

23234

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Sumter County

Honorable W. Jeffrey Young, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

RASHAD CORNEAL BRISBON,

APPELLANT

APPELLATE CASE NO 2016-001949

RECORD ON APPEAL

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SC Court of Appeals

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1 State of South Carolina

2 County of Sumter

3

4 The State of South Carolina,) Trial and Sentencing
Plaintiffs) 2015-GS-43-00436

5

6 vs.

7

8 Rashad C. Brisbon,
Defendant

June 14, 2016 &
September 12, 2016
Sumter, S.C.

9

10

11

12 Before the Honorable W. Jeffrey Young, Judge.
13 Before the Honorable Roger M. Young, Judge.

14

15

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Assistance Solicitor for the State

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18 Mr. Stephen B. Story, Jr.
Attorney for Defendant

19

20 Margaret T. Sullivan,
Court Reporter

21

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1 THE COURT: Yes, sir.

2 MR. BROWN: The next matter before the
3 court true billed indictment is 2015-GS-43-0436.
4 The State of South Carolina versus Mr. Rashad
5 Cornell Brisbon. This is an indictment for a
6 failure to stop for a blue light. The State is
7 ready for trial and we have proposed witnesses.

8 THE COURT: Ladies and gentlemen, we are
9 about to strike the case of the State versus Rashad
10 Cornell Brisbon who was charged by indictment for
11 failure to stop for a blue light and the indictment
12 reads as follows: Rashad Cornell Brisbon did in
13 Sumter County on or about October 22, 2014, while
14 operating a motor vehicle on the road, street or
15 highway of the State of South Carolina fail to stop
16 his motor vehicle when signaled to do so by law
17 enforcement vehicle by means siren, and or flashing
18 light in violation of section 56-5-750(b)2 of the
19 South Carolina Code of Laws 1976 as amended.

20 Now, Ladies and gentlemen, the fact that
21 the defendant was arrested, charged and indicted,
22 in no way is indicative that he is guilty of this
23 charge. The defendant has pled not guilty, and
24 therefore the State has the burden of proving each
25 and every allegation of this charge in the

1 indictment. The defendant never has to prove
2 anything. The burden is always on the State and the
3 defendant never has to prove anything. So and the
4 indictment is really just a formal written document
5 that brings this case into the court.

6 Now, Ladies and gentlemen, before we
7 select our jury, there are several questions that I
8 am going to need to ask you, so I will ask you these
9 under oath. Mr. Bradley, if you please place our
10 jury panel under oath.

11 (Whereupon, jury panel is sworn.)

12 THE COURT: Thank you, Ladies and
13 gentlemen. Was there anyone who was not able to
14 take the oath. Thank you, no one is standing. Now,
15 Ladies and gentlemen, the reason you are under oath
16 is that this is such a crucial stage at the trial.
17 You know, just like a building would have a firm
18 foundation to be protective of those who live in it,
19 so must a jury be the strong basis of a fair and
20 impartial trial for these who participate, and the
21 solicitor's office for the State, and the defendant
22 who is on trial. And the attorneys will build that
23 jury and they're relying on your truthful answers to
24 these questions. So listen carefully and if you
25 think the question applies to you, I would ask that

1 you please stand.

2 Now the first question is, is anyone in
3 the jury panel ever been related by blood or
4 marriage or had a close personal or business
5 relationship with the defendant, Rashad Cornell
6 Brisbon? Mr. Brisbon, if you would please stand and
7 face the jury.

8 (Whereupon, no response.)

9 THE COURT: Thank you, you may be seated.
10 So if anyone has relations was Mr. Brisbon, please
11 stand at this time.

12 (Whereupon, no response.)

13 THE COURT: Thank you, no one is standing.
14 Now, Ladies and gentlemen, the list of witnesses who
15 may be called in this case is Trooper First Class
16 Steven McLaughlin Lowder of the South Carolina
17 Highway Patrol. Is there any member of the jury
18 panel who is related by blood or marriage or has had
19 a close personal or business relationship with
20 Trooper Lowder, please stand.

21 (Whereupon, no response.)

22 THE COURT: Thank you, no one is standing.

23 Now, Ladies and gentlemen, the attorneys
24 who will be trying this case will be Mr. Tyler Brown
25 for the State. Mr. Brown, would you like to

1 introduce yourself to the jury?

2 MR. BROWN: Yes, Your Honor. May it
3 please the court.

4 THE COURT: Yes, sir.

5 MR. BROWN: My name is Tyler Brown. I
6 work for the Third Circuit Solicitor's Office. I
7 work for your elected solicitor. I'll be trying
8 this case. Thank you.

9 THE COURT: Mr. Story, would you like to
10 introduce yourself to the jury?

11 MR. STORY: Yes, Your Honor. Thank You.
12 Good morning, my name is Stephen Story. I work for
13 the Third Circuit Public Defender, Jack Howle.

14 THE COURT: Now, Ladies and gentlemen, has
15 any member of the jury panel ever been related by
16 blood or marriage or had a close personal or
17 business relationship or ever been represented by
18 either of these attorneys or the solicitor's office
19 or the Sumter County Public Defender's Office? If
20 so, please stand.

21 (Whereupon, no response.)

22 THE COURT: Thank you, no one is standing.
23 Has any member of the jury panel formed or expressed
24 an opinion about any issue or matter involved in
25 this case? If so, please stand.

1 (Whereupon, no response.)

2 THE COURT: Thank you, no one is standing.

3 Is there any member of the jury panel who is aware
4 of any bias or prejudice towards either the State or
5 the defendant in this case? If so, please stand.

6 (Whereupon, no response.)

7 THE COURT: Thank you. No one is
8 standing. Is there any member of the jury panel who
9 is also a member of the grand jury that indicted
10 this case? If so, please stand.

11 (Whereupon, no response.)

12 THE COURT: Thank you, no one is standing.
13 Is there any member of the jury panel who is a
14 member of or a contributor to any group which has as
15 its primary concern promotion of law enforcement, or
16 victim's rights? These groups would include, but
17 certainly would not be limited to, Mother's Against
18 Drunk Driver's, Student's Against Drunk Driver's,
19 Citizen's against Violent Crimes, or any group that
20 is in favor of defendant's rights; such as, the
21 ACLU? If so, please stand.

22 (Whereupon, no response.)

23 THE COURT: Does any member of the jury
24 panel know of any reason whatsoever why he or she
25 should not serve as a juror in this case, with

1 particular emphasis being placed on your ability to
2 be fair and impartial to both the State and the
3 defendant? If so, please stand.

4 (Whereupon, no response.)

5 THE COURT: Thank you. No one is
6 standing. Does the State have any additional
7 questions it would like for me to ask?

8 MR. BROWN: None, Your Honor.

9 THE COURT: Does the defense have any
10 additional questions for me to ask?

11 MR. STORY: None, Your Honor.

12 THE COURT: Ladies and gentlemen, what is
13 going to happen now is, the computer is going to
14 generate a list of names. If your name is called,
15 please come stand at the podium and face Mr. Prince
16 in the back. The State will then have an
17 opportunity to strike you as well as the defendant.

18 THE CLERK: Please the court, Your Honor.

19 THE COURT: Yes, sir.

20 THE CLERK: Ladies and gentlemen, if your
21 name is called, please come forward and stand up
22 here in front of the podium and face the back of the
23 courtroom. And bring with you, please, any personal
24 belongings you may have with you. Juror No. 106
25 Debra McKenzie (f-b) accepted. Juror No. 168 Tisha

1 Johnson (f-b) accepted. Juror 172 Donald Fennoy
2 (m-b) accepted. Juror No. 20 Brandon Brown (m-w)
3 - accepted. Juror No. 62 Brea L. Gass- Goodman (f-b)
4 accepted. Juror No. 97 Latisha Martin (f-b)
5 accepted. Juror No. 67 Cynthia Graham Brogdon (f-w)
6 accepted. Juror No. 147 Elizabeth Sumter (f-b)
7 accepted. Juror No. 103 Kimberly McDuffie (f-b)
8 accepted. Juror No. 34 Kenneth Clark (m-w)
9 accepted. Juror No. 37 Catrina Conyers (f-b)
10 defense struck. Jury No. 90 Quina Joyner (f-b)
11 state struck. Juror No. 84 Rhonda Jackson (f-w)
12 accepted. Juror No. 170 Nick Davrados (m-w)
13 accepted. Alternate Juror 113 Pierre Neal (m-b)
14 defense struck. Juror 152 Gladys Truesdale (f-h)
15 accepted.

16 THE COURT: Please call out the names of
17 the jury.

18 THE CLERK: Yes, sir, Your Honor. Ladies
19 and gentlemen, when I call your name, please raise
20 your hand. Debra McKenzie, Trisha Johnson, Donald
21 Fennoy, Brandon Brown, Brea Gass Goodman, Latisha
22 Martin, Cynthia Graham Brogdon, Elizabeth Sumter,
23 Kimberly McDuffie, Kenneth Clark, Rhonda Jackson,
24 Nick Davrados, Gladys Truesdale. Thank you.

25 THE COURT: Thank you, Mr. Bradley.

1 MR. BRADLEY: Yes, sir.

2 THE COURT: Ladies and gentlemen, you all
3 have been selected as the jury for this particular
4 trial. I am going to send you back in the jury room
5 for just a few minutes. While you're back there, if
6 you could select who you want to be the foreperson
7 of the jury. And the foreperson will lead the
8 deliberations and will be the jury spokesperson here
9 in court, and will also write down the verdict. But
10 we'll talk about that later. But it would be
11 basically the leader of your group. And it can be
12 any of the 12 primary jurors. It cannot be the
13 alternate juror. So I am going to send you back
14 there for maybe 5 or 10 minutes, and I will bring
15 you back out here and talk to. You thank.

16 (Whereupon, the following takes place
17 within the presence of the jury.).

18 THE COURT: Solicitor, let me see you up
19 here for one minute. I just need to see the
20 solicitors for scheduling.

21 (Whereupon, the attorneys approach the
22 bench and confer with the judge.)

23 THE COURT: How long do you all think the
24 pretrial stuff is going to take?

25 MR. STORY: I have a number of motions,

1 Your Honor, that I think we discussed in chambers.
2 And I think Your Honor will have to view at least
3 part of the video in this motion, but not all of it,
4 because it is a lengthy video. But I would ask Your
5 Honor for an hour at the most.

6 THE COURT: Okay. Why don't we eat an
7 early lunch and be back. I am going to have to come
8 back at one. That way everybody will have an
9 opportunity to have lunch or whatever. And then
10 we'll just go on through.

11 MR. BROWN: Sounds good, Your Honor.
12 (Whereupon, the following takes place
13 within the presence of the jury.)

14 THE CLERK: Ms. Jackson.

15 THE COURT: Ms. Jackson, you have been
16 duly elected as the foreperson of this jury, I
17 understand.

18 THE FORELADY: Yes, sir.

19 THE COURT: Ladies and gentlemen, we've
20 got a few pretrial matters that we need to take up.
21 And so what I'm going to do is, I am going to ahead
22 and dismiss you now so you can go ahead and have
23 lunch. With the instructions that you be back here
24 at 1 o'clock. We'll start the trial. And it looks
25 like it won't be that long. So we'll be able to be

1 finished this afternoon as well.

2 So when I say go eat a lunch, don't a big
3 lunch, because I don't want you falling asleep this
4 afternoon if it gets warm in here. I've had
5 jurors just conk out when they had a good lunch, and
6 you don't want be that juror. So don't go out and
7 tell everybody you have jury duty. It's not a
8 secret that you have jury duty, but what's going to
9 happen is that person, you know, I had jury duty one
10 time and this is what happened in my case. Well you
11 don't need to hear that. This case is specific and
12 it's unique. And we'll give you all the evidence
13 you need to make a decision from this room. So have
14 a nice lunch. Be back here just a little bit before
15 one so we can start on time. And then I'll see you
16 then. Thank you, Ladies and gentlemen. And they'll
17 show you how to get in and out.

18 (Whereupon, the following takes place
19 outside the presence of the jury.)

20 THE COURT: Mr. Story, what's your first
21 motion?

22 MR. STORY: My first motion would be a
23 motion to suppress any evidence that occurred after
24 the traffic stop, based on the lack of initial
25 suspicion that a crime had occurred by the officer

1 including any stop. That would be my first motion.
2 I also have a Jackson vs. Denno, a motion to
3 suppress statement under Jackson v. Denno. I also
4 have motion to suppress any evidence of bad acts,
5 prior bad acts, or any evidence of other bad acts.
6 I know there was a DUI charge with this case, and I
7 believe a driving under suspension was discussed in
8 part. So those would be my three main motions, Your
9 Honor.

10 THE COURT: Well let's start.

11 MR. STORY: Your Honor, at this time, the
12 defense calls Trooper Stephen Lowder.

13 MR. BROWN: Your Honor, if I may briefly.
14 Are we addressing---

15 THE COURT: Yeah, that's what I want to
16 know. Which motion is this?

17 MR. STORY: The first motion I wanted to
18 address is the motion to suppress based on a lack of
19 probable cause to stop.

20 MR. BROWN: And I could be heard on that,
21 briefly.

22 THE COURT: Yes, sir.

23 MR. BROWN: Your Honor, I don't
24 necessarily think that matter needs to be heard.
25 And I would point the court, and I have a copy of

1 the case of State v. Hoffman. This is for the
2 record 257, S.C. 461. Permission to approach?

3 THE COURT: Yes, sir.

4 MR. BROWN: And I am given a copy to
5 counsel. Your Honor, State v. Hoffman is a failure
6 to stop for lights and sirens. A case from 1972.
7 I believe it came out of St. Matthews. In that
8 particular case, the defense moved to suppress a
9 failure to stop for a blue light because
10 of the underlying a magistrate charges;
11 specifically, a noise violation, and I think a
12 speeding issue were found not guilty in the
13 magistrate court.

14 The Supreme Court of South Carolina lead
15 by Justice Moss, Chief Justice Moss, wrote an
16 opinion, they outlined. I am looking specifically
17 on pages 3 and 4 of what's printed out. I'll note
18 they are front and back. So pages 3 and 4 right
19 there that the underlying reason for the stop is not
20 an element of the offense of a failure to stop for a
21 blue light. While we maintain wholly and completely
22 that there was a justified reason for the stop, and
23 we plan to discuss that in this trial, what we do
24 not believe that we have to prove is that the stop
25 was justified in regards to a suppression matter.

1 The reason being is that there is a number of
2 reasons why officers may initiate a traffic stop.

3 And the crime itself is the fact that he
4 turned on his blue lights and the person did not
5 stop. Not necessarily that there was the underlying
6 offense of driving or of in this case, the defendant
7 weaving outside his lane, driving well below the
8 speed limit, which was the reasonable suspicion as
9 to why he made the stop. We'd offer. We don't need
10 a special hearing.

11 MR. STORY: Your Honor, my understanding
12 in this case, is that the defense counsel didn't
13 suppress based on the fact that a person had been
14 acquitted in magistrate court. My argument is not
15 that he wasn't guilty of the DUI or anything like
16 that, but that the officer didn't have a reason to
17 stop him in the first place.

18 THE COURT: Well being found not guilty
19 just means that they didn't prove it beyond a
20 reasonable doubt. It doesn't mean there's not
21 probable cause. There's a whole different standard
22 on that. So yeah, when I was a lawyer I had a case
23 where I actually had a DUI in general sessions
24 thrown out, yet they immediately turned around and
25 got him for the failure to stop for a blue light,

1 because that is a separate offense. So I am going
2 to deny your motion on that.

3 MR. STORY: So, Your Honor, okay.

4 THE COURT: So they can go forward on the
5 failure to stop for the blue light despite the fact
6 that there was no conviction in lower court.

7 MR. STORY: Well, Your Honor, my argument
8 is not that there was no conviction. It's that the
9 officer did not have probable cause to stop, and
10 did not have reasonable suspicion that a crime had
11 occurred when he initiated his blue light. Just so
12 I'm clear.

13 THE COURT: Okay. Well I guess we may
14 need some testimony on it.

15 MR. BROWN: We're happy to provide that
16 testimony, Your Honor. We'll call Trooper Lowder on
17 the case.

18 Trooper Stephen M. Lowder, being first
19 duly sworn, testified as follows: old is

20 THE CLERK: State your full name and spell
21 your last name for the record.

22 A. Trooper Stephen Lowder. Lowder is
23 L-O-W-D-E-R.

24 Direct Examination by Mr. Brown:

25 Q. Good morning, Trooper Lowder.

Trooper Lowder-Direct by Brown

1 A. Good morning.

2 Q. It's pretty obvious what you're wearing,
3 but tell this court who you work for.

4 A. I work for the South Carolina Highway
5 Patrol.

6 Q. And how long have you worked for their
7 agency?

8 A. Since 2013.

9 Q. As a trooper, what are your obligations?

10 A. To make the roadways a safer place and
11 investigate collisions.

12 Q. Are you a MAIT officer or are you a patrol
13 officer?

14 A. Just a basic trooper, yes, sir.

15 Q. Were you working in October of 2014?

16 A. Yes, sir.

17 Q. And on that particular day, what shift
18 were you working?

19 A. The night shift of 6 p.m. until 6:00 a.m.

20 Q. Did you have the occasion, I'm just going
21 to skip right into it. Did you have the occasion
22 that night to make contact with Mr. Rashad Brisbon?

23 A. Yes, sir, I did.

24 Q. And where was that contact made?

25 A. In Sumter County on Brewington Road near

Trooper Lowder-Direct by Brown

1 Beckwood.

2 Q. And about what time was this contact made?

3 A. Around 4 a.m.

4 Q. Does your car have video and audio
5 surveillance?

6 A. Yes, sir, it does.

7 Q. And do you recognize this disk right here?

8 A. Yes, sir. It would be the one I put in my
9 general sessions packet.

10 Q. And with me, have you watched this disk,
11 and is an accurate representation of what happened
12 on that particular night?

13 A. Absolutely.

14 MR. BROWN: Your Honor, I'd offer for the
15 purpose of this, State's Exhibit No. 1.

16 MR. STORY: We have no objection.

17 (Video marked State's Exhibit No. 1 for
18 Id.)

19 Q. And, Trooper Lowder, we'll play that video
20 in just a second. But before we start playing it,
21 can you please tell us the circumstances with which
22 you made contact with Mr. Rashad Brisbon?

23 A. Yes, sir. Like I said on the date we're
24 talking about, I was traveling south on Brewington
25 Road or west. If you know where Sumter Airport is,

Trooper Lowder-Direct by Brown

1 I was traveling west towards US 521 or the old
2 Camden. As I was starting to make a left on
3 Beckwood, I noticed a silver car there, which turned
4 out to Mr. Brisbon's. It was at the stop sign at
5 Beckwood and Brewington.

6 As I turned on Beckwood, I noticed a
7 defective headlight on the car. Well I turned
8 around and as normal procedure, we activate our
9 camera prior to activating the blue lights if we
10 can, to record the location of the stop. And the
11 description of the car on our video.

12 Q. Is that what you did in this case?

13 A. Yes, sir. That's right. And upon
14 activating my camera, that's when I observed the
15 violation of the improper lane use and weaving and
16 striking the center line.

17 Q. So we can back up for a second. I'm not
18 sure if I asked yet, but what time was this?

19 A. About 4:09 a.m.

20 Q. And this was on October 2nd?

21 A. Yes, sir.

22 Q. And so initially your attention was caught
23 because of the head lamp?

24 A. Yes, sir.

25 Q. How long did you stay behind the vehicle

Trooper Lowder-Direct by Brown

1 before you turned on your blue lights?

2 A. I didn't actually calculate it with my
3 mileage of my car. But if I had to take a a guess
4 from Beckwood to old Camden where the safe location
5 was for the stop, I'd say probably less than a mile
6 to a mile.

7 Q. And during that time period, have you had
8 your camera on?

9 A. Yes, sir.

10 Q. About how far back were you from the
11 vehicle as this was going on?

12 A. I'd say probably several hundred yards.
13 Probably 2 or 300 yards, if I had to take a guess.

14 Q. Does your camera have a zoom feature?

15 A. It does.

16 Q. Explain that to the judge.

17 A. I zoom the camera in a lot of times
18 because people do get nervous when the police get
19 behind them. So I zoomed my camera in from a
20 distance, to observe the driving of the vehicle.
21 And that time I observed the violation.

22 Q. And you keep saying the violation. Tell
23 this court what violation you specifically observed.

24 A. The vehicle was weaving in its lane. It
25 was a double yellow lane. I mean a double yellow

Trooper Lowder-Direct by Brown

1 line in which the vehicle struck the center line
2 several times in the roadway. And at that time, I
3 conducted a traffic stop once I got to the
4 intersection of old Camden which was a safe location
5 to pull over for both he and I. You know, I stopped
6 him based on the impairment. Possibly a driving
7 impaired.

8 Q. Was there any other features or
9 observations you made while he was driving that led
10 you be to be suspicious of impaired driving?

11 A. He was driving 11 under the speed limit.
12 Let me make a correction on that. It was a 55. And
13 I think there was clarification that I need to make
14 in the report. I think it says 45. And it's a 55
15 zone, and I got him at 34 on my radar.

16 Q. In your training experience as a trooper
17 with the South Carolina Highway Patrol and through
18 the law enforcement academy, does the reduced speed
19 with which he was driving, coupled with him weaving,
20 does that meaning anything to you?

21 A. Yes, sir. It's a very good indicator of
22 being impaired.

23 Q. As a trooper, what are the things you're
24 looking for an impaired driver?

25 A. Of course traveling well below the posted

Trooper Lowder-Direct by Brown

1 speed limit. Failing to maintain lane. And of
2 course an excessive rate of speed.

3 Q. And you had 2 or 3 on this?

4 A. Yes, sir.

5 Q. It was based on that, that you made the
6 initial traffic stop.

7 A. That's right.

8 Q. And all that's recorded on video?

9 A. Yes, sir.

10 Q. And that's this video we have here today?

11 A. Yes, sir.

12 MR. BROWN: Your Honor, permission to
13 publish the video.

14 THE COURT: You certainly may.

15 Q. This is a beep from inside your car?

16 A. Yes, sir. That's right.

17 Q. What happened next?

18 A. In a normal situation, I make contact with
19 them, and make sure they're not impaired or
20 fatigued. And then issue a contact and send them on
21 their way.

22 Q. But in this particular case, as we just
23 now saw, he then drove off?

24 A. Yes, sir.

25 Q. And is that started the failure to stop

Trooper Lowder-Cross by Story

1 for a blue light?

2 A. Yes, sir.

3 Q. And again, if you can just emphasize for
4 the court one more time, what were the exact reasons
5 that you made the initial stop in this case?

6 A. As you saw how slow he was driving, 34 in
7 a 55. And also he's crossing to the center line.
8 As you can see where the reflector was and it shows
9 the line.

10 Q. And we don't see it in this video, but was
11 there also something about his head lamp?

12 A. Yes, sir. There was a defective head
13 lamp, yes, sir.

14 MR. BROWN: Court's indulgence.

15 Q. Anybody else in the car at the time?

16 A. In his vehicle?

17 Q. Right.

18 A. No, sir.

19 MR. BROWN: Please answer any of
20 Mr. Story's questions.

21 THE COURT: Mr. Story.

22 Cross Examination by Mr. Story:

23 Q. Good morning, Trooper Lowder.

24 A. Good morning.

25 Q. I want to talk a little bit about training

Trooper Lowder-Cross by Story

1 and experience. You joined the highway patrol in
2 2013?

3 A. Yes, sir.

4 Q. And prior to that, how do you get
5 qualified to be a highway patrol?

6 A. Well I had to go through trooper school.
7 But prior to highway patrol, I was a sheriff's
8 deputy for two years, in which I went through the
9 South Carolina Criminal Justice Academy in Columbia
10 for a 9 week course.

11 Q. So you went to what we usually call police
12 academy.

13 A. That's right.

14 Q. Criminal Justice Academy.

15 A. Yes, sir.

16 Q. And so it's your testimony today that
17 there was a defective head lamp?

18 A. Yes, sir.

19 Q. And that was on the front of the car?

20 A. Yes, sir.

21 Q. And we can't see that from a video.

22 A. No, sir. That's an older camera in the
23 car. That was actually my car. But the VHS, it's
24 not the new DVD system.

25 Q. But how did you observe the defective head

Trooper Lowder-Cross by Story

1 lamp?

2 A. As I was making a left on Beckwood, he was
3 at the stop sign.

4 Q. And that was before the video began.

5 A. That's right. Yes, sir.

6 MR. STORY: Thank you. No further
7 questions.

8 THE COURT: Thank you. Any follow up?
9 Any redirect?

10 MR. BROWN: None, Your Honor.

11 THE COURT: Thank you. You can step down.
12 Anything further on that motion?

13 MR. STORY: No, Your Honor.

14 THE COURT: I find just from what I saw
15 and his testimony, that there was at least probable
16 cause to stop.

17 MR. BROWN: Thank, Your Honor.

18 MR. STORY: The next motion I have, Your
19 Honor, is a motion to suppress any statements made
20 by the defendant based on Jackson V. Denno.

21 THE COURT: Solicitor, are you ready call
22 him back up?

23 MR. BROWN: My trooper is already sworn
24 in. We can bring him back up.

25 THE COURT: Bring him right back up.

Trooper Lowder-Direct by Brown

1 DIRECT EXAMINATION by Mr. Brown:

2 Q. Trooper Lowder, you've already introduced
3 yourself, but just in this case they parcel out this
4 record, can you just state your name again for the
5 record?

6 A. Yes, sir. Trooper S. M. Lowder. Stephen
7 Lowder. L-O-W-D-E-R.

8 Q. Thank you, trooper. Now you were the
9 arresting officer on this case.

10 A. Yes, sir.

11 Q. And of course we just now had the
12 suppression hearing, and we saw the initial part.
13 Did you ultimately catch up with and arrest the
14 defendant, Mr. Rashad Brisbon, that morning?

15 A. Yes, sir.

16 Q. Did you ever lose sight of him?

17 A. No, sir. Well briefly as we were -- I
18 could hear him running through the woods as we made
19 it into the woods, but yes, sir.

20 Q. But you were able to make an arrest of him
21 that particular night?

22 A. Yes, sir. Minutes, Or less than a minute
23 later.

24 Q. When you took him in to your custody, were
25 there occasions where you spoke with him?

Trooper Lowder-Direct by Brown

1 A. Yes, sir.

2 Q. And that, we have about an hour and a half
3 long video. Were there multiple occasions where
4 that happened?

5 A. Yes, sir. We talked for a long time.

6 Q. Prior to beginning to speak with him, did
7 you read him his miranda rights?

8 A. Yes, sir, I did.

9 Q. Can you please for this court, read to the
10 court the miranda rights that you read to the
11 defendant October 2nd 2014? Just the same way you
12 read them to him that night.

13 A. Yes, sir. I told him, you have the right
14 to remain silent. Anything you say can and will be
15 used against you in a court of law. You have the
16 right to consult an attorney and have one present
17 before any questioning if you wish. If you cannot
18 afford to hire an attorney, one would be appointed
19 to present you. You can decide at any time to
20 exercise your rights and not answer any questions or
21 make any statements.

22 Q. About what point after you made the arrest
23 of the defendant, did you read these rights to him?

24 A. Once I got him handcuffed and put in my
25 car, and backed up his vehicle, I turned the camera

Trooper Lowder-Direct by Brown

1 around and read him his miranda rights.

2 Q. And did you ask him any questions really
3 prior to reading him his rights?

4 A. No, sir.

5 Q. After you read him his rights, did you
6 make sure that he understood them?

7 A. Yes, sir.

8 Q. Did you ask him that question?

9 A. That's right.

10 Q. And did he tell you that he did understand
11 them?

12 A. From what I recall.

13 Q. And tell me about the state that you saw
14 Mr. Rashad Brisbon in that particular night. Did he
15 seem to understand what was going on around him?

16 A. Yes, sir.

17 Q. Did ask you any questions about his
18 rights?

19 A. Rephrase that question.

20 Q. Did he ask you any questions about his
21 rights, about how to get a lawyer or anything like
22 that?

23 A. No, sir.

24 Q. Did he at point from the time that you
25 arrested until the time you got him to the detention

Trooper Lowder-Direct by Brown

1 that night, ever say, I don't want to talk to you
2 anymore without a lawyer present?

3 A. No, sir. Not that I recall. No, sir.

4 Q. Did you eve use any threats or coercion?
5 Did you ever threaten him in any way to get him to
6 make any statements to you?

7 A. No, sir.

8 Q. In the entirety of this hour and half
9 video, did you ever tell him, if you talk to me,
10 I'll make sure you get a better sentence or offer
11 him any other hope or promise of reward?

12 A. No, sir, absolutely not.

13 Q. And in this hour and a half video, was it
14 all captured, the audio of you reading him his
15 rights?

16 A. Of the miranda?

17 Q. Right.

18 A. Yes, sir.

19 Q. And also in this video is the opportunity
20 that if any point he would have said, I want a
21 lawyer, or if you were to try and threaten him,
22 would it all have been captured on that video?

23 A. Everything would be captured from the time
24 that we watched here, until the time I got the jail.

25 MR. BROWN: And, Your Honor, permission to

Trooper Lowder-Direct by Brown

1 publish State's No. 1.

2 THE COURT: Yes, sir.

3 Q. Trooper Lowder, I am going to stip ahead
4 to after you took the defendant in to custody.

5 A. Okay.

6 Q. I am going to actually going to get to the
7 first part where you actually made contact with him.

8 A. Yes, sir.

9 (Whereupon, playing video.)

10 Q. And, Trooper Lowder, what we heard on that
11 video, was that you mirandizing him?

12 A. Yes, sir.

13 Q. And correct me if I am wrong, did you ask
14 him twice, do you understand the rights I just read
15 to you?

16 A. That's right.

17 Q. I couldn't really hear his response. Is
18 it your recollection that he did affirm that he
19 understood his rights?

20 A. Yes, sir.

21 Q. And it was after that, that you actually
22 started asking him questions?

23 A. That's right.

24 Q. You asked him one question before that,
25 but did you here any answer to it?

Trooper Lowder-Direct by Brown

1 A. He didn't answer to it. No, sir.

2 MR. BROWN: Your Honor, in talking with
3 Mr. Story, I think we agree that it might be best to
4 just go ahead and play every other section that I
5 plan to publish to the jury.

6 THE COURT: Okay.

7 MR. BROWN: And that will let us lead into
8 the before the analysis.

9 THE COURT: Okay.

10 MR. BROWN: And, Your Honor, just so
11 you're aware, I'm just skipping over to 2054.

12 Q. That's it. 59 minutes. And we obviously
13 skipped around a good bit. At my request and with
14 me yesterday, did you watch through all those
15 sections that we were skipping? Did you watch all
16 that?

17 A. Yes, I did.

18 Q. And at any point from the time that we
19 stopped here, all the way back to when you first
20 mirandized him, did he ever say, I want a lawyer?

21 A. No, sir.

22 Q. Did he ever say, I'm not going to talk to
23 you until I have a lawyer present?

24 A. No, sir.

25 Q. Did he ever ask you to clarify how he

Trooper Lowder-Direct by Brown

1 might get a lawyer?

2 A. No, sir.

3 Q. Did you threaten him?

4 A. No, sir.

5 Q. Did you ever offer him hope of reward if
6 he cooperated or talked to you?

7 A. No, sir.

8 Q. Were there even a couple of times where
9 you actually told him to stop talking while you were
10 working?

11 A. I'm sure, trying to distract me or
12 something. Yes, sir.

13 Q. At any point were you ever put under the
14 impression that he did not want to talk to you any
15 longer?

16 A. No, sir.

17 Q. Did he seem to understand his rights when
18 you read them to him?

19 A. Yes, sir.

20 Q. Did he seem to understand his right to
21 remain silent?

22 A. Yes, sir.

23 Q. And he made those statements after the
24 fact?

25 A. Yes, sir, that's correct.

Trooper Lowder-Cross by Story

1 MR. BROWN: Please answer any of
2 Mr. Story's questions.

3 THE COURT: Mr. Story.

4 Cross Examination by Mr. Story:

5 Q. Trooper Lowder, Stephen.

6 A. Yes, sir.

7 Q. Do you spell your first name,

8 S-T-E-P-H-E-N?

9 A. That's right.

10 Q. Good, glad to hear it. Now there are
11 portions of the video that are not audible, right?

12 A. That's right.

13 Q. Did at any point in some of those sections
14 that we can't hear, did he tell you that he wished
15 to stop speaking with you?

16 A. No, sir.

17 Q. That he wanted some water or had any kind
18 of physical infirmity?

19 A. I don't recall about water or anything.
20 I'm not sure. People do occasionally ask for water.
21 I can't give it to them.

22 Q. Or go the bathroom.

23 A. That's right. I can't let them out of
24 handcuffs.

25 Q. Not in the car. Did the defendant, and

Trooper Lowder-Cross by Story

1 you have no knowledge about his educational
2 background, correct?

3 A. No, sir, I don't know.

4 Q. Did he seem slow to you?

5 A. No, sir.

6 Q. In any way? He didn't seem like to have a
7 severe learning disability or anything like that?

8 A. No, sir.

9 MR. STORY: Thank you. That's all the
10 questions I have.

11 THE COURT: Any redirect?

12 MR. BROWN: No, Your Honor.

13 THE COURT: Thank you, you can step down.

14 MR. BROWN: And I think that's the
15 totality of the testimony. He might be giving some
16 footing on the last legal issue.

17 MR STORY: Yes, Your Honor. I would
18 just renew my motion under Jackson vs. Denno, that
19 the statement was not voluntary. And then I have
20 also a 404 (b) objection under relevance as to a
21 portion of the statement. As well as any evidence
22 of prior bad acts under 404(b) Your Honor.

23 THE COURT: I think the only part they say
24 is he didn't have a license. He never had a
25 license. Don't have a license. Never had a

Trooper Lowder-Cross by Story

1 license.

2 MR. STORY: I think there are three, there
3 are specifically three sections that the State
4 intends to introduce. The one he says, I'm not
5 going to lie to you, I don't have a license.

6 THE COURT: Okay.

7 MR. STORY: I don't believe he's been
8 convicted in magistrate's court of driving under
9 suspension. Also the one about drinking a beer.
10 He has not been convicted of driving under the
11 influence. So I would object to those under 404
12 (b). And then finally the third portion, I would
13 object under relevance as to any of him talking
14 about how he's going to get out. How he's going to
15 be on probation. How he knows the bondsman and
16 things like that.

17 It's my belief that the State is intending
18 to introduce it to make the jury personally dislike
19 the defendant, which is irrelevant.

20 MR. BROWN: Your Honor, I am certainly not
21 introducing it to make them personally dislike. Any
22 evidence I put in is going to be prejudicial.
23 That's kind of the point to my job. Just starting
24 out addressing the Jackson V. Denno issue, I just
25 offer to the court that I think that was freely and

Trooper Lowder-Cross by Story

1 voluntarily given. He never invoked any rights. He
2 spoke freely and voluntarily without coercion.

3 THE COURT: Mr. Story, while he's arguing,
4 if you will please have a seat.

5 MR. STORY: Yes, sir.

6 THE COURT: I will give you an opportunity
7 to stand up.

8 MR. BROWN: He did so without coercion,
9 without hope or promise of reward. So I just want
10 to go ahead and put that issue to rest. I certainly
11 think we met our burden on Jackson v. Denno.

12 THE COURT: Yeah, I certainly think from
13 what I saw, he give his statements freely and
14 voluntarily. So under the Jackson v. Denno, I think
15 the statement will come in. Whether these parts
16 come in is a different matter. But if he was
17 properly mirandized, and I don't think there was any
18 question he knew he was mirandized, and he continued
19 to talk.

20 MR. BROWN: Going specifically to the 404
21 analysis requested by the defense counsel, Your
22 Honor, heard the I guess there's 5 sections in
23 totality, and I'll just break it down. The first
24 one is the actual car stop itself and the arrest
25 with miranda that ends with him saying, that he had

Trooper Lowder-Cross by Story

1 a beer. The second one is, they are getting info,
2 and he one again admits that he had a 22 ounce Bud
3 Lite Platinum. The third section is him saying that
4 he ran me. He goes -- he doesn't have a license.
5 He's never had a license. The fourth is where he
6 indicates he was going to run again. He was trying
7 to move back to his car. And the fourth one is of
8 course acknowledging who judges, and that the worst
9 that he is going to get is probation.

10 Your Honor, I think each and every one of
11 those are pertinent and more probative than
12 prejudicial in this particular case. Of course I
13 handed back to, Your Honor, State v. Woods in
14 chambers. That's 362 S.C. 520. A 2004 case from
15 court of appeals. And what it addresses is a
16 similar request by defense counsel out of Anderson
17 County, where it was a failure to stop for a blue
18 light, that the initial stop was a result of a
19 shooting where I think the trooper was killed. And
20 they tried keeping out that there was anything
21 happening in Greenville County. I think they
22 ultimately settled on saying an incident occurred.
23 But what the court emphasized in that case is that I
24 think they actually went so far as to say that that
25 may have been even overly cautious, and they might

Trooper Lowder-Cross by Story

1 not have had a reference just as an incident, but
2 that the issue here is the res gestae of the case.

3 And one thing the State under these
4 analysis should be allowed to do is to present the
5 entire case. And when we deal with crimes, they
6 don't happen part and parcel. A lot of them happen
7 all together. And one thing that I've observed as a
8 prosecutor in my career, is that juries will ask
9 questions about why something happened. They're
10 going to want to know why he ran. Why he did this.
11 And they're going to ask that question. I think
12 they're entitled to know why he ran. He didn't have
13 a license. He never had a license. He had beers
14 that night. Or one, I'm sorry, A beer, a Bud Lite
15 Platinum.

16 THE COURT: Which in and of itself is not
17 illegal.

18 MR. BROWN: In and of itself absolutely
19 it's not. But it goes to the totality of why he
20 would run. He's driving after having drank alcohol
21 on a suspended license or without a license. I
22 think that it is important for the jury to hear that
23 his mental state throughout this process that he was
24 going to try to get in his car and run again. And I
25 think it's important that they know the seriousness

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1 of which he takes this. And that you know to him he
2 knows people. He'll get out. And he's going to get
3 probation. The worst. There's no reason for him
4 not to run.

5 I think that all goes to his mental state
6 about why he would do that. I think just looking
7 specifically at the res gestae argument in
8 State v. Wood, it's a full presentation of the case.
9 It allows us to show the context with which stuff
10 happens. And it allows us to show the motivation
11 for the crimes. I'm looking specifically at the key
12 cite page 440, at that very bottom left hand side of
13 the fourth page of this. It provides a context and
14 motivation for the crimes at issue.

15 So we certainly think it's relevant, the
16 statements he made. We certainly think he was
17 advised that what he said could and would be used
18 against him. I think we've gone to great links in
19 excluding things that truly would be more
20 prejudicial and probative. For instance, the fact
21 that he has a prior failure to stop for a blue
22 light. And he just got out of prison for a number
23 of B & E autos. You know, we've gone to great
24 links to try excluding those things. But
25 specifically with him driving without a license.

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1 Specifically with him having had alcohol that night.
2 Specifically with him bragging about knowing judges
3 and that the worse that is going to happen is
4 probation.

5 I think that goes to his mental state.
6 And I think it goes to showing the jury why he had
7 such cavalier attitude about the safety of our
8 community.

9 THE COURT: Okay.

10 MR. STORY: Your Honor, I'd simply
11 disagree with the solicitor as far as his attitude.
12 I don't understand if his attitude was truly that,
13 you know, he was going to get a slap of the wrist or
14 that he would get off of this, I think his
15 motivation would be to not run, to take the charges
16 of whatever he may or not have been guilty of. So I
17 would still object, that's irrelevant. And if Your
18 Honor denies my motion under 404(b) grounds of
19 relevance grounds, I also object. Under 403 that
20 any of these statements and evidence of prior bad
21 acts or any other statements by the defendant -- the
22 probative value does not outweigh the prejudicial
23 effect.

24 THE COURT: I've watched the video. I
25 believe the fact that when he says he does not have

Trooper Lowder-Cross by Story

1 a license. I never had a license will come in. I
2 am not going to allow the beer or drinking a beer
3 itself is not an illegal act. But in this
4 situation, it could. And especially in light of
5 the fact that he was not convicted in the lower.
6 And I certainly think -- although the court has
7 heard it, I am not sure that the jury needs to hear
8 about him bragging that he's going to get off on
9 this. And he knows judges. But I certainly heard
10 it. But I don't think the jury should hear it. So
11 I am going to allow the fact that he doesn't have a
12 license and never had a license can come in, but
13 the remainder will be excluded.

14 MR. BROWN: And if I can, Your Honor, I'm
15 just going to need just a little bit of time,
16 because the first little bit, it ends him saying. I
17 need to make sure I know exactly where to stop.

18 THE COURT: Right. And we're not starting
19 back until one o'clock.

20 MR. BROWN: Just one more clarification
21 question. There was one other section that I was
22 planning on playing, where he said that he was
23 planning on circling back around and getting in the
24 car and running.

25 THE COURT: I don't know that that does

Trooper Lowder-Cross by Story

1 anything. I mean he's in the cop car. He's locked
2 down. Just saying he was going to try to run again,
3 I don't think that that does anything in this. I
4 think the fact that you got him that he never had a
5 license, without a license, is really keeps it --
6 that's something he might have done later, but he
7 didn't do. I am going to leave that out.

8 MR. STORY: Nothing further from the
9 defense, Your Honor.

10 THE COURT: Let's be ready to go at one
11 o'clock. Court's in recess until 1:00 o'clock.

12 (Whereupon, the court takes a lunch
13 recess.)

14 (Whereupon, the following takes place
15 outside the presence of the jury.)

16 MR. BROWN: Your Honor, while we're
17 waiting, If I can ask one clarifying question just
18 to make sure of the officer, I understand the
19 perimeters.

20 THE COURT: Yes, sir.

21 MR. BROWN: Are we on the record? Your
22 Honor's ruling and we are respecting your ruling, of
23 course, we can't mention the fact that he had had a
24 beer to drink. I don't know how to parcel out the
25 fact that the reason the officer made the stop was

Trooper Lowder-Cross by Story

1 on suspicion of driving under the influence. And of
2 course that's not something we're going to harp on.
3 But that was the fundamental reason he didn't---

4 THE COURT: Well I and I guess what I need
5 to do is, Mr. Story can't have it both ways. He
6 can't say there was no probable cause, and then I
7 find probable cause. And then and I'm not going to
8 allow you to the jury that there's no probable
9 cause. That's not -- that wouldn't -- and I don't
10 think that's what you're intending to do. Otherwise
11 if you want to do that, then I've got to put in the
12 beer?

13 MR. STORY: Okay.

14 THE COURT: Okay.

15 MR. STORY: Yes, Your Honor.

16 THE COURT: I think, is that what you're
17 concerned about? That he's saying there was no
18 reason to stop him?

19 MR. BROWN: Well he's just letting the
20 jury know why there was an actually pulling over. I
21 mean if we're not going to be---

22 THE COURT: Well I mean he can testify
23 that it was erratic driving, and that he had a
24 headlight out. He can certainly say that.

25 MR. BROWN: Okay. I just wanted to make

Trooper Lowder-Cross by Story

1 sure I don't -- I don't want to put the officer on
2 the stand, me not have guided him properly about
3 what he can say, and then cause a mistrial or
4 anything like that.

5 MR. STORY: And my position on that, Your
6 Honor, was just that evidence of the DUI was
7 irrelevant to this charge of failure to stop for a
8 blue light.

9 THE COURT: Correct.

10 MR. STORY: Right.

11 THE COURT: I mean, It would be one thing
12 if he was already stopped him for DUI, and then
13 while he's DUI, he runs. I mean that's not the
14 situation. I mean, when the officer is pursuing
15 him, legally I think, that he doesn't know what he's
16 facing. I mean all he did was open the back door,
17 and all of a sudden, you know.

18 MR. BROWN: I'll just advise the officer,
19 and I'll talk with him very briefly to just say he
20 stopped him to investigate the erratic driving. And
21 if I we have to explain further.

22 THE COURT: I mean if you ask him on cross
23 examination, you know, if you open the door to he
24 didn't do anything wrong, look at the driving, then
25 I am going to allow them to, you know, to drive

Pam Haynesworth-Direct by Brown

1 their truck right through that hole that you opened.

2 MR. STORY: I understand. Yes, sir.

3 THE BAILIFF: Your Honor, there was
4 nobody. No response.

5 THE COURT: Okay, very well. Tyler, are
6 you ready to proceed on a TIA?

7 MR. BROWN: Yes, Your Honor. To clarify
8 my record, if we could just call Ms. Pam Haynesworth
9 from the clerk's office to qualify the.

10 THE COURT: Just swear her right there.

11 Pam Haynesworth, being first duly sworn,
12 testified as follows.

13 DIRECT EXAMINATION by Mr. Brown:

14 Q. Ms. Haynesworth, you're the general
15 sessions clerk of court for Sumter County?

16 A. I am.

17 Q. You work for Mr. Jamie Campbell?

18 A. I do.

19 Q. Our again newly appointed clerk of court.

20 THE COURT: He was elected, not appointed.

21 A. Elected.

22 THE COURT: A big difference.

23 MR. BROWN: Yes, sir, Your Honor.

24 Q. At the request of the court, were you kind
25 enough to pull the bail proceeding form on Rashad

Pam Haynesworth-Direct by Brown

1 Brisbon, whose case has been called for trial?

2 A. Yes.

3 Q. And you have a copy of that with you?

4 A. I don't.

5 Q. If I were to bring my copy of it, would
6 you be able to look at this---

7 A. True.

8 Q. And recognize this?

9 A. Yes.

10 Q. And on that proceeding form is there a
11 section that acknowledges that he's informed that he
12 has a right to be present for his trial, and if he
13 is not present, the State can proceed forward
14 without his presence?

15 A. Yes.

16 Q. And can you identify what subsection that
17 is, or where that is specifically?

18 A. Right here in No. 3.

19 Q. That's No. 3.

20 MR. BROWN: With the defendant being here,
21 we'll withdraw that part,

22 THE COURT: Let's bring our jury in.

23 (Whereupon, the following takes place
24 within the presence of the jury.)

25 THE COURT: Ladies and gentlemen, I hope

Pam Haynesworth-Direct by Brown

1 you all had a great lunch. And we will proceed on
2 with this trial. Mr. Bradley, would you please
3 swear our jury.

4 THE CLERK: Yes, sir, Your Honor. Madame
5 Forelady and Ladies and gentlemen, would you please
6 raise your right hand to be sworn.

7 (Whereupon, jury is sworn.)

8 THE COURT: Ladies and gentlemen, of the
9 jury, before we begin this trial, I want to tell you
10 that this trial is probably a little different from
11 what you might expect. You know most people never
12 have an opportunity to attend and participate in an
13 actual trial as you are now, and may think from
14 watching TV, movies or reading in books that trials
15 are always full of high drama, intense action, and
16 riveting circumstances. Now while all these things
17 might be true at times, this trial is not for
18 entertainment. This is a real trial, which is a
19 fundamental part of our democracy. It's a search
20 for the truth to make sure, make sure that an effort
21 is done -- that justice is done. In searching for
22 the truth and insuring that justice is done, is
23 often slow, repetitive and deliberate. The exact
24 opposite of what you've seen on TV, movies or read
25 in books.

1 Now, Ladies and gentlemen, this courtroom
2 is a place of honor that is dedicated to the
3 protection and the preservation of our citizen's
4 rights, in what has been called, and I truly believe
5 in the bottom of my heart to be greatest justice
6 system ever created by mankind. The attorneys who
7 are before you are advocates for the parties that
8 they represent. But first and foremost, they are
9 officers of this court, who are sworn to uphold the
10 integrity and the fairness of our judicial system,
11 and to help you in your search for the truth.

12 Ladies and gentlemen, you should expect
13 them to be professional, competent and ethical in
14 the representation of their client's interests. And
15 remember, you also just took an oath to listen to
16 the evidence in this case and to reach a fair and
17 just verdict. And you are expected to be
18 professional, reasonable and ethical as well..

19 Now, Ladies and gentlemen, what I am going
20 to tell you now is just intended to serve as an
21 introduction to the trial of this case. This is
22 not, these remarks are not a charge on the law.
23 I'll charge you the law that it to be applied in
24 this particular case at the end of the trial before
25 you begin your deliberations. This is merely an

1 explanation of the procedures that we will follow
2 during this trial so you may be better -- so you
3 will better understand what is happening.

4 Now, Ladies and gentlemen, let me say up
5 front that during this trial, you will not be
6 allowed to take notes. Therefore it is very
7 important that you listen closely throughout this
8 trial. Now, Ladies and gentlemen the defendant is
9 charged by indictment filed in this case with
10 failure to stop for a blue light. And the specific
11 elements of this charge will be explained to you
12 later. But, Ladies and gentlemen, let me remind you
13 again, the indictment charging the defendant is
14 simply the document by which this case is brought in
15 to court, and it is not in any sense evidence of any
16 of the allegations contained therein.

17 The defendant has pled not guilty to the
18 charge. So the State therefore has the burden of
19 proving each and every allegation and element of the
20 charge in the indictment beyond a reasonable doubt.

21 Now, Ladies and gentlemen, it will be your
22 duty to determine whether the State has met that
23 burden. Now, Ladies and gentlemen, your purpose
24 during this trial is to determine the facts. And
25 you'll determine the facts from the testimony that

1 you hear from this witness stand, and any other
2 exhibits which are presented in court. And it be up
3 to you determine the inferences you feel may be
4 properly drawn from the evidence.

5 Now, Ladies and gentlemen, it is
6 especially important that you perform your duty
7 diligently and conscientiously, because ordinarily
8 there is non way to correct an erroneous
9 determination of facts by a jury. On the other hand
10 but with equal emphasis, the same law that makes you
11 the judges of the facts, makes me the judge of the
12 law. The law as given you by me is the only law
13 that you can consider. You must accept the law as I
14 give it to you and follow it even though you may
15 disagree. And I'll make an agreement you right now.
16 I won't tell you what the facts are, and you will
17 not disagree with me about what the law is or what
18 the law ought to be. Your job is to take the law as
19 I give it to and you apply it to the facts as you
20 find them from the testimony and the other evidence
21 as presented. And after hearing the evidence you
22 will deliberate and render a just verdict under the
23 solemn oath that you just took as jurors.

24 Now, Ladies and gentlemen, until I advise
25 you to begin your deliberations at the conclusions

1 of this case, you must not discuss the case with
2 others, including your fellow jurors. You may not
3 use a computer, a cellular phone or other electronic
4 device with communications capabilities while in
5 attendance in this trial or during your
6 deliberations. Normally I say you can use them when
7 you go home, but I anticipate that this trial will
8 be over with at that time.

9 Now, Ladies and gentlemen, you cannot give
10 any information about a party, a witness or an
11 attorney or a court officer. Now, Ladies and
12 gentlemen, after the case is submitted to you, you
13 must discuss it only in the jury room with your
14 fellow jurors. The attorneys and the parties in
15 this case are advised that they are not to talk to
16 you. So if you see anyone involved around and they
17 don't even say hello, well, well they're not being
18 unfriendly, they're just following my instructions.

19 Now, Ladies and gentlemen, it's very
20 important that you keep an open mind and not decide
21 any issue in this case until all of the evidence has
22 been presented, the attorneys have given you their
23 closing arguments, and I have instructed you on the
24 law that is to be applied in this case. And, Ladies
25 and gentlemen, it's your solemn responsibility to

1 determine the guilt or the innocence of the
2 defendant. And your verdict must be based solely on
3 the evidence as presented to you in this trial, and
4 on the law as I instruct you at the close of the
5 trial.

6 Now, Ladies and gentlemen, in just a
7 minute the solicitor will make what is called an
8 opening statement where he will explain to you what
9 he believes the issues are in this case. The
10 attorney for the defendant may also make an opening
11 statement, but he is not required to do so. What
12 the attorneys tell you during their opening
13 statements however, is not evidence. It is only
14 their contention as to what they believe the issues
15 are and what the evidence might show.

16 Now, ladies and gentlemen, from time to
17 time during this trial, you may hear one of the
18 attorneys make or say something like, Your Honor I
19 believe we have a question or a matter of law to
20 discuss with you Your Honor, may we approach the
21 bench. Or sometimes I may find it necessary to
22 excuse you from the courtroom for a short time while
23 the attorneys and I discuss a matter of law. And
24 the reason for this, as I said, I'm not supposed to
25 tell you what the facts are. So, and sometimes when

1 I'm discussing a matter of law with the attorneys it
2 may be necessary for me to make some statement
3 concerning the facts in connection with whether a
4 law applies. So as I said, I'm not supposed to tell
5 what the facts are, so I will excuse you from these
6 conversations. So you will in no way be influenced
7 by anything that I might say during these
8 discussions concerning the facts.

9 Now, Ladies and gentlemen, you may also
10 hear one of the attorneys make an objection to
11 certain evidence that is about to be presented.
12 Whether I sustain, which would be to grant the
13 objection, or whether I overrule, which would be to
14 deny the objection, should not be construed that I
15 favor one side over the other, I do not. Nor should
16 you infer that the objecting party is trying to hide
17 something from you. Now, Ladies and gentlemen, in
18 this courtroom as in all situations in life, there
19 are specific rules that must be followed. And the
20 attorneys as officers of the court, are merely
21 trying to follow the rules of evidence in making
22 their objections, and I am only ruling based upon
23 what I believe the law of the state to be concerning
24 the evidence about to be presented.

25 Now, Ladies and gentlemen, in determining

1 what the facts are in this case, you must decide
2 whether or not the testimony of a witness is
3 believable. It will be my responsibility to rule as
4 a matter of law to whether certain testimony is
5 admissible. But once the testimony is admitted,
6 whether or not you decide to believe it, is solely
7 for you to determine.

8 Now, Ladies and gentlemen, in determining
9 whether to believe a witness or not, you have the
10 right to consider the interest of any witness, the
11 bias of any witness, the prejudice of any witness,
12 the opportunity for the witness to have observed the
13 matter and things about what the witness may
14 testify, and the way the witness acts on the witness
15 stand. Ladies and gentlemen, you have a right to
16 consider anything that is in the record that will
17 help you evaluate the testimony of a witness. That
18 means as jurors, it's your duty to pay close
19 attention to the witnesses, to observe the
20 witnesses, to listen to the witness, and to pay
21 close attention to the attorneys and to the court.
22 Ladies and gentlemen, please don't let your thoughts
23 wander but give strick attention to the testimony in
24 this case. So after all the testimony is presented
25 and the argument of counsel and the charge on the

1 law by me, you will then be in a position to
2 determine what the facts are, and to apply those
3 facts to the law and thus render a true and just
4 verdict.

5 In addition, Madam Forelady, it would be
6 your job to preside in the jury room and be the
7 spokesperson here in court. You'll also be
8 responsible for writing down the verdict on the
9 verdict form that I gave you, but I'll give you
10 further instructions on that at a later time.

11 Now in order to protect everyone's rights,
12 I will give the parties an opportunity to object to
13 anything that I have stated. Does the State have
14 any objections?

15 MR. BROWN: No, sir, Your Honor.

16 THE COURT: Does the defense have any
17 objections?

18 MR. STORY: No, Your Honor.

19 THE COURT: Thank you. We will now begin
20 the trial of this case.

21 MR. BROWN: May it Please the Court.

22 THE COURT: Yes, sir.

23 MR. BROWN: Good afternoon. I introduced
24 myself just a little bit ago this morning when you
25 all were here for jury qualifications and for the

1 picking of the jury. But I will make an
2 introduction again; my name is Tyler Brown. I am a
3 prosecutor here with Third Circuit Solicitor's
4 Office. I work for your elected solicitor,
5 Solicitor Ernest Finney, III. And it's my pleasure
6 to be in here today before you.

7 Before I get in to what this case is about
8 and why you all are here, I want to start off by
9 thanking for being here. I know most of you
10 probably did not want to start off your June off
11 this way. But I think I saw that there were a
12 couple of teachers in the group, and I'm sure you
13 all had other summer plans. But the good news is
14 that this case will not take very long. As His
15 Honor has already indicated, this is a very short
16 case. As you might have heard from the witness
17 list, this is a one witness grass. But that does
18 not make it any less important. And it also does
19 not make your service any less important.

20 So before I really get started, I want to
21 tell you how much I appreciate you being here, how
22 much I appreciate you paying attention, and how much
23 I appreciate your service starting to begin. The
24 reason you are here today though is because
25 Mr. Brisbon, the defendant in this case, is

1 exercising his right to trial. Mr. Brisbon has been
2 charged with the offense of failure to stop for a
3 blue light. That case has been sent to our grand
4 jury, and has been true billed as an indictment.
5 And so now, under our law, he is entitled to have
6 12 jurors sit and hear the facts, hear the
7 testimony. In this particular case, see the video
8 of what happened on October 2, 2014. And determine
9 whether or not Mr. Brisbon violated the law, whether
10 or not he failed to stop his vehicle when required
11 to do so. Whether or not he operated his motor
12 vehicle on a highway or road of our state. Whether
13 he was signaled to stop by law enforcement and
14 whether that signal to stop was done with blue
15 lights and siren or sirens, and whether or not he
16 failed to stop.

17 He's here today because the State intends,
18 and we believe we will prove in this case, that he
19 failed to do that. What you're going to hear in
20 this case and what you're going to see in this case,
21 is testimony and a video of what happened on October
22 2nd, 2014 on Brewington Road. Probably not more
23 than 10 miles from where you sit today. Not very
24 far from our local airport. At 4 o'clock in the
25 morning, this Trooper Lowder, was patrolling that

1 particular area. You're going to I suspect hear
2 testimony about how Trooper Lowder observed
3 suspicious driving.

4 I'll let him explain it better, because
5 quite candidly he is better at explaining. And
6 you're going to hear about how he initiated a
7 traffic stop. And what I'll suspect y'all hear and
8 see in the video is that initially Mr. Brisbon
9 stopped his car. He pulled over right on the
10 intersection. The same area that Trooper Lowder
11 wanted him to pull over, because there was a safe
12 spot to pull over both for Mr. Brisbon and for the
13 trooper. And what I suspect you will see in the
14 video and what you will hear from Trooper Lowder is,
15 that as he got out of his vehicle, approached the
16 vehicle on the passenger side for his safety, got up
17 to the car. Tapped on the window and opened the
18 door to make contact with the driver; that he saw
19 the defendant reach down, grab the gear shift and go
20 put it in drive, and go.

21 What you will see in the video from there,
22 and once again what you'll hear from the testimony
23 is, that Trooper Lowder managed to get in the patrol
24 care quickly. He was able to get pursuit. He was
25 able maintain visual on the cars as he drove. And

1 as he drove down Brewington Road hitting close to
2 90 miles per hour trying to catch up with this
3 driver, the same driver that's here today. He
4 watched his car blew through the stop sign. Turned
5 his lights off trying to evade his arrest. And
6 ultimately stopped his vehicle and got out and tried
7 to run.

8 Fortunately Trooper Lowder passed both in
9 the car, as well as on the speed, and was able to
10 catch up with the driver that very night right then
11 and there. Within 2 minutes of pulling him over,
12 you'll see on the video as he brings him out of the
13 woods, brings him to his patrol car, mirandized him.
14 Now what you also see in the video and I'm just
15 going to go over and let you know about this.
16 You'll see this it's about an hour and a half long.
17 I need to go ahead and tell you, I'm not going to
18 sit here and make you watch an hour and a half
19 video. The main reason for that is, it takes a
20 long time to go through this process. It's various
21 inventorying the vehicle, and waiting for tow truck
22 to come. But a lot of it is just video. So will
23 show you a section in the video where Trooper Lowder
24 asked him, why did you run. Why did you pull away
25 and run like that.

1 And you hear as a defendant, I suspect,
2 gives initially an answer that he was surprised when
3 he came to the passenger side. But I also suspect
4 that you're hear the real reason that he ran. And
5 that 'is, that he didn't have a license. And he
6 never has had one. This particular case will not
7 take long. I think you will probably see a total of
8 about 12 minutes of video when it's all said and
9 done. You'll hear from Trooper Lowder as he
10 explains what he was doing that night, what he was
11 looking for. What he was patrolling for, and what
12 his observations were about how he captured
13 Mr. Brisbon. And you hear how he made that arrest
14 that night. And you will hear how the same person
15 that he observed, throw this car into drive after he
16 had gotten out of the vehicle and approached the
17 passenger side, thinking that the stop had
18 effectuated.

19 You will hear that the same person who
20 threw his car into drive, and drove off nearly
21 90 mile per hour. Blew threw stop signs. Turned
22 his headlights off, got out and tried to run. Is
23 the same person who is sitting at defense table
24 today, Mr. Rashad Brisbon. We ask you to pay close
25 attention. And once again, thank you for your time,

1 for your service. And we look forward to talking to
2 you again at the end of the case. Thank you.

3 THE COURT: Thank you. Mr. Story.

4 MR. STORY: May it please the court.

5 THE COURT: Yes, sir.

6 MR. STORY: Good afternoon. Members of
7 the jury, my client, Rashad Brisbon, he's innocent.
8 And I know what you all are probably thinking. As a
9 defense lawyer, of course, you're going to say he's
10 innocent. But the judge told you he was innocent
11 too. That's because everybody charged with a crime,
12 everybody that steps in to this courtroom, every
13 single citizen is innocent when they step in here.
14 Oftentimes it's described as a robe of innocence.
15 And that robe stays on them throughout the trial
16 until it is stripped from them of the weight of
17 evidence.

18 Members of the jury, I am going to ask
19 you, the solicitor is asking you, to pay close
20 attention to the evidence. And I am going to ask
21 you the same thing, please pay close attention to
22 the evidence, to everything that is going on. I'm
23 going to ask you to do something further. You are
24 the deciders of the facts. The judge has already
25 told you that once. I'll suspect he'll tell you

1 that again. And you're going to hear it many times.
2 But I am going to ask you to take that to heart, and
3 to not let anyone else influence your decision and
4 your opinions of what you see and what you hear from
5 the witness stand and everything else.

6 Don't let anybody else tell you what you
7 saw. Don't let anyone else tell you what happened.
8 Because ultimately you are the ones who decide the
9 facts. And the State is going to try to tell you
10 what happened. They're going to tell you what to
11 think. I'm asking you not to let them do that, to
12 allow my client the presumption of innocence. And
13 as the judge has told you, keep an open mind
14 throughout this trial today. Sometimes there are
15 surprises in trials. Sometimes there are things we
16 don't expect. That's just part of it. But
17 ultimately it is your job to pay close attention to
18 everything. Some of the surprising things and not
19 the surprising things, and to make a decision based
20 on what you feel is what happened.

21 And it's a little bit further than that.
22 The State has the burden of proof. They have the
23 burden of proof to show that someone is guilty
24 beyond a reasonable doubt. And that is a high
25 burden. In this case, this is a case of failure to

1 stop for a blue light. And they have many things to
2 prove. Some of them are kind of mundane and some of
3 them are very important. They have to prove that
4 there was a defendant who was operating a motor
5 vehicle on the highway of South Carolina. And they
6 were signaled to stop, and they did not stop.

7 Also that they reasonably could have
8 fairly foreseen the signal to stop under the
9 circumstances. The State has to prove each of those
10 things beyond a reasonable doubt. And I am asking
11 you to hold them to that burden. They're going to
12 act at times like this whole trial was just a
13 formality. It's not a formality. It's not a
14 foregone conclusion. Before anyone gets convicted,
15 they have to go through you first. They have to go
16 through each and every one of you, and what your
17 decision based on the facts. So please don't let
18 anyone else tell you what to think. But I believe
19 at the end of this trial, you will find there is a
20 reasonable doubt. And you find Rashad Brisbon not
21 guilty for failure to stop for a blue light. Thank
22 you.

23 THE COURT: You may call your first
24 witness.

25 MR. BROWN: May it please the court, Your

1 Honor.

2 THE COURT: Yes.

3 MR. BROWN: The State would call Trooper
4 First Class Stephen McLauren Lowder with the South
5 Carolina Highway Patrol.

6 Trooper Stephen M. Lowder, being first
7 duly sworn, testified as follows.

8 THE CLERK: State your full name and spell
9 your last name for the record.

10 A. Trooper Stephen McLauren Lowder. Lowder
11 is, L-O-W-D-E-R.

12 Direct Examination by Mr. Brown:

13 Q. You go by McLauren Lowder.

14 A. Yes, sir.

15 Q. You have any problem with me calling you
16 Trooper Lowder today?

17 A. That's fine. Yes, sir.

18 Q. Trooper, let these Ladies and gentlemen of
19 the jury know who you are. If you can, just kind of
20 tell them who you are, where you're from, where you
21 went to school, and what type of background you have
22 to be a highway patrol officer.

23 A. I'm Trooper Lowder. I was born and raised
24 in Sumter. I'm 26 years old. I've been in law
25 enforcement since I was 21. I've been with the

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1 highway patrol since 2013. Prior to the highway
2 patrol, I worked for the Clarendon County Sheriff's
3 Department, where I did two years down there. Prior
4 to becoming a certified officer, all law enforcement
5 officers had to go through a 9 week course. Now 12
6 weeks, but I went to a 9 week course in April of
7 2011, where I underwent all kinds of training to
8 become a certified law enforcement officer.

9 After making the decision to go to the
10 highway patrol in 2013, I went back to the academy
11 for additional about 10 weeks after it was all said
12 and done. But we did further training on traffic
13 enforcement and collision investigation.

14 Q. You said you are from Sumter?

15 A. Yes, sir.

16 Q. Where did you go to high school?

17 A. I went to Sumter High School, where I
18 graduated in 2009.

19 Q. And you said you had gone both through
20 what we colloquially know as the police academy?

21 A. Yes, sir.

22 Q. And then you also went through highway
23 patrol training?

24 A. Yes, sir.

25 Q. And you, again, you said you've been with

Trooper Lowder-Direct by Brown

1 the highway patrol since 2013?

2 A. That's right.

3 Q. What's your official rank today?

4 A. I'm a trooper. Just basic trooper.

5 Q. Are you a trooper first class or trooper?

6 A. Well I'm right at the trooper first class
7 on paper, so, yes, sir.

8 Q. What are your duties as a highway patrol
9 trooper?

10 A. Our main focus is to keep the roadway safe
11 and investigate collisions.

12 Q. In the highway realm is their division
13 known as MAIT and then there's the standard, not
14 standard most troopers---

15 A. Yes, sir.

16 Q. ---what they are?

17 A. That's right.

18 Q. Are you a MAIT officer?

19 A. No, sir.

20 Q. So you're on patrol.

21 A. Yes, sir.

22 Q. Explain to these Ladies and Gentlemen what
23 a patrol officer's regular day on the job is.

24 A. We work 12 hours shift. We work two weeks
25 of nights, two weeks of days. We work 2 on, 2 off.

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1 Three on, 2 off. On our days that we work our
2 primary focus is targeting aggressive drivers,
3 erratic driving, speeding, seatbelt enforcement.
4 All those are important in saving lives. And when
5 we're not doing enforcement, our primary focus is
6 investigating collisions that happen within the
7 county. We do not work collisions if they happen
8 within the city unless called upon by an outside
9 agency.

10 Q. What troop are you with?

11 A. I'm with troop 1, post A. Our
12 headquarters is in Columbia. We have Richland,
13 Lexington, Kershaw, Lee, Sumter and Clarendon County
14 is all within our troop. I'm assigned to Sumter and
15 Clarendon County.

16 Q. And is that where you were assigned in
17 2014?

18 A. Yes, sir. Upon 2013, I was assigned to
19 post A, which is Sumter\Clarendon, which the office
20 is on South Pike.

21 Q. Were you working in October of 2014, with
22 the highway patrol?

23 A. Yes, sir.

24 Q. Let me take that a step further. Were you
25 working October 2nd of 2014, with the highway

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1 patrol?

2 A. Yes, sir, I was.

3 Q. Were you -- what shift were you working?

4 A. I was working the night shift that night.

5 We work a 6 p.m. to 6 a.m.

6 Q. Did you have the occasion on October 2nd
7 2014, on those morning hours to make contact with a
8 gold Chevy Cavalier?

9 A. Yes, sir, I did.

10 Q. And can you explain to these ladies and
11 gentlemen of the jury, how you made contact with
12 that Chevy Cavalier.

13 A. I was on Brewington Road. I'm not sure if
14 you are familiar with the Sumter Airport. I was
15 traveling west on Brewington Road from the Sumter
16 Airport area, which would towards Old Camden or the
17 four lane of US 521. It was about 4:09 a.m. in the
18 morning. I was making a left on Beckwood Road,
19 which Beckwood comes in to Brewington out to US 521
20 just behind the Wal-Mart. As I was making a left
21 turn, I observed the Cavalier that Mr. Brown was
22 talking about, that had a defective headlight that
23 caught my attention. As I turned around, that
24 vehicle as I made the left turn to go back -- as I
25 made the left turned on to Beckwood, the vehicle was

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1 at a stop sign. I observed the defective headlight.
2 When I made a left on Beckwood, I turned around.
3 He pulled off at the stop sign to travel west on
4 Brewington Road towards Old Camden.

5 At that time, I activated my camera. I
6 always activate my camera or at least try to prior
7 blue light activation. Our camera does cut on with
8 on activation of blue lights. But our policy
9 requires that we have our location and the
10 description of the car and tag number recorded.

11 Q. I am going to pause you here for a moment
12 please. Prior to me taking me a job at the
13 solicitor's office, I didn't know too much about
14 cameras and cars. Can you explain to these ladies
15 and gentlemen kind of how that's all set up, and
16 what you mean you say you activated your camera?

17 A. Right now our vehicles have two different
18 types of cameras. We're in the days of getting new
19 technology. At this time in question, I was driving
20 an older car that I was issued with an older camera
21 system. The cameras are wired so when the blue
22 lights come on, the camera and our body mic, which
23 is usually on my belt, cuts on also. So it records
24 everything I say between me and the violater when
25 I'm at the window. And the camera that is mounted

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1 on my windshield records me as I'm walking up, and
2 records the scene itself.

3 Q. Do you have control of the camera that
4 you're talking about?

5 A. Yes, sir. I have control. I can zoom in
6 and be able to zoom out. And also you know we
7 have -- I have controls and a lenses recording, yes,
8 sir.

9 Q. And on October 2, 2014, you said you had
10 an older model. Was this one of the VHS models?

11 A. Yes, sir. It was a VHS. Some cars have
12 DVD systems now, the newer cars do. At that time I
13 had a VHS system, which was an older system.

14 Q. So going back to October 2nd 2014, you've
15 now turned around and gotten behind the gold Chevy
16 Cavalier. And you said you activated your camera.
17 What happened next?

18 A. I observed some erratic driving. The
19 vehicle as you will see, it strikes the center line.
20 It's a 55-mile an hour zone. And the defendant was
21 traveling 34-mile an hour. And I confirmed with my
22 radar which I was certified to operate. Still am.

23 Q. So you observed the car traveling at a low
24 rate of speed?

25 A. Yes, sir.

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1 Q. And you also observed the car hit center
2 line.

3 A. That's right.

4 Q. And this was all captured on video?

5 A. Yes, sir.

6 Q. And as a trooper, are you trained to when
7 you see that type of activity, to initiate a traffic
8 stop?

9 A. Yes, sir.

10 Q. To see if there is anything more going on?

11 A. That's right. Yes, sir. To make sure
12 everything is all right.

13 Q. Is that what you did in this case?

14 A. Yes, sir. That was the plan.

15 Q. Tell me, where did you initiate the
16 traffic stop?

17 A. Between Beckwood and old Camden. The
18 actual stop occurred at the intersection of old
19 Camden and Brewington Road. Due to a safe stop to
20 pull over, Brewington Road has a narrow shoulder,
21 and I don't like to stop a violater where they
22 cannot get completely off the roadway to prevent me,
23 which eventually end up getting hit up in the rear
24 end, or potentially causing someone else to get
25 struck, the violater to get struck.

Trooper Lowder-Direct by Brown

1 MR. STORY: Objection to the use of
2 violator, Your Honor.

3 Q. If we can just say the driver.

4 THE COURT: Rephrase your question.

5 A. Yeah, the driver, to where the driver does
6 not get hit. So I waited until I got to the
7 intersection. At the corner of Brewington and old
8 Camden, there is like a grass spot, a turn around
9 spot. I activated my blue lights to where I
10 signaled the driver to pull over, in which he did.
11 He pulled somewhat into that vacant spot. He was
12 still in the roadway.

13 Q. So you now have the vehicle pulled over.
14 Did you pull behind him?

15 A. Yes, sir.

16 Q. In your training experience, do you have a
17 preference about which side of the vehicle you
18 approach a car on?

19 A. I'd like to do a passenger side approach,
20 simply because you're back is not in traffic, and
21 also you can see inside the vehicle. Officer safety
22 reasons.

23 Q. Is that what you did in this case?

24 A. Yes, sir.

25 Q. So you get out of your car and you

Trooper Lowder-Direct by Brown

1 approach the passenger side?

2 A. Yes, sir.

3 Q. And tell me what happened next.

4 A. As I approached the passenger side of the
5 vehicle, like I said, I walked around the back side
6 of my car, and up to the passenger side of his. We
7 don't want like walk rumbly lights, because it shows
8 our body in their rear view mirror and makes us a
9 silhouette basically. So I walked around to the
10 passenger side. Upon walking up to the passenger's
11 side, I observed the subject here looking out of
12 driver's side window waiting on me to come up to the
13 window. I waited for a second. As I looked to make
14 sure everything was okay, I checked for weapons, is
15 a normal procedure for me. I look at everybody's
16 hands as I walk, approach the vehicle.

17 I tapped on the window and opened the door
18 to speak to him, and at that time, I observed him to
19 reach over and grab the gear shifter, and attempt to
20 snatch it in drive. You hear the car reeve up. At
21 that time I jumped out of the way, because I knew
22 that he was going to take off on me, and I did not
23 want to caught against the vehicle and get drug.

24 Q. So you managed to get out of the way of
25 the car before it actually did drive off.

Trooper Lowder-Direct by Brown

1 A. Yes, sir.

2 Q. What did you do next?

3 A. At that time, I retreated back to my
4 vehicle. Which I hopped in my vehicle. I put it in
5 drive. Activated sirens, which my blue lights of
6 course were already activated. I advised my
7 dispatch by radio, that I was in vehicle pursuit. I
8 requested Sumter County Sheriff's Office to assist.
9 Of course, gave my location and direction of travel.
10 Which they had my location to begin with, but gave
11 it to them again, gave them direction of travel.

12 Q. You gave chase?

13 A. Yes, sir. Which I notified we were in
14 vehicle pursuit, yes, sir.

15 Q. As you were giving chase, were you able to
16 see which direction the vehicle went, and to
17 maintain visual as you drove?

18 A. Yes, sir. While maintaining due regard
19 for the public.

20 Q. How fast did you have to get to try
21 catching up to that vehicle?

22 A. Around 90.

23 Q. And you mentioned earlier that when the
24 driver was going 34 originally, you noted that low
25 rate of speed, that that was a 55-mile per hour

Trooper Lowder-Direct by Brown

1 speed zone. What was the speed zone after that stop
2 sign where he was going close to 90?

3 A. When we took off from the stop sign of old
4 Camden, that's the residential area between old
5 Camden and the four lane of US 521, there's a pond
6 there. Some houses on the left and the right. I
7 want to say, I can't put it, but I want to say the
8 speed limit is 45 or better.

9 Q. And you mentioned that this was a
10 residential area?

11 A. Yes sir.

12 Q. And so this was a 45, approximately
13 45-mile per hour speed zone.

14 A. It may have a 35, but I'd say 45.

15 Q. And that was when you were hitting
16 90 miles an hour?

17 A. Yes, sir.

18 Q. What happened next?

19 A. I observed the vehicle to cross all
20 four lanes of US 521 at a high rate of speed. In
21 which that's a, of course, you all know is a busy
22 highway for people traveling back and forth to work
23 from Camden and Sumter, and even going to Columbia.
24 It's a highly traveled highway.

25 Q. Now when you say cross over, do you mean?

Trooper Lowder-Direct by Brown

1 A. Yeah, he blew the stop sign. He didn't
2 even tap his brakes. He just straight on through
3 the stop sign. All four lanes of traffic. And
4 you'll see I slowed down to clear the intersection,
5 which we have to. We, you know, we want to catch
6 the person, but our main focus is to make sure we do
7 not injure anybody else in the process.

8 Q. After you cleared this intersection, what
9 did you observe happen next?

10 A. We went across the intersection, straight
11 on across and went to Brewington. We go around a
12 curve, and the vehicles light were turned off.

13 Q. What do you mean by that?

14 A. The switch, he cut his lights off on the
15 vehicle. Turned his headlights off. There was no
16 tail lights. No headlights. So he was driving down
17 a -- traveling down a dark road with houses, at a
18 high rate of speed, with no lights on.

19 Q. Are we still traveling 90 miles per hour?

20 A. Yes, sir. We're at a high rate of speed,
21 yes, sir.

22 Q. And how did you end up catching up to the
23 vehicle and finding the vehicle?

24 A. He slammed on brakes. After we came
25 around the curve, I saw his brake lights. At that

Trooper Lowder-Direct by Brown

1 time, of course I was already at a high rate of
2 speed. When he hit his brake lights, he left some
3 skid marks. And his car, goes off the right
4 shoulder, stops. And as I'm coming up on the
5 vehicle braking, he jumps out of the driver's side
6 and runs to his left down a dirt road.

7 At that time, I pursued him down a dirt
8 road, and he cuts back into the woods. And I can
9 see him, and you will not see it on camera, but I
10 can see him out of my passenger side window,
11 basically running back towards the vehicle. I was
12 able to get out on foot at that time and pursue him.

13 Q. And as you pursued him, were you able to
14 catch up with him?

15 A. Yes, sir. I was able to catch up. He
16 went through a group of pine tress. It's a narrow
17 row, between the dirt road and the field we were in.
18 He had some change in a jar, and I could hear that
19 rattling as I was pursuing him. He tripped up in
20 front of me, and I was able him take him in to
21 custody then.

22 Q. Did he initially give up willingly?

23 A. Not easily.

24 Q. Let me rephrase. Did you have to order
25 him to the ground multiple times.

Trooper Lowder-Direct by Brown

1 A. Loud, verbal commands multiple times to
2 lay down. He had something in his hands at the
3 time, and I couldn't tell exactly what it was. I
4 did have my firearm drawn on him, and ordered him to
5 the ground. It turns that out that was a cell phone
6 in one hand and a change jar in the other. But it
7 was like I said, pitch black.

8 Q. Did you have threaten to taser him?

9 A. Yeah, I did. After that I haltered my
10 firearm. Which I never want have a taser and a
11 firearm in both hands, not to get mixed up. So I
12 holstered my glock or my service weapon. I drew my
13 taser, and at that time I ordered that he would be
14 tased if he did not comply. Multiple times you will
15 hear the video. And after multiple loud, verbal
16 commands, he did lay on the ground, in a frontal
17 position, which is laying out, and I was able to
18 take him in to custody.

19 Q. So you didn't even up having to tase him?

20 A. No, sir, I did not use force.

21 Q. And at that point, were you able to take
22 him in to custody and bring him back to your
23 vehicle?

24 A. Yes, sir, at that time, I did.

25 Q. And all this is on video?

Trooper Lowder-Direct by Brown

1 A. Yes, sir.

2 MR. BROWN: Permission to approach the
3 witness?

4 THE COURT: Yes.

5 Q. Do you recognize this disk?

6 A. Yes, sir. That's the one I gave you.

7 Q. And this is the disk that you provided our
8 office of the traffic stop?

9 A. That's right.

10 Q. Prior to us coming in here today, did you
11 watch this video to make sure that it's an accurate
12 representation of the traffic stop you had on
13 October 2nd, 2014?

14 A. Yes, sir.

15 Q. And is it that?

16 A. Yes, sir, It is.

17 MR. BROWN: Your Honor, I'd offer State's
18 Exhibit No. 1.

19 THE COURT: Any objection?

20 MR. STORY: I renew my previous objection,
21 Your Honor.

22 THE COURT: Over your objection, it's
23 admitted.

24 (DVD video of traffic stop marked State's
25 Exhibit No. 1 into evidence.)

Trooper Lowder-Direct by Brown

1 Q. You describe throughout the last little
2 bit that there were a number of things that were on
3 video and that we would see. Is this the disk that
4 we will see that on?

5 A. Yes, sir, it is.

6 Q. I am going to play this disk in just a
7 moment. But as we go through it, I am going to ask
8 that especially prior to the initial pullover, that
9 you kind of help walk us through what we're seeing.
10 If you see an infraction, let the jury know. And
11 then we might stop it a couple of times as we go,
12 to make sure we can explain it to the jury what
13 happened. Is that understood?

14 A. Yes, sir.

15 MR. BROWN: Permission to publish, Your
16 Honor?

17 THE COURT: You may publish.

18 (Whereupon, the playing to the jury the
19 video.)

20 Q. And this is view from inside the camera?

21 A. Yes, sir. And what you're seeing right
22 now is, this is after I've already turned around,
23 and he's made the left on Brewington, traveling
24 towards Old Camden. This is where I said I zoomed
25 my camera in to further observe him driving. And at

Trooper Lowder-Direct by Brown

1 this time I pointed to violation.

2 Q. And if we can just go and have you
3 clarify. About how far are you back from the car as
4 this is going on?

5 A. Several hundred yards. Our cameras our
6 zooming pretty close.

7 Q. And why were you staying that much
8 distance behind the driver?

9 A. I don't ever like to get close behind
10 somebody, because it's a natural tendency if they
11 see you behind them, that it's a a natural tendency
12 for someone to get nervous if the cop is behind
13 them. So I stayed back not to blow my cover.
14 And you'll see the vehicle. I said 34-mile an hour,
15 and this is a 55-zone. And it's kind of dark. You
16 will see in just a minute where the vehicle does
17 strike the center line. I will point that out to
18 you. That noise you hear is the Doppler effect of
19 my radar. You will see coming up. Right there is
20 he's on top of the yellow line. You saw the
21 reflector, which will be the center line. And now
22 I'm zooming my camera out. And that's me calling in
23 a traffic stop on my dispatch.

24 Q. So by this point you decided you were
25 making the traffic stop.

Trooper Lowder-Direct by Brown

1 A. That's right. This is the intersection
2 and kind of the larger grass area to your right,
3 right here where he stops that I was talking about.

4 Q. And is that your blue light that we're
5 seeing shining on the back of the car right here?

6 A. That's right. Yes, sir. And that's the
7 grass spot right on the right. This is the four
8 lane here, coming up here that US 521. That's the
9 stop sign here. We cross over the to four lane now.

10 Q. Is this you clearing the intersection?

11 A. Yes, sir. You see his brake lights.
12 There they are.

13 Q. Those are the brake lights that alerted
14 you to where he was again?

15 A. That's right. And I talked about he was
16 traveling to some houses off to the left. That's
17 where he had no lights on in this segment.

18 Q. Is that your flashlight coming back
19 through?

20 A. Yes, you see my flashlight through the
21 trees there.

22 Q. Right here, is this the vehicle you were
23 chasing?

24 A. Yes, sir, it is.

25 Q. And this is the front driver's side panel.

Trooper Lowder-Direct by Brown

1 Does that appear to have---

2 A. The vehicle had front end damage, yes,
3 sir.

4 Q. Is that what you were seeing earlier and
5 what you were talking about with the head lamp
6 damage.

7 A. In the right, yes, sir.

8 Q. Trooper Lowder, at this point you had him
9 under arrest and he's in your car.

10 A. Yes, sir, that's right.

11 Q. What all do you have to do after you make
12 an arrest, when you have a car and there's no other
13 driver? Is there a lot of procedure that you have
14 to follow at that point?

15 A. Yes, sir.

16 Q. Can you kind of walk us through what you
17 typically might have to do in that scenario?

18 A. On this situation being it was a vehicle
19 pursuit, the first thing we call for a tow truck.
20 The second thing is, I have to notify my
21 supervisor. She has to respond out, or respond to
22 me to review the video. In the meantime, I have to
23 fill out tow logs. It was a vehicle pursuit. So of
24 course this pursuit report you have to start. You
25 have to make contact with dispatch to get your

Trooper Lowder-Direct by Brown

1 incident number, all your times that you initiated
2 the traffic stop, the pursuant time, the time the
3 pursuit ended, the time you made the arrest. All
4 that has to be logged. So I get pretty busy after I
5 make an arrest. And of course, restraining the
6 suspect in the front seat of my car.

7 Q. You also have to inventory the vehicle?

8 A. Yeah, well that's part of the tow log is
9 the inventory. We have to look through the vehicle.
10 We usually write down if there's any valuable stuff.
11 Or if any firearms, we write the serial numbers
12 down. So if it does go missing, we have a serial
13 number and it's documented.

14 Q. And that's standard procedure.

15 A. Yes, sir.

16 Q. So of course we see this video. It's an
17 hour and a half long. A good bit of that was taken
18 up by you having to go through all these procedures?

19 A. That's right.

20 Q. And then to drive back to dispatch?

21 A. To the jail, yes, sir.

22 Q. Was there an occasion after you began
23 doing all this work, in which you sat down in the
24 car and you asked the defendant why he ran?

25 A. Yes, sir, it was.

Trooper Lowder-Direct by Brown

1 Q. Do you recall watching that earlier today
2 in the pretrial hearings?

3 A. Yes, sir, I did.

4 Q. And of course you mirandized him. We just
5 now heard that on video. From the time that you
6 mirandized him and the time you read him his rights,
7 did he ever say he didn't want to talk to you
8 between that time and when you asked him the
9 question about why he ran?

10 A. No, sir.

11 Q. Did he ever say he wanted a lawyer?

12 A. No, sir.

13 Q. Or that he didn't want to talk with?

14 A. No, sir.

15 Q. Did you threaten him to talk to you?

16 A. No, sir.

17 Q. Did you hold out any hope or promise of
18 reward if he would talk to you?

19 A. I didn't say anything.

20 Q. It's just conversation you had together.

21 A. Yes, sir.

22 Q. I went to clarify that point right there.
23 You said, talking about going through that stop
24 sign, and you said, put you in a car versus a body
25 bag, what did you mean by that?

Trooper Lowder-Direct by Brown

1 A. If a tractor trailer or anybody would have
2 been coming, and you get T-boned at 70 miles an
3 hour, the impact is more than likely will kill you.

4 MR. STORY: Object to relevance, Your
5 Honor.

6 THE COURT: Overruled.

7 Q. I just wanted to make sure we understood.
8 And of course, this is a little hard to hear, so I
9 may stop again to ask what you were asking.

10 (Whereupon, playing video to jury.)

11 MR. STORY: Your Honor, I object
12 under 404.

13 THE COURT: Overruled.

14 MR. BROWN: Your Honor, If I may rewind
15 it.

16 THE COURT: You may.

17 (Whereupon, playing video to jury.)

18 Q. Did we hear that correctly, that he never
19 had a license?

20 A. Yes, sir.

21 Q. And this section of Brewington Road just
22 to make sure it's clear, that's here in Sumter
23 County?

24 A. Yes, sir, that is.

25 Q. That's right -- you said right over near

Trooper Lowder-Direct by Brown

1 the airport area?

2 A. Yes, sir. And where we placed him under
3 arrest would be on the -- it be West of 521. So
4 from the Shaw Air Force Base out on 521.

5 Q. And so this entire from beginning of the
6 failure to the stop all the way to the end, all that
7 occurred here in Sumter County?

8 A. Yes, sir, between Sumter Airport and
9 basically right there at 521.

10 Q. And from the time that you pulled the
11 defendant over the first time, up and until the time
12 that you caught him in the woods, were you able to
13 either maintain visual or auditory hearing of him
14 through the entire process?

15 A. Yes, sir.

16 Q. Other than that one section where you
17 blocked out his car?

18 A. That's right, yes, sir.

19 Q. And hearing this little bit, he
20 acknowledged that he was the one that ran?

21 A. Yes, sir.

22 Q. Now the person who you initially pulled
23 over at that intersection and that threw his car
24 into drive, the person who was hitting close to
25 90 miles an hour going down Brewington Road, the

Trooper Lowder-Direct by Brown

1 person who blew through the stop and blacked out his
2 car, got out and ran and you had to chase and
3 tackle, the person who said he drove that way
4 because he didn't have a license. Is that the same
5 person that is seated at defense table today?

6 A. I'm 100 percent, yes, sir.

7 Q. Did you see him when he -- when you first
8 opened that car door for the very time?

9 A. Yes, sir, I identified him. Yes, sir.

10 Q. And he was the same one you pulled out of
11 the woods that night?

12 A. Yes, sir, that is.

13 MR. BROWN: Court's indulgence.

14 THE COURT: Yes.

15 Q. You had your blue lights on?

16 A. Yes, sir.

17 Q. You had your sirens on?

18 A. Yes, sir.

19 Q. Brewington Road is a road or highway that
20 belongs to the State of South Carolina?

21 A. Yes, sir, secondary 81.

22 Q. And he failed to stop?

23 A. Yes, sir, he did.

24 MR. BROWN: Please answer any questions by

25 Mr. Story.

Trooper Lowder-Cross by Story

1 THE COURT: Mr. Story.

2 MR. STORY: I beg the court's indulgence,
3 please.

4 Cross Examination by Mr. Story:

5 Q. Trooper Lowder, I would like to begin by
6 clarifying just a few things. It was your testimony
7 that when apprehending suspects, you did not have to
8 use force, correct?

9 A. No, nothing on my belt, no.

10 Q. So you did have to tackle the defendant,
11 correct?

12 A. I was able to use loud verbal commands. I
13 am not going hands on with any suspect that I don't
14 know. That's asking for trouble.

15 Q. So that's a no.

16 A. Yes, sir.

17 Q. You did have to tackle him.

18 A. I did not tackle him.

19 Q. And so you just used loud, verbal
20 commands.

21 A. He tripped up and hit the ground. That's
22 what I testified to.

23 Q. Okay, thank you. I would like go back to
24 some of your training. It's your testimony that
25 you, before you were with the Clarendon County

Trooper Lowder-Cross by Story

1 Sheriff's Department, you went to the criminal
2 justice academy for 9 weeks, correct?

3 A. That's right.

4 Q. And you also went to another academy
5 before you became a trooper, correct?

6 A. That's correct.

7 Q. Well how long was that course?

8 A. Well they said it 5 weeks, but it turned
9 to be closer to 9 or 10.

10 Q. And you went over a lot of things during
11 that course.

12 A. Yes, sir.

13 Q. One of the things you learn about is how
14 to write an incident report, right?

15 A. That's right.

16 Q. And---

17 A. Briefly, I mean we pretty much learn that
18 on FTO. They don't actually sit down and make you
19 write reports.

20 Q. And what is FTO mean?

21 A. Field training officer. It's where you
22 come out on the field and you learn the way a
23 certain agency does things.

24 Q. But do they teach you there to put down
25 everything important in the incident report?

Trooper Lowder-Cross by Story

1 A. For the most part, what's relevant to the
2 case.

3 Q. What's relevant to the case. I mean, is
4 that another way saying, important to the case?

5 A. Yes, sir.

6 Q. And did you write an incident report in
7 this case?

8 A. Yes, sir, that's what you have.

9 MR. STORY: May I approach the witness?

10 THE COURT: You may.

11 Q. Trooper Lowder, I'm showing you a copy of
12 something marked incident report. Is that the
13 report you wrote in this case?

14 A. Yes, sir.

15 Q. Now it was your testimony today that you
16 tracked a car going at 34 miles an hour in 45 zone,
17 correct?

18 A. Well I made the correction at pretrial,
19 that I believe it was a 55 actually.

20 Q. So it was actually a 55.

21 A. Yes, sir.

22 Q. But in your incident report you actually
23 said it was a 45, correct?

24 A. Yes, sir.

25 Q. And but that's incorrect.

Trooper Lowder-Cross by Story

1 A. That's right. It changes to a 45 on the
2 other side.

3 Q. Right. Do you mind reading about 3 lines
4 down? Well excuse me, let's start on the second
5 line, the second sentence.

6 A. Can start it for me? Can you show me
7 which one it is?

8 MR. BROWN: If I can object, Your Honor.
9 I mean, if he wants to put this in evidence we don't
10 have an objection to that. But I think the proper
11 way to impeach is to ask for clarification and then
12 he can offer -- ask him to read it.

13 THE COURT: But lay your foundation.

14 Q. Well it's your testimony today that he was
15 doing 34 in a 55, correct?

16 A. Yes, sir.

17 Q. But it was, in the incident report you
18 wrote, you said you clocked him doing 34 in a 45,
19 correct?

20 A. Yes, sir. But my radar doesn't tell me
21 the speed limit.

22 Q. I understand, but is your incident report
23 inconsistent with, that you initially clocked him
24 at -- your testimony is, you clocked him at 34 miles
25 an hour, correct?

Trooper Lowder-Cross by Story

1 A. That's right, yes, sir.

2 Q. And your testimony today is that was in a
3 55 mile an hour zone.

4 A. That's right, yes, sir.

5 Q. But in your incident report you said it
6 was actually a 45-mile an zone that you clocked him.

7 A. That's right.

8 Q. Correct? So that is inconsistent. Your
9 incident report isn't inconsistent with your
10 testimony today.

11 A. Well I made that correction, yes, sir.

12 Q. Now you made that correction, right?

13 A. Yes, sir.

14 Q. Also another couple of things, today
15 you've testified that there was front end damage on
16 a car, correct?

17 A. Yes, sir.

18 Q. And that you observed one of headlights
19 being out, right?

20 A. Yes, sir.

21 Q. Is that in your incident report?

22 A. No, sir. The basis of the stop was a
23 moving violation.

24 Q. But and it's also been your testimony that
25 you viewed the video before coming to trial today,

Trooper Lowder-Cross by Story

1 correct?

2 A. Yes, sir.

3 Q. So that was in between the arrest, you
4 writing the incident report, and your testimony now,
5 right?

6 A. Yes, sir, that was -- yeah, I reviewed it
7 yesterday.

8 Q. So just to go back over, the speed limit
9 you had in the incident report, is different than
10 the speed limit you have today.

11 A. Yes, sir. Since then, I've traveled that
12 road a lot more times since then and it is 55.

13 Q. And also, there is nothing about the
14 headlight in the incident report.

15 A. Yes, sir.

16 Q. That is -- that's your testimony today.

17 A. That's right. And that -- the stop --
18 that caught my attention as I turned around, yes,
19 sir.

20 Q. You've -- the other thing I wanted to ask
21 you about is, you approach on the passenger's side,
22 correct?

23 A. Yes, sir, especially at nighttime.

24 Q. Is it your practice to always approach on
25 the passenger side?

Trooper Lowder-Cross by Story

1 A. At nighttime, yes, sir.

2 Q. Isn't that a little unusual for a state
3 patrolmen to do that?

4 A. It's the officer discretion, and it's not
5 unusual for me.

6 Q. It's not unusual for you.

7 A. No, sir.

8 Q. But you don't have any knowledge as to
9 what other troopers do.

10 A. Well the work I'm in, that's it, yes, sir.

11 MR. STORY: I beg the court's indulgence.

12 THE COURT: Yes, sir.

13 MR. STORY: No further questions.

14 THE COURT: Any redirect.

15 MR. BROWN: Briefly, Your Honor.

16 Redirect Examination by Mr. Brown:

17 Q. Trooper Lowder, you were asked about the
18 front end damage on the car. And we saw the video
19 of that same spot where we pointed it out, is that
20 the front end damage to the car?

21 A. Yes, sir. The vehicle had front end
22 damage. The car had damage all the way around it
23 actually. But I mean the front end damage, it could
24 have caused the headlight.

25 Q. And the discussion on the 45 versus 55.

Trooper Lowder-Redirect by Brown

1 That road does change from 45 later?

2 A. Yes, sir. It's a 45 on one end. It's a
3 45 on the other end. But there's a section through
4 there that's 55. It's a secondary road through a
5 rural area.

6 Q. As a trooper who controls that area all
7 the time, is this your recollection is, you sit here
8 today you understand the area where the initial stop
9 happened to be 55-mile per hour zone.

10 A. Yes, sir, that's right.

11 MR. BROWN: Nothing further, Your Honor.

12 THE COURT: Any recross based on his
13 redirect?

14 MR. STORY: No, Your Honor.

15 THE COURT: Your may step down.

16 MR. BROWN: Your Honor, the State rests.

17 THE COURT: Ladies and gentlemen, the
18 State has now rested. I am going to give you a
19 break while we take up a few matters of law. It
20 will be 15 minutes or 20 minutes. If you want to
21 get a coca cola or if somebody needs to smoke a
22 cigarette, the bailiff will help you. Thank you
23 Ladies and gentlemen. Please do not discuss
24 anything about the case while you are back there.

25 (Whereupon, the following takes place

Trooper Lowder-Redirect by Brown

1 outside the presence of the jury.) jury

2 THE COURT: Mr. Story, do you have any
3 motions at this time?

4 MR. STORY: I do, Your Honor. At this
5 time the defense moves for a directed verdict in
6 this case in favor of the defendant. I believe
7 taking all the evidence in the light most favorable
8 to the State that a reasonable jury could not find
9 the defendant guilty beyond a reasonable doubt.

10 THE COURT: Thank you, very much,
11 Mr. Story. Yes, sir, Mr. Brown.

12 MR. BROWN: Your Honor, he testified this
13 happened on Brewington Road here in Sumter County;
14 that it happened on October 2nd 2014; that the
15 trooper identified Rashad Brisbon as the driver both
16 when he made the initial stop as well as after he
17 made the arrest. And testified too that he was
18 driver of the motor vehicle, and that he was
19 operating on Brewington Road, which is a road or
20 street or highway in the State of South Carolina.
21 The second element of the offense. It's been
22 testified to clearly that the officer -- that the
23 defendant failed to stop his motor vehicle when
24 signaled to do so by law enforcement.

25 It's been testified to as well as shown

1 through video, that blue lights were on, the sirens
2 were on, and defendant did 90 miles per hour while
3 the officer was trying to get him to stop. We've
4 clearly established our burden.

5 THE COURT: Any follow up?

6 MR. BROWN: No, Your Honor.

7 THE COURT: Well the court at this stage
8 of the trial in ruling on a directed verdict, is
9 more concerned about the mere existence of evidence
10 and not the weight of the evidence. I find that the
11 evidence presented by the State creates more than
12 just a mere suspicion. Mr. Story, I am going to
13 respectfully deny your motion. Now, Mr. Story, I am
14 going ahead your client concerning his willingness
15 to testify. So please place the defendant under
16 oath.

17 (Whereupon, the defendant is sworn.)

18 THE COURT: Mr. Brisbon, at this time, I
19 am going to explain to you certain of your rights.
20 If you do not understand anything that I say, please
21 let me know. And if you need further clarification,
22 I will be glad to state it in more detail if
23 necessary. Do you understand that?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Now, Mr. Brisbon, we have now

1 reached the stage of your trial where you may
2 present your defense. You have a right to claim the
3 protections given to you by the 5th Amendment of the
4 United States Constitution, which state in part,
5 that no one person shall be compelled in any
6 criminal case to be a witness against himself. So
7 that means that you cannot be required to testify
8 against yourself, however no one -- and you do have
9 a right to testify, but nobody can make you
10 testify. This is a personal right, and no one can
11 waive it except for you.

12 Now if you decide to testify, you will
13 subjected to the same rules that govern other
14 witnesses, and you may we examined and cross
15 examined on relevant issues in this case. In
16 addition, if you have any convictions involving
17 dishonesty or for false statements or for crimes
18 punishable by imprisonment of more than one year,
19 and this court determines that the probative value
20 of admitting this evidence outweighs the prejudicial
21 effect on you, then the State will be allowed to
22 introduce that evidence to attack your credibility.

23 What does the State intend to put into
24 evidence should the defendant take the stand?

25 MR. BROWN: Your Honor, just to go

1 through his entire criminal history real quickly.
2 He has convictions for B & E auto, 3 of those out of
3 2003. He also has a failure to stop for a blue
4 light and distribution of cocaine base in 2006.
5 Your Honor, we'd argue that failure to stop for a
6 blue light carries more than a year and occurred in
7 the past 10 years. I also would argue that it'd
8 actually be admissible. And finally, Your Honor, he
9 was convicted 14 counts of breaking into motor
10 vehicles in 2010. He received a 5 year sentence.

11 The State contends that B & E autos are a
12 crime of violence and dishonesty because they are
13 root elements to theft. And so we would offer those
14 into evidence.

15 THE COURT: Mr. Story, do you agree that
16 those would come?

17 MR. STORY: I do not agree about the B & E
18 auto, Judge.

19 THE COURT: I think the 2010 would come
20 in. The other ones would pass the 10 year point.
21 Now, Mr. Brisbon, if you decide to testify the
22 decision on your part must be freely, voluntarily,
23 and intelligently made, with knowledge of the
24 protections given to you by the 5th Amendment and
25 the consequences of your decision to testify. If

1 you decide not to testify, I will explain to the
2 jury that they can't hold that against you in any
3 way whatsoever, and there is to be no absolutely no
4 prejudice to you because you do not testify. It's
5 left up entirely to you as to whether or not you
6 want to testify. You make talk with your lawyer and
7 anyone else. And that will give -- we'll take
8 about a 10-minute break and come back. And then
9 I'll ask you the ultimate question at that point.
10 Thank you. The court will be in recess for us about
11 10 minutes.

12 (Whereupon, the Court Breaks.)

13 THE COURT: Is your client back?

14 MR. STORY: Your Honor, he went outside to
15 smoke a cigarette.

16 THE COURT: Does Mr. Brisbon want to
17 testify?

18 MR. STORY: Your Honor, my understanding
19 was he did not.

20 THE COURT: That being the case, if he
21 comes back in here and says he does not want to
22 testify, do you want to go ahead and renew your
23 motion on the record?

24 MR. STORY: Yes, Your Honor.

25 THE COURT: So we don't have to bring the

1 jury in and then back out and back in.

2 MR. STORY: Yes, sir.

3 THE COURT: And you all have got copies of
4 the proposed charge.

5 MR. BROWN: Your Honor, the only part
6 of -- and I haven't seen the proposed charge. The
7 only thing I would specially would want to make sure
8 that's in there, is probably the standard charge and
9 failure to stop for a blue light. There is a
10 section of it, and I'm looking at 56-5-750 where it
11 says, an intent to increase the speed of a vehicle
12 or in other manner avoid the pursuing law
13 enforcement vehicle when signaled by a siren or
14 flashing light, is prime facie evidence of a
15 violation of this section. I want to make sure
16 that's in there. That's my big thing.

17 THE COURT: And that's part of the code.
18 Do you have any objection to that?

19 MR. STORY: I do have an objection, Your
20 Honor. And just because it's in the code, I don't
21 believe it's necessarily proper for an instruction.

22 THE COURT: Yeah, I could guess he could
23 consider that to be burden shifting. An attempt to
24 increase the speed of a vehicle, or in some other
25 manner avoid the pursing law enforcement vehicle

1 when signaled by a siren. That may be considered as
2 evidence. That's the correct words. Failure to
3 stop for a blue light however is merely an
4 evidentiary fact to be taken. That would probably
5 be the more proper.

6 MR. BROWN: You said it can be considered
7 as evidence?

8 THE COURT: Yes.

9 MR. BROWN: I'm fine with, Judge. I just
10 want to make sure something about that was in there.

11 THE COURT: And I am going to give him
12 5 minutes and I am going start without him. That's
13 going to prejudice his case, however, that's his
14 fault.

15 MR. STORY: Yes, Your Honor.

16 THE COURT: He was late when we started
17 the trial as well. The trial will proceed without
18 him.

19 MR. BROWN: And I think it's already on
20 the record that his bond paperwork did say that.

21 THE COURT: It was. Let me put this on
22 the record. We broke and I told them they could
23 have a break and we would be back in 10 minutes.
24 And at that time it was roughly 2:30. 10 minutes,
25 would have been 20 till 3. Everyone else was back

1 here at 20 minutes till 3. We have been waiting for
2 the defendant 15 minutes. We have had the bailiffs
3 and the deputy go into the hallway. The assistant,
4 and other public defenders have gone to find him.
5 Although he has not answered the ultimate question
6 verbally that he did not want to testify, his
7 actions have now shown that he obviously does not
8 want to testify.

9 This is not necessarily a trial in absence
10 at this point, because he was here during the
11 testimony of the State. And apparently that's
12 going to be all the evidence that is going to be
13 testified, so he was here during his trial. The
14 fact that he does not want to be here at this point
15 and time, clearly answers the question, do you want
16 to testify, which is a resounding no, based upon his
17 actions. We will continue with this trial at this
18 time. Please bring our jury in.

19 MR. STORY: Your Honor, I would like the
20 rest on the record and also renew my motions.

21 THE COURT: And for that, the motions are
22 denied.

23 (Whereupon, the following takes place
24 within the presence of the jury.)

25 THE COURT: Thank you, ladies and

1 gentlemen, all of the evidence that is going to be
2 presented to you has been now presented to you. Now
3 the attorneys will give you their closing remarks.
4 I will then charge you the law and then allow you to
5 begin your deliberations.

6 Is the State ready to proceed?

7 MR. BROWN: The State is ready, Your
8 Honor.

9 THE COURT: Is the defense ready?

10 MR. STORY: Yes, Your Honor.

11 THE COURT: Yes, sir, Mr. Brown.

12 MR. BROWN: May it please the court, Your
13 Honor.

14 THE COURT: Yes, sir.

15 MR. BROWN: Good afternoon again. Not
16 very long ago, I guess it was just shy of two hours
17 ago, I introduced myself. But because I like to
18 introduce myself, and consider it as being salient
19 and begin talking. I want to introduce myself
20 again, my name is Tyler Brown. I'm the prosecutor
21 on the case. I work for your solicitor and once
22 again, on behalf of the entire solicitor's office, I
23 want to thank you for your time, for your service,
24 for your attention in this case for being here.

25 I told you at the beginning of this trial

1 that it would not be a long one. That doesn't make
2 it unimportant. That doesn't make it trivial by any
3 means.

4 It's just quite candidly I, you know, I
5 was meeting with my co-workers yesterday and we were
6 talking about this case, and I was letting them know
7 what I was going to try. And they asked me how many
8 witnesses I was going to call. And I said I really
9 don't know who else to call other than one officer.
10 No one else is going to be there. That's kind of
11 the nature of a failure to stop for a blue light.
12 But I am glad we were able to address this. And I
13 am glad that -- I don't do a lot of jury watches. I
14 don't consider that a good practice. But I was able
15 to look over a couple of times and see that you all
16 were paying attention, that you all were listening
17 to details watching the videos, and listening to
18 Trooper Lowder as he explained what was going on.
19 And I appreciate y'all's attention to this and
20 recognizing that even though, this is just a one
21 witness case, even though this is not going to have
22 300 pieces of evidence, I've been in those trials,
23 they take a long time. Even though it's not that
24 case, it's still important. It's still something
25 that happened in our community. It's still

1 something that has to be addressed.

2 Mr. Brisbon is charged with failure to
3 stop for a blue light. The law says that in South
4 Carolina if you're operating a vehicle, if you're
5 driving on one of our roads, maintained by our
6 State, whether it's the road or highway, in this
7 particular case it was Brewington Road. If you're
8 riding in that car, and a trooper gets behind you or
9 a police officer or the sheriff's deputy, if a law
10 enforcement officer gets behind you and turns on
11 their blue lights or their sirens or turns on both,
12 you've got to stop your vehicle. That's the law.
13 And the law is there for a good reason.

14 When people don't stop their vehicles, it
15 puts other people at risk. When people blow through
16 stop signs, you've heard it from Trooper Lowder,
17 people get hurt. When people decide to turn off
18 their head lamps or try evading law enforcement,
19 other cars aren't going to be able to see them.
20 We're fortunate in this case at 4 o'clock in the
21 morning, so there as less traffic there. But the
22 law is there for a reason. What we submit to you
23 today, is that we've proven that beyond a reasonable
24 doubt, and I'd even go so far as to say beyond any
25 and all doubt, that on October 2nd, 2014, Rashad

1 Brisbon, the defendant in this case, he violated
2 the law. He broke it plain as day.

3 You saw the video. You heard the
4 testimony. You saw them catch him on the scene, and
5 bring him to the patrol car, and him admit, I did it
6 because I didn't have a license. Never had a
7 license. I submit to you we have proven this case
8 beyond any and all doubt. But I want to talk to you
9 about this case still. I want to go through it and
10 make sure that we don't leave any stone unturned,
11 because defense counsel brought in up in the
12 beginning of this trial, and I don't 100 percent
13 agree with him. We have a high burden. As a
14 prosecutor my job is to prove guilt beyond a
15 reasonable doubt.

16 Again, I'll emphasize that's not any and
17 all doubt. You can take the most sure thing in the
18 world, and there's some way that people can find
19 questions. And sometimes questions are just
20 questions. But my job is to prove guilt beyond a
21 reasonable doubt. To do that, I present testimony.
22 I present evidence. I'll let you all see videos. I
23 do whatever it takes and whatever we have at our
24 disposal, we kind of let you see what happened, to
25 take you all through that particular night.

1 In this case, I am fortunate that our
2 highway patrol has the funds to make sure there were
3 dashcams in the car. So you all didn't just have to
4 rely on Trooper Lowder. I certainly think he's --
5 you know, I think he speaks for himself; that he
6 understood what happened that night. I think he did
7 a find job testifying. You all be the ultimate
8 decider of that. But you all got to see when he
9 testified he said that the car initially pulled over
10 and he went up to the passenger side. He opened the
11 door, and the driver threw his car in drive and
12 reeved the engine. You all got to see on video as
13 he went up to the car, as he went up to the door, as
14 he opened it. And you heard the engine reeve. And
15 you heard him jump back saying, don't drive off, but
16 the car drive off. And you all heard as he
17 testified about the fact that this car hit high rate
18 of speeds.

19 I wish that the dashcam would have had a
20 speedometer on it. I will tell you new cameras do.
21 But you heard me testify that they were driving at a
22 high rate of speed, burning through the residential
23 area of Brewington Road. He testified it was close
24 to 90-miles an hour. I don't have any way to gauge
25 that, but I don't have any reason to doubt. And you

1 can tell they were going at a very high rate of
2 speed. You can watch that video. You can compare
3 it to the testimony of Trooper Lowder as he talks
4 about what happened.

5 You can listen to Trooper Lowder testify
6 about the fact that the defendant burned through a
7 stop sign right there at 521, a major road here in
8 Sumter County. As he burned through that stop sign
9 at a high rate of speed, not even touching his
10 brakes. And you can watch on that video, as you
11 never saw the brake lights light up, as he burned
12 through it. And Trooper Lowder approaches him to
13 make sure it's clear, because he's trying to make
14 sure he's a responsible trooper, that he's
15 responsible. And he doesn't cause injury to another
16 car that's driving by.

17 And you can listen and you can listen to
18 him tell that as the car went around the bend, it
19 turned off its lights to try to evade him. The only
20 way he was able to catch up with him is continuing
21 to drive and wait to see those brake lights. And
22 you got to see those brake lights. They lit up, and
23 the defendant jumped out of the car. Just like he
24 testified happened. I am glad we're able to have
25 that evidence, because we have a high burden of

1 proof. But, Ladies and gentlemen, I'm going to keep
2 saying this because it's true, we've met it.

3 The defense counsel says he needed his
4 trial; that his client is innocent. I completely
5 agree with him. He's still innocent. But what he
6 left out is the next part of it, and that's what the
7 judge is going to tell you; that he's innocent until
8 he's found guilty. That's where your jobs come in,
9 because you are the triers of the facts. You all
10 are the ones that listen to the testimony and
11 watched the video that compared the video to the
12 testimony by Trooper Lowder. You all the ones who
13 see the picture as they bring him out of the woods
14 and see him sitting in that patrol car saying I
15 didn't have a license. That's why I ran.

16 You all are the deciders of the facts.
17 And what Mr. Story left out when he said that his
18 client is innocent, once again, he's right. Because
19 you all have the ability to say differently. As
20 members of the community, you have all the ability
21 and at this juncture, the responsibility of
22 listening to the testimony, of determining guilt or
23 innocence. And you have an obligation that if all
24 believe that the State has meet its burden, if you
25 all believe that testimony does show guilt beyond a

1 reasonable doubt, you all swore to listen to that
2 evidence and determine without bringing any other
3 prejudice or anything else in to this, as to whether
4 or not, he's guilty or innocent.

5 I submit to you that evidence has been put
6 forth before you today, leaves only one conclusion.
7 The defense counsel also said that we were going to
8 try telling you what happened and how it happened,
9 telling you what to think. Mr. Story and I have
10 tried a number of cases together. He's a skilled
11 defense attorney. And I've enjoyed working with him
12 in cases.

13 I'd submit to you I really don't have too
14 much to think. I think the video has shown you what
15 to think. I submit to you that testimony has shown
16 what to think. I submit to you that the evidence
17 that you've actually you heard, I'm just the guy who
18 went to law school and gets to stand up to talk to
19 the jury. I am not telling you all what to think.
20 I'm telling you who the witnesses who are going to
21 get called, and I'm letting them tell you what
22 happened, and I'm letting you all decide what
23 happened.

24 Again, I'll just emphasize that I don't
25 think that there is anything other than what you saw

1 on that video that you can reasonably conclude.
2 There was no other person in the car. The same
3 person who Trooper Lowder observed in the passenger
4 seat when he first pulled over, is the same person
5 he pulled out of the woods on October 2, 2014, is
6 the same person who said I drove off because I
7 didn't have a license.

8 So, Ladies and gentlemen, as you go back
9 in the jury room, what I ask you to do, is I ask you
10 to consider the facts. And I ask you not to
11 consider anything other than what you've heard from
12 this witness stand, what you've seen on that video.
13 I ask you to consider the fact that this driver
14 decided to go 90 miles per hour. I ask you to
15 listen to the jury charge as the judge said, that
16 you can consider him accelerating the speed, off the
17 way he did, as proof that he intended not to stop.
18 As proof that he planned to violate the law, and
19 failed to stop the car.

20 I also to submit to you to consider the
21 fact that he had a safe place to stop. He was
22 already stopped at that intersection prior to him
23 throwing his car in to drive. I'd submit to you
24 that the evidence in this case is clear. I'd submit
25 to you that we have met our burden, and I ask you to

1 find the defendant guilty. Thank you.

2 THE COURT: Thank you, Mr. Brown.

3 Mr. Story.

4 MR. STORY: May it please the court.

5 THE COURT: Yes.

6 MR. STORY: I love trying cases this time
7 of year, because we always have a lot of teachers in
8 the jury pool. I know it's not always the most fun
9 thing to do is to go do jury duty. But I really do
10 enjoy this time of year with all the teachers,
11 because the teachers have a unique experience. They
12 are charged with educating people and handing out
13 grades. They grade papers. And what do you when
14 you grade a test? You go through and see if the
15 answers are correct. Especially like a multiple
16 choice test or a short answer type exam. You go
17 through and you make sure everything is correct.

18 And the reason I like having teachers on
19 jury panels is because they have prior experience
20 with kind of holding people up to a certain grade.
21 And what the jurors are asked to do, is to hold the
22 State to certain standard. And when a trial is
23 finished, they grade the State's paper. And they go
24 through and they see all the mistakes that have gone
25 on during the State's case. If it doesn't meet the

1 grade, they find someone not guilty. And what are
2 some of the State's mistakes. There's been a lot
3 inconsistencies from the testimony.

4 For example, before today there was a
5 45-mile an hour zone. Then all of a sudden they say
6 55. Remember the headlight being out? It wasn't in
7 the incident report. And today the officer
8 testified that he saw the headlight being out. The
9 State has not met the burden. They haven't lived
10 up to the grade. My job is to kind of go in and
11 point those flaws out and show you all the flaws in
12 the State's case. But at the end of the day, you're
13 the ones who decide the facts.

14 Now in my opening, I told you that they're
15 going to tell you what to think, and they did that,
16 didn't they. As they playing the video, they were
17 like, okay, what's he doing here. And look what
18 he's doing here, here he's crossing the center line.
19 And let's take you by, and let's tell you what
20 you're seeing on the video. And what I ask you to
21 do at the beginning of this trial, and what I'm
22 asking you to do now, and what I'm asking you do in
23 your jury deliberations is to decide for yourself.
24 You make the decision, because ultimately you are
25 the deciders of the facts.

1 In our society, our robust democracy
2 cannot survive unless you the jurors do your jobs.
3 And to hold the State to their burden and grade them
4 on their case. Pay attention to everything that
5 goes on. Ultimately you'll decide for yourselves
6 what you see. What you see. Whether or not you
7 believe certain testimony, that is for you to
8 decide. Because despite what they may tell you,
9 they have all the power, all the money, all the
10 resources, all the influence of the State of South
11 Carolina. And this is the case that you heard.
12 They failed. They failed their exam.

13 Now what they really need is an A. In
14 order to find somebody guilty, they've got to have
15 A. But they've fallen far short of that today,
16 folks. They've fallen far short of where they need
17 to be.

18 Now when go back in the jury
19 deliberations, there's probably going to be some
20 disagreements. And that's okay. All I am asking
21 you to do, decide the facts for yourself. Not to do
22 violence to your individual conscience. Because at
23 the end of the day, if you're going to have doubts,
24 have them today. Don't have them a week from now.
25 Don't have them a month from now, have them today.

1 I ask you to find Rashad Brisbon not guilty of
2 failure to stop for a blue light.

3 THE COURT: Thank you, Mr. Story. Please
4 secure the courtroom. Ladies and gentlemen, all of
5 the testimony and the other evidence to be presented
6 to you in this case, has now been presented to you.
7 Now is the time when I will charge you the law that
8 is to be applied in this particular case. Now
9 Ladies and gentlemen, I remind you that during this
10 trial you and I have certain duties to perform. And
11 as the trial judge, it is my responsibility to
12 preside over the trial of the case, and I also have
13 the duty to rule on the admissibility of evidence
14 that has occurred during this trial. You are to
15 consider only the competent evidence before you. If
16 there was any testimony ordered stricken from the
17 record in this case, you must disregard that
18 testimony. You are to consider only the testimony
19 that has been presented from this witness stand, and
20 any exhibits which have been made a part of the
21 record any stipulations of counsel.

22 Now, Ladies and gentlemen, I have the
23 additional duty to charge you the law applicable to
24 this case. As the presiding judge, I am the sole
25 judge of the law in this case. And it is duty as

1 jurors to accept and apply the law exactly as I now
2 state it to you. If you already have some idea as
3 to what the law is, or what the law ought to be, and
4 it does not agree with what I tell you the law is,
5 you must abandon that idea, because Ladies and
6 gentlemen, you are sworn to accept and apply the law
7 exactly as I now state it to you.

8 Now, Ladies and gentlemen, in every case
9 tried before this court and before a jury, you the
10 jury become the sole and exclusive judges of the
11 facts. And as a trial judge, I cannot intimate,
12 state, comment or make any statement to a trial jury
13 about the facts in a case. You are as the jury, you
14 are the sole judges of the facts, and you are not to
15 infer by anything that I have said during the
16 progress of this trial in ruling upon the
17 admissibility of evidence or otherwise or anything
18 that I say now during the course of those closing
19 instructions that I have any opinion about the facts
20 in a case. The law simply does not allow me to have
21 an opinion about the facts in a case. That is a
22 matter solely for you as jurors to determine. And
23 as jurors it is your duty to determine the effect,
24 the weight, the value and the truth of the evidence
25 that has been presented during this trial.

1 Now, Ladies and gentlemen, the indictment
2 in this case alleges one offense against the
3 defendant. Under 2015-GS-43-436 for failure to stop
4 for a blue light. And, Ladies and gentlemen, I
5 remind you that the fact the defendant was arrested,
6 charged and indicted is not evidence in this case,
7 and cannot be considered by you as evidence of
8 guilt. Nor does it create any presumption or
9 inference of guilt. The indictment is simply the
10 formal written instrument which contains the charges
11 made against the defendant. It is the formal
12 document by which this case is brought in to court.

13 Now, Ladies and gentlemen, the defendant
14 has pled not guilty to the charge in this
15 indictment. And that plea puts the burden on the
16 State to prove the defendant guilty. A person
17 charged with committing a criminal offense in South
18 Carolina is never required to prove himself
19 innocent. And, Ladies and gentlemen, I charge you
20 that this is an important rule of law that the
21 defendant in a criminal trial no matter how serious
22 the charge may be, will always be presumed to be
23 innocent for the crime for which the indictment was
24 issued, unless guilt has been proven by evidence
25 satisfying you of that guilt beyond a reasonable

1 doubt.

2 Now this presumption of innocence does not
3 end when you begin your deliberations, but it
4 accompanies the defendant throughout the trial until
5 you reach a verdict of guilt based upon evidence
6 satisfying you of that guilt beyond a reasonable
7 doubt. The presumption of innocence is like a robe
8 of righteousness that's placed about the shoulders
9 of the defendant, which will remain with that
10 defendant until it has been stripped from the
11 defendant by evidence again satisfying you of the
12 defendant's guilt beyond a reasonable doubt. The
13 presumption of innocence is not a mere legal theory,
14 and it's not just a phrase that we use, but it is a
15 substantial right to which every defendant is
16 entitled to unless you -- until you the jury are
17 satisfied from evidence of the defendant's guilty
18 beyond a reasonable doubt.

19 Now the State has the burden of proving
20 defendant beyond a reasonable doubt. And some of
21 you may have served as jurors in civil cases where
22 you were told that it's only necessary to prove that
23 a fact is more likely true than not true; such as,
24 by the greater weight or the preponderance of the
25 evidence. In criminal cases however, the State's

1 proof must be more powerful than that. It must be
2 beyond a reasonable doubt. And proof beyond a
3 reasonable doubt is proof that leaves you firmly
4 convinced of the defendant's guilt. It is the kind
5 of doubt that would cause a reasonable person to
6 hesitate to act.

7 Now, Ladies and gentlemen, there are very
8 few things in this world that we know with absolute
9 certainty. And in criminal cases, the law does not
10 require proof that overcomes every possibility. If
11 based upon your consideration of the evidence you
12 are firmly convinced that the defendant is guilty of
13 the crime charged, you must find the defendant
14 guilty. If on the other hand you think that there's
15 a real possibility that the defendant is not guilty,
16 then you must give the defendant the benefit of the
17 doubt and find him not guilty.

18 Now, Ladies and gentlemen, there are two
19 types of evidence that is generally presented during
20 a trial. There's direct evidence and there's
21 circumstantial evidence. Direct evidence is the
22 testimony of a person's claim to have actual
23 acknowledge of a fact, such as an eye witness. It
24 is evidence that immediately establishes the main
25 fact to be proven. And circumstantial evidence is

1 proof of a chain of facts and circumstances
2 indicating the existence of a fact. And crimes may
3 be proven by circumstantial evidence. And the law
4 makes no distinction between the weight, the value
5 to be given to either direct or circumstantial
6 evidence. However to the extent that the State
7 relies on circumstantial evidence, all of the
8 circumstances must be the consistent with each
9 other, and when taken together, point conclusively
10 to the guilt of the accused beyond a reasonable
11 doubt. If the circumstances merely portray the
12 defendant's behavior as suspicious, then the proof
13 has failed. And the State has the burden of proving
14 the defendant guilt beyond a reasonable doubt. And
15 this burden rests with the State regardless of
16 whether the State relies on direct evidence,
17 circumstantial evidence, or some combination of the
18 two.

19 Now, Ladies and gentlemen, I instruct you
20 and emphasize the fact that the defendant did not
21 testify, is not a factor to be considered by you in
22 any way in your deliberations and in your
23 consideration of the question of guilt or innocence
24 of the defendant. It must not be considered by you
25 in any manner whatsoever. The defendant has the

1 constitutional right to remain silent. And the
2 assertion of this right must not be considered by
3 you in your deliberations. And I repeat, under your
4 oath, you are to draw no conclusion whatever from
5 the fact that the defendant in this case did not
6 testify. The fact that a defendant did not testify,
7 should not even be discussed in the jury room.

8 The burden of proof as I have stated to
9 you, is on the State. And the defendant is not
10 required to prove his innocence. The burden of
11 proof remains on the State to prove the defendant
12 guilty beyond a reasonable doubt.

13 Necessarily, Ladies and gentlemen, you
14 must determine the credibility of witnesses who have
15 testified in this case. And credibility simply
16 means believability. And it becomes your duty as
17 jurors to analyze, and to evaluate the evidence and
18 determine which evidence convinces you of its truth.
19 In determining the believability of a witness who
20 has testified in this case, you may believe one
21 witness over several witnesses or several witnesses
22 over one witness. You may believe a part of the
23 testimony of a witness and reject the remaining
24 parts of the testimony of that same witness. And
25 you may believe the testimony of a witness in its

1 entity or reject the testimony of a witness in its
2 entirety. And you may consider whether any witness
3 has exhibited to you any interest, bias, prejudice
4 or other motive in this case. And you may also
5 consider the appearance and manner of a witness
6 while on the witness stand.

7 Now, Ladies and gentlemen, the defendant
8 is charged with failing to stop the blue light. And
9 in order to prove this crime, the State must prove
10 beyond a reasonable doubt that the defendant was
11 driving a motor vehicle and that the defendant was
12 driving the motor vehicle on a road, street or
13 highway of this state; that the defendant was
14 signaled to stop by a law enforcement vehicle by
15 means of a siren and or flashing light and that the
16 defendant did not stop. And in determining whether
17 or not there are mitigating circumstances, which
18 would justify the defendant's failure to stop for
19 the blue light, you may consider actual road
20 conditions, actual roadside conditions, other
21 conditions such as lighting, and whether officer
22 driver and or passenger's 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 siren or a flashing light.

1 But both are not required.

2 An attempt to increase the speed of a
3 vehicle or in some other manner avoid the pursuing
4 law enforcement vehicle when signaled by a siren or
5 a flashing light may be considered as evidence of
6 failure to stop for a blue light; however, it is a
7 merely an evidentiary fact to be taken into
8 consideration by you along with all the other
9 evidence in this case, and is to be given the weight
10 that you decide it should receive.

11 Now, Ladies and gentlemen, there are two
12 possible verdicts which you may find in this case on
13 the charge of failure to stop for a blue light.
14 Under indictment 2015-GS-43-436, not guilty or
15 guilty. There is no significance whatsoever in the
16 order that I state the possible verdict, it's just
17 that one must be stated first. And, Ladies and
18 gentlemen, your verdict must be unanimous. And your
19 decision must not be based on sympathy, passion,
20 prejudice, emotion or any other consideration that
21 is not in evidence in this case.

22 Now, Madam Forelady, when the jury reaches
23 a verdict, please check the appropriate box with not
24 guilty or guilty. Sign your name. And if you could
25 then knock on the jury room door and inform the

1 bailiffs that you reached a verdict, you will then
2 be back into the courtroom for the publication of
3 your verdict.

4 Now, Ladies and gentlemen, I am going to
5 send you back to the jury room to begin your
6 deliberations. But don't start until you are
7 informed to do so. There are still some matters I
8 need to take up with the attorneys. Thank you.

9 And, Ladies and gentlemen, I am going to send you a
10 hard copy of what I just read to you as the charge,
11 if you need to refer to it to the jury room. Thank
12 you.

13 (Whereupon, the following takes place
14 outside the presence of the jury.)

15 THE COURT: Any objection to the charge
16 that has been made to the jury from the State?

17 MR. BROWN: No, sir, Your Honor.

18 THE COURT: From the defense?

19 MR. STORY: No, Your Honor.

20 THE COURT: Thank you. Here is the
21 verdict form and the charge. Any other evidence?

22 MR. BROWN: The VHS was introduced. Do we
23 need to send that back?

24 THE COURT: They can't play it until they
25 come back in. So really there's no -- if they want

1 to play the disk, we will bring them back. Because
2 I don't want them looking at the whole.

3 MR. BROWN: I understand. Yes, sir. Your
4 Honor.

5 (Whereupon, we jury commences
6 deliberations at 3:28 p.m.)

7 (Whereupon, the alternate is excused.)

8 THE COURT: The jury has reached a
9 verdict. You may bring the jury in.

10 (Whereupon, at 3:42 jury reaches a
11 verdict.)

12 (Whereupon, the following takes place
13 within the presence of the jury.)

14 THE COURT: Madam Forelady, has the jury
15 reached a verdict?

16 THE FORELADY: Yes, we have, Your Honor.

17 THE COURT: Is it unanimous?

18 THE FORELADY: Yes, sir.

19 THE COURT: Thank you, pass it to
20 Mr. Bradley. The jury form seems to be in
21 accordance with the law. Please publish the
22 verdict.

23 THE CLERK: Yes, sir, Your Honor. For the
24 State of South Carolina, County of Sumter, in the
25 Court of General Sessions, Indictment No.

1 2015-GS-43-436, the State of South Carolina,
2 Plaintiff, versus Rashad Cornell Brisbon, Defendant,
3 we the jury by unanimous agreement find the
4 Defendant Rashad Cornell Brisbon on the charge of
5 failure to stop for a blue light, guilty. Signed
6 Rhonda Y. Jackson, foreperson. Dated June 15th,
7 2016.

8 Ladies and gentlemen of the jury, is this
9 your verdict, so say you all by raising your right
10 hand please. Thank you very much.

11 THE COURT: Does the defense wish to poll
12 the jury?

13 MR. STORY: No, Your Honor.

14 THE COURT: Any post-trial motions?

15 MR. STORY: None, Your Honor.

16 THE COURT: Then the verdict stands. I
17 have got to sentence the defendant. Do you want to
18 say anything?

19 MR. BROWN: Your Honor, you've heard it.
20 You need me to repeat it prior to the sentencing?

21 THE COURT: No.

22 MR. BROWN: Permission to approach, I have
23 sentencing sheet.

24 THE COURT: And if you can get a bench
25 warrant.

1 MR. BROWN: I'll be happy to prepare an
2 order for a bench order. But Your Honor as already
3 heard the criminal history. I would just point out
4 his criminal history again. In 2003 he was
5 convicted. I believe he spent the better part of
6 his -- half of his adult. It is what it is, Judge.

7 THE COURT: Mr. Story.

8 MR. STORY: Briefly, Your Honor, he's 27.
9 He was working in construction I know up until I
10 think last February. He was working with his dad.
11 I hate to see young men who have jobs in this
12 situation, but we just ask the mercy of the court.

13 THE COURT: I mean, what a perfect example
14 of his irresponsibility by leaving during the middle
15 of a trial. I've never seen that happen. But I
16 guess that's his option. He has the right to do
17 that. But I will never let a defendant go once the
18 trial starts. You all you have a nice day, and I
19 will have this sealed.

20 MR. BROWN: I will bring up an order
21 either tomorrow morning, or I can probably prepare
22 it pretty quickly.

23 THE COURT: Tomorrow morning is fine.

24 MR. BROWN: Yes, sir, Your Honor. And
25 I'll make sure Mr. Story gets a a copy before I

1 bring it to you.

2 THE COURT: Thank you.

3 (Whereupon, the defendant is sentenced on
4 Monday September 12, 2016 at 9:30 a.m.)

5 MR. BROWN: Your Honor, before you is
6 Mr. Rashad Brisbon. Your Honor, he has a true
7 billed under 2015-43-436. Which was one count of
8 failure to stop for a blue light second offense.

9 Your Honor, on June 15, 2016, Mr. Stephen
10 Story who is his attorney and I, began the trial of
11 this case. Mr. Brisbon was present at the start of
12 the trial. We began trying the case that morning.
13 At the conclusion of the State's case in front of
14 the Honorable Judge Jeffrey Young, the judge gave
15 him 10 minutes to talk with his lawyer to decide if
16 he was going to testify in defense's case in chief.
17 He went outside and never came back. The jury
18 deliberated on that base, and came back with a
19 guilty verdict. Judge Young has sealed a sentence,
20 and we are here to unseal the sentence.

21 THE COURT: All right, what have you got.
22 Well Judge Young, the other Judge Young, was for
23 5 years. I guess you get the chance to me why I
24 shouldn't give you that.

25 THE DEFENDANT: Well the grounds for my

1 jury trial was that the probable cause was
2 insufficient, and those charges were dropped.

3 MR. STORY: Your Honor, may I have a
4 moment?

5 THE COURT: Uh-huh. (Affirmative.) Well
6 here's what it is. You, on this case right here,
7 you took off. So they continued the trial without
8 you. You got convicted. Judge Young gave you
9 5 years. Arguing whether or not you did it anymore,
10 doesn't -- there's no need for that. Basically you
11 and your lawyer can try to convince me why I
12 shouldn't give you what Judge Jeffrey Young gave
13 you. Otherwise I'll just impose 5 years. So why
14 don't you let me hear from your lawyer first, and
15 then you can say anything you want to.

16 MR. STORY: Your Honor, Mr. Brisbon I
17 think he was very nervous that day. He was not
18 happy with me. I can tell you a little bit about
19 Mr. Brisbon. He generally does conviction work. I
20 know he was doing construction during my
21 representation of him. All the time we were in
22 meeting, he was employed. And I think right up
23 until before this he was employed. Is that correct?

24 So, Your Honor, we would ask you to
25 reconsider the sentence.

1 THE COURT: Well before I hear from you,
2 let me hear from the State. What would you like to
3 tell me?

4 MR. BROWN: Well, Your Honor, I
5 respectfully offer to the court that Judge Young, he
6 heard all the facts and circumstances in this case.
7 And his case was a pretty egregious failure to stop
8 for a blue light. The defendant originally stopped
9 his vehicle. And the second the trooper got his
10 hand onto the passenger door to make contact, the
11 defendant threw it in gear, and then hit 100 miles
12 an hour at 3:00 o'clock in the morning. I believe
13 it was a 100, but he hit very high speeds. Well,
14 well, well above the posted speed limits.

15 He turned off his head lamps, and was
16 blowing through stop signs without even touching his
17 brakes. Trying to lose the officer. He ended up
18 putting his car onto the side of the road at a high
19 rate of speed, and running into the woods to try
20 hiding from the officer. The officer managed to
21 apprehend him at that time. And then he made what
22 can only be described as incriminating statements.
23 The judge did keep the jury from hearing some of
24 them, but he bragged about all he would get was
25 probation in this case; how he knew judges. I think

1 he was mentioning magistrate courts judges of some
2 sort. And the judge heard all of those things.

3 Also the defendant has a nothing short of
4 extensive criminal history. He's got somewhere in
5 the approximate range of 17 B & E autos since 2003.
6 He's been convicted of an indecent exposure for
7 which is on the registry, the sex offender registry
8 from 2010. He's got distribution or PWID charges
9 for cocaine. This is a second offense failure to
10 stop for a blue light. I actually think it's a
11 third offense, If I remember correctly. One from
12 2006. One from, I think there is one in 2014. But
13 I am not positive on that one, Your Honor. He's
14 just taking every opportunity he can to flaunt the
15 law.

16 And, Your Honor, I think Judge Young
17 sentenced him to 5 years, he was considering
18 everything. I don't think he was considering
19 necessarily that he left the courtroom. That's the
20 defendant's right not to be present for his trial.
21 This was simply an issue it was an egregious failure
22 to stop for a blue light. It was not his first one.
23 And he has an awful criminal history. And then was
24 pretty braggadocious about whether or not anything
25 would even happen to him because of it.

1 MR. STORY: The only thing I would like to
2 add to that, Your Honor, those B & E autos, I think
3 most of those were, he was arrested for those
4 around the same time. I think he only has three
5 different conviction dates for B & E auto.

6 THE COURT: Mr. Brisbon, what would like
7 to say now?

8 THE DEFENDANT: I am willing to go on
9 whatever your discretion is, sir. I would just like
10 to also add I would like to file for a PCR on the
11 grounds that the officer who tried to stop me for
12 DUI, and I was not drinking anything. And the
13 charges were dropped.

14 THE COURT: Well I guess the whole idea
15 behind the way we do these things is to say, well
16 the judge has heard the case and has put his
17 thoughts on a sentencing sheet. And then later on
18 when you get caught, we undo it. And it's usually
19 not the same judge. Sometimes it is. But it's
20 usually not the same judge. But you don't get
21 penalized when the judge that was there is mad at
22 you for just taking off in the middle of the trial
23 or never showing up. You know, but goodness, with
24 your record, it does seem like to me that you
25 deserve the 5 years that he give you.

1 So I am going to go along with that,
2 5 years. Good luck. You get credit for time
3 served. And if you want to file an appeal, you can
4 talk to him, and he can help you file an appeal.
5 It's probably too earlier to file a PCR at this
6 point, but you can do that if you want to. I'd file
7 an appeal first if that's what you want to do. You
8 can talk with your lawyer about how to do all that.

9 MR. STORY: Thank you for reconsidering
10 this sentence, Your Honor.

11 --End of Requested Transcript of Record--

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C-E-R-T-I-F-I-C-A-T-E

I, Margaret T. Sullivan, Court Reporter, for the
Third Judicial Circuit of the State of South Carolina,
do hereby Certify that the foregoing is a true, accurate
and complete Transcript of Record of the proceedings had
and evidence introduced in General Sessions Court on
June 14th 2016 and September 12th 2016, in Sumter
County, Sumter, South Carolina.

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

12-22-16

DATE

Margaret T. Sullivan

COURT REPORTER

My Commission expires: 9/7/21

STATE OF SOUTH CAROLINA)
COUNTY OF SUMTER)

INDICTMENT FOR
Failure to stop for a blue light

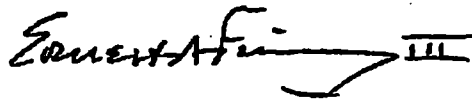
At a Court of General Sessions, convened on May 7, 2015 the Grand Jurors of
SUMTER County present upon their oath:

COUNT ONE
FAILURE TO STOP FOR BLUE LIGHT/SIREN

That Rashad Corneal Brisbon did in Sumter County on or about October 2, 2014, while operating a motor vehicle on a road, street, or highway of the State of South Carolina, fail to stop his motor vehicle when signaled to do so by a law enforcement vehicle, by means of a siren and/or flashing light, in violation of Section 56-05-0750(B)(2), S. C. Code of Laws, 1976, as amended.

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

Solicitor



4/4

WITNESSES

SM Lowder

S C Highway Patrol

10-20-2016

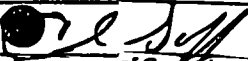
09:14:01 a.m.

ARREST WARRANT NUMBER

H079423

ACTION OF GRAND JURY

True Bill


 Foreperson of Grand Jury
 Date:

5-7-15

VERDICT

 Foreperson of Petit Jury
 Date:

DOCKET NO. 2015-GS-43-0436

The State of South Carolina

County of SUMTER

COURT OF GENERAL SESSIONS

MAY

TERM

2015

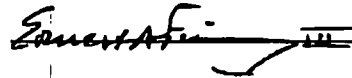
THE STATE

vs.

RASHAD CORNEAL BRISBON

Indictment for

Failure to stop for a blue light



ERNEST A. FINNEY, III, SOLICITOR

803436223

COUNTY OF Sumter
 STATE VS.
Rashad Corneal Brisbon
 AKA:
 Race: Black Sex: M Age: 30
 DOB: SS#:
 Address:
 City, State, Zip: Sumter, SC 29153
 DL#: SID#:

INDICTMENT/CASE#: 2015-GS-43-0436
 A/W#: H079423
 Date of Offense: 10/2/2014
 S.C. Code § : 56-05-0750(B)(2)
 CDR Code #: 2396

SENTENCE SHEET

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐
 In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS
 TO: Traffic / Failure to stop for a blue light, no injury or death - 2nd or sub. offense

in violation of § 56-05-0750(B)(2) of the S.C. Code of Laws, bearing CDR Code # 2396
☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
 w/minor 1st or Lewd Act)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)
 The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST: [Signature] 76326
Brown, Tyler SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
 for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed years
 and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
 of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
 probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:
☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
 by the State Department of Corrections.
☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
 Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:	\$
§ 14-1-206 (Assessments 107.5 %)	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100
§ 14-1-211(A)(2) (DUI Surcharge)	\$100
§ 56-5-2995 (DUI Assessment)	\$12
§ 56-1-286 (DUI Breath Test)	\$25
Proviso 47.9 (Public Def/Prob)	\$500
§ 14-1-212 (Law Enforce. Funding)	\$25
§ 14-1-213 (Drug Court Surcharge)	\$150
§ 50-21-114 (BUI Breath Test Fee)	\$50
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea
Proviso 90.5 (SCCJA Surcharge)	\$5
3% to County (if paid in installments)	\$ <u>3.00</u>
TOTAL	\$ <u>103.00</u>

PTUP

 days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling ☐

Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly
 pmts. of \$ beginning

\$ paid to Public Defender Fund

Other:

☐ Appointed PD or appointed other counsel,
 § 47.12 requires \$500 be paid to Clerk
 during probation.

Presiding Judge

Judge Code: 2156

Sentence Date: 15 June 2016

Clerk of Court/ Deputy Clerk

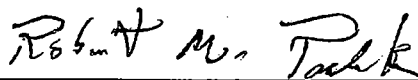
Court Reporter:

SCCA/217 (03/2011)

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,



Robert M. Pachak
Appellate Defender

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

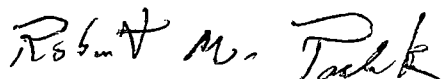
ATTORNEY FOR APPELLANT

This 14th day of March, 2017.

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,



Robert M. Pachak
Appellate Defender

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

ATTORNEY FOR APPELLANT

This 14th day of March, 2017.

RECEIVED

MAR 14 2017

SC Court of Appeals