

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Laurens County
Honorable Donald B. Hocker, Circuit Court Judge
Appellate Case Tracking No. 2017-002306

State of South Carolina,

Appellant,

vs.

Leon LaGwan Barksdale,

Respondent.

RECORD ON APPEAL

ALAN WILSON
Attorney General

WILLIAM M. BLITCH, JR.
Senior Assistant Attorney General

Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

DAVID M. STUMBO
Solicitor, Eighth Judicial Circuit

ATTORNEYS FOR APPELLANT

DAVID ALEXANDER
Assistant Public Defender

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

ATTORNEY FOR RESPONDENT

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State's Exhibit 1, a DVD, will be transported to this Court pursuant to a requested transportation order.

2016-GS-30-1475

October 23 and 24, 2017
Laurens, South Carolina

Honorable Donald B. Hocker, Judge

Joel Broome, Assistant Public Defender
Callie Thomas, Assistant Public Defender
Attorneys for the Defendant

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I N D E X O F W I T N E S S E S

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(DW) - Denotes Defense Witness
(SW) - Denotes State's Witness

(SW) Patrick Craven

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1 MR. BROOME: No, Your Honor.

2 THE COURT: Okay. All right. Y'all bring the panel
3 in, please.

4 (Whereupon, the jury panel enters open court at
5 approximately 12:24 p.m.)

6 THE COURT: All right. Ladies and gentlemen, the
7 first case that is being called for trial is the State of
8 South Carolina versus Leon Lagwan Barksdale. Mr.
9 Barksdale, if you would stand, please, sir, and just face
10 the jury panel for just a second so they can see you.
11 Face that way.

12 (Whereupon, the Defendant stood before the jury
13 panel.)

14 THE COURT: Yes, sir. Very good. You can have a
15 seat. Thank you. Mr. Barksdale has been charged and
16 indicted with felony driving under the influence, great
17 bodily injury results. And let me explain to you, ladies
18 and gentlemen, the fact that Mr. Barksdale has been
19 charged and indicted in this case is absolutely no
20 evidence whatsoever of any guilt on his part. The
21 indictment that I'm holding in my hand is the charging
22 document putting Mr. Barksdale on notice of the charge
23 that he is facing at this trial. It is the mechanism to
24 get the case into trial where we are today and the
25 indictment has no further significance. So please don't

1 give it any significance and again, understand that it is
2 not evidence of any guilt on Mr. Barksdale's part. I
3 will, however, read to you the allegations that the
4 indictment contains. That Leon Lagwan Barksdale did on or
5 about October 21st in the year 2013, in Laurens County,
6 who, under the influence of alcohol, drugs, or the
7 combination of alcohol and drugs, did drive a vehicle and
8 when driving the said vehicle did an act forbidden by law
9 or neglect any duty imposed by law to wit, drove with
10 reckless disregard for the safety of others and/or failed
11 to charge, failed to change the course of travel to avoid
12 causing the accident and/or failed to slow down to avoid
13 cars in the accident and/or failed to keep a proper
14 lookout and/or failed to maintain his vehicle under proper
15 control and/or turned into the path of oncoming traffic,
16 which act of neglect proximately caused great bodily
17 injury to another person, Carlton Gregory, in violation of
18 the provisions of Section 56-5-2945, Code of Laws for
19 South Carolina. Now, I am going to ask you some questions
20 and the same rules apply, if you are reluctant to respond
21 in front of everybody I'll speak with you privately. In
22 addition, there will be blocks of questions that I will
23 tell you if you want to respond, don't do it in front of
24 everybody, but do it with me privately as we did before.
25 Okay. Any member of the jury panel related by blood or

1 motion will be denied. What other pretrial matters do we
2 have?

3 MR. SCOTT: Your Honor, SLED agents may be released
4 yet or at least coming back?

5 THE COURT: Right. Do you have any more need for
6 these two SLED agents?

7 MR. BROOME: I may. I'd like to see what happens as
8 this trial goes and want to see how my --

9 THE COURT: All right.

10 MR. BROOME: -- expert testifies.

11 THE COURT: You're free to go back to Columbia. Just
12 understand that you're still under subpoena. If Mr.
13 Broome believes that you're needed, certainly, I
14 understand and can appreciate your schedule. Mr. Broome,
15 try to provide as much notice as you possibly can if it is
16 determined that you think you may need them back. So
17 you're free to go. Just make sure that Solicitor Scott
18 and Mr. Broome know how to get a hold of you if you're
19 needed back, okay, but you are free to go. All right.
20 Any other pretrial matters?

21 MR. BROOME: Yes, Your Honor. This is a, I filed a
22 formal motion. This is Ms. Thomas' motion, Jackson v.
23 Denno hearing.

24 THE COURT: Okay. All right. Solicitor, do you have
25 the appropriate person or persons who would testify at

1 Jackson v. Denno?

2 MR. SCOTT: Yes, sir.

3 THE COURT: Okay. You may proceed.

4 MR. BROOME: All right. The State would call Patrick
5 Craven.

6 PATRICK CRAVEN, being
7 first duly sworn, testified as follows:

8 DIRECT EXAMINATION

9 By Mr. Scott:

10 Q All right. Mr. Craven, October 21, 2013, you were
11 working with the Laurens Police Department?

12 A Yes, sir.

13 Q And what was, well I guess, what were your duties
14 over there?

15 A I was a patrol officer at the time.

16 Q Okay. Do you remember October 21, 2013?

17 A Well, I remember this night; yes, sir.

18 Q Okay. And did you have an occasion to go investigate
19 a motor vehicle collision?

20 A I did.

21 Q And when you got there, what did you observe?

22 A When I got there, I observed an individual laying in
23 the middle of the roadway there with a motorcycle that was
24 also in the middle of the road. I also observed the car
25 that was over the curb inside the grass just by the Citgo

1 sign there on Fleming Street.

2 Q Okay. And Judge Hocker is familiar with Laurens, but
3 the Citgo, describe what the address of that Citgo is or
4 whereabouts it is?

5 A It's at the corner of, I believe, it's Garlington
6 Street and Fleming Street.

7 Q Okay. And then there's a, is it a Conway?

8 A Conway and Neros is straight across from it.

9 Q Okay. So, essentially, if we're leaving here and
10 we're going to Ingles or Mig's or any of those places, you
11 go over the, go through the intersection there at Harvard,
12 up the hill over the railroad tracks. You kind of dip
13 down a little bit. There's a church right there on the
14 right. You follow me?

15 A Yeah.

16 Q And then you go a little bit further, and then that
17 Citgo is on the right heading into --

18 A That's correct.

19 Q Okay. And were you able to identify who the driver,
20 well, first of all, where was the motorcycle rider?

21 A He was in the middle of Fleming Street laying in the
22 middle of the road.

23 Q Okay. By the time you got there he was already --

24 A Yes, sir.

25 Q What time of day was it?

1 A Well, it was sometime a little after 9:00 p.m.

2 Q Okay. So dark outside?

3 A Yes, sir.

4 Q Was EMS there yet?

5 A Yes, sir.

6 Q Okay. And what kind of car was involved in the
7 collision?

8 A It was a four-door sedan.

9 Q Okay. And you said you were able to identify the
10 driver?

11 A Yes, sir.

12 Q Were you able to speak with the driver?

13 A I was.

14 Q And who was it?

15 A Mr. Leon Barksdale.

16 Q Okay. And so when you began speaking with him, what
17 did you observe?

18 A When I began speaking with him, asked him about what
19 happened, his story was a little erratic and kind of all
20 over the place. While I was speaking with him I could
21 smell alcohol on his person.

22 Q Okay. Was he under arrest at this point?

23 A No, sir.

24 Q Did you ask him some questions?

25 A I did.

1 Q Okay. Did you ask him whether or not he'd been
2 drinking?

3 A I had.

4 Q And what did he say?

5 A He said he had been.

6 Q Okay. Did you find anything in his car?

7 A Inside of his car was an unopened forty-ounce Bud
8 Ice.

9 Q Okay. And did you locate any other bottles,
10 forty-ounce bottles of alcohol?

11 A We did. There was an open one. It was still cold to
12 the touch and it was laying by the Citgo sign which was
13 close to his car.

14 Q Okay. Did he say anything at all about that empty
15 forty-ounce bottle?

16 A He did.

17 Q Okay. What did he say?

18 A When I asked if it was his, he said it was, that he
19 had threw it out because he didn't want an open container
20 charge.

21 Q Okay. And at this point or right at some point after
22 you collect his information and get his side of the story,
23 did you ask him to participate in a field sobriety test?

24 A I did.

25 Q Okay. Did you do the HGN test?

1 A Yes, sir.

2 Q Heel-to-toe walk?

3 A Yes, sir.

4 Q Okay. And then the, I don't know what you call the
5 leg-lift thing where you balance on --

6 A Yes, sir. The one-leg stand test. Yes, sir.

7 Q One-leg stand. And then you did something where he
8 holds his head back and estimates thirty seconds?

9 A Yes, sir. We did the lack of convergence test and
10 the Romberg balance test, as well.

11 Q Okay. Did he agree to do all of these voluntarily?

12 A He did.

13 Q Again, was he under arrest at this time?

14 A He was not.

15 Q Okay. Had you made up your mind that he was driving
16 under the influence at that time?

17 A No, sir.

18 Q Okay. And did you ask him whether he could feel the
19 effects of the alcohol?

20 A I did.

21 Q Okay. And did he answer you?

22 A He did.

23 Q Did you ask him about the scale of one to ten how --

24 A Yes, sir. I asked him on a scale of zero to ten with
25 zero being sober, and ten being the drunkest ever been,

1 what is the number at. And he advised me that he wasn't
2 drunk, but the number was a five.

3 Q Okay. All right. After you do all these tests and
4 after you ask him those questions, did you make the
5 decision to place him under arrest?

6 A Yes sir, at that time I did.

7 Q Was it based on any one test or was it just the
8 battery of tests all in all?

9 A Yes, sir. It was the, basically all of the tests put
10 together.

11 Q And so then when you put him under arrest and what
12 did you do, did you give him any rights?

13 A Yes, sir. He was handcuffed to the front and he was
14 read his Miranda rights at that time.

15 Q Okay. And you were just watching, this is all on
16 video, correct?

17 A Yes, sir.

18 Q Okay. At that point you read him his rights and did
19 you ask him any other questions at that point?

20 A It was after that, that, when we asked him about the
21 bottle, the empty bottle, and that's when he advised that
22 he had thrown it out because he didn't want an open
23 container charge.

24 Q Okay. That was after Miranda?

25 A Yes, sir,

1 Q Okay. And Miranda, you're not in law enforcement
2 anymore, are you?

3 A No, sir.

4 Q But do you still recall Miranda?

5 A Yes, sir.

6 Q The rights you would have read? Can you still recite
7 them?

8 A Yes, sir.

9 Q What rights would you have read to or rather
10 recounted to Mr. Barksdale?

11 A He had the right to remain silent and anything he
12 said could go against him in a court of law. He has the
13 right to an attorney. If he cannot afford one, one will
14 be provided for him. At any point during the questions he
15 had a right to not answer the questions.

16 Q Okay. And did he understand?

17 A Yes, sir.

18 Q Let me think what else. Okay. He didn't appear to
19 be under the influence of alcohol to the effect or to the
20 extent that he couldn't understand those rights --

21 A No, sir.

22 Q -- in your opinion? Okay. Where did you take him
23 next after you placed him under arrest?

24 A He was placed in the back of the patrol car and he
25 was, I took him out to the Johnson Detention Center where

1 we performed a breath sample out there.

2 Q Okay. Is he Mirandized again?

3 A He was read his implied consent rights out there to
4 let him know about the test and what the consequences were
5 or were not if he failed to submit to a test.

6 Q All right. But he was given the option to either
7 blow into the Datamaster machine or not to blow?

8 A Yes, sir.

9 Q Okay. And what did he, what was his decision?

10 A When the time came I provided a tube to him and at
11 that time he provided a breath sample that registered a
12 .29 on the Datamaster.

13 Q But he voluntarily submitted --

14 A Yes, sir.

15 Q -- to the Datamaster machine? Okay. And just to
16 recap and stop me if this is inaccurate. You go up and
17 you ask him to do the field sobriety test, and he's not
18 under arrest at that point?

19 A No, sir.

20 Q And you're investigating whether or not to arrest
21 him; is that fair to say?

22 A That's correct.

23 Q And it's after he does all the tests that you make
24 the decision to place him under arrest?

25 A That's correct.

1 Q And you Mirandize him?

2 A Yes, sir.

3 Q You put him in handcuffs, and then took him to the
4 jail and administered the Datamaster?

5 A That's correct.

6 Q Okay.

7 MR. SCOTT: Okay. Your Honor, I think that's all I
8 have.

9 THE COURT: Ms. Thomas, do you have any questions of
10 Mr. Craven, or Mr. Broome?

11 MR. BROOM: I'll cross-examine the officer.

12 CROSS-EXAMINATION

13 By Mr. Broome:

14 Q As an initial matter, have you had a chance to watch
15 the Datamaster video with you and Mr. Barksdale on it?

16 A I have.

17 Q Okay. So you would know that what you told him, what
18 you told him on the video is that he couldn't leave the
19 jail until he submitted to the Breathalyzer test?

20 A For felony DUI, yes, sir, you have to at that time,
21 you have to provide some sort of sample for felony DUI.

22 Q Okay. And he was in custody with you at that point?

23 A That's correct.

24 Q He was arrested, correct?

25 A Correct.

1 Q At the jail? Okay. And when you initially arrived
2 on the scene you did not have probable cause to arrest Mr.
3 Barksdale?

4 A Initially, when I showed up, when I first showed up,
5 no sir.

6 Q Correct. Okay. After you spoke with him, you didn't
7 have probable cause to arrest Leon, correct?

8 A No, sir.

9 Q Okay. Immediately after speaking with Leon, you told
10 another officer who I presume to be Sergeant Michael
11 Gainey, that boy has been drinking. Do you remember that?

12 A Yes, sir. I could smell the alcohol on him.

13 Q And you went on to tell other officers that were
14 present too, correct?

15 A Yes, sir.

16 Q I don't know his official title, but Marty Crane was
17 present, correct?

18 A Yes, sir.

19 Q And EMS was present there as well?

20 A That's correct.

21 Q And there is an African-American lady on the video as
22 well. What's her name?

23 A I believe that was Chrissy Cofield.

24 Q Was she with Laurens City Police Department?

25 A At that time, I'm not a hundred percent sure. She

1 may have been.

2 Q Okay. So you immediately tell Gainey, that boy been
3 drinking. And you told Gainey that you can smell alcohol?

4 A That's correct.

5 Q And you asked Gainey to come stand next to you so
6 that he could smell the alcohol coming off Leon, correct?

7 A I don't remember that one.

8 Q But if that were on the video? If the, had you
9 saying --

10 A Yeah. But I don't, I don't recall that.

11 Q -- come smell this boy, that'd be --

12 THE COURT: Y'all don't talk over each other, okay?

13 MR. BROOME: My apologies.

14 THE COURT: Repeat the question, Mr. Broome, and
15 then, Mr. Craven, repeat your answer, please, sir.

16 Q If it were on the video, you'd side with the video?

17 A Yeah. If it is on the video, but like I said, I
18 don't recall that.

19 Q And so you actually know how much he had to drink
20 within minutes of meeting him, correct?

21 A After speaking with him, yes.

22 Q And then you let Leon walk away and he's talking with
23 someone else, correct?

24 A I don't know. I couldn't see any of that on the
25 video from where, where it was at, I don't know how far

1 away from him I was at that time.

2 Q Have you watched your in-car camera video since this
3 date?

4 A At the time when I was actually asking him about his
5 registration and if he had been drinking or not, if he had
6 any alcohol or anything like that or, actual in-car camera
7 was not right there in front of him.

8 Q If your car, the camera was, there was a car in front
9 of you and then Sergeant Gainey's car?

10 A Yes, sir. The car at the time was actually in the
11 roadway.

12 Q Correct. And you and Gainey and Leon are not on
13 there together, correct?

14 A No, sir.

15 Q Okay. I can't tell if he's, what he's doing, I agree
16 with you on that based upon the video. But you would
17 agree with me that at one point you asked other officers
18 for gloves, correct?

19 A Yes, sir.

20 Q Okay. And you asked them for gloves because you were
21 going to pick up an empty beer bottle near Leon's car,
22 correct?

23 A That's correct.

24 Q And you told the officer you needed gloves so you
25 could try to get fingerprints off of his bottle?

1 A That's correct.

2 Q And up until this point, your testimony is you didn't
3 have probable cause to arrest Leon, correct?

4 A Correct.

5 Q Okay. Is it fair to say that you're actively
6 investigating an accident, correct?

7 A That is correct.

8 Q And now you're starting to investigate a possible
9 DUI, correct?

10 A Correct.

11 Q Okay. You picked up the bottle and you told Gainey
12 and you told the Court on direct that the bottle was still
13 cold?

14 A It was.

15 Q All right. You didn't have probable cause to arrest
16 Leon then?

17 A At the time, no.

18 Q Okay. According to you. You then told Gainey, don't
19 let Leon walk off. Those are your words. Do you remember
20 that?

21 A Yes, sir.

22 Q Okay. So you smelled alcohol on Leon. You're asking
23 for gloves and try and get prints on the bottle and this
24 is an accident. And so you're telling another officer,
25 whatever happens, don't let him walk away?

1 A Correct.

2 Q Correct? Okay. And still no probable cause to
3 arrest him, at this point?

4 A At that time, no.

5 Q Okay. So from there Leon goes, and we've watched the
6 video, he is on video dealing with someone from EMS, I
7 believe. Is that right?

8 A I believe so, yeah. I'm not real sure who he was
9 talking to after I moved my car back over to that area.

10 Q You had backed the car up to the Citgo gas station
11 and parked your car and was facing back towards, I guess,
12 Exchange Street back towards --

13 A Yeah. Facing towards the sign.

14 Q Towards that Citgo sign, right?

15 A Yes.

16 Q He is on camera but in the background, correct?

17 A Correct.

18 Q Okay. And you go up and you talk to this person from
19 EMS and you tell him, hey, when you're done, I'm going to
20 do my thing with him. And then he's, you have a little
21 conversation. You say, I'm going to go have my thing with
22 him, and I want to talk with Leon. Do you remember that?

23 A I remember saying something about, do whatever you
24 got to do, I'm going to do my test.

25 Q Correct. At that point you take Leon in front of

1 your car, correct?

2 A Correct.

3 Q And you had him, you asked him if he would perform
4 these standardized field sobriety tests?

5 A Correct.

6 Q And the first test was the horizontal gaze nystagmus
7 test, correct?

8 A That's correct.

9 Q Okay. Part of the horizontal gaze nystagmus test,
10 there are certain clues that you're looking for, correct?

11 A Correct.

12 Q All right. You're trying to determine if someone is
13 impaired or not, correct?

14 A Correct.

15 Q And in your report, you indicated that three of the
16 main clues Leon exhibited, correct?

17 A Correct.

18 Q Okay. I think one of the first things you said is
19 you noticed a lack of smooth pursuit in his eyes when you
20 were tracking them, right?

21 A That's correct.

22 Q Did you have probable cause to arrest him at that
23 point?

24 A At that point, no.

25 Q And still no probable cause. You then noticed that

1 you, you say in your report you notice a sustained
2 nystagmus had a maximum deviation, correct?

3 A That's correct.

4 Q Okay. And can you tell the Court what that means for
5 some of us who don't know what sustained --

6 A Sustained nystagmus had maximum deviation is once you
7 bring the pen over to forty-five degrees, the eyes will
8 either stay still or they will, they'll start to move,
9 start jumping.

10 Q And so according to your report, you saw that --

11 A Yes, sir.

12 Q -- right, and his eyes were jumping?

13 A Yes, sir.

14 Q And that will be a clue for intoxication?

15 A Yes, sir.

16 Q Did you have probable cause to arrest him at that
17 point?

18 A Still doing my tests.

19 Q Okay. You also noticed that you saw an onset of
20 nystagmus prior to forty-five degrees. Is that right?

21 A Yes, sir.

22 Q Can you explain to the Court what that is?

23 A That is from when you bring the pen out slow to
24 forty-five degrees. As you're moving it out slowly the
25 eyes are tracking. If they are moving, bouncing and not

1 moving smoothly, that's also a clue.

2 Q Okay. And no probable cause to arrest him at that
3 point?

4 A No, sir. After the first test, at that point, no.

5 Q Okay. And then you had him perform the walking test
6 turn, correct?

7 A Yes, sir.

8 Q And you still made, and one of the things you noted
9 in your report is that he stepped off the line, correct?

10 A Correct.

11 Q And part of that test is you are asking him to walk
12 nine steps forward, correct?

13 A Correct.

14 Q Make a series of small steps, correct?

15 A Correct.

16 Q If I don't say, correct, I'm not trying to just --

17 A That's all right.

18 Q It's what I mean. I'm just making a statement. But
19 he makes a series of three small steps.

20 A Supposed to. That's what I wanted. Yes, sir.

21 Q And then he turns around and takes nine steps back to
22 you?

23 A Yes, sir.

24 Q Okay. And according to your report, he stepped off
25 this line five times?

1 A No. I assume it was five.

2 Q Do you --

3 A I don't have the report in front of me.

4 Q Okay. If I told you that it was five times in your
5 report, would you agree with me? Would you like to see
6 your report?

7 A Sure.

8 Q Okay. And I want to make sure I'm right. In your
9 report it says, the first nine steps he stepped off line
10 on steps three and five. He also on his back nine steps,
11 he stepped off lines two, six, and nine. And that's on
12 the bottom of your second paragraph there.

13 A Thanks.

14 Q Yes, sir. You're welcome. Would you like to keep a
15 copy of that?

16 A Yeah, if you don't mind.

17 Q I don't. I've got another one. Did it amount to
18 five stepped off lines, according to you?

19 A Yes, sir.

20 Q Okay. Did you have probable cause to arrest him
21 after each of those steps?

22 A Still building the case.

23 Q Still building the case. And those are clues
24 according to the National Highway Traffic Standard
25 Association clues that you look for, part of the

1 standardized tests, right?

2 A Part of the standard field sobriety, yes.

3 Q You still don't have probable cause to arrest him
4 when he stepped, in your report he said, that you said he
5 missed heel-to-toe on two steps, four and nine? Do you
6 see that in your report?

7 A Yes, sir.

8 Q Okay. So he had, did you have probable cause to
9 arrest him at that point?

10 A No. At the time I'm still building the case.

11 Q Okay. You weren't sure. Okay. Now, after that test
12 was done, you had him perform the one-legged stand test,
13 correct?

14 A One-leg stand.

15 Q One-leg. I'm sorry, I said, one-legged, one-leg.
16 But you asked him to do this kind of number, right?

17 A Yes, sir.

18 Q Okay. You still hadn't made a decision to place him
19 under arrest, correct?

20 A Currently at that time, no sir.

21 Q And you still have no probable cause, according to
22 you, to place him under arrest?

23 A Still building the case.

24 Q Okay. You noted in your report that he put his leg
25 down initially, correct?

1 A Yes, sir. He put his foot down after he reached
2 1003.

3 Q And that's a clue for impairment according to your
4 guidelines, correct?

5 A Yes, sir.

6 Q Okay. Did you have probable cause to arrest him
7 then?

8 A I'm still doing that test.

9 Q You noted that he didn't start back at 1001, and let
10 me back up. Part of the instructions were he counts from
11 1001, 1002, 1003, correct?

12 A He was instructed that if he puts his foot down at
13 any point, if he puts his foot down on 1005 to pick it up,
14 back up and continue counting from where he left off and
15 not to start over.

16 Q And you wrote that in your report. You thought that
17 was significant, right?

18 A Yes, sir.

19 Q Okay. Did you have probable cause to arrest him
20 then?

21 A Just still doing the tests at that time.

22 Q You noted he put his leg down back again. He starts
23 to count, he's counting at 1011, he put his leg back down.

24 A Yes, sir.

25 Q Okay. Did you have probable cause to arrest him at

1 that point?

2 A At that time, still just doing the tests.

3 Q Okay. You then noted that Leon skipped from 22 to,
4 he was counting from 22, 21, 1001, 1002, and he skips to
5 1033. Is that what your report reflects?

6 A Yes, sir. After he counted 1022, he skipped to 1033.

7 Q Okay. And you counted that against him, right?

8 A Yes, sir.

9 Q Okay. And you didn't place him under arrest at that
10 point, did you?

11 A At that point, I did not.

12 Q Okay. After the entire one-legged stand test, you
13 still did not place him under arrest, correct?

14 A No, sir.

15 Q Okay. So then you had him do a lack of convergence
16 test, which we talked about. What is the lack of
17 convergence test for?

18 A This test, if there is an impairment, you actually
19 have them follow a circle twice. You bring the finger to
20 the pen, the object, towards their face to test the
21 instructions for, if their eyes come in and they maintain
22 and come in then there is no impairment. But if the eyes
23 move back out then there is impairment.

24 Q Is that a test that the National, is that a
25 standardized field sobriety test?

1 A That is an advanced roadside DUI test.

2 Q Is that something that you're trained on from the
3 National Highway Traffic Standard Association Guidelines?

4 A It was through ARIDE.

5 Q Was it through the National Highway Traffic Standard
6 Association Guidelines?

7 A I'm not sure who done that but I went through an
8 instructor for this to gain that certification.

9 Q Are you certified in the National Highway Traffic
10 Standard Association Guidelines?

11 A Right now; no, I'm not, because I hadn't been a
12 police officer in three years.

13 Q Did you leave right after this or around this
14 timeframe, not right after this case, but?

15 A I left in 2014 --

16 Q 2014.

17 A -- the beginning of 2015.

18 Q Were you certified prior to meeting Leon that night?

19 A Yes.

20 Q Okay. So you're certified in those tests, and then,
21 but this is not one of those tests, correct?

22 A I was certified in this test through the instructor I
23 went to.

24 Q While you're doing the horizontal gaze nystagmus test
25 and the walk-and-turn test and the one-legged stand test,

1 and this test, there's another one we'll get to, you were
2 not the only officer standing next to Leon, correct?

3 A That's correct.

4 Q Okay. There's Deputy Marty Crane is following you
5 around, correct?

6 A Yes sir, he was there with me.

7 Q At one point he tells Leon, hey, after the test was
8 over. I'm skipping forward a little bit. You place him
9 under arrest. You tell him, hey, you failed these tests.
10 Do you remember telling Leon he failed the tests?

11 A I remember telling him he was under arrest; yes, sir.

12 Q And Marty Crane tells my client, I was watching you.
13 I'm trained in this too. Do you remember him telling him
14 that?

15 A Yes, sir.

16 Q And if you watch that video, wherever you go, Marty's
17 kind of following you around, right? He's around in the
18 video the whole time.

19 A Correct.

20 Q The same thing for Ms. Cofield, correct?

21 A At one point, she walked off. I don't remember when
22 it was, but she walked off.

23 Q Okay. But she should be on video during these tests
24 that you're administering?

25 A There is one of them I assume so, yes sir.

1 Q Okay. And so, again, no probable cause to arrest.
2 And we are now onto our fifth test.

3 A I didn't say there was no probable cause. I just
4 kept doing test --

5 Q So you did --

6 A -- building a case.

7 Q So you had probable cause to arrest him at which
8 point, at that point? You said there had been probable
9 cause.

10 A After going to, to ARIDE and going through that, that
11 course, any incident where I felt like there was, we were
12 doing a DUI investigation, all these tests were done, all
13 five of them. Anything before that certification I went
14 to for ARIDE, those last two tests were not done.

15 Q Okay. And one, the last one was a Romberg balance
16 test?

17 A That's correct.

18 Q Okay. And he completed that test for you, right?

19 A That's correct.

20 Q And you say you still didn't have probable cause to
21 arrest him at that point?

22 A After that is when he was, well, after another series
23 of questions then he was placed under arrest.

24 Q Okay. So up until this point, he is, you said that
25 you smelled alcohol on him, correct?

1 A Correct.

2 Q You've told another officer that, at least one of the
3 officer's, if not more, that you smell alcohol on him,
4 correct?

5 A Correct.

6 Q You're aware as an officer or you were aware as an
7 officer at the time that it is a crime, in a criminal act
8 in South Carolina to leave the scene of an accident,
9 correct?

10 A (No audible response.)

11 Q Okay. Correct?

12 A Correct.

13 Q You also told, Sergeant Gainey, don't let that boy
14 walk off, correct?

15 A Correct. I asked him to get him to stay where he's
16 at.

17 Q Don't let him walk off?

18 A Yes.

19 Q Okay. And you've had him do five field sobriety
20 tests at this point, correct?

21 A Correct.

22 Q As soon as he finishes the Romberg balance test, you
23 asked him how drunk he was on a scale of zero to ten,
24 correct?

25 A Correct.

1 Q And you asked him, tell me the drunkest you've been
2 in your life with zero being the most sober, give you a
3 number, right?

4 A Correct.

5 Q It's kind of a trick question, right?

6 A Not really.

7 Q No? You asked him if he could feel the effects of
8 alcohol?

9 A I don't remember asking him that question, but I
10 remember asking him from zero to ten.

11 Q If I tell you it's on the video that you asked him,
12 you can feel the effects of alcohol. You would agree with
13 that? Would you agree with me that that's --

14 A Yes, if it is on the video.

15 Q Okay. And we can show the video. But from what I've
16 seen, you ask him after he gives you an answer, you ask
17 him if he can feel the effects of alcohol, right?

18 A Sure.

19 Q And at that point, the answer he gave you, as far as
20 a zero to ten, was a five, right?

21 A Correct.

22 Q And you immediately arrested him after he told you he
23 could feel the effects of alcohol, correct?

24 A After the last series of questions, yes sir.

25 Q Okay. If he had told you that he was a zero, would

1 you have let him walk away?

2 A No, sir.

3 MR. BROOME: Beg the Court's indulgence.

4 THE COURT: Sure. Take your time.

5 Q And at one point, just a quick follow-up. This is
6 after Miranda, but you had asked him, and actually before
7 Sergeant Gainey had told you that other unknown witnesses,
8 some people that were around that scene had said, hey,
9 Leon's trying to leave the scene, right?

10 A When I first got there, he had, somebody had said
11 that he had tried to leave and he stopped.

12 Q And you directly questioned Leon about that on the
13 video, asking him whether or not that was true, correct?

14 A I asked him about that. Yes, sir.

15 Q Okay. He denied that, correct?

16 A Yes.

17 Q Okay.

18 MR. BROOME: No further questions, Your Honor.

19 THE COURT: Anything in follow-up, Solicitor?

20 REDIRECT EXAMINATION

21 By Mr. Scott:

22 Q Well, when you do these field sobriety tests and it's
23 a battery of tests, is it not?

24 A Yes, sir.

25 Q So if he would have failed or done poorly on the HGN,

1 you wouldn't have arrested him right then, would you?

2 A No, sir.

3 Q Okay. And then, likewise, if he did the heel-to-toe
4 and he had done poorly, would you have arrested him right
5 then?

6 A No, sir. I usually try to, I do all the tests and
7 make the decision.

8 Q Right. Because you're taught that there is a battery
9 of tests to go through --

10 A Yes, sir.

11 Q -- before you make your determination? And so is it
12 safe to say that it was only after all of those battery of
13 tests was complete that you made your decision to arrest
14 him?

15 A Yes, sir.

16 Q Did he voluntarily submit to the field sobriety
17 tests?

18 A He did.

19 Q Okay. Did he, was he under arrest when he told you
20 he had been drinking?

21 A No, sir.

22 Q Okay. And then you read him the Miranda rights that
23 you went over at the point that you determined to arrest
24 him for DUI and put him in handcuffs?

25 A Correct.

1 Q And then thereafter everything he would have answered
2 would have been after being given his Miranda rights?

3 A That's correct.

4 MR. SCOTT: That's all I have, Your Honor.

5 THE COURT: Now, let me see if there's any followup,
6 Mr. Broome?

7 RECROSS-EXAMINATION

8 By Mr. Broome:

9 Q Isn't it true that when you're investigating a
10 felony, just let me back up. You had some information
11 from EMS that Mr. Gregory had sustained some injuries?

12 A Yeah. I been, I don't know if it was before or
13 after, I was advised at some point he had, he had
14 sustained some injuries.

15 Q I think pretty early on. So there's a possibly at
16 your point, a possibility that you're investigating a
17 felony DUI at that point?

18 A Yes, sir.

19 Q Okay. And isn't it true that the law says that when
20 you're investigating a felony DUI, the person must submit
21 to standardized field sobriety tests?

22 MR. SCOTT: Your Honor, that is a question of law, is
23 that what he is asking?

24 THE COURT: With this rain, I'm having a little hard
25 time hearing him. Could you speak up just a little, Mr.

1 Broome. I didn't hear your whole question.

2 Q It was soft-spoken. The angels are trying to drown
3 me out. The question was, you were a law enforcement
4 officer back then, correct?

5 A Yes, sir.

6 Q You're trained in how to make probable cause arrests
7 for DUI, right?

8 A Yes, sir.

9 Q Okay. So you're very familiar with DUI laws as a law
10 enforcement officer, right?

11 A At that time, I was trained for DUI --

12 Q -- and you admitted earlier that if someone is
13 arrested for felony DUI, they have to submit to a
14 Breathalyzer test or a blood test, correct, before they
15 ever leave?

16 A Yes.

17 Q All right.

18 A Yeah. According, that was what my supervisor at the
19 time had instructed me.

20 Q So my question to you was, were you aware back in
21 2013 that if you're arresting someone or investigating
22 someone for felony DUI, that the law says that they must
23 submit to a field sobriety test unless there is a medical
24 exception?

25 A Correct.

1 Q Is that true?

2 A As far as I know.

3 Q Okay.

4 A I am not one-hundred percent sure on that.

5 THE COURT: You're going to need to speak up. With
6 this rain, I'm having a hard time hearing you and Mr.
7 Broome too so speak up, please, sir.

8 A Yeah, on that one I'm not one-hundred percent sure
9 from the experience of my supervisor who used to be a
10 state trooper. That was the information that's given to
11 me at the time.

12 Q Okay. You're a pretty experienced officer as well,
13 right?

14 A For a couple of years.

15 Q A couple of years. You've made a bunch of DUI
16 arrests, though, right?

17 A Yes, sir.

18 Q Okay. And over fifty, right?

19 A Possibly.

20 Q Back in 2013, alone?

21 A Not fifty.

22 Q If I told you that you had gotten a silver star from
23 the South Carolina Department of Public Safety for making
24 at least fifty DUI arrests, would that be accurate?

25 A Yes, sir.

1 Q Okay. So you're knowledgeable in arresting people
2 and charging them with DUI?

3 A Yes, sir.

4 MR. BROOME: Beg the Court's indulgence.

5 THE COURT: Sure.

6 Q And I asked you some questions about each of those
7 tests and whether or not you had probable cause to arrest
8 him, do you remember that series of questions we went
9 through?

10 A Yes, sir.

11 Q Okay. Back to that. If you noticed that Leon had
12 failed the horizontal gaze nystagmus test, well, you say
13 that he failed the horizontal gaze nystagmus test,
14 correct?

15 A Yeah. He did not pass it, yes.

16 Q Would you have let him leave the scene at that point?

17 A I would have finished the rest of my tests before I
18 made a decision about whether to dismiss somebody or not.

19 Q Well, you don't know, need all three tests to make a
20 decision, correct?

21 A I'm not going to arrest somebody just based off of
22 one.

23 Q Sometimes, people can't only do the horizontal gaze
24 nystagmus test, correct, because of medical conditions,
25 right?

1 A Yeah. The other two are there to do. If you can't
2 do the more physical ones, the walk and turn or one-leg
3 stand test, the other two are used to help make that
4 decision.

5 Q Were you going to let him walk away after you said
6 that he failed the horizontal gaze nystagmus test?

7 A Would I?

8 Q Yes.

9 A I have to do the rest of my tests.

10 Q Would you --

11 A I'm not just going to make that decision off the
12 first test.

13 Q Were you going to let Leon walk away from the scene
14 after all that information and after you say he failed the
15 horizontal gaze nystagmus test?

16 A Probably not, because I was told at that time that
17 he, his license was suspended.

18 Q Okay. And you weren't going to let him leave the
19 scene after the walk and turn, correct?

20 A I was going to do the rest of my tests before I made
21 that decision for that.

22 Q Okay. Were you arresting him for driving without a
23 license then?

24 A He was, I was informed that he was, his license was
25 under suspension. But I was going to do the rest of my

1 tests for driving under the influence.

2 Q Well, the rest of the tests for driving under
3 suspension or for driving under the influence?

4 A For driving under the influence.

5 MR. BROOME: No further questions.

6 THE COURT: Okay. You can step down, sir.

7 Solicitor, does the State have any other witnesses for
8 this Jackson v. Denno hearing?

9 MR. SCOTT: No, not in regards to the statements.

10 THE COURT: Okay. All right. Does the Defense have
11 any witnesses with respect to this Jackson v. Denno
12 hearing?

13 MR. BROOME: No, Your Honor.

14 THE COURT: All right. Mr. Broome, what statements
15 are you wanting out. Because if I heard Mr. Craven
16 correctly, there's some questions and answers given as far
17 as you been drinking, how much, et cetera. And then the
18 statement was made by Mr. Craven to one of the officer's,
19 don't let Leon walk away. And then some field sobriety
20 tests were done. After that, the question was asked
21 concerning the zero to ten scale and a response was made.
22 And then at that time the arrest was effected and Miranda
23 given. Would that be a fair summary of the chronology of
24 what took place out there as it relates to anything that
25 the Defendant may have said?

1 MR. BROOME: Pretty much, Your Honor, and he had
2 asked him, not, well, that's what I got to early on was he
3 had asked him about, direct question had asked Leon had he
4 been drinking, what he was drinking. Leon made statements
5 about how much he had to drink, what it was. That's very
6 early on in his investigation for his DUI. So that is
7 something that he's asking, he's obviously interrogating
8 him. He's questioning the accident and now he's actively
9 engaging in a DUI investigation.

10 THE COURT: He did state, I think Mr. Craven stated
11 at that point in time he was not in custody. I think I
12 heard that correctly.

13 MR. BROOME: Well, he was not in the, he's not
14 handcuffed.

15 THE COURT: Right.

16 MR. BROOME: Certainly. But he was, you know,
17 involved in an accident where he wasn't free to, by law
18 you're not allowed to leave. And then very early on, I
19 asked Officer Craven, didn't you tell the other officer,
20 don't let that boy walk away. And he admitted, yeah, I
21 told him don't walk away. So at the minimum at that
22 point, he has said --

23 THE COURT: Oh, I agree completely that once Mr.
24 Craven told the officers, don't let Leon walk away, and
25 I'm assuming that that was about the same time that he got

1 the gloves and wanted to pick up the bottle, pretty close
2 in there.

3 MR. BROOME: Yes, Your Honor.

4 THE COURT: I don't think there's any question at
5 that point, he was in custody just by virtue of what Mr.
6 Craven said, don't let him leave.

7 MR. BROOME: I agree. And, I'm sorry, Your Honor.

8 THE COURT: No, go ahead.

9 MR. BROOME: And I was going to say, the specific
10 statements would be what I was getting to. So he goes
11 through all these tests and he's very quickly, like, all
12 right, you've done this, we're going to go through these
13 five tests. He says, real quick, real quick, on a scale
14 of zero to ten, you know, I appreciate the back and forth
15 with Officer Craven, but it's kind of, and it's a leading
16 question at minimum. It's a trick question. It's
17 certainly leading and the second one is, the second one is
18 a leading question, it's kind of a trick question, because
19 he's told him he's drinking. And he says, hey, on a zero
20 to ten, how drunk are you? He's in custody. This is on
21 video. He's directly questioning my client. He's
22 actively investigating a DUI, a felony DUI, because he
23 knows that there are injuries to this man on the
24 motorcycle. And he says, what is it, what would you say.
25 And my guy says, well, I wouldn't say I'm drunk. But, I

1 guess if I have to give you, you know, it's a five. Okay.
2 So we would like for that to be suppressed. The next
3 question he immediately says is, but you could feel the
4 effects of alcohol? And Leon says, well, yeah, I can feel
5 the effects of alcohol. And then he immediately goes and
6 Mirandizes him and he's already --

7 THE COURT: Well, I think he's arrested, and then
8 Mirandized.

9 MR. BROOME: He's, sorry, say it again.

10 THE COURT: I think Mr. Craven said he then arrested
11 him, and then Mirandized.

12 MR. BROOME: I probably switched, but yeah. Very
13 quickly, this is all happening and if it's on the video,
14 it's going boom, boom, boom. And as soon as he says, you
15 can feel the effects of the alcohol? He says, yeah. Come
16 up here in front of me. And he's doing that because under
17 the statute, as you know, Miranda needs to be on video.
18 So part of that is, let me just rush in and get this
19 Miranda on video, blah, blah, blah, blah, blah. You
20 understand these rights. Yes, I do. He puts him in
21 handcuffs or he puts him in handcuffs and reads him those
22 rights. So my argument is he's admitted, they are not
23 letting him walk away. And when he ask him these
24 questions, this is interrogation. They are questioning
25 him. He is in custody. He's surrounded by Marty Crane,

1 Chrissy Cofield, the Chief of his organization, EMT. It's
2 a crime to leave the scene. We have an actual motion.
3 She did this.

4 MS. THOMAS: Your Honor, it would just be our
5 position, and I think Mr. Broome summarized my argument
6 well in that Mr. Barksdale was in custody the entire time.
7 He was involved in an accident, immediately identified as
8 a suspect in the accident, immediately pinpointed as being
9 potentially at fault in that accident, identified as being
10 potentially drunk. And, obviously, was told not to leave.
11 But we understand that routine traffic stops,
12 investigative detentions, and field sobriety tests are not
13 determined by themselves to be in custody. However, Mr.
14 Barksdale was at the scene of an accident. It is a crime
15 to leave the scene of an accident. And any reasonable
16 person would know that they're not allowed to leave.
17 Therefore all of these statements within in their entirety
18 would be a result of custodial interrogation the minute
19 law enforcement engaged with Mr. Barksdale and started
20 asking him questions that are definitely likely to lead to
21 incriminating responses. And I appreciate the Solicitor
22 focusing in on whether he was under arrest or not,
23 however, that is not the test that we use in this case.
24 It's whether a reasonable person would feel like they were
25 in custody or free to leave. And I think it's axiomatic

1 to say that anybody would not feel like they are free to
2 leave after being involved in an accident, after an
3 officer says, hey, don't let him leave, which he could
4 have easily overheard or the message could have been
5 relayed to him from another officer. Also, Mr. Broome
6 alluded to at the end of cross-examination, there was some
7 talk about a witness stopping him from leaving the scene.
8 So the very beginning of this whole video recording, Mr.
9 Barksdale is under the impression that he is in custody
10 and not free to leave. Therefore, any statement made in
11 response to police interrogation should be suppressed,
12 Your Honor.

13 THE COURT: Okay. Does the video start from the very
14 beginning of all of this when --

15 MR. SCOTT: Yes, sir.

16 THE COURT: -- when Mr. Craven approaches the
17 Defendant? Is the video at the very beginning?

18 MR. SCOTT: Yes, sir. We've got it, and I'm happy to
19 play it, Your Honor, for the Court's clarification. But
20 just quickly, in response to that argument. Essentially,
21 the argument they just made to you is that any time
22 there's an accident, any questioning that an officer
23 submits to or asks of a person involved in an accident
24 would be product of detention and interrogation. Because
25 they're saying if there's an accident the law says they

1 can't leave the scene of an accident therefore any time
2 there's an accident, a person can't leave the scene or
3 else they violate the laws. So any questioning is a
4 result of interrogation while somebody's in custody.
5 That's incorrect.

6 THE COURT: And let me just make sure I'm clear. If
7 I find that he was in custody at the beginning, I don't
8 think there is any question once Mr. Craven said, don't
9 let Leon walk away, from that point forward. And I'll
10 allow you to address that, but I think that's pretty clear
11 that he was in custody. But I'm not going to equate
12 leaving the scene of an accident and being in custody, I'm
13 not going to equate those together. I mean, I realize
14 your argument that yeah, if you leave the scene of an
15 accident you can be charged for that. But I still don't
16 believe that that equates to being in custody by law
17 enforcement. So if I find that he was in custody at the
18 outset, it's going to be on other grounds other than
19 leaving the scene. Okay.

20 MR. SCOTT: And, Your Honor, Walter's back there
21 getting it kind of squared away now so we can watch the
22 video. But I do want to put Your Honor at the scene.
23 This is a, somebody is laid out in the road. EMS is
24 there. It's a very fluid scene. People are in and out.
25 They've gotten some information. I don't know how

1 credible it was, but it appeared that he was trying to
2 leave the scene. They're trying to conduct an
3 investigation, how did this accident happen? They're
4 talking to Barksdale. They smell alcohol. He's kind of
5 wandering around. You'll see it on the video. So it
6 wasn't necessarily, I'm not going to concede that it was
7 custody, Your Honor, because it was more of, hey, don't
8 let, don't let him walk off here, don't let him leave the
9 scene because we're still conducting an investigation.
10 That's what an investigative detention would be and that's
11 what those field sobriety tests and all those statements
12 were following. It's not to the extent where they're
13 grabbing him and marching him over here. It's, hey, make
14 sure he doesn't just kind of disappear because we need to
15 figure out what happened here. And I think that's kind of
16 what Your Honor will see. But let's drag the TV out and
17 if that will help clear it up.

18 THE COURT: Sure. I think it's going to be helpful
19 to me to look at the video. But before we do, do we have
20 any other pretrial issues or motions that need to be
21 addressed at this time?

22 MR. BROOME: Some standard-type motions stuff that we
23 can do pretrial in the morning.

24 THE COURT: Okay.

25 MR. BROOME: I think substantively we've addressed

1 the --

2 THE COURT: Okay.

3 MR. BROOME: -- reading and all that, Your Honor, so
4 think this is the next --

5 THE COURT: Okay.

6 MR. BROOME: I think this is, probably be it.

7 THE COURT: All right. Well, let's take a little
8 short break and y'all get stuff set up. And then I'll
9 come out and take a look at the video and we need to check
10 on this weather too. I understand that there was a
11 tornado warning as this rain was beating down on the roof,
12 so we need to kind of take a look at that too. So just
13 get set up and let me know when you are ready.

14 (Whereupon, a short break was taken.)

15 THE COURT: All right. We have the video.

16 MR. SCOTT: Judge, he was trying to, we have the disk
17 and the audio wasn't working, so he's converting it or
18 he's putting it on his flash drive.

19 THE COURT: Okay.

20 MR. SCOTT: Let me go grab him real quick.

21 THE COURT: That's fine.

22 (Whereupon, State's Exhibit 1 was marked for
23 identification only.)

24 THE COURT: Would it be any easier if you just gave
25 me the disk, and I can put it on my computer and watch it

1 that way?

2 MR. SCOTT: We can do that, Your Honor.

3 THE COURT: And whatever's easier.

4 (Whereupon, a video was published to the Court
5 starting at 3:55 p.m. and ended at 4:25 p.m.)

6 MR. SCOTT: Your Honor, I think we've essentially
7 covered all the State's--

8 THE COURT: -- okay. Concerning the Defense's motion
9 for suppression, I'm going to take it under advisement and
10 let everybody know in the morning. Anything else we need
11 to take up on the record before we adjourn for the day,
12 from the State?

13 MR. SCOTT: Your Honor, we have at least one doctor
14 coming in from Greenville tomorrow. Something to
15 consider, we would ask, one of them would ask to be
16 allowed to Skype testimony in. Of course, they would just
17 be talking about the injuries sustained.

18 THE COURT: Sure.

19 MR. SCOTT: Apparently, he's got appointments pretty
20 much most of the day tomorrow.

21 THE COURT: What day are you wanting, do you want to
22 do that tomorrow, then?

23 MR. SCOTT: Yes, sir.

24 THE COURT: Take his testimony via Skype?

25 MR. SCOTT: Yes. We wanted to see the doctor, his

1 last name starts with a C. He's asked to do that. These
2 doctors are typically difficult to get out of their
3 routine.

4 THE COURT: Do you have a time that you want to try
5 to accomplish that?

6 MR. SCOTT: I'll find out, Your Honor, just --

7 THE COURT: Okay.

8 MR. SCOTT: -- when we take a break.

9 THE COURT: We'll certainly do everything we can to
10 accommodate that. Okay.

11 MR. SCOTT: Okay. But I don't think we have anything
12 else.

13 THE COURT: Okay. All right. Mr. Broome, you had
14 indicated some kind of housekeeping matters. Let's go
15 ahead and deal with those now since we're all together.
16 Something about sequestration and whatever else that you
17 were thinking about.

18 MR. BROOME: Your Honor, we typically, the standard
19 issue. Renew Rule 5, renew Brady motions just in light of
20 the history of this case, in particular, to make sure we've
21 got everything. And, as well, go ahead and make a motion
22 to sequester. It looks like, it sounds like one of these
23 doctors is going to be out of pocket and will be
24 testifying potentially via Skype. There are going to be
25 two officers, Sergeant Gainey and Officer Craven. His

1 rank eludes me right now at the time. I would ask to
2 sequester them.

3 THE COURT: Mr. Craven would be the, your primary
4 investigating officer. You'd want him to remain in here.

5 MR. BROOME: Yes, sir.

6 THE COURT: But any other officers that would be
7 testifying, of course, they would be sequestered.

8 MR. BROOME: And that's pretty much it. There's no
9 elaborate. Just renew my Rule 5 and Brady motions --

10 THE COURT: Sure.

11 MR. BROOME: -- for the record. Okay.

12 THE COURT: And, Solicitor, to the best of your
13 knowledge, everything has been provided to the Defense by
14 way of Brady and Rule 5?

15 MR. SCOTT: Yes sir, Your Honor.

16 THE COURT: Okay. Very good. All right. Thank you
17 very much. We'll start back, I think I told the jury
18 9:15. Maybe we can go back on the record about 9:00, and
19 I can make a ruling on this Jackson v. Denno suppression.
20 Okay. Thank you very much. Everybody have a good
21 evening.

22 October 24, 2017

23 THE COURT: Solicitor Scott, indicated that you had
24 sent an email wanting to put something on the record, I
25 assume as it relates to the Defense motion to suppress.

1 Is that correct?

2 MR. SCOTT: Yes, sir.

3 THE COURT: I will be glad to hear from you.

4 MR. SCOTT: And it's just really the way we did it.
5 I probably should have played the video earlier, but we
6 had testimony that we argued, and then we played the video
7 and kind of broke for the day. But just a couple of
8 things. When you watched the video, I know Your Honor was
9 concerned to some degree with the testimony that Craven
10 had mentioned to another officer don't let him walk out,--

11 THE COURT: Right.

12 MR. SCOTT: -- and that was amounting to custody.
13 That was I think Video 1, they're broke up in clips and
14 you can see Walter have to go up there and skip to the
15 next clip. But that was nine minutes and thirty seconds
16 into the first video. That was after he had been asked
17 what had happened, how much he had to drink. And then
18 being informed that, and the State does not intend to
19 produce any evidence that he was trying to flee the scene.
20 But there was some indication at the time against a very
21 fluid scene, they're getting information from everywhere,
22 that he had perhaps been trying to leave. So Craven, it
23 appears in the video, said to another officer out of
24 earshot of the Defendant, don't let him walk off. And
25 then it was a couple of minutes later in the video and it

1 was interesting. Your Honor asked, well, where is the
2 Defendant in the video. He was kind of just laid back
3 against his car, you know, really not being bothered or
4 anything or harassed or detained, certainly. Ten seconds
5 after that, Craven walks up to him and indicates to him,
6 you are not under arrest. But then asked if he'd be
7 willing to perform some field sobriety tests. At that
8 point they began the HGN and whatnot. I've got just a
9 couple of cases that I didn't have handy yesterday that do
10 stand for the proposition. This is a Pennsylvania V.
11 Bruder and that is 488 U.S. 9. It's a US Supreme Court
12 case from 1988 and it stands for the proposition, ordinary
13 traffic stop during which a police officer asks a driver a
14 modest number of questions and requested him to perform a
15 simple balancing test at a location visible to passing
16 motorists did not involve custody for the purposes of
17 Miranda. And that is cited by our State Supreme Court in
18 State v. Clute, C-L-U-T-E. That's at 324 S.C. 584.
19 That's a 1996 case. Again, our Supreme Court held the
20 motorist was not in custody during the performance of the
21 field sobriety tests and is, therefore, not entitled to a
22 recitation of constitutional rights prior to the test.
23 The Court found that a motorist's responses to questions
24 about his drinking are admissible despite the lack of
25 Miranda warnings. And I cite those cases just, I found

1 those and those are akin to what we have here. Craven is
2 involved in investigation at that point. When he shows
3 up, there's a motorcyclist in the road, there's a car, and
4 Mr. Barksdale does admit to being the driver of the car
5 and does indicate his version of how the accident
6 happened, does admit to drinking. And so at that point,
7 when it, whenever the statement is don't let him walk off,
8 again, this is still part of an investigation. He's still
9 trying to get all components of a story and everybody's
10 version of the events. So that's all I really wanted to
11 put on the record. And I thought it was just, after
12 seeing the video yesterday.

13 THE COURT: Okay. You got those cases, so I can take
14 a quick look at them. Mr. Broome, Ms. Thomas?

15 MS. THOMAS: Your Honor, just briefly. I did cite
16 both of those cases that Solicitor Scott referenced in the
17 memo I handed the Court yesterday. We acknowledge in that
18 memo that Berkemer and Bruder both stand for the
19 propositions that routine traffic stops and field sobriety
20 testing not amount to custody by themselves. However,
21 it's the Defense's position that this is not a routine
22 traffic stop, nor is it merely a field sobriety test, but
23 it is an accident.

24 THE COURT: Right.

25 MS. THOMAS: I also cite to State v. Easler which

1 held though with the Court, erred when it relied on
2 precedent regarding routine traffic stops or field
3 sobriety tests when an accident was involved. State v.
4 Easler, 327 S.C. 121 says that when an accident is
5 involved it's a totally different circumstance.

6 THE COURT: All right.

7 MS. THOMAS: So I would just urge the Court to
8 consider when an accident is involved it is something
9 entirely different. That is our argument to have the
10 statements suppressed throughout the video regardless of
11 when the officer said, don't let him leave, et cetera.

12 THE COURT: Right. And under State vs. Clute, that's
13 C-L-U-T-E, and we're not dealing with suppression of the
14 field sobriety test. All we're dealing with is
15 suppression of a statement. So I just want to make sure
16 we're clear. How important is it, and I throw this
17 question out to both sides. How important is it that Mr.
18 Craven, during his in-camera testimony, never stated that
19 Mr. Barksdale was not in custody at the time of the
20 questioning. All he said was he was not under arrest.
21 And I think we all can agree that being in custody and
22 being under arrest are two different things. So I throw
23 that question out to both sides, how important is it that
24 Mr. Craven never testified, which normally they do in a
25 Jackson v. Denno, he was not in custody at the time I was

1 asking the questions. So I'll throw it out to both sides,
2 whoever wants to go first.

3 MR. SCOTT: Well, I just, not to disparage Officer
4 Craven by any means. But those are, I will argue that
5 what those terms mean to us may be used interchangeably to
6 the layperson, custody and arrest.

7 THE COURT: Well, let me just stop you, Solicitor.
8 He's not a layperson. I realize he's no longer a police
9 officer. But he is, he's not a layperson.

10 MR. SCOTT: That's correct, and he's not a lawyer. I
11 would say that I typically hear law enforcement use those
12 terms interchangeably. The argument, though, is if field
13 sobriety testing and if submitting to those voluntarily,
14 if that would be considered custody then we got to say
15 that for every DUI case where there's field sobriety.
16 They are under custody at that point. And that's just
17 simply not what the law says and that's what those cases
18 indicate. Now, routine questioning, field sobriety
19 testing, those don't account or amount to custody. And,
20 again, I think it's synonymous with what we have here.
21 It's what the Defendant's, what's in the Defendant's mind.
22 And I know the Court has some concern. Again, it's, I've
23 got it written down. He says, don't let him walk off.
24 It's don't, it doesn't say don't let him go, you know, go
25 ahead and hold onto him, detain him, it's don't let him

1 walk off. Because the indication was, we've got a witness
2 that's leaving a scene or attempting to leave the scene.
3 Let's don't let him leave just yet until we get everything
4 figured out. Everything, if you watch his body language,
5 if you listen to Mr. Barksdale, and I give him credit. He
6 was more than cooperative. Very polite. He voluntarily
7 submits to the thing. It doesn't seem, in fact, it seems
8 that he's confused for the most part when he's arrested.
9 I passed the tests, didn't I? So I don't think he ever
10 really fully considered the fact that he may be arrested
11 that night. You know, he seemed kind of surprised when
12 they said you actually failed the test. It doesn't seem
13 to be a man that had in his mind that he was in custody at
14 that time.

15 THE COURT: Okay. All right.

16 MS. THOMAS: Just briefly, Your Honor. I don't mean
17 to belabor this point. But as I stated yesterday, the
18 Solicitor did and the law enforcement officer already
19 testified did consistently emphasize the fact that he was
20 not under arrest. That is not what we're here to decide
21 today. It's whether objectively a reasonable person would
22 believe that they are in custody. And I think that the
23 statement, don't let him walk off, certainly plays to the
24 totality of the circumstances. But there are many other
25 factors here that I think would play into an objective.

1 person or Mr. Barksdale believing that he was not free to
2 leave. The investigation and the questioning was very
3 prolonged for this kind of matter. Law enforcement is
4 present everywhere. You have Emergency Medical Services.
5 You have multiple police officers which you can see on the
6 video. He is not free to leave and he knows he is not
7 free to leave at this point. You see the officer
8 questioning him and he's immediately identified as a
9 suspect. He begins to collect evidence, asking for
10 gloves, begins asking him how much he's had to drink. The
11 officer also said that he was driving without a license.
12 That could have been potentially, arise to the level of
13 him being arrested just for that. I just think that the
14 totality of the circumstances, you can look at all of
15 these things, and I think that it's very clear that a
16 reasonable person would not believe that they were free to
17 leave the scene regardless of whether they were under
18 arrest, Your Honor.

19 THE COURT: Okay. All right. I certainly recognize
20 that as a general proposition, routine traffic stops do
21 not warrant the giving up Miranda. In this situation, I
22 can't tell you for certain if it is a routine traffic stop
23 or something more involved. Because you can't see, until
24 Officer Craven pulls his car around, you can't even see
25 under what environment Mr. Barksdale was in when he was

1 being questioned about the accident and the drinking and
2 that sort of thing. Presumably, I mean he was surrounded
3 by officers, because he was surrounded by officers at the
4 time the field sobriety tests were given. But, be that as
5 it may, I can't tell you whether or not the environment in
6 which he was in was a routine traffic stop question and
7 answer or something more to that, because you cannot see
8 anything because of the placement of Officer Craven's
9 vehicle. Certainly, the burden is on the State to prove
10 by a preponderance of the evidence that the statements
11 were voluntary and that Miranda was either not necessary
12 or that Miranda was given. The State has that burden. I
13 don't think voluntariness is at issue here. What is at
14 issue is whether or not Miranda needed to be given at some
15 point in time prior to the statements being done. Since I
16 can't see the environment in which the Defendant was in, I
17 can't tell you whether it was just a typical routine
18 traffic stop or something more --

19 MR. SCOTT: May I, Your Honor, I'm sorry. And Your
20 Honor has used the routine traffic stop a number of times.
21 This was an accident that officers rolled up on.

22 THE COURT: Well, I understand. A poor choice of
23 words. A poor choice of words.

24 MR. SCOTT: And I think that's an important nuance,
25 though. This is an investigation. What happened? How

1 did this guy end up over here? Who's driving this car?

2 THE COURT: I think it plays more into the hand of
3 the Defense when he goes up and the first thing he
4 notices, he smells alcohol. And he's asking, you know,
5 have you been drinking and that sort of thing. So just a,
6 and again, routine traffic stop, that was a poor choice of
7 words. I shouldn't have phrased it that way. But it was
8 more than that, and I think that plays into the hands of
9 the Defense. Coupled with it, and I know that the State
10 does not want me to place much emphasis on, don't let Leon
11 walk away. But I think that's extremely important. The
12 fact too, that Officer Craven never said he was not in
13 custody. I think all that plays into me granting the
14 motion to suppress the statements from start to finish.
15 This does not factor into my decision whatsoever; however,
16 I don't think his statements are going to make or break
17 the case to be quite honest with you. Basically, what he
18 said was I had one forty, and I assume that means one
19 forty-ounce drink. That's about all he said before the
20 field sobriety test that, you know, could be somewhat
21 important. But I don't think the statements will make or
22 break the case either way. But I'm going to grant the
23 motion to suppress and find that Miranda, that the State
24 has failed to meet its burden of proof to convince me that
25 Miranda was not necessary.

1 MR. SCOTT: Well, let me ask for some clarification

2 --

3 THE COURT: Okay.

4 MR. SCOTT: -- before I make my next decision.

5 THE COURT: Okay.

6 MR. SCOTT: Are you suppressing after the, don't let
7 him walk off, statement?

8 THE COURT: No. I'm suppressing at the very
9 beginning. I'm suppressing when he goes up and starts
10 questioning him about, you know, how much he had to drink,
11 so kind of from start to finish.

12 MR. SCOTT: May I take a brief break, Your Honor.

13 THE COURT: Sure. You going to try to come up with
14 some arguments to convince me to change my ruling?

15 MR. SCOTT: No. But I just need to kind of figure
16 out how to proceed at this point.

17 THE COURT: Okay. All right. We'll take a little
18 short break.

19 (Whereupon, a short break was taken.)

20 THE COURT: All right. Back on the record. The
21 lawyers wanted some time to do a little more research.
22 Solicitor?

23 MR. SCOTT: Yes, Your Honor. I would just offer the
24 case of State v. Morgan. This is, again, another Supreme
25 Court case. It's 1984, but it's still a good law and it's

1 282 S.C. 409. In this case, we have, it's a Pickens
2 County case, it's two cars, a Camaro and a Mustang racing
3 down the road at a high rate-of-speed. The Mustang loses
4 control, wrecking, and seriously injuring a number of the
5 occupants. Officers arrive on the scene to assist with
6 the wounded people. And the Camaro comes back to the
7 scene after going on down the road. At that time, a man
8 named Dotson was driving the Camaro. Law enforcement
9 began asking them what happened, did you see anything. At
10 that point, Morgan, who this case is named after, admits
11 that he had been smoking marijuana and drinking and he
12 had, in fact, been the driver of the Camaro. The
13 officers, again, it's their approaching an accident scene
14 and they're questioning everybody there. The Supreme
15 Court ruled and, again, he had the same argument. He
16 said, well, I should have been Mirandized before officers
17 starting asking me what happened and I gave my version of
18 events. They say and I quote, "A traffic accident had
19 just occurred. Dotson volunteered the information that he
20 and Defendant had seen the accident. What followed was a
21 routine investigation into the case and the cause. The
22 statements by the Defendant were made during the course of
23 this routine investigation. Miranda warnings were not
24 required." Now, this is just another case I've found and
25 that is --

1 THE COURT: You want to hand it up to me?

2 MR. SCOTT: Yes, sir. And it really appears to be
3 directly on point and the, that's the nuance I talk about.
4 When they're investigating an accident and a very fluid
5 situation that they haven't identified a suspect yet,
6 because they don't know whether any criminal act has
7 occurred.

8 THE COURT: Okay. Anything further from the
9 Solicitor?

10 MR. SCOTT: Just, Your Honor, again I think, and I
11 don't want to beat the dead horse. But the ruling, what
12 it would envision is that any time there's a traffic
13 accident, if Your Honor and I leave to go to lunch and we
14 get in a wreck out here, that would require me to instruct
15 law enforcement that once they come to investigate, you've
16 got to Mirandize the Judge and me before you begin asking
17 any questions on what happened. Because at that point,
18 you know, they're investigating an accident. They're
19 trying to find a root cause of exactly what happened,
20 whether or not anyone or if anyone should be held
21 accountable or whether it was, nobody's at fault. That's
22 what we have here. I don't think that's what the law
23 requires. And I think the case law provided, indicates as
24 much. I don't think I can fully try this case and prove
25 the elements without a lot of the statements made by the

1 Defendant after they arrive on scene. Perhaps, perhaps,
2 you know, I can get by if the statements allow up to the
3 point where they make the statement, don't let him walk
4 away. Perhaps, I could still try it then. But with the
5 ruling as it is, we just think, Your Honor, that the law
6 indicates that Miranda would not be required under this
7 set of facts.

8 THE COURT: Okay.

9 MR. SCOTT: And rather the Defendant was not in
10 custody --

11 THE COURT: Okay.

12 MR. SCOTT: -- up until the point of Miranda.

13 THE COURT: All right. Defense, anything from the
14 Defense?

15 MS. THOMAS: Just briefly, Your Honor. I have
16 reviewed the State v. Morgan case, and do I believe the
17 case states, that the facts are a little different herein
18 that the Defendant went up to the police officers,
19 volunteered information that they had witnessed the scene
20 of the crime, witnessed the accident, I'm sorry. I think
21 that's a little different here where in our case the
22 police officers, from what we can tell from the video,
23 initiated interrogation with Mr. Barksdale first. Who
24 knows what happened before then, if police officers had
25 talked to him before that. So I do think it's different

1 in the State v. Morgan case where the Defendant does
2 volunteer information saying I witnessed this, let me talk
3 to you about it. That would clearly be voluntary
4 initiation of conversation. We would just ask the Court
5 to stick to its prior ruling that the entire video and the
6 statements made by Mr. Barksdale should be suppressed
7 because the State has failed to meet their burden that
8 these were statements made that should not have been
9 Mirandized prior.

10 THE COURT: All right. Here's what I'm going to do.
11 I want to take a look at this. I, to be quite candid with
12 you folks, I don't think I'm going to be inclined to alter
13 my previous ruling. But I want to, I came across a couple
14 of cases I want to read. And then Valerie indicated that
15 y'all were out here ready to go. So I didn't get a chance
16 to read it. I think I'm going to cut the jury loose and
17 have them back at 1:00 and I'm going to look into this a
18 little further. But, again, I want to be candid with both
19 sides. I don't think I'm going to alter my ruling, but I
20 want to read the couple of cases that I came across to
21 make sure that I feel comfortable with my ruling in spite
22 of the State's position to the contrary. So I'm going to
23 bring the jury out and tell them that we've been working
24 and going to continue to work, have them back at 1:00
25 o'clock. All right. Anything further?

1 MR. SCOTT: No, Your Honor.

2 THE COURT: Okay. Thank you. Let's bring the jury
3 out.

4 (Whereupon, the jury came into open court at
5 approximately 10:36 p.m.)

6 THE COURT: Good morning, ladies and gentlemen. I'm
7 sure you've been wondering what in the world have we been
8 doing while you have been sitting back in the jury room.
9 We've had some pretrial matters that we dealt with
10 yesterday, been dealing with them this morning, and going
11 to have to deal with them a little bit longer. So what
12 I'm going to do, instead of just keeping you back in the
13 jury room while we're working on these pretrial issues,
14 I'm going to go ahead and send you on for an early lunch.
15 Come back at 1:00 o'clock. But I want to emphasize with
16 you that we have been working and will continue to work,
17 and I routinely say that when I have excellent lawyers
18 like I've got in this case, they will typically work the
19 Judge pretty hard. So I need to read some things and make
20 some rulings on some issues. So with that said, I'm going
21 to send you on. Be back here at 1:00 o'clock, and we'll
22 see where we are. Okay. All right. Have a good early
23 lunch.

24 (Whereupon, the jury was excused from open court for
25 a lunch break.)

1 THE COURT: All right. We'll regroup a little bit
2 before 1:00 o'clock.

3 (Whereupon, a lunch break was taken.)

4 THE COURT: All right. We're back on the record.
5 During the several hours break that we took, I read
6 multiple cases, watched the video once again. And my
7 ruling to suppress any statements that the Defendant has
8 made remains my ruling. Let me just kind of go through
9 especially what the video shows. Officer Craven comes up
10 to the accident scene, sees the accident, determines the
11 extent of the victim's injuries. And then all that's done
12 before talking with the Defendant. Then, he asked the
13 Defendant what happens. Gets some information from him,
14 and then immediately after that makes numerous statements
15 that the Defendant had been drinking, I think he has been
16 drinking. That boy has been drinking. I smell the
17 alcohol. And then a minute later, goes back to the
18 Defendant and questions him about how much he's had to
19 drink. Based upon the totality of the circumstances, it
20 certainly is clear to me that as soon as Officer Craven
21 started talking with the Defendant, he smelled alcohol.
22 And certainly at that time, I don't think Officer Craven
23 would have been in any position to allow Mr. Barksdale to
24 leave the scene. And then approximately four minutes
25 after, well, probably a little bit longer, but at least

1 four minutes after Officer Craven makes the statement that
2 he's been drinking, he says, don't let him walk off. I
3 think at the very outset Officer Craven would not have
4 allowed the Defendant to leave. Therefore, I find that he
5 was in custody and Miranda should be given. It's a close
6 case. I came across some cases that probably do err on
7 the side of or on the side of the State. But my ruling
8 remains the same. And just as an observation and this
9 certainly has no effect on my ruling to suppress. But if
10 the State's only version of the accident, how the accident
11 happened comes from the Defendant then I see, just kind of
12 looking at this, you know, there may be certainly directed
13 verdict issues and I'm not prejudging anything. But I
14 know that the State was at least wanting to get in Mr.
15 Barksdale's version of how this accident happened. I
16 understand that, but there's no, the investigating
17 officers for the City didn't bother to secure the names
18 and identities of the various witnesses to the accident.
19 Then the only version of the accident that we have comes
20 from Mr. Barksdale if, in the event, his statements were
21 allowed to be admitted into evidence. So that's the
22 ruling. So what's the, how does the State want to
23 proceed?

24 MR. SCOTT: Your Honor, just based on the number of
25 cases we cited to include Pennsylvania v. Bruder, State v.

1 Clute, that was 324 S.C. 584. Bruder was 109, Supreme
2 Court 205, that's a U.S. Supreme Court case. The Berkemer
3 v. McCarty. That is 104 U.S. 3138. And then, of course,
4 that Morgan one that we found to be synonymous with this
5 case. That's 282 S.C. 409. Based on those facts, we
6 would just respectfully again and argue that he was not in
7 custody. This was a traffic accident. This was an
8 investigation. The video, the officer is operating under
9 some understanding that he had been trying to leave the
10 scene earlier and the fact that he asked another officer
11 not to let him walk off, not to let him wander away from
12 the scene, we don't see that as custody. But at this
13 point, Your Honor, this ruling would be dispositive of
14 this case and how we presented the case. Do not feel that
15 we would be able to explain to the jury how the wreck
16 occurred, who was driving the vehicle if we're not allowed
17 to have these statements put in. It's dispositive in the
18 fact that we are under obligation to prove beyond a
19 reasonable doubt that there was some neglect of the
20 traffic laws. We would be unable to do that. And, again,
21 we would be unable to explain to the jury that he has
22 admitted to drinking and he had a number of open bottles
23 in the car and around the car that he admitted to. We
24 would just at this point stand down. And I think just
25 based on it being dispositive for our case, we'd file a

1 Notice of Appeal at this point, Your Honor.

2 THE COURT: Certainly, and I don't blame you. And if
3 I'm incorrect in my analysis of this, then I certainly
4 want to know that. And I don't fault you at all for
5 wanting somebody else to take a look at it. But I just
6 believe based on the totality of the circumstances what a
7 reasonable person would believe at the time. Okay. Let
8 me bring the jury out and dismiss them and have the panel
9 report back in the morning. All right. Let's bring the
10 jury out and dismiss them and have them come back along
11 with the remaining members of the panel. Did the Defense
12 want to put anything on the record? If they do, hold the
13 jury up. All right. Back on the record. Mr. Broome?

14 MR. BROOME: I would think that, has the jury been
15 sworn in yet, by the Court?

16 THE COURT: The jury has not been sworn in.

17 MR. BROOME: I did not think so, but I just wanted to
18 make sure.

19 THE COURT: The jury has not been sworn in.

20 MR. BROOME: I think we are going to find ourselves
21 back in responding to the Court's comments about directed
22 verdict. I think even if this statement comes in there is
23 no confession or admission to guilt. So, there is still
24 evidence of traffic violation that occurred. I think they
25 are going to have that issue in eighteen months or two or

1 three years, a 2013 case on a 2020, 2019 docket. The only
2 thing Leon says is, the motorcycle pulled out in front of
3 that car. That is what happened. The Court is aware of
4 all of the lack of evidence in this case. Nothing
5 further, Your Honor.

6 THE COURT: We are ready for the jury.

7 (Whereupon, the jury entered open court at
8 approximately 1:10 p.m.)

9 THE COURT: Ladies and gentlemen, this case has been
10 resolved. I'm not going to give you any of the
11 particulars or the specifics. So your services in this
12 case will not be needed, but that doesn't mean that you
13 may not get picked again on another case this week. So
14 what I need for you to do is be back here at 10:00 o'clock
15 in the morning as part of the jury panel. So you'll come
16 in the front and not in the back, and we will select a
17 jury in the next case. I'm not aware of what that case
18 is, but, nonetheless we still need you. So if you'll be
19 back here in the morning at 10:00 o'clock. Okay. All
20 right. Very good. Thank you, and have a good afternoon
21 and evening.

22 *** END OF REQUESTED TRANSCRIPT OF RECORD ***
23
24
25

1 CERTIFICATE OF REPORTER
2
34 State of South Carolina)
5)6 County of Newberry)
7

8 I, Joy E. Holston, Official Court Reporter for the
9 Eighth Judicial Circuit of the State of South Carolina, do
10 hereby certify that the foregoing is a true, accurate and
11 complete transcript of record of the proceedings had and
12 evidence introduced in the trial of the captioned case,
13 relative to appeal, in the County of Laurens, South
14 Carolina on the days of October 23rd through 24th, 2017.

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

17
18

19 December 11, 2017

20 *Joy Holston*

21 _____
22 Joy E. Holston, Court Reporter

23 My Commission expires: May 2, 2026
24
25

WITNESSES

Patrick Craven
Laurens Police Department

WARRANT NUMBER

64141GM

True Bill

Louise Childs

Foreman of the Grand Jury

Date: 10/21/16

VERDICT

Foreman

THE STATE OF SOUTH CAROLINA

COUNTY OF LAURENS

COURT OF GENERAL SESSIONS

October Term, 2016

Indictment # 16GS30- 1475

THE STATE

vs.

Leon La Gwan Barksdale

INDICTMENT FOR

Felony driving under the influence, great bodily injury

results

§56-05-2945

CDR: 0406

THE STATE OF SOUTH CAROLINA

INDICTMENT FOR

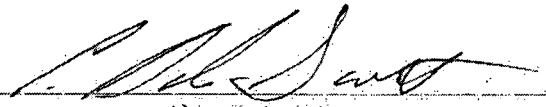
COUNTY OF LAURENS

Felony driving under the influence, great bodily
injury results
§56-05-2945

At a Court of General Sessions, convened on the 21st day of October, 2016, the Grand Jurors of Laurens County present upon their oath:

That Leon La Gwan Barksdale did, on or about October 21, 2013, in Laurens County, who, under the influence of alcohol, drugs, or the combination of alcohol and drugs, did drive a vehicle and when driving the said vehicle did an act forbidden by law or neglect any duty imposed by law, to wit: drove with reckless disregard for the safety of others, and/or failed to change the course of travel to avoid causing the accident, and/or failed to slow down to avoid causing the accident, and/or failed to keep a proper lookout, and/or failed to maintain his vehicle under proper control, and/or turned into the path of oncoming traffic which act of neglect proximately caused great bodily injury to another person, Carlton Gregory, in violation of the provisions of Section 56-5-2945 of the South Carolina Code of Laws, 1976, as amended.

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


Deputy Solicitor

Form S-438
Rev. 9/10

STATE OF SOUTH CAROLINA
UNIFORM TRAFFIC TICKET

CITY OR COUNTY OF <u>Laurens</u>		VERSUS	
FIRST NAME <u>Lean</u>	MIDDLE NAME <u>LaGuan</u>	LAST NAME <u>Barksdale</u>	
STREET AND NO. <u>250 W. Laurens St</u>		CITY <u>Laurens</u>	STATE <u>SC</u>
ZIP CODE <u>29360</u>			
STATE LICENSED <u>SC</u>	DRIVER'S LICENSE NO. <u>56-5-2945</u>	CDL ☐ YES ☒ NO	DRI. LIC. CLASS <u>D</u>
VEH. LIC. NO. <u>56-5-2945</u>	STATE <u>SC</u>	MAKE OF VEH. <u>Ford</u>	YEAR <u>05</u>
COMB. VEH. ☒	HAZ. MT. ☐	MOPED ☐	MTRCYCL. ☐
OTHER ☐			
YOU ARE SUMMONED TO APPEAR BEFORE THE TRIAL COURT			
NAME OF TRIAL COURT <u>Felony DUT</u>		STREET AND NO. <u>250 W. Laurens St</u>	
DATE <u>11/5/13</u>	OF TRIAL <u>4pm</u>	CITY <u>Laurens</u>	STATE <u>SC</u>
ZIP CODE <u>29360</u>			
VIOLATION - COURT APPEARANCE REQUIRED ☒ YES ☐ NO		VIOLATION SECTION NO. <u>56-5-2945</u>	
OWNER OF VEHICLE <u>Harvey Taylor</u>		DATE OF ARREST <u>10/21/13</u>	
ADDRESS OF OWNER		DATE OF VIOLATION <u>10/21/13</u>	
BAIL DEPOSITED <u>15.00</u>	NAME OF ARRESTING OFFICER <u>P. Craven</u>		RANK <u>MTI</u>
DESCRIPTION OF ACCUSED <u>15.00</u>	HT. <u>5'6"</u>	HAIR <u>BLK</u>	EYES <u>BRN</u>
DATE BAIL REC'D. <u>11/5/13</u>	BY <u>MTI</u>	COUNTY <u>Laurens</u>	NUMBER <u>30</u>
CASE BEFORE MAGISTRATE ☐ MUN. COURT ☒ X CIRCUIT COURT ☐ FAMILY COURT ☐ FEDERAL COURT ☐		BADGE <u>615</u>	TROOP <u>00</u>
NAME OF TRIAL COURT IF DIFFERENT FROM ABOVE		TIME OF VIOLATION <u>2132</u>	WEATHER <u>CI</u>
DEFENDANT: DID NOT APPEAR ☐ APPEARED ☐		DISTANCE IN FEET FROM INTERSECTION OF <u>Laurens St</u>	AND <u>Conway Ave</u>
DISPOSITION NOLLE PROSSED ☐ GUILTY ☐ FORFEITED BOND ☐ PLED: NOLO CONTENDERE ☐		MILES <u>1</u>	ES <u>1</u>
TRIAL BY: TRIAL JUDGE ☐ JURY ☐		HWY NO. <u>Yes</u>	CITY <u>Yes</u>
VERDICT OF TRIAL IF ANY GUILTY ☐ NOT GUILTY ☐		Lat <u>34° 30' 12.20"</u>	Long <u>81° 59' 43.10"</u>
JAIL ☐	SUSPEND ☐	FINE ☐	AMT. COLLECTED ☐
AMT. SUSPENDED ☐		COMMITTED TO: Vehicle Searched ☐	Arrest as Result of Collision <u>No</u>
OFFENSE CODE <u>99</u>		B.A. LEVEL <u>29</u>	
CERTIFIED CORRECT		DATE <u>11/5/13</u>	
		64141 GM	

DRIVER'S RECORD COPY

Form S-438
Rev. 9/10

STATE OF SOUTH CAROLINA
UNIFORM TRAFFIC TICKET

CITY OR COUNTY OF Laurens VERSUS
FIRST NAME Leon MIDDLE NAME La Gwan LAST NAME Barksdale
STREET AND NO. Laurens CITY SC STATE SC ZIP CODE 29360

STATE LICENSED SC DRIVER'S LICENSE NO. SC CDL NO DRILLIC. CLASS. D
VEH. TYPE SC STATE SC MAKE OF VEH. Ford YEAR 07 COMM. VEH. NO 16 PSGR. VEH. NO COMB. NO
HAZ. MT. NO MOPED NO MTRCYCL. NO OTHER NO

YOU ARE SUMMONED TO APPEAR BEFORE THE TRIAL COURT

NAME OF TRIAL COURT Recorder STREET AND NO. 250 W. Laurens St
DATE OF TRIAL 11/5/2013 TIME OF TRIAL 9pm CITY Laurens STATE SC ZIP CODE 29360

VIOLATION - COURT APPEARANCE REQUIRED YES NO NO VIOLATION SECTION NO. 56-1-460

OWNER OF VEHICLE Harvey Taylor DATE OF ARREST 10/21/2013
ADDRESS OF OWNER Laurens DATE OF VIOLATION 10/21/2013

BAIL DEPOSITED 0 NAME OF ARRESTING OFFICER T. Paver RANK MTX

DESCRIPTION OF ACCUSED 5'6" 170 lbs COUNTY Laurens NUMBER 30
BADGE 615 TROOP 02
DATE BAIL REC'D. 20 BY 1

CASE BEFORE MAGISTRATE ☐ MUN. COURT ☒ CIRCUIT COURT ☐ FAMILY COURT ☐ FEDERAL COURT ☐
NAME OF TRIAL COURT IF DIFFERENT FROM ABOVE. Laurens TIME OF VIOLATION 2:17Z WEATHER C

DEFENDANT: DID NOT APPEAR ☐ APPEARED ☐
NOLLE PROSSSED ☐ DISPOSITION CONVICTED A/P
FORFEITED BOND ☐ PLED: NOLO CONTENDERE ☐

TRIAL BY: TRIAL JUDGE ☐ JURY ☐ MILES 105 CITY Laurens

VERDICT OF TRIAL IF ANY GUILTY ☐ NOT GUILTY ☐ DATE OF TRIAL IF ANY 20
JAIL ☐ SUSPEND ☐ FINE ☐ AMT. COLLECTED ☐ AMT. SUSPENDED ☐

COMMITTED TO: NO Vehicle Searched NO Arrest as Result of Collision NO
OFFENSE CODE 96 B.A. LEVEL 64142 GM

CERTIFIED CORRECT DATE 20

DRIVER'S RECORD COPY

Form 9-438
Rev. 8/10

STATE OF SOUTH CAROLINA
UNIFORM TRAFFIC TICKET

CITY OR COUNTY OF Laurens VERSUS
FIRST NAME Leon MIDDLE NAME La Gwan LAST NAME Barnesdale
STREET AND NO. Laurens CITY Laurens STATE SC ZIP CODE 29360

STATE LICENSED DRIVER'S LICENSE NO. ---

CDL ☐ YES ☒ NO
DRI. LIC. CLASS D

VEH. LIC. NO. --- STATE SC MAKE OF VEH Ford YEAR 03 COMM. VEH. ☒ AUTO ☐ MOPED ☐ MTRCYCL. ☐ OTHER ☐
HAZ. MT. ☐ MOPED ☐ MTRCYCL. ☐ OTHER ☐

YOU ARE SUMMONED TO APPEAR BEFORE THE TRIAL COURT

NAME OF TRIAL COURT Recorder STREET AND NO. 250 W. Laurens St
DATE 11/5 OF TRIAL 2013 TIME OF TRIAL 4pm CITY Laurens STATE SC ZIP CODE 29360

VIOLATION - COURT APPEARANCE REQUIRED YES ☒ NO ☐ VIOLATION SECTION NO. 64-1-110

OWNER OF VEHICLE Open Container DATE OF ARREST 10/21/2013

ADDRESS OF OWNER Harvey Taylor DATE OF VIOLATION 10/21/2013

BAIL DEPOSITED --- NAME OF ARRESTING OFFICER P. Craven RANK MTA

DESCRIPTION OF ACCUSED --- COUNTY Laurens NUMBER 30

DATE BAIL REC'D. --- BY --- BADGE 615 TROOP 02

CASE BEFORE MAGISTRATE ☐ MUN. COURT ☒ CIRCUIT COURT ☐ FAMILY COURT ☐ FEDERAL COURT ☐

NAME OF TRIAL COURT --- IF DIFFERENT FROM ABOVE. --- TIME OF VIOLATION 2:32 AM-1 --- WEATHER ---

DEFENDANT: DID NOT APPEAR ☐ APPEARED ☐ DISTANCE IN FEET FROM INTERSECTION OF Laurens St AND Commonwealth

NOLLE PROSSED ☐ DISPOSITION --- MILES --- CITY ---

FORFEITED BOND ☐ PLED: NOLO CONTENDERE ☐ HWY NO. --- CITY ---

TRIAL BY: TRIAL JUDGE ☐ JURY ☐ VERDICT OF TRIAL IF ANY --- DATE OF TRIAL IF ANY ---

JAIL ☐ SUSPEND ☐ FINE ☐ AMT. COLLECTED ☐ AMT. SUSPENDED ☐

COMMITTED TO: --- Vehicle Searched ☐ Arrest as Result of Collision ☐

CERTIFIED CORRECT ☐ DATE --- Lat 34° 30' 12" N Long 81° 59' 43" W

OFFENSE CODE 91 B.A. LEVEL ---

64143 GM

DRIVER'S RECORD COPY

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Laurens County
Honorable Donald B. Hocker, Circuit Court Judge
Appellate Case Tracking No. 2017-002306

RECEIVED
DEC 07 2018
SC Court of Appeals

State of South Carolina,

Appellant,

vs.

Leon LaGwan Barksdale,

Respondent.

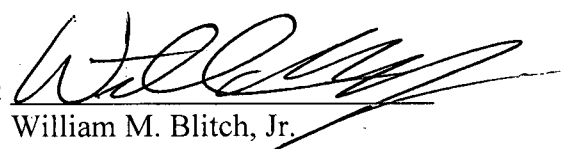
CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

ALAN WILSON
Attorney General

WILLIAM M. BLITCH, JR.
Senior Assistant Attorney General

BY:


William M. Blitch, Jr.

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR APPELLANT

December 7, 2018