

ORIGINAL

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY

Deadra L. Jefferson, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

CORY GETHERS,

APPELLANT

APPELLATE CASE NO. 2011-204886

RECORD ON APPEAL

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STATE’S EXHIBIT #1 (DVD)**

STATE OF SOUTH CAROLINA )  
 COUNTY OF CHARLESTON ) IN THE COURT OF GENERAL SESSIONS  
 ) 2010-GS-10-02020  
 )  
 STATE OF SOUTH CAROLINA, )  
 )  
 PLAINTIFF, )  
 )  
 VERSUS )  
 )  
 COREY LANARD GETHERS, )  
 )  
 DATE: DECEMBER 1-2, 2011  
 CHARLESTON, SOUTH CAROLINA  
 DEFENDANT. )

TRIAL TRANSCRIPT

B E F O R E:

THE HONORABLE DEADRA L. JEFFERSON

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

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EMMANUEL FERGUSON, ESQUIRE  
ATTORNEYS FOR THE STATE

ANDREW DAVID GRIMES, ESQUIRE  
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ATTORNEYS FOR THE DEFENDANT

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Official Court Reporter  
South Carolina Judicial Department

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## PRE-TRIAL MOTION

4

1 THE COURT: This is the case of The State versus Cory  
2 Gethers, Indictment No. 2010-GS-10-2020, failure to stop  
3 for a blue light. During the status conference, you  
4 indicated your client wishes to make -- or you are making a  
5 motion or is he making a motion? Which is it?

6 MR. GRIMES: He would be making a motion.

7 THE COURT: Okay. Yes, sir?

8 PRE-TRIAL MOTION BY MR. GETHERS

9 MR. GETHERS: Yes, ma'am. I'd like to make a motion to  
10 relieve my attorney for ---

11 THE COURT: I'm sorry, I can't hear you, sir.

12 MR. GETHERS: I want to make a motion because there is  
13 a conflict of interest with my attorney.

14 THE COURT: What is the conflict of interest?

15 MR. GETHERS: Me and my lawyer, he doesn't want to be  
16 shown. He doesn't want to be shown. I'd like to ask for a  
17 30-day continuance. I have another attorney.

18 THE COURT: Have you retained that attorney? Is that  
19 attorney ready to go forward?

20 MR. GETHERS: Yes, ma'am. He asked me to ask for a  
21 30-day continuance.

22 THE COURT: Who is that?

23 MR. GETHERS: Michael Coleman.

24 THE COURT: Have you paid his fee?

25 MR. GETHERS: No, ma'am.

COREY L. GETHERS VERSUS THE STATE OF SOUTH CAROLINA

## PRE-TRIAL MOTION

5

1 THE COURT: Then, he's not your attorney.

2 MR. GETHERS: I'm going to pay him today. I went to  
3 his office yesterday, but he wasn't there.

4 THE COURT: He needs to be ready to go forward today.  
5 You should have thought about this long before now. We're  
6 at the eve of trial. Mr. Grimes, are you ready? Who is  
7 actually representing him? Is it you or Victoria Anderson?

8 MR. GRIMES: I was assigned this case and given the  
9 Mr. Travis Jones case and Ms. Anderson has been helping me.  
10 She will be doing the direct examination of Mr. Gethers. I  
11 sat in on that yesterday in reference to that and the cross  
12 examination of the deputy. Ms. Anderson will be doing the  
13 opening and closings.

14 THE COURT: Okay. Are you all ready for trial?

15 MR. GRIMES: Yes, ma'am.

16 MS. ANDERSON: Yes, ma'am.

17 THE COURT: What is he referring to about compromising  
18 privilege? Has he made you aware of any potential defenses  
19 or all potential defenses?

20 MR. GRIMES: Yes, ma'am.

21 THE COURT: Has he made you aware of all witnesses he  
22 would want to call in his defense?

23 MR. GRIMES: Yes, ma'am.

24 THE COURT: And have you examined all of those  
25 witnesses or talked to all of those witnesses?

## PRE-TRIAL MOTION

6

1 MR. GRIMES: There are two witnesses that we do not  
2 have contact information for.

3 THE COURT: And who are they?

4 MR. THOMAS: One would be the alleged driver of the  
5 car.

6 THE COURT: Okay.

7 MR. GRIMES: And I imagine that he would not testify  
8 due to self-incrimination.

9 THE COURT: May incriminate himself.

10 MR. THOMAS: There was another suspect arrested.

11 THE COURT: And who was that?

12 MR. GRIMES: Gary Barnes. We did talk, our  
13 investigator spoke with Mr. Barnes and he doesn't even  
14 acknowledge this incident, being in the car.

15 THE COURT: Okay. Sir, are those the two witnesses  
16 you're talking about?

17 MR. GETHERS: No, ma'am.

18 THE COURT: Are you aware of what he's referring to?  
19 I don't want you to compromise privilege, but I just need  
20 you to, the best you can, tell me yes or no.

21 MR. GRIMES: There were two charges, one was for  
22 resisting arrest.

23 THE COURT: And that's been *nolle prossed*.

24 MR. GRIMES: *Nolle prossed*.

## PRE-TRIAL MOTION

7

1 THE COURT: Pardon me, sir?

2 MR. GETHERS: It was assault and battery with a police  
3 officer.

4 THE COURT: It's been dismissed.

5 MR. THOMAS: And this video of the chase, you don't see  
6 the assault, but you hear a lot of it.

7 THE COURT: Okay.

8 MR. GRIMES: And as far as the trial strategy, that  
9 video would be shown and Mr. Gethers ---

10 THE COURT: So, y'all have a disagreement about that?

11 MR. GRIMES: I don't think we have a disagreement. I  
12 think Mr. Gethers...

13 THE COURT: Go ahead, Mr. Grimes. Go ahead, I'm  
14 listening.

15 MR. GRIMES: I'm sorry. He seems to be more obsessed  
16 with that than we are, but it is going to be shown.

17 THE COURT: Is it going to be shown in its entirety?

18 MR. GRIMES: I imagine the State will show it in its  
19 entirety.

20 THE COURT: Is the State going to show the video?

21 MR. STACK: It goes on for a long time. We are going  
22 to show the first ten minutes and anybody is welcome to  
23 show ---

24 THE COURT: Show the rest of it if they want to?

25 MR. STACK: The cops were there for about an hour.

COREY L. GETHERS VERSUS THE STATE OF SOUTH CAROLINA

## PRE-TRIAL MOTION

8

1 THE COURT: Okay. So, what's -- I guess I'm trying to  
2 figure out, what's the rub, for a lack of a better way of  
3 putting it, if they are going to show the video?

4 MR. GRIMES: I'm not sure.

5 MR. GETHERS: The medical records.

6 THE COURT: What medical records?

7 MR. GETHERS: I had to go to the hospital after  
8 everything occurred.

9 THE COURT: How is that relevant?

10 MR. GETHERS: Because I had injuries.

11 THE COURT: And? You are charged with failure to stop  
12 for a blue light, which means failure to stop your car  
13 after the police gave you notice that they were the police  
14 and they wanted you to stop. So, why would your injuries  
15 be germane?

16 MR. GETHERS: Then Mr. Grimes seems like he wants me  
17 to plead guilty. You know what I'm saying? I'll get  
18 probation.

19 THE COURT: You will.

20 MR. GETHERS: And then, if I don't plead guilty,  
21 because of my probation, I'll probably end up going to  
22 jail.

23 THE COURT: That's possible.

24 MR. GETHERS: Yes, ma'am.

25 THE COURT: It's his job to tell you the worse case

## PRE-TRIAL MOTION

9

1 scenario.

2 MR. GETHERS: I understand that, but from his demeanor  
3 yesterday, you know what I'm saying, it just seems like we  
4 have a conflict of interest. You can ask Miss Victoria ---

5 THE COURT: Well, he has the duty -- He's not supposed  
6 to get as personally involved as you are.

7 MR. GETHERS: I didn't get personally involved.

8 THE COURT: Oh, you are personally involved, because  
9 you are charged and if you were not personally involved,  
10 you would be an unusual person. You would be completely  
11 unusual, because if I was charged with a crime, I would be  
12 personally involved.

13 MR. GETHERS: Yes, ma'am.

14 THE COURT: So, it's Mr. Grimes' job to be completely  
15 objective with you. Okay?

16 MR. GETHERS: Yes, ma'am.

17 THE COURT: So, it's his job to look at everything,  
18 to assess that, and sometimes it's his job to tell you what  
19 you don't want to hear. It's not his job to tell you what  
20 you want to hear, to soothe you, or to tell you that  
21 everything is going to be okay. That's not his job. His  
22 job is: to say this is the evidence the State has, tell me  
23 if you have any defenses, or tell me your version of it,  
24 basically, which he then assesses whether there are any  
25 defenses regarding that.

## PRE-TRIAL MOTION

10

1 MR. GETHERS: Yes, ma'am.

2 THE COURT: And then he tells you, it's his job to  
3 tell you the worst case scenario, because if he doesn't,  
4 and you roll the dice, then you'll say, "Well, he never  
5 told me this could happen to me." So, it's his job to do  
6 that and it's also his job to disagree with you. It's not  
7 his job to do what you tell him to do.

8 MR. GETHERS: Well, then how can I ---

9 THE COURT: It's his job, strategically, to do what he  
10 thinks is in your best interest, even if you disagree.

11 MR. GETHERS: But I mean, it's more like he wants me to  
12 plead guilty to this.

13 THE COURT: No, we're prepared to give you a fair trial  
14 and I've seen Mr. Grimes try a case and ---

15 MR. GETHERS: I mean, his demeanor. His demeanor.

16 THE COURT: --- I have no doubt and believe that he'll  
17 do a good job. Lawyers don't like to lose. It's our  
18 personality. It is an ego thing. I don't know any lawyer  
19 that goes into a case to lose. People watch too much  
20 television. That is not in our nature. All lawyers have  
21 A-type personalities. We are driven. We overwork  
22 ourselves and we are perfectionists and we don't like to  
23 lose and that is separate and apart from you. So, he is  
24 going to do his best to try to win this case, but he is

## PRE-TRIAL MOTION

11

1 still stuck with the facts as they are. He can't contort  
2 them. He can't put a spin on them. They are what they  
3 are. So, you have to make an assessment as to whether you  
4 think it's in your best interest to plead guilty or to go  
5 forward. Only you can make that decision. He is going to  
6 honor any decision that you make. If you don't want -- if  
7 you don't want to plead guilty, he's going to try the case.

8 MR. GETHERS: Yes, ma'am, I understand that, but to  
9 me, it was more like he was pushing me towards pleading  
10 guilty.

11 THE COURT: Well, sometimes lawyers do try to tell  
12 their clients what they think is their best interests,  
13 because they can see down the line where you can't,  
14 because it is in the nature of a human being to be the  
15 best. It is the nature of a human being wanting to believe  
16 -- It's almost like -- I will give you a different example:  
17 It is the main reason why people should never go to the  
18 doctor alone if they have hard news to hear, because you  
19 don't hear, you don't ever hear the doctor say -- You only  
20 hear the good parts. You only hear the parts that have  
21 hope. That's why you need to have another set of ears  
22 there. One, to ask questions and also to hear the parts  
23 you don't want to hear, because it is human nature to want  
24 to hear the best, to want to believe the best is going to  
25 happen. You would be unreasonable to go into a trial and

## PRE-TRIAL MOTION

12

1 not want to get acquitted. However, he has to look at the  
2 other side of it if you don't get acquitted. He can't wait  
3 until the end of the line and say, "Well, you know, I  
4 really thought, I'm telling you absolutely, I am assuring  
5 you that I'm going to get you acquitted." He can't do  
6 that. There are twelve individuals to look at that case.  
7 Twelve different people with different backgrounds looking  
8 at the facts of the case, which I haven't seen them, I have  
9 no idea what the facts are, have no clue. But only you and  
10 he can make that assessment. He has a duty to tell you  
11 whatever offers they've made to you, because if you get  
12 convicted, you are going to file a PCR and say, "Mr. Grimes  
13 never told me they offered me a deal for probation, worst  
14 case scenario, and now I'm serving jail time and I never  
15 knew that I had a deal for probation, and if I knew I had a  
16 deal for probation, I would have taken it. I have seen it  
17 too many times. Plays itself out in this courtroom every  
18 single day in PCRs, because that is what people do. So,  
19 under the law, he has a duty whether he agrees with the  
20 offer or not, he has an ethical duty, he has a legal  
21 obligation, to tell you what the deal is they've made, or  
22 offer they've extended to you and then it is also his job  
23 to tell you whether or not he thinks it's in your best  
24 interests or not and what his opinion is about it and then  
25 it is up to you to, ultimately, make the decision. You

## PRE-TRIAL MOTION

13

1 can't take it personally, because if he didn't do it, then  
2 you would be in a posture later to say, "Well, he never  
3 told me. He never told me that was a possibility."

4 MR. GETHERS: Your honor, may I say something?

5 THE COURT: Yes. Sure.

6 MR. GETHERS: Your honor, from the git-go, he told me  
7 what was on the table and to take probation and not to go  
8 on with the trial. You know what I am saying to you?

9 THE COURT: And he told me that when we status  
10 conferenced.

11 MR. GETHERS: I would ask you to give me thirty days of  
12 continuance to hire Mr. Michael Coleman for this.

13 THE COURT: Does the State have a position regarding  
14 the motion for a continuance?

15 MR. STACK: Your Honor, we're not going to fall on our  
16 sword for this, but for your consideration, this is his  
17 third rep. He was originally represented by Phillip Bundy,  
18 who attempted to work out a plea agreement and it didn't  
19 work out, and Phillip told me that he had been fired and he  
20 was going to hire Mr. Grimes, which he did.

21 THE COURT: Okay.

22 MR. STACK: It has been on this docket once, prior, but  
23 in all fairness, I asked for it not to be called, because I  
24 anticipated the requirement and I asked for it to be taken  
25 off and this is the first time it is on the docket. He can

## PRE-TRIAL MOTION

14

1 plead to probation, but I am not going to fall on my sword  
2 for it. We offered probation.

3 MR. GRIMES: And, Your honor, that's off the table. He  
4 is on probation now.

5 THE COURT: What is he on probation for now?

6 MR. GRIMES: Drug offense.

7 THE COURT: Do you know what it is?

8 MR. GRIMES: I don't think it was possession. I think  
9 it was ---

10 THE COURT: What was the sentence? Do you know? Do  
11 you know?

12 MR. STACK: Yes, I think it was two counts of PWID  
13 cocaine. I will have to look up the sentence, Your Honor.

14 THE COURT: Okay.. And when it was. That would be  
15 helpful as well.

16 MR. STACK: Yes, ma'am.

17 MR. GETHERS: I would like to say something.

18 THE COURT: I am trying to get an answer from the  
19 Solicitor, after which, I will acknowledge you and you can  
20 say anything you'd like.

21 MR. STACK: Your honor, I believe on August 29, 2008,  
22 he was convicted of PWID cocaine. He was sentenced to  
23 fifteen years, suspended on three years probation. There  
24 were two counts of it with the same sentence.

25 THE COURT: All right. So, he is still on probation?

## PRE-TRIAL MOTION

15

1 MR. STACK: I believe so, Your Honor.

2 MR. GRIMES: Did you say 2008, Mr. Stack?

3 MR. STACK: 2008.

4 THE COURT: Yeah, 2008. Unless it was tolled or was  
5 extended.

6 MR. GRIMES: Our records show June 24, 2009.

7 THE COURT: June 24, 2009, is when he pled?

8 MR. GRIMES: That was the court date, yes, ma'am.

9 THE COURT: Okay.

10 MR. STACK: I believe that is correct. I'm sorry.

11 THE COURT: So, it would be twelve that his probation  
12 expires. Have you talked with probation? Have you talked  
13 to them about, I assume -- Yes, this conviction would be a  
14 violation, which would put him in ---

15 MR. GRIMES: Your Honor, our position is -- When I  
16 first met him, I went over the plea offer and the evidence  
17 in the case and he said he wanted a trial and that is the  
18 last time we talked about pleas or anything.

19 THE COURT: Okay. But you all are ready for trial.  
20 Correct?

21 MR. GRIMES: Yes, ma'am.

22 THE COURT: This case has been pending since 2010, when  
23 it was true billed on March 01, 2010?

24 MR. GETHERS: May I speak?

25 THE COURT: I am going to give you a chance to speak in

## PRE-TRIAL MOTION

16

1 a moment.

2 MR. GETHERS: Yes, ma'am.

3 THE COURT: You said there were two witnesses you  
4 didn't have phone numbers for. One was, he said,  
5 allegedly, driving the car, but he's not -- I'm not going  
6 to let him inculcate himself without getting a lawyer.

7 MR. GRIMES: And the other person -- there was a  
8 passenger in the car.

9 THE COURT: Okay.

10 MR. GRIMES: I know his first name was Roy.

11 THE COURT: Okay. Do we know where to find him?

12 MR. GRIMES: I don't believe so.

13 THE COURT: Does he know where to find him?

14 MR. GETHERS: No, ma'am.

15 THE COURT: Okay.

16 MR. GRIMES: And then, if I'm not mistaken, the State  
17 is only calling one witness.

18 THE COURT: Okay. Well, I have four listed. You are  
19 only calling one?

20 MR. STACK: Yes, Your honor. The two others are law  
21 enforcement for the chain of custody for the CD, but I  
22 think I have initially identified it. The other one is a  
23 woman that made a statement, which I provided to Defense  
24 Counsel, who refuses ---

25 THE COURT: She just didn't want to be involved?

## PRE-TRIAL MOTION

17

1 MR. STACK: Yes, Your Honor.

2 THE COURT: Okay. So, it's a one witness case. Yes,  
3 sir?

4 MR. GETHERS: At first, I had Mr. Bundy, but being the  
5 high standard of the case being sought, Mr. Bundy had my  
6 bill for \$5,000.00 and so, I had financial problems so I  
7 couldn't pay all the bills and I had to have a public  
8 defender, but now that half my charges have been dropped,  
9 you know what I am saying, I think I can get a regular  
10 lawyer now.

11 THE COURT: The motion for a continuance is denied. To  
12 grant or a denial of the motion is in the Court's  
13 discretion and I have not heard anything that would rise to  
14 the level of necessitating a continuance in this case. It  
15 has been pending for over a year. It is relatively simple.  
16 There is nothing complicated about trying it. I have not  
17 heard anything that indicates counsel has been dilatory or  
18 has not been diligent in preparing for the trial of this  
19 case and I've not heard anything that indicates they are  
20 not ready to try this case. So, the motion for a  
21 continuance is denied. In addition to that, counsel has  
22 not been obtained, or has not been retained, therefore  
23 counsel of record at this time is Andrew Grimes, and the  
24 attorney who assisting him is Ms. Victoria Anderson. Now,  
25 where is the pro -- Sir, has Mr. Grimes advised you that if

## PRE-TRIAL MOTION

18

1 you are convicted on this offense -- and again, the Court  
2 takes no position, but I do need to make sure you  
3 understand all of the consequences of your decision, that  
4 if you are convicted on this failure to stop for a blue  
5 light, that even if the Court were inclined to give you  
6 probation on that, that it still would result in a  
7 revocation of your probation as you would have violated  
8 State, Local or Federal Law. Do you understand that risk,  
9 that you have exposure to a fifteen-year sentence on those  
10 two PWID cases?

11 MR. GETHERS: That's why I'm asking to change.

12 THE COURT: Pardon me?

13 MR. GETHERS: That's why I'm asking for a change of  
14 lawyers.

15 THE COURT: That's not going to change anything.

16 MR. GETHERS: That's not?

17 THE COURT: It is the Court's perception that you are  
18 being dilatory in the trial of this case and you're just  
19 trying to put it off.

20 MR. GETHERS: No, I ---

21 THE COURT: Don't get into debate with the Court once  
22 the Court rules. That is just an observation for the  
23 record, but that is my perception and I believe that when  
24 it is called for trial again, you will have another reason  
25 why it's not ready to go forward, but we are going forward

## PRE-TRIAL MOTION

19

1 today and we are going to pick a jury.

2 (Judge Jefferson acknowledges an attorney in the  
3 audience and a discussion of cases to be heard later in the  
4 week is held)

5 THE COURT: Okay, we will go ahead and pick the State  
6 versus Corey Gethers. Mr. Gethers, I need to ask, for the  
7 record, I need you to raise your right hand to be sworn.

8 (Mr. Corey Gethers is duly sworn by the judge.)

9 THE COURT: State your full name for the record.

10 MR. GETHERS: Corey Lanard Gethers.

11 THE COURT: Sir, how old are you?

12 MR. GETHERS: Thirty-six.

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

14 MR. GETHERS: Eleventh grade.

15 THE COURT: Do you have a GED?

16 MR. GETHERS: I don't have one now. I am in the  
17 process of getting it.

18 THE COURT: What do you do for a living?

19 MR. GETHERS: Electrician.

20 THE COURT: Okay. Has your lawyer fully explained to  
21 you and disclosed the State's offer on the failure to stop  
22 for a blue light indictment and that the recommendation for  
23 -- is it a recommendation for probation or are y'all just  
24 not going to take the position?

25 MR. STACK: It was a recommendation of probation.

## PRE-TRIAL MOTION

20

1 THE COURT: With a recommendation for probation. Did he  
2 fully explain that to you?

3 MR. GETHERS: Yes, ma'am.

4 THE COURT: Okay. And are you suffering from any  
5 mental disabilities or under the influence of any drugs or  
6 alcohol?

7 MR. GETHERS: No, ma'am.

8 THE COURT: Sir, do you wish to accept or reject that  
9 offer?

10 MR. GETHERS: Reject.

11 THE COURT: Are you doing that freely and voluntarily  
12 and of your own will?

13 MR. GETHERS: Yes, ma'am.

14 THE COURT: And he has fully explained to you your  
15 exposure for your outstanding probation case?

16 MR. GETHERS: Yes, ma'am.

17 THE COURT: And that if convicted, it is likely that  
18 your probation on those cases will be revoked?

19 MR. GETHERS: Yes, ma'am.

20 THE COURT: Okay. Then, you are doing that, likewise,  
21 freely and voluntarily and of your own will?

22 MR. GETHERS: Yes, ma'am.

23 THE COURT: Okay. Also, the Court would note for the  
24 record that he has indicated there are witnesses and other  
25 matters that Mr. Grimes is not going to put forth. Mr.

## PRE-TRIAL MOTION

21

1 Grimes has disclosed to the Court those two witnesses, one  
2 of whom is not cooperating and he can't locate, but even if  
3 he could, it is unlikely that he would inculcate himself in  
4 this case, and one who his client has indicated for the  
5 record, he could not assist him in locating. They only  
6 have a first name and no address or phone number. All  
7 righty.

8 MR. GRIMES: Your honor?

9 THE COURT: Yes, sir.

10 MR. GRIMES: Just for the record, I don't really recall  
11 going over the probation violation issues with Mr. Gethers.

12 THE COURT: Do you need to go over it in more detail  
13 than I am?

14 MR. GRIMES: I don't think so. I think you have  
15 explained it.

16 THE COURT: Well, I probably need to go into more  
17 detail. I need for you to understand that probation's  
18 position is going to be a full revocation if you are  
19 convicted. That is their state policy, basically. And you  
20 understand that?

21 MR. GETHERS: Yes, ma'am.

22 THE COURT: Okay. Are those PWIDs at eighty-five  
23 percent or what are they? PWID, is that serious or  
24 violent? I can't remember.

25 MR. GRIMES: For a first offense, it would be a non-

## JURY SELECTION

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1 THE COURT: I will protect you, ma'am. You are juror  
2 number 43. Correct?

3 MS. CHANDLER: Yes, ma'am.

4 THE COURT: She needs to be protected. Thank you.  
5 You may take your seat. Are there any additional  
6 questions, from the State?

7 MR. STACK: No, Your Honor.

8 THE COURT: From the Defense?

9 MS. ANDERSON: No, Your Honor.

10 THE COURT: Strikes are five and five. Who's going to  
11 demonstrate for me? Mr. Brown? Ladies and Gentlemen, if  
12 your name is called, please come forward as Mr. Brown is  
13 doing, and stand where he is standing, and turn back and  
14 face your fellow jurors until we either seat you as a juror  
15 or excuse you as a juror. We greatly appreciate your  
16 patience, and again, if your name is called, please bring  
17 all of your personal belongings with you as well. If you  
18 will give the clerk your attention. Madam Clerk, you may  
19 proceed when ready.

20 CLERK OF COURT: Juror Number 290, Jacquelyn Wilson.  
21 (Whereupon, Jacquelyn Wilson, a black female, comes  
22 forward.)

23 CLERK OF COURT: What say you for the State?

24 MR. FERGUSON: Please seat the juror.

25 CLERK OF COURT: What say you for the Defendant?

COREY L. GETHERS VERSUS THE STATE OF SOUTH CAROLINA

## JURY SELECTION

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1 jury box.

2 THE COURT: One alternate, strikes are one and two.

3 CLERK OF COURT: Striking for the alternate. Juror  
4 Number 188, Stephen Miernicki.

5 (Whereupon, Stephen Miernicki, a white male, comes  
6 forward.)

7 CLERK OF COURT: What say you for the State?

8 MR. FERGUSON: Please seat the juror.

9 CLERK OF COURT: What say you for the Defendant?

10 MS. ANDERSON: Please seat the juror.

11 CLERK OF COURT: Mr. Miernicki, please have a seat in  
12 the jury box.

13 THE COURT: Are there any motions regarding the  
14 selection of the jury, from the State?

15 MR. STACK: No, Your Honor.

16 THE COURT: From the defense?

17 MS. ANDERSON: No, Your Honor.

18 THE COURT: Ladies and Gentlemen, we thank you for your  
19 time and your patience with us. We know that jury service  
20 can be arduous for you, and really, feel very thankful,  
21 but we are appreciative of you giving your time to us  
22 during this process. I hope that even if you've not had a  
23 chance to serve on a jury, that while sometimes it may have  
24 been frustrating, that it still has been educational for  
25 you and that you leave this process knowing how very

## OPENING STATEMENT - MR. FERGUSON

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1 greater vote or voice than you do in the deliberative  
2 process. It is simply an administrative process where that  
3 person writes out the verdict form and writes out any notes  
4 you may have in deliberations at the conclusion of the  
5 case.

6 In order to preserve everyone's rights, I am going to  
7 give the attorneys the opportunity to take exception to  
8 anything that the Court has said by way of opening  
9 instruction. Are there any exceptions, from the State?

10 MR. STACK: No, Your Honor.

11 THE COURT: From the defense?

12 MS. ANDERSON: No, Your Honor.

13 THE COURT: Ladies and Gentlemen, I would ask that you  
14 to give the attorneys your undivided attention. The State  
15 may proceed when it is ready.

16 MR. FERGUSON: Thank you, Your Honor.

17 OPENING STATEMENT BY MISTER FERGUSON

18 Car chases are exciting to watch on television. Car  
19 chases are fun to watch when you are seated at home and  
20 you're safe and you know what is going to happen, the hero  
21 is going to win. But in real life, under darkness of  
22 night, the car chase, a high speed car chase, can be one of  
23 the most frightening things anyone can go through.

24 My name is Emmanuel Ferguson, along with James Stack  
25 and the assistance of Joanne Rule, we represent the State

*COREY L. GETHERS VERSUS THE STATE OF SOUTH CAROLINA*

## OPENING STATEMENT - MR. FERGUSON

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1 in this case against Corey Gethers.

2 On December 21, 2009, at approximately 10:00 at night,  
3 Deputy Cain of the Charleston County Sheriff's Office  
4 attempted to pull over a dark Suzuki Forenza for a traffic  
5 violation. Now, that dark Suzuki Forenza turned into a  
6 grocery store parking lot, but it did not stop. It sped  
7 through the parking lot of the Piggly Wiggly, turned  
8 Eastbound on Highway 78, and turned right again onto Ladson  
9 Road. At this point, that dark Suzuki Forenza went upwards  
10 of 100 miles-an-hour in order to evade Deputy Cain's blue  
11 lights and siren. If that wasn't bad enough, that dark  
12 Suzuki Forenza turned into a residential neighborhood and  
13 slowed enough for someone to jump out of the car and let  
14 the car just coast throughout the neighborhood. Who was  
15 driving the dark Suzuki Forenza? It was Corey Gethers.  
16 Now, Deputy Cain never lost sight of Mr. Gethers. He saw  
17 Mr. Gethers jump out of the front driver's side seat of  
18 that Suzuki Forenza.

19 Now, there are five elements that the State must  
20 prove, beyond a reasonable doubt, in order to show that Mr.  
21 Gethers failed to stop for a blue light, and they are quite  
22 simple. One, in the absence of good reason, a motor  
23 vehicle driver, while driving on a road, street, or  
24 highway, fails to stop when signaled to do so by a law  
25 enforcement officer.

COREY L. GETHERS VERSUS THE STATE OF SOUTH CAROLINA

## OPENING STATEMENT - MS. ANDERSON

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1           You are going to hear the testimony of Deputy Cain and  
2 he is going to say to you that he had visual contact with  
3 the dark Suzuki Forenza, and that dark Suzuki Forenza was  
4 in front of Deputy Cain when he initiated his blue lights,  
5 and that Forenza did not stop. You are going to see the  
6 videotape and you are going to see the lights flashing from  
7 Deputy Cain's marked police cruiser and you are going to  
8 see the Forenza zoom off. You are going to see that  
9 Forenza drive up Highway 78 and drive on Ladson Road. What  
10 you won't see is a good reason for Mr. Gethers not to stop.

11           When all the evidence is collected and all the  
12 testimony is given and when you see the videotape and hear  
13 Deputy Cain's testimony, you will be able to hold Mr.  
14 Gethers responsible for that night of terror, not only for  
15 Deputy Cain, but for those driving on Highway 78 and for  
16 those in that Summerville residence, and you will be able  
17 to find Mr. Gethers guilty, beyond a reasonable doubt, for  
18 failure to stop for a blue light. Thank You.

19           THE COURT: You may proceed.

20           OPENING STATEMENT BY MS. ANDERSON

21           MS. ANDERSON: This is a simple case. One about  
22 choices made. Some made in an instant, some ordinary, and  
23 some made under unusual circumstances, the kind of choices  
24 that we all make every day. The kind that are, though  
25 seemingly small in the beginning, have the potential to

*COREY L. GETHERS VERSUS THE STATE OF SOUTH CAROLINA*

## OPENING STATEMENT - MS. ANDERSON

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1 change our lives and change the circumstances that we face,  
2 and on the day in question, December 21, 2009, Corey  
3 Gethers was faced with those kinds of choices. They were  
4 choices that, ultimately, led him here to this day in front  
5 of you and he's going to get on the stand and talk to you  
6 today and tell you what really happened that night. I  
7 want you to consider what you would do when faced with  
8 those kinds of choices. What do you do when you make plans  
9 to go out with friends for the night, nothing out of the  
10 ordinary, just a normal night out? Well, that's kind of  
11 what you expect. You expect a normal night out with  
12 friends and that's what Corey Gethers expected that night.  
13 He made plans to go bowling. That's what he was going to  
14 do on Monday night, December 21, 2009, but, he didn't have  
15 a ride. He lived in North Charleston and the bowling alley  
16 was in Goose Creek.

17 So, what do you do when you want to go out and you  
18 don't have a ride? Well, you call someone up and that's  
19 what Corey did. He called up a friend of his, named Tony,  
20 and you will hear about him when Corey gets up to testify.  
21 He called up Tony and asked him to ride him over to Goose  
22 Creek, to the bowling alley. Tony agrees. Everything  
23 seems set for Corey's normal night out with friends. But  
24 what do you do when you don't get that normal night? One  
25 minute, you are in the back seat of the car, and in the

## OPENING STATEMENT - MS. ANDERSON

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1 next, there is a siren behind you with lights flashing and  
2 all of a sudden the driver of that car hits the gas.

3 Mr. Ferguson was right. Car chases are scary and  
4 Corey Gethers, sitting in the back seat of that car, has no  
5 choice but to go along for the ride, because he is sitting  
6 in the back seat. The anticipation and excitement he felt  
7 for a trip to the bowling alley quickly turned into  
8 confusion and fear as the driver sped away. But then what  
9 do you do when that chase ends, when that driver pulls into  
10 a neighborhood and slows down and everyone bails out of the  
11 car? What do you do? Corey was faced with another choice,  
12 and he chose to get out of the car with everyone else, and  
13 he ran in the same direction as the driver. He's going to  
14 get on the stand and tell you what happened when he got out  
15 of the car. They ran in the same direction, but the driver  
16 got away. Corey, obviously, did not, and that is when  
17 Deputy Cain came in and pulled him off of the fence. Corey  
18 was trying to jump the fence. He threw him down on the  
19 ground and tased him. Corey screamed out. Deputy Cain  
20 tased him again and again and again, over and over and  
21 over, while Corey did nothing but lie on the ground,  
22 screaming. And what did he do after all of that? What did  
23 Corey do after being tased, after lying on the ground,  
24 being thrown to the ground by the officer? He told the  
25 officer the truth. He said, "I was not driving the car."

*COREY L. GETHERS VERSUS THE STATE OF SOUTH CAROLINA*

## DIRECT EXAMINATION OF DEPUTY CAIN BY MR. STACK

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1 Ladies and Gentlemen, the State has the burden of  
2 proof, beyond a reasonable doubt, that Corey Gethers was  
3 the one driving the car that night. The way that I  
4 understand reasonable doubt is, it's just a doubt that a  
5 regular person would have that Corey Gethers was not the  
6 one driving that car that night and that is based on all  
7 the evidence that you will hear today. If the State's  
8 evidence does not leave each and every one of you firmly  
9 convinced, beyond a reasonable doubt, that Corey was  
10 driving that car, you must find him not guilty. This is a  
11 big day for Corey Gethers. He has been waiting a long time  
12 to tell his side of the story. I ask you to listen  
13 carefully to the evidence that they will present and to  
14 listen carefully to Corey's story, and at the conclusion of  
15 all the evidence, I will ask you to find him not guilty of  
16 failure to stop for a blue light.

17 THE COURT: The State may proceed.

18 MR. STACK: Thank you, Your Honor.

19 THE COURT: You're welcome.

20 MR. STACK: The State calls Deputy Jason Cain of the  
21 Charleston County Sheriff's Office.

22 THE COURT: Officer, if you will come forward to be  
23 sworn.

24 (After being duly sworn by the Clerk of Court, Deputy  
25 Jason Cain testified as follows:)

COREY L. GETHERS VERSUS THE STATE OF SOUTH CAROLINA

## DIRECT EXAMINATION OF DEPUTY CAIN BY MR. STACK

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1 THE CLERK OF COURT: State your full name and spell  
2 your last name.

3 DEPUTY CAIN: Jason Cain. Last name spelled, C-A-I-N.

4 THE COURT: You may proceed.

5 MR. STACK: Thank you, Your Honor.

6 THE COURT: You're welcome.

7 DIRECT EXAMINATION OF DEPUTY JASON CAIN BY MISTER STACK

8 Q Good afternoon, Deputy Cain.

9 A Good Afternoon.

10 Q Sir, what do you do for a living?

11 A Sir, I am a deputy with the Charleston County  
12 Sheriff's Office.

13 Q And how long have you worked for the Sheriff?

14 A For, approximately, nine years.

15 Q Nine years, you say?

16 A Yes, sir.

17 Q Okay. Do you have any other law enforcement  
18 experience besides that?

19 A Yes, sir. I worked two years prior to that with the  
20 Mt. Pleasant Police Department.

21 Q Okay. Would you please describe for the jury the  
22 types of duties and responsibilities you have,  
23 currently, with the Charleston County Sheriff?

24 A Yes, sir. Currently, I am a Certified Bomb  
25 Technician. I am on the bomb squad for the Sheriff's

## DIRECT EXAMINATION OF DEPUTY CAIN BY MR. STACK

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1 office.

2 Q Okay. Back on the night of December 21, 2009, was  
3 this your assignment or did you have a different  
4 assignment back then?

5 A No, sir. I was a Patrol Deputy.

6 Q And what kind of duties and responsibilities does a  
7 patrol deputy have?

8 A We respond to calls for service. Basically, when you  
9 call the police, uniformed police service, we answer  
10 calls for service, we enforce traffic laws. We,  
11 basically, liaise for the Sheriff.

12 Q Were you on duty the night of December 21 of '09?

13 A Yes, sir.

14 Q Do you recall the events that occurred that night?

15 A Yes, sir.

16 Q Now, would you please describe to the jury what  
17 happened that night, from start to finish, and please,  
18 take your time.

19 A Okay. We were on our way to Rivals Sports Bar, which  
20 is on Highway 78 just west of the fairgrounds, in  
21 order to help Berkeley County Sheriff's Office serve  
22 some warrants they had on an individual. They had  
23 gotten a tip that he was at Rivals Sports Bar. I was  
24 the closest deputy up there, so I decided I would  
25 drive by the bar in order to see if maybe the suspect

1 was there. As I did, I noticed a dark colored Suzuki  
2 Forenza leaving the parking lot. I passed Rivals,  
3 turned around and caught back up to the Suzuki, which  
4 was then traveling eastbound back towards I-26 on  
5 Highway 78. As I approached the vehicle, it was  
6 coming up on the intersection of Highway 78 and  
7 College Park Road. That's where the Burger King is  
8 and there's a Taco Bell. The vehicle approached the  
9 illuminated red light. The stop light was red. He  
10 crossed the white line, approximately, about a full  
11 'nother car length beyond that white line. By that  
12 time, the light turned green and he signaled a left  
13 turn and I initiated my blue lights to conduct a  
14 traffic stop on the vehicle. When I did that, the  
15 vehicle continued it's lefthand turn onto College Park  
16 Road and then made an abrupt right turn into the  
17 Piggly Wiggly parking lot, which in itself, was not an  
18 unusual event. People get out of the roadway when  
19 they typically pull over. However, when it pulled  
20 into the driveway, it accelerated. We started going  
21 through the parking lot. I called for backup. The  
22 vehicle reached speeds of right around 30 miles-an-  
23 hour through the parking lot. He made a right-hand  
24 turn back towards Highway 78, at which point, I  
25 notified our communications that the person I might

## DIRECT EXAMINATION OF DEPUTY CAIN BY MR. STACK

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1 have been looking for at Rivals may possibly be in  
2 this vehicle and that may be why it is not stopping.

3 MR. GRIMES: Objection. Rule 44(b).

4 THE COURT: Please approach.

5 (Brief Bench Conference Off the Record)

6 THE COURT: You may proceed.

7 MR. STACK: Thank you.

8 Q Go ahead and continue from that point.

9 A Okay. At that point, I notified our communications  
10 that the person that we originally were in route for  
11 at Rivals Sports Bar may possibly be in the vehicle.  
12 That was my reason for continuing the pursuit or  
13 initiating the pursuit of the vehicle. As it turned  
14 out onto Highway 78, it made a left back eastbound,  
15 still headed back towards I-26. At that point, I was,  
16 basically, tapping on my siren. It wasn't a full-  
17 blown siren, but it was just sort of a kind of  
18 intermittent sound. At that point, it turned right  
19 onto Highway 78, which is a posted 45 mile-an-hour  
20 speed zone. And we then -- the Suzuki increased its  
21 speed to, approximately, 100 miles-an-hour on Highway  
22 78. It traveled all the way down Highway 78 -- excuse  
23 me, Ladson Road. I apologize. Ladson Road. It  
24 traveled down Ladson Road passing cars, using the  
25 center paved median, busting through a red light. It

## DIRECT EXAMINATION OF DEPUTY CAIN BY MR. STACK

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1 entered into Dorchester County, at which point, it  
2 turned left into the Summerwood Subdivision, which is  
3 just inside Dorchester County. It then made the  
4 right, the road goes to the right, and then made a  
5 right turn on At that point, the  
6 vehicle came to a very abrupt halt, at which point, in  
7 my years of experience, I figured they were getting  
8 ready -- the driver was getting ready to bail out of  
9 the vehicle. So, I threw my car into park, started  
10 exiting the vehicle. As I look up, I could see the  
11 driver exiting the vehicle and running straight  
12 across. I cut between two cars and, basically, caught  
13 up to him as he was busting through the fence at the  
14 address of As the subject  
15 busted through the fence, I was yelling for him to  
16 stop. Initiated my -- Employed my taser, but the  
17 taser didn't really have any effect on him. The  
18 subject got back up and started running to the back  
19 fence. It was a wooden property fence. At that  
20 point, he was trying to climb over the fence, at which  
21 point, I used the taser in what they call the Drive-  
22 Stun method. Basically, instead of shooting the darts  
23 out of it, you basically touch it to him to get the  
24 effect out of it. I pulled the subject off the fence.  
25 At that point, the subject started to actively resist.

## DIRECT EXAMINATION OF DEPUTY CAIN BY MR. STACK

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1 I told him to get down. I was trying to put him into  
2 handcuffs. I deployed the taser, I think, a total of  
3 eight times in an attempt to get him under control and  
4 get him into handcuffs. He was using his arms, his  
5 hands, his legs, everything basically, trying to fight  
6 me off. At that point, I discarded my taser and drew  
7 my issued sidearm, pointed it at him, I told him -- I  
8 don't know exactly what I told him, but I basically  
9 told him I was going to shoot him if he didn't stop.  
10 I was done fighting. It was only at that point, he  
11 kind of rolled over and started to give me his hands  
12 so that I was able to put him into handcuffs.

13 Q Okay. The person you saw jump out of the vehicle. He  
14 jumped out of the driver's side door?

15 A Yes, sir.

16 Q Was he getting out of the drivers's side seat?

17 A Yes, sir.

18 Q The person you saw jump out of the driver's seat and  
19 run, that is the person you chased?

20 A Yes, sir.

21 Q Do you see that person in the courtroom today?

22 A Yes, sir.

23 Q Would you please point to him, him or her, and  
24 describe what he or she is wearing?

25 A It is the gentleman right there in the white shirt and

## DIRECT EXAMINATION OF DEPUTY CAIN BY MR. STACK

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1 brown pants, seated.

2 MR. STACK: Your Honor, the State asks that the record  
3 reflect the deputy identified the defendant, Mr. Corey  
4 Gethers.

5 THE COURT: Let the record so indicate. You may  
6 proceed.

7 Q Deputy Cain, were these events recorded in any  
8 fashion?

9 A They were.

10 Q I am now going to show you a CD that is marked State's  
11 Exhibit Number 1 for identification purposes only.  
12 Would you please examine this CD? (Mr. Stack hands  
13 item to Deputy Cain) Do you recognize this CD?

14 A I do.

15 Q How do you recognize it?

16 A My initials are right here.

17 Q Okay. Have you reviewed this CD?

18 A I have.

19 Q Does the CD accurately depict --- depict, excuse me,  
20 the events of 21, December of '09 as you witnessed it?

21 A It does.

22 Q Your Honor, the State moves State's Exhibit No.1 into  
23 evidence.

24 THE COURT: Any objection?

25 MR. GRIMES: We object to some parts of the CD coming

## DIRECT EXAMINATION OF DEPUTY CAIN BY MR. STACK

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1 in.

2 THE COURT: Approach.

3 (Brief Bench Conference Off the Record)

4 THE COURT: Any objection from the Defense?

5 MR. GRIMES: No, Your Honor.

6 THE COURT: Marked and admitted, without objection,  
7 subject to bench conference.

8 (Whereupon, a CD is admitted into evidence as State's  
9 Exhibit No. 1, without objection)

10 Q Deputy Cain, what is that CD?

11 A It is a digital recording of my in-car camera.

12 Q I'm sorry. Say that again?

13 A I'm sorry. It's a digital recording from the in-car  
14 video from my patrol car that night.

15 Q Is that often called a Cruiser Cam?

16 A Yes, sir.

17 Q How is a Cruiser Cam operated? Is it manually or  
18 automatically, or both?

19 A Both.

20 Q Okay. Describe that, please.

21 A There is a console on the top of, basically, on the  
22 roof of the inside of the car. I can initiate the  
23 record button or it will come on as soon as I hit the  
24 button for my blue lights.

25 Q In this particular case, how was it activated?

## DIRECT EXAMINATION OF DEPUTY CAIN BY MR. STACK

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1 A When I activated the blue lights.

2 Q So, if you hit the blue lights, the camera comes on  
3 automatically. Is that correct?

4 A That's correct.

5 Q Is the speed of travel indicated on the video?

6 A It is.

7 Q And how is that indicated?

8 A It is calculated by GPS and it is in the bottom right  
9 corner of the video screen.

10 Q Thank you.

11 MR. STACK: Your Honor, the State's now is going to  
12 publish State's Exhibit Number 1.

13 THE COURT: You may proceed.

14 Q We will begin at marker 2200:10, which is,  
15 approximately, 10:00 p.m. that night. Now, the camera  
16 is going to appear on the screen behind you, Deputy  
17 Cain. Do you want to speak from there or would you be  
18 more comfortable if you step down from there?

19 A It will probably be easier if I step down.

20 MR. STACK: With the Court's permission, I would like  
21 for the witness to step down.

22 THE COURT: He may step down.

23 (Witness complies. The deputy will use the laser to  
24 indicate on the large screen as the video plays)

25 Q Would you please narrate what is going on at 2200:10?

## DIRECT EXAMINATION OF DEPUTY CAIN BY MR. STACK

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1 A Okay. At this point, we are turning onto College Park  
2 Road, turning into the Piggly Wiggly. We just entered  
3 into the Piggly Wiggly parking lot area where all  
4 these cars are parked.

5 Q Would you show the speed indicator on the camera,  
6 please.

7 A The speed indicator is right here. This is my current  
8 speed right here. Again, it is calculated by GPS, so  
9 it takes a second or two. If you notice, there is an  
10 individual in the right front seat. We're turning  
11 now, down Ladson Road. As you come up through here,  
12 you turn onto Ladson Road right here.

13 Q Are your lights and siren on at this time?

14 A You can hear the siren. If you look at the  
15 surrounding area, you can see the blinking lights  
16 coming through here. If you notice down here, my  
17 speed is increasing. It's a 45 mile-per-hour speed  
18 zone through here. We're traveling, again, we are  
19 traveling on Ladson Road. We are approaching  
20 Lincolnville Road. Actually, that is the railroad  
21 tracks on Ladson Road.

22 Q What speed do you show now?

23 A Eighty-seven miles-an-hour. Eight-nine. Still  
24 traveling on Ladson Road. This is now a 50 mile-per-  
25 hour speed zone. We are doing 100 miles-per-hour. We

## DIRECT EXAMINATION OF DEPUTY CAIN BY MR. STACK

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1 are getting ready to go into this paved center median  
2 right through here. We are approaching Palmetto  
3 Commerce Highway or Parkway. You'll notice the  
4 vehicles that are stopped right here. We are still  
5 doing -- At this point, we are coming up on Jamison  
6 Road. The speed limit is back down to 45 miles-per-  
7 hour. We are still at 77 miles-an-hour and you can  
8 hear my siren and, occasionally, you can see my blue  
9 lights flashing, reflecting. At this point, we just  
10 passed Hoot Owl Road right there. We are now crossing  
11 over into Dorchester County on Ladson Road. And  
12 again, (he circles 97 miles per hour). And now we are  
13 making a left-hand turn into Summerwood subdivision.  
14 Actually, I almost missed the turn. You can see on  
15 the curb there. You can see the traffic and people  
16 coming out of their neighborhood. He makes a right.  
17 Actually, you have to make a right there. Getting  
18 ready to make a right-hand turn onto  
19 You will observe, basically, the vehicle stops. If  
20 you will observe, you will hear my siren get a whole  
21 lot louder because my door was open. My vehicle door  
22 was already open prior to my vehicle actually  
23 stopping.

24 Q What is going on with the car now?

25 A Right now, it just rolled off. It just idles away.

## DIRECT EXAMINATION OF DEPUTY CAIN BY MR. STACK

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1 You can't see brake lights and you see that nobody  
2 else got out of this side of the vehicle. You don't  
3 see anybody running this way. We actually ran,  
4 basically, straight out the side of the car. He went  
5 straight out his side of the driver's door, which is  
6 basically straight. He stopped pretty much in between  
7 two houses and I had to kind of bird dog him, what we  
8 refer to as bird dogging, a little bit. I moved  
9 between two cars, which you briefly saw right before  
10 we stopped, and I cut across the yard. So, when I was  
11 getting out of my car, he was getting out of his car  
12 and I, basically, caught up to him as he was near the  
13 bushes behind the house.

14 Q This person running down the street. Who is that?

15 A That is my back-up. That's all back-up.

16 Q What are they doing?

17 A They are actually following the tire tracks here,  
18 because they don't know where I'm at. The video  
19 doesn't really show it, but there are no street lights  
20 in that area. It is very dark and you can't see  
21 anything without a flashlight. So, they're basically  
22 following this car because they think I followed this  
23 car. Actually, I think it is a minute or two later  
24 you actually hear me yell to them, "I'm behind the  
25 house," and looking with their flashlights, that's how

## DIRECT EXAMINATION OF DEPUTY CAIN BY MR. STACK

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1           they found me. And so, at this point, I'm trying to  
2           effect an arrest of the subject. I still don't have  
3           him in handcuffs. So, at this point, back-up units  
4           are arriving on scene. Other officers are arriving  
5           and I'm still behind a 6-foot privacy fence, a wooden  
6           privacy fence, at

7           Q     Now, the voice portion of this, how is this being  
8                    recorded?

9           A     There is a microphone that actually pretty much pokes  
10           out of the pocket of my shirt. It goes down to,  
11           approximately, my duty belt. The microphone is about  
12           right here. (Indicating)

13          Q     So, at this time about how far away from the police  
14           cruiser are you?

15          A     Oh, I'm a good 25 to 30 yards, and on the backside of  
16           the house.

17          Q     And your back-up, when they arrived, did they know  
18           where you were?

19          A     No, sir. They had no idea.

20          Q     At this time, is he under arrest?

21          A     Yes. He is.

22          Q     Is he in handcuffs?

23          A     Yes. He is.

24          Q     I don't know if you noticed the person driving back up  
25           the street?

## DIRECT EXAMINATION OF DEPUTY CAIN BY MR. STACK

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1 A Yes, sir.

2 Q Who is that?

3 A That's another officer. He just had a flak jacket on.

4 Q And who is that officer?

5 A I'm not sure which officer that was.

6 Q Okay. Thank you Deputy Cain. (Turns CD off) You may  
7 return to the witness stand.

8 MR. STACK: Just for the record, the States just  
9 played the first eight minutes of the tape. Defense  
10 counsel is very welcome to play the entire tape, or any  
11 additional portion, and we will assist them in that.

12 THE COURT: Any further questions of this witness?

13 MR. STACK: Yes, Your Honor.

14 THE COURT: You may proceed.

15 Q Okay, in terms of time, about how long did that chase  
16 last?

17 A About three-and-a-half minutes.

18 Q In terms of the distance covered, how far did it go?

19 A Four, four to five miles.

20 Q Okay. And what was the highest rate of speed that was  
21 clocked, according to the Cruiser Cam?

22 A My Cruiser Cam, 101 miles-an-hour.

23 Q Okay. Now that's not radar run on the Defendant's  
24 vehicle. Is it?

25 A No. It's not.

## DIRECT EXAMINATION OF DEPUTY CAIN BY MR. STACK

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1 Q It's just your vehicle?

2 A Correct.

3 Q And you were traveling at 100 to 101 miles-an-hour?

4 A That's correct.

5 Q Were you catching up or were you barely keeping up  
6 with him?

7 A Barely keeping up, actually.

8 Q And were there other vehicles or pedestrians  
9 endangered during this chase?

10 A Yes.

11 Q How so?

12 A Well, the initial part of it, in the Piggly Wiggly  
13 parking lot, you could see there were cars and people  
14 going back and forth to the grocery store.

15 Q Uh-huh.

16 A And there were multiple cars on 78 and Ladson Road, as  
17 well as the residential neighborhood.

18 Q Okay. During the chase, could you see the back of the  
19 front seat head rests?

20 A Yes.

21 Q Were there any back seat head rests or just front seat  
22 head rests?

23 A No, it was just like a hump for the headrest in the  
24 back seat.

25 Q So, the only head rests -- were there any head rests

## DIRECT EXAMINATION OF DEPUTY CAIN BY MR. STACK

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- 1 other than the front seat head rests?
- 2 A Well, the front seat head rests are like the big ones.
- 3 Q Was there anything in the back seat of the car?
- 4 A There were two child safety seats in the backseat.
- 5 Q Were they like strapped in?
- 6 A Yes.
- 7 Q Were they, what you'd call, seatbelted in, regulated
- 8 in?
- 9 A Yes.
- 10 Q Could an adult about your size have fit in that back
- 11 seat?
- 12 A It would have been a pretty tight fit.
- 13 Q Would you have been able to see him from the vehicle
- 14 chase?
- 15 A Yes. It would have been clear.
- 16 Q All right. Why were you trying to pull over this
- 17 vehicle?
- 18 A As I approached the stop light on 78 at College Park
- 19 right at the outset of the video, the red light,
- 20 excuse me, the traffic light was red. As it
- 21 approached the light, it crossed the white line,
- 22 approximately one full car length. It was out in the
- 23 middle of the intersection. It was a clear disregard
- 24 for the stoplight.
- 25 Q Okay. And during the chase, and I think you mentioned

## DIRECT EXAMINATION OF DEPUTY CAIN BY MR. STACK

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1           this, could you tell -- how many people did you  
2           observe in the vehicle?

3           A     I observed two.

4           Q     Okay. And was the person on the passenger side wearing  
5           any clothing that would have distinguished him from  
6           the driver?

7           A     It appeared to me he was wearing a white or a light  
8           colored skull cap, hoodie hat, or something similar to  
9           that.

10          Q     Okay. The person you chased after, did he have this  
11          white skull cap on?

12          A     No.

13          Q     Okay. And which door of the car did he exit?

14          A     The driver's door.

15          Q     The driver's door.

16          A     Yes, sir.

17          Q     And how many doors are there?

18          A     Four.

19          Q     All right, describe, in terms of when you dismounted  
20          your vehicle and the defendant got out of the driver's  
21          side, was it simultaneous or sequential or can you  
22          describe that, please?

23          A     Basically, you know, actually, on the video you can  
24          hear me saying, "They're going to bail." So, I  
25          already knew then, and you can also hear that my door

## DIRECT EXAMINATION OF DEPUTY CAIN BY MR. STACK

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1 is opening, because the siren gets louder. I'm  
2 getting out before my car stopped. So, essentially,  
3 from all the foot chases and car chases I have been  
4 in, I know I've got to get out of the car quick.  
5 Otherwise, I'm going to get beat. As I'm coming out  
6 of the car, I'm already focused on the vehic -- I'm  
7 zoned in on that car, anyway. So, when I'm getting  
8 out of the car, I'm looking forward to spot the driver  
9 and I'm picking the driver out and he's getting out of  
10 the car roughly at the same time that I am. I mean it  
11 is -- he has initiated before me, but we are still  
12 together, if that makes sense.

13 Q Well, ---

14 A It was at the same time, but he just got a little bit  
15 of a head start on me.

16 Q All right. Did you see any other person exit the car?

17 A No.

18 Q Okay. The person you saw getting out of the driver's  
19 seat, was he the only person that you saw bail out of  
20 the car?

21 A Yes.

22 Q Okay. Did you chase that person?

23 A I did.

24 Q And while you were chasing him, did you ever lose  
25 sight of the defendant?

## DIRECT EXAMINATION OF DEPUTY CAIN BY MR. STACK

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1 A I did not.

2 Q And about how long, in terms of the foot chase, was it  
3 from the time that you exited your vehicle until you  
4 effected the arrest?

5 A Total time, actually getting him in handcuffs,  
6 probably a minute-and-a-half to two minutes.

7 Q Were you alone during that foot chase?

8 A I was.

9 Q And did you have to fight with the Defendant?

10 A I did.

11 Q Were you in uniform at that time?

12 A Yes. I was.

13 Q And I take it your Cruiser is what, marked or  
14 unmarked?

15 A It's marked.

16 Q Okay. Now, was there any hesitation between when the  
17 vehicle you were chasing stopped and the defendant was  
18 bailing out of the vehicle?

19 A No.

20 Q Was it actually -- was it completely stopped?

21 A No. Not in a word. It was -- the suspension was  
22 settling, if that makes any sense.

23 Q Was there any time that a person could switch seats  
24 from front to back or left to right?

25 A No.

## DIRECT EXAMINATION OF DEPUTY CAIN BY MR. STACK

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1 Q All right. And when you were chasing the car, and you  
2 may have answered this and I'm sorry if I'm being  
3 redundant, but did you observe anyone in the back  
4 seat?

5 A No.

6 Q Okay. The second person in the vehicle, what happened  
7 to that person? Was he arrested?

8 A No. He was not.

9 Q And why not?

10 A Actually, we were not able to one hundred percent  
11 guarantee his identity. As you can see in the video,  
12 when I'm chasing the driver, the vehicle idled off out  
13 of view and I was gone for several minutes. During  
14 that time, he got out and ran away. I think some  
15 North Charleston or Dorchester County guys got an I.D.  
16 and license out of the car for a Mr. Barnes from  
17 Ladson, and brought him back over there after finding  
18 him, but we couldn't clearly ---

19 Q You couldn't guarantee who it was?

20 A We couldn't guarantee who it was.

21 Q That's because you lost sight of him?

22 A That's correct.

23 Q Was the vehicle fingerprinted?

24 A No. It was not.

25 Q Why not?

## CROSS EXAMINATION OF DEPUTY CAIN BY MR. GRIMES

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1 A Well, I had thought about it, initially. During the  
2 time that I was chasing the driver, you could see  
3 other officers running down to the car. Basically, I  
4 think it ended up being six or eight other officers  
5 showed up on scene and they were all inside the car.  
6 So, basically, the crime scene was contaminated.

7 Q Did you mirandize the Defendant?

8 A I did.

9 Q And did you ask him any questions either before or  
10 after you had read him his rights?

11 A No.

12 MR. STACK: Beg the Court's indulgence just for a  
13 moment.

14 Q Thank you, Deputy Cain. If you would, please answer  
15 any questions Defense counsel may have.

16 A Yes, sir.

17 THE COURT: Any cross examination of the witness?

18 MR. GRIMES: Yes, Your Honor.

19 THE COURT: You may proceed.

20 MR. GRIMES: Thank you, Your Honor.

21 THE COURT: You're welcome.

22 CROSS EXAMINATION OF DEPUTY JASON CAIN BY MR. GRIMES

23 Q Good afternoon, Deputy Cain.

24 A Good afternoon.

25 Q I want to ask you a few questions about your training.

## CROSS EXAMINATION OF DEPUTY CAIN BY MR. GRIMES

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1 It sounds like you have been in law enforcement for  
2 approximately 11 years?

3 A Yes, sir.

4 Q And before you became, can become, a sworn law  
5 enforcement officer, you have to go through the South  
6 Carolina Criminal Justice Academy?

7 A Yes, sir.

8 Q And you received your certification there?

9 A Yes, sir.

10 Q I know the time frames change, but eleven years ago,  
11 it was about a 12-week course?

12 A Eight weeks?

13 Q Eight weeks?

14 A Eight or nine weeks. I think it was eight.

15 Q And the Criminal Justice Academy is in Columbia?

16 A Yes, sir.

17 Q I believe that's run by SLED?

18 A Yes, sir. I think it's the Department of Public  
19 Safety.

20 Q Okay. And they sort of teach you the basics of being  
21 a police officer?

22 A Yes, sir.

23 Q And then, you go back to your own agency and they have  
24 a field training officer that teaches you more of the  
25 day to day stuff and what really happens on the

## CROSS EXAMINATION OF DEPUTY CAIN BY MR. GRIMES

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1 street. Is that fair to say?

2 A Yes, sir.

3 Q And some of the things that they would teach you at  
4 the Criminal Justice Academy would be about writing  
5 reports?

6 A Yes, sir.

7 Q And documenting your cases?

8 A Yes, sir. Well, I learned all that at our Sheriff's  
9 office. They didn't really teach you how to write  
10 reports at the Academy.

11 Q You would agree that it's important to document your  
12 cases accurately. Correct?

13 A Yes, sir.

14 Q Because, as in this case, it may be over a year, or  
15 close to a year, over a year, before a case comes to  
16 trial.

17 A Yes, sir.

18 Q This happened in 2009?

19 A Yes, sir. In December of 2009, so two years.

20 Q And you probably make a lot of stops during a year  
21 being on road patrol?

22 A I made my share. Yes, sir.

23 Q And to keep everything straight, it's good to have  
24 accurate reports. Right?

25 A Yes, sir.

## CROSS EXAMINATION OF DEPUTY CAIN BY MR. GRIMES

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1 Q And they also teach you the importance of securing  
2 crime scenes?

3 A Yes, sir.

4 Q And the importance of keeping a crime scene secure?

5 A Yes, sir.

6 Q How to gather evidence?

7 A Yes, sir.

8 Q Fingerprints?

9 A Yes, sir.

10 Q DNA and other types of items?

11 A Yes, sir.

12 Q They probably would teach you about the importance of,  
13 maybe, locating witnesses or documenting what  
14 witnesses may have said?

15 A Yes, sir.

16 Q And getting a witness' address so you could use him in  
17 court?

18 A Yes, sir.

19 Q Now, I want to go over the events of December 21,  
20 2009. I think it's fair to say, and you may agree  
21 with me, there was a failure to stop for a blue light  
22 that was committed that night. You would agree with  
23 that?

24 A Yes, sir.

25 Q The only question is, was Mr. Gethers the driver, or

## CROSS EXAMINATION OF DEPUTY CAIN BY MR. GRIMES

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1 was it someone else. Is that fair to say?

2 A Not in my mind.

3 Q Not in your mind, but that's why we are here and why  
4 we have a jury. Correct?

5 A Yes, sir.

6 Q So, you've made your mind up that he is guilty.  
7 That's what your testimony is. Right?

8 A Well, I mean, yeah. I made the charge.

9 Q And this incident started, I guess, off Highway 78?

10 A Yes, sir.

11 Q Near the Piggly Wiggly?

12 A Yes, sir.

13 Q And that's probably, maybe, about a mile down from the  
14 fairgrounds?

15 A It's less than a mile. Yes, sir.

16 Q Less than a mile? And then you took a right, I guess,  
17 on Ladson Road?

18 A Yes, sir.

19 Q And went over the railroad tracks where the fire  
20 department is, well not the fire department, but where  
21 an ambulance service is?

22 A Yes, sir. It's a private ambulance.

23 Q And you split off on Lincolnvile there?

24 A Yes, sir. A right turn onto Lincolnvile Road.

25 Q And you keep on down Ladson Road like you're going

## CROSS EXAMINATION OF DEPUTY CAIN BY MR. GRIMES

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- 1           towards Oak Brook?
- 2       A     Yes, sir.
- 3       Q     Go into Dorchester County?
- 4       A     Well, you get there before you get to Oak Brook.
- 5       Q     Yes. You get to --- Well, you get to Dorchester
- 6           County around where Kelticks is. Right? Is that fair
- 7           to say?
- 8       A     Yes, sir. Yes, sir.
- 9       Q     And y'all get to a right-hand turn which leads you to
- 10           Jamison Terrace?
- 11      A     Yes, sir.
- 12      Q     Okay. And then the driver of this car went a little
- 13           bit further down and made a left-hand turn into
- 14           Summerwood?
- 15      A     Yes, sir.
- 16      Q     And as the video shows, the car eventually stops, kind
- 17           of rolls to a stop?
- 18      A     Well, it rolled out of view. We never actually saw it
- 19           stop.
- 20      Q     But, certainly, it stopped sometime. Didn't it?
- 21      A     Oh, yeah. Right.
- 22      Q     It got totaled. Didn't it?
- 23      A     Yes, sir.
- 24      Q     I'm going to ask you a few questions after the arrest.
- 25           Mr. Stack asked you if you read him his Miranda

## CROSS EXAMINATION OF DEPUTY CAIN BY MR. GRIMES

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- 1 rights.
- 2 A Yes, sir.
- 3 Q And you said you didn't ask him any questions.
- 4 A Right.
- 5 Q Nonetheless, he told you he was not the driver.
- 6 Correct?
- 7 A Yes.
- 8 Q And he told you that he was in the back seat?
- 9 A After several minutes. Several minutes passed. It
- 10 wasn't immediately, when he said he was in the back
- 11 seat.
- 12 Q But he mentioned it?
- 13 A He mentioned it, yes.
- 14 Q And you said "No, you couldn't have been because there
- 15 were two child restraint seats back there. You
- 16 couldn't have fit in there." Correct?
- 17 A That's correct.
- 18 Q I was wondering if the child restraint seats are in
- 19 evidence?
- 20 A No, sir.
- 21 Q Were they photographed?
- 22 A No, sir.
- 23 Q Documented in any way?
- 24 A No, sir. Actually, they are on the tow sheet.
- 25 Q Okay.

## CROSS EXAMINATION OF DEPUTY CAIN BY MR. GRIMES

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- 1 A They are listed on the tow sheet.
- 2 Q And, apart from that, they are not documented in any  
3 other way?
- 4 A No.
- 5 Q Not documented in your report? Just the tow sheet?
- 6 A That's it.
- 7 Q Was there a receipt where you gave it back to the  
8 registered owner?
- 9 A No, the tow sheet was the receipt.
- 10 Q Okay. And after the arrest, there was a witness  
11 nearby. Wasn't there?
- 12 A Yes, sir.
- 13 Q And she was in a car where she had a clear view of  
14 what happened. Correct?
- 15 A Yes, sir.
- 16 Q And did you or some of the other officers have an  
17 opportunity to get her name?
- 18 A That's correct.
- 19 Q Talk to her? Obtain a statement from her?
- 20 A Yes, sir.
- 21 Q And I believe in your report, you mention suspect  
22 Number two, a Mr. Barnes?
- 23 A Yes, sir.
- 24 Q Is that the guy that was not able to be identified?
- 25 A Yes, sir.

## CROSS EXAMINATION OF DEPUTY CAIN BY MR. GRIMES

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1 Q So, you don't know if he was in the car or not?

2 A No, sir. Not with a one-hundred-percent guarantee.

3 Q Okay. And it's my understanding that no report was  
4 taken from him or anything?

5 A No, sir.

6 Q And if he was in the car, was it investigated where he  
7 was when this incident happened? Or when the driver  
8 got out of the car, do you know if he had a clear view  
9 of who the driver was? Was there any follow-up  
10 investigation like that done?

11 A I'm sorry. I don't think I understand.

12 Q I'm sorry. Eventually, someone detained Mr. Barnes or  
13 had him brought in for probable cause. Is that  
14 correct?

15 A Well, they brought him back over to the scene.

16 Q Okay. They brought him to the scene.

17 A Yes, sir.

18 Q And you could not I.D. whether Mr. Barnes was in the  
19 car at the time of the chase. Correct?

20 A That's correct.

21 Q He -- What I'm asking is, do you know if any of the  
22 officers found out if, maybe, he had been sitting  
23 outside on the porch at the time of the chase and  
24 maybe saw who the driver was?

25 A I talked to Mr. Barnes.

## CROSS EXAMINATION OF DEPUTY CAIN BY MR. GRIMES

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- 1 Q All right.
- 2 A Some other officers talked to Mr. Barnes and he said
- 3 he didn't have anything to ---
- 4 Q I'm not asking, basically, what he said, but that
- 5 would be in your report, that you talked to him?
- 6 A Without reviewing the report, I don't really
- 7 recollect.
- 8 Q Maybe I can help you with that. I may have missed it.
- 9 MR. GRIMES: May I approach the witness, Your Honor?
- 10 THE COURT: You may.
- 11 Q This is Exhibit 1, for identification. I believe this
- 12 a the copy of your report. If you want to take a
- 13 minute to review it yourself and see if that refreshes
- 14 your memory?
- 15 A Okay. Do you want me to read from the report?
- 16 Q Sir?
- 17 A Do you want me to read from the report?
- 18 Q Just read it to yourself ---
- 19 A Oh.
- 20 Q --- and see if that refreshes your memory on your
- 21 interaction with Mr. Barnes.
- 22 A Okay.
- 23 Q Can you point in the report where it says that you
- 24 talked to him?
- 25 A Page four, about half way down.

## CROSS EXAMINATION OF DEPUTY CAIN BY MR. GRIMES

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- 1 Q Page four?
- 2 A Where it says, "Dorchester County deputies were able  
3 to locate," on page four.
- 4 Q Okay. And he was, as I think you testified, brought  
5 back and wasn't he released? But brought back to the  
6 scene?
- 7 A Yes, sir. Brought back to the scene and ---
- 8 Q And it says, "Identified as Subject two" in this  
9 report.
- 10 A Yes, sir.
- 11 Q Then released?
- 12 A Yes, sir.
- 13 Q So, it doesn't say anything about any interview with  
14 him?
- 15 A No.
- 16 Q Now, I want to ask you a few questions about the tow  
17 sheet.
- 18 A Yes, sir.
- 19 Q Is there a registered owner listed as Andrew Dunham?
- 20 A Yes, sir.
- 21 Q And not Corey Gethers. Correct?
- 22 A Correct.
- 23 Q Do you know if anyone talked to Mr. Dunham to see how  
24 he let Mr. Gethers borrow his car?
- 25 A I did not.

## CROSS EXAMINATION OF DEPUTY CAIN BY MR. GRIMES

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- 1 Q Do you know if anyone in your department did?
- 2 A I don't.
- 3 Q Mr. Stack asked you some questions about why the car  
4 was not fingerprinted and it sounded like you felt  
5 like the other deputies from Dorchester County and the  
6 North Charleston Police Officers contaminated the  
7 scene. Was that it?
- 8 A Well, essentially, I mean, it wasn't -- if they are  
9 going through the car, they are putting their  
10 fingerprints, their hands, on it.
- 11 Q So, the steering wheel was never fingerprinted?
- 12 A No, sir.
- 13 Q Was it automatic or, I mean...
- 14 A To be honest with you, I don't, I don't recall.
- 15 Q There was no gear shift or anything like that that was  
16 fingerprinted?
- 17 A No, sir.
- 18 Q Do you know if the keys were fingerprinted?
- 19 A No, sir.
- 20 Q Were the child seats fingerprinted?
- 21 A No, sir.
- 22 Q The report says there were miscellaneous papers found  
23 in the car. Do you know if any of those -- they don't  
24 say that those were connected to Mr. Gethers in any  
25 way. Do they?

## CROSS EXAMINATION OF DEPUTY CAIN BY MR. GRIMES

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1 A No, sir.

2 Q Now, I want to ask you a couple of questions about  
3 after the car was stopped and you were in the process  
4 of arresting Mr. Gethers. You said you had him  
5 handcuffed about a minute or a minute-and-a-half to  
6 two minutes after the car was stopped?

7 A Yes, sir. Roughly. It's an estimate.

8 Q Well, it's not important if it's an estimate. How  
9 long do you think it took?

10 A I think it took close to a minute, at least.

11 Q At least a minute, at most two minutes. Is that ---

12 A At most two minutes, yes.

13 Q I believe, if I recall from watching the video, the  
14 car was stopped about 2200:03?

15 A Okay.

16 Q (A portion of the video is replayed) Is it fair to  
17 say, at this point, the driver of the vehicle has  
18 bailed out?

19 A Yes.

20 Q And from about a minute from this time, you would have  
21 the driver -- you would have -- it's your testimony  
22 that you had Mr. Gethers in handcuffs?

23 A I would say in a minute to a two minute range. Yeah.

24 Q Are you familiar with the Charleston County Use of  
25 Force Continuum?

## CROSS EXAMINATION OF DEPUTY CAIN BY MR. GRIMES

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1 A Yes, sir.

2 Q Did Mr. Gethers, at any time, threaten to use an  
3 aggravated act of aggression towards you?

4 A When he was fighting me. He didn't have any weapons.

5 Q In an aggravated act of aggression, his actions are  
6 likely to result in death or serious bodily injury to  
7 the deputy or the deputy sheriff or another person?

8 A That's right.

9 Q These actions may include the discharge of a firearm,  
10 use of a blunt or bladed weapon, or extreme physical  
11 force?

12 A Correct.

13 Q That's the only time you are allowed to use excessive  
14 force, is under aggravated acts of aggression?

15 A When I feel my life or the life of others are in  
16 danger.

17 Q Okay. So, if you had him in handcuffs, your life  
18 wouldn't be in danger. Would it?

19 A If he was in handcuffs, no.

20 Q Okay.. And you testified that you drew your service  
21 revolver?

22 A Yes. I did.

23 Q And that you threatened to shoot him?

24 A Yes, sir.

25 Q You don't remember your exact words?

## CROSS EXAMINATION OF DEPUTY CAIN BY MR. GRIMES

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1 A I believe I told him I was going to cap him.

2 Q And that was about 2204:14 seconds? Around there?

3 A I'm assuming, yes.

4 Q You said you were going to cap him?

5 A Yes, sir. I told him that.

6 Q And a little bit later you threatened to shoot him  
7 again. Correct?

8 MR. STACK: Objection, Your Honor. Relevance.

9 THE COURT: Sustained as to relevance.

10 MR. GRIMES: I think it goes to ---

11 THE COURT: The Court did not elicit argument. It's  
12 not relevant on any of the elements for failure to stop for  
13 a blue light.

14 Q And -- But -- At 2210:06, you said, "You are lucky I'm  
15 not giving you more." Correct?

16 A Yes, sir.

17 Q And that would have been, certainly, he would have  
18 been handcuffed at that point?

19 A Yes, sir.

20 MR. STACK: Objection, Your Honor.

21 THE COURT: Basis?

22 MR. STACK: Again, relevance.

23 THE COURT: Approach.

24 (Bench Conference Off the Record)

25 Q And you would agree that the use of the -- that in the

## CROSS EXAMINATION OF DEPUTY CAIN BY MR. GRIMES

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1 Charleston County Sheriff's Office, the use of  
2 excessive force to any degree ---

3 MR. STACK: Objection, Your Honor.

4 THE COURT: Basis?

5 MR. STACK: Relevance.

6 THE COURT: Sustained. Unless you can draw and connect  
7 the dots, Mr. Grimes, and you have not at this point.

8 MR. GRIMES: Well, I think this question would ---

9 THE COURT: The Court did not elicit argument. I've  
10 ruled.

11 MR. GRIMES: I ---

12 THE COURT: Unless you can draw it to the elements of  
13 failure to stop for a blue light, it is not relevant.

14 MR. GRIMES: I understand. I would ask to be able to  
15 proffer that at some point.

16 THE COURT: We will do it outside the presence of the  
17 jury. Proceed.

18 Q Is it fair to say that in the Charleston County  
19 Sheriff's Policies, that if you use excessive force  
20 you can get in trouble?

21 MR. STACK: Your Honor, objection, again.

22 THE COURT: I'm going to give him some latitude,  
23 subject to connection, but you've got to connect the dots.  
24 Proceed.

25 Q You can get either -- you can face disciplinary action

1 or prosecution for the use of excessive force?

2 A Yes, sir.

3 Q And you can also face a civil lawsuit for the use of  
4 excessive force. Correct?

5 A Yes, sir.

6 Q And if a person is convicted of the crime, it may  
7 justify the use of force. Correct?

8 A I don't know the answer to that, because I don't think  
9 civil court and criminal court are tied.

10 Q Well, if you arrested a person and used excessive  
11 force in the incident ---

12 MR. STACK: Your Honor, objection.

13 THE COURT: Beyond the scope. Lack of foundation.

14 Proceed. And when I said, beyond the scope, beyond the  
15 scope of his knowledge. You have to establish appropriate  
16 foundation that that would be within his lay knowledge or  
17 somewhere within the ambit of his education, training, or  
18 experience.

19 Q Let me step back to some of the training you've  
20 received from the Justice Academy or field training.  
21 You have been trained on the use of force. Correct?

22 A Yes, sir.

23 Q And the Charleston County's Sheriff's Office, probably  
24 all police departments, have Use of Force Policies.  
25 Correct?

## REDIRECT EXAMINATION OF DEPUTY CAIN BY MR. STACK

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1 A Yes, sir.

2 Q And if you violate those policies, you could get  
3 reprimanded?

4 A Yes, sir.

5 Q If you violate them in an egregious manner, you could  
6 sometimes get prosecuted?

7 A I believe so.

8 Q Going back, again, to when you questioned -- when you  
9 spoke with Mr. Gethers, he told you that he was not  
10 the driver. Correct?

11 A He did make that statement. Yes.

12 MR. GRIMES: May I have one moment, Your Honor? Thank  
13 you, Your Honor. No further questions of Deputy Cain.

14 THE COURT: Any redirect?

15 MR. STACK: Yes, very briefly, Your Honor.

16 THE COURT: You may proceed.

17 REDIRECT EXAMINATION OF DEPUTY JASON CAIN BY MISTER STACK

18 Q Earlier in your cross exam, you talked about tow  
19 sheets?

20 A Yes, sir.

21 Q (Hands a document to the witness) Is that the tow  
22 sheet in this particular case?

23 A Yes, sir.

24 Q Under inventory items, does it list two child seats?

25 A It does.

## REDIRECT EXAMINATION OF DEPUTY CAIN BY MR. STACK

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1 Q Okay. Earlier it was brought up about another  
2 witness. Did you interview a witness there?

3 A Yes, sir.

4 Q Did you speak to her later?

5 A Yes, sir.

6 Q In preparation for his case?

7 A Yes, sir.

8 Q Did you ask her to attend this trial?

9 A Yes, sir.

10 Q And what was her answer?

11 A She didn't want to be involved.

12 Q Did she give you any information at the scene?

13 A Yes, sir.

14 MR. GRIMES: Objection.

15 THE COURT: Basis?

16 MR. GRIMES: Hearsay.

17 THE COURT: Please repeat the question. I apologize.

18 There is a fan over my head that sometimes makes it  
19 difficult to hear.

20 MR. GRIMES: Deals with the confrontation clause.

21 THE COURT: Well, I just need to hear the question.

22 MR. STACK: The question asked was, "Did she give you  
23 any information?"

24 THE COURT: You are referring to a witness that he  
25 spoke with?

## RE-CROSS EXAMINATION OF DEPUTY CAIN BY MR. GRIMES 100

1 MR. STACK: Yes, Your Honor.

2 THE COURT: Sustained. Hearsay. You may say what you  
3 did as a result of the conversation.

4 MR. STACK: Nothing further, Your Honor. Thank you.

5 THE COURT: Any objection to the witness being excused,  
6 from the State?

7 MR. STACK: No, Your Honor.

8 THE COURT: From the Defense?

9 MR. GRIMES: May I ask two questions, Your Honor?

10 THE COURT: You may, but they are limited, however, to  
11 the scope of redirect.

12 RE-CROSS EXAMINATION OF DEPUTY JASON CAIN BY MISTER GRIMES

13 Q In the tow sheet Mr. Stack referred to, there is also  
14 listed, a brown jacket?

15 A I would have to see it.

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

17 THE COURT: You may.

18 Q (Mr. Grimes hands a document to the witness) Your  
19 Honor, I would mark this as Exhibit Number 2, for  
20 identification.

21 MR. STACK: May I have a look at that, please?

22 THE COURT: Yes, please show it to him.

23 (Mr. Grimes complies)

24 Q I show you what has been marked as Defense Exhibit  
25 Number 2, for identification.

1 A Yes, sir.

2 Q And it says, "Brown jacket recovered."

3 A Yes, sir.

4 Q Was that jacket tested for DNA?

5 A No, sir.

6 Q Thank you.

7 THE COURT: Anything further from the State?

8 MR. STACK: No, Your Honor.

9 THE COURT: Any objection to the witness being excused,  
10 from the State?

11 MR. STACK: No, Your Honor.

12 THE COURT: From the Defense?

13 MR. GRIMES: No, ma'am.

14 THE COURT: Sir, you are excused. The State may  
15 proceed.

16 MR. STACK: Your Honor, the State rests.

17 THE COURT: Madam forelady, Ladies and Gentlemen, the  
18 State has rested their case. I have some matters of law I  
19 need to take up with the attorneys. It should be very  
20 brief. During this break, please do not discuss the case  
21 and leave your note pads in your seat. If you would go  
22 with the bailiff for me, please.

23 (Jury out at 4:49 p.m.)

24 THE COURT: You may be seated. Are there any motions,  
25 Mr. Stack?

1 MR. STACK: Yes, and I'm not sure this is the time for  
2 it, but in terms of, there was an earlier motion about  
3 impeachment by prior conviction and I would like to address  
4 that if I may?

5 THE COURT: Tell me what you would be seeking to  
6 introduce to impeach his credibility.

7 MR. STACK: I would seek to introduce convictions for  
8 grand larceny.

9 THE COURT: All right.

10 MR. STACK: On three occasions.

11 THE COURT: Okay. And those clearly would be  
12 admissible as crimes of theft, not subject to the balancing  
13 test and irregardless of -- How old are they?

14 MR. STACK: It wasn't 10 years, Your Honor. The  
15 specific case is May 13, 2002.

16 THE COURT: When did he -- when was he released from  
17 confinement?

18 MR. STACK: He was sentenced to a term of three years.

19 THE COURT: Active confinement or probation?

20 MR. STACK: No, then it was suspended upon the service  
21 of six months, Your Honor.

22 THE COURT: Six months active time?

23 MR. STACK: Yes, Your Honor.

24 THE COURT: And so when did he plead and when was he  
25 released from confinement?

1 MR. STACK: He pled May 13th, and I can look this up.

2 THE COURT: May 13th of what year?

3 MR. STACK: 2002.

4 THE COURT: And what was the original sentence?

5 MR. STACK: The original sentence was three years,  
6 suspended upon the service of six months.

7 THE COURT: So, he would have come out on community  
8 supervision.

9 MR. STACK: Probation for two years subsequent to that.  
10 He was given credit for 178 days time.

11 THE COURT: Okay. It clearly would be within the ten  
12 years from the release of his confinement, which would be  
13 at the end of his probation or the community supervision,  
14 whichever was ---

15 MR. GRIMES: I thought he said there were three things  
16 in the beginning.

17 THE COURT: Those clearly would come in. Now that the  
18 State has rested, are there any more motions?

19 MR. STACK: None from the State, Your Honor.

20 THE COURT: From the Defense?

21 MR. GRIMES: Yes, Your Honor. We would move for a  
22 Directed Verdict under Rule 29. We don't think the State  
23 has met its burden to prove Mr. Gethers' involvement in  
24 this. We have testimony from the officer that he saw him,  
25 but there is no corroboration with that, such as forensic

1 evidence, interviews of any other witnesses, and therefore,  
2 the State has not met its burden and the Court should grant  
3 a Directed Verdict. Thank you.

4 THE COURT: You are welcome. Would the State like to  
5 respond?

6 MR. STACK: Your Honor, we presented some evidence with  
7 regards to each of the elements. Any evidence is for the  
8 jury to weigh.

9 THE COURT: In considering a motion for a Directed  
10 Verdict, the Court is concerned with the existence or  
11 nonexistence of evidence and not its weight. It is not for  
12 the Court to act as a fact-finder. If there is any direct  
13 or circumstantial evidence reasonably intending to prove  
14 the Defendant's guilt, it is appropriate for the matter to  
15 be submitted to the jury.

16 There is direct testimony in the form of an eye-  
17 witness who has identified the Defendant as the person who  
18 was driving the vehicle and who was pursued and  
19 subsequently arrested for that offense. There is also more  
20 than sufficient direct testimony in the record, via the  
21 video, that the car or the Defendant, according to the  
22 testimony in the light most favorable to the State, clearly  
23 was warned in the form of a blue light to stop the vehicle  
24 and he engaged in a high speed pursuit prior to being  
25 apprehended. There is substantial circumstantial evidence

1 in the nature of the video taken in conjunction to eye-  
2 witness testimony, reasonably tending to prove the  
3 Defendant's guilt. Therefore, the motion for a Directed  
4 Verdict is denied.

5 Now, is there anything else we need to take up other  
6 than questioning the Defendant regarding his right to  
7 testify, from the State?

8 MR. STACK: No, Your Honor.

9 THE COURT: From the Defense?

10 MR. GRIMES: I think it's just been a long day, but I  
11 remember saying I wanted to proffer something with Deputy  
12 Cain. I just need to jog my memory. I think it was a  
13 little bit more about the language used. (Mr. Grimes looks  
14 through his papers) I think it was, as I recall, the second  
15 part of the video which Mr. Stack objected and which was  
16 sustained.

17 THE COURT: You never asked him that question. You  
18 were asking him about excessive force and you never  
19 connected it to anything that was relevant to the elements  
20 of failure to stop for a blue light. Those questions that  
21 you were asking him regarding that would clearly go to  
22 resisting arrest, but there is a clear demarcation point  
23 with these offenses. One, in regards to failure to stop  
24 for a blue light, which concludes with his arrest. The  
25 next involves resisting arrest which, as I recall -- and I

1 don't have the indictment with me, I think I've already  
2 given it to the clerk. It has been nolle prosed by the  
3 Solicitor and that dealt with a venue issue once the car --  
4 assaulting a police officer while resisting arrest, which, I  
5 assume, y'all had an issue regarding the fact that the  
6 chase went into Dorchester County and for whatever reason,  
7 unbeknownst to me, nor am I particularly concerned with,  
8 you all decided -- the State decided to nolle prose those  
9 charges. That testimony would be completely germane on the  
10 issue of assaulting a police officer while resisting  
11 arrest, because it would go to the amount of force that was  
12 used, whether he legally resisted a lawful arrest or  
13 otherwise. As regards his credibility, however, you've not  
14 connected or shown any tangent between any alleged  
15 instances of excessive force and how that goes to bear on  
16 his credibility on the failure to stop for a blue light  
17 charge.

18 MR. GRIMES: I think that's what I was going to try to  
19 do with the proffer.

20 THE COURT: Officer, I remind you, you are still under  
21 duress. I'm sorry, you are still under oath. That was a  
22 Freudian slip. I'm having a long day. I'm so sorry. I  
23 hope I didn't offend you?

24 DEPUTY JASON CAIN: No, ma'am.

25 THE COURT: You may proceed.

1 PROFFER EXAMINATION OF DEPUTY JASON CAIN BY MISTER GRIMES

2 Q Now, Deputy Cain, we were talking a little bit about  
3 excessive force. Now, you threatened -- You pulled  
4 your service revolver on Mr. Gethers. Correct?

5 A Yes. I did.

6 Q At that point, he was handcuffed?

7 A No, sir.

8 Q You said it took about a minute for you to get him  
9 into handcuffs?

10 A At least.

11 Q And there was about ---

12 A I think I said a minute to two minutes. I think  
13 that's what I said.

14 Q You said you changed it a little bit?

15 A It was a minute to two minutes.

16 Q Okay. You said that, you said that you were going to  
17 put a cap in him?

18 A I told him I would cap him, yes.

19 Q Did you say you were going to cap him or did you say,  
20 "I'm going to put a cap in your ass?"

21 A I believe I said, "I'm getting ready to cap you."

22 Q All right. Then you threatened to shoot him again  
23 after that. Correct?

24 A I don't remember threatening to shoot him again.

25 Q And, I believe you also said, a couple minutes later,

## PROFFERED EXAMINATION OF DEPUTY CAIN - MR. GRIMES

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1           you're lucky this is all I am doing to you." Or  
2           "You're lucky I'm not doing more."

3       A     Yeah, I think that's what I said.

4       Q     What did you mean by that?

5       A     What I meant by that was, he was lucky that he was not  
6           being arrested by another person who might be  
7           uncontrolled or unable to control their temper or  
8           anger.

9       Q     Someone who might use a taser on him eight times?

10      A     No, sir. Now, about that taser use, a taser is  
11           designed to help bring a person subdued. If it takes  
12           eight, it takes eight if it's not working.

13      Q     Did you ever tase him when he was handcuffed?

14      A     No, sir.

15      Q     And you could face civil liability if Mr. Gethers  
16           wanted to proceed with excessive force?

17      A     Yes, sir.

18      Q     And when you use it, you have to submit a report on  
19           the "Use of Force" form. Correct?

20      A     Yes, sir.

21      Q     And that is reviewed by your superiors?

22      A     Yes, sir. It's reviewed once I complete it.

23      Q     And if they find an inappropriate use of force, you  
24           could be reprimanded ---

25      A     Yes, sir.

1 Q --- or perhaps, criminally prosecuted?

2 A Yes, sir.

3 Q And if you were able -- It may help your defense if  
4 you were in that situation in a civil lawsuit, a  
5 reprimand situation or, perhaps, a criminal case, if  
6 the person who you used force on was convicted of the  
7 charge. It would make your use of force seem more  
8 reasonable. Correct?

9 A Again, I wasn't aware that what happens in criminal  
10 court has any effect on civil court. I thought here  
11 was a break between the two, but if you are saying  
12 they are, I mean.

13 Q Well, I am just saying that if you tased an innocent  
14 person eight times and threatened to put a cap in  
15 them, they might have a stronger claim against you  
16 than if you tased a guilty person eight times and you  
17 threatened to cap them.

18 A If you say so. I don't know the answer to that.

19 Q Okay. I think I'm through with my proffer, Your  
20 Honor.

21 THE COURT: Why would any of that be relevant?

22 MR. GRIMES: I said I believe it would be relevant,  
23 because it shows he may have a bias against Mr. Gethers to  
24 get a conviction here to prevent, perhaps, a civil lawsuit.

25 THE COURT: A civil lawsuit hasn't been filed. It's

1 speculative.

2 MR. GRIMES: Well, there is still time for it to be  
3 filed. There's a three-year statute of limitations that  
4 hasn't run yet.

5 THE COURT: It's two, if he hasn't filed a notice of  
6 claim, so the statute has already run on it. They are  
7 governed by the Tort Claims Act. You only get three years  
8 if you have filed a notice with the government and it ends  
9 after the three years.

10 MR. GRIMES: But I think in federal court you get three  
11 years.

12 THE COURT: Same thing applies.

13 MR. GRIMES: It has been a long day ---

14 THE COURT: The Tort Claims Act still applies across  
15 the board, whether you're suing in Federal Court or State  
16 Court. You have a two year statute of limitations unless  
17 you extend it by a notice of claim. This happened on  
18 12-21-09. So, this statute expires December 21, 2011,  
19 which then you would have to surmise that he would be able  
20 to attain a lawyer, have someone to agree to represent him  
21 and file a suit before then, which is unlikely, considering  
22 it's less than a month ---

23 MR. GRIMES: Well, he had Mr. Coleman lined up for  
24 something and he ---

25 THE COURT: He didn't say for something, he said he had

1 him retained for this case.

2 MR. GRIMES: He said, "For something."

3 THE COURT: No, he didn't say, "For something."

4 MR. GRIMES: I mean, I said that, Your Honor.

5 THE COURT: He said he wanted to retain him for this  
6 case and he had not yet paid him, and so, having practiced  
7 law, unless money has exchanged hands, all you're doing is  
8 having conversation.

9 MR. GRIMES: Well, that would be our position, though,  
10 that if someone could be facing a civil lawsuit, it would  
11 be a great incentive, I think, and as the Court would know,  
12 he would have more sympathy from a jury if it is a  
13 convicted defendant as opposed to an acquitted person.

14 THE COURT: You would have to prove that there was  
15 actually a suit pending. Otherwise, it's speculative and  
16 it leaves something really very misleading in the jury's  
17 mind and leaves the Court in the posture of having to  
18 explain to them about a civil suit, about the statute of  
19 limitations, and it gets to be very sticky and it's really  
20 tangential to the entire issue. If he were, in fact, still  
21 proceeding on the assaulting a police officer while  
22 resisting arrest, I think all that would be germane. It  
23 would go to the amount of force used, if he was lawfully  
24 resisting an arrest, but to say that if he filed a lawsuit  
25 in the next fifteen days, which is what would be required

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1 in order for him to meet his applicable statute of  
2 limitations, it gets into a whole 'nother level of issue,  
3 because not only does it have to be relevant, it can't be  
4 information that has the potential to mislead the jury, and  
5 in this case, it would, because you're dealing with legal  
6 principles that would have to be explained to them: If the  
7 lawsuit has not been filed, there is an applicable statute  
8 of limitations that expires on Wednesday the 21st of  
9 December, which is about two weeks from now. So, that  
10 means he would have to find a civil lawyer, have somebody  
11 willing to do it. In addition to that, he would have to  
12 hire an expert on excessive force, and the last time I  
13 checked, they cost about \$40,000.00. There is only one guy  
14 in the country, almost, that does them and he's out of  
15 Atlanta and he requires payment in advance. Just so you  
16 know, that's how it works. I used to do those kinds of  
17 cases and that was ten years ago when he charged  
18 \$40,000.00. I don't know what his fee is now. So, the  
19 bottom line becomes, beyond all of that is, has he filed a  
20 suit? He hasn't. Is there potential for him to file a  
21 suit before the statute of limitations? Could he?  
22 Anything is possible. I don't know any lawyer that would  
23 take on that type of case. Federal Court is totally  
24 different. The burden is incredibly high. As a matter of  
25 fact, at the Directed Verdict stage in Federal Court, the

1 Federal Judge has the ability to weigh the evidence and  
2 dismiss it and if he does not feel or she feels that it  
3 does not meet the appropriate burden of proof and it  
4 requires them to weigh the evidence that has been  
5 submitted. So, it's sort of misleading to the jury to say,  
6 "Didn't you do all these things because you are trying to  
7 avoid civil liability." When, in fact, a civil suit hasn't  
8 been filed and the likelihood of one being filed is really  
9 slim to none at this point. Now, if, in fact, the State  
10 were proceeding on the assault of a police officer while  
11 resisting arrest, I think all that would be germane,  
12 because it would go to whether he resisted, lawfully  
13 resisted the arrest, whether there was proportionate force,  
14 whether he accidentally injured the officer because he  
15 alleges that he was tased, you know, like so many different  
16 times. But you can hear on the video, although the officer  
17 was narrating it and no one objected, you can hear that he  
18 is not being compliant with being arrested. And so, what  
19 you then do is, you sorta fudge the issues, which is in  
20 this case, the only thing that is relevant on a failure to  
21 stop for a blue light are the elements of, one, did he fail  
22 to stop? Which is -- Well, let me back up, because I am  
23 getting a little ahead of myself. Which is, the State has  
24 to prove he was driving the car, which also shows the issue  
25 of identity. The State then also has to prove that he was

## PROFFERED EXAMINATION OF DEPUTY CAIN - MR. GRIMES 114

1 signaled appropriately by law enforcement, which means a  
2 siren or flashing lights, and that he didn't stop and  
3 whether there were any mitigating circumstances that would  
4 justify him not stopping. For example: an emergency, bad  
5 road conditions, lighting, and other things that concern  
6 passenger safety. A lot of women don't stop in dark areas  
7 and that's one of those things that you would consider,  
8 especially with the possibility of them being injured and  
9 it might not be the police. So, there is no harm or foul  
10 going into a lighted area or to a police station or  
11 otherwise and maintain a moderate speed and not stopping.  
12 I think, clearly, all of those things have been articulated  
13 and recognized as mitigating factors that the jury would  
14 consider. Again, they would have to prove that it was an  
15 official signal, that being, a siren or flashing lights.  
16 Both are not required. And then, you know, of course the  
17 other things regarding speed. That's an evidentiary, you  
18 know, whether a person increased their speed to avoid being  
19 captured. So, those are the only elements that are really  
20 relevant to the case for failure to stop for a blue light.  
21 Now, credibility is always an issue, but I've not seen any  
22 connection between what you have attempted to elicit, which  
23 really what you are eliciting really is germane to the  
24 issue of assaulting a police officer while resisting  
25 arrest, but that charge has been nolle prossed. But if

1 there -- you haven't shown that an Excessive Force  
2 Complaint was filed. You haven't proven that he was subject  
3 to any disciplinary action, although I did let you go into  
4 some of that before the jury. You haven't indicated that  
5 his job was actually in jeopardy. So, those things would  
6 be relevant to his credibility. He actually faced them.  
7 But you can't sort of throw stuff, you know, at a jury and  
8 see what will stick. You have to have a good faith basis  
9 in asking those questions and some underlying factors to  
10 support it and it simply is not apparent, nor has it been  
11 elicited in this case. And you can --I mean, I don't know  
12 if the State wants to ask the witness if he was subject to  
13 any disciplinary proceedings as a result of this, or  
14 whether was an Excessive Force Complaint was ever filed.

15 Mr. Stack?

16 MR. STACK: I would be glad to ask the question if Your  
17 Honor ---

18 THE COURT: I mean, it's up to you.

19 MR. STACK: No, Your Honor, I don't.

20 THE COURT: Okay. I would assume he wasn't. Well,  
21 actually, I'm curious now.

22 MR. STACK: Were you subject to any type of discipline  
23 as a result of this action?

24 DEPUTY JASON CAIN: I was told to watch my language,  
25 essentially.

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1 MR. STACK: And who told you that?

2 DEPUTY JASON CAIN: My lieutenant.

3 THE COURT: I would assume that was after watching the  
4 video?

5 DEPUTY JASON CAIN: Yes, ma'am.

6 THE COURT: All right. If you want to ask him about  
7 that, that's fine.

8 MR. GRIMES: No. The other point I would like to make  
9 is on a different theory. It kind of relates to the last  
10 case we had where the jury out of North Carolina, I  
11 believe, the Black case, we may have cited it, where they  
12 gave a jury charge on an officer, a undercover officer,  
13 that had some interest in the case and that they should  
14 consider that officer's testimony more carefully because  
15 the officer ---

16 THE COURT: I'm not going to do a charge conference. I  
17 mean, I'm going to deal with charge conference at charge  
18 conference.

19 MR. GRIMES: But what I'm saying is, the theory is  
20 that he charged -- he's the officer involved in this chase,  
21 he gets into a into a fight with Mr. Gethers and he could,  
22 personally, have animosity towards Mr. Gethers.

23 THE COURT: You could have asked him that.

24 MR. GRIMES: And I think this ---

25 THE COURT: You could have gone into all that. You

1 could have asked him, "Were you aggravated?" "Did he get  
2 on your nerves because you had to chase him down the  
3 highway and then you had to chase him between some houses?"  
4 You could have asked all those questions.

5 MR. GRIMES: I think the video shows the answers to  
6 those.

7 THE COURT: Well, I mean you could have explored all  
8 of that. All of that goes to bear on his credibility.  
9 Actually, it doesn't bear on credibility, it's a red  
10 herring, but I would have let you ask it. The only things  
11 relevant are: was he driving the car and if, in fact, he  
12 was driving the car, did he know the police were following  
13 him, were following and had signaled him, and whether he  
14 stopped or not. That's really what it comes down to.

15 MR. GRIMES: Thank you, Your Honor.

16 THE COURT: You are welcome. Does the State wish to  
17 ask any questions of the witness on the proffer?

18 MR. STACK: No, Your Honor.

19 THE COURT: Does the State have any additional argument  
20 regarding Mr. Grimes' argument or his submission to the  
21 Court that this testimony should be admissible on the issue  
22 regarding the officer's credibility?

23 MR. STACK: No, Your Honor, other than we respectively  
24 oppose it.

25 THE COURT: And what would be the basis of the Court's

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1 opposition to the admissibility of the testimony?

2 MR. STACK: The State would oppose it, because there is  
3 no connection to the facts presented in this case.

4 THE COURT: The proffer will stand.

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6 THE COURT: All right, sir, stand for me please, and  
7 raise your right hand.

8 (The oath is duly administered to Mr. Gethers by Judge  
9 Jefferson)

10 THE COURT: You can put your right hand down. Please  
11 state your name for the record.

12 MR. GETHERS: Corey Lanard Gethers.

13 THE COURT: Sir, at this time, I'm going to explain to  
14 you certain of your rights. If you do not understand  
15 anything that I say please -- Sir, you can step down. I  
16 apologize. (Speaking to Deputy Cain who is still on the  
17 witness stand) If you do not understand anything that I  
18 say, please let me know. If I need to repeat anything,  
19 please let me know or if you have any questions, please let  
20 me know. Do you understand?

21 MR. GETHERS: Yes. Ma'am.

22 THE COURT: Sir, we have now reached the stage of the  
23 trial where you may present your defense. You have a right  
24 to claim the protections given to you by the Fifth  
25 Amendment to the Constitution and that amendment states in

## DIRECT EXAMINATION OF COREY GETHERS BY MS. ANDERSON 127

1 then I went ahead while you were doing that and I took care  
2 of two other cases so that we could proceed with this case  
3 without any further interruption. We will now resume with  
4 the trial. The Defense may proceed.

5 MS. ANDERSON: The Defense calls Corey Gethers.  
6 (After being duly sworn by the Clerk of Court, Corey  
7 Gethers testified as follows:)

8 CLERK OF COURT: Please be seated and state your full  
9 name and spell your last name for the record.

10 A Corey Lanard Gethers. G-E-T-H-E-R-S.

11 THE COURT: Okay, proceed.

12 MS. ANDERSON: Thank you, Your Honor.

13 THE COURT: You are welcome.

14 DIRECT EXAMINATION OF COREY GETHERS FOR BY MS. ANDERSON

15 Q Good morning, Mr. Gethers.

16 A Good morning.

17 Q How are you doing today?

18 A Okay.

19 Q Doing all right?

20 A Yes, ma'am.

21 Q Let me start off by asking you a few questions about  
22 your background.

23 A Yes, ma'am.

24 Q Where were you born?

25 A Right here in Charleston.

## DIRECT EXAMINATION OF COREY GETHERS BY MS. ANDERSON 128

1 Q When were you born?

2 A

3 Q Have you grown up here in Charleston all your life?

4 A Yes, ma'am.

5 Q Is all your family here?

6 A Yes, ma'am.

7 Q Who did you live with growing up?

8 A My Mom and grandmother.

9 Q Did anyone else live with you?

10 A No, ma'am.

11 Q Do you have any siblings?

12 A I have a sister.

13 Q A sister?

14 A Yes, ma'am.

15 Q What kind of work does your Mom do?

16 A She works at M.U.S.C.

17 Q What does she do there?

18 A She is like a delivery driver. A delivery driver.

19 Q Sir?

20 A Like, a delivery driver.

21 Q Okay. Does your grandmother work?

22 A No, ma'am.

23 Q What does she do?

24 A She like assists older, elderly people.

25 Q What does your sister do?

- 1 A She works for M.U.S.C., too.
- 2 Q Do you have any children, Mr. Gethers?
- 3 A Yes, ma'am.
- 4 Q How many do you have?
- 5 A Three.
- 6 Q What are their names and how old are they?
- 7 A is 12 years old, is 6 years old, and
- 8 , who is like 2 weeks old.
- 9 Q They are all boys?
- 10 A Yes, ma'am.
- 11 Q You've got three boys.
- 12 A Yes, ma'am.
- 13 Q What kinds of things do you do with them?
- 14 A I try to take care of them and take them out to movies
- 15 and spend quality time with them.
- 16 Q Okay. Where did you go to school, Mr. Gethers?
- 17 A Stall High School.
- 18 Q How far did you go?
- 19 A Eleventh grade.
- 20 Q Did you ever get any schooling or anything after that?
- 21 A No. I'm right now in preparation to get my GED.
- 22 Q So, you are working on your GED?
- 23 A Yes, ma'am.
- 24 Q What kind of work do you do?
- 25 A I do electrician work as a trade, but right now I'm

## DIRECT EXAMINATION OF COREY GETHERS BY MS. ANDERSON 130

1 taking anything the Temp agency can give me right now.

2 Q How long have you been an electrician?

3 A About three years.

4 Q Three years?

5 A Yes, ma'am.

6 Q Okay. Let's take a minute and talk about a little bit  
7 of trouble you got in, back in 2002.

8 A Yes, ma'am.

9 Q Do you have some convictions for grand larcenies?

10 A Yes, ma'am.

11 Q Three?

12 A Yes, ma'am.

13 Q Did you plead guilty to them?

14 A Yes, ma'am.

15 Q Did you receive a probationary sentence?

16 A Yes, ma'am.

17 Q And that was in 2002?

18 A Yes, ma'am.

19 Q Now let's talk a little bit -- I want to do a little  
20 bit of introductory work. Let's talk about some of  
21 the people that are going to come up and talk about  
22 what happened that day.

23 A Yes, ma'am.

24 Q Tell me, did you make plans to go out that day?

25 A Yes, ma'am.

## DIRECT EXAMINATION OF COREY GETHERS BY MS. ANDERSON 131

- 1 Q Who were you planning to meet?
- 2 A Me and my friend Tru and his friend, we were going out  
3 to bowling at Royal Z on Monday night.
- 4 Q Can you spell that name for us?
- 5 A T-R-U. Tru Davis.
- 6 Q Thank you.
- 7 A Okay.
- 8 Q So, Tru and his girlfriend are who you were going to  
9 meet that night?
- 10 A Yes, ma'am.
- 11 Q And how were you going to get there?
- 12 A I called a friend of mine to get a ride.
- 13 Q Okay. And what was his name?
- 14 A Tony.
- 15 Q And how do you know Tony?
- 16 A We just know each other by passing by. We went to  
17 school together in Middle school.
- 18 Q Are you good friends with him?
- 19 A No, not everyday friends. Just pass by.
- 20 Q Do you see him very often?
- 21 A Here and there, we see each other to say hello.
- 22 Q And there was another person in the car with you that  
23 night?
- 24 A Yes, ma'am.
- 25 Q What was his name?

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1 A Roy.

2 Q Do you know Roy very well?

3 A Just from the neighborhood, really.

4 Q Do you see him very often?

5 A No, ma'am. I just know him from over the years.

6 Q All right. Now that we are all on the same page,  
7 let's jump ahead one more time.

8 A Yes, ma'am.

9 Q To the very, very end of the story. What happened  
10 after you got arrested?

11 A Um.

12 Q After you were in the police car?

13 A The ambulance came and I told them what happened.

14 MR. STACK: Objection. Relevance.

15 THE COURT: Sustained. Proceed.

16 Q All right. Well, let's just jump back, again, to  
17 December 21, 2009.

18 A Yes, ma'am.

19 Q Do you remember that day?

20 A Yes, ma'am.

21 Q Do you remember what day of the week that was?

22 A No, ma'am.

23 Q What do you remember about doing that day?

24 A I got up that morning and I -- in fact, it was on a  
25 Monday. It was on Monday.

## DIRECT EXAMINATION OF COREY GETHERS BY MS. ANDERSON 133

1 Q Monday?

2 A Yes, ma'am. It was a Monday, because they called me  
3 to come bowl on Monday and I got up that morning and  
4 called the temp agency and put my name in as available  
5 for work to start off the day.

6 Q So, you put your name in to the temp service and let  
7 them know you were available for work that day.

8 A Yes, ma'am.

9 Q Did you go to work that day?

10 A No, ma'am.

11 Q What did you do?

12 A Mostly, just kind of laid around the house, helped my  
13 grandmother out.

14 Q Did you make any plans for that night?

15 A Yes, ma'am. To go bowling.

16 Q With Tru and Mindy?

17 A Yes, ma'am.

18 Q Where is the bowling alley?

19 A In Goose Creek.

20 Q Where is Goose Creek?

21 A In North Charleston.

22 Q How were you planning to get to North Charleston to  
23 Goose Creek?

24 A I called a friend of mine, Tony.

25 Q I'm sorry?

## DIRECT EXAMINATION OF COREY GETHERS BY MS. ANDERSON 134

- 1 A I called a friend of mine, Tony, and asked if he could  
2 give me a ride.
- 3 Q Did Tony agree to give you a ride?
- 4 A Yes, ma'am.
- 5 Q What time did he come pick you up?
- 6 A I would say about seven or eight.
- 7 Q Seven or eight?
- 8 A Yes, ma'am.
- 9 Q Was he driving the car?
- 10 A Yes, ma'am.
- 11 Q What kind of car was it?
- 12 A I believe it was a Forenza.
- 13 Q A Forenza?
- 14 A Yes, ma'am.
- 15 Q Was anyone else in the car with him?
- 16 A Yes, ma'am.
- 17 Q Who was in the car with him?
- 18 A Roy.
- 19 Q Where was Roy sitting?
- 20 A In the passenger seat.
- 21 Q Where did you get in the car?
- 22 A Behind the passenger.
- 23 Q In the back seat?
- 24 A Yes, ma'am. In the back seat.
- 25 Q Was there anything else in the back seat with you?

## DIRECT EXAMINATION OF COREY GETHERS BY MS. ANDERSON 135

- 1 A I believe it was like the base of a child's seat.
- 2 Q The base?
- 3 A The base of it. Not the whole child's seat, just the  
4 base of it.
- 5 Q But you had room to sit back there?
- 6 A Yes, ma'am. I had plenty of room.
- 7 Q Where did Tony take you after leaving the house?
- 8 A After we left there, he had to make a stop right  
9 around Rivals on 78.
- 10 Q So you stopped at Rivals?
- 11 A Yes, ma'am. He made a stop at Rivals.
- 12 Q He made a stop at Rivals?
- 13 A Yes, ma'am.
- 14 Q Did you go inside?
- 15 A No, ma'am.
- 16 Q Did anyone go inside?
- 17 A Roy went inside.
- 18 Q And how long was he in there?
- 19 A Maybe ten or fifteen minutes.
- 20 Q And then he came back out?
- 21 A Yes, ma'am.
- 22 Q After he came back out, where were you going to go  
23 from there?
- 24 A They were going to drop me off at the Royal -- at the  
25 Royal Z bowling alley.

## DIRECT EXAMINATION OF COREY GETHERS BY MS. ANDERSON 136

1 Q In Goose Creek.

2 A Yes, ma'am.

3 Q What happened on the way there?

4 A When we were on 78, an officer came by us and he hit  
5 his lights -- he put, like, the spotlight on us and we  
6 kept going down and then he turned -- he made a "U".  
7 He made a "U" and he came in behind us.

8 Q I am going to play for you one more time the video  
9 from that night.

10 A Yes, ma'am.

11 Q And you can look at it and then we will talk about it.

12 A Yes, ma'am.

13 Q (Plays the video.) Okay. That is where we are going  
14 to stop for right now. Corey, did you recognize that  
15 car?

16 A Yes, ma'am.

17 Q Is that the car you were in that night?

18 A Yes, ma'am.

19 Q Who was driving?

20 A Tony.

21 Q Is that the person -- that is the person that picked  
22 you up?

23 MR. STACK: Objection.

24 THE COURT: Basis?

25 MR. STACK: Third-party guilt.

## DISCUSSION - THIRD-PARTY GUILT

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1 THE COURT: Please approach.

2 (Bench Conference Off the Record)

3 THE COURT: Madam Forelady, Ladies and Gentlemen, I  
4 have a brief matter of law I need to take up. During the  
5 break, please do not discuss the case and please leave your  
6 note pads in your seats. You may go with the bailiff.

7 (Jury out at 10:27 a.m.)

8 THE COURT: You may be seated. What is the basis for  
9 your objection, Mr. Stack?

10 MR. STACK: Third-party guilt, Your Honor.

11 THE COURT: And do you want to be more specific?

12 MR. STACK: Yes, Your Honor. Earlier in the direct  
13 testimony, he said when he was picked up, the car was being  
14 driven by one of his friends, Tony. That was several hours  
15 before this event, including one stop. Since this event,  
16 and this is the only event that's he's on trial for, he  
17 has stated that someone else was driving. I contend that  
18 it is arguably third-party guilt and they should be  
19 restricted from arguing something that is inconsistent with  
20 his guilt.

21 THE COURT: Would you like to respond to the  
22 objection, Ms. Anderson?

23 MS. ANDERSON: Yes, Your Honor. We would argue that  
24 he has waived his right to object by reason of, in my  
25 opening, I said someone else had been driving the car and

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1 he did not object.

2 THE COURT: Opening isn't evidence.

3 MS. ANDERSON: He testified that Tony was driving and  
4 drove him straight to Rivals and Rivals is where the car  
5 chase was and that Tony was driving and he didn't object  
6 then. We argue that he has waived that. It also goes to  
7 the impeachment of the officer. The officer testified that  
8 Corey was driving. And Corey says that ---

9 THE COURT: How does someone else's statement impeach  
10 somebody? You, generally, impeach someone with something  
11 that is independently corroborative and on it's face,  
12 inherently has veracity. Two people saying somebody else  
13 did it, isn't impeachment. That's just two people with  
14 different opinions.

15 MS. ANDERSON: Well, it contradicts the officer's  
16 testimony.

17 THE COURT: When you say somebody else did it, you have  
18 to do more than that. You have to have some independent  
19 corroboration -- I mean, you can't just simply say somebody else  
20 did it. I mean, that's what, basically, without using a  
21 lot of legal language, that's what third-party guilt is.

22 MS. ANDERSON: Well, ---

23 THE COURT: When you raised the suspicion, the mere  
24 suspicion that somebody else did it, that's just like  
25 coming into court saying, "So-and-so did it. I didn't do

1       it." Our case law articulates that you have to have  
2       something more than that. You can't just come in and say  
3       somebody else did it. I don't think there is anything that  
4       precludes him from saying, "I wasn't driving," but I don't  
5       think he gets to say somebody else was driving.

6               MS. ANDERSON: Beg The Court's indulgence. (Confers  
7       with Mr. Grimes.)

8               THE COURT: You have to be able to prove that there is  
9       a specific chain of facts and circumstances that satisfy  
10       the standards for third-party guilt. In other words, our  
11       courts have articulated that it is not proper to just raise  
12       that somebody else could have done it or that somebody else  
13       did do it. That it is improper to have those type of  
14       inferences in front of the jury about some third person and  
15       vague references ---

16              MS. ANDERSON: Well, when ---

17              THE COURT: --- when you don't have some other  
18       independent corroboration of the fact that somebody else  
19       did it.

20              MS. ANDERSON: Well, we are saying that it's not  
21       speculation, it's not a bare, remote fact, it's not just a  
22       suspicion. He was in the car that day and he knows who was  
23       driving. So, he is saying a specific individual, on a  
24       specific date, at a specific time. It's not just, "Well,  
25       somebody else did it." It's not, "Well, you know -- It's a

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1 specific, individual, clearly, and he has the right to use  
2 that evidence to present a defense on his behalf when his  
3 defense is, "I wasn't driving".

4 THE COURT: He can say that. He can say, "I wasn't  
5 driving." But he doesn't get to point the finger at  
6 somebody else without independent corroboration which  
7 establishes a chain of facts that support that assertion.  
8 Otherwise, it's a bald assertion. If that were the case,  
9 people would come into the court all the time and say, "I  
10 didn't do it, so-and-so did it." And our case law,  
11 specifically, doesn't allow that. How is that different  
12 from being at a murder and saying, "I didn't shoot him. I  
13 was with my friend so-and-so and he shot him?"

14 MR. GRIMES: It's the same thing where the victim of a  
15 CDV can come into court and say, "He touched me, he did  
16 this to me." The statute allows for no corroboration.  
17 It's the same as the officer saying ---

18 THE COURT: Because that is a specific statute and that  
19 says a rape victim does not have to corroborate. That's a  
20 totally different situation.

21 MR, GRIMES: It's the same as the officer coming in and  
22 saying, "I saw him driving." There is no corroboration: no  
23 fingerprints, no other witnesses, and the witness they did  
24 have, they are not calling to trial.

25 THE COURT: Pardon me?

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1 MR. GRIMES: And the witness they did have, they are  
2 not going to call to trial.

3 THE COURT: Well, that's not their fault. She says  
4 she's not going to cooperate because she's afraid and she  
5 doesn't want to get involved.

6 MR. GRIMES: There are all sorts of witnesses that  
7 don't want to cooperate. The State ---

8 THE COURT: Pardon me?

9 MR. GRIMES: There are all kinds of witnesses that  
10 don't want to cooperate ---

11 THE COURT: I'm sure if she could exculpate your  
12 client, y'all would be calling her.

13 MR. GRIMES: Well ---

14 THE COURT: So, clearly her testimony isn't beneficial.

15 MR. GRIMES: But you are ---

16 THE COURT: So, it's to your benefit they are not  
17 calling her.

18 MR. GRIMES: But ---

19 THE COURT: If she could exculpate your client, you  
20 would have subpoenaed her and you would be asking me to  
21 command her be here.

22 MR. GRIMES: And the State could do the same thing.

23 THE COURT: That is not -- that is not what is germane  
24 to this issue. You said that they have a witness and they  
25 are not calling her. It is clear from this record, that

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1 she was not cooperative, she does not want to testify, she  
2 did not want to be involved. The Court's observation is,  
3 based on a wealth of experience, that if she was going to  
4 exculpate your client, you would have subpoenaed her and  
5 you would be here right now demanding that I send somebody  
6 to go pick her up so she could come testify and I could  
7 command her to testify, if you felt it was beneficial to  
8 your client. So, clearly, their not calling her, must be  
9 beneficial, in some way, to your client, otherwise, you  
10 would be asking me to have them go find her.

11 MR. GRIMES: That's one reasonable strategy. Another  
12 reasonable strategy is to require the State --

13 THE COURT: This is just an observation.

14 MR. GRIMES: --- to bear the burden of proof and they  
15 are not meeting their burden of proof. And ---

16 THE COURT: The State does not have to call independent  
17 -- the issue is not burden of proof. The issue is not the  
18 State meeting their burden of proof. The issue, at this  
19 point, is third-party guilt, so I need you to stay on  
20 target. There is a very specific stringent standard that is  
21 applied in South Carolina regarding third-party guilt. It  
22 has been sustained by the United States Supreme Court.  
23 They have articulated what the applicable standard is. You  
24 cannot simply point your finger at somebody else and say  
25 somebody else did it. You have to be able to establish an

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1 extraneous chain of -- you have to have, and I don't want  
2 to say, "independent corroboration", because I'm not  
3 certain that is the exact language the case law uses, but  
4 it pretty much implies that, that you can't simply come  
5 into court and say somebody else did it. I don't think  
6 there is anything that prohibits him from saying, "I wasn't  
7 driving the car. I'm not the person that was driving that  
8 car," and I think there is enough circumstantial evidence,  
9 especially in light of the fact that the video doesn't show  
10 who got out of the vehicle. You can argue he wasn't  
11 driving the car. I just don't think you get to point the  
12 finger at somebody else and say that were driving the car,  
13 because there is no evidence of that, either.

14 MR. GRIMES: Well, we believe, under the Sixth  
15 Amendment, our right to present a defense and in the  
16 Supreme Court case of South Carolina versus Holmes in which  
17 they noted the South Carolina third-party guilt rule, it  
18 said the original rule is fine, but the way it has been  
19 expanded and interpreted, it ---

20 THE COURT: I am not applying ---

21 MR. GRIMES: --- causes problems.

22 THE COURT: I am not applying that standard. The  
23 Supreme Court is very clear about what they articulated.  
24 They didn't change what South Carolina's application of  
25 third-party guilt was. It simply said that it had been

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1 expanded in a way that did not allow for inconsistencies in  
2 terms of -- In other words, what it said when they  
3 distinguished the way it was applied in that particular  
4 case was, that it said, basically, was what our courts said  
5 held had expanded the standard and said, basically, once  
6 the State presents a certain amount of evidence, that there  
7 is no way you can impeach it if it was applied in that way.  
8 I am making something very complicated. I am sort of  
9 cutting to the chase. It's really not applicable in this  
10 case. The way that the standard was applied and when the  
11 Supreme Court addressed it, I'm not applying the same  
12 standard of third-party guilt. I am applying the standard  
13 of black letter third-party guilt and what I just read to  
14 you was straight from the U.S. Supreme Court opinion. It  
15 wasn't from the South Carolina Court opinion. It was from  
16 the U.S. Supreme Court opinion that said you can not simply  
17 point at somebody else and say they did it and that is just  
18 basic black letter jurisprudence for the country and any  
19 state that applies third-party guilt, not just South  
20 Carolina.

21 MR. GRIMES: Well, in Holmes, the court says that  
22 evidence offered by the accused as to the commission of a  
23 crime by another person must be limited to such facts as  
24 are inconsistent with his own guilt and to such facts as  
25 raise a reasonable inference or the presumption as to his

1 own innocence. Here, he is -- we're limiting the facts.  
2 We're not saying that it could have been Tony or somebody  
3 else, but that it is Tony and that's inconsistent with his  
4 guilt and that raises a reasonable inference of the  
5 presumption of his own innocence and it says, before such  
6 testimony can be received, there must be such proof of  
7 connection with it, such a chain of facts or circumstances,  
8 as tends clearly to point out such other person as the  
9 guilty party. His testimony clearly points out that Tony  
10 is the guilty party. We don't have independent  
11 corroborative evidence. We can't find this Tony person,  
12 but I believe the Court is almost weighing the evidence and  
13 saying you haven't introduced enough the evidence to carry  
14 the burden of ---

15 THE COURT: I didn't say that. I was merely  
16 articulating ---

17 MR. GRIMES: The State's burden.

18 THE COURT: He doesn't have any burden of proof. Once  
19 you get on the stand and you start making statements, you  
20 have to make them in good faith and you still have to meet  
21 the burden of third-party guilt, if that is what you are  
22 trying to articulate. So, the Court is not applying some  
23 arbitrary standard. It is merely looking at what the case  
24 law provides and asking you, very pointedly, how does this  
25 come within meeting what is required by South Carolina

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1 Jurisprudence to rise to the level of being able to present  
2 a defense of third-party guilt.

3 MR. GRIMES: Well, we think he has met the burden. He  
4 has shown a specific person, in a specific time, and he's  
5 given the name of the person, talked about how the person  
6 picked him up, how he knew the person. Originally, at the  
7 scene, he admitted, he said, "I wasn't driving." The  
8 officer did no follow-up investigation. They never  
9 contacted Mr. Dunham, who is the registered owner of the  
10 car and we believe this is the ultimate impeachment  
11 evidence. You can have impeachment evidence by another  
12 witness. For example, if Officer Deputy Cain said, "Well,  
13 I only tased him once," and another witness testified,  
14 "Well, I heard Deputy Cain say he tased him five times," we  
15 could call that witness to impeach Deputy Cain. Here,  
16 Deputy Cain has testified, "I was zoned in on him. I saw  
17 him get out the driver's side and run." Here, he is  
18 impeaching Deputy Cain's testimony by saying, "No, I was  
19 not driving the car. I was in the back seat. I got out of  
20 the back seat," and that is what he told Deputy Cain at the  
21 scene and Deputy Cain said, "No, there's no way you could  
22 fit in there, because there are two child seats." So, we  
23 believe it is impeachment evidence which would come in for  
24 impeachment purposes and the Court could give limited  
25 instruction as to impeachment, if not for the truth of the

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1 matter asserted and we believe, also, we have met our  
2 burden of third-party guilt.

3 THE COURT: Anything further from the State?

4 MR. STACK: No, Your Honor.

5 THE COURT: Y'all can take your seats. Please ask the  
6 questions you were going to ask of the witness.

7 PROFFERED TESTIMONY - COREY GETHERS - BY MS. ANDERSON

8 Q Were you in the back seat of the car that night?

9 A Yes, ma'am.

10 Q Who was driving?

11 A Tony.

12 MR. STACK: I'm going to object to that.

13 THE COURT: Well, we're in camera. I'm creating a  
14 proffer in the event it is needed.

15 MR. STACK: I'm sorry.

16 THE COURT: That's okay. You may continue.

17 Q Is Tony the person that picked you up from your house  
18 that night?

19 A Yes, ma'am.

20 Q Is Tony the person who drove you to Rivals?

21 A Yes, ma'am.

22 Q Is Tony the person who left Rivals ---

23 A Yes, ma'am.

24 Q --- and was driving when the police officer came up  
25 behind you?

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- 1 A Yes, ma'am.
- 2 Q Was Tony driving when the officer turned on his blue  
3 lights?
- 4 A Yes, ma'am.
- 5 Q And was Tony the one that hit the gas, hit the gas in  
6 the car?
- 7 A Yes, ma'am.
- 8 Q Where were you sitting?
- 9 A In the back seat.
- 10 Q Is it your car?
- 11 A No, ma'am.
- 12 Q If they had printed the car, would they have found  
13 your fingerprints on the steering wheel?
- 14 A No, ma'am.
- 15 Q Would they have found them on the drive shaft?
- 16 A No, ma'am.
- 17 Q Would they have found them on the keys?
- 18 A No, ma'am.
- 19 Q Would they find them on the door handles ---
- 20 A No, ma'am.
- 21 Q --- of the front seat or the driver's seat?
- 22 A No, ma'am.
- 23 Q What happened when the car finally stopped?
- 24 A Everybody jumped out.
- 25 Q Do you know where Tony -- where Roy was sitting in the

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car?

A Roy was in the passenger seat.

Q Did you see him get out of the car?

A No, ma'am.

Q Do you know which direction he went?

A No, ma'am.

Q Who got out of the car first?

A Tony.

Q Tony?

A Yes, ma'am.

Q And where did he get out of the car from?

A From the driver's side.

Q How quickly did you get out of the car after him?

A Right out behind him.

Q Did you see where Tony ran?

A He ran to -- he got out and ran to the right -- to the left, and I followed him into the backyard.

Q How closely were you following him?

A Just a couple of feet from him.

MS. ANDERSON: Beg the Court's indulgence. (Confers with Mr. Grimes) That's all the questions, Your Honor.

THE COURT: It's really a 50-50 call. I think that South Carolina law is very clear that you cannot simply point the finger at someone and say that somebody else did it. However, -- and I appreciate y'all indulging me to do

## PROFFERED TESTIMONY - COREY GETHERS - BY MS. ANDERSON 150

1 a little reading to refresh my memory -- most of the cases  
2 that deal with third-party guilt deal with witnesses who  
3 are called to corroborate independent facts that, in and of  
4 themselves, really have no bearing on the factual  
5 circumstances at hand. In other words, I'll use an  
6 example: In one of the cases, there was a murder or a  
7 burglary, you know, several different factual scenarios,  
8 but where other witnesses were called to establish that  
9 there were other people maybe in the area that could have  
10 committed the offense or where there is another witness  
11 that comes in and says they heard some third party say they  
12 actually heard someone say they actually did it versus the  
13 person who is on trial. This case is a little different,  
14 factually, than all of those cases and the case law is  
15 clear in terms of articulating the standard for the  
16 admissibility of third-party guilt evidence and most  
17 recently in State versus Burgess, which is found at 391  
18 S.C.15 (2010 Ct.A), they articulate from Gregory, that the  
19 evidence offered by the accused as to the commission of the  
20 crime by another person must be limited to such facts as  
21 are inconsistent with his own guilt and to such facts as  
22 raise a reasonable inference or presumption as to his own  
23 innocence; evidence which can have no other effect than to  
24 cast a bare suspicion upon another, or to raise a  
25 conjectural inference as to the commission of the crime by

## PROFFERED TESTIMONY - COREY GETHERS - BY MS. ANDERSON 151

1 another, is not admissible, but before such testimony can  
2 be received, there must be such proof of connection with  
3 it, such a chain of facts or circumstances as tends clearly  
4 to point out such other person as the guilty party. Remote  
5 acts, disconnected and outside of the crime itself, cannot  
6 be separately proved for such a purpose. This case, again,  
7 as I've indicated, is different in a way, because what it  
8 really comes down to is, it becomes a credibility contest  
9 about who the jury is going to believe. Either the jury is  
10 going to believe the officer that he, in fact, pursued this  
11 vehicle and what he observed and that the defendant was, in  
12 fact, driving and that is who he subdued or took into  
13 custody at the scene or that they may well believe the  
14 Defendant's version, which is, that there was someone else  
15 driving the vehicle, that he merely had an incidental  
16 contact with these individuals and that he was in the place  
17 at the wrong time. Of course, there are arguments on both  
18 sides of that in terms of credibility and believability and  
19 I think the jury is just going to have to sort it out. So,  
20 out of an abundance of caution, I am going allow the  
21 testimony. Please get the jury for me.

22 (Jury in at 11:02 a.m.)

23 BAILIFF: All present, Your Honor.

24 THE COURT: Thank you. You may be seated. Ladies and  
25 Gentlemen, I appreciate your patience. You may proceed.

## CONT. DIRECT EXAMINATION OF COREY GETHERS BY MS. ANDERSON 152

1 MS. ANDERSON: Thank you.

2 THE COURT: You are welcome.

3 CONT. DIRECT EXAMINATION OF CORY GETHERS BY MS. ANDERSON

4 Q Just so we are back on the same page, you are in the  
5 back seat of the car coming out of Rivals. What  
6 happened after that?

7 A We was coming down 78 and the police passed us and  
8 shined, like, a spotlight on us, and I guess he went  
9 up and came, I guess he made a U-turn, and came after  
10 us.

11 Q Where were you sitting in the car at that time?

12 A In the back seat.

13 Q And were you with the same people that picked you up  
14 that night?

15 A Yes, ma'am.

16 Q Tell us, again, who that was.

17 A Tony and Roy.

18 Q And where was Roy seated?

19 A Roy was in the passenger seat.

20 Q And where was Tony sitting?

21 A In the driver's seat.

22 Q Was Tony the one driving at that time?

23 A Yes, ma'am.

24 Q Tell the jurors how you felt when Tony hit the gas.

25 A Scared and nervous. I didn't really know what to

## CONT. DIRECT EXAMINATION OF COREY GETHERS BY MS. ANDERSON 153

1 think. I didn't know what would happen. I didn't  
2 know why he was driving so fast. A bunch of mixed  
3 emotions.

4 Q What were you thinking about?

5 A My kids. My Mom. Just life in general.

6 Q Did you do anything?

7 A No, ma'am.

8 Q Okay. We just watched the chase, but we don't see you  
9 in the car. Why don't we see you?

10 A When we were on 78, I had already ducked down in the  
11 back seat. We'd already seen him coming behind us.  
12 So, I guess the camera doesn't really show until we  
13 turned on College Park Road, so that's why.

14 Q Let's go ahead and play the next part.

15 A Yes, ma'am. (Plays video)

16 MR. STACK: Objection. Relevance.

17 (Bench Conference Off the Record)

18 THE COURT: Withdrawn. You may proceed.

19 Q Is that when the car stopped? Is that what happened  
20 after the car stopped?

21 A Yes, ma'am.

22 Q We don't see a lot on there, so kind of -- what  
23 happened from there, when the car stopped?

24 A When the car stopped, me and Tony jumped out of the  
25 car. We ran in this lady's backyard and Tony jumped

## CONT. DIRECT EXAMINATION OF COREY GETHERS BY MS. ANDERSON 154

1 over the fence and I tried to jump over the fence  
2 behind him, but the fence broke on me and when I tried  
3 to jump back on the fence, that's when the officer  
4 grabbed me and tased me with the taser once, and he  
5 shot me with the taser once, and that's when I went to  
6 the ground and when I went to the ground, that's when  
7 he shot me again.

8 MR. STACK: Objection. Relevance.

9 MS. ANDERSON: The officer said that he tased him in  
10 his testimony. He's just ---

11 THE COURT: I'll give you a little latitude. Continue.

12 A From there, I went to the ground and I was like this  
13 right here with my hands out. (Demonstrating) He shot  
14 me the second time with the touch taser. He just  
15 touched me in my back and my side ---

16 MR. STACK: Objection. Relevance.

17 THE COURT: Approach.

18 (Bench Conference Off the Record)

19 THE COURT: Proceed.

20 Q Keep going.

21 A He kept on touching me on my back and my side and my  
22 neck with the taser, the stun gun, like fifteen times,  
23 and then finally, he got me in hand -- finally he put  
24 me in handcuffs and he put the gun to my head. That's  
25 when we started talking about the gun to my head and

## CONT. DIRECT EXAMINATION OF COREY GETHERS BY MS. ANDERSON 155

1           stuff like that.

2           Q     How did that feel?

3           A     Terrible. It hurt really bad.

4           Q     Let's jump back a little bit to when everybody was  
5           getting out of the car. Where were you seated?

6           A     In the back seat.

7           Q     Where did you get out of the car?

8           A     Behind the driver.

9           Q     Where?

10          A     Behind the driver.

11          Q     We were talking about Roy. Tell us, again, where Roy  
12          was seated.

13          A     In the passenger seat.

14          Q     And where did he go?

15          A     I don't know where Roy went.

16          Q     And where was Tony sitting?

17          A     In the driver's seat.

18          Q     Where did Tony get out of the car?

19          A     In the driver's seat -- out the driver's door.

20          Q     Who got out of the car first?

21          A     Tony got out a little before me. We were about the  
22          same, about the same.

23          Q     Okay. Did you follow him?

24          A     Yes, ma'am.

25          Q     Is that what you said earlier?

## CROSS EXAMINATION OF COREY GETHERS BY MR. STACK

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1 A Yes, ma'am.

2 Q How close were you to him?

3 A I was just a couple of feet off his foot. Just a  
4 couple of steps behind him.

5 Q If the officer had fingerprinted the car, would they  
6 have found your fingerprints in there?

7 A No, ma'am.

8 MR. STACK: Objection. Speculation.

9 THE COURT: Sustained, and lack of foundation.

10 Q After it was all over, after you were arrested and you  
11 were in the police car, and before you went to jail,  
12 did you say anything to the officer?

13 A I told him I wasn't driving.

14 Q Were you driving the car that night?

15 A No, ma'am.

16 Q That's all the questions I have. Please answer Mr.  
17 Stack's questions.

18 A Yes, ma'am.

19 THE COURT: You may proceed.

20 MR. STACK: Thank you, Your Honor.

21 CROSS EXAMINATION OF COREY GETHERS BY MISTER STACK

22 Q Good morning, Mr. Gethers,

23 A Good morning.

24 Q Sir, I would like to run down a few things with you,  
25 if I may.

- 1 A Yes, sir.
- 2 Q Bear with me.
- 3 A Yes, sir.
- 4 Q Some of these, I think, are already in evidence, but I  
5 just want to confirm them with you.
- 6 A Yes, sir.
- 7 Q On the evening of December 21st of '09, you were in a  
8 Suzuki Forenza. Is that correct?
- 9 A Yes, sir.
- 10 Q And that is the -- That's the car we see in in the  
11 videotape?
- 12 A Yes, sir.
- 13 Q All right. And you were aware that there was a police  
14 car behind you that was flashing his blue lights. Is  
15 that correct? Did you see his blue lights?
- 16 A Yes, sir.
- 17 Q And they were flashing?
- 18 A Yes, sir.
- 19 Q And you could also hear the siren going?
- 20 A Yes, sir.
- 21 Q It was pretty loud. Wasn't it?
- 22 A Yes, sir.
- 23 Q And the car that you were in, increased its speed to  
24 about 100 miles-an-hour or so. Is that right?
- 25 A Yes, sir.

## CROSS EXAMINATION OF COREY GETHERS BY MR. STACK

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1 Q Okay. And went through the parking lot and then went  
2 up and down the streets and things like that.

3 Correct?

4 A Yes, sir.

5 Q And there were no mitigating circumstances as to why  
6 that vehicle should not have stopped when Deputy Cain  
7 began ---

8 MS. ANDERSON: Objection.

9 THE COURT: Basis?

10 MS. ANDERSON: Calls for a legal conclusion.

11 THE COURT: I didn't hear the whole question. Restate  
12 the question.

13 MR. STACK: The question? Yes, Your Honor. There  
14 were no mitigating circumstances as to why the vehicle  
15 should not have stopped when Deputy Cain attempted to pull  
16 it over. Is that correct.

17 THE COURT: You need to re-phrase.

18 MR. STACK: Thank you, Your Honor.

19 Q Was there any reason why, that you know, that the  
20 vehicle should not have stopped?

21 A No, sir.

22 Q Okay. Deputy Cain implicated you, that he saw you  
23 exit from the driver's seat, but your statement is,  
24 that you were in the back seat. Is that correct?

25 A Yes, sir.

## CROSS EXAMINATION OF COREY GETHERS BY MR. STACK

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1 MS. ANDERSON: Objection.

2 THE COURT: Basis?

3 MS. ANDERSON: Leading.

4 THE COURT: Repeat the question. I'm sorry.

5 MR. STACK: Deputy Cain has stated he observed you  
6 exiting from the driver's seat, but your statement is,  
7 that you were in the back seat.

8 THE COURT: Sustained. Pitting.

9 Q You stated you were in the back seat. Is that  
10 correct?

11 A Yes, sir.

12 Q And when Defense Counsel Anderson spoke with you, your  
13 statement was, that you were on the back seat on the  
14 passenger side. Is that correct?

15 A Yes, sir.

16 Q Okay. So, you are in the back seat on the passenger  
17 side and in that back seat were also two child seats.  
18 Isn't that correct?

19 A No, sir.

20 Q Okay. May I approach, Your Honor?

21 THE COURT: Yes, you may.

22 Q I am going to show you Defense Exhibit, Defense  
23 Exhibit No. 2, which has already been entered into  
24 evidence.

25 MS. ANDERSON: Objection.

## CROSS EXAMINATION OF COREY GETHERS BY MR. STACK

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1 THE COURT: Basis?

2 MS. ANDERSON: Improper impeachment.

3 THE COURT: Overruled. It goes to his knowledge of  
4 what was actually in the vehicle. It's an extraneous  
5 statement and serves to impeach his testimony. You may  
6 proceed. He was given the opportunity to answer the  
7 question affirmatively, "yes" or "no". You may proceed.

8 Q I am going to read this paragraph to you and would you  
9 read along with me, please?

10 A Yes, sir.

11 Q Okay. "Inventory by Deputy and Wrecker Driver."

12 Okay?

13 A Yes, sir.

14 Q And underneath it says, "Miscellaneous papers". Is  
15 that correct?

16 A Yes, sir.

17 Q "Factory radio." Is that correct?

18 A Yes, sir.

19 Q And "Two child seats." Is that correct?

20 A Yes, sir.

21 Q And "one brown jacket"?

22 A Yes, sir.

23 Q Okay. And is there a signature of the wrecker  
24 company?

25 A Yes, sir.

1 Q And there is the signature of the deputy. Is that  
2 correct?

3 A Yes, sir.

4 Q Okay. Thank you. But your statement is, there was  
5 only part of one?

6 A No, there was just the base of a baby seat.

7 Q All right. And you've stated that you exited from the  
8 left-side door. Is that correct?

9 A No, sir.

10 Q All right, I'm sorry. What did you say?

11 A I said I exited from the right. I mean from the left.  
12 The left. I mean the left.

13 Q All right. But you were sitting on the passenger side  
14 of the back seat?

15 A Yes, sir.

16 Q Okay. Now, a Suzuki Forenza is not a very large  
17 vehicle. Is it?

18 A I don't know, sir.

19 Q You have been in a lot -- you have been in lots bigger  
20 cars, I'd imagine?

21 A Yes, sir.

22 Q And it's pretty tight with three adults in it,  
23 wouldn't you say?

24 A Not really, sir.

25 Q Okay. And you were in the back seat on the passenger

## CROSS EXAMINATION OF COREY GETHERS BY MR. STACK

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1 side. Is that correct?

2 A I had scooted over by the time we had exited the car,  
3 though.

4 Q Okay. But you were in the back seat. During the  
5 chase, you were in the back seat and ---

6 A I was in the car behind the passenger seat.

7 Q Behind the passenger seat. Okay.

8 MR. STACK: Would you please roll the tape? This is  
9 State's No. 1. We are going to roll it from the very  
10 beginning and I would like you to point out where you are  
11 at. And we heard testimony that the lights -- that the  
12 camera comes on automatically as soon as he pops the  
13 lights. So, the tape begins when the deputy pops the  
14 lights.

15 Q Can you show us where you indicated you were, here?

16 A I was laying down. I was already ducked down on the  
17 back seat.

18 Q You had already ducked down?

19 A Yes, sir.

20 Q Did you ever peek up?

21 A A couple of times.

22 Q Now, why were you ducked down before the lights come  
23 on?

24 A I didn't really know what was going on, really. I  
25 didn't know why he hit the gas.

1 MR. STACK: Please stop the tape and go back to the  
2 beginning.

3 Q All right, the testimony is, the camera came on  
4 automatically when he popped the blue lights on. So,  
5 before that camera comes on, there was no blue lights.

6 A I believe that the blue lights came on on 78.

7 Q Okay. Like we've said, the camera pops on as soon as  
8 the blue lights come on.

9 A Yes, sir.

10 Q So, when that camera starts, the second prior to that  
11 camera starting, there are no blue lights. So, why  
12 did you duck down before the camera starts?

13 A We had done seen him. We seen him when he turned  
14 around. When he said he saw us pull out of Rivals, we  
15 seen him. We saw him pass by and when he hit the spot  
16 light and then I guess he made a U-turn and came back.

17 Q Okay. So, even before he pops the blue lights, you  
18 are ducking down?

19 A Yes, sir.

20 MR. STACK: Roll the tape, please, for the first few  
21 minutes.

22 Q Is there any point when we can see you in the video?

23 A No, sir.

24 Q Why not?

25 A I'm ducked down in the back seat.

## CROSS EXAMINATION OF COREY GETHERS BY MR. STACK

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1 Q We can't see you, at all, in the back seat?

2 A I was ducked down in the back seat.

3 Q Okay. Before the lights even come on, you duck down.

4 Is that correct?

5 A What did you say, sir?

6 Q Before the lights even come on, you are ducking down?

7 A Yes, sir.

8 Q And why would you do that?

9 A Like I said, I had seen him before that. We seen him  
10 when he passed by at the point we was coming out of  
11 Rivals.

12 Q I'm sorry, what?

13 A At the point we was coming out of Rivals, he passed  
14 us. He had the spot light on us and he went out and  
15 turned around and Tony was, like, "He is coming  
16 behind us".

17 Q Okay. And in your statement earlier, you said that  
18 you and Tony -- what's Tony's last name?

19 A I couldn't find out what his last name was.

20 Q But you said, under oath, just now during direct exam,  
21 that you went to middle school together.

22 A We went to middle school together.

23 Q All right. So, if you guys went to middle school  
24 together why ---

25 A We ain't best buds, we are just associates.

1 Q So, you have known him since middle school.

2 A Yes, sir.

3 Q You are hanging out and socializing.

4 A No, we just passed by. We are not everyday friends.

5 Q So, why are you in the car with him going to  
6 socialize?

7 A He had a girlfriend that lived around the corner from  
8 where we stayed at.

9 Q Okay. So, you are not going bowling, you are going to  
10 the girlfriends house?

11 A No, I was going bowling. I was just getting dropped  
12 at the bowling alley.

13 Q You were getting dropped off at the bowling alley.  
14 Okay. Earlier, I think you said that you were at  
15 Rivals at about 7:00 or 8:00 p.m. Is that correct?

16 A No, I said that was about the time I was picked up.

17 Q Okay. What time were you at Rivals?

18 A I'm not sure exactly what time it was.

19 Q Okay. From 7:00 to 8:00 p.m., what were you doing?

20 A I got picked up about 7:00 or 8:00. The bowling  
21 starts at 10:00.

22 Q Okay, so what were you doing from 7:00 or 8:00 until  
23 10:00?

24 A Tony said he had to make a stop over by Rivals.

25 Q Okay, so when he picked you up at 7:00 or 8:00, you

## CROSS EXAMINATION OF COREY GETHERS BY MR. STACK

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1           went to Rivals?

2           A     Yeah, he had to make a stop at Rivals.

3           Q     Okay. You got picked up at 7:00 or 8:00 and you got  
4           in the car and you drove to Rivals. Is that correct?

5           A     I didn't drive to Rivals, sir.

6           Q     You were in the car and the car drove -- somebody  
7           drove the car to Rivals.

8           A     Tony drove the car to Rivals. Yes, sir.

9           Q     And you got picked up about 7:00 or 8:00.

10          A     Yes, sir.

11          Q     Okay. How far is the drive, from wherever you got  
12          picked up, to Rivals?

13          A     I think about 45 minutes to a hour. Not an hour,  
14          maybe, 45 minutes.

15          Q     All right. So, you got picked up about 7:00 or 8:00  
16          and then, somehow, it takes an hour to get from Goose  
17          Creek to North Charleston?

18          A     From North Charleston to Goose Creek.

19          Q     Okay. It takes an hour to get there?

20          A     Yeah, he said he had to make a stop.

21          Q     At Rivals.

22          A     He had to make a stop. I didn't know where he had to  
23          make a stop at.

24          Q     Okay. I'm not talking about going -- Okay, so it  
25          takes you an hour to get from Goose Creek to North

1 Charleston to the bowling alley?

2 A No. My house is in North Charleston.

3 Q All right, and you were going to?

4 A I was going to Goose Creek. I was just wanting to get  
5 a ride. I wanted to go straight to Royal Z, ---

6 Q How long does it take to get to ---

7 A --- but they had to make a stop. It would have only  
8 been, like, 45 minutes.

9 Q About how long did it take you to get to Rivals?

10 A I think about 45 minutes.

11 Q Okay. So, it takes about 45 minutes to get there?

12 Was there heavy traffic or something?

13 A No, it wasn't heavy traffic.

14 Q Okay, could you turn around and look at the screen,  
15 please.

16 A Yes, sir.

17 Q You see up here, is the time indicator that's been  
18 described by the deputy. It's kind of like in  
19 military time, It's 22:00:36. 2200 hours is 10:00  
20 p.m. Okay? So, you get picked up at 7:00 or 8:00,  
21 how come the lights don't pop on and the camera  
22 doesn't pop on until 10:00 at night?

23 A I wasn't sure exactly what time it was. I just know I  
24 wanted to be at the bowling alley at 10:00.

25 Q So, what are you saying now?

## CROSS EXAMINATION OF COREY GETHERS BY MR. STACK

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1 A I'm not saying anything now. I'm saying this is like,  
2 this was, like, 2009.

3 Q Okay. But you stated, under oath, that you got picked  
4 up about 7:00 or 8:00.

5 A I said I believed it was about 7:00 or 8:00. I tried  
6 to get there early because, number one, at 10:00, it  
7 is probably like a long line because the bowling is  
8 like \$5.00 to bowl all night.

9 Q All right. You don't know Tony's last name. Do you?

10 A No, sir.

11 Q But you went to middle school with him?

12 A Yes, sir.

13 Q And you were in the car socializing as doing  
14 something.

15 A Yes, sir. We know each other from passing by and we  
16 went to middle school together.

17 Q But you are not going to tell me his last name?

18 A I can't remember his last name.

19 Q Okay. And then what about Roy? What is Roy's last  
20 name?

21 A Roy is a boy from the neighborhood.

22 Q Okay, but what is his last name?

23 A I don't know his last name.

24 Q You don't know his last name?

25 A No, sir.

## CROSS EXAMINATION OF COREY GETHERS BY MR. STACK

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1 Q You get picked up by some people and you don't even  
2 know their last names?

3 A I know Roy for years. I know him for years.

4 Q Okay, then what is his last name? Could you tell this  
5 court his last name?

6 A I can't. I can't tell you his last name because I  
7 don't know his last name. I tried to find out, but I  
8 couldn't find out.

9 Q Okay. Why did you duck down when a police officer,  
10 before a police officer even pops a blue light?

11 A Because it was the way Tony was talking.

12 Q What do you mean by that?

13 A He was, like, well, here he comes behind us. I was  
14 like, everything, my heart was pounding, I didn't know  
15 what was going on.

16 Q But why did you duck down?

17 A Huh?

18 Q Why would you duck down?

19 A I didn't know what was going on, sir.

20 Q Well, if you were not driving and you haven't done  
21 anything illegal, what's the big deal? You get pulled  
22 over and the driver gets a ticket. What's the big  
23 deal?

24 A That's how I figured, but it didn't happen like that.

25 Q But why did you duck down, then?

## CROSS EXAMINATION OF COREY GETHERS BY MR. STACK

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1 A I didn't know what was going on. He already say he  
2 wasn't going to stop.

3 Q Before the blue lights popped on?

4 A Yeah, because he seen the police car come behind us.

5 Q But why would you duck down? Why would you hide from  
6 the police?

7 A I wasn't hiding.

8 MS. ANDERSON: Your Honor, objection.

9 THE COURT: Basis?

10 MS. ANDERSON: Asked and answered.

11 THE COURT: Overruled.

12 Q Why would you hide from the police?

13 A I wasn't really hiding. I just ducked down. I didn't  
14 know what was going on.

15 Q What is the purpose of ducking down, if not to conceal  
16 your location?

17 A No, sir. It was just everything happened so quick. I  
18 didn't know why he didn't stop. He was, like, "I'm  
19 not stopping," so I didn't know. Everything was going  
20 so fast.

21 Q What was the purpose, though? Why say, "I am going to  
22 duck down," to accomplish what?

23 A I don't know, sir. I just, I just ducked down. No  
24 reason behind it.

25 Q Earlier, your attorney brought up that you had been

## CROSS EXAMINATION OF COREY GETHERS BY MR. STACK

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1 convicted three times for grand larceny. Is that  
2 correct?

3 A Yes, sir.

4 Q Okay. And you stated on the record that your sentence  
5 was probation. Is that correct?

6 A Yes, sir.

7 Q But that is not the full sentence that you received.  
8 Is that correct?

9 A That was the full sentence.

10 Q Okay. I am going to...

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

12 THE COURT: You may.

13 Q Okay, is this your name? Corey Gethers? (Showing  
14 witness document)

15 A Yes, sir.

16 Q And this is the date that you pled guilty. Is that  
17 correct?

18 A Three years suspended to six months.

19 Q Active time, and then what?

20 A Three years probation.

21 Q Two years of probation?

22 A I'm on three years probation.

23 Q Okay. So, you got three years of prison suspended on  
24 six months of prison and then ---

25 A No. Six months time served.

## CROSS EXAMINATION OF COREY GETHERS BY MR. STACK

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- 1 Q Okay. So you got credit for ---
- 2 A Six months.
- 3 Q Because you were in jail for six months?
- 4 A Yes, ma'am. Yes, sir.
- 5 Q Credit for time served for how much?
- 6 A Yes, sir.
- 7 Q One hundred seventy-eight days?
- 8 A Yes, sir.
- 9 Q All right, so you are sentenced to prison with six
- 10 months of active time. You had served that already
- 11 and then you have three years of probation. Is that
- 12 correct?
- 13 A Yes, sir.
- 14 Q All right, you have three counts of that?
- 15 A Yes, sir.
- 16 Q Okay, when you were sitting in the back seat,
- 17 allegedly, and you were sitting in the back seat on
- 18 the right passenger side, where was the child seat?
- 19 A Could you repeat that, sir?
- 20 Q Yes. When you were sitting in the back seat ---
- 21 A Yes, sir.
- 22 Q --- on the passenger side, behind the passenger.
- 23 A Yes, sir.
- 24 Q Where was the child's seat?
- 25 A The base of the child's seat was, like, sitting in the

1 middle. It wasn't tied down.

2 Q So, it would be to your left?

3 A Yes, sir.

4 Q So, it would be to your left?

5 A It wasn't buckled down.

6 Q Okay, but it would be to your left?

7 A Yes, sir.

8 Q Okay. Your statement is, there weren't two child  
9 seats?

10 A There was no big child's seat. No, sir.

11 Q Okay. But you saw the tow sheet I showed you?

12 A Yes, sir. But there wasn't no big, wasn't no big, I  
13 guess how you say, car seat. It wasn't none of that.

14 Q And so, when you bailed out, if you were sitting on  
15 the right side and there is an object or the part of a  
16 child's seat, or two child seats, depending on  
17 whatever testimony, why would you bail out to the left  
18 side ---

19 A When ---

20 Q --- and not to the right?

21 A When I jumped out, I was in the lefthand side behind  
22 the driver when I jumped out the car.

23 Q Well, you said you were on the right side behind the  
24 passenger.

25 A Yeah, that's right. That's right. But when I jumped

## CROSS EXAMINATION OF COREY GETHERS BY MR. STACK

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1 out of the car, I was going behind the driver.

2 Q Well, I asked you, specifically, which side of the  
3 seat were you on and you said behind the driver's  
4 seat.

5 A Yeah, I had switched. I had moved over behind the  
6 driver.

7 Q Okay. And we can't see you because you are ducked  
8 down.

9 A Yes, sir.

10 Q Even before the lights popped up.

11 A Yes, sir.

12 Q And you won't tell us why you are ducked down?

13 A Everything was just scary. Everything was scary.

14 Q Well, if you are an innocent passenger that's in a car  
15 that gets a minor traffic violation, or gets a ticket,  
16 what's the big deal? What is there to be afraid of to  
17 have to hide from the police?

18 A I was asking Tony why he wasn't stopping.

19 Q I'm sorry?

20 A I said, I was asking Tony why he wasn't stopping.

21 Q Okay, but that's not the question. I'm talking about  
22 your actions. You claim that you were in that back  
23 seat.

24 A Yes, sir. I was.

25 Q And you are on the floor in the back and nobody can

1 see you in that back seat.

2 A I was in the back seat.

3 Q So, we aren't going to see you in that back seat?

4 A I didn't see myself in the back seat. I was ducked  
5 down.

6 Q Okay. And you say you ducked down.

7 A That's why nobody can see me.

8 Q Even before the blue lights popped?

9 A Yes, sir.

10 Q For a minor traffic charge.

11 A I didn't know whether --- I didn't know what might  
12 transpire from it. I told you everything was just ---

13 Q But you claim you were just a passenger ---

14 A I was.

15 Q --- with two people who you didn't even know their  
16 last names.

17 A I was.

18 Q So, why did you hide yourself from the police?

19 A I didn't know what was going on. He just say he  
20 wasn't stopping, so I didn't know why he wasn't  
21 stopping.

22 Q Well, that's not the question, and I'm not trying to  
23 be difficult, Mr. Gethers. When you took the action  
24 of ducking down, it was an action of purpose. What  
25 was the purpose of taking that action?

## CROSS EXAMINATION OF COREY GETHERS BY MR. STACK

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1 MS. ANDERSON: Objection.

2 THE COURT: Basis?

3 MS. ANDERSON: Asked and answered.

4 THE COURT: Overruled. Sir, you may answer the  
5 question.

6 A I was just looking back and kind of just, like,  
7 ducking down looking back.

8 Q Oh, so you were looking back?

9 A Yes, sir.

10 Q Through the back windshield?

11 A Yes, sir.

12 Q Okay, so let's roll the tape, then, from the start.

13 (Videotape is played)

14 Q Please point out to us you looking out the back.

15 A They don't show it from 78. They don't show it on the  
16 tape on 78. They just show it on College Park.

17 Q Do you want to use this? (Indicating laser pointer)

18 A No, sir.

19 Q Okay.

20 A And they are not showing the tape, they are not  
21 showing it on 78.

22 Q Well, the tape begins automatically when the blue  
23 lights pop.

24 A Yes, sir.

25 Q All right. Were you looking back through the back

## CROSS EXAMINATION OF COREY GETHERS BY MR. STACK

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1 windshield?

2 A This was when we come down 78. I guess, when he got,  
3 when he pulled behind us, we were around right by the  
4 fairground.

5 Q All right.

6 A So that's when ---

7 Q All right. But where were you looking back? Where  
8 were you looking back out of that windshield? Where  
9 is there any indication of you being back there at  
10 all?

11 A I was there, sir, but I was ducked down.

12 Q All right. You said you were looking out the back.  
13 Please show us. Where were you looking out the back?

14 A I was looking out the back, but it's only showing  
15 partial. It doesn't show on 78.

16 Q Are you saying the tape is incomplete?

17 A No, sir. After he got behind us on 78.

18 Q The tape starts and the blue light pops. You say you  
19 ducked down for some reason prior to that and you  
20 looked out the back. Can you show us where you looked  
21 out the back?

22 A No, sir. You can't see me, sir.

23 Q Okay. So, if we run it front to back, we're not going  
24 to see you in that back seat. Are we?

25 A No.

## CROSS EXAMINATION OF COREY GETHERS BY MR. STACK

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1 Q (Stops the tape) Okay. So, you are in the back seat,  
2 initially, on the right-hand side.

3 A Repeat that, sir?

4 Q At least initially, you are in the back seat on the  
5 right-hand side behind the passenger.

6 A I was.

7 Q Okay. So, on your left on that seat is either the  
8 part of one child seat or two child seats?

9 A It was a base of a baby seat.

10 Q Okay. And it's to your left?

11 A Yes, sir.

12 Q Okay. So, isn't it the easiest thing to do when you  
13 bail out of a car for some reason, to get out on the  
14 right-hand side?

15 A It wasn't buckled down at any time.

16 Q Okay. Let's go back to task and purpose again. The  
17 task is to bail out. What is the purpose of bailing  
18 out?

19 A I didn't know what was in the car, sir.

20 Q I'm sorry?

21 A I didn't know what was in the car.

22 Q Okay, what is the purpose? When you said, "I'm going  
23 to bail out and run from the police," et cetera, what  
24 is your purpose in doing that task?

25 A Could you repeat that? Could you repeat the question

## CROSS EXAMINATION OF COREY GETHERS BY MR. STACK

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1           again?

2           Q     Sure. Absolutely. No problem. When you made the  
3           decision to bail out of the car and run from the  
4           police ---

5           A     Yes, sir.

6           Q     --- what was the purpose you intended to accomplish by  
7           doing that?

8           A     I was scared and nervous and I didn't know what was in  
9           the car.

10          Q     To evade the police?

11          A     Not really, sir. I was just following the driver.

12          Q     Well, what is your purpose? You are an adult. Aren't  
13          you?

14          A     Yes, sir.

15          Q     And you say you were an innocent citizen sitting in  
16          the back seat.

17          A     Yes, sir. I was.

18          Q     You wouldn't even get a ticket at that stop. Would  
19          you?

20          A     But if anything is found in the car I might get, they  
21          might blame me for it.

22          Q     Was there something in the car that you were worried  
23          about?

24          A     I didn't know. I didn't know if anything was in the  
25          car. I was just getting a ride. I was just getting a

## CROSS EXAMINATION OF COREY GETHERS BY MR. STACK

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1 ride to Royal Z.

2 Q Okay. You also said, when you were talking about  
3 being tased and struggling with the deputy, that when  
4 he finally, and you used the word finally, got you  
5 into handcuffs. Is that correct?

6 A Yes, sir.

7 Q Is it while you were fighting with the deputy?

8 A I wasn't fighting with the deputy at all.

9 Q Well, why did you say, "when he finally got me into  
10 handcuffs"?

11 A Because he tased -- he asked -- the whole time he had  
12 one handcuff on me and he was tasing me. He kept on  
13 tasing me and tasing me and tasing me and then he  
14 finally put the other handcuff on me and turned me  
15 around and that's when he put the gun to my head. I  
16 thought of this and that, this and that, this is what  
17 he was talking about. I will cap you, this and that.

18 Q But we have absolutely no evidence at all that you  
19 were in the back seat.

20 A I was in the back seat, sir.

21 Q Okay. But do we have any evidence at all that you  
22 were in the back seat?

23 MS. ANDERSON: Objection.

24 THE COURT: Basis?

25 MS. ANDERSON: Burden shifting.

## CROSS EXAMINATION OF COREY GETHERS BY MR. STACK

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1 THE COURT: Sustained. Re-phrase.

2 MR. STACK: I'm sorry. I didn't hear the basis.

3 THE COURT: Sustained. Re-phrase.

4 MR. STACK: Beg The Court's indulgence.

5 THE COURT: Mmm-hmm.

6 Q All right. Earlier in your testimony, you said you  
7 called Tony. Is that correct? For a ride?

8 A Yes, sir.

9 Q So, you had his telephone number?

10 A I had it.

11 Q Do you have it now?

12 A No, sir.

13 Q May I ask why not?

14 A I don't know. That was 2009.

15 Q Okay, and?

16 A I mean, I don't have the same telephone number.

17 Q But he has the same number?

18 A I don't even know.

19 Q So, you are not going to tell us Tony's last name?

20 A I don't know his last name.

21 Q And you can't tell us Roy's last name?

22 A I was trying to find him but I couldn't find him.

23 Q But you can't tell us?

24 A It's not that I can't tell you. I don't know.

25 Q And you can't give us a number?

## CROSS EXAMINATION OF COREY GETHERS BY MR. STACK

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1 A As I said, sir, it was 2009.

2 MR. STACK: Nothing further. Thank you, Your Honor.

3 THE COURT: Any re-direct of the witness?

4 MS. ANDERSON: Court's indulgence. No further  
5 questions, Your Honor.

6 THE COURT: Sir, you may step down.

7 MR. GETHERS: Yes, ma'am.

8 THE COURT: The Defense may proceed.

9 MS. ANDERSON: The Defense rests, Your Honor.

10 THE COURT: Madam Forelady, Ladies and Gentlemen, the  
11 Defense has rested their case. I have some matters of law  
12 I need to take up that will be brief. During this break,  
13 the clerk is going to come in and take your lunch orders  
14 and we are going to try to time that so that after closing  
15 argument and instruction your lunch will have arrived. As  
16 soon as that process is completed we will resume the trial.  
17 If you all will go with the bailiff. Please leave your  
18 note books and please do not discuss the case during this  
19 break.

20 (Jury out at 11:34 a.m.)

21 THE COURT: You may be seated. The Defense has rested.  
22 Are there any motions from the State?

23 MR. STACK: None from the State, Your Honor.

24 THE COURT: Any from the Defense?

25 MS. ANDERSON: Just to renew our motion for a Directed

## CHARGE CONFERENCE

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1 Verdict.

2 THE COURT: Does the State have any response?

3 MR. STACK: No, Your Honor.

4 THE COURT: The Court will stand by it's previous  
5 ruling and deny the motion for Directed Verdict. Does the  
6 State have any rebuttal testimony?

7 MR. STACK: No, Your Honor.

8 THE COURT: Okay. We'll go ahead and do charge  
9 conference, then we will do closing argument and  
10 instruction. How long is -- is the State going to open and  
11 close?

12 MR. STACK: No, Your Honor. We'll just close.

13 THE COURT: Did the Defense present any evidence? I  
14 can't remember.

15 MR. GRIMES: Yes, ma'am.

16 THE COURT: Oh, golly. Y'all, I've had a really long  
17 week. I'm sorry. I've had my brain on pause or something  
18 for the whole year.

19 MR. GRIMES: We will be happy to argue last.

20 THE COURT: I know. You've been patient. I apologize.  
21 I think my brain isn't functioning one hundred percent.  
22 I'm sorry. I will instruct the jury -- you said you are  
23 just going to close, though. You're not going to open and  
24 close.

25 MR. STACK: That's correct, Your Honor.

## CHARGE CONFERENCE

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1 THE COURT: Okay. I will give the jury a general  
2 instruction regarding their responsibility and my  
3 responsibility, how they are to judge witness' credibility  
4 and believability. I will also be giving them instruction  
5 regarding the Defendant's criminal record that it is  
6 limited for purposes of his believability, but not as  
7 evidence of guilt for the crime he is charged with. I will  
8 give a general instruction from State versus Grippon on  
9 direct and circumstantial evidence. I will also give a  
10 general instruction that the charge, the arrest and the  
11 indictment are not evidence as well as on the presumption  
12 of innocence. I am going to charge Victor versus Nebraska  
13 on reasonable doubt. Then I will instruct the elements on  
14 failure to stop for a blue light, which is §56-5-750, and I  
15 think we all know what those elements are, so, I won't go  
16 through those. I will also instruct on identification,  
17 which is the idea that the Defendant is the person who  
18 committed the offense. And Mr. Grimes has requested mere  
19 presence. Is there any exception from the State?

20 MR. STACK: Not with regard to mere presence, Your  
21 Honor.

22 THE COURT: Then, I will give the general instruction  
23 on mere presence and then explain the forms of the verdict.  
24 The State submitted a request for instruction which mirrors  
25 §56-5-750 and the Court will use its standard instruction.

COREY L. GETHERS VERSUS THE STATE OF SOUTH CAROLINA

## CHARGE CONFERENCE

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1 We will mark your request as a Court's Exhibit. The Defense  
2 submitted an e-mail this morning asking that we instruct  
3 their request to charge Number 1. In addition, they also  
4 requested a charge on mere presence and prior convictions,  
5 which the Court has already included in its standard  
6 instructions. That email will be marked as a Court's  
7 Exhibit. In addition, he has requested a charge regarding,  
8 and I am just going to summarize it, basically, saying that  
9 if a witness is interested, you should totally discount  
10 their testimony. In other words, if the witness is  
11 interested in the outcome of the case because of his  
12 involvement. I don't know if this is the actual language  
13 from that case or not, but in any event, I would not give  
14 that instruction. I feel that my standard instruction is  
15 an accurate statement of current and prevailing case law  
16 and my instruction already includes prejudice by its  
17 motivation to fabricate or otherwise, although it doesn't  
18 use that exact language, but my instruction is neutral and  
19 an accurate statement of law regarding how the jury is to  
20 judge the credibility and believability of witnesses on  
21 bias and prejudice and whether certain testimony would help  
22 or hurt one side or the other or otherwise. I believe this  
23 instruction is written as an impermissible comment on the  
24 facts, more specifically, the factual testimony of one  
25 witness as opposed to another. It is not as neutral as I

## CHARGE CONFERENCE

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1 would prefer a statement to be and, in fact, it highlights  
2 particular testimony of a witness and, basically, asks that  
3 the Court tell a jury to discount it almost in it's  
4 entirety and I'm not inclined to give that instruction. In  
5 addition to that, it is factually and absent to this case.  
6 The case that's relied on by the Defense is a case out of  
7 North Carolina where you had a deputy sheriff who was  
8 working as a narcotics officer where he agreed to act as an  
9 informant and attempted to buy illegal drugs in various  
10 places, which is totally different from this particular  
11 case. I will have your request marked as a Court's  
12 Exhibit. Other than what has been submitted and what the  
13 Court has already addressed, are there any exceptions to  
14 the instruction as proposed, from the State?

15 MR. STACK: No, Your Honor.

16 THE COURT: From the Defense?

17 MR. GRIMES: Again, we'd request our request to charge  
18 Number 1, but I understand the Court has ruled not to  
19 charge our proposed charge Number 1.

20 THE COURT: Any other exceptions other than what has  
21 been stated for the record?

22 MR. GRIMES: No, ma'am.

23 THE COURT: Okay. How long does the State anticipate  
24 its closing argument will be?

25 MR. STACK: Fifteen minutes, Your Honor.

*COREY L. GETHERS VERSUS THE STATE OF SOUTH CAROLINA*

1 Defense may proceed when it's ready.

2 MS. ANDERSON: Thank you, Your Honor.

3 THE COURT: You're welcome.

4 CLOSING ARGUMENT - MS. ANDERSON

5 Good afternoon. I told you at the beginning of this  
6 case that it was simple, a case about everyday choices,  
7 choices that we make every day. I'm going to ask you to  
8 put yourself in Corey Gether's shoes. In his place, what  
9 do you do when you face the choices he had that day? You  
10 heard about the choices Corey Getters had to make and you  
11 heard it from his own mouth, as he sat right there on the  
12 witness stand.

13 Now, the Solicitor, in his opening, tried to appeal to  
14 your emotions. He told you it was a night of terror. I'm  
15 not trying to downgrade the seriousness of what happened.  
16 Car chases are dangerous, but it lasted minutes. It was  
17 not a night of terror. The car didn't roll dangerously  
18 down the road in the neighborhood. When the tape runs,  
19 you see it drifts a little bit. There is nothing there to  
20 say that it rolled into a family's yard. There is not  
21 even any evidence of car tire marks in a yard. So, what  
22 they are trying to do, and the reason they are doing that,  
23 is to appeal to your emotions, because the facts are not  
24 there.

25 There is no question that there was a failure to stop

## CLOSING ARGUMENT - MS. ANDERSON

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1 for a blue light that night. There is no question that  
2 Corey Gethers was in the car, but the testimony from Deputy  
3 Cain is absolutely uncorroborated that Corey Gethers was  
4 the driver of that car. There is nothing to back it up.  
5 If there was a night of terror for anyone, it was for  
6 Corey. He expected that normal night out that we talked  
7 about. He made plans to go bowling in Goose Creek. He  
8 called someone he knew to give him a ride. It wasn't  
9 someone he knew very well to come give him a ride, not  
10 someone he knew very well at all. It was someone named  
11 Tony. He knew him from childhood and from seeing him  
12 around the neighborhood. He and Tony were acquaintances.  
13 He was in the car in the back seat and the next thing he  
14 knows he sees a police car come up, shines a light on him,  
15 does a U-turn, comes up behind him and the lights come on.  
16 That's scary, being in the back seat of a car going over  
17 one hundred miles-an-hour, and he told you how scared he  
18 was. He ducked down, he thought about his children. Who  
19 knows what can happen in a chase like that. Maybe the car  
20 would crash. He didn't know how it would end.

21 I know you don't see him in the video. You don't see  
22 him in the video at all. There are a couple of things you  
23 don't see on the video. You don't see that traffic light  
24 the officer talked about. It's not on the video. You  
25 don't see when he turned around and did a U-turn. You

1 don't see that on the video. Obviously, there are some  
2 things not on there that happened before the blue lights  
3 came on.

4 Corey talked about when everyone bailed out of the  
5 car, when the chase was over and how frightened he was.  
6 He talked about how he jumped out right behind the driver,  
7 following him closely, being chased by a police officer,  
8 being thrown to the ground, tased over and over. That same  
9 officer put a gun to his head. "I felt the metal." That is  
10 scary. Being screamed at, cursed at, told to get the "f"  
11 down, mother "f"-er, or I will cap you right now. You are  
12 lucky I didn't do it ---

13 MR. STACK: Objection, Your Honor.

14 THE COURT: Basis?

15 MR. STACK: May we approach?

16 THE COURT: You may.

17 (Bench Conference Off the Record)

18 MS. ANDERSON CONTINUES CLOSING ARGUMENT

19 Now, Corey is not perfect. He told you that on the  
20 stand. He does have a record from 2002. He is not  
21 perfect, but that does not put him in the driver's seat.  
22 And running, after the car had already stopped and the  
23 chase is over, is not a failure to stop for a blue light.  
24 Even after all that happened, after that scary flight, he  
25 told the officer what happened. "I wasn't the driver.

## CLOSING ARGUMENT - MS. ANDERSON

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1 Tony was the driver." And he is telling the same truth  
2 today.

3 The reason that the Solicitor is trying to appeal to  
4 your emotions is because all he has is the officer's  
5 testimony. There is nothing to back him up. You don't see  
6 Corey on the video at all. You do not see him in the  
7 driver's seat. You cannot see him on the video as he gets  
8 out. They didn't take any fingerprints on the car. There  
9 are lots of places you could have fingerprinted: the  
10 steering wheel, the keys, drive shaft, the door handles.  
11 He didn't even try. When asked about it Deputy Cain said,  
12 "Well, I thought about doing it, but I thought the car  
13 might have been contaminated while being processed." He  
14 didn't even try.

15 There were some other people in the car. They didn't  
16 find them. Didn't take statements. The individual they  
17 talked about on the report, a Gary Barnes, who reportedly  
18 was a passenger in the car, there's no statement from him  
19 and he is not here today to tell you. There is nothing in  
20 the car connecting him to it. There was miscellaneous  
21 paperwork mentioned. None with his name. No letters, no  
22 I.D., no car registration. He didn't own the car. They  
23 know who the owner of the car was. It's on that tow sheet  
24 we talked about. Did anyone go talk to the owner of the  
25 car? No. How easy could that have been to go, knock on

1 his door, "Who was driving your car that night?" No.  
2 There was another witness there that night as well. You  
3 heard him talk about a Sandra Chavis.

4 MR. STACK: Objection, Your Honor.

5 THE COURT: Basis.

6 MR. STACK: Ask to approach again.

7 THE COURT: You may.

8 (Bench Conference Off the Record)

9 THE COURT: You can't make mention of it and then  
10 restrict them in responding to it. Proceed.

11 MS. ANDERSON CONTINUES CLOSING ARGUMENT

12 Where is she today? These gentlemen here represent  
13 the State of South Carolina. Their investigation has the  
14 full force and power of the State of South Carolina behind  
15 them. If they wanted her here today, she would be here,  
16 and she is not. So, we don't know what she would have to  
17 say. The officer made up in his mind that he had the right  
18 guy and that was it. No follow-up. Nothing to make sure  
19 that Corey Gethers -- no evidence, no additional evidence  
20 collected, to make sure that Corey Gethers was the driver  
21 of the car that night.

22 I talked to you, briefly, about reasonable doubt in my  
23 opening, and that is the burden of proof that the State  
24 carries. They must prove to you each element of the  
25 offense beyond any reasonable doubt. They -- You must be

## CLOSING ARGUMENT - MS. ANDERSON

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1 firmly convinced that Corey was the one driving the car  
2 that night. If you think that there is a real possibility  
3 that Corey was not driving, then you must find him not  
4 guilty. You must give him the benefit of the doubt and  
5 find him not guilty and the reason that that burden is so  
6 high is because it risks something that is so precious,  
7 Corey Gether's freedom. And while his literal life is not  
8 on the line, the days and minutes of it are, the most  
9 precious of time, and he is trusting them to you.

10 Corey Gethers was only a passenger in the car that  
11 night. He was not the driver. All of the choices he made  
12 that day put him in the wrong car, with the wrong people,  
13 at absolutely the wrong time, but that did not put him in  
14 the driver's seat that night. Corey Gethers did not drive  
15 that car and we would ask you, at the conclusion, to find  
16 him not guilty. Thank you.

17 THE COURT: Mr. Stack, you may proceed when you are  
18 ready.

19 MR. STACK: Thank you, Your Honor.

20 THE COURT: You are welcome. Will Counsel approach  
21 before you begin?

22 (Bench Conference Off the Record)

23 THE COURT: You may proceed.

24 MR. STACK: Thank you, Your Honor.

25 THE COURT: You are welcome.

*COREY L. GETHERS VERSUS THE STATE OF SOUTH CAROLINA*

## CLOSING ARGUMENT - MR. STACK

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CLOSING ARGUMENT - MR. STACK

1           Good morning. I know it has been a long morning. As  
2           you know, my name is James Stack and I am an Assistant  
3           Solicitor here and I am going to give you my closing  
4           argument. When I am done speaking, the Judge will address  
5           you about several matters, then she will send you off to do  
6           your deliberations. I have a prepared closing, but before  
7           I give it to you, I want to comment to you about a couple  
8           of things that came up about a witness. Defense counsel  
9           brought up a witness that she claims we know, that we  
10          didn't call. There was a woman that witnessed these events  
11          and wrote a written statement. What Deputy Cain found  
12          supported those charges and this written statement was  
13          provided to Defense Counsel ---

14                   MS. ANDERSON: Objection.

15                   THE COURT: Basis?

16                   MS. ANDERSON: Burden shifting, confrontation clause.

17                   THE COURT: Proceed. Pardon? Approach, please.

18                               (Bench Conference Off the Record)

19                   THE COURT: Ladies and Gentlemen, you are to disregard  
20                   the Solicitor's last sentence and give it absolutely no  
21                   consideration in your deliberations. You may proceed, Mr.  
22                   Stack.

23                   MR. STACK: Thank you, Your Honor.

24                   MR. STACK CONTINUES CLOSING ARGUMENT

## CLOSING ARGUMENT - MR. STACK

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1           Let me rephrase. At the crime scene, there was a lady  
2           that witnessed what happened. Deputy Cain interviewed that  
3           lady. He took a written statement from that lady and  
4           included it in his file. I provided Defense counsel with a  
5           copy of that statement and Defense counsel acknowledged it  
6           and knew how to contact that witness by name, by address,  
7           and by phone number. If Defense counsel wishes that  
8           witness to be here, they have equal power, the power of  
9           this Court to subpoena that person to be here.

10           MS. ANDERSON: Objection.

11           THE COURT: Basis?

12           MS. ANDERSON: Burden shifting.

13           THE COURT: Overruled. He is speaking in terms of  
14           procedure and you all raised the issue. He's entitled to  
15           address it, as well, within the confines of the evidence.  
16           Procedurally, he's accurate. It is not burden shifting and  
17           the Court will instruct the jury that you have no burden in  
18           this case, that the burden remains on the State to prove  
19           every element of this offense beyond a reasonable doubt.  
20           You may proceed.

21           MR. STACK: Thank you, Your Honor.

22           MR. STACK CONTINUES CLOSING ARGUMENT

23           So, on that point, if Defense counsel wants that  
24           witness here or to use that statement as given, they have  
25           equal power. I have no greater power to bring that person

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## CLOSING ARGUMENT - MR. STACK

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1 here than they do. If they want them here, they can get  
2 them. They can get a subpoena signed by a judge. No  
3 witness is being hidden from you.

4 Okay. You've heard a lot of testimony, you've seen  
5 the cruiser's camera, and now you have to begin to organize  
6 your thoughts. You have to organize the information and  
7 then you have to organize your thoughts. When I am done  
8 speaking, the Judge will address you. She will charge you  
9 and then when she commands you, you will begin your  
10 deliberations. One way that I would suggest to you, to  
11 organize the information that has been presented, is to use  
12 the elements of the law as a framework, or an outline, in  
13 which to hang or place the information that's been  
14 presented.

15 In South Carolina, for a person to commit the crime of  
16 failure to stop for a blue light, the person must, while  
17 driving on a road or a street or a highway in our state,  
18 fail to stop when signaled by a police car by, either siren  
19 or flashing lights. Also, in our state, an attempt to  
20 increase speed or otherwise evade police is, by its  
21 definition, by definition, a violation of that law.

22 And so, the question becomes, was the Defendant  
23 driving the vehicle on a road in South Carolina, did the  
24 police cruiser activate his light or his siren and did the  
25 Defendant fail to stop or, in the alternative, increase his

## CLOSING ARGUMENT - MR. STACK

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1 speed, or in some other way, attempt to evade the police  
2 car.

3 So, with those guidelines as a framework, or an  
4 outline, let's review the evidence. Did the defendant fail  
5 to stop, or in the alternative, increase his speed? What  
6 evidence have you been presented with regard to that? We  
7 can look to a couple of things. The cruiser cam video you  
8 viewed a couple of times and is also available to you in  
9 the back if you wish to review it. If you want to see the  
10 tape again, all you have to do is inform the Judge and she  
11 will arrange, in some manner, for you see that video again.  
12 With that, you can judge the rate of speed, you can judge  
13 the reckless driving in and out of the center lane and  
14 heading through the parking lot. You can see the speed  
15 indicator down in the bottom lefthand corner and where the  
16 speed reaches 102 miles-an-hour and we've heard the  
17 testimony of Deputy Cain. He spoke about the speed. He  
18 spoke about the threat to other vehicles on the road that  
19 night. He spoke about the threats to pedestrians in the  
20 area.

21 So, the next question becomes, did the cruiser  
22 activate the siren and/or his lights and what information  
23 have you been presented in regard to that. Again, we have  
24 the video cam and the testimony. You can see the  
25 reflection of the lights flashing, from the camera, and you

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1 can actually hear the siren going and you heard the  
2 testimony of Deputy Cain who turned them both on.

3 All right. Did this occur on a street in South  
4 Carolina? Obviously, it did. He was on Ladson Road in  
5 Charleston County, crossed into Dorchester County, and it  
6 ended when he bailed out on One Notch Road in Dorchester  
7 County.

8 Now, comes the last question and the most important  
9 question. Was the Defendant driving. What information  
10 have you received with regard to this element? To this, we  
11 look again to the testimony of Deputy Cain. He testified  
12 he saw the Defendant bail out of the driver's door. He was  
13 in the driver's seat. He stepped out of the driver's door.  
14 Not the lefthand rear door, the lefthand front door, the  
15 driver's door and that he dismounted his vehicle  
16 simultaneously. I asked him if there was any time in which  
17 he lost sight of that person in the foot chase and his  
18 answer was, "No". I asked him if there was any hesitation  
19 in terms of when that vehicle stopped or barely stopped,  
20 when his cruiser was still settling and when he saw the  
21 Defendant bail out of the driver's seat. He said, "No".  
22 He doesn't stop and he didn't switch seats from left to  
23 right, from front seat to the back, or visa-versa.  
24 Immediately, when that vehicle stops, or even before it  
25 stops, the driver door opens, the Defendant puts his left

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1 foot onto the ground. The police officer opens his left  
2 door and puts his left foot down and they both exit the  
3 vehicles. At no time, from the time he left that car, was  
4 physically in that car, steps out with his left foot, steps  
5 out with his right following, at no time did he lose eye  
6 contact with him. He maintained eye contact from the time  
7 he jumped out and there was no loss of sight during the car  
8 chase.

9 But the Defendant says he wasn't driving the car. He  
10 says he was in the back seat even before the lights come  
11 on. You don't see any indication that he is back there,  
12 but you know he jumped out, or you heard the cop testify he  
13 jumped out of the front seat. You see evidence, or you  
14 will see evidence, that tow sheet, where there were two  
15 child seats in that back seat. I asked the officer, "Were  
16 they laying there or were they strapped in by regulation  
17 with seat belts? He said they were strapped in. Two child  
18 seats, not a part of one laying there. When you look at  
19 the tow sheet, which is Defense Exhibit No. 2, I believe---

20 MS. ANDERSON: Objection.

21 THE COURT: Basis?

22 MS. ANDERSON: Arguing item not in evidence.

23 THE COURT: Please approach.

24 (Bench Conference Off the Record)

25 MR. STACK CONTINUES CLOSING ARGUMENT

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## CLOSING ARGUMENT - MR. STACK

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1 MR. STACK: You have heard the testimony from the  
2 Defendant in this case when I showed him this tow sheet  
3 that the Defense put in without contest. I asked the  
4 Defendant, "Were there miscellaneous papers there?" "Yes."  
5 "Was there a brown jacket there?" "Yes." And then I asked  
6 Mr. Gethers, does this tow sheet indicate there are two  
7 child seats in that car? And what did Mr. Gethers say?  
8 "Yes. There are two child seats indicated in that car by  
9 that tow sheet." And I asked him, "Who signed this down  
10 here? Is there a signature under the wrecker, the tow guy  
11 that comes out and pulls the car from the crime scene?"  
12 "Yes. The wrecker signed the sheet indicating the  
13 inventory." And who else signed this sheet? And Mr.  
14 Gethers, according to his testimony, said Deputy Cain and  
15 the tow truck driver, the wrecker driver, both signed that  
16 inventory sheet which indicated two car seats, two child's  
17 car seats and from the testimony of Deputy Cain, who  
18 indicated they were in the back seat and were properly  
19 strapped in by whatever regulations require.

20 Okay. Why won't Mr. Gethers tell us last names? This  
21 is something you have to balance. You have two people  
22 making a statement. These statements are mutually  
23 exclusive. One of these statements is not correct. Either  
24 Deputy Cain is incorrect in his ascertain or the Defendant  
25 is incorrect in his assertion. Why won't, and you can

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1 consider this, why won't or can't, the Defendant account  
2 for the time from when he was picked up at 7:00 or 8:00 for  
3 a fifteen minute ride to Rivals, a bar, at 2200 hours,  
4 until the tape comes up? No last names. Somebody else did  
5 it. But who? "I can't tell you." "You went to Middle  
6 School with him?" He had enough of a relationship with him  
7 to call him up, hook a ride, but, "Nah, I can't tell you  
8 his last name or his phone number." "What about the other  
9 guy?" "No, I can't tell you that either."

10 Did Deputy Cain act poorly? Yes, he did. He has been  
11 reprimanded for that, for his language. He was reprimanded  
12 by his lieutenant. You don't talk to people that way. If  
13 you confront somebody in a physical confrontation, you are  
14 taught to speak authoritatively to convey that you are in  
15 charge and they are not in charge. You do not speak to  
16 them in a submissive manner. You are trying to get control  
17 of a physical situation. You speak in an authoritative  
18 manner. He was trying to do that, but because of his youth  
19 and lack of experience, he went too far. He should not use  
20 the "f" word or the mother "f" word when speaking to  
21 citizens. But you do need to get in charge of that. If  
22 you are struggling with a large man, trying to handcuff  
23 him, is your adrenalin going? Yes. Does his experience as  
24 a police officer lend him to believe this can be dangerous?  
25 Yes. But if you are older, like me, perhaps you can do

1 that and not drop the "f" bomb and the "mf" bomb. Did he  
2 speak poorly? Yes. Did he act poorly? No. He would not  
3 submit to getting him into cuffs.

4 Like I said, what came from Mr. Gethers is not  
5 accurate. When you go to the back and the Judge releases  
6 you and directs you to begin, you will balance their  
7 credibility. Deputy Cain's testimony does not need to be  
8 corroborated any more than the Defendant's has to be  
9 corroborated. His testimony can carry as equal weight as  
10 you wish to assign it. There is no requirement of the  
11 State to provide corroboration of that witness, just as  
12 there is no requirement of the Defense to provide  
13 corroboration of his assertions. They sit in that witness  
14 box with equal status.

15 So, when you begin your deliberations, you need to  
16 evaluate their credibility. Who had the chance to see  
17 things clearly? Deputy Cain. The events in which he spoke  
18 poorly occurred after the events of this crime, after the  
19 elements. He cannot say, "I failed to stop for the police  
20 light because he spoke too poorly after the fact." You  
21 need to weigh the motives to tell the truth and you need to  
22 weigh the motives to deny the truth. Thank you.

23 THE COURT: Thank you, Mr. Stack.

24 CHARGE ON THE LAW

25 During this trial, Ladies and Gentlemen, you and I  
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1 have certain duties to perform. As the trial Judge, it is  
2 my responsibility to preside over the trial of this case.  
3 I also have the duty to rule upon or pass upon the  
4 admissibility of evidence that has been offered during this  
5 trial. You are to consider only the competent evidence  
6 that is before you and you are to disregard and disabuse  
7 from your mind any testimony the Court has ordered  
8 restricted from the record in this case. You are to  
9 consider only the testimony which has been presented from  
10 the witness stand, together with any exhibits which has  
11 been made a part of the record, in this case.

12 I have the additional duty to charge or to instruct  
13 you on the law applicable to this case. As the presiding  
14 judge, I am the sole judge of the law and it is your duty,  
15 Ladies and Gentlemen, as jurors, to accept and apply the  
16 law as I now state it to you. If you have a preconceived  
17 idea as to what the law is or what the law ought to be, in  
18 a case or in this case, and it should not agree with what I  
19 now tell you the law is, you are obligated under the oath  
20 which you have taken to abandon those preconceptions on  
21 your part, because you are sworn to accept the law and  
22 apply the law precisely as I now state it to you.

23 In every case tried in this court before a jury the  
24 jury becomes the sole and exclusive judges of the facts.  
25 You, the jury, are the judges of the facts in this case.

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1 This Court is the judge of the law. The Constitution of  
2 our state has declared that a trial judge shall not  
3 intimate, state, comment upon, or make any statement to a  
4 trial jury about the facts in a case. Since you, the jury,  
5 are the sole judges of the facts in this case, you are not  
6 to infer anything, from what I have said to you during the  
7 progress of this trial and in ruling upon the admissibility  
8 of evidence or otherwise, or anything I now say to you  
9 during the course of this instruction, that I have any  
10 opinion about the facts. The law does not allow me to have  
11 an opinion about the facts. This is a matter solely for  
12 you, the jury, to determine.

13 As jurors then, it is your duty as I have instructed  
14 you to determine the effect, the value, the weight, and the  
15 truth of the evidence which has been presented.

16 Necessarily, you must assess the credibility of witnesses  
17 who have testified in this case. Credibility is simply a  
18 legalistic term which means believability. It becomes your  
19 duty, as jurors, to analyze and to evaluate the evidence  
20 and determine that evidence which convinces you of its  
21 truth.

22 I instruct you that in determining the question of the  
23 credibility or believability of witnesses who have  
24 testified, you may believe one witness as against several  
25 witnesses or several witnesses as against one witness. You

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1 may believe a part of the testimony of a witness and reject  
2 the remaining part of the testimony of that same witness.  
3 If you have a good and sound reason, you may believe the  
4 testimony of a witness in its entirety or reject the  
5 testimony of a witness in its entirety. You may consider  
6 whether any witness has exhibited to you any interest, any  
7 bias, any prejudice, or other motive in this case. You may  
8 consider other things such as whether the testimony of a  
9 witness was strengthened or weakened by other testimony in  
10 evidence, was the witness straightforward or hesitant in  
11 answering, and again, whether the witness exhibited to you  
12 any interest, any bias or prejudice, or other motivation.  
13 You may consider the demeanor of a witness. That is the  
14 appearance and manner of the witness from the witness  
15 stand. You have but one objective, Ladies and Gentlemen,  
16 to seek the truth, regardless of its source.

17 You have heard evidence that the Defendant was  
18 convicted of a crime or crimes other than the one for which  
19 the Defendant is now on trial. This evidence may be  
20 considered by you, if you conclude it is true, only in  
21 deciding whether the Defendant's testimony is believable  
22 and for no other purpose. You must not consider the  
23 Defendant's prior record as any evidence of the Defendant's  
24 guilt of the charge we are trying today.

25 Ladies and Gentlemen, there are two types of evidence

1 which are presented during a trial; direct evidence and  
2 circumstantial evidence. Direct evidence is the testimony  
3 of a person who asserts or claims to have actual knowledge  
4 of a fact, such as an eyewitness. Circumstantial evidence  
5 is proof of a chain of facts and circumstances indicating  
6 the existence of a fact. The law makes absolutely no  
7 distinction between the weight or value to be given to  
8 either direct or circumstantial evidence, nor is a greater  
9 degree of certainty required of circumstantial evidence  
10 than of direct evidence.

11 You should weigh all of the evidence in this case.  
12 After weighing all of the evidence, if you are not  
13 convinced of the guilt of the defendant, beyond a  
14 reasonable doubt, you must find the defendant not guilty.  
15 Conversely, if you are convinced of the guilt of the  
16 defendant, beyond a reasonable doubt, then you must find  
17 him guilty.

18 I instruct you that the fact the Defendant was  
19 arrested, charged and indicted is not evidence in this case  
20 and cannot be considered by you as evidence of guilt in  
21 this case, nor does it create any presumption or inference  
22 of guilt. This documentation is simply the formal written  
23 instrument which contains a charge made against a  
24 defendant. It simply serves as the formal documentation by  
25 which a case is processed or brought into court. The

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1 Defendant has pled not guilty to the indictment and that  
2 plea casts the burden on the State to prove the Defendant  
3 guilty, because a person charged with committing a criminal  
4 offense in South Carolina is never required to prove  
5 himself innocent.

6 I instruct you, Ladies and Gentlemen, that it is a  
7 cardinal and important rule of the law of evidence that the  
8 defendant in a criminal trial, no matter what the  
9 seriousness of the charge made against him may be, will  
10 always be presumed to be innocent of the crime for which he  
11 is indicted unless his guilt has been proven by evidence  
12 satisfying you of that guilt beyond a reasonable doubt.

13 The presumption of innocence does not cease when you  
14 retire to deliberate regarding this case, but it  
15 accompanies the Defendant from the time of his appearance,  
16 throughout the trial, until you reach a verdict in this  
17 case. Our Supreme Court has said that the presumption of  
18 innocence is like a robe of righteousness placed about the  
19 shoulders of the Defendant and it remains with him and  
20 assigns him to that class of innocence until that  
21 presumptive robe of righteousness has been stripped from  
22 his person by evidence satisfying you of that guilt beyond  
23 a reasonable doubt.

24 The presumption of innocence is not mere legal theory.  
25 It is not just a legal phrase. It is a substantial right

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1 to which every defendant is entitled unless you, the jury,  
2 are satisfied from the evidence of his guilt beyond a  
3 reasonable doubt.

4 The State has the burden of proving the defendant  
5 guilty beyond a reasonable doubt. Some of you may have  
6 served as jurors in civil cases where you were told that it  
7 is only necessary to prove that a fact is more likely true  
8 than not true, such as by the greater weight or the  
9 preponderance of the evidence. In criminal cases the  
10 State's proof must be more powerful than that. It must be  
11 beyond a reasonable doubt. Proof beyond a reasonable doubt  
12 is proof that leaves you firmly convinced of the  
13 Defendant's guilt. There are very few things in this world  
14 that we know with absolute certainty and in criminal cases  
15 the law does not require proof that overcomes every  
16 possible doubt. If, based on your consideration of the  
17 evidence, you are firmly convinced that the Defendant is  
18 guilty of the crime charged, you must find the Defendant  
19 guilty. If, on the other hand, you think there is a real  
20 possibility that the Defendant is not guilty, you must give  
21 him the benefit of that doubt and find him not guilty.

22 The Defendant is charged with failing to stop for a  
23 blue light. In order to prove this crime the State must  
24 prove beyond a reasonable doubt: that the Defendant was  
25 driving a motor vehicle, that the Defendant was driving the

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1 motor vehicle on a road, a street, or highway of this  
2 state, that the Defendant was signaled to stop by a law  
3 enforcement vehicle by means of a siren or flashing light  
4 and that the Defendant did not stop.

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

21 Ladies and Gentlemen, an issue in this case is the  
22 identification of the Defendant as the person who committed  
23 the crime charged. The State has the burden of proving  
24 identity beyond a reasonable doubt. You must be satisfied,  
25 beyond a reasonable doubt, of the accuracy of the

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1 identification of the Defendant before you may convict the  
2 Defendant. Identification testimony is an expression or  
3 belief of impression by a witness. You must decide the  
4 accuracy of the identification of the Defendant. You must  
5 consider the believability of each identification witness  
6 in the same way as any other witness. You may consider  
7 whether the witness had an adequate opportunity to observe  
8 the offender at the time of the offense. This will be  
9 affected by things like how long or short a time is  
10 available, how far or close the witness was, the lighting  
11 conditions and whether the witness had the chance to see or  
12 know the person in the past.

13 Once again, I instruct you the burden of proof on the  
14 State extends to every element of the crime charged and  
15 this, specifically, includes the burden of proving, beyond  
16 a reasonable doubt, the identity of the Defendant as the  
17 person who committed the crime. If, after examining the  
18 testimony, you have a reasonable doubt as to the accuracy  
19 of the identification, you must find the Defendant not  
20 guilty.

21 Ladies and Gentlemen, mere presence at the scene is  
22 not sufficient to prove someone guilty of a crime. A  
23 Defendant's presence where a crime is being committed or  
24 mere association with a person who commits a crime does not  
25 make a Defendant an accomplice or an aider and abetter of

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1 the person committing the crime. The burden is on the  
2 State to prove every element of the crime charged. If you  
3 find, after reviewing all of the evidence, that the State  
4 has proved that the Defendant was only present at the scene  
5 of a crime and that they have not proven beyond a  
6 reasonable doubt any other participation in the crime, then  
7 you must find the Defendant not guilty. The law is, that  
8 presence at the scene of the crime is not sufficient to  
9 find someone guilty.

10 Ladies and Gentlemen, there are two possible verdicts  
11 in this case -- and this will go to the jury room with you  
12 so you don't have to try to write this down -- and they are  
13 as follows: We, the jury, by unanimous consent, find the  
14 Defendant guilty of failure to stop for a blue light or not  
15 guilty. There is absolutely no significance whatsoever to  
16 the order in which the Court states the potential verdicts.  
17 It's simply that one must be stated first.

18 Ladies and Gentlemen, your verdict must be a unanimous  
19 one, which means that all twelve of you must agree, in  
20 order to reach a verdict. Madam Forelady, when the jury  
21 has reached a verdict, it is your responsibility to fill  
22 out the verdict form, to sign and date the form, and also  
23 to knock on the door and advise the bailiffs that the jury  
24 has reached a verdict. Also, if the jury has any questions  
25 during deliberations, you will be required to write those

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1 out and again follow the same procedure in notifying the  
2 bailiffs.

3 Ladies and Gentlemen, if you have any questions during  
4 deliberations, please know that there will be a delay in  
5 our response and that is just that we will have to follow  
6 procedure to answer your question. So, if you have a  
7 question know that there will be a delay. We are not  
8 ignoring you. We are simply following that process.  
9 Again, Ladies and Gentlemen, your verdict must be a  
10 unanimous one which means that all twelve of you must agree  
11 in order to reach a verdict.

12 I'm going to ask that you return to your jury room,  
13 but do not yet begin your deliberations. I have some  
14 matters of law I need to take up with the attorneys that  
15 may require an additional instruction or clarification of  
16 an instruction. However, if there is no further  
17 instruction, at that time, we will excuse the alternate.  
18 We will bring in your notebooks, the evidence, and the  
19 verdict form and at that time you will be allowed to begin  
20 your deliberations. We anticipate that your lunch should  
21 be here shortly. It's here already. We have been having  
22 good luck with lunch this week. Sometimes we have  
23 circumstances where it's late, so I am very pleased that it  
24 is here at the time that we anticipated. So, it is here.  
25 I don't know if they have already set it up in your room,

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1 but if they have, feel free to go ahead and start eating.  
2 And again do not yet begin your deliberations. If you  
3 would go with the bailiff for me, please.

4 (Jury out at 12:38 p.m.)

5 THE COURT: Any exceptions to the charge, other than  
6 those which have already been articulated in charge  
7 conference, from the State?

8 MR. STACK: No, Your Honor.

9 THE COURT: From the Defense?

10 MR. GRIMES: No, ma'am.

11 THE COURT: If you all can make sure that everything is  
12 in order with the evidence and Mr. Sutton if you can set  
13 the alternate's notebook on the railing for me and you can  
14 go ahead and collect the notebooks and the evidence. Once  
15 you take that down for me, if you could bring the alternate  
16 out for me.

17 MR. GRIMES: I think the only evidence is the CD.

18 THE COURT: I thought there was just one piece of  
19 evidence, the DVD of the stop.

20 (Exhibits, notebooks and verdict form are taken to the  
21 jury at 12:40 p.m.)

22 DISMISSAL OF THE ALTERNATE

23 THE COURT: How are you, sir?

24 MR. MIERNICKI: Pretty good.

25 THE COURT: We wanted to thank you for your time and

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1 your service to this case. Being an alternate often feels  
2 very thankless but you provided an important and essential  
3 service to the court. You are welcome to leave as I am  
4 going to dismiss you, but you are welcome to hang around if  
5 you want to. I believe your lunch is here and if you would  
6 like to stay and eat it, the bailiffs will situate you so  
7 you can do that so it doesn't get cold, but if you would  
8 like to take it with you, you are welcome to do that as  
9 well. You are welcome to discuss this case if you would  
10 like, but I would ask that you not do that until Monday  
11 after we know that the proceedings have been completely  
12 concluded. If you need a work excuse you can get that on  
13 the first floor on the Circuit side at the Clerk's office.  
14 Any of the deputy clerk's at any of those windows can do  
15 that for you. Otherwise, we will mail that to you along  
16 with your check. I hope that jury service has been  
17 educational for you. I know that the Court is profoundly  
18 grateful for your service. Have a great week-end.

19 MR. MIERNICKI: Thank you.

20 THE COURT: You're welcome. Is there anything before  
21 we recess and await further instructions from the jury,  
22 from the State?

23 MR. STACK: No, Your Honor.

24 THE COURT: From the Defense?

25 MS. ANDERSON: No, Your Honor.

1     QUESTION FROM THE JURY

2           THE COURT: I have a note from the jury. The note  
3     says, "May we have a copy of the tow sheet?" I usually  
4     give them my standard instruction, which is; I make certain  
5     determinations about the admissibility of documents. You  
6     have everything you can see. Don't draw any inferences  
7     from it. If you need any testimony re-played, let us know,  
8     and I do that in writing. Is there any objection, from the  
9     State?

10           MR. STACK: No, Your Honor.

11           THE COURT: From the Defense?

12           MR. GRIMES: No, ma'am.

13           THE COURT: Then it will be marked as a Court's Exhibit  
14     and they will be instructed not to dispose of the notes.  
15     Okay, y'all can go back to eating your lunch.

16     SECOND QUESTION FROM THE JURY

17           THE COURT: The jury has requested equipment to watch  
18     the video. The problem is, it will take too long to track  
19     down a television. It is quicker to do it this way. (To  
20     play the video in open court) Any exception, from the  
21     State?

22           MR. STACK: No, Your Honor.

23           THE COURT: From the Defense?

24           MS. ANDERSON: No, Your Honor.

25           THE COURT: Please bring in the jury, Mr. Sutton. And

1       then, I also would have had to send someone in there with  
2       them, because they only want to watch the first ten minutes  
3       of it or however many minutes there were that was actually  
4       published.

5                               (Jury in at 2:06 p.m.)

6               THE COURT: You may be seated. Ladies and Gentlemen,  
7       in response to your request, we will now replay the video.  
8       You may proceed.

9                               (Video is played for the jury)

10              MR. FERGUSON: Your Honor, we've stopped it where it  
11       was marked and was played, previously, for the jury. We  
12       can play the remainder of it.

13              THE COURT: Ladies and Gentlemen, that will conclude  
14       the playing of the tape. If you need anything further from  
15       us, please let us know. If you wish to see it again or you  
16       have further questions, just let us know.

17                               (Jury out at 2:15 p.m.)

18              THE COURT: Any exceptions, from the State?

19              MR. STACK: No, Your Honor.

20              THE COURT: From the Defense?

21              MS. ANDERSON: No, Your Honor.

22              THE COURT: All right, we will await further  
23       instruction from the jury.

24       VERDICT

25                               (Jury in at 2:59 p.m.)

*COREY L. GETHERS VERSUS THE STATE OF SOUTH CAROLINA*

1 THE COURT: You may be seated. Madam Forelady, we are  
2 advised that the jury has reached a verdict.

3 MS. GREEN: Yes.

4 THE COURT: Would you give the verdict form to the  
5 bailiff for me, please? (Bailiff hands document to the  
6 Judge.) Madam Clerk? (Judge hands document to the clerk)  
7 Sir, would you stand for publication of the verdict.

8 (Defendant complies, along with his attorneys)

9 CLERK OF COURT: Indictment Number, 2010-GS-10-02020,  
10 Failure to Stop for a Blue Light, the State of South  
11 Carolina versus Corey Gethers. We, the jury, find the  
12 Defendant, Corey Gethers, guilty of failure to stop for a  
13 blue light. Ladies and Gentlemen of the jury, if this is  
14 your verdict, please raise your right hand.

15 (All jurors raise their right hand)

16 THE COURT: Is there any request to poll the jury, from  
17 the State?

18 MR. STACK: No, Your Honor.

19 THE COURT: From the Defense?

20 MS. ANDERSON: Yes, Your Honor.

21 THE COURT: Madam Clerk, if you would proceed with  
22 polling the jury. Ladies and Gentlemen, if you would give  
23 the Clerk your attention.

24 POLLING OF THE JURY

25 CLERK OF COURT: I will ask you two questions, starting

COREY L. GETHERS VERSUS THE STATE OF SOUTH CAROLINA

1 with the Forelady. Please answer, as to both of them.

2 Juror No. 117, Victoria Green, is this your verdict?

3 MS. GREEN: Yes, it is.

4 CLERK OF COURT: Is it still your verdict?

5 MS. GREEN: Yes.

6 CLERK OF COURT: Juror No. 290, Jacquelyn Wilson, .

7 MS. WILSON: Yes.

8 CLERK OF COURT: Is this your verdict?

9 MS. WILSON: Yes.

10 CLERK OF COURT: Is it still your verdict?

11 MS. WILSON: Yes.

12 CLERK OF COURT: Juror No. 155, Vera Irene Jones, is  
13 this your verdict?

14 MS. JONES: Yes.

15 CLERK OF COURT: Is it still your verdict?

16 MS. JONES: Yes.

17 CLERK OF COURT: Juror No. 296, Cecil Wright.

18 MR. WRIGHT: Yes.

19 CLERK OF COURT: Is this your verdict?

20 MR. WRIGHT: Yes.

21 CLERK OF COURT: Is it still your verdict?

22 MR. WRIGHT: Yes.

23 CLERK OF COURT: Juror No. 240, Sandy Scherling.

24 MR. SCHERLING: Yes.

25 CLERK OF COURT: Is this your verdict?

1 MS. SCHERLING: Yes.

2 CLERK OF COURT: Is this still your verdict?

3 MS SCHERLING: Yes.

4 CLERK OF COURT: Juror No. 299, Jason Yonge, is this  
5 your verdict?

6 MR. YONGE: Yes.

7 CLERK OF COURT: Is this still your verdict?

8 MR. YONGE: Yes.

9 CLERK OF COURT: Juror No. 173, Heavenly Long.

10 MS. LONG: Yes.

11 CLERK OF COURT: Is this your verdict?

12 MS. LONG: Yes.

13 CLERK OF COURT: Is this still your verdict?

14 MS. LONG: Yes.

15 CLERK OF COURT: Juror No. 127, James Hart, is this  
16 your verdict?

17 MR. HART: Yes.

18 CLERK OF COURT: Is this still your verdict?

19 MR. Hart: Yes.

20 CLERK OF COURT: Juror No. 1, Tyrone Aiken, is this  
21 your verdict?

22 MR. AIKEN: Yes.

23 CLERK OF COURT: Is this still your verdict?

24 MR. AIKEN: Yes.

25 CLERK OF COURT: Juror No. 164, Carolyn Landowske, is

1 this your verdict?

2 MS. LANDOWSKE: Yes.

3 CLERK OF COURT: Is this still your verdict?

4 MS. LANDOWSKE: Yes.

5 CLERK OF COURT: Juror No. 217, Martha Pierce, is this  
6 your verdict?

7 MS. PIERCE: Yes.

8 CLERK OF COURT: Is this still your verdict?

9 MS. PIERCE: Yes.

10 CLERK OF COURT: Juror No. 14, Christina Bannister, is  
11 this your verdict?

12 MS. BANNISTER: Yes.

13 CLERK OF COURT: Is this still your verdict?

14 MS. BANNISTER: Yes.

15 CLERK OF COURT: Your Honor, the jury has been polled  
16 and the verdict is as stands.

17 THE COURT: You may be seated. Madam Forelady, Ladies  
18 and Gentlemen, we thank you for your time and your  
19 attention to this case. I know that this has been,  
20 probably, a taxing experience, but I hope it has been an  
21 educational experience as well. We try a lot of cases in  
22 Charleston County. We are one of the top three busiest  
23 circuits in the state. I think Richland might be second to  
24 us now. Greenville and us are probably tied neck and neck  
25 in terms of jury court and volume. Probably out of fifty-

1 two weeks, we have jury trials probably somewhere around  
2 forty-two to forty-six weeks out of the year. So, you can  
3 well imagine if you all were not willing to donate your  
4 time to us, we would not have the ability to do the bulk of  
5 the court's work. So, I hope it has been educational for  
6 you and you have learned real court is nothing like Judge  
7 Judy or Judge Joe Brown, People's Court, Judge Mathis. I  
8 was off last week and during the holidays I watched some of  
9 those shows and I had to chuckle a little when I thought,  
10 "Oh, gosh, I hope people don't take their knowledge of the  
11 court system from this." While it is entertaining, it is  
12 truly nothing that shows you how very valuable you are to  
13 the jury process. I hope it has been educational for you  
14 and I hope it has reaffirmed your faith that the system  
15 works and it works because of your participation in it. We  
16 have your checks and your work excuses and the clerk will  
17 hand those out to you as you exit the courtroom. Madam  
18 Forelady, we need you to sign the indictment and the Clerk  
19 of Court will assist you in doing that. You are welcome to  
20 discuss this case if you would like but if, however,  
21 someone should persist in speaking with you and it makes  
22 you uncomfortable, please make us aware of it so that we  
23 can take the appropriate action to protect your privacy. I  
24 hope that you all have a wonderful holiday season. You are  
25 excused from the court for the day. If anyone would like

1 to stay for sentencing, you are welcome to do that. Just  
2 let the bailiff know.

3 SENTENCING

4 THE COURT: Any post-trial motions, from the State?

5 MR. STACK: No, Your Honor.

6 THE COURT: From the Defense?

7 MS. ANDERSON: Your Honor, we do not wish to make  
8 post-trial motions right now, but we reserve our right to  
9 make one within ten days of today.

10 THE COURT: Anything from the State regarding  
11 sentencing?

12 MR. STACK: Your Honor, in a review the facts, speeds  
13 were reached in excess of one hundred miles-per-hour.

14 THE COURT: I have another question before you go into  
15 that. Does he have any record other than the grand  
16 larcenies?

17 MR. STACK: Yes, he does, Your Honor.

18 THE COURT: And what is his record?

19 MR. STACK: I just sent Emmanuel to go get my folder.  
20 I left it in my office. He has a -- he has a record.

21 THE COURT: I know he has a probationary case. Where  
22 is probation, by the way?

23 MR. STACK: If you can indulge me about two minutes,  
24 I'll have his file.

25 THE COURT: I know he has two counts of PWID from

1 MR. STACK: Four, Your Honor.

2 THE COURT: What happened to the car? Was it  
3 impounded? Towed?

4 MR. STACK: It was towed.

5 THE COURT: And what happened after that?

6 MR. STACK: I believe it was returned to the owner.

7 THE COURT: Okay. So, the person who actually owned  
8 it did come pick it up?

9 MR. STACK: (Looks through papers) The Court's  
10 indulgence for just a second. I believe, Your Honor, I  
11 believe it was released. It's not in evidence.

12 THE COURT: So the owner came and picked it up?

13 MR. STACK: I believe so, Your Honor.

14 THE COURT: You said he served 90 days pre-detention,  
15 Mr. Grimes?

16 MR. GRIMES: Yes, ma'am. And I don't think we have  
17 seen a restitution request from the State about this. I  
18 don't think there was ---

19 THE COURT: I didn't think there was. I was just  
20 curious to know what happened with the car, because in the  
21 testimony, it was never listed, and I was curious to know  
22 whether it had been abandoned, whether it had been picked  
23 up, and if the owner had any interest in him, and I was  
24 curious as to know how he came into possession of it. So,  
25 there was -- It was never reported stolen, apparently, and

1       that indicates that the person that loaned it or let  
2       somebody use it had knowledge of whomever had possession of  
3       it.

4               Based on what has been represented to the Court, you  
5       are sentenced to the State Department of Corrections for a  
6       period of one year. You will get credit for any time that  
7       you have served to be calculated and applied by the  
8       Department of Corrections and I wish you well, sir.

9               PROBATION OFFICER: Probation, Your Honor?

10              THE COURT: Oh, it will be continued and tolled during  
11       his active time and they can restructure his fines and  
12       assessments however they think appropriate.

13              PROBATION OFFICER: Okay.

14              THE COURT: Make sure you convey that to him, please,  
15       Mr. Grimes. Ma'am, I wish you well. I appreciated your  
16       comments. It was very helpful to the Court.

ULE 3



# Charleston County Sheriff's Office

Charleston, South Carolina

202-1700



CCSO FORM 500-(5-89)

J. AL CANNON, JR., ESQ.  
SHERIFF, CHARLESTON COUNTY

## TOWED VEHICLE PROTECTIVE CUSTODY FORM

OCA# 2009-024135-B Make Suzuki Model Forenza  
 Date 12-21-09 Year 2008 VIN# KL5 JD56248K865149  
 District 3 Lic. AES 802 State SC

Reg. Owner Andrew Durham Driver \_\_\_\_\_  
 Address N. CHS, SC 29405 Address \_\_\_\_\_  
 Special Request \_\_\_\_\_ Towing Company \_\_\_\_\_  
 Owner Present  
 Owner NOT Present  
 Driver Present  
 Driver NOT Present

Reason Towed:  Accident  Disabled, Abandoned or Parking Violation  Arrest  Recovered Stolen  Other  
 Confiscation:  DUI/DUS  Drugs Hold:  Yes  No Reason: \_\_\_\_\_

Company Called: TBT Towing Requested 2213 (am) (pm)  
 Address: 1275 Remount Rd Arrived 2230 (am) (pm)  
 Phone: 514-1798 Departed 2240 (am) (pm)

If excessive time is required to remove vehicle, explain why.

Veh. towed from \_\_\_\_\_ Rd / Summerwood  
 To lot

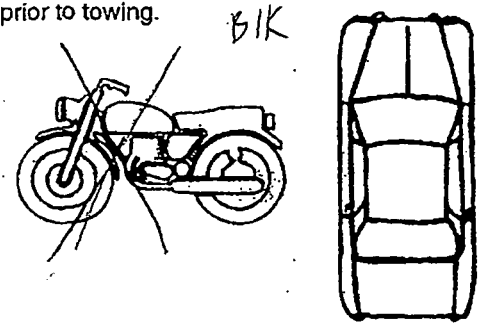
Inventory of vehicle by Deputy and Wrecker driver (c.b., radio, tape deck, personal papers, etc.)  
MISC papers, factory radio, (2) child seats,  
(1) brown jacket

Personal property removed from towed vehicle:  
N/A

Removed by: \_\_\_\_\_  
 Stored at: \_\_\_\_\_

Vehicle Condition:  Bad  Fair  Good

Circle parts of vehicle which are damaged prior to towing.



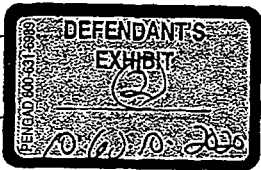
Is damage due to accident?  Yes  No

Deputy W. HANNA  
 Wrecker Driver Russell. Pugh

WE, THE UNDERSIGNED DEPUTY(S) AND TOW TRUCK DRIVER(S) HEREBY CERTIFY THAT THE ABOVE LISTED JOINT PROPERTY INVENTORY IS CORRECT TO THE BEST OF OUR KNOWLEDGE

SIGNATURE OF DEPUTY \_\_\_\_\_ SIGNATURE OF WRECKER COMPANY \_\_\_\_\_ SIGNATURE OF VEHICLE DRIVER (SPECIAL REQUEST) \_\_\_\_\_

Vehicle Release to: \_\_\_\_\_ On Authority of: DEPUTY \_\_\_\_\_  
 (Hold or Confiscation)  
 DATE \_\_\_\_\_ AM PM \_\_\_\_\_ DATE \_\_\_\_\_ TIME \_\_\_\_\_ AM PM \_\_\_\_\_



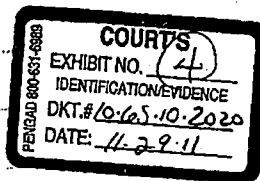
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Dec 2, 2011

May we please have a copy of the  
Tow Sheet.

Victoria Green

terminations that I  
on the rules of  
o review are with  
clusions as to why  
erations. If you  
will immediately



STK20091207326

DOCKET NO. 2010GS1002020

WITNESSES

JASON CAIN

Charleston County Sheriff

The State of South Carolina

County of Charleston

AGENCY CASE NUMBER

2009024135

COURT OF GENERAL SESSIONS

MARCH TERM 2010

ARREST WARRANT NUMBER

37621EZ

THE STATE

vs.

DATE OF ARREST

December 21, 2009

COREY GETHERS

DOB:

B/M

ACTION OF GRAND JURY

TRUE BILL

Indictment for

FAILURE TO STOP FOR A BLUE LIGHT

*[Signature]*

Foreperson of Grand Jury  
Date: MAR 24 2010

VERDICT

Guilty

*[Signature]*  
Foreperson of Petit Jury

10/2/11  
Date

INDICT



STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Charleston
STATE VS. COREY GETHERS

INDICTMENT/CASE#: 2010GS1002020
A/W#: 37621EZ
Date of Offense: 12/21/2009
S.C. Code § : 56-05-0750(B)(1)
CDR Code #: 0065

AKA:
Race: BLACK Sex: M Age: 34
DOB: SS#:
Address: iT
City, State, Zip: 000
DL#: SID#: SC00977492

SENTENCE SHEET

\*CDL Yes No CMV Yes No Hazmat Yes No
In disposition of the said indictment comes now the Defendant who was TO: Failure to stop for a blue light, no injury or death, 1st offense

CONVICTED OF or PLEADS

in violation of § 56-05-0750(B)(1) of the S.C. Code of Laws, bearing CDR Code # 0065
NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC w/minor 1st or Lewd Act) §17-25-45

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury.
The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST: Stack, James P. Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
for a determinate term of 1 days/months/years or under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$ ; provided that upon the service of days/months/years and/or payment
of \$ , plus costs and assessments as applicable\*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.
CONCURRENT or CONSECUTIVE to sentence on:
The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.
The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence ) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered
Total: \$ plus 20% fee: \$
Payment Terms:
Set by SCDPPPS

PTUP
days/hours Public Service Employment
Obtain GED
Attend Voc. Rehab. or Job Corp.
May serve W/E beginning
Substance Abuse Counseling
Random Drug/Alcohol testing
Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ beginning
\$ paid to Public Defender Fund
Other:

Table with 2 columns: Description and Amount. Includes items like § 14-1-206 (Assessments 107.5%), § 14-1-211(A)(1) (Conv. Surcharge) \$100, § 14-1-211(A)(2) (DUI Surcharge) \$100, § 56-5-2995 (DUI Assessment) \$12, § 56-1-286 (DUI Breath Test) \$25, Proviso 47.9 (Public Def/Prob) \$500, § 14-1-212 (Law Enforce. Funding) \$25, § 14-1-213 (Drug Court Surcharge) \$150, § 50-21-114 (BUI Breath Test Fee) \$50, § 56-5-2942(J) (Vehicle Assessment) \$40/ea, Proviso 90.5 (SCCJA Surcharge) \$5, 3% to County (if paid in installments) \$, TOTAL \$.

Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk
Court Reporter:
SCCA/217 (03/2011)

Presiding Judge
Judge Code:
Sentence Date: 12-2-11

OFFICE OF THE SOLICITOR  
NINTH JUDICIAL CIRCUIT

INDICTMENT/WARRANT STATUS CHANGE FORM  
(One Defendant and One Warrant/Indictment per Form)

Name: COREY GETHERS

Indictment #: 2010GS1002021

Race: B

Sex: M

Case Number: 20091207326

SSN: \_\_\_\_\_

Date of Birth: 3

Warrant Number: K611110

Disposition (Check One)

Reason (Optional):

4A  Dismissed

Reason: \_\_\_\_\_

4B  Nolle Prosequi

Reason: \_\_\_\_\_

7  Remanded

Charge: \_\_\_\_\_

Municipal Court: \_\_\_\_\_

Magistrate Court: \_\_\_\_\_

Judge: \_\_\_\_\_

8B  No Bill

9  Failure to Appear

Date Bench Warrant Issued: \_\_\_\_\_

Trial/Plea Docket Week: \_\_\_\_\_ Case Pre-filed with \_\_\_\_\_ Grand Jury.

Authorized by: [Signature]  
James P. Stack

Date: 4 Dec 11

CLERK OF COURT'S DATE/TIME STAMP:	RECEIVED BY: _____
	DATE: _____

Defense Attorney: Grimes, Andrew David

By [Signature]  
JULIE J. ARMSTRONG  
CLERK OF COURT

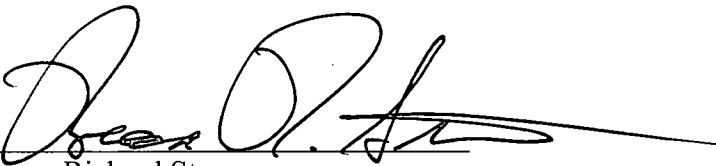
2011 DEC -6 - 6:09 PM

FILED

## CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability, with the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

April 3, 2013



Breen Richard Stevens  
Appellate Defender

South Carolina Commission on Indigent Defense  
Division of Appellate Defense  
PO Box 11589  
Columbia, S. C. 29211-1589  
(803) 734-1330

ATTORNEY FOR APPELLANT