A. Yes, sir.

22 Q. And you were coming up Central Park, taking a left  
23 onto Fleming Road; is that correct?

24 A. Yes, sir.

25 Q. You weren't drinking while you were driving, were

1     you?

2           A.     No.

3           Q.     Now, you say today that the cup is not yours -- or  
4     that cup is yours, that's what you said today?

5           A.     Yes.

6           Q.     We had a hearing yesterday, didn't we?

7           A.     Yes.

8           Q.     And during that hearing, I asked you about the cup  
9     and you said it wasn't yours; isn't that correct?

10          A.     I don't believe so.

11          Q.     Today it's your cup. Yesterday I asked you about  
12     the cup, and you said not yours, because you said you don't  
13     drink and drive?

14          A.     I drink, then drive.

15          Q.     Now, let's be fair. During this traffic stop,  
16     Sergeant Light or an officer you may not know his name, he's  
17     talking to you, so your attention is drawn to him; is that  
18     correct?

19          A.     Yes.

20          Q.     And at some point, you are out of the car?

21          A.     Yes.

22          Q.     They place you in handcuffs?

23          A.     Yes.

24          Q.     They put you on the ground?

25          A.     Yes.

1 Q. You are on the ground outside of the car?

2 A. Yes.

3 Q. Now, is it your testimony here today that when  
4 Sergeant Light asked you about the cup, that you said, yeah,  
5 that's my cup?

6 A. Explain that to me.

7 Q. Did Sergeant Light at any point -- Sergeant Light  
8 did ask you about the cup or inquire about the alcohol in  
9 the vehicle, didn't he?

10 A. He asked whose alcohol or whatever alcohol it was.

11 Q. And you said that you had just got off work, that  
12 it wasn't yours?

13 A. No. I told him I just got off of work and I was  
14 drinking. I did tell him that.

15 Q. But the alcohol inside the car you said, not mine?

16 A. No. There wasn't no alcohol in there. It was a  
17 cup where the alcohol --

18 Q. Okay. Good. So your testimony is that what's  
19 inside the cup was not alcohol?

20 A. No, I didn't say that.

21 Q. All right.

22 A. I said the cup was in the car and no alcohol was in  
23 there because I already drank it.

24 Q. I'm sorry, I didn't phrase it very well. So it's  
25 your testimony that the liquid that's inside the cup is not

1 alcohol?

2 A. What liquor? What liquid?

3 Q. There was no liquid in the cup?

4 A. No.

5 Q. Okay. Now, you cooperated with the police during  
6 the traffic stop, didn't you?

7 A. Yeah.

8 Q. In fact, I mean, I don't think you told this to  
9 Mr. King, but I think you even told Sergeant Light that you  
10 were driving under a suspended license?

11 A. No.

12 Q. Oh, you never told him that?

13 A. No, I never told him that.

14 Q. My mistake. When a police officer tells you to do  
15 something or they give you an order, I mean, you do listen  
16 to what they say, don't you?

17 A. Of course.

18 Q. That night, when the officer told you -- or asked  
19 you questions and asked you to step out of the car, you  
20 followed those orders, didn't you?

21 A. Yeah.

22 Q. Because that's the lawful thing to do, correct?

23 A. Yeah.

24 Q. You didn't fight with the officers, did you?

25 A. No.

1 Q. When they put you in handcuffs, you didn't start  
2 kicking, flailing, thrashing around, or any of that, did  
3 you?

4 A. No.

5 Q. In fact, I think at one point when Sergeant Light  
6 brought you out of the vehicle and he put you in handcuffs  
7 and left you on the ground, you may not be aware, there was  
8 a lot going on, but I think at one point you were left by  
9 yourself; isn't that correct?

10 A. Yeah.

11 Q. You didn't try to get up and run away or anything  
12 like that, did you?

13 A. No; too much officers out there.

14 Q. All right. I want to talk a little bit about this  
15 traffic stop that happened earlier. You said there was a  
16 little bit of weed that the passenger had in the car, that  
17 he ran and all of that.

18 A. I don't know how much it was. I didn't need to  
19 take on that.

20 Q. But you said a little bit when, in fact, I mean, it  
21 was over 21 grams of marijuana?

22 A. Well, I don't know.

23 Q. Because you weren't the guy?

24 A. Right.

25 Q. It was the passenger?

1 A. Exactly.

2 Q. Car gets pulled over, same power shift unit, a guy  
3 driving your car jumped out of the car, ran --

4 A. No, I was driving my car.

5 Q. Right. Right, just like the defendant, but riding  
6 in your car, and then when they pulled him over, he jumped  
7 out and ran?

8 A. Yes.

9 Q. So it wouldn't surprise you to hear that he had 21  
10 grams of weed on him, marijuana, would it?

11 A. I don't know. Nothing surprises me.

12 Q. Nothing surprises you? Now, you've spoken to  
13 Mr. King before your testimony, haven't you?

14 A. Yes.

15 Q. But you've never talked to me?

16 A. Yes.

17 Q. But it wasn't for lack of effort, was it?

18 A. No.

19 Q. In fact, Investigator David Watson here, he works  
20 with me, he made numerous attempts to contact you, didn't  
21 he?

22 A. Yeah.

23 Q. The first attempt, he left a message with you on  
24 July the 17th of 2014; isn't that right?

25 A. I don't know.

1 Q. Didn't get the message?

2 A. I don't even check my messages.

3 Q. Called again on July the 20th, left another message  
4 with you. I guess you didn't get that one either?

5 A. I don't even check it.

6 Q. Got his messages though, didn't you?

7 A. He came to the house.

8 Q. Investigator Watson came to your house too.

9 A. Well, I wasn't there that day.

10 Q. But you heard about it?

11 A. Yeah.

12 Q. From who?

13 A. From my mom.

14 Q. Talked to your mom?

15 A. Yeah.

16 Q. So you got the message on July 21st, and I think  
17 you even spoke to Investigator Watson, didn't you?

18 A. Yeah.

19 Q. And he told you that I would like to talk to you;  
20 isn't that correct?

21 A. Yes.

22 Q. Never called, did you?

23 A. I didn't, no.

24 Q. I think he even gave you my cell phone number,  
25 didn't he?

1 A. Yes.

2 Q. Never called?

3 A. Nope.

4 MR. OSBORNE: Court's indulgence.

5 THE COURT: Yes.

6 BY MR. OSBORNE:

7 Q. Two questions. Sergeant Light brought you out of  
8 the vehicle, handcuffed you, put you down on the ground? Is  
9 that yes or no?

10 A. Yes.

11 Q. Right outside the driver's side of the car?

12 A. The back side of the car.

13 Q. On the driver's side?

14 A. Yeah.

15 Q. Isn't it true, Mr. Backman, that the reason why you  
16 spoke to Mr. King and not me is because you are friends with  
17 the defendant, have been friends with the defendant for 30  
18 years, and don't want to say anything here that might hurt  
19 him?

20 A. No, that's not true. The truth is --

21 Q. Thank you.

22 A. -- I didn't like the situation because it happened  
23 to me before, they did the same thing to me weeks before.  
24 That's the truth.

25 Q. But you had an opportunity to tell me that though,

1 didn't you?

2 A. You didn't try to come to my house. Maybe you  
3 came, I would have seen you that day, but I didn't.

4 Q. It wasn't enough that Investigator Watson tried to  
5 contact you four or five times?

6 A. No.

7 MR. OSBORNE: All right. Thank you.

8 THE COURT: Any redirect?

9 MR. KING: I have none, Your Honor.

10 THE COURT: You may step down. Let me see the two  
11 lead attorneys back here.

12 (Whereupon, a bench conference takes place off the  
13 record.)

14 THE COURT: You may call your next witness.

15 MR. KING: Thank you. The defense calls Cynthia  
16 Anderson.

17 CYNTHIA ANDERSON,

18 having been duly sworn, testifies as follows:

19 THE CLERK: State your full name and then spell  
20 your last name.

21 THE WITNESS: My first name is Cynthia. My last  
22 name is Anderson, A-n-d-e-r-s-o-n.

23 DIRECT EXAMINATION

24 BY MR. KING:

25 Q. Good afternoon, Ms. Anderson. You know this man

1 sitting here at the table?

2 A. My son, Damian.

3 Q. Do you remember that night back February 1st, 2013,  
4 when he was arrested?

5 A. Yes.

6 Q. What do you remember of that night? Let me ask you  
7 this. What was going on that night in your house?

8 A. What was going on that night? My sister died, and  
9 I was in the kitchen preparing some food. Some people was  
10 coming in and leaving the same time. When I finished the  
11 macaroni salad, I actually was sitting down. Like I said,  
12 family was coming in and out. And my niece -- that's how I  
13 know everything that was going on, because my niece called  
14 me and said, the police got Damian outside.

15 When I got outside, they was talking to  
16 Mr. Backman. And they went from one side -- from the  
17 driver's side to the passenger's side, pulled my son out of  
18 the car, throw him against the car, and throw him down to  
19 the ground. They already had handcuffed him. Throw him to  
20 the ground. They put his hand up in his pants. They put  
21 his foot -- the police officer put his foot in Damian's  
22 back. One of the police officers had a stick under his  
23 neck. That's when he called my name, and I respond to that  
24 as a mother.

25 Q. What did he yell?

- 1           A.    Mama.
- 2           Q.    Is that what he calls you?
- 3           A.    No.
- 4           Q.    What does he call you?
- 5           A.    Damian call me by my first name, Cynthia.
- 6           Q.    So you heard him saying what?
- 7           A.    Mama. But, actually, I didn't hear -- I heard
- 8           Damian. As a mother, I respond to a four- or five- or
- 9           three-year-old child, and I respond to it. That's when I
- 10          came around to see what he was doing. Like I said, the guy
- 11          had his foot in the back. The police officer had the foot
- 12          in Damian's back and the little stick under his neck.
- 13          Q.    Did you see your son trying to hit the officers?
- 14          A.    No, because his hand -- he had his hand -- his hand
- 15          was behind his back already cuffed.
- 16          Q.    Did you see him kicking the officer or anything?
- 17          A.    No. No. Three officers grabbed him out of the
- 18          car. Officer Light was on the other side of the car, the
- 19          driver's side.
- 20          Q.    Okay. Did you hear anything that was going on
- 21          inside the car -- or what did you first see when you came
- 22          out, I guess? Let me ask you that.
- 23          A.    What I first saw was when one officer was on the
- 24          other side. Three officers was on the passenger's side.
- 25          They grabbed him out of the car, throw him against the car

1 on this hand side. Okay. This is my -- so this is my right  
2 and this is my left. The car was on the left-hand side that  
3 they throw Damian against. And they throw him against the  
4 ground. If a person has hands already cuffed, throw him on  
5 the ground, they shouldn't be doing like that. And putting  
6 the foot in the back, no, that was wrong.

7 Q. You were concerned for Mr. Anderson?

8 A. I was concerned. When he called me mommy, that's  
9 when I got concerned.

10 Q. Now, you were charged too?

11 A. Yes, I was.

12 Q. And you were arrested?

13 A. Yes, I was.

14 Q. What happened with your charges?

15 A. Everything was dropped.

16 Q. Is there a reason why?

17 A. Actually, I had to apologize to the --

18 MR. OSBORNE: I object, Your Honor.

19 THE COURT: Sustained.

20 MR. KING: I have no further questions.

21 THE COURT: Mr. Osborne.

22 MR. OSBORNE: Thank you, Your Honor.

23 CROSS-EXAMINATION

24 BY MR. OSBORNE:

25 Q. Ms. Anderson, you had a lot of guests at your house

1 that night?

2 A. Yes.

3 Q. Did I hear you right? I was kind of having a hard  
4 time hearing you. Is it your testimony that the officers  
5 had already had Mr. Anderson in handcuffs and then threw him  
6 to the ground?

7 A. Yes. They grabbed him out of the car, like I said.  
8 They grabbed him from the passenger's side, they throw him  
9 against the car. Officer Light was on one side, on the  
10 driver's side, while Mr. Backman been on the ground sitting  
11 down. Mr. Light came around from the driver's side to the  
12 passenger's side. The three officers and Officer Light  
13 grabbed Damian out of the car, threw him onto the other car,  
14 after they handcuff him, throw him to the ground. One  
15 officer, I can't remember who, put their foot in his back,  
16 and put the little stick on his neck. That's when he called  
17 me mommy, and I respond to mommy.

18 Q. You saw him the whole time?

19 A. I saw everything.

20 Q. He wasn't kicking?

21 A. No.

22 Q. He wasn't thrashing?

23 A. No.

24 Q. He was complying with them as best he could?

25 A. Yeah.

1 Q. So from your perspective, he wasn't doing anything  
2 wrong?

3 A. No, he wasn't doing anything wrong.

4 Q. Okay. You were arrested --

5 A. I was arrested because --

6 Q. -- for assaulting two officers, but you only got  
7 one charge; isn't that correct?

8 A. Actually, I don't remember assaulting the officer.

9 Q. A lot of emotion going on. Do you remember your  
10 trip to the jail?

11 A. Yes, I do.

12 Q. Do you remember taking your handcuffs off when you  
13 were in the back seat of the car?

14 A. First, let me tell you how that happened.

15 MR. KING: Objection, relevance.

16 THE COURT: Overruled.

17 BY MR. OSBORNE:

18 Q. Do you remember when you got to the jail, you had  
19 no handcuffs, you got out of the car doing this number?

20 (Indicating) Do you remember that?

21 A. Well, can I tell you how that happened.

22 Q. Let me just ask this last question. Yes or no?

23 A. Yes.

24 Q. Do you remember when the officers asked, where are  
25 the handcuffs? And you said, well, they are in my pants?

1 Do you remember that?

2 A. Uh-huh. Yes. But can I say something, too?

3 THE COURT: No, ma'am.

4 MR. OSBORNE: No further questions.

5 THE COURT: Mr. King, would you like to redirect?

6 REDIRECT EXAMINATION

7 BY MR. KING:

8 Q. Mrs. Anderson, what were you about to say how the  
9 handcuffs got off?

10 A. How the handcuffs got off, it wasn't an officer --  
11 I was in another person's car. I don't remember his name.  
12 Okay. The handcuffs was so tight on my wrist, I asked them  
13 to loosen it for me. And during the same time he loosened  
14 it for me, my hand got out of the handcuff from the time I  
15 left where I live at on James Island to -- on Maybank  
16 Highway, Maybank to -- I don't remember, across from Piggly  
17 Wiggly, another police force, and from there, my hand was  
18 loose like this.

19 So when I got to North Charleston on Leeds Avenue,  
20 my hands were loose then. So when I got in the jailhouse, I  
21 had the handcuffs in my pocket, so they handcuff me again.

22 And when I got in the jail, I took my hand, this  
23 hand right here, and come around and threw the handcuffs. I  
24 said, look here, and I threw the original handcuffs on the  
25 ground in the police force.

1 MR. KING: No questions.

2 THE COURT: Any recross-examination?

3 RECROSS-EXAMINATION

4 BY MR. OSBORNE:

5 Q. Did I hear you correctly that you asked the  
6 officers to loosen your handcuffs, and then the handcuffs  
7 slipped off?

8 A. Uh-huh.

9 MR. OSBORNE: No further questions.

10 THE COURT: Thank you. You may step down. You are  
11 done, ma'am. Thank you.

12 (Whereupon the witness is excused.)

13 MR. KING: Your Honor, the defense calls Damian  
14 Anderson.

15 THE COURT: Mr. Anderson, come forward and be  
16 sworn.

17 DAMIAN ANDERSON,

18 having been duly sworn, testifies as follows:

19 THE CLERK: Please state your full name and spell  
20 your last name for the record.

21 THE DEFENDANT: Damian Anderson, A-n-d-e-r-s-o-n.

22 DIRECT EXAMINATION

23 BY MR. KING:

24 Q. Mr. Anderson, you remember back on February 1st,  
25 2013?

1 A. Yes, sir.

2 Q. How did you end up in a car with Mr. Backman?

3 A. I got off of work that day and I know he just got  
4 off at the same time, so I called him for a ride because I  
5 had a death in the family. On the way to the house, we got  
6 by Camp and Riverland. When we got by Camp and Riverland  
7 Road, Mr. Backman observed the police officers coming off of  
8 Camp Road. As a matter of fact, they came a little past the  
9 stop sign, so we came around a little bit. You know what  
10 I'm saying? And went -- turned on Camp Road -- not Camp  
11 Road, Central Park Road, and made a left on Fleming Road.  
12 Drived (sic) down about half mile, whatever, and then police  
13 pulled us over.

14 So I tell him, let's pull in my yard, we're going  
15 to my house anyway. Then Officer Light -- and I think  
16 Harvill was driving, yeah.

17 Q. Let me slow you down a little bit. So they pulled  
18 you over. Mr. Backman, where did he end up pulling over?

19 A. Right at my house.

20 Q. And who did you see? You saw officers or an  
21 officer approaching the car? Or what did you see then?

22 A. I saw two officers in the car. Officer Light was  
23 the driver, he came on the driver's side, and the other  
24 officer came on my side. They asked me for my ID. I go,  
25 why do I have to give you my ID? I mean, supposed to be the

1 driver. I ask him why I have to give my ID. He said,  
2 because I said. So I gave him my ID.

3 Q. Do you remember which officer was at your  
4 passenger's side?

5 A. Not exactly.

6 Q. So you gave them your ID?

7 A. Yes, sir.

8 Q. Do you see anything going on with Mr. Backman at  
9 this point?

10 A. No, sir. They was asking Mr. Backman if he already  
11 got his license and everything straight.

12 Q. Okay. After you gave him your ID, what happened?

13 A. As soon as I gave him my ID, the other officer that  
14 was on my side tell me to get out of the car. As soon as I  
15 give him my ID, officer tell me to get out of the car. I  
16 said: For what? And Officer Light came on the other side  
17 and pulled me out of the car.

18 Q. Did you refuse to get out of the car?

19 A. No, sir. Why I refuse? I'm at my house, you know.

20 Q. You just -- you said what, when he asked you to  
21 step out of the car?

22 A. No, sir.

23 Q. What did you say to him when he asked you to get --  
24 step of the car?

25 A. I said: Why do I have to get out of the car? As

1 soon as I gave him my ID, he said get out of the car. Why I  
2 got to get out of the car? Why I got to get out of the car?

3 Q. Did they ask you more than once?

4 A. No, sir. As soon as I asked him why I need to get  
5 out of the car -- as soon as I give the guy my ID, Officer  
6 Light came on the passenger's side and just pulled me out of  
7 the car.

8 Q. What about the cell phone? The officer testified  
9 you were talking on your cell phone at some point.

10 A. I don't really remember. Only time I was talking  
11 on the cell phone was when they put me in the car and took  
12 me and my mother to the police station. Then I was on the  
13 phone then. Then they took the phone from me.

14 Q. Now, you said the police pulled you out of the  
15 car?

16 A. Yes, sir.

17 Q. Did they ever answer your questions about why?

18 A. No, sir.

19 Q. What happened then when they pulled you out of the  
20 car?

21 A. When they pulled me out of the car, they were  
22 trying to put handcuffs on me. One officer pulling my arm  
23 this way. They throw me on the ground. One officer pulling  
24 my arm this way, my hand behind my back. The other officer  
25 pulling on my leg, my pants fall to the ground. Officer

1 Light -- my pants fall to the ground, so he was like pulling  
2 on my underwear, you know, and --

3 Q. What would he be doing that for?

4 A. I guess to see if I had drugs or something on me,  
5 you know.

6 Q. Okay. Are you standing up at this point or are you  
7 on the ground?

8 A. I'm on the ground.

9 Q. Did you ever try to hit them?

10 A. No, sir.

11 Q. Kick them?

12 A. No, sir.

13 Q. What were you doing?

14 A. I was trying to get them off of me because they  
15 were just roughing me up. I had family at the house,  
16 family -- my aunt had died. You know, it was a lot of  
17 emotion.

18 Q. Were you injured?

19 A. Yes, sir.

20 Q. How did you get injured?

21 A. The cuffs they had on my arm, they had it real  
22 tight. It was twisting my arm and everything at the same  
23 time.

24 Q. When you were inside the car, were you drinking  
25 alcohol?

1 A. No, sir.

2 Q. Was that your cup --

3 A. No, sir.

4 Q. -- in the car?

5 MR. KING: Beg the Court's indulgence. I have no  
6 further questions, Your Honor.

7 MR. OSBORNE: Court's indulgence.

8 THE COURT: Yes, sir.

9 CROSS-EXAMINATION

10 BY MR. OSBORNE:

11 Q. Mr. Anderson, couple quick things. You were the  
12 passenger in the vehicle that was pulled over on February  
13 the 1st; is that correct?

14 A. Yes, sir.

15 Q. You know you were pulled over by law enforcement  
16 officers; is that correct?

17 A. Yes, sir.

18 Q. You saw they were in uniform, correct?

19 A. Yes, sir.

20 Q. Now, it's your testimony that you were never on the  
21 phone or that you don't remember being on the phone?

22 A. I don't remember.

23 Q. You don't remember?

24 A. The only time I really remember is when they took  
25 me to the station. I was on the phone then because I was

1 using the phone calling. Another officer took the phone  
2 from me.

3 Q. So it's possible you were on the phone?

4 A. Possible I was.

5 Q. It's not possible?

6 A. I said it's possible.

7 Q. I'm sorry, I didn't hear you.

8 So is it your testimony that when the officers came  
9 up to the door, they asked you to step out of the car one  
10 time, and then they just started pulling you out of the car?

11 A. Say again, sir.

12 Q. When the officers came to the car, is it your  
13 testimony that they asked you one time to get out of the  
14 car, and you said: What for?

15 And then they immediately grabbed you and started  
16 pulling you out of the car?

17 A. Well, the guy asked me for my ID first, then he  
18 said get out.

19 Q. ID, you gave it to him?

20 A. Right. Then he said: Get out of the car.

21 Q. Get out of the car. You said: What for?

22 A. I said: Why do I have to get out of the car for?

23 Q. Reached in and grabbed you, pulled you out of the  
24 car?

25 A. Other officer came around to help the other officer

1     that was on my side. And there was a whole bunch of  
2     commotion.

3           Q.     The commotion and the altercation and all of  
4     that?

5           A.     Yes, sir.

6           Q.     During this altercation, you never -- you've been  
7     sitting here during this whole testimony, right?

8           A.     Yes.

9           Q.     You never thrashed the officers around? You never  
10    kicked? You never pushed?

11          A.     I probably remember trying to get them off of me,  
12    because they was hitting me while I was leaning down,  
13    hitting me, choking me. Like I tell you, one pulling me,  
14    pulling my arm this way. Another one pulling my leg this  
15    way, and I got tired of it. You know what I'm saying?

16          Q.     So you do remember pushing them off of you?

17          A.     Yes, sir. They stay right there. I just want them  
18    to get off of me, stop them from doing whatever they were  
19    doing.

20          Q.     Do you remember them getting one handcuff on you?

21          A.     Yes.

22          Q.     Do you remember putting your hands in tight like  
23    this? (Indicating)

24          A.     Never. It was too much officers to get my  
25    hand with me rolling on the ground.

1 Q. So when they told you to put your hands behind your  
2 back, you complied?

3 A. Yes, sir.

4 Q. You did end up on the ground at some point?

5 A. Yes, sir. Before I ended up on the ground, they  
6 was trying to put me in the handcuffs and I fall. I fall on  
7 the ground. At the same time I fall on the ground, my pants  
8 fell down.

9 Q. Right. But it's your testimony that as soon as  
10 they asked you to put your hands behind your back, you did?

11 A. Right.

12 Q. So you didn't resist arrest in any way, did you?

13 A. No, sir.

14 Q. And the reason for that -- the reason for you  
15 complying with everything they asked you to do is that in  
16 your mind, I didn't do anything wrong, correct?

17 A. Right.

18 Q. I do want to talk about the injury a little bit.  
19 The officers asked you at the end of this if you were hurt,  
20 correct?

21 A. No, sir.

22 Q. Did they ask you if you needed EMS?

23 A. No, sir.

24 Q. When you got to the jail, were you asked there if  
25 you were hurt?

1 A. No, sir.

2 MR. OSBORNE: Your Honor, may I approach?

3 THE COURT: You may.

4 BY MR. OSBORNE:

5 Q. I would like to show you what's been marked as  
6 State's Exhibit 16 for identification purposes. You've  
7 probably never seen this before, so I'll just ask you to  
8 read the top of this right here. What does that say?

9 A. Charleston County booking date.

10 Q. Actually, it says Charleston County Jail?

11 A. Charleston County Jail booking date.

12 Q. The booking date is what day?

13 A. 2/1/13.

14 Q. February 1st, 2013. What is the time?

15 A. 22:09.

16 Q. That would be 10:09 p.m.?

17 A. Yes.

18 Q. And that is?

19 A. Me.

20 Q. Damian Anderson. Okay. And now let's go through  
21 some of this. I'm going to read along with you and tell me  
22 if I'm not correct in this: Obvious pain, bleeding, or  
23 other symptoms suggesting need for emergency medical  
24 services? N, no.

25 Visible signs of injury, illness requiring

1     immediate medical treatment -- immediate treatment or care?

2     No.

3             Appears to be under the influence of alcohol or  
4     exhibiting signs of that? No.

5             Appears to be under the influence of barbiturates?

6     No.

7             Taken to hospital prior to intake? No.

8             Does behavior suggest the need for immediate  
9     psychiatric treatment? No.

10            Any complaints of sore throat, blah, blah, blah?

11     No.

12            Doctor's care? No.

13            Has he been hospitalized recently? No.

14            Do you remember the jailer asking you questions,  
15     are you hurt, are you injured, any of that?

16     A.     I don't remember.

17     Q.     You don't remember that.

18            One last question, Mr. Anderson. Mr. King was  
19     going through the questions, and he was asking you about  
20     everything that happened.

21     A.     Yes, sir.

22     Q.     And you told him everything that happened during  
23     the incident, during the scuffle, during the altercation and  
24     all of that; is that correct?

25     A.     Yes, sir.

1 Q. And at no point during your testimony did you  
2 mention anything about a stick being placed around your  
3 neck; did you?

4 A. No, sir.

5 MR. OSBORNE: No further questions.

6 THE COURT: Any redirect?

7 MR. KING: No, Your Honor.

8 THE COURT: Thank you. You may step down.

9 MR. KING: Your Honor, the defense rests.

10 THE COURT: All right. Thank you. Let me see the  
11 attorneys up here real quick.

12 (Whereupon, a bench conference takes place off the  
13 record.)

14 THE COURT: All right. Ladies and gentlemen,  
15 that's all the testimony you are going to hear today. And  
16 so I'm going to let you go home with instructions that,  
17 again, you will get tired of me saying this, please do not  
18 discuss the case with anyone while you are home. Do not do  
19 any investigation on your own, like Googling anything, to  
20 see if you can find any reports. That would be in violation  
21 of my order. And I'm a nice guy to violate an order.

22 Ladies and gentlemen, have a nice evening. And I  
23 will see y'all back here at 9:30 tomorrow morning. Okay.  
24 Thank you.

25 (Whereupon, the jury leaves open court at 03:56

1 p.m.)

2 THE COURT: All right. Mr. King.

3 MR. KING: I would just renew my motion for  
4 directed verdict, Your Honor, now that we've heard testimony  
5 from Mr. Backman, from Mr. Anderson's mother, Cynthia  
6 Anderson, Mr. Anderson, that the State has not presented  
7 sufficient evidence that Mr. Anderson knowingly and  
8 willfully did assault, beat, or wound the officer, or that  
9 there was a lawful arrest.

10 THE COURT: Mr. Osborne.

11 MR. OSBORNE: We would just reiterate our prior  
12 comments on that.

13 THE COURT: I'm going to respectfully deny your  
14 motion.

15 Now, my law clerk on his first day of work has  
16 already gotten your preliminary for your -- for the charge.  
17 If you give him your e-mail addresses, he will e-mail that  
18 to you. He will review it tonight. If you have any  
19 additional charges to make -- it's pretty  
20 straight-forward -- bring them with you when we meet at 9  
21 a.m. in chambers. Y'all have a nice evening.

22 (Whereupon, the proceedings adjourn for the day.)

23

24

25

1 MR. OSBORNE: Opening on the law, yes, Your Honor.

2 THE COURT: All right. Let's bring our jury in.

3 (Whereupon, the jury returns to open court at 09:57  
4 a.m.)

5 THE COURT: All right. Ladies and gentlemen, I  
6 hope you had a good night's rest. It's a beautiful day  
7 today, seems like the first time it wasn't with clouds  
8 everywhere, so it was nice.

9 You have heard all of the testimony in this case  
10 that was available for you to hear. Now is the time when  
11 the attorneys will give you their closing arguments. After  
12 that, I will charge you on the law of this case and then I  
13 will send you back to the jury room and you will begin your  
14 deliberations. Is the State ready to proceed?

15 MR. OSBORNE: Yes, Your Honor.

16 THE COURT: Is the defense ready to proceed?

17 MR. KING: Yes, Your Honor.

18 THE COURT: Mr. Osborne.

19 MR. OSBORNE: We will waive opening on the law,  
20 Your Honor.

21 THE COURT: Very well. Mr. King.

22 MR. KING: Thank you, Your Honor. Why did this  
23 have to happen? We can ask ourselves because Damian asked  
24 why? Where Damian lives there are at least two police cars  
25 that patrol around the area looking for the most minor of

1 traffic violations to pull those cars over and look for  
2 more; interdiction. Damian Anderson happens to live in this  
3 area. He had gotten off work, got a ride to 266 Fleming  
4 road; there was a death in his family. He was riding with a  
5 friend he's known for years; a friend that was pulled over  
6 by the police for crossing the solid double yellow line; a  
7 friend who was pulled over before, about a month and a half  
8 before, for crossing the double yellow line.

9 Same officers were involved; Sergeant Light,  
10 another officer, two other officers involved arrived later  
11 to assist, but all four officers were involved in some way  
12 in both incidents. Which seems like it would be memorable,  
13 the December incident where a passenger ran from the car and  
14 canine chased the guy down. Mr. Backman says they pulled  
15 him out of the car. Seems like a memorable event. But the  
16 police say -- testimony is they pull over a lot of cars,  
17 pull over a lot of cars. So Damian lives in this area.

18 And I wonder how many cars are they pulling over  
19 every day for these minor infractions, asking occupants out  
20 of the car or trying to search the car or trying to find  
21 something more. And this is the reality that the citizens  
22 of that community have to deal with every day. If Damian  
23 had been in a different neighborhood, a nicer neighborhood,  
24 would he have been jerked from the car so quickly? He just  
25 wanted to know why. Police wouldn't answer him.

1           I think one of the most important pieces of  
2 evidence in this case is the time frame that came out.  
3 We've had evidence in this case that 19:39 is the time when  
4 the blue lights would have came on. 19:44 is when the  
5 defendant was in cuffs. Fives minutes; we have a  
6 five-minute clock from the time the blue light comes on.

7           So Backman testified that he drove slowly until he  
8 pulled over. So blue lights come on, still have to drive up  
9 the street for a little bit, Mr. Backman has to park. And  
10 the clock is still ticking. And Sergeant Light has to get  
11 out of the car and he has to walk up to the driver's side,  
12 talking with the driver, his backup was right there. They  
13 must have been right nearby because they are right on his  
14 heels. And they walk up, two of them walk up to talk to the  
15 passenger. Clock is still ticking. Give me your ID.

16           He says, why do I have to give you my ID? Ends up  
17 giving then the ID. Clock is still ticking. They say he  
18 was on the cell phone conversation. They ask him to step  
19 out of the car. There's a dispute over that. Sergeant  
20 Light said he heard him say, why do I have to get out of the  
21 car? And Mr. Anderson testified he asked why. The other  
22 officer says he refused to get out of the car. Said no.  
23 Clock is ticking.

24           Then there was testimony that there were a couple  
25 of minutes outside of the car after they had already pulled

1 him out toward the end. So how much time in that window of  
2 blue lights to talking to them, asking for ID, asking him  
3 out of the car, to jerking him out? Still leave a little  
4 bit of time for what happened outside the car. Think about  
5 how short that amount of time would have been before these  
6 officers decided it was okay to grab him by the arms and  
7 yank him out of the car.

8 That time frame is important because I think it  
9 contradicts what the officers were saying. How much time  
10 does that leave for repeated questions; we asked him over  
11 and over again, we had no other choice, we were at a  
12 stalemate. These guys have short fuses. It supports what  
13 Damian says happened, that they asked him to step out of the  
14 car, and he said why do I have to step out of the car? Next  
15 thing you know, they're pulling him out. William Backman  
16 supports that too, that it was almost immediately they had  
17 pulled him out of the car. So how much time did Damian  
18 Anderson have before he was jerked out of the car, punched  
19 in the stomach, taken to the ground and cuffed?

20 They talk about officer's safety. This was a minor  
21 traffic violation. Police saw no weapons in the car. There  
22 was no safety issue there. And a brief protest, it was all  
23 Mr. Anderson did. Villeneuve -- Officer Villeneuve, the  
24 least experienced officer out there, he was enforcing  
25 Sergeant Light's order, get out of the car. Sergeant Light

1     gave an order, he was enforcing it.

2             And I read through his internal memo. He didn't  
3     write a report; he wrote an internal memo which he is  
4     required to do for the use of force. And I read through  
5     that and it seemed to narrate along the lines of what Mr.  
6     Anderson was saying. But in his internal memo, he narrates  
7     it as asking for the ID, Damian asked why, he's on the cell  
8     phone, they tell him to cease the cell phone and ask him to  
9     exit. They said he said, no, not going out of the car, and  
10    then Villeneuve attempted to gain control of his right hand.  
11    Nothing in his internal memo about questioning over and over  
12    again.

13            The way his narrative reads, there was an ID, there  
14    was a get off the phone, it was step out of the car, and  
15    then hands were on him pulling him out. He said he can't  
16    put everything in his police report. That's true, may be  
17    hard to get every single detail in there, but those are  
18    important details. Especially when you're writing a report  
19    to justify the use of force, whether you want to put in  
20    there, I asked him over and over and over again and he would  
21    not get out of the car. But that's not what he put in his  
22    internal memo to justify his use of force, grabbing him out  
23    of the car.

24            These officers are selected, sounds like from their  
25    testimony, to be in this Power Team 3. You know, I heard

1 testimony about the SWAT team. I mean, this is not your  
2 average police officer driving around pulling someone over,  
3 getting out of the car, can I see your ID, walking back to  
4 the car to check it. Most traffic offenses -- traffic stops  
5 are going to last -- you know, they last a little while.  
6 It's usually a slow process. But these guys are tuned high  
7 and they are ready for anything. They seek out these minor  
8 infractions and look for more.

9           On this day, Sergeant Light saw a red flag. He had  
10 some concern, Mr. Backman didn't pull over the car fast  
11 enough, so he's already on high alert. That's why he calls  
12 in backup, calls in three more officers for someone who has,  
13 at worst, turned a little too sharply to the left and  
14 crossed the solid yellow line. So, I mean, when they  
15 approach the car with that mind frame, they have to be ready  
16 for everything.

17           I know it's dangerous out there and nobody wants  
18 officers to get hurt, but there has to be a balance between  
19 our freedom as citizens and their use of force and their  
20 authority. And it does sound like they think more like in  
21 terms of battle as opposed to pull someone over, let's talk  
22 to them. It's more like, you know, we are fighting. Sounds  
23 like they're looking for drugs, fighting the war on drugs,  
24 finding red spots around the neighborhood.

25           All wars have casualties, innocent people who get

1 caught up, and Damian Anderson is one of those casualties.  
2 What was he under arrest for? Sergeant Light is the  
3 supervisor, he's the one that pulled the car over. He wrote  
4 the incident report, said he just wanted to get Damian out  
5 of the car for safety and he was conducting an  
6 investigation. He had talked to the driver, he had seen a  
7 cup and he wanted to conduct an investigation. They didn't  
8 go over there to arrest anybody. They wanted to talk to him  
9 and he protested.

10 The State has to prove that Damian Anderson  
11 knowingly and willfully -- willfully means intentionally --  
12 did assault, beat or wound Officer Harvill. There's been no  
13 testimony that Damian Anderson tried to intentionally hurt  
14 Officer Harvill. We don't know how his hand was broken, he  
15 doesn't really know. He tells Sergeant Light, I broke my  
16 hand. I know this could be a figure of speech, but if  
17 something -- I think you can learn from that. I broke my  
18 hand. He immediately went to Roper Hospital and told them  
19 that his hand was caught between the seat and the door.  
20 This is right after it happened before anybody has had a  
21 chance to write a report. He left pretty quickly from that  
22 scene.

23 One officer testified that it happened during the  
24 fall, when they fell down. Officer Harvill said yesterday  
25 that it happened while he was on the ground trying to cuff

1 Mr. Anderson and that he rolled and it caused it to break,  
2 but he can't say that for sure. If it happened during the  
3 fall, another officer could have fallen on him. Even if you  
4 believe all their witnesses, it still sounds like an  
5 unintended harm.

6           Officer Harvill said Damian didn't grab his hand,  
7 twist his hand, or stomp on his hand. Damian Anderson  
8 wasn't trying to break anyone's hand. Sergeant Light --  
9 sorry. His mother testified. Put his mother up. I don't  
10 know about pulling the Houdini with the handcuffs, but from  
11 her perspective -- there was a death in her family. She saw  
12 the police, what she believed, beating up on her son. And  
13 he normally calls for Cynthia, but he's yelling mama and she  
14 hears that. She hears that mama and her mother instinct is  
15 kicking in. She hears something that I guess she hasn't  
16 heard in a long time, since he was a child. And she is  
17 arrested and goes to jail, which is unfortunate all around  
18 for everyone.

19           The officer testified there's no cameras in the  
20 cars. This is Power Team 3. This is, like, nice cars that  
21 they have. If they recorded everything, they'd have cameras  
22 facing when they pull in, they face the area. They could  
23 have everything recorded, you could hear it, you could see  
24 it, and we wouldn't have to be trying to figure out what  
25 really happened. We would know. And they would benefit

1     them; that's to their benefit to have that.

2             But, you know, you have some photos taken at some  
3     later time. State's entered these photographs. They are  
4     all taken later; none of the crime scene as it occurred. It  
5     looks like one of those nice Dodge Chargers. They can't get  
6     a camera, Power Team 3? They didn't take a photo of his  
7     hand. They were able to take some photos at the time. But  
8     nobody is disputing that his hand was broken. They didn't  
9     take any photographs of what the scene looked like that  
10    night. They didn't take any photographs of the cup with the  
11    liquid in it. Now, they have an empty cup.

12            No crime scene came, but the canine came. No  
13    photos of the damage to the car they claim. We have no idea  
14    what kind of damage that was. That might give us some  
15    information, how many dents, how much scratches, what did it  
16    look like; no photos of that damage. Even if they don't  
17    have cameras in the car, they've all got cell phones. They  
18    have some kind of camera; they can take still photographs of  
19    some of these things. But there's nothing except what they  
20    took afterwards and the photographs of his hand. Doesn't  
21    tell us a whole a lot in determining how that happened.

22            But Power Team 3 keeps it simple. One incident  
23    report, no other supplemental reports. Internal memos that  
24    had to be written of the chain of command to justify their  
25    use of force, but only one incident report in the case file.

1 No photos of the crime scene, no fingerprints on the cup, no  
2 liquid in the cup. They said they poured it out. They have  
3 a lab on-site at the police station. No test to see if that  
4 had alcohol in it. No blood test, breath test, to see if  
5 Mr. Anderson was intoxicated. Never proven any of that.

6           You've got an empty cup over there. Why wouldn't  
7 they want to take photos and get video and have as much as  
8 they can show you so that you can make the right decision?  
9 But that's what they had. At the end of all of this, they  
10 had an empty cup and they had an officer with a broken hand,  
11 and they have to justify this to you jurors. So of course  
12 they are going to charge Damian with everything they can  
13 charge him with. The more they can charge him with, the  
14 more he's convicted of, the better it looks for them.

15           But Damian wasn't breaking the law that day. He  
16 was getting a ride home. And within five minutes, he was  
17 going to jail. Not long after, his mother was going to  
18 jail. Who wants to live in a place where that can happen,  
19 where a citizen can't ask why? This is one of the things  
20 that makes our country great, is that we do question  
21 authority. We ask questions. We asked questions when this  
22 country was founded; why we have to pay taxes if we can't  
23 vote? That was a big issue during the Civil War.

24           We've always asked questions. And it's one of the  
25 things that makes our country great, to question authority.

1 In his own yard, he was jerked out of the car, punched in  
2 the stomach and taken to the ground.

3 This will be in your hands. No one can question  
4 your verdict. I'm asking if you would send a message that  
5 this is not what we want in our community and find Damian  
6 Anderson not guilty.

7 THE COURT: Thank you, Mr. King.

8 Mr. Osborne.

9 MR. OSBORNE: Yes, Your Honor. This defendant made  
10 a decision back on February 1st of 2013, and that decision  
11 was he was not going to jail that night. The police did  
12 absolutely nothing wrong. They have the lawful right to ask  
13 an individual to get off the phone during a traffic stop.  
14 They have the lawful right to ask an individual to get out  
15 of the car on a traffic stop. They have more than enough  
16 evidence to charge him with disobeying a lawful order and  
17 open container of a motor vehicle.

18 The defendant had no right to disobey their lawful  
19 orders, he had no right to resist arrest and he had no right  
20 to assault Officer Harvill during the arrest. I would  
21 submit to you that the officers did exactly what they are  
22 trained to do, exactly what the department expects them to  
23 do, and exactly what the community expects them to do.

24 Now, let's talk about this traffic stop. The State  
25 is not arguing that this is the worst traffic violation in

1 the world. It is not. But it is a traffic violation.  
2 Sergeant Light is on proactive patrol that night. He told  
3 you what the area was like. They were directed to that area  
4 because this is a high-crime area, there's a lot of violence  
5 in that area. When he saw the vehicle cut across double  
6 yellow lines into what would have been oncoming traffic and  
7 then off to the right, he initiated his lights and sirens  
8 and pulled the vehicle over.

9 Sergeant Light could have ignored him, he could  
10 have kept on riding, but he did his job and pulled the car  
11 over. Let's look at what happened when the car did pull  
12 over. Sergeant Light goes up to the driver's side of the  
13 car window, starts talking to the driver, Backman. He  
14 smells the alcohol coming from the car, he sees what he  
15 thinks is a container of alcohol. It's an amber liquid in  
16 the center console. He investigated the matter. He could  
17 have ignored it, but he asked the driver and the passenger  
18 to step out of the vehicle. The driver did, the passenger  
19 did not.

20 And you heard why they asked him to get out of the  
21 car, it's for officer safety reasons. Was there a gun in  
22 the car this time? No, but traffic stops are dangerous and  
23 that's why they do that. But there was more than just  
24 officer safety reasons for asking him out of the car, he saw  
25 multiple violations of the law. The driver was driving

1 under a suspended license, he admitted to that, smelt  
2 alcohol, saw alcohol in the car. It's more than just  
3 officer safety reasons, but that's all he needed.

4 Now, let's talk about this fight. Mr. King is  
5 right, that's not a photograph from that night. Remember,  
6 the Nissan is supposed to be showing the vehicle that they  
7 pulled over, the police car is the rental car. When  
8 Villeneuve -- Officer Villeneuve approached the passenger  
9 side of the car, he also immediately smelt the alcohol. He  
10 also saw the open container sitting right next to the  
11 defendant. He asked him for his ID; he's investigating it.  
12 He gets the ID. Then he asked him -- well, what does he do?  
13 He gets on on the phone; y'all get out here, y'all get over  
14 here.

15 He doesn't even remember making the phone call, but  
16 I would submit to you, you know, he made the phone call  
17 because guess who came out? His mom and all the other  
18 people that happened to be at his house that night. He made  
19 the phone call and that's exactly what Villeneuve was  
20 worried about, more people being brought to the scene, it  
21 becomes unsafe. Completely reasonable request under the  
22 circumstances. And you heard the way he asked it, sir, do  
23 you mind getting off the phone?

24 These guys aren't trying to fight, that's the last  
25 thing they want to do. When you get into a fight, bad

1 things happen. Can you get off the phone? No. Sir, do you  
2 mind getting off the phone to the end of the traffic stop?  
3 No. Officer Villeneuve is diffusing the situation, or  
4 trying to, because that's what he's trained to do. They are  
5 not -- how did he describe it, short-fused, tuned hot  
6 individuals. That's not who I saw on the stand. They were  
7 trying to diffuse the situation, asking him to get off the  
8 phone, asking him to step outside the car several times.  
9 There was more than enough evidence at that point to arrest  
10 the defendant for disobeying a lawful order and open  
11 container in a motor vehicle.

12 I'm not going to go through the fight again. You  
13 heard it described to you four times. You heard what  
14 happened, fight was getting on, there was a lot of kicking  
15 and thrashing and after all of that stuff, his hand was  
16 broken during the fight. But what I will state to you here  
17 is the obvious. This could have absolutely been avoided.  
18 We don't -- we didn't need to be here today if he would have  
19 simply obeyed the officer's command. His choice to disobey  
20 them and to break the law left the officers with no choice.

21 I'm going to talk a little bit about the defense's  
22 case, but I first want to address just a few issues that he  
23 brought up in closing. He talks about community, these poor  
24 individuals that live in this community that have police  
25 presence. Well, Sergeant Light told you that the reason

1    they are in this community is this is a high-violent area.  
2    That's the only areas they patrol, they are directed to go  
3    into that area. I would guarantee you that most of the  
4    people in that community welcome the police presence. They  
5    are tired of the violence in that community, they want the  
6    police out there doing their job.

7            I will also say this, he talked about Officer  
8    Villeneuve's use of force, that he didn't mention in his  
9    report that he asked him numerous times. Officer Villeneuve  
10   admitted to that, yeah, I probably should have put that in  
11   there. But Officer Harvill did. Officer Harvill said that  
12   he heard Officer Villeneuve telling him numerous times to  
13   get off the phone, numerous times to get out of the car.

14           I'm going to talk about the case itself, the case  
15   that you saw presented during the trial. And it's really  
16   not one theory that the defense brought to you. It's kind  
17   of like multiple theories and multiple stories that I think  
18   they are just hoping that if you fill enough on the wall,  
19   something will stick. The first theory, I didn't do it. I  
20   didn't do anything wrong, completely complied with  
21   everything they said. That's what the defendant said and  
22   that's basically what all the other witnesses said too,  
23   their witnesses.

24           Police asked me to get out of the car, I didn't  
25   have a chance, I would love to have gotten out of the car,

1 but I didn't have a chance. They asked -- everything they  
2 asked me to do, I did. Well, I'm going to tell you how you  
3 know that's not true. The officers told you that he had one  
4 handcuff on and the fight continued. He also said, at one  
5 point I had one handcuff on. If he complied with every  
6 single order that the officers were giving him, they would  
7 have just put that other handcuff on.

8           Next, let's look at the driver, let's look at how  
9 believable his testimony is. Sergeant Light told you when  
10 he pulled the car over and started talking to the driver  
11 that he said, I just got off work, cup's not mine, driving  
12 under suspension, which he was. Backman testified that,  
13 yeah, I told him I just got off work, I never mentioned  
14 anything about driving under suspension, and I never told  
15 him that the cup wasn't mine.

16           So then I asked him about the cup. I said, okay,  
17 the cup is yours. He's trying to help his friend out. He  
18 thinks if I claim the cup, I'm going to help my friend.  
19 Fine, claim the cup; cup is mine. But he's not going to  
20 take the charge for his friend. That's why he went as far  
21 as to say there was not a drop of anything, no liquid at  
22 all, no alcohol, nothing.

23           Now, still about Backman, think about how  
24 believable that is. If he witnessed what he claims that he  
25 witnessed, then his friend didn't do anything wrong, why not

1 tell the prosecutor that my friend is innocent? Especially  
2 when you know the prosecutor is trying to get in touch with  
3 you. He did not return my phone calls because he saw what  
4 his friend did that night. He broke the law and he resisted  
5 arrest. All of this stuff about what he saw while he was  
6 laying on the ground from the driver's side is just not  
7 believable.

8           And Cynthia Anderson, the mom, now the gist of her  
9 testimony really was that it was excessive force that they  
10 put a beating on on him. The foot to the back, the stick  
11 pulling his throat back, that's basically what she's saying.  
12 If that had happened, you could be guaranteed that that  
13 defendant would have been harping on that. You would have  
14 heard that over and over again. Not one point did you hear  
15 that. Not from him.

16           Now, the judge is going to talk to you about  
17 credibility. That's for you to decide. You can accept part  
18 of the witnesses' testimony, all of their testimony or you  
19 can reject it all. I would submit to you that the defense's  
20 witnesses are not credible. They are not believable.

21           Now, let's look at next what the defendant is  
22 saying. He worded it a little bit differently, I would have  
23 changed it, but in his closing he basically said, my client  
24 is not breaking the law. All right. So if you have a  
25 problem believing that he didn't do anything, well, let's

1 try this one. I'm not breaking the law, that's why I'm not  
2 getting into it. Let's look at the law that he broke,  
3 disobeying a lawful order. Sergeant Light ordered him out  
4 of the car and off of the phone. The police have a right to  
5 order you out of the car, you will hear that in the judge's  
6 instructions. He disobeyed. Officer Villeneuve ordered him  
7 off the phone and out of the car numerous times.

8           Second law he broke, open container in a motor  
9 vehicle. Backman told Sergeant Light it's not his, that he  
10 just got off work. There was no alcohol smell at all on the  
11 driver. The defendant smelled like a brewery. Oh, and  
12 then, yeah, there was liquid in the cup, amber-colored  
13 liquid.

14           So, if you're not buying that, then he's got  
15 another one for you; the defendant was never arrested. He  
16 didn't mention this in his closing, but there was a lot of  
17 this going on during the trial so I want to clarify. The  
18 defendant was under arrest, Officer Villeneuve made the  
19 decision to place the defendant under arrest when he said, I  
20 had to put my hands on him. At that point when he put his  
21 hands on him, he's under arrest. You don't need to use  
22 these magic words. He asked several times, did you ever  
23 tell him he was under arrest? There's no law that says he  
24 has to tell him he's under arrest. The defendant just needs  
25 to know -- the officers told you, he just needs to know that

1 he's being placed under arrest.

2 Well, how would he possibly know he's being placed  
3 under arrest? They told him over and over again, put your  
4 hands behind your back, stop resisting, and at one point he  
5 had one handcuff on him. He knew he was being placed under  
6 arrest. He made the decision that he was not going to jail.

7 Knowingly and willfully. If you listen to his  
8 interpretation of this, then basically the only way you  
9 could convict his client is if you believed that the law  
10 says knowingly and willfully hurt Officer Harvill. That's  
11 not what the law says. Knowingly means with knowledge,  
12 consciously done. Willfully means done intentionally and  
13 not done by an accident. It's not that he knowingly or  
14 willfully broke his hand, it's that he knowingly and  
15 willfully assaulted or wounded him.

16 You don't get the right to throw officers up  
17 against cars, to get on the ground, tussle with them, roll  
18 with them, push them, kick them, thrash at them and then  
19 turn around and say, I didn't hurt him. So let's look at  
20 the law itself and what it does say. And I'm not -- if  
21 anything I saw is different than the judge, listen to the  
22 judge; this is my interpretation. That the defendant  
23 knowingly and willfully assaulted, beat, or wounded a law  
24 enforcement officer.

25 Let's look at the wounded one first. Officer

1 Harvill's hand was broken. We didn't bring in a doctor to  
2 tell you that because anybody can look right there at his  
3 middle finger and see the snap all the way through. You  
4 know who wasn't hurt? Look at him. If you listen to the  
5 way Mr. King describes this incident, this was a brutal  
6 police beating for no reason whatsoever. He tried to  
7 comply, but they pulled him out of the car and started  
8 putting a beating on him. Does he look like he just went  
9 through a police beating?

10 And not to mention, the officer asked him if he was  
11 hurt. He said no. When he got to the jail -- you heard me  
12 read the intake. They asked him over and over again, are  
13 you hurt? Are you hurt? No, no, no, no, no. All right.  
14 So we have the wounded or assault.

15 Let's look at what assault says. An assault is the  
16 intentional creation of fear of immediate bodily injury.  
17 Intentional creation, fear of bodily injury. You don't even  
18 have to make contact, but we've got contact here. Officer  
19 Harvill testified that, yeah, during this fight when we were  
20 getting slung around and thrown around, I was afraid I was  
21 going to get hurt. We've got the first one, that the  
22 defendant knowingly and willfully did assault or beat or  
23 wound; got the broken hand.

24 When the defendant was resisting arrest, he  
25 thrashed, he kicked, you heard all that testimony; that the

1     defendant should have known he was a law enforcement  
2     officer. He testified he knew they were cops. Just in  
3     case, there's the shirt right there. You can see the scuff  
4     marks on it. They were on the ground rolling with the  
5     defendant.

6             When you go back there and you start deliberating  
7     you are basically going to have three options; you can find  
8     him guilty of assault of a police while resisting arrest; or  
9     you can find him guilty of just resisting arrest, or you can  
10    find him not guilty. You could find him guilty of just  
11    resisting arrest. But don't. This officer was injured and  
12    he was assaulted. That defendant is guilty of assaulting a  
13    police officer while resisting arrest.

14            And I'm just going to end it with this. We've all  
15    been to I-HOP or Waffle House and you've seen the officer  
16    that looks like they spend their whole shift there, they are  
17    not exactly go-getters. That's not the officers that you  
18    witnessed testify in this trial. These are the type of  
19    officers that go out there into dangerous areas and, yes,  
20    they do engage citizens. It's a choice that Officer Harvill  
21    made. He made that choice to be a law enforcement officer.  
22    He made the choice to accept that assignment. That choice  
23    has consequences. Officer Harvill paid that consequence, he  
24    was injured.

25            Now it's time for him to pay the consequence of his

1 choice, find him guilty of assaulting a police officer while  
2 resisting arrest. Thank you.

3 MR. KING: Your Honor, may I approach?

4 THE COURT: Sure. I was going to ask you to  
5 approach.

6 (Whereupon, a bench conference takes place off the  
7 record.)

8 THE COURT: Please secure the courtroom. All  
9 right. Ladies and gentlemen, as I said, all the testimony  
10 in this case you've heard. The attorneys have given you  
11 their summations and now is the time where I will explain to  
12 you the law that is to be applied in this case.

13 Ladies and gentlemen, I remind you that during this  
14 trial, you and I have certain duties to perform. As the  
15 trial judge, it is my responsibility to preside over the  
16 trial of this case, and I also have to rule on the  
17 admissibility of the evidence that is offered during this  
18 trial. You are to consider only the competent evidence  
19 before you. If there was any testimony stricken from the  
20 record, you must disregard that testimony. You are to  
21 consider only the testimony which came from the witness  
22 stand and any other evidence which may have been made a part  
23 of the record in this case and any stipulations of counsel.

24 Ladies and gentlemen, I have the additional duty to  
25 charge you the law that is applicable to this case. And as

1 the presiding judge, I am the sole judge of the law in this  
2 case. And it is your duty as jurors to accept and apply the  
3 law exactly as I now state it to you. If you already have  
4 in idea as to what the law is or what the law ought to be,  
5 and it does not agree with what I now tell you the law is,  
6 you must abandon that idea, because you are sworn to accept  
7 and apply the law exactly as I now state it to you.

8 Ladies and gentlemen, in every case tried before a  
9 jury, you the jury become the sole and exclusive judges of  
10 the facts in the case. As a trial judge, I cannot intimate,  
11 state, comment or make any statements to a trial jury about  
12 the facts of the case. Since you are the jury, you are the  
13 sole judges of the facts in this case, and you are not to  
14 infer from anything that I have said during the progress of  
15 this trial on the ruling of admissibility of evidence, or  
16 otherwise, or anything that I say now during the  
17 instructions to you that I have any opinion about the facts  
18 of the case.

19 The law simply does not allow me to have an opinion  
20 about the facts in this case and this is a matter solely for  
21 you, as the jury to determine. And as jurors, it is your  
22 duty to determine the effect, the value, the weight and the  
23 truth of the evidence which has been presented in this  
24 trial.

25 Ladies and gentlemen, the indictment in this case,

1 2013-GS-10-2277, charges the defendant, Damian Anderson,  
2 with the crime of assault on a police officer while  
3 resisting arrest. I remind you, as I did before, the fact  
4 that the defendant was arrested, charged, and indicted in  
5 this case, is not evidence in this case and cannot be  
6 considered by you as evidence of guilt, nor does it create  
7 any presumption or inference of guilt. The indictment is  
8 simply the formal written document that contains the charge  
9 made against the defendant and it is the formal legal  
10 document the brings this case into court.

11 Ladies and gentlemen, the defendant has pled not  
12 guilty to the charge contained in the indictment. And that  
13 plea puts the burden on the State to prove the defendant  
14 guilty. A person charged with committing a crime in South  
15 Carolina is never required to prove his innocence.

16 Ladies and gentlemen, I charge you that this is an  
17 important rule of law, that the defendant in a criminal  
18 trial, no matter how serious the charge may be, is always  
19 presumed to be innocent of the crime for which the  
20 indictment has been issued, unless guilt has been proven by  
21 evidence satisfying you of that guilt beyond a reasonable  
22 doubt. The presumption of innocence does not end when you  
23 begin your deliberations, but it accompanies the defendant  
24 throughout the trial until you reach a verdict of guilty,  
25 based on evidence satisfying you of that guilt beyond a

1 reasonable doubt.

2           And the presumption of innocence, ladies and  
3 gentlemen, is like a robe of righteousness which is placed  
4 about the shoulders of the defendant which remain with that  
5 defendant until it has been stripped from the defendant by  
6 evidence satisfying you of the defendant's guilt beyond a  
7 reasonable doubt. The presumption of innocence is not a  
8 mere legal theory. It is not just a legal phrase, but it is  
9 a substantial right to which every defendant is entitled to,  
10 again, unless you the jury are satisfied of the evidence of  
11 the defendant's guilt beyond a reasonable doubt.

12           Now, ladies and gentlemen, the State has the burden  
13 of proving the defendant guilty beyond a reasonable doubt.  
14 Some of you may have served as jurors in civil cases where  
15 you were told that it is only necessary to prove that a fact  
16 is more likely true than not true, such as by the greater  
17 weight or the preponderance of the evidence. In criminal  
18 cases, however, the State's proof must be more powerful than  
19 that. It must be beyond a reasonable doubt. Proof beyond a  
20 reasonable doubt is proof that leaves you firmly convinced  
21 of the defendant's guilt.

22           Ladies and gentlemen, there are very few things in  
23 this world that we know with absolute certainty, and in  
24 criminal cases, the law does not require proof that  
25 overcomes every possible doubt. If, based upon your

1 consideration of the evidence, you are firmly convinced that  
2 the defendant is guilty of the crime charged, you must find  
3 the defendant guilty

4 If on the other hand, you find that the defendant,  
5 or think there's a real possibility that the defendant is  
6 not guilty, you must give the defendant the benefit of the  
7 doubt and find him not guilty.

8 Ladies and gentlemen, there are two types of  
9 evidence which are generally presented during a trial.  
10 There's direct evidence and there's circumstantial evidence.  
11 Direct evidence is evidence which directly proves the  
12 existence of a fact and does not require deduction.  
13 Circumstantial evidence is proof of a chain of facts and  
14 circumstances indicating the existence of a fact. Crimes  
15 may be proven by circumstantial evidence, and the law makes  
16 no distinction between the weight or value to be given to  
17 either direct or circumstantial evidence; however, to the  
18 extent that the State relies on circumstantial evidence, all  
19 of the circumstances must be consistent with each other when  
20 taken together, point conclusively to the guilt of the  
21 accused beyond a reasonable doubt, and if these  
22 circumstances merely portray the defendant's behavior as  
23 suspicious, the proof has failed.

24 And the State has the burden of proving the  
25 defendant guilty beyond a reasonable doubt, and this burden

1 rests with the State regardless of whether the State relies  
2 on direct evidence, circumstantial evidence, or some  
3 combination of the two.

4 Ladies and gentlemen, the defendant is charged with  
5 assaulting a law enforcement officer while resisting a  
6 lawful arrest. The State must prove beyond a reasonable  
7 doubt that the defendant knowingly and willfully assaulted,  
8 beat or wounded an officer when the defendant was resisting  
9 arrest made by a person who the defendant knew, or  
10 reasonably should have known, was a law enforcement officer.  
11 Knowingly means with knowledge, consciously done. Willfully  
12 means done intentionally and not done by accident.

13 And an assault occurs when a person violently or  
14 forcibly attempts to hurt or injure another person and has  
15 the present ability to complete the attempted injury. An  
16 assault is the intentional creation of fear of immediate  
17 bodily harm and it is not necessary that the attempted  
18 injury or harm actually take place. For example, if I walk  
19 up to you and you are within my arm's reach and I rear back  
20 to hit you, that is an assault.

21 A law enforcement officer means any duly appointed  
22 or commissioned law enforcement officer of the state,  
23 county, or municipality.

24 Ladies and gentlemen, you have heard evidence that  
25 the defendant had a prior charge or other charges from

1 defenses other than the one that the defendant is now on  
2 trial. The testimony, if you conclude is true, may only be  
3 considered by you on the question of any other charge for  
4 the limited purpose of determining the witness's state of  
5 mind leading up to the time of the alleged offense.

6 Again, you are not to consider evidence of any  
7 other charges as proof of the defendant's guilt of the  
8 charge that we are trying today. The State bears the burden  
9 of proving the elements of the offense for this charge  
10 beyond a reasonable doubt.

11 Now, ladies and gentlemen, you must determine the  
12 credibility of witnesses who have testified in this case.  
13 Credibility simply means believability. And it becomes your  
14 duty as jurors to analyze and to evaluate the evidence and  
15 determine which evidence convinces you of its truth. In  
16 determining the believability of witnesses who have  
17 testified in this case, you may believe one witness over  
18 several witnesses or several witnesses over one witness.  
19 You may believe a part of the testimony of a witness and  
20 reject the remaining parts of the testimony of that same  
21 witness. You may believe the testimony of a witness in its  
22 entirety or reject the testimony of a witness in its  
23 entirety. You may consider whether the witness has  
24 exhibited to you any interest, bias, prejudice or other  
25 motive in this case. You may also consider the appearance

1 and manner of a witness on the witness stand.

2 Ladies and gentlemen, the defendant is charged  
3 with -- all right. Probable cause is a good faith belief  
4 that a person has committed a crime when the belief rests on  
5 grounds that would make an ordinarily, prudent and cautious  
6 person under the circumstances to have the same belief, and  
7 probable cause for arrest in a misdemeanor case without a  
8 warrant is something more than a mere suspicion that the  
9 person committed a crime. An arrest made on a hunch, a mere  
10 belief, or a guess unsupported by facts, circumstances, or  
11 credible information showing that the person has committed a  
12 crime is not made on probable cause. And probable cause is  
13 somewhere between suspicion and sufficient evidence to  
14 convict. In deciding whether there was probable cause to  
15 arrest, the probability cannot be technical, but must be  
16 based on practical considerations of every day life based on  
17 reasonable prudent and cautious -- how cautious people act.

18 An officer, ladies and gentlemen, may make a  
19 traffic stop. Making a traffic stop, may lawfully order the  
20 driver and passenger to get out of the car pending the  
21 completion of the stop. And I charge you that a momentary  
22 delay in responding to a police officer's command does not  
23 amount to a violation of law.

24 Now, ladies and gentlemen, there are two possible  
25 verdicts which you may find in this case on the charge of

1 assault on a police officer while resisting arrest; not  
2 guilty or guilty. Ladies and gentlemen, there is no  
3 significance whatsoever in the order in which I state the  
4 possible verdicts. It's simply that one must be stated  
5 first.

6 Ladies and gentlemen, your verdict must be  
7 unanimous. All 12 of you must agree on the verdict and your  
8 decision must not be based on sympathy, passion, prejudice,  
9 emotion, or any other consideration not in evidence in this  
10 case.

11 Madam Forelady, when the jury agrees on the  
12 verdict, you will check the applicable section on the  
13 verdict form which I will give you, and then you will sign  
14 your name as forelady and then knock on the jury room door  
15 and the bailiffs will then bring you back into court for the  
16 publication of your verdict.

17 Now, I'm going to send you back to the jury room,  
18 but please do not begin your deliberations until you are  
19 instructed to do so. There's still a few matters that I  
20 need to take up with the attorneys before you begin your  
21 deliberations.

22 Now, bailiffs, if you could take the jurors to the  
23 jury room, separate the alternates, and then I will talk to  
24 the alternates. Thank you.

25 (Whereupon, the jury leaves open court at 10:51

1 a.m.)

2 THE COURT: You may proceed. Are there any new  
3 objections to the charge?

4 MR. KING: Just renewing the previous objections  
5 that I made. But specifically, Judge, I'm especially  
6 concerned now about obeying a police officer's order.  
7 Mr. Osborne -- I believe the jury could have the impression  
8 that if you fail to obey any order by an officer, then they  
9 could immediately arrest you. And what they arrested him  
10 for was a specific statute that has elements in it I think  
11 the jury could consider. So it could consider Mr. Osborne's  
12 closing in reference to it. I would ask that the jury be  
13 advised of what the elements of this Code Section 21-192  
14 are, interferes with public and obeying a police officer's  
15 order.

16 THE COURT: I'm satisfied the charge is correct and  
17 y'all agree that we can send a hard copy back there; is that  
18 correct? Did you all have any objection?

19 MR. OSBORNE: No, Your Honor.

20 THE COURT: All right. I want to make sure the  
21 evidence is all together and then we will send you back to  
22 the jury. Thank you. I want to thank y'all. Y'all have  
23 acted and certainly upheld your civility oath. It's been a  
24 pleasure trying the case with you, I've enjoyed trying the  
25 case with y'all. Thank you. Court will be at ease.

1 (Luncheon recess was taken.)

2 THE COURT: Court's Exhibit 1.

3 (Court's Exh. 1, Jury Note asking what  
4 constitutes "under arrest", was marked for identification.)

5 THE COURT: The question they are asking, by law,  
6 what constitutes under arrest? How do you all want me to  
7 answer that to the jury? I think it was in the charge. The  
8 options are, do you want me to answer it or say it's in the  
9 charge and please refer to the written charge that you have?

10 And then the next one is, how does one know if not  
11 being told that they are under arrest? And three, what does  
12 resisting arrest -- when does resisting arrest cross the  
13 line to assault? They've heard the testimony, they've been  
14 given the charge, they just now need to make those  
15 decisions. That's why we have juries.

16 MR. OSBORNE: Well, there is a case that's on point  
17 with this under arrest -- the magic words, State vs.  
18 Williams 237 South Carolina 252. To be under arrest is a  
19 two-part test. First, it's the officer's subjective intent  
20 to place the individual under arrest. Second, the defendant  
21 must be consciously aware of a restraint of his freedom, and  
22 that -- the case goes on -- the Court goes on to say there's  
23 no magic form of declaration of arrest necessary. If you  
24 would be agreeable, we can always formulate a charge using  
25 that type of language.

1 THE COURT: That's State vs. --

2 MR. OSBORNE: Williams, 237 South Carolina 252.

3 THE COURT: That certainly helps, that would help  
4 the jury. Do you have any objection to that?

5 MR. KING: Yes, Judge. I would just request that  
6 we tell the jury they've been instructed on the law and  
7 to -- that they would have to make those decisions.

8 THE COURT: But I think there's a two-part test,  
9 I've got to tell them that, because that's what we are  
10 specifically looking for. Prepare me a short charge that  
11 gives that and I will send that back to the jury.

12 You know, Number 2, how does one know, if not being  
13 told, they are under arrest? I think that charge will help  
14 resolve that as to whether the person thinks it, because  
15 like I said, there's a two-part test. So that would resolve  
16 Number 2 as well.

17 And when does resisting arrest cross the line to  
18 assault, intentional creation of fear? I can't answer that  
19 one. That is a subjective determination by the jury. They  
20 are just going to have to make that determination. It's  
21 just kind of like when I say beyond a reasonable doubt. You  
22 know, is it up to that point?

23 So if you will give me a quick charge on that, make  
24 sure Mr. King has a copy of it, then I will send that with  
25 my little statement here from the first two. I will say,

1 see attached, which would be the charge.

2 And then on the third one, I will say that is  
3 subjective for you to decide.

4 We will remain at ease.

5 (Whereupon, recess transpired.)

6 THE COURT: I've got another thing, but I'm going  
7 to see if this answers it first. Says, may we have  
8 Mr. Anderson's testimony? But they can't have it. But I  
9 can bring them back in here for you to play it again if they  
10 need to. Let's see. I will send this back, and if they  
11 still want this, they can have Mr. Anderson's testimony.

12 MR. KING: I have one objection. There's a  
13 sentence added in -- an arrest itself is an ongoing process  
14 in South Carolina which I don't think is from State vs.  
15 Williams; it's from State vs. Dowd, a direct quote.

16 THE COURT: I'm going to leave it in there. I will  
17 send this back with them.

18 (Whereupon, recess transpired.)

19 THE COURT: I checked with the bailiff, their lunch  
20 won't be here for a little while, so they want to hear  
21 Mr. Anderson's testimony again, so I'm getting ready to do  
22 that now.

23 (Whereupon, the jury returns to open court at 12:50  
24 p.m.)

25 THE COURT: Madam Forelady, ladies and gentlemen,

1 of the jury, it's my understanding you want to hear Mr.  
2 Anderson's testimony again. We have that available for you  
3 and the timing is good. The length -- how long -- is about  
4 20 minutes or so. And so we will listen to that and then  
5 your lunch will be there by then. Please proceed.

6 (Testimony of Damian Anderson was played to the  
7 jury in open court.)

8 THE COURT: Thank you. Ladies and gentleman, you  
9 may return to the jury room to resume your deliberations.  
10 Hopefully your lunch is there by now.

11 (Whereupon, the jury leaves open court at 01:03  
12 p.m.)

13 THE COURT: All right. We will remain at ease.

14 (Court's Exhibit 2, Jury note requesting Mr.  
15 Anderson's testimony be played back, was marked for  
16 identification.)

17 (Whereupon, recess transpired.)

18 THE COURT: I understand they do have a verdict.  
19 Let's bring our jury in.

20 (Whereupon, the jury returns to open court at 01:59  
21 p.m.)

22 THE COURT: I hope you enjoyed your lunch. I've  
23 always found that a good lunch will induce a verdict.  
24 Making you starve back there. So, Madam Forelady, has the  
25 jury reached a verdict?

1 THE FOREPERSON: Yes, sir.

2 THE COURT: Is it unanimous?

3 THE FOREPERSON: Yes, sir.

4 THE COURT: Please hand it to the bailiff. Mike,  
5 please publish the verdict. The defendant will stand.

6 THE CLERK: The verdict form in the matter of State  
7 of South Carolina vs. Damian Anderson, Defendant, as to the  
8 charge of assault on a police officer while resisting  
9 arrest, we, the, jury unanimously find the defendant guilty.  
10 Signed by the foreperson of the jury on August 6th, 2014.

11 Ladies and gentlemen, of the jury, if that was your  
12 verdict, please raise your right hand. Thank you. Please  
13 let the record reflect all 12 jurors raised their right  
14 hand.

15 THE COURT: Thank you, you may be seated. Does the  
16 State or defense request polling of the jury?

17 MR. OSBORNE: No, Your Honor.

18 MR. KING: The defense does.

19 THE COURT: Please poll the jury.

20 THE CLERK: What we are going to do now is called  
21 polling the jury. When I call your juror number, if you  
22 will please raise your hand. When I acknowledge you, you  
23 can put your hand down. I will ask you two questions; was  
24 that your verdict and is that still your verdict? Please  
25 answer both questions verbally.

1 Juror No. 228, was that your verdict?  
2 A JUROR: Yes, sir.  
3 THE CLERK: Is that still your verdict?  
4 A JUROR: Yes, sir.  
5 THE CLERK: Thank you.  
6 Juror No. 8, was that your verdict?  
7 A JUROR: Yes, sir.  
8 THE CLERK: Is that still your verdict?  
9 A JUROR: Yes, sir.  
10 THE CLERK: Thank you.  
11 Juror number 40, was that your verdict?  
12 A JUROR: Yes, sir.  
13 THE CLERK: Is that still your verdict?  
14 A JUROR: Yes, sir.  
15 THE CLERK: Juror number 83, was that your verdict?  
16 A JUROR: Yes.  
17 THE CLERK: Is that still your verdict?  
18 A JUROR: Yes, sir.  
19 THE CLERK: Thank you.  
20 Juror number 92, was that your verdict?  
21 A JUROR: Yes, sir.  
22 THE CLERK: Is that still your verdict?  
23 A JUROR: Yes, sir.  
24 THE CLERK: Thank you.  
25 Juror 119, was that your verdict?

1           A JUROR:  Yes, sir.

2           THE CLERK:  Is that still your verdict?

3           A JUROR:  Yes, sir.

4           THE CLERK:  Thank you.

5           Juror 133, was that your verdict?

6           A JUROR:  Yes, sir.

7           THE CLERK:  Is that still your verdict?

8           A JUROR:  Yes, sir.

9           THE CLERK:  Thank you.

10          Juror 236, is that your verdict?

11          A JUROR:  Yes, sir.

12          THE CLERK:  Is that still your verdict?

13          A JUROR:  Yes, sir.

14          THE CLERK:  Thank you.

15          Juror 260, was that your verdict?

16          A JUROR:  Yes, sir.

17          THE CLERK:  Is that still your verdict?

18          A JUROR:  Yes, sir.

19          THE CLERK:  Thank you.

20          Juror 353, was that your verdict?

21          A JUROR:  Yes, sir.

22          THE CLERK:  Is that still your verdict?

23          A JUROR:  Yes, sir.

24          THE CLERK:  Thank you.

25          Juror 376, was that your verdict?

1           A JUROR: Yes, sir.

2           THE CLERK: Is that still your verdict?

3           A JUROR: Yes, sir.

4           THE CLERK: Thank you.

5           Juror 391, was that your verdict?

6           A JUROR: I have a quick question. Does that mean  
7 we are under oath?

8           THE CLERK: No, just to identify you. That's all  
9 it is. Was that your verdict?

10          A JUROR: No

11          THE COURT: That was not your verdict?

12          A JUROR: No.

13          THE COURT: Your verdict was not guilty?

14          A JUROR: Yes, it was.

15          THE COURT: Your verdict was a guilty verdict?

16          A JUROR: It was not guilty.

17          THE COURT: That was your verdict.

18          I will send the jury back to the jury room to  
19 continue your deliberations.

20          (Whereupon, the jury leaves open court at 02:03  
21 p.m.)

22          THE COURT: You may release him. Do you want to  
23 send them another verdict form?

24          (Whereupon, a recess takes place.)

25          THE COURT: The jury has now requested two copies

1 of Mr. Anderson's testimony. And I've just talked to Karen,  
2 I don't know that that's possible. I will offer to let them  
3 listen to it again, but it would take her well over an hour  
4 and it would have to be prepared to do that. Do you want to  
5 tell the jury if they would like to listen to it again, I  
6 will bring them back in here to listen to the testimony and  
7 then just let us know where we are at?

8 THE DEPUTY: They don't want to listen to it again.

9 THE COURT: Do you have any objection to her  
10 sending -- they didn't want to listen to you again, but I  
11 will reinquire.

12 MR. KING: My only objection is sending that  
13 testimony back gives them undue influence.

14 THE COURT: It's no different than bringing them in  
15 here and letting them listen to the testimony, which they've  
16 already done. And that's what they've asked and I see no  
17 real valid reason for not sending it back, so okay. Your  
18 objection is noted.

19 Make two copies and I will inquire if they still  
20 want it. They may not need it.

21 (A recess transpired.)

22 THE COURT: They do want the transcript of Mr.  
23 Anderson and also Villeneuve and Light, if available. If  
24 they want to listen to it, they can do that. I don't know  
25 that they want to, but I will tell them if they would like

1 to listen to it, they can listen to it, but it's not  
2 available in a transcript.

3 (Whereupon, the jury begins deliberations at 04:19  
4 p.m.)

5 THE COURT: The jurors say they: Cannot come to a  
6 decision today; what would be the next step?

7 And I will tell them they will be here through next  
8 week. (Joking.)

9 I'm going to give them an Allen charge now and see  
10 what happens after that. So let's bring them in.

11 MR. KING: Your Honor, can I put something on the  
12 record?

13 THE COURT: Yes, sir.

14 MR. KING: I will put an objection on the record.  
15 Under 14-7-1330, says when a jury, after doing thorough  
16 deliberations, returns into the court without having agreed  
17 upon a verdict, the Court may state evidence, or any part of  
18 it, and explain to it anew applicable to the case and send  
19 it for deliberations.

20 I would argue when the jury came out before, they  
21 had come out once and were -- had not agreed upon a verdict.  
22 So if they come back again, I don't think they can be sent  
23 back without their consent.

24 THE COURT: Well, at that point in time they came  
25 out saying they had a verdict. It wasn't until polling

1 where it was revealed they did not. Objection is noted.

2 (Whereupon, the jury returns to open court at 04:27  
3 p.m.)

4 THE COURT: Now, Madam Forelady, did you inquire --  
5 and I will take it based upon your note that y'all are at  
6 impasse at this point in time.

7 THE FOREPERSON: That's correct, sir.

8 THE COURT: At this time what I'm going to do is  
9 I'm going to give you what's known as an Allen charge,  
10 that's based upon the United States vs. Allen case, and then  
11 I'm just going to read the charge.

12 Ladies and gentlemen, you have stated that you have  
13 been unable to agree on a verdict in this case. And as I  
14 instructed you earlier, the verdict on the jury must be  
15 unanimous. When a matter is in dispute, it isn't always  
16 easy for even two people to agree, so when 12 people must  
17 agree, it becomes more difficult.

18 In most cases, absolute certainty cannot be reached  
19 or expected; however, y'all have a duty to make every  
20 reasonable effort to reach a unanimous verdict. In doing  
21 this, you should consult with one another, express your  
22 views, and listen to the opinions of your fellow jurors.  
23 Tell each other what you feel and why you feel that way,  
24 discuss your differences with open minds; and, although, the  
25 verdict for the jury must be unanimous, each one of you has

1 a right to your own opinion.

2           The verdict you agree upon must be your verdict and  
3 the result of your own convictions, and you should not give  
4 up your firm belief merely to be in agreement with your  
5 fellow jurors. Majority should consider the minorities  
6 opinion and the minorities should consider the majorities  
7 opinion. You should carefully consider and respect the  
8 opinions of each other and reevaluate your position for  
9 reasonableness, correctness, and impartiality. You must lay  
10 aside all outside matters and reexamine the questions before  
11 you, based upon the law and the evidence in this particular  
12 case.

13           If you do not agree on a verdict in this case, I  
14 must declare a mistrial. In that case, it does not mean  
15 that anybody wins. It just means at some future time, I, or  
16 another judge, will try this case with some other jury  
17 sitting where you sit now. The same participants will come  
18 in and the same lawyers will ask basically the same  
19 questions and get basically the same answers and we will go  
20 through this whole process again.

21           Ladies and gentlemen, you were selected in the same  
22 manner and from the same source as any future jury will be.  
23 And there is no reason for me to suppose that the case will  
24 ever be submitted to 12 more intelligent, impartial,  
25 conscientious, and competent jurors than you, or that more

1 clearer -- more or clearer evidence will be produced by one  
2 side or the other. Therefore, I'm going to ask you to  
3 return to your deliberations at this point in time.

4 Thank you, ladies and gentlemen.

5 (Whereupon, the jury leaves open court at 04:31  
6 p.m.)

7 THE COURT: We'll give them a little while, see  
8 what happens. Any objections?

9 MR. KING: Yes, Your Honor.

10 THE COURT: Now if they come back again, I'm  
11 satisfied that I will declare a mistrial.

12 MR. KING: I was just worried, Judge, because --  
13 when she came out the first time, I was worried maybe she  
14 was coerced in going along with the other 11, and when she  
15 came out in the open courtroom, feels more comfortable to  
16 share her views.

17 THE COURT: Sometimes people think they are okay  
18 being in a group, but when it gets polled, they don't like  
19 it. And that's their right, and I will declare a mistrial  
20 if I need to. Thank you.

21 (Court's Exh. 3, Jury Note indicating they cannot  
22 agree, was marked for identification.)

23 (Recess)

24 THE COURT: Another note. Apparently, they are  
25 back to deliberating. Said: Will the testimony of the

1 police officers be transcribed tonight? And the answer to  
2 that is no. But I can -- do we need to come back in the  
3 courtroom to review the other testimony?

4 So I'm going to let them know if they want to come  
5 listen to the testimonies of the other officers, they may do  
6 so.

7 (Court's Exh. 4, Jury Note requesting transcript  
8 of officers, was marked for identification.)

9 (Whereupon, the jury continues deliberations 04:53  
10 p.m.)

11 (Whereupon, the jury returns to open court at 04:57  
12 p.m.)

13 THE COURT: Now, Madam Forelady, you have a  
14 verdict?

15 THE FOREPERSON: Yes, sir.

16 THE COURT: Please pass it. Is it unanimous?

17 THE FOREPERSON: Yes, sir. Please publish the  
18 verdict.

19 THE CLERK: The verdict form in the matter of State  
20 of South Carolina vs. Damian Anderson, Defendant, as to the  
21 charge of assault on a police officer while resisting  
22 arrest. We, the jury, unanimously find the defendant  
23 guilty. Signed by the foreperson of the jury on August 6th,  
24 2014.

25 Ladies and gentlemen of the jury, if this was your

1 verdict, please raise your right hand.

2 (Jury complies)

3 Thank you. Please let the record reflect all 12  
4 jurors raised their right hands.

5 THE COURT: Does the defense request polling again?

6 MR. KING: Yes.

7 THE COURT: Please poll the jury again.

8 THE CLERK: When I call your juror number, raise  
9 your hand. I will acknowledge you and I will ask you two  
10 questions; was that your verdict and is that still your  
11 verdict? Please answer these questions verbally.

12 Juror No. 228, was that your verdict?

13 A JUROR: Yes, sir.

14 THE CLERK: Is that still your verdict?

15 A JUROR: Yes, sir.

16 THE CLERK: Juror No. 391, was that your verdict?

17 A JUROR: Yes, sir.

18 THE CLERK: What was that, I'm sorry?

19 A JUROR: Yes, sir.

20 THE CLERK: Is that still your verdict?

21 A JUROR: Yes, sir.

22 THE CLERK: Juror No. 40, was that your verdict?

23 A JUROR: Yes, sir.

24 THE CLERK: Is that still your verdict.

25 A JUROR: Yes, sir.

1           THE CLERK: Thank you. Juror 92, was that your  
2 verdict?

3           A JUROR: Yes, sir.

4           THE CLERK: Is that still your verdict?

5           A JUROR: Yes.

6           THE CLERK: Thank you. Juror 133, was that your  
7 verdict?

8           A JUROR: Yes, sir.

9           THE CLERK: Is that still your verdict?

10          A JUROR: Yes, sir.

11          THE CLERK: Thank you. Juror 260, was that your  
12 verdict?

13          A JUROR: Yes, sir.

14          THE CLERK: Is that still your verdict?

15          A JUROR: Yes, sir.

16          THE CLERK: Juror 376, is that your verdict?

17          A JUROR: Yes, sir.

18          THE CLERK: Is that still your verdict?

19          A JUROR: Yes, sir.

20          THE CLERK: Juror No. 8, was that your verdict?

21          A JUROR: Yes, sir.

22          THE CLERK: Is that still your verdict?

23          A JUROR: Yes, sir.

24          THE CLERK: Juror No. 83, was that your verdict?

25          A JUROR: Yes, sir.

1 THE CLERK: Is that still your verdict?

2 A JUROR: Yes, sir.

3 THE CLERK: Thank you. Juror 119, was that your  
4 verdict?

5 A JUROR: Yes, sir.

6 THE CLERK: Is that still your verdict?

7 A JUROR: Yes, sir.

8 THE CLERK: Juror 236, was that your verdict?

9 A JUROR: Yes, sir.

10 THE CLERK: Is that still your verdict?

11 A JUROR: Yes, sir.

12 THE CLERK: Thank you.

13 Juror No. 353, was that your verdict?

14 A JUROR: Yes, sir.

15 THE CLERK: Is that still your verdict?

16 A JUROR: Yes, sir.

17 THE CLERK: Thank you.

18 Is there any juror whose number I did not call,  
19 please raise your right hand.

20 Your Honor, the jury has been polled and the  
21 verdict stands.

22 THE COURT: Thank you. You may be seated. Ladies  
23 and gentlemen, let me tell you how grateful I am for your  
24 efforts in this trial. You know, it's never easy holding  
25 the life of a fellow citizen in your hands. I mean, you've

1    been pulled out of your normal duties, you've been pulled  
2    out of your families to come here and listen to something  
3    and render a verdict. And I would tell you the same thing  
4    had it been the other way, because you did what you were  
5    asked to do and that was to reach a verdict. And, again,  
6    it's never easy doing that, but you stepped up and you did  
7    it, and I want to thank you for that.

8               Now, ladies and gentlemen, let me remind you that  
9    this counts as your jury duty. So you don't have to -- you  
10   are probably glad you won't have to be on the jury for the  
11   next three years. You can't be on the jury for the next  
12   three.

13              Ladies and gentlemen, as I sit here as a judge, I  
14   think of what makes America great, what makes our country  
15   what it is. And it's not the judges. It's not the lawyers.  
16   It's not politicians. But it's people like you who --  
17   again, who step out of their comfort zone. Not voluntarily;  
18   we make you come up here, but you are willing to do it.

19              I tell people I have the greatest job in the world  
20   because I get to sit between these two flags. And, you  
21   know, these flags are just -- they are cloth, but what they  
22   stand for, people have died for many times over, hundreds of  
23   thousands, millions of people have died for what these  
24   things represent. And what I want you to go out of here  
25   feeling is that you are the fibers that make this flag,

1 individual citizens like you.

2 And, you know, again, there were a lot of important  
3 things going on in Charleston for the last three days, but I  
4 can assure you that nothing more important was going on than  
5 making sure that justice was done.

6 Ladies and gentlemen, again, you pulled yourself  
7 out of your jobs, your homes, and we are eternally grateful  
8 to you for that. And, again, when you go home, nobody is  
9 going to question you about what you did. If somebody does  
10 want to talk to you, you can tell them what all along I've  
11 been telling you, you can't discuss the case, as well as  
12 you can now discuss it with anyone that you want to.

13 Again, what's so important about our system and why  
14 I believe in the jury system is because that's what makes  
15 America unique. Unlike other countries, it's not the  
16 government that says whether someone is guilty or not. It's  
17 free individuals who are citizens. The State doesn't say  
18 he's guilty. The police don't get to say he's guilty, but  
19 it's the free citizens of our nation who do that.

20 Ladies and gentlemen, when I dismiss you, they are  
21 going to pay you a small amount of money for the services  
22 you have given to Charleston and the State of South  
23 Carolina, but I would like to have the honor of shaking your  
24 hands as you leave here. In about 15 minutes, I'm going to  
25 do my job and I'm going to pass sentence on the defendant.

1 You are welcome to, as I -- as you exit here, come back into  
2 this courtroom and see what happens. Now you have completed  
3 your job and if you want to go home, you are welcome to do  
4 so.

5 (Whereupon, the jury leaves open court at 05:04  
6 p.m.)

7 THE COURT: Any post-trial motions?

8 MR. KING: Yes, Your Honor. I would just renew any  
9 previous motions for directed verdict and also my motion for  
10 a mistrial. I feel like maybe that last juror was coerced  
11 by coming out the first time and the jury not being  
12 unanimous, and then sending back a note saying that they are  
13 still unable to come to a verdict, and after the Allen  
14 charge seemed to come pretty quickly, so I would make a  
15 motion for a mistrial based on that.

16 THE COURT: I will hear from the State.  
17 Mr. Osborne.

18 MR. OSBORNE: No motions.

19 THE COURT: Okay. I'm going to respectfully deny  
20 your motion. Although, we didn't know what the breakdown  
21 was, might have been close, the juror did -- and, obviously,  
22 they had discussed that for a long time before they reached  
23 that first verdict.

24 So I guess I will give you about 15 minutes to talk  
25 to your client and talk to anybody you want to have speak,

1 and then -- so let's say at 5:20, I will sentence him. All  
2 right. Thank you.

3 (Whereupon, recess transpired.)

4 THE COURT: Solicitor, y'all have the verdict form?

5 MR. OSBORNE: Yes, Your Honor.

6 THE COURT: Solicitor, what is Mr. Anderson's prior  
7 record?

8 MR. OSBORNE: Yes, Your Honor. On June of 2013, he  
9 has a conviction for a possession of cocaine first, a  
10 conviction for possession with intent to distribute cocaine  
11 near a school, possession of cocaine third or subsequent  
12 offense, possession of cocaine first offense. In August of  
13 2006, he has a conviction for possession with intent to  
14 distribute cocaine near a school. May of 2008, he has a  
15 conviction for possession of 28 grams or less of marijuana.  
16 In February of 2009, he has a conviction for 28 grams or  
17 less of marijuana. In August of 2009, he had a parole  
18 violation, his YOA was violated. And in November of 2010,  
19 he has another conviction for possession with intent to  
20 distribute cocaine near a school.

21 THE COURT: Is he currently on probation?

22 MR. OSBORNE: No, Your Honor, he's not.

23 THE COURT: All right. Mr. King, on behalf of your  
24 client.

25 MR. KING: Thank you, Your Honor. I always advise

1 him to at least remain silent about the charge itself  
2 pending the appeal, Judge, but I just wanted to let you know  
3 -- tell you that you heard his record, his drug charges. He  
4 has a record, but he doesn't have a history of violence or  
5 violent offenses or anything like that.

6 He was working at Pepperdine Construction, Judge.  
7 He's had that job for about a year, I've confirmed that, but  
8 he has been working there. I have a letter from his boss,  
9 so he was working. So he was trying to take care of his  
10 three children.

11 His mother, as a result of all of this -- as you  
12 know, she was involved and got involved in this too and was  
13 charged. She lost that place she was staying in -- she  
14 takes care of her daughter's three children -- and she lost  
15 her job at the College of Charleston that she'd had for six  
16 years.

17 So he's tried to be helping her financially since  
18 then. She's been struggling. He's concerned about his  
19 mother because she is struggling and he helps support her  
20 and his children. He has three children, Judge.

21 You know, you heard the evidence in the trial,  
22 Judge. I do believe it was a very brief period of time and  
23 it was something that happened in a fairly quick amount of  
24 time. I just ask that you focus on his lack of any prior  
25 violent record, Judge, and consider suspending some of the

1 sentence and possibly a strict sentence with probation to  
2 follow.

3 THE COURT: Would the victim like to say anything?

4 MR. OSBORNE: Yes, Your Honor, he would.

5 OFFICER HARVILL: Thank you, Your Honor. I've  
6 spent six years with this department. And during that time,  
7 I've tried to always obey the utmost courtesy to all  
8 citizens in contact that I've had. I had three years with  
9 the assignment I was on with Power Shift, which I'm no  
10 longer on, but during that time, those officers were always  
11 respectful to members they came in contact with.

12 That night was nothing more than a routine traffic  
13 stop that alarmed us in certain ways and had a very  
14 different outcome than what we typically have. That night  
15 we were all courteous to Mr. Anderson, as well as to  
16 Mr. Backman. And the situation escalated far beyond what it  
17 needed to. And as a result, six weeks of me being out of  
18 work full-duty status. Injury I recovered from, it was a  
19 very painful injury. I was concerned it was going to  
20 require other surgery or be debilitating at work.  
21 Fortunately, did not go that way. I'm lucky to be back  
22 full-time, have not suffered anything long-term enduring  
23 injury because of that.

24 All I ask, due to the fact that this situation did  
25 not come to come to this outcome. There's no reason I

1     needed to be injured in that sense.

2             THE COURT:   Thank you.

3             Mr. Osborne, the charge carries up to three years.

4             MR. OSBORNE:   Up to ten years.

5             THE COURT:   Yeah.

6             MR. KING:   Your Honor, Mr. Anderson would like to  
7     address you generally about his -- I think his generally and  
8     say some words.

9             THE COURT:   All right.

10            THE DEFENDANT:   Good evening, Your Honor.

11            THE COURT:   Speak into the microphone so I can hear  
12   you.

13            THE DEFENDANT:   Good evening, Your Honor.   I would  
14   like to say since this incident, it was hard for me and my  
15   mother.   My mother used to work at College of Charleston,  
16   she had ten years to retirement, and from this incident, she  
17   lost her retirement and got kicked out of her house, from  
18   this incident.   I would like -- I'm not a violent person.   I  
19   did things in my past that he wasn't me to this day, and I  
20   try to be a better parent for my children and better son to  
21   my mom.   I never hurt anyone in my life.   I'm not a violent  
22   person.   Like I said, I've done things in my past that he  
23   wasn't me to this day.

24            When I get to prison, I went to prison, I got a  
25   trade and I found a good job that I like at Pepperdine

1 Construction. When I got the job, that was my first  
2 tax-paying job, so I was a citizen, tax-paying citizen. I  
3 just try to do the right thing. I'm not a bad person. As  
4 you could see, I've done things in my past that will -- he  
5 wasn't me to this day.

6 I just ask that you have some mercy on me, Your  
7 Honor. I try to help people as much as I could, you know,  
8 and I hate to see my mother struggling any more than she's  
9 going through now. Since this incident, she's struggling  
10 now. She has custody of my sister's children that I help  
11 her with, and her -- and I have three children of my own.  
12 School is about to start and look where I'm at right now.  
13 My children are looking forward to me getting school  
14 supplies and this is going to -- that's all.

15 THE COURT: Thank you. Anything further, Mr. King?

16 MR. KING: No, Your Honor.

17 THE COURT: Thank you. Anything further from the  
18 State?

19 MR. OSBORNE: No, Your Honor.

20 THE COURT: You know, this could have been so much  
21 worse a situation and could have been so much better a  
22 situation. The total fault of why this ended up being the  
23 way it was was Mr. Anderson. Mr. Anderson -- I'm looking  
24 --has a nine -- excuse me, no, 11 years of thumbing his nose  
25 at the law. And this night, police pulled him over, from

1 the testimony I heard sounds like a reasonable claim that he  
2 did, and he put his life and he put the lives of these  
3 officers in jeopardy.

4 You are lucky, sir, that you didn't do something  
5 else and end up getting shot -- and we wouldn't be here at a  
6 trial, your mama would have been at your funeral -- or that  
7 one of these officers didn't get shot by you grabbing their  
8 gun or something. I'm glad you didn't do that. If that had  
9 been the case, this would have been a whole different trial.

10 Your lack of respect for the law put these officers  
11 in danger, it put you in danger, and it actually injured an  
12 officer. So I don't have a whole lot of sympathy for you  
13 and I'm not going to give you a whole lot of leniency in  
14 this sentence. I think what you did is horrible.

15 I think a message needs to be sent out that you  
16 cannot attack a police officer and get away with it and  
17 expect mercy from this Court. The sentence of the Court is  
18 that you be committed to the State Department of Corrections  
19 for a period of ten years. Good luck, sir.

20 And again, Mr. King, I think you did a great job  
21 with the evidence that you had to work with. The State, I  
22 think y'all presented a fair case. Again, you both, and all  
23 your team, upheld your civility oath and you are a tribute  
24 to being lawyers and what makes this a great system. Thank  
25 you.

1           (Court's Exh. 5, State vs. Williams charge, was  
2 marked for identification.)

3           (Court's Exh. 6, Transcript of Damian Anderson,  
4 was marked for identification.)

5           (Whereupon, these proceedings are concluded.)

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

questions.

① By law, what constitutes  
"under arrest"?

US  
"detained"

② How does one know if not being  
told - That they are under  
arrest

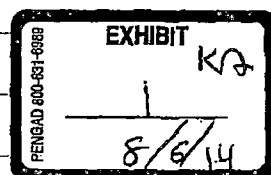
③ When does resisting arrest  
cross the line to  
Assault, intentional creation  
of fear.

①+②  
See attached charge

③ This is for you  
the jury to  
decide.

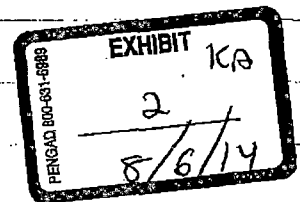
Joanne Liu  
Joanne Liu

*[Signature]*  
Judge  
12:43 pm 8/6/14



May we have  
Mr. Andersens testimony

Joanne Liu  
/ Joanne Liu



(1) Transcript of Mr. Anderson  
testimony

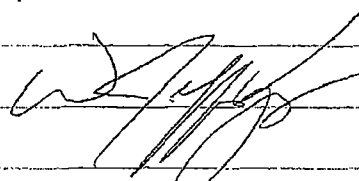
(2) if available  
Officer Villeneuve

Officer Light  
testimony

gblw

Anderson testimony is attached

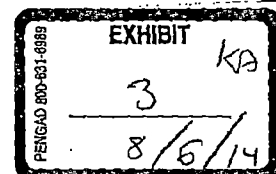
You may listen to other testimony  
if you like

  
6 Aug 2014

In the course of resisting  
arrest - an assault  
occurred.

If we cannot come to  
a decision today  
what would be the next step

Joanne & Eric



Will The testimonies of  
police officers be transcribed  
tonight.

Do we need to go back in  
the cart room to review  
the other testimonies 1st

JaGue

No The testimony can be  
listened to again if  
you wish.

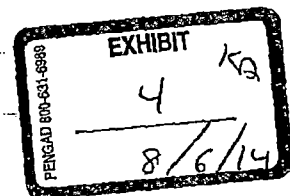
W. J. G. 6

4:45pm

6 Aug 2014

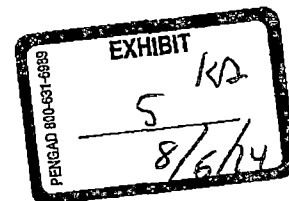
No thank you

JaGue



State v. Williams, 237 S.C. 252 (1960)

In order to constitute an arrest, there must be an actual or constructive seizure or detention of the person, performed with the intention to effect an arrest and so understood by the person detained. An arrest itself is "an ongoing process" in South Carolina.



MEG20130200752

## WITNESSES

Charleston City Police Department

## AGENCY CASE NUMBER

1301807

## ARREST WARRANT NUMBER

2013A1010200553

## DATE OF ARREST

February 1, 2013

## ACTION OF GRAND JURY

MEG 2013 0311  
 DATE BILL

*Paul Butler*  
 Foreperson of Grand Jury  
 Date: MAY 6 2013

## VERDICT

Guilty

*James E. Lee* 8/6/14

Foreperson of Petit Jury

Date:

## INDICT

DOCKET NO. 2013GS1002277

The State of South Carolina

County of Charleston

## COURT OF GENERAL SESSIONS

May Term 2013

THE STATE

vs.

DAMIAN D ANDERSON

## Indictment for

Assault on Police Officer While Resisting  
 Arrest

ATTEST: A TRUE COPY  
 JULIE J. ARMSTRONG (SEA)

By *[Signature]*  
 CLERK OF PAGES & FEE  
 DEPUTY CLERK

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF CHARLESTON )

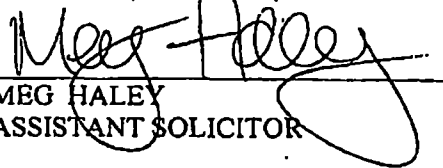
## INDICTMENT

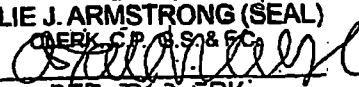
At a Court of General Sessions, convened on May 6, 2013 the Grand Jurors of Charleston County present upon their oath:

**Assault on Police Officer While Resisting Arrest**

That in Charleston County, South Carolina, on or about February 1, 2013, the Defendant, DAMIAN D ANDERSON, knowingly and willfully did assault, beat, or wound Officer Harvill, a law enforcement officer of this State, while resisting the efforts of the officer to make a lawful arrest of the defendant, when he knew or reasonably should have known that Officer Harvill, was a law enforcement officer, in violation of Section 16-9-320(b), of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

  
 MEG HALEY  
 ASSISTANT SOLICITOR

ATTEST: A TRUE COPY  
 JULIE J. ARMSTRONG (SEAL)  
 CLERK, C.P., S. & F.C.  
 By   
 DEPUTY CLERK

## CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

June 1st, 2015



Wanda H. Carter  
Deputy Chief Appellate Defender

South Carolina Commission on Indigent Defense  
Division of Appellate Defense  
PO Box 11589  
Columbia, S. C. 29211-1589  
(803) 734-1330

ATTORNEY FOR APPELLANT

## CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

June 1st, 2015



Wanda H. Carter  
Deputy Chief Appellate Defender

South Carolina Commission on Indigent Defense  
Division of Appellate Defense  
PO Box 11589  
Columbia, S. C. 29211-1589  
(803) 734-1330

ATTORNEY FOR APPELLANT

RECEIVED  
JUN 01 2015  
SC Court of Appeals