

ORIGINAL

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY

G. Edward Welmaker, Circuit Court Judge

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FEB 11 2013

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

COMEST SABATINO ALLEN,

APPELLANT

Appellate Case No. 2012-212619

RECORD ON APPEAL

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INDEX

INDEX.....	i
TRIAL TRANSCRIPT DATED JULY 18, 2012.....	1
INDICTMENTS.....	121
CERTIFICATE OF COUNSEL.....	129

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF GREENVILLE

STATE OF SOUTH CAROLINA,

PLAINTIFF,

-VS-

COMEST SABATINO ALLEN,

DEFENDANT.

)
)
) 2011-GS-23-01296-01297,
) 01305-01306
)

)
) JULY 18, 2012
)

)
) TRANSCRIPT OF RECORD
)

BEFORE:

THE HONORABLE G. EDWARD WELMAKER, JUDGE

APPEARANCES:

BRENNAN TOWNSEND, ESQUIRE
ATTORNEY FOR THE STATE

TIM SULLIVAN, ESQUIRE
ATTORNEY FOR THE DEFENDANT

DANETTE P. HANKS
CIRCUIT COURT REPORTER

INDEX

WITNESSES	DIRECT	CROSS	REDIRECT	RECROSS
Richard Coury Townsend Sullivan	30	63		
Tina Harwood Townsend Sullivan	68	72		
James Culbertson Townsend Sullivan	73	76		
<<-->>				
				PAGE
Jury Voir Dire				4
Opening Statements Townsend Sullivan				26 28
Closing Statements Townsend Sullivan				85 90
Charge				92
Certificate of Reporter				120

JURY VOIR DIRE

Juror #	Name	Race	Sex	<u>Strikes</u>			Accept
				Court	Plaintiff	Def.	
135	Kilgus, James F	W	M				x
113	Hooker, Tracy L	W	F				x
244	Williams, Golden N	B	F		x		
34	Brown, George A	B	M		x		
66	Dees, James A	W	M				x
156	Maggio, Joseph R Jr	W	M			x	
18	Bennett, Linda W	W	F				x
203	Rosenberg, Sharyn T	W	F				x
85	Furr, Alison T	W	F				x
248	Wingert, Kelly M	W	F				x
64	Davis, Kathy S	W	F				x
214	Simpson, Loreal N	B	F				x
108	Hill, Bessie R	B	F				x
11	Bailey, Nicole K	W	F				x
45	Cirelli, Liza E	W	F			x	
39	Byrd, Caitlin A	W	F				x
131	Jones, William B	W	M			x	
127	Johnson, Rozena G	B	F			x	
168	McDonald, Corey J	W	M				x

State of South Carolina -vs- Comest Sabatino Allen (2011-GS-23-1296-1297 and 1305-1306)
Exhibit List

3

STATE'S EXHIBITS

NO	DESCRIPTION	ID	EV
S-1	Photograph of Defendant	5	59
S-2	DVD - In-car	5	50
S-3	DVD - BA room	5	57
S-4	BA analysis test report	5	54
S-5	Implied consent form	5	55
S-6	Notice of suspension of driver's license	5	56
S-7	Map	5	
S-8			

DEFENDANT'S EXHIBITS

	(NONE)		

COURT'S EXHIBITS

C-1	Documents from Defendant requesting expedited trial	5	
C-2	Pleading filed by Defendant against James E. Dorreity	5	
C-3	Notes from jury: Re: Request to view portion of video again Re: Definition of leaving scene / Definition of assault & battery	111	

July 18, 2012

(WHEREUPON, court convened with all parties present and the following proceedings were had.)

(WHEREUPON, State Exhibit Numbers 1 through 7 were marked for identification.)

(WHEREUPON, Court Exhibit Numbers 1 and 2 were marked for identification.)

(WHEREUPON, the jury panel entered the open court at approximately 10:01 a.m.)

THE COURT: Thank you for your patience with us, ladies and gentlemen. We're now ready to select a jury for the next trial we have this week.

This is an indictment that I'm holding where the State of South Carolina has brought charges against Mr. Comest Sabatino Allen. The first charge says that here in Greenville County on or about October the 31st, 2010, that he unlawfully injured Officer Rich Coury, whereby the victim suffered great bodily injury or that was accomplished by means likely to produce great bodily injury or death. He's been charged with assault and battery of a high and aggravated nature.

He's also been charged on that same date with willfully and knowingly and unlawfully failing to stop for a police vehicle when he was driving on a roadway, street or a highway in the state, refused to stop when signaled to

1 do so by a blue light or siren. And that constituted the
2 offense for failing to stop for a blue light.

3 Mr. Allen's also been charged on that date with
4 operating a motor vehicle while under the influence of
5 alcohol or other drugs to such a degree that his faculties
6 to drive were deteriorated and appreciably impaired.

7 The final charge on that same date is driving a motor
8 vehicle while involved in an accident resulting in damage
9 to an intended vehicle, and left the scene of the accident
10 without fulfilling the requirements of law as far as
11 notification.

12 Each of these charges Mr. Allen has entered a plea of
13 not guilty to. By entering that plea, of course, he's
14 presumed innocent. The State of South Carolina has the
15 burden of proving his guilt beyond a reasonable doubt on
16 each and every one of these charges.

17 I'm going to judge the law in the case, decide what
18 the applicable law would be. We need to find twelve fair
19 and impartial jurors to determine what the facts are and
20 make a decision factually as to the truth of the matter.

21 While you've been qualified to serve as a juror this
22 week, I need to ask you additional questions to determine
23 your eligibility to serve on this particular case.

24 First of all, ladies and gentlemen, is there any
25 member of the jury panel have any prior knowledge from

1 whatever source it may be, from media, from talk at the
2 coffee shop, wherever it may have been, hearsay or
3 otherwise, if you have prior knowledge about this
4 particular alleged incident, would you please stand?

5 (No response.)

6 THE COURT: Thank you. There is no response.

7 Is there any member of the jury panel related by blood
8 or marriage to Mr. Comest Sabatino Allen? If so, would you
9 please stand?

10 (No response.)

11 THE COURT: Is there a member of the jury panel
12 who has a close business or social or personal relationship
13 with Mr. Allen? If so, would you please stand?

14 (No response.)

15 THE COURT: Thank you. There is no response.

16 Among the potential witnesses who may be called in
17 this case would be Officer Richard Coury, Sergeant James
18 Culbertson, Tina Harwood. Are there any member of the jury
19 panel or is there a member of the jury panel who is related
20 by blood or marriage to any of those potential witnesses?

21 (No response.)

22 THE COURT: Is there a member of the panel who
23 has a close business or social, a personal relationship
24 with any of these potential witnesses. If so, would you
25 please stand.

1 (No response.)

2 THE COURT: Thank you. Again, there is no
3 response.

4 Is there any member of the jury panel expressed or
5 formed an opinion in any way about the facts in this case?
6 If so, would you please stand?

7 (No response.)

8 THE COURT: Is there a member of the panel who's
9 aware of any bias or prejudice that would interfere with
10 the ability of that -- of you to render a fair verdict if
11 you were selected as a juror? If so, would you please
12 stand?

13 (No response.)

14 THE COURT: Is there a member of the jury panel
15 who is a contributing member of any organization whose
16 primary concern is that of law enforcement or promotion of
17 victim rights, such organizations as the Sheriff's
18 Association, MADD or SADD, PARR, CAVE. If you're a member,
19 a contributing member, of any such organization, would you
20 please stand?

21 (No response.)

22 THE COURT: Thank you. There is no response.

23 Is there any member of the jury panel who has a
24 religious or a moral opposition to the consumption of
25 alcohol to such an extent that you could not be a fair

State of South Carolina -vs- Comest Sabatino Allen (2011-GS-23-1296-1297 and 1305-1306)
Jury Voir Dire

9

1 juror if selected in this case? If so, would you please
2 stand?

3 (No response.)

4 THE COURT: Thank you. There's no response.

5 Is there any member of the jury panel or a member of
6 your immediate family who's ever been the victim of an
7 automobile accident involving an intoxicated driver? If
8 you or a member of your immediate family have been involved
9 in a DUI related accident, would you please stand?

10 Yes, ma'am, your name, please?

11 THE JUROR: Cathy Wiggins.

12 THE COURT: And was it you or a member of your
13 family?

14 THE JUROR: It was me.

15 THE COURT: And how long ago was that?

16 THE JUROR: Twenty plus years.

17 THE COURT: If you would remain standing.

18 Your name, please, ma'am?

19 THE JUROR: Rosanna Johnson.

20 THE COURT: Okay. Was it you or a family member?

21 THE JUROR: It was me.

22 THE COURT: Okay. And how long ago was that?

23 THE JUROR: 2005.

24 THE COURT: Okay. One more recent and one more
25 distant. Those of you who are standing, if you've been

1 involved in an automobile accident in which an intoxicated
2 driver was operating a vehicle, would that affect your
3 ability to be a fair juror? If you're selected to serve on
4 this panel, there's a DUI charge involved here. Do you
5 believe that would interfere with your ability to be a fair
6 juror?

7 THE JUROR: No.

8 THE JUROR: No.

9 THE COURT: Both of you feel like that you could
10 be fair to the State and you could be fair to the
11 Defendant, you could render a verdict on what takes place
12 in this courtroom, the evidence that's presented, the law
13 that I give you and that alone?

14 THE JUROR: Yes, sir.

15 THE JUROR: Yes, sir.

16 THE COURT: All right. Thank you. You're both
17 qualified. You may be seated.

18 Is there any member of the jury panel or a member of
19 your immediate family involved in law enforcement in any
20 way? If so, would you please stand?

21 Your name, please.

22 THE JUROR: Liza Cipelli.

23 THE COURT: Okay. And what -- is it you or a
24 family member?

25 THE JUROR: I have a family member that's a

State of South Carolina -vs- Comest Sabatino Allen (2011-GS-23-1296-1297 and 1305-1306)
Jury Voir Dire

11

1 member of law enforcement.

2 THE COURT: And what member of your family is
3 that?

4 THE JUROR: It's my uncle.

5 THE COURT: And where does he work?

6 THE JUROR: Now, he's in Texas.

7 THE COURT: In Texas?

8 THE JUROR: Yes, sir.

9 THE COURT: The fact that you do have a relative
10 in law enforcement in Texas, do you believe that would
11 interfere with your ability to be a fair juror?

12 THE JUROR: No, sir.

13 THE COURT: You can set aside that relationship
14 and decide the case on the law and the evidence?

15 THE JUROR: Yes, sir.

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

17 Yes, ma'am, your name, please?

18 THE JUROR: Rachel Clyborne.

19 THE COURT: And which relative do you have?

20 THE JUROR: It's not by blood. It's my step-
21 brother. He's in law enforcement.

22 THE COURT: And where does he work?

23 THE JUROR: Greenville County Sheriff's Office.

24 THE COURT: So you have a brother-in-law that
25 works ---

1 THE JUROR: Step-brother.

2 THE COURT: --- step-brother that works with the
3 Greenville County Sheriff's Office?

4 THE JUROR: Yes, sir.

5 THE COURT: Would that affect your ability to be
6 a fair juror?

7 THE JUROR: No, sir.

8 THE COURT: You could set that relationship aside
9 and be fair to both sides in this case?

10 THE JUROR: Yes.

11 THE COURT: All right. Thank you, ma'am. You
12 may be seated.

13 At this time, I'll ask the attorneys, if you would,
14 please, stand and introduce yourselves to the jury. Ms.
15 Townsend?

16 MS. TOWNSEND: Good morning, ladies and
17 gentlemen. My name is Brennan Townsend. I'm an Assistant
18 Solicitor with the Greenville County Solicitor's Office.
19 My paralegal is Lindsey Kicklighter. She's also with the
20 Solicitor's Office.

21 THE COURT: Mr. Sullivan?

22 MR. SULLIVAN: I'm Tim Sullivan. I'm the Public
23 Defender of Greenville County and I represent Mr. Comest
24 Allen.

25 THE COURT: Thank you.

State of South Carolina -vs- Comest Sabatino Allen (2011-GS-23-1296-1297 and 1305-1306)
Jury Voir Dire

13

1 Is there any member of the jury panel related by blood
2 or marriage to either of these attorneys or anyone on their
3 staff? If so, would you please stand?

4 (No response.)

5 THE COURT: Is there a member of the jury panel
6 who has a close business or a social or personal
7 relationship with either of these attorneys? If so, would
8 you please stand?

9 (No response.)

10 THE COURT: Is there a member of the jury panel
11 who's ever been involved in any litigation in which either
12 of these attorneys represented you or represented the
13 opposing side. If so, would you please stand?

14 (No response.)

15 THE COURT: Thank you. There's no response.

16 Mr. Allen, as well as the State of South Carolina,
17 desire to have fair and impartial jurors to hear this case
18 to decide what the facts are. They deserve to have fair
19 and impartial jurors. Is there any member of the jury
20 panel aware of any reason whatsoever that you believe in
21 this particular case you could not be fair to both the
22 State of South Carolina, to the Defendant, and render a
23 verdict based strictly on the law that I give you and the
24 evidence that's presented in this courtroom. If for any
25 reason you believe you could not be a fair juror, would you

1 please stand?

2 (No response.)

3 THE COURT: Thank you. There is no response.

4 Any other questions from the State?

5 MS. TOWNSEND: No, sir, Your Honor.

6 THE COURT: From the Defense?

7 MR. SULLIVAN: None from the Defense, Your Honor.

8 THE COURT: All right. Let's empanel a jury.

9 THE CLERK: When I call your name, if you'll
10 please come up and stand right here kind of in the center,
11 face the back door there and wait for further instructions.

12 Juror 135, James Kilgus. If you'll please bring your
13 things with you in case you are selected for the jury.
14 Save you a trip back.

15 What say you the State?

16 MS. TOWNSEND: Please present this juror.

17 THE CLERK: What says the Defendant?

18 MR. SULLIVAN: Swear the juror, please.

19 THE CLERK: All right. Mr. Kilgus, please have a
20 seat in the jury box.

21 Juror number 113, Tracy Hooker. What says the State?

22 MS. TOWNSEND: Please present this juror.

23 THE CLERK: What say you the Defendant?

24 MR. SULLIVAN: Number 113?

25 THE CLERK: Number 113, Tracy Hooker.

State of South Carolina -vs- Comest Sabatino Allen (2011-GS-23-1296-1297 and 1305-1306)
Jury Voir Dire

15

1 MR. SULLIVAN: Swear the juror, please.

2 THE CLERK: Ms. Hooker, please have a seat in the
3 jury box.

4 Juror 244, Golden Williams. What says the State?

5 MS. TOWNSEND: Please excuse this juror.

6 THE CLERK: All right. Ms. Williams you may be
7 seated. You have been excused from this case.

8 Juror 34, George Brown. What says the State?

9 MS. TOWNSEND: Please excuse this juror.

10 THE CLERK: All right. Mr. Brown, you may be
11 seated. You have been excused from this case.

12 Juror 66, James Dees. What says the State?

13 MS. TOWNSEND: Please present this juror.

14 THE CLERK: What says the Defendant?

15 MR. SULLIVAN: Swear the juror, please.

16 THE CLERK: All right. Mr. Dees, please have a
17 seat in the jury box.

18 Juror 156, Joseph Maggio. What says the State?

19 MS. TOWNSEND: Please present this juror.

20 THE CLERK: What says the Defendant?

21 MR. SULLIVAN: Please excuse this juror from this
22 case.

23 THE CLERK: All right, sir. Please be seated.

24 You have been excused from this case.

25 Juror 18, Linda Bennett. What says the State?

1 MS. TOWNSEND: Please present this juror.

2 THE CLERK: What says the Defendant?

3 MR. SULLIVAN: Swear the juror, please.

4 THE CLERK: Ms. Bennett, please have a seat in
5 the jury box.

6 Juror 203, Sharyn Rosenberg. What says the State?

7 MS. TOWNSEND: Please present this juror.

8 THE CLERK: Thank you. What says the Defendant?

9 MR. SULLIVAN: Swear the juror, please.

10 THE CLERK: Pardon me? Swear the juror?

11 MR. SULLIVAN: Swear the juror.

12 THE CLERK: Thank you. Ms. Rosenberg, please
13 have a seat in the jury box.

14 Juror 85, Alison Furr. What says the State?

15 MS. TOWNSEND: Please present this juror.

16 THE CLERK: What says the Defendant?

17 MR. SULLIVAN: Swear the juror, please.

18 THE CLERK: Ms. Furr, please have a seat in the
19 jury box.

20 Juror 248, Kelly Wingert. What says the State?

21 MS. TOWNSEND: Please present this juror.

22 MR. SULLIVAN: Swear the juror, please.

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

25 Juror 64, Kathy Davis. What says the State?

State of South Carolina -vs- Comest Sabatino Allen (2011-GS-23-1296-1297 and 1305-1306)
Jury Voir Dire

17

1 MS. TOWNSEND: Please present this juror.

2 THE CLERK: What says the Defendant?

3 MR. SULLIVAN: Swear the juror, please.

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

5 Juror 214, Loreal Simpson. What says the State?

6 MS. TOWNSEND: Please present this juror.

7 MR. SULLIVAN: Swear the juror, please.

8 THE CLERK: All right. Ms. Simpson, please have
9 a seat in the jury box.

10 Juror 108, Bessie Hill. What says the State?

11 MS. TOWNSEND: Please present this juror.

12 MR. SULLIVAN: Swear the juror, please.

13 THE CLERK: All right, sir. Please have a seat
14 in the jury box.

15 Juror 11, Nicole Bailey. What says the State?

16 MS. TOWNSEND: Please present this juror.

17 THE CLERK: And the Defendant.

18 MR. SULLIVAN: Swear the juror, please.

19 THE COURT: Thank you. Please have a seat in the
20 jury box.

21 Juror 45, Liza Cirelli. What says the State?

22 MS. TOWNSEND: Please present this juror.

23 THE CLERK: What says the Defendant?

24 MR. SULLIVAN: Excuse Ms. Cirelli from this case.

25 THE CLERK: All right. Ms. Cirelli, you may be

1 seated. You have been excused from this case.

2 Juror 39, Caitlin Byrd. What says the State?

3 MS. TOWNSEND: Please present this juror.

4 THE CLERK: What says the Defendant?

5 MR. SULLIVAN: Swear the juror, please.

6 THE CLERK: Ma'am, please have a seat in the jury
7 box.

8 And for alternate, juror 131, William Jones. What
9 says the State?

10 MS. TOWNSEND: Please present this juror.

11 MR. SULLIVAN: Excuse this juror, please.

12 THE CLERK: All right, sir. You may be seated.
13 You have been excused from this case.

14 Juror 127, Rozena Johnson. What says the State?

15 MS. TOWNSEND: Please present this juror.

16 THE CLERK: What says the Defendant?

17 MR. SULLIVAN: Excuse this juror, please.

18 THE CLERK: All right, ma'am. You may be seated.
19 You have been excused in this case.

20 Juror 168, Corey McDonald. What says the State?

21 MS. TOWNSEND: Please present this juror.

22 THE CLERK: What says the Defendant?

23 MR. SULLIVAN: Swear the juror, please.

24 THE CLERK: Sir, please have a seat in the jury
25 box.

1 THE COURT: Any matters as far as the selection
2 of the jury in this case? From the State?

3 MS. TOWNSEND: No, sir.

4 THE COURT: From the Defense?

5 MR. SULLIVAN: None, Your Honor.

6 THE COURT: Ladies and gentlemen who were not
7 selected, I'll ask if you would, please, step back down to
8 the Assembly Room. They'll have further instructions for
9 you there as to whether or not we need to select another
10 jury for later today. Thank you very much.

11 (WHEREUPON, the jury panel exited the open court at
12 approximately 10:23 a.m.)

13 THE COURT: Ladies and gentlemen, you've seen the
14 process by which you were selected to serve on this jury.
15 The parties believe you're the best twelve people to decide
16 what the facts are, and I'm honored to have an opportunity
17 to work with you. We're going to be judges. I'm going to
18 judge the law and I'll wear the black robe, considered the
19 judge, but you're every bit as much judges as I am, because
20 you're going to be judging the facts in the case. Now, you
21 may have some apprehension about where you are now, sitting
22 in a jury box, maybe never served as a juror before,
23 thinking to yourself, well, I'm not qualified; I don't have
24 any training to do this. How can I possibly be a judge? I
25 assure you that you have ever skill you're going to need to

1 be a judge because you're going to be judging the facts of
2 the case. You're going to be judging the credibility of
3 witnesses who testify. You're going to be deciding what
4 the facts are and you're going to utilize your good common
5 sense with which you've been blessed. You're going to
6 utilize the everyday experiences that you enjoy at home, at
7 the workplace, and social activities and otherwise. I'm
8 quite confident that you will be able to fulfill the role
9 that you've been entrusted with.

10 You've made a commitment to fairness, to impartiality,
11 to both sides and I'm grateful that we have jurors such as
12 you to hear this case and make those determinations.

13 I'm going to be the judge of the law and at the end of
14 the case, I'll explain what the law is relating to the
15 charges and based upon the evidence that's been presented
16 and I'll instruct you on that law. And your job is to
17 accept that law that I give you and apply it to the facts
18 that you hear. Part of my job also is to preside over the
19 trial of the case. Among those tasks would be to decide
20 when we take breaks. And we'll take breaks periodically,
21 every hour, hour and a half, depending on how the testimony
22 is flowing. Obviously, I've told you what your task is, to
23 be a good observer, be a good listener. If you're
24 uncomfortable in any way and need to take a break and I
25 haven't called for one, please let me know, get my

State of South Carolina -vs- Comest Sabatino Allen (2011-GS-23-1296-1297 and 1305-1306)
Jury Voir Dire

21

1 attention. Because if you're not focused, then you're not
2 going to be the juror that both parties deserve. If you
3 can't get my attention, you have staff personnel here.
4 You've already had a chance, I'm sure, to meet the
5 bailiffs, Mr. Jenkinson over to your right, Mr. Dorreity in
6 the back. Either of these gentlemen will certainly assist
7 you in any way. The young lady from the Clerk's Office,
8 Ms. Mary Troup, she called your names earlier and she'll be
9 functioning here on behalf of the Clerk. She's certainly
10 available to help you. Seated beside me is Sean Hinton, a
11 recent law school graduate and member of the South Carolina
12 Bar, my law clerk. He'll be working up here with me and
13 also back at the office taking care of things. The young
14 lady seated directly in front of me is Ms. Danette Hanks.
15 She's the court reporter. She's taking down everything I
16 say, everything a witness says, a lawyer says. She's going
17 to keep up with the conduct of the trial, marking any
18 exhibits that may be introduced into evidence. Any of
19 these folks will certainly assist you in any way that they
20 can.

21 Trials take place in stages. In a few moments the
22 attorneys will have a chance to address you in opening
23 statements, giving you an overview of what you can expect
24 from the trial. After that, there will be witnesses called
25 and they'll be examined and cross-examined. There may be

1 some documentary evidence presented. I don't know that.

2 Sometimes during the course of a trial an objection
3 may be made by one side or the other. Sometimes there's a
4 trial where no objections are made. But if objections are
5 made, my job is to rule on those objections. Frequently, I
6 can do that by simply saying overruled or sustained and we
7 move to the next question. Sometimes you may see me
8 huddling with the attorneys up here for scheduling purposes
9 or otherwise or maybe we can resolve an issue, whispering
10 about that. Sometimes there might be a legal matter that
11 one of the lawyers brings up. There might be a stage in
12 the trial that we're at where a legal issue has to be
13 resolved. I want to make the very best decision I possibly
14 can as the judge of the law in deciding the correct answer
15 to those decisions that may face me. Sometimes that
16 necessitates you being back in your jury room while I hear
17 argument of legal counsel or hear some testimony that
18 wouldn't even be properly presented to the jury. I may
19 need to do some research and look at law books and so forth
20 that would not involve you. So while you're back there,
21 and I need to resolve those, I hope you understand we're
22 not hiding things from you. I just need to focus on those
23 legal issues that you have no concern of. Very much like I
24 have no concern with the factual issues. After all the
25 evidence is in, you're back in your jury room deliberating,

State of South Carolina -vs- Comest Sabatino Allen (2011-GS-23-1296-1297 and 1305-1306)
Jury Voir Dire

23

1 I won't be back there with you, even though I'm a fellow
2 judge as you are, because that's not my prerogative to
3 decide what the facts are. That's your prerogative and
4 yours alone. So we have our different roles and sometime
5 the legal matters have to be resolved outside of your
6 presence. I hope you understand that.

7 After all the evidence is in, the attorneys will again
8 have a chance to address you in a closing statement. I
9 will then instruct you on the law and that will be the time
10 that you start that deliberation process. Before then, you
11 should not be discussing the case one with another. You
12 don't know anything about this trial. You could speculate
13 based on the indictments that I read, but those aren't
14 evidence. And even after you hear part of the evidence it
15 would be improper for you to start discussing the case
16 until all the evidence is in and until I've instructed you
17 on the law.

18 Sometimes as we come and go, have a lunch break, you
19 may see the attorneys in the hallway. You may get on an
20 elevator with them, and if either of these attorneys or
21 members of their staff seem a little distant toward you or
22 high-hat you in any way or look the other way or walk the
23 other way, please don't hold that against the attorneys.
24 That's their training, to avoid any appearance of any
25 impropriety in talking to a juror about the weather or some

1 other event that has nothing to do with the trial. It
2 could look bad and they want to make sure that there's no
3 appearance of that going on. So if they seem unfriendly
4 towards you, it's not their nature, I can assure you. But
5 you should not, in any way, hold that against the
6 attorneys.

7 You've committed to these parties to seek justice for
8 both sides, the State of South Carolina and for Mr. Allen.
9 It makes me proud that you've accepted that responsibility
10 and made that commitment. I look forward to working with
11 you in this case.

12 Before we actually have the opening statements, I'm
13 going to give you a short break. There's another trial on
14 the docket, I need to sort of check on the status of that,
15 see if we're going to select another jury for that case and
16 perhaps start later today. So if you will go back to your
17 jury room. Obviously, don't discuss the case.

18 You may have noticed we have thirteen jurors here. We
19 have an alternate, the last juror picked. He will occupy
20 that seat. He's every bit as much a part of the jury as
21 anyone else. We pick an alternate in case we're into the
22 trial and one of you may have an emergency or illness
23 befall you. We certainly hope not, but if that were to
24 happen, he can step into your shoes and we won't have to
25 start the trial all over again. So he'll always be in the

1 alternate seat.

2 At this time, I'm going to ask you to go back to your
3 jury room. Don't discuss the case. We'll call you back in
4 about ten or fifteen minutes and be ready to start the
5 trial.

6 (WHEREUPON, the jury exited the open court at
7 approximately 10:33 a.m.)

8 THE COURT: Let's take a short break.

9 (WHEREUPON, the court stood at recess for a short
10 break.)

11 THE COURT: All right. If our jury's ready, you
12 can have them come in.

13 (WHEREUPON, the jury entered the open court at
14 approximately 10:58 a.m.)

15 THE COURT: All right. Ladies and gentlemen,
16 we're now ready to proceed with the trial of the case, with
17 the opening statements of these attorneys. I urge you to
18 listen carefully as these attorneys address you. While
19 it's not evidence for you to consider, I'm confident that
20 each of them can give you valuable insights to help you as
21 the case develops.

22 Prior to their addressing you in their opening
23 statements, I'm going to let Ms. Troup administer an oath
24 to you. I urge you to listen carefully as the oath is
25 administered to well and truly try the case. And I'm sure

1 you'll fulfill that. Ms. Troup.

2 THE CLERK: Please stand and raise your right
3 hand. And the proper response is, I will.

4 You shall well and truly try the case 2001-GS-23-1296,
5 the State versus Comest Sabatino Allen, indicted for
6 assault and battery of a high and aggravated nature; 1297,
7 for failure to stop for a blue light; 1305, for leaving the
8 scene of an accident with property damage; and 1306, for
9 driving under the influence, and a true verdict render
10 according to the law and the evidence, so help you God? I
11 will?

12 (WHEREUPON, all jurors answered I will and were duly
13 sworn.)

14 THE CLERK: Thank you. Please be seated.

15 THE COURT: Solicitor, you may address the jury
16 in your opening statement.

17 MS. TOWNSEND: May it please the Court?

18 **OPENING STATEMENT**

19 **BY MS. TOWNSEND:**

20 Good morning, ladies and gentlemen. I just want to
21 talk to you briefly about Halloween, October 31st, 2010,
22 which was a very scary night indeed for several people in
23 this courtroom today. I believe that the evidence is going
24 to show that this Defendant tore through a neighborhood of
25 trick or treaters that were out on Halloween night, driving

State of South Carolina -vs- Comest Sabatino Allen (2011-GS-23-1296-1297 and 1305-1306)
Opening Statement by Ms. Townsend

27

1 crazy. He almost ran over an officer when he attempted to
2 walk up to his window and talk to him. He led officers on
3 a high-speed chase throughout Simpsonville and he
4 eventually crashed into a vehicle containing two children
5 and their parents.

6 Now, the Judge is going to instruct you on the law,
7 but I'm just going to give you a little preview about what
8 to be listening for in the case that I'm going to be
9 presenting.

10 This Defendant is charged with assault and battery of
11 a high and aggravated nature. And in order for me to prove
12 him guilty of that I need to show that he either committed
13 an act that either resulted in great bodily injury or that
14 he committed an act that likely would have resulted in
15 death or great bodily injury.

16 He is also charged with failure to stop for a blue
17 light, which is pretty much what it sounds. He disregarded
18 the officer's signal to stop, when required to do so by
19 law.

20 And he was also charged with hit and run, which is
21 also as it sounds. He caused an accident and then
22 disregarded his duty to remain on the scene.

23 And then, lastly, he's charged with driving under the
24 influence. And driving under the influence requires for me
25 to prove that this Defendant was materially and appreciably

1 impaired by drugs or alcohol. And that just means that he
2 had some impairment that is noticeable. And I believe that
3 the evidence is going to present that.

4 And I want to thank you all for your time and I just
5 ask that you pay attention to everything and listen
6 closely. And at the end of the case, I'm going to be
7 asking you to return a guilty verdict on all four charges.

8 THE COURT: Mr. Sullivan, you may address the
9 jury in your opening.

10 MR. SULLIVAN: May it please the Court, Ms.
11 Townsend. I'll be brief.

12 **OPENING STATEMENT**

13 **BY MR. SULLIVAN:**

14 I'm Tim Sullivan. Most of this is going to be on --
15 we'll be watching a film, because most of this is recorded.
16 So a couple of things I want you to watch for on this.
17 There's no question the driving was horrible and what
18 happened, happened. The question is, who was driving the
19 car. Now, Comest has said, I wasn't driving. I was a
20 passenger. So when you watch the film, they're behind the
21 car, there's a place in the film you can see a passenger, a
22 bald-headed passenger. They think there were two people in
23 the car, Mr. Allen driving and a female, and she was caught
24 on the scene and charged and then he was charged. But if
25 you look at the film, there's a certain place you can see

State of South Carolina -vs- Comest Sabatino Allen (2011-GS-23-1296-1297 and 1305-1306)
Opening Statement by Mr. Sullivan

29

1 on the passenger's side a bald-headed male.

2 There's another spot in the film right after the
3 collision, when the car spun around, there's a brief moment
4 where you cannot see the car. And so we don't know for
5 sure that Mr. Allen was the first one out of the car. He
6 did run out of the car, but somebody ran out before him.
7 And then look at the -- they describe he had on a dark
8 shirt. The film in the car there's a vanilla, white
9 looking turtleneck, and later it gets to be black again.
10 And I don't know how that this happened. They'll explain
11 it to you, I'm sure, in some technical terms. But the
12 officers don't even determine the color at any time during
13 the process, just his shirt. There'll be some other things
14 I'll point out to you later. But just pay attention to the
15 film and watch for the little things I told you about. The
16 bald head and the moment after the crash, when there's a
17 time somebody else could have gotten out of the car and run
18 away. So I'll leave you with that thought. Thank you.

19 THE COURT: The State may call its first witness.

20 MS. TOWNSEND: Your Honor, the State calls
21 Officer Coury.

22 THE COURT: Come around and be sworn, please,
23 sir.

24 THE CLERK: Please place your left hand on the
25 bible and raise your right hand.

State of South Carolina -vs- Comest Sabatino Allen (2011-GS-23-1296-1297 and 1305-1306)
Richard Coury - Direct Examination by Ms. Townsend

30

1 Do you solemnly swear or affirm to tell the truth, the
2 whole truth and nothing but the truth, so help you God?

3 THE WITNESS: I do.

4 THE CLERK: Thank you. Please be seated. Please
5 state your name for the record.

6 THE WITNESS: Richard Coury.

7 RICHARD COURY,

8 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

9 DIRECT EXAMINATION

10 BY MS. TOWNSEND:

11 Q. Good morning, Officer Coury. Could you please tell us
12 who you work for?

13 A. I work for the Simpsonville Police Department.

14 Q. Okay. And were you working on the night of October
15 31st, 2010?

16 A. Yes, ma'am.

17 Q. In what capacity?

18 A. Uniform patrol.

19 Q. And can you describe what that means?

20 A. It's just we have several officers on our shift, they
21 divide up our city limits between one side of the highway
22 and the other. And we patrol the neighborhoods.

23 Q. And what area were you patrolling that night?

24 A. I was patrolling the west side of the highway.

25 Q. And where -- describe where you were when this

1 incident began?

2 A. At that particular time, I was patrolling the
3 subdivision of Hunters Woods. It's located within the City
4 Limits of Simpsonville, County of Greenville.

5 Q. And what happened at that point? What was the scene?

6 A. Well, as I was patrolling through the neighborhood,
7 there was a high volume of vehicle traffic, as well as a
8 high volume of foot traffic. Several parents, so on, trick
9 or treating with their children throughout the
10 neighborhood. I drove through that neighborhood several
11 times throughout the night just to make sure everything's
12 safe.

13 Q. And is that normally a place where there are a bunch
14 of trick or treaters?

15 A. Yes, ma'am.

16 Q. And can you just describe how you -- what our first
17 contact was regarding this incident with the Defendant?

18 A. I was traveling on a street called Fox Hound Road.
19 Once again, that's located in the Hunters Woods
20 Subdivision. As I was patrolling that neighborhood I did
21 observe two vehicles in my rear view mirror. They both had
22 a decent distance from the rear of my vehicle. As I
23 continued to patrol through the area, I did observe the
24 third vehicle, which technically is the second vehicle
25 behind me, cut off the vehicle directly behind me and

1 approach my rear bumper at a high rate of speed and proceed
2 to slow down. The driver of that particular vehicle
3 continued to do the same thing approximately two or three
4 times with accelerating, close to my rear bumper and then
5 pulling back, and so on and so forth. It gave me a clear
6 indication that this driver is in a rush of some sort.

7 Like I mentioned, there was a high volume of foot traffic
8 with several subjects walking across the street. At that
9 time, I decided to activate my rear blue lights, just to
10 indicate to this driver that I am in a police vehicle. And
11 when I activated my blue lights, I proceeded to pull my
12 vehicle to the side of the road. I did step out of the
13 vehicle and proceed to walk to the driver's door.

14 Q. Can you describe the blue lights? You said they were
15 rear blue lights?

16 A. Yes, I have -- my vehicle is an unmarked patrol
17 vehicle. However, I have a LED light bar on the rear deck
18 of my vehicle, which stretches the entire length of the
19 back window. In addition, there are also LED lights on my
20 tail lights, as well.

21 Q. And what did the other vehicle do when you turned
22 those lights on?

23 A. The vehicle did proceed to stop, did not proceed to
24 move to the side of the road; however, did proceed to stop
25 at that time. And once again, when I exited my vehicle, I

State of South Carolina -vs- Comest Sabatino Allen (2011-GS-23-1296-1297 and 1305-1306)
Richard Coury - Direct Examination by Ms. Townsend

33

1 began to walk towards the driver. I had my flashlight in
2 my hand and I did illuminate into the cabin of the vehicle,
3 which gave me a very clear view of the driver at that time.
4 As I proceeded to walk towards the driver to make contact
5 with him, at that time the driver proceeded to turn the
6 steering wheel to the left and accelerate in my direction.

7 Q. And how close did you get at that point when he
8 started moving?

9 A. I was, I would say, about -- under ten feet, eight --
10 seven to eight feet approximately.

11 Q. And that was the distance from your body to the
12 driver's body?

13 A. Yes, ma'am.

14 Q. What happened at that point?

15 A. At that point, as I mentioned, the vehicle began to
16 accelerate, I want to say literally right at me. I did
17 jump out of the way, and at that time, the left rear view
18 mirror of the truck struck my left shoulder, so it made me
19 spin-out, so to speak.

20 Q. And can you describe your state of mind as this is
21 going on?

22 A. Well, to be quite honest, I was shocked. You see it
23 on TV, but you never expect that to actually happen to you.
24 So it was a shock. So as the vehicle passed my, my first
25 intent was to jump into my car and go after him.

1 Q. And how long did that take you from the point that
2 that happened until when you were able to get into your
3 car?

4 A. I'm sorry?

5 Q. When he started pulling out, how soon were you able to
6 get into your car after that?

7 A. Just a few seconds.

8 Q. And is your car equipped with a video camera?

9 A. Yes, ma'am.

10 Q. And how is that video activated?

11 A. It's activated one of two ways, either you can
12 manually push the record button, which will automatically
13 start recording whatever you're recording, thirty seconds
14 prior, or by activating your lights.

15 Q. And which happened in this situation?

16 A. Lights. I did activate my lights.

17 Q. Okay. And did you -- at that point did you pursue ---

18 A. Yes, ma'am.

19 Q. --- the vehicle?

20 A. Yes, I did.

21 Q. And you had -- did you have your siren on, as well?

22 A. Initially, no. I did not want to scare the children
23 in the neighborhood. Like I said, there was several of
24 them out there and I didn't want to cause any panic to
25 anybody walking around. So at that particular moment, no,

1 I did not activate the sirens just yet.

2 Q. Could you see the vehicle? Did he get out of your
3 sight when you were in the neighborhood?

4 A. No, ma'am.

5 Q. Now, going back to your in-car camera. Are there
6 multiple views that that camera can record? Not at the
7 same time, but like an outward look or if there's someone
8 in the vehicle?

9 A. Yes, I do have -- there are two cameras. The vehicle
10 is equipped with two cameras, one that's displayed to view
11 everything out of my windshield, my front windshield, and
12 there's an additional camera technically behind me that is
13 directed -- well, it's manually -- you can move it wherever
14 you want, but it's technically aimed at where you would
15 place a prisoner.

16 Q. Okay. And how is that one operated?

17 A. Manually.

18 Q. And is it the same -- does it record the same way as
19 the out-view camera?

20 A. Yes.

21 Q. What happened after you started following the vehicle?

22 A. The vehicle proceeded to exit the subdivision. Excuse
23 me. As the vehicle was exiting the subdivision, that's
24 when my sirens were activated. There was no more foot
25 traffic at that time. And we proceeded out of the

1 subdivision. We had then proceeded across a very major
2 intersection, through the parking lot of Walmart onto three
3 very busy roadways, and then impacted with another vehicle.

4 Q. Can you describe the vehicle's driving patterns during
5 this time?

6 A. It was very erratic. There was a lot of high-speed
7 driving. Unfortunately, I was unable to get a very good
8 look at the tag due to the fact that the driver -- most of
9 their travels were in the center median in between vehicles
10 traveling northbound and southbound. At that time, the
11 driver was kicking up a lot of debris in the roadway,
12 coming up on my windshield. I was never able to get a
13 clear view. As mentioned, it was high-speed, weaving in
14 and out of a lot of vehicles and so forth.

15 Q. How close was your vehicle, on average, during the
16 whole pursuit?

17 A. Well, once we got onto the main roadways, I would
18 estimate approximately two car lengths behind. Officer
19 safety purposes, and for the safety of drivers around, I
20 didn't want to get too close to the vehicle. So I would
21 say approximately two car lengths behind.

22 Q. And could you tell any difference in the driver's
23 behavior at the point that you activated your siren? Was
24 there a response, so to speak?

25 A. There was a higher -- increase of acceleration,

State of South Carolina -vs- Comest Sabatino Allen (2011-GS-23-1296-1297 and 1305-1306)
Richard Coury - Direct Examination by Ms. Townsend

37

1 absolutely.

2 Q. All right. Now, I'd like to show you what's been
3 marked as demonstrative Exhibit Number 7. Can you identify
4 what this is?

5 A. That's an aerial view of the area which I patrol.

6 MS. TOWNSEND: Your Honor, we'd like permission
7 to publish this demonstrative exhibit to the jury.

8 THE COURT: Any objection to showing the picture
9 to the jury?

10 MR. SULLIVAN: None, Your Honor.

11 THE COURT: Exhibit 7.

12 MR. SULLIVAN: Exhibit 7?

13 (WHEREUPON, State Exhibit Number 7 was published to
14 the jury.)

15 Q. Now, Officer Coury, and you can step down if you'd
16 like to show us where it is. But can you just describe the
17 route as it unfolded?

18 A. Sure. Okay. Highlight or just with fingers?

19 Q. You can just use your ---

20 THE COURT: Officer Coury, I need you to make
21 sure your voice is elevated. The Court reporter's going to
22 have to pick up what you have to say. The jury also needs
23 to hear you.

24 THE WITNESS: Yes, Your Honor.

25 THE COURT: Be sure you speak loudly.

1 THE COURT: Yes, Your Honor.

2 A. The area where my first contact was made with the
3 driver, as mentioned, was in this particular subdivision
4 here, which is called Hunters Woods Subdivision. I, at
5 that time, was in this particular area of Fox Hound Road
6 when I first observed the two vehicles behind my vehicle.
7 At the particular time when I came to a stop to make
8 contact with the driver, was approximately at this area
9 right over here, still remaining on Fox Hound Road. At
10 that time, that's when the vehicle proceeded to pass mine,
11 which in turn is where the pursuit technically began. We
12 then proceed down Fox Hound Road, making a right turn on
13 this road right here, which is called Hunters Woods Drive.
14 This main roadway right here, which is called Fairview
15 Road, we then proceeded to cross over Fairview Road onto
16 what's called Ray E. Talley Court. At that time, we began
17 -- well, excuse me. We continued on Ray E. Talley Court,
18 throughout this parking lot here, which this area, as you
19 see, here is the Walmart store and parking lot. We
20 proceeded across the main entrance area of Walmart, turned
21 left on the entrance/exit area of Walmart, and then
22 proceeded to make a right turn here on Grandview Drive. At
23 that particular time, as mentioned before, this is when the
24 driver proceeded to maintain his high-speed traveling on
25 the center median area, which mentioned, is where all of

State of South Carolina -vs- Comest Sabatino Allen (2011-GS-23-1296-1297 and 1305-1306)
Richard Coury - Direct Examination by Ms. Townsend

39

1 the debris began to come up onto my windshield. We proceed
2 down Grandview Drive and as we came to the intersection of
3 Grandview Drive and Harrison Bridge Road, at that
4 particular time, we then proceeded to make a right turn
5 onto Harrison Bridge. We then proceeded up Harrison
6 Bridge, coming once again back to Fairview Road. Prior to
7 the intersection of Harrison Bridge and Fairview Road, the
8 driver of the vehicle then proceeded to by-pass the traffic
9 light, entering into the parking lot. This that you see
10 right here is what's called a Spinx Gas Station. We
11 proceeded to enter into the Spinx Gas Station and then
12 exited the Spinx gas station on Fairview Road and proceed
13 right, which is going back in the same direction where we
14 originally came. As we continued down Fairview Road, as we
15 were approaching, once again, the same traffic light of
16 Hunters Woods and Ray E. Talley Court, at that particular
17 time we had the red light. Vehicles traveling in this
18 direction had the green. At that particular time, the
19 driver of the vehicle did make contact with a vehicle
20 crossing the roadway. The vehicle that was impacted
21 remained at that location. The vehicle, which I was
22 pursuing, stopped approximately thirty feet beyond that
23 location. At that particular time, the driver of the
24 vehicle proceeded to exit his vehicle, running on foot. I
25 was a second behind him. I was able to exit my vehicle and

1 we were able to apprehend the subject in the bushes. This
2 here, ladies and gentlemen, is the Kohl's shopping center.
3 There's a small little driveway that separates Kohl's and
4 where it used to be Baskin Robbins Ice Cream. There's a
5 little driveway right here that you can see. There's a
6 large amount of bushes in that area. That's where the
7 subject was apprehended.

8 Q. Thank you, Officer. And you can take your seat now.

9 Now, were there other officers involved in this pursuit?

10 A. Yes, ma'am, there were.

11 Q. At what point did they get involved?

12 A. The first officer assisted when we turned back onto
13 Fairview Road, returning back towards the direction of Ray
14 E. Talley.

15 Q. And how many total officers in your department ended
16 up being involved?

17 A. Four altogether.

18 Q. And what's your procedure when you're the lead
19 officer, as far as radio control and that sort of thing?

20 A. Generally, the way it works with our policy, when
21 there is an additional officer that assists in a pursuit,
22 the second officer takes command of the radio.

23 Q. And did that happen in this incident?

24 A. Yes, it did.

25 Q. And for how long was he on the radio, and who was

State of South Carolina -vs- Comest Sabatino Allen (2011-GS-23-1296-1297 and 1305-1306)
Richard Coury - Direct Examination by Ms. Townsend

41

1 that?

2 A. His name is Officer Nemeth. He probably took control
3 of the radio for maybe twenty seconds before impact.

4 Q. And does he still work with Simpsonville?

5 A. No, ma'am. He does not.

6 Q. Okay. Is he in South Carolina any longer?

7 A. To my knowledge, I do not believe so.

8 Q. All right. Now, did you -- how close were you when
9 the -- did you see the crash when the driver you were
10 pursuing hit the other vehicle?

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

12 Q. How close were you when that occurred?

13 A. Less than ten car lengths away.

14 Q. Now, let's go back over after the crash happened. Was
15 the vehicle damaged, the one that you were pursuing?

16 A. Yes, ma'am.

17 Q. And what was the result of that impact or the damage
18 to the vehicle?

19 A. The vehicle became immobilized and the driver of the
20 vehicle that I pursued proceeded on foot.

21 Q. Okay. When that vehicle came to a stop, where were
22 you?

23 A. I was directly behind it.

24 Q. Okay. And did you maintain visual contact with the
25 vehicle?

1 A. Yes, I did.

2 Q. And what did you see when that vehicle came to rest?

3 A. At that time, I did see the driver exit the vehicle
4 and proceed on foot.

5 Q. And what was he wearing?

6 A. He was an African American male, bald head, dark in
7 color shirt and I believe -- I want to say khaki pants on.

8 Q. And was this the same person that you recognize as the
9 driver ---

10 A. Yes, it was.

11 Q. --- from prior when you were ---

12 A. Yes, it was.

13 Q. Was there any doubt in your mind that that was the
14 same person?

15 A. No doubt.

16 Q. And did anyone else exit the vehicle during that time?

17 A. No, ma'am.

18 Q. What happened after he exited the vehicle?

19 A. He proceeded on foot and attempted to, I'm assuming,
20 to hide in the bushes, once again, as I mentioned, in
21 between where Kohl's and Baskin Robbins are located. Just
22 within a second or two, I was able to locate him and place
23 him in custody.

24 Q. And had the other officer arrived on the scene also?

25 A. Yes.

State of South Carolina -vs- Comest Sabatino Allen (2011-GS-23-1296-1297 and 1305-1306)
Richard Coury - Direct Examination by Ms. Townsend

43

1 Q. And was he able to assist?

2 A. Yes, he did.

3 Q. All right. Now, is the person that you apprehended,
4 do you see that person in the courtroom today?

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

6 Q. Can you identify who that is?

7 A. That's the gentleman sitting on the right-hand side.
8 On the right, excuse me.

9 MS. TOWNSEND: And please let the record reflect
10 that he's identified the Defendant.

11 Q. Can you describe your contact with the Defendant after
12 you were able to apprehend him?

13 A. Upon -- once we had the subject in custody, we
14 escorted him to the trunk area of my partner's vehicle
15 where he was patted down, search, incident to arrest. He
16 began to state that he was not driving. Once he began
17 speaking, I was able to detect a very strong odor of an
18 alcoholic beverage coming from his person. At that time,
19 once he was patted down, I placed him in the back of my
20 patrol vehicle.

21 Q. And let's back up a little bit. Can you describe what
22 was going through your mind as you saw him flee from the
23 vehicle after what had happened prior to that?

24 A. What was going through my mind?

25 Q. Uh-huh (affirmative).

1 A. Hoping he wasn't going to get away. Absolutely.

2 Q. Did you know anything about this person, whether they
3 were armed or anything like that?

4 A. No, I did not.

5 Q. And in that kind of situation, having unknowns like
6 that, what is your protocol typically?

7 A. Every call is handled differently, every situation is
8 handled differently. You never know what you're going to
9 get into. Like you mentioned, there's always a strong
10 possibility the subject could be armed, could have just
11 committed murder for all we know, so you have to take every
12 precaution as safely as possible.

13 Q. And can you describe your demeanor as you were dealing
14 with him, how you controlled the situation?

15 A. As professional as possible. Of course, my heart rate
16 was sky high, blood pressure sky high.

17 Q. And why is that? Why were you ---

18 A. I would say it's just the general nature of being
19 involved in a pursuit, being involved in being struck by a
20 vehicle and then observing a collision occurring right in
21 front of you and observing the subject jump out and run on
22 foot. With all that combined, it's just -- it's
23 adrenaline.

24 Q. Did you have concerns about your own safety?

25 A. Of course.

State of South Carolina -vs- Comest Sabatino Allen (2011-GS-23-1296-1297 and 1305-1306)
Richard Coury - Direct Examination by Ms. Townsend

45

1 Q. All right. So you mentioned you placed the Defendant
2 in the back of you patrol car. Can you describe what you
3 did as far as your camera and what happened at that point?

4 A. At that time we did begin the interview process.
5 During the interview process, I switched to my front
6 camera, deactivated my front camera and activated my rear
7 camera, which was positioned to focus on the person in the
8 back seat.

9 Q. And what does that camera view look like when you're
10 going to play it back?

11 A. When you're going to play it back, it comes out an
12 automatic gray color. It's -- it does have a microphone as
13 well. Due to the infrared of the camera system, at
14 nighttime it automatically comes out as a gray color.

15 Q. Now, let's talk about your concerns with his driving
16 under the influence charges. What led you to be concerned
17 about that?

18 A. Concerned?

19 Q. Yes, that you suspected that he might be driving under
20 the influence?

21 A. First and foremost was his behavior behind the wheel,
22 the erratic driving through the neighborhood with several
23 persons walking, high-speed, traveling in between vehicles,
24 weaving in and out of vehicles, and then colliding with
25 another one at the end.

1 Q. And what in your interaction with him may have also

2 ---

3 A. I did detect bloodshot eyes. There was a slight slur
4 in his speech, as well.

5 Q. And normally when you suspect somebody of driving
6 under the influence, are there tests that you would do out
7 on the roadside?

8 A. Generally, yes, there are. We have what's called
9 standard field sobriety testing or just field sobriety
10 testing, depending on what your certificates are.

11 Q. And what kind of things do those tests reveal
12 normally?

13 A. Obviously, it cannot determine at that particular time
14 what your blood alcohol concentration level can be, but
15 it'll indicate certain impairments that you have, whether
16 it be visual, balance, and so on.

17 Q. And did you perform those tests in this situation?

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

19 Q. Why not?

20 A. Fear of another flee. I believed that if he was
21 willing to run from me the first time in the vehicle and
22 then run from me again on foot, I didn't want to take a
23 chance of another attempted flee.

24 Q. Now, to your knowledge was there anyone else in the
25 vehicle that you were pursuing?

State of South Carolina -vs- Comest Sabatino Allen (2011-GS-23-1296-1297 and 1305-1306)
Richard Coury - Direct Examination by Ms. Townsend

47

1 A. Not until the end.

2 Q. Okay. And what were you able to determine?

3 A. There was a female in the passenger seat.

4 Q. Okay. And did you have any contact with her?

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

6 Q. Now, with respect to the vehicle, were you able to
7 determine whose vehicle this was the Defendant was driving?

8 A. At a later time, yes, I was.

9 Q. And who was that person?

10 A. The owner of the particular vehicle that was in the
11 pursuit, the owner was a Tamekia Fleming.

12 Q. And did you have any indication of who that was at the
13 time you ---

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

15 Q. Did you suspect that the vehicle had been stolen or
16 anything like that? Did you check that?

17 A. At that time, of course, you suspect. However, on
18 further investigation it was determined that the vehicle
19 was not stolen at that time.

20 Q. Did you call forensics out to process the vehicle or
21 anything like that?

22 A. Not to my knowledge, ma'am, no.

23 Q. And is that normally something -- somebody that you
24 would call in that kind of situation, a forensics person?

25 A. For a collision?

1 Q. Uh-huh (affirmative).

2 A. Generally, no.

3 Q. All right. Let's discuss your training for DUI
4 detection? Can you describe your training and
5 certifications?

6 A. I do have a certificate in what's called standard
7 field sobriety testing. It's a more advanced technique, if
8 you will. When you are dealing with subjects on the side
9 of the road, the additional testings that you are able to
10 do once you are certified in this particular line of
11 testing that you can perform that others who are not
12 certified in it cannot.

13 Q. And when you're not able to do field sobriety tests
14 for whatever reason, are you taught about other things to
15 look for?

16 A. Absolutely. You can detect a possible intoxicated
17 driver by the way that they drive, based on the way that
18 they make turns, stopping too short, stopping too far,
19 acceleration at any given moment. And after that, beyond
20 that, you can make your observations based on your initial
21 contacts with the driver, detection of an alcohol scent in
22 the vehicle or on the person. Bloodshot eyes, slurring of
23 speech, how he presents documentation to you and so on.

24 Q. So, are there -- the field sobriety tests are not
25 necessary, is that -- would you characterize it like that?

State of South Carolina -vs- Comest Sabatino Allen (2011-GS-23-1296-1297 and 1305-1306)
Richard Coury - Direct Examination by Ms. Townsend

49

1 A. They're a great assistance, but not always necessary.

2 Q. And in this case, if you had been able to perform the
3 field sobriety tests, would they have been helpful?

4 A. I believe so.

5 Q. Would they -- do you think they would have indicated
6 anything other than what you observed?

7 MR. SULLIVAN: Judge, I object to that. They
8 weren't performed.

9 THE COURT: Sustain the objection.

10 MR. SULLIVAN: Thank you.

11 Q. What was the Defendant's behavior when he was in the
12 back of the patrol car?

13 A. During the interview process he continued to state
14 that he was not the driver of the vehicle. He refused to
15 -- well, I shouldn't say refused at that particular time.
16 When we attempted to obtain his information, there was no
17 ID or anything like that found. And so when we attempted
18 to get his name, date of birth, address, phone number, so
19 on and so forth, when we first attempted to obtain the
20 name, he provided his name in a different order. For
21 example, if I may, his name, his real name is Comest
22 Sabatino Allen. The way he explained it first, I believe,
23 was stating that his first name was Allen and his last name
24 was Sabatino or vice versa; I do not recall. Never
25 indicating his real first name to me. When we attempted to

1 obtain his address, date of birth, phone number, he refused
2 to give us that information. Stated he did not remember.

3 Q. At some point were you able to determine his identity?

4 A. Yes, we were.

5 Q. And Officer Coury, can you tell me what State's
6 Exhibit Number 2 is?

7 A. This shows in-car video which was obtained the night
8 of the pursuit.

9 Q. Okay. And have you viewed this video?

10 A. Yes, ma'am, I have.

11 Q. Okay. And how can you tell?

12 A. I did make a marking of my initials on the case.

13 MS. TOWNSEND: Your Honor, this is State's
14 Exhibit 2. We would request that it be admitted and
15 published to the jury at this time?

16 THE COURT: Any objection to Exhibit 2?

17 MR. SULLIVAN: Is this the in-car video?

18 MS. TOWNSEND: Yes, sir.

19 THE COURT: Without Objection. Exhibit 2 is
20 admitted and may be published to the jury.

21 (WHEREUPON, State Exhibit Number 2 was admitted into
22 evidence.)

23 (WHEREUPON, State Exhibit Number 2 was published to
24 the jury.)

25 Q. All right. Officer Coury, where are y'all headed at

1 the end of that video?

2 A. To the police department.

3 Q. Okay. And what -- can you just describe what happened
4 in that transition period? Was there a conversation in the
5 car or anything like that?

6 A. We did have a little bit of conversation. He asked me
7 where we were a few times and when I explained to him that
8 we were in Simpsonville, he also stated, are we in
9 Columbia? I explained to him, no, we're in Simpsonville.
10 He didn't know where that was at. In addition, he asked if
11 he killed anyone. And I did say, luckily, no one was
12 killed during the events; it could have been much worse.
13 And then he proceeded to say that he wasn't driving.
14 Continued to ask where we were over and over again.

15 Q. And what were you going back to the station to do?

16 A. First would be to start the DataMaster Machine to
17 determine blood alcohol concentration level.

18 Q. Okay. Can you describe that procedure as part of the
19 normal arrest for a DUI?

20 A. It is. When we bring subjects into the police
21 department for a Breathalyzer test, they're placed in
22 what's called the DataMaster room. Miranda rights are read
23 once again, advising them as to what the charges were, once
24 again. We go through an implied consent, which explains
25 what the nature of the charges were and what the next

1 procedure would be, which is we're going to be initiating a
2 Breathalyzer test to determine your blood alcohol
3 concentration level at that time. And after that is done,
4 you initiate the system, runs internal testings for
5 approximately twenty minutes. And after that period of
6 twenty minutes, which is what we use as our observation
7 period, then the subject is -- the subject has the option,
8 I should say, of either providing or refusing to provide a
9 breath sample.

10 Q. And what's the purpose of that twenty minute
11 observation period?

12 A. As mentioned, it's an observation period just to see
13 their behaviors, more or less just to see what they're
14 doing during that twenty-minute period. And at the same
15 time, you know, the machine itself has testings, internal
16 testings that it needs to run.

17 Q. So is that required to validate a test?

18 A. Yes, ma'am.

19 Q. The twenty minutes?

20 A. Yes, it is.

21 Q. And what was the Defendant's demeanor inside of the
22 breath testing room?

23 A. To my recollection, I don't remember too much of the
24 events that took place in the Breathalyzer room. But to my
25 recollection, demeanor was very calm. To be honest, I

State of South Carolina -vs- Comest Sabatino Allen (2011-GS-23-1296-1297 and 1305-1306)
Richard Coury - Direct Examination by Ms. Townsend

53

1 don't remember too much else.

2 Q. Did you notice anything about any appearance that he
3 had or anything?

4 A. I'm ---

5 Q. Did he appear the same as he had when you were -- when
6 he was in the back of the patrol car and that sort of
7 thing?

8 A. Yes. Yes.

9 Q. All right. Did the Defendant provide a breath sample?

10 A. No, he did not. He refused.

11 Q. And when someone refuses to provide a breath sample,
12 what do you do at that point?

13 A. At that time, it's determined that the Defendant is
14 what's called a refusal. It's indicated in the machine and
15 by State of South Carolina law, the driver's license is
16 automatically suspended.

17 Q. And what are they advised about the results of their
18 refusal?

19 A. They're advised in paperwork indicating the length of
20 time that the machines ran its internal testings, when the
21 testings was completed and what the final results were.
22 Subjects are provided copies for their own records.

23 Q. I'm going to show you what's been marked as Exhibit 4.
24 Can you just describe what that is?

25 A. This is what's titled as the South Carolina Law

1 Enforcement Division Breath Alcohol Analysis Test Report
2 for driving under the influence. There are one, two,
3 three, four different sections of this paperwork, first
4 stating the subject's biographical information, next is the
5 arrest information, meaning what the charges were, citation
6 numbers, so on and so forth. Next is the operator
7 information, which is whoever's operating the DataMaster
8 machine at that time. And the final section is the
9 subject's breath alcohol test results.

10 Q. And does that indicate a result?

11 A. Yes. Every result is highlighted in gray. In this
12 particular case showing subject's sample as refused.

13 MS. TOWNSEND: Your Honor, the State moves to
14 admit Exhibit 4.

15 MR. SULLIVAN: Without objection.

16 THE COURT: Without objection, Exhibit 4 is
17 admitted and may be published.

18 (WHEREUPON, State Exhibit Number 4 was admitted into
19 evidence.)

20 Q. Now, I'm going to show you what is marked as Exhibit
21 5. Can you describe what that is?

22 A. This is the initial paperwork that's presented to all
23 subjects that are placed under arrest. This is what's
24 called the Advisement of Implied Consent Rights, as I
25 mentioned. It generally explains the process inside the

State of South Carolina -vs- Comest Sabatino Allen (2011-GS-23-1296-1297 and 1305-1306)
Richard Coury - Direct Examination by Ms. Townsend

55

1 DataMaster room, explaining the nature of the charge,
2 definitions of what the nature of the charges are. Also
3 provides information as to what your final results are.
4 For example, if your final result is a point zero eight or
5 less, information provided, point one five or greater, the
6 information provided, refusals, so on and so forth.

7 Q. And does that contain information that you read to the
8 Defendant?

9 A. Yes, ma'am. The subject also receives copies for
10 their records as well.

11 MS. TOWNSEND: Your Honor, the State moves to
12 admit Exhibit 5 into evidence.

13 MR. SULLIVAN: No objection.

14 THE COURT: Without objection, Exhibit 5 is
15 admitted and may be published.

16 (WHEREUPON, State Exhibit Number 5 was admitted into
17 evidence.)

18 Q. And would you identify what has been marked as Exhibit
19 6, please?

20 A. This paperwork here is from the South Carolina
21 Department of Motor Vehicles, which is the notice of
22 suspension paperwork.

23 Q. And was that given to the Defendant as a result of
24 this test?

25 A. Yes, ma'am. There are different indications for

1 notice of suspension, the first one being if the subject
2 provides a sample of point one-five percent or greater or
3 if the subject refuses to provide a sample.

4 MS. TOWNSEND: Your Honor, the State moves to
5 admit Exhibit 6.

6 MR. SULLIVAN: Without objection, Your Honor.

7 THE COURT: Exhibit 6 is admitted without
8 objection.

9 (WHEREUPON, State Exhibit Number 6 was admitted into
10 evidence.)

11 Q. And during the procedures in the breath testing room,
12 is that something that normally is videoed?

13 A. Yes, ma'am. Audio and video.

14 Q. Okay. And was there a video made of that incident?

15 A. Yes, ma'am.

16 Q. Can you -- I'm showing you Exhibit 3. Can you
17 describe what that is, please?

18 A. This would be the copy of the video of the DataMaster
19 recordings. It also has my signature.

20 Q. Okay.

21 MS. TOWNSEND: Your Honor, the State moves to
22 admit Exhibit 3 and would seek to publish it to the jury,
23 as well?

24 THE COURT: Any objection to Exhibit 3?

25 MR. SULLIVAN: None, Your Honor.

State of South Carolina -vs- Comest Sabatino Allen (2011-GS-23-1296-1297 and 1305-1306)
Richard Coury - Direct Examination by Ms. Townsend

57

1 THE COURT: All right. Admitted without
2 objection and may be published to the jury.

3 (WHEREUPON, State Exhibit Number 3 was admitted into
4 evidence.)

5 THE COURT: This video will take a while. Do you
6 need a break before you watch it. It will probably be
7 about thirty minutes or so.

8 MS. TOWNSEND: Yes, sir. About thirty-three
9 minutes, I think.

10 THE COURT: Okay. Well, continue on.

11 THE JUROR: Your Honor, we'd like to take a
12 break.

13 THE COURT: You do need a break? Let's take a
14 short break. Let's take about a -- well, it's got to be
15 set up anyhow. Let's take about a five-minute break and
16 we'll be ready to view this. Don't discuss the case while
17 you're back there.

18 (WHEREUPON, the jury exited the open court at
19 approximately 12:18 p.m.)

20 THE COURT: Officer Coury, you can step down.
21 Don't discuss your testimony with anyone.

22 We'll take a short break.

23 THE WITNESS: Yes, Your Honor.

24 (WHEREUPON, the court stood at recess for a short
25 break.

1 THE COURT: Have our jury come in if they're
2 ready.

3 (WHEREUPON, the jury entered the open court at
4 approximately 12:32 p.m.)

5 THE COURT: All right. Solicitor, you may
6 continue your examination of the witness or the video
7 evidence.

8 (WHEREUPON, State Exhibit Number 3 was published to
9 the jury.)

10 Q. Officer Coury, what is the point in checking the
11 Defendant's mouth during this procedure?

12 A. Just to make sure there's no items inside his mouth;
13 for example, caps around the teeth, gum, any type of breath
14 mints, anything that would possibly impair the results of
15 the test.

16 Q. So it would have been important if he had provided a
17 breath sample?

18 A. (No verbal response).

19 Q. To check his mouth, that's -- correct?

20 A. Oh, yes, yes.

21 Q. Okay. And let me show you what's been marked as
22 Exhibit 1. Can you describe what that is?

23 A. It's a mug shot that was taken of Mr. Allen the night
24 of the incident.

25 Q. Okay. And can you -- does that fairly and accurately

State of South Carolina -vs- Comest Sabatino Allen (2011-GS-23-1296-1297 and 1305-1306)
Richard Coury - Direct Examination by Ms. Townsend

59

1 represent the Defendant on the night that these incidents
2 occurred?

3 A. Yes, it does.

4 MS. TOWNSEND: Your Honor, the State would ask
5 that Exhibit 1 be admitted.

6 THE COURT: Any objection to Exhibit 1?

7 MR. SULLIVAN: No objection.

8 THE COURT: Without objection. Exhibit 1 is into
9 evidence and may be published.

10 (WHEREUPON, State Exhibit Number 1 was admitted into
11 evidence.)

12 Q. Now, was there anything noteworthy that we can't see
13 across from the video that you noted being in the breath
14 room with the Defendant?

15 A. During that particular time?

16 Q. Yes?

17 A. Nothing that wasn't observed.

18 MS. TOWNSEND: I believe that's all the State has
19 for this witness, Your Honor.

20 Please answer any questions Mr. Sullivan has.

21 THE COURT: I think it might be good to take a
22 lunch break before we start the cross-examination. You've
23 been very patient watching the case. I want to let us go
24 to lunch for a little while. Let me remind you, ladies and
25 gentlemen, while you're out and about for lunch not to

1 discuss the case. You may have family or friends or
2 business associates who would gather with you at lunchtime.
3 It would be improper for you to discuss the case while it's
4 in progress, with them. Certainly, you can discuss it
5 after the case is over completely. But maintain the purity
6 of the process that we're in, make sure that you don't let
7 anyone talk to you about it and you don't talk to anyone
8 about it.

9 There's also been an order issued by our Chief Justice
10 of our Supreme Court that -- for us trial judges to give to
11 all jurors who are sitting on a case to remind you that
12 while you're involved in the case and you've made the high
13 commitment that you have, that there should not be any kind
14 of research done by any juror or checking archives or
15 looking up words on the internet or do any social media,
16 anything of that nature. That would be highly improper for
17 you to do, and it's certainly in violation of the rules of
18 the Court and the order of our Chief Justice, and a
19 violation of the commitment that you've made to these
20 parties. Refrain from any of that while the case is in
21 progress.

22 I've designated the alternate, Mr. McDonald, as to
23 where he sits. I'm going to appoint Ms. Davis as the
24 foreperson of the jury. She's occupying the foreperson's
25 seat. Sometimes, as you've seen, papers are passed around

State of South Carolina -vs- Comest Sabatino Allen (2011-GS-23-1296-1297 and 1305-1306)
Richard Coury - Direct Examination by Ms. Townsend

61

1 for the foreperson to look at and pass on to the others.
2 Sometimes when you're back in your jury room before we
3 start back after lunch, there might be a need that you have
4 or a question that you need to ask or temperature
5 adjustment. Whatever it may be, the foreperson will be the
6 one -- the liaison of the Court. She could write out
7 whatever that need is, if you need to call a child or check
8 on someone picking up a child, whatever it may be, she'd be
9 the one who will communicate with the Court by way of the
10 bailiffs, just write out the need that you have and we'll
11 see if we can take care of it, either through the Clerk's
12 office or if it's a legal question, I'll see if I can
13 handle it for you.

14 Also, the foreperson will have the responsibility,
15 when all the evidence is in and after I've instructed you
16 on the law, to facilitate that discussion that you'll then
17 have to discuss the facts of the case, to make sure
18 everyone has their input into the facts, as each individual
19 juror sees them, and then on behalf of the jury write out
20 the verdict form that will be provided and explained to you
21 later. But she'll be the liaison with the Court, sort of
22 your presiding officer, if you will. It doesn't mean she
23 has more votes than anyone else, just that we need a
24 spokesperson while you're back there. So she'll occupy the
25 foreperson's seat; the alternate in his seat. As you come

1 and go, you may like the seat you're in now, you may want
2 to switch them around, that's fine too.

3 Have a good lunch. If you'll be back at two-thirty,
4 we'll be ready to start then.

5 Everyone else please remain seated while the jury
6 departs for lunch.

7 (WHEREUPON, the jury exited the open court at
8 approximately 1:12 p.m.)

9 THE COURT: All right. Officer, you can step
10 down. Let me remind you again not to discuss your
11 testimony with anyone during the break. We'll be back at
12 two-thirty, ready to proceed with cross-examination. Have
13 a good lunch.

14 (WHEREUPON, the court stood at recess for a lunch
15 break.)

16 THE COURT: Are you ready to go?

17 MR. SULLIVAN: I think so, Your Honor.

18 THE COURT: If our jury is ready, you can have
19 them come in.

20 (WHEREUPON, the jury entered the open court at
21 approximately 2:44 p.m.)

22 THE COURT: All right. Ladies and gentlemen,
23 we're ready to proceed.

24 Mr. Sullivan, you may cross-examine the witness.

25 MR. SULLIVAN: Thank you, Your Honor.

1 CROSS-EXAMINATION

2 BY MR. SULLIVAN:

3 Q. A couple of things I'm going to use the video for,
4 Officer. The Solicitor was kind enough to help -- I'm not
5 good at this stuff so she's going to help me get this up
6 and going.

7 MR. SULLIVAN: If you will come up and get it to
8 10:35.

9 MS. TOWNSEND: And stop it once it's there?

10 MR. SULLIVAN: About there.

11 Q. What I want to see, Officer, if you can see right
12 here, it looks like the back of a bald head. Is that ...

13 MR. SULLIVAN: Can you back that up just a little
14 bit? Just let it run so I don't have to stop it. Right
15 there to the right passenger side. That's it. And then
16 012:00. That's good. Thank you very much.

17 Q. That's what I wanted to point out on the first one we
18 looked at behind the car, does it appear to you or not that
19 there was somebody in the car on the passenger side, bald
20 headed?

21 A. No, sir. It did not.

22 Q. You could not tell that?

23 A. No, sir. It did not.

24 Q. It's not or you couldn't tell it?

25 A. You could not tell there was somebody in the passenger

1 seat with a bald head, no.

2 Q. They can look at it. Now, after the wreck there's a
3 brief period of time that the car is turned around and
4 there's no video of it. You have to get around the wrecked
5 car to get there; correct?

6 A. That's correct.

7 Q. So there's a short period of time when you lost visual
8 contact of the car?

9 A. Not me directly, no. It appeared that way in the
10 camera, but not me directly. I still had a clear view.

11 Q. Around the wreck, you could see through the wrecked
12 car?

13 A. I could see through the window where the driver
14 proceeded on foot, yes.

15 Q. All right. Just a few other questions. The car was
16 not owned by Mr. Allen; was it?

17 A. Not to my knowledge, no, sir.

18 Q. I believe you testified Tamekia Fleming is on the
19 Highway Patrol report?

20 A. Yes, sir.

21 Q. And then I think I asked you when we were on the
22 break, you don't remember if the truck was a two-door or
23 four-door truck, you don't recall that; do you, sir?

24 A. I do not recall, sir.

25 Q. And from the time you first arrested him, all the way

1 through the BA room, he insisted he was not the driver of
2 the car. Is that correct?

3 A. That is correct.

4 Q. He never admitted -- he's always said he was not
5 driving. In the B.A. I think you hear him say that it was
6 John or somebody named J.J.; is that correct?

7 A. Although he did repeat quite often whether or not he
8 killed someone.

9 Q. But he asked you if somebody was hurt?

10 A. I'm sorry.

11 Q. He asked if somebody had been hurt?

12 A. He asked if he'd killed someone.

13 Q. But from the first time he talked to you until right
14 in the BA room, he denied -- this is going to be an issue,
15 what I'm saying is, was he driving the car or the truck,
16 that was going to be an issue. You knew that from day one;
17 didn't you?

18 A. Whether or not he'd been driving the vehicle? That's
19 what I've been told.

20 Q. And to clear me up, I'm not trying -- explain to me,
21 you used the term -- I know what you're saying, the rear
22 view mirror struck you. How did that happen? Now, he was
23 coming at you and then the side, the side struck you, the
24 side mirror?

25 A. I do apologize if I stated rear view mirror.

1 Q. You were just confused -- I just wanted to get an idea
2 how you were hit.

3 A. The driver's left view mirror.

4 Q. And it hit you in your left shoulder?

5 A. That is correct.

6 Q. So you were jumping out of the way?

7 A. To my right.

8 Q. And it hit you and spun you?

9 A. Correct.

10 Q. Now, there was a female passenger in the vehicle;
11 correct?

12 A. Correct.

13 Q. And I believe it's in your report, Officer Coury, and
14 I can't pronounce the name, but I'm pointing to that. And
15 I want you to spell it. Do you recognize that?

16 A. I recognize the name, yes, sir.

17 Q. And she was a passenger?

18 A. That is correct.

19 Q. And the spelling on it is M-S-S-I-O-B-H-A-N Grady,
20 G-R-A-D-Y. And she was placed -- I think in the video you
21 can see it later, she was placed in another car and placed
22 under arrest. Is that correct?

23 A. That is correct.

24 Q. So y'all had her in custody?

25 A. Yes, sir.

State of South Carolina -vs- Comest Sabatino Allen (2011-GS-23-1296-1297 and 1305-1306)
Richard Coury - Cross Examination by Mr. Sullivan

67

1 Q. Now, when you got out of your car to first approach
2 the truck, were the headlights in your face?

3 A. On a slight angle. Not directly in my face, no.

4 Q. You were at an angle?

5 A. I was approaching on an angle, yes.

6 Q. And then you had to jump out of the way?

7 A. Correct.

8 Q. From the time of this accident until whenever, y'all
9 had time to do forensics on the car, you could have gotten
10 prints off the driver's door or the steering wheel or the
11 mirror. Is that correct?

12 A. Was there? Is that what you're asking me?

13 Q. Did you have time to do that had you wanted to?

14 A. I believe there was -- I believe so.

15 Q. But that was not done; was it?

16 A. Not to my knowledge, no, sir.

17 Q. And this was a car owned by somebody else, and usually
18 if somebody gets in somebody else's car they adjust the
19 seat, fix the mirror; don't they? So you can see some for
20 yourself?

21 A. Yes, sir.

22 Q. So you could get a print on the mirror; is that right?

23 A. Could you?

24 Q. Yeah?

25 A. Right.

1 MR. SULLIVAN: I have nothing further, Your
2 Honor. Thank you.

3 THE COURT: Any redirect?

4 MS. TOWNSEND: No, sir. Nothing from the State.

5 THE COURT: All right. Thank you, officer. You
6 may step down.

7 The State may call its next witness.

8 MS. TOWNSEND: May it please the Court, Your
9 Honor, the State calls Ms. Tina Harwood.

10 THE CLERK: Ms. Harwood, would you please place
11 your left hand on the bible and raise your right hand.

12 Do you solemnly swear or affirm to tell the truth, the
13 whole truth and nothing but the truth, so help you God?

14 THE WITNESS: Yes, I do.

15 THE CLERK: Thank you. Please be seated. Please
16 state your name for the record.

17 THE WITNESS: Tina Renee Harwood.

18 TINA HARWOOD,

19 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

20 DIRECT EXAMINATION

21 BY MS. TOWNSEND:

22 Q. Ms. Harwood, can you tell us where you live?

23 A. In Gray Court.

24 Q. Okay. Is that in Laurens County?

25 A. Yes, ma'am.

1 Q. And would you tell us a little bit about your family?

2 A. I have -- at the time of the accident, my son was
3 about six days shy of being nine. My daughter was three.
4 Good kids, my life.

5 Q. Are you married?

6 A. Yes, ma'am. I've been married about seven years now.

7 Q. And where were you on the night of October 31st, 2010?

8 A. My husband and myself and my children were at my
9 brothers. We had taken them over to his subdivision to
10 trick or treat and we were leaving from his house to go
11 back to Gray Court.

12 Q. And where was that subdivision?

13 A. It's over off [REDACTED] on [REDACTED], [REDACTED].

14 Q. And what did you do when you left his house?

15 A. We came down Main Street and took a right onto
16 Fairview and were going to stop at Arby's to get a bite to
17 eat on the way home. That's where we had actually stopped.
18 We'd already gone through the drive-thru and were waiting
19 for our food.

20 Q. Okay. And what happened at that point?

21 A. We witnessed some police officers headed toward, I
22 guess what you'd say, Hickory Tavern on Fairview Road and
23 went up pretty fast. We knew something was going down. We
24 just didn't know what at that point. At that point we
25 didn't really pay any mind. We got our food and proceeded

1 to pull out of the Arby's.

2 Q. And when you left Arby's, where did you go?

3 A. There's a Spinx gas station directly adjacent to the
4 parking lot to Arby's. We cut through it to pull out onto
5 Ray E. Talley because there's a light there. We pulled out
6 onto Ray E. Talley at that light. We were stopped. When
7 the light turned green, we went and out of nowhere the
8 truck came. I mean, it was just fast.

9 Q. Okay. So y'all were proceeding with a green light?

10 A. Yes, ma'am. We were going to take a left onto
11 Fairview Road from Ray E. Talley.

12 Q. And were you driving or your husband was driving?

13 A. My husband was driving.

14 Q. Okay. And what exactly happened when the impact
15 occurred?

16 A. I know that it raised our vehicle off the ground. I
17 do recall that. I had a lap full of food. It just sprayed
18 everywhere. At the time of impact, I mean, literally, by
19 the time we saw that truck, he was hitting us. When the
20 car stopped, we were kind of dazed for a minute. I turned
21 around to check my children in the back. My son was
22 crying. I got out of the vehicle just immediately. The
23 police were already stopped. One gentleman, he was
24 probably about six feet from our vehicle and he told us,
25 you know, what had happened. I was getting the children

State of South Carolina -vs- Comest Sabatino Allen (2011-GS-23-1296-1297 and 1305-1306)
Tina Harwood - Direct Examination by Ms. Townsend

71

1 out of the truck. My husband was getting my son. I was
2 getting my three-year-old at the time, just making sure
3 they were okay. That was my priority at that moment.

4 Q. And was everybody okay?

5 A. The children were fine, my husband was fine. I did
6 subsequently end up having to go to Hillcrest Hospital
7 later that evening. I had injured my tendons in my foot.

8 Q. Did you get a chance to see who was driving the
9 vehicle that hit you?

10 A. No. I'll be honest with you, I did not see any faces.
11 Like I said, I looked up, the truck was there.

12 Q. Did anybody come to assist you or report the accident,
13 other than law enforcement?

14 A. My family -- I called my father once, you know, we
15 made sure the children were okay. He came down to pick us
16 up. And my brother was also called and he came to the
17 scene as well. And he actually -- here, again, it wasn't
18 me, but my brother did speak to law enforcement and kind of
19 relayed as to what had happened, what started the chase or
20 what have you.

21 Q. Okay. And did anyone come forward and say that they
22 were the person who had hit you?

23 A. No.

24 Q. Okay. And how is your injury today?

25 A. At the time of the accident, I was about a week away

1 from going into a surgery. I've had two spinal surgeries
2 since this accident and I am now disabled. So, I mean, I
3 can't say that the accident is what disabled me, but I know
4 it didn't help the situation.

5 Q. All right. Thank you, Ms. Harwood. Please answer any
6 questions Mr. Sullivan has.

7 **CROSS-EXAMINATION**

8 **BY MR. SULLIVAN:**

9 Q. Do you remember speaking with an Officer James
10 Culbertson?

11 A. Yes, sir.

12 Q. He was an officer who essentially came and checked on
13 you guys?

14 A. Yes. I believe he was the officer that actually was
15 the closest to us once our vehicle came to a stop and he
16 had explained what happened.

17 Q. And let me ask you this about the truck that Officer
18 Coury couldn't remember. The truck that hit you, was it a
19 two-door or a four-door?

20 A. It was a big Ford four-door truck.

21 Q. So it had four doors?

22 A. Yes, sir. It had a head rest in the back for the
23 passenger seats. So it was like a four-door work truck.

24 Q. Did you notice if it was spun around or just ---

25 A. No, it was spun around.

State of South Carolina -vs- Comest Sabatino Allen (2011-GS-23-1296-1297 and 1305-1306)
James Culbertson - Direct Examination by Ms. Townsend

73

1 Q. It was spun?

2 A. Yeah.

3 Q. Okay.

4 MR. SULLIVAN: I have nothing further, Your
5 Honor.

6 THE COURT: Any redirect, Ms. Townsend?

7 MS. TOWNSEND: No, Your Honor.

8 THE COURT: Thank you, ma'am. You may step down.
9 You may call your next witness, Solicitor.

10 MS. TOWNSEND: Thank you, Your Honor. The State
11 calls Sergeant Culbertson.

12 THE CLERK: Please place your left hand on the
13 bible and raise your right hand.

14 Do you solemnly swear or affirm to tell the truth, the
15 whole truth and nothing but the truth, so help you God?

16 THE WITNESS: I do.

17 THE CLERK: Thank you. Please be seated. Please
18 state your name for the record.

19 THE WITNESS: James Culbertson.

20 JAMES CULBERTSON,

21 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

22 DIRECT EXAMINATION

23 BY MS. TOWNSEND:

24 Q. Thank you, Sergeant Culbertson. Could you state your
25 employer for the record?

1 A. Simpsonville Police Department.

2 Q. And in what capacity are you employed there?

3 A. Sergeant on uniform patrol.

4 Q. Were you working on the night of October 31st, 2010?

5 A. I was.

6 Q. In what capacity that night?

7 A. I was actually a corporal on the shift at that time,
8 assistant supervisor to Sergeant Foreman.

9 Q. Okay. How did you become involved with this incident?

10 A. When Officer Coury advised that he was attempting to
11 catch up with a vehicle and initiated pursuit of that
12 vehicle, Sergeant Foreman had asked the charges. Once he
13 explained that over the radio, we headed toward the area to
14 assist.

15 Q. And were you able to see the chase in progress when
16 you got there?

17 A. Not at first. We caught up to them as they turned --
18 we were coming down Fairview Road. Sergeant Foreman at the
19 time had stop sticks to deploy to hopefully -- if we could
20 have got them out safely and end the pursuit by deflating
21 the tires. We wasn't able to do that in time because
22 before we got to Fairview Road and got set up, they had
23 already turned back on Harrison Bridge, coming back towards
24 us. And the other two patrol cars you see on the video
25 that was on the other side was my myself and Sergeant

State of South Carolina -vs- Comest Sabatino Allen (2011-GS-23-1296-1297 and 1305-1306)
James Culbertson - Direct Examination by Ms. Townsend

75

1 Foreman. We turned around to try to shadow the pursuit to
2 catch up and try to ward off any other traffic, but before
3 we could catch up to it, they had already struck the other
4 vehicle.

5 Q. And did you see the accident where the Defendant hit
6 the other vehicle?

7 A. I didn't see it, the impact, I saw it just a few
8 seconds after it because I was several car lengths behind.

9 Q. Okay. And what did you do upon seeing that?

10 A. When the suspect vehicle spun out, Officer Coury and
11 Officer Nemeth were the initial two and they proceeded
12 after the suspect on foot. At that point, I stopped to
13 render aid to the victims if any was needed.

14 Q. And did you speak to the Harwood family?

15 A. I did.

16 Q. Did EMS respond?

17 A. The EMS first responder, if I'm not mistaken, they
18 also did come out.

19 Q. And what did you do after you first dealt with the
20 victims in this case?

21 A. At that point we just set up traffic control because,
22 I mean, the car was obviously disabled and unable to be
23 moved. So we just had to shut down that part of the
24 intersection and direct traffic for the emergency medical
25 service.

1 Q. Did you go to the area where the Defendant's car or
2 the truck was?

3 A. I did after we had the intersection cleared. The
4 medical personnel were waiting on a tow truck to get the
5 disabled vehicle. I did walk over, yes, ma'am.

6 Q. And do you remember having any contact with the
7 Defendant?

8 A. I do not. If I did, it was brief.

9 MS. TOWNSEND: That's all the State has for this
10 witness, Your Honor.

11 THE COURT: You may cross-examine.

12 **CROSS-EXAMINATION**

13 **BY MR. SULLIVAN:**

14 Q. Just one question. In your report from the accident,
15 I highlighted with where I think you spoke to the driver
16 and asked him, if you'll just read that?

17 A. When I spoke to the driver of the victim's vehicle?
18 This right here?

19 Q. Uh-huh (affirmative). The car I highlighted.

20 A. I spoke to the driver, Terry Wayne Harwood ---

21 Q. Stop. Speak slower, would you?

22 A. I spoke to the driver, Terry Wayne Harwood, and asked
23 him if there were any injuries. And they were obviously
24 visibly shaken but stated that they were fine. Do you want
25 me to continue on?

1 Q. Yeah, I think you said you were going to get EMS to
2 come check on them?

3 A. Right.

4 Q. That's all. Now, when you went down to the scene, to
5 the truck that hit them, did you notice if it was a two-
6 door or four-door truck?

7 A. Four-door.

8 Q. Four-door truck?

9 A. Uh-huh (affirmative.)

10 Q. Thank you.

11 MR. SULLIVAN: I have nothing further, Your
12 Honor.

13 THE COURT: Any redirect?

14 MS. TOWNSEND: No, sir, Your Honor.

15 THE COURT: All right. Thank you, Officer
16 Culbertson. You may step down.

17 You may call your next witness.

18 MS. TOWNSEND: Your Honor, that is the State's
19 case.

20 THE COURT: All right. Ladies and gentlemen, we
21 need to take a short break now for me to take care of some
22 matters with the attorneys. If you'll go back to your jury
23 room. Don't discuss the case. We'll call you back in just
24 a few moments and continue with the trial.

25 (WHEREUPON, the jury exited the open court at

1 approximately 3:05 p.m.)

2 THE COURT: Are there any matters we need to take
3 care of before I talk with your client about his right to
4 testify, Mr. Sullivan?

5 MR. SULLIVAN: I would move for an acquittal
6 based on if you watch the video you can see, I think, the
7 Defendant is in the back seat passenger side. He said all
8 along somebody else was driving. And as far as the DUI, I
9 think you can see from the -- had no field sobriety tests.
10 You can see him in the car and in the BA room, he was doing
11 fine, answering their questions. He exercised his rights,
12 understood them, signed what they asked him to, said he was
13 cold. They let him get up. He was cooperative. I think
14 on the DUI, I don't think they have any sufficient evidence
15 to support a DUI conviction.

16 THE COURT: Well, at this stage, as you know, Mr.
17 Sullivan, I must view all the evidence in the light most
18 favorable to the non-moving party, which would be the
19 State. I certainly appreciate the factors that you've
20 pointed out, but there was testimony from the officer to
21 the contrary about his observations and so forth. I
22 believe it's a jury issue as to that, as well as the other
23 charges, as well. I respectfully deny your motion.

24 MR. SULLIVAN: Thank you, Your Honor. My client,
25 we spent a couple of hours together on Monday, and at that

1 time he told me he does not wish to take the stand. I told
2 him you would want to make an inquiry as to his decision
3 and whatever. So if you want ---

4 THE COURT: Yes, sir. Mr. Allen, if you would
5 come forward, please, with your attorney, up to the
6 microphone.

7 (WHEREUPON, Mr. Sullivan and the Defendant approached
8 the bar.)

9 THE COURT: If you would, raise your right hand?
10 Do you swear or affirm the testimony you're about to give
11 me will be the truth, the whole truth ---

12 THE DEFENDANT: Yes, sir, Your Honor.

13 THE COURT: --- and nothing but the truth, ---

14 THE DEFENDANT: Yes, sir.

15 THE COURT: --- so help you God?

16 Your lawyer has indicated that you and he have talked
17 about your right to testify in this case or not testify and
18 I need to be satisfied in my own mind that you understand
19 those rights that you are entitled to under our
20 Constitution, both in South Carolina and the United States.
21 Both Constitutions say that no person can be compelled in
22 any criminal case to be a witness against themselves. That
23 means you can't be required to testify in the case. Of
24 course, you have a right to testify in your own behalf.
25 Nobody can make you testify, though. It's a personal right

1 that you enjoy and nobody can waive this right but you.

2 Now, obviously, your choices are to testify or not
3 testify. If you choose to testify you'll be subject to all
4 the rules that govern any other witness who testifies and
5 you can be examined and cross-examined on any relevant
6 issue connected with the case. If you have prior
7 convictions involving dishonesty or false statements or
8 crimes that are punishable by imprisonment for more than
9 one year, and the Court determines that the probative value
10 of admitting this evidence outweighs the prejudicial effect
11 to you, then the Solicitor would be able to introduce your
12 criminal record to attack your credibility.

13 Any decision you make to testify or not testify must
14 be made by you voluntarily, must be made intelligently with
15 the protections that you enjoy under our Constitution.
16 Certainly, you need to knowingly understand the
17 consequences of your decision to testify. If you make the
18 choice not to testify, I'll instruct the jury they cannot
19 give the fact that you chose not to testify any
20 consideration at all in their deliberations and there is to
21 be absolutely no prejudice to you because you chose to
22 exercise your right not to testify. This decision on your
23 part has to be made by you. You can certainly seek the
24 advice of your lawyer or friends or family or anyone else
25 you might want to talk to, but that decision has to be

1 yours and yours alone to decide. Do you have any questions
2 of me of what I've explained to you?

3 THE DEFENDANT: No, sir, Your Honor.

4 THE COURT: You've understood what I've explained
5 to you?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: All right, sir. You can return to
8 your table with your attorney.

9 THE DEFENDANT: Thank you, sir.

10 THE COURT: Mr. Sullivan, do you need more time,
11 does your client need more time to talk with you? Do we
12 need to take a break or has he made a decision as to
13 whether or not he wishes to testify?

14 MR. SULLIVAN: We talked about it at length.

15 (WHEREUPON, Mr. Sullivan and the Defendant had an off-
16 the-record discussion.)

17 MR. SULLIVAN: We discussed something other than
18 that, Your Honor, another facet of an assault charge. He
19 understands it now. The defense is not putting up
20 anything. We would rest and I want to preserve ... I
21 guess we ---

22 THE COURT: All right. So the -- you don't
23 intend to testify in your own behalf?

24 THE DEFENDANT: No, sir.

25 THE COURT: All right. So are we ready to ---

1 MR. SULLIVAN: I'd like to have maybe five or ten
2 minutes to get my thoughts together.

3 THE COURT: We'll take a short break before you
4 argue your case to the jury. Are there any -- obviously,
5 I'll charge the four matters under consideration here,
6 along with my regular charge about, certainly, his right
7 not to testify. I'll charge on identification. That
8 seemed to be an issue in the case from the Defense
9 standpoint. I'll charge leaving the scene of an accident
10 with property damage. I'll talk about the DUI, failing to
11 stop for a blue light, and the ABHAN. Are there any other
12 matters as far as charges from either side, or requests?

13 MS. TOWNSEND: Your Honor, with respect to the
14 DUI charge, we would just request that the provision about
15 not providing a breath sample is not a right not to provide
16 a breath sample, but something in the way of a choice or
17 something, not to be equivalent to the right not to
18 testify.

19 THE COURT: All right.

20 MR. SULLIVAN: I think they have a right not to
21 take it, Your Honor.

22 THE COURT: I think that's -- well, I mean,
23 that's into evidence; isn't it? One of your Exhibits is
24 already there.

25 MR. SULLIVAN: I think it's Exhibit Number 5, I

1 believe, is the Complied Consent Form that they read to
2 him.

3 THE COURT: I think that the law is that he has a
4 right to refuse. You can certainly argue anything to the
5 contrary about the things that are in evidence. The form
6 itself, I think, speaks for itself if the jury wants to
7 look at it, what happens if he doesn't, those kinds of
8 things.

9 Anything else?

10 MR. SULLIVAN: As a practical matter, I wonder if
11 anybody on the jury knows how to work this thing? I assume
12 they're going to have it back there.

13 THE COURT: Well, they can -- that'll come up,
14 I'm sure. Is there any objection to the -- can the
15 equipment go back there or we can bring them back out here.

16 MS. TOWNSEND: Well, we did have one area that
17 was redacted that I had to manually do, so if they went
18 back there, then it's ---

19 THE COURT: Okay. All right. So we're going to
20 need to have them come back out here if they want to view
21 it again. I didn't know whether you'd cut another tape
22 with that.

23 MS. TOWNSEND: We tried for many, many hours.

24 THE COURT: Okay. I'll explain that. If they
25 ask, we'll just send the tape back.

1 All right. Anything else? If not, we'll take a short
2 break, otherwise.

3 MR. SULLIVAN: I have one question. I can talk
4 to Brennan about it.

5 THE COURT: Okay. All right. That'll be fine.
6 Let's take about a ten-minute break and then we'll be ready
7 to present it to the jury.

8 (WHEREUPON, the court stood at recess for a short
9 break.)

10 THE COURT: If the jury's ready, you can have
11 them come in.

12 I'm going to let you rest on the record, okay? I'll
13 call upon you to put up a defense in front of the jury and
14 you can just say the Defense rests.

15 MR. SULLIVAN: Okay.

16 THE COURT: So they'll know that I'm not ignoring
17 you.

18 MR. SULLIVAN: Right.

19 Judge, did we decide that they're going to leave this
20 out here so they can come back and watch if they want?

21 THE COURT: We'll just send the CD back and then
22 if they ask a question, I'll tell them that they'll need to
23 come out here and watch it.

24 THE BAILIFF: Your Honor, are you ready?

25 THE COURT: Yes, sir.

1 (WHEREUPON, the jury entered the open court at
2 approximately 3:32 p.m.)

3 THE COURT: All right. Ladies and gentlemen,
4 we're now ready to proceed.

5 Mr. Sullivan, you may present your Defense.

6 MR. SULLIVAN: Judge, the Defendant has chosen to
7 exercise his Constitutional right not to testify, so the
8 Defense rests.

9 THE COURT: All right. Madam forelady, ladies
10 and gentlemen of the jury, you've heard all the testimony
11 in this case. We're now at the stage where the attorneys
12 will address you in their closing statements. I told you
13 before that what they have to say to you is not evidence.
14 All the evidence is in. But I urge you to listen carefully
15 as each of the attorneys address you in their closing
16 statements. I am confident that each of them can give you
17 some valuable insights to help you as you begin your
18 deliberations in a few moments after I instruct you on the
19 law.

20 Solicitor, you may address the jury in your closing.

21 **CLOSING STATEMENT**

22 **BY MS. TOWNSEND:**

23 Ladies and gentlemen, we are coming to a close here
24 and I thank you for your time and attention to everything
25 here. Soon you're going to be able to go back and start

1 your deliberation process and I just want to leave you with
2 some final thoughts here.

3 First, the big issue here, this Defendant wants you to
4 think that he wasn't driving the vehicle that night. He
5 wants you think it was somebody else, somebody named John.
6 There's some problems with that theory. First of all, he
7 says multiple times, did I kill anybody? He says one time
8 that he was trying to commit suicide. And most
9 importantly, we've got Officer Coury's testimony that he
10 saw this Defendant, he was within seven to eight feet of
11 him when he walked up to the vehicle at the very first
12 contact. The officer had a flashlight in his hand, he was
13 illuminating the area, he made contact with the Defendant
14 and recognized him. He never lost contact visually with
15 him from that moment, through the whole pursuit, all those
16 streets of Simpsonville, to the time when that vehicle came
17 to a rest and he saw the Defendant jump out of the vehicle,
18 run over into the bushes and he grabbed him out of the
19 bushes. There was no point in that time that there could
20 have been another person jumping out. It's just not
21 reasonable. This officer testified multiple times that he
22 is positive that this man sitting here today is the man
23 that was sitting behind the wheel that day and the man that
24 jumped out of the vehicle and the man that he pulled out of
25 the bushes that day.

1 So let's talk quickly about the charges that he's
2 facing. And the Judge is going to instruct you on the law
3 for all of these charges. But just the things that you
4 need to keep in mind as I talked to you about in the
5 beginning, I would be putting my evidence in for you to
6 consider the elements that I need to prove to you on the
7 various charges.

8 The first charge, assault and battery of a high and
9 aggravated nature. And, again, in order to prove that, you
10 need to find that the Defendant either committed an act
11 that caused great bodily injury or he committed an act that
12 was likely to result in great bodily injury or death. And,
13 ladies and gentlemen, this officer testified that he was
14 within feet when this Defendant gunned his vehicle right
15 toward him. The officer had to jump out of the way and he
16 was hit by a large mirror on the side of that vehicle. If
17 that's not a very direct indication of what could have
18 happened if this officer had not jumped out of the way, I
19 mean, it's -- a very, very serious situation could have
20 occurred. It definitely could have resulted in great
21 bodily injury or even death had he not had the wherewithal
22 to jump out of the way quickly.

23 The Defendant is also charged with failure to stop for
24 a blue light. And you all saw the video, you saw the
25 pursuit. The blue lights were clearly on, the siren was

1 clearly on. You could hear all that. There's no question
2 that the Defendant knew he was being pursued. He was
3 accelerating. He was doing everything he could to avoid
4 being caught. Had no indication that he was going to stop
5 for this officer at all. The only thing that did stop him
6 was a crash and that's where the charge of hit and run
7 comes in. He clearly knew that he hit another vehicle at a
8 high rate of speed and there could have been serious
9 injuries there. And instead of stopping and realizing what
10 he had done and making an effort to right the situation, he
11 wanted to save himself or avoid consequences and he drove
12 off and bailed out of the car and tried to run away, tried
13 to avoid all of that.

14 And then, lastly, he is charged with driving under the
15 influence. And, again, this charge requires that you all
16 find that this Defendant's capabilities to drive were
17 materially and appreciably impaired. And that means that
18 there was something noticeable there that caused a
19 difference in the way that he could operate a vehicle.
20 Now, we don't have the benefit of field sobriety tests. We
21 don't have that. And we don't have a blood or breath
22 result. And the Judge is going to tell you about the
23 Defendant's right to refuse to take that test. However,
24 it's not a right the same that he has a right not to
25 testify. This is a right that he is told in the beginning,

State of South Carolina -vs- Comest Sabatino Allen (2011-GS-23-1296-1297 and 1305-1306)
Closing Statement by Ms. Townsend

89

1 if he refuses, this will be used against him in court.
2 And, ladies and gentlemen, that's something that you all
3 should consider. That's something that the Legislature
4 asks you to consider. If someone agrees that they're going
5 to drive on the roads of South Carolina, they agree that
6 they're going to provide a blood or breath sample when
7 asked if they're under suspicion of driving under the
8 influence. And if they decide not to provide that sample,
9 you all as jurors can hold that against that person; and
10 you should. This Defendant is the only person who knows
11 what the results of that test would have been and he's the
12 only person who could provide that information and he chose
13 not to provide that.

14 We also have the officer's observations of the
15 Defendant. He smelled like alcohol, he had bloodshot eyes,
16 he had slow slurred speech and those are all also
17 indicators of impairment that you all can consider.

18 And, ladies and gentlemen, that's the evidence. You
19 heard three different witnesses testify. You heard two
20 officers, you heard the victims of the crash and you saw
21 the video. And I believe with all that evidence, it's
22 clear that this Defendant did commit these crimes and I
23 would ask that you would find him guilty of all four
24 charges.

25 THE COURT: Mr. Sullivan.

1 MR. SULLIVAN: May it please, the Court. Ms.
2 Townsend, Officer Coury.

3 CLOSING STATEMENT

4 BY MR. SULLIVAN:

5 I'm not going to be long. The video pretty much
6 speaks for itself. There's a few points. Officer Coury,
7 or somebody's power of observation sometimes, he thinks he
8 got a good look at the driver. He never mentioned the
9 passenger. Did not know if it was a four-door or two-door
10 truck. We did not get to that until Ms. Harwood testified,
11 said it was a four-door truck, so there was a passenger
12 that could have been in the back, the front seat or the
13 back seat.

14 From the very beginning, the officers involved in this
15 case knew that the driving issue, who was operating this
16 vehicle, was going to be the key to the case. Now, you
17 have a right to have this back -- they will bring you back
18 out to look at parts if you want to, look at all of it,
19 part of it, whatever. I noted at the minute of 10:35, it
20 looks like there's a passenger, bald headed passenger, in
21 the back seat. And, of course, Mr. Allen is bald headed.
22 Also, when the car was hit, the car that was allegedly
23 being driven by Mr. Allen flipped around and was behind the
24 other car, was out of sight, and somebody could have run
25 out before he did and he was the second one to go. That's

State of South Carolina -vs- Comest Sabatino Allen (2011-GS-23-1296-1297 and 1305-1306)
Closing Statement by Mr. Sullivan

91

1 a question you have to decide.

2 Now, I'm always curious. I know they brought in, they
3 brought in Officer Coury and the other officer and Ms.
4 Harwood and we have the videos; you can watch those. But
5 I'm curious about what they didn't bring. And they know
6 that the issue from day one, the very first thing he says,
7 I was not driving this car. Told them in the BA room, I
8 was not driving this car, or truck. You have ways to prove
9 he's driving it. The testimony was it was not his car.
10 But one of the first things you do when you get in somebody
11 else's car to drive it is you adjust the mirror. It
12 wouldn't take a lot to have the fingerprint people out
13 there to dust the door handle, check the gear shift, and
14 check the mirror. The mirror does great. If we had that
15 evidence, we wouldn't be here today.

16 There's also another thing that's not here today, on
17 the video, and you heard the officer testify, there was a
18 passenger in the car. There's no one, nobody here asked
19 her who was driving that car. She's not here. She could
20 have gotten up there and said, Mr. Allen was driving it; or
21 she could have said, JJ was driving. So I'm curious -- I
22 know the key to my case is going to be, was this guy
23 operating the car? And I've got a witness and I've got
24 forensics that can prove it, I'm going to use them. Now,
25 it's not that hard to do. It's not DNA, it's not NCIS or

1 all of those fancy -- they've been doing fingerprints for a
2 long time. There was a very simple way to solve this case.
3 So many questions. If you want to see this, I would call
4 your attention to about 10:35, in that area, where you can
5 see somebody's bald head, and 10:50 where you see the crash
6 and the car goes out of sight for a few minutes. And also,
7 the fact that Officer Coury did not even realize it was a
8 four-door car. So that would be the things that I would
9 like for you to consider.

10 The other thing, on the DUI, he did have a right to
11 refuse it. But he also -- they tell him -- you'll have the
12 consent. It's in here. It's Exhibit 5, I think. They
13 say, when you drive you give consent to take it, but you
14 can refuse it, but if you do, you'll lose your license. So
15 you have a choice. You get punished for it. You can
16 refuse, but you're going to lose your license and he chose
17 that option. And that's his perfect right.

18 And the other thing is, the Judge is going to tell you
19 he is presumed, right now, innocent. And until all twelve
20 of you agree and come back with a guilty verdict on every
21 charge, then he's not guilty. Thank you.

22

CHARGE23 **BY THE COURT:**

24 Ladies and gentlemen, it is now my responsibility to
25 instruct you on the law of the cases. Let me remind you

State of South Carolina -vs- Comest Sabatino Allen (2011-GS-23-1296-1297 and 1305-1306)
Charge

93

1 that the fact that the Defendant has been charged, he's
2 been arrested, he's been indicted in each of these matters,
3 it's not evidence. It's not to be considered by you as
4 evidence of his guilt. It doesn't create any presumption
5 or inference of guilt. The indictments are merely the
6 formal written instruments by which the cases are brought
7 before the Court for final disposition by this Court.

8 Now, there's four separate and distinct charges here.
9 There's the charge of assault and battery of a high and
10 aggravated nature. There's the failure to stop for a blue
11 light, driving under the influence and leaving the scene of
12 an accident with property damage. Each of these
13 indictments charges a separate and distinct offense. You
14 must decide each indictment separately on the evidence and
15 the law applicable to that charge uninfluenced by your
16 decision on any other indictment. In other words, the
17 Defendant could be convicted or acquitted or any or all of
18 the offenses. You'll be asked to write separate verdict
19 forms for guilty or not guilty for each of the indictments.

20 Now, by entering a plea of not guilty to each of the
21 indictments, the burden is placed on the State of South
22 Carolina to prove the Defendant is guilty. A person
23 charged with committing a criminal offense in South
24 Carolina is never required to prove himself innocent. I
25 charge you, that's an important rule of law, that a

1 Defendant in a criminal trial, no matter how serious the
2 charge may be, will always be presumed to be innocent of
3 the crime for which that indictment was issued, unless
4 guilt has been established and proven by evidence
5 satisfying you of that guilt beyond a reasonable doubt.
6 The presumption of innocence doesn't end when you begin
7 your deliberations. It continues throughout the trial
8 until you've reached a verdict of guilt based on the
9 evidence satisfying you of that guilt beyond a reasonable
10 doubt. Presumption of innocence isn't a mere legal theory
11 that's used, it's not a legal phrase that's tossed about.
12 It is a substantial right to which every Defendant is
13 entitled unless you are satisfied from the evidence of the
14 Defendant's guilt beyond a reasonable doubt.

15 And, Madam Forelady, ladies and gentlemen, you may ask
16 yourself, what is a reasonable doubt in the law. A
17 reasonable doubt is the kind of doubt that would cause a
18 reasonable person to hesitate to act. Some of you may, in
19 the past, have had an opportunity to serve as a juror on a
20 civil case, either in Magistrate's Court or a City Court or
21 even in the Court of Common Pleas in the State Court system
22 and a Judge told you it was only necessary to prove a fact
23 is more likely true than not true by a standard of proof
24 known as preponderance of the evidence or the greater
25 weight of the evidence. In criminal cases, the State's

State of South Carolina -vs- Comest Sabatino Allen (2011-GS-23-1296-1297 and 1305-1306)
Charge

95

1 proof is more powerful than that. It's proof beyond a
2 reasonable doubt. That would be proof, ladies and
3 gentlemen, that leaves you firmly convinced of the
4 Defendant's guilt. There are very few things that we know
5 in this world with absolutely certainty and the law doesn't
6 require proof that overcomes every possible doubt. If,
7 based upon your consideration of the evidence, you are
8 firmly convinced of the Defendant's guilt of the crimes
9 charged, then you must find the Defendant guilty. If, on
10 the other hand, you think there's a real possibility that
11 he's not guilty, you must give him the benefit of the doubt
12 and find him not guilty. And, again, that applies to each
13 of the separate indictments, individually and distinct.

14 Now, throughout the trial, you and I have had certain
15 duties to perform. It's been my responsibility to preside
16 over the trial of the case and to rule on the admissibility
17 of evidence that's been offered during the trial. You're
18 to consider only the competent evidence that's before you,
19 the testimony that's been presented from the witness stand,
20 the exhibits that have been made a part of the record and
21 that alone. My job also is to charge you the law that's
22 applicable to the case. As the Presiding Judge, I'm the
23 sole Judge of the law. It's your duty as jurors to accept
24 the law and apply the law just as I state it to you. Some
25 of you may already have an idea of what the law is in a

1 case such as this or even a notion of what the law ought to
2 be in a case like this. If you have such an idea and it's
3 in conflict with what I now tell you the law is, then you
4 must abandon such an idea because under your oath you've
5 sworn to accept the law and apply the law exactly as I
6 state it to you now. Every case that's tried in this
7 courtroom before a jury, that jury becomes the sole and
8 exclusive judge of the facts of the case. The Trial Judge
9 can't intimate or state or comment on or make any statement
10 whatsoever to a trial jury about the facts in a case.
11 Since you, the jury, are the sole judges of the facts,
12 you're not to infer from what I've said during the progress
13 of the trial or any rulings I've made on the admissibility
14 of evidence or otherwise, anything I say to you now in the
15 course of this instruction to you that I have an opinion
16 about the facts of the case. I don't have an opinion about
17 the facts. The law of South Carolina, the Constitution of
18 our State prohibits a Trial Judge such as I from having an
19 opinion about the facts of the case. That's a matter
20 solely up to you, ladies and gentlemen. You determine the
21 effect, the value, the weight and the truth of the evidence
22 that has been presented during this trial.

23 Normally, in every trial, there's two types of
24 evidence, there's what's called direct evidence and what's
25 called circumstantial evidence. Direct evidence is the

State of South Carolina -vs- Comest Sabatino Allen (2011-GS-23-1296-1297 and 1305-1306)
Charge

97

1 testimony of a person who claims to have actual knowledge
2 of a fact, such as an eyewitness. It's evidence which
3 immediately establishes the main fact to be proven.
4 Circumstantial evidence is proof of a chain of facts and
5 circumstances that indicate the existence of a fact. It's
6 evidence which immediately establishes collateral facts
7 from which the main fact may be inferred. Circumstantial
8 evidence then is based on inference and not on personal
9 knowledge or observation. The law makes absolutely no
10 distinction between the weight or the value to be given to
11 either direct evidence or circumstantial evidence, nor is a
12 greater degree of certainty required of circumstantial
13 evidence than of direct evidence. You should weigh all of
14 the evidence in the case and after weighing that evidence,
15 if you're not convinced of the guilt of the Defendant
16 beyond a reasonable doubt, you must find the Defendant not
17 guilty.

18 Necessarily, you must determine the credibility of
19 witnesses who testified in the case, and credibility simply
20 means believability. It becomes your duty as jurors to
21 analyze and evaluate the evidence and determine which
22 evidence convinces you of its truth. You have a right to
23 determine the believability of witnesses by weighing one
24 witness over several witnesses, or several witnesses over
25 one witness. In your discretion, ladies and gentlemen, you

1 can believe part of the testimony of a witness and reject
2 the remaining part of the testimony of that very same
3 witness. You can accept the testimony of a witness in its
4 entirety. You can reject the testimony of a witness in its
5 entirety. You can consider whether any witness has
6 exhibited to you an interest or bias or prejudice in the
7 case or other motive. You can consider the appearance, the
8 manner of the witness while on the witness stand, the
9 demeanor of that witness? Was the witness straightforward
10 or hesitant in answering? Was the testimony consistent or
11 inconsistent? How did that witness's testimony stack up
12 with other evidence that you've heard, was it strengthened
13 or weakened? You and you alone determine the credibility
14 of witnesses who have testified in the case.

15 Now, in order to establish criminal liability,
16 criminal intent is required and it must be proven by the
17 State beyond a reasonable doubt. Criminal intent is always
18 a matter that must be determined by a jury from the
19 circumstances surrounding the situation. There's no way to
20 prove intent to a mathematical certainty. It's not
21 necessary to establish intent by direct and positive
22 evidence, but intent may be established by inference in the
23 same way as any other fact, by taking into consideration
24 the acts of the parties and all of the facts and
25 circumstances of the case. Criminal intent is a mental

State of South Carolina -vs- Comest Sabatino Allen (2011-GS-23-1296-1297 and 1305-1306)
Charge

99

1 state. It's a conscious wrong-doing. It's up to you to
2 determine what the Defendant intended to do based upon the
3 circumstances shown to have existed.

4 Now, Madam Forelady, ladies and gentlemen, I instruct
5 you and I emphasize to you the fact that the Defendant did
6 not testify is not a factor to be considered by you in any
7 way in your deliberations and in your consideration on the
8 question of the guilt or the innocence of the Defendant.
9 It's not to be considered by you in any manner whatsoever.
10 A Defendant has a Constitutional right to remain silent and
11 the assertion of that right must not be considered by you
12 in your deliberations. I repeat, under your oath, you're
13 to draw no conclusions whatsoever from the fact that the
14 Defendant in this case chose not to testify. That fact
15 should not even be discussed by you in your jury room. The
16 burden of proof is on the State of South Carolina. The
17 Defendant is not required to prove his innocence. That
18 burden remains on the State throughout the trial, that the
19 State has the burden of proof beyond a reasonable doubt.

20 Now, the State also has the burden of proving identity
21 beyond a reasonable doubt and you must be satisfied beyond
22 a reasonable doubt of the accuracy of the identification of
23 the Defendant before you may convict. You may consider
24 whether the witness had an adequate opportunity to observe
25 the offender at the time of the offense. Identification is

1 an expression of the belief or an impression by a witness.

2 And, of course, you must determine the accuracy of that
3 identification of the Defendant.

4 The opportunity to observe the offender at the time of
5 the offense, that will be affected by things such as how
6 long or short a time was available, the closeness or the
7 distance that the witness was, the lighting conditions,
8 whether the witness had the chance to see or know the
9 person in the past. Once again, I instruct you that the
10 burden of proof is on the State and that extends to every
11 element of the crime charged and specifically includes the
12 burden of proving beyond a reasonable doubt the identity of
13 the Defendant as the person who committed the crime. If,
14 after examining the testimony, you have a reasonable doubt
15 as to the accuracy of the identification, then you must, of
16 course, find the Defendant not guilty.

17 Now, in this case the Defendant is charged with
18 assault and battery of a high and aggravated nature.
19 That's the unlawful act of violent injury to a person of
20 another, accompanied by circumstances of aggravation. An
21 assault occurs when a person unlawfully attempts or offers
22 to commit a violent injury upon another person and has the
23 present ability to complete that attempted injury. An
24 assault is the intentional creation of a reasonable fear of
25 immediate bodily harm. It's not necessary that the

State of South Carolina -vs- Comest Sabatino Allen (2011-GS-23-1296-1297 and 1305-1306)
Charge

101

1 attempted injury or harm actually take place. An example
2 often is given that if I were to walk up to one of you and
3 when I was within arm's reach, I drew back as if to hit
4 you, that would be an assault. A battery is the unlawful
5 touching of another person by a person who has committed
6 the assault. An unlawful touching can be caused by part of
7 the accused body or by an object the accused puts in
8 motion. A battery is the completion of the assault by
9 using or applying force to another person, however slight,
10 in a rude or angry or resentful manner without legal
11 justification for doing so. Again, using my earlier
12 example, if I carry through the assault by hitting you,
13 then that would be a battery. The State must also prove a
14 circumstance of aggravation. And circumstances of
15 aggravation would include the use of a deadly weapon or the
16 attempt to commit a felony, the infliction of serious
17 bodily injury or the resistance of lawful authority. These
18 are only examples of circumstances of aggravation. It'll
19 be up to you to determine whether or not the aggravating
20 circumstances were present in this case.

21 The Defendant is also charged with the statutory
22 offense of driving under the influence. The State must
23 prove beyond a reasonable doubt that the Defendant was
24 driving a motor vehicle in this State while under the
25 influence of alcohol and/or drugs or other substance to the

1 extent that the Defendant's faculties to drive were
2 materially and appreciably impaired. Driving a motor
3 vehicle means that the vehicle was in motion. This can be
4 proven by direct or circumstantial evidence. The State
5 must prove beyond a reasonable doubt that the Defendant was
6 sufficiently under the influence to impair his ability to
7 drive with reasonable care with due regard for others and
8 himself or as a reasonably prudent person would drive.
9 It's not necessary to show the Defendant was in a helpless
10 condition, passed out or even intoxicated. On the other
11 hand, the fact that the Defendant at some time prior to the
12 incident drank an alcoholic beverage or took a drug does
13 not prove that the Defendant was driving under the
14 influence. The Defendant, under the law, has a right to
15 refuse to take a blood alcohol concentration test.

16 The Defendant is also charged in this matter, this
17 case, with failing to stop for a blue light. In order to
18 prove this crime, the State must prove beyond a reasonable
19 doubt that the Defendant was driving a motor vehicle, that
20 the Defendant was driving the motor vehicle on a road, a
21 street or a highway of this State, that the Defendant was
22 signaled to stop by a law enforcement vehicle by means of a
23 siren or a flashing light and that the Defendant did not
24 stop. In determining whether or not there were mitigating
25 circumstances which would justify the Defendant's failure

State of South Carolina -vs- Comest Sabatino Allen (2011-GS-23-1296-1297 and 1305-1306)
Charge

103

1 to stop for a blue light, you can consider the actual road
2 conditions, the roadside conditions, other conditions such
3 as lighting or weather, the officer, the driver, the
4 passenger's safety, any other circumstances you believe
5 could reasonably mitigate the alleged violation. An
6 official signal requiring a motorist to stop may be by a
7 siren or a flashing light, but both are not required. An
8 attempt to increase the speed of a vehicle or in some other
9 manner avoid the pursuing law enforcement vehicle when
10 signaled by a siren or a flashing light may be considered
11 as evidence of the failure to stop for a blue light.
12 However, this is merely an evidentiary fact to be taken
13 into consideration by you, along with all the other
14 evidence in the case and it should be given the weight that
15 you decide it should receive.

16 Finally, the Defendant in this case is charged with
17 leaving the scene of accident that resulted in damage to a
18 motor vehicle driven or attended by another person. To
19 prove this offense, the State must establish beyond a
20 reasonable doubt that the Defendant was driving a vehicle,
21 that the vehicle was involved in an accident, the accident
22 caused damage to another motor vehicle and the Defendant
23 did not stop or failed to return or to remain at the scene.
24 The Defendant failed to give his name, address, vehicle
25 registration number and, if asked, failed to show his

State of South Carolina -vs- Comest Sabatino Allen (2011-GS-23-1296-1297 and 1305-1306)
Charge

104

1 driver's license.

2 The State must also prove beyond a reasonable doubt
3 that the Defendant knew or should have known that the
4 accident happened. This may be shown by evidence of
5 circumstances and conditions which would cause an ordinary,
6 reasonable person to believe that the vehicle had been
7 involved in an accident resulting in property damage.

8 Now, as I told you, Madam Forelady, ladies and
9 gentlemen, each of these four charges are separate and
10 distinct. I have a verdict form prepared for you on each
11 of those. There's two possible verdicts for each of these
12 offense; either guilty or not guilty. On your verdict form
13 each is listed. There's no significance in the order in
14 which they're listed. One has to be listed before the
15 other. If you find on each charge that the State has met
16 its burden of proof, then, of course, your verdict would be
17 guilty. If you find the State has failed to meet the
18 burden of proof on any of the particular charges, then the
19 verdict would be not guilty. I believe the verdict form
20 will be self-explanatory. It's a two-page verdict form,
21 Madam Forelady. And after you've checked the appropriate
22 block on each of the charges, then you'd sign your name as
23 foreperson, date it and we'll receive the verdict back here
24 in the courtroom.

25 Your verdict must be a unanimous one. All twelve of

State of South Carolina -vs- Comest Sabatino Allen (2011-GS-23-1296-1297 and 1305-1306)
Charge

105

1 you must agree upon the verdict. Your verdict can't be
2 based upon sympathy or passion, prejudice, emotion or any
3 other consideration not in evidence in the case. And I
4 remind you that while you're free to ask me any questions
5 about the law that I've explained to you, remember, it's
6 impermissible for me to answer any questions you have
7 regarding the facts in the case. That's up to you and you
8 alone to determine, as the sole fact finders, just what the
9 facts are.

10 I'm going to ask you now, if you would, to retire to
11 your jury room. Again, I'm going to ask you not to discuss
12 the case just yet. There's a final matter of law I need to
13 take care of with the attorneys, after which, hopefully,
14 we'll be able to send the exhibits back with you and you
15 can then begin your deliberations. I'll have the verdict
16 form for you, as well. If you will, retire to your jury
17 room now. Don't discuss the case at this time.

18 (WHEREUPON, the jury exited the open court at
19 approximately 4:06 p.m.)

20 THE BAILIFF: Your Honor, they're clear. Do you
21 wish to speak with the alternate?

22 THE COURT: Not yet.

23 Any exceptions to the charge from the State?

24 MS. TOWNSEND: No, sir, Your Honor.

25 THE COURT: From the Defense?

1 MR. SULLIVAN: None, Your Honor.

2 THE COURT: All right. If you'll get all the
3 exhibits together and make sure that they're back.

4 Go tell them they can begin their deliberations and
5 have the alternate come out here.

6 (WHEREUPON, the verdict forms and exhibits were
7 delivered to the jury for their deliberations at
8 approximately 4:07 p.m., after which court stood at
9 recess awaiting the verdict of the jury.)

10 THE COURT: All right. We'll be at ease until we
11 hear from our jury.

12 THE BAILIFF: Your Honor, the alternate.

13 THE COURT: Yes, sir. Thank you very much for
14 participating in this trial with us. We don't need your
15 services because your other twelve have survived the
16 ordeal. You can stay with us, you can go home, whatever
17 you like. You need to call back tonight after six o'clock.
18 There'll be a message on the machine as far as whether or
19 not you need to report back tomorrow or come back or call
20 back tomorrow.

21 THE JUROR: Okay.

22 THE COURT: But thank you very much. You can
23 just give your badge to Mr. Dorreity. And if you'd like to
24 stay with us, you're welcome to, but you're free to go
25 also. Thank you.

State of South Carolina -vs- Comest Sabatino Allen (2011-GS-23-1296-1297 and 1305-1306)
Charge

107

1 (WHEREUPON, the Court stood at recess awaiting the
2 verdict of the jury.)

3 THE COURT: All right. We've received three
4 inquiries from the jury. I'll mark these as Court Exhibit
5 Number 3. First of all, the jurors need to view the video
6 from time of accident until suspect flees. What is the
7 definition of leaving the scene? What is the definition of
8 assault and battery of a high and aggravated nature?

9 I'll have the jury come back and tell them we've got
10 it geared to show that. If they need to see more or less,
11 if they need to see it more than once, we will show it ever
12 how many times they need to. And then I'll instruct them
13 on the law.

14 Any other matters we need to take care of before the
15 jury comes in?

16 MS. TOWNSEND: None from the State?

17 MR. SULLIVAN: Nothing from the Defense, Your
18 Honor.

19 THE COURT: If they're ready have them come in.

20 (WHEREUPON, the jury entered the open court at
21 approximately 4:31 p.m.)

22 THE COURT: Madam Forelady, ladies and gentlemen,
23 you've asked to review part of the video. They've got that
24 geared up at the place that you need to watch it. You let
25 us know if you need to watch it more than once or if you

1 need to stop it sooner or see more, you let us know and
2 we'll try to accommodate whatever you need to see. So I'm
3 going to have her to show that. That will be the scene
4 from the accident until the suspect flees. They're going
5 to show the tape now.

6 (WHEREUPON, a portion of State Exhibit Number 2 was
7 published in open court.)

8 THE COURT: One more time, if you could go back
9 to that point and show it another time.

10 (WHEREUPON, a portion of State Exhibit Number 2 was
11 published in open court.)

12 THE COURT: All right. Ladies and gentlemen, you
13 also asked about the definition of leaving the scene and
14 assault and battery of a high and aggravated nature. The
15 charge of leaving the scene is under Title 56 of our Code
16 of Laws. The State, in order to establish this, must prove
17 beyond a reasonable doubt, first of all that the Defendant
18 was driving a vehicle; that secondly, the vehicle was
19 involved in an accident; and thirdly, that the accident
20 caused damage to another motor vehicle. They must also
21 proved that the Defendant did not stop or failed to return
22 and remain at the scene; finally, that the Defendant failed
23 to give his name, address, vehicle registration, and if
24 asked, failed to show his driver's license. To prove this

State of South Carolina -vs- Comest Sabatino Allen (2011-GS-23-1296-1297 and 1305-1306)
Charge

109

1 offense, the State must also prove beyond a reasonable
2 doubt that the Defendant knew or should have known that the
3 accident happened and this may be shown by evidence of
4 circumstances and conditions which would cause an ordinary,
5 reasonable person to believe that the vehicle had been
6 involved in an accident that resulted in property damage.

7 Now, there's the other offense of assault and battery
8 of a high and aggravated nature. That's the unlawful act
9 of violent injury to the person of another, accompanied by
10 circumstances of aggravation. I explained to you the
11 definition of assault that occurs when a person unlawfully
12 attempts or offers to commit a violent injury upon another
13 person and had the present ability to complete that
14 attempted injury. An assault is the intentional creation
15 of a reasonable fear of immediate bodily harm. It's not
16 necessary that the attempted injury or harm actually take
17 place. And I gave you the example of me coming up close to
18 you and drawing back my fist as if to hit you. That would
19 constitute an assault if I had the present ability to carry
20 that out. A battery is the unlawful touching of another
21 person by a person who committed the assault. An unlawful
22 touching can be caused by a part of the accused body or by
23 any object that the accused puts into motion. The battery
24 is the completion of the assault by using or applying force
25 to another person, however slight, in a rude or angry or

1 resentful manner, without legal justification for doing so.
2 And, again, using the example if I draw back my fist as if
3 to hit, committing the assault, and then carry through by
4 hitting you, striking you, then that would constitute the
5 battery. To prove this offense, the State would also have
6 to show a circumstance of aggravation and among the
7 aggravating circumstances that you could consider would be
8 use of a deadly weapon, an intent to commit a felony, the
9 infliction of serious bodily harm, the resistance of lawful
10 authority. You determine what an aggravating circumstance
11 is. These are merely examples.

12 I hope that helps you in your deliberations. I'll ask
13 you if you would now go back to your jury room and continue
14 your deliberations.

15 (WHEREUPON, the jury exited the open court at
16 approximately 4:38 p.m.)

17 THE BAILIFF: They're clear, Your Honor.

18 THE COURT: Any exceptions to the charge? From
19 the State?

20 MS. TOWNSEND: No, sir, Your Honor.

21 THE COURT: From the Defense?

22 MR. SULLIVAN: None, Your Honor.

23 THE COURT: All right. We'll be at ease until we
24 hear from the jury. I'll mark this as Court Exhibit Number
25 3, a two-page document.

State of South Carolina -vs- Comest Sabatino Allen (2011-GS-23-1296-1297 and 1305-1306)
Charge

111

1 (WHEREUPON, Court Exhibit Number 3 was marked for
2 identification.)

3 (WHEREUPON, the court stood at recess awaiting the
4 verdict of the jury.)

5 THE COURT: I understand they have a verdict. Is
6 there anything we need to take care of before we receive
7 the verdict back from the jury?

8 MR. SULLIVAN: No, Your Honor.

9 MS. TOWNSEND: No, sir.

10 THE COURT: If they're ready, you can bring them
11 in.

12 (WHEREUPON, the jury entered the open court at
13 approximately 4:47 p.m.)

14 THE COURT: Madam Forelady, I understand the jury
15 has reached a verdict. Is that correct?

16 MADAM FORELADY: It is.

17 THE COURT: Is it a unanimous verdict as to all
18 charges?

19 MADAM FORELADY: Yes, sir.

20 THE COURT: All right. If you would, please,
21 hand the verdict form to the bailiff.

22 All right. Madam Clerk, you may publish the verdict.

23 THE CLERK: Your Honor, in the case of State of
24 South Carolina versus Comest Sabatino Allen, indictments
25 2011-GS-23-1296 and 1297, 2011-GS-23-1305 and 1306, we the

1 jury unanimously find the Defendant, Comest Sabatino Allen,
2 as to the charge of driving under the influence, guilty; as
3 to the charge of leaving the scene of an accident, guilty;
4 as to the charge of failure to stop for blue lights,
5 guilty; as to the charge of assault and battery of a high
6 and aggravated nature, guilty. This is signed by Ms.
7 Davis, our Forelady.

8 Ladies and gentlemen, if you agree these are the
9 verdicts you reached in your deliberation room, would you
10 please raise your right hand?

11 (WHEREUPON, all jurors' right hands were raised.)

12 THE CLERK: Thank you.

13 THE COURT: Thank you. Is there anything we need
14 to take care of with this jury before they're discharged in
15 this case? Anything from the State?

16 MS. TOWNSEND: No, sir, Your Honor.

17 THE COURT: From the Defense?

18 MR. SULLIVAN: None from the Defense, Your Honor.

19 THE COURT: Madam Forelady, ladies and gentlemen,
20 thank you very much. It's been a pleasure for me to get to
21 work with you in this case. You've been a conscientious
22 group and diligent in your service. You've performed a
23 valuable service for your community to be a juror. You've
24 directly participated in your government. You've been a
25 part of the Judicial Branch of government by being a judge

State of South Carolina -vs- Comest Sabatino Allen (2011-GS-23-1296-1297 and 1305-1306)
Charge

113

1 of the facts. I'm grateful to have had an opportunity to
2 work with you.

3 I hope that if you get picked to serve as a juror in
4 the future that you may remember from Monday that you can
5 claim an exemption. Certainly this year will exempt you
6 from service in 2013 and 2014. I hope you'll waive it if
7 you get called again. I'm sure that if one day you find
8 yourself not sitting in a jury box, but sitting at a table
9 accused of a crime or in a dispute with a neighbor over a
10 contract or property line dispute or an automobile
11 accident, you're going to want good solid intelligent
12 jurors such as yourself sitting where you are to decide the
13 facts for you. So I hope you'll serve again. I hope this
14 has been an educational week for you and an enjoyable one,
15 as best it could be.

16 I understand that we have several judges here this
17 week. We have three different trial judges plus another
18 judge working with the General Sessions, as well, that the
19 trials on the docket tomorrow will not necessitate more
20 than the jurors we have already called for, some of your
21 fellow jurors, so you're not going to need to come back
22 tomorrow. And I understand that on Friday we have some
23 non-jury matters with probation and bonds and so forth, so
24 your service for the week is concluded. Some of you may
25 need statements for your employer. If you do so, the

1 bailiffs have those for you. Thank you very much for your
2 service. You're dismissed for the week. You may be
3 excused at this time.

4 I will ask Madam Forelady if you would remain in the
5 hallway. There's additional papers I need to have you sign
6 that Ms. Troup will bring back for you. Thank you very
7 much. You're excused at this time, ladies and gentlemen.
8 Thank you for your service.

9 (WHEREUPON, the jury exited the open court at
10 approximately 4:50 p.m.)

11 THE BAILIFF: They're clear, sir.

12 THE COURT: We'll wait just a moment until Ms.
13 Troup gets back to handle the paperwork.

14 All right. Any matters we need to take care of before
15 sentence is imposed in this case? From the State?

16 MS. TOWNSEND: Nothing from the State, Your
17 Honor.

18 MR. SULLIVAN: Nothing from the Defense, Your
19 Honor.

20 THE COURT: All right. If you'd come forward
21 with your client, please.

22 (WHEREUPON, Ms. Townsend, Mr. Sullivan and the
23 Defendant approached the bar.)

24 THE COURT: Before I hear from you, Mr. Sullivan,
25 from your client, I would like to hear what the prior

State of South Carolina -vs- Comest Sabatino Allen (2011-GS-23-1296-1297 and 1305-1306)
Charge

115

1 offenses are.

2 MS. TOWNSEND: May it please the Court, Your
3 Honor. 1976, shoplifting; 1978, attempted housebreaking;
4 1981, grand larceny of vehicle; 1984, hit and run,
5 uninsured vehicle; 1986, failure to stop for a blue light,
6 resisting arrest; 1987, fraud check, receiving stolen
7 goods; 1989, stolen tag, uninsured vehicle, driving under
8 suspension, resisting arrest; 1994, shoplifting, seven
9 counts of fraud check, petit larceny, twelve counts of
10 forgery, obtaining goods under false pretenses; 1997, use
11 of vehicle without consent, financial transaction card
12 theft; 1999, shoplifting, breach of trust with fraud, less
13 than a thousand; 2000, receiving stolen goods; 2002,
14 receiving stolen goods; 2005, use of vehicle without
15 consent, failure to stop for a blue light; 2010, improper
16 tag; 2010, two counts of no driver's license.

17 MR. SULLIVAN: Judge, we would agree the
18 Solicitor, the DUS is a second.

19 MS. TOWNSEND: It's a DUI.

20 MR. SULLIVAN: I mean, DUI.

21 THE COURT: All right. Does that one carry up to
22 one year, thirty days to one year; is that right?

23 MS. TOWNSEND: Five days to one year.

24 THE COURT: Five days to one year?

25 MS. TOWNSEND: Yes.

1 THE COURT: All right. Mr. Sullivan, I'll be
2 glad to hear from you and certainly from Mr. Allen?

3 MR. SULLIVAN: Well, Judge, the jury has spoken
4 and so you know much about the case. Comest -- I've been
5 knowing Comest for thirty years and knew his daddy and
6 they're real good people. Their landscape business, Comest
7 was trying to take over. Comest is fifty-five now. I know
8 you're going to hit him with a pretty good sentence. I'd
9 like for you to go as light as possible because of his age
10 and if you give him a real long sentence, it could be kind
11 of like a death penalty. Also, I'd ask you to consider
12 making them concurrent. But I leave the sentencing, of
13 course, in your discretion.

14 THE COURT: Mr. Allen, anything you want to tell
15 me?

16 THE DEFENDANT: No, sir. I appreciate you
17 hearing my case and everything.

18 THE COURT: You're fifty-five years old?

19 THE DEFENDANT: Yes, sir, Your Honor.

20 THE COURT: How far did you go in school?

21 THE DEFENDANT: I quit because I had to help my
22 father. He had cancer. That's how I know Mr. Sullivan. I
23 used to work for Mr. Sullivan.

24 THE COURT: Did you grow up here in Greenville?

25 THE DEFENDANT: Yes, sir.

State of South Carolina -vs- Comest Sabatino Allen (2011-GS-23-1296-1297 and 1305-1306)
Charge

117

1 THE COURT: Not in New York?

2 THE DEFENDANT: No, sir. I was just born up
3 there.

4 THE COURT: When did you last do some time? When
5 did you get out last?

6 THE DEFENDANT: Probably 2004 or '5, somewhere
7 along in there.

8 MR. SULLIVAN: Do you have his jail time?

9 MS. TOWNSEND: I do not have an updated one. I
10 apologize for that. He has not been in since the incident.
11 He was out for, I think, approximately six months and then
12 the bondsman went off bond when he got new charges.

13 THE COURT: New charges in addition to these?

14 MS. TOWNSEND: Yes, sir.

15 MR. SULLIVAN: I think these are going to clear
16 those out maybe. I'm not sure.

17 THE COURT: What were the other charges?

18 MS. TOWNSEND: Two counts of possession of a
19 stolen vehicle.

20 THE COURT: This occurred after the Omnibus Crime
21 Bill; right?

22 MS. TOWNSEND: Yes, sir.

23 THE COURT: The ABHAN is twenty instead of ...

24 MS. TOWNSEND: Correct.

25 MR. SULLIVAN: It happened 10/31/10. I think the

1 crime bill went into effect in June of 2010.

2 THE COURT: Any time served on these?

3 MS. TOWNSEND: There is some, Your Honor. I can
4 run and get an updated jail count if you would like, but it
5 will take a couple of minutes.

6 THE COURT: Can you give me an estimate? Are we
7 talking about months, years?

8 MS. TOWNSEND: I would say, yeah, somewhere in
9 the neighborhood of a year or thirteen months sounds about
10 right.

11 MR. SULLIVAN: Part of that delay was change in
12 lawyers, I think. It wasn't originally her case. Chris
13 had it and he went to Anderson and it took a while to get
14 familiar with each other.

15 THE COURT: All right. This is case 2011-GS-23-
16 1296, the sentence of the Court is Defendant be committed
17 to the State Department of Corrections for period of 220
18 months, credit for his time served;

19 Case 2011-1297, thirty-six month sentence to be
20 concurrent to that previously imposed;

21 2011-1305, 1306, each to be twelve months, concurrent
22 and credit for time served.

23 I sure hope you get your life straightened out, Mr.
24 Allen. Wish you the best, sir.

25 THE DEFENDANT: How much time do I have, Your

State of South Carolina -vs- Comest Sabatino Allen (2011-GS-23-1296-1297 and 1305-1306)
Charge

119

1 Honor?

2 THE COURT: Two hundred twenty months.

3 MR. SULLIVAN: Two hundred twenty? Judge, before
4 he leaves, he wants me to file an appeal. If something
5 happens to me, I'd like for that to be preserved. I plan
6 to do it, but we never know what tomorrow brings. And I
7 told him that by making the motion part of the Court's
8 record, that that will preserved his appeal.

9 THE COURT: We've made court exhibits and
10 everything you want to present on those, too.

11 Thank you, sir.

12 All right. We're adjourned for the day.

13

14 [END OF REQUESTED TRANSCRIPT OF RECORD]

1 CERTIFICATE OF REPORTER

2

3 I, the undersigned Danette P. Hanks, Official Court
4 Reporter for the Thirteenth Judicial Circuit of the State
5 of South Carolina, do hereby certify that the foregoing is
6 a true, accurate, and complete transcript of record of all
7 the proceedings had and evidence introduced in the
8 trial/hearing of the captioned case, relative to appeal, in
9 the Circuit Court for Greenville County, South Carolina, on
10 the 18th day of July, 2012.

11 This transcript may contain quoted material. Such
12 material is reproduced as read by the speaker.

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

15 October 2, 2012

16

17

18

19



Circuit Court Reporter

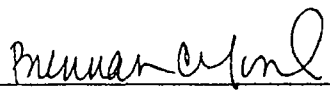
STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
ASSAULT AND BATTERY OF A HIGH AND AGGRAVATED
NATURE

At a Court of General Sessions, convened on _____ the Grand Jurors of Greenville
County present upon their oath:

That COMEST SABATINO ALLEN did in Greenville County, on or about the 31st day of October
2010, unlawfully injure Officer Rich Coury whereby the victim suffered great bodily injury or the act
was accomplished by means likely to produce death or great bodily injury. This is in violation of §16-
03-0600 of the South Carolina Code of Laws (1976) as amended.

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



SOLICITOR

WITNESSES

Rich Coury

Simpsonville Police Dept.

10/31/2010

ARREST WARRANT NUMBER

1570049

ACTION OF GRAND JURY

Foreperson of Grand Jury

VERDICT

*Guilty**Kelly Davis July 18, 2012*
Foreperson of Petit Jury
Date:

DOCKET NO. 2011-GS-23-01296

BCT

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

TERM 2011

7-18-12

THE STATE

vs.

COMEST SABATINO ALLEN

Indictment for

3411

ASSAULT AND BATTERY OF A HIGH AND
AGGRAVATED NATURE

VIOLATION § 16-03-0600

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

INDICTMENT FOR
FAILURE TO STOP FOR A BLUE LIGHT

At a Court of General Sessions, convened on JUN 07 2011 the Grand Jurors of Greenville
County present upon their oath:

That COMEST SABATINO ALLEN did in Greenville County, on or about the 31st day of October 2010, willfully, knowingly, and unlawfully commit the offense of failure to stop for a police vehicle in that the said defendant while driving on a road, street or highway of the State did intentionally refuse to stop when signaled to do so by a police vehicle using blue lights and/or siren. This is in violation of §56-5-750 of the South Carolina Code of Laws (1976) as amended.

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


SOLICITOR

WITNESSES

Rich Coury

Simpsonville Police Dept.

10/31/2010

ARREST WARRANT NUMBER
1570050

ACTION OF GRAND JURY

Bobby Damm
Foreperson of Grand Jury

VERDICT

*Guilty**Kathy Davis*
Foreperson of Petit Jury
Date:

DOCKET NO. 2011-GS-23-

CLK

001297

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

7-18-12

June

TERM 2011

THE STATE

vs.

COMEST SABATINO ALLEN

Indictment for

2396

FAILURE TO STOP FOR A BLUE LIGHT

VIOLATION § 56-05-0750

RECEIVED

MAR 11 2011

Clerk of Court
Greenville County

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

INDICTMENT FOR
LEAVING THE SCENE OF AN ACCIDENT WITH PROPERTY
DAMAGE

At a Court of General Sessions, convened on **JUN 07 2011** the Grand Jurors of Greenville
County present upon their oath:

That COMEST SABATINO ALLEN did in Greenville County, on or about the 31st day of October 2010, drive a
vehicle which was involved in an accident resulting in damage to an attended vehicle and thereafter did leave the
scene of the accident without fulfilling the requirements of §56-5-1230. This is in violation of §56-5-1220 of the
South Carolina Code of Laws (1976) as amended.

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


SOLICITOR

001305

DOCKET NO. 2011-GS-23-
CLK

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

June

TERM 2011

718-12

THE STATE

vs.

COMEST SABATINO ALLEN

WITNESSES

Rich Coury

Simpsonville Police Dept.

10/31/2010

ARREST WARRANT NUMBER
1570052

ACTION OF GRAND JURY

TRUE BILL

FOREPERSON OF GRAND JURY
Foreperson of Grand Jury

VERDICT

Guilty

Kathleen Davis July 16, 2012
Foreperson of Petit Jury
Date:

Indictment for

2464

LEAVING THE SCENE OF AN ACCIDENT WITH
PROPERTY DAMAGE

VIOLATION §56-05-1220

RECEIVED

MAR 11 2011

Clerk of Court
Greenville County

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
DRIVING UNDER THE INFLUENCE

At a Court of General Sessions, convened on **JUN 07 2011** the Grand Jurors of Greenville

County present upon their oath:

That COMEST SABATINO ALLEN did in Greenville County, on or about the 31st day of October 2010, drive a motor vehicle while under the influence of alcohol, or other drug or substance or combination of alcohol, other drug and/or substance which caused impairment to the extent that the defendant's faculties to drive were materially and appreciably impaired; such not being the first offense within a period of ten (10) years including and immediately preceding the foregoing date. This is in violation of §56-5-2930 of the South Carolina Code of Laws (1976) as amended.

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


SOLICITOR

WITNESSES

Rich Coury

Simpsonville Police Dept.

10/31/2010

ARREST WARRANT NUMBER

1570051

ACTION OF GRAND JURY

TRUE BILL

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Guilty

Foreperson of Petit Jury

Date:

DOCKET NO. 2011-GS-23-
CLK

001306

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

June

TERM 2011

7-18-12

THE STATE

vs.

COMEST SABATINO ALLEN

Indictment for

3359

DRIVING UNDER THE INFLUENCE

VIOLATION § 56-05-2930

RECEIVED

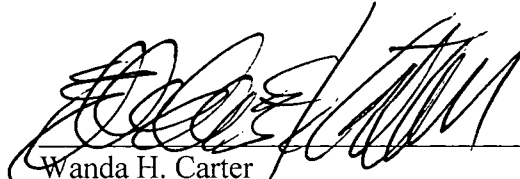
MAR 11 2011

Clerk of Court
Greenville County

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability, with the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

February 11, 2013



Wanda H. Carter
Deputy Chief Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
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