

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM YORK COUNTY

Lee S. Alford, Circuit Court Judge

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SC Court of Appeals

THE STATE,

RESPONDENT,

V.

DANNY LEE THOMAS,

APPELLANT

RECORD ON APPEAL

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2 COUNTY OF YORK) IN THE COURT OF GENERAL SESSIONS

3
4 THE STATE)
5 -vs-) TRANSCRIPT OF RECORD
6 DANNY LEE THOMAS,) 2010-GS-46-04067
7 DEFENDANT.) 2010-GS-46-04068
8) JULY 25, 2011
9) YORK, SOUTH CAROLINA

10 (VOLUME I)

11 B E F O R E:

12 THE HONORABLE LEE S. ALFORD, JUDGE. ; And a Jury.

13
14 A P P E A R A N C E S:

15 MARINA BENDER, ASSISTANT SOLICITOR
16 ERIN JOYNER, ASSISTANT SOLICITOR
17 ATTORNEYS FOR THE STATE

18 B.J. BARROWCLOUGH, DEPUTY PUBLIC DEFENDER
19 ATTORNEY FOR THE DEFENDANT

20 MICHAEL R. WATTS
21 CIRCUIT COURT REPORTER
22
23
24
25

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1 (PROCEEDINGS, JULY 25, 2011)

2 (Photograph marked as State's Exhibit No. 1 for
3 identification)

4 (Photograph marked as State's Exhibit No. 2 for
5 identification)

6 (Photograph marked as State's Exhibit No. 3 for
7 identification)

8 (Photograph marked as State's Exhibit No. 4 for
9 identification) (Photograph marked as State's Exhibit No. 5
10 for identification)

11 THE COURT: Counsel, ready to proceed?

12 MS. BENDER: Yes, Your Honor.

13 THE COURT: Okay. Do you want to call your cases?

14 MS. BENDER: Your Honor, the State calls State
15 versus Danny Lee Thomas.

16 The Indictment Number is 2010-GS-46-04068 and
17 Indictment 2010-GS-46-04067.

18 The defendant has asked for a jury trial and the
19 State is now ready to proceed.

20 THE COURT: Okay. Counsel, are you prepared for
21 trial?

22 MR. BARROWCLOUGH: Yes, sir, Your Honor.

23 THE COURT: Defendant pleads not guilty to these
24 charges?

25 MR. BARROWCLOUGH: Yes, he does, Your Honor.

1 THE COURT: Thank you.

2 Let me hear you with regard to any pretrial
3 motions that you wish to make at this time.

4 MR. BARROWCLOUGH: Thank you, Your Honor.

5 May it please the court, Your Honor, I move -- I
6 have provided a copy to the solicitor and I did also put a
7 copy up on Your Honor's bench.

8 Your Honor, the first motion is to determine if
9 the State has complied with Rule Five and Brady.

10 MS. BENDER: We have, Your Honor.

11 MR. BARROWCLOUGH: Your Honor, the second motion
12 is to determine the prior record of the defendant that the
13 State would intend to introduce, should he choose to
14 testify.

15 MS. JOYNER: Beg the court's indulgence just one
16 moment.

17 THE COURT: Sure.

18 (Off the record)

19 (Back on the record)

20 MS. BENDER: Your Honor, the defendant has a 2004
21 assault on a police officer. He served five years, or --

22 MS. JOYNER: Yes.

23 MS. BENDER: And that's the only one, if he gets
24 on the stand, that we intend on bringing in, unless he opens
25 the door.

1 THE COURT: That's -- did you say assault on an
2 officer?

3 MS. BENDER: Yes. Yes, Your Honor.

4 THE COURT: And that would be subsection B, a
5 felony, I guess.

6 MS. BENDER: Yes, sir, Your Honor.

7 THE COURT: All right. And that's the only charge
8 you would intend to impeach him with, should he choose to
9 testify?

10 MS. BENDER: Yes, Your Honor.

11 THE COURT: Counsel?

12 MR. BARROWCLOUGH: Your Honor, if that were to be
13 the case, then pursuant to State v. Green I would ask that
14 the defendant would only be impeached with it as a felony as
15 opposed to the charge, so similar to the charge on the trial
16 for.

17 THE COURT: The State doesn't have a problem with
18 that? Instead of asking if he was convicted of assault on
19 an officer, they would simply ask him if he was convicted of
20 a felony.

21 MS. BENDER: That's fine.

22 MR. BARROWCLOUGH: Thank you, Your Honor.

23 Your Honor, my third motion is a motion for a list
24 of witnesses, which has been provided to me.

25 My fourth motion is a motion to determine the

1 existence and admissibility of any prior bad acts and to any
2 Lyle testimony that the State would intend to introduce.

3 I did speak with the solicitors prior to meeting
4 with Your Honor this morning. I understand that there was
5 some alleged drug paraphernalia found contemporaneous with
6 the arrest, and my motion is not going to that. My motion
7 is really going to the incidents on prior record before
8 September 4th of 2010, the incident date. My understanding
9 is that they don't intend to introduce any of that.

10 MS. JOYNER: That's correct, Your Honor, but at
11 this time we do wish to advise the court that during the
12 course of the defendant's life he has had a very lengthy
13 record with resisting officers, obstruction of justice, and
14 other similar types offenses. So we do not intend to offer
15 any Lyle evidence, but we do wish to make it a part of the
16 record that if he does testify and he opens the door, there
17 is much more beyond what we have made the court aware of at
18 this point. It's very, very lengthy, going back to some 34
19 arrests, I believe. Not all for resisting, but a fair
20 number.

21 THE COURT: Okay. Counsel, do you understand if
22 he opens the door, that they can walk through that door,
23 like with any other record or prior bad acts that he opens
24 the door to?

25 MR. BARROWCLOUGH: Yes, sir, Your Honor, I

1 understand. I meant in their case.

2 THE COURT: Right.

3 MR. BARROWCLOUGH: Your Honor, my next motion
4 would be a motion to sequester the witnesses. On some of
5 these -- the witness list provided to me, I understand the
6 State only has two witnesses, one of whom I imagine would be
7 the case agent, so I would ask that the other witness be
8 sequestered.

9 MS. BENDER: Your Honor, we are just naming
10 Officer Stewart as our case agent.

11 THE COURT: And the other officer, of course, can
12 be present up until the time that you start with opening
13 statements. At that point that officer would not be able to
14 be in the courtroom until he testifies and then he can come
15 in and testify? And, of course, that means you always
16 can't -- if one witness testifies before the other, they
17 cannot discuss their testimony or what questions are asked
18 of him through the other witness before they testify. Okay.

19 And, of course, case agent would be able to stay.

20 MR. BARROWCLOUGH: Thank you, Your Honor.

21 Your Honor, my next motion has to deal with the
22 prior record of any lay witnesses the State would intend to
23 call, but judging from the witness list I don't think there
24 are any lay witnesses.

25 THE COURT: Okay.

1 MR. BARROWCLOUGH: And, Your Honor, my last motion
2 is to determine the existence and admissibility of any
3 statements that the defendant may have made that the State
4 would intend to introduce at trial.

5 Again, just for clarity's sake, there was a video,
6 one video, from one police car that was provided to me and
7 copied and I know there is some statements of Mr. Thomas
8 that can be heard on that, the video, and I'm not addressing
9 my motion to those statements. I am just talking about any
10 other statement. I'm not aware of any, but for the sake of
11 thoroughness I would just want to make sure there aren't
12 any.

13 THE COURT: Okay.

14 MS. BENDER: Your Honor, there are no statements.

15 THE COURT: Okay.

16 MR. BARROWCLOUGH: Thank you, Your Honor. That's
17 all my motions.

18 THE COURT: Okay. Any motions on behalf of the
19 State?

20 MS. BENDER: No, Your Honor.

21 THE COURT: All right.

22 Does the defense have any objections to the
23 requested voir dire by the State?

24 MR. BARROWCLOUGH: No, sir, Your Honor.

25 THE COURT: Does the State have any objection to

1 the requests for voir dire by the defendant?

2 MS. BENDER: No objection, Your Honor.

3 THE COURT: I think defense's No. 7 is covered by
4 State's No. 1. Do you agree with that?

5 MR. BARROWCLOUGH: Yes, Your Honor.

6 THE COURT: And also 8 would be covered by
7 defense's No. 1 -- I mean State's No. 1. Do you agree with
8 that?

9 MR. BARROWCLOUGH: Yes, Your Honor.

10 I would ask just to alternately include close
11 friend, my No. 8 to close friend.

12 THE COURT: Okay. Let me add that then.

13 MR. BARROWCLOUGH: But other than that, Your
14 Honor, it's fine.

15 THE COURT: I'll add that and just cover it in one
16 question.

17 I have no problem with the voir dire requests.
18 What I would do is on the State's 1, 2, 3 -- 1, 2 and 3,
19 what I will do is have them come down front and respond to
20 the questions. I don't want them to respond in open
21 assembly.

22 MR. BARROWCLOUGH: Yes, sir, Your Honor.

23 THE COURT: Does the defense have a potential
24 witness list?

25 MR. BARROWCLOUGH: No, sir, Your Honor.

1 THE COURT: I'm going to note for the record,
2 counsel, it looks like on the indictment, on the front of
3 it, it looks like there has been some tape and it's been
4 pulled off. Do you see those, counsel?

5 (Whereupon, the lawyers approached the bench for
6 an off-the-record discussion)

7 THE COURT: I don't think it's going to affect it,
8 but for the record I wanted to bring it to your attention.

9 MS. JOYNER: Oh, that was not by my office, Your
10 Honor. I'm not sure what that mark came from.

11 THE COURT: It looks like somebody taped something
12 to the front of it and took it off.

13 THE CLERK: I have no idea.

14 THE COURT: I don't think it affects it, but make
15 sure, Mr. Barrowclough.

16 MR. BARROWCLOUGH: Yeah.

17 THE COURT: I'm not going to send it back to the
18 jury because it's part of the record.

19 MR. BARROWCLOUGH: Your Honor, I have no objection
20 to it. It looks just like --

21 THE COURT: It looks like somebody has taped
22 something on there and pulled that tape off and left about
23 three marks on there where something was taped on it, but I
24 just -- that's a little irregular. I wanted to point it
25 out.

1 MR. BARROWCLOUGH: Thank you, Your Honor.

2 THE COURT: The court is not going to send it back
3 to the jury anyway.

4 All right, counsel, strikes will be five and five.

5 We will go ahead and select one alternate. Even
6 though it's going to be a short trial, we will still select
7 one alternate and the strikes for the alternate would be two
8 for the defense and one for the State.

9 If nothing further then from either side, we will
10 go ahead and bring the jury up and get a jury selected.

11 MR. BARROWCLOUGH: Nothing further, Your Honor.

12 MS. BENDER: Nothing further.

13 THE COURT: I'm going to instruct the jury Mr.
14 Thomas is charged with resisting arrest. I don't want to go
15 into assault or anything like that, just resisting arrest.
16 I'll tell them when it allegedly occurred.

17 When I instruct them on the law, of course, I'll
18 instruct them on the other.

19 (Whereupon, the jury venire panel entered the
20 courtroom)

21 THE COURT: Good afternoon, ladies and gentlemen
22 of the jury panel. If you would give me your attention,
23 please.

24 We are about to go into a trial in the matter of
25 the State of South Carolina versus Danny Lee Thomas.

1 The State charges Danny Lee Thomas with two
2 offenses. They charge him with indecent exposure and also
3 with resisting arrest.

4 To these charges the defendant has pled not guilty
5 and we are about to go into a trial on those two charges.

6 Now, the incident is alleged to have occurred on
7 or about September the 4th, 2010.

8 The State is represented in this case by assistant
9 solicitors Erin Joyner and Marina Bender.

10 Solicitors, will you please stand and face the
11 jury panel?

12 Thank you. You may be seated.

13 Is anyone on the jury panel related by blood or
14 marriage, friends with, or have any other type social,
15 business or professional relationship with either Erin
16 Joyner or Marina Bender? If so, please stand.

17 (No response)

18 THE COURT: Is anyone on the jury panel related by
19 blood or marriage, friends with, or have any other type
20 social, business or professional relationship with anyone
21 who works in the Sixteenth Circuit Solicitor's Office? If
22 so, please stand.

23 (No response)

24 THE COURT: The defendant, Danny Lee Thomas, is
25 represented in this case by attorney B.J. Barrowclough with

1 the Public Defender's office.

2 Mr. Barrowclough, please stand, and also ask, if
3 you will, Mr. Thomas to stand and face the jury panel.

4 Thank you. You may be seated.

5 Is anyone on the jury panel related by blood or
6 marriage, friends with, or have any other type social,
7 business or professional relationship with Danny Lee Thomas?
8 If so, please stand.

9 Ma'am, please give us your name and number.

10 JUROR NUMBER 11: My name is Lisa Benjamin. I'm
11 juror number 11.

12 I haven't seen him in a lot of years, but I think
13 we were childhood friends, weren't we?

14 THE COURT: You can't ask him questions.

15 JUROR NUMBER 11: He's just --

16 THE COURT: Ma'am, assuming that is the person
17 that you think, would that relationship interfere in any way
18 with your ability to give both the State and the defendant a
19 fair and impartial trial in this case?

20 JUROR NUMBER 11: Possibly.

21 THE COURT: Okay. I think -- I'm going to ask
22 you, if you will, to come down front and let me get your
23 response.

24 While you are doing that, ma'am, give us your name
25 and number.

1 JUROR NUMBER 252: Kamilah Cannon, 252.

2 THE COURT: Yes, ma'am.

3 JUROR NUMBER 252: I go to church with the defense
4 attorney.

5 THE COURT: Mr. Barrowclough?

6 JUROR NUMBER 252: Yes, sir.

7 THE COURT: Well, we haven't gotten to him yet,
8 but let me ask you, while you are standing, if that would
9 interfere, that relationship would interfere in any way with
10 your ability to give both the State and the defendant, Danny
11 Lee Thomas, a fair and impartial trial?

12 JUROR NUMBER 252: No, sir.

13 THE COURT: Thank you, ma'am. You may be seated.
14 Okay.

15 (Whereupon, Juror Number 11 approached the bench
16 for bench conference)

17 THE COURT: Let me ask you again, how do you know
18 Mr. Thomas?

19 JUROR NUMBER 11: We were childhood friends in the
20 neighborhood when we were growing up.

21 THE COURT: All right. And y'all were childhood
22 friends?

23 JUROR NUMBER 11: Yeah, but I haven't --

24 THE COURT: Would that -- you know, would that
25 interfere with your ability to give both the State and the

1 defendant a fair and impartial trial in this case?

2 JUROR NUMBER 11: (No response).

3 THE COURT: Be just as honest as you can, please.

4 JUROR NUMBER 11: Possibly.

5 THE COURT: Okay. Well, I'm not going to require
6 you to sit on this particular jury then. Just go back to
7 your seat and just follow instructions from here, okay?

8 JUROR NUMBER 11: Yes.

9 (Whereupon, the bench conference was concluded)

10 THE COURT: The next question is, is there anyone
11 on the jury panel related by blood or marriage, friends
12 with, or have any other type social, business or
13 professional relationship with B.J. Barrowclough, the
14 attorney in this case? If so, please stand.

15 One lady need not stand back up. You don't have
16 to stand back up, ma'am. I have got your response.

17 Yes, sir, please give us your name and number.

18 JUROR NUMBER 122: Kenneth Mabry.

19 Mr. Barrowclough was a defense attorney for a
20 relative of mine.

21 THE COURT: Sir, give us your number, if you will.

22 JUROR NUMBER 122: 122.

23 THE COURT: Okay. Sir, is there anything about
24 that relationship there that would interfere in any way with
25 your ability to give both the State and the defendant Danny

1 Lee Thomas a fair and impartial trial in this case?

2 JUROR NUMBER 122: Absolutely not.

3 THE COURT: Thank you, sir. You may be seated.

4 Anyone else?

5 (No response)

6 THE COURT: I'm now going to ask you about
7 potential witnesses in this case. And when I call their
8 names, what I would ask you to do is if you are related by
9 blood or marriage, friends with, or have any other type
10 social, business or professional relationship with any of
11 these potential witnesses, when I call their names, I would
12 ask that you please stand.

13 If the witnesses are here, they can stand up so
14 the jury can see who they are.

15 Sergeant D. Scott Cribb, C-R-I-B-B, with the Rock
16 Hill Police Department. This is Sergeant Cribb down front.
17 Thank you, sir. You may be seated.

18 Officer Tony Stewart with the Rock Hill Police
19 Department. This is Officer Stewart down front. Thank you,
20 sir.

21 (No response)

22 THE COURT: Has any member of the jury panel,
23 either presently or in the past, been employed by or
24 volunteered with any city, county, state, or federal law
25 enforcement agency or law enforcement's victim witness

1 assistance program? If so, please stand.

2 (No response)

3 THE COURT: Is any member of the jury panel
4 related by blood or marriage or close personal friends with
5 any person who is now or has ever been employed by or
6 volunteered with any city, court, state, or federal law
7 enforcement agency or law enforcement's victim witness
8 assistance program? If so, please stand.

9 Yes, ma'am, please give us your name and number,
10 ma'am.

11 JUROR NUMBER 9: Patrice Baxter, number 9.

12 THE COURT: Yes, ma'am.

13 JUROR NUMBER 9: My dad is a correction officer.

14 THE COURT: He is a corrections officer?

15 JUROR NUMBER 9: Yes.

16 THE COURT: Ma'am, is there anything about that
17 relationship that would interfere in any way with your
18 ability to give both the State and the defendant a fair and
19 impartial trial in this case?

20 JUROR NUMBER 9: No, sir.

21 THE COURT: Let me ask you one other question,
22 where he's employed?

23 JUROR NUMBER 9: He works in New Jersey.

24 THE COURT: Okay. Thank you, ma'am.

25 Yes, sir, please give us your name and number.

1 JUROR NUMBER 238: Chris Wagner, 238.

2 My father was with the Ohio State Patrol in the
3 seventies.

4 THE COURT: Okay. Sir, is there anything about
5 that relationship that would interfere in any way with your
6 ability to give both sides a fair and impartial trial in
7 this case?

8 JUROR NUMBER 238: No, sir.

9 THE COURT: Thank you, sir.

10 Yes, sir.

11 JUROR NUMBER 249: My name is Jesse Young. I'm
12 juror number 249.

13 THE COURT: Yes, sir.

14 JUROR NUMBER 249: And my father is currently
15 employed with the SCDNR as a law enforcement officer.

16 THE COURT: The South Carolina.

17 JUROR NUMBER 249: Department of Natural
18 Resources.

19 THE COURT: Natural Resources.

20 Sir, is there anything about that relationship
21 that would interfere in any way with your ability to give
22 both sides a fair and impartial trial in this case?

23 JUROR NUMBER 249: No, sir.

24 THE COURT: Thank you. You may be seated.

25 Anyone else?

1 (No response)

2 THE COURT: Is any member of the jury panel
3 related by blood or marriage or close personal friends with
4 any person who is now or has ever been employed by or
5 volunteered with any city, county, state, or federal
6 prosecutor's office or prosecutor's victim witness
7 assistance program? If so, please stand.

8 (No response)

9 THE COURT: Has any member of the jury panel ever
10 contributed to or volunteered time with Mother's Against
11 Drunk Driving, Students Against Drunk Driving, Citizens
12 Against Violence Everywhere, victim witness assistance
13 programs, or any other similar organizations which lobbies
14 on behalf of victims or lobbies for tougher sentences for
15 criminal offenders? If so, please stand.

16 Yes, ma'am, please give us your name and number,
17 ma'am.

18 JUROR NUMBER 38: Carla Clarke, number 38.

19 Member of Mothers Against Drunk Drivers.

20 THE COURT: Ma'am, is there anything about your
21 support of that organization that would interfere in any way
22 with your ability to give both sides a fair and impartial
23 trial in this case?

24 JUROR NUMBER 38: No, sir.

25 THE COURT: Thank you, ma'am. You may be seated.

1 Anyone else?

2 I'm sorry. Yes, ma'am, give us your name and
3 number, ma'am.

4 JUROR NUMBER 2: My name is Angela Purcell. I'm
5 juror number 2. In high school I was on the board for
6 Students Against Drunk Driving. That was back in 1988.

7 THE COURT: Ma'am, is there anything about your
8 involvement with that organization that would interfere in
9 any way with your ability to give both the State and the
10 defendant a fair and impartial trial in this case?

11 JUROR NUMBER 2: No, sir.

12 THE COURT: Thank you, ma'am.

13 Anyone else?

14 (No response)

15 THE COURT: Has any member of the jury panel ever
16 contributed money to the Fraternal Order of Police, or South
17 Carolina Law Enforcement Officers Association, or any law
18 enforcement organization, or organization which supports the
19 police or law enforcement? If so, please stand.

20 Yes, sir.

21 Let me begin in the front and work my way back.

22 Yes, ma'am, please give us your name and number.

23 JUROR NUMBER 36: My name is Sherry Carter. I'm
24 number 36. We sometimes give to the officers.

25 THE COURT: Okay, ma'am, is there anything about

1 your support of that organization that would interfere in
2 any way with your ability to give both sides a fair and
3 impartial trial in this case?

4 JUROR NUMBER 36: No.

5 THE COURT: Thank you, ma'am.

6 Yes, sir, let me begin with you.

7 JUROR NUMBER 122: Kenneth Mabry, 122.

8 THE COURT: Yes, sir.

9 JUROR NUMBER 122: I occasionally donate to the
10 South Carolina Highway Department.

11 THE COURT: Sir, is there anything about your
12 support of that organization that would interfere in any way
13 with your ability to give both sides a fair and impartial
14 trial in this case?

15 JUROR NUMBER 122: No, sir.

16 THE COURT: Thank you, sir.

17 Yes, ma'am.

18 JUROR NUMBER 243: Joe Winkler. I'm juror 243,
19 and we have made donations to the Fraternal Order of Police.

20 THE COURT: Ma'am, is there anything about your
21 support of that organization that would interfere in any way
22 with your ability to give both sides a fair and impartial
23 trial in this case?

24 JUROR NUMBER 243: No, sir.

25 THE COURT: Thank you, ma'am. You may be seated.

1 I'm going to go back to my left and work my way
2 across.

3 Yes, sir, please give us your name and number.

4 JUROR NUMBER 218: My name is Hayes Thomas, number
5 218.

6 THE COURT: Yes, sir.

7 JUROR NUMBER 218: And from time to time we have
8 contributed to the Fraternal Order of Police.

9 THE COURT: Sir, is there anything about your
10 support of that organization that would interfere in any way
11 with your ability to give both sides a fair and impartial
12 trial in this case?

13 JUROR NUMBER 218: No, sir.

14 THE COURT: Thank you.

15 Yes, sir.

16 JUROR NUMBER 194: Scott Shirley, juror number
17 194, and I also contribute from time to time to the law
18 enforcement agencies.

19 THE COURT: Sir, is there anything about your
20 support of those organizations that would interfere in any
21 way with your ability to give both sides a fair and
22 impartial trial in this case?

23 JUROR NUMBER 194: No, sir.

24 THE COURT: Thank you.

25 Yes, ma'am.

1 JUROR NUMBER 2: My name is Angela Purcell, juror
2 number 2, and at times we have donated money to the
3 Fraternal Order of Police.

4 THE COURT: Ma'am, is there anything about your
5 support of those organizations that would interfere in any
6 way with your ability to give both sides a fair and
7 impartial trial in this case?

8 JUROR NUMBER 2: No, sir.

9 THE COURT: Thank you, ma'am.
10 Anyone else?

11 (No response)

12 THE COURT: Is any member of the jury panel
13 friends with or associates with any person who has worked
14 for the York County Public Defender's Office or any criminal
15 defense attorney? If so, please stand.

16 (No response)

17 THE COURT: Has any member of the jury panel
18 worked for the York County Public Defender's Office or any
19 attorney engaged in criminal defense work? If so, please
20 stand.

21 (No response)

22 THE COURT: Does any member of the jury panel have
23 any beliefs, religious or otherwise, that would prevent you
24 from rendering judgment against another person? If so,
25 please stand.

1 (No response)

2 THE COURT: I'm going to ask you now three
3 questions. The responses to some of them -- I don't want
4 you to respond in open assembly to these questions. What I
5 will do instead is ask you to wait until I have gone through
6 all of the three questions. And if you need to respond to
7 one, or more, of these questions, or one, or more, of these
8 questions apply to you, I'll ask you to wait until I have
9 gone through all three questions. Then I'll get you to come
10 to the center aisle and we will bring you down front one at
11 a time and take your responses next to the court reporter
12 where we can do that with a little more privacy.

13 Here are the questions:

14 Have you or a member of your immediate family or a
15 close friend ever been the victim of the crime of indecent
16 exposure or other similar crime? That's the first question.

17 The second question is have you or a member of
18 your immediate family ever been suspected of, investigated,
19 or arrested for the offense of indecent exposure or other
20 similar crimes?

21 And the third and last question, have you or a
22 member of your immediate family ever suspected of,
23 investigated, or arrested for the offense of resisting
24 arrest or other similar crimes?

25 Those are the three questions. If you need to

1 respond to one of these three question, I'll ask that you
2 come to the center aisle at this time and we will take your
3 responses down front.

4 (Whereupon, Juror Number 2 approached the bench)

5 THE COURT: Give us your name and number, please.

6 JUROR NUMBER 2: My name is Angela Purcell and I'm
7 number 2.

8 THE COURT: Okay. Yeah.

9 JUROR NUMBER 2: This is so embarrassing.

10 THE COURT: That's why we are doing it right here.

11 JUROR NUMBER 2: My husband was actually arrested
12 for indecent exposure at one time. He was playing in a band
13 and the whole idea was for the band to play in the nude and
14 they were raided at that particular club. This was many
15 years ago, but he is my husband and he was arrested for it.

16 THE COURT: Let me ask you whether there is
17 anything about your experiences in that regard that would
18 interfere in any way with your ability to give both the
19 State and the defendant a fair and impartial trial in this
20 case?

21 JUROR NUMBER 2: I don't believe so. I'm fairly
22 open minded. I can put it aside.

23 THE COURT: That's what I was going to ask. Could
24 you listen to the testimony and evidence and the law as
25 instructed by the court and render a decision which would be

1 fair and impartial to both sides? Could you do that?

2 JUROR NUMBER 2: I believe so.

3 (Whereupon, Juror Number 2 returned to the jury
4 venire panel)

5 (Whereupon, the bench conferences were concluded)

6 THE COURT: Just a couple more questions, ladies
7 and gentlemen.

8 Has any member of the jury panel had any prior
9 knowledge about this case from any source before coming here
10 to court today? If so, please stand.

11 (No response)

12 THE COURT: Has any member of the jury panel
13 formed or expressed an opinion as to the guilt or innocence
14 of the defendant Danny Lee Thomas? If so, please stand.

15 (No response)

16 THE COURT: Is any member of the jury panel
17 conscious of any interest, bias or prejudice for or against
18 the defendant Danny Lee Thomas? If so, please stand.

19 (No response)

20 THE COURT: Can each member of the jury panel give
21 both the State and the defendant Danny Lee Thomas a fair and
22 impartial trial in this case? If not, please stand.

23 (No response)

24 THE COURT: Does any member of the jury panel know
25 of any reason whatsoever why he or she should not serve as a

1 juror in this particular case? If so, please stand.

2 (No response)

3 THE COURT: Any additional questions requested of
4 the jury panel from the State?

5 MS. BENDER: No, Your Honor.

6 THE COURT: From the defense?

7 MR. BARROWCLOUGH: No, sir, Your Honor.

8 THE COURT: All right. Madam Clerk, please give
9 us a jury.

10 THE CLERK: When your name is called, please bring
11 all of your belongings and stand by the bailiff..

12 Number 2, Angela Purcell.

13 What say you for the State?

14 MS. BENDER: Please excuse the juror.

15 THE CLERK: You may return to your seat.

16 Number 218, Hayes Thomas.

17 What say you for the State?

18 MS. BENDER: Please present the juror.

19 THE CLERK: Defense?

20 MR. BARROWCLOUGH: Please excuse the juror.

21 THE CLERK: You may return to your seat.

22 Number 133, Brian McCullough.

23 What say you for the State?

24 MS. BENDER: Please present the juror.

25 THE CLERK: Defense?

1 MR. BARROWCLOUGH: Please swear the juror.
2 THE CLERK: You may have a seat in the jury box.
3 Number 252, Kamilah Cannon.
4 What say you for the State?
5 MS. BENDER: Please excuse the juror.
6 THE CLERK: You may return to your seat.
7 Number 166, Edwin Payne.
8 What say you for the State?
9 MS. BENDER: Please present the juror.
10 THE CLERK: Defense?
11 MR. BARROWCLOUGH: Please excuse the juror.
12 THE CLERK: You may return to your seat.
13 Number 65, Crystal Fewell.
14 What say you for the State?
15 MS. BENDER: Please present the juror.
16 THE CLERK: Defense?
17 MR. BARROWCLOUGH: Please swear the juror.
18 THE CLERK: You may have a seat in the jury box.
19 Number 115, Barbara Lashelle.
20 What say you for the State?
21 MS. BENDER: Please present the juror.
22 THE CLERK: Defense?
23 MR. BARROWCLOUGH: Please swear the juror.
24 THE CLERK: You may have a seat in the jury box.
25 Number 205, Kimberly Stacy.

1 What say you for the State?

2 MS. BENDER: Please present the juror.

3 THE CLERK: Defense?

4 MR. BARROWCLOUGH: Please swear the juror.

5 THE CLERK: You may have a seat in the jury box.

6 Number 184, Donna Rodman.

7 What say you for the State?

8 MS. BENDER: Please present the juror.

9 THE CLERK: Defense?

10 MR. BARROWCLOUGH: Please excuse the juror.

11 THE CLERK: You may return to your seat.

12 Number 201, Tanya Smith.

13 What say you for the State?

14 MS. BENDER: Please present the juror.

15 THE CLERK: Defense?

16 MR. BARROWCLOUGH: Please swear the juror.

17 THE CLERK: You may have a seat in the jury box.

18 Number 16, Ebony Boller.

19 What say you for the State?

20 MS. BENDER: Please present the juror.

21 THE CLERK: Defense?

22 MR. BARROWCLOUGH: Please swear the juror.

23 THE CLERK: You may have a seat in the jury box.

24 Number 156, Ivory Murray.

25 What say you for the State?

1 MS. BENDER: Please present the juror.

2 THE CLERK: Defense?

3 MR. BARROWCLOUGH: Please swear the juror.

4 THE CLERK: You may have a seat in the jury box.

5 Number 103, Alyssa Jones.

6 What say you for the State?

7 MS. BENDER: Please present the juror.

8 THE CLERK: Defense?

9 MR. BARROWCLOUGH: Please swear the juror.

10 THE CLERK: You may have a seat in the jury box.

11 Number 49, Nancy Daniel.

12 What say you for the State?

13 MS. BENDER: Please present the juror.

14 THE CLERK: Defense?

15 MR. BARROWCLOUGH: Please swear the juror.

16 THE CLERK: You may have a seat in the jury box.

17 Number 175, Charlene Potts.

18 What say you for the State?

19 MS. BENDER: Please present the juror.

20 THE CLERK: Defense?

21 MR. BARROWCLOUGH: Please swear the juror.

22 THE CLERK: You may have a seat in the jury box.

23 Number 28, Steven Brown.

24 What say you for the State?

25 MS. BENDER: Please present the juror.

1 THE CLERK: Defense?

2 MR. BARROWCLOUGH: Please swear the juror.

3 THE CLERK: You may have a seat in the jury box.

4 Number 171, Amanda Piercy.

5 What say you for the State?

6 MS. BENDER: Please present the juror.

7 THE CLERK: Defense?

8 MR. BARROWCLOUGH: Please swear the juror.

9 THE CLERK: You may have a seat in the jury box.

10 This is for the alternate.

11 Number 36, Sherry Carter.

12 What say you for the State?

13 MS. BENDER: Please present the juror.

14 THE CLERK: Defense?

15 MR. BARROWCLOUGH: Please excuse the juror.

16 THE CLERK: You may return to your seat.

17 Number 38, Carla Clarke.

18 What say you for the State?

19 MS. BENDER: Please present the juror.

20 THE CLERK: Defense?

21 MR. BARROWCLOUGH: Please excuse the juror.

22 THE CLERK: You may return to your seat.

23 Number 120, Amanda Loveland.

24 What say you for the State?

25 MS. BENDER: Please excuse the juror.

1 THE CLERK: You may return to your seat.

2 Number 194, Scott Shirley.

3 What say you for the State?

4 MS. BENDER: Please present the juror.

5 THE CLERK: Defense?

6 MR. BARROWCLOUGH: Please swear the juror.

7 THE CLERK: You may have a seat in the jury box.

8 THE COURT: Any questions concerning the selection
9 process, from the State?

10 MS. BENDER: No, Your Honor.

11 THE COURT: From the defense?

12 MR. BARROWCLOUGH: No, sir, Your Honor.

13 THE COURT: Ladies and gentlemen of the jury panel
14 who were not selected for this particular case, we are going
15 to go ahead and excuse you for the balance of the day and
16 ask you, if you will, to please call in tonight anytime
17 after seven o'clock to your voicemail number. You will get
18 instructions then when you need to either call back or
19 report back, as the case may be.

20 Please enjoy your afternoon. Thank you for your
21 patience. You are free to go.

22 (Whereupon, the jury venire panel left the
23 courtroom)

24 THE COURT: Ladies and gentlemen of the jury
25 panel, if you would give me your attention, please. It's,

1 by the courtroom clock, about five after one, so we are
2 going to go ahead and get some lunch. We wanted to go ahead
3 and get a jury selected and excuse those who were not going
4 to be serving on this jury.

5 A few words -- I will give you an instruction once
6 you come back about what to expect and the format of the
7 trial, but for now, please, when we take a break for lunch,
8 please do not discuss this case among yourselves or with
9 anyone else you might see on the lunch break, and I'll
10 explain the reasons for that a little bit later. If anyone
11 should try to discuss the case with you during the break,
12 please do not discuss it with them but leave and report that
13 attempt to me through the bailiff or the clerk of court and
14 I will deal appropriately with that person. No one should
15 try to discuss the case with you. If they do, I certainly
16 wish to be made aware of it.

17 I'm going to ask you to do one thing, though,
18 before you go to lunch. I'm going to ask you to go back
19 into the jury room and elect from the first twelve jurors
20 chosen a foreperson.

21 Let me explain to you the role of the foreperson.
22 The foreperson is asked to serve as the spokesperson for the
23 jury back to the court. So if there is a matter that needs
24 to come to the attention from the jury to the court, we
25 would ask that the foreperson write the message down on the

1 tablet that would be provided for you back in the jury room,
2 give that to the bailiff. The bailiff will bring it to me
3 and I will correspond in like manner.

4 We also ask that the foreperson serve as the
5 moderator, once we reach the deliberative stage of the
6 trial, to maintain the order and deliberations and make sure
7 everyone is allowed to participate and to be heard in
8 deliberations.

9 And then, finally, once the unanimous verdict is
10 reached by the jury, to record that verdict on a verdict
11 form which will be provided to you and explained to you at
12 the appropriate time, at the conclusion of the trial.

13 Now, the primary role of the foreperson is the
14 same as every other juror, and that's to listen carefully to
15 the testimony and evidence so that person would be in a
16 position to deliberate and help reach a verdict in this
17 case.

18 Now, once you have elected the foreperson, if that
19 person would write their name and juror number down on the
20 tablet and give it to the bailiff on the your way out and
21 the bailiff will give that to me.

22 Thank you. Please retire to the --

23 I will tell you this as well. When you come back
24 from lunch and you go into the jury room, if you have
25 something in the jury room that you wish to bring back to

1 the jury box to sip on or drink as we go through the trial,
2 you are welcome to do that. The clerk, who is in charge of
3 the courtroom, allows that, and this court does too. So if
4 you have some water, Coke, tea, or something like that you
5 want to bring into the jury box, you are welcome to do that.

6 Again, please retire to the jury room and elect
7 the foreperson. After that you can retire for lunch.

8 What I'm going to ask you to do is to be back in
9 the jury room ready to go at 2:15. That should give
10 everybody plenty of time to get lunch and get back in the
11 jury room. Thank you.

12 Please retire to the jury room.

13 (The following takes place outside the presence of
14 the jury panel)

15 THE COURT: All right. Anything else we need to
16 address out of the presence of the jury at this time?

17 MS. BENDER: No, Your Honor.

18 MR. BARROWCLOUGH: No, sir, Your Honor.

19 THE COURT: All right. Was the defendant
20 incarcerated or not?

21 MR. BARROWCLOUGH: Yes, sir.

22 THE COURT: He is. Well, of course, he will
23 remain incarcerated then if he was incarcerated.

24 (Whereupon, proceedings were recessed)

25 (Whereupon, proceedings were reconvened)

1 THE COURT: Counsel, is there anything we need to
2 address before we get started?

3 MR. BARROWCLOUGH: Nothing from the defense, Your
4 Honor.

5 MS. BENDER: Nothing from the State, Your Honor.

6 THE COURT: All right. Madam Clerk, we will have
7 to swear in the jury. We haven't done that yet.

8 All right, for the attorney's information, the
9 jury has selected Charlene Potts, juror number 175, as the
10 foreperson.

11 MR. BARROWCLOUGH: Thank you, Your Honor.

12 THE COURT: Counsel, we will swear the jury panel.
13 I'm going to give them a little preliminary instruction as
14 the first jury of the week, and then we will get started
15 right away with opening statements.

16 Please bring the jury in.

17 (The following takes place in the presence of the
18 jury panel)

19 THE COURT: Good afternoon, ladies and gentlemen
20 of the jury panel. I have your note indicating that you
21 have elected Charlene Potts, juror number 175, as your
22 foreperson.

23 Ma'am, you are Ms. Potts in the front row, is that
24 correct?

25 JUROR NUMBER 175: I am.

1 THE COURT: Thank you.

2 The clerk will now please swear the jury panel.

3 THE CLERK: Please stand and raise your right
4 hand.

5 You shall well and truly try and in true
6 deliverance make between the State of South Carolina and the
7 defendant at the bar whom you shall have in charge and a
8 true verdict give according to the evidence and the law, so
9 help you God? Please acknowledge by saying I will.

10 JURY PANEL: I will.

11 THE CLERK: Have a seat.

12 THE COURT: Thank you. Please be seated.

13 Madam Forelady, members of the jury panel, I'm
14 going to give you what I call a preliminary instruction
15 about the format of the trial and what to expect as we go
16 through the trial. This is expected to be a fairly short
17 trial, as trials go, but, nevertheless, I'm going to give
18 you some idea of what's going to go on during the trial so
19 that you will be a little more comfortable in these
20 unfamiliar surroundings.

21 The first thing that will happen after I have
22 completed this instruction to you is that an attorney for
23 the State, who is an assistant solicitor, will make an
24 opening statement to you. And then the attorney for the
25 defendant will have the same opportunity to address you in

1 opening statement. These opening statements by the
2 attorneys are not evidence, but you should pay close
3 attention because they are, in essence, going to identify to
4 you what they perceive or say the issues in this case are.

5 After they have made their opening statements to
6 you, then the State will proceed by presenting the testimony
7 and evidence they want you to consider.

8 The reason the State goes first is that the State
9 has the burden of proof in this case. There is no burden of
10 proof upon the defendant to prove his innocence. The burden
11 of proof is upon the State of South Carolina to prove the
12 charges against this defendant by evidence that satisfies
13 you, the jury, beyond a reasonable doubt before you can
14 return a verdict of guilty. If the State fails to meet that
15 burden of proof, then your verdict must be not guilty.

16 After the assistant solicitor has presented to you
17 the evidence they want you to consider on behalf of the
18 State, then the same opportunity will be afforded to the
19 defense. The defendant may, but is not required to, present
20 any testimony or evidence, because the State has the burden
21 of proving the defendant guilty beyond a reasonable doubt.
22 The defendant does not have to prove he is innocent. He is
23 presumed innocent and that presumption of stays with him
24 throughout the trial and may only be removed if the State
25 meets its burden of proving the guilt of the defendant

1 beyond a reasonable doubt.

2 Now, what is evidence in the case? Evidence is
3 the sworn testimony you will hear from the witness stand to
4 my right, exhibits admitted into the record for your
5 consideration by me, the presiding judge, and any
6 stipulation of counsel.

7 Now, exhibits may take many forms, such as
8 documents, pictures, videotapes, maps, diagrams, and so
9 forth.

10 Stipulations are agreements of facts by the
11 attorneys. If the attorneys enter into a stipulation, that
12 would be made known to you and you can consider that
13 agreement or stipulation of fact, along with all of the
14 other facts and evidence in the case. Give it such weight
15 as you determine it to be appropriate once you begin your
16 deliberations.

17 You may not consider anything that you heard from
18 any other source about this case in making your decision
19 because that is not evidence.

20 After you have heard all of the evidence, the
21 State and the defendant will once again appear before you
22 and make what we call closing arguments. And we call them
23 arguments because the attorneys are allowed at that time to
24 argue their positions, will attempt to persuade you as to
25 their position or view of the facts.

1 When you have heard final arguments of counsel, I
2 will then charge you, which simply means to instruct you, as
3 to the law that applies to the issues in this case. You
4 will then retire to the jury room to deliberate and reach
5 your verdict.

6 That's how a case is tried in General Sessions
7 Court, whether it be this case or any other case. Some
8 cases take a half a day or a day. Some cases take weeks,
9 but the same format applies in every case.

10 As the trial judge I have three functions to
11 perform during the trial. I am the presiding officer, and,
12 therefore, see that the trial is run in an orderly manner.
13 I decide based on rules of civil and criminal procedure
14 whether testimony and exhibits are admissible into evidence
15 for your consideration. And at the conclusion of the trial
16 I instruct you as to the law you must apply to the facts in
17 this case in reaching your verdict.

18 You, ladies and gentlemen, are also judges in this
19 case. You are the judges of the facts. In other words, you
20 determine the truth of the facts in this case. Under our
21 Constitution I'm not permitted as the judge of the law to
22 have an opinion about the facts, so I do not get into
23 whether I believe a witness or not. That is not my
24 function. I'm not even permitted to express an opinion, if
25 I had one, as to the facts in this case. So you, the

1 jurors, determine what is the truth of the facts.

2 Now, I do not permit jurors to take notes during
3 the trial because it's my experience that while writing
4 notes you may miss something very important for you to hear
5 and you may fail to observe a witness when testifying. It
6 is important that you pay careful attention to all testimony
7 and introduction of evidence, since you must judge the
8 credibility or believability of the witnesses and the weight
9 to give all evidence introduced into this case in
10 determining the truth of the facts.

11 During the trial the attorneys may object to the
12 admissibility of certain testimony or other evidence. I
13 will either sustain the objection, which means I agree, and
14 the testimony or evidence may not be made part of the record
15 for your consideration; or, I will overrule the objection,
16 which means as the judge of the law I have determined that
17 it is admissible as part of the record for your
18 consideration. The mere fact that I have admitted it does
19 not mean that you must believe it or disbelieve it. I have
20 simply determined that it is admissible under our rules.
21 And it is up to you then to believe it or disbelieve it and
22 to assign such weight to it as you determine to be
23 appropriate.

24 At the conclusion of the trial when we send you to
25 the jury room every exhibit that is admitted into evidence

1 would be sent to the jury room for you to examine further.
2 and to consider.

3 Madam Forelady, members of the jury panel,
4 whatever your verdict in this case is, it must be your
5 unanimous verdict. All twelve jurors must agree on the
6 verdict which the foreperson would be authorized to write on
7 behalf of the jury.

8 Madam Forelady, ladies and gentlemen, you are not
9 to discuss this case at any time during the trial until I
10 tell you, and that will not occur until you have received
11 all of the evidence and I have instructed you upon the law.
12 You should not discuss the case among yourselves or you
13 should not discuss it with your family, friends, or anyone
14 else you might see on a recess from court. If you overhear
15 their parties, their attorneys, their witnesses talking
16 about the case outside of the courtroom, you should not
17 listen and move away.

18 Now, if there should be any media coverage of this
19 trial, and I do not know of any, and there may very well not
20 be any, but if there should be any news coverage of this
21 trial, please to not read, listen to, or watch any media
22 account of this trial until after the trial is over and the
23 verdict is in. If there should be any media coverage, and
24 again there may not be, but if there should be and someone
25 wanted to save it for you until after the trial, you are

1 welcome to read, listen to, or watch any media account of
2 this trial once the trial is over and the verdict is in.

3 I'm well aware that a lot of people get their
4 information over the Internet these days. Please do not go
5 on the computer or on the Internet to try to find out
6 anything about this case or try to get any information about
7 this case or to read any kind of media account, if there
8 should be any, which might appear over the Internet.

9 It's very important -- we can't guarantee the
10 accuracy of any other account of this trial, and it's very
11 important that you make your decision solely on the sworn
12 testimony and evidence that comes in during the trial and
13 not from any other source.

14 Now, I'm concerned about your comfort and your
15 ability to see and hear the testimony and evidence so you
16 can properly do your job. I will try to take a break about
17 every hour and a half. If you need a break before the time
18 a break is taken, just raise your hand and let me know, your
19 right hand, and I will take a break as quickly after that as
20 I can.

21 If you cannot see or hear something you need to
22 hear or see during the course of this trial, I'll try to
23 anticipate that, but some of you are much further away from
24 the witness stand than where the attorneys might be standing
25 than I. So if you cannot hear or see, please do not

1 hesitate to raise your right hand and let me know and I'll
2 make sure that you are able to hear and see so you can
3 properly do your job.

4 Now, if you wish to communicate with the court,
5 other than needing a break or the inability to see or hear,
6 please write the message down on a tablet provided for you
7 back in the jury room. Give that to the bailiff and the
8 bailiff will bring it to me and I will either correspond in
9 like manner or I will bring you back out in the courtroom
10 and respond, as the case need be. That's how we should
11 communicate, you now having been sworn as jurors in this
12 case.

13 Now, I ask that -- we are to that part of the
14 trial where counsel will make their opening statements to
15 you. I ask that you listen attentively now as counsel
16 address you in opening statement.

17 Counsel, ready to proceed.

18 MS. BENDER: Yes, Your Honor.

19 May it please the court?

20 THE COURT: Solicitor.

21 MS. BENDER: Good afternoon. My name is Marina
22 Bender. This is Erin Joyner. We are the assistant
23 solicitors and we are handling this case.

24 Ladies and gentlemen, we are here today because
25 the defendant is charged with indecent exposure and

1 resisting arrest.

2 You will hear from Sergeant Cribb on the stand
3 today that on September 4th, 2010, that night he was going
4 from one stop he had just had down Tigler Street and he came
5 upon a man sitting on a boulder two feet from the road. As
6 he pulls closer, his lights shown on the defendant sitting
7 on a boulder, pants down around his knees, his genitals in
8 full public view of the street in front of him.

9 Officer Cribb, as you will hear on the stand, he
10 attempted to approach the defendant. In his attempt, he got
11 out of the car, went to the front of the car and the
12 defendant pulled up his pants and took off, took off down
13 the road and into some brush. Officer Cribb will say that
14 he pursued him, ran after him down the road, screaming
15 "stop, you are under arrest." He didn't stop.

16 Officer Cribb eventually caught up to him, took
17 him down and he was punched to the face multiple times. The
18 defendant got away again.

19 This happened three more times. This kind of
20 struggle happened three more times before this defendant was
21 subdued enough to be handcuffed.

22 Officer Stewart will get on the stand and tell you
23 that he came on the scene that night and had two grown men,
24 Officer Cribb and Sergeant -- Officer Cribb and Sergeant
25 Stewart, it took two grown men to subdue him and handcuff

1 the defendant.

2 I'm going to charge you on the law -- or going to
3 explain the law in this case. You are the fact finders.
4 You listen to evidence. You come to your conclusion. The
5 judge will charge you on the law at the end of the case.

6 The crime of indecent exposure requires two
7 things. It requires that a person, one, willfully,
8 maliciously and indecently exposed his person.

9 And, two, in a public place or in a view of any
10 person on a street or highway.

11 It means exactly what it means. It's what it
12 sound like it means.

13 Second, the defendant is charged with resisting
14 arrest. Under the law of resisting arrest, there are two
15 types. There is subsection A. That's just when a person
16 refuses to willfully obey a law enforcement officer, meaning
17 he struggles probably as he's putting the handcuffs on him.
18 He puts up a little struggle. That's not what the defendant
19 is charged with today. He's charged with Subsection B.

20 Subsection B requires three things.

21 A person knowingly and willfully;

22 Two, assaults, beats, or wound an officer when the
23 person is resisting arrest;

24 And, three, that arrest is being made by someone
25 the person knows or reasonably should know is a police

1 officer.

2 Ladies and gentlemen of the jury, I ask today that
3 you weigh all the evidence that's presented to you and at
4 the end of this case I will ask you that you find a verdict
5 that speaks the truth in this case and find the defendant
6 guilty of resisting arrest and indecent exposure. Thank
7 you.

8 THE COURT: Counsel.

9 MR. BARROWCLOUGH: May it please the court?

10 THE COURT: Yes, sir, counsel.

11 MR. BARROWCLOUGH: Ladies and gentlemen, on
12 September 4th, 2010, my client, Danny Thomas, was sitting on
13 a rock in the dark by some woods, alone, and he was about to
14 have a smoke, and Officer Cribb rolled up on Mr. Thomas out
15 of the dark in his patrol car and he observed Mr. Thomas had
16 a lighter in his hand, something in his other hand, and
17 Officer Cribb got out of his car and approached Mr. Thomas,
18 and Mr. Thomas took off and ran down the wood line. He did
19 not run because his pants were down. He ran because there
20 was some drug paraphernalia next to him on the rock. He ran
21 approximately 30 feet down the wood line and then cut into
22 the woods. Officer Cribb chased him into the woods. And
23 the chase ensued in the woods and Officer Cribb did sustain
24 some scratches from the underbrush. I'm sure there will be
25 some pictures of some scratches to his arms and some

1 scratches on his face, although it's important to note those
2 scratches were from the brush, not from Mr. Thomas; that in
3 the brush there was a struggle and that Mr. Thomas
4 ultimately was tackled and taken into custody. During that
5 process Mr. Thomas was screamed at, threatened, threatened
6 with being shot, and tasered multiple times.

7 And, ladies and gentlemen, if all of that sounds a
8 little extreme to you for some drug paraphernalia, maybe you
9 can begin to see why the serious, yet bogus, allegations are
10 being made.

11 Let me say Mr. Thomas did not assault, beat, or
12 wound Officer Cribb, and Mr. Thomas did not willfully and
13 maliciously expose himself to anybody. He did not assault,
14 beat, or wound Officer Cribb, and he did not willfully and
15 maliciously expose himself.

16 Now, on August 4th, 2010, warrants were obtained
17 against Danny Thomas for these charges. In South Carolina
18 the way that a warrant is obtained is that an officer, like
19 Officer Cribb, can go and tell a magistrate their version of
20 what happened. And that process does not involve the
21 requirement of any additional evidence. The version that is
22 given by an officer is not challenged, it's not questioned.
23 It's just given to the magistrate. And then a warrant is
24 issued. The charge is instituted.

25 But, ladies and gentlemen, today you are in

1 General Sessions Court. This is the highest criminal court
2 in South Carolina. And as the solicitor just noted, they
3 are going to ask you to convict Mr. Thomas of these charges.
4 And as the judge told you, the burden of proof in criminal
5 court is that the State must prove these charges beyond a
6 reasonable doubt.

7 And the judge will also tell you that the law says
8 that a reasonable doubt is the type of doubt that would
9 cause a reasonable person to hesitate to act, or to hesitate
10 to convict. To have some hesitation. And that that
11 hesitation may come from the evidence in the case, something
12 that doesn't seem right, something that doesn't make sense
13 to you; or, that hesitation may come from something that's
14 missing in the case, something that you want to see or
15 something that you expect to see if the charges were true.
16 And the law says, and I'm sure the judge will tell you, that
17 Mr. Thomas, as a criminal defendant charged in South
18 Carolina, is entitled to the benefit of every reasonable
19 doubt.

20 And, ladies and gentlemen, I say all that to say
21 this. The State's case that they are about to present to
22 you is going to be no more thorough, no more detailed, no
23 more persuasive, of no more quality than what was presented
24 to the magistrate ten months ago. Only this time Officer
25 Cribb's version will be subject to cross-examination, will

1 be subject to questions. It will be challenged. You will
2 see that there are parts of that story that don't make
3 sense, and you will see that there are parts of that story
4 that are not consistent with the pictures and video in this
5 case. And you will see the way that the video in this case
6 was obtained, copied, and what decisions were made about
7 what video may get into evidence.

8 All of those things, ladies and gentlemen, all of
9 those things will be challenged, and at the end of this
10 trial, ladies and gentlemen, you will see that Officer
11 Cribb's story can't be believed beyond a reasonable doubt.
12 Officer Cribb's version can't be believed without
13 hesitation. Officer Cribb's story can't be believed. And
14 that's why at the end of this case, ladies and gentlemen, I
15 will ask you to find Mr. Thomas not guilty. Thank you.

16 THE COURT: The State may call its first witness,
17 please.

18 MS. BENDER: The State would call Sergeant Cribb.

19 OFFICER D. SCOTT CRIBB, having been first duly
20 sworn, testified as follows:

21 MS. BENDER: If it please the court?

22 DIRECT EXAMINATION BY MS. BENDER:

23 Q. Good afternoon. Thank you for being here.

24 Would you please state your name for the court?

25 A. Scott Cribb.

1 Q. And what is your occupation?

2 A. I'm a sergeant at the Rock Hill Police Department.

3 Q. And what type of work do you do in -- or what position
4 do you hold?

5 A. I'm a patrol sergeant currently.

6 Q. And what type of work do you do under that position?

7 A. I supervise a patrol team. I also respond in for calls
8 for service; accidents, shopliftings, things of that nature.

9 Q. How long have you been employed at Rock Hill?

10 A. I have been with the Rock Hill Police Department for
11 about a year and a half.

12 Prior to that I worked for almost 10 years with the
13 Columbia Police Department.

14 Prior to that I was a reserve officer with the
15 Charleston Police Department for about a year.

16 Q. Were you employed in your present capacity the night of
17 the September 4th, 2010?

18 A. Yes, I was.

19 Q. I would like to draw your attention to that night.
20 Where were you that night?

21 A. During this incident I was actually -- I had just
22 stopped a moped on Tigler Street right at Saluda and I was
23 clearing up from that traffic stop.

24 Q. Are you familiar with this area, Tigler?

25 A. I am now. During the night of this incident that's the

1 first time I had ever driven on Tigler or Fouche Street.

2 Q. Sergeant Cribb, I'm going to hand you what's been
3 marked as Exhibit 1 for identification.

4 A. This is --

5 Q. Do you recognize that area?

6 A. Yes, ma'am, I do.

7 Q. What is it?

8 A. It's an aerial shot of the block where this incident
9 took place. On the top side of the picture, that's Saluda
10 Road.

11 The road that's going down kind of to the left of the
12 picture is Blake Street.

13 The one coming off of Blake Street running diagonally
14 from top left to the bottom right is Fouche Street.

15 Fouche Street curves around. There is two houses in
16 the corner and turns into Tigler, which comes back out to
17 Saluda Road.

18 Q. And how did you become familiar with this location?

19 A. As I said, that night I had just stopped a moped at
20 corner of Tigler and Saluda. And once I cleared the traffic
21 stop, I drove around Tigler here, which becomes Fouche
22 Street, and we're driving back out towards Blake. That's
23 the first time I had ever driven down that road. I'm
24 familiar with the surrounding area. I had just never driven
25 down that one little stretch of road.

1 Q. And does this photograph that you have fairly and
2 accurately depict the road and the location as it appeared
3 that night on September 4th, 2010?

4 A. Yes, it does.

5 Q. Are there any material alterations or deletions from
6 that photograph?

7 A. I don't -- I don't know of any, no, ma'am.

8 Q. Okay.

9 MS. BENDER: Your Honor, the State offers State's
10 Exhibit 1 for admission.

11 MR. BARROWCLOUGH: Your Honor, I don't have any
12 objection to that picture.

13 MS. BENDER: Okay.

14 THE COURT: It's admitted without objection.

15 MS. BENDER: I request permission to publish
16 State's Exhibit 1.

17 THE COURT: You may publish it.

18 BY MS. BENDER:

19 Q. I will give you a laser pointer and ask you to point to
20 certain locations.

21 A. Okay.

22 Q. Sergeant Cribb, could you please point out on the map
23 what direction you were coming from the night of September
24 4th, 2010?

25 A. Well, when I initiated the initial traffic stop on the

1 prior incident, I was coming southbound Saluda. And right
2 here where it's kind of cut off, when you turn that corner,
3 this is Tigler Street. I stopped the moped right up here at
4 the corner of the intersection.

5 Q. Okay. So what direction were you coming towards the
6 street that you --

7 A. I was coming southbound on Saluda. This is Saluda
8 here. I made that traffic stop.

9 Whenever I cleared the traffic stop, I would have been
10 going approximately south, southwest down Tigler Street,
11 which is this part of the road right here.

12 Q. And where on that map was the defendant when you came
13 upon him?

14 A. He was actually on Fouche Street, which it turns into
15 Fouche down here at this curve. And you can't see in the
16 picture, but there is a stop light right up here before you
17 get to Blake Street.

18 And just a very short distance, somewhere right in this
19 area, there is a large what I call a boulder. It's a big
20 rock. It's probably two to three feet in diameter, just a
21 large rock, and there is a lot of debris around it. There
22 was roofing shingles, just a bunch of trash. It almost
23 looked like a trash pile with a big boulder in the middle of
24 it.

25 Q. And when you came upon the defendant, did you know him?

1 A. No, ma'am, I had never met him before in my life.

2 Q. And what made you stop him and attempt contact?

3 A. Well, as I'm driving down Fouche Street there, it's
4 kind of dark down through there, as I'm coming up to Blake
5 Street, as I say, I'm just clearing this traffic stop and
6 coming back around. As my headlights hit him, I saw him
7 kind of sitting on the side of the road. I saw some
8 movement which kind of caught my attention. And as I am
9 getting within probably 15 or 20 feet of him I realized it's
10 a person sitting there. I had stopped my patrol vehicle
11 right beside where he's sitting, which is only a couple feet
12 off the road.

13 Q. And how did you see him that time of night?

14 A. Initially with my headlights. As I stopped my patrol
15 vehicle beside him, I actually turned on my alley lights,
16 which are the white lights that are on the ends of the light
17 bar so I can see, so to speak, down an alley.

18 Q. And what kind of car were you driving on September 4th,
19 2010?

20 A. 2009 Chevy Impala.

21 Q. Was that a -- what kind of car was that?

22 A. That's my assigned patrol vehicle. It's a marked
23 patrol vehicle. It's white. It's got multi-colored
24 markings on it. It's striped and says police in large
25 letters down both sides on the front and back.

1 Q. And what were you wearing?

2 A. The same type of uniform I'm wearing today. However, I
3 was in long sleeves. It was that time of year when -- I'm
4 sorry, this was September. We were in short sleeves, so it
5 would be the same uniform I'm wearing today.

6 Q. Could you please describe what happened once you exited
7 your patrol vehicle?

8 A. When I got out of my patrol vehicle I tried to be kind
9 of nonchalant. I saw him sitting there. Anytime I'm
10 dealing with someone I don't know, I try to kind of keep
11 them at ease so I can kind of see what's going on. I get
12 out of my car. I'm walking around the front driver's side
13 corner of my patrol car, which is on the opposite side from
14 where he is. As I get to that front corner and I said
15 something like, "hey, what's going on," or "how are you
16 doing," just kind of something to break the ice, he jumps up
17 off the rock, pulls up his pants, which were down around his
18 knees exposing his genitals, and he took off running. You
19 know, at that point I gave pursuit.

20 Q. And which direction -- on the map can you show -- when
21 you went in pursuit of him, what direction did he run?

22 A. Well, he was sitting right in here. Whenever he took
23 off running, my patrol car is facing back towards Blake
24 Street, so it's facing to the top left corner of this photo.
25 He started running parallel to the road back towards these

1 houses. And he ran about I'm guessing maybe 30 or 40 feet
2 parallel to the road and then turned into the woods.

3 Q. You said that you saw him with his pants down --

4 A. Yes, ma'am.

5 Q. -- on the boulder?

6 A. Yes, he was -- he was sitting on the rock facing my
7 direction kind of catty-cornered. The way this photo is
8 kind of catty-cornered, he would have been kind of facing
9 this way, down. My patrol car is facing that way and he was
10 on the passenger side of my vehicle.

11 He actually had his pants down, unbuttoned, unzipped
12 and down around his knees. And, you know, he had his hands
13 up near his face with a cigarette lighter in one and
14 something else in the other. I couldn't see what it was.
15 It looked like he was smoking something.

16 Q. And he was exposed?

17 A. Yes, ma'am, I could see his genitals.

18 Q. And you said he ran up towards the houses?

19 A. Yes, ma'am. It would be kind of -- if north is
20 straight up in this picture, assuming, he would have been
21 running kind of southeast back towards these houses. Right
22 along the roadside parallel to the road.

23 Q. And where did he run to --

24 A. Well --

25 Q. -- once he --

1 A. Once he got about 30 or 40 feet down, he immediately
2 made a 90 degree turn and ran into the wood line and I
3 followed him.

4 Q. Why did you have difficulty catching up with him?

5 A. Well, once we got into the wood line, it's hard to tell
6 from these pictures, but it's very thick brush in there. A
7 lot of briers. And I say a lot of briers, it was so thick
8 that -- I mean, it was really dark. You couldn't really
9 see. I had my flashlight out about halfway through, but the
10 briers were everywhere. I kind of got disoriented in there.
11 I was getting hung up on the briers. I mean, they were
12 clinging to my uniform, my arms, the side of my face, so it
13 was real difficult to maneuver through the briers.

14 Q. And what were you doing as you were in pursuit of him?

15 A. Well, initially whenever I took off running after him,
16 I told him to stop a couple of times. I told him he was
17 under arrest. I mean, I had seen him exposed to, you know,
18 public view. And in his immediate flight when he saw me,
19 which, you know, I was in a marked patrol vehicle, in
20 uniform. He knew I was a police officer. I had yelled out
21 "stop, you are under arrest," as we were running into the
22 wood line.

23 Q. And did you catch up to him?

24 A. Yes, I did.

25 Q. And what happened then?

1 A. When I caught up to him -- he got kind of slowed down
2 by the briers. I'm not a real fast runner, but those woods
3 slowed him down a lot, just like they did me, but I was able
4 to manage to catch up to him. Whenever I actually caught up
5 to him, he had his back to me, I grabbed him. And as soon
6 as I grabbed him, he turned around and punched me in the jaw
7 and the chest.

8 Q. And then what happened after he punched you?

9 A. Well, I mean, the initial shock, you know, I realized I
10 was being assaulted. I immediately kind of, you know, took
11 a defensive posture and I punched him in the face two or
12 three times trying to defend myself.

13 Q. And where did you -- did he -- did you get him into
14 custody?

15 A. At that point, no, ma'am. Like I said, whenever he
16 punched me -- I saw this hand coming up. I didn't actually
17 see it hit me. I felt it hit me in the chest, though.

18 This hand I actually saw coming around and he hit me in
19 the right side of the jaw with a closed fist.

20 Like I said, to defend myself I threw several punches
21 back trying to disorient him. At that point we kind of
22 tussled a little bit. He broke lose and started running
23 again, started making his way -- he kind of went to the
24 right of where we had initially stopped. So at that point
25 he then kind of -- we would be somewhere right around in

1 here, maybe, and he started kind of running back in this
2 general direction a few feet, but the briars were extremely
3 thick, so he wasn't making a lot of progress. He got
4 stopped a few feet later. At that point, after already
5 being punched, I pulled my taser off my belt and turned it
6 on and fired it, hitting him in the back.

7 Q. And what happened then?

8 A. Well, I didn't get a lot of effect from the taser,
9 because the way a taser operates is you got to have enough
10 spread on the probes to lock up the muscle groups to cause
11 them to be incapacitated and fall. I was so close to him
12 that I only got about maybe a four or five inch spread on
13 the probes, which causes a lot of pain, but it won't drop
14 someone, normally, unless they are already off balance.

15 So I fired one cycle of the taser. That's the initial
16 one that -- that's where the darts actually hit him. It
17 runs for five seconds. I continued to give him commands to
18 get on the ground, stop resisting. As soon as the taser
19 stopped, he continued to resist, trying to get away, trying
20 to dig through these woods. I hit him with a second five
21 second cycle. Again a lot of pain, but it didn't drop him.

22 After that the taser wasn't being real effective, but I
23 decided to try it a third time. However, the brush was so
24 thick that the leads, the metal leads, that the darts are
25 connected to got hung up and apparently had gotten pulled

1 out of his back, because when I fired it the third time, I
2 didn't see any kind of reaction from his body.

3 The taser itself actually has kind of a flashlight on
4 the end of it, so I could see him while the taser was
5 pointed at him. I didn't see any reaction, so at that point
6 I had assumed the darts had been pulled out of his back by
7 the brush, which I later found out when I went back and
8 retrieved my cartridge from the wood line they were all
9 wrapped around the briars and stuff.

10 Q. And what did you do after -- you said that you pulled
11 the taser out of the brush. What did you attempt to do --

12 A. Well --

13 Q. -- next?

14 A. -- after the third cycle I actually pulled the
15 cartridge off the taser, realizing that it wasn't going to
16 do me any good. I threw it down and we are just kind of
17 running through the woods. I got kind of disoriented. I
18 wasn't sure exactly which way we were going.

19 Now, I already had backup coming at this point. When
20 he initially turned around, we had that initial
21 confrontation, I had got on the radio long enough to say,
22 you know, "I'm in the woods off Tigler fighting the
23 subject." You know, so I knew I had backup coming at that
24 point. I'm just trying to keep him in sight and hopefully,
25 you know, get him down to where I can hold him.

1 As we are running, we are making our way kind of
2 towards this direction over here. I get ahold of him again
3 and go face to face with him. He's putting his hands up
4 like he's going to fight. I take the taser and do what's
5 called a dry stun. And what a dry stun is is you take the
6 taser and you just depress it straight to the skin. Again,
7 a pain compliant thing. It's not going to drop him down,
8 but it causes some pain to disorient them and hopefully
9 distract them. What he did is what most people do whenever
10 you got pain, you try to stop that pain. He hit my hand or
11 the taser and knocked it away from his chest.

12 Q. And where are you at on the map? Where are you at this
13 point?

14 A. At this point when I do the dry stun, we are probably
15 closer to this area right in here. We didn't make it a
16 whole lot of distance, because, like I said, it's so thick
17 in there, but we are probably somewhere right over in here
18 I would have to guess.

19 Q. And have you attempted to get him into custody all of
20 these times?

21 A. Yes, each time I actually laid hands on him and he
22 either fought, pushed off, or with the initial incident he
23 punched me.

24 Q. And how did you finally manage to get the defendant
25 into custody?

1 A. Well, once we started making our way -- we eventually
2 came out of the woods somewhere behind these two houses and
3 actually ended up in the back yard of this first house,
4 somewhere right over in here. And as we are coming out of
5 the woods I catch up to him, I grab him, he turns around and
6 throws his hands up as if he's going to fight again. At
7 that point I threw another punch, hit him in the face, which
8 knocked him backwards. He kind of stumbled backwards and
9 immediately turned to try to run again. At that point I
10 just went into a sprint, tackled him from behind and got him
11 down on the ground. That wasn't the end of it, though. It
12 continued from that point.

13 Q. And could you please show me on the map where you began
14 pursuit and then where you ended?

15 Let's start with where you began.

16 A. The pursuit would have started right in here and ran
17 parallel down along Fouche Street, turned 90 degrees and ran
18 up into the woods 30 or 40 feet, approximately. That's
19 where the first encounter happened. Then we kind of moved
20 this direction slowly through the briars. Another
21 encounter. And then we started -- it kind of opens up a
22 little bit in part of this. The briars are mostly over in
23 this part, but it kind of opens up. We actually got a
24 little bit of running through the small trees and brush and
25 stuff before we came out of the woods here.

1 Q. Okay. And how far would you estimate that to be?

2 A. A rough guesstimate would probably be 150 feet. I'm
3 not -- I didn't actually go back and measure it, but if I'm
4 guesstimating, it's probably 150 feet.

5 Q. Sergeant Cribb, do you have a video camera in your
6 patrol car?

7 A. Yes, ma'am, I do.

8 Q. And what causes that to be activated?

9 A. There is three ways it can be activated.

10 The first obviously is by cutting on the blue lights.
11 They are wired into the blue lights. When you turn the blue
12 lights on, it sends a signal and it turns them on. It turns
13 on the camera so that it starts recording.

14 The second way is that you can manually do it. It
15 basically works just like a VCR. It's got a play, a record,
16 a stop button, fast forward, rewind. You can actually
17 manually hit the record button. That will start it up.
18 That has to be done from inside of the car, just like the
19 blue lights.

20 And the third way is there is actually a wireless mike
21 pack that we carry on our belts. This basically records the
22 sound out of the car. If we actually have this turned on
23 and depress this. There is a slide switch on the front of
24 it here, that when you push it down, it sends a signal to
25 the camera and it starts it recording.

1 Q. And on the night of September 4th, 2010, the night of
2 this incident, what activated your camera and microphone?

3 A. It would have been my mike, my wireless mike on my
4 belt.

5 Q. Sergeant Cribb, let me hand to you what's been marked
6 as State's Exhibit 2. You can open that.

7 Officer Cribb, on the night of September 4th was your
8 patrol or camera activated?

9 A. It did get activated during the incident.

10 Q. And what did I just hand you?

11 A. This is a DVD copy of the video from that incident. I
12 actually have a VHS recording system in my car, which is
13 pretty antiquated. What we do is whenever we have an
14 incident that we need to save the video on, we have a VCR to
15 DVD recorder and it transferred the video onto a DVD so we
16 can play it in DVD players in court.

17 Q. And how do you recognize that DVD?

18 A. This particular DVD?

19 Q. Uh-huh.

20 A. This is one of the ones that we placed into evidence
21 after the incident and the same one that we viewed in your
22 office Friday afternoon and also this morning.

23 Q. So you have had a chance to view the --

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

25 Q. And are those your initials?

1 A. Yes, ma'am, they are.

2 Q. Showing that you have viewed that DVD?

3 A. Yes, ma'am.

4 Q. And is that video or the DVD a fair and accurate
5 depiction and representation of the actual scene that you
6 observed the night and that was taped the night of September
7 4th --

8 A. Yes, it is.

9 Q. -- 2010.

10 And has this been altered or deleted? Any deletions or
11 editing in any way since it has been removed?

12 A. No, ma'am, this is the entire video from that incident
13 from beginning to end.

14 MS. BENDER: Your Honor, the State offers State's
15 Exhibit 2 for admission as evidence.

16 MR. BARROWCLOUGH: No objection, Your Honor.

17 THE COURT: It's admitted without objection.

18 MS. BENDER: And request permission to publish to
19 the jury.

20 THE COURT: You may publish.

21 (Whereupon, State's Exhibit No. 2, the DVD, was
22 played to the jury panel)

23 BY MS. BENDER:

24 Q. Sergeant Cribb, could you please describe for us what
25 we are seeing on this screen, the top of the screen?

1 A. This is the video from my patrol car. It's my assigned
2 patrol car.

3 My vehicle is sitting on Fouche Street.

4 Facing the light -- the lights you are seeing there is
5 a gas station at the corner of Heckle and Saluda Boulevard.
6 It's -- this is Blake Street running back -- this way runs
7 back into a neighborhood to the left. This side runs right
8 back out to Saluda.

9 Behind me will be the curb down there where it turns
10 into Tigler, and there is a -- in the aerial photo you will
11 see a long building. There is a car wash right over here to
12 the right-hand side that's facing Saluda.

13 Q. And what's the writing on the top of this screen that
14 we see there?

15 A. That's the statistical or data information that's I
16 guess encoded or embedded on the video automatically by the
17 system.

18 This first number is like a tape counter.

19 The second one here, it's blank right now. And when
20 you first hit record, it goes blank and that actually will
21 update and tell me how much time is left on the videotape
22 that I have in there. It's like a six hour tape. So when
23 that shows up, it may show two, three, four, five hours.
24 That's how much time I got until I got to replace the tape.

25 Obviously my name, my vehicle number, the date this was

1 recorded, the time it was recorded in hours, minutes, and
2 seconds.

3 M-1, which is showing, that's the in-car microphone.
4 It's in the back where the prisoner sits. It's audio into
5 the car.

6 M-2, which is the audio coming from my belt mike,
7 anything outside the car where I'm at.

8 Q. And at what point does this video start?

9 A. It actually starts after I had tased him a couple of
10 times. I don't recall actually starting the video. I mean,
11 there has been instances in the past where, you know, I see
12 things going south and I reach down there and bump the mike
13 just out of habit. It's a subconscious thing because we use
14 our video a lot.

15 On this particular incident I can't remember if I
16 started it or if it got started maybe by some brush or
17 something hitting my mike. I was pretty tangled up with
18 him, so it's very possible it got started whenever we were
19 running through the woods getting tangled up, but I'm not
20 really sure.

21 (Videotape started)

22 (Videotape stopped)

23 BY MS. BENDER:

24 Q. What did we just hear?

25 A. Are your referring to the clicking noise?

1 Q. Yes.

2 A. That's my taser running. That's one of the attempts
3 that I tried to dry stun him where I made the direct contact
4 with his chest. That would be the second encounter,
5 physical encounter in the woods with him, when I caught up
6 to him.

7 (Videotape started)

8 (Videotape stopped)

9 BY MS. BENDER:

10 Q. Okay. What just happened? What was all of that static
11 sound?

12 A. The audio is going in and out from my belt mike. The
13 range is not a -- it's not a real long range on these
14 things, especially with my unit. It's a very old unit. As
15 you start getting away from the vehicle and you have objects
16 in the way, obstacles, trees, houses, buildings, the audio
17 starts to fade in and out.

18 Q. And it sounded like static. What was --

19 A. Now, that's going to be like the brush and stuff
20 hitting the mike. I mean, it's very thick, viney. You can
21 actually hear it scratching against the mike at certain
22 points during it.

23 (Videotape started)

24 (Videotape stopped)

25 BY MS. BENDER:

1 Q. Okay. So the sound just went out?

2 A. Uh-huh.

3 Q. Can you explain what happened on this screen when that
4 sound went out?

5 A. Yes, ma'am. You will notice up here in this top right
6 corner M-2 has disappeared. Whenever the camera stops
7 getting a signal from my belt mike, it's out of range or
8 it's almost out of range, sometimes you will see that
9 flicker, but when it stops getting a signal about 10
10 seconds, or so, 15 seconds, sometimes it flickers a little
11 bit if it's a weak signal and whatnot, but it actually cut
12 out completely for enough time that it actually took the M-2
13 off the screen. That suggests that I'm out of range of the
14 mike -- of the car. And at this point I'm probably, like I
15 said earlier, probably 150 feet from the car guesstimate, so
16 we are probably just barely getting out of range there,
17 which is --

18 What you hear just before that is I had tackled him to
19 the ground and you will actually hear the taser cycle again.
20 I tried to dry stun him one more time in the chest while I
21 had him with his back on the ground. He was still fighting
22 me. At that point I realized the taser wasn't going to do
23 any good against this guy. I just needed to hold him,
24 because I could hear the sirens in the background, just
25 hoping help would get there so that I could get him in

1 handcuffs. I threw my taser kind of off to the side so he
2 couldn't get it, because fighting with him, obviously I
3 couldn't re-holster it, so I just kind of threw it to the
4 side, grabbed him, put him in like a headlock and held him
5 down.

6 Q. And you said he was fighting you?

7 A. Yeah, he was punching off of me trying to get me off of
8 him, just -- you know, at this point I don't recall any
9 punches actually hitting me in the face, but I could feel
10 his hands hitting me in the body just trying to get me off
11 of him.

12 He tells me a couple of times, you know, "I don't want
13 to fight you, I didn't do nothing," something of that
14 nature.

15 Q. But was he fighting you?

16 A. Yes, he was trying to get away from me. He absolutely
17 was trying to get away from me.

18 (Videotape started)

19 (Videotape stopped)

20 A. The last voice that you heard on there was Officer
21 Stewart. He is the first one to arrive to help me.

22 BY MS. BENDER:

23 Q. We are starting to hear some sound. What are we
24 hearing now?

25 A. Well, at this point -- as you noticed again, the M-2

1 dropped off the screen about 10 or 15 seconds after the
2 audio went out. At this point we are probably right on the
3 edge of the range of that thing and it's kind of fading in
4 and out.

5 Any sounds that you hear at this point is from the
6 inside of the car, whether it be the computer. You know, I
7 don't hear any music, but if the car radio was playing, you
8 might hear that. Doors opening, things of that nature, you
9 will be able to hear. Anything that -- the sound that you
10 are going to hear if you were sitting inside the car you are
11 going to hear on the video.

12 And at this point with the M-2 gone you are not getting
13 any audio from my belt mike.

14 (Video started)

15 (Video stopped)

16 BY MS. BENDER:

17 Q. What was that noise we just heard that came upon you
18 all?

19 A. It sounded like that patrol car that pulled up beside
20 me, that door closing and hear my door opening on the car.

21 And any time we chase somebody and we have left a
22 vehicle unsecured, our patrol vehicles have other weapons in
23 them. Mine particularly has an M-4 patrol rifle, various
24 equipment and stuff. As soon as we apprehended whoever we
25 are chasing we get on the radio to somebody to go and secure

1 my vehicle. That way nobody steals the vehicle or steals
2 any of the weapons or equipment that's in it. That's
3 happened a time or two over the years.

4 Q. I want to run back through what happened in that video.

5 A. Okay.

6 Q. He was resisting --

7 A. Yes, ma'am.

8 Q. -- as you have said.

9 Can you he describe how he resisted you on each
10 incident, if he did?

11 A. Well, initially he did it by fleeing, started running
12 away from me.

13 Once I caught him in the wood line, about 30 or 40 feet
14 back in the wood line, his immediate response to me grabbing
15 him from behind was to turn around and punch me in the face
16 and the chest.

17 Q. That was the first incident?

18 A. He physically assaulted me.

19 Q. And so the second incident when you caught up to him?

20 A. Struggling, trying to get away, pushing off of me. At
21 that point I don't recall any punches actually being thrown,
22 but I could feel him pushing off of me. Just a general
23 struggle.

24 Q. And were you saying things to him?

25 A. Throughout the -- throughout the incident I was telling

1 him to get down on the ground. I probably told him eight or
2 ten times to get down on the ground, hoping he would just
3 comply, because it's so hard to get through the brush I
4 couldn't physically get to him to put him on the ground, so
5 I was hoping that I could just bluff him into getting on the
6 ground. You know, by yelling at him, by giving him those
7 commands, hopefully he would hear me and just give up,
8 realizing it's futile to keep running. However, he didn't.
9 He continued to run and try to resist every time I got my
10 hands on him.

11 Q. And the third incident up near the house, what did he
12 do?

13 A. Well, once we actually left the wood line and came into
14 that back yard, we got into a little sprint. I caught up to
15 him after just a few feet, grabbed him. He turned around,
16 came up with his fists like he was getting ready to either
17 defend himself or punch me. At that point I didn't even
18 hesitate. I punched him in the face. He kind of staggered
19 backwards, just kind of stunned by it. Then he turned
20 around as he's staggering backwards and actually turned and
21 tried to run. At that point -- I decide at that point I'm
22 just going to tackle him. Get into a sprint, hit him from
23 behind, knock him down. He falls down and kind of rolls
24 over to his back. The struggle continues. You can kind of
25 hear some pushing and shoving and struggling while I'm

1 telling him to stop resisting. I'm screaming pretty loudly
2 "stop. Stop resisting."

3 Q. And he continued?

4 A. He continues to do this. I still have my taser in my
5 hand. I try to deliver another dry stun to the chest. He
6 continued to do it. Finally I just -- you know, like I said
7 earlier, the taser just wasn't working in this particular
8 incident, for whatever reason, I decided to just physically
9 hold him. So I move maneuver him into a position where I
10 could just hold him until an officer got there.

11 Q. And so what happened after the video shuts off?

12 A. Well, you will hear -- right before the audio cuts out
13 you will hear Officer Stewart actually come up telling him,
14 you know, you know, "get your hands behind your back if you
15 don't want to get shot." Trying to -- basically trying to
16 punk him out, trying to let him know that we mean business,
17 "just do what we say."

18 We get him in the handcuffs, once he gets there. After
19 the handcuffs are on we don't have any further resistance.
20 We get him up off the ground.

21 We actually had to pull his hands up, because when I
22 had tackled him his pants had fallen down again. They were
23 still unzipped and unbuttoned. We pulled his pants up,
24 walked him over to Tigler Street, which is the direction we
25 were initially running towards. We walked him out there

1 because that's where all the patrol vehicles had pulled up.
2 When they came down, they came down Saluda, including
3 Officer Stewart, and they parked their patrol vehicles all
4 down through here. So we actually walked him from this back
5 yard over here over here to Tigler Street and put him in a
6 patrol vehicle.

7 Q. And so you took the defendant from the house to the
8 patrol car on Tigler?

9 A. Yes, ma'am, we walked him over there.

10 Q. And there was a struggle. Show me where the struggle
11 was from and where the struggle ended.

12 A. The struggle -- well, from the initial incident the
13 first time we actually had contact with each other, as far
14 as physically.

15 Q. And the stop point and the start point.

16 A. I stopped right in here, which is where that rock is.
17 My patrol car is sitting in the roadway. We ran down here,
18 cut into the woods, kind of moved back and forth through
19 here as we are struggling, trying to get through the brush.
20 We come out behind this first house, which is where I threw
21 that last punch at him knocking him backwards, and
22 ultimately getting him into custody after I tackled him.
23 And then we actually walked him over here, which is probably
24 another 50 feet, or so, maybe 60 feet over to the roadway
25 and put him a patrol car. So probably -- I would say

1 distance it's probably between 150 and 200 feet, guessing,
2 from my patrol vehicle.

3 Q. I'm going to hand you what's been marked as State's
4 Exhibit'S 5.

5 Do you recognize this photo?

6 A. Yes, ma'am, I do.

7 Q. What is it?

8 A. It's a photo taken of Mr. Thomas in the city jail.

9 Q. And how do you recognize that photo?

10 A. I recognize him, the clothing he was wearing, his
11 facial features. I know this was the guy that I actually
12 saw sitting on the rock, chased through the woods, was
13 punched by, and ultimately arrested.

14 Q. And does this photograph fairly and accurately depict
15 the defendant --

16 A. Yes.

17 Q. -- as he appeared the night of September 4th?

18 A. Yes, ma'am, it does.

19 Q. And are there any alterations or deletions in that
20 photograph?

21 A. No, ma'am.

22 Q. Okay.

23 MS. BENDER: Your Honor, I offer State's Exhibit
24 5 --

25 MR. BARROWCLOUGH: No objection.

1 MS. BENDER: -- for introduction into evidence.

2 THE COURT: Admitted without objection.

3 MS. BENDER: I request to publish State's Exhibit
4 5 for the jury.

5 THE COURT: You may publish.

6 BY MS. BENDER:

7 Q. Sergeant Cribb, could you please describe in the
8 picture how the defendant appeared that night?

9 A. Well, in this picture -- it's hard to see on the
10 overhead, but when you look at the close-up here you can
11 actually see some grass and dirt on the left side of his
12 face. He's very dirty and sweaty.

13 If you look at his left hand up close you can see that
14 he's actually holding his pants up. His pants are still
15 unbuttoned. You can actually see inside of the jeans kind
16 of lift forward, unbuttoned. And obviously when we pulled
17 him up we would have zipped them, not necessarily buttoned
18 them, but they are still unbuttoned. I don't even know if
19 he realized it in there, but you can see it in the picture
20 where he's actually holding them up.

21 Q. And did you sustain any injuries --

22 A. Yes, ma'am.

23 Q. -- from this night?

24 A. I did.

25 Q. Could you please describe those injuries to the jury?

1 A. None of them were so severe that I needed medical
2 attention. However, when he punched me in the left -- or
3 the right side of my face, I actually had a sore jaw for a
4 couple of days, as anyone would if they were punched in the
5 face.

6 And actually the side of my face -- mostly the right
7 side of my face had lots of lacerations and scratches and
8 cuts from running through the briars and the bushes and the
9 tree limbs, going all the way from up here on my forehead,
10 my ear. One actually went from right beside where a thorn
11 dug in right beside my eye and kind of ripped backwards, and
12 several across the bottom of my face.

13 My arms were scratched up and cut up. I had to
14 actually pull briars out of my skin. A lot of the thorns
15 had broken off the plants and actually stuck in my skin.

16 Q. And you stated your jaw was sore. Which side of your
17 face?

18 A. It was the right side.

19 Q. Sergeant Cribb, I'm going to hand you what's marked as
20 State's Exhibit 3 and 4. Could you please describe how you
21 recognize those?

22 A. These are photos.

23 No. 3 -- Exhibit 3 is a picture of the right side of my
24 face showing the scratches and the injuries that I had just
25 described.

1 State's Exhibit 4 is the photos of my right arm showing
2 some -- they are a lot minor than what you see on my face,
3 scratches and small lacerations and stuff all about my arm
4 from the briers.

5 Q. And do these photographs fairly and accurately depict
6 your injuries from the night of September 4th, 2010?

7 A. Yes, ma'am, they do.

8 Q. And have they been altered, any deletions from them?

9 A. No, ma'am.

10 MS. BENDER: Your Honor, the State offers State's
11 Exhibit 3 and 4 for admission into evidence.

12 MR. BARROWCLOUGH: No objection, Your Honor.

13 THE COURT: Admitted without objection.

14 MS. BENDER: I would request to publish to the
15 jury.

16 THE COURT: You may.

17 BY MS. BENDER:

18 Q. Okay. Could you please -- this is State's Exhibit 3.
19 Could you please describe the injuries?

20 A. Yes. As I just described, at the top of my forehead
21 you will see a fairly superficial scratch up there. It's
22 hard to see on the overhead, but in the pictures you can see
23 there is actually some dried blood inside the ear. A brier
24 had cut my ear and it bled pretty bad for awhile. I had a
25 lot of blood running down the side of my head.

1 This one right here starts almost at the corner of my
2 eye and it just kind of ripped through the skin. That's a
3 little more serious.

4 Some very similar scratches across my face here. You
5 can see these two right in here, those are a little more
6 serious as well, a little more deep, more of a ripped kind
7 of laceration.

8 And going all the way down you can see just a couple of
9 minor ones near my lower jaw and kind of behind the ear,
10 under my ear towards the back of my neck.

11 Q. And how did you sustain these injuries?

12 A. While I was chasing Mr. Thomas through the woods,
13 fighting with him, struggling with him, getting hung up in
14 the briars. I mean, a couple of instances where we are
15 actually struggling, we have got -- I have got briars
16 actually ripping me as I'm trying to get him into custody.

17 Q. And the next picture I'm showing you is State's Exhibit
18 4, and please describe these injuries.

19 A. This is the photo of my right arm. You will see some
20 cuts and lacerations just all over my arm. They are a lot
21 easier to see in the actual photo, but you can actually see
22 them there. That one looks a little more significant, as
23 well as that one. These are some more minor ones, more
24 scratches than cuts.

25 Q. Okay. When did you first -- I'm going to go back to

1 the beginning and ask you a few more questions.

2 When did you first realize that the defendant's pants
3 were down?

4 A. When I first pulled up to him.

5 Q. And when you mean pulled up to him --

6 A. As I'm -- can we put the photo of the street back up
7 there, of the aerial?

8 As I stopped my car, I'm facing -- facing towards this
9 way, up towards Blake Street. As I'm pulling up to him he's
10 sitting on this rock right around in this area somewhere. I
11 see him with my headlights as I'm pulling up to him.

12 Obviously I saw the movement. My attention is drawn to him.

13 As I'm pulling up to him, I pull right up to the side of
14 him, turned my alley lights on, and he's literally looking
15 through my passenger's side window. As I'm pulling up I
16 could actually see his pants down. As I got beside him, I
17 could actually see his genitals.

18 Q. And is that the reason that you stopped your vehicle?

19 A. At that point, yes, ma'am, he was exposed to the
20 public.

21 Q. Okay.

22 A. I felt like I had to.

23 Q. And was this location within the city limits of Rock
24 Hill?

25 A. Yes. Yes, ma'am, it was.

1 Q. And York County?

2 A. Yes, ma'am, it was in York County.

3 Q. And I'm going to ask you one last question. Do you see
4 the person that you struggled with that night and the person
5 who exposed himself that night in the courtroom?

6 A. Yes, ma'am.

7 Q. Could you please identify him?

8 A. It would be the gentleman wearing the purple shirt
9 sitting to Mr. Barrowclough's right.

10 Q. Thank you. Please answer any questions that -- answer
11 any questions that the defense may have.

12 A. Yes, ma'am.

13 MR. BARROWCLOUGH: May it please the court?

14 THE COURT: Counsel.

15 CROSS EXAMINATION BY MR. BARROWCLOUGH:

16 Q. So Officer Cribb, if I understood you correctly, on
17 September 4th you were clearing up from another call?

18 A. That's correct, sir.

19 Q. You did not proceed down Fouche Street pursuant to a
20 call to that location?

21 A. No, sir, I did not.

22 Q. There was no call to the Rock Hill Police Department to
23 the effect of there is some guy exposing himself on Fouche
24 Street?

25 A. There was not.

1 Q. All right. And let's talk a little bit about this
2 location.

3 You said this right here is Blake Street, right?

4 A. Yes, sir.

5 Q. Okay. And this is Fouche Street, right?

6 A. Yes, sir.

7 Q. And this is Tigler Street?

8 A. Yes, sir.

9 Q. And this entire area in here has no street lights,
10 right?

11 A. I'm not sure if there is no street lights. I just
12 remember it being dark.

13 Q. And obviously there is no -- this entire area is not
14 lit in here, right?

15 A. Yes, sir, that's a completely wooded area, natural
16 area.

17 Q. Extremely dark?

18 A. Yes, sir, very dark.

19 Q. And this house right here is actually condemned, right?

20 A. I do not recall if it's condemned or not, sir.

21 Q. Well, did you testify that you become more familiar
22 with this area since the incident?

23 A. I have driven through there a few times, yes, sir.

24 Q. And the doors and windows on this residence are all
25 boarded up?

1 A. I don't know, sir.

2 Q. Okay. And this house is vacant. It's not boarded up,
3 but it's vacant?

4 A. I don't know if it's vacant at this time. I know on
5 that particular night some people had come out of one of
6 those houses because of all the commotion.

7 Q. And as you already testified to, this entire area is
8 dense with underbrush, correct?

9 A. Yes, sir, it's very thick and there are a lot of
10 briars, a lot of low hanging limbs and things of that
11 nature.

12 Q. Okay. And the boulder that you observed Mr. Thomas
13 sitting on was in this area, correct?

14 A. Somewhere just before you get to the stop sign, yes,
15 sir.

16 Q. Right. And it was right on the wood line, right?

17 A. Yes.

18 Q. The trash, the boulder?

19 A. Yes, sir. The boulder itself sits I'm guessing two or
20 three feet off the roadway.

21 Q. And you photographed that?

22 A. Yes, sir, I did.

23 Q. And in that -- on that boulder is where you located
24 some drug paraphernalia, correct?

25 A. Yes, sir.

1 Q. And in this case you filled out an evidence log,
2 correct?

3 A. That's correct.

4 Q. And in your evidence log you logged into evidence the
5 DVD, correct?

6 A. Yes, sir.

7 Q. That you just showed to the jury --

8 A. Yes, sir.

9 Q. -- right?

10 A. Yes, sir.

11 Q. And you logged into evidence the drug paraphernalia,
12 correct?

13 A. There were several items. I would have to look at the
14 actual log to tell you what was put in there.

15 Q. All right.

16 MR. BARROWCLOUGH: Your Honor, may I approach the
17 witness?

18 THE COURT: Yes, sir.

19 BY MR. BARROWCLOUGH:

20 Q. And Officer Cribb, do you recognize that as a copy of
21 the evidence log that you filled out in this case?

22 A. Yes, sir.

23 Q. And isn't it true that there are only two items listed
24 in the evidence log?

25 A. There is two line items, yes, sir.

1 Q. And the first line item is the drug paraphernalia,
2 correct.

3 A. Yes, sir, it's a paper bag containing cigarettes,
4 brillo-type pads, steel bolt and a knife.

5 Q. And you also photographed the drug paraphernalia,
6 correct?

7 A. Yes, sir, I did.

8 Q. And that stuff was found on that bolder, right?

9 A. Yes, sir.

10 Q. At the edge of the woods, right?

11 A. Yes, sir.

12 Q. In this remote location, right?

13 A. Yes, sir.

14 Q. In the dark?

15 A. Yes, sir.

16 Q. And you said that you have been an officer now with
17 Rock Hill for a year and a half, correct?

18 A. Yes.

19 Q. And prior to that for 10 years in Columbia?

20 A. That's correct.

21 Q. So you have some experience then with people who use
22 drugs, right?

23 A. Absolutely.

24 Q. And people who use drugs sometimes use them in their
25 house, right?

1 A. Yes, sir.

2 Q. Or their friend's house?

3 A. Yes, sir.

4 Q. Or they rent a hotel room?

5 A. Yes, sir.

6 Q. Or they do it someplace outside the public view, right,
7 because using drugs is illegal?

8 A. It is illegal. Not everyone does it outside the public
9 view. I have had people pull up beside me at a stop light
10 smoking a marijuana cigarette.

11 Q. But they are still in their car, right.

12 A. It's in public view, though. That's why I say it's --
13 Yeah, most people try to do it out of sight, but I have
14 actually encountered people doing it in plain view before.

15 Q. Yes, sir.

16 But most people typically use drugs outside of the
17 public view?

18 A. I would agree with that, yes, sir.

19 Q. Because it's kind of a secretive activity?

20 A. Absolutely.

21 THE COURT: Excuse me. Counsel, approach just a
22 minute. Sorry to interrupt.

23 MR. BARROWCLOUGH: Yes, sir.

24 (Whereupon, the lawyers approached the bench for
25 an off-the-record discussion)

1 BY MR. BARROWCLOUGH:

2 Q. Okay. So we have established that using drugs
3 typically is a secretive activity, right, done in private?

4 A. Yes, sir.

5 Q. And you said that when you were driving down Fouche
6 Street that you first observed Mr. Thomas because there was
7 some movement, right --

8 A. Yes, sir.

9 Q. -- that caught your eye?

10 A. Yes, sir.

11 Q. And ultimately determined that he had something in his
12 hand, right?

13 A. Yes, sir.

14 Q. A lighter in one hand, right?

15 A. Yes, sir.

16 Q. And something else in his other hand?

17 A. Yes, sir. I couldn't tell what was in the other hand,
18 but he kind of had it up towards his mouth. I'm assuming he
19 did have something in there.

20 Q. And that's what your initial observation was, correct?

21 A. That's correct.

22 Q. And as you just testified to for the prosecutor, you
23 didn't observe anything about his pants being down until
24 after you turned on the alley lights, correct?

25 A. I could see that his pants looked like they were down,

1 but I couldn't see how far they were down until I got right
2 up beside him.

3 Q. Okay. And, also, artificially illuminated the rock
4 with your alley lights, correct?

5 A. That's correct.

6 Q. And in talking about those pants, I mean, those are the
7 same pants he's wearing in that picture, right?

8 A. Yes, sir.

9 Q. That you showed the jury earlier?

10 A. Absolutely.

11 Q. And did you have an opportunity to check out the size
12 of those pants were a size 36?

13 A. I didn't check the size on them, no, sir.

14 Q. Would it be fair to say those pants were too big for
15 him?

16 A. They were a little big on him. You can actually tell
17 in the photo they are a little bit baggy.

18 Q. Right.

19 And they weren't buttoned, right?

20 A. They were actually unzipped and buttoned whenever I saw
21 him.

22 Q. And that when he was running from you, he was holding
23 them up, right?

24 A. Yes, sir.

25 Q. And that even in this picture he had to hold them up,

1 right?

2 A. Yes, sir.

3 Q. And, you know, you didn't inquire from him whether or
4 not he had a tailor for his clothes, right?

5 A. No, sir, I did not.

6 Q. Or that he gets his clothes fitted at a department
7 store?

8 A. No, sir, I did not ask him that.

9 Q. Or if maybe he gets his clothes from the Salvation
10 Army?

11 A. No, sir, I didn't ask him that either.

12 Q. But you say that you could observe his genitals, right?

13 A. Yes, sir.

14 Q. But isn't it true that even if those pants had slid
15 down some, that his shirt would have still been covering his
16 crotch area?

17 A. No, sir, I could actually see his penis whenever I
18 turned on the alley light.

19 Q. Well, Officer Cribb --

20 MR. BARROWCLOUGH: Can you put up State's Exhibit
21 5, is it?

22 BY MR. BARROWCLOUGH:

23 Q. I mean, Officer Cribb, that's the shirt that he was
24 wearing that night, right?

25 A. That is.

1 Q. And in that picture he's standing up, right?

2 A. Yes, sir.

3 Q. And even in that picture the shirt hangs as low as his
4 crotch area, correct?

5 A. It does in that picture, yes, sir.

6 Q. And, therefore, if he were sitting down, wouldn't it
7 make sense that the shirt would hang lower further over his
8 crotch?

9 A. It would make sense, unless he pulled it up.

10 Q. Right, but you already testified he's using his hands
11 to hold the lighter and whatever he's going to smoke, right?

12 A. Exactly.

13 Q. So he wasn't holding it up, was he?

14 A. He was not holding his shirt up at that time, no, sir.

15 Q. And, Officer Cribb, you did testify about how your
16 vehicle is equipped with a video camera, correct?

17 A. Yes, sir, it is.

18 Q. And you testified that you know how to use it, right?

19 A. I do know how to use it, yes, sir.

20 Q. You received training in using it?

21 A. I haven't received official training, but -- I know. I
22 understand.

23 Q. On the job training?

24 A. It's like a VCR. It's pretty to operate. You put a
25 tape in, play, or record, or rewind. It's pretty simple.

1 Q. Okay.

2 A. I have read the actual manual to it, if that helps.

3 Q. Okay.

4 A. Yeah.

5 Q. So you have read the manual and you have had on-the-job
6 training?

7 A. Yes, sir.

8 Q. All right. And you know the purpose of the camera is
9 to help you record evidence in making a case, right?

10 A. Yes, sir.

11 Q. For example, in making a DUI case -- you made DUI
12 cases?

13 A. Yes, sir, I have.

14 Q. And you give a suspect roadside sobriety tests, you
15 like to get that on video, right?

16 A. Yes, sir.

17 Q. Because it creates --

18 A. You are actually required to get it on video.

19 Q. Right.

20 So that creates evidence for your case, right?

21 A. That's correct.

22 Q. And in this case there is no video of Mr. Thomas'
23 exposing his genitals, is there?

24 A. No, sir, there is not.

25 Q. There is no video that shows his pants down at all?

1 A. No, sir, there is not.

2 Q. Now, you testified that you observed that with the
3 alley lights, right?

4 A. That's correct, sir.

5 Q. And, of course, you could -- at that point you are
6 still in your car, right?

7 A. Yes, sir.

8 Q. So you could have turned on your camera from in the
9 car?

10 A. I could have.

11 Q. Or you could have turned it on your belt --

12 A. I could have.

13 Q. -- if I understood you correctly?

14 A. That's correct.

15 Q. Or you could have turned on your blue lights in your
16 car and it would have gone on automatically?

17 A. I could have.

18 Q. But you didn't do any of those things?

19 A. No, sir, I did not.

20 Q. And so there is no video?

21 A. There is video.

22 Q. No video to back up your allegation that his pants were
23 down?

24 A. There is nothing on the video that shows him with his
25 pants down.

1 Q. Okay. And as you demonstrated in the video that we do
2 have, a video includes audio, right?

3 A. That's correct, sir.

4 Q. So that there is an audio recording of what you say,
5 right?

6 A. Yes, sir.

7 Q. What you say to a subject?

8 A. Yes, sir.

9 Q. And also it records what a subject might say to you in
10 response?

11 A. Yes, sir.

12 Q. And, again, since you made the choice not to turn your
13 video camera on, there is no audio of you saying anything
14 like "hey, why are your pants down," or, "hey, stop, your
15 pants are down," or anything of that nature?

16 A. No, sir. Obviously it started during the altercation.
17 So anything prior to that was not on video, that's correct.

18 Q. All right. Now, a portion of the video -- well, no,
19 the video covering of portion of this encounter was turned
20 into evidence, right?

21 A. Yes, sir.

22 Q. And --

23 A. Well, actually the entire video was turned into
24 evidence, not a portion of it.

25 Q. Right. I said the video that's a portion of the

1 incident.

2 A. Of the overall incident, yes, sir.

3 Q. And I believe from we just observed, approximately 18
4 seconds into that video is when you yell at Mr. Thomas that
5 you are going to tase him again?

6 A. Yes, sir.

7 Q. Right?

8 A. Yes.

9 Q. And as you testified to then, when this video began Mr.
10 Thomas had already been tased?

11 A. He had been tased a couple of times, yes, sir.

12 Q. And so, therefore, based on your testimony, a bulk of
13 this had already occurred before the video comes on?

14 A. Yes, sir. Everything that happened when I first got
15 out of the car, including the initial physical confrontation
16 in the woods where the fists were thrown and a couple tasing
17 cycles, all that had taken place at the point where the
18 video starts -- prior to the point where the video starts.

19 Q. And, again, the ability to start the video, the means
20 to collect this evidence is within your control?

21 A. Absolutely.

22 Q. And the entire front part of the incident is not video
23 or audio recorded?

24 A. That's correct.

25 Q. And at the end of the video, the last thing that you

1 have --

2 MR. BARROWCLOUGH: Can we cue that up?

3 (Videotape started)

4 (Videotape stopped)

5 BY MR. BARROWCLOUGH:

6 Q. Now, M-2 is there, right?

7 A. What's that?

8 Q. M-2, that's your mike, that's on, right?

9 A. Yes, sir.

10 Q. And --

11 (Videotape started)

12 (Videotape stopped)

13 BY MR. BARROWCLOUGH:

14 Q. Somebody said "turn over or you are going to get shot.
15 Turn over, turn over." Was that you?

16 A. No, sir, that was Officer Stewart.

17 Q. And then right after you said that it goes quiet again?

18 A. Yes, sir.

19 Q. But M-2 is still showing?

20 A. Yes, sir.

21 Q. So at that point the second officer comes, right? Mr.
22 Thomas has been tased multiple times?

23 A. Yes, sir.

24 Q. And there is a threat he's going to get shot, right?

25 A. Yes, sir.

1 Q. Presumably with a firearm, not a taser, right?

2 A. Yes, sir.

3 Q. And then all of the sudden we have no audio, even
4 though M-2 is still lit up?

5 A. Yes, sir. The reason for that, as I said earlier, the
6 unit in my car is a VHS unit. It's an older unit. When the
7 mike signal goes out, sometimes it takes 10 or 15 seconds
8 for the M-2 to actually disappear from the screen. At a
9 certain part of the video you will see that mike, that M-2
10 actually flicker a couple of times, which I'm assuming is
11 because we're on the borderline of going out. Sometimes it
12 goes off sooner, sometimes it goes off longer, but usually
13 within about 10 or 15 seconds the M-2 will actually drop off
14 the screen, once it loses its signal from the mike pad.

15 Q. Okay. So then basically right at that time that the
16 threats go from tasing to shooting is when the audio
17 disappeared --

18 A. Yes, sir.

19 Q. -- because you were too far away?

20 A. Yes, sir. And just before that you will actually hear
21 the audio kind of flicker and go in and out. Even though
22 the M-2 is up there, it's -- we obviously right on the edge
23 of the range for that unit. I mean, it's on one second and
24 it's off the next. We are obviously right at the edge of
25 the range.

1 Q. And if we talk about what actually can be heard on this
2 audio portion of your video, it's true that at no point on
3 that did Mr. Thomas threaten you, does he?

4 A. No, sir, he never threatened me.

5 Q. He didn't curse you?

6 A. No, sir.

7 Q. He didn't call you any names?

8 A. No, sir.

9 Q. He didn't use any foul language towards you?

10 A. No, sir.

11 Q. And isn't it true that the clearest thing that you can
12 hear him say on that video is "I don't want to fight you"?

13 A. Yes, sir, he said that a couple of times, I believe.

14 Q. And when you were testifying with regards to the
15 injuries that you received in this incident, the scratches
16 that you received were from the brush, right?

17 A. Yes, sir.

18 Q. It would not be your position that Danny Thomas
19 scratched you?

20 A. No, sir, he did not scratch me.

21 Q. And that you did not have a broken nose?

22 A. No, sir.

23 Q. Or a black eye?

24 A. No, sir.

25 Q. Or busted lip?

1 A. No, sir.

2 Q. Or broken teeth?

3 A. No, sir.

4 Q. Or any visible bruising or lumps?

5 A. No, sir, I had no visible bruising.

6 Q. And you weren't bleeding from your nose?

7 A. No, sir.

8 Q. Or your mouth.

9 And the picture of the right side of your face was
10 where I believe you testified that you were hit does not
11 show swelling, right, or bruising?

12 A. No, sir.

13 Q. Or redness, or anything like that?

14 A. No, sir, it does not.

15 Q. Obviously it shows some scratches?

16 A. Yes, sir.

17 Q. But there is no demarcations on your face consistent
18 with any blunt force trauma, right?

19 A. That's correct, sir. You can't see the soreness that
20 I'm experiencing.

21 Q. Yes.

22 And as you already testified to also, you didn't have
23 any -- you didn't seek any medical treatment at the
24 hospital, did you?

25 A. No, sir, I did not.

1 Q. Or any ongoing treatment from a doctor?

2 A. No, sir.

3 Q. Because you didn't have any broken bones?

4 A. That's correct.

5 Q. Or any internal injuries, or anything like that?

6 A. That's correct.

7 Q. But you did have the scratches?

8 A. Yes, sir.

9 Q. And the scratches were from the bushes?

10 A. Yes, sir.

11 Q. And Mr. Thomas was tased those multiple times, right?

12 A. That's correct.

13 Q. And he had injury to his back that you photographed,
14 right?

15 A. He had two marks where the taser darts actually hit him
16 in the back, yes, sir.

17 Q. And --

18 A. Again, some minor superficial scratches on him as well.

19 Q. And you submitted those photographs with the use of
20 force report, right?

21 A. That's correct. We are required any time that we tase
22 someone, if we can get photographs of where the darts hit or
23 any injuries sustained as a result of the tasing, to
24 photograph those and turn them into internal affairs, that's
25 correct.

1 Q. And that where you used the force report?

2 A. Yes, sir.

3 Q. To internal affairs?

4 A. Yes, sir.

5 Q. And as a result of this encounter, you did have to
6 undergo that process?

7 A. Absolutely. It's required by the department policy to
8 report it, yes, sir.

9 Q. All right. Thank you, officer. That's all.

10 MS. BENDER: Just briefly, Your Honor.

11 THE COURT: Counsel.

12 REDIRECT EXAMINATION BY MS. BENDER:

13 Q. Sergeant Cribb, did you arrest the defendant for using
14 drugs?

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

16 Q. Did you observe him, the defendant, with his pants
17 down?

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

19 Q. Were his genitals exposed?

20 A. They were.

21 Q. And his shirt -- you said he had a shirt. Was it
22 resting on his waist?

23 A. On his legs.

24 Q. On his legs?

25 A. He was sitting down on the rock kind of as I'm sitting

1 in this chair, hands up here and his pants were down here.

2 Q. And was this in view of the street?

3 A. Yes, it was.

4 Q. Facing the street?

5 A. That's correct.

6 Q. Did you turn on blue lights?

7 A. No, ma'am.

8 Q. Did you anticipate that this would go -- that this
9 encounter would go this way?

10 A. Absolutely not.

11 Q. So you did not anticipate having to activate the
12 camera?

13 A. I did not, no, ma'am.

14 Q. When he says on the video, "I don't want to fight with
15 you," did he comply with that?

16 A. No, ma'am. In fact, he did the exact opposite of that.
17 He actually did fight me. He did --

18 Q. What was his actions?

19 A. Yeah, I mean, saying one thing and doing another. I
20 mean, as you are punching me in the face, telling me, you
21 know, "let me go. You know, I don't want to fight you." I
22 mean, that's -- it sure looked like he wanted to fight me to
23 me. I mean, he's trying to get away. But whenever he
24 wasn't getting away, I was getting hit.

25 Q. Thank you.

1 MS. BENDER: No further questions.

2 RECROSS EXAMINATION BY MR. BARROWCLOUGH:

3 Q. Well, Officer Cribb, now, if I understand you correctly
4 the first time that you testified, you said you only had
5 gotten hit in the face that one time when you first caught
6 up with him.

7 A. And that's what I'm talking about, yes, sir.

8 Q. Okay. But that "I don't want to fight you" is on the
9 video, right?

10 A. That's correct, sir.

11 Q. And, of course, you testified the first part wasn't on
12 the video?

13 A. That's correct.

14 Q. But the part where he says, "I don't want to fight you"
15 is on the video?

16 A. Yes, sir.

17 Q. And he didn't hit you then?

18 A. No, he didn't hit me at that point. He hit me in the
19 initial part, not on the video.

20 Q. Well, what I'm saying is, though, I mean, when you were
21 just talking to the prosecutor, you said he said "I don't
22 want to hit you" -- "I don't want to fight you" and then hit
23 you, right?

24 A. Well, no, maybe I -- let me clarify that.

25 What I meant when I said that was he's hitting -- he's

1 hitting me, he's actually physically assaulting me, but then
2 he says, "I don't want to fight you." You know, it's
3 seconds later, 20, 30 seconds, whatever. What I'm saying is
4 if you don't want to fight me, why would you throw punches
5 at me? Why would you physically push me? Why would you try
6 to punch me? That's my whole point in that.

7 No, he did not say that while he was punching me.

8 Q. Right.

9 But, I mean, and what I'm saying is from your earlier
10 testimony, and you tell me if I'm wrong, but from your
11 earlier testimony anything that had to do with any hitting
12 was prior to what was recorded on the video?

13 A. Yes, sir.

14 Q. Okay.

15 MR. BARROWCLOUGH: That's all.

16 A. Yes, sir.

17 THE COURT: Thank you, sir. You may stand down,
18 sir.

19 THE WITNESS: Thank you, Your Honor.

20 THE COURT: Counsel, let's take about five
21 minutes, okay?

22 Madam Forelady, members of the jury panel, we will
23 take just a few minutes at this time to allow you to refresh
24 yourselves during the break.

25 I'll remind you if you want to bring something

1 back to drink with you, you are welcome to do that. Thank
2 you.

3 (The following takes place outside the presence of
4 the jury panel)

5 THE COURT: Let's just take a few minutes.

6 MS. JOYNER: Your Honor, can we release Officer
7 Cribb?

8 THE COURT: Any objection?

9 MR. BARROWCLOUGH: No, Your Honor.

10 THE COURT: Thank you for coming. You may be
11 excused, Officer Cribb.

12 (Whereupon, proceedings were recessed)

13 (Whereupon, proceedings were reconvened)

14 THE COURT: Counsel approach just a second while
15 we are waiting on the defendant.

16 (Whereupon, the lawyers approached the bench for
17 an off-the-record discussion)

18 THE COURT: All right, please bring the jury in.

19 (The following takes place in the presence of the
20 jury panel)

21 THE COURT: Counsel, ready to proceed.

22 MS. BENDER: Thank you.

23 May it please the court, the State would call
24 Officer Tony Stewart.

25 OFFICER TONY STEWART, having been first duly

1 sworn, testified as follows:

2 DIRECT EXAMINATION BY MS. BENDER:

3 Q. Good afternoon.

4 A. Good afternoon.

5 Q. Would you please state your name, full name, for the
6 court?

7 A. Tony Stewart.

8 Q. And Officer Stewart, what is your occupation?

9 A. I'm an officer with the Rock Hill Police Department.

10 Q. And what type of work do you do in your position there?

11 A. I patrol. Patrol work and traffic unit.

12 Q. And how long have you been employed with Rock Hill
13 Police Department?

14 A. Nine years this year.

15 Q. Were you employed in your present capacity on the night
16 of September 4th, 2010?

17 A. Yes, I was.

18 Q. I would like to draw your attention to that night of
19 September 4th.

20 Where were you located the night of this incident?

21 Where did this incident occur?

22 A. Where was it?

23 Q. Yes.

24 A. I was patrolling the area of Saluda Street near --
25 closer to downtown Rock Hill when I heard Officer Cribb on

1 the radio call for assistance.

2 Q. And is that in Rock Hill?

3 A. That's in Rock Hill city limit.

4 Q. In York County?

5 A. Yes, ma'am.

6 Q. And you said that particular night you were answering a
7 call to assist Sergeant Cribb?

8 A. That's right. He came on the radio and said that he --

9 MR. BARROWCLOUGH: Objection to hearsay.

10 THE COURT: Sustained as to hearsay, counsel.

11 BY MS. BENDER:

12 Q. Officer Stewart, I'm going to show you a map. Could I
13 direct your attention to the screen?

14 A. Uh-huh.

15 Q. How do you recognize this photo?

16 A. Well, I recognize the road at the top of the screen,
17 the wider road as Saluda Street.

18 That longer building with the tin roof is a car wash
19 just off Saluda Street at the corner of Blake Street that
20 runs -- from Saluda Street runs southwest.

21 That looping street from Blake Street is Fouche and it
22 goes down to the corner where it becomes Tigler. And then
23 Tigler runs back north towards Saluda Street and intersects
24 with it.

25 Q. How did you become familiar with this area?

1 A. That particular night I was responding to Officer
2 Cribb's call that he was fighting a subject in the woods off
3 of Tigler street. And believing that I was the closest unit
4 or a close unit to that area, I responded down Saluda
5 Street, came -- made a right onto -- made a right onto
6 Tigler just up here where it intersects and came down and
7 parked my vehicle somewhere just right along this edge of
8 the road right here in front of this residence.

9 Q. So this photograph fairly -- does it fairly and
10 accurately depict the road and the location as it appeared
11 the night of September 4th, 2010?

12 A. Yes.

13 Q. Could you point out the path that you took to get to
14 Sergeant Cribb and the defendant the night of September 4th
15 when you got the report?

16 A. Before or after I had parked?

17 Q. After you parked your car.

18 A. After I parked my vehicle, as I said, we was right here
19 along this opening where the yard is. As I exited my
20 vehicle, came around the hood, I observed some residents
21 standing on the back porch of one of these residence and
22 they appeared to be looking out across the yard in that
23 direction toward the woods. And knowing -- not knowing
24 exactly where he was, they -- to me they appeared to be --
25 to have their attention drawn on something. I didn't know

1 exactly what it was, but I asked them "where is he," and
2 they directed me that he was right -- right there by the
3 woods. So I turned quickly and found Sergeant Cribb and Mr.
4 Thomas on the ground right in this general area right here.

5 Q. And what did you proceed to do once you found them?

6 A. I ran over -- ran over to them. Sergeant Cribb was on
7 top of Mr. Thomas trying to hold him down until someone got
8 there to assist him. It was dark. I couldn't see a lot of
9 detail. At that time I gave Mr. Thomas verbal commands to
10 flip over, to get over on his -- you know, to turn over and
11 get on his stomach so that we could handcuff him behind his
12 back. I issued a verbal command to let him know that I did
13 have a gun, that -- I couldn't see his hands at that time,
14 so -- and I don't know why Sergeant Cribb is chasing him in
15 the first place. The last thing we had heard on the radio
16 was "I was fighting a subject in the woods off Tigler." So
17 I don't know what its cause is. I don't know how it's
18 developed, and by that point made a strong assumption that
19 Sergeant Cribb was going to be exhausted and was -- and so
20 my verbal commands were to get compliance from Mr. Thomas to
21 put an end to his struggle.

22 Q. So did you have your gun drawn at that point?

23 A. No. I had my gun drawn, no.

24 Q. And so did you intend to shoot the defendant?

25 A. Not unless he had a gun.

1 Q. And I would like to ask you about the purpose of
2 tasers. What do y'all use? What do officers use the tasers
3 for?

4 A. We use tasers --

5 Q. The purpose?

6 A. I'm sorry?

7 Q. What's the purpose of them?

8 A. The purpose of the taser is to gain compliance once --
9 once physical compliance has no longer -- has no longer
10 worked. It's just to get compliance, get control of the
11 subject. It causes some slight pain and discomfort and
12 disorient until we can then get hands on and where they
13 totally comply so that they can be apprehended.

14 Q. So to subdue?

15 A. Absolutely, yes.

16 Q. And when you used a taser, does that cause injury to a
17 defendant?

18 A. No, the taser itself doesn't cause injury, other than
19 the two markings -- or the markings where the actual --
20 where the probe actually penetrates the skin. It doesn't
21 cause injury other than that.

22 Q. And when you arrived on the scene did you notice any
23 injury to Sergeant Cribb?

24 A. Not immediately, not when I first arrived. My
25 attention was to get the subject, being Mr. Thomas,

1 apprehended. I wasn't looking at Officer Cribb's face at
2 the time.

3 Q. But once the defendant was handcuffed and taken to the
4 car, were you able to get a view of Sergeant Cribb?

5 A. Right. After we moved back out we had more flashlights
6 out and view of headlights and so forth, he was completely
7 scratched up along the right side of his face and bleeding
8 down his face.

9 MS. BENDER: Beg the court's indulgence.

10 (Off the record)

11 (Back on the record)

12 BY MS. BENDER:

13 Q. Thank you. Please answer any questions that the
14 defense may have.

15 CROSS EXAMINATION BY MR. BARROWCLOUGH:

16 Q. Officer Stewart, you were just talking about tasers?

17 A. Uh-huh.

18 Q. Isn't it true that tasers work by delivering electrical
19 charge to the body of another person?

20 A. Yes, sir.

21 Q. And you said that causes a slight pain?

22 A. Yes, sir.

23 Q. Isn't it likes 50,000 volts, or something?

24 A. I don't know the exact number.

25 Q. But it's only slight pain?

1 A. Well, it kind of depends. That will depend on how far
2 away or how close the probes make contact with the skin.
3 The closer the probes are, the less pain, because you are
4 still able to fight through or continue with your activity.

5 The further away the probes strike the body, then you
6 are going to get more muscle contraction and then you are
7 going to get -- you know, they will fall or be completely
8 incapacitated until -- for the five seconds?

9 Q. And you said that tasers doesn't cause injury?

10 A. Many factors involved. It depends. The taser itself?

11 Q. No, wait, wait.

12 My question was you testified that the taser does not
13 cause injury. All right. That's what you said in response
14 to the solicitor's question, right?

15 A. I testified that the injury would be caused by the two
16 probes that strike the skin.

17 Q. So it does cause injury?

18 A. That's what I testified to, that it --

19 Q. Maybe I misheard it. So the taser does cause injury?

20 A. The two probes that enter the skin cause minor injury.

21 Q. And, in fact, people have died from being tased, right?

22 MS. BENDER: Objection.

23 THE COURT: Overruled.

24 BY MR. BARROWCLOUGH:

25 Q. Right?

- 1 A. They have.
- 2 Q. You are aware of that, right?
- 3 A. I'm aware of that.
- 4 Q. So you say it causes minor injury, but sometimes it
- 5 causes more than minor injury, right?
- 6 A. It could.
- 7 Q. And you arrived on the scene in your patrol car, right?
- 8 A. Yes.
- 9 Q. And you had your blue lights activated, right?
- 10 A. Yes.
- 11 Q. And is your car equipped with a video camera?
- 12 A. Yes, it is.
- 13 Q. And your blue lights were activated, right?
- 14 A. Yes.
- 15 Q. So then the camera would have been on, right?
- 16 A. Yes.
- 17 Q. It would have been engaged, right?
- 18 A. Yes.
- 19 Q. And there would have been video, right?
- 20 A. Yes.
- 21 Q. And the video would have also included audio, right?
- 22 A. Yes.
- 23 Q. That would have recorded what was said, right?
- 24 A. Yes.
- 25 Q. On the scene when you arrived, right?

1 A. Yes.

2 Q. And you were sitting in court and observed the audio --
3 I mean the video earlier, right?

4 A. That's right.

5 Q. And as I believe you were alluding to on direct, that
6 was you who said something to the effect of "if you don't
7 want to be shot, you better turn over," right?

8 A. I don't know if that's the exact wording.

9 Q. But something like that?

10 A. Something close to that.

11 Q. That was your voice, not Officer Cribb's voice?

12 A. No, that was mine.

13 Q. Right.

14 And then on Officer Cribb's video the mike faded out,
15 right? We couldn't hear anything after that, right?

16 A. Right.

17 Q. And that would have been because Officer Cribb's car
18 was too far away from that location at that time, right?

19 A. Yes.

20 Q. But you testified that you drove your car on Tigler
21 Street, right, and parked on Tigler Street, right?

22 A. Yes.

23 Q. And your car was located much closer to where Mr.
24 Thomas was on the ground with Mr. Cribb, right?

25 A. Yes.

1 Q. And, therefore, the audio from yours would still be
2 good, right?

3 A. Yes.

4 Q. And the video from your car was not obtained, right?

5 A. No.

6 Q. Was not put into evidence, right?

7 A. Uh-uh.

8 Q. And is not a part of this case?

9 A. No.

10 Q. And so you -- are the case agent in this case, right?

11 A. Yes.

12 Q. You have been designated the case agent, right?

13 A. Yes.

14 Q. That's why you have been sitting in here, right?

15 A. Yes.

16 Q. So you would be the one responsible for the evidence in
17 this case as the case agent, right?

18 A. Not necessarily the entire evidence, no.

19 Q. But it would be your decision to not put your video
20 into evidence in this case so that we can't hear it?

21 A. No, it would be my choice, no.

22 Q. It would not be your choice?

23 A. It wouldn't be so in my choice, no.

24 Q. Even though it's your car and you are the case agent?

25 A. Yes.

1 Q. Would it also be Officer Cribb's choice?

2 A. I wouldn't say it was either one of our choices, the
3 one or the other. I don't think it solely one person's.

4 Q. So the collection of evidence in the case is nobody's
5 responsibility?

6 A. I'm not saying that either.

7 Q. There weren't any other officers who were a part of
8 this case, was there?

9 A. No.

10 Q. There is Officer Cribb, right?

11 A. Yes.

12 Q. And you?

13 A. Yes.

14 Q. And the video from your car did not make it into
15 evidence?

16 A. That's right.

17 MR. BARROWCLOUGH: That's all I have.

18 MS. BENDER: Beg the court's indulgence.

19 (Off the record)

20 (Back on the record)

21 MS. BENDER: Just briefly, Your Honor.

22 REDIRECT EXAMINATION BY MS. BENDER:

23 Q. Officer Stewart, the defendant did not die that night?

24 A. No, he did not.

25 Q. To the best of your knowledge, the defendant did not

1 sustain serious injury?

2 MR. BARROWCLOUGH: I'm going to object to the
3 leading nature of that.

4 THE COURT: Please avoid leading, counsel. You
5 may rephrase it.

6 BY MS. BENDER:

7 Q. What injuries, to the best of your knowledge, did the
8 defendant sustain that night?

9 A. He had some scratches to him, some superficial
10 scratches, and then had two probe marks where the taser
11 probes had struck his skin.

12 Q. You were designated the case agent by the solicitor's
13 office and it was not given to you the night of that
14 incident, correct?

15 A. That's correct.

16 Q. And are tasers common practice to subdue -- used to
17 subdue someone?

18 A. Yes.

19 Q. Thank you.

20 MR. BARROWCLOUGH: Nothing further, Your Honor.

21 THE COURT: Thank you, sir. You may stand down,
22 sir.

23 MS. BENDER: The State rests its case.

24 THE COURT: Counsel, approach just a minute.

25 (Whereupon, the lawyers approached the bench for

1 an off-the-record discussion)

2 THE COURT: Madam Forelady, members of the jury
3 panel, there is some matters I need to take up with counsel
4 at this time out of your presence, so I'm going to ask you,
5 if you will, to retire to the jury room. We will probably
6 be about 10, 15 minutes at the most. You may refresh
7 yourselves, of course, during the break. Thank you.

8 Please do not begin discussing the case.

9 (The following takes place outside the presence of
10 the jury panel)

11 THE COURT: Let's bring the defendant around and
12 let me ask him.

13 MR. BARROWCLOUGH: Your Honor, would it be
14 appropriate for me to put my motion for directed verdict on
15 the record?

16 THE COURT: Absolutely.

17 MR. BARROCLOUGH: Your Honor, may it please the
18 court, Your Honor, at this time on behalf of Mr. Thomas I
19 would move for a directed verdict. Your Honor, I would move
20 for a directed verdict on the basis that the evidence taken
21 in the light most favorable to the State is not sufficient
22 to support a conviction.

23 Your Honor, particularly with regard to the
24 indecent exposure charge, Your Honor, I would point out the
25 fact that indecent exposure requires a mens rea element of

1 willfully and maliciously exposing one's self. Your Honor,
2 I think the evidence in this case would show that that
3 element is lacking, even in the light most favorable to the
4 State, even taking Officer Cribb's testimony that his pants
5 were down so far that his genitals would be exposed. Your
6 Honor, I think all the evidence shows that this was a
7 location it was by woods. It was absolutely dark, but the
8 only reason Officer Cribb could see him was artificial
9 illumination from his alley lights. That as soon as Mr.
10 Thomas realized he was seen, he did pull his pants up and
11 run.

12 And that evidence would also indicate that with
13 him sitting on the rock was contemporaneous with drug use,
14 which I think would be circumstantial evidence that he was
15 trying to be in a secret location or a location not readily
16 observable by the general public. There is no evidence that
17 anyone observed Mr. Thomas or called for service about Mr.
18 Thomas, or was victimized by this by Mr. Thomas. So, Your
19 Honor, I think that there is really no evidence of malice on
20 the part of Mr. Thomas with regard to his exposure, if, in
21 fact, there even was an exposure. But, again, in the light
22 most favorable to the State, assuming that he was exposed,
23 still, Your Honor, I would say that there is no evidence or
24 malice on Mr. Thomas' part with regards to indecent
25 exposure.

1 THE COURT: Counsel?

2 MS. JOYNER: Your Honor, just for the sake that
3 the court considers sufficient evidence to present to the
4 jury, the officers's testimony is that he clearly exposed,
5 exposing himself in view of the public or to the view of the
6 officer that was parked on the road able to observe the
7 defendant's genitalia.

8 The question of what his intent was, whether it
9 was willful, or malicious, or whatever the case may be, his
10 intent is for the jury.

11 So we believe that the officer's testimony is
12 sufficient on the indecent exposure.

13 And, I'm sorry, Your Honor, did we make a motion
14 on the resisting arrest as well, or just the indecent
15 exposure?

16 THE COURT: I don't think he did.

17 MR. BARROWCLOUGH: Your Honor, my motion -- my
18 original motion was just a generic motion on both charges,
19 including resisting arrest, and I had one special specific
20 motion with regards to --

21 THE COURT: He made one generic, but go ahead.

22 MS. JOYNER: On the --

23 THE COURT: You may respond.

24 MS. JOYNER: I'm sorry, sir?

25 THE COURT: He made a generic motion to --

1 MS. JOYNER: We would just say that officer --
2 Sergeant Cribb is clearly a law enforcement officer. It
3 would have been reasonable for any person to conclude that
4 he was a law enforcement officer.

5 His testimony is that he was assaulted, beat, or
6 wounded by the defendant during the course of the defendant
7 resisting arrest for indecent exposure, which I believe
8 there is sufficient evidence to bring the case to the jury
9 on that charge.

10 THE COURT: Looking at a motion for directed
11 verdict, the court is required to look at the evidence in
12 the light most favorable to the party against whom the
13 motion is made.

14 In this case, looking at the evidence in the light
15 most favorable to the State, I find there is substantial
16 evidence from which the jury could infer the State had
17 proven the elements of these two offenses beyond a
18 reasonable doubt.

19 Addressing first the resisting arrest. Even if
20 he, the defendant, was up there smoking drugs, as the
21 defense would indicate, and that he had drug paraphernalia
22 up there and he was sitting on the rock smoking drugs and he
23 was in a remote location so he could smoke his drugs in
24 private, that was kind of the theory of the defense, as I
25 understand it, but even if he was smoking drugs, whatever he

1 was doing up there he was doing illegal. The police officer
2 told him to stop and he didn't stop. Obviously he resisted
3 arrest.

4 And then when he physically resisted, the jury
5 could find that it was assault on an officer under
6 Subsection B of resisting arrest. So that takes care of
7 resisting arrest, whether there was any indecent exposure or
8 not, but still the State has established sufficient
9 evidence, presented sufficient evidence for the jury to find
10 him guilty of resisting arrest B, and, of course, the lesser
11 included A.

12 Now, dealing specifically with indecent exposure,
13 my question to you, counsel, is did anybody see his genitals
14 out there? Did anybody see them?

15 Did anybody see his genitals the night that they
16 tried to arrest him, or did arrest him?

17 MR. BARROWCLOUGH: Yeah, I guess the testimony
18 would be Officer Cribb did.

19 THE COURT: Awe, the officer saw him and he was
20 out there exposed. Anybody else coming along there could
21 have seen him as well, so he wasn't hidden behind the rock
22 and he wasn't hidden in the woods. He was sitting up on top
23 of a rock where everybody could see him.

24 Now, the officer testified that he was sitting
25 there stooped down in a stooped position there.

1 And you are talking about his shirt. Obviously
2 his shirt would be on top of his legs, as the officer
3 testified. And if his pants were down, what was visible
4 underneath his pants would have been his genitals. Whether
5 he had a long shirt on or not, the shirt wouldn't go down
6 between his legs unless he punched them down in there.

7 So, I mean, the officer testified that he was
8 sitting there on a rock kind of in a stooped position like
9 this with his hands up doing something and that he could see
10 basically his pants were down. He could see under his
11 shirt. He could see -- clearly see his penis and his
12 genitalia. And the officer could see that, and he could see
13 it from the lights. And if he could see it, any other
14 motorist coming by there could have seen it. And so -- I
15 mean, he was obviously clearly there where anybody could see
16 him sitting up there.

17 What his intent was, the jury could make that
18 determination what his intent was, but clearly he was in
19 close to a public road sitting up on a rock with his
20 genitalia exposed, if you are looking at the evidence in the
21 light most favorable to the State in this case. And so
22 anybody else coming along there who put their lights on,
23 their bright lights on, coming up that public street
24 certainly could have seen him there on the side of the road
25 up on a rock with himself exposed out there.

1 What his intent was or whether he intended for
2 anybody to see him -- now, one thing that's for sure. The
3 police officer came up there with his lights on and he
4 didn't jump behind a rock or try to cover himself up. And
5 if he saw lights coming up the street, he didn't know it was
6 an officer up there necessarily I guess first. But even if
7 it's somebody who lived there, or somebody else from the
8 general public driving up there, he had a chance to cover
9 up, but he didn't. And so I don't know what he was thinking
10 or what his intent was, but certainly the jury could infer
11 from the evidence that's been presented by the State the
12 elements of indecent exposure and potentially exposing
13 himself to anybody else, or anybody who is willing to see
14 him.

15 If he had jumped off the rock or covered himself
16 up when the lights came up the street, you could assume he
17 didn't want anybody to see him, but he didn't do that. The
18 officer clearly could see him. Anybody else could have seen
19 him. He had a chance to cover up and he didn't.

20 So I'm going to -- you know, so looking at the
21 evidence in the light most favorable to the State, I find
22 there be substantial evidence from which the jury could
23 infer the guilt of the defendant on the indecent exposure.
24 I deny your motion on that particular charge as well.

25 Anything else?

1 MR. BARROWCLOUGH: No, sir.

2 THE COURT: Let's bring the defendant around and
3 question him.

4 DANNY LEE THOMAS, having been first duly sworn,
5 testified as follows:

6 THE COURT: Sir, for the record you are Danny Lee
7 Thomas?

8 THE DEFENDANT: Yes, Your Honor.

9 THE COURT: Mr. Thomas, we have reached the stage
10 of your trial where you may present your defense.

11 You have the right to testify in your own behalf.
12 However, no one can make you testify.

13 In the event that you have a record for any
14 conviction involving dishonesty or false statement or for a
15 crime punishable by imprisonment for more than one year and
16 this court determines that the probative value of admitting
17 this evidence outweighs its prejudicial effect to you, the
18 solicitor would be able to introduce this record for
19 impeachment purposes to attack your credibility.

20 If you elect not to take the stand, I would charge
21 the jury that they are not to give the fact that you did not
22 testify any consideration whatsoever and there is to be
23 absolutely no prejudice to you because you did not testify.

24 It's left entirely up to you whether or not you
25 testify. You may talk with your attorney, your family, or

1 friends, or anyone else, but the ultimate decision is left
2 entirely up to you.

3 Do you understand that it is your decision as to
4 whether you will or will not testify in your case?

5 THE DEFENDANT: I understand.

6 THE COURT: Have you discussed with your attorney
7 the advantages and disadvantages of testifying?

8 THE DEFENDANT: Yes, I have.

9 THE COURT: And do you wish to testify in your
10 case, sir?

11 THE DEFENDANT: No.

12 THE COURT: Is that your decision?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Are you sure it's your decision?

15 THE DEFENDANT: I need to speak with him again
16 about it, but it's my decision.

17 THE COURT: Well, I'm going to give you a chance
18 to speak to him, but you need to make up your mind one way
19 or the other. It doesn't matter to me. Certainly you can
20 testify or not testify. It's solely up to you. I have
21 explained to you what will happen if you don't testify, the
22 instruction I will give the jury, but it's solely up to you.
23 It's not your lawyer's decision.

24 THE DEFENDANT: That's okay. I'm not going to
25 testify.

1 THE COURT: Sir?

2 THE DEFENDANT: I'm not going to testify.

3 THE COURT: Well, you can talk to him.

4 THE DEFENDANT: I have already told him what
5 happened. He can tell you. He will explain it for me.

6 THE COURT: He's not going to testify to what's
7 not on the record. When he's arguing to the jury he's not
8 going to argue anything that's not on the record. I can
9 tell you that, but you two go back and talk to him a couple
10 more minutes and see what you want to do.

11 (Off the record)

12 (Back on the record)

13 THE COURT: And it's almost five o'clock, a
14 quarter to five and we haven't even made a decision whether
15 he's going to testify or not, so I don't know if we will
16 start it this late.

17 I do want to question him about his right to
18 testify.

19 MR. BARROWCLOUGH: Yes, sir.

20 Do you want him to come back around, sir?

21 THE COURT: Yes, sir.

22 Mr. Thomas, have you now had sufficient time to
23 discuss with your attorney the advantages and the
24 disadvantages of testifying?

25 THE DEFENDANT: I have decided not to, sir.

1 THE COURT: I didn't ask you that.

2 THE DEFENDANT: Yes, sir.

3 THE COURT: I asked you if you had sufficient
4 time --

5 THE DEFENDANT: Yes, sir, I have.

6 THE COURT: -- to discuss that with your attorney?

7 THE DEFENDANT: Yes, I have.

8 THE COURT: Okay. And do you wish to testify,
9 sir?

10 THE DEFENDANT: No, I don't.

11 THE COURT: Is that your decision?

12 THE DEFENDANT: That's my decision.

13 THE COURT: Thank you. You may return to your
14 seat.

15 MR. BARROWCLOUGH: Thank you, judge.

16 THE COURT: All right. I'm going to send them
17 home. We will just have to get started in the morning about
18 at nine.

19 Bring the jury in, please, sir.

20 (The following takes place in the presence of the
21 jury panel)

22 THE COURT: Counsel, we're ready to proceed.

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

24 Your Honor, the defense rests.

25 THE COURT: Madam forelady, members of the jury

1 panel, this concludes all the taking of testimony and
2 evidence in the case. We have yet remaining final arguments
3 from counsel, my instruction to you with regard to the law
4 that applies to the issues in this case.

5 It's by the courtroom clock about ten minutes to
6 five, so it's just getting a little bit late in the day. We
7 were going to try to finish this today, but really it's just
8 gotten a little bit late in the day, but if we do arguments
9 and charge we would probably be hear at least another couple
10 of hours, so we are going to go ahead and recess for the
11 afternoon and I'm going to ask you to be back in the jury
12 room ready to go in the morning at nine o'clock. At nine
13 o'clock in the morning.

14 On the overnight recess please do not discuss this
15 case among yourselves or with anyone else, even though you
16 have heard all the testimony and evidence in the case, you
17 have not yet heard my instruction to you with regard to the
18 law that applies to the issues in this case. So you need to
19 wait until you have that instruction before you begin
20 deliberating or considering the case and making a decision
21 in the case. So, again, please do not discuss the case with
22 anyone.

23 If anyone tries to discuss the case with you, do
24 not discuss it with them, but make note of that person and
25 let the bailiff know or the Clerk of Court know upon your

1 return. They will let me know and I will deal appropriately
2 with that person.

3 Please have a pleasant night tonight and please be
4 back in the jury room in the morning at nine a.m.. Thank
5 you.

6 (The following takes place outside the presence of
7 the jury panel)

8 THE COURT: All right, counsel, if you will meet
9 with me just briefly in chambers. I'll try not to keep you
10 more than a few minutes.

11 (Whereupon, proceedings were adjourned to July 26,
12 2011)

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1 STATE OF SOUTH CAROLINA)
2 COUNTY OF YORK) IN THE COURT OF GENERAL SESSIONS

3
4 THE STATE)
5 -vs-) TRANSCRIPT OF RECORD
6 DANNY LEE THOMAS,) 2010-GS-46-04067
7 DEFENDANT.) 2010-GS-46-04068
8) JULY 26, 2011
9) YORK, SOUTH CAROLINA

(VOLUME II)

10 B E F O R E:

11 THE HONORABLE LEE S. ALFORD, JUDGE. ; And a Jury.

12
13
14 A P P E A R A N C E S:

15 MARINA BENDER, ASSISTANT SOLICITOR
16 ERIN JOYNER, ASSISTANT SOLICITOR
17 ATTORNEYS FOR THE STATE

18 B.J. BARROWCLOUGH, DEPUTY PUBLIC DEFENDER
19 ATTORNEY FOR THE DEFENDANT

20 MICHAEL R. WATTS
21 CIRCUIT COURT REPORTER
22
23
24
25

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1 (PROCEEDINGS, July 26, 2011)

2 THE COURT: Counsel, approach just one second.

3 (Whereupon, the lawyers approached the bench for
4 an off-the-record discussion)

5 THE COURT: All right. Is there any matter we
6 need to take up out of the presence of the jury at this time
7 before we get started?

8 MR. BARROWCLOUGH: Not by the defense, Your Honor.

9 MS. JOYNER: Not by the State, Your Honor.

10 THE COURT: All right, the defense did not put up
11 anything, so the defense gets the last argument.

12 MR. BARROWCLOUGH: Yes.

13 THE COURT: The State will have the first
14 argument, so we are ready to proceed when we get started.

15 All right, please bring the jury, sir.

16 (The following takes place in the presence of the
17 jury panel)

18 THE COURT: Good morning, Madam Forelady, members
19 of the jury panel. I hope you enjoyed your night last
20 night.

21 We are ready now to resume with the trial.

22 We are to that part of the trial where counsel
23 will make their final arguments to you. I ask that you
24 listen attentively now as counsel address you in final
25 argument.

1 Solicitor.

2 MS. BENDER: Yes, Your Honor.

3 May it please the court?

4 Good morning.

5 The night of September 4th, 2010, Sergeant Cribb
6 was finishing up on a call on Tigler Street. He drives down
7 the road, circles around. He's just going back on routine
8 patrol, not expecting to see anything on the street, going
9 down and his headlights flash at something on the rock. It
10 was on the boulder, and he proceeds to drive down the road
11 and then pulls up to the rock in a fully marked patrol car
12 and in full uniform. He turns on his alley lights right
13 next to the defendant, who is sitting on the boulder next to
14 his patrol car and he sees with his alley lights this
15 defendant with his genitals out on this rock, pants down by
16 his knees, displaying his genitals on the street in front of
17 the him two feet away from a public road. I'll remind you
18 this is a marked patrol car.

19 The defendant continues to sit there, pants down,
20 genitals out, with the lights on him. And only until
21 Officer Cribb gets out of his car did the defendant decide
22 to pull up his pants and runs, runs from Officer Cribb, who
23 is running down this road after him. The defendant runs
24 into the brush. Only then does Officer Cribb catch up with
25 him, grabs ahold of his shirt, the defendant's shirt, and

1 the defendant issues punch and punch into Sergeant Cribb's
2 face. At that time the defendant gets away. He runs back
3 into this brush and struggled. It's a constant struggle.
4 The defendant, Sergeant Cribb, and then he gets away again
5 and goes through here.

6 At that point nothing is working. Officer Cribb
7 had said "stop, you are under arrest." He had tried to grab
8 his shirt and not be arrested. He is forced to use standard
9 procedure and deploy his taser, only after every attempt to
10 again compliance he said.

11 After he deploys his taser on several occasions,
12 and the defendant un-phased by all of this, does he gain
13 compliance right here because another officer, Sergeant
14 Stewart, comes on the scene. It takes two grown men to
15 handcuff this defendant at this point.

16 Ladies and gentlemen of the jury, the defense
17 wants to blame the officer for using his taser. This
18 defendant led this officer into dark woods. Sergeant Cribb
19 did not know the defendant when he chased him into these
20 dark, unlit, unfamiliar woods. Like I said before, he made
21 every effort to get this defendant to comply when he didn't.
22 The defendant was un-phased by the taser attempts. I'm not
23 trying to minimize the discomfort the defendant may have
24 felt, but the officer was doing his job.

25 I'm going to show you a picture of the defendant

1 after he's been tased, and tased. Un-phased. Standing
2 there at the police station after this incident he looks
3 fine. Please do not punish the officer for doing his job.

4 Second, I want to address the issue of the video
5 that defense has made with that video. They want you to
6 believe that this is some kind of conspiracy by the
7 officers. The video is what it is, ladies and gentlemen.
8 There was not some deliberate action taken by these officers
9 to not have initiated the video. He didn't anticipate that
10 this defendant would run from him and eventually punch him.
11 This was not deliberate to not have this entire incident on
12 the video. This officer was doing his job, running after
13 this defendant who was fleeing, the defendant who had broken
14 the law.

15 Now, I want address the law with you.

16 The defendant is charged with indecent exposure.

17 The first element willfully, maliciously, and
18 indecently.

19 Second element, expose his person.

20 And third element, in a public place, on property
21 of others, or in the view of any person on a street or
22 highway.

23 The defendant was breaking the law when he had
24 himself exposed, element two, on that rock. How do we know
25 this? Because Sergeant Cribb say he was exposed. He saw

1 his genitals feet from the road.

2 Third. Third element, this was in a public place.
3 This is a public road that he had himself exposed on. This
4 wasn't his home. This was in the view of any person who
5 came down that road, any person approaching that rock.

6 As you saw on the video, there was a bike that
7 went down that road. If it wasn't for Officer Cribb coming
8 up on this defendant exposed, that bike rider would have
9 come down that street and seen him exposed probably ten,
10 five feet away.

11 And one, the first element, willfully, maliciously
12 and indecently. The defendant simply did not care who saw
13 him exposed. He didn't care if he saw his genitals. He
14 didn't, because you know what? When Officer Cribb was going
15 down that road with those headlights, he saw those
16 headlights. He could have pulled his pants up when he saw
17 that car coming. He didn't. He willfully and maliciously
18 and indecently remained exposed as that car pulled right
19 next to him with police down the side of it. And those
20 alley lights shined on him, he remained exposed. That was
21 willful, that was malicious, and that was indecent.

22 He's also charged with resisting arrest, Section
23 B.

24 Three elements. He knowingly and willfully.

25 Two, assault, beat, or wound a law enforcement

1 officer.

2 And three, when the person is resisting arrest and
3 being made by one whom the person he knows or reasonably
4 knows or should -- or reasonably should know is a law
5 enforcement officer.

6 Let's start with the third element. Of course,
7 the defendant knew that Sergeant Cribb was a law enforcement
8 officer. He's in full uniform and he pulled up in a marked
9 patrol car with the police displayed on the side of it.

10 The defendant knew or should have known that this
11 was a law enforcement officer when he decided to punch and
12 punch him in those woods. Again, Officer Cribb had stated
13 "stop, you are under arrest." He continued to run. He knew
14 he was a law enforcement officer, or reasonably should have
15 known.

16 The first element, knowingly and willfully. The
17 defendant knowingly and willfully punched Sergeant Cribb
18 knowing exactly what he was doing. He made that choice to
19 lift his hand and punch Officer Cribb. He made the point to
20 shove Officer Cribb, to resist and struggle with Officer
21 Cribb in those briers. He knew what he was doing and he
22 willfully did it.

23 Okay. Let me explain element two, assault, beat,
24 or wound a law enforcement officer.

25 Assault: Offer or attempt a battery. As I said

1 earlier, Sergeant Cribb testified he was pushed. That when
2 he went up to the defendant, the defendant put up his hands
3 as if he was going to punch him, put up his fists, attempted
4 a battery, attempted to punch him. That's an assault in
5 itself.

6 Or, beat or wound. As I stated earlier, he was
7 punched. He struck the officer. He was beaten and wounded
8 the officer.

9 The judge will charge you on a lesser included of
10 resisting arrest, Subsection A. This is the type of
11 resisting arrest that is nonviolent. Let's explain it as a
12 struggle to get handcuffs on. This is not the type the
13 defendant is charged with. He assaulted an officer. He's
14 charged with Subsection B.

15 The State has the burden to prove the elements of
16 resisting arrest and indecent exposure beyond a reasonable
17 doubt. Reasonable doubt is the kind of doubt that would
18 cause a person to hesitate to act. This is not a hundred
19 percent certainty. This is not beyond any and all doubt.
20 It's a hesitation to act. Please do not go back in that
21 deliberation room and confuse deliberation with a hesitation
22 to act.

23 When you go back and deliberate, you can go and
24 entertain these conspiracy theories the defense has put
25 forward. And then I ask that you go back to the real facts

1 and evidence in this case. Sergeant Cribb was doing his
2 job. The defendant was breaking the law. The defendant
3 exposed his genitals in full public view on a public street.
4 He ran from Officer Cribb. He punched and assaulted Officer
5 Cribb. Sergeant Cribb didn't know the defendant. He had no
6 motive or reason to make this story up. He didn't want to
7 go into this briar patch and chase someone he didn't know he
8 that this defendant had anything on him. He put himself in
9 danger. He's not going to make this story up.

10 The defendant, again, broke the law. Officer was
11 doing his job. Defense wants to put fault on the officer
12 for doing his job and following standard procedure. He
13 doesn't want to put blame on the defendant, who was clearly
14 breaking the law that night.

15 I would ask that you reach a verdict that speaks
16 the truth in this case and find the defendant guilty of the
17 crime of indecent exposure and resisting arrest, Subsection
18 B. Thank you.

19 MR. BARROWCLOUGH: May it please the court?

20 THE COURT: Counsel.

21 MR. BARROWCLOUGH: Ladies and gentlemen, good
22 morning.

23 So what do we know? What is the uncontroverted
24 evidence in this case?

25 The uncontroverted evidence in this case is that

1 Mr. Thomas was sitting on a rock in a trash pile by some
2 woods in the dark, in a remote area of Rock Hill that was
3 not lit by street lights.

4 Now, Mr. Thomas was about to have a smoke; that
5 Officer Cribb came up on him and initiated an encounter with
6 him. It's uncontroverted evidence that Thomas ran, that he
7 ran about 30 feet down the wood line and into the woods.
8 It's uncontroverted that Officer Cribb grabbed Mr. Thomas;
9 that Mr. Thomas did resist, or oppose, or struggled with
10 Officer Cribb efforts to subdue him. It's uncontroverted
11 that ultimately Mr. Thomas was taken into custody.

12 Also it's uncontroverted that Mr. Thomas was tased
13 at least five times, dry stunned tased twice; and that what
14 was taken into evidence in this case on that night was some
15 drug paraphernalia. That's it. And that's important. Why?
16 Why? Well, we know, because Officer Cribb admitted that he
17 had to fill out an incident report, submit pictures of Mr.
18 Thomas' injury, and there is an internal affairs
19 investigation. For some drugs paraphernalia? No. No. But
20 it was in that context that these allegations arose.

21 And do you remember yesterday in opening statement
22 I said the only evidence that would be presented to you
23 against Mr. Thomas is the say-so of Officer Cribb. Just
24 what he said, that he said the genitals were exposed; that
25 he said Mr. Thomas punched him one time. One time. And I

1 told you in opening statement and it bore out to be true the
2 fact that there is no evidence, no direct evidence, no
3 circumstantial evidence, that supports either one of those
4 allegations. It doesn't matter how many times the solicitor
5 talked about it as if it's true. That's not evidence.
6 Officer Cribb said it and that's it. And like I said
7 yesterday, there is plenty of circumstantial evidence which
8 shows that those two allegations are not true. They are not
9 true. The State has the obligation of proving those
10 allegations beyond a reasonable doubt so you could believe
11 them without hesitation, but yet there is no evidence to
12 support them, and a lot of evidence that contradicts it.

13 So let's start with the indecent exposure. I'm
14 not high tech, like my counterpart, but basically indecent
15 exposure charges that Mr. Thomas, as I said yesterday in
16 opening statement, willfully, maliciously, and indecently
17 exposes himself.

18 I mean, what's the situation here? The situation,
19 as you heard, is that Mr. Thomas is sitting on a rock in a
20 garbage pile, in the dark, by some woods. They have got to
21 have smoke. There's drug paraphernalia next to him.

22 Now, the drug paraphernalia. It's funny. Officer
23 Cribb admitted that was the first thing he took into
24 evidence. I mean, it was one of the only things he did take
25 into evidence, that he took pictures of it, but none of that

1 was brought into this case. Why? Because you can't have it
2 both ways, you know, that night about the drug
3 paraphernalia, but now you can't say oh, we have got to use
4 drugs. Well, he admitted that's a secret activity. That's
5 illegal. That's something you do in private. That's
6 something that you do outside the public eye. But then he
7 willfully, maliciously, and indecently trying to expose
8 himself to the public. Those things are contradictory. So
9 that's why the drug paraphernalia angle to this situation
10 was not brought up at all by the State. But clearly on my
11 questioning, Officer Cribb had to admit, yes, that both he
12 took it into evidence and he photographed it, and he is in
13 the dark.

14 And, as it came out on cross-examination, Mr.
15 Thomas was wearing pants that were too big for him. The
16 officer didn't examine those pants to see just how big they
17 were, but they were too big. And there was a question of
18 whether or not the clasp worked. And Officer Cribb admitted
19 that he had to hold them up when he ran. They had to hold
20 them up in that picture because they were too big. So
21 sitting on a rock by himself in the dark by the woods to
22 have a smoke, you know, maybe they were rolled down a little
23 bit, but that's not indecent exposure.

24 Willfully, maliciously, indecently exposure is
25 what you think it is. It's the guy in the trench coat at

1 the bus stop flashing on purpose, showing himself, exposing
2 himself to victims. Why? Because he's a bad person,
3 because he's evil. That's what malicious means, evil. It's
4 not this.

5 Ladies and gentlemen, you were picked as
6 reasonable people from the community, drawing from your life
7 experience, your common sense. Does this situation even
8 sound like indecent exposure to you? No, it's not.

9 And factually his genitals were not exposed. How
10 do we know that? Number one, because Officer Cribb didn't
11 activate his video camera. He admitted the purpose of
12 having a video camera is to document evidence of a crime.
13 He testified he gets out of his car, lights up the whole
14 area artificially with his alley lights, gets out of the car
15 and sees his genitals. Really? Why didn't he turn the
16 video camera on to document it to have some evidence? Maybe
17 you get it on the camera. At the very least he gets out
18 there and says "I'm approaching the suspect. His genitals
19 are exposed." Did he document what he said to the suspect?
20 "Sir, why are your genitals exposed?" But he didn't
21 activate his video camera. And, again, like I said, that's
22 circumstantial evidence that this did not happen, because
23 he's a law enforcement officer. He knows what to do. If
24 this really had happened, he would have activated the video
25 camera.

1 How else do we know that this, in fact, did not
2 happen? From the testimony of Officer Stewart. What did
3 Officer Stewart say? Officer Stewart said "I didn't know
4 what he was arresting him for. I didn't know what he was
5 chasing him for." But that's important. Why? Because even
6 though he didn't get the transmission, Officer Cribb's said
7 he radioed for backup. He radioed for backup. So what if
8 he said "I'm chasing a flasher. I need backup. I'm chasing
9 a fellow who created an indecent exposure. I'm chasing an
10 indecent exposure suspect." Something. Nothing. But there
11 was nothing. There was no video recording or audio or
12 visual recording and no radio transmission, both things that
13 you would expect to find if this were really true.

14 The third thing that this is not true. You can
15 see from State's Exhibit 5 the shirt Mr. Thomas was wearing.
16 It was a long shirt. In fact, it goes down to his crotch
17 when he's standing up. I mean, just think about this. If
18 he's sitting on a rock, and I believe the testimony was that
19 he was hunched over lighting something, that shirt would
20 cover his lap.

21 And what's interesting, and think about this,
22 what's interesting is when I questioned Officer Cribb on
23 that point, I said "Officer Cribb, the shirt is long. It
24 would have covered his lap." What's the first thing he
25 said? "Well, he could have been holding it up with his

1 hand. Could have been holding up with his hand." Uh-uh,
2 no. I said "no, because you have already testified both his
3 hand were being used to light something." So, that's not
4 true. And what does that indicate? Does that indicate --
5 his answer, does that indicate that he thought back into his
6 mind to an actual memory of what happened? No, of course
7 not, because he contradicted what he already said. It
8 indicates more just a rationalized trying to come up with an
9 explanation, an explanation that would be false, because the
10 shirt would have covered his lap and his genitals.

11 Ladies and gentlemen, those are three powerful
12 things that are circumstantial evidence that contradict what
13 Officer Cribb said, and this whole scenario is not indecent
14 exposure at any rate.

15 Now, in terms of resisting arrest, Officer Cribb
16 says that Danny Thomas hit him one time. Now, the solicitor
17 in her argument said a couple of times, but the testimony
18 was one time. One time.

19 Now, you saw the picture. You saw the picture.
20 There is no evidence to support what Officer Cribb said, if
21 he was hit at all. I don't know if any of you have a life
22 experience of being in a fight, but, ladies and gentlemen,
23 this is nothing to indicate that he was hit. He said it was
24 on the right side of the face. This is the right side of
25 the face. It's not red. It's not bruised. It's not

1 swollen. Nothing. Nothing to back that up.

2 He admitted that he had absolutely no injury from
3 consistent with being in a fight. Now, don't be confused.
4 Don't be confused the fact he got scratched it, that it's
5 unfortunate. Certainly we feel bad for him that he got
6 scratched up, but that's part of the job description,
7 running woods and chasing people sometimes.

8 And don't be confused when the solicitor talks
9 about the fact that there was struggling because resisting
10 arrest, regular resisting arrest, simple resisting arrest,
11 resisting arrest A section, the definition -- the judge will
12 tell you the definition, is to oppose, or resist, or strive
13 against the effort, to resist. So Mr. Thomas, which we
14 acknowledge, was continuing to strive against Officer
15 Cribb's efforts to subdue him, to strive against Officer
16 Cribb to get away, to maintain his freedom, but that's not
17 assault, beat, or wound. How is that assault, beat, or
18 wound when actually no injury?

19 And let's take it a step further. Again, looking
20 at the circumstances, looking at the circumstantial
21 evidence. You know, it's interesting that Officer Cribb
22 says that Mr. Thomas tried to punch him one time, but that
23 one time was before the video came on. You all saw the four
24 and a half minute video and I'll leave it to you to judge
25 that, but it sounded like nothing that would be consistent

1 with someone in the mindset of committing violence against a
2 police officer. It's interesting that, again, Officer Cribb
3 said he was hit one time, but it's not backed up by any
4 evidence, including the video that was submitted into
5 evidence.

6 And, you know, speaking of video, it's not a
7 conspiracy theory that says the video was manipulated. I
8 don't have a grand conspiracy theory. I just want to point
9 out a couple of things. One, it's interesting that the
10 video does not come on in this case -- the video that is in
11 evidence does not come on in this case until this entire
12 sequence of events is more than half over. It's
13 interesting that the video does not come on, is not on,
14 during the period of time for which Officer Cribb makes
15 these two allegations that support these charges.

16 It's even more interesting that the audio from the
17 video that's in evidence miraculously goes off right as
18 Officer Stewart shows up. And if you listen to it, and it
19 will be in evidence and you can listen to it back in the
20 jury room, and the whole tone of the thing ranks up to "turn
21 over or I'm going to shoot you." Then the audio goes off
22 miraculously because they are out of range.

23 And it's not a conspiracy theory to say Officer
24 Stewart's car was equipped with video. That's true, they
25 admitted it. That video would have been recording because

1 the lights were on. That's true, they admitted it. That
2 video was not put into evidence for you to see, for you to
3 hear, for me to see, for me to hear. I mean, that's a fact.
4 That's not a conspiracy theory. That's a fact. They chose
5 not to preserve that evidence. Why? Why? Who was the
6 victim that night?

7 But going back to the circumstantial evidence that
8 shows the assault and battery on a police officer, assault,
9 beat, or wounding of a police officer is not true is the
10 fact that if you will listen to that video, who is yelling?
11 Who is threatening? The officer, not Mr. Thomas. The
12 officer admitted Mr. Thomas did not threaten him, did not
13 cuss him, did not use foul language against him. What did
14 the officer -- what did Mr. Thomas say on that video? "I
15 don't want to fight you. I don't want to fight you. I
16 didn't do anything wrong. I don't want to fight you."
17 Again, drawing from your life experience, is that consistent
18 with somebody who had violently assaulted an officer moments
19 before? No, it's not. Again, that's circumstantial
20 evidence that that allegation is not true. They have to
21 prove that allegation beyond a reasonable doubt, but that
22 evidence -- that allegation is not true, because leopards
23 don't change their spots. People don't act that way. When
24 the camera is off, he's violently assaulting the officer and
25 then all the sudden the camera is on and he's saying "i

1 don't want to fight you."

2 And remember the testimony. If Danny Thomas
3 really wanted to assault, beat, or wound the officer, it
4 wasn't a lie that he only had swung time. But, number two,
5 on the rock there was a knife. Why would he have run and
6 left a weapon that he could have used to defend himself?
7 Why? The reason why is because his mindset was not to
8 assault, beat, or wound the officer. His mindset was simply
9 to get away.

10 Ladies and gentlemen, I have done my best to take
11 you through a rigorous examination of all of the facts of
12 this case. I ask you on your oath as jurors to consider all
13 of the facts in this case before rendering a decision.
14 Please do not just blindly go along with some bald
15 assertions by police officers, even though he was a police
16 officer, and we all respect police officer. Nevertheless,
17 anybody can say anything about anybody else. But to obtain
18 a conviction in a criminal court of law in the United States
19 of America it requires more than just a bald assertion. It
20 requires evidence to such a level that you can believe those
21 assertions beyond a reasonable doubt, that you will be
22 firmly convinced that those things are true. In this case,
23 ladies and gentlemen, that just can't happen.

24 And ladies and gentlemen, I said yesterday that at
25 the end of this case that I'm going to ask you to find Mr.

1 Thomas not guilty of these two charges, and I am. And in
2 your wisdom, perhaps you would choose to acquit him entirely
3 on the theory that he was tased five times and that he was
4 the victim that night. But it would be disingenuous of me
5 to not acknowledge the fact that a verdict on resisting
6 arrest A, or regular simple resisting arrest might be
7 warranted. It might be. We have not tried to deny, nor am
8 I denying now, that Danny Thomas did not run, or that Danny
9 Thomas did not resist and oppose and strive against Officer
10 Cribb's efforts to subdue him. That's up to y'all, but I
11 would ask you to consider all the facts, consider all the
12 evidence, consult your heart what you believe really
13 happened that night, what's the right result in this case,
14 and find Mr. Thomas not guilty of assaulting a police
15 officer, which is resisting arrest B, and not guilty of
16 indecent exposure.

17 I thank you all very much for your attention to my
18 closing statements.

19 (Whereupon, at 9:45 a.m., the court charged the
20 jury panel)

21 THE COURT: Madam Forelady, members of the jury
22 panel, you have heard the final arguments of counsel. It's
23 now time for me to charge you, that is to instruct you with
24 regard to the law that applies to these issues. You are not
25 going to have these instructions written down for you back

1 in the jury room, so you are going to have to call on your
2 collective memories as to what I instruct you the law is.
3 However, once you begin your deliberations and you have some
4 question about the law and you request that I reinstruct you
5 on any of it, I will be happy to do that upon your request,
6 but what I would ask you to do at this time is to listen
7 very carefully as I go through the law that applies to the
8 issues in this case.

9 In this case the State charges Danny Lee Thomas
10 with two offenses. They charge him with indecent exposure
11 and they charge him with resisting arrest, assault on an
12 officer.

13 To these charges the defendant has pled not
14 guilty, which then places upon the State the burden of
15 proving the defendant guilty.

16 A person charged with committing a criminal
17 offense in South Carolina is never required to prove himself
18 innocent. I charge you that it is a vital important rule of
19 law that a defendant in a criminal trial must always be
20 presumed innocent until his guilt has been proved beyond a
21 reasonable doubt. This presumption of innocence remains
22 with the defendant at all times throughout the trial and is
23 only removed when and if the State's has proved guilt beyond
24 a reasonable doubt. For it is your solemn duty, ladies and
25 gentlemen, if not clearly convinced of guilt beyond every

1 reasonable doubt to the contrary to find the defendant not
2 guilty.

3 Madam Forelady, members of the jury panel, I
4 instruct you and emphasize to you that the fact that the
5 defendant did not testify in his trial is not a factor to be
6 considered by you in any way in your deliberations. You
7 must not consider the fact that the defendant has chosen not
8 to testify when you determine the guilt or innocence of the
9 defendant. It must not be considered by you in any manner
10 whatsoever either against or for the defendant. A defendant
11 has the Constitutional Right to remain silent. The
12 assertion of that Constitutional Right cannot and must not
13 be considered by you in your deliberations. Under your oath
14 then you are to reach no inference and draw no conclusion
15 whatsoever from the fact that the defendant did not testify.
16 The burden of proof remains upon the State to prove guilt
17 beyond every reasonable doubt.

18 What is a reasonable doubt? The state has the
19 burden of proving the defendant guilty beyond a reasonable
20 doubt.

21 Some of you may have served as jurors in civil
22 cases where you were told it is only necessary to prove a
23 fact is more likely true than not, such as by the greater
24 weight or preponderance of the evidence. However, in
25 criminal cases the State's proof must be more powerful than

1 that. It must be beyond a reasonable doubt.

2 Now, ladies and gentlemen, proof beyond a
3 reasonable doubt is proof that leaves you firmly convinced
4 of the defendant's guilt. There are very few things in this
5 world that we know with absolute certainty and in criminal
6 cases the law does not require proof that overcomes every
7 possible doubt.

8 A reasonable doubt may also be described as the
9 kind of doubt that would cause a reasonable person to
10 hesitate to act.

11 If you have such a doubt as to the guilt of the
12 defendant, then he would be entitled to a verdict of not
13 guilty.

14 Reasonable doubt may arise from evidence which is
15 in the case, or from the absence or lack of evidence in the
16 case.

17 If, based on your consideration of the evidence,
18 you are firmly convinced the defendant is guilty of the
19 crimes charged, you must find him guilty.

20 If, on the other hand, you think there is a real
21 possibility that he is not guilty, you must give him the
22 benefit of the doubt and find him not guilty.

23 You alone must make the determination of whether
24 or not reasonable doubt exists as to the guilt of the
25 defendant.

1 Madam Forelady, members of the jury panel, there
2 are two types of evidence which are generally presented
3 during a trial: Direct evidence and circumstance evidence.

4 Direct evidence is the testimony of a person who
5 asserts or claims to have actual knowledge of a fact, such
6 as an eyewitness.

7 Circumstantial evidence is proof of a chain of
8 facts and circumstances indicating the existence of a fact.

9 The law makes absolutely no distinction between
10 the weight or value to be given to either direct or
11 circumstantial evidence, nor is a greater degree of
12 certainty required of circumstantial evidence than of direct
13 evidence.

14 You should weigh all the evidence in the case.
15 After weighing all the evidence, if you are not convinced of
16 the guilt of the defendant beyond a reasonable doubt, you
17 must find the defendant not guilty.

18 Madam Forelady, members of the jury panel, under
19 the Constitution of South Carolina you are the finders of
20 facts in this case. I do not have the right to pass upon
21 the facts or even to express any opinion I might have as to
22 the facts, nor may I suggest in any way what I may think
23 about the guilt or innocence of the defendant. You should
24 form no opinion in that regard from anything that I may have
25 said or any rulings that I have made during the course of

1 the trial.

2 As the sole judges of the facts in this case you
3 are also necessarily the sole judges of the credibility or
4 believability of each of the witnesses that have testified
5 during the course of the trial.

6 There are a number of factors which you may
7 consider in arriving at your assessment as to a particular
8 witness' credibility or believability. Some factors I'm
9 going to list for you, and should you think of other factors
10 that you believe also ought to be considered when you go
11 back in the jury room on the question of credibility, then
12 you should consider those factors as well, but you may
13 consider the demeanor of the witness from the witness stand.
14 What was that witness' manner of appearance. Was the
15 witness straightforward in answering questions or hesitant
16 in responding to questions. Simply put, do you believe the
17 witness was telling the truth or not telling the truth.

18 Do you believe the witness knew of what that
19 witness testified or did not know of what that witness
20 testified.

21 You may consider whether or not the testimony of a
22 witness is consistent or inconsistent with that witness' own
23 testimony or with other testimony or evidence presented
24 during the course of the trial.

25 You may also consider how the witness came to know

1 the facts to which he testified.

2 You may consider the opportunity that a witness
3 had to observe or hear; that is, to perceive the existence
4 of a fact by means of their senses.

5 You may also consider whether or not a witness is
6 biased or prejudiced. That simply means do you find that a
7 witness had some reason to come into court and testify one
8 way or another to help or hurt one side or the other.

9 You may also consider whether or not the testimony
10 of a witness was strengthened or weakened by other testimony
11 or other evidence presented during the course of the trial.

12 Now, you as the finders of fact in this case and
13 you as the judges of the credibility or believability of
14 each of the witnesses that have testified may believe as
15 much or as little of what a witness testifies to as you deem
16 appropriate. You may believe all of what a witness says.
17 You may none of what a witness says, or you may believe only
18 part of what a witness says.

19 Madam Forelady, members of the jury panel, the
20 same Constitution that makes you the finders of the fact in
21 this case makes me the sole and only instructor in the law.
22 You must accept as correct the law that I charge and apply
23 to the law the evidence as you find it and reach your
24 verdict. Put aside any conceptions you may have as to the
25 law before coming here today and accept the law as I

1 instruct it to be. You, for purposes of your duty as jurors
2 today, should not be concerned about what the law ought to
3 be, but what I charge you the law is now in this state.

4 Madam Forelady, members of the jury panel, I
5 charge you with regard to criminal intent. Criminal intent
6 is a necessary element of each crime that must be proved by
7 the State beyond a reasonable doubt. Criminal intent is
8 always a matter that must be determined by the jury from the
9 circumstances surrounding the situation. There is no way to
10 prove intent to a mathematical certainty. There is no way
11 medical science can dissect a person's brain and determine
12 what he had in mind, so the law says that criminal intent
13 may be inferred from the circumstances shown to have
14 existed. This is how the jury makes a determination whether
15 or not the element requiring intent was present. Criminal
16 intent is a state of mind, which operated jointly with an
17 act is the commission of a crime. Criminal intent is a
18 mental state a conscious wrongdoing. So it is up to you,
19 the jury, to determine what the defendant intended to do
20 based on the circumstances shown to have existed.

21 I tell you that the State must prove criminal
22 intent beyond a reasonable doubt, just as the State must
23 prove every element beyond a reasonable doubt as I have
24 previously explained to you.

25 It is not necessary to establish intent by direct

1 and positive evidence, but intent may be established by
2 inference, in the same way as any other fact, by taking into
3 consideration the acts of the parties and all of the facts
4 and circumstances of the case.

5 While the State may prove motive, it is not
6 necessary that the State do so. However, the State must
7 prove intent.

8 Madam Forelady, members of the jury panel, I will
9 charge you now specifically with the law as to the offenses
10 of which the defendant is charged in this case.

11 As to indecent exposure, pursuant to Section
12 16-15-130 of the South Carolina Code of Laws, 1976, as
13 amended, the defendant is charged with indecent exposure.

14 The State must prove beyond a reasonable doubt
15 that the defendant willfully, maliciously, and indecently
16 exposed his private parts in a public place, on property of
17 others, or to the view of any person on a street or highway.

18 Willfully means that the act is not done by
19 accident, but that is done knowingly, consciously, and of a
20 stubborn purpose.

21 Maliciously means that the act is done with wicked
22 or mischievousness intentions or motives wrongfully and
23 intentionally without just cause or excuse.

24 Indecent means offensive, immodest, grossly
25 vulgar, obscene, unseemly, unbecoming, unfit to be seen or

1 heard.

2 I charge you now with regard to resisting arrest.
3 I'm going to charge you first with -- the defendant is
4 charged with 16-9-320(b) of the South Carolina Code of Laws
5 with regard to resisting arrest. I'm going to charge --
6 that is assault on an officer while resisting arrest. And
7 then I'll charge you under the theory that the greater
8 offense also includes the lesser offense. I will charge you
9 also with regard to the lesser offense.

10 First, as to 16-9-320, Subsection B of the South
11 Carolina Code of Laws provides in pertinent part that it is
12 unlawful for a person to knowingly and willfully assault,
13 beat or wound any law enforcement officer when such person
14 is resisting an arrest, whether under process or not.
15 Whether he's got a warrant or not, or some other legal
16 process or not.

17 In order for you, the jury, to find the defendant
18 guilty of violating this statute, you must find that the
19 State has proved every element of this offense beyond a
20 reasonable doubt.

21 The first element of this offense concerns the
22 defendant's state of mind at the time he committed the
23 offense. The State must prove beyond a reasonable doubt
24 that the defendant knowingly and willfully committed this
25 offense.

1 I'll define for you now the word knowingly and
2 willfully.

3 The word knowingly means to act voluntarily.

4 In order to have acted knowingly, the defendant
5 must have been aware that the person making the arrest was a
6 law enforcement officer.

7 The circumstances must be such that you as jurors
8 determine that a person of ordinary reason and prudence
9 under the same or similar circumstances would have realized
10 that the person making the arrest upon the defendant was a
11 law enforcement officer.

12 Knowingly means that an act is consciously and
13 intelligently performed. It means that an act is performed
14 with an awareness, and it means that the defendant knew what
15 he was doing when he committed the offense.

16 The word willfully means an intent to achieve the
17 result which actually occurs. Willful behavior is neither
18 accidental nor involuntary. Rather it involves a purposeful
19 deliberation.

20 Willfully indicates the intentional and deliberate
21 doing of a wrongful act without legal justification. It
22 indicates the doing of a forbidden act preferably in
23 violation of the law.

24 The second element of this offense is that the
25 defendant resisted an arrest by assaulting, beating, or

1 wounding a law enforcement officer.

2 The word assault is an unlawful attempt or offer
3 with force or violence to do corporal hurt or injury to the
4 person of another where there is the present apparent
5 ability to complete the attempt or offer by a battery.

6 Let me explain it to you this way. Let me
7 describe an assault this way to you. If I'm standing here,
8 someone else is standing here in front of me and I draw back
9 my fist and threaten in a rude, angry, resentful manner to
10 hit that person and I have the apparent ability to follow
11 through with that and hit that person, that is an assault
12 without a battery. That alone is an assault.

13 Now, if I follow through and punch that person,
14 that is a battery.

15 Now, you have an assault and battery, but you can
16 have an assault without a battery, or you can have assault
17 and battery.

18 It is an attempt to do bodily harm which falls
19 short of touching the body.

20 Mere words or threats are not sufficient to
21 constitute an assault.

22 The word beat and the word wound both simply mean
23 to strike or hurt.

24 To wound means to inflict an injury upon or to do
25 damage to the person of another.

1 The third element of this offense is that the
2 person who was either assaulted, beaten, or wounded was at
3 the time this offense was committed a law enforcement
4 officer, which means any duly appointed or commissioned law
5 enforcement officer.

6 The fourth element of this offense is that the
7 arrest was lawful. No citizen is required to submit to an
8 illegal arrest, and force may be used in resisting an
9 illegal arrest.

10 An arrest is lawful when it is made with a
11 properly executed warrant of arrest, which is served upon
12 the defendant in accordance with the law. As I told you
13 before, that's a process;

14 Or, when an arrest warrant is unnecessary, as when
15 a misdemeanor is committed in the presence of a law
16 enforcement officer, or when the arresting officer has
17 reasonable and probable grounds to believe that the suspect
18 has committed a felony.

19 It is the duty, however, of every citizen to
20 peacefully submit to a lawful arrest when the arrest is
21 made.

22 Let me go back and say to you and explain to you.
23 In this case the defendant is charged with indecent
24 exposure. That is a misdemeanor, not a felony.

25 As a reasonable and probable ground to believe

1 that the suspect has committed a felony.

2 It is the duty, however, of every citizen to
3 peacefully submit to a lawful arrest when the arrest is made
4 or sought to be made by lawful authority.

5 As I have said, when a police officer is engaged
6 in a lawful arrest, it is the duty of the citizen to subject
7 or yield to the arrest. And should the subject resist, the
8 law enforcement officer is justified in using as much force
9 as is reasonably necessary to take the subject into custody.

10 A citizen is not, of course, required to submit to
11 an illegal arrest and may use as much force as reasonably
12 necessary to prevent an unlawful arrest.

13 The fifth and final element of this offense is
14 that the defendant resisted a lawful arrest.

15 The word resist means to refuse to cooperate with
16 the arresting officer. It means a refusal by the defendant
17 to comply with the lawful order and lawful direction of the
18 law enforcement officer.

19 The word resist means to hinder, to obstruct, or
20 to strive against the law enforcement officer in the lawful
21 performance of his duty.

22 The resistance by the defendant may be active or
23 it the may be passive. And if the means employed by the
24 defendant are intended to prevent the law enforcement
25 officer from accomplishing a lawful arrest, the resistance

1 by the defendant is complete.

2 It is not necessary that the defendant shall have
3 used force in resisting a lawful arrest, but a mere
4 momentary delay in responding to an officer's command does
5 not constitute resisting a lawful arrest.

6 In order to convict the defendant and find him
7 guilty of this offense, the State must prove to your
8 satisfaction each of these elements and all of them beyond a
9 reasonable doubt.

10 As I told you before, I'm going to charge you also
11 with regard to the lesser included offense of simple
12 resisting arrest.

13 You may consider the lesser included offense of
14 simple resisting arrest under Section 16-9-320, Subsection
15 A, of the Code the laws of the South Carolina, 1976, as
16 amended.

17 To find the defendant guilty under that section
18 you must find all of the elements as I have previously
19 explained to you with regard to resisting arrest with
20 assault on an officer except that there is no assault on an
21 officer present. In other words, to find the defendant
22 guilty under this section you must find that the defendant
23 knowingly and willfully resisting arrest and that such
24 arrest was lawful and that such arrest was made by a law
25 enforcement officer.

1 Now, if you should find the defendant guilty and
2 there is a reasonable doubt as to whether he is guilty of
3 assault on an officer while resisting arrest or simply
4 resisting arrest, you should give the defendant the benefit
5 of the doubt and find him guilty of the lesser included
6 offense of simple resisting arrest.

7 Of course, you should not convict him of either
8 offense unless his guilt has been proved beyond a reasonable
9 doubt.

10 Madam Forelady, members of the jury panel, nothing
11 that I may have said or done during the course of this trial
12 has been in any way intended to express or suggests a view
13 of the case or an opinion as to the facts, the weight of the
14 evidence, or the credibility of the witnesses. If any of my
15 actions or words have seemed to so indicate, you will
16 disregard such and form your own opinion as to these
17 matters. You have been selected as fair and impartial
18 jurors, sworn to impartially try and determine the facts of
19 this case. When you comply with your oath to do so, then no
20 one will have a right to criticize your verdict and you will
21 have fully discharged your duty as juror. You are to decide
22 this case according to the testimony you have heard from the
23 lips of the sworn witnesses, along with any other evidence
24 introduced during the course of this trial.

25 I charge you that as jurors you must decide the

1 issues in this proceeding without bias and without prejudice
2 to any party. You cannot allow yourself to be governed by
3 sympathy, by prejudice, by passion, by public opinion, or
4 any other arbitrary factor. Both the State and the
5 defendant have the right to expect that each of you will
6 carefully and impartially consider all of the evidence in
7 the case and you will follow the law as I have explained it
8 to you.

9 Whatever your verdict in this case, it must be
10 your unanimous verdict. All twelve jurors must agree on the
11 verdict which the foreperson would be authorized to write on
12 behalf of the jury.

13 Madam Forelady, I charge you that once you begin
14 your deliberations, that you maintain some order in those
15 deliberations, that everyone who wishes to be heard and to
16 participate in those deliberations be allowed to do so.

17 If for any reasons any members of the jury panel
18 should take a break from their deliberations, all should
19 take a break. By that I mean all twelve jurors should be
20 present and deliberating when deliberations are going on.

21 Now, I have prepared for your use in the jury room
22 a verdict form for each of the charges in this case and I'm
23 going to run over those verdict forms for you now. They are
24 pretty self explanatory, but I'm going to run over those for
25 you now.

1 First, as to the charge of indecent exposure,
2 there are two possible verdicts which the jury can reach on
3 that charge, indecent exposure.

4 The first verdict which appears on the verdict
5 form reads as follows: We, the jury, find the defendant,
6 Danny Lee Thomas, guilty of indecent exposure.

7 The second possible verdict which appears on the
8 verdict form reading as follows: We, the jury, find the
9 defendant, Danny Lee Thomas, not guilty.

10 Now, Madam Forelady, I'm going to go over now with
11 you the resisting arrest charge. And on this verdict form
12 there are three possible verdicts that you could reach on
13 that verdict form, and I'm going to go over those at this
14 time.

15 The first possible verdict that appears on the
16 verdict form is: We, the jury, find the defendant, Danny
17 Lee Thomas, guilty of assault on an officer while resisting
18 arrest.

19 The second possible verdict which appears on the
20 verdict form reads as follows: We, the jury, find the
21 defendant, Danny Lee Thomas, guilty of the lesser included
22 offense of simple resisting arrest.

23 The third verdict which appears on the verdict
24 form reads as follows: We, the jury, find the defendant,
25 Danny Lee Thomas, not guilty.

1 Now, in preparing the verdict forms I have to put
2 the possible verdicts on the verdict form in some order. I
3 do it the same way every time. The order in which the
4 possible verdicts appear on the verdict form means
5 absolutely nothing and you should infer nothing from them.
6 What you should do, Madam Forelady, the jury should
7 deliberate. Once the jury has reached a unanimous verdict
8 in each of these cases, you would then go to the verdict
9 form, find the verdict which corresponds with the unanimous
10 verdict reached by the jury. You will simply then put a
11 check mark beside the blank next to that verdict. Sign your
12 name on the line above the word foreperson's signature and
13 date it. Once you have done that on each of these two
14 charges, you will knock on the door, let the bailiff know
15 that you have reached a verdict. The bailiff will let me
16 know and I'll bring you back out into the courtroom to
17 receive that verdict.

18 Now, I'm going to ask you if you will at this time
19 to retire to the jury room, all except the alternate. Sir,
20 I'll ask you at this time not to go into the jury room but
21 wait just outside the courtroom door for further
22 instructions.

23 If additional instructions are necessary -- do not
24 begin deliberating, however, because I have to give counsel
25 an opportunity to request additional instructions on the

1 law. If additional instructions are requested and I deem
2 them necessary, I'll bring you back out in the courtroom and
3 give you additional instruction.

4 If no additional instructions are necessary, I
5 will send to you by means of the bailiff the verdict form,
6 any exhibits that have been admitted into evidence and
7 instructions to begin deliberating. Please do not begin
8 deliberating until you get those instructions.

9 One other thing, Madam Forelady. Should you
10 become divided in your deliberation and you send me a note
11 out telling me that you are divided, please do not tell me
12 how you are divided. I don't want numbers from you. It's
13 certainly okay to tell me if you are divided, but please do
14 not tell me or give me numbers with regard to the division.
15 I don't want to know that.

16 All right. Thank you. Please retire to the jury
17 room.

18 (Whereupon, at 10:11 a.m., the jury panel retired
19 to the jury room, awaiting instructions to begin
20 deliberations)

21 THE COURT: Exceptions or additional requests to
22 charge from the State?

23 MS. JOYNER: Not from the State.

24 THE COURT: From the defense?

25 MR. BARROWLCOUGH: No, sir, Your Honor.

1 THE COURT: Okay. Counsel, check the exhibits and
2 make sure only those that were admitted into evidence go
3 back to the jury.

4 (Off the record)

5 (Back on the record)

6 THE COURT: You can hand those to the jury and
7 tell them they can begin deliberating, and ask the alternate
8 to come in, please.

9 (Whereupon, at 10:13 a.m., the jury panel was
10 instructed to begin deliberating)

11 (Whereupon, the alternate was brought into the
12 courtroom)

13 THE COURT: Sir, as it turns out we made it
14 through the trial without an emergency developing with
15 regard to those jurors, so this will conclude your service
16 on this particular case. And I'm going to excuse you for
17 the balance of the day and ask you, if you will, please, to
18 call in tonight after seven o'clock. You will get
19 instructions by voicemail when you need to report back or
20 call back, as the case may be.

21 ALTERNATE JUROR: Thank you.

22 THE COURT: Thank you very much for your service
23 thus far this week. You are free to go.

24 ALTERNATE JUROR: Thank you.

25 (Whereupon, the alternate juror was discharged)

1 (Whereupon, at 10:14 a.m., proceedings recessed
2 pending the verdict of the jury panel)

3 (Whereupon, at 11:27 a.m., proceedings were
4 reconvened)

5 THE COURT: All right, sir, please bring the jury
6 in.

7 (Whereupon, at 11:29 a.m., the jury panel returned
8 to open court to report its verdict)

9 THE COURT: Madam Forelady, have you and the jury
10 reached a unanimous verdict in these cases?

11 JURY FORELADY: We have.

12 THE COURT: Please hand the verdict forms up to
13 the bailiff.

14 The clerk will publish the verdicts.

15 THE CLERK: In the State of South Carolina versus
16 Danny Lee Thomas with the Indictment Number 2010-GS-46-4068,
17 we, the jury, find the defendant, Danny Lee Thomas, guilty
18 of assault on an officer while resisting arrest.

19 Signed by foreperson this date.

20 2010-GS-46-4067, we, the jury, find the defendant,
21 Danny Lee Thomas, not guilty.

22 Signed by the foreperson this date.

23 If this so be your verdict, so say you all by
24 raising your right hand.

25 Let the record show all affirmed.

1 THE COURT: Any questions of the jury panel from
2 the State?

3 MS. JOYNER: Not from the State, Your Honor.

4 THE COURT: From the defense?

5 MR. BARROWCLOUGH: No, sir, Your Honor.

6 THE COURT: Okay. Madam Forelady, members of the
7 jury panel, this will conclude your service on this
8 particular case. I'm going to -- I certainly want to thank
9 you for your service thus far this week and the sacrifices
10 that you have made to help make our justice system work.

11 I'm going to excuse you at this time and ask you,
12 if you will, to please call in tonight after seven o'clock
13 or to get instructions. We're about ready -- we just
14 started another trial in the other courtroom and we are
15 about to start one in this one. We are in some pretrial
16 matters now and start another trial. We have already a jury
17 selected for that one, so you will not be on one of those
18 two cases, but we might need you one for later this week, so
19 I'm going to ask you to please call in tonight after seven
20 o'clock to your voicemail number and you will get
21 instructions then.

22 Again, thank you for your service and sacrifice.
23 You are free to go at this time.

24 I need the foreperson. Ma'am, if you will come up
25 and sign our indictments for us, please.

1 (Whereupon, at 11:31 a.m., the jury panel was
2 discharged)

3 THE COURT: All right, I'll hear you with regard
4 to any motions you might wish to make at this time.

5 MR. BARROWCLOUGH: Thank you, Your Honor.

6 Your Honor, at this time on behalf of Mr. Thomas I
7 would move for a new trial on the resisting arrest
8 indictment on the grounds that the evidence was insufficient
9 to support the verdict of guilty by the jury, especially in
10 light of the fact that he was acquitted on the other charge.
11 That would have gone to the element that he was an arresting
12 officer.

13 THE COURT: Does the State wish to be heard on the
14 motion?

15 MS. JOYNER: Your Honor, we would just ask that
16 the defendant's motion be denied. There is more than
17 sufficient evidence to carry this case to the jury on the
18 account the resisting arrest, Subsection B. The officer's
19 testimony alone was sufficient, Your Honor. He testified
20 that he was in the course of a lawful arrest and assaulted
21 by the defendant. He was in plain clothes obviously -- or
22 I'm sorry, he was in the uniform. He was in a marked car
23 and obviously the defendant knew or should have known that
24 he was an officer.

25 THE COURT: Well, you know, it's one thing to

1 believe he had probable cause to make an arrest and not be
2 satisfied -- the jury not be satisfied that the State had
3 proved beyond a reasonable doubt the elements of the
4 indecent exposure charge but still believe that the officer
5 had probable cause to make the arrest. After all, there
6 were drug paraphernalia also found. And also, of course,
7 the officer testified, but the jury may found that he was
8 exposed, the officer did, and -- but, you know, and possibly
9 the jury just didn't think they had proven maybe the
10 malicious intent, but still they found and I explained it to
11 them that they could find that it was a legal arrest, and so
12 they obviously found that.

13 So insofar as the assault on an officer, clearly
14 there is evidence to support that charge. It's a question
15 for the jury. But unlike your final argument, the officer
16 testified not that he was struck once, but he was struck
17 more than once, despite your argument to the jury you only
18 said he was struck once. The officer testified that he was
19 struck in the face and in the jaw with the fists, that he
20 was punched in the chest. He was also hit by the defendant
21 trying to get away and pushed and shoved, and all of those
22 could be considered by the jury. Certainly there is ample
23 evidence from which the jury could infer the State had
24 proven the elements of that offense. So I would deny your
25 motion for judgment, notwithstanding the verdict on that, or

1 for a new trial. I think it was factual question for the
2 jury to determine and they made that decision.

3 Okay, are you ready with the sentencing?

4 (Indictment No. 1995-GS-46-3384 marked as Court's
5 Exhibit No. 1 for identification)

6 (Indictment No. 2004-GS-46-3223 marked as Court's
7 Exhibit No. 2 for identification)

8 MS. JOYNER: Your Honor, I have before us two
9 Court's Exhibits. Court's Exhibit 1 is with reference to a
10 1995 conviction in York County for resisting arrest, A.

11 Court's Exhibit 2 is a 2005 conviction for
12 resisting arrest, subsection B. That also occurred in York
13 County and the sentence was a five year sentence.

14 Your Honor, the defendant's record begins in 1980.
15 He has been arrested 33 times in his life that I can
16 determine from the NCIC. Your Honor, he's been arrested in
17 North Carolina. He's been arrested in South Carolina. He
18 has been arrested in Virginia.

19 Most of the record, I will tell Your Honor, it
20 looks like a record of public drunk, possession of
21 marijuana, misdemeanor-type offenses. Throughout his life,
22 some involving alcohol, some involving drugs, some involving
23 trespass, some involving assault.

24 The ones that I wish to highlight to the court, in
25 1985 a conviction from York County, South Carolina,

1 distribution of marijuana, three counts.

2 1987, the NCIC indicates a conviction for
3 burglary.

4 Again in 1995, State's Exhibit 1, for resisting
5 arrest, Subsection A.

6 In North Carolina, in 2000, April 7th, 2000
7 incident date. Conviction date was June of 2000, assault
8 and battery on a public officer.

9 Again, an incident date August 30th, 2000,
10 conviction date September 20th, 2000, obstruction of
11 justice. That also occurred in Richmond, Virginia.

12 Following that are a series of arrests for
13 marijuana, trespassing, and public disorderly conduct.

14 Then we come to February 22nd of 2002, arrested
15 again for obstruction of justice. Convicted on June 12th of
16 2010. That was in Richmond, Virginia.

17 Following that are a series of arrests for public
18 intoxication, especially marijuana, other misdemeanor-type
19 offenses.

20 Your Honor, then that brings us to Court's Exhibit
21 2, which is 2004. I think I misspoke earlier. I said 2005.
22 A 2004 conviction for assault on a police officer, and that
23 was from our jurisdiction, Your Honor. He received five
24 years.

25 Additional convictions involving, you know,

1 violence or threats in North Carolina. Charlotte, North
2 Carolina, incident date March 24th of 2007, conviction date
3 April 4th of 2007, communicating threats to town. I think
4 that is a misdemeanor offense, Your Honor.

5 Also from Charlotte, North Carolina, incident date
6 July 17th, 2007, conviction date August 14th, 2007. Assault
7 on a government official or employee.

8 Again in Charlotte, North Carolina, incident date
9 June 5th, 2008, conviction date August 28th of 2008,
10 resisting a public officer, two counts.

11 And July -- June -- well, I'm actually -- I'm
12 sorry, Your Honor, I'm not sure. I think there were three
13 counts of resisting public officer from Charlotte, North
14 Carolina in 2008, a different date.

15 And, Your Honor, as I said, there is some 33
16 arrests, but those are the ones that we wanted to highlight
17 for the court.

18 THE COURT: Counsel?

19 MR. BARROWCLOUGH: Thank you, Your Honor. May it
20 please the court.

21 Your Honor, Mr. Thomas is 47 years old. Tomorrow
22 is his birthday and actually he will be 48 tomorrow.

23 Your Honor, he is from this area. He only went to
24 the 3rd grade, Your Honor. As a youth he did suffer from
25 abuse, physical and sexual abuse. That I think affected his

1 development as an adult. Your Honor, he has suffered from
2 different mental illnesses.

3 In talking not so much to him, but one of our
4 investigators talked to a family member, they know that he
5 has had difficulty most of his adult life, that he has lived
6 off and on a homeless or vagrant lifestyle, that they have
7 tried to get him help.

8 I do think, Your Honor, that the record as
9 narrated by Ms. Joyner is somewhat consistent and indicative
10 of a person who is often on the street and sometimes comes
11 into contact with law enforcement in these different
12 jurisdictions.

13 And in, I guess, an adversarial way, because of
14 the fact that he's homeless, because of the fact that he's
15 where he's not supposed to be because he has nowhere really
16 to go, Your Honor, in fashioning a sentence for Mr. Thomas I
17 would ask the court to consider the fact that the jury did
18 find him guilty of assault on a police officer, but that --
19 of course, that Statute, that Code Section covers a wide
20 variety of possible circumstances, and that on these
21 circumstances it was not a situation where the officer was
22 severely injured, or even had any visible injury from what
23 Mr. Thomas was found to have done by the jury. I would say
24 it would be more on the less egregious injury spectrum. I
25 would ask the court to take all that into consideration in

1 fashioning a sentence for Mr. Thomas.

2 I understand that the sentence probably will
3 involve incarceration. I would ask the court to consider a
4 sentence more in the two to three year range than the upper
5 end of the sentencing range, Your Honor.

6 THE COURT: Thank you.

7 How much time has he served?

8 MR. BARROWCLOUGH: Your Honor, it's been since
9 September 4th, which by my calculation is 325 days.

10 THE COURT: Mr. Thomas, is there anything that you
11 want to say to the court?

12 THE DEFENDANT: Yes, sir, I would like to speak.

13 I do have a lengthy record. I try to stay out of
14 trouble.

15 I did not strike this officer. I honestly didn't.
16 I know I didn't. And I'm -- I learned from the mistakes
17 that I made those previous times, and this man assaulted me.
18 And when he did I told him I didn't want to fight him, but
19 evidently it turned out this way. And I -- I have -- I have
20 never took a jury trial and pleaded guilty to charges that I
21 have -- I mean charges that I was guilty of. I never have.

22 I place myself on the mercy of the court and I'm
23 not going to tell you any lies. I didn't try to hurt this
24 man, and I didn't have any intent to do so, even after he
25 had struck me. I did have the intent of running away from

1 him. I was hoping that by picking a jury that it would be
2 dealt with in that manner, but there is nothing I can do
3 about it at this point. I will try to get an appeal to
4 overturn whatever it is that I can, but there is nothing I
5 can do about it at this point. But that's -- please
6 understand that this man -- I'm -- I'm a large man and this
7 man is going to have a bruise on him. If I was trying to
8 hurt him, I would have -- he would have -- I would have done
9 more than struck him. I would have -- I would have done
10 something to harm him.

11 And the only thing I can say is if I had been
12 found guilty, you are going to have to sentence me, but if
13 you do so based on the harm that I caused him, I would
14 appreciate it and have mercy on whatever the sentence I
15 have. I mean, I don't know exactly what to say. That's all
16 I have.

17 THE COURT: Well, Mr. Thomas, I say this for you.
18 Based on the facts that I heard I don't think that you
19 intended to hurt the officer. I think you were trying to
20 get away from him. I think that. But I also think that you
21 struck the officer. I don't think he was lying about that.
22 It happened so fast and so much going on out there you may
23 not remember everything that happened, and he may not be
24 exactly right about everything that he said, but I believe
25 you struck the officer. You didn't do any substantial

1 physical harm to him, but you did strike him and resisted
2 him in that.

3 Did the officer want to say something?

4 OFFICER CRIBB: Yes, sir, I would.

5 Your Honor, I just want to say that, you know, I'm
6 going on twelve years as a police officer now and I have
7 encountered a lot of different situations over the years.
8 And as we all see in a media every day an officer is being
9 assaulted, an officer being killed, being run over. And I
10 would hate to think that it would have to be to the point to
11 where I didn't go home to my family for someone to have to
12 be punished for it. Luckily I didn't sustain any serious
13 injury. I'm glad I didn't, but it could have -- it could
14 have gotten to that point.

15 THE COURT: Well -- thank you.

16 Anything else you want to tell me?

17 OFFICER CRIBB: No, sir, that's all I wanted to
18 say.

19 THE COURT: Well, Mr. Thomas, you know, I realize
20 the officer wasn't severely hurt in this case, and thank
21 goodness he wasn't, but the problem I have got, of course,
22 in sentencing is I have to consider everything, and that
23 includes all of these crimes. You have been in trouble your
24 whole life with the law and you have resisted the officers
25 and struck officers before. And you say that you learned

1 from that, but apparently you didn't.

2 I don't think that you -- like I said, I don't
3 think that you set out to hurt the officer. I think that
4 you were trying to get away and do whatever you needed to do
5 to get away, but you have got a lengthy record and I have to
6 consider that as well. If this was the first time that you
7 were in court with no record, I would look at this entirely
8 different, but I have to consider your record as well,
9 particularly with regard to previous charges.

10 Case number 2010-GS-46-4068, Danny Thomas, having
11 been found guilty by a jury of resisting arrest, assault on
12 an officer, the sentence of the court is to be committed to
13 the State Department of Corrections for a determinate term
14 of six years.

15 Give him credit for 325 days of jail time.

16 This is a parolable offense, obviously, so you --
17 and you would be eligible for parole on this offense when
18 you have served a certain amount of time. I don't know how
19 much time that you would be eligible.

20 All right. Thank you.

21 MR. BARROWCLOUGH: Thank you, Your Honor.

22 MS. BENDER: Thank you, Your Honor.

23 MS. JOYNER: Thank you, Your Honor.

24 (END OF REQUESTED TRANSCRIPT OF RECORD)

25

CERTIFICATE

I, the undersigned, Michael R. Watts, Official Court Reporter for the Sixteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and the evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for YORK County, South Carolina, on the 25th AND 26th days of July, 2011.

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

NOVEMBER 2, 2011

A handwritten signature in cursive script, reading "Michael R. Watts", is written over a horizontal line.

Michael R. Watts
Circuit Court Reporter

WITNESSES

IPD\Grayson

g

ARREST WARRANT NUMBER

517513

ACTION OF GRAND JURY

TRUE BILL

ABK
Foreperson of Grand Jury
Date: 11-11-10

VERDICT

guilty

Charles B. 7/10/10
Foreperson of Petit Jury
Date:

DOCKET NO. 2010-GS-46- 04068

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

November 11, Term 2010

THE STATE

vs.

DANNY LEE THOMAS

Indictment for
RESISTING ARREST

SC Code: 16-9-320(b)
CDR Code: 256

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
guilty to the within indictment or to

Defendant

Witness:

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

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)

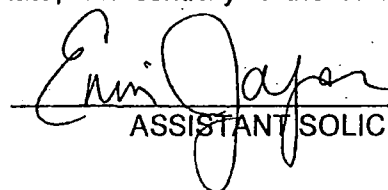
INDICTMENT

At a Court of General Sessions, convened on November 11, 2010, the Grand Jurors of York County present upon their oath:

RESISTING ARREST

The Defendant, Danny Lee Thomas, did in York County, South Carolina, on or about September 4, 2010, knowingly and wilfully assault, beat, or wound Officer Scott Cribb, a law enforcement officer of this State, while resisting the efforts of the officer to make a lawful arrest of the defendant, when he knew or reasonably should have known that Officer Cribb, is a law enforcement officer, in violation of Section 16-9-320(b), Code of Laws of South Carolina, (1976, as amended).

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


ASSISTANT SOLICITOR

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 August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

July 9th, 2012


LaNelke Cantey DuRant
Appellate Defender

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

ATTORNEY FOR APPELLANT

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

 ORIGINAL

Appeal from York County
Lee S. Alford, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

DANNY LEE THOMAS,

APPELLANT

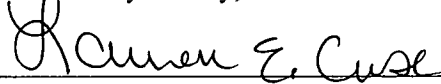
CERTIFICATE OF SERVICE

I certify that a true copy of the Record on Appeal in the above referenced case has been served upon Salley W. Elliott, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201 this 9th day of July, 2012.



Brandon Hall
Administrative Specialist

SUBSCRIBED AND SWORN TO before me
this 9th day of July, 2012 .

 (L.S.)

Notary Public for South Carolina

My Commission Expires: August 23, 2014.

RECEIVED
JUL 09 2012
SC Court of Appeals