

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM YORK COUNTY

J. Mark Hayes, II, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

LATROY LAMAR WHERRY,

APPELLANT

APPELLATE CASE NO. 2013-002509

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA	)	GENERAL SESSIONS
	)	
County of York	)	2013-GS-46-2280
	)	
State of South Carolina,	)	
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
Latroy Lamar Wherry.	)	
	)	
	)	
	)	

November 18th-19th, 2013
York, South Carolina

BEFORE:

THE HONORABLE J. MARK HAYES, II, JUDGE; and a
jury.

APPEARANCES:

CHRISTOPHER EPTING, ASSISTANT SOLICITOR
Attorney for the State

MELISSA INZERILLO, ASSISTANT PUBLIC DEFENDER
Attorney for the Defendant

AMINAH R. HARDY, RPR, CVR-CM
Official Court Reporter

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P R O C E E D I N G S

(State's Exhibit Number 1 was marked.)

THE COURT: This is the matter of State of South Carolina versus Latroy Wherry -- did I say that correctly?

THE DEFENDANT: Yes, sir.

THE COURT: And this is an indictment for failure to stop for a blue light. Has been true billed by the grand jury, the docket number 2013-GS-42-02280 (sic). I have an been provided with a list of defendant's request for voir dire and potential list of witnesses. And did the defense also have the -- motions?

MS. INZERILLO: Yes, sir. I gave the Court copy earlier in chambers, but I can provide another copy.

THE COURT: If you've got a copy, I believe I left it up there. Thank you, ma'am.

MS. INZERILLO: Yes, Your Honor.

THE COURT: First one that I see -- this is a motion to determine if the State has complied with Rule 5?

MR. EPTING: State has complied with Rule 5 as well as Brady, Your Honor.

THE COURT: And motion to determine the prior record of the defendant that the State would intend to introduce should he choose to testify?

MR. EPTING: Your Honor, the defendant was convicted in 2005 of one count of possession of a stolen vehicle,

1 one count of false information to police. We believe
2 those would be crimes of dishonesty under 609 and should
3 he testify, intend to impeach with those. He was also
4 convicted of several drug charges carrying up to 15 years
5 in jail in 2005. We believe those would be admissible to
6 impeach him as a crime that carries over one year under --
7 I believe the first part of Rule 609.

8 THE COURT: What was that second one? You have -- I
9 wrote down "possession of stolen vehicle in 2005." What
10 was the other one in 2005?

11 MR. EPTING: Conviction for false information to
12 police officer from 2005, as well as some drug charges,
13 Your Honor. I can give you the exact captions of those
14 charges if the Court would like.

15 THE COURT: Have you provided a copy of his record to
16 the defendant?

17 MR. EPTING: We have, Your Honor.

18 THE COURT: Okay.

19 MR. EPTING: Convictions for PWID or distribution of
20 crack cocaine, first offense, for which he received a
21 sentence of a YOA on September 23rd, 2005. That
22 obviously does carry more than one year in prison, and
23 thus we believe would be fair game for impeachment under
24 the rules.

25 MS. INZERILLO: Your Honor, regarding the first two

1 charges -- regarding the possession of stolen vehicle, I
2 don't have a case readily that comes to mind, but I would
3 object to that one under the state -- the reason the State
4 has put forth. I think the inception of that case is the
5 possession of a stolen vehicle, not the theft of a
6 vehicle, which certainly would be a crime of dishonesty.
7 And I don't think that would fall under a crime of
8 dishonesty that is contemplated under that.

9 Your Honor, and my only concern regarding the drug
10 charges, certainly I would ask that if Mr. Wherry does
11 take the stand and is questioned of those, perhaps he be
12 questioned along the lines of the fact he had been
13 convicted of a felony and not anything specific in terms
14 of specifics as to those charges.

15 MR. EPTING: Your Honor, if it came to that, the
16 State would seek to impeach him without naming the
17 offense, obviously, because we agree that would be unduly
18 prejudicial. However, we would like to ask him that he's
19 been convicted of a felony over one year in prison and
20 leave it at that.

21 THE COURT: Okay. What we'll do is the giving false
22 information to police officer will be allowed. The State
23 has agreed to the restriction on the way they would phrase
24 the drug charge, and so the State would be restricted on
25 that. That was an interesting position on the distinction

1 between possession of a stolen vehicle versus theft of a
2 stolen vehicle. I will let you know by the time we get to
3 that point. I'll do some -- little bit on research on
4 that.

5 MS. INZERILLO: Thank you, Your Honor.

6 MR. EPTING: Thank you, Your Honor. And Your Honor,
7 moving on to the next defense motion, I have provided her
8 with a list of potential witnesses. I also provided that
9 to the Court, the Clerk of Court, as well as the court
10 reporter.

11 MS. INZERILLO: Your Honor, not quite sure if
12 Ms. Kennedy is going to be called as a witness, but I
13 don't think we have any indication of any prior record.

14 MR. EPTING: I don't believe she has one, Your Honor,
15 but out of an abundance of caution, we can have our
16 support staff run her rap sheet and deliver that to
17 Ms. Inzerillo certainly if she testifies prior to the
18 testimony.

19 THE COURT: All right.

20 MR. EPTING: And Your Honor, I don't believe I
21 received a list from the defense. I'm assuming perhaps
22 only the defendant is on it?

23 MS. INZERILLO: Yes, Your Honor. At this time, the
24 defense does not anticipate calling any other witnesses
25 other than whether Mr. Wherry exercises his right to

1 testify.

2 THE COURT: And you want the -- to sequester Sergeant
3 Breeden and Brittany Kennedy?

4 MS. INZERILLO: That would be our request if
5 Ms. Kennedy does testify. Obviously if Sergeant Breeden
6 is the only witness, Your Honor, certainly that would not
7 be a suitable request.

8 MR. EPTING: We would not object to sequestering
9 Ms. Kennedy should she testify. However, Sergeant Breeden
10 is the case agent in this case and it's usually customary
11 that they be allowed to stay in the courtroom of the
12 entirety of the case.

13 THE COURT: Really doesn't sound like that's a
14 problem. Okay. Motion to determine the existence and
15 admissibility of any prior bad acts the State may intend
16 to introduce versus Lyle testimony?

17 MR. EPTING: Your Honor, at this juncture, we don't
18 believe that we have any Lyle testimony we would introduce
19 at trial.

20 THE COURT: Motion to suppress any identification
21 done by the officer in the present case pursuant to Neil
22 versus Biggers?

23 MR. EPTING: Thank you, Your Honor. And we do have
24 the officer who made the ID of Mr. Wherry here in the
25 courtroom today and he's present to testify.

1 THE COURT: Is the defense ready to proceed on that
2 issue as well?

3 MS. INZERILLO: Yes, Your Honor.

4 MR. EPTING: Thank you, Your Honor.

5 THE COURT: At this time the State calls Tony Breeden
6 to the stand.

7 ANTHONY BREEDEN, after having first being duly sworn,
8 testified under oath as follows:

9 DIRECT EXAMINATION

10 BY MR. EPTING

11 Q. Please state your full name on the record.

12 A. Anthony Wade Breeden.

13 Q. And how are you employed?

14 A. Rock Hill Police Department.

15 Q. And were you employed in that capacity in
16 February 6th of 2013?

17 A. Yes, sir, I was.

18 Q. Were you involved in a car chase that involved the
19 defendant at trial here today, Latroy Wherry?

20 A. Yes, sir.

21 Q. Could you please tell the Court about that?

22 A I was running stationary radar on North Cherry Road.
23 Observed a vehicle pass me at 52 in a 40. Turned around
24 to initiate a traffic stop on the vehicle. I activated my
25 blue lights. Short distance later, the vehicle didn't

SERGEANT ANTHONY BREEDEN - DIRECT EXAMINATION BY
MR. EPTING

1 yield. I activate my siren. Vehicle sped up in an
2 attempt to evade. Crossed into -- crossed a bridge over
3 21, over the Catawba River. Went into Forest Ridge
4 Apartments on U.S. 21. Continued at a high rate of speed
5 through the apartments, pulled erratically in a parking
6 space, and fled on foot, and a foot pursuit ensued.

7 Q. How far away -- so he pulled into a space and starts
8 to flee; is that correct?

9 A. Yes, sir.

10 Q. You pull in after him and you start to chase him?

11 A. Yes, sir.

12 Q. Initially how far apart are y'all?

13 A. Probably somewhere around 30 -- 30, 40 yards,
14 something like that.

15 Q. 30, 40 yards?

16 A. Yes, sir.

17 Q. What was the lighting like in the parking lot?

18 A. It was at night, but in that apartment complex, there
19 was your basic ambient lighting. There was some street
20 lights. There was some lights on the buildings. There
21 was -- it's not like it's out in the middle of the woods.
22 The parking lot is lit. Each building has lights that
23 light up. The sidewalk in front of the building, and
24 so -- and street lights in between the rear of buildings.

25 Q. Could you -- even at that distance, could you tell

SERGEANT ANTHONY BREEDEN - DIRECT EXAMINATION BY
MR. EPTING

1 basic information about the person you were chasing?

2 A. Yes, sir. I could see basically male, race,
3 clothing. Like I said, I could see the -- I never lost
4 sight of the person I was chasing.

5 Q. Could you tell if the person you were chasing was
6 wearing a mask?

7 A. He wasn't wear a mask.

8 Q. So you could tell a gender as well?

9 A. Oh, yes, sir. I knew it was a black male as soon as
10 I jumped out the car.

11 Q. You started out 30 yards away, correct?

12 A. Yes, sir.

13 Q. Did you at any time get closer?

14 A. Yes, sir. I actually started -- we ran a pretty
15 considerable distance in the apartment complex. We
16 probably -- we ran the distance of what would be five or
17 six of the buildings, and essentially we circled one
18 building completely, ran up around another two buildings,
19 ran the length of those two buildings, around a third
20 building and back up the sidewalk. And I had actually
21 started to close the distance on the subject as we were
22 approaching one of the apartments.

23 Q. And he -- jumping ahead of ourselves, but he went
24 inside that apartment; is that correct?

25 A. Yes, sir.

SERGEANT ANTHONY BREEDEN - DIRECT EXAMINATION BY
MR. EPTING

1 Q. Prior to him going inside that apartment, how close
2 were you, if you had to estimate?

3 A. I probably had gotten as close to maybe here to the
4 back door, somewhere around there.

5 Q. The defendant -- the person you were chasing went
6 into the apartment; is that correct?

7 A. Yes, sir.

8 Q. Did you follow him inside?

9 A. Yes.

10 Q. Could you tell the Court what happened inside the
11 apartment?

12 A. As soon as I went inside the apartment, I came in and
13 I immediately saw movement. It's one of the apartments --
14 it's a two-story apartment, and right when I came in the
15 front door, it -- there's a little landing area and stairs
16 that immediately go up to the right, and you're looking
17 into the living room. As soon as I came in the door, I
18 saw movement on the stairs and saw a gentleman coming down
19 the stairs. So my attention immediately went to him for a
20 split second, and I said, "Where did he go?" And he said,
21 "What are you talking about?" And about that time, I
22 heard the bolt lock on the back door twist, which is
23 essentially living room and immediately into a kitchen in
24 a small apartment.

25 I heard the bolt lock on the door, so I immediately

SERGEANT ANTHONY BREEDEN - DIRECT EXAMINATION BY
MR. EPTING

1 took off running toward the kitchen, and as I was coming
2 through the living room to the kitchen, the subject looked
3 back at me, opened the door, and immediately ran out, and
4 probably had distance from me to you as he was going out.

5 Now, as you come out that back door, it is completely
6 dark because there's woods directly behind the apartment,
7 and it's only a distance of maybe from here to the
8 defense -- I mean the prosecuting table from where there's
9 a brief yard, and then it's just straight off in the
10 woods, and there's several trails. And by time I came out
11 and adjusted to that, I didn't see which way he went.

12 Q. When he's standing at the door, you said he's looking
13 back at you?

14 A. He looked back at me.

15 Q. Did you lock eyes?

16 A. Yes. I looked at him.

17 Q. Could you see his face?

18 A. Yes, sir.

19 Q. What was the lighting in the area where he was
20 standing?

21 A. It wasn't -- you know, it wasn't pitch black. You
22 know, I don't recall, you know, whether there was a stove
23 light. There was enough light to where in the kitchen
24 where I saw him when we looked at each other. And I don't
25 know if it was lighting coming from the living room, you

SERGEANT ANTHONY BREEDEN -- DIRECT EXAMINATION BY
MR. EPTING

1 know, like I said. I just know there was enough light in
2 the kitchen where I saw his face as he opened the door and
3 went out.

4 Q. Did the individual you saw about to flee through the
5 back door, did that match the person you had been chasing
6 around this complex?

7 A. It was the same clothes, same subject. Like I said,
8 I was gaining on him the whole time we were running.

9 Q. What was the expression on the individual's face he
10 when he saw you?

11 A. I mean, it was genuinely a little surprised, like,
12 Oh, no, and then he just went out. Not like he said, Oh,
13 No, but looked at me like, There's a police, and then took
14 off.

15 Q. Did you recognize the person that was about to flee?

16 A. I knew him from just previous dealings in knowing
17 him. I didn't know the name at the time, but I knew the
18 face and knew who he was, but just didn't know the exact
19 name at that particular moment.

20 Q. So you encountered him several times before?

21 A. Yes, sir.

22 Q. And you recognized him, but just didn't put name to
23 face at this point?

24 A. Yes, sir.

25 Q. At some point, did you put name to face?

SERGEANT ANTHONY BREEDEN - DIRECT EXAMINATION BY
MR. EPTING

1 A. Yes, sir, I did.

2 Q. Could you tell the Court how that came about?

3 A. Initially -- the owner of the vehicle arrived a few
4 minutes later, and she was talking to me, and I was trying
5 to figure out who was driving the vehicle. And she said
6 boyfriend/child's father Latroy Wherry was driving the
7 vehicle. And then kind of a bell -- rang a bell. I went
8 and checked that, confirmed that with a picture, and it
9 was, in fact, the subject I saw, Latroy Wherry.

10 Q. At that time, did you issue any warrants for his
11 arrest?

12 A. Yes, sir. We initially called the K9 out to that
13 area, but the patch of woods was pretty small and there
14 was numerous ways to go once you got out of those woods in
15 Fort Mill, different neighborhoods. So once there was no
16 results with the K9, I did go back to the law center and
17 type a warrant.

18 Q. How certain were you about recognizing him inside the
19 apartment?

20 A. I knew -- like I said I knew the face, but from just
21 dealing with so many people, I just didn't know the name
22 right away. But I knew who he was when I saw him.

23 Q. And you say Ms. Brittany Kennedy approached you; is
24 that correct?

25 A. Well, we -- naturally there's police everywhere out

SERGEANT ANTHONY BREEDEN - DIRECT EXAMINATION BY
MR. EPTING

1 there. And the apartment he ran in was some type of
2 relative of hers, and she arrived on scene and wanted to
3 know where her car was and what about her vehicle. And I
4 said, "It was just involved in a chase. Who had your
5 car?" And she said Latroy Wherry was driving her car.

6 Q. At that point, how sure were you the person you saw
7 was Latroy Wherry?

8 A. Once I matched it with the picture, I was sure. I
9 knew who it was.

10 Q. Would you say you had a high degree of attention as
11 you were chasing this individual?

12 A. Pretty high.

13 MR. EPTING: Beg Court's indulgence.

14 Please answer any question the defense may have.

15 MS. INZERILLO: May it please the Court.

16 CROSS-EXAMINATION

17 BY MS. INZERILLO

18 Q. It was 2337 by your incident report when you -- all
19 this started; is that correct?

20 A. Yes, ma'am.

21 Q. So in nonmilitary time, that's --

22 A. 11:37.

23 Q. Okay. So it was dark outside?

24 A. Yes, ma'am.

25 Q. So when this chase started, it was dark?

SERGEANT ANTHONY BREEDEN - CROSS-EXAMINATION BY
MS. INZERILLO

1 A. Yes, ma'am.

2 Q. And fair to say that you can't see what's inside the
3 car during the chase?

4 A. Just one occupant. I can just see basically one
5 person in the car. I can see the back head of the driver
6 in the car.

7 Q. Okay. And inside the car that you're chasing, were
8 there lights on in the car?

9 A. No, ma'am.

10 Q. No interior lights?

11 A. No, ma'am.

12 Q. And eventually that car turns in to Forest Ridge
13 Apartments?

14 A. Yes, ma'am.

15 Q. And you indicated there was ambient light, like
16 parking light, street light, that kind of thing?

17 A. Yes, ma'am.

18 Q. And whoever was in the car drove through the parking
19 lot and then jumped out of the car when it sort of stopped
20 in the parking space; is that right?

21 A. Mr. Wherry, yes, ma'am. When he pulled in, he jumped
22 out and took off running.

23 Q. But your -- when you activated your blue lights and
24 your siren, your in-car video is going?

25 A. Yes, ma'am.

SERGEANT ANTHONY BREEDEN - CROSS-EXAMINATION BY
MS. INZERILLO

1 Q. So it starts with you sort of following the car over
2 the bridge?

3 A. Yes, ma'am.

4 Q. Going into Fort Mill.

5 A. Actually, it's prior to the bridge when I first start
6 following the car.

7 Q. Right.

8 A. And, you know, when I first get up behind the vehicle
9 I see the tag, I run the tag through my computer. I get
10 the results from that, and then by the time I activated my
11 light was on the bridge. But it was actually -- when I
12 turned around on the car on Cherry Road where the new
13 Velodrome is, the new bike place, that's where I actually
14 observed the vehicle.

15 Q. And then so when you click on your lights from your
16 siren, that's when your in-car video comes on?

17 A. There's a 30-second back up. Our video cameras are
18 now digital, which they record on a loop constantly. It
19 used to be on the old VHS system as soon as you cut the
20 lights on it was activated at the moment, but now there's
21 back up which it automatically backs up from the
22 activation of the lights 30 seconds prior to, and you
23 actually see that time frame 15 to 30 second prior to the
24 blue lights cut on is actually me following the vehicle
25 prior to initiating the blue lights.

SERGEANT ANTHONY BREEDEN - CROSS-EXAMINATION BY
MS. INZERILLO

1 Q. You don't manually turn on the lights -- I mean the
2 in-car video, do you?

3 A. You can. There's three ways you can activate. You
4 can activate it by turning on the blue lights. You can
5 activate by depressing the microphone button on your
6 wireless mic, or hit the record button.

7 Q. Right. But you didn't do any of that?

8 A. No, I cut my blue lights on and it automatically
9 activates the recorder in the car.

10 Q. So we got this. Your camera activated when the blue
11 lights activated. That's all I'm asking you?

12 A. Yes, ma'am.

13 Q. Okay. All right. And so it shows y'all crossing
14 over the bridge and turning in to Forest Ridge Apartments.
15 Is that fair?

16 A. Is that all you're saying it shows?

17 Q. Yeah -- no, no, that's what it shows. That's what's
18 on the video, and then it shows the car stopping?

19 A. Right.

20 Q. And you stopping behind the car?

21 A. At an angle, yes.

22 Q. Okay. But what it doesn't show is that on that video
23 is whoever jumped out the car?

24 A. No, ma'am. I couldn't get -- because of the way he
25 parked and the speed he was traveling, I couldn't go

SERGEANT ANTHONY BREEDEN - CROSS-EXAMINATION BY
MS. INZERILLO

1 through the apartments at the rate he was going through.
2 I couldn't drive like him through an apartment complex,
3 because if somebody walks in between a car, I'm
4 responsible for how I'm driving. So he had gained a
5 considerable -- I was closer to him on 21 than I was when
6 he turned into the apartments because of the amount of
7 erratic driving he was doing in the apartments.

8 Q. Right.

9 A. So he had gained that distance when it became
10 apparent to me that somebody was getting ready to bail out
11 of the car.

12 Q. Right. And so there are parts that we can see on the
13 video where you are a distance behind that car?

14 A. Oh, yes.

15 Q. Okay. And when the driver bails out of that car,
16 he's bailing it. He's running at full speed?

17 A. I mean, if that's his full speed.

18 Q. And fair to say you're running after him at full
19 speed?

20 A. Yes, ma'am.

21 Q. It's not like you're jogging and he's running. It's
22 full speed is what I'm saying.

23 A. (The witness shakes his head.)

24 Q. And Mr. Wherry wasn't arrested at the scene; is that
25 right?

SERGEANT ANTHONY BREEDEN - CROSS-EXAMINATION BY
MS. INZERILLO

1 A. That's correct.

2 Q. Now, while you were at the scene chasing the person,
3 you were on radio dispatch; is that correct?

4 A. Yes, sir.

5 Q. And while you're on radio, you were radioing a
6 description of the person?

7 A. That's correct.

8 Q. And you radio in a description of a black male,
9 right?

10 A. Right.

11 Q. 6 feet?

12 A. Approximately, yes.

13 Q. Okay. Wearing all gray?

14 A. Right.

15 Q. All right. You didn't radio in any description of
16 hair length?

17 A. No.

18 Q. Okay. You didn't radio description of eye color?

19 A. No, ma'am.

20 Q. Okay. You didn't radio any description of build if
21 the person was heavy-set, medium build, tea tiny, anything
22 like that?

23 A. I just said 6-foot, you know, all gray. I'm looking
24 at him the whole time I'm calling it out. It's not like a
25 lost sight and we're trying to pick him back up. I'm

SERGEANT ANTHONY BREEDEN - CROSS-EXAMINATION BY
MS. INZERILLO

1 watching him the whole time I'm chasing him.

2 Q. But you did not -- you didn't give any more
3 information. So he could have been 6-foot and lanky and
4 he could have been 6-foot and 400 pounds; is that right?

5 A. If he had been 6-foot and 400 pounds, he wouldn't
6 have made it out that parking spot.

7 Q. But what I'm asking: You did not give any more
8 specific information than that. 6-foot, black male,
9 wearing all gray. That's what you radioed in at the
10 scene?

11 A. I mean, that's plenty for me at the time, you know
12 what I'm saying? I'm giving that out while I'm actually
13 pursuing him to the other officers coming, so, you know,
14 as far as tea tiny or a couple poundage or eye color
15 doesn't matter because at 11:30 at night, it's not like
16 you could see a hundred people in the parking lot. So a
17 6-foot black male in gray running from the police, I would
18 think other officers would immediately recognize him as
19 the one we were looking for. So that was as specific I
20 felt I needed to be at the time.

21 Q. All right. So if a 6-foot lanky guy is walking down
22 the street five minutes later coming out of Fort Mill, how
23 would a police officer know that's the same 6-foot tall
24 guy you were chasing?

25 A. Well, if he was all gray and sweating come from the

SERGEANT ANTHONY BREEDEN - CROSS-EXAMINATION BY
MS. INZERILLO

1 apartments we were in, that would be the first indicator.
2 But if they saw anybody wearing all gray at 6-foot at that
3 time of night that was anywhere that vicinity, someone
4 would have got out with that subject.

5 Q. Okay.

6 A. And they would have called me and I would have come
7 the scene where they were and identify the subject they
8 were out with.

9 Q. Okay. Now, the house that you say you went into
10 backed up to some woods; is that right?

11 A. The apartment, yes, ma'am.

12 Q. And it's all dark in those woods?

13 A. Yes, ma'am.

14 Q. And so Mr. Wherry was never tracked by K9?

15 A. No, ma'am.

16 Q. And when you were there, you were unable to make an
17 arrest; is that fair?

18 A. Yes.

19 Q. So you called for the vehicle owner because the car
20 was still there?

21 A. She showed up.

22 Q. Okay. And you spoke to Ms. -- to Ms. Kennedy and
23 initially she did not tell you that Mr. Wherry was the
24 person driving the car; is that correct?

25 A. Correct, because her mother was standing within

SERGEANT ANTHONY BREEDEN - CROSS-EXAMINATION BY
MS. INZERILLO

1 earshot of her. And then as soon as she -- as soon as I
2 went to my vehicle she followed me to my vehicle and
3 said, "Look, I didn't want my mom to hear that Latroy was
4 in the car because he's not supposed to be in my car.
5 It's Latroy Wherry, that was driving it."

6 Q. But the first thing that she told you was that a man
7 name Reginald Green was the driver; is that correct?

8 A. I believe that was the right name. I knew it was a
9 different name.

10 Q. Okay. Did she make any other statements to you that
11 night?

12 A. Not that I can recall. Not anything as of
13 significance to who I saw leaving the apartment.

14 Q. Okay. And so initially she told you Reginald Green,
15 and then she changed her story and told you Latroy Wherry,
16 and then she pulled up a picture of Latroy from Facebook;
17 is that right?

18 A. Yes, ma'am.

19 Q. Okay. And it was when you saw that picture from
20 Facebook that you ultimately identified Latroy Wherry as
21 the person that --

22 A. When she said the name is where I immediately
23 recognized and remembered him from face, but then I
24 confirmed that when she saw it. But I also looked on our
25 system as well for Latroy Wherry for our picture of him

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1 which confirmed it. But as soon as she said Latroy
2 Wherry, I immediately recalled putting that name with that
3 face. So the Facebook status was just her showing it to
4 me, but as soon as he said Latroy Wherry, that's when I
5 recall to myself that that's the name that of the guy I
6 saw running out of the apartment.

7 Q. Do you know Reginald Green?

8 A. No, ma'am.

9 Q. Do you know what he looks like?

10 A. No, ma'am.

11 Q. Do you know if he's 6 feet tall or a black male?

12 A. I know he isn't who I was chasing that night.

13 Q. Do you know if he's 6 feet tall or a black male?

14 A. I don't have any idea how tall he is.

15 Q. Did you bother to look up who Reginald Green was?

16 A. No, ma'am.

17 Q. Do you have a copy of the Facebook photo she showed
18 you?

19 A. No, ma'am.

20 Q. Do you have a copy of whatever you looked at in your
21 system to see if it was Reginald?

22 A. It's our booking picture through our RMS system.

23 Q. Now, you swore out the warrant in this case; is that
24 correct?

25 A. Yes, ma'am.

SERGEANT ANTHONY BREEDEN - CROSS-EXAMINATION BY
MS. INZERILLO

1 Q. And Mr. Wherry's height is listed at 5'7?

2 A. It could be. It may be. I mean I -- I could have
3 pulled that off some old particulars in RMS is where I
4 could have pulled it off of.

5 MS. INZERILLO: May I approach the witness?

6 Q. Is that a copy of his warrant?

7 A. Yes, ma'am.

8 Q. Does that say he's 5'7?

9 A. Yes, ma'am.

10 Q. Have you had a chance to review your incident report
11 in this case?

12 A. No, ma'am. I just briefly looked at it when I met
13 with Mr. Epting earlier, but I didn't really look at it.
14 But like I said, I just pulled that off old information.

15 Q. I'm going to show you a copy of your incident report.

16 A. Yes, ma'am.

17 Q. Does your incident report Latroy as 5-foot 10 inches
18 tall?

19 A. Yes, ma'am.

20 Q. Your Honor, I have no further questions.

21 THE COURT: Any redirect?

22 MR. EPTING: Very briefly, Your Honor.

23 REDIRECT EXAMINATION

24 BY MR. EPTING

25 Q. Sergeant Breedon, I believe your testimony was you

SERGEANT ANTHONY BREEDEN - REDIRECT EXAMINATION BY
MR. EPTING

1 called out he was approximately 6 feet tall, correct?

2 A. Yes, sir.

3 Q. And the angle of your car, is that something that
4 moves with your eyesight, or is that fixed?

5 A. The car stays. I'm exiting the left side of my
6 vehicle, the same side that he ran out of, but my car is
7 essentially -- best way to describe it is he pulled in an
8 angle this way, and as I pulled in behind him, I
9 couldn't -- I didn't have time to swing out and like a
10 normal traffic stop where I would pull behind the vehicle.
11 At that point, it was irrelevant where he was on it
12 because I need to get out of my car as soon as I could.
13 So I stopped my car at essentially a 45-degree angle
14 facing -- I guess off into the apartment as he was running
15 to the left out of his vehicle.

16 Q. Was it your testimony that you identified Latroy
17 Wherry after you heard his name before you saw the photo
18 or anything like that?

19 A. Yes. As soon as she said Latroy Wherry, I was -- oh,
20 that's where I know him from.

21 Q. And you corroborated that?

22 A. Yes, sir.

23 MR. EPTING: No further questions, Your Honor.

24 MS. INZERILLO: Your Honor, if I may, for the
25 completeness of this hearing as have been testified by

1 Sergeant Breeden, there is a video in the case. I can
2 certainly have Sergeant Breeden authenticate that video if
3 the Court would wish, but I would ask the Court to watch
4 that video before making a ruling. And I believe it would
5 be easier for the State to give their copy since it's
6 already been marked.

7 THE COURT: How long is the video?

8 MR. EPTING: It's approximately 35 or 40 minutes and
9 to be honest with Your Honor --

10 THE WITNESS: He's never --

11 MR. EPTING: -- it doesn't bear on identification, I
12 don't believe. The video cuts off before Ms. Brittany
13 Kennedy actually arrives, so you don't hear that. You
14 don't hear that conversation. You see the chase, you see
15 Sergeant Breeden stop, you see him chase. At some point
16 they get beyond the range of his car, so you don't have
17 any audio. And just beyond that, it's people mulling
18 around. So if the Court desires -- I certainly can play
19 it if the Court wishes, but I don't think it adds a great
20 deal of value to this Biggers hearing.

21 MS. INZERILLO: The only reason I ask, Your Honor, is
22 I think it will give the Court a sense of what the
23 lighting and atmospheric conditions were that evening. If
24 the Court doesn't wish to see everything after once it's
25 clear that there will be no arrest made, I certainly don't

1 have an issue with that. But I think it will give the
2 Court a sense of how dark it was, what the lighting was,
3 the duration of the chase, as well as the duration of the
4 foot chase following the road chase.

5 THE COURT: It's my understanding -- is this a video
6 from the camera that's in the car?

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

8 MS. INZERILLO: Yes, sir.

9 THE COURT: And I'm assuming I'm going to be watching
10 a chase that doesn't show the defendant?

11 MS. INZERILLO: Well, the State's allegation is that
12 it does show the defendant in the failure to stop for a
13 blue light part in the car.

14 THE COURT: Is that towards the beginning or the end?

15 MS. INZERILLO: Towards the beginning. It starts
16 with the -- it starts with the car chase, and then the
17 driver sort of jumps out of the car and runs. That part
18 you do not see. You do hear audio. You hear the
19 dispatch, what's being read into the dispatch.

20 THE COURT: So at that point I can stop watching the
21 tape? I'm really not interested in watching a 30- to
22 40-minute tape if it doesn't show anything.

23 MR. EPTING: And in candor to the Court, that is a
24 lot shorter than the entirety of the tape. That's
25 approximately seven, eight minutes.

1 MS. INZERILLO: Seven, eight minutes.

2 THE COURT: But I agree with the defense. I think it
3 would give the Court a general view of the lighting and
4 that kind of thing.

5 MR. EPTING: Certainly. Your Honor, I apologize.
6 Any time we turn on this overhead, it makes beeps, and
7 when we turn it off, it will beep a couple time sort of
8 intermittently.

9 THE COURT: You want me to watch it here?

10 MR. EPTING: We can put it on the board or we can --

11 THE COURT: I was going to put in my computer, but we
12 can do it in here.

13 (Video recording played in open court.)

14 MR. EPTING: Your Honor, I believe at this point
15 they're at or very close to the limit of their audio
16 range. After they get a certain distance from the patrol
17 car, it doesn't record audio. I'd ask the Court to
18 inquire of the defense if they wish to play it further, or
19 if they believe that's sufficient.

20 MS. INZERILLO: Your Honor, after this point the
21 Court would hear the radio dispatch I did cross Sergeant
22 Breeden on about the identification, and certainly you
23 would hear any communications where he went inside the
24 house. And you do hear a short time after that where
25 the -- essentially it's clear the chase is completed.

1 It's not very long after this point. The defendant would
2 wish the Court to hear that, but we would certainly defer
3 to the Court.

4 THE COURT: How much longer would it be to hear?

5 MS. INZERILLO: I believe by my calculations it's
6 about two minutes past this, maybe three.

7 THE COURT: And that's relatively short?

8 MS. INZERILLO: That would be all we would wish the
9 Court to...

10 THE COURT: We'll go ahead.

11 (Video recording played in open court.)

12 MS. INZERILLO: That would be sufficient for the
13 defense, Your Honor.

14 THE COURT: Okay. Thank you. Do y'all have one of
15 those marked as an exhibit?

16 MR. EPTING: Yes, Your Honor. I do have that marked
17 as a State's exhibit.

18 THE COURT: Okay. All right.

19 MR. EPTING: Your Honor, nothing further for the
20 State. We're ready for any motions the defense may have.

21 THE COURT: Thank you, sir. You may step down.

22 MS. INZERILLO: Thank you, Your Honor. May it please
23 the Court. Your Honor, at this point I would start my
24 remarks -- I want to be clear. I'm not exactly sure I did
25 hear Sergeant Breeden positively identifying Mr. Wherry

1 through this -- through any in-court identification. I
2 know he said his name, he sort of nodded, and so leave it
3 to the Court whether the Court does find that would be
4 sufficient for in-court identification having seen the
5 testimony. If the Court does find that, I would continue
6 with any argument under this pretrial motion.

7 Essentially, as the Court is aware, there are certain
8 criteria that the Court should look at to determine the
9 reliability of the procedure, and I would say and argue to
10 the Court that Sergeant Breeden essentially should not be
11 treated any different than any lay witness due to the fact
12 he does wear a uniform. Whereas he testified that he
13 recognized and possibly knew Mr. Wherry before, he does
14 not have -- could not positively identify him. There's no
15 relationship where he knew Mr. Wherry prior to the -- and
16 was immediately able to identify him.

17 I did ask the Court to review the tape because I do
18 think it sheds a lot of light on some of these the
19 elements, and I did wish the Court to see that. One of
20 the elements, Your Honor, is the opportunity of Sergeant
21 Breeden to view who he alleges is Mr. Wherry at the time
22 of this offense. As the Court sees, for the duration of
23 the road chase at this time, the driving portion of this,
24 it is dark on the main roads. There's no interior light
25 inside the car. It's very dark inside the car. For one

1 portion of the trip along Highway 21, there is no street
2 lights. It's sort of very woodsy around.

3 When they pull into the Forest Ridge Apartments, I
4 would contest Sergeant Breeden's testimony. There really
5 aren't a whole bunch of ambient lighting when they pull up
6 to the front of the townhome complex. The majority of the
7 lighting is coming from the blue lights and the headlights
8 of his police car. So there was not a lot of porch lights
9 on, happening very late at night. There's not a lot of
10 surrounding lighting from which to make a good, positive
11 identification.

12 I think that is evidenced, Your Honor, by the
13 identification that is radioed in through dispatch by
14 Sergeant Breeden, which is a sort of general and generic
15 identification, black male, 6 feet tall, wearing all gray.
16 I asked Sergeant Breeden specifically about -- specific
17 things about Mr. Wherry, because he did indicate he got a
18 good look at his face, and these are things certainly that
19 Sergeant Breeden would have been able to either radio in
20 or testify as to today. I asked if he saw the cut of his
21 jaw or the shape of his build or something like that he
22 would have testified to.

23 And so, Your Honor, that is sort of indicative as to
24 the opportunity that he did have to view Mr. -- the person
25 he says is Mr. Wherry, as well as the witness's degree of

1 attention. You can see from watching the video and also
2 from Sergeant Breeden's testimony, not only is there's a
3 sort of a high speed chase going on with the cars, but
4 there's also a high speed foot chase. I mean, he's
5 chasing after someone who is running at high speed and
6 he's also running at high speed. And certainly running
7 around these townhomes and eventually the person gets
8 lost, that's where his attention is. Certainly not
9 memorizing the person's face.

10 I don't think in this case there are any prior
11 descriptions. He said he does recognize him but doesn't
12 recognize the name, and I'll address that separately in a
13 moment, Your Honor, because I believe that's a separate
14 objection by the defense as to that part of the testimony,
15 so I'll set that aside for a second.

16 Your Honor, essentially all in all, I would argue
17 that for purpose of this, it's a bad identification. It's
18 a suggestive identification. Essentially he doesn't get a
19 good look at whoever he was chasing. Someone comes up to
20 him, gives him a name, that's who he uses to identify, and
21 eventually swears out warrant. As has been elicited,
22 Mr. Wherry is listed as both 5'7 and 5'10 on various court
23 documents, but the incident report and the arrest
24 warrant -- neither of which are 6 feet tall -- which is
25 the description that Sergeant Breeden did put before the

1 Court as the person that he was chasing. And so certainly
2 those descriptions we would consider that -- offered by
3 the State the description in this case does not match the
4 information that we have that's connected to Mr. Wherry
5 either being 5'7 or 5'10.

6 So, Your Honor, we would ask the Court to take all
7 this into consideration. Certainly I would ask the Court
8 to contextually take into consideration the situation
9 regarding Ms. Kennedy's information. They ultimately
10 relied on the fact that she did state it was Mr. Wherry.
11 I would ask the Court to temper that a bit by noting she
12 also gave another name. We had no idea what the
13 identification characteristics of that person are. Is he
14 6 feet tall? Is he a black male? Does he more closely
15 match the identification of the person that Mr. --
16 Sergeant Breeden was chasing more so than what the
17 identification characteristics that we have regarding
18 Mr. Wherry? And certainly I think the conjecture has been
19 she was covering for him, but I would put forth that
20 clearly as has been testified by Sergeant Breeden, there
21 are two separate versions, two separate people put forward
22 by her, and that certainly would go to her credibility,
23 and I would ask the Court to take that into consideration.

24 So I would ask the Court to find that this
25 identification is unreliable, having watched the video and

1 having heard the testimony and would suppress the
2 identification in this case.

3 MR. EPTING: Your Honor, as to the suggestion of this
4 argument, I have not heard Ms. Inzerillo how the State
5 acted impermissibly in this matter. It sounds like we
6 have a private party who approached officers and gave a
7 name. I would like to hand up the case of State v.
8 Liverman, which I'm also providing a copy to the defense.
9 Your Honor, that case suggests in the absence of State
10 misconduct, the Biggers analysis does not apply; that
11 Biggers is geared towards police misconduct which causes
12 another person to misidentify a person.

13 Your Honor, the specific language I'm looking for
14 are -- on the copy that I handed you on page 4 and the
15 bottom paragraph that begins in Perry v. New Hampshire.
16 Your Honor, that passage states in Perry v. New Hampshire,
17 the Supreme Court refused to extend the reach of
18 identification due process protections into areas where an
19 identification is not procured by State action. While
20 acknowledging that eyewitness evidence is inherently
21 imperfect, the court stated, "The fallibility of
22 eyewitness evidence does not, without the taint of
23 improper State conduct, warrant a due process rule
24 requiring the trial court to screen such evidence for
25 reliability before allowing the jury to assess its

1 creditworthiness."

2 Your Honor, in this case, it seems that a private
3 citizen approached Sergeant Breeden, so if they're
4 suggesting -- if there is suggestion at all, then it would
5 be on the part of the private citizen suggesting a name to
6 Sergeant Breeden. Ms. Inzerillo mentioned the other prior
7 name. I would say that goes to the reliability of his
8 identification, given that he heard that first name and
9 said, "Actually, that's not the person." "He is Latroy
10 Wherry"; he says that is the person. He's confident that
11 he's had prior experiences with Latroy Wherry. The
12 standard under Biggers is very high. It's that an
13 identification must be suppressed where there is a very
14 substantial likelihood of irrefutable misidentification.

15 I would submit to the Court that Ms. Inzerillo has
16 all the tools at her arsenal to cross-examine Sergeant
17 Breeden in front of the jury to try to attack his
18 identification. He had a good opportunity to view this
19 defendant. Perhaps not while they were running, although
20 he was able to tell some identifying information, but
21 certainly while they're inside the house. He testified
22 the defendant looked at him head on and he recognized the
23 face at that point, and that there was light in the house.
24 He had a high degree of attention.

25 Certainly he's been -- the defendant has been

1 described as various different heights. I would submit to
2 the Court that Sergeant Breeden's testimony has been that
3 he was described as approximately or around 6 feet. I
4 would submit that 5'10, 5'11, even 5'7 is approximately
5 6 feet tall. It's in the ballpark.

6 There was a very low amount of time between the
7 viewing and between him hearing the name and putting those
8 together. All those things together, Your Honor, we
9 believe that there is no substantial likelihood of
10 irreparable misidentification, and all that's left is an
11 issue for the jury.

12 THE COURT: Her first argument?

13 MR. EPTING: I'm sorry?

14 THE COURT: Her first argument?

15 MR. EPTING: Concerning?

16 THE COURT: That you never asked him to identify the
17 defendant in the courtroom.

18 MR. EPTING: Your Honor, I believe for the purposes
19 of a pretrial hearing, that is not necessary. He did
20 identify him by name. Several times, I said "the
21 defendant" as I was questioning him, I believe, and he did
22 identify that was Latroy Wherry. I believe the pointing
23 out of the defendant would be something necessary to
24 establish beyond a reasonable doubt, but not to the
25 standard that the Court would be satisfied that the

1 identification was reliable.

2 THE COURT: Any reply on whether they need to?

3 MS. INZERILLO: If I could have one moment, Your
4 Honor. I believe...

5 THE COURT: Don't worry about that not being a
6 Biggers hearing, because I believe it is a Biggers
7 hearing.

8 MS. INZERILLO: Okay. I believe that had been
9 reviewed, but I do -- I would take issue with and
10 obviously leave it in the Court's discretion, but I do
11 take issue with the 5'7 being close to 5'10. I'm 5'2. If
12 that makes me even closer to 5'6, I'll be happy with that.
13 But I do think that is a bit of a stretch of the facts
14 that are in this case, Your Honor. Certainly Sergeant
15 Breeden is the identifier of whoever was driving that car.
16 He is the sole witness in this case as has been presented
17 so far, and he will be a person that will come in
18 presumably and identify the person who was driving that
19 car that evening, and the information that we have that he
20 points out does not comport. I'd just ask the Court to
21 take all that into consideration in determining this, and
22 take into consideration what the in-car video did show,
23 which is the sufficiency or insufficiency of the lighting,
24 as well as the lack of lighting sort of during the car
25 chase during this case.

1 THE COURT: All right. This is not at the stage --
2 the issue of identification at this juncture is not the
3 same as the issue of identification to the jury. I
4 believe that it -- the identification has been presented
5 through this hearing today is sufficiently reliable for me
6 to allow it to go to the jury. Obviously the defense has
7 an approach to the issue of identification which they
8 would be -- can bring up all the issues they already
9 brought up and attack the credibility of the
10 identification and make those presentations to the jury in
11 order to demonstrate to the jury, or at least their
12 argument would be the State has failed beyond a reasonable
13 doubt to establish that the identity was proper. But
14 that's not the standard at this hearing, and I believe the
15 State has met the burden at this hearing to go forward
16 with the identity.

17 Interesting position that the State would take that
18 it was not a Biggers hearing. Was not necessary under the
19 fact that the identity was made by the third-party, but if
20 I understand the testimony of that lady, she's not
21 identifying him as the driver. She's identifying him in
22 some other ways being the person she thought was going to
23 be the driver, somehow had possession of the automobile.
24 The identity of the driver still comes from the police
25 officer, though. So I think it's still subject to a

1 Biggers hearing, but that was an interesting argument.

2 Anything else pretrial?

3 MS. INZERILLO: Your Honor, we did have just two
4 other objections we did wish to put on the record, one of
5 them made now in light of Your Honor's last comments. But
6 one is in light of the fact that Ms. Kennedy may not be
7 appearing as a witness, we would have an objection to any
8 of her testimony coming in. Essentially, we feel like she
9 was sort of integral to this whole process. Without her
10 testimony, taking that out of consideration, Sergeant
11 Breeden would be, you know, recognized the face, didn't
12 have a name, didn't put all of this together until she
13 provided it at length. And certainly we think that
14 impairs Mr. Wherry's -- one, we think that's hearsay.
15 He's relying on hearsay and that is provided for the truth
16 of the matter asserted and not just a link in the chain,
17 but secondly that that does impair Mr. Wherry's
18 confrontational right and his ability to cross-examine
19 her, especially in light of the fact she did give two very
20 different statements, and actually gave the name of a
21 person that was not in the car.

22 And certainly having Sergeant Breeden come in and
23 essentially not only recite her statements but also vouch
24 for her credibility certainly impedes his right to
25 cross-examine her, and so I would have an objection to

1 that, Your Honor. I pulled a case essentially to support
2 that. It's not on point in terms of just pure testimony,
3 but I think might be a bit instructive. But again, if the
4 Court feel like it's already ruled on that in light of its
5 last statement, we certainly understand that. Madam Court
6 Reporter, it's State v. Williams 285 SC 544. And in that
7 case, Your Honor, the officers are investigating an armed
8 robbery and there's testimony regarding -- from an officer
9 whereas -- a person identifies a purse that was used as
10 part and parcel of the armed robbery, and the Court did
11 hold not bringing in that Court violated the defendant's
12 right to confrontation clause, and so we would put that in
13 front of the Court for consideration.

14 Our only other -- second objection, Your Honor, would
15 be Sergeant Breeden does mention knowing Mr. Wherry -- at
16 least recognizing him from incidents before. Certainly we
17 believe this is prejudicial and that with Sergeant Breeden
18 being in uniform, I think the inference would be those
19 would not be legal confrontations or those confrontations
20 would not be above board. And so we would ask that that
21 information not be elicited and not be put before the jury
22 as being unduly prejudicial.

23 THE COURT: So you think that because a police
24 officer has involvement with people, it's always inferred
25 that it's negative?

1 MS. INZERILLO: I don't always think that, but I
2 think that is the initial inference that is gleaned, and
3 without being able to explain it if that was not the case,
4 which I don't believe that is the case, and without
5 Sergeant Breeden perjuring himself, then I think certainly
6 that would yield prejudice to Mr. Wherry.

7 MR. EPTING: Your Honor, as to the prior viewings, we
8 will limit those as much as we can to eliminate the
9 prejudicial effect. We do, however, think the probative
10 effect is through the roof given that the central issue in
11 this case is the identification of Mr. Wherry. We think
12 it is extremely vital to our case to be able to present
13 that Sergeant Breeden is not picking this man out of the
14 thin air; that he has, in fact, seen him several times
15 prior to this. It strengthens his identification of it,
16 and thus we think it's incredibly probative. But we could
17 sanitize that and present it in such a way that it doesn't
18 appear he's encountering in Mr. Wherry in a negative way,
19 something as simple as, "I have seen Mr. Wherry on several
20 other occasions. I know what he looks like." I think
21 there's no negative connotations to that, but for the fact
22 that Sergeant Breeden is a police officer.

23 THE COURT: Any other argument?

24 MR. EPTING: Your Honor, we would argue in order for
25 it to be hearsay, it would have to be offered for the

1 truth of the matter asserted. We would not seek to
2 introduce that statement to show that Latroy Wherry was,
3 in fact, the person who drove the car. I would seek to
4 introduce that to show the following steps that Sergeant
5 Breeden took in following the police station, pulling up
6 Mr. Wherry 's photograph, and corroborating that ID by the
7 information in the system at the police station, and thus
8 it could be false, could be true. It's not being offered
9 for the truth of the matter asserted. It's being offered
10 to explain what Sergeant Breeden proceeded to investigate
11 further and further ascertain Mr. Wherry's identity.

12 THE COURT: Any reply limited to what he went into?

13 MS. INZERILLO: No, Your Honor. Thank you.

14 THE COURT: All right. First issue, the statements
15 that were made by the third party to the police officer
16 that then led to the police officer further conducting his
17 investigation into the identity. It's probably going -- I
18 know I've heard his testimony here, but sometimes
19 testimony changes from a pretrial -- during pretrial to
20 the actual testimony. It could be the State elicits
21 hearsay testimony from him depending on how the question
22 is phrased, what's the intent of the question. In
23 general, though, I think the police officer would be
24 entitled to tell the jury since the issue is going to be
25 identity, he gets to be able to tell the jury what's his

1 basis for making the identification. All of it then
2 subject to the scrutiny through confrontation on a
3 attacking the police officer's method of doing his
4 investigation, the police officers sources or -- and gets
5 to test that, the police officer's credibility. That's
6 where confrontation comes in. But it could be if the
7 question is phrased in a certain matter, the police
8 officer says a certain thing, it could be that it could be
9 subject that a hearsay objection. But I'm not willing to
10 rule that he can't say what she told him.

11 I'm going to let the State -- I'm not going to say at
12 this juncture that going into the prior relationship
13 between the defendant and the officer is necessarily
14 prejudicial, therefore it need to be kept out, because
15 that takes an analysis that this Court has to do based
16 upon what it hears during the trial itself. So -- but as
17 guidance to counsels, if the State wants to take measures
18 that they feel are reasonable to try to -- State were to
19 sanitize it out, that's fine. But I'm not suggesting that
20 this Court is telling the State to sanitize it out. But
21 be aware that the defendant has placed you on notice that
22 if you get too far out of line, she's going to object to
23 it, and then that would require me at that juncture to do
24 that balancing analysis that I have to do, prejudicial
25 effect and probative value, that kind of analysis. So do

1 it as you see fit, but be wary she's watching.

2 Anything else? I've got a couple other matters I
3 want to take care of before you start the trial, and if we
4 could take a break. But I want to get through pretrial.

5 MS. INZERILLO: Nothing else from the defense, Your
6 Honor.

7 THE COURT: Let's take a break on this one just for a
8 few minutes. Give y'all a chance to get your ducks in a
9 row and let me see what I've got that needs to be taken
10 care of.

11 MS. INZERILLO: I just need to know Mr. Wherry's bond
12 situation, if we'd allow him to remain out on breaks and
13 since he has reported.

14 THE COURT: Just remind him that he does remain on
15 bond, so that all the requirements that were on that bond
16 still remain and that if he violates them, then the bond
17 would be subject to being revoked.

18 MS. INZERILLO: Thank you, Your Honor.

19 MR. EPTING: Thank you, Your Honor.

20 (A recess was taken from 3:29 p.m. to 4:09 p.m.)

21 THE COURT: We're going to proceed with the selection
22 of the jury in the case of State of South Carolina versus
23 Latroy Lamar Wherry. Before we actually begin the
24 selection process, there will be some questions that I
25 need to ask you. And as part of the answering any

1 questions, the Clerk of the Court needs to administer an
2 oath. So if you would, please rise and let the clerk
3 swear you in.

4 (The jury panel was sworn.)

5 THE COURT: Ladies and gentlemen, as I said, we're
6 now going to begin the selection in the case of the State
7 versus Latroy Lamar Wherry. Mr. Wherry, will you please
8 stand and face the ladies and gentlemen of the jury? This
9 is Mr. Wherry. He's charged with the crime of failure to
10 stop for a blue light that occurred on or about
11 February 6th, 2013 here in York County. Ladies and
12 gentlemen, I need you to please stand if you're related by
13 blood or marriage to him, or if you have any close
14 personal or social relationship with Mr. Wherry, please
15 stand. Thank you, Mr. Wherry. You may have a seat.

16 Ladies and gentlemen, I'm now going to read the names
17 of potential witnesses who may be called during the trial
18 of this case. I need you to please listen to these names
19 because if you are related by blood or marriage to these
20 people or if you have a close personal or social
21 relationship with these people, I need you to please
22 stand. And also, if these people when I call their names,
23 if they're present in the courtroom, if they would please
24 stand and face the ladies and gentlemen of the jury. We
25 have Brittany Kennedy. Face the ladies and gentlemen.

1 Just -- there you go.

2 THE CLERK: She's a juror.

3 THE COURT: Oh, she's a juror. Okay. Have a seat,
4 ma'am, until we get finished.

5 And Sergeant Tony Breeden. Thank you, sir. If any
6 member of the jury is related by blood or marriage to
7 either Sergeant Breeden or Brittany Kennedy, or if you
8 have a close personal or social relationship with either
9 of those individuals, please stand at this time.

10 Ladies and gentlemen, at this time I'm going to ask
11 the lawyers that will be participate in the case to please
12 stand and introduce themselves to you.

13 MR. EPTING: Good afternoon, ladies and gentlemen.
14 I'm Chris Epting. I'm with the Solicitor's Office.

15 MS. INZERILLO: I'm Melissa Inzerillo. I'm with the
16 Public Defender's office.

17 THE COURT: Thank you very much. Ladies and
18 gentlemen, I'm going to ask that you please stand if
19 you're related by blood or marriage to either of the
20 attorneys, or if you have a close personal or social
21 relationship with either of the attorneys, please stand at
22 this time.

23 Ladies and gentlemen, I'm going to ask if you would
24 please stand if you or a member of your immediate family
25 has ever been a victim in a case that was prosecuted by

1 the York County Solicitor's Office. If so, please stand
2 at this time.

3 I'm also going to ask you to please stand if you or a
4 member of your immediate family has ever been a party that
5 was represented by the York County Public Defender's
6 Office, please stand at this time.

7 Has any member of the jury panel presently or in the
8 past been employed or volunteered with any type of city,
9 county, state, or federal law enforcement agency or law
10 enforcement agencies, victim witness assistance program.
11 If so, please stand at this time. Yes, sir. Your juror
12 number?

13 JUROR: 284.

14 THE COURT: 284? Are you Mr. Weaving?

15 JUROR: Correct, sir.

16 THE COURT: Sir, the fact that has occurred, would
17 that in any way affect your ability to give both the State
18 and the defense a fair and impartial trial in the event
19 you're selected as a member of this jury?

20 JUROR: No, it would not.

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

22 Has any member of the jury panel presently or in the
23 past been employed or volunteered with any city, county,
24 state, or federal prosecutor's office or prosecutor's
25 office victim witness assistance program? If so, please

1 stand at this time.

2 Has any member of the jury panel ever been a
3 contributor to any organization that supports victims
4 rights such as -- or law enforcement such as the Fraternal
5 Order of Police, the South Carolina Law Enforcement
6 Officers' Association, MADD, SADD or CAVE, Citizens
7 Against Violent Crimes. If so, please stand at this time.

8 Yes, sir. Your number again?

9 JUROR: 284.

10 THE COURT: Sir, the fact that that has occurred,
11 would that in any way affect your ability to give the both
12 the State and the defense a fair and impartial trial in
13 the event you're selected as a member of the jury?

14 JUROR: It would not, Your Honor.

15 THE COURT: Thank you, sir.

16 Yes, sir. In the red tie, your juror number?

17 JUROR: 266.

18 THE COURT: Mr. Sturgis?

19 JUROR: Right.

20 THE COURT: Sir, the fact that has occurred, would
21 that in any way affect your ability to give both the State
22 and the defense a fair and impartial trial in the event
23 you're selected as a member of the jury?

24 JUROR: No, sir.

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

1 Yes, sir, your juror number?

2 JUROR: 23.

3 THE COURT: You're Mr. Blessing?

4 JUROR: Right.

5 THE COURT: Sir, the fact that has occurred, would
6 that in any way affect your ability to give both the State
7 and defense a fair and impartial trial in the event you're
8 selected as a member of this jury?

9 JUROR: No, sir.

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

11 Has any member of the jury panel formed or expressed
12 an opinion about any issue or matter that may be involved
13 in this case? If so, please stand at this time.

14 Is there any member of the jury panel aware of any
15 bias or prejudice toward either the State or the defendant
16 in this case? If so, please stand at this time.

17 Is there any member of the jury panel that was a
18 member of the grand jury which issued the indictment in
19 the case? If so, please stand at this time.

20 Does any member of the jury panel know of any reason
21 whatsoever why he or she should not serve as a juror in
22 the case, with particular emphasis being placed on your
23 ability to be fair and impartial to both the State and the
24 defendant. If so, please stand.

25 Yes, ma'am, your juror number?

1 JUROR: 146.

2 THE COURT: Come forward for a moment, please. What
3 was your juror number again?

4 JUROR: 146.

5 THE COURT: Are you Ms. Jones? Yes, ma'am.

6 JUROR: By his name, I think I knew his father. But
7 he passed long time ago. But I know his father, but I
8 don't know him personally.

9 THE COURT: Okay. The fact that you might know his
10 father, would that in any way affect your ability to be
11 give the State and defense a fair and impartial trial?

12 JUROR: No.

13 THE COURT: Thank you very much.

14 Does the State have any additional questions?

15 MR. EPTING: Nothing from the State.

16 THE COURT: Does the defense have any additional
17 questions?

18 MS. INZERILLO: Your Honor we would respectfully ask
19 the Court to ask defense's number 2, 4, 5, 7 and 8 on the
20 requested voir dire.

21 THE COURT: I'll ask seven. I think the others are
22 sufficiently covered with the other charges that I've
23 given. I missed seven. Sorry about that.

24 Has any member of the jury panel ever been charged
25 with evading police or failure to stop for a blue light,

1 or does any member of the jury panel have a member of its
2 immediate family or close friends that have been charged
3 with such crime? If so, please stand at this time.

4 Thank you very much.

5 Any -- before we proceed with the jury selection,
6 any -- you want to approach?

7 (WHEREUPON, a bench conference was held in the
8 presence but not within the hearing of the jury panel.)

9 THE COURT: Five and five.

10 MR. EPTING: That's correct, Your Honor.

11 THE COURT: All right, ladies and gentlemen. Thank
12 you for your patience while we went through that process.
13 When I was a -- well, I'm not that old, but back when I
14 was younger and I was practicing law -- I'm from
15 Spartanburg so we have access to the South Carolina School
16 for the Deaf and Blind. We would actually bring in a
17 person that was visually challenged from the School for
18 the Deaf and Blind, and we would bring them in, and during
19 the jury selection process, we had a wooden barrel. And
20 all of the jurors' name like where you're sitting now
21 would be put in a capsule and we put it into the barrel
22 and we'd start turning the barrel and have that
23 visually-impaired person reach and pull out the names.
24 Jury selection sometimes in a case like this would take
25 four or five hours.

1 We now have a jury system more up-to-date, so the
2 Clerk of the Court has now been able to prepare a list and
3 pulled your name through the computer process to randomly
4 select a list of names. She's now going to call your
5 name. I just want to share that with you, because while
6 it seem we may take our time and go slow, we're trying to
7 do it as fast as we can, and be fortunate you didn't get
8 picked 20 years ago. And if you want to see that barrel
9 come to Spartanburg. We still have it back behind my
10 chambers in my courtroom. I hold court in Spartanburg.

11 But at this time, the Clerk of the Court is going to
12 call a list, is going to call your name, those who have
13 been randomly selected through this process through the
14 computer. When your name is called, I'm going to ask if
15 you would to come forward and -- don't they stand? -- come
16 forward and stand with the bailiff, and face the lady --
17 the gentleman and lady who are the attorneys. And if you
18 have any personal belonging that are with you, pocketbook,
19 notepad, anything, please bring them with you when you
20 come up. But we will now begin with the jury selection
21 process. Strikes are five and five.

22 THE CLERK: Number 188, Ruth Mehring. What say you
23 for the State?

24 MR. EPTING: Please present the juror.

25 THE COURT: And the defense?

1 MS. INZERILLO: Please swear the juror.

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

3 Number 163, Denise Latham. What say you for the
4 State?

5 MR. EPTING: Please present this juror.

6 THE CLERK: And the defense?

7 MS. INZERILLO: Please swear the juror.

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

9 Number 179, Darrell Matthews. What say you for the
10 State?

11 MR. EPTING: Please present the juror.

12 THE CLERK: And the defense?

13 MS. INZERILLO: Please swear the juror.

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

15 Number 122, Krista Hartley. What say you for the
16 State?

17 MR. EPTING: Please present the juror.

18 THE CLERK: And the defense?

19 MS. INZERILLO: Please excuse the juror.

20 THE CLERK: You're excused in this case.

21 Number 102, David Gay. What say you for the State?

22 MR. EPTING: Please present this juror.

23 THE CLERK: And the defense?

24 MS. INZERILLO: Please swear the juror.

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

1 Number 32, Christopher Bragg. What say you for the
2 State?

3 MR. EPTING: Please present the juror.

4 THE CLERK: And the defense?

5 MS. INZERILLO: Please swear the juror.

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

7 Number 266, Ira Sturgis. What say you for the State?

8 MR. EPTING: Please present this juror.

9 THE CLERK: And the defense?

10 MS. INZERILLO: Please excuse the juror.

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

12 Number 121, Phyllis Harris. What say you for the
13 State?

14 MR. EPTING: Please swear the juror.

15 THE CLERK: Defense?

16 MS. INZERILLO: Please swear the juror.

17 THE CLERK: Have a seat in the jury box.

18 Number 216, Lisa Pepper. What say you for the State?

19 MR. EPTING: Please present the juror.

20 THE CLERK: And the defense?

21 MS. INZERILLO: Please excuse the juror.

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

23 Number 45, Clifton Calloway. What say you for the
24 State?

25 MR. EPTING: Please excuse this juror.

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

2 Number 21, Daniel Blackburn. What say you for the
3 State?

4 MR. EPTING: Please present the juror.

5 THE CLERK: And the defense?

6 MS. INZERILLO: Please swear the juror.

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

8 104, Kristen George. What say you for the State?

9 MR. EPTING: Please present the juror.

10 THE CLERK: And the defense?

11 MS. INZERILLO: Please swear the juror.

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

13 Number 213, Heather Patterson. What say you for the
14 State?

15 MR. EPTING: Please present the juror.

16 THE CLERK: And the defense?

17 MS. INZERILLO: Please excuse the juror.

18 THE CLERK: You're excused in this case.

19 Number 46, Jill Cameron. What say you for the State?

20 MR. EPTING: Please present this juror.

21 THE CLERK: And the defense?

22 MS. INZERILLO: Please swear the juror.

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

24 Number 277, Dylan Vander Velde. What say you for the
25 State?

1 MR. EPTING: Please present this juror.

2 THE CLERK: And the defense?

3 MS. INZERILLO: Please swear the juror.

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

5 Number 284, James Weaving. What say you for the
6 State?

7 MR. EPTING: Please swear the juror.

8 THE CLERK: Defense?

9 MS. INZERILLO: Please excuse the juror.

10 THE CLERK: You're excused in the case.

11 Number 175, Audrey Marak. What say you for the
12 State?

13 MR. EPTING: Please present the juror.

14 THE CLERK: And the defense?

15 MS. INZERILLO: Please swear the juror.

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

17 Number 217, Bernard Perrine. What say you for the
18 State?

19 MR. EPTING: Please excuse the juror.

20 THE CLERK: You're excused in this case.

21 161, Janice Laney. What say you for the State?

22 MR. EPTING: Please present this juror.

23 THE CLERK: And the defense?

24 MS. INZERILLO: Please swear the juror.

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

1 This will be for the alternate.

2 Number 233, James Robinson. What say you for the
3 State?

4 MR. EPTING: Please present this juror.

5 THE CLERK: And the defense?

6 MS. INZERILLO: Please swear the juror.

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

8 THE COURT: Anything concerning the manner and
9 methods of selection of the jury from either the State or
10 the defense?

11 MR. EPTING: Nothing from the State.

12 MS. INZERILLO: No, Your Honor.

13 THE COURT: All right, ladies and gentlemen that have
14 been selected to be our next jury, congratulations. Give
15 me just a moment. I need to address those folks out
16 there.

17 Well, I'm informed that you are relieved of your duty
18 as far as today is concerned. I think the Clerk of the
19 Court has provided you with a call back number. Please be
20 sure to call that telephone number probably after 6:00; is
21 that correct? After 7:00 tonight and receive instructions
22 for tomorrow. But I do want to thank you for your time
23 and patience while we went through the qualification
24 process this morning and we started the jury selection.
25 But thank you very much. If you would -- I'm going to ask

1 you -- let you leave, but please leave quietly because
2 we're going to continue to do business in here. Thank you
3 very much.

4 See the lawyers for a moment.

5 (WHEREUPON, a bench conference was held in the
6 presence but not within the hearing of the jury.)

7 THE COURT: All right, ladies and gentlemen,
8 congratulations on being selected as our next jury. Given
9 the hour that it is, we're not going to actually start the
10 process of starting the testimony to you. I'm going to
11 ask you, if you would, to please return in the morning and
12 be back in this courthouse in the jury deliberation
13 room -- which the bailiff will show you just shortly -- by
14 9:30 in the morning. We'll begin with the presentation of
15 the evidence.

16 Now, even though we've not actually presented
17 evidence yet, you've actually become jurors in this case.
18 And so I'm going to be repeating some instructions to you
19 throughout the course of this trial, but I want you to
20 hear it now for the first time, and you're going to hear
21 it again and again because this is very important. Until
22 we begin -- until you begin your deliberations of this
23 case, which is at the end of the case after all of the
24 testimony has been presented to you, you can't have any
25 discussions with anybody about anything involved in this

1 case. Now that includes you go home tonight and, "Oh, you
2 got picked on a jury. What kind of case is it? Who is
3 involved in it? Who are the lawyers?" Just very politely
4 tell them, "I'm sorry, but the judge instructed me that I
5 can't have any discussions with anybody about anything
6 involved in the case until the deliberations." After the
7 deliberations is over, you can talk to anybody you want to
8 as much as you want to. But until you begin your
9 deliberations, you can't talk about it at all.

10 Also, you cannot do any type -- the decisions that
11 you make back there in the jury deliberation has to be
12 based on what you hear in this courtroom, either from me
13 or through the lawyers or through the testimony that's
14 presented from the witness stand. If I've said anything
15 today that -- or you've heard something that's raised your
16 curiosity and said, "Well, gosh, I've got to go look that
17 up. I'm not sure what he was talking about," or, "Gosh, I
18 might have seen one of the lawyers on Facebook somewhere
19 or I might have seen them on TV at some point. I'm going
20 to look and find out about them." You can't do it. You
21 can't do any of that. You cannot do any type of
22 independent research or investigation into anything that
23 involves this case. Allow your decisions that you have to
24 make in the case be based solely on what you hear in this
25 courtroom.

1 So I apologize if I've said a word and you feel like
2 you need to pull the Webster's dictionary off the shelf.
3 You cannot even do that, because allow us to educate you
4 as this trial progresses and through our arguments to you
5 and the instructions that I will give you as the law as to
6 what you need you to have access to when you go back there
7 to the jury deliberation room. Plus, look at it this way:
8 Don't take it home with you and feel like you've got to do
9 homework to get ready. We already impose enough of a
10 burden of you by your coming here and sitting here, so
11 don't feel like you have to do anything outside the
12 courtroom either.

13 Don't have any contact with any of the lawyers, the
14 witnesses, or anybody that's involved in this case as you
15 come and go from the courthouse. And please do not think
16 that I or one the staff members or the lawyers, anybody is
17 being rude to you if we do not even say hello to you. We
18 understand the importance of not having any conversations
19 or communications with you and the appearance of
20 impropriety that would arise if we did during the course
21 this trial. Forgive us if we seem to be rude and
22 impolite. We're just doing what we have to do to keep
23 that barrier in place.

24 But I do want to thank you for you time as we got --
25 went through the jury qualification process and the jury

1 selection process today. Again, I would like you to be
2 back at 9:30 in morning. And Mr. Blackburn, when we
3 return, I'm going to ask if you would please serve as the
4 jury foreman. You'll be the jury spokesperson here in
5 this courtroom if that becomes necessary, but I'll give
6 you further instructions on that tomorrow. But if you
7 would like to go with the bailiff, he will show you where
8 the jury deliberation room is and how to get in and out of
9 the courthouse. Have a good evening.

10 (The jury left open court at approximately 4:42 p.m.)

11 THE COURT: I will see everyone by 9:30 in the
12 morning. We'll stand at ease. And, sir, that thing about
13 your being on bond still remains. Okay?

14 THE DEFENDANT: All right.

15 THE COURT: Thank you, sir.

16 (The proceedings were adjourned at 4:42 p.m. on
17 November 18, 2013 and resumed at 9:48 a.m. on November 19,
18 2013.)

19 THE COURT: Are y'all ready?

20 MS. INZERILLO: Your Honor, may I have just one
21 second?

22 MR. EPTING: State is ready too. Your Honor, before
23 we bring the jury out, as a -- just a housekeeping
24 matter out of an abundance of caution. I should have done
25 this during pretrial yesterday, Your Honor. But

1 Ms. Inzerillo at some point during the prosecution of this
2 case did file a motion. I guess it was a notice that the
3 defendant was, in fact, rejecting his 18-month offer as
4 well as his cap of 18-month offer. They did reduce that
5 in writing and filed that with the clerk's office. Out of
6 an abundance of caution, I would like to make that a
7 Court's exhibit if the Court is amenable.

8 THE COURT: Okay. It can be a Court's exhibit. It
9 won't go back with the jury.

10 MR. EPTING: That's right. But it can be a Court's
11 Exhibit and it's marked as Court Exhibit 1. Thank you,
12 Your Honor. That's Court's Exhibit 1.

13 (Court's Exhibit Number 1 was marked.)

14 THE COURT: Bring them in.

15 (The jury entered the courtroom at 9:48 a.m.)

16 THE COURT: Thank you, ladies and gentlemen. As you
17 will -- may learn during the course this trial, there are
18 frequent times when we have to actually keep you in the
19 back because there are things that I have to do with the
20 lawyers that have to be done outside of your presence, and
21 so I wanted to just mention that to thank you for your
22 patience while we got started this morning. But you may
23 also find that there are times when an out-of-town judge
24 that travels is a little bit late. So this morning it was
25 completely my fault that you were back there for a little

1 bit. I misjudged the traffic, so please accept my
2 apologies for the delay in bringing you out.

3 Ladies and gentlemen, at this time we're going to now
4 begin the trial of the state of South Carolina versus
5 Latroy Lamar Wherry. But before we actually start this
6 trial, the Clerk of the Court has to administer an oath to
7 you, so if you would, please stand and raise your right
8 hand.

9 (The jury was sworn.)

10 THE CLERK: Let the record show all affirmed.

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

12 Ladies and gentlemen, before we begin this trial, I
13 want to tell you that this trial probably will be
14 different from what you might expect. Many people do not
15 have the chance to attend an actual court session as
16 you're doing now, and may think from watching television
17 or movies or reading books that trials are always full of
18 high drama, intense action, and riveting circumstances.
19 While all of these things may be true at times, this trial
20 is not for entertainment. It is a fundamental part of our
21 democracy. It is a search for the truth and an effort to
22 make sure justice is done between the parties that are
23 before the court. And searching for the truth, making
24 sure that justice is done is often slow, deliberate and
25 repetitive, just the opposite of what you may have seen on

1 television or in a movie or read about in a book.

2 This courtroom is a place of honor dedicated to the
3 protection and preservation of citizens' rights through
4 what many have called the greatest justice system ever
5 created. The attorneys appearing before you, they are
6 advocates for the parties they represent. But first and
7 foremost, they are officers of the court, sworn to uphold
8 the integrity and fairness of our judicial system and to
9 help you in the search for the truth. You should expect
10 them to be professional, competent, and ethical in the
11 representation of their client's interests. Remember you
12 have taken an oath to try and reach a fair and just
13 verdict, and you are also expected to be professional and
14 ethical.

15 I do want to thank you for accepting this important
16 responsibility of jury service and your contribution today
17 for our democracy. What I will say now is intended to
18 serve as an instruction or an introduction trial of the
19 case. My remarks are not to be considered a charge on the
20 law of the case. I will instruct you on the law
21 applicable to this case at the end of the trial before you
22 retire to consider your verdict. This, my remarks, are
23 merely an explanation of the procedures that we will
24 follow in the trial of the case in order that you may
25 better understand what is happening.

1 Now, the defendant, he is charged way by of an
2 indictment filed with this court with the crime of failure
3 to stop for a blue light, the elements of which will be
4 explained to you later. Now, this indictment is simply
5 the charge by which the case is brought into court, and it
6 is not, in any sense, evidence of the allegations
7 contained in it. The defendant, he has pled not guilty to
8 the indictment. It is the State, therefore, that has the
9 burden of proving each of the elements of the charge
10 beyond a reasonable doubt. It will be your duty, ladies
11 and gentlemen, to decide whether or not the State has met
12 that burden.

13 Your purpose as jurors is to find and determine the
14 facts. You are the sole judge of the facts. If at any
15 time during this trial I make any comments regarding the
16 facts, you must disregard my comments. You are to
17 determine the facts from the testimony you hear, from the
18 evidence introduced in court, and it is up to you to
19 determine the inferences which you may feel may be
20 properly drawn from the evidence. It is especially
21 important that you perform your duty of determining the
22 facts diligently and conscientiously because ordinarily,
23 there is no way to correct an erroneous determination of
24 facts that is made by a jury.

25 Now, on the other hand and with equal emphasis, the

1 same law that makes you the judge of the facts makes me
2 judge of the law. The law as given by the Court is the
3 only law you may consider. You must accept and follow it
4 even though you may disagree it with. I cannot tell you
5 what the facts are, and you cannot disagree with me about
6 what the law is or about what the law should be. Your job
7 is to take the law as I give it to you, apply it to the
8 facts as you find them from the testimony of the witnesses
9 and the evidence presented, and after doing that, you will
10 render your verdict, a true and just verdict in the solemn
11 oath you just took.

12 Now as I've already explained to you, until I advise
13 you to begin your deliberations, you must not discuss this
14 case with anyone, including your fellow jurors, friends,
15 family members, or anyone that is involved in this case.
16 That's including any type of face-to-face discussion, by
17 telephone, e-mail, text, blogs, or any other type of
18 communication devices. You can't use your -- as I told
19 you yesterday you can't use your computer to do any type
20 of research. You can't communicate people with --
21 communicate with people about this case with cell phones
22 or any other type of electronic devices. Even when you
23 begin your deliberations, you cannot use those devices or
24 seek any type of outside information through those
25 sources.

1 I do not anticipate there's going to be any type of
2 media coverage of this trial, but if there is, you cannot
3 read about it in the newspapers. You can't listen to it
4 on the TV or watch any type of news reports. So you must
5 make a conscious effort that if there is any type of media
6 report you must disregard those types of reports.

7 Now, after the case is submitted to you, you must
8 discuss it only in the jury room with your fellow jurors.
9 As I told you yesterday, the attorneys and the parties
10 have been advised that they're not to talk with you at
11 all. So if you see anyone involved in the case and they
12 do not even say hello to you around the courthouse,
13 they're not being unfriendly or rude. They're simply
14 following my instructions.

15 It is important for you as a -- jurors in this case
16 to keep an open mind and not decide any issue in this case
17 until all the evidence has been presented to you, the
18 parties have made their closing arguments, and I have
19 instructed you on the law. It is your solemn
20 responsibility to determine the guilt or innocence of the
21 defendant, and your verdict must be based solely on the
22 evidence as it is presented during this trial and on the
23 law that I instruct you at the close of this trial.

24 Now in a moment, the solicitor will make what is
25 called an opening statement in which the solicitor

1 explains to you what he believes the issues are in the
2 case. The attorney for the defendant may also make what's
3 called an opening statement, although she's not required
4 to do so. Now, what the attorneys tell you in opening
5 statements is not evidence in the case. It is only their
6 contention as to what they believe the issues are in this
7 case. The evidence in this case, it will be presented to
8 you by testimony from this witness stand right here and by
9 any exhibits that might be presented to you.

10 I've already mentioned from time to time during this
11 trial you may hear one of the lawyers say something like,
12 "Your Honor, I believe I have a question of law or matter
13 of law to discuss with you." Or they may say something
14 like, "Your Honor, may we approach the bench," or
15 sometimes I may find it necessary myself to excuse you
16 from the jury room while we discuss what's called matters
17 of law. The reason that we do this, that we exclude you
18 from those conversations is because there are times when I
19 have to make comments about the facts of the case and
20 ruling on matters of law. So that you will not be
21 influenced by anything I say or do in ruling on matters of
22 law, I will have you removed from the courtroom while we
23 have those discussions.

24 Now, in determining what the true facts are in the
25 case, you must decide whether or not the testimony of a

1 witness is believable. It will be my responsibility to
2 rule as a matter of law whether or not the testimony is
3 admissible or not, but once the testimony is admitted,
4 whether or not you believe it is solely for you to decide.
5 In deciding whether to believe a witness, you have the
6 right to consider any interest of the witness, the bias of
7 the witness, the prejudice of any witness, the opportunity
8 for the witness to have seen the matters and things about
9 which the witness may testify, and also the way the
10 witness acts on the witness stand.

11 You have the right to consider anything that is in
12 the record that will help you evaluate the testimony of
13 the witness. Now that means that is it is your duty to
14 pay close attention to the witnesses, to observe them, to
15 listen to them. Pay close attention to the attorneys in
16 the court. Do not let your thoughts wander, but give
17 strict attention to the testimony so at the end of all
18 testimony and after the arguments of counsel and the
19 charge of the law, you may then be in a position to
20 determine what the true facts are in this case, apply
21 those facts to the law as I give it to you, and thus
22 render a true and just verdict.

23 It is your added duty, Mr. Foreperson, to preside in
24 the jury room and also to be the jury spokesperson in the
25 courtroom in the event that becomes necessary. At the end

1 of this case, it will also be your responsibility to write
2 the jury's verdict that I will give you further assistance
3 and instructions on that at the end of the trial.

4 Now, in order to preserve everyone's rights, I will
5 give the parties an opportunity to object to anything I
6 have just stated to the jury. Any objections from the
7 State?

8 MR. EPTING: Nothing from the State, Your Honor.

9 THE COURT: Any from the defense?

10 MS. INZERILLO: No, Your Honor.

11 THE COURT: At this time, we will receive the opening
12 statement.

13 MR. EPTING: Thank you, Your Honor, may it please the
14 court. Ms. Inzerillo.

15 OPENING STATEMENT BY MR. EPTING

16 Ladies and gentlemen, good morning. Ladies and
17 gentlemen, we're here today because the defendant, seated
18 at defense table, failed to stop for a blue light as he
19 was required to do by law. The evidence that you'll hear
20 during the course of this trial will be the testimony of
21 Sergeant Tony Breeden, a supervisor of the traffic patrol
22 unit at the Rock Hill PD. He'll testify that he was on
23 patrol on the night in question; that he was on patrol in
24 the area of Celanese and Cherry Road when a car passed him
25 exceeding the speed limit. Happens every day all the

1 time. He pulls up to that car. As is his standard
2 operating procedure, he checks the tag to make sure
3 nothing is amiss, that he doesn't need backup, and he
4 turned on his blue lights. Car does not pull over. At
5 the time, he does not know it's Latroy Wherry driving the
6 car, but he follows it.

7 The pursuit begins. Carries into Fort Mill.
8 Mr. Wherry pulls into a nearby apartment complex where he
9 starts driving a little faster, cutting a little closer
10 turns, trying to get away. And eventually Mr. Wherry
11 pulls into a vacant parking space, where he gets out and
12 runs. Tony Breeden does his job. He pulls behind him.
13 He runs too. Chases him. He's yelling at him to stop
14 this whole time. He's yelling at him he's going to taze
15 him if he doesn't stop. He gets pretty close to him, and
16 at some point Mr. Wherry runs into a nearby apartment.
17 Tony Breeden chases right after him. Someone's coming
18 down the stairs as he enters, so he stops, does his job,
19 secures, tells that person, "Hey, wait, I'm chasing
20 somebody," and he hears a noise in the kitchen. He goes
21 in there. It's the same person that he's been chasing
22 through this apartment complex. Person in the back of the
23 house turns around, looks at Mr. Tony Breeden right in his
24 eyes. He's kind of surprised, looked like, "Oh, my gosh,
25 the police are still chasing me," and he runs into the

1 woods.

2 Sergeant Breeden will testify that when he saw this
3 person's face, when they locked eyes, he recognized him.
4 He had seen him before. He knew that face. It was
5 nighttime when this occurred and Mr. Wherry ran into some
6 woods, so Tony Breeden, being alone, decides to call for
7 backup to call for K9 to try to chase him, track him
8 down. He didn't want to go in the woods alone. Backup
9 arrives. Some folks claiming ownership of the car arrive
10 on the scene as well. You'll hear one of those name is
11 Brittney Kennedy. Brittney Kennedy speaks with Officer
12 Breeden, and at that point, Mr. Breeden's investigation
13 turns toward Latroy Wherry. She says Latroy Wherry was
14 driving the car that night.

15 At that point he's shown a picture of Latroy Wherry,
16 and he'll testify on the witness stand as soon as he knew
17 that name, he knew. Latroy Wherry was the same guy he saw
18 in the house, the same guy that he had seen on multiple
19 other incidents. They never caught Latroy that night. He
20 got away. But nonetheless, he did recognize him and
21 that's why he's here before you today.

22 The judge mentioned beyond a reasonable doubt, and at
23 the close of the case, we'll get the chance -- we'll get
24 to argue. Close of the case, some you may be happy to
25 hear will probably be before lunch. This is not going to

1 be a long case. It's going be a short case, probably just
2 Tony Breeden, the video. That doesn't mean it's not an
3 important case. Important to the defense because this is
4 Mr. Wherry's day in court. Important to the State because
5 we wouldn't be trying the case if it wasn't important to
6 us.

7 Beyond a reasonable doubt is not beyond all doubt.
8 People in courts in this country every single day, I would
9 submit every single person gets convicted with some doubt.
10 Very few things in life can be proven with zero doubt.
11 We're not required to prove to that level.

12 Ladies and gentlemen, at the close of this case after
13 hearing from Officer Breeden, after seeing portions of his
14 in-car tape, after hearing his identification that
15 Mr. Wherry is the person he saw, we are confident that you
16 will return the only verdict in the case that's fair and
17 just and that meets the facts, and that's a verdict of
18 guilty for failure to stop for a blue light.

19 Thank you. My name is Chris Epting, and it's my
20 privilege and honor to represent the people of York County
21 in the case.

22 MS. INZERILLO: May it please the court, Your Honor.

23 THE COURT: Yes, ma'am.

24 OPENING STATEMENT BY MS. INZERILLO

25 Good morning. There's one simple issue in this case.

1 Latroy Wherry was not driving the car that night. As
2 Mr. Epting explained to you, you're going to hear
3 essentially two key pieces of evidence. You're going to
4 see Sergeant Breeden take the stand, and you're going to
5 see Sergeant Breeden's in-car video. You're going to hear
6 the judge at the conclusion of this tell you what the law
7 is, and he's going to explain the elements of failure to
8 stop for a blue light. He's also going to explain to you
9 that it's important that it's proven beyond a reasonable
10 doubt that you find as a jury that it was Mr. Wherry
11 driving that car and it was Mr. Wherry that failed to stop
12 for the blue lights that evening.

13 Ladies and gentlemen, it's our position that you're
14 not going to find that. After hearing the testimony,
15 after watching the video, you are not going to find that
16 Mr. Wherry was the driver of that car. When you come into
17 this courtroom, you don't become robots. You don't leave
18 all your experiences at that door. You don't become
19 another person when you take this chair. You come here
20 with common sense, with life experiences. And I ask you
21 to embrace them when you see the evidence and you hear the
22 evidence of this case. In looking at identification, look
23 at and consider how you approach it in your everyday
24 lives. Every day we think of oh, I know that person. Oh
25 wait, do I know that person? When you walk past people in

1 the mall and you're so sure, oh, that was the person --
2 oh, no, it wasn't.

3 You're going to hear testimony from Sergeant Breeden
4 about the identification of Latroy Wherry. Assess that as
5 you would in your everyday lives, and I feel confident at
6 the conclusion of your case, you will find Mr. Wherry not
7 guilty. Thank you.

8 THE COURT: Is the State ready to proceed with their
9 first witness?

10 MR. EPTING: Yes, sir.

11 THE COURT: The State would call Sergeant Breeden to
12 stand.

13 SERGEANT ANTHONY BREEDEN, after being duly
14 sworn, testified as follows:

15 DIRECT EXAMINATION

16 BY MR. EPTING

17 Q. Sergeant Breeden, would you please state your full
18 name for the record.

19 A. Anthony Wade Breeden.

20 Q. And this is a stupid question, but what do you do for
21 a living?

22 A. I'm a police officer.

23 Q. How long have you been a police officer?

24 A. About 22 years.

25 Q. And has all this time been on patrol?

SERGEANT ANTHONY BREEDEN - DIRECT EXAMINATION BY
MR. EPTING

1 A. Yes, sir. I worked two years in Meck County in the
2 jail, but the last 20 have been in Rock Hill on some type
3 of uniform capacity.

4 Q. And I believe you said you're a sergeant?

5 A. Yes, sir.

6 Q. Could you explain the jury the significance of that
7 rank?

8 A. Right now, I'm currently assigned as a supervisor
9 over our traffic unit. I served time on patrol, as a
10 regular member of the traffic unit. I was promoted to
11 sergeant over patrol, assigned to street crime unit, which
12 a uniform part of the detective division for several
13 years. I went back to patrol as a patrol supervisor, and
14 now assigned as the supervisor of the traffic unit.

15 Q. And could you explain briefly some of the duties of
16 the traffic unit from Rock Hill police department?

17 A. Aside from answering, you know, normal patrol calls,
18 we investigate collisions. We respond to areas of the
19 city where there's high complaints of traffic, speeding,
20 wrecks, things like that. So we don't just typically
21 call, call, call. We normally try and handle traffic
22 areas and traffic enforcement. We investigate serious
23 collisions, fatalities, things like that.

24 Q. All right. Getting into the matter that's relevant
25 to the trial today, Sergeant, were you involved in a

SERGEANT ANTHONY BREEDEN - DIRECT EXAMINATION BY
MR. EPTING

1 failure-to-stop incident that occurred on February 6,
2 2013?

3 A. Yes, sir.

4 Q. If you would, please tell the jury about your
5 involvement in that incident.

6 A. That night I was operating stationary radar on Cherry
7 Road just past Celanese, near Riverwalk near the new
8 Velodrome on Cherry Road. That area was under
9 construction. It was not an active construction zone at
10 the time, but there were numerous barrels in the area. We
11 were out there trying to reduce speed in the area during
12 that time, and as I said, I was operating a stationary
13 radar, which means my vehicle was parked with my lights
14 off, just operating radar in that area, and observed a
15 vehicle traveling from Celanese toward Fort Mill, like I
16 said right in the area of the Velodrome at 52 miles an
17 hour in a 40-mile an hour zone.

18 I immediately turned on my headlights, turned around,
19 caught up to the vehicle. And normal procedure, we have
20 computers in our cars that we can run tags, driver's
21 license, things of that nature. And I normally run the
22 tag myself just to see if there's anything on the vehicle,
23 whether it's wanted, stolen, if there's any previous
24 things with the vehicle before I activate the blue lights,
25 because it just lets me know, you know, a tactical

SERGEANT ANTHONY BREEDEN - DIRECT EXAMINATION BY
MR. EPTING

1 mind-set that may differ than a normal traffic stop.

2 So -- and when I normally get that back, then I'll
3 activate the blue lights to initiate the stop, which I
4 did.

5 Q. And before we get into further, this car was not
6 stolen; is that correct?

7 A. No, sir.

8 Q. And when you got behind the car to check the tag, did
9 you have in it your mind to pull him over?

10 A. Yes, sir. As soon as I cut my lights on to turn
11 around, I knew I was going to stop the vehicle.

12 Q. And the traffic violation that you -- the speeding
13 violation that you saw, where exactly would you say that
14 occurred?

15 A. Right approximately right in front of the light at
16 the Velodrome on Cherry road.

17 Q. Is that Rock Hill, York County?

18 A. Yes, sir. City limits of Rock Hill.

19 Q. Did all this incident occur within York County?

20 A. All of it took place in the county, yes, sir.

21 Q. So you get behind him, you check his tag, everything
22 is clear. What happened at that point?

23 A. Activated my blue lights. Called a traffic stop out,
24 activated my blue lights. Waited, you know, a couple
25 seconds to make sure to see if the person probably saw my

SERGEANT ANTHONY BREEDEN - DIRECT EXAMINATION BY
MR. EPTING

1 blue lights. I did observe and made a note that the
2 vehicle crossed the center line a couple times. During
3 that point, I went ahead and activated my siren. And at
4 that point, the vehicle began to accelerate and it was
5 apparent to me that it was not going to yield, and
6 accelerated in an attempt to evade and not yield to the
7 blue lights or the siren.

8 Q. Were you close enough to the vehicle where a
9 reasonable person would have seen the light or heard the
10 siren?

11 A. Yes, sir.

12 Q. If you had to estimate, approximately how close?

13 A. At one point, I was probably two or three car lengths
14 behind the vehicle.

15 Q. So you hit the lights, hit the sirens. Could you
16 tell how many people were in the car?

17 A. I just saw the driver in the vehicle.

18 Q. And car did not pull over?

19 A. No, sir.

20 Q. You said it sped up?

21 A. Yes, sir.

22 Q. Did you give pursuit?

23 A. Yes, sir. I notified dispatch. I also notified a
24 different supervisor. Our pursuit policy is restricted to
25 three elements that we can pursue for. One of them is

SERGEANT ANTHONY BREEDEN - DIRECT EXAMINATION BY
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1 suspicion of possibility of a DUI. I notified the on-duty
2 supervisor of that as well to justify my pursuit. The
3 vehicle continued through the first entrance as you cross
4 the bridge into Fort Mill, continued on U.S. 21, which
5 would be north on the 21. As soon as we entered, we came
6 up on the Forest Ridge Apartments, which are on the left
7 on 21 right before you get to the Peach Stand,
8 essentially. The vehicle turned left into the apartments.

9 I knew that was a dead end apartments and I was
10 pretty sure that the driver of the vehicle was going the
11 bail in the apartments -- bail -- I'm sorry, was going to
12 jump out and run. I notified as a matter of fact,
13 probably going to bail in the apartment. Pulled into the
14 apartments. The vehicle immediately came in and made a
15 right in the apartments and accelerated at a pretty high
16 speed through the apartments. There were some speed
17 bumps. He actually increased his distance on me pretty
18 good in the apartments because of his driving and, you
19 know, and I couldn't -- I couldn't drive the same way he
20 was in the apartment complex. So the gap that I had on
21 him that was pretty close increased in the apartments,
22 and -- which is pretty common when somebody is getting
23 ready to flee on foot is give a little more distance so
24 they have that opportunity to get away.

25 Q. Just so we're clear: At this point, you don't know

SERGEANT ANTHONY BREEDEN - DIRECT EXAMINATION BY
MR. EPTING

1 who is driving the car?

2 A. No, sir.

3 Q. Eventually did the car bail out like you suspected?

4 A. Yes, sir. Pulled into a parking spot. I pulled in
5 behind the car, jumped out and gave pursuit. We ran a
6 couple minutes in the apartments. We ran -- a minute or
7 two in the apartments, I guess. We circled a couple
8 different apartments. We ran behind the apartment,
9 circled an apartment, running through the apartment
10 complex. During this time, I started to gain on the
11 person. Gave the description out. Noticed he was about
12 6-foot tall wearing all gray. Continued the pursuit.

13 We ran along the back of the apartments. He came
14 around the back of the building that he eventually went
15 into the apartment, and as he was coming up the sidewalk,
16 all of a sudden he turned and darted in an apartment.

17 Q. Before we get into the apartment, as you're chasing
18 him around the apartments and around the parking lot,
19 what's the lighting like in this area?

20 A. It's at night, but you can see that all the
21 apartments have lights on the front of the buildings and
22 in between some of the buildings there's street lights.
23 So it's at night, but there's what I would consider
24 ambient lighting in a normal apartment complex to where --
25 it's not like you're running in the woods or along a

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1 country road in the middle of the night where you can't
2 see. I mean it is -- there is enough light to where you
3 can make out clothing. You can see people. You can
4 recognize vehicle makes, colors, things like that. So
5 it's not pitch black, but it at night.

6 Q. And just so we're clear on your testimony, you said
7 you called out clothing?

8 A. Yes, sir.

9 Q. An approximate height; is that correct?

10 A. Yes, sir.

11 Q. Could you tell race?

12 A. Yeah, I knew it was a black male.

13 Q. Could you -- so you could tell race and gender. That
14 was my next question.

15 A. Yes, sir.

16 Q. What was the furthest distance you were away from
17 him?

18 A. I would probably say initially between 30 and
19 40 yards when I got out of his car and I was able to stop.
20 But as I said I started to close that distance, and had he
21 not made it in the apartment, I would probably say I was
22 100 percent sure I would have caught him.

23 Q. What was the closest?

24 A. I would say the closest I had gotten approximately
25 maybe here to a little bit before the door in the back of

SERGEANT ANTHONY BREEDEN - DIRECT EXAMINATION BY
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1 the courtroom.

2 Q. Could you tell if the person who was running was
3 wearing a mask or anybody obstructing their face?

4 A. No, I just saw the back of his head. I didn't see a
5 mask.

6 Q. So eventually this person runs into an apartment?

7 A. Yes, sir.

8 Q. Could you tell the jury about your experience there?

9 A. Soon as he ran in the apartment, I immediately --
10 within a second or so came in behind him. And as soon as
11 we came in the apartment, this is a typical two-story
12 apartment where as soon as you open the front door, you
13 immediately see stairs that go up and you're looking into
14 the living room and you can see straight into the -- what
15 would be the kitchen with the little wall. So essentially
16 it's just an open downstairs and stairs.

17 As soon as I came in, I saw movement on the stairs
18 and saw another black male coming down the stairs. I knew
19 it wasn't the person I was chasing, but I asked him did he
20 come upstairs? And at that time while I was standing
21 there talking to him, I heard a bolt lock twist on the
22 back kitchen door. And I said, "Dang, he's going out the
23 back door." So I immediately took off toward the kitchen,
24 and as I was getting to the kitchen, he opened the door,
25 looked at me, and then took off out the back door.

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1 Q. Did he look at you in your eyes?

2 A. Yes, sir.

3 Q. How far from him were you when you saw him about to
4 bolt out the back door?

5 A. I would say me to you, somewhere around in there.

6 Q. What was the lighting like inside?

7 A. It was -- you know, it wasn't pitch black. There was
8 light in the kitchen, you know, and I saw his face, you
9 know. Like I said, the apartment -- there were lights on
10 in the apartment. The TV was on in the apartment. So it
11 was not like we came in the apartment and it was --
12 everybody was in bed. There was -- know what I'm saying?
13 The apartment was what I would consider active at the
14 time. So I saw him and he immediately ran out the back
15 door.

16 Q. Same clothes as the person you're chasing?

17 A. Yes, sir.

18 Q. Same height?

19 A. It's the same person.

20 Q. The same person?

21 A. Yes, sir.

22 Q. You're sure of that today?

23 A. The person I saw go out the back door was who I was
24 chasing.

25 Q. Did you recognize that person?

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1 A. I did recognize his face. I couldn't put a name with
2 it immediately, but I knew that I knew that person from
3 just knowing him previous dealings with.

4 Q. At that point -- at that point, person runs out the
5 back. Did you know -- do you know where they ran to?

6 A. No. When you come -- different -- the way this
7 apartment, particular building was, there was not
8 apartments on the backside. There was woods and there was
9 only a very small distance of which you would consider
10 grass or a rear yard. And when he went out, he could have
11 gone three directions immediately that I would have lost
12 sight of him, either around the corner, into the woods
13 where there was a couple different trails, and -- or the
14 left.

15 Now, had I seen him, I would have been able to
16 continue pursuit. But our normal policy if we are in a
17 pursuit and we're going to call K-9, once you lose sight
18 of the person, you need to stop, because anything you do
19 could subsequently mess up the track of the K-9. Had I
20 just started walking around in the woods trying to find
21 him, it would have contaminated the scent of the K-9 if I
22 caught him. You know, any foot pursuit, you continue the
23 foot pursuit as long as you see the person, but once you
24 lose sight, you have to stop, maintain -- protect the area
25 of the last place you saw him, and wait for the K-9 at

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1 that point.

2 Q. What time after at night was this?

3 A. Was around 11:35 somewhere around there.

4 Q. So dark out?

5 A. Yes, sir.

6 Q. And you're alone?

7 A. Yes, sir, but I would have continued to pursue him
8 had I -- if I would have seen him. Like I said, if I
9 would have had sight of him, I would have continued the
10 pursuit. But once I lost sight of him, there's no sense
11 in traipsing all over the place not knowing where he went.

12 Q. To your knowledge, was K-9 called out?

13 A. Yes, we did call them. I called them.

14 Q. What was the result of that?

15 A. K-9 tracked into the woods. They had a -- what you
16 would deem a pretty decent track, but that's a pretty
17 small patch of woods, probably 75 yards to the other side.
18 And any one of the trails that went into that woods came
19 out on several different streets in the Fort Mill area.
20 And, you know, you obviously -- K-9 is not like on TV
21 where they just track them forever. You know, you have to
22 have a perimeter, have the person contained. A dog can't
23 just track for indeterminate amount of time. And once it
24 made it to a couple surface streets and cross over, then
25 the scent was lost at that point.

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1 Q. So K-9 did not locate --

2 A. Not that night, no, sir.

3 Q. At some point, did your investigation turn to the
4 car?

5 A. Yes, sir. A short time later, the owner of the
6 vehicle and her daughter arrived on scene, and I began to
7 speak with both parties, primarily the daughter who was
8 Brittney Kennedy, who is -- she is -- the mother owns the
9 car, but she pretty much drives and operates the vehicle.
10 It's in her mom's name, but it's essentially her car.

11 Q. How old was Brittany, approximately?

12 A. She was probably 23, 24 years old. Somewhere around
13 her early 20s.

14 Q. At some point, did your investigation turn to Latroy
15 Wherry?

16 A. I initially asked Brittney Kennedy who was driving
17 her --

18 MS. INZERILLO: Your Honor, I'm going to renew my
19 objection to this response.

20 THE COURT: All right. So far I have to overrule the
21 objection.

22 MS. INZERILLO: Thank you, Your Honor.

23 A. I asked Ms. Kennedy who was driving her car. She
24 told me that -- initially said it was a gentleman named
25 Richard Green. She was standing with her mother at the

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1 time. I immediately walked over to my vehicle or away
2 from her, and she followed me over, and outside of her
3 mother's earshot, said, "Look, it wasn't Richard Green.
4 It was Latroy Wherry driving the car. I didn't want my
5 mom to hear that." So that's when she told me it was
6 Latroy Wherry and already pulled up his Facebook page, his
7 page and said, "That's him." And it was who I had saw
8 going out the back door.

9 Q. When you heard the name Latroy Wherry, did you put
10 face to name at that point?

11 A. I definitely knew that name and it rang a bell, and I
12 knew that name.

13 Q. Did you need to see the picture after you heard
14 Latroy Wherry's name?

15 A. I could have pulled up the picture myself, but she
16 already pulled it up and had his Facebook page and had a
17 picture of him on it.

18 Q. Do you see the person who ran from you in court
19 today?

20 A. Yes, sir, I do.

21 Q. Could you please point him out?

22 A. He's wearing the orange shirt.

23 MS. INZERILLO: Your Honor, I would again renew
24 previous objections to that prior line of questioning as
25 well as to the identification.

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1 THE COURT: All right. I'll overrule the objection.

2 MR. EPTING: Your Honor, I would ask the record
3 reflect that Officer Breeden pointed to Latroy Wherry
4 wearing orange seated at the defense counsel table next to
5 his defense counsel, Melissa Inzerillo.

6 Q. You mentioned earlier you were in a patrol vehicle;
7 is that correct?

8 A. Yes, sir.

9 Q. Is your patrol vehicle equipped with video recording
10 equipment?

11 A. Yes, sir.

12 MR. EPTING: Beg the Court's indulgence. Your Honor
13 may I approach the witness?

14 THE COURT: Yes, sir.

15 Q. I'd like to hand you what is been marked as State's
16 Exhibit 1. If you would look up once you've had a chance
17 to review it. Sergeant Breeden, do you recognize State
18 Exhibit 1?

19 A. Yes, sir. Those are my initials I made on the DVD.
20 It's a copy of my in-car video.

21 Q. And does that contain the chase?

22 A. Yes, sir. Our video cameras -- whereas they use to
23 be VHS, they're now digital, and when you pull into the
24 law center, I don't know how it works either, but you
25 download to a server. We can't control the DVD or the

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1 tape anymore. When you pull it, it's immediately
2 downloaded to a server, whereas we used to take our VHS
3 and that VHS would be turned in. Now a DVD is made of the
4 stop itself off the computer server, which is why it's a
5 DVD instead of the VHS tape.

6 Q. Is -- what's contained -- and you have you had chance
7 to review that tape?

8 A. Yes, sir.

9 Q. How do you know that the tape that you reviewed is
10 the same copy you're holding in your hand?

11 A. I actually download and made the copy myself. I made
12 two copies, one for essentially -- we make two copies, one
13 for the prosecution, one for defense, and they're both
14 placed in evidence.

15 Q. What about that DVD? Did you make some kind of mark
16 on it?

17 A. It's my initials and a date on it.

18 Q. What does the date signify?

19 A. It's the -- the date signifies when I would have
20 reviewed it.

21 Q. Okay. And after reviewing that tape and having a
22 chance to see it, is it a fair and accurate depiction of
23 what happened that night?

24 MR. EPTING: Your Honor, I ask that State's Exhibit 1
25 be moved into evidence.

SERGEANT ANTHONY BREEDEN - DIRECT EXAMINATION BY
MR. EPTING

1 MS. INZERILLO: No objection.

2 THE COURT: Without objection.

3 (State's Exhibit Number 1 was admitted.)

4 MR. EPTING: I would ask permission to publish
5 State's 1.

6 THE COURT: Without objection.

7 MR. EPTING: Your Honor, I apologize. The overhead
8 projector is rather loud. It beeps intermittently when
9 it's turned on and off.

10 (Videotape played in open court.)

11 Q. If at any time while this video is playing you wish
12 to instruct the jury on something or speak on it, just
13 give me a signal and I will pause it and allow you a
14 chance to speak.

15 Initially Sergeant Breeden -- is there audio on this
16 initially?

17 A. No, sir. Our new cameras, the way they work is with
18 them being digital they constantly record on a loop. And
19 when we activate our blue lights, it backs up 15 to 30
20 seconds prior to and records even prior to when I cut my
21 blue lights on, and that portion is not audio. Audio
22 begins -- will begin at the exact time I activated the
23 blue lights. That's actually a feature put in there in
24 case there's an accident where our vehicles are equipped
25 to where it has a collision sensor, and if we're going

SERGEANT ANTHONY BREEDEN - DIRECT EXAMINATION BY
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1 through -- it's basically for certain purposes. If we're
2 going through a light or something like that and there's
3 collision, it will back up and show the status of that
4 light possibly as we were going through. It's one of the
5 reasons for that feature, but that's why there's a few
6 seconds of no audio, and when you hear audio is the point
7 where I cut it on at.

8 Q. Thank you, sir.

9 (Videotape played in open court.)

10 MR. EPTING: Your Honor, can I ask the Court to
11 inquire if the audio level is sufficient?

12 THE COURT: Everybody hear it? They indicate yes.

13 MR. EPTING: Thank you, Your Honor.

14 Q. Sergeant Breeden, what's going on while all this
15 is --

16 A. I'm actually -- we're in -- I'm in pursuit at this
17 point. Our microphones have a range that's normally only
18 about 20 or 30 yards from our car, if that, and where you
19 hear it intermittently popping in and out, I'm getting out
20 of the range of my in-car microphone and that's -- you
21 don't hear anything except that as we're leaving range.
22 And the rest of it is just a car sitting there and we
23 don't -- at no point do we come back in front of my
24 vehicle.

25 Q. Is it fair to say to say by this time Mr. Wherry has

SERGEANT ANTHONY BREEDEN - DIRECT EXAMINATION BY
MR. EPTING

1 ran into the wood lines?

2 A. Yes, sir. We're just speaking to -- I'm speaking to
3 the gentleman that was in the apartment and other officers
4 arriving on scene to begin setting up a perimeter and
5 calling K-9, but it's essentially pretty much over at this
6 point.

7 MR. EPTING: Your Honor, in the interest of time
8 unless defense counsel objects, I would like to terminate
9 the video at this time.

10 MS. INZERILLO: No objection.

11 THE COURT: Without objection. Do you know -- does
12 that have a reading to where it stops?

13 MR. EPTING: 416 it tells the end, so it's got about
14 five more minutes on it.

15 THE COURT: Okay. Thank you.

16 Q. Sergeant Breeden in summary, you got a look at
17 Mr. Wherry inside the apartment; is that correct?

18 A. Yes, sir.

19 Q. You recognize him?

20 A. Yes, sir, I knew the face, yes, sir.

21 Q. And you recognize him from that night?

22 A. Yes, sir.

23 Q. Are you sure that was Latroy Wherry in that
24 apartment?

25 A. Yes, sir.

SERGEANT ANTHONY BREEDEN - CROSS-EXAMINATION BY
MS. INZERILLO

1 MR. EPTING: Your Honor, I have no further questions
2 for Sergeant Breedon at this time.

3 Please answer any questions Ms. Inzerillo may have
4 for you in this case.

5 MS. INZERILLO: May it please the Court, your Honor.

6 THE COURT: Yes, ma'am.

7 CROSS-EXAMINATION

8 BY MS. INZERILLO

9 Q. Sergeant Breedon, the initial reason you decided to
10 blue light the car that evening was for speeding, correct?

11 A. Yes, ma'am.

12 Q. And when you -- I believe you testified earlier that
13 you ran the tag or the car or called in the tag?

14 A. Yes, ma'am.

15 Q. And we actually hear that on the video, the dispatch
16 calling back in saying the tag -- the car belongs to Jerry
17 Kennedy?

18 A. Yes, ma'am.

19 Q. And that is the registered owner of the car?

20 A. Yes, ma'am.

21 Q. Not Mr. Wherry?

22 A. No, he's not the owner.

23 Q. And you testified that this video fairly and
24 accurately represents the event of that night?

25 A. Yes, ma'am.

SERGEANT ANTHONY BREEDEN - CROSS-EXAMINATION BY
MS. INZERILLO

1 Q. So it's not been doctored in any way, edited, cut
2 anything like that?

3 A. No, ma'am. No, ma'am.

4 Q. All right. It's fair to say on this video there are
5 portions of Highway 21 that have no streetlamps on them?

6 A. Yes, ma'am.

7 Q. And there are portions of this video where you're
8 driving to the parking lot behind the car where we sort of
9 lose sight of the car?

10 A. Yes, ma'am.

11 Q. Okay. And from the angle of your car, we cannot see
12 the person who jumps out of the car?

13 A. That's correct.

14 Q. All right.

15 A. I could see him, though, from my driver's door and I
16 could see as he jumped out of the car.

17 Q. Okay. But from the video, we can't see?

18 A. No, ma'am.

19 Q. Okay. When that person jumped out of the car, they
20 were running at full speed?

21 A. Yes, ma'am, I'm assuming.

22 Q. Okay. They were running pretty fast. They weren't
23 jogging or trotting along?

24 A. Yes, ma'am.

25 Q. And in your estimation, you were pretty much running

SERGEANT ANTHONY BREEDEN - CROSS-EXAMINATION BY
MS. INZERILLO

1 at full speed behind that person as well?

2 A. Yes, ma'am.

3 Q. And we hear you tell that person, "You're going to
4 get tazed. Slow down. I'm going to taze you."

5 A. Yes, ma'am.

6 Q. You never got close enough to that person to actually
7 taze them?

8 A. I didn't even take it out. I was hoping that would
9 work and it didn't.

10 Q. But certainly had you gotten close enough, that would
11 have been an option?

12 A. It would have been more than an option, yes, ma'am.

13 Q. Because you were in uniform that night?

14 A. Yes, ma'am, in a marked police car.

15 Q. And you had you taser on your belt?

16 A. Yes, ma'am.

17 Q. And so the person was ahead of you the whole time?

18 A. Yes, ma'am.

19 Q. Okay. And also on as part of your uniform is your
20 radio. That's what's on your shoulder?

21 A. Yes, ma'am.

22 Q. Okay. It got a little hard to hear there in the
23 middle, but we hear you radio in a description?

24 A. Yes, ma'am.

25 Q. And the description that you radio in is 6-foot --

SERGEANT ANTHONY BREEDEN - CROSS-EXAMINATION BY
MS. INZERILLO

1 A. Approximately 6-foot.

2 Q. -- black male?

3 A. Yes, ma'am.

4 Q. Wearing all gray?

5 A. Yes, ma'am.

6 Q. Okay. So you don't radio a description of for
7 example, long hair, short hair?

8 A. No, ma'am.

9 Q. Dreds?

10 A. No, ma'am.

11 Q. Okay. You don't radio in a description of build, for
12 example, tall or skinny versus heavy-set?

13 A. No, ma'am.

14 Q. That's the extent of the description that we have of
15 the person that you're chasing?

16 A. Yes, ma'am. I'm still chasing him at that time.

17 Q. Okay. And you indicated when you went inside the
18 house, essentially you're still running at full speed; is
19 that right?

20 A. I would have had to slow down, turn, open the door,
21 and at least look in. I wouldn't have just charged in
22 into the house wide open. You know what I'm saying? I
23 would have had to stop and have some tactical and
24 awareness about where I was before I ran in.

25 Q. But you didn't stop? There's no break in the

SERGEANT ANTHONY BREEDEN - CROSS-EXAMINATION BY
MS. INZERILLO

1 running? You're running --

2 A. No, ma'am. I ran, paused for a second, checked, and
3 then came into the house. Yes, ma'am.

4 Q. And you indicated there was a television on in the
5 house?

6 A. Yes, ma'am.

7 Q. And you've testified there was some conversation
8 between you and the owner, and then you see the person --

9 A. I don't know if it was the owner. It was a gentleman
10 coming down the stairs as I came into the landing.

11 Q. Okay. And then you see you see who you identified as
12 Mr. Wherry look at you and run out of the house?

13 A. I heard the bolt lock first because I didn't see him.
14 And I couldn't see all the way to the back door at that
15 point. I heard a bolt lock turn, knew it was a back door,
16 and took off toward the kitchen. And as he was opening
17 the door, saw him before he ran out.

18 Q. Okay. And so that, according to your testimony, is
19 the first time you see his face?

20 A. Yes, ma'am.

21 Q. Because prior to that, in the car, there's no
22 interior lights on in the car; is that correct?

23 A. That's correct.

24 Q. You're not radioing in a description from the car.
25 Your testimony before was that essentially you saw the

SERGEANT ANTHONY BREEDEN - CROSS-EXAMINATION BY
MS. INZERILLO

1 back of his head as you're chasing him?

2 A. Yes, ma'am.

3 Q. And we've been through the description that you
4 radioed in prior. So when you see his face, you don't
5 radio in any other description of him; is that correct?
6 Facial hair?

7 A. No, ma'am.

8 Q. Anything about the hair on his head?

9 A. No, ma'am.

10 Q. Anything like that? Okay. And then you indicated
11 after that sort of, poof, he's gone. He runs out the
12 back. You don't know where he went?

13 A. Yes, ma'am.

14 Q. And K-9 is unable to track?

15 A. Yes, ma'am.

16 Q. Runs out the door. Okay. So the next bit of
17 information you get is when you continue, essentially,
18 this investigation and you -- the owner of the car or
19 the -- who as you describe as the operator of the car
20 comes out. Because Jerry Kennedy is actually the owner of
21 the car, but he doesn't come to the scene?

22 A. I believe it's his wife, Brittany's mom, is on the
23 scene with her.

24 Q. Okay. You talked to Brittany?

25 A. Yes, ma'am.

SERGEANT ANTHONY BREEDEN - CROSS-EXAMINATION BY
MS. INZERILLO

1 Q. Okay. Brittany initially tells you it was someone
2 named Reginald Green that was driving the car?

3 A. I believe that's right. I might have had Richard.
4 Could be Reginald. One of the two.

5 Q. Do you know Reginald Green?

6 A. No, ma'am.

7 Q. Do you know if Reginald Green is a black male?

8 A. No idea.

9 Q. Do you know if he's 6 feet tall?

10 A. No idea.

11 Q. Do you know if he was wearing a gray outfit that
12 night?

13 A. I know that's not who I was chasing.

14 Q. Do you know any of that information about Reginald
15 Green?

16 A. No, ma'am.

17 Q. Now, you indicated that you had a computer in your
18 car. You have means to radio dispatch, ask them to send
19 you a picture of Reginald Green?

20 A. I didn't do that because it was within seconds of her
21 giving me that name that she approached me and changed and
22 said that it was Latroy Wherry, but she did not want her
23 mom to know he was driving her car.

24 Q. So she changed her story and gave you a different
25 name; is that correct?

SERGEANT ANTHONY BREEDEN - CROSS-EXAMINATION BY
MS. INZERILLO

1 A. No, ma'am. She didn't just change her story. A
2 story would be she gave me something several minutes
3 later, whatever the case is, once I found out something
4 she would have changed it. She made it very clear the
5 only reason she gave me that name a couple seconds earlier
6 was because her mother was standing there.

7 Q. Right.

8 A. It's not like through my investigation I said,
9 "That's not Reginald Green," and she said, "You're right,
10 you're right." She came to me and immediately changed it
11 out of earshot of her mother.

12 Q. So to you it's not changing the story if she gives
13 you one person's name and then turns around and few
14 minutes later and gives you a completely different
15 person's name. That's not changing the story?

16 A. A few minutes later, no. The reason she told me
17 initially is we're standing there with her mother, and I
18 don't know why she didn't want her mom knowing she had her
19 car. I don't know that. But she didn't, and she
20 immediately me followed me over and changed it, like I
21 said, within seconds. Not minutes, not when I came to her
22 and said, look, "That's not who was driving your car."
23 She volunteered it immediately and that's essentially not
24 the same as changing a story.

25 Q. She did not tell you, speaking to a police officer

SERGEANT ANTHONY BREEDEN - CROSS-EXAMINATION BY
MS. INZERILLO

1 investigating a case when asked who had the car, her first
2 answer was not Latroy Wherry?

3 A. That's right.

4 Q. Was it? Okay. Now, you drafted an arrest warrant in
5 this case?

6 A. Yes, ma'am, a warrant was issued.

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

8 A. Yes, ma'am. I typed the incident report. I don't
9 know if I actually typed the warrant, but I did type the
10 incident report.

11 Q. And those are pretty standard documents for police
12 officers; is that right?

13 A. The incident report is.

14 Q. Okay. And you're familiar with warrants?

15 A. Yes, ma'am.

16 Q. Okay. And both of those have standard information
17 about a case in it; is that fair?

18 A. Yes, ma'am.

19 Q. So for example, in an incident report, it would have
20 a narrative as to the events of the evening?

21 A. Yes, ma'am.

22 Q. It would have a narrative as to the person you
23 arrested?

24 A. Yes, ma'am.

25 Q. Including any information about that person?

SERGEANT ANTHONY BREEDEN - CROSS-EXAMINATION BY
MS. INZERILLO

1 A. Yes, ma'am.

2 Q. And you filled out that form accurately and
3 truthfully?

4 A. I filled it out of what information I would have had,
5 yes, ma'am.

6 Q. And in your incident report, you list Mr. Wherry's
7 height as 5'10; is that correct?

8 A. Yes, ma'am.

9 Q. Okay.

10 A. That would have been off of DMV information or
11 previous booking information or something to that effect.

12 Q. But you had just testified that you know Latroy
13 Wherry, you'd seen him that evening, and yet that's the
14 information you put in the incident report?

15 A. Yes, ma'am. I testified I was familiar; not that I
16 know him.

17 Q. You're familiar?

18 A. Right.

19 Q. Okay. Now, sort of similar questions for the arrest
20 warrant. That also contains information about the person
21 for whom an arrest warrant was sworn; is that correct?

22 A. Yes, ma'am.

23 Q. And that has identifying information primarily
24 because you may not be the person that goes out to serve
25 an arrest warrant?

SERGEANT ANTHONY BREEDEN - CROSS-EXAMINATION BY
MS. INZERILLO

1 A. Or type the warrant.

2 Q. Absolutely. Okay. And in your arrest warrant,
3 Mr. Wherry's height is listed as 5'7; is that correct?

4 A. Yes, ma'am.

5 Q. Okay.

6 MS. INZERILLO: Your Honor, I have no further
7 questions.

8 THE COURT: Any redirect limited to what she went
9 into?

10 MR. EPTING: Very briefly.

11 REDIRECT EXAMINATION

12 BY MR. EPTING

13 Q. She asked you a number of questions about Brittney
14 Kennedy changing her story. Could you tell the jury again
15 what's the relationship between Brittany and Latroy
16 Wherry?

17 A. I believe she mentioned they have a child in common.

18 Q. She mention about some height discrepancies. Do you
19 remember what you called out over the radio?

20 A. I said approximately 6-foot.

21 Q. You didn't say exactly 6-foot. You said
22 approximately?

23 A. I don't think I'd ever say he's 5'10.

24 Q. And just to clarify some things. She went over a
25 little bit about the chase that was around the apartment

SERGEANT ANTHONY BREEDEN - REDIRECT EXAMINATION BY
MR. EPTING

1 and asked about stuff that was inside the apartment. Did
2 you ever lose sight of him during the foot chase?

3 A. Not until he made it out the back door when I lost
4 him completely. But up to that point, I never lost sight
5 of him.

6 Q. As a police officer, are you trained to note faces?

7 A. Yes, sir.

8 Q. She asked you about not listing that the person had
9 long or short hair. Did the person have long hair?

10 A. I didn't note -- at the point with it being almost
11 midnight and it being a perimeter, there's -- there's only
12 certain things are that essential. You know, wearing all
13 gray, at -- you know, running from the police in the area.
14 If somebody comes out wearing all gray running, at that
15 point it might be a little bit irrelevant whether he's got
16 a mustache, know what I'm saying? So at that point, if
17 someone does get out with that particular person, I would
18 respond to where they were and I would confirm the
19 identity. You know, there's times to where, you know,
20 broad daylight down Cherry Road, you might need more
21 specifics. But at midnight in the woods, I wouldn't
22 anticipate there was hundreds of people running around
23 those woods at midnight.

24 Q. So is it safe to say the purpose of the information
25 you relayed was for quick identification of a person?

SERGEANT ANTHONY BREEDEN - REDIRECT EXAMINATION BY
MR. EPTING

1 A. It's for generic information on a perimeter in case a
2 officer spots someone matching those basic characteristics
3 on that perimeter.

4 MR. EPTING: No further questions, Your Honor.

5 THE COURT: Thank you, sir. You may step down.

6 MR. EPTING: Your Honor, the State rests.

7 THE COURT: All right. Ladies and gentlemen, at this
8 time, it's one of those times that arise where I have to
9 take up matters with law with the attorneys, so I'm going
10 to have to excuse you from the courtroom for a brief
11 moment. I need to remind you of my instruction to you
12 that you cannot have any discussion among yourself about
13 anything involving the case. But I tell you what, at this
14 point you can go with the bailiff and he'll show you back
15 to the jury room deliberation room. We'll get you back as
16 soon as we can.

17 (The jury left the courtroom at 10:43 a.m.)

18 MS. INZERILLO: Your Honor, at this time -- I would
19 renew -- for the record, I would move for a directed
20 verdict at this time, but I would also renew all previous
21 objections and motions. I would specifically renew the
22 identification motion. I believe that testimony at trial
23 has been slightly different than what was testified to
24 pretrial, mainly in terms of the sergeant's reliance on
25 Ms. Kennedy's testimony. I believe the testimony today

1 was more that he relied more on her -- her statements to
2 him and not so much on verifying that with any other
3 pictures or anything like that. And I think that may be a
4 subtle difference, but perhaps fairly significant in terms
5 of the identification, and that would segue into my
6 renewal of the second objection, which now the State has
7 rested and we have confirmation Ms. Kennedy will not be
8 testifying, certainly that would impair Mr. Wherry's right
9 to confront Ms. Kennedy about those statements. And so I
10 would specifically renew those two objections. Also
11 renewing all previous objections, and would also for the
12 record make a motion for directed verdict.

13 THE COURT: Yes, sir.

14 MR. EPTING: Your Honor, just briefly as to -- I
15 actually -- we did stay away from him corroborating those
16 pictures at the detention -- at the police station. I was
17 worried, based upon some of the testimony that perhaps
18 the -- the inference that his involvement or his prior
19 encounters with police were less than social, shall we
20 say. So in order to not prejudice the defendant, I did
21 shy way away from that. Nonetheless, I think that
22 Sergeant Breeden standing alone that he has prior
23 involvement with him, that he recognized his face, and
24 that as soon as he heard the name, he immediately clicked
25 with the face. It's independent recollection, independent

1 even of what she had said.

2 Your Honor, I believe that suffices to get the
3 identity to the jury, and I believe Ms. Inzerillo had a
4 chance to cross-examine Sergeant Breeden as to that
5 identification. We believe in the light most favorable to
6 the State, there's sufficient evidence in this case to
7 submit the case to the jury.

8 THE COURT: Any reply?

9 MS. INZERILLO: No, Your Honor.

10 THE COURT: All right. I would have to deny the
11 motions based upon the standards that I have to apply at
12 this juncture in viewing the evidence in the light most
13 favorable to the nonmoving party and in drawing all
14 reasonable inferences from that evidence in light of the
15 nonmoving party so I will deny the motions.

16 MS. INZERILLO: Thank you, Your Honor. Your Honor
17 may I have a just a short break to confer with my client
18 before any future voir dire of him or testimony?

19 THE COURT: We will step down.

20 MS. INZERILLO: Thank you, Your Honor.

21 (A recess was taken from 10:46 a.m. to 11:11 a.m.)

22 MS. INZERILLO: Thank you, Your Honor. May it please
23 the Court. Your Honor, as the trial has started up today
24 and sort of progressed and Mr. Wherry has been making the
25 decisions as to whether to testify or not, there's been an

1 issue that's arisen regarding the underlying other two
2 tickets in this case. I'm not sure if the Court is aware,
3 but in addition to failure to stop for a blue light ticket
4 issued by Sergeant Breeden, there were two other tickets
5 issued. One was for DUS second; the other was for a
6 speeding violation.

7 Those tickets, Your Honor, from my understanding and
8 at least confirmation on the DUS second is that those
9 tickets were dismissed by the magistrate judge in Rock
10 Hill city court. They were dismissed, Your Honor. There
11 was no disposition on the merits of the case in terms of a
12 jury trial or a bench trial where Mr. Wherry was found to
13 be not guilty. And no entry at all as to the disposition
14 of the merits. It was merely an entry of dismissal by the
15 judge.

16 In my conversations with Mr. Wherry, he indicates
17 that he wished the Court to know about those dispositions,
18 and he wished the Court to be aware that in his decision
19 as to whether to take the stand, it would be his intent
20 for me to elicit testimony as to those underlying tickets
21 so that he could tell the jury that he -- those tickets
22 were dismissed by the judge; that he did appear in court,
23 and his testimony would be that he did appear in court
24 ready to answer those charge and those tickets were
25 ultimately dismissed by the judge.

1 I did not elicit that testimony through Sergeant
2 Breeden, and so it would be his intention to elicit that
3 through any testimony. Because I did not anticipate
4 putting up a case in chief, I spoke with Mr. Epting about
5 this over the break and made him aware because I do have
6 some paperwork substantiating that, so out of an abundance
7 of caution did share that with Mr. Epting so he would be
8 aware we did have some proof of that from Rock Hill city
9 court.

10 But I did wish to make the Court aware of that. I
11 have explained to Mr. Wherry that I did have some concerns
12 about that. A judicial dismissal in my view certainly was
13 not a disposition on the merits, which is why I did not
14 elicit it through Sergeant Breeden, and that I was not
15 aware of what -- of whether there would be an objection to
16 that, what the Court's position would be. And certainly
17 if that was factoring into his decision as to take the
18 stand, he wished me to bring this up to Court and I did
19 wish to make the Court aware prior to the voir dire of
20 Mr. Wherry and conclusion of this case.

21 THE COURT: Okay. And if Mr. Wherry did testify and
22 that information was elicited from the witness by his
23 client, would the State be objecting to that?

24 MR. EPTING: We would, Your Honor. We believe that
25 it's irrelevant to the case. We believe that it runs

1 afoul of Rule 403 pertaining to substantially misleading
2 or confusing the jury. Essentially what that is is a
3 collateral matter to this case. Given that it was not
4 heard on the merits and it was just dismissed for whatever
5 reason. It really doesn't say anything at all about the
6 case. And I would worry that the jury would confuse the
7 fact that those have been dismissed affect his culpability
8 or evidence up here in general sessions court. For that
9 reason, I would object to their admission and we were not
10 prevented with -- and I don't know if Ms. Inzerillo was
11 presented with copies until today, so we'd also submit
12 that it's late discovery as well.

13 THE COURT: All right. Your understanding of your
14 client's desire to want to have that information presented
15 from the jury is so that the inference could be that since
16 my client was not found guilty of those charges, then he,
17 by inference, must not be guilty of this charge?

18 MS. INZERILLO: Yes, Your Honor. Mr. Wherry has
19 explained to me very strongly that he feels very strongly
20 that he should not be prosecuted on this case because in
21 his view this question has been answered by a lower court.
22 Of course putting a different sheen on it, but essentially
23 he does not feel like he should be prosecuted here because
24 a lower court has already essentially found him not guilty
25 of driving and of speeding. I have explained to him that

1 the charges were dismissed. There's not been -- there's
2 not been a finding on those merits. He's not found not
3 guilty by of either one of those, but in his view, he
4 feels like those tickets were taken care of down in
5 magistrate court, and he does not feel he should have to
6 go forward here, and he wishes the jury to hear this
7 evidence so that they can weigh that and determine whether
8 he's guilty of this charge.

9 THE COURT: Based on the fact the charges were there,
10 he was charged for that, and he was charged and they're
11 charges that arise from the same factual foundation to
12 which he's now on trial here, I would not allow that
13 testimony to be presented because they're different
14 charges. Even though each case has some factual overlay
15 with each other, the legal elements of the offenses are
16 different. And so -- as the same way that even if your
17 client had been found guilty in magistrate of speeding and
18 also of driving under suspension, I would not allow the
19 State to argue to a jury that your client therefore must
20 be guilty of this charge of failure to stop for a blue
21 light, because the legal elements that the State would
22 have to prove are different than the State would have to
23 prove with speeding and driving under suspension. So even
24 there had been a judicial determination -- even if there
25 had been a jury impaneled below and the jury had made a

1 decision to find your client not guilty, I would not --
2 that would not be presented to this jury in this case.
3 Again, likewise because if even there had been a jury
4 below had found your client guilty of speeding or driving
5 under suspension, I would not allow the State to present
6 that to the jury. They are different charges.

7 On top of that, the way that the cases got dismissed
8 below, there is no -- what I call jeopardy has never
9 attached to those cases. There's never been a
10 determination based on the merits of whether or not your
11 client was, in fact, speeding or, in fact, your client was
12 driving under suspension, second. My understanding is
13 that the cases were called for trial and for whatever
14 reason, the prosecuting officer chose not to show up. The
15 prosecuting officer could have chosen not to show up
16 because he had a family emergency, that his wife was
17 giving birth to a child at that time, that, in fact, he
18 was trying to handle some other type of investigation on
19 the road that required him to do it, that he simply could
20 not show up, as well it could have been the officer just
21 didn't care about the charges and said, "I'm not going to
22 worry about that."

23 But that's all speculation on the part of the Court,
24 and I wouldn't want the jury to engage in speculation as
25 to the reason that the officer didn't show up below as

1 well. So it would be -- I could not conceive of a way
2 that I would allow this jury to say that simply because a
3 judge has dismissed other charges that arose of the same
4 factual situation that I would allow this jury then to
5 infer something positive --

6 Mr. Wherry, you may disagree with the decisions that
7 I make in this courtroom, but sir, you will not show me
8 disrespect and sit there and make faces.

9 THE DEFENDANT: I was not --

10 THE COURT: No, sir, you are not.

11 THE DEFENDANT: I'm sorry. I didn't mean to make no
12 faces. I'm sorry.

13 THE COURT: The same way I would not allow the State
14 the opportunity to use those charges -- if he had been
15 convicted against your client, I would not allow your
16 client to somehow want to use those charges, the fact they
17 got administratively dismissed by a judge with the officer
18 not showing up to somehow persuade the jury to make a
19 decision based on that.

20 Do you want some moments to talk with your client so
21 that -- we need to make a decision, or y'all need to make
22 a decision whether or not he will testify or not.

23 MS. INZERILLO: Yes, Your Honor, just briefly.

24 THE COURT: We'll step down for a few seconds. Is.

25 (A recess was taken from 11:20 a.m. to 11:24 a.m.)

1 THE COURT: Have you and your client been able to
2 discuss whether or not he wishes to testify or not?

3 MS. INZERILLO: We have, Your Honor. He has made a
4 decision -- I'm not sure if it's in the Court's customary
5 practice to voir dire my client. If it is, I would ask
6 the Court to do so.

7 THE COURT: I do.

8 MS. INZERILLO: Thank you, Your Honor.

9 THE COURT: Mr. Wherry, please stand.

10 THE DEFENDANT: Yes, sir.

11 LATROY WHERRY, after having first being duly sworn,
12 testified under oath as follows:

13 THE COURT: I've got some questions to ask you. If
14 you would please speak up so the that lady way over on the
15 other side of the courtroom, the court reporter can hear
16 your answers.

17 THE DEFENDANT: Yes, sir.

18 THE COURT: And if ever during this process you can't
19 hear me, let me know and I'll speak up as well.

20 THE DEFENDANT: Yes, sir.

21 THE COURT: At this time, I'm going to explain
22 certain of your rights. If you want me to explain
23 anything in more detail, please let me know that. Do you
24 understand?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Sir, we've now reached the stage of the
2 trial where you may present your defense. You have the
3 right to claim the protections given to you by the
4 Fifth Amendment to the Constitution of the United States.
5 Now, this amendment provides in part that no person shall
6 be compelled in any criminal case to be a witness against
7 himself. This means that you cannot be required to
8 testify in this case. You have the right to testify on
9 your own behalf; however, no one can make you testify.
10 This is a personal right and no one can waive this right
11 except you. If you decide to testify, you will be to
12 subject to the same rules that govern other witnesses, and
13 you may be examined and cross-examined on any relevant
14 issue in this case. In addition, if you have any
15 convictions involving dishonesty or false statements or
16 for crimes punishable by imprisonment for more than one
17 year and this Court determines that the probative value of
18 admitting this evidence outweighs its prejudicial effect
19 to you, the solicitor will be able to introduce your
20 record to attack your credibility.

21 If you decide to testify, this decision on your part
22 must be freely, voluntarily, and intelligently made with
23 knowledge of the protections given to you by the
24 Fifth Amendment and the consequences of your decision to
25 testify.

1 If you decide not to testify, I will instruct the
2 jurors that they cannot give the fact that you did not
3 testify any consideration whatsoever, and that there is to
4 be absolutely to be no prejudice to you because you did
5 not testify. And you may talk with your attorney; you may
6 talk with family and friends or anyone else, but the final
7 decision will be left entirely up to you.

8 Now, sir, do you understand what I've just explained
9 to you?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Do you have any questions about anything
12 that I've explained to you?

13 THE DEFENDANT: No, sir.

14 THE COURT: Have you discussed with your lawyer
15 whether you should or should not testify?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Do you feel the need or wish to speak
18 with your lawyer any more at this time about whether to
19 testify or not?

20 THE DEFENDANT: No, sir.

21 THE COURT: All right. And what is your decision as
22 to whether or not you wish to testify?

23 THE DEFENDANT: I don't want to take the stand.

24 THE COURT: Okay. All right. And has anybody come
25 to you and threatened you in any way or made you any

1 promises in order to get you to make the decision not to
2 testify?

3 THE DEFENDANT: No, sir.

4 THE COURT: I'm correct to conclude that is a free
5 and voluntary decision on your part?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Okay. All right. Thank you, sir. You
8 may be seated.

9 THE DEFENDANT: Thank you.

10 THE COURT: Then the State has rested. I have
11 copied -- or printed up the charges that and reviewed the
12 charges, proposed charges with the attorneys. So are we
13 ready to go?

14 MR. EPTING: The State is ready.

15 MS. INZERILLO: Yes, Your Honor.

16 THE COURT: Let's bring them in.

17 (The jury entered the courtroom at 11:29 a.m.)

18 THE COURT: Ladies and gentlemen, thank you for your
19 patience while we dealt with some matters that have to be
20 dealt with outside your presence. But ladies and
21 gentlemen, the parties now have presented all the evidence
22 that will be presented as part of this case, and it's now
23 time for the attorneys to make what is called their
24 closing arguments to you. Need to remind you that the
25 closing arguments of the attorneys are not evidence in

1 this case. Their statements and arguments to you are
2 meant to help you understand the evidence and apply the
3 law to that evidence. You should disregard any remark,
4 statement, or argument which is not supported by the
5 evidence presented during this trial or the law that I
6 will explain to you after the arguments. But at this time
7 we will receive the closing arguments from the attorneys.

8 MR. EPTING: Thank you, Your Honor. May it please
9 the Court.

10 CLOSING ARGUMENTS BY MR. EPTING

11 Ladies and gentlemen, I told you it would be a
12 short case. We're at the close. Pretty soon you're not
13 going to have to hear us talk anymore. It will be in your
14 hands. All the evidence you heard, the testimony, the
15 decision will be yours. I go first, meaning that I get
16 one chance to talk to you. After me, the defense counsel
17 gets the chance to talk to you. I'm not going to be able
18 to get up and respond to anything she say unless it's
19 evidentiary and objectionable, so this is my one shot.

20 The judge has instructed you on this already and will
21 instruct you again as part of his charge. I imagine --
22 because again, I can't respond -- I anticipate that the
23 defense attorney will harp on this: Reasonable doubt.
24 Defense attorneys usually do harp on doubt. So what is
25 beyond a reasonable doubt? Well, lawyers construct what

1 beyond a reasonable doubt is. And, of course, being
2 lawyers, they have 15 different definitions. One of those
3 definitions is a reasonable doubt is a doubt that causes
4 you to hesitate to act. It's my anticipation that
5 Ms. Inzerillo will probably argue that you should hesitate
6 to act on this case. Hesitate, hesitate, hesitate.

7 But what does that really mean? We put a great deal
8 in your common sense just like Ms. Inzerillo said in her
9 opening. You're supposed to hesitate as a juror in any
10 case to consider the evidence, to discuss the evidence, to
11 discuss your doubts, and to come to fair and just
12 conclusions. One of our old attorneys who has since
13 retired used to say, "There are chairs in the jury room
14 for a reason. You're supposed to hesitate." You in your
15 personal life would not make an important decision without
16 first hesitating, without first considering. Do I buy
17 this house? Do I buy this car? Well, can we afford it?
18 Is the school district good? Is the car something I think
19 we'll keep for a long time? You do hesitate. But I don't
20 want you to confuse that hesitation with a finding of
21 reasonable doubt. I encourage you to hesitate. I
22 encourage you to go back and discuss the evidence.

23 Another definition is proof beyond a reasonable doubt
24 is proof that leaves you firmly convinced. It's that
25 common sense gut feeling. In your heart, do you believe

1 that the defendant is guilty of this crime? Much more
2 simple. Again, your common sense tells you that.

3 Well, what do I have to prove? It's kind of a
4 laundry list in any given case, and we have statutes that
5 list out all the elements of the crime. I have to prove
6 each of those elements beyond a reasonable doubt, just as
7 the judge said, just as the defense counsel said. So what
8 are the elements? This case is pretty simple, luckily for
9 y'all because y'all won't have -- there's not that many
10 elements to go over. Quite simply, it's what it sounds
11 like. A person is guilty of failure to stop for a blue
12 light when they fail to stop for a blue light. It's a
13 simple as that. Cut and dry. Evidence of intent to evade
14 can be shown by increased speed. You can't really say --
15 you can't be deaf, blind, and dumb, and say, "Oh, I didn't
16 hear that light," even when they're behind you blaring
17 their siren, because you can see people trying to use that
18 as a defense. It's not a defense.

19 And frankly, ladies and gentlemen, I don't believe
20 that's an issue in this case because you saw the video. I
21 don't think there's any question in anyone's mind that the
22 person driving that car failed to stop for a blue light as
23 they were required to do by law. They sped up. They went
24 through red lights. They just plain old didn't stop.
25 Statute was violated. The tape speak for itself. The

1 tape is in evidence. It will only play on the computer,
2 but if any one of you want to review that tape for any
3 reason, you can send a note the judge, ask that at it be
4 replayed, and we'll replay it on the screen for you. So
5 if you need to see it again, don't be bashful.

6 The only issue left is identity. That's what we've
7 been fighting about this entire trial. How do you tell if
8 an identification is good? The judge is going to instruct
9 you on identification, the things you are to consider. I
10 would submit to you that you look to see if the person had
11 their face obstructed. You look to see how far away the
12 person was when they made that identification. Again,
13 common sense stuff. What were the lighting conditions
14 like when it was made? Was it pitch black and I can just
15 see the outline of a face, or were you in some place like
16 a kitchen? Were the lights on, shining over you? Did the
17 person who is making the identification have prior
18 encounters with the defendant? Common sense. If you'd
19 seen somebody before, you're more likely to recognize them
20 when you see them again. And again, the jury are the
21 masters -- the judges of credibility. Y'all are the only
22 ones in this room who can say who is telling the truth or
23 who is not telling the truth.

24 How do you figure out if someone is lying? Well,
25 we're not giving lie detector tests or anything like that.

1 You look at their demeanor on the stand. Do they seem to
2 be holding things back? Do they not -- avoid eye contact?
3 Did the voice drop when they were telling part of their
4 testimony? More importantly, what reason do they have to
5 lie? Ask yourself that. Why would a person come up here
6 and lie? Do they have a reason?

7 Tony Breeden, who has familiarity with Latroy Wherry,
8 who got a good look at him. Defendant wore no mask. I
9 think that's undisputed. Even as he was chasing him
10 around those apartment complexes, he knew it was a black
11 male wearing -- he saw the clothes he was wearing. He got
12 an approximate height. The defense made a big deal about
13 that, but common sense. Approximately 6 feet high. I
14 would say I'm approximately 6 feet when I'm 5'9. Common
15 sense. He got an extended time -- he got an extended
16 amount of time to look at his build, what he looked like.

17 Got a very good look at him inside the apartment. He
18 did not lose sight of him for a second until they got that
19 apartment and then even momentarily. And what was the
20 defendant's reaction when he saw Tony Breeden? Was it,
21 "Hey, what are police officers doing in my house?" Me, I
22 would have walked and been like, "Is everything okay?"
23 What did Latroy Wherry do? He fled out the back. Ladies
24 and gentlemen, I submit to you he fled out the back
25 because he was running the whole time and he fled in the

1 woods and he got away.

2 Prior familiarity. Tony Breeden testified he had
3 seen Latroy Wherry before. He recognized that face before
4 anybody said anything when he saw him inside the house.
5 Said, "I know that guy." And then when Brittney
6 Kennedy -- and I'll get to Brittany in a second. When
7 Brittney Kennedy shows up, boom, that's him. Face to
8 name. He doesn't even need to see the Facebook photo. He
9 knows immediately that this is his guy. This is right
10 after he had seen him inside the house. Right after.
11 Ladies and gentlemen he got his guy.

12 What motive does Tony Breeden have to lie about who
13 he saw that day? If Tony Breeden lies about who he saw
14 that day, guess what? The guy who ran from him, the guy
15 who created all that danger by going through that
16 apartment complex? He's still free. Tony Breeden has
17 every motive in the world to get the right guy, to make
18 sure that guy is off the street. He was even presented
19 with another individual. Ms. Inzerillo brought that out
20 on cross. Brittany lied at first because she didn't want
21 her parents to know that she was hanging around Latroy.
22 Presented with another name. If he just wanted to pick
23 somebody out of thin air, he could have been like, "Boom.
24 That's him. I recognize him. Boom. Go arrest him." But
25 he didn't. He didn't. It wasn't until he heard Latroy's

1 name that he put two and two together. Latroy, who he had
2 seen multiple times. No motive to lie. Every motive to
3 tell the truth.

4 And think about it from another angle. Not just the
5 catching the right guy. What do you think would happen to
6 Sergeant Breeden's career, Sergeant Breeden's supervisor's
7 career if he comes in here and he fabricate a story on the
8 stand under oath. Is this case worth that to him? I
9 submit to you absolutely not. He said it was Latroy
10 Wherry because he knew Latroy Wherry, and he got the right
11 guy.

12 Before I get to that, you heard a great deal of
13 testimony about Brittney Kennedy. And it just struck me
14 during the trial. What a bunch of coincidences must be in
15 place for Latroy Wherry to be innocent in this case. What
16 a bunch of coincidences. A person matching his
17 description, maybe not quite right on height, but
18 approximate and who shows up uncalled was Tony Breeden's
19 testimony, who just shows up on the scene? Brittney
20 Kennedy. Brittney Kennedy a stranger to Latroy Wherry?
21 Has a baby with him. She just shows up on the scene.
22 Says to Latroy, and wouldn't you know it, Sergeant Breeden
23 recognizes him. What a bunch of coincidences. Sole judge
24 of credibility. All goes back, why would he lie?

25 Ladies and gentlemen, common sense tells you he

1 wouldn't lie. He's telling the truth here today, and he's
2 telling you the person he found in that apartment, the
3 person that ran from him that night -- if he wanted to get
4 Latroy Wherry, he could have bolstered his testimony to an
5 unbelievable degree. He could have said, "I saw him when
6 he was running. I saw his face clear as could be. Saw
7 him running, saw him inside the house. I hollered, 'No,
8 Latroy, stop.' He told me his name before he went out."
9 He didn't say any of that. He told what happened. And
10 what happened, ladies and gentlemen, was Latroy Wherry
11 parked his car in that parking lot, got out, ran, ran from
12 officers, ran into an apartment complex and ran into the
13 woods.

14 Ladies and gentlemen, clearly a failure to stop for a
15 blue light. Committed a traction infraction. Y'all want
16 to see the tape again, there's digital readings on the car
17 that can tell you how fast Tony Breeden was going. He's
18 following the car closely. That car is going over the
19 posted speed limit. Sergeant Breeden attempted to pull
20 that car over after he checked its tag and everything.
21 That car sped up. You can tell that from the video. You
22 can tell that from your own sight. The car blew through
23 some red lights running from Tony Breeden.. Sergeant
24 Breeden's close enough to where a reasonable person would
25 have heard that siren and saw the light. Again, not to

1 beat a dead horse, but obviously failure to stop for a
2 blue light.

3 Sergeant Breeden accurately identified Latroy Wherry.
4 He had an unobstructed view of his face inside the
5 apartment. Unobstructed view as they are running;
6 however, of course Mr. Wherry is facing forward, trying
7 not to trip, trying to get away. Close view in full light
8 inside the apartment, prior familiarity. Remember what
9 Sergeant Breeden testified. They're trained to look at
10 faces. Faces to you or I, people on the streets. Maybe
11 friends, you know, maybe acquaintances. Evidence. To
12 Tony Breeden, evidence to him. Evidence. He's trained to
13 look at and recognize faces.

14 Finally, no motive to lie. Again, not to beat a dead
15 horse. Every motive to tell the truth. Every motive to
16 get the right guy that night. Disincentives to lie.
17 Could hurt his career.

18 Ladies and gentlemen, at the end of this case, there
19 is only one reasonable conclusion. As I said at the
20 beginning of this case, there are few things you can know
21 beyond all doubt. Beyond any doubt is not required.
22 Because if that were the case, we would never win a case.
23 There are very, very few things with we can know with zero
24 doubt. Ladies and gentlemen, at this juncture, given the
25 testimony we've heard, given all the corroborating

1 circumstances that point to Mr. Wherry, it is beyond a
2 reasonable doubt that he is guilty of failure to stop for
3 a blue light.

4 Now after you deliberate, after you share your doubts
5 and after you view the evidence, I ask you return the only
6 verdict in this case that is fair and just, and that's a
7 verdict of guilty to failure to stop for a blue light. I
8 thank you for your attention.

9 MS. INZERILLO: May it please the Court, Your Honor.

10 THE COURT: Yes, ma'am.

11 CLOSING ARGUMENT BY MS. INZERILLO

12 You know, one of the things I love is technology.
13 And I love technology because it gives us an unprecedented
14 way to go back in time. And you see that in this case.
15 Because in this case you've got the unprecedented ability
16 to go back in time. You've got, with the push of a
17 button, the ability to see what Sergeant Breeden saw that
18 night. When we push play on that video, you saw at least
19 for the first two to three minutes what he saw. You saw a
20 car with no interior lights. You saw almost impossible to
21 see who was driving that car. You saw that car drive up
22 21 going into Fort Mill at night, dark, no streetlamps.
23 You saw that car turn into the apartment complex. You saw
24 that car go out of frame. You saw what Sergeant Breeden
25 saw for the first part of that evening, which was nothing.

1 Saw a car and we saw someone not stopping for a blue
2 lights. That's what I told you at the beginning of this a
3 case. The issue is Mr. Wherry was not driving that car.

4 Now, what did you also hear on that tape? There's
5 limitations to technology. That tape stops. You don't
6 see who bails out of that car. You don't see who runs,
7 but you do hear things. You hear Sergeant Breeden chasing
8 someone. You hear what he tells dispatch. 6-foot, not
9 approximately 6-foot. 6-foot. Black male. Wearing gray.
10 You hear him say, "Stop, or I'm going to taze you." Why
11 is that important? There's a lot of distance measuring.
12 I was from here to there, here to there. If he had gotten
13 close enough to taze him, you heard him testify, "I would
14 have tazed him." But don't you think if you're close
15 enough to taze, you're also close enough to get a good
16 look at someone?

17 Six foot black male wearing gray. There was a lot of
18 discussions in the State's closing about motivation.
19 Motivation to get this right. There's a lot of
20 motivation. There was a lot of motivation. It's late at
21 night. Dark apartment complex. You could see on that
22 video. There was testimony by Sergeant Breeden that every
23 apartment complex or house there had lights on the
24 outside. What he failed to tell you is that lights aren't
25 on, and you can see that on the video. When all the cars

1 are stopped and you hear Sergeant Breeden chasing whoever
2 jumped out of that car, none of the porch lights are on.
3 The lights you see are from the headlights and from the
4 blue lights.

5 He's running through what's apparently a very quiet
6 townhome complex. There's no one milling about. There's
7 no lights on. It's quiet. It's dark. It's at night.
8 He's got motivation, and the only description he can give
9 is 6-foot black male wearing gray. It's at night.
10 There's K-9. There's perimeter. He doesn't know who this
11 person is. He claims at some point he gets a good look at
12 him and there's no more specific identification than this.

13 We don't know anything about this person. It's at
14 night. Danger is heightened. We don't know where this
15 person goes. He's not caught on the scene, and he took
16 the stand and told you, "I got a good look at him," and
17 yet no other description is radioed in. He didn't feel
18 compelled to give any other description. In fact, today
19 he said, "I'm very, very, very sure it's Latroy Wherry.
20 Looked. I'm very sure of it," but yet under redirect,
21 when Mr. Epting asked him, "Well, did he have long hair or
22 short hair that night," Sergeant Breeden could not answer
23 that question. He gave a very long answer about generic
24 descriptions are very important because really we're just
25 trying to get the information out, but he could never

1 answer that question. That's a very simple question to
2 ask.

3 You can look at Latroy Wherry. You can look at him
4 right now. Does he have short hair or long hair? Is it
5 in dreds? Is it in twists? It's a very easy description.
6 Mr. Epting didn't ask Sergeant Breeden about the color of
7 his eyes or anything specific. It was a very simple
8 question. That's a question you would notice if you're
9 chasing someone and you see them from behind. You would
10 know the cut of his hair. If they turned around and
11 looked at you inside a house, you would know the cut of
12 his hair. At any point in this once Mr. Wherry jumped out
13 of that car, you would notice the cut of his hair, and yet
14 Sergeant Breeden taking the stand today could not answer
15 that question.

16 Now, the other reason I like modern technology is in
17 situations like this memories can fault and it reins
18 people in. It gives jurors like yourself a chance to
19 listen and compare that technology, because that video
20 camera doesn't lie. You heard Sergeant Breeden say, "I
21 didn't edit that picture. I didn't move it around."
22 That's what happened. But what was his testimony?
23 "Chased him, was running, saw him from behind, and I
24 chased him into this house, and I had a conversation with
25 the guy who lived there. And then I saw" -- who he said

1 was Latroy Wherry turn the back lock and run outside the
2 door.

3 Now that video is in evidence and you'll have that
4 back with you. Watch that video. There's no conversation
5 he's having before Mr. Wherry runs outside. In fact, when
6 you watch it, it's kind of garbled, but you'll hear him
7 say, "I think he's in the wood line," and then there's
8 conversation. It happens like this. And when you hear
9 his description, because admittedly there's a large part
10 of this where you're hearing things and you're not seeing
11 it, it does come down to Sergeant Breeden. It is his
12 credibility on the line. And what does he explain? "I
13 went inside the house. I could see clearly." Well, what
14 was on? There was a television on. There wasn't lights
15 blaring. There wasn't light overhead on. It's late at
16 night in a quiet complex. You can see that from the
17 video. He never once says the lights are on, they're
18 blaring. He said there was a television on. That's the
19 lighting that he had up until that point. Does he radio
20 in and say, "Y'all, it's Latroy Wherry." No. Or, "Y'all,
21 I've seen this guy before." No. When does he identify
22 Latroy Wherry? When Brittney Kennedy comes on stage.

23 Now, what are the four things we know about Brittney
24 Kennedy? We know she likes to hide things from her mama.
25 Because according to Sergeant Breeden if you believe it,

1 she doesn't want her mama to know she's been lending out
2 the car to who, that, and when. What's the second thing
3 we know? She lies to police officers. When she's asked
4 directly to police officers, "Who had this car earlier,
5 who was in the car," she gives a name.

6 Now, if you're Sergeant Breeden you believe that the
7 lie is Reginald Green. We don't know that for sure.
8 Because what's the third thing we know about Brittney
9 Kennedy? Brittney Kennedy is not here. She didn't take
10 the stand to come in and say what he's supposing is the
11 truth, which is, I was trying to help the father of my
12 child or I didn't want my mom to know all this. That's
13 all supposition. Brittney Kennedy is not here to explain.

14 Maybe the lie is Latroy Wherry. Maybe we don't know
15 who Reginald Green is. We don't know what he looks like.
16 We know that she changed her story. She showed a Facebook
17 picture. Where's the Facebook picture? Who was in it?
18 Reginald Green in it? How long would it have taken to
19 look up pictures of these guys and say I'm absolutely sure
20 it was this person? Because up until this person the only
21 person we know is a 6-foot black male wearing gray. And
22 why is it as important? It is pitch black in Fort Mill.
23 Don't you want to get this right?

24 What's the other thing we know? What is the
25 documented evidence we have by Sergeant Breeden about

1 Latroy Wherry? Well, if you believe his warrant, Latroy
2 Wherry is 5'10. If you believe an incident report, he's
3 5'7. And I could tell you if you believe the State's
4 logic that 5'7 makes you 6 foot, then I'm the happiest
5 girl in the world because I'm 5'2 and that just might make
6 me 5'6 or 5'7. But that's just not how it works. He's
7 specific on that video. Why? He's radioing out to
8 dispatch. He's not talking to himself. He's radioing out
9 to dispatch because this is information officers are
10 relying on.

11 You have to remember in the case whoever he was
12 chasing was not found. K-9 was called out and was not
13 found. So who was he chasing? Latroy Wherry, who is 5'7
14 or 5'10 black male, or was he chasing a 6-foot tall black
15 male wearing gray? Because if an officer came up to
16 Latroy Wherry who is 5'7 or 5'10, black male, is that the
17 same description that matches Sergeant Breeden's? That's
18 the question, ladies and gentlemen. That's the reasonable
19 doubt in the case.

20 I told you into my opening to bring common sense into
21 this room. And common sense a lot of times can be all
22 those instances in your life when you walk up to someone
23 and you think, I know that person. And maybe it's me. I
24 think I have one of those faces everybody knows. A couple
25 of weeks ago I was in a store, walked up to a person I

1 swore was my coworker's wife. Looked exactly like her and
2 she opened her mouth and she had more of a southern drawl
3 than all of us. And it wasn't until she opened her mouth
4 that I realized she was not my coworker's wife.

5 We misidentify people all the time. We misidentify
6 people we know. We see all the time. That's not so
7 unheard of. The difference is in this room the burden is
8 on the State to prove the case beyond a reasonable doubt.
9 One of the thing you look at is credibility. How was
10 Sergeant Breeden on the stand? How does his story match
11 with what's on the video, with the other documentation he
12 produced? He produced that information. It's his
13 warrant. It's his incident report. If he had eyeballed,
14 how long does it take to hit delete a couple times and
15 change to that 6-foot? It takes no time at all. Other
16 people may serve that warrant. Other people may read the
17 incident report. That's the information that he had.

18 It's not enough to take the stand and be absolutely
19 100 percent confident that that man right there is the man
20 that you saw running in front of you. That's where you
21 come in. We ask for 12 pairs of eyes and 12 pairs of ears
22 to look at these cases for that reason. We ask you to
23 judge credibility and look at the evidence for that
24 reason, and ask that you find Mr. Wherry not guilty.

25

JURY CHARGE

1
2 THE COURT: Ladies and gentlemen, the indictment
3 charges the defendant with failure to stop for a blue
4 light. I remind you the fact the defendant was arrested,
5 charged, and indicted in this case is not evidence in this
6 case and cannot be considered by you as evidence of guilt.
7 This case -- nor does it create any presumption or
8 inference of guilt. This particular indictment is simply
9 the formal written instrument which contain the charge
10 made against the defendant. It is simply the formal
11 document by which the case is brought into court.

12 The defendant has pled not guilty to the indictment
13 and that plea puts the burden on the State to prove the
14 defendant guilty. A person charged with committing a
15 criminal offense in South Carolina is never required to
16 prove himself innocent. I charge you that it is an
17 important rule of law that the defendant in a criminal
18 trial, no matter what the seriousness of the charge may
19 be, will always be presumed to be innocent of the crime
20 for which the indictment was issued unless guilt has been
21 proved -- proved by evidence satisfying you of that guilt
22 beyond a reasonable doubt.

23 This presumption of innocence does not end when you
24 begin your deliberations, but it accompanies the defendant
25 throughout the trial until you reach a verdict of guilty

1 based on evidence satisfying you of that guilt beyond a
2 reasonable doubt. The presumption of innocence is like a
3 robe of righteousness placed about the shoulders of the
4 defendant which remains with the defendant until it has
5 been stripped from the defendant by evidence satisfying
6 you of the defendant's guilt beyond a reasonable doubt.

7 The presumption of innocence is not mere legal
8 theory. It's not just a legal phrase. It is a
9 substantial right to which every defendant is entitled
10 unless you, the jury, are satisfied from the evidence of
11 the defendant's guilt beyond a reasonable doubt.

12 Now, what is reasonable doubt in the law? A
13 reasonable doubt is the kind of doubt that would cause a
14 reasonable person to hesitate to act. The State has the
15 burden of proving the defendant guilty beyond a reasonable
16 doubt. Some of you may have served as jurors in civil
17 cases where you were told that it only necessary to prove
18 that a fact is more likely true than not true, such as by
19 the greater weight or the preponderance of the evidence.
20 In a criminal case, the State's proof must be more
21 powerful than that. It must be beyond a reasonable doubt.

22 Proof beyond a reasonable doubt is proof that leaves
23 you firmly convinced of the defendant's guilt. There are
24 very few things in the world we know with absolutely
25 certainty, and in criminal cases, the law does not require

1 proof that overcomes every possible doubt. If, based on
2 your consideration of the evidence, you're firmly
3 convinced the defendant is guilty of this crime, you must
4 find the defendant guilty. If, on the other hand, you
5 think there's a real possibility the defendant is not
6 guilty, you must give the defendant the benefit of the
7 doubt and find him not guilty.

8 Now, I remind you that during this trial you and I
9 have had certain duties to perform. As the trial judge --
10 trial judge, it has been my responsibility to preside over
11 the trial of the case. And I also had to duty to rule --
12 had the duty to rule on admissibility of evidence offered.
13 You're only to consider the competent evidence that is
14 before you. You are to consider only the testimony from
15 the witness stand and possibly any exhibits that have been
16 made part of the record of this case.

17 Now I have the additional duty to charge you the law
18 applicable to this case, and as the presiding judge, I'm
19 the sole judge of the law. And it is your duty as jurors
20 to accept and apply the law as I now state it to you. If
21 you already have any ideas as to what the law is or what
22 the law ought to be that does not agree what I tell you
23 now, you must abandon this idea because you are sworn to
24 accept the law and apply it exactly as I state it to you.

25

1 In every case tried in a court before a jury, the
2 jury becomes the sole and exclusive judge of the facts. A
3 trial judge cannot intimate, state, comment on, or make
4 any statement to a trial jury about the facts of the case.
5 Since you, the jury, are the sole judge of the facts, you
6 are not to infer from what I've said during the progress
7 of this trial in ruling upon the admissibility of evidence
8 or otherwise, or anything that I say now during the course
9 of this instruction to you, that I have any opinion about
10 the facts. The law does not allow me to have an opinion
11 about the facts in this case. This is a matter solely for
12 you, the jury, to determine.

13 Now as jurors, it is your duty to determine the
14 effect, the value, the weight, and the truth of the
15 evidence that has been presented during this trial. There
16 are two types of evidence that are usually presented in
17 any trial: Direct evidence and circumstantial evidence.
18 Direct evidence is the testimony of a person who claims to
19 have actual knowledge of a fact, such as an eyewitness.
20 It is evidence which immediately establishes the main fact
21 to be proved. Circumstantial evidence is proof of a chain
22 of facts and circumstances indicating the existence of a
23 fact. It is evidence which immediately establishes
24 collateral facts from which the main fact may be inferred.
25 Circumstantial evidence is based on inference and not on

1 personal knowledge or observations. The law makes
2 absolutely no distinction between the weight or value to
3 be given either direct or circumstantial evidence, nor is
4 a greater degree of certainty required of circumstantial
5 evidence than of direct evidence. You should weigh all
6 the evidence in the case. After weighing all the evidence
7 in the case, if you were not convinced of the guilt of the
8 defendant beyond a reasonable doubt, you must find the
9 defendant not guilty.

10 Necessarily, you must determine the credibility of
11 witness who have testified. Credibility simply means,
12 believability. It become your duty as jurors to analyze
13 and to evaluate the evidence and determine which evidence
14 convinces you of its truth. In determining the
15 believability of those who have testified, you may believe
16 one witness over several, or several over one witness.
17 You may believe a part of the testimony of a witness and
18 reject the remaining part of the testimony of that same
19 witness. You may believe the testimony of a witness in
20 its entirety or reject the testimony of a witness in its
21 entirety. You may consider whether any witness has
22 exhibited to you any interest, bias, prejudice or other
23 motive in the case. You may also consider the appearance
24 and the manner in which the witness acts on the witness
25 stand.

1 Ladies and gentlemen, I instruct you and emphasize
2 the fact that the defendant did not testify is not a
3 factor to be considered by you in any way in your
4 deliberations and in your consideration on the question of
5 guilt or innocence of the defendant. It must not be
6 considered by you in any manner whatsoever. A defendant
7 has the constitutional right to remain silent and the
8 assertion of this right must not be considered by you in
9 your deliberations. I repeat, under your oath you are to
10 draw no conclusion whatsoever from the fact that the
11 defendant in this case did not testify. The fact that the
12 defendant did not testify should not even be discussed in
13 the jury room.

14 The burden of proof, as I've stated to you, is on the
15 State. The defendant is not required to prove his
16 innocence. The burden of proof remains on the State to
17 prove guilt beyond a reasonable doubt.

18 The defendant in this case is charged with failure to
19 stop for a blue light. In order to prove this crime, the
20 State must prove beyond a reasonable doubt that the
21 defendant was driving a motor vehicle; that the defendant
22 was driving a motor vehicle on a road street or highway of
23 this State; that the defendant was signaled to stop by law
24 enforcement vehicle by means of a siren or flashing light,
25 and the defendant did not stop. In determining whether or

1 not there are mitigating circumstances which would justify
2 the defendant's failure to stop for a blue light, you may
3 consider the actual road conditions, actual roadside
4 conditions, and other conditions such as lighting and
5 weather -- lighting and weather, officer, driver, and/or
6 passenger safety, and any other circumstances you believe
7 reasonably to mitigate the allegation.

8 An official signal requiring a motorist to stop may
9 be a siren or flashing light, but both are not required.

10 An attempt to increase speed of a vehicle or in some other
11 manner avoid the pursuing law enforcement vehicle when
12 signaled by a siren or flashing light may be considered
13 evidence of failure to stop for a blue light; however, it
14 is merely an evidentiary fact to be taken into
15 consideration by you along with all of the other evidence
16 in the case and to be given the weight that you decide it
17 should deserve.

18 Ladies and gentlemen, an issue in this case is the
19 identification of the defendant as the person who
20 committed the crime charged. The State has the burden of
21 proving identity beyond a reasonable doubt. You must be
22 satisfied beyond a reasonable doubt of the accuracy of the
23 identification of the defendant before you may convict the
24 defendant. Identification testimony is an expression of
25 belief or impression by a witness. You must determine the

1 accuracy of the identification of the defendant. You must
2 consider the believability of the identification witness.
3 You may consider whether the witness had an adequate
4 opportunity to observe the offender at the time of the
5 offense.. This will be affected by things like how long or
6 how short a time was available, how far or close the
7 witness was, the lighting conditions, and whether the
8 witness had the chance to see or know the person in the
9 past.

10 Once again, I instruct you that the burden on the
11 State extends to every element of this crime charged, and
12 this specifically includes the burden of proving beyond a
13 reasonable doubt the identity of the defendant as the one
14 who committed the crime. If, after examining the
15 testimony, you have a reasonable doubt as the accuracy of
16 identification, you must find the defendant not guilty.

17 Now, Mr. Foreman, ladies and gentlemen, there are two
18 possible verdicts to which you may find in this case, and
19 I have prepared a verdict form for you to use in your jury
20 room. Because I listed one outcome over the over outcome,
21 that should be of no importance in your deliberation.
22 It's simply because I had to put one before the other. So
23 do not that I've listed them like this to have any
24 importance on your determination. I need to let you know
25 Mr. Foreman, ladies and gentlemen, that the verdict has to

1 be unanimous. All 12 of the jurors must agree. And the
2 jury verdict cannot be based -- must be based on the
3 evidence that has been presented here in this courtroom.
4 It cannot be based on any capriciousness, compassion, or
5 try to reward or to punish one party other the other. It
6 has to be based on the evidence that is presented in this
7 courtroom and it has to be a unanimous decision made by
8 the jury.

9 Mr. Foreman, once the jury has reached its verdict,
10 it's your responsibility in the jury room to complete the
11 form, to sign the form, and to date the form. I need to
12 also let you know that one of your other duties is you
13 have to knock on the door and let the bailiff know when
14 the jury has concluded. I actually was engaged in a case
15 one time. Many, many, many hours went by and we never
16 heard anything from the jury. And finally I sent the
17 bailiff to figure out are we going to order supper, keep
18 them overnight, or whatever? And they said, "Well, you
19 didn't tell us what we had to do when we finished our
20 deliberations." So please be sure to knock on the door
21 and let us know once you have finished, or else we'll just
22 keep you back there as long as you want.

23 Tell you what: At this time, ladies and gentlemen,
24 I'm going to let you go back to the jury room
25 deliberation, but do not begin your deliberations because

1 there's a few matters I have to address with the
2 attorneys. But the bailiff will advise you as to when to
3 begin. But you all may retire to the jury room.

4 (The jury left open court at 12:10 p.m.)

5 THE COURT: Any objection to the charge from the
6 State or the defense?

7 MR. EPTING: None from the State.

8 MS. INZERILLO: No, Your Honor.

9 THE COURT: All right. We've got just the verdict
10 form and the audio -- and the little CD?

11 MR. EPTING: I believe so, Your Honor.

12 THE COURT: On the alternate -- you want to go ahead
13 and take that back there. On the alternate, what I
14 usually do is I get -- I can either have the alternate
15 placed somewhere else outside the jury room deliberation
16 room in the event something happens and one of the other
17 jurors have to go, and then they have to restart the
18 deliberations if we have to put the alternate back in
19 there, or if -- we can dismiss the alternate and if y'all
20 agree to go with 11 in the event that something happens to
21 one of the 12 in the event that an emergency occurs.

22 MS. INZERILLO: My preference would be to have the
23 alternate wait.

24 MR. EPTING: Just out of an abundance of caution.

25 THE COURT: All right. Can you put the alternate

1 somewhere else and just have the alternate to wait?

2 THE BAILIFF: We'll find a place for them.

3 THE COURT: You may tell them they can begin their
4 deliberations.

5 (The jury began deliberations at 12:12 p.m.)

6 (Court's Exhibit Number 2 was marked.)

7 (A recess was taken at 12:12 p.m.)

8 THE COURT: I've been given a note by the jury
9 foreman that reads that the jury has come to a verdict
10 signed by the jury foreman. I guess he took my advice on
11 being sure to notify us to heart. So it's notified us
12 both by knocking on the door and handwriting a note they
13 reached a verdict. Anything before we bring the jury in
14 to receive the verdict?

15 MR. EPTING: Nothing from the State, Your Honor.

16 MS. INZERILLO: No, Your Honor.

17 (The jury entered the courtroom at 12:27 p.m.)

18 THE COURT: Mr. Foreman, has the jury has reached a
19 verdict?

20 JUROR: Yes, sir, Your Honor.

21 THE COURT: If you would, give the verdict form to
22 the bailiff.

23 VERDICT

24 Madame Clerk, please publish the verdict.

25 THE CLERK: In the case of Latroy Lamar Wherry with

1 the indictment Number 2013-GS-46-2280, we, the jury,
2 unanimously find the defendant, Latroy Lamar Wherry,
3 guilty of failure to stop for a blue light. Signed by the
4 foreperson this day. If this so be your verdict, so say
5 you all by raising your right hand.

6 Let the record show all affirmed.

7 THE COURT: Anything from the State or defense before
8 I dismiss the jury?

9 MR. EPTING: Nothing from the State.

10 MS. INZERILLO: No, Your Honor.

11 THE COURT: Ladies and gentlemen, I want to thank you
12 for your time and your patience while we went through this
13 process today. The -- do they have to call back to that
14 telephone number?

15 THE CLERK: Let me see if I can find out. Just have
16 them call at 7:00. She's not answering.

17 THE COURT: Usually what I do is if it's the last
18 case of the week, I make some extended comments to try to
19 let people that sit as part of a jury to have -- try to
20 focus you in on what it is you've done, for the
21 contribution that you've made to the democracy that we
22 live in. I usually extend my comments out further, but I
23 don't want to say anything because you might actually have
24 to come in and participate in another trial. But suffice
25 it to say that it has frequently been said that service to

1 our great country -- there's -- probably the most
2 difficult service is that of military service in time of
3 war, when citizens go when they're asked to protect the
4 rights and freedom and privileges we have in this country.
5 It's often said the second most difficult service that a
6 citizen will do for the protection of our great country
7 that we live in is to actually serve on a jury as you have
8 done for the last several days.

9 At the beginning of the case when I said and reminded
10 you that this is the greatest justice system ever created
11 and that I thanked you for your service to our great
12 democracy, those were just not puffing words on my part.
13 I'm a sincere believer in the jury system and that without
14 people like you taking away from your life and your time
15 to sit and to come in and to hear cases like this, we
16 would not have our democracy that we have in this great
17 country. All across this country in every county and
18 every state and every courthouse, people like you are
19 called upon do what you did the last two days every day
20 that we have. So I want to thank you for your service.

21 I have to limit my comments because you might have to
22 come back and serve on another case, but I do want to
23 thank you for everything you've done. You're free to go.
24 Call back after 7:00. Mr. Foreman, you have to sign one
25 more piece of paper with the clerk of the court. Thank

1 you very much. Have a good evening -- afternoon. Call
2 back after 7:00.

3 (The jury left open court at 12:32 p.m.)

4 MS. INZERILLO: Your Honor, before we go too much
5 further, if I could just for the record renew all previous
6 objections.

7 THE COURT: I'm sorry. Yes, ma'am. Anything else
8 from the defense?

9 MS. INZERILLO: Yes, Your Honor, just that for the
10 record, we renew all previous motions and objections and
11 move for a new trial.

12 THE COURT: Okay. Based on the standard that I have
13 to apply in ruling on those motions, I would have to deny
14 the motions. Thank you very much.

15 MS. INZERILLO: Thank you, Your Honor.

16 MR. EPTING: Your Honor, if I could have leave, I
17 would go get that paperwork right now.

18 THE COURT: How long you going to be? We got someone
19 else in line too.

20 MR. EPTING: Less than five minutes.

21 (A recess was taken from 12:33 p.m. to 12:38 p.m..)

22 THE COURT: Can I see the lawyers for a moment?

23 (WHEREUPON, a bench conference was held.)

24 (A recess was taken from 12:38 p.m. to 2:38 p.m.)

25 THE COURT: Back on the record in the matter of State

1 of South Carolina versus Latroy Wherry.

2 Mr. Wherry, I just need to remind you that you remain
3 under oath. Do you understand that?

4 THE DEFENDANT: Say that again, sir?

5 THE COURT: Understand a while ago I swore you in. I
6 need to remind you that you remain sworn to tell me the
7 truth, okay?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: All right, sir. I've got just some
10 preliminary questions to ask you that I ask everyone that
11 comes in front of me. So if you would, speak up loud
12 enough so that both the lady way on that side of the
13 courtroom and I both can hear you, okay?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: How old are you?

16 THE DEFENDANT: 26.

17 THE COURT: How far did you go in school?

18 THE DEFENDANT: Tenth grade.

19 THE COURT: Did you ever obtain a GED?

20 THE DEFENDANT: No, sir.

21 THE COURT: Married, single, divorced, widowed?

22 THE DEFENDANT: I got a girlfriend.

23 THE COURT: But you're single?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Do you have children?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: How many.

3 THE DEFENDANT: Five.

4 THE COURT: How old is the is oldest? How young is
5 the youngest?

6 THE DEFENDANT: Eight and one.

7 THE COURT: Prior to your -- well, do you have a job
8 outside the home?

9 THE DEFENDANT: I was working at Pinpoint off
10 Westinghouse, and they had laid us off. I was just
11 waiting on the call. I was just waiting on the call to
12 come back in so we can go back to work. They laid us off.

13 THE COURT: What type of work is that? Warehouse?

14 THE DEFENDANT: Warehouse, yes, sir.

15 THE COURT: Ever served in the military?

16 THE DEFENDANT: No, sir.

17 THE COURT: And when you first got arrested on this
18 charge, how long a time, if any, did you spend in jail
19 before you made bond?

20 THE DEFENDANT: Seven days, I think. A whole week.

21 THE COURT: Does he have a prior record?

22 MR. EPTING: He does, Your Honor. In 2005, he was
23 convicted of possession of stolen goods in an amount
24 between one and \$5,000. False information to police and
25 distribution of crack cocaine, first offense. It appears

1 that he received an active YOA sentence on the crack
2 charge with a consecutive probationary sentence on the
3 possession of stolen goods charge. In 2008, he was
4 revoked on that probation. He also has an additional
5 conviction for public disorderly conduct from 2011.

6 THE COURT: No victim in the case. Anything else
7 from the State before we hear from the defense?

8 MR. EPTING: Your Honor has seen the video and seen
9 the facts and circumstances of this case. We would ask
10 you take into consideration the danger he posed not only
11 to Officer Breeden but everybody in that apartment
12 complex. He did drive through that rather fast, and
13 shortly before the stop, he did actually go through a red
14 light where were there cars waiting on both sides.

15 Your Honor, Mr. Wherry's name -- we have what's
16 called comstat meetings every week at Rock Hill PD where
17 the leadership at Rock Hill police department gathers with
18 the unit leaders and they discuss the biggest problems
19 facing their zones in the community. Your Honor, I can
20 tell you of the comstat meetings that I've been to,
21 Mr. Wherry's name is a constant presence. So he's a
22 bigger threat and problem to Rock Hill than even his
23 record indicates, and we ask that you take that into
24 consideration in formulating his sentence.

25 THE COURT: Thank you, sir. Yes, ma'am?

1 MS. INZERILLO: Thank you, Your Honor, may it please
2 the Court. Your Honor, Mr. Wherry has reviewed a lot of
3 his basic information with you, and he -- when we were
4 discussing what to explain to the Court, he did want me to
5 ask the Court to consider a sentence of probation or
6 county time with probation with a weekend time option.
7 Essentially he's been hoping that his job will call and
8 will -- he can start work again.

9 In the meantime, he's been sort of being a
10 stay-at-home dad to his children, helping out the mother
11 of his children taking care of that, so he feels like he's
12 been pretty productive on that end, not just sort of
13 sitting around.

14 Your Honor, he's asking the Court to take that into
15 consideration. He's looking for a job in addition to
16 doing that. He's got a friend that works at Bi-Lo. I'm
17 not sure how it is, and I'm not sure how it is in Your
18 Honor's home county, but here they've been closing more
19 Bi-Los than they've been leaving open, so I think that's
20 been a little bit hard for him to sort of chase that down.
21 But he has been looking, so he is asking the Court to take
22 that into consideration.

23 In looking at his record, Your Honor, it would appear
24 the bulk of those charges occurred about eight years ago,
25 and he did pick up some consecutive probation. But the

1 bulk of that happened -- the most recent conviction would
2 be from 2011, and that would just be the disorderly
3 offense. So we would ask the Court take that into
4 consideration as well and sentence Mr. Wherry accordingly.

5 THE COURT: Do you agree with what your lawyer just
6 stated?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Sir, is there anything else that you
9 would like to say or would want me to know?

10 THE DEFENDANT: No, sir, not really. I don't want to
11 say too much.

12 THE COURT: I'm more than happy to hear anything you
13 want to say, but you also don't have to say anything at
14 all if you don't want to.

15 THE DEFENDANT: I was just wanting to say about the
16 case, though -- I mean, I ain't -- what I ain't really get
17 was when you said I was making faces over there and stuff,
18 what I really didn't get was when they had me driving with
19 under suspension and speeding, and then on the tape it
20 showed that the person whoever was in the car was speeding
21 and all that. But I -- when I went to Rock Hill court and
22 I was going to go to trial there too. But the officer --
23 or the girl who said I was driving the car never showed
24 up. So that's why they dropped the charges on that.

25 And I was just wanting to see can they -- would they

1 be able to drop the charges like on the failure to stop
2 for a blue light, because you can't get a failure to stop
3 for a blue light if you wasn't driving the car or
4 speeding, you know. That's what I was going to ask you
5 like because when I went to jail in Rock Hill, they
6 throwed -- they threwed the charges out. And all them
7 three charges -- I had three new tickets of them charges,
8 and they dropped two of them, and just kept one. And I --
9 I mean, I just didn't get that part right there. That's
10 all. That would be it.

11 THE COURT: And Mr. Wherry, I would encourage you --
12 you have a very competent, able, and intelligent and
13 articulate lawyer. You may talk with her about what you
14 just asked me, but simply because those tickets got
15 dropped did not mean that the State could not pursue this
16 case against you. It just doesn't mean that. I know that
17 you would hope and you would -- that it would. You would
18 hope that because they did not pursue those tickets that
19 somehow that that would have influence over this case and
20 possibly since they dropped those cases that they would
21 drop these cases, but sir, it's -- it just -- it doesn't
22 work that way.

23 They're completely separate charges and the State has
24 the discretion and ability to pursue charges pretty much
25 the way they want to unless something that's called

1 jeopardy attaches. Jeopardy did not attach to those
2 charges so there's no constitutional violation in my
3 opinion for the State to proceed with prosecuting you on
4 this charges.

5 So even though I can see your logic and your desire
6 to want that to happen the way you want it to happen, it's
7 not happened that way. Okay? Is there anything else you
8 would like me to know or consider?

9 THE DEFENDANT: No, sir. That's it.

10 SENTENCE OF THE COURT

11 THE COURT: I've -- this is not a plea, so I don't
12 have to accept the plea, but on this particular charge
13 what I'll do is sentence you to 30 months at the
14 Department of Corrections on this charge. Give you credit
15 for the seven days you've already served. Good luck to
16 you, sir.

17 MR. EPTING: Thank you, Your Honor.

18 MS. INZERILLO: Thank you, Your Honor.

19 (Whereupon, the proceedings were concluded.)
20
21
22
23
24
25

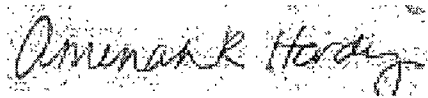
CERTIFICATE OF REPORTER:

STATE OF SOUTH CAROLINA

COUNTY OF YORK

I, Aminah R. Hardy, RPR, Official Court Reporter
for the 16th Judicial Circuit of the State of South
Carolina, do hereby certify that the foregoing is a true,
accurate and complete Transcript of Record of the
proceedings had and evidence introduced in the trial of
the captioned case, relative to appeal, in the Court of
General Sessions for York County, South Carolina, on the
19th day of November, 2013.

May 1st, 2014



Aminah R. Hardy, RPR, CVR-CM

STATE OF SOUTH CAROLINA)

INDICTMENT

COUNTY OF YORK)

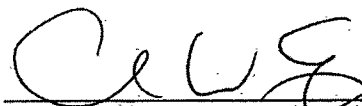
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At a Court of General Sessions, convened on June 13, 2013, the Grand Jurors of York County present upon their oath:

FAILURE TO STOP FOR A BLUELIGHT

The Defendant, Latroy Lamar Wherry, did in York County, South Carolina, on or about February 6, 2013, while driving a motor vehicle on a road, street, or highway of the State, unlawfully fail to stop for a law enforcement vehicle after being signaled by a blue light or a siren to do so, all in violation of Section 56-5-750, 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

WITNESSES

RHPD/Breeden

DOCKET NO. 2013-GS-46-02280

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

June 13, Term 2013

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

In

ARREST WARRANT NUMBER

2013A4620301652

THE STATE

VS.

LATROY LAMAR WHERRY

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date:

VERDICT

Guilty

Indictment for

**FAILURE TO STOP FOR A
BLUE LIGHT**

SC Code: 56-5-750
CDR Code: 065

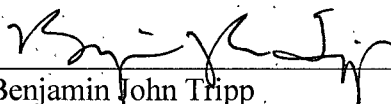
Foreperson of Petit Jury

Date:

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

November 5, 2014


Benjamin John Tripp
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