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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from York County

Honorable Daniel D. Hall, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

DEVIONNE DEVAIGHN MCCLAIN,

APPELLANT

APPELLATE CASE NO 2015-002595

RECORD ON APPEAL

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SC Court of Appeals

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1 STATE OF SOUTH CAROLINA

2 -----x

3 STATE,

4 Plaintiff,

5 Case No.

6 -against-

2015-GS-46-3842

7 DEVIONNE DEVAUGHN MCCLAIN,

8 Defendant.

9 -----x

10 December 15, 2015

11 York, S.C.

12

13 B E F O R E:

14 HONORABLE DANIEL HALL, Judge.

15

16 A P P E A R A N C E S:

17 Hannah Grove, Esquire

18 Attorney for the Plaintiff

19

20 Jessica Russo, Esquire

21 Attorney for the Defendant

22

23 Aileen Butler

24 Official Court Reporter

25

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1 THE COURT: Lets call the case, Miss Grove.

2 MS. GROVE: The State calls the case against
3 Devionne McClain, on Indictment 2015-GS-46-03842.

4 THE COURT: All right, thank you. Is the State
5 ready to proceed?

6 MS. GROVE: Yes, Your Honor.

7 THE COURT: Is the defense ready?

8 DEFENSE ATTY: Yes, Your Honor.

9 THE COURT: All right is there any pretrial
10 issues?

11 MS. RUSSO: Yes, Your Honor.

12 THE COURT: All right. Any pretrial from the
13 State?

14 MS. GROVE: Nothing from the State.

15 THE COURT: And from the defense?

16 MS. RUSSO: Yes, Your Honor, some housekeeping
17 matters, Your Honor. And some of them are covered by
18 what we agreed to on the video.

19 THE COURT: All right. Miss Russo, if you just
20 work down your list.

21 MS. RUSSO: We would like to move to determine
22 whether the State complied with Rule 5 and Brady and
23 turned overall discovery material.

24 THE COURT: The State's response?

25 MS. GROVE: Yes, Your Honor, we have complied we

1 Rule 5 Brady.

2 MS. RUSSO: We would like to determine the prior
3 record of the defendant the State would produce should
4 he choose to testify.

5 THE COURT: Let me ask you this, has the State
6 provided the defense with a copy of the defendant's
7 rap sheet?

8 MS. GROVE: We have.

9 THE COURT: Well, we can deal with this at the
10 appropriate time if he decides to testify. Go ahead.
11 I will let you answer that question.

12 MS. GROVE: Your Honor, I think the only things
13 that might come up is his charges after 2011. He had
14 possession of a firearm by a felon, and also a
15 distribution of selling crack near school and
16 possession of drugs, of cocaine base, from 2014 and
17 2014 failure to stop for a blue light.

18 THE COURT: All right. Well we deal with those
19 whether they are proper or not at the appropriate
20 time.

21 MS. GROVE: Yes, Your Honor.

22 THE COURT: Miss Russo.

23 MS. RUSSO: I believe I have been given the list of
24 witnesses. I would move to sequester the witnesses
25 for the State.

1 MS. GORVE: Your Honor, we can ask the sergeant to
2 step out in the hall way. Our only other witness is
3 Officer McNeely and he's the case agent.

4 THE COURT: All right. Sergeant Harris are to
5 remain outside until you are called. If at some point
6 when Officer McNeely comes out you can't discuss the
7 case or talk to him about what he said or what you are
8 going to say. You are see sequestered for purposes of
9 this case. Do you understand that?

10 OFFICER MCNEELY: Yes, sir.

11 THE COURT: All right. Thank you.

12 MS. RUSSO: Your Honor, we move to determine the
13 existence of admissibility of any prior bad acts and
14 that the State may be intending to introduce as Lyle
15 testimony. I don't believe that there are any though.

16 MS. GROVE: Nothing from the State, Your Honor.

17 THE COURT: Thank you.

18 MS. RUSSO: Motion to exclude any statements made
19 by defendant McClain to officers during the course of
20 the investigation. Again I don't believe that there
21 are any statements but I would ask if there are any
22 they be turned over at this time.

23 MS: GROVE: Your Honor, the State is not planning
24 to introduce any statements by Mr. McClain.

25 THE COURT: All right. Thank you.

1 MS. RUSSO: Your Honor, the defendant would like
2 to make a motion to dismiss this charge for lack of
3 reasonable suspicion for the initial stop. This stop
4 was made -- the report shows that the officer stopped
5 him for visually clocking him going over the speed
6 limit. We would contend that is not a reasonable
7 suspicion for the stop and he should not have been
8 stopped in the first place. It is kind of analogous
9 to resisting and an unlawful arrest. That he would be
10 permitted to not stop for an unlawful stop and we
11 would ask that you dismiss the charge.

12 THE COURT: All right. What is the State's
13 position?

14 MS. GROVE: Your Honor, the State would argue that
15 there is reasonable suspicion. We are happy to put
16 the officer on the stand to clarify if there are any
17 issues.

18 THE COURT: All right, let's bring him in and put
19 him under oath and have an in camera hearing.

20 SPENCER MCNEELY, called as a witness, having been
21 duly sworn by the clerk, was examined and testified as
22 follows:

23 THE COURT: All right, solicitor.

24 MS. GROVE: Thank you, Your Honor. May it please
25 the Court.

1 DIRECT EXAMINATION

2 BY MS. GROVE:

3 Q Would you please state your name for the Court?

4 A Officer Spencer McNeely.

5 Q And where do you work Officer McNeely?

6 A I work for Clover Police Department in the town of
7 Clover.

8 Q And what is your position there?

9 A I am a patrolman.

10 Q And how long have you been working there?

11 A I have been working there since approximately February
12 the first of this year.

13 Q Okay. On April 9, 2015 were you working?

14 A Yes, ma'am, I was.

15 Q At what point in your shift were you?

16 A The shift was coming to an end. I work the night shift
17 and the shift was fixing to come to a close. It was
18 approximately two or three. Close to three in the morning.

19 Q And where were you on the night of April 30th when you
20 came in to contact with Devionne McClain?

21 A I was on Kings Mountain Street in the area of Harbor
22 Street which is located within the town limits of my
23 jurisdiction and that was located in the town of Clover.

24 Q When you were on this road what did you see that night?

25 A I observed a black colored sedan passing me in the

1 opposite direction. I was on routine patrol. That vehicle
2 happened to be the only vehicle in the area. At the time that I
3 come in contact with the car and I observed the vehicle speeding
4 pass me and at at the time go to turn around to initiate a
5 traffic stop.

6 Q When you say you observe the vehicle speeding, can you
7 kind of explain what that consisted of, your observations?

8 A Yes, when I stated -- or when I documented in my report
9 that I visually saw that the vehicle was speeding. What I meant
10 by that is that the radar unit itself is meant to confirm what
11 you see in utilizing the radar unit. What I am saying is I
12 visually tracked -- we refer to it as visually tracking the
13 vehicle. I visually tracked the vehicle going approximately 45
14 in a 35.

15 Q And did you confirm that with the radar?

16 A I did.

17 Q So the radar stated that the car was going --

18 A It's confirming what I was visually seeing.

19 Q Okay. So you visually tracked him speeding and then
20 confirmed it with the radar?

21 A That is correct?

22 Q Okay.

23 MS. GROVE: Nothing further from the State.

24 Police answer any questions the defense may have.

25 THE COURT: Miss Russo.

1 CROSS EXAMINATION

2 BY MS. RUSSO:

3 Q Officer McNeely, you started with Clover Police
4 Department on about February the 1st?

5 A Yes.

6 Q And prior to that did you go to the academy?

7 A Yes, I did.

8 Q And at the academy they taught you how to investigate a
9 crime?

10 A Yes, they did.

11 Q And they taught you how to write a report?

12 A Not -- yes and no. That would be more curtailed to the
13 department because of programing would be different, but it is
14 essentially, yes.

15 Q So prior to starting on February 1st they would have
16 taught you how to write up a report?

17 A Yes.

18 Q And they would have taught you that the important
19 details inside to go into that report for the process of
20 prosecuting criminals?

21 A Yes.

22 Q Okay. And your recollection at the time of writing
23 this report would have been fresh in your mind because you wrote
24 this report immediately after this occurred, right?

25 A No. There would have been a little bit of time because

11
1 of sustained injuries that occurred to your client. Immediately
2 after the arrest the report was not completed immediately
3 thereafter.

4 Q Okay. How long after did you write the report?

5 A I can't say. I can't recollect. It would have been
6 within the same shift period so I don't know if that would have
7 been seven, maybe eight o'clock in the morning. I am not real
8 sure.

9 Q Okay, so at the academy they would have taught you that
10 it's important to get a witness's statement earlier on in the
11 investigation, right, because a witnesses memory is going to get
12 worse over time not better?

13 A No, that's actually incorrect. A person's memory
14 actually -- a person actually has better memory after they
15 sustained a couple hours of sleep.

16 Q Okay. But after say six months, a person's memory is
17 going to be better a couple hours after the events then it is
18 going to be say six months later?

19 A Yes, it is going closer to the event it is going to be
20 better then six months, yeah.

21 Q Then further away. Okay. So when you wrote this
22 report a few hours after the event your memory, your
23 recollection, then was going to be better then a few months
24 later or a few weeks later even?

25 A That's correct.

1 Q And in this report you wrote that you visually clocked
2 the vehicle speeding?

3 A That's what I wrote, correct.

4 Q And you did not mention anywhere in this report
5 anything about radar?

6 A No, I did not. What I mean by that is when I say I
7 visually tracked that is that the radar unit is really only a
8 confirmation of what I am seeing and during the visual tracking
9 of the vehicle with the visual tracking I determined that the
10 vehicle was speeding approximately 45 in a 35 mile per hour
11 zone.

12 Q So that what you visually tracked when the vehicle were
13 going in opposite directions?

14 A That is correct?

15 Q At about three o'clock in the morning?

16 A Yes, ma'am

17 Q Toward the end of your shift?

18 A Yes, ma'am.

19 Q While it was dark outside?

20 A Yes, ma'am.

21 MS. RUSSO: That is all I have Your Honor.

22 THE COURT: Anything else from the State?

23 MS. GROVE: Nothing further from the State.

24 THE COURT: Anything from the defense?

25 MS. RUSSO: Nothing further.

1 THE COURT: All right. I find that the officer
2 testified that he visually tracked the vehicle going
3 45 in a 35. He has testified his radar confirmed the
4 45 in a 35. He testified and was cross-examined in
5 his incident report where he wrote he individually
6 clocked the vehicle speeding and so there is a
7 suspicious basis by which there is a reasonable
8 suspicion by which he can make a arrest. I will deny
9 the motion to dismiss.

10 What is the next pretrial? It looks like eight,
11 nine and ten may be you all have already resolved that
12 as far as the video and what will be shown.

13 MS. RUSSO: I believe so Your Honor.

14 MS. GROVE: Yes, Your Honor I think as we spoke
15 earlier we talked about our inability to redact and
16 only playing certain portions.

17 THE COURT: So you all agreed on exactly when it
18 is going to start and when it will end.

19 MS. GROVE: Yes, Your Honor.

20 MS. RUSSO: Yes.

21 THE COURT: All right, so that takes care of 8, 9
22 and 10. Right.

23 Anything else from the defense?

24 MS. RUSSO: Nothing else.

25 THE COURT: Nothing else from the State?

1 MS. GROVE: Nothing further from the State.

2 THE COURT: We will be at ease until our jury gets
3 here. I will be right back.

4 (Jury entering).

5 THE COURT: Thank you ladies and gentlemen. Is
6 the State ready to proceed?

7 MS. GROVE: Yes, Your Honor.

8 THE COURT: Defense.

9 MS. RUSSO: Yes, Your Honor.

10 THE COURT: All right. Ladies and gentlemen of
11 the jury panel we are about to begin the trial of this
12 case, the State of South Carolina versus Devionne
13 Devaighn McClain. And so before we select a jury I
14 got some very particular questions I need to ask you.
15 Judge Hayes may have told you when you came in
16 yesterday or I am telling you there is a three part
17 process to jury selection. Judge Hayes and the Clerk
18 of Court went through the first two parts yesterday
19 where we do what we do what is call a roll call the
20 lawyers get basic information about you. Then we go
21 through specific qualifications that by statute to
22 determine whether someone is eligible to serve as
23 jurors. And that was done yesterday. But today we
24 will begin the process called voir dire. It is where
25 we have an opportunity to ask you specific questions

1 (WHEREUPON, there was an off the record
2 discussion.

3 THE COURT: You all need to forgive the Court.
4 I'm an old man and I can't keep my children names
5 straight. I got 11 grandchildren that I get mixed up,
6 and so I have called the wrong lawyers by the wrong
7 names. So at this point the State will give their
8 opening statement. Miss Grove will now address you.
9 I think I got them right this time.

10 MS. GROVE: Thank you, Your Honor. May it please
11 the court. Ladies and gentlemen, we are here for a
12 very simple case today. We are here because Devionne
13 McClain is charged with failing to stop for a blue
14 light. An on April 30, 2015 Devionne McClain was
15 driving a car down the road in Clover, South Carolina
16 and he failed to stop for a blue light. On that
17 night, April 30, 2015, Officer Spencer McNeely will
18 testify that he was finishing up his shift. He was
19 driving down Kings Mountain Street and he saw a car
20 coming towards him. He thought the car was speeding
21 and he is going to testify that he verified that with
22 his radar and the car was going ten miles over the
23 speed limit. Officer McNeely is going to testify that
24 he turned around to do just a routine speeding --
25 stopped the driver for speeding over the speed limit.

1 At that point he turned on his blue lights but the
2 driver didn't stop. The driver, Devionne McClain,
3 went down the road, accelerated, turned down several
4 different streets. Did not stop for the blue light
5 and in fact he only stopped when he crashed into the
6 side of a van that was parked in someone's parking
7 spot. In someone's driveway.

8 At that point Officer McNeely is going to testify
9 and you will see on his dash cam video that Devionne
10 McClain exited his vehicle, kicked off his shoes and
11 ran away. At that point Officer McNeely pursued him
12 on foot. He called in help from Sergeant Harris and
13 Sergeant Harris is going to be here to testify that he
14 responded to the scene and that they both chased
15 Devionne McClain. They were able to apprehend him.
16 They had to take him and they are going to testify
17 when he was arrested him he was wearing the same
18 clothes; a red hat, a black shirt, camo pants and no
19 shoes that he had -- that he was wearing when he
20 crashed the car.

21 Ladies and gentlemen, this is a very simple trial.
22 It is about whether or not Devionne McClain was
23 driving that night and whether or not he failed to
24 stop for a blue light when an officer went to stop him
25 for speeding.

1 Please listen to all the evidence and listen to
2 all the testimony and take it all into consideration.
3 At the end of this trial I am going to come back up
4 here and ask that you find the defendant guilty.

5 Thank you.

6 THE COURT: Thank you. Miss Russo. May it please
7 the court.

8 MS. RUSSO: May it please the Court, Your Honor.

9 Ladies and Gentleman of the jury, thank you for
10 being here. You are the most important part of
11 judicial process and I love telling jurors that
12 because it is absolutely true. Without you here none
13 of the rest of us -- as important we think we are
14 sometimes -- could do our jobs. You are arguably the
15 most important check on the power of the State in a
16 case like this.

17 The State in a criminal case, has brought a charge
18 against Mr. Devionne McClain. They have the power to
19 accuse someone, one of their own citizens, one of
20 their own people of a crime. Now that charge is not
21 evidence, but it brings them to this courtroom here
22 today and you are the first check against that power.
23 That the jury of our community, people we trust to
24 make decisions like this, come in to determine guilty
25 or not guilty.

1 Now when you entered those courthouse doors this
2 morning, with your coffee or your breakfast from
3 McDonald's or whatever, you also brought with you your
4 life experiences. You brought with you the knowledge
5 that you have from the years of everything that you
6 have done. You come from all different walks of life.
7 You've all done different things with your lives. You
8 all experienced different things with your lives and
9 you don't live those things at the courthouse door.
10 You bring those with you here and you bring those with
11 you into the jury room. And I would just ask you to
12 use those things. Use everything you brought with you
13 to make a determination in this case because that is
14 the first check that we have in a criminal case
15 against the State's power. I'm asking you to be
16 sceptical, to ask questions and to second guess
17 everything. And the second check is that Mr. McClain
18 is innocent until he is proven guilty. As he sits
19 there right now, as he walked through the courthouse
20 doors this morning he is innocent. He is innocent up
21 until and if the State can prove him guilty. It is
22 not just a saying, it is not just a theory, it's not
23 just something we see on TV. It is an absolute legal
24 truth. Until and if the State can prove him
25 guilty he is innocent.

1 Now what is it that they have to prove? They have
2 to prove that he's guilty. Not just kind of. Not
3 just a suspicion of guilt, but guilty beyond a
4 reasonable doubt, and that's what they have to prove
5 here today to you. So each element of this crime to
6 you beyond a reasonable doubt and that's where your
7 scepticism and your life experiences come in. Because
8 beyond a reasonable doubt means that you would
9 hesitate to act. There's a reasonable doubt. So in
10 your business life, in your home life, in your school
11 life, if you based on the evidence put before you
12 would hesitate to act then there is a reasonable
13 doubt. They've got to prove every element of the
14 charge to you.

15 Now the charge failure to stop for blue lights and
16 that seems pretty simple. Seemed pretty simple to me.
17 And when I was talking about it with other attorneys,
18 other people who also thought that it seemed pretty
19 simple we actually had a few questions. What is
20 failure to stop for blue lights. Well, it could also
21 mean failing to stop for a siren, if a siren is
22 involved. It doesn't necessary have to be both. In
23 this case a siren is not used at the beginning but
24 we'll find out later on that's not really required.
25 It means that the vehicle has to be in motion on a

1 road way. So if someone is on foot not a failure to
2 stop for blue lights even if they are being blue
3 lighted. There is also a knowing element to this
4 crime. The crime states that it is not a defense if
5 you fail to see the blue lights, but it would have
6 been reasonable for to you see the blue lights. If
7 the condition of the road, the vehicle, etc., etc.,
8 are such that it would be reasonable to see them then
9 it is not a defense. Well, what does that mean for us
10 here today. What it means is if it is reasonable for
11 you not to see them, if it's dark outside, if the cop
12 was just going the other way, if you can see lights
13 but you don't understand that they are for you then it
14 might be reasonable for you to not understand that
15 they are there for you and it might be reasonable for
16 you not to stop in a case like that. The statute
17 actually has that defense built in.

18 So today I am going to ask you to use your
19 scepticism. Pay close attention. Hopefully it will
20 be short, but that doesn't mean it is any less
21 important to the people involved. So will I ask you
22 to use all of life experiences that you brought with
23 you and hold the State up to the standards that are
24 required and if they fail to met those standards I am
25 going to ask you find Devionne McClain not guilty.

1 THE COURT: Thank you, Miss Russo. Miss Grove,
2 call your first witness.

3 MS. GROVE: Thank you, Your Honor. The State
4 calls Spencer McNeely.

5 SPENCER MCNEELY, called as a witness, having been
6 duly sworn by the clerk, was examined and testified as
7 follows:

8 THE COURT: Solicitor.

9 DIRECT EXAMINATION

10 BY MS. GROVE:

11 Q Good afternoon Officer McNeely.

12 A Good afternoon.

13 Q Could you please state your name for the record?

14 A Yes, I'm, Officer Spencer McNeely and I work with the
15 Clover Police Department.

16 Q And what is your position with the Clover Police
17 Department?

18 A I am a patrolman with the Clover Police Department.

19 Q And what does that position entail?

20 A Just basically respond to calls for service for 911 and
21 just routine patrol just on the streets.

22 Q And how long have you been working at the Clover Police
23 Department?

24 A I have worked for Clover Police Department since
25 February 1st of this year.

1 Q And how long have you been a police officer?

2 A I have been a police officer since July 18, 2014 and I
3 worked prior to that in corrections with Rock Hill Police
4 Department.

5 Q And what are your presents duties?

6 A Just right now I am routine patrolman. I work night
7 shift. Our department has permanent night shift so I am more
8 acclimated with working at nights. I just, like I said I check
9 properties at night while people are sleeping. I pull over cars
10 who are in violation of the law and just routine police work.

11 Q Okay. Thank you. Turning your attention to April 30,
12 2015, were you working that night?

13 A Yes, I was.

14 Q And at what point in your shift were you on the night
15 of April 30, 2015, when you came in contact with Mr. McClain?

16 A The shift was coming to a close. I had been working
17 all night and it was about three a.m..

18 Q What time did your shift approximately start?

19 A It starts -- we work 12-hour shifts so I would have
20 started at 5:45 the night prior and I would go until six the
21 next morning.

22 Q And where were you that night around three o'clock in
23 the morning?

24 A I was within my town limits on Kings Mountain Street.
25 Approximately at Carver Street which is just below a cemetery

1 which is inside the town of Clover. It is mainly highway 55.

2 Q And is that in York County?

3 A That is in York County.

4 Q And around three o'clock in the morning on Kings
5 Mountain Street what did you see that night?

6 A Around three a.m. I was on Kings Mountain Street going
7 back towards the town of Clover and at that time a vehicle -- it
8 was the only vehicle on the road -- was approaching me in the
9 opposite direction. I observed that the vehicle was speeding
10 and I turn around to do a routine traffic stop on it.

11 Q When you say that you observed the vehicle was speeding
12 can you break that down a little bit for the jury?

13 A Yes, absolutely. When it comes to apprehending a
14 speeder the main portion is the radar unit itself is just to
15 confirm what you are seeing. Apprehending a speeder is the
16 majority is visualization that that vehicle is actually
17 speeding. You use the radar to confirm that. You just don't
18 look at the radar. The radar confirms what you're already
19 seeing before you look at. And I had visually referred to it.
20 Visually tracking. I visually tracked this vehicle was going
21 faster than 35. it looked to be approximately 45 miles per hour.
22 Ten miles an hour over the speed limit.

23 Q And when you looked at the radar, what did the radar
24 read?

25 A The radar did confirm exactly what I was visualling.

1 The vehicle was moving approximately ten miles per hour over the
2 speed limit.

3 Q And when you turned around to stop the vehicle what was
4 your attention?

5 A My attention was just to make contact with the driver.
6 Make sure that they are okay. That there in a sober state of
7 mind. That they have their license and registration on them.
8 That they have the privilege from the state to drive and conduct
9 business and go on about my next call for service.

10 Q And what happened after you turned your patrol car
11 around?

12 A I noticed when I turned my patrol car around I noticed
13 the black sedan that I was attempting to stop it was now
14 accelerating away much faster then 45 miles per hour. That I
15 was losing site of him very quickly.

16 Q And what happened after you turned around?

17 A After I turned around the vehicle had just just reached
18 the reach the crest of a hill and I could see a bellowing of
19 smoke from underneath the vehicle making a right hand turn. I
20 then, you know, put the blue lights on and pursued the vehicle
21 and attempted to get as close as I could to the vehicle.

22 Q And were there any other cars on that night?

23 A There was not. It was just me and this particular car.

24 Q So what did you see as you followed the car with your
25 blue lights on?

1 A I noticed that he was not -- he was not making, you
2 know, just an average turn. You would slow down, you would use
3 your signal. You would cautiously take a turn. I was noticing
4 that this vehicle was cutting corners and hitting curves and
5 leaving tread marks because the speed of the vehicle was too
6 great to be making the turns that this vehicle was making.

7 Q And about how long did this pursuit happen?

8 A It was very, very brief pursuit. My -- and with all
9 law enforcement things, my initial thought is to you want to
10 have back up. So my mind is geared for making sure my back up
11 knows where I at least -- traveling in the direction. Know at
12 least the direction I am traveling before anything else. So, I
13 did eventually turn the siren on before the pursuit ended but
14 overall the pursuit was very short.

15 Q And when you said you called for backup at about what
16 point did you call for backup?

17 A When I made the first turn where I saw the smoke
18 bellowing that for me was confirmation. Hey, this person is
19 evading me and it was at that time I radioed for my supervisor
20 to assist me.

21 Q At what point did you make contact, if at all, did you
22 make contact with Devionne McClain?

23 A After he was apprehended. Any time prior to the
24 movement of vehicles or to a foot pursuit, no contact was made
25 until he was apprehended.

1 Q Okay. So after you were in pursuit and you had called
2 in backup what happened then?

3 A So we were in pursuit and as I stated the chase was
4 real short and that is because after making a two or three turns
5 Mr. McClain -- later identified as Mr. McClain crashed into an
6 RV that was parked in a driveway and that was the only thing
7 that really stopped him from going any further. He had taken an
8 curve like I stated way too fast and it caused his vehicle to
9 shoot up off up the yard and crash into the driveway. At that
10 time I was able to of course catch up and we ended up in foot
11 pursuit. A very lengthy foot pursuit.

12 Q When you saw that the vehicle had crashed and you came
13 up to a stop, what did you see at that point,

14 A Well, I noticed that he struggled to get out of the
15 vehicle and allowed me to visually see who it was I was dealing
16 with. The crash was more on the driver's side and it kind of
17 pinned the door to where it would not open as freely as what it
18 would normally open. And because of this the subject had issues
19 getting out of the vehicle. And when I got out I noticed this
20 gentleman is wearing a read hat, a black shirt and he was
21 kicking out of his shoes as he took off running.

22 Q So he took off his shoes and he took off running?

23 A Yes, and that's very clear in the video.

24 Q So what happened after the subject took off running?

25 A So after we took off running -- we took off running

1 across several yards. I had an issue right at the beginning of
2 the foot pursuit with radioing my backup because I had an issue
3 where my radio would not sustain a full shift because the shift
4 is so lengthy. So we have to leave the body radio off and just
5 use in-car radio. So when I exited the vehicle and got in to
6 foot pursuit with this gentleman I had to turn the radio on and
7 the radio takes approximately five to ten seconds to power up
8 before I can either get out to dispatcher or another officer who
9 is in route. So we ended up like I said in very lengthy pursuit
10 and to the best of my ability was able to give out my
11 description of the suspect that I was chasing. That was
12 approximately three yards before the radio became active and
13 then we ended up in a very lengthy foot pursuit that went in and
14 out of several yards before it come to a head.

15 Q At what point did Sergeant Harris arrive on the scene?

16 A Sergeant Harris arrived on scene -- we had already --
17 the majority of the foot pursuit had pretty much came to an end.
18 We had ran, like I said, across three yards. We started running
19 in between houses, jumping over fences. The pursuit itself was
20 so long you know we entered the same areas multiple times
21 rounding houses and coming back. And Sergeant Harris at one
22 point met me on Zion Church Road where I had temporary loss
23 visual of Mr. McClain.

24 Q And at that point when Sergeant Harris arrived after
25 you temporarily lost visual what happened?

1 A Sergeant Harris in essence met me at point in the road.
2 I cut across behind a yard. I ran down the driveway and when
3 Mr. McClain had cut around the house I temporary lost visual,
4 but it just so happened that Harris -- Sergeant Harris happened
5 to meet me at that exact moment. So he gets out of the car.
6 He's focusing on areas ahead of where I am standing and I am
7 focusing on the area I am standing on to make sure he is not
8 standing, you know, many right where I am. And within no matter
9 of time Sergeant Harris looks upon the hill. There's a park.
10 Looks upon the hill with the distance is maybe fifty to one
11 hundred feet and there Mr. McClain stands. He is out of breath
12 and he's hunched down and just sitting there just trying to
13 regroup himself.

14 Sergeant Harris again takes off pursuant with Mr.
15 McClain and he again runs. And then at that time I parallel him
16 up on a neighboring street.

17 Q And when you say you, "parallel him" can you kind of
18 explain that for the jury?

19 A Yeah. So, this particular park it's gated on one
20 particular side and this is not an official entrance of the
21 park. You have to run up a residential yard and there is an
22 opening in the fence where this gentleman runs up through the
23 fence and once he does that he's now trapped inside of the park.
24 The park is gated all the way around. And so Sergeant Harris is
25 following him through the opening and is now trapped inside the

1 park with Mr. McClain. While I am paralleling them on the
2 outside of the fence in the case he jumps the fence again, and
3 now my supervisor is trapped inside and both of us are trapped
4 inside and no one is on the outside of the fence. So as they
5 are running towards another side of the fence I'm coming
6 basically from the outside and we're meeting at a point.

7 Q Did Mr. McClain jump a fence at any point?

8 A Yes, he did. He jumped a fence the first time before
9 making it to the park and fell. Once we entered the park and
10 continue pursuit through the park he ran the fence to the end.
11 I don't know thinking maybe there was an opening at the end or
12 what. But he realized that once he got down there that the
13 fence was closed. That it was just, you know, a ninety degree
14 angle with more fencing and he wasn't going to get out.

15 At that time he proceed to jump over the fence and
16 continue to run.

17 Q And that second fence was there anything at the top of
18 that fence?

19 A Yeah, the fence is it had barb wire. There's -- it's
20 not exactly like a barb wire fence. Like a circular barb wire
21 fence where you would think it's wrapped around it. Like the
22 kind of every there is a you know like a continuation and it
23 just stretches across there. There were parts of the fence that
24 had barb wire and parts that did not.

25 Q Did you know if he jumped the part that had barb wire?

1 A I can't recall.

2 Q After he jumped the fence about how long was it before
3 the pursuant ended?

4 A Immediately thereafter. He jumped the fence and I was
5 still running paralleling from the outside. He jumped the fence
6 and dislocated his shoulder and at that time was making fervent
7 movements towards his waistband and still proceeding to try to
8 get up and run, and at that time is when he was tased by
9 Sergeant Harris.

10 Q When you say "fervent movements" can you explain that
11 to the jury?

12 A Just making a fast movement. A fast movement that
13 would that would give fear that someone is reaching for a weapon
14 is typically -- typically what we would describe as a fervent
15 movement. A quick movement you can't see what is going to
16 happen. You don't know what they are reaching for.

17 Q After Mr. McClain was tased what happened then?

18 A After he was tased what happened then?

19 A After he was tased it was an unfortunate spot where he
20 had fallen. When he had jumped over the fence and dislocated
21 his shoulder he landed in a briar patch. So I'm now standing
22 inside of the briar patch with Mr. McClain and we are putting
23 him into custody, putting handcuffs on him.

24 Q And describing Mr. McClain, the man that you
25 apprehended, did it appear to be the same man who had --

1 A Yeah, after he was taken into custody supervisor
2 brought the vehicle -- his vehicle around. I stood with him in
3 the briar patch and it was the same gentleman that took off
4 running. Still wearing the same clothes, black shirt. Of
5 course it was ripped from jumping the fence. Red hat and still
6 had no shoes.

7 Q Would you recognize that man if you were asked to point
8 him out?

9 A Oh, absolutely.

10 Q Can you point out the same man from that night for the
11 jury?

12 A Mr. McClain is seated just to your right over here.
13 (Indicated

14 MS. GROVE: Thank you. Let the record show that
15 the witness pointed to the defendant.

16 Q Officer McNeely does your car have an in-car video in
17 it?

18 A Yes, it does.

19 Q Okay. I am going to show you State's Exhibit One, and
20 do you recognize that CD Officer McNeely?

21 A Yes, I do.

22 Q And how do you recognize that CD?

23 A It is the same video that we watched this morning.
24 Those are my initials on the video.

25 Q So you wrote on the disc?

1 A Yes, ma'am.

2 Q What is on that disc?

3 A This is going to be in-car camera from my vehicle as
4 far as we discussed, a collection of Sergeant Harris's in-car
5 video as well.

6 Q Okay, and how do you know that is the in-car video from
7 your vehicle?

8 A Because I watched this. I watched it.

9 Q And does it match the events that happened on night of
10 April 30th?

11 A Yes, it does.

12 Q Okay.

13 MS. GROVE: Your Honor, at this time the State
14 seeks to enter State Exhibit One into evidence.

15 THE COURT: Miss Russo, any response?

16 MS. RUSSO: Just that we play the part that
17 corresponds with Mr. McClain.

18 THE COURT: The State exhibit what?

19 MS. GROVE: One.

20 THE COURT: One is introduced into evidence. The
21 appropriate parts will be shown to the jury.

22 (State's Exhibit One, CD, received in evidence as
23 of this date.)

24 MS. GROVE: And Your Honor the State seeks to
25 publish State's Exhibit One to the jury specifically

1 officer McClain's portion of the video.

2 THE COURT: You are allowed to do that.

3 (WHEREUPON, the video was played for the jury.

4 BY MS. GROVE:

5 Q Officer McNeely was, that a fair and accurate depiction
6 of what happened that night?

7 A Yes, ma'am. Yes, ma'am it is.

8 Q And the video that we just watched is from the inside
9 of your parole car?

10 A That's correct. It's mounted just in to the windshield
11 there.

12 Q And when you turned on your blue lights were we able to
13 see that from kind of the reflection on the car?

14 A Yes, they are LED's and they are very, very bright.

15 Q Okay. And there were no other cars on the road that
16 night?

17 A That's correct.

18 Q And officer McClain is there anything else on the rest
19 of this video as far as -- on the rest of this video there is no
20 other pursuit of the defendant?

21 A No other vehicle pursuit up to that point and no
22 further then the foot pursuit that took place.

23 Q And the foot pursuit took place off camera?

24 A That is correct, yes.

25 Q And at some point from my understanding your camera --

1 or your microphone on your uniform cuts out?

2 A Yes, ma'am. The length of the pursuit is so far that I
3 go too far of a distance for my camera to be picking up -- I'm
4 sorry, my microphone to be picking up.

5 Q Okay, and you don't have a body camera?

6 A That's correct we do not.

7 Q Okay. Now I am showing you State's Exhibit Two. Do
8 you recognize that photo?

9 A Yes, I do.

10 Q What is on the paper that you are holding?

11 A This is an aerial print out of the town of Clover, just
12 west of the main part of town.

13 Q And what does that print out show?

14 A This print out shows everywhere as far as the area that
15 this entire incident would have taken place.

16 Q Okay. And is this a fair and accurate depiction of the
17 lay out of the area where the failure to stop for a blue light
18 happened that night?

19 A Absolutely.

20 MS. GROVE: Your Honor, at this time the State
21 seeks to enter State's Exhibit Two into evidence.

22 MS. RUSSO: No objection.

23 THE COURT: State's Exhibit Two is entered into
24 evidence without objection.

25 (State's Exhibit Two, photo, received in evidence

1 as of this date.)

2 MS. RUSSO: Thank you, Your Honor. And Your Honor
3 the State seeks to publish State's Exhibit Two to the
4 jury and we are planning to publish the exact same
5 picture that is in Officer McNeely's hand on the
6 screen.

7 THE COURT: All right. You can do that.

8 Q Officer McNeely, can you explain to the jury the path
9 that you took.

10 A Yes. If you will look right where --

11 THE COURT: Tell you what, I have a little laser
12 device that might be very helpful. Just don't push
13 down real hard. Just sort of touch it and you can use
14 it.

15 MS. GROVE: Would it be all right if the officer
16 steps down.

17 THE COURT: That is fine. You may step down.

18 Q Could you just show the jury the pursuit, the path that
19 pursuit took?

20 A Yes absolutely. So, at the beginning of the incident I
21 am traveling in this direction of Kings Mountain Street. Mr.
22 McClain is going to pass me in the opposite direction and we
23 will meet around this portion of Kings Mountain Street.

24 At that time I will go to this next road which is
25 Carver Street and will use the road to turn around. When I turn

1 around and do pursue Mr. McClain we are going to go down,
2 continue this direction towards Kings Mountain Street. The
3 first turn that you witnessed on the video it's going to be Zion
4 Church Road. We will take a hard right and then take a left
5 onto Carroway Lane, then we take a right on Queensgate and he
6 will crash his vehicle in the yard right approximately right
7 here. (Indicating). At that point in time we will end up in a
8 foot pursuit where we will go down these three yards and come
9 across and end up in the park.

10 Q Okay. So could you just show the jury about where Mr.
11 McClain ended up?

12 A Yes, looking at it right here is Zion Church Road, the
13 opening of the fence that is on the hill and that residential
14 yard is right here. It's right here, I'm sorry.

15 There is a pathway that leads right here and the
16 opening is right here. This is Roosevelt Park right here and
17 there is ninety degree angle I was explaining to you, is all
18 fenced in and that point in time he is trapped in to the park.
19 He runs through here and all the way to where the fence ends and
20 hops over and we end up in this little briar slash wood patch
21 right here.

22 Q Okay. All right, thank you Officer McNeely. And just
23 to clarify a few things Officer McNeely, when you were on the
24 road that night you were on Kings Mountain Street?

25 A That's correct.

1 Q Devionne McClain was driving a black car that was
2 speeding over the speed limit?

3 A That's correct.

4 Q You went to stop him for speeding and you at what point
5 did you turn your blue lights on?

6 A Shortly after turning around.

7 Q Was he still on Kings Mountain Street when you turned
8 your blue lights on?

9 A Yes.

10 Q And there were no other cars in the area?

11 A That's correct.

12 Q When you turned your blue lights on did Mr. McClain
13 stop his vehicle?

14 A No, he did not. He continued to accelerate away from
15 me.

16 Q Okay.

17 MS. GROVE: No further questions from the State.

18 Please answer any the defense may have.

19 THE COURT: All right, Miss Russo.

20 A Okay.

21 MS. RUSSO: Thank you, Your Honor.

22 CROSS EXAMINATION

23 BY MS. RUSSO:

24 Q Officer McNeely, you said you started with the Clover
25 Police Department around February first?

1 A Yes, ma'am, that is correct.

2 Q That's about three months before this incident?

3 A That's correct.

4 Q Okay. Before you started they taught you how to write
5 reports?

6 A They, who?

7 Q Your department?

8 A Yes, the department pretty much -- it is per department
9 teaches you how to write up a report. How they want the report
10 written.

11 Q Your department taught how to investigate a crime?

12 A The academy did.

13 Q So you went to the academy and they taught how to
14 investigate a crime?

15 A Yes, the academy taught me how to investigate a crime.

16 Q Did they teach you how to take a witness statement?

17 A There's not a particular situation or a particular
18 portion where we specialize on just getting witness statements.

19 Q Well, do they teach you that, you know, a witness
20 statement might be better a couple days a couple weeks after
21 the incident rather than a couple months?

22 A Yes, that is correct.

23 Q And your report in this case is written a few hours a
24 few days after the indent?

25 A Within a few hours, yes, ma'am.

1 Q Okay. And today is about six, seven months after the
2 the incident, right?

3 A That's correct.

4 Q Now, in your report you don't mention anything about
5 the defendant accelerating?

6 A I can't remember specifically whether I do or not.

7 Q Would a copy of your report refresh your recollection?

8 A Certainly.

9 MS. RUSSO: May I approach, Your Honor.

10 THE COURT: Yes, you may.

11 (WHEREUPON, a document was handed to the witness.)

12 A Thank you ma'am. That is correct, there is no
13 specific mention to an acceleration.

14 Q And in fact you do specifically mention that he slows
15 down but you just don't mention that he speeds up at all?

16 A I mention that he makes an aggressive turn.

17 Q After reducing the speed?

18 A He would be reducing his speed in the aggressive turn.

19 Q So you mention that he reduces his speed?

20 A I mention that he makes aggressive turn.

21 Q Do you mention that he reduces his speed?

22 A Yes. That he left a skid mark. He made aggressive
23 turn coming -- slowing the vehicle so great that it left a tread
24 mark.

25 Q Okay. So you mention in your report that he reduced

1 his speed?

2 A Yes, ma'am, I did.

3 Q But you did not mention anywhere in your report that he
4 accelerated?

5 A That's correct, I did not.

6 Q And you did not mention billowing smoke from a turn or
7 anything like that?

8 A I did not.

9 Q Okay. Now in your report you mention, like you
10 mentioned today, that you visually tracked Mr. McClain?

11 A Yes, ma'am.

12 Q You didn't mention radar in the report?

13 A That's correct.

14 Q Now this was about three a.m. and it was dark outside?

15 A Yes, ma'am.

16 Q And you were traveling in opposite directions?

17 A Yes, ma'am, we were.

18 Q And you did not mention anything about radar in that?

19 A No, ma'am I just mentioned the visual tracking.

20 MS. RUSSO: Can we play the video again.

21 Q Okay. So earlier we watched just this video part,
22 right?

23 A Yes.

24 Q Okay. But on the outside this gives us some
25 information like this gives us your speed and your GPS

1 information?

2 A That's correct.

3 Q Okay. And it gives us over here this will be a your
4 breaks and your siren and your lights?

5 A Yes, ma'am.

6 Q Okay. And down here it has got a spot for radar?

7 A I can't attest to the radar. That would not be --
8 anything in that view it would not have radar. It would
9 predict -- project anything from the radar that is a separate
10 unit from L-3 system.

11 Q Okay. Can we play the video.

12 (WHEREUPON, the video is playing.)

13 Q This is your speed, where you are heading. This is
14 right when you lights go on?

15 A Yes, ma'am, it should.

16 Q Okay. So, that spot down there it has a spot for radar
17 and that stayed on zero the whole time, right?

18 A Say that again. I'm sorry.

19 Q It has a spot down there for the radar and that stay on
20 zero the whole time right?

21 A Yes.

22 Q Okay. Now you in that video, you turn around on Mr.
23 McClain because you were going in opposite directions?

24 A Yes, ma'am.

25 Q So by the time you stopped, turn around, start to catch

1 up back to him your pretty far behind him, right?

2 A Yes, there is quite a bit of distance.

3 Q So you had to speed up. I think your top speed was
4 about 70 miles per hour to get back to him?

5 A That's correct.

6 Q Okay. And at that point you use your blue lights but
7 you did not use your siren?

8 A That's correct.

9 Q So you were present when Mr. McClain shoulder was
10 dislocated that night, right?

11 A Yes, ma'am.

12 Q And you testified that he was trying to get up from a
13 briar patch at that point?

14 A Yes, that's correct

15 Q So he was down on the ground?

16 A Yes, ma'am.

17 Q And he didn't display any weapons?

18 A He did not. He didn't display a weapon.

19 Q Okay. He hadn't attacked you or your co-officer?

20 A No, ma'am.

21 Q But he was tased while he was down in that briar patch?

22 A That's correct.

23 Q And EMS had to come to the scene, right?

24 A Yes, ma'am.

25 Q And he was not released to you he had to go to hospital

1 that night?

2 A That's correct. He had dislocated his shoulder so he
3 had to go to hospital.

4 Q And a he spent a couple hours in the hospital?

5 A Yes, ma'am.

6 Ms. Russo: Nothing further.

7 THE COURT: Anything further.

8 MS. GROVE: Yes, Your Honor just a few questions..

9 THE COURT: All right.

10 REDIRECT EXAMINATION

11 BY MS. GROVE:

12 Q Officer McClain, when you were referring to L-3 system
13 can you kind of explain that to the jury?

14 A Yes, ma'am. The L-3 system it comes with a little USB
15 stick that he's attached to individual officer. Our police
16 department is so small we have to share cars some times. So
17 insert that little stick and that stick basically allows that
18 information -- that car to be attached to me for the evening.
19 L-3 system consists of a body -mic -- I am sorry, a microphone
20 and the dash cam that I explained was attached to the
21 windshield. It is controlled by a little screen that's not much
22 bigger then that little recorder right there. (Indicating) And
23 it's just basically a video system. It's completely separate
24 from the radar system there. They are not attached.

25 Q So your radar is not attached to your L-3 system?

1 A That is correct. They are not paired.

2 Q As far as the stop goes, Officer McNeely, when you went
3 to stop Mr. McClain what did he do when you turned on the blue
4 lights?

5 A He did accelerate. At 45 miles per hour he would not
6 have been at greater distance that he was from me had he not
7 accelerated.

8 Q Did he pull over at any point in the stop?

9 A No, he did not. He did not stop that vehicle until it
10 was cashed into the side of another vehicle.

11 Q And when after he crashed into the side of another
12 vehicle what did he do?

13 A He -- despite the fact that I was there, right behind
14 him, he got out of the car and took off running.

15 Q Okay.

16 Ms. Grove: Nothing further from the State?

17 THE COURT: Any recross.

18 MS. RUSSO: Just a moment.

19 MS. RUSSO: Nothing further.

20 THE COURT: Thank you, Officer McNeely. You may
21 step down.

22 THE WITNESS: Thank you, sir.

23 THE COURT: Ladies and gentlemen, lets take about
24 a ten-minute break. When you return to the jury room
25 if you would elect a foreperson from among yourselves

1 and write that name down and hand it to the bailiff
2 and when you come back into the courtroom I will ask
3 the foreperson to take the end seat.

4 All right, we will take a ten- minute break.
5 Refresh yourselves. Do not discuss the case. Do not
6 talk about anything you heard in the courtroom yet.
7 Thank you.

8 (WHEREUOPON, the jurors leave the courtroom.)

9 THE COURT: All right, we will be at ease for
10 about ten mintues.

11 (WHEREUPON, the court was in recess.)

12 THE COURT: Will lawyers approach.

13 (WHEREUPON, there was an off the record discussion
14 held at the bench.)

15 THE COURT: All right, let's bring the jury in.

16 (WHEREUPON, the jurors enter the courtroom.)

17 THE COURT: All right. I believe you are Miss
18 Pankowski. You are now our foreperson.

19 THE JUROR: Yes, sir.

20 THE COURT: All right. Thank you. When you come
21 in if you will maintain that street.

22 THE JUROR: Yes, sir.

23 THE COURT: All right. State call your next
24 witness.

25 MS. GROVE: The State calls Sergeant Nicholas

1 Harris.

2 NICHOLAS HARRIS, called as a witness, having been
3 duly sworn by the clerk, was examined and testified as
4 follows:

5 DIRECT EXAMINATION

6 BY MS. GROVE:

7 Q Hello Sergeant Harris.

8 A Hello.

9 Q Can you please state your full name for the record.

10 A Nicholas Anthony Harris.

11 Q Okay. And where do you work?

12 A Clover Police Department.

13 Q And what is your position with the Clover Police
14 Department?

15 A I'm the nightshift sergeant.

16 Q And how long have you been working in that capacity?

17 A As a sergeant for about a year.

18 Q And how long have you been working at the Clover Police
19 Department?

20 A About two and a half years, two years.

21 Q And how long have you been a police officer?

22 A A little over five.

23 Q Okay. And what are your present duties?

24 A As supervisor

25 Q Yes, sir?

1 A Patrol. Just basically look over the shift. Make sure
2 everything is done properly.

3 Q Okay. Turning your attention to April 30, 2015. Were
4 you working that night?

5 A Yes, ma'am.

6 Q And where were you initially at the beginning of the
7 night?

8 A At the time this incident occurred I was actually at
9 the police department.

10 Q Okay. About what time did your shift start?

11 A Six o'clock that night.

12 Q Okay. And from six o'clock at night you were at the
13 police department. Did you leave up until this point?

14 A Yes, ma'am. I had just went back to the police
15 department to eat lunch, but yeah, I had been patrolling most of
16 the night.

17 Q So you were eating lunch at around three o'clock in the
18 morning?

19 A Yes.

20 Q And at what point did you get a call?

21 A Well, whenever Officer McNeely called over the radio he
22 told me that he needed me to 25 with him, which is pretty much
23 meet him. He sounded kind of out of breath, excited. Usually
24 we know that something is going on. At which time I headed in
25 his direction because he gave out Zion Church as the location.

1 Q About how far is the police department from Zion
2 Church?

3 A Less than a mile I would say. Guessing.

4 Q And so about how long did it take to you respond to
5 this scene?

6 A Thirty seconds to a minute.

7 Q Okay. What happened when you got on the scene?

8 A When I arrived on scene I told -- he had called out
9 over the radio he was giving his location as he was running.
10 First he call out that he was actually trying to, you know, stop
11 the car. He said it hit something. He was on foot pursuing. I
12 knew the area and pretty much knew that he was going to double
13 back towards Mobley Street and Zion Church so I went on Zion
14 Church. I told him I was at Zion Church. At which time I
15 observed Officer McNeely's flashlight coming between the houses
16 and I got out and I asked Officer McNeely where is the last time
17 he'd seen him. He said I lost him right here at this house. He
18 was running that way.

19 I told him to stop where he was. He gave a brief
20 description while we were on the radio; black shirt. He
21 actually told me on the side of the house something about a hat
22 on. I looked around. I told him to stop there and kind form of
23 a little parameter. When I turned to right I shined my
24 flashlight. There was a guy with a hat, on and black shirt
25 crossing up a hill to a park, probably not even fifty yards from

1 where I was.

2 Q What did you do you once you saw the man on the hill?

3 A I told him to stop and took off running in his
4 direction at which he looked at me and started running again.

5 Q And did he match the description that Officer McNeely
6 had told you?

7 A Yes, ma'am

8 Q Okay. At some point did you apprehend the suspect?

9 A Yes, ma'am. When he went up the hill he took a right
10 and ran down the fence line of the park. Whenever he was
11 attempting to jump the fence I was right behind him. He jumped
12 the fence and he fell into the bushes, at which time I got on
13 the other side of the fence and I told him not to move. I put
14 my taser -- got my taser on him. I told him do not move you
15 will tased. He had his hands in his waistband, told him to show
16 me his hands. He refused to show me his hands. He actually
17 started making a bunch of movements. Standing up still with his
18 hands in waistband. At which time I did pull my taser. Which I
19 held him at taser point until Officer McNeely went down the road
20 back of the road. Actually cut up Mobley Street and came and
21 was able to take the subject in custody.

22 Q What happened after the subject was in custody?

23 A He had a injury to his shoulder so EMS was called and
24 they arrived on scene and performed treatment.

25 Q When you apprehended the suspect were you able to see

1 his face?

2 A Yes, sir.

3 Q Were you face to face with him?

4 A Yes, ma'am.

5 Q Would you be able to point him out today for the jury?

6 A Yes, ma'am.

7 Q Can you point out the suspect from that night to the
8 jury?

9 (WHEREUPON, the witness points to the defendant.),

10 MS. GROVE: Please note that Sergeant Harris
11 pointed out the defendant.

12 Q So, when you apprehended Mr. McClain what was he
13 wearing just to reiterate?

14 A He was wearing a hat which ended up being a red bulls
15 hat. He was wearing a black shirt which was ripped from the
16 pursuit and I believe he had camo pants on.

17 Q Did he have any shoes on?

18 A No, ma'am, he had no shoes on.

19 Q Okay.

20 A We actually recovered shoes beside the vehicle whenever
21 we went back.

22 Q And when you say beside the vehicle which vehicle was
23 that?

24 A The vehicle in question that was fleeing from officer
25 McNeely.

1 Q And where was that vehicle?

2 A It was actually located I believe on Queensgate. It
3 had ran into the side of kind of like a camper, truck-type
4 thing.

5 Q Okay. But you were not part of that initial pursuit?

6 A No, ma'am. I didn't get involved until I came
7 afterwards.

8 Q Okay. Just to clarify Sergeant Harris, the area in
9 question is that a residential area?

10 A Yes, ma'am.

11 Q So are there a lot of houses? .

12 A Yes, ma'am.

13 Q Were there other people out and about that night?

14 A Due to the time there wasn't anybody at the time, but
15 after all the commotion happen we did start seeing people coming
16 outside of their homes and everything like that.

17 Q Okay. But in general this was not -- there was no
18 stores in this area?

19 A No, ma'am.

20 Q Okay. And it was around three o'clock in the morning?

21 A Yes, ma'am.

22 Q All right. I am showing you State's Exhibit Two. Do
23 you recognize that Sergeant Harris?

24 A Yes, ma'am.

25 Q What is that Sergeant Harris?

1 A It's a map of the area in which the pursuit and the
2 foot chase occurred.

3 Q And how do you know that is the area that the foot
4 chase and pursuit occurred?

5 A Because that's where I actually got involved. That was
6 on the road, Zion Church and its my jurisdiction.

7 Q And is that in the town of Clover?

8 A Yes, ma'am.

9 MS. GROVE: Your Honor, the State would just seek
10 to -- that is already published to the jury. The
11 State would just pull that back up.

12 THE COURT: All right, you can show that to the
13 jury again. You can pull it up again.

14 Q Sergeant Harris, would you just show the jury the path
15 that you took to get to this incident.

16 A So right here is the road that I came down. That is
17 going to be Zion Church Road. Officer McNeely was right around
18 in this area coming out between houses. I parked my car around
19 this area right here. I seen there is a little cut in the fence
20 with a little hill probably about that high, (indicating). He
21 was right here on top of this hill in this area. Whenever I got
22 behind him I ran right here.

23 I lost site of him from here to here. I then regained
24 site whenever he was in the corner right here jumping the fence.
25 He fell right here. At which time I got right here. Officer

1 McNeely cut back and ran this direction, and came out on this
2 side of the fence and he was taken into custody right there in
3 the corner.

4 Q Thank you, Sergeant Harris. And Sergeant Harris I am
5 going to show you State's Exhibit One. Do you recognize that
6 Sergeant Harris?

7 A Yes, ma'am.

8 Q And what is that?

9 A It's the video dash cams that we viewed earlier.

10 Q And how do you recognize that disc?

11 A Because I signed it my initials are right there.

12 Q And what is on that disc again just to clarify?

13 A Both dash cam videos from my car as well as Officer
14 McNeely's car that happened that night.

15 Q All right.

16 MS. GROVE: Your Honor, at this time the State
17 would just seek to publish the second video on that
18 disc.

19 THE COURT: All right. It has been introduced
20 into evidence. You can show it.

21 (WHEREUPON, video was played for the jury.)

22 Q Sergeant Harris, what is going at this time?

23 A At this time as you seen I shine my flashlight over
24 there. I observed the subject was over on top of the hill me
25 and Officer McNeely gave pursuant. Right now we are probably

1 taking the subject into custody. At which time after he is
2 placed in to custody I came back to the patrol car in ordered to
3 bring it up to the scene where it happened --

4 Q Okay.

5 A -- and that way we can video the search of the subject.

6 Q Okay. So at this point you guys are off camera?

7 A Yes, ma'am. We were actually by now we're in the park
8 actually standing where I pointed out that we took him in to
9 custody.

10 Q Okay. Thank you. And Sergeant Harris is this where
11 you are moving the car?

12 A Yes, ma'am. I am heading back to the scene where we
13 actually take him in to custody.

14 Q Sergeant Harris, can you just point to the jury where
15 we are right now?

16 A Right here is if you back up to the left probably about
17 ten feet is the edge of the fence where he jumped it and a
18 little square patch of woods over there. A little triangle
19 patch. He's probably about ten feet inside the woods right now
20 caught up in briars. We had to help him out of the briars. To
21 the left is actually the park that he ran through.

22 Q And Sergeant Harris is this the man you apprehended
23 that night?

24 A Yes, ma'am.

25 Q And what is he wearing?

1 A He's wearing a black shirt. It looks like camo pants
2 and a red bulls hat. His shirt is ripped from jumping the
3 fence.

4 Q Sergeant Harris is that Devionne McClain?

5 A Yes, ma'am.

6 Q Sergeant Harris, after that was there any other video
7 that occurred in front of your car?

8 A I don't believe so.

9 Q Just to reiterate a few things Sergeant Harris. You
10 were not in pursuit of Devionne McClain that night?

11 A Not in the car.

12 Q At what point in the night did you get involved in this
13 incident?

14 A After Officer McNeely called for help and I arrived on
15 scene and observed Mr. McClain running from him.

16 Q And was this in the town of Clover?

17 A Yes, ma'am.

18 Q In York County?

19 A Yes, ma'am.

20 MS. GROVE: I have no further questions.

21 Please answer any questions the defense may have.

22 THE WITNESS: Yes, ma'am.

23 THE COURT: Miss Russo.

24 MS. RUSSO: Thank you, Your Honor.

25 CROSS EXAMINATION

1 BY MS. RUSSO:

2 Q Sergeant Harris, you arrived on scene after the
3 defendant left his vehicle?

4 A Yes, ma'am.

5 Q So you didn't see anything of the alleged crime?

6 A No, ma'am.

7 Q When you caught up to the defendant he was on the other
8 side of the fence?

9 A Well, I seen him jumping the fence. I observed him
10 jumping the fence.

11 Q So he jumped the fence and you are on one side and
12 McNeely -- Officer McNeely is on the other side of the fence?

13 A Yes, he got to the other side of the fence at that
14 time.

15 Q Okay. But eventually he comes around to the other side
16 and so he's on one side with Mr. McClain and you are the other
17 side?

18 A Yes, ma'am.

19 Q Okay. And the fall from over the fence that was enough
20 to dislocate Mr. McClain's shoulder?

21 A Yes, ma'am. It wasn't known at the time until EMS
22 arrived, but yeah.

23 Q At that point did he pull a weapon on you?

24 A No, ma'am.

25 Q Did he appear to have a weapon?

1 A He had his hands tucked in waistband. He was told
2 several times to take his hand out of his waistband. Stay
3 still. He did not abide by anything. Any police or lawful
4 commands to show his hands. He then attempted to get up and he
5 was messing around with something in his waistband and I wasn't
6 going wait until he pulled a weapon out.

7 Q Did you find a weapon on him when you searched him?

8 A No, ma'am.

9 Q Did you find a weapon in the spot where he was
10 arrested?

11 A No, ma'am.

12 Q So at no point do you know that he had a weapon on him?

13 A No, ma'am.

14 Q Okay. Did he attack you or Officer McNeely?

15 A No, ma'am.

16 Q And there was a fence between you and him although not
17 between him and officer McNeely?

18 A Yes, ma'am.

19 Q And he was stuck in the briars at this point and he was
20 trying to get up but he wasn't really up?

21 A He hadn't had an opportunity to get up.

22 Q And that's when you tased him?

23 A While he was trying to get up messing around in his
24 waistband, yes, ma'am.

25 Q All righth. V afterwards the defendant couldn't be

1 transported to jail he had to go to EMS?

2 A Yes, ma'am.

3 Q And had to be transported on a stretcher?

4 A As per protocol put him on the stretcher, yes, ma'am.

5 Q All right.

6 MS. RUSSO: Nothing further. Thank you.

7 THE COURT: Any redirect.

8 MS. GROVE: No, Your Honor.

9 THE COURT: All right. Thank you Sergeant Harris
10 you may step down.

11 THE WITNESS: Yes, sir.

12 MS. GROVE: Your Honor, may Sergeant Harris be
13 excused?

14 THE COURT: Any objection?

15 MS. RUSSO: No objection.

16 THE COURT: He is excused.

17 All right, Miss Grove call your next witness.

18 MS. GROVE: The State has no further witnesses,
19 Your Honor.

20 THE COURT: Is the State resting.

21 MS. GROVE: Yes, Your Honor the State is resting.

22 THE COURT: All right, ladies and gentlemen, the
23 State has indicated they are resting which means that
24 they are not intending to produce any more evidence.
25 At this point I will ask you to go back to the jury

1 room just briefly and then we anticipate we should
2 have back out here in just a few moments. We need to
3 take a matter up outside of your presence. Do not
4 discuss the case at all.

5 Thank you.

6 (WHEREUPON, the jurors leave the courtroom.)

7 THE COURT: Anything from the defense at this
8 point?

9 MS. RUSSO: Yes, Your Honor. I would like to
10 renew all previously motions, especially our motion to
11 dismiss based on lack of reasonable suspicion to stop
12 the car. We also like to make a directed verdict
13 motion as we believe we do not believe the State has
14 met the burden at this time.

15 THE COURT: All right, I will abide by my prior
16 decision on the motion to dismiss. That is denied.
17 On the directed verdict motion I find that given the
18 evidence in the light most favorable to the State, the
19 non-moving party in this case, there is evidence where
20 the officer testified when he turned on his blue light
21 the defendant did not stop. Ended up crashing his
22 vehicle after a chase and then he was apprehended. I
23 find there is sufficient evidence for a jury issue to
24 determine whether he has violated the section or not.
25 So I deny your motion.

1 MS. RUSSO: Thank you, Your Honor.

2 THE COURT: All right, anything else? Do you
3 intend to present any --

4 MS. RUSSO: We have no witnesses Your Honor.

5 THE COURT: Have you talked to your client about
6 testifying.

7 MS. RUSSO: I have, Your Honor, and at this time
8 he does not wish to testify.

9 THE COURT: Let me put this on the record. Mr.
10 Mr. McClain if you will stand. Let's place him under
11 oath.

12 DEVIONNE MCCLAIN, called as a witness, having
13 been duly sworn by The Clerk, was examined and
14 testified as follows:

15 THE COURT: Mr. McClain, What I need to do right
16 now is just inform you of your rights to be sure that
17 understand your rights, and the most important right I
18 want to inform you about is the right to testify or
19 not to testify.

20 If at any time you do not understand what you are
21 telling me I ask you to stop and speak to your lawyers
22 and speak to me. Have you talked to your lawyer about
23 testifying in this case.

24 MR. MCCLAIN: Yes, sir.

25 THE COURT: Well, this is the stage of the trial

1 will be followed by Miss Russo giving her closing.

2 Miss Grove.

3 MS. GROVE: Thank you, Your Honor, may it please
4 the Court.

5 Ladies and gentlemen, I told you about two hours
6 ago that this would be a simple trial and it has been.
7 It's taken about two hours. We had two witnesses.
8 It's simple. This is a failure to stop for blue
9 light. Now the judge is going to explain to you what
10 the law and his version of the law is what you should
11 abide by. That is the correct version.

12 Miss Russo in her opening talked a little bit about
13 the element of failure to stop for a blue light, but I
14 will go over them again. If it's somebody is on a
15 road in South Carolina, operating a motor vehicle and
16 a law enforcement official puts on their blue lights
17 for a reason, such as speeding, and then that person
18 doesn't stop. They are failed to stop for a blue
19 light.

20 Now ladies and gentlemen, you heard the testimony
21 from Sergeant Harris and Officer McNeely under oath.
22 They told you what happened that night. They told you
23 that Officer McNeely explained that he was on routine
24 patrol. He just saw somebody speeding. He was making
25 a routine speeding stop. He didn't know who was in

1 that car. He thought it could be anybody. Almost
2 everybody at some point in our lives gets pulled over
3 for a speeding and it's not generally something that
4 ends in a foot pursuit. It generally ends up with
5 somebody getting a speeding ticket or a warning and
6 Officer McNeely was just doing his job that night. He
7 saw someone speeding and he turned around to pull them
8 over. At that point though Devionne McClain didn't
9 pull over like 99 percent of the population does when
10 they are pulled over for speeding. He escalated the
11 situation. He accelerated his vehicle which you can
12 see on the video. He took a sharp turn. He ended up
13 not ever stopping but crashing into someone else's
14 vehicle and then if you had any little bit of doubt
15 that Devionne McClain didn't know he was being pulled
16 over, he stops and looks at the officer -- Officer
17 McNeely on video and then takes off running. There is
18 no question that Devionne McClain knew that the blue
19 lights were on. That Officer McNeely was attempting
20 to stop him and that Devionne McClain purposely did
21 not stop. Failure to stop for a blue light ends when
22 Devionne McClain doesn't stop for a blue light. That
23 in itself is the crime. But if you need any
24 confirmation that he did or didn't know that he was
25 being stopped on video he looks back and sees that an

1 officer has been following him with the blue lights on
2 and instead of stopping he takes off running in to the
3 night, into a residential area.

4 Ladies and gentlemen, this is a simple case. We
5 can complicate it with lots of things and I know that
6 reasonable doubt is something that is going to come
7 up. Beyond a reasonable doubt is not beyond all
8 doubt. There are very few things in life that are be
9 beyond any and all doubt. But in this case beyond a
10 reasonable doubt, is using your common sense, and it is
11 high standard. But use your common sense and look at
12 all the evidence that was presented to you; the
13 videos, the testimony of the officers who were there
14 that night and what they said happened. The videos
15 show you that what Officer McNeely said happened
16 happened. He sees a car coming towards him. It's
17 speeding. He turns around. He pursues it and it
18 doesn't stop. His blue lights were on. The car
19 crashes. The driver, Devione McClain, who you can see
20 clear as day and what he's wearing, takes off running.
21 You can see him pop his shoes off.

22 Officer McNeely also talked about the foot pursuit.
23 Sergeant Harris joined in the foot pursuit as well.
24 They find Devionne McClain. He's running. He's
25 wearing the same clothes as the same person who is

1 driving the car who didn't stop for a blue light.

2 Ladies and gentlemen, if it seems very simple
3 it's because it is. This is a simple case. After
4 hearing all the evidence, hearing the testimony, I
5 would ask that you bring a verdict of guilty for
6 Devionne McClain for failure to stop for a blue light.

7 Thank you.

8 THE COURT: Thank you, Miss Grove. Miss Russo.

9 MS. RUSSO: Thank you, Your Honor. We talked just
10 a few hours ago -- this has been a pretty short
11 case -- about the checks that are here that exist to
12 safeguard people who have been charged by the State.
13 The fact that Mr. McClain is incident until proven
14 guilty. In fact he has to be proved guilty beyond a
15 reasonable doubt. I think you all be able to remember
16 that. I don't think I need to go over that again with
17 you.

18 But what I would like to do is actually read you
19 the statute itself -- and I got it up here so I don't
20 get it wrong -- but the statute failure to stop a
21 motor vehicle -- and the judge will actually read you
22 the law and you should certainly go with what he says
23 if I do something wrong. But the statute is actually
24 failure to stop a motor vehicle when signaled by a law
25 enforcement vehicle, of course the shorthand we use is

1 failure to stop for a blue light.

2 "In the absence of mitigating circumstances, it is
3 unlawful for a motor vehicle driver, while driving on
4 a road, street, or highway of the State, to fail to
5 stop when signaled by a law enforcement vehicle by
6 means of a siren or flashing light. An attempt to
7 increase the speed of a vehicle or in other manner
8 avoid the pursuing law enforcement vehicle when
9 signaled by a siren or flashing light is prima facie
10 evidence of a violation of this section. Failure to
11 see the flashing light or hear the siren does not
12 excuse the failure to stop when the distance between
13 the vehicles and other road conditions are such that
14 it would be reasonable for a driver to hear or see the
15 signals from the law enforcement vehicle." So that
16 last part, failure to see the flashing light or hear
17 the siren it does not excuse a failure to stop if it
18 is reasonable that you should see them. That, you
19 know, your driving a car, right behind it's obvious
20 the flashing light is for you. That it's simple.
21 You're the car, you should stop. But what that also
22 means is that it's reasonable that you wouldn't
23 understand that that car is for you. That the blue
24 lights are for you. That the siren that's on is for
25 you. Then that is a defense. That can be a defense.

1 So failure to understand that it's for you can be a
2 defense to this charge.

3 Now, we actually have videos in this case. So you
4 just don't have to take anybody's word for it. You
5 can look at that video any time that you want and see
6 what happened. And you can see how fast the officer
7 gets up. To what speed he has got because he is
8 connected to L-3A system which connects to his sirens,
9 it connects to his blue lights. You can see exactly
10 when those go, where he is, what street. You can see
11 see what speed he is going. How fast he has to go to
12 catch up to Mr. McClain because Mr. McClain is so far
13 down the road. Because they have, again, they've gone
14 in opposite directions. Takes a while for the officer
15 to turn and and come back. Mr. McClain is so far down
16 the road. That those blue lights are pretty far
17 behind him. That it's dark and that blue lights are
18 flashing, but there is no way to really tell maybe
19 that officer just got a call. He is headed in another
20 direction. It might be impossible to tell where those
21 blue lights are going. That siren goes on for about a
22 second after Mr. McClain has already stopped his
23 vehicle. After he has already stopped. Now once he
24 gets out of his vehicle it is obvious he knows those
25 blue lights are on. But as we talked about before

1 after he gets out of his vehicle this charge is over.
2 This is no failure to stop for blue lights once you
3 are on foot. If he realizes at that point that the
4 blue lights are for him that doesn't necessarily mean
5 that he is guilty of this charge unless he realized
6 that they were for him earlier and failed to stop his
7 vehicle for them earlier.

8 Now what's also interesting about this, is that I
9 think it's the only statute I know of that begins with
10 "In the absence of mitigating circumstances." So even
11 the legislature put in here there could be mitigating
12 circumstances. There can be a reason why you could be
13 stopped and maybe you don't stop and that could be
14 reasonable because there are mitigating circumstances.
15 Say you have a medical emergency, or you want to get
16 to a lite area or for some reason your in fear. In
17 this particular case you heard that Mr. McClain did
18 not have a weapon on his person. Did not attack
19 anybody. Didn't end up injuring anyone. And in the
20 end he ended up with a dislocated shoulder. Was
21 transported to the hospital on a stretched that night
22 and was tased while he was down and entangled in a
23 briar patch. Did he have some mitigating
24 circumstances. That is something that you can look
25 for in this particular charge because of the way this

1 statute is written. So there are a couple of
2 different things that you can look for. Did the State
3 meet their burden in proving to you all the elements
4 of this charge. That he knew the blue lights were
5 behind him and that he failed to stop. And like I
6 said, you have that video to look at.

7 Now the officer he got up here and he said a couple
8 of things. He said, well, his vehicle accelerated.
9 Well, there was smoke billowing. Well, there was
10 radar. Well, you have video to look at. None of
11 those things were on the video. None of those things
12 were in the report that that officer wrote just a few
13 hours after this incident. Now that it's six, seven
14 months later which recollection is the better one?
15 The one that happened just a few hours later? The
16 report that he wrote for prosecution to remember all
17 the details in this case. Don't you think he should
18 have remembered to write down that that vehicle
19 accelerated. He remembered to write down that it
20 slowed down. The vehicle slowed down and it made a
21 turn. He remember to write that down, but he did not
22 remember to write down that it accelerated, but today
23 that's his claim. Today it's his claim there was
24 smoke billowing. But you don't just have to trust
25 people who came out here and spoke to you. You got

1 something else you can trust. You got the video that
2 you can see and you can see how far away the vehicles
3 were. You can see when the lights went on. You can
4 see when the siren went on. Where it went on. You
5 can see all those things. So this might be a
6 relatively simple case, but am here to say it is still
7 serious for everyone involved. It is still important
8 to each of us and we would ask you to look at it with
9 some skepticism. Take a look at each element of the
10 charge, at each requirement the State must meet and
11 when they don't meet it find Mr. McClain not guilty.

12 Thank you.

13 THE COURT: Ladies and gentlemen of jury now I
14 have the duty to charge you on the law and what that
15 simply means I am going to read the law to you that
16 you are to apply in this case. And in fact then I am
17 going to give you a copy of what I read. You will be
18 able to take that back to the jury room with you and I
19 will give you some instruction on that when we get to
20 that point. I ask that you to give me your close
21 attention as I instruct you on the law in this case.

22 I remind you that during this trial you and I
23 have certain duties to perform. As the trial judge
24 it's my responsibility to preside over the trial of
25 this case and I also have the duty to rule on the

1 admissibility of evidence offered during this trial.
2 You are to consider only the competent evidence before
3 you. You are to consider only the testimony which has
4 been presented from this witness stand, any exhibits
5 which have been made a part of the record in this case
6 and any stipulations of counsel. I have the
7 additional duty to charge you the law applicable to
8 this case. As a presiding judge I am the soul judge
9 of law of this case and it is your duty as jurors to
10 accept and apply the law as I now state it to you. If
11 you already have an idea of what the law is or what
12 the law ought to be and it does agree with what I now
13 tell you the law is you must abandon this idea because
14 you are sworn to accept the law and apply the law
15 exactly as I state it to you. In every case tried in
16 this Court before the jury, the jury becomes the soul
17 and exclusive judge of the facts in the case. A trial
18 judge can not intimate, state, comment on or make any
19 statement to a trial jury about the facts of the case.
20 Since you the jury are the soul judge of the facts in
21 this case you are not to infer from what I have said
22 during the progress of this trial the ruling upon the
23 admissibility of evidence, or otherwise, or anything
24 that I say now during the course of this instruction
25 to you that I have any opinion about the facts of this

1 case. The law does not allow me to have an opinion
2 about the facts of the case. It is a matter solely
3 for jury to determine.

4 As jurors it is your duty to determine the affect,
5 weight and truth of the evidence presented during this
6 trial.

7 The Indictment charges the defendant with failing
8 to stop for a blue light. I remind you that the fact
9 that the defendant was arrested, charged, indicted in
10 this case is not evidence in this case and can not be
11 considered by you as evidence of guilt in this case,
12 nor does it create any presumption or inference of
13 guilt. This document, the Indictment, is simply the
14 formal written instrument which contains the charges
15 made against the defendant. It is the formal document
16 by which this case is brought to you in this Court.

17 I remind you that the fact that the defendant was
18 arrested, charged and indicted in this case is not
19 evidence in this case and can not be considered by you
20 as evidence of guilt in this case, nor does it create
21 any presumption or inference ever guilt. The
22 indictment is simply the formal written instrument
23 which can contains the charge made again the
24 defendant. It is formal document by which this case
25 is brought in to the Court.

1 The defendant has plead not guilty to this charge,
2 of this Indictment and that plea puts the burden on
3 the State to prove the defendant guilty. A person
4 charged with committing a criminal offense in South
5 Carolina is never required to prove his own innocence.
6 I charge you that it is important rule of law that the
7 defendant in a criminal trial no matter what the
8 seriousness of the charges may be will always be
9 presumed to be innocent of the crimes for which the
10 Indictment was issued unless guilt has been proven by
11 evidence satisfying you of that guilty beyond a
12 reasonable doubt. The presumption of innocence does
13 not end when you begin your deliberations but
14 accompanies the defendant throughout the trial until
15 you reach a verdict of guilt based on the evidence
16 satisfying you of that guilt beyond a reasonable
17 doubt. The presumption of innocence is like a robe of
18 righteousness placed about the shoulders of the
19 defendant which remains with the defendant until it
20 has been stripped from the defendant by evidence
21 satisfying you of the defendant's guilt beyond a
22 reasonable doubt. The presumption of innocence is not
23 a mere legal theory. It is not just a legal phrase.
24 It is a substantial right to which every defendant is
25 entitled unless you the jury are satisfied from the

1 evidence of the defendant's guilt beyond a reasonable
2 doubt.

3 What is a reasonable doubt. A reasonable doubt is
4 the kind of doubt that would cause a reasonable person
5 to hesitate to act. The State has the burden of
6 proving the defendant guilty beyond a reasonable
7 doubt. Some of you may have served as jurors in civil
8 cases where you were told it is only necessary to
9 prove that a fact is more likely true than not true,
10 such as the greater weight or preponderance of the
11 evidence. In criminal cases the State's proof must be
12 more powerful than that. It must be beyond a
13 reasonable doubt. Proof beyond a reasonable doubt is
14 proof that leaves you firmly convinced of the
15 defendant's guilty. There are very few things in this
16 world that we know with absolute certainty and in
17 criminal cases the law does not require proof that
18 overcomes every possible doubt. If based on your
19 consideration of the evidence you are firmly convinced
20 that the defendant is guilty of the crime charged you
21 must find the defendant guilty. If on the other hand
22 you think there is a real possibility that the
23 defendant is not guilty you must give the defendant
24 the benefit of the doubt and find him not guilty.

25 There are two types of evidence which are

1 generally presented during the trial. Direct evidence
2 and circumstantial evidence. Direct evidence directly
3 proves the existence of a fact and does not require
4 deduction. Circumstantial evidence is proof of a
5 chain of facts and circumstances indicating the
6 existence of a fact. Crimes may be proven by
7 circumstantial evidence. The law makes no distinction
8 between the weight or value to be given to either
9 direct or circumstantial evidence. However, to the
10 extent the State relies on circumstantial evidence all
11 the circumstances must be consistent with each other
12 and when taken together point conclusively to the
13 guilt of the accused beyond a reasonable doubt. If
14 these circumstances merely portray the defendant's
15 behavior suspicious the proof has failed.

16 The State has the the burden of proving the
17 defendant guilt beyond a reasonable doubt. This
18 burden rests with the State regardless of whether the
19 State relies on the direct evidence, circumstantial
20 evidence, or some combination of the two. Necessarily
21 you must determine the credibility of witnesses who
22 testified in this case. Credibility simply means
23 believability. It becomes your duty as jurors to
24 analyze and evaluate the evidence and determine which
25 evidence convinces you of its truth. In determining

1 the believability of witnesses who have testified in
2 this case you may believe one witness over several
3 witnesses or several witnesses over one witness. You
4 may believe a part of the testimony of a witness and
5 reject the remaining part of the testimony of that
6 same witness. You may believe the testimony of a
7 witness in its entirety or reject the testimony of a
8 witness in its entirety. You may consider whether any
9 witness has exhibited to you any interest, bias,
10 prejudice or other motive in this case. You may also
11 consider the appearance and manner of a witness while
12 on the witness stand.

13 I instruct you and emphasis that the fact that the
14 defendant did not testify is not a factor to be
15 considered by you in any way in your deliberation and
16 in your consideration on the question of guilt or
17 innocence of the defendant. It must not considered by
18 you in any manner whatsoever. A defendant has the
19 constitutional right to remain silent and the
20 assertion of this right must not be considered by you
21 in your deliberations. I repeat under your oath you
22 are to draw no conclusion whatsoever from the fact
23 that the defendant in this case did not testify. The
24 fact that this defendant did not testify should not
25 even be discussed in the jury room. The burden of

1 proof of proof as I stated to you is on the State.
2 The defendant is not required to prove his innocence.
3 The burden of proof remains on the State to prove the
4 defendant's guilt beyond a reasonable doubt.

5 In order to establish criminal liability criminal
6 intent is required. For example the mental state
7 required to be proven by the State for a particular
8 crime might be purpose, intent, knowledge,
9 recklessness or criminal negligence. Criminal intent
10 must be proven by the State beyond a reasonable doubt.
11 Criminal intent is always a matter that must be
12 determined by the jury from the circumstances
13 surrounding the situation. There is no way to prove
14 intent by mathematical certainty. There is no way
15 medical science can dissect a person's brain and
16 determine what the person had in mind. So the law
17 says a criminal intent may be inferred from the
18 circumstances shown to exist. This is how you make a
19 determination of whether or not the element requiring
20 intent was present. It is not necessary to establish
21 intent by direct positive evidence but intent may be
22 established by inference in the same way as any other
23 fact by taking into consideration the acts of the
24 parties and all the facts and circumstances of the
25 case. Criminal intent is a mental state, a conscious

1 wrongdoing. It is up to you to determine what the
2 defendant intended to do based on the circumstances
3 should to have existed. Criminal intent can arise
4 from action or failure to act. It may arise from
5 negligence, recklessness or an indifference to duty or
6 the consequence that are considered by the law to be
7 the equivalent of criminal intent.

8 The defendant is charged with failing to stop for a
9 blue light. In order to prove this crime the State
10 must prove beyond a reasonable doubt that the
11 defendant was driving a motor vehicle. That the
12 defendant was driving a motor vehicle on a road,
13 street or highway of this state. That the defendant
14 was stopped -- was signaled to stop by a law
15 enforcement vehicle by means of a siren or flashing
16 light and that the defendant did not stop. In
17 determining whether or not there are mitigating
18 circumstances which would justify the defendant's
19 failure to stop for the blue light you may consider
20 actual road conditions, actual roadside conditions,
21 other conditions such as lighting and weather, officer
22 driver and/or passenger safety and any other
23 circumstances you believe to reasonably mitigate the
24 alleged violation. An official signal requiring a
25 motorist to stop may be a siren or flashing lights but

1 both are not required. An attempt to increase the
2 speed of a vehicle or in some other manner avoid the
3 pursuing law enforcement vehicle when signaled by
4 siren or flashing light may be considered as evidence
5 for failing to stop for a blue light. However, it's
6 merely an evidentiary fact to be taken into
7 consideration by you along with all the other evidence
8 in the case and to be given the weight that you decide
9 it should receive.

10 During your deliberations you may refer to the
11 instructions that I am going to give to you to guide
12 your decision making, but you must consider the
13 instructions as whole and not follow some and ignore
14 others. Madame forelady when you finish I am going to
15 ask that you return these instructions with the
16 verdict and evidence that goes back at the time your
17 verdict is rendered.

18 Under the constitution of this State the jury
19 verdict must be unanimous. Unanimity is mandated.
20 Every single juror must agree on the jury verdict.
21 There can not be a split or a divided vote in any form
22 or fashion such as eleven to one, ten to two, or nine
23 to three. The foreperson is required to sign the jury
24 verdict. When the foreperson checks the verdict and
25 signs the name as foreperson that assures the Court

1 that the jury verdict is unanimous. Please do not
2 sign the verdict form until every single juror agrees.
3 When you go back back in just a few moments I will ask
4 you to go back to your jury room and not start
5 discussing the case until we send the verdict form and
6 and I think the only thing that will come back to you
7 will be an aerial photo. The video was introduced
8 into evidence. If you decide you need to see that
9 video just knock on the door, tell the bailiff and we
10 will bring you back out here and we will watch the
11 video back out here. That video -- those two videos
12 are part of the evidence in this case.

13 The verdict form that I am sending back simply has
14 the heading and then two lines. The first line is we
15 the jury find the defendant not guilty or second line,
16 we the jury find the defendant guilty of failure to
17 stop for a blue light. Madame forelady, you sign your
18 name and date it when you reach a verdict. The order
19 in which they are on the verdict form has no
20 significance whatsoever. You just have to put one in
21 front the other so don't make any significance out of
22 the order in which those verdicts are on there.
23 Again, when you go back in your jury room don't
24 discuss the case until we send the evidence back and
25 the verdict form. If during the course of your

1 deliberations somebody needs to leave the room and go
2 to the bathroom you must stop deliberations and you
3 can start them when all 12 jurors are back in the jury
4 room. If all 12 jurors are not in the jury room you
5 can't be deliberating.

6 So at this point I will ask that you go retire to
7 the jury room and in just a few moments after we take
8 up any issues outside of your presence we will be send
9 back the verdict form with the jury instructions and
10 the one piece of evidence that come back. I will ask
11 when you go out if the alternate if you'll just come
12 down and stand right here until the rest of the jury
13 goes out. You can be excused to the jury room. I'm
14 sorry, when you reach a verdict knock on the door and
15 tell the bailiff that you reached a verdict. Keep the
16 verdict form in your hand. When you come back here in
17 the jury room I will ask you if you reached a verdict
18 and if you have then you can hand the verdict to the
19 bailiff and he will hand it to the Court.

20 (WHEREUPON, the jurors leave the courtroom at
21 4:22)

22 THE COURT: All right, Mr. Mueller, you won't be
23 needed. Thankfully nobody got sick or fell out this
24 afternoon. Sometimes that happens. If that had
25 happened you would then have gone to the jury room and

1 be part of deliberations, but that didn't happen. So
2 you have served your role as juror today. You are
3 excused. Call tonight after seven and they will give
4 you instructions about the remainder the week. Thank
5 you.

6 Anything further as far as jury instructions from
7 the State?

8 MS. GROVE: Nothing from the State.

9 THE COURT: From the defense?

10 MS. RUSSO: Nothing, Your Honor.

11 THE COURT: All right. If you all come up I think
12 the only thing that really needs to go back is the
13 verdict form and the aerial photo; is that right?

14 MS. GROVE: I believe so, Your Honor.

15 THE COURT: Plus the instructions.

16 MS. HOLLAND: Are the instructions the entirety of
17 the charge?

18 THE COURT: Yes.

19 THE COURT: All right. Hand those to the bailiff
20 and you can hand those in and tell them they can begin
21 deliberating. We will be at ease while the jury
22 deliberate.

23 (WHEREUPON, the jury begins to deliberate at
24 4:32).

25 THE COURT: Please be seated. I have a note.

1 Have a note from the jury we want to watch the video.
2 So let's bring them i, and I will ask the forelady
3 when they come in if they want to watch both videos or
4 just the first video. I think probably ought to have
5 the first video up.

6 Lets mark this as a Court exhibit.

7 (Court's Exhibit One, Jury note, marked for
8 identification as of this date.)

9 (WHEREUPON, the jury came into open court.)

10 THE COURT: Thank you madame forelady. I received
11 a note. You would like to see the video. Do you want
12 to see both videos or the first video or the second
13 video or again both?

14 THE FOREPERSON: Just the first.

15 THE COURT: The first video. All right, Miss
16 Grove, do you have State's Exhibit One, the first
17 video ready?

18 MS. GROVE: Yes, Your Honor.

19 (WHEREUPON, the video was played.)

20 THE COURT: All right. That video was actually
21 shown twice. We need to show it in the same way it
22 was shown the second time as well.

23 MS. GROVE yes, Your Honor.

24 (WHEREUPON, the video was played.)

25 THE COURT: All right. Thank you. All right

1 ladies and gentlemen you have seen the video in the
2 form it was shown to you both ways during State's case
3 and during cross examination. You can return to your
4 jury room.

5 (WHEREUPON, the jury continues to deliberate at
6 4:38)

7 THE COURT: Anything from the State at this point?

8 MS. GROVE: No, Your Honor.

9 THE COURT: Anything from the defense?

10 MS. RUSSO: No, Your Honor.

11 THE COURT: All right. We will be at ease while
12 the jury is out.

13 THE COURT: All right the jury sent I thought it
14 was a request but when I opened it it simply said we
15 have a verdict. So Mr. Dunlap if you will ask the
16 jury to come on in.

17 (WHEREUPON, the jury came into open court at 4:58)

18 THE COURT: Thank you, ladies and gentlemen.
19 Madam Forelady, has the jury reached a verdict.

20 THE FOREPERSON: Yes, Your Honor.

21 THE COURT: Hand the jury verdict up to bailiff.
22 Madam clerk if you will publish the verdict.

23 THE CLERK: The State of South Carolina versus
24 Devionne McClain with Indictment 2015-GS-46-03842, for
25 failure to stop for a blue light, we the jury find the

1 defendant guilty of failure to stop for a blue light.
2 Signed by the foreperson this day. If this so be your
3 verdict so say you all by raising your right hand.
4 Let the record show all affirm.

5 THE COURT: Anything further from the State before
6 we release the jury?

7 MS. GROVE: No, Your Honor.

8 THE COURT: From the defense?

9 MS. RUSSO: Nothing Your Honor.

10 THE COURT: Thank you, ladies and gentlemen of the
11 jury. Thank you for your service on this trial. You
12 are excused for the rest of the day. Call again after
13 seven tonight and you will receive instructions about
14 the remainder of the week. Thank you.

15 (WHEREUPON, the jury leaves the courtroom.)

16 THE COURT: All right. Miss Grove, have you got a
17 sentencing sheet?

18 (WHEREUPON, a document was handed up to the Court.)

19 THE COURT: Miss Russo, would you get your
20 children to stand.

21 All right, let's see. We got a factual basis for
22 this charge. Let me hear his prior record. I do have
23 probation matter, and so let's hear that at the same
24 time.

25 MS. GROVE: Yes, Your Honor. 1996 he is CSC,

1 third, with a minor. 1997 he has a pointing and
2 presenting. 1999 he has a simple assault and battery.
3 2002 he has a possession of marijuana. 2002 he was
4 also convicted of accessory after the fact to 2nd
5 degree murder as well as assault with deadly weapon
6 with intent to kill. I believe on that charge he
7 served anywhere from five to seven years is what the
8 conviction said, Your Honor. In 2011 he was convicted
9 of possession of firearm by a felon. In 2014 he was
10 convicted of failure to stop for blue light. In 2014
11 he was convicted of distribution or selling crack near
12 a school. And in 2014 he was convicted of possession
13 of drugs, manufacturing, distributing cocaine base and
14 stemming from those 2014 charges he does have ten years
15 hanging over his head on a probationary sentence.

16 THE COURT: It looks to me like he has got 15. It
17 says 15 provided upon the service of six and he is on
18 probation. So he has still got whatever is left on
19 the 15.

20 PROBATION OFFICER: He has a suspended sentence as
21 well of ten years while he was on probation.

22 THE COURT: All right. Miss Russo, your client he
23 was served with the probation citation; is that right?

24 MS. RUSSO: Yes, Your Honor.

25 THE COURT: Here in court, and he understands that

1 this would also be a violation of his probation.

2 MS. RUSSO: Yes, Your Honor.

3 THE COURT: And we're prepared to go forward with
4 probation matter today as well.

5 MS. RUSSO: Yes, Your Honor. For the record I
6 renew my motion at this time and also make a motion
7 for a judgement notwithstanding the verdict.

8 THE COURT: Yes, let's do that.

9 MS. RUSSO: Thank you, Your Honor.

10 THE COURT: All right, I note for the record that
11 the defense renewed all their prior motions and then
12 had a motion for judgement notwithstanding the verdict
13 and I deny those motions.

14 MS. RUSSO: Thank you, Your Honor.

15 THE COURT: All right, let's talk about the
16 probation violation.

17 PROBATION OFFICER: Yes, Your Honor. Mr. Devionne
18 McClain was served in the courtroom with the citation
19 today. He was originally sentenced on Indictment
20 10-GS-3705 and 3706 for possession with intent to
21 distribute crack cocaine and a proximity. He was
22 sentenced by the Honorable Judge Miller on 9-30-2014.
23 On the possession with intent to distribute crack
24 cocaine he received a sentence of 15 years provided
25 upon the service of six years, balance suspended to

1 thirty months probation. And on the proximity he
2 received a sentence of ten years, balance suspended
3 during probation.

4 He has no priors and is current until he was
5 convicted of this new charge.

6 THE COURT: When did he get out? I noticed he was
7 sentenced on the September 30, 2014. He had credit
8 for 1,107 days. So he had credit essence a little
9 more than three years on a six-year sentence. I
10 assume that they sent him to the department of
11 corrections or R and E. When did he get out?

12 MS. RUSSO: April first of 2015.

13 THE COURT: He got out April the first of 2015.
14 All right. And this happened April 30th.

15 THE COURT: All right, I will be glad to hear from
16 you Miss Russo and your client.

17 MS. RUSSO: I was in contact with Agent Moffit who
18 was the agent on this case. He was prepared to
19 recommend about one year on this violation in which
20 Mr. McClain is facing up to ten years. If Mr. McClain
21 had plead prior to trial I would ask you if you would
22 consider that one year or something in that realm.
23 Something less than ten. I recognize that he is
24 facing up to five on the failure to stop as well,
25 however, it was not high-speed chase. No one was

1 injured. I would just ask you to recognize that and
2 sentence him to something fair, Your Honor.

3 THE COURT: All right.

4 Anything else? Mr. McClain anything you want to
5 say.

6 MR. MCCLAIN: No, sir.

7 THE COURT: How much time did he spend in jail
8 before he bonded out.

9 MS. RUSSO: Twelve days.

10 THE COURT: Twelve days.

11 MS. RUSSO: Your Honor, I'm sorry, I believe he
12 has a person or two who would like to speak.

13 THE COURT: I will be glad to hear from anyone on
14 Mr. McClain's behalf.

15 If you will state your name for the record.

16 MR. W. MCCLAIN: William C. McClain.

17 THE COURT: I will be glad to hear from you Mr.
18 McClain.

19 MR. W. MCCLAIN: By the grace of God, judge, even
20 though Devionne done what he has done, I ask if you
21 would give him reconsideration as to as less a
22 sentence as you can if he do get any. Give him
23 another chance.

24 THE COURT: All right. Thank you. Yes, sir.

25 MR. BARNETT: Name Yes, Your Honor, my name is John

1 Barnett (phonetics). I mentored Devionne probably
2 since he was about the age of seven. We worshiped at
3 a local church in Clover. Since then he has been
4 pretty productive, with the exception of his brush
5 with going to prison, but since he has been released
6 he actually been very positive. He was actually in
7 route to pick up his brother from work. He said he
8 has learned from his mistake. If he could possibly
9 get over from today's case -- not get over, may be win
10 this particular case, you know, he was doing what he
11 needed to do, but I think fear kicked in and so I
12 think that is the challenges that we have with that.
13 So today if you can have some mercy on him I think he
14 will learn from his mistake it through.

15 THE COURT: Well Mr. Barnett, did you speak on his
16 behalf when he was sentenced by Judge Miller in
17 September of 2014?

18 MR. BARNETT: No, I did not. I was actually out of
19 town.

20 THE COURT: You can have a seat. I appreciate
21 your impute. The difficult thing is Mr. McClain has
22 quite an extensive record and we can't just un-ring
23 that bell. The difficult thing too is another judge
24 has sentenced him to significant time on drug charges
25 in September of 2014. He got out April the first of

1 2015 and 29 days later he has this so -- and he is not
2 18 years years old. He is 35 and so he is not -- the
3 Court can't view him like an 18, 19 or 20-year old who
4 makes some sort of foolish mistakes. Mr. McClain has
5 had many, many, many opportunities.

6 On Indictment 2015-GS-46-3842 State versus Devionne
7 McClain Devaughn McClain having been found guilty by a
8 jury for failure to stop for a blue light, second
9 offense, sentence of the Court he be committed to
10 state department of correction for a determinat term
11 of five years. Credit for 12 days.

12 On the probation matter he has -- let's do this.
13 On the -- can I do this on the PWID case,
14 2010-GS-46-3705 we'll just terminate that case. All
15 right. Where will that leave us on the proximately
16 case, Miss Boyle, the ten years.

17 PROBATION OFFICER: It was suspended during
18 probation, so ---

19 THE COURT: Well, he wasn't on probation but
20 thirty days. So he has got a ten-year sentence
21 hanging over his head for the proximity, right?

22 PROBATION OFFICER: Yes, Your Honor, and nine
23 years on the possession.

24 THE COURT: Well, that's what I am saying. Let's
25 terminate -- can I terminate -- well, I guess I can't

1 probably do that. I can't terminate one charge and
2 then he's got nine left on the PWID?

3 PROBATION OFFICER: Yes, Your Honor.

4 THE COURT: All right. We're going to revoke the
5 probation on the -- well, I'm trying to figure out how
6 to do this. What I am going to do is give him the
7 nine years. Do I revoke nine on the other and
8 terminate the balance?

9 PROBATION OFFICER: We can do that.

10 THE COURT: All right, so we will revoke the PWID
11 its entirety and we will revoke nine on the proximity
12 and terminate the balance.

13 Thank you.

14 PROBATION OFFICER: Can we allow time-served to
15 satisfy all momentary obligations?

16 THE COURT: Yes.

17 (END OF TRANSCRIPT)

18

19

20

21

22

23

24

25

C E R T I F I C A T E

I, the undersigned Aileen Butler, Official Court Reporter for the 16TH Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings in the captioned case, in the Circuit Court for York County, South Carolina, on the 15th day of December, 2015.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

February 9, 2016

Aileen Butler

WITNESSES

CPD

Witnessing Officer: *Davis*

ARREST WARRANT NUMBER

2015 8546 03842

Direct Indictment

ACTION OF GRAND JURY

TRUE BILL

Shuler Sanders
Foreperson of Grand Jury
Date: *12/10/15*

VERDICT

Guilty

Selly Parkowski
Foreperson of Grand Jury
Date: *12/15/15*

Direct Indictment
DOCKET NO. 2015-GS46- 03842

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

DECEMBER 10, TERM 2015

THE STATE

VS.

DEVIONNE DEVAUGHN MCCLAIN

INDICTMENT FOR

FAILURE TO STOP FOR A BLUE LIGHT

SC Code: § 56-05-0750(B)(2)
CDR Code: 2396

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I
hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA
COUNTY OF YORK

2015 DEC 17 AM 10:05

INDICTMENT

DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC

At a Court of General Sessions, convened on December 10, 2015, the Grand Jurors of York County present upon their oath:

FAILURE TO STOP FOR A BLUE LIGHT

The defendant, Devionne Devaughn McClain, did on or about April 30, 2015 in York County, while driving on a road street or highway of the State, fail to stop when signaled by a law enforcement vehicle by means of a siren or flashing light. All in violation of 56-05-0750(B)(2), Code of Laws of South Carolina, (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

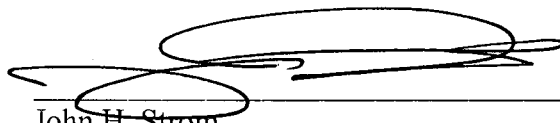


HANNAH R. GROVE
ASSISTANT SOLICITOR

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,



John H. Strom
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT

This 5th day of December, 2016.

RECEIVED

DEC 05 2016

SC Court of Appeals