

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

 ORIGINAL

Appeal from Spartanburg County

Honorable Robin B. Stilwell, Circuit Court Judge

THE STATE,

V.

KEVIN MAURICE WARD,

RECEIVED
NOV 03 2017
SC Court of Appeals
RESPONDENT

APPELLANT

APPELLATE CASE NO. 2017-000819

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

IN THE COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA,)
)
PLAINTIFF,)
)
-VS-)
)
KEVIN WARD,)
)
DEFENDANT.)
_____)

2016-GS-42-05473

TRANSCRIPT OF RECORD

MARCH 29 - 30, 2017
SPARTANBURG, SOUTH CAROLINA

BEFORE:

THE HONORABLE ROBIN B. STILWELL

APPEARANCES:

ATTORNEY FOR PLAINTIFF:

JENNIFER JORDAN
ASSISTANT SOLICITOR

ATTORNEY FOR DEFENDANT:

ROGER POOLE, ESQ.

SUSAN W. HUDGINS
CIRCUIT COURT REPORTER

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<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EVIDENCE</u>
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1 Wednesday, March 29, 2017:

2 (Whereupon State's exhibit 1 was marked for
3 identification)

4 (Whereupon court convened at 1:04 pm)

5 **THE COURT:** Do I have -- do I have the indictment?

6 **MS. JORDAN:** No, sir. I just realized I haven't passed
7 that up yet.

8 Your Honor, the Defendant is charged with habitual
9 traffic offender. He's also charged with operating an
10 uninsured motor vehicle. I'm choosing not to go forward on
11 that. I just didn't want there to be any issues or
12 questions for the jury since he wasn't the owner of the
13 vehicle.

14 **THE COURT:** Okay.

15 **MS. JORDAN:** Your Honor, the habitual traffic offender
16 charge is under 16-GS-42-5473.

17 **THE COURT:** Okay. All right. Well, we will call to
18 bar the case of the State versus Kevin M. Ward. And that is
19 case number 2016-GS-42-5473, an indictment for habitual
20 traffic offender.

21 The -- I have been advised that our entire pool of
22 jurors is present. Are there any matters that we need to
23 take up before we begin selection of the jury?

24 **MS. JORDAN:** Yes, sir, Your Honor. It appears that the
25 Defendant is not present. It's my understanding -- and I do

1 believe I saw him on Monday morning ---

2 **THE COURT:** Yes, ma'am.

3 **MS. JORDAN:** --- during roll call here. And I believe
4 he was sitting on the bench speaking with Mr. Poole after
5 roll call.

6 **THE COURT:** Yes, ma'am.

7 **MS. JORDAN:** We would ask to be able to proceed in his
8 absence as the Defendant was on notice to be here and has
9 chosen apparently at this point in time not to be here.
10 Although, I believe Mr. Poole indicated that he was here
11 earlier.

12 **THE COURT:** Okay. Mr. Poole.

13 **MR. POOLE:** That's correct, Your Honor. The Defendant
14 -- and there are two witnesses, Howard Davis and Anthony
15 Makerson. Mr. Makerson is here. In fact, they all three
16 were here. I was told Mr. Davis was here this morning. But
17 I've met with my client and Mr. Makerson and told them to be
18 back at 12:30 today.

19 **THE COURT:** Yes, sir.

20 **MR. POOLE:** I don't know where they are right now, but
21 the deputy told me that he thinks that the two were here
22 previously and then left, went outside. And I went around
23 to the other big lobby looking for them on the Magnolia
24 Street side and I did not see them. So they know to be
25 here.

1 **THE COURT:** Yes, sir. Well, we -- well, I do intend to
2 proceed with regard to jury selection. I do find that they
3 were given notice -- the Defendant was given notice of the
4 date and time of today's proceeding. He was appropriately
5 arraigned and told the ramifications of his failure to
6 appear.

7 I suspect that he's going to come -- he's going to
8 wander in in the next few minutes. He knew that the trial
9 was starting at one today. And I'm guessing he'll be here.
10 I don't want to keep the jury waiting any more than we have
11 to.

12 **MR. POOLE:** Sure.

13 **THE COURT:** And I want to proceed with jury selection.
14 After we've selected the jury and before we begin our
15 opening statements maybe we'll take a little pause and see
16 if you can round them up at that point, but I'm -- I don't
17 intend to delay the proceedings substantially inasmuch as he
18 knew we were starting trial.

19 **MR. POOLE:** I understand.

20 **THE COURT:** Okay. All right. Good enough. All right.
21 Well, let's bring -- will you bring the jury around, please,
22 sir.

23 (Pause)

24 (Whereupon the Defendant entered the courtroom)

25 (Whereupon the jury panel entered the courtroom)

1 **THE COURT:** All right, ladies and gentlemen, welcome
2 back. I know that there are a good number of you who were
3 on the jury pool yesterday and came in and sat through jury
4 qualification or jury selection, excuse me, for a case. For
5 those of you who were here, you're going to hear me say some
6 of the same things. And I apologize to you in advance. But
7 there's some people in here who weren't on that jury pool
8 and didn't have the benefit and privilege of hearing me
9 explain the jury selection process.

10 But I will tell you that now we are going to call a
11 specific case to bar and we're going to select a jury for
12 that specific case. All of you, I know, sat through jury
13 qualification on Monday morning, and I went through a series
14 of questions and asked you to respond to the same.

15 The process for jury selection is similar to jury
16 qualification in that I ask you questions and you respond to
17 those questions. I'll remind you that you each took an oath
18 to tell the truth on Monday morning and all of you continue
19 under that oath to tell the truth.

20 Now, ladies and gentlemen, before I begin posing the
21 questions to you I first need to read for you the
22 allegations on the indictment. Now, ladies and gentlemen,
23 the indictment is the charging document by which the State
24 begins its prosecution of a defendant.

25 Now when I read to you the allegations on this

1 indictment, I do not want you to think that I'm representing
2 to you what the facts are in this case. I'm not allowed
3 under the law to have an opinion about what the facts are on
4 a case. A jury of twelve persons will determine what the
5 facts are in the case.

6 The reason I'm reading for you the allegations on the
7 indictment is so that you can intelligently answer the
8 questions that I pose to you when we begin the jury
9 selection process. Don't think that I am telling you that
10 these are the facts. I am not. Again, I am simply telling
11 you the allegations that the State is making.

12 Now, ladies and gentlemen, I also need to tell you
13 before I read these allegations the State has the burden of
14 proving its case. The State must prove each and every
15 element of the offense beyond a reasonable doubt. A jury of
16 twelve people will determine if the State has met its burden
17 of proof.

18 Now, ladies and gentlemen, the County of Spartanburg
19 and the State of South Carolina in the United States of
20 America, each and every criminal defendant who comes before
21 the court is presumed innocent. And that defendant
22 maintains that presumption of innocence until such time as
23 twelve jurors determine that the State has met its burden of
24 proof. So as we sit here and as we begin this trial, the
25 Defendant is presumed innocent and will remain presumed

1 innocent until the very end of the trial unless and until
2 the jury decides that the State has met its burden of proof.

3 So, ladies and gentlemen, the case that we're calling
4 to bar today is the State versus Kevin M. Ward. And that is
5 case number 2016-GS-42-5473. And it is an indictment for
6 habitual traffic offender. In this case, ladies and
7 gentlemen, the State would allege that Mr. Ward did in
8 Spartanburg County on or about July 6th, 2016 operate a
9 motor vehicle after having been declared a habitual traffic
10 offender by the South Carolina Department of Public Safety.

11 Now, ladies and gentlemen, I'll ask you, is there
12 anyone among you who has any prior knowledge, any prior
13 disposition or any prior opinion about the facts or parties
14 to this case?

15 (No response)

16 **THE COURT:** All right. Let the record reflect no
17 affirmative response.

18 Ladies and gentlemen, the Defendant in this case is Mr.
19 Kevin Ward. Is there anyone among you who has a personal,
20 professional or family relationship with Mr. Kevin M. Ward?

21 (No response)

22 **THE COURT:** Ladies and gentlemen, Mr. J. Roger Poole of
23 the South Carolina Bar is representing Mr. Ward in this
24 matter. Is there anyone among you who has a personal,
25 professional or family relationship with Mr. Poole?

1 (No response)

2 **THE COURT:** All right. Ladies and gentlemen, this case
3 is being prosecuted by Ms. Jennifer A.J. Jordan with the
4 Seventh Circuit Solicitor's Office. Is there anyone among
5 you who has a personal, professional or family relationship
6 with Ms. Jordan or with anyone employed by the Seventh
7 Circuit Solicitor's Office?

8 (No response)

9 **THE COURT:** Ladies and gentlemen, I'm going to read to
10 you a list of potential witnesses in this case. And those
11 are as follows; Officer Chindar Ryant with the Spartanburg
12 Public Safety Department, Marie Wearing of the South
13 Carolina Department of Motor Vehicles, Pashana Rose Johnson,
14 Howard Davis, Anthony Makerson. Ladies and gentlemen, is
15 there anyone among you who has a personal, professional or
16 family relationship with any of those proposed witnesses?

17 (No response)

18 **THE COURT:** Ladies and gentlemen, is there anyone among
19 you who has ever been yourself employed by or has an
20 immediate family member who has been employed by law
21 enforcement? Yes, ma'am. If you'd stand up and tell me
22 your name and juror number.

23 **MS. PRIDGEON:** Marcia Pridgeon, juror number 128.

24 **THE COURT:** Okay. And who is employed by law
25 enforcement?

1 **MS. PRIDGEON:** Barry Pridgeon.

2 **THE COURT:** Okay. Do you think you could still be a
3 fair and impartial juror in the trial of this case given
4 that fact?

5 **MS. PRIDGEON:** I do believe so.

6 **THE COURT:** Okay. Thank you for telling me. I
7 appreciate it. Anyone else? Yes, ma'am.

8 **MS. DAWKINS:** Well, I have a cousin that -- that works
9 for the Magistrate Court. I don't know if that has anything
10 to do ---

11 **THE COURT:** Okay. Well, what's your name and juror
12 number?

13 **MS. DAWKINS:** Sheryl Dawkins, juror number 40.

14 **THE COURT:** Okay. Do you think given that fact that
15 you could still be a fair and impartial juror in the trial
16 of this case?

17 **MS. DAWKINS:** Yes.

18 **THE COURT:** Okay. Thank you for telling me. I
19 appreciate it. I know somebody else had their hand up.

20 **MS. PHILLIPS:** It was me, juror 121. My husband was
21 previously employed with the Sheriff's Office of Cherokee
22 County. And my brother was also previously employed with
23 Cherokee County Sheriff's ---

24 **THE COURT:** Okay. Do you think given that fact that
25 you could still be a fair and impartial juror in this case?

1 **MS. PHILLIPS:** I do.

2 **THE COURT:** Okay. Thank you. I appreciate it. Anyone
3 else?

4 (No response)

5 **THE COURT:** Is there anyone among you who has either
6 been yourself or has an immediate family member who has been
7 prosecuted by the Seventh Circuit Solicitor's Office or
8 accused of a crime by the Spartanburg Sheriff's Department
9 or the Spartanburg Department of Public Safety?

10 (No response)

11 **THE COURT:** All right. Let the record reflect no
12 affirmative response.

13 Ladies and gentlemen, is there anyone among you who has
14 either yourself been or has an immediate family member who
15 has been accused or convicted of habitual traffic offender?

16 (No response)

17 **THE COURT:** All right. Let the record reflect no
18 affirmative response.

19 Ladies and gentlemen, is there anyone among you who is
20 either a contributor to or a member of an organization which
21 advocates for the prosecution of crimes or for victim's
22 rights? And, ladies and gentlemen, when I say that I mean
23 organizations like MADD, Mothers Against Drunk Driving, or
24 SADD, Students Against Drunk Driving, or again,
25 organizations which advocate for criminal prosecutions or

1 victim's rights?

2 (No response)

3 **THE COURT:** All right. Let the record reflect no
4 affirmative response.

5 Ladies and gentlemen, is there anyone among you who for
6 whatever reason feels as though you could not be a fair and
7 impartial juror in the trial of this case?

8 (No response)

9 **THE COURT:** All right. Let the record reflect no
10 affirmative response.

11 Any additional questions and voir dire from the State?

12 **MS. JORDAN:** No, sir, Your Honor.

13 **THE COURT:** From the Defense?

14 **MR. POOLE:** None here.

15 **THE COURT:** Okay. All right, ladies and gentlemen,
16 we're going to move forward now with the actual selection of
17 the jury.

18 Now, the clerk of court has randomly generated a strike
19 sheet, that is thirty-five people among the entire pool of
20 jurors. You are -- your names are listed on this strike
21 sheet in random order. The computer just spit it out at
22 random, okay?

23 So the clerk of court will begin going down the list of
24 jurors on the strike sheet. When she calls your name what I
25 would like for you to do, please, is just stand up exactly

1 where you are. You don't have to say or do anything other
2 than just stand up.

3 At that point the parties will have the opportunity to
4 exercise their strikes. Now, each party is given great
5 latitude in effecting its strikes. And they have a lot of
6 discretion in who they strike and why they strike that
7 person, but they calculate those strikes in context with
8 their case.

9 So the reason I tell you that is so that you won't be
10 offended if you're stricken from the case. You won't know
11 why you're stricken. And, frankly, I won't know why you've
12 been stricken either because they've got great latitude in
13 doing it and they know their cases, all right? So don't be
14 offended by it.

15 Each side gets five strikes. The State will go first
16 and then the Defense will have the opportunity to strike.
17 If you hear from both sides, from both sides, either please
18 swear the juror or please seat the juror, then what I'd ask
19 you to do is pick up all your things and come over to the
20 jury box and have a seat.

21 If you hear from either side, just once from either
22 side, please excuse the juror from the trial of this case or
23 please strike the juror, then just have a seat where you
24 are. You will have been stricken from this jury and we'll
25 move on to the next. Okay. All right.

1 We're prepared for selection of the jury? Okay. You
2 can call the names, ma'am.

3 **MADAME CLERK:** Juror number 128, Marcia Pridgeon.

4 (Whereupon juror 128, Marcia Pridgeon, a white female,
5 stood)

6 **MADAME CLERK:** What say the State?

7 **MS. JORDAN:** Please present this juror.

8 **MADAME CLERK:** What say the Defense?

9 **MR. POOLE:** Please excuse this juror.

10 **MADAME CLERK:** Juror number 45, Dennis Fant.

11 (Whereupon juror 45, Dennis Fant, a black male, stood)

12 **MADAME CLERK:** What say the State?

13 **MS. JORDAN:** Please present the juror.

14 **MADAME CLERK:** What say the Defense?

15 **MR. POOLE:** Please seat the juror.

16 **MADAME CLERK:** Juror number 40, Sheryl Dawkins.

17 (Whereupon juror 40, Sheryl Dawkins, a black female,
18 stood)

19 **MADAME CLERK:** What say the State?

20 **MS. JORDAN:** Please present this juror.

21 **MADAME CLERK:** What say the Defense?

22 **MR. POOLE:** Please seat the juror.

23 **MADAME CLERK:** Juror number 37, Roda Crouch.

24 (Whereupon juror 37, Roda Crouch, a white female,
25 stood)

1 **MADAME CLERK:** What say the State?

2 **MS. JORDAN:** Please present this juror.

3 **MADAME CLERK:** What say the Defense?

4 **MR. POOLE:** Please seat the juror.

5 **MADAME CLERK:** Juror number 168, Rita Williams.

6 (Whereupon juror 168, Rita Williams, a white female,
7 stood)

8 **MADAME CLERK:** What say the State?

9 **MS. JORDAN:** Please present this juror.

10 **MADAME CLERK:** What say the Defense?

11 **MR. POOLE:** Please seat the juror.

12 **MADAME CLERK:** Juror number 132, Taquana Robinson.

13 (Whereupon juror 132, Taquana Robinson, a black female,
14 stood)

15 **MADAME CLERK:** What say the State?

16 **MS. JORDAN:** Please present this juror.

17 **MADAME CLERK:** What say the Defense?

18 **MR. POOLE:** Please seat the juror.

19 **MADAME CLERK:** Juror number 148, Savuat Suon.

20 (Whereupon juror 148, Savuat Suon, an Asian male,
21 stood)

22 **MADAME CLERK:** What say the State?

23 **MR. POOLE:** What number, please?

24 **MADAME CLERK:** 148. What say the State?

25 **MS. JORDAN:** Please present the juror.

1 **MADAME CLERK:** What say the Defense?

2 **MR. POOLE:** Please seat the juror.

3 **MADAME CLERK:** Juror number 87, Alan Lanza.

4 (Whereupon juror 87, Alan Lanza, a white male, stood)

5 **MADAME CLERK:** What say the State?

6 **MS. JORDAN:** Please present this juror.

7 **MADAME CLERK:** What say the Defense?

8 **MR. POOLE:** Please seat the juror.

9 **MADAME CLERK:** Juror number 100, Shaunte' Means.

10 (Whereupon juror 100, Shaunte' Means, a white female,
11 stood)

12 **MADAME CLERK:** What say the State?

13 **MS. JORDAN:** Please present this juror.

14 **MADAME CLERK:** What say the Defense?

15 **MR. POOLE:** Please seat the juror.

16 **MADAME CLERK:** Juror number 161, Jayhue Weisner.

17 (Whereupon juror 161, Jayhue Weisner, a white male,
18 stood)

19 **MADAME CLERK:** What say the State?

20 **MS. JORDAN:** Please excuse this juror.

21 **MADAME CLERK:** Juror number 70, Charles Hyatt.

22 (Whereupon juror 70, Charles Hyatt, a white male,
23 stood)

24 **MADAME CLERK:** What say the State?

25 **MS. JORDAN:** Please present this juror.

1 **MADAME CLERK:** What say the Defense?

2 **MR. POOLE:** Please seat the juror.

3 **MADAME CLERK:** Juror number 138, Robert Scruggs.

4 (Whereupon juror 138, Robert Scruggs, a white male,
5 stood)

6 **MADAME CLERK:** What say the State?

7 **MS. JORDAN:** Please present this juror.

8 **MADAME CLERK:** What say the Defense?

9 **MR. POOLE:** Please seat the juror.

10 **MADAME CLERK:** Juror number 35, Michael Cox.

11 (Whereupon juror 35, Michael Cox, a white male, stood)

12 **MADAME CLERK:** What say the State?

13 **MS. JORDAN:** Please present this juror.

14 **MADAME CLERK:** What say the Defense?

15 **MR. POOLE:** Please excuse this juror.

16 **MADAME CLERK:** Juror number 53, J.C. Fowler.

17 (Whereupon juror 53, J.C. Fowler, a white male, stood)

18 **MADAME CLERK:** What say the State?

19 **MS. JORDAN:** Please present this juror.

20 **MADAME CLERK:** What say the Defense?

21 **MR. POOLE:** Please seat the juror.

22 **MADAME CLERK:** Juror number 121, Alva Phillips.

23 (Whereupon juror 121, Alva Phillips, a white female,
24 stood)

25 **MADAME CLERK:** What say the State?

1 MS. JORDAN: Please present this juror.

2 MADAME CLERK: What say the Defense?

3 MR. POOLE: Please excuse this juror.

4 MADAME CLERK: Juror number 12, David Baldwin.

5 (Whereupon juror 12, David Baldwin, a white male,
6 stood)

7 MADAME CLERK: What say the State?

8 MS. JORDAN: Please present this juror.

9 MADAME CLERK: What say the Defense?

10 MR. POOLE: Please excuse this juror.

11 MADAME CLERK: Juror number 41, John Dawson.

12 (Whereupon juror 41, John Dawson, a white male, stood)

13 MADAME CLERK: What say the State?

14 MS. JORDAN: Please present this juror.

15 MADAME CLERK: What say the Defense?

16 MR. POOLE: Please excuse the juror.

17 MADAME CLERK: Juror number 120, Annie Peterson.

18 (Whereupon juror 120, Annie Peterson, a black female,
19 stood)

20 MADAME CLERK: What say the State?

21 MS. JORDAN: Please excuse this juror.

22 MADAME CLERK: Juror number 181, Linda Brown.

23 (No response)

24 MADAME CLERK: 181.

25 (Whereupon juror 181, Linda Brown, a black female,

1 stood)

2 MADAME CLERK: What say the State?

3 MS. JORDAN: Please present this juror.

4 MADAME CLERK: What say the Defense?

5 MR. POOLE: Please seat the juror.

6 THE COURT: Ms. Brown, you can come up. Okay. That's
7 twelve jurors. We'll pick one alternate. Strikes are one
8 and one.

9 MADAME CLERK: Juror number 176, Kathleen Wright.

10 (Whereupon juror 176, Kathleen Wright, a white female,
11 stood)

12 MADAME CLERK: What say the State?

13 MS. JORDAN: I'm sorry, could you repeat the number?

14 MADAME CLERK: 176.

15 MS. JORDAN: Please excuse the juror.

16 MADAME CLERK: Juror number 36, William Cox.

17 (Whereupon juror 36, William Cox, a white male, stood)

18 MADAME CLERK: What say the State?

19 MS. JORDAN: Please present the juror.

20 MADAME CLERK: What say the Defense?

21 MR. POOLE: Please seat the juror.

22 THE COURT: All right, counsel, any issues or matters
23 of law to take up with respect to the qualification or
24 selection of this jury?

25 MS. JORDAN: None from the State, Your Honor.

1 **MR. POOLE:** No, sir.

2 **THE COURT:** Okay. All right, ladies and gentlemen,
3 I'll ask you to return to the jury gathering room. I don't
4 suspect that we're going to pick anymore juries this week.
5 So I suspect that y'all will be dismissed for the week.

6 I would like you, please, although, to call back after
7 six just in case, just in case something happens and we have
8 to readjust. But as I sit here right now, I don't intend to
9 qualify any additional juries this week.

10 So if I don't see you again, which I suspect I won't, I
11 want to tell you how much I appreciate your being here this
12 week. We have resolved a significant amount of cases as a
13 consequence of having a jury ready and willing to preside
14 over these cases. So your -- your contribution has been
15 meaningful. And I'm sincere when I say that. And I
16 appreciate it.

17 I hope you have a good rest of the week, and I hope you
18 have a great weekend as well. Go Gamecocks.

19 (Laughter).

20 (Whereupon the remaining jury panel exited the
21 courtroom)

22 **THE COURT:** All right. Ladies and gentlemen,
23 congratulations for having made it onto a jury. I know
24 you're excited about it. I am as well. I'm looking forward
25 to working with you on this case.

1 I don't know how long it's going to take, but if you
2 look at the witness list there aren't a whole, whole lot of
3 witnesses. So we may be able to finish it today, but I
4 think at the latest we'll be able to finish it before
5 lunchtime tomorrow. It really depends on how long the
6 witnesses take and how long the presentation of the case is.
7 I don't necessarily control that.

8 I'm in the same position that y'all are, which is I
9 haven't seen the witnesses, I haven't heard any of the
10 testimony yet. We'll be seeing it for the first time
11 together. So when I tell you how long it's going to take,
12 it's really just an educated guess. I'm estimating based on
13 what I know by the case right now.

14 I find that before we start a case it's instructive for
15 me just to have a short talk with you to explain to you what
16 your role is as jurors in the trial of the case and then
17 explain to you how we conduct a case, the process that we'll
18 go through so that you'll know where we're going and where
19 we are in the case, what's next and then how -- where we
20 hope to arrive.

21 So we'll start by telling you what your role is as
22 jurors. As jurors in the trial of the case you are the
23 judges of the facts. You will determine what the facts are
24 based on the evidence that's presented during the trial of
25 the case.

1 That evidence will be presented as the parties call
2 witnesses to the stand and introduce exhibits into the
3 record. You will take all of those facts, or excuse me, all
4 that evidence and from that you will weigh it, you'll value
5 it, you'll determine what's important and what's not
6 important.

7 You'll determine who's believable and who's not
8 believable and from that you'll determine what the facts
9 are. You have the sole and exclusive authority to determine
10 what the facts are. Nobody can tell you what the facts are.
11 The parties can't tell you what the facts are. They can
12 just introduce evidence and argue about it. Y'all determine
13 what the facts are.

14 I can't tell you what the facts are because as
15 distinguished from y'all as the judge of the facts, I'm the
16 judge of the law. And I'm not allowed to have an opinion
17 about what the facts are.

18 So if you hear me say anything during the course of
19 this trial that gives you the impression that I've got an
20 opinion about what the facts are or about what your decision
21 should be, just disregard that because I truly don't have an
22 opinion about that.

23 My job is to make sure that this is a fair trial for
24 the State and for the Defense and by extension for y'all too
25 because y'all are going to spend some of your valuable time

1 here with us. What I'm going to do essentially is call
2 balls and strikes objectively just like an umpire or a
3 referee. I don't have a dog in the fight or a stake in the
4 outcome of this thing at all.

5 During the course of the trial the attorneys decides
6 they're going to make objections and make motions. That's
7 their job because they're advocating for their respective
8 sides, and I'm going to rule.

9 And I'm going to rule for somebody, and I'm going to
10 rule against somebody. But don't think that because I rule
11 for or against somebody that I'm partial or that I have a
12 bias or prejudice for or against either side. I truly
13 don't. Again, I'm just making an objective call based on my
14 understanding of the law and my understanding of the
15 evidence.

16 At the end of the case I'll give you a charge on the
17 law, and I'll tell you the law that applies to the evidence
18 that's been presented, because like I told you, I'm like
19 y'all, I haven't seen the evidence yet. So I have to see
20 the evidence before I can give you a charge on the law.

21 So the way we'll start right after I finish talking to
22 you, the parties will have the opportunity to offer opening
23 statements to you. Those opening statements are simply a
24 means of each side introducing themselves and their theory
25 of the case.

1 Generally speaking, they're very short. . Just
2 introductions. That's not evidence. That's the
3 introductions and opening statements from counsel.

4 After you hear opening statements, then the State will
5 have the opportunity to put its case up to introduce
6 evidence. The State goes first because as I've already told
7 you, the State has the burden of proof. The State has to
8 prove its case beyond a reasonable doubt. The Defendant
9 does not have a burden of proof, doesn't have to present any
10 evidence, doesn't have to testify. So the State goes first.

11 Usually what happens is the State calls a witness to
12 the stand. That witness takes the stand, testifies. All of
13 the questions that the State has are asked, then the Defense
14 has the opportunity to follow up and cross examine that
15 witness.

16 After all of the questions have been asked and that
17 witness is excused, the State calls their next witness to
18 the stand. After the State has called all of its witnesses
19 to the stand and introduced all of the evidence that it
20 intends to introduce, then the State will rest.

21 And then the Defense has the opportunity, if they elect
22 to, to put evidence into the record as well. They don't
23 have to because they don't have the burden of proof, but
24 they can.

25 So if the Defense elects to put evidence into the

1 record, we'll follow the same format called -- Defense calls
2 witnesses to the stand, asks that witness questions and then
3 the State cross examines. And after the State -- the
4 Defense has put all of its evidence into the record, then we
5 will conclude with the introduction of evidence. You will
6 have heard all the evidence that you're going to hear in the
7 case.

8 And then the parties have the opportunity to give
9 closing arguments. Now, closing arguments, again, are not
10 evidence because you've already heard all the evidence.
11 It's the parties' opportunity at that point to argue to you
12 in an attempt to persuade you to their respective sides.
13 What they'll be doing is commenting on the evidence in an
14 attempt to persuade you to their position.

15 After you've heard the closing arguments from both
16 sides, then I'll give you the charge on -- the charge on the
17 law. And then I'll send you back to your jury room and let
18 you begin your deliberations.

19 Now, don't begin your deliberations until I tell you
20 to. And that'll be at the very, very end of the case. And
21 the reason that's important is because you know that you
22 can't make any intelligent decision about anything on the
23 face of this earth until you've heard everything that bears
24 upon the issue to be decided. So it's important that you
25 hear from both sides and you hear everything before you

1 start considering the case and before you begin your
2 deliberations.

3 Now when I say that, that means even when we take
4 breaks, which we will, don't begin discussions of the case.
5 Don't say, wow, that witness really -- I don't believe them,
6 or that's tough to believe, or that was a great witness, I
7 really thought they did well. Don't discuss it at all.
8 You'll have plenty of opportunity to discuss it, I promise
9 you.

10 Also, as we take breaks, if you have the opportunity to
11 get your phone or to talk to somebody outside of the
12 courthouse like a spouse or a friend, don't discuss it with
13 them either because it's not appropriate that you discuss
14 the case with anyone other than the twelve deliberating
15 jurors.

16 We will be taking regular breaks. I take a break about
17 every hour to every hour and a half not because I want to
18 take a break, but because that's about how much time
19 somebody can really focus on what's going on. But y'all are
20 the thirteen most important people in the courtroom right
21 now. So if y'all need to take a break at any other time,
22 even if it's just after -- right after we've come back in on
23 the record, just let me know.

24 Raise your hand, let me know, let one of the bailiffs
25 know, and we'll take a short break and we'll come back in

1 because I'd rather y'all were concentrating on what's going
2 on as opposed to thinking, boy, I'm not catching any of
3 this. I wished they'd shut up, I want to take a break.
4 Just tell me that, okay? You're not going to offend me, and
5 we'll come back in. All right.

6 Like I said, I think that there -- we'll be able to get
7 through the case fairly quickly. I'm going to try to get it
8 done this afternoon, but that remains to be seen. If we get
9 to three or four -- if we get at least to 4:00, I'll
10 probably come back tomorrow because it takes some time to
11 argue and charge and for y'all to deliberate. And I don't
12 want y'all to be here into the evening.

13 If it gets to three, then I'll kind of be looking at it
14 and try to determine how much time we have left, okay? But
15 I'd rather go ahead and get it done today if we can. If
16 not, then we'll bleed over until tomorrow morning and we'll
17 be done then, okay? All right.

18 So the next thing we're going to do is I'm going to
19 have the clerk of court swear you in. You've already taken
20 an oath this week to tell the truth. This is a different
21 oath. And this is an oath to truly and fairly try the case
22 in accordance with the law and the evidence. So having said
23 that, I'll turn it over to the clerk of court to swear you
24 in.

25 **MADAME CLERK:** If you'll all, please, stand and raise

1 your right hand. Do you solemnly swear or affirm in the
2 case about to be tried to truly try the issues joined in the
3 case and a true verdict rendered according to the evidence
4 and law so help you God?

5 **THE JURY:** (Affirmative responses).

6 **MADAME CLERK:** Thank you.

7 **THE COURT:** Okay. All right, Ms. Jordan.

8 **MS. JORDAN:** Your Honor, may I address a matter of law
9 with the Court outside the presence of the jury?

10 **THE COURT:** Yeah, sure. Absolutely. Ladies and
11 gentlemen, we'll take a break. Sometimes we'll end up
12 taking breaks because the lawyers have to make arguments and
13 they're not appropriate for the jury. So that'll be one of
14 these -- one of those points. And we'll come back in fairly
15 shortly, okay?

16 (Whereupon the jury exited the courtroom at 1:42 pm)

17 **THE COURT:** Yes, ma'am.

18 **MS. JORDAN:** Your Honor, the State would make a motion
19 to sequester the witnesses in this case. And I believe the
20 lead officer, the only officer I have in this case, she can
21 stay ---

22 **THE COURT:** Yes, ma'am.

23 **MS. JORDAN:** --- under the rules. We would ask that
24 the other witnesses be sequestered outside of the courtroom
25 during the testimony.

1 **THE COURT:** Okay. Mr. Poole.

2 **MR. POOLE:** Your Honor, I would object to any
3 sequestration whatsoever. I have provided the names of
4 these particular witnesses to Ms. Jordan ahead of time.
5 She's had an opportunity to speak to at least one of them.
6 So nothing new is going to come that she's probably not
7 aware of. I've let her know what their names was -- were,
8 the addresses and what they would say. So I don't see any
9 necessity for sequestration.

10 **THE COURT:** Okay. All right. I appreciate that. And
11 I don't -- I think very rarely is there a necessity for
12 sequestration, but I know that each side has certain
13 theories of the case and has certain notions about the way
14 he or she may want to approach it tactically and
15 strategically.

16 I know that, you know, obviously in Federal Court
17 matters of sequestration are granted as a matter of right.
18 And in State Court it's fairly liberal. And I generally
19 grant sequestration upon request of either party. So in
20 this case, and I don't see any compelling reason to deny the
21 motion, and I will invoke an order of sequestration.

22 Now, y'all have to police the order of sequestration
23 because I don't know who the witnesses are. And I'm not
24 going to be policing and watching who comes in and out of
25 the courtroom. So y'all are going to have to tell me, you

1 know, if somebody is about to violate the order of
2 sequestration, usually unknowingly and unwittingly, but
3 y'all got to tell me, okay?

4 MS. JORDAN: Your Honor, I have -- both of my witnesses
5 are now present in the courtroom. And I will just ask Ms.
6 Wearing if she could step outside until it's time for her to
7 be called.

8 THE COURT: Okay.

9 MS. JORDAN: And my officer is my first witness.

10 THE COURT: Okay. Good enough.

11 MS. JORDAN: Thank you, Your Honor.

12 THE COURT: All right. Okay. Is that the only matter
13 we need to take up?

14 MS. JORDAN: Your Honor, ---

15 MR. POOLE: Your Honor, while we're on this issue --
16 excuse me, did you need to go first? While we're on the
17 order of witnesses, the Defendant has informed me that one
18 of the State's potential witnesses, Pashana Rose Johnson,
19 may be willing to testify in his defense. I have not
20 actually talked with her, but he said that she's a phone
21 call away and that could be effected.

22 THE COURT: Okay. And you would intend to call her in
23 your case in chief?

24 MR. POOLE: Yes, sir.

25 THE COURT: Okay.

1 **MR. POOLE:** If I deem that her testimony ---

2 **THE COURT:** Yeah, yeah, yeah, yeah. How much time do
3 you need?

4 **MR. POOLE:** We can proceed with the case.

5 **THE COURT:** Okay.

6 **MR. POOLE:** I think the telephone number is in the
7 possession of one of our witnesses.

8 **THE COURT:** Okay.

9 **MR. POOLE:** And that witness can make a telephone call.

10 **THE COURT:** Sure. Yeah. That makes sense to me.
11 Okay.

12 **MR. POOLE:** So we could just go ahead and not let this
13 hold us up.

14 **THE COURT:** Okay. Good. Let's do that.

15 **MR. POOLE:** Okay.

16 **MS. JORDAN:** And, Your Honor, just to briefly put a
17 couple of things on the record just to make the Court aware
18 because I don't want to do anything that would cause a
19 mistrial or anything.

20 **THE COURT:** Sure.

21 **MS. JORDAN:** But my officer in this case has previously
22 arrested this Defendant twice for habitual traffic offender.
23 And I have spoken with her on the phone at least twice and
24 cautioned her about the fact that she can't state that she
25 has arrested him for habitual traffic offender or that he's

1 been convicted of that twice previously. So I wanted to let
2 the Court know that we've had that discussion ---

3 **THE COURT:** Okay.

4 **MS. JORDAN:** --- and cautioned her.

5 One thing that I do want to address is the fact that
6 she would be allowed to state that she is familiar with the
7 Defendant by name and by sight.

8 **THE COURT:** Um-hum (affirmative).

9 **MS. JORDAN:** She also at a certain point in time lived
10 in the same neighborhood or the same apartment complex as
11 the Defendant.

12 **THE COURT:** Um-hum (affirmative).

13 **MS. JORDAN:** Your Honor, I'd also be -- I'd also ask to
14 be allowed to ask if she is familiar with the Defendant by
15 the vehicle that he has driven before because in the prior
16 two instances, that's the same vehicle that she saw him
17 riding in on the night in question here.

18 **THE COURT:** Um-hum (affirmative).

19 **MS. JORDAN:** Or the day in question here. And this
20 case is simply that she sees the Defendant driving, she's
21 unable to stop him right there and he's arrested two days
22 later.

23 **THE COURT:** Okay.

24 **MS. JORDAN:** And that's why I think it's important as
25 to her knowledge of which vehicle he was driving or he's

1 known to drive.

2 **THE COURT:** Okay.

3 **MS. JORDAN:** And I just wanted to make the Court aware
4 of that in case the Court has any issues.

5 **THE COURT:** Uh-uh (negative). Does Mr. Poole take any
6 exception to that?

7 **MR. POOLE:** No, sir. I think it's fair enough. But --
8 and I will also tell my client that should he take the
9 witness stand not to mention the fact of prior habitual
10 traffic offender ---

11 **THE COURT:** Yes, sir.

12 **MR. POOLE:** --- offenses. I don't think that's ...

13 **THE COURT:** It's not relevant. That's right. I got
14 it. Yeah, y'all are thinking right. And I agree with
15 everything that both of you have said, okay? So I'm
16 comfortable with that manner of presentation and that
17 testimony that you've just described.

18 **MS. JORDAN:** Yes, sir. And I'd have one more thing.

19 **THE COURT:** Sure.

20 **MS. JORDAN:** Last, but not least. She also -- the
21 reason that she was aware of him was, of course, because she
22 knew that he did not have a license and they had been
23 suspended. And that is the reason that she noticed him and
24 the vehicle that he was in was that prior knowledge.

25 And I think that that's going to come out anyway when I

1 call the Department of Motor Vehicle's lady and ask to admit
2 the habitual traffic offender letter that his license was
3 suspended. So I would like to also be able to question her
4 about the fact that she had prior knowledge that his license
5 was suspended. That's what -- part of the reason that draws
6 her attention to his vehicle and to him.

7 **THE COURT:** Okay. What's your position on that, sir?

8 **MR. POOLE:** Well, Your Honor, I don't think we need to
9 get into all that. I think if she testifies that she knows
10 that he was an habitual traffic offender, she had that
11 information, and that she wanted to go ahead and do the
12 pursuit, ---

13 **THE COURT:** Um-hum (affirmative).

14 **MR. POOLE:** --- that that's simply enough without going
15 into the fact of the license suspension.

16 **THE COURT:** Okay. All right. Did she know at the time
17 that he had been declared an habitual traffic offender?

18 **MS. RYANT:** Yes, Your Honor, I did.

19 **THE COURT:** Okay. Well, let's leave it at that ---

20 **MS. JORDAN:** Okay.

21 **THE COURT:** --- as opposed to bringing up the
22 underlying charges.

23 **MS. JORDAN:** Yes, sir. But how will we address when I
24 submit the -- through the DMV person when I submit his
25 habitual traffic offender letter because in the notice it

1 does -- it does list the three driving under suspensions
2 that led to the habitual traffic offender status.

3 **THE COURT:** There are two ways to do it.

4 **MS. JORDAN:** Yes, sir.

5 **THE COURT:** Either y'all come to a stipulation that he
6 had been declared an habitual traffic offender or you redact
7 that from the letter. One of the two. It doesn't --
8 however y'all want to handle it is fine with me.

9 **MR. POOLE:** May I have a moment to consult, please?

10 **THE COURT:** Sure.

11 (Pause)

12 **THE COURT:** Yes, sir.

13 **MR. POOLE:** We will stipulate as to HTO status.

14 **THE COURT:** Okay. Are you comfortable with that, Ms.
15 Jordan?

16 **MS. JORDAN:** Your Honor, as long as the stipulation
17 includes the elements in the statute as far as he had been
18 declared, notice had been sent as required by the Department
19 of Motor Vehicles because I know that Mr. Poole and I have
20 had a discussion about whether or not the Defendant received
21 the notification and if he had to by statute.

22 So I don't want to stipulate to that and lose my
23 witness, send my witness back to Columbia if there's going
24 to be any argument at any point that he didn't know he was
25 an habitual traffic offender or that we did not follow the

1 correct statute by sending the advance notification that
2 he's about to become one and the notification that he did
3 become one.

4 **THE COURT:** Okay. Sir.

5 **MR. POOLE:** One moment to confer?

6 **THE COURT:** Sure.

7 (Pause)

8 **MR. POOLE:** Your Honor, I think we've got a stickler
9 right at this point right now.

10 **THE COURT:** Okay.

11 **MR. POOLE:** I think the best thing to do would be to
12 redact the driving under suspension content of the letter.

13 **THE COURT:** Okay. Well, let's redact it then. And the
14 way we can do it is take a black magic marker and strike
15 through the offenses that's in the body of the letter, both
16 on the front and the back so you can't see through it, okay?
17 All right. So before you introduce it, if you'll do that,
18 and that'll be sufficient.

19 **MR. POOLE:** Thank you.

20 **THE COURT:** Yes, sir.

21 **MS. JORDAN:** I'm going to show them what I'm doing.

22 **THE COURT:** Okay.

23 (Pause)

24 **MR. POOLE:** Your Honor, may I be excused for just one
25 minute?

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1 **THE COURT:** Yes, sir.

2 (Pause)

3 **MR. POOLE:** That looks acceptable, Your Honor.

4 **THE COURT:** Okay, good. Good. All right. We ready
5 for the jury?

6 **MR. POOLE:** Yes, sir.

7 **THE COURT:** You ready, Ms. Jordan?

8 **MS. JORDAN:** Yes, sir.

9 **THE COURT:** Okay. All right. Will you bring them in,
10 please, sir?

11 **THE BAILIFF:** Yes, sir.

12 (Whereupon the jury entered the courtroom at 1:56 pm)

13 **THE COURT:** Okay. Ladies and gentlemen, we're going to
14 proceed with opening statements now. Ms. Jordan.

15 **MS. JORDAN:** Thank you, Your Honor.

16 **THE COURT:** Yes, ma'am.

17 **MS. JORDAN:** Ladies and gentlemen, you're here today
18 because the State of South Carolina has accused Kevin Ward,
19 the Defendant, of being an habitual traffic offender. So
20 with that the State has to prove that he was driving a
21 license [sic] in the State of South Carolina after being
22 declared an habitual traffic offender by the Department of
23 Motor Vehicles.

24 We tend or we intend to prove that to you with two
25 witnesses. We're going to call Officer Ryant with the

OPENING STATEMENTS - MS. JORDAN

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1 Spartanburg City Police Department to tell you who she saw
2 driving the vehicle back on July the 6th of 2016. She's
3 going to tell you she was familiar with the Defendant, she
4 saw him driving the vehicle on Crescent Avenue here in the
5 City, but she wasn't able to get back to him and stop him
6 that night.

7 Then we're going to call Marie Wearing from the
8 Department of Motor Vehicles. And she's going to tell you
9 about the notification that was sent to the Defendant
10 regarding his status to drive a motor vehicle in the State
11 of South Carolina.

12 It will probably be a very short simple case just as
13 the Judge had told you. But just because it's short and
14 simple, it is still important. It's important to both sides
15 here.

16 We ask that you just listen to the facts that are
17 presented from the witness stand and to the documents that
18 you're given and that you apply your common sense, which
19 luckily nobody asked you to check at the door when you came
20 into the courtroom today. So just apply your common sense
21 to the information that you hear from the witness stand and
22 the exhibits placed into evidence.

23 At the end of the trial I'll come back to you, probably
24 be later this afternoon or first thing in the morning, and
25 ask you to return a guilty verdict as to the Defendant for

OPENING STATEMENTS - MR. POOLE

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1 driving a motor vehicle in the State of South Carolina after
2 being declared an habitual traffic offender. Thank you.

3 MR. POOLE: May it please the Court?

4 THE COURT: Yes, sir.

5 MR. POOLE: Good afternoon, ladies and gentlemen. Your
6 area is the area of being the finders of fact. Judge
7 Stilwell is the -- his domain is the law. He's going to
8 instruct you as to what the law is in this case as relates
9 to habitual traffic offender status and what it takes for
10 the State to prove their case, which will be to prove each
11 and every element of it beyond a reasonable doubt. That's
12 the State's burden.

13 The Defendant has an absolute right to contest the
14 allegations contained in the indictment. And that's all
15 they are at this point is allegations. They do not become
16 facts until you decide that they are facts because that's
17 your domain. That's your region, that's your frontier.

18 And the Defense in this case is that my client, Kevin
19 Ward, seated right over there next to me is not guilty
20 because he was not the driver of the vehicle. The vehicle
21 that the officer saw was being driven by Mr. Howard, excuse
22 me, an Anthony Makerson. He's one of the witnesses that was
23 called out. He's one of the witnesses that was seated
24 behind us when we selected you.

25 My client was elsewhere. He was in Wellford. And a

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1 witness by the name of Howard Davis will testify to say that
2 he was with him at the time and date that this occurred on
3 July 6th. It was in the evening around seven or 8:00.

4 So -- and it's up to the Defendant to testify. He
5 doesn't have to testify on his behalf if he chooses not to.
6 And we may have one more witness. So this will be a fast
7 case, a short one, but nevertheless, it's important to Mr.
8 -- my client, Mr. Ward, and it's important to the State.

9 So thank you for your presence. I know you don't have
10 a choice about being here or not, but thank you for being
11 here and thank you for your attention.

12 **THE COURT:** All right, Ms. Jordan, you may call your
13 first witness, ma'am.

14 **MS. JORDAN:** Thank you, Your Honor. The State calls
15 Officer Chindar Ryant.

16 **MADAME CLERK:** If you'll place your left hand on the
17 Bible and raise your right.

18 **Chindar Ryant,** being duly
19 sworn testifies as follows;

20 **MADAME CLERK:** Thank you.

21 **Direct Examination by Ms. Jordan:**

22 Q. Please state your full name for the record.

23 A. My name is Officer Chindar Ryant.

24 Q. And if you need to, you can move the microphone a
25 little closer to you so you don't have to bend over.

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- 1 A. Okay. Thank you.
- 2 Q. Where are you presently employed?
- 3 A. The City of Spartanburg Police Department.
- 4 Q. How long have you been employed there?
- 5 A. I'm working on my fourth year with the department.
- 6 Q. Okay. What is your position at the police department?
- 7 A. I'm a law enforcement officer, patrol.
- 8 Q. Okay. Have you been on patrol for the almost four
- 9 years you've been on duty?
- 10 A. Yes, ma'am, the entire four years.
- 11 Q. Okay. And what are your -- what are some of your
- 12 duties as a patrol officer?
- 13 A. We go out to the communities, we patrol, we respond if
- 14 we get calls, just -- I don't know any other way to put it.
- 15 Just patrol, I guess.
- 16 Q. Were you working on July the 6th of 2016?
- 17 A. Yes, ma'am, I was.
- 18 Q. Okay. Are you familiar with the Defendant in this
- 19 case, Kevin Ward?
- 20 A. Yes, ma'am, I am.
- 21 Q. Do you know him by sight?
- 22 A. I do.
- 23 Q. Do you also know him by his name?
- 24 A. Yes, ma'am.
- 25 Q. Okay. Do you also -- or prior to July the 6th, 2016

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1 did you also have previous knowledge that he had been
2 declared an habitual traffic offender?

3 A. Yes, ma'am, I did.

4 Q. Okay. At that point in time where were you living?

5 A. I was living at , which is
6 Park Square Apartments, in the City limits.

7 Q. Okay. Do you know if the Defendant stayed in that same
8 apartment complex occasionally?

9 A. Yes, ma'am. He lived out there as well.

10 Q. Okay. Will you tell the jury about what you saw on
11 Crescent Avenue back on July the 6th of 2016?

12 A. Yes, ma'am. I was -- I had turned onto Crescent Avenue
13 from John B. White, and I observed Mr. Ward driving a older
14 model, I believe it was a burgundy Chevy Tahoe with a South
15 Carolina tag of . We weren't going that fast, maybe
16 about fifteen to twenty miles per hour.

17 We approached each other. I recognized the vehicle. I
18 had previous encounters with the Defendant. So I recognized
19 the vehicle and him immediately. He had -- his dreads were
20 upright. And at the time he was wearing a head wrap with
21 Jamaican colors on it.

22 He had a goatee with the -- the bottom of the goatee a
23 little bit longer. But again, I could -- I recognized him
24 immediately because I've dealt with him previously. And
25 again, I stayed in apartment -- the same apartment complex

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- 1 with him.
- 2 Q. Okay. I'm going to stop you right there for a moment
- 3 and just ask you a couple of quick questions. Is this area
- 4 -- what county in this area is Crescent Avenue in?
- 5 A. It's in the City limits of Spartanburg County.
- 6 Q. Okay. And what time of day was this? You may have
- 7 stated it, and I might have missed it.
- 8 A. It was around seven pm.
- 9 Q. Okay. What was the lighting at this point in time?
- 10 A. It was lit. I could see. Mr. Ward had his windows
- 11 down. So when we passed each other, he looked at me, and I
- 12 looked at him, and we kind of locked eyes for a moment. So
- 13 I, you know, again, I knew exactly who he was.
- 14 Q. Okay. And you're positive that the person that you saw
- 15 that day is the Defendant, Kevin Ward?
- 16 A. Yes, ma'am, I'm positive.
- 17 Q. Same Defendant that's sitting at the table with -- or
- 18 same gentleman that's sitting at the table with Roger Poole?
- 19 A. Yes, ma'am.
- 20 Q. Okay. So the person that you saw driving that vehicle
- 21 had dreads and had the dreads placed up as the Defendant has
- 22 them today?
- 23 A. Exactly how he has them today.
- 24 Q. Okay. Was it in just a different color wrap?
- 25 A. It had Jamaican colors on it.

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1 Q. Okay. Are you familiar with the fact -- with the type
2 of vehicle the Defendant would drive?

3 A. Yes, ma'am. Again from previous encounters with him,
4 he's driven that same vehicle. He's always been in that
5 same vehicle.

6 Q. Okay. Just for people who may not know, is Crescent
7 Avenue a two lane road or does it have more than two lanes?

8 A. It's a two lane road.

9 Q. Okay. And John B. White, how many lanes does that
10 have?

11 A. Where I turned onto Crescent from, I believe it was
12 four lanes. Two on each side of the median.

13 Q. Is that sort of near where there's an elementary school
14 on Crescent Avenue?

15 A. It is.

16 Q. Okay.

17 A. Yes, ma'am.

18 Q. Were you able to stop the Defendant that night?

19 A. I could not. When I saw Mr. Ward I attempted to turn
20 my vehicle -- well, I did turn my patrol vehicle around to
21 get behind to attempt a traffic stop, but by the time I had
22 got behind him he had already turned off onto another
23 street. So I wasn't able to stop him when I had saw him
24 driving the vehicle.

25 Q. Did you activate your blue lights in attempt to chase

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1 the Defendant?

2 A. No, ma'am. He had turned down Crestview. And by the
3 time I had got up to Crestview, he was out of sight. So I
4 did not activate my blue lights.

5 Q. Okay. Is there any policy that dictates whether or not
6 you can activate your blue lights in a situation like that?

7 A. In this particular situation it's not mandatory that I
8 activate my blue lights unless I can safely get up behind
9 the Defendant.

10 Q. When you came upon -- and it's my understanding when
11 you came upon him you were not able to see him, once again,
12 made the turn off of Crescent Avenue?

13 A. I could not see him.

14 Q. Okay.

15 A. No.

16 Q. You said that you got the tag number earlier. How did
17 you get the tag number?

18 A. When I had -- when he was passing me I was able to see
19 his tag number in my mirror. And, again, when I turned
20 around I was able to see his tag number as well, but I just
21 couldn't get up to the car quick enough by the time he had
22 turned off.

23 Q. Okay. Were you -- and you were still going at a slow
24 rate of speed when you passed by him and were able to look
25 in your rearview mirror?

CHINDAR RYANT - DIRECT EXAMINATION BY MS. JORDAN

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1 A. Yes, ma'am.

2 Q. Okay. Once you determined you were not able to find
3 him on Crestview Avenue what did you do?

4 A. At that time I went to his residence to see if he had
5 returned to his apartment. And I went to his residence and
6 I spoke to his girlfriend. And I had asked his girlfriend
7 did he -- did she know who had her vehicle, the vehicle that
8 he was driving? And she kind of got quiet for a moment and
9 she ---

10 MR. POOLE: I object ---

11 A. --- said ---

12 MR. POOLE: --- to hearsay, Your Honor.

13 THE COURT: Okay. I sustain.

14 Q. When you went to that apartment did you see the
15 Defendant?

16 A. No, ma'am, I did not.

17 Q. Do you recall whether or not you saw the burgundy Tahoe
18 ---

19 A. It was not ---

20 Q. --- at the ---

21 A. --- there.

22 Q. --- apartment complex?

23 A. It was not there.

24 MS. JORDAN: Your Honor, may I have just a moment?

25 THE COURT: Sure. Yes, ma'am.

CHINDAR RYANT - CROSS EXAMINATION BY MR. POOLE

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1 (Pause)

2 Q. Please answer any questions the Defense attorney may
3 have.

4 A. Yes, ma'am.

5 **Cross Examination by Mr. Poole:**

6 Q. Officer Ryant, just a few questions. You say that you
7 knew Mr. Ward because of -- amongst other reasons, that you
8 lived in the same apartment complex as he did?

9 A. Yes, sir.

10 Q. And he's always had a head wrap, right?

11 A. Yes, sir.

12 Q. He's always had gold teeth?

13 A. I'm not sure if he has gold teeth or not.

14 Q. And this Tahoe, it's a truck, is it not?

15 A. Yes. It's a SUV truck.

16 Q. What kind of -- SUV. What color?

17 A. It's burgundy.

18 Q. Okay. And when you went to his residence, where was it
19 that you went to his residence? What -- where -- what was
20 the address there?

21 A. , Spartanburg, South Carolina,
22 29301.

23 Q. Was that where you were living at the time?

24 A. Yes, sir.

25 Q. Okay. And so when you saw him you were on Crescent ---

CHINDAR RYANT - CROSS EXAMINATION BY MR. POOLE

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- 1 A. Yes, sir.
- 2 Q. --- Street?
- 3 A. Crescent Avenue.
- 4 Q. Okay. Is it -- does it intersect to John B. White?
- 5 A. It does.
- 6 Q. Okay. And you did not activate your blue lights at any
- 7 point in time, right?
- 8 A. No, sir, I did not.
- 9 Q. And there was no high speed chase, was there?
- 10 A. No, sir.
- 11 Q. And we're talking about something that lasted just a
- 12 short period of time, aren't we?
- 13 A. As far as our encounter is what you mean?
- 14 Q. Right.
- 15 A. Yes, sir. It wasn't that long.
- 16 Q. Okay. Could you estimate how long? Matter of seconds?
- 17 A. Maybe twenty or twenty-five seconds from the -- from
- 18 the moment it took me to see him approaching me until we
- 19 actually passed each other?
- 20 Q. Yep.
- 21 A. About twenty to twenty-five seconds.
- 22 Q. Okay. Less than half a minute?
- 23 A. Yes.
- 24 Q. Okay. And you talked to his girlfriend at the
- 25 residence, is that correct?

CHINDAR RYANT - CROSS EXAMINATION BY MR. POOLE

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- 1 A. Yes, sir, I did.
- 2 Q. All right. Now he was not driving too slow nor was he
- 3 driving too fast, is that your testimony?
- 4 A. Well, I believe the speed limit on Crescent is, I
- 5 believe thirty, and we were going about fifteen.
- 6 Q. Okay. And so -- but he was not -- the car, whoever the
- 7 driver was, was not committing a crime?
- 8 A. I recognized him to be a habitual traffic offender,
- 9 which is a crime.
- 10 Q. Okay. That's your testimony, and I understand that.
- 11 But there was no speeding violation?
- 12 A. No, sir.
- 13 Q. No traffic violation?
- 14 A. No, sir.
- 15 Q. No probable cause for you to stop the vehicle other
- 16 than what your testimony is?
- 17 A. Right.
- 18 Q. Is that right?
- 19 A. Him being a habitual traffic offender.
- 20 Q. Right. That's ---
- 21 A. Right.
- 22 Q. Okay. And when was the warrant served on him?
- 23 A. I believe two days after I had saw him.
- 24 Q. Okay. Why was it not procured earlier?
- 25 A. Well, I don't -- I didn't serve the warrant. I just

CHINDAR RYANT - CROSS EXAMINATION BY MR. POOLE

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1 sign -- well, I requested a warrant and granted -- I was
2 granted the warrant. I didn't serve -- I don't even know
3 who was the arresting officer for him.

4 Q. Okay.

5 A. But the same day that I saw him, I did get the warrant
6 the same day.

7 Q. Okay. At what time on your shift was this?

8 A. It was around seven pm.

9 Q. Okay. And what time do you go on your shift?

10 A. Four pm.

11 Q. Okay. Did you notice whether or not the Tahoe was
12 there when you left to go on your shift?

13 A. I didn't pay any attention to that.

14 Q. Okay. Is the Tahoe parked in the complex where you
15 mentioned ---

16 A. Was it parked there that day?

17 Q. Did you ever see the Tahoe parked there before?

18 A. Yes.

19 Q. Okay. And do you know to whom that belongs to?

20 A. I believe it belongs to his girlfriend.

21 Q. And what's the girlfriend's name?

22 A. Pashana, I believe.

23 Q. Okay. Do you know the last name?

24 A. No, sir, I don't.

25 **MR. POOLE:** All the questions I have, Your Honor.

MARIE WEARING - DIRECT EXAMINATION BY MS. JORDAN

1 **THE COURT:** Okay. Any redirect, ma'am?

2 MS. JORDAN: No, sir, Your Honor.

3 **THE COURT:** Okay. Thank you, ma'am.

4 A. Thank you.

5 **THE COURT:** Appreciate you being here. You may step
6 down. You may call your next witness.

7 **MS. JORDAN:** Your Honor, the State calls Marie Wearing
8 from the Department of Motor Vehicles.

9 **MADAME CLERK:** Place your left hand on the Bible and
10 raise your right.

11 Marie Wearing, being duly
12 sworn testified as follows;

13 **MADAME CLERK:** Thank you.

14 Direct Examination by Ms. Jordan:

15 Q. Please state your name for the record.

16 A. Marie Wearing.

17 Q. Where are you currently employed?

18 A. South Carolina Department of Motor Vehicles.

19 Q. What is your position at the DMV?

20 A. Custodian of driver's records.

21 Q. Okay. Can you tell the jury a little bit about what
22 you do in the administration of your job?

23 A. When the citations comes into the Driver's Records
24 Department we key it into the computer and it automatically
25 generates a suspension notice.

MARIE WEARING - DIRECT EXAMINATION BY MS. JORDAN

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1 Q. Okay. And are those records kept as part of your --
2 part of the Department of Motor Vehicles job or ---

3 A. Yes.

4 Q. Okay.

5 A. Through the business course of the day.

6 Q. And how are they kept during the course of the business
7 day?

8 A. It's kept on a hard drive on [sic] the DMV Office.

9 Q. Okay. And do you, at the request of other State
10 offices, such as the Solicitor's Office, do you pull driving
11 records for individuals?

12 A. That's correct.

13 Q. Okay. Can you tell the -- tell the jury how y'all
14 handle sending notifications of habitual traffic offender
15 status to individuals who have been declared an habitual
16 traffic offender.

17 A. Once you have generated three major suspensions or ten
18 minor, it's generally -- it's automatic. Once we key the
19 citation, automatic generated habitual offender letter, and
20 it's sent to the address that's on the Defendant's driver's
21 license.

22 Q. Okay. And do y'all keep a copy of that letter once
23 it's sent?

24 A. That's correct.

25 Q. Okay. What else do you keep with that letter?

MARIE WEARING - DIRECT EXAMINATION BY MS. JORDAN

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1 A. We also keep the citation notice also.

2 Q. And I'm going to show you -- and I've already shown
3 this to Defense counsel. I'm going to show you what's
4 previously been marked as State's exhibit number 1 and ask
5 if you recognize this item?

6 A. Yes.

7 Q. Is -- are the documents in front of you items that are
8 kept in the normal course of business for the Department of
9 Motor Vehicles?

10 A. That's correct.

11 Q. Are those true and accurate copies? With the exception
12 of the second page that has some items blacked out, are
13 those true and accurate copies of the information kept at
14 the DMV?

15 A. Yes.

16 Q. Okay. And does it also have a stamp on it that states
17 that these are true and accurate copies?

18 A. Yes.

19 Q. Okay.

20 **MS. JORDAN:** Your Honor, at this time ---

21 Q. And do you recognize those items in front of you?

22 A. Yes.

23 **MS. JORDAN:** Your Honor, at this time we would move
24 State's exhibit number 1 into evidence.

25 **MR. POOLE:** No objection.

MARIE WEARING - DIRECT EXAMINATION BY MS. JORDAN

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1 **THE COURT:** All right. Without objection, the same is
2 moved into evidence.

3 (Whereupon State's exhibit 1 was admitted into
4 evidence)

5 **MS. JORDAN:** Your Honor, ---

6 Q. And, Ms. Wearing, could you tell the Court, I'm sorry,
7 tell the jury what is on the front page of that packet that
8 you have.

9 A. It's a certification of mailing. This notice -- do I
10 need to read this?

11 Q. Yes, ma'am.

12 A. Okay. This notice of suspension is a true and correct
13 copy of the original notice of suspension which was computer
14 generated on March the 13th, 2015, processed in the normal
15 course of business and deposited in the United States
16 mailing and post prepaid address to the driver at the
17 address contained at the DMV records, electronically stored
18 under file with the South Carolina Department of Motor
19 Vehicles.

20 Q. Okay. That's signed by an employee with the Department
21 of Motor Vehicles?

22 A. That's correct.

23 Q. Okay. What is on the second page? Would that be what
24 we refer to as the habitual traffic offender letter?

25 A. Yes.

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1 Q. Okay. And that's sent out to an individual notifying
2 them of that declaration?

3 A. That's correct.

4 Q. Okay. What date was that sent to the Defendant, Kevin
5 Ward?

6 A. March the 13th, 2015.

7 Q. Okay. What is ---

8 **MS. JORDAN:** If I may approach, Your Honor?

9 **THE COURT:** Yes, ma'am.

10 Q. Let me make sure I've got the pages right in my head.
11 Can you tell the jury what the third page is? I may -- I
12 believe it may be another copy of the certificate of
13 mailing.

14 A. Certificate of mailing, but this was certified.

15 Q. Okay.

16 A. Yes.

17 Q. And what do you have on the additional -- on the final
18 two pages of that packet?

19 A. Return receipt to the DMV Office.

20 Q. Okay.

21 A. And the -- which was not signed.

22 Q. Okay. When you send out the habitual traffic offender
23 notification do you send it in regular mail or do you send
24 it as certified letters?

25 A. We send it -- the suspension notice, DUS, as certified

MARIE WEARING - DIRECT EXAMINATION BY MS. JORDAN

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1 and the habitual offender letters as regular U.S. mailing.

2 Q. Okay. So that was mailed to the Defendant?

3 A. That's correct.

4 Q. What address was it mailed to?

5 A. Dale Street, Moore, South Carolina, 29369.

6 Q. And how was that address picked by the Department to
7 mail it to?

8 A. Because this is official notice once we have mailed out
9 the other three notice certified. This is -- this was a
10 certificate of mailing. And the other letters went out
11 certified, which came back to us not signed.

12 Q. I must have -- I may have misphrased that. How do you
13 pick the address that it's sent to?

14 A. How do we pick the address?

15 Q. Yes, ma'am.

16 A. It's just the address that the driver have on his
17 application at the DMV.

18 Q. Okay. So it's one that's on file placed by the
19 Defendant?

20 A. That's correct.

21 Q. Okay. Do you happen to have a copy of the Defendant's
22 driving record on you today?

23 A. Yes.

24 **MS. JORDAN:** Your Honor, if I may have something

25 admitted just for purposes to show the witness just as --

MARIE WEARING - DIRECT EXAMINATION BY MS. JORDAN

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1 just to have it marked ---

2 **THE COURT:** Yeah, marked for identification?

3 **MS. JORDAN:** Yes, sir.

4 **THE COURT:** Sure, you may.

5 (Whereupon State's exhibit 2 was marked for
6 identification)

7 Q. Ms. Wearing, I'm going to show you what's been
8 previously marked just now as State's exhibit number 2 and
9 just ask you if you identify -- if you can tell the jury
10 what this item is?

11 A. This is a copy of the Defendant's driver's license.

12 Q. Okay. And my only question with regard to this item is
13 whether or not that shows if there's been any change of
14 address by this Defendant?

15 A. No.

16 Q. Would a change of address be documented on a driver's
17 -- a certification of the driving record?

18 A. That's correct.

19 Q. Okay. But there has not been one there?

20 A. No changes.

21 **MS. JORDAN:** If I may have a moment, Your Honor.

22 **THE COURT:** Yes, ma'am.

23 (Pause)

24 Q. Ms. Wearing, you were -- are you aware of any
25 notification requirement if the Defendant does change his

MARIE WEARING - CROSS EXAMINATION BY MR. POOLE

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1 address?

2 A. That's correct.

3 Q. What is that notification requirement?

4 A. It will be like a -- a DR-47, it's an address changes.

5 And we will key in the address to his driver's records.

6 Q. Okay. And that would show on the ---

7 A. That -- we do a address history, correct, and his

8 driver's license.

9 Q. Okay. Do you know if there's a requirement that a
10 person needs to change their license if they move or change
11 their address?

12 A. No, just fill out the application.

13 Q. Okay. Please answer any questions Mr. Poole may have.

14 **Cross Examination by Mr. Poole:**

15 Q. Ms. Wearing, just about four questions to go back over
16 your testimony. The date of the letter was March 13, 2015,
17 is that correct?

18 A. Yes.

19 Q. The date it was sent was March 13, 2015, is that
20 correct?

21 A. The date it was sent was March the 13th, 2015, yes.

22 Q. And it was certified, return receipt requested?

23 A. Yes.

24 Q. It was returned, but not signed by Kevin Ward?

25 A. That's correct.

MARIE WEARING - REDIRECT EXAMINATION BY MS. JORDAN

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1 Q. And the address was Dale Street, Moore, South
2 Carolina, 29369?

3 A. That's correct.

4 Q. Is that right?

5 A. Yes, sir.

6 Q. Okay. Thank you, ma'am.

7 A. You're welcome.

8 **THE COURT:** Okay. Any redirect, ma'am?

9 **MS. JORDAN:** Just one quick question, Your Honor.

10 **THE COURT:** Sure.

11 **Redirect Examination by Ms. Jordan:**

12 Q. Based upon the driving record that you've seen,
13 previously seen on Kevin Ward, just for clarification, he
14 had not changed his address at any point in time that you're
15 aware of, is that ---

16 A. That's correct.

17 **MS. JORDAN:** Nothing further, Your Honor.

18 **THE COURT:** Recross?

19 **MR. POOLE:** Nothing further.

20 **THE COURT:** Okay. Thank you, ma'am. I appreciate you
21 being here.

22 **MS. JORDAN:** Your Honor, may this witness be excused?

23 **THE COURT:** Any objection to that, Mr. Poole?

24 **MR. POOLE:** No, sir.

25 **THE COURT:** Okay. Yes, ma'am, you may be excused.

MARIE WEARING - REDIRECT EXAMINATION BY MS. JORDAN

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1 Drive safely.

2 A. Thank you.

3 **THE COURT:** Hope you have a great day. Anything
4 further from the State?

5 **MS. JORDAN:** Nothing from the State, Your Honor.

6 **THE COURT:** Okay. All right. So does the State rest
7 at this point?

8 **MS. JORDAN:** Yes, Your Honor, we do.

9 **THE COURT:** Mr. Poole, do you have a motion for
10 directed verdict that you need to articulate outside of the
11 presence of the jury?

12 **MR. POOLE:** Yes, sir, I do.

13 **THE COURT:** Okay. All right, ladies and gentlemen, I
14 have to take up a short legal matter before we move on with
15 the Defense's case if they elect to put evidence into the
16 record. So please return to your jury room and we'll come
17 back out shortly, okay?

18 (Whereupon the jury exited the courtroom at 2:22 pm)

19 **THE COURT:** Yes, sir.

20 **MR. POOLE:** Your Honor, may it please the Court? I'm
21 not sure I've got the exact statute section, but we
22 discussed this briefly yesterday. The statute says that the
23 DMV must provide notice of an habitual offender status to
24 the Defendant.

25 **THE COURT:** Yes, sir.

1 **MR. POOLE:** And it's in the mandatory language that the
2 DMV shall do it. It's mandatory, not regulatory. And we
3 discussed the fact that -- about certification, return
4 receipt requested and return unsigned.

5 So there's a question here whether the DMV complied
6 with that particular statute. And I'm asking for a motion
7 -- I'm making a motion for a directed verdict of not guilty
8 based on the DMV not complying with the mandates of that
9 statute.

10 **THE COURT:** Okay. All right. Yes, ma'am, would you
11 like to respond?

12 **MS. JORDAN:** Your Honor, it's the same position that
13 under 56-1-360, which I believe the Court has a copy of and
14 the State requests a charge, that it states when notice is
15 required concerning a person's driver's license the notice
16 must be given by the Department of Motor Vehicle by
17 depositing the notice in the U.S. Mail, with postage prepaid
18 addressed to the person at the address contained in the
19 driver's license record at the Department. I believe that
20 Ms. Wearing has testified to all the information required in
21 that sentence.

22 Furthermore, it states the notice -- the giving of
23 notice by mail is complete ten days after the deposit of the
24 notice. She states, and we've got in record, a copy of the
25 letter and a copy of the envelopes that were returned.

1 And it says a certificate by the director of the
2 department or his designee that the notice has been sent as
3 required under the section is presumptive proof that the
4 requirements as to notice of suspension have been met even
5 if the notice has not been received by the addressee. It's
6 the State's position that we -- that the Department of Motor
7 Vehicles has completely complied with the statute as
8 required.

9 **THE COURT:** Did the -- is the -- did the alleged
10 incident occur ten days after notice was sent? And I ask
11 that because I honestly don't know. I haven't looked at the
12 date on the letter.

13 **MS. JORDAN:** Yes, sir, Your Honor. The notice was sent
14 -- and if I -- let me just ---

15 **THE COURT:** Sure.

16 **MS. JORDAN:** I'm giving it to you right. I believe the
17 letter was addressed 3 ---

18 **MR. POOLE:** 13 ---

19 **MS. JORDAN:** --- 13 ---

20 **MR. POOLE:** --- 2015.

21 **MS. JORDAN:** --- 2015.

22 **THE COURT:** Okay.

23 **MS. JORDAN:** And it has incorporated in the letter
24 before, that's admitted to the jury, his habitual traffic
25 notification was -- status period was for April 12th, 2015

1 through 2020. The allegations -- the State's date is for
2 July the 6th of 2016.

3 **THE COURT:** Okay. All right. Mr. Poole, I'll give you
4 the opportunity to respond if you'd like to, sir.

5 **MR. POOLE:** Well, I don't have anything to add to my
6 previous motion.

7 **THE COURT:** Yeah, I wasn't requiring you to. I just
8 thought you might want to say something to that.

9 Under the law and the statutory requirements I deny the
10 motion for directed verdict. I think that under the
11 relevant statutes that notice was provided in compliance
12 with the law. Now, that's insofar as the directed verdict
13 motion is concerned.

14 We need to discuss in our -- if that is a -- actually,
15 I think that's a factual question that the jury will have to
16 determine, and we'll charge them appropriately. But I think
17 there's evidence in the record that notice was complied with
18 for purposes of a directed verdict motion. And I'll deny
19 it.

20 **MR. POOLE:** Yes, sir.

21 **THE COURT:** Okay. Anything else?

22 **MR. POOLE:** No, sir.

23 **THE COURT:** Mr. Poole, does your client intend to
24 testify?

25 **MR. WARD:** Yes, Your Honor.

1 **THE COURT:** Okay.

2 **MR. POOLE:** He does intend to.

3 **THE COURT:** Okay. Do you want me to conduct an
4 allocution on the record, sir?

5 **MR. POOLE:** I think that would probably be appropriate.

6 **THE COURT:** Okay. All right. Mr. Ward, will you stand
7 up, please. Would you raise your right hand. You swear or
8 affirm the testimony you're about to give is the truth, the
9 whole truth and nothing but the truth so help you God?

10 **MR. WARD:** Yes, Your Honor.

11 **THE COURT:** Okay. And I hear you saying that you're
12 going to testify, and I respect that. I just need to make
13 sure that you understand that you don't have to.

14 You have a right to remain silent under the
15 Constitution, which means you don't have to do or say or
16 prove anything. The State has the burden of proof.

17 You can remain silent because you have that right
18 against self-incrimination. If you -- oh, and you also have
19 the right to testify if you want to. And that's entirely up
20 to you.

21 If you elect to testify, then you assume certain risks
22 because the State has the opportunity to cross examine you.
23 And by cross examining you they would attempt to throw your
24 credibility into question, to impeach you. Now, and if you
25 have any prior records, and I don't know whether you do have

1 any prior record, but they may under certain circumstances
2 be allowed to ask you questions and introduce your prior
3 record to impeach your credibility.

4 Now, if you elect not to testify, of course, then you
5 lose your opportunity to explain your side of the story to
6 the jury. So you understand that you assume risks by either
7 electing to testify or electing not to testify. But
8 ultimately it's your decision as to whether you want to
9 testify or not.

10 You may receive advice from your attorney. And he may
11 tell you one way or the other what he thinks, but ultimately
12 it's your decision and your decision alone. Now, do you
13 understand your right to testify, sir?

14 **MR. WARD:** Yes, sir.

15 **THE COURT:** Okay. And do you appreciate and understand
16 all of the risks and all of the benefits of either
17 testifying or electing not to testify?

18 **MR. WARD:** Yes, sir.

19 **THE COURT:** And have you had the opportunity to discuss
20 the matter with Mr. Poole as much as you needed to?

21 **MR. WARD:** I would like to further.

22 **THE COURT:** Okay. All right. And you're satisfied
23 with your conversations with him and you feel like you are
24 fully apprized of all of your rights and all the information
25 you need to make an intelligent decision?

1 **MR. WARD:** No, I'd like to refer with him further.

2 **THE COURT:** Okay. All right. Good. Well, then y'all
3 have a talk. And, Ms. Jordan, while they're talking, does
4 Mr. Ward have any prior record that you would intend to use
5 to impeach him?

6 **MS. JORDAN:** Yes, Your Honor, he does.

7 **THE COURT:** Okay.

8 (Pause)

9 **MR. POOLE:** Your Honor, I've had further conversation
10 with Mr. Ward. He says he would like to delay his final
11 decision as to whether to testify or not after he hears the
12 testimony of his witnesses.

13 **THE COURT:** Sure. That's fair enough. What -- let me
14 ask you this? What prior record do you intend to introduce
15 for purposes of impeachment?

16 **MS. JORDAN:** Your Honor, he has two different sets that
17 I'd like to address with the Court.

18 **THE COURT:** Okay.

19 **MS. JORDAN:** The first set being that he has two prior
20 convictions for an habitual traffic offender that were
21 convictions from October of 2015. There were two separate
22 offense dates, but he pled to them at the same time and
23 received a sentence before the Honorable Keith Kelly.

24 Your Honor, I understand under 609(a)(1) that those
25 would fit under because it's a punishment that carries in

1 excess of more than one year.

2 **THE COURT:** Um-hum (affirmative).

3 **MS. JORDAN:** I also understand too that the Court,
4 since he is the Defendant, would do a balancing test under,
5 I believe, 403 as far as probative versus prejudicial. I'm
6 tongue-tied today.

7 **THE COURT:** I knew what you meant.

8 **MS. JORDAN:** Yes, sir. So from that perspective, under
9 609(a)(1) I would like to be able to address or ask the
10 Defendant if he has been convicted of a crime or two crimes
11 that carry more than one year. I would not for the purposes
12 of 609(1) or ask the Court to be able to say have you been
13 convicted of habitual traffic offender twice before?

14 **THE COURT:** Okay.

15 **MS. JORDAN:** I would like to, however, have that as an
16 option if notice becomes an issue, a relevant issue with
17 this Defendant as to whether or not he was under notice that
18 he was an habitual traffic offender. At the appropriate
19 time I'd make that argument.

20 **THE COURT:** Okay.

21 **MS. JORDAN:** But we would ask to be able to ask if he
22 were convicted of two crimes that carried more than one
23 year.

24 **THE COURT:** Yeah. I ---

25 **MS. JORDAN:** Without mentioning the name.

1 **THE COURT:** Okay.

2 **MS. JORDAN:** The other set of crimes, Your Honor, falls
3 under 609(a)(2), which is as to dishonesty or false
4 statement. The Defendant has, based upon his NCIC form,
5 copies that we've had pulled from the Magistrate Court and
6 the Municipal Court in Chesnee has three prior convictions
7 for giving false information to police. One of those as
8 listed on his NCIC form is from November the 12th of 2014.
9 And I have a copy of his NCIC if the Court would like to see
10 that.

11 And the other two were listed as no disposition on his
12 NCIC. However, I had my paralegal pull this yesterday and
13 emailed it to the Defense attorney, he has another false
14 information to police that he pled guilty to on -- the
15 sentence date was February 17, 2015. And the false
16 information listed as found guilty on January the 5th of
17 2016. We would ask to be able to ask the Defendant as to
18 those three convictions.

19 **THE COURT:** What's the position of the Defendant?

20 **MR. POOLE:** Our position on the giving of false
21 information is simply this, defendants plead guilty for a
22 variety of reasons, a lot of times maintaining their
23 innocence when they do plead guilty, especially in
24 Magistrate's Court where they don't have the benefit of an
25 attorney, for instance. And so I would ask that the State

1 not be able to get into those matters.

2 And under Rule 403 I think that the -- it's outweighed
3 -- the probative value is substantially outweighed by the
4 danger of unfair prejudice. The jury could draw all sorts
5 of speculative inferences if this aspect of his record is
6 mentioned at all.

7 **THE COURT:** Okay. What were the dates for the false
8 testimony?

9 **MS. JORDAN:** Your Honor, he had one, ---

10 **THE COURT:** False report?

11 **MS. JORDAN:** --- November of 2014, one from January,
12 2016 and one from February, 2015.

13 **THE COURT:** Okay. And they're all false information to
14 police?

15 **MS. JORDAN:** Yes, Your Honor.

16 **THE COURT:** Okay.

17 **MS. JORDAN:** And if the Court needs me to, I can make
18 his NCIC and these two copies of the convictions Court's
19 exhibits for purposes of the record, if needed.

20 **THE COURT:** Okay. All right. I understand that there
21 may be any number of reasons why somebody may plead guilty
22 to those offenses or why they may have been adjudicated
23 guilty. And, you know, those reasons are limited only by
24 our imaginations.

25 But -- and the Defendant, if he elects to testify,

1 certainly would have the opportunity to clarify the
2 circumstances under which there was a guilty adjudication.
3 But under Rule 609 I find that those convictions are
4 admissible, under 609(a)(2), and they're clearly within the
5 time limit.

6 With regard to the habitual traffic offender, the two
7 prior habitual traffic offenders, I do find that under 609
8 that they are admissible, however, under a 403 analysis the
9 specific character of the crime, that is the offense of
10 habitual traffic offender, is unduly prejudicial.

11 Therefore, I will allow you to ask if he has been convicted
12 of a crime that carries over a year or however you phrase
13 it. I thought that that was appropriate. So I'll allow
14 impeachment using those crimes.

15 **MS. JORDAN:** All crimes?

16 **THE COURT:** Yes, ma'am.

17 **MS. JORDAN:** Thank you, Your Honor.

18 **THE COURT:** Yes, ma'am. Okay. That may -- that may
19 help him make a decision as to whether he wants to testify
20 or not. Certainly that's up to him.

21 **MR. POOLE:** Yes, sir. May I have a moment to confer
22 with him?

23 **THE COURT:** Sure.

24 **MR. POOLE:** And I respectfully take exception to Your
25 Honor's ruling.

ANTHONY MAKERSON - DIRECT EXAMINATION BY MR. POOLE

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1 **THE COURT:** Oh, yeah, I understand. I wouldn't expect
2 you to do otherwise.

3 (Pause)

4 **MR. POOLE:** Okay. Your Honor, we're ready to proceed.

5 THE COURT: Okay. All right.

6 **MR. POOLE:** To our next witness.

7 THE COURT: Sure. Can we bring the jury in.

8 (Whereupon the jury entered the courtroom at 2:37 pm)

9 **MR. POOLE:** Our next witness will be -- our first
10 witness will be Anthony Makerson.

11 **THE COURT:** Okay. Come around to the stand, please.

12 **MR. POOLE:** Mr. Makerson, come around to the stand,
13 please, sir.

14 **MADAME CLERK:** Place your left hand on the Bible and
15 raise your right.

16 Anthony Makerson, being
17 duly sworn testified as follows;

18 **MADAME CLERK:** Thank you.

19 **THE COURT:** You can have a seat, sir.

20 Direct Examination by Mr. Poole:

21 Q. What's your name, please, sir?

22 A. Anthony Makerson.

23 Q. And, Mr. Makerson, how old are you?

24 A. Twenty-one.

25 Q. And do you know Mr. Ward?

ANTHONY MAKERSON - DIRECT EXAMINATION BY MR. POOLE

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- 1 A. I do.
- 2 Q. Okay. Are y'all friends?
- 3 A. Yes, sir.
- 4 Q. How long have you known one another?
- 5 A. About -- almost three years.
- 6 Q. Are you a lifelong resident of Spartanburg County?
- 7 A. No, sir.
- 8 Q. Okay. How long have you lived in Spartanburg County?
- 9 A. For about two years.
- 10 Q. Okay. Mr. Makerson, do you know where you were on July
- 11 6th, 2016 around 7:00?
- 12 A. On my way to get something to eat.
- 13 Q. Okay. And what means of transport were you using to go
- 14 get something to eat?
- 15 A. A Chevy Tahoe.
- 16 Q. A what?
- 17 A. Chevy Tahoe.
- 18 Q. A Chevy Tahoe? Describe that, please.
- 19 A. It's burgundy. I believe it was a year 2000 and has a
- 20 dent on the driver's side door. And it's about all I can
- 21 think of right now.
- 22 Q. Okay. Does it belong to you?
- 23 A. No, sir.
- 24 Q. To whom does it belong?
- 25 A. Pashana Johnson.

ANTHONY MAKERSON - DIRECT EXAMINATION BY MR. POOLE

75

- 1 Q. And who is Ms. Johnson?
- 2 A. My mother.
- 3 Q. And did you ask her to use the car?
- 4 A. Yes, sir, I did.
- 5 Q. And what time did you ask her to use it?
- 6 A. It was around five something because I went to work out
- 7 earlier. And after I left the gym, I went to go get
- 8 something to eat.
- 9 Q. Okay. Where did you go to work out?
- 10 A. The YMCA.
- 11 Q. All right. Are you a member there?
- 12 A. I'm not.
- 13 Q. Did you go with a guest -- as a guest?
- 14 A. No. I just paid for a one-day thing because the gym
- 15 that I go to, it was closing down and renovating at the
- 16 time. So I couldn't go there.
- 17 Q. You a member of another gym?
- 18 A. Yes, sir.
- 19 Q. What gym is that?
- 20 A. Planet Fitness.
- 21 Q. Okay. All right. And so you had permission to use the
- 22 Tahoe?
- 23 A. Yes, sir.
- 24 Q. And were you on John B. White Boulevard?
- 25 (Pause)

ANTHONY MAKERSON - DIRECT EXAMINATION BY MR. POOLE

76

1 Q. Do you know -- do you know where you were driving the
2 Tahoe?

3 A. I was ---

4 MS. JORDAN: Objection to leading.

5 THE COURT: Okay. I'll overrule. You can answer the
6 question.

7 Q. Do you know where you were driving the Tahoe?

8 A. Yes, to the Cook Out.

9 Q. And where was it located?

10 A. That's over on Hillcrest.

11 Q. Okay. Well, were you ever on the west side of town?

12 A. Well, when I left, but after that, no.

13 Q. When you left ---

14 A. That's where I live, on the west side of Spartanburg.

15 Q. Okay. You left on -- okay. What time did you leave?

16 A. It was around five -- I want to say 5:15.

17 Q. Okay. And do you know whether or not Mr. Ward at any
18 point in time was driving that Tahoe?

19 A. No, sir, he wasn't.

20 Q. Do you know if he drove it at any time during the
21 night?

22 A. No, sir, he didn't.

23 Q. Was he anywhere around you ---

24 A. No.

25 Q. --- that day or night?

ANTHONY MAKERSON - CROSS EXAMINATION BY MS. JORDAN

77

1 A. Uh-uh (negative).

2 Q. Okay. And so as far as you know you were the only
3 driver and, perhaps, your mother was the only driver of that
4 Tahoe that day?

5 A. Yes, sir.

6 Q. Anybody else could have been driving it or do you know?

7 A. No, sir.

8 Q. No one else could have been driving it?

9 A. No, sir.

10 Q. You know that for a fact?

11 A. Hundred percent sure.

12 Q. Okay. And he is your friend?

13 A. Yes, sir, he is.

14 Q. Would you lie to protect him?

15 A. No.

16 Q. Do you know anything about this case?

17 A. Very little.

18 Q. Okay. All right. Thank you, Mr. Makerson.

19 A. No problem.

20 **THE COURT:** Cross examination.

21 **MS. JORDAN:** Yes, sir, Your Honor. Thank you.

22 **Cross Examination by Ms. Jordan:**

23 Q. Anthony, what was your mom's name again?

24 A. Pashana Johnson.

25 Q. Isn't it true that she dates the Defendant?

ANTHONY MAKERSON - CROSS EXAMINATION BY MS. JORDAN

78

1 A. It is.

2 Q. Okay. Do they currently date?

3 A. They do.

4 Q. Did they date back in July of 2016?

5 A. Yes, ma'am.

6 Q. Okay. Where does your mom live?

7 A.

8 Q. Okay. And does the Defendant sometimes stay there?

9 A. Yes.

10 Q. Okay. Do you also live at that residence?

11 A. I do.

12 Q. Okay. How long had you been living back in Spartanburg
13 County?

14 A. For two years.

15 Q. Two years. Okay. Take me back -- take me back to that
16 day, though. Your mom lives on W.O. Ezell Boulevard, is
17 that correct?

18 A. Correct.

19 Q. And you went to the YMCA?

20 A. Um-hum (affirmative).

21 Q. Okay. Did you -- which direction did you go from W.O.
22 Ezell Boulevard to the Y?

23 A. I believe to the left that you take out of the complex.

24 Q. Okay. Is that a left onto W.O. Ezell?

25 A. Um-hum (affirmative).

ANTHONY MAKERSON - CROSS EXAMINATION BY MS. JORDAN

79

1 Q. Okay. For those who are not familiar, do you know the
2 name of the road that the YMCA is on?

3 A. I can't quite remember. I just know how to get there.

4 Q. Tell me how to get there.

5 A. You take the left and down -- I really only went there
6 that one day because I don't have a membership there. It's
7 been a while since I've been.

8 Q. Is this the YMCA that's in downtown Spartanburg near
9 Pine Street?

10 A. It is.

11 Q. Okay. Is it near a Wendy's?

12 A. I told you, I can't quite remember. It's been a long
13 time since I've been over there.

14 Q. Okay. But you don't remember the exact way that you
15 went?

16 A. No, I don't.

17 Q. Okay. So you just left and went down W.O. Ezell
18 Boulevard?

19 A. Yes.

20 Q. Okay. Do you remember what you did after you went down
21 W.O. Ezell Boulevard?

22 A. I went to Cook Out.

23 Q. Okay. I'm sorry, once ---

24 A. Well, ---

25 Q. --- you left the YMCA?

ANTHONY MAKERSON - CROSS EXAMINATION BY MS. JORDAN

80

1 A. Yeah, went to Cook Out.

2 Q. I apologize. You went to Cook Out. Where is Cook Out
3 located?

4 A. Hillcrest.

5 Q. Okay. So that's away from W.O. Ezell Boulevard, is
6 that correct?

7 A. Correct.

8 Q. Okay. What time did you arrive back at your mom's?

9 A. Around 8:30-ish.

10 Q. Okay. Was it light or dark outside?

11 A. It was dark.

12 Q. Okay. And this was the summer. So do you recall when
13 it gets light or dark?

14 A. I don't recall.

15 Q. Okay. Do you know Officer Ryant?

16 A. I don't know her, but she looks familiar. I believe
17 she used to stay in the complex.

18 Q. Okay. Let me ask you this. You have a very close
19 haircut. Has your hair always been like a tight cut?

20 A. For the most part, give or take.

21 Q. Have you ever had dreads similar to the Defendant?

22 A. No, ma'am.

23 Q. Okay. So back on July 6th of 2016 what did your hair
24 look like?

25 A. Maybe a bit longer than this.

ANTHONY MAKERSON - CROSS EXAMINATION BY MS. JORDAN

81

1 Q. Okay. By a bit longer do you mean maybe an inch?

2 Less?

3 A. Less.

4 Q. Okay. So you've always kept it kind of -- it's not
5 high and tight, but just close?

6 A. Um-hum (affirmative).

7 Q. Okay. Do you recall being on W.O. Ezell Boulevard any
8 that night?

9 A. When I was on the way home.

10 Q. On the way home?

11 A. Um-hum (affirmative).

12 Q. And that would have been about 8:30?

13 A. Well, that's when I got home, yeah.

14 Q. Okay. How far is W.O. Ezell Boulevard from your -- I'm
15 sorry. John B. -- how far is John B. White Boulevard? Do
16 you recall being on that road?

17 A. Um-hum (affirmative).

18 Q. Okay. And that's about the time you went home?

19 A. Yes, ma'am.

20 Q. And was it light or dark out then?

21 A. It was dark.

22 Q. Okay. So it was dark when you were on John B. White
23 Boulevard in your mom's burgundy vehicle?

24 A. Correct.

25 Q. Okay. Did you see a police officer that day?

ANTHONY MAKERSON - CROSS EXAMINATION BY MS. JORDAN

82

1 A. No, not that I recall.

2 Q. You didn't see any marked Spartanburg City Police
3 Department?

4 A. No. I wasn't really paying that much attention.

5 Q. Okay. Does the Defendant provide financially for your
6 mom or you to live in the apartment that y'all live in?

7 A. No.

8 Q. Okay. How -- does your mom work?

9 A. She does.

10 Q. Okay. Does the Defendant work?

11 A. He does.

12 Q. Okay. Does he contribute any money to the household?

13 A. Sometimes, yes.

14 Q. Okay. Does he buy groceries at the house?

15 A. No.

16 **MR. POOLE:** Objection. That's irrelevant.

17 **MS. JORDAN:** Your Honor, at this time -- I'm sorry.

18 **THE COURT:** Okay. Overruled. You may ask it.

19 Q. How does he provide for the household?

20 A. Whenever my siblings may need some food, he'll get it
21 for them or give them rides to work.

22 Q. Okay. But he did stay at the house with you and your
23 mom and your siblings?

24 A. Yes.

25 Q. Okay. How many siblings do you have?

ANTHONY MAKERSON - CROSS EXAMINATION BY MS. JORDAN

83

1 A. Four.

2 Q. Are you the oldest or youngest?

3 A. Oldest.

4 **MS. JORDAN:** If I may have a moment, Your Honor.

5 **THE COURT:** Yes, ma'am.

6 (Pause)

7 Q. Have you ever seen the Defendant drive your mom's
8 vehicle?

9 A. Not to my knowledge.

10 Q. Okay. Didn't you just say that you -- maybe I
11 misunderstood you, that he sometimes gives people ride to
12 work -- rides to work if they need it?

13 A. Well, this has been more recently. This was in my car.

14 Q. Okay. So he's driven your car before?

15 A. Yes.

16 Q. In the recent months?

17 A. Like recent weeks, but, yeah.

18 Q. Okay. And you've never seen him driving your mom's
19 vehicle?

20 A. No.

21 **MS. JORDAN:** Nothing further, Your Honor.

22 **THE COURT:** Redirect, sir?

23 **MR. POOLE:** No, sir.

24 **THE COURT:** All right. Thank you, sir. I appreciate
25 you being here. You may step down.

HOWARD DAVIS - DIRECT EXAMINATION BY MR. POOLE

84

1 A. No problem.

2 **THE COURT:** All right. You may call your next witness,
3 sir.

4 **MR. POOLE:** That would be Mr. Howard Davis. Mr. Davis,
5 come around and be sworn.

6 **MADAME CLERK:** Place your left hand on the Bible and
7 raise your right.

8 **Howard Davis,** being duly
9 sworn testified as follows;

10 **MADAME CLERK:** Thank you.

11 **Direct Examination by Mr. Poole:**

12 Q. What is your name, please, sir?

13 A. Howard Davis.

14 Q. And, Mr. Davis, where do you live?

15 A. Wellford.

16 Q. What's your address?

17 A. , Wellford, 29385.

18 Q. And where is Wellford located with respect to
19 Spartanburg City?

20 A. Between the Lyman and Inman area.

21 Q. Okay. Northern part of the County?

22 A. Yes.

23 Q. All right. How long have you lived at the Wellford
24 address?

25 A. About five years.

HOWARD DAVIS - DIRECT EXAMINATION BY MR. POOLE

85

- 1 Q. Now do you know Mr. ---
- 2 (Someone coughed)
- 3 A. Know who?
- 4 Q. You know the Defendant?
- 5 A. Yes, sir.
- 6 Q. How long have you known him?
- 7 A. A little over two years.
- 8 Q. You friends with him?
- 9 A. Yes.
- 10 Q. Were you with him on July the 6th, 2016?
- 11 A. Yes.
- 12 Q. And how did it come to pass that you were with him?
- 13 A. We was going to go play basketball around like
- 14 5:30/6:00. And the gym opened up at 6:30.
- 15 Q. What gym?
- 16 A. It's Peach Valley First Baptist Church, I think, is the
- 17 name of it.
- 18 Q. Where is it located?
- 19 A. In Chesnee.
- 20 Q. How did he get to your house?
- 21 A. I drove.
- 22 Q. Did you come pick him up?
- 23 A. Yes.
- 24 Q. Where did you pick him up from?
- 25 A. His house.

HOWARD DAVIS - DIRECT EXAMINATION BY MR. POOLE

86

- 1 Q. What's the address there?
- 2 A. I have no idea.
- 3 Q. Is it on Ezell Boulevard?
- 4 A. Yes.
- 5 Q. Okay. And what time did you pick him up again?
- 6 A. About -- it was a little before 6:00.
- 7 Q. And where did you go from there?
- 8 A. We went back to my house because I had to get my
- 9 basketball shoes and then went to Chesnee.
- 10 Q. Okay. And what time did you get to the church?
- 11 A. About 6:15/6:20.
- 12 Q. Okay. Did y'all play some ball?
- 13 A. Yes.
- 14 Q. How long did you play?
- 15 A. To about 8:30/8:40.
- 16 Q. To 8:40 or so?
- 17 A. Yes.
- 18 Q. And where did you go from there?
- 19 A. I dropped him back off at the house.
- 20 Q. At his house?
- 21 A. Yes.
- 22 Q. Back on Ezell Boulevard?
- 23 A. Yes.
- 24 Q. Okay. Are you married?
- 25 A. No.

HOWARD DAVIS - DIRECT EXAMINATION BY MR. POOLE

87

- 1 Q. Okay. You live by yourself?
- 2 A. No. I live with my sister.
- 3 Q. Okay. And at any point in time did -- was he with you
- 4 during the entire time between -- before six until you
- 5 dropped him off at his house?
- 6 A. Before six? Can you repeat that?
- 7 Q. You picked him up before six pm?
- 8 A. Yes.
- 9 Q. Is that right?
- 10 A. No -- well, yeah, six pm.
- 11 Q. Okay. Let's say around six.
- 12 A. Around six, yeah.
- 13 Q. And what time did you take him back to his home?
- 14 A. He probably got back around 9:15.
- 15 Q. Okay. You were with him the whole time?
- 16 A. Yes.
- 17 Q. And at no point in time was he driving a truck, is that
- 18 right?
- 19 A. That's right.
- 20 Q. You're friends with him?
- 21 A. Yes.
- 22 Q. Mr. Ward, right?
- 23 A. Yes.
- 24 Q. Would you lie for him?
- 25 A. No.

HOWARD DAVIS - CROSS EXAMINATION BY MS. JORDAN

88

1 Q. Okay. Answer any questions that the State may have for
2 you.

3 THE COURT: Yes, ma'am.

4 MS. JORDAN: Thank you, Your Honor.

5 **Cross Examination by Ms. Jordan:**

6 Q. Mr. Davis, where were you coming from when you went to
7 his house to pick him up?

8 A. I was coming from another friend's house. We were
9 sitting there playing a game.

10 Q. Okay. Where was that located at?

11 A. I have no idea. I just moved down -- well, I've been
12 down here, but I'm not good with the roads. It was on, I
13 think, Church Street.

14 Q. Church Street here in the City?

15 A. Yes.

16 Q. Okay. And from there you went and picked him up?

17 A. Yes.

18 Q. When did you come up with the plan to go play
19 basketball?

20 A. They text me like during the day and let me know the
21 time they playing or whatnot. So I called him and asked him
22 did he wanted to play.

23 Q. Okay. Where were you at when you got the text from
24 your friends about playing?

25 A. I was at my friend's house playing a game.

HOWARD DAVIS - CROSS EXAMINATION BY MS. JORDAN

89

- 1 Q. Okay. So you drove to W.O. Ezell Boulevard, ---
- 2 A. Yes.
- 3 Q. --- picked up the Defendant?
- 4 A. Yes.
- 5 Q. What was that -- what was the lighting outside at this
- 6 point? Was it, you know, sunlight still out or ---
- 7 A. It was ---
- 8 Q. --- was it getting dark?
- 9 A. Sunlight still out.
- 10 Q. Okay. Who was at the apartment when you picked him up?
- 11 A. I have no idea. I didn't go in. He was coming out.
- 12 Q. And this -- you said this was around six?
- 13 A. Yes.
- 14 Q. Did you see the Chevy Tahoe?
- 15 A. I didn't even pay it no attention.
- 16 Q. Okay. But do you know if his girlfriend drives a Chevy
- 17 Tahoe that's ---
- 18 A. Yes.
- 19 Q. Okay. Did you see it there that day?
- 20 A. I didn't pay really no attention to it, it's ---
- 21 Q. Okay.
- 22 A. --- been so long.
- 23 Q. It's been -- but you still remember picking him up?
- 24 A. Yeah, I remember picking him up.
- 25 Q. Okay. How do you specifically remember that it was

HOWARD DAVIS - CROSS EXAMINATION BY MS. JORDAN

90

1 July 6th, 2016? I'm just curious.

2 A. 'Cause we played church -- we play ball every
3 Wednesday.

4 Q. Okay. Once you picked him up, you said you drove all
5 the way back to your house ---

6 A. Yes.

7 Q. --- to pick up your shoes? Okay. What's the distance
8 between W.O. Ezell Boulevard and Wellford?

9 A. It's like ten minutes.

10 Q. Okay. Which route did you go?

11 A. The highway, 29.

12 Q. Okay.

13 A. I think it was 29.

14 Q. Okay. Did you go straight 29?

15 A. Yes.

16 Q. Did you get on 85 at any point?

17 A. No. Well, when I was -- I had to get on 85 to go to
18 Chesnee.

19 Q. Okay. So you picked him up at W.O. Ezell?

20 A. Yeah.

21 Q. Drove to Wellford?

22 A. Yeah.

23 Q. Got your shoes?

24 A. (Affirmative nod).

25 Q. And drove all the way back to Chesnee?

HOWARD DAVIS - CROSS EXAMINATION BY MS. JORDAN

91

- 1 A. Yes.
- 2 Q. What's the time between your place in Wellford and
- 3 Chesnee?
- 4 A. About ten to twelve minutes.
- 5 Q. So it's another ten to twelve minutes?
- 6 A. Yes.
- 7 Q. Okay. How long were you at the -- at the church?
- 8 A. From like 6:30 to like 8:30/8:40.
- 9 Q. Okay. And you left the church and then what did you
- 10 do?
- 11 A. I dropped him back off at the house.
- 12 Q. Okay. Who else was playing basketball with you that
- 13 day?
- 14 A. Just a whole bunch of people that go to the church.
- 15 Q. How many?
- 16 A. It's -- don't be a big crowd. About nine, ten.
- 17 Q. Okay. Do they keep a list of who's there, ---
- 18 A. No.
- 19 Q. --- and who's playing each day?
- 20 A. They don't.
- 21 Q. How do you get access to the gym at the church?
- 22 A. It's somebody that go to the church come open it.
- 23 Q. Okay. And how do you recall again that it was July the
- 24 6th?
- 25 A. 'Cause it was on a Wednesday. And we all play ball on

HOWARD DAVIS - CROSS EXAMINATION BY MS. JORDAN

92

1 Wednesday.

2 Q. Okay. What was the Defendant wearing?

3 A. I couldn't answer that.

4 Q. Okay. Did he have his hair up similar to the way that
5 he has his hair up today?

6 A. Yes.

7 Q. What was it wrapped in? Do you recall?

8 A. I have no idea. He always have his hair up like that.

9 Q. Okay. You just don't remember ---

10 A. I don't.

11 Q. --- what it was wrapped in that day?

12 A. Uh-uh (Negative).

13 Q. And how do you know him? How did you guys meet?

14 A. We worked together.

15 Q. Where did you work at?

16 A. Martex Fiber.

17 Q. Okay. Is that here in Spartanburg County?

18 A. Yes.

19 **MS. JORDAN:** Your Honor, if I may have a moment.

20 **THE COURT:** Sure.

21 (Pause)

22 Q. When did you find out the Defendant had been accused of
23 driving on July 6th?

24 A. Probably a few weeks ago. He told me.

25 Q. Who told you?

HOWARD DAVIS - CROSS EXAMINATION BY MS. JORDAN

93

1 A. He told me.

2 Q. Okay. When he told you what did you say?

3 A. That we was -- I already knew we was together that day.

4 Q. How?

5 A. If it was March the 6th, I mean, July 6th, we always
6 play ball 'cause we was working together and everything too.

7 Q. Okay.

8 A. So we always play ball on Wednesday.

9 Q. Did you contact anybody and tell them, hey, he was with
10 me?

11 A. No.

12 Q. Okay. So you never contacted law enforcement?

13 A. No.

14 Q. Or the Solicitor's Office?

15 A. No.

16 **MS. JORDAN:** Nothing further, Your Honor..

17 **THE COURT:** Redirect, sir?

18 **MR. POOLE:** No, sir.

19 **THE COURT:** Okay. Thanks for being here, sir. I
20 appreciate it. You can step down.

21 A. Is it okay if I stay?

22 **THE COURT:** Yeah. You don't intend to recall him, do
23 you?

24 **MR. POOLE:** No, sir.

25 **THE COURT:** Okay. Yes, sir. You can stay. Any

1 additional witnesses, Mr. Poole?

2 MR. POOLE: Your Honor, there may be one that'll take a
3 few minutes to get here, just a few minutes.

4 THE COURT: Okay. So we need to take a short break?

5 MR. POOLE: I think that would be a good thing.

6 THE COURT: Okay. All right. Ladies and gentlemen,
7 let's take a short break. I think we may be in a position
8 where we're getting close to being able to go to argument
9 and charge. I don't know for sure, but that's kind of the
10 way it feels to me. So please take a break. And don't
11 discuss the case. We'll come back out shortly and resume
12 testimony.

13 (Whereupon the jury exited the courtroom at 2:58 pm)

14 THE COURT: Okay. We'll take a few -- anything you
15 need to put on the record?

16 MR. POOLE: No, sir.

17 THE COURT: Okay.

18 MR. POOLE: The witness, I am told, should be here very
19 shortly. When she gets here, I'll be looking for her back
20 over here in this area.

21 THE COURT: Okay.

22 MR. POOLE: And I'll need to talk to her for just a few
23 minutes.

24 THE COURT: Okay. All right. We'll take a short
25 break. And we'll -- I'll wait for a reasonable amount of

1 time, okay?

2 MR. POOLE: Yes, sir.

3 THE COURT: Yes, sir. Okay. We'll be in recess until
4 the witness arrives. In the meantime, do y'all have any
5 requests for charge you want to give me? I know you've
6 given me requests to charge. Do you have any, Mr. Poole?

7 MR. POOLE: No, sir. Other than just the standard.

8 THE COURT: Okay. Good enough. Thank you.

9 MS. JORDAN: Judge, there's a possibility that I may
10 ask to recall Officer Ryant to testify as to the location of
11 certain spots here in Spartanburg County just in case I have
12 somebody on the jury who's kind of like me. I've worked
13 here for twelve years, but don't live here. Just for some
14 direction as far as where W.O. Ezell Boulevard is located at
15 in reference to the YMCA that is on Pine Street.

16 THE COURT: Okay. You don't have to explain it all.
17 If you want to do that, that's fine.

18 MS. JORDAN: Okay.

19 THE COURT: Okay. Good enough.

20 MS. JORDAN: Thank you, Judge.

21 THE COURT: Yes, ma'am.

22 (Whereupon court was in recess at 3:00 pm)

23 (Whereupon court reconvened at 3:26 pm)

24 MR. POOLE: Your Honor?

25 THE COURT: Yes, sir.

25 Q. Where do you work?

PASHANA JOHNSON - DIRECT EXAMINATION BY MR. POOLE

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- 1 A. BrightStar.
- 2 Q. What is that?
- 3 A. It's a nursing company. I do home health.
- 4 Q. Okay. And do you know where you were on July 6th,
- 5 2016?
- 6 A. I was home.
- 7 Q. Okay. Do you own a Chevy Tahoe?
- 8 A. I did. I don't have it anymore.
- 9 Q. Burgundy in color?
- 10 A. Tinted windows. (Affirmative nod).
- 11 Q. About 2000?
- 12 A. It's a '99.
- 13 Q. '99?
- 14 A. Um-hum (affirmative).
- 15 Q. And did you own that vehicle on July 6th, 2016?
- 16 A. Yes.
- 17 Q. And on July 6th, 2016 did you give your son permission
- 18 to drive that car?
- 19 A. I did.
- 20 Q. Or truck?
- 21 A. I did.
- 22 Q. All right. About what time did you give him permission
- 23 to do so?
- 24 A. I know it was evening time. I can't remember the exact
- 25 time. It was in the evening.

PASHANA JOHNSON - DIRECT EXAMINATION BY MR. POOLE

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1 Q. Okay. At any point during that day did you give Mr.
2 Ward permission to drive that truck?

3 A. I didn't.

4 Q. Okay. And was Mr. Ward at your house on July the 6th,
5 2016?

6 A. He had stepped out for a little while, but I can't
7 remember exactly where.

8 Q. Okay. And I may have already asked you this, but did
9 you give your son the keys to drive the truck?

10 A. I did.

11 Q. And how long did he have it in his possession?

12 A. It was a few hours. It was a nice little while he was
13 gone.

14 Q. And one other -- more time. Do you remember what time
15 you gave him permission?

16 A. Around the evening time. I just can't remember the
17 exact time.

18 Q. Okay. And nobody else drove that truck that day?

19 A. Uh-uh (negative).

20 Q. All right. Later on did you see Officer Ryant? Did
21 that officer come to your ---

22 A. Um-hum (affirmative).

23 Q. --- house?

24 A. Yeah, she came.

25 Q. What happened then?

PASHANA JOHNSON - DIRECT EXAMINATION BY MR. POOLE

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1 A. She asked me was Kevin driving the truck. And I told
2 her, no, when she said she saw him, I mean, it's at like the
3 south side where the Hot Spot is, on that side of town. So
4 I forgot the name of the street she said. And I was like
5 that's not him because my son has the truck. And she made a
6 phone call. And the next thing I know he got -- Kevin was
7 getting arrested for driving when he wasn't.

8 Q. Okay. So you know Kevin couldn't have been driving
9 because your son was driving?

10 A. Yeah, because my son had my truck.

11 Q. Okay. What sort of relationship do you have with
12 Officer Ryant?

13 A. She used to be the neighborhood officer of the
14 apartment complex.

15 Q. Okay. What kind of relationship did she have with
16 Kevin Ward?

17 A. None as far as I knew besides she arrested him before.

18 Q. Okay. Did the -- did she seem to have it out for him
19 or anything?

20 A. To me she did.

21 Q. Why do you say that?

22 A. I mean, 'cause just going out your way to come knock on
23 the door and ask me was my boyfriend driving my truck. And
24 if she saw him and she know that he's not supposed to drive,
25 why wouldn't she just pull him over and do what she needed

PASHANA JOHNSON - DIRECT EXAMINATION BY MR. POOLE

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1 to do?

2 And then she made statements to the then apartment
3 complex about him doing disturbances over there, causing
4 trouble, and that wasn't true. I never had a complaint on
5 Kevin or had to file a police report. And I saw the sticky
6 note where she made the claim in my folder when I went to
7 renew my lease, what she said to the office manager.

8 Q. So is it fair to say things were just not quite right
9 between ---

10 A. Yeah.

11 Q. --- Officer Ryant ---

12 A. I even asked Kevin did -- maybe did they have like a
13 confrontation or something when I'm not around because I
14 just didn't understand it. And he said, no. So I don't
15 know.

16 Q. Okay. Once again, she came to your house?

17 A. Yes, sir.

18 Q. About what time was that, do you know?

19 A. It was evening -- it wasn't dark yet, but I know it was
20 like late evening.

21 Q. What did she ask you?

22 A. Was Kevin driving my truck. And I told her, no, my son
23 had my car.

24 Q. Okay. And regardless of your information that you gave
25 her what did she do then?

PASHANA JOHNSON - CROSS EXAMINATION BY MS. JORDAN

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1 A. She went -- she went downstairs and made her phone
2 call. And I think it was like a couple of days or so later
3 Kevin was getting arrested for driving.

4 Q. Okay.

5 A. And she didn't even pull him over and arrest him or
6 anything.

7 Q. Okay.

8 A. And me and Kevin both called the police department to
9 make a complaint about it, but nobody never got back to us.

10 Q. Okay. When was that call made?

11 A. Like a couple of days later after we got Kevin out of
12 jail and everything.

13 Q. Okay. Y'all called the police department?

14 A. Um-hum (affirmative).

15 Q. Do you know anything else about this situation, ma'am?

16 A. No. That's all I know.

17 Q. Okay. Thank you very much.

18 A. You're welcome.

19 **THE COURT:** Cross examination, ma'am.

20 **Cross Examination by Ms. Jordan:**

21 Q. Ms. Johnson, when did you give your son your vehicle
22 that day?

23 A. It was like evening time. I don't know the exact time.

24 Q. What do you classify as evening time?

25 A. I know it was after lunchtime, but it wasn't quite

PASHANA JOHNSON - CROSS EXAMINATION BY MS. JORDAN

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1 dark. So it was sometime late evening.

2 Q. Okay. And you remember Officer Ryant coming to your
3 house that evening?

4 A. Um-hum (affirmative).

5 Q. Okay. And were you -- what did you tell her that day?

6 A. That my son had my truck.

7 Q. Okay.

8 A. And that I know that -- that she saw Kevin driving.

9 And I told her -- that's when I said again that my son had
10 the truck. And she was going on to say 'cause you know
11 Kevin is not supposed to be driving. And I said I know
12 that.

13 Q. Okay. You don't recall telling her that you didn't
14 know who had your vehicle?

15 A. No. Why would I tell her that when I know who live in
16 the house and who I let drive my car?

17 Q. Okay. Was Kevin living in the house with you then?

18 A. Yes, he was then.

19 Q. Okay.

20 A. But he wasn't at home.

21 Q. Was he at home any that day?

22 A. In and out. But he has friends that he rides with too.
23 So ...

24 Q. By in and out, what do you mean by that?

25 A. I mean, he go, step out, go do something and come back

PASHANA JOHNSON - CROSS EXAMINATION BY MS. JORDAN

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- 1 home. I mean, I don't know. Run to the store or something.
- 2 Q. Okay. What did he do that day?
- 3 A. I don't remember exactly.
- 4 Q. Okay. But you remember giving the keys to your son,
- 5 but you don't remember what Kevin ---
- 6 A. Kevin was gone already by the time I gave my son my
- 7 keys.
- 8 Q. Okay. So Kevin was gone by what time?
- 9 A. I guess, what, like mid-afternoon or something like --
- 10 a little after lunch.
- 11 Q. So he was gone by a little after lunch?
- 12 A. Yeah.
- 13 Q. And you didn't see him anymore that day?
- 14 A. He came home a little bit after my son returned home a
- 15 few hours later. I don't remember exactly how long he was
- 16 gone.
- 17 Q. Okay. But he left sometime right after lunch and was
- 18 gone?
- 19 A. Um-hum (affirmative).
- 20 Q. Kevin was?
- 21 A. Yeah. He goes visit his friends and stuff like that
- 22 before ---
- 23 Q. How does he visit his friends?
- 24 A. Huh?
- 25 Q. How does he visit his friends? Sorry.

PASHANA JOHNSON - CROSS EXAMINATION BY MS. JORDAN

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1 A. They pick him up.'

2 Q. Okay. So somebody picked him up early that day right
3 after lunch and he was gone all day?

4 A. Yeah. He was gone after lunchtime for a few hours.

5 Q. Okay. Where did your son take your vehicle that day?

6 A. I don't know. He just asked me can he use it. I
7 didn't grill him. I let him use the car.

8 Q. Okay. When he came back what did he have with him?

9 A. I don't remember what he had with him. I just know he
10 came in the room and put my keys on the dresser like he
11 does, and he walked out of my room because I was in the bed.

12 Q. Okay. How soon after Officer Ryant came to your house
13 was Kevin arrested?

14 A. I think it was like a few days later. It wasn't too
15 long. It seemed like it happened fairly quick. I don't
16 remember the exact date.

17 Q. Okay. And you said you called the City Police
18 Department to complain on Ms. Ryant?

19 A. Yeah, because I was asking how can she put a charge on
20 Kevin and she didn't -- why she didn't go on and arrest him
21 and how he got -- charged him and she didn't actually arrest
22 him.

23 Q. Okay. But you never followed up on that?

24 A. No, because I never got a return call. And Kevin
25 called hisself. I don't know if he ever talked to anybody.

PASHANA JOHNSON - CROSS EXAMINATION BY MS. JORDAN

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1 Q. But you never followed up on it?

2 A. Uh-uh (negative). I never got a return call. Uh-uh
3 (negative).

4 Q. Okay. You didn't call them back?

5 A. Uh-uh (negative).

6 Q. And you have a vehicle?

7 A. Um-hum (affirmative).

8 Q. You could have driven to the City Police Department?

9 A. I could have.

10 Q. Did you?

11 A. No.

12 Q. Okay. Does Kevin help out with bills around your
13 house?

14 A. Yeah, when he works.

15 Q. Okay. Well, how does he provide for the family?

16 A. Like I said, when he works or he goes and makes a few
17 dollars, I guess, like helping somebody out doing yard work
18 or something like that, then he contributes to the house.

19 Q. Okay. At this time back in July of 2016 was he working
20 anywhere?

21 A. I think he was at Adidas then.

22 Q. Okay. Where -- is Adidas called by any other name?

23 A. Unless he went -- I don't know the name of the temp
24 service he went through, unless that's what you're talking
25 about.

PASHANA JOHNSON - CROSS EXAMINATION BY MS. JORDAN

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1 Q. Okay. Was he working on July the 6th?

2 A. I don't think he was working that day, no. He was out
3 the house. I said he came back a little bit after my son
4 got home. So he couldn't have been working, I don't think.

5 Q. Okay. So he came back after -- late at night?

6 A. Yeah, it was dark by the time Kevin came home.

7 Q. Okay. Did you ever let Kevin drive your vehicle?

8 A. I have.

9 Q. Okay. Have you let him drive it anytime around this
10 time in July?

11 **MR. POOLE:** Objection, Your Honor.

12 **THE COURT:** What's the basis of the objection?

13 **MR. POOLE:** It is not relevant to the facts of this
14 case.

15 **THE COURT:** Okay. I will overrule. I'll let you ask
16 that question.

17 **MS. JORDAN:** Okay.

18 Q. And it's your testimony also -- I'm sorry, if you could
19 answer the question.

20 A. I don't remember Kevin driving my truck around that
21 time. He didn't.

22 Q. Okay. And do you recall what your license tag number
23 was on that suburban?

24 A. I don't.

25 Q. Oh, I'm sorry, Tahoe.

PASHANA JOHNSON - CROSS EXAMINATION BY MS. JORDAN

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1 A. I don't remember it.

2 Q. Okay. Did you have the same tag number the entire time
3 you had that vehicle?

4 A. Yes.

5 Q. Okay. And it didn't change?

6 A. I don't think it did, no.

7 Q. Okay. And you stated that -- earlier that Kevin never
8 caused any disturbances at that apartment complex at W.O.
9 Ezell Boulevard?

10 A. Uh-uh (negative). We hadn't had -- at that particular
11 time we hadn't had any disturbances when she went and told
12 the apartment complex that.

13 Q. Okay. Do you still live there?

14 A. I do.

15 Q. Okay. But you -- you don't recall speaking with her
16 telling her that you didn't know who had your vehicle?

17 A. I don't -- no, I wouldn't say I don't know who has my
18 vehicle.

19 Q. Okay. So your testimony today is you think you gave
20 your vehicle to Anthony?

21 A. No. I didn't say I think I gave my vehicle to Anthony,
22 I know I gave my vehicle to Anthony.

23 Q. Okay. And you ---

24 **MS. JORDAN:** One moment, Your Honor.

25 **THE COURT:** Sure.

1 (Pause)

2 **MS. JORDAN:** Nothing further, Your Honor.

3 **THE COURT:** Any redirect, sir?

4 **MR. POOLE:** No, sir.

5 **THE COURT:** All right. You can step down, ma'am.

6 Thank you for being here. I appreciate it. Anything
7 further from the Defense?

8 **MR. POOLE:** No, sir, that's all.

9 **THE COURT:** Okay. Do you have any directed verdict
10 motions? Do you want to essentially put into the record the
11 same motions that you had before or do you need to
12 articulate any additional grounds for the same outside the
13 presence of the jury?

14 **MR. POOLE:** For the same purposes -- of economy of
15 time, I make the same motions that I did before based upon
16 the same grounds that I made before.

17 **THE COURT:** Okay. All right. Good enough. And the
18 ruling is the same, I deny the same. Does the State wish to
19 put up any additional evidence in reply, ma'am?

20 **MS. JORDAN:** No, sir, Your Honor.

21 **THE COURT:** No? Okay. All right. Ladies and
22 gentlemen, you've heard all the evidence that you are going
23 to receive in this case. I was hopeful that we were going
24 to be able to go ahead and argue and charge and give you the
25 case this afternoon, but it's a little bit later than I had

1 anticipated.

2 The problem with us starting now with argument and
3 charge is because it's going to take about anywhere from an
4 hour to an hour and a half, which means y'all wouldn't get
5 to the -- get to the case until actually 5:00. You know,
6 y'all may take ten minutes to deliberate and you may take
7 ten hours. I don't know. That's entirely up to you.

8 And I don't want you to be here tonight until nine,
9 ten, eleven or even midnight. So I'm not going to start the
10 process yet because what I'd rather you do is just go home
11 refresh, come back tomorrow, we'll do the argument and
12 charge and then y'all can deliberate without wondering
13 what's happening at the house, how your kids are being fed
14 and all the things that you're missing that you had
15 anticipated doing tonight, okay?

16 So y'all come back, if you will, please, at 9:30.
17 Please don't discuss the case. Please be on time. And
18 we'll start as quickly as we can. Thank you very much.
19 Hope y'all have a great evening.

20 (Whereupon the jury exited the courtroom at 3:40 pm)

21 **THE COURT:** All right. Counsel, I've received your
22 requests for charge. We'll have a short charging conference
23 tomorrow morning at 9:15 in my chambers. If y'all just want
24 to come on back and we'll talk through the charge.

25 I don't think it's going to be real complicated. And

1 I'll tell you what I'm going to charge, give you the
2 definition that I use for reasonable doubt so that when we
3 go in front of the jury we're all on the same sheet of
4 music, okay?

5 MS. JORDAN: Yes, sir.

6 THE COURT: All right.

7 MR. POOLE: Yes, sir.

8 THE COURT: Thank you. I'll see y'all tomorrow
9 morning. I hope you have a good evening.

10 MS. JORDAN: You too.

11 MR. POOLE: Thank you. You too.

12 (Whereupon court was in recess at 3:40 pm)

1 Thursday, March 30, 2017:

2 (Whereupon court reconvened at 9:40 am)

3 **THE COURT:** All right. Are we ready to proceed?

4 **MR. POOLE:** The Defense is, Your Honor.

5 **MS. JORDAN:** Yes, sir.

6 **THE COURT:** Okay. All right. And I know that I've
7 told you in chambers that I'm appointing Mr. Dennis Fant,
8 juror number 45, as Foreman of the jury. So if you'd bring
9 the jury in, please, sir.

10 (Whereupon the jury entered the courtroom at 9:41 am)

11 **THE COURT:** Welcome back, ladies and gentlemen. Mr.
12 Fant, I'm appointing you as Foreman of the jury. That's in
13 recognition of your excellent jury service thus far.

14 Know that your role as foreman of the jury is to ensure
15 that when you begin your deliberations that everyone has the
16 opportunity to be heard. You know that when twelve people
17 get together and have met each other probably for the first
18 time, you're going to have some people who are much more
19 vocal and ready to voice their opinion, and you're probably
20 going to have some people who are more quiet and reticent
21 and reluctant to offer their opinion. So your job in
22 deliberations is just to make sure that everyone has a
23 voice, everyone has the opportunity to voice their opinion
24 in the jury room.

25 Beyond that I can't really give you any greater

1 instructions about how to conduct deliberations. I do jury
2 trials all over the State every week just about and juries
3 usually come to their own method of deliberation. And they
4 settle in -- they settle in on whatever works for them.

5 I've never been on a jury. And I'm precluded from
6 being on a jury. I might like to do it one day, but I don't
7 know how juries conduct their deliberations. But y'all will
8 figure it out, I'm certain, armed with the evidence and the
9 law that I give you.

10 So, Mr. Fant, if during the course of your
11 deliberations the jury has a question, I hope that you
12 don't, but if you have a question, then you'd simply write
13 it down, let the bailiff know, and they'll deliver the
14 question to me, and I'll answer it if I can. Sometimes I
15 get questions that I can't answer.

16 If you ask me questions about evidence, I've already
17 told you I'm not allowed to have an opinion about the
18 evidence. So I might just send you back a curt answer that
19 says I can't tell you.

20 Don't think I'm being rude, there's just some issues
21 that I am not allowed to discuss with you and I can't answer
22 for you. So send me the question, and I'll see if I can
23 answer it if you have any. In the end, also, you'll be
24 responsible for filling out the verdict form, which I'll go
25 over with you when I do the final charge.

CLOSING ARGUMENTS - MS. JORDAN

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1 All right, ladies and gentlemen, we are going to
2 proceed now to closing arguments. Closing arguments, like I
3 told you to begin with, are not evidence. You've already
4 heard all the evidence that you're going to hear in the
5 case. This is simply the attorneys commenting on the
6 evidence in an attempt to persuade you to their respective
7 sides. So, ladies and gentlemen, let's go ahead and get
8 started. Ms. Jordan, your argument, ma'am.

9 **MS. JORDAN:** Thank you, Your Honor. Good morning,
10 ladies and gentlemen, of the jury. I am going to talk to
11 you about what the Defendant's been charged with and what
12 we, the State of South Carolina, has to prove as far as Mr.
13 Kevin Ward.

14 We do have the burden of proof in this case. And as
15 you've already heard, it's proof beyond a reasonable doubt.
16 The one thing I want you to focus on is beyond a reasonable
17 doubt, not any and all doubt. I just wanted to point out
18 that one word in that phrase of beyond a reasonable doubt,
19 just reasonable doubt.

20 We have to prove that the Defendant was driving after
21 being declared an habitual traffic offender and after
22 receiving notice of that. I want to focus on those last two
23 things first before I go back to the driving aspect of it.

24 As far as the habitual traffic offender notification or
25 HTO notification is usually what I call it, you will see

CLOSING ARGUMENTS - MS. JORDAN

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1 that is State's exhibit number 1. You'll have these
2 documents back there with you to look at while you're in the
3 jury room.

4 And you'll notice on the second page of this, it's an
5 official notice that's sent to the address that the
6 Department of Motor Vehicles had for him. You had Ms.
7 Wearing from the Department of Motor Vehicles testify
8 yesterday, never had an address change for Mr. Ward, that
9 this is the address.

10 You're also going to hear the Judge talk to you about
11 the law on the notice in this case. And he's going to tell
12 you, and you listen to it, that certificate of notice is
13 presumptive proof that the notice requirements are met even
14 if not received by the Defendant.

15 The DMV did their job in this case. They noticed that
16 he was an habitual traffic offender as stated under law.
17 They sent him the notice to the address that they had. And
18 this is the notice.

19 Within this page you're going to see that it says the
20 beginning date for the habitual traffic offender status is
21 12:01 midnight on April the 12th, 2015. And it goes for
22 five years. The ending date is midnight on April the 12th
23 of 2020.

24 You guys have heard the date from the officer. It's
25 within this period right here. You have the information

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1 from the DMV to prove that this was within the habitual
2 traffic offender notice period and he had received the
3 notice for this.

4 Driving in the State of South Carolina, legally driving
5 in the State of South Carolina, is a privilege, not a right.
6 When you lose that privilege, it's gone. That's what he
7 did, he lost the privilege. The DMV did their job and told
8 him about that loss of privilege.

9 Whether or not he received it, it's his obligation to
10 notify his change of address if he did move. And none of
11 that was received by the DMV. So they sent it to where they
12 had to send it to him.

13 The Judge is also going to tell you that notice is
14 complete ten days after the object is or after the letter is
15 deposited in the U.S. Mail. You've got all that right here
16 within State's exhibit number 1. I'm going to pass this
17 back to the court reporter so I don't forget.

18 I'm going to move on to the next issue that is before
19 you guys. And that is whether or not the Defendant was
20 driving. We have -- on behalf of the State we had one
21 witness as to whether or not he was driving. And you guys
22 were able to witness Officer Ryant as she testified
23 yesterday.

24 Think about what she told you, how she told it to you.
25 She looked at you and she told you, I know the Defendant, I

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1 know him by sight, I know him by name, we live in the same
2 apartment complex that his girlfriend stays in, that he
3 stays there frequently as well. She's aware of him, very
4 familiar with him, familiar with what he had driven before,
5 which is the burgundy Tahoe that belongs to his girlfriend.

6 Ladies and gentlemen, she says the windows were down,
7 and it was still sunlight. Here in the south, July the 6th,
8 it's still going to be sunlight until past eight, she says
9 around 7:00 when she's out driving.

10 You know, where John B. White -- Crescent Avenue comes
11 into John B. White, that's the area that they're at. She
12 said the speed is very slow. They weren't going fast in
13 that area. She's not alleging that he did anything else
14 other than drive when he doesn't have that privilege to
15 drive anymore. She says she passes him, his window's down,
16 they lock eyes as they're going past. So slowly going past,
17 she locks eyes with him.

18 This Defendant has a very distinctive hairstyle. He
19 wears his hair up and wrapped just as you see it here today.
20 Very distinctive that he has that look when the officer sees
21 him, locks eyes with him, knows him previously and is able
22 to identify him.

23 I just want to point out that he looks nothing like
24 Anthony Makerson, who was here yesterday and testified,
25 close cut hair. Said that's how he's worn his hair, that's

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1 how he had his hair back in July of 2015. Sorry, 2016.

2 Haven't gotten my years straight in my head yet.

3 She also described in addition to his hair that's very
4 distinctive, she described his gold teeth and the goatee
5 that he has, very familiar and very distinctive. She knows
6 him, knows his name, knows the vehicle that he's bound to
7 drive. She sees all of that in Spartanburg County on July
8 the 6th.

9 She tells me that she turns around, they pass slowly,
10 lock eyes and then she turns around on him when she's able
11 to, but can't catch up to him. But he's turned off on a
12 side street and he's gone. She can't catch him. She
13 doesn't chase him because this isn't a situation that would
14 warrant a chase.

15 But what does she do? She follows it up by going to
16 the apartment where his girlfriend lives, which she knows
17 the vehicle is usually at. He's not there. So she leaves
18 the Crescent Avenue area, goes back over to W.O. Ezell
19 Boulevard. He's not there, the vehicle's not there.

20 She goes there immediately and speaks to them. She
21 follows up with them. She gets a warrant that day. And
22 then he's arrested two days later.

23 Ladies and gentlemen, the Judge is going to talk to you
24 about the believability or credibility of a witness and how
25 you can believe all what a witness says or a little bit of

CLOSING ARGUMENTS - MS. JORDAN

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1 what a witness says and none of what a witness says. He's
2 also going to tell you that you can look at different things
3 when you're determining the credibility or believability;
4 their body language, posture, different things like that.

5 And think about it, Officer Ryant sat on the stand and
6 she looked at you guys and she told you what she saw.
7 What's her bias for doing this? Did she just get up and go
8 to work on July the 6th that day and think to myself, you
9 know what I'm going to do? I don't have enough to do, so
10 I'm going to say that Kevin was driving a vehicle when he
11 shouldn't have been driving.

12 And I'm going to follow that up by going to Kevin's
13 house just to see if he's there. Ladies and gentlemen, she
14 didn't just make it up. She saw him driving that day and
15 she came in and told you guys about that.

16 Speaking about credibility and bias and all that, I'm
17 going to turn to the three witnesses who testified for the
18 Defense. His girlfriend, his girlfriend's son, who
19 describes him as a friend as well, and his friend. Let's
20 look at all the things that they told you and how those
21 things kind of don't match up with what was going on that
22 day.

23 Anthony, his girlfriend's son, he says he lives with
24 his mom and the Defendant stays there. The Defendant does
25 help out around the house, gets lunch for the kids, even

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1 gives them rides to work when they need it. He's
2 acknowledging the Defendant does drive, just not on this
3 particular date. Very convenient.

4 He also pointed out, which I thought was interesting,
5 that he drives other stuff, but not his mom's car. But then
6 the mom came in later, Ms. Johnson, and she said, no, he's
7 driven my car before.

8 Anthony says that he asked to use the car around 5:00
9 and went to the Y, that when he left, Kevin wasn't there.
10 So he gets the keys from his mom, he leaves, he goes to the
11 Y. So he leaves W.O. Ezell Boulevard, drives to the Y,
12 which is on Pine Street here, works out at the Y for a
13 while, then he decides to leave and go to Cook Out in
14 Hillcrest.

15 And for any of us who are familiar with the Spartanburg
16 area, you've got W.O. Ezell Boulevard over on the west side
17 near Dorman Center. Then you've got Pine Street where the Y
18 is. It's kind of over here in the City. And then you've
19 got Hillcrest that's over in the opposite direction of all
20 of this.

21 But the one thing that he does mention is, oh, yeah, I
22 was somewhere near John B. White Boulevard that night, but
23 it was dark when I was over there. So it's an amazing map
24 collection that he puts himself into by being over in the
25 area where the officer sees that vehicle.

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1 But look at them, you guys saw Anthony yesterday and
2 you see the Defendant today. They look nothing alike. This
3 is the person the officer saw driving that day, not Anthony.

4 Let's look at Mr. Davis. Mr. Davis is the kind of
5 friend that you want. A couple of weeks ago apparently
6 they're talking and he's like, you know, you remember that
7 day, we were out playing basketball.

8 Mr. Davis is his friend. Mr. Davis probably does play
9 basketball some Wednesdays at that church. And it's kind of
10 like a pattern of habit or something that you do regularly,
11 but you can't say specifically if you did it on that certain
12 date back then. But it amazes me that he's now certain that
13 on July 6th of last year, remembering a few weeks ago that
14 that's what he was doing that day.

15 It's kind of like me saying I usually always grab my
16 seatbelt, but I can't tell you if you go back to a certain
17 day nine months from today that I was wearing it that day.
18 Or that I pick up my niece every Wednesday from dance, then
19 tell you I've been doing that every Wednesday or almost
20 every Wednesday since August.

21 But if you ask me a specific date if I did it then, I
22 can't tell you for sure because other things have come up
23 and I haven't been able to do it. Maybe I got stuck here at
24 court. Maybe she was sick or maybe dance was canceled that
25 night.

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1 But I'm in a pattern where I can say pretty much on
2 Wednesdays that's what I do, but I can't tell you that I do
3 it every time. But yet, he was certain that nine months
4 later that on that specific date that he went there?

5 One thing I also want to point out with him is he says
6 I picked him up at the apartment at W.O. Ezell Boulevard
7 around 6:00, six or 6:15 I picked him up there. But if you
8 think back to what Anthony said, Anthony says I left at five
9 and he wasn't there.

10 Then you add in the mom or the girlfriend, Anthony's
11 mom, and she says Kevin left sometime after lunch and was
12 gone until night. So which one was it? Did Kevin leave
13 sometime after lunch and was gone from W.O. Ezell Boulevard
14 until the night? Did Kevin leave before five and wasn't
15 there or was Kevin there at six or 6:15 when Mr. Davis says
16 he picked him up? He wasn't there at seven something
17 because you know where Officer Ryant says she saw him.

18 Finally the girlfriend. Bias and credibility, if
19 you'll look at them you'll notice that Anthony, when he
20 spoke, he looked down and would occasionally look out the
21 side eye. He never would make eye contact over this way.

22 Look at how Ms. Johnson was on the stand. Very defiant
23 when it came to certain things. She knew some general
24 stuff. She didn't let him drive her car that day, but she
25 didn't know any specifics. Well, it was sometime around

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1 lunchtime. I don't exactly remember. It was sometime after
2 lunch that he left. But I know, I know that my son got the
3 keys to the car that day and took them. I know. Just look
4 back, like I said, believability and credibility of the
5 witnesses.

6 One you have from the State, the notice requirement,
7 the status that he was under, the habitual traffic offender
8 status, and you have the officer who was doing her job back
9 on July the 6th, 2016 when she saw him driving, but
10 unfortunately was not able to catch up with him that day,
11 but tried to follow up on it, was not able to, but she saw
12 him, she saw that gentleman with his hair, goatee and stuff.
13 She saw him driving and was familiar with him, knew his
14 name, knew his face, knew his status and knew that was him
15 driving that day.

16 Ladies and gentlemen, like I said earlier, we were
17 fortunate enough that no one asked you to check your common
18 sense in at the door. So please take your common sense and
19 look at what you've got.

20 I always like the old saying, if it walks like a duck
21 and quacks like a duck, it's a duck. Ladies and gentlemen,
22 the Defendant's guilty of habitual traffic offender. Thank
23 you.

24 **MR. POOLE:** May it please the Court?

25 **THE COURT:** Yes, sir.

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1 **MR. POOLE:** Good morning. I've been doing this for a
2 while. And I hope you don't mind if I use this lectern
3 because after that -- a long period of time -- I have to
4 have these, and I've got to use my notes from yesterday when
5 I was making them as the witnesses were testifying.

6 I trust that y'all had a good evening and a good
7 night's rest. And I appreciate your attention that you've
8 paid during the course of this trial. It's been very short,
9 but nevertheless that doesn't detract from its importance to
10 Mr. Ward and to the State.

11 I disagree with about everything that my friend,
12 Jennifer Jordan, has just told you. There is plenty of
13 reasonable doubt in this case. There are at least five
14 different areas where there is reasonable doubt. And that
15 corresponds with the number of witnesses that testified
16 yesterday.

17 The State has to prove that Mr. Ward, while being under
18 an habitual traffic offender status or HTO, for short, was
19 given notice and that he was driving that night. I agree
20 that those are the issues, but I disagree with the fact that
21 he was the one driving the Tahoe. And the reasons are
22 absolutely clear from what the Defense and what the State
23 presented yesterday.

24 The first witness, of course, was Officer Ryant. She
25 was on patrol on July 6th, 2016 at around seven pm. She

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1 told you where she saw Mr. Ward.

2 She went into great detail as Ms. Jordan asked to give
3 you the description of Mr. Ward. She said that he was
4 driving the Tahoe that she knew to belong to his girlfriend,
5 that he had a head wrap on, that he had gold teeth. She
6 told you specifically that information.

7 She went into detail to make it a point that she knew
8 it was him, but she otherwise testified that she lived at
9 in the same apartment complex with
10 Mr. Ward. So she knows him by name and sight from him
11 living there, not necessarily because he was violating the
12 law that night. Did she, in fact, see him driving that
13 Tahoe? I say, no, she did not.

14 And one of the things that really puzzles me about her
15 actions that night, I'm talking about the officer's, and
16 believe me, I respect everybody in law enforcement. I
17 respect their jobs, their responsibilities, what they have
18 to do, what they have to put up with on a daily basis, and
19 their families too, but they, just like anyone of us, have
20 their own prejudices, biases, attitudes. And there's
21 something that exists between Officer Ryant and the
22 household that Mr. Ward was living in at this time. And
23 I'll get around to that when I talk about the last witness.

24 But she testified that she knew that Mr. Ward was
25 breaking the law when she saw him. The traffic was slow.

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1 Why didn't she go ahead then, activate her blue lights and
2 then pursue, stop and arrest Mr. Ward? Ask yourselves that
3 question. Why -- what prohibited her from doing that? It's
4 because he wasn't there.

5 There was no high speed chase that would have evolved
6 from this. There was no elusiveness that would have
7 occurred from this. There was no reason why she could not
8 have effected the arrest then and there when she knew that
9 he was violating the law according to her testimony.

10 But, no. What she does, she takes it upon herself to
11 go over to and talk to Ms. Johnson
12 and have a confrontation and face-to-face with her. And
13 apparently that conversation didn't go over well because you
14 heard Ms. Johnson's testimony yesterday. And, in fact,
15 there have been some problems between them to the point that
16 Ms. Johnson had called the City to try to complain about
17 Officer Ryant. So Mr. Ward simply was not there.

18 The issue of the notice. I know some of you, if not
19 most of you know a lot about certified mail and return
20 receipt requested. And Ms. Wearing testified that the
21 letter was dated March 13, 2015, it was sent March 13, 2015,
22 it was certified return receipt requested. That's where the
23 receiver signs on the receipt and it's sent back to show
24 proof of delivery. And it had a particular address on it.
25 There was no return receipt. It was returned as

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1 undeliverable.

2 Now the statute says that there is a presumption that
3 notice was given. The Judge is going to charge you on that
4 statute. It's not an absolute proof of notice, but a
5 presumption of notice given. A big difference.

6 So that's a question you need to reflect upon when
7 you're making your deliberations is was Mr. Ward under
8 notice of his habitual offender status? Because that's a
9 necessary element in this case that must be proved beyond a
10 reasonable doubt.

11 The young man, Anthony Makerson, he said -- we asked
12 him about what he was doing at 7:00 on that particular date.
13 He said he was driving the -- his mother's Chevy Tahoe.
14 It's called burgundy, a 2000 model. It belonged to his
15 mother.

16 He testified that he went to the YMCA. He got the car
17 about 5:00. He got back around 8:30. He never did see Mr.
18 Ward driving the vehicle, nor was Mr. Ward anywhere around
19 to have access to it. Mr. Makerson came in here and he
20 testified the best way that young man could testify by
21 telling you the truth.

22 Those three witnesses that got up on the witness stand
23 told you their version of what happened on that day
24 subjecting themselves to perjury if they were telling a lie.
25 They were not. They were telling you the best way they

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1 could testify. And that's just by looking at you or looking
2 at me, or wherever they were looking and telling their story
3 the best way they remembered it.

4 And I submit to you, you take any one of those
5 witnesses and that's a reasonable doubt. That is a
6 reasonable doubt. It doesn't prove that he's guilty. He's
7 not guilty.

8 Howard Davis, his friend that he played basketball
9 with, he picked Mr. Ward up before 6:00, went to the church,
10 got there around 6:15/6:20, played basketball to 8:40 and
11 got back around 9:15. He remembered those times
12 specifically. He remembered that date specifically. He
13 remembered that occasion specifically.

14 It's not because of a habit. It's not because they
15 played basketball on Wednesdays. He remembered it. And he
16 was telling the truth. And he just happened to remark that,
17 yeah, we all on Wednesday, we do play basketball. But he
18 knew the times even when he picked Kevin up and when he
19 brought him back. So he was -- I believe it was a church in
20 Chesnee where Mr. Ward was.

21 Then Ms. Johnson, Ms. Pashana Rose Johnson, she
22 testified in no unequivocal terms, my son had my truck, I
23 told Officer Ryant that he was driving the truck and that he
24 had had permission to do so. Obviously, Officer Ryant was
25 not satisfied with that answer because what did she do?

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1 Left in a huff, got a warrant.

2 And, again, I go back to an original point, why wasn't
3 an arrest made on the scene? Why did she go to Ms.
4 Johnson's house, confront her, get into it with her and
5 almost in a way a threat? Because there's animosity. Where
6 it comes from, how it evolved? We don't know, but it's
7 there.

8 And she said, I think, toward the very end,
9 emphatically she said I know I gave my vehicle to Anthony.
10 She knows her son. She knows what kind of car -- what kind
11 of truck she had. And she knows that for a fact. She was
12 emphatic about it. And she was telling the truth.

13 Now, I don't know whether you realize this or not, but
14 when each one of these witnesses, these three witnesses for
15 the Defense were testifying, when one of them was testifying
16 the other two were not here. So the witnesses did not have
17 the benefit of giving -- of being in the courtroom and
18 hearing any one of the other three testify so that they
19 could tailor their testimony to coincide and compliment
20 another witness for the Defense. Each one was telling the
21 truth.

22 Ladies and gentlemen, Mr. Ward was not driving that
23 night. We don't know if he received notice that he was on
24 HTO status. The Judge is going to tell you that you must be
25 firmly convinced of his guilt beyond a reasonable doubt.

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1 And I urge you that when you go back there and begin
2 your deliberations and talk about these matters that you
3 come back and deliver a verdict that speaks the truth.
4 That's the Latin for the word verdict, veredicto. It speaks
5 the truth. And the truth in this case is that Mr. Ward is
6 not guilty of violating the Habitual Offender Act.

7 Thank you for listening to me. Now the Judge will give
8 you the law that's applicable in this case.

9 **THE COURT:** You can leave that there, as a matter of
10 fact.

11 **MR. POOLE:** It's not interfering?

12 **THE COURT:** Nope 'cause I'm going to use it. But I
13 think Ms. Jordan has one last chance to address the jury and
14 respond to what you said.

15 **MR. POOLE:** Thank you, Your Honor.

16 **MS. JORDAN:** Very briefly, Your Honor.

17 **THE COURT:** Yes, ma'am.

18 **MS. JORDAN:** Ladies and gentlemen, all three of those
19 witnesses can't be telling the truth. One of the reasons I
20 think you saw that is because they were not in the room when
21 the other ones testified.

22 You heard what they say -- they said. You know the
23 discrepancies that they gave you about where he was that
24 day, what time he left and who picked who up where. You
25 heard that. They're not all telling the truth because it's

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1 not the truth. And luckily that's the job or determination
2 that y'all have to make.

3 What is this issue? The only issue that we've heard
4 about Officer Ryant having with anybody other than the fact
5 that the Defendant's violated the law and he's driving
6 illegally is from his girlfriend who defiantly sat up there
7 and, you know, talked about how she had made complaints
8 about the Defendant living there to the manager. That's the
9 only complaints that we had.

10 The only complaint that Officer Ryant has with this
11 Defendant was the fact that he's violated the law after
12 knowingly received notice. And as to that notice, it's his
13 responsibility to notify the Department of Motor Vehicles if
14 he changes his address. He didn't do it.

15 I don't get to notify or fail to notify Dish or DirectTV
16 or any other bill that I have coming in that I've changed my
17 address and just get to avoid the consequences of it. I
18 can't just move and not tell one of them where I'm going and
19 not have to worry about the bill that I've got coming or the
20 consequences that I have coming from moving and not letting
21 somebody know. Thank you, Your Honor.

22 **THE COURT:** All right. Ladies and gentlemen, when we
23 started the trial of this case I told you that you have
24 certain functions and responsibilities and I have certain
25 functions and responsibilities. You are the judges of the

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1 facts, of course, and I'm the judge of the law.

2 Under your oath that you took in the beginning of this
3 case you swore to accept the law as I give it to you. So if
4 you come into this courtroom with any prior opinion or
5 disposition about what the law is or what the law should be,
6 I charge you now to disregard that because under your oath
7 you must accept the law as I give it to you this morning.

8 Now, ladies and gentlemen, we started this case and I
9 told you that the Defendant has a presumption of innocence.
10 And he retains that presumption of innocence until the
11 twelve of you determine that the State has met its burden of
12 proving each and every element of the offense beyond a
13 reasonable doubt. As we sit here now, he retains that
14 presumption of innocence. And you will determine whether
15 the State has met its burden of proof in this matter.

16 Now, I think it's worth noting and I need to address
17 the fact that the Defendant in this case elected not to
18 testify. That is his right. When we started the case I
19 told you he does not have the burden of proof. He doesn't
20 have to do, say or prove anything. The State has the burden
21 of proof.

22 So because he has exercised his constitutional right
23 and it is a constitutional right, which we all enjoy, you
24 can't hold it against him that he elected not to testify.
25 That is his right. As a matter of fact, that is such a

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1 time-honored right among all the citizens of the United
2 States that you can't even discuss it in your jury room. It
3 cannot be a factor at all in your deliberations.

4 Now, we've bandied around this term reasonable doubt.
5 So I will define it for you. Proof beyond a reasonable
6 doubt is proof which leaves you firmly convinced of the
7 Defendant's guilt.

8 Now, ladies and gentlemen, there's nothing on the face
9 of this earth that we can know with absolute certainty. And
10 this, you know, the law does not require that the State meet
11 -- prove its case beyond any possible doubt.

12 However, after your review of the evidence if you are
13 firmly convinced of the Defendant's guilt, then under your
14 oath you would find him guilty. However, after your review
15 of the evidence if you find that there is a real possibility
16 that the Defendant is not guilty, then under your oath you
17 would find him not guilty.

18 Now you'll determine whether the State has met its
19 burden of proof by reviewing and analyzing the evidence. As
20 I told you, you have the exclusive and sole authority to
21 determine what the facts are in this case based on the
22 evidence. And you'll review those facts and that evidence
23 and you'll decide what's important, what has weight and what
24 has value. You'll also look at the witnesses and determine
25 who's believable and not believable.

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1 Now through your common sense you have clues as to
2 whether you should believe somebody or not, whether they're
3 credible or not. You know by a consequence of what somebody
4 said, how they said it, the facial expressions, their body
5 language, whether they had something to gain or whether they
6 had something to lose as a consequence of their testimony,
7 whether they should be believed or not. And you'll make a
8 determination as to whether the witnesses should be believed
9 or not.

10 You can take a part of a witness' testimony and find
11 that it's very valuable and that it should be believed and
12 put great weight on it and then discount the rest of it.
13 You can take all of it, you can take none of it. It's up to
14 you. It's entirely up to you. You decide what the evidence
15 says and whether to believe witnesses or not.

16 Ladies and gentlemen, when you receive evidence in a
17 case, in any case, you're going to have two forms of
18 evidence. It's either going to be direct evidence or it's
19 going to be circumstantial evidence.

20 Now, direct evidence is evidence which immediately
21 establishes a fact to be proven. Circumstantial evidence is
22 proof of collateral facts that when taken together prove the
23 main fact to be proven.

24 Now the law doesn't prefer direct evidence over
25 circumstantial evidence or circumstantial evidence over

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1 direct evidence. You decide what weight and what value any
2 sort of evidence has whether it be direct or circumstantial.

3 Now, I'm going to give you an example of -- that will
4 help clarify the distinction between direct and
5 circumstantial evidence for you that I find usually is
6 helpful to juries to help them understand it. Let's say
7 that tonight you walk by your front window or your front
8 door and you look out on your front lawn or in your parking
9 lot and there's no precipitation on the ground.

10 You wake up the next morning and you look out that same
11 window or door and you see that there's a blanket of snow on
12 the ground. You also notice that in that snow there are
13 footprints which appear in the snow that walk to your door
14 and then lead away.

15 You know under that set of circumstances that it snowed
16 last night. That's direct evidence because it's there. You
17 can see it, touch it, feel it. It's immediately established
18 by its presence.

19 But you have circumstantial evidence that sometime that
20 night or early that morning somebody walked to your door and
21 walked away. Now you can't see that person, and you can't
22 talk to them, you can't feel them, you can't touch them, but
23 you know as a consequence of the timing of the snow fall and
24 the existence of the footprints in the snow that somebody
25 must have come to your door and walked away. That's

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1 circumstantial evidence.

2 Again, the law doesn't prefer one or the other.

3 However, do understand that to the extent that the State
4 relies upon circumstantial evidence in its case, all of the
5 circumstances, when taken together, must conclusively point
6 to the guilt of the Defendant beyond a reasonable doubt and
7 can't merely portray a suspicion.

8 Now, ladies and gentlemen, as you know the charge
9 before the Court is one for habitual traffic offender. And
10 I'm going to read a little bit to you. I don't like to read
11 to you because sometimes that can get dry.

12 But I want to make sure that the definitions that I
13 give you are correct and are precise because it's important.
14 It's an important day at trial for the Defense and for the
15 State and for y'all. So I'm going to give you a precise
16 definition.

17 The Defendant is charged with violating the Habitual
18 Offender's Act. The State must prove beyond a reasonable
19 doubt that the Defendant was operating a motor vehicle in
20 this State. Operating a motor vehicle does not necessarily
21 mean driving the vehicle. Driving means that the vehicle is
22 actually in motion.

23 However, in order to be operating a motor vehicle there
24 does not need to be any motion. Operating includes starting
25 the engine or using any mechanical or electrical part of the

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1 vehicle which will set the vehicle in motion.

2 The State must also prove beyond a reasonable doubt
3 that at the time the Defendant was operating a motor vehicle
4 the Defendant -- the Department of Public Safety had found
5 the Defendant to be an habitual offender and had revoked the
6 Defendant's license to drive based on that finding.

7 When notice is required concerning a person's driver's
8 license the notice must be given by the Department of Motor
9 Vehicles by depositing the notice in the United States Mail
10 with postage prepaid, addressed to the person at the address
11 contained in the driver's license records of the Department.
12 The giving of notice by mail is complete ten days after the
13 deposit of the notice.

14 A certificate by the director of the department or his
15 designee that the notice has been sent as required in this
16 section is presumptive proof that the requirements as to
17 notice have been met even if the notice has not been
18 received by the addressee.

19 Whenever any person after applying for or receiving a
20 driver's license shall move permanently from the address
21 named in such application or in the license issued to him or
22 when the name of a licensee is changed by marriage or
23 otherwise, such person shall within ten days thereafter
24 notify the Department of Motor Vehicles in writing of his
25 old and new address or such former and new name and of the

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1 number any license then held by him. All right, ladies and
2 gentlemen, that's all I'm going to read to you.

3 I told you I was going to go over the jury verdict with
4 you or the verdict form, excuse me. This is the verdict
5 form. It's very simple. I prepared this verdict form.

6 When you look at the verdict form you'll have it back
7 in the -- in your deliberation room with you. And it's very
8 simple. It has the caption of the case and it says verdict,
9 habitual traffic offender.

10 You'll note the first line says we, the jury, by
11 unanimous agreement find the Defendant. That's important to
12 note because your verdict must be unanimous. It must be all
13 twelve of you agreeing. It can't be eleven to one or ten to
14 two. Each of you have to agree.

15 Understand as well that your verdict has to be based on
16 the law and the evidence that's been presented in this case.
17 It can't be based on passion, prejudice, caprice, bias or
18 sentimentality. It has to be based on the law and the
19 evidence that's been presented in the case.

20 So after this you've got two choices, not guilty and
21 guilty, okay? Don't take note of the order that it's in. I
22 prepare these. There are two choices. I have to put them
23 in some order. I'm not sending you any signals, okay? All
24 right?

25 But what you will do is y'all will determine whether

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1 the State has met its burden of proof or not. If you find
2 that the State has not met its burden of proof, proving the
3 Defendant guilty beyond a reasonable doubt, then, Mr. Fant,
4 you would initial here or check not guilty. If you find
5 that the State has met its burden of proof, then you would
6 check guilty. After you have come to a unanimous decision,
7 Mr. Fant, you'll simply sign as Foreman of the jury.

8 Ladies and gentlemen, I'm going to ask you to retire to
9 your jury room yet [sic], and you're going to begin
10 deliberating in fairly short order. But right now I'm going
11 to make sure, make sure with the attorneys that I have given
12 you a full, complete and accurate charge. From time to time
13 I'll leave something out or I just inadvertently misstate
14 something.

15 And they're my quality control. So they're going to
16 let me know of any mistakes that I may have made in
17 delivering the charge. After we're all satisfied that the
18 charge was sufficient, then what I'm going to do is I'm
19 going to send back to you this verdict form, and I'm going
20 to send back to you the exhibits that were introduced in
21 this case.

22 When you get this verdict form, then you'll know it's
23 time to begin your deliberations. All right? So if you
24 would, please, retire to your jury room. Thank you.

25 (Whereupon the jury exited the courtroom at 10:22 am)

1 **THE COURT:** All right. Counsel, exceptions to charge?

2 **MS. JORDAN:** None from the State.

3 **THE COURT:** Mr. Poole?

4 **MR. POOLE:** None here, Your Honor.

5 **THE COURT:** Okay. All right. Thank y'all for having
6 tried an excellent case, for having been professional and as
7 civil as well. Mr. Ward, I thank you for your gracious
8 conduct during the course of the trial. All of that always
9 makes my job easier. And I appreciate it. Good luck to you
10 both.

11 I'm going to send back one exhibit as far as I know and
12 the verdict form. And I'm going to dismiss the alternate
13 from chambers. All right? Thank you very much. We'll be
14 in recess til we hear from the jury.

15 (Whereupon court was in recess at 10:23 am)

16 (Whereupon Court's exhibit 1 was marked)

17 (Whereupon court reconvened at 11:42 am)

18 **THE COURT:** Okay. We ready to receive the verdict?

19 **MS. JORDAN:** Yes, sir.

20 **THE COURT:** All right. Mr. Poole?

21 **MR. POOLE:** Yes, sir.

22 **THE COURT:** All right. Will you bring them in, please.

23 **THE BAILIFF:** Yes, sir.

24 (Whereupon the jury entered the courtroom at 11:42 am)

25 **THE COURT:** All right. Mr. Fant, has the jury reached

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1 a unanimous verdict, sir?

2 **MR. FOREMAN:** Yes, we have.

3 **THE COURT:** Would you hand the verdict form to the
4 bailiff, please. Thank you very much. All right. Madame
5 Clerk, will you publish the verdict, please, ma'am.

6 **MADAME CLERK:** The State of South Carolina, County of
7 Spartanburg, in the Court of General Sessions, the State
8 versus Kevin M. Ward, indictment number 2016-GS-42-5473,
9 habitual traffic offender, we, the jury, by unanimous
10 agreement find the Defendant guilty. Signed by the
11 Foreperson, Dennis Fant, on March 30th, 2017.

12 Ladies and gentlemen of the jury, if this is your
13 verdict and still your verdict, please raise your right
14 hand.

15 (Whereupon all jurors raised their right hand)

16 **MADAME CLERK:** So say you all.

17 **THE COURT:** All right, counsel, anything further for
18 this jury? Anything from the State?

19 **MS. JORDAN:** No, sir, Your Honor.

20 **THE COURT:** Anything from the Defense?

21 **MR. POOLE:** No, sir.

22 **THE COURT:** Okay. All right, ladies and gentlemen.

23 Thank you for your service on this jury. I'm going to
24 proceed in a few minutes to sentencing in this case. Before
25 I do that, what I'm going to ask you to do is return to your

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1 jury room and I'm going to come in here -- I'm going to come
2 in and dismiss you informally, give you the opportunity to
3 ask any questions that you may have about this case, your
4 jury duty, make any comments or critiques that you'd like to
5 make as well.

6 And then you can come back in and you can sit in on
7 sentencing if you want to. It's entirely up to you. Or you
8 can take off and be dismissed for the week, okay? So if
9 you'll return to your jury room, I'll be back there in just
10 a second.

11 (Whereupon the jury exited the courtroom at 11:44 am)

12 **THE COURT:** All right, ladies and gentlemen. I'm going
13 to dismiss the jury and I'll come back in. And at that
14 point I'll hear any post trial motions and we'll proceed to
15 sentencing, okay?

16 (Whereupon court was in recess at 11:45 pm)

17 (Whereupon court reconvened at 12:01 pm)

18 **THE COURT:** All right, ladies and gentlemen. Okay.

19 Any post trial motions?

20 **MS. JORDAN:** None from the State, Your Honor.

21 **MR. POOLE:** Your Honor, Judge Stilwell, I will make a
22 motion for a new trial. And that motion is based upon my
23 previous motion for a directed verdict that was made at the
24 close of the Defense case and -- the State's case, rather,
25 and the motion that was renewed -- that same motion that was

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1 renewed at the resting of the Defense. And that's the basis
2 for the motion for a new trial

3 **THE COURT:** Okay. All right, sir. On the same bases
4 that I articulated previously on the record, I respectfully
5 deny the same.

6 **MR. POOLE:** Thank you.

7 **THE COURT:** All right. Anything further before we
8 proceed to sentencing?

9 **MS. JORDAN:** None from the State, Your Honor.

10 **THE COURT:** Okay. All right. Then if y'all will
11 approach for sentencing, please.

12 **MS. JORDAN:** May I approach, Your Honor?

13 **THE COURT:** Yes, ma'am. Thank you. All right, Ms.
14 Jordan, I've heard the facts, obviously, in this case. Is
15 there anything additionally that the State needs to put on
16 the record bearing upon sentencing?

17 **MS. JORDAN:** Your Honor, the only thing that we'd ask
18 to put on the record is the Defendant's prior record.

19 **THE COURT:** Okay.

20 **MS. JORDAN:** He has from the State of Georgia in 1995 a
21 theft by taking; a 2003 simple possession of marijuana;
22 2010, DUI. He has from the State of Florida a battery on a
23 law enforcement officer or firefighter.

24 From the State of South Carolina in 2014 he has a
25 simple possession of marijuana, operating a vehicle that is

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1 not registered, following too closely, open container,
2 giving false information and two counts of DUS.

3 He has from 2015 two counts of habitual traffic
4 offender with the same period that he is in, currently still
5 under, along with two counts of driving under suspension.
6 And, Your Honor, I believe that he has two additional counts
7 of giving false information. And if I remember correctly
8 from pretrial rulings, I think one was from 2015 and one was
9 from 2016.

10 **THE COURT:** Okay.

11 **MS. JORDAN:** I could check in my file if need be.

12 **THE COURT:** No, I'm comfortable with that. Mr. Ward,
13 does that sound like a fair account of your prior record,
14 sir?

15 **MR. WARD:** Well, I think so, sir.

16 **THE COURT:** Okay. All right. Thank you. Is Mr. Ward
17 currently on probation for the previous habitual traffic
18 offender convictions?

19 **MS. JORDAN:** No, sir. On those charges he pled at the
20 same time ---

21 **THE COURT:** Yes, ma'am.

22 **MS. JORDAN:** --- and received a ninety day sentence
23 before Judge Keith Kelly back in 2015.

24 **THE COURT:** Okay. Has he served any time on these
25 charges?

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1 **MS. JORDAN:** Yes, sir. My file indicates that he
2 served two days when he was arrested.

3 **THE COURT:** Two days? Mr. Ward, does that sound
4 correct to you, sir?

5 **MR. WARD:** Yes, sir.

6 **THE COURT:** Okay. All right. Mr. Poole, I'd be happy
7 to hear from you, sir.

8 **MR. POOLE:** May it please the Court? Your Honor, Mr.
9 Ward is thirty-nine years of age. He has two years of
10 college. He works as much as he can. He works in the areas
11 of maintenance, construction, forklift operating and
12 landscaping.

13 He has three children, two of whom are sixteen and one
14 of whom is five years old. He sees and supports these
15 children. He pays child support through the court for the
16 five year old.

17 He works as much as he can. And he works through two
18 temporary agencies. And he makes at least sixteen hundred
19 dollars per month.

20 I would ask the Court in this case to consider not an
21 active sentence in the Department of Corrections, but a
22 suspended sentence along with any requirements that you may
23 place upon him for probation, intensive probation and
24 supervision, something along those lines.

25 I ask that on his behalf because he wants to continue

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1 to support his children and keep what he has. And what
2 little he has, he loses everything if he goes to the
3 Department of Corrections. And I ask that on his behalf.
4 And he may want to address the Court too.

5 **THE COURT:** Okay. Mr. Ward, anything you'd like to
6 tell me, sir?

7 **MR. WARD:** Yes, sir. I understand about my behalf of
8 past record and due to the background thing, but on the
9 particular DM, that, I did not do on the latest date.
10 However, I am sentenced now. So it doesn't matter.

11 What does matter is I'm not out here looting. I'm not
12 out here doing drugs and selling. I'm not doing no really
13 bad things.

14 So a driving record, yes, it is a records of lie, but
15 still, you know, I learned my lesson. I done my time. I've
16 paid restitution and things. I'm just trying to walk right,
17 you know, and manage, you see me?

18 So a lot of times when I did drive was to the fact of
19 the matter that I had to versus just out there hanging out
20 and doing things. So -- but I paid my time for those
21 things, you know? That's pretty much it, sir.

22 **THE COURT:** Okay. All right. Thank you, Mr. Ward. I
23 appreciate that.

24 To a large degree I agree with what you said, Mr. Ward.
25 That is, you know, you don't have a significant --

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1 significantly violent prior record. You've got some prior
2 record, but it's -- it's not what I see a lot of times in
3 General Sessions Court.

4 And I don't see any evidence that you are out there
5 being a particular menace to society. However, I do see
6 that you have consistently elected to violate the traffic
7 laws in the State.

8 Now, as a tax payer in the State of South Carolina it
9 really is unfortunate that people go to jail for traffic
10 violations. I mean, people shouldn't go to jail for traffic
11 violations. I mean, it's something that really seems
12 trivial and it doesn't make good sense that we would be
13 spending money for that.

14 But you've got to understand that at some point a
15 horn's got to hook. Meaning if someone continually disobeys
16 the laws in the State of South Carolina and they're extended
17 chance, after chance, after chance, then ultimately there
18 has to be some -- some penalty for having thumbed your nose
19 at laws that you know are outstanding and laws that you know
20 that you have to abide by.

21 Now, you may take exception to the facts as the State
22 represented them. And you may take -- you may deny that you
23 were driving that day. But the jury has found that you were
24 driving that day and that the State met their burden of
25 proof. Well, I'm duty bound to honor that decision.

SENTENCE OF THE COURT

1 So whether you were driving that day has been resolved
2 as a matter of fact by the jury in this case. You, Mr.
3 Ward, took a calculated risk in, first of all, driving that
4 day. You knew what the ramifications were. You had
5 previous convictions for habitual traffic offender. So you
6 knew you were looking at a substantial period of
7 incarceration.

8 And you took a calculated risk by electing to go to
9 trial as opposed to trying to negotiate some reasonable
10 resolution and/or accommodation on this case. What I see in
11 this case is that you just made your decisions. You're a
12 grown man and you decided that you were going to drive and
13 you decided that you were going to take it to trial.

14 And I don't fault you for that. I don't sentence you
15 with any ill will or animus at all. It's just a matter of
16 applying the facts as the jury determined them to be to the
17 law in the State of South Carolina. You made your own
18 decisions and you've taken your risk as a grown man, okay?

19 Sentence in this case is you be committed to the
20 Department of Corrections for a period of thirty months.
21 That's two and a half years. Credit for time served of two
22 days. Good luck to you, Mr. Ward.

23 **MS. JORDAN:** Thank you, Your Honor.

24 THE COURT: Thank you.

25 (Hearing Ended at 12:10 pm)

1

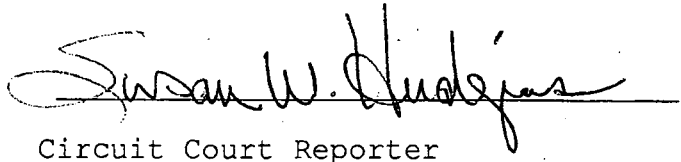
(End of Requested Transcript of Record)

Certificate of Reporter

I, the undersigned, Susan W. Hudgins, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial/hearing of the captioned case, relative to appeal, in the Circuit Court for Spartanburg County, South Carolina, on the 29th - 30th day of March 2017.

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

June 10, 2017


Circuit Court Reporter

WITNESSES

CITY PD

Anthony S. Minor

ARREST WARRANT NUMBER

2016A4210202438

ACTION OF GRAND JURY

True Bill

OCT 28 2016

Foreperson of Grand Jury
Date:

VERDICT

Guilty

**Dennis J. [Signature]*
Foreperson of Petit Jury
Date:

DOCKET NO.

54 23

The State of South Carolina

County of Spartanburg

Barry Barnette, Solicitor

COURT OF GENERAL SESSIONS

TERM

THE STATE
vs.

KEVIN M WARD

Indictment for
HABITUAL TRAFFIC OFFENDER

SC Code: 56-1-1100
CDR Code: 0057
Class FEL/F

FILED
CLERK OF COURT
2016 NOV -4 AM 9:50
M. HOPE BLACKLEY

- 1. VERDICT MADE
- 2. REPORT ENDED
- 3. CARD PULLED
- 4. INDEXED
- 5. CHECKED WARRANTS
- 6. CHECKED SIGNATURE
- 7. ASSESSMENT AND FINE CARD MADE
- 8. TRAFFIC VIOLATION COPY

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STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

INDICTMENT

At a Court of General Sessions, convened on OCT 28 2016 the

Grand Jurors of Spartanburg County present upon their oath:

HABITUAL TRAFFIC OFFENDER

That the defendant, Kevin M Ward, did in Spartanburg County on or about July 6, 2016, operate a motor vehicle after having been declared an Habitual Offender by The South Carolina Department of Public Safety, in violation of §56-1-1100, *THE CODE OF LAWS OF SOUTH CAROLINA*, (1976), as amended.

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


Assistant Solicitor

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

STATE VS.

Kevin Maurice Ward

AKA:

Race: BLACK Sex: M Age: 39

DOB: SS#:

Address:

City, State, Zip:

DL#:

SID#:

*CDL Y ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Habitual Traffic Offender 0-5 years

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2016GS4205473

A/W#: 2016A4210202438

Date of Offense: 7/6/2016

S.C. Code §: 56-01-1100

CDR Code #: 0057

SENTENCE SHEET

☒ CONVICTED OF or ☒ PLEADS

in violation of § 56-01-1100 of the S.C. Code of Laws, bearing CDR Code # 0057

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS (CSC w/minor 1st or Lewd Act) ☐ § 17-25-45The 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.INVEST: Jordan, Jennifer A 69423 X Defendant 7 Attorney for Defendant 4498
JORDAN, JENNIFER A 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 30 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. 2 days☐ 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 (Domestic
Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ OrderedTotal: \$ 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 61.6 (Public Def/Probation)	\$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
3% to County (if paid in installments)	\$ 3.75

TOTAL

\$ 128.75

Clerk of Court/ Deputy Clerk

Court Reporter

SCCA-217 (07/2016)

 days/hours Public Service EmploymentObtain GED ☐Attend Voc. Rehab. or Job Corp. May serve W/E beginning Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ beginning \$ paid to Public Defender FundOther: ☐ Appointed PD or appointed other counsel.
Proviso 61.6 requires \$500 be paid to Clerk
during probation and shall be collected before
any other fees.

Presiding Judge

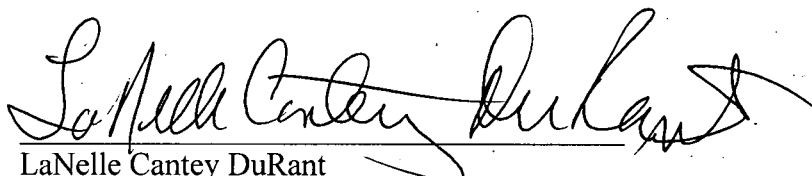
Judge Code:

Sentence Date:

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,



LaNelle Cantey DuRant
Appellate Defender

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

ATTORNEY FOR APPELLANT

This 3rd day of November, 2017.

RECEIVED

NOV 03 2017

SC Court of Appeals