

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Charleston County

Honorable Alison Renee Lee, Circuit Court Judge

RECEIVED

OCT 19 2016

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

JERRY L. GARDNER, JR.,

APPELLANT

APPELLATE CASE NO 2015-002604

RECORD ON APPEAL

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	)	2015-GS-10-2269
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STATE OF SOUTH CAROLINA	)	
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	)	
vs.	)	
	)	
	)	
JERRY LEWIS GARDNER, JR.	)	
	)	
Defendant	)	
	)	
	)	
	)	
	)	TRANSCRIPT OF RECORD

August 3, 2015
Charleston, South Carolina

VOLUME 1 (OF 3)

B E F O R E:

THE HONORABLE ALISON RENEE LEE, JUDGE

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STATE

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50	Jail calls C.D.	

DEFENDANT

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State v Jerry Gardner
Motion to Suppress-Remarks by Mr. Geel
August 3, 2015

1 MR. GEEL: And Your Honor there is sort of another
2 issue that goes along with this one which is that the
3 document itself I believe that the State intends to call
4 a witness from I believe she works with Parole to testify
5 to the fact that she gave that document to Jerry. And of
6 course on the same basis we would object to that
7 testimony because of course that would put the jury on
8 notice that Mr. Gardner was on parole.

9 I think that the real issue here and I believe that
10 what the State intends to show with this piece of
11 evidence is that there is a document bearing Jerry
12 Gardner's name on it and I believe that that redacted
13 copy of the photo that Your Honor has just seen is
14 sufficient to show that. And so I don't think any
15 testimony alongside that document is necessary.

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State v Jerry Gardner
Motion to Suppress-Remarks by Mr. Condon
August 3, 2015

1 MR. CONDON: Your Honor, if I could also clarify.
2 There is actually -- I think we're getting it confused.
3 There are two sets of documents. This document here
4 [indicates] was actually on the passenger seat so we
5 think that's relevant to show that he was the driver and
6 he put it on the passenger seat.

7 There's also a sticky note that is on the center
8 console of the car and the sticky note says Agent
9 Grissett return January 13th. We just want Agent
10 Grissett to come in. We're not going to ask her who she
11 works for but we think it's relevant that she gave him
12 that note on December 9th which is nine days before this
13 car accident.

14 So it puts him in the car nine days before this car
15 chase and we think it's relevant to show that he was in
16 the car on December 9th. So we're not going to ask about
17 being on probation; just did she give him this note and
18 when did she give it to them. If they will stipulate
19 that he had the note on December 9, 2014 we'd be fine
20 with that as well.

21 THE COURT: Any response?
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State v Jerry Gardner
Motion to Suppress-Response by Mr. Geel
August 3, 2015

1 MR. GEEL: Again, Your Honor we would object to her
2 being identified as Agent. I just think that having this
3 piece of testimony in and this witness coming in it will
4 identify Mr. Gardner as a parolee. The prejudice of that
5 is in my opinion and in my view way too significant to
6 have her testify at all. The document has his name on
7 it. Does the note from her have a name on it?

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State v Jerry Gardner
Motion to Suppress-Remarks by Mr. Condon
August 3, 2015

1 MR. CONDON: The note does not -- the note was
2 actually fingerprinted and they couldn't find any
3 fingerprints on it so. Part of the defense in this case
4 is he wasn't in the car so it's important for us to
5 exclude or include documents belonging to him that are in
6 the car and the note is one of those documents that is in
7 hand's reach of whoever would be operating the car. And
8 without having her come in and say I gave this to Jerry
9 Gardner it's unclear who the note would belong to and
10 that would go into their defense of it was somebody else
11 who was driving the car or in the vehicle.

12 THE COURT: And what does the note say?

13 MR. CONDON: It says Agent Grissett return January
14 13.

15 MR. GEEL: And again, Your Honor I'll just
16 reiterate there is a document with his name on it also in
17 the car. So there already is documentation that the
18 State has or will have in their records to show
19 connection to the vehicle.

20 MR. CONDON: If I may add, Your Honor, this is the
21 only document that actually has a relevant time on there
22 that is close to the incident. The other document's time
23 is October 2nd, 2014 whereas this document would be
24 December 9th, 2014. So we believe that increases the
25 probative nature of that piece of evidence. And we're

State v Jerry Gardner
Motion to Suppress-Remarks by Mr. Condon
August 3, 2015

1 open for limiting the testimony not to include probation
2 or somehow redacting the note if Your Honor sees that fit
3 but we believe that should come in.

4 THE COURT: I do think its relevant information.
5 And I do understand the concern about the prejudice and
6 so either we can redact it or if it's very clear that the
7 person will not testify as to where they are employed.
8 The only thing I guess to redacting the note is to redact
9 the agent part of it but I think it should be clear there
10 is no reference to the Department of Probation, Pardon
11 and Parole Services which are Parole, Pardon and
12 whatever; Triple P.

13 I do think its relevant to at least show that was
14 given directly to him to more clearly establish and I
15 think that's relevant and reasonable under the
16 circumstances by the State in light of potential
17 defenses. So I think it should be allowed to be
18 discussed. Anything else on that point?

19 MR. GEEL: No, Your Honor.

20 THE COURT: Let's talk about the -- I'll come back
21 to the audio. Let's talk about the motion to suppress.
22 Yes, sir?

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State v Jerry Gardner
Opening Statements-Remarks by Mr. Condon
August 3, 2015

1 touch on the law regarding each of these charges. The
2 Judge will also instruct you as well at the end of the
3 case. Failure to stop for a blue light is pretty
4 straight forward; it's when an officer signals by sirens
5 or flashing lights for someone to stop and the person
6 does not stop when they are driving a vehicle.

7 Habitual traffic offender is when someone has been
8 declared a habitual traffic offender by the Department of
9 Motor Vehicles and that person's license has been
10 suspended and that suspension is in effect when they are
11 operating a motor vehicle. Lastly possession of stolen
12 property is when someone has in their possession goods
13 that are stolen and they knew or had reason to believe
14 that the goods are stolen.

15 The State has the burden of proof in this case and
16 it's proof beyond a reasonable doubt. It's not beyond
17 all doubt because few things in life we know beyond all
18 doubt. Its proof which will leave you firmly convinced
19 that the defendant is guilty.

20 In this case we're going to have a lot of witnesses
21 come in. We're going to start out with the North
22 Charleston Police Department officers who were originally
23 investigating the stolen iPad. Next you're going to hear
24 from Charleston County Sheriff's officers who took over
25 the chase, and then you're going to hear from the

State v Jerry Gardner
Opening Statements-Remarks by Mr. Condon
August 3, 2015

1 Charleston Police Department who helped assist in
2 locating Mr. Gardner. Then you're going to hear from the
3 Department of Motor Vehicles and you're going to hear
4 from crime scene that responded and recovered
5 fingerprints off of two McDonald's cups that were in the
6 center console that came back to this defendant. At the
7 end of the case you will be firmly convinced that the
8 defendant is guilty of all charges. Thank you very much.

9 THE COURT: Mr. Geel?

10 MR. GEEL: Thank you, Your Honor.

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State v Jerry Gardner
Opening Statements-Remarks by Mr. Geel
August 3, 2015

OPENING STATEMENT

BY MR. GEEL:

Ladies and gentlemen my name is Christopher Geel. I have the privilege of representing Mr. Gardner in this case. With me at counsel table is my colleague Ted Smith. I will be very brief. I just wanted to highlight one very, very key important point to you all. I'm going to ask all of these witnesses whether they will be able to identify my client Jerry Gardner as the driver of that vehicle and not one of them will be able to do so. You will not see one witness who will testify that my client was driving the vehicle.

The Judge will instruct you on the law as far as these driving offenses are concerned. The State will of course have to prove that my client was the person who was driving the vehicle and there will not be any evidence to that fact. So I'll ask you from the outset to pay attention to that. Thank you.

THE COURT: You may call your first witness.

State v Jerry Gardner
Joshua Snyder-Direct Examination by Mr. Condon
August 3, 2015

1 MR. CONDON: The State calls Joshua Snyder.
2 [Whereupon, Mr. Snyder comes forward]
3 [Whereupon, the witness is duly sworn by the Clerk
4 of Court]
5 CLERK OF COURT: Please state your first and last
6 name and spell your last name loudly and clearly into the
7 microphone.
8 THE WITNESS: Joshua Snyder, S-N-Y-D-E-R.
9 - - - - -
10 JOSHUA SNYDER,
11 Having been first duly sworn,
12 Was examined and testified as follows:
13 DIRECT EXAMINATION
14 BY MR. CONDON:
15 Q. Good afternoon Mr. Snyder.
16 A. Good afternoon.
17 Q. Where are you currently living?
18 A. Currently I reside in Winston-Salem, North Carolina.
19 Q. Okay. And where are you originally from?
20 A. Winston-Salem, North Carolina.
21 Q. And back on December of 2014 where were you living?
22 A. Ladson, South Carolina.
23 Q. Can you explain to the jury what you were doing back
24 then?
25 A. Sure. I was coaching college basketball in the area

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Joshua Snyder-Direct Examination by Mr. Condon
August 3, 2015

1 and I've since moved back home to Winston-Salem, North
2 Carolina to take another job.

3 Q. Okay. And can you then explain to the jury what
4 was happening on the evening of Wednesday, December 17th?

5 A. Sure. I returned sometime between 2 and 2:30 in the
6 morning and parked my car, a blue Jeep at my apartment
7 complex Ingleside Plantation right off Interstate 26. I
8 then went upstairs only taking my cell phone with me
9 leaving some belongings in my car and went to bed.

10 Q. And what had you been doing that night?

11 A. We just returned from an away game up in
12 Spartanburg, South Carolina.

13 Q. And did you have any money that belonged to the team
14 in the car?

15 A. I did; 208 dollars in the center console.

16 Q. And that was in Charleston County where you were
17 living?

18 A. Yes, sir.

19 Q. And can you then describe to the jury what happened
20 the next day on Thursday, December 18th when you woke up?

21 A. Sure. I woke up to my normal routine of getting
22 ready to go to work, went out to my car in the back of
23 the parking lot and where I had parallel parked it the
24 night before and locked it and went out there noticed
25 fragments of glass on the ground and upon that I looked

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Joshua Snyder-Direct Examination by Mr. Condon
August 3, 2015

1 up and saw that the rear window had been smashed.

2 Q. What items were stolen out of the car?

3 A. Sure. An iPad, 208 dollars out of the center
4 console, a blue Samsonite luggage bag with numerous
5 amounts of clothing and -- I apologize; along with that
6 aside from the clothing shirts and shorts were the
7 clothing items that were taken.

8 Q. And did you also have some gym shorts?

9 A. Yes, sir. There were two pairs of shorts that were
10 in my blue Samsonite luggage bag.

11 Q. I'm going to show you what has been marked as
12 State's exhibit 1 for identification purposes. Can you
13 look at that and tell me if you recognize any of the
14 property there.

15 [Whereupon, the witness is shown photograph]

16 A. Yes, two pairs of the shorts and my iPad are sitting
17 there in plain view, a black pair of Jordan size 2 XL
18 shorts and a white red and black pair of Jordan shorts
19 along with my iPad which can be found on there as well
20 under a bag.

21 MR. CONDON: Your Honor, we'd ask that State's
22 exhibit 1 be admitted into evidence.

23 THE COURT: Any objection?

24 MR. GEEL: No objection, Your Honor.

25 THE COURT: It's admitted.

State v Jerry Gardner
Joshua Snyder-Direct Examination by Mr. Condon
August 3, 2015

1 [Whereupon, State's exhibit number 1 is entered into
2 evidence by the court]

3 MR. CONDON: Permission to publish, Your Honor?

4 THE COURT: Yes, sir.

5 Q. [Mr. Condon] If you don't mind just kind of turning
6 around and pointing out for the jury the items which were
7 yours.

8 A. Sure. Under the grey package you'll see my iPad
9 with a case, the black athletic shorts right there
10 [indicates] and then the white, black, and red athletic
11 shorts in between the package and the black shorts.
12 Those are all my possessions.

13 Q. And were all those items stolen from you?

14 A. Yes, that's correct.

15 Q. Did you give the defendant Jerry Gardner, Jr.
16 permission to have those items?

17 A. No one had permission to have those items.

18 Q. So after you discovered the crime what happened
19 next?

20 A. I placed a call to 911 with an officer responding to
21 the call. He took down information and let me know about
22 the iPad tracker because I did remember it. And so I
23 logged in to see if it was on; the iPad was not on
24 currently. Then I monitored that throughout the day.

25 Q. And what happened then?

State v Jerry Gardner
Joshua Snyder-Direct Examination by Mr. Condon
August 3, 2015

1 A. I went to work and got my window repaired. The
2 officers helped later that day. He recommended someone
3 so I called them. And then around 3:40 in the afternoon
4 it pinged; the iPad was turned on so somebody whoever it
5 was obviously had no idea that the tracker would be
6 active.

7 They had no access to my iPad because I had a
8 security code on it or security lock; excuse me. And so
9 it pinged at a car wash on Dorchester Road across from
10 the Harley Davidson dealership. So I wondered huh,
11 clearly somebody doesn't know what they are doing. And
12 ---

13 MR. GEEL: --- objection, Your Honor. This is
14 speculation as to the state of mind. He has no knowledge
15 of that.

16 THE COURT: I'll sustain the objection.

17 Q. [Mr. Condon] Can you explain to the jury what you
18 did once you discovered it was cut on?

19 A. Sure. I informed the officer that came to see me
20 that morning and he let me know to keep monitoring it and
21 then it cut off about twenty or thirty minutes later.

22 Q. At any point did it cut back on?

23 A. Yes. Sometime after 7 p.m. it cut back on. I was
24 in the middle of eating dinner with my family which was
25 down in the area. And I saw it cut on so I alerted that

State v Jerry Gardner
Joshua Snyder-Direct Examination by Mr. Condon
August 3, 2015

1 officer who proceeded to let another officer know that
2 was actually on duty at the time that it was on and it
3 was moving so one can assume that it was in a car.

4 Q. And was this North Charleston Police Department
5 officer you had been in contact with?

6 A. Yes. He was the one that responded to the call that
7 morning from the breaking and entering of my Jeep.

8 Q. And did they end up tracking the iPad?

9 A. Yes they did, they tracked it.

10 Q. Can you describe that?

11 A. Yes. I actually am one that I want to make sure
12 that people if they steal from someone that they need to
13 be handled and taken care of.

14 I would like my property back and I would never
15 steal from anybody so I let the officer know and he let
16 me know that they had found a vehicle and tried to stop
17 it and that according to him they were following it ---

18 MR. GEEL: --- objection.

19 THE COURT: I'll sustain it as to hearsay.

20 Q. [Mr. Condon] And did you actually follow the iPad
21 too when the police were pursuing it?

22 A. Can you define follow?

23 Q. Did you trail it in your car?

24 A. Yes. I got in my Jeep because I wanted to make sure
25 that I got my property back and I followed. I didn't get

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Joshua Snyder-Direct Examination by Mr. Condon
August 3, 2015

1 within probably a mile of it but I noticed it moving
2 frequently on roads so unless somebody was on a
3 motorcycle they were most likely in an automobile driving
4 continuously until it stopped. And the last place I
5 noticed it stopping on was --

6 THE COURT REPORTER: Was what?

7 THE WITNESS: Locksley Avenue.

8 Q. [Mr. Condon] And that's in Charleston County in West
9 Ashley?

10 A. Yes, sir. And that's when I drove back to my
11 apartment.

12 Q. And did you eventually get your iPad back?

13 A. Yes, some weeks later I did. I had to buy a new
14 case because it had been dusted for fingerprints and
15 gotten residue all over it but I did get it back. But
16 that was the only item I did receive back from the stolen
17 goods.

18 Q. And that was the same iPad right there [indicates]?

19 A. Yes, the one right there under that grey bag.

20 Q. You never got your basketball shorts back?

21 A. No sir, or the 208 dollars or any of the other
22 luggage.

23 Q. And was the school out of the money?

24 A. What's that; I'm sorry?

25 Q. Was the school out the money?

State v Jerry Gardner
Joshua Snyder-Direct Examination by Mr. Condon
August 3, 2015

1 A. I just put my money into it to take care of it.

2 Q. And do you have to go back to work tomorrow?

3 A. Yes, I do.

4 Q. No further questions.

5 THE COURT: Any cross?

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State v Jerry Gardner
Joshua Snyder-Cross-Examination by Mr. Geel
August 3, 2015

CROSS-EXAMINATION

BY MR. GEEL:

Q. Just to be clear as far as the actual theft of your iPad you indicated that you had parked your car and you had gone inside that evening is that right?

A. Yes sir, that's correct.

Q. And you did not actually witness the theft itself?

A. No sir, that's correct.

Q. You were inside the entire time so you didn't see who might have done it or the actual event take place?

A. Yes sir. I was in my apartment sleeping and sometime between 2:30 in the morning and when I walked outside someone broke into my car because it was locked; they wouldn't have busted a window otherwise, and they took my belongings that belonged to me, Joshua Snyder.

Q. Right. And the reason you know what happened at that point is because you parked your car that night and came out the next morning and saw that it had been broken into correct?

A. Yes, because my window was not smashed when I returned home.

Q. Right. Thank you. Nothing further.

THE COURT: Any redirect?

MR. CONDON: Nothing further, Your Honor. Thank you.

State v Jerry Gardner
Joshua Snyder-Cross-Examination by Mr. Geel
August 3, 2015

1 THE COURT: You may step down. Thank you.

2 THE WITNESS: Thank you, Your Honor.

3 [Whereupon, the witness is excused and exits the
4 witness stand]

5 THE COURT: You may call your next witness.

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State v Jerry Gardner
Jerrid Riley-Direct Examination by Mr. Condon
August 3, 2015

1 MR. CONDON: The State calls Officer Jerrid Riley
2 with the North Charleston Police Department.

3 [Whereupon, Officer Riley comes forward]

4 [Whereupon, the witness is duly sworn by the Clerk
5 of Court]

6 CLERK OF COURT: Please state your first and last
7 name and spell your last name loudly and clearly into the
8 microphone.

9 THE WITNESS: Jerrid Riley, R-I-L-E-Y.

10 THE COURT: Would you also spell your first name
11 please?

12 THE WITNESS: Jerrid, J-E-R-R-I-D.

13 THE COURT: Thank you.

14 - - - - -

15 JERRID RILEY,

16 Having been first duly sworn,

17 Was examined and testified as follows:

18 DIRECT EXAMINATION

19 BY MR. CONDON:

20 Q. Good afternoon. Who are you employed by?

21 A. North Charleston Police Department.

22 Q. And what's your job title?

23 A. I'm a patrolman.

24 Q. And can you describe to the jury some of your job
25 duties as a patrolman?

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1 A. I do dispatch calls, traffic stops and that's about
2 it.

3 Q. And did you have a chance to become involved in an
4 incident involving a stolen iPad on Thursday, December
5 18, 2014?

6 A. Yes.

7 Q. And can you describe to the jury how you became
8 involved?

9 A. I got a phone call from a dayshift officer with
10 North Charleston Police Department requesting me go to an
11 address on West Montague Boulevard to try to recover an
12 iPad that was pinging in that area.

13 Q. And were you able to locate where that iPad was?

14 A. I was at the intersection at Dorchester and Montague
15 when he called me again and said the iPad was pinging at
16 that intersection.

17 He then stated that the vehicle that it was in
18 because it was moving took a right onto Dorchester Road.
19 I looked to my left and the vehicle was the only other
20 vehicle at that intersection at the time.

21 Q. At any time did you initiate a traffic stop?

22 A. I did.

23 Q. And can you describe that?

24 A. I initiated -- I did a U-turn and initiated a
25 traffic stop in between West Montague and I-526 on

State v Jerry Gardner
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August 3, 2015

1 Dorchester Road.

2 Q. And that's in Charleston County?

3 A. It is.

4 Q. And did you turn on your lights and sirens?

5 A. I did.

6 Q. And what did the vehicle do?

7 A. The vehicle continued down Dorchester Road. I let
8 it go for a while. It then took a right onto Paramount
9 Drive; I thought it was going to stop. It then got into
10 the left lane and turned left onto I-526 and continued
11 down 526 into West Ashley.

12 Q. And did someone take over the pursuit from you?

13 A. They did; Charleston County Sheriff's Office.

14 Q. And during this time did you have in car video?

15 A. I did.

16 Q. I'm going to show the witness what has been marked
17 as State's exhibit 2. Do you recognize that C.D.?

18 [Whereupon, the witness is shown exhibit]

19 A. I do.

20 Q. And how do you recognize that C.D.?

21 A. My initials and badge number are on it.

22 Q. Is that a true and accurate depiction of your in car
23 video?

24 A. It is.

25 MR. CONDON: We'd ask that State's exhibit 2 be

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1 admitted into evidence.

2 THE COURT: Any objection?

3 MR. GEEL: No objection, Your Honor.

4 MR. CONDON: Permission to publish, Your Honor.

5 THE COURT: It's admitted and it may be published.

6 [Whereupon, State's exhibit number 2 is entered into
7 evidence by the court]

8 Q. [Mr. Condon] I'm going to ask you a few questions
9 while we're getting that thing fired up. I'm going to
10 show you what has been marked as State's exhibit 3. Do
11 you recognize that map?

12 [Whereupon, the witness is shown exhibit]

13 A. I do.

14 Q. And is that an accurate depiction of an overview of
15 where the incident happened and where it ended?

16 A. It is.

17 MR. CONDON: We'd ask that State's exhibit 3 be
18 moved into evidence.

19 THE COURT: Any objection?

20 MR. GEEL: No objection, Your Honor.

21 THE COURT: It's admitted.

22 [Whereupon, State's exhibit number 3 is entered into
23 evidence by the court]

24 Q. [Mr. Condon] And that green marker there [indicates]
25 is that where the chase started at?

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1 A. It is.

2 Q. And are you aware -- is that red marker [indicates]
3 is that where it headed?

4 A. From what I'm aware, yes.

5 Q. Can you describe the vehicle to the jury?

6 A. It is a gold Ford Explorer.

7 Q. And were y'all able to recover items out it.

8 A. When the chase ended with Charleston County
9 Sheriff's Office we were notified. My sergeant sent out
10 crime scene techs to fingerprint and recover the iPad
11 that was found in the vehicle.

12 Q. To your knowledge did they recover any latent prints
13 out of the vehicle?

14 A. Yes.

15 MR. CONDON: I'm sorry, Your Honor. We have a slow
16 laptop here.

17 [Whereupon, Mr. Condon and Mr. Maynor confer]

18 MR. CONDON: Your Honor, can we have permission to
19 call our next witness and publish this once we get our
20 computer technical difficulties fixed?

21 THE COURT: So you want -- and you're not finished
22 with the direct testimony of this particular witness?

23 MR. CONDON: I believe that would be all of it.
24 We're just going to publish the video through him but I
25 believe we could do it after the next witness as well.

State v Jerry Gardner
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1 THE COURT: We'll reserve your cross until such
2 time -- you may step down. I'll ask that you not discuss
3 your testimony with anyone. You have not concluded your
4 testimony so it would not be appropriate to discuss it
5 with anyone.

6 THE WITNESS: Yes, Your Honor.

7 [Whereupon, the witness is excused and exits the
8 witness stand]

9 [Whereupon, Mr. Geel and Mr. Condon confer]

10 MR. GEEL: Your Honor, just to be clear and I
11 apologize in speaking with Mr. Condon is this officer
12 going to remain here so that we can do our cross later?

13 THE COURT: Yes. But he is going to remain
14 outside.

15 MR. GEEL: Thank you.

16 THE COURT: We'll bring you back shortly.
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State v Jerry Gardner
Donald Stanley-Direct Examination by Mr. Condon
August 3, 2015

1 MR. CONDON: The State calls Lieutenant Donald
2 Stanley.

3 THE COURT: Come forward please sir to be sworn.

4 [Whereupon, Lieutenant Stanley comes forward]

5 [Whereupon, the witness is duly sworn by the Clerk
6 of Court]

7 THE COURT: Please state your first and last name
8 spelling your last name loudly and clearly into the
9 microphone.

10 THE WITNESS: Donald Stanley, S-T-A-N-L-E-Y.

11 - - - - -

12 DONALD STANLEY,

13 Having been first duly sworn,

14 Was examined and testified as follows:

15 DIRECT EXAMINATION

16 BY MR. CONDON:

17 Q. Good afternoon. Can you explain to the jury your
18 job title and job duties?

19 A. I'm a Lieutenant with the Charleston County
20 Sheriff's Office assigned to the patrol division. I have
21 two sergeants and a squad of deputies on the night shift.

22 THE COURT: I'm sorry, I had difficulty
23 understanding you.

24 THE WITNESS: I'm sorry.

25 THE COURT: So just make sure you speak up. I'm not

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1 that far away from you so I doubt some of the jurors
2 heard exactly what you had to say.

3 THE WITNESS: Yes, ma'am.

4 Q. [Mr. Condon] And can you describe to the jury your
5 law enforcement experience and training?

6 A. I've got over twenty years in law enforcement. I
7 have training that I could probably go on for hours about
8 different things I've been trained in. I don't know
9 exactly how far you want me to go on that.

10 Q. Maybe just a brief overview in twenty seconds or
11 less.

12 A. Training and supervision of subordinates and
13 training as a field training instructor. There is quite
14 a few different aspects. There is training that is
15 ongoing all the time.

16 Q. Okay. And were you involved in a car chase on
17 Thursday, December 18, 2014?

18 A. Yes, I was.

19 Q. And can you describe for the jury that chase?

20 A. I can. It was approximately 7:57 or 7:58 p.m. I
21 was -- I typically monitor neighboring agencies radio
22 channels and I was on Leeds Avenue and I overheard a
23 North Charleston officer say he was in a vehicle or
24 attempting to stop a vehicle on Dorchester Road and the
25 vehicle was failing to stop. He indicated the vehicle

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1 got on I-526 west bound. At that point I was over the
2 top of I-526 so I just got on the ramp to go west bound
3 as they were passing by and I fell in behind him to back
4 him up in the event that circumstances dictated that he
5 needed some backup.

6 Once the pursuit came into West Ashley North
7 Charleston they have a standing agreement with the City
8 of Charleston that if they are not chasing a vehicle for
9 a violent felony that they will discontinue the pursuit.

10 And at that point North Charleston broke their
11 pursuit off and I was the only vehicle left so I went
12 ahead and assumed the pursuit because the Sheriff's
13 Office doesn't have that same agreement.

14 We continued on a pursuit. I believe it lasted
15 approximately sixteen minutes all throughout West Ashley
16 and ended on Locksley Drive.

17 Q. And did you have an in car camera during this chase?

18 A. No, sir. My vehicle is not equipped with a camera.

19 Q. And why is that?

20 A. Our agency doesn't equip lieutenants and above with
21 in car cameras.

22 Q. At any time did you observe the driver and passenger
23 attempt to bail out before they got to their final
24 destination?

25 A. Multiple times. At one point if you're familiar

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Donald Stanley-Direct Examination by Mr. Condon
August 3, 2015

1 with Orange Grove Road there is Jervey Avenue, River
2 Front, Joy Drive they were making multiple loops around
3 that area and every time they would come up on the
4 intersection of Jervey and I believe it was Joy the
5 driver and passenger would slow the car down and attempt
6 to bail out of the vehicle.

7 They were unsuccessful being able to get out the car
8 there and the pursuit continued through West Ashley and
9 finally ended on Locksley.

10 Q. And you mentioned the place they tried to bail out.
11 Is that close to Orange Grove Road?

12 A. Yes, it is.

13 Q. And are you aware of what Shanrrika Gregg's address
14 is on D-M-V?

15 A. I believe it is Orange Grove.

16 Q. And the final chase ended on Locksley Drive. Can
17 you describe to the jury what you witnessed when they
18 bailed out of the vehicle?

19 A. Yes, sir. When the vehicle came to the dead end of
20 Locksley Drive the vehicle veered to the right. There
21 was a trash can or a recycled container that the vehicle
22 rolled into.

23 The driver bailed out of the driver's side of the
24 vehicle. There is a fence line that he went around and
25 ran back over towards Saint Andrews Garden apartments.

State v Jerry Gardner
Donald Stanley-Direct Examination by Mr. Condon
August 3, 2015

1 The passenger who bailed out of the right side I know the
2 passenger went to the right but I lost sight of him after
3 they fled from the vehicle.

4 Q. And did you get a good description of the defendant?

5 A. The driver I did, yes.

6 Q. And can you describe the description of the driver
7 that you got?

8 A. The driver was wearing all black and had a black
9 hoodie on.

10 Q. And at any time did they have a suspect in custody?

11 A. Probably about fifteen minutes later the City of
12 Charleston had stopped the defendant at the entrance of
13 Saint Andrews Garden apartments. I came over and I
14 looked at him to see if I could identify him.

15 And he had on black clothing and a black hoodie and
16 he was the same height; he was approximately six foot
17 tall and skinny. They went ahead and detained him at
18 that time.

19 Q. And was that consistent with the description of the
20 driver that you saw?

21 A. Yes, it was.

22 Q. And how good of a look did you get at the driver
23 when he bailed out of the car?

24 A. I did not get a look at his face. I got a look at
25 him from behind as he was fleeing. Everything matched as

State v Jerry Gardner
Donald Stanley-Direct Examination by Mr. Condon
August 3, 2015

1 far as clothing, height and weight. The fact that he was
2 sweating and it was winter time; it was in December.

3 Q. Was it pretty cool that night?

4 A. I think it was cool out. I don't remember the
5 temperature though.

6 Q. And you observed him sweating?

7 A. Yes, sir.

8 Q. About how far away was he from you when you got a
9 look at him running away?

10 A. Probably from me to you. I was right behind the
11 vehicle when he fled.

12 Q. And before you gave chase to him did you check the
13 vehicle?

14 A. Yes, sir.

15 Q. And can you explain to the jury why you did that?

16 A. The reason why we would check the vehicle is because
17 there may be other occupants in there. You don't want to
18 subject yourself to somebody coming out of the car behind
19 you if you go chasing after the driver putting you in
20 danger.

21 I mean it doesn't happen often but it has happened
22 in the past and basically it can be a set up to try and
23 ambush a law enforcement officer.

24 Q. At any point did you observe them trying to bail out
25 around Balsam Street?

State v Jerry Gardner
Donald Stanley-Direct Examination by Mr. Condon
August 3, 2015

1 A. I do believe they tried to bail out and I know we
2 went through Balsam Street several times. I'm trying to
3 recall. If they did it would probably be on video from
4 the unit that was behind me.

5 Q. And are you aware of what the defendant's D-M-V
6 address is?

7 A. I know it's on Balsam. I don't remember the
8 specific address. I believe but I'm not 100 percent
9 certain.

10 Q. Are you aware of what the dad Jerry Gardner, Sr.'s
11 address is?

12 A. I know he's at the same address.

13 Q. I'd like to show you some maps. The first one is
14 kind of an overview and the other ones are more in depth.
15 If you could take a second to look at exhibits 4, 5, 6,
16 and 7 -- excuse me 4, 5, and 6 and see if you recognize
17 those.

18 [Whereupon, the witness is shown exhibits]

19 A. Yes.

20 MR. CONDON: We'd ask that State's exhibit 4
21 through 6 be admitted into evidence.

22 THE COURT: Any objection?

23 MR. GEEL: No objection, Your Honor.

24 THE COURT: They're admitted.

25 [Whereupon, State's exhibit numbers 4, 5, and 6 are

State v Jerry Gardner
Donald Stanley-Direct Examination by Mr. Condon
August 3, 2015

1 entered into evidence by the court]

2 MR. CONDON: I'll publish them over here, Your
3 Honor.

4 Q. [Mr. Condon] Can you point out to the jury where the
5 chase ended at?

6 A. Do you see where the X is where it says Locksley
7 Drive [indicates]? And you'll see Littlejohn. There is
8 an X right there and that's where the pursuit ended at.

9 Q. And where are the Saint Andrews Garden apartments?

10 A. The area in blue ink that is shaded in.

11 Q. And where did you go view him after this happened?

12 A. Actually there is a dot, a blue dot off Ashley River
13 Road the entrance to Saint Andrews Garden apartments.

14 Q. That's the entrance and exit to Saint Andrews Garden
15 apartments you say?

16 A. Yes.

17 Q. And what was the timeframe from the end of the chase
18 to when you went and viewed the suspect?

19 A. Approximately fifteen minutes.

20 Q. And Balsam Street is right there [indicates]?

21 A. Yes, sir. That's where his registered address is;
22 the defendant.

23 THE COURT: Could you identify the exhibit that you
24 are showing?

25 MR. CONDON: This is State's exhibit 5.

State v Jerry Gardner
Donald Stanley-Direct Examination by Mr. Condon
August 3, 2015

1 Q. [Mr. Condon] Is that just the same thing?

2 A. Yes, the same thing just a color version of it. The
3 dead end is Locksley here [indicates]. And there is a
4 wooden fence where the defendant ran around the fence and
5 ran over to Saint Andrews Garden apartments.

6 Q. I'm going to show you what has been marked as
7 State's exhibit numbers 7 through 15. Can you flip
8 through those and see if you recognize them please.

9 [Whereupon, the witness views photographs]

10 A. Yes sir, I do.

11 Q. Are they a true and accurate depiction of the path?

12 A. Yes, sir.

13 Q. And the scene?

14 A. Yes.

15 MR. CONDON: We'd ask that State's exhibit 7
16 through 15 be admitted into evidence.

17 THE COURT: Any objection?

18 MR. GEEL: No objection, Your Honor.

19 THE COURT: They're admitted.

20 [Whereupon, State's exhibit numbers 7 through 15 are
21 entered into evidence by the court]

22 Q. [Mr. Condon] We're going to start by publishing
23 exhibit 7, State's exhibit 7.

24 [Whereupon, the photograph is shown]

25 Q. Can you describe this picture to the jury?

State v Jerry Gardner
Donald Stanley-Direct Examination by Mr. Condon
August 3, 2015

1 A. This is the house at the dead end of Locksley. To
2 the left here [indicates] there is a wooden fence and
3 there is a debris can or trash can that he ran into. It
4 was sitting up against the fence at the time.

5 Q. And what direction was the passenger running?

6 A. The passenger ran to the right, the right of that
7 house [indicates].

8 Q. Can you point?

9 A. I'm sorry. To the opposite side of this house
10 [indicates].

11 Q. And the driver ran?

12 A. The driver ran -- that's [indicates] the actual
13 fence line to the left side of the house. The driver ran
14 around this [indicates] fence line and fled down this
15 [indicates] path.

16 Q. That's State's exhibit 8. State's exhibit 9. What
17 is that [indicates]?

18 A. That's the path continuing. To the left there is
19 probably a ten or twelve foot chain length fence. And to
20 the right would be the wooden fence that was on the
21 property line with the house on it at the end of
22 Locksley.

23 Q. Same thing?

24 A. Yes.

25 Q. Peeking out at the end of this path right there

State v Jerry Gardner
Donald Stanley-Direct Examination by Mr. Condon
August 3, 2015

1 [indicates] what is that [indicates]?

2 A. That's Saint Andrews Garden apartments at the very
3 end of the path. It's across a ditch line.

4 Q. State's exhibit 12. Exhibit 13 what's that?

5 A. That is when you come to the end of the path there
6 is a ditch line that you cross and Saint Andrews Garden
7 apartments is at the very end.

8 Q. That's just a view from the other side of Saint
9 Andrews Garden apartments?

10 A. Yes, sir looking back from Saint Andrews Garden.

11 Q. Is that one of the apartments?

12 A. Yes sir; one of the apartment buildings.

13 Q. Did y'all have a K-9 called out to the scene?

14 A. Yes sir, I did.

15 Q. And can you explain what happened when the K-9 came?

16 A. The K-9 tracked down that same path that was just
17 shown on the exhibits, went all the way to Saint Andrews
18 Garden apartments and once it got around the populated
19 area of Saint Andrews Garden apartments he lost the
20 scent. It's my understanding -- I've never had a K-9 but
21 it's pretty common for that to happen in very highly
22 populated areas.

23 Q. Did y'all have a helicopter out there?

24 A. Yes, sir.

25 Q. Can you describe that?

State v Jerry Gardner
Donald Stanley-Direct Examination by Mr. Condon
August 3, 2015

1 A. Our Sheriff's Office helicopter I had them respond.
2 They were able to make it up a short time after they
3 bailed out of the vehicle probably within two or three --
4 well, I don't know the specific time but I know it was
5 several minutes later, but the helicopter continued
6 circling the area trying to locate the parties that came
7 out of the car.

8 Q. And when you observed the defendant Jerry Gardner,
9 Jr. was there anything inconsistent with your
10 observations of the driver with him?

11 A. No, sir.

12 Q. No further questions.

13 THE COURT: Any cross?

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State v Jerry Gardner
Donald Stanley-Cross-Examination by Mr. Geel
August 3, 2015

1 CROSS-EXAMINATION

2 BY MR. GEEL:

3 Q. I just want to be clear about one point. It's your
4 testimony you did not actually see the driver's face?

5 A. Correct.

6 Q. So when you were saying that you were able to
7 identify Mr. Gardner what you are saying is that his
8 clothing is consistent with what you saw not that you
9 were about able to actually identify him as the driver?

10 A. Correct. His clothing was consistent with what the
11 driver that fled from the vehicle.

12 Q. Did you get a look at the other occupant in the
13 vehicle; the passenger?

14 A. Not from my vantage point I could not see the
15 passenger.

16 Q. So you aren't certain what the passenger of the
17 vehicle was wearing and you're not certain now?

18 A. Not from my own visual observation. I know what
19 Sergeant Cain who was the secondary vehicle provided.

20 Q. Now you indicated you supervise a number of other
21 officers below you is that correct?

22 A. Yes.

23 Q. Are they generally about the -- what your sort of
24 function is in law enforcement and what the purposes of
25 police reports are. You I assume have filed hundreds of

State v Jerry Gardner
Donald Stanley-Cross-Examination by Mr. Geel
August 3, 2015

1 police reports over your career ---

2 A. --- yes.

3 Q. And the purpose of doing that is so you will be able
4 to recall those facts later if you need to come to court;
5 that's one of the functions anyway is that right?

6 A. That and documentation.

7 Q. Right. And you do those police reports very close
8 in time to the incident when your memory is very fresh.

9 A. Yes.

10 Q. So that like for example today here we are in
11 August. This is an incident that happened back in
12 December you can review that report and refresh all of
13 your recollection about the details of what happened that
14 night.

15 A. Yes.

16 Q. And you have reviewed your report?

17 A. Yes sir, I have.

18 Q. And again the primary purpose of that is to assist
19 you in testifying if you need to in court about the
20 details of what happened that night?

21 A. Yes, sir.

22 Q. And you've worked -- I can't even speculate how many
23 cases would you estimate between December and today if
24 you had to guess?

25 A. Well typically I don't work cases.

State v Jerry Gardner
Donald Stanley-Cross-Examination by Mr. Geel
August 3, 2015

1 Q. You're a supervisor.

2 A. Yes. I mean as far as are you asking how many
3 incident reports I've completed.

4 Q. Sure and how many you've reviewed I suppose.

5 A. Well reviewed and completed are two different
6 things. But as far as me completing incident reports
7 I've probably completed fifteen or twenty in between that
8 timeframe.

9 Q. And now the people, your subordinates, the people
10 who report to you, you demand that same sort of accuracy
11 in their reports as well is that correct?

12 A. Well, we try to strive for having accuracy in the
13 reports.

14 Q. You want to make them as accurate as possible ---

15 A. --- yes ---

16 Q. --- so that they can also go to court if need be to
17 testify to the events that they observed correct?

18 A. Yes, sir.

19 Q. Okay. Thank you.

20 MR. GEEL: Nothing further, Judge.

21 THE COURT: Any redirect?

22 MR. CONDON: Just briefly, Your Honor.

23

24

25

State v Jerry Gardner
Donald Stanley-Redirect Examination by Mr. Condon
August 3, 2015

1 REDIRECT EXAMINATION
2 BY MR. CONDON:
3 Q. What other descriptions did you give of the -- were
4 there any other descriptions of the build or the height?
5 A. Yes. It was approximately six foot, skinny.
6 MR. CONDON: No further questions.
7 THE COURT: You may step down. Thank you.
8 [Whereupon, the witness is excused and exits the
9 witness stand]
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State v Jerry Gardner
Jerrid Riley-Direct Examination by Mr. Condon (resumes)
August 3, 2015

1 MR. CONDON: Your Honor, we recall Officer Riley to
2 play the in car video.

3 [Whereupon, Officer Riley comes forward]

4 THE COURT: Officer Riley, I'll remind you that you
5 are still under oath to tell the truth in this matter.

6 THE WITNESS: Yes, ma'am.

7 THE COURT: Yes sir, Mr. Condon?

8 MR. CONDON: We will publish the in car video at
9 this time; State's exhibit 2.

10 [Whereupon, the video plays]

11 [Whereupon, the video stops]

12 - - - - -

13 JERRID RILEY,

14 Having been previously duly sworn,

15 Was examined and testified as follows:

16 DIRECT EXAMINATION (resumes)

17 BY MR. CONDON:

18 Q. And after that Charleston County took over?

19 A. Yes.

20 MR. CONDON: No further questions.

21 THE COURT: Any cross?

22

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25

State v Jerry Gardner
Jerrid Riley-Cross-Examination by Mr. Geel
August 3, 2015

1

CROSS-EXAMINATION

2

BY MR. GEEL:

3

Q. Officer when the camera cuts on there what causes
that to happen when the video comes on?

4

5

A. The video comes on when I initiate blue lights.

6

Q. Okay. So when you activate your blue lights it
automatically turns the camera on?

7

8

A. Yes.

9

Q. And does it automatically turn off?

10

A. It does not. I turn it off.

11

Q. So you have to manually turn it off?

12

A. Yes.

13

Q. Are you able to manually turn it on?

14

A. Yes.

15

Q. So the blue lights just make it happen automatically
but if you choose to you can just flip it on yourself
even without your blue lights is that correct?

16

17

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A. Yes.

19

Q. Okay. Now what we just saw there with you
terminating your pursuit of this car that was the end of
your sort of involvement with the case. In other words
you weren't there when the chase ultimately came to an
end is that right?

20

21

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24

A. Yes.

25

Q. That is correct you were not there?

State v Jerry Gardner
Jerrid Riley-Cross-Examination by Mr. Geel
August 3, 2015

1 A. I was not.

2 Q. Okay. You didn't see the conclusion of the chase,
3 you did not observe the driver or passenger or any
4 occupant of the car when they got out?

5 A. No.

6 Q. So just to be clear you would be unable to identify
7 who was actually driving the vehicle on that day correct?

8 A. Yes.

9 Q. Okay. Nothing further.

10 MR. GEEL: Thank you, Judge.

11 THE COURT: Any redirect?

12 MR. CONDON: No, Your Honor.

13 THE COURT: You may step down. Thank you.

14 [Whereupon, the witness is excused and exits the
15 witness stand]

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State v Jerry Gardner
Jason Cain-Direct Examination by Mr. Condon
August 3, 2015

1 MR. CONDON: The State calls Sergeant Jason Cain.

2 [Whereupon, Sergeant Cain comes forward]

3 [Whereupon, the witness is duly sworn by the Clerk
4 of Court]

5 CLERK OF COURT: Once seated state your first and
6 last name spelling your last name loudly and clearly into
7 the microphone.

8 THE WITNESS: Okay. My name is Jason Cain. The
9 spelling of the name is C-A-I-N.

10 - - - - -

11 JASON CAIN,

12 Having been first duly sworn,

13 Was examined and testified as follows:

14 DIRECT EXAMINATION

15 BY MR. CONDON:

16 Q. Good afternoon Sergeant. Could you describe for the
17 jury who you are employed by and your job title?

18 A. I'm employed by Charleston County Sheriff's Office
19 and I am one of the north area supervisors.

20 Q. And what is some of your training and experience
21 that you have?

22 A. I've been with the Sheriff's Office since roughly
23 1998. I started out in the jail, then I went to Mount
24 Pleasant Police Department and then I came back to
25 Charleston County Sheriff's Office. I worked the road;

State v Jerry Gardner
Jason Cain-Direct Examination by Mr. Condon
August 3, 2015

1 I've been on the SWAT team for about nine and a half
2 years. I'm currently on the bomb squad as a collateral
3 duty. I've been through numerous trainings; I've been in
4 law enforcement for about seventeen years so.

5 Q. And were involved in a high speed chase on Thursday,
6 December 18, 2014?

7 A. Yes, sir.

8 Q. And did you have an in car video of that chase?

9 A. Yes, sir.

10 Q. I'm going to show you what has been marked as
11 State's exhibit 16. Do you recognize that?

12 [Whereupon, the witness is shown exhibit]

13 A. Yes, sir.

14 Q. And how do you recognize that?

15 A. That's my signature right there [indicates].

16 Q. Okay. Is that a true and accurate depiction of
17 your in car video from the chase?

18 A. Yes, sir.

19 MR. CONDON: We ask that State's exhibit 16 be
20 admitted into evidence?

21 THE COURT: Any objection?

22 MR. GEEL: No objection, Your Honor.

23 THE COURT: It's admitted.

24 [Whereupon, State's exhibit number 16 is entered
25 into evidence by the court]

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1 Q. And during this chase did you activate your blue
2 lights and sirens?

3 A. Yes, sir.

4 Q. And what was the defendant's reaction?

5 A. I actually joined the chase after he was -- after
6 the chase had already begun so I was a few minutes I
7 think into the pursuit and I was a secondary vehicle.
8 And with blue lights and sirens activated the defendant
9 continued to flee.

10 Q. And can you describe the chase to the jury?

11 A. My portion of the chase is I entered into the chase
12 -- I was actually at Charleston County Sheriff's Office
13 headquarters when I was notified by dispatch of the
14 pursuit because I was on a different channel.

15 At that time I was the west supervisor so I wasn't
16 privy to the chase being in North Charleston. So they
17 let me know it was on 526 near Leeds and I was right
18 there so I attempted to catch up to the chase.

19 And I monitored both radio channels trying to get --
20 pin down their location at the time because it was
21 obviously continuing to move. I was able to join into
22 the chase somewhere around Joy Avenue, Orange Grove Road
23 in that area of the neighborhood right there.

24 Q. At any time did you observe the driver or passenger
25 try to bail out of the vehicle?

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1 A. Yes, sir.

2 Q. Whereabouts was that?

3 A. That was I believe on Joy Avenue I think is where it
4 was. The car actually pulled over to the side. The
5 right seat passenger the door opened but no one ever came
6 out or anything; it just kind of opened and shut back and
7 the vehicle continued down the roadway.

8 Q. And to your knowledge is that close to the Orange
9 Grove apartments?

10 A. Yes, sir. It's actually the neighborhood right
11 adjacent.

12 Q. At any time did the chase go through Balsam Street?

13 A. Yes, sir.

14 Q. And on the video that was pretty quick but can you
15 get a glimpse of the driver bailing out and the passenger
16 as well?

17 A. The passenger I got a really good look at.

18 Q. On your in car video?

19 A. Yes, sir.

20 Q. And also observed the driver bailing out?

21 A. I did not because I was concentrating on trying not
22 to hit the car in front of me; it was my Lieutenant.

23 Q. And what description did you give of the passenger?

24 A. The passenger was a fairly tall black male wearing
25 dark clothing and he had maybe four to six inch long kind

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1 of twists or braids in his hair.

2 Q. How good of a view did you get of his hair?

3 A. It was pretty good; distance wise twenty to twenty
4 five yards.

5 Q. Okay. And at any time was a suspect detained?

6 A. Yes, sir.

7 Q. And did you go try to identify that person?

8 A. Yes, sir.

9 Q. And was that person consistent or inconsistent with
10 the passenger?

11 A. Oh he was definitely inconsistent with the
12 passenger?

13 Q. Why was that?

14 A. The hair and the height on the individual and the
15 clothing; it just was not correct.

16 Q. And the hair again you said was four to six inches?

17 A. Yes, it was long. I would say twists about that
18 long [indicates], maybe braids or twists.

19 Q. If we go back and look at the video very carefully
20 in the video can you see the driver bailing out and the
21 passenger bailing out as well?

22 A. You can definitely see the passenger sir, yes.

23 Q. And can you again describe to the jury, and I'm
24 going to show you an exhibit that may help. That is
25 State's exhibit 7. Can you recognize that?

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1 [Whereupon, the witness is shown exhibit]

2 A. Yes, sir.

3 Q. And can you describe for the jury the direction in
4 which the passenger ran?

5 A. If you see that what looks like a sidewalk running
6 along the house -- if you have a laser pointer I could do
7 it -- but directly to the right of that vehicle there is
8 a sidewalk and the passenger fled that way [indicates]
9 down the sidewalk.

10 Q. And is that away from the Saint Andrews Garden
11 apartments?

12 A. It is.

13 MR. CONDON: We'd ask that the in car video be
14 published at this time.

15 THE COURT: Yes, sir.

16 [Whereupon, the video plays]

17 [Whereupon, the video stops]

18 Q. [Mr. Condon] Sergeant Cain who was that that
19 followed the driver down the path after he cleared the
20 car out?

21 A. That was Lieutenant Stanley and Deputy Brown I
22 think.

23 Q. I want to replay that last 30 seconds of the jump
24 scene and I want you to point out on the driver's side
25 before it gets to the fence where you can see the driver

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1 bail out. I'd like to replay that part once more.

2 A. I'm sorry; you want me to point out what?

3 Q. The driver's side.

4 A. Okay.

5 [Whereupon, the video plays]

6 [Whereupon, the video stops]

7 Q. Were you able to see the driver bailing out?

8 A. Just barely; just a glimpse. I didn't even
9 recognize it that night, sir.

10 Q. And then again you chased the passenger runaway?

11 A. Correct. That's why you don't see me on video.

12 Q. And afterwards you identified the defendant Jerry
13 Gardner, Jr. who they had detained. Did the passenger
14 match up with his description regarding hair?

15 A. No.

16 Q. And y'all deployed stop sticks. Can you describe to
17 the jury what stop sticks are?

18 A. Stop sticks are a controlled tire deflation system.
19 They're about this long [indicates]. They come in a
20 little black tube. They have a little I'm not sure what
21 the metal is but they are little metal hollow tubes.

22 And what they're designed to do is if the car runs
23 over it they penetrate the tire and then the tip breaks
24 off so you have that piece of metal so you don't have
25 like a blow out; the tire doesn't blow up. It actually

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1 has a controlled release of the air out of the tire. So
2 when you're putting air in your tire that little valve if
3 you just sat there and pushed on it, it would have a
4 steady flow of air come out but the tire doesn't just
5 blow up in your face.

6 That's essentially what it does; it just has a
7 controlled release. But you get numerous of those little
8 tubes in the tire and it slowly deflates the tire.

9 Q. Were y'all able to deploy those in this case?

10 A. We were able to deploy them but not successfully.

11 Q. Okay. No further questions. Please answer any the
12 defense has.

13 THE COURT: Any cross?
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State v Jerry Gardner
Jason Cain-Cross-Examination by Mr. Geel
August 3, 2015

1 CROSS EXAMINATION
2 BY MR. GEEL:
3 Q. How are you sir?
4 A. Good sir.
5 Q. So just to be clear from the outset I may have
6 misheard you but you indicated that was the first time
7 you had actually seen the driver bailing out of the
8 vehicle?
9 A. Yes, actually it was ---
10 Q. --- on the video? So you didn't see the driver bail
11 out when you were actually there?
12 A. No.
13 Q. You did see the passenger bail out?
14 A. I did see the passenger, yes.
15 Q. And we can see on video -- we can see the passenger
16 bailing out on that video correct?
17 A. Yes, sir.
18 Q. And there were only two occupants of the vehicle
19 correct?
20 A. That's correct.
21 Q. And you indicated that you were about twenty to
22 twenty five yards away from the passenger?
23 A. Roughly.
24 Q. Is that when you exited your vehicle? Is that when
25 you were that distance away? When were you that distance

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1 away from the passenger is what I'm asking?

2 A. Right there at the end of the video.

3 Q. Right there?

4 A. Yes, when my car stopped.

5 Q. Would that be light roughly the length of this
6 courtroom?

7 A. No, not the length of the courtroom no.

8 Q. How much further or closer is it than this?

9 A. Probably to just the other side of the bar maybe.

10 Q. Okay. Could you describe in a little bit more
11 detail where the pursuit went? You chased after the
12 passenger?

13 A. My pursuit?

14 Q. Yes?

15 A. Okay. When the passenger bailed out of the car I
16 went around to the back of my car so that's why you never
17 see me cross in front of my video. I go around the back
18 of the car.

19 The passenger ran up the sidewalk and crossed the
20 fence going into the backyard of the house that you can
21 see. I forgot what exhibit it was but the house they
22 showed the picture.

23 Q. Is it this one on State's 7? This house? Did you
24 want to look at it?

25 [Whereupon, the witness is shown photograph]

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1 A. Basically the passenger runs up the sidewalk here
2 [indicates], runs around and goes through here
3 [indicates]. There is a gate that you can't see on this
4 picture, jumps that fence, jumps another fence and so on
5 and so forth.

6 Q. And then what happened? Is that when you stopped
7 pursuing him or did you ---

8 A. --- I stopped pursuing him when I realized that I
9 wasn't catching him.

10 Q. Was that when he hopped over that fence?

11 A. Several fences.

12 Q. Okay. Are you familiar with this area? Have you
13 been around patrolling in that area before Saint Andrews
14 Garden and then the adjacent neighborhood?

15 A. It's a funny way of answering it but yes. I work
16 what we call district 7, which is West Ashley but it had
17 been several years. But that area in there I believe is
18 mostly City jurisdiction so we don't actively do a lot of
19 patrolling in there.

20 Q. I'm going to show you a photograph that is marked as
21 Defendant's exhibit 31. Are you able to identify the
22 locations that are shown on this photograph?

23 [Whereupon, the witness is shown photograph]

24 A. Yes, sir.

25 Q. To your knowledge is that a true and correct copy of

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1 an aerial shot of that area? Is it accurate?

2 A. It looks like it to me.

3 MR. GEEL: Judge, tender defense's 31?

4 THE COURT: Any objection?

5 MR. CONDON: No objection, Your Honor.

6 THE COURT: It's admitted.

7 [Whereupon, defendant's exhibit number 31 is entered
8 into evidence by the court]

9 Q. [Mr. Geel] I'll try to minimize the glare here.

10 [Whereupon, the photograph is shown]

11 Q. Now is this the area right here where the car -- the
12 driver and occupant bailed out of the vehicle where my
13 pen is right now?

14 A. Correct, yes.

15 Q. Okay. And is this house the house that we've seen
16 in State's exhibit 7?

17 A. Yes, sir.

18 Q. The house where the people bailed out right in the
19 front yard?

20 A. It should be, yes.

21 Q. And now the cut through that goes back to Saint
22 Andrews Garden apartments is located approximately here
23 [indicates] isn't that correct?

24 A. Yes, immediately adjacent to the house.

25 Q. And then this big complex we see here this is Saint

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1 Andrews Garden apartments correct?

2 A. Yes, sir.

3 Q. Okay. So the passenger got out of the vehicle in
4 the front yard here [indicates] is that correct?

5 A. Yes.

6 Q. And it's your testimony that he ran up behind this
7 house right here [indicates]?

8 A. That's correct.

9 Q. Now over here this is Saint Andrews Garden
10 apartments as well, correct, this whole complex?

11 A. Yes, sir.

12 Q. Okay. So just to be clear I know that you were
13 just discussing the general proximity when we're talking
14 about the passenger running across the sidewalk and then
15 into the backyard there he is in fact running towards
16 Saint Andrews Garden apartments; just not taking the same
17 cut through or taking the exact same path as the driver?

18 A. I would disagree.

19 Q. Let's take a quick peek.

20 A. I would say he is running parallel to the
21 apartments.

22 Q. Certainly not running away from it would that be
23 fair to say?

24 A. Correct.

25 Q. What we're talking about here is an individual

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1 running here [indicates] and then into generally this
2 area here [indicates], these backyards.

3 A. Okay.

4 Q. Is that fair to say? I'm sorry.

5 A. Well all the way to Rice Court. I ran all the way
6 to Rice Court through the woods, which was not easy.

7 Q. Oh down here [indicates] you mean?

8 A. Yes.

9 Q. Are you familiar with any other cut throughs into
10 Saint Andrews Garden apartments from that neighborhood?

11 A. I didn't see any; not the mess that I was running
12 through.

13 Q. Okay. But you're not aware of any other cut
14 throughs besides the one the driver apparently went down?

15 A. No sir, I'm not.

16 Q. Now just to be clear you did not see the driver and
17 you're not able to identify the driver of the vehicle?

18 A. That's correct.

19 Q. And one last time the description you gave of the
20 passenger was approximately six feet tall black male,
21 black hoodie, black pants with a white t-shirt underneath
22 the hoodie is that correct?

23 A. Yes.

24 Q. And you can see on the video that there is ---

25 A. --- you can see it hanging out the bottom ---

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1 Q. --- it's longer than the hoodie is so you can see
2 the bottom rim of the white t-shirt?

3 A. That's correct. Yes, sir.

4 Q. And did you call that description out to the other
5 officers?

6 A. I think I did.

7 Q. Okay.

8 A. I'm pretty sure I did.

9 Q. Okay. Thank you. Nothing further.

10 THE COURT: Any redirect?

11 MR. CONDON: Just a couple of questions.

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State v Jerry Gardner
Jason Cain-Redirect Examination by Mr. Condon
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REDIRECT EXAMINATION

BY MR. CONDON:

Q. I'd like to put this exhibit back up. Can you kind of trace for the jury exactly the path you took and where you last made contact with the passenger?

A. Yes, sir. Can I walk up to the T.V. and do that because I don't have a pointer?

Q. Sure, absolutely.

A. This is Locksley Court [indicates]. The cut through here [indicates] goes into the apartments. This [indicates] is a ditch line essentially. The vehicle stopped here [indicates], the suspect vehicle here [indicates], Lieutenant Stanley was here [indicates], I was here [indicates].

The passenger ran this way [indicates] behind the house and I chased him through the woods, this is pretty thick woods here [indicates]. We crossed -- I think I crossed three more fences and ultimately came out to somewhere right in here [indicates].

I could see the cul-de-sac at the end of the street here [indicates] at Rice Court and then I -- I couldn't see anything after that so I went back not knowing -- I knew that Lieutenant Stanley was with the driver so I went back to them.

Q. And what was his flight path when you last saw him?

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1 A. When I last saw him he was going towards Rice Court.

2 Q. Which is not towards Saint Andrews Garden apartments
3 correct?

4 A. Correct.

5 Q. And to reiterate one last time what was his hair
6 like, the passenger?

7 A. It was about a four to six inch you know it
8 obviously was in the dark but they were long either
9 twists or braids or.

10 Q. And did the defendant that you observed afterwards
11 did he have four to six inch twists?

12 A. No, sir.

13 Q. So he was inconsistent with the passenger?

14 A. Yes, sir.

15 Q. No further questions.

16 THE COURT: You may step down. Thank you.

17 [Whereupon, the witness is excused and exits the
18 witness stand]

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State v Jerry Gardner
Michael Baker-Direct Examination by Mr. Maynor
August 3, 2015

1 MR. MAYNOR: The State calls Michael Baker.
2 [Whereupon, Mr. Baker comes forward]
3 [Whereupon, the witness is duly sworn by the Clerk
4 of Court]

5 CLERK OF COURT: Once seated please state your
6 first and last name spelling your last name loudly and
7 clearly into the microphone.

8 THE WITNESS: My name is Michael Baker, B-A-K-E-R.

9 - - - - -

10 MICHAEL BAKER,

11 Having been first duly sworn,

12 Was examined and testified as follows:

13 DIRECT EXAMINATION

14 BY MR. MAYNOR:

15 Q. Good afternoon. Officer Baker can you briefly
16 explain what your involvement in this case was?

17 A. Originally ---

18 MR. GEEL: --- I apologize, for interrupting Your
19 Honor. I just want to renew my prior objection and our
20 pretrial issue on this witness.

21 THE COURT: Yes, sir. It is preserved for the
22 record.

23 MR. GEEL: Thank you, Your Honor.

24 Q. [Mr. Maynor] Would you like me to repeat the
25 question?

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1 A. No. The county put out and tried to call us for
2 assistance. They were in a high speed chase. Then the
3 male bailed -- we got a call that he bailed in the
4 Ardmore area I think it was Locksley Drive so I went over
5 to Saint Andrews Garden and was checking cars leaving.

6 Q. Okay. Can you tell us what you do?

7 A. I'm a patrol officer for the City of Charleston.

8 Q. And how long have you been doing that?

9 A. About a year and a half.

10 Q. What did you do before you were a police officer?

11 A. I went to the College of Charleston.

12 Q. Okay. Were you working the night of December 18,
13 2014?

14 A. I was.

15 Q. Where during that incident were you positioned and
16 set up?

17 A. I positioned myself at the entrance of Saint Andrews
18 Garden right at the front of it. There is only one way
19 in and out so I just positioned myself in front of the
20 entrance.

21 Q. What were your instructions to do when you were
22 there?

23 A. I was just checking cars leaving to see if I could
24 locate the suspect trying to leave the scene.

25 Q. I'm going to show you what has already been

State v Jerry Gardner
Michael Baker-Direct Examination by Mr. Maynor
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1 published to the jury as I believe its exhibit 7 -- 4;
2 excuse me. Do you recognize that map? Will you
3 familiarize yourself with that?

4 [Whereupon, the witness reviews map]

5 A. Yes.

6 MR. MAYNOR: Permission to publish this back to the
7 jury?

8 THE COURT: Yes, sir.

9 Q. [Mr. Maynor] Do you see on this map where you were
10 located if you were to zoom out and look at it? Do you
11 see Locksley Drive?

12 A. Yes, I see that.

13 Q. Do you see that X right there [indicates]?

14 A. I do.

15 Q. Do you see that shaded blue thin area?

16 A. I do.

17 Q. Do you know what area that is right there?

18 A. That's Saint Andrews Garden.

19 Q. Okay. Could you roughly estimate or approximately
20 estimate where you were located outside that apartment?

21 A. The blue dot.

22 Q. That blue dot there [indicates]? I'm also going to
23 show you what has been marked as State's exhibit 5. Do
24 you recognize that?

25 [Whereupon, the witness is shown exhibit]

State v Jerry Gardner
Michael Baker-Direct Examination by Mr. Maynor
August 3, 2015

- 1 A. I do.
- 2 Q. Is that area the same area where that blue dot was?
- 3 A. It is.
- 4 Q. Is that one exit there?
- 5 A. Yes, sir.
- 6 Q. It's the only exit?
- 7 A. Yes, sir.
- 8 Q. The only entrance too?
- 9 A. By vehicle, yes.
- 10 Q. And so you were checking cars right?
- 11 A. Yes, sir.
- 12 Q. How many cars did you see come out?
- 13 A. Five to six.
- 14 Q. Were you stopping these cars?
- 15 A. I was looking into each one, yes sir.
- 16 Q. What were you looking for?
- 17 A. The suspect. I was looking for someone matching the
- 18 description of the suspect.
- 19 Q. What was the description that you received?
- 20 A. Black male, black pants, black hoodie.
- 21 Q. Did you stop -- what was the last car that you
- 22 stopped?
- 23 A. It was like a red little pickup truck I believe like
- 24 a GMC.
- 25 Q. How many people were in that car?

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Michael Baker-Direct Examination by Mr. Maynor
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1 A. There was two.

2 Q. Were they two men?

3 A. Yes, sir.

4 Q. Black males?

5 A. Two black males.

6 Q. What did you see then?

7 A. Well as the car was approaching I noticed the
8 passenger matches the description. It was a black male
9 with a black shirt on so I waved for them to stop.

10 And when I approached the driver's side door I
11 believe it was the father he was the driver and the male
12 in the passenger matched the description; he also had the
13 black pants on so I called for backup and asked the
14 driver to put it in park.

15 Q. Did he put it in park?

16 A. No, sir. The passenger actually told the driver to
17 go which then he went for about ten feet as we were
18 yelling for him to stop.

19 Another officer had pulled up to the side and was
20 yelling at him to stop which he did about ten feet away.
21 Then we pulled both the passenger and the driver out of
22 the car.

23 Q. So the passenger was the one wearing the black
24 shirt.

25 A. Yes, sir.

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1 Q. And black pants?

2 A. Yes, sir.

3 Q. He's the one who was fitting the description that
4 you heard?

5 A. Yes, sir.

6 Q. Is that why you told them to stop?

7 A. Yes, sir.

8 Q. Once stopped what happened? Did they get out of the
9 car?

10 A. They did.

11 Q. And did you talk to them?

12 A. I talked to the driver not the passenger. Another
13 officer talked to the passenger.

14 Q. Was it your -- what was your understanding as to
15 their relationship the two men in the car?

16 A. Like I said I spoke ---

17 MR. GEEL: --- Your Honor, objection. Hearsay;
18 this would be based on his interview with that particular
19 person.

20 MR. MAYNOR: Your Honor, I'm asking the witness
21 about his perception of what he believed to be the
22 relationship not as to what anyone had said.

23 MR. GEEL: It would have been derived from what
24 that individual told him.

25 THE COURT: I'll sustain the objection as to the

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1 statement.

2 Q. [Mr. Maynor] Based on what the driver told you what
3 did you do? Did you confirm a relationship status
4 between the two men?

5 A. At first he stated he didn't know the guy and he
6 just picked him up ---

7 MR. GEEL: --- objection, objection, objection ---

8 THE COURT: --- sustained. I'll sustain the
9 objection; it's hearsay.

10 MR. MAYNOR: Beg the court's indulgence.

11 [Whereupon, Mr. Maynor and Mr. Condon confer]

12 Q. [Mr. Maynor] Based on what you learned were you able
13 to confirm that the suspect driving was Jerry Gardner,
14 Sr.?

15 A. Yes, sir.

16 Q. And based on what you learned after that what did
17 you learn about the identity of the passenger?

18 A. It was Jerry Gardner, Jr.

19 Q. Can you identify that individual in the courtroom
20 today?

21 A. Yes, sir. He's sitting in the middle right at that
22 table [indicates].

23 Q. What happened after you identified those two men?

24 A. Well County arrived on the scene to try to identify
25 them. They pretty much took the lead in talking to them.

State v Jerry Gardner
Michael Baker-Direct Examination by Mr. Maynor
August 3, 2015

1 Q. Thank you officer. Please answer any questions
2 defense counsel might have.

3 THE COURT: Any cross?
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State v Jerry Gardner
Michael Baker-Cross-Examination by Mr. Geel
August 3, 2015

CROSS-EXAMINATION

BY MR. GEEL:

Q. So you responded to this scene after the chase had taken place? It concluded before you arrived at the scene correct?

A. Yes, sir.

Q. So you weren't involved in the actual pursuit?

A. No, I was not.

Q. You never actually saw the driver or passenger, the occupants, of the vehicle get out of the vehicle?

A. No, I did not.

Q. You're not able to actually identify the driver based on having seen him in the vehicle at any point?

A. No, he just matched the description of the suspect; that's all.

Q. And that wasn't based on your observation of anyone?

A. No, it was not.

Q. It was just what you were told?

A. Correct.

Q. Okay. Thank you.

THE COURT: Any redirect?

MR. MAYNOR: Yes, Your Honor.

State v Jerry Gardner
Michael Baker-Redirect Examination by Mr. Maynor
August 3, 2015

1 REDIRECT EXAMINATION

2 BY MR. MAYNOR:

3 Q. I just wanted to clarify what did you hear the
4 defendant say to the driver when you asked them to stop
5 the car?

6 A. Go. He told the driver to go.

7 Q. When you stopped the car what did you observe about
8 the two men in the car?

9 A. They were both extremely nervous and the passenger
10 was even sweating.

11 Q. What month was it?

12 A. December.

13 Q. Was it cold outside?

14 A. Yes sir, it was.

15 Q. Was it nighttime?

16 A. Yes sir, it was.

17 Q. What kind of hair did the passenger have?

18 A. Black hair.

19 Q. Did he have short hair, long hair?

20 A. I don't remember at the time. No, I don't remember
21 that.

22 Q. Did he have dreadlocks or braids?

23 A. I don't remember.

24 Q. Okay. Thank you.

25 THE COURT: Anything further?

State v Jerry Gardner
Michael Baker-Redirect Examination by Mr. Maynor
August 3, 2015

1 MR. GEEL: No, Your Honor.

2 THE COURT: You may step down. Thank you.

3 [Whereupon, the witness is excused and exits the
4 witness stand]

5 THE COURT: Call your next witness.
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State v Jerry Gardner
Jerry Gardner, Sr.-Direct Examination by Mr. Condon
August 3, 2015

1 MR. CONDON: The State calls Jerry Gardner, Sr.

2 THE COURT: Step forward please sir to be sworn.

3 [Whereupon, Mr. Gardner comes forward]

4 [Whereupon, the witness is duly sworn by the Clerk
5 of Court]

6 CLERK OF COURT: Once seated please state your first
7 and last name spelling your last name loudly and clearly
8 into the microphone.

9 THE WITNESS: First name Jerry, last name Gardner,
10 G-A-R-D-N-E-R.

11

JERRY GARDNER, SR.

12 Having been first duly sworn,

13 Was examined and testified as follows:

14 DIRECT EXAMINATION

15 BY MR. CONDON:

16 Q. Good evening Mr. Gardner. You would agree you don't
17 want to be here today do you?

18 A. No.

19 Q. And you would agree that Jerry Gardner, Jr. ---

20 MR. GEEL: --- objection, leading.

21 THE COURT: Rephrase the question.

22 MR. CONDON: Your Honor, may I approach?

23 THE COURT: Yes, sir.

24 [Whereupon, an off the record bench conference is
25

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- 1 held]
- 2 Q. [Mr. Condon] Who is your son?
- 3 A. Sitting right over there.
- 4 Q. And what's his name?
- 5 A. Jerry Gardner.
- 6 Q. Jr.?
- 7 A. Yes.
- 8 Q. Does he own a car?
- 9 A. No, he don't.
- 10 Q. And who was his girlfriend back in December of 2014?
- 11 A. Man, I can't tell you. I don't know his girlfriend.
- 12 I stay out of his relationships.
- 13 Q. Have you ever met Shanrrika Gregg?
- 14 A. A couple of times.
- 15 Q. Have you seen them together?
- 16 A. I mean if I met her then obviously they were
- 17 together so.
- 18 Q. And do you know she owns a gold Ford Explorer?
- 19 A. Like I say man I don't really know exactly what she
- 20 owns you know. I can't tell you.
- 21 Q. And what was your address back in December of 2014?
- 22 A. 12/14? The present address was River Front
- 23 Drive.
- 24 Q. Did you also live at Balsam Street at any time?
- 25 A. It was like three or four years ago, two or three

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1 years ago; something like that.

2 Q. So you lived on River Front and Balsam Street. And
3 was your son living with you at the time as well?

4 A. No.

5 Q. And on December 18, 2014 did you get a call from
6 Jerry?

7 A. Yes. Jerry wanted a ride which was a usual request
8 because I've picked him up here and there and taken him
9 several places, so yes.

10 Q. How did he sound on the phone?

11 A. Like Jerry.

12 Q. Was he frantic?

13 A. No.

14 Q. Where did he tell you to pick him up from?

15 A. I think it was from -- what is that place -- it's...

16 Q. Saint Andrews Garden apartments?

17 A. Yes, yes.

18 Q. Do you recall about what time he called you?

19 A. No sir, I don't.

20 Q. Was it close to dark?

21 A. It wasn't close to dark I think it was dark.

22 Q. And how far was that from your house?

23 A. I don't know. A couple of miles maybe two; three
24 maybe, something like that.

25 Q. Do you recall getting pulled over by the police that

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1 night?

2 A. Well, we didn't exactly get pulled over. As we were
3 leaving the apartment complex we was stopped. I noticed
4 they were stopping cars and we was just one of them that
5 got stopped. So we pulled over.

6 Q. What did you tell the officers when you were
7 stopped?

8 A. I didn't tell them anything except about me
9 personally. I thought it was a roadblock you know at the
10 time. My license was suspended and I just wanted to let
11 them know that. I had a D-U-S plus I was drinking that
12 night too.

13 Q. So your license was suspended when you were pulled
14 over and you were drinking. Do you recall telling the
15 police officer you didn't know who the passenger was?

16 A. No, I don't remember saying that.

17 Q. Are you sure about that?

18 A. Well like I said I was drinking. I may have; I
19 don't remember it.

20 Q. So it was possible that you told police officers
21 that you did not know who your passenger was?

22 A. It's possible. If the guy has got it put down then
23 maybe I did; I don't know.

24 Q. Do you recall then telling officers that he called
25 you for help because law enforcement was looking for him?

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- 1 A. Negative, never, never.
- 2 Q. You don't remember that?
- 3 A. It never happened.
- 4 Q. Are you sure about that?
- 5 A. Positive.
- 6 Q. He was pretty upset right that he ---
- 7 MR. GEEL: --- objection, leading.
- 8 Q. [Mr. Condon] That he told on you ---
- 9 MR. GEEL: --- objection, leading.
- 10 THE COURT: Rephrase the question.
- 11 Q. [Mr. Condon] What was his reaction when he found out
- 12 you told on him?
- 13 A. Told what on him?
- 14 Q. About the driving ---
- 15 A. --- what are you talking about? I never told
- 16 anybody anything on him.
- 17 Q. Do you recall getting some phone calls from him?
- 18 A. Yes, but I don't recall that what you're saying
- 19 about his reaction to any phone calls.
- 20 Q. Do you recall him calling you on the phone and
- 21 fussing at you about it?
- 22 A. No sir, I don't.
- 23 Q. Do you recall him telling you how to testify?
- 24 A. Nope.
- 25 Q. You sure about that?

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- 1 A. I'm positive.
- 2 Q. If we had a recording that said otherwise what would
3 you say about that?
- 4 A. I don't know what I would say about it. I just
5 don't remember it -- saying that. I don't remember any
6 conversations at that point.
- 7 Q. And do you make a habit of driving under suspension?
- 8 A. No. And I usually try to follow the law. I lived
9 in Atlanta for like seven or eight years and they got me
10 screwed up, they got me screwed up right now. But no I
11 don't make it a habit.
- 12 Q. When you're driving -- I mean why would you go drive
13 that night? Was there some important reason that you
14 were driving?
- 15 A. I ain't know. I just drove you know. I shouldn't
16 have but I did.
- 17 Q. Anytime your son calls you for a ride do you go pick
18 him up?
- 19 A. He don't make it a habit but it's not an unusual
20 request you know him asking for rides.
- 21 Q. So it would be normal for you to drive under
22 suspension to pick him up if he called you?
- 23 A. No, sir. I just said normally I prefer not to drive
24 like that but I just happened to be driving that night
25 under D-U-S.

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1 Q. Do you remember him being sweaty that night?

2 A. No. I know I was sweaty from drinking.

3 Q. Do you love your son?

4 A. Yes, I do.

5 Q. Would you do anything for him?

6 A. I think like anybody in this room man you know what
7 I mean. They probably would say the same thing yes, they
8 would pretty much do anything for them.

9 Q. Did you know what he did before he called you?

10 A. No, I don't. I don't follow his every little move,
11 every little step. He's a grown man pretty much.

12 Q. Would you cover for him?

13 A. Would I cover for him?

14 Q. No further questions.

15 THE COURT: Any cross?

16 MR. GEEL: No, Your Honor.

17 THE COURT: You may step down.

18 [Whereupon, the witness is excused and exits the
19 witness stand]

20 THE COURT: Call your next witness.

21

22

23

24

25

State v Jerry Gardner
Austin Rissanen-Direct Examination by Mr. Condon
August 3, 2015

1 MR. CONDON: The State calls Officer Rissanen.

2 Also will be for rebuttal, Your Honor.

3 [Whereupon, Officer Rissanen comes forward]

4 [Whereupon, the witness is duly sworn by the Clerk
5 of Court]

6 CLERK OF COURT: Once seated please state your
7 first and last name spelling your last name loudly and
8 clearly into the microphone.

9 THE WITNESS: I'm Austin Rissanen. My last name is
10 spelled R-I-S-S-A-N-E-N.

11 - - - - -

12 AUSTIN RISSANEN,

13 Having been first duly sworn,

14 Was examined and testified as follows:

15 DIRECT EXAMINATION

16 BY MR. CONDON:

17 Q. Can you explain to the jury your job title and
18 position?

19 A. I'm a deputy with the Charleston County Sheriff's
20 Office.

21 Q. And back on December 18, 2014 did you respond to the
22 conclusion of a high speed chase?

23 A. I did.

24 Q. And where did you respond to?

25 A. I responded to the very end of Locksley Drive in

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1 West Ashley in Charleston County.

2 Q. Okay. And when you got on the scene what did you
3 observe?

4 A. I was informed by Lieutenant Stanley and Sergeant
5 Cain that the subject had went down kind of like a ditch
6 area that was leading into Saint Andrews Garden
7 apartments.

8 At that time my vehicle was still on Locksley. I
9 got out on foot and went into Saint Andrews Garden
10 apartments to look for the subject.

11 Q. And can you kind of describe what happened after
12 that?

13 A. Certainly. At that time our main focus was to set
14 up a perimeter. Any time we have kind of pursuit or
15 anything like that we try to figure out what area they
16 are going into and have officers coordinate with other
17 agencies, which in this case it was the City of
18 Charleston and us, set up perimeters so that if the
19 subject leaves.

20 Commonly and consistently in pursuits in any type of
21 situation we have a subject we're looking they'll often
22 call rides. We've even had people call taxis to the
23 scene before. So our focus was to basically freeze the
24 area to secure it and try to look for the subject and
25 make sure that we communicate that with all of our

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1 officers.

2 Q. And was a checkpoint established?

3 A. It was. I spoke with the City of Charleston
4 officer, Officer Baker from the back of Saint Andrews
5 Garden apartments and almost immediately as soon as were
6 trying to set up our perimeter I asked him to go to the
7 front of the apartment complex on Brookwood Drive.

8 There is only one exit for the apartment complex so
9 if the subject was to call for a ride he would be leaving
10 out of that exit.

11 Q. At any time did they stop somebody who matched the
12 description?

13 A. Yes, almost probably from two to five minutes after
14 he got in place, it was very quickly, they stopped
15 someone and immediately notified me on the radio to come
16 over there because they had someone who matched the
17 description.

18 Q. And can you describe for the jury what you observed
19 when you went up there?

20 A. Certainly. When I went there the City of Charleston
21 had a GMC red pickup truck that was stopped. The subject
22 who just spoke, Mr. Gardner, Sr. was the driver of the
23 vehicle and the defendant was the front passenger. And
24 when I walked up I noticed that the passenger was wearing
25 the clothes that had been described in this case. He was

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1 also observed to be sweating profusely, his hands were
2 trembling uncontrollably. His demeanor and physique
3 based off of the sweating and everything would be
4 consistent with someone that was running considering it
5 was wintertime and not many people out riding around are
6 really heavily sweating like they just came from the gym.

7 Q. What did you learn had happened when you first
8 approached them?

9 A. I first talked to them -- I don't ever interview two
10 people together. I asked the father to step aside with
11 me which is the person who just spoke. While speaking
12 with him he originally told me that they didn't know each
13 other.

14 He stated that he was riding around in the apartment
15 complex, he couldn't tell me a reason why and that the
16 defendant flagged him down. He didn't know him and he
17 felt like he should give him a ride.

18 When I looked at both of their I.D. cards I noticed
19 they had the same name; even the same middle name. When
20 I asked him about their names he admitted that he was the
21 father.

22 Q. And what else did he tell you about what he learned
23 from the son?

24 A. After he came clean about him being the defendant's
25 father I then started asking him why he was in the area.

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1 He stated that he received a phone call from the
2 defendant; the defendant seemed very, very frantic on the
3 phone, very upset. The defendant directly told him that
4 he was running from law enforcement and that he needed
5 him to come pick him up.

6 The defendant then told me that he left his house at
7 River Front, which if anyone is familiar with the
8 West Ashley area that's right off Orange Grove Road
9 that's only 1.71 miles away so in traffic it would take
10 about four minutes to get to the apartment complex so
11 it's very close by.

12 Q. And at that time did you take the defendant Jerry
13 Gardner, Jr. into custody?

14 A. Based on what the father had told me I felt like
15 that there was a strong -- any reasonable and prudent
16 person would believe there was a strong probability that
17 this might be the subject. However, during our
18 investigation we also discovered --

19 Q. --- hold on a second.

20 MR. CONDON: I'm sorry, Your Honor.

21 A. We did take him in custody.

22 Q. [Mr. Condon] And at that point did you read him his
23 Miranda rights?

24 A. Yes.

25 Q. And do you have a card that you advise ---

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1 A. --- yes ---

2 Q. --- their rights?

3 A. I usually keep a card that way it's consistent with
4 every case the same exact Miranda rights, everyone is
5 read the same exact card for every case we have.

6 Q. And can you read the rights that you read to him
7 that night?

8 A. Yes. Miranda rights are ---

9 THE COURT REPORTER: --- and read slowly please.

10 A. You have the right to remain silent. Anything you
11 say can and will be used against you in a court of law.
12 You have the right to talk to a lawyer and have him
13 present with you while you're being questioned.

14 If you cannot afford to hire a lawyer one would be
15 appointed to represent you before any questioning if you
16 wish. If you decide at any time to exercise these rights
17 and not answer any questions or make any statements. Do
18 you understand each of these rights as I have explained
19 them to you?

20 Q. And after you read him his rights did he agree to
21 talk to you?

22 A. He didn't refuse to talk to me however he was very,
23 very uncooperative. He kept making statements -- he
24 started using a lot of profane language, he was very loud
25 and boisterous with us on the side of the road. He was

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1 very uncooperative. I chose at that time not to talk to
2 him.

3 Q. And he told you he was involved correct?

4 A. He did.

5 Q. At that time. On the way back, back at the station
6 did y'all kind of reinitiate some Q and A?

7 MR. GEEL: Your Honor, I just renew our prior
8 objection.

9 THE COURT: It's noted for the record.

10 Q. [Mr. Condon] And can you tell the jury what he told
11 you?

12 A. Yes. We went to the detention center at the jail.
13 There is a very large sally port. It's basically where
14 we go to start preparing like to complete all the
15 paperwork that is necessary before we take someone inside
16 the jail.

17 I have a laptop computer so usually I'll be sitting
18 in my car with the defendant in the backseat and I'll be
19 preparing the appropriate paperwork to go inside like the
20 booking form that has all the charges and the subject's
21 information.

22 So it can take a couple of minutes to complete that.
23 While I was filling out the paperwork me and him started
24 to talk. He started to ask me how he was being charged
25 for the charge of failure to stop for blue lights because

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1 none of us had saw him driving the car, physically saw
2 him driving the car. Do you want me to continue? While
3 speaking with that I asked him would his fingerprints be
4 on the car.

5 I never mentioned what kind of car was involved in
6 the pursuit; I never mentioned the car. I just asked him
7 would his fingerprints would be on the car. He then
8 stated yes, they would be that the car belongs to his
9 girlfriend; completely being unaware of which car I was
10 talking about because I never mentioned what car was in
11 question.

12 After speaking about his fingerprints being on the
13 car I then asked him would your fingerprints be on the
14 iPad that was in the car? I never mentioned to him that
15 we were investigating a stolen iPad; I just mentioned
16 that there was an iPad in the car.

17 Immediately he knew exactly what iPad I was talking
18 about and stated that his fingerprints would be on the
19 iPad and he directly associated himself with this iPad.
20 And he also made statements stating that -- I'm going to
21 refer back to my report; this was back in December so.

22 [Whereupon, the witness reviews document]

23 A. He also made statements stating that he purchased
24 the iPad from an unknown subject so that we could not
25 charge him for a burglary charge but we only could charge

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Austin Rissanen-Direct Examination by Mr. Condon
August 3, 2015

1 him for receiving stolen goods.

2 Q. No further questions.

3 THE COURT: Any cross?

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State v Jerry Gardner
Austin Rissanen-Cross-Examination by Mr. Geel
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1 CROSS-EXAMINATON

2 BY MR. GEEL:

3 Q. How are you sir?

4 A. I'm great.

5 Q. Just to be clear you did not actually participate in
6 the high speed chase?

7 A. I did not and I did not see him exiting the vehicle.

8 Q. You didn't see either of the occupants exit the
9 vehicle?

10 A. No, I got there later.

11 Q. Now as far as you indicated during your direct
12 testimony that Jerry, Sr. had indicated that Jerry, Jr.
13 had called him and said that the police were after him or
14 something to that effect?

15 A. Yes.

16 Q. But he didn't indicate specifically whether he had
17 been the driver of the vehicle?

18 A. No.

19 Q. He just said that the police are after me.

20 A. Yes.

21 Q. And the police, you and all of your colleagues were
22 in pursuit at that point with both the driver and the
23 passenger correct?

24 A. No, not necessarily. On pursuits we focus our
25 attention directly on the driver because we don't

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1 necessarily always know why the vehicle is running when
2 we get involved in a pursuit so at that time we wouldn't
3 have a charge on the passenger. The charge at the time
4 would be failure to stop for blue lights.

5 Even the iPad case would be a North Charleston case.
6 Our case would be failure to stop for blue lights. And
7 the passenger would not have technically committed a
8 crime so no; we were only looking actively for the
9 driver. I didn't even at the time know about a passenger
10 until later on.

11 Q. Let me ask you this way. Are you aware of the
12 passenger having fled the area on foot?

13 A. No.

14 Q. You're not aware of that?

15 A. No, I was not.

16 Q. Okay. Now lastly the statement -- your testimony
17 that Mr. Gardner made a statement at the jail regarding
18 the iPad saying specifically what? That you can only
19 get me on receiving -- can you repeat that portion of
20 your testimony?

21 A. Yes, because I was taking notes as he was speaking
22 to me. Now keep in mind while he was speaking to me he
23 was still very uncooperative. This was more of a tangent
24 that he was going on. But when I asked him about the
25 iPad he specifically stated that his fingerprints would

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1 be on the iPad because he purchased it from someone,
2 which he stated off the street but that we could not
3 charge him for burglary; we could only charge him for
4 receiving stolen goods.

5 So basically what he was doing was he communicating
6 to me that he wasn't the person that burglarized the
7 victim's car; that he only came into possession of this
8 iPad at a later time is what he was doing by
9 communicating it to me.

10 Q. Okay. Nothing further. Thank you.

11 THE COURT: Any redirect?

12 MR. CONDON: No, Your Honor.

13 THE COURT: You may step down. Thank you.

14 [Whereupon, the witness is excused and exits the
15 witness stand]
16

STATE OF SOUTH CAROLINA	)	COURT OF GENERAL SESSIONS
	)	
COUNTY OF CHARLESTON	)	DOCKET NO. 2015-GS-10-2268
	)	2015-GS-10-2269
	)	2015-GS-10-4407
	)	
STATE OF SOUTH CAROLINA	)	
	)	
vs.	)	
	)	
JERRY LEWIS GARDNER, JR.	)	
	)	
Defendant	)	
	)	
	)	
	)	
	)	TRANSCRIPT OF RECORD
		August 4, 2015
		Charleston, South Carolina

VOLUME 2 (OF 3)

B E F O R E:

THE HONORABLE ALISON RENEE LEE, JUDGE

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1 is fairly conclusive evidence that those phones belong to
2 two separate people and neither of them my client. The
3 reason that we want this evidence in is because we will
4 be able to argue based on that evidence that there were
5 individuals in the car who was not my client. As Your
6 Honor I'm sure can tell at this point the biggest issue
7 here is identity whether the State can prove that Mr.
8 Gardner was driving the car.

9 Our ability to put individuals in the car who
10 weren't my client goes directly to that defense and
11 that's why these exhibits are relevant. They are
12 photographs, call logs, text message logs, GPS data;
13 things along those lines which all tend to suggest that
14 those phones did not belong to my client and we don't
15 know precisely who one of those phones belongs to. So
16 basically that's why it's relevant; it shows that there
17 were other people in the car.

18 THE COURT: Is there not any information relating
19 to who the numbers belong to, the cell numbers belong to?

20 MR. CONDON: Your Honor I believe -- I'll ask on
21 direct who the phones belong to and she is going to tell
22 us the names. I don't think all these records are
23 relevant to prove any point beyond that. And in fact if
24 you can look at some of these, these are like
25 pornographic images off the guy's phone. I don't know

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1 THE COURT: Ladies and gentlemen this is a good
2 time to take a morning break. I'm going to remind you of
3 the instructions that I've given to you that is not to
4 begin to discuss this matter among yourselves as you've
5 not heard all the evidence that has to be presented.
6 Let's take a morning break and then we will come back and
7 continue on.

8 [Whereupon, the jury exits at 11:44 a.m.]

9 THE COURT: Anything we need to take up before we
10 take our break?

11 MR. GEEL: No, Your Honor.

12 MR. CONDON: Your Honor, we just ask how many more
13 witnesses do you want to do before a lunch break?

14 THE COURT: It depends on how long they are and how
15 many you're going to get through.

16 MR. CONDON: Okay.

17 THE COURT: I don't know who your next witnesses
18 are so I can't answer that question.

19 MR. CONDON: Okay. How much longer do you
20 anticipate going?

21 THE COURT: Usually I take a lunch break somewhere
22 around 1 o'clock.

23 MR. CONDON: Okay. Sorry, Your Honor, one other
24 question. We have a little bit awkward situation with
25 this probation and parole agent. Can we address how we

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1 want to admit this evidence then of the sticky note in
2 the car? I just want to make sure I don't overstep how
3 I'm supposed to introduce this. I don't know if we can
4 just stipulate that it belonged to him and he got it on
5 December 9th, 2014.

6 THE COURT: I haven't seen the one with the sticky
7 note. I saw the letter; I didn't see the other one. Do
8 we have a photograph of it?

9 MR. CONDON: We actually have the note itself, Your
10 Honor.

11 [Whereupon, Mr. Condon provides document to the
12 court]

13 THE COURT: And what was that attached to?

14 MR. CONDON: This was on the center console of the
15 car.

16 THE COURT: So it wasn't attached to any document
17 or anything like that?

18 MR. CONDON: No, Your Honor. My understanding it
19 was just in the center console according to the crime
20 scene notes. It was like in plain view right when you
21 got in the car is my understanding of it. I don't
22 believe they got a picture of it.

23 MR. GEEL: There is no image that I've seen. And
24 Your Honor, I'd maintain my prior objection to this. The
25 problem is that I'm not sure how it could be redacted in

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1 a way that will make any sort of sense to the jury. The
2 entire top of it would have to be blocked out as would
3 the word agent. And beyond that I guess I don't want to
4 put the cart before the horse but I think that there
5 might be some foundational authentication issues in terms
6 of the agent being able to actually identify this because
7 it doesn't have my client's name on it. I'm certain that
8 she gives lots of these out. I guess that remains to be
9 seen. I'm anxious to see whether she can actually
10 authenticate this as the note she gave to Jerry.

11 THE COURT: For the record just to describe the
12 note it's a post it note but it's a post it note that has
13 the heading on it of the Department of Probation, Pardon
14 and Parole Services or whatever the correct name of the
15 agency is if I don't have it in the right order. And
16 then in the other part of the note is handwritten Agent
17 Grissett return and then a date that is on it.

18 So previously as we discussed it I thought it was
19 just a regular post it note. I didn't realize it was one
20 that had the agency's name at the top of the post it
21 note. So the agent part could have been redacted without
22 a problem. I think the only other way I can see that is
23 to cut off the top of it or...

24 MR. CONDON: Your Honor, if I may? This case is
25 tough because we've got to link him to the car and the

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1 defense says he's not in the car. And everything that
2 associates with himself aren't necessarily nice things
3 but it's very probative of him being in the car. It's
4 the only piece of evidence that we have establishing him
5 really a document that has a time date on there close to
6 the event so we believe that's highly probative.

7 The whole argument was that he wasn't in the car and
8 hasn't been in the car. That's what the whole defense
9 has been presenting. We believe a limiting instruction
10 to the jury not to consider that could quell any dangers
11 of unfair prejudice. And we think that the probative
12 value of this is great and we should be able to admit it
13 to prove our case.

14 THE COURT: Well I'll tell you the issues I have
15 with it only because it's obviously probation and or
16 parole department. And so that leaves an inference that
17 he's had some prior contact or there is some -- some part
18 of his past which required him to come into contact and
19 they still continue for him to come into contact.

20 You might be able to give a limiting instruction if
21 -- without the agent's testimony but if the agent is on
22 the witness stand and testifies then the explanation as
23 to why he has contact could easily be ascertained from
24 the agent. Of course from what I understand from you all
25 he's on probation or parole for some previous criminal

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1 offense which I presume is not a misdemeanor that could
2 create some problems associated with this particular case
3 and what inferences the jury would draw from the fact
4 that he had been convicted of a prior felony. And even
5 if the charge is not related to anything in this
6 particular case it still creates some issue that perhaps
7 he may have committed some criminal offense in this
8 particular case.

9 I understand that under other evidentiary provisions
10 prior bad acts can be admissible to establish identity
11 and motive but I think it has to be done in the proper
12 way. I haven't heard either side discuss how that would
13 occur in this particular case. So those are my concerns.

14 MR. CONDON: Okay. Could we agree to submit it
15 without testimony? Would that alleviate concerns of
16 pointing you know ---

17 THE COURT: --- well he's not going to agree to
18 that.

19 MR. GEEL: The issue is that the note has no
20 relevance without knowing who it is from and knowing who
21 it's from is the problem. And that's what Your Honor is
22 describing. Having Ms. Grissett come in here the risk is
23 too great that the jury will surmise how my client had
24 contact with her. And due to the level of prejudice we
25 have here it just can't come in. I submit to the court

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1 that it can't come in. The note has no relevance without
2 knowing what it's from. It doesn't have Jerry's name on
3 it. If we don't have any testimony Grissett return on
4 whatever -- Grissett return on a specific date and it's
5 blacked out who it's from and it's blacked out that it is
6 Agent Grissett it fails to have any relevance at that
7 point. There is no way a jury would know what to do with
8 that.

9 MR. CONDON: Also, we'd rely, Your Honor, on Rule
10 404 subpart (b) the admissibility of evidence to prove
11 identity. Again we're not offering it to show that he is
12 on probation. We're offering it to show his identity.
13 And that really is the heart of the matter in this case
14 is identity. This is a very important piece of evidence
15 for the State's case to establish the timeframe that he
16 has been in the car and he is in the car at some time.
17 And the location of it is such that a person who would
18 continually use the car would see it there as well.

19 THE COURT: Well, what I would suggest is that we
20 have her testify in camera for a more complete -- to
21 generally hear the information about what contact she had
22 with him and the reason for her contact and whether or
23 not there are portions of that that may or may not be
24 admissible. So we can have it in camera testimony about
25 that. I think without doing some additional review I

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1 understand that under 404 evidence of prior bad acts can
2 be used to establish identify. As I recall the case law
3 the identity is generally to establish that because of
4 whatever bad acts this person would have committed the
5 crime involved here. And there is generally some logical
6 connection between the prior bad act itself and the crime
7 with which the person is charged.

8 I understand in this case it is a little bit
9 different. You're not trying to connect the fact that he
10 was convicted of some other charge to establish that the
11 logical connection that he was the perpetrator of this
12 particular crime other than to show that there was a
13 piece of paper that was given to him, which was given to
14 him personally which was found inside the vehicle. And
15 so the prior bad act is not really relevant to the bad
16 act that's occurring in this particular case; it's only
17 because of the testimony from that particular witness
18 that person being the parole -- the probation agent or
19 parole agent to establish that she has had contact with
20 him and it was for some other crime.

21 So I need to hear it first to be able to tell you
22 completely what to do about it -- whether it's admissible
23 or not actually. It's up to you how you choose to admit
24 it but whether it's admissible or not and whether it's
25 probative value exceeds the prejudice that would be

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1 caused by the testimony.

2 MR. CONDON: Okay. Do you want to do that after
3 the break or when is the best time for that to be?

4 THE COURT: When do you intend to call the witness?

5 MR. CONDON: Soon within a couple -- we've only got
6 a couple more.

7 THE COURT: Who's your next witness?

8 MR. MAYNOR: Your Honor, our next witness is Angela
9 Watts. She's from the South Carolina Department of Motor
10 Vehicles.

11 THE COURT: And then who is after that?

12 MR. CONDON: We'd call either Agent Grissett or
13 Moore. We only have two more witnesses; it would be
14 Anderson and Sherbine.

15 THE COURT: Are you calling --

16 MR. CONDON: I'm sorry?

17 THE COURT: Are you calling Tamesha James?

18 MR. CONDON: No, I don't think we need to call her.

19 THE COURT: I mean you can go ahead and call her
20 now, Grissett, so we can go ahead and do it in camera
21 while the jury is out.

22

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State v Jerry Gardner
Jokira Grissett-In Camera-Direct Examination by Mr. Condon
August 4, 2015

1 MR. CONDON: The State calls Agent Grissett. And
2 also for the record we had her not wear her probation and
3 parole identification badge and all that stuff and
4 uniform.

5 [Whereupon, Agent Grissett comes forward]

6 [Whereupon, the witness is duly sworn by the Clerk
7 of Court]

8 CLERK OF COURT: Once seated please state your first
9 and last name spelling your last name loudly and clearly
10 into the microphone.

11 THE WITNESS: Jokira Grissett, G-R-I-S-S-E-T-T.

12 - - - - -

13 JOKIRA GRISSETT,

14 Having been first duly sworn,

15 Was examined and testified as follows:

16 DIRECT EXAMINATION

17 BY MR. CONDON:

18 Q. Good morning. Just to let you know it's okay to
19 talk about things right now. I think beforehand I told
20 you not to discuss your job and all that but it's okay in
21 front of the Judge here. Can you explain to the Judge
22 where you work at right now?

23 A. I'm a probation and parole agent.

24 Q. At any time were you involved with the supervision
25 of Jerry Gardner, Jr.?

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Jokira Grissett-In Camera-Direct Examination by Mr. Condon
August 4, 2015

1 A. Yes.

2 Q. And did you see him for an appointment?

3 A. Yes.

4 Q. What day was that and when?

5 A. December 9, 2014.

6 Q. And at that appointment did you give him a note?

7 A. Yes.

8 MR. CONDON: I'm sorry Your Honor, one second. I
9 just need to figure out my last number here.

10 [Whereupon, State's exhibit number 48 is marked by
11 the court reporter]

12 Q. [Mr. Condon] I'm going to show what has been marked
13 as State's exhibit 48. Do you recognize that note?

14 [Whereupon, the witness is shown exhibit]

15 A. Yes, sir.

16 Q. And is that the note that you gave Jerry Gardner,
17 Jr.?

18 A. Yes.

19 Q. And that was on December 9, 2014?

20 A. Yes.

21 Q. And was that for a follow up appointment?

22 A. Yes.

23 Q. And what date was the follow up appointment?

24 A. January 13, 2015.

25 MR. CONDON: No further questions, Your Honor.

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Jokira Grissett-In Camera-Direct Examination by Mr. Condon

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1 We'd just ask that that be admitted for purposes of this
2 hearing that exhibit.

3 THE COURT: So that would be the intent of the
4 questions that you would intend to ask her?

5 MR. CONDON: Well, I could also limit it to not get
6 into the supervision stuff too much. I'm pretty
7 flexible. I just want to be able to get the note in tied
8 to the date; that's my only concern just that he got the
9 note on December 9th. That's all I really care to ask
10 and get the note in.

11 MR. GEEL: Your Honor, for purposes of what we're
12 doing here would you mind if I ask a few questions?

13 THE COURT: No, go ahead.
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State v Jerry Gardner
Jokira Grissett-In Camera-Cross-Examination by Mr. Geel
August 4, 2015

1 CROSS-EXAMINATION

2 BY MR. GEEL:

3 Q. So that particular note you're identifying that as
4 the note you gave to Jerry Gardner. How exactly -- you
5 recognize your handwriting?

6 A. Yes.

7 Q. Okay. Are you certain that you gave that precise
8 note to Jerry Gardner?

9 A. Yes.

10 Q. How are you sure of that?

11 A. From my notes.

12 Q. Excuse me?

13 A. From my notes.

14 Q. What notes?

15 A. From my documents in the office.

16 Q. Okay. Can you go into more detail about that
17 please?

18 A. Every time someone reports we have to document it
19 and I documented it that I gave him this note.

20 Q. That particular note?

21 A. Yes.

22 Q. Or a note that read that he needed to return on a
23 specific date?

24 A. Yes.

25 Q. Okay. And you're certain that that's that note?

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Jokira Grissett-In Camera-Cross-Examination by Mr. Geel
August 4, 2015

1 Did you give anyone else a note to return on a specific
2 date? Do you typically hand out notes letting people
3 know?

4 A. Yes.

5 Q. So anyone who had a return date you would give them
6 a note like that?

7 A. Yes.

8 Q. Okay. Do you often meet with more than one
9 individual that you are supervising in the same day?

10 A. Yes.

11 Q. So it's possible that this is a note that you gave
12 to someone else and not to Jerry?

13 A. It could be.

14 MR. GEEL: Your Honor, I raised the issue earlier
15 there is an authentication problem here without Jerry's
16 name on it.

17 MR. CONDON: Your Honor, she's clearly identified
18 it as belonging to Jerry. That's cross-examination ---

19 MR. GEEL: --- she just said she couldn't be
20 certain that it was the one she gave to Jerry Gardner.
21 She said it very clearly.

22 THE COURT: No, what I get out of it is that she
23 said she gave a note to Jerry. I understand that that's
24 the argument that you want to make to the jury and that's
25 the inference. And I understand that it may raise --

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Jokira Grissett-In Camera-Cross-Examination by Mr. Geel
August 4, 2015

1 what you want to argue may raise other questions about
2 who had access to the car and who all she would have
3 supervised. But she clearly testified that she gave that
4 note to the defendant in this case. And you're free to
5 argue it could have been anybody else she came into
6 contact with but I've got to get through some other
7 hurdles before we get to that point.

8 I don't think it's a foundation issue. She
9 indicated that she documented in her notes that she gave
10 a note to him; that she gives that note out to
11 individuals who need to report back. So you're free to
12 argue -- if I let it in you will be free to argue that it
13 could have been given to anybody else but I don't think
14 that's a foundation issue. And so there is an elephant
15 in the room which nobody is talking about is why does he
16 have to report to her.

17 MR. CONDON: Your Honor, we would make no mention
18 of that or discuss that. That's not our intent of the
19 plan. We're just establishing a timeline of when he was
20 in the car and when he got the note. We would not ask
21 that and I don't think that's relevant. Again, we agree
22 a limiting instruction would be appropriate but we're not
23 going to bring attention to it. We're just going to ask
24 the question, show them the note and put her up there and
25 that's it.

State v Jerry Gardner
Jokira Grissett-In Camera-Cross-Examination by Mr. Geel
August 4, 2015

1 MR. GEEL: Your Honor, it seems to me from what her
2 testimony would be that all of this ceases to have any
3 relevance without an explanation of who she is. And of
4 course we can't get into that. The jury simply can't
5 hear why she had contact with Jerry Gardner. And the
6 evidence doesn't have any relevance if she can't
7 specifically testify that she gave Jerry that note and in
8 what context she did. So we're kind of -- it's a rock
9 and a hard place. We certainly don't want the jury to
10 learn the context in which he got it and without that the
11 note doesn't make any sense. There is no way the jury
12 will know what it means.

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State v Jerry Gardner
Jokira Grissett-In Camera-Examination by the Court
August 4, 2015

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EXAMINATION

2

BY THE COURT:

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Q. Ms. Grissett, for what purpose were you supervising

4

Mr. Gardner?

5

A. I took his report that day.

6

Q. And are you his -- do you supervise him on a regular

7

basis or was this a onetime thing?

8

A. It was a onetime thing.

9

Q. So you don't supervise him all the time?

10

A. No, ma'am.

11

Q. So how did he come to be in the office that day or

12

how did he come to see you that particular day?

13

A. I think there was some things switching around with

14

the caseloads and I was in the office and I seen him that

15

day. I'm not sure whose offender he was.

16

Q. And do you recall for what charge you seeing him?

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A. For why he is on probation?

18

Q. Yes, ma'am.

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A. For breaking and entering.

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State v Jerry Gardner
Jokira Grissett-In Camera-Remarks by Mr. Condon
August 4, 2015

1 MR. CONDON: Your Honor, we'd also argue under Rule
2 403 the balancing is a favor of admissibility. The
3 unfair prejudice has to substantially outweigh the
4 probative value. This would be a case where they are
5 trying to have their cake and eat it too. They want to
6 claim he wasn't in the car. We've got stuff hooking him
7 up in the car and now they want to exclude it. We're not
8 going to talk about his probationary offense. We're not
9 going to get into all that. We're going to ask the basic
10 questions to get the note it, establish the date and be
11 done with it.

12 [Whereupon, the court reviews documents]
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State v Jerry Gardner
Jokira Grissett-In Camera-Remarks by the Court
August 4, 2015

1 THE COURT: I think the evidence is relevant, it's
2 clearly relevant. And under 404 I think it relates to
3 the issue of identification. It provides some relevant
4 evidence to indicate that the defendant may have been in
5 the car at the time that these crimes occurred on
6 December the 18th. And by establishing that there may
7 have been some evidence of -- information that belonged
8 to him in that vehicle so it places him in the vehicle.
9 Whether it places him in the vehicle on the 18th or not
10 that's up to jury argument and obviously that's still
11 going to be up to the jury to make that decision.

12 But it at least provides some evidence to show that
13 he had access to the car at one particular time or that
14 there was information in the car that could be attributed
15 to him. I think that if -- I don't have any problem with
16 asking her a couple of questions like leading questions
17 without going into detail as to where she works or
18 anything along those lines is to ask her did she have
19 occasion to meet with him on December -- an occasion to
20 meet with the defendant in December.

21 And you can ask her what date was that. Did you
22 provide this note to him and have her identify the note
23 and then be done with it. I think that that -- it
24 doesn't say that he was being supervised. It doesn't say
25 that he was -- the reasons why she met with him, she met

State v Jerry Gardner
Jokira Grissett-In Camera-Remarks by the Court
August 4, 2015

1 with him on that date. The only time she ever saw him or
2 met with him was on December the 9th. She met with him
3 and gave him the note and for him to return. And it
4 doesn't say she is supervising him. It doesn't say that
5 his case was somebody else's you know somebody else's
6 caseload that was being transferred or rearranged. It
7 doesn't really provide any additional information, and
8 then in connection -- since there would be a charge
9 related to identification that would go to the evidence
10 of identification and leave it at that.

11 All evidence at some particular point may be
12 prejudicial because the prejudice outweighs the probative
13 value. And if presented in that manner I would say no.
14 If we go into he is being supervised by the department I
15 think that creates some additional questions. But to say
16 I met with him and she's not in uniform. She doesn't
17 have to say where she works I can leave it at that.

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State v Jerry Gardner
Jokira Grissett-In Camera-Remarks by Mr. Geel
August 4, 2015

1 MR. GEEL: Your Honor, if I could just for the
2 purposes of the record. We would object to it being
3 admitted under 404(b). I believe that was the court's
4 ruling. Well, first of all we weren't given any notice
5 that this evidence would be offered for that purpose.
6 And beyond that I think it creates an issue where if
7 there is evidence admitted under 404(b) the jury has to
8 be instructed it's my understanding that they can only
9 consider that evidence for a limited purpose. So I
10 believe the instruction includes language along the lines
11 of prior bad acts and so forth.

12 So if there is a problem where we need to instruct
13 the jury how to use this evidence under 404(b) we'll
14 essentially highlight the prejudicial problem that we
15 have here which that this is being offered under 404(b)
16 or admitted under 404(b) and it's a prior bad act
17 according to the court's ruling. So we have an issue in
18 terms of how we'll have to instruct the jury on how to
19 understand the evidence. And we can't not instruct them
20 if it's being admitted under 404(b); they must be
21 instructed under 404(b); I believe so. So maybe that's
22 something we have to address when the time comes. But I
23 think it opens up another can of worms if it comes in
24 under 404(b).

25 THE COURT: I'm stuck on the part where you said

State v Jerry Gardner
Jokira Grissett-In Camera-Remarks by Mr. Geel
August 4, 2015

1 you didn't have notice. Obviously you argued at pretrial
2 so you must have had notice.

3 MR. GEEL: We didn't. We didn't argue this issue
4 at pretrial.

5 THE COURT: Sure we did.

6 MR. GEEL: Oh, excuse me Your Honor. It wasn't
7 offered -- the record will speak for itself. I don't
8 recall the State indicating that they were offering this
9 under 404(b) at pretrial. I believe that came up the
10 first time today.

11 THE COURT: Maybe the 404(b) part of it does but at
12 least there was a discussion about the note, about the
13 sticky note in pretrial because that's when it was
14 discussed ---

15 MR. GEEL: --- oh, that's right, yes ---

16 THE COURT: --- so it's not like you didn't have
17 any idea that they were going to try to introduce the
18 evidence at all.

19 MR. GEEL: Oh, no Your Honor. That's not the
20 argument we're making. We knew that this evidence was
21 going to be offered by the State. The question is
22 whether we had notice that it was being offered for
23 404(b) use, which we weren't until just now.

24 THE COURT: Sure.
25

State v Jerry Gardner
Jokira Grissett-In Camera-Remarks by Mr. Condon
August 4, 2015

1 MR. CONDON: Your Honor, looking at rule 404(b) I
2 don't see any notice requirement. The only notice
3 requirement I'm familiar with is 609(e) when you're
4 offering a conviction that is older than ten years.
5 Additionally I've given defense counsel a heads up that I
6 was going to try to admit this note hence the pretrial
7 discussion of this. Again, I'm not aware of any time
8 requirement as well.

9 Also, I would say the relevant part also goes --
10 identification also goes to show the relevance also so
11 it's admissible under 402 because the purpose we're
12 offering it for is to show identification under 402 as
13 well. So that's why it is so probative and the probative
14 value is not substantially outweighed by the danger of
15 unfair prejudice; not prejudice, unfair. In this case
16 there is no unfair prejudice.

17 We'd also point to what makes it even more relevant
18 on cross-examination the defense pointed out that
19 fingerprints there is no timeframe for fingerprints. So
20 this puts a timeframe on it as well. Your Honor, if I
21 could point to the notes it says -- I've got the
22 annotated rules of evidence it says the South Carolina
23 rule does not contain a requirement which is in the
24 federal rule that upon request by the accused the
25 prosecution must provide reasonable notice of the general

State v Jerry Gardner
Jokira Grissett-In Camera-Remarks by Mr. Condon
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1 nature of any evidence it tends to introduce under the
2 rule.

3 THE COURT: I'm not really concerned with the
4 notice portion of it.

5 MR. CONDON: Okay.

6 THE COURT: I'm still trying to figure out about
7 whether the note can be redacted in some form or fashion.

8 [Whereupon, the court reviews documents]

9 MR. CONDON: Your Honor, I'll also point out that
10 this note was fingerprinted and there were no
11 fingerprints on it so we don't have a way to establish
12 who it belonged to. The defense is that these other
13 individuals were involved so it really is a key piece of
14 evidence for us in this case.

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State v Jerry Gardner
Jokira Grissett-In Camera-Remarks by the Court
August 4, 2015

1 THE COURT: What I would suggest is to make a copy
2 of that note and to redact the top part that says
3 probation the Department of Probation or whatever. You
4 can redact the agent part -- it says Agent Grissett. You
5 can take out -- you can redact the top part and you can
6 redact the agent part and then introduce the copy and
7 have the copy that is discussed in court and prepared for
8 the jury.

9 I think that would get us past any inference or
10 reference about prior bad acts at this particular point
11 as long as the defendant is not planning on testifying it
12 won't come out anyway. That will be the best way to
13 solve it. And any questions that you met with him on
14 this date and you gave him this note to come back and
15 talk to you and that will be the end of it. We'll take a
16 break so that you all can make that copy and redact it.

17 I don't want the original shown to the jury or used
18 because then the issue is what does the original note
19 look like? I think that's the appropriate thing to do
20 that way the original note is preserved and so cutting it
21 off or trying to do something else with it or marking on
22 it the original is preserved for the record for any
23 future purposes if needed. Anything else we need to take
24 up?

25 MR. CONDON: No, Your Honor. Thank you.

State v Jerry Gardner
Anita Moore-Direct Examination by Mr. Condon
August 4, 2015

1 MR. CONDON: The State calls Anita Moore.

2 [Whereupon, Ms. Moore comes forward]

3 [Whereupon, the witness is duly sworn by the Clerk
4 of Court]

5 CLERK OF COURT: Once seated if you could please
6 state your first and last name and then spell your last
7 loudly and clearly into the microphone for the record
8 please.

9 THE WITNESS: Anita Moore, M-O-O-R-E.

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11 ANITA MOORE,

12 Having been first duly sworn,

13 Was examined and testified as follows:

14 DIRECT EXAMINATION

15 BY MR. CONDON:

16 Q. Good afternoon Ms. Moore.

17 A. Good afternoon.

18 Q. Who do you work for?

19 A. The City of North Charleston Police Department.

20 Q. And what's your current job and position?

21 A. I'm a crime scene technician.

22 Q. And were you on duty last night?

23 A. Yes sir, I was.

24 Q. Did you work all night?

25 A. Yes sir, I did.

State v Jerry Gardner
Anita Moore-Direct Examination by Mr. Condon
August 4, 2015

1 Q. And can you describe to the jury some of your
2 current job duties?

3 A. It's my job to respond to potential crime scenes to
4 collect, preserve and document crime scenes and evidence
5 that pertain to a scene.

6 Q. And what training and experience do you have to do
7 this investigation?

8 A. I've been doing crime scene investigations for
9 approximately 12 years. I've got a Bachelor's in
10 Chemistry from the College of Charleston. I've also been
11 a graduate of the National Forensics Academy and I've
12 been certified by the International Association of
13 Identification as a crime scene analyst, and by the
14 American Board of Criminology for a general knowledge
15 exam, an ABC exam.

16 Q. And have you been admitted as an expert in crime
17 scene investigation before?

18 A. Yes sir, I have.

19 Q. About how many times?

20 A. Unfortunately I don't recall quite off my head but
21 it's been about three or four times.

22 Q. You said 34 or three or four?

23 A. Three or four times; sorry.

24 MR. CONDON: We'd ask that crime scene tech Anita
25 Moore be admitted as an expert in crime scene

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1 investigation.

2 THE COURT: Any voir dire?

3 MR. GEEL: No objection, Your Honor.

4 THE COURT: No objection. I do find her so
5 qualified.

6 Q. [Mr. Condon] And where did you respond to regarding
7 this case with Jerry Gardner, Jr.?

8 A. It was on Locksley Avenue. Let me get my report for
9 numerics.

10 Q. It's okay. It was approximately at the end of
11 Locksley?

12 A. Yes sir, it was at the dead end of Locksley; 1026
13 Locksley.

14 Q. And that's in Charleston County?

15 A. Yes, it is.

16 Q. And can you describe to the jury what you saw when
17 you arrived?

18 A. When I arrived on scene there was a vehicle up
19 against the fence near a building crashed into some trash
20 cans.

21 Q. And what's the first thing you do when you get on
22 scene?

23 A. The first thing that we need to do is document the
24 scene as it is when I've arrived. And we do that by
25 taking photographs of the scene and the area around it to

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1 document any type of evidence that may be there or how it
2 is seen when we first get there.

3 Q. I'm going to show you what has been marked as
4 State's exhibits 19 through 40. Do you mind flipping
5 through those and let me know if you recognize those
6 pictures?

7 [Whereupon, the witness views photographs]

8 A. Yes sir, I do.

9 Q. Are those pictures that you took that night?

10 A. Yes sir, they are.

11 Q. Are they a true and accurate depiction of the scene
12 as it existed?

13 A. Yes, they are.

14 MR. CONDON: We'd ask that State's exhibits 19
15 through 40 be admitted into evidence.

16 THE COURT: Any objection?

17 MR. GEEL: No objection, Your Honor.

18 THE COURT: They're admitted.

19 [Whereupon, State's exhibit numbers 19 through 40
20 are entered into evidence by the court]

21 Q. [Mr. Condon] I'm going to show you a few of these
22 photos if you could maybe describe what's going on to the
23 jury. We'll start out with State's 19.

24 [Whereupon, photos are shown to the jury]

25 A. That's the picture of the front of the vehicle as it

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1 was when I first arrived. We take overall photographs to
2 show the exterior of the location.

3 Q. Is it touching that wood fence there [indicates] it
4 looks like?

5 A. I can't remember if it was actually touching. I
6 think it was hitting the trash can.

7 Q. And what does this picture show?

8 A. That's an interior photograph of the vehicle from
9 the passenger side.

10 Q. And I want to point out what are those two cups
11 right there [indicates]?

12 A. Those are McDonalds Styrofoam cups.

13 Q. And did you process those cups for prints?

14 A. Yes sir, I did.

15 Q. And where did you process them for prints?

16 A. I took them back to the lab to process them.

17 Q. Do you normally process for prints on scene?

18 A. We do try to process items on scene, yes.

19 Q. Why would you process something back at the lab?

20 A. There was numerous reasons. One we have other
21 equipment that may be possible to use at the lab that may
22 give us better results if we can depending on the surface
23 of the item that needs to be processed. Other things is
24 if they need to be dried or if there is something in them
25 more things that need to be done. In this case there

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1 might have been condensation on the cups. The straws I
2 think were going to be pulled to take D-N-A as well.
3 Q. Okay. I want to point out right there [indicates]
4 is that a letter?
5 A. Yes, sir.
6 Q. Is that a close up picture of the letter?
7 A. Yes sir, it is.
8 Q. And whose name is that right there [indicates]?
9 A. It says Jerry Gardner.
10 Q. And the dates?
11 A. 10/2/14, 2014.
12 THE COURT: And could you identify the exhibit
13 numbers for us?
14 MR. CONDON: I'm sorry, Your Honor. That was
15 exhibit 23 and the close up picture was exhibit 24.
16 Q. [Mr. Condon] This is State's exhibit 25. Is that
17 just a closer up picture of the two cups?
18 A. Yes sir, it is.
19 Q. And were you able to lift some latent prints off
20 those cups?
21 A. Yes sir, I was.
22 Q. And was that L-7 through 10?
23 A. I'd have to see the cards. I didn't do the
24 examination so I don't know what numbers were assigned.
25 Q. I'm going to hand this witness State's exhibits 41

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- 1 through 44.
- 2 [Whereupon, the witness views photographs]
- 3 A. Yes sir, they are.
- 4 Q. And are those AccuTrans lifts that you made?
- 5 A. Yes sir, they are.
- 6 Q. And those link back to Jerry Gardner, Jr.?
- 7 A. I believe the report did say so, yes sir.
- 8 Q. The glove box?
- 9 A. Yes, sir.
- 10 Q. And State's exhibit 27 can you read who it is
- 11 registered to in the name?
- 12 A. That's a photograph of the registration and it
- 13 listed Tonya Renee Mazyck.
- 14 Q. And who is that insurance card in the name of?
- 15 A. It's the same name Tonya Mazyck.
- 16 [Whereupon, the witness views photographs]
- 17 A. That was a voter registration found inside the
- 18 vehicle to another person Shanrrika Gregg.
- 19 Q. State's exhibit 30?
- 20 A. That's a photograph of a cell phone that was in the
- 21 center console between the driver and passenger seat.
- 22 Q. Is that the cup right there [indicates]?
- 23 A. Yes sir, it is.
- 24 Q. State's exhibit 31?
- 25 A. That's another close up photograph of the console

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1 showing an I.D. card that was in one of the little slot
2 areas of the console.

3 Q. And can you read the name on that I.D. right there?

4 A. It's hard to read but its Nakeem Armand Rasheed
5 [phonetic].

6 Q. Nakeem Rasheed [phonetic]? That's just an I.D. card
7 correct; not a driver's license?

8 A. Right. It was a South Carolina I.D. card.

9 [Whereupon, the witness views photographs]

10 A. And that's a photograph of the backseat area from
11 the driver's back door going into the vehicle of a cell
12 phone that was next to the center console.

13 Q. So this is the center console right there
14 [indicates]?

15 A. Yes, sir.

16 Q. Exhibit 33? And that's the cell phone right there
17 [indicates] correct?

18 A. Yes sir, it is.

19 Q. On the driver's side?

20 A. Yes, sir.

21 Q. And did you take a picture of someone who was
22 calling the phone?

23 A. Yes sir, we did.

24 Q. That's when you were examining?

25 A. While I was processing the vehicle the cell phone

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1 went off and I took a photograph of the actual phone and
2 who was calling.

3 Q. And what's the name there?

4 A. It said it was Keshia [phonetic]?

5 Q. State's exhibit 36. What's that a picture of?

6 A. That's of the backseat area as well showing items
7 that were on the backseat.

8 Q. And can you describe to the jury the items in the
9 backseat?

10 A. There was a laptop, clothing; there was a large
11 plastic like mailing type bag with items in it, and
12 miscellaneous items also in the backseat.

13 Q. I'm going to show you what has previously been
14 entered into evidence as State's exhibit 1.

15 [Whereupon, the witness is shown photograph]

16 Q. Is that also a picture that you took?

17 A. Yes sir, it is.

18 Q. And is that a close up picture of the bag?

19 A. Yes, sir.

20 Q. The iPad?

21 A. Yes sir, it is.

22 Q. And gym shorts?

23 A. Yes, sir.

24 Q. And did you get an approximate value of the iPad?

25 A. When the initial officer takes the report the victim

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- 1 gave an estimate of about 600 dollars, yes.
- 2 Q. That's another laptop over there [indicates]?
- 3 A. Yes, sir.
- 4 Q. And more clothing right there [indicates]. And what
- 5 is -- this is State's exhibit 37. Is that a close up
- 6 view of the package?
- 7 A. That was the shipping label that was on the grey
- 8 plastic bag that was on the backseat with the items in
- 9 it.
- 10 Q. What's the name on there?
- 11 A. Shanrrika Gregg.
- 12 Q. And that was on top of the iPad?
- 13 A. Yes, sir.
- 14 Q. Next to the stolen gym shorts?
- 15 A. Yes, sir.
- 16 Q. This is State's exhibit 38. What does that appear
- 17 to be?
- 18 A. It appeared to be a check stub with the name of
- 19 Shanrrika Gregg on it as well.
- 20 Q. And what are those [indicates]?
- 21 A. Those appear to be a type of military coins. I
- 22 believe they are called -- normally they are known by
- 23 challenge coins that were inside the vehicle.
- 24 Q. Do you know who those belong to?
- 25 A. No, I do not.

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1 Q. State's exhibit 40? What is that right there?

2 A. That's a picture of the very -- it was an SUV or a
3 large vehicle, in the very back trunk area was a bunch of
4 items and that was a picture of the trunk and just
5 miscellaneous clothing and other items that were in
6 there.

7 Q. Does that look like kind of a suitcase right there
8 [indicates]?

9 A. It was I believe a duffle bag or some type of item,
10 yes.

11 Q. And did you also locate a sticky note in the car?

12 A. Yes sir, I did.

13 Q. And where was that located?

14 A. I believe it was in the front of the vehicle but I
15 don't remember exactly. I think it was on the passenger
16 seat but I don't recall off the top of my head. If you
17 could give me a second I can check my...

18 Q. Please.

19 [Whereupon, the witness reviews document]

20 A. It says center console under the radio, under where
21 they have the little areas where you could put personal
22 items.

23 Q. Let me show you what has been marked as State's
24 exhibit 47 -- I'm sorry, 49. Do you recognize this
25 document?

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1 [Whereupon, the witness is shown exhibit]

2 A. Yes sir, I do.

3 Q. And is that the sticky note that you found in the
4 center console area?

5 A. It's a photocopy of the sticky note, yes.

6 MR. CONDON: We'd ask that State's exhibit 49 be
7 admitted into evidence.

8 THE COURT: Any objection?

9 MR. GEEL: Subject to our prior objection, Your
10 Honor.

11 THE COURT: It's preserved and I'll admit it.

12 [Whereupon, State's exhibit number 49 is entered
13 into evidence by the court]

14 Q. [Mr. Condon] And what areas of the car did you
15 process for fingerprints?

16 A. I processed the exterior of the vehicle,
17 particularly the driver's side and passenger side doors
18 and the rear doors, and the interior of the vehicle,
19 rearview mirrors, other items that were in the vehicle.

20 Q. And you processed all that in this case?

21 A. Yes sir, I did.

22 Q. And are you always able to recover prints in these
23 areas?

24 A. No sir, we're not.

25 Q. And once you get these fingerprints lifts are they

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1 secured in a secure place?

2 A. Yes, sir. I take them back to the office where I
3 fill out the information on them and I create a file.
4 They go then to the operator who does the examination on
5 latent prints and they go into a secured area, a locked
6 area.

7 Q. And in this case was the stolen iPad was that
8 returned back to the victim Mr. Snyder?

9 A. Once I collected it, processed it, I turned it over
10 to evidence and it was returned back to the owner.

11 Q. And were you able to collect any fingerprints on the
12 iPad?

13 A. I believe we did get prints off of the iPad as well.

14 Q. And were you able to find any matches to that?

15 A. I don't recall if matches were found on the iPad or
16 not.

17 Q. No further questions.

18 THE COURT: Any cross?

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State v Jerry Gardner
Anita Moore-Cross-Examination by Mr. Geel
August 4, 2015

1 CROSS-EXAMINATION

2 BY MR. GEEL:

3 Q. I'll refer you back to State's exhibit 23. Are

4 those like documents in the glove box there [indicates]?

5 A. I believe so. I do recall that there were check

6 stubs and other miscellaneous papers, yes.

7 Q. And this is how you found it?

8 A. Yes sir, it is.

9 Q. So all those documents were already in the glove box

10 kind of stuffed in the glove box like that when you found

11 the car?

12 A. Yes, sir.

13 Q. Here's a closer image of that. Does that also

14 depict how the glove box was when you found the car?

15 A. Yes sir, it did.

16 Q. Did you go through all those documents?

17 A. I personally did not go through all of the

18 documents, no.

19 Q. Now this image [indicates] shows us one of two or at

20 least one of the cell phones that was recovered from the

21 vehicle correct?

22 A. Yes sir, it does.

23 Q. And that appears to be a Samsung Galaxy phone?

24 A. Yes, sir.

25 Q. It says on the cover correct?

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1 A. Yes, sir.

2 Q. It appears to be pinkish, kind of pinkish purple
3 color would it be fair to say?

4 A. Yes, sir.

5 Q. Now can you describe to the jury exactly what we're
6 looking at? Where is this?

7 A. That is a photograph from the -- can you zoom out
8 just a little. I believe that's going to be from the
9 driver's side because that's the pillow on the driver's
10 seat if I'm looking at it right.

11 Q. So is this between the driver ---

12 A. --- it's the center console between the driver and
13 the passenger seat.

14 Q. Okay. And I see a few other items there it looks
15 like ChapStick and a comb. Were those all -- is this
16 exactly how you found them when you came to the vehicle?

17 A. Yes, sir.

18 Q. To your knowledge was that phone turned over to Ms.
19 Kubicsko for processing? Are you aware of that?

20 A. I processed it for latent prints.

21 Q. Right. So you're not certain whether it was
22 actually processed with the cellebrite machine ---

23 A. --- oh I'm sorry, I misunderstood what you were
24 asking me.

25 Q. My question wasn't clear; I apologize.

State v Jerry Gardner
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August 4, 2015

1 A. Yes. It was turned over to her for examination by
2 cellebrite.

3 Q. And again that's a Samsung Galaxy phone?

4 A. Let me verify -- yes, I have it as a purple Samsung
5 Galaxy S4 cell phone with a pink cover.

6 Q. This image here [indicates] this appears to be sort
7 of the center console right underneath the sort of air
8 conditioning controls and so forth?

9 A. Yes, sir.

10 Q. So if the driver was seated in the car this would
11 kind of be in front of him or her to the right correct?

12 A. Yes, sir.

13 Q. Kind of underneath all of the controls? It looks
14 like there are some keys there. Is that [indicates] a
15 key?

16 A. I believe it is. I don't recall precisely what it
17 is. It does look like a key though.

18 Q. Now in this image we can see the other phone that
19 was recovered and sent to Ms. Kubicsko for processing
20 correct?

21 A. Yes, sir.

22 Q. And that was for the cellebrite machine to have the
23 data pulled off of the phone?

24 A. Yes sir, it was.

25 Q. And that's the HTC phone?

State v Jerry Gardner
Anita Moore-Cross-Examination by Mr. Geel
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- 1 A. Yes, an HTC grey T-Mobile cell phone.
- 2 Q. And that's ---
- 3 A. --- with a pink cover ---
- 4 Q. --- I'm sorry for interrupting. That's where it was
- 5 located when you found ---
- 6 A. --- yes sir, it was.
- 7 Q. Can you describe to the jury just exactly where in
- 8 the car, what are we looking at? Where is that situated?
- 9 A. That is if you open up the back driver door and you
- 10 look in the vehicle that is right behind the driver's
- 11 seat up against the center console where the frame is
- 12 like right behind it. So it's not on the floor, but it's
- 13 not on the console. It's sitting next to it.
- 14 Q. So it's kind of between the driver's seat and the
- 15 center console ---
- 16 A. --- yes ---
- 17 Q. --- and a little bit behind?
- 18 A. Yes, like it fell down ---
- 19 Q. --- the driver's seat. Now it looks like there is
- 20 sort of a plastic -- we've been calling it the center
- 21 console. It looks like there is a big sort of plastic
- 22 thing between the two seats is that right?
- 23 A. I think its all part of that center console.
- 24 Q. Right. And I think at the top we can see is that
- 25 the seatbelt buckle for the passenger seat at the top

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Anita Moore-Cross-Examination by Mr. Geel
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1 left that little red clip?

2 A. Yes, sir.

3 Q. So what we're seeing here is the very bottom of the
4 passenger seat and then the center console and then the
5 phone which is down between the driver's seat and the
6 center console.

7 A. Yes, sir.

8 Q. And that's how it was when you found it?

9 A. Yes, sir.

10 THE COURT: And again if you will give the exhibit
11 numbers.

12 MR. GEEL: I'm sorry, Your Honor, that was State's
13 exhibit 33.

14 Q. [Mr. Geel] And State's exhibit 34. Just to be clear
15 for the jury this is the same phone that we just looked
16 at that was down behind the driver's seat?

17 A. Yes sir, it is.

18 Q. The HTC phone?

19 A. Yes, sir.

20 Q. And not the Samsung that was situated on top of the
21 center console?

22 A. Right. It's the one that was on the floor by the
23 center console in the back.

24 Q. And State's exhibit 35 is just a closer shot of the
25 very same phone correct?

State v Jerry Gardner
Anita Moore-Cross-Examination by Mr. Geel
August 4, 2015

1 A. Yes, sir.

2 Q. And again this is exactly how you found the phone as
3 far as what the screen looked like and everything?

4 A. Yes. It was ringing; I pick it up just to get a
5 closer shot and took a picture of it.

6 Q. Thank you.

7 MR. GEEL: I have nothing further, Your Honor.

8 THE COURT: Any redirect?

9 MR. CONDON: Just a couple of brief questions here.

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State v Jerry Gardner
Anita Moore-Redirect Examination by Mr. Condon
August 4, 2015

1 REDIRECT EXAMINATION

2 BY MR. CONDON:

3 Q. When you get on scene is it possible that an officer
4 could have gone in the car to secure the vehicle if it
5 was still in drive?

6 MR. GEEL: Objection, speculation.

7 THE COURT: Rephrase the question.

8 Q. [Mr. Condon] Would a car be left in drive?

9 A. Normally before I arrive on scene because I am a
10 civilian especially the officers will secure the scene to
11 make sure it's safe for me to proceed; that being check
12 rooms, check cars, make sure it is not going to hurt
13 anybody or me. If it was in drive they would have
14 secured it to where it wouldn't have hurt anybody else,
15 yes.

16 Q. And have you ever noticed that officers go through
17 the glove box before you get there?

18 A. Unfortunately, yes.

19 Q. Looking for the owner of the car?

20 A. They're trying to find out who owns the vehicle,
21 yes; a registration, any type of information to help know
22 who has the vehicle.

23 Q. And I know you investigated cases involving high
24 speed chases. During a high speed chase can items shift
25 around in a car?

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1 A. Extremely, yes.

2 Q. So if something was in the center console could it
3 slip to one side if someone is making a big left turn or
4 a big right turn?

5 A. Yes sir, they do.

6 Q. No further questions.

7 THE COURT: Anything further?

8 MR. GEEL: Nothing further Your Honor.

9 THE COURT: You may step down.

10 [Whereupon, the witness is excused and exits the
11 witness stand]

12 THE COURT: Do you have another short witness?

13 MR. MAYNOR: Yes, Your Honor.
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State v Jerry Gardner
Jokira Grissett-Direct Examination by Mr. Condon
August 4, 2015

1 MR. CONDON: The State calls Jokira Grissett.
2 [Whereupon, Ms. Grissett comes forward]
3 [Whereupon, the witness is duly sworn by the Clerk
4 of Court]

5 CLERK OF COURT: Once seated if you'll state your
6 first and last name spelling your last loudly and clearly
7 into the microphone.

8 THE WITNESS: Jokira Grissett, G-R-I-S-S-E-T-T.

9 THE COURT: Would you also spell your first name
10 please?

11 THE WITNESS: J-O-K-I-R-A.

12 THE COURT: Thank you.

13 - - - - -

14 JOKIRA GRISSETT,

15 Having been first duly sworn,

16 Was examined and testified as follows:

17 DIRECT EXAMINATION

18 BY MR. CONDON:

19 Q. Good afternoon. On December 9, 2014 did you meet
20 with Jerry Gardner, Jr.?

21 A. Yes, sir.

22 Q. I'm going to show you what has been marked as
23 State's exhibit 49. Pursuant to your meeting did you
24 give him that note?

25 [Whereupon, the witness is shown document]

State v Jerry Gardner
Jokira Grissett-Direct Examination by Mr. Condon
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1 A. Yes, sir.

2 Q. It's already been admitted into evidence as State's
3 exhibit 49 and the return date of January 13th and you
4 gave it to him on December 9th?

5 A. Yes, sir.

6 Q. No further questions.

7 THE COURT: Any cross?

8 MR. GEEL: No questions, Your Honor.

9 THE COURT: You may step down. Thank you.

10 [Whereupon, the witness is excused and exits the
11 witness stand]

12 THE COURT: You may call your next witness.
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State v Jerry Gardner
Charge Conference
August 4, 2015

1 THE COURT: At this time I've received requested
2 charge from the defense. I did not receive any from the
3 State. I will at this time inform you what I intend to
4 charge the jury.

5 I will charge them that they have to determine the
6 facts based upon the evidence. In order to do that in
7 conjunction with that I will tell them that they should
8 consider only the testimony and evidence that has been
9 presented from the witness stand along with any exhibits
10 that have been a made a part of the record. I'll tell
11 them they must never insinuate to be true any suggestion
12 that was made of a question that is asked by a witness.
13 A question is not evidence but can be considered by them
14 only to the extent it supplies meaning to the answer.

15 I'll tell them that they have to judge the
16 creditability of the witnesses. I'll give them factors
17 to consider in doing that. I will tell them about expert
18 witnesses, those who may give opinions, and they should
19 give it the weight they believe it deserves. And if they
20 feel an expert witness's opinion is not based upon
21 sufficient education and training or if the reasons given
22 to support the opinion are not sound or if the opinion is
23 outweighed by other evidence then they may disregard the
24 opinion in its entirety. That it is entitled to no
25 greater weight than that of any other testimony simply

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Charge Conference
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1 because that person professes to be an expert. I will
2 charge them on circumstantial evidence and that charge
3 comes from State v Logan which is a 2013 case which says
4 there are two types of evidence which are generally
5 presented during a trial; direct evidence and
6 circumstantial evidence.

7 Direct evidence directly proves existence of a fact
8 and does not require deduction. Circumstantial evidence
9 is proof of a chain of facts and circumstances that
10 indicates the existence of a fact. Crimes may be proven
11 by circumstantial evidence. The law makes no distinction
12 between the weight or value to be given to either direct
13 or circumstantial evidence.

14 To the extent that the State relies on
15 circumstantial evidence all the circumstances must be
16 consistent with each other and when taken together point
17 conclusively to the guilt of the accused beyond a
18 reasonable doubt. If these circumstances merely portray
19 the defendant's behavior as suspicious the proof has
20 failed.

21 The State has the burden of proving the defendant
22 guilty beyond a reasonable doubt and that burden rests
23 with the State regardless of whether the State relies on
24 direct evidence, circumstantial evidence or some
25 combination of the two. I will charge them the fact that

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1 the defendant was arrested, charged, and indicted is not
2 evidence to be considered by them as evidence of guilt.
3 It does not create any presumption or inference of guilt;
4 it's just the way in which we're able to come to court
5 and to have a trial in this matter.

6 I'll charge them about the presumption of innocence.
7 I'll use the Victor v Nebraska but before I get to that
8 after the presumption of innocence I'll charge them about
9 the failure of the defendant to testify that that is not
10 a factor to be considered by them in any way during the
11 deliberations in considering the guilt or the innocence
12 of the defendant.

13 The defendant has a constitutional right to remain
14 silent. The assertion of that right must not be
15 considered in your deliberations. The fact that the
16 defendant did not testify should not even be discussed by
17 the jurors in the jury room. The burden of proof again
18 is on the State and the defendant is not required to
19 prove his innocence.

20 I will charge them on Victor v Nebraska reasonable
21 doubt. That is proof beyond a reasonable doubt is proof
22 that leaves you firmly convinced of the defendant's
23 guilt. There are few things that we know in the world
24 with absolute certainty and in criminal cases the law
25 does not require proof that overcomes every possible

State v Jerry Gardner
Charge Conference
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1 doubt. But if based upon your consideration of the
2 evidence you are firmly convinced that the defendant is
3 guilty of the crime charged then you must find him
4 guilty. If on the other hand you think there is a real
5 possibility that he is not guilty then you must give him
6 the benefit of the doubt and find him not guilty.

7 I will also charge them about the statement alleged
8 to have been made by the defendant has been admitted into
9 evidence. And while the court has determined that the
10 statement was admissible the jury has to make the
11 ultimate decision as to whether or not the defendant made
12 the statement. If the defendant did make the statement
13 you must determine whether the statement was made by the
14 defendant voluntarily and of his own free will. That the
15 statement was not caused by pressure, force, fear,
16 threats, coercion, etcetera.

17 And you should consider the characteristics -- in
18 determining whether the statement was voluntary you
19 should consider the characteristics of the defendant and
20 the details of the questioning. Some of those factors
21 are the age of the defendant, education or lack thereon,
22 the mental ability or capacity, his I.Q. or intelligence,
23 the background and environment, the place and length of
24 detention, the nature of the questioning, the advice or
25 the lack thereof to the defendant of his constitutional

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1 rights including but not limited to the right to remain
2 silent, that the statement could be used against him in a
3 court of law. The right to have a lawyer present and if
4 he couldn't afford a lawyer one would be appointed for
5 him without any cost and that he could stop making a
6 statement at any time.

7 The State has the burden of proving beyond a
8 reasonable doubt that the statement was voluntary. If
9 you determine that it was then you may give the statement
10 any further consideration that you think is appropriate.
11 You must decide what weight, if any, is to be given to
12 the alleged statement. If you determine that the
13 statement was not free and voluntary then you should not
14 consider the statement at all. I will give a charge on
15 identification but I'll come back to that in just a
16 moment.

17 I will also charge them on the three charges the
18 failure to stop for a blue light section 56-5-750 of the
19 Code defines the offense to failure to stop for a blue
20 light in the absence of mitigating circumstances it is
21 unlawful for a motor vehicle driver while driving on a
22 road, street, or highway of the state to fail to stop
23 when signaled by a law enforcement vehicle by means of a
24 siren or flashing light. An attempt to increase the
25 speed of a vehicle or any other manner avoid the pursuing

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1 law enforcement vehicle when signaled by a siren or
2 flashing light as evidence of violation of this section.
3 The failure to see the flashing light or hear the siren
4 does not excuse a failure to stop when the distance
5 between the vehicles and other road conditions are such
6 that it would be reasonable for a driver to hear or see
7 the signal from the law enforcement vehicle.

8 In order to establish a violation the State must
9 show that the defendant was driving a motor vehicle, that
10 he was on a road, street or highway in South Carolina,
11 that he was signaled by law enforcement to stop --
12 signaled to stop by a law enforcement vehicle by means of
13 a siren or a flashing light and he did not stop.

14 I will charge them on the habitual traffic offender;
15 that the defendant is charged with violating the habitual
16 offender act. The State must prove beyond a reasonable
17 doubt that the defendant was operating a vehicle in this
18 state. Operating a motor vehicle does not necessarily
19 mean driving a vehicle. Driving means that the vehicle
20 is actually in motion, however in order to be operating a
21 motor vehicle there does not need to be any motion.

22 Operating includes starting the engine or using any
23 mechanical or electrical part of the vehicle which will
24 set the vehicle in motion. The State must also prove
25 beyond a reasonable doubt that at the time the defendant

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1 was operating the motor vehicle the Department of Motor
2 Vehicles had found the defendant to be a habitual
3 offender and revoked the defendant's driving license
4 based upon that finding. The charge as provided to the
5 judges does not require that there be notice to the
6 defendant but I will -- I need to go back and look at the
7 statute.

8 [Whereupon, the court reviews documents]

9 THE COURT: I'll come back to that and fill that
10 in. Receiving stolen goods 16-13-180 the defendant is
11 charged with receiving stolen goods. The State must
12 prove beyond a reasonable doubt that the defendant
13 bought, received, or possessed goods, chattels or other
14 property and that the defendant knew or had reason to
15 believe that the property was stolen. Whether the
16 defendant knew or had reason to believe that the property
17 was stolen may be shown by direct or circumstantial
18 evidence.

19 The State may prove that the defendant knew or had
20 reason to believe that the property was stolen by showing
21 that the defendant knew facts that would make a
22 reasonable person believe that the property was stolen.

23 MR. CONDON: Your Honor, we'd also request -- I'm
24 sorry, Your Honor the statute 16-13-180 also says persons
25 guilty of this offense whether or not anyone is convicted

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1 of the property theft.

2 THE COURT: I see that as well and I'll add that.

3 MR. CONDON: Also, I believe the value of the
4 property is 2,000 dollars or less. I don't know if that
5 is an element or not.

6 THE COURT: I don't think that's an element per se
7 of the crime. That's just a factor to be considered when
8 determining whether it's a misdemeanor or a felony.

9 MR. CONDON: Okay. Perfect.

10 [Whereupon, the court reviews documents]

11 THE COURT: Going back to the habitual traffic
12 offender the statute itself does not require any notice
13 in terms of a violation of the habitual traffic offender,
14 the penalty section. The entire code section says that a
15 person found to be an habitual offender under the
16 provisions of this article who subsequently is convicted
17 of operating a motor vehicle in the state while the
18 decision of the Department of Motor Vehicles prohibiting
19 the operation is in fact guilty of a felony and must not
20 be in prison for more than five years.

21 For the purpose of enforcement of this section in
22 any case in which the accused is charged with driving a
23 motor vehicle while his driver's license or permit is
24 suspended or revoked or is charged with driving without a
25 license the department before hearing the charges shall

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1 determine whether the person has been judged an habitual
2 offender and is barred from operating a motor vehicle on
3 the highways of the state. If the person is found to be
4 a habitual offender the department shall notify the
5 Solicitor or the Attorney General and shall cause that
6 the appropriate criminal charges to be lodged against the
7 offender.

8 Under the provisions in determining for revocation
9 of the license it says if the department -- and that's
10 section 56-1-1030 if the department's review of its
11 record shows that the person is a habitual offender,
12 meaning if convicted of three or more separate offenses
13 during a three year period, the department must institute
14 agency proceedings to revoke or suspend the person's
15 driver's license.

16 If after appropriate proceeding the department finds
17 a person to be a habitual offender the department shall
18 direct the person not to operate a motor vehicle on the
19 highways of the state and to surrender his driver's
20 license or permit to the department.

21 MR. CONDON: Your Honor, if I may we'd like to
22 point towards 56-1-1030(b) and it says if the department
23 determines the person is an habitual offender the
24 department shall give notice of this determination to the
25 person and direct the person not to operate a motor

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1 vehicle on the highways of the state.

2 THE COURT: What section are you looking at?

3 MR. CONDON: 56-1-1030(b).

4 THE COURT: Yes, sir. And that's as amended in
5 2008. The department shall give notice of its
6 determination to the person and direct the person not to
7 operate a motor vehicle on the highways of the state and
8 to surrender his driver's license or permit to the
9 department. The notice must provide that the person
10 aggrieved by the department shall follow and request an
11 investigation review. It says shall give notice of its
12 determination to the person. So I will charge that
13 portion of section 56-1-1030.

14 I'm going to look at actual and constructive notice.
15 I don't like the charge that the defense provided. It's
16 not clear; it's really kind of confusing. I've used a
17 charge in the past. I just need to put my hands on it.
18 I may not have it with me so I may have to come up with
19 an alternative method to obtain that information.

20 On the identification charge I will charge an issue
21 in this case is the identification of the defendant as
22 the person who committed the crime charged. The State
23 has the burden of proving identity beyond a reasonable
24 doubt. You must be satisfied beyond a reasonable doubt
25 of the accuracy of the identification of the defendant

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1 before you may convict the defendant. Identification
2 testimony is an expression of belief or impression by a
3 witness. You must determine the accuracy of the
4 identification of the defendant. You must consider the
5 believability of each identification witness in the same
6 way as any other witness.

7 You may consider whether the witness had an adequate
8 opportunity to observe the offender at the time of the
9 offense. This will be affected by things like how long
10 or short the time was available, how far or close the
11 witness was, the lighting conditions and whether the
12 witness had the chance to see or know the person in the
13 past.

14 Again, the burden of proof is on the State. It
15 extends to each and every element of the crime charged.
16 It specifically includes the burden of proving beyond a
17 reasonable doubt the identity of the defendant as the
18 person who committed the crime. If after examining the
19 testimony you have a reasonable doubt as to the accuracy
20 of the identification then you must find the defendant
21 not guilty.

22 Is there anything else? And then I'll charge them
23 their verdict has to be unanimous. It has to be the
24 verdict of all twelve of them. That they have been sworn
25 as fair and impartial jurors to determine the facts based

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1 upon the evidence and based upon the law as I have
2 instructed them and when they have done that they will be
3 able to arrive at a verdict in this case. In this case
4 on these charges there are two separate verdicts; one is
5 guilty and one is not guilty. There is no significance
6 to the order in which I state them. One has to come
7 first and one has to come second.

8 And I will tell them the Foreperson that she will
9 have to write the verdict on the front of the indictment
10 and place her signature and today's date so that the
11 verdict on receiving stolen goods is not guilty or
12 guilty. The same with receiving stolen goods -- I'm
13 sorry, the same with failure to stop for a blue light
14 it's not guilty or guilty. And on habitual traffic
15 offender it's not guilty or guilty. Is there anything
16 else that I need to add to the charge that we haven't
17 discussed at this time?

18 MR. GEEL: Nothing from the defense, Your Honor.

19 MR. CONDON: I don't believe so, Your Honor. I
20 appreciate you going over in detail the charge.

21 THE COURT: I'm setting this indictment aside
22 because that's not the one that goes to the jury. I just
23 want to make sure I don't get it mixed up in my stack. I
24 also need for you all to double check the exhibits,
25 particularly those in which the pictures need to be

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1 redacted and to look at all the indictments and make sure
2 that everything else on the indictments are correct so
3 that we don't need to make any further modifications to
4 any of them.

5 If there is nothing else I assume that your closing
6 arguments won't be a whole lot longer than your openings.
7 And if there is nothing else then we'll see you at 9:30
8 in the morning. I will briefly tell you the last issue
9 on the actual versus constructive notice and then we will
10 be ready to go in the morning. Anything else?

11 MR. GEEL: No, Your Honor..

12 THE COURT: Nothing from the State?

13 MR. CONDON: No, Your Honor.

14 THE COURT: Please come and make sure you check all
15 of those and make sure that they're all accounted for.

16 [Whereupon, counsel reviews exhibits with the court
17 reporter]

18 [Whereupon, court adjourns at 5:40 p.m.]

19

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25

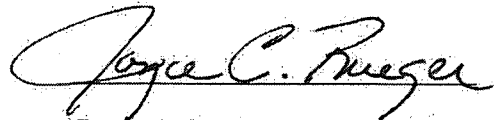
State v Jerry Gardner
Certificate of the Court Reporter
August 4, 2015

C E R T I F I C A T E

I, the undersigned, Joyce C. Rueger, Official
Circuit Court Reporter for the Ninth Judicial Circuit of
the State of South Carolina, do hereby certify that the
foregoing is a true, accurate, and complete Transcript of
Record of the proceedings had and evidence introduced in
the trial of the captioned case, relative to appeal, in
the Court of General Sessions for Charleston County,
South Carolina on the 4th day of August, 2015.

I do further certify that I am neither of kin,
counsel, nor interest to any party hereto.

March 8, 2016



Joyce C. Rueger, CVR-M

Court Reporter

STATE OF SOUTH CAROLINA

COURT OF GENERAL SESSIONS

COUNTY OF CHARLESTON

DOCKET NO. 2015-GS-10-2268

2015-GS-10-2269

2015-GS-10-4407

STATE OF SOUTH CAROLINA

vs.

JERRY LEWIS GARDNER, JR.

Defendant

TRANSCRIPT OF RECORD

August 5, 2015

Charleston, South Carolina

VOLUME 3 (OF 3)**B E F O R E:**

THE HONORABLE ALISON RENEE LEE, JUDGE

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1 CLOSING ARGUMENTS

2 BY MR. CONDON:

3 Good morning ladies and gentlemen. I'm going to
4 open briefly on the law right here then the defense will
5 make their argument and then we'll finish with the
6 closing argument. I want to kind of refresh your memory
7 on the charges. I know they're all pretty straight
8 forward but I want to touch base on them one more time.

9 The first charge that we have here today is failure
10 to stop for a blue light. As I said in my opening it's
11 simply when an officer signals by siren or flashing
12 lights to stop and a person fails to stop when they're
13 driving as vehicle. Clearly we had that in this case.
14 We have the video of a high speed chase. There is
15 multiple cars with multiple flashing lights. There is a
16 failure to stop. We've proven the defendant's identity
17 and in my closing I will get more into that.

18 Next is habitual traffic offender. And this is
19 pretty straight forward; it's operating a motor vehicle
20 while the person has been declared a habitual traffic
21 offender. And you heard from Angela Watts that's when
22 someone has three serious violations in three years they
23 are then declared a habitual offender. That was in
24 effect on December 18th and notice was sent to his last
25 known address at Balsam Street. The last charge we have

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1 is possession of stolen goods. And that's pretty
2 straight forward. It's when someone is in possession of
3 goods and they either knew or had reason to know that
4 they were stolen. We've proven this in this case through
5 multiple pieces of evidence including the defendant's
6 statement where he admitted that his fingerprints would
7 be on the property which shows possession. He's admitted
8 that he bought it off the streets. That's reason to
9 believe it's stolen; its hot property. And lastly he
10 says you can charge me with receiving stolen goods and
11 not burglary. And that's the guilty knowledge of it.

12 We've got the burden of proof in this case. It's
13 proof beyond a reasonable doubt. It's not proof beyond
14 all doubt because as I said earlier there are few things
15 in life that we know beyond all doubt. Its proof which
16 will leave you firmly convinced of the defendant's guilt.
17 We believe that all the evidence you've heard will leave
18 you firmly convinced that he's guilty of all those
19 charges. Thank you.

20 THE COURT: Mr. Geel?

21 MR. GEEL: Thank you, Your Honor.
22
23
24
25

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1 CLOSING ARGUMENTS

2 BY MR. GEEL:

3 Ladies and gentlemen first off I would like to thank
4 you for your service this week. I'm certain that there
5 are other places that you would prefer to be; you're away
6 from loved ones and your work. It's been a privilege and
7 an honor to represent Mr. Gardner this week and I just
8 want to thank you for being here.

9 Mr. Condon just touched on both these concepts. I
10 just wanted to go into a little bit of detail before we
11 talk about the actual evidence in the case. These are
12 two very important concepts in any case, any criminal
13 case in particular.

14 The first concept that I want to highlight for you
15 is the burden of proof. Now the burden of proof here
16 falls on the State. What that means is that they have
17 the burden to bring evidence to you all to convince you
18 that Mr. Gardner is guilty. It is not a situation where
19 we meet on an even playing field so to speak. We have no
20 burden to prove that Mr. Gardner is innocent. That's not
21 what we are here to decide today. The State has the
22 burden of proving to you all that Mr. Gardner is guilty
23 and a verdict of not guilty is a declaration from you all
24 that the State has failed to meet that burden. It's not
25 a declaration that Mr. Gardner is innocent. The State

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1 bears the burden at all times to prove all the
2 allegations in this case. Now as far as the beyond a
3 reasonable doubt standard the reason I want to talk about
4 this is because as Mr. Condon has highlighted in life we
5 very often don't make decisions by this standard.

6 We're very comfortable in our daily lives making
7 decisions with doubts in our minds. If anyone has had a
8 child or purchased property, purchased a car, relocated
9 to a new city anything like this, these big life
10 decisions, we make decisions like this all the time with
11 doubts in our minds.

12 And what about more sort of mundane decisions if you
13 take the example where to go to lunch. I'm sure we've
14 all been in the office doing something and a co-worker
15 comes over and says let's go get Chinese food or
16 something like that. And then another worker says no, no
17 there is a new Mexican restaurant and I want to try that.
18 And you're sitting there weighing both of those decisions
19 and you ultimately decide on one.

20 If you were to think about it you of course have
21 doubts about whether you're making the right decision.
22 I've never been to that restaurant before; maybe it's not
23 so good. You could go on a whole litany of reasons why
24 you should doubt that you're making the right decision
25 but we're very comfortable making decisions with doubts.

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1 And that's why I need you to take that hat off and put on
2 the hat of beyond a reasonable doubt because the standard
3 here is not the standard by which you make everyday
4 decisions. This is beyond a reasonable doubt, okay.
5 That's the standard that the State must meet in order to
6 get a conviction here.

7 So I'm going to talk about the actual evidence that
8 was presented in this case and I'll remind you that we
9 had no burden yet we did bring in a number of very
10 significant exhibits that I'm going to go through with
11 you. Those of you who weren't bored to tears as I put
12 them in through cross-examination yesterday I'm going to
13 explain them now and I hope that you'll understand
14 exactly why it was necessary to put all those in.

15 I'm going to talk about all the evidence and ladies
16 and gentlemen I'll submit to you that if any of these
17 arguments that I make here if any of the things that I
18 point out here resonate with you or highlight doubts that
19 you have in your mind the only verdict that you can
20 render is not guilty.

21 So let's talk a little bit about the actual evidence
22 in the case. When I first spoke with you the first thing
23 that I told you is that you weren't going to hear anyone
24 identify Jerry Gardner as the driver of the car. I made
25 a point to ask every witness who could have easily

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1 identified him as the driver of the car whether they
2 could and not one of them said that they could. Not one
3 of the State's witnesses has identified him as the
4 driver. The State had fingerprint evidence in the car
5 and we went through that in detail. That doesn't
6 identify him as the driver either. What that identifies
7 him as is a person who touched a cup that was in the car.

8 You heard the testimony from the State's expert
9 regarding fingerprint evidence. There is no time link.
10 They can't tell you exactly when the fingerprints were
11 put on the cup. And furthermore these weren't
12 fingerprints that are even found inside the car. They
13 were found on a cup in the car and that's a moveable
14 object. So the fingerprints on a McDonalds cup certainly
15 do not identify Mr. Gardner as the driver of the vehicle.

16 His connection to the car also does not identify him
17 as the driver. I'm sure that Mr. Condon will highlight
18 the fact that there are connections between Mr. Gardner
19 and the car; the allegation being that this was his
20 girlfriend's car. Again, this does not identify him as
21 the driver of the car on the night of the incident.

22 And I also want to point out one other fact is that
23 we had two separate descriptions of the two occupants of
24 the vehicle. There wasn't a single officer who saw both
25 occupants. You had Lieutenant Stanley who in the video

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1 we watched he was the front car. If you remember there
2 was no video from his car. He indicated that he only saw
3 the driver and he didn't get a look at the driver's face;
4 black hoodie, black male, six feet tall, black pants.
5 The other officer, the one who was behind whose video we
6 did see, Officer Cain he identified the passenger, black
7 hoodie, six foot tall, black male, black pants; the same
8 description both people.

9 So at the end of the day what we have here is a
10 total failure to identify Mr. Gardner as the driver of
11 the vehicle. Furthermore, we don't have any video or
12 audio evidence of the following piece of evidence that
13 I'm certain that the State will rely on in their closing
14 at the traffic stop leaving the complex.

15 It's the State's position that Mr. Gardner was
16 pulled over as a passenger in his father's car as they
17 were leaving the complex, that he was sweating profusely;
18 that was the testimony that he was belligerent and so
19 forth. We have no video or audio evidence of that
20 whatsoever.

21 Now I made a point to specifically ask Officer Riley
22 if you recall during his testimony how does the camera in
23 your car operate. Can you explain it? He specifically
24 said you flip it and flip it off. It turns on
25 automatically when you turn on the blue lights but if you

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1 want to you can just manually flip it on. Yet we have a
2 traffic stop here with Sr. and Jr. in the car and we
3 don't have video or audio evidence of what took place
4 there.

5 Now the other allegation is that after Mr. Gardner
6 was arrested and taken to the jail only upon arriving at
7 the jail did he suddenly make a statement spontaneously
8 linking himself to both the car and the iPad in the car
9 out of nowhere relevant to nothing that they had spoken
10 about before. This was just an outburst, very
11 convenient, and we don't have any video or audio of that
12 either. Again, this happened in the police car. We
13 could easily have audio or video of this but we don't.

14 Okay, let's talk about Maurice Powell. Of course
15 I'm sure it won't surprise any of you to know that I am
16 going to spend a good deal of time talking about this
17 young man. This [indicates] is Maurice Powell's cell
18 phone. You'll recall this was found in the vehicle.
19 This photograph on the right hand side is a photograph of
20 that phone that was taken by the crime scene technicians
21 and also recall specifically where the phone was found.
22 It's kind of tiny on this one but you can see it's lodged
23 down there right behind the driver's seat almost like it
24 fell out of someone's pocket while they were driving the
25 car. So that's where they found this phone. Now let's

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1 back up a little bit and let's talk about why we're
2 certain that this is Maurice Powell's phone. First of
3 all we've got the photograph right here [indicates]. You
4 can't make it out too well on this screen but you can
5 certainly look at my exhibit, that's defense one. This
6 is a debit card with Maurice Powell's name on it, right?
7 We've got photographs, a whole bunch of photographs of
8 this young man.

9 Now we could feel pretty comfortable this is the
10 owner of the phone based on how many photographs we have
11 of this person but we've also put in Maurice Powell's
12 driving record so we have a photograph of him so you can
13 compare those two and decide for yourself whether that is
14 Maurice Powell. I submit to you that it very clearly is.
15 Also bear in mind you also can't make this out on here
16 but you can look at this, the defense put this exhibit in
17 Maurice Powell is six one, 185; six one, 185, black male.
18 It seems to fit the description that all the officers
19 gave.

20 We also have a picture of a note. This was also in
21 Maurice Powell's phone. You have a look at that note up
22 closely and it is signed Maurice Jarvis Powell. We also
23 have the logins, the various logins and I went through
24 this in detail with Ms. Kubicsko, the crime scene
25 technician. We have a whole bunch of logins and these

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1 are all, you'll get a chance to look at these, you'll
2 have all these exhibits back with you in the jury room,
3 the MauricePowell@gmail.com, Maurice P; it's all Maurice
4 Powell. One of the things I wanted to point out to you
5 is that each of the defense exhibits have a little cover
6 page here.

7 I'm not sure I showed this to you but every exhibit
8 that you see in the back that has one of these pages this
9 is information that was taken from the cell phones that
10 were found in the car; that's what this signifies. These
11 are all our exhibits. So as I'm pointing out all of
12 these things that are found in these exhibits if you want
13 to look at them in the back this is where you look.

14 Now I'm going to talk a little bit about the
15 timestamps and so forth that were found in the various
16 communications in this phone. Before I get into that I
17 just wanted to say that if there are any jurors among you
18 who are particularly technically savvy I will ask you to
19 assist your fellow jurors in understanding this stuff. I
20 understand that not everyone understands what calls logs
21 are, SMS, MMS; all these things.

22 If any of you understand what these things are I'll
23 ask you to assist everyone else in understanding them. I
24 think that they are not terribly difficult to understand
25 if you really go through them I am confident that you all

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1 will be able to understand the relevance of these things.
2 So getting back to the fact how we know this is Maurice
3 Powell's phone there is a picture of him with the phone
4 right there [indicates]. This is also a defense exhibit.
5 All these photographs and all these charts are in
6 evidence already. So you see that's the phone that was
7 recovered on the right. And there is Maurice with a
8 picture of himself with the phone. So it's beyond
9 dispute I submit to you that this is Maurice Powell's
10 phone.

11 Now Maurice Powell also had his phone on the day of
12 the incident. I anticipate that some people might be
13 inclined to think that well maybe he didn't have the
14 phone. The phone is in the car but that doesn't mean
15 that Maurice had it that day. Well he actually did.

16 If you look at the call log on his phone you'll see
17 him contacting his friend Rich Rich at 7:50 p.m. You'll
18 see him contacting his friend Raven at 4:35 p.m. and
19 you'll see him contacting Rich Rich earlier that day on
20 the 18th. So he's contacting his friends Raven and Rich
21 Rich okay. And this is on the day of the incident and in
22 the case of Rich Rich moments before this car chase;
23 moments before. And if you look at the date you can see
24 them highlighted right there [indicates]. Now here's
25 communication from the same phone back in March and you

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1 see him contacting Raven back in March. And you can see
2 the bracketed portion; that's March 30th, 2014 the same
3 phone number the same contact. So he's contacting Raven
4 in March of 2014 and also contacting her right before
5 this car chase. So this was his phone and he had it
6 unless you want to try and say that someone took his
7 phone and then started calling and texting his contacts.
8 That makes no sense, okay. Again, his phone was not
9 stolen or lost. He actually had it.

10 Again if you look at the activity analytics this
11 again was the ranking of the people who were most
12 frequently contacted by this phone and you'll see Raven's
13 right there [indicates] and you'll see Rich Rich right
14 there [indicates]. These people are both in the top 30
15 most frequently contacted people and again these are the
16 people that he was in contact with right before this
17 chase started.

18 Okay, so you may be saying so what? What's the
19 relevance of all that? Well it's undisputed that the car
20 was found -- that the phone was found in the car after
21 the chase right? We know that that's not disputed by
22 either party. And if we know that Maurice Powell was
23 with his phone right before the chase the only conclusion
24 that we can come to based on those two facts is that
25 Maurice Powell was in the car. Maurice Powell was in

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1 that car right before the chase started and his phone was
2 in the car after the chase because he was with it the
3 entire time. So let's have a look at the various
4 theories that the State might present in argument
5 regarding these facts.

6 Well we have Jerry Gardner, we have Maurice Powell
7 and then you'll recall that we have the passenger, the
8 passenger who is an unknown person with four to six inch
9 twists. If you remember that's the way that Officer Cain
10 described him. We don't know who this person is but he
11 was adamant that this person had twists and that this was
12 the passenger.

13 And that's the reason that Jerry was charged for
14 this is because when they found him on the scene Officer
15 Cain said no, no, no that's not the passenger. The
16 passenger had four to six inch twists, okay. So that's
17 the reason that Jerry is charged is because Cain was so
18 adamant that the passenger had four to six inch twists.
19 So these are our three people.

20 So let's talk about how they would have been
21 situated in the car. It's going to be the State's theory
22 of course that Jerry Gardner was the driver and that the
23 unknown man was the passenger. That's their theory here.
24 That's what Cain testified to and that's what Stanley
25 testified to is that their belief is that Jerry Gardner

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1 was the driver and the passenger was the person with the
2 twists. Of course that theory doesn't make any sense.
3 And why is that because we know that Maurice Powell was
4 in the car and we know that there were only two people in
5 the car right? So this theory does not make sense and it
6 does not line up with the evidence in this case. Okay.
7 Well, you might be inclined to say fine, what is Jerry
8 was the driver and Maurice was the passenger. Again,
9 that doesn't make sense because Maurice Powell does not
10 have four to six inch twists in his hair. And how do we
11 know that because we have his phone.

12 Here's a picture of him that was taken if you look
13 at the date stamp November 13, 2014. That's about a
14 month before this chase and you can clearly see he
15 doesn't have twists in his hair right there. In fact it
16 appears he has very closely cropped hair. Here's another
17 picture of him [indicates]. It doesn't come out too well
18 here but at least you can make out the hair style.
19 Again, a very neat closely cropped hairstyle; that's a
20 picture from August so that's only four months before.

21 So unless he figured out a way to grow four to six
22 inch twists inside of you know one to four months he
23 cannot have been the passenger of that vehicle. So what
24 if Jerry Gardner was the passenger? Well, then he's not
25 guilty right? If he was the passenger he wasn't driving

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1 the car. And then any other configuration that you want
2 to come up with you know Maurice Powell is the driver,
3 you know the guy with twists is the passenger, put the
4 twists guy in the driver's seat and Maurice Powell is the
5 passenger because we know Maurice was in the car. All of
6 those are not guilty because then Jerry is not in the
7 car. So basically what you have here is a situation
8 where there is no theory that has Jerry Gardner driving
9 the car that is consistent with the evidence that we
10 have; none.

11 Let's talk a little bit more about Maurice Powell.
12 Maurice Powell was trying to break into an iPad on the
13 day of the incident. And again, we know this from the
14 data on the phone. Here we have Google searches, and
15 again this is all in evidence, the web history. You can
16 see him searching how to break in to -- how to remove
17 forgotten passcode on iPhone, how to unlock an iPad
18 without a passcode, unlock iPad. So he's Googling all
19 this stuff and this is the afternoon of December 18th.
20 This is hours before the police chase okay.

21 We also see a screen cap that is in his phone.
22 You've got it right there [indicates], it's on the
23 YouTube how to remove forgotten passcode on the iPhone.
24 You will recall from Mr. Snyder, he was the first
25 witness. I know that seems like a long time ago; I can't

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1 believe it's only been two days. He was the first
2 witness to testify. He said there was a passcode on his
3 iPad if you recall that. He specifically noted that
4 there was a passcode on it so that people wouldn't be
5 able to get into it. And here we have Maurice Powell
6 trying to break into Mr. Snyder's iPad very clearly.

7 Maurice Powell knows people in Saint Andrews Garden
8 apartments. Remember we have all the GPS data. Now this
9 is printed out so this won't make any sense to you; it's
10 just numbers on a page. But you will recall that my
11 investigator, Mr. Wilson, he actually clicked on the
12 little Google map things and he had a look at where all
13 these data points line up. And what did we find? That
14 box [indicates] that's Saint Andrews Garden apartments.
15 Look at all those dots that are inside it. These are GPS
16 pings from Mr. Powell's phone inside of Saint Andrews
17 Garden apartments.

18 Here's a closer view [indicates]. You can see them
19 right there [indicates] and you can see them right there
20 [indicates]. And if you look right up the middle kind
21 like a third of the way through that's Locksley Drive.
22 At the end of that dead-end is where the chase terminated
23 and the cut through goes right there [indicates]; right
24 toward both of those two buildings, okay. Now the driver
25 of this car is the person who gets to determine where

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1 they jump out, okay. And they're jumping out right near
2 a place where Maurice Powell has had contact with his
3 phone, with the phone that we found in the car, with the
4 phone that he had right before the chase because he was
5 in the car. Here's another view [indicates]. You can
6 see this is a wider view and there is even more of those
7 GPS locations down at the bottom.

8 Okay, so let's talk about what remaining questions
9 that we have. I'll remind you all that the State has the
10 burden of proof here. So in order to obtain a conviction
11 there can't be lingering doubts in any of your minds.
12 There can't be remaining questions regarding the guilt of
13 my client so here let's talk about these remaining
14 questions.

15 Why haven't we heard from Shanrrika Gregg? She was
16 the owner of the vehicle right? It's their theory this
17 was my client's girlfriend at the time. You've seen the
18 photographs of the items that were taken from the car.
19 There is a package and a paycheck stub Shanrrika Gregg.
20 I'll remind you the State has the burden. Why haven't we
21 heard from her? Wouldn't it be nice to ask her a few
22 questions about who had the car that day? Did Jerry have
23 the car that day or did you give it to someone else? We
24 haven't heard from her; again the State's burden. Who
25 was this person with the braids or twists in their hair?

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1 Do they exist? Again, Maurice doesn't have braids in his
2 hair. My client doesn't have braids in his hair. Who is
3 this person? Does he exist at all? Officer Cain seemed
4 fairly certain; again, that picture [indicates] taken in
5 August.

6 And again, where is Maurice Powell right? He could
7 have come to court; we could have had him come here.
8 Where is he? Were his fingerprints in the car? The
9 fingerprint expert told you that she was not asked to
10 compare Maurice Powell's fingerprints to any of the
11 prints that were found in the car. Now this information,
12 all this stuff that I presented to you from the cell
13 phone that was information that was in the State's
14 possession.

15 You heard their witness, their expert, Ms. Kubicsko
16 she talked about how she pulled all that information off
17 the phone. They could have gone through all these phone
18 records the way that I did. They could have gone to
19 Maurice Powell and said what the heck is going on. We've
20 got your phone here; why are you searching on how to
21 break into an iPad? Why isn't Maurice Powell on trial
22 here if we could put him in the car? What would his
23 explanation be for all of this? We didn't hear any of
24 that. He didn't even come in here. And let's not forget
25 about the other phone right. This woman's phone was in

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1 the car. We hear her name from Ms. Kubicsko but we have
2 no idea who she is. Does she have a boyfriend or a
3 friend with twists in his hair? Did she lend someone her
4 phone that day? Would she have had any information to
5 offer us? How would she explain her phone being found in
6 this car? We didn't hear from her. We heard her name
7 very briefly but that's all we know.

8 I want to make one final point to you ladies and
9 gentlemen and that is one of the issues that I've sort of
10 been harping on is the fact that there wasn't any video
11 or anything along those lines. When you're thinking
12 about whether you have lingering doubts regarding this
13 case I would ask you to consider this.

14 This [indicates] is a blank disk. There is nothing
15 on it. I just took it from a spool of blank disks that I
16 have in my office. But what if this was a better video?
17 What if this was a video from Lieutenant Stanley's car?
18 You remember his was the car that was right in front and
19 not equipped with video right? That's what he testified
20 to.

21 What if we had a video? Would you want to see it?
22 What if I told you there was a better video and it got
23 you a glimpse of the driver. Would you want to see it?
24 I submit that there is a few of you who would make that
25 the first order of business when you went back there

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1 okay. And I will submit to you ladies and gentlemen that
2 if you would want to see it that is because you have
3 doubts. That's because the State has failed to remove
4 all of your doubts and you want to see. You want to
5 actually lay eyes on the person, huh? So ladies and
6 gentlemen I ask you to consider all of this and I think
7 that based on the evidence that has been presented here
8 the only just verdict here is not guilty on all charges.
9 Thank you.

10 MR. CONDON: May it please the court?

11 THE COURT: Mr. Condon?

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1 CLOSING ARGUMENTS

2 BY MR. CONDON:

3 Again, the best thing about jury service is that
4 y'all come in here and just use your common sense. All
5 we ask is you use your common sense in looking at the
6 evidence. Throw out this old trick and let's blame this
7 Maurice Powell. We're not saying Maurice Powell wasn't
8 involved. He probably was the passenger. We can't prove
9 he was the passenger but the evidence does suggest that
10 he was the passenger or had loaned the phone to Jerry
11 Gardner.

12 I want to focus on what we do know in this case. We
13 do know that Jerry Gardner, Jr. was the driver and that's
14 going to be on a common sense based reasoning looking at
15 all the evidence and from all the witnesses. We're going
16 to start at the beginning and we're going to use our
17 common sense when we go through all this. We're going to
18 think about whose car it is; it's his girlfriend's car.
19 His girlfriend is not just going to loan out the car to
20 some random person.

21 We're going to look at the items in the car and see
22 who they're tied to. We're going to look at where he
23 fled. We're going to look at the descriptions that were
24 taken by two experienced police officers; one focused on
25 the driver and one focused on the passenger. We're going

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1 to then look at where he was stopped immediately after.
2 He fled towards the Saint Andrews Garden apartments and
3 he was stopped minutes later leaving the complex wearing
4 the same clothing, the same description and he was
5 sweating profusely, which that is consistent with someone
6 who has been running. That's common sense; it's
7 December. We just ask you to look at the facts as they
8 are before you.

9 Then let's go into a little more detail. Then the
10 dad comes to pick him up. The dad testifies that he got
11 a call to pick him up. And so we then have the officer
12 whose -- mind you now they're not in a car now because
13 they are on foot, they've established a perimeter around
14 Saint Andrews Garden apartments. So he's on foot now and
15 he's waiting outside the front checking cars as they
16 leave.

17 He sees someone who matches the description and he
18 stops them. Guess what? What does the defendant Jerry
19 Gardner, Jr. say? He tells his dad to go. Why else
20 would you say go unless you're not running from the cops?
21 That is obvious. And let's look at who has a motive to
22 run in this case? Who is a habitual traffic offender?
23 Jerry Gardner, Jr. Who has stolen property in the car?
24 Jerry Gardner, Jr. You saw Maurice Powell. He's got no
25 driving record. He's got no reason to run. It doesn't

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1 make any sense. He's got a valid license. The only
2 person who doesn't have a license is Jerry Gardner, Jr.
3 And they're showing these pictures up. They said that
4 first picture that they said is around the time his head
5 is cropped off. How can we tell what his hair looked
6 like? We don't know. He could have had twists or he
7 could have had four inch braids; we don't know. And the
8 other picture was from four months earlier. He could
9 have grown his hair out. People change hairstyles.

10 And also when you start looking through all this
11 stuff you can realize that Maurice Powell and Jerry
12 Gardner, Jr. do have similar connections because if you
13 look at that phone and see who is calling it is Keshia.
14 And when we listen to jail calls pay attention because
15 he's talking to Shanrrika Gregg and he says all my other
16 shoes are at Keshia's house. So I think that kind of
17 shows that they had the same grouping of friends here.
18 And I would bet that Maurice Powell was the passenger but
19 we don't have enough evidence to prove that. What we do
20 have evidence is of who the driver is and that's why he
21 is charged for that.

22 Now I wanted to walk you through the testimony of
23 each witness just briefly to give you some highlights of
24 it and then I'm going to try to wrap it all together and
25 tie it together and show you each piece of evidence is

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1 like a stand in a rope; by itself it's weak but when you
2 combine them all together it's strong and that's what
3 this case is, a strong case against Jerry Gardner, Jr.
4 Let's look at Joshua Snyder. He's the basketball coach
5 from Charleston Southern. His car is broken into and had
6 an iPad stolen out of it. And they track his stuff to
7 that gold Ford Explorer which belongs to Shanrika Gregg.
8 And we know that she was dating Jerry Gardner, Jr.

9 This is kind of going to link up later with the jail
10 call because she's calling about a grey package. She's
11 calling asking where is that package at, that grey one.
12 And he goes that's been in the backseat the whole time.
13 That been in there the whole time. He keeps saying the
14 whole time. What does the whole time mean? The whole
15 chase. Then who does he blame? He blames Henry. Henry
16 is the tow truck driver. We know he was the tow driver
17 because Tonya Mazyck testified about that. She said that
18 she sent Shanrika to pick up the stuff from Henry.

19 And she's upset saying where is my bag at? I was
20 supposed to ship that back. Look, there [indicates] it
21 is. He says it's been back there the whole time. And
22 guess what's underneath it? The stolen iPad which he
23 admitted his fingerprints would be on it. Come on y'all;
24 this is common sense. The stolen gym shorts are there.
25 The whole backseat is full of stolen property. There's

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1 all kinds of people's stuff in there. That's going to
2 link together again with the jail calls. And we went
3 into Officer Riley. He started the chase. He discussed
4 how he was following the track. Joshua Snyder was just
5 trying to get his stuff back. That led to Jerry Gardner,
6 Jr. driving that gold Ford Explorer of his girlfriend;
7 his girlfriend's car. Then we had Lieutenant Stanley who
8 took over the chase. Yes, I wish he had an in car camera
9 because we would have got a close up shot of Jerry
10 Gardner, Jr. running away.

11 I also want to point out let's look at the path he
12 took. Now this stop started in North Charleston. Guess
13 where it ended? Locksley Drive, which is really, really
14 close to where he lives on Balsam Street and where his
15 dad lives on River Front Drive. If you notice during
16 that chase the neighborhood that they circle around a
17 couple of times that's Orange Grove apartments. That's
18 his girlfriend's address, Shanrika Gregg. That's not a
19 coincidence y'all.

20 And the path where it ended was at Locksley Drive
21 and there is a cut through that goes into Saint Andrews
22 Garden apartments. You've got to be a local to know that
23 and he knew. He cut through there and ran to the back.
24 He was wearing black top and black pants. And if you
25 watch the video closely you can see him jump out. The

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1 car was still moving and he was out of there behind that
2 fence and gone. And Lieutenant Stanley testified how he
3 tracked him back there. He gave the description out of
4 the driver. Then after they stopped the defendant
5 leaving the apartment complex with his dad he then went
6 up and did an I.D. of him and said clothing is
7 consistent; he's got dark pants and a dark sweatshirt.
8 His hair is consistent and he's the same height and
9 build.

10 Next Sergeant Cain testified; another experienced
11 officer. He had an in car video of the chase. And you
12 all saw; that was nuts. He was going everywhere
13 disobeying every traffic signal, blowing through stop
14 signs, blowing through red lights driving recklessly
15 flying by cars. He didn't care, he wanted to get away
16 because he was a habitual traffic offender and he didn't
17 want to get caught with stolen property in his car. He
18 was up to no good. He shouldn't have been driving and he
19 knew that.

20 And he chased, Sergeant Cain chased the passenger.
21 And we'll pull this map up again, y'all will have that
22 back there, and he described that chase in detail and he
23 described how when he was chasing the passenger who was
24 running parallel to Saint Andrews Garden apartments and
25 the last spot he saw him was at Rice Hope Drive and he

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1 still was going away. So he wasn't going towards the
2 Saint Andrews Garden apartments. Then y'all heard about
3 from Officer Rissanen how they set up a boundary around
4 the Garden apartments. It doesn't make any sense for the
5 passenger to loop back and try to go where all the cops
6 are. That's nonsensical; that does not make sense.

7 And more importantly that passenger could have been
8 Maurice Powell. He had four to six inch twists or
9 dreads. And Sergeant Cain went up and did an
10 identification of the defendant Jerry Gardner, Jr. who
11 they had up at the front and he said that is not the
12 passenger. So he cannot be the passenger.

13 Then you heard from Officer Baker of the Charleston
14 Police Department. So we've got three police agencies
15 that are chasing this guy. We've got helicopters out
16 there, K-9; everybody is out there. And they got him;
17 they did a good job. They set up that traffic check
18 point. Within minutes he was stopped.

19 Come on y'all; he's running from the car down a
20 path, and y'all have pictures of it, directly to the
21 apartments. He calls his dad and his dad said he called
22 me for a ride. He was stopped leaving and he's sweating
23 he yells go to his dad and his dad drives away for a
24 second and then stops. He gathers his senses. He was
25 ready to run. And then the dad confirms for the police

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1 oh yes, you've got the right man. That's what he told
2 them. And then you saw the dad come up here. Of course
3 he didn't want to be up here; this is his son. But as
4 you know that night he was driving under suspension. He
5 doesn't make a habit of driving when he is under
6 suspension.

7 So that was an important ride for him to make. But
8 his son was in trouble; his son was running from the cops
9 and that's what he told Officer Rissanen. He said my son
10 called me and said law enforcement is looking for him and
11 he needs a ride so his dad came to give him a ride. Then
12 when he was stopped he lied. His dad said I don't know
13 who that is. I don't know who the passenger is.

14 Obviously he is hiding the identity of his son
15 because he knows what happened. He finally did come
16 clean and admitted that his son was involved, law
17 enforcement was looking for him. And you even heard his
18 testimony when he was on the stand when I asked him if
19 you would cover for his son. He couldn't really answer
20 that -- I'm not blaming him for that but.

21 Next you heard from Officer Rissanen. Again, he
22 talked about how sweaty that Jerry Gardner, Jr. was. He
23 read him his Miranda rights and questioned him at first
24 and he was combative and cursing. You heard that
25 discussion. And then on the way back they were checking

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1 him in at the sally port of the jail unfortunately the
2 cameras weren't on him; that would have been nice. But
3 we had an officer here that came and described what he
4 said. He's got no reason to lie. If he was going to lie
5 why not just say he said I was driving. There is no
6 reason to make up the statement he made.

7 I want to parse out the statement he said. He said
8 my fingerprints would be throughout the vehicle. At the
9 time Officer Rissanen didn't know the relationship, he
10 said it was my girlfriend's vehicle, he didn't know the
11 relationship. How would he even know that vehicle was
12 involved in the chase; his girlfriend's vehicle. Come
13 on; that's common sense.

14 Then he said that his fingerprints would be on the
15 stolen iPad. What does that mean? That means that you
16 touched or possessed the property. That's one of the
17 elements of receiving stolen goods or possession of
18 stolen property; you had possession of the property so he
19 says you got me; I had possession of the iPad and my
20 fingerprints would be on it.

21 Unfortunately, they did process everything. We
22 didn't get any fingerprints on the iPad. We did get a
23 couple on the center console cups, the McDonalds cups,
24 which I'll talk about a little bit more later. You can't
25 always get prints on everything. Just because someone

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1 touches something you don't always get their print. The
2 testimony came out about that. Also said he told Officer
3 Rissanen that he purchased it from an unknown subject off
4 the street. Everyone knows that means you're buying hot
5 goods that are stolen; it's common sense. So he has
6 reason to believe they're stolen if he purchased them
7 from some unknown person off the street.

8 Lastly, he says you can get me for receiving stolen
9 goods but not burglary. That's admitting guilty
10 knowledge. He knows that that iPad was stolen. He says
11 you can't prove I burglarized the car; you can't prove
12 that. Yes, we admit that. We can't prove you broke into
13 the car. The break in did happen that same day. It was
14 found in his girlfriend's car that he was driving and he
15 admitted he was in possession of it. Yes, we can't prove
16 he broke into the car and stole it. We can prove he was
17 in possession of it.

18 And there really is no doubt of that because you
19 heard his own statement. There is no doubt about that.
20 There is no driving required for that. That's not an
21 element. He was without a doubt in possession of that
22 iPad based on all the evidence in his statement. Tonya
23 Mazyck came in and she basically kind of connected the
24 relationships. She explained that her niece was
25 Shanrika Gregg. She's a nice lady. She bought her a

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1 car, a Ford Explorer for her. She had insurance and the
2 car in her name but as she said she eventually turned it
3 over to Shanrrika. She did say that she was dating Jerry
4 back then. And she said that she sent Shanrrika to
5 Henry's towing to pick up the truck, the Ford Explorer.
6 Yes, it would have been nice you know they always
7 reference wish you had this person and that person. Not
8 everyone is cooperative folks.

9 Then we had Ms. Watts come in from the D-M-V and she
10 explained to you the law about habitual traffic offender;
11 three major violations in three years. So Jerry was
12 declared a habitual traffic offender. That status was in
13 effect on October 11, 2014 and this incident occurred on
14 December 18th so obviously his status as a habitual
15 offender was in effect.

16 Then we have -- all this stuff is in evidence and
17 you can look at it as well in the back. I invite you to
18 pay careful attention to the details in this case because
19 all of it points to his guilt. We ask that you look
20 through it and weigh the evidence carefully.

21 And there was a notice in there and it was sent to
22 his last known address on Balsam Street. Again, you've
23 got the record of Maurice Powell. The driver's license
24 photo I'm sure was taken when he first got his permit.
25 His hair could have changed by the time this incident

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1 happened. He didn't have a driving record and he had a
2 valid license, valid permit. He doesn't have a motive to
3 run. It just doesn't add up. Let's blame this kid with
4 no record. Yes, the phone was in the car that links to
5 him. He could have been the passenger. He could have
6 loaned the phone to Jerry. He could have been in there
7 earlier; we don't know.

8 You also heard testimony and you saw the video of
9 the chase flying around everywhere. He could have put
10 the phone in the center console but when they're swinging
11 around everywhere the phone is going to fly off of
12 course. There was all kind of stuff in the car. He
13 could have let Jerry borrow it. We don't know. I ask
14 you to focus on what we do know in this case and that's
15 what is important.

16 Next you heard from crime scene technician Anita
17 Moore. She went through the crime scene pictures which
18 you can look at in detail. It has a lot of pictures of
19 the vehicle. You will notice also in the driver's seat
20 are some letters and Jerry Gardner's name is on there.
21 What do you do when you get in the car and you have some
22 papers? You throw them on the passenger seat.

23 We've got the McDonalds cups. We've got his left
24 middle fingerprint and two left thumb prints on one cup.
25 On the other cup we have one left thumb print. Who is

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1 the only person who touches both cups at a drive through;
2 the driver putting it in and the next one putting it in.
3 They took these cups back to North Charleston to process.
4 Unfortunately she couldn't recall if there was still ice
5 in it but she said she normally processes stuff on scene
6 and she would take something back if it needed to be
7 dried off or it had condensation.

8 Cups; those aren't something that you just leave in
9 your car for weeks and weeks at a time. Any time you get
10 a drink you toss out your old cup. You're not just going
11 to leave that in there for a long time because those cups
12 were in there. When he was in the car he touched both of
13 them and left his fingerprints. He can't deny that. He
14 cannot deny that.

15 Again, that stolen property; that was all over the
16 backseat. I mean it was just in plain view. He knew
17 what was in there. He told Officer Rissanen; we already
18 went through all that. He knew about that. And when you
19 listen to the jail call he knows about stuff in the car
20 because he's been in there the whole time he said.

21 In regards to the fingerprints they'd like to say
22 that his prints weren't run. But you can look at the
23 report; every fingerprint they have is run through a
24 database and then they do a comparison. They ran those
25 fingerprints through a database and there were no other

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1 matches besides Jerry Gardner, Jr. So they did check.
2 And she is the fingerprint expert and again we talked
3 about all the fingerprints. You can't always leave them
4 on all surfaces unfortunately. They did a great job
5 getting those prints off those two cups.

6 Next you heard from Ms. Grissett. She had a meeting
7 with Jerry Gardner, Jr. on December 9th with a return
8 date of January 13. She gave him a note informing him
9 when he had to be back. Guess what; that note was in the
10 center console of that car. That's where somebody
11 driving gets in the car and they put it right there
12 that's because he is always driving this car.

13 Rasheed Anderson; his I.D. was in the car right in
14 the center console his I.D. card. He came in and said he
15 wasn't involved so it eliminated him as a possible
16 passenger. He said he left the I.D. in the car when he
17 was riding with Jerry Gardner, Jr. Jerry Gardner, Jr.
18 was driving and gave him a ride to the store before this
19 incident occurred and that's when his I.D. dropped out of
20 his pocket. Common sense.

21 Then you heard from Mr. Sherbine. And he is the
22 custodian of the jail calls so we brought him in here to
23 lay the foundation for that. He discussed how the calls
24 are made and at the beginning of each call the person
25 announces their name and in here he says J; also his

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1 nickname for Jerry. You're notified at the beginning of
2 each call you're being recorded. So they have a heads up
3 they know people are listening to this. They know that.
4 We published three calls and note that they were right
5 after this incident occurred. They are on the 19th, the
6 20th, and the 22nd. This occurred on the 18th.

7 I want to point out some of the details of each of
8 these calls. Jerry Gardner: Y'all got to go get the
9 truck now -- he's worried about the truck. Yes, where
10 they got the truck at? Turkeys? No. North Charleston?
11 No. Country? How would he know North Charleston could
12 have it? How in the world could he know that unless he
13 was in the car running from the cops because that's where
14 the chase started. What the man name is? Henry. Henry?
15 Tell Henry he know who I is. Again, Henry is the tow
16 truck driver.

17 Where's the key at? He can't deny this. He says
18 the key is in the truck. How would he know where the key
19 is at if he was not the driver? The key is in the
20 ignition. He explicitly says the key is in the ignition.
21 The car was left in drive when he bailed out. How else
22 could he know where the key is? Because he was driving.
23 He was involved and he was driving; a habitual traffic
24 offender running from the cops with stolen property in
25 his car. The next day there was a call. What happened

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1 to my jacket -- obviously talking about the jacket -- my
2 coat that been in the grey bag. He says I keep on a
3 hoodie. Yes, he was wearing a hoodie that night. She
4 says I'm talking about that one I had in that bag that I
5 was supposed to mail.

6 You saw that picture. It's got her name on it,
7 Shanrrika Gregg, obviously she's supposed to mail and
8 it's a return label, a smart label. Oh and the grey shit
9 -- it's this [indicates] grey bag. That's sitting on the
10 backseat the whole time. The whole time. What does the
11 whole time mean? Entire. Yes, it's sitting there.
12 That's the picture on the backseat and the stolen
13 property is all around it.

14 The iPad, which he's already admitted he's touched,
15 he knows about, the gym shorts, which unfortunately the
16 victim did not get back. He did get the iPad back. You
17 heard the value it was about 600 bucks. It was a pretty
18 nice iPad. And she says because she's got the car now
19 from Henry and she says it's not back there now. And he
20 said them people take it. He's blaming Henry. He said
21 that been on the back the whole time, the whole time. He
22 keeps saying the whole time. It's been on the backseat.
23 He said call him back in an hour or 30 minutes and see if
24 the police take that inventory. That's what Shanrrika
25 said. Obviously she's talking to Henry and they're

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1 complaining some of my stuff is gone and he's saying the
2 cops might have taken it as evidence. Next he did which
3 is why we had the two phones and he said he did that with
4 my phone. Then she said that other phone that been in the
5 glove compartment. He goes what phone? The pink one.
6 He goes yeah that dude take it. They're blaming Henry
7 for taking the pink phone. We know who took the phones;
8 the cops did. They took it into evidence and they're
9 sitting here discussing the items. Come on y'all; he's
10 in the car, he's driving. He knows all about the
11 ignition, the key is in the ignition. How else would he
12 know that?

13 Then y'all heard the last call from him and his dad.
14 Y'all can recognize these people's voices. He testified
15 and he also was on the call. Jerry said that if he takes
16 this to trial they are going to use the dad's testimony
17 to convict him because he is a witness. That's right
18 he's a witness because he knows what happened.

19 You heard from Officer Rissanen. He told him yes,
20 he was running from law enforcement. He called me to
21 pick him up and I gave him a ride. Then Jerry goes just
22 say I been riding with you, I been riding with you. Yes,
23 he was riding with him but he also was driving earlier
24 before he bailed out and he got a ride with his dad.
25 True he was riding with his dad after the fact. He says

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1 okay, okay, I got you. I'll do it your way, I'll do it
2 your way. He's coaching him on how to testify. You know
3 why; because he's guilty that's why. Common sense.

4 Again, as I discussed he's got all the motive in the
5 world to run, where he attempted to bail, the description
6 matches. It doesn't match that of the passenger with the
7 hair. It can't be him. They fled in opposite
8 directions. He fled through the cut through.

9 He was stopped leaving the apartment in the
10 timeframe. Everything matches up. It was minutes later
11 after the chase this timeframe. Tell his dad to go, he
12 was way nervous. His dad confirms it. The fingerprints,
13 paperwork; it's really overwhelming evidence when you
14 look at it as a whole. Each piece is a strand wrapped
15 together and you've got a strong rope. He admits his
16 fingerprints were in the car, he admits, which they did
17 find on the cups, he admits the stolen iPad, he admits he
18 bought it off the street, he admits that he can be
19 charged with receiving stolen goods. He's guilty of
20 that; no doubt.

21 The jail calls; the key is in the ignition. I know
22 I'm beating a dead horse but I just want to make it
23 abundantly clear that he was the driver. All the
24 evidence points to that. He's coaching his dad, blaming
25 Henry. You're not going to blame the tow truck driver.

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1 You'd blame the person who had control of the car before
2 the tow truck driver if you weren't involved. You'd say
3 what about those guys that had it. No, he didn't say
4 that now. He said Henry must have taken it. Again,
5 common sense.

6 Again, when you look at the evidence as a whole you
7 should be firmly convinced of his guilt on all these
8 charges. We had the Sheriff's Office, North Charleston
9 Police Department, and City of Charleston all combined
10 together to do a very thorough investigation where they
11 gathered lots of evidence that all point conclusively to
12 his guilt as the driver. Focus on what we know and not
13 what you don't know. All the evidence points to him as
14 the driver and we ask that you seek the truth and find
15 him guilty of all charges. Thank you very much.

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1 CHARGE OF THE COURT

2 During this trial ladies and gentlemen you and I had
3 certain duties to perform. As the trial Judge it's my
4 responsibility and duty to instruct you on the law that
5 applies in this particular case. And you are to accept
6 only the competent evidence which is before you. To any
7 evidence to which there was an objection sustained you
8 must not speculate as to what the answer might have been
9 or the reasons for the objection. You should consider
10 only the evidence in the form of testimony from the
11 witnesses along with exhibits have been made a part of
12 the record in this case.

13 You also must never insinuate to be true any
14 suggestion that is made of a question that is asked of a
15 witness. The question is not evidence. But you can
16 consider the question only to the extent that it supplies
17 meaning to the answer that has been provided. Again, you
18 should consider any of the evidence that has been
19 presented along with the exhibits that have been made a
20 part of the record.

21 Now I have the additional duty and responsibility as
22 I stated to instruct you on the law that is to be applied
23 in this particular case. No one can tell you what the
24 law is in this case except for me. If you have any
25 preconceived ideas as to what the law is or what the law

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1 should be then I ask that you set that aside. Under your
2 oath as jurors you are sworn to accept the law as I
3 charge it to you. If by chance I make some error in that
4 charge of the law then there is another court at another
5 time that will correct those errors of law. But for
6 purposes of this trial right now this moment again you
7 must accept the law as I charge it to you as being the
8 correct statement of the law.

9 Now in every case tried before the jury you, the
10 jury, become the sole and exclusive judges of the facts
11 of this case. No one can tell you what the facts of this
12 case are. And if I've done anything throughout the
13 course of this trial that has given you any impression
14 that I am commenting on the facts or telling you what
15 facts to find or giving an opinion about the facts I ask
16 that you set that aside as well. I assure you I don't
17 have any idea or any opinion about the facts of this
18 case. That is your job and that is your duty, your
19 responsibility as jurors to determine the facts of this
20 case.

21 Now in order to do that you have to analyze and
22 evaluate the evidence and determine what evidence
23 convinces you of its truth. In order to do that you have
24 to judge the creditability or believability of the
25 witnesses who have testified. And in judging the

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1 creditability or believability of the witnesses you may
2 consider the following factors: What was the manner and
3 appearance of the witness who testified? Was he or she
4 hesitant or straightforward in answering the questions?
5 Was the testimony of the witness consistent or
6 inconsistent? How did the witness come to know the facts
7 that he or she testified to? What was his or her ability
8 to know the facts that they testified about? Was a
9 witness -- give testimony that was biased or prejudiced
10 in some manner? And was the testimony of a witness made
11 strengthened or weakened by other testimony or other
12 evidence?

13 Now additionally ladies and gentlemen you also heard
14 testimony from witnesses that we call expert witnesses.
15 Under our rules of evidence ordinarily witnesses cannot
16 testify as to opinions or conclusions. An exception
17 exists for those that we call expert witnesses. Those
18 are witnesses who because of their education or their
19 training they profess to be an expert at some science or
20 art and they may state an opinion in the areas in which
21 they profess to be an expert.

22 You are to consider any expert opinion that has been
23 offered in this case and give it the weight that you
24 think that it deserves. If you should find that an
25 expert's opinion is not based upon sufficient education

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1 or training or you find that the expert's opinion is
2 outweighed by other evidence or other testimony you are
3 not required to accept the witness's -- the expert's
4 opinion. An expert's opinion is to be given no greater
5 weight than that of any other witness simply because that
6 person professes to be an expert. And you are not
7 required to accept a witness's expert opinion even if it
8 is uncontradicted.

9 Now when determining the creditability of the
10 witnesses and based upon the witnesses who have testified
11 and the evidence presented you may believe one witness
12 against several witnesses or you may believe several
13 witnesses against one witness. You may believe a portion
14 of a witness's testimony and disregard other portions of
15 that same witness's testimony. And if you have a good
16 and sufficient reason for doing so you may accept a
17 witness's testimony in its entirety or you may reject it
18 in its entirety.

19 These factors you should not exercise arbitrarily
20 but if in your good judgment there is reason for you to
21 consider these things then you should do so. Ladies and
22 gentlemen your objective is to seek the truth and whether
23 it comes from a witness or witnesses for the State or a
24 witness or witnesses for the defense you don't determine
25 the truthfulness of the testimony or the evidence by

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1 counting the number of witnesses who testified for one
2 side or the other. The truth is not determined by
3 counting witnesses. What the law simply requires is that
4 when you've exercised your mental processes in coming up
5 with what you consider to be truthful evidence that you
6 should use your good common sense, use your sense of
7 logic and reasoning, use your experiences in life. You
8 then apply these attributes to the evidence and determine
9 what you consider to be truthful evidence. And then to
10 those true statements of facts as determined by you, you
11 apply the law as I will instruct you and then you will be
12 able to arrive at your verdict.

13 Ladies and gentlemen your verdict should not be
14 based upon sympathy, passion, or prejudice. By your
15 verdict you have no friends to reward and you have no
16 enemies to punish. Your verdict should simply speak the
17 truth.

18 Now in any trial that is presented there are two
19 types of evidence that can be presented. One is direct
20 evidence and one is circumstantial evidence. Direct
21 evidence directly proves the existence of a fact and does
22 not require deduction. Circumstantial evidence is proof
23 of a chain of facts and circumstances that indicate the
24 existence of a particular fact. Crimes may be proven by
25 circumstantial evidence. The law makes no distinction

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1 between the weight or value that you give to either
2 direct evidence or to circumstantial evidence. But to
3 the extent that the State relies on circumstantial
4 evidence all of the circumstances must be consistent with
5 each other and when taken together they must point
6 conclusively to the guilt of the accused beyond a
7 reasonable doubt.

8 If these circumstances merely portray the
9 defendant's behavior as suspicious then the proof has
10 failed. The State has the burden of proving that the
11 defendant is guilty beyond a reasonable doubt. And that
12 burden rests with the State regardless of whether the
13 State relies on direct evidence or circumstantial
14 evidence or a combination of the two. Conjecture,
15 speculation, suspicion, or probabilities do not
16 constitute circumstantial evidence.

17 Now ladies and gentlemen I instruct you once again
18 the fact that the defendant in this case was arrested and
19 indicted and has been charged in this case is not
20 evidence and cannot be considered by you in determining
21 the guilt or the innocence of the defendant. It does not
22 create any presumption or any inference of guilt. These
23 indictments ladies and gentlemen are simply the charging
24 documents which allow us to be able to come into court
25 and to have a trial for the State to be able to put up

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1 evidence relating to those charges. Again, ladies and
2 gentlemen two of these indictments that have been
3 presented here the defendant has pleaded not guilty and
4 that burden casts fully upon the State to prove that the
5 defendant is guilty of these charges.

6 A person who is charged with committing a criminal
7 offense in South Carolina or anywhere in this country is
8 never required to prove that they are innocent. Ladies
9 and gentlemen I charge you that it is an important
10 cardinal rule of law that the criminal defendant in a
11 trial no matter how serious the charges against him may
12 be is always presumed to be innocent of the crime for
13 which he has been indicted unless his guilt has been
14 proven by evidence that satisfies you of that guilt
15 beyond a reasonable doubt.

16 Now the presumption of innocence does not go away
17 when you retire into the jury room. It follows him from
18 the time of his appearance in court up until you, the
19 jury, determine by a verdict based upon evidence that
20 convinces you of his guilt beyond a reasonable doubt.
21 Our Supreme Court has stated that the presumption of
22 innocence is like a robe of righteousness that is placed
23 about the defendant's shoulders and that robe of
24 righteousness casts that defendant with a class of the
25 innocent and it remains with him until that presumptive

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1 robe of righteousness has been stripped from him by
2 evidence that satisfies you of his guilt beyond a
3 reasonable doubt. Again, ladies and gentlemen I cannot
4 emphasize enough that the presumption of innocence is not
5 some nice legal theory. It's not just something that we
6 talk about. It is a very important and cardinal rule of
7 law to which every individual who is charged with a crime
8 is entitled to rely upon the presumption of innocence
9 until his or her guilt has been firmly established by
10 evidence that convinces you of that guilt beyond a
11 reasonable doubt.

12 Now ladies and gentlemen I instruct you that the
13 fact that the defendant in this case did not testify is
14 not a factor to be considered by you in any manner
15 whatsoever in determining his guilt or his innocence. It
16 may not -- must not even be discussed by you during the
17 course of your deliberations. The defendant has a
18 constitutional right to remain silent and the assertion
19 of that right must not be considered by you during your
20 deliberations.

21 I repeat ladies and gentlemen under your oath as
22 jurors you are to draw no conclusion whatsoever from the
23 fact that the defendant did not take the witness stand
24 and testify in this particular matter. And again the
25 fact that he did not testify should not be discussed or

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1 considered by you during the course of your
2 deliberations. The defendant is not required to prove
3 that he is innocent. The burden of proof remains always
4 with the State to prove that the defendant is guilty
5 beyond a reasonable doubt.

6 So what is reasonable doubt? Some of you may have
7 served as jurors in a civil case in which you were told
8 that it was only required to prove that a fact was more
9 likely true than not true. Well, in criminal cases the
10 State's burden is more powerful than that. It must be
11 proof beyond a reasonable doubt. Proof beyond a
12 reasonable doubt is proof that leaves you firmly
13 convinced of the defendant's guilt.

14 Now of course there are very few things that we know
15 with absolute certainty and the law does not require
16 proof that overcomes every possible doubt. But if based
17 upon your considerations of the evidence that has been
18 presented throughout the course of this trial you are
19 firmly convinced that the defendant is guilty of the
20 charge, the charges that are pending against him then you
21 must find him guilty. If however on the other hand you
22 think that there is a real possibility that he is not
23 guilty then you must give him the benefit of the doubt
24 and find him not guilty on that charge. Presented into
25 evidence ladies and gentlemen was a statement alleged to

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1 have been made by the defendant and it was admitted into
2 evidence in this case. While the court has determined
3 that the statement is admissible I instruct you ladies
4 and gentlemen that you ultimately make the decision as to
5 whether or not the defendant made the statement.

6 If the defendant did make the statement then you
7 must determine whether the statement was made by the
8 defendant voluntarily and of his own free will. This
9 means that the statement was not caused by pressure,
10 force, fear, threats, coercion or intimidation or by hope
11 or a promise of leniency or a reward of any kind. In
12 determining whether the statement was voluntary you
13 should consider both the characteristics of the defendant
14 and the details of the questioning.

15 Some of the factors that you must consider are the
16 age of the defendant, the defendant's education or lack
17 thereof, the defendant's mental ability or capacity, the
18 defendant's I.Q. or intelligence, the defendant's
19 background and environment, the place and length of
20 detention, the nature of the questioning and the advise
21 or the lack thereof to the defendant of his
22 constitutional rights including the right to remain
23 silent, that any statement could be used against him in a
24 court of law, the right to have a lawyer present, that if
25 he could not afford a lawyer that one would be appointed

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1 to represent him without any cost and that he could stop
2 making a statement at any time. You must carefully
3 consider all of the surrounding circumstances before you
4 give any weight to the alleged statement. The State has
5 the burden of proving beyond a reasonable doubt that the
6 alleged statement was voluntary.

7 If you determine that it was you may give the
8 statement any further consideration that you deem proper.
9 You must decide what weight if any should be given to
10 this statement. If you determine that the statement was
11 not the free and voluntary statement of the defendant
12 then you should not consider the statement at all.

13 Another issue in this case ladies and gentlemen is
14 the identification of the defendant as the person who
15 committed the crime charged. The State has the burden of
16 proving identity beyond a reasonable doubt. You must be
17 satisfied beyond a reasonable doubt of the accuracy of
18 the identification of the defendant before you may
19 convict the defendant.

20 Identification testimony is the expression of belief
21 or impression by a witness. You must determine the
22 accuracy of the identification of the defendant. You
23 must consider the believability of each identification
24 witness in the same way as any other witness. You may
25 consider whether the witness had adequate opportunity to

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1 observe the offender at the time of the offense. This
2 will be affected by things like how long or short a time
3 was available, how far or close the witness was, the
4 lighting conditions, and whether the witness had the
5 chance to see or know the person in the past.

6 Once again ladies and gentlemen I instruct you that
7 the burden is on the State to extend -- every element of
8 the crime charged and that applies to proving beyond a
9 reasonable doubt the identity of the defendant as the
10 person who committed the crime. If after examining the
11 testimony you have a reasonable doubt as to the accuracy
12 of the identification then you must find the defendant
13 not guilty.

14 Now ladies and gentlemen the court also took
15 judicial notice of the following: Coordinated Universal
16 Time abbreviated as UTC is the primary time standard by
17 which the world regulates clocks and time. Now some of
18 you may be familiar with Greenwich Mean Time which is a
19 predecessor to Coordinated Universal Time. To obtain
20 local time in the United States you need to subtract a
21 certain number of hours from the UTC depending on how
22 many time zones you are from Greenwich, England because
23 that's where the standard occurs is in Greenwich,
24 England. Eastern Standard Time is reflected as UTC minus
25 five. However, Eastern Daylight Savings Time is

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1 reflected as UTC minus four. Ladies and gentlemen these
2 facts are now in evidence and may be considered by you in
3 determining the facts of this particular case.

4 Now as to the charges against the defendant the
5 defendant has been charged with a violation of the
6 habitual traffic offender laws. It is unlawful for a
7 person found to be a habitual offender to operate a motor
8 vehicle in this state while the decision of the
9 Department of Motor Vehicles prohibiting the operation of
10 the vehicle is in effect.

11 The State must prove beyond a reasonable doubt that
12 the defendant was operating a motor vehicle in this
13 state. Operating a motor vehicle does not necessarily
14 mean driving the vehicle. Driving means that the vehicle
15 is actually in motion. However in order to be operating
16 a motor vehicle there does not need to be any motion.
17 Operating includes the starting of the engine or using
18 any mechanical or electrical part of the vehicle which
19 will set the vehicle in motion.

20 The State must also prove beyond a reasonable doubt
21 that at the time the defendant was operating the motor
22 vehicle the Department of Motor Vehicles had found the
23 defendant to be a habitual offender and had revoked his
24 driver's license to drive based upon that finding. When
25 a person is convicted of three or more offenses within a

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1 year, and we're talking driving offenses, within a three
2 year period the Department of Motor Vehicles must review
3 its records of that person. If the department determines
4 after review of those records that the person is a
5 habitual offender the department must revoke or suspend
6 the person's driver's license.

7 If the department determines the person is a
8 habitual offender the department shall give notice of the
9 determination to the person and direct the person not to
10 operate a motor vehicle on the highways of this state and
11 to surrender his driver's license or permit to the
12 department.

13 The state statute provides that when notice is
14 required concerning a person's driver's license the
15 notice must be given by the Department of Motor Vehicles
16 by depositing the notice in the United States mail with
17 postage prepaid addressed to the person at the address
18 contained in the driver's license records of the
19 department. The giving of notice by mail is complete ten
20 days after the deposit of the notice.

21 A certificate by the Director of the Department or
22 his designee that the notice has been sent as required in
23 this section, which is section 56-1-360 is presumptive
24 proof that the requirements as to notice of suspension
25 has been met even if the notice has not been received by

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1 the addressee. The next charge is the failure to stop
2 for a blue light. Section 56-5-750 of the South Carolina
3 Code defines the offense of failure to stop for a blue
4 light. It states that in the absence of mitigating
5 circumstances it is unlawful for a motor vehicle driver
6 while on a road, street, or highway of the state to fail
7 to stop when signaled by law enforcement vehicle by means
8 of a siren or a flashing light.

9 An attempt to increase the speed of a vehicle or in
10 any manner avoid the pursuing law enforcement vehicle
11 when signaled by a siren or flashing light is prima facie
12 evidence of a violation of this section. And prima facie
13 evidence ladies and gentlemen means that it is an
14 evidentiary fact to be considered and taken into
15 consideration along with other evidence in the case.

16 The statute goes on to say that the failure to see
17 the flashing light or hear the siren does not excuse a
18 failure to stop when the distance between the vehicles
19 and other road conditions are such that it would be
20 reasonable for a driver to hear or see the signals from
21 the law enforcement vehicles.

22 So in order to establish a violation for failure to
23 stop for a blue light the State must prove beyond a
24 reasonable doubt that the defendant was driving a motor
25 vehicle, that he was on a road, street, or highway in

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1 South Carolina, that he was signaled by to stop by a law
2 enforcement vehicle by means of a siren or flashing light
3 and that he did not stop. The signal requiring a
4 motorist to stop as given by law enforcement may be by
5 way of a siren or a flashing light; both are not
6 required.

7 And finally ladies and gentlemen the defendant has
8 been charged with receiving stolen goods. The State must
9 prove beyond a reasonable doubt that the defendant
10 bought, received or possessed goods, chattels, or other
11 property and that the defendant knew or had reason to
12 believe that the property was stolen. A person may be
13 found guilty of this offense whether or not anyone is
14 convicted of the theft of the property. However, the
15 State must prove that the property was stolen by someone.

16 Whether the defendant knew or had reason to believe
17 that the property was stolen may be shown by direct or
18 circumstantial evidence. The State must prove that the
19 defendant knew or had reason to believe that the property
20 was stolen by showing that the defendant knew facts that
21 would make a reasonable person believe that the property
22 was stolen.

23 Now ladies and gentlemen after you considered all of
24 the evidence in this case and you've considered all of my
25 instructions to you as to the law on the charges then you

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1 will be able to arrive at your verdict and then it will
2 be time for your Foreperson to record the verdict on the
3 appropriate form. Ladies and gentlemen you will have
4 copies of the indictments in this case. There are two
5 possible verdicts that you can find in this case on each
6 one of these charges. One is guilty; one is not guilty.
7 There is no significance to the order in which I say
8 those words. I have to put one first, I have to put one
9 second.

10 But if after considering all the evidence and the
11 law in this particular case ladies and gentlemen on the
12 charge of habitual traffic offender you considered what
13 the State would have to prove beyond a reasonable doubt.
14 If you find that the State did in fact prove beyond a
15 reasonable doubt that the defendant was guilty of
16 habitual traffic offender then you would write the word
17 guilty on the line down here where it says verdict.

18 Or if you find that the State has failed to meet its
19 burden of proving that the defendant was guilty beyond a
20 reasonable doubt of habitual traffic offender then you
21 would write the word not guilty. Then Madame Foreperson
22 you would sign your name and place today's date.
23 Likewise you would go through the same exercise with
24 respect to the failure to stop for a blue light. If you
25 find that the State proved beyond a reasonable doubt that

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1 the defendant was guilty of that offense then you would
2 write guilty. If you find however that the State failed
3 to meet that burden of proving the defendant was guilty
4 beyond a reasonable doubt then you would write not guilty
5 then you would sign your name and place today's date.

6 And the same with the offense related to receiving
7 stolen goods. Did the State prove beyond a reasonable
8 doubt that the defendant was guilty of the charge of
9 receiving stolen goods? If you find that the State made
10 that burden then you would write guilty. If you find
11 however that the State failed to prove that then you
12 would write the words not guilty and again Madame
13 Foreperson you would sign your name and today's date.

14 Ladies and gentlemen your verdict must be unanimous.
15 It must be the verdict of all 12 of you. You have been
16 sworn as a fair and impartial juror in the trial of this
17 particular case and you were sworn to determine the facts
18 based upon the evidence and based upon the law as I've
19 instructed you.

20 Once you have done that then you will arrive at your
21 verdict and no one will be able to complain about the
22 verdict that you have reached in this case. And you
23 would have fully discharged your duty and your
24 responsibility as jurors in this matter. Ladies and
25 gentlemen your verdict should not be based upon sympathy,

State v Jerry Gardner
Charge of the Court
August 5, 2015

1 question on a sheet of paper, sign your name, knock on
2 the door and give it to the bailiff and we will try to
3 answer those questions. However if you have no questions
4 and once you have completed the verdict forms on the
5 front of the indictments just knock on the door at that
6 time and tell them that you have reached a verdict and we
7 will receive you back into the courtroom so that we can
8 receive your verdict.

9 So at this time ladies and gentlemen I ask that you
10 retire. You are well aware that lunch has been ordered.
11 I've asked for it to arrive about 12 o'clock. When it
12 arrives they will knock on the door and they will tell
13 you to stop deliberating so that they can bring lunch in
14 to you. Once you've all gotten your lunch and you're
15 settled they will leave and then you may continue on with
16 your deliberations during the time that you have lunch.
17 But I ask that you retire at this time and await further
18 instructions.

19 [Whereupon, the jury exits at 11:27 a.m.]
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State v Jerry Gardner
Proceedings
August 5, 2015

1 THE COURT: Are there any exceptions to the charge
2 by the State?

3 MR. CONDON: No, Your Honor. I think it would make
4 sense for me to make a copy of the indictment on
5 indictment paper. I notice it's on the flimsy copy paper
6 so it probably might look kind of suspicious.

7 THE COURT: That's fine with me. If you have a
8 color copier that would be great because all the rest of
9 them are in color.

10 MR. CONDON: Yes, I can re-do it.

11 THE COURT: I assume there is no objection from the
12 defense on that?

13 MR. GEEL: As to the copy ---

14 THE COURT: --- making a copy?

15 MR. GEEL: No objection, Your Honor.

16 THE COURT: Let me finish checking -- are there any
17 exceptions to the charge by the defense?

18 MR. GEEL: No, Your Honor.

19 THE COURT: Let's get a better copy of that and in
20 the interim we can put all the exhibits together and make
21 sure they're all here.

22 [Whereupon, counsel and the court reporter review
23 the exhibits]

24 THE COURT: Madame Court Reporter, if we can go
25 back on the record for just a moment. Mr. Gardner, you

State v Jerry Gardner
Proceedings
August 5, 2015

1 [Whereupon, evidence out to the jury at 11:40 a.m.]

2 [Whereupon, court is in recess]

3 THE COURT: Counsel, we have a note from the jury
4 that says can we have a copy of the jail conversation
5 transcript from all parties? So my response would be
6 that they have the evidence that is before them. They
7 can listen to the conversation if they like but we do not
8 have a transcript that we could give to them or words to
9 that effect.

10 MR. GEEL: No objection, Your Honor.

11 MR. CONDON: No objection, Your Honor.

12 [Whereupon, court's exhibit number 1 is marked by
13 the court reporter]

14 THE COURT: What I wrote is we do not have a
15 transcript that can be given to you. The C.D. is in
16 evidence and you may hear the conversations. Please tell
17 us which conversation you want to hear if you wish to
18 hear it. Anything else?

19 MR. CONDON: No, Your Honor.

20 THE COURT: If you'll give that to the Foreperson
21 and tell her not to destroy the notes and just to share
22 it with the jury and for her to hold on to it and return
23 it to us when they reach a verdict.

24 [Whereupon, the court provides the note to the
25 bailiff]

State v Jerry Gardner
Proceedings
August 5, 2015

1 THE COURT: Thank you. We'll stand in recess
2 until we hear from them.

3 [Whereupon, court is in recess]

4 THE COURT: Be seated please. I received a note
5 from the jury that says can we hear the C.D. of the jail
6 conversations between all parties. I wrote back and said
7 please tell me whether you want to hear all three
8 conversations or only one or two. Which conversations do
9 you want to hear? Then she wrote back and said we would
10 like to hear all three please.

11 MR. CONDON: Your Honor, can we queue them up real
12 quick to make sure we're all on the same page before we
13 bring them in?

14 THE COURT: Yes.

15 [Whereupon, court's exhibit number 2 is marked by
16 the court reporter].

17 [Whereupon, Mr. Condon and Mr. Geel confer regarding
18 the C.D.]

19 MR. CONDON: Your Honor, I think we're ready here.

20 THE COURT: And we're going to play them in the
21 order in which they were presented?

22 MR. CONDON: Correct, Your Honor.

23 THE COURT: Anything we need to take up? You may
24 ask the jury to come in please.

25 [Whereupon, the jury enters at 2:11 p.m.]

State v Jerry Gardner
Proceedings
August 5, 2015

1 THE COURT: Madame Foreperson, I received a note
2 from you that says can we hear the C.D. of the jail
3 conversations between all parties? Is that the note that
4 you sent?

5 MADAME FOREPERSON: Yes, ma'am.

6 THE COURT: Then I responded by saying please tell
7 me whether you want to hear all three conversations or
8 only one or two. Which conversations do you want to hear
9 and your response was we would like to hear all three
10 please, is that correct?

11 MADAME FOREPERSON: Yes, ma'am.

12 THE COURT: At this time we will hear the
13 conversations. I believe that they took place on
14 December 19th, December 20th, and December 22nd.

15 [Whereupon, the C.D. plays]

16 [Whereupon, the C.D. ends]

17 THE COURT: Ladies and gentlemen you've now heard
18 the conversations that you requested to be heard. I ask
19 that you return to the jury room and continue on with any
20 deliberations.

21 [Whereupon, the jury exits at 2:20 p.m.]

22 THE COURT: We'll stand in recess until we hear
23 from them further]

24 [Whereupon, court is in recess]

25 THE COURT: Are we ready to proceed?

State v Jerry Gardner
Verdict
August 5, 2015

1 VERDICT

2 THE COURT: Madame Foreperson, I understand that
3 you've reached a verdict is that correct?

4 MADAME FOREPERSON: Yes, ma'am.

5 THE COURT: Would you please pass it to the
6 bailiff?

7 [Whereupon, the Foreperson complies]

8 THE COURT: Would you please publish the verdict?

9 CLERK OF COURT: Yes, ma'am. If the defendant
10 would please rise.

11 [Whereupon, the defendant complies]

12 CLERK OF COURT: In the state of South Carolina in
13 the county of Charleston in the Ninth Judicial Circuit
14 the State of South Carolina versus Jerry Lewis Gardner,
15 Jr. indictment number 2015-GS-10-02669 indictment for
16 habitual traffic offender we, the jury, unanimously find
17 the defendant guilty. Signed Madame Forelady August 5,
18 2015.

19 As to indictment number 2015-GS-10-02668 indictment
20 for failure to stop for a blue light we, the jury,
21 unanimously find the defendant guilty. Signed Madame
22 Forelady August 5, 2015.

23 As to indictment number 2015-GS-10-04407 indictment
24 for receiving stolen goods we, the jury, unanimously find
25 the defendant guilty. Signed Madame Forelady August 5,

State v Jerry Gardner
Verdict
August 5, 2015

1 2015. Madame Forelady and ladies and gentlemen of the
2 jury if this is your verdict please indicate so by
3 raising your right hand.

4 [Whereupon, the jury complies]

5 CLERK OF COURT: Please let the record reflect that
6 all jurors have raised their right hand.

7 THE COURT: Thank you. Ladies and gentlemen the
8 court is not concerned with the verdict that you reached
9 so much as I'm concerned with the process by which you
10 reach your verdict. Throughout the course of this trial
11 you've listened to the evidence that was presented. You
12 also listened to my instructions to you as to the law.
13 You determined the facts in accordance with your view of
14 what that evidence showed and you applied the law as I
15 instructed you and then you were able to reach a verdict.

16 Based upon that ladies and gentlemen there is no one
17 who can complain about the verdict that you've reached
18 and you have fully discharged your duty and your
19 responsibility as jurors in this particular matter. On
20 behalf of Charleston County and the state I'd like to
21 thank you very much for your service in this matter. You
22 are welcome to stay for sentencing but you are not
23 required to stay. If you would like to stay then you
24 don't have to leave but if you would like to leave then I
25 will give you that opportunity at this particular time

State v Jerry Gardner
Verdict
August 5, 2015

1 but I do want to thank you for your service.

2 [Whereupon, the jury is excused and exits at 2:56
3 p.m.]

4 THE COURT: Are there any post trial matters which
5 we need to take up at this time?

6 MR. GEEL: Your Honor, it's our intent to move the
7 court for a new trial. We request permission to do that
8 in writing within ten days.

9 THE COURT: I will give you an opportunity to make
10 that motion within ten days. Please remember that in
11 addition to filing a copy at the Clerk of Court's office
12 here you must send a copy to my office in Richland County
13 pursuant to the rules so that I am aware you have filed
14 it.

15 And I will tell you most likely there will not be a
16 hearing on those matters. But I'll decide it on the
17 merits of the motion that you submit. I'll give the
18 State an opportunity five days to respond if necessary
19 and that also needs to be filed here in the Clerk's
20 office in Charleston County as well as copies sent to me
21 in Columbia.

22 MR. CONDON: Yes, Your Honor.

23 THE COURT: Are you preparing the sentencing
24 sheets?

25 MR. CONDON: We are, Your Honor. I believe there

State v Jerry Gardner
Verdict
August 5, 2015

1 is also a probation violation. I don't know if you want
2 to have the agent in here or if that would be separate.

3 MR. SMITH: Your Honor, they are aware and they said
4 that they would be here very shortly.

5 MR. CONDON: I can go ahead and give the court the
6 record if you're so inclined or we can wait for the
7 sheets to come down.

8 THE COURT: I'll go ahead and hear whatever
9 information you'd like me to hear ahead of time.

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State v Jerry Gardner
Sentencing
August 5, 2015

SENTENCING

MR. CONDON: I want to start going through his record. He's got two prior failure to stop for a blue light convictions in 2012. He's got habitual traffic offender conviction that was also in 2012 or 2013. He's got six receiving stolen goods convictions in 2012. He's got a burglary third degree conviction but that was 2011. He's also got a breaking and entering motor vehicle conviction; I believe that was 2013. He's got nine prior driving under suspension convictions.

And I've got certified copies of the six receiving stolen goods convictions; that's for the property crime enhancement for receiving stolen goods. We'd just like to make this part of the record as well, Your Honor. He also has the three false information to police convictions also but we discussed those earlier.

[Whereupon, the court reviews documents]

MR. CONDON: Your Honor, I'm going to go follow up on the sentencing sheets if that's okay?

THE COURT: Yes, sir.

MR. CONDON: Thank you.

[Off the record momentarily]

[Whereupon, court's exhibit number 3 is marked by the court reporter]

THE COURT: I've made the certified copies of the

State v Jerry Gardner
Sentencing
August 5, 2015

1 prior receiving stolen goods convictions a court's
2 exhibit for the record.

3 MR. CONDON: Thank you, Your Honor. I'm sorry
4 Your Honor; I need to correct the sentencing sheet that
5 reflects the first offense for failure to stop with the
6 correct CDR code.

7 THE COURT: Jerry Lewis Gardner, Jr., if you would
8 step up please?

9 [Whereupon, the defendant complies]

10 MR. CONDON: Your Honor, would you like to hear
11 from the State with regards to sentencing or?

12 THE COURT: In just a moment please. Mr. Gardner,
13 do you understand that you have been found guilty by a
14 jury of the charge of failure to stop for a blue light.
15 Do you understand that is a second offense? Do you
16 understand that?

17 MR. GARDNER: Yes, ma'am.

18 THE COURT: And that it carries up to five years
19 imprisonment are you aware of that?

20 MR. GARDNER: Yes, ma'am.

21 THE COURT: You've also been convicted by a jury of
22 the offense of habitual traffic offender and that carries
23 up to five years in jail are you aware of that?

24 MR. GARDNER: Yes, ma'am.

25 THE COURT: And you've also been convicted of

State v Jerry Gardner
Sentencing
August 5, 2015

1 receiving stolen goods and it is a third or subsequent
2 offense. That carries under the property crime
3 enhancement that carries up to ten years in jail are you
4 aware of that?

5 MR. GARDNER: Yes, ma'am.

6 THE COURT: Before I hear from Mr. Geel regarding
7 sentencing I will hear from the State. Yes sir, Mr.
8 Condon?

9 MR. CONDON: Yes, Your Honor. As we discussed this
10 is his third failure to stop for a blue light conviction.
11 He actually had another that was pled down to reckless so
12 this is the fourth incident regarding failure to stop.
13 He has a previous habitual traffic offender, the burglary
14 which he is on probation, a B and E for motor vehicle
15 which he is on probation for right now, six prior
16 receiving stolen goods convictions.

17 We believe that warrants the ten year sentence on
18 the property crime enhancement and five years sentences
19 on the other convictions, Your Honor. It shows a
20 continued disregard for the law and put a lot of people
21 at risk that night.

22 THE COURT: Mr. Geel?

23 MR. GEEL: Thank you, Your Honor. My client Mr.
24 Gardner is 29 years old. He spent 58 days in jail after
25 he was arrested for this incident bonding out February

State v Jerry Gardner
Sentencing
August 5, 2015

1 13, 2015. We are aware that he has a significant record.
2 Obviously there is no avoiding that issue. Prior to
3 trial in my communications with the State I'm not sure
4 that there was really a firmly conveyed plea offer but it
5 was our understanding at least, I'm not sure formerly,
6 that Mr. Condon intended to request the maximum on the
7 failure to stop for a blue light.

8 Given the fact that there were triable issues in
9 this case I don't take that as a plea offer that he could
10 have reasonably accepted prior to trial. Of course he
11 could have done an open plea. But like I said there were
12 significant issues in this case as Your Honor has sat
13 through the entire trial and you're aware.

14 We are aware that a custodial sentence is probably
15 inevitable in this case. Your Honor, I would submit to
16 the court respectfully that the maximum sentence is not
17 warranted here. I won't give Your Honor a specific
18 number but I would ask you simply to keep it to a more
19 reasonable sentence on the lower end. Again, it has to
20 be custodial. I think a few years would be appropriate
21 as far as punishment is concerned for these offenses so
22 we would leave that to the discretion of the court.

23 THE COURT: And I have heard all the evidence as it
24 was presented throughout the course of this trial I
25 understand that there were a number of legal issues which

State v Jerry Gardner
Sentencing
August 5, 2015

1 were raised including identification which was a serious
2 issue and a reasonable one under the circumstances given
3 the testimony that was presented.

4 With respect to the habitual traffic offender
5 charge, given the fact that there are prior habitual
6 traffic offender convictions and that Mr. Gardner was
7 aware that his privileges had been suspended for a period
8 of time that he was not to operate a vehicle I will
9 sentence Mr. Gardner to the Department of Corrections for
10 a period of five years. I'll give you credit for the
11 time that you served and it will run concurrent with the
12 other charges in this matter.

13 On the failure to stop for a blue light I was
14 present during the trial and I had the opportunity to
15 watch the video relating to the attempt to stop you in
16 the traffic stop. And I was concerned about the danger
17 to the community in the way that all the way that the
18 automobiles were operated, the number of red lights that
19 were run and putting the community in danger as a whole.

20 Given the fact that it is a second offense and
21 second offense -- second or subsequent offense the
22 maximum is five years I'll sentence you to the Department
23 of Corrections for a period of five years. I'll also
24 give you credit for the time you served and it is to run
25 concurrent with the other charges. And finally as it

State v Jerry Gardner
Sentencing
August 5, 2015

1 relates to the receiving stolen goods third or subsequent
2 under the property enhancement that carries up to ten
3 years in jail I've seen the certified copies of the prior
4 convictions for receiving stolen goods; there have been a
5 number of them. And while under the circumstances based
6 upon what was in your possession at the time that this
7 offense occurred may not warrant the maximum.

8 I will impose a sentence at the Department of
9 Corrections not to exceed seven years. I'll give you
10 credit for the time that you served and also run that
11 concurrent with the other charges in this particular
12 matter. Mr. Geel I would need for you to sign even
13 though it's a conviction I will need you to sign the
14 sentencing sheets and I'll fill in the rest of it.

15 [Whereupon, Mr. Geel complies]

16 MR. CONDON: I'll also hand up one of the failure
17 to stop for a blue light convictions for 2012 to be made
18 part of the record too, Your Honor.

19 THE COURT: Mr. Gardner, I've imposed a sentence
20 based upon the jury finding you guilty beyond a
21 reasonable doubt on these charges. Good luck to you,
22 sir.

23 [Whereupon, court's exhibit number 4 is marked by
24 the court reporter]

25 [Whereupon, the defendant reenters the courtroom]

State v Jerry Gardner
Sentencing
August 5, 2015

1 THE COURT: Mr. Gardner, we neglected to take up
2 the probation matter. Yes sir, I'll hear from you. He's
3 on probation for breaking and entering a motor vehicle?

4 PROBATION AGENT: Yes, ma'am. May it please the
5 court? Jerry Gardner is on probation for two breaking
6 and entering and a habitual traffic offender and he was
7 sentenced to five years suspended on five year's
8 probation. In light of the recent conviction we're
9 merely asking for a termination of this case.

10 THE COURT: How much time - and he'll get credit
11 for whatever time he has previously done on those
12 charges?

13 PROBATION AGENT: Yes, ma'am. He served 290 days
14 pre-detention -- pre-sentencing on the offense.

15 THE COURT: Mr. Geel, anything from you on that
16 matter?

17 MR. GEEL: No, Your Honor. We certainly don't
18 oppose terminating his probation.

19 THE COURT: And that will terminate all probation
20 matters that he has with ---

21 PROBATION AGENT: --- yes ma'am, it will.

22 THE COURT: Then I'll revoke in full and to run
23 that concurrent with the time to be served on the charges
24 today.

25 PROBATION AGENT: Thank you, ma'am.

State v Jerry Gardner
Sentencing
August 5, 2015

1 THE COURT: Thank you.

2 MR. GEEL: Thank you, Judge.

3 [Whereupon, the jury trial concludes at 3:19 p.m.]

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CMC/0242642/20141212622
WITNESSES

Charleston County Sheriff Office

AGENCY CASE NUMBER
2014021103B

ARREST WARRANT NUMBER
40002GS

DATE OF ARREST

12/18/2014

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

JUL 07 2015
Date:

VERDICT

Guilty

Foreperson of Petit Jury

Date:

DOCKET NO. 2015-GS-10-02669

The State of South Carolina
County of Charleston

COURT OF GENERAL SESSIONS
JULY TERM 2015

THE STATE

VS.

JERRY LEWIS GARDNER, JR
B/M DOB:

Indictment for

HABITUAL TRAFFIC OFFENDER

SC Code: § 56-01-1100
CDR Code: 0057

STATE OF SOUTH CAROLINA

INDICTMENT

COUNTY OF CHARLESTON

At a Court of General Sessions, convened on July 6, 2015, the Grand Jurors of Charleston County present upon their oath:

HABITUAL TRAFFIC OFFENDER

That in Charleston County, South Carolina, on or about December 18, 2014, the

Defendant, Jerry Lewis Gardner Jr, did operate a motor vehicle in the State of South Carolina

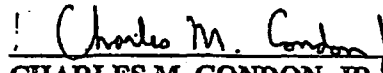
after having been found to be an habitual traffic offender by the South Carolina Department of

Motor Vehicles and while the decision of the Department of Motor Vehicles prohibiting the

defendant from operating a motor vehicle was in effect. This is in violation of Section 56-1-1100

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.


CHARLES M. CONDON, JR.
ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

STATE VS.

JERRY LEWIS GARDNER, JR.

AKA: Jerry Lewis Jr. Gardner, Jerry L. Gardner

Race: Sex: Age: DOB: SSN: Address: City, State, Zip: DL# SID# *CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Failure To Stop For A Blue Light 2.1 or 6.6 requestIn violation of § 56-05-0750(B)(1) of the S.C. Code of Laws, bearing CDR Code # 0005 2316☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45(CSC w/minor 1st or Lewd Act)The charge is: ☒ As indicted, ☐ Lesser included Offense, ☐ Defendant Waives Presentment to Grand Jury, (def.'s initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Charles M. Condon, Jr. 100579Charles M. Condon, Jr., Assistant Solicitor - SC Bar # DefendantChris Ged 101458Attorney for Defendant - SC Bar # WHEREFORE, the Defendant is committed to the ☐ State Department of Corrections ☐ County Detention Center, for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed years and/or to pay a fine of \$; provided that upon the service of days/months/years and or payment of \$, plus costs and assessments as applicable*; the balance is suspended with probation for months/years and subject to South Carolina Department of Probation, Parole and Pardon Service standard conditions of probation, which are incorporated by reference.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: all other sentences the date☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred: ☐ Def. Waives HearingTotal: \$ plus 20% fee: \$ Payment Terms: ☐ Set by SCDPPPS Recipient:

*Fine:	\$	<u> </u>
§14-1-206 (Assessments 107.5%)	\$	<u> </u>
§14-1-211 (A)(1)(Conv. Surcharge)	\$100	\$ <u> </u>
§14-1-211 (A)(2)(DUI Surcharge)	\$100	\$ <u> </u>
§56-5-2995 (DUI Assessment)	\$12	\$ <u> </u>
§56-1-286 (DUI Breath Test)	\$25	\$ <u> </u>
Proviso 47.9 (Public Def/Prob)	\$500	\$ <u> </u>
§14-1-212 (Law Enforce. Funding)	\$25	\$ <u> </u>
§14-1-213 (Drug Court Surcharge)	\$150	\$ <u> </u>
§50-21-114 (BUI Breath Test Fee)	\$50	\$ <u> </u>
§56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$ <u> </u>
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ <u> </u>
3% to County (if paid in installments)	\$	\$ <u> </u>
TOTAL	\$	\$ <u> </u>

Clerk of Court/Deputy Clerk: Christine SawyerCourt Reporter: Joy Rueger

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2015-GS-10-02668

A/W: 40001GS

Date of Offense: 12/18/2014

S.C. Code §: 56-05-0750(B)(1)

CDR Code #: 0005 2316

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADSRECEIVED
DEC 21 2015
SC Court of Appeals☐ Ordered PTUP days/hours Public Service EmploymentObtain GED ☐Attend Voc. Rehab. Or Job Corp. May serve W/E beginning Substance Abuse Counseling ☐Random Drug/Alcohol Testing ☐

Fine may be pd. in equal consecutive weekly/monthly

pmts. of \$ Beginning \$ Paid to Public Defender FundOther: ☐ Appointed PD or appointed other counsel

§47-12 requires \$500 be paid to Clerk

during probation.

Presiding Judge: Al. SawyerJudge Code: 218Sentence Date: 2/5/2015

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

STATE VS.

JERRY LEWIS GARDNER, JR

AKA: Jerry Lewis Jr Gardner, Jerry L. Gardner

Race: Black Sex: M Age: 37DOB: 03/15/1978 SS#: 25-115-50418Address: 100579City, State, Zip: Charleston, SC 29405DL# 25-115-50418 SID# 25-115-50418*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Habitual Traffic Offender

In violation of § 56-01-1100 of the S.C. Code of Laws, bearing CDR Code # 0057

☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45(CSC w/minor 1st or Lewd Act)The charge is: ☒ As indicated, ☐ Lesser Included Offense,☐ Defendant Waives Presentment to Grand Jury, (def.'s initials)The plea is: ☐ Without Negotiations or Recommendation,☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Charles M. Condon, Jr.

100579

Chris Geel

101458

Charles M. Condon, Jr., Assistant Solicitor SC Bar # 100579 DefendantAttorney for Defendant SC Bar # 101458

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center, for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed years and/or to pay a fine of \$, provided that upon the service of days/months/years and or payment of \$, plus costs and assessments as applicable*, the balance is suspended with probation for months/years and subject to South Carolina Department of Probation, Parole and Pardon Service standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: all other sentences this def.☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP days/hours Public Service Employment

Total: \$ plus 20% fee: \$ Payment Terms: ☐ Set by SCDPPPS Recipient:

*Fine:	\$	<u> </u>
§14-1-206 (Assessments 107.5%)	\$	<u> </u>
§14-1-211 (A)(1)(Conv. Surcharge)	\$100	<u> </u>
§14-1-211 (A)(2)(DUI Surcharge)	\$100	<u> </u>
§56-5-2995 (DUI Assessment)	\$12	<u> </u>
§56-1-286 (DUI Breath Test)	\$25	<u> </u>
Proviso 47.9 (Public Def/Prob)	\$500	<u> </u>
§14-1-212 (Law Enforce. Funding)	\$25	<u> </u>
§14-1-213 (Drug Court Surcharge)	\$150	<u> </u>
§50-21-114 (BUI Breath Test Fee)	\$50	<u> </u>
§56-5-2942(J) (Vehicle Assessment)	\$40/ea	<u> </u>
Proviso 90.5 (SCCJA Surcharge)	\$5	<u> </u>
3% to County (if paid in installments)	\$	<u> </u>
TOTAL	\$	<u> </u>

Clerk of Court/Deputy Clerk: Christine Davis
Court Reporter: Joy Rucker

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2015-GS-10-02669A/W: 40002GSDate of Offense: 12/18/2014S.C. Code §: 56-01-1100CDR Code #: 0057

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

Obtain GED ☐

Attend Voc. Rehab. Or Job Corp. May serve W/E beginning Substance Abuse Counseling: ☐Random Drug/Alcohol Testing ☐

Fine may be pd. in equal consecutive weekly/monthly

pmts. of \$ Beginning \$ Paid to Public Defender Fund.Other: ☐ Appointed PD or appointed other counsel.

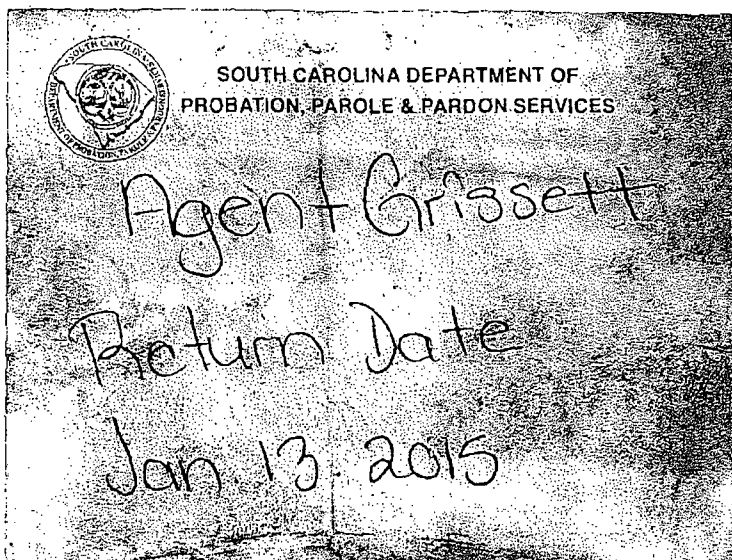
§47.12 requires \$500 be paid to Clerk

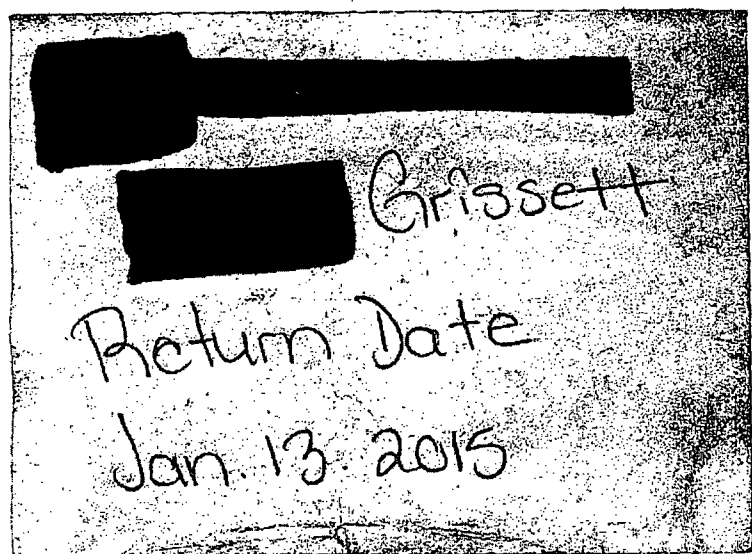
during probation.

Presiding Judge: Alfred LeeJudge Code: 2118Sentence Date: 3/5/2015

#48

(on back of note)





STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

State of South Carolina,

Plaintiff,

v.

Jerry L. Gardner,

Defendant.

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

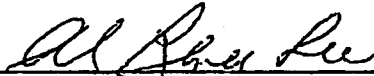
Indictment No(s): 2015-GS-10-02668;
2015-GS-10-02669; 2015-GS-10-04407

ORDER

This matter comes before the Court based on a Motion for New Trial, pursuant to Rule 29, SCRCrP, filed on August 12, 2015. The Defendant, indicted for Failure to Stop for Blue Lights; Habitual Traffic Offender; and Receiving Stolen Goods, proceeded to trial on August 3, 2015. The jury returned a verdict on August 5, 2015, finding the defendant guilty on all counts.

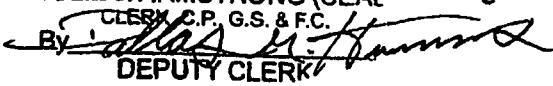
After careful consideration of the motion made and the record in this case, this Court is unable to discover any material fact or principle of law that either has been overlooked or disregarded and further finds no error of law or facts not appropriately considered at trial. Accordingly, this Court hereby **DENIES** the Motion for New Trial.

AND IT IS SO ORDERED.


ALISON RENEE LEE
Presiding Judge

December 9, 2015
Columbia, South Carolina

ATTEST: A TRUE COPY
JULIE J. ARMSTRONG (SEAL)
CLERK, C.P., G.S. & F.C.

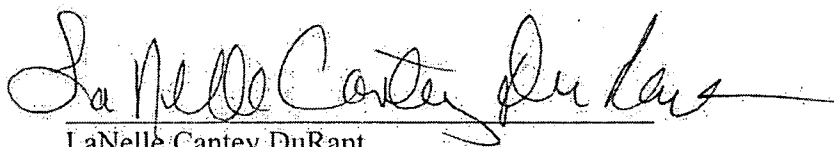
By 
DEPUTY CLERK

2015 DEC 14 AM 11:00
JULIE J. ARMSTRONG
CLERK OF COURT
JAC

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."

Respectfully Submitted,

A handwritten signature in cursive script, reading "LaNelle Cantey DuRant", written in black ink.

LaNelle Cantey DuRant
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

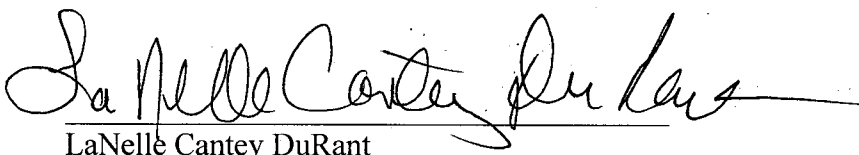
ATTORNEY FOR APPELLANT

This 19th day of October, 2016.

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."

Respectfully Submitted,



LaNelle Cantey DuRant
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT

This 19th day of October, 2016.

RECEIVED

OCT 19 2016

SC Court of Appeals