

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

ORIGINAL

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JAN 25 2017

SG Court of Appeals

Appeal from York County

Honorable John C. Hayes, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

MARQUIS DELLAN EVANS,

APPELLANT

APPELLATE CASE NO 2016-000307

RECORD ON APPEAL

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State of South Carolina.,)
)
)
County of York.,)

In the Court of General
Sessions for York
Case No.: 2016-GS-46-00293
2016-GS-46-00294

State of South Carolina.,)
)
Plaintiff.,)
)
-vs-)
)
Marquis Dellan Evans.,)
)
Defendant.)
_____)

Transcript of Record

February 8-10, 2016
York, South Carolina

B E F O R E:

The Honorable John C. Hayes, III., Judge, and a jury.

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ORIGINAL

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Wanda Nelson, CVR-M
Official Court Reporter
To the Honorable John C. Hayes, III

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E-X-A-M-I-N-A-T-I-O-N

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Reporter's Note: All Exhibits were filed with the York
County Clerk of Court's Office.

1 (COURT IN SESSION MONDAY, FEBRUARY 8. 2016 IN THE
2 MATTER OF STATE V. MARQUIS EVANS AT 10:30 AM.)

3 SOLICITOR AUSTIN: Your Honor, we're gonna have that
4 hearing.

5 SOLICITOR FULLER: Marquis Evans.

6 THE COURT: All right.

7 SOLICITOR FULLER: Thank you, your Honor, may it
8 please the court. Standing before you is Mr. Marquis
9 Evans. He is currently represented by Ms. Mindy Lipinski
10 of the Public Defender's Office. This case is set for
11 trial this week and the State plans to proceed to trial
12 tomorrow morning. It's my understanding that the defendant
13 may wish to discuss Ms. Lipinski representation of this
14 time.

15 THE COURT: All right. Mr. Evans, how old are you?

16 MR. EVANS: Thirty - Thirty-eight.

17 THE COURT: And how far did you go in school?

18 MR. EVANS: GED.

19 THE COURT: What now?

20 MR. EVANS: GED.

21 THE COURT: GED? All right. What kind of work do
22 you do to maintain a living?

23 MR. EVANS: You say what do I do to maintain a living?

24 THE COURT: Yeah.

25 MR. EVANS: I work at --

1 THE COURT: All right. You're represented by Ms.
2 Lipinski?

3 MR. EVANS: Yes, sir.

4 THE COURT: All right. And, Ms. Lipinski, tell me
5 why we're here?

6 MS. LIPINSKI: May it please the court, your Honor.

7 I did take over the case from Ashley Anderson about
8 the turn of this year and due to some reassignment in our
9 office. At that time Ms. Fuller indicated that she was
10 going to put Mr. Evans on the trial docket. I immediately
11 tried to locate him. We sent him a letter and weren't
12 getting a response, so I went out to the residence that we
13 had in Lancaster. I did not find him but some other people
14 gave me some information and that ---- told me he would be
15 - I could possibly locate him in Rock Hill.

16 We did. This was during the last court term. Mr.
17 Kelly my investigator and I went out there and did locate
18 him, have him come in there and meet with him. I think
19 previously to that I had I believe an offer on the table
20 but I did ask Ms. Fuller to engage in one. She made an
21 initial offer and I communicated to Mr. Evans and he was
22 not happy with that offer and I think that kind of set us
23 on a bad course.

24 I met with him during that time; I've talked to him on
25 the phone and I've provided him with copies of discovery.

1 He's advised me that he wants to retain private counsel. I
2 encouraged him to do that immediately and to advise him
3 that he would likely be put back on the trial docket this
4 week. I know he's or at least he's indicated to me that
5 he's met with a couple of people and he just - I think
6 those are the reasons why I advised. When I spoke with him
7 late last week he ask me about a preliminary hearing. I
8 told him that Ms. Anderson's notes do not indicate that he
9 wanted a preliminary hearing and that she just kind of
10 proceeded with trying to represent him, and that I told him
11 and that he's been indicated by the Grand Jury; the time
12 for a preliminary hearing is past.

13 He ask me about an arraignment. I advised him that an
14 arraignment would be - could be done today for the most
15 part.

16 THE COURT: Well he was arrested under a warrant, the
17 indictment issued off the warrant he doesn't need to be
18 indicted.

19 MS. LIPINSKI: I understand that but I told him even
20 if the State didn't indulge him that they would ask him how
21 he pled and whether he wanted a jury trial or a bench trial
22 and it would be a formulated hearing that would be handled
23 today; that that would not delay the case.

24 THE COURT: Let's go ahead and do that. If he wants
25 an arraignment we're gonna arraign him right now.

1 SOLICITOR FULLER: I don't have the language in front
2 of me.

3 THE COURT: Well we'll take a minute. Somebody scurry
4 and get it and we'll go ahead and do an arraignment today.

5 MR. EVANS: Thank you, sir.

6 THE COURT: All right. Go ahead.

7 MS. LIPINSKI: So, just it has not gone well. We had
8 several terse conversations and he even hung up on me a
9 couple of occasions last week. I talked to him last Friday
10 to tell him that regardless of where we were he needed to
11 be here in court on Monday dressed for court and that if he
12 didn't they would either get a bench warrant or they would
13 proceed in his absence.

14 He ask me for - to get another copy of discovery. Ms.
15 Anderson notes indicated that she already provided him with
16 one and I had already given him a copy of the video because
17 I think she didn't have that to give to him. So I drove a
18 copy of the discovery out to his house last Friday and gave
19 that to him. I do nonetheless continue to zealously
20 represent him and was able to get Ms. Fuller to come down
21 on her offer by one year. I communicated that to him this
22 morning and he just indicates that he wants to make a
23 number of motions that I don't believe have as much legal
24 merit as he does and that for that reason he wants to
25 remove me as counsel.

1 THE COURT: All right, Mr. Evans, do you want to
2 relieve Ms. Lipinski from representing you?

3 MR. EVANS: Yes, sir. All right, do you understand
4 that that means you will not have an attorney and that you
5 will be going to trial this week on your own without an
6 attorney?

7 MR. EVANS: Yes, sir.

8 THE COURT: And do you understand that the State is
9 required to appoint an attorney to represent you if you
10 can't afford one and wish for one, and the State has done
11 that, but you're telling me now that even though you ask
12 for an attorney and you got a competent attorney appointed
13 that you choose to represent yourself as opposed to being
14 represented by the attorney the State's paying?

15 MR. EVANS: No, sir.

16 THE COURT: All right. Well it's dangerous for you to
17 represent yourself and there is a benefit in having an
18 attorney because an attorney knows the things to bring to
19 the Court's attention and knows the motions and how to try
20 a case. Do you understand that?

21 MR. EVANS: Yes, sir.

22 THE COURT: You still want to allow Ms. Lipinski -
23 You still want me to relieve Ms. Lipinski from further
24 representing you?

25 MR. EVANS: Yes, sir.

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THE COURT: All right, Ms. Lipinski, you are no longer Mr. Evans attorney. He will be proceeding - -

Mr. Evans, you will be proceeding on your own, what we call pro se ; that is, on your own right and she will do what I call - what we call stand-by counsel. That is she will not sit with you at this trial desk but she will sit on the front row in the gallery and you can communicate with her if you have questions about procedure. She can't make arguments for you or she can't give you advice. You can only turn to her about whether or not you have questions about procedure issues.

Are you okay - This is scheduled for tomorrow so you are required to be here by 9:30 in the morning. If you're not the case will go forward in your absence. That is, you will be tried whether you're here or not. The case will be presented. Ms. Lipinski will not be required to sit here if you're not here so or nobody will be appearing on your behalf.

MR. EVANS: Can --

THE COURT: Let me finish and then I'll be glad to talk to you. I want you to understand that the case will go on and once the jury returns a verdict if that verdict is not guilty then its over. If the verdict is guilty I will issue a sentence. I will seal that sentence and nobody in the world will know what that sentence is but me.

1 It will be held by the Clerk; a bench warrant will be
2 issued for your arrest, you will be arrested; once you are
3 brought back before the court, me or another judge will
4 open that sealed sentence read it out to you and impose it.

5 Do you understand all that?

6 MR. EVANS: Yes, sir.

7 THE COURT: All right. You want to arraign him?

8 SOLICITOR FULLER: Yes, your Honor. I'm sorry but I
9 have to stand here to be able to read it.

10 THE COURT: While you're looking that up, =
11 Yes, sir.

12 MR. EVANS: First about my witnesses. I thought about
13 getting somebody to testify on my behalf.

14 THE COURT: Stand in counsel, I will ask Ms. Lipinski
15 to help you to advise you at least to that extent. That's
16 procedural and I'll be glad to ask her to assist you -
17 assist you in getting subpoenas out to your witnesses.

18 MR. EVANS: Okay. So you mean like tomorrow or after?
19 Call them today and say be here tomorrow?

20 THE COURT: That's up to you. I can't tell you but
21 they got to be here tomorrow so I don't know whether you
22 want to have the sheriff serve subpoenas on them or whether
23 you want to get a motor vehicle and go pick 'em up and
24 bring them, but that's up to you.

25 MR. EVANS: Okay. When you subpoena, sir, like how do

1 - how is that --

2 THE COURT: I can't give you advice. I can't give you
3 advice. You don't have an attorney but she can give you
4 advice on that. That's procedural so she can tell you that
5 but I can't. I'm not your attorney. Do you have any other
6 questions that I might can answer as the judge in this
7 case?

8 MR. EVANS: No, sir.

9 THE COURT: Okay. All right. Yes, ma'am.

10 Listen to Ms. Fuller please, Mr. Evans.

11 SOLICITOR FULLER: Marquis Della Evans, do you answer
12 by that name raise your right hand?

13 (DEFENDANT MARQUIS EVANS COMPLIES.)

14 SOLICITOR FULLER: The first indictment is resisting
15 arrest, Number 2015A4620306806. The Defendant Marquis
16 Della Evans did in York County on or about June 21st, 20105
17 knowing and willfully assault, beat, or wound, Officer
18 Robert Smith of the Rock Hill Police Department while
19 Officer Smith was engaged in serving, executing, or
20 attempting to serve or execute a legal writ or process or
21 did assault, beat, or wound Officer Smith when resisting an
22 arrest being made by Officer Smith and knew or reasonably
23 should have known Officer Smith was a law enforcement
24 officer all in violation of Section 16-9-320 Section (B)
25 Code of Laws of South Carolina, 1976 as amended.

1 The second indictment --

2 THE COURT: Do you have a copy of that Indictment,
3 Mr. Evans?

4 MR. EVANS: No, sir. I do.

5 THE COURT: Yes, sir.

6 MR. EVANS: I just got this copy Friday. I hadn't had
7 time to really, you know, go over the things I want to say
8 and stuff like that.

9 THE COURT: Ms. Lipinski, do you know anything about
10 discovery that --

11 MS. LIPINSKI: My notes indicate that Ms. Anderson
12 gave him a file in December of last year and that I gave
13 him a copy of the video approximately two weeks ago during
14 the last court term when I met with him. He ask for an
15 additional copy of the paper discovery and I delivered it
16 to his house on Friday.

17 THE COURT: I feel like you've had time for the
18 discovery, you have it now.

19 Yes, ma'am.

20 SOLICITOR FULLER: The second indictment is Failure to
21 Stop for a Blue light. The Defendant Marquis Della Evans
22 did on or about June 21st, 2015 in York County while
23 driving on a road, street, or highway of the state failed
24 to stop when signaled by a law enforcement vehicle by means
25 of a siren, or flashing light, all in violation of Section

1 56.5.750(B) (1) Code of Laws of South Carolina.

2 What you say, Marquis Evans, are you guilty or not
3 guilty of the felonies wherein you stand indicted?

4 MR. EVANS: Not guilty.

5 SOLICITOR FULLER: How shall you be tried?

6 MR. EVANS: Jury.

7 SOLICITOR FULLER: These good and lawful jurors will
8 pass between you and the State upon the trial of this case.
9 If you challenge them or any of them you will do so as each
10 is called to the bar to be sworn and before he or she is
11 sworn. May God grant you a just deliverance.

12 THE COURT: Thank you. All right, we'll see you at
13 9:30 in the morning.

14 MR. EVANS: Thank you, your Honor.

15 MS. LIPINSKI: Thank you, sir.

16 (COURT AT EASE AT 10:30 AM.)

17 (COURT BACK IN SESSION TUESDAY, FEBRUARY 9, 2016 AT
18 09:49 AM.)

19 (JARROD JAQUAYS PLEA WITH ATTORNEY KEN SHOW.)

20 THE COURT: All right, you ready to proceed on Mr.
21 Evans' case?

22 SOLICITOR FULLER: Yes, your Honor.

23 THE COURT: All right. Mr. Evans, come on up and have
24 a seat.

25 SOLICITOR FULLER: May I pass up the witness list?

1 THE COURT: Yes, ma'am.

2 SOLICITOR FULLER: I've given that to Mr. Evans.

3 THE COURT: Is the State ready to proceed?

4 SOLICITOR FULLER: Yes, your Honor, the State's ready

5 to proceed. The State calls State versus Marquis Evans.

6 He's been charged on two True Billed Indictments for

7 Resisting Arrest under 2016-GS-46-0-0-2-9-3; Failure to

8 Stop for a Blue Light under 2-9-4, your Honor.

9 THE COURT: Do you have those indictments?

10 Okay. We'll get those indictments in just a minute.

11 Mr. Evans, you've entered pleas of not guilty to both

12 of these?

13 MR. EVANS: Yes, sir.

14 THE COURT: And did you recall yesterday we determined

15 that you had exercised your right to go forward without an

16 attorney even though I told you that was dangerous and you

17 loose the benefit of an attorney. Do you still want to go

18 forward without an attorney?

19 MR. EVANS: I mean I would like to have a different

20 attorney if possible. I don't what -

21 THE COURT: Beg pardon?

22 MR. EVANS: I said I'd like to have a different

23 attorney but I believe I don't know what I'm doing.

24 THE COURT: Well, I know you don't. That's why I told

25 you yesterday it was dangerous for you to fire your

1 attorney but you insisted on doing it. I didn't think it
2 was very wise but whether I think it was wise or not in my
3 eyes now its up to you to determine whether you're doing
4 something wise. Ms. Lipinski's here. I'll allow her to
5 continue to represent you if she doesn't have any objection
6 to that as she was prepared yesterday. But you've
7 indicated you do not want her to represent you so we're
8 sort of in the land of - Well, we're sort of in a situation
9 where you put yourself in a situation that's going to
10 require you to either use Ms. Lipinski but you don't want
11 to do, or represent yourself, which I told you doesn't
12 really make sense to me, but that's your choice.

13 MR. EVANS: I understand.

14 THE COURT: So are you ready to go forward?

15 MR. EVANS: With Ms. Lipinski.

16 THE COURT: Okay. Ms. Lipinski is present for the
17 record as stand-by counsel. All right, do you have any
18 matters to bring up other than that before we get the jury
19 up?

20 MR. EVANS: Yes, sir. I ask Ms. Lipinski can I
21 subpoena my witnesses or whatever and she told me that she
22 notified my mental health counselor. I don't know the
23 times the trial's gonna start, she said, you know, the
24 mental health counselor in Lancaster and about the so I
25 mean I just wanted to speak to my - you know what I'm

1 saying - on my behalf or whatever but besides that I mean
2 I'd like for her - you know what I'm saying, I'm not
3 prepared enough.

4 THE COURT: Well, I can't go into this too much
5 because I don't want to have you exposed to me your theory
6 of your defense, but you haven't to my knowledge - -

7 Has he raised any mental issues as a defense? That is
8 in not guilty by reason of insanity or guilty but mentally
9 ill?

10 SOLICITOR FULLER: No, your Honor, we haven't received
11 any information regarding it.

12 THE COURT: Okay. So do you want the mental health
13 people here just to kind of vouch for your character or?

14 MR. EVANS: Yeah, right, just to - Right. Right, to
15 speak on my - you know, cause I was diagnosed with certain
16 things and, you know, that kind of triggered - that kind of
17 triggered - that kind of triggered, you know what I'm
18 saying, of what happened at this current situation.

19 THE COURT: All right. Well, the reality of that is I
20 have to hear what the witnesses have to say before I'll let
21 them testify before the jury because in South Carolina and
22 I'm sure this is the case in most states, what we call
23 mental defenses are very well defined, there are only two;
24 that you were insane at the time and did not know the
25 difference between moral legal right and wrong. And you've

1 got to give notice to the State if you're proceeding on
2 that defense.

3 The other mental issue would be whether you could be
4 determined to be guilty of this offense but mentally ill at
5 the time. That is, that you could at that time know the
6 difference between right and wrong and that you because of
7 a mental deficiency were unable to conform your conduct to
8 the conduct required by law. So those are the only two
9 things that a mental expert or a mental practitioner could
10 even bring to the table and you haven't offered those.

11 I'm not saying you can't call them but you certainly -
12 We'll see where that goes but I want you to understand that
13 is not a defense. That would go - the condition of your
14 mental state would go more to what the law calls
15 mitigation. That is, whether or not the court, me in this
16 case if I end up being the judge which obviously I am,
17 whether or not I will take that into consideration in
18 determining what sentence to impose as opposed to whether
19 or not you're guilty. I know it's very complicated.

20 Young people go to law school for three years and come
21 out sometimes not even understanding that. I been doing
22 this for forty years and sometimes I get confused but I've
23 tried in the best way I can in layman's terms to tell you
24 where we are. Unless you have something else we'll bring
25 the jury up and start your trial.

1 MR. EVANS: I don't know what kind of motions. I
2 don't know what kind of motions to file. I ask for a
3 continuance or something so I could get prepared.

4 THE COURT: That's why you need a lawyer cause you
5 don't know how to prepare. The state hired one for you
6 that didn't satisfy you, so. Now I will tell you that when
7 we get the jury up I will ask them certain questions about
8 their - whether they have any bias or prejudice; whether
9 they could be fair jurors in this case. After that I will
10 allow or have the jurors names called. They will stand up
11 one at a time and as they stand up the State will have the
12 right to excuse up to five of those jurors, one at a time,
13 and you will have the right to excuse up to five of them.

14 The way that will work will be when I have the jurors
15 stand I will ask them to face Ms. Fuller and she will say
16 either excuse the juror or present the juror. If she says
17 excuse the juror that means the juror sits back down. If
18 she says present the juror then you look at the juror and
19 determine whether or not you want to excuse the juror. If
20 that's the case just simply say excuse the juror and that
21 juror will sit down. If you don't want to excuse or if you
22 run out of your five strikes then you simply say seat the
23 juror and the juror will take a seat in the jury box. And
24 we'll twelve jurors plus one alternate.

25 MR. EVANS: I guess the defendant sits down.

1 THE COURT: Yeah. I mean that's the way it works.

2 MR. EVANS: Like I said this is my first time really
3 doing this so I'm just gonna follow your lead.

4 THE COURT: I can't really lead you. All I can do is
5 be as helpful --

6 MR. EVANS: What ever you say. I just want -

7 THE COURT: All right. Okay. You can have a seat
8 right now?

9 MR. EVANS: Sit down?

10 THE COURT: Yes, sir. And I usually - I'll tell you
11 this again during the trial, but since you are representing
12 yourself, the State will present their case, all their
13 witnesses. They will call their witnesses. They can't
14 call you as a witness of course. But they will call their
15 witnesses; those witnesses will testify and you have a
16 right to cross-examine them. You can come up and ask these
17 witnesses, they will be under oath and they have to answer
18 honestly, you can ask them questions that you think are
19 important and favorable to your side of the case. So you
20 have a right to cross-examine all these witnesses.

21 After the State presents their witnesses then the case
22 goes into your side. And you don't have to call witnesses.
23 You're presumed innocent of the charge so you don't have to
24 call a single witness but you can. You have the right to
25 testify but you do not have to. If you testify you will be

1 under oath and the State will ask you questions concerning
2 this event. If you choose your - exercise your right to
3 remain silent I will tell the jury that you have done that;
4 that you have exercised your right to remain silent and
5 that the jury cannot use that against you in any way
6 whatsoever. They cannot discuss that among themselves in
7 the jury room and cannot factor that into determining
8 whether or not you are guilty or not of this offense.

9 Do you understand all that? Yes, sir.

10 MR. EVANS: As far as like objections, I seen 'em on
11 TV but how do - Like if I say objection, how do I go about
12 saying it?

13 THE COURT: Well, that's all you need to do.

14 MR. EVANS: Is I object?

15 THE COURT: You just - You don't have to point to me.
16 You just stand up and say I object. You have to have
17 some basis for it. You just don't get to object because
18 you don't like what the witness has testified. And there
19 again where it would be nice to have an attorney who knows
20 the rules of evidence and knows what's hearsay and knows
21 what's admissible and what's relevant or not. But you
22 object anytime you think a witness is testifying to
23 something they should not be testifying to and you object
24 and I'll rule on it.

25 Now once I've ruled if you object and I sustain it

1 then the State would have to move to something else. But
2 if you object and I over rule it then the State can
3 continue on on those lines. Now once the jury's drawn and
4 the twelve jurors and the alternate are seated over here
5 Ms. Fuller on behalf of the State - or Ms. Holland - have
6 the right to come before that jury and tell them what this
7 case is about. They're not trying to have the jury make a
8 decision they're just gonna tell the jury this case is
9 about A B C. After they sit down you have a right to stand
10 before them before they even call their first witness and
11 say members of the jury I did not commit this crime. That
12 would be basically the nature of your testimony in a way
13 but usually lawyers get up and say their client did not
14 commit the crime. But you have the right to get up and
15 tell them why you think you should be or what you think the
16 evidence will show as to why you should be found not
17 guilty. So that's the way we'll proceed and I'll - Again,

18 Ms. Lipinski is here to give you guidance if she can.

19 MR. EVANS: Okay.

20 THE COURT: Anything further before we get the jury
21 up?

22 SOLICITOR FULLER: Just a couple of things, your
23 Honor. First, we just want to go ahead and put on the
24 record that we aren't going to be showing the whole video.
25 There aren't any redactions that we've made on the video.

1 We don't intend to offer any statements by the defendant.
2 We plan to show approximately the first ten minutes of the
3 video and then cut it off once he's in the car. But the
4 jury would need to come back in and rematch it here in if
5 they needed to, to see it again because towards the end of
6 the video the defendant does make some statements that we
7 don't plan to introduce.

8 THE COURT: Well, y'all got competent individuals in
9 y'all's office that can redact that could they not?

10 I mean we're way into the age of the use of videos and
11 bringing the jury back in is almost archaic. We've got the
12 ability to let the jury - If we don't have the ability
13 we've darn well ought to start working on having it so that
14 the jury can watch it in the jury room and turn it off and
15 come backwards, go forwards, and discuss it.

16 We used to there is a practice to bring 'em back
17 in because it was difficult to do otherwise. But I would
18 think you've got somebody in your office that could cut out
19 the part - to trim it down to what we need then that way it
20 can be going into evidence solely as that.

21 SOLICITOR FULLER: We can do that, your Honor. It
22 would just be having the last ten minutes where the
23 defendant speaks. We can handle that pretty easy, your
24 Honor.

25 THE COURT: All right.

1 SOLICITOR FULLER: Then the only other issue that we
2 want to bring up is that its our understanding that Mr.
3 Evans may make race an issue in the trial and we would just
4 ask that he be precluded from bringing that up - -

5 THE COURT: All right. Mr. Evans, this case is about
6 whether or not you committed an offense. I'm not gonna
7 tell you what you can and cannot say and I have to hear
8 what you have to say but what she's putting on the record
9 is that they're basically gonna object if you make this
10 situation where you want the jury to acquit you because you
11 believe you were singled out for race - because of your
12 race. For the record Mr. Evans is an African American. Of
13 course we have the video so the record will make sure
14 that's clear. So do what you think you need to do for your
15 own benefit and your own best interest and if the State has
16 some problem with what you're saying they will call it to
17 my attention. You got that?

18 MR. EVANS: Yes, sir.

19 THE COURT: Okay. All right, anything else?

20 SOLICITOR FULLER: Nothing further, your Honor.

21 THE COURT: All right. Mr. Evans, anything else
22 before we get the jury up?

23 MR. EVANS: No.

24 THE COURT: All right. Bring up the jury.
25 We'll be at ease until the jury gets in.

1 Mr. Evans, you need to remain in the courtroom while
2 the jury's coming in.

3 MR.. EVANS: What, sir?

4 THE COURT: We're gonna take a break while the jury's
5 coming up but you need to stay in the courtroom. You of
6 course can talk to your friend that you've been talking to
7 and Ms. Lipinski here in the courtroom.

8 (COURT AT EASE AT 10:13 AM.)

9 (JURY ENTERS COURTROOM AT 10:17 AM.)

10 (COURT BACK IN SESSION AT 10:17 AM.)

11 THE COURT: Good morning, thank you. You may have a
12 seat.

13 Members of the jury panel, I'm John Hayes from Rock
14 Hill and I along with Judge Hall, one of the resident
15 judges here in York County, and like Judge Hall I'm
16 assigned to hold General Sessions - that's a technical name
17 - criminal court. The first case the State is calling in
18 this courtroom are two indictments against Mr. Marquis
19 Dellan, D-e-l-l-a-n, Evans.

20 This is Mr. Evans seated here. Stand so the jury can
21 see who you are.

22 (DEFENDANT MARQUIS EVANS STANDS.)

23 THE COURT: This is Mr. Evans. You may be seated.

24 Mr. Evans is representing himself. He's not an
25 attorney but he's representing himself as he has the right

1 to do. The State is represented by Ms. Fuller and Ms.
2 Holland.

3 (SOLICITOR FULLER AND SOLICITOR HOLLAND STAND.)

4 THE COURT: Now, Mr. Evans is charged with two counts
5 on two different offenses. One is the Failure to Stop for
6 a Blue Light, and that indictment alleges - sets forth the
7 indictments - sets forth the charges, they are not
8 evidence, states that on June 21st of last year, 2015, Mr.
9 Evans did not stop after he was properly signaled by law
10 enforcement to stop.

11 The second indictment is that on that same date he
12 resisted Officer Robert Smith of the Rock Hill Police
13 Department who was arrested - attempting to serve or
14 execute a legal writ or process on Mr. Evans. He has
15 entered pleas of not guilty to these charges. These pleas
16 of not guilty places on the State the burden of proving his
17 guilt beyond a reasonable doubt.

18 Now somewhat similar to what Judge Hall did downstairs
19 I have to go through some questions regarding service as a
20 juror in this case. If you need to respond to any of
21 these; that is, if you have any information you need to
22 tell me based on the question, just stand where you are and
23 we'll have a dialogue from here to where you are.

24 First, are any of you related by blood or marriage to
25 Mr. Evans, Ms. Holland or Ms. Fuller; if so, please stand?

1 No one stands.

2 Are any of you a close personal friend or acquaintance
3 of any of those three people; if so, please stand?

4 No one stands.

5 Do any of you have - now have or have you any time in
6 the past had any association with our Solicitor's office,
7 Mr. Kevin Brackett? Have you been a witness, been a victim
8 that's been represented by that office? Worked in his
9 campaign or anything like that; if so, please stand?

10 (WHITE MALE STANDS.)

11 THE COURT: All right, your name and number?

12 A. Brian Oxendine, Two Fifty-two.

13 THE COURT: All right. And you -

14 MR. OXENDINE: I was a victim.

15 THE COURT: You were a victim? Okay. Thank you.

16 That's all we need to know. We appreciate it. That's what
17 we want to know is that kind of information.

18 The next question is, have any of you heard about this
19 case? Any of you know about it from any source whatsoever?
20 Or have any of you formed or expressed an opinion about any
21 matter or issue involved in this case; if so, please stand?

22 No one stands.

23 Are any of you - Were any of you members of the Grand
24 Jury which passed on these two indictments at an earlier
25 time; if so, please stand?

1 No one stands.

2 Are any of you or a member of your family involved in
3 law enforcement at any level or in the prosecution of
4 criminal cases at any level? Anything from a solicitor to
5 a US Attorney, Judge Advocate General, MP, sheriff's
6 deputy, FB; anything like that; if so, please stand?

7 (WHITE FEMALE STANDS.)

8 THE COURT: All right, yes, ma'am, your name and
9 number?

10 A. Daphne Anderson, Number Four. My brother is a
11 detective.

12 THE COURT: All right. Where?

13 MS. ANDERSON: New York.

14 THE COURT: All right. Would that affect your ability
15 to be fair and impartial in the trial of this case?

16 MS. ANDERSON: No.

17 THE COURT: All right, you may be seated.

18 I'm gonna ask the first gentleman that stood up,
19 stand up again.

20 (WHITE MALE STANDS.)

21 THE COURT: I neglected to ask would the fact - in
22 spite of the fact that you were a victim in the case
23 prosecuted by this solicitor's office, would you still be
24 able to be fair and impartial in this trial regarding the
25 trial of Mr. Evans?

1 MR. OXENDINE: Yes, sir.

2 THE COURT: Okay. Thank you. Now, yes, sir.

3 (WHITE MALE STANDS.)

4 A. Curtis Simmons, Number Two Fifty-four. My father is
5 in the Jacksonville, Florida detective Vice Squad Division.

6 THE COURT: Well, in spite of having that association
7 would you still be able to be fair and impartial in Mr.
8 Evans trial?

9 MR. SIMMONS: Yes, sir.

10 THE COURT: Okay. Thank you.

11 (WHITE FEMALE STANDS.)

12 THE COURT: Yes, ma'am, your name and number?

13 A. Jennie Urick, Number Two Twenty-eight. My brother was
14 a criminal investigator in this county but he is deceased.

15 THE COURT: All right. Would that affect your ability
16 to be fair and impartial in the trial of this case?

17 You have to say yes or no because we got to take this
18 down.

19 MS. URICK: I'm sorry. No.

20 THE COURT: You nod your head and I can see it. We
21 got to take a record, we got you now.

22 THE COURT: The following are the witnesses that the
23 State intends to call in this case. Robert Smith of the
24 Rock Hill Police Department and Dustin Ochiltree from the
25 Rock Hill Police Department. Any of you related by blood

1 or marriage or are you a close personal friend or
2 acquaintance or you would know in any way whatsoever
3 through any manner whatsoever either of these two
4 policemen; if so, please stand?

5 No one stands.

6 Are any of you members of or contributors to
7 organizations such as Mother's Against Drunk Driver's,
8 Student's Against Drunk Driver's, Citizen's Against
9 Violence, Trooper's Association, Sheriff's Association,
10 Fraternal Order of Police; if so, please stand?

11 No one stands.

12 Do any of you have any religious or moral or
13 theoretical beliefs that would prevent you from being fair
14 and impartial in this particular trial; if so, please
15 stand?

16 No one stands.

17 Anything else from the State?

18 SOLICITOR FULLER: No, your Honor.

19 THE COURT: Mr. Evans, do you have any particular
20 questions you want me to ask the jury regarding their
21 service?

22 MR. EVANS: No, sir.

23 THE COURT: Okay. Finally, do any of you know of any
24 reason whatsoever why you could not or should not serve as
25 a juror on this particular case; if so, please stand?

1 No one stands.

2 Now the way we draw jurors in this type court is as
3 follows: Mr. Evans has the right to excuse up to five
4 individuals, so does the State. If you hear your name
5 called please just stand where you are and face first the
6 table where the Solicitor's are seated. One of them will
7 say either excuse the juror, and if you hear those words,
8 take your seat. Or, present the juror. If you hear those
9 words turn and face the table where Mr. Evans is seated and
10 he will say excuse the juror which means you may take your
11 seat. Or, he will say swear the juror. If you hear the
12 words swear the juror please come forward and the bailiff
13 will show you where to have a seat in the jury box.

14 We're to draw twelve alternates and as I said each
15 side has the right to excuse up to five - We draw twelve
16 jurors and then we'll draw one alternate and as to the
17 alternate the State can excuse one and the - Mr. Evans up
18 to two. So please stand up if you hear your name called.

19 MADAM CLERK: Number Two-forty-nine, Christina
20 Zimmerman-Barnosky.

21 (WHITE FEMALE STANDS.)

22 MADAM CLERK: What say you for the State?

23 SOLICITOR FULLER: Please present.

24 MADAM CLERK: Defense?

25 THE COURT: You can say either excuse the juror and

1 she will take a seat or you can say swear the juror and if
2 you say swear the juror she will come up and be a part of
3 the jury. But you have a right to excuse her or accept
4 her. Keeping in mind that you can do that up to five
5 times.

6 MR. EVANS: Do that five times --

7 Excuse.

8 THE COURT: All right. You can be excused. Just have
9 a seat. Thank you.

10 MR. EVANS: That was one on her? I get five?

11 THE COURT: You get five of those.

12 MADAM CLERK: Number Thirty-four, Matthew Carvin.

13 ((WHITE MALE STANDS.))

14 MADAM CLERK: What say you for the State?

15 MR. EVANS: What number was that?

16 MADAM CLERK: Thirty-four.

17 SOLICITOR FULLER: Please present.

18 MADAM CLERK: Defense?

19 MR. EVANS: Present.

20 MADAM CLERK: Please come forward and have a seat in
21 the jury box.

22 Number Two Twenty-eight, Jennie Urick.

23 ((WHITE FEMALE STANDS.))

24 MADAM CLERK: What say you for the State?

25 SOLICITOR FULLER: Please present.

1 MADAM CLERK: Defense?

2 MR. EVANS: Excuse.

3 MADAM CLERK: You've excused from this case.

4 Number Sixty, Melissa Doull.

5 (WHITE FEMALE STANDS.)

6 MADAM CLERK: What say you for the State?

7 SOLICITOR FULLER: Please present.

8 MADAM CLERK: Defense?

9 MR. EVANS: Excuse.

10 MADAM CLERK: You've been excused from this case.

11 Number One ninety, Garfield Sanders.

12 (BLACK MALE STANDS.)

13 MADAM CLERK: What say you for the State?

14 SOLICITOR FULLER: Please excuse.

15 MADAM CLERK: You've been excused from this case.

16 Number One Seventy-seven, Sarah Puccio.

17 (WHITE FEMALE STANDS.)

18 MADAM CLERK: What say you for the State?

19 SOLICITOR FULLER: Please present.

20 MADAM CLERK: Defense?

21 MADAM CLERK: Present.

22 MADAM CLERK: Please come forward and have a seat in
23 the jury box.

24 Number 1-0-4, James Howell.

25 THE COURT: 1-0-4, James Howell.

1 (WHITE MALE STANDS.)

2 MADAM CLERK: What say you for the State?

3 SOLICITOR FULLER: Please present.

4 MADAM CLERK: Defense?

5 MR. EVANS: Juror 1-0-4?

6 MADAM CLERK: 1-0-4.

7 MR. EVANS: Excuse.

8 MADAM CLERK: You've been excused from this case.

9 Number 2-0-4, Kimberly Sloan.

10 (WHITE FEMALE STANDS.)

11 MADAM CLERK: What say you for the State?

12 SOLICITOR FULLER: Please present.

13 MADAM CLERK: Defense?

14 MR. EVANS: Excuse.

15 MADAM CLERK: You've been excused from this case.

16 Strikes are one for the State and five for the

17 Defense. Number One Ninety-two, Guynndolyn Savage.

18 (WHITE FEMALE STANDS.)

19 MADAM CLERK: What say you for the State?

20 SOLICITOR FULLER: Please present.

21 MADAM CLERK: Defense?

22 MR. EVANS: Excuse.

23 MADAM CLERK: You've used your five.

24 THE COURT: Yeah. You've used your five.

25 You can come up and have a seat.

1 MADAM CLERK: Number Four, Daphne Anderson.

2 (WHITE FEMALE STANDS.)

3 MADAM CLERK: What say you for the State?

4 SOLICITOR FULLER: Please present.

5 MADAM CLERK: Defense?

6 THE COURT: You can come forward and be seated.

7 MADAM CLERK: Number Two Fifty-two, Brian Oxendine.

8 (WHITE MALE STANDS.)

9 MADAM CLERK: What say you for the State?

10 SOLICITOR FULLER: Please present.

11 MADAM CLERK: Defense?

12 Sir, please come and have a seat in the jury box.

13 Number Two Fifty-one, Vicki McCoy.

14 (WHITE FEMALE STANDS.)

15 MADAM CLERK: What say you for the State?

16 SOLICITOR FULLER: Please present.

17 Please come forward and have a seat in the jury box.

18 Number One Thirty-nine, Carol Meadows.

19 (WHITE FEMALE STANDS.)

20 MADAM CLERK: What say you for the State?

21 SOLICITOR FULLER: Please present.

22 MADAM CLERK: Please come forward and have a seat in
23 the jury box.

24 Number Two Fifty-four, Curtis Simmons.

25 (WHITE MALE STANDS.)

1 MADAM CLERK: What say you for the State?

2 SOLICITOR FULLER: Please present.

3 MADAM CLERK: Please come forward and have a seat in
4 the jury box.

5 Number Two Forty-five, Janette Wrenn.

6 (WHITE FEMALE STANDS.)

7 MADAM CLERK: What say you for the State?

8 SOLICITOR FULLER: Please present.

9 MADAM CLERK: Please come forward and have a seat in
10 the jury box. Number Two Thirty-nine, Barbara Wheeler.

11 (WHITE FEMALE STANDS.)

12 MADAM CLERK: What say you for the State?

13 SOLICITOR FULLER: Please present.

14 MADAM CLERK: Please come forward and have a seat in
15 the jury box. Number Two ten, Devensezo Starr.

16 (BLACK MALE STANDS.)

17 MADAM CLERK: What say you for the State?

18 SOLICITOR FULLER: Please excuse.

19 MADAM CLERK: You've been excused from this case.

20 Number Fourteen, Jeffrey Becker.

21 (WHITE MALE STANDS.)

22 MADAM CLERK: What say you for the State?

23 SOLICITOR FULLER: Please excuse.

24 MADAM CLERK: You've been excused from this case.

25 Number Eighty seven, Sean Hardwick.

1 (WHITE MALE STANDS.)

2 MADAM CLERK: What say you for the State?

3 SOLICITOR FULLER: Please present.

4 MADAM CLERK: Please come forward and have a seat in
5 the jury box.

6 Number One Sixty-five, Peggy Orr.

7 (BLACK FEMALE STANDS.)

8 MADAM CLERK: What say you for the State?

9 SOLICITOR FULLER: Please present.

10 MADAM CLERK: Please come forward and have a seat in
11 the jury box.

12 Number Eighty, Shannon Godwin.

13 (WHITE FEMALE STANDS.)

14 MADAM CLERK: What say you for the State?

15 SOLICITOR HOLLAND: Madam Clerk, are we drawing for
16 the alternate?

17 THE COURT: Yeah. We've got - that was number twelve
18 Ms. Orr so now we're doing the alternates.

19 SOLICITOR FULLER: Please present.

20 THE COURT: Now, Mr. Evans, we're back to the
21 alternates now so you have two more strikes. Wait just one
22 second.

23 MR. EVANS: On the alternate, excuse.

24 THE COURT: You're excused.

25 MADAM CLERK: You've been excused.

1 THE COURT: You'll be excused.

2 MADAM CLERK: Number One Fifty four, Monanique Myers-
3 Adams.

4 (WHITE FEMALE STANDS.)

5 MADAM CLERK: What say you for the State?

6 SOLICITOR HOLLAND: Madam Clerk, will you repeat the
7 number.

8 MADAM CLERK: One Fifty four.

9 SOLICITOR FULLER: Please present.

10 MADAM CLERK: Defense?

11 MR. EVANS: Present.

12 MADAM CLERK: Please come forward and have a seat in
13 the jury box.

14 THE COURT: Anything from the State involving the
15 striking of the panel?

16 SOLICITOR FULLER: No, your Honor.

17 THE COURT: Anything, Mr. Evans, involving the way we
18 struck the panel?

19 MR. EVANS: What do you mean by striking the panel?

20 THE COURT: Beg your pardon?

21 MR. EVANS: I said what do you mean by strike?

22 THE COURT: Do you think that the State violated - -

23 Let me let the jury go. Let me let you all go to the
24 jury room just a minute and let the remainder of you go out
25 in the hall just for a few minutes. Don't start discussing

1 the case. You don't know anything about it yet. When you
2 do come back, Mr. Hardwick, I'm gonna ask you to be the
3 foreperson so when you come back in you can take this first
4 seat on the front row. Then this - Well I guess - You're
5 right the two first - that would actually take to be the
6 first. You're correct. For the last seat - anyway.

7 All right, just step in the jury room for a few
8 minutes and the rest of you step out in the hall but don't
9 go anywhere.

10 (PETIT JURY EXITS COURTROOM/JURY POOL EXITS COURTROOM
11 AT 10:44 AM.)

12 THE COURT: The jury is out. I will allow you to take
13 a moment to ask, if you wish,, to ask Ms. Lipinski anything
14 about this. You don't have to. I will tell you that the
15 State struck Garfield Sanders, Devensezo Starr and Jeffrey
16 Becker. Those are numbers one ninety, two ten and
17 fourteen. If you think they struck that and by striking
18 those jurors they violated your constitutional rights for
19 any reason you need to call that to my attention at this
20 time? You don't have any?

21 All right, he's indicating no.

22 (DEFENDANT MARQUIS EVANS INDICATED.)

23 THE COURT: He's shaking his head. You can have a
24 seat. But you need to be verbal.

25 MR. EVANS: Okay.

1 THE COURT: But you're telling me --

2 MR. EVANS: I think I made a mistake.

3 THE COURT: Well, you did use your strikes pretty
4 quick but that's - but you're not a lawyer but you don't
5 have any issue with the way the State did it?

6 (DEFENDANT MARQUIS EVANS INDICATED.)

7 THE COURT: He's indicating again no. Are you saying
8 no?

9 MR. EVANS: No.

10 THE COURT: No. Okay. All right. The other jurors
11 can be - go back downstairs and do whatever they need to do
12 and this panel can come in.

13 (JURY DISMISSED AT 10:46 AM.)

14 (PETIT JURY REENTERS COURTROOM AT 10:49 AM.)

15 THE COURT: Now that you're all comfortably seated
16 would you please stand.

17 MADAM CLERK: If you'd raise your right hand.

18 (PETIT JURY SWORN BY CLERK OF COURT AT 10:50 AM.)

19 THE COURT: All right. You may be seated.

20 I'm going to chat with you just a minute and then the
21 attorneys - the attorney - an attorney from the State and
22 Mr. Evans himself have the right to come before you and
23 make what we call opening statements. These are not
24 closing arguments, that is, they will not be at this time
25 telling you why your verdict should be a certain verdict.

1 That will come at a later time. What they are doing at
2 this time is simply giving you an outline or a blueprint of
3 the trial.

4 As to these two charges resisting arrest and failing
5 to stop for a blue light, Mr. Evans has entered pleas of
6 not guilty. These pleas of not guilty place on him - place
7 on the State the burden of proving his guilt beyond a
8 reasonable doubt. Mr. Evans like anyone charged with any
9 offense in our system is presumed innocent of the charge
10 against him and need not prove his innocence. The State
11 has to prove his guilt beyond a reasonable doubt.

12 I have three primary jobs in the trial. One is the
13 logistics of the trial of making sure we take breaks, that
14 one person speaks at a time; the mechanical part of the
15 trial. My second job is that I rule on questions of
16 evidence. If one side believes certain evidence should be
17 allowed to come into the record and the other does not, I
18 have to make a ruling on that. My third job is that I am
19 the sole judge of the law in this case. Your oath requires
20 you to take accept and apply the law as I charge it even if
21 you think I charge the law in error or even if you think
22 the law should be different your oath required you to take
23 accept and apply the law as I charge it.

24 I have given you some legal principles now. I may
25 during the trial give you some, and at the end of the trial

1 I will give you a precise and comprehensive charge on the
2 law that you are to apply to the facts as you determine the
3 facts. But it solely up to you to determine the facts in
4 this case.

5 As a trial judge I am not allowed to formulate or
6 express to you any opinion on mine on the facts. That is
7 solely your prerogative. It is solely up to you to examine
8 the evidence to give to the evidence the effect the value
9 the weight and the truth you believe it should have. In
10 doing this you may believe one witness as opposed to
11 several; several witnesses as opposed to one. You may
12 believe all part or none of the witnesses testimony.

13 Use your common sense, your sense of logic, your sense
14 of reason; use your experiences in life as you analyze the
15 evidence. You also can use certain evaluators. A
16 witnesses demeanor how they act on the stand. Are they
17 hesitant or straightforward? Is their testimony consistent
18 or inconsistent? Consider the opportunity a witness had to
19 know those things they testify about. Consider any bias or
20 prejudice a witness may have; that is, whether a witness
21 wished to help or hurt one side or the other.

22 All these things you consider determine the true facts
23 apply the law and your verdict will speak the truth.

24 You're not to discuss the case among yourselves; nor
25 even try to make up your own mind until we reach the point

1 in the trial where I instruct you to jointly deliberate and
2 return a unanimous verdict. Prior to that time you're not
3 equipped with all the tools you need to make a fair and
4 reasonable decision. So, do not discuss the case to try to
5 make up your own mind until we reach that point.

6 Do not let anyone outside the courtroom discuss this
7 case with you. Do not initiate a conversation with anybody
8 about this case and do not let anyone start a conversation
9 with you. If someone tries to talk to you about this case
10 report that back to me giving me the identity of that
11 person; of course tell that person that you cannot discuss
12 it since you are on the jury panel.

13 Do not read anything. I don't know, we might finish
14 this case today but if it goes over night and we break for
15 lunch don't read, listen to or watch anything that could
16 remotely deal with this trial. You have to base your
17 verdict solely on the law and the evidence presented here
18 in the courtroom.

19 Do not use any mechanical device or electronic device
20 to obtain any information concerning the trial on me or Mr.
21 Evans or the Solicitor. That is, don't access Google or
22 anything like that to find out any information about the
23 charges. Just don't do any independent research on line or
24 not on line. But also, I don't know that this case will go
25 over 'till tomorrow but if it does or even during lunch

1 hour don't even go on Face book or something like that to
2 say hey I'm on the jury because someone may send you a
3 message back with something that might not be healthy for
4 your service as a juror in this case.

5 You do not need to take notes. Please listen
6 carefully. We take breaks about every hour and a half. I
7 find that's a good break time but if you need a break at
8 any time, just simply raise your right hand and with no
9 questions ask we'll take a break. We want to move the case
10 along but I do not believe we're in such a hurry that we
11 won't take a break if someone needs it. And I extend that
12 to counsel and Mr. Evans. If they want a break we'll take
13 it. Again with no questions ask.

14 Mr. Foreman, you will be the liaison between the jury
15 and myself and you will preside over the jury's
16 deliberation and ultimately sign on behalf of the jury it's
17 unanimous verdict.

18 Counsel.

19 SOLICITOR FULLER: Thank you, your Honor.

20 May it please the Court.

21 THE COURT: Yes, ma'am.

22 OPENING STATEMENT BY SOLICITOR FULLER:

23 SOLICITOR FULLER: The Judge told you we're here
24 today because Mr. Evans is charged - charged with Failure
25 to Stop for a Blue Light and Resisting Arrest, and these

1 are as straight forward as they sound. As Judge Hayes
2 said, you can use your common sense, failure to stop is
3 actually as it sounds when someone is being signaled by law
4 enforcement, by siren and lights, to pull over and they
5 don't do it.

6 Resisting arrest: When someone is being arrested and
7 they assault, beat, or wound that officer and they should
8 have known or did know that that person was a law
9 enforcement officer. Today you will hear evidence and
10 testimony that will show why Mr. Evans is guilty of both of
11 those charges.

12 First, you're going to hear from Detective Robert
13 Smith who works at the Rock Hill Police Department. He
14 will talk to you about how he was intending to pull Mr.
15 Evans over for suspicion of driving under the influence;
16 he'll talk to you about how Mr. Evans did not stop until
17 the street was blocked by a crowd at a party. And that
18 when Mr. Evans did come out of the car he came out swinging
19 and punched Detective Smith.

20 You will also hear from the other officer that was
21 training with Detective Smith that night is Officer
22 Ochiltree. He will talk to you about he had to taze the
23 defendant three times before Mr. Evans would comply and put
24 his hands behind his back. You will not only hear from
25 both of these officers but Detective Smith's in-car video

1 system was working that night and you will get to see it
2 for yourselves. After all of this is over I'll come back
3 out and will go back over the evidence and I will ask you
4 to find Mr. Evans guilty at that time. So I just ask that
5 you please listen to all of the testimony and the evidence
6 presented today. Thank you.

7 THE COURT: Mr. Evans, would you like to address the
8 jury?

9 OPENING STATEMENT BY MR. EVANS:

10 MR. EVANS: Good morning. I ask that we - I don't
11 even know what I'm doing so this evidence on me the State
12 said, you know what I'm saying, what I did. But basically
13 my theory is I got pulled over for no reason. As you will
14 see in the video I was putting my blinkers on. I was
15 driving and I felt like it was a profile at issue. And as
16 I turned slow you will see on the video I put my blinker on
17 and turned slow. I got by - I got by some people that I
18 was with. And they put me on the blue light and they
19 pulled me over. You will see there is a lot of - there's
20 gonna be a lot of cars on the street so I just went by, you
21 know what I'm saying, where people was at. And I see when
22 I get out the car you will see on the video the police
23 officer got a gun to my head.

24 Now, I don't know y'all realize what's going on like
25 in the cities or anything like that, but, you know, we died

1 about the weeks almost like at an alarming rate.

2 SOLICITOR FULLER: Objection, your Honor.

3 THE COURT: Yeah, that's not an issue. The issue is
4 whether or not you committed these offenses.

5 MR. EVANS: Well it basically this is what I felt.
6 This is why I'm taking a jury trial. This is my life and I
7 know I'm facing fifteen years for this. But as you can see
8 in this video that I was complying with the law. I was
9 driving - you can see I'm driving with blinkers on and
10 everything. And basically y'all have to say and you will
11 see that basically its profiling. It's a profile thing.
12 And when the officer put the gun to my head I thought I was
13 gonna die. I mean like right is right and wrong is wrong I
14 understand that. But I believe though if y'all really
15 listen to me during this trial you will understand. I
16 don't know no laws, I don't know no codes, no statutes. I
17 just speak to me my own self cause it's my life. But once
18 the trials going on you'll understand further on about, you
19 know, what happened. Thank you.

20 THE COURT: Thank you, Mr. Evans.

21 The State can call it's first witness.

22 SOLICITOR FULLER: The State calls Detective Robert
23 Smith.

24 (WHEREUPON, ROBERT SMITH,
25 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

INVESTIGATOR ROBERT SMITH: BY SOLICITOR FULLER

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1 MADAM CLERK: Thank you. Have a seat.

2 DIRECT EXAMINATION

3 INVESTIGATOR ROBERT SMITH BY SOLICITOR FULLER:

4 Q. Will you please state your name for the record?

5 A. Robert Christopher Smith.

6 Q. And where do you work?

7 A. I work for the city of Rock Hill.

8 Q. What's your position with the City?

9 A. I'm a police officer specifically assigned as a
10 detective.

11 Q. How long have you been working there?

12 A. Came to work for the city of Rock Hill from the police
13 Department in Cincinnati, Ohio in 2010. I served as a
14 patrol officer and a field training officer for most of my
15 time there.

16 Q. And what are your present duties?

17 A. Currently I'm assigned to the Criminal Investigation
18 Division as a detective in the Property Crimes section.

19 Q. With reference to the day in question, were you
20 working June 21st of 2015?

21 A. I was.

22 Q. And what were you doing on your shift that evening?

23 A. That evening we were on patrol in a uniform wearing
24 a uniform driving a marked car. And I was specifically
25 training Officer Ochiltree who was in one of his early

1 phases of training.

2 Q. And where were you that night?

3 A. At that point we were over in the - if I remember
4 correctly it's the South Stonewall area. We were
5 discussing another vehicle, a suspect vehicle that had been
6 involved in another crime. We were to go off and look for
7 that vehicle. I was taking with another officer who had
8 pulled up beside my vehicle sitting on the roadway.

9 Q. And is that in York County?

10 A. Yes, ma'am.

11 Q. So how did you first come into contact with the
12 defendant?

13 A. At that point we were parked on the roadway on the
14 right side of the road. As I said Sergeant Rainier at the
15 time was one of the patrol officers that worked that
16 evening. He pulled up next to me and we discussed a
17 vehicle we wanted to look for and the vehicle was on Flint
18 Street which was behind us. Sergeant Rainier was gonna
19 circle around the block and approach the house that we
20 thought the vehicle might be in and I was gonna perform a
21 three point turn and go back in the other direction turn
22 right onto Flint Street. I initiated a three point turn,
23 began in the process of that where you make the left you
24 cross across the street and you begin to back. As I got to
25 about the other side of the street and began the backing

INVESTIGATOR ROBERT SMITH: BY SOLICITOR FULLER

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1 portion a vehicle came off of Flint Street at a high rate
2 of speed. I actually thought the vehicle was gonna strike
3 my patrol vehicle. I stopped thinking it was gonna try to
4 go behind me. The vehicle stopped. I then started to pull
5 forward to complete the three point turn at that point the
6 vehicle again moved. I stopped again and came along side
7 the suspect vehicle at that point which stopped the window
8 rolled down I rolled my window down and I said to the
9 driver at the side, what are you drunk, because of the way
10 he was driving. At that point I looked at his face. His
11 eyes kind of rolled a little bit, very watery looking, and
12 he appeared to be intoxicated so I then performed another
13 three point turn and followed after the vehicle.

14 Q. Where had that - the defendant's car gone at that
15 point?

16 A. He proceeded up the roadway. I was able to keep a
17 visual on him as we're quickly turning back around. He
18 proceeded up the roadway to Black Street where he lightly
19 rolled through the stop sign making a right onto Black and
20 then proceeded down Black Street. I caught up to him
21 quickly made the right and was catching up putting out my
22 radio traffic to my dispatch center letting them know that
23 I was gonna make a traffic stop.

24 Q. About how far did you go?

25 A. Total distance from the time that we actually made

1 contact with the vehicle to the time that we stopped and
2 then I was able to exit my patrol car and make contact with
3 the driver it was about maybe two thirds of a mile.

4 Q. Were your blue lights activated?

5 A. Yes, ma'am, I had my blue lights and siren activated.

6 Q. Okay. And did the car stop?

7 A. No, they did not initially stop, ma'am.

8 Q. When did the vehicle come to stop?

9 A. When we turned we went down Black Street and made a
10 right turn, continued down to Marshall; we made another
11 right turn and at that point there was a large block party
12 going on. There was cars in the roadway, people on both
13 sides of the street. The vehicle in front of me it stopped
14 and then it kind of lurched a little bit like it was trying
15 to figure out if he could get around the vehicles. At that
16 point he couldn't go any where so I exited the vehicle and
17 went to challenge the driver.

18 Q. About how many - how large would you estimate this
19 crowd to be?

20 A. I could easily say it was fifty people there. It
21 seemed like there was just people everywhere.

22 Q. So what happened after the car did stop?

23 A. When the vehicle stopped my concern when you have a
24 vehicle take off and you don't know what the driver's gonna
25 do at the end, what we would do is we would initiate what

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1 people see on the movies it's a high-risk traffic stop, a
2 felony traffic stop where you stay back by the vehicle
3 challenge the driver from that position yelling to them to
4 show their hands; that kind of thing. Unfortunately in
5 this circumstance there were so many people gathered about
6 that if the driver exited the vehicle and began engaging us
7 in gunfire or something like that we have no way to shoot
8 back because we can't take the risk of hitting somebody in
9 the crowd, so we would be in a very defensive position
10 trying to hide and hope that he didn't come to us and
11 attack. So when I exited the vehicle I quickly moved up
12 along side his vehicle. I had my weapon drawn and was
13 pointing towards the driver's door yelling show me your
14 hands, show me your hands and that kind of thing.

15 The door opened very quickly and at that point the
16 defendant stepped out of the vehicle.

17 Q. What happened when the defendant stepped out of the
18 vehicle? Did you still have your gun out?

19 A. I did, ma'am. I had my firearm drawn. I was in a
20 police uniform. I was yelling at him. The lights and
21 siren were still activated on my vehicle. It was very
22 clear that there was a police officer there. He exited the
23 vehicle and it was just evident - Immediately the first
24 thing I noticed is he didn't have any weapons in his hand
25 which is my primary concern. Not seeing any weapons

1 presented in his hand the look on his face was just a we're
2 gonna fight. And at that point I tried to holster my
3 weapon as fast as I could. I moved in quickly and I was
4 struck across the face on the left side of my face with his
5 right - it became mostly his forearm just because the way I
6 stepped into the punch and I kind of grabbed him in almost
7 a bear hug and he grabbed me and started trying to throw
8 me on the ground and I was trying to hold him up and I
9 turned him so that Officer Ochiltree was approaching from
10 the rear.

11 Q. About how long did the two of you struggle?

12 A. It was only maybe five or six seconds of actually
13 struggling before Officer Ochiltree got to him and at first
14 Officer Ochiltree attempted to try to pull him loose which
15 I did not want him to do that because he was actively still
16 resisting me and I didn't want to take another punch so I
17 told Officer Ochiltree to back off a few steps and taze
18 him.

19 Q. And is that what he did? Did he taze him?

20 A. He did, ma'am. He stepped back. At first I think he
21 realized that he couldn't taze him from where he was so he
22 backed up a little bit and then he fired his tazer. And
23 once he deployed his tazer the tazer took immediate full
24 effect. Mr. Evans sort of went limp and I was able to get
25 him to the ground at that point.

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1 Q. Did he comply at that point with your commands?

2 A. No, ma'am. The tazer will cycle for five seconds and
3 that cycling it actually just locks the body up. That
4 causes the person to be very rigid. You can still hear,
5 you're giving commands, you know, and we're telling them to
6 put their hands behind their back. When the tazing stopped
7 he immediately did not give me his right hand. I was able
8 to get one handcuff on. Of course the concern is still
9 could there be a weapon; is he gonna draw a firearm, you
10 know, where are we going from here, so at that point
11 Officer Ochiltree again deployed his tazer. At this point
12 the probes are still deployed. The wires are still
13 connected so there is no need to actually fire at him
14 again. It just sends another shock for five seconds so he
15 received a second tazing at that point.

16 Q. Did he also like comply?

17 A. He did. After the third time Officer Ochiltree tazed
18 him he finally stopped resisting. When the tazing stopped
19 then I was able to get his hands behind his back and
20 handcuff him and then to avoid what they call positional
21 asphyxiation which is where somebody is laying on the
22 ground with an officer on top of them and they just can't
23 breath we began setting him up and getting him up off the
24 ground.

25 Q. When you approached the defendant's vehicle did you

1 intend to arrest him?

2 A. Yes, ma'am, I was gonna arrest him at least at that
3 point for the failure to stop for a blue lights because it
4 was clear he was trying to get away. He accelerated away
5 from me at one point. It's not like he maintained a slow
6 speed looking for a place to stop or something like that.
7 It was a clear intent to get away. I was also intending to
8 conduct an investigation for DUI.

9 Q. And also when you had the defendant on the ground
10 with Officer Ochiltree was it also your intent to arrest
11 him at that time?

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

13 Q. So before we go any further let's talk a little bit
14 about the video system in your car. Was your patrol car
15 that night equipped with a recording camera system?

16 A. Yes, ma'am.

17 Q. And can you tell us a little bit about how it works?

18 A. Yes, ma'am. The camera system that the Rock Hill
19 Police Department employs in their marked units; there is a
20 single camera mounted at the front of the vehicle in the
21 windshield area. That video's a little bit better than the
22 view of the street. It's a pretty wide angle. That camera
23 system is attached to our lights so that when an officer
24 activates their blue lights the camera system itself will
25 go ahead and engage. The system also incorporates with it

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1 an in-car microphone which can record suspects and officers
2 speaking inside the vehicle. It also has a body microphone
3 system attached to it and that is a - just a mobile
4 microphone that's usually worn by the officer. Mine was
5 more high on my uniform so that you can hear my voice and
6 generally hear anybody I'm speaking with.

7 Q. You mentioned that the camera system can start when
8 the blue lights start. How did your camera activate on
9 June 21st of last year?

10 A. That evening it was activated when I turn on the blue
11 lights.

12 Q. And does the camera produce an actual recording?

13 A. It does.

14 Q. And was it in working order that night?

15 A. It was, ma'am.

16 Q. Let me show you what's been marked as State's Exhibit
17 One.

18 SOLICITOR FULLER: May I approach, your Honor?

19 THE COURT: You may.

20 Q. Do you recognize that disc?

21 A. I do, ma'am. This is a CD-R that you presented to
22 me earlier to review.

23 Q. And how do you recognize the disc?

24 A. I reviewed it to make sure that it was the video from
25 that evening.

1 Q. Are your initials on it?

2 A. They are.

3 Q. Do you know what's on that disc?

4 A. This is the video from my vehicle. It's recorded to
5 a digital camera in-car recording system in the police
6 department and then we can produce the disc.

7 Q. And you watched this video before trial today?

8 A. I have.

9 Q. Does it fairly and accurately reflect the events and
10 conditions of that night?

11 A. It does.

12 SOLICITOR FULLER: Your Honor, at this time the State
13 seeks to enter State's Exhibit One into evidence.

14 THE COURT: Any objection?

15 MR. EVANS: Object to what?

16 THE COURT: The video coming into so the jury can see
17 it. Do you object to that?

18 MR. EVANS: Naw.

19 THE COURT: Okay. He said naw which I guess is no.

20 (WHEREUPON, STATE'S EXHIBIT NUMBER ONE, IDENTIFIED AND
21 MARKED, RECEIVED INTO EVIDENCE.)

22 THE COURT: Go ahead.

23 SOLICITOR FULLER: May we publish, your Honor?

24 THE COURT: Yes.

25 (WHEREUPON, STATE'S EXHIBIT NUMBER ONE PUBLISHED TO

INVESTIGATOR ROBERT SMITH: BY SOLICITOR FULLER

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1 THE JURY AT 11:11 AM.)

2 BY SOLICITOR FULLER:

3 Q. Is that the defendant driving away?

4 A. Yes, ma'am.

5 (STATE'S EXHIBIT NUMBER ONE STOPS AT 11:22 AM.)

6 BY SOLICITOR FULLER:

7 Q. Let'S go back and talk a little bit about the actual
8 altercation that you had. Did he physically strike you?

9 A. Yes, ma'am.

10 Q. And where did he punch you?

11 A. He struck me across the left side of my face right
12 across the cheek and temple.

13 Q. Were you injured at all?

14 A. About a week after that my face, you know, I'm not
15 upset to admit that my face was pretty numb but I didn't
16 walk away with any serious injuries from it.

17 Q. What happened after the defendant was handcuffed?

18 A. After he was handcuffed we began setting him up. At
19 that point that's when you see me kind of pull him up
20 trying to get him to stand up. Again like I said you don't
21 want to leave somebody in a position like that. We've
22 learned over the years positional asfixial leaving somebody
23 on their stomach on the ground can lead to suffocation so
24 you definitely get them up and get them moving to try to
25 physically assess em. I stood him up. You see me kind of

1 checking his pockets; patting him down just making sure
2 there are no immediate weapons. And then I moved him over
3 to the vehicle where we had people gathered around trying
4 to get them to move out of the way. And again search him
5 at the vehicle which is what the time out there in front,
6 pause, and then photograph the tazer application where the
7 two probes had struck him. We make sure we document
8 everything and then I remove the probes.

9 Q. Where did you go after you left the scene?

10 A. We went back to the Sally port which is the entry
11 point where we take people into the jail over at the Rock
12 Hill Police Department.

13 Q. What were you planning to do at the Sally port?

14 A. The plan when we got to the Sally port was to -
15 initially we would normally be in a DUI investigation.
16 We'd like to do the investigation right there at the scene.
17 Even if you had to fight with somebody once you get
18 everything calmed down you want to go ahead and try to do
19 the DUI checks; everything you normally. You see people do
20 it. Standardized field sobriety test, that kind of thing.
21 Unfortunately because of the crowd, just the hostility of
22 the moment, there was citizens who were trying to, you
23 know, community members trying to calm people down.
24 Officers trying to keep them back it just was not a safe
25 environment to obviously take him out of handcuffs and

1 start it up there, so we took him back to the police
2 department. The Sally port is an area where you can drive
3 in and close the gates. Now there's no place to go. And
4 at that point we had hoped to do field sobriety test.

5 Q. Did you do field sobriety test?

6 A. We did not.

7 Q. Why not?

8 A. He was still pretty upset when we got back to the
9 police department. He was relatively calm but just
10 demeanor, statements he was making, led us to believe that
11 there was gonna be an altercation if we took him out of
12 handcuffs outside so we decided to just take him straight
13 in and move to offer him a breath test.

14 Q. Did Mr. Evans receive any kind of medical attention?

15 A. He did. Once we got back - Initially I thought he
16 was tazed two times. When I'm fighting and struggling with
17 somebody I'm not - I was fortunate enough not to get
18 electrocuted so I didn't know that there was three
19 applications of the tazer. Our policy is after the third
20 application of the tazer we go ahead and call from EMS to
21 just check somebody over to make sure everything's okay.

22 Once we got back to the police department we were
23 talking when we waited for a vehicle that was inside the
24 Sally port to be moved, and Officer Ochiltree informed me
25 at that time that he actually taze3d him three times so I

1 called for EMS to come and check him and they came out
2 checked him over to make sure that he was - his heart and
3 everything was fine. There was nothing unusual, nothing
4 for immediately hospitalization.

5 Q. Was he fine?

6 A. According to EMS he was, ma'am.

7 Q. And then what happened next?

8 A. At that point we moved into the breath test site.

9 As I stated we took him inside and we have a room
10 inside the police department that's more secure where you
11 can take somebody out of the handcuffs and give them the
12 opportunity to blow as per law.

13 Q. What happened at that point? Did he submit to the
14 breath test?

15 A. No, ma'am, he refused.

16 Q. So what happened by the time you left?

17 A. After that we took him into the jail. I proceeded to
18 book in and issues several charges.

19 Q. Okay. I just have a few more questions. This entire
20 incident from when you first encountered the defendant to
21 when that last scene where the altercation took place, was
22 that all in York County?

23 A. It was, ma'am.

24 Q. And then in opening the defense, Mr. Evans mentioned
25 racial profiling. Can you talk to us about that? Were

INVESTIGATOR ROBERT SMITH: BY SOLICITOR FULLER

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1 there any racial profiling at play here?

2 A. No, ma'am.

3 Q. What was your - What was the reason you were gonna -
4 Let's just get it one more time. What was the reason you
5 were going to pull Mr. Evans for that evening?

6 A. That evening when he first came along side us
7 obviously, I mean I'm facing the other way. I'm not trying
8 to quickly get turned around in the vehicle and at the
9 first contact we had was actually beside each other. When
10 I was asking the person who had almost struck my vehicle
11 twice are you drunk and then he looked very drunk so that
12 was when I decided well we got to stop this guy at this
13 point.

14 Q. And that person that you saw in the vehicle that night
15 who didn't stop when you turned your lights on and
16 ultimately punched you is he in the room today?

17 A. He is today, ma'am.

18 Q. Can you please point him out and tell us what he's
19 wearing?

20 A. He's wearing a - I believe it's stripes across a
21 white shirt seated at the defense table with glasses on his
22 head.

23 Q. Please let the record reflect that Detective Smith
24 has pointed to the defendant Mr. Marquise Evans.

25 SOLICITOR FULLER: I have no further questions.

INVESTIGATOR ROBERT SMITH: CROSS BY MR. EVANS

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1 see your face at that point. Better than I can from here
2 at this moment.

3 Q. Okay. So in the video I don't see any - any of that
4 interaction as far as what you said of me pulling up
5 against you. I don't see any of that in the video. Can
6 you answer that?

7 A. When the video - The video faces completely forward
8 outside of the vehicle there. So obviously when I'm
9 sideways in the roadway you can't see anything to the left.
10 As I back up and finish that maneuver you see the vehicle
11 stopping. That's when we come up along side each other and
12 I pull up. So obviously again just the frame of the
13 vehicles are what it is. You can't see anything until I
14 turn around. We don't even know that you're vehicle is
15 there according to the video.

16 Q. Okay. Another question. If you seen me - you said
17 in your statement that you seen me with no seat belt also.

18 A. Yes, sir.

19 Q. Now when did you initiate the - activate the siren?

20 A. When did I activate the siren?

21 Q. Yeah. After we coming down the street ---

22 A. Yes, sir.

23 Q. --- after you turn around ---

24 A. Yes, sir.

25 Q. --- and you see me with no seat belt on, and turn

1 making a right ---

2 A. Yes, sir.

3 Q. --- what took so long to activate the siren when
4 we had - it was on a clear street on Black Street you
5 didn't activate the siren until I made a right?

6 A. Initially what we do is we'll turn our blue lights
7 first. We don't activate the siren until we've had the
8 blue lights for long enough to realize the person may not
9 actually know we're behind them. A lot of people just
10 don't see blue lights. That's happened to anybody and
11 everybody. When I first turn around in the vehicle the
12 very first thing that I want to do especially if I've got
13 somebody that I think is DUI a lot of times DUI driver's
14 will flee from us on foot or in the vehicle, so my initial
15 thoughts are when I get turned around on the suspect
16 vehicle to try to catch up, get a license plate, and get on
17 the radio and give a description of the vehicle. What I'm
18 doing; where I am. At that point I want to make sure I
19 give all that information. The blue lights on my vehicle
20 activate first. And that's a little bit after we've
21 started down the roadway after we've made that initial
22 right. You can hear me at that point giving a lot of radio
23 traffic out. Once I've given that initial radio traffic
24 and I realize the suspect vehicle is not stopping
25 immediately then I activate my siren. That's to give a

INVESTIGATOR ROBERT SMITH: CROSS BY MR. EVANS

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1 further audio signal that I want you to stop. And then
2 when we make the right just continue from there.

3 Q. So you - So basically you saying the blue lights
4 activate when the camera turns on?

5 A. No. The camera turns on when I activate the blue
6 lights. So when you actually hear audio kick in the camera
7 will record for a full minute in that particular vehicle
8 before you ever hear sound so I can see where that would be
9 confusing. The - It's got a DR style recording to it.
10 It's the automatic play back thing so when I hit record I'm
11 gonna actually capture the minute that occurred before.
12 You won't have any audio to go along with that. So when
13 you first hear audio pick up in the video that's when the
14 lights have actually activated and the camera is actually
15 turned on if that makes sense.

16 Q. So basically - So basically what you're saying is
17 you seen me with no seat belt, you seen me supposed to be
18 disoriented, then you activate the blue lights on Black
19 Street or do you activate the blue lights on Marshall
20 Street?

21 A. On Black Street.

22 Q. Okay. If I didn't stop - If you initiated the blue
23 lights on Marshall Street why would you say that I'm allude
24 and I got my blinkers?

25 A. On Black Street. I initiated the blue lights on

1 Black Street and I initiated siren and then when you
2 continued to go that's when I'm realizing that you speed up
3 when you make the right and your vehicle actually lunges
4 forward and continues to go. Had you stayed at five miles
5 per hour or so I might think you were just trying to figure
6 out what to do as where to pull over. When the vehicle
7 makes the right - very wide right turn and accelerates away
8 that's when I determine this vehicle's not stopping. This
9 is a pursuit. And then when we make another turn.

10 Q. Okay. Did you - Did you write me a ticket for
11 speeding? Did you write me any tickets?

12 A. I have to look at the charging documents. I don't
13 think I wrote any ticket for speeding.

14 Q. Right. So if I was trying to loose you wouldn't it
15 be probable cause for you to write me a ticket for speeding
16 or any traffic violation I may have done?

17 A. I can write a lot of tickets. I don't have to write
18 a charge for every single thing. And alluding isn't
19 necessarily speeding, sir.

20 Q. So you saying I tried to loose you but I had the brake
21 on?

22 A. Yes.

23 Q. Okay. So once we get to on Marshall Street is it - as
24 you can see it's a lot of cars in the road?

25 A. Yes, there were a lot of vehicles and people.

INVESTIGATOR ROBERT SMITH: CROSS BY MR. EVANS

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1 Q. Yeah, on Marshall. Not --

2 A. Oh, I'm sorry, yes. On Marshall Street.

3 Q. Right.

4 A. Yeah, there was no vehicles in the roadway that I
5 remember. Just people was parked on the side - -

6 Q. Yes, the side of the road. So basically you can't
7 just stop you know what I'm saying in the middle of the
8 road when the police is behind you. You have to get
9 somewhere where you can actually have some room.

10 THE COURT: I hate to interrupt you. I'm going to ask
11 you to sit down a minute and let the jury go to the jury
12 room while we take up a matter outside your presence.

13 (JURY EXITS COURTROOM AT 11:33 AM.)

14 THE COURT: I apologize, Mr. Evans, but I was just
15 handed a note that the alternate is being called because
16 her son is being transferred to Carolina Medical Center in
17 Charlotte. I have no idea why so what I'm gonna do with
18 the permission of both sides is let my Clerk go tell Ms.
19 Myers-Adams that she needs to call her husband and make
20 arrangements to then call and we'll take a little break
21 while we do that.

22 You can step down and get some water but you can't
23 talk to the Solicitor or your other officers while they're
24 on break.

25 MR. EVANS: Can I use the restroom?

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1 THE COURT: Yeah, you can get some water if you need
2 to. We'll take a little break while we find out what's
3 going on.

4 (COURT IN RECESS AT 11:34 PM.)

5 (WHEREUPON, COURT'S EXHIBIT NUMBER ONE, IDENTIFIED AND
6 MARKED, RECEIVED INTO EVIDENCE.)

7 (COURT BACK IN SESSION AT 11:41 AM.)

8 THE COURT: Get the officer back on the witness stand
9 and see if we can find Mr. Evans.

10 (PAUSE AT 11:42 AM.)

11 MS. LIPINSKI: I'm very sorry, your Honor. I've had a
12 - if you were in court this morning received a call from
13 one of the witnesses that Mr. Evans subpoenaed that he
14 wanted here and so I was trying to coordinate that with her
15 and was trying to just goes like a pretty bad old school
16 three way conversation. We were not being disrespectful.

17 THE COURT: I understand.

18 MS. LIPINSKI: I didn't want to cut off that doctor
19 when I had her on the phone cause if you recall from being
20 in private practice it's hard to get those people on the
21 phone sometimes.

22 THE COURT: I understand. All right, you can bring
23 the jury back in. While she's doing that Ms. Myers-Adams,
24 I don't know exactly what the issue is but she felt like
25 she needed to leave so we now have no alternate. She's

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1 been excused from the rest of the proceedings.

2 (JURY REENTERS COURTROOM AT 11:45 AM.)

3 (WHEREUPON, COURT'S EXHIBIT NUMBER TWO IDENTIFIED AND
4 MARKED, RECEIVED INTO EVIDENCE.)

5 THE COURT: Members of the jury panel, I've excused
6 Ms. Myers-Adams. She has a medical situation with her son.
7 I don't know that she still does but that's where she needs
8 to be so I've excused her to be there.

9 You may proceed, Mr. Evans.

10 CROSS-EXAMINATION-CONTINUES

11 INVESTIGATOR ROBERT SMITH BY MR. EVANS:

12 Q. Like I was saying, Mr. Smith, basically when you
13 stated you stopped by and said am I drunk and I looked
14 disoriented. Do I look disoriented now?

15 A. No. In looking at you right now you look fine.

16 Q. That's - that's the way I normally look, my eyes
17 is naturally dropped.

18 A. You don't look the same right now, sir.

19 Q. You know what I'm saying but I - I hadn't seen any
20 blue lights being activated on Black Street. Down the
21 first right turn I mean I make the first right why was that
22 - that's - that's Black Street am I correct?

23 A. Yes, sir.

24 Q. Did you see any lights in the video being activated
25 ---

- 1 A. Yes.
- 2 Q. --- on Black Street?
- 3 A. On Black Street yes.
- 4 Q. I seen the lights activated when I was turning on
5 Marshall Street.
- 6 A. Is that a question, sir?
- 7 Q. I'm asking you did you activate the lights when I
8 made the right on Marshall Street?
- 9 A. I activated the lights on Black Street.
- 10 Q. I'm talking about when I made the right and you said
11 I lurched forward.
- 12 A. Right. I activated the lights on Black Street prior
13 to your right turn.
- 14 Q. How long - How long did you say that you activated
15 the lights for?
- 16 A. Distance or time?
- 17 Q. Distance.
- 18 A. What are you looking for?
- 19 Q. Distance.
- 20 A. Distance? I'd say half way between the point where we
21 made the first right turn and half way between when you
22 made the second right turn roughly. It didn't - when the
23 sound kicks in you can tell that that's when the lights are
24 on.
- 25 Q. Well in the video - the camera is recording when you

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1 was making the three point turn, the U-turn; am I correct?

2 A. Yeah. Yes, the camera's actually still - it's always
3 recording. It just picks up that minute before I turn the
4 lights on so when you activate the lights the sound system
5 actually activates along with it. You can even begin
6 hearing audio recording which is why there is a delay
7 between the initial point where you were watching the video
8 and the point where you actually hear sound.

9 Q. Why at - Like I said on the video as you can see there
10 was no blue lights on in the video.

11 SOLICITOR FULLER: Objection, your Honor.

12 THE COURT: Just frame that as a question.

13 SOLICITOR FULLER: He seems to ask the -

14 THE COURT: Just frame it as a question.

15 BY MR. EVANS:

16 Q. Do you see any blue lights on in the video when I
17 made the right turn on Black Street?

18 A. No. The blue lights are not on when you make the
19 initial right turn onto Black Street. No, they're not on.

20 Q. Okay. So riding down Black Street you say you didn't
21 put the lights on so what point on Black Street?

22 A. About half way between Stonewall I believe it is and
23 then Marshall I think is the street you turned right on.
24 That's about half way between those two points when I
25 actually activated the blue lights. The sound comes on and

1 you can hear me giving a description of the vehicle and
2 that kind of thing. The lights are running the entire
3 time. And then I activate the siren shortly after that.

4 Q. Well as you see in the video - -

5 MR. EVANS: May I take a look at it again?

6 THE COURT: No.

7 SOLICITOR FULLER: Objection, your Honor.

8 THE COURT: No. You can argue that to the jury later.

9 MR. EVANS: Oh. Oh.

10 THE COURT: You need to ask this gentleman a question.

11 MR. EVANS: Oh. Okay.

12 Q. So now we still talking about the right turn up
13 Marshall Street. Do you see any signs of me trying to
14 elude you?

15 A. Yes. When you make a turn on the Marshall Street?

16 Q. Yeah.

17 A. Yes, sir. Yes.

18 Q. Okay. So I put - Did I put my blinker on?

19 A. Yes.

20 Q. Did I put my blinker on every turn I made?

21 A. Pretty sure you did, yes.

22 Q. Okay. So is that a sign of a disoriented driver?

23 A. It can be. I mean it depends on what you're looking
24 for. I don't know.

25 Q. Okay. So basically you saying that you see me

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1 disoriented and waited how long - how long did you wait
2 after you seen me on the passenger of your car you say
3 before you activated the blue light?

4 A. I'm not --

5 Q. You seen me - You pulled up next to me and you're a
6 police officer and you pull up next to me as you say and
7 you said I'm disoriented or drunk or whatever, like that;
8 you ask me am I drunk or disoriented or whatever how come
9 you didn't activate the siren right now? Why would you let
10 me get way down on Marshall Street before you activate a
11 blue lights?

12 A. Are you asking procedurally why I did that?

13 Q. Right.

14 A. Okay. Initially when you have a vehicle that you
15 believe is a DUI driver, a suspect vehicle, any kind of
16 vehicle you're trying to pull over, a lot of times you'll
17 notice an officer following you for a while before they
18 initiate the traffic stop. A lot of times people think
19 that's because the officer's just staying with them for no
20 reason. Generally during that time frame the officer is
21 getting your license plate, giving out descriptions of your
22 vehicle, looking for other indicators such as going far to
23 the right and then back over to the left gathering evidence
24 through the video in a lot of cases so that we can present
25 that later in a courtroom and build a case. Also in this

1 case I'm training another officer so I have an officer next
2 to me who I'm explaining to him what we're doing and what
3 we're going to do when we make the stop. So you'll hear me
4 talking and you hear me say at one point during the video
5 get ready he's gonna bail. That's my guess that you were
6 gonna exit the vehicle and run and I'm telling Officer
7 Ochiltree what to do. So there's multiple things going on
8 inside the vehicle. Its very unusual and it would be a
9 poor decision in my estimation to initiate the blue lights
10 when I first was doing the three point turn because then if
11 the vehicle did not want to stop they would have all that
12 time to get away and the best I can say was a basic
13 description of you and a basic description of the vehicle.
14 I wouldn't have a license plate, a direction of travel
15 other than he just made a right and that kind of thing. So
16 I was trying to gather evidence and catch up to you before
17 I initiated a traffic stop, yes.

18 Q. So basically what you're saying is if I almost crash
19 in your police car and look disoriented and drunk and
20 that's proper procedure for you to let me keep driving a
21 half mile away before you activate a blue lights?

22 A. Well I need to gather evidence and build a case and
23 follow procedures and use the radio; that kind of thing.
24 There's a lot of things going on inside the vehicle. I
25 can't just - I could turn the blue lights on and watch you

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1 leave but I didn't want to do that.

2 Q. Okay. So let me ask you about the incident when
3 we turned on Walnut.

4 A. Yes, sir.

5 Q. Is it proper procedure to pull out - put - pull out
6 a gun on my head when I slowly made a right turn to stop?

7 A. I was investigating procedurally and I'm completely
8 within police and departmental procedure. Yes I was a
9 hundred percent within policy and procedure as well as
10 proper teachings of police work.

11 Q. Okay. So why would you pull a gun out and aim it at
12 my head?

13 A. Well a lot of times after you've been involved in a
14 chase such as this the person comes out ---

15 Q. Excuse me.

16 Q. --- of the vehicle --

17 Q. A chase?

18 A. Yes, sir, that was a chase.

19 Q. Huh.

20 A. After being involved in a vehicle chase where a
21 vehicle doesn't stop for you initially people come out of
22 the vehicle and start shooting at police officers. And in
23 those types situations you don't know what you're dealing
24 with in a vehicle. The first thought is always gonna be to
25 the highest level of defense which is gonna be a firearm.

1 For instance if I got out of the vehicle and approached
2 quickly thinking that he might run and I have my tazer in
3 my right hand and he came out with a firearm in his hand
4 I'd find myself in a really bad position because a tazer
5 versus a firearm equals bad things happening all around.
6 So to have the weapon drawn and prepared to fire is
7 definitely what we would teach a law enforcement officer,
8 yes.

9 Q. So when you point the gun to my head was it your
10 intention to shoot or was it your intentions to slow me
11 down or what, why did you pull your gun out when obviously
12 I was complying when I make a slow right turn on Marshall
13 why would you come and pull it and pull your gun out on me
14 and aim it at my head?

15 A. It was my estimation - At that point I wasn't actually
16 aiming at your head. If you want to know where I was
17 specifically aiming it was the center of your chest which
18 is where we teach officers to aim your weapons. It was my
19 estimation you were not compliant at that moment; that you
20 were fleeing from me and that you were going to flee and
21 that you could have a weapon.

22 Q. Okay. Fleeing - Was it a high - any high - high
23 speeds?

24 A. No, sir, no high speeds.

25 Q. Okay. So is that - Don't you consider that not a

INVESTIGATOR ROBERT SMITH: REDIRECT BY SOLICITOR FULLER

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1 chase if its not no high speeds?

2 A. If I was to tell you to stop right now and had a legal
3 reason to stop you and you walked in front of me and
4 continued to walk for a mile that would be a chase.

5 Q. Wow. I think -

6 MR. EVANS: I have no more questions, your Honor.

7 THE COURT: Any redirect?

8 SOLICITOR FULLER: Just a couple of questions, your
9 Honor.

10 REDIRECT EXAMINATION

11 INVESTIGATOR ROBERT SMITH BY SOLICITOR FULLER:

12 Q. Detective Smith, did Mr. Evans have the opportunity to
13 pull over?

14 A. Yes. There were multiple opportunities to pull over.

15 Q. What ultimately caused Mr. Evans to stop his car?

16 A. From what I could tell what ultimately stopped him
17 was the vehicle and the people in the roadway. When he
18 first stopped he actually rolled a little bit as though he
19 was trying to decide whether or not he'd go again and then
20 you see him exit the vehicle and approach because at that
21 point I realize he's blocked.

22 Q. And as soon as you realized that Mr. Evans didn't
23 have a gun and he wasn't coming out of his car with a gun
24 did you holster your weapon?

25 A. I did. I holstered my weapon and prepared for a

1 physical confrontation.

2 Q. Mr. Evans said that he complied with you. Did he
3 actually comply with your verbal commands?

4 A. No, I felt like punching me in the head was not
5 compliance, ma'am.

6 SOLICITOR FULLER: No further questions.

7 THE COURT: Any recross?

8 MR. EVANS: Can I?

9 THE COURT: Yes,, sir. Yes, sir.

10 RECROSS-EXAMINATION

11 INVESTIGATOR ROBERT SMITH BY MR. EVANS:

12 Q. Okay. After you pulled your gun out did you - did
13 you rush me? Did you rush towards me?

14 A. Once I had my weapon out I closed the distance in the
15 vehicle I saw you didn't have any weapons in your hand and
16 I holster and I move in and grab you at that point.

17 Q. Oh, so, you made a aggressive move towards me?

18 A. Yes. You were under arrest at that moment.

19 Q. Okay. So yo made a aggressive - you made an
20 aggressive move towards me after you pulled the gun out?

21 A. I don't understand the question, sir.

22 Q. I said you made an aggressive move towards me after
23 you say you holstered your gun.

24 A. Yeah, I holstered the weapon and then I went in to
25 grab you cause it looked like you were gonna punch me at

1 that moment.

2 Q. Well you seen on the video I get out - -

3 SOLICITOR FULLER: Objection.

4 THE COURT: Go ahead, you can ask that question.

5 Let's see how he ask it.

6 Q. MR. EVANS: Continue?

7 THE COURT: Go ahead.

8 Q. Never mind. Well basically do you feel that I reacted
9 when I get out the car do you feel I reacted aggressively
10 toward you?

11 A. I feel like you were actively aggressive towards me,
12 yes. You were actively aggressively fleeing.

13 Q. Do you feel like you was over aggressive towards me?

14 A. No. I was within policies and procedures and teachings
15 of law enforcement.

16 Q. Okay. Let me ask you a question about the tazer.

17 How many volts is there in a tazer?

18 A. If I remember correctly it's a fifty thousand volt
19 tazer.

20 Q. Okay. When I'm on the ground and my arm behind my
21 back, why - why do you - this officer use the tazer three
22 times while I'm on the ground?

23 A. If you have a person whose especially in a situation
24 such as this where you're actively struggling and fighting
25 with somebody, it's not unusual at all for a person to

1 continue to struggle and fight and pull a weapon of some
2 sort. At one point one of his arms is completely
3 underneath the body and that's when we're actively tazing
4 you because you would not put both of your arms behind your
5 back.

6 Q. So when you get tazed its - can you have movement in
7 your body when you get tazed?

8 A. Now during the five second tazing a person cannot
9 generally cannot move. They're pretty much locked up.

10 Q. Does that --

11 A. And there is a pause and you're yelling at them give
12 me your hands, give me your hands, and they don't do it
13 then the tazer is reapplied for another five seconds.
14 You're looking to make the person stop behaving the way
15 they are. You can also actively move somebody's body
16 generally during tazing so that's - that was initially how
17 I got one handcuff on you.

18 Q. Okay. So basically you saying I'm on the ground and
19 you tazing me so how can I put my arm behind my back and
20 I'm frozen I'm afraid I'm gonna be electrocuted?

21 A. Between the tazing's there's - you can actively move
22 freely perfectly at that moment. Once the tazing stops
23 you're able to move.

24 Q. Well I couldn't move. So how was that resistance and
25 I'm on the ground? I'm on the ground.

1 A. Are you asking how you resisted?

2 Q. Yeah, and I'm on the ground.

3 A. Because when the tazing stops you kept fighting to
4 keep your arm underneath your body and not giving it up to
5 me. You were actually physically pulling away from me.

6 Q. But you're telling me that you're frozen and you get
7 electrocuted you can't move your body. If you seen the
8 video that once I got hit to taze you locked up. You can't
9 - you cannot move. Am I correct?

10 A. During the tazing you cannot move. When the tazing
11 stopped you would force your body and you would actively
12 keep your arm locked up so that I couldn't pull it out and
13 then you would be tazed again and you would seize. And
14 then when the tazing stopped you - I had to fight your arm
15 out from underneath your back.

16 Q. So you think - Do you think that's over excessive for
17 somebody to be on the ground to be tazed three times?

18 A. No not in this situation it was not.

19 Q. Okay. Let me ask you one more thing. How long you
20 been on the force?

21 A. I been a police officer - I was ten years as a
22 military police officer and then after getting out of the
23 Army after coming back from Iraq where I was a police
24 officer for ten years in the Army. I joined the Cincinnati
25 Police Department in 2006 and then I served with the

1 Cincinnati Police Department until 2010 and then I came to
2 the Rock Hill Police Department where I've served since.

3 Q. Okay. Are you a worldly person?

4 A. Am I a worldly person, sir?

5 Q. Worldly. Like worldly. You know what I'm saying
6 like are you --

7 A. Am I

8 Q. Do you agree to loose?

9 A. Yes.

10 Q. Okay. Can I ask you have you have seen any white
11 officers kill the unarmed black dude ---

12 SOLICITOR FULLER: Objection, your Honor.

13 Q. --- in the last year?

14 THE COURT: I sustain the objection. This isn't -
15 that is not an issue in this case.

16 MR. EVANS: Well, your Honor, I'm just stating the -
17 permitted to ask that you know what I'm saying how somebody
18 could think with a lot of stuff that's going on in today's
19 America.

20 THE COURT: Well, I sustain the objection. You can't
21 ask that. You can go on to another question.

22 MR. EVANS: No further questions.

23 THE COURT: All right. You can step down. You can be
24 excused. We appreciate your time.

25 (WITNESS LEAVING WITNESS STAND.)

OFFICER DUSTIN OCHILTREE: DIRECT BY SOLICITOR FULLER

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1 THE COURT: Call your next witness.

2 SOLICITOR FULLER: Thank you, your Honor. The State
3 calls Officer Dustin Ochiltree.

4 (WHEREUPON, DUSTIN FULLER, BEING
5 FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

6 MADAM CLERK: Thank you. You can have a seat.

7 DIRECT EXAMINATION

8 OFFICER DUSTIN TYLER OCHILTREE BY SOLICITOR FULLER:

9 Q. Could you please state your name for the record?

10 A. Yes, ma'am. Dustin Tyler Ochiltree.

11 Q. And where do you work?

12 A. I work for the city of Rock Hill Police Department.

13 Q. And what do you do there?

14 A. I am assigned to the patrol division as a patrol
15 officer.

16 Q. How long have you been working in the Patrol Division?

17 A. I've been with the Patrol Division since June. I got
18 hired on the police department in January.

19 Q. Of last year?

20 A. Yes, ma'am, of last year.

21 Q. What are your present duties?

22 A. My present duties I'm assigned to patrol, answer calls
23 for service, direct traffic violations, you know, generally
24 the quote unquote routine police stuff that you hear of
25 that's my duties.

1 Q. Were you working on June 21st of last year?

2 A. Yes, ma'am, I was.

3 Q. And were you alone or were you working with another
4 officer?

5 A. I was working with another officer.

6 Q. Were you still training then?

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

8 Q. How far along in your training were you?

9 A. I had just started the field program - field training
10 program about three weeks prior to that.

11 Q. What were the two of you doing on your shift that
12 night?

13 A. We were looking for another - we were looking for a
14 vehicle in the area that we were in on South Stonewall.
15 The street behind that's called Flint Street; we were
16 contacted by Sergeant Rainier about another vehicle. I
17 forget what exactly the vehicle we were looking for at the
18 time but we were, you know, looking for a vehicle at that
19 time.

20 Q. And was that in York County?

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

22 Q. Can you tell us a little bit about the first contact
23 you had with the defendant?

24 A. Yes, ma'am. The first contact we had with the
25 defendant was when we were executing a three point turn

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1 where we were perpendicular on the road. That's when I saw
2 the vehicle come up almost strike us. We back up a little
3 bit. I think he's going around us; he lurches forward
4 almost hits us again. That's the first.

5 Q. And so what happened after that?

6 A. What happened after that is he pulled parallel to us.
7 I heard Officer Smith roll down his window ask the guy,
8 hey, man, are you drunk? And at that time I looked over at
9 him also saw that he looked disoriented. I also observed
10 that he wasn't wearing his seat belt. I also observed that
11 his eyes were glassy and blood shot.

12 Q. Where did the two of you go after that?

13 A. The two of us after that we went - we turned around
14 again, got behind the defendant's vehicle. We headed
15 towards Black Street from South Stonewall. From South
16 Stonewall we turned - we made a right onto Black Street
17 continued down until we made a right on Marshall Street.

18 Q. And were the - Do you recall, were the blue lights on?

19 A. Yes, ma'am, the blue lights were activated about right
20 when we made the right turn on Black Street. I'd say not a
21 second or two after that is when the blue lights came on is
22 when we made the right onto Black.

23 Q. Was the siren turned on at some point as well?

24 A. Yes, ma'am, the siren was turned on. I don't recall
25 exactly which street we turned the sirens on but the sirens

1 were engaged. I'm wanting to say Marshall Street but I
2 couldn't say for sure.

3 Q. Can you tell us about how long you all followed him
4 and how far you think you probably went?

5 A. Yes, ma'am, absolutely. It's about two - two thirds
6 of a mile.

7 Q. Did the defendant ever pull over or attempt to pull
8 over?

9 A. No, ma'am.

10 Q. When - What if anything did make the defendant stop
11 his car?

12 A. We came upon, when we turned onto Walnut Street I
13 believe it was, we came upon a large group of cars in the
14 middle of the roadway; people standing along both sides of
15 the road, it looked to be like a house party going on. The
16 defendant, you know, came to a stop lurched forward again
17 and then stopped his vehicle.

18 Q. What happened? What did you do after the defendant
19 stopped the car?

20 A. The defendant stopped the car I exited the vehicle
21 kind of stood to the side of the vehicle kind of watched
22 for the crowd as Officer Smith was closing in on the
23 vehicle.

24 Q. And when the altercation began what role did you play?

25 A. When the altercation began I saw Officer Smith

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1 struggling with the defendant. I ran up behind the
2 defendant; I initially grabbed the defendant. I forget
3 which arm that I grabbed and want to say it was his right.
4 I don't remember which one. At that time, you know, I'm
5 still in training; my training officer told me, you know,
6 disengage and taze him so at that time I backed off the
7 confrontation a little bit and deployed my tazer.

8 Q. Let's talk a little bit about tazing. Can you tell us
9 a little bit about the standard procedures regarding how
10 you use a tazer?

11 A. I'm sorry, could you rephrase the question?

12 Q. Can you tell - How are you taught to use your tazer?

13 A. I had actually just went through tazer training. I'm
14 wanting to say two or three days beforehand. I had just
15 been issued a tazer before then and before then I had to go
16 through a four-hour training session on the proper use of
17 the tazer; how the tazer should be deployed; legal
18 ramifications of the tazer, you know, all of that's taken
19 into consideration.

20 Q. What is the standard procedure? How are you taught
21 to use it? How is the appropriate way?

22 A. In this particular case I backed up just so I could
23 - so I could get, you know, a good spread with the barbs.
24 I'm sorry, I'm having a difficult time understanding you
25 know exactly what you want me to explain.

1 Q. Just walk me through how you deployed your tazer
2 that night.

3 A. Okay. That night I disengaged from the defendant in
4 the struggle between Officer Smith and the defendant. I
5 backed up in order to get what's called a good spread in
6 order to be able to effectively use the tazer which causes
7 what you saw in the video; cause the defendant, or you
8 know, causes the defendant to lock out and fall to the
9 ground in order to bring him into compliance.

10 Q. And how many more times did you deploy the tazer?

11 A. After he was on the ground I deployed my tazer two
12 more times.

13 Q. Okay. Go ahead.

14 A. I'm sorry, let me rephrase. I put the tazer through
15 two more cycles. I only deployed the tazer once and once
16 he was on the ground I put it through two more cycles.

17 Q. What does it mean two more cycles?

18 A. The two cycles that I ran through once he was on the
19 ground no more barbs are being shot out or anything like
20 that, it was just the electrical charge, in order to bring
21 him into compliance.

22 Q. When you taze someone is it continuous volts of
23 electricity?

24 A. Yes, ma'am, it's a five second cycle. So once the
25 probes make contact the electricity is gonna go for five

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1 seconds and then it will stop and at that time the person
2 is given a chance to comply with the officer's verbal
3 commands for - from there, you know, if they're still
4 noncompliant which in this case he was, they're given
5 another cycle of the tazer until they are brought into
6 compliance.

7 Q. What happened after the last, the third time you tazed
8 him?

9 A. After the third time I tazed him Officer Smith was
10 still was able to wrestle the defendant's arm from
11 underneath him and put - placed the handcuffs on him.

12 Q. And the man that you saw that night in the vehicle
13 that you ultimately had to taze to make complaint on June
14 21st, do you see him; is he present in the courtroom today?

15 A. Yes, ma'am, he is.

16 Q. Could you please identify him and point to him?

17 A. Absolutely. Its - -

18 Q. Describe what he's wearing.

19 A. Yes, ma'am. He's wearing a red and blue line shirt
20 and glasses on top of his head.

21 SOLICITOR FULLER: Please let the record reflect that
22 Officer Ochiltree has pointed to the defendant Mr. Evans.

23 (WITNESS POINTED AND IDENTIFIED THE DEFENDANT MARQUIS
24 EVANS.)

25 SOLICITOR FULLER: We have no further questions at

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1 this time.

2 Please answer anything Mr. Evans has for you.

3 CROSS-EXAMINATION

4 OFFICER DUSTIN TYLER OCHILTREE BY MR. EVANS:

5 Q. How you doing, Ochiltree?

6 A. I'm doing well, Mr. Evans. How about yourself, sir?

7 Q. All right. Could be better. I have a couple of
8 questions for you.

9 A. Okay.

10 Q. Do you see any blue lights being activated in that
11 video on Black Street?

12 A. Yes, sir, I do. You can see the blue lights come on.

13 Q. Huh?

14 A. Yes, sir.

15 Q. Was that at the corner of Marshall Street?

16 A. At the corner of Marshall Street? No. About half
17 way between South Stonewall and Marshall is when the blue
18 lights were activated.

19 Q. Okay. So is it - When the blue lights are on ---

20 A. Uh-huh.

21 Q. --- and you don't put no siren on what does that
22 mean?

23 A. At that point it's just a ordinary traffic stop. We
24 turn the blue lights on we're signaling for you to stop.
25 The siren comes on when someone, you know, quite often it's

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1 because the person doesn't see the blue lights behind 'em
2 so the siren's just there as also, you know, as an auditory
3 backup to the visual of the lights.

4 Q. Okay. So let me ask you a question. If I - If I
5 almost hit your car ---

6 A. Uh-huh.

7 Q. --- two - two - two - two to three times or what
8 ever you want to say ---

9 A. Yes, sir.

10 Q. --- why would you not activate - if your life is
11 in danger why would you not activate the blue lights if I
12 almost hit a police car two times?

13 A. Well, sir, at no point, you know, at no point did I
14 feel like my life was in danger because you almost hit the
15 police car. We were going at a slow speed. As was
16 explained to you by Officer Smith we got behind you we were
17 giving out pertinent information to the traffic stop
18 dispatch. Officer Smith and I were having conversations in
19 the vehicle about procedural issues about what we were
20 gonna do during the traffic stop there's a lot to be taken
21 into consideration. The blue lights came on between South
22 Stonewall and Marshall Street while we were still on Black.
23 During - beforehand there's a lot of things going on inside
24 the patrol vehicle. We're gathering evidence; we're giving
25 your information to dispatch; the vehicle information to

1 dispatch. It's a lot of different things going on.

2 Q. What's the Code 65?

3 A. I'm not familiar with the Code 65, sir.

4 Q. Well it states in the video that you say Code 65.

5 A. Oh. No, sir, what he was saying is possible 55,
6 possible 55 is a possible intoxicated driver.

7 Q. I thought he said 65?

8 A. No, sir, he said 55.

9 Q. Okay. So basically you're stating that I got pulled
10 over the blue lights is activated on Black Street instead
11 of Marshall Street. No sirens, no sirens or nothing was
12 performed until I hit Marshall Street.

13 A. Yes, sir.

14 Q. Can you explain how narrow the road on Marshall
15 Street is?

16 A. How narrow the road on Marshall Street is? I can't
17 speak to it, sir. I don't recall to be honest with you.

18 Q. Okay. So how long does it take 'till you have to
19 pull over for a failure to stop for a blue light?

20 A. Sir, it would be, you know, reasonable and prudent to,
21 you know, pull over immediately as far as what the reason
22 that you were charged for failure to stop for a blue light
23 the evasive tactics that you used as in picking up speed as
24 soon as you hit Marshall Street.

25 Q. Okay. So basically was I speeding?

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1 A. No, sir, I never said you were speeding.

2 Q. Okay. So I wasn't speeding.

3 A. No, sir.

4 Q. Was I weaving in traffic or anything?

5 A. Yes, sir, you were weaving. You were weaving.

6 Q. I was?

7 A. Yes, sir, you were going left to center, right center,
8 made a wide right turn on Marshall. These are indicators
9 of your intoxication and also once we hit Marshall you
10 began to speed up in an attempt to allude us.

11 Q. So you're saying I wasn't going at high speeds so
12 how - Why would you say I'm trying to elude you?

13 A. No, sir, I'm not arguing with you there that you
14 weren't going at a high speed at the time but the fact of
15 the matter is you accelerated after the blue lights and
16 sirens were activated and you began to speed up.

17 Q. Except though the sirens is on, was turned on when I
18 speeded up on Marshall Street. That's when the sirens was
19 turned on.

20 A. Okay. Yes, sir. I'm not disagreeing with you there.

21 Q. Right. So basically when you look in the video the
22 road is this narrow and there's cars on this side. You
23 can't just pull over anywhere cause you need - you in the
24 middle of the street. Am I correct?

25 A. Sir, there were other opportunities. I'm not

1 disagreeing with you that there were cars on the side of
2 the road on Marshall Street because there was. However
3 there were still numerous opportunities to pull over
4 between there and there.

5 Q. What you mean? Numerous opportunities like what?

6 A. You can see on the video ---

7 Q. Right.

8 A. --- there wasn't cars lined all the way down
9 Marshall Street.

10 Q. Right. But don't you feel though from Marshall Street
11 to Walnut Street is one block. Am I correct?

12 A. I don't know for sure.

13 Q. So from Marshall Street to Walnut is one block and
14 its like a one way like a skinny road. So once I hear the
15 sirens I - the first thing I do is cut - Did I cut my
16 blinker on?

17 A. Yes, sir, your blinker was on quite often during ---

18 Q. Right.

19 A. --- yes, sir.

20 Q. And so I was going at a slow speed. Am I correct?

21 A. You were going at a slow speed. Again, you had sped
22 up.

23 Q. Okay. So if I was going at a slow speed how do you
24 define it as a chase?

25 A. Sir, at no point did I say that, you know, you weren't

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1 - you were not going at a slow speed. You were. You were
2 doing what you could to evade law enforcement.

3 Q. Well is that evading going at a slow speed?

4 A. Increasing speed whenever you turned onto Marshall
5 Street, yes, sir, that was a sign of it.

6 Q. Increasing speed?

7 A. Yes, sir.

8 Q. Okay. So I wasn't speeding, all right, you said that.

9 A. Yes, sir.

10 Q. I was going - I followed all the traffic signals and
11 everything?

12 A. No, sir, you were still in violation of certain
13 traffic laws including the wide right turn you made on
14 Marshall.

15 Q. A wide right turn?

16 A. Yes, sir.

17 Q. Okay. So you saying that the blue lights is activated
18 on Black Street?

19 A. Yes, sir.

20 Q. Okay. So if the blue lights is - was activated on
21 Black Street, if from Black Street how long is Black Street
22 from Walnut Street where this incident happened?

23 A. From Black Street to Walnut Street as far as an
24 exact distance, yeah, I couldn't tell you an exact distance
25 between Black and Walnut. The whole thing was about two

1 thirds of a mile from where we started on South Stonewall
2 and South Stonewall is from where we were at on 5 - on
3 South Stonewall it wasn't even a hundred yards to Black
4 Street.

5 Q. Right. Let me ask you a question. How do you feel
6 about police killing unarmed Blacks?

7 SOLICITOR FULLER: Objection, your Honor.

8 THE COURT: I sustain the objection.

9 MR. EVANS: He don't get to answer that question?

10 THE COURT: No he can't.

11 MR. EVANS: Okay.

12 THE COURT: You can't ask it and he can't answer it.

13 MR. EVANS: Okay.

14 Q. So basically when you taze me on the ground
15 don't you feel that's over excessive force when I'm had one
16 hand behind my back and I'm in a position of submission?

17 A. No, sir, I do not. You were continuing to be
18 non-compliant.

19 Q. How can I be this guy on my back? I mean I can't -
20 I can't do nothing.

21 A. Sir, you were given opportunities between tazer
22 cycles to place your hand behind your back.

23 Q. So you don't feel like that three times is excessive
24 force when I'm on the ground?

25 A. No, sir, I do not. The level of force that was used

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1 was consistent with what the level of non-compliance you
2 were exhibiting.

3 Q. Okay. So basically that's - did I say anything
4 derogatory towards you at any way during that time?

5 A. No, sir, you did not.

6 Q. Okay. So I'm complying - I'm complying - I'm a
7 failure to stop - Excuse me. Let me check my words.
8 Failure to stop for a blue light, what's the legal
9 question - like what's the fines for failure to stop for a
10 blue light? How long does it take for you to stop before,
11 you know what I'm saying, you get charged for failure to
12 blue - blue light?

13 A. Sir, as I said, in this case your actions were the
14 reasons that you were charged with failure to stop for a
15 blue light, still evasive, evasive maneuvers that you
16 exhibited while you were - again, there's no better way to
17 put it, failure to stop for blue lights.

18 Q. As you can see in the video from Marshall Street to
19 Walnut Street is one block.

20 SOLICITOR FULLER: Objection, your Honor.

21 THE COURT: Mr. Evans, don't refer to what's in the
22 video. The jury will determine those kind of things.

23 MR. EVANS: Okay. Well I have no further questions.

24 THE COURT: Redirect?

25 SOLICITOR FULLER: No, your Honor.

1 THE COURT: You can step down. Thank you.

2 (WITNESS LEAVES WITNESS STAND.)

3 SOLICITOR FULLER: Your Honor, may he be excused?

4 THE COURT: He can.

5 SOLICITOR FULLER: Thank you, Judge.

6 THE COURT: Is that the State's case?

7 SOLICITOR FULLER: We have nothing further, your
8 Honor.

9 THE COURT: All right, I'm gonna let you go to the
10 jury room just for a few minutes. The State has rested and
11 those are the two witnesses' that the State will present so
12 we have some matters of law to take up outside your
13 presence. We'll send for you in just a few minutes.

14 (JURY EXITS COURTROOM AT 12:16 PM.)

15 THE COURT: Mr. Evans, do you have anything for the
16 Court at this time?

17 MR. EVANS: Yes, sir. I have ask Ms. Lipinski about
18 subpoenaing my witnesses and they haven't showed up. I
19 mean.

20 THE COURT: All right. Ms. Lipinski, do you know
21 about when we can expect any of his witnesses'?

22 MS. LIPINSKI: Your Honor, I have not been able to
23 reach Mr. Brackett. I did speak as I advised the Court Mr.
24 Evans with a Doctor Christine Williamson, that's somebody
25 that he indicated he wanted me to subpoena yesterday. I

1 spoke with Ms. Williamson, she says that she has no
2 personal recollection of Mr. Evans; that he may have seen
3 her in the past, she believes from their computer records
4 that would have been sometime in 2009 to 2010.

5 Unfortunately due to their volume of records those records
6 are available on MicroMD and she's not able to access them
7 readily. She did say that I could call her back but she
8 didn't know when she would be able to put her hands on
9 those. I need to go down and talk to the people in my
10 office to see if they were able to serve or contact Mr.
11 Reggie Brackett. They were still working on it this
12 morning when I came to court.

13 THE COURT: All right. Anything else? I'll address
14 that in just a minute. Anything else at this time, Mr.
15 Evans?

16 MR. EVANS: Your Honor, basically I would just like to
17 wait to see, you know what I'm saying, if my witnesses come
18 through cause I think its important to understand, you
19 know, the mental mind - the mental mind frame of, you know
20 what I'm saying, what I'm dealing with, you know. And I
21 believe I know what I'm doing.

22 THE COURT: I'll bring the jury back in and we'll
23 break until two o'clock for lunch. That will give you an
24 hour and half to work on those sort of things.

25 All right, bring in the jury.

1 And while they're getting the jury, please remember
2 what I told you that you have a right to present a defense
3 but you do not have to. And that you have a right to
4 testify; that you do not have to. And if you chose to
5 testify you'll of course will be ask questions under oath.
6 If you chose to remain silent I will tell the jury that you
7 have exercised your right to remain silent they cannot use
8 that against you nor discuss that in the jury room. And
9 remind them that you are presumed innocent and you need not
10 prove your innocence the state must prove your guilt beyond
11 a reasonable doubt. Do you understand all that?

12 MR. EVANS: Yes, sir. I also have a question. What
13 - this lady that's sleeping on the jury?

14 THE COURT: I haven't seen her and I'll try to make -
15 I'll try to be more attentive and make sure that she stays
16 awake.

17 MS. LIPINSKI: Your Honor, one of the bailiff's did
18 notice her and did motion for the other jurors to nudge her
19 awake ---

20 THE COURT: Okay.

21 MS. LIPINSKI: --- at some point in the last session.
22 So he saw those as well. I think more or less the bailiff
23 caught it at that time.

24 MR. EVANS: Is there any motion I can -

25 THE COURT: Well ask Ms. Lipinski.

1 (SIDE BAR BETWEEN DEFENDANT AND MS. LIPINSKI.)

2 MR. EVANS: I would like to have a motion and mistrial
3 cause the jury is not paying attention to the testimony and
4 this is my, you know, this is my life at stake. This is it
5 and I really feel like I need everybody's attention on the
6 facts of this case.

7 (JURY STARTS TO ENTER COURTROOM.)

8 THE COURT: Well I - Just wait one second.

9 I did not see a juror but I from what I understand
10 others did and so I have no question but that a witness - a
11 juror did doze off and I deny your motion for a mistrial.
12 I do not believe there is any manifest necessity to grant a
13 mistrial. And I will try to be more attentive and make
14 sure that - do what I can to make sure that everyone is
15 alert. But your motion is well stated, but denied.

16 Anything else?

17 Let me get the jury in and let them go to lunch and
18 then I'll leave the record open so we can finish any
19 matters that he has, that you have, Mr. Evans, cause the
20 jury's - I didn't realize we were gonna be doing this right
21 now so the jury is right outside the door, let's get them
22 in and go to lunch.

23 (JURY REENTERS COURTROOM AT 12:21 PM.)

24 THE COURT: Members of the jury panel, we're gonna
25 break for lunch at this time. We're gonna break until two

1 o'clock. That sounds like a long time because it is over
2 an hour and half, but we still have a few matters to take
3 up outside your presence, plus there is only one place you
4 can get to to eat here without getting in your car and the
5 only place that's closer is on the other side of Highway 5
6 so it's kind of a treacherous trip to that place.

7 So we usually take a little extra time for lunch cause
8 everybody has to drive somewhere to get lunch. So please
9 be back at two o'clock and the bailiff's will tell you what
10 to do as far as when you return. Have a pleasant lunch.

11 (JURY OUT ON LUNCH RECESS AT 12:23 PM.)

12 THE COURT: We'll break for lunch and you can -
13 Mr. Evans, talk to Ms. Lipinski. I'll let you stay
14 out. I'm not gonna require you to remain incarcerated over
15 the lunch period but if for some reason you fail to - if
16 you leave the premises and don't come back at two, this
17 case will go forward and you can - the case will be
18 submitted to the jury whether you're here or not. And what
19 I told you yesterday about the fact that if they find a
20 verdict finding you guilty and you're not here that I will
21 issue a sentence and seal it; issue a bench warrant, and at
22 a later time when you are arrested on that bench warrant
23 you will be brought back before a judge for that sentence
24 to be imposed. So you need to be back here at two o'clock.
25 If you're not your case will go forward. Do you understand

1 that?

2 MR. EVANS: All right.

3 THE COURT: Okay. And I'll give each side an
4 opportunity over lunch to see if they have any cases on
5 sleeping jurors that they would like for me to look at.

6 I have found no manifest necessity to grant a mistrial
7 but I'll be glad to look at any case law, thank you.

8 SOLICITOR FULLER: Thank you, your Honor.

9 (COURT IN LUNCH RECESS AT 12:24 PM.)

10 (COURT BACK IN SESSION AT 02:01 PM.)

11 THE COURT: We'll visit this sleeping witness
12 situation. And I don't see Mr. Lloyd in here.

13 THE BAILIFF: He's outside with the jury, your Honor.

14 THE COURT: Okay. Ask him - Which juror was it? Do
15 we know?

16 SOLICITOR FULLER: I think it's the lady that has a
17 black and white cardigan in the back row.

18 THE COURT: Okay. All right, because we got word from
19 Mr. Lloyd that he thinks - and I'm gonna bring her in -
20 that she was not sleeping but rubbing her eyes.

21 Ask him to bring in - What's her name?

22 SOLICITOR FULLER: I wasn't sure which juror, what her
23 name was.

24 THE COURT: Well he'll know.

25 Ask her to bring in the juror - Ask Mr. Lloyd to bring

1 in the juror that they say may have been sleeping, the
2 black and white top. Is that right?

3 THE BAILIFF: Yes, sir.

4 SOLICITOR FULLER: I believe so.

5 THE COURT: Okay.

6 (JUROR ONE NINETY-TWO, GUYNNDOLYN SAVAGE, ENTERS
7 COURTROOM.)

8 THE COURT: Is this the - Yeah, ma'am, I hate to
9 single you out, but someone thought you may have dozed off
10 during ----

11 JUROR ONE NINETY-TWO: The fumes from the roofing were
12 burning my eyes.

13 THE COURT: I can understand.

14 JUROR ONE NINETY-TWO: I have a sinus infection so I
15 wasn't sleeping.

16 THE COURT: Okay. Well good.

17 JUROR ONE NINETY-TWO: I just had my eyes closed for a
18 second. They were burning.

19 THE COURT: I know. It's been my nose. It hasn't
20 bothered my eyes yet. Okay. Thank you. You've helped us
21 clear something up. Thank you.

22 JUROR NINETY-TWO: Thank you, your Honor.

23 MADAM CLERK: Judge, get her name and number.

24 THE COURT: All right. Your name and number?

25 A. My numbers One ninety-two and my name is Guynnolyn

1 Savage.

2 THE COURT: Okay. Thank you.

3 JUROR ONE NINETY-TWO: Thank you.

4 (JUROR ONE NINETY-TWO EXITS COURTROOM.)

5 THE COURT: All right. Any comment on that from the
6 State?

7 SOLICITOR FULLER: No, your Honor.

8 THE COURT: Mr. Evans?

9 MR. EVANS: Yes, sir. Your Honor, the lady was
10 definitely dozed off because they nudged her and everything
11 cause, you know what I'm saying, I'm sitting here looking
12 at her. I don't know, you know and I'm sitting in the
13 courtroom.

14 THE COURT: Well she's come in and I'm gonna take her
15 at face value so I find that there is no ground for a
16 mistrial, no manifest necessity. I don't believe that
17 based on what has been presented that there is any
18 prejudice shown other than Mr. Evans did correctly state
19 that the jury was sleeping during the part of the
20 presentation. That juror may have missed something
21 important but based on her presentation to the court, not
22 under oath, but she is a juror and she's sworn as a juror,
23 so I accept her explanation.

24 All right, where do we stand with the witness?

25 MR. EVANS: All right.

1 MS. LIPINSKI: May it please the Court, your Honor, I
2 did speak with Mr. Brackett over the lunch break just
3 briefly. His supervisor had gotten the subpoena however he
4 was actively engaged with a client this afternoon. He was
5 having some type of psychological crisis. The director
6 said that he would have him here first thing tomorrow
7 morning if the court would understand that but he did not
8 have somebody who could step in and replace him but he does
9 remember Mr. Evans. He did treat him recently. He does
10 have - I was able to confirm that because I wanted the
11 Court to know we weren't waiting on a dog that wouldn't
12 hunt so to speak. And he did go get him and I was able to
13 confirm that he did state he remembers Mr. Evans and did
14 treat him recently. He doesn't really understand how he
15 intersects with the defense and I told him being standby
16 counsel I couldn't really advise him but that I told him
17 that I would try and put him in touch and that I would
18 report to the court that he could be here first thing in
19 the morning at whatever time the court allowed.

20 THE COURT: Okay. All right, Mr. Evans, did you tell
21 Ms. Anderson when she represented you about these two
22 witnesses that you now wish subpoenaed?

23 MR. EVANS: Well, Ms. Anderson I just came for roll
24 call.

25 THE COURT: Well the question is, did you or did you

1 not tell Ms. Anderson about these two witnesses?

2 MR. EVANS: Yes.

3 THE COURT: You did?

4 MR. EVANS: Yes.

5 THE COURT: All right. Did you tell Ms. Lipinski

6 about

7 these two witnesses? She's sitting right behind you.

8 MR. EVANS: Yeah, she let them know.

9 THE COURT: All right. Ms. Lipinski, were you told
10 about these witnesses?

11 MS. LIPINSKI: He did tell me, your Honor, that he
12 wanted to potentially get them involved. He did not give
13 me the names until yesterday. We had a dialogue similar to
14 what the court had with him in terms of what that would
15 arise to; would it be mitigation versus defense.

16 THE COURT: Well I'll get to that in a minute.

17 But you had no names until yesterday?

18 MS. LIPINSKI: I did not have names until yesterday,
19 your Honor. And I did do everything I could to subpoena
20 them as expeditiously as I could. And about their
21 attendance tomorrow that's the best we can do.

22 THE COURT: Well I find that this is - that the case
23 will proceed. It's untimely to hold the case up for these
24 witnesses who were not divulged to counsel until yesterday.
25 Its awful hard to subpoena people over night. Your standby

1 counsel is working diligently but she couldn't send out
2 subpoena's when she was representing you until she knew the
3 names. She can't just send out subpoena's for individuals
4 who, or blanket anybody that knows so to speak so, I'm
5 gonna - you got your hand up I'll speak to you in just a
6 moment - but I find that the way you subpoena witnesses and
7 the way you tell your counsel the names of witnesses until
8 yesterday is that I'm not gonna hold up the trial to have
9 those witnesses appear.

10 MR. EVANS: Your Honor, yesterday was my first day
11 ever coming to court, you know what I'm saying. So
12 yesterday when I came you told me - I ask you about
13 witnesses yesterday you said to get a subpoena, you know.
14 I only had - I had to come back this morning so I did. She
15 called me got the names of the, you know what I'm saying,
16 yesterday and that's as fast as we can move, you know what
17 I'm saying because you told me yesterday to - -

18 THE COURT: Well but you should have - and you did,
19 you subpoenaed them, but for reasons they cannot be here
20 because of getting the subpoena's so late. Had they been
21 subpoenaed last week or some other time they could have
22 made arrangements and been available. So again I find that
23 even - you did follow the right procedure and I did
24 instruct you to do that - but the fact that they are
25 unavailable is not gonna hold this trial up because of the

1 tardiness in requesting the subpoenas by - for those
2 individuals by designating their names.

3 MR. EVANS: So why can't I be here first thing in the
4 morning? They can be here -

5 THE COURT: We're gonna finish this trial today.

6 MR. EVANS: Also is it possible that you can read over
7 these cases that I got as far as the juror is concerned?

8 THE COURT: Yeah, I can look at 'em but she's already
9 - Well I don't need to look at 'em. She's already relieved
10 my mind that she was doing any sleeping and therefore I
11 find that that's not an issue in this trial.

12 MR. EVANS: Okay. Is it possible that I can dismiss
13 that juror?

14 THE COURT: No.

15 MR. EVANS: So I don't have no - I can't subpoena none
16 my witnesses or?

17 THE COURT: No. Well I will ask you this, what is Mr.
18 Brackett, what do you propose these two witnesses - first
19 Mr. Brackett. Tell me who he is and what you expect him to
20 testify to?

21 MR. EVANS: Well that's my mental health counselor
22 and, you know, basically he's gonna, you know, testify
23 about my character and the things that, you know what I'm
24 saying, my mental health issue that I have and to explain
25 the proper reason for, you know what I'm saying, my actions

1 came to as far as the officer approaching me, you know what
2 I'm saying, that in an aggressive manner. I been
3 diagnosed, you know what I'm saying, with certain things.
4 You know, so it can help me, you know, in a lot of ways to
5 talk to somebody professional as a doctor, you know what
6 I'm saying, that's qualified in that field. You know what
7 I'm saying, you know, I'm here by myself. I mean that's
8 the only thing I could. you know --

9 THE COURT: Have you talked to the doctor? When did
10 you see Doctor Brackett? I guess he's a doctor. We been
11 saying Mr. Brackett.

12 MR. EVANS: Last week.

13 THE COURT: Before or after this event?

14 MR. EVANS: I been with him before.

15 THE COURT: Okay. You been with him after this event?

16 MR. EVANS: After too, yeah.

17 THE COURT: After you were charged?

18 MR. EVANS: Yeah. I been on the case though since

19 2009 ---

20 THE COURT: All right.

21 MR. EVANS: --- cause I had got locked up, came
22 home, you know what I'm saying, got back on the case.

23 THE COURT: Did you discuss with Mr. Brackett what
24 he's gonna testify to if he came up?

25 MR. EVANS: Yeah. I would like to get the opportunity

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1 to talk to him. Like I said I came to court yesterday and
2 he didn't - he didn't work yesterday and I called and he
3 wasn't available. So like I said she called me today and -

4 THE COURT: But you didn't talk to him at any earlier
5 time about testifying?

6 MR. EVANS: Yes, sir, together. We talked as far as
7 when I was inside her office I told him I said I might
8 need, you know what I'm saying, need you to, you know, be
9 there for me for my defense, you know what I'm saying. And
10 he was like well why not I write a letter or whatever I
11 need to do, you know what I'm saying, to help you. You
12 know what I'm saying I'll do it.

13 THE COURT: All right. Well what about the other
14 doctor who hasn't seen you since - -

15 MR. EVANS: Well she was - she's my doctor in 2009.
16 That was like I got to ask somebody that's more recent.
17 That's Doctor Williamson but that was back in 2009.

18 THE COURT: I'll give you the benefit of the doubt.

19 MR. EVANS: Thank you.

20 THE COURT: I'll carry the case over to in the morning
21 to get Mr. Brackett here. If you're gonna testify we'll go
22 ahead and get your testimony out of the way or are you
23 gonna remain silent?

24 MR. EVANS: Yeah, I'm not gonna testify.

25 THE COURT: You're not gonna testify?

1 All right, then we will adjourn for the day on the
2 trial. I will bring the jury in and explain we have a
3 witness who is not available until the morning and we'll
4 start back at ten in the morning.

5 MR. EVANS: All right. Thank you.

6 THE COURT: Bring in the jury.

7 MS. LIPINSKI: What time do you want Mr. Brackett
8 here?

9 I told him I would call.

10 THE COURT: Ten. 10:00 am.

11 MS. LIPINSKI: Thank you, sir.

12 (JURY REENTERS COURTROOM AT 02:12 PM.)

13 THE COURT: Members of the jury panel, we had a little
14 wrinkle, we had a witness who has been served with a
15 subpoena who had an emergency come up and will not be
16 available until in the morning so we're gonna stop where we
17 are for the day and start back at ten in the morning.

18 Keep in mind what I told you about not discussing the
19 case and not let anybody discuss the case with you. No
20 outside coverage, no social media or any other kind of
21 electronic or device to obtain any information and not try
22 to make your mind up.

23 So anything else before the jury's dismissed for the
24 day?

25 SOLICITOR FULLER: No, your Honor.

1 THE COURT: Anything else?

2 MR. EVANS: No, sir.

3 THE COURT: All right. We'll see you back at ten in
4 the morning. Have a pleasant evening.

5 (JURY EXITS COURTROOM AT 02:13 PM.)

6 THE COURT: As to the - going back again to the
7 sleeping witness issue. I find that the witness was not
8 sleeping so I don't need to get into whether or not the
9 defense has to show that - have to show that he was
10 prejudiced because there was nothing that happened.

11 I will take judicial notice that there is a very
12 pungent odor throughout the building and outside the
13 building based on - I smell it myself so I think I can take
14 judicial notice - based on some roof work that's being
15 done. It's a fairly obnoxious odor and it didn't bother my
16 eyes but it certainly doesn't smell good and I can
17 certainly understand why it would irritate somebody's eyes
18 and nose.

19 So we'll be at ease in this trial until ten in the
20 morning. I'm gonna let you go home over the night, Mr.
21 Evans. Keep in mind if you don't show up we're going
22 forward with the trial.

23 MR. EVANS: Okay, sir. I have one more question.

24 THE COURT: Yes, sir.

25 MR. EVANS: Is it possible that after bringing up the

1 person that woke the lady up or something if I can - is it
2 possible I can bring up the person that seen that woke the
3 lady up, woke her up while she was sleeping?

4 THE COURT: Is that you? Did you wake the lady up?

5 THE BAILIFF: Yeah, I pointed to the woman next to her
6 and she - but she wasn't sleeping.

7 THE COURT: Okay. All right, you want to ask Mr.
8 Floyd questions?

9 MR. EVANS: Yes, sir.

10 The lady was dozing off, you know what I'm saying,
11 told her to wake her up or something, you know what I'm
12 saying. I was looking right at her her eyes was closed.

13 THE BAILIFF: Yeah. But I told the woman next to her
14 to nudge her.

15 MR. EVANS: Correct.

16 THE BAILIFF: To open her eyes because they were
17 burning.

18 MR. EVANS: Okay. Well what I'm saying is even though
19 your eyes is burning ---

20 THE BAILIFF: Yeah.

21 MR. EVANS: --- you know what I'm saying, you
22 sitting there closed asleep, you know what I'm saying, like
23 she was - that's why the lady had to nudge her.

24 THE COURT: You're arguing with him now. Just ask him
25 if he saw a witness - that particular juror sleeping.

1 MR. EVANS: Did you personally see that she was
2 asleep?

3 THE BAILIFF: I didn't see her asleep. I saw her eyes
4 closed. And then she told me out in the outside she
5 apologized for having her eyes closed but they were
6 burning.

7 THE COURT: Thank you. And I don't believe - I
8 believe you got the witnesses name?

9 MADAM COURT REPORTER: Yes, sir.

10 THE COURT: Okay. I'm talking about you now.

11 All right. Anything else before we stop for the day?

12 MR. EVANS: No, sir.

13 THE COURT: All right. Just keep in mind I'm gonna
14 let you go home or wherever you want to but you be back at
15 ten in the morning.

16 MR. EVANS: Yes, sir.

17 THE COURT: Or better yet be back at 9:30 in case
18 your witness gets here a little early you will have a
19 chance to talk with him so we can start. All right.

20 (COURT IN RECESS AT 02:17 PM.)

21 (COURT BACK IN SESSION WEDNESDAY, FEBRUARY 10, 2016 AT
22 10:05 AM.)

23 THE COURT: Thank you. Good morning. You may take
24 your seats.

25 Mr. Evans, we are back today with your ability to

1 present witnesses. Do you have the witness here?

2 MR. EVANS: Yes, your Honor.

3 THE COURT: Okay. Well, we'll get the jury in and any
4 issues before the jury comes in?

5 SOLICITOR HOLLAND: Your Honor, we would just like to
6 proffer that witness if we could. I believe it's possible
7 that his testimony is irrelevant and may be an expert in
8 terms of an opinion.

9 THE COURT: All right. Why don't you call your
10 witness? We have a procedure where one side - here the
11 State - thinks that a witness for the other side - that's
12 you - are presenting doesn't have any relevant testimony.

13 That is any testimony to show to them to go toward
14 whether or not you are or are not guilty of this offense;
15 that testimony is not allowed. So we have a procedure
16 where before we put that before the jury we go through that
17 outside the presence of the jury. So if you'll call that
18 witness we'll have, him I believe, have him sworn and see
19 what he has to say.

20 MR. EVANS: Your Honor, I also have documentation from
21 previous - from 2009 mental health evaluation from a
22 physician. Is it possible that you can look at that?

23 THE COURT: Well the only thing I can look at in that
24 regard since this will be hearsay I maybe can consider it
25 if you're found guilty and look at it in regard to

DOCTOR REGINALD BRACKETT: DIRECT BY MR. EVANS - PROFFERED -117-

1 sentencing. But as far as whether or not you committed
2 this offense or not, we cannot accept documents from one of
3 the individuals without them being here and being sworn and
4 testify. Additionally that is from 2009 and this offense
5 took place in 2015 so I don't know that it would have any
6 relevance either but you can certainly make it a Court's
7 Exhibit and if you're determined to be guilty by this jury
8 and I in sentencing you I certainly can take a look at it.

9 MR. EVANS: Okay. You ready for Brackett.

10 THE COURT: All right, Mr. Brackett. Good morning.

11 MR. BRACKETT: Good morning, sir.

12 THE COURT: All right, if you'll come up and put your
13 left hand on the Bible and raise your right.

14 (WHEREUPON, REGINALD
15 BRACKETT, BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS
16 FOLLOWS:)

17 DIRECT EXAMINATION - PROFFERED TESTIMONY

18 DOCTOR REGINALD BRACKETT BY MR. EVANS:

19 Q. How you doing, Mr. Brackett?

20 A. Before I do, I need to get the order from you for me
21 to be able to speak.

22 THE COURT: Yeah. See, we've got an issue here
23 according to the HIPPA Law which I was going to bring up in
24 just a minute, but as a - What is your profession exactly?

25 DOCTOR BRACKETT: Therapist.

1 THE COURT: You're a therapist. Are you a medical
2 doctor or just --

3 DOCTOR BRACKETT: No. Mental health therapist.

4 THE COURT: Okay. So a mental health therapist.

5 I don't know that much about HIPPA but I presume that
6 those conversations between you and your therapist will -
7 by law they are privileged. But they are also covered
8 under the federal government law, I believe the HIPPA law,
9 that prevents a therapist or medical provider from telling
10 anybody in the world your information without your
11 permission because its private to you.

12 So, first off, do you consent to Mr. Brackett
13 discussing your private therapy sessions here in open court
14 under oath on the record? Do you consent to that?

15 MR. EVANS: Yes, sir.

16 THE COURT: All right. I'll order you then to respond
17 to his questions. Thank you.

18 BY MR. EVANS:

19 Q. Hi, Mr. Brackett. Can you tell me how long you been
20 in this professional field?

21 A. I been doing therapy for the last twenty-five years.

22 Q. Twenty-five years. Education?

23 A. I hold a Master's Degree in Counseling.

24 Q. Okay. Now, basically I just want to get this across.

25 When did I first come to see you?

DOCTOR REGINALD BRACKETT: DIRECT BY MR. EVANS - PROFFERED

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1 A. According to the records you came for the initial
2 clinical assessment on July 22nd.

3 Q. Okay. July 22nd.

4 THE COURT: Of what year?

5 A. Of 2015.

6 Q. Okay.

7 A. And that was conducted by Ms. Becky Love.

8 Q. Right. Now, is it possible that you can state what
9 me and you discussed during some of our visitations?

10 A. You - The first session that I had with you after we
11 do the initial clinical assessment the case was transferred
12 to me and you came to see me on August the 26th as well as
13 September the 2nd. You first came to me my role was to
14 assess the symptomology of your behaviors and what was
15 going on and some of the things that we discussed was about
16 your anger. Talked about some of the symptoms being the
17 irritability, the lack of sleep, and not being able to
18 focus.

19 Q. Okay. So by me coming to you basically I was coming
20 for help, am I correct?

21 A. That is correct.

22 Q. Okay. No further questions, your Honor.

23 THE COURT: Ms. Holland.

24 SOLICITOR HOLLAND: Yes, sir.

25

CROSS-EXAMINATION

DOCTOR REGINALD BRACKETT: CROSS BY SOLICITOR HOLLAND - PROFFERED -120-

1 DOCTOR REGINALD BRACKETT BY SOLICITOR HOLLAND:

2 Q. Hey, Mr. Brackett. How are you?

3 A. Good morning.

4 Q. I'm an assistant solicitor with the Solicitor's
5 Office. My name is Jessica Holland. You used a word I
6 don't know. Symptomology. What does that mean?

7 A. Basically the symptoms and the stressors associated
8 with his diagnoses.

9 Q. Okay. So the first time you saw Mr. Evans was in
10 July, 22nd of 2015?

11 A. That's the first time that he was seen by - in an
12 initial assessment. I didn't do the assessment.

13 Q. Okay.

14 A. Ms. Becky Love did the assessment but it was later
15 transferred to me.

16 Q. Okay. And who do you currently work for?

17 A. Lancaster Mental Health.

18 Q. Lancaster County Mental Health. And Ms. Love, what is
19 her position there?

20 A. She's the intake therapist.

21 Q. Intake? Okay. So she's a therapist as well?

22 A. Uh-huh.

23 Q. And what's your education? What's your highest
24 degree?

25 A. A Masters.

DOCTOR REGINALD BRACKETT: CROSS BY SOLICITOR HOLLAND - PROFFERED -121-

1 Q. Masters. In counseling?

2 A. Yes.

3 Q. Okay. And where did you receive that from?

4 A. Through Webster University. Went to the University.

5 Q. Okay. And then you saw - How many times have you
6 seen Mr. Evans?

7 A. I - According to the report I've seen him twice. He
8 was scheduled to come back to see me and at that time I
9 think he had gone to jail.

10 Q. Okay. So what dates did you say? Was it August 22nd
11 and September 2nd?

12 A. Yes. August 22nd, 26th, I'm sorry.

13 Q. That's right.

14 A. And September the 2nd.

15 Q. Okay. And were those in a group or individual?

16 A. Individual.

17 Q. Okay. And what did those sessions consist of?

18 A. Basically just to continue with the initial clinical
19 assessment to assess him to see based on the symptoms and
20 stressors of his behaviors. And once we got finished with
21 doing that he was to continue to see me but he was also set
22 to see the psychiatrist as well to be assessed for possibly
23 psychotropic medications.

24 Q. Okay. So if an actual medical diagnoses were to be
25 made would you be the person who made that or would the

DOCTOR REGINALD BRACKETT - CROSS BY SOLICITOR HOLLAND - PROFFERED-122-
REDIRECT BY MR. EVANS - PROFFERED

1 psychologist make that?

2 A. The psychiatrist.

3 Q. The psychiatrist would make that. And do you have the
4 ability to dia - I mean to prescribe medicine?

5 A. No.

6 Q. No. And I'm sure with working for Lancaster Mental
7 Health you see a lot of patients?

8 A. Yes, ma'am.

9 Q. And do you make notes and reports after you meet with
10 patients?

11 A. Yes.

12 Q. Okay. I see notes in your hands. Are those from
13 your meetings with Mr. Evans?

14 A. Those were two of them.

15 Q. Okay.

16 SOLICITOR HOLLAND: Thank you, your Honor, that's all
17 the State has.

18 THE COURT: You want to followup?

19 MR. EVANS: Yes.

20 REDIRECT EXAMINATION

21 DOCTOR REGINALD BRACKETT BY MR. EVANS:

22 Q. Mr. Brackett, can you say when - Do you have the
23 ability to - I'm not for sure, you know what I'm saying,
24 your positions to do this but can you say when I initially
25 started mental health? When I first was on a case load?

1 A. When you came on our case load?

2 Q. Not on the case. On somebody in South Carolina
3 period?

4 A. That was before my time. But according to reports
5 I believe that was around 2009.

6 Q. All right. So basically this, you know, I was coming
7 back after I came from jail. Did you have any interaction
8 with my girlfriend Teresa McCanney, as far as when I was in
9 the chain gang for forty-five days about me coming back to
10 you once I got out of the chain gang?

11 A. Yes. Yeah I did. I spoke to Teresa several different
12 times. She communicated with me letting me know that you
13 were in jail. She gave me - let me know that you were
14 matter of fact when you were about to be discharged from
15 jail as well. I think we had a total of about three or
16 four contacts.

17 Q. Right. So basically when I got out did I - do you see
18 calls from me as far as the ones' you didn't get, you know
19 what I'm saying, when I ask you you said voice mails you
20 wasn't getting them cause there was another number; is that
21 correct?

22 A. Yes.

23 Q. So basically I was continuing my - trying to continue
24 my sessions?

25 A. Yeah, you did. One of the positive things you did was

1 as soon as you got out of jail you did come. Matter of
2 fact you came to mental health I think it was like twice.

3 Q. Right.

4 A. So yeah, you definitely showed initiative.

5 Q. All right. Thank you. I appreciate it.

6 THE COURT: Anything else?

7 SOLICITOR FULLER: I have no redirect, your Honor.

8 THE COURT: All right. You can step down, Mr.

9 Brackett.

10 MADAM COURT REPORTER: Judge can you get his full name
11 for the record?

12 THE COURT: Full name, yeah.

13 A. Reginald Brackett.

14 THE COURT: Just have a seat out there for a minute,
15 Mr. Brackett.

16 MR. BRACKETT: Yes, sir.

17 THE COURT: The State.

18 SOLICITOR HOLLAND: Your Honor, I would object to Mr.
19 Brackett testifying. I'm certainly sorry, I'm very sorry
20 that he came here today but I do believe his testimony
21 would be irrelevant. He did not meet with Mr. Evans until
22 afterwards. I do believe that Mr. Evans is more offering
23 this, this would be appropriate mitigation witness for him
24 but not an appropriate witness for the jury to hear from in
25 determining whether or not he's guilty.

1 THE COURT: Anything, Mr. Evans?

2 MR. EVANS: I just disagree.

3 THE COURT: Okay. I know you disagree but she's right
4 so I'm not gonna allow his testimony. I will if you're
5 found guilty take into consideration his testimony in
6 sentencing. Particularly even the fact that he testified
7 that you took the initiative after this event to seek some
8 help which is in your favor but is not a defense.

9 So I'll allow Mr. Brackett to be relieved from his
10 subpoena and thank you for coming up here this afternoon.

11 Now, you had told me yesterday, I've gone over with
12 you Mr. Evans, your right to testify and your right to
13 remain silent and if you testify you will be examined by
14 the State. If you exercise your right to remain silent I
15 will tell the jury that they cannot use that against you in
16 any way whatsoever. And I will also tell them that you are
17 presumed innocent and that they cannot find you guilty
18 based on your taking - taking advantage of your
19 Constitutional right to remain silent. And I will remind
20 them that the State would have to prove your guilt beyond a
21 reasonable doubt. Now you told me yesterday you were
22 choosing to remain silent. Is that still your desire?

23 MR. EVANS: Yes, sir. I just have one thing. If
24 possible I would like to renew my motion for inadequate
25 time to prepare. I would like to renew my motion for lack

1 of time to prepare. I only had, you know what I'm saying,
2 like since counsel changed three times or twice from Ashley
3 to her to me, I feel like I never really had enough time to
4 look up my cases or anything of that nature cause I got it
5 Friday and went to trial Monday, you know what I'm saying.
6 I just feel like you throwing me under the bus cause I
7 really don't know - ain't had a chance to really look up my
8 cases or anything in that fashion as far as my defense.

9 I mean counsel has changed three times. I mean I
10 didn't have - plan on the intention of representing myself
11 when I had Ms. Anderson then she - Ms. Lipinski she came
12 two like the last two weeks and then she talking about, you
13 know what I'm saying, take them five years and I said I
14 didn't want to do that I rather go to trial I represent
15 myself. She gave me discovery, you know what I'm saying,
16 like Friday trials Monday so I really ain't have enough
17 adequate time to prepare for anything to be honest with you
18 and I'm just getting railroaded really.

19 THE COURT: Well, I don't agree that you're being
20 railroaded. I think you've had plenty of time and you had
21 an obligation to take care of your own business. That is
22 you had an obligation to tell your attorney the things that
23 that attorney needed while she was still your attorney to
24 get ready for trial. The fact that you did not ---

25 MR. EVANS: I --

1 THE COURT: --- share the things that you now say you
2 don't to go forward with is not the fault of the court or
3 the solicitor. That was your choice. You might not think
4 it was a choice but doing nothing is making a choice.

5 MR. EVANS: Can I speak, your Honor?

6 THE COURT: Yes, sir.

7 MR. EVANS: You talking about Ms. Anderson?

8 THE COURT: Both.

9 MR. EVANS: Like I said I came to all my court dates
10 as far as my roll call and stuff like that. It wasn't no
11 offer on the table and Ms. Anderson when I talked to her
12 she said she'll get back in touch with me and the next
13 thing I knew Ms. Lipinski just came by and like you my
14 lawyer like, you know what I'm saying, you go five, you
15 take six years or for the trial like that and I'm like I
16 ain't to my hearings I ain't even - you know I been coming
17 to all my court dates, you know what I'm saying, the roll
18 call when I had Ms. Anderson and it was no hearings or
19 anything so it was out of my hands. I was waiting for her
20 to tell me what kind of plea they offer or whatever she
21 didn't - the next thing you know she's getting married or
22 whatever and I got this lady and then boom two weeks later
23 I'm in trial with nothing like, you know, just like no kind
24 of - I can't look up cases, no state cases or nothing. I
25 can't look up anything.

1 THE COURT: Well, I'm not penalizing you for going
2 forward without an attorney but I warned you that going
3 forward without an attorney was dangerous and an attorney
4 could be of a benefit to you. So based on the age of this
5 case and the fact that you have had counsel and counsel has
6 interacted with you and that you determine once the ball
7 was in your court to go forward, we're in the trial and we
8 will finish it.

9 Now, we've reached the point where - You're not gonna
10 call any other witnesses?

11 MR. EVANS: Can I have a recess, your Honor?

12 Can I take a break?

13 THE COURT: Well, we will, but for what?

14 MR. EVANS: Huh? I just want to take a break just to,
15 you know, got to calm down a little bit.

16 THE COURT: All right. We'll do that. When we come
17 back you'll get the right to make the last argument to the
18 jury cause you presented no defense.

19 MR. EVANS: Okay.

20 THE COURT: The - When you argue to the jury don't be
21 - You can't testify. All you can do is tell - talk to the
22 jury about why - what's in evidence, what's on that table,
23 what the officer's testified to; why in spite of that they
24 - the jury should find you not guilty. But you can't get
25 up and testify. And so you may if the solicitor objects to

1 something you say I may sustain it if you try to testify.

2 I'm not saying you'll do that intentionally just don't

3 --

4 MR. EVANS: Yeah, I don't know nothing.

5 THE COURT: No, I know. And I'm not finding fault
6 with you. That's why I'm trying to kind of warn you. I'll
7 let you take a recess but I want to ask not that I think
8 you're gonna run away ---

9 MR. EVANS: Oh, no, no.

10 THE COURT: --- but since we're in the trial I'm gonna
11 ask that security make sure that you remain on this floor
12 and you can use the restroom or whatever you want.

13 Yes, ma'am.

14 SOLICITOR HOLLAND: Yes, sir, I just wanted to mention
15 real quickly because I understand we'll be closing when we
16 come back, two quick motions. We've ask that Mr. Evans
17 not discuss the police brutality and things like that have
18 happened in our state but also throughout the country. And
19 that has - he still mentioned that multiple times and we
20 had to object. So we just ask to reiterate that and also
21 it's not appropriate for him to mention the sentence. He's
22 already done that as well. So we would ask if he could be
23 instructed at that. We don't want to object a million
24 times while he's closing.

25 THE COURT: Well, all I can do is tell him number one,

1 that - if I remember what he said about the sentence I
2 thought it was incorrect basically the charges I think he
3 said eighteen years.

4 MR. EVANS: Fifteen.

5 THE COURT: Yeah, cause - I thought he said eighteen.

6 Anyway, you can't tell the jury - That's up to me to
7 determine what you - what your sentence would be if you are
8 convicted. Your concern about profiling and it is
9 certainly - and what's happening all over the nation we're
10 all concerned about that but we're - this is like a
11 snapshot in time. We're looking at what happened in
12 regarding your interaction with the officers on that
13 particular night and that is an isolated incident and
14 that's what you need to focus on not what's happened in
15 Ferguson and some of these other - New York or some of
16 these other places which are horrible quite frankly. I
17 agree its some egregious things done but that's not at
18 issue in this trial.

19 MR. EVANS: But see I can't - there's a heightened
20 awareness that's going on and like actions and, you know
21 what I'm saying.

22 THE COURT: Well see that would be testifying. If you
23 got up and said - and I can understand that - that jurors -
24 members of the jury panel I want you to understand that the
25 reason I acted like I did was because of what's been

1 happening all over the nation and its when unarmed African-
2 American's notably have been shot by police under
3 circumstances that appear to be unnecessary and that's what
4 was scaring me. You can testify to that but you can't use
5 that in your argument. But if you want to present that to
6 the jury I'm not telling you you have to testify because
7 that's your decision. But you could - that would be what
8 you could testify to under oath but that's not something
9 you could argue to the jury because it's not in evidence.

10 Kind of confusing but --

11 MR. EVANS: I need to take a little break.

12 THE COURT: Okay. We'll take a short break and then

13 --

14 MR. EVANS: I appreciate that.

15 THE COURT: Yes, sir. We'll reconvene in about ten
16 minutes. That's about twenty-five till eleven.

17 (COURT IN RECESS AT 10:24 AM.)

18 (COURT BACK IN SESSION AT 10:37 AM.)

19 THE COURT: Thank you. You may take your seats.

20 Is the State ready?

21 SOLICITOR FULLER: Yes, your Honor. We have one
22 quick question regarding the charge on failure to stop.

23 We're just asking if it's possible to have the entire
24 statute read?

25 THE COURT: Well let me look at the entire statute.

1 56-5-750?

2 SOLICITOR FULLER: 56-5-750.

3 THE COURT: You realize of course if I comply with
4 what you say then I'll be telling the jury what the
5 sentences are?

6 SOLICITOR FULLER: Just the first section, your Honor.

7 THE COURT: Isn't that what you said? You said the
8 entire section.

9 SOLICITOR FULLER: I'm sorry. Just the - before the
10 sentences start, that first paragraph, your Honor.

11 THE COURT: Let's see what I charge.

12 I'll charge that Section A.

13 SOLICITOR FULLER: Thank you, your Honor. We're
14 ready to proceed.

15 THE COURT: Yes, ma'am, Ms. Lipinski.

16 MS. LIPINSKI: We kind of got off course a little bit
17 yesterday, but I did instruct him any to make a motion for
18 a directed verdict. At one point we tabled that and held
19 it open and then we kind of got distracted on his witness
20 but I did instruct him to make that motion. I think he's
21 unsure of the timing of it so I just felt the need to alert
22 the court.

23 THE COURT: Mr. Evans, according to what your standby
24 counsel says you wish to make a motion that I grant a
25 verdict in your favor, that is find you not guilty

1 basically based on the fact that the state from your
2 perspective has not presented enough evidence for the case
3 to go forward to a jury. Is that the motion you're making?

4 MR. EVANS: Yes, sir.

5 THE COURT: All right. Well I deny that motion. But
6 you did, you timely made it.

7 All right. Bring in the jury.

8 MR. EVANS: Excuse me, sir.

9 THE COURT: Wait just one second.

10 MR. EVANS: What just happened about the statute that
11 I --

12 THE COURT: You're charged under Section 56-5-750 and
13 she just wanted to make sure that I was going to read that
14 statute since that's what the indictment says.

15 MR. EVANS: On --

16 THE COURT: I read that statute that says "In the
17 absence of mitigating circumstances, it is unlawful for a
18 motor vehicle driver, while driving on a road, street, or
19 highway of the State to fail to stop when signaled by a law
20 enforcement vehicle by means of a siren or a flashing
21 light. An attempt to increase the speed of a vehicle or in
22 other manner avoid the pursuing law enforcement vehicle
23 when signaled by a siren or flashing light is prima facie
24 evidence of a violation of this section. Failure to see
25 the flashing light or hear the siren does not excuse a

1 failure to stop when the distance between the vehicles and
2 other road conditions are such that it would be reasonable
3 for a driver to hear or see the signals from the law
4 enforcement vehicle." That's what the law says.

5 Thank you. All right, bring in the jury.

6 (JURY REENTERS COURTROOM AT 10:43 AM.)

7 THE COURT: Good morning. Y'all think I missed that
8 class in kindergarten when they taught you to tell time.
9 We've been working since ten, we had some issues to take
10 care of and including the fact that I had told you
11 yesterday there would be an additional witness. It turns
12 out there is not another witness so we've reached the point
13 where the State would make a closing argument for you and
14 then Mr. Evans will make a closing argument. But he will
15 not be testifying. He's not under oath on the stand
16 testifying so what he will be doing is the same thing that
17 the State will be doing. That is he will be talking to you
18 about why under the evidence you should return a certain
19 verdict. Of course the State is arguing that that evidence
20 in the record should lead to a verdict of guilt. Mr. Evans
21 will be telling you why that evidence in the record should
22 create at least a reasonable doubt in your mind and I
23 remind you that he is presumed innocent and ask you to
24 return a verdict of not guilty based on what he says to you
25 regarding the facts of this case.

CLOSING ARGUMENT: BY SOLICITOR FULLER

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1 Ms. Fuller.

2 SOLICITOR FULLER: Yes, your Honor.

3 CLOSING ARGUMENT BY MS. FULLER:

4 MS. FULLER: May it please the Court.

5 Ladies and gentlemen of the jury, you all may be
6 wondering why we're here today. We're here because every
7 person has a right to a jury trial regardless of how strong
8 or how weak the State's case is. However a request for a
9 jury trial does not indicate whether the State's case is
10 strong or weak. It does not mean the case is complicated.
11 This case is not complicated.

12 Before long you're gonna hear from Judge Hayes; he's
13 going to talk to you about the law and he's gonna instruct
14 you on it and he'll tell you about the burden of proof and
15 the standard of proof. The State, we have the burden of
16 proof here. We have to prove our case beyond a reasonable
17 doubt.

18 Let's talk a little bit about what reasonable doubt
19 is. Doubt that would cause a reasonable person to hesitate
20 to act; there must be proof that leaves you firmly
21 convinced of the defendant's guilt. Reasonable doubt is
22 the highest standard we have in the system but it is not
23 insurmountable. Reasonable doubt does not mean beyond any
24 or all doubt. There isn't much in life that's beyond any
25 and all doubt.

1 The thing I want you to remember is hesitation versus
2 deliberation. You all are supposed to go back to that jury
3 room after this and go back through all the evidence and
4 the testimony you've heard and talk about it. That is your
5 job as jurors. That is what you are here to do. But that
6 is not hesitation. That is deliberation.

7 The first charge Mr. Evans is facing is failure to
8 stop for a blue light. This is the statute. It is
9 unlawful for a motor vehicle driver while driving on a
10 road, street, or highway of the State to fail to stop when
11 signaled by law enforcement by means of a siren or a
12 flashing light.

13 Now let's go back through the facts that you have
14 heard. The defendant drives up alongside officers. They
15 get a clear view of one another and then the defendant
16 drives off. He's aware of law enforcement's presence at
17 that point. The two officers go after him in order to pull
18 him over for suspicion of DUI. The siren's activated or
19 the lights are activated. The defendant doesn't pull over.
20 The siren is activated. He keeps driving even speeds up on
21 Marshall Street. He wants to put some space between
22 himself and the officers.

23 The defendant had multiple opportunities to pull over
24 and didn't. He only stopped when he turned onto Walnut and
25 there was a crowd in the street from a party with people

CLOSING ARGUMENT: BY SOLICITOR FULLER

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1 and cars blocking that street.

2 He's also charged with resisting arrest. This is just
3 as straightforward as failure to stop. It is unlawful for
4 a person to assault, beat, or wound an officer when an
5 arrest is being made and that person knew or reasonably
6 should have known that that person is a law enforcement
7 officer.

8 The defendant gets out of his car and he punches the
9 officer. He didn't get out and initially comply. He got
10 out and punched. He didn't hesitate, and he continued to
11 struggle with Detective Smith. Another officer, Officer
12 Ochiltree, had to come up behind the defendant and taze
13 him. He falls to the ground and still refuses to comply.
14 He ended up having to get tazed twice more before he would
15 put both hands behind his back to allow himself to be
16 handcuffed.

17 Mr. Evans has stood up here and he's raised some
18 arguments; he's talked about some stuff, he's brought up a
19 lot of things that have absolutely nothing to do with this
20 case. What I ask you all to focus on is exactly what
21 happened on the night of June 21st of 2015. Mr. Evans
22 talked a lot about excessive force with the multiple
23 tazing. However, Detective Smith when he saw that Mr.
24 Evans was getting out of the car without a gun himself
25 holstered his gun immediately and he took a punch because

1 of that choice.

2 Mr. Evans also tries to keep giving the impression
3 that for failure to stop for a blue light to be guilty of
4 that, it has to be like what you see in the movies. He has
5 to be traveling at high speeds ignoring all road traffic
6 signals and all the rules of the road. That is not what
7 the statute requires. It only requires that there are
8 lights and siren from a law enforcement vehicle and that
9 you don't stop.

10 Distance doesn't matter. Even though he only went two
11 thirds of a mile speed doesn't matter. It does not matter
12 that he wasn't moving at a high rate of speed. It doesn't
13 matter that he was using his turn signals. All those
14 things are irrelevant. What matters is that he had
15 multiple opportunities to stop on different streets and
16 didn't do it. He only stopped when the cars and the people
17 from the party forced him to.

18 Ladies and gentlemen, like I said before, this is a
19 straightforward simple case. You can use your common
20 sense. I ask that you go back to the jury room, you talk
21 over the evidence and the testimony you've heard and then
22 you return and come back and find Mr. Evans guilty on all
23 counts. Thank you.

24 THE COURT: Mr. Evans.

25 CLOSING ARGUMENT BY MR. EVANS:

CLOSING ARGUMENT: BY MR. EVANS

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1 MR. EVANS: How you doing today? When you go back in
2 that jury room I just want you to have an open mind. I
3 want you to - Well I'm not even gonna get my age brackett -
4 I just want you to put yourself in my shoes and understand
5 where I coming from.

6 Basically failure to stop for a blue light is an
7 intent to increase speeds of a vehicle in a manner of
8 avoiding pursuant of a law enforcement. As a police
9 officer openly said there was no high speeds, no speeding
10 period. This is in the statute. The attempt to increase
11 speeds trying to get away from the law - law enforcement
12 officer.

13 Use your judgment. You see blinkers and you see me
14 put my blinker's on and turn. The road is this skinny.
15 You see cars on this side and you see cars on this side. I
16 was getting to a place where I felt safe and so I could
17 pull over in just fashion. You can't pull over in your
18 neighbor's street --

19 SOLICITOR FULLER: Your Honor, he's testifying.

20 THE COURT: Yeah. Don't testify. You can argue what
21 the facts show but not --

22 MR. EVANS: You can listen to one officer and to the
23 other one for Robert Smith said it was high speeds
24 Ochiltree said was no high speeds. Y'all listen closely.
25 So basically that's - that's not failure to stop for a blue

CLOSING ARGUMENT: BY MR. EVANS

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1 light when I'm trying to get to some place where I'm trying
2 to have a safe where to pull over at.

3 If you look closely if you see how tight the streets
4 was and how both cars was on there on both sides of the
5 street there's no way you can just stop in the middle of
6 that street. You have to go somewhere - you have to get
7 off that street and turn and get ready to pull over
8 somewhere.

9 Basically for resisting arrest I know it looks - I
10 know it looks bad when you have a gun pointed to you in
11 your head and you feel like your life's in danger in - he
12 lurched towards me and I really just stepped into him. He
13 lurched --

14 SOLICITOR FULLER: Objection, your Honor. He's
15 testifying.

16 THE COURT: I think that's still dealing with the
17 evidence, what the video shows. I'll allow you to argue
18 that.

19 MR. EVANS: Yeah, he lurched towards me and I just,
20 you know what I'm saying, I just shoooooot, you know what
21 I'm saying. I felt it was unlawful and I felt I was self
22 defending myself cause of the manner of it. It's a normal
23 traffic stop he shouldn't have got out his car with a gun
24 to my head. Going to my chest or whatever he said it was.
25 I felt after he put his gun in and ran toward me I just,

CLOSING ARGUMENT: BY MR. EVANS

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1 you know what I'm saying, that was a reaction. You know
2 what I'm saying, that was - I wasn't trying to resist on
3 the ground on my back. You can see hands under my stomach
4 and one hand behind me.

5 THE COURT: All right, now you're arguing to the --

6 MR. EVANS: Well that's on the video, your Honor.

7 THE COURT: Okay. Go ahead.

8 MR. EVANS: You can see I'm on the ground handcuffed a
9 hundred and fifty thousand volts is way through my body and
10 he's talking about resisting arrest and I'm down on the
11 ground face down. I mean what can you do? I understand I
12 don't have the quote unquote lawyer savvy but whatever, but
13 I just feel, you know, this is my life. I work, I got a
14 job --

15 SOLICITOR FULLER: Objection, your Honor, testifying.

16 THE COURT: Yeah. That is testifying.

17 MR. EVANS: That's testifying? I'm sorry.

18 But I just want you to listen to it, listen to what
19 Ochiltree said happened and Robert Smith said happened and
20 understand if you could just put your mind in the situation
21 like that as a young black man you will understand you'll
22 have a better understanding of why that happened the way it
23 happened. But I swear I know for a fact that I was
24 unlawful for a regular traffic stop to turn into something
25 of that nature where I got to have a gun pulled upon me,

1 you know what I'm saying, for no apparent reason.

2 And for him to put his gun and come toward me for me
3 just to react like that that's - that was a natural
4 reaction. It wasn't like I really just got out of the car
5 and went to him. You see the video. He came like that and
6 I went like that. Its crazy, you know what I'm saying, for
7 a natural reaction. So I just want you to have a open mind
8 and really understand, you know, the law to. If I'm a
9 citizen coming in front of you and for the State I felt I'm
10 right. I felt that it was unlawful arrest and I felt that
11 as a citizen no police officer should get out their car
12 with a gun on a regular traffic stop whatsoever. To me
13 that's unlawful so. But granted what happened and the
14 excessive force that happened on that ground was no
15 resisting no officer when I down face down with all them
16 volts going in me. I just want you to have a open mind.
17 You all talk and got to show reasonable doubt. You just -
18 If I'm just - you feel like I'm plain guilty then that's
19 how you feel. I have to respect it. You know for years
20 down the road I just have to respect it but I just fully
21 feel that by reasonable doubt I had for my unlawful arrest
22 I had probably cause to act the way I reacted being in dire
23 circumstances like that. Point blank, you know what I'm
24 saying? I appreciate y'all's time and patience and y'all
25 have a good day and God bless you.

CHARGE TO THE JURY:

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1 THE COURT: Members of the jury panel, I appreciate
2 the attention you've given to us at this time. My law
3 clerk, Ms. Fitalli, is going to pick up another piece of
4 paper I need to have to complete my charge but I'm going to
5 go ahead and start charging you at this time.

6 We have now reached the point in the trial where the
7 case will be put in your hands for your deliberation. I
8 will remind you that each charge as set forth in the
9 indictments for resisting arrest and failure to stop for a
10 blue light you will have these indictments with you in the
11 jury room but they are not evidence; they are simply the
12 paperwork by way of which this case has been processed
13 through our court system. It will ultimately be where you
14 enroll the unanimous verdict of the jury, Mr. Foreman, and
15 I'll tell you more about that later.

16 Now, the fact that there are two charges is not of any
17 weight. That is, the fact that he is charged out of one
18 incident the two charges does mean that they are - does not
19 mean - does not weigh toward him being guilty of either.
20 Each must rise or stand on it's own merit. You must look
21 at the resisting arrest charge and the failure to stop
22 charge individually and determine whether or not as to the
23 elements I charge you in just a moment as to those offenses
24 the state has proven his guilt beyond a reasonable doubt.

25 Now as to the resisting arrest under the scheme of

CHARGE TO THE JURY:

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1 South Carolina we have two types of resisting arrest and
2 I'm gonna charge you each of those. One is called a more
3 severe, that is, beating and wounding, causing an assault on
4 an officer. The other which is a less severe resisting
5 arrest charge is that of simply resisting arrest without an
6 assault.

7 I tell you that because when I get to later in the
8 charge I will talk to you about a stair stepping of degree
9 of charges and tell you how that factors into your
10 consideration.

11 To these charges Mr. Evans has entered pleas of not
12 guilty. This puts on the State the burden of proving his
13 guilt beyond a reasonable doubt. Anyone charged in our
14 system with any offense is never required to prove themselves
15 innocent. This presumption of innocence is an important
16 rule of law; it is a fundamental part of our system. It's
17 not just a mere legal theory or a mere legal phrase, it is
18 a substantial right.

19 The presumption of innocence adheres to an individual's
20 benefit at the time of their arrest and remains with them
21 as their case is processed through our court system,
22 remains with them throughout the trial. In fact the
23 presumption of innocence is in Mr. Evans' favor and remains
24 at this moment and continues while you deliberate. The
25 presumption of innocence in his favor is removed if and

CHARGE TO THE JURY:

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1 when and only if and when you determine that the State has
2 proven beyond a reasonable doubt his guilt as to an
3 offense.

4 Now the State is not required to prove his guilt
5 beyond all or beyond every doubt. That is not possible in
6 our real world. The State must prove his guilt beyond a
7 reasonable doubt. Our courts have determined to that a
8 reasonable doubt is the kind of doubt that would cause a
9 reasonable person to hesitate to act. Proof beyond a
10 reasonable doubt is proof that leaves you firmly convinced
11 of someone's guilt. If, based on your consideration of the
12 evidence, you are firmly convinced that Mr. Evans is guilty
13 of a crime one's charged, or the lesser as to resisting
14 arrest, you would find him guilty. On the other hand if
15 you think there is a real possibility that he is not guilty
16 of an offense you would return a verdict finding him not
17 guilty.

18 I remind you that I am the sole judge of the law and
19 you must take, accept and apply the law as I charge it.
20 And that you are the sole judges of the facts in the case
21 and you're not to take from anything I say or do at any
22 time or have said or done during this trial as indicating
23 an opinion of mine on the facts. That is solely your job.
24 It is solely your job to examine the evidence and give to
25 the evidence the effect, the value, the weight, and the

CHARGE TO THE JURY:

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1 truth you believe the evidence should have.

2 If you think I charge you the law in error, or you
3 think the law should be different you must disregard that
4 and apply the law as I charge it. In assessing the
5 evidence you can believe one witness as opposed to several,
6 several witnesses as opposed to one, you may believe all or
7 part or none of a witnesses' testimony.

8 In analyzing the evidence use your common sense, your
9 sense of logic, your sense of reason, use your experiences
10 in life as you analyze the evidence. As judges of the
11 facts you use your common sense, your sense of - your
12 common sense, your experiences in your day to day life.
13 You also as judges of the facts must necessarily judge the
14 credibility; that is, the believability of the witnesses
15 who have testified.

16 In doing this you use the things I've already talked
17 to you about. And you can use certain things including
18 indications that you have as to an individual as to -
19 Excuse me, I'm getting - I got a cold so I'm getting a
20 little tongue tied. I apologize.

21 As I said in judging the facts you necessarily must
22 judge the credibility; that is, the believability of the
23 witness. Use your sense of - your common sense, your sense
24 of reason and your experiences in life. Use the factors
25 that you deem in your day to day life as being indicators

CHARGE TO THE JURY:

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1 of truthfulness in an individual. As to credibility you
2 can also consider how a witness acts on the stand. Are
3 they hesitant or straight forward? Is their testimony
4 consistent or inconsistent? Are they hesitant or
5 straightforward? Consider the opportunity a witness had to
6 know those things a witness testifies to. And you can
7 consider any bias or prejudice a witness may have; that is,
8 whether a witness would wish to help or hurt one side or
9 the other.

10 In this case Mr. Evans has exercised his
11 constitutional right to remain silent. The fact that he
12 has done that cannot be used against him in any way
13 whatsoever. Anyone charged in our system has an absolute
14 right to remain silent. The exercise of a defendant by
15 that right cannot be used against them or mitigate them
16 against them in any way whatsoever.

17 You cannot in your jury room discuss the fact that Mr.
18 Evans exercised his right to remain silent. And you cannot
19 factor that into your own consideration of what the verdict
20 should be.

21 The State has the burden of proving his guilt beyond a
22 reasonable doubt whether he testifies or not and I remind
23 you that he is presumed innocent until you are convinced by
24 the evidence the State has presented that he is guilty
25 beyond a reasonable doubt.

CHARGE TO THE JURY:

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1 He is charged with failure to stop for a blue light.
2 This is a statute under what's called our rules of the
3 road. The statute - you don't have to remember the
4 numbers, it's 56-5-750 - states that in the absence of
5 mitigating circumstances it is unlawful for a motor vehicle
6 driver while driving on a road or highway of the State to
7 fail to stop when signaled by law enforcement vehicle by
8 means of a siren, or flashing light. An attempt to
9 increase the speed of a vehicle or another manner to avoid
10 the pursuing law enforcement vehicle when signaled by a
11 siren or flashing light is prima facie evidence of a
12 violation of this section.

13 Failure to see the flashing light or hear the siren
14 does not excuse a failure to stop nor the distance between
15 the vehicles and other road conditions are such that it
16 would be a unreasonable - be reasonable for a driver to
17 hear or see the signals from the law enforcement officer.

18 That's what the statute says. In determining of
19 whether or not there are in this case mitigating
20 circumstances which would have justified Mr. Evans failure
21 to stop for a blue light, you may consider regarding
22 mitigating circumstances actual road conditions, lighting,
23 weather, and any other circumstances you believe to have
24 reasonably mitigated the alleged violation.

25 An official signal requiring a motorist to stop may be

CHARGE TO THE JURY:

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1 by a siren, or, flashing light. It does not have to be by
2 both. And attempt to increase the speed of a vehicle or in
3 some other manner avoid the pursuing law enforcement
4 vehicle, when signaled by a siren or flashing light may be
5 considered as evidence of failure to stop for a blue light.
6 However, this fact of increasing speed being evidence of a
7 failure to stop is merely an evidentiary fact to be taken
8 into consideration by you, along with the other evidence in
9 the case, and it's to be given such weight if any as you
10 deem appropriate.

11 The charge in the indictment as to resisting arrest is
12 under as I told you earlier the more severe resisting
13 arrest charge. That is a term generally as assault on an
14 officer. That under our statutory scheme that is the top
15 charge regarding resisting arrest. If you consider what
16 I'm going to talk to you about now as a set of stairs, you
17 have what he's charged with up here but there is a lower
18 step called simple resisting arrest. I will charge you
19 that also because you have the right if you determine that
20 the state has failed to prove that he violated the more
21 severe, that is assault, but that he did violate the lesser
22 you could find him only guilty of the lesser. But of
23 course you would have to find him guilty of that beyond a
24 reasonable doubt before you could find him guilty of either
25 one.

CHARGE TO THE JURY:

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1 He is charged with assaulting a law enforcement
2 officer while resisting a lawful arrest. Here the State
3 must prove beyond a reasonable doubt that the defendant,
4 Mr. Evans, knowingly and willfully assaulted, beat, or
5 wounded a law enforcement officer who was serving,
6 executing, or attempting to serve or execute a legal writ
7 or process, or that the defendant assaulted, beat, or
8 wounded an officer when the defendant was resisting an
9 arrest being made by a person the defendant knew, or
10 reasonably should have known, was a law enforcement
11 officer.

12 Knowingly means with knowledge; something that is done
13 knowingly is done consciously. Willfully means something
14 he's done intentionally and not by accident.

15 An assault occurs when a person violently or
16 forcefully attempts to hurt or injure another person and
17 has the present ability to complete the attempted injury.
18 An assault is the intentional creation of fear of
19 immediately bodily harm. It is not necessary that an
20 attempted injury or harm actually take place for there to
21 be an assault.

22 I always use an example if I'm within striking
23 distance of you and I raise back my fist in a rude and angry
24 manner and I have the ability because of the distance to
25 hit you then put you in fear I have committed an assault.

CHARGE TO THE JURY:

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1 Now, a battery is the unlawful touching of another
2 person who has committed an assault. A battery is the
3 completion of the assault by using or applying force to
4 another person however slight, in a rude, angry, or
5 resentful manner without legal justification. Going back
6 to my example, I've assaulted you and if I put you in fear
7 by rearing back or raring back if I go forward and actually
8 make contact with you, however slight, I have committed a
9 battery.

10 A law enforcement officer, here the term law
11 enforcement officer used in the statute means any duly
12 appointed or commissioned law enforcement officer of the
13 state, county, or municipality.

14 Now, as to resisting arrest there is that second less
15 severe down step. If you find the State has failed to
16 prove beyond a reasonable doubt that Mr. Evans assaulted an
17 officer while resisting arrest, you may consider whether
18 the State has proven beyond a reasonable doubt that he
19 simply resisted arrest. A simple resisting arrest does not
20 include or require an assault on an officer.

21 One has committed this lower offense if that person
22 knowingly and willfully opposed or resisted a law
23 enforcement officer in attempting to make a lawful arrest
24 of that person. Resist means to oppose, strive against, or
25 obstruct. Obstruct means to impede, hinder, or interfere

CHARGE TO THE JURY:

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1 with. Even peaceful, nonviolent, indirect obstruction of
2 an arrest can constitute resisting arrest. If the means
3 used are sufficient to prevent an officer from making an
4 arrest, the defendant would be guilty of that lesser
5 offense of resisting arrest.

6 I will send in with you the verdict forms on the
7 resisting arrest charge. I will go over that with you in
8 just a moment.

9 Mr. Foreman, as to the failure to stop for a blue
10 light, there are only two possible verdicts guilty or not
11 guilty. On the bottom left of the back of the indictment
12 you will see the word verdict and there are four lines, a
13 place for you to sign and a place for you to date. Today
14 is the 10th. On one of the lines above your signature you
15 would write the jury's unanimous verdict. If that verdict
16 is not guilty that means that you have determined that the
17 State has failed to prove his guilt as to failure to stop
18 for a blue light beyond a reasonable doubt you would write
19 the two words not guilty.

20 If you determine that the State has proven Mr. Evans
21 guilty of failure to stop for a blue light beyond a
22 reasonable doubt you would write the one word guilty.

23 Now you will have the verdict form on the resisting
24 arrest; it will have two options because you have the stair
25 step that I talked about. The first option, the first

CHARGE TO THE JURY:

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1 line, the lines will have a short line in front of them.
2 The first line says we find the defendant guilty of
3 assaulting an officer while resisting arrest. That is the
4 charge. The top one is the charge that he is facing.

5 The second says we find the defendant guilty of the
6 lesser included offense of resisting arrest. You will put
7 a x or a check mark in front of either one of those if you
8 find that the State has proven either beyond a reasonable
9 doubt.

10 The third line says we find the defendant not guilty.
11 If you find that the State has failed to prove Mr. Evans
12 guilty of either of the offenses, the assaulting an officer
13 or the simple resisting arrest, you would indicate by
14 placing on that third line a check that says we find the
15 defendant not guilty.

16 Now, your verdict must be unanimous. All twelve
17 jurors must agree. Your verdict cannot be based on
18 passion, prejudice, public opinion or matters outside the
19 record. If you have questions while you are deliberating
20 please write them down, Mr. Foreman, knock on the door give
21 them to the bailiff. The bailiff will bring them to me and
22 I will as soon as possible meet with the attorneys and Mr.
23 Evans to go over your question and respond. It may be that
24 I can write an answer on any note you send out. If I do
25 that and send the note back in save that note and turn it

CHARGE TO THE JURY:

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1 back in with the CD or DVD at the end of the trial.

2 The State - we will make arrangements for you to have
3 a computer in the jury room so that you can view the - a
4 clean computer that has nothing else on it - so that you
5 can view the video that's in evidence. Again, your verdict
6 cannot be based on sympathy, passion, prejudice, public
7 opinion or matters outside the record. It must be
8 unanimous.

9 If you wish to have testimony replayed we can bring
10 you back in and replay the testimony. If you wish for me
11 to go over any part or all of my charge on the law, let me
12 know and I will bring you back in and recharge you the law
13 here in open court.

14 When you first go into the jury room - when you've
15 reached a verdict knock on the door and tell the bailiff.
16 The bailiff will send for me and I will send for you as
17 promptly as I can and I may be involved in other matters.
18 but I will send for you when you reach a verdict as
19 promptly as I can.

20 When you first go into the jury room now do not start
21 deliberating. I have to go over my charge with the State
22 and with Mr. Evans. If I have made an error I'll have to
23 bring you back in and correct it because its very important
24 that you follow the law so it's very important that I tell
25 you the law correctly. If I have not made an error in my

CHARGE TO THE JURY:

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1 charge I will send in the DVD and the indictments and the
2 verdict form on resisting arrest and the bailiff will tell
3 you to start deliberating.

4 So I'm gonna let you go to the jury room right now but
5 do not start deliberating.

6 (JURY EXITS COURTROOM FOR DELIBERATIONS AT 11:13 AM.)

7 THE COURT: Anything from the State regarding the
8 charge?

9 SOLICITOR FULLER: No, your Honor.

10 THE COURT: Mr. Evans, anything from you? You might
11 want to ask Ms. Lipinski. Anything on the charge?

12 MR. EVANS: No, sir.

13 THE COURT: All right. Well we'll send in the verdict
14 form on the assault - I mean resisting arrest and we will
15 send in the two indictments and the DVD.

16 SOLICITOR FULLER: I will go bet the jury lap top and
17 give it to the bailiff.

18 THE COURT: Okay. And tell 'em to start deliberating.
19 And we'll be at ease.

20 SOLICITOR FULLER: Thank you, your Honor.

21 THE COURT: He can remain out. Just remain on this
22 floor of the building. There is a restroom on this floor.
23 If you want water or anything we've got it. All right.

24 (COURT AT EASE AT 11:14 AM..)

25 (COURT BACK IN SESSION AT 11:28 AM IN THE MATTER OF

1 THE STATE VERSUS JUSTIN BIVINS PLEA WITH ATTORNEY DAVID
2 COOK.)

3 (COURT IN RECESS AT 11:36 AM.)

4 (COURT BACK IN SESSION AT 11:53 AM.)

5 THE COURT: Thank you. You may take your seats.

6 Mr. Evans, the jury wants to see a copy of the law on
7 failure to stop as I read it to them and you indicated
8 through my law clerk that you had no objection. That's
9 what I'm gonna give them and I'll let you look at it.
10 That's just straight from the South Carolina Code.

11 MR. EVANS: Oh, no.

12 THE COURT: No objection?

13 MR. EVANS: No.

14 THE COURT: Any objection from the State?

15 SOLICITOR FULLER: No objection, your Honor.

16 (COURT AT EASE AT 11:11:55 AM.)

17 (COURT BACK IN SESSION AT 12:08 PM.)

18 (WHEREUPON, COURT'S EXHIBIT NUMBER THREE, IDENTIFIED
19 AND MARKED, RECEIVED INTO EVIDENCE.)

20 THE COURT: Okay. Ms. Lipinski, you were not here
21 earlier, the jury requested the statute on failure to stop
22 and with your client - not your client, your former
23 client's agreement we've sent that statute in.

24 They now want the statute on to resisting arrest.

25 They read exactly almost exactly. I'm sure there is a word

VERDICT:

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1 to that I use differently. Any objection to sending in the
2 statute on that from the State?

3 SOLICITOR FULLER: No, your Honor.

4 MR. EVANS: No, sir.

5 THE COURT: Okay. All right, we will send that in
6 too.

7 That's it. Thank you.

8 (COURT IN RECESS AT 12:12 PM.)

9 (COURT BACK IN SESSION AT 12:48 PM.)

10 (WHEREUPON, COURT'S EXHIBIT NUMBER FOUR, IDENTIFIED
11 AND MARKED, RECEIVED INTO THE RECORD.)

12 THE COURT: You may have a seat. Thank you.

13 I understand we have a verdict. The State's present
14 and Mr. Evans is present.

15 Bring in the jury.

16 (JURY REENTERS COURTROOM AT 12:49 PM.)

17 THE COURT: Mr. Foreman, I understand the jury's
18 reached verdicts?

19 MR. FOREMAN: Yes, sir.

20 THE COURT: If you'll hand it to the bailiff he will
21 hand it up to me.

22 (VERDICT RECEIVED UP BY THE COURT.)

23 THE COURT: All right.

24 MADAM CLERK: Indictment 2016-GS-46-294 the State
25 versus Marquis Evans indictment for failure to stop for a /

VERDICT:

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1 blue light verdict guilty signed by the Foreperson dated
2 today's date.

3 Indictment 2016-GS-46-293 State versus Marquis Evans
4 indictment for resisting arrest we find the defendant
5 guilty of assaulting an officer while resisting arrest
6 signed by the Foreperson dated today's date.

7 Ladies and gentlemen of the jury, if that be your
8 verdict so say you all by raising your right hand.

9 Let the record show all jurors affirmed this verdict.

10 (ALL JURORS AFFIRMED.)

11 THE COURT: Anything from the State before the jury's
12 dismissed?

13 SOLICITOR FULLER: No, your Honor.

14 THE COURT: Mr. Evans, anything before the jury's
15 dismissed?

16 MR. EVANS: No, your Honor.

17 THE COURT: All right. Members of the jury panel, --
18 What are they supposed to do?

19 We're gonna check and see what, it's getting toward
20 the middle of the week and I know I'm supposed to start
21 another trial. Quite frankly I don't feel like it but
22 that's my job. We'll find out what we need to do as far as
23 your calling back in. Call back tonight after seven.

24 Mr. Foreman, I'll - He's already done it. You're
25 ahead of the game. All right, call back tonight after

SENTENCING:

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1 seven and we appreciate your help on this case.

2 Thank you, you're free to leave.

3 (JURY DISMISSED AT 12:51 PM.)

4 THE COURT: Does Mr. Evans have any prior record?

5 SOLICITOR FULLER: Yes, your Honor.

6 THE COURT: He mentioned just - Was this his second
7 failure to stop?

8 SOLICITOR FULLER: That - I was going to address that
9 with your Honor. I indicted it as a first but it is
10 actually a second, your Honor, but it's in your discretion.

11 I have the sentencing sheets for both.

12 THE COURT: Well I think if he was indicted as a first
13 and that's what he went to trial on then - The reason I'm
14 kind of following that is he said he was looking at five
15 years, fifteen years. Again I thought he said eighteen.

16 My math had it down at thirteen.

17 MS. LIPINSKI: Your Honor, I have advised him it was
18 gonna be a second plus a resisting ten and he has the
19 probation violation that would kind of be the worst case
20 scenario.

21 THE COURT: Okay. I didn't know about the probation.

22 So tell me his record though. If he was indicted I
23 mean the purpose of the indictment is to we all know - -

24 SOLICITOR FULLER: Right, your Honor. That is my
25 mistake.

SENTENCING:

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1 THE COURT: I'm gonna - Even though this is - you're
2 telling me this is perhaps your second failure to stop for
3 a blue light, they've already charged you as a first so
4 that's what I'm gonna look at as far as what sentence
5 you're looking at, Mr. Evans.

6 SOLICITOR FULLER: 2001 willful obstruction of law
7 enforcement officers, giving false information, armed
8 robbery, influencing a witness, aggravated assault. 2007 a
9 probation revocation. 2009 two counts of obstruction of
10 police, criminal trespass and simple battery. 2009
11 reckless driving. 2011 simple battery against a police
12 officer. 2013 reckless driving, PWI level five, failure to
13 stop. 2015 public disorderly conduct, failure to stop for
14 which he's on probation; reckless driving and unlawful
15 carry. He has a pending DUI second with our office as well
16 as pending DUI second and throwing bodily fluids in
17 Lancaster. I believe he has another failure to stop
18 pending in Lancaster, your Honor.

19 THE COURT: All right. Mr. Evans, they're gonna serve
20 you with, I believe, a citation probation indicating that
21 by having found guilty of this charge that's a violation of
22 your probation.

23 (DEFENDANT SERVED WITH PROBATION CITATION.)

24 THE COURT: All right, the citation that was just
25 served on your alleges that you violated the probationary

SENTENCING:

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1 sentence with Judge Benjamin. She imposed a sentence on
2 April 6, 2015 for failure to stop for a blue light first
3 offense. She gave you one year provided upon five day
4 service, two years probation to follow. Is that correct?

5 MR. EVANS: Yes, sir.

6 THE COURT: And the warrant - the citation alleges you
7 violated that sentence by again having a failure to stop
8 for a blue light charge and that is correct of course so I
9 find that is a substantial violation. I told you I would
10 take into consideration what Mr. Brackett told me earlier.
11 I also have to take into consideration your extensive
12 record and the fact that you were on probation for failure
13 to stop at the time you picked up this failure to stop.

14 So I'll be glad to hear anything you have to say
15 regarding which sentence I should impose.

16 MR. EVANS: Your Honor, the statute first was the
17 ninety days for the - the - no more than a year for the
18 first failure to stop is what they indicted me on, they
19 indicted me on today?

20 THE COURT: I think it's three years. Failure to stop
21 for a blue light first offense carries up to three years.

22 MR. EVANS: Okay. Thank you. I also like you to take
23 into consideration the fact that, you know, that I was on
24 mental health previously back in 2009. And you know take
25 into consideration that I was still trying to get help when

SENTENCING:

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1 I came home from prison in 2013. And like I said, your
2 Honor, I have a job. I don't have a job no more but I had
3 a job and, you know, I had a job. The only reason I took
4 it to trial cause of my record. I already knew it was
5 gonna be so hard for me to get another job so that's why I
6 took this, you know what I'm saying, to trial, you know
7 what I'm saying, by myself not knowing what I was really
8 doing but I just had to fight. Like I said I a lot of the
9 parts I put back, you know, I was twenty some years old. I
10 mean basically I have driving charges, you know what I'm
11 saying, for driving or whatever like that.

12 I also want to state that you know I have a real
13 disease as far as alcoholism, you know what I'm saying. So
14 you know I just look forward to trying to get some help in
15 that aspect if possible, you know, doing some classes or
16 whatever. You know what I'm saying with my mental health
17 counseling. I mean like I said I know I have an extensive
18 record you know what I'm saying but at the same time I kind
19 of changed my life a little bit beside the drinking. I
20 know my downfall in my life as far as me driving you know
21 what I'm saying and making bad choices in my life. At this
22 age like I said I'm thirty-eight and like I basically I
23 been trying to get help and trying to get back on my
24 counseling ways now I got no job and just try you know make
25 the best out of life you know what I'm saying, that I can

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1 as far, you know, that's one reason I took it to trial
2 cause I had a job. I mean you know its so hard to find one
3 out there so with my record. That's the reason why I took
4 this to trial. I knew it was kind of me going by myself
5 against a real lawyer. I really don't, you know what I'm
6 saying, basically I was stuck in mud, you know what I'm
7 saying, but I tried. It didn't work out to my best
8 interest. Like I said have mercy upon the court to just
9 take into consideration of the fact that I been trying to
10 get help and to try to get back to my counseling and
11 hopefully you can, you know, possibly try to get me in some
12 classes, you know, if you gonna be sending me down the road
13 or whatever to try to get some, you know what I'm saying,
14 some alcohol cause that's my real downfall in my whole life
15 and it finally caught up to me today at this age and I'm
16 also gonna admit it. Thank you.

17 THE COURT: All right. Well, you're somewhat of an
18 anomaly, Mr. Evans. You're a pretty bright man. No
19 question about that.

20 MR. EVANS: Thank you.

21 THE COURT: And that will carry the brightest man in
22 the world down but like I say you're sort of an anomaly.
23 You got a bad record but you're very bright and you're
24 apparently hard working but I have to go on what you
25 continue to do as far as the offenses.

SENTENCING:

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1 I find that this is a substantial violation of your
2 probation and I'm gonna revoke that probation and have it
3 run concurrent with your current sentences. On the failure
4 to stop for a blue light that sentence is three years.
5 That's concurrent with the other sentences I impose today.
6 And on the resisting arrest the sentence on that is eight
7 years. Thank you.

8 MR. EVANS: Your Honor, is it possible to take this?

9 THE COURT: Well, I will look at it but I don't think
10 it's gonna change anything since it's from 2009. And I
11 heard what Mr. Brackett said.

12 MR. EVANS: Yes, sir.

13 THE COURT: And I've taken that into consideration but
14 I also when I told you that I did not know your extensive
15 record. And I did not know that you were on probation for
16 failure to stop for a blue light when you committed this
17 failure to stop for a blue light. But give me a minute and
18 I'll look at this and see if there's anything in here that
19 might make a difference.

20 MR. EVANS: I appreciate it.

21 THE COURT: And while I'm doing that I'll tell you
22 that you have ten days to file an appeal if you think of
23 any error in the trial of this case and you can talk while
24 she's your - not your counsel but your standby counsel, you
25 can ask Ms. Lipinski about that.

SENTENCING:

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1 MS. LIPINSKI: I told him, your Honor, that I would
2 come see him later on this week and discuss it with him and
3 file the papers for him if that's how he wished to proceed.

4 THE COURT: Okay.

5 (PAUSE AT 01:00 PM.)

6 THE COURT: Well this is informative although it's not
7 gonna change my decision the issues that brought you before
8 me today and the issues that got you into probation and the
9 issue not that you've kind of addressed yourself is that
10 you have according to one of these reports and anti-social
11 personality. I don't know how that's fixed other than
12 through therapy. And that they had recommended some
13 followup. And again this is helpful in a way. It kind of
14 - not kind of - but it does emphasize what you've already
15 told me and it does reflect the lifetime you've had an
16 interaction with law enforcement but since - and I'll make
17 this a part of the record also for sentencing purposes but
18 - and quite frankly had you not had the extreme record that
19 you have and had you not been on probation or the same
20 violations for which you just been found guilty, failure to
21 stop for a blue light, I would take this more into
22 consideration but I'm gonna stick with the eight years.

23 MR. EVANS: Was that eighty-five?

24 THE COURT: No, it's not an eighty-five percent. I
25 can't advise you about those. Ms. Lipinski will tell you

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1 about appeal but it is not - I can tell you it's not an
2 eighty-five percent. It's not a violent. It's not a
3 serious or a most serious I don't believe. Let's see.

4 No. Thank you.

5 And we'll make this a Court's Exhibit.

6 (WHEREUPON, COURT'S EXHIBIT FIVE, SIX AND SEVEN,
7 IDENTIFIED AND MARKED, RECEIVED INTO EVIDENCE.)

8 THE COURT: Does the Solicitor's office have something
9 or are we gonna break for lunch?

10 (COURT IN RECESS AT 01:04 PM.)

11 (COURT BACK IN SESSION AT 02:39 PM.)

12 (STATE V. ROBERT LEE PLEA WITH ATTORNEY SYRETTA
13 ANDERSON.)

14 (COURT IN RECESS AT 03:00 PM.)

15 -- END OF TRANSCRIPT OF RECORD --

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WITNESSES

RHPD

Witnessing Officer: *Felmet*

ARREST WARRANT NUMBER

2015A4620306806

ACTION OF GRAND JURY

TRUE BILL

[Signature]
Foreperson of Grand Jury
Date: *1-21-16*

VERDICT

*Guilty unanimous of resist and
assault.*

2/10/2016

[Signature]
Foreperson of Grand Jury
Date: *2/10/2016*

DOCKET NO. 2016-GS46-00293

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

JANUARY 21, TERM 2016

THE STATE

VS.

MARQUIS DELLAN EVANS

INDICTMENT FOR

RESISTING ARREST

SC Code: § 16-09-0320(B)
CDR Code: 0256

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.

STATE OF SOUTH CAROLINA

COUNTY OF YORK

CERTIFIED TRUE COPY INDICTMENT

2016 FEB 12 PM 4:35

DAVID HAMILTON
CLERK OF COURT

At a Court of General Sessions, convened on January 21, 2016, the Grand Jurors of York County present upon their oath:

RESISTING ARREST

The defendant, Marquis Dellan Evans, did in York County, on or about June 21, 2015, knowingly and willfully assault, beat or wound Officer Robert Smith with the Rock Hill Police Department while Officer Robert Smith was engaged in serving, executing, or attempting to serve or execute a legal writ or process; or did assault, beat, or wound Officer Robert Smith when resisting an arrest being made by Officer Robert Smith and knew or reasonably should have known Officer Robert Smith was a law enforcement officer, all in violation of Section 16-9-320(B), *Code of Laws of South Carolina* (1976, as amended).

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



MEGAN Y. FULLER
ASSISTANT SOLICITOR

Deputy

169

WITNESSES

RHPD

Witnessing Officer: *Felnet*

ARREST WARRANT NUMBER

79259GZ

ACTION OF GRAND JURY

TRUE BILL

Joseph Faulk
Foreperson of Grand Jury
Date: *1-21-16*

VERDICT

Guilty by unanimous vote
2/10/2016

Frank Howard
Foreperson of Grand Jury
Date: *2/10/16*

DOCKET NO. 2016-GS46-00294

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

JANUARY 21, TERM 2016

THE STATE

VS.

MARQUIS DELLAN EVANS

INDICTMENT FOR

FAIL TO STOP FOR A BLUE LIGHT

SC Code: § 56-05-0750(B)(1)
CDR Code: 0065

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.

STATE OF SOUTH CAROLINA

CERTIFIED TRUE COPY

INDICTMENT

COUNTY OF YORK

2016 FEB 12 PM 4:35

DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC

At a Court of General Sessions, convened on January 21, 2016, the Grand Jurors of York County present upon their oath:

FAIL TO STOP FOR A BLUE LIGHT

The defendant, Marquis Dellan Evans, did on or about June 21, 2015 in York County, while driving on a road, street, or highway of the state, fail to stop when signaled by a law enforcement vehicle by means of a siren or flashing light, all in violation of Section 56-05-0750(B)(1), *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.



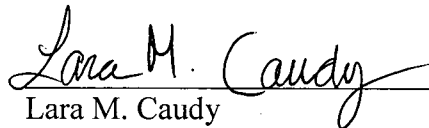
MEGAN Y. FULLER
ASSISTANT SOLICITOR

Deputy

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,



Lara M. Caudy
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT

This 25th day of January, 2017.

RECEIVED

JAN 25 2017

SC Court of Appea