

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM BERKELEY COUNTY

Court of General Sessions

Honorable R. Markley Dennis, Circuit Court Judge

APPELLATE CASE NO. 2017-002104

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SC Court of Appeals

THE STATE RESPONDENT

v.

SAMUEL LEE BROADWAY..... APPELLANT

RECORD ON APPEAL
VOLUME II

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1 THE COURT: You may cross-examine.

2 CROSS-EXAMINATION

3 BY MR. BOLES:

4 Q. Lieutenant Battista, Good morning.

5 A. Good morning, sir.

6 Q. Throughout your investigation of this
7 matter, did Mr. Broadway ever deny any involvement
8 in this collision?

9 A. No.

10 Q. And let's back up to the point you just
11 made about strong odor of alcohol, bloodshot eyes,
12 believed he may have been under influence. Is that
13 what you testified earlier?

14 A. Yes.

15 Q. You testified you were about three to
16 four feet from Mr. Broadway while he was talking to
17 Officer Davis?

18 A. Yes, I believe that's correct.

19 Q. And as part of your oversight of these
20 investigations, do you oversee the written reports
21 that officers make?

22 A. Yes.

23 Q. Are you aware that Mr. Davis -- excuse
24 me, Officer Davis issued a written report in this
25 matter?

1 A. Yes.

2 Q. Have you reviewed that report?

3 A. I would have to believe so. I would
4 have to look. It should have an electronic
5 signature if I have.

6 Q. Is it standard protocol in your
7 department for you to review the reports that
8 Officer Davis would author?

9 A. Not always. It depends. I'm the only
10 supervisor over our unit and I can't always be
11 there.

12 Q. Okay. Well, in a matter like this
13 where somebody died and you believe the defendant
14 fled, would you make it a point to get involved in
15 the investigation?

16 A. Yes.

17 Q. And would you make it a point to make
18 sure that those reports were done?

19 A. Yes.

20 Q. And those reports have to be accurate,
21 don't they?

22 A. Yes.

23 Q. And those reports have to be thorough,
24 don't they?

25 A. Yes.

1 Q. And those reports have to be complete,
2 don't they?

3 A. Yes.

4 Q. And one of the reasons that they need
5 to be all of those things is because various
6 officers may refer back to those reports to help in
7 an ongoing investigation; is that accurate?

8 A. Yes.

9 Q. Okay. Have you reviewed the report
10 authored by Officer Davis prior to your testimony
11 today?

12 A. At some point in time, yes, I'm sure I
13 have read it.

14 Q. Okay. And, again, you testified that
15 Officer Davis was actually standing right in front
16 of Mr. Broadway interviewing him in the driveway.

17 A. I did not testify to that.

18 Q. Okay. Well, help us understand
19 everyone's relative position to each other while
20 they were talking in the driveway.

21 A. I believe Mr. Broadway is standing
22 to -- next to the truck that's in the picture
23 facing the road. Officer Davis was standing off to
24 what would be his left, I believe and --

25 Q. How far away are these gentlemen from

1 each other?

2 A. Within a matter of a few feet from each
3 other is my recollection.

4 Q. Okay.

5 A. It's also on video of it that can give
6 another perspective of it.

7 Q. All right. Well, I want to bring us
8 back to what you said about your observations of a
9 strong odor of alcohol, bloodshot eyes, and under
10 the influence and, also, this report that was
11 authored by Officer Davis. You said that you had a
12 chance to review this report prior to your
13 testimony today?

14 A. Yeah. At some point in the last two
15 years, I'm sure that I have reviewed it.

16 Q. Would you like a chance to look at it
17 now?

18 A. Sure, I'll take a look at it.

19 MR. BOLES: May I approach the witness,
20 Your Honor?

21 THE COURT: You may.

22 Exhibit 2 for identification only.

23 (DFT. EXH. 2, Report, was marked for
24 identification.)

25 BY MR. BOLES:

1 Q. Take your time. And please let me know
2 when you've had a chance to review it thoroughly.

3 A. Okay.

4 Q. Lieutenant Battista, where in that
5 report does Officer Davis use the phrase, smelled
6 of alcohol?

7 A. I don't see where he does say that.

8 Q. Where does he use any phrase that
9 there's an odor of alcohol coming from the
10 defendant's person?

11 A. I don't see where he uses that.

12 Q. Because it's not in there, is it?

13 A. From what I can see, no, it's not.

14 Q. Where does he say that the defendant
15 appeared to have bloodshot eyes?

16 A. Again, I didn't say he said that. I
17 said that that was my personal testimony. He does
18 not say it in here.

19 Q. Okay. And at the bottom of the page,
20 is that your electronic signature?

21 A. Yes.

22 Q. Okay. So you signed off on that
23 report?

24 A. Yes.

25 Q. And, again, these reports need to be

1 accurate, thorough, and complete, don't they?

2 A. Yes.

3 Q. Okay. So throughout your
4 investigation, the first time we are hearing the
5 phrase, the defendant smelled of a strong odor of
6 alcohol, is as you sit here in the witness box?

7 A. Yes, that's -- this is my first time
8 being in here.

9 Q. And in your paperwork, this is the
10 first time we hear this phrase, the defendant
11 smelled of a strong odor of alcohol, is you saying
12 it here in front of the jury?

13 A. From what I can tell, yes.

14 Q. Okay. You didn't arrest the defendant
15 for DUI, did you?

16 A. No.

17 Q. Let's go back to the scene of the
18 accident. Did you have occasion to interview
19 Ms. Richley Campbell?

20 A. No; I didn't speak to anyone on scene.

21 Q. Okay. Did any of your officers have
22 occasion to interview Ms. Richley Campbell?

23 A. I believe she was interviewed later on
24 by Davis. And I'm sure someone spoke to her on
25 scene that night, but not that I'm -- I don't know

1 who it was.

2 MR. BOLES: May I approach, Your Honor?
3 I want to grab that report back.

4 THE COURT: Uh-huh.

5 BY MR. BOLES:

6 Q. Did you or any of your officers have
7 occasion to interview a gentleman named Cody Meree?

8 A. I am not sure.

9 Q. Do you know who that is?

10 A. Not off of the top of my head.

11 Q. Do you know if in any of your
12 investigative paperwork Mr. Meree's name appears?

13 A. I'd have to go through the files. I
14 don't recall that name.

15 Q. Okay. And in your line of work,
16 locating and interviewing eyewitnesses is very
17 important, isn't it?

18 A. It can be, yes.

19 Q. Okay. And in a case like this where
20 you have death resulting and you alleged that the
21 defendant fled the scene, it would be very
22 important to find eyewitnesses, wouldn't it?

23 A. Yes.

24 MR. BOLES: Beg the Court's indulgence?

25 THE COURT: Certainly.

1 MR. BOLES: Can we pull up State's
2 Exhibit 15, please?

3 MR. CANNON: May I see it?

4 MR. BOLES: Okay.

5 MR. CANNON: Thank you.

6 BY MR. BOLES:

7 Q. Officer Battista, you said earlier this
8 is a photograph you took?

9 A. Yes.

10 Q. And you said that this photograph shows
11 skid marks in the grass, correct?

12 A. It shows where a vehicle has traveled
13 through the grass. It's mainly -- the picture is
14 for the piece of debris that's there.

15 Q. Correct. Your purpose was to capture
16 the piece of debris, and you said that debris you
17 believe fell off of the motor vehicle or the moped?

18 A. Off of the vehicles involved. I
19 believe it was off of the Cadillac, but I can't
20 really -- I'd have to zoom in on the picture. I
21 believe --

22 Q. Here, I'll hand you a copy of it,
23 actually.

24 MR. BOLES: May I approach the witness,
25 Your Honor?

1 THE COURT: Yes, you may.

2 BY MR. BOLES:

3 Q. Here. Just look at this really close
4 and let us know.

5 A. I believe that is a picture of debris
6 that would be from the motor vehicle.

7 Q. Okay. And that debris is in -- it's
8 inside the skid marks, right?

9 A. Yes. Again, the skid mark is -- could
10 have already been there. The skid mark -- the
11 picture is taken for the debris.

12 Q. And you said that the skid mark looks
13 like a vehicle gaining or losing traction on the
14 side of the road?

15 A. Yes. It's not necessarily a skid mark.
16 It's where a vehicle is trying to gain traction or
17 get going, et cetera. It's clearly not just
18 driving through the grass.

19 Q. Right.

20 A. Which is the other marks that you can
21 see out there alongside of the road.

22 Q. Right. And these skid marks that we're
23 talking about of gaining and losing traction, they
24 are coming from off road headed back on road,
25 aren't they?

1 A. Yes.

2 Q. And they appear to be fresh?

3 A. No.

4 Q. Okay.

5 A. Well, I mean, they appear to be after
6 -- or before the collision because the debris is
7 inside of it or on top of it.

8 Q. I'm done with that photograph now. You
9 can turn back around. Thank you.

10 Throughout your department's
11 investigation, did you learn that Ms. Campbell
12 pulled out of Domingo Way in front of the defendant
13 while he was travelling down 176.

14 A. I believe that she said she wasn't sure
15 how far she had pulled out, but, yes, there was
16 some point in time she had come out into the
17 roadway is I think what she said in the interview,
18 that she wasn't real sure where she was.

19 Q. Okay. Again, I want to hand you
20 Officer Davis' report and I want you to read it for
21 any information that Ms. Campbell gave to your
22 department during the investigation.

23 A. This report only covers what she said
24 that night. I believe there is an additional
25 interview.

1 Q. Right.

2 MR. CANNON: Are you ready to put it
3 into evidence?

4 MR. BOLES: It's been marked, actually
5 for identification.

6 BY MR. BOLES:

7 Q. Lieutenant Battista, I want to show you
8 what's been marked for identification purposes
9 Defendant's Exhibit 1. I'll take that back.

10 A. Okay.

11 Q. Is that the statement that you were
12 just referring to?

13 A. Yes, because I knew she was interviewed
14 later on.

15 Q. Okay. And take a second to review that
16 please.

17 A. Okay.

18 Q. And if I can take that back from you.

19 And in your police reports and in the
20 statement that she gave, does Ms. Richley Campbell
21 tell you that she pulled out in front of the
22 defendant?

23 A. I don't see it there in those reports,
24 no.

25 Q. She doesn't admit that she on purpose

1 came into the roadway in front of the defendant?

2 A. I am not aware of that happening.

3 Q. She also, throughout -- throughout your
4 investigation with her -- let me ask you this: Did
5 you meet with her or did your department meet with
6 her on more than one occasion?

7 A. I'm not -- well, I mean, yes, clearly
8 someone met with her on more than one occasion
9 because someone talked to her at the collision
10 scene and then there was an interview with her
11 later. Beyond that, I can't say.

12 Q. In any of those interviews, she also
13 omitted that there was another eyewitness in her
14 car, didn't she?

15 A. It appears so.

16 Q. And she omitted that that eyewitness
17 fled on foot.

18 A. I do not -- I'm not aware of that.

19 Q. Okay. And she also admitted that that
20 person -- I'm sorry. Start that question over.

21 She also admitted that she did not tell
22 you about any of those things because that person
23 had warrants out for their arrest?

24 A. I'm not aware of that.

25 Q. Okay. Let's move back to Chaff Lane

1 because you said you responded to Chaff Lane, you
2 and Officer Davis and several other officers. When
3 you were listening to the conversation between
4 Officer Davis and Mr. Broadway, you -- I believe
5 you testified, and don't let me put words in your
6 mouth, but you heard discussion about his phone not
7 working.

8 A. No, there was no conversation about the
9 phone not working. He said he didn't have his
10 phone.

11 Q. Okay. He said he didn't have his
12 phone.

13 A. Said he was going back for it.

14 Q. Okay.

15 A. Because he thought he left it at the
16 last place he was.

17 Q. Okay. And as you're standing in the
18 driveway, you know that there has been a motor
19 vehicle accident, correct?

20 A. Yes.

21 Q. And as you're standing in that
22 driveway, you believe Mr. Broadway is the person
23 who's involved in that accident, didn't you?

24 A. Yes.

25 Q. And you just are told --

1 A. I don't believe it. He said he was.

2 Q. You know that he's the guy that's
3 involved in the accident, don't you?

4 A. Yes. Yes, he said it.

5 Q. We have closed the loop as you're
6 standing right there in the driveway, right?

7 A. Uh-huh.

8 Q. Okay. And you know also from him that
9 he tells you the only reason he was on the road was
10 to go get his phone, correct?

11 A. Yes.

12 Q. Okay. And it's very important to this
13 case, because part of duty is to report if an
14 accident happens, isn't it?

15 A. Yes.

16 Q. Okay. Did you seize his phone?

17 A. No.

18 Q. Did you ask to hold his phone and look
19 at it?

20 A. No.

21 Q. Did anyone --

22 A. I would have to get -- no, I didn't.

23 Q. Throughout the investigation, not even
24 that night, let's say -- because you had to get a
25 search warrant for the car subsequently, didn't

1 you?

2 A. Uh-huh.

3 Q. Okay.

4 THE COURT: Is that a yes?

5 THE WITNESS: Yes.

6 BY MR. BOLES:

7 Q. Because you wanted to look through the
8 car and examine it?

9 A. Yes.

10 Q. Did you get a search warrant for his
11 phone?

12 A. No.

13 Q. Did you try to see whether that phone
14 was functioning at the time?

15 A. No.

16 Q. At the -- at the close of your
17 department's interview at Chaff Lane with the
18 defendant, you knew that Mr. Broadway was in the
19 accident that you were investigating, correct?

20 A. Yes. To the best of my knowledge at
21 that point in time, yes.

22 Q. As you stated, he told you that he was
23 in it. And when you responded to Chaff Lane, was
24 Mr. Broadway hiding?

25 A. No. His father-in-law said he was

1 asleep.

2 Q. Okay. Did he come out to the driveway
3 and meet you in the driveway?

4 A. Yes. He came out after I believe the
5 father-in-law and officer went and got him.

6 Q. Okay. And at the close of his
7 statement to you, you were wrapping up your time at
8 Chaff Lane, you knew he was involved in the
9 accident? You knew that he didn't stay there,
10 correct?

11 A. Yes.

12 Q. And you still didn't arrest him?

13 A. There was -- the investigation was --
14 no, I didn't.

15 Q. In fact, are you aware of the date that
16 the warrant was issued for his arrest?

17 A. Not off of the top of my head.

18 Q. Okay. Again, in a matter like this
19 where someone died in this car accident and you
20 believe that the defendant is guilty of hit and
21 run, would you make it a point to involve yourself
22 in the investigation?

23 A. Yes.

24 Q. Okay. And would you make it a point to
25 involve yourself in any search warrants?

1 A. Yes.

2 Q. And would you make it a point to
3 involve yourself in the arrest warrants for the
4 suspect?

5 A. Yes.

6 Q. Do you need your recollection refreshed
7 as to when the search warrant -- I'm sorry, as to
8 when the arrest warrant was issued?

9 A. Again, I advised I don't remember when
10 the arrest warrant was issued. I'd have to see the
11 arrest warrant.

12 MR. BOLES: Okay. May I approach the
13 witness, Your Honor?

14 THE COURT: You may.

15 MR. BOLES: And I'll mark this
16 Defendant's Exhibit 3 for identification purposes.

17 THE COURT: For ID only.

18 (DFT. EXH. 3, Arrest warrant affidavit,
19 was marked for identification.)

20 BY MR. BOLES:

21 Q. Lieutenant Battista, I will hand you
22 what has been marked Defendant's Exhibit 3 for
23 identification purposes. Do you know what that is?

24 A. It's an affidavit for an arrest
25 warrant.

1 Q. Okay. And what is the date on that?

2 A. Which date?

3 Q. The date that that affidavit was
4 issued.

5 A. The affidavit was signed in service on
6 3/10 of 2015.

7 Q. March 10, 2015?

8 A. Yes.

9 Q. And you were on Chaff Lane
10 March 7, 2015, correct?

11 A. Yes.

12 Q. I will retrieve that one from you.

13 THE COURT: How much longer do you
14 anticipate your cross-examination?

15 MR. BOLES: Not very long, Your Honor.

16 THE COURT: Okay.

17 BY MR. BOLES:

18 Q. So at the close of your department's
19 interviewing and investigation at Chaff Lane where
20 you had the defendant, Mr. Sam Broadway, right in
21 front of you, you waited three days until you
22 decided to arrest him?

23 A. We allowed him to turn himself in.

24 Q. You waited three days until you issued
25 the arrest warrant?

1 A. That's what the signature says, yes.

2 MR. BOLES: Okay. Thank you. Those
3 are all the questions I have.

4 THE COURT: All right. Before -- you
5 have redirect?

6 MR. CANNON: Just one or two questions,
7 Your Honor.

8 THE COURT: Well, if it's two
9 questions, go ahead.

10 MR. CANNON: Yes.

11 REDIRECT EXAMINATION

12 BY MR. CANNON:

13 Q. All right. Lieutenant Battista, did
14 you ever say what the status of what the victim in
15 the case was at the time you arrived at Chaff Lane
16 that morning?

17 A. No. I still had to investigate and
18 find out the status of the person to decide
19 applicable charges.

20 Q. And would that provide you -- at that
21 time, would that have provided you the authority to
22 get the arrest warrant for the charge in this case?

23 A. I needed to wait until the defendant
24 [sic] was officially deceased.

25 Q. Before you could --

1 A. Before I could initiate the charge that
2 we're currently here for.

3 MR. CANNON: Thank you. No further
4 questions.

5 THE COURT: Recross?

6 RE CROSS-EXAMINATION

7 BY MR. BOLES:

8 Q. You knew there was a grave injury at
9 the time you were at Chaff Lane --

10 THE COURT: Hold on. Approach, please.

11 MR. BOLES: Yes, sir.

12 (Bench conference.)

13 THE COURT: Thank you, sir.

14 MR. BOLES: I will withdraw the
15 question. No questions.

16 THE COURT: Thank you very much. You
17 may step down.

18 THE WITNESS: Thank you, sir.

19 THE COURT: Do you wish the officer to
20 be excused?

21 MR. CANNON: He can be, Your Honor.

22 MR. BOLES: No objection.

23 THE COURT: Lieutenant, you are free to
24 leave.

25 THE WITNESS: Thank you.

1 THE COURT: All right. At this point
2 we will take our recess, ladies and gentlemen.
3 Please do not begin your deliberations, don't
4 discuss the case. We will be with you in about
5 15 minutes. Thank you.

6 (Jury out, 11:38 a.m.)

7 THE COURT: All right. Anything from
8 the State before we recess?

9 MR. CANNON: Nothing further. For
10 scheduling purposes, Your Honor, I believe we have
11 just four more witnesses and the next two are
12 rather quick.

13 THE COURT: All right.

14 MR. CANNON: And then we will have
15 Officer Davis take the stand as well as --

16 THE COURT: That may work out for a
17 lunch break by 12:00.

18 MR. CANNON: That works perfect.

19 THE COURT: Okay. Great.

20 Anything from the defense before we
21 recess?

22 MR. BOLES: No, sir.

23 THE COURT: Thank you.

24 (A recess transpired.)

25 THE COURT: Let the record reflect that

1 Mr. Broadway is present. Let me just -- I'm just
2 mentioning this for all of you, not just one, it's
3 not one-sided, but in 1994, former Chief Justice
4 Pleconis -- or Chief Justice Pleconis introduced me
5 to the new -- as a fledgling trial judge to
6 Rule 611A of our Rules of Evidence.

7 And I have used it, but didn't cite the
8 reason that I asked you to move on, but that's the
9 basis, because it says that a court -- and the
10 reason it's important is it's the only rule I know
11 that speaks to the trial judge. It says, the Court
12 shall exercise, and I'm very cognizant of the next
13 word, reasonable control over the mode and order of
14 interrogating witnesses and presenting evidence so
15 as to, one, make an interrogation and presentation
16 effective for the ascertainment of the truth.

17 That's an interesting phrase because it
18 happens to be in the first rule, Rule 1 -- the
19 second rule, Rule 102. It says, the purpose and
20 the construction, and it reads as follows: These
21 rules shall be construed to secure fairness in the
22 administration, elimination of unjustifiable
23 expense and delay in promotion of growth and
24 development of law and evidence, and to that end
25 that the truth may be ascertained and proceedings

1 justly determined.

2 The rule goes on to say in 2, avoid
3 meaningless consumption of time; and 3, protect
4 witnesses from harassment or undue embarrassment.
5 And the balance of undue -- what's needless
6 consumption of time of the -- stated another way
7 and paraphrased, instead of wasting time, I think
8 tracks into 403 where it talks about several
9 things.

10 And 403 we know deals with relevant
11 evidence. It may have some probative value, but it
12 goes on to say something else that I think is
13 significant, and that is -- I want to be precise in
14 my quote -- although relevant evidence may be
15 excluded if its probative value is substantially
16 outweighed by the danger of unfair prejudice,
17 confusion of the issues or misleading the jury, or
18 considerations of undue delay of wasted time and
19 needless presentation of cumulative evidence. I
20 think I have threatened the Solicitor with that
21 rule when we first started when he told me the
22 numbers.

23 As I understand the defense position at
24 this point, because I've heard it stated in various
25 and sundry ways and cross-examination questions

1 very pertinent is, Mr. Broadway does not deny the
2 accident. He's the man that was driving the car
3 and no question he hit the man. He hit the victim
4 on the moped.

5 In a civil trial, all of this is
6 relevant That we've been -- all the
7 cross-examination of the last witness, and many
8 other witnesses, are extremely relevant and
9 germane. Maybe relevant even to this one to some
10 extent.

11 But -- and if this was a driving felony
12 DUI with death, no question it's relevant because
13 we all know that one of the elements that we have
14 to consider is that -- in an element that's
15 relevant is, did the victim's negligence contribute
16 to the accident or someone else. Intervening
17 negligence even could be given the testimony we had
18 at this point, but that's not an issue here. It
19 has nothing to do with this trial.

20 So all we're doing is talking about
21 things that I don't know what -- the purpose of my
22 concern is, the jury gets back and discussed, well,
23 who caused the accident? It doesn't have anything
24 to do with it. Nothing at all. Because it's
25 not -- it doesn't have anything to do with the

1 relevance or the pertinence of this trial.

2 I haven't heard an objection. I'm not
3 going to -- I haven't decided, but I'm getting
4 close, Mr. Boles, and I just wanted to tell you so
5 that if I do, I wanted to let you know, I respect
6 your right to differ from my -- with my conclusion.
7 And you mentioned something when we first started;
8 you have a duty to represent your client vigorously
9 and consistent with the Rules.

10 And I commend you for that and I
11 certainly am going to afford you that opportunity,
12 but so if I do, you will have the opportunity to
13 profer any of the testimony that you wish to do if
14 I stop you if I exercise -- if I do something under
15 611A. Of course, it's different if there's been an
16 objection made. That's a different ball game
17 totally.

18 But, anyway, I just wanted to let you
19 know because I think we're moving very quickly, but
20 my biggest concern is not so much the waste of
21 time, it's the -- that we're talking about and
22 arguing about things that really have no
23 consequence. It really is nothing.

24 And, Solicitor, you're really getting
25 to the point about whether he's -- you know, this

1 thing about his intoxication? Who cares? I mean,
2 you've already presented evidence he was at a bar.
3 He's already -- he's already said that. I mean, we
4 know he was there based on his own statement, based
5 on the fact that they've answered you. He went
6 back to the bar to look for his phone. The jury
7 can infer. The jury -- I assume you're going to
8 play the video.

9 So it's becoming a cumulative situation
10 that we just really have -- that it's really a
11 nonissue because as the question was asked, you
12 didn't charge him with DUI, and we know why. I
13 mean, there's a reason why. Obviously, those of us
14 who practice law know it will be a difficult thing
15 because you can't prove what he consumed after the
16 accident, so therein lies the problem.

17 And I was -- I know that because I had
18 a guy that I was able to successfully defend
19 because while he was waiting on that deputy to
20 come, he had liquor under his seat and he took a
21 swig of that before he went to take the
22 breathalyzer. So we presented that evidence and
23 that messed up everything.

24 So I understand all of that. So I'm
25 cognizant of it, but at the same token, I

1 understand your responsibilities, so thank you,
2 sir.

3 MR. BOLES: Thank you, Your Honor. Can
4 I ask a question?

5 THE COURT: Sure.

6 MR. BOLES: I'm hearing you to say that
7 you would like for me to avoid --

8 THE COURT: I'm not -- I'm not asking
9 you to avoid anything, Mr. Boles. I'm just telling
10 you -- I try to let people know before I use that
11 because it's a rule that I recognize the word
12 reasonable control and -- but I also know it's my
13 responsibility to try to effectuate the intent and
14 purposes of our Rules of Evidence, and that is to
15 have the jury deal with deciding the true issues.

16 MR. BOLES: Uh-huh.

17 THE COURT: And I don't think the true
18 issues in this case have anything to do with any of
19 the questions of, did you get a witness, an
20 eyewitness?

21 Who cares? Because he admits it. We
22 don't need an eyewitness to the accident, and there
23 is no eyewitness. To my knowledge, there is no
24 eyewitness that -- an eyewitness to say, I saw him
25 come back to talk. That is germane. I saw him

1 drive by and he waved and went on by. That would
2 be germane to the issue at hand.

3 But what does it matter about whether
4 or not there's an eyewitness, other than to point
5 out that there was a person that had an arrest
6 warrant that has absolutely nothing to do with
7 anything and -- because that's not the issue here
8 today. It's no issue at all.

9 Because that doesn't have anything to
10 do with whether or not he -- the issue in this case
11 is quite simple. You said it in your opening
12 statement and I'm looking now to determine whether
13 the word, temporary, or, temporarily, has ever been
14 defined. I can't find it in South Carolina, but
15 that's clearly the issue. What does that mean?

16 Because there's no question, at least
17 at this junction -- and I haven't heard all of the
18 evidence. Maybe there's -- maybe -- and I agree
19 with the line of questioning about, did you seize
20 the phone? It's very pertinent to the question of
21 whether or not he reported it or attempted -- but
22 it doesn't say attempt to report, but there are
23 other issues there.

24 So no, no. I'm just talking about
25 those things that dealt with causation of the

1 accident itself. I mean, there's no question this
2 man was struck by this man's car while he was
3 operating it. That -- can't do it in a criminal
4 trial, but in a civil trial, I would direct a
5 verdict as to that. Absolutely.

6 There's no question about that because
7 he doesn't argue with that. And you've used that I
8 think throughout the entire trial, even in your
9 opening statement. That's not the question here.
10 He did it. And by his own statements, he admits to
11 that.

12 But anyway, having said all of that, I
13 still understand that these folks know nothing
14 about what we've talked about and you have a duty,
15 both of you, to represent your clients vigorously
16 and I will respect that. I just wanted to share
17 that with you in advance before --

18 MR. CANNON: Thank you, Your Honor.

19 MR. BOLES: Thank you.

20 THE COURT: You bet.

21 Okay. Let's bring in our jury, please.

22 (Jury in, 12:01 p.m.)

23 THE COURT: Thank you very much, ladies
24 and gentlemen. I appreciate your patience with the
25 timing of the break. I try to work it in with

1 certain points in the interrogation, but sometimes
2 they're inevitable. I thank you for your
3 indulgence and we're ready to continue.

4 You may call your next witness.

5 MR. MCNEELY: Thank you, Your Honor.
6 State calls Kevin Binnall.

7 KEVIN BINNALL

8 being first duly sworn, testified as follows:

9 THE CLERK: Have a seat. State your
10 full name for the record and spell your last name,
11 please.

12 THE WITNESS: Kevin, B, as in Boston,
13 I-N-N-A-L-L.

14 DIRECT EXAMINATION

15 BY MR. MCNEELY:

16 Q. Good morning, Mr. Binnall. Where are
17 you currently employed?

18 A. City of Goose Creek Fire Department.

19 Q. What is your position there and how
20 long have you been employed there?

21 A. Firefighter paramedic, two-and-a-half
22 years.

23 Q. Can you please describe your education
24 and training?

25 A. I have my bachelor's in fire department

1 administration. Currently I'm studying my master's
2 in emergency management. I've been a paramedic
3 since 2000, today been an EMS since 1989.

4 Q. What is the difference between a
5 paramedic and an EMS?

6 A. EMS is the division we work in;
7 paramedic is a title. It's a level of education
8 that you attain. I've gone to paramedic school and
9 have been certified by the State and national
10 registry.

11 Q. What are the duties of your position as
12 paramedic?

13 A. Basically, gain access to a patient,
14 assess a patient, treat the patient, treat any
15 life-threatening injuries, take the patient to a
16 hospital.

17 Q. Were you employed in that capacity with
18 Goose Creek on March 7, 2015?

19 A. Yes, sir.

20 Q. Were you working during the early
21 morning hours of March 7, 2015?

22 A. Yes, sir.

23 Q. Were you dispatched to an incident that
24 night on Highway 176 near its intersection with 17A
25 in Goose Creek, South Carolina?

1 A. Yes, sir.

2 Q. Is that in Berkeley County?

3 A. Yes.

4 Q. Why were you dispatched to that

5 location?

6 A. A motor vehicle accident.

7 Q. What time were you dispatched there?

8 A. I believe 2:40.

9 Q. What time did you arrive?

10 A. Couple minutes after that, probably

11 2:45.

12 Q. Who did you arrive on the scene with?

13 A. It was myself, my partner on Medic 9,

14 which is the assigned medic truck. There were a

15 couple of police cars there. I don't remember what

16 jurisdiction they were with.

17 Q. What did you do when you arrived on

18 scene?

19 A. When I arrived on scene -- I usually

20 sit in the passenger's seat, that's where the

21 paramedic usually sits. I noticed, I believe, a

22 lot of first responders who were on scene, they

23 were attending to a patient on the side of the

24 road.

25 Q. Did you locate the patient?

1 A. Yes, sir.

2 Q. Where was the patient?

3 A. The patient was on the shoulder of the
4 road, 17 -- I'm sorry, State Road, on the shoulder
5 of State Road.

6 Q. Can you describe his position at that
7 time?

8 A. If I remember, he was perpendicular to
9 the road. His feet were towards the road and his
10 head was towards the brush line.

11 Q. Did you assess the victim for injuries
12 at that time?

13 A. Yes, sir.

14 Q. Can you please describe the condition
15 of the victim and how he appeared when you arrived
16 and first assessed him?

17 A. The first thing we worry about with
18 anybody is an airway. People who don't have
19 airways don't tend to live very long. He had
20 airway respirations. We had to assist his
21 breathing with a device called a bag valve mask.

22 Once we secured his airway as best we
23 could, we cut his clothes down, assessed him for
24 further injuries, put him on our cardiac monitor,
25 get vital signs and attempt any IVs we can. If we

1 can't get -- we're not successful, we go to the
2 truck and we have a secondary device that we can do
3 a field cutting for additional IVs and, if
4 warranted, call for a helicopter and have the
5 patient flown to a trauma center, Level 1 trauma
6 center.

7 Q. When you made contact with the victim,
8 was he conscious?

9 A. No, sir.

10 Q. Was he responsive to verbal prompts?

11 A. No.

12 Q. Was he making any movements?

13 A. It's hard to describe. When he -- when
14 he was breathing, it was, like, a deep, gagging --
15 we call it abnormal respirations. He was trying to
16 breathe on his own, but he wasn't very effective.
17 That's the best way to describe it.

18 Q. Did you assess his body for injuries?

19 A. Yes.

20 Q. What injuries were you able to assess
21 at that time?

22 A. Before we cut his clothes off, I don't
23 recall which ankle, but he had an obvious ankle
24 fracture. Once we got some clothes removed, I
25 believe he had some abrasions on his chest, his

1 abdomen and also his back.

2 Q. Did you notice any head trauma?

3 A. I don't recall.

4 Q. What did you do next to treat the
5 victim?

6 A. Once we -- once I noticed that it
7 was -- he was basically what we call a Level 1
8 trauma patient, where we bring the patient to a
9 Level 1 trauma center, the closest Level 1 trauma
10 center was in Charleston. The most rapid way to
11 get there was by calling a helicopter, have the
12 helicopter land on the scene and transfer the
13 patient to the flight crew, and we'd fly the
14 patient out to Med U.

15 Q. When you described him as a Level 1
16 trauma --

17 A. Yes, sir.

18 Q. -- how did you designate the victim as
19 a Level 1 trauma?

20 A. Given -- there's a couple things we
21 look at. We look at what's called mechanism of an
22 injury, where we see what type of injuries, if
23 there's a -- the way that the national -- actually,
24 the State protocols are, there are certain things
25 that we look at, like if the patient was hit by a

1 vehicle, how far was he thrown, if there was
2 entrapment, if there was -- if he fell from a
3 height greater than two times his height. It's
4 things like that are -- it's called an automatic
5 entry into a trauma center.

6 Q. Is Level 1 trauma an indicator of the
7 significance of his injuries?

8 A. Yes..

9 Q. Is there any level higher for -- or
10 more significant injury than a Level 1 trauma?

11 A. No, sir.

12 Q. What did you do after you assisted him
13 on the scene?

14 A. We assessed him immediately, called for
15 a helicopter through our dispatch. They called
16 whoever is next up in the air, secured him to a
17 backboard, got him onto the stretcher, got him into
18 the truck, and we assessed him a little bit
19 further. A couple of IVs -- I attempted an IV. I
20 couldn't get an IV because he was -- it was cold
21 out and he was hurt real badly, so his vasculature
22 was kind of constricted a little bit, so I had
23 difficulty getting an IV on him.

24 Had to go with what's called an
25 interosseous, which is a 15-gauge needle put into

1 the humeral head, which goes right into the bone
2 marrow, which is an accepted route for an IV. Once
3 the medical -- the helicopter crew got there,
4 they -- we met them at the landing zone.

5 They came to the back of the truck. I
6 gave them my verbal report, go over, you know, what
7 we saw on scene. The appropriate treatment is
8 selected for the patient and they continued their
9 treatment protocols.

10 Q. Where was the landing zone?

11 A. I honestly was in the back of the
12 truck. I believe it was at the church up the
13 street, but my primary focus was the patient care.

14 Q. And you met the helicopter at that
15 location?

16 A. Yes, sir.

17 Q. Did the crew of the helicopter enter
18 your ambulance?

19 A. Yes, sir.

20 Q. What did they do in the ambulance?

21 A. Once I gave verbal turnover, they gave
22 him some -- medication to the patient to sleep
23 basically and put a breathing tube down into his
24 lungs and trachea.

25 Q. Is that another way of saying they

1 intubated him?

2 A. Yes. Well, in the street it's called a
3 rapid sequence induction where we -- you basically
4 give medication to the patient to stop breathing
5 and give them, you know, analgesics so they
6 don't remember anything. Basically, paralyze the
7 whole breathing system in the body.

8 Q. Why do you do that?

9 A. There's a couple reasons. One of
10 the -- I mentioned the airway. The airway is the
11 most important thing we have to worry about. The
12 second one is if the patient becomes conscious and
13 tries to rip the tube out, the endotracheal tube
14 out, they're going to possibly injure themselves,
15 injure the flight crew. And helicopters don't
16 crash very often, so ...

17 Q. So would it be fair to say you do it
18 for patient safety and to maintain an airway?

19 A. Yes, sir.

20 Q. What did you do after the airway was
21 established in the ambulance?

22 A. We -- the medical -- the air crew
23 established the airway, we put him on their
24 stretcher, and we brought him to the helicopter.

25 Q. Did you have any further involvement

1 after he was loaded on the helicopter?

2 A. No, sir.

3 MR. MCNEELY: No further questions from
4 the State.

5 THE COURT: Cross-examine.

6 MR. BOLES: Mr. Binnall, thanks for
7 your hard work and for being here. I have no
8 questions for you.

9 THE COURT: Do you wish the witness to
10 be excused?

11 MR. MCNEELY: Yes, sir.

12 THE COURT: Any objections?

13 MR. BOLES: No, sir.

14 THE COURT: You are excused, sir.

15 Thank you. You may step down.

16 Call your next witness.

17 MR. CANNON: The State calls
18 Dr. Stuart Leon.

19 STUART LEON

20 being first duly sworn, testified as follows:

21 THE CLERK: Have a seat. State your
22 full name for the record and spell your last name,
23 please.

24 THE WITNESS: My name is Stuart Leon,
25 L-E-O-N.

1 DIRECT EXAMINATION

2 BY MR. CANNON:

3 Q. Dr. Leon, I appreciate you being here.
4 Where are you currently employed?

5 A. Medical University of South Carolina.

6 Q. And what do you do at MUSC?

7 A. I am one of the trauma doctors there.

8 Q. Can you tell us your educational
9 background?

10 A. Did four years of medical school at the
11 Medical College of Pennsylvania in Philadelphia. I
12 did a five-year general surgery residency rather --

13 THE COURT: Could you slow down just a
14 little bit?

15 THE WITNESS: I'm sorry, sir; I'm from
16 the north. I'll try.

17 I did a five-year general surgery
18 residency at Robert Packer Hospital in Sayre,
19 Pennsylvania, and then I did a two-year fellowship
20 at the University of Pittsburgh Medical Center.
21 First year was in surgical critical care and the
22 second year was in traumatology.

23 BY MR. CANNON:

24 Q. Now, I understand MUSC is a teaching
25 hospital. Do you have any responsibilities on

1 faculty there?

2 A. Yes, sir.

3 Q. What are those?

4 A. We teach residents and medical
5 students.

6 Q. Okay. Have you --

7 MR. CANNON: At this time, Your Honor,
8 I would like to name Dr. Leon -- admit him as an
9 expert in the field of trauma and critical care.

10 THE COURT: Care to examine his
11 qualifications?

12 MR. BOLES: No, sir. Thank you.

13 THE COURT: Very well. He will be
14 submitted to render opinions in those areas.

15 MR. CANNON: Thank you, Your Honor.

16 BY MR. CANNON:

17 Q. Dr. Leon, were you working on the
18 evening of March 7, 2015, at USC?

19 A. It wasn't the evening. Actually, my
20 partner was working that evening. I took over care
21 the following morning.

22 Q. Okay. And did you ever have an ability
23 to render an opinion on Jesse Feagin that morning?

24 A. Yes. Yes, I did.

25 Q. What condition was it when you first

1 encountered Mr. Feagin?

2 A. By the time -- my first interaction
3 with him, it was pretty much a forgone conclusion
4 that he had a nonsurvivable traumatic brain injury.

5 Q. Were you able to -- to a reasonable
6 degree of medical certainty, render an opinion as
7 to the cause of death for Mr. Feagin?

8 A. It was established that he was involved
9 in a motor vehicle crash, collision.

10 Q. And he passed away as involvement in
11 that motor vehicle crash, but what was the cause of
12 death for Mr. Feagin?

13 A. The brain injury.

14 Q. And would Mr. Feagin have survived had
15 he been kept in additional medical treatment --
16 received additional medical treatment?

17 A. No.

18 MR. CANNON: No further questions for
19 this witness, Your Honor.

20 THE COURT: Any questions?

21 MR. BOLES: None, thank you.

22 THE COURT: Thank you. Do you wish him
23 to be excused?

24 MR. CANNON: Yes, Your Honor.

25 THE COURT: Dr. Leon, you may step

1 down. Thank you, sir.

2 MR. MCNEELY: State calls Harvey
3 Burton.

4 HARVEY BURTON

5 being first duly sworn, testified as follows:

6 THE CLERK: If you'll have a seat,
7 state your full name for the record and spell your
8 last name, please.

9 THE WITNESS: My name is Harvey Burton,
10 B-U-R-T-O-N.

11 DIRECT EXAMINATION

12 BY MR. MCNEELY:

13 Q. Mr. Burton, what do you do for a
14 living?

15 A. I'm retired.

16 Q. What did you do prior to your
17 retirement?

18 A. I worked for Cummins Engine Company in
19 the engineering department.

20 Q. Where do you live, Mr. Burton?

21 A. 514 Chaff Lane, Moncks Corner.

22 Q. Is that in Berkeley County?

23 A. Yes.

24 Q. Were you living at that address on
25 March 7, 2015?

1 A. Yes.

2 Q. Is it a home?

3 A. Yes.

4 Q. Do you own that home?

5 A. Yes.

6 Q. Do you know the defendant in this case,

7 Samuel Broadway?

8 A. Yes, I do.

9 Q. How do you know him?

10 A. He is my ex-son-in-law.

11 Q. Was he married to your daughter?

12 A. Yes.

13 Q. Do they have any children?

14 A. Two, they have twin girls.

15 Q. Were those children at your home on

16 March 7, 2015?

17 A. Yes.

18 Q. Do you know what kind of car the

19 defendant drove on March 7, 2015?

20 A. It was a Cadillac. I can't tell you

21 the year, but it was a cream-colored Cadillac.

22 Q. Was it a sedan or an SUV?

23 A. Sedan.

24 Q. I want to discuss the early morning

25 hours of March 7, 2015. Do you recall where you

1 were at approximately 4:30 that morning?

2 A. I was at the house. I don't -- at that
3 particular time, I don't know if I was asleep or
4 awake.

5 Q. You were at your home on Chaff Lane?

6 A. Yes.

7 Q. Did something wake you up during the
8 early morning hours of that morning?

9 A. My wife and Sam talking to one another
10 in the hallway.

11 Q. So you woke up to the sound of them
12 speaking?

13 A. Yes.

14 Q. Was it unusual for him to be at your
15 home at that time?

16 A. At that time in the morning, yes.

17 Q. Did you go out to see what was going
18 on?

19 A. Yes.

20 Q. Did you observe the defendant in your
21 home at that time?

22 A. Yes, I did.

23 Q. Can you describe his demeanor?

24 A. He just -- he was -- he kind of acted
25 like he was lost and in shock. He didn't really --

1 I don't know. It's kind of hard to explain, but he
2 was kind of slump shouldered a little bit, but...

3 Q. Did you ask him why he was there?

4 A. Yes.

5 Q. What did he tell you?

6 A. He said he had been in an accident,
7 that a car had pulled out in front of him. He
8 swerved off the road to miss the car and when he
9 pulled back up, he thought he had hit a moped, and
10 he panicked and came to our house.

11 Q. Did he tell you where the accident
12 occurred?

13 A. No.

14 Q. Did you ask him if he called the
15 police?

16 A. Yes.

17 Q. What did he tell you?

18 A. He said he had not.

19 Q. Did you suggest to him that he call the
20 police?

21 A. Yes.

22 Q. What was his response?

23 A. He just -- he said he just didn't know
24 what to do.

25 Q. What happened after that?

1 A. He went in and went to sleep in the
2 bedroom, and when he did, I called the police.

3 Q. What was the time frame from when he
4 arrived at your home to when he went in the bedroom
5 and went to sleep?

6 A. Maybe an hour. I didn't look at the
7 clock, but maybe an hour.

8 Q. What did he do during that hour?

9 A. He was just there in the hallway and in
10 the living room.

11 Q. I believe you mentioned you called the
12 police?

13 A. Yes.

14 Q. Do you recall what time you called the
15 police that day?

16 A. No, I never did look at a clock.

17 Q. What did you call the police and tell
18 them?

19 A. That Sam was at the house and that he
20 had been involved in an accident. He did say that,
21 I thought, it was on 176 and that I just -- I
22 needed to call the police and let them know.

23 Q. Why did you decide to call the police?

24 A. I thought it was the right thing to do,
25 they had to be called. I thought it would be

1 probably better all the way around, even on him, if
2 they were called then instead of somebody tracking
3 him down three or four days later.

4 Q. Did law enforcement respond to your
5 home?

6 A. Yes.

7 Q. When law enforcement arrived at your
8 home, where was the defendant?

9 A. He was in the bedroom, asleep.

10 Q. Did you make contact with law
11 enforcement?

12 A. Yes.

13 Q. Was it inside of your home or outside
14 of our home?

15 A. He came inside.

16 Q. What happened after that?

17 A. We got Sam up and he went out and
18 talked to the police.

19 Q. Did you ever go outside?

20 A. Yes.

21 Q. Did you see the vehicle, Mr. -- excuse
22 me, did you see the defendant's vehicle in your
23 driveway?

24 A. Yes.

25 Q. Did it have any observable damage?

1 A. On the left front fender.

2 Q. What happened after that?

3 A. The police talked to him and then they
4 finally left. They were out in the yard so, of
5 course, I didn't hear hardly anything they said.

6 Q. Following that -- strike that.

7 Does your home have a landline
8 telephone?

9 A. Yes.

10 Q. And was it operational that day?

11 A. Yes, sir.

12 Q. Is that the line that you used to
13 contact law enforcement?

14 A. I think so. If I remember right, it
15 was.

16 Q. Okay. And correct me if I'm wrong, did
17 you contact law enforcement before or after
18 Mr. Broadway went to sleep that day?

19 A. After.

20 Q. Is there a particular reason you waited
21 until after he went to sleep?

22 A. No. I just -- I just didn't call them
23 before then.

24 MR. MCNEELY: Okay. No further
25 questions, Your Honor.

1 THE COURT: Any cross-examination of
2 the witness?

3 CROSS-EXAMINATION

4 BY MR. BOLES:

5 Q. Good afternoon, Mr. Burton.

6 A. Good afternoon.

7 Q. I just want to go over some of your
8 testimony that you just gave us. You described
9 Mr. Broadway when he got to your house as lost and
10 in shock?

11 A. That's the way he acted to me.

12 Q. Okay. And you said that when you
13 and -- saw him in the house, he was discussing that
14 he'd just avoided a car and believed he had struck
15 something else after that?

16 A. Yes.

17 Q. Okay. The attorney for the State asked
18 you whether you knew he had called police, and you
19 said no. Do you know anything about his phone on
20 that evening?

21 A. No.

22 Q. When you made known to Mr. Broadway
23 that police had been contacted, did he attempt to
24 flee your house?

25 A. No.

1 Q. Did he try to hide in your house?

2 A. No.

3 Q. The room that you said he went into, is
4 that where his little girls were?

5 A. Well, I thought that was where he was
6 at and my wife told me that it wasn't.

7 Q. Okay. His -- let's back up for a
8 second on that question. Do you keep
9 Mr. Broadway's daughters from time to time?

10 A. Yeah. At the time we did because they
11 were in the process of getting divorced and our
12 daughter lived with us, so we had the girls quite
13 often.

14 Q. And were the girls, his daughters, at
15 your house that night?

16 A. Yes.

17 Q. Did they ever wake up at some point?

18 A. No.

19 Q. Okay. And I believe you also said
20 Mr. Broadway got to your house and said he didn't
21 know what to do?

22 A. Yes.

23 Q. Was he trying to get help from you?

24 A. Yes. He said he didn't know what to
25 do, wanted us to tell him what to do.

1 Q. Okay. And so you decided to call law
2 enforcement?

3 A. Yes.

4 Q. And when they got there, Mr. Broadway
5 went out to meet them?

6 A. Yes.

7 Q. And he talked to them?

8 A. Yes.

9 MR. BOLES: Beg the Court's indulgence
10 for a minute?

11 THE COURT: Certainly.

12 BY MR. BOLES:

13 Q. Just one last question: Do you
14 remember how long it took from when you called 911
15 to when law enforcement showed up?

16 A. I didn't look at a clock, so it's just
17 a personal guess, but 30 to 45 minutes --

18 Q. Okay.

19 A. -- is what it seemed like to me.

20 MR. BOLES: Okay. Thank you for being
21 here today. That's all the questions I have for
22 you.

23 THE COURT: Any redirect?

24 MR. MCNEELY: Just a quick one.

25 REDIRECT EXAMINATION

1 BY MR. MCNEELY:

2 Q. During cross-examination, you said when
3 he arrived he asked you what to do?

4 A. Yeah. He had made the comment that he
5 didn't know what to do. And he asked us at one
6 point would we tell him what to do.

7 Q. What did you tell him?

8 A. That he needed to call the police.

9 Q. And did he call the police?

10 A. No.

11 MR. MCNEELY: Thank you.

12 THE COURT: Any recross?

13 MR. BOLES: Nothing, Your Honor.

14 THE COURT: All right. You may step
15 down.

16 Do you wish for Mr. Burton to be
17 excused?

18 MR. CANNON: He may be.

19 THE COURT: Any objection?

20 MR. BOLES: None, Your Honor.

21 THE COURT: You are also free to leave,
22 sir, if you wish.

23 Is this a stopping point?

24 MR. CANNON: It's a good stopping
25 point. We have one more witness, Your Honor.

1 THE COURT: Very well.

2 Ladies and gentlemen, at this point we
3 will take our lunch recess. Please remember you
4 are not at liberty to discuss this case among
5 yourselves or permit anyone to talk with you about
6 it or talk about it in your presence.

7 Have a good lunch. I'd ask you to
8 return to your jury room please by 2:00 and we will
9 resume the trial at that time. Thank you.

10 (Jury out, 12:20 p.m.)

11 THE COURT: Anything from the State
12 before we recess?

13 MR. CANNON: Nothing further, Your
14 Honor.

15 THE COURT: Anything from the defense?

16 MR. BOLES: No, Your Honor.

17 THE COURT: Let me just for my planning
18 purposes, you say you have one more witness and
19 that's the investigating officer?

20 MR. CANNON: That's right.

21 THE COURT: And that would be some
22 length.

23 At this point, Mr. Boles, I'm not going
24 to hold you to this, do you anticipate calling any
25 additional witnesses on behalf of Mr. Broadway.

1 MR. BOLES: Yes, sir, I would.

2 THE COURT: Okay. Approximately, how
3 many at this time?

4 MR. BOLES: Two probably, and I need to
5 make calls right now.

6 THE COURT: That's no problem. What I
7 was going to tell you that I would guess we will
8 start at 2:00. I would think by 3:30 or 4:00,
9 between 3:00 and 3:30, that would be a good
10 ballpark time for them. And have you talked with
11 your client about whether he will be testifying or
12 not testifying?

13 MR. BOLES: We've discussed that, Your
14 Honor.

15 THE COURT: I need for you to discuss
16 it further because I would like to find out that as
17 well and to explore initially, but we will do it
18 again at the close of the State's case. I would
19 like to find out at least at this point -- if he's
20 made a decision. If he hasn't, that's perfectly
21 all right too.

22 MR. BOLES: Yes, sir.

23 THE COURT: Thank you very much. I
24 appreciate it.

25 MR. BOLES: Thank you. So, I'm sorry,

1 I didn't catch the time you want us back here.

2 THE COURT: At 2:00.

3 (A luncheon recess transpired.)

4 THE COURT: Is the State ready?

5 MR. CANNON: It is, Your Honor.

6 THE COURT: Is the defendant ready,

7 Mr. Boles?

8 MR. BOLES: Yes, sir.

9 THE COURT: Let the record reflect that

10 Mr. Broadway is present.

11 Okay. Let's invite the jury to return.

12 Thank you.

13 (Jury in at 1:57 p.m.)

14 THE COURT: Thank you very much, ladies

15 and gentlemen. I hope you had a good lunch. We

16 are ready to continue.

17 Solicitor, call your next witness.

18 MR. CANNON: Thank you, Your Honor.

19 State calls Officer Ted Davis.

20 TED DAVIS

21 being first duly sworn, testified as follows:

22 THE CLERK: Have a seat. State your

23 full name for the record and spell your last name,

24 please.

25 THE WITNESS: My name is

1 Ted Edwin Davis, III. Davis is spelled D-A-V-I-S.

2 DIRECT EXAMINATION

3 BY MR. CANNON:

4 Q. Officer Davis, where do you work?

5 A. I work for the City of Goose Creek
6 Police Department.

7 Q. And how long have you worked at Goose
8 Creek?

9 A. I've worked off and on since 2006.

10 Q. Does that work off and on since 2006
11 encompass your entire career as a law enforcement
12 officer?

13 A. No. I worked for about a year at
14 Charleston City Police Department.

15 Q. What are your responsibilities as an
16 officer with Goose Creek?

17 A. I'm assigned to the traffic team, and
18 basically what that entails is we are responsible
19 for anything and everything involving the roadway,
20 everything from motor vehicle collisions to
21 disabled vehicles, debris in the roadway and so on.

22 Q. Would Lieutenant Battista be your
23 superior?

24 A. Yes, he's my supervisor.

25 Q. Were you working at Goose Creek on

1 March 7, 2015?

2 A. I was.

3 Q. You've been sitting in this courtroom
4 the entire trial, so you're familiar with the
5 reason why we're here. Do you recall responding to
6 the incident on Highway 176 --

7 A. I do.

8 Q. -- that early morning?

9 A. Yes, sir.

10 Q. Where were you when that -- you
11 received the call of the accident?

12 A. I was at home in Hanahan.

13 Q. Okay. You mentioned you're a part of
14 the traffic team. Is that why you were called out?

15 A. Yes, sir.

16 Q. What county was the location of the
17 incident in?

18 A. Berkeley.

19 Q. Do you recall about what time you
20 arrived on scene?

21 A. It was probably around 3:00.

22 Q. Okay.

23 A. I would guess, maybe quarter till.

24 Q. Who was at the scene of the accident
25 when you arrived?

1 A. When I arrived there, I remember
2 Lieutenant Upchurch was on scene, and I want to say
3 Sergeant Stayton was on scene. I believe there was
4 another officer further down doing traffic
5 direction, but I don't recall.

6 Q. When you arrived on scene, what did you
7 first encounter?

8 A. The very first thing I did when I
9 arrived on scene was I met with Lieutenant
10 Upchurch, who just gave me a brief synopsis as to
11 what he had going on on the scene. And after I
12 received that information from him, I went
13 immediately and spoke to the only witness that was
14 on scene, which was Ms. Campbell. I got a brief
15 recount from her as to the events that had
16 transpired.

17 And as she was extremely frantic and,
18 you know, she wanted to get to the hospital and I
19 didn't want to hold her up, so I just told her we
20 would get with her later. I got the description of
21 the vehicle she described as being involved in the
22 collision and then she was released and went to the
23 hospital.

24 Q. Let me just step back and ask this one
25 question: We haven't heard from Officer

1 Upchurch -- Sergeant Upchurch. What's his status
2 at Goose Creek Police Department?

3 A. He is a patrol lieutenant, similar to
4 Lieutenant Battista. He oversees one of the patrol
5 teams.

6 Q. And is he available to testify at this
7 trial?

8 A. He's not. It's my understanding that
9 he's had some kind of a medical procedure and he's
10 out.

11 Q. Okay. When you arrived on scene and
12 ascertained the situation and spoke with
13 Ms. Campbell, what responsibilities did you have on
14 scene that night at that point?

15 A. Typically, the first thing that we want
16 to do is, we want to make sure the scene is secure.
17 And what I mean by that is, we don't want -- you
18 know, motor vehicle collisions, a lot of your
19 evidence is in the road so we want to make sure
20 that cars aren't driving through. So we will
21 position a patrol officer on either end of the
22 collision, rerouting traffic, just to make sure the
23 scene is secure.

24 Once we get the scene secure, then we
25 walk the scene, making notes of various pieces of

1 evidence, then we come back through the scene
2 again, marking each piece with spray paint
3 typically.

4 And it's not just, you know, pieces
5 like we saw in the pictures. It's also skid marks,
6 gouge marks, you know, any -- any kind of --
7 anything that might be of evidentiary value in the
8 reconstruction.

9 Q. Did you assist in marking for
10 identification purposes later on that scene that
11 night?

12 A. Yes, sir.

13 Q. And who assisted you in doing that?

14 A. It was myself and Lieutenant Battista.

15 Q. Okay. And we have seen pictures of
16 spray-painted numbers in the roadway.

17 A. Yes.

18 Q. Is that what you're referring to?

19 A. Yes, sir.

20 Q. Okay. How long were you on scene on
21 176?

22 A. I would say probably a little maybe
23 over two-and-a-half hours.

24 Q. And did you collect -- did you have a
25 responsibility of collecting up any of the car

1 parts?

2 A. I did. Once we had finished marking
3 and photographing the scene, the next thing we do
4 is collect all the evidence. In this case, it's
5 any kind of motor vehicle parts or accessories that
6 would aid us in identifying the vehicle that left
7 the scene.

8 In this case, as we saw, there were
9 several pieces of motor vehicle parts that had
10 serial numbers, part numbers, things along those
11 lines, so I collected all of that.

12 Q. We've heard a description of the
13 vehicle that was identified by numerous witnesses
14 leaving the scene. Did you ever observe a vehicle
15 matching that description come back to the scene
16 while you were present that morning?

17 A. No, sir.

18 Q. After you finished processing the
19 scene, what did you do next?

20 A. We finished processing the scene, we
21 cleared everything up, cleaned everything up. The
22 moped was taken to our city impound lot. Once we
23 were done on scene, I then went to the Goose Creek
24 Police Department to drop off all of the car parts,
25 evidence, and secure it in the evidence locker.

1 Q. Okay. Did you ever do anything else in
2 this -- investigation of this case?

3 A. Yes. Immediately thereafter, I was at
4 the police department, we received a notification
5 from the Berkeley County dispatcher that they had
6 received a phone call in regards to a vehicle being
7 located along with potentially the driver of that
8 vehicle at a residence in Moncks Corner.

9 MR. CANNON: Permission to approach the
10 witness, Your Honor?

11 THE COURT: Yes.

12 BY MR. CANNON:

13 Q. I'm going to hand you what's been
14 premarked as Exhibit 36, and it's only for
15 identification purposes. Do you recognize what
16 this is?

17 A. Yeah. This looks -- this is an
18 overhead, I guess, satellite imagery of the area.
19 It looks like there's, I believe, 176, 17A.

20 Q. Let's talk about it. I just want
21 you -- do you recognize what it is?

22 A. Yes. Yes.

23 MR. CANNON: All right. Permission to
24 publish this to the jury, Your Honor?

25 THE COURT: You may. Do you want it

1 introduced?

2 MR. CANNON: It's got markings on it.
3 I have no objection if it's introduced. I mean,
4 it's up to the defense counsel.

5 THE COURT: Well, you can't show it
6 without it being introduced, I don't think.

7 MR. CANNON: For demonstrative
8 purposes?

9 THE COURT: No, sir. It's got to be
10 introduced.

11 But do you have an objection to it
12 being shown for demonstrative purposes?

13 MR. BOLES: No, sir.

14 THE COURT: All right. Use it for
15 demonstrative -- if not -- what's the exhibit
16 number?

17 MR. CANNON: 36.

18 THE COURT: 36, for ID only.

19 MR. CANNON: Yes, sir. Thank you.

20 THE COURT: Uh-huh.

21 MR. CANNON: Yes, sir.

22 BY MR. CANNON:

23 Q. It's behind you. Here's a laser
24 pointer. There's some -- three things that are
25 marked on this map. Can you identify what is in

1 the top left of that map?

2 A. Yeah. This is Domingo Lane. This is
3 the intersection at which the collision occurred,
4 Highway 176 at Domingo.

5 Q. And in the bottom left, what is that?

6 A. This is the location of BFE Bar where
7 Mr. Broadway stated he was returning to. I just --
8 when the collision occurred, this is Highway 17A
9 here.

10 Q. And so to the far right is --

11 A. This is where Mr. Broadway and the
12 vehicle were located after we received the phone
13 call from Berkeley County Dispatch.

14 Q. Do you recall roughly what time you
15 received that phone call from Berkeley County
16 Dispatch?

17 A. I want to say it was just before 6:00
18 in the morning.

19 Q. Did you have the ability to respond to
20 that address?

21 A. I did respond, yes, sir.

22 Q. Okay. And what is 514 Chaff Lane?

23 A. It's a residence.

24 Q. When you arrived there, who was -- who
25 was present at the scene?

1 A. Nobody. So, essentially, what we did
2 was myself, I believe Sergeant Stayton, I want to
3 say there was another Goose Creek Police Officer,
4 but I don't recall who, and one or two Berkeley
5 County Sheriff's Deputies, we all met there at the
6 gas station, Strawberry. And then we together went
7 to the residence, so we all arrived simultaneously.

8 Q. Did you locate any vehicles at that
9 residence?

10 A. Yes.

11 Q. What did you find?

12 A. There were, I believe, four -- four
13 cars in the driveway when we arrived, one of which
14 was a Cadillac which matched the description that
15 was given to us by the defendant -- or I'm sorry,
16 not the defendant, the witness on scene.

17 Q. Were you able to observe that vehicle?

18 A. I was. When I arrived on scene, the
19 first thing I did was I go over, looked at the car
20 and identified the same make. The witness provided
21 a description of the taillights specifically, it
22 had the elongated taillights. Those were a match
23 as well.

24 And I noticed that there was some
25 damage to the front end of the car that would have

1 been consistent with the damage that we were
2 looking for.

3 Q. What did you do next?

4 A. After we analyzed the vehicle, decided
5 there was a pretty high probability that this was
6 the vehicle that was involved in our collision,
7 Mr. Broadway -- I believe one of the deputies had
8 made contact at the residence. He and Mr. Broadway
9 was brought out of the residence and he was -- came
10 down the driveway. I met with Mr. Broadway and
11 conducted an interview.

12 Q. What were your first initial
13 observations?

14 A. Of Mr. Broadway?

15 Q. Yes.

16 A. He -- I mean, he -- I didn't really
17 have any initial observations of Mr. Broadway. I
18 mean, he just -- I'm not sure.

19 Q. Okay. When you first made contact,
20 what did you do next?

21 A. I immediately advised him of his
22 Miranda rights and asked him to tell me about what
23 happened.

24 Q. And where was the location of this
25 interaction between you and Mr. Broadway?

1 A. Right in the driveway of that
2 residence.

3 Q. At that time was Mr. Broadway under
4 arrest?

5 A. No.

6 Q. Was he ever placed in handcuffs?

7 A. Not that morning, no, sir.

8 Q. After you Mirandized Mr. Broadway, did
9 he elect to speak with you?

10 A. He did.

11 Q. And does your police car have an in-car
12 camera?

13 A. Yes, sir, it does.

14 Q. Was it active that morning?

15 A. Yes, sir, it was.

16 Q. I am going to hand you --

17 MR. CANNON: Permission to approach the
18 witness, Your Honor?

19 THE COURT: Yes.

20 BY MR. CANNON:

21 Q. I'm handing you what has been premarked
22 as Exhibit 3. Do you recognize that?

23 A. Yes, I do.

24 Q. What is that?

25 A. This is a DVD containing the in-car

1 camera footage taken by my in-car camera system the
2 morning that the interview was conducted of
3 Mr. Broadway.

4 Q. How do you know that?

5 A. Because I reviewed this video on
6 November the 8th of this month and confirmed that
7 the contents of that DVD were what I just stated.

8 Q. Is it a complete and accurate
9 representation of your interactions that morning?

10 A. Yes, sir, it is.

11 MR. CANNON: Your Honor, at this time
12 the State would move to enter Exhibit 3 into
13 evidence and play it for the jury.

14 THE COURT: Any objection?

15 MR. BOLES: Just relevance, Your Honor.
16 The witness can testify as to --

17 THE COURT: All right. Subject to the
18 objection made and subject to further matters that
19 were taken up as a matter of law earlier in the
20 proceedings, it's -- what's the exhibit number?

21 MR. CANNON: 3.

22 THE COURT: State's Exhibit 3 is
23 admitted subject to those objections.

24 MR. CANNON: Thank you, Your
25 Honor.

1 (STATE EXH. 3 in evidence.)

2 (DVD played.)

3 BY MR. CANNON:

4 Q. Officer Davis, after you completed that
5 initial oral interview of the defendant, what did
6 you do next?

7 A. I went back in my police car, where we
8 keep our paperwork and forms and whatnot. I
9 grabbed a written statement form with a cover
10 sheet, and I went back to Mr. Broadway and had him
11 provide a written statement.

12 Q. Did you provide Miranda advisement to
13 him as well again?

14 A. Yes. He was Mirandized a second time.

15 MR. CANNON: Okay. We're going to
16 play --

17 (DVD played.)

18 BY MR. CANNON:

19 Q. Officer Davis, after he -- after you
20 completed that advisement, did the defendant
21 provide you a written statement?

22 A. Yes.

23 Q. Did you have chance to review that
24 written statement?

25 A. I have.

1 Q. And did you have any observations or
2 problems with reviewing that statement?

3 A. I mean, it was pretty illegible. He
4 provided me with the statement and I'm looking at
5 it and I had a hard time reading it. It was just
6 illegible handwriting. And so -- he actually -- I
7 didn't even have to ask. I believe he just offered
8 to read it for me, so he read it.

9 Q. And does your in-car camera capture
10 that?

11 A. Yes, sir, it does.

12 (DVD played.)

13 BY MR. CANNON:

14 Q. Officer Davis, does that complete your
15 interaction with the defendant that morning?

16 A. Yes.

17 Q. Did you --

18 A. Well, I think maybe we talked a little
19 bit more about his car --

20 Q. What --

21 A. -- a little later.

22 Q. When you say you talked to him a little
23 more, what did he say later on or what were your
24 questions and then his responses to you?

25 A. This was informing him, you know, about

1 what was going on with his car, and there was
2 some -- I believe some information exchanged
3 regarding the insurance on the vehicle, stuff that
4 I needed for the collision report.

5 Q. Was the defendant placed under arrest
6 at that time?

7 A. No, sir.

8 Q. Was he ever placed in handcuffs?

9 A. No, sir.

10 Q. Why was he not placed under arrest at
11 that time?

12 A. Well, for several reasons. Main reason
13 being it wasn't a freshly committed crime. In
14 order for us to arrest somebody without an arrest
15 warrant, a crime has to be -- either occurs in our
16 presence or freshly committed, and this was neither
17 of those.

18 Q. Okay. After you completed your
19 interactions with Mr. Broadway, what did you do
20 next?

21 A. As soon as we finished here at the
22 residence, the vehicle was taken to the police
23 department where it was secured in our vehicle
24 storage place. At the police department, keys were
25 dropped in the evidence locker, and I believe that

1 was it for the day.

2 Q. Sitting here, not to state the obvious,
3 you've had contact with the defendant in this case?

4 A. Yes.

5 Q. Do you recognize the defendant in this
6 case?

7 A. Yes.

8 Q. Can you point out and identify the
9 defendant in this case?

10 A. That's Mr. Broadway sitting in the
11 middle right here at this table.

12 Q. And this gentleman is the same
13 individual that you had interactions with on the
14 morning of March 7th?

15 A. Yes, sir.

16 MR. CANNON: Permission to approach the
17 witness, Your Honor?

18 THE COURT: Sure.

19 (STATE EXH. 37, Statement, was marked
20 for identification.)

21 BY MR. CANNON:

22 Q. Do you recognize what this is?

23 A. Yes, sir.

24 Q. What is it?

25 A. This is the written statement and the

1 cover sheet to the written statement that was
2 provided to me by Mr. Broadway.

3 Q. On the morning of March 7, 2015?

4 A. That's correct.

5 Q. And is that a complete and accurate
6 depiction of what he provided to you that morning?

7 A. Yes, sir, that's correct.

8 Q. Is that his signature at the bottom of
9 page 2?

10 A. Yes, sir.

11 MR. CANNON: At this time the State
12 would move to introduce Exhibit 37 into evidence.

13 THE COURT: Any objections other than
14 those previously argued?

15 MR. BOLES: None, Your Honor.

16 THE COURT: Very well. Subject to
17 those objections previously argued on the record in
18 this proceeding, State's Exhibit 37 is
19 admitted.

20 (STATE EXH. 37 in evidence.)

21 MR. CANNON: Beg the Court's
22 indulgence.

23 THE COURT: Certainly.

24 BY MR. CANNON:

25 Q. Officer Davis, when did you place

1 Mr. Broadway under arrest?

2 A. Mr. Broadway was arrested -- I believe
3 it was Tuesday, the following Tuesday.

4 Q. So a couple of days after the incident?

5 A. Yes, sir, I believe so.

6 Q. Were you the arresting officer for
7 that?

8 A. I know -- I believe I drafted the
9 warrants, so, yeah.

10 MR. CANNON: Okay. No further
11 questions at this time for this witness, Your
12 Honor.

13 Please answer any questions from
14 Mr. Boles.

15 THE COURT: You may cross-examine.

16 MR. BOLES: Thank you, Your Honor.

17 CROSS-EXAMINATION

18 BY MR. BOLES:

19 Q. Good afternoon, Officer Davis.

20 A. Hello, sir.

21 MR. BOLES: Let's see here. Can I pull
22 up -- let's go back to the exhibit, State's 36, the
23 map with all the --

24 BY MR. BOLES:

25 Q. Officer Davis --

1 A. Yes, sir.

2 Q. -- we have no evidence that -- other
3 than these three places, the defendant was anywhere
4 else on this evening in question. Starting with
5 time of accident to when you encountered him in the
6 driveway, these are the three places he went?

7 A. That we know of, yes, sir.

8 Q. Okay. There's no evidence of anything
9 else?

10 A. No, sir, not to my knowledge.

11 Q. And I'm looking at the smaller version
12 of it. It looks like that bar on the bottom is a
13 two-mile bar. Do you see that?

14 A. Yes, sir.

15 Q. Okay. So, you know, laying my pen out,
16 using the two-mile bar, would you say it's fair
17 that this triangle is about, from Domingo Lane to
18 BFE Bar, I don't know, two or three miles?

19 A. Probably close.

20 Q. Okay. And then from BFE -- and this is
21 kind of as the crow flies. I realize there's roads
22 and stuff to go around. From the bar to Chaff Lane
23 where he met you, you know, I'm measuring, you
24 know, two, four, maybe six, seven miles?

25 A. Maybe eight to ten, maybe.

1 Q. With roads and whatnot in the way?

2 A. Yes, sir.

3 MR. BOLES: Okay. And thank you.

4 That's all I need from that exhibit.

5 BY MR. BOLES:

6 Q. You responded to the residence at Chaff
7 Lane because you were called -- I'm sorry, because
8 911 received a phone call from Mr. Burton; is that
9 accurate?

10 A. Yes, sir.

11 Q. Okay. And he told 911 that
12 Mr. Broadway was at that residence?

13 A. Yes, sir.

14 Q. And that his car was at that residence?

15 A. Yes, sir.

16 Q. And then when you arrived at that
17 location, at that residence, the car and
18 Mr. Broadway were still there waiting for you?

19 A. Yes, they were both at the residence.

20 Q. Okay. And when you arrived at the
21 residence, Mr. Broadway met you in the driveway.
22 Is that what we observed on the video?

23 A. Well, he wasn't -- I mean, he came out
24 of the residence, yes, and into the driveway to
25 speak with us.

1 Q. Okay. And after, as we saw in the
2 video, you Mirandized him, he talked to you, didn't
3 he?

4 A. Yes, sir.

5 Q. Okay. And at this point you are clear
6 that he is the person who was involved in the
7 accident you're investigating?

8 A. That's correct.

9 Q. Correct?

10 A. Yes. By the end of the interview, yes,
11 sir.

12 Q. 100 percent certain it's him. And in
13 the interview he tells you that he was on the road
14 to go get his telephone?

15 A. Correct.

16 Q. Correct?

17 A. Yes, sir.

18 Q. And that when he went to he -- doesn't
19 know the name of the place, but as he calls it BFF.
20 We now know it's BFE. When we got there, no one
21 will let him use their phones. Your investigation
22 revealed this to you.

23 A. Correct.

24 Q. Okay. And, again, getting back to what
25 we just talked about, about this picture, we, based

1 on the evidence, know that he went from where he
2 thought his phone was to where you found him at
3 Chaff Lane, right?

4 A. Correct.

5 Q. And when he --

6 A. As far as we know.

7 Q. And when he got there, the phone call
8 to 911 went out, and that's why you came to that
9 residence was to meet him?

10 A. Yes, sir.

11 Q. Okay. And once there, he provided you
12 his ID. I think you said in the video earlier you
13 asked him for his ID and he gave it to you?

14 A. Yes, sir.

15 Q. And you, in talking with Mr. Cannon,
16 said that after the video was done, he also
17 provided you with all the insurance information on
18 his vehicle and, you know, whatever vehicle-related
19 information he was required to give?

20 A. Yes, sir, that's correct.

21 Q. Okay. And at what point did you ask
22 him if you could analyze his phone or view his
23 phone?

24 A. I never did.

25 Q. Okay. Again, you knew that there was a

1 grave injury, at the very least at this point,
2 while you're in the driveway, correct?

3 A. That's correct.

4 Q. And you know that he has told you the
5 only reason he was driving was to get his phone,
6 right?

7 A. That's correct.

8 Q. And yet you did not ask to -- if you
9 could voluntarily see his phone?

10 A. No.

11 Q. At the end of your interaction with
12 him, as shown on the video and as you just
13 testified, you knew all of these things that I just
14 asked you: He was the guy in the accident, someone
15 was gravely injured, the call was made by someone
16 at the residence to 911, correct?

17 A. Yes.

18 Q. You had all of this information. Okay.
19 And you even seized his car at that time, right?

20 A. Correct.

21 Q. Okay. And yet you did not issue a
22 warrant for his arrest until, I believe, three days
23 later?

24 A. Correct.

25 Q. Correct?

1 A. Yes, sir.

2 Q. And actually, he voluntarily turned
3 himself in, didn't he?

4 A. Yes, sir.

5 Q. Okay. So he met this head-on?

6 A. After we had arrived at the house, yes,
7 sir.

8 MR. BOLES: Okay. Beg the Court's
9 indulgence, Your Honor?

10 THE COURT: Certainly. Take your time.

11 BY MR. BOLES:

12 Q. I want to be sure that I captured this
13 correctly from the video recording. Mr. Broadway
14 expressed to you that he came to that residence
15 because those were his in-laws, soon to be former
16 in-laws, and he didn't know what to do?

17 A. Correct.

18 Q. And he came there to ask them, what do
19 I need to do?

20 A. Correct.

21 Q. Okay. And, again, after all that, he
22 was there when you arrived and he came down the
23 driveway and talked to you, correct?

24 A. Yes.

25 Q. Provided you with a written statement

1 that we've looked at?

2 A. Correct.

3 MR. BOLES: Okay. One second.

4 Officer Davis, thanks for being here
5 today. Those are all the questions I have for you.

6 THE COURT: Redirect?

7 MR. CANNON: No further questions, Your
8 Honor.

9 THE COURT: Thank you. Mr. Davis, you
10 may step down.

11 THE WITNESS: Thank you, Judge.

12 THE COURT: Call your next witness,
13 please.

14 MR. CANNON: Your Honor, at this time
15 the State rests its case.

16 THE COURT: All right. Ladies and
17 gentlemen, at this point I have some matters of law
18 that I must take up outside of your presence. I
19 would ask you to go to your jury room. Do not
20 begin your deliberations, don't discuss the case.
21 We will be with you as quickly as we can. Thank
22 you.

23 (Jury out at 2:42 p.m.)

24 THE COURT: All right. Any motions
25 from the State at this point?

1 MR. CANNON: No motions at this time,
2 Your Honor.

3 THE COURT: Mr. Boles, I'll be happy to
4 hear from you, sir.

5 MR. BOLES: Thank you, sir. If I could
6 have just one moment, sir.

7 THE COURT: Sure.

8 MR. BOLES: Thank you.

9 May it please the Court, Your Honor?

10 THE COURT: Certainly.

11 MR. BOLES: Your Honor, at this time,
12 the defendant makes a motion for directed verdict
13 on the charges as indicted. Grounds for this
14 offense, as the Court I'm sure is well aware, our
15 defense in this matter has been that Mr. Broadway
16 was seeking help for what happened on that evening.

17 For the purpose of establishing a
18 record, I hope you don't mind, I'll just walk
19 through some of the background, Your Honor.

20 THE COURT: Go right ahead.

21 MR. BOLES: As was established by the
22 State's witnesses in this matter, there was a motor
23 vehicle accident where the setting is a dark road
24 with pine trees on all sides. There are no street
25 lights and there is nothing within the immediate

1 vicinity by way of residences or business right
2 where the accident happened.

3 We heard testimony that Ms. Campbell
4 purposely pulled out in front of Mr. Broadway. She
5 told us that he had swerved into the grass. She
6 told us that as he regained the road is when he
7 made contact with Mr. Feagin.

8 And we also heard various accounts that
9 the first place Mr. Broadway went following that
10 was to where he thought his phone was. And there
11 has been no dispute from the State that
12 Mr. Broadway was without a cell phone at the time
13 that the accident occurred.

14 We also heard testimony from the
15 State's witnesses, Mr. Bryant, that when
16 Mr. Broadway arrived at where he thought his phone
17 was, he went to the door and banged on the door.
18 No one was there, or if they were, they didn't open
19 the door, so he wasn't able to go in.

20 He asked various people to borrow their
21 phone. We heard from Officer Logan Wolfsen. His
22 recollection of what Mr. Bryant told him shortly
23 after this encounter was that no one would let the
24 defendant use a phone.

25 Then the next place we know that

1 Mr. Broadway went to his in-laws' house on Chaff
2 Lane, where, as we heard, he told them that he
3 believed he had been in an accident. He said on
4 the video that we just watched that he didn't know
5 what to do and he's coming to them for help.

6 Mr. Burton called 911. Mr. Broadway
7 stayed there and when the police came, he gave him
8 his ID, he gave him a statement, and he gave them
9 all the necessary insurance information.

10 Now, this does not -- if this were a
11 clean-cut instance of, you know, someone going to a
12 pay phone and calling 911, I doubt we would be here
13 right now; however, my argument, Your Honor, is
14 that Mr. Broadway substantially complied with the
15 requirements of law, of Section 56-5-1210.

16 Most importantly, Your Honor, as the
17 State pointed out, if he never came back to the
18 scene, I can't imagine what sort of arrest would
19 have happened if he had actually left the Burtons'
20 in an attempt to go back to the scene.

21 So once he knows that the 911 call has
22 been made and that law enforcement is en route to
23 Chaff Lane, his duties are to remain and to wait
24 for law enforcement, and that's precisely what he
25 did at that point, Your Honor.

1 I've got a copy of -- I couldn't find
2 anything from South Carolina Jurisprudence that's
3 factually --

4 THE COURT: You don't need to argue
5 specific law. You can argue that at the next
6 level, should that be sufficient, sir. I've read
7 the law. I'm familiar with it. Thank you, sir.

8 MR. CANNON: Okay. Thank you, Your
9 Honor. That's our motion at this time. Thank you.

10 THE COURT: All right. First of all,
11 thank you, and I respect your version of construing
12 the statute, but this is my reading of the statute,
13 and I'm reading it verbatim: The driver of a
14 vehicle involved in an accident -- and this is from
15 Section 56-5-1210A -- in an accident resulting in
16 injury to or death of a person immediately shall
17 stop the vehicle at the scene of the accident or as
18 close to it -- as close to it as possible.

19 He shall then -- he then shall return
20 and in every event shall remain at the scene, not
21 remain somewhere else, but remain at the scene of
22 the accident until he has fulfilled the
23 requirements of Section 56-5-1230, which we know,
24 for the sake of brevity, that's giving data which
25 -- correct, he gave the information when asked. He

1 produced his ID, produced registration, produced
2 basically all the information that 56-5-1230
3 requires.

4 Sentence: However, he may temporarily
5 leave the scene to report the accident to proper
6 authorities. It doesn't say seek help to find out
7 what he's supposed to do. It says to report it.

8 Obviously, the inference to be drawn is
9 once he's reported it, he's to go back because we
10 know that 1230 requires him to render aid, to make
11 sure he has help, to make sure he can do everything
12 he can to assist the person who is injured.

13 The question here is what -- if the
14 jury wants to believe he was trying to report it,
15 and I would urge to say temporarily means to report
16 it, he drives fast and his testimony, the jury can
17 believe or disbelieve. I know there may be an
18 argument it wasn't there, but there's a Sunoco
19 station that he went by that was open, and all he
20 had to do was go in and say, call 911.

21 Because your -- said that 911 was
22 called. He doesn't know that because he didn't
23 make the call. He didn't know anything about 911,
24 at least from the evidence that I've heard thus
25 far.

1 So that being said, his waiting is
2 nothing more than unfortunately being caught, and
3 that's a view the jury could interpret. He doesn't
4 report until he's confronted by law enforcement.

5 And as far as calling, his
6 father-in-law testified that he told him you need
7 to report, and for whatever reason, he chose not to
8 and went to bed. The jury can construe that he
9 went to bed to wait for the people to come because
10 he -- I guess he read his father-in-law's mind and
11 knew he was going to call, but I don't know. Maybe
12 that's -- maybe that's circumstantial evidence, but
13 it's not sufficient.

14 I think there's sufficient evidence to
15 support the charge in every respect, and you and I
16 just have to agree to disagree on what temporarily
17 leaving the scene implies. Thank you, sir.

18 MR. BOLES: Thank you, Your Honor.

19 THE COURT: The motion is denied.

20 All right. Now, have you talked with
21 your client about whether he wishes to testify or
22 not to testify?

23 MR. CANNON: We've had that discussion,
24 Your Honor, and I had another witness I was going
25 to offer --

1 THE COURT: Well, that's fine, but I
2 first need to explore with him about that.

3 MR. BOLES: Okay. Sorry.

4 THE COURT: Has he made a statement?
5 Has he told you what he's decided to do?

6 MR. BOLES: Um ...

7 THE COURT: You need to tell me what
8 he's decided, then I need to ask him. So you take
9 a few minutes and talk to him and tell me what his
10 decision is.

11 MR. BOLES: May I approach, Your Honor?

12 THE COURT: No, sir, you can talk to
13 him --

14 MR. BOLES: Okay.

15 THE COURT: Approach for what reason,
16 Mr. Boles?

17 MR. BOLES: We have one other witness
18 we're going to call --

19 THE COURT: Mr. Boles, I will handle
20 the order of things. I do that. You and I haven't
21 had the pleasure of trying a case, I don't think,
22 together.

23 I want to do this at this break, and I
24 have an -- I have a way of dealing with that if he
25 changes his mind. I want to know what his decision

1 is now.

2 MR. BOLES: Okay.

3 (Off-the-record conference.)

4 MR. BOLES: Okay. Thank you, Your
5 Honor.

6 THE COURT: Yes, sir. Go ahead.

7 MR. BOLES: At this time we are not
8 planning on offering Mr. Broadway as a witness.

9 THE COURT: All right. Thank you very
10 much. Mr. Broadway, you can remain seated if you
11 choose to, sir.

12 THE DEFENDANT: I'll be glad to stand.

13 THE COURT: No, you don't have to
14 stand. If you want to stand, you can stand.

15 THE DEFENDANT: I'm not sure -- I'm not
16 sure the --

17 THE COURT: I know you don't and I'm
18 about to explain something to you. I mentioned to
19 you 611A being taught by, I think, a very wonderful
20 jurist and I'm grateful for having had the
21 experience to sit with him when I was doing my
22 brief sessions and then having the great pleasure
23 of being assigned to Columbia where he was a
24 circuit court judge.

25 And we shared a porch, our offices were

1 next to each other in Richland County for six
2 months. So I got to bend his ear and he's a --
3 he's -- I hope one day that I can be half as smart
4 as he is, and I doubt that I will ever achieve that
5 status.

6 But he shared with me indirectly
7 something, because I was reviewing a record on a
8 case in a post-conviction relief case that he was
9 the trial judge. And in that -- and I had never
10 thought of it because I did the same thing that
11 every lawyer that I know does today and I did it 21
12 years, when you address the Court, you stand up.
13 That's just common protocol.

14 Chief Justice Pleconis in the record
15 said, sir -- he was talking to a defendant in a
16 criminal trial, which is even more significant to
17 me. Sir, you don't have to stand up if you don't
18 want to. Your lawyer does because he's an officer
19 of the court and that's required as part of the
20 protocol, but you are a citizen of this state and
21 this court is held for your benefit. So you don't
22 have to stand for me unless you choose to.

23 And I thought, that makes perfect sense
24 to me because that's -- I think all of us who are
25 privileged to hold this position are servants and I

1 see it in that fashion.

2 So if you want to stand, that's fine.

3 THE DEFENDANT: Out of respect, sir, I
4 will be glad to stand.

5 THE COURT: You don't have to, but
6 thank you, sir.

7 THE DEFENDANT: I'm just not exactly
8 sure of the protocol.

9 THE COURT: I know you're not and you
10 don't have to, but I respect that and I thank you
11 for that.

12 You've had the opportunity to talk with
13 your lawyers about your right to testify and not to
14 testify?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: And you've had an
17 opportunity to reflect on that?

18 THE DEFENDANT: Yes, sir, we've
19 reflected.

20 THE COURT: And it's your decision at
21 this point to exercise your right, your
22 constitutional right, as you've heard me tell the
23 jury, and if you choose to continue that status,
24 I'll tell them again in charge that that is a
25 very -- that's something critical about this

1 beautiful country, that people accused of criminal
2 offenses don't have to say a thing. They don't
3 have to present any evidence. They don't have to
4 do a thing and you can't consider that whatsoever.
5 In fact, I tell them in my charge, if you do, you
6 violate the oath that you took.

7 But it is your right to testify if you
8 wanted to. You understand that?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: But if you did, of course,
11 as you've witnessed, you would be subject to
12 cross-examination just as every witness that
13 appears in this proceeding.

14 THE DEFENDANT: I understand, sir.

15 THE COURT: As you sit here today and
16 at this moment, it is your decision to continue to
17 exercise your right to remain silent; is that
18 correct?

19 THE DEFENDANT: As of this moment, yes,
20 sir.

21 THE COURT: That would be fine.

22 Now, are you under the influence of
23 anything, any alcohol, any medication that would
24 affect your ability to make this decision?

25 THE DEFENDANT: No, sir.

1 THE COURT: And are you comfortable
2 that you've had sufficient time to discuss it with
3 your lawyers and discuss various strategies that
4 may be, if there be any, and then reflect on that
5 and make a conscious decision for yourself?

6 THE DEFENDANT: Sir, I believe I've
7 learned as we went.

8 THE COURT: I understand.

9 THE DEFENDANT: And as far as I know in
10 my legal credibility, yes, I guess.

11 THE COURT: Okay. Very well.

12 And no one is forcing to you to make
13 this decision?

14 THE DEFENDANT: No, sir.

15 THE COURT: It's one that you make
16 freely and voluntarily?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Very well. Thank you very
19 much, Mr. Broadway.

20 THE DEFENDANT: Thank you, sir.

21 THE COURT: What I would say is that at
22 this point, Mr. Broadway has demonstrated that he's
23 very --

24 And are you comfortable with that and
25 are you satisfied with the manner in which your

1 attorneys have advised you concerning this issue.

2 THE DEFENDANT: Yes, sir.

3 THE COURT: And he's had the benefit of
4 very competent counsel, with whom he's indicated
5 he's totally satisfied. I find that it's a
6 decision that he is making to continue to exercise
7 his right to remain silent, and that he makes that
8 freely, voluntarily, knowingly and intelligently.

9 You may be seated. Thank you, sir.

10 THE DEFENDANT: Yes, sir.

11 THE COURT: If at any point, Mr. Boles
12 and/or Mr. Broadway, you decide to change your
13 mind, all you need to do is make me aware of that
14 and I will excuse the jury and we will revisit this
15 issue. But at this point -- and I understand
16 Mr. Boles has indicated he may call a witness. At
17 the point that he says, defense rests, then that
18 decision remains solid, okay? And you stand by
19 your answers; is that correct?

20 THE DEFENDANT: That's correct.

21 THE COURT: So unless I hear from you
22 otherwise, I will assume that you wish to continue
23 to exercise that right to remain silent; is that
24 fair?

25 THE DEFENDANT: That is fair.

1 THE COURT: Very well. Thank you so
2 much.

3 Now, Mr. Boles, you do have a witness
4 you wish to call?

5 MR. BOLES: Yes, sir. I'm checking my
6 watch. Based on what I was -- scheduled, we're a
7 little bit behind or we finished faster than I
8 thought we were going to. She's supposed to be
9 here at 3:30.

10 THE COURT: Okay.

11 MR. BOLES: I'll be happy to step out
12 and call her.

13 THE COURT: If you could see where she
14 is so we could get a feel for her, we'll be at
15 ease. That'll be fine.

16 MR. BOLES: I think so.

17 THE COURT: That'll be fine. Thank
18 you, sir. We'll be at ease for a few minutes.

19 (A recess transpired.)

20 MR. BOLES: She's in Moncks Corner, so
21 she'll be here any minute.

22 THE COURT: She's in Moncks Corner?

23 MR. BOLES: Yes, she lives there. She
24 can be here any minute.

25 THE COURT: Good. Thank you, sir. We

1 will be at ease.

2 (A recess transpired.)

3 THE COURT: All right.

4 MR. BOLES: Thank you, Your Honor.

5 This was the witness we were prepared to call
6 today. And for the Court's scheduling purposes,
7 once we are done with this witness, I was going to
8 ask that we reconvene tomorrow morning.

9 THE COURT: Okay. Well, I appreciate
10 that. I will make that call and I understand your
11 request.

12 MR. BOLES: Thank you.

13 THE COURT: Thank you, sir.

14 All right. Are you ready to proceed?

15 MR. BOLES: Yes, sir.

16 THE COURT: Bring in the jury.

17 I think we can accommodate you.

18 MR. BOLES: Thank you, sir.

19 THE COURT: Because the jury is going
20 to have to come back tomorrow for that next case.

21 (Jury in 3:20 p.m.)

22 THE COURT: Thank you so much, ladies
23 and gentlemen. You recall when we first started, I
24 mentioned to you that in this country, persons
25 accused of criminal offenses are never required to

1 prove or disprove anything at all. And I shared
2 that you would hear first from the State, because
3 the State is the only party that has any burden of
4 proof. And I said that if the defendant chose to
5 do so, he certainly had the right to do that.

6 So we are now at the point that the
7 State has completed its case.

8 Mr. Boles, does the defendant wish to
9 present any additional witnesses for the jury's
10 consideration?

11 MR. BOLES: Yes, sir, Your Honor. The
12 defense calls Marlene Burton.

13 THE COURT: Very well.

14 MARLENE BURTON

15 being first duly sworn, testified as follows:

16 THE CLERK: Please have a seat. State
17 your full name for the record and spell your last
18 name, please.

19 THE WITNESS: Pamela Marlene Burton,
20 B-U-R-T-O-N.

21 THE COURT: You may proceed.

22 MR. BOLES: Thank you, Your Honor.

23 DIRECT EXAMINATION

24 BY MR. BOLES:

25 Q. Good afternoon, Ms. Burton.

1 A. Hello.

2 Q. Are you married to Harvey Burton by
3 chance?

4 A. Yes.

5 Q. You live together on Chaff Lane?

6 A. Yes.

7 Q. And you know Mr. Sam Broadway?

8 A. Yes, I do.

9 Q. Are you also familiar with what we're
10 here about for this trial?

11 A. Yes.

12 Q. Were you at home March 6th and 7th of
13 2015?

14 A. Yes, I was.

15 Q. Okay. And did Mr. Broadway come to
16 your home that evening --

17 A. Yes.

18 Q. -- or early morning?

19 A. Yes.

20 Q. Okay. Tell the jury what -- how did he
21 arrive? What happened?

22 A. Well, we were all in bed. I heard I
23 think it was a knock at the door. I went to answer
24 the door. I flipped the light on and it's Sam.
25 And of course, I'm very outspoken. What in the are

1 you doing here this time of day -- night?

2 And he said --

3 MR. MCNEELY: Objection, Your Honor.

4 THE COURT: Sustained. It's hearsay.

5 THE WITNESS: When I asked him what he
6 was doing there, he told me --

7 MR. MCNEELY: Objection, Your Honor.

8 THE COURT: Sustained.

9 MR. BOLES: If I could.

10 BY MR. BOLES:

11 Q. Ms. Burton, we'll have to stick with --

12 A. I thought you asked what --

13 Q. That's all right. That's all right.

14 We have to stick with what you observed and saw,
15 not what anybody else --

16 A. Okay. I saw Sam at my front door. I
17 let him in. I asked him what he was doing there.
18 In the conversation I found out that --

19 MR. MCNEELY: Objection, Your Honor.

20 THE COURT: Sustained. It would be
21 hearsay.

22 THE WITNESS: Okay. Just ask me what
23 you want me to --

24 BY MR. BOLES:

25 Q. Yes, ma'am. Describe his appearance.

1 A. When Sam came to my door, he was kind
2 of, what I would call, in shock. He was kind of
3 just like hunched over like he needed help.

4 Q. Okay. Did he discuss with you what had
5 happened earlier that night?

6 A. He told me what he was --

7 MR. MCNEELY: Objection, Your Honor.

8 THE COURT: Again, just answer the
9 question --

10 THE WITNESS: Yes.

11 THE COURT: -- did he discuss with you?

12 THE WITNESS: Yes.

13 THE COURT: Okay. I'll overrule the
14 objection to did he discuss it with you.

15 BY MR. BOLES:

16 Q. Did you-all discuss his cell phone at
17 all?

18 A. Yes.

19 Q. What do you know about his cell
20 phone --

21 MR. MCNEELY: Objection.

22 THE COURT: I'll sustain that, unless
23 you can establish how she could have known of her
24 own knowledge without discussion with the
25 defendant.

1 MR. BOLES: Okay.

2 THE WITNESS: He did not have his phone
3 with him --

4 THE COURT: No, ma'am. No, ma'am, you
5 can't answer that question. Thank you.

6 Jury will disregard the witness' last
7 response.

8 BY MR. BOLES:

9 Q. Who else was there that night at your
10 house?

11 A. I had my two youngest granddaughters,
12 my husband was there, and later on my daughter came
13 in.

14 Q. Okay. And was -- between you and
15 Mr. Burton and Mr. Broadway, out of the three of
16 you, how were you all interacting? More
17 specifically, were you interacting with
18 Mr. Broadway or was your husband?

19 A. I was.

20 Q. Okay. Were you close physically, you
21 know, together while you were talking?

22 A. Yes. I think I gave Sam a hug when he
23 came in.

24 Q. Was there discussion about contacting
25 law enforcement?

1 A. Yes. Can I tell you what Sam told me?

2 THE COURT: Just -- ma'am --

3 THE WITNESS: There was --

4 THE COURT: Ma'am, you can answer the
5 question.

6 THE WITNESS: Yes.

7 THE COURT: Okay.

8 BY MR. BOLES:

9 Q. Did Mr. Broadway use your phone to call
10 the police?

11 A. No.

12 Q. Did your husband use the phone to call
13 the police?

14 A. Yes.

15 Q. Why did Mr. Burton call the police?

16 A. Sam asked him to call.

17 MR. MCNEELY: Objection, Your Honor.

18 THE COURT: Sustained; hearsay.

19 Jury disregard the last statement.

20 BY MR. BOLES:

21 Q. At any point in your discussions,
22 everyone at the house, did Mr. Broadway try to stop
23 anyone from calling the police?

24 A. No, he did not.

25 Q. Okay. Based on your observations at

1 the house, did he want you to call the police?

2 MR. MCNEELY: Objection, Your Honor.

3 THE COURT: Sustained. That would call
4 for speculation on the part of the witness. I will
5 not allow it under 602.

6 MR. BOLES: Thank you, Your Honor.

7 THE COURT: Okay.

8 BY MR. BOLES:

9 Q. Did he direct you to call the police?

10 MR. MCNEELY: Objection, Your Honor.

11 THE COURT: Sustained. It's hearsay.

12 MR. BOLES: Thank you, Your Honor.

13 BY MR. BOLES:

14 Q. Tell the jury about Harvey's hearing.

15 A. I don't know if it's selective or he
16 just doesn't hear well, but he does have a hearing
17 problem.

18 Q. Okay. And did he have that same
19 hearing problem a year ago in March of 2015?

20 A. He's had it for awhile, yes.

21 Q. The selective or the physical?

22 A. Physical. The selective has been about
23 39 years.

24 Q. Okay. And, again, I want to kind of
25 paint a picture in the jury's mind of you,

1 Mr. Burton, and Mr. Broadway and your relation to
2 each other inside the house.

3 Okay. Am I hearing you correctly that
4 you were more closely in contact with Mr. Broadway?

5 A. Yes.

6 Q. And Mr. Burton, was he always in the
7 room with the two of you?

8 A. No. No.

9 Q. Where was he?

10 A. Our discussion woke him up. He was in
11 bed.

12 Q. Okay. And then once he got up, did he
13 come and sit down beside you all and remain beside
14 you?

15 A. No.

16 Q. Okay. Did he move about the house?

17 A. Yes.

18 Q. Okay. Were there discussions between
19 you and Mr. Broadway that Mr. Burton --

20 MR. MCNEELY: Objection, Your Honor.

21 THE COURT: I haven't heard the
22 question.

23 Don't answer the question until he
24 finishes asking it, please.

25 BY MR. BOLES:

1 Q. I don't want to know the content of the
2 discussion. I just want to know when you were
3 talking to Mr. Broadway, was Mr. Burton in places
4 where he wouldn't hear --

5 A. Yes.

6 Q. -- what you were saying?

7 In fact, on a good day, how close would
8 he need to be to you-all to really hear the
9 discussions you were having?

10 A. Unless we were speaking louder than
11 right now without a microphone, he couldn't hear me
12 from the distance between me and you.

13 Q. Okay. Okay. Was it made known to
14 Mr. Broadway that law enforcement had been called?

15 A. Yes.

16 Q. Okay. And I believe you testified that
17 his daughters were at your house that evening?

18 A. The youngest, yes.

19 Q. The youngest daughters were there?

20 A. Yes.

21 Q. They're twin girls?

22 A. Yes.

23 Q. Okay.

24 A. They were four at the time.

25 Q. So what happened after it was made

1 known to Mr. Broadway law enforcement had been
2 called?

3 A. He just went in with the girls and laid
4 down across the foot of the bed with them.

5 Q. Did he remain there until law
6 enforcement arrived?

7 A. Yes, sir.

8 Q. And when law enforcement arrived, did
9 he go out and talk to them?

10 A. Yes, he did.

11 Q. Did he ever try to flee your house?

12 A. No.

13 Q. Did he ever try to hide in your house?

14 A. No.

15 MR. BOLES: Okay. Those are all the
16 questions I have for you, Ms. Burton. Thank you
17 for coming. Please answer anything that the
18 State's attorneys may have.

19 THE COURT: Cross-examine.

20 MR. MCNEELY: Thank you, Your Honor.

21 CROSS-EXAMINATION

22 BY MR. MCNEELY:

23 Q. Good afternoon, Ms. Burton. How are
24 you doing?

25 A. Just fine.

1 Q. I believe you testified that your
2 husband, Harvey, who the jury heard from earlier
3 today, doesn't have the best hearing; is that
4 correct?

5 A. That's correct.

6 Q. But did you also not testify that he
7 heard you and Mr. Broadway at the front door and
8 that woke him up out of a dead sleep?

9 A. No. I said that he heard us in the
10 living room talking, which is about as far as from
11 me to the judge. And when you're asleep -- and I'm
12 not quiet when I talk. And I have two dogs who
13 also barked.

14 Q. But Mr. Burton sure heard you talking
15 in the next room, correct?

16 A. He heard noises in the next room, yes.

17 Q. Does your home have a landline
18 telephone?

19 A. Yes.

20 Q. Is that the phone that Mr. Burton used
21 to call the police on March 7th, 2015?

22 A. Yes.

23 Q. And I believe you testified that
24 Mr. Broadway never once picked up the telephone to
25 call the police; is that not correct?

1 A. That's correct.

2 MR. MCNEELY: No further questions,
3 Your Honor.

4 THE COURT: Redirect?

5 MR. BOLES: No, thank you. We can
6 excuse the witness, please.

7 THE COURT: Certainly. Any objection?

8 MR. MCNEELY: No, Your Honor.

9 THE COURT: Ms. Burton, you may step
10 down. You are free to leave.

11 All right. Any additional witnesses on
12 behalf of the defense?

13 MR. BOLES: At this time, Your Honor,
14 no.

15 THE COURT: Defense rests?

16 MR. BOLES: No, no, sir. No, sir, we
17 don't rest.

18 THE COURT: This is where you're going
19 to have to make -- I'm not going -- if you have
20 another witness, you need to call them.

21 Approach, please.

22 MR. BOLES: Yes, sir.

23 (Bench conference.)

24 MR. BOLES: Thank you for that
25 indulgence, Your Honor.

1 THE COURT: Sure.

2 MR. BOLES: The defense rests.

3 THE COURT: Very well. Is there any
4 reply testimony from the State?

5 MR. CANNON: No, Your Honor.

6 THE COURT: Okay. Ladies and
7 gentlemen, there's some matters of law now that I
8 again must take up out of your presence. In
9 addition, there are two parts we will now have --
10 you've completed the evidentiary portion, but as
11 you recall, there are two very important parts to
12 this process; one, of course, the last remarks of
13 the attorneys where they have an opportunity to
14 discuss with you the evidence and suggest
15 reasonable inferences that you may draw from that
16 evidence. And both of which that -- both of their
17 arguments will be very helpful to you. And
18 following that is the charge on the law.

19 In discussing the case, we may have to
20 come back tomorrow anyway, but I'm going to --
21 since we don't know how long the deliberations --
22 because I'm sure that you've honored the commitment
23 that you've made. So rather than to push
24 through -- it would probably be close to 5:00 by
25 the time you got the case, and that's starting

1 deliberations and we don't know how long that is
2 going to take.

3 So rather than to do that, I think the
4 better thing to do is to go ahead and let you break
5 for this evening. We will take up our matters of
6 law and we will resume this and you will hear --
7 when we return, you will hear the closing arguments
8 and the charge on the law.

9 I would ask you to be in your jury room
10 please by 9:30 in the morning. And please remember
11 that while you will not hear any more evidence and,
12 of course, that's evidence that you ultimately will
13 be requested to analyze and decide what you find to
14 be credible and believable, it still would be
15 inappropriate for you to change that open mind that
16 we've talked about. You are not at that point yet.
17 And if you should commence that process, you will
18 have violated the commitment that you've made to
19 the State and to Mr. Broadway, and I know that each
20 one of you will not do that.

21 Do not discuss the case among
22 yourselves. Again, do not discuss this case with
23 anyone at home. Tomorrow you will complete this
24 case and then you will be free to talk about it if
25 you wish, but until then, please remember that you

1 are not at liberty to talk with anyone about it and
2 you're not at liberty to have anyone talk with you
3 about it or discuss it with you.

4 Thank you for your attention. You are
5 now free to leave for the evening. Do not call the
6 number. Just report to your jury room at 9:30.
7 Thank you so much. Have a good evening.

8 (Jury out, 3:32 p.m.)

9 THE COURT: All right. Any matters
10 from the State at this point?

11 MR. CANNON: Nothing further, Your
12 Honor.

13 THE COURT: Mr. Boles, renew your
14 motion --

15 MR. BOLES: We renew our motion for
16 directed verdict and would add to arguments already
17 made, the testimony that the Court has received
18 from our witness in this matter.

19 THE COURT: Okay. And I thank you,
20 sir. I think it's a question for the jury stated
21 in the light most favorable to the State --

22 MR. BOLES: Yes, sir.

23 THE COURT: -- that would establish he
24 violated the statute. There is no question that
25 each element that is required through part of my

1 charge and my opinion, either by direct evidence or
2 circumstantial evidence, and supports a
3 determination that there was a violation. Clearly
4 there was a death. Clearly he was in an accident.
5 There's no question about that, but there's
6 evidence that he did not comply with the statute or
7 the requirements that have been made and parts of
8 the charge that will be given.

9 So I feel that the State has at least
10 met the burden required to get by a directed
11 verdict, so the motion is denied.

12 Any specific requests to charge from
13 the State? I'm going to charge leaving the scene
14 with various elements that are listed.

15 Anything specific from the defendant
16 that you wish --

17 MR. BOLES: Not at this time, Your
18 Honor.

19 THE COURT: Okay. I'm not inclined to
20 inject alcohol into this now, to charge that. I
21 don't see any need to. I don't -- assume you're
22 not going to argue he was under the influence.

23 MR. CANNON: I have no intentions to
24 argue that he was under the influence.

25 THE COURT: Then I don't know that

1 there's any reason to argue that --

2 MR. BOLES: Just that there was --
3 there were statements by Lieutenant Battista to the
4 effect --

5 THE COURT: Well, that's fine. If you
6 want me to mention it, it's not against -- I will
7 reiterate what I told them before and -- but I
8 don't know why you'd want to bring that --

9 MR. BOLES: Not from me. It's the same
10 instruction that you gave at the outset?

11 THE COURT: Yes, exactly.

12 MR. BOLES: They already got it.

13 THE COURT: There's no need because DUI
14 is not -- you asked him the question. You didn't
15 charge him with driving under the influence? No,
16 he didn't.

17 MR. BOLES: That's correct.

18 THE COURT: So there's really no reason
19 to discuss that.

20 MR. BOLES: That's correct. Thanks.

21 THE COURT: And that was after -- he
22 was basically the arresting officer. That was
23 after Lieutenant Battista's position that he had
24 expressed, although he would -- was not in his
25 report, but it was done. So, to me, that was --

1 that pretty much closed the door on that issue, I
2 think.

3 MR. BOLES: Okay.

4 THE COURT: If you think about it, let
5 me know. I can certainly add that tomorrow.

6 MR. BOLES: Thank you, Judge.

7 THE COURT: You bet. All right. See
8 you all at 9:30 then.

9 (These proceedings were recessed at
10 3:41 p.m., to be continued 11/30/2016.)

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1 (The following proceedings were had
2 11/30/2016, in re: State v. Broadway, Berkeley
3 County Circuit Court, 9:32 a.m.)

4 THE COURT: Let's bring in the jury
5 please.

6 (Jury in, 9:32 a.m.)

7 THE COURT: Good morning, ladies and
8 gentlemen. I hope you had a good evening. Let me,
9 before we start, tell you again how much it's been
10 an honor to serve with you as a judge, and I
11 appreciate the manner in which you approached your
12 duties as judges and jurors in this case. Very
13 shortly you're going to commence the process of
14 resolving this matter, and I thank you for your
15 commitment to that process, as well as honoring the
16 oath that you took in every respect.

17 As I mentioned yesterday, we're not
18 going to hear anymore evidence, so you can rest
19 comfortably with that. You've heard all the
20 evidence, but as I suggested, and I again still
21 reiterate, what would be said now will help you
22 immensely when you begin the process of deciding
23 this case.

24 In fact, last night I was discussing
25 with my wife this process. And -- and it's

1 something that you don't do every day of your life.
2 And sometimes, I'll confess, that we who have been
3 a part of this for a number of years kind of take
4 that for granted and just say, they understand.
5 But that's not fair to you.

6 What's going to happen very shortly
7 after we go through these next two parts is you
8 will go back and you're going to discuss the
9 evidence and, basically, analyze what you believe
10 to be the true facts of this dispute and make the
11 decision on that. And once you decide those facts,
12 then you will take the law, as I will give it to
13 you, and apply it fairly and impartially.

14 The remarks of the attorneys will help
15 you in -- both in the analysis and -- obviously,
16 there are two sides to this process. It's an
17 adversarial proceeding. That's exactly what it was
18 intended to be and should be. And I would expect
19 that you would give your attention to each side as
20 they talk about it and highlight the strengths of
21 their particular case.

22 And those strengths will be something
23 -- those and other matters that you think are
24 important, will be matters that you will then focus
25 on and decide, what do I truly believe?

1 And then you will take the law -- and
2 they're going to discuss the law with you, but as
3 they will tell you and I will remind you in my
4 charge, what they say is the law is not what you're
5 going to apply. You apply the law as I give it to
6 you, and that would be the process.

7 Let me also state something now. We
8 have a wonderful court reporter. It's an honor to
9 serve with her too. I'm glad to be on your team of
10 court reporters as we have an excellent one here
11 today. Please remember that -- and sometimes
12 jurors want to take notes, and that's fine, but one
13 of the things that I've always felt, it's better to
14 focus rather than to take the notes, because, as we
15 know, body language speaks loudly sometimes and
16 that's important I think and it's important to
17 really grasp everything that's happening.

18 But if, when you begin your
19 deliberations, you can't agree on what a witness
20 said or didn't say, please know that we have the
21 capability of replaying that for you if that be
22 necessary.

23 And so with that additional
24 instruction, please give your attention now to the
25 attorneys as they give their opening (sic)

1 statements. And, again, their remarks are
2 extremely important so they would be helpful to
3 you.

4 Does the State wish to make any opening
5 statement on the law?

6 MR. MCNEELY: We do.

7 THE COURT: Very well. You may
8 proceed.

9 MR. MCNEELY: Thank you.

10 Morning, ladies and gentlemen. First
11 off, I'll thank you for your time and attention
12 over the last several days. I know that everybody
13 has lives to attend to, but what we're here for, as
14 the judge said, is very important. Your service
15 and time does not go unappreciated.

16 In a moment you will hear from
17 Mr. Boles on behalf of the defendant, and you will
18 hear from Mr. Cannon on behalf of the State, as it
19 applies to the evidence you've heard in this case.
20 Briefly, before that, I'm going to address you on
21 the law as it applies to the case just so we're all
22 on the same page going forward.

23 As you're aware and you were made aware
24 in the beginning, Mr. Broadway, in this matter, is
25 charged with leaving the scene of the accident

1 resulting in death. The law on this charge is very
2 simple. All he had to do was stop. As Mr. Cannon
3 said in the beginning, nobody is here today
4 asserting that the defendant intentionally killed
5 Jesse Feagin. How the accident happened is
6 inconsequent. All we're here today to discuss is
7 the crime charged, and the crime in this case is
8 the defendant's failure to stop.

9 The law is simple on this. When you're
10 involved in an accident, no matter whose fault it
11 is, when that accident results in death, you're
12 obligated to stop at the scene. If you're driving,
13 if you are involved in an accident that results in
14 the death of an individual and you do not stop at
15 the scene, that is a crime. That's the crime the
16 defendant in this case is charged with.

17 As you've heard, the driver of a
18 vehicle involved in an accident resulting in death
19 shall immediately stop his vehicle at the scene and
20 go back to the scene, meaning just down the road
21 where it happened, as soon as possible to render
22 aid.

23 The defense in this matter wants to
24 focus on the last sentence; however, he may
25 temporarily leave the scene to report the accident

1 to the proper authorities. A person that fails to
2 stop is to follow the requirements of the section.

3 What that sentence contemplates is
4 somebody who is out in the county, out in Saint
5 Stephen hunting where cell service is bad or they
6 may not have a phone. They're involved in an
7 accident and they have no way to get help. The
8 statute allows them to go get help, but there are
9 two very important words in that last sentence.

10 The first is, temporarily leave. That,
11 by definition, means that you have to come back.
12 You can leave and go get help, but you have to come
13 back. And it says to report the accident to the
14 proper authorities. That means the person has to
15 report the accident. In this case, none of that
16 happened.

17 What we know is the defendant was
18 driving a vehicle, number one; he was involved in
19 an accident that resulted in the death of Jesse
20 Feagin, that's two; and that he did not stop at the
21 scene, never returned, and never called
22 authorities.

23 That's the law in this case.
24 Mr. Cannon is going to discuss with you that's what
25 the evidence shows; it shows the defendant in this

1 case is guilty of that crime. The reporting
2 statute that's referenced in the crime is just
3 personal information you would expect you have to
4 provide in an incident, your vehicle information,
5 your insurance, and you have to render aid, medical
6 attention. That didn't happen here.

7 Beyond a reasonable doubt, the Judge is
8 going to instruct you on that. Mr. Cannon will
9 mention it, but as Mr. Cannon mentioned initially,
10 it's not beyond all doubt. There's very little we
11 know in life is beyond all doubt. Death and taxes
12 is probably about it.

13 Beyond a reasonable doubt. What that
14 means is evidence that leaves you firmly convinced.
15 And Mr. Cannon will address it, but I will tell you
16 right now, the evidence in this case that you've
17 heard, Mr. Broadway was driving, he was involved in
18 an accident that resulted in the death of Jesse
19 Feagin, and he didn't stop and he didn't go call
20 authorities and come back.

21 The evidence in this case should leave
22 you firmly convinced that he's guilty of the crime
23 charged.

24 Thank you for your time.

25 THE COURT: Thank you, sir.

1 Mr. Boles.

2 MR. BOLES: Thank you, Your Honor. May
3 it please the Court.

4 Ladies and gentlemen of the jury, when
5 I started out on Monday, I asked you to keep your
6 eyes peeled and your ears open for one part of the
7 statute that we have been here about; and that is,
8 that he may temporarily leave the scene to report
9 the accident to the property authorities. And I
10 asked you to listen to the evidence presented, and
11 I asked you to keep your ears peeled for whether
12 the evidence addresses whether Mr. Broadway went to
13 get help.

14 Let's walk through the testimony and
15 evidence that we've heard throughout this trial.
16 First up, according to my notes, was Matthew
17 Schneider. He was the off-duty firefighter, EMT I
18 believe, who stopped at the scene, just happened
19 upon it. He told you about how dark the scene was,
20 about how remote the scene was, and he told us some
21 pretty graphic information about the defendant and
22 the car wreck.

23 And, again, going back to my opening,
24 we have never disputed there was an accident, and
25 we have never disputed that someone lost their life

1 as a result of that accident. We're here about
2 whether Mr. Broadway went to get help. And
3 Mr. Schneider didn't have a lot to offer in the way
4 of what Mr. Broadway was doing.

5 Then we heard from Ms. Richley Campbell.
6 who, much to my surprise, told us that on purpose
7 she pulled out in front of Mr. Broadway. She told
8 us that he narrowly escaped colliding with her car
9 by swerving into the grass, which we saw in some of
10 the pictures was covered in frost that night. She
11 told us that he fish-tailed on the side of the
12 road, and by some miracle Mr. Broadway was able to
13 maintain control of his car, and when he regained
14 the road, his collision with Mr. Feagin happened.

15 She could not recall whether she saw
16 any brake lights from Mr. Broadway, and she also
17 let us know that there were certain parts of her
18 statement that were omitted to police.

19 Again, was she able to offer any
20 information about whether Mr. Broadway was going
21 for help after the accident occurred? And she
22 wasn't.

23 We next heard from Jason White. He was
24 the gentleman who worked at the Sunoco, who told us
25 that it had recently opened. He told us that he

1 saw the car fitting Mr. Broadway's description
2 drive past on its way to the place where Mr.
3 Broadway believed his phone was. He told us that.
4 Outside of that, he doesn't know what was going on
5 inside the car. Again, another witness offered by
6 the State that has not been helpful in educating us
7 on whether Mr. Broadway was going for help.

8 We then heard from Justin Bryant who
9 was at BFE where Mr. Broadway believed he left his
10 phone. His testimony was that Mr. Broadway pulled
11 up, immediately banged on the door. He is -- the
12 first thing that he does when he gets there is to
13 go where he thinks his phone is.

14 And, bear in mind, we heard from the
15 State and from my opening that the only reason Mr.
16 Broadway was even out that night was to retrieve
17 his telephone. You also heard that in the video
18 they played for you. That's the only reason he was
19 driving.

20 We heard that Mr. Broadway asked
21 repeatedly to use other people's telephones there;
22 no one let him. No one else -- hearing what he was
23 saying, I think I've been in an accident, I don't
24 have my phone, I need to use my phone. No one else
25 in the parking lot called 911.

1 Then we heard from law enforcement.

2 First, we heard from Officer Stayton. He told you
3 about the accident scene. I told you about the
4 accident scene in my opening. He didn't offer any
5 testimony as to whether there was any evidence
6 about whether Mr. Broadway was going to notify the
7 proper authorities.

8 Then we heard from Officer Ambroziak.
9 He went to the Sunoco. Strangely enough, he wasn't
10 able to recover any footage because, as he put it,
11 the Sunoco was recently opened and they still
12 hadn't installed their security footage yet.

13 One of the questions that has come up
14 throughout the trial; why didn't he stop at the
15 Sunoco? We heard from Mr. Schneider that he drove
16 past the Sunoco and was unaware of whether it was
17 opened, it was a new place. Secondly, we also
18 heard that from the accident site to where
19 Mr. Broadway believed his phone was, was
20 approximately a mile-and-a-half. It was the first
21 place that he went, was where he thought he was
22 going to be able to get his phone to call.

23 Next Officer Wolfsen talked to us.
24 He's the officer that spoke with Justin Bryant
25 shortly after the accident, and he confirmed the

1 same theme that we have been hearing throughout
2 this trial. He confirmed that Justin Bryant told
3 him someone fitting Mr. Broadway's description,
4 driving a car that they were looking for, came to
5 BFE and asked repeatedly to use a phone and was
6 repeatedly denied access to a phone, and then he
7 left.

8 Then we heard from Officer Vazquez who
9 also was at the accident scene, told us more about
10 the accident that we already know happened. He did
11 confirm that the scene was extremely dark and that
12 there were no lights in the area where the accident
13 took place.

14 Next, the State put up Officer Battista
15 -- I'm sorry, Lieutenant Battista. Lieutenant
16 Battista was the officer in charge of the entire
17 investigation of this matter. He told you that he
18 had to review everyone's reports and the warrants
19 they applied for, he signed off on all of them.
20 And much to my disappointment, Officer Battista
21 tried to offer some disparaging commentary about
22 Mr. Broadway.

23 And you saw what happened when I
24 collected the contents of their investigation which
25 he confirmed needed to be accurate, thorough, and

1 complete.

2 I said, Lieutenant Battista, show me
3 where these remarks that you are now making in
4 front of the jury appear in your officer's
5 investigation.

6 And what did he say? They don't.
7 They don't. In fact, the author of most of those
8 materials was Officer Davis who Lieutenant Battista
9 told you was the closest to the defendant while
10 they were talking in the driveway, did all of the
11 interviewing of the defendant, went inside the home
12 with the defendant while he voluntarily read his
13 statement to the police.

14 Did Officer Davis say any of those
15 remarks that we heard from Battista? No.

16 We also heard from Lieutenant Battista
17 that he was aware in the driveway that Mr. Broadway
18 told them, I was driving that night to go get my
19 phone. And this lieutenant who has years of law
20 enforcement experience and training in how to
21 investigate matters, this experienced lieutenant
22 did not ask, may we see your phone? Voluntarily
23 even.

24 Don't worry -- don't even worry about
25 that they didn't get a warrant for it. Okay?

1 Because the phone would establish whether he had
2 called anybody. The phone would establish whether
3 the phone was even on or working at the time. He
4 didn't ask that.

5 They did seize the car, which as we all
6 know from my opening statement until now was
7 involved in the accident, but they didn't ask for
8 the one key piece of evidence. Even just
9 voluntarily to look at it. May I please look at
10 it?

11 You know, it made me think about, if it
12 had been me and my mom in that driveway, and she
13 said, why didn't you call me? And I said, well, my
14 phone wasn't working. That's the first thing she
15 would do is look at me and say, let me see that
16 phone. And if I handed it to her and it was dead,
17 she would say, all right, Daniel, I'm still mad at
18 you, but you have an excuse. They didn't even try
19 that.

20 You know, Officer Battista and the
21 State put in lots of exhibits. They are going to
22 want to say this is evidence. It is evidence.
23 Those are photos of the car. These are photos of
24 the scene. You already knew all of this. None,
25 none of this evidence talks about whether Mr.

1 Broadway left the scene to notify authorities.

2 None of this evidence offered by them.

3 Next we heard from Kevin Binnall, the
4 paramedic -- or EMT that was there. I didn't ask
5 him any questions because, guess what? Just like
6 all the other witnesses, his information was
7 related to something that we all already knew
8 happened.

9 We also heard right after that from Dr.
10 Leon, the physician from MUSC. Why would the State
11 offer witnesses that just tell you about the
12 horrible and tragic loss of Mr. Feagin and where
13 the witnesses have nothing to offer by way of the
14 facts in this case and the defense in this case?
15 Ask yourself that.

16 Next we heard from Harvey Burton. He
17 told us that Mr. Broadway arrived at their
18 residence, that he appeared to be lost and in
19 shock. And Mr. Burton told you that, by his
20 recollection, Mr. Broadway went to bed and then, on
21 his own, Mr. Burton decided to call law
22 enforcement.

23 Now, that is the first -- the first
24 witness at the -- almost at the end of their
25 presentation that's the first witness who has

1 spoken anything, albeit not favorably to the
2 defendant, he's the first witness that said
3 anything about whether Mr. Broadway tried to
4 contact the proper authorities.

5 You had to sit through all of that
6 police testimony, you had to sit through all of the
7 sad testimony about what happened to Mr. Feagin,
8 and none of that was in dispute. You had a
9 day-and-a-half of that information, you already
10 knew all of that.

11 First time you heard anything about
12 whether Mr. Broadway went for help came from
13 Mr. Burton, and I want you to draw a circle around
14 that in your mind.

15 After Mr. Burton the State put up
16 Officer Davis who did -- as you saw in the video,
17 did the interviews, took a voluntary statement from
18 Mr. Broadway. And he told you at the end of his
19 interview they are standing in the driveway, they
20 have got -- they know there had been an accident
21 and someone was gravely injured, they know that at
22 that point.

23 They've got the car that Mr. Broadway
24 was driving, they've got Sam Broadway explaining
25 himself and telling them what happened.

1 Voluntarily. Don't ask to see his phone. But they
2 pack up, having all of the information, and they
3 left, and they didn't issue an arrest warrant for
4 three days.

5 Now, Officer Davis and Officer Battista
6 talked to you about, well, it wasn't freshly
7 committed, so we would need to get a warrant.
8 Let's assume that's accurate. Okay. I'll buy it.
9 You know that there has been a terrible accident,
10 there is a young man expiring in the hospital. The
11 defendant was not present, which in law
12 enforcement's mind means he's guilty just because
13 he wasn't there, and it took you three days to go
14 get a warrant to arrest this person.

15 What does that mean? I'll tell you
16 what it means. They were thinking about it. They
17 didn't know. I told you there would be some Monday
18 morning quarterbacking. I told you how the guys on
19 Sports Center like to show slow motion clips from
20 the game, they like to blow up viewpoints, they
21 like to go forwards and backwards, zoom in, zoom
22 out, use pointers.

23 That's exactly the show that you got
24 while the State was putting their evidence up. In
25 fact, they showed you a video they skipped around

1 on. They didn't play the whole video. Just like
2 those people on Sports Center, who drive me crazy,
3 they showed you select parts of the story they
4 carved out, and they want you to find the defendant
5 guilty based on a partial presentation. And then
6 they closed.

7 And then Mr. Broadway gave you
8 testimony from Marilyn Burton. You heard what she
9 said. She said her husband sometimes on purpose,
10 but mostly because he physically is hard of
11 hearing, doesn't hear everything. She told you
12 that she is the one that met Sam at the door. She
13 told you she is the one that sat with him and
14 talked with him. She told you about their
15 discussions. And it did not correlate what
16 Mr. Burton told you.

17 And that is for you to decide, which of
18 them you find to be more believable. And you know
19 what? They can both be telling the truth. Because
20 from where Mr. Burton is sitting, not in the room
21 with him, not exactly hearing everything that's
22 being discussed, he may not have been aware of this
23 stuff.

24 But Ms. Burton -- Mrs. Burton set us
25 straight on that, and she is the second person that

1 talked about what Mr. Broadway did to try to notify
2 the proper authorities. But we had to call her.

3 Now, the State had access to both of
4 those witnesses. And which one did they chose and
5 which version of what happened inside that house
6 after the accident did they present to you? All in
7 all, I counted 13 witnesses presented by the State.
8 Six of those were police officers, six of them
9 putting in evidence telling you about an accident
10 that everybody knows happened. Three of those
11 witnesses were medical professionals who had some
12 fairly unsettling testimony to offer, but, again,
13 none of that testimony was aimed at uncovering the
14 truth of what Mr. Broadway was doing after the
15 accident. None of it.

16 And remind yourself of the question I
17 asked you earlier, why did they offer that
18 testimony? Nine witnesses so far, nothing that you
19 didn't know. There's a gas station attendant.
20 Again, ten witnesses not offering you anything you
21 don't know. One witness from where Mr. Broadway
22 thought his phone was at who told you that he asked
23 to use phones and was denied.

24 Ms. Campbell's testimony -- this is
25 where I think it becomes particularly important.

1 We start consideration of whether a crime was
2 committed with the accident and we move out from
3 there. Now we heard that this accident took place
4 on 176 at roughly 1:30 in the morning. It is pitch
5 black dark on that road.

6 And we heard that as Mr. Broadway was
7 driving down the road someone on purpose pulled out
8 in front of him. So what does he know? He knows
9 dark road, he knows there's no one around, and he
10 knows that the car that is now behind him that he
11 just narrowly escaped colliding with is still
12 there. He also knows that he can't call for help
13 because he doesn't have his phone.

14 Is it safe for a person to remain in a
15 place where they've narrowly avoided their own
16 death in the middle of nowhere, in the pitch black
17 dark, and you can't call for dark? He didn't have
18 the luxury of pulling up a couple hundred yards
19 down the road and turn around and look back at the
20 accident and think, look, there is no way I'm going
21 to go talk to those people, but I need to get the
22 cops here. He didn't have the luxury of that.

23 So what he did next was to go to where
24 he thought his phone was so he could call for help.
25 You just heard from the State in their closing that

1 all he had to do was stop. If you don't stop, it's
2 a crime. That's what he said. I wrote it down as
3 I heard it right here. Is it? Again, look at the
4 law that I showed you in my opening. A defendant
5 may temporarily leave the scene to call the proper
6 authorities.

7 Now, they are going to say, well, let's
8 assume that he did leave to call proper
9 authorities. Let's believe what he said. Let's
10 believe the witnesses, let's try that. He didn't
11 go back. Again, this is not disputed. When he
12 knew that law enforcement had been called and that
13 law enforcement was coming to the Burton home, he
14 waited for them. And when they got there, he went
15 out to meet them. And when he met them, he talked
16 to them. And not only did he talk to them, he
17 volunteered a written statement.

18 The other code section they showed you
19 a second ago deals with driver's licenses and
20 insurance, and we learned from Officer Davis he
21 gave him all that. Can you imagine what would have
22 happened if the Burtons told him, law enforcement
23 is on the way, and he said, oh, my goodness, I
24 better return to the scene. What if they found him
25 going back to the scene? How hard would my job be

1 then?

2 You are going to hear from Mr. Cannon
3 and you will hear from Judge Dennis about the
4 burden of proof and that the State carries that
5 burden in this case. And the example that we all
6 like to give as lawyers is, there is a scale.
7 Okay. Picture the scale. And you put evidence
8 that the State offers on one side and put your
9 doubts on the other side, and then you assign
10 weight to those items. Okay. And let's look at
11 the weight that I would submit you should assign to
12 those items.

13 Again, here's evidence, evidence the
14 State's offered right here. (Indicating) All of
15 it relates to stuff that I told you when I first
16 met you. And I'm going to submit to you that that
17 means that evidence is very light.

18 And then I will ask you to think about
19 the two witnesses. The only two witnesses that
20 spoke about whether Mr. Broadway tried to notify
21 the proper authorities were the Burtons, and
22 remember what each of them told you and assign
23 weight to what each of them told you. And if that
24 scale doesn't hit the ground for the State, if it
25 doesn't go all the way to the floor, then you have

1 reasonable doubt.

2 You were all selected for this jury
3 because you are reasonable people. And you can use
4 your everyday experience on this planet to decide
5 whether you feel hesitant to act. Do you feel
6 hesitant to say that the State has proven to you
7 beyond a reasonable doubt that Mr. Broadway wasn't
8 trying to go notify the proper authorities and
9 trying to go get help? And if you cannot rule that
10 out, if you have reasonable doubt as to that, then
11 you must return a verdict of not guilty.

12 In a minute, Mr. Cannon will give you
13 his closing and I ask that you give him your
14 undivided attention, but please remember how
15 constant we have been -- the defense has been in
16 this case. I told you where we were going to start
17 and we finished right there also.

18 And remember the testimony from the
19 only two witnesses that told you about whether Mr.
20 Broadway was going for help. Remember that. And
21 I'm confident that once you weigh the scales and
22 you assign relative weight to the evidence that
23 you've heard, you're going to return a verdict of
24 not guilty.

25 I thank you for your time.

1 THE COURT: Mr. Cannon.

2 MR. CANNON: Judge, Mr. Boles,
3 Mr. Burrows.

4 March 7, 2015 was the day Jesse Feagin
5 passed away. Now you've heard from Mr. McNeely a
6 little about the law. Mr. Boles has touched on it
7 too. At the end of the trial, after I finish
8 closing, Judge Dennis is going to give you that
9 law. You, as the jury, are the judge of the facts.

10 Now I'm here to talk to you and argue
11 the facts of the case, what I feel the State has
12 proven to you. My first line is the red herring.
13 I have given you a definition, but I want to focus
14 your attention to section 2, which is another
15 definition of a red herring. Something that draws
16 your attention away from the matters being
17 discussed. It's just what the defense is. It's
18 what it is.

19 Now, again, we talked about this
20 statute, and the reason why we pulled a number of
21 witnesses is because it's the State's burden to
22 prove the case to you. We had to prove each and
23 every element. Yeah, they may have conceded some
24 of this, but it was our job to prove this statute
25 to you and that's why we called a number of

1 witnesses to testify to things to prove our case.

2 I started off by telling you before
3 that the State is making no assertion that Mr.
4 Broadway intended to hit Jesse Feagin. He didn't
5 do it on purpose. There is no evidence that he
6 did. By all accounts, it was an accident. The law
7 requires you to stay put and do as the law tells
8 you.

9 I'm going to use the statute again as a
10 backdrop and address the testimony from witnesses
11 that testified in the chair, but also to the
12 evidence you saw, the pictures and the 911 call.
13 That's something for you to consider and give
14 weight for yourself to make a decision about the
15 case.

16 Again, it's the State's obligation to
17 prove the case so I will walk through each
18 paragraph -- or each sentence.

19 Richley Campbell; you heard her
20 testimony, she was there that day. Regardless of
21 whether or not she may have been at fault, it's
22 irrelevant. It doesn't matter.

23 You heard her make a 911 call right
24 after it happened where she said he didn't stop.
25 She watched him to see where he was going so she

1 could give law enforcement some kind of idea where
2 this guy was headed. She watched his brake lights
3 go out in the distance and make a right turn. She
4 testified that she initially thought he was pulling
5 into the Sunoco. Richley Campbell doesn't live in
6 that area, but she knows there's a Sunoco there.

7 I know this is kind of key, Mr.
8 Broadway is a Realtor by trade. You would think he
9 would be very familiar with the landmarks of the
10 community where he works.

11 Jason White and Matthew Schneider;
12 yeah, they may have been witnesses as to what was
13 going on, but they continued to harp on the fact
14 that the car didn't stop. Jason White, the clerk
15 at the Sunoco, said it had been opened about
16 three months. Three months. So, yeah, the
17 operating system of the camera may not have been
18 working, but they'd been open for three months.
19 There were lights on. He was there.

20 Matthew Schneider, the EMT that arrived
21 on scene, passed a car before he got to the
22 accident. Again, he was the guy on the back end of
23 the 911 call telling you what he was observing as a
24 trained first responder. He also identified to you
25 the car making a right turn on 17A, which is

1 undisputed, but, again, it's the State's burden to
2 prove to you beyond a reasonable doubt that he
3 didn't stop.

4 Then you heard Dr. Stewart Leon. He
5 was a short witness, and we only asked him about
6 ten questions, and the defense didn't ask him any
7 questions. Well, we called him because we had to,
8 because we had to have a death to meet the burden
9 of proof for you in this case. So we had to.

10 The next sentence, they shall return
11 to, in every event shall remain at the scene. Now,
12 this comes in the form of several witnesses. We
13 had the Goose Creek Police, we had a number of
14 officers testify. They testified that they
15 responded, at no point did the defendant, Mr.
16 Broadway, return to the scene. No one ever saw a
17 Cadillac at the scene. No one ever saw a man
18 matching his description. They never saw him at
19 that scene. He never came back.

20 Richley Campell testified to that
21 before she went to the hospital. Again, we had to
22 prove to you beyond a reasonable doubt that he did
23 not return. The defense has conceded that, but,
24 again, it's our burden of proof to prove to you
25 that he did not return. We also heard it from

1 Samuel Broadway himself, and that was in the in-car
2 where he admitted to not returning to the scene.
3 You saw that on Officer Ted Davis' in-car camera.

4 Now, here's where we come to disagree:
5 However, he may temporarily leave the scene to
6 report the accident to the proper authorities. A
7 person who fails to stop or comply with the
8 requirements of this section is guilty.

9 We heard from Justin Bryant, who, Mr.
10 Broadway himself admitted, arrived at the BFE after
11 the accident. Justin Bryant heard the noise of the
12 car coming down the road and pull into a parking
13 lot away from where Justin Bryant was sitting.
14 Justin Bryant testified that he didn't see the
15 extent of the damage.

16 The only thing he recalls and does
17 recall is hearing Mr. Broadway acting frantic,
18 talking about his kids, I need my phone, beating on
19 the door of the bar to get inside to get his phone.
20 They all looked at him like he was nuts.

21 At no point did he ask them to call the
22 police. He made statements that I hit somebody,
23 but they don't know that for sure. It's not their
24 obligation -- it's not his, Justin Bryant's, job to
25 call the police that he may think might have

1 happened. That would have been a good Samaritan,
2 but Justin Bryant is not required to do that.

3 Mr. Broadway didn't ask people to call
4 the police. He wanted to call his wife. He was
5 upset about losing his kids. He knew he had been
6 drinking that night. That's what he had been doing
7 before.

8 I had Harvey Burton up there next, but
9 I wanted to touch back on this: Mr. Boles wanted
10 to say that Mr. Broadway never found his phone or
11 didn't have access to a phone. There was testimony
12 that a girl handed him a phone, but he didn't know
13 how to operate it and gave it back. There is no
14 testimony that he tried to call 911. He then walks
15 over to his car and finds his phone. We don't know
16 if it was operational, but he found his phone, what
17 he was trying to get, so he had to leave the scene.
18 He didn't satisfy the statute.

19 Now Harvey Burton was a big player in
20 this case and he testified too, and I'm going to
21 come back to him more importantly later on, but he
22 testified too that he came to the house. He didn't
23 go back to the scene. Harvey Burton told you that
24 he came to the house from BFE. Mr. Broadway
25 concedes that as well.

1 Now, here's a map that we talked about
2 or we showed Officer Davis earlier in the trial.
3 And we all know that Mr. Broadway was coming
4 eastbound, southbound, however you want to look at
5 it, down 176 where the collision occurred and made
6 a right turn on 17A to go back to the bar.

7 After Mr. Broadway found his phone, he
8 could have returned home, but he knew he couldn't,
9 because where would he have to go right thru to get
10 home? He knew what he had been doing. He knew it
11 was a bad wreck. You heard him say on the in-car
12 he realized the wreck was bad when he observed it.
13 He knew what was going on. He knew something not
14 right had happened and he was in some trouble.

15 This map shows the distance to Chaff
16 Lane -- Chaff Lane, wherever, it was the home of
17 Mr. Burton. That's where -- he wanted to get
18 somewhere, and in quotations I put this because
19 these were Mr. Broadway's words, to get to someone
20 who he could trust.

21 Mr. Broadway is saying you can't trust
22 the police, you can't return to the scene, go to
23 the Sunoco. As a Relator you know these places
24 exist. Call for help, return to the scene. I
25 trust the police. I hope you do.

1 Now, Lieutenant Battista who is
2 lieutenant over the traffic division of Goose
3 Creek, 15 years of experience, a wealth of
4 knowledge and experience documenting incidents like
5 this, he did a lot of things. He took pictures of
6 the scene, took a video, was responsible for going
7 to MUSC to find out the status of the victim in
8 this case, Jesse. He didn't know that stuff.
9 There was still questions to be answered by that.

10 I'll show you a couple of photos just
11 to recap and refresh your memory of what Lieutenant
12 Battista said. He talked about the cone of debris
13 that was about two football fields long. And I'm
14 only telling you that because this wasn't a fender
15 bender.

16 By some accounts, this was an
17 explosion. Richley Campbell called it an
18 explosion, Lieutenant Battista talked about the
19 parts everywhere, an explosion.

20 That's confusing to me that, I didn't
21 know the extent of the damage until I got home and
22 realized I might need to do something.

23 Now, again, here's the car that --
24 Lieutenant Battista took that picture the morning
25 -- just a couple of hours after the accident. But

1 one tidbit that wasn't even talked about was the
2 fact that he did an investigation of the case
3 following up. He contacted agencies to see if
4 they'd heard any word, any phone calls from anyone
5 pertaining to this accident to kind of get a lead
6 on to where the possible person who left the scene
7 is.

8 He found only two phone calls. Richley
9 Campbell, which you've heard, and Harvey Burton who
10 he told you about his 911 call. Those are the only
11 two. Lieutenant Battista never found a phone call
12 from Sam Broadway reporting the incident. He
13 looked. It didn't exist.

14 Now, we have Ted Davis who did testify
15 and is the case agent on this. And Officer Davis
16 -- his in-car was important because it captured the
17 interactions between law enforcement and Sam
18 Broadway over at Chaff Lane. And on his in-car you
19 saw and heard the oral statement Mr. Broadway gave
20 after being Mirandized, and then he wrote a
21 statement after being Mirandized the second time,
22 and then read that statement out loud.

23 Mr. Boles wanted to point out that we
24 showed you snippets. The whole in-car is in
25 evidence, you can watch it. For convenience

1 purposes of a lot of dead air of Mr. Broadway
2 writing, of law enforcement talking, you didn't
3 need to see that. You only needed to see the
4 interactions with Mr. Broadway with Mr. Davis and
5 you saw and heard those. If you'd like to take a
6 look, it's in evidence. I would invite you to
7 watch it again, the complete interview.

8 This brings us to Harvey Burton, one of
9 the last witnesses we called right before
10 Mr. Davis. Mr. Burton testified that he was asleep
11 and woke up to some commotion in the hallway, to
12 Sam, who doesn't live there, showing up sometime
13 that morning. Mr. Broadway came there that morning
14 somewhat distraught asking them what to do. Burton
15 asked him if he had called the police. He said no.

16 He asked him, are you going to call the
17 police? Mr. Broadway's response was no. Mr.
18 Broadway had been there for about an hour and then
19 went to sleep. Mr. Burton then called the police.
20 Well, if Mr. Mr. Broadway was intending to call the
21 police, he never did it. There was testimony there
22 was a landline in place that he could have used.
23 He didn't call the police.

24 He knew he'd been in a wreck where
25 someone was possibly seriously hurt and he knew

1 what he had been doing that night. Mr. Boles
2 called a witness, Marlene Burton, who is Harvey's
3 wife. She testified that she had more interaction
4 with Mr. Broadway that early morning, and she
5 talked about how Mr. Burton was hard of hearing.
6 Well, Mr. Burton woke up to that noise. He didn't
7 seem to -- understand my questions to him.

8 Mr. Broadway, by all accounts, didn't
9 call the police at that time and Marlene didn't
10 call the police at that time. It was Harvey Burton
11 that called the police after Mr. Broadway had gone
12 to sleep. Burton's the one that called 911.
13 Besides Richley Campbell, Harvey Burton is the only
14 one that called 911 that morning.

15 Now, I'm about to wrap this up in a
16 little bit, but Broadway never called the police or
17 returned to the scene, which is required by the
18 statute. It's temporarily leave and then return.
19 I would submit to you that he did not do those
20 things.

21 The defense conceded the first two
22 elements, although it's the State's burden to prove
23 those, that last element is what we're here about.

24 Now, the burden of proof is -- Mr.
25 Boles used a scale and, like I told you before,

1 it's -- the standards are -- the way I like to
2 describe it is, are you firmly convinced? Does the
3 evidence leave you firmly convinced that
4 Mr. Broadway did not do the things he was required
5 by law to do.

6 If you're firmly convinced after you've
7 had an opportunity to review all of the evidence
8 and give it consideration and apply the law that
9 Judge Dennis is giving you -- we've talked about
10 the law, I've had the law on the board and we've
11 walked through it -- you have no other option, but
12 to find him guilty.

13 So I will leave you with this: All he
14 had to do was stop, go get help, come back and we
15 wouldn't be here today. Thank you.

16 THE COURT: All right. Ladies and
17 gentlemen, it now becomes my responsibility as the
18 judge of the law to instruct you on the law that
19 you are to take and apply fairly and impartially to
20 the facts that you will determine very shortly when
21 you begin your deliberations in this case.

22 It is your duty as jurors to accept and
23 apply this law and to determine the effect, the
24 value, the weight, and the truth of the evidence.
25 Both the State and Mr. Broadway expect that you

1 will conscientiously consider the evidence,
2 evaluate that evidence, decide what you find to be
3 credible and believable, then apply the law and
4 report your decision. When you've done that, you
5 will have honored in every respect to both the
6 commitment that you made when we started this
7 proceeding.

8 During this instruction and during this
9 trial, if you've heard me use the word -- term,
10 defendant, it's simply a term to designate a party.
11 That's the sole purpose of it. It's just a way of
12 identifying Mr. Broadway. If you hear that term in
13 my charge, it's a way of identifying him. It means
14 nothing more than that.

15 He's been accused, I told you when we
16 started, in the Indictment which is what I'm
17 holding in my hand. It's a piece of paper. It's
18 not evidence. It won't accompany you to your jury
19 room. It merely contains the accusations of the
20 State that bring this matter to court and frames
21 the issues, so to speak.

22 To this Indictment he's rendered a plea
23 of not guilty, which as stated, start -- places
24 upon the State the burden of proving his guilt
25 beyond a reasonable doubt. Because, as you recall,

1 I've said throughout, persons such as Mr. Broadway
2 who are accused of committing criminal offenses in
3 this country are never required to prove anything
4 or disprove anything.

5 The law states that the State, the
6 party charging or making the charges, has the
7 burden of proving. The person so accused is to be
8 presumed innocent. And that presumption, ladies
9 and gentlemen, is an act of presumption, and not
10 just words. As I stated when we started, you must
11 actively presume that Mr. Broadway is not guilty,
12 and that may only change when, and if, you reach a
13 point during your deliberations that you're firmly
14 convinced that the State has established each of
15 the elements required for a verdict of guilty.

16 And, therefore, as we know, the fact
17 that a person accused of a criminal offense does
18 not testify in his or her own behalf cannot be
19 considered by a jury in any respect. A defendant
20 has the constitutional right to remain silent and
21 the assertion of that right cannot be used in any
22 fashion.

23 So, under your oath, you cannot
24 discuss, you cannot mention, you cannot infer
25 anything whatsoever from the fact that Mr. Broadway

1 did not testify. It shouldn't be discussed. And
2 if you do, then you will have violated the
3 commitment that you made.

4 The burden rests solely upon the State
5 to prove the guilt of Mr. Broadway beyond a
6 reasonable doubt. What is a reasonable doubt? A
7 reasonable doubt is a doubt which makes an honest,
8 sincere, conscientious juror who is searching for
9 the truth in the case to hesitate to act or take
10 some action.

11 Proof beyond a reasonable doubt is
12 proof that leaves you firmly convinced of Mr.
13 Broadway's guilt. I will tell you there are very
14 few things in this world and this life that we know
15 with absolute certainty, and the law does not
16 require proof that overcomes ever possible doubt.

17 If, based upon your consideration of
18 the evidence, you are firmly convinced that the
19 defendant is guilty of the crime charged, then you
20 must return a verdict of guilty. If, on the other
21 hand, you think that there's a real possibility
22 that he's not guilty, then you must give him the
23 benefit of that doubt and return a verdict of not
24 guilty.

25 A reasonable doubt may arise from the

1 evidence which is in the case or the lack or
2 absence of evidence in the case, and it's up to you
3 to determine whether or not a reasonable doubt
4 exists as to Mr. Broadway's guilt. I charge you
5 that he's entitled to every reasonable doubt
6 arising in the whole case and that means simply
7 this, if upon any issue of fact, which is essential
8 to a conviction and a verdict of guilty, you should
9 have a reasonable doubt as to how that issue should
10 be resolved, I would instruct you that it is your
11 duty to resolve that in his favor.

12 Now, ladies and gentlemen, cases such
13 as this can be presented -- or evidence can be
14 presented in two ways, or there are two types of
15 evidence; one we call direct evidence and the other
16 indirect, and the more common name is
17 circumstantial evidence.

18 Direct evidence as the name would imply
19 generally deals with essentially perception; I saw
20 something, I heard something, I felt something of
21 the like.. And if you are firmly convinced of the
22 credibility and believability of that testimony,
23 then that, of course, would establish that
24 particular fact and circumstance.

25 Circumstantial evidence is when you

1 prove a number of circumstances, you're firmly
2 convinced as to each one of those circumstances,
3 and you link them by inductive or deductive
4 reasoning and that leads you to a logical
5 conclusion of which you're firmly convinced, and
6 that would establish that particular fact and
7 circumstance.

8 I will tell you that the law makes
9 absolutely no distinction between the weight or the
10 value given to either direct or circumstantial
11 evidence, nor is any greater degree of certainty
12 required of circumstantial evidence than direct
13 evidence. You should weigh all of the evidence.

14 The law does state to the extent that
15 the State is relying on circumstantial evidence, it
16 has to meet a certain test. First, as to each of
17 those events or circumstances upon which the State
18 is relying, the State has to prove each one of
19 those beyond a reasonable doubt. As I stated, you
20 must be firmly convinced of each one of them.

21 Further, that these facts must point
22 conclusively to the guilt of the defendant and they
23 must be wholly, perfectly consistent with each
24 other in every particular respect.

25 I further instruct you in that regard,

1 that the mere fact the circumstances brought out in
2 a case are strongly suspicious of guilt, or that
3 the circumstances are such that the defendant's
4 guilt is probable, that is not enough to sustain a
5 conviction. Why? Because the proof offered by
6 the State has to be more than mere suspicion. It
7 has to be more than someone being probably guilty.
8 It has to be proof that satisfies you beyond a
9 reasonable doubt.

10 Now, the evidence of course that you
11 are to consider, as we've stated throughout,
12 consists of the testimony of the witnesses and the
13 exhibits that have been offered through their
14 testimony. The remarks of the attorneys are not to
15 be considered evidence in any fashion, and if an
16 attorney in their statements, either in opening
17 statement or in closing argument, differs from your
18 recollection of what a witness said or didn't say,
19 you're instructed to disregard their remarks and
20 take your recollection. Why? Because you're the
21 sole judges of the facts in this case.

22 Likewise, if the attorneys' remarks
23 about the law differs from what I'm telling you the
24 law is, you're instructed to disregard those
25 remarks also because, for this proceeding today,

1 I'm the sole judge of the law in this case and you
2 must take the law as I give it to you.

3 I would remind you also with regard to
4 my statements and any statements or rulings that I
5 made during this trial, you should not consider any
6 of those to be a suggestion or an indication of how
7 you are to resolve a factual dispute because,
8 ladies and gentlemen, I have nothing to do with
9 that. That's your sole job and your sole
10 responsibility.

11 I would instruct you also, ladies and
12 gentlemen, that a statement alleged to have been
13 made by the defendant has been admitted into
14 evidence in this case. While the Court has
15 determined that the statement is admissible, I
16 would instruct you that you have to make the
17 ultimate decision of whether or not the statement
18 -- the defendant made the statement; and if the
19 defendant did make the statement, you must
20 determine whether the statement was made by the
21 defendant voluntarily and of his own free will.

22 This means that the statement was not
23 caused by pressure, force, fear, threats, coercion,
24 or intimidation, or by hope or promise of leniency,
25 or reward of any kind. In determining if the

1 statement was voluntary, you should consider both
2 the characteristics of the defendant and the
3 details of the question.

4 Some of the factors that you must
5 consider are the age of the defendant, the
6 defendant's degree of education or lack of
7 education, the defendant's mental ability or
8 capacity, the defendant's IQ or intelligence, the
9 defendant's background and environment, the place
10 and length of the detention and the nature of the
11 questioning, and advice or lack thereof of advice to
12 the defendant of his or her constitutional rights
13 including, but not limited to, the right to remain
14 silent, that any statement could be used against
15 them in a court of law; the right to have a lawyer
16 present, that if he could not afford one, one would
17 be appointed to represent him without any cost; and
18 that he could stop making a statement at any time.

19 You must carefully consider all of the
20 surrounding circumstances before you give any
21 weight to the alleged statement. The State has the
22 burden of proving beyond a reasonable doubt that
23 the statement was voluntary. If you determine it
24 was, you may give the statement any further
25 consideration that you deem proper.

1 You must decide what weight, if any,
2 should be given to the statement. If you determine
3 the alleged statement was not free and voluntary,
4 then you should not consider the statement at all.

5 How do you decide the facts in this
6 case? As I stated to you from the beginning, this
7 is not something foreign to you. You have done it
8 every day of your life. Most of the time it's a
9 subconscious process, we don't really think about
10 it, but there are times when we do and you have
11 made those decisions. You've heard something,
12 you've read something and you decided whether you
13 believe it or not. And the methods that you've
14 used and employed in your life to assist you in
15 making those decisions, I urge you to use those
16 when you're instructed to begin your deliberations.

17 Now, there are many, many factors that
18 we may consider to assist us in making this type of
19 decision. I'm going to discuss some of them with
20 you now, but if I don't mention a method or factor
21 that you've used in your life and found to be
22 reliable, remember, use it when you begin your
23 deliberations.

24 Some of the factors that you may want
25 to consider would be the appearance of the witness.

1 How did they appear to you? Straightforward or
2 hesitant in answering the questions? Was the
3 testimony of a witness consistent or inconsistent?
4 Was it strengthened or weakened by other evidence
5 in the case? How did the witness come to know the
6 facts that he or she testified to? What was the
7 ability of that witness to know those particular
8 facts or circumstances? Is there a reason for a
9 witness to give testimony which may be helpful to
10 one side or which may be detrimental to one side?
11 In other words, was the witness biased or
12 prejudiced in any fashion?

13 In making the decisions of credibility
14 and believability of evidence, you're given very
15 wide latitude, very broad discretion. You have a
16 right to believe many witnesses against one, one
17 witness against many. You have a right to believe
18 parts of a witness's testimony, all of a witness's
19 testimony, or none of the witness's testimony.

20 Now, you don't make these decisions
21 arbitrarily, but if there's a reason in the record
22 of this case, that is the evidence, that leads you
23 to that conclusion, you have that prerogative,
24 because your objective from the start has been to
25 determine what you believe to be the true facts of

1 this dispute, and that's what you will be
2 instructed to do very, very shortly.

3 Now, while you've been given very broad
4 discretion and wide latitude in what you consider
5 and what you determine to be the true facts,
6 remember that you are the sole judges of the facts,
7 but it's my responsibility, as I have stated, to be
8 the sole judge of the law, and you must take the
9 law as I give it to you.

10 Now, we live in a wonderful country.
11 We have a right to take an active role in changing
12 law if we choose to. We have a right to speak out
13 against laws that we think should be changed, but
14 for purposes of this proceeding today, you promised
15 to set that aside. You promised to accept the law,
16 even if you may differ with it, and apply that law
17 fairly and impartially to those facts. And I am
18 confident that each one of you will honor that
19 commitment.

20 Please remember that nothing I say in
21 this instruction should be considered, again, an
22 indication of how you are to resolve a factual
23 issue. There is nothing in this charge that deals
24 with the facts of this case.

25 The defendant, as I stated from the

1 start and I've shared with you what's been alleged
2 in this indictment, is charged with leaving the
3 scene of an accident causing the death of a person.
4 It's found in section 56-5-1210, and I will read a
5 portion of that section that is pertinent to you
6 that that section provides and you've seen it.

7 The section provides in part that the
8 driver of a vehicle involved in an accident
9 resulting in injury to or death of a person,
10 immediately shall stop the vehicle at the scene of
11 the accident or as close to it as possible. He
12 then shall return to and in every event shall
13 remain at the scene of the accident until he has
14 fulfilled the requirements of section 56-5-1230.

15 Let's look at that section. What does
16 that section say he has to do? Section 56-5-1230
17 says that the driver of a vehicle involved in an
18 accident resulting in injury to or death of a
19 person or damage to any vehicle, which is driven or
20 attended by any person, shall give his name,
21 address, and the registration number of the vehicle
22 he is driving, shall upon request and if available
23 exhibit his driver's license to the person struck,
24 or the driver or occupant of, or a person attending
25 any vehicle collided with, and shall render to any

1 person injured in such accident reasonable
2 assistance including the carrying, or making
3 arrangements for the carrying of such person to a
4 physician, surgeon, or hospital for medical or
5 surgical treatment, if it is apparent that such
6 treatment is necessary, or if such carrying is
7 requested by the injured person.

8 That's what that section -- those are
9 the duties that that person must comply. And the
10 section goes on to say; however, he may temporarily
11 leave the scene to report the accident to the
12 proper authorities. The stop must be made without
13 obstructing traffic more than is necessary. A
14 person who fails to stop or to comply with the
15 requirements of this section is guilty of violating
16 this section.

17 Now, what does the State have to prove
18 in order for you to return a verdict of guilty?
19 The State must prove beyond a reasonable doubt that
20 the defendant was driving a vehicle; two, that the
21 vehicle was involved in an accident; three, that
22 the accident caused the death of a person; four,
23 that the defendant did not stop or failed to return
24 and remain at the scene; five, that the defendant
25 failed to give his name and address and vehicle

1 registration number and, if asked, failed to show
2 his driver's license in compliance with that
3 section that I read to you -- that was section five
4 -- section 56-5-1230 -- and that the defendant
5 failed to give reasonable assistance to the person
6 injured. Those are the elements the State has to
7 prove.

8 Reasonable assistance includes take the
9 person to the doctor or hospital, or making
10 arrangements to have the person taken if it is
11 apparent that treatment is needed, or if the
12 injured person asks for that treatment. The State
13 must prove beyond a reasonable doubt that the
14 defendant knew, or should have known, that the
15 accident happened. This may be shown by evidence
16 of circumstances and conditions which would cause
17 an ordinary reasonable person to believe that the
18 vehicle had been involved in an accident resulting
19 in a personal injury to or death of another person.

20 Now, ladies and gentlemen, throughout
21 this entire process you and I are not advocates of
22 either side. We have absolutely no friends to
23 reward nor do we have any enemies to punish. We
24 have been chosen to be judges; you by these
25 persons, and me by the chief justice assigning me

1 here, but each one of us made a similar commitment.
2 I made mine when I assumed this responsibility and
3 it's very similar to the one that you made.

4 And to -- in the essence of what we
5 said, without repeating it verbatim, we said that
6 when we're performing our tasks, we will to the
7 best of our ability set aside all human emotion,
8 because if you think about it, it has no place in
9 performing the tasks of being a judge. And I can
10 promise you, it's not something you do every day,
11 but I've been doing it for 22 years and I remind
12 myself of that every single day. Why? Because I'm
13 a human being. I accept and acknowledge that, but
14 if I ever let emotion factor into my
15 decision-making, then, in my opinion, I've violated
16 my oath. And I would submit that you also would
17 violate your oath if you do the same.

18 We are supposed to apply our knowledge,
19 our sense of logic and reason fairly and
20 impartially and make the decisions we are called
21 upon to do. In just a moment you're going to do
22 that, and you will honor in every respect and
23 report your decision.

24 Mr. Presiding Juror, to assist you in
25 reporting that decision, I've prepared a verdict

1 form which I will be sending to you with all of the
2 evidence in this case. I would like to discuss it
3 with you now and the other jurors. And I would
4 tell you that it's captioned -- and you will see
5 that it's captioned, and that means nothing. That
6 is to facilitate the filing of it.

7 There are two choices that appear. The
8 order in which they appear means absolutely
9 nothing; I had to put them in some order. It says:
10 We, the jury, by unanimous consent -- what does
11 that mean? That means that all 12 of you have to
12 agree; 11 to 1 doesn't work. Twelve to 0 must be
13 the verdict -- by unanimous consent find the
14 Defendant, Samuel Lee Broadway, on the charge of
15 leaving the scene of an accident, guilty, first
16 choice, or not guilty.

17 And then there's a line and it says,
18 Presiding Juror. And once you've made your
19 selection as to which one the jury decides is
20 correct, then you will sign it and date it. It's
21 been dated for you. Once you have done that, you
22 will have fulfilled it, knock on the door and we
23 will return you to the courtroom to receive your
24 verdict.

25 Let's go through the choices. There's

1 a line that precedes it. I would ask that you
2 place a checkmark in that -- on the line and circle
3 it. That way we will know that is your choice.

4 What will you be saying if the first
5 choice is the one you select? You'll be saying
6 that each of you have analyzed the evidence and
7 you're firmly convinced the State met its burden of
8 proof and established the elements that we've
9 discussed about leaving the scene of the accident
10 and your verdict is that he was guilty of violating
11 that statute.

12 Two; you've looked at it and you are
13 not firmly convinced. The State has not firmly
14 convinced you that he violated that section and
15 they failed to prove the elements necessary and,
16 therefore, you're returning a verdict of not
17 guilty. Again, all 12 of you must agree.

18 Now, let me ask you now, if each of you
19 -- each of the first 12 believe that they would be
20 able to continue? If anyone does not, please raise
21 your hand.

22 Ms. Faulk, at this point it appears
23 that the first 12 will be able to continue. So
24 when we excuse the jury in just a moment, I'm going
25 to ask that you not rejoin them in the jury room.

1 They will take you to another room and I will be
2 there shortly to discuss with you how much longer
3 you need to remain.

4 I need to send you to your jury room,
5 but don't start deliberating. I have to discuss my
6 charge with the attorneys. If there are any
7 exceptions or additions that we need to make or
8 clarifications, we will return you to the courtroom
9 to accomplish that. If there aren't any, we will
10 gather the exhibits and verdict form and deliver
11 them to you.

12 When you receive those exhibits, then
13 you may commence your deliberations. The only
14 restriction I place on the deliberations is this;
15 if at any point any juror has to leave the table
16 for any reason, you must stop deliberating until
17 all 12 of you are together. Other than that, you
18 proceed as you deem fit.

19 Thank you so much for your attention
20 throughout this matter. Please now retire to your
21 jury room and await your exhibits before commencing
22 your deliberations.

23 (Jury out, 10:48 a.m.)

24 THE COURT: Are there any exceptions
25 or additions from the State?

1 MR. CANNON: No, Your Honor.

2 THE COURT: Are there any exceptions
3 or additions from the defense?

4 MR. BOLES: Very briefly, Your Honor.
5 In listing the elements that the State has the
6 burden to prove, I asked that you consider
7 including an element on the however clause of the
8 law -

9 THE COURT: There is no such element.
10 I read the statute. There is no element of
11 however.

12 MR. BOLES: Thank you, Your Honor.

13 THE COURT: Thank you, sir. I decline
14 to do that.

15 MR. BOLES: Thank you.

16 THE COURT: We disagree on that.
17 Thank you very much.

18 MR. BOLES: Thank you.

19 (Jury began its deliberations at 10:52
20 a.m.)

21 (A recess transpired.)

22 THE COURT: They want to read Mr.
23 Burton, we can't do that, and they want to view the
24 dash cam video again. Okay. So -- and I'm --
25 given the statement in -- both the statement and

1 closing argument, I'm going to inquire whether they
2 want to view from start to finish, because I don't
3 know what the purpose of that is. And I'm going to
4 tell them, you view it as long as you need.

5 And what I typically do, and I've been
6 doing it for years and it seems to work -- I don't
7 want to know what they're looking for, but I also
8 don't want to force them to listen to testimony
9 when they've heard what it is they're looking for.

10 So I let -- I'm going to tell the
11 foreperson if at any point they have resolved
12 whatever their concern is, if he will raise his
13 hand, don't tell us, we'll stop, but unless I see
14 his hand raised, we will continue to play it until
15 its finished or he raises his hand.

16 MR. CANNON: Yes, sir.

17 THE COURT: All right. We'll do
18 Burton's first and then we'll play back. Let's
19 bring them in.

20 (Off-the-record conference.)

21 (Jury in, 12:34 p.m.)

22 THE COURT: Thank you very much. I
23 have what are now Court's 1 and 2, the questions.
24 The first question: Can we view the dash video
25 from Officer Davis's vehicle?

1 The answer is yes.

2 We're getting the technician up here.

3 It has to be done here in the courtroom.

4 And can we read Mr. Harvey Burton's
5 testimony?

6 And that's a very good question. There
7 are some states, I think Arizona was one that was
8 starting to do that -- the day may come, probably
9 not in my lifetime on the bench, maybe in our
10 lifetime, when that will be possible. It would be
11 -- it won't be an official transcript because the
12 Court Reporter has to verify everything and has to
13 look at what she's written against what the audio
14 is, but it would be a rough draft of it for the
15 jury to read. And I understand why; some people
16 are visual and some people are auditory and I
17 understand that clearly, but we can't do that. We
18 can replay it for you.

19 What we're going to do, our Court
20 Reporter, after we've watched the video of the dash
21 cam, we'll send her back and then you-all can
22 listen to that, stop her, have her replay it, do
23 whatever you wish her to do. And, then, when you
24 finish, you can tell her that you're finished.

25 In listening to it, I would remind you

1 of this. We don't want to know what it is you're
2 looking for, but I would remind you that testimony
3 consists of direct -- as you recall, direct
4 testimony, then cross-examination, and then there
5 is redirect and then there's a recross. Keep that
6 in mind as you listen to something, because
7 something may have come out in cross that may be
8 addressed in re-cross, or may be in redirect, but
9 you listen to as much of it or all of it as you
10 wish.

11 Now, on the dish cam, we're going to
12 start playing it. As mentioned, it's in evidence.
13 Only portions will play, but the whole document --
14 I mean, the whole disk is in evidence. We're going
15 to play it until you tell us to stop. Okay. I
16 don't want to know what you're looking for. If
17 anybody sees whatever it is that they need answered
18 from viewing this, let -- they just need to make
19 you aware of that and you can raise your hand and
20 we'll stop playing it, but as we stand now, we'll
21 play the whole -- the whole disk that is in
22 evidence. Okay?

23 FOREPERSON: Yes, sir.

24 (Video played in open court.)

25 FOREPERSON: You can stop it.

1 THE COURT: Stop that. All right. We
2 will ask you to return to your jury room and the
3 court reporter will accompany you and you can
4 listen to Mr. Burton's testimony.

5 If you need any further review of
6 anything, just send us another note.

7 (Jury out, 11:57 a.m.)

8 THE COURT: Are there any exceptions,
9 questions from the State concerning the jury's view
10 of the tape?

11 MR. CANNON: No, Your Honor.

12 THE COURT: Any exception or questions
13 from the defendant?

14 MR. BOLES: No, sir, Your Honor.

15 THE COURT: And there is no objection
16 from the State to the Court Reporter going back and
17 playing, as requested by the jury, Mr. Burton's
18 testimony.

19 MR. CANNON: We have no problems with
20 Ms. Lauder going back.

21 THE COURT: Any objections?

22 MR. BOLES: No, sir.

23 THE COURT: Thank you very much.

24 We'll be at ease.

25 (COURT EXH. 1, Jury note, was marked

1 for identification.)

2 (COURT EXH. 2, Jury note, was marked
3 for identification.)

4 (Testimony was played in the jury
5 room.)

6 (COURT EXH. 3, Jury note, was marked
7 for identification.)

8 THE COURT: The question is: Can we
9 get the outline of what call number 15-30-36 for
10 hit and run duties of driver involved in accident
11 with injury or death as well as the duties that
12 need to be met that the Judge outlined in six
13 points for us?

14 Typically, and what we do in -- there
15 is a debate among us about whether to send the
16 written charge or re-read it. A lot of judges
17 re-read. As I mentioned, people who are visual,
18 absolutely you can re-read it and re-read it and
19 re-read it and they'll never understand it. I'm
20 one of the judges, and I've been doing it for 22
21 years, when they ask for it I send it back to them.

22 And it's exactly what I read to them.
23 I'm going to give each of you a copy of it so that
24 you will have it, and I will attach it as part of
25 the record for purposes of review should that

1 become necessary.

2 I have been of the bent that you don't
3 give them the whole charge unless they ask for the
4 whole charge. And I've had jurors ask me for the
5 whole charge. Typically, what I will do is just
6 read that portion that they ask me for, or send
7 that portion back and tell them if there's any
8 additions you need -- there's a decision that Judge
9 Thomas wrote several years ago that said -- that
10 okayed the process because typically we've never
11 done it.

12 And I remember asking Judge Lockemy
13 when I was in Reno in 1994, when I learned about --
14 we were one of the few states that don't send the
15 written charge. In fact, my desk mate was from
16 Virginia. They send -- they have to and they can't
17 deviate from the book. If you're a lawyer, you
18 request charge 5872, and that charge has to be in
19 verbatim. Everybody has it. It makes some sense.

20 We don't have that. We try to -- we've
21 been trying for years to bring these charges to
22 something that's more suitable for lay people so
23 that they can understand what the law is saying.

24 But Judge Lockemy's response is, we
25 don't do it because we've never done it. And I

1 said, well, that sounds like what we always do.
2 And I don't fault him -- because the old school
3 judges, they don't want to do that, they just
4 re-read it. And that's fine, I don't fault them
5 for that. I just think it's much better and it
6 helps them I think to answer the questions that
7 they want.

8 I'm going to send back in compliance
9 with Judge Thomas the whole charge and I'm going to
10 bring them in and tell them that's what I'm doing.
11 So any objection to my complying with the appellate
12 court decision in sending the whole charge rather
13 than rereading it?

14 MR. CANNON: I mean, I have no
15 objection if that's what the Court desires to do.

16 MR. BOLES: No objection to sending it
17 back there, Your Honor.

18 THE COURT: Okay. That's fine. I
19 will bring each of you a copy. I will be right
20 back. I have to go print it.

21 (A recess transpired.)

22 (Jury in, 12:39 p.m.)

23 THE COURT: Thank you very much.
24 Presiding Juror, what is now Court's Exhibit 3,
25 you're asking for an outline of what the section is

1 for hit and run, and I've attached now my whole
2 charge. The Court has said when you ask for a
3 portion, I can read it to you, but we all know that
4 some people are visual and it's much better if you
5 look at it and read it yourself.

6 So I've attached a printed copy, there
7 are a couple of typos, I apologize for that. As
8 I'm reading it, I'm just rough-handing it, but if
9 you will look towards the latter part where the
10 sections are outlined and they're quoted in there.
11 It's verbatim, so it's for your review. I'm
12 attaching it to it and ask the jury to please
13 retire to the jury room and resume your jury
14 deliberations.

15 Also, of course, the charge -- you
16 review the entire charge now to whatever you need.

17 (Jury out, 1:04 p.m.)

18 THE COURT: Exceptions or additions
19 from the State?

20 MR. CANNON: No, Your Honor.

21 THE COURT: Exceptions or additions
22 from the defense?

23 MR. BOLES: Just the same from before,
24 Your Honor, that we raised --

25 THE COURT: All right.

1 MR. BOLES: -- for the record.

2 THE COURT: It's the charge that we
3 typically are giving concerning the elements that
4 the State is required. I think those are supported
5 by the statute and I declined to give that
6 additional request.

7 MR. BOLES: Thank you, Your Honor.

8 THE COURT: We will be at ease again.

9 (A recess transpired.)

10 THE COURT: Let the record reflect Mr.
11 Broadway is present. We've had a conference in
12 chambers. There's an issue that the State has
13 raised -- as I understand, the State is raising it
14 concerning the charge that was given and sent back.
15 And, Solicitor, I will be happy to hear from you.

16 MR. MCNEELY: Thank you, Your Honor.
17 And as you stated, we discussed this in chambers.
18 The State is mindful that this is identical with
19 the entire jury instruction as written.

20 The State's issue in the elements as
21 stated are the State must prove beyond a reasonable
22 doubt that, one, the defendant was driving a
23 vehicle; two, the vehicle was involved in an
24 accident; three, the accident caused the death of a
25 person; four, the defendant did not stop or failed

1 to return and remain at the scene; five, the
2 defendant failed to give his name, address, and
3 vehicle registration and if asked failed to show
4 his driver's license; and six, the defendant failed
5 to give reasonable assistance to the injured
6 person.

7 The State's position is that 4 and 5
8 should not be separate elements, they should be
9 combined into one element, and/or five should
10 include the phrase, at the scene, at the end.

11 The State is mindful of the Court's
12 position.

13 THE COURT: I appreciate it, but that's
14 a direct -- when you were reading it I happened to
15 have the statute and I will read it and it says
16 this: Section 56-5-1230. The driver of the
17 vehicle involved in an accident resulting in an
18 injury to or death of any person or damage to any
19 vehicle, which is driven or attended by any person,
20 shall give his name, address, and the registration
21 number of the vehicle. All three.

22 He -- vehicle he's driving and shall
23 upon request, if available, exhibit his driver's
24 license to the person struck or the driver or
25 occupant of the person attending the vehicle

1 collided with. It really isn't even the officer.
2 He is supposed to show it to the people there.

3 That's the -- that's the -- what that
4 section provides, but I appreciate your position.
5 I think it complies, but, again, Mr. Boles, you're
6 -- don't ask me to change anything about the charge
7 other than what you wanted with respect to the
8 temporary --

9 MR. BOLES: That's correct, Your Honor,
10 the afore mentioned request we stand by, but I have
11 no commentary on the State's --

12 THE COURT: Very well. Thank you,
13 Solicitor, and I appreciate it. As Mr. Boles and I
14 have had the discussion, we will just have to agree
15 to disagree on that one.

16 MR. MCNEELY: Thank you, Your Honor.

17 THE COURT: Thank you. I apologize
18 for keeping you all. Please go ahead and get you
19 some lunch and we will hold off on anything.

20 (A luncheon recess transpired.)

21 (THE COURT: We have a verdict.)

22 THE COURT: Let the record reflect Mr.
23 Broadway is present. Is the defendant read to
24 receive the verdict?

25 MR. BOLES: We are, Your Honor.

1 THE COURT: State ready?

2 MR. CANNON: Yes, Your Honor.

3 THE COURT: Very well.

4 Let me say I appreciate everyone who
5 has been here from both sides and I thank you for
6 the respect shown to the process, and I expect that
7 to continue. I don't want any reaction to the
8 verdict from the jury, and if there is any
9 reaction, that would be considered contempt of
10 court.

11 So if you feel that you will have
12 difficulty controlling your emotions, and I
13 understand this is an emotional time, I would
14 suggest that you go ahead and vacate the room now.
15 If you remain, I understand that you understand
16 what I'm expecting. Thank you very much again for
17 the courtesy shown for the proceeding in this
18 court.

19 All right. Let's bring in our jury.

20 (Jury in, 2:38 p.m.)

21 THE COURT: Thank you very much, ladies
22 and gentlemen. As I understand it, the jury has
23 reached a verdict.

24 THE FOREPERSON: That is correct,
25 Judge.

1 THE COURT: If you would pass it please
2 to the bailiff.

3 Verdict form is properly completed. Do
4 you want to publish it?

5 THE CLERK: It's up to you.

6 THE COURT: If you would publish the
7 verdict for me, please.

8 I ask the Defendant to please stand.

9 THE CLERK: In the Court of General
10 Sessions, the State of South Carolina, Indictment
11 Number 2016-GS-08-2361, versus Samuel Lee Broadway:
12 We, the jury, by unanimous consent, find the
13 defendant on the charge of leaving the scene of the
14 accident guilty.

15 Ladies and gentlemen of the jury, if
16 this is your verdict, please signify by raising
17 your right hand.

18 THE JURY: (Raised hands)

19 THE COURT: Thank you. Let the record
20 reflect that each juror raised his or her right
21 hand in response to the clerk's question.

22 Anything further from the jury from the
23 defendant?

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

25 THE COURT: Okay. You may be seated.

1 Anything further from the State?

2 MR. CANNON: No, nothing right now.

3 THE COURT: Okay. Ladies and
4 gentlemen, thank you so much for your
5 participation. I'm going to ask you to go to your
6 jury room. I will be in there in just a moment.

7 (Jury out, 2:34 p.m.)

8 THE COURT: We will be at ease for a
9 few moments.

10 And, Mr. Cannon, do you want to go
11 ahead and entertain the motions? And then if I
12 deny the motion, are you prepared to go forward
13 with sentencing today?

14 MR. CANNON: We are, Your Honor. We
15 are getting the sentencing sheet now.

16 THE COURT: That's fine. No problem.

17 All right. Mr. Boles, thank you very
18 much. The State doesn't have any motions I assume.

19 MR. CANNON: No, it does not, Your
20 Honor.

21 THE COURT: Mr. Boles, motions? I
22 would be delighted to hear from you, sir.

23 MR. BOLES: Thank you. At this time,
24 we're making our judgment for -- judgment
25 notwithstanding the verdict, Your Honor, raising

1 the same grounds as raised in our motion for
2 directed verdict, relying on the same testimony
3 that was put before the Court at the time.

4 It's our position that the defendant
5 substantially complied with the requirements of the
6 statute and, therefore, could not be found
7 criminally liable in this matter. So thank you for
8 your consideration, Your Honor.

9 THE COURT: You bet, and I -- as I
10 believe in my ruling, I think it was a jury issue
11 and, in fact, in answer to some of the questions --
12 and this is my construction of it, and I'm placing
13 it on the record so that if you choose to review
14 it, the Court can see my thought process.

15 I almost envision this statute -- and I
16 think it was intentionally drawn that way because
17 of the history involved in how it was created and
18 how it came about. And we all of us that live here
19 know that to be the case of the tragedy that
20 occurred in the Battery I think in Charleston years
21 ago.

22 But it's -- I see it as almost -- the
23 way it's drawn, we, as lawyers, know shall means
24 absolutely. There is no deviation from that, it's
25 mandatory. And the problem was -- I don't have any

1 problem with your argument; he had the right to
2 leave to go get aid according to the statute, but
3 in order to get the right to leave, you've got to
4 stop, because you can't leave temporarily if you
5 haven't stopped in the first place.

6 And that, to me, is why it makes sense
7 to me that it requires you to stop and to perform
8 those things, and in the -- this is what I argued
9 in that -- I placed on the record -- I mentioned to
10 you-all when we started, I directed a verdict after
11 the statute was for that reason. In that case, the
12 defendant stopped. They got -- they made sure that
13 an ambulance came, and while the ambulance was
14 working on him, he left and he went away.

15 The officer came, he was not there. He
16 went home, much as Mr. Broadway did. And they
17 said, you need to go back. So he left there and
18 went back -- first, he went to the hospital to
19 check on him. Gave the family all of the
20 information that would be typically given -- should
21 have been given at the scene, technically, as I
22 read that statute. Gave them all the information
23 and then went to the North Charleston Police
24 Department. It wasn't done simultaneously, but it
25 was done over a period of time, and, in my opinion,

1 he complied with every part of the statute.

2 Where I have a problem and why I'm
3 denying this motion, he didn't comply with the
4 other parts. I could maybe even stretch and say,
5 giving his ID at the home complied with giving the
6 ID, except the ID is -- really, the way the statute
7 is drawn isn't to the officer. It's to the person
8 there at the scene. And so that, to me, is the
9 reason I distinguish that and why I want that to be
10 clearly stated as to why I respectfully deny your
11 motion, but thank you for making it on behalf of
12 your client.

13 MR. BOLES: I appreciate that clarity,
14 Your Honor.

15 THE COURT: Yes, sir.

16 All right. Solicitor, are we ready --
17 are you ready for sentencing, too?

18 MR. BOLES: If the Court would indulge
19 me a couple of minutes, I would appreciate it.

20 THE COURT: Oh absolutely. Take five
21 or 10 minutes? Or 15?

22 MR. BOLES: Fifteen would be great.

23 THE COURT: That would be good. You
24 can take him out the back. Okay. Thank you
25 Mr. Boles.

1 (There was a break in these
2 proceedings.)

3 THE COURT: All right. Solicitor,
4 before I hear from Mr. Boles, anything else you
5 would like to add?

6 MR. CANNON: Judge, I'm not going to go
7 into the facts, you've been here all week just as
8 well as everyone else. I would like to acknowledge
9 the undertones of this case was alcohol-related
10 which is.

11 THE COURT: No question.

12 MR. CANNON: -- part of it. And I also
13 want to acknowledge that the victim's family has
14 been present all week. Ms. Chastity Garrett is
15 present in the courtroom. I do not believe she
16 wishes to address the Court. She understands the
17 fact that she's never going to get Jesse Feagin
18 back and with that, because of the loss of life in
19 this case, the State is going to be recommending
20 12 years, Your Honor.

21 THE COURT: Okay. All right. First,
22 I would be happy to hear from you Mr. Boles.

23 MR. BOLES: Thank you, Your Honor.

24 THE COURT: You bet.

25 MR. BOLES: Just some background about

1 Mr. Broadway because we haven't gotten into this
2 yet.. He's been in the tricounty area for the last
3 30 years. He bought his own business, it's a reMax
4 real estate business, in 2013. He's been the head
5 of that company or that branch of the company
6 since.

7 Prior to today, he's had 15 years of
8 working in the real estate industry, ten years
9 prior to that was retail, and that's what brought
10 him to the tri-county area. Mr. Broadway has three
11 daughters; Abigail, and she is present in the
12 courtroom today; he also has two twin daughters,
13 they're six years old, Sophie and Maddie.

14 Mr. Broadway is the primary earner for
15 his family. He's paying child support for his
16 children right now. He's had a divorce with his
17 ex-wife, who is the daughter of the Burtons, who we
18 heard from and they are here as well.

19 He's been a member of the Chamber of
20 Commerce, he goes to Northwoods Church. He's
21 engaged to Laura Toller, she's also here today in
22 support of him. The Burtons were here -- they are
23 here in the back as well in support of him.

24 Your Honor, throughout the time that we
25 have been working with Mr. Broadway, he's told me

1 repeatedly that he must repeat this drive every
2 day, and the pain for the family he feels is
3 renewed every time he passes that intersection.

4 I know this didn't get brought up in
5 the trial of the matter, but I think it's important
6 for the Court to know about some of the
7 conversations that happened with the witness that
8 was not relevant to this trial, but I think could
9 be relevant to Mr. Broadway's state of mind in the
10 Court's consideration.

11 Mr. Broadway has maintained to me, and
12 we did not address this, but that when he was at
13 the parking lot, the witness, Mr. Bryant, made an
14 offer for money to steal his car so that he could
15 claim that he was not driving it. Obviously,
16 that's not relevant to the trial and the merits of
17 the case so we did not address that, but Mr.
18 Broadway knew that was wrong. And there's a very
19 small clip you can hear in that video where he says
20 something about people in the parking lot with bad
21 ideas and he knew that wasn't right. That's what
22 he was referring to.

23 So I use that just to segue, Your
24 Honor, into our -- what we believe the undertone of
25 the case is, and that is, despite what has now been

1 ruled upon, the noncompliance with the statute, you
2 know, I think there's enough in the record for the
3 Court to infer that Mr. Broadway's intent was not,
4 to hide himself or to run, albeit, he did not
5 comply with the stop requirement and the letter of
6 the law -- as Your Honor explained in our motion,
7 the denial of our motion, the letter of the law
8 wasn't met, but I would submit for your better
9 judgment -- and you've presided over probably more
10 cases than any of the judges in this circuit, if
11 you would take into consideration what I'm offering
12 as his intent at the time was to try to reach out
13 for some form of help, and it was -- there is
14 nothing in the record to suggest that he tried to
15 hide his car or hide evidence or anything like
16 that.

17 He turned himself in once he knew the
18 warrant was issued for his arrest and met this
19 openly and head on, so I hope that you will
20 consider that.

21 Also, Your Honor, and again I know that
22 you have handled many of these cases and you've
23 seen a lot of them, I'm reminded a little bit of a
24 Charleston County matter that came up a couple of
25 years ago on Riverland Road. There was a DNR

1 officer -- or maybe a part-time DNR officer, there
2 was a death, that person left the scene, went and
3 got his fiance, or his girlfriend I think, and they
4 came back to the scene.

5 In that case there was a relatively
6 lengthy sentence imposed upon him suspended to 40
7 -- my notes are 40 months of house arrest to allow
8 him to continue to work and to provide for his
9 family.

10 Now, of course, we all know that's not
11 binding at all. I just throw that out there as an
12 example of what is a similar matter, and I will end
13 with that, Your Honor.

14 Also, if you would so entertain, I know
15 there are a couple of people here --

16 THE COURT: Sure.

17 MR. BOLES: -- in support of Mr.
18 Broadway that would like to be heard.

19 THE COURT: I would be delighted to
20 hear from anyone.

21 MR. BOLES: John.

22 THE COURT: Right here. Give me your
23 full name for the record, please.

24 THE WITNESS: Yes, sir; my name is John
25 Batten. I'm an agent in Sam's office, and he's

1 been an inspiration to me and been -- has trained
2 me to be a good solid ethical agent. I know he's
3 -- he's inspired a lot of people in the office and
4 he's done wonderful things for hundreds of families
5 in finding them homes in this community and I
6 appreciated his friendship.

7 THE COURT: Thank you, Mr. Batton. I
8 know he appreciates those words as well.

9 MR. BOLES: I thought we may have one
10 or two more, Your Honor.

11 THE COURT: That's okay. Take your
12 time.

13 MR. BOLES: This is Laura Toller.

14 THE WITNESS: Hi; I'm Laura Toller. I
15 have met this man and he's of integrity, he's all
16 family. All he wants to do is care for his
17 children and raise them properly. I don't feel
18 that it would be a service to the community or his
19 children to have a lengthy jail sentence. If you
20 would take that into consideration.

21 THE COURT: Thank you, ma'am.

22 THE WITNESS: I'm Carol Broadway, I'm
23 his ex-wife --

24 THE COURT: Yes.

25 THE WITNESS: -- the mother of his

1 kids. And I don't think it would benefit my
2 children to have their dad in jail. They need his
3 guidance and -- and so I think that he needs to
4 help raise his kids and I don't think it would
5 benefit them for him to be in jail.

6 THE COURT: I understand that.

7 THE WITNESS: Anita Burton. I didn't
8 get to say what I needed to say at the trial, and I
9 felt like I needed to say that now. Sam come to
10 the house, he asked for help. He just wanted to
11 see the girls. I said, you need to call the
12 police, I don't think you need to be driving that
13 car back to the scene. You need to call the
14 police. He said, I'm tore up. Can you do it? So
15 he was not trying to flee.

16 Now, I have the girls -- I pick them up
17 from school just about every day, and they are very
18 close with their dad. They're four years old --
19 they're five years old. They won't be six until
20 January, and I do think -- I don't care how many
21 years of parole, house arrest, or whatever you give
22 Sam, but I think it would be punishing Maddie and
23 Sophie for him to be out of their life for an
24 extended period of time. Thank you.

25 THE COURT: Thank you, ma'am.

1 MR. BOLES: I believe that's it for our
2 support. I think the Court for their time. I
3 think the State for their time as well.

4 THE COURT: Absolutely.

5 Mr. Broadway, is there anything that
6 you would like to say, sir?

7 THE DEFENDANT: Yes, sir. First,
8 there's something that's not been any time for me
9 to -- to -- and my attorney had mentioned that I
10 did pass this place. I had many times before and
11 certainly many times after. With Maddie and Sophie
12 and Abigail, my oldest daughter back there, I can't
13 imagine the loss of life. I have made right with
14 the Lord God and that's my nature because I know
15 that I was not at fault.

16 There was -- you know, it's easy to
17 second guess what you could and how you could do
18 better, and in my heart I was trying to do the best
19 that I knew. It was total shock, total surprise,
20 and I regret it every day and I see it every day.

21 I also hold my children and I can
22 imagine the pain -- and my heart goes out to the
23 Feagin family, and my mom and I have had this
24 discussion many times. I'm blessed to have many
25 people that have touched me as much as I have

1 touched them.

2 I feel my timing -- it's not here. I'm
3 not a whiner. I'm not a very good crier so you
4 won't see me cry too much, but sometimes I can
5 whine a bit, but I do feel my timing was pretty
6 poor with things that happened before this. I feel
7 like the offers and the things are way higher than
8 the crime itself with the whole story, so I
9 appreciate the time to hear the story.

10 You know, there is no way that things
11 could be second guessed. I guess I've learned more
12 about the law than I've ever known in the last few
13 days and how we read it and what -- the intent, but
14 I was not running to hide. In my heart I was
15 trying to find out what it is that I need to do
16 and, unfortunately, the normal citizen, and myself,
17 even though I'm read in real estate, does not.

18 I don't think we're always equipped in
19 certain times and certain instances to digest and
20 to react in the way that is written, but there was
21 never an intent to hurt or harm, to avoid.

22 Again, my heart goes out to those who
23 have lost and to my family if they lose me, too. I
24 think it would be tragic. I don't think that you
25 take tragedy and punish others. I certainly take

1 responsibility for whatever you deem, and we will
2 take it from there, sir.

3 THE COURT: Thank you. Anything else?

4 MR. BOLES: No thank you, Your Honor.

5 MR. CANNON: Nothing further.

6 THE COURT: Well, no question it's a
7 difficult situation and it's a tough law, but it
8 was intended to be. And if you think about it, as
9 we've heard a lot about decency and ethics and
10 being responsible, it's true, you don't have to
11 have knowledge of the law to know that you should
12 stop and see if you can help someone. That's just
13 common sense.

14 And the sad thing about -- the good and
15 the bad of a trial is you get to see more than a
16 guilty plea. Just like you're seeing some guilty
17 pleas while you were waiting; they're very brief
18 and very short, a brief version, you don't see the
19 whole thing, but I got to see the whole thing.

20 And I'm looking at an intelligent man
21 and, obviously, a very wonderful person. And every
22 time -- everything I heard, it brought back the
23 conversation that I had with my son who is now 35
24 -- 33? He's getting up there, and I'm too old to
25 remember his age. But it was shortly after I was

1. elected and we were going home. We had gone
2. somewhere in Moncks Corner and we were riding on --
3. I can see where it was, it was on a little stretch
4. of road.

5. And he said, well, now that you're a
6. judge, if I do anything wrong, I'll get probation.

7. And I looked at him and I said, sorry,
8. not so. And you know why? Because I know what you
9. have and I know what you were given, I know what
10. opportunities you were presented, and I know what
11. you know. And that's part of the sentencing.

12. Sentencing is part punishment. It's part some
13. retribution, although nothing that I -- the
14. sentence I impose is ever going to restore life.

15. And, truly, in this case, it's what I
16. said during the trial is what was said. The
17. tragedy was -- you know, in a civil trial there are
18. all kinds of issues. And, frankly, I'm -- not
19. before me, but it would be difficult to see a civil
20. result in favor of the -- of the decedent because
21. of the actions that were taken in a negligence
22. case.

23. In a felony DUI case, there may have
24. been some issues involved, but in this case there
25. was none. And that's the problem. You knew better

1 and you knew not just that you shouldn't take your
2 car, but I think you knew full well what you should
3 have done.

4 And, Mr. Boles, you hit the nail on the
5 head; if I'd been presented with -- after talking
6 with mom and dad and I get in my car and I go
7 back -- because, according to his statement he was
8 fine, he hadn't had anything to drink, and now
9 we're four hours removed from the time of this
10 accident.

11 Had he gone back, we'd have a big
12 issue, big time, because he's back. Not
13 withstanding the statute says, you should have
14 stopped in the first place, and that's the problem.

15 The other part of the sentence and,
16 yeah, it's -- the effects of sentences are
17 exponential, and don't think I'm not cognizant of
18 that. I'm blessed to have three children, I'm
19 blessed to have six grandchildren. They're
20 important to me, just as I know your children are
21 important to you, but it's also important that they
22 understand and I think that's -- I really think
23 that's what -- I can only imagine what was going
24 through your mind as a father. You saw -- what
25 now? How can I do this?

1 And I think it's summed up in a
2 nutshell. It was all for a phone? That said to
3 me you realized how stupid this whole thing was.
4 It didn't have to be; you were home safe and sound.
5 But, unfortunately, now we have to make a statement
6 not only about you, but to the community, to others
7 who may be faced with that similar choice. And
8 that's also part of the sentence.

9 So I appreciate it. To be candid with
10 you, the latter part is what -- I've been thinking
11 about it since we started the trial and hearing
12 more about you -- and thanks for what everybody
13 said about you and I believe every word of it. You
14 know, you're a great person, but I have to tell
15 you, even the Bible says it, too much is given, much
16 is expected. And I think we have a right to hold
17 you to that standard.

18 And, frankly, I was thinking more in
19 the range of 15 to 20 to be a more reasonable
20 sentence, given what I've heard and what I saw
21 about your alcohol -- the condition you were in.
22 You had every right in the world, didn't fault you
23 for refusing. I thought that showed -- really that
24 probably gave me more convincing that you were
25 cognizant of what you were doing. You had control

1 of your faculties. You thought that would prove --
2 and you even articulated it to some extent, and
3 that showed me, you know, this man is really not
4 totally under the influence. He's capable of
5 functioning.

6 The other part it showed me was what
7 you did with the automobile, keeping it -- from you
8 rolling the car because you were faced with an
9 absolute sudden emergency. No question about it.
10 That's why all of those things were in your favor.
11 All you had to do was stop, and you didn't. And
12 there in lies the problem.

13 So, Solicitor -- all right. You've
14 recommended 12 years. I will accept the
15 recommendation. The sentence of the Court is
16 12 years. Good luck to you.

17 MR. BOLES: Thank you, Your Honor.

18 THE COURT: Let's take a ten-minute
19 break.

20 (These proceedings were concluded at
21 4:28 p.m.)

22

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25

1 CERTIFICATE OF REPORTER

2

3 I, Carol Denise Lauder, Registered
4 Professional Reporter and Notary Public for the
5 State of South Carolina at Large, do hereby certify
6 that the foregoing transcript is a true, accurate,
7 and complete record.

8 I further certify that I am neither related
9 to nor counsel for any party to the cause pending
10 or interested in the events thereof.

11 Witness my hand, I have hereunto affixed my
12 official seal this 3rd day of February, 2017 at
13 Charleston, Charleston County, South Carolina.

14

15

16

17

18 Carol Denise Lauder
19 Registered Professional
20 Reporter, CP
21 My Commission expires
22 August 2, 2017

23

24

25

1 STATE OF SOUTH CAROLINA) GENERAL SESSIONS COURT
 2 COUNTY OF BERKELEY) CASE NO. 2016-GS-08-02361
 3 STATE OF SOUTH)
 4 CAROLINA,)
 5 Plaintiff,) Transcript of Record
 6 vs.)
 7 SAMUEL R. BROADWAY,) Date: September 28, 2017
 8 Defendants.)

9 * * * * *

10 B E F O R E:

11 The Honorable R. Markley Dennis
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 17 Denise J. Lauder, RPR
 18 Ninth Judicial Circuit
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 25

1 A P P E A R A N C E S

2

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INDEX OF EXHIBITS

(No exhibits were offered or
marked for identification.)

1 (The following proceedings were had
2 9/28/17, at 10:07 a.m., Berkeley County General
3 Sessions Court, in re: State v. Broadway.)

4 THE COURT: This is your motion.

5 MR. GEEL: Thank you, Your Honor.

6 Judge, we're here on two motions this
7 morning. The first is our motion for a new trial,
8 and the second is our motion to reconsider the
9 sentence. As Your Honor knows, this case arises
10 out of a collision that took place on March 7,
11 2015, which resulted in the death of Jessie Feagin.

12 This collision happened on Highway 176
13 near Domingo Road --

14 THE COURT: Not to interrupt you, but I
15 remember this case.

16 MR. GEEL: Very good.

17 THE COURT: Very vividly.

18 MR. GEEL: So Mr. Broadway was
19 sentenced to 12 years at the conclusion of this
20 trial. November 30, 2016, he was sentenced to
21 12 years.

22 Judge, the first of our motions -- I
23 will do the motion for a new trial first. I figure
24 logically it makes the most sense to do it that
25 way.

1 I'll dispense with the Jackson Denno
2 issue that we raised first because of the fact that
3 this was already litigated pretty extensively at
4 trial, as Your Honor will recall.

5 Essentially, we'll reassert the same
6 claims; that he asked for a lawyer, that is
7 Mr. Broadway, when he said, call Chase Payne, and
8 that was brushed aside. The police seized his car
9 he was parked in, they seized his vehicle and,
10 ultimately, the statement did come in and the jury
11 heard it.

12 It constituted -- amounted to a
13 confession; he essentially admitted to being
14 involved in the accident. He admitted that he'd
15 consumed alcohol earlier in the evening. He was on
16 camera refusing to provide a blood sample, and he
17 also did a written statement. So reasserting all
18 of the arguments that were made by trial counsel,
19 we would ask the Court to give additional
20 consideration to that issue.

21 Turning to the hearsay issue, which is
22 a little bit thornier and was not extensively
23 litigated at trial, what we are claiming, Your
24 Honor, is the Court's ruling that Marlene Burton
25 was prohibited from testifying to a statement that

1 Mr. Broadway made when he arrived at her home.

2 Your Honor will remember the facts that
3 Mr. Broadway left the scene and went to his
4 in-laws, the Burtons' home.

5 THE COURT: He went somewhere else
6 first before he went to his in-laws.

7 MR. GEEL: That's correct, Your Honor..
8 In the transcript at page 333 and 334, this is
9 where the series of questions at issue appears.

10 The question was --

11 Question: Why did Mr. Burton call the
12 police?

13 And Marlene Burton answered, Sam asked
14 him to call. At which point the State objects,
15 arguing hearsay -- excuse me. The State just says,
16 objection, Your Honor. And the Court says,
17 sustained, hearsay. The jury disregard that last
18 statement.

19 Later on, Mr. Boles, the trial lawyer,
20 asked, did he -- meaning Broadway -- want you to
21 call the police? Again the State objects. And the
22 Court says, sustained; that would call for
23 speculation on the part of the witness. I will not
24 allow it under 602.

25 And, again, moments later, Mr. Boles

1 asked, did he -- meaning Broadway -- direct you to
2 call the police? Again, the State objects. And
3 the Court says, sustained; it's hearsay.

4 So, Your Honor, the Court's ruling on
5 that objection was that the statement, you know,
6 Mr. Broadway informing Mrs. Burton to call 911 was
7 hearsay. The main issue, at least the way I see
8 it, sort of the hearsay issue, the problem is the
9 vicarious assertion of fact; essentially, one
10 person vicariously asserting facts through another
11 by saying they're out-of-court statements.

12 We all know from the definition of
13 hearsay that it is not hearsay when a statement is
14 not offered for the truth of the matter asserted.
15 In this case, I'd submit to the Court --

16 THE COURT: What would be the purpose
17 of offering the statement?

18 MR. GEEL: Well, Your Honor --

19 THE COURT: You know, I appreciate it.
20 You can argue that up the street because I'm
21 comfortable -- there's no other reason for it to be
22 offered. Why? Because he wanted the people to
23 know -- the jury to know that he wanted them to
24 call the police.

25 MR. GEEL: Right.

1 THE COURT: So it's offered for the
2 truth of the matter asserted.

3 MR. GEEL: Well, respectfully, Your
4 Honor, what it is, essentially -- and there's a
5 number of bases for admitting it for non-hearsay
6 uses. The phrase, call 911, or telling someone to
7 call 911, it's not a statement that has any sort of
8 factual weight to it. It doesn't make any claims.
9 It can't be proved true or false. It doesn't
10 assert any facts.

11 And that's the issue when you have a
12 hearsay objection. It is, essentially, the jury
13 hearing factual claims not from the declarant. So
14 in this situation, you have someone saying, call
15 911. Call 911 is not describing any kind of facts
16 or circumstances. It's not asserting any facts.
17 It's not making any claims that the State --

18 THE COURT: Why would you be calling
19 911? What is the inference to be drawn from that?

20 MR. GEEL: From what, Your Honor?

21 THE COURT: Call 911. Why? Because
22 you want to talk to them?

23 MR. GEEL: Well, Your Honor, it,
24 essentially --

25 THE COURT: Mr. Geel, as I told you,

1 sir, I appreciate you briefed this issue
2 substantially and significantly, and you have every
3 right to argue -- you know, to incorporate the
4 brief fully. I'm assuming that that's been filed,
5 what's been submitted to me?

6 MR. GEEL: Yes, sir.

7 THE COURT: Then it is fully
8 incorporated for purposes of review. You're
9 entitled to rely on it. I appreciate your
10 position. I agree with you; it's a discretionary
11 ruling. I believe it's hearsay. I have given the
12 reasons for it. I think I articulated the reasons,
13 and I'm comfortable with my decision.

14 MR. GEEL: Okay. Is it the Court's
15 ruling --

16 THE COURT: I stand by my ruling.

17 MR. GEEL: Understood.

18 THE COURT: I appreciate your position
19 though.

20 Help me, I'm trying to recall, I don't
21 -- Mr. Broadway, did he take the stand?

22 MR. GEEL: No, sir.

23 THE COURT: I didn't think he did. And
24 that's another major issue in this case, because
25 there is no question that's the -- had he taken the

1 stand, there's a clear -- clear -- I've ruled on it
2 a number of times, 801(d)(1), whereas the prior
3 statement is given, it's not hearsay.

4 This is -- this was offered to support
5 him. Not to contradict him. I mean, it's just
6 simply -- it's just simply I'm comfortable with it,
7 and I appreciate it and it's a way for the
8 defendant to testify without relinquishing his
9 constitutional right to remain silent, which I
10 think is also significant.

11 MR. GEEL: I understand the Court's
12 ruling. So bearing that in mind, we will submit
13 the motion for new trial for the Court's
14 consideration, and I'll move on to our motion to
15 reconsider the sentence.

16 A fair number of issues to talk about
17 there, and these are issues that have not been
18 presented to the Court before. So I would like to
19 talk very briefly, as far as our motion to
20 reconsider the sentence, about the offense itself;
21 you know, leaving the scene of the accident
22 56-5-1210.

23 Most of the time what you see with sort
24 of a criminal statute is sort of criminalizing
25 conduct that sort of directly creates some sort of

1 harm. There's a sort of but-for cause-and-effect
2 type of relationship between the alleged criminal
3 conduct and the harm that's alleged.

4 I mean, murder is the most obvious
5 example. You know, when someone commits murder,
6 now there's someone who has lost their life. Or a
7 theft, you have somebody who's lost their property
8 and, you know, they are not whole.

9 This is a fairly unusual statute, the
10 way that I see it, in terms of very often you will
11 have a harm, especially when there's a 1210, when
12 there's a fatality. You'll have someone who has
13 lost their life, or may be in the process of losing
14 their life, prior to the commencement of the
15 criminal act; in other words, the damage,
16 especially in this case, it's already done.

17 THE COURT: We know the history.

18 MR. GEEL: Right.

19 THE COURT: We know why it exists.

20 MR. GEEL: Right.

21 THE COURT: It comes out Charleston. I
22 mean, we know why. Mark Evans, we know why. So I
23 understand why. And, frankly, when he was alive, I
24 granted a directed verdict. And it was a death,
25 leaving scene with -- and -- because he came back.

1 He went and did all the things that were necessary
2 to comply with the statute.

3 I think I even said that during the
4 process that, you know, all this gentleman had to
5 do was go back.

6 MR. GEEL: Right.

7 THE COURT: Then he could have done --
8 because there's no question the statute -- I think
9 defense counsel was focusing on, he has a right to
10 go look for help. And that's fine, the statute
11 clearly says that.

12 But the first thing he has to do is he
13 has to go back and then go look for help; and
14 therein lies the problem, and we know why.

15 And in this case, as I think I put on
16 the record, there is no question -- and, frankly, I
17 had the unfortunate task of sentencing someone in
18 Charleston not too long ago and not too long after
19 Mr. Broadway. I remember it. This guy, it was
20 horrible.

21 MR. GEEL: I represented that
22 gentleman, Judge. I know which case you're
23 referring to.

24 THE COURT: The one with failure to
25 stop for blue lights --

1 MR. GEEL: Yes, sir.

2 THE COURT: -- and you remember then
3 that the victim in that case, had he just stopped,
4 could have been nothing. Because he -- he'd have a
5 failure to stop for blue light and that would have
6 been the extent of it, because the victim was at a
7 place where he shouldn't have been.

8 And in this case there was negligence,
9 clear negligence, as I recall from testimony on the
10 part of the victim. So there is no question in my
11 mind about all of those things. The problem that
12 we have is -- and you and I can debate that.

13 I don't -- I don't argue at all with
14 your analysis and your position on the statute
15 itself. I think we have a lot of statutes in this
16 state that are -- they seem to be knee-jerk
17 statutes instead of having some specific purpose;
18 although, clearly, this one was to try to alleviate
19 and eliminate what we know it was trying to guard
20 against, what it would have guarded against in that
21 case.

22 It wouldn't have in this case, but I
23 don't believe Mr. Broadway would have failed under
24 the influence. I mean, sure, he had something to
25 drink, but that doesn't -- we know that doesn't

1 make him guilty of driving under the influence.

2 MR. GEEL: Right.

3 THE COURT: And then the negligence on
4 the part of the deceased was clear. So, anyway, I
5 apologize, but I understand the theoretical
6 arguments, I guess, is the way I'd phrase that.
7 And you're right about that.

8 I mean, we're taking a statute that,
9 frankly -- and when we use the term -- and this one
10 bothers me all the time. We've labeled it as
11 leaving the scene of the accident which has this
12 negative connotation.

13 What it is, you failed to give the
14 investigating officer the information. That's the
15 main purpose of it -- and to render aid. And in
16 this case, had he gone back, tragically, I don't
17 think there was any aid that could have been
18 rendered to the individual.

19 MR. GEEL: Right.

20 THE COURT: I'm not a physician, but
21 from what I've heard, he was deceased at that time.
22 So there would have been no -- he didn't cause any
23 further damage, as the person in the case that you
24 -- we talked about.

25 MR. GEEL: Right.

1 THE COURT: That was a horrific thing
2 as well.

3 But, anyway, I understand what you're
4 talking about, excuse me. I certainly apologize --

5 MR. GEEL: Well, Judge, I think you are
6 sort of going down the road of what I was getting
7 at, which is to say that, for a crime like this, I
8 think -- I submit to you, Your Honor, that it makes
9 sense to kind of gauge culpability based on what
10 harm is actually inflicted by leaving the scene.

11 I mean, once you conceive of an offense
12 like this where there was no one on that dark road
13 that night, and a person who could have been saved,
14 but the driver strikes that individual, leaves the
15 scene, and then they lose their life as a
16 consequence.

17 It would seem that -- my intuition is
18 that it would make all the sense in the world to
19 determine that that person is highly culpable
20 because their criminal act is actually tied
21 directly to the harm that resulted; in other words,
22 the person lost their life because of their leaving
23 the scene.

24 And as Your Honor has already said, in
25 this particular instance, Ms. Campbell was already

1 on the scene, she called the police immediately,
2 they responded immediately. I believe, if I'm not
3 mistaken, he was air-lifted out of the area to get
4 immediate medical attention and, unfortunately, he
5 lost his life.

6 So the reason I'm bringing this all up
7 is that if we're going to -- I submit to the Court
8 that Mr. Broadway's culpability should be gauged in
9 that light, which is to say that his leaving the
10 scene, ultimately, had no bearing on whether
11 Mr. Feagin is here today. Unfortunately, that was
12 already complete once the criminal act commenced.

13 So I would like to talk a little bit
14 about the sentence that the Court actually imposed.

15 THE COURT: Sure.

16 MR. GEEL: I'm sure that, Your Honor,
17 you had an opportunity to look at our --

18 THE COURT: I did.

19 MR. GEEL: -- motion where we collected
20 the statistics statewide. And I respectfully
21 submit to the Court, and I know that Your Honor
22 can't possibly engage in this kind of statewide
23 analysis before sentencing everybody, I submit to
24 the Court that Mr. Broadway's sentence is a bit out
25 of step with what other offenders in the state of

1 South Carolina are getting under similar
2 circumstances.

3 We have the 23 offenders of the 77
4 receiving sentences more severe than Mr. Broadway,
5 the average being 9.25 years, the median being nine
6 years. So you have Mr. Broadway's sentence being
7 significantly higher without the presence of
8 aggravating factors.

9 I would like to talk very briefly as
10 well about the other people who received very
11 severe sentences, which is to say the 26 most
12 severe, which is the neighborhood where
13 Mr. Broadway finds himself. Twenty of those 26 had
14 contemporaneous convictions for other felonies.
15 The most common being felony DUI and failure to
16 stop.

17 Now, you can see just by looking at
18 that what that says about those cases. You have
19 situations where people are running from the police
20 under the influence -- beyond a reasonable doubt
21 under the influence, or he pled guilty to being
22 under the influence at the time when the accident
23 -- the collision took place.

24 So you have a situation where
25 Mr. Broadway has been classed by way of his

1 sentence with offenders who have very, very clear
2 aggravating factors; whereas, on the other end of
3 the scale, you have a few individuals, granted it's
4 a small portion, but you have seven of the 77 who
5 received no prison time at all, or who had all of
6 their prison time suspended. So they won't go to
7 prison provided they comply with the terms of their
8 probation. So I would just ask the Court to
9 consider that.

10 I also wanted to touch briefly on the
11 notions of sort of deterrence and recidivism. Now,
12 Your Honor, I know that at the Sidney Floyd hearing
13 Your Honor was presented with a lot of these
14 factors by the public defender, Susanna Knox, so I
15 won't sort of belabor those points because I know
16 that the Court is aware.

17 But during the sentencing Your Honor
18 made a statement that, essentially, put forth that
19 one of the considerations for Mr. Broadway's
20 sentence was a sort of general deterrent.

21 Your Honor said, now, we have to make a
22 statement, not only about you, but to the
23 community, to others who may be faced with a
24 similar choice. And that's part of the sentence.

25 So, Your Honor, the sentencing project

1 has extensively studied the effects of sentences on
2 crime rates, and sentencing severity has no
3 deterrent effect whatsoever. We have the analysis
4 from Dr. Valorie Wright, as well as another
5 analysis by Anthony Dube from the University of
6 Chicago, who said that a reasonable assessment of
7 the research is that sentence severity has no
8 effect on the level of crime in society.

9 Now, I want to draw a distinction; the
10 criminal justice system itself has a deterrent
11 effect, and it's the certainty of punishment that
12 actually deters crime and not the severity. So
13 that's an important distinction whether someone is
14 sure that they will be caught and punished, not
15 that they will serve 12 years in prison versus five
16 years in prison versus one year in prison.

17 And, Your Honor, similarly, I would
18 also like to touch on the notion of recidivism
19 which is something else that Your Honor will always
20 have to consider when imposing a sentence. Your
21 Honor, longer sentences do not reduce recidivism.
22 In fact, it's quite the opposite. The risk factors
23 for recidivism, the number one is lengthy periods
24 of incarceration; also, criminal activity from a
25 young age; prior criminal history; negative peer

1 associations; substance abuse and anti-social
2 personality disorder.

3 So the only one of those potential risk
4 factors for recidivism that Mr. Broadway has is the
5 lengthy prison sentence that he's currently
6 serving.

7 So as far as the substance of the
8 sentence itself, that's all that I have to say. I
9 will submit that for the Court's consideration.

10 I would like to close out just by very
11 briefly talking about my client, Sam Broadway. As
12 you have seen in our motion, we submitted over a
13 dozen letters. I'm sure Your Honor has read
14 through all of them. His beautiful family is
15 present here supporting him.

16 I would like to point out just a few.
17 I obviously can't point out everybody, but if you
18 could raise your hand if you're here supporting
19 Mr. Broadway so the judge can see. (Raising
20 hands.)

21 We have his parents, Martha and Furman;
22 his daughter, Abby; his brother, Daniel; and
23 numerous people as you can see. They're all here
24 to support him. They all need him to come home.

25 This tragedy has affected them as well.

1 His daughters, Maddie and Sophie, are not here in
2 the courtroom today. He has two very young
3 daughters.

4 And one of the things that we said in
5 our motion, Judge, is that Mr. Broadway lives for
6 his daughters. In speaking with his daughter,
7 Abby, who is an adult, she's in the courtroom right
8 here, she said to me -- she's read the motion. And
9 she asked me to tell you that it isn't just Sam
10 that lives for his daughters, his daughters also
11 live for him.

12 They ask after him every single day;
13 where is Daddy? When is he coming home? And they
14 just don't understand what this is and what has
15 happened, and they need him.

16 Since his time -- since his
17 incarceration, which is coming on a year now, he's
18 been a model inmate. I have his SCDC record from
19 yesterday; I printed it. He has no discipline
20 issues whatsoever.

21 He's in a very dark place and has done
22 absolutely everything he can to try to better
23 himself. He is going to AA meetings, he's teaching
24 English. Every time I go out to visit him at the
25 prison, he's read the Bible cover to cover a few

1 more times. I believe he's on about eight times
2 now. Is that right?

3 THE DEFENDANT: Yes.

4 MR. GEEL: He's doing everything that
5 he can, but he doesn't have many opportunities to
6 better himself. He's at a level-three institution;
7 there just isn't much there for him.

8 So, Your Honor, bearing all these
9 things in mind, one thing I would point out is, if
10 he's sentenced below ten years, that would qualify
11 him to move to a level-two institution, which would
12 have substantially more offerings in terms of him
13 bettering himself.

14 Bearing that in mind, I am going to ask
15 for more, if Your Honor is willing to consider it.
16 This past year has been an absolute nightmare for
17 him. I'm sure it has been for the Feagin family as
18 well. This is just a tragedy all around.

19 Mr. Broadway has been facing -- staring
20 down the barrel of a 12-year sentence now for a
21 year. This has changed him substantially. I would
22 ask Your Honor to consider suspending the balance
23 of the prison time, of course, with whatever
24 conditions of probation that Your Honor would
25 consider; but, obviously, Your Honor, we would be

1 more than happy with any kind of sentence
2 reduction.

3 Again, I submit to the Court,
4 respectfully, that a 12-year sentence is out of
5 step with what similar offenders are receiving.
6 Thank you, Your Honor.

7 THE COURT: Thank you very much. I
8 appreciate the thoroughness of your brief, very
9 much.

10 Do you wish to respond?

11 MR. MCNEELY: Thank you, Your Honor.

12 First, if I understand, I believe the
13 motion for a new trial has been addressed and is
14 disposed of?

15 THE COURT: Yeah. I'm not going to
16 grant a new trial. I'm going to deny the new
17 trial. If you would prepare the appropriate order,
18 I would appreciate it.

19 MR. MCNEELY: Absolutely. As to the
20 motion to reconsider sentence, Your Honor, the
21 State is mindful of Mr. Broadway's lack of criminal
22 record as we were at the time of trial.

23 After hearing all of the evidence, Your
24 Honor, we recommended the 12-year sentence that was
25 imposed by the Court. As you know, it carries up

1 to 25.

2 Based on all of the circumstances, we
3 did not feel that the 25 was an appropriate
4 sentence; therefore, we did not ask for it. Based
5 on the facts and circumstances of the case, all of
6 which you have heard, the conduct of Mr. Broadway
7 that night, specifically, that he was involved in
8 an accident and, certainly, it did not appear at
9 trial that that accident was his fault, but this is
10 not a requirement under the statute.

11 At the time he was involved in that
12 accident, which was obvious based on the damage to
13 his vehicle, dragging bumper, out headlight, he did
14 not know who or what he hit or the condition of
15 that individual, and that is the entire purpose of
16 the statute, that they get aid rendered to them in
17 a timely manner.

18 Rather than stopping, he proceeded past
19 the Sunoco on 17A. He went to a bar to look for
20 his phone, the bar that he had been to before going
21 home to Cane Bay, realizing that he misplaced his
22 phone, and going back down to 176 where the
23 accident happened.

24 Once at the bar, he located his phone
25 in the car and he still did not go back to the

1 scene. Rather, he drove around Berkeley County,
2 specifically not going back to his home, which
3 would have required him to go through the accident
4 scene, and going to his in-laws' house where he
5 parked the car and went to sleep without ever
6 calling the police.

7 The only way the Goose Creek Police
8 Department was notified is Mr. Broadway's
9 ex-father-in-law called the police.

10 During all of that time, Mr. Broadway
11 did not know that -- what Mr. Feagin's condition
12 was. Like you said, you're not a physician, I'm
13 not either, and it certainly appeared that death
14 was imminent for Mr. Feagin regardless, but he
15 didn't know that when this took place.

16 And that's the entire purpose of this
17 statute, to make sure that those people get aid as
18 soon as possible so they can survive if possible.
19 He did not do that in this case. Based upon the
20 facts and circumstances at trial, we requested the
21 12-year sentence and we stand by our
22 recommendation.

23 Mr. Feagin's mother is here. I don't
24 know if she wishes to address --

25 THE COURT: I certainly would be happy

1 to hear from her.

2 I'm sorry you have to be here, ma'am,
3 but thank you very much.

4 THE MOTHER: No, thank you.

5 MR. MCNEELY: She does not wish to
6 address the Court. Thank you.

7 THE COURT: Well, again, let me just
8 address that because -- because it needs to be.
9 And I wonder if it's really worth saying, but I
10 feel the need to say it many times when I see
11 victims' families here.

12 If I thought giving Mr. Broadway
13 25 years would remove your pain and your loss, I
14 would do it in a minute, but it doesn't.

15 And that's why we have separate courts.
16 This week I've been trying civil cases where we
17 deal with damages. In fact, we just concluded one
18 last night.

19 The sentence is -- in no way should it
20 be considered a compensation or, basically, giving
21 you some -- some consolation for the loss. It
22 isn't. It's strictly punishment. That's what it's
23 for and that's the sole purpose of it. And as I've
24 said before -- in fact, I have it in my office --
25 my office is here.

1 I've been involved in a project in
2 Charleston for all this year. And one of my law
3 clerks gave me this, and I cherish it --

4 It's a blow-up of the "Berkeley
5 Democrat," which was published in July of 1930. It
6 is a picture of my grandfather who was gunned down
7 on Main Street. Somebody -- a group of people,
8 they were tried, and they were really -- I know my
9 father didn't believe they were not guilty until
10 the day he died. And I know he was a bitter man
11 the day he died. His sisters somehow dealt with
12 it, but he didn't do a very good job. He harbored
13 grudges.

14 And this person was, I think, mentally
15 challenged, and a group went to him -- and they
16 didn't like his position; he was in the
17 legislature. They didn't like his position, and so
18 they paid this man \$500 and a new Chevrolet. And
19 he shot him with buckshot on Main Street in Moncks
20 Corner. There is an article about that on my wall.

21 And I read it, not to relive it, but
22 just as a reminder of the sacrifices that people
23 who serve made, and it reminds me with being
24 sensitive to people who have suffered a loss. I
25 didn't realize how significant it was going to be,

1 because I can assure you when I finished law school
2 in 1973, I had no idea in the world that I'd be
3 sitting here.

4 I had no ambition to be a judge, but
5 along the way you change, and I've changed. But
6 I'm grateful for that experience and it's worthy to
7 remind myself of it.

8 But also in punishment, the person who
9 shot him in 19 -- in the '40s, the governor
10 pardoned him. And I find that a little bit
11 disturbing. He pardoned him. But that's politics.
12 It's the way it works.

13 All of that to say, go back to -- it
14 supports what I said; you can't look at a sentence
15 being anything other than a sentence. It's a
16 punishment, that's all. And it's not in any way --
17 it doesn't -- tit for tat, or that sort of thing,
18 an eye for an eye. It never has been and it will
19 never be, and shouldn't be because that's
20 abhorrent.

21 Did I not split this sentence?

22 MR. GEEL: No, sir.

23 THE COURT: And that's what my thought
24 has been. Two fold; number one, I don't disagree
25 with you. I was a strong believer in the death

1 penalty when I was lawyer, and I've had the
2 misfortune of trying six. Fortunately, I think the
3 first one was -- he pled, and I think he's out now,
4 Titus Huggins. I know he's not been executed.

5 And then I've had several of them
6 overturned over various and sundry reasons, but I
7 will assure you I've had to impose six -- I think,
8 six death penalties, and I don't think that it
9 deters a soul, except the individual. It doesn't
10 -- it's not a deterrent to a soul. If it was, we
11 wouldn't have people shooting people all the time.
12 So I don't quarrel with your philosophy.

13 It might -- my thoughts -- and I will
14 just share why I said that. Persons similarly
15 situated -- because Mr. Broadway -- and this is
16 something that I have continued; in fact, I said it
17 last week. My son was sitting here and he
18 remembered that conversation too.

19 When I became a judge, my son -- and it
20 occurred like two miles from where we sit. And he
21 said, well, I guess if I get in trouble, I'll get
22 probation. And I said, no, you won't. Because I
23 couldn't possibly sentence him, but I said, I hope
24 you get jail because I know what you've had. I
25 know what you've been offered. I know what

1 opportunities you've had.

2 And so I -- I think the Bible addressed
3 that; to whom much is given, and I'm paraphrasing,
4 but much is expected. And I think it's a
5 reasonable philosophy. I don't quarrel with that.
6 And that's one of the factors -- it's not just a
7 deterrent to stop anybody, but somebody in
8 Mr. Broadway's position with all that he has, I'm
9 looking at something, you have to think about those
10 things.

11 And maybe, just maybe -- and my
12 feelings, you know what? It may be 99 percent it
13 doesn't affect, but if it affects 1 percent,
14 somebody is not going to have to sit where this
15 lady is sitting. Maybe.

16 And I'm not talking about this, because
17 I don't disagree with you at all. This -- we know
18 why this bill was passed; we understand it.
19 Basically, the problem was DUIs and felony DUIs and
20 inability to prove their condition at the time. So
21 they just made it that people will run -- boy, you
22 talk about broad generalization -- people run
23 because they're scared.

24 People run because suddenly it comes to
25 their mind, my Lord, what have I done? And human

1 nature being what it is, we're reluctant to look at
2 that sometimes, and we try to do anything but look
3 at it. It doesn't make it right or wrong; it just
4 makes us who we are as human beings.

5 And so I don't find fault with this
6 gentleman, and I don't think there's any -- any
7 chance in the world that this gentleman will
8 violate the law again in his life. I really don't.
9 I think that he certainly probably understands more
10 so than anybody in this room what he should have
11 done, and I commend him for the actions he's taken.

12 My regret is we don't offer you more,
13 and shame on us for not. We -- as a society, I
14 think we're going to have to answer for that.
15 There's no question what our assignment is to be if
16 we profess Christianity is to do to those who can't
17 help themselves.

18 And it will be a tough one to answer
19 when you've had the wherewithal to do it and we
20 haven't bothered to do it. So I hear you, I
21 understand, and I hear you, too.

22 I'm going to do this, because I've done
23 it now in a couple of them, and this comes from
24 Matt, who is an attorney who was a public defender
25 in Lexington, I think. He was with the Department

1 of Probation and Parole, and he speaks to us. I'm
2 on the faculty that teaches new judges and he
3 addresses us every year, all the new judges, about
4 probation and parole.

5 But I couldn't figure out why some
6 people were suspending -- you can't grant parole --
7 probation. We understand that, but we have a
8 probation; it's built in. And he finally got me to
9 think about that. And then I had it really brought
10 to mind -- I'm not the brightest kid on the block,
11 and I understand that, but I always was under the
12 impression that to exhaust the 15 percent that
13 remains, you have to actually serve 15 percent.
14 You have to be in jail for 15 percent. 15 percent
15 includes the supervision too. So it's not just
16 jail.

17 And so that brought to mind something
18 that, wait a minute, I thought we had, for
19 instance, a 10-year sentence, eight and a half
20 years, then I would have a year and a half that I
21 could sentence a person back with up to a year at a
22 time. No. If he goes a year and a half on
23 supervision and he violates it, guess what? There
24 is nothing to rule on. He's done. So there's no
25 real penalty there.

1 So what I have started doing is
2 splitting non-parolable offenses. Why? Because it
3 gives just what you're asking me for, and just what
4 society would ask. And that is to make sure -- I
5 don't think he'll have any problem completing a few
6 years, I'm comfortable with that, but to make sure
7 that he is towing the mark, so to speak. And if he
8 doesn't, then a judge has a great deal of options.

9 So what I'm going to do is this: I'm
10 going to amend the sentence. The sentence is that
11 you be committed to the Department of Corrections
12 for a term of 18 years, suspended upon the service
13 of eight.

14 That would be -- you'll serve 85
15 percent of eight, which gets into the ballpark of
16 what I think is probably reasonable for this case,
17 a five- to six-year sentence. He gets credit for
18 the time that he's served thus far. So that would
19 be the order. If you want to prepare the order to
20 accomplish that, I will be happy to sign that.

21 MR. GEEL: Okay. Sure.

22 THE COURT: Anything else?

23 MR. ADAMS: May counsel approach?

24 THE COURT: Sure.

25 (Bench conference.)

1 THE COURT: Probation is governed by
2 statute. You understand, you'll have a -- what
3 that means is, when you've finished your
4 sentence -- you don't have to stand up. You can
5 remain seated. Excuse me, you may stand if you
6 want to stand.

7 My -- my former chief justice and one
8 of my professors at -- I say, professor. We all
9 when we take these jobs, we have to sit three weeks
10 typically with a judge. And I had the pleasure of
11 sitting with a judge who became Chief Justice
12 Pleconis. And I happened to read one of his PCR
13 transcripts that he ruled in a PCR case, and I was
14 glad to read it because I had never thought of it.
15 He's probably one of the smartest people I have
16 ever met in my life bar none, but a person --
17 obviously, the person who the applicant was, he was
18 addressing him and the fellow stood.

19 And he said, sir, you don't have to
20 stand. Your lawyers have to stand because they are
21 officers of this court, and out of the protocol and
22 respect, but, you, sir, this court belongs to you
23 basically, and I'm here representing you.

24 So if you want to stand, you can. If
25 you don't want to stand, I'm not offended in the

1 slightest.

2 MR. ADAMS: If that means we should
3 stand, please let me know --

4 THE COURT: Mr. Adams, you have always
5 followed -- well, let me rephrase that. I've known
6 you too long. I can't say always; I can say most
7 of the time. No, it's always been a pleasure to
8 practice and to work with you, sir.

9 MR. ADAMS: Thank you.

10 THE COURT: And the same with your
11 counterpart.

12 MR. GEEL: Thank you, Your Honor.

13 THE COURT: What that means is this:
14 You will be given credit for the time you have
15 served towards that. That eight years is about
16 seven years, thereabouts. It's 85 percent of -- it
17 will be 6.8, I think. And you're given credit for
18 that.

19 So, roughly, you've probably got about
20 a five-year sentence left, and that's what I'm
21 looking at. Once you're released this is what will
22 happen: You will be followed by the Department of
23 Probation and Parole, and it's called Community
24 Supervision.

25 And, basically, you will have to follow

1 the standard guidelines for the probation. If you
2 complete that without any incidents for two years,
3 it's done. If you don't, then the Court can return
4 you -- if they find as a violation, the Court has
5 the right to return you to prison for up to one
6 year at a time for the balance of your sentence,
7 which, by the way, will be about ten years or -- 11
8 or 12 years.

9 So, in theory, you would -- you could
10 be on supervision for 12 years, but if you do the
11 two years, it's over. It's done. And that's why I
12 said what I said; I don't think this should be a
13 problem for that, sir.

14 And I wish you luck and thank you for
15 all the positive things that you have done. I
16 think that your family is proud and, as well, they
17 should be.

18 Thank you.

19 MR. GEEL: Thank you, Your Honor.

20 THE COURT: And good luck to you,
21 ma'am, as well.

22 Solicitor, thank you, too.

23 This would be concluded if you'll get
24 me an order.

25 (These proceedings were concluded at

1 10:45 a.m.)

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1 CERTIFICATE OF REPORTER

2

3 I, Carol Denise Lauder, Registered
4 Professional Reporter and Notary Public for the
5 State of South Carolina at Large, do hereby certify
6 that the foregoing transcript is a true, accurate,
7 and complete record.

8 I further certify that I am neither related
9 to nor counsel for any party to the cause pending
10 or interested in the events thereof.

11 Witness my hand, I have hereunto affixed my
12 official seal this 26th day of November, 2017 at
13 Charleston, Charleston County, South Carolina.

14

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Carol Denise Lauder
Registered Professional
Reporter, CP

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THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

APPEAL FROM BERKELEY COUNTY

Court of General Sessions

Honorable R. Markley Dennis, Circuit Court Judge

APPELLATE CASE NO. 2017-002104

THE STATE RESPONDENT

v.

SAMUEL LEE BROADWAY..... APPELLANT

CERTIFICATE OF APPELLANT

I hereby certify that this Record on Appeal contains all material proposed to be included
by any of the parties, and not any other material.

May 25, 2018.



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