

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from York County

Honorable Alison Renee Lee, Circuit Court Judge

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SC Court of Appeals

THE STATE,

RESPONDENT,

V.

JAMIL OMIRE ALI,

APPELLANT

APPELLATE CASE NO. 2017-002044

RECORD ON APPEAL

ROBERT M. DUDEK
Chief Appellate Defender

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

ATTORNEY FOR APPELLANT

ALAN WILSON
Attorney General

J. BENJAMIN APLIN
Senior Assistant Deputy Attorney General
Rembert Dennis Building
1000 Assembly Street, Room 519
Columbia, SC 29201

ATTORNEYS FOR RESPONDENT

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STATE OF SOUTH CAROLINA	)	IN THE GENERAL SESSIONS
	)	COURT OF THE SEVENTH
COUNTY OF YORK	)	JUDICIAL CIRCUIT
	)	
	)	
THE STATE,	)	
	)	
Plaintiff,	)	TRANSCRIPT OF RECORD
	)	2016-GS-46-02351
vs.	)	
	)	
JAMIL OMIRE ALI,	)	
	)	
Defendant.	)	
	)	

November 15, 2016
York, South Carolina

B E F O R E:

HONORABLE ALLISON R. LEE, Judge.

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

AARON J. HAYES, ASSISTANT SOLICITOR
For The State

CHRISTOPHER EPTING, ASSISTANT SOLICITOR
For The State

MARK T. MCKINNON, ESQUIRE
For Defendant

Julie A. Ashbrook,
Circuit Court Reporter
Seventh Judicial Circuit

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THE STATE VERSUS JAMIL OMIRE ALI

THE COURT: Good morning.

MR. MCKINNON: Good morning.

MR. HAYES: Good morning.

THE COURT: We are here on State versus Jamil Ali, by true bill Indictment Number 2016-GS-46-02351. For the State is Aaron Hayes, for the Defense it's Mark McKinnon.

Yes, sir, are we ready to proceed? Is there any pretrial?

MR. HAYES: Yes, Your Honor. Just one housekeeping matter. The State has a couple of pretrial motions, the defense has a couple of pretrial motions. Should it please the Court, the State has suggested that we do the motion to quash first, even though that's a defense motion and the State typically goes first with our motions. We just think logically it would make the most sense, if that pleases the Court.

THE COURT: Yes, sir. Yes.

MR. HAYES: Thank you, Your Honor.

THE COURT: Mr. McKinnon.

MR. MCKINNON: Yes, Your Honor. I guess before we begin with that, do we need to deal with the absence of my client for a second?

THE COURT: Okay.

1 MR. MCKINNON: What I can tell the Court is I
2 spoke to him over the phone on Thursday. He seemed to
3 enthusiastically be wanting to come to his trial. I
4 told him he was not needed on the docket for Friday of
5 last week, which is what our letter would typically say;
6 that really this week was for trial, so just be here
7 Monday morning 9 o'clock. We'll do some motions and
8 then come back ^{1st} Tuesday when the trial will begin in
9 earnest.

10 While I did not explicitly tell him that he would
11 be tried in his absence, I did make it very clear that
12 this was his trial and we would be going forward this
13 morning. I probably should have told him about the TIA
14 warning, but hearing was so enthusiastic about being
15 here, you know, I didn't.

16 THE COURT: So when you talked to him on
17 Thursday, you told him to be here on Monday?

18 MR. MCKINNON: Yes, ma'am.

19 THE COURT: Was he here yesterday?

20 MR. MCKINNON: He was not. And so yesterday I
21 called his bondsman to try and locate him and the
22 bondsman is still looking for him this morning. He told
23 me he spoke to the family but they seemed to kind of
24 blow him off.

25 THE COURT: And did you make any contact with him

1 or try to make contact with him yesterday?

2 MR. MCKINNON: Yes, Your Honor. The -- I could
3 not get ahold of him. I have an investigator, Pat
4 Heathrow, is also trying to call him again this morning.

5 THE COURT: Do we have the bond form for Mr. Ali?

6 MR. HAYES: Yes, Your Honor. The State would
7 hand that up as a Court's exhibit, if the Court would
8 like me to have it marked.

9 THE COURT: You can have it marked.

10 MR. HAYES: And the State would submit this case
11 as right for a TIA because he was notified on his bond
12 paperwork.

13 (Whereupon, Court's Exhibit No. 1, Bond
14 Paperwork, was marked for identification.)

15 (Whereupon, Court's Exhibit No. 1 was entered
16 into the record.)

17 THE COURT: Court's Exhibit Number 1 is the bail
18 form for Jamil Ali. It states the bond is set at
19 \$6,000. He was required to report July 26th of 2016 for
20 appearances. On the second page of the bottom form, or
21 I guess what would be the back of the original, there's
22 a part that says acknowledgment by defendant.

23 (Reading.) I understand that if I violate any
24 condition of this order a warrant for my arrest will be
25 issued. I understand and have been informed that I have

1 a right and obligation to be present at trial and should
2 I fail to attend the court, the trial will proceed in my
3 absence. It has been explained to me that if I fail to
4 appear before the court as required a warrant for my
5 arrest will be issued. (Ends reading.)

6 And it appears to be signed by the defendant on
7 April the 18th of 2016. The address that he listed was
8 [REDACTED], Charlotte, North Carolina 28208.
9 And lists a telephone number as well. There is also a
10 driver's license, a North Carolina driver's license
11 number.

12 Seeing as Mr. Ali is not present this morning for
13 trial, having been notified that the trial -- well,
14 apparently notified to appear on Monday and also being
15 told that the trial would begin on Tuesday, and on
16 receiving and acknowledging the bond form and the
17 matters contained therein, I'll issue a bench warrant
18 for his arrest. I want to note that a bench warrant
19 will be issued.

20 And in particular, since he is an out of state
21 resident, I am concerned about that, although we're not
22 that far from Charlotte. So a bench warrant should be
23 issued for his arrest at this particular time so that
24 his whereabouts can be located.

25 And based upon the information contained in this

1 bail form, we would be entitled to go forward without
2 his presence since he was notified that should he fail
3 to attend court the trial would proceed in his absence.

4 Was there any other written notice provided to
5 the defendant about his appearance for court?

6 MR. MCKINNON: Your Honor, you're talking about
7 for today?

8 THE COURT: Yes.

9 MR. MCKINNON: No, Your Honor. As I said
10 earlier, we typically send our docket letters to tell
11 people to come the Friday before court just because it's
12 chaotic here on Monday. So we sent him that standard
13 letter. But, like I said, I called him on Thursday and
14 explained his situation had changed to go to trial.

15 THE COURT: And so you actually -- so you had an
16 actual conversation with him and told him exactly what
17 was going. And I find that he had notice. He had
18 notice to appear in court yesterday, which you said he
19 failed to appear, but he also had notice that the trial
20 was going to begin today as well. And you communicated
21 that to him; is that correct, Mr. McKinnon?

22 MR. MCKINNON: That's correct, Your Honor.

23 THE COURT: So I'll find that we may proceed in
24 his absence. And so with that we'll take up the motion
25 to quash the indictment.

1 MR. MCKINNON: May it please the Court?

2 THE COURT: Yes, sir.

3 MR. MCKINNON: Your Honor, as I proceed here, I
4 recognize too, and I want to point out in a true spirit
5 to everyone, but I think there will probably be a lot of
6 overlap with the State's number one motion in limine
7 where they are trying to keep the defense from
8 mentioning fault of the officer. I thinks it's all kind
9 of related to proximate cause, but perhaps it would be
10 more born out during that motion.

11 But at any rate, Your Honor, if I can refer the
12 Court to the case I handed up, *State v. Adams*. On the
13 last page of that: (Reading.) The true test of the
14 sufficiency indictment is not whether it could have been
15 more definite and certain, but whether it contains the
16 necessary elements of the offense intended to be charged
17 and sufficiently praises the defendant in what he must
18 be prepared to meet. (Ends reading.)

19 Your Honor, so what we are saying here is that
20 this indictment is laying out in its language and on its
21 face a connection between the acts of the, alleged acts
22 of the defendant and the injury, great bodily injury,
23 that cannot be born out by the statute. Essentially
24 they've added an extra element that should not be here
25 or could not be here based on this case.

1 I realize that's a little tenuous, but for just
2 judicial efficiency and I think essentially we're asking
3 the Court to decide the matter of whether there is a
4 proximate cause relationship between defendant's actions
5 and bodily injury. And that was to be the basis for the
6 motion.

7 To decide that, Your Honor, I would suggest that
8 we, you know, look to the rules of case law for
9 statutory interpretation, you know, looking at the
10 statute itself and comparing that to the DUI with great
11 bodily injury statute. And I provided up another case,
12 which is a Fourth Circuit case, United States versus
13 Davis, where the court, the Federal Court there has to
14 decide whether the South Carolina law for propelling
15 failure to stop for blue lights with great bodily injury
16 was in fact a element of the offense of the great bodily
17 injury portion or whether that was actually just a
18 sentencing provision.

19 Ultimately it's not particularly relevant here of
20 what they decided or what they didn't decide, that it
21 was parallel to the DUI great bodily injury statute and
22 that it should be an element of the offense. So that's
23 how they decided. And in so doing, if I can quote page
24 seven of nine at the bottom of the left column.

25 It says: (Reading.) Like the failure to stop

1 statute, we find the South Carolina Supreme Court's
2 interpretation of that statute persuasive, if not
3 compelling, in view of the virtually identical language
4 for two statutes with regard to the requirement of great
5 bodily injury and an additional requirement of
6 performing a legally forbidden act while neglecting a
7 legally imposed duty. (Ends reading.)

8 Your Honor, if you look at the actual statute,
9 56-5-50 -- I'm sorry, 56-5-750, part A lays out basic
10 failure to stop for blue lights, what that is. So
11 that's not really in question here at this motion. But
12 if we skip down past the B where we have the penalties
13 for that, we see part C. And that lays out just like or
14 substantially identical to DUI statute.

15 (Reading.) A person who violates the provisions
16 of Subsection A and, when driving performs an act
17 forbidden by law or neglect to a duty imposed by law
18 when driving a vehicle... (ends reading.)

19 And that's where they go on. So, Your Honor, I
20 would say that if the legislature did not intend another
21 act and that act being the proximate cause of the
22 injury, C could just be deleted. There would be no need
23 for C. They could just say the failure to stop first
24 offense causes this penalty, second offense this
25 penalty. Great bodily injury causes this penalty.

1 Death causes this penalty.

2 As we look to the intent of the statute, we see a
3 greater penalty for more bad acts, I guess, or more
4 culpability of the actor, just like the DUI penalty.
5 And, again, there simply must be a proximate connection
6 here. If the State is trying to this, and it seems like
7 they are, a strict liability offense, that is that if
8 one is failing to stop for blue lights and in so doing
9 if for any reason around or anywhere, I guess, you know,
10 some great bodily injury occurs, then we come up with
11 some absurd scenarios.

12 And I can just put an example being that what if
13 a dispatcher told an officer to get in their car and
14 drive to this location to meet this person failing to
15 stop and through their own negligence fell down the
16 steps on the way to their cruiser? Or if a pedestrian
17 were to be walking down the street, a civilian, and see
18 the car drive by and distracted them, so they watched
19 while they were still walking and then tripped, again,
20 to their own negligence, and hit their head and were
21 injured?

22 Your Honor, those scenarios I think are identical
23 to the fact pattern we're going to hear in this case,
24 not identical but analogous and directly on point where
25 the State is alleging that where a driver in pursuit

1 crashes their car through no action or admission of the
2 defendant. That is exactly the same scenario and it
3 cannot be, you know, the statutory intent.

4 So if I then call our attention to, let's see,
5 *State versus Dantonio*, that case was a DUI great bodily
6 injury case where the jury was instructed on proximate
7 cause and conviction sustained because despite the
8 defense saying that the proximate cause issue is
9 actually one of comparable negligence and that if the
10 defendant was not at least 51 percent at fault for the
11 accident, then they should rule not guilty.

12 And, of course, that was not -- and that was not
13 the ruling of the court. But they did rule against the
14 defendant, but in so doing, saying that if he was at
15 least part of the cause of the accident, essentially he
16 was driving, perhaps fast. A woman pulled out in front
17 of him, which knocked him into oncoming traffic and
18 ended up killing someone. So I think that is
19 illustrative of exactly the legislative intent for the
20 almost parallel statute for failure to stop for blue
21 lights of great bodily injury.

22 Now, I will point back -- I don't think I
23 mentioned this yet, but one more page a *Hinton versus*
24 *South Carolina Department of Probation and Parole and*
25 *Pardon Services*, which I think is just a good

1 illustration of how the South Carolina rules and case
2 law evolve, the statutory interpretation.

3 I'm sure we've all heard a lot of these quotes
4 before, but I point: (Reading.) Out the penal statute
5 will be strictly construed against the State. Any doubt
6 must be resolved in favor of the defendant. Penal
7 statutes are strictly construed against the State and in
8 favor of the defendant. And at the same time a cardinal
9 rule of statutory construction requires we endeavor to
10 ascertain an effectually intent to the legislature.

11 A law must be interpreted reasonably and
12 practically consistent with the purpose and policy of
13 the general assembly. The word and its meaning in
14 conjunction with the purpose of the whole statute policy
15 of the law -- I'm sorry, I misquoted. The Court should
16 not consider merely the language of the particular law
17 as being construed if the word is being in conjunction
18 with the purpose of a whole statute and the policy of
19 the law.

20 Words must be given a plain and ordinary meaning
21 without resorting to subtle and poor construction which
22 limits or expands the State's operation. (Ends
23 reading.) Which I think is exactly what the State is
24 trying to do here is to expand the operation of the
25 Statute. (Reading.) Any ambiguity in the statute

1 should be resolved in the favor of just, equitable and
2 beneficial operation to the law. (Ends reading.)

3 So, Your Honor, I think at its core here, if we
4 were to -- I guess another way to put this would be the
5 rule of limiting, is that if a statute is clear and
6 unambiguous, nothing further. I would submit that this
7 is clear and unambiguous. But if there is an ambiguity,
8 it needs to be resolved against the State -- strictly
9 construed against the State.

10 And given just a common sense argument that
11 proximate cause absolutely must be implied here, if not
12 explicitly in the statute, we've also got, if you read
13 the statutory language, the resistance of Subsection C
14 altogether puts us on notice that there's something more
15 required than just if failure to stop for blue lights
16 didn't create bodily injury and that's it. It has to be
17 something else or else C has no point, no purpose if
18 there has to be another component, which I would say is
19 proximate cause.

20 THE COURT: So but -- okay.

21 MR. MCKINNON: Yes..

22 THE COURT: I'm not, I'm not sure you're really
23 arguing about quashing the indictment. It sounds to me
24 like you're arguing more about what evidence the State
25 might present.

1 MR. MCKINNON: That's correct, Your Honor.
2 Again, I was just hoping to do this to wrap this up,
3 but...

4 THE COURT: Okay. The *U.S. versus Davis*
5 indicates that the provisions about great bodily injury
6 resulting in -- well, yeah, is an element of the offense
7 and not just part of the sympathy provision. So if --
8 and what it says as it relates, what the statute says as
9 it relates to the great bodily injury under Subsection C
10 that says: (Reading.) When a person violates the
11 provisions of Subsection A and when driving performs an
12 act forbidden by law or neglects of duty imposed by law
13 in driving the vehicle where great bodily injury
14 resulted is guilty of a felony and must be in prison not
15 more than ten years. (Ends reading.)

16 And the statute defines great bodily injury and
17 defines what that is. So if I'm following what *U.S.*
18 *versus Davis*, which is a Fourth Circuit case, that
19 interprets specifically the issue in that case was
20 whether the great bodily injury part was an element of
21 defense or just simply a sentencing requirement. And
22 the Fourth Circuit determined that it is an element of
23 defense and must be listed in the indictment.

24 And certainly in this particular indictment, the
25 indictment says that: (Reading.) Jamil Ali did in York

1 County, on/or about April 5th of 2016, while driving
2 under -- while driving a vehicle did fail to stop when
3 signaled by law enforcement by means of a siren or a
4 flashing light and did perform an act forbidden -- it
5 says an act forbidden law and/or neglecting the duty
6 imposed by law in the driving of a vehicle and which act
7 or neglect resulted in great bodily injury to Marina
8 Arbelo. (Ends reading.)

9 So at least, at least on the face of the
10 indictment it seems to cover those points and provisions
11 that *U.S. versus Davis* addressed and seems to
12 incorporate provisions of the statute. I will
13 acknowledge that the language and the way it's listed in
14 the indictment is a little bit different than what the
15 statute says, and is certainly different from the felony
16 DUI statute. Which the felony DUI statute makes it very
17 clear that a person who drives a motor vehicle under the
18 influence of alcohol, drugs or a combination thereof,
19 when driving a motor vehicle does any act forbidden by
20 law or neglects any duty imposed by law when driving a
21 motor vehicle which act or neglect proximately causes
22 great bodily injury to another person is guilty of the
23 offense of felony driving under the influence.

24 And I understand your argument to be that there
25 has to be some proximate cause between the act of the

1 defendant and the injury to the law enforcement -- well,
2 in this case a law enforcement officer. And we all know
3 that generally that comes up with -- it usually comes up
4 where the defendant's -- a person's fleeing and ends up
5 causing a motor vehicle accident directly actually
6 involving a motor vehicle accident which results in
7 someone's injury.

8 And I guess what I'm trying to figure out, I
9 don't see, while there is some difference between the
10 two statutes, I'm not sure that for purposes of a motion
11 to quash there is an actual difference because in this
12 particular case you were put on -- your client was put
13 on notice that one of the elements that the State was
14 claiming was that there was an act. And it
15 specifically, the indictment almost parrots the felony
16 DUI statutes, so it even says a little bit more than
17 what the actual statute says.

18 It says: (Reading.) Which act or neglect
19 results in great bodily injury. (Ends reading.) And
20 the act that they're talking about was the act that was
21 forbidden by law and neglect of the duty imposed by law.

22 So as it relates to the indictment, I'm not, I'm
23 not sure that there's a basis to quash the, quash the
24 indictment. I'm not trying to forego your argument as
25 it relates to the evidence that will be presented.

1 MR. MCKINNON: Yes, ma'am.

2 THE COURT: I mean, I know a little bit about it
3 because we've had some arguments about it. I've seen
4 the highway patrol report and I've read the summary that
5 you all provided to me about the facts of this case.
6 But just to get to that argument, why wouldn't that be a
7 jury issue? Why wouldn't that, why wouldn't that be an
8 issue for the jury to determine to make a decision as to
9 whether there is a proximate cause? I mean, and I'm
10 sure the State's gonna argue that they don't need to
11 provide proximate cause, but...

12 MR. MCKINNON: Well, Your Honor, I certainly
13 planned on if it got that far making, you know, factual
14 arguments to the jury. But I also think, you know, at
15 this stage and the directed verdict stage, the
16 traditional decision, that being whether or not the
17 statute to cops is a proximate cause issue and not one
18 for the jury, but...

19 THE COURT: And you're saying that basically
20 because the statute's not clear -- your argument is that
21 it's not clear so therefore the ambiguity should be
22 construed against the State in the benefit of the
23 defendant in favor of finding that there has to be a
24 proximate cause element?

25 MR. MCKINNON: Yes, Your Honor.

1 THE COURT: As opposed to just having the two,
2 two conditions co-exist.

3 MR. MCKINNON: Yes, Your Honor.

4 THE COURT: And I don't want to cut you off. Is
5 there anything else you wanted to say?

6 MR. MCKINNON: No, ma'am.

7 THE COURT: Yes, sir.

8 MR. HAYES: Your Honor, just briefly. I think
9 Your Honor has already touched on it, but for the
10 purposes of the record, the State submits that on the
11 issue of the motion to quash, we have tracked the
12 language of the statute and that is what the inquiry is
13 on a motion to quash. Has the State alleged what the
14 statute requires us to allege? I think Your Honor
15 correctly identifies there may be legal arguments later
16 as to proximate causation and all that, but for the
17 purposes of the motion to quash, all it has to do is --
18 the indictment has to allege that the offense stated was
19 sufficient certain particularity to enable the Court to
20 know what judgment to pronounce and to let the defendant
21 know what he's called upon to answer and whether it
22 apprises the defendant of the elements that is the
23 elements of the offense that is intended to be charged.
24 We submit that has been done.

25 We ask that the Court deny the motion to quash.

1 I have cases to hand up if Your Honor wants to read them
2 that recite what I just said. That would be *State*
3 *versus Gentry*, 363 S.C. 93. And *State versus Thompson*,
4 305 S.C. 496, which I will hand to the Court, as well as
5 the indictment quashing statute, which is 17-19-20. If
6 the Court would like these cases.

7 THE COURT: Sure.

8 MR. HAYES: And I'll provide a copy to
9 Mr. McKinnon. But it's the State's position that the
10 indictment is -- tracks the statute on its face and that
11 any enquiries into the facts on a motion to quash was
12 improper at this time, Your Honor.

13 THE COURT: Again, based upon the information
14 that I have before me and specifically in the
15 indictment, which I've read the material portions of the
16 indictment, I'll deny the motion to quash the
17 indictment. I think that it is -- it plainly comports
18 with the statutory provision of 56-5-750 and that it
19 lists all of the elements of the statute. And it in
20 fact cites the statute in those provisions so that
21 reference can also be made in addition to the language
22 contained in the indictment referenced and also related
23 to the statutory provisions to determine what he is
24 charged with.

25 And given notice of the elements of the offense

PRETRIAL MOTIONS

1 and what the State would be required to establish and
2 include in order to find him guilty of that offense. It
3 allows him to understand what he would be required to
4 defend against. And so I think it meets the criteria of
5 the statute.

6 Also, *The State versus Gentry* in which you can
7 certainly, you can make questions and raise concerns
8 about what's contained in the indictment, but in this
9 particular case, as I stated earlier, the language of
10 the indictment does contain all of the elements within
11 the statute. And I would go so far as to almost parrot
12 the portions of the felony DUI statute. Although it
13 does not state that there is a proximate cause out
14 there. It does indicate that there, that there was a --
15 that the defendant performed an act for forbidden by law
16 and/or negligent of a duty imposed by law when driving a
17 vehicle, which act or negligence or neglect resulted in
18 great bodily injury to the victim of the case. And so I
19 think that very clearly indicates what he is alleged to
20 have done.

21 And specifically under *U.S. versus Davis* provides
22 the elements of the great bodily injury as a part of
23 what the State must prove as a substantive portion of
24 the statute and not a punishment portion. So I'll deny
25 your request.

1 Having done that, there other motions that we
2 need to take up. Some of them I believe you both kind
3 of overlap together. Some of those motions I think I'll
4 allow the State to go forward with the remaining
5 portions of its motion, pretrial motions and then we'll
6 take up the remaining defendant's motions.

7 MR. HAYES: Yes, Your Honor. As Your Honor just
8 stated, we did do some overlap on this. So just for the
9 record I'll make our first motion, which is a motion in
10 limine to prohibit any defense reference to alleged,
11 fault on behalf of the victim officer in this case
12 because that necessarily gets to the issue of proximate
13 causation and proximate causation is omitted from the
14 felony -- well, failure to stop for a blue light with
15 great bodily injury statute.

16 And I think that is significant because it is
17 present in other traffic statutes involving great bodily
18 injury, such as the felony DUI statute 56-5-2945. So I
19 think the omission is instructive. I think the
20 legislature clearly knows how to give us a statute
21 involving proximate causation because they have done it
22 many times. And they chose not to in this particular
23 case. So it's the State's position that we should not
24 be required to vet that additional element of proximate
25 causation is not present in this case and, therefore,

1 should not be mentioned to the jury either by the State
2 or by way of a defense.

3 That's the State's first pretrial motion, Your
4 Honor. Would you like me to move on to my other motions
5 at this time?

6 THE COURT: No. Let's, let's talk about in the
7 indictment, I'm going back to that language because that
8 more or less follows the statute. It says that he did
9 perform an act forbidden by law and/or neglected of his
10 duty imposed by law when driving a vehicle, which act or
11 negligence or neglect resulted in great bodily, great
12 bodily injury.

13 So the way the indictment reads, there should be
14 some connection between the act that was done or neglect
15 that occurred and the great bodily injury that resulted
16 to the victim. It doesn't say specifically proximate
17 cause, as the felony DUI statute does. It certainly,
18 there's got to be some connection between the
19 defendant's conduct and the act that occurred and the
20 injury.

21 MR. HAYES: Yes, Your Honor. We would submit
22 that it all hinges on the word "result" and that word
23 should be construed with its ordinary plain language
24 meaning. And that that would be more in line, as
25 opposed to proximate causation or something that may

1 give rise to civil liability, maybe something lesser
2 that the defendant set in motion a chain of events that
3 resulted in great bodily injury happening to the officer
4 without regard to fault.

5 In this particular case it's all recorded on
6 video. I won't go too much into the facts, but for the
7 purposes of this motion he is driving through a painted
8 median, through an intersection, around traffic and the
9 officer drops in to follow him and that's when the wreck
10 happens.

11 So the State's position would be that proximate
12 causation is not the inquiry. The inquiry is did he do
13 something that set in motion a chain of events that
14 resulted in what ultimately happens with the victim? So
15 that's our position on that.

16 But I understand, Your Honor, there is a
17 connection between his conduct and the injury. I just
18 don't think the statute requires proximate cause as that
19 term is used in other criminal statutes or as that term
20 is used in a civil context. I think it's more of a
21 common sense inquiry, did he get the ball rolling on
22 something that led to the victim's injuries?

23 THE COURT: Mr. McKinnon, do you wish to be heard
24 on that?

25 MR. MCKINNON: Yes, Your Honor. I will say that

1 the solicitor's description of the statute as all it
2 requires is getting the ball rolling seems to be a
3 partial description of proximate cause. We can go back
4 to law school, there's the famous Paulsgraf case where
5 we learn in our one on year that proximate cause is not
6 just a but for analysis that you getting the ball
7 rolling and then apply, you know, actions down the road
8 is still it's not gonna be a proximate cause. There
9 must be a foreseeable consequence. And in this case, I
10 mean I think it's completely unforeseeable that an
11 officer due to her own negligence crashed.

12 And I will also go back when he's talking about
13 the distinction between cause and results. I think he
14 said that. I will go back to the Hinton case where on
15 page four of thirteen: (Reads.) Words must be given
16 their plain and ordinary meaning that was going to
17 subtle or force construction which limits or expands the
18 State's operation. (Ends reading.)

19 And trying to draw a line between the words
20 "cause" and "results" I think it's exactly that. They
21 are trying to divide essentially synonyms into two
22 different meanings to expand the State's power by making
23 this a strict liability element of the crime,
24 essentially not requiring any sort of criminal intent as
25 to the injury portion.

1 Your Honor, I would also point, as I said
2 earlier, that interpreting the statute, and I think Your
3 Honor touched on this too, or pretty much said this too,
4 but the fact that C exists, driving -- and when driving
5 performs an act forbidden by law or neglects a duty
6 imposed by law and a great bodily injury results, that's
7 the proximate cause right there. It doesn't say the
8 words proximate cause, but there has to be something
9 else other than driving without stopping for the blue
10 lights and bodily injury occurred.

11 And, you know, what else could a neglects a duty
12 imposed by law mean other than not following a traffic
13 signal? Or, you know, not stopping at a stop sign, not
14 stopping at a red light, not yielding. The result of
15 which is a crash which makes great bodily injury.
16 There's really no other way to read that, I think.

17 THE COURT: Okay. And so Mr. Hayes, would your
18 argument that they shouldn't use the words fault or they
19 shouldn't use the concept or...

20 MR. HAYES: Yes, Your Honor. Based on the
21 information that you were provided yesterday, those
22 wreck reports, the State is anticipating that the
23 defense may present witnesses or cross-examine State's
24 witnesses and try to make this, try to make the injuries
25 into the officers's fault. Try to make it sound like

1 the officer was the one who caused her own injuries.
2 The officer was driving poorly. The officer did this.
3 The officer shouldn't have done that. And that's what
4 we are seeking to limit, Your Honor, just anticipating
5 where they might be going.

6 MR. MCKINNON: Your Honor, I think, the facts as
7 will come out will be uncontroverted that is to the
8 case.

9 THE COURT: I think -- I don't think, based upon
10 my reading of the instructions that are given under the
11 felony DUI provisions, the proximate cause that they
12 refer to in that particular statute seems to relate to
13 the time between -- the proximate cause under the felony
14 DUI talks about that the proximate cause is the direct
15 cause. It also goes on to say that it does not have to
16 be the only cause, that there can be more than one cause
17 of an injury, but it must be at least a contributing
18 factor to, to the bodily injury or death under that
19 statute.

20 So I don't, I don't think that in this particular
21 case there's a requirement that it has to be -- that the
22 injury that occurred has to be solely caused by the
23 defendant's conduct. But if it's -- if it occurs
24 through a chain of events that's set in motion by the
25 defendant which could be foreseeable and the acts of

1 either the negligent or the doing of something or the
2 failure to do something causes or leads to the injury
3 and seriously bodily injury, then I think that could be
4 a contributing factor and it could be a concurrent
5 cause.

6 I don't think that the words proximate cause are
7 used by the statute. I don't think that it's a
8 requirement necessarily that there be an instruction as
9 to proximate cause because we're not talking about
10 proximate cause because the statute doesn't state that.
11 But I think, I think I guess I have more, I have more
12 problems with the use of the words that it's the fault
13 of the officer in, in presenting the evidence.

14 I think that, I think certainly it's a jury
15 question. I think the jury can determine based upon the
16 evidence whether the defendant's conduct caused the
17 injury. And certainly the defendant would be able to
18 argue his view that it did not cause the injury.

19 I do have a question about fault, but I think
20 that he's entitled to present the evidence and present
21 information that shows that they were intervening acts
22 that may have alleviated any of his conduct, either in
23 his negligent or his failure to do something or was
24 doing something that was inconsistent with the law. And
25 I really think it becomes a jury question.

1 So I'll allow the evidence. The question the way
2 you phrased it in your motion is the question of fault.
3 And perhaps if there's a way to communicate that
4 without, without trying to point the finger directly at
5 the police officer and saying, you know, it was her
6 fault because obviously she -- well, the argument is
7 obviously she would not have been in part of that
8 position had it not been for the conduct of the
9 defendant. And I think that may be sufficient for the
10 jury to make that decision. I don't know whether I
11 answered your question or that's sufficient.

12 MR. HAYES: Thank you, Your Honor. As I
13 understand, the defense is arguing intervening
14 causation.

15 THE COURT: Yes.

16 MR. HAYES: But not point the finger at the
17 officer as at fault.

18 THE COURT: Correct.

19 MR. HAYES: Thank you, Your Honor.

20 MR. MCKINNON: Just to clarify, Your Honor. So I
21 mean I can get into what contributed to the accident,
22 what did not.

23 THE COURT: Yes.

24 MR. MCKINNON: But I just cannot use the word
25 fault, which I think is kind of a layman's term that the

1 jury may understand. You know, as far as insurance they
2 always want to know who's at fault. I'm at fault, well
3 my insurance is gonna go up. Well, they're at fault, so
4 mine will not. It's just kind of a general way that a
5 layperson thinks of a car crash.

6 THE COURT: I think you can make the argument
7 that, that -- I'm not gonna, I'm not gonna hamstring you
8 into making the argument that her conduct in the
9 operation of the vehicle or the manner in which she
10 operated the vehicle contributed to her injuries.

11 MR. MCKINNON: Okay, thank you.

12 MR. HAYES: Your Honor, moving on to the next
13 motion, should it please the Court, is our standard
14 sequestration motion.

15 THE COURT: Yes. I think both sides made that
16 motion and I'll require all witnesses with the exception
17 of the victim, if she is present, and the investigating
18 officer.

19 MR. HAYES: Yes, Your Honor. And just to
20 identify for the purposes of the motion, the victim,
21 Marina Arbelo, is present. If you could raise your
22 hand, please. (Complies.)

23 Case agent Sergeant Buddy Brown is present. And
24 then we do have one witness at this time who will be
25 subject to the sequestration, Deputy Covert. And then

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1 our other witnesses who are coming in this afternoon.

2 THE COURT: Okay. And so that would apply to
3 both the State's witnesses and the defense witnesses,
4 that there should not be any conversations among the
5 witnesses relating to the proposed testimony. And to
6 the extent that the witness has concluded testimony,
7 they should not discuss their testimony to what they
8 testified to with any witness.

9 Again, it's not done to punish anyone. It's only
10 done to make sure that what you testified to is your own
11 recollection of the events that occurred. And, of
12 course, you need to have the opportunity, if necessary,
13 to be able to refresh whatever recollection of any
14 reports that you have of his.

15 MR. MCKINNON: Your Honor, may I?

16 THE COURT: Yes.

17 MR. MCKINNON: The only thing I would say, I
18 mean, we certainly ask for the same thing other than the
19 exception of the victim case agent, which I think
20 traditionally are granted. However, in this case our
21 position is that this is not a failure to stop for blue
22 lights of great bodily injury, so this is a victimless
23 crime. This is a failure to stop for blue lights for
24 all the cases that ---

25 THE COURT: I think based upon the allegations

1 contained in the indictment that there would in fact be
2 someone who was injured, that the State's claiming was
3 injured as a result. And there be, you know, in my
4 experience that when there's someone who is alleged to
5 have been injured because of the conduct of the
6 defendant, that person is generally treated as the
7 victim and whether or not they actually are a victim
8 would ultimately be determined by a jury.

9 MR. HAYES: Yes, Your Honor.

10 THE COURT: I'll allow Ms. Arbelo to remain.

11 MR. HAYES: Thank you, Your Honor. The next
12 motion ---

13 THE COURT: And the sequestration starts after
14 the jury is selected, so they cannot sit through opening
15 statements.

16 MR. HAYES: Yes, ma'am. And then as far as
17 Rule 5, the discovery certification. There's been
18 significant discovery in this case going back and forth.
19 The State would certified that we've given everything
20 that we have to Mr. McKinnon. We'd ask that he certify
21 the same. There's been arguably the -- Mr. McKinnon is
22 in possession of material that we deem Brady, which
23 would be those wreck reports that were the subject of
24 the motion yesterday and allowed us to put that on the
25 record.

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1 THE COURT: And there was some question in some
2 of the e-mails that I was not -- I was concerned because
3 there was some statement that some of the evidence had
4 not been processed. And I assume that's -- that was
5 incorrect or a misstatement.

6 MR. HAYES: The only thing I'm aware of that
7 hasn't been processed is did Your Honor received my
8 e-mail about the fingerprint identification --

9 THE COURT: Yes.

10 MR. HAYES: -- that we're gonna present? They
11 also took -- they also swabbed for DNA but cancelled the
12 DNA request because his fingerprints were found on the
13 jar. That may be what Your Honor's ---

14 THE COURT: Okay. Well, maybe that's what I'm
15 confused about. Okay. So it was DNA that was not
16 processed?

17 MR. HAYES: It was not processed because of the
18 presence of the fingerprints.

19 THE COURT: But -- okay. And that was a
20 reciprocal motion. The defense made the exact same
21 motion, so I assume that you're prepared to certify at
22 this time.

23 MR. MCKINNON: I am, Your Honor. I don't believe
24 I've turned over anything, but I don't believe I have
25 anything that I'd use in my case in chief.

1 THE COURT: All right.

2 MR. HAYES: The standard motion of the defense,
3 was refrain from referencing any possible penalties of a
4 criminal offense in front of the jury and that the
5 defense refrain from eliciting self-serving hearsay,
6 which I don't anticipate that being an issue, but that's
7 our standard motion, Your Honor.

8 MR. MCKINNON: Your Honor, I have no problem with
9 those. I've never seen those made as motions in limine,
10 but certainly I will abide by those as standard
11 practice.

12 THE COURT: And certainly the penalty is not
13 relevant as to guilt or innocence, so I would ask that
14 both parties refrain from making any statements that
15 relate to the penalties that could be imposed in this
16 particular case.

17 MR. HAYES: Oh, I do have one, one discovery
18 matter to put on the record, Your Honor. When it was
19 uncovered this morning that this would be a TIA, most
20 likely a TIA, the fingerprint expert did compare the ten
21 print from the April booking when he was arrested on
22 this charge and it is the same individual whose ten
23 print was found -- whose print was found on the jar and
24 whose print was found or was previously ID'd, basically
25 putting onto the record that our fingerprint expert is

1 prepared for the TIA today as part of his procedure when
2 we found out that it was gonna be a TIA, if that makes
3 sense.

4 THE COURT: No, it doesn't.

5 MR. HAYES: Your Honor, when we found out it was
6 gonna be a ---

7 THE COURT: Well, what difference does it make
8 whether it's a TIA or not?

9 MR. HAYES: Because this defendant was arrested
10 on this charge in April and provided a ten print, as is
11 standard procedure. That ten print was not examined in
12 anyway because he was identified from a previous ten
13 print and a current -- and the print that they pulled
14 from the jar. When we found out the defendant may not
15 be physically present in the courtroom, we asked that
16 the fingerprint expert look at the ten print of the
17 individual who was arrested on this charge to make sure
18 it matches the evidence that has already been turned
19 over.

20 So basically shoring up the fact that the
21 defendant will not be presented in the courtroom, we
22 will have testimony that the defendant arrested on this
23 charge is in fact the defendant, if that makes sense.
24 And I'm just putting everybody on notice of that.

25 MR. MCKINNON: So you're saying there was another

1 comparison done --

2 THE COURT: Yes, that's what he's saying.

3 MR. MCKINNON: -- between the April 18th ten
4 print?

5 MR. HAYES: No. That is the ---

6 THE COURT: No. What I interpret from what he's
7 saying is that there was an initial comparison and that
8 was the basis for which there was probable cause to go
9 after Mr. Ali. And then what I hear today is the
10 witness has compared the person who -- compared to the
11 person who was actually arrested, and so would be able
12 to testify that the prints matched those of the
13 defendant in this case, as opposed to saying ---

14 MR. MCKINNON: I mean, I guess you're saying
15 there was not a comparison done though. I mean --

16 MR. HAYES: No.

17 MR. MCKINNON: -- they already provided me with
18 this.

19 MR. HAYES: No. This individual had a ten print
20 on file since 2011 with the sheriff's office. That was
21 the ten print used to link him to the jar that was
22 recovered.

23 THE COURT: Right.

24 MR. HAYES: When we found out the defendant would
25 not be present in the courtroom today, they grabbed his

1 ten print from this booking so that ---

2 THE COURT: From when he was arrested.

3 MR. HAYES: From when he was arrested on this
4 charge, so that we will have testimony in front of the
5 jury that the defendant -- ultimately that the defendant
6 is the defendant so that we can say that Mr. Ali was the
7 one arrested on this charge, which would not be
8 necessary from the fingerprint witness if Mr. Ali was
9 present today.

10 So we are just shoring up our identification.
11 And those are circumstances that could not develop until
12 Mr. Ali failed to appear, which explains why I'm saying
13 it now.

14 MR. MCKINNON: Okay. But, I mean, are you going
15 to present a comparison of the 18th ten print?

16 MR. HAYES: It's the fingerprint examiner's
17 opinion.

18 MR. MCKINNON: They're not going to be presenting
19 any further evidence?

20 MR. HAYES: No. Would not introduce that ten
21 print, but it would be his opinion.

22 THE COURT: Right.

23 MR. HAYES: Thank you, Your Honor. I just had to
24 make that disclosure for the record based on
25 developments.

1 THE COURT: Sure. So we've covered all the
2 motions on the by the State. Going back to the motion
3 in limine by the defense. We've covered some of them,
4 let's go through the rest of them. We've covered the
5 Rule 5 and the Brady. We've covered the sequestration
6 of witnesses.

7 / Mr. McKinnon, anything further on your motions?

8 MR. MCKINNON: Yes, Your Honor. Just to cover
9 all the bases, going to number two. I'm just asking if
10 the State plans on impeaching Mr. Ali were he to testify
11 and what that basis would be.

12 MR. HAYES: Your Honor, for the record, I don't
13 think he has any impeachable offenses.

14 THE COURT: But he does have a prior record; is
15 that correct?

16 MR. HAYES: Yes, Your Honor, but nothing I think
17 we could get into on the stand.

18 THE COURT: Let's make sure for the record,
19 please, if you would outline what those are.

20 MR. HAYES: Yes, Your Honor. I'm pulling up his
21 rap summary. I'm sorry, Your Honor, our computer system
22 just went down but I have it pulled up now.

23 His criminal record is a 2013 driving while
24 license revoked. 2013 larceny from a person, which is a
25 North Carolina felony. Two counts of ---

1 THE COURT: I'm sorry, what was that?

2 MR. HAYES: Larceny from a person.

3 THE COURT: Okay.

4 MR. HAYES: Which is a North Carolina felony.

5 MR. MCKINNON: I believe it says guilty to a
6 lesser degree.

7 MR. HAYES: Those are lesser included of robbery
8 in North Carolina, is how I read his rap.

9 MR. MCKINNON: I just have trouble reading North
10 Carolina incidents.

11 MR. HAYES: And then a 2014 no operator license
12 and a 2014 trespassing are the only convictions that we
13 are showing, none of which that we would seek to admit
14 if he were to testify. I don't think any of those are
15 eligible to be admitted if he were to testify.

16 THE COURT: Okay.

17 MR. MCKINNON: Your Honor, just as an officer of
18 the court, I believe the solicitor may have missed a
19 couple, but I do not believe they'd be impeachable.
20 Carry and conceal, 2014, and possession of controlled
21 substance in 2015. All out of North Carolina.

22 THE COURT: All right. Number three is request
23 for records online, um, law enforcement witnesses.

24 MR. HAYES: Your Honor, on our witness list the
25 only individual who does not work for a law enforcement

1 agency is the orthopaedic surgeon who is set to testify
2 on Thursday morning. We will provide a rap sheet
3 tomorrow or Thursday morning. I can't imagine he has
4 one, but...

5 MR. MCKINNON: I can't either, but...

6 MR. HAYES: But we will provide it.

7 THE COURT: Yeah.

8 MR. HAYES: Some of these individuals work for
9 law enforcement agencies, but they may not be sworn law
10 enforcement. Would Your Honor still require raps on
11 them?

12 THE COURT: For what, like evidence control or...

13 MR. HAYES: Evidence control. I don't think
14 they're sworn law enforcement even they're sheriff's
15 office employees.

16 THE COURT: Well, I assume that they do a
17 background check before they get employed, but do you
18 want one?

19 MR. MCKINNON: I can't imagine there's anything
20 to uncover there.

21 MR. HAYES: But we'll provide the orthopaedic
22 surgeon's background on Thursday morning.

23 MR. MCKINNON: Okay.

24 THE COURT: Any Lyle information? Prior bad
25 acts, 404?

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1 MR. HAYES: Just contemporary -- contemporaneous
2 bad acts, Your Honor. He does have some Summary Court
3 charges stemming from this event. Of course he's not on
4 trial for those today, but we would reference the
5 circumstances of those charges; although, we will not
6 reference that he was charged in some report and those
7 charges are currently pending. He was charged with
8 possession of marijuana and no driver's license. We are
9 gonna go into those facts, but not those charges. Then
10 any other Lyle evidence we don't have any.

11 MR. MCKINNON: Your Honor, I guess that kind of
12 goes to number seven. It doesn't really sound like a
13 Lyle offense, but...

14 THE COURT: Which would be to exclude the
15 contents of the plastic jar?

16 MR. MCKINNON: Yes, Your Honor. I mean, I
17 understand the State is trying to say that this jar was
18 found on the ground. Circumstantially his prints are on
19 it. That could say that he is in the car, but I don't
20 think the contents of that jar have any relevance
21 whatsoever.

22 MR. HAYES: Your Honor, in that jar was 23 grams
23 of marijuana, so it's the State's position, and it's
24 actually an element of failure to stop for a blue light,
25 that there be no mitigating circumstances. And so it's

1 the State's position that that goes to our case, that he
2 has no valid reason for fleeing. The jury is entitled
3 to hear that he's fleeing probably because he has drugs
4 in the car, which were subsequently thrown from the car.

5 So it's the State's position that the marijuana
6 is necessary for the full presentation of our case under
7 the res gestae theory. We're certainly not gonna try
8 him for possession of marijuana, but it will be
9 instructive to the jury for them to hear that this
10 individual is likely running because he had marijuana in
11 his car and it was thrown from his car during the
12 pursuit.

13 So to just say that a jar was thrown from his
14 car, it kind of at first that just sounds odd, but then
15 also it doesn't -- it would hinder our ability to prove
16 that he had no valid reason to flee. He had no
17 mitigating circumstances that allowed him to flee.
18 There was no medical emergency. There was no anything
19 like that.

20 This was an individual ditching drugs out the
21 window. I think the jury is entitled to hear that in a
22 failure to stop case where we have to show that there
23 was no mitigating circumstance for his failure to stop.

24 I have a case on the res gestae theory, if Your
25 Honor would like to see it, which talks about how

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1 evidence like this is admissible if it would -- if it --
2 if its absence would make the State's case interrupted
3 or choppy or not make sense. The evidence can come in
4 on the *res gestae* theory in order to make a streamline
5 presentation that gives the jury the full picture of
6 what happened that day. And if Your Honor would like
7 that case I can hand it up now.

8 THE COURT: Yes, sir, I'll take a look at it.

9 MR. HAYES: And this is *State versus Wood*, 362 SC
10 520, explaining just the hornbook law and the *res gestae*
11 theory, which the State submits allows us to get into
12 the marijuana in the jar.

13 THE COURT: But you do not intend to talk about
14 the quantity or ---

15 MR. HAYES: Well, the, the marijuana is
16 physically present in the courtroom and it is in the
17 same evidence bag as the jar. And the drug chemist is
18 prepared to testify this afternoon. I don't thing the
19 quantity is particularly relevant. I mean, the jury, if
20 it's allowed, will see that it's a sandwich bag full of
21 marijuana, weighs 23 grams. It makes up a substantial
22 portion of the bag, so there's no ignoring it from a
23 visual perspective. But I don't see any need to talk
24 about the law of marijuana or inference levels or
25 anything like that, just the fact that it is marijuana.

1 The drug chemist is prepared to testify to that.

2 THE COURT: Mr. McKinnon.

3 MR. MCKINNON: I think, Your Honor, the solicitor
4 seems to wanting to add an element to this offense,
5 which is a lack of mitigation, in other words, a motive,
6 I guess, which is not on the indictment. So if that's
7 the case, I think we can revisit the motion to quash.
8 But otherwise, I don't think they need to prove lack of
9 mitigation. And I've got the defense to put forth
10 mitigating circumstance.

11 He's creating this motive element. And, Your
12 Honor, even if that were the case that they need a
13 motive as to why he's fleeing -- and it said he's also
14 charged with not having a South Carolina driver's
15 license, an equal arrestable offense that carries 30
16 days, just like the marijuana. They are both in Summary
17 Court. That's the proper venue to hear the facts of
18 those cases.

19 So again even if they aim to show this motive,
20 there's gonna be testimony that this jury will hear that
21 this individual prior to taking off, the deputy was
22 pulling him out of the car from where under his -- to
23 arrest him, I guess for not, for not having a South
24 Carolina license, as well as I believe having his tag in
25 the wrong place, but I don't think that was actually

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1 charged but that was the, I believe, what this stop was
2 about.

3 So, Your Honor, I don't see any reason
4 whatsoever, any probative value whatsoever in discussing
5 marijuana in any way. There was no DNA or fingerprints
6 taken from the marijuana inside the jar. It's the jar
7 that's relevant. The contents with the - completely
8 irrelevant and which is frankly prejudicial to my client
9 to even bring up additional alleged illegal acts that is
10 not properly before this court.

11 MR. HAYES: One final thing for the record. On
12 Page 5 of *State versus Woods*, just the -- its head notes
13 8, 9, 10, 11, 12, 13, 14. One of the accepted bases for
14 admissibility of evidence of other crimes arises when
15 such evidence furnishes part of the context of the crime
16 or is necessary to a full presentation of the cases or
17 is so intimately connected with an explanatory of the
18 crime charged against the defendant and is so much a
19 part of the setting of the case and its environment that
20 its proof is appropriate in order to complete the story
21 of the crime on trial by proving to be the context or
22 the *res gestae*. (Ends reading.)

23 And it goes on talking about how the State's --
24 it streamlines the presentation, explains the case and
25 there's no reason to fragmentize the case or chop it up

1 when there's the presence of another crime. So the
2 State requests that Your Honor admit the marijuana,
3 subject to the normal rules of evidence under the res
4 gestae theory.

5 MR. MCKINNON: I don't think anything will be
6 chopped up. I mean, they'll have testimony that the jar
7 was found outside the car. And they will have testimony
8 about the prints. Nothing else is really relevant. The
9 jar was found I guess in the area.

10 THE COURT: The statute talks about in the
11 absence of mitigating circumstances. And the charge
12 also includes information about mitigating
13 circumstances. I do think that -- I am concerned about
14 testimony as it relates to the size, to the amount. I
15 think that certainly the fact that it was -- that there
16 was a jar thrown out the window and that it contained
17 marijuana and there's a print on the, on the jar would
18 be evidence to indicate that there was a lack of
19 mitigating circumstance and that it would be relevant
20 for purposes of the trial. But I am concerned that -- I
21 am concerned about the weight and the actual admission
22 of the marijuana. I'm not sure that -- I'm not sure
23 that that's -- I don't have a problem with the fact that
24 the jar contained marijuana as evidence for the State to
25 make an argument that there was a lack of mitigating

1 circumstances, but I am concerned about testimony
2 regarding the weight of it and the visual that goes
3 along with it.

4 And I think certainly -- but I think it's
5 reasonable under the circumstances. I don't think
6 there's necessarily a way to get around -- I'm trying to
7 think of a way to discuss the marijuana without, you
8 know, if -- if the forensic person is gonna testify that
9 there was marijuana in the jar and it was tested and it
10 was marijuana and it's gonna be part of the evidence bag
11 that would be opened, you know, there'll be at least
12 some kind of a visual to the jury. So I am just
13 concerned about testimony that, you know, usually they
14 go through the whole testimony but, you know, I took it
15 out of the way to avoid this many grams or however much.
16 And I think that that can be dispensed with if, you
17 know, I would say that the existence of the marijuana
18 does provide an evidence in the absence of mitigating
19 circumstances. And I think that that's reasonable under
20 the circumstances. It doesn't prove that it was -- it
21 doesn't prove that it was his, but certainly it explains
22 the circumstances under -- potentially explains the
23 circumstances under which there was flight. And so I'll
24 allow the evidence of the testimony except as to the,
25 the weight.

1 MR. HAYES: Yes, Your Honor. We will instruct
2 our witnesses accordingly.

3 MR. MCKINNON: Your Honor, just to clarify, are
4 we saying that the lack of mitigating circumstances is
5 an element of the offense?

6 THE COURT: Well, the statute says in the absence
7 of mitigating circumstances it's unlawful for the motor
8 vehicle driver to fail to stop and signal by a law
9 enforcement vehicle by means of a siren or flashing
10 light. And to the extent the indictment does not
11 specifically state that, the indictment does go to that
12 it's all in violation of 56-5-750(c)(1). C(1) says a
13 person who violates the provisions of subsection A,
14 which talks about the mitigating circumstances. And
15 when driving performs an act forbidden by law in regards
16 to duty imposed by law in the driving of the vehicle
17 where great bodily injury resulted and is guilty of
18 felony and upon conviction must be in prison not more
19 than ten years.

20 So I think that certainly reference to the code
21 section for further clarification and, and it is a, it
22 is a part of the instructions on failure to stop for a
23 blue light because part of the charge says in
24 determining whether or not there are mitigating
25 circumstances which would justify the defendant's

1 failure to stop, you may consider road, factual road
2 conditions, other conditions, such as lighting and
3 whether the officer, driver, passenger safety and any
4 other circumstances you believe to be reasonably
5 mitigate the alleged violation.

6 MR. MCKINNON: Is Your Honor saying the fact that
7 56-5-750 is mentioned on the body of the indictment it
8 basically covers the entirety of the requirements of the
9 notice? I'm a little confused, Your Honor.

10 THE COURT: I think that, I think that the
11 indictment is sufficient to say what he did to violate
12 the statute. And the fact that the code section that's
13 involved also indicates it's in violation of the code
14 section. And the code section specifically talks about
15 the introductory phrase. It says in the absence of
16 mitigating circumstances. 'I don't think necessarily
17 that they have to prove beyond a reasonable doubt the
18 absence of mitigating circumstances, but...

19 MR. MCKINNON: Perhaps, Your Honor, we could do
20 that as an allowable rebutment if the defense brings up
21 mitigating circumstances. Perhaps that could be
22 appropriate.

23 THE COURT: I'm sorry say that again.

24 MR. MCKINNON: Perhaps we could do this as if the
25 defense brings up mitigating circumstances, then the

1 State then would be allowed to bring up such thing as
2 marijuana to rebut the mitigating circumstances.

3 THE COURT: And I'm fine with that too.

4 MR. MCKINNON: Okay. And, I'm sorry, to drag
5 this out. Just one more question, if I could. Could we
6 cover the issue of whether the marijuana would be
7 included in the jar. I mean, presumably the State tries
8 to admit it into evidence.

9 THE COURT: It's not in the jar.

10 MR. MCKINNON: Oh, I thought the State said it
11 was.

12 MR. HAYES: It is in the same evidence bag.

13 THE COURT: It's in the same evidence bag.

14 MR. MCKINNON: Okay.

15 THE COURT: Yeah. I -- the absence from the case
16 law that relates to failure to stop for a blue light,
17 the absence of a mitigating circumstance is not an
18 element of the offense. The case law indicates that the
19 elements of the failure to stop for a blue light, what
20 the State has to prove, is that the defendant was
21 driving under the influence, that he was driving on a
22 road, street or highway of the state. He was signaled
23 to stop by law enforcement by means of a siren or a
24 flashing light and they did not stop. And those are the
25 elements in -- and then as it relates to great bodily

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1 injury there has to be that additional element
2 established as part of the offense pursuant to *U.S.*
3 *versus Davis*.

4 So if the defense is not going to try to present
5 mitigating evidence that there was a reason why they
6 didn't stop then there would be no need to really talk
7 about the marijuana at all, but certainly the fact that
8 there was something thrown out of the car, that it was
9 retrieved; that they were able to lift the fingerprints
10 on the jar. The fingerprints came back to this
11 individual, which also happens to coincide with I guess
12 whatever information was provided at the initial stop
13 before he took off. He corroborates that information.
14 And so I have no problem not charging it. I mean, that
15 is the charge includes that information, but if it
16 doesn't apply to the specific circumstances of the case
17 then they're not required to charge him. So I don't
18 have a problem with only requiring that the jar -- and
19 to the extent that the bag needs to be opened beforehand
20 and the jar is marked, I'm not opposed to that. We can
21 certainly take a break and do that before the witness
22 testifies.

23 MR. MCKINNON: Okay.

24 THE COURT: So if the State has a problem with
25 that, you need to speak up at this particular point.

1 MR. HAYES: Your Honor, I think it gives the jury
2 a complete picture of what happened if they hear about
3 the marijuana. If the Court orders that the bag be
4 broken and repackaged, we can comply with that in about,
5 in a short amount of time.

6 THE COURT: Well, let's make it clean. If the
7 defendant is not going to present any mitigating
8 circumstances, only evidence that shows mitigation on
9 why he did not stop, then there's not a need to talk
10 about the marijuana that was found in the jar.
11 Certainly in terms of identifying the individual that
12 the jar and the fingerprints can be established, but I
13 prefer to keep it clean. Anything else?

14 MR. MCKINNON: Just to be perfectly clear, Your
15 Honor. So what we're now saying that the State cannot
16 mention the marijuana and the marijuana must be removed
17 from the jar.

18 THE COURT: From the evidence bag, yes.

19 MR. MCKINNON: Your Honor, at -- at that -- that
20 way I guess segue into my last motion, number nine,
21 since we already handled number 8, which would be to
22 prohibit any sort of mention ---

23 THE COURT: I don't have a number nine.

24 MR. MCKINNON: On the second page.

25 THE COURT: My law clerk just handed it to me.

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1 Okay. Number nine, yes, sir.

2 MR. MCKINNON: Your Honor, based on the incident
3 report provided by the State, there was some witnesses
4 that were known to them that called and said that this
5 jar was thrown from the vehicle. My understanding is
6 that these witnesses are not on the witness list,
7 presumably not available. I don't know. The State can
8 explain that, but they're not on the witness list. So
9 nobody on the witness list witnessed the jar being
10 thrown from the vehicle, so we just ask that the
11 officers only mention that they were searching the area
12 around where the incident happened and then found the
13 jar wherever they found it.

14 THE COURT: Okay. So how do -- there's a lot of
15 stuff that's left out when you talked to me. How did
16 the jar come to be thrown? Who witnessed it? And how
17 did it come to be retrieved?

18 MR. MCKINNON: So, Your Honor, I suppose we could
19 proffer testimony if you want, but I think the State
20 would probably agree that what happened ---

21 MR. HAYES: We actually agree with his motion,
22 Your Honor. The -- and we can explain it or I could
23 just say that we agree with this motion.

24 THE COURT: So let me understand exactly what
25 we're talking about. The motion is that they not

1 testify, that the officers not testify that they
2 received a call from someone who said that something was
3 thrown from the car.

4 MR. MCKINNON: That's correct, Your Honor. Just
5 that they testified ---

6 THE COURT: Just during the course of their
7 investigation they searched the area.

8 MR. MCKINNON: Yes, ma'am. Yes.

9 MR. HAYES: We agree with the motion and have
10 already instructed our witnesses accordingly.

11 THE COURT: Okay. And I would agree that the
12 motion would be hearsay and violate his client's right
13 to confrontation of due process. Anything else?

14 MR. MCKINNON: Your Honor, I don't know if we put
15 on the record number six. And I don't think anything
16 exists, any sort of post custody statements or
17 interrogatory statements. But just for the record, we'd
18 ask the State say if they intend to produce any
19 protective custody style provisions.

20 MR. HAYES: The only words of the defendant that
21 we intend to introduce are what is audible on the video
22 and he was never in custody on this day.

23 MR. MCKINNON: Your Honor, we would not contest
24 the audiotape.

25 THE COURT: So there's an audiotape that will be

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1 presented that will have him speaking?

2 MR. HAYES: Yes. It's video and audio, yes.

3 THE COURT: And that's in conjunction with the
4 stop?

5 MR. HAYES: Yes, Your Honor, that's it.

6 THE COURT: And there's no objection to it?

7 MR. MCKINNON: That's correct, Your Honor.

8 THE COURT: So then there are no other statements
9 that were made by him that would follow the *Jackson*
10 *versus Denno*?

11 MR. HAYES: No, Your Honor.

12 THE COURT: All right. Anything else?

13 MR. HAYES: Nothing from the State.

14 MR. MCKINNON: Your Honor, nothing from the
15 defense.

16 THE COURT: Let's take a break right before we
17 bring the jury up. Is there anything we need to take up
18 before we do that?

19 MR. MCKINNON: Your Honor, I guess just the voir
20 dire motions. I don't think that would take long, but
21 certainly I don't know about anyone else but I could use
22 a restroom break.

23 THE COURT: My policy to- to the voir dire, I may
24 or may not ask all the questions that are on the list.
25 Is there a certain note that you are objecting to?

1 MR. HAYES: State objects to Defense Number 4 and
2 we have no other objections to defense voir dire. It's
3 probably moot at this point but the State views it as
4 improper comment on the facts.

5 THE COURT: I wouldn't ask Defendant's Number 4.
6 I may not ask number three. And I will not ask State's
7 number one the way it's written. At least not the first
8 part of it.

9 MR. HAYES: Your Honor, we consent to strike on
10 the State's number one.

11 MR. MCKINNON: Your Honor, the only issue further
12 we have with the State's request would be number three.
13 I think Your Honor would standardly ask ---

14 THE COURT: I won't ask them about that, but I do
15 ask questions that try to elicit whether there would be
16 any bias against the State, the solicitor's office or
17 and bias against defense as well. So I'll cover
18 substance in some form or fashion, but not necessarily
19 in those words.

20 MR. MCKINNON: Okay.

21 THE COURT: Anything else?

22 MR. HAYES: And, Your Honor, it just occurred to
23 me concerning Your Honor's ruling on the marijuana.

24 THE COURT: Yes.

25 MR. HAYES: There is a discussion on the dash cam

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1 where the victim officer indicates that she can smell it
2 in the car and they had a conversation is it in the car,
3 it's on your clothes.

4 We would certainly want the jury to hear that.
5 It's just a normal exchange between the officer and the
6 defendant. It doesn't involve the admission of the
7 marijuana that was ultimately found. I just did not
8 want to run a fowl to a ruling that Your Honor had made
9 because the video as it is does have that conversation
10 back and forth between the officer and the defendant.

11 MR. MCKINNON: Your Honor, frankly I watched the
12 video a number times and on full volume and I could not
13 hear that exchange and so this the first I've heard of
14 that.

15 THE COURT: Well, maybe you all better listen to
16 it again during the break.

17 MR. MCKINNON: Yes, ma'am. If it does exist, and
18 I'm sure it does if they've heard it, then I guess our
19 position is that it's somewhat prejudicial but, you
20 know, whatever your Honor decides.

21 THE COURT: I would suggest that you listen to it
22 again and determine if there's an issue on it and then
23 we can go from there.

24 MR. MCKINNON: Thank you, Your Honor.

25 THE COURT: I think part and parcel to this is

1 the reference to the responses that are given as well.
2 So you may want to listen to it. Just give me all of
3 the evidence that was provided and the interaction
4 between the officer and the driver of the vehicle.

5 MR. MCKINNON: Yes, ma'am.

6 THE COURT: So if you all would do that during
7 this break we'll come back. All right. Let's take a
8 break and come back. All right. Let's take a break and
9 we'll come back.

10 (Whereupon, a recess was had from 11:21 a.m. -
11 11:46 a.m.)

12 THE COURT: Yes, sir.

13 MR. HAYES: Your Honor, we've watched the video.
14 It's the State's position that it's normal back and
15 forth discussion between the officer and the defendant
16 of a conversation that basically went nowhere. So the
17 State would present the video as is to the jury.

18 MR. MCKINNON: Your Honor, to be frank, I kind of
19 agree I guess that it was normal kind of do you have
20 anything illegal in the car. There's a little bit of
21 discussion about smelling marijuana on his clothes, but
22 then it does not go any further than that and she does
23 not search the car as a result of that. I really can't
24 object to playing the video in its entirety.

25 THE COURT: Anything else we need to take up?

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1 MR. HAYES: The State is ready for the jury, Your
2 Honor.

3 MR. MCKINNON: So is the Defense, Your Honor.

4 THE COURT: Ask the jury to come up, please.

5 MR. MCKINNON: Your Honor, if I may ask a
6 question of the Court?

7 THE COURT: Yes.

8 MR. MCKINNON: Through rumor I've heard that
9 perhaps we're talking about two alternates. That's fine
10 with us. I was just curious. I'm not, I guess, aware
11 of how many strikes, if the changes ---

12 THE COURT: Hold. Hold. Hold.

13 MR. HAYES: I apologize, Your Honor. I'm sorry,
14 the jury was coming in, so we were going to do sequester
15 with the one witness.

16 THE COURT: That's fine, but he's talking so you
17 need to pay attention to what he's saying.

18 MR. HAYES: I'm sorry, I did not realize.

19 THE COURT: And they were talking over, so I'm
20 sorry.

21 MR. MCKINNON: I'm sorry, Your Honor. I've never
22 had a trial with two alternates. I was just wondering
23 if that changed the number of strikes that each side
24 got.

25 THE COURT: There are five strikes each and then

1 there's two strikes for the defense and one strike for
2 the State per alternate.

3 MR. MCKINNON: Okay. Very good, thank you.

4 THE COURT: Are we have having two alternates?
5 Do we need two alternates?

6 MR. HAYES: Well, yeah. Your Honor, since this
7 is supposed to be a two-day trial and we are supposed to
8 have a one-day gap, the State thinks it -- I think it
9 might be prudent to have two.

10 THE COURT: I don't have an opinion one way or
11 the other.

12 MR. MCKINNON: I don't either, Your Honor. I
13 have no opinion.

14 (Whereupon, the jury enters the courtroom at
15 11:53 a.m.)

16 THE COURT: Good morning, ladies and gentlemen.
17 My name is Allison Lee. I'm the judge here this week
18 for General Sessions or Criminal Court. There are a
19 couple of you whose faces I cannot see. There's a young
20 lady in the fourth row, who is second from the end on
21 that side. (Indicating.) Either if you could move to
22 your left a little bit, please. Thank you. There's a
23 gentleman on the last -- I think it's a gentleman on the
24 last row, the third person from the left -- I'm sorry,
25 to the right. Yes, sir. If you'd move and go to your

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1 right or to your left so I can see you, please. I think
2 that covers everybody else. Thank you very much.

3 Ladies and gentlemen, let me first start off by
4 saying I apologize for the delay in your waiting to come
5 up to court. We had some pretrial issues that we had to
6 take up outside of your presence and it took longer than
7 I anticipated, so I apologize for the delay and having
8 you sit here for a number of hours when you could have
9 been doing other things.

10 We are here, ladies and gentleman, about to begin
11 the trial of the case of The State versus Amil Omire
12 Ali. Ladies and gentleman, this criminal case comes to
13 use by way of an indictment. And I'll read the portions
14 to you as, as a court of General Sessions convened on
15 July 21, 2016, the grand jury of York County present
16 upon their oath that Jamil Omire Ali did in York County,
17 South Carolina on/or about April 5, 2016, while driving
18 a vehicle on a road, street, highway of this state did
19 fail to stop when signaled by a law enforcement vehicle
20 by means of a siren or flashing light and did perform an
21 act forbidden by law and/or neglected a duty imposed by
22 law in the driving of a vehicle, in which act or
23 negligence or neglect resulted in great bodily injury to
24 Marina Arbelo, all in violation of Section
25 56-5-750(c)(1) of the South Carolina Code of Laws as

1 amended. And against the peace and dignity of the state
2 contrary to the statute of such case made and provided.

3 Ladies and gentlemen, this is an indictment for
4 the failure to stop for a blue light in which great
5 bodily injury resulted.' And to this indictment, the
6 defendant, Mr. Ali, has pleaded not guilty. And so that
7 precasts the burden upon the State to prove that Mr. Ali
8 is guilty of this particular charge with evidence that
9 satisfied the jury of that guilt beyond a reasonable
10 doubt.

11 Is there any member of the jury panel who is a
12 member of the grand jury that returned the indictment in
13 this particular case? If so, please stand.

14 (No response.)

15 Ladies and gentlemen, the State is represented by
16 the York County Solicitor's Office, and on behalf of the
17 Solicitor's office is Aaron Hayes. And with you, Mr.
18 Hayes, is?

19 MR. HAYES: Senior Solicitor Chris Epting.

20 THE COURT: Is there any member of the jury panel
21 who is related by blood or marriage or close personal
22 friend of either of these two attorneys? If so, please
23 stand.

24 (No response.)

25 Is there any member of the jury panel who has

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1 ever been employed with the York County Solicitor's
2 Office? If so, please stand. Or member of your
3 immediate family. If so, please stand.

4 (No response.)

5 Is there any member of the jury panel that's ever
6 been prosecuted by the York County Sheriff's Department
7 -- I mean, I'm sorry, the York County Solicitor's
8 Office? If so, please stand. Or a member of your
9 family.

10 (No response.)

11 The defendant in this case is Jamil Ali. Is
12 there any member of the jury panel who is related by
13 blood or marriage or close personal friend of Mr. Ali?
14 If so, please stand.

15 (No response.)

16 Mr. Ali is represented by Mark McKinnon of the
17 16th Judicial Circuit Public Defender's Office. Is
18 there any member of the jury panel who is related by
19 blood or marriage or close personal friend of Mark
20 McKinnon or have you ever been represented by the Public
21 Defender's Office? If so, please stand.

22 (No response.)

23 THE COURT: Thank you. Is there any member of
24 the jury panel who has ever been prosecuted for a
25 failure to stop for a blue light? If so, please stand.

1 Or a member of your immediate family. If so, please
2 stand.

3 (No response.)

4 Ladies and gentlemen, there may be a number of
5 witnesses who may be called to testify in this matter.
6 And to the extent that those witnesses are present here
7 in this courtroom, when their name is called if they
8 would please stand.

9 The question, ladies and gentlemen, is there any
10 member of the jury panel related by blood or marriage or
11 a close personal friend to any of the following
12 individuals: Deputy Marina Arbelo with the York County
13 Sheriff's Office. And she's standing here in the back
14 in the courtroom.

15 (No response.)

16 Thank you. And, ladies and gentlemen, as you
17 hear a name that you recognize or you think that it is
18 possible, if you stand when you hear that name.

19 Sergeant Buddy Brown with the York County Sheriff's
20 Office. He's also standing in the courtroom.

21 (No response.)

22 THE COURT: Thank you. Dr. William Graham with
23 Ortho Carolina, or have you ever been treated by him?

24 (No response.)

25 Deputy Eddie Covert with the York County

1 Sheriff's Office.

2 (No response).

3 John Buchanan with the York County Forensic
4 Services?

5 (No response.)

6 Brian Bagwell with York County Forensic Services?

7 (No response.)

8 Jimmy Stiles with the York County Sheriff's
9 Office Evidence Control.

10 (No response.)

11 Cynthia Mitchum with York County Sheriff's Office
12 chemist.

13 (No response.)

14 Corporal MZ Hassen with the South Carolina
15 Highway Patrol.

16 (No response.)

17 THE COURT: Is there any member of the jury panel
18 who is a member of or contributor to an organization
19 that has as its primary focus that of victim's rights or
20 law enforcement rights, such organizations would include
21 but are not limited to M.A.D.D., S.A.D.D., C.A.V.E
22 C.A.D.R.E, the South Carolina Sheriff's Association, the
23 South Carolina Law Enforcement Officers Association? If
24 so, please stand.

25 (No response.)

1 Is there any member of the jury panel who is a
2 member of or contributed an organization that has as its
3 primary concern those of rights related to prisoners?
4 Such organizations would include the Innocence Project,
5 any prison ministry programs, including any church
6 affiliated prison ministry program. If so, please
7 stand.

8 (No response.)

9 Is there any member of the jury panel who has
10 formed or expressed an opinion about any of the issues
11 that may be involved in this particular case? If so,
12 please stand.

13 (No response.)

14 Is there any member of the jury panel who has
15 formed or expressed an opinion as to the guilt or the
16 innocence of the defendant in this case, Jamil Ali? If
17 so, please stand.

18 (No response.)

19 THE COURT: Is there any member of the jury panel
20 that's aware of any bias or prejudice against the state
21 of South Carolina represented by the York County of the
22 16th Circuit Solicitor's Office? If so, please stand.

23 (No response.)

24 Is there any member of the jury panel that's
25 aware of any bias or prejudice toward the defendant,

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1 Jamil Ali, in this case? If so, please stand.

2 (No response.)

3 THE COURT: Is there any member of the jury panel
4 that knows of any reason why you would not be able to
5 serve as a fair and impartial juror in the trial of this
6 particular case? If so, please stand.

7 (No response.)

8 THE COURT: Is there anything further from the
9 State?

10 MR. HAYES: Nothing further.

11 THE COURT: Anything further from the Defense?

12 MR. MCKINNON: No, Your Honor.

13 THE COURT: Then, counsel, as I've indicated
14 earlier, there are five strikes for the State and five
15 strikes for the Defense. And then on the alternate,
16 there be one strike for the State and two strikes for
17 the Defense.

18 Ladies and gentlemen, as your names are called,
19 if you would please bring all of your belongings and
20 come down to the front of the courtroom here and sit in
21 front of this bench right here and face the attorneys in
22 the case.

23 THE CLERK: Juror Number 167, Tina O'tuel.

24 (Whereupon, white female comes forward.)

25 What say you for the State?

1 MR. HAYES: Please present.
2 THE CLERK: Defense?
3 MR. MCKINNON: Please swear this juror.
4 THE CLERK: 241, Myra Wilks.
5 (Whereupon, black female comes forward.)
6 What say you for the State?
7 MR. HAYES: Please present.
8 THE CLERK: Defense?
9 MR. MCKINNON: Please swear this juror.
10 THE CLERK: Please have a seat in the jury box.
11 216, Myra Strickland.
12 (Whereupon, white female comes forward.)
13 What say you for the State?
14 MR. HAYES: Please present.
15 THE CLERK: Defense?
16 MR. MCKINNON: Please swear this juror.
17 THE CLERK: Please have a seat in the jury box.
18 126, Russell Kidd.
19 (Whereupon, white male comes forward.)
20 What say you for the State?
21 MR. HAYES: Please present.
22 THE CLERK: Defense?
23 MR. MCKINNON: Please swear this juror.
24 THE CLERK: Please have a seat in the jury box.
25 172, James Peters.

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1 (Whereupon, white male comes forward.)

2 What say you for the State?

3 MR. HAYES: Please excuse from this particular
4 case.

5 THE CLERK: You're excused from this case.

6 89, Jenny Greenway.

7 (Whereupon, white female comes forward.)

8 What say you for the State?

9 MR. HAYES: Please present.

10 THE COURT: Defense?

11 MR. MCKINNON: Please swear this juror.

12 THE CLERK: Please have a seat in the jury box.

13 119, Christopher Jones.

14 (Whereupon, black male comes forward.)

15 What say you for the State?

16 MR. HAYES: Please present.

17 THE CLERK: Defense?

18 MR. MCKINNON: Please swear this juror.

19 THE CLERK: Please have a seat in the jury box.

20 207, Kevin Spargo.

21 (Whereupon, white male comes forward.)

22 THE CLERK: What say you for the State?

23 MR. HAYES: Please present.

24 THE CLERK: Defense?

25 MR. MCKINNON: Please swear this juror.

1 THE CLERK: Please have a seat in the jury box.
2 53, Amanda Dasdorf.
3 (Whereupon, white female comes forward.)
4 What say you for the State?
5 MR. HAYES: Please present.
6 THE CLERK: Defense.
7 MR. MCKINNON: Please swear this juror.
8 THE CLERK: Please have a seat in the jury box.
9 221, Todd Thompson.
10 (Whereupon, white male comes forward.)
11 What say you for the State?
12 MR. HAYES: Please present.
13 THE CLERK: Defense?
14 MR. MCKINNON: Please swear this juror.
15 THE CLERK: Please have a seat in the jury box.
16 231, James Washington.
17 (Whereupon, black male comes forward.)
18 THE CLERK: What say you for the State?
19 MR. HAYES: Please present.
20 THE CLERK: Defense?
21 MR. MCKINNON: Please swear this juror.
22 THE CLERK: Please have a seat in the jury box.
23 32, Carlyn Burns.
24 (Whereupon, white female comes forward.)
25 What say you for the State?

JURY SELECTION

1 MR. HAYES: Please present.

2 THE CLERK: Defense?

3 MR. MCKINNON: Please excuse this juror.

4 THE CLERK: You've been excused from this case.
5 134, Albert Len.

6 (Whereupon, Asian man comes forward.)

7 What say you for the State?

8 MR. HAYES: Please present.

9 THE CLERK: Defense?

10 MR. MCKINNON: Please swear this juror.

11 THE CLERK: Please have a seat in the jury box.
12 26, Edward Bowles.

13 (Whereupon, white male comes forward.)

14 What say you for the State?

15 MR. HAYES: Please excuse from this particular
16 case.

17 THE CLERK: You've been excused from this case.
18 54, Curtiss Daughtry.

19 (Whereupon, white male comes forward.)

20 What say you for the State?

21 MR. HAYES: Please present.

22 THE CLERK: Defense?

23 MR. MCKINNON: Please swear this juror.

24 THE CLERK: Please have a seat in the jury box.

25 THE COURT: For alternate number one.

1 THE CLERK: 83, Brittany Giametta.
2 (Whereupon, white female comes forward.)
3 What say you for the State?
4 MR. HAYES: Please present.
5 THE CLERK: Defense?
6 MR. MCKINNON: Please swear this juror.
7 THE CLERK: Please have a seat in the jury box.
8 THE COURT: And for alternate number two.
9 THE CLERK: 249, Sandra Worley.
10 (Whereupon, white female comes forward.)
11 What say you for the State?
12 MR. HAYES: Please present.
13 THE CLERK: Defense?
14 MR. MCKINNON: Please swear this juror.
15 THE CLERK: Please have a seat in the jury box.
16 THE COURT: Are there any motions with respect to
17 the selection of the jury?
18 MR. HAYES: None from the State.
19 MR. MCKINNON: No, Your Honor.
20 THE COURT: Ladies and gentlemen, if you would
21 stand and raise your right hand for the administration
22 of the oath.
23 THE CLERK: You shall well and truly try in true
24 deliverance make between the State of South Carolina and
25 the Defendant at the bar whom you shall have in charge

1 and a true verdict give according to the evidence and
2 the law so help you God? Please respond by say I will.

3 THE JURY: I will.

4 THE COURT: You may be seated. To the remaining
5 members of the panel, I want to thank you very much for
6 your willingness to serve as jurors in this matter. We
7 ask that you call after 7 p.m. this evening. Thank you.
8 You may be excused.

9 (Whereupon, jury panel leaves the courtroom at
10 12:14 p.m.)

11 Again, good afternoon ladies and gentlemen. You
12 have now been sworn as jurors in this case. And as
13 jurors you will be sworn to determine the facts of this
14 case based upon the evidence that will be presented
15 throughout the course of this trial. I'm going to ask
16 you to -- I'll provide you some instructions. I'm going
17 to ask you that you follow throughout the course of this
18 trial.

19 First of all, I ask that you not begin to discuss
20 this matter among yourselves. Certainly you've heard
21 the allegations that have been made against the
22 defendant, but you have not been presented any of the
23 evidence that has to be presented in this case. And it
24 will be your job and be your responsibility to determine
25 the facts and then to make a determination as to whether

1 or not the State has met its burden of proving that
2 Mr. Ali is guilty of the crime of which he's been
3 charged.

4 So I ask that you wait until you have heard all
5 of the evidence that has to be presented. The evidence
6 does not always come in a chronological order, and so
7 until you've heard all of the evidence, you are not in a
8 position to be able to determine the facts of this case.
9 And so I ask that you not to discuss it until it's time
10 for you all to begin your deliberations.

11 Secondly, ladies and gentlemen, as you come and
12 go from the courthouse I ask that you not listen to
13 conversations that you may hear in the hallway.
14 Oftentimes the attorneys are discussing things with each
15 or with their witnesses and the decision that you have
16 to make about this case must be based upon the evidence
17 that's presented here in this courtroom. It should not
18 be based upon conversations that you may overhear as you
19 come and go. So I ask that you not listen to any of
20 those conversations.

21 Also, ladies and gentlemen, I ask that you not
22 allow anyone to approach you to discuss this matter with
23 you. It's inappropriate for anyone to come up to you
24 and talk to you about this case while you're seated as a
25 juror in the matter. If anyone comes up to you and

1 attempts to discuss this case with you, please tell them
2 that you are a juror and that you can not discuss it.
3 And we ask that you report it as soon as possible.

4 We would like to have the opportunity to
5 investigate to make sure that no one is attempting to
6 influence you in anyway, and the only way we can do that
7 is if you report it to us. You can report it to any of
8 the bailiffs in the case or the clerk's office or to me,
9 but certainly we do ask that you do report it so that we
10 can conduct an investigation to make sure that no one's
11 attempting to influence you in any way.

12 Also, ladies and gentlemen, to the extent that
13 you may have reading materials with you, I don't screen
14 your reading materials. I don't want to screen your
15 reading materials. But if there's any information, any
16 material that you have with you that you keep it in the
17 jury room. That may have some impact upon some issue or
18 facts that can be determined in this case. So we ask
19 that you not keep any of those reading materials in the
20 jury room.

21 Additionally, with your telephones, your
22 telephones should be turned off. And they will collect
23 the telephones from you before you go into the jury
24 room. If for some reason you need to be connected to
25 your home or office for any reason and you do not want

1 to turn it off, then if you'd turn it to vibrate then if
2 it goes off or we get notice that there is some
3 emergency, we can take a break so that you can address
4 those particular issues. And we ask that you not keep
5 those with you while you're in the jury room.

6 Now, to my alternates, your role here is also
7 extremely important. If one of your fellow jurors is
8 unable to complete service, then you would step into
9 those -- then you would step into that juror's shoes.

10 I ask that when you come into the jury room, that
11 Ms. Giametta, you are alternate number one. Ms. Worley,
12 you are alternate number two. And you will be seated in
13 the order in which you were selected as alternates. And
14 so you would take those two seats where you are seated
15 at this particular point when you come into the, to the
16 courtroom.

17 Mr. Spargo; is that correct?

18 THE JUROR: Uh-huh.

19 THE COURT: I'm gonna ask that you serve as
20 foreperson for this jury. Your responsibility would be
21 to communicate with me in the event that there's
22 anything that the jury may need throughout the course of
23 this trial. For example, if there's anyone that has any
24 issues, health issues that may relate to taking a break
25 or taking a lunch hour, you should write me a note about

JURY INSTRUCTIONS

1 that.

2 Additionally, if in the event that we have to,
3 have to go past 5 p.m., which I'm hoping that we will
4 not have to do, if there's anyone that has any conflicts
5 after 5 p.m., daycare, childcare or other appointments,
6 you should write me a note about that.

7 But more importantly, when this case is submitted
8 to the jury, you the jury, to begin your deliberations,
9 it will be your responsibility to make sure that
10 everyone has the opportunity to express his or her views
11 about the evidence and what the evidence shows. And
12 then to coordinate those discussions.

13 And then ultimately when you have reached a
14 verdict, it will be your responsibility to report the
15 verdict on the appropriate form. I want to thank you in
16 advance for your service as the foreperson of the jury.
17 I appreciate that.

18 Now, ladies and gentlemen, I'm hoping that we can
19 get through a little bit of information before we
20 actually take a lunch break. What I would like to do is
21 talk to you a little bit about how we'll progress
22 throughout the course of this trial.

23 Now again, ladies and gentlemen, my comments are
24 just preliminary matters and you will get a more
25 detailed instruction at the time that this case is

1 submitted to you all to begin your deliberations.

2 Again, this is the case of The State versus Jamil
3 Ali. You've heard the indictment that was read to you.
4 The indictment is simply the charging document. It's
5 the -- it's the document that lists the elements of the
6 offense against Mr. Ali, and it is the mechanism by
7 which we're able to come into court and to have a trial.

8 Again, to this indictment, Mr. Ali has pleaded
9 not guilty. And so that burden -- that plea casts the
10 burden upon the State to prove that Mr. Ali is guilty of
11 the offense of failure to stop for a blue light with
12 great bodily injury resulting. And, again, the purpose
13 for this trial is to determine whether or not the State
14 would be able to meet that burden.

15 Ladies and gentlemen, in connection with the
16 trial I'll explain to you a little bit about the
17 procedure that we'll follow throughout the course of
18 this trial. The first thing that you will hear will be
19 the opening statements of the attorneys. They are not
20 required to make opening statements. It's purely up to
21 them if they wish to make one.

22 But the opening statements are not evidence, but
23 they may tell you a little bit more about what this case
24 is about and what they hope that you'll be able to hear
25 in the form of evidence that will be presented

1 throughout the course of this trial. So I ask that you
2 listen very carefully to what they have to say.

3 Once they've made those opening statements, then
4 you will hear the evidence. The evidence may take many
5 forms. It may be in the form of the witness's testimony
6 from the witness stand. It may be in the form of
7 photographs or documents or other tangible and physical
8 pieces of evidence that you'll be able to take with you
9 into the jury room when it's time for you all to begin
10 your deliberations.

11 Now, just as in any profession, there are certain
12 rules that govern. For trials they're what they call
13 rules of evidence. Those rules are designed to make
14 sure that what you hear and what you can consider will
15 assist you in being able to determine the facts of this
16 case. For, again, that's your duty and your
17 responsibility here is to determine the facts and then
18 apply the law as I will instruct you in determining
19 whether or not the State will be able to meet its burden
20 in this matter.

21 Whether or not -- and so from time to time you
22 may hear objections about evidence as it's being
23 presented. Then attorneys are simply doing their job in
24 raising a question for me to decide as to whether or not
25 that evidence will assist you. So if I sustain the

1 objection, then that means that the evidence will not be
2 allowed in.

3 I ask that you not speculate as to what that
4 evidence might have been or the reasons for the
5 objection. I assure you that we're not trying to hide
6 or keep anything from you. Again, we're just trying to
7 make sure that what you can consider will assist you in
8 your fact finding mission. On the other hand, if I
9 overrule the objection, then the evidence will be
10 allowed in and you will be able to hear it.

11 From time to time we may -- we may to take up
12 some matters outside of your presence. To the extent
13 that we can do that quickly here in the courtroom, the
14 attorneys may come up to the bench then we'll talk about
15 them. On other occasions I may need to ask that you
16 retire to the jury room so that we can discuss those
17 legal issues in more detail.

18 Again, I will ask you not to speculate as to what
19 the reasons for our discussion or what we're talking
20 about. Again, I assure you that we're not trying to
21 keep anything from you. We're just trying to protect
22 everyone's rights and sometimes we have to have a
23 conversation in depth about those issues and we must do
24 that outside of your presence. And that's a good reason
25 why we were delayed this morning in bringing you to the

JURY INSTRUCTIONS

1 courtroom.

2 Once you've heard all of the evidence that has to
3 be presented, you will hear again from the attorneys in
4 the form of a closing argument. Again, their closing
5 arguments are not evidence, but what they will do is
6 they will pick out portions of the evidence that you've
7 heard and make arguments to you to try to sway to find
8 the facts in accordance with their view of what
9 happened. So I ask that you listen carefully to those
10 closing arguments.

11 And then once we have heard the closing
12 arguments, then I will instruct you on the law that's to
13 be applied in the case and then you may begin your
14 deliberations at that particular time.

15 Now, ladies and gentlemen, I think based upon
16 where we are in the course of the day that we will not
17 conclude this case today. And unfortunately I have a
18 previous appointment for tomorrow, and so we will not
19 have court tomorrow. So once we end today we will come
20 back on Thursday morning and continue on with the trial
21 of this case.

22 And I apologize for any inconvenience to any of
23 you, but I did try to notify them in advance that I
24 would not be here on Wednesday. So I do ask that you
25 listen very carefully to the attorneys and to the

1 witnesses as they present the evidence and the
2 information.

3 I ask that you do not take notes. I find
4 oftentimes that when people are taking notes, they are
5 busy writing information that they're hearing and then
6 they miss something that's being presented.

7 But having said that, I do understand that
8 sometimes people need to take notes to help them
9 remember information. And if you find that throughout
10 the course of this trial that you think that you need to
11 take notes to help you keep up with what's going on and
12 the information that's being presented, please let me
13 know so that I can accommodate you. I'm hoping that
14 this will be a relatively straightforward trial and the
15 information will be relatively easy for you to be able
16 to keep up and follow along with. But if you find that
17 you needed to take those notes, then please let me know
18 so that I can accommodate you.

19 At this time I believe that we're ready to hear
20 any opening statements from the State.

21 MR. HAYES: May it please the Court, Your Honor?

22 THE COURT: Yes, sir.

23 MR. HAYES: Counsel.

24 MR. MCKINNON: (Witness nods head up and down.)

25 OPENING STATEMENT

OPENING STATEMENT BY MR. HAYES

1 BY MR. HAYES:

2 On April the 5th, 2016, Jamil Ali set in motion a
3 chain of events that led to Deputy Marina Arbelo being
4 on the operating table for a broken collarbone. That's
5 the first thing that I'm going to tell you and it's the
6 last because that's really what this case boils down to.

7 My name is Aaron Hayes and I'm the assistant
8 solicitor here in York County and I focus on traffic
9 crimes. With me is Chris Epting, also an assistant
10 solicitor here in York County.

11 I want to give you a road map of the facts that
12 you are going to hear over the next two days. I also
13 want to give you a road map of the law on the charge
14 that Mr. Ali is facing, which is known as failure to
15 stop for a blue light with great bodily injury
16 resulting.

17 And as far as the facts, you're gonna hear that
18 on April 5th Deputy Arbelo initiated a traffic stop at
19 about 6:40 p.m. on Carowinds Boulevard near the 77 ramp.
20 And that stop was for an improperly placed tag. Just a
21 normal traffic stop, broad daylight. Really nothing
22 much to it.

23 But you will hear that very quickly the traffic
24 stop went awry because Mr. Ali decided to speed away
25 from that traffic stop and lead police on a high speed

1 chase down Carowinds Boulevard involving improper lane
2 changes, a u-turn across a grass median, speeds in
3 excess of 80 miles an hour, all of which ultimately
4 culminated in a wreck when Deputy Arbelo's patrol
5 vehicle crashed into another car. You will hear that
6 Deputy Arbelo suffered severe injuries from that.

7 But the best part of the world we live in today
8 and the video capabilities that we have, is that you're
9 gonna get to see it for yourself because Deputy Arbelo's
10 dash cam caught it all. And that is the strongest and
11 best evidence in this case. And we look forward to
12 presenting that video to you in its entirety.

13 You're also gonna hear from some officers that
14 responded to the scene and did some followup
15 investigation. Sergeant Buddy Brown of the York County
16 Sheriff's Office, who is Deputy Arbelo's supervisor and
17 who responded to the scene of the wreck.

18 You're gonna hear from Deputy Eddie Covert, who
19 also works for the York County Sheriff's Office and who
20 investigated the path that the chase followed. And
21 you're gonna hear from experts in fingerprint
22 identification, who analyzed some of the evidence
23 recovered from the scene and were able to match the
24 defendant's fingerprints to items from the vehicle.

25 You're also gonna hear from the orthopaedic

OPENING STATEMENT BY MR. HAYES

1 surgeon who treated Deputy Arbelo for the injury that
2 she sustained as a result of this wreck. So that's
3 gonna be our presentation over the next day,
4 day-and-a-half, and the witnesses that you'll hear from
5 us.

6 I want you to keep in mind that as you listen to
7 the evidence, the nature of this charge and the element
8 of the offense for failure to stop for a blue light with
9 great bodily injury. In South Carolina all crimes are
10 made u[with what we call elements. And those are the
11 items that we must prove to a jury beyond a reasonable
12 doubt in order for a person to be guilty of that
13 particular offense.

14 And the elements for failure to stop for a blue
15 light resulting in great bodily injury are pretty self
16 explanatory. Number one, the defendant must be driving
17 a motor vehicle in the state of South Carolina on one of
18 our public roads. They must be signaled to stop by a
19 law enforcement officer through either a blue light or a
20 siren or both. They must fail to stop for the blue
21 light or the siren.

22 And then in cases where great bodily injury
23 results, they must commit a traffic violation while
24 driving away from the officer and then great bodily
25 injury results as a result of that violation.

1 Those are the elements of the crime for failure
2 to stop for a blue light with great bodily injury. So I
3 hope that's a good preview of what you're gonna see over
4 the next day-and-a-half and I appreciate and thank you
5 in advance for your time and attention. And we know
6 that jury service is an inconvenience, but no one in
7 this courtroom can do their job without you.

8 And so we look forward to presenting this case to
9 you. And please keep in mind we are here today because
10 of the chain of events set in motion by Jamil Ali on
11 April the 5th. Thank you.

12 THE COURT: Yes, sir.

13 MR. MCKINNON: May it please the Court?

14 THE COURT: (Nods head up and down.)

15 MR. MCKINNON: Thank you.

16 OPENING STATEMENT

17 BY MR. MCKINNON:

18 Ladies and gentlemen, I will be brief. I am sure
19 we are all anxious to get a bite to eat. But, again,
20 thank you for being here. As the judge said, you guys
21 are about to serve the most crucial and important part
22 of a criminal trial. That is, you decide the facts and
23 you decide what you believe and you decide ultimately
24 whether the State has met their burden of proof, whether
25 they, in fact, have met the burden that is very high,

1 that's beyond a reasonable doubt as to each and every
2 element of the offense for the offense of failure to
3 stop with great bodily injury.

4 As you hear the testimony, evidence that you've
5 come across, watch a video maybe, I want you to think
6 about a few things. There are going to be some issues
7 that come up. A lot of the, the facts that are
8 presented are probably not gonna be in question. Some
9 may, but a lot of the, you know, I think will be fairly
10 obvious what the situation is.

11 But there will be three very important issues
12 that will, I say, that you should end up deciding this
13 case on. One, did the State prove beyond a reasonable
14 doubt that it was Jamil Ali that was driving the vehicle
15 that you're gonna hear about?

16 The solicitor stated that their case is Jamil Ali
17 was driving, but they have to prove that. They have to
18 prove that beyond a reasonable doubt. You're gonna see
19 that the individual that was driving was not apprehended
20 that day. So they're gonna try and put it together
21 through other evidence who was driving.

22 Please pay particular attention to that. Think
23 about they can prove that. Did they give someone who
24 was there a six-person lineup, like you see on TV? You
25 know, is the person that was driving, you know, on this

1 piece of paper? Point to that person.

2 Did they take forensics? If they did, how was
3 that managed? What was submitted and what can they get
4 out of that? I imagine you're going to see some
5 forensics and I want you to not just take the
6 technician's word for it.

7 You're certainly free to look at the evidence
8 yourself and compare. Do you think that this is a
9 match? Do you think this conclusory? This is beyond a
10 reasonable doubt, if this forensic evidence proves that
11 it was Mr. Ali that was driving that day.

12 Was the car that he was driving investigated?
13 They had the car on video. Ask did they determine who
14 owned that vehicle? Who purchased that vehicle? All
15 those kinds of things. Is there any way that they can
16 prove that Jamil Ali owned that car which perhaps would
17 give you extra knowledge or extra reason to believe that
18 it was, in fact, Mr. Ali driving it?

19 Issue number two. This will be shorter. Deputy
20 Arbelo, I anticipate will present to you that she was
21 actually injured that day. I think that should not be
22 at issue. What you will have to decide is thejuries
23 that she explains to you, and I guess, an orthopaedic
24 surgeon will as well I imagine, does that rise to the
25 language in the statute, the element that is great

1 bodily injury?

2 And the judge will instruct you later as to what
3 great bodily injury is. And it's certainly higher, much
4 higher than just any sort of injury. There will be a
5 definition the judge will give you, so keep that in
6 mind.

7 And finally, the issue is are we going to as a
8 society to hold someone responsible for acts behind them
9 that they were not responsible for? And certainly
10 Deputy Arbelo, you will hear, will be giving chase, but
11 was she required to give chase? That's something you
12 can consider. And was the accident in any way caused by
13 the driver of that vehicle, whether it was Jamil Ali or
14 somebody else?

15 Did that driver cause the accident? Did it even
16 contribute to it with some sort of maneuver or they ran
17 a red light that caused a car to crash into another car
18 or anything like that? Did something like that happen
19 or did just the deputy's car just crash on its own?

20 I think that is very important to deciding
21 whether or not the great bodily injury would attach to
22 the failure to stop for blue light. So those three main
23 things please consider it.

24 And I'm almost done, but I mentioned earlier and
25 so you've heard the State and the judge mention beyond a

1 reasonable doubt. I'll try to describe to you what that
2 means. It's a legal term that there's no perfect
3 definition for, but I will say it is the burden of proof
4 that the State has to meet.

5 Does that mean beyond a any doubt? No, but it is
6 this highest burden in our criminal system or, I'm
7 sorry, any judicial system in this United States. That
8 is, if you are sitting in a trial, this is a civil
9 trial, the one side that was, say, suing the other party
10 would need to prove a preponderance of evidence
11 standard. That is, the evidence is slightly more in
12 favor of them than the defense side in a civil case.

13 And the reason for that is simple. What's at
14 stake? Money, property, something like that. In a
15 criminal trial, obviously liberty can be at stake, and
16 so our justice says the standard today must be that it
17 is beyond a reasonable doubt. So if you picture the
18 scales of justice, criminal matter tilting like that.
19 (Indicating.)

20 In this case they've got to tip the scale almost
21 all the way. One way I've heard it described is you
22 picture the scale game at a carnival or fair where
23 somebody smashed it with a hammer, tries to hit the
24 bell, you may hit it really high, but unless they ding
25 that bell they have not met that standard.

1 Another way -- a very simple way to think about
2 it is, is reasonable doubt is something or a doubt that
3 would make you pause even for just a few seconds.

4 And finally, as you sit through the trial
5 thinking about was this great bodily injury, was this
6 caused by the driver of the car and who is the driver of
7 the car, remember Mr. Ali does not need to prove his
8 innocence to you. That's not why we're here. He is
9 considered to have a veil of innocence and is, in fact,
10 innocent of his charge throughout this entire trial.
11 That means from now until we are done he is innocent.
12 That only changes if you as a jury decide each and every
13 element has been met. The State has proven beyond a
14 reasonable doubt that each and every element has been
15 met. Then and only then can you find him guilty. And
16 I'm confident that at the end of this trial for many
17 reasons you will not decide that. That the State will
18 not meet their burden and we'd ask you to enter a
19 verdict of not guilty.

20 And that's all I have, so hopefully you can go to
21 lunch.

22 THE COURT: Ladies and gentlemen, I think this is
23 a good time to go ahead and take a lunch break. I want
24 to remind you that the instructions I've given you, that
25 there is not to discuss this matter among yourselves.

1 There's currently no evidence in this matter. Please do
2 not allow anyone to approach you to discuss this matter
3 with you. Again, if someone attempts to do that, please
4 tell them that you're a juror and you cannot discuss it.
5 And we ask that you report it as soon as possible.

6 And please also remember as you come and go in
7 the hallway not to listen to conversations that you may
8 hear in the hallways. Again, for the reasons that you
9 have to make the decision based upon the evidence that
10 will be presented here.

11 Ladies and gentlemen, when you go out the
12 courtroom, if you will follow this gentleman out, he
13 will show you a room where you should report after
14 lunch. When you have all are reported together after
15 lunch, then at that time we'll be ready to come back
16 into the courtroom.

17 And, Mr. Spargo, I'm gonna ask that you take the
18 seat where you are seated right there as the foreperson.
19 And the two alternates are set in their seat. And then
20 when you come back in be ready to hear the first witness
21 and the evidence that has to be presented in this
22 matter.

23 I'm gonna ask that you report back at 1:45. Then
24 when you report back at that particular time then we'll
25 be ready to continue on. Have a good lunch and we'll

OPENING STATEMENT BY MR. MCKINNON

1 see you back then.

2 (Whereupon, jury leaves courtroom at 12:43 p.m.)

3 THE COURT: Is there anything we need to take up
4 at this time before we leave for lunch?

5 MR. HAYES: Nothing from me, Your Honor.

6 MR. MCKINNON: Nor I, Your Honor.

7 THE COURT: And, Mr. Epting, I apologize for not
8 recognizing you earlier, but since you haven't said
9 anything... So I apologize for that.

10 MR. EPTING: No, that's perfectly fine, Your
11 Honor.

12 THE COURT: Thank you. All right. We'll see you
13 back at 1:45.

14 (Whereupon, a lunch recess was taken from 12:44 -
15 1:50 p.m.)

16 THE COURT: Is there anything we need to take up
17 before we begin?

18 MR. HAYES: Nothing from me, Your Honor.

19 MR. MCKINNON: Nor the defense, Your Honor.

20 THE COURT: And the witnesses have been
21 sequestered; is that correct?

22 MR. HAYES: Yes, Your Honor, except for the
23 victim and the case agent.

24 THE COURT: Will you ask the jury to come in,
25 please.

1 (Whereupon, jury enters courtroom at 1:59 p.m.)

2 THE COURT: Good afternoon, ladies and gentlemen.

3 Oh, no response. Good afternoon ladies and gentlemen.

4 THE JURY: Good afternoon.

5 THE COURT: We're ready to proceed with the trial
6 of this matter. You may call your first witness.

7 MR. HAYES: Your Honor, the State calls Deputy
8 Marina Arbelo.

9 THE COURT: Would you step forward please, ma'am,
10 and be sworn.

11 THE CLERK: Do you solemnly swear or affirm the
12 testimony you're about to give to this court in this
13 matter is the truth, the whole truth and nothing but the
14 truth so help you God?

15 THE WITNESS: I do.

16 THE CLERK: Thank you.

17 THE COURT: Will you have a seat here in the
18 witness stand here please. And if you'll please state
19 your full name and spell your last name please.

20 THE WITNESS: Marina Alexis Arbelo. Last name
21 A-R-B-E-L-O.

22 THE COURT: Thank you.

23 MARINA ALEXIS ARBELO,
24 having been duly sworn, testified as follows:

25 DIRECT EXAMINATION

DIRECT EXAMINATION OF MARINA ARBELO BY MR. HAYES

1 BY MR. HAYES:

2 Q. Deputy Arbelo, can you tell us who you work for.

3 A. York County Sheriff's Office.

4 Q. How long have you worked for the Sheriff's
5 Office?

6 A. Approximately two years.

7 Q. Have you ever testified in court before?

8 A. No.

9 Q. What is your current job description with the
10 Sheriff's Office?

11 A. I'm the deputy sheriff. I patrol York County,
12 specifically Fort Mill district.

13 Q. Okay. And how long have you been in the Fort
14 Mill district on patrol?

15 A. About year and a half. About a year, year and a
16 half.

17 Q. Can you tell the jury just briefly the type of
18 training required to become a police officer in South
19 Carolina.

20 A. Yes. You have to attend the South Carolina
21 Criminal Justice Academy for a period of 12 weeks, go
22 through their training, academic testing in order to
23 graduate and receive your certification. You also
24 receive on-the-job training through field training which
25 would put you side-by-side with an experienced officer

1 teaching you the rules of what you follow in your
2 day-to-day on patrol duties.

3 Q. So you've done both the Criminal Justice Academy
4 and field training with the Sheriff's Office?

5 A. Yes.

6 Q. Were you on patrol in York County on April 5th,
7 2016?

8 A. Yes.

9 Q. Were you patrolling the area of Carowinds
10 Boulevard?

11 A. Yes.

12 Q. Had you patrolled that area before?

13 A. Yes.

14 Q. Is Carowinds Boulevard in York County?

15 A. Yes, it is.

16 Q. Are you familiar with that area?

17 A. Yes.

18 MR. HAYES: Your Honor, may I approach the
19 witness?

20 THE COURT: Yes, sir.

21 BY MR. HAYES:

22 Q. If you would take a look at this and let me know
23 if this looks -- tell me what this is and if that looks
24 familiar to you.

25 A. This is a map of a portion of Highway 21 and

DIRECT EXAMINATION OF MARINA ARBELO BY MR. HAYES

1 Carowinds Boulevard with 77 overpass. And it's familiar
2 to me. It's an area that I patrol very frequently.

3 Q. Is that map a true and accurate depiction of your
4 of your understanding of Carowinds Boulevard area?

5 A. It is.

6 MR. HAYES: And, Your Honor, at this time I would
7 like to move that into evidence as State's Exhibit
8 Number 1.

9 MR. MCKINNON: Without objection, Your Honor.

10 THE COURT: Without objection it's admitted.

11 (Whereupon, State's Exhibit No. 1, Copy of Map of
12 Carowinds Boulevard, was marked for identification.)

13 (Whereupon, State's Exhibit No. 1 was entered
14 into the record.)

15 BY MR. HAYES:

16 Q. Did you engage in a -- well, first of all, were
17 you involved in a wreck that day?

18 A. Yes.

19 Q. Prior to that wreck did you engage in a traffic
20 stop?

21 A. I did.

22 Q. What type of vehicle did you pull over?

23 A. It was a blue sedan. I believe it was an Accura
24 sedan.

25 Q. Why did you pull that vehicle over?

1 A. It had an improperly displayed paper tag. It was
2 displayed in the rear window of the vehicle.

3 Q. Where is the tag supposed to be displayed?

4 A. In the most rear portion of the vehicle on the
5 outside portion. Most would see in the trunk area,
6 lower bumper area.

7 Q. What time of day did you initiate that traffic
8 stop?

9 A. It was late afternoon, approximately 6:40,
10 6:30 in the afternoon.

11 Q. Ok. How many people were in that car when it
12 originally came to a stop?

13 A. One person.

14 Q. Did you walk to the driver's side window of that
15 car?

16 A. I did.

17 Q. Did you speak with the driver?

18 A. I did.

19 Q. Did you look at the driver's face?

20 A. Yes.

21 Q. About how long did you look at the driver's face?

22 A. Long enough to recognize him if I were to see him
23 today.

24 MR. HAYES: Your Honor, at this time I have a
25 matter of law for the Court.

1 THE COURT: Ladies and gentlemen, we have a legal
2 issue which we need to take up outside of your presence.
3 I'm gonna ask that you retire to the jury room. Do not
4 begin to discuss this matter among yourselves. As soon
5 as we take up this issue we'll bring you back.

6 (Whereupon, jury leaves courtroom at 2:05 p.m.)

7 THE COURT: Yes, sir.

8 MR. HAYES: Your Honor, at this time we are --
9 it's obvious the defendant is not present in the
10 courtroom. At this time we would like to show the
11 witness a picture to ask if the witness can identify the
12 picture. According to the case law, it's my
13 understanding there is a three-prong inquiry that has to
14 be shown by the State and then ruled on by Your Honor
15 for the admission of this type of photograph, which we
16 have redacted to reduce prejudice, and we would like to
17 go over that now.

18 THE COURT: And what's the case?

19 MR. HAYES: The case is State versus Green, Your
20 Honor. I printed copies, which I have back in my office
21 if you would like a hard copy of it.

22 THE COURT: Yes, please.

23 MR. HAYES: Thank you. Mr. Epting is going to
24 get them. The basic gist of the case is times when a
25 defendant's mugshot may be admissible to the jury, with

1 the three-prong test being the need of the State to
2 admit the photograph, the redactions to the photograph
3 to make sure that it is not prejudicial. And I believe
4 the State not mentioning where the photograph came from.
5 And so at this time we would submit that we need to do
6 that because this is a TIA and that we have redacted the
7 photograph accordingly. And we would seek approval to
8 show it to the jury if it comes in through other methods
9 or if it comes in at the appropriate time.

10 THE COURT: Mr. McKinnon.

11 MR. MCKINNON: Your Honor, I don't have that case
12 in front of me either, but at this point I mean I'd say
13 the State has had seven months to do an out-of-court
14 six-pack lineup, as we call it, which limits prejudice
15 in the case. The witness has to pick out from amongst
16 six people, you know, whether they could identify that
17 particular individual.

18 And, you know, if on this day here, I mean I
19 guess they're saying they're going to be giving a
20 photograph that is supposed to be Jamil Ali from
21 booking, so I guess that's getting down to quantity, but
22 I mean the value of that when, you know, here's a
23 picture of Jamil Ali, is that Jamil Ali seems kind of
24 limited, but... But as far as the three-prong test I'd
25 have to refresh my knowledge of that from the case law.

1 MR. HAYES: May I approach, Your Honor?

2 THE COURT: Yes, sir.

3 MR. HAYES: The three-prong test is on Page 7 of
4 the opinion in the top left-hand corner.

5 THE COURT: I haven't fully read the case. I
6 guess I'm still reviewing, but is he not identified on
7 -- is he not on the video?

8 MR. HAYES: Your Honor, his voice is audible and
9 the back of his head is visible through the car window
10 from the dash cam's perspective, but that is as close as
11 the camera ever gets to him.

12 MR. MCKINNON: Your Honor, I agree with that.
13 The officers car was directly behind the defendant's car
14 and he never got out of the car, so you can't ever see
15 his face.

16 THE COURT: And so any interaction she had with
17 him, he was not facing her or turning his head towards
18 her at all? So then I assume -- well, let me back up.
19 The video comes from the dash cam of the car and not
20 through anybody?

21 MR. HAYES: That's correct.

22 THE COURT: Okay. That answers that.

23 MR. HAYES: It does show the officer standing at
24 the driver's side window for -- on two occasions.

25 THE COURT: Okay. And so I've read the, the

1 criteria relating to the introduction of a mugshot. So
2 what's the three, the three prongs would be the State
3 has a demonstrable need to introduce the photograph.
4 Two, the photograph showed to the jury does not suggest
5 the defendant's criminal record. And, three, the
6 photograph is not introduced in such a way as to draw
7 attention to its origin or implication. So I guess
8 we'll go to the first prong.

9 MR. HAYES: Yes, Your Honor. As far as
10 demonstrable need, we would like to ask this witness if
11 the face matches the face that she saw behind the
12 steering wheel of that car. Typically, the kind of
13 thing that's done in court, you know, the defendant is
14 present, which we do not have the opportunity to do that
15 today.

16 And then as far as -- so that would be the first
17 prong, Your Honor. The second prong ---

18 THE COURT: Well, before you get to the second
19 prong, generally if a person, when the defendant is
20 present court the officer can either --, the question is
21 usually something, you know, do you see the individual
22 you stopped in the courtroom or something along those
23 lines. So in the Green case, it was a different
24 situation in which the reasons for the mugshot be
25 introduced. It was to compare the two, what was on a

1 video, a surveillance video from a robbery and allowed
2 the -- according to the opinion, the photo included a
3 side view of the defendant Green's face which the State
4 needed to show the jury because it allowed the jury to
5 compare the photo to the still photo from the
6 surveillance video of the robbery, which also showed the
7 side of the assailant's face. And so I can understand
8 in that particular situation.

9 I guess I'm not familiar enough with just using
10 one photograph to show somebody to say is this the
11 person that you stopped versus some other type of lineup
12 or some other type of identification based upon the
13 lineup. Specifically, I guess since the defense has now
14 raised at this particular point whether it was in fact
15 -- whether they arrested the right person. So I guess
16 that's where I'm having trouble with it at this
17 particular point, unless you can provide -- you can
18 figure out a way to help me understand a little bit
19 better.

20 MR. HAYES: Yes, Your Honor. We are trying to
21 show the jury an image of the individual who was behind
22 the driver's seat, who was behind the steering wheel.
23 And we believe through this witness's -- this witness
24 and other witnesses later that we can connect up an
25 image of the driver as she saw him and the defendant,

1 Jamil Ali. Of course that will be a multi-witness
2 inquiry on the TIA such as this one.

3 But for purposes of getting that started, we
4 would like to ask this witness if a particular picture
5 is the person that she saw that day. That would be the
6 need. If the defendant were present, we would ask the
7 witness if he was -- if the driver of the vehicle is
8 somewhere in the courtroom and the witness, you know,
9 presumably would say yes or no and then find him in the
10 courtroom. This is a substitute for that because of
11 Mr. Ali not being here today. We are -- that would be
12 our demonstrable need.

13 THE COURT: Mr. McKinnon.

14 MR. MCKINNON: Thank you, Your Honor. Your
15 Honor, I picked up the same thing as far as this fact
16 pattern may be very different, that this decision was
17 made based on it being beneficial to the jury to be
18 being able to compare one shot of this defendant to what
19 they're seeing on the video. And, therefore, they can
20 assess the I.D. made by the detective that he made from
21 the video.

22 In this case they will have no such comparison.
23 So I don't see really the probative value. I mean,
24 other than the State must have a need to try identify
25 the defendant. But, Your Honor, as I said earlier,

1 they've had seven months to get an out-of-court six-pack
2 I.D. done with this witness and have neglected to do
3 that.

4 Putting up a picture in front of the witness and
5 saying is this the person, Your Honor, that's analogous
6 to a showup lineup but done seven months after the
7 event. I mean, it's absolutely prejudicial. There's
8 only one answer really to give.

9 I mean, the prejudice is not from the three
10 prongs I think they're talking about, saying that, you
11 know, that's gonna show that he was in jail and all
12 that. I think now it's all cropped out. The prejudice
13 is that it's a -- you know, if this was done out of
14 court would be a *Neil v. Biggers* motion for a showup
15 lineup. I think this is worse because it's seven months
16 after the fact.

17 MR. HAYES: Your Honor, I think this is
18 distinguishable from traditional *Neil v. Biggers*
19 situation because this is an in-court identification
20 from which no previous out-of-court identification has
21 been attempted. So the remedy for the defense in that
22 situation is cross-examination but not exclusion. This
23 is not something -- this is something we are doing in
24 open court that we would do a hundred times out of a
25 hundred if the defendant was present. Every criminal

1 trial I've ever participated in please find the
2 defendant and they find the defendant. Whether -- and
3 in most of those cases there's been no out-of-court
4 identification even attempted because it's not
5 necessary.

6 THE COURT: Well, what you're doing is not an
7 inquiry identification. You are basically presenting a
8 one photograph lineup to a witness saying is this the
9 person, as opposed it being based upon, based upon the
10 witness's recollection of what occurred is the person
11 that you saw which you interacted with or who you
12 believe this particular offense is in the courtroom and
13 then they identify an individual.

14 I think in my view the idea that you would
15 present a photograph of the defendant to the witness and
16 say is this, is this the person, is tantamount for close
17 - or of- or of um, who is specifically telling them in
18 essence this is the person because that's the person who
19 you've identified that, you know, we've heard no
20 description about what the individual looked like. We
21 don't have anything to identify who the driver of the
22 car was. You're just gonna show a photograph and say is
23 this the person and you're showing a photograph of the
24 defendant. And I guess that's the issue I have. I
25 could understand if there had been at least some other

1 -- there had been some other evidence that's already
2 before the jury about, you know, the person that we
3 arrested was based upon the fingerprints that we got off
4 the job. Then the witness said, you know, testifies --
5 someone testifies that this is, this is the photograph
6 of the person whose fingerprints were on, is this the
7 person you saw. I can see the difference in that. I
8 guess I have a real problem with -- I don't believe that
9 this is a true in-court identification, because a true
10 in-court identification I believe involves actually
11 physically, physically seeing the individual and being
12 able to identify based upon a number of people who may
13 be in the courtroom whether or not that individual is
14 present. I'll be happy to take a look at some other
15 case law, you know, related to in-court identification
16 to determine or if you can just point me to something
17 that would give me some additional information.

18 MR. HAYES: Your Honor, if I may add?

19 THE COURT: Yes, sir.

20 MR. HAYES: At this time we will withdraw this
21 particular question with leave to recall this witness as
22 the trial progresses, but we will withdraw this question
23 at this time. And we will move on from this issue at
24 this time, if that pleases the Court.

25 THE COURT: Any issues from the defense?

1 MR. MCKINNON: Your Honor, I kind of suspected
2 that's what they were gonna say. I'm not really sure
3 how to answer that. I mean, I don't know if they're
4 asking if they withdraw the witness without being
5 subject to cross-examination. I mean, we have limited
6 testimony, but...

7 MR. HAYES: We're not withdrawing the witness,
8 Your Honor. We're just withdrawing that question.

9 MR. MCKINNON: Oh, I'm sorry.

10 MR. HAYES: Yeah.

11 MR. MCKINNON: Your Honor, I guess our position
12 would be that the question has been asked, the jury has
13 been removed. It's right for Your Honor to decide on
14 it, but...

15 THE COURT: I mean, the only thing she's
16 testified at this particular point is that she would
17 recognize him if she saw him again. And that's, and
18 that's basically the extent of the testimony.

19 I don't see anything that would suggest otherwise
20 in terms of in-Court information, so I would, I would
21 say that the Green would not -- and provisions in Green
22 would not apply to this particular in-Court
23 identification and so I would deny your request at this
24 particular point.

25 MR. HAYES: Yes, Your Honor. As the testimony

1 develops, we seek leave to recall this witness at a
2 later time if the Court's concerns have been alleviated
3 at a later time, but for the moment we are moving on
4 from this question.

5 THE COURT: All right. You may ask the jury to
6 come back in.

7 (Whereupon, jury enters courtroom at 2:34 p.m.)

8 THE COURT: You may proceed.

9 MR. HAYES: Thank you, Your Honor.

10 BY MR. HAYES:

11 Q. Deputy Arbelo, I believe you testified that you,
12 you were talking about how you pulled over a blue sedan.

13 A. Yes.

14 Q. And that you spoke to the driver that was in that
15 blue sedan.

16 A. I did.

17 Q. Can you walk us through what happened from there
18 beginning with your initial conversation with the
19 driver.

20 A. Upon initiating the traffic stop, I approached
21 driver's side, spoke with the driver, asked him, who was
22 later identified to me as an individual named Mr. Jamil
23 Ali. I asked him for his driver's license and vehicle
24 documents, those being his registration, insurance.

25 Mr. Ali at that point stated that he, he did not

1 have a driver's license to provide me, but could provide
2 me his name and date of birth, of which he did. We got
3 into the conversation of the vehicle documents that he
4 did not have on him due to this being a fairly newer
5 car.

6 Q. Did -- how did he tell you his name?

7 A. He said it at first, but I didn't catch it, so I
8 had him spell it out for me. So he spelled his first
9 name and his last name and he provided his name or he
10 provided his date of birth afterwards.

11 Q. Can remember how he spelled his name?

12 A. Yes. It's J-A-M-I-L. Last name is Ali, A-L-I.

13 Q. And that's what the driver told you?

14 A. That's what the driver told me.

15 Q. Do you remember what his date of birth was?

16 A. I do not.

17 Q. Then what happened?

18 A. He provided me that information. I returned to
19 my patrol car. Through dispatch I ran his name and date
20 of birth. At that point I was informed that his license
21 was, in fact, suspended. It was at that time that I
22 made the decision while in my patrol car that I was
23 going to place him under arrest. I exited my patrol car
24 and approached his vehicle again. His window was still
25 down. I told that I needed him to step outside. It was

1 at that time that he placed his car in drive and sped
2 off.

3 Q. Okay. What happened at that point?

4 A. At that time I went back to my patrol car, put
5 the car in drive and pursued after him. My lights were
6 already on. I initiated siren and I pursued after him.
7 At this point we're on Carowinds Boulevard approaching,
8 heading towards North Carolina. It was heavy traffic at
9 that point, I do remember at that time of day.

10 We approached the intersection of Pleasant Road.
11 Prior to getting to that intersection he made a u-turn
12 in the grass median. I continued in pursuit after him.
13 At that point we were traveling back towards Fort Mill,
14 south on Carowinds. We proceeded through Carowinds
15 Lakemont intersection, and then approached the
16 intersection of Carowinds and Foothills way.

17 It was at that time that I saw Mr. Ali drive into
18 the divided median prior to Carowinds and Foothills Way
19 to get around vehicles that were at that intersection,
20 continuing at a high rate of speed. I do remember one
21 of the last miles per hour that I was telling my
22 supervisor at the time was approximately 80 miles an
23 hour.

24 You know, he continued around that vehicle. I
25 continued in behind him. It was at that time when I

1 went through the divided median as well he did that my
2 vehicle started to fishtail. I crossed over into
3 oncoming traffic and collided with another vehicle that,
4 that was not Mr. Ali, another individual.

5 Q. Okay. What type of car were you driving?

6 A. A crown Victoria.

7 Q. Did it have lights and sirens?

8 A. It did.

9 Q. Is it illegal for someone to do a u-turn on the
10 grass median?

11 A. It is.

12 Q. What is the speed limit on Carowinds Boulevard?

13 A. That particular area is 35 miles an hour.

14 Q. Is it illegal to travel 80 miles an hour on that
15 part of this road?

16 A. It is.

17 Q. Is it illegal to drive in the painted median?

18 A. It is.

19 Q. Tell us what you remember after wrecking into
20 that other car?

21 A. I, from the moment that I made impact I remember
22 opening my eyes and looking around me and suddenly there
23 was about five or six civilians surrounding my car. I
24 never saw them exit their vehicle. I don't even know
25 how they got there, but suddenly they were there.

1 They were telling me that I needed to get out
2 because my vehicle was smoking. I was - the inside of
3 my car was covered in the dust from the airbags that had
4 deployed. They assisted me out of my car. I had blood
5 running down the side of my face and I remember having
6 extreme pain on the left part of my body here in my
7 collarbone area.

8 I was able to use my, my lapel mic to radio for
9 assistance, that I needed EMS. At that time eventually
10 at some point I heard my co-workers arriving on scene,
11 lights and sirens as well. EMS arrived shortly after.

12 Q. Okay. And where did the ambulance take you?

13 A. The ambulance took me to CMC main in Charlotte.

14 Q. And what happened when you were there?

15 A. When I was there I was -- I went to the emergency
16 room where I was seen by several nurses, a doctor. They
17 assessed my injuries. They, based on looking at it,
18 feeling it and hearing my description of the pain that I
19 was having, they told me that my clavicle was fractured.
20 They took an x-ray, MRI.

21 The, after reading the results from the hospital,
22 they stated that I suffered a mild concussion. I had
23 stitches that they applied there at the hospital on the
24 right portion of my head. And they sent me home with a
25 sling.

1 Q. This was on April 5th, right?

2 A. Yes.

3 Q. Can you tell us what happened in the weeks
4 following your release from the ER that night?

5 A. From that night up until my anticipated surgery,
6 I was very dependent on someone else for assistance.
7 All my activities of daily life. Getting out of bed,
8 brushing my teeth, taking a shower, getting dressed,
9 using the restroom. I needed somebody for help with all
10 of that, which is very different than what my normal
11 routine was going to work, going to the gym, things like
12 that. Driving.

13 I had excruciating pain despite the medication
14 that I was administered. In the mornings throughout the
15 entire day I was dependent on, on pain medication to
16 alleviate that and get me to a comfortable level. I did
17 eventually see an orthopedist who took an x-ray and
18 looked at the injury and the extent of it.

19 It was at that time that my doctor explained that
20 the significance of my impact would require surgery to
21 repair that clavicle and make it functioning enough for
22 me to be able to work, drive and do activities that I
23 normally participated in.

24 Q. Did you ultimately have surgery?

25 A. I did.

1 Q. What date did you have surgery?

2 A. April 21st.

3 Q. What was the name of the doctor that did the
4 surgery?

5 A. Dr. William Gray.

6 Q. Was any hardware placed onto your clavicle to
7 repair it?

8 A. Yes. A titanium plate with six screws were
9 placed in my clavicle to realign it and keep it from
10 re-breaking again.

11 Q. Do you have a scar?

12 A. I do.

13 Q. Where is that scar located?

14 A. It's on the left portion of my chest.

15 Q. About how big is that scar?

16 A. It's about that big. It goes like that across my
17 chest. (Indicating.)

18 MR. HAYES: Court's indulgence, Your Honor. Your
19 Honor, may I approach?

20 THE COURT: Yes.

21 (Whereupon, a bench conference was held off the
22 record.)

23 BY MR. HAYES:

24 Q. Deputy Arbelo, would you be able to show your
25 scar to the jury? And the judge just advised that if

1 you need to take your tie off and loosen your collar in
2 the witness prep room that would be okay.

3 A. That's fine. I can do it here.

4 THE COURT: It's your choice.

5 THE WITNESS: Yes.

6 BY MR. HAYES:

7 Q. Thank you, Deputy. Deputy, please show your scar
8 to the jury.

9 A. Can I come closer to them or do you want me to
10 stay here?

11 MR. HAYES: Your Honor, may the witness come
12 closer to the jury to show the scar?

13 THE COURT: She can stand in front of the witness
14 box.

15 (Whereupon, Witness leaves witness stand.)

16 MR. HAYES: Thank you Deputy.

17 THE COURT: Everyone have an opportunity to see
18 it?

19 (All nod in the affirmative.)

20 THE COURT: Thank you.

21 (Whereupon, Witness takes seat on the witness
22 stand.)

23 BY MR. HAYES:

24 Q. Deputy, can you tell us what lasting effects you
25 have had from that surgery?

1 A. I am still working on regaining strength in that
2 arm the way that I had it before. The most significant
3 I would say is that I have permanent numbness that runs
4 from the very top of that scar about mid chest, about
5 that much numbness that I can't feel at all.
6 Periodically when I lift anything of significant weight
7 I will feel strain in that shoulder. I can lift, but
8 it's a reminder that it's there. I mean I feel the
9 plate there. You know, I don't necessarily feel every
10 individual screw, but it's not 100 percent obviously.
11 (Indicating.)

12 Q. Did you have to miss work as a result of this
13 wreck?

14 A. I did.

15 Q. About how long were you out of work?

16 A. I was off the road for about two-and-a-half
17 months.

18 Q. About how long did you have diminished use of
19 your left arm?

20 A. That entire time. Probably about a little over
21 two months, significant unusable use of that arm.

22 Q. Deputy Arbelo, was your patrol car equipped with
23 a video record recording device on April 5th, 2016?

24 A. Yes.

25 Q. Did it make a recording of the police chase you

1 just described?

2 A. Yes.

3 MR. HAYES: Your Honor, may I approach the
4 witness?

5 THE COURT: Yes.

6 BY MR. HAYES:

7 Q. Please take a look at this and let me know if you
8 recognize it.

9 A. I do.

10 Q. What is that disk?

11 A. This is a video of my in car -- it's from my
12 in-car video for my patrol car.

13 Q. Have you watched that video prior to today?

14 A. I have.

15 Q. Is that video a true and accurate representation
16 of what took place on April 5th?

17 A. It is.

18 MR. HAYES: Your Honor, at this time I would move
19 that disk into evidence as State's Exhibit Number 2.

20 MR. MCKINNON: Your Honor, I guess pending seeing
21 what's on the disk I would tentatively say yes, but I
22 mean I want to make sure this is not altered or
23 anything.

24 THE COURT: You haven't seen it?

25 MR. MCKINNON: I mean, that particular disk, no,

1 but I was given a copy. So, yes, I've seen the video
2 from her car if we're admitting that disk.

3 THE COURT: I understand what you're saying, but
4 I'll admit it and at this particular point.

5 MR. MCKINNON: Very good.

6 (Whereupon, State's Exhibit Number 2, Video Of
7 Patrol Car Dash Cam, was marked for identification.)

8 (Whereupon, State's Exhibit Number 2 was admitted
9 into the record.)

10 MR. HAYES: Your Honor, may we publish this to
11 the jury?

12 THE COURT: Yes, Sir.

13 MR. HAYES: Your Honor, this is State's Exhibit
14 2. Your Honor, this particular disk takes a while to
15 load. This is normal for this particular disk. I'm
16 sorry for the inconvenience.

17 (Whereupon, video plays with no sound.)

18 MR. EPTING: Beg the Court's indulgence.

19 MR. HAYES: Your Honor, while we work on the
20 audio issue, may I ask the witness some additional
21 questions?

22 THE COURT: (Nods head up and down.)

23 BY MR. HAYES:

24 Q. Deputy Arbelo, tell us which direction you're
25 facing on Carowinds Boulevard.

1 A. Facing northbound.

2 Q. And that is the blue Acura that you pulled over?

3 A. It is.

4 Q. Tag visible in the back windshield?

5 A. Yes.

6 Q. What time of day is this?

7 A. About 6:40. 6:30, 6:40.

8 Q. So your initial interaction, were there any other
9 people in the car?

10 A. No.

11 MR. HAYES: And I apologize, Your Honor, while we
12 work on the audio issue. May I approach, Your Honor?

13 THE COURT: Yes, sir.

14 (Whereupon, a bench conference was held off the
15 record.)

16 (Whereupon, plays video.)

17 BY MR. HAYES:

18 Q. Deputy Arbelo, the vehicle that you ultimately
19 wrecked into, was it visible on that video?

20 A. Yes. It was a black truck that's out of view
21 now, but it was a black pickup.

22 Q. Okay. Tell us in your own words why that wreck
23 happened.

24 A. The wreck happened because I pursued the suspect
25 in an attempt to apprehend him. Going through that

1 divided median the way that he did, following in pursuit
2 of him in order to get him.

3 Q. What color was that light when he ran through it?

4 A. It was red.

5 MR. HAYES: Court's indulgence, Your Honor. No
6 further questions at this time. Please answer any that
7 Mr. McKinnon may have for you.

8 MR. MCKINNON: May it please the Court?

9 THE COURT: Yes, sir.

10 CROSS-EXAMINATION

11 BY MR. MCKINNON:

12 Q. Deputy Arbelo, after pulling the car over you
13 said it was because of a tag wasn't in the proper place.

14 A. Yes.

15 Q. Was that tag on the inside or the outside of the
16 glass?

17 A. It was on the inside of the glass.

18 Q. Inside of the glass. So the driver did not give
19 you a photo I.D. to compare his image to on the I.D.,
20 correct?

21 A. Correct.

22 Q. But he did tell you a name, eight letters,
23 J-A-M-I-L, A-L-I?

24 A. Yes.

25 Q. All right. And a four digit date of birth?

1 A. Yes.

2 Q. So you ran dispatch and the name and date of
3 birth matched up, those eight numbers -- I'm sorry,
4 eight letters and four numbers?

5 A. Yes.

6 Q. You then walked back to the car, reached down and
7 grabbed the handle, correct?

8 A. Yes.

9 Q. With the intention of him getting out to arrest
10 him for driving without a South Carolina license,
11 correct?

12 A. Yes.

13 Q. Now his South Carolina driving credentials was
14 not suspended, he just did not have one, correct?

15 A. Yes. Correct he did not have a license out of
16 South Carolina.

17 Q. So then he took off. You got back in your car
18 and pursued him. You said you estimate he was going
19 about up to 80 miles per hour. How fast were you going?

20 A. When I cam through the intersection of Carowinds
21 and Lakemont, I recall saying approximately 80 miles an
22 hour to my supervisor.

23 Q. Okay. So you were going roughly the same?

24 A. Reporting myself. Yes. Yes.

25 Q. Now, this was, as you said, Carowinds Boulevard,

1 a pretty heavily trafficked road at all times, correct?

2 A. Yes, sir.

3 Q. But especially right after work. And this was a
4 Tuesday, correct, April 5th?

5 A. I don't remember the day.

6 Q. It was a work day though?

7 A. It was.

8 Q. Monday through Friday workday.

9 A. Yes.

10 Q. A lot of cars, as we saw --

11 A. Yes.

12 Q. -- on that highway. So you were trying to catch
13 up to the driver at least prior to him crossing the
14 median for improper tag display and for not having a
15 South Carolina license?

16 A. Yes. To place him under arrest for not having a
17 valid license in South Carolina.

18 Q. Now, did you call your supervisor? You said you
19 just mentioned that. Did you ask him for permission to
20 continue the pursuit?-

21 A. No.

22 Q. Are you required to do that?

23 A. To ask, no, sir.

24 Q. So it's entirely your call to determine whether
25 the danger to the community or to yourself would match

1 up with the crime committed?

2 A. Yes. It's my supervisors position to call off
3 the pursuit.

4 Q. So say that one more time.

5 A. It's my supervisor's position to call off the
6 pursuit.

7 Q. But he has to know about it?

8 A. Yes. There are certain things that we advise our
9 supervisor of, one of those being miles per hour being
10 traveled, time of day, things like that.

11 Q. So you were -- you did tell him that?

12 A. I told him the miles per hour that I was
13 traveling, yes.

14 Q. Did you tell him what the offense was that had
15 been committed?

16 A. No.

17 Q. Did you not have time for that prior to the
18 crash?

19 A. I did not tell him, no.

20 Q. Now, how far away from the Acura would you
21 estimate you were when you crashed?

22 A. At the time that I made impact which was right
23 after that intersection of Carowinds and Foothills Way,
24 he was not even at the onramp to 77 northbound. So
25 maybe five car lengths, five or six car lengths away

1 from me.

2 Q. So basically you had pretty much caught up to
3 him?

4 A. Uh-huh.

5 Q. Just not all the way.

6 A. Right.

7 Q. And he went through the median that you went
8 through?

9 A. Yes.

10 Q. Obviously he did not crash and you did, I guess?

11 A. Yes.

12 Q. Did you have to do any driving maneuvers to avoid
13 anything that he was doing?

14 A. There were vehicles that were in front of us, so,
15 yes.

16 Q. So you were avoiding the, not the parked cars but
17 stationary vehicles?

18 A. Avoided vehicles that were in front of me,
19 correct.

20 Q. Right. What I'm saying is you didn't have to
21 take evasive maneuvers for something that the driver of
22 that Acura did to avoid being hit by that Acura or you
23 hitting that Acura?

24 A. I'm not understanding what you're asking.

25 Q. So I'm asking did you have to -- did you have to

1 turn the wheel at any particular high rate causing your
2 crash to avoid crashing into the blue Accura?

3 A. I had to turn my wheels to avoid crashing into a
4 vehicle that was in front of me, correct.

5 Q. But not the blue Accura when we're talking about
6 the stationary vehicle?

7 A. Correct.

8 Q. Have you ever broken a bone prior to this?

9 A. No.

10 Q. This is your first experience with an orthopaedic
11 surgeon --

12 A. Yes.

13 Q. -- any sort of break? How long was your arm in a
14 sling?

15 A. From that date through, through the date of my
16 surgery. Following my surgery I was probably released
17 from my sling maybe two, three weeks before -- two weeks
18 before I came back on the road. So I would say
19 approximately two months I was required to wear a sling
20 at least all, if not portions of the day.

21 Q. Okay. So I understand. You said maybe two more
22 weeks after the surgery you said?

23 A. No. Two weeks before going back on the road.

24 Q. Okay. And are you still taking pain medication
25 today?

1 A. No.

2 Q. How long were you on pain medication?

3 A. I don't recall a specific length of time. I was
4 on pain medication from the time that I broke my collar
5 bone through the date of my surgery probably a week or a
6 week and a half following my surgery, so maybe a month.

7 Q. Did you ever look at any, say, six-person
8 photographic lineup with Jamil Ali's image in it?

9 A. No.

10 Q. Did Sergeant Brown ask you to assist him in any
11 way in the investigation or you were in the hospital and
12 could not assist?

13 A. I was not in a position to do so, no.

14 MR. MCKINNON: Your Honor, that's all the
15 questions I have.

16 THE COURT: Any redirect?

17 MR. HAYES: None at this time, Your Honor.

18 THE COURT: You may the step down.

19 (Whereupon, Witness leaves witness stand.)

20 MR. HAYES: Your Honor, at this time the State
21 calls Sergeant Buddy Brown.

22 (Whereupon, Witness comes forward.)

23 THE CLERK: Do you solemnly swear or affirm the
24 testimony you're about to give this court in this matter
25 is the truth, the whole truth and nothing but the truth

1 so help you God?

2 THE WITNESS: I do.

3 THE CLERK: Thank you.

4 THE COURT: State your full name, please.

5 THE WITNESS: James Hoyt Brown, III.

6 THE COURT: Spell your middle name.

7 THE WITNESS: H-O-Y-T.

8 THE COURT: Thank you.

9 SERGEANT JAMES HOYT BROWN, III,
10 having been duly sworn, testified as follows:

11 DIRECT EXAMINATION

12 BY MR. HAYES:

13 Q. Sergeant Brown, can you please tell us who your
14 current employer is?

15 A. The York County's Sheriff's Office.

16 Q. How long you been employed with the Sheriff's
17 Office?

18 A. Eleven years.

19 Q. How long have you been in law enforcement?

20 A. Fifteen years.

21 Q. Where did you work before that?

22 A. Chester County Sheriff's Office.

23 Q. What does it mean that you are a sergeant?

24 A. I have a group of deputies that I supervise. On
25 my rotation I may -- the county is now broken up into

1 districts and I have the Rock Hill district which gives
2 me five deputies to supervise. Plus I look over the
3 other districts when their sergeant is not there. And
4 on the -- when this incident happened, the Fort Mill
5 sergeant, which Deputy Arbelo would follow under wasn't
6 there so I was supervising them also.

7 Q. Okay. On April 5th you were the on-duty
8 supervisor for this area?

9 A. Correct. For the eastern side of York County.

10 Q. Did you respond to this wreck after it happened?

11 A. I did.

12 Q. Were you notified of the pursuit as it was
13 happening?

14 A. I was.

15 Q. What did you know as it was happening?

16 A. I knew that Deputy Arbelo had stopped a vehicle
17 and the vehicle had fled from the scene. I questioned
18 her about the, the speed they were -- or the direction
19 they were traveling. She gave me that they were headed
20 back toward the interstate and that was shortly before
21 the accident happened.

22 Q. Okay. How were you notified to proceed to the
23 wreck site?

24 A. Deputy Arbelo came across the radio and said that
25 she had been in a traffic accident. She sounded pretty

1 calm, but I, with it being a pursuit and everything I
2 just went ahead and headed up there.

3 Just once, once she was in a pursuit anyway since
4 I was a supervisor for that area I was gonna go up there
5 anyway. And then after she said she had been in an
6 accident I headed on up there.

7 Q. Tell us what you saw when you arrived at the
8 intersection where this happened.

9 A. There was a black truck and her patrol vehicle
10 that were, I mean, it was a bad, it was a thing, it was
11 a hard hit. The Crown Vic was very, very tore up and
12 the pickup truck was also. Deputy Arbelo was standing
13 by her vehicle.

14 And the -- as I was arriving the ambulance was
15 arriving on scene also and there were several
16 firefighters. There were some more deputies that
17 arrived prior to me getting there and there was a --
18 they were out directing traffic and taking care of the
19 people from the vehicles.

20 MR. HAYES: May I approach the witness, Your
21 Honor.

22 THE COURT: Yes.

23 BY MR. HAYES:

24 Q. If you would take a look at this and let me know
25 if you recognize it. Tell me what it is and if you

1 recognize it.

2 A. That's Deputy Arbelo's patrol vehicle.

3 Q. Is that photograph a true and accurate
4 representation of how it appeared after the wreck on
5 April 5th?

6 A. Absolutely.

7 MR. HAYES: Your Honor, at this time I'd like to
8 introduce this photo into evidence as State's Exhibit 3.

9 MR. MCKINNON: No objection, Your Honor.

10 THE COURT: Without objection it's admitted.

11 (Whereupon, State's Exhibit Number 3, Photograph
12 of Patrol Car, was marked for identification.)

13 (Whereupon, State's Exhibit Number 3 was entered
14 into the record.)

15 BY MR. HAYES:

16 Q. Sergeant Brown, tell us what you did when you
17 responded to the wreck site.

18 A. I initially walked up and spoke to Marina for a
19 moment. As I was getting there they were, they were
20 putting her into an ambulance. There were other
21 supervisors. There was the day shift supervisor from
22 Fort Mill was on scene. And the district lieutenant
23 from Fort Mill was also on scene.

24 We assigned a few jobs, kind of some housekeeping
25 stuff to get the road cleaned up. And it was decided at

1 that time there was Lieutenant Wooten and Sergeant
2 Billingsly. At that time it was decided that Sergeant
3 Billingsly and Lieutenant Wooten were gonna stay at the
4 wreck scene and I was gonna go to CMC with Marina to, to
5 precipitate getting things ready for her, for her
6 arrival at the CMC.

7 Q. Okay. And did you travel by ambulance or by your
8 own car?

9 A. By my patrol vehicle.

10 Q. Sergeant Brown, did you secure an arrest warrant
11 for Jamil Ali for this crime?

12 A. I did.

13 Q. Tell us about your investigation that led to you
14 getting that arrest warrant.

15 A. I -- Deputy Marina wasn't -- Deputy Arbelo really
16 wasn't in any shape to, you know, be much help with
17 that, so I -- the patrol captain had the video
18 downloaded from her car and provided it to me on a disk.
19 I watched the video, the same video that we watched
20 here, and got the name that the suspect had provided for
21 Mr. Ali. Ran the name and date of birth. Found it in
22 our system that he had been in our system before.

23 The -- while I didn't -- I couldn't see his face,
24 but it matched everything that he was, that he was
25 saying as far as we could tell. So I went ahead and

1 provided that information to the magistrate, requesting
2 a warrant for failure to stop, resulting in great bodily
3 injury. The, the magistrate found that there was
4 probable cause and issued the warrant for that.

5 Q. Was he apprehended on that warrant on this day?

6 A. I'm sorry, sir?

7 Q. Was he apprehended, was he caught on April
8 the 5th?

9 A. No, sir, he was not.

10 Q. Was that warrant also served on him at a later
11 time?

12 A. It was.

13 Q. No further questions at this time. Please answer
14 any questions the defendant may have.

15 MR. MCKINNON: May it please the Court?

16 THE COURT: Cross, yes, sir.

17 CROSS-EXAMINATION

18 BY MR. MCKINNON:

19 Q. Sergeant Brown, just to clarify, you arrived on
20 the scene, I think you testified to this, after the
21 crash.

22 A. Yes, sir.

23 Q. So you did not see the Acura in person nor the
24 driver?

25 A. No, I did not.

1 Q. Part of your duties as a patrol sergeant would be
2 to investigate a crash involving any of your deputies?

3 A. I do. I do that, yes.

4 Q. You found in your own investigation that speed
5 was a contributing factor.

6 A. I did not investigate this crash.

7 Q. You did not?

8 A. Sergeant Billingsly and Lieutenant Wooten did the
9 investigation on this crash.

10 MR. MCKINNON: Your Honor, may I approach?

11 THE COURT: Yes, sir.

12 BY MR. MCKINNON:

13 Q. So this is entitled police report. It's got a
14 supervisor on it, but you were not part of that
15 investigation?

16 A. No, I was not part of this investigation. I went
17 to the hospital with her, they did the wreck, they did
18 the wreck investigation.

19 Q. Okay. So after you got out of the hospital
20 that's when you began your investigation of the charge,
21 failure to stop for a blue light?

22 A. Yes. Yes.

23 Q. And you said in that investigation you watched
24 the video?

25 A. Yes.

1 Q. And you saw that there was a name and a date of
2 birth given. And I believe you said it matched to what
3 he was saying. By that do you mean the name and date of
4 birth matched?

5 A. Yes. The name and date of birth came back to, to
6 Jamil Ali.

7 Q. Okay. So at that point did you try and run the
8 tag on the temporary tag?

9 A. We didn't have that information.

10 Q. It's right there on the video, isn't it?

11 A. I don't remember there being a -- generally
12 temporary tags, at least in South Carolina, temporary
13 tags are not registered that way. Temporary tags are
14 just passed out by -- they're not -- issued by the DMV,
15 they're not actually attached to the vehicle the way
16 that a normal tag is. If the North Carolina one was, I
17 don't -- I didn't have that information.

18 Q. So you don't know if it was a North Carolina tag
19 or a South Carolina temporary tag?

20 A. No, I do not.

21 Q. So you don't know what dealership would have sold
22 this car?

23 A. No, sir, I do not.

24 Q. Would that information be on the tag?

25 A. It could be.

1 Q. Did you ask Deputy Arbelo if she noted that?

2 A. She was in no shape to answer questions.

3 Q. Initially, but we're seven months later. You
4 never asked Ms. Arbelo that question?

5 A. No, I did not.

6 Q. So you sought your warrant when? When did you
7 swear out the warrant, do you recall?

8 A. I don't recall the exact date. I think this
9 happened on a Tuesday and we came back to work on a
10 Friday. And I investigated over the weekend and swore
11 out the warrant over the weekend, to the best of my
12 knowledge from it being seven months ago.

13 Q. So a few days later?

14 A. Yes. Yes.

15 Q. In the time of swearing out this warrant to the
16 magistrate all you knew was that the driver's name and
17 date of birth matched up, that's the entirety of the
18 evidence that you had?

19 A. Yes.

20 Q. And, of course, you would not swear out a warrant
21 if you were not convinced that you had the right person?

22 A. Yes.

23 Q. Sergeant Brown, so you didn't see the face of the
24 driver, you didn't have a description of the clothing of
25 the driver, description of the driver. You didn't have

1 any sort of matching car information, car registration
2 information, plate information that matches up to Jamil
3 Ali. You didn't have any of that, did you?

4 A. No, sir.

5 Q. Deputy Arbelo, you were in here, testified that
6 she let you know her speed and direction of travel. And
7 I think you said the same.

8 A. Yes.

9 Q. Were you aware of the underlying reason for the
10 stop at that point?

11 A. No. I was aware that she had been on a traffic
12 stop and that the suspect had fled. I had heard that he
13 was suspended because we scan different channels. I had
14 heard that he was suspended. And then I heard her say
15 that he had fled and she was pursuing him.

16 Q. You have the power to essentially pull the plug
17 on a traffic pursuit or high speed pursuit?

18 A. I do.

19 Q. Would you have wanted to know what the traffic
20 stop was for to make that decision? Would you have
21 wanted to know current road conditions?

22 A. I'm aware of the road conditions on Carowinds
23 Boulevard around that time. I mean, I'm five miles from
24 there. I mean, I'm in Rock Hill, so the conditions
25 aren't gonna be that -- and I worked the Fort Mill

1 district for several years, so I'm very familiar with
2 Carowinds Boulevard and how it -- traffic is.

3 Q. So typically you know it's congested?

4 A. Yes.

5 Q. You didn't have to ask for that?

6 A. No.

7 Q. Well, what about the reason for the stop, the
8 underlying violation or crime?

9 A. The ---

10 Q. Would that -- does that go into your assessment
11 of whether or not --

12 A. We may have ---

13 Q. -- to terminate the pursuit?

14 A. We may have gotten there, as quickly as that
15 pursuit developed, we may have gotten there. But at
16 that point that it was, it was -- I didn't have -- there
17 wasn't a time yet to ask her what she was, what she was
18 pursuing the car for at that time because it was a
19 quick, a quick evolving situation.

20 Q. It did seem quick, I'm with you there.

21 A. Yeah.

22 Q. But given more time if she had not crashed so
23 quickly, would you have wanted to know that information?

24 A. Yes. I would have, I would have asked her what
25 she, what she was chasing him for.

1 Q. Presumably different standards for following a
2 homicide versus a traffic violation.

3 A. There are different standards for different
4 crimes.

5 Q. Did you ask Deputy Arbelo if she was wearing her
6 seatbelt?

7 A. Yes.

8 Q. And what was the result of that question?

9 A. She was not.

10 Q. Is that the sheriff's department's policy to not
11 wear a seatbelt during high-speed chases?

12 A. Of course not.

13 Q. Or at any time?

14 A. When you're driving you're supposed to have your
15 seatbelt on, yes.

16 Q. Now, as the investigating sergeant or case agent,
17 at some point you could have given Deputy Arbelo a
18 six-person identification card to try to pick out if
19 Jamil Ali was among those six people, correct?

20 A. Yes.

21 Q. And was that ever done?

22 A. No.

23 Q. Is that pretty standard sheriff's department
24 procedure to not give a ---

25 A. It's very, it's very dependent on a case-by-case

1 basis.

2 Q. Certainly, you know, once she's off her pain
3 medication that could have been done without a terrible
4 amount of effort, correct?

5 A. It could have been done, yes.

6 Q. And as case agent you called forensics to the
7 scene?

8 A. No, I did not call forensics to the scene.

9 Q. You had already gone to ---

10 A. I had already gone to CMC. I do not know who
11 called forensics.

12 Q. How long were you on the scene before you went to
13 CMC with Deputy Arbelo?

14 A. Ten, fifteen minutes maybe.

15 Q. In that time period you watched the video or did
16 you watch that after you got home?

17 A. I watched that after. When we came back to work
18 I saw the video.

19 Q. So it would be fair to say that when you have the
20 warrant, the entirety of your investigation was the ten
21 to fifteen minutes on scene and then seven or
22 eight minutes length of that video?

23 A. Yes, sir.

24 MR. MCKINNON: Your Honor, that's all the
25 questions I have for Sergeant Brown.

1 THE COURT: Any redirect?

2 MR. HAYES: No, Your Honor.

3 THE COURT: You may step down.

4 (Whereupon, witness leaves witness stand.)

5 THE COURT: Counsel, would this be a good time to
6 take an afternoon break?

7 MR. HAYES: Yes.

8 THE COURT: Ladies and gentlemen, I'm going to
9 remind you of the instructions that I've given to you,
10 not to begin to discuss this matter among yourselves.
11 And we're gonna take a brief break and then we'll come
12 back. You're excused.

13 (Whereupon, jury leaves courtroom at 3:29 p.m.)

14 THE COURT: I'll just remind the witnesses it's
15 inappropriate for them to discuss their testimony with
16 anyone as well as the attorneys. Let's take a break and
17 then we'll come back. A short break.

18 MR. HAYES: Thank you, Your Honor.

19 MR. MCKINNON: Your Honor, I have a very small
20 issue that has come up. I'd be happy to do it after the
21 break if Your Honor would be so inclined.

22 THE COURT: Well, since we're in here let's go
23 ahead and do it now.

24 MR. MCKINNON: Very good, Your Honor. What I
25 show as far as Brown was a Sheriff's Office collision

1 report. Their internal investigation. I spoke to the
2 State prior to trial. We were both sure this was
3 Sergeant Brown's investigation. So if necessary, I'm
4 just, I guess, asking leave to add Lieutenant Wooten on
5 as a defense witness. He's listed on here as
6 supervisor, and the he described it to me that it was
7 clearly Sergeant Brown's investigation and Wooten just
8 signed off as supervisor, according to Sergeant Brown
9 today. The investigation, I believe, was done by
10 Lieutenant Wooten.

11 THE COURT: Any objection?

12 MR. HAYES: None, Your Honor.

13 THE COURT: And that would be allowed if
14 necessary. Well, as a potential defense witness, yes.

15 MR. HAYES: Yes, Your Honor.

16 THE COURT: Let's take a break.

17 (A recess was had from 3:23 p.m. - 3:36 p.m.)

18 THE COURT: Please be seated, thank you. Is
19 there anything we need to take up before we bring the
20 jury in?

21 MR. HAYES: Nothing from the State, Your Honor.

22 COURT REPORTER: Just one moment.

23 THE COURT: I'm sorry, the court reporter was not
24 seated and I started talking. Okay.

25 MR. MCKINNON: Nothing from the defense.

1 THE COURT: Thank you. You may ask the jury to
2 come in, please.

3 (Whereupon, State's Exhibit Number 4, Photograph
4 of Street, was marked for identification.)

5 (Whereupon, State's Exhibit Number 5, Photograph
6 of Street, was marked for identification.)

7 (Whereupon, State's Exhibit Number 6, Photograph
8 of Jar, was marked for identification.)

9 (Whereupon, jury enters courtroom at 3:47 p.m.)

10 THE COURT: You may call your next witness.

11 MR. HAYES: Yes, Your Honor. The State calls
12 Deputy Eddie Covert. And I'll step out in the hallway
13 to get him.

14 (Whereupon, Witness comes forward.)

15 THE CLERK: Do you solemnly swear or affirm the
16 testimony you're about to give this court in this matter
17 is the truth, the whole truth and nothing but the truth
18 so help you God?

19 THE WITNESS: I do.

20 THE CLERK: Thank you.

21 THE COURT: State your full name, please, and
22 spell your last name.

23 THE WITNESS: Edward John Covert, C-O-V-E-R-T.

24 THE COURT: Thank you.

25 DEPUTY EDWARD JOHN COVERT,

1 having been duly sworn, testified as follows:

2 DIRECT EXAMINATION

3 BY MR. HAYES:

4 Q. Deputy Covert, who is your current employer?

5 A. York County Sheriff's Office.

6 Q. How long have you've worked for the Sheriff's
7 Office?

8 A. Roughly four years.

9 Q. Do you know Marina Arbelo?

10 A. I do.

11 Q. How do you know Marina Arbelo?

12 A. She's one of my co-workers. Works in the Fort
13 Mill district and I work in the Rock Hill district.

14 Q. Were you on shift on April 5th, 2016?

15 A. Yes, sir.

16 Q. Are you aware that Deputy Arbelo was involved in
17 a wreck that day?

18 A. Yes, sir.

19 Q. Were you called out to investigate that scene at
20 any point?

21 A. I was.

22 Q. Did you investigate the grass median on Carowinds
23 Boulevard?

24 A. Yes, sir.

25 Q. Did you locate any objects of note during your

1 investigation?

2 A. I did.

3 Q. Can you tell us about that?

4 A. Located a clear plastic jar in the median on the
5 grass on Carowinds Boulevard.

6 Q. About where on Carowinds Boulevard?

7 A. Near Ruben Center Drive near the Drunken Goat
8 bar, methadone clinic area.

9 Q. Okay. And the jar, where was the jar laying
10 again?

11 A. It was -- it's a divided highway, two lanes in
12 either direction. It was in the grass median that
13 separates both lanes of travel.

14 Q. What did you do with that jar?

15 A. Picked up it with a gloved hand, put it into an
16 evidence bag and then submitted that into our evidence
17 control.

18 Q. Where is evidence control located?

19 A. It's in this building at the Moss Justice Center,
20 1675 York Highway, 2A, Suite 2A.

21 Q. On what date did you recover this jar?

22 A. Recovered on April 5th.

23 Q. And what date did you log it into evidence
24 control?

25 A. I believe it was April the 6th, the following

1 morning. I was working night shift and I was -- when it
2 occurred it was at the beginning of my shift. I didn't
3 have an opportunity to submit it into evidence until
4 later on in the shift which would have been the morning
5 of April 6th.

6 Q. While that jar was in your possession did you
7 tamper with it in any way?

8 A. No, sir.

9 Q. Did you see anyone tamper with it?

10 A. No. It was in my control at all times.

11 Q. Were you the one who lifted it off the grass?

12 A. Yes, sir.

13 Q. From the time you lifted it off the grass until
14 you turned it into evidence control, did anyone else
15 have access to that jar?

16 A. No.

17 Q. And it was not tampered with in anyway during
18 that time?

19 A. It was not.

20 Q. When you recovered the jar -- let me back-up a
21 second -- does your patrol car have video recording
22 system?

23 A. Yes, it does.

24 Q. When you recovered the jar, was that video system
25 running?

1 A. Yes.

2 Q. Have you reviewed still photographs from your
3 video system that day?

4 A. I have.

5 MR. HAYES: Your Honor, may I approach the
6 witness?

7 THE COURT: Yes.

8 BY MR. HAYES:

9 Q. I'm showing you what's been marked for
10 identification as State's Exhibit 4 and 5. If you could
11 take a look at those and let me know if you recognize
12 those and what those are.

13 A. I do recognize them. Two photographs, one is of
14 the roadway on Carowinds Boulevard. You can see an
15 object in the median, in the grass median. And in the
16 second photograph it is myself placing the object from
17 the grass median to an evidence bag, and there's two
18 additional officers standing with me.

19 Q. What time of day was it that you recovered that
20 in the grass median approximately?

21 A. I'd say maybe 7:00 p.m., give or take.

22 Q. Okay.

23 A. I can't remember exactly.

24 Q. Are those pictures true and accurate copy or true
25 and accurate depictions of what took place that day?

1 A. Yes, sir.

2 MR. HAYES: Your Honor, at this time I would move
3 those two Exhibits into evidence as State's Exhibits 5
4 and 6.

5 MR. MCKINNON: No objection, Your Honor.

6 THE COURT: Without ---

7 MR. HAYES: I apologize, four and five. I'm
8 sorry.

9 THE COURT: Without objection they're admitted.

10 (Whereupon, State's Exhibit Numbers 4 and 5 were
11 entered into the record.)

12 BY MR. HAYES:

13 Q. And the lighting levels are low because it was,
14 it looks like, dusk when you recovered that object. But
15 if somebody was looking at that picture, which area of
16 the picture would they need to look at to see the jar
17 that you're talking about?

18 A. Can I grab it again?

19 Q. Oh, yes.

20 A. So the lower left quadrant of the page there's a
21 -- there's the white line to the left side of where you
22 could see the roadway for the -- to the westbound
23 traffic traveling into Charlotte. And in the background
24 is the Pleasant Road intersection, but you can see that
25 there's an object in the grass median on the left lower

1 quadrant of the page.

2 MR. HAYES: Permission to hand this photograph to
3 the jury, Your Honor.

4 THE COURT: Yes. Counsel, can you approach for a
5 minute, please.

6 (Whereupon, a bench conference was held off the
7 record.)

8 MR. HAYES: And permission to hand the other
9 photograph that was just submitted to the jury as well.

10 THE COURT: Yes.

11 BY MR. HAYES:

12 Q. So, Deputy Covert, you took that jar that you
13 found at the end of your shift and took that straight
14 down to evidence control here at the Sheriff's Office?

15 A. Yes, sir.

16 MR. HAYES: Your Honor, at this time I have no
17 further questions for the witness.

18 THE COURT: Any cross?

19 MR. MCKINNON: Yes, Your Honor. May it please
20 the Court?

21 THE COURT: Yes, sir.

22 CROSS-EXAMINATION

23 BY MR. MCKINNON:

24 Q. Very briefly. How -- or, I guess, what time did
25 you say it was when you located the jar?

1 A. I can't say for sure. I would guess around 7
2 o'clock P.M.

3 Q. And did you say that you reviewed the video
4 evidence that you took?

5 A. I reviewed the ---

6 Q. Or the car took -- I'm sorry.

7 A. I reviewed the still photographs that I was just
8 shown. I haven't reviewed the dash camera footage and
9 the video, just the still photographs.

10 Q. Could it have been a little later than that?

11 A. It could have been.

12 Q. Did you tell the DNA lab not to process the DNA?

13 A. No.

14 MR. MCKINNON: Your Honor I have no further
15 questions.

16 THE COURT: Any redirect?

17 MR. HAYES: No, Your Honor.

18 THE COURT: You may step down, thank you.

19 (Whereupon, Witness leaves witness stand.)

20 MR. HAYES: Your Honor, if I may call out in the
21 hallway for my next witness?

22 THE COURT: Yes.

23 MR. HAYES: Your Honor, the State calls Jimmy
24 Styles to the stand.

25 THE COURT: Would you step forward, please, and

1 be sworn. (Complies.)

2 THE CLERK: Do you solemnly swear or affirm the
3 testimony you're about to give this court in this matter
4 is the truth, the whole truth and nothing but the truth
5 so help you God?

6 THE WITNESS: I do.

7 THE COURT: Thank you. You can have a seat and
8 please spell -- state your full name and spell your last
9 name, please.

10 THE WITNESS: Okay. My name is Jimmy Stiles,
11 S-T-I-L-E-S.

12 THE COURT: Thank you.

13 JIMMY STILES,

14 having been duly sworn, testified as follows:

15 DIRECT EXAMINATION

16 BY MR. HAYES:

17 Q. Mr. Styles, who is your current employer?

18 A. York County Sheriff's Office.

19 Q. How long have you worked for the Sheriff's
20 Office?

21 A. Five-and-a-half years.

22 Q. What is your job description at the Sheriff's
23 Office?

24 A. Evidence technician.

25 Q. Are you familiar with the evidence control

1 procedures of the York County Sheriff's Office?

2 A. I am.

3 Q. Are you familiar with the evidence locker at the
4 York County Sheriff's Office?

5 A. I am.

6 Q. On April 5th of 2016, how many people had access
7 to the evidence stored at the evidence room of the York
8 County Sheriff's Office?

9 A. Three.

10 Q. And who would those people be?

11 A. One is Patrick Patterson and the other one is
12 Lieutenant Miller. I'm sorry, Mitchum.

13 Q. Was a clear plastic jar associated with this case
14 logged into York County or logged into the Sheriff's
15 Office evidence room on April the 6th of this year?

16 A. I didn't bring my evidence report.

17 Q. Is there anything that would refresh your
18 recollection as to whether or not a clear plastic jar
19 was logged in?

20 A. Not unless I ---

21 Q. Would your written evidence log refresh your
22 recollection?

23 A. Yes.

24 MR. HAYES: May I approach the witness, Your
25 Honor.

1 THE COURT: Yes, sir.

2 MR. HAYES: And may I approach the bench, Your
3 Honor, briefly?

4 (Whereupon, a bench conference was held off the
5 record.)

6 BY MR. HAYES:

7 Q. Mr. Stiles, if you could read this evidence log
8 and advise if your recollection has been refreshed
9 concerning a clear plastic jar.

10 A. Yes. It looks like I retrieved it from the
11 evidence drop on 4/6/16, 0800.

12 Q. And who would be, other than evidence control
13 technicians, who would be the next recipient of that
14 clear plastic jar?

15 A. It looks like my co-worker Patrick Patterson.

16 Q. Okay.

17 A. Had gived it -- I don't recognize the signature
18 on here. It went out on 4/12/16 at 1525 hours.

19 Q. Okay. And when did it come back to evidence
20 control?

21 A. 4/25/16 at 12:20.

22 Q. Okay. So based on your recollection, at this
23 point the clear plastic jar was logged into evidence on
24 April the 6th and logged out of the evidence and given
25 to someone else on April the 25th?

1 A. Correct.

2 Q. Between April the 6th and April 25th, were there
3 any breeches in evidence control?

4 A. No, sir.

5 Q. Were any items tampered with?

6 A. No, sir.

7 Q. What type of bags are all these items kept in?

8 A. It's -- I have different type bags. I have paper
9 bags. I have clear bags, plastic bags. I have boxes.

10 Q. Are the clear plastic bags kept in a sealed
11 condition?

12 A. Yes. Yes, it has a seal on the clear plastic
13 bags that the officer, if he puts anything in, he'll
14 peel the plastic sleeve off and seal the bag up.

15 Q. Is that how you know if somebody has opened it or
16 tampered with it in any way?

17 A. That's correct.

18 Q. And, again, you all have not had any unauthorized
19 tampering during that time period?

20 A. No, sir.

21 MR. HAYES: Your Honor, no further questions for
22 this particular witness.

23 THE COURT: Any redirect? I sorry, any cross?

24 MR. MCKINNON: No, Your Honor.

25 THE COURT: You may step down, thank you.

1 (Whereupon, Witness leaves witness stand.)

2 THE COURT: You may call your next witness.

3 MR. HAYES: Yes, Your Honor. The State calls
4 Investigator Buchanan. We're calling in the hallway for
5 him.

6 THE COURT: If you'll step forward, please, and
7 be sworn. (Complies.)

8 THE CLERK: Do you solemnly swear or affirm the
9 testimony you're about to give to this court in this
10 matter is the truth, the whole truth and nothing but the
11 truth so help you God?

12 THE WITNESS: Yes, ma'am, I do.

13 THE CLERK: Thank you.

14 THE COURT: If you'd have a seat, please, and
15 state four full name and spell your last name.

16 THE WITNESS: John, Buchanan, B-U-C-H-A-N-A-N.

17 THE COURT: Thank you.

18 INVESTIGATOR JOHN BUCHANAN,
19 having been duly sworn, testified as follows:

20 DIRECT EXAMINATION

21 BY MR. HAYES:

22 Q. Investigator Buchanan, what is your -- who is
23 your current employer?

24 A. I work for York Police Department.

25 Q. Okay. And what, to what unit are you assigned?

1 A. To the York County multi-jurisdiction forensic
2 services unit.

3 Q. What are your duties with the forensic services
4 unit?

5 A. I gather evidence, work crime scenes, process
6 evidence for latent impressions, DNA swabs, photographs
7 of crime scenes. Anything to do with CSI basically.

8 Q. Okay. Did you come into possession of a clear
9 plastic jar on April the 25th, 2016?

10 A. Yes, sir.

11 Q. From whom did you come into possession of that
12 jar?

13 A. I received it out of evidence from, I think,
14 Jimmy Stiles, is who I got it from.

15 Q. Or one of the evidence control technicians?

16 A. Yeah.

17 MR. HAYES: Your Honor, may I approach the
18 witness?

19 THE COURT: Yes.

20 BY MR. HAYES:

21 Q. Did you take photographs of that clear plastic
22 jar?

23 A. Yes, sir.

24 Q. Were you looking for fingerprints on that clear
25 plastic jar?

1 A. Yes, sir.

2 Q. Can you tell us how you develop fingerprint
3 photographs off of the jar.

4 A. Basically it was a clear plastic jar. I placed
5 it into the fuming chamber. And with the use of
6 cyanoacrylate esters, which is basically super glue. It
7 adheres to the amino acids, the oils left behind when
8 you touch something, an object. It adheres to those
9 ridges and then you can see the print, just develops the
10 print so you can see it.

11 Q. I'm showing you what's been marked for
12 identification as State's Exhibit 6. If you could take
13 a look at that and let me know what that -- if you
14 recognize that and what that is.

15 A. Yes, sir. That's the jar that I processed.

16 Q. Did you take that photograph?

17 A. Yes, sir.

18 Q. Is that photograph a true and accurate
19 representation of the plastic jar that you processed for
20 prints?

21 A. Yes, sir.

22 MR. HAYES: Your Honor, at this time I would move
23 what's been marked as State's Exhibit 7 into evidence as
24 exhibit -- excuse me, Exhibit 6 into evidence as Exhibit
25 6.

1 MR. MCKINNON: No objection, Your Honor.

2 THE COURT: It's admitted.

3 (Whereupon, State's Exhibit Number 6 was entered
4 into the record.)

5 (Whereupon, State's Exhibit Number 7, Photograph
6 of Jar, was marked for identification.)

7 BY MR. HAYES:

8 Q. I'm showing you what's been marked for
9 identification as State's Exhibit 7. Could you take a
10 look at that and let me know if you recognize it.

11 A. Yes, sir, I do.

12 Q. What is Exhibit 7?

13 A. This is a photograph of the plastic jar after it
14 had been fumed in the fuming chamber. And I have placed
15 a black fingerprint card inside the clear container so
16 that you can more visibly recognize the ridge detail in
17 the fingerprint.

18 Q. And what did you do with that photograph? To
19 whom did you give that photograph?

20 A. All the photographs were burned to a disk and
21 submitted to our FSU latent fingerprint file for further
22 examination in matching possible suspects or in the AFIS
23 computer.

24 MR. HAYES: Your Honor, I would move that into
25 evidence as State's Exhibit 7.

1 MR. MCKINNON: Your Honor, I don't believe I've
2 seen that photograph.

3 MR. HAYES: (Hands document to Mr. McKinnon.)

4 MR. MCKINNON: Without objection, Your Honor.

5 THE COURT: It's admitted.

6 (Whereupon, State's Exhibit Number 7 was admitted
7 into the record.)

8 BY MR. HAYES:

9 Q. Investigator Buchanan, did your involvement in
10 this case end after you developed that fingerprint
11 photograph and passed it on for analysis?

12 A. Yes, sir. I just collected the latent
13 impression, developed it and that's all I did.

14 MR. HAYES: Thank you, Investigator Buchanan, no
15 further questions at this time.

16 THE COURT: Any cross?

17 MR. MCKINNON: Yes, Your Honor. May it please
18 the Court?

19 THE COURT: Yes, sir.

20 CROSS-EXAMINATION

21 BY MR. MCKINNON:

22 Q. Investigator Buchanan, you, I think, just
23 testified here that you sprayed it with, you said, in a
24 sealable ester?

25 A. Cyanoacrylate esters.

1 Q. Okay.

2 A. It's basically super glue. I didn't spray it.

3 Q. You did what with the super glue?

4 A. You place super glue, which is cyano --
5 cyanoacrylate esters in a tin and you place it on a
6 heating element and you place the item in the fuming
7 chamber and you shut the door and it's all touch and go.

8 Q. So the esters then fume?

9 A. They fume and they adhere to the amino acids and
10 the oils left behind in the fingerprint.

11 Q. Okay. And then once that adheres then you
12 photograph it?

13 A. Correct.

14 Q. And that's the photograph that you just saw?

15 A. Correct.

16 Q. Now, is that photograph modified any?

17 A. No, sir.

18 Q. Is it blown up or enhanced?

19 A. No, sir. We have a scale there for purposes for
20 entering the evidence, it fits into an average scale.

21 Q. Yeah, I saw the scale, but I mean it's bigger
22 than life size, I guess, is what I'm asking.

23 A. Well, I mean, you use a zoomed lens, a zoomed in
24 close up lens to get the detail.

25 Q. Okay. And you try to identify anything on that

1 jar, any prints that could be AFIS quality, that's the
2 goal?

3 A. Yes, sir.

4 Q. And you said you identified several, I believe,
5 in this case that you thought might be AFIS quality?

6 A. I think it turned out to be two. Two or three,
7 I'm not sure.

8 Q. And what is AFIS quality? And what is AFIS?
9 What does that mean?

10 A. It's where there's sufficient reads detail or
11 there are unique characteristics to the fingerprint that
12 makes it to where you have enough to put it in the AFIS
13 machine to where it can start trying to match those
14 points the same.

15 Q. You say like a higher quality index of print
16 could go in AFIS?

17 A. Well, I mean, yeah. I mean, you've gotta have
18 good sufficient ridge detail and characteristics, points
19 of minutia to, to enter it into AFIS.

20 Q. And you don't actually put it into AFIS yourself?

21 A. No, sir. I have, but I am not certified on that
22 machine yet and I did not enter that, no, sir.

23 Q. So you just took the disc and handed it?

24 A. It was placed in a folder, yes, sir. And he
25 received the folder and he went to AFIS and entered it.

1 Q. Okay. And we just looked at the photograph of
2 that jar. Would you say looking at the photograph and
3 your recollection, that jar could handle a lot, that
4 there were a lot of prints on that jar?

5 A. Yes, sir. There were quite a few fingerprints,
6 but they were not identifiable.

7 Q. Right. So basically would you say we've got
8 prints on top of prints on top of prints?

9 A. You have some of that, but the ones that we have
10 to use it has to be ---

11 Q. Well, I understand that, two prints. I'm just
12 saying the rest of the jar you could not get any quality
13 prints from. If you ---

14 A. There were smudges and smears, sir.

15 Q. Right.

16 A. There's not enough ridge definition.

17 Q. Yeah, I understand that. I'm not trying to be
18 smart here.

19 A. Yeah. No, I mean, I'm just trying to explain.

20 Q. Right.

21 A. It looks like it's a whole lot, but it's really
22 only -- I don't remember the exact number that were
23 actually usable.

24 Q. Right. Now, I guess in this day and age you
25 don't actually powder them anymore and lift them on a

1 card, right?

2 A. Not in this particular instance because the
3 fingerprint is contained. The super glue sets the
4 print, so to speak, like concrete, just sets it. If you
5 can still remove and lift that print, there's ways, but
6 it's not necessary. If they weren't as developed as
7 clear as they are, I would have went a step further with
8 basic yellow 40 dye and dye stand it and then looked at
9 it through an alternate light source with an orange
10 barrier lens, and sometimes they develop even better.
11 But in this case it developed sufficient and I didn't
12 need to do anything further.

13 Q. So, so the two prints you got were high quality
14 or high enough quality index that you --

15 A. Yes, sir./

16 Q. -- didn't need to do that? And did you also swab
17 the lid of the jar for DNA analysis?

18 A. Yes, sir, I did.

19 Q. What day did you do that?

20 A. It was before actually placing my item into the
21 fuming chamber.

22 Q. So you did that first basically?

23 A. Yes, sir.

24 Q. So I asked you this before, but I think it had a
25 compound question. I guess can you explain to the jury

1 what AFIS is exactly?

2 A. AFIS stands for Automated Fingerprint Information
3 System. Basically you enter a print in the computer.
4 And I'm sure everybody is familiar with how a
5 fingerprint looks with the ridges and the lines. And
6 you mark points of minutia, is what it's called. And
7 where you have an ending ridge or you have a bifurcation
8 or you have an island or a void, you mark those on the
9 fingerprint.

10 And when you submit it, the computer goes through
11 everybody that's been arrested that's been entered and
12 then tries to match the same points of minutia. And you
13 get them back and then you've gotta verify, you know,
14 these comes back but that's not it, that's not -- whoop,
15 there it is, that's it. Meaning you have it, you got
16 it. It just helps. Instead of having to sit there and
17 look at millions of fingerprint cards, it narrows it
18 down, is what it does.

19 Q. Essentially it's a computer program that does
20 what you could not. You could not sort through millions
21 of fingerprints.

22 A. Well, they used to have to, but yeah.

23 Q. Right.

24 A. That's basically the system.

25 Q. So essentially it matched the people that live on

1 the other side of the county, where as a person or a
2 human beings would never pull a card from Seattle, let's
3 say, to compare it to?

4 A. Well ---

5 Q. Unless there's some other reason, you know?

6 A. Yeah. I mean, most of them you do when you enter
7 it, it's in the area, Charlotte, York County area.

8 Q. And if it can't pinpoint exactly why, it can at
9 least narrow down to a certain number of prints --

10 A. That's right.

11 Q. -- that may be a match, right?

12 A. And it comes back with a score. The higher the
13 score, the more likely it's gonna match.

14 Q. But certainly a human being can go by and double
15 check that?

16 A. Well you have to, yes, sir.

17 Q. Do you know what happens to those DNA swabs after
18 you swabbed?

19 A. Yes, sir. They were placed in a yellow evidence
20 envelope and they were sealed up completely and they
21 were returned to evidence.

22 Q. From?

23 A. From?

24 Q. From where? You said they were returned to
25 evidence.

1 A. Well, I collected them in the lab and placed them
2 in evidence, should I say.

3 Q. And that's the last you know of those swabs?

4 A. Right. I missed -- I returned the jar with the
5 swabs I collected to evidence.

6 Q. Okay. Hopefully I'm using these terms right.
7 Would you say this jar had a lot of noise? I'm sorry,
8 not the jar, but the prints that you were looking at on
9 the jar?

10 A. No. I mean, I don't know what you mean by noise.

11 Q. And maybe I'm not using the right term.
12 Artifacts, is that the right term?

13 A. No. I mean, it's typical in fingerprints you
14 have smudges, you have clear definition. I mean, but
15 there were, you know, it looked like it had been handled
16 a lot.

17 Q. I said, some of them they handled a lot. Most of
18 the prints could not be usable, but you thought you got
19 two AFIS qualities and that's what you photographed?

20 A. Yes, sir.

21 MR. MCKINNON: Okay. That's all the questions
22 that I have, Your Honor.

23 THE COURT: Any redirect?

24 MR. HAYES: Just a few, Your Honor.

25 REDIRECT EXAMINATION

1 BY MR. HAYES:

2 Q. So, Investigator Buchanan, you checked this jar
3 out of evidence control?

4 A. Yes, sir.

5 Q. And you process it for fingerprints and took DNA
6 swabs?

7 A. Yes, sir..

8 Q. And then you returned it to evidence control?

9 A. Yes, sir.

10 Q. And there were a lot of smudges on the jar?

11 A. That's correct.

12 Q. But you were able to find two analyzable
13 fingerprints on the jar?

14 A. That's correct.

15 Q. And then you returned the jar and the swabs that
16 you took and returned them to evidence control?

17 A. That's correct.

18 Q. And then you pass the fingerprint that you had
19 developed onto someone else for analysis?

20 A. That's correct.

21 MR. HAYES: Thank you, no further questions.

22 THE COURT: You may step down, thank you.

23 THE WITNESS: Thank you.

24 (Whereupon, Witness leaves witness stand.)

25 MR. HAYES: Your Honor, we're calling in the

1 hallway for the next witness.

2 THE COURT: Yes, sir.

3 (Whereupon, Witness enters courtroom.)

4 Would you step forward please, sir, to be sworn.

5 (Complies.)

6 THE CLERK: Do you solemnly swear or affirm the
7 testimony you're about to give this court in this matter
8 is the truth, the whole truth and nothing but the truth
9 so help you God?

10 THE WITNESS: I do.

11 THE CLERK: Thank you.

12 THE COURT: If you'd have a seat and state your
13 full name and spell your last name, please.

14 THE WITNESS: My name is Brian Bagwell,
15 B-A-G-W-E-L-L.

16 THE COURT: Thank you. Yes, sir.

17 BRIAN BAGWELL,

18 having been duly sworn, testified as follows:

19 DIRECT EXAMINATION

20 BY MR. HAYES:

21 Q. Investigator Bagwell, who is your current
22 employer?

23 A. York County Sheriff's Office.

24 Q. Okay. What unit are you currently assigned?

25 A. I'm assigned to the Multi-Jurisdiction Forensics

1 Services Unit.

2 Q. Can you tell us what your duties as part of the
3 Forensic Services Unit are?

4 A. Yes, sir. It's to process crime scenes, look at
5 fingerprints, make fingerprint identifications, process
6 any evidence that's turned in by deputies and video and
7 retrievable and restoration.

8 Q. What time -- how much of your work would you say
9 is devoted to processing crime scenes?

10 A. It would be hard to guess. So the smaller
11 amount, to be honest with you. Luckily we don't have a
12 in lot of activity in the county, so...

13 Q. What percentage of your work is dedicated to
14 analyzing fingerprints?

15 A. The majority of my time is spent with fingerprint
16 evidence.

17 Q. Okay. What study or training or classes have you
18 taken in your career to become someone who analyzes
19 fingerprints?

20 A. I have a list, if it's all right if I kind of
21 look at it. I kind of remember the school names here,
22 if that's okay.

23 Q. Yes, please.

24 A. All right. I've had a fingerprint class from the
25 Public Agency Training Council. I've had a crime scene

1 hands on class from the Public Agency Training Council.
2 I've had Forensic Applications of DNA with International
3 Association for Identification. I've had Latent
4 Processing through the South Carolina Criminal Justice
5 Academy.

6 I've had Crime Scene Search and Evidence Recovery
7 from the Public Agency Training Council. I'm AFIS
8 certified through SLED, which is the State Law
9 Enforcement Division. I had Law Enforcement Photography
10 through South Carolina Criminal Justice Academy. I had
11 the Advanced Palm Print Comparison Techniques through
12 Ron Smith & Associates.

13 I had DNA Evidence Identification, Collection and
14 Preservation from the Carolinas Institute for Community
15 Policing. I have Star Witness Video Restoration and
16 Enhancement. I have been to Bloodstain Recognition and
17 Application through Lexington County Sheriff's Office.
18 I have another digital photography class from the
19 University of Tennessee. Another photography class from
20 the West Virginia University.

21 Basic/Advanced Diagramming and Animation with
22 Total Station. MorphoBIG Basic Latent Encoding through
23 Morphotrak. MorphoBIS Advanced Latent Encoding through
24 Morphotrak and Advanced Image Enhancement through
25 Morphotrak.

1 Q. How many years have you been analyzing
2 fingerprints?

3 A. Since 2002, so 14 years.

4 Q. How many times have you testified in the General
5 Sessions court in York County?

6 A. Roughly, 15 to 20. I know it's over ten, but I'm
7 not sure of the exact number.

8 Q. All involving fingerprints?

9 A. Some crime scene and some fingerprint. Mostly
10 fingerprint evidence.

11 Q. Okay. How long have you been in law enforcement
12 in general?

13 A. Since 1995.

14 MR. HAYES: Your Honor, at this time I would ask
15 that this witness be qualified as an expert in
16 fingerprint collection analysis and identification.

17 THE COURT: Any voir dire?

18 MR. MCKINNON: Well very briefly, Your Honor.

19 THE COURT: Yes, sir.

20 VOIR DIRE EXAMINATION

21 BY MR. MCKINNON:

22 Q: Investigator Bagwell, you certainly mentioned a
23 lot of different schools.

24 A. Uh-huh.

25 Q. I mean, how long was each one of those courses?

1 A. Anywhere from 40 hours to a day-long class.

2 Q. You said hours?

3 A. Yeah, a week-long class to day long. It just
4 depends on the class.

5 Q. So in aggregate I guess how much time have you
6 spent studying fingerprints?

7 A. I have no idea on the timeframe to give you, sir.
8 I've done it since 2002, like I said. I started
9 actually with jail rolling fingerprints and had to
10 examine them for accuracy and make sure they were
11 legible. So I actually started in '95 doing that and
12 have been doing it ever since, so...

13 Q. And you've ben qualified as an expert 10 or 15
14 times before, is what you said?

15 A. Yes, sir.

16 MR. MCKINNON: Your Honor, I have no further
17 questions. I won't challenge his expertise.

18 THE COURT: Then I will find him to be an expert
19 in the collection analysis and identification of
20 fingerprints.

21 RESUMPTION OF DIRECT EXAMINATION

22 BY MR. HAYES:

23 Q. Can you tell the jury what a latent print is?

24 A. A latent print means it's a hidden print and you
25 can't see it without some kind of chemical or powder

1 enhancement.

2 Q. Okay. And where are latent prints typically
3 found? Are latent prints found in crime scenes?

4 A. They can be, yes.

5 Q. Okay. Was there a latent print in this case?

6 A. It was.

7 Q. Where was it found?

8 A. It was on a plastic jar that was processed by
9 Buchanan.

10 Q. What is a known print?

11 A. As far as an ink impression?

12 Q. Yes.

13 A. It's just a known standard. If you have
14 somebody, a known person, you can take an ink and put it
15 on their hand and get a known print from them. That is
16 a known standard.

17 Q. Okay. Do you compare latents and knowns as part
18 of your job?

19 A. Yes, sir, I do.

20 Q. What is a distinguishing characteristic of a
21 fingerprint that allows you to analyze it?

22 A. Well we have three different levels, so it's not
23 just points or different one specific thing we're
24 looking for. We're looking for pattern type. We're
25 looking for a flow of the ridges. We're looking for

1 bifurcations in the ridges. Dots, scars. And actually
2 the ridge structure itself, the way it deviates, the way
3 it flows.

4 Q. Okay. Those are all things that you analyze when
5 comparing latens and knowns?

6 A. That's correct.

7 Q. What is a fingerprint made of if you're able to
8 find one?

9 A. Fingerprints are made of acids and the oils that
10 are secreted from your pores and your ridges.

11 Q. All right.

12 A. And they're left behind when you touch a surface.

13 Q. Do -- does touching a surface always result in a
14 fingerprint?

15 A. No, sir.

16 Q. Why not?

17 A. It can be contaminates on the surface. You could
18 have contaminates on your hand. Some people are
19 non-secreters. They're drier skin. You know, some
20 people have to lotion up more than others and for
21 whatever reason they may not leave a very good print.

22 Q. How do you compare latent fingerprints with known
23 fingerprints in your day-to-day job?

24 A. Actually I have a magnifier on my desk. I have a
25 two-screen system set up, so we take images of the

1 latent print to whether it be a photograph that we have
2 or an actual latent card and I will take the ink ten
3 print card, take a picture of whatever finger I'm
4 comparing and I'll put them up side-by-side on a screen
5 and start looking for those characteristics I mentioned
6 earlier.

7 Q. Okay. Are fingerprints specific to each
8 individual person?

9 A. Yes, sir.

10 Q. Could two people have the same fingerprint?

11 A. No, sir.

12 Q. Have you ever seen somebody with the same
13 fingerprint?

14 A. No, sir.

15 Q. I'm gonna show you what's been introduced into --
16 may I approach the witness, Your Honor?

17 THE COURT: Yes, sir.

18 BY MR. HAYES:

19 Q. I'm gonna show you what's been introduced into
20 evidence as State's Exhibit 7. Can you take a look at
21 that and let me know if you recognize it.

22 A. Yes, sir.

23 Q. What is that?

24 A. That is a picture taken by Officer Buchanan after
25 he processed the plastic jar.

1 Q. Is that a latent print?

2 A. It is not latent anymore. It was a latent print,
3 but it has been developed. It is now a visible print.

4 Q. Okay. Is that the print that you compared to a
5 known standard in this case?

6 A. It is.

7 Q. That method that you used for comparison, is that
8 the standard in the field as far as fingerprint
9 comparison?

10 A. It is going -- it is headed the way to be the
11 standard. It is fairly new software that we're using.
12 Old school, you bend over the glass and look at two
13 images with a magnifier. Some of us were getting neck
14 aches and back pain, so somebody's come up with the
15 technology so we can sit straight up and do it with two
16 screens now, so...

17 Q. So how did you analyze and compare this print in
18 this case?

19 A. Well, initially I started off with a glass, to be
20 honest. We look at it initially just to look at pattern
21 type, whatever. When I actually start, want to do a
22 comparison is when I'll take the pictures of them and
23 put them up side-by-side.

24 Q. And that's standard procedure in the fingerprint
25 analysis field?

1 A. It is.

2 MR. HAYES: May I approach, Your Honor?

3 THE COURT: Yes, sir.

4 (Whereupon, State's Exhibit Number 8, Copy of
5 Fingerprint Card, was marked for identification.)

6 BY MR. HAYES:

7 Q. Does York County government keep known standards
8 on file --

9 A. We do.

10 Q. -- as records in the normal course of business of
11 the county?

12 A. Yes, sir.

13 Q. I'm gonna hand you what's been marked as State's
14 Exhibit 8, and I'm gonna ask if you recognize that.

15 A. I do, sir.

16 Q. What is that?

17 A. It is a photo copy of an ink ten print card, a
18 known standard.

19 Q. On which individual?

20 A. Jamil Omire Ali.

21 Q. Is that document kept in the ordinary course of
22 business of York County?

23 A. It is.

24 Q. Is that a true and accurate copy of that
25 document?

1 A. It is.

2 MR. HAYES: Your Honor, at this time I would move
3 that into evidence as State's Exhibit 8.

4 MR. MCKINNON: No objection.

5 THE COURT: All right, it's admitted.

6 (Whereupon, State's Exhibit Number 8 was admitted
7 into evidence.)

8 BY MR. HAYES:

9 Q. What is the date of birth of the individual on
10 that card?

11 A. [REDACTED] '93.

12 Q. Did you compare State's Exhibit 7 and State's
13 Exhibit 8?

14 A. I did.

15 Q. Do you have an opinion as to whether there is a
16 match?

17 A. Yes, sir, I do.

18 MR. HAYES: Your Honor, at this time I would move
19 his expert opinion into evidence.

20 THE COURT: Any objection to the card?

21 MR. MCKINNON: No objection, Your Honor.

22 THE COURT: Yes, sir, it's admitted.

23 BY MR. HAYES:

24 Q. What is your expert opinion?

25 A. After the comparison was performed it was my

1 opinion that the picture in question, 008.jpg was a
2 positive identification of finger number nine, which is
3 the left ring finger of Ali.

4 Q. Okay. Have you prepared a visual aid for the
5 jury to detail your findings?

6 A. I have.

7 Q. Have you brought that to court with you today?

8 A. Yes, sir, I have it on a thumb drive.

9 Q. Would you hand it to me at this time. And may I
10 approach, Your Honor?

11 THE COURT: Yes, sir.

12 MR. HAYES: Thank you, Your Honor. And with the
13 Court's indulgence, we would move to publish this to the
14 jury. It has been shown to the defense.

15 THE COURT: Yes, sir.

16 BY MR. HAYES:

17 Q. Investigator Bagwell, if you will let me know
18 when to advance each slide as we go forward.

19 A. Okay. I may -- you may want to start on slide
20 seven. That is the identification in question here.

21 Q. (Complies.)

22 THE WITNESS: All right. Your Honor, may I step
23 down in front of the screen?

24 THE COURT: Yes, sir. As long as you keep your
25 voice up so that the jury could hear you and the court

1 reporter can record you.

2 THE WITNESS: Thank you. Just hard to see from
3 over here.

4 (Whereupon, Witness leaves witness stand.)

5 I'm gonna try to stay out of you all's way. What
6 you're seeing now in the photograph is image 0008.jpg,
7 as the fingerprint photograph that Officer Buchanan took
8 on the plastic jar. If you can go ahead and forward.
9 That is an ink copy of the handprint card that I used to
10 make the comparison to, to Mr. Ali. (Indicating.)

11 Next slide. What you're seeing there is a zoomed
12 image of 0008.jpg. It's that same picture, I just
13 zoomed in on the one area that I wanted to focus my
14 attention on, which is the latent print or the developed
15 latent print there.

16 Next slide. And that is a zoomed photograph of
17 finger number nine. This is a left ring on the ink ten
18 print card labeled as Ali, Jamil Omire.

19 Next one. Here I just put it on side-by-side so
20 I can start doing a comparison purposes. And before we
21 get started, I'd like to talk about the characteristics
22 we're looking for. If you noticed in the latent one,
23 the image on the left, you can see a short count loop.
24 It's a left loop. It comes in from the left, it goes
25 out to the left.

1 So that's the sort of thing I'd be looking for,
2 just a pattern type in general. I found that on finger
3 number nine. You can see a short count loop over there.
4 And the next slide would be characteristics that I found
5 and applied each factor, sliding the frame.

6 You can go ahead to the next one. There's an
7 ending ridge. And if you look over it's three from the
8 core. I don't really have a whole lot of time to go
9 into all the basics of the training equipment. The core
10 is actually shoulders that loop around. A delta is
11 where it tends to surround and wants to surround the
12 core. And that's found on the delta ridge, wants to
13 fork and go around the core. So where I put that mark
14 there is about a three ridge count over from the core
15 area. And that's where I started my marking.

16 Next slide. If you count over two ridges you can
17 see that bifurcation to the left. Remember, a
18 bifurcation where one ridge splits in two, so that's
19 what I had marked there.

20 Next ridge or next slide. It's kind of over one
21 ridge and down to the left. You can see an ending ridge
22 there. It's in the same location on the latent print as
23 it is the ink ten print card.

24 Next. You can see where that next area pops up
25 is your bottom most arrow. You can see what appears to

1 be an enclosure. It's really two bifurcations where one
2 ridge comes and bifurcation in two, makes a little
3 circle, goes back around and bifurcation goes into one.

4 Next slide. You can see what I marked is on both
5 ends on both cards. Next slide. You come down one
6 ridge, you see the other little short ridge right below
7 from where I had it marked on the right side.

8 Next slide. I went over just a little bit to the
9 left and you can see where it ends on both pictures.
10 Next slide. You look down one ridge and you come down
11 and you have many ridges. That's why I marked there.

12 Next slide. And from there one ridge down or two
13 ridges down from that last one is another end ridge and
14 I have it marked simultaneous on both cards. Next.
15 Counting up one, two, three ridges you have another
16 ending ridge. And I've counted up three and marked it
17 on the left.

18 Next. One ridge, two ridges up and to the left
19 you have another ending ridge which I have marked.
20 Next. Two ridges up you have another ending ridge. I
21 have it marked simultaneous on both images.

22 Next. Based on everything that I saw with the
23 minutia that was there, the pattern, the ridge typing
24 and the ridge structure, there was a positive
25 identification to finger number nine, left ring, to

1 Jamil Ali.

2 BY MR. HAYES:

3 Q. Were you able to identify other fingerprints on
4 this jar?

5 A. I did have one more identification on it, yes,
6 sir.

7 Q. Okay. How did that take place?

8 A. I ran it through AFIS, which is Automated
9 Fingerprint Identification System. I ran it through,
10 got a possible match. Brought it back, did the same
11 type of comparison on it and matched it to another
12 individual.

13 Q. Okay. What was that individual's name?

14 A. Funderburk. Brandon Lashal Funderburk
15 (phonetic.)

16 Q. Okay. Did you have a chance to examine another
17 known standard on Jamil Ali that that was taken in April
18 of this year?

19 A. Yes, sir, I did.

20 Q. Okay. Did you have a chance to compare the known
21 standard from 2000 -- have you had a chance to compare
22 the known standard that we just looked at with the known
23 standard for Mr. Ali in April of this year?

24 A. Yes, sir, I did.

25 Q. Did you have an opinion as to whether they are

1 identical or not?

2 A. They were made by the same individual, yes, sir.

3 Q. So you have two known standards on Jamil Ali?

4 A. That's correct.

5 Q. No further questions. Please answer any Mr.

6 Buchanan may have.

7 A. Yes, sir.

8 MR. MCKINNON: Please the Court?

9 THE COURT: Yes, sir.

10 CROSS-EXAMINATION

11 BY MR. MCKINNON:

12 Q. Investigator Bagwell.

13 A. Yes, sir.

14 Q. You took two photographs from Investigator
15 Buchanan and then you scanned it into AFIS?

16 A. Yes, sir.

17 Q. And one told you that they had a kit on
18 Funderburk, correct?

19 A. That's correct.

20 Q. What was the result of the other latents?

21 A. It produced no results.

22 Q. No results whatsoever?

23 A. That's correct.

24 Q. Okay. So essentially the one that, that you hit
25 on Funderburk on was compared to essentially every known

1 print in the United States at least, right?

2 A. It's the national data base, yes, sir.

3 Q. And you only compared the other print to Jamil
4 Ali?

5 A. No, sir. It was entered as well into AFIS but it
6 come back with negative results.

7 Q. Right. So the computer says it's not matched
8 with anything. I'm asking what you compared
9 personally --

10 A. Yes.

11 Q. -- by hand?

12 A. Yes. I did compare the remaining latents to
13 Brandon Funderburk and to Ali.

14 Q. And that's it?

15 A. Yes.

16 Q. So one hits on Funderburk, comparing it to
17 basically everyone. This one you compared it to two.

18 A. By me, yes.

19 Q. Yes. Now, how would you describe the quality
20 index of the print that was latent that you visualized?

21 A. I would give that about a five or a six. It's
22 not of the best quality.

23 Q. So kind of mid level?

24 A. Yes, sir.

25 Q. Could that be a reason for AFIS not hitting?

1 A. There's various reasons it could be, but also
2 live scan tends to do strange things with prints
3 sometimes when people are fingerprinted when they're
4 rolled in their ink. So I don't know what standard AFIS
5 has in it so I don't know what it's trying to compare it
6 to.

7 Q. Okay. So the slide's gone, so I'll address this
8 if it's okay. Is it the same thing? Maybe the same
9 thing? And I'm gonna try to get it close to the jury if
10 that's all right.

11 THE COURT: Yes, sir, as long as the witness can
12 see.

13 BY MR. MCKINNON:

14 Q. So Investigator Bagwell, again, this is the known
15 one, which is gonna be the highest quality, correct?

16 A. That's correct.

17 Q. Because that's been rolled. You know, you can
18 see every ridge everywhere, all the terms, right?

19 A. Right.

20 Q. And you can also see other things, right, like
21 the texture, the edges, all that kind of stuff. The, I
22 guess, what the tier three details?

23 A. Right.

24 Q. And can you see those in this? (Indicating.)

25 A. You can see level three detail in that image,

1 yes, sir.

2 Q. All the ---

3 A. Not all. You can see some of the level three
4 detail.

5 Q. And what we're looking at period is probably
6 just, you know, this portion, which I guess is a small
7 portion of this print, correct?

8 A. What you see there, that's correct.

9 Q. Well, what your points are a very small portion
10 of the entire print.

11 A. Well, it's got the core and the depth, so it's
12 actually a pretty good piece of the print.

13 Q. If you put your own finger on the little area you
14 got there around the -- what do you call this, the core?

15 A. That's the core area, yes, sir.

16 Q. The core. The little area around the core is
17 just, say, from the right side of it to just south. I'm
18 not using the right terminology here, but just to the
19 down and left here, just kind of a squat, I guess.

20 A. That's the area that I marked the points of
21 minutia incorrect.

22 Q. Right. Now, are these to scale? I mean, are
23 they blown up to be the same size?

24 A. They are. They're actually captured at the same
25 resolution with the same camera, so they are one-to-one

1 images.

2 Q. Okay. So the distance and angles of the
3 different points should be identical?

4 A. Right. Or very, very close, compared to how I
5 have them positioned on the screen, so...

6 Q. But the core is the same and it's the same size?

7 A. It's close, yes.

8 Q. I didn't catch quite something you were saying.
9 So the old school method when you were comparing prints
10 by hand was looking through a magnifying glass.

11 A. Correct.

12 Q. And we've all seen Sherlock Holmes doing that,
13 but what was the new technology?

14 A. We have a USB microscope --

15 Q. Okay.

16 A. -- hooked up to our lap or our desktop computers.
17 We used two computer monitors so we can capture that
18 image and pull it up into a, it's called FCS, Forensic
19 Comparison Software, and it puts the images side-by-side
20 for us.

21 Q. Okay. And does it overlay them?

22 A. No.

23 Q. It does not?

24 A. No.

25 Q. Did you overlay them by hand?

1 A. I don't overlay anything.

2 Q. And did you use any image enhancements
3 algorithms?

4 A. Just what's built into the software to brighten
5 or add contrast to the image.

6 Q. Just one final question. So you were told to
7 compare the latent print that became not latent to the
8 known print of Jamil Ali?

9 A. That's correct.

10 MR. MCKINNON: I have no further questions, Your
11 Honor.

12 THE COURT: Any redirect?

13 MR. HAYES: I have just a few followup, Your
14 Honor.

15 REDIRECT EXAMINATION

16 BY MR. HAYES:

17 Q. So in your expert opinion, at some point someone
18 named Brandon Funderburk touched that jar?

19 A. That's correct.

20 Q. And at some point someone named Jamil Ali touched
21 that jar?

22 A. That's correct.

23 Q. And you have reviewed known standards for Mr. Ali
24 from 2011, again in 2016, April of this year?

25 A. That's correct.

1 Q. Okay. Was that known standard from 2016 taken
2 when he was booked on this warrant?

3 A. It was for this charge, yes.

4 MR. HAYES: Thank you. No further questions.

5 MR. MCKINNON: Nothing further, Your Honor.

6 THE COURT: Then you may step down, thank you.

7 THE WITNESS: Thank you.

8 THE COURT: Just make sure you don't take any
9 exhibits with you.

10 THE WITNESS: That's just my list.

11 MR. HAYES: Your Honor, may we approach?

12 THE COURT: Yes, sir.

13 (Whereupon, a bench conference was held off the
14 record.)

15 THE COURT: Ladies and gentlemen, it's my
16 understanding that the next witness would be the
17 physician who is not available until Thursday morning,
18 so this is the time that we will break for the afternoon
19 and for the day and return on Thursday morning. I'm
20 going to remind you the instructions that I've given to
21 you. That is, not to begin to discuss this matter among
22 yourself because you still have not heard all of the
23 evidence that has to be presented in this trial.

24 Also, please remember as you come and go from the
25 courthouse both today and on Thursday that you not

1 listen to conversations in the hallways, again, for the
2 reasons that you have to make the decision based upon
3 the evidence that's been presented here in this
4 courtroom and not based upon conversations that you may
5 overhear.

6 Please also remember not to allow anyone to
7 approach you to discuss this matter with you. Again, if
8 someone attempts to do that, please tell them that you
9 are a juror, you cannot discuss it. And let me ask that
10 you report it as soon as possible.

11 In addition, ladies and gentlemen, I'm going to
12 give you some additional instructions for you to follow
13 over the next couple days. I know that your family and
14 friends will want to know what you're doing on jury
15 duty. Certainly you can tell them that you've been
16 selected as a juror in the case that involves a failure
17 to stop for a blue light, but I ask that you not discuss
18 the testimony that you've heard with your family and
19 friends. Oftentimes they may ask you questions or make
20 comments to you and that has the potential to impact how
21 you view the evidence. While they're not strangers,
22 it's still inappropriate for you to have conversations
23 with them about the evidence that you've heard or seen
24 and discuss it with them.

25 Please tell your family and friends that I've

1 asked you not to discuss it with them. And please tell
2 them that once you have rendered a verdict in this case
3 at that time you will be free to discuss it as you
4 choose with whomever and about whatever you've seen and
5 heard, but that I've asked you not to discuss it until
6 such time as you begin your deliberations.

7 Additionally, I find that oftentimes when you
8 begin to talk about things, you instinctively talk about
9 the things that stood out in your mind that are most
10 important to you. And I would like for you to save that
11 until your fellow jurors get to hear your, your views on
12 the evidence so that they can determine and hear those
13 things that are -- that you consider to be most
14 important in telling the facts in this particular case.

15 Additionally, ladies and gentlemen, I ask that
16 you not engage in any independent research or
17 investigation. It is not appropriate for you to use any
18 computers or individuals or books or other sources or
19 any information that you may have access to, to do
20 research or look up issues relating to this case. That
21 is not evidence that's been presented in this case and
22 cannot be considered by you in reaching your verdict in
23 this matter.

24 And to the extent that you may have to travel
25 past the area in which the motor vehicle accident

1 occurred, I ask that you not make a special trip to go
2 in that vicinity, but if during the course of your trial
3 goes to and from your home or your business or any
4 events that you have to go to you pass that location,
5 that's certainly acceptable, but I ask that you not go
6 out of your way to make a trip there to, to look and to
7 try to gather any information or gleam information that
8 you think will be helpful in determining the issues in
9 this particular case.

10 Again, that's not evidence for you to consider.
11 You have the opportunity to review the video again at
12 the appropriate time if you feel that you need to do so,
13 but we ask that you not engage in any sort of
14 independent research or investigation.

15 Ladies and gentlemen, I'm gonna ask that you
16 report back on Thursday morning. Not tomorrow, but
17 Thursday morning at 9:30 to the same jury room where you
18 reported after lunch today. You are to report back at
19 9:30 on Thursday. We will be ready to continue on with
20 the trial in this particular matter.

21 I hope that you have a pleasant evening and a
22 good day tomorrow and we'll see you back on Thursday.
23 Thank you very much. Have a good evening.

24 (Whereupon, jury leaves courtroom at 4:41 p.m.)

25 THE COURT: Is there anything that we need to

1 take up before we adjourn for the day?

2 MR. HAYES: Nothing from the State, Your Honor.

3 MR. MCKINNON: Nothing from the Defense, Your
4 Honor.

5 THE COURT: I ask that if you have any requests
6 to charge to the extent that you may develop any
7 additional requests, that you try to send them to us
8 tomorrow so that by Thursday morning we'll be ready to
9 be able to have that discussion at the appropriate time.

10 MR. HAYES: Yes, Your Honor, we'll certainly do
11 so.

12 THE COURT: Okay.

13 MR. MCKINNON: Thank you, Your Honor.

14 THE COURT: Thank you.

15 (Whereupon, court concluded at 4:44 p.m.)

16

17 --- THIS ENDS REQUESTED TRANSCRIPT ---

18

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20

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25

1 COURT REPORTER CERTIFICATE

2
3 I, the undersigned Julie A. Ashbrook, Court
4 Reporter for the Seventh Judicial Circuit Court of the
5 State of South Carolina, do hereby certify that to the
6 best of my ability the foregoing is a true, accurate,
7 and complete transcript of record of all the proceedings
8 and evidence introduced in the hearing and/or trial of
9 the captioned case, relative to appeal, in the Court of
10 General Sessions for York County, South Carolina, on the
11 15th day of November, 2016.

12 I do further certify that I am neither of kin,
13 counsel, nor interest to any party hereto.
14
15
16
17
18

19 s/Julie A. Ashbrook.
20 Julie A. Ashbrook
21 Circuit Court Reporter
22 Seventh Judicial Circuit
23
24
25

State of South Carolina) In the Court of General Sessions
) Sixteenth Judicial Circuit
County of York) 2016-GS-46-02351

The State of South Carolina,)

Plaintiff,

Vs.

Transcript of Record

Jamil Omire, Ali,

Defendant.

November 17, 2016
Columbia, South Carolina

B e f o r e:

The Honorable Alison R. Lee, Judge

A p p e a r a n c e s:

Mr. Aaron Hayes, Esq.,
Mr. Chris Epting, Esq.,
Attorneys for the Plaintiff,

VS.

Mr. Mark McKinnon, Esq.,
Attorney for the Defendant.

Bonnie H. Kelly, CVR
Circuit Court Reporter

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DAY 2

The following is an excerpt of testimony for the trial referenced in the caption as follows:

(On the record at 10:14 a.m)

(Marked Plaintiff's Exhibit No. S-9, photograph, for identification.)

THE COURT: Good morning.

MR. HAYES: Good morning, Your Honor.

THE COURT: We are ready to continue on?

MR. HAYES: Yes, Your Honor. Two -- two housekeeping matters from the State.

The first of which is we had a witness on our witness list named "Lisa Hayes" who's one of our paralegals here. We would ask that she be removed from the witness list for the purposes of not being on the sequester anymore. We need her assistance in court today, and she will not testify.

THE COURT: Okay.

MR. HAYES: The second matter is we would like to advise the Court of our intention to revisit a matter that we went into on Tuesday, that being the admission of the Defendant's booking photograph and it's identification, or not, as the person who was driving the car.

We have brought to court today the person we have requested to add to our witness list, Captain Cheryl

1 Guzman, who is the record's custodian over at York County
2 Sheriff's Office booking.

3 She is present in the hallway and is prepared to
4 testify as to the circumstances of Mr. Ali's booking and
5 how the fingerprint card, which has already been discussed,
6 was taken from him on that day; and how a photograph of him
7 was taken on that day as is standard procedure for all
8 bookings. And so she is prepared to testify this morning.

9 And then we would like to recall -- for the limited
10 purpose -- the victim officer who has been sequestered in
11 one of the conference rooms for the limited purpose of
12 identifying, or not, the booking -- the redacted booking
13 photo as the driver of the car, if she's able to do so,
14 after we have laid the foundation through Captain Guzman.

15 I understand when we attempted this on Tuesday, Your
16 Honor had some concerns about the origin of the photo. And
17 so we are seeking to alleviate those concerns by bringing
18 in the record's custodian.

19 We also have handed up a case on this issue of *State*
20 *vs. Lewis*. I left two copies on the bench and gave a copy
21 to Mr. McKinnon,

22 THE COURT REPORTER: *State vs. Willis?*

23 MR. HAYES: *State vs. Lewis*. I apologize.

24 The site on that is 363 South Carolina 37. That is
25 the Supreme Court case on -- it's my understanding that is

1 the granddaddy case on in-court identifications in the
2 State of South Carolina from our Supreme Court. And I
3 would direct the Court to headnote 2 of that opinion, which
4 is -- what we believe is our authority for allowing this
5 identification of the Defendant by his photograph, in lieu
6 of his person, since he is not here.

7 We would make the analogy that he -- we are
8 identifying him through his photograph. We are asking an
9 in-court witness to identify the Defendant in court, for
10 the first time, with the only thing we have available to us
11 which is his most recent photograph taken by the Sheriff's
12 Office booking.

13 THE COURT: So -- so your belief is that an in-court
14 identification is not an in-court identification of which -
15 - when both the witness and the Defendant are present,
16 that it's only called an in-court identifications because
17 the identification's being done in court.

18 MR. HAYES: Not quite sure I -- I understand the
19 question, but I -- I ---

20 THE COURT: Well, let -- let -- let me -- let me
21 restate it so that I -- that you -- I make sure you
22 understand so that I make sure we're on the same -- we're
23 talking about the same thing.

24 I view an in-court identification as the circumstances
25 in which a witness who is testifying makes an

1 identification during the course of that testimony, in
2 court, of the -- of the -- of the -- or the purported -- of
3 the Defendant who is also in court.

4 In other words, it is -- it's an identification in
5 which the witness says, "That's the person," and points at
6 the Defendant or -- or not, depending on -- but let's --
7 let's just say for purposes that that's the in-court
8 identification.

9 What I hear you saying is that *State vs. Lewis* allows
10 a witness from the witness stand to be able to identify the
11 perpetrator of the -- of the crime as the Defendant, even
12 though the Defendant is not present in Court. In other
13 words, it -- it's not -- it's not a pointing at the
14 individual and says, "Yes, that's him," or describing what
15 he has on and the -- and the -- and the record reflecting
16 that we're talking about the Defendant. It's being able to
17 just look at a piece of paper and say, "That's the person."
18 And because that person is the Defendant, therefore, the --
19 that -- that identification is appropriate. So -- because
20 there are no cases that -- in which the Defendant is not
21 present at trial in which there's an in-court
22 identification.

23 MR. HAYES: I understand, Your Honor. I think for the
24 -- as I read the case law and as I understand the concept
25 of in-court identification, this would be an in-court

1 identification because it is the witness telling to the
2 jury who the Defendant is, based -- here in court for the
3 first time, based on the most recent image we have of the
4 Defendant on the day he was booked, the day he was assigned
5 a bond, and the day a bondsman let him out. And the
6 bondsman, through no fault of the State, has failed to
7 bring him here. But if the bondsman had brought him here
8 and he was sitting in a chair somewhere in this courtroom,
9 the witness could say, "That's him."

10 THE COURT: And I would agree that if the -- if the
11 Defendant were present, or somewhere in the courtroom, and
12 the witness looked around the courtroom and said, "That's
13 the person I saw," that would be a -- a -- a valid in-court
14 identification.

15 MR. HAYES: I ---

16 THE COURT: Because -- because everybody's in court
17 and it's not -- it's not about communicating, necessarily,
18 to the -- to the jury that that's the person. It's about
19 being able to properly identify a person who is present and
20 saying for the first time that is the person that -- that I
21 know committed this particular crime or that I saw during
22 the course of this crime.

23 MR. HAYES: Well -- and Your Honor, that is why we
24 have gone through multiple witnesses and extensive lengths
25 to lay the foundation for this picture. We have had

1 testimony to the record that he gave a 10-print on April
2 18, 2016, which is when he was booked. We've had testimony
3 that there's been a 10-print on file since 2011. We've had
4 testimony that there was a jar recovered at the scene and
5 that all three of those are linked.

6 And so this picture, as Captain Guzman will testify,
7 should the Court allow, is the result of that same booking
8 that generated the 10-print that we've already linked up to
9 the scene. So that's the foundation for this picture, that
10 we have spent the past day in court attempting to go
11 through, so that the jury can see -- because -- and also --
12 excuse me -- something that I omitted from the foundation
13 is the video itself, where the -- the victim witness -- the
14 victim officer has an on-camera conversation with the
15 Defendant and has a frame of reference for knowing his face
16 because they spoke for five -- for several minutes at just
17 18 inches apart.

18 So through all this, Your Honor, this is the best --
19 through no fault of the State, this is what the State is
20 forced into in -- in a TIA situation where the Defendant
21 absconds. We have to bring in booking photos and see if
22 any on-scene witnesses recognize the booking photo after
23 we've laid the foundation for that moment in court.

24 And so it's the State's position that this would be a
25 valid in-court identification pursuant to *State Vs. Lewis*.

1 This is the situation we're forced into because of the,
2 Defendant's conduct ain not being here today, which I have a
3 little information on that should the Court want to hear it.

4 But I would just read into the record that --

5 THE COURT: I'm -- I'm sorry. Go back and make -- what
6 was your previous statement?

7 MR. HAYES: I've -- I've spoken to the bondsman several
8 times, if the Court is interested in the alleged Defendant's
9 whereabouts. I was just pointing that out.

10 And so I'll -- I'll read into the record headnote two,
11 (as read): "We conclude, as a majority of the courts have,
12 that *Neil Vs. Biggers* does not apply to in-court
13 identifications -- if the -- and that the remedy ---

14 THE COURT REPORTER: Sir, you need to slow down a
15 little bit when you read.

16 MR. HAYES: Yes, ma'am.

17 (As read) "We conclude, as the majority of courts have,
18 that *Neil Vs. Biggers* does not apply to in-court
19 identifications and that the remedy for any alleged
20 suggestiveness of an in-court identification is cross-
21 examination and argument."

22 So ---

23 THE COURT: But you have to admit that in *Lewis*, the
24 Defendant was present. And in the -- the -- the victim in
25 that case -- or the witness on the witness stand made no

1 prior identification of any of the individuals who were, you
2 know, alleged to have participated in the crime.

3 And so the identification of the -- the -- the
4 Defendant in that case, he was present in the courtroom and
5 she was able to make the identification.

6 Here we still have one in which there's -- there's no
7 -- there's no in-court identification because that Defendant
8 is not in court.

9 MR. HAYES: I understand, Your Honor, and we take the
10 position that we would be allowed -- we should be allowed to
11 substitute his presence with his picture because we have
12 gone through great lengths to link that picture to the car
13 on the day this happened.

14 We can do that through the 10-print and the jar and the
15 2011 known records, as well as the statements of the
16 Defendant on the video, "My name is Jamil Ali. My date of
17 birth is ...". So it's the State's position we are
18 substituting picture for his presence through the foundation
19 that we have laid.

20 THE COURT: Well, let me ask you this question: In
21 light of all that, why do you need -- why do you need to
22 have her identify a photograph of somebody who's not here?

23 The jury can't make -- jury can't make the connection
24 as to whether or not she's -- she's identifying the
25 Defendant other than -- than through, I guess, the procedure

1 that you're talking about. They have no way of looking and
2 seeing, at this particular point, that the person she's
3 identified is, in fact, the Defendant in this case except
4 for what you put before them to say that he's the Defendant
5 in this case.

6 So they don't have the opportunity to make that
7 independent verification that -- so -- you know, that the
8 person she's identified is the Defendant. So I guess I'm
9 trying -- I'm trying to understand why you need to make an
10 identification in this case.

11 MR. HAYES: Well, based on my interpretation, some of
12 the questions that the Defense has been asking the State's
13 witnesses today, they might try to argue some type of third-
14 party guilt, some other person was driving the car.

15 For instance, there was another print identified on the
16 jar by the name of "Brandon Funderburk" who was an AFIS hit,
17 on the jar. There was some testimony on that.

18 So if we have a witness who was face to face with the
19 Defendant and then we have a picture of that Defendant, I
20 think it's relevant and admissible for the jury to know we
21 can call that person "Jamil Ali" and any third-party guilt,
22 based on anybody else's prints that might have been found on
23 that jar, is -- is a no-go.

24 So that would be the relevance and the need for the
25 State -- and then, I understand Your Honor's concerns about

1 the suggestiveness and the jury not having the opportunity
2 to -- or the jury essentially having to -- no other picture
3 to compare or no other identification to compare.

4 But that is addressed in *State vs. Lewis*, on the last
5 paragraph of section one, where -- where to me, the Court
6 basically says that's the jury's province and that is
7 certainly Defense counsel's province to beat our
8 identification up and down in closing argument.

9 I -- I'm reading from the paragraph that begins (as
10 read): "Accordingly, we conclude *Neil vs. Biggers* does not
11 apply to first time in-court identification because the
12 judge is present and can adequately address relevant
13 problems" -- which we just talked about -- "and the jury is
14 physically present to witness the identification rather than
15 merely hearing testimony about it; and cross-examination
16 offers Defendants an adequate safeguard or remedy against
17 suggested examinations."

18 So I -- I -- I fully admit, anticipate, and expect that
19 Mr. McKinnon will go hard after this identification, should
20 the Court allow it; but that is the proper remedy in these
21 circumstances, certainly not exclusion, in -- in the State's
22 opinion. And we request that we be allowed to continue with
23 this attempted photo identification of Mr. Ali.

24 THE COURT: Yes, sir, Mr. McKinnon.

25 MR. MCKINNON: Yes, Your Honor. I think the State is

1 -- is still missing the distinction that Your Honor is
2 correctly making, that an in-court identification is not an
3 open concept of -- of saying who did -- who done it. It's a
4 -- it's a live witness pointing out a live Defendant as the
5 perpetrator of the crime or for the identification.

6 I don't think foundation is necessarily the issue here.
7 I think the State keeps arguing that they made all this
8 effort to put a foundation into this picture, but the issue
9 is having a witness point to a single photograph in the
10 presence of the jury saying, "This is the guy," is grossly
11 prejudicial.

12 I think it -- as Your Honor also pointed out, that as
13 -- as there's no case law on a point on this, I think it's
14 probably indicative that no one has ever even considered
15 trying this because it's obviously prejudicial.

16 Your Honor, I -- I -- I see that the case of *State v*
17 *Lewis* the State has provided does pretty conclusively give
18 the State, or anyone really, the ability to have an in-court
19 identification. Again, that's the live witness, in front of
20 the jury, pointing out a live human being.

21 However, the State, based upon the case that I handed
22 up, the Fourth Circuit *State v Workman* -- I'm sorry --
23 *United States v Workman*, deals with an issue where a --
24 pursuant to *State v Lewis*, an in-court identification was
25 made that was valid, but that was invalidated by that

1 witness being shown a single photograph prior to court.

2 So if a -- if a single photograph is enough to taint
3 what would have been a valid in-court identification,
4 certainly an in-court showing of a single photograph is
5 absurdly prohibited and prejudicial.

6 Your Honor, I would point also to that case where, near
7 the end, on page 2 (as read): "Preparation of a
8 photographic spread, containing pictures of different
9 people, would be a minor burden for an investigator when
10 measured against the potential prejudice of the accused."
11 And that is pretty much what Sergeant Brown said on Tuesday.

12 It's very easy to develop a six person line-up and --
13 and show that to the witness prior to the Court. And I
14 think the State says through no fault of their own;
15 therefore, they need to have this done, basically because
16 the -- the relative weakness of their case, they basically
17 need to prejudice Mr. Ali by getting this in.

18 I don't think that's a valid argument. And they --
19 again, like I said on Tuesday, the State has had seven
20 months to produce a six pack line-up and show that to the
21 witness, the one person who saw who was driving that car,
22 and they failed to do that.

23 THE COURT: Okay.

24 MR. HAYES: Just a brief reply, Your Honor.

25 THE COURT: Yes, sir.

1 MR. HAYES: Couple -- two things on *State vs.* --
2 *United States vs. Workman*. It's distinguishable on it's
3 face because there was an out-of-court identification --
4 photo identification.

5 That initial out-of-court -- out-of-court photo
6 identification was a misfire. And then they kind of kept
7 going back at it out of court, and then that led to the in-
8 court identification.

9 So for that reason, *Workman* is distinguishable on its
10 facts. And then that -- that line from *Workman* that says
11 (as read): "Preparation of a photographic spread,
12 containing pictures of different people, is a minor burden
13 for an investigator when measured against the potential
14 prejudice to the accused."

15 Well, that -- that's certainly true logically, but
16 that's certainly not a requirement; otherwise *State vs.*
17 *Lewis* would have no application because *State vs. Lewis*
18 allows the State to identify Defendants in court through
19 their presence. And then, by analogy, we would argue their
20 presence be a picture that was taken on the day they were
21 booked.

22 THE COURT: After reading both *Lewis* and *Workman* and
23 based -- based upon, you know, what -- what we discussed on
24 -- I guess it was Tuesday, I still -- I understand what the
25 State is trying to accomplish and I understand that some of

1 it may have been at -- at my suggestion in -- in being able
2 to link things up.

3 But I still think that showing one photograph, despite
4 the fact that it may be the -- the -- of the person who was
5 arrested for this particular crime, without the benefit of
6 her identifying a person who's sitting in the chair as,
7 "Yes, that is the person I saw," as opposed to the person
8 that we arrested, "Yes, that's the person that I saw."

9 I -- I think it's -- I think it's prejudicial. I think
10 that there's a portion of *Workman* that says it best. The --
11 *Workman* talks about the fact, besides the manager's
12 identification that (as read): "The government introduced
13 only scant circumstantial evidence linking Workman to the
14 crime."

15 I think in this particular case that there -- that
16 there is circumstantial evidence, and I think it's
17 circumstantial evidence from which the jury could make the
18 connection that -- that the Defendant in this case was the
19 perpetrator of -- of the -- of the crime.

20 I think as well that the -- the identification of the
21 Defendant as the person who committed the -- the offense is
22 simply a factual issue, that even if he were present in
23 court and -- and the identification was made in court, that
24 that would still be a factual issue for the jury to
25 consider.

1 And so I don't think that his absence from the court
2 should -- should change the requirements of what would be
3 appropriate in identifying someone in court.

4 I -- I think clearly that *Lewis* makes the implication,
5 and the facts of *Lewis* were that the person that was
6 identified was physically in court and there was an
7 identification in court. And I think that, if we're going
8 to distinguish them based upon the facts, that that's a
9 distinguishing fact in this particular case.

10 Whether or not he was -- whether or not the Defendant
11 in this case, Mr. Ali, was the perpetrator is just as --
12 simply a factual issue which the jury will have to resolve
13 as they do in -- in all criminal cases.

14 And -- and so I'm going to deny the request to be able
15 to allow the use of the booking photo and that testimony as
16 a -- as a mechanism of -- of establishing the basis for in-
17 court identification.

18 Is there any ---

19 MR. HAYES: Thank you, Your Honor.

20 MR. MCKINNON: Thank you, Your Honor.

21 THE COURT: Is there anything else we need to take up
22 at this particular point?

23 MR. HAYES: The State is ready to call it's next
24 witness, Your Honor.

25 THE COURT: Okay. And as I understand it, that will be

1 Dr. Graham; is that correct?

2 MR. HAYES: Yes, ma'am.

3 THE COURT: Okay. All right.

4 MR. HAYES: Your Honor, just by way of information to
5 the Court, we will still call the booking officer to confirm
6 that he gave a 10-print on April 18th when he was booked.
7 But pursuant to the Court's ruling, we will not mention any
8 photograph.

9 THE COURT: Anything else we need to take up?

10 MR. MCKINNON: Nothing from the Defense, Your Honor.

11 THE COURT: And all the witnesses are still
12 sequestered; is that correct?

13 MR. HAYES: Your Honor, the victim was voluntarily
14 sequestered by me. I know she's exempt from the Court's
15 sequester, but I sequestered her ---

16 THE COURT: With the idea that there could be an
17 inquiry on identification. I understand. And so based upon
18 my ruling, she can return to court if that's what she wishes
19 to do.

20 MR. HAYES: Yes.

21 THE COURT: You may ask the jury to come in, please.

22 (Jury enters at 10:38 a.m.)

23 THE COURT: Good morning, ladies and gentlemen.

24 THE JURY: (Simultaneously) Good Morning.

25 THE COURT: I'm sorry for the delay. We had some legal

1 issues we had to take up this morning, so I apologize for
2 the delay in bringing you back.

3 Ladies and gentlemen, there may be two additional
4 witnesses who may be called in this trial, and I need to ask
5 you: Is there any member of the jury panel who is related
6 by blood or marriage or a close personal friend of either
7 Robert Wooten or Cheryl Guzman, who are both employed with
8 the York County Sheriff's Office? If so, please raise your
9 hand.

10 (A juror raises their hand.)

11 Yes, ma'am. Tell ---

12 JUROR: I'm not a close personal friend, but I did
13 serve on Leadership York County with Cheryl Guzman.

14 THE COURT: Okay. And the fact that you may have been
15 associated with her through that particular process, would
16 that prevent you in this case from being able to continue to
17 listen to the evidence in this case?

18 THE JUROR: I don't think so.

19 THE COURT: Would you be able to make a decision that
20 would be based strictly upon the evidence to be presented
21 here?

22 THE JUROR: Yes.

23 THE COURT: And I understand that you are the
24 alternate. And would you be able to give both the State as
25 well as the Defendant a fair and impartial trial?

/

DIRECT EXAMINATION BY MR. HAYES - DR. GRAHAM

21

1 THE JUROR: Yes.

2 THE COURT: Thank you. And for -- for the record, you
3 are Sandra Worley; is that correct?

4 THE JUROR: Yes.

5 THE COURT: Juror No. 249.

6 THE JUROR: Yes.

7 THE COURT: Thank you.

8 Anything further by either the State or the Defense at
9 this time?

10 MR. HAYES: Nothing, Your Honor. We're ready to call
11 our next witness.

12 MR. MCKINNON: No, Your Honor.

13 THE COURT: Then you may call your next witness.

14 MR. HAYES: Your Honor, at this time the State calls
15 Dr. William Graham.

16 DR. WILLIAM GRAHAM, having been
17 first duly sworn, testifies as follows:

18 THE COURT: Would you state your full name, please?

19 THE WITNESS: William Christopher Graham.

20 THE COURT: And Mr. -- Dr. Graham, you'll need to speak
21 up just a little bit louder to make sure that all of the
22 jurors can hear you. Thank you.

23 DIRECT EXAMINATION

24 BY MR. HAYES:

25 Q Dr. Graham, can you tell us what your occupation is?

DIRECT EXAMINATION BY MR. HAYES - DR. GRAHAM

22

1 A I'm an orthopaedic surgeon.

2 Q Can you tell us where you went to undergraduate
3 school?

4 A The University of North Carolina.

5 Q Can you tell us where you went to medical school?

6 A The University of Alabama School of Medicine.

7 Q Can you tell us in what states you are licensed to
8 practice medicine?

9 A I currently hold active licenses in North Carolina and
10 South Carolina.

11 Q Okay. Can you tell us if you are board certified in
12 any medical specialty?

13 A I'm technically board eligible, half-way through
14 the board certification process for orthopaedic surgery.

15 Q Okay. Do you perform orthopaedic surgery on a regular
16 basis?

17 A Yes, sir.

18 Q Did you perform orthopaedic surgery on Marina Arbelo in
19 April of this year?

20 A I did.

21 MR. HAYES: Your Honor, at this time the State would
22 move to qualify Dr. Graham as an expert in orthopaedic
23 surgery.

24 THE COURT: Any voir dire?

25 MR. MCKINNON: No, Your Honor.

1 THE COURT: Any objections?

2 MR. MCKINNON: No, Your Honor.

3 THE COURT: Then I'll find him so qualified.

4 BY MR. HAYES:

5 Q Dr. Graham, can you tell us what your diagnosis was of
6 Deputy Arbelo's injuries.

7 A She sustained a clavicle fracture.

8 Q What is a clavicle?

9 A The clavicle is also known as the collar bone. It's a
10 strut involved in the shoulder joint.

11 Q Okay. How did you reach that diagnosis?

12 A She had obtained x-rays at an outside facility when she
13 presented, and I diagnosed it based on the x-ray as well as
14 her physical exam.

15 Q Okay. Tell us what you normally do to repair a broken
16 clavicle.

17 A It can be treated operatively or non-operatively.
18 Operatively it's typically treated with a plate and screws.
19 "Open reduction and internal fixation" is the term we use.

20 Q Okay. So that is a surgery where a plate is used to
21 fuse the two bones back together?

22 A Yes.

23 Q What's the difference between a broken clavicle that
24 requires surgical intervention and one that is treated non-
25 surgically?

1 A That's somewhat debatable. I think that this
2 particular clavicle fracture would have healed either way;
3 but it was shortened greater than two centimeters, which is
4 often a limitation if it heals that way with regards to
5 strength and endurance.

6 So in a laborer or anyone who works with their arms in
7 any kind of physical capacity it's useful to have a normal
8 anatomy restored.

9 Q Okay. Can you tell us what type of -- and you went
10 into this a little bit, but what type of limitations could
11 someone have in using their arm prior to and after surgery
12 on -- for a broken clavicle?

13 A "Prior to" meaning ...?

14 Q After the injury, but before the surgery.

15 A Significant limitations, secondary to pain. As the --
16 prior to the fracture being healed in an operative or non-
17 operative treatment process, fracture fragments move; and
18 when they rub against each other, they cause significant
19 discomfort.

20 Q And then, after the surgery, how long is someone have
21 -- can you describe the impairment to someone's arm after
22 the surgery?

23 A The limitations are primarily restrictions placed by
24 myself or the treating physician simply to allow it to heal.
25 Their pain dissipates typically within the first few days,

1 but we do limit their lifting, carrying, pushing, pulling,
2 etcetera as the bones heal over the course of six to eight
3 weeks typically.

4 Q Okay. Is there any type of skin numbness associated
5 with a collar bone repair?

6 A There is frequently a skin nerve in the -- sort of just
7 over the collar bone that does get cut with the approach.
8 It's a very small, superficial nerve; and there is typically
9 some -- a small patch of numbness in that area post-
10 operatively.

11 Q Okay. And also, do these type of surgeries typically
12 leave a scar?

13 A Yes.

14 Q Did you treat Deputy Arbelo for any other injury
15 besides the broken collar bone?

16 A No formal treatment. She had some right tibia pain.
17 We x-rayed. It was negative, and I believe it was just a
18 contusion that dissipated on it's own.

19 Q Excuse me just a moment.

20 MR. HAYES: The Court's indulgence, Your Honor.

21 (Brief pause.)

22 MR. HAYES: Dr. Graham, we have no further questions.
23 Please answer any Mr. McKinnon may have.

24 THE COURT: Any cross?

25 MR. MCKINNON: Yes, ma'am. May it please the Court?

CROSS-EXAMINATION BY MR. MCKINNON - DR. GRAHAM

26

1 THE COURT: Yes, sir.

2 CROSS-EXAMINATION

3 BY MR. MCKINNON:

4 Q So Dr. Graham, was there just a single break at the
5 -- in this clavicle?

6 A I believe it had what we call "butterfly fragments,"
7 but I don't remember specifically.

8 Q Don't remember any specifics?

9 A I -- I remember that she had a broken clavicle that we
10 treated operatively, but I haven't seen the x-ray in some
11 time.

12 Q Now, a broken clavicle, is that something you see
13 fairly often?

14 A With some frequency. I -- I don't know -- what I would
15 say is fairly often.

16 Q I mean, can you recall, say, how many you -- you've
17 seen since this surgery?

18 A I'd say probably five additional, something like that.

19 Q This is something that you can see from sports
20 injuries?

21 A Yes.

22 Q Car crashes?

23 A Yes.

24 Q Now, you mentioned that you thought that this would
25 heal whether you operated or whether this was a non-

1 operative situation, right?

2 A Most clavicle fractures heal whether they're treated
3 operatively or non-operatively.

4 Q You said it's kind of a debate, I guess, in the
5 orthopaedic community as to how to proceed in a situation
6 like this.

7 A I think you would get different answers from different
8 people, but it's often put in the context of what the
9 patient does and how they use the arm.

10 Q And so in your opinion, because you said I believe it
11 was some separation between the two -- the bone pieces, I
12 guess, that it was your suggestion to -- to have the
13 surgery?

14 A Specifically the degree of shortening.

15 Q Right. Now, there are different types of fractures and
16 this was not a compound fracture, right?

17 A "Compound fracture" is not a term we use to describe
18 anything anymore. I believe that was used previously to
19 describe an open fracture.

20 Q When the bone was coming out of the ---

21 A Correct.

22 Q --- skin.

23 A This was not an open fracture.

24 Q Okay. Now, after surgery, limitation of the use of
25 that appendage, that arm, was based on doctor's order for

1 better healing; is that what you -- you testified to?

2 A I'm not sure I'd say "better healing," but to
3 facilitate healing.

4 Q And what I mean is, the arm was usable in an emergency
5 -- emergency, let's say. It was not dangling there loose.
6 I mean it -- she -- she could pick up a cup if she had to.

7 A Yes.

8 Q In your experience -- oh, sorry. Do you recall what
9 the origin of this break was from? I mean, what -- what
10 caused the break?

11 A The -- the history that I recall was that she was
12 involved in a -- a chase, some sort of pursuit; and in that
13 process, sustained the injury.

14 Q Right. And in your experience, would this sort of
15 injury be less likely to happen with a seatbelt being worn?

16 A I don't think that that has any effect.

17 Q In your experience of treating clavicle's from car
18 crashes, would you say --

19 A The -- in general, I can't speak specifically
20 to a clavicle fracture. I don't think there's any ---

21 Q There's no data saying --

22 A No. No.

23 Q And one last question. I believe, just to clarify,
24 you said that typically following surgery the pain greatly
25 subsides two to three days.

1 A It's different with different patients, but once the
2 fragments are no longer movable and they've been stabilized,
3 then, yes, their pain dissipates relatively quickly.

4 Q Okay. I have no further questions.

5 THE COURT: Any re-direct?

6 MR. HAYES: No, Your Honor. We ask that this witness
7 be excused.

8 THE COURT: You may step down. You may be excused.
9 Thank you very much.

10 THE WITNESS: Thank you.

11 (The witness exits the stand.)

12 THE COURT: You may call your next witness.

13 MR. HAYES: Your Honor, the State calls Captain Cheryl
14 Guzman.

15 (Brief pause.)

16 THE COURT: You need to step forward, please, ma'am, to
17 be sworn.

18 CHERYL GUZMAN, having been first
19 duly sworn, testifies as follows:

20 THE COURT: Please state your full name and spell your
21 last name.

22 THE WITNESS: Cheryl Hale Guzman. G-u-z-m-a-n.

23 THE COURT: Thank you.

24 DIRECT EXAMINATION

25 BY MR. HAYES:

DIRECT EXAMINATION BY MR. HAYES - CHERYL GUZMAN

30

1 Q Captain Guzman, can you tell us who your employer is?

2 A York County Sheriff's Office Detention Center.

3 Q How long have you worked for the Sheriff's Office
4 Detention Center?

5 A Since May of 1993.

6 Q What is your role there?

7 A I am the operations captain.

8 Q Do you supervise the department that does bookings when
9 people are arrested on charges?

10 A I do.

11 Q Are fingerprints taken as part of the normal booking
12 process?

13 A Yes.

14 Q Are you the custodian of those fingerprint records?

15 A I am.

16 Q Based on your review of your departments records, was
17 someone named "Jamil Ali" arrested for failure to stop for a
18 blue light resulting in great bodily injury in April of this
19 year?

20 A Yes, sir.

21 Q What date?

22 A Date of arrest reflects 4/18 of 2016.

23 Q Okay. What name was provided on that -- during that
24 arrest?

25 A Last name Ali, A-l-I. First name, Jamil. Middle name,

1 Almiri.

2 Q What date of birth was provided?

3 A [REDACTED] of 1993.

4 Q Were fingerprints taken?

5 A Yes, sir.

6 Q In the normal course of the booking process?

7 A Yes.

8 MR. HAYES: I have no further questions. Please answer
9 any that Mr. McKinnon may have.

10 Mr. MCKINNON: Your Honor, just one question.

11 CROSS EXAMINATION

12 BY MR. MCKINNON:

13 Q Captain Guzman, what was the date again that Mr. Ali
14 was booked?

15 A I don't have the booking report in my custody right
16 now. I have the fingerprint card, and the fingerprint card
17 reflects the date of arrest As April 18th of 2016.

18 Q But you don't have the record of -- of -- or the
19 warrant there that would show for what offense and when that
20 occurred.

21 A The offense date is reflected as April 5th of 2016.

22 Q So April 5th offense date; arrest date of April 18th,
23 you said?

24 A That's what it shows, yes.

25 Q No other questions, Your Honor.

1 THE COURT: Anything further?

2 MR. HAYES: Nothing further from the State, Your Honor.

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

4 THE WITNESS: Thank you, Your Honor.

5 MR. HAYES: And we ask that this witness be excused.

6 THE COURT: You may be excused as well.

7 (The witness exits the stand.)

8 THE COURT: Yes, sir.

9 MR. HAYES: Your Honor, the State rests its case.

10 THE COURT: Are there any matters which we need to take
11 up outside the presence of the jury?

12 MR. HAYES: None from the State, Your Honor.

13 MR. MCKINNON: Yes, Your Honor.

14 THE COURT: Ladies and gentlemen, again we have some
15 legal issues which we need to take up outside of your
16 presence.

17 I'm going to ask that you retire to the jury room, but
18 not to begin any discussions or deliberations about this
19 particular case as you've not heard all of the evidence.
20 And even if you have heard all of the evidence, you've not
21 heard my instructions to you as to the law. We'll bring you
22 back very shortly.

23 (Jury exits at 10:55 a.m.)

24 THE COURT: Yes sir, Mr. McKinnon.

25 MR. MCKINNON: I think, at this time, Your Honor, this

1 -- the Defense has a -- a -- essentially three-part motion
2 for a directed verdict based on three different arguments.

3 One, the gist of which will be based on the identity of
4 the driver of the Acura; one based on the proximate cause
5 issue and whether or not that should be submitted to the
6 jury; and one based on the injuries rising to the level of
7 great bodily injury as testified by Dr. William Graham.

8 So if it would please the Court, I guess -- I'm
9 thinking that the easiest one to start with would be
10 identity because of -- if Your Honor directs verdict for
11 that, the others arguments will not be necessary.

12 THE COURT: Yes, sir.

13 MR. MCKINNON: Your Honor, I would submit the State has
14 submitted insubstantial circumstantial evidence as to the
15 identity of the driver. Not one person whatsoever has
16 identified Jamil Ali as the driver of that blue Acura that
17 day or at any time.

18 What they have is the driver gave Deputy Arbelo eight
19 letters and four numbers: Jamil Ali, [REDACTED]. That's it.
20 That's what they got from the -- from the entire
21 investigation up until the -- Investigator, I guess, Bagwell
22 testified that there was a matching print found on a jar in
23 the median. Unknown origin, unknown length of time it had
24 been there, it was covered with other fingerprints.

25 I would say that is a minute circumstantial evidence

1 that could put Jamil Ali as the driver, but all things
2 considered, I would say that it's insubstantial
3 circumstantial evidence. I would say that since noone
4 identified the driver, either in court or out of court, that
5 what the driver said is also circumstantial; and that
6 because of that shred of evidence here, that it is an
7 insubstantial circumstantial case that we need not submit to
8 the jury.

9 THE COURT: Any response from the State?

10 MR. HAYES: Yes, Your Honor. Obviously I disagree with
11 Mr. McKinnon. I believe we have submitted substantial
12 circumstantial evidence, especially when construed in the
13 light most favorable to the State, as the Court's required
14 to do at this time.

15 We have had an identification of the Defendant through
16 the fingerprint evidence in this case which we've talked
17 about at length, but I will just rehash it for the record at
18 this time.

19 We have a suspect behind the driver's seat of a car on
20 the dashboard camera providing his name as Jamil Ali, giving
21 his date of birth. We have a police chase. We have a jar
22 found along the path of that chase. A jar is recovered, a
23 print is developed. That print matches the 2011 known
24 standard for Jamil Ali.

25 Jamil Ali is arrested and booked, provides a 10-print

1 card that matches the 2011 known standard. That was all
2 through the testimony of Investigator Bagwell who linked the
3 print that was found on the jar with the print from the
4 known records and the print from the booking on this
5 offense. Those all have been connected by Investigator
6 Bagwell.

7 So certainly this is an atypical case, but that does
8 not mean that this is a fatally flawed case or insubstantial
9 circumstantial evidence case. We believe that we have
10 evidence that a reasonable jury could put Jamil Ali behind
11 the driver's seat of that car based on the fingerprints in
12 this case, based upon the fact that he identified himself on
13 video without any type of hesitation: "My name's Jamil Ali.
14 I'll spell it for you. Here's my date of birth." And so
15 far all that evidence has been corroborated by County
16 records and fingerprints.

17 So we would submit that the jury is entitled to hear
18 that Jamil -- Jamil Ali is the Defendant in this case and
19 that he has been identified through the fingerprints.

20 MR. MCKINNON: Your Honor, brief response?

21 THE COURT: Yes, sir.

22 MR. MCKINNON: Your Honor, the State just argued that
23 -- that the fingerprint was, in fact, identification of the
24 -- of the driver. That is absolutely not true. The
25 fingerprint has no correlation between time of incident that

1 -- and -- and really there's no correlation in location.

2 It's a fungible object with multiple prints on it. We
3 have no idea when and where that would have been touched by
4 Mr. Ali, and essentially all it's evidence of is that he
5 touched that jar at some point some where. That's it.
6 That's not identifying the driver.

7 It -- it -- I mean, it -- it is a circumstantial bit of
8 evidence. I'm not going to say it's no evidence, but in the
9 entirety of the facts here, what the State has is completely
10 insubstantial to send this to the jury. This is
11 insubstantial circumstantial evidence.

12 THE COURT: I -- I would tend to agree with the State.
13 I think that the fingerprints simply provide additional
14 evidence which would help corroborate the fact that -- that
15 even -- that Ali was in the vicinity of where the chase
16 occurred or items belong -- presumably which he touched, may
17 or may not have belonged to him; but that the inference can
18 be drawn, you know, that -- that he was the driver of the
19 car based upon his identification of himself and based upon
20 additional information that was provided once -- through the
21 -- through the fingerprints that were obtained and the
22 information from -- from the booking as well.

23 So I'll -- I'll deny your request. I -- I think it's a
24 jury -- clearly I think it's a jury issue, and I think
25 there's enough evidence to send it to the jury.

1 MR. MCKINNON: Okay. I think we'll go on, I guess,
2 Your Honor, to part two, which would be the proximate cause
3 issue.

4 Your Honor, although not explicitly worded like in the
5 DUI statute where it says that (as read): "The action or
6 omission must be the proximate cause of the injury -- of the
7 great bodily injury," it does have a proximate cause
8 requirement that would be read through -- from 56-5-750,
9 subsection, C.

10 As we discussed on Tuesday pre-trial, subsection A
11 lends out the elements for basic failure to stop, B tells
12 the penalties for that, and C, rather than it saying (as
13 read): "Additional penalties for injury, great bodily
14 injury, or death," lays out another requirement here,
15 another element, that if a person violates A (as read):
16 "When driving, performs an act forbidden by law or neglects
17 a duty imposed by law while driving the vehicle"; and then
18 that segues into the injuries for great bodily -- penalties
19 for great bodily injury and death.

20 That clearly is the -- even though this was written in
21 a different time as the DUI statute, that -- that clearly,
22 at the time of the writing of this, was the legislator's --
23 the legislature's way of saying that there must be another
24 act to this -- or omission as the proximate cause of the
25 injury or death.

1 So, Your Honor, with or without a act or omission, if
2 that -- that's not there, if injuries that are not
3 proximately caused, anything that the Defendant did or did
4 not do, that clearly expands the statute to one of strict
5 liability and lends to absurd examples.

6 I mentioned these on Tuesday and I'll -- I'll say them
7 again on the record, where if someone is failing to stop for
8 blue lights, and officer falls down the stairs going to his
9 patrol car to follow this, that would qualify just the same
10 as the State's case on this.

11 Same as if a civilian stumbles while walking and
12 watching him driving, or let's say a civilian driving the
13 car and texting while driving, you know, an intervening
14 negligent act -- the same thing that happened here --
15 crashes into another civilian or even into the officer, had
16 nothing to do with the driving of -- of the person that's
17 failing to stop.

18 I think all those examples are just absurd reasons why
19 you cannot just assign any sort of injury that happens in
20 the same vicinity to the driver that's failing to stop.

21 The *Dantonio* case that I handed up on Tuesday, I think
22 sets out the standard for proximate cause for the DUI with
23 great bodily injury and how to -- to deal with the proximate
24 cause issue.

25 In that case, the Defendant was arguing that because

1 his negligence, his speeding did not rise to the
2 contributory negligence throughout the threshold of 51
3 percent, that the jury should not have been given the chance
4 to say that his actions, his speeding, was the proximate
5 cause of the -- of injury or death in that case.

6 THE COURT: And you're talking about *Dantonio*.

7 MR. MCKINNON: Yes -- yes, ma'am.

8 THE COURT: Okay.

9 MR. MCKINNON: And in that case, I believe, that there
10 were two people that were clearly at fault. The Defendant
11 was speeding, a third party failed to yield, and pulled out
12 in front of him; but the combination of those caused the
13 crash which caused a third car to suffer a death.

14 In that case, the Court, I think, properly, gave the
15 jury the chance to decide whether Mr. Dantonio's speeding
16 was a proximate cause.

17 But the distinction here, Your Honor, is that whether
18 it was less than the other car's negligence or not, he had
19 some sort of bearing and responsibility. His actions had
20 some causal connection to the accident that caused the death
21 in that case.

22 In the case at bar, there is no evidence that the --
23 that blue Acura made contact with any car. No evidence that
24 it contacted a stationary car, Deputy Arbelo's car, nor the
25 truck that was struck by Deputy Arbelo's car. There's no

1 evidence presented that any car had to change their driving
2 action due to any action done by the Defendant. No one had
3 to swerve or disobey a traffic signal or anything like that
4 because of the driving of the driver of the blue Acura.

5 There is no evidence that any sort of causal connection
6 of any kind occurred between the driving and actions of the
7 blue Acura and the ensuing crash. In fact, the evidence
8 clearly showed, both in testimony and video, that the blue
9 Acura was some lanes ahead of the -- Deputy Arbelo's car and
10 the truck that was involved in the crash, and that Deputy
11 Arbelo stated that she had to swerve out of the way of a
12 stationary vehicle and then -- that she lost control and
13 went into the oncoming lane of traffic, striking another
14 stationary vehicle.

15 So, Your Honor, I would submit that a jury simply
16 cannot find that the Defendant was any sort of proximate
17 cause of this accident.

18 If this were a civil case, and either the driver of the
19 third-party truck or the Deputy Arbelo attempting to sue Mr.
20 Ali for negligence in what happened, I would be making the
21 exact same argument here, that the jury could not possibly
22 find even 1 percent liability for damages here, that there
23 simply is no causal connection; and therefore, there is no
24 need for the jury to decide who was the proximate cause and
25 who aw not. There is simply no connection.

1 Your Honor -- and if we need to delve further into
2 statutory interpretation, I'm not sure if we do or not, I
3 think the -- the State indicated they were conceding that
4 there is a proximate cause in the statute, but if -- if that
5 is -- is not the case, I would go back to the *Hinton* case
6 and put that back on the record.

7 MR. HAYES: We consent to a proximate cause jury
8 instruction, Your Honor.

9 THE COURT: All right. Yes, sir. I'll hear from -- is
10 -- I'll hear from you as -- as a response, Mr. Hayes.

11 MR. HAYES: Yes, Your Honor. It's the State's position
12 that issues like proximate causation are consummate jury
13 questions because they involve the type of analysis that's
14 not suitable for disposition as a matter of law.

15 I'd like to hand up the case that I emailed the cite to
16 Ms. Bing yesterday, *State vs Deschamp*. *State vs Deschamp*,
17 which is 126 South Carolina 416, an old case, but certainly
18 a good case in the sense that it has not been overruled.

19 Reading from page 2 of this opinion, at headnotes 2 and
20 3, the middle of the paragraph (as read): "The law
21 applicable in ascertaining and appraising the consequential
22 damage resulting from such criminal act as the familiar law,
23 proximate cause. But that doctrine is more broadly, rather
24 than more narrowly, applied against the wrongdoer in a
25 criminal prosecution than against the tortfeasor in a civil

1 action.

2 "Thus, in a criminal action, the wrongdoer, who --
3 whose crime has resulted in injury to another, will not be
4 absolved on the ground that the wrongful act or negligence
5 of the person injured contributed to the injury as a
6 proximate cause."

7 I think this stands for the proposition that a victim
8 of a crime may be negligent, but that is not sufficient to
9 cut off the proximate cause connection to the Defendant in a
10 criminal case. And I think the jury charges bear that out
11 when it references the fact that more than one person can be
12 the cause of a particular injury. I think that incorporates
13 the possibility that a victim may be the cause of an injury,
14 but the Defendant can still be a cause as well and that's a
15 factual analysis for the jury.

16 Because in this case, we have a video of the Defendant
17 driving dangerously for an extended period, but right before
18 the wreck, proceeding through a red light with the deputy
19 following in his -- essentially in his tire tracks,
20 following his path, his negligent path, his path of -- of
21 committing traffic violations in an attempt to apprehend
22 him.

23 To say that he played no role whatsoever is simply
24 something that the jury is going to have to decide if they
25 want to go that way. But he is on camera committing traffic

1 violations. The police are entitled to chase when people
2 run from them. She was chasing him, he was running through
3 a red light, his car didn't lose control, her car for some
4 reason did.

5 This is the consummate jury issue as to apportionment
6 of proximate cause and who's the sole cause and who's not or
7 did both cause it. The law on proximate cause incorporates
8 the possibility that there may be many proximate causes and
9 that is simply a jury question in the State's position.

10 THE COURT: Any response?

11 MR. MCKINNON: Just briefly, Your Honor. I -- I mean,
12 the State's talking about the jury ascertaining the
13 proximate cause, but there has to be a causal connection to
14 begin with. There's not one here.

15 The deputy was chasing. There's no evidence that --
16 that was a mandatory pursuit. She's driving, doing that on
17 her own decision. There's no evidence that any sort of
18 driving maneuver or failing to obey the red light or
19 anything like that caused any sort of crash.

20 If -- if the actions of the driver of that blue Acura
21 caused the crash into oncoming traffic when they were going
22 through their green light, that what's -- you know, what --
23 what we're talking about here. I mean, that's -- that's not
24 all that happened. That's -- that's the legislative intent,
25 that, you know, one car has to swerve out of the way, hits

1 another car that would reply. One car hits into the blue
2 Acura, the blue Acura hits another car. Anything like that,
3 where any action that cause a collision between two vehicles
4 causing injury, is in some way, whether a minor amount or a
5 large amount, caused by an action of -- of that person. And
6 that is simply not here.

7 Whether it was a small amount -- again, I'll go back to
8 the -- *the Dantonio* case, the Defendant in that case clearly
9 was less responsible than the other car, and the -- that
10 case decided that even though you're less responsible than
11 someone else, if there is a connection -- there was a causal
12 connection, his car crashed into the person who failed to
13 yield.

14 That's just completely missing here, Your Honor.
15 There's no evidence that ties the Defendant's actions or
16 inactions to anything that caused the crash between the
17 third-party truck and Deputy Arbelo.

18 THE COURT: So let me make sure I -- so basically
19 you're saying that if they were -- if the -- the driver of
20 the vehicle did not have a -- have -- that was being pursued
21 -- did not crash into anything else, there would be no
22 proximate cause.

23 MR. MCKINNON: Your Honor, I think that's one thing. I
24 think that the State though -- I mean, if -- if another car
25 -- let's say the driver of the Acura didn't crash into

1 someone else, but the actions of that car made another car
2 have to do something they wouldn't ordinarily do and then
3 crashed into other cars, there -- there's still a proximate
4 cause issue there. You could still check that box.

5 But when the Acura goes through the intersection and
6 there's no crash at all up here, like, I don't -- you can't
7 see what happens up there, but clearly there was no -- no
8 crash. But if, you know, somebody had to do some sort of
9 driving maneuver because of the actions of that car, you
10 know, doing the wrong thing, running the red light or what
11 have you, then yes, you're -- you're still in that -- that
12 proximate cause situation because of the actions of that
13 car.

14 If -- if ---

15 THE COURT: Well ---

16 MR. MCKINNON: --- the crash down here happens after
17 that car is gone through other means, and that -- that the
18 only testimony here is that the deputy went around a
19 stationary vehicle at 80 miles an hour, lost control, went
20 into the other lane of traffic.

21 THE COURT: But by your basic argument, where you said
22 that the -- the driver of the Acura causes some other driver
23 to do something that results in a crash -- I mean, that's
24 what we have here.

25 Even -- even though it may have been a police officer

1 who was pursuing him, it still required that officer was --
2 in following him, was doing something that they would -- in
3 driving through the -- the intersection, something based
4 upon the conduct of the driver of the Acura.

5 MR. MCKINNON: Then I'd say there's an easy distinction
6 there. By causing that car to do something they wouldn't
7 ordinarily do, I mean, you know, having to make an emergency
8 maneuver, the -- the drive -- the deputy's car, I mean, she
9 made a conscious decision to follow someone at 80 miles an
10 hour..

11 THE COURT: But that was ---

12 MR. MCKINNON: There was no testimony that it was
13 mandatory. The driver was not causing her to do that. She
14 chose to do that. I mean, that's a completely different
15 situation. I mean, you're -- you're -- you're ascribing the
16 actions of the Defendant causing the deputy to do her
17 actions. There's been no testimony that that is the case.
18 She simply pursued 80 miles an hour, crashed.

19 THE COURT: So basically what you're saying is that she
20 should never have followed him.

21 MR. MCKINNON: Your Honor, I'm saying if she makes the
22 decision to follow him, then she's responsible for her own
23 actions and you can't ascribe those to someone that's up the
24 road.

25 (Brief pause.)

1 THE COURT: I think that it's clearly a jury question.
2 I -- I think there's evidence from which the jury could
3 conclude that the Defendant's conduct resulted in the -- the
4 damage and was the proximate cause of the injury to the
5 officer.

6 And I'm only concerned with the existence of evidence,
7 not the weight to give it. But -- but I -- I think based
8 upon the -- the law of proximate cause relating to proximate
9 cause, that -- in which there has to -- it's a direct cause
10 and that the conduct has to be one that contributes to the
11 injury, but it does not have to be the sole cause of the
12 injury. And I think that's sufficient to allow the jury to
13 consider that evidence. And so I'll deny your request to
14 allow as to proximate cause.

15 MR. MCKINNON: Your Honor, one last prong here. I'm
16 going to ask that you find a directed verdict against the
17 element of great bodily injury based on the testimony of Dr.
18 William Graham, uncontested that the arm was not unable to
19 move for that two month period or whatever period she was in
20 the sling. That was just under doctor's orders to -- as he
21 put it, to "facilitate healing."

22 It was -- it was not -- I'm trying to see the language
23 of the great bodily injury here (as read): "... if
24 protracted loss or impairment of the function of the bodily
25 member or organ ..." That -- that is incongruous with the

1 doctor's testimony that the -- the organ could still be
2 used, it was just doctor's orders to help facilitate the
3 healing.

4 I don't think there's anything that was alleged that
5 there was a substantial risk of death which caused serious
6 permanent disfigurement. So, Your Honor, the -- the
7 evidence presented in -- even in the light most favorable to
8 the State, does not lay out great bodily injury for a broken
9 clavicle.

10 THE COURT: Yes, sir.

11 MR. HAYES: Yes, Your Honor. As I read the great
12 bodily injury charge, there are three mutually exclusive
13 ways to have great bodily injury.

14 One, which is a substantial risk of death, which we do
15 not contest in this case. The second, serious permanent
16 disfigurement. Your Honor saw the scar, the jury saw the
17 scar. The final and most significant, protracted loss of or
18 impairment of the function of a bodily member or organ.

19 You take the testimony of Dr. Graham and the testimony
20 of Deputy Arbelo herself, in the light most favorable to the
21 State, she testified that she was in a sling for two months,
22 she was out of work for two and half months, she had to have
23 surgery involving plates and screws in order to bring her
24 arm back to full function. For a law enforcement officer, I
25 think that's more than enough to get it to the jury on the

1 issue of great bodily injury.

2 We certainly submitted that she suffered impairment of
3 her arm as a result of this wreck, and has permanent
4 disfigurement in the form of a scar, Your Honor.

5 THE COURT: Anything further?

6 MR. MCKINNON: Nothing further, Your honor.

7 THE COURT: And I also think that there's evidence from
8 which they could make that decision -- the jury could make a
9 decision that there was permanent disfigurement or -- and --
10 and/or protracted loss of or impairment of the function of a
11 bodily member. And so I'll allow that to go to the jury as
12 well for them to make that ultimate decision.

13 MR. MCKINNON: Thank you, Your Honor. That's it for my
14 motions.

15 THE COURT: And we've got defense witnesses; is that
16 correct?

17 MR. MCKINNON: Well, Your Honor, at -- at this point I
18 can certainly say this in front of the jury if Your Honor
19 would like, just for Your Honor's scheduling purposes, I
20 believe I'm now electing not to call any defense witnesses.

21 So we could, depending on time and what Your Honor
22 wants to do, I guess what's next would be closing and
23 charge.

24 THE COURT: And so what I hear you telling me, just to
25 make sure that I'm just not fogged over, Mr. McKinnon, is

1 that while you'd considered calling witnesses on behalf of
2 your client, you've decided at this particular point that
3 you will not present any witnesses; is that correct?

4 MR. MCKINNON: That's -- that's correct, Your Honor.
5 It's a strategic decision at this point in the trial, I -- I
6 have decided, even though I have several witnesses on the
7 list, that I will not be calling any of them.

8 THE COURT: Okay. That's fine. Thank you.

9 In light of that, is there anything else that --
10 besides the -- a charge conference, is there anything else
11 we need to take up as it relates to the evidence in this
12 matter?

13 MR. HAYES: No, Your Honor.

14 THE COURT: Okay. I know that we need to talk about
15 jury charges. How long do you anticipate your closing
16 arguments would take?

17 MR. HAYES: About 20 minutes for me, Your Honor.

18 MR. MCKINNON: Your Honor, probably 20 minutes.
19 Certainly no more than 30 minutes.

20 THE COURT: Okay. Let's -- let's take a break so I can
21 pull together a charge and talk to you about it. I have
22 received some requests to charge as it relates to proximate
23 cause, and of course, the provision of the statute relating
24 to great bodily injury.

25 Is there anything else that you all would like to

1 submit at this particular time?

2 MR. HAYES: No, Your Honor. I have extra copies of
3 what I submitted yesterday, if -- if y'all want them.

4 THE COURT: I have --

5 MR. EPTING: Oh. I do have one thing, Your Honor.

6 (Brief pause.)

7 MR. MCKINNON: Your Honor, the only thing I was going
8 to say is, I -- I believe you and your -- your clerk had
9 mentioned that you would have your -- your judge's standard
10 charges, which, you know, we don't know what those -- what
11 you're planning on saying yet, but depending on what's --
12 what your -- if you put anything that we don't have, you
13 know -- I mean, I don't want to forego my ability to request
14 a charge, I guess ---

15 THE COURT: Sure.

16 MR. MCKINNON: --- at a later time.

17 THE COURT: Yeah. I mean, I -- I intend to go over to
18 -- with you what I would charge and then you can make any
19 additional comments or suggestions or -- related to that, I
20 guess.

21 MR. MCKINNON: Thank you, Your Honor.

22 THE COURT: Yeah.

23 MR. EPTING: Your Honor, as far as showing the video to
24 the jury, we have different protocol with different judges.
25 Some judges have elected a preference to send a laptop, that

1 has been secured and devoid of all software, back with the
2 jury. Other judges prefer the jury to come in and view the
3 video which is in evidence in the courtroom, to make sure
4 nothing wrong is done.

5 I can secure that laptop if Your Honor wishes to have
6 that sent back or -- or not.

7 THE COURT: I don't have any preference one way or the
8 other. You know, if -- usually, if I get that kind of
9 request to see the video, then I'll -- I'll ask, you know,
10 if there's any problem sending back a laptop that's secure
11 that doesn't have any information on it. And if there's no
12 objection to that, then I'll do that; otherwise, I'd bring
13 them back in the courtroom. So ...

14 MR. EPTING: Very good, Your Honor.

15 MR. MCKINNON: Thank you.

16 THE COURT: So does that mean, Mr. McKinnon, that you
17 don't object to sending it back or ...?

18 MR. MCKINNON: I -- I ---

19 THE COURT: I guess the question is -- is -- is your --
20 the State is requesting to send it back along with the
21 evidence when it goes back to the jury, as opposed to
22 waiting for them to make a request.

23 MR. EPTING: That is -- that is correct, Your Honor.
24 That's typically how we follow protocol.

25 MR. MCKINNON: I'm sorry if I -- I'm just a -- just to

1 make sure I'm not missing something here. You're asking
2 whether we want to go ahead and suggest that they watch the
3 video by sending the video ---

4 THE COURT: No.

5 MR. MCKINNON: --- back?

6 THE COURT: No, no, no. No. I'm -- the -- the CD is
7 an exhibit.

8 MR. MCKINNON: Yes.

9 THE COURT: Generally all the exhibits go back to the
10 jury. The -- the question is whether we send the laptop
11 back with it so that they -- if they want to watch it they
12 can watch it by simply putting it in the laptop and viewing
13 it; or are we going to require that they say in a note, "We
14 would like to view the video," and then make a decision at
15 that particular point.

16 MR. MCKINNON: Yes, Your Honor. I mean, I guess I
17 don't feel really strongly about this, but I've not heard
18 this come up before. But I mean, it seems to me that by
19 sending a computer back there you're suggesting that they
20 watch the video, but I'm -- I'm not really going to object
21 to it either, I suppose.

22 THE COURT: I'm -- I'm happy to have them make the
23 request, and -- and to say the exhibits will be sent to you.
24 And just -- and then if they say, "Well, we want to see it,"
25 or they'll write a note that says can we have something to

1 view the video on or the -- so ...

2 MR. MCKINNON: Yes, Your Honor. That would be best ---

3 THE COURT: We can -- we can do it that way, just --
4 just to avoid any confusion.

5 MR. HAYES: Very good.

6 THE COURT: Okay. Let's take a break, and then we'll
7 come back and I'll -- I'll do the -- the request to charge,
8 the -- the charge, and then see if there's anything
9 additional that you want to discuss.

10 MR. MCKINNON: Thank you, Your Honor.

11 (Off the record at 11:29 a.m.)

12 (On the record at 12:00 p.m.)

13 THE COURT: Counsel, I'm prepared to go over with you
14 at this particular time the instructions I'll give to the
15 jury.

16 First I will instruct them that they have to determine
17 the facts based upon the evidence. In order to do that,
18 they have to judge the credibility of the witnesses who
19 testified. I'll give them the factors for which they can
20 consider the credibility. I'll also charge them on expert
21 witnesses.

22 I will charge them on circumstantial evidence from
23 *State vs Logan* which states that there are two types of
24 evidence which are generally presented during a trial:
25 Direct evidence and circumstantial evidence.

1 Direct evidence directly proves the existence of a fact
2 and does not require deduction. Circumstantial evidence is
3 a proof of a chain of facts and circumstances indicating the
4 existence of a fact. Crimes may be proven by circumstantial
5 evidence. The law makes no distinction between the weight
6 or value to be give to either direct or circumstantial
7 evidence.

8 To the extent that the State relies on circumstantial
9 evidence, all of the circumstances must be consistent with
10 each other and, when taken together, point conclusively to
11 the guilt of the accused beyond a reasonable doubt. If
12 these circumstances merely portray the Defendant's behavior
13 as suspicious, the proof has failed.

14 The State has the burden of proving the Defendant
15 guilty beyond a reasonable doubt. This burden rests with
16 the State regardless of whether the State relies on direct
17 evidence, circumstantial evidence, or some combination of
18 the two.

19 I will instruct them on the fact that the Defendant was
20 arrested, charged, and indicted is not evidence and cannot
21 be considered by them as evidence of guilt; nor does it
22 create any presumption or inference of guilt; that the
23 indictment is simply the charging document by which we're
24 able to come to court and go forward with the trial.

25 I will charge them that under the laws of this state, a

1 Defendant may be tried even if the Defendant does not attend
2 the trial. But the fact that the Defendant is not present
3 may not be considered against the Defendant in any manner
4 whatsoever. I'll also then charge them on the presumption
5 of innocence.

6 Then I will charge them on the *Victor vs Nebraska*
7 reasonable doubt, that there are very few things that we
8 know of in this world with absolute certainty; and in
9 criminal cases, the law does not require proof that
10 overcomes every possible doubt.

11 But if, based upon their considerations of the
12 evidence, they are firmly convinced that the Defendant is
13 guilty of the crime charged, then you must find him guilty.
14 If, on the other hand, you think there's a real possibility
15 that he is not guilty, then you must give him the benefit of
16 the doubt and find him not guilty.

17 The Defendant in this case is charged with the
18 failure to stop for a blue light in which great bodily
19 injury results. In order to prove the crime, the State must
20 prove beyond a reasonable doubt that the Defendant was
21 driving a motor vehicle; that the Defendant was driving a
22 motor vehicle on a road, street, or highway of this state;
23 that the Defendant was signaled to stop by a law enforcement
24 vehicle by means of a siren or a flashing light; and the
25 Defendant did not stop.

1 An official signal requiring motorists to stop may be
2 the siren or the flashing lights. Both are not required.

3 An attempt to increase the speed of the vehicle or in
4 some manner avoid the pursuing law enforcement vehicle when
5 signaled by a siren or flashing light, may be considered as
6 evidence of failure to stop for a blue light. However, it's
7 merely an evidentiary fact to be taken into consideration by
8 the -- by you, the jury, along with other evidence in the
9 case, and to be given the weight that you think that it
10 deserves.

11 The failure to see the flashing light or hear the siren
12 does not excuse a failure to stop when the distance between
13 the vehicles and other road conditions are such that it
14 would be reasonable for a driver to hear or see the signals
15 from the law enforcement vehicle. And that comes out of 56-
16 5-750(A).

17 In this case, the State alleges that the victim
18 suffered great bodily injury. Great bodily injury is
19 defined as (as read): "Bodily injury which creates a
20 substantial risk of death or which causes serious permanent
21 disfigurement or protracted loss of or impairment of the
22 function of a bodily member or organ." And that's from 56-
23 5-750(E).

24 I will also charge them that the State must prove
25 beyond a reasonable doubt that the Defendant is the

1 proximate cause of the injury that was sustained. Proximate
2 cause is the direct cause of the injury. It is the
3 immediate cause. It is the efficient cause. It is the
4 cause without which the injury would not have resulted.

5 There may be more than one proximate cause.

6 The acts of two or more persons may combine together to
7 be a proximate cause of the injury to a person. The
8 Defendant's act may be regarded as the proximate cause if it
9 is a contributing cause of the injury to the victim.

10 The fact that other causes also contribute to the
11 injury -- to the injury to the victim, does not relieve the
12 Defendant from responsibility. The Defendant's act need not
13 be the sole cause of the injury, but must be a proximate
14 cause contributing to the injury of the victim.

15 And I will charge them that there are two possible
16 verdicts in this case, that their verdict has to be
17 unanimous; that there are two possible verdicts: One is
18 guilty, one's not guilty. There's no significance in the
19 order in which I state them. I have to put one first, I
20 have to put one second. f'

21 But if, after their consideration of all the evidence
22 in this case, they find that the State has proven beyond a
23 reasonable doubt that the Defendant is guilt -- actually, I
24 won't tell them that. I would have already gone over the
25 instructions, and so I'll just tell them that there are two

1 possible verdicts, that after they've considered all of the
2 evidence and my instructions to you -- to them as to the
3 law, when they arrive at their verdict, that the foreperson
4 should record the verdict on the front of the indictment.
5 And I'll show the place on the indictment and -- and sign
6 the name.

7 I'll also tell them that lunch has been ordered for
8 them. It will be a box lunch and pursuant to the -- to the
9 -- the normal habits of the York County Clerk of Court, and
10 that it will not arrive until about 1:30; that when it
11 arrives, they'll knock on the door, tell them to stop
12 deliberating for the lunch to be brought in. Then once
13 they've all gotten their lunches and whatever drinks they're
14 going to have with the lunch, then they can resume
15 deliberations.

16 Is there anything further from the State in terms of
17 the request to charge?

18 MR. HAYES: Your Honor, probably beat Mr. McKinnon to
19 the punch, but would Your Honor like to charge of the lesser
20 include of simple failure to stop? And I have a proposed
21 instruction on that if you want to.

22 MR. MCKINNON: Your Honor, I -- we would oppose the
23 addition of lesser included, but --

24 MR. EPTING: And we would also have several matters
25 after we deal with this.

1 MR. HAYES: Well, Your Honor, just from a logical
2 standpoint, based on his directed verdict motion, I think in
3 the -- in the eyes of the law, if the jury were to agree
4 that Jamil Ali was guilty of failure to stop for a blue
5 light but think that he was not a proximate cause of the
6 injury, he would still be guilty of simple failure to stop
7 for a blue light because those charges -- I mean, that --
8 that offense is a lesser included.

9 So we have the additional element of proximate cause,
10 additional element of great bodily injury. They can say,
11 "Hey, no, he's not the cause of that, but he still ran from
12 the police and failure to stop for a blue light." So we
13 would request that lesser included, and I have a proposed
14 charge on that.

15 THE COURT: I'll be happy to look at your charge. It
16 would be basically the same one that I have, but just minus
17 the great bodily injury portion ---

18 MR. HAYES: Yes, Your Honor. I just did a little segue
19 as ---

20 THE COURT: I understand.

21 MR. HAYES: --- as far as the --

22 THE COURT: What say you, Mr. McKinnon?

23 MR. MCKINNON: Your Honor, I'd say that the State had a
24 put up an indictment for simple failure to stop. They've
25 made their nest and they can roost, I guess is my response.

1 THE COURT: I'll -- I'll -- I'll charge the lesser
2 included. I may not use this same language. It may be if
3 they find -- if they find that the State has not proven
4 beyond a reasonable doubt that the -- that there was great
5 bodily injury or if they find that the State has not proven
6 beyond a reasonable doubt that the Defendant was the
7 proximate cause of the injury that was suffered, then they
8 may consider the simple failure to stop for a blue light.

9 And -- and that they must prove beyond a reasonable
10 doubt -- and I'll probably repeat those elements.

11 MR. MCKINNON: Just for the record, we'll object, but
12 so be it.

13 THE COURT: Okay. So that would alter what I would
14 tell them in the end in terms of the verdicts. They could
15 find him guilty of failure to stop for a blue light with
16 great bodily injury or guilty of -- of failure to stop for a
17 blue light or not guilty.

18 Anything else?

19 MR. HAYES: Nothing from me.

20 MR. MCKINNON: Several matters, Your Honor. One, you
21 know, the Defense has certainly brought up the identity of
22 the accused here, so I think some sort of charge on that
23 would be appropriate.

24 I've got a book here which I've -- we just found in our
25 office just a few minutes ago. It does have a few

1 reasonable charges. I apologize I don't have any print-
2 outs, but like I said, we just found this book. It was
3 hidden in a conference room.

4 But I'm open to suggestions from -- from the bench, I
5 guess, how we want to proceed on that.

6 And Your Honor, to be frank with the Court, most of
7 these charges include parts -- portion of the charge dealing
8 with witness identification which, of course, we do not have
9 in this case.

10 THE COURT: No. There -- there are simple -- more
11 simple charges.

12 (Brief pause.)

13 THE COURT: I'm not so -- I'm not so sure that
14 identification is an issue because there's not -- there's
15 not been a question that he -- that he was the wrong person.
16 It's simply a statement that he was not -- that there's --
17 that -- that he did not commit the crime.

18 So identification -- as -- as -- as I understand the
19 defense, the defense -- part of the defense is they -- this
20 -- the Defendant was arrested not contemporaneous with the
21 events that occurred. And so there's no -- basically
22 there's no evidence to prove that this Defendant was
23 operating this vehicle.

24 MR. MCKINNON: That's correct, yes.

25 THE COURT: And so I'm not --

1 MR. MCKINNON: I guess ---

2 THE COURT: I -- I'm not -- I'm -- I'm not convinced
3 that it's -- it's a true identification issue. But with
4 respect to identification, what I -- what I could say is
5 that the State has the burden of proving the identity of ...

6 MR. MCKINNON: Of the driver?

7 THE COURT: Yeah. Of the driver beyond a reasonable
8 doubt. And -- and I don't -- because the charge says that
9 the -- the State has to prove that the Defendant was
10 driving. So I think -- I think that -- that identification
11 portion is included within the element of what they have to
12 prove, that this Defendant was driving the car. So I'm not
13 so sure that it's -- it's not a separate identification
14 issue, if you understand what I'm saying?

15 MR. MCKINNON: I believe I do, Your Honor, yes.

16 THE COURT: And -- and so just to make it clear, I can
17 include that in order to prove this crime, the State must
18 prove beyond a -- beyond a reasonable doubt that the
19 Defendant was driving a motor vehicle.

20 I mean, that's -- that's the first element that -- and
21 that -- and must -- and -- and I can change that to prove
22 that this Defendant was driving a motor vehicle. But it's
23 -- it's an element that they have to prove.

24 So I -- I think you can -- I think that you can -- you
25 can, of course, make the argument that he wasn't driving and

1 -- and they haven't proven that he was driving the car.

2 MR. MCKINNON: Yes, Your Honor.

3 THE COURT: But I'm not sure that that's a separate
4 identity issue. Anything from the State on that?

5 MR. HAYES: Nothing, Your Honor.

6 THE COURT: And so what I'll -- I'll just put "this
7 Defendant," that the state must prove beyond a reasonable
8 doubt that this Defendant was driving a motor vehicle, that
9 the Defendant was driving -- that this Defendant was driving
10 a motor vehicle on a road, street, or highway of the state
11 and that this Defendant was signaled to stop." So is that
12 sufficient?

13 MR. HAYES: Yes, Your Honor.

14 THE COURT: Anything else?

15 MR. MCKINNON: Yes, Your Honor. If we could go back to
16 the proximate charge -- proximate cause charge, excuse me.
17 The -- I kind of -- I -- I would object, I guess, to the
18 portion where Your Honor read (as read): "Defendant's act
19 may be regarded as the proximate cause if it is a
20 contributing cause of injury to the victim." To me that's
21 -- that's a bit confusing and prejudicial. It's basically
22 saying that if the jury finds that any sort of contribution
23 occurred, then it is the proximate cause. It seems to be
24 taking out the definition of proximate cause in that phrase.
25 And then (as read): "The fact that other causes

1 contribute to the injury does not relieve the Defendant from
2 responsibility." So that portion there we would object to.

3 THE COURT: Okay. And that -- and that's a standard
4 proximate cause charge. I mean, it says (as read): "That
5 there may be more than one proximate cause. The acts of two
6 or more persons may combine together to be a proximate cause
7 of the injury. The Defendant's act may be regarded as the
8 proximate cause if it is a contributing cause to the
9 injury." That's one of two people.

10 (As read) "The fact that other causes also contribute
11 to the victim does not -- injury to the victim does not
12 relieve the Defendant from liability. The Defendant's act
13 need not be the sole cause of the injury."

14 I think that's a correct statement, and so I'll just
15 note your objection for the record.

16 MR. MCKINNON: Okay.

17 THE COURT: Anything else?

18 MR. HAYES: Nothing from us, Your Honor.

19 MR. MCKINNON: Your Honor, just out of an abundance of
20 caution, I feel like there's some sort of new charge on
21 insubstantial circumstantial evidence, that that seems to be
22 a matter of law. But --

23 THE COURT: What I read to you was the most recent law.

24 MR. MCKINNON: Then --

25 THE COURT: That -- just to be clear, the -- the case

1 was *State vs Logan*. It is a 2013 case. I know that the
2 Supreme Court has talked about proximate -- I mean,
3 circumstantial evidence since then, but as I -- as I
4 understand it, it still supports the *Logan* instructions.

5 There was one, I think, either earlier this year, that
6 -- that talked about circumstantial evidence. It also
7 talked about, I think, substantial circumstantial evidence
8 for a directed verdict. But I think the instructions came
9 back to this particular instruction and said it -- it is not
10 -- it's no longer the -- the *Griffin* or the *Cherry*
11 instructions. And so I think this is still the correct one.
12 I'll get her to check real quick just to double check,
13 though.

14 MR. MCKINNON: Okay. Very good.

15 (Brief pause.)

16 THE COURT: There was a case in 2015, *The State vs*
17 *Lynch*, that raises basically the same issue that was raised
18 in *Logan*. And that case was pending on appeal at that time
19 that *Logan* was decided, and the Court just -- Court of -- it
20 was a Court of Appeals case that -- that basically
21 reaffirmed what was stated in *Logan* and said that there was
22 not error with the fact that the charge in *Logan* was not
23 given in *Lynch*.

24 MR. MCKINNON: Okay. Very good. Thank you.

25 MR. HAYES: I'm sorry, Your Honor. One last

1 clarification. When you charge -- when you charge beyond a
2 reasonable doubt, do you also charged that it is overcome
3 when the jury is firmly convinced of the Defendant's guilt?
4 Do you also use that -- that phrase?

5 THE COURT: No, I don't. What I tell them is -- I
6 think the last thing I say that if -- if they are firmly
7 convinced and the -- let me go right to it. (As read) "If
8 -- if, based upon your consideration of the evidence, you
9 are firmly convinced that the Defendant is guilty of the
10 crime charged, then you must find him guilty."

11 MR. HAYES: That's what I was talking about, Your
12 Honor. Thank you.

13 THE COURT: (As read) "If, on the other hand, you think
14 that there's a real possibility that he is not guilty, then
15 you must give him the benefit of that doubt and find him not
16 guilty."

17 MR. HAYES: Thank you, Your Honor.

18 THE COURT: Anything else?

19 MR. MCKINNON: Just one little thing, Your Honor. If
20 -- I -- I -- I doubt the State would -- would do this;
21 however, I'm not sure we'd need a charge on this, but I just
22 wanted to have Your Honor maybe caution the State not to
23 mention anything about my client's not being here. And
24 certainly not reference that that's sort of hiding or any
25 sort of flight or means they're guilty of crazy stuff, so.

1 THE COURT: I -- I presume -- and I instruct that they
2 will not do that because I specifically will charge them
3 that he doesn't have to be here. The trial can still go
4 forward in his absence.

5 MR. MCKINNON: Very good, Your Honor. Then there's
6 nothing further from the Defendant.

7 THE COURT: And -- and because I specifically tell them
8 that the fact that the Defendant is not present may not be
9 considered against the Defendant in any manner whatsoever.

10 MR. MCKINNON: Very good.

11 THE COURT: We ready?

12 MR. HAYES: The State is ready, Your Honor.

13 THE COURT: (To the bailiff) Will you ask the jury to
14 come in, please.

15 (Jury enters the courtroom at 12:26 p.m.)

16 THE COURT: Good afternoon, ladies and gentlemen.

17 THE JURY: (Simultaneously) Good afternoon.

18 THE COURT: At this time we're ready to continue on.
19 Does the Defense wish to rest?

20 MR. MCKINNON: The Defense rests, Your Honor.

21 THE COURT: At this time, ladies and gentlemen, it is
22 now time to where we will hear the closing arguments of the
23 attorneys. As I indicated to you earlier this week, their
24 closing arguments are not evidence. But what they will do
25 is they will pick out portions of the evidence and make

1 arguments to you in an effort to try to sway you to find the
2 facts in accordance with their view of what occurred in this
3 matter.

4 So I ask that you listen very carefully to those
5 closing arguments. Sometimes those arguments may cause you
6 to think about the evidence in a different light, or they
7 may raise questions that you'll want to discuss among
8 yourselves when it's time for you all to begin your
9 deliberations.

10 Once they have made those closing arguments, then I
11 will instruct you on the law that's to be applied and then
12 you may begin your deliberations at that particular time.

13 Mr. Hayes?

14 MR. HAYES: May it please the Court, Your Honor?
15 Counsel.

16 (To the jury) I appreciate your time and patience as
17 we've gone through this case. There's been a lot of
18 information presented to you.

19 We had the break yesterday, so what I would like to do
20 to start my closing argument is I would like to play the
21 video for you again because, as I mentioned I my opening
22 statement, one of the good things about the area in that we
23 live is that we can watch a lot of things as they happen and
24 the video in this case is certainly some of the best
25 evidence. So I'd like to play that for you now.

1 (Brief pause to set up video.)

2 MR. HAYES: Sorry, y'all. But y'all will remember that
3 it takes a while for this video to load.

4 (Video plays.)

5 MR. HAYES: This is the last chance that I have to
6 address you, so what I want to do over the next few minutes
7 is connect the dots between the facts that you've seen and
8 the law that you have to apply in this case.

9 (Using demonstrative aid) The law on failure to stop
10 for a blue light with great bodily injury: It requires that
11 the Defendant be driving a motor vehicle, on a highway here
12 in South Carolina; that he's signaled to stop by law
13 enforcement vehicle. That can be through a blue light or a
14 siren or both; that he did not stop; that he commits a
15 traffic violation or another act of bad driving; and that
16 great bodily injury results from that traffic violation or
17 that bad driving.

18 In great bodily injury -- and the judge will charge you
19 on the law on that -- is the type of injury that creates a
20 substantial risk of death, causes permanent disfigurement,
21 or a protracted loss or impairment of a bodily member or
22 organ. And only one of these must be present for the injury
23 to be classified as a great bodily injury.

24 And your job as the jury is to find the facts, to match
25 the facts to the law; and if they match up, that's your

1 verdict.

2 The State has to prove this case beyond a reasonable
3 doubt. You'll hear that from the judge and from Mr.
4 McKinnon. And that's a very important part of American
5 criminal law. It is a high burden and it should be because
6 criminal cases are very important.

7 But it's not an impossible burden, and it's very
8 important for y'all to focus on the exact definition of what
9 beyond a reasonable doubt means. It's the type of doubt
10 that would cause a reasonable person to hesitate to act.
11 That's the legal definition for it.

12 There's also an alternate way of saying it that's a
13 little more -- to me, is a little more clear-cut. It's the
14 type of doubt that's overcome when you're firmly convinced
15 that the Defendant is guilt -- the Defendant is guilty.
16 You'll know that a case has been proven to you beyond a
17 reasonable doubt when you, as a group, feel firmly convinced
18 in the decision that you make, the decision that you've
19 reached, the decision that the Defendant is guilty.

20 (Indicates) So this is a little graphic that I use to
21 conceptualize the concept of beyond a reasonable doubt and
22 how -- while it is a high burden, is not an impossible
23 burden.

24 Because the judge will charge you there are few things
25 in this world that we can know with absolute certainty, and

1 we don't -- we are not required to prove this case to you to
2 absolute certainty. There are many types of proof above
3 beyond a reasonable doubt, and there are many types below
4 because Mr. McKinnon correctly told you, in his opening
5 statement, that in civil cases, the scales of justice you
6 know, tip. It's -- it's kind of a 50/50 analysis, who can
7 reach 51 percent.

8 And then a criminal case is beyond a reasonable doubt
9 which is higher, but realize, it's not impossible.

10 (Using demonstrative aid) The judge will also charge
11 you on the law of circumstantial evidence because this is
12 what we call a circumstantial case.

13 The first thing I want to tell you is that's not a bad
14 thing. You may have seen watching TV shows or movies in --
15 in legal courtroom dramas or police dramas, "That's a
16 circumstantial case. That's circumstantial evidence."
17 That's actually not a bad thing.

18 The judge will charge you that the law views
19 circumstantial evidence and direct evidence as the same.
20 They're just two different types of evidence, but one's not
21 better than the other.

22 Circumstantial evidence is what we've use to exclude
23 unreasonable alternate theories in cases like this. The way
24 I think about circumstantial evidence is if you work all day
25 and you don't have window in your office and you didn't get

1 to go out at lunch and you had a deadline you had to meet,
2 you just had your head down all day, do you know whether or
3 not it rained that day?

4 Well, when you walk out in the parking lot you probably
5 got a pretty good idea. If all the cars are wet, the bushes
6 are wet, the sidewalk's wet, the road is slick, you know
7 that it rained that day. You didn't see that it rained that
8 day, you don't have any direct evidence that it rained that
9 day, but you know beyond a reasonable doubt it rained that
10 day because everything in the world is pointing to that
11 conclusion.

12 It's possible something crazy happened. It's possible
13 that a fire truck drove up and sprayed everything that you
14 -- that is around, sprayed all the cars, sprayed the road,
15 sprayed the trees. But that's not reasonable. The
16 circumstantial evidence in the case would exclude that as a
17 reasonable theory. It's possible but it's not reasonable.
18 Fire trucks don't just drive around spraying everything.
19 You would know through circumstantial evidence that it had
20 rained.

21 And that's what -- how I want you to think about
22 circumstantial evidence when the judge charges it to you and
23 when you apply it to this case.

24 One of the last things I want to tell you before we
25 dive into the facts is that you are the voice of common

1 sense. Please do not check it at the door. Criminal cases
2 are full of legalese and difficult factual concepts.
3 There's no way to hide that. That's what you're tasked with
4 looking at, but your Number One tool for doing that is the
5 common sense that you bring to the table as a member of our
6 community. So please don't check it at the door. Bring it
7 with you into the deliberation room and apply ordinary
8 common sense to looking at the facts and the law on this
9 case.

10 (Indicates) This is a map, and you have this in
11 evidence. This is just a framework for where this happened.
12 The traffic stop happened right about in here, right before
13 you get to the on-ramp on 77, and then proceeded on
14 Carowinds Boulevard, past Carowinds -- or past the entrance
15 to Carowinds itself, until we have a u-turn in this
16 vicinity; and the chase comes back this way, and where the
17 wreck happens, right here, before you get to the other on-
18 ramp for 77. That's just giving you a birds-eye view of
19 where this took place.

20 You have a blue Acura stopped by Deputy Arbelo. She
21 approached for the improper paper tag. She approaches the
22 driver's side window and immediately, without hesitation,
23 the driver says, "My name is Jamil Ali." And he spells it
24 for her, J-a-m-i-l A-l-i, without hesitation. Gives her his
25 date of birth, [REDACTED] 1993, without hesitation and they

1 have an ongoing conversation, a standard police
2 conversation: "Anything illegal in the car?"

3 And then she goes back to her car to run his license.
4 And you hear it come over the radio that his license is
5 suspended. So she has to go ask him to step out of the car
6 so that he can be arrested for that offense, but by now you
7 know that that did not happen.

8 Because this is what happened: He led her on a high-
9 speed chase with speeds reaching 80 miles an hour down
10 Carowinds Boulevard, including this illegal u-turn pictured
11 here, right before you get to Pleasant Road.

12 What's significant about this illegal u-turn in the
13 grass median is what Deputy Covert testified to -- well,
14 excuse me -- then you see the -- the red light that he ran
15 right before the crash, which resulted in her car looking
16 like this (indicates); and as we'll talk about more later,
17 her clavicle being broken.

18 What's significant about that illegal u-turn is this
19 jar (indicates) was recovered in close proximity to that
20 illegal u-turn. You heard Deputy Covert come in and testify
21 that they were investigating that grass median, and they
22 went and found it.

23 And you actually have the pictures, we'll talk about it
24 in just a minute, of Deputy Covert recovering that. Those
25 are States Exhibit 4 and 5, and you'll have those for your

1 consideration, and I -- I apologize that the light level was
2 low and those pictures are kind of dark.

3 But you might have caught this on the video as you were
4 actually watching the chase taking place: Mr. Ali's car is
5 not in the frame, it's blocked by the current traffic. But
6 you can actually see the jar, as the sun flares off of it,
7 from Deputy Arbelo's dash cam as she is pursuing.

8 Compare the signage visible in this picture with the
9 signage visible from the picture that was captured off of
10 Deputy Covert's dash cam when they recovered the jar, and
11 you can see that that jar was visible during the chase and
12 then visible from his dash cam when they went to recover it.
13 (Indicates) And that's them putting it into the bag, and
14 those are the two pictures that you have in evidence.

15 So what's the conclusion there? What's the reasonable
16 inference there? What's the circumstantial evidence? That
17 jar came out of that car during the chase.

18 And then you heard what they did with jar after they
19 recovered it. They logged it into evidence, here at the
20 Moss Justice Center, and Investigator Buchanan checked it
21 for latent prints, his process where they put it in the
22 chamber and they develop the prints on the outside of the
23 jar. And they were able to find this print (indicates),
24 which you have it with a picture of which you have in
25 evidence. And they were able to compare it to Jamil Ali's

1 known standard from county records from 2011, and you
2 actually have that known standard in evidence for you.

3 And they were able to determine -- specifically
4 Investigator Bagwell was able to determine, through his
5 expert analysis and opinion, that this print right here from
6 Jamil Ali was on that jar.

7 You'll remember Investigator Bagwell's presentation
8 where he showed you the way he does it, where he puts the
9 prints side by side and finds the points of comparison. And
10 he showed those with those red arrows. (Indicating) You
11 have this print next to this print, with all the red arrows
12 that match up that allow him to conclude that Jamil Ali
13 touched that jar.

14 And so what's the bottom line? The finger print match
15 from the jar matches the known standard from county records.

16 You also heard Investigator Bagwell testify and you
17 heard Captain Guzman testify that fingerprints were taken
18 when he was booked for this offense on April 18, 2016. And
19 he testified that the prints given on April 18th of this
20 year match the known standard from 2011. So that's three
21 points of connection there.

22 And so here's our time-line to summarize: 2011, York
23 County Records has a known standard for Mr. Jamil Ali.
24 April 5, the jar is thrown from the car. The car has only
25 one occupant. That occupant gives his name and date of

1 birth without hesitation. The chase ensues and the jar is
2 recovered later that evening and logged into evidence
3 control early the next morning. Mid-April of this year,
4 Investigators Buchanan and Bagwell find the print, analyze
5 the print, and it matches Jamil Ali's known standard. And
6 then on April 18 of this year, Jamil Ali is booked for this
7 offense and provides prints that match.

8 And so just anticipating something that Mr. McKinnon
9 may tell you, that is our proof that Jamil Ali was the
10 driver of that car on April 5, those points of connection.
11 And it is a circumstantial connection; but remember, that's
12 not a bad thing. That's merely a different way of proving
13 something.

14 So we have shown to you, beyond a reasonable doubt,
15 Jamil Ali was driving that car, the jar left the car during
16 the chase, his prints are on the jar, it all matches up.
17 That's the reasonable conclusion ---

18 MR. MCKINNON: Objection, Your Honor. I think it's a
19 misstatement of facts. There was no evidence that jar left
20 that car during that chase.

21 MR. HAYES: Your Honor, I -- I think that's a
22 reasonable inference based on the fact that the jar is
23 captured on the dash cam, during the chase, in the median.

24 THE COURT: I -- I -- I think that it's appropriate to
25 argue any of the facts and any inferences that can be

1 reasonably drawn from those facts.

2 MR. HAYES: Thank you, Your Honor.

3 So anticipating something that Mr. McKinnon may say,
4 Mr. Ali is connected to that car. He's connected to the
5 driver's seat. There's only one person in that car, and
6 that person rattled his name and date of birth like it was
7 accurate, common, "This is my name. This is my date of
8 birth." And then his prints are found on the jar along the
9 path of the chase.

10 Just like my fire truck example: How do you know it
11 rained? You walk outside, the circumstances around you tell
12 you it rained. A fire truck didn't come up and spray the
13 whole world. It rained that day.

14 How do we know Mr. Ali was the driver of that car? His
15 prints were found on the jar. The jar left the car during
16 the chase. That's the only reasonable explanation.

17 So red herrings, there were a -- you heard testimony
18 there was another print on that jar. That's an interesting
19 issue, but when you really think about it, it doesn't change
20 anything. There could be prints from multiple people on
21 multiple objects anywhere. But Jamil Ali identified
22 himself, and then his prints were on the jar. Other prints
23 from other people -- it doesn't really change the equation.

24 You also heard from Investigator Buchanan that they
25 took DNA swabs from the jar. That serves no purpose. That

1 would tell us nothing than what the fingerprints have
2 already told us, that Jamil Ali touched the jar.

3 Vehicle processing: There were some questions asked
4 about why the vehicle wasn't processed or investigated in
5 any way. That vehicle had a paper tag, it's clear as day on
6 the video. There was no official plate that could be run
7 against DMV records. Those are red herrings.

8 And so we can match -- we can begin to match the law to
9 the facts. Jamil Ali was driving a motor vehicle. It was
10 on a highway here in South Carolina, that's Carowinds
11 Boulevard, clearly on the visible -- clearly on the video.

12 He was signaled to stop by a law enforcement vehicle.
13 That's very visible on the video. You hear the sirens, you
14 see the lights, it's a lengthy chase. The Defendant failed
15 to stop. Also very visible on the video because it's a
16 lengthy chase.

17 And so I want to pause for a second and tell you about
18 these four things because the judge is going to charge you
19 on what's called "simple failure to stop" or the lesser
20 included offense of failure to stop.

21 If you find that those four elements are met against
22 Mr. Ali, you can find him guilty of the lesser included
23 offense of simple failure to stop for a blue light. And
24 that will be one of the decisions you will have to make as a
25 jury. And I would say he's certainly guilty of that, but I

1 would ask that you not stop there.

2 I would ask that you continue to the higher offense
3 that we're going to talk about, failure to stop for a blue
4 light with great bodily injury.

5 But I do want to put a bracket around that because that
6 will be a possibility for you. It's for y'all to decide.
7 If those four elements are met, he's guilty of the crime of
8 simple failure to stop for a blue light. But please, go
9 further, and look at the other more serious offense, failure
10 to stop for a blue light with great bodily injury. And
11 that's when we add those last two elements for your
12 consideration.

13 So how do we know that he's guilty of those last two
14 elements to make him guilty of what he's charged with?

15 Traffic violation: That's all on the video. He sped,
16 he did an illegal u-turn, and right before the wreck, he's
17 running a red-light through that intersection and Deputy
18 Arbelo goes to follow. But that is clear as day on the
19 video for you, the traffic violation right there at the red
20 light, right before the wreck. And then great bodily injury
21 happens as a result of that traffic violation committed by
22 him.

23 How do we know that? Well, now we have to talk about
24 the concept of proximate cause. And that is a legal concept
25 that the judge is going to ask you to apply. Proximate

1 cause basically says that there has to be a connection
2 between the traffic violation committed by Mr. Ali and the
3 injury sustained by Deputy Arbelo.

4 So there has to be a link between the fact that he ran
5 a red light and was leading police on a high-speed chase and
6 the wreck and -- and the wreck that injured her shoulder.

7 The way -- or something you might hear from Mr.
8 McKinnon is that he can't be held -- held liable for that
9 because his car was never involved in the wreck. And that's
10 true, Mr. Ali's car was not involved in the collision in the
11 sense that his car crashed into another car. You can see on
12 the video he is able to make it through the intersection
13 unscathed, and the chaos ensues behind him when Deputy
14 Arbelo's car crashes into an uninvolved truck. And so Mr.
15 McKinnon may say to you that he can't be held responsible
16 for that because his car never touched anyone.

17 Well, there's a simple illustration that explains why
18 that's not true. There's a simple illustration that
19 explains why he is a proximate cause of this injury.

20 Imagine we had a crime in South Carolina called
21 "leaving glass on the floor." You never leave glass on the
22 floor, and if you leave glass on the floor, it's a crime.
23 Well, the person who broke the glass on this particular
24 picture, they would be a cause of glass being on the floor.
25 That's very straightforward. They knocked the glass out,

1 they have caused glass to be on the floor.

2 But you know who else would be responsible in this
3 particular incidence? The person who set their lunch on
4 fire in the break room. Because when you think about it,
5 when someone engages in dangerous conduct, like running from
6 the police, like running through red lights, like committing
7 illegal u-turns, like driving 80 miles an hour down
8 Carowinds Boulevard, chaos is going to ensue behind them.
9 That is normal, natural.

10 So in this example, you set your -- if someone sets
11 their lunch on fire in the break room, people are going to
12 break the glass on the fire alarm. There is going to be a
13 causal link between setting the microwave on fire and the
14 glass on the floor. There is a link between driving through
15 a red light when the police are chasing you and the wreck
16 that happens because of it.

17 And the judge is going to charge you that in order for
18 Mr. Ali to be a proximate cause of the injury that happened
19 to Deputy Arbelo, he doesn't have to be the only cause. He
20 can be a contributing cause. More than one person can
21 contribute to this wreck, and the law says Mr. Ali is still
22 held responsible if he contributed to it.

23 So Mr. McKinnon may argue that Deputy Arbelo should
24 have quit chasing him, that she never should have driven
25 into that intersection, or that she was going too fast

1 herself or all of those things. And you know what? Even if
2 that's true? Even if that is a cause of the injury that she
3 ultimately sustained, it is not enough to take Mr. Ali off
4 the hook because he contributed as well and that is enough
5 for proximate cause under our law.

6 When you're going over that in your deliberations,
7 think back to this example. Glass on the floor, the person
8 who starts the fire in the microwave is also responsible
9 because somebody had to get to the fire alarm. So remember
10 that.

11 So that would take out another one of their defenses if
12 they try to argue to you that Mr. Ali did not cause this
13 wreck. He did, in fact, cause this wreck.

14 And then finally, on the issue of what is great bodily
15 injury itself, I mentioned to you at the beginning of my
16 argument that only one of these three needs to be present.
17 And I would submit to you we actually have both, we actually
18 have the latter two.

19 Deputy Arbelo showed you the scar. She showed you the
20 disfigurement she has on her collar bone. And then you
21 heard from her and Dr. Graham about how she had to have her
22 arm repaired with - excuse me -- her collar bone repaired
23 with plates and some screws and how she was in a sling for
24 two months and how she missed work for two and a half months
25 and how she has a numb patch running from -- running on her

1 clavicle. That is impairment and loss of function of a
2 bodily member or organ.

3 She lost the use of her arm or had diminished use of
4 her arm for at least two and half months. So to the extent
5 that they try to argue to you that this injury is not
6 sufficient to qualify as great bodily injury, I'd submit
7 that that's wrong.

8 And so matching the law to the facts, we now have all
9 six elements present for the crime of failure to stop for a
10 blue light with great bodily injury.

11 And the bottom line, like I told you when we first
12 started this case, Jamil Ali set in motion a chain of events
13 that led to Deputy Arbelo on the operating table with a
14 broken collar bone, and it's time to hold him accountable.
15 And it's time to hold him accountable by finding him guilty
16 of failure to stop for a blue light resulting in great
17 bodily injury, and we ask that that's what your verdict be.
18 Thank you.

19 THE COURT: Yes, sir, Mr. McKinnon.

20 MR. MCKINNON: Afternoon. Ladies and gentlemen, we
21 talked on Tuesday that to find Mr. Ali guilty, the State
22 would have to prove beyond a reasonable doubt each and every
23 element of that offense.

24 Mr. Hayes put up the elements, but he sort of glossed
25 over -- he mentioned later, but he really glossed over in

1 his presentation there on the power point, that the actions
2 of the Defendant and the injury have to have a proximate
3 cause connection.

4 He -- he mentioned "set in motion a chain of events."
5 Well, that's not the law of proximate cause. The judge is
6 going to tell you that when I'm finished, but that's just
7 not what it is. I mean, proximate cause, you're going to
8 hear, is the immediate cause of the injury, the direct cause
9 of the -- the injury, the efficient cause of the injury.

10 She's going to tell you that there can be, yes, more
11 than one proximate cause. But we're not talking some
12 distant chain that he's talking about, some initial act,
13 like, I mean, from his perspective, the proximate cause
14 would be that Deputy Arbelo got up in the morning, that she
15 got in her car, that she drove on her shift. That's just
16 not the law.

17 When there's a foreseeable incident that happens
18 because of a person's action in the law, that gets pulled
19 into proximate cause. In his example of the glass breaking,
20 that's how it's different in this case because if someone
21 sets the fire, it's absolutely foreseeable that somebody's
22 going to break the fire glass or gets the ax or whatever the
23 alarm is. The foreseeable consequences of that in the law
24 follow and gets pulled into proximate cause.

25 It is not foreseeable that when someone's driving, that

1 behind them the Deputy, or anyone else that's driving, will
2 simply not drive well, crash their car, not wear their
3 seatbelt. All these things are intervening, foreseeable --
4 I'm sorry -- unforeseeable events that change that, the
5 whole course of the -- of what happened. It's completely
6 different from the glass and the -- and the microwave.

7 At any rate, as you recall, I asked you to pay
8 attention to three main issues. Mr. Hayes is sort of
9 bringing some of them up. But one, identity of driver.
10 That's a huge issue. We're going to talk about that in a
11 second. Of course are the injuries great bodily injuries.
12 And then, again, I just talked about the proximate cause.

13 If Jamil Ali was the driver, was his driving the
14 proximate cause of the injuries or a proximate cause of the
15 injuries? But before you get to that, what really did
16 happen in this case?

17 I'll tell you, Sergeant Brown summed this up on Tuesday
18 when he said that he, as the case agent, spent the entirety
19 of 10 to 15 minutes on scene and then watched the same video
20 you watched Tuesday, the same video we just watched again.
21 It's about seven/eight minutes long.

22 And that was his investigation. He, just like us,
23 heard someone in a car say a name and a birth date. That's
24 it. That was his investigation. He then got the warrant
25 and got the arrest. He -- and he said, "I would not have

1 gotten that warrant if I was not sure I had my man."

2 He was sure, just based on that video, name, date of
3 birth. That's literally what he has. There was no follow-
4 up investigation done other than the forensics guys trying
5 to find or getting the print off of that cup.

6 They never tried to see, you know, if Jamil Ali was
7 registered owner of that blue Acura, and again, Mr. Hayes
8 said that's a temporary tag, but there was no testimony
9 whether they even attempted to see if there was anything
10 they could do to track the registration of that vehicle.
11 Did they look to see, even from a temporary tag perspective,
12 who -- what dealership sold that car? To who did they --
13 whom did they sell that car to? No investigation done
14 there. Temporary tags had to come from a particular
15 dealership. They didn't investigate that one bit.

16 Did they do any sort of investigation to see if anyone,
17 anywhere could place Jamil Ali in York County, Carowinds
18 Boulevard, even the State of South Carolina that day?
19 Nothing. If someone could corroborate, "Well, I saw him at
20 Walmart an hour before," or something like that, that would
21 be some other bit of evidence that could give you an idea
22 that maybe that was him. But they did nothing like that.

23 Did they look to see if anyone could say that Jamil Ali
24 drives a blue Acura, that they -- he's known to drive a blue
25 Acura. No. Nothing.

1 So they did -- you did hear from Investigator Buchanan
2 that he took DNA swabs from that jar as well. So that's one
3 little bit of investigation that happened, but it wasn't
4 finished. No one ever tested it. Did you hear anyone ever
5 say that they tested that DNA and the results of it? We
6 don't know. Did anyone tell you what happened to that DNA?
7 Just -- they just gloss over it? Nothing. I'm not going to
8 tell you.

9 And as we know, DNA scientifically would be able to
10 tell you who touched that jar. I mean, maybe not when they
11 touched it, but whether or not Mr. Ali had touched it or
12 anyone else for that matter.

13 And finally, the biggest critical investigatory
14 technique that they failed to do was the 6-print -- or six
15 photo line-up. You've seen it on TV. Sergeant Brown told
16 you it's very easy to do. They did not do it. All they had
17 to do was get six photos, include Jamil Ali as one of those
18 six, show it to Deputy Arbelo at any point prior to now.

19 Seven months have elapsed, they never did that. So
20 literally not one person ID'd Jamil Ali as the driver. No
21 one did. Why not? If they had given her that line-up, it
22 would have taken, I don't know, short amount of time. If
23 they had done that, and she picks him out, we're in a
24 different situation here.

25 I mean, if they could come into court and say, "Marina

1 Arbelo, being the only person who saw who was driving that
2 Acura, had a one-in-six chance of getting in right, and she
3 nailed it as to being Jamil Ali." Wouldn't that be
4 important? Why was that not done? Why was no investigation
5 done really?

6 I'll tell you my theory. They had their man from the
7 get-go. They watched the video, they heard a name, date of
8 birth -- birth date. If the DNA comes back and Jamil Ali's
9 not on there, then they don't have their man. Maybe they
10 arrested the wrong person. If fingerprints come back that's
11 not Jamil Ali, they got the wrong man. If Marina Arbelo
12 cannot identify Jamil Ali as the driver of that vehicle,
13 then they've got the wrong man. If they find that Jamil Ali
14 was never in York County that day, per their investigation,
15 or that he was never was in that car, that someone else
16 bought that car, any of those things are discovered, they've
17 probably got the wrong man.

18 And rather than actually investigate and build their
19 case, I'm surmising that they decided, "Let's just roll with
20 who we've got. We think we got our man. We've gotten our
21 20 minutes investigation. That's plenty, right?"

22 So with that in mind, let's talk about the three
23 issues. Let's go right now onto identity. I think that's a
24 big one.

25 Did the State prove beyond a reasonable doubt that

1 Jamil Ali was driving that blue Acura that day? I think
2 it's pretty clear some of the elements -- and we talked
3 about that on Tuesday -- some of these are not going to be
4 contested. It's pretty clear someone was driving that car,
5 that Acura. Someone failed to stop for blue lights, but who
6 did that? Have they really proven to you, beyond a
7 reasonable doubt, that Jamil Ali was the driver?

8 You heard the driver say eight letters and four
9 numbers: Jamil Ali, J-a-m-i-l; then a birth date, [REDACTED]
10 That's the case. That is what Sergeant Brown knew when he
11 got his warrant.

12 Now, they do have the extra-fingerprint they say is --
13 that Bagwell says, in his opinion, is on this jar. Now, for
14 the sake of argument, let's say he's accurate, his expert
15 testimony is true that that was Jamil Ali's print. Come
16 back to that later.

17 But for the sake of argument, let's say it is. But
18 does that really prove, beyond a reasonable doubt, this is
19 Jamil Ali driving?

20 We -- unlike Mr. Hayes said, do you recall any
21 testimony, anyone saying that jar was thrown out of that
22 car? No. What they did say is that, I believe, Deputy
23 Covert, around 30 minutes or so after the accident, found
24 the jar on the side of the road.

25 If that was the jar that he pointed to in the video

1 during the crash, I don't think that changes anything. If
2 it didn't come from the car, that could have been there for
3 weeks, months, days.

4 On top of that, you'll see -- here's the jar right here
5 (indicates.) Investigator Buchanan said it's covered in
6 prints. Prints upon prints upon prints. There is no time
7 and space location tying that jar to the car. We can't
8 inclusively say that jar came from the car; therefore, that
9 if someone touched that jar, they could be in the car. I
10 mean, that's a circumstantial situation you can work out in
11 your own head.

12 But I'm saying that if we don't know how long its been
13 there, we don't know for sure that it came from that car.

14 Even if it did come from that car, think about this.
15 Okay. You all got friends and acquaintances. How many of
16 them do you know their birthday? Because that's literally
17 all it would take to falsify an identity here.

18 The driver of the car, let's say he's an acquaintance
19 of Jamil Ali's, who, for whatever reason, does not want to
20 tell the police who he is. Maybe his license is suspended,
21 who knows? He knows his friend's name and can spell it --
22 it's eight letters long -- his friend's birthday, says it,
23 and then let's say this jar didn't even come from the car.
24 If he's his friend, perhaps at some point in time they both
25 handled this jar, or maybe a third-party handled this jar.

1 I mean, you heard that in addition to the numerous prints
2 that they could not figure out whose they were on here, but
3 they did figure out one. I believe his name was Funderburk.
4 Could Mr. Funderburk be an acquaintance of Mr. Ali, be
5 driving that car, know his birth day, and both of their
6 prints are on the jar?

7 Ladies and gentlemen, that's the essence of reasonable
8 doubt right there. A plausible theory that his print could
9 be on this jar and have his name and date of birth stated to
10 the officer, yet he's not the driver. That is not that
11 farfetched. That, again, is reasonable doubt. I mean,
12 that's -- right there you can sink your teeth into that, a
13 not that farfetched scenario where the facts are the facts,
14 yet Mr. Jamil Ali is not the driver.

15 And I will -- as you chew over that, I -- I've already
16 said this, but it's so important here: Nobody identified
17 Jamil Ali as the driver. It -- it's almost beyond belief we
18 are here, but think about that again. No one. No one. /

19 As to those fingerprints, if you recall, Investigator
20 Buchanan, the first guy, the guy that put the jar into the
21 gizmo that -- I think he said some sort of glue kind of
22 thing blew up on it -- that person said he identified --
23 (coughing) excuse me -- what he thought were two AFIS
24 quality prints. All right?

25 Now, I believe he or Investigator Bagwell told you that

1 AFIS was the nationwide computer system that can match up
2 the prints that they take -- latent prints or -- or visible
3 prints, what have you -- and they will try and match them
4 against all the prints they know in the -- in the country.
5 Millions. And certainly you could do that by hand, but it
6 would take a ludicrous amount of time.

7 So they ran the two AFIS quality prints. The first
8 one, I imagine they were expecting to come back to Jamil
9 Ali. It did not. It came back to the Funderburk
10 individual.

11 So what do they do? Okay, lets try a second print.
12 Doesn't hit anyone. No match.

13 So he then looks to see if it's the same print as
14 Funderburk's by hand. Says, "No, it does not match
15 Funderburk's."

16 So what do they do. As he told you, "I was told to,
17 just by hand, compare it to Jamil Ali."

18 Again, they think they have their man, they're going to
19 get there however they think they can get there. Computer
20 doesn't match it, but by gosh, we're going to try it again.
21 Tell me if this is Jamil Ali's print here.

22 Now, what we have here are two more pieces of the
23 State's evidence. They've got the known print card, which
24 as the investigator said, this gives you a high quality
25 print. You can see fine details on here. And then you've

1 got the other print taken from the jar.

2 And if you recall, Bagwell had made a kind of
3 presentation -- a dual-sided image here, where he had kind
4 of a blown up portion of this and compared that with the red
5 arrows to this (indicates.) Now, if the State had submitted
6 that into evidence -- I would ask you to take a look at it
7 yourself. At that point, it would have been the same slides
8 you could compare and see what points he's talking to that
9 matched up this blue mess here to what he says matches it up
10 to this. But as it is, you don't have that to look at and
11 compare it to.

12 So all I can tell you is take a look at this. It's so
13 much smaller than this one. But if you recall, I believe it
14 was this area right here (indicates), kind of down and to
15 the right area of the central core, I believe he called it.

16 This is the area that he says matches up with this.
17 Please, look at that. This was not some sort of, you know,
18 magicianry [sic] that the -- that -- that Bagwell has -- has
19 access to that makes -- he's looking at it the same as you,
20 albeit blown up, which they do not allow you to look at.
21 But that's what he was doing, just comparing it by hand.

22 Again, the computer did not -- did not match this.
23 He's saying looking here to here, that's a match
24 (indicates.)

25 If you decide that 20-some-minutes investigation, a

1 name, a date of birth, and this mess matching to this print
2 -- and you can, again, decide that, if -- if you believe
3 that -- is enough to prove beyond a reasonable doubt that
4 Jamil Ali was the driver, then we can go on and continue
5 thinking about the rest of the case.

6 If, on the other hand, you think that that's not nearly
7 enough -- and I would submit that it's not, we're not even
8 close to enough here to say that that is Jamil Ali. Again,
9 we don't know if that jar -- how long it had been there or
10 when it was handled, who handled it, if it's his print. All
11 we know is, at some point in time, he touched it.

12 But if you believe that that is not nearly enough --
13 that that is -- well, not nearly enough, but have they met
14 the burden beyond a reasonable doubt. If you decide that
15 they have not, then you can end your discussion right there
16 in your deliberations because if they cannot prove beyond a
17 reasonable doubt that Jamil Ali was the driver, that's it.
18 It's over. The rest of the case is immaterial.

19 But incase you do think that they met that burden, I
20 will talk about the rest of the case here.

21 Now, great bodily injury. Mr. Hayes put up there what
22 -- correctly, I believe, what -- what the judge is going to
23 instruct you as to what that means. I think the word
24 "death" in there or "likelihood of death" gives you kind of
25 a ballpark figure of where we are, what the intention of the

1 statute is from the legislature, what kind of injury.

2 It's -- it's short and poorly worded, I would say, but
3 the fact that death is an option or likelihood of death
4 should, I think, give us pause. This is talking about a
5 really severe injury. And the other options, which I
6 believe were protracted -- or I'm sorry -- serious
7 disfigurement. I mean, these are words that you have to
8 figure out for yourself what that means. But is a three or
9 four inch scar serious disfigurement? I mean, it's not an
10 attractive thing, I'm sure she wishes she doesn't have it,
11 but is that disfigurement? I mean, we talking "Quasimodo"
12 disfigurement or is it a little scar or protracted loss of
13 bodily organ or member?

14 But Dr. Graham told us that the limb was not -- she did
15 not have loss of use of it. I mean, it's not like it was
16 damaged so that she could not move it. I asked him that.
17 He clarified and said, "Well, no. What I mean is I put her
18 in the sling, as doctor's advice, to facilitate the
19 healing."

20 I asked him, "Could she still move the arm if she
21 really needed to?" "Yes, the arm was still usable."

22 I mean, it -- I would say that protracted loss of the
23 use would mean it was so damaged that until it healed, it
24 really could not be used. That's what the legislature's
25 getting at, that this limb is so mangled, you know, the

1 tendons are cut, it's hanging by a thread kind of situation,
2 and not just that the arm was in a sling while the bone
3 break heals.

4 So again, if you find that Jamil Ali was driving, I'd
5 say your next task would be to determine whether the great
6 bodily injury did occur. If you can check both of those
7 boxes, and again, I expect you will not, will ask that you
8 do not; but if you do, then you need to decide whether or
9 not the actions of the driver of that blue Acura were the
10 proximate cause of the injury to Deputy Arbelo.

11 The judge will define what proximate cause is here in
12 just a little bit. One definition says, "It's the direct
13 cause -- I got -- I said this earlier, "... the immediate
14 cause, the efficient cause."

15 So we have a series of events. We have the driver of
16 the blue Acura not stopping, he goes across the median, he's
17 speeding, that's what he's done. After that, we have Deputy
18 Arbelo speeding. Deputy Arbelo, driving the same path as
19 the driver of the Acura. She said that she did not have to
20 swerve because of the driver of the Acura.

21 She came upon a parked -- not parked, but a stationary
22 vehicle in the lane. She went around that. The vehicle
23 then lost control, and we've all -- we've seen the video
24 twice now, she crashes. And then we have she's not wearing
25 her seatbelt.

1 When we're ascertaining what the proximate causes are,
2 any or all of those could be proximate causes. But again,
3 her actions -- negligence in driving too fast, losing
4 control, crashing into stationary traffic, and not wearing
5 her seatbelt -- are unforeseeable consequences of the driver
6 of the Acura's actions. And as such they cannot be -- his
7 actions of driving cannot be the direct cause, the immediate
8 cause, the efficient cause of the accident. You've got
9 intervening acts, unforeseeable acts. Those are the
10 proximate causes of the injury.

11 And -- and in further support of that I will take you
12 back to the video and the testimony. Did that Acura strike
13 any other vehicle? No. In fact every other vehicle that we
14 saw at the actual scene of the accident was not moving.
15 They were all stationary. It's almost analogous to watching
16 two cars driving an obstacle course or -- or on a race track
17 or something like that.

18 Car A goes through the obstacle course without problems
19 and continues on. Car B, also driving -- testimony said,
20 about the same speed, same route -- loses control and
21 crashes. You cannot prescribe that to the driver of the
22 Acura.

23 Now, if the State's really trying to say that there was
24 driving, a violation of the law occurs -- or the traffic law
25 occurs, an injury results, again, that's not the law. The

1 law is the actions of the driver and the act or omission of
2 the running the red light or driving too fast or what have
3 you were the proximate cause of the injury.

4 So if we again take a look at that -- and again, what
5 is the legislative intent there? We've got -- let's say
6 that light was red, he goes through it. Let's say a car's
7 coming the other way and they have to swerve to avoid the
8 driver of the Acura and crash into another car, doesn't that
9 seem plausible? That's now -- the proximate cause is the
10 car had to swerve to avoid that blue Acura and then crashing
11 into another car. That's the causal connection in this
12 situation.

13 That's not what happened. We -- we can't see what
14 happened, but that's not where the crash happened. The
15 crash is way back here where Deputy Arbelo, doing
16 essentially the same thing as the driver of the Acura,
17 crashes. So are -- are we holding the driver of the Acura,
18 who has successfully completed the -- the course, per se,
19 responsible for the actions of the -- of the car behind him
20 or her, I guess? Essentially saying that you're responsible
21 because you are a better driver than the deputy behind you?
22 Does that make sense?

23 One more thing, I don't want the State to try and
24 conflate this causation situation by acting like -- that the
25 deputy had a mandatory chase. Did you hear anyone testify

1 that she had to do this? In fact, Sergeant Brown said he
2 had the authority to call off the chase if he wanted to, and
3 he said he would want to know the reason for the underlying
4 traffic stop. But essentially, this happened so fast, she
5 crashed so quickly, he never got a chance to hear that. It
6 was over before he could figure out if the chase should
7 continue.

8 So if her chasing the blue Acura is not mandatory,
9 she's making her own independent decision to engage in that
10 chase prior to the sergeant making the decision whether or
11 not to do it. So that's the same as if any one of you
12 decided to drive 80 miles an hour on Carowinds Boulevard
13 without a seatbelt on and going around stationary traffic
14 into a median. Do we hold the driver safely up ahead
15 responsible for that?

16 Now, I'll leave you with one thing and that is three
17 things, seriously, to think about here. But identity,
18 that's a big one. They -- they didn't give you a whole lot
19 to work with there. And find him -- that they have not met
20 their burden of proof of proving that he is the driver of
21 that blue Acura and it's that simple. We all go home.
22 Thank you.

23 THE COURT: During this trial, ladies and gentlemen,
24 you and I have certain duties to perform. As a trial judge,
25 it's my responsibility to preside over the trial of this

1 case and to rule upon and pass upon the admissibility of the
2 evidence that's been presented throughout the course of this
3 trial. And you should consider only the competent evidence
4 which is before you.

5 To any evidence in which there was an objection
6 sustained, you must not speculate as to what that evidence
7 might have been. Again, you should consider all of the
8 evidence that's been presented, along with the exhibits that
9 have been made a part of the record.

10 Now, I have the additional duty and responsibility to
11 instruct you on the law that applies. And as a trial judge,
12 I'm the sole judge of the law that applies. If you have any
13 preconceived ideas as to what the law is or what the law
14 should be or your interpretation of the law, you must set
15 all of that aside; for under your oath as jurors, you are
16 sworn to accept the law as I instruct you.

17 If by chance I make some error in my instructions, then
18 there's another court at another time that can correct those
19 errors of law. But for -- but -- but for the purposes of
20 this trial, right now this moment, you must accept the law
21 as I instruct you as being the correct statement on the law.

22 Now, in every case tried before a jury, you the jurors
23 become the sole and exclusive judges of the facts of this
24 case. No one can tell you what the facts of this case are.
25 And if I've done anything throughout the course of this

1 trial that's given you any impression that I'm commenting on
2 the facts, that I'm telling you what facts to find, or that
3 I'm giving an opinion about the facts, I ask that you set
4 that aside as well.

5 I assure you I don't not have any opinion about the
6 facts in this case. That's not my job here. That's not my
7 duty or responsibility.^c That's your job, your duty, your
8 responsibility to determine the facts of this case.

9 Now, in order to do that, you have to analyze and
10 evaluate the evidence and determine what evidence convinces
11 you of it's truth. In order to do that, you have to judge
12 the credibility or believability of the witnesses who've
13 testified.

14 And in judging the credibility or believability of the
15 witnesses you may consider the following factors: What was
16 the manner and appearance of the witness who testified? Was
17 he or she hesitant or straightforward in answering
18 questions? Was the testimony of a witness consistent or
19 inconsistent? How did the witness know the facts that he or
20 she testified to? What was his or her ability to know these
21 facts? Did a witness have a reason to give testimony that
22 was biased or -- or prejudiced in some manner? Or was the
23 testimony of the witness strengthened or weakened by other
24 testimony or other evidence?

25 Now, in judging the credibility of the witnesses,

1 ladies and gentlemen, you may consider one witness against
2 several witnesses or you may consider several witnesses
3 against one witness. You may believe a portion of a
4 witness's testimony and disregard other portions of that
5 same witness's testimony. And if you have a good and
6 sufficient reason for doing so, you can accept a witness's
7 testimony in its entirety or you may reject it in its
8 entirety.

9 You may also consider the testimony of an expert
10 witness. Ordinarily under our rules, witnesses cannot
11 testify as to opinions or conclusions. An exception exists
12 for those that we call "expert witnesses." Those are
13 witnesses who -- because of their education or their
14 training, they profess to be an expert in some art or
15 science. And they may express an opinion in the area in
16 which they profess to be an expert. You should consider any
17 expert opinion that's been offered in this case and give it
18 the weight that you think that it deserves.

19 If you should find that a witness's testimony -- the
20 expert's testimony is not supported by sufficient education
21 or training or it's outweighed by other testimony or other
22 evidence, then you are not required to accept that witness's
23 opinion. An expert's opinion is to be given no greater
24 weight than that of any other witness simply because that
25 person professes to be an expert witness. And you are not

1 required to accept an expert's opinion even though it may be
2 uncontradicted.

3 Ladies and gentlemen, after considering all these
4 factors you have to determine the truthfulness of the
5 testimony; and again, what the law requires is that when you
6 exercise your mental processes in coming up with what you
7 consider to be truthful evidence, you use your good common
8 sense, your sense of logic and reasoning. Use your
9 experiences in life. You then apply those principles to the
10 evidence and determine what you consider to be truthful
11 evidence, and then, to those true statements of fact as
12 determined by you, you apply the law as I instruct you.

13 Ladies and gentlemen, your verdict should not be based
14 upon sympathy, passion, or prejudice. And by your verdict
15 you have no friends to reward and you have no enemies to
16 punish. Your verdict should simply speak the truth.

17 Now, in every trial that's presented, there are two
18 types of evidence that may be presented throughout the
19 course of this trial. One is direct evidence and the other
20 is circumstantial evidence.

21 Direct evidence directly proves the existence of a fact
22 and does not require that you make any deductions or any --
23 or -- or -- or cobbled together a chain of events in order
24 to come up with what the facts are. Circumstantial evidence
25 is proof of a chain of facts and circumstances which

1 indicates the existence of a fact..

2 Crimes can be proven by either circumstantial evidence
3 or by direct evidence. The law makes no distinction by
4 which -- which evidence would -- would apply in determining
5 whether or not the evidence supports a finding of guilt
6 beyond a reasonable doubt. To the extent that the State
7 relies on circumstantial evidence however, all of the
8 circumstances must be consistent with each other. And when
9 they're all taken together, they must point conclusively to
10 the guilt of the accused beyond a reasonable doubt. If the
11 circumstances merely portray the Defendant's behavior as
12 suspicious, then the proof has failed.

13 The State has the burden of proving that the Defendant
14 is guilty beyond a reasonable doubt and that burden is --
15 rests with the State throughout the entire trial, regardless
16 of whether the State relies upon direct evidence or
17 circumstantial evidence.

18 Now, ladies and gentlemen, conjecture or speculation or
19 guess is not circumstantial evidence.

20 Now, ladies and gentlemen, once again I instruct you
21 that the fact that the Defendant was arrested in this case
22 and charged with this crime and indicted is not evidence of
23 the Defendant's guilt in this case and is not evidence in
24 this case and cannot be considered by you in determining the
25 -- the guilt of the Defendant. The indictment here simply

1 contains the charging documents and -- and it's the method
2 by which we are able to come into court and have a trial.
3 It serves as a formal document by which we're able to
4 process the charges against the Defendant in this case. And
5 again, it does not raise any presumption or inference of
6 guilt.

7 And now, to the indictment, as I stated to you earlier,
8 the Defendant has pleaded not guilty. And that plea cast
9 the burden upon the State to prove that the Defendant is
10 guilty of the -- of this particular crime.

11 A person who has been charged with a crime is never
12 required to prove that they are innocent. It is always the
13 State has the burden of proving that the Defendant is guilty
14 of the charge with evidence that satisfies you of that guilt
15 beyond a reasonable doubt.

16 Now, ladies and gentlemen, it's a very important rule
17 of law and -- and a rule of evidence that the Defendant in a
18 criminal case, no matter how serious the charges are against
19 him, is always innocent and presumed innocent of the crime
20 unless the State is able to convince you with evidence that
21 satisfies you of that guilt beyond a reasonable doubt.

22 Now, the presumption of innocence does not cease when
23 you go into the jury room, but it remains with the Defendant
24 from the time that he -- of his appearance, throughout the
25 course of the trial, until you reach a verdict of guilt

1 that's based upon evidence that satisfies you of that guilt
2 beyond reasonable doubt.

3 Now, our Supreme Court has said that presumption of
4 innocence is like a robe of righteousness that's placed
5 about the Defendant's shoulders. And it assigns him to that
6 class being the innocent unless and until that robe of
7 righteousness is stripped from him by evidence that
8 satisfies you of his guilt beyond a reasonable doubt.

9 Ladies and gentlemen, I cannot emphasize enough the
10 importance of the presumption of innocence. It's not merely
11 a legal phrase that we toss around. It's -- it's a very
12 important, and again, cardinal rule of law that the
13 Defendant is always innocent and remains innocent until you
14 find that he is guilty with evidence that satisfies you of
15 that guilt beyond a reasonable doubt.

16 Now, ladies and gentlemen, under the laws of our state,
17 a Defendant may be tried even if he does not attend the
18 trial. But the fact that the Defendant is not present may
19 not be considered by you any -- in any manner whatsoever in
20 determining the guilt or the innocence of the Defendant.

21 So we've talked about his presumption of innocence and
22 we've talked about the burden of proof beyond a reasonable
23 doubt. What does that mean? The government has the burden
24 of proving each and every element of the crime beyond a
25 reasonable doubt. Now, some of you may have served as

1 jurors in civil cases in which you were only told that a --
2 that it was required that a -- a fact be proven more likely
3 true than not true.

4 Well, in criminal cases, the government's burden is
5 more powerful than that. It must be beyond a reasonable
6 doubt.

7 Proof beyond a reasonable doubt leaves you firmly
8 convinced of the Defendant's guilt. Now, there are very few
9 things that we know in this world with absolute certainty
10 and the law does not require proof that overcomes every
11 possible doubt. But if, based upon your consideration of
12 the evidence, you are firmly convinced that the Defendant is
13 guilty of the crime with which he's been charged, then you
14 must find him guilty.

15 But if, on the other hand, you think that there's a
16 real possibility that he is not guilty, then you must give
17 him the benefit of that doubt and find him not guilty.

18 In this case, ladies and gentlemen, the Defendant has
19 been charged with failure to stop for a blue light with
20 great bodily injury result -- resulting. The Defendant's
21 charged with this crime and the State must prove, beyond a
22 reasonable doubt, that this Defendant was driving a motor
23 vehicle; that this Defendant was driving a motor vehicle on
24 a road, street, or highway of this state; that the -- this
25 Defendant was signaled to stop by law enforcement vehicle by

1 means of a siren or flashing light; and that this Defendant
2 did not stop.

3 An official signal requiring a motorist to stop may be
4 by siren or flashing lights. Both are not required.

5 An attempt to increase the speed of a vehicle or in
6 some manner -- some other manner avoid the pursuing law-
7 enforcement vehicle when signaled by a siren or a flashing
8 light may be considered as evidence of failure to stop for a
9 blue light; however, this is just a fact that may be
10 considered by you and taken into consideration by you, along
11 with all the other evidence in this case, and to be given
12 the weight that you think that it deserves.

13 The State must also prove, beyond a reasonable doubt,
14 that the Defendant, while driving, performs an act forbidden
15 by law or neglects a duty imposed by the law in driving the
16 vehicle. And the State must prove, beyond a reasonable
17 doubt, that the victim suffered great bodily injury and that
18 that great bodily injury was proximately caused by the
19 Defendant's conduct.

20 Great bodily injury is defined as bodily injury which
21 creates a substantial risk of death or which causes serious
22 permanent disfigurement or protracted loss or impairment of
23 a bodily member or organ. The State must prove that -- that
24 great bodily injury was proximately caused by the Defendant
25 and his conduct.

1 Proximate cause is the direct cause. It is the
2 immediate cause. It is the efficient cause. It is the
3 cause without which the injury to the victim would not have
4 resulted.

5 There may be more than one proximate cause. The acts
6 of two or more persons may combine together to be a
7 proximate cause of the injury to a person. The Defendant's
8 act may be regarded as proximate cause if it is a
9 contributing cause of the injury to the victim.

10 The fact that other causes may also contribute to the
11 injury of the victim does not relieve the Defendant from
12 responsibility. The Defendant's act need not be the sole
13 cause of the injury, but must be a proximate cause
14 contributing to the injury of the victim.

15 Now, ladies and gentlemen, if you find that the State
16 has failed to prove beyond a reasonable doubt that the
17 Defendant is guilty of -- of the failure to stop for a blue
18 light, great bodily injury because the State has failed to
19 prove beyond a reasonable doubt that the victim suffered
20 great bodily injury as I've defined that for you, or that
21 the State failed to prove beyond a reasonable doubt that the
22 Defendant's conduct was a proximate cause of the injuries
23 sustained by the victim, then you may consider whether or
24 not the State has proven beyond a reasonable doubt the
25 lesser included offense of failure to stop for a blue light.

1 Again, the State would have to prove beyond a
2 reasonable doubt for the failure to stop for a blue light
3 that this Defendant was driving a motor vehicle, that this
4 Defendant was driving a motor vehicle on a road or street or
5 highway of this state, that this Defendant was signaled to
6 stop by a law enforcement vehicle by means of a siren or
7 flashing light, and that this Defendant did not stop.

8 And again, in -- in -- maybe -- the signal requiring a
9 motorist to stop may be a flashing light or by a siren. It
10 does not have to be both. And again, any attempt to
11 increase the speed of the vehicle or in some other manner
12 avoid the pursuing law enforcement vehicle when signaled by
13 a siren or a flashing light may be considered as the failure
14 to stop for a blue light.

15 Again, that's merely a fact that may be taken -- that
16 may be considered by you, along with all the other evidence
17 in this case, and given the weight that you think that it
18 deserves.

19 Ladies and gentlemen, after you have considered all of
20 the facts and all of the evidence in this case and you
21 arrive at the verdict -- arrive at a -- at a verdict, then
22 it will be time for your foreperson to record the verdict on
23 the appropriate form.

24 There are three possible verdicts in this case. One --
25 the first possibility is you find the Defendant guilty of

1 failure to stop for a blue light in which great bodily
2 injury results or you may find the Defendant guilty of
3 failure to stop for a blue light or you may find the
4 Defendant not guilty. There's no significance to which one
5 I say first. I have to -- I have to put one first, I have
6 to put one second.

7 But if, after considering all of the evidence in this
8 case, you arrive at your verdict, then when you're
9 completing the verdict form -- and I'll go over the form
10 with you -- it says (as read): "We, the jury, unanimously
11 find the Defendant" -- there's a check here -- "guilty of
12 failing to stop for a blue light, great bodily injury
13 results." That is the -- that is the actual charge that has
14 been brought against him by the State, and you should
15 consider that particular charge first.

16 If you find that the State has failed to prove, beyond
17 a reasonable doubt, that great bodily injury resulted or if
18 you find that the State has failed to prove, beyond a
19 reasonable doubt, that the -- that his acts were a proximate
20 cause of the injury, then you would go on to consider the
21 lesser included: Did the State prove, beyond a reasonable
22 doubt, that the Defendant was guilty of failure to stop for
23 a blue light? If you find that the -- that the State proved
24 that, then that would be the second possible verdict. Or if
25 you find that the State has failed to prove, beyond a

1 reasonable doubt, that the Defendant was guilty of -- of
2 failure to stop for a blue light, then your verdict would be
3 not guilty.

4 And again, Mr. Foreman, you consider the -- each one if
5 -- once you arrive at your verdict in this case, then you
6 sign your name and you place today's date.

7 Ladies and gentlemen, your verdict would -- must --
8 must be unanimous. It must be the verdict of all twelve of
9 you. You have been sworn as fair and impartial jurors to
10 determine the facts of this case based upon the evidence
11 that's been presented in -- in this matter and based upon my
12 instructions to you as to the law.

13 And when you have arrived at your verdict, you --
14 you've considered all of the evidence, and you've listened
15 to my charge, and you apply the law to the -- to the
16 evidence, then no one will be able to complain with the
17 verdict that you've reached and you would have fully
18 discharged your duty and your responsibility as jurors in
19 this case.

20 Ladies and gentlemen, once again your verdict should
21 not be based upon sympathy, passion, or prejudice. Your
22 verdict must speak the truth.

23 At this time ladies and gentlemen, I'm going to ask
24 that you retire to the jury room. I will tell you that
25 lunch was ordered for you and I followed the procedures by

1 the York County Clerk of Court. I believe that there are
2 box lunches that have been provided to you. They're all the
3 same thing. My understanding there may be a slight
4 difference as to cookie or potato chips in the box, but
5 they're there. I ask that -- they may have already arrived.
6 The -- and so when you go into the jury room, I ask before
7 you begin any deliberations, to kind of get your lunch and
8 kind of get settled with your drinks and all.

9 The law requires that I consult with the attorneys and
10 make sure that I haven't omitted anything in my charge. If
11 not, then I will bring to you -- what will be sent to you
12 will be all of the exhibits; including the video tape, which
13 we need to retrieve; the indictment which, again, is the
14 charging document; as well as the verdict form. And then
15 you may begin your deliberations at that particular point.

16 Now, again, to my alternates, your role has also been
17 important. If one of your fellow jurors had been unable to
18 complete service, then you would have stepped into their
19 shoes. I ask that you go into the jury room only long
20 enough to obtain a box -- a box lunch; and then, if you'll
21 come back outside and I will come and excuse you in -- in a
22 few moments.

23 At this time, ladies and gentlemen, I ask that you
24 retire to the jury room and await further instructions.
25 Thank you.

1 (Jury exits at 4:44 p.m.)

2 THE COURT: Are there any objections to the charge by
3 the State?

4 MR. HAYES: None from the State, Your Honor.

5 THE COURT: By the Defense?

6 MR. MCKINNON: Your Honor, nothing new. But at this
7 time, we would like to renew our objections to the -- the
8 charge given, as well as renew our -- our motions for
9 directed verdict and any other motions and objections.

10 THE COURT: And they're -- they're noted for the
11 record. As I indicated earlier, I thought it was clearly a
12 jury issue. And with respect to the charge, your
13 exception's noted.

14 MR. MCKINNON: Yes, Your Honor.

15 THE COURT: My law clerk is printing out -- I saw some
16 typos on the form. She's printing out new copies for you
17 all to take a look at to -- but in the interim, if you'd
18 come and make sure all the exhibits are here. As I
19 understand, there were like eight State's exhibits or nine?

20 MR. HAYES: I believe that's correct, Your Honor. (C
21 Eight.

22 THE COURT: Eight.

23 THE BAILIFF: You wanted the alternate ---

24 THE COURT: I'll come and get them in a few moments.

25 (Brief pause to go over exhibits with the court

1 reporter.)

2 THE COURT: Also take a look at the indictment to make
3 sure that it's proper.

4 MR. HAYES: Looks good, but I guess we know that at
5 this point, they're only getting the verdict form, I
6 suppose.

7 THE COURT: Yes, they will. And there's typos up here,
8 maybe. So that's basically how it looks. So just read it
9 over.

10 MR. MCKINNON: I don't think it could read any
11 differently.

12 MR. HAYES: I don't even see the typos. Did you
13 already ...

14 THE COURT: Yeah. I handed you the corrected version.
15 Okay, that's good.

16 MR. HAYES: Thank you, Judge.

17 THE COURT: (To the bailiff) Then you may tell them
18 that they may begin their deliberations.

19 (Off the record at 1:54 p.m.)

20 (On the record at 3:38 p.m.)

21 THE COURT: Okay. Counsel, I have a note that says (as
22 read): "We -- you know, and I forgot to tell them about
23 that -- "We request a transcript of Deputy Marina Arbelo's
24 testimony. Thank you. Can we have a smoke break?"

25 So the smoke break is not the problem. The only thing

1 I would propose to tell them is that we don't have a
2 transcript, but I'll be happy to play the -- have the
3 testimony replayed. And they would tell me what portions or
4 you know, or -- whether they want to hear all of it.

5 MR. HAYES: We do have a recording of it?

6 THE COURT REPORTER: This is from the court reporter
7 from Tuesday. She left me this audio. I don't know what's
8 on it, but she's given me great notes.

9 THE COURT: She was the very first witness.

10 THE COURT REPORTER: So it can be played back.

11 (Brief pause.)

12 MR. HAYES: We can play it on the main computer and
13 play it over the ---

14 THE COURT: The one that you did the same? Yeah.

15 (The Court confers with the court reporter.)

16 THE COURT: Okay. So I'll just tell them I don't --
17 that I don't have a transcript, but they can -- they can
18 listen to her testimony. Just tell me whether they want to
19 hear a portion or all or ...

20 (Brief pause.)

21 (Marked Court's Exhibit 2, juror note.)

22 THE COURT: First of all, the deputies have let them go
23 out to take a smoke. But I wrote on the notes is (as read):
24 "I do not have a transcript of the testimony, but you can
25 hear the testimony replayed in court. Please let me know

1 whether you want to hear all or some of her testimony. If
2 you want to hear only portions of it, please tell me what
3 portions."

4 Anything else I need to include on that?

5 MR. HAYES: No, Your Honor.

6 THE COURT: Okay. (To the bailiff) If you will give
7 this back to the foreperson. Ask him to sign his name and
8 to save the note and not to throw it away. Just hold onto
9 it. And give it back to us when he comes in the courtroom.
10 And we'll just stand in recess til we hear from them.

11 (Briefly off the record.)

12 THE COURT: The jury indicated that they wanted to hear
13 the entire testimony of the witness.

14 Is there anything we need to take up before we bring
15 the in?

16 MR. HAYES: One housekeeping matter, we're getting
17 headphones because there was at least one in camera hearing
18 during her testimony, as I recall. So we'll play it, pause
19 it. I'll have to put the headphones on them, skip through
20 that, and then resume it because we -- obviously, would not
21 want that to be audible to the jury. So ...

22 THE COURT: Okay. I just got a second note that says
23 (as read): "We'd like to hear the three points of law
24 defined again. Define proximate cause, great bodily
25 injury."

1 So I don't know -- I don't know which one they want to
2 hear -- what -- what they want to do first. I'll -- ask
3 them to answer that. Thank you.

4 (Brief pause.)

5 And then Madam Clerk, if you would pass this to the
6 court reporter so she can mark this as a Court's Exhibit.
7 And if you'd make a reference as the first note, that they
8 wrote on the back.

9 THE COURT REPORTER: So it will be Court's 2 and 3
10 because Court's 1 is already marked.

11 THE COURT: Okay.

12 (Marked Court's Exhibits 2 and 3. Exhibit 3 is on the
13 back of Exhibit 2.)

14 (Brief pause.)

15 THE COURT: I'm sorry. What I sent back is (as read):
16 "Do you want to hear the testimony of Deputy Arbelo," and
17 they wrote back, "Yes, please."

18 So we'll start with that, and then once they come in,
19 I'll ask them about what portions of the -- the law they
20 want to hear. Okay.

21 Before we bring them in, is there a way to fast forward
22 through waiting for the video to play?

23 MR. HAYES: We have the -- Deputy Arbelo's testimony
24 queued up from when you first introduce her.

25 THE COURT: Right. But then, once she's testifying,

1 you queue up the -- the -- the -- the video as well. Or is
2 that later on?

3 MR. HAYES: Oh. You want me to fast forward through
4 the video.

5 THE COURT: Yes. I mean, well --

6 MR. HAYES: I will certainly do that. We can use the
7 headphones to do that.

8 THE COURT: If that's -- I mean, if it's okay with you?

9 MR. MCKINNON: Sure. Absolutely.

10 THE COURT: Okay. Okay. You can ask them to come in.

11 (Jury enters the courtroom at 4:03 p.m.)

12 THE COURT: Mr. Foreman, you've sent me a couple of
13 notes. One is about hearing the testimony of Deputy Arbelo;
14 is that correct?

15 THE FOREPERSON: Yes, ma'am.

16 THE COURT: And you indicated that you wanted to hear
17 all -- the jury wanted to hear all of the testimony; is that
18 right?

19 THE FOREPERSON: Yes, ma'am.

20 THE COURT: We'll go ahead and play that first. And
21 then the second note you sent was about hearing portions of
22 the law again, and I'll get some clarification from you
23 after we've heard the testimony.

24 Ladies and gentlemen, this is the testimony. You'll
25 hear the -- the -- the testimony as it was presented in

1 court. It is on a flash drive because the court reporter
2 who was here on Tuesday is not here today. So it's being
3 played through a computer, the only computer we could find
4 that could play it.

5 And so Mr. Hayes will -- will play it. It's been
6 connected into the -- the -- the P.A. system so you'll be
7 able to hear it.

8 And there was a portion during which we had a -- you
9 were sent out while we took up another legal issue, and we
10 will skip over that particular part.

11 (Audio of the examination of Deputy Arbelo is replayed,
12 excluding the in camera hearing video.)

13 THE COURT: Ladies and gentlemen, you've now heard the
14 testimony as you requested of Deputy Arbelo. You also sent
15 a note indicating that you wanted to hear three points of
16 law defined again, and specifically you stated define
17 proximate cause and great bodily injury; is that correct?

18 THE FOREPERSON: Yes, ma'am.

19 THE COURT: Was there anything other than those two?

20 THE FOREPERSON: No, that's it.

21 THE COURT: Ladies and gentlemen, you recall that
22 during my instructions to you, I indicated to you that the
23 State had to prove each and every element of the crime
24 charged beyond a reasonable doubt, and that the Defendant
25 was charged with the failure to stop for a blue light, great

1 bodily injury resulting.

2 I specifically indicated that the -- as it relates to
3 proximate cause and great bodily injury, that the State
4 would have to prove the elements of the simple failure to
5 stop for a blue light. I described that to you and that the
6 State would have to prove -- must also prove, beyond a
7 reasonable doubt, that the Defendant, while driving,
8 performed an act forbidden by law or neglects a duty imposed
9 by law driving the vehicle.

10 The State must also prove, beyond a reasonable doubt,
11 that the victim suffered great bodily injury and that the
12 great bodily injury was proximately caused by the Defendant.

13 Great bodily injury was defined -- is defined as bodily
14 injury which creates a substantial risk of death or which
15 causes serious permanent disfigurement or protracted loss of
16 or impairment of the function of a body member or organ.

17 The State must prove, beyond a reasonable doubt, that
18 the great bodily injury was proximately caused by the
19 Defendant. Proximate cause is the direct cause. It is the
20 immediate cause. It is the efficient cause. It is the
21 cause without which the injury to the victim would not have
22 resulted.

23 There may be more than one proximate cause. The acts
24 of two or more people -- persons may combine together to be
25 a proximate cause of injury to a person.

1 The Defendant's act may be regarded as the proximate
2 cause if it is a contributing cause of injury to the victim.

3 The fact that other cause also contribute to the injury
4 to the victim does not relieve the Defendant from
5 responsibility. The Defendant's act need not be the sole
6 cause of the injury, but must be a proximate cause
7 contributing to the injury of the victim.

8 And then I went on to instruct you, ladies and
9 gentlemen, that if the State had failed to prove beyond a
10 reasonable doubt that the victim suffered great bodily
11 injury as defined or the State failed to prove beyond a
12 reasonable doubt that the Defendant's conduct was a
13 proximate cause of the injuries sustained by the victim,
14 then you may consider the lesser included offense which
15 would be the simple failure to stop for a blue light. And I
16 instructed you on that again.

17 Do you need to hear those portions again?

18 THE FOREPERSON: (Shakes head with no audible
19 response.)

20 THE COURT: Okay. Then having charged you the
21 information that you required, the portions of the law that
22 you required, I ask that you return to the jury room and
23 continue on with your deliberations.

24 And again, Mr. Foreman, if you have any questions, I
25 neglected to tell you earlier, but you did write it on a

1 sheet of paper and sign your name. And we'll try to answer
2 those questions for you.

3 And of course, if you have no questions, then once
4 you've filled out the verdict form, let us know that you've
5 reached a verdict and we'll bring you back into court to
6 received your verdict.

7 (The jury exits the courtroom at 4:45 p.m.)

8 THE COURT: And Madam Court Reporter, I'll give you
9 this -- this last note to mark, please. And we'll just
10 stand in recess until we hear from them further. Thank you.

11 MR. HAYES: Thank you.

12 MR. MCKINNON: Thank you.

13 (Marked Court's Exhibit No. 4, Juror Note.)

14 (Off the record at 4:44 p.m.)

15 (On the record at 4:53 p.m.)

16 THE COURT: I understand that the jury's reached a
17 verdict. Is there anything that we need to take up before
18 we bring them in?

19 MR. HAYES: Nothing from the State, Your Honor.

20 MR. MCKINNON: Nothing from Defense, Your Honor.

21 THE COURT: (To the bailiff) You may ask them to come
22 in, please.

23 (Jury enters the courtroom at 4:54 p.m.)

24 THE COURT: Mr. Foreman, I understand that you've
25 reached a verdict; is that correct?

1 THE FOREMAN: Yes, ma'am.

2 THE COURT: If you'd please pass it to the bailiff.

3 (The foreperson complies.)

4 (The bailiff passes it to the Court; the Court passes
5 it to the Clerk.)

6 THE COURT: Madam Clerk, if you'd please publish the
7 verdict.

8 COURT CLERK: (As read) Indictment 2016-GS-46-2351, *The*
9 *State of South Carolina vs. Jamil Ali*. We, the jury,
10 unanimously find the Defendant guilty of failure to stop for
11 a blue light, great bodily injury results. Signed by the
12 foreperson, name, and today's date.

13 Ladies and gentlemen of the jury, if that be your
14 verdict, so say you all by raising your right hands.

15 (All jurors raise their right hands.)

16 COURT CLERK: Let the record show all jurors affirm
17 this verdict.

18 THE COURT: Do the parties wish to poll the jurors
19 further on behalf of the State?

20 Mr. Hayes: No, Your Honor.

21 THE COURT: On behalf of the Defense?

22 MR. MCKINNON: No, Your Honor.

23 THE COURT: Ladies and gentlemen, the Court's not
24 concerned so much with the verdict that you've reached as
25 I'm concerned with the process by which you reach your

1 verdict. You listened to the evidence as it was presented
2 throughout the course of this trial, and you listened to my
3 instructions to you as to the law; and having done so, that
4 you determined the facts in accordance with your view of
5 what -- of what that evidence showed and you applied the law
6 as I've instructed you and you have fully discharged your
7 duty and your responsibility as jurors in this matter.

8 On behalf of York Count and the State of South
9 Carolina, I'd like to thank you very much for your service
10 in this particular matter. I'm pleased to inform you that
11 your service is concluded for the week, so you do not need
12 to call back after seven tonight, you do not need to report
13 tomorrow.

14 I would like to thank you again. When you leave the
15 courtroom, if you will leave with the -- the bailiffs your
16 plastic portion of your badge. Your white portion is your
17 souvenir for jury service for this week, and your checks
18 will be in the mail.

19 (To the court clerk) Do you have any return to work
20 forms?

21 COURT CLERK: They'll have them downstairs in the
22 Clerk's Office.

23 THE COURT: If you get there before three minutes.

24 (Courtroom laughter.)

25 THE COURT: So thank you very much for your service. I

1 appreciate it.

2 (Jurors exits the courtroom at 4:57 p.m.)

3 (Marked Court's Exhibit No. 5, flash drive.)

4 THE COURT: Are there any post-trial motions at this
5 time?

6 MR. HAYES: Nothing from the State, Your Honor.

7 MR. MCKINNON: Yes, Your Honor. The Defense would
8 renew all objections and motions.

9 THE COURT: My -- the question I have -- well, the
10 question before me is whether or not there is evidence to
11 support the verdict that the jury reached in this matter.
12 And I would indicate that there is evidence to support the
13 conclusions that they reached.

14 There were factual questions what they -- which they
15 had to determine. There was evidence from which they could
16 draw those conclusions. And so I'll respectfully deny your
17 request for a new trial, if that's what you were looking
18 for.

19 MR. MCKINNON: Yes, Your Honor.

20 THE COURT: At this particular time, I believe there
21 will be sentencing. And so I'll be happy to hear, if
22 there's anything further from the State, for my
23 consideration for sentencing. I will need the sentencing
24 sheet whenever you ...

25 MR. HAYES: Your Honor, we're getting the sentencing

1 sheet.

2 THE COURT: Okay.

3 (Brief pause.)

4 THE COURT: Yes, sir.

5 MR. HAYES: Yes, Your Honor. As far as sentencing
6 goes, Your Honor heard the evidence, Your Honor saw the
7 video in this case. The State does not lightly ask for
8 this, but we ask for a severe penalty for Mr. Ali.

9 I know Your Honor is from the Columbia area. I lived
10 there for many years. This area of our county is the
11 Harbison Boulevard of York County. This is a major economic
12 corridor. This is a major traffic thoroughfare. This was a
13 work day. This was a high-speed pursuit initiated by Mr.
14 Ali, endangering countless people in our community, and then
15 ultimately causing great bodily injury to Deputy Marina
16 Arbelo, who does wish to address the Court at the
17 appropriate time.

18 And the injuries -- while there was some argument back
19 and forth, the injury, none the less, can't be downplayed.
20 She'll have a plate and six screws in her clavicle for life,
21 along with the scar.

22 And Your Honor, the -- the nature of the conduct and
23 the nature of the injury beg for a severe sentence in this
24 case.

25 Then there's the matter of his driver's record and his

1 criminal record which are -- appear to be overlapping
2 because I don't think Mr. Ali has a good record for
3 operating a motor vehicle. I will hand them to the victim,
4 provided to the Defense in discovery. I will hand them to
5 the Court if the Court would like to see them.

6 His convictions -- his criminal convictions have been
7 circled and starred by me. I will read them for the record
8 (as read): "2013, driving while license revoked; two counts
9 of larceny from a person from 2013, which is a lesser
10 included offense of robbery in North Carolina, I'm given to
11 understand; carrying a concealed weapon in North Carolina
12 from 2016; no operator license in North Carolina from 2016;
13 second degree trespassing from North Carolina in 2014;
14 felony possession of a Scheduled 2 controlled substance from
15 North Carolina in 2015 -- excuse me -- 2016." And then this
16 offense and then several corresponding lesser offenses
17 reported on his driver's record -- which I'll hand both his
18 rap sheet and driver's record to Your Honor.

19 (Mr. Hayes hands documents to the Court.)

20 MR. HAYES: And then Deputy Arbelo would like to
21 address the Court should the Court wish to hear her.

22 THE COURT: Yes, I'll be happy to hear from her at this
23 time.

24 DEPUTY ARBELO: Thank you. I just wanted to say a
25 couple of things. This -- as minor of a thing as this come

1 off as -- just scars, just a couple of screws, things like
2 that -- it's my first broken bone. I've been on the road
3 for about a year, and it affected me, not only physically,
4 but on a personal level. It -- it made me approach my job
5 very differently. I -- I dealt with some -- some struggle
6 with -- with coming back on the road, and I -- I do -- am
7 very grateful for the outcome today, but I -- I do wish to
8 know that he will receive some type of penalty that will
9 make him learn because I don't feel as if probation will be
10 enough for him, not by any means.

11 He comes into our -- our county and -- and this is the
12 damage that he brings. I don't feel like he's a -- he's a
13 good citizen and for that I -- I do think that he needs to
14 receive a pretty significant punishment for it.

15 Although I did not have a "Quasimodo" scar, as -- as
16 Mr. McKinnon described, it was something that affected me
17 greatly and I would like to see some justice continue to be
18 served.

19 THE COURT: Thank you. Mr. McKinnon?

20 MR. MCKINNON: Thank you, Your Honor. I understand
21 this was not a fun experience for Deputy Arbelo. Frankly, I
22 -- Your Honor's already ruled, even though I didn't make the
23 motion explicit on a motion for a new trial, it does seem
24 appropriate to me. However, Your Honor, I still firmly
25 believe the statute does not encompass this type of activity

1 and the way the injury occurred. Your Honor, clearly the
2 jury decided that he was in that car. I would ask that no
3 more than a three-year sentence be -- be sealed based on
4 failure to stop for a blue lights without great bodily
5 injury, encompassing up to a three-year time window.

6 But Your Honor, I do say -- I mean, I've met Mr. Ali,
7 even though he's not here today. He's a young man, he's
8 from Charlotte, I -- I can't explain why he's not here.
9 Again, I -- I explained earlier that he's always been here
10 for other court dates, been enthusiastic about his trial.

11 And we just ask that you take into consideration that
12 there are -- of course, the jury decided not to believe it,
13 but questions that are still in my mind about causation and
14 proximate cause.

15 THE COURT: And you still have had no contact with your
16 client since last Thursday.

17 MR. MCKINNON: That's correct, Your Honor.

18 THE COURT: And no idea as to where -- to where he's
19 located at this particular point.

20 MR. MCKINNON: No, Your Honor.

21 THE COURT: Okay. And Mr. Hayes, you indicated, I
22 think, earlier today that you had some idea or there had
23 been some report to you about his location; is that correct?

24 MR. HAYES: Yes, Your Honor. In consultation with his
25 bondsman and York County's Fugitive Apprehension Team, they

1 believe they have leads on him in Charlotte as recently as
2 3 a.m. this morning. Well, they were looking as recently as
3 3 a.m. this morning at last report. They -- they were
4 following him and missing him by a few minutes each place is
5 what I was given to understand. Of course, that was the --
6 my conversation with a frustrated bondsman, so who knows
7 really is happening. That's third-hand information, but
8 that is what I've come to learn.

9 THE COURT: Okay. And of course, pursuant to the --
10 (coughs) excuse me -- pursuant requirements that any
11 sentence would be placed under seal and would not be opened
12 or revealed until such time as Mr. Ali is apprehended and
13 returned to court so that the sentence can be opened. And
14 then at that particular time, if there are any additional
15 motions that the Defense wishes to make, they can be made at
16 that particular point.

17 MR. MCKINNON: Your Honor, at that time, that would be
18 the appropriate time for -- to ask for an appeal bond?

19 THE COURT: Yes, sir. I believe so.

20 MR. MCKINNON: Thank you.

21 THE COURT: And we'll make the driving record and the
22 rap sheet together as a Court's Exhibit just to demonstrate
23 what's been -- what was presented to me.

24 (Marked Court's Exhibit No. 6, driving record and rap
25 sheet documents.)

1 THE COURT: And this sentence carries from 0 to 10
2 years, I believe; is that correct?

3 MR. HAYES: It's my understanding.

4 (Brief pause.)

5 THE COURT: And the sentence of the Court has been
6 written and placed in an envelope with the name of the case
7 and the indictment number and the date that the sentence was
8 imposed.

9 Is there anything further?

10 MR. HAYES: Nothing from the State, Your Honor.

11 MR. MCKINNON: No, Your Honor.

12 THE COURT: Then with that, we are adjourned. Thank
13 you all very much.

14 (Off the record at 5:11 p.m.)

15 -- END OF TRANSCRIPT OF RECORD --
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CERTIFICATE

I, the undersigned Bonnie H. Kelly, Official Court Reporter for the Fifth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete excerpt of transcript of record of all the proceedings had and evidence introduced in the hearing of the captioned cause, relative to appeal, in the First Circuit Court for York County, South Carolina, on the 17th day of November, 2016.

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

e/Bonnie H. Kelly, CVR

Bonnie H. Kelly, CVR

Official Court Reporter

Columbia, South Carolina

January 7, 2018

1 STATE OF SOUTH CAROLINA
2 COURT OF GENERAL SESSIONS
3 COUNTY OF YORK
4 2016-GS-46-02351

5 State of South Carolina

6 vs.

7 Jamil Omire Ali

8

9 York, South Carolina

10 September 22, 2017

11 Before the Honorable Paul M. Burch

12

13 APPEARANCES

14 For the State: Aaron Hayes

15 For the Defendant: Mark McKinnon

16

17 Reported by: Michael C. Watkins

18 Official Court Reporter

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2 Sentencing hearing: 3

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1 MR. HAYES: Your Honor, before you is Jamil Omire Ali, he
2 is standing before you with his court appointed attorney, Mr.
3 Mark McKinnon. He has been convicted in his absence by a jury,
4 2016-GS-46-02351 alleging failure to stop for a blue light with
5 great bodily injury, he was sentenced by the Honorable Judge
6 Alison Lee on November 17, 2016, and we request that Your Honor
7 unseal the sentence and impose it.

8 THE COURT: Counsel?

9 MR. MCKINNON: Your Honor, that's all accurate.

10 THE COURT: Let the record reflect, it appears there was a
11 trial in absence on Mr. Ali. The jury reached a verdict of
12 guilty for failing to stop for a blue light great bodily injury
13 on November 17th, 2016, sentence was imposed by Judge lee and
14 sealed. Wherefor the defendant is committed to the State
15 Department of Corrections for a determinat term of seven
16 years. The defendant will be given credit for time served
17 pursuant to South Carolina Code 24-13-40 to be calculated and
18 applied by the State Department of Corrections.

19 MR. HAYES: Thank you, Your Honor.

20 THE COURT: That is the sentence.

21 MR. MCKINNON: Your Honor, can I put one thing on the
22 record?

23 THE COURT: Yes, sir.

24 MR. MCKINNON: Obviously Judge Lee would not have known
25 this at the time, but Mr. Ali was actually held on a detainer

1 from South Carolina on this charge since February 16th, or --
2 I'm sorry, February 17th of this year so I'm just asking that
3 Your Honor give credit to that.

4 THE COURT: How many days, have you got any idea?

5 MR. MCKINNON: The total would be 218 days, including the
6 one day that he spent in 2016 prior to bonding out.

7 THE COURT: 218?

8 MR. MCKINNON: Yes, sir. The extradition waiver was
9 signed on February the 17th of 2017.

10 THE COURT: Give me the total days again.

11 MR. MCKINNON: 218.

12 THE COURT: Any position?

13 MR. HAYES: The State agrees, Your Honor.

14 MR. MCKINNON: And one more matter, Your Honor, for the
15 record. He is technically in our detention center on the bench
16 warrant so we would need to lift bench warrant number
17 2016B4600100426.

18 THE COURT: All right. The bench warrant is lifted, he
19 gets credit for the 218 days on my amendment to the sentence.

20 MR. MCKINNON: Thank you, Your Honor.

21 (End of the hearing.)

22

23

24

25

1 I, the undersigned, Michael C. Watkins,
2 Official Court Reporter for the Sixth Judicial
3 Circuit of the State of South Carolina, do hereby
4 certify that the foregoing is a true, accurate and
5 complete transcript of the proceedings had and
6 evidence introduced in the trial of the captioned
7 case relative to appeal in the Court of General
8 Sessions for York County, South Carolina, on the
9 22nd day of September, 2017.

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

12

13

February 6, 2018

14

15


Michael C. Watkins

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Court Reporter

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STATE OF SOUTH CAROLINA
COUNTY OF YORK

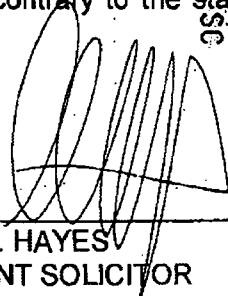
INDICTMENT

At a Court of General Sessions, convened on July 21, 2016, the Grand Jurors of York County present upon their oath:

FAILURE TO STOP FOR A BLUE LIGHT, GREAT BODILY INJURY RESULTS

That Jamil Omire Ali did in York County, South Carolina, on or about on or about April 5, 2016, while driving a vehicle on a road, street, highway of this state, did fail to stop when signaled by a law enforcement vehicle by means of a siren or flashing light and did perform an act forbidden law and/or neglected a duty imposed by law in the driving of a vehicle, and which act or neglect resulted in great bodily injury to Marina Arbelo. All in violation of 56-5-750(C)(1) of the South Carolina Code of Laws (1976) as amended.

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


AARON J. HAYES
ASSISTANT SOLICITOR

CERTIFIED TRUE COPY
2017 SEP 29 AM 9:26
DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC

WITNESSES

YCSO

• Witnessing Officer: T. Hager

ARREST WARRANT NUMBER

2016A4610200668

**ACTION OF GRAND JURY
TRUE BILL**

Danell T. Bowe 7/21/16
 Foreperson of Grand Jury
 Date:

VERDICT*Guilty*

[Signature]
 Foreperson of Petit Jury
 Date: 11/17/16

DOCKET NO. 2016-GS46- 02351

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

JULY 21, TERM 2016

THE STATE

VS.

JAMIL OMIRE ALI

INDICTMENT FOR**FAILURE TO STOP FOR A BLUE LIGHT,
GREAT BODILY INJURY RESULTS**

SC Code: § 56-05-0750(C)(1)
 CDR Code: 2397

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

Defendant

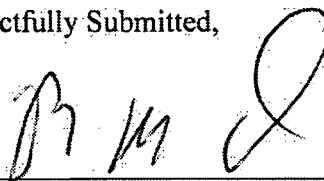
I
 hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant**Witness:****C.C.C. PLS. AND G.S.**

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,



Robert M. Dudek
Chief Appellate Defender

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

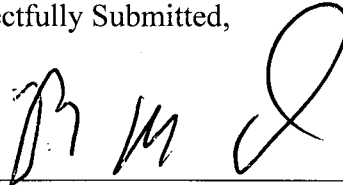
ATTORNEY FOR APPELLANT

This 17th day of October, 2018.

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,



Robert M. Dudek
Chief Appellate Defender

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

ATTORNEY FOR APPELLANT

This 17th day of October, 2018.

RECEIVED

OCT 17 2018

SC Court of Appeals