

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Pickens County

Honorable Perry H. Gravely, Circuit Court Judge

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Oct 23 2020

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

ROBERT DARRELL SHORES,

APPELLANT

APPELLATE CASE NO 2019-001708

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA	)	
	)	COURT OF GENERAL SESSIONS
COUNTY OF PICKENS	)	2018-GS-39-00464
	)	2018-GS-39-00465
	)	2018-GS-39-00465
	)	2018-GS-39-00466
	)	2019-GS-39-01715
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
ROBERT DARRELL SHORES,	)	
DEFENDANT.	)	
_____	)	

October 1 and 2, 2019
Pickens, South Carolina

B E F O R E:

THE HONORABLE PERRY H. GRAVELY, JUDGE; and a jury.

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

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Assistant Solicitor

JOHN G. RECKENBEIL, ESQ.
Attorney for the Defendant

HOLLIE M. JENKINS
Circuit Court Reporter

I N D E X

(SW) - Denotes State's Witness

(DW) - Denotes Defense Witness

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All Exhibits were retained by the Clerk of Court for
Pickens County.

P R O C E E D I N G S

(WHEREUPON, State's Exhibit Nos. 1 and 2 were marked for identification only.)

(WHEREUPON, the jury panel entered the courtroom.)

THE COURT: This is the -- first of all, before -- let me kind of give you some preliminary information. It's my understanding from talking to the attorneys that this case will start this morning. I don't think it's going to be very long. It could possibly go into -- into the morning.

So before we get started, was there anybody I protected either for this afternoon or in the morning that's sitting out here?

THE CLERK: There was one for Wednesday and we left them out.

THE COURT: All right. I just wanted to make sure we had taken care of that.

All right. This is the case of -- let me find it.

Do you have the indictments?

Oh, it's right here.

All right. I'm going to read to you the indictments for this case. And, as I mentioned yesterday, indictments are merely allegations. These are not -- these are -- this is -- the State has the burden of proving these allegations. The Defendant has pled not guilty to these.

1 So these are just the charging papers that -- there
2 are four separate charges. And it -- the first one is
3 that -- this is called open container. That Robert
4 Darrell Shores did in Pickens County on November 22nd,
5 2017, have in his possession an open container of an
6 alcoholic beverage in a vehicle in which he was inside.

7 Resisting arrest. That Robert Darrell Shores did in
8 Pickens County on or about the 23rd day of November of
9 2017, knowingly, willfully, and unlawfully opposed or
10 resisted an arrest being made by Jeremiah Vissage with the
11 Pickens County Sheriff's Office, whom he knew or
12 reasonably should have known was a law enforcement
13 officer.

14 Providing false information to police. That Robert
15 Darrell Shores did in Pickens County on November 23rd of
16 2017, when stopped while under arrest give false
17 information to a law enforcement officer.

18 And driving under suspension. That Robert Darrell
19 Shores did in Pickens County on or about November 23rd of
20 2017, drive a motor vehicle on a public highway of this
21 state when his license to drive was suspended.

22 So those, again, are merely the allegations in this
23 case.

24 At this time, I'm going to ask you some questions,
25 kind of like we did yesterday. And the purpose is for the

1 attorneys to get more information and, also, to make sure
2 that if you're picked for this jury that you can be fair
3 and impartial. And I apologize for it being hot in here.
4 But it is hot.

5 All right. First of all, we'll start off --

6 Mr. Shores, if you could stand and just turn around
7 and face the jury.

8 Thank you.

9 I just wanted him to --

10 JURY QUALIFICATION

11 THE COURT: All right. Is anybody related by blood
12 or marriage, have a close personal or social relationship
13 with Robert Shores? If so, please, stand.

14 (WHEREUPON, there was no response.)

15 THE COURT: Okay. At this time, I would ask that the
16 attorneys, if they could, stand and introduce themselves.

17 MS. ODOM: I'm Shannon Swords Odom. I'm the
18 assistant solicitor that's going to be prosecuting this
19 case.

20 MR. RECKENBEIL: Good morning.

21 I'm John Reckenbeil from Greenville in private
22 practice. I'm the attorney for Robert Shores.

23 THE COURT: All right. Is anybody related by blood
24 or marriage --

25 Could you see?

1 (WHEREUPON, there was no verbal response.)

2 THE COURT: All right. Why don't you --

3 MR. RECKENBEIL: Oh, sorry.

4 THE COURT: Are you -- I mean, if y'all just need to
5 stand up and see. I'm sorry.

6 MR. RECKENBEIL: Sorry about that. Did you hear?

7 (WHEREUPON, there was no verbal response.)

8 MR. RECKENBEIL: I'm John Reckenbeil from Greenville.
9 And I represent Mr. Shores.

10 THE COURT: All right. Is anybody related by blood
11 or marriage, have a close personal or social relationship
12 to either of the attorneys? If so, please, stand.

13 (WHEREUPON, there was no response.)

14 THE COURT: All right. Has anybody ever been
15 involved in a matter where either attorney was --
16 represented you or was involved in a matter on the other
17 side? If so, please, stand.

18 (WHEREUPON, there was no response.)

19 THE COURT: All right. And no response.

20 Is anybody related by blood or marriage, or have a
21 close personal or social relationship with anybody who
22 works in the Thirteenth Circuit Solicitor's Office? If
23 so, please, stand.

24 (WHEREUPON, there was no response.)

25 THE COURT: All right. Now, here are a list of

1 possible witnesses. And, again, it's going to be the same
2 question, do you know, are you related by blood or
3 marriage, do you have a close personal, social, or
4 business relationship with any of these individuals?

5 And if you're here, if you could stand.

6 Jeremiah Vissage.

7 All right. If you need to stand up and see on this
8 side, if y'all want to...

9 Okay. Bertha Phillips from the Department of Motor
10 Vehicles; Lieutenant Tony Robinson, Pickens County
11 Sheriff's Office; Alexis Lucas, Easley Police Department;
12 Thomas Hayes, Pickens County Sheriff's Office; and Deputy
13 Andrew Rackley of the Pickens County Sheriff's Office.

14 We only had one other. The other ones weren't over
15 there, so.

16 All right. Is anybody related by blood or marriage,
17 have a close personal or social relationship to any of
18 these individuals that could be witnesses in this case?
19 If so, please, stand.

20 (WHEREUPON, there was no response.)

21 THE COURT: All right. Has any member of the jury
22 panel formed or expressed an opinion about any issue or
23 matters in this case? If so, please, stand.

24 Yes. Your name and number?

25 PROSPECTIVE JUROR: Matthew Redmond.

1 THE COURT: Okay.

2 PROSPECTIVE JUROR: I -- I just was thinking -- I
3 don't know the facts of this case --

4 THE COURT: Is this -- first of all, is this
5 something you'd rather approach us up here? Let's
6 approach. I'm not sure it's necessary, but just to make
7 sure.

8 PROSPECTIVE JUROR: Oh, okay. Sure.

9 (WHEREUPON, a sidebar was held with the prospective
10 juror, the Court, and the attorneys.)

11 THE CLERK: What's your name and number?

12 PROSPECTIVE JUROR: Matthew Redmond, #146.

13 THE COURT: Okay.

14 PROSPECTIVE JUROR: I was just thinking. If he
15 wasn't driving and he was just drinking in the car --

16 THE COURT: This was driving under suspension. It
17 wasn't a -- it was drinking in the --

18 PROSPECTIVE JUROR: Oh, it wasn't?

19 THE COURT: No. There's no allegation.

20 Anyway, what is your --

21 PROSPECTIVE JUROR: I was just thinking if it's open
22 container but not driving, I don't see anything wrong with
23 that.

24 THE COURT: But, I mean, could you -- and I guess the
25 question is, could -- could you apply the law as I charge

1 you if you served on the jury?

2 PROSPECTIVE JUROR: I don't know. It depends on the
3 facts of the case.

4 THE COURT: So you're not sure you could apply the
5 law as I charge you? You think your own personal beliefs
6 may overcome that?

7 PROSPECTIVE JUROR: Potentially.

8 THE COURT: Okay. And what was your name and number?

9 PROSPECTIVE JUROR: #146.

10 THE COURT: I'm going to be -- just to be safe, I'm
11 going to go ahead and excuse you from this case. If you
12 can just stay for a few more minutes.

13 (WHEREUPON, the sidebar concluded.)

14 THE COURT: Okay. Is there any member of the jury
15 panel, immediate family member connected by blood or
16 marriage, or have a close personal, social, or business
17 relationship with anyone connected with the Pickens County
18 Sheriff's Office or Easley Police Department? If so,
19 please, stand.

20 (WHEREUPON, there was no response.)

21 THE COURT: All right. No response.

22 Is any member of the jury panel a member of or a
23 contributor to any group or organization which promotes
24 victim's rights or law enforcement, such as MADD, SADD, or
25 any other advocacy group which promotes the interest of

1 law enforcement or victim's rights?

2 (WHEREUPON, there was no response.)

3 THE COURT: If anybody falls into that category -- if
4 so, please, stand.

5 (WHEREUPON, there was no response.)

6 THE COURT: All right. And no response.

7 Has any member of the jury panel read any newspaper
8 articles, postings on Internet sites, social media, or any
9 information about the Defendant, or any issues relating to
10 this case? If so, please, stand.

11 (WHEREUPON, there was no response.)

12 THE COURT: And no response.

13 Is any member of the jury panel a member of any
14 political, religious, social, industrial, fraternal law
15 enforcement, or other organization whose beliefs or
16 teachings would prejudice him or her against either party
17 in this case? If so, please, stand.

18 (WHEREUPON, there was no response.)

19 THE COURT: Is any member of the jury panel aware of
20 any physical, mental, or emotional condition which would
21 prevent them from giving the Defendant and the State a
22 fair and impartial trial in this matter? If so, please,
23 stand.

24 (WHEREUPON, there was no response.)

25 THE COURT: Is there any member of the jury panel who

1 has a religious or moral opposition to the consumption of
2 alcohol? If so, please, stand.

3 (WHEREUPON, there was no response.)

4 THE COURT: All right. And no response.

5 Is there any member of the jury panel who considers
6 themselves or ever considered themselves in the past to be
7 a sovereign citizen or considers the law of this country
8 to not apply to them? If so, please, stand.

9 (WHEREUPON, there was no response.)

10 THE COURT: Okay. And no response.

11 Has any member of the jury panel ever felt threatened
12 by law enforcement? And on this question, if you'd like
13 to stand and come up more privately, I'll be glad to -- to
14 talk to you here.

15 (WHEREUPON, there was no response.)

16 THE COURT: All right. And no response.

17 Is there any member of the jury panel aware of any
18 bias or prejudice towards either the State or the
19 Defendant in this case? If so, please, stand.

20 And, Mr. Vissage, you now are with --

21 MR. JEREMIAH VISSAGE: Tri-County Tech.

22 THE COURT: Is there anybody related by blood or
23 marriage, or have a close personal relationship with
24 anyone who works at Tri-County Technical College? If so,
25 please, stand.

1 Yes. Your name and number?

2 PROSPECTIVE JUROR: Joseph Speer, #170.

3 My sister works at Tri-County.

4 THE COURT: Okay. Could you still be fair and
5 impartial in the trial of this case if a witness worked
6 there?

7 PROSPECTIVE JUROR: I can, yes, Judge.

8 THE COURT: All right. Thank you.

9 Does any member of the jury panel know of any reason
10 whatsoever why they could not be fair and impartial in the
11 trial of this case? If so, please, stand.

12 (WHEREUPON, there was no response.)

13 THE COURT: All right. Anything else from the State?

14 MS. ODOM: Nothing further.

15 THE COURT: Anything else from the Defendant?

16 MR. RECKENBEIL: Nothing further from the Defense,
17 Your Honor.

18 THE COURT: All right. And this will be five and
19 five. And two alternates.

20 MR. RECKENBEIL: Yes, sir.

21 THE CLERK: Again, as I call your name, if you would,
22 please, stand so the attorneys can see you.

23 JURY SELECTION

24 THE CLERK: Juror #96, Derrick Knuckles.

25 (WHEREUPON, Derrick Knuckles, a black male, stood.)

1 THE CLERK: What says the State?

2 MS. ODOM: Please present Mr. Knuckles.

3 THE COURT: And the Defense?

4 MR. RECKENBEIL: Please seat the juror.

5 THE CLERK: Please come forward and have a seat in
6 the jury box, sir.

7 Juror #18, Cindy Burke.

8 (WHEREUPON, Cindy Burke, a white female, stood.)

9 THE CLERK: What says the State?

10 MS. ODOM: Please excuse the juror.

11 THE CLERK: Thank you.

12 Please return to your seat, ma'am.

13 Juror #165, Alice Shove.

14 (WHEREUPON, Alice Shove, a white female, stood.)

15 THE CLERK: What says the State?

16 MS. ODOM: Please present the juror.

17 THE CLERK: And the Defense?

18 MR. RECKENBEIL: Please seat the juror.

19 THE CLERK: Please come forward and have a seat in
20 the jury box, ma'am.

21 Juror #21, Breanna Chapman.

22 (WHEREUPON, Breanna Chapman, a white female, stood.)

23 THE CLERK: What says the State?

24 MS. ODOM: Please present the juror.

25 THE CLERK: And the Defense?

1 MR. RECKENBEIL: Please seat the juror.

2 THE CLERK: Please come forward and have a seat in
3 the jury box.

4 Juror #117, Kathryn Melendon.

5 (WHEREUPON, Kathryn Melendon, a white female, stood.)

6 THE CLERK: What says the State?

7 MS. ODOM: Please present the juror.

8 THE CLERK: And the Defense?

9 MR. RECKENBEIL: Please seat the juror.

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

12 Juror #183, Eryn Weatherford.

13 (WHEREUPON, Eryn Weatherford, a white female, stood.)

14 THE CLERK: What says the State?

15 MS. ODOM: Please excuse the juror.

16 THE CLERK: Please return to your seat.

17 Juror #147, Amanda Reynolds.

18 (WHEREUPON, Amanda Reynolds, a white female, stood.)

19 THE CLERK: What says the State?

20 MS. ODOM: Please present the juror.

21 THE CLERK: And the Defense?

22 MR. RECKENBEIL: Please seat the juror.

23 THE CLERK: Please come forward and have a seat in
24 the jury box.

25 Juror #71, Daniel Hester.

1 (WHEREUPON, Daniel Hester, a white male, stood.)

2 THE CLERK: What says the State?

3 MS. ODOM: Please present the juror.

4 THE CLERK: And the Defense?

5 MR. RECKENBEIL: Please seat the juror.

6 THE CLERK: Please come forward and have a seat in
7 the jury box.

8 Juror #76, Tracy Hinson.

9 (WHEREUPON, Tracy Hinson, a white male, stood.)

10 THE CLERK: What says the State?

11 MS. ODOM: Please present the juror.

12 THE CLERK: And the Defense?

13 MR. RECKENBEIL: Please seat the juror.

14 THE CLERK: Please come forward and have a seat in
15 the jury box.

16 Juror #141, Barbara Perkins.

17 (WHEREUPON, Barbara Perkins, a white female, stood.)

18 THE CLERK: What says the State?

19 MS. ODOM: Please present the juror.

20 THE CLERK: And the Defense?

21 MR. RECKENBEIL: Please seat the juror.

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

24 Juror #61, Lee Hagan.

25 (WHEREUPON, Lee Hagan, a white female, stood.)

1 THE CLERK: What says the State?

2 MS. ODOM: Please present the juror.

3 THE CLERK: And the Defense?

4 MR. RECKENBEIL: Please seat the juror.

5 THE CLERK: Please come forward and have a seat in
6 the jury box.

7 Juror #167, Harriet Simmons.

8 (WHEREUPON, Harriet Simmons, a white female, stood.)

9 THE CLERK: What says the State?

10 MS. ODOM: Please present the juror.

11 THE CLERK: And the Defense?

12 MR. RECKENBEIL: Please seat the juror.

13 THE CLERK: Please come forward and have a seat in
14 the jury box.

15 Juror #42, Alyssa Durham.

16 (WHEREUPON, Alyssa Durham, a white female, stood.)

17 THE CLERK: What says the State?

18 MS. ODOM: Please present the juror.

19 THE CLERK: And the Defense?

20 MR. RECKENBEIL: Please seat the juror.

21 THE CLERK: Please come forward and have a seat in
22 the jury box.

23 Juror #112, Billy Mauldin.

24 (WHEREUPON, Billy Mauldin, a white male, stood.)

25 THE CLERK: What says the State?

1 MS. ODOM: Please excuse the juror.

2 THE CLERK: If you would return to your seat, sir.

3 Juror #20, Gary Byars.

4 (WHEREUPON, Gary Byars, a white male, stood.)

5 THE CLERK: What says the State?

6 MS. ODOM: Please present the juror.

7 THE CLERK: And the Defense?

8 MR. RECKENBEIL: Please seat the juror.

9 THE CLERK: Please come forward and have a seat in
10 the jury box.

11 THE COURT: All right. First alternate.

12 THE CLERK: First alternate, Juror #43, Shannon
13 Edwards.

14 (WHEREUPON, Shannon Edwards, a white male, stood.)

15 THE CLERK: What says the State?

16 MS. ODOM: Please present the juror.

17 THE CLERK: And the Defense?

18 MR. RECKENBEIL: Please seat the juror.

19 THE CLERK: Please come forward and have a seat in
20 the jury box.

21 THE COURT: And the second alternate.

22 THE CLERK: Juror #129, Perri Munn.

23 (WHEREUPON, Perri Munn, a white female, stood.)

24 THE CLERK: What says the State?

25 MS. ODOM: Please present the juror.

1 THE CLERK: And the Defense?

2 MR. RECKENBEIL: Please seat the juror.

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

5 THE COURT: All right. Any objections or exceptions
6 to the jury selection by the State?

7 MS. ODOM: None from the State.

8 THE COURT: By the Defendant?

9 MR. RECKENBEIL: Nothing from the Defense, Your
10 Honor.

11 THE COURT: All right. I'll talk to y'all first,
12 then I'll talk to the crowd out there.

13 We're going to start this case probably -- it's going
14 to be about 10:30. But I'm going to give you a couple
15 rules. You can't discuss the case. Okay. Even though
16 you don't know much about it, it's not appropriate to talk
17 about the case yet, do any type of research, or anything
18 like that.

19 So, at this point, if you'll step back into your jury
20 room. We'll bring you out, like I said, probably in about
21 20 or 25 minutes. But we'll start the case at that point.

22 (WHEREUPON, the jury was excused from open court at
23 approximately 10:08 a.m.)

24 THE COURT: All right. As I told y'all yesterday,
25 this would be a good week to be on jury duty. Because we

1 have now gotten through all our cases that we needed to
2 get to, which means I can release y'all for the week. I
3 can kind of release you for three years. Because you
4 won't -- you know, you -- you get a three-year protection
5 window there, so.

6 But anyway, I do appreciate -- and even though it's
7 like, wow, they -- they didn't have a bunch going on,
8 there was a lot that -- that got resolved. A lot of times
9 what happens is when people have matters that -- you know,
10 you have two sides. Sometimes, they're not able to get
11 together until they see that jury out there looking at
12 them. And they say, oh, let's get -- see if we can't get
13 this worked out.

14 So a lot of matters have been worked out. And those
15 that haven't been worked out, it's real important that we
16 can -- our system allows us to work it out with -- with --
17 in the -- in the jury system. And even though -- even
18 after this case, it doesn't mean we get the week off like
19 y'all. Of course, y'all got to go home and go to work,
20 too, so. There's a lot of other matters that we work on
21 outside of just the jury.

22 But I do want to let you know, it's very important
23 for y'all to be able to come in. And I know it was
24 inconvenient for everyone here. And we do appreciate it,
25 we really do. And that's why you get paid so much. That

1 does not -- that does not show how much we appreciate you.

2 But anyway, thank y'all again.

3 And y'all -- like I said, y'all are free to go. You
4 don't have to call back, or anything. So you're good to
5 go.

6 (WHEREUPON, the remaining jury panel members exited
7 the courtroom.)

8 (WHEREUPON, a break was taken.)

9 THE COURT: All right. Are y'all ready for the jury
10 to come in?

11 MR. RECKENBEIL: Judge, I just wanted to put into
12 evidence the one matter that we've been discussing for
13 quite sometime. I have a separate copy that I have given
14 both to the State and to the Court via e-mail. And I just
15 wanted to put this into evidence.

16 This is a motion that, obviously, I will take up,
17 Your Honor, that we have presented based upon the fact of
18 putting the Court on notice that there is evidence that we
19 believe that we were entitled to that we have not
20 received. But we've -- we've discussed this. And this
21 would be a motion that I'll be taking up per the Reeves
22 case of 2015 at the close of evidence.

23 THE COURT: All right. I guess you need to --

24 MR. RECKENBEIL: Yeah, to the court reporter.

25 THE COURT: I guess since this is not going to be

1 something going back to the jury, mark it as a Court's
2 Exhibit.

3 MR. RECKENBEIL: Yes, sir.

4 Thank you.

5 (WHEREUPON, Court's Exhibit No. 1 was marked for
6 identification and admitted into evidence.)

7 MR. RECKENBEIL: And with that, Your Honor, the
8 Defense is ready for the jury.

9 MS. ODOM: Your Honor, I -- I just have one thing.

10 THE COURT: Yes.

11 MS. ODOM: We had discussed stipulating that the
12 Defendant's license was suspended on the date of the
13 incident. I was -- my intention was to call my first
14 witness. And when he gets done, request that the
15 stipulation be read to the jury.

16 THE COURT: Okay. Is it something y'all have
17 written?

18 MS. ODOM: I've written -- it's just one sentence.

19 THE COURT: Do you want to -- you can publish it.

20 MS. ODOM: Okay. I wasn't sure how you wanted it --

21 THE COURT: Yeah.

22 MS. ODOM: So it's okay.

23 THE COURT: You can publish it to the jury.

24 MS. ODOM: Okay.

25 MR. RECKENBEIL: We have no objection, Your Honor.

1 MS. ODOM: And will -- will I just move that into
2 evidence and then seek to publish it?

3 I've never done a stipulation.

4 THE COURT: No. I would -- I would just publish it
5 based on a stipulation. And you can mark it as a Court's
6 Exhibit, if you want.

7 But I'd just say, you know, the -- Your Honor, I'd
8 like to publish a stipulation. And then you, basically,
9 tell the jury, like, the parties have stipulated and then
10 just read that.

11 MS. ODOM: Okay. Thank you.

12 THE COURT: We're ready for the jury.

13 (WHEREUPON, the jury came into open court at
14 approximately 11:07 a.m.)

15 THE COURT: All right. The temperature is a little
16 more comfortable now than what it was. And that's kind
17 of -- I'm -- I'm sure they told you that that was kind of
18 the reason we -- I mean, it got -- it was getting really
19 hot in here. And they talked to maintenance. They had to
20 cut something off to -- for some maintenance. But we
21 figured 30 minutes would make a big difference because it
22 was pretty warm. So, hopefully, y'all are -- I figured --
23 that's why I let y'all -- like, I'm sure it got hot in
24 that room, too.

25 So, anyway, thank you for your patience.

1 But we're now getting ready to start the trial of the
2 case. Again, it's State v. Robert Darrell Shores. And
3 I'm going to give you some preliminary remarks. But
4 before I do that, I'm going to ask that the Clerk
5 administer the oath for this case.

6 THE CLERK: If you would, please, stand. And, again,
7 after the oath is administered, if you'd answer by saying
8 "I will."

9 Raise your right hand.

10 (WHEREUPON, the jury was sworn at approximately
11 11:08 a.m.)

12 THE CLERK: If you agree with that, please, have a
13 seat.

14 INTRODUCTORY REMARKS

15 THE COURT: All right. I'm going to give you some
16 preliminary remarks. I think there are a couple people
17 that may have been on the previous jury. So sorry you've
18 got to hear all this again, but.

19 First, I'd like to start off by saying -- let you
20 know who some of these people in the courtroom are, so you
21 don't have to, like, wonder what they're doing. You've
22 met the attorneys, and the parties, and witnesses. But we
23 have the Clerk of Court here, who's in charge of the
24 courthouse and the records, Pat Welborn.

25 And then we have our court reporter who takes down an

1 entire transcript. And this is -- and I know this came up
2 actually, in the one yesterday. This is a transcript for
3 if it's ever needed later. But it's not something that
4 can be provided to -- to the jury during their
5 deliberations. I know -- and the reason I say that is I
6 know that kind of came up yesterday in the matter. And
7 it's a -- it's a pretty involved process of getting that
8 transcript, and stuff. So that's -- that's -- it's -- I
9 may have misled people yesterday. But it's a transcript
10 for later on down the road, if needed.

11 Behind me is my clerk of -- I mean my law clerk,
12 who's a law school graduate who, actually, helps me with
13 research, and does stuff for the -- helps with the case.
14 We have deputies. They're involved any time court's in
15 session.

16 We, also, have the bailiffs, these gentleman --
17 sharp-looking gentleman with the badges on. They're -- if
18 you have any questions, comments, or anything, please,
19 direct that to the bailiffs. And if any -- if it's
20 something that needs to be brought to my attention,
21 they'll let me know. So if you have any questions,
22 they're here.

23 Your role as a jury is to decide what the facts of
24 this case are. That's your -- your primary and your sole
25 and exclusive duty.

1 My duty is not to determine the facts. And if
2 anything I say in this trial makes you think I have an
3 opinion about the facts, please, disregard that because
4 that's not my job. My job is to preside over the trial,
5 and rule on the admissibility of evidence, and to
6 determine what the law is. And the law is what I will
7 charge you with at the conclusion of this case.

8 I know there was also -- again, to address this. In
9 these kinds of cases, they're -- they're relatively short
10 cases. They're very important cases, but they're
11 relatively short cases. And just as a general rule, we
12 ask you not to take notes. I know that kind of came up in
13 the matter yesterday. And I think it's important for you
14 to, instead of paying attention to your notes, to
15 actually, make sure that you're observing the witnesses.

16 And then, you know, sometimes, when you take notes,
17 what happens is, you know, 12 people, there may be 12
18 versions of what -- notes. And then it's like, well,
19 those notes -- so that's why it's -- we think it's more
20 important to rely on your memory, your collective memory
21 there, so.

22 And, again, this is not going to be a trial several
23 days down the road where you have to try to think back
24 about what took place. Because, like I said, the -- if --
25 the worse case scenario is we may go into the morning with

1 deliberations. So we're not talking very long.

2 A little bit about the trial for y'all who may not
3 have been involved with trials before. We'll have opening
4 statements. Then we'll have the testimony and evidentiary
5 stage. Once all that has been completed, then we'll have
6 closing arguments by the attorneys. Then I will charge
7 you on the law. And then you'll begin deliberating.

8 All right. And it's important that you do not
9 discuss the case before that. Okay. And the reason is if
10 you start discussing the case, then you start making up
11 your mind.

12 And when I say not discussing it among yourselves
13 during breaks, or not discussing it with your family
14 members when you go home for lunch, or home for the
15 evening. It's important that you not discuss it in any
16 way.

17 It's, also, important that you not do any type of
18 research, Google the parties, Google the -- the law, or
19 the attorneys, or -- or anything like that. Because what
20 you're supposed to be making your decision on is what you
21 get from this courtroom and what you get from this
22 courtroom only.

23 I'm not aware of any social media or any -- any media
24 coverage of this trial. But I will tell you not to pay
25 any attention to that if there's any of that out there.

1 This is a criminal trial. And that's -- the reason
2 that -- there's a major distinction in that and the burden
3 of proof. If you've been involved in a civil matter,
4 then -- or -- that is a much lesser. That's called the
5 greater weight or preponderance of the evidence. That's a
6 much lesser when two parties are suing each other.

7 In a criminal matter, it's beyond a reasonable doubt,
8 much higher. And this burden is on the State to prove the
9 elements of this crime, the crimes -- or the -- the
10 charges against the Defendant. The Defendant has no
11 burden whatsoever to prove anything. He doesn't have to
12 prove he's innocent. He doesn't have to prove any
13 elements. But the State has the sole burden beyond a
14 reasonable doubt as to every element of each of these
15 charges.

16 Also, I know you had a reference to indictments. And
17 I read to you the indictments. And you'll hear reference
18 to arrest and charges. Those -- that's not anything to be
19 considered by you. That is merely documents, the formal
20 charges that brings this matter to the Court and
21 establishes what elements the State has the burden on. So
22 that's all that's for. And that's not something you need
23 to consider. Again, you're to consider what you -- the
24 facts of this case and the law that I -- I give you.

25 You know, one of the things, too, that I always kind

1 of tell people, the way our courtroom is set up when you
2 take breaks and come in in the morning, and stuff, you may
3 end up on the elevator with an attorney or a party. And
4 it's like, wow, they were very rude to me, you know. They
5 can't have any communication with you. So don't -- don't
6 feel like they're being rude if that does happen.

7 We'll try to take breaks every hour to hour and a
8 half. And, sometimes, that kind of depends on where we
9 are with witnesses. And, sometimes, we have to take
10 breaks to go over certain matters of evidence, and so
11 forth.

12 If anybody needs to take a break otherwise, please,
13 let us know. We know this is an inconvenience to you.
14 And we try to make it as less an inconvenience as
15 possible. So if you need to take a break, just kind of
16 indicate and we'll break as soon as possible.

17 Normally, we try to break for lunch somewhere between
18 12:30 and 1:00. And we'll give you sufficient time for
19 that. Again, that may depend on where we are with
20 witnesses, too.

21 If we -- and as far as -- by the end -- for the end
22 of the day, we try to break as close to 5:00 as possible.
23 Sometimes, we go a little past that just because of a
24 particular witness. If it looks like we're going past
25 5:00 at all, I usually consult with y'all and say, hey,

1 we -- it looks like we may be going a little bit later
2 than 5:00. Does anybody need to make any arrangements?
3 Of course, I don't want -- you know, I -- I try to check
4 with y'all on anything like that.

5 So with that being said, I'm going to now turn it
6 over to the attorneys for their opening statements.

7 Ms. Odom.

8 OPENING STATEMENTS

9 MS. ODOM: Thank you, Your Honor.

10 No good deed goes unpunished. That's kind of what
11 this case is about. This case occurred nearly two years
12 ago, November 22nd, 2017. Deputy Vissage was on patrol
13 that night.

14 Now, I don't know if y'all are familiar with Easley,
15 but he was on 123 approaching the Bojangles'. He was
16 coming from the Liberty side going towards Greenville. So
17 he's driving. It's late at night. And he comes up on a
18 vehicle that's hauling a trailer. It has a bunch of stuff
19 on it. And the brake light is stuck. It's like they're
20 driving, but the light's on.

21 So doing what a deputy is supposed to do, looking out
22 for people on the road, he gets beside the vehicle and,
23 like, motions saying, hey, man, your brake light's stuck.
24 He sees the Defendant behind the steering wheel driving
25 the vehicle. The Defendant sees him and gets kind of an,

1 oh -- oh, man, kind of look.

2 So the Defendant turns into the Bojangles' real
3 quick. Deputy Vissage turns into -- on the next road that
4 comes back into the Bojangles'. He sees the Defendant and
5 the passenger switching seats.

6 So this should have been something easy -- quickly
7 resolved, hey, man, your brake light. But it turns into a
8 long ordeal of the deputy trying to get some answers.
9 What's going on? What's happening here? He's smelling
10 alcohol. The Defendant will not get out of the vehicle.

11 His supervisor, Deputy Rackley, has to come out.
12 Several officers have to come out. They will not get out
13 of the vehicle. And you'll see in just a little bit video
14 from that night. You'll be able to hear what the officers
15 are telling the Defendant, what the Defendant's telling
16 them.

17 Ultimately, they place him under arrest. He still
18 won't get out. And that's the resisting.

19 We're going to have four charges. The Judge has
20 already read them to you. But I want you to be aware of
21 them again so you kind of know what to look for during the
22 trial. The resisting is when he's placed under arrest.
23 Open container. There's an open beer can that's leaked
24 out of the driver's door. False name. They ask him who
25 he is. He gives his brother's name. And, ultimately,

1 DUS. He was driving under a suspended license.

2 So those are the four charges you look for. Listen
3 closely when the witnesses testify. Think about -- hear
4 what they're saying. But think about the reasons they
5 have to testify. Are they getting a benefit? Do they
6 have a bias in the case? Does it somehow help them out to
7 say one thing or another?

8 And at the end of the -- the case after you hear from
9 my witnesses and look at all the evidence we present to
10 you, you'll have the opportunity to go back and
11 deliberate. And I'm going to ask, as I'm sure the Judge
12 and Mr. Reckenbeil will ask, too, listen to each other.
13 Don't let just one person overpower another. Discuss the
14 case and thoroughly deliberate.

15 This -- even though it's a short trial and nobody is
16 going to be downstairs wanting to interview y'all when you
17 get done, it doesn't mean it's not important. It's
18 important to the State. It's, certainly, important to the
19 Defendant. So I ask that you do pay attention.

20 And at the end of the trial, though, I'll ask that
21 you find the Defendant guilty on all four charges.

22 MR. RECKENBEIL: May it please the Court, Your Honor.

23 Good morning again, ladies and gentlemen.

24 Thank you very much for your patience in allowing it
25 to get cooler.

1 Being in a suit coat is not very nice when it's 80
2 degrees in a courtroom. So I appreciate your patience.

3 As lawyers, we have a duty, and an oath, and an
4 obligation to try to present a case for a jury to make a
5 determination under the rules of evidence to the best of
6 our ability. That's really what a lawyer's job is, to
7 follow rules of evidence, to follow rules of procedure
8 that has been mapped out by our legislature and by the
9 attorneys that have come before us, put people on witness
10 stands, show videos, show pieces of evidence in order to
11 give the ladies and gentlemen of the jury the best
12 opportunity to make the best decision using your common
13 sense, and using all the evidence that's presented to come
14 to a verdict. That's our job and our responsibility.

15 We have rules that have been engrained, basically, in
16 stone as to how we go about doing that. It's extremely
17 important that we follow the rules.

18 The Judge is going to be the judge of the law. He's
19 going to give you the law of our state. He's going to
20 rule on evidentiary issues. He's going to set forth,
21 basically, the parameters in which you make decisions.
22 And it's our job to make sure that you have the best
23 evidence to make the decision.

24 And I submit to you, ladies and gentlemen of the
25 jury, that there's one question that needs to be answered

1 that we propose, who was driving the car that night? Was
2 it Mr. Shores or Mr. Miller? You're going to have video
3 evidence to see what took place.

4 And I will submit to you that after the stop, after
5 the fact of what you decide of who is driving the
6 vehicle -- Mr. Shores was a little bit uncooperative.
7 There's no question that you're going to see that on the
8 video. There's no question that you're going to hear it
9 on the video. But we'll talk more about that later about
10 some rules that we're going to set forth to you to make
11 your decision.

12 But, most importantly, we want to make sure that you
13 have the best evidence to make the decision as to the
14 verdict that you'll reach.

15 Thank you for your time.

16 THE COURT: Ms. Odom, you can call your first
17 witness.

18 MS. ODOM: Thank you, Your Honor.

19 The State calls Jeremiah Vissage.

20 THE CLERK: If you would place your left hand on the
21 Bible and raise your right.

22 WHEREUPON,

23 JEREMIAH VISSAGE,

24 after first having been duly sworn, testified as follows:

25 THE CLERK: Thank you, sir.

1 If you would have a seat.

2 And state your name for the record, please.

3 THE WITNESS: I'm Jeremiah Vissage.

4 DIRECT EXAMINATION

5 BY MS. ODOM:

6 Q All right. Officer, where do you work now?

7 A I currently work for Tri-County Technical College
8 Police Department.

9 Q And how long have you been working there?

10 A Since March of this year.

11 Q Now, where did you work before then?

12 A Before then, I was with Pickens County Sheriff's
13 Office for the 12 years preceding that.

14 Q Now, what were your duties at the sheriff's office?

15 A I started off as just a deputy working there. And I
16 worked seven or eight years as a deputy. Then I advanced
17 through deputy first class, and then as a corporal, which
18 is the lowest supervisory rank at the sheriff's office.

19 Q And as a corporal -- were you a corporal when this
20 case happened?

21 A Yes, ma'am, I was.

22 Q What kind of job responsibilities and duties did you
23 have?

24 A Just enforcing the law, basic laws of the county and
25 of the State of South Carolina and, also, to assist the

1 other deputies. If they had a question about something
2 going on, they would call me to ask -- ask questions and,
3 basically, just the -- the smaller administrative tasks
4 that supervisors do. Those were the things that I took
5 care of, in addition to my job as just a deputy to answer
6 calls.

7 Q So you responded to calls. And did you initiate
8 stops?

9 A Yes, ma'am.

10 Q Now, were you working on November 22nd of 2017?

11 A I was. I was on night shift that night.

12 Q And did you have an opportunity to become involved in
13 this case?

14 A I did.

15 Q All right. Tell me where you were when that
16 happened.

17 A Yes, ma'am. I was coming down 123 towards the city
18 of Easley from Liberty. And I was in the -- the outside
19 lane just -- just driving, nothing going on. And I
20 noticed a car ahead of me while we're still in the 65 zone
21 with its brake lights stuck on. The --

22 Q Were --

23 A -- brake lights --

24 Q Oh, I'm sorry. Were -- you said "brake lights," the
25 vehicle's brake lights?

1 A Yes, ma'am, the vehicle's brake lights. You know,
2 when -- on an SUV-type vehicle, you have a third brake
3 light that's at the top. That was illuminated and, also,
4 the brake lights in addition to the -- the running lights
5 were on. So it was very bright from the rear area of the
6 vehicle. I could see all three lights were illuminated.

7 Q Okay. And how many lanes are --

8 A It's a four-lane highway, two lanes going in each
9 direction.

10 Q Okay. So when you -- what type of -- what time of
11 day or night --

12 A This was shortly before midnight, about 20 minutes,
13 25 minutes before midnight on that night.

14 Q Okay. So when you saw the brake lights on, what did
15 you do?

16 A Right. After I realized that it wasn't just him
17 riding the brakes -- this went on for, you know, a mile
18 maybe. I pulled alongside of him to just flag him down
19 and say, hey, your brake lights are stuck on. You might
20 want to check the sensor to see if you can, you know,
21 wiggle the brake pedal to get them to release.

22 And when I did that, he looked at me and then turned
23 away from me. He turned -- he looked straight ahead and
24 then turned the vehicle into a parking lot immediately.

25 Q Were y'all at a stoplight or anything, or --

1 A No. We were just traveling down the road. I -- like
2 I said, it's -- it's two lanes going in each direction.
3 He was in the outside lane. I had pulled into the lane
4 beside him and rolled my passenger side window down and
5 waved out the window to get his attention, and motioned
6 for him to roll the window down.

7 At that point, he had looked at me and then
8 immediately turned back forward and turned away from me,
9 turned into the parking lot.

10 Q Okay. Now, so you -- did you get a good look at the
11 driver?

12 A I did.

13 Q Okay. Now, tell me what -- what happened next. When
14 he turned in --

15 A Sure.

16 Q -- what happened?

17 A Yeah. He -- he turned into the -- to the parking
18 lot, which he turned -- turned right. I knew at that
19 point that some -- something wasn't exactly right. So I
20 took the next turn in and turned into the parking lot.

21 He was coming around to the bottom side of the
22 Bojangles' parking lot. And I came around from the other
23 direction. I saw him turn into the parking lot. And I
24 pulled in sort of alongside of him. And as I pulled along
25 kind of in this -- about here where his vehicle stopped

1 here and I'm stopped sort of beside it, I could see them
2 trying to switch seats, the driver and passenger.

3 Q Okay. Now, tell me -- tell me, did you have your --
4 your body camera or your in-car camera on?

5 A I had an in-car camera. I -- I don't remember having
6 a body camera at that time. That was brand new to us in
7 2017. I -- I don't remember whether there was body camera
8 at all. And I know there wasn't any footage because I
9 didn't mention it in my report. I did, however, have a
10 car camera at the time.

11 Q Okay. Is there footage from your car camera?

12 A There should have been footage from my car camera.
13 But I'm not sure what happened to it when I left the
14 sheriff's office. When you contacted me about this case,
15 I called them and it was no longer in the server. And I'm
16 not sure where that went.

17 Q Okay. If -- if your in-car camera had been recording
18 or if we had footage, what angle would it show from your
19 car to the Defendant's vehicle?

20 A It wouldn't have shown anything in the Defendant's
21 vehicle. Once I activated my blue lights, the way I was
22 parked, the camera was facing straight down the parking
23 lot. So I wouldn't have been able to see the Defendant's
24 vehicle, other than maybe the corner of the -- the fender
25 of the vehicle in the camera.

1 Q So -- hold on one second.

2 MS. ODOM: I beg the Court's indulgence one moment.

3 (Pause.)

4 MS. ODOM: Your Honor, may I approach the witness?

5 THE COURT: You may.

6 BY MS. ODOM:

7 Q I'm showing you what's been marked as State's Exhibit
8 No. 1 for ID purposes. Do you know what that is?

9 A Yes, ma'am. That is a picture of the -- of Calhoun
10 Memorial Highway in Easley where I made the initial
11 sighting, and then of the parking lot area around
12 Bojangles' and the adjacent parking lot.

13 Q And, to the best of your knowledge, this is an
14 accurate representation of the roads?

15 A Yes, ma'am.

16 MS. ODOM: Your Honor, at this point, the State would
17 move to have this entered into evidence as State's Exhibit
18 No. 1.

19 MR. RECKENBEIL: No objection, Your Honor.

20 THE COURT: Okay. State's Exhibit No. 1 is in
21 without objection.

22 (WHEREUPON, State's Exhibit No. 1 was admitted into
23 evidence.)

24 MS. ODOM: And, Your Honor, permission to publish.

25 THE COURT: Yeah.

1 BY MS. ODOM:

2 Q All right. And you have a laser pointer up there?

3 A Yes, ma'am.

4 Q With the laser pointer, can you just show -- show us
5 where you were when --

6 A Yes, ma'am.

7 Q -- you first saw him and go -- kind --

8 A Yes, ma'am.

9 Q -- of go through it on the map?

10 A Yes, ma'am. So it would be off the picture where I,
11 initially, saw the vehicle with the brake lights on. I
12 got beside the vehicle somewhere right about at the time
13 the picture is starting there. And I pulled alongside of
14 him here and was motioning for him to roll his window
15 down. At that point, he looked straight ahead and made a
16 right turn into the parking lot here.

17 I took this turn and came around this way. As I came
18 around, he was turning into the parking lot here at
19 Bojangles'. So I came in -- this -- this is at midnight.
20 The store was closed. There's no one around.

21 I came in this direction, the wrong way, to pull up
22 on him just as he stopped his vehicle. And, like I said,
23 I was pulled up. He was -- would have been somewhere
24 right here. And then my vehicle would have been somewhere
25 right about there. So I was at sort of a 45-degree angle

1 to him and slightly behind.

2 Q All right. So at this point, when you pull up beside
3 him, you were able to see what was going on in the
4 vehicle?

5 A Yes, ma'am.

6 Q Okay. Did he have -- did he have a trailer on the
7 vehicle?

8 A That's right.

9 Q Did he have items on the trailer?

10 A Yeah. There was a whole bunch of stuff, just like
11 scrap material on the trailer and in the back of the
12 vehicle.

13 Q Okay. Did any of those items get in the way of your
14 view of the --

15 A They did not, not through the driver's window. There
16 was a clear view through the driver's window.

17 Q All right. So when -- when you got out and you saw
18 them switching seats, what did you do?

19 A I called in the traffic stop for the faulty vehicle
20 equipment that I had, initially, noted. I made -- started
21 my traffic stop. Then I realized there was probably more
22 to it than the simple just a -- you know, the vehicle
23 being improper with the -- with the brake lights stuck.

24 So I initiated the traffic stop, got out of the
25 vehicle. I walked up to the driver's window, which the

1 person that had been in the passenger seat is now in the
2 driver's seat as I walked up.

3 And I immediately started talking to the Defendant,
4 who was sitting in the passenger seat. And I asked him
5 for identification. And he told me that he didn't have to
6 provide that at that time.

7 Q Okay. Were you able to, ultimately, identify the
8 person in the driver's seat at that point?

9 A I, eventually, was able to identify him as Ryan Keith
10 Miller.

11 Q Okay. So at that point, Mr. Miller, who had been in
12 the passenger seat, was in --

13 A In the driver's seat.

14 Q -- in the driver's seat?

15 And the Defendant --

16 A Had moved into the passenger seat.

17 Q All right. So the Defendant refused to give you his
18 license. What happened next?

19 A I asked him for his license a couple times. Then I
20 asked the driver to -- the person that was in the driver's
21 seat to step out of the vehicle. He looked at the
22 Defendant. And the Defendant told him not to get out of
23 the vehicle and to roll the window up.

24 Q Okay.

25 A And then he started recording us with his cell phone.

1 Q All right. Now, you asked for ID, for the
2 Defendant's license. Is that standard?

3 A Yes. Yeah. The driver of the vehicle must have a
4 driver's license with them at all times. And I asked for
5 that ID. And he refused to provide it.

6 Q So what did you do next? How long did this go on?

7 A For several minutes. I asked for -- immediately
8 asked for -- when I realized that something odd was going
9 on, I had asked for backup to -- to come to me. And
10 Easley City was the closest backup. So they came to -- to
11 assist me. We were in the City of Easley by that point.

12 And then, eventually, at the Defendant's request, I
13 asked for a supervisor to respond. And that was when
14 Lieutenant Rackley arrived.

15 Q Is it -- are you, as a deputy, allowed to ask
16 someone -- a driver to get out of the vehicle?

17 A Absolutely.

18 Q Okay. At any point, were you concerned for your
19 safety?

20 A I was. The Defendant would put his hands down into
21 the console. He's moving around in the vehicle. He won't
22 be still. And, like I said, there's stuff everywhere.
23 The vehicle is just piled full of stuff in the backseat,
24 and in the back of the vehicle, and on the trailer as
25 well.

1 And when he stuck his hand in the console, I did not
2 know what he was doing. So I drew my service weapon,
3 pointed it at the ground just outside the window, and gave
4 them loud commands to keep their hands up where I could
5 see them, which they complied with that and took their
6 hands away from the -- the area that I was worried about.

7 Q Okay. Now, when Easley City officers got out there,
8 did anything change?

9 A Nothing changed. We -- initially, we had asked them
10 repeatedly to get out of the vehicle. They refused.
11 Eventually, the passenger gave us a name. He -- he said
12 that he was who he was, which one of the Easley City
13 officers was able to check through DMV online and pull up
14 a picture of the person that he said he was. And it was
15 him.

16 Q Okay. What name did he give?

17 A He gave us the name of Ricky Dale Shores, which I
18 believe is his brother.

19 Q Okay. And when you say DMV online pulled up a
20 picture, can you tell us a little bit more about that?

21 A Yes, ma'am. In South Carolina, the DMV has a member
22 services department where if you're registered with the
23 DMV as a police officer, you're able to put in a password
24 and pull up someone's driver's license. And it shows the
25 picture that would be on your driver's license. We can

1 pull it up and see if that matches the person who's
2 telling us who they are.

3 If someone doesn't have a driver's license, just them
4 telling us, you know, my -- what their name is, we can't
5 confirm that without seeing the picture to match it up.

6 Q All right. So after Easley gets out there and y'all
7 pull up the picture and everything, what's your next step?
8 What happens next?

9 A Yeah. Again, I've -- I've told him to -- to get out
10 of the vehicle. He refused several more times.
11 Lieutenant Rackley arrived on scene. And Lieutenant
12 Rackley began speaking with him, asking him to get out of
13 the vehicle.

14 And then, eventually, after several more tries -- at
15 one point, the Defendant started reaching into the back of
16 the vehicle, reached over his shoulder and into the back
17 where all the stuff was back there. I stepped to the
18 front of the vehicle, redrew my weapon, and pointed it at
19 him. Because I was afraid he was going to pull something
20 out of the back. Because he was very upset at that point.
21 I didn't know what kind of weapons he might have in the
22 vehicle.

23 Shortly thereafter, Lieutenant Rackley had told
24 him -- I'll -- I'll let him testify to what he said. But
25 he, basically, told him he had to get out of the vehicle

1 and get out then. And, eventually, the driver complied.
2 And once the driver -- the person that was in the driver's
3 seat complied, then the Defendant got out of the passenger
4 side.

5 Q So was the Defendant placed under arrest while he was
6 still in the car?

7 A He was. He was told that he was under arrest
8 numerous, numerous times.

9 Q And he refused to get out?

10 A That's correct.

11 Q Was there a smell about the vehicle, or anything?

12 A Absolutely. It smelled like alcohol. From outside
13 the vehicle, I could smell it.

14 Q Okay. Do you remember at any point alcohol coming
15 out of the vehicle?

16 A Once there -- there was a liquid under the car, but I
17 didn't know exactly what it was until after we had made
18 the arrest and we located the -- the beer bottle inside
19 the vehicle under the driver's seat. It had turned over.
20 And the beer had poured out through the floorboard and was
21 on the ground in a puddle underneath the car.

22 Q So what kind of -- you said it was -- what kind of
23 alcohol was it?

24 A It was a beer.

25 Q Like, a bottle or a can?

1 A Bottled beer.

2 Q Bottled beer. And it was under the driver's side
3 seat?

4 A That's correct.

5 Q All right. Now, did -- can you -- is the Defendant
6 in the courtroom today, the man that you, initially, saw
7 in the driver's seat?

8 A Yes, ma'am.

9 Q And can you point him out to us?

10 A Right. It's the Defendant here.

11 MS. ODOM: Okay. And, Your Honor, may the record
12 reflect he's pointed to the Defendant?

13 THE COURT: All right. So noted.

14 BY MS. ODOM:

15 Q And what county was this in?

16 A This was in Pickens County, South Carolina.

17 Q Now, once he got out of the car, were y'all able to
18 determine his real name?

19 A Yeah. We were able to determine his real name.
20 After speaking with him for a few minutes, he, finally,
21 told us his real name. And we used that to determine he,
22 also, had a warrant for his arrest. And that may have
23 been the reason he --

24 Q Well, was it -- was it determined officially that he
25 was driving under suspension?

1 A Yes. We checked -- when we checked his driver's
2 license, it did show that it was suspended.

3 MS. ODOM: Your Honor, I beg the Court's indulgence
4 one moment.

5 (Pause.)

6 MS. ODOM: If you will answer any questions from the
7 Defense.

8 THE COURT: All right. Cross-examination.

9 CROSS-EXAMINATION

10 BY MR. RECKENBEIL:

11 Q Corporal, what was the make and model of the vehicle
12 that you were driving that night?

13 A It was a Chevrolet Suburban.

14 Q Suburban?

15 A Yes.

16 Q Do you remember the color?

17 A I don't -- I remember -- I don't remember, sir.

18 Q Was that your normal vehicle that you would drive?

19 A That I was in, yes, sir.

20 Q Okay. And how long were you an occupant of that
21 vehicle? In other words, how long were you patrolling in
22 that car, not that night, but for how many years?

23 A Probably about 16 to 18 months in that patrol car.

24 Q Okay. And you said that it had an in-car camera?

25 A That's correct.

1 Q Was it affixed to the dashboard?

2 A It was -- the camera unit itself was attached to the
3 windshield.

4 Q To the windshield?

5 A Yes, sir.

6 Q In the center portion of it?

7 A Yes, sir.

8 Q And in your experience, sir, in the 16 months that
9 you were operating that vehicle, what normally would the
10 view be of that camera? What would it take?

11 A The -- the front of my patrol car and anything in
12 front of that.

13 Q All right. Do you know when that turned on? In
14 other words --

15 A When I activated my blue lights.

16 Q When you activated your blue lights. Did you have an
17 ability to turn it on or off by remote control, anything
18 on your person or anything in the car?

19 A There -- there's a -- a microphone in the car, but I
20 don't remember that -- if I had it on at that point. I
21 don't remember having that microphone on my body at the
22 time.

23 Q Okay. So -- but back to my one other question is
24 that, do you know if there's an ability to turn that
25 camera on or off with anything that you have in the car or

1 on your body?

2 A Obviously, yes. You can turn the vehicle -- the
3 camera off.

4 Q How do you do that?

5 A By pushing the "stop" button on the --

6 Q On the camera?

7 A Right.

8 Q Okay. Is there an ability to turn the camera on or
9 off when the blue lights are activated, or does it
10 automatically stay on?

11 A You can turn it off while the blue lights are
12 activated.

13 Q Okay. Does that camera pick up your audio?

14 A I don't remember. That's what I'm saying. The --

15 Q Not that night. Not that night. But I'm saying
16 about in your normal course --

17 A Normally, yes, sir.

18 Q Yeah.

19 A Yes, sir, normally.

20 Q During your time frame -- so -- so it normally would
21 pick up your audio when you're in the car?

22 A That's correct.

23 Q And is that -- in your experience of the 16 months
24 that you were in that vehicle, was -- the microphone that
25 you just discussed, would that then be picked up on the

1 camera mounted in the car, or would that -- there be
2 another component in the vehicle that would pick up that
3 audio?

4 A There's -- there's a -- a hard-wired microphone
5 somewhere in every patrol car that picks up inside. And
6 then there's, also, a microphone box that you can remove
7 from the vehicle and place it on your body and carry it
8 with you.

9 Q Okay. And in your 16 months that you were operating
10 that vehicle, did you, also, have at any time a body
11 camera that you would wear on your vest?

12 A Yeah. We were just in the process of getting body
13 cameras. And I honestly cannot remember if I had the body
14 camera that night or not.

15 Q Again, I'm talking about your 16-month timeframe of
16 when you were operating that vehicle. Did you ever
17 have --

18 A Well, the body camera's separate from the vehicle.
19 And we --

20 Q Yes, sir.

21 A -- were just getting those in the weeks prior to this
22 incident.

23 Q Okay. So do you remember ever using a body camera
24 while patrolling in that vehicle prior to that incident?

25 A Specifically, prior to that incident, no, sir, I

1 don't remember.

2 Q You don't remember whether or not you ever used the
3 body camera before that incident?

4 A No, sir. Like I said, we were just getting -- that
5 was -- that was something new to the agency. We didn't
6 have them before.

7 Q Yes, sir.

8 A And we were just getting them as this incident
9 occurred.

10 Q All right. Coming down from Liberty to Easley, is
11 that a decline, incline, or is it a straight away?

12 A Where I, initially, saw him is an incline. And then
13 there's a decline, and then another incline prior to where
14 I got up beside him and motioned for him to roll his
15 window down.

16 Q And would you agree with me, sir, that there was a
17 significant amount of what you called scrap on the back of
18 the trailer?

19 A Absolutely.

20 Q And I'm just going to take a stab at something and
21 see if you have a recollection of --

22 A Sure.

23 Q -- the trailer and the items that may be on the back.
24 And I'm just -- take a look, if you would, sir, at this
25 picture if that may refresh your recollection. I know

1 we'll see it on the video, but...

2 A Okay. I don't remember, specifically, items that
3 were on the trailer.

4 Q Understood.

5 A I know that there was a trailer behind the vehicle
6 and it had things on it.

7 Q Fair enough. Do you think it would be unusual for an
8 individual who's driving in a vehicle with a bunch of
9 stuff in the trailer behind them to have a car come up to
10 the side of them and kind of flag them down? Do you think
11 it would be unusual for that individual to think, oh, my
12 gosh, I might be losing something off the back there, let
13 me turn in and strap it down better?

14 A That could be what they thought. I have no idea to
15 what --

16 Q But would it be unusual for an individual to think
17 that?

18 A I don't know what it would be unusual for them to
19 think or not.

20 Q Okay.

21 A I -- I know that if a patrol car -- marked, well-lit
22 patrol car pulls up beside me and tells me to roll my
23 window down, that's, generally, what I'm going to do.

24 Q Fair enough. But I'm talking about just whether or
25 not -- how about if it's not even a patrol car? You've

1 got another person driving down the road next to you.

2 Again, you're hauling a bunch of stuff. Would you think

3 it's unusual for the individual who is, basically, getting

4 flagged down and who's a driver to not think that they

5 might be losing some stuff off the back of their trailer

6 and they should pull off --

7 A Okay.

8 Q -- and check it?

9 A That may be something someone would think.

10 Q Okay. You said that you parked your vehicle at a

11 45-degree angle when you came into Bojangles'?

12 A Yes, sir.

13 Q And that your -- your video would have not gotten the

14 car, if I'm not mistaken, is -- is what I remember your

15 testimony being.

16 A Or if it did, it would have caught the fender area

17 of -- the front fender area of that car.

18 Q Okay. But you said that you saw the driver's seat

19 from where you were --

20 A Correct.

21 Q -- seated in your patrol vehicle?

22 A Correct.

23 Q Okay. And how much of the driver's seat did you see?

24 A All of it.

25 Q Okay. And it's your testimony that you saw two

1 individuals, basically, swapping seats?

2 A That's correct.

3 Q And you were clear on one thing that you testified is
4 that you said that Mr. Shores was under arrest while he
5 still was in the vehicle and he didn't get out?

6 A That's correct.

7 Q All right.

8 A He was advised numerous times that he was under
9 arrest and that he needed to exit the vehicle.

10 Q Last question. Did you write a ticket for faulty
11 vehicle?

12 A I did not.

13 Q And what is a faulty vehicle ticket?

14 A It would have been a -- it would have been faulty
15 equipment for -- basically, for having -- for -- for the
16 brake lights not functioning correctly.

17 Q Okay. Is it faulty if an individual is going down a
18 hill and they're using the brakes?

19 A The vehicle was going up a hill.

20 Q And the brakes are still on?

21 A They are still on. And they had been on for, at
22 least, a mile, maybe a mile and a half before I caught up
23 to him and then got up beside him to motion him to roll
24 the window down.

25 Q Okay. And you never wrote a ticket for that?

1 A I did not.

2 MR. RECKENBEIL: Thank you.

3 That's all the questions I have.

4 THE COURT: Any redirect?

5 MS. ODOM: Just briefly.

6 REDIRECT EXAMINATION

7 BY MS. ODOM:

8 Q I just wanted to -- to clear something up. What kind
9 of vehicle were you driving?

10 A I was driving an Explorer.

11 Q Okay. An Explorer. And what kind of vehicle was the
12 Defendant driving?

13 A A -- a Suburban.

14 Q Okay. And do you have discretion on what tickets
15 you, ultimately, write someone?

16 A Yes, ma'am. Absolutely. We can decide whether a
17 ticket needs to be written or not.

18 MS. ODOM: All right. Thank you.

19 That's all.

20 THE COURT: All right. Thank you.

21 You may step down.

22 MS. ODOM: And, Your Honor, can he be released from
23 his subpoena?

24 THE COURT: Any objection to that?

25 MR. RECKENBEIL: I don't have any objection.

1 THE COURT: All right. You may be released.

2 THE WITNESS: Thank you.

3 MS. ODOM: At this time, the State calls Deputy
4 Andrew Rackley.

5 THE COURT: Mr. Rackley, if you'll come around.
6 WHEREUPON,

7 ANDREW RACKLEY,
8 after first having been duly sworn, testified as follows:

9 THE CLERK: Thank you, sir.

10 If you would have a seat.

11 And state your name for the record, please.

12 THE WITNESS: Andrew Rackley.

13 DIRECT EXAMINATION

14 BY MS. ODOM:

15 Q What rank are you?

16 A I'm a lieutenant at the sheriff's office.

17 Q Okay. I wanted to make sure I got your rank right.
18 So what are your job duties as a lieutenant?

19 A On a daily basis, I -- I supervise a team at the
20 sheriff's office that is primarily responsible for
21 answering calls for service from the public. In that
22 capacity, I have a sergeant, a corporal, and six uniform
23 patrol deputies under my command.

24 Q Were you working the night of November 22nd, 2017?

25 A I was.

1 Q And did you get a call from Deputy Vissage?

2 A I did.

3 Q All right. Tell me about that -- or tell me what
4 happened that night.

5 A I was on -- excuse me. I was on patrol in Pickens
6 County. It's a large county. And as Deputy Vissage
7 alluded to, he -- he had called for a backup unit. I
8 heard that traffic. Normally, I don't respond, as a
9 supervisor, unless I'm requested or if I'm close by.

10 He then told me that -- over the radio, he called my
11 call sign, which was Adam 10, and told me that I needed to
12 respond to the area because a subject there wanted to
13 speak with me.

14 Q Okay. And did you respond to the area?

15 A I did.

16 Q Okay. Where -- where was that?

17 A It was at the Bojangles' in the city limits of
18 Easley.

19 Q And that's within Pickens County?

20 A Yes, ma'am.

21 Q All right. So when you get there, tell me what's --
22 what -- when you get out of your vehicle, what's going on?

23 A Corporal Vissage approaches me and tells me the
24 gentleman in the car is -- is refusing to get out and has
25 asked to speak with me.

1 Q Okay. And someone refusing to get out on its own may
2 not be a big deal. But why was that a big deal?

3 A Basically, the -- Corporal Vissage had told me that
4 the Defendant was operating the vehicle. And in the State
5 of South Carolina, if you're operating a vehicle, upon
6 command of a law enforcement officer on a traffic stop or
7 in that case has -- he can request your identification.

8 You primarily don't have to give him a -- hand him
9 the identification. But you have to give him the
10 opportunity, even if you put it up to your window or
11 something, to allow him to read the information off your
12 license in order to obtain that information of who he is.

13 Q So what did you do when you got there?

14 A I, basically, came up to the driver's side of the
15 vehicle. There was a -- a gentlemen sitting in the -- the
16 driver's side. I couldn't tell you who he was. And I was
17 talking across the way of him to the Defendant, who was
18 sitting in the passenger seat.

19 Q Okay. And did you have a body camera?

20 A I did.

21 Q And was it on?

22 A Yes, ma'am.

23 Q Is there any way to look at another officer and tell
24 if their body camera is on or not?

25 A There's -- on the body camera's, there's lighting on

1 it. If the light is red at the top -- there's a little
2 red light, it will let you know that the -- the camera is
3 recording.

4 MS. ODOM: May I approach the witness?

5 THE COURT: You may.

6 BY MS. ODOM:

7 Q All right. Lieutenant, can you tell me what this is?
8 And I'm showing you what's been marked as State's Exhibit
9 No. 2 for identification.

10 A Is it all right if I remove it?

11 Q Yes.

12 A Okay. It is the body camera footage from my person
13 on case number 201728719.

14 Q All right. And you know that that's your body cam
15 footage?

16 A Yes, ma'am.

17 Q And how do you know that?

18 A I've reviewed that copy.

19 MS. ODOM: Your Honor, at this point, I'd like to
20 enter this into evidence as State's Exhibit No. 2.

21 THE COURT: All right. Any objection?

22 MR. RECKENBEIL: No objection, Your Honor.

23 THE COURT: All right. It's in without objection.

24 (WHEREUPON, State's Exhibit No. 2 was admitted into
25 evidence.)

1 THE COURT: How long is it?

2 MS. ODOM: It's going to be right at 50 minutes.

3 THE COURT: 50?

4 MS. ODOM: Yes, sir.

5 THE COURT: All right. Does anybody need to take a
6 break before we watch this video?

7 (WHEREUPON, there was no response.)

8 THE COURT: It's about a 50-minute video. So all
9 right.

10 MS. ODOM: Are you okay with me publishing --

11 THE COURT: I am. I'm just wondering, it's almost
12 12:00. I'm wondering if by the time -- you know, with
13 additional questions and cross-examination -- I wonder if
14 we should break for lunch. I see some -- I mean, I think
15 we probably need to break for lunch. Because, otherwise,
16 it's going to put us at almost 1:00. And it would be 1:30
17 before -- let's go ahead and break for lunch since we've
18 just started here. Don't y'all think that's -- all right.
19 Let's -- we've got some hungry jurors.

20 All right. We're going to break for lunch. Do not
21 discuss the case among yourselves or among your friends.
22 Do not do any type of research, or anything like that. Do
23 not pay any attention to any media coverage. If you're
24 contacted by anybody other than the clerk's office,
25 please, let the bailiffs know.

1 Be back in your -- it's 10 till 12:00. How about
2 1:20. Be back in your jury room at 1:20.

3 MS. ODOM: Judge, you have a question.

4 UNIDENTIFIED JUROR: Do we get our phones back at
5 lunch time?

6 THE COURT: Yes. You get them back. No, that's a
7 good question. They take care of that.

8 (WHEREUPON, the jury was excused from open court at
9 approximately 11:53 a.m.)

10 THE COURT: I mean, I was just thinking -- I realize
11 by the time you play that whole thing and you ask some
12 additional questions and then cross-examination, it would
13 be 1:30 or later breaking for lunch. And I just
14 thought -- I thought in my mind, it's better to break now
15 than break later.

16 MS. ODOM: I agree. That way they see it --

17 THE COURT: Right. And it, also, gives them --

18 MR. RECKENBEIL: A chance to --

19 THE WITNESS: I've got a full team tonight. I'm
20 good.

21 THE COURT: Well, and the fact that one of them went
22 like that.

23 MS. ODOM: Your Honor, the Defendant is out on bond.
24 So we just need to take that up since we've started the
25 trial.

1 THE COURT: Right. I don't have --

2 You're going to -- you're going to come back, aren't
3 you?

4 MR. RECKENBEIL: Yeah. He's been -- always
5 cooperative. He's showed up every time.

6 THE COURT: And, Mr. Shores, let me just kind of --
7 that's a technicality. But when the trial starts, that
8 means your bond, basically, terminates. And it's up to
9 the Judge to decide what happens, you know, whether --
10 but, you know -- so I'm just letting you know that -- you
11 know, we've had people skip out of it at lunchtime before.

12 MR. RECKENBEIL: I've had clients do that.

13 THE COURT: Not that I -- but I'm just saying,
14 regardless of whether you show up or not, the trial will
15 continue, you know. So we'll be going forward. So, I
16 mean, I don't expect you not to show up. But I'm just
17 telling you, we will --

18 DEFENDANT SHORES: Yes, sir.

19 THE COURT: -- proceed forward, so.

20 All right. We'll see you back at 1:20.

21 (WHEREUPON, a lunch break was taken.)

22 THE COURT: Do y'all have any jury charges that we
23 need to be looking at?

24 MR. RECKENBEIL: Your Honor, now, it -- it might
25 change, obviously, with --

1 THE COURT: Well, I know, yeah.

2 MR. RECKENBEIL: But I do have one about -- and I --
3 I gave this to Shannon -- Ms. Odom yesterday. If I could,
4 Your Honor, pass it up. I've got one for Your Honor --
5 not saying anything about our eyes -- and one for your
6 clerk --

7 THE COURT: Okay.

8 MR. RECKENBEIL: The spoliation charge, if we get to
9 that.

10 THE COURT: Yeah. That's fine. No -- I just -- I
11 like to put everything in --

12 MR. RECKENBEIL: Yes, sir.

13 THE COURT: -- and then take it out as -- as needed,
14 so.

15 All right. Are we ready for the -- is the State
16 ready for the jury?

17 MS. ODOM: Yes, sir, Your Honor.

18 And I will say, do you want officer -- Deputy Rackley
19 back on the stand for the video, or is he okay to sit out
20 here? I intend on questioning him further after --

21 THE COURT: Right. What I'm going to do is when the
22 jury comes in, I'm going to -- I'm going to ask him to
23 come up here and remind him that he's still under oath.
24 Because you may need to ask him -- I mean, I think you
25 probably need to kind of set it up a little bit just -- I

1 mean, I -- just kind of entry just for their purposes, so.

2 All right. If the jury is ready, bring them in.

3 (WHEREUPON, the jury came into open court at
4 approximately 1:31 p.m.)

5 THE COURT: All right. Ladies and gentlemen, I hope
6 everybody had a good lunch. We are -- the State's still
7 in their case. And I think --

8 Officer Rackley, if you'll come back around. And
9 I'll remind you that you're still under oath and in the
10 middle of questioning.

11 So, Ms. Odom, I will turn it back over to you.

12 MS. ODOM: Thank you, Your Honor.

13 CONTINUED DIRECT EXAMINATION

14 BY MS. ODOM:

15 Q Lieutenant Rackley, before the break, we were
16 discussing State's Exhibit No. 2, your body cam. So
17 you -- you have had a chance to -- to look at the disk.

18 A I have.

19 Q And how many videos are on here?

20 A Three.

21 Q But it's all of that night?

22 A Yes.

23 MS. ODOM: Okay. And, Your Honor, just for the
24 Court's information, I will have to press play three
25 separate times. So there will be just a bit of a break.

1 THE COURT: All right. And this is in without
2 objection?

3 MR. RECKENBEIL: Oh, yes, Your Honor.

4 THE COURT: All right.

5 MR. RECKENBEIL: It's without objection.

6 (WHEREUPON, State's Exhibit No. 2 was played in open
7 court.)

8 BY MS. ODOM:

9 Q All right. Lieutenant Rackley, we just got done
10 watching that video. I've got a few follow-up questions
11 for you.

12 So we saw in the video that the doors -- or heard the
13 doors lock, and whatnot. Who was locking and unlocking
14 those doors?

15 A I can't recall.

16 Q Okay. You mentioned several times on the video a 55,
17 or 1055, or several codes. What does that mean?

18 A That's -- that's the 10 code we use in law
19 enforcement for saying someone's possibly driving under
20 the influence.

21 Q Okay. So you were thinking that the Defendant was
22 DUI?

23 A Yeah, possibly, just with the -- all the actions that
24 had occurred. I was on the DUI task force here at the
25 sheriff's office where I did primarily DUI enforcement for

1 three years. So I -- I'd seen the actions, and demeanor,
2 and stuff. So I just assumed, at that point, that might
3 possibly be why he was acting the way he was.

4 Q And on the video, we heard you say, You're under
5 arrest for -- for DUI. Was he, ultimately, charged with
6 that?

7 A He was not.

8 Q Okay. Is that -- can you tell me about discretion
9 y'all have?

10 A It's with anything. You can determine -- charges can
11 be changed, you know, at -- at any point. The -- the
12 basis of that was I knew there was an arrestable offense.
13 I didn't per se -- I let it go on too long, and that's my
14 fault. It should have been a lot quicker than -- than it
15 was as far as getting him out. Because he had already
16 broken a law by not providing his ID and him being
17 identified as the driver of the vehicle.

18 Q That open container, was there -- did you see the --
19 any liquid coming out of that?

20 A As far as what they had -- when they had made mention
21 of what was beside the door?

22 Q Yes, sir.

23 A No, ma'am. I -- I couldn't tell you. But I never
24 seen anything poured out, other than the one that I poured
25 out that was open.

1 Q Okay. And what was in that one?

2 A I would believe it to be -- it smelled of -- of beer
3 or what I would know to be beer.

4 Q All right. Was there an odor about the vehicle?

5 A Oh, yes. It was strong.

6 Q And what did it smell like?

7 A It smelled like, you know, fermented alcohol like --
8 like a -- it wasn't like a distilled thing. It was like
9 a -- in my experience, it was a beer smell.

10 Q And at one point, you stated to the younger guy
11 something about the seat, on the video, the seats back, or
12 something?

13 A Oh, the gentleman we were out with, the -- the one
14 that you seen in the driver's seat was, actually, too tall
15 for that -- how close he was sitting up underneath the
16 dash of the car. So it just come to my attention -- I'm
17 like, he's -- he's all up underneath this thing and looked
18 like it was uncomfortable the way he was sitting.

19 Q And did you happen to notice the time stamp on the
20 video?

21 A Of?

22 Q Of what time it was shown on the video?

23 A It looked like 11:15 when I, initially, first saw it,
24 I -- I think. I didn't really pay that much attention. I
25 was watching the video, so.

1 Q All right. And so the report states that Vissage got
2 out there about 11:45. Would you say that the report's
3 right, or that your camera's off, or --

4 A I would -- I would go with the report. Like -- like
5 I said -- and I apologize for my language there in some
6 points. We had just got those cameras. So it was a -- it
7 was the inception of the new body camera policy. So we
8 were all new to it. And, you know, those -- I think they
9 were still working out bugs, and stuff as far as time
10 stamping and stuff like that with the company that we're
11 using.

12 Q All right. And you mentioned body cam policy. So
13 talk to me about what happens -- or what happened at the
14 time, it may or may not be different, when y'all would get
15 done with a stop. Was your camera automatically saved, or
16 how does that work?

17 A Okay. Basically, if y'all notice throughout the --
18 the video, there was times that I turned it off. If we're
19 not in contact with a -- a suspect, we have the discretion
20 to turn that off. And that's what we do. Because we're
21 normally talking -- you seen some talk between myself and
22 other officers on scene. And, normally, we'll turn it off
23 when we're communicating with one another. Like I said,
24 it was brand new.

25 After that, the body camera will fill up, eventually,

1 with enough data on it to where it has to be downloaded.
2 But the policy of the sheriff's office is at the end of
3 every shift, each officer has to download their body
4 camera footage. And inside the sheriff's office patrol
5 room, there's a -- a data collection kind of unit that you
6 plug these cameras up into and it automatically downloads
7 everything off the camera, puts it on a server. And then
8 the -- the camera is free to record more video.

9 With that being said, if it's an arrest such as this,
10 the -- the footage is to stay on the camera or on the
11 system until the -- the case is adjudicated, which means
12 either the Defendant's found guilty or not guilty.

13 Other incidents where it's just the -- what people
14 like to call routine traffic stops, those -- if we mark
15 them for deletion -- and after 90 days, the Office of
16 Professional Standards will review a lot of those and then
17 they'll knock them -- delete them out of the server to
18 open up room on the server.

19 Q Okay. And do you have any knowledge -- personal
20 knowledge about Deputy Vissage's body cam or in-car camera
21 footage?

22 A I do not, no.

23 Q All right. Just to go over a few more things before
24 I'm -- I'm done. This occurred in what county?

25 A Pickens County.

1 Q On what date?

2 A November 22nd, 2017.

3 Q And -- and it went into?

4 A It went into the 23rd of November.

5 Q Okay. And were you able to determine that the
6 Defendant was, in fact, driving on a suspended license?

7 A We were.

8 Q And were you able to determine that he gave you a
9 fake name or a false name?

10 A We were.

11 Q One last thing, Lieutenant. Is the Defendant in the
12 courtroom today?

13 A He is.

14 Q And can you point him out to us?

15 A He's the Defendant.

16 MS. ODOM: All right. Thank you, Lieutenant.

17 Please answer any questions from the Defense.

18 THE COURT: All right. Cross-examination.

19 MR. RECKENBEIL: Thank you.

20 CROSS-EXAMINATION

21 BY MR. RECKENBEIL:

22 Q Lieutenant Rackley, when an individual officer has a
23 body camera video that is operational, it demonstrates a
24 red light; is that correct?

25 A That's correct.

1 Q Did you see Officer Vissage -- Corporal Vissage in
2 the video when you were watching it?

3 A I did.

4 Q And did you -- can you describe him, please?

5 A He's about 6'5", probably 310, I guess.

6 Q A linebacker --

7 A He's a big guy.

8 Q A big guy?

9 A Yes, sir.

10 Q And did he have short sleeves on that evening, if you
11 can recall from the video?

12 A He -- he did.

13 Q All right. Do you recall in the video seeing that he
14 had a body camera right in the middle of his torso?

15 A I did.

16 Q And did you see, also, the fact that he had a red
17 light that was operational?

18 A I can't recall if that light was operational or not.

19 Q Okay. So if we were to replay the video, would you
20 have any reason to disagree with me that the time stamp in
21 the bottom left-hand corner was 11:26 and 20 seconds, and
22 the video showed Corporal Vissage's body camera with a red
23 light on it?

24 A I wouldn't argue with that. Because I saw it at some
25 point. I don't know what the time stamp was, but I did

1 see it.

2 Q Yes, sir. So you would agree with me that from that
3 video, Officer Vissage -- Corporal Vissage had the body
4 camera in his torso -- on his torso -- excuse me -- with
5 the red light operational?

6 A I cannot verify the red light. I seen the body
7 camera was on his person. But I don't know what -- to the
8 operational standard it was at that time.

9 MR. RECKENBEIL: Okay. Is there any way we can pull
10 the video back up to 11:26 and 20 seconds?

11 THE COURT: Don't ask me. I'm not the -- I'm not the
12 IT guy.

13 MS. ODOM: You said 11:26.

14 MR. RECKENBEIL: Yes, and 20 seconds.

15 (Pause.)

16 (WHEREUPON, a portion of State's Exhibit No. 2 was
17 played in open court.)

18 BY MR. RECKENBEIL:

19 Q Did you see where I was trying to get at?

20 A I did.

21 Q My finger wasn't quick enough.

22 A I did.

23 Q And you saw how he -- the red light?

24 A Yes, sir.

25 Q Okay. And in your experience, sir, that would be an

1 indication that that camera is operational?

2 A Yes, sir.

3 Q Okay. Talking about the vehicle that Corporal
4 Vissage was driving, it was a Ford Explorer; correct?

5 A I believe that's correct.

6 Q Have you ever operated a patrol vehicle -- Ford
7 Explorer like that?

8 A I currently have one now.

9 Q Okay. Yes, sir. And where from your recollection is
10 the in-car camera positioned?

11 A It is just to the right of the rear view mirror.

12 Q All right. Is there other Ford Explorers in your
13 fleet besides the one that you're operating right now?

14 A Yes, sir.

15 Q Okay. Are they identical, or are they different?

16 A The only difference is all of them now do have in-car
17 video cameras. If you see -- you'll see fully marked and
18 semi marked, we call it. Semi marked means there's no
19 light bar on top. I'm a lieutenant. And lieutenants on
20 red patrol have unmarked -- well, semi marked ones with no
21 light bar on top. But other than that, they're all
22 identical.

23 Q They're all identical?

24 A Yes.

25 Q Okay. So we're -- when we're speaking about the car

1 that you're operating in, it would be pretty much
2 identical to the one that was pictured on the video?

3 A As far as the one Corporal Vissage was driving --

4 Q Yes, sir.

5 A -- at that time?

6 Q Right.

7 A Correct.

8 Q Okay. And the way that the in-car camera is recorded
9 is identical now as it was then? Because I -- I
10 understood the body camera because you talked about
11 downloading it.

12 A Okay. Let me --

13 Q And please do. I would like you to explain.

14 A Okay. There's several different types of systems
15 that we were using at the time when this occurred.
16 There's a DVM 400, a DVM 800 system. What the DVM --
17 and -- and I don't want to be misquoted on this. I'm just
18 going to try to -- the differences between the two is the
19 new upgraded system that we have now. When we pull into
20 the back lot of the sheriff's office, it automatically
21 downloads to the server. And then it's cleared off
22 completely. There's nothing left on that camera because
23 it's all on the server.

24 The older style DVM 400s or the 800s -- I can't
25 remember which it was -- you, actually, had to remove the

1 memory card out of that system and place it into the
2 computer for it to go to the server.

3 Q Okay. You said that in 2017 that it was, basically,
4 a new policy, body cameras?

5 A Yes, sir.

6 Q Was it new having in-car cameras back in 2017?

7 A No. We'd -- we'd had them for -- for years. I
8 started in '02 at -- at Greenville County. And we -- I
9 had a camera in my car then.

10 Q Okay. So Pickens Counties vehicles, to include the
11 Ford Explorer, had an in-car camera's for much longer than
12 2017?

13 A Well, yes, most of them did. I -- I was a
14 lieutenant. Back then, lieutenants didn't have in-car
15 cameras.

16 Q Do you know if Corporal Vissage's vehicle had an
17 in-car camera --

18 A His should have been outfitted with one.

19 Q All right.

20 A I -- I can't tell you for certain. But it should
21 have been outfitted.

22 Q And is it correct that I understand that he would've
23 had to manually take out disks, flash drive, whatever the
24 recording device was and then manually load it into a
25 server back in 2017?

1 A It would have been either that one or the one that
2 automatically downloads when he pulls into the sheriff's
3 office.

4 Q Would you agree with me that you have a policy that
5 describes what an officer is to do when finishing his or
6 her shift about those in-car cameras?

7 A Yes.

8 Q And what does the policy state, just to the best of
9 your --

10 A There's -- there's more on the body camera policy
11 than there is -- it's a digital kind of policy. But --

12 Q In-car camera, sir. I'm sorry. I should have been
13 more clear on that.

14 A Okay. In-car cameras is just -- most -- the in-car
15 cameras must be activated when in contact with a --

16 Q And I -- I guess I didn't ask a good question on
17 that. If -- back in 2017, was there a policy that
18 described what the officer was to do at the end of the
19 shift when they --

20 A Not for an in-car camera, no, sir.

21 Q There was no policy on that?

22 A No, sir. There's no policy currently for what to do
23 with in car, only body-worn camera footage.

24 Q Okay. Would you agree with me that you would want to
25 keep those in-car camera videos?

1 A Absolutely.

2 Q All right. And how would you keep them back in 2017?

3 A Back then, we didn't have the server we have now. It
4 was just a computer with a large terabyte hard drive on
5 it. A lot of things have been upgraded since 2017, so.

6 Q Okay. And so back in 2017, you didn't have the
7 capability of keeping those videos of the in-car cameras?

8 A We did. It was just a different system than we have
9 now. I -- I couldn't tell you. I -- I'm not a computer
10 technician --

11 Q Sure. Understood.

12 A -- so I don't know all that stuff -- exactly the
13 words. But there -- there was ways of keeping footage.

14 Q All right. Now --

15 A If I can elaborate a little bit more.

16 Q Yes, please. I'd like to -- I'm more -- wanting to
17 know --

18 A Here -- here's what happens. If -- if I put a --
19 something in the system like my body-worn camera footage
20 that -- that we have here today -- when I knew this was an
21 arrest due to the circumstances of that arrest, I knew
22 there was a possibility that it was going to maybe, you
23 know, go to trial, or there would be court proceedings on
24 it. I label it with an incident number. Then that is the
25 2017 number -- case number I read.

1 When I put that in there, it marks that video to
2 where when the lieutenant over the Office of Professional
3 Standards goes through looking at it, he will not delete
4 it. Because he says, hey, he wanted to save this for a
5 reason. He doesn't know why I want to save it, but he
6 saves it. And -- and that's why it was there.

7 So if an officer through human error forgets to put
8 in something, there's a very strong possibility that gets
9 deleted.

10 Q Okay. So you would say that it's the officer's
11 responsibility that effectuates an incident or an arrest
12 to label it back in 2017 to make sure that it wasn't
13 deleted?

14 A Yes, yes, and is today.

15 Q All right. Now, moving -- I want -- I want to talk
16 about your policy about body cameras. Because I believe
17 it was instituted in 2015. But it took a while for it to
18 kind of roll out for the locales.

19 A Right.

20 Q You would agree?

21 A Yes.

22 Q And it was a new thing that was coming about here in
23 the State of South Carolina. Did Pickens County ever
24 create a body camera policy about how the officers use and
25 save those to video?

1 A It -- you know, and I can't quote the policy on when
2 they're supposed to download it. It's more of an
3 individual lieutenant -- like me, I'm -- I'm kind of more
4 a little retentive on stuff like that and kind of OCD. So
5 I make my guys within one shift download it and within
6 three days label what the video is.

7 So there's no exact policy on -- they're just
8 supposed to keep them updated, and stuff like that. And
9 how you're supposed to utilize the camera -- but I -- I
10 can't recall.

11 Q So do you have a written policy on body camera
12 retention, or you don't know --

13 A Yes.

14 Q -- in Pickens County?

15 A There -- there is, yes, sir. There is a body-worn
16 camera policy.

17 Q And where would I find that policy?

18 A It is through our -- it's in our general orders,
19 which I guess is a FOIA thing, Freedom of Information Act,
20 is what I would -- guess that's how you would get access
21 to that. I'm not sure. I'm not in that department.

22 Q Okay. Well, do you know if it mirror the SLED
23 policy?

24 A I have never seen SLED's policy.

25 Q All right. And you would agree that an individual

1 who is charged with a crime would have the ability to get
2 their hands on the body camera footage to see what
3 transpired. Would you agree with that?

4 A (There was no response.)

5 Q An attorney who represents an individual who's been
6 charged with a crime in Pickens County should have access
7 to the body camera footage?

8 A I guess the solicitor's office -- you know, a
9 discovery motion would get it.

10 Q Right.

11 A I -- I don't deal with that either.

12 Q Do you know who does?

13 A With us, it's the solicitor's office.

14 Q Right. But at your department, is there somebody
15 that works as a liaison between the solicitor's office and
16 your office?

17 A Yes. That would be Lieutenant Tony Robinson, who's
18 over our forensics unit.

19 Q Okay. Do you remember seeing the Ford Explorer and
20 the angle that it was parked?

21 A I don't recall.

22 Q It was described before as kind of a 45-degree angle.
23 Would you agree with the fact that that --

24 A I -- I don't recall how many Ford Explorers I seen
25 out there. There was Easley Police. And I -- I don't --

1 I don't recall exactly how it was pulled.

2 Q Okay. The video is what it is about the angle. I
3 was just asking you --

4 A Right.

5 Q -- if that caught your attention?

6 A I just -- I just didn't pay it any attention.

7 Q Okay. Did you see Mr. Shores after you left the
8 Bojangles' parking lot that evening?

9 A I did not.

10 Q Okay. Do you know who booked him in?

11 A I do not.

12 Q Mr. Miller left with that vehicle that evening;
13 right?

14 A Correct.

15 Q Keith Miller. Okay. Your in-car camera -- you would
16 have no reason to disagree with me that the in-car camera
17 is projected straightforward?

18 A Unless the camera head gets turned. We can manually
19 turn the camera heads.

20 Q Okay. And that camera is activated upon the blue
21 lights being activated?

22 A Yes. They can be, yes.

23 Q Okay. What do you mean by that, "they can be"?

24 A Well, there's several different ways. The camera can
25 be activated through the body mic, push -- press --

1 pressing it manually by hitting the record button --

2 Q Right.

3 A -- or by an activation of blue lights.

4 Q If your body camera indicates that it's on with the
5 red light, is your in-car camera, also, on?

6 A Yes.

7 Q All right.

8 A Now -- they are now. In 2017, possibly not. Our
9 systems are the same company now. And they link up. If I
10 activate my body camera -- that's a fourth way now in 2019
11 that we press the body camera and it activates the in-car
12 as well.

13 Q To the best of your recollection, in 2017, if the
14 blue lights were activated in a patrol vehicle, the in-car
15 camera would, also, be activated?

16 A If the camera's functional, absolutely.

17 MR. RECKENBEIL: Okay. Thank you, sir. Thank you
18 for answering my questions.

19 THE COURT: Any redirect?

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

21 THE COURT: All right. You may step down.

22 MS. ODOM: Can this witness be excused from his
23 subpoena?

24 THE COURT: Any objection?

25 MR. RECKENBEIL: I have no objection.

1 THE COURT: All right. You may be excused.

2 MS. ODOM: Your Honor, at this time, the State would
3 like to read in a stipulation.

4 THE COURT: All right.

5 MS. ODOM: The State and the Defense have stipulated
6 that the Defendant's license was suspended on the date
7 that -- on the date this case occurred, November 22nd,
8 2017.

9 THE COURT: All right. Anything else?

10 MS. ODOM: Nothing from the State, Your Honor.

11 The State rests.

12 THE COURT: All right. Ladies and gentlemen, the
13 State has rested its case in chief, which is the evidence
14 that they plan to present at this point. So there's
15 matters that we -- I have to go over with the attorneys.

16 So, at this time, I'm going to ask that you step back
17 to your jury room. Do not discuss the case.

18 And, Mr. Hester, I'm going to appoint you as the
19 Foreperson. Okay. And what that means is you're just to
20 lead any discussions when you begin deliberating. If
21 there's any notes or any questions that you need to
22 present to -- to the Court, then you would write those
23 out. But, as I tell everybody, you don't get a pay
24 increase for that.

25 So, anyway, step back to your jury room. Do not

1 discuss the case. And we'll bring you back out. It may
2 be, you know, closer to 20 minutes. So you can kick your
3 heels off.

4 (WHEREUPON, the jury was excused from open court at
5 approximately 2:38 p.m.)

6 THE COURT: All right. Let's take five minutes. And
7 then we'll put anything --

8 MR. RECKENBEIL: Thank you, Judge.

9 THE COURT: -- on the record that needs to be heard.

10 (WHEREUPON, a break was taken.)

11 THE COURT: All right. We're back on the record
12 here.

13 I'll be glad to hear any motions from the Defense.

14 MOTIONS

15 MR. RECKENBEIL: Your Honor, yeah. We have, I think,
16 a couple issues I'd like to bring to the Court's
17 attention.

18 THE COURT: Okay.

19 MR. RECKENBEIL: First, with -- as a matter of
20 course, Your Honor, the Defense would make a -- a motion
21 for directed verdict of acquittal on all charges as the
22 light most favorable to the non-moving party that the
23 State has failed to present all elements of each crime.
24 And, thus, respectfully, the Defense would ask for a
25 motion -- an order granting a directed verdict of acquittal.

1 THE COURT: All right. And I believe that the --
2 the -- you know, that there's a factual issue of -- I
3 mean, it really boils down to, do they believe Officer
4 Vissage that he was driving and switched, or he didn't. I
5 mean, and -- and I think that's going to be -- that's a
6 factual issue for the jury.

7 As far as the other elements, I think they have
8 been -- fallen [phonetic] through. But that -- that's
9 going to be the key issue, I think, that's for the jury to
10 decide.

11 So I'm going to deny your motion.

12 MR. RECKENBEIL: Thank you, Your Honor.

13 Secondly, myself and Ms. Odom have been discussing
14 about a curative instruction in regards to what Officer
15 Vissage testified to this morning about the warrant. It
16 was spoken about in the video again. But it was after
17 they ID'd my client. And so the bottom line is, I think
18 we both agree that there should be some curative
19 instruction coming from the Court in the sense that the
20 jury shouldn't take that into consideration.

21 Ultimately, that charge was dismissed, according to a
22 record from Florida that we've had e-mailed to us. But it
23 was after the fact in 2018.

24 Still, I would -- we've never -- in our discussions,
25 it was never a contemplation that that was going to be

1 admissible into evidence. I think 404(B) --

2 THE COURT: Right. And I don't -- I mean, I
3 don't think -- and I think it's -- the decision is, you
4 know, how can we craft something that accomplishes what
5 you want without over ringing the bell, basically?

6 MR. RECKENBEIL: Yeah. Your Honor, I think that a
7 curative instruction of saying there was a mention by
8 Officer Vissage as to an active warrant. That charge --
9 that charge was dismissed. And it just is not to be even
10 contemplated in the jury's deliberations for determination
11 of the meeting of the elements of the pending crimes,
12 something along those lines.

13 THE COURT: Yeah. I'm not sure that totally helps
14 you either. I think we need to work on that. That's
15 something we can address --

16 MR. RECKENBEIL: Right.

17 THE COURT: -- before we send it to the jury. So, I
18 mean, yeah -- I mean, I definitely -- and I think Ms. Odom
19 would agree, we need to discuss before -- let me give that
20 some thought.

21 MR. RECKENBEIL: Thank you.

22 THE COURT: Definitely, you know, we'll -- we'll
23 include something there.

24 MR. RECKENBEIL: My client has indicated he'd like to
25 testify. And we've -- we've all agreed that that is just

1 not the way to cure it is by him to try to get up there
2 and explain it. Because that just -- I don't think that
3 that is something that we really want to get into.

4 Because, again, it could open up the door, which we
5 don't want to do on that issue. And I think it'd be
6 better served with the Court giving a curative
7 instruction.

8 And so I'm happy for us to take that up later or in
9 the morning when we try to --

10 THE COURT: Right. And I think because -- like I
11 said, I don't see how we could put -- you know, we -- our
12 kind of rule of thumb is if you cannot get it to the jury
13 before 4:00 and if -- by the time we -- your client
14 testifies, by the time we figure out the charge, by the
15 time you argue and I charge, there's no way that can be
16 done by 4:00. So I -- I mean, I thought there was a
17 possibility. But I don't think it's going to happen now.

18 So let's just kind of -- I think we can plan on
19 arguing and charging in -- in -- in the morning.

20 MR. RECKENBEIL: And -- Your Honor, and I do think
21 that, also, the other thing that I -- I would like to have
22 the opportunity at the close of evidence -- which my
23 client has indicated he'd like to testify. So I know the
24 Court's going to have to go through that colloquy
25 questioning.

1 THE COURT: Yeah.

2 MR. RECKENBEIL: But I -- I would like to bring up my
3 motions on the spoliation and --

4 THE COURT: Right.

5 MR. RECKENBEIL: -- also, the due process issues.
6 And so I do think that that will take a significant amount
7 of time. Maybe we can accomplish that this afternoon
8 after my client testifies.

9 THE COURT: Okay. Yeah. I mean, I -- yeah, we
10 definitely --

11 MR. RECKENBEIL: Yeah. I would need to --

12 THE COURT: All right. So anything else as far as
13 motions before I talk to him about his Fifth Amendment
14 rights?

15 MR. RECKENBEIL: No, sir, Your Honor.

16 THE COURT: All right. Mr. Shores, is it -- "Shores"
17 with an "S"; right?

18 DEFENDANT SHORES: Yes.

19 THE COURT: All right. If you'll raise your right
20 hand. And this is just -- this is not for any testimony.
21 This is just for your -- for my advising your rights.

22 WHEREUPON,

23 ROBERT DARRELL SHORES,
24 after first having been duly sworn, testified as follows:

25 THE COURT: All right. First of all, you are Robert

1 Darrell Shores?

2 DEFENDANT SHORES: Yes.

3 THE COURT: And how old are you?

4 DEFENDANT SHORES: (There was no response.)

5 THE COURT: You can guess, ballpark --

6 MR. RECKENBEIL: It's not a trick question.

7 DEFENDANT SHORES: 55, 56. I don't keep -- I don't
8 keep up with it.

9 THE COURT: All right. Yeah. I quit forgetting -- I
10 quit keeping up with it, too, so.

11 And are you under the influence of any alcohol,
12 drugs, or medication today?

13 DEFENDANT SHORES: No, sir.

14 THE COURT: Okay. Do you have any health or mental
15 issues which would keep you from understanding what's
16 going on here today?

17 DEFENDANT SHORES: No, sir.

18 THE COURT: All right. We're now at the stage of the
19 trial where the State has rested. Okay. And so it is the
20 opportunity for you and your attorney to present any
21 evidence which you feel is appropriate. You don't have to
22 present any evidence. And one of the types of evidence
23 would be for you to testify.

24 Now, you have the absolute right to testify. But
25 you, also, have the right not to testify. That -- that's

1 your Fifth Amendment right that says no person shall be
2 compelled to be a witness against himself. And,
3 basically, what that means is you -- you don't have any
4 burden of proof whatsoever in this matter. So you don't
5 have to testify.

6 And if you decided that you didn't want to testify or
7 you felt it was appropriate not to testify, then I would
8 charge this jury that that was your absolute right. And
9 they could not consider that in any way whatsoever in
10 their deliberations, so.

11 But you, also -- you have the right to testify. But
12 if you testify, you're subject to the same
13 cross-examination anybody else would be. And part of that
14 is any prior criminal record that qualifies could be
15 brought out against you.

16 And I think we had some brief discussions between the
17 attorneys beforehand. And I think there were two items
18 that were questioned, a fraudulent check from --

19 Was it 2003?

20 MR. RECKENBEIL: Yes, sir, Your Honor. And failure
21 to stop for a blue light in 2012.

22 THE COURT: All right. Failure to stop for a blue
23 light, that does -- that's more than one year?

24 MS. ODOM: It is. It's up to three.

25 THE COURT: All right. And that was what year?

1 MR. RECKENBEIL: 2012, Your Honor.

2 THE COURT: All right. So that would be admissible
3 against you. I think -- the fraudulent check, I believe
4 that is -- it was beyond the 10 years. And I don't -- and
5 then it's up to the Court to make a decision whether its
6 probative value exceeds its prejudicial -- prejudicial.

7 I don't see any probative value whatsoever in a
8 fraudulent check in a case like this. So that would not
9 be admissible. I rule that it would not be. So,
10 therefore, you would be subject to being questioned about
11 your prior record on the failure to stop.

12 Now -- and I'm sure you've had a chance to talk with
13 your attorney. There's -- there's -- in addition to
14 your -- your right not to testify, I'm sure your attorney
15 has said there's some strategic reasons as well. Your
16 attorney would get final closing argument, and so forth.

17 But, ultimately, this decision is yours. And it's
18 your decision. But I want to make sure you've had
19 sufficient time to talk with your attorney about that
20 before I ask you, you know, about that.

21 First -- okay. Do you understand your rights, that
22 you have a right to testify?

23 DEFENDANT SHORES: Yes.

24 THE COURT: Do you, also, understand you have a
25 Constitutional right not to testify, and my instructions

1 to the jury if you did so?

2 DEFENDANT SHORES: Yes.

3 THE COURT: Okay. Have you had sufficient time to
4 talk with your attorney about this issue, or would you
5 like a few more minutes to talk with him in the hallway
6 about it?

7 (Pause.)

8 MR. RECKENBEIL: Your Honor, he'd just like -- could
9 I have two minutes in the hallway?

10 THE COURT: Right. Okay. That's fine.

11 And when you come back, I'm going to ask you if
12 you've made a decision.

13 So, you know, y'all take some time.

14 (WHEREUPON, a break was taken.)

15 THE COURT: All right. Mr. Shores, I've -- I've
16 given you some additional time. First of all, was that
17 sufficient time to discuss with your attorney whether you
18 wanted to testify or not?

19 DEFENDANT SHORES: Yes, sir. Yes, sir.

20 THE COURT: And do you need any additional time?

21 DEFENDANT SHORES: No, sir.

22 THE COURT: Okay. And based on your discussions with
23 your attorney and based on the rights that I have
24 discussed with you, what is your decision?

25 THE DEFENDANT: I wish to testify.

1 THE COURT: You wish to testify?

2 DEFENDANT SHORES: Yes, sir.

3 THE COURT: Okay. That's fine.

4 And if -- are we ready?

5 MS. ODOM: Yes, sir, Your Honor.

6 THE COURT: All right. Is the Defense ready?

7 MR. RECKENBEIL: Yes, Your Honor.

8 THE COURT: If the jury's ready, bring them in.

9 (WHEREUPON, the jury came into open court at
10 approximately 3:15 p.m.)

11 THE COURT: All right. Ladies and gentlemen, before
12 we broke, the State rested. So it's now the opportunity
13 for the Defense to present any evidence which they feel is
14 appropriate.

15 So at this time, I'll turn it over to Mr. Reckenbeil.

16 MR. RECKENBEIL: Thank you, Your Honor.

17 May it please the Court.

18 The Defense would call Robert Shores.

19 THE COURT: Mr. Shores, if you'll come around and be
20 sworn.

21 THE CLERK: If you would, please, place your left
22 hand on the Bible and raise your right.

23 WHEREUPON,

24 ROBERT DARRELL SHORES,

25 after first having been duly sworn, testified as follows:

1 THE CLERK: Thank you, sir.

2 If you would have a seat.

3 And state your name for the record, please.

4 THE WITNESS: My name is Robert Shores.

5 DIRECT EXAMINATION

6 BY MR. RECKENBEIL:

7 Q Robert, where do you live?

8 A I live in Spartanburg County, 1 Cleveland Court,
9 Spartanburg County.

10 Q Okay. How long have you lived in Spartanburg?

11 A Since 1970.

12 Q Okay. What do you do for work?

13 A I'm a contractor. I work on restaurants. Mainly,
14 Bojangles' and Burger King's are my two basic clients.

15 Q Do you, also, do odds and ends with different
16 furniture and different --

17 A Yes. I buy at estate sale auctions. And we do it
18 online. I've been doing this for over 10 years. And most
19 of the auctions I do purchase from are at online auctions.
20 And I still do that as of now.

21 Q Okay. And how do you find out about these estate
22 sales? Is there some website, or how --

23 A Yes. It's proxy bid. And I get e-mails from various
24 auction companies all over the United States, actually.
25 And -- and I bid on items. If there's substantial enough

1 items, I can have them shipped in if I bid out of state.
2 If not, generally, it's around the upstate here. And I,
3 actually, just go do -- pick up after the auction has
4 completed.

5 Q And if -- once you submit your bid online, how are
6 you then notified if you're the highest bidder, they
7 accepted your bid?

8 A We're -- actually, it's like a live online auction.
9 So when the clock times out and the auction net light has
10 ended, if you're the high bidder, you get it. And then at
11 the end of the auction, they'll send you an e-mail showing
12 your total of what you have won and all your items, when
13 to pick them up, and so forth.

14 Q How is the purchase of those items? Is it via in
15 person, or is it PayPal, or how is it done?

16 A No. It's a -- done by a -- linking your debit card
17 to the auction site. And so at the end of each auction,
18 you're automatically charged for the items that you have
19 won at auction.

20 Q So purchase -- so items are pre -- basically, prepaid
21 for before you go and pick them up?

22 A Yes.

23 Q All right. What evidence do you ever get? Do you
24 get a printout --

25 A Yes. I get printed copies of receipts and the items

1 I have won at auction.

2 Q All right. So moving to the night of November 22nd,
3 2017. Describe what you were doing that night before the
4 Bojangles'.

5 A Okay. Me and my nephew, we went to retrieve the
6 items I won at auction. And it was quite a lot of stuff.
7 It went from a machinist lathe to antiques, to paintings,
8 and all -- various types of antiques.

9 Q And your nephew's name is?

10 A Keith Miller.

11 Q Okay. The -- the location of the pickup area --
12 where did you have to go to pick up the items?

13 A We had to go to Seneca to pick them up. And it took
14 several, several hours to load all this, mainly because
15 the lathe and all the equipment with it is very heavy and
16 it's hard to handle. And so it -- by the time we got
17 everything loaded and situated, we were there, at least,
18 five hours.

19 MR. RECKENBEIL: If I can approach the witness, Your
20 Honor.

21 THE COURT: You may.

22 BY MR. RECKENBEIL:

23 Q Robert, if you would just take a look at these, and
24 just if you could identify and -- do those pictures
25 reflect, basically, the load that you had in the vehicle?

1 A That is -- that is exactly the load we had on the
2 vehicle at that time.

3 Q And in the back of the vehicle, does that accurately
4 depict what you have?

5 A Yes, sir. That's exactly how it was loaded with the
6 items that we had picked up.

7 MR. RECKENBEIL: Okay. Your Honor, if I could have
8 them marked and move those into evidence.

9 THE COURT: Any objection?

10 MS. ODOM: No objection.

11 MR. RECKENBEIL: It's Defense Exhibit Nos. 1 and 2.

12 (WHEREUPON, Defense Exhibit Nos. 1 and 2 were marked
13 for identification and admitted into evidence.)

14 BY MR. RECKENBEIL:

15 Q Are you able to see them if I put them on the --

16 A Yes, yes.

17 MR. RECKENBEIL: Your Honor, if I could publish them
18 for the jury.

19 THE COURT: All right.

20 MR. RECKENBEIL: Can everyone see that okay?

21 (WHEREUPON, the jurors indicated in the affirmative.)

22 BY MR. RECKENBEIL:

23 Q So, Robert, if you could take me through kind of what
24 we're looking at here.

25 A Okay. There's a -- toward the back end, there's

1 several machinist parts in the boxes. Then moving further
2 up, there's antique tables. There's, also, the -- the
3 fireplace insert, and just various other household
4 antiques, and antiques that came out of the -- the
5 cabin -- log cabin.

6 Q Looking at the -- what is carry on? What -- what is
7 that?

8 A That's a 20 -- a 20-foot utility trailer.

9 Q Okay. And the utility trailer, does it have lights
10 on the back of the trailer, or are those just reflectors?

11 A It does have lights on the back of the trailer.

12 Q And those lights would light up when the brake is
13 touched?

14 A Yes.

15 Q Or to the best of your knowledge --

16 A Yeah. On each side of the trailer, also.

17 Q Okay.

18 A It -- it would light up.

19 Q All right. And in the front of this, is this
20 attached to a vehicle?

21 A Yes, it is.

22 Q All right. And is it the Suburban that is in the
23 video that we saw --

24 A Yes. Yes, sir, it is.

25 Q -- before?

1 And do these -- does this picture accurately depict
2 all the items that were loaded into the vehicle?

3 A Yes, sir, it does.

4 Q And that was loaded into the vehicle at the estate
5 sale?

6 A Yes, it was.

7 MR. RECKENBEIL: Okay. Thank you.

8 THE COURT: And just for the record, you -- the first
9 photograph was Defense Exhibit No. 2, and the second was
10 Defense Exhibit No. 1?

11 MR. RECKENBEIL: Yes, Your Honor.

12 THE COURT: All right.

13 MR. RECKENBEIL: Thank you very much.

14 BY MR. RECKENBEIL:

15 Q So after the trailer and the vehicle was loaded, what
16 did you all do?

17 A After we loaded and got everything on there, we did
18 place some straps across some of the items to help secure
19 what was on there. And then when we left, we had stopped
20 at a grocery store, bought some chips and some candy. And
21 then we went on down the road. And we stopped at
22 McDonald's and, actually, got a burger right there in
23 Easley.

24 Q And then after coming out of the McDonald's, how far
25 down the road was it until you came to the Bojangles'?

1 A I think it was just a few miles, maybe. And when
2 we -- we were getting down to where I think you turn off
3 of Easley Highway to go toward 85, and I told my nephew to
4 turn off into the parking lot so that we could check our
5 straps. Because we'd already came from Seneca to Easley.
6 And things will always shift a little when you -- when
7 you're driving.

8 And so when I instructed him to turn off into the
9 drive -- into the Bojangles' parking lot there, as soon
10 as -- we turn in and we go down, and we pull up, and we
11 park. I undo my seat belt. And I turn to reach and get
12 my coat. And when I turned to reach to get my coat,
13 Officer Vissage all the sudden comes flying up at a high
14 rate of speed at an angle toward our vehicle.

15 He then jumps out of his vehicle, and runs over to
16 our vehicle, and starts demanding we get out of our -- get
17 out of the truck. And I'm like, you know, why? And he
18 runs back to his vehicle, turns his blue lights on, runs
19 back over --

20 Q Can I stop you a second?

21 A (There was no response.)

22 Q So the -- when he first comes up, did you see whether
23 or not the vehicle had on the blue lights or not?

24 A He did not have no blue lights on.

25 Q Okay. Continue with what you were saying.

1 A Okay. The first time he jumped out and he come
2 running over. He starts to -- demanding we get out of the
3 vehicle. And he's acting -- I mean, he's hollering at us,
4 you know. And -- and then he runs back to his patrol car,
5 flips his blue lights on, comes running back over, and
6 starts demanding we get out of the vehicle again.

7 And at this point, he's acting crazy to me. And I
8 tell my nephew, I said, No, do not get out. I said,
9 He's -- I said, I don't know what his problem is. I said,
10 But do not get out. And from that point on, it escalated.

11 Q In the video, it shows that you've got something that
12 you're holding in your hand in -- in the car. What was
13 that?

14 A That was my cell phone. I started -- I started
15 videotaping it. As soon as he run back and turned his
16 blue lights on, I started videotaping what he was doing.

17 Q Okay. And the recording that you had on that -- on
18 that video, was it the same kind of angle, but from the
19 reverse of what the lieutenant had with his body camera?
20 So, basically, if you're sitting in the car, it would be
21 almost like a mirror?

22 A Yes.

23 Q Okay. And do you know how long or the -- the order
24 in which the police officers arrived, if you have a
25 recollection?

1 A I do not. I -- I remember there was one officer that
2 pulled up a few minutes later, maybe three to five minutes
3 after he initially jumped out and then run back, turned
4 his lights on. And then he runs back over like he made a
5 traffic stop, which he did not do. All he done was pull
6 up on us as we were getting prepared to check what was
7 strapped on our trailer.

8 Q Did Corporal Vissage indicate to you why he wanted
9 you to get out of the -- the vehicle?

10 A No. He just started demanding we exit our vehicle
11 right away.

12 Q All right. And then the other officer that came
13 second, did that officer indicate why you should get out
14 of the vehicle?

15 A Not that I recall. The second officer didn't really
16 say much, I don't believe. And then there's more officers
17 that showed up. And from the very start, I told him I
18 wanted to see a supervisor and I wanted a -- an attorney
19 before they ever started escalating the whole incident.

20 Q Okay. In 2012, you would agree with me that you had
21 a conviction in Spartanburg for failure to stop for a blue
22 light. Would you agree with that?

23 A It was a conviction. But it was never that I,
24 actually, failed to stop. That's just the way they
25 initialized it. And in order to get time served, I had to

1 plead guilty to it.

2 Q And that was back in 2012?

3 A Yes, sir.

4 MR. RECKENBEIL: Okay. Please answer any questions
5 that Ms. Odom might have for you.

6 CROSS-EXAMINATION

7 BY MS. ODOM:

8 Q Who's Ricky?

9 A That's my brother.

10 Q And why did you give his name that night?

11 A Because when they escalated the incident about saying
12 that I was driving and I knew I wasn't driving that they
13 were -- if I had give them my name, they still would have
14 forced me to the fact of trying to say I was driving. And
15 I was afraid. Here it is Thanksgiving eve. All I want to
16 do is go home -- get home. I'm not doing nothing wrong.
17 And, yet, he comes up and starts insinuating that I'm the
18 driver.

19 Q Okay. So you gave the name Ricky. So that's not
20 your name; right?

21 A No.

22 Q So that's a false bit of information you gave to law
23 enforcement?

24 A Not true. You're under arrest. It's not false
25 information.

1 Q Then that's not correct. So if you gave some -- the
2 officer a false name, then that would be false
3 information?

4 A Well, I told him --

5 Q Yes or no --

6 A -- I wanted an attorney first, which they're supposed
7 to cease asking questions once I ask for an attorney.

8 Q Okay. You kept talking after you said you wanted an
9 attorney; isn't that right?

10 A They kept questioning me, which they were not
11 supposed to do.

12 Q You kept talking even after Lieutenant Rackley said,
13 Please be quiet. You kept talking; isn't that right?

14 A (There was no response.)

15 Q And isn't it right that that open beer bottle
16 belonged to you?

17 A No. It was not open. The lid was on it. It was
18 seal broken, but it was not open. State law states open
19 container, not sealed broken container.

20 Q Not only was it open, but isn't it right that the
21 beer was leaking out of your vehicle on to the ground
22 beside the driver's side door?

23 A I don't know where it was leaking at. I just know it
24 was behind the seat where it was left with the cap on it.

25 Q And you got that beer when you got the candy and

1 snacks?

2 A No. We had the beer when we arrived at the auction
3 earlier that day.

4 Q So y'all took beer from your house to Seneca?

5 A I had it in a cooler.

6 Q And how far is it from your house to Seneca?

7 A Over an hour. But none of it was drank.

8 Q All right. And you -- your license was suspended
9 that night; right?

10 A (There was no response.)

11 Q I'm not asking if you drove. But was your license
12 suspended?

13 A Yes. But I didn't need a license.

14 Q Okay. So your license was suspended. So if you'd
15 been driving, you'd have been driving on a suspended
16 license; correct?

17 A If I'd been driving, but I wasn't driving.

18 Q Okay. So you're saying you didn't do the D -- DUS,
19 and that open container wasn't really open because this or
20 that, and the false statement you gave doesn't count. So
21 you didn't commit a crime?

22 A Well, he didn't have probable cause to begin with.

23 Q And --

24 A He pulled up on us and started making accusations and
25 demanding we get out of our vehicle while we were sitting

1 on private property. He did not make a traffic stop. He
2 pulled up on us, and jumps out, and starts acting crazy,
3 and demanding we get out before he ever initiates his blue
4 lights or gives a reason.

5 Q And where's your cell phone footage?

6 A On my cell phone that I submitted to him.

7 Q All right. So tell me this, did you go to
8 McDonald's -- so you left Seneca, you went to McDonald's.
9 And then when you left McDonald's, you continued on down
10 the road?

11 A Yes.

12 Q And that McDonald's was in Easley?

13 A Yes.

14 Q All right. And when they kept telling you that you
15 were under arrest, why didn't you get out of the car the
16 first time?

17 A Because I should not have been under arrest for
18 anything as a passenger, especially when they said I'm
19 under arrest for DUI. I cannot be under arrest for DUI
20 when I'm the passenger and not the driver.

21 And how can I, actually, be under arrest --

22 Q And I'm sorry. I'm not asking a question.

23 A Okay.

24 Q All right. So you're saying Vissage was out of
25 control, but that's not the case, is it? Vissage was calm

1 that night, wasn't he?

2 A No, ma'am.

3 Q You were the one out of control that night, weren't
4 you?

5 A I think I was very calm in that video. Don't you
6 think?

7 Q And you think the law doesn't apply to you, don't
8 you?

9 A No, ma'am.

10 Q And that's why you didn't get out of the car after
11 one --

12 A No, ma'am.

13 Q -- two, three --

14 A No, ma'am. I felt threatened. As I was being -- I
15 was threatened. You've got all these armed officers
16 around me.

17 Q You had one armed officer and two civilians; isn't
18 that right, when Vissage first got out with you? One
19 officer and two of y'all; isn't that correct?

20 A Yeah. But he's armed, I'm not.

21 Q You're telling me -- did they do anything? Did they
22 hurt you when you got out of that vehicle?

23 A They did. They grabbed me. They jerked my cell
24 phone out of my hand, throwed [sic] it on the ground,
25 broke the screen when I asked them not to. Of course,

1 they did.

2 Q So you were driving that night at some point, weren't
3 you?

4 A No, ma'am, I sure wasn't.

5 Q And your testimony is you got scared when you saw
6 Deputy Vissage?

7 A No.

8 Q You weren't scared?

9 A I got scared when he jumps out and starts to tell us,
10 Get out of your vehicle. I'm in the passenger seat. My
11 nephew's in the driver's seat. He comes running over. I
12 mean, he come flying up out of nowhere at a high rate of
13 speed --

14 Q So were you scared, or were you not scared?

15 A When he first come jumping out, yes. I was like,
16 what's this guy doing? He's crazy.

17 Q Were -- and your nephew looked terrified on that
18 video. Would you agree with me?

19 A I don't know.

20 Q When it comes down to it, you didn't get out because
21 you didn't want to go to jail that night; isn't that
22 right?

23 A They had no reason for me to get out.

24 Q That is not my question. You didn't get out that
25 night because you didn't want to go to jail; isn't that

1 correct?

2 A I didn't get out because I didn't have to.

3 Q And you think the law doesn't apply to you, don't
4 you?

5 A No, ma'am. I didn't have to get out --

6 MS. ODOM: That's all --

7 THE WITNESS: -- that's not the law.

8 MS. ODOM: -- I've got.

9 THE COURT: Redirect?

10 MR. RECKENBEIL: Your Honor, I do. But can I have a
11 sidebar with Your Honor very quickly?

12 (WHEREUPON, a bench conference was held.)

13 REDIRECT EXAMINATION

14 BY MR. RECKENBEIL:

15 Q Robert, you were asked on cross-examination where the
16 cell phone footage was; correct?

17 A Yes.

18 Q That cell phone footage, did you provide it to my
19 office?

20 A Yes.

21 MR. RECKENBEIL: All right. Thank you.

22 THE COURT: You may step down.

23 All right. Anything else?

24 MR. RECKENBEIL: That would be the only presentation
25 the Defense would have, Your Honor.

1 THE COURT: So the Defense rests?

2 MR. RECKENBEIL: The Defense rests, Your Honor.

3 THE COURT: Do you have anything else?

4 MS. ODOM: No, sir.

5 THE COURT: All right. Ladies and gentlemen, the
6 Defense has rested. And the State has not -- has
7 indicated they're not going to present any additional
8 evidence -- have some rebuttal, if needed. So, therefore,
9 that's all of the evidence that will be presented to you.

10 In looking at it now, it's 3:30. We kind of have a
11 rule of thumb that if we cannot present the case to a jury
12 before 4:00, then we don't do so. And -- and it's not in
13 a position to present to y'all at this point. Because we
14 still have -- the final stage of the trial would be
15 closing arguments by both attorneys and charge on the law.
16 So it would be well past 4:00, probably closer to 4:30.
17 And I don't want to do that and have y'all begin
18 deliberations at 4:30.

19 So what we're going to do -- we still have some other
20 matters we have to go over in the case. So what we're
21 going to do is start back at 9:30 in the morning. Be back
22 in your jury room at 9:30 and be ready to go.

23 And, like I said, the -- we're only in -- the final
24 stages would be the closing arguments and the charge. And
25 at that point, I'll send you back to your jury room for

1 deliberations.

2 So, again, my four little rules, and that would be do
3 not discuss the case among yourselves, or family members,
4 or anybody. You just have to tell them, like, sorry, I
5 can't talk to you. The Judge will throw me in jail. Nah.
6 I'm just kidding. Do not do any type of research about
7 the case, about the charge, about the parties, or
8 anything. Everything that you're supposed to get, you're
9 supposed to get in this courtroom.

10 Do not pay any attention to any media coverage,
11 whether it be news -- like I said, I'm not aware of any
12 media coverage, or anything like that, or social media.
13 And if anybody should contact you other than the clerk's
14 office, then, please, let the bailiff know.

15 Otherwise, y'all have a good evening. And I will see
16 y'all in the morning at 9:30.

17 (WHEREUPON, the jury was excused from open court at
18 approximately 3:38 p.m.)

19 THE COURT: All right. The jury's secure.

20 Mr. Reckenbeil, and I -- you can put on -- if you
21 want to put on the record about your --

22 MR. RECKENBEIL: Sure. Your Honor --

23 THE COURT: I guess I need to -- at sidebar, you
24 indicated that you were going to try to get in through
25 this witness something that you had sent to the -- and

1 that was kind of -- one of the reasons is this witness
2 didn't -- wasn't the one that sent that.

3 MR. RECKENBEIL: Right.

4 THE COURT: And I -- and if you want to -- you want
5 to mark that, by all means, I want you to protect your
6 record.

7 MR. RECKENBEIL: Yes.

8 THE COURT: Go ahead and mark that as...

9 MR. RECKENBEIL: A Court's Exhibit.

10 (WHEREUPON, Court's Exhibit No. 2 was marked for
11 identification and admitted into evidence.)

12 MR. RECKENBEIL: Your Honor, that's just a letter on
13 May 31st indicating with a certificate of service that we
14 sent six pictures, along with two videos, which were
15 including the video that Mr. Shores was talking about on
16 the witness stand.

17 THE COURT: Right. And -- and I -- and you presented
18 that at sidebar. And I indicated that I was not going to
19 let it in. And part of it is because this particular
20 witness was not the one that had anything to do with
21 sending those documents over. He -- and I think you
22 got -- he presented them to you. But as far as your --
23 you know, he had nothing to do with sending that to them.

24 So I'm not sure, you know, based on the objection
25 that -- and that's not the basis of that, so.

1 MR. RECKENBEIL: Sure.

2 THE COURT: All right. Anything else?

3 MR. RECKENBEIL: Your Honor, if -- if the Court so
4 pleases, I would bring up our motion --

5 THE COURT: All right.

6 MR. RECKENBEIL: -- of what's been submitted.

7 THE COURT: Well, let's -- let's do this in order.

8 Now, does the State have anything first?

9 MS. ODOM: No, sir.

10 THE COURT: All right. And the Defense, I'll be glad
11 to hear anything.

12 MOTIONS

13 MR. RECKENBEIL: Thank you, Your Honor.

14 We've -- we've submitted to the State, as well as
15 made a Court's Exhibit -- previously, when we thought this
16 case was coming to trial in August, we submitted a motion
17 that I believe is relevant under South Carolina Rules of
18 Criminal Procedure 5(D)(2) where I'm required to place the
19 Court on notice that there's unavailable evidence.

20 I believe that the clear record demonstrates that
21 Officer Vissage, his body cam -- camera footage and audio,
22 as well as his in-car camera video and audio have not been
23 disclosed and turned over in discovery. The -- the case
24 that I have cited and I looked at demonstrates the fact
25 that we're required under Rule 5 to send a motion of

1 discovery, which we've -- we've done. That's in the
2 record here of my exhibits.

3 And then the question turns at the end of the
4 evidence is what sort of remedy shall the Court apply when
5 it comes to the missing evidence. We've got the case of
6 Reeves that talks about a curative instruction of,
7 basically, the civil remedy whereby there's a negative
8 inference of anything that is missing would -- therefore,
9 the Court would instruct the jury that you are to infer in
10 the negative that the video and the audio depicts what, in
11 fact, the Defendant says that it would depict.

12 I think what we've tried to do is piece together
13 through circumstantial evidence of the positioning of the
14 vehicles. And, also, the positioning of the officer of
15 what, in fact, would have been recorded. And --

16 THE COURT: All right. Let me just stop you just so
17 I can be clear. In your -- your relief you're requesting
18 is a charge on spoliation?

19 MR. RECKENBEIL: That would be -- yes, sir.
20 That would be--

21 THE COURT: Do you have a proposed charge?

22 MR. RECKENBEIL: I have, Your Honor. I've submitted
23 it to you.

24 THE COURT: Okay. I got you. I'm sorry. All right.
25 I'm sorry. Go ahead.

1 MR. RECKENBEIL: I would think that that -- at a
2 minimum that the Defense is entitled to a spoliation
3 charge on the -- of what I've submitted already to the
4 Court. That there's an inference that the -- that the
5 in-car body camera recording would, in fact, give
6 pertinent information, evidence as to what the vehicle was
7 projecting outside the camera view where, in fact, it was
8 pointing directly at the driver's side.

9 And I think that the evidence that has been presented
10 into the record of the video demonstrates that the Ford
11 Explorer was parked at an angled degree, that it can be
12 reasonably concluded that that video would have a wide
13 view. And if it was, in fact, one could, in fact, show the
14 non-switching of the -- the driver and my client.

15 Because that I think, Your Honor, is the -- is the
16 real issue when it comes to whether or not that there is
17 reasonable suspicion to further the traffic stop. There
18 has been no indication that there was a charge for
19 somebody having brake lights that were operational or not
20 operational. And everything hinges upon whether or not
21 that he saw further criminal activity that was taking
22 place once he approached the vehicle.

23 His body camera, if activated, would have picked up,
24 again, the view of what was going on inside that vehicle
25 and, also, the commands that were being

1 audibled [phonetic] by Corporal Vissage or could have been
2 depicting whether or not that he saw them at the time
3 switching seats.

4 I think it's reasonable to deduce that police
5 officers are -- they audibilize what they're seeing not
6 only during the time frame of, you know, an excited
7 utterance, but as to -- in my experience, police officers
8 would be like, they're switching seats, they're switching
9 seats almost to create a record. That is the whole
10 purpose of the body cams and the in-car cameras.

11 And, Your Honor, I think it is important to note that
12 in Title 23, our general assembly -- Title 23-1240
13 established in June of 2015 that they commanded the South
14 Carolina Law Enforcement Division to establish a policy
15 that, ultimately, would get to the State and local police
16 divisions so that, ultimately, this could be rolled out.

17 And in 23-1-240, Subsection 5(B), it states that in
18 addition to persons who may request and must receive data
19 recorded on body-worn cameras provided in Subsection 2 of
20 this statute, the following are entitled to request and
21 receive such data pursuant to the South Carolina Rules of
22 Criminal Procedure, civil procedure, or court order. And
23 that is Subsection B, a criminal defendant if the
24 recording is relevant to a pending criminal action.

25 I don't think that there's any question, Your Honor,

1 from our standpoint that that body camera, and recording,
2 and audio is relevant. I don't think there's any question
3 that we've indicated from the lieutenant's testimony that
4 in the normal course of operation of that body camera, you
5 would have a red light on. We've established into the
6 record that his -- Vissage's red light was on indicating
7 that that camera was being operational. And so what we
8 see is that the Defendant is, at the minimum, entitled to
9 a spoliation charge.

10 But then the next question is whether or not there's
11 a due process violation. The test for that, it's been
12 laid out in the Reeves case that I've included in our --
13 in our memorandum. And it -- it goes to the fact of
14 whether or not, under the Constitution, the Defendant has
15 been deprived the opportunity of a fair trial.

16 And the -- the test that our Supreme Court has laid
17 out in 2015 is the fact that not only do we have to
18 demonstrate that it's been done in bad faith, we have to
19 then show that it's exculpatory. And I -- while I see the
20 test that they've laid out and --

21 THE COURT: Well, talk to me about bad faith. What
22 evidence do you have of any bad faith?

23 MR. RECKENBEIL: Your Honor, there -- there is
24 nothing that I'm going to sit here and say that the
25 officers are, you know, having a bon fire in the back of

1 the police station burning things. That is just not it.

2 I think the only thing that can be indicated is a
3 breach of policy. And I think that what I've tried to
4 establish with the officer is that they had a policy that
5 they were to download their -- their cameras, basically,
6 into a system at the end of each shift. And so --

7 THE COURT: And you don't have any evidence that that
8 didn't happen.

9 MR. RECKENBEIL: That's a very good point, Your
10 Honor. It is -- there is no evidence to show that that
11 didn't happen. But we would then have an inference of the
12 fact, well, we should have received it if it did happen.

13 THE COURT: Well, I mean, I'm just -- yeah. I mean,
14 I don't think there's really any evidence on, you know --
15 I mean, yes, it -- it should have been collected and it
16 hasn't been. But I don't think there's any -- any
17 evidence of what happened or any showing of bad faith,
18 which I think that that -- you do have the burden to show
19 that.

20 MR. RECKENBEIL: And -- and, Your Honor, I would
21 agree with the Court that that is definitely our test from
22 2015. But the Reeves case, I think, went -- went one step
23 further. Because I think the Reeves court was concerned a
24 little bit about the whole fact of do we -- how do we show
25 bad faith?

1 And in the Reeves case, they said, well -- in quoting
2 State v. Reeves, The trial court found that -- no due
3 process violation because there was no bad faith by the
4 State and no evidence the lost clothing possessed any
5 exculpatory value.

6 Judge, what I think that the Court is -- was trying
7 to say there is the fact that we're saying that there's no
8 bad faith, but we're then, also, going that second step
9 with no exculpatory value.

10 Your Honor, I think it's -- it's a path that we've
11 not crossed yet in the sense that if the exculpatory value
12 outweighs the bad faith, I think the exculpatory value
13 would then hinge and hit the Constitutional fundamental
14 right that the legislature I think is -- what they're
15 describing when they use the word "entitled" in that body
16 cam statute. I think we're at a -- the Court, I think,
17 would probably say that the exculpatory value would
18 outweigh bias, even though the test is it's got to be
19 biassed and exculpatory value.

20 THE COURT: Well, let's talk about the exculpatory.
21 Now, are we talking about the body cam or the -- or the --

22 MR. RECKENBEIL: I think we -- we have the body
23 camera, which is, also, indicative of -- of the in-car
24 camera.

25 THE COURT: Okay.

1 MR. RECKENBEIL: But -- but, realistically, Your
2 Honor, I think it's more the body camera. Because that is
3 what I think is -- is recording his actions and is --
4 also, his verbiage. Because we can take what's only in
5 the record, and that's the lieutenant's.

6 THE COURT: But the whole key here is who was
7 driving. And neither one of those cameras would have been
8 exculpatory in that effect.

9 MR. RECKENBEIL: The way his vehicle was parked,
10 that's the only thing, Your Honor, is that --

11 THE COURT: Because when he pulled up what he's
12 saying is they'd already switched.

13 MR. RECKENBEIL: He's saying he saw them --

14 THE COURT: Right. So, I mean, how would those
15 cameras have recorded that? Say, they were preserved. I
16 mean, I don't think there's any -- I mean, that's your
17 basic issue. And --

18 MR. RECKENBEIL: It's the angle of the vehicle as
19 it's approaching. The angle of the vehicle, Your Honor,
20 is -- what I see is it's reasonable that the view that we
21 have there, because it's angled, would see whether or
22 not --

23 THE COURT: But didn't they say it would not have
24 turned on until the blue light turns on?

25 MR. RECKENBEIL: That's the in-car camera.

1 THE COURT: Right. And the blue lights were not --
2 based on your client's testimony, were not turned on until
3 well after he'd, actually, already confronted your client.

4 MR. RECKENBEIL: Right. But we see with Lieutenant
5 Vissage him coming to the -- to the scene. As he's
6 pulling in, his body camera's already on.

7 And so the Court in Reeves is, I think, very accurate
8 in saying that we're going to now tell the trial courts
9 that they're going to go through this, you know, unknown
10 expedition. And it's -- it's not an easy thing.

11 But I think what we've got is just the presentation
12 of evidence that gives us a reasonable belief that the
13 evidence, if it was recorded and if it did show no
14 switching of seats, we would believe that's exculpatory.
15 And that would prohibit the stop because there's no
16 furtherance of criminal activity.

17 Because I -- I don't think there's been anything
18 really set forth in the record that -- besides the
19 switching of seats that's really what pinned them there.
20 Because if -- if the brakes were on and he was there to
21 just tell him that your brakes were on for a period of
22 time, that's almost a consensual encounter. And that's
23 the first thing that I put forward in our brief. But
24 the -- really the -- is the switching of seats.

25 THE COURT: I mean, let me hear from the State.

1 MS. ODOM: On the issue of if Vissage's body worn
2 camera would have picked up the switching of seats, I'm
3 just going to respectfully disagree on that. Just because
4 when he pulled up, he's still in his car.

5 And we can see from the video and from testimony that
6 the -- the body-worn camera is kind of at the sternum. So
7 it's below the breast. And that would have been behind
8 the steering wheel or at the top of the steering wheel.
9 And even if the car was positioned just right to show or
10 to not show switching, the car angle wouldn't have made a
11 difference as far as the body-worn camera because that
12 would have been behind the steering wheel.

13 So I just wanted to -- to speak on that first. So
14 with the -- the issue of is it -- what do we do? What's
15 the remedy here for evidence that hasn't been turned over
16 that's been lost? I think Reeves is clear on that, as
17 well as Youngblood, which ended up they had lost -- let me
18 talk about Reeves first.

19 So in Reeves, the amount of evidence lost was a good
20 deal. This was, you know, a shooting where they lost
21 many, many items, law enforcement did, the victim's
22 clothing, jewelry, hats, credit cards, phones, all of
23 these things lost.

24 And the -- the Court found that the remedy to that --
25 well, first, you have to show bad faith in law

1 enforcement. They didn't purposely lose anything. And
2 that's the same in this case. There's no testimony that
3 Vissage purposely deleted anything. It just was gone,
4 whether it's on a server or not. So there's no bad faith
5 here. No evidence of that.

6 Then once you get past the bad faith, you go on to
7 the remedy, which is of forceful or full
8 cross-examination, which the Defense was able to do
9 with -- with Vissage. They had and took advantage of the
10 opportunity to question him, as well as Rackley about
11 procedures, about why it wasn't there. And then after
12 cross-examination, the instruction -- the spoliation
13 instruction.

14 So I don't -- this just isn't to the level of a
15 dismissal. Best case scenario for the Defense is going to
16 be the spoliation instruction. And so that's -- that's
17 Reeves.

18 And I understand the argument of, you know, SLED says
19 to -- to do this. They're not complying. In a perfect
20 world, law enforcement would be able to comply with
21 everything. That just -- just doesn't happen. And this
22 isn't a straight black and white kind of rule. There's
23 definitely leeway on both sides.

24 So my argument would just be the spoliation. No due
25 process violation I don't think has been established here.

1 Because according to the Reeves case, you have to have the
2 two prongs, destroying the evidence and bad faith not
3 shown, and that the evidence possessed exculpatory value.
4 And we just -- there's arguments both ways. But I think
5 the evidence tends to show that it wouldn't have.

6 THE COURT: Well, let me ask you this,
7 Mr. Reckenbeil, do you have any evidence that it's,
8 actually, been destroyed?

9 You have Mr. Vissage saying, I don't know what
10 happened to it after I left. You have -- Mr. Rackley's
11 talking about the different policies. But I think they
12 all testified that it was up to Tony Robinson, who kept
13 all this.

14 I mean, do we, actually, have evidence that it has
15 been -- I mean, we have evidence it was not produced to
16 you.

17 MR. RECKENBEIL: Yes, sir.

18 THE COURT: Do you have any evidence that it's,
19 actually, been destroyed?

20 MR. RECKENBEIL: No. And I think that -- but Your
21 Honor is correct to -- to point that out that, no, I don't
22 have any evidence of it. But we hinge our argument on
23 Rule 5 of criminal procedure and the failure to disclose
24 what we believe is clearly an item that we requested.

25 So, no, Your Honor, I don't have any -- I don't have

1 what I wish I had like the General Motors in the Fourth
2 Circuit --

3 THE COURT: Yeah. The smoking gun.

4 MR. RECKENBEIL: Yeah. Right. Because that's what
5 General -- because, you know, in that case, the Fourth
6 Circuit agrees, like, yeah, you should grant summary
7 judgment when they destroyed the vehicle that General
8 Motors doesn't have the ability to -- to view. But
9 we're -- we're in a little bit -- we're in a different
10 situation. We just have Rule 5 that we're saying the
11 discovery rule has been violated.

12 THE COURT: I mean, I think that I -- I don't think
13 that you have -- that this case rises to the level of --
14 of Reeves -- or the Reeves case which it cites as far as
15 due process. But I believe that I will charge the
16 spoliation of evidence charge that's -- which you have
17 presented, which you cite the Stokes v. Spartanburg
18 Regional Medical Center case.

19 Have you reviewed that as well?

20 MS. ODOM: I have reviewed it. He's provided it.

21 THE COURT: All right. So, otherwise, I'm going to
22 deny your motion on that. But I will -- I'll do the
23 spoliation of evidence charge.

24 MR. RECKENBEIL: And can I -- just one thing for the
25 record.

1 THE COURT: Yes.

2 MR. RECKENBEIL: Normally, some -- a defense attorney
3 would file a motion or make a motion for suppression of a
4 stop based upon the lack of reasonable suspicion or
5 probable cause. I don't have the answer to this. And
6 I've discussed this with Madam Prosecutor is -- that is
7 the Court then supposed to take the negative inference
8 when deciding whether or not there's reasonable suspicion
9 or probable cause if the same spoliation then applies to
10 the Court? And I don't know if I've even explained that
11 right.

12 THE COURT: Well but, I mean, according to this
13 charge here, they have a right to -- the jury has a right
14 to consider the explanation made by the parties. If they
15 find it unsatisfactory, then they're permitted but not
16 required to draw an inference.

17 So, I mean, there's not an absolute requirement that
18 there really is an inference. It's if you feel like they
19 have done something improper, then you can infer that it
20 was done for their benefit, basically.

21 MR. RECKENBEIL: Okay. So -- because I don't feel
22 it -- I think it would be repetitive if I'm making a
23 motion, basically, to dismiss the indictments for lack of
24 probable cause based upon a negative inference whereby
25 there was no probable cause to make the stop or to

1 continue the stop --

2 THE COURT: Right. And I think that would be -- I'm
3 going to let that go to the jury.

4 MR. RECKENBEIL: Right. Thank you, Judge.

5 THE COURT: All right. Anything else from the
6 Defendant?

7 MR. RECKENBEIL: Nothing from the Defense, Your
8 Honor.

9 THE COURT: All right. I'm -- I'm going to give it
10 some thought. And if y'all come up with a thought, you
11 know, as far as the curative charge, too, then let me --
12 you know, think about that this evening. But if y'all
13 come up with something, e-mail it to my law clerk.

14 MR. RECKENBEIL: Thank you very much.

15 THE COURT: All right. And, Mr. Shores, I'm going to
16 leave you out on bond. So I'm going to leave you out.
17 I'm not going to take you into custody. But as -- as I
18 told you at lunchtime today, be back here. We will start
19 this trial at 9:30 in the morning, whether you're here or
20 not.

21 DEFENDANT SHORES: I'll be here.

22 THE COURT: And if you fail to show up, then we will
23 issue a bench warrant, so.

24 DEFENDANT SHORES: I'll be here.

25 THE COURT: I know. I know. But I just -- that's

1 what I tell everybody at this point, so.

2 MR. RECKENBEIL: Thank you very much, Judge.

3 THE COURT: All right. See y'all in the morning.

4 Be here a little bit early. But we'll be -- I'd like
5 to get, you know, this -- have the jury walk out at 9:30.

6 (WHEREUPON, the proceedings were concluded at
7 approximately 4:00 p.m., to be reconvened on
8 Tuesday, October 2, 2019.)

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1 WEDNESDAY, OCTOBER 2, 2019

2 THE COURT: All right. First of all, as to the
3 verdict form, the verdict form is -- both parties have
4 reviewed the verdict form.

5 Any objections from the State?

6 MS. ODOM: No objections.

7 THE COURT: Any objections from the Defendant?

8 MR. RECKENBEIL: One minute, Your Honor. My client
9 is just having a chance to review it.

10 (Pause.)

11 MR. RECKENBEIL: Your Honor, we've reviewed it in
12 chambers and my client now in court has reviewed the
13 verdict form. And we have no objections.

14 THE COURT: All right. I'll be glad to hear anything
15 as far as jury charge. We've discussed the jury charges
16 in chambers.

17 And anything the State wants to put on the record?

18 MS. ODOM: Nothing from the State, Your Honor.

19 THE COURT: Defendant, I know you had several that --

20 MR. RECKENBEIL: Yes, Your Honor.

21 Thank you.

22 May it please the Court.

23 Your Honor, back in chambers and early this morning,
24 I e-mailed requests to charge. And I understand that
25 the -- the Court is going to use our spoliation charge

1 that we have submitted.

2 Further, what I was submitting were the Rule 5 of
3 disclosure in criminal cases. And I've gave to Madam
4 Court Reporter a clean copy of what --

5 THE COURT: Okay.

6 MR. RECKENBEIL: Just -- I didn't know if Your Honor
7 would make that a Court's Exhibit or --

8 THE COURT: Do you want to make that -- yeah, a
9 Court's Exhibit and...

10 (WHEREUPON, Court's Exhibit No. 3 was marked for
11 identification and admitted into evidence.)

12 THE COURT: All right. I think that I denied your
13 request for the discovery Rule 5, Section 23-1-240. I am
14 charging the spoliation. I'm denying the -- your second
15 one about traffic stop, fruit of the poisonous tree. I
16 indicated that would be more appropriate as a motion to
17 dismiss, a motion to suppress.

18 I think my charge covers your unlawful arrest, number
19 four. And your number five is to a DUI. Since the --
20 what's before us now is not a charge for a DUI, then the
21 video provisions I don't think would apply.

22 So -- but your -- you've got those marked and your
23 objection is noted.

24 MR. RECKENBEIL: Thank you.

25 THE COURT: Anything else?

1 MR. RECKENBEIL: Nothing else, Your Honor.

2 THE COURT: All right. Are you ready for the jury
3 from the State?

4 MS. ODOM: Yes, sir.

5 THE COURT: Ready for the jury from the Defendant?

6 MR. RECKENBEIL: Yes, Your Honor.

7 THE COURT: Good morning, Mr. Shores.

8 I didn't mean to ignore you.

9 DEFENDANT SHORES: Good morning.

10 THE COURT: All right. Bring them in.

11 (WHEREUPON, the jury came into open court at
12 approximately 9:53 a.m.)

13 THE COURT: Good morning, ladies and gentlemen.

14 Thank you for your patience.

15 I apologize for bringing you in at 9:30, and we don't
16 get to start until 10 till 10:00. We weren't back here
17 drinking coffee and eating donuts.

18 Sometimes, it takes a little longer to go through the
19 jury charge with the attorneys. We kind of try to iron
20 out any -- any issues with that. And that's kind of what
21 we were doing. So I do apologize.

22 But we're now at the final phases of the trial.
23 We'll have the closing arguments by the attorneys. Now,
24 this is not evidence. This is their summation, their
25 argument about the case. And when they finish their

1 arguments, then I will charge you on the law. And then
2 I'll, finally, send you back to your jury room for
3 deliberations.

4 So at this time, we're going to ask that you pay
5 attention to the attorneys.

6 Ms. Odom.

7 CLOSING ARGUMENTS

8 MS. ODOM: Thank you, Your Honor.

9 No good deed goes unpunished. I said that at the
10 beginning and I say it to you now. And now it makes more
11 sense to you that you've seen everything, you've heard
12 from the officers.

13 Vissage that day -- that night, he was just trying
14 the tell Mr. Shores -- was trying to tell the Defendant,
15 hey, something's wrong with your brake lights. And nearly
16 an hour later, he's still out there.

17 This was a relatively straightforward situation with
18 these brake lights that turned into a bad situation that
19 could have been a lot worse, a lot worse. I'm thankful
20 that we're here today just on this, and that nothing else
21 happened.

22 Vissage stopped him -- or waved him down at 11:45.
23 And it took 45 minutes of begging, and pleading, and
24 saying, Man, just -- just tell me who you are. Just show
25 me your license. 45 minutes of that before he, finally,

1 got out of the car.

2 So I'm going to go over the facts of the case with
3 you. And then we'll talk about the specific charges.

4 So this started on November 22nd, 2017, when Vissage
5 was a little bit down Highway 123. I'm not sure if y'all
6 are familiar with Highway 123. But when you're coming
7 from Clemson, from Seneca and you're going up towards
8 Easley, you're going to come into Easley and pass a
9 Bojangles' first. And then you're going to get to
10 McDonald's. And then on further up the road is going to
11 be where you turn to go to Spartanburg.

12 So Vissage says that he sees Mr. Shores, sees that
13 vehicle on towards the city limits. They're coming up
14 123. He sees these brake lights in the distance. He
15 comes up on the vehicle, gets closer. The lights are
16 still on, even though they've passed that dip past Silver
17 Bay. They're down in the dip. Now, they're coming up the
18 dip. The brake lights are still on, even though they're
19 coming up a hill.

20 And he just pulls beside him to tell him, hey, man,
21 your brake lights. He just wanted him to roll down the
22 window. That's all he wanted. And that's when he sees
23 the Defendant driving. Vissage was very clear with his
24 testimony. He saw the Defendant driving. He saw the
25 Defendant look over at him, turn back to his passenger,

1 and then whip into the Bojangles' parking lot.

2 For those of you not familiar with the area, we have
3 the map. And y'all will be able to take the map back
4 there with you so you can see where each person turned in.

5 So Mr. Shores turns into that first -- between First
6 Citizens and Bojangles'. And Vissage turns in on Brushy
7 Creek Road right around there.

8 So as the Defendant is parking, putting that vehicle
9 in park, Vissage is coming up and he sees them switching
10 seats. And that's where the kind of -- the trouble
11 begins. He sees them switching seats.

12 So Vissage is out here by himself in the middle of
13 the night. He doesn't know what's going on. He was just
14 trying to do what officers do and help people out.

15 So at this point, something's going on. And when an
16 officer sees what he believes to be criminal activity
17 going on, he doesn't just get back in his car and leave
18 and think, whew, man, I avoided doing some work there.
19 No. He's got to investigate it. And he's got to go
20 further with it.

21 You heard both officers say, in South Carolina, when
22 an officer stops a vehicle -- or a driver of a vehicle,
23 the driver has to give their license and registration.
24 That's the law. They have to give it over. Here, Vissage
25 doesn't know at that point what's going on. He just knows

1 they're switching seats and something's happening.

2 He asks the driver, the Defendant, who's now in the
3 passenger seat, for his license. He won't give it to him.
4 Something is going on. They refuse to get out of the car.
5 Just because you're an officer and you have a gun doesn't
6 mean that you're not going to be fearful of a situation,
7 nervous about what's going on.

8 So Vissage does the right thing and gets Easley City
9 out there. It never hurts to -- to have back up. And
10 then he gets his supervisor out there. Also, the right
11 step to go.

12 So the stop -- they stop at the Bojangles' right at
13 11:45. Rackley gets out there right after midnight. And
14 that's whose body camera you saw, Lieutenant Rackley. So
15 at this point, they're still, man, just tell me who you
16 are. What's going on?

17 There's beer coming out of the driver's side door.
18 You can see on the video the Easley officer getting down
19 and checking it. You know, just -- they -- he gives them
20 a name. They look up the name on the DMV. And they can
21 see a picture. And it looks similar, but it's not him.

22 So this whole time, just, man, just, please, comply
23 with us. Please comply with us. If he would have just
24 complied -- really, if he hadn't switched seats when
25 Vissage pulled up, he probably would have been like, y'all

1 good, y'all good, just telling you about your lights. And
2 that would have been it.

3 But now, the Defendant has made this a situation.
4 He's brought this on himself. And he's making it worse.
5 And you can see Rackley getting agitated. But for -- for
6 all the aggravation that was going on, they stayed calm.
7 The officers stayed calm. They didn't escalate it to
8 where it could have been. I give them credit for that.

9 So Rackley tells -- finally, you heard Rackley say
10 he's dealt with DUI's before. That's what they suspect
11 was going on. And when you -- when, as an officer, you
12 have probable cause to believe a crime has happened,
13 you've got to go forward with it. If an officer, you
14 know, suspects a crime has happened and just turns his
15 back, that's not a -- that's not a good thing. He's not
16 doing his job.

17 If, you know, Rackley said, ah, if he had thought to
18 himself, yeah, this guy's probably driving drunk, but I'm
19 going to let him go on, who's to say what would have
20 happened. He -- you've got to -- as an officer, you've
21 got to do your job. You've got to follow-up. It's not
22 always easy, but it's their job.

23 So Rackley effects the arrest, tells him, You're
24 under arrest. He does say, You're under arrest for DUI.
25 Y'all can clearly hear that on the video. They -- and

1 after about a dozen or so times of saying, You're under
2 arrest, get out of the car, you're under arrest, get out
3 of the car, you're under arrest, finally, the Defendant
4 gets out of the car. And they -- once they get him out,
5 even though he said -- all he said was DUI, he knows
6 there's an open container. Beer was coming out. And they
7 knew he'd given false info. That wasn't him on the
8 picture.

9 So he's under arrest for these -- these things. Once
10 they get him out, they determine his real name and that he
11 is, in fact, DUS. I say "DUS," driving under suspension.
12 In South Carolina, if your license is suspended for
13 whatever reason, you're not supposed to drive on it. So
14 DUS just means driving under suspension. You can't be
15 driving when your license is suspended.

16 So they get him out. And they figure out -- they
17 figure out in addition to false information, open
18 container, he's, also, DUS, which is probably the crux of
19 it. He knew he was DUS, not supposed to be driving. And
20 he's just trying to avoid being caught with that. And
21 that's probably what kept him in that vehicle for 45
22 minutes.

23 Now, they, also, charged him with resisting for just
24 repeatedly refusing to get out of the vehicle. Now, a lot
25 of people when they think about resisting, they're

1 thinking about throwing elbows, and running, and just
2 fighting with the law, just everything they can. But
3 resisting -- take it as what it is, resisting means to
4 oppose, to defy, to attempt to stop an officer from
5 arresting -- effecting his arrest. So Mr. Shores, the
6 Defendant, was resisting. He was defying law enforcement
7 from effecting their arrest.

8 Now, it doesn't just stop there. Once they get him
9 arrested, other things happen. They speak with the nephew
10 on camera. And that kid was scared. You can see him on
11 the body cam when he's gripping the steering wheel and
12 he's just thinking, oh, my goodness, what is going on?
13 He's scared.

14 I'll tell you who wasn't scared is the Defendant,
15 who's sitting in the passenger seat just spouting off all
16 these rights, you've got to get me a lawyer out here, and
17 all this and that. And I -- I don't say it to make light
18 of it. I say it to show he -- he was pretty calm with it.
19 He's not scared. He's not feeling threatened. He's just
20 doing what he can to kind of kick the can down the road a
21 little bit. So those are the facts kind of in a nutshell.

22 Now, if y'all want to re-watch the video, it's in
23 evidence. You'll come back out here and watch it. The
24 map and the pictures the Defense put in, they'll go back
25 in the jury room with you. And let me say a little bit of

1 something about that.

2 So just my -- my view, my personal opinion,
3 Mr. Reckenbeil is one of the nicest, most professional,
4 well prepared defense attorneys I've ever worked with.
5 And I do not say that about a lot of people. And I'd like
6 to think I'm pretty nice, and I'm pretty prepared, and I'm
7 pretty easy to work with. And that doesn't happen in all
8 cases.

9 Sometimes, you'll -- a jury will be up here and we'll
10 just be constantly objecting, arguing. But that's not
11 what it's supposed to be, and that's not what it's about.
12 Because this case isn't about me. It's not about
13 Mr. Reckenbeil. It's about the Defendant. It's about
14 what he did and what he didn't do.

15 So I don't want you to get back there and think, man,
16 what she said, or how she talks, or she just isn't with
17 it, I don't like her, or I love her, or I like him, I
18 don't like -- it's not about that. It's about the
19 Defendant, what he did, what he didn't do. This is the
20 State versus him.

21 And so y'all don't carry any biases towards any
22 parties with the case. But get back there and look at the
23 facts and think about the evidence. Think about the
24 testimony.

25 Mr. Shores got on that stand yesterday. And he had

1 an explanation for everything. Everything he had an
2 answer for. He -- oh, man, it's, like, kind of his -- his
3 way or no way, his rules. It reminded me of, like, a kid
4 on a playground who has the ball and they want to make up
5 more rules as you're playing the game. And they get mad
6 at you when you're not agreeing with them. They take the
7 ball and go home. That's what he reminded me of.

8 It was -- it was something else to listen to him.
9 And I know when, like, the one point where he's talking
10 about going to McDonald's, and I saw several people perk
11 up with that. Because if you've ever been in Easley, you
12 know where McDonald's is and you know where Bojangles' is.
13 And when you're coming out of Clemson, out of Seneca and
14 heading up 123 towards Easley, you're going to pass the
15 Bojangles' first.

16 So he said he had stopped at this gas station to --
17 they went to this estate sale, or whatever. Then they
18 stop at a gas station and get candy and drinks.

19 All right. Then they go up to McDonald's in Easley
20 after they pass the Bojangles'. And they get food there.
21 And then they drive a mile back in the wrong direction --
22 more than a mile because they didn't just drive to
23 Bojangles' and pull over. They would have drove way down
24 123 to where Vissage, initially, saw them.

25 So I guess they would've had to go down to the

1 Liberty exit and then get back on for Vissage to see them
2 way back down there. That makes zero sense. What he --
3 that line he's feeding y'all makes no sense at all for him
4 to have drove past Bojangles', up to McDonald's, way back
5 down towards Liberty, back up to Bojangles' just to pull
6 in and check his straps. That story doesn't check out.
7 And if you're going to tell a story, at least, make it
8 make sense. And that -- again, checking those straps --
9 why wouldn't he check the straps in the McDonald's parking
10 lot, instead of back down?

11 So he's got an answer for everything, even when I
12 just straight up asked him, Well, who's Ricky? Why'd you
13 give the name Ricky? And he said, Well, you can -- more
14 or less, you can lie to the police. It's not false
15 information until you're arrested. No, absolutely not.
16 That is not how that goes.

17 And the Judge will charge you on the law. He'll tell
18 you the law and how it goes. But false information,
19 that's telling the law -- telling an officer that they
20 came [inaudible] to try to avoid arrest, try to get out of
21 something. That's giving them a fake name. And it --
22 it -- before arrest, yeah. It can be after arrest, too.
23 But just -- you cannot just tell an officer a fake name
24 and get away with it because it's before arrest. And the
25 Judge will tell you the law on that.

1 But he would not even when he's admitting to it on
2 the stand saying, well, yeah, I gave somebody else's name,
3 but that's okay. Like, he would not budge on that.

4 And he did admit to having a suspended license. So
5 all the State has to show is that he was driving. And
6 then you'll have that DUS. And you have that with Vissage
7 pulling up right beside him, being five feet -- however
8 far from him, seeing him. And the Defendant and his
9 much-younger nephew don't look enough alike to where he
10 would have gotten them confused.

11 So he said without a doubt it was the Defendant
12 driving. The Defendant admitted his license was
13 suspended, and we stipulated to that as well. So you've
14 got him on that false info right there. On the DUS, right
15 there, he's admitted to it.

16 Open container. Open container is just you've got an
17 open beer in your car. And you can't do that in the State
18 of South Carolina. You can't have an open beer in your
19 vehicle.

20 He had said something about a broken seal, open
21 container. It's kind of tomato tomato, just another way
22 to put it, more or less. If you've got an open beer,
23 that's an open container. And they knew that before he
24 even got out because the beer was literally pouring out of
25 the door. It was coming out of the door. And this

1 liquid's not going to come out unless whatever container
2 it's in is opened.

3 All right. So those are the three first offenses.
4 Then we have this resisting arrest. So the Defense is
5 going to argue to you that he was within his means to
6 resist arrest because they didn't follow through with this
7 DUI, or they didn't have grounds to arrest him, something
8 to that effect.

9 And you heard Rackley and Vissage, to a lesser
10 extent, discuss that on the stand. They do have
11 discretion with cases. And that's a good thing to have
12 discretion. You want an officer to be able to look at all
13 the facts as they're occurring, but to, also, look at them
14 afterwards when things have kind of calmed down, and they
15 can review what's going on, and they can talk to their
16 other officers, and talk about DUI law. And so at that
17 moment, they had enough to arrest him for DUI.

18 But, ultimately, they decided not to go forward with
19 it. And that is fine. Don't get hung up on, well, since
20 they didn't go forward with the DUI, they can't get him
21 with the resisting. And that's not true.

22 Because even though the officer said, you're under
23 arrest for DUI, he was under arrest. So at that point, he
24 was under arrest. Did he resist? Yes. And that's what
25 you need. Even though the officer just said DUI, he's,

1 also, arrested him for other things. So even though --
2 like, say, he was under arrest for a hundred things and
3 the officer just said one, it's fine.

4 In that moment, Rackley didn't rattle off any --
5 everything and anything. He said the bare minimum charge,
6 you're under arrest. And then a couple minutes later, he,
7 finally, got out of the car.

8 So don't get hung up on that -- whether or not he was
9 charged with DUI or not. It's was he under arrest? Yes.
10 Rackley said it a couple times. Did he resist? Yes, he
11 did resist.

12 He even started that car. I don't know if y'all
13 heard it. But that car started. And I can't imagine,
14 like, Rackley's heart pumping because he had parked his
15 patrol car right in front of the Defendant's vehicle and,
16 here, that vehicle starts. And Rackley doesn't know
17 what's going to happen in that moment. And he's drawn
18 back his baton to break the window to get him out. But,
19 thank goodness, it didn't go that far.

20 All right. And so don't -- don't get hung up on
21 that -- that DUI, what could have happened. They -- they
22 made that judgment call. And that's good that they have
23 that discretion and that they go back and look at that.

24 But, really, what was law enforcement supposed to do
25 that night when Vissage got out and saw what he suspected

1 to be criminal activity, and then the Defendant just being
2 very obstinate? Like, all it would have took, just show
3 me your license. That's it. Because if he showed -- if
4 he'd complied and showed his license, it would have came
5 back that he was DUS.

6 But law enforcement has their job. Like I said, they
7 have to follow-up with things. And, you know, that's a
8 very dangerous precedent to go down is, well, all you've
9 got to do when you're pulled over is switch seats and then
10 sit in the passenger seat and refuse to show your license.
11 That's a very dangerous precedent. That's going to be
12 happening every single day if that is found out to be
13 okay, which it is not.

14 So the Judge is going to tell you about several
15 other, like, legal things to consider. I'm going to go
16 ahead and give you a heads up on them because they're very
17 important.

18 When you're considering the case and the testimony,
19 don't just listen to what was said, but listen to how it
20 was said, how it was presented. When a witness is on the
21 stand, are they believable? And that's up to you as the
22 jury. Are they believable? You don't have to believe
23 everything they said. It's not all or nothing. It can be
24 if that's how you choose. You can believe part of what
25 they said, disbelieve part of it. That's fine. And

1 that's up to y'all.

2 You take into account their tone, their demeanor,
3 their bias. Do they have a reason to say what they're
4 saying? Are they worried about the case and what's going
5 on? Is there a reason to do what they did?

6 And I would submit to you, the Defendant has bias
7 because he has high stakes in this. He has stakes in
8 this, you know. He wants to avoid any repercussions here.
9 And so he's going to say what he needs to say to try to
10 have a not guilty. Think about his bias.

11 Think about Rackley and Vissage's bias. Are they --
12 do they have a dog in this, really? And Vissage has left
13 the sheriff's office and he's with Tri-County Tech. And
14 y'all heard that. And so he's not too worried about what
15 happens. This isn't going to affect him. Rackley, I felt
16 like he was -- was very straightforward with y'all.
17 But -- but think about that and think about what makes
18 sense.

19 I don't know if y'all watch the show Judge Judy, but
20 I watch that every day. It's like my guilty little
21 pleasure. And she says this one thing all the time and I
22 agree with her, If it doesn't make sense, it isn't true.
23 Don't leave your common sense at the door when y'all go
24 back there to deliberate. What makes sense? And what
25 doesn't make sense? What's true? And what's not? Just

1 think things through. Don't get hung up on complex legal
2 issues. Take a step back and look at the case as a whole.

3 Now, he's going to charge you that the standard you
4 use is reasonable doubt. You have to be convinced beyond
5 a reasonable doubt that the Defendant is guilty before you
6 check the guilty box on the verdict form. And when I say
7 it like that, it kind of sounds daunting. Oh, gosh,
8 reasonable doubt.

9 Reasonable doubt isn't 100 percent beyond any, like,
10 little small chance, you know, well, maybe aliens came
11 down and, like, made them switch seats or change their --
12 no, no, no. Reasonable doubt is just, are you convinced?
13 Are you firmly convinced?

14 When y'all talk about it and y'all take a vote, okay,
15 who says guilty on -- on DUS? Are you firmly convinced?
16 And that just means, are you hesitant to act? Like, when
17 they start to take a vote and they say, are you -- what do
18 y'all think? Guilty? And you're kind of, like, maybe,
19 maybe not, like 50/50, you're hesitating. But when you're
20 like, nah, that beer was open. It was pouring out of the
21 door, firmly convinced. You're not hesitating.

22 Now, with Vissage's not, like, having a body cam, I
23 felt like that that was kind of made a big deal out of.
24 But when it comes down to it, we just don't have it. He
25 didn't destroy it on purpose. We don't know why it didn't

1 record, or if it recorded, or if it was lost. That really
2 wasn't clear.

3 What we do know is Vissage 100 percent saw the
4 Defendant driving, 100 percent saw him switching seats.
5 That's what the body cam may or may not have even shown.
6 Because with it being right, you know, at sternum level,
7 when he was in his patrol car, it wouldn't have shown much
8 when he pulled up. So it wouldn't have shown the
9 Defendant driving. It wouldn't have shown him switch
10 seats. So that's all that comes down to.

11 I wish we would have had it, yeah. But there's just
12 not going to be a perfect case. I've learned that with
13 trying cases. It's just not -- you're never going to have
14 everything.

15 What we do have is the Rackley camera. And what we
16 do have is the Defendant for 45 minutes refusing to
17 comply, refusing to get out of the car, and really just
18 bringing -- bringing it on himself and making the
19 situation worse.

20 The bottom line, we have several level-headed
21 officers who didn't -- Rackley could have got out of that
22 car -- out of his patrol car and drug Mr. Shores out, or
23 immediately busted that window. Nobody wanted to do that.
24 No officer wanted it to go that far. They just wanted to
25 say, what's going on? We have to do this. We have to do

1 our job. Just, please, show us your license. He might
2 not have even got a ticket or anything that night. We
3 have level-headed officers doing their job, doing what
4 they're supposed to, showing restraint and
5 professionalism.

6 Now, bottom line, he was told dozens of times he was
7 under arrest. He resisted by not getting out of the car.
8 The other elements are met for the other charges.

9 No one's above the law. The law is the same for
10 every single person in this country, man or woman,
11 regardless of race or age. The law is the same. No one
12 is above the law.

13 And the Defendant is not an exception to that, no
14 matter what he says and what he thinks. He's not an
15 exception. And he isn't above the law.

16 So I'm going to ask you, after you hear from the
17 Defense and the Judge, to go back in the jury room, to
18 thoroughly discuss the case, to review the evidence, and
19 find him guilty of all four charges.

20 Thank you.

21 THE COURT: Mr. Reckenbeil.

22 MR. RECKENBEIL: Thank you, Your Honor.

23 May it please the Court.

24 Good morning, ladies and gentlemen.

25 I will echo Ms. Odom's comments about professionalism.

1 There is no question, she has been extremely professional,
2 been a pleasure to work with, and a top-scale lawyer, and
3 truly a credit to our profession. And the reason why I say
4 that is because it's important that people understand that
5 lawyers more have a responsibility to follow the rules than
6 they do to advocate for their client. But, first and
7 foremost, we have an obligation to our oath and to this
8 Court. No question that we have the responsibility to
9 defend and represent our respective interests.

10 But, most importantly, we have the rule of law.
11 Because without that, we don't have anything. We have
12 anarchy. And to me, that's a judge of another lawyer.
13 Because I look to them to see how their professionalism is
14 and to see how they follow the rules. And she has done
15 every single thing that she possibly could in this case to
16 prove that she's an outstanding lawyer.

17 And what my responsibility is -- as an attorney is to
18 give you every opportunity to try to make the best
19 decision. And the way that we do that is we follow the
20 rules. And we put people on the witness stand and we
21 introduce evidence. This is a pretty thick book. This is
22 just one of many of the rule books of the rules of
23 procedure.

24 The Judge is going to talk a lot about the charge of
25 the law exactly as it applies to all the different facts

1 and to the elements of each -- each crime. We have a law
2 here in the State of South Carolina that's been
3 established that lawyers are entitled to see the body-cam
4 footage of police officers when they effectuate an arrest
5 of their client.

6 We have now used technology to better our society in
7 so many broad spectrums, medicine, communications, and now
8 the ability for us to understand, basically, what is
9 happening at a certain time and place based upon video
10 footage. We would be foolish not to use technology to
11 better our society. Think about all the advances of
12 medicine, all the advances of communication.

13 Having the opportunity to put yourself at the time of
14 that incident --

15 Would you like some water?

16 UNIDENTIFIED JUROR: Yes.

17 (Pause.)

18 UNIDENTIFIED JUROR: Thank you.

19 MR. RECKENBEIL: No problem.

20 Having the ability to put you all at the incident is,
21 literally, what we are trying to do as lawyers so that you
22 can be a judge of the facts of what was transpiring.

23 And when an individual officer takes an oath and
24 obligation to effectuate their -- their duties, they're
25 taking an oath and obligation to follow the law as well.

1 No person's above the law. And if we, the people, have
2 established through our general assembly back in 2015 that
3 we think it's in the best interest of our residents of
4 South Carolina that our officers have a policy and have
5 body cams, they need to do that.

6 This is our community. We want to have officers
7 upholding the law. We want officers to be safe. We want
8 officers to -- effectuating their -- their obligations.
9 It is not an easy job what they do. Every day, they
10 combat stuff. They come into contact with the unknown.
11 This is a way of -- what our general assembly is putting
12 forward is a way to protect them.

13 My hat is off to Lieutenant Rackley. I don't have
14 patience of 45 minutes of talking to somebody. But the
15 video gives an opportunity for that lieutenant to be able
16 to demonstrate what he was doing on that day. And that is
17 the same thing of what we have when it comes to Officer
18 Vissage.

19 You saw on the video the fact that the red light was
20 on. You have the ability to re-watch the video. I can
21 rattle off times, and I'm going to a little bit. 11:36
22 and 40 seconds, you saw the red light in the mid section
23 of Officer Vissage.

24 I replayed it, asked Lieutenant Rackley, Did you see
25 the red light?

1 He said, Yes, sir I saw it. It was square in the
2 middle of his mid section.

3 The Prosecutor said that he saw him get -- switch
4 seats. Well, if Officer Vissage saw it, so would the body
5 camera. And that is the best evidence that would give the
6 ability for the jury to decide whether or not my client
7 was driving under suspension. So much the fact that our
8 case law has established what we call a spoliation charge.

9 In other words, the Judge is going to charge you that
10 the law of this state is that if there's a failure to turn
11 over something in discovery and the failure is done by,
12 you know, not bad faith, not done in any way to destroy
13 the evidence, but you can consider a negative inference.

14 What that means is, basically, that the party that
15 doesn't turn over the evidence or turns over the video and
16 they don't have a really good explanation for why they
17 didn't turn it over, they just -- maybe it just got
18 misplaced, you can consider the fact of a negative
19 inference that that video might show something in
20 contradiction to what that party's claiming.

21 So in other words, that video could show that
22 nobody's switching seats. Lieutenant Rackley says that
23 they have a standard procedure and a policy. Officer
24 Vissage just didn't start -- just -- in 2017, he was an
25 officer for quite some time. You follow procedures or

1 things happen. We create laws to be followed, especially
2 this one. You don't lie, you don't lie. That's just not
3 the way that our system works. We can't further a more
4 perfect union if people are just going to sit there and
5 lie no matter what it is about.

6 And so it is your determination, ladies and
7 gentlemen, of -- after considering all the evidence as to
8 what's more believable or not. And if, in fact, you
9 believe that there is any sort of reasonable hesitation,
10 then you have to find the Defendant not guilty. And
11 that's what the Judge is going to talk to you about.

12 The reason why we have the greatest system in the
13 world of justice is that it begins and ends with we the
14 people, you the town residents, you the county residents
15 of Pickens. You start off in the ballot box where you
16 cast your ballot for those people that go to Columbia to
17 create our laws.

18 And then at the end of the day, after everything
19 transpires, you, ladies and gentlemen of the jury, get to
20 make a decision as to one of your own citizens, one of
21 your own residents of whether or not that they have
22 violated those laws. That is why we have the greatest
23 system in the world is because it all depends upon the
24 people and your decisions.

25 Thank you very much for taking time with us. And

1 thank you very much for your service.

2 THE COURT: Ms. Odom.

3 MS. ODOM: Thank you.

4 So now is my chance to respond very briefly to
5 anything that was brought up that I didn't initially
6 address.

7 And so the spoliation charge. So you'll -- as
8 Mr. Reckenbeil said, you're going to hear the Judge say
9 you can take -- take into consideration the evidence that
10 wasn't turned over might have shown one thing or another
11 thing.

12 So that's saying that you can take into consideration
13 that Vissage's body cam, if it had been turned over, would
14 have shown the Defendant not switching seats, or would
15 have shown anything. That's up to you to make that
16 determination.

17 It is not a charge of because evidence wasn't
18 produced that may or may not have even existed. It's not
19 saying that y'all can just taint this case on a
20 technicality. That's -- that's not what it's saying.

21 It's saying you can consider the evidence not
22 produced may or may not have shown something. But I
23 submit to you that you have Vissage's testimony there and
24 that's going to cover it.

25 And it was said that Vissage's body camera in his car

1 would have shown if they were switching seats or not.
2 That's up to you, again. That's up to you as far as the
3 spoliation charge for y'all to think about.

4 But a camera facing one way is going to show that,
5 whatever it's seeing. Whereas an officer's head can turn
6 and see something. So think about all of that. Bottom
7 line, you have what Vissage said, 100 percent what he saw.

8 Thank you.

9 CHARGE ON THE LAW

10 THE COURT: All right. Ladies and gentlemen, it's
11 now my opportunity to charge you on the law. I always
12 like after closing arguments to have the jury just kind of
13 stand up and do a stretch. Mine's not going to be real
14 long, but it gives you kind of a break from arguments to
15 law. I'm not going to make you do jumping jacks, because
16 I don't think I could do them any more, so.

17 All right. I'm going to charge you on the law which
18 applies to this case. As I told you in the beginning,
19 each of us, meaning me versus the jury, have two distinct
20 duties. My duty is to preside over the trial, rule on the
21 admissibility of evidence, and to determine what the law
22 is in this case.

23 Now, if you came into this trial and you may --
24 you -- you maybe just had an idea of what you thought the
25 law was or you think the law should be something

1 different, you have to disregard that. Because you've
2 taken an oath that says that you will apply the law that
3 I'm charging you now.

4 You're only to consider evidence that was presented
5 from this witness stand, any documents, or any
6 stipulations that Counsel may have entered into. Anything
7 that was referenced but not introduced, or any testimony
8 that was stricken, you're to disregard that in its
9 entirety.

10 You also -- you, as I said, are the sole judges of
11 the facts. And that is very important. That means if --
12 if something that I've done or said makes you think I have
13 an opinion of the facts, you disregard that. Because
14 that's not my job. That would be me stepping into the
15 jury box and -- and doing your role.

16 Now, we have in this matter -- as I told you, we have
17 four separate indictments or charges, driving under
18 suspension, giving false information, resisting arrest,
19 and open container. I will give you the elements of each
20 of those charges in just a few minutes.

21 But I remind you of the fact -- the fact that just
22 because a person was arrested, charged, and indicted is
23 not evidence. And that cannot be considered by y'all.
24 That is merely a formal -- formal paper which brings this
25 matter into this courtroom. It kind of sets up what the

1 State has to prove. And their burden of proof is beyond a
2 reasonable doubt.

3 So you're not to consider any of those documents at
4 all in your deliberations. You're to base your decision
5 on the evidence that was presented.

6 Now, we have multiple charges. And I'm going to kind
7 of give you the rule on that. We have four separate
8 charges. Again, the driving under suspension, giving
9 false information, resisting arrest, and open container.

10 These are all separate and distinct offenses. And
11 you're to consider each of those separately when you begin
12 your deliberations. You're to analyze those and
13 deliberate on those separately. And in making -- and the
14 burden of proof -- each element of the -- the State has
15 the burden of proof on each element of each charge.

16 You have the right to in your deliberations find the
17 Defendant guilty of all of them, find him not guilty of --
18 of all of them, guilty of some and not guilty of others.
19 In other words, you're analyzing each one separately. And
20 whatever your analysis is for one of them should not apply
21 to the next one. You should consider each one of those
22 charges separately. And you will -- and when -- I'll show
23 you in a minute, your verdict form will be -- will show
24 you have to make a -- you have to reach a verdict on each
25 of one of those charges.

1 Now, the -- as I told you in the beginning, the
2 Defendant has pled not guilty in this matter. And that's
3 very important. Because that -- he has a presumption of
4 innocence, as does anyone who comes into any courtroom in
5 this state no matter how serious or how minor the charges
6 are. And that's not merely a -- just a legal theory.
7 That is a very -- that is kind of one of the foundations
8 of our criminal judicial system.

9 And by having a presumption of innocence, he has no
10 burden whatsoever in this Court to prove anything. The
11 burden rests solely on the State to prove each element of
12 the charge.

13 And that burden, again, is beyond a reasonable doubt.
14 And that presumption of innocence does not end until you,
15 the jury, have decided that the State has met its burden
16 beyond a -- a reasonable doubt. So it -- it follows the
17 jury -- it follows you into the jury room until you've
18 completed your deliberations.

19 What is reasonable doubt? That's a term you've heard
20 probably a lot watching any TV, or you've heard it a lot
21 in this trial before. The burden of -- reasonable doubt,
22 that is the burden. That is a much higher burden than you
23 may apply in a civil case where it's not to that level.

24 It's the State must prove each element beyond a
25 reasonable doubt. And that is more than just more likely

1 than not. That's -- it's more powerful. It's a higher
2 standard because of the liberties that are involved here.
3 Reasonable doubt is the kind of doubt that would make a
4 reasonable person hesitate to act.

5 Proof beyond a reasonable doubt is proof that leaves
6 you firmly convinced of the Defendant's guilt. You know,
7 there are very few things in this world that we know with
8 absolute certainty. And the State is not required to
9 prove that the law does not -- to overcome every possible
10 doubt. But, if based on your consideration of the
11 evidence, you're firmly convinced that the Defendant is
12 guilty of the crimes charged, then you must find the
13 Defendant guilty.

14 If, on the other hand, you think there's a real
15 possibility that the Defendant is not guilty, then you
16 must give the Defendant the benefit of that doubt and find
17 him not guilty. Facts and circumstances that merely place
18 upon the Defendant a grave suspicion of the crime charged
19 or merely raises speculation or conjecture of his guilt is
20 not sufficient for a conviction of the accused.

21 Now, there are two types of evidence that you can
22 consider. And it's -- you give the same weight and value
23 that you feel is appropriate. And that is direct and
24 circumstantial evidence.

25 Direct evidence is when a person or piece of evidence

1 directly shows what it's trying to prove.

2 Circumstantial evidence may be a chain of facts that
3 is trying to prove one particular fact by stating each of
4 those facts. And there's no difference in the weight that
5 is required.

6 I always try -- I think the best way to kind of
7 illustrate direct and circumstantial evidence is, you pull
8 into your driveway. This is on -- this is an example of
9 direct evidence. You pull into your driveway. And just
10 as you park your car, it starts raining. You see the rain
11 hitting your driveway and your car. You get out with your
12 umbrella and run inside. You have direct evidence of that
13 rain.

14 On the other hand, if you pull into your driveway,
15 there's no rain. You go inside and come back out 30
16 minutes later and you see rain on the hood of your car.
17 You don't see it raining. You have -- you see puddles.
18 You see clouds in the sky. Those are kind of a chain of
19 facts which lead to the fact that it was raining. So
20 that's kind of the -- circumstantial evidence.

21 Again, there's no difference in the weight that
22 you -- that the State can rely on both direct and
23 circumstantial evidence. And the weight's to be given the
24 same for both of those.

25 But if the State relies on circumstantial evidence,

1 all of the evidence must be consistent with each other and
2 when taken together point conclusively to the guilt of the
3 accused beyond a reasonable doubt. If these circumstances
4 merely portray the Defendant's behavior as suspicious,
5 then that proof has failed.

6 Now, let's talk about the credibility of witnesses.
7 That's something that you need to consider, and any -- any
8 jury needs to consider in their deliberations.
9 Credibility simply means believability, you know. You
10 must in -- in -- in considering each person's testimony,
11 you give it the weight, and the value, and the affect that
12 you think is appropriate.

13 Now, you may take one witnesses testimony over
14 several witnesses. You may take several witnesses
15 testimony over one witness. You may accept a witnesses
16 testimony in its entirety, and you may reject it in its
17 entirety. You may accept a portion of it, and reject the
18 remaining portion. Again, it's the weight and the value
19 that you, as a jury, thinks is appropriate.

20 And when you're determining that, you can consider
21 did this witness have a particular bias, or prejudice, or
22 some other motive in the case? You know, what was his
23 appearance on the witness stand? Just all of those things
24 that you use in your, you know, common sense and
25 evaluation of the matter.

1 Now -- now, we're going to talk about a particular
2 matter. If there is any mention or any reference to any
3 prior arrest or warrants in -- in a matter like this, it
4 is not to be considered by you whatsoever in any way in
5 trying to determine the facts here today. You're only to
6 consider what he's being charged with here today.

7 Now, there's an exception to that. And that is for a
8 conviction. You've heard the evidence that the Defendant
9 was convicted of a crime, other than the one which he's on
10 trial for. Now, this evidence can be considered by you if
11 you conclude it's true only in deciding whether the
12 Defendant's testimony is believable, and for no other
13 purpose. It's just for that purpose only.

14 So you must not consider his prior record in any way
15 in determining his guilt on the charges that are before
16 you today. In order -- in every criminal case -- in every
17 criminal -- the State has the burden to prove criminal
18 intent. For instance, the mental state required is to be
19 proven by the State for a particular crime might be for
20 purpose, intent, knowledge, recklessness, or criminal
21 negligence.

22 Criminal intent must be proven, again, beyond a
23 reasonable doubt. And it's not something -- and it must
24 be determined by the circumstances surrounding the
25 situation.

1 Now, there's no way for you to get in the mind of a
2 person and find out what their intent is. So, therefore,
3 you have to look at all the circumstances surrounding the
4 matter. And -- and the law allows that criminal intent
5 can be inferred from those circumstances.

6 It's not necessarily to -- to establish intent by
7 direct and positive evidence. But intent may be
8 established by an inference in some other way -- other
9 facts by taking into consideration the acts of the parties
10 and all the facts of the case.

11 Criminal intent is a mental state, a conscious
12 wrongdoing. It's up to you to determine what the
13 Defendant intended to be -- to do based on the
14 circumstances. Criminal intent can arise from action, or
15 failure to act. It may arise from negligence,
16 recklessness, or an indifference to duty or to
17 consequences that is considered by law to be the
18 equivalent of criminal intent.

19 Now, I'm going to go through some specific -- those
20 are kind of all the general rules and deliberations. And,
21 now, I'm going to go through some items that are very
22 specific to this case and very statute [sic].

23 And this relates to a -- a traffic stop. A
24 commissioned officer or uniformed officer may upon
25 reasonable belief that any vehicle is being operated in

1 violation of any provision of statutory law require the
2 driver, thereof, to stop and exhibit their registration
3 card issued for the vehicle, the individual's driver's
4 license, and submit to inspection of such vehicle and
5 license.

6 And this is a charge on spoliation of evidence. When
7 a party fails to preserve material evidence for trial, it
8 is for you, the jury, to determine whether the party has
9 offered a satisfactory explanation for that failure. If
10 you find the explanation unsatisfactory, you're permitted,
11 but not required, to draw the inference that the evidence
12 would have been unfavorable to the parties claim.

13 Driving under suspension. The Defendant is charged
14 with driving under suspension. The State must prove
15 beyond a reasonable doubt that the Defendant drove a motor
16 vehicle on a public highway in this state during the time
17 that the Defendant's driver's license was cancelled,
18 suspended, or revoked.

19 The charge of false information to police. It is
20 unlawful for a person to misrepresent his identification
21 to a law enforcement officer during a traffic stop or for
22 the purpose of avoiding arrest or criminal charges.

23 Resisting arrest. The Defendant is charged with
24 resisting arrest. The State must prove beyond a
25 reasonable doubt that the Defendant resisted a lawful

1 arrest being made by a person that the Defendant knew or
2 reasonably should have known was a law enforcement
3 officer.

4 Resist means to oppose, strife against, or obstruct.
5 Obstruct means to impede, hinder, or interfere with. Even
6 peaceful, nonviolent, indirect obstruction of an arrest or
7 the service of execution of process is considered
8 resisting arrest if the means used are sufficient to
9 prevent the officer from making an arrest. The Defendant
10 is guilty of -- of resisting arrest.

11 So when a person is the subject of a lawful arrest,
12 there's a duty to peacefully allow the arrest. However, a
13 person has the right to resist an unlawful or illegal
14 arrest, and may use as much force as is reasonably
15 necessary to prevent the unlawful arrest.

16 In order to determine whether the Defendant was
17 entitled to resist arrest, you must first determine
18 whether an arrest in the case was lawful. A law
19 enforcement officer may arrest a person without a warrant
20 when the crime is committed in the officer's presence.

21 A law enforcement officer may, also, arrest for a
22 misdemeanor without a warrant when the facts and
23 circumstances observed by the officer provide probable
24 cause to believe that a misdemeanor has been freshly
25 committed.

1 Probably cause is a good faith basis to believe that
2 the Defendant committed a crime. This means that at the
3 moment the arrest was made, the officer had reasonable,
4 trustworthy information which would cause a reasonable
5 person to believe that the Defendant committed a crime.

6 If you determine that the Defendant had the right to
7 resist the arrest in this case, you must then decide
8 whether the force used by the Defendant was reasonable and
9 necessary to prevent the unlawful arrest, detention, or
10 interference with the Defendant's person. Only that force
11 which is reasonably necessary under the circumstances to
12 resist the arrest may be used.

13 Open container. It is unlawful for a person to have
14 in his possession, except in the trunk or luggage
15 compartment, beer and wine in an open container in a motor
16 vehicle any time while located upon the public highways or
17 highway of rights of way of this state.

18 So those are the specific charges. And as to each
19 element of those charges, again, the State has the burden
20 of proof beyond a reasonable doubt for each of those
21 charges.

22 Now, Mr. Foreman, I'm going to hand you a -- the
23 verdict form. I'm going to go through this with you. And
24 this kind of, I think, will help you with it. All right.
25 The top part is merely the caption. It says, Verdict

1 Form. And so it says, Please answer all the following
2 questions. You will go to question one. And as to the
3 charge of driving under suspension, it has the indictment
4 number, We, the jury, unanimously find the Defendant,
5 Robert D. Shores, and you check one.

6 If you find that the State has met its burden on that
7 charge, you would check "guilty." If you find the State
8 has not met its burden on that charge, you would check
9 "not guilty."

10 Then you would go to question two, as to providing
11 false information to the police. And you'd have the same
12 analysis. If you find the State's met its burden, you
13 would check "guilty." If you find the State has not met
14 its burden, you would check "not guilty."

15 Then as to resisting arrest, you would have the same
16 analysis and determine guilty -- or check "guilty" or "not
17 guilty."

18 And then you go to the next page. As to open
19 container. The same analysis, you -- you check either
20 "guilty" or "not guilty." And you must answer all four
21 questions.

22 And once you have completed your verdict, all four
23 questions, then you would sign and date it. And you
24 would -- you would let the bailiff know that you have
25 reached a verdict.

1 Now, let me give you a couple of other --

2 And you can put that down for now because I'm not...

3 All right. You may have questions. And that's one
4 of your roles as the Foreman is to -- you would write any
5 questions on a piece of paper and you would send -- give
6 them to the bailiff. And the bailiff will bring them to
7 me. I will have several options. One, I can either write
8 a response -- sometimes, it's -- I can just write a
9 response on that same piece of paper and send it back to
10 you. Sometimes, it requires me to bring you out and give
11 you further instructions.

12 Now, we cannot answer factual questions because
13 that's what y'all are to determine. You've got all -- and
14 the record is closed. Sometimes, juries came -- come back
15 and say, can we see such and such document, or can we hear
16 what such and such officer would say. We can't -- the
17 record is closed. Y'all have all of the facts that y'all
18 will have to make a determination. So there's -- and we
19 can't answer factual questions.

20 So if you need to -- there was a reference to the --
21 to the video. Because of the way it's set up, if you need
22 to see that video, we'd have to bring you back out for --
23 for that. Again, any -- any kind of questions you have
24 along those lines or like that, your communication with me
25 is by -- by note, you know.

1 Okay. Each question that you're answering, one --
2 all four questions have to be a unanimous decision. You
3 cannot -- you know, it has to be a unanimous guilty or
4 unanimous not guilty. You cannot -- you can't -- it's not
5 a majority vote, or anything like that. So, therefore,
6 all 12 of you must agree.

7 And it must be based on the evidence. It can't be
8 based on -- based on any passion, prejudice, bias,
9 emotion. It's the evidence.

10 Now, let me speak to my alternates. Y'all have --
11 you're like, who me? We -- you know, y'all have been here
12 and worked just as hard as the rest of them. But our law
13 does not allow you to participate in -- in the
14 deliberations. But it's important. And I -- and you've
15 heard this before. It's important that -- that you were
16 here.

17 Because if some -- if one of these jurors could not
18 continue or were not able to come back because they were
19 sick or something, then we'd had to put you back in their
20 place. Otherwise, we would have had to declare a
21 mistrial.

22 You thought I was going to drop that, didn't you?

23 So it's like -- you're like that backup quarterback
24 who sits on the bench at the Super Bowl and never gets in,
25 and all that. But that -- if that starting quarterback

1 gets hurt, you're the most important person in the -- in
2 the stadium.

3 So we appreciate your service. And you'll go back in
4 just a minute with them.

5 And here's kind of what we need to do at this point,
6 I'm going to send you back to your jury room, but I
7 can't -- you can't deliberate yet. Because what I've got
8 to do is make sure -- I know, you're saying, dadgummit.
9 Because I've got to make sure I haven't left something out
10 or I misstated something.

11 So I'll send you back there. And the alternates will
12 go back there. The bailiff will come back and tell you
13 when it's time to deliberate. And what he'll do is he'll
14 bring the verdict form, and he'll bring the exhibits. And
15 he'll ask the alternates to step out of the jury room. At
16 that point, you can, finally, discuss the case.

17 So at this point, if you'll go back into your jury
18 room and await further -- wait for the signal. And if I
19 need to bring you back out, I will for just whatever
20 reason.

21 Thank you.

22 (WHEREUPON, the jury was excused from open court at
23 approximately 10:52 a.m.)

24 THE COURT: All right. Anything -- the jury -- the
25 just is secure.

1 Anything from the State?

2 MS. ODOM: Nothing from the State.

3 THE COURT: Other than the ones beforehand, anything
4 else from the Defendant?

5 MR. RECKENBEIL: No other exceptions from the
6 Defendant, Your Honor.

7 THE COURT: Okay. Make sure your exhibits are
8 properly lined up and ready to go back to the jury.

9 (Pause.)

10 THE COURT REPORTER: Judge, do you want this to go
11 back?

12 THE COURT: We can send it back so they can have it
13 and then -- yeah. Let's -- since it's an exhibit, let's
14 just send the -- this back. And if they ask to look at
15 it, we'll --

16 MR. RECKENBEIL: Yes, sir. I agree with that.

17 THE COURT: -- get the bailiff to...

18 (Pause.)

19 THE BAILIFF: Judge, do you want to speak to the
20 alternates?

21 THE COURT: Yes. I'll talk to the alternates back
22 there just briefly.

23 All right. Don't go far, if you go at all.

24 (WHEREUPON, the proceedings were recessed at
25 approximately 10:54 a.m.)

1 QUESTIONS FROM THE JURY

2 THE COURT: All right. This is on the record back in
3 the case of State v. Shores.

4 We've gotten two notes from the -- I guess we need to
5 mark it. I'll mark it in a minute. We've gotten two
6 notes from the Foreman. The first one, "Who gets charged
7 for open container? Driver, or passenger, or both?"

8 And the second question is, "Does the passenger have
9 to show ID?"

10 Talking with Counsel in chambers, what I have done is
11 just printed out the charges that I have -- that I've
12 already given them on open containers in a motor vehicle,
13 my portion about a traffic stop by a commissioned officer,
14 and false information to police. It's those three charges
15 only. And I've just put a little note, See attached
16 charged.

17 Any objection from the State?

18 MS. ODOM: None from the State.

19 THE COURT: From the Defendant?

20 MR. RECKENBEIL: None from the Defense, Your Honor.

21 THE COURT: All right. If you'll mark this and then
22 give that to the -- I guess mark them separately. Since
23 there's two separate notes, mark them separately.

24 (WHEREUPON, Court's Exhibit Nos. 4, 5, and 6 were
25 marked for identification and admitted into evidence.)

1 (WHEREUPON, the proceedings were recessed at
2 approximately 11:20 a.m.)

3 THE COURT: We're back on State v. Shores.

4 We have a question, "Can we see the last part of the
5 video?"

6 I'm not exactly sure I'm going to -- what I'm going
7 to do is ask them to come out. When you say, "last part"
8 what are you talking about, specifically?

9 And then you can play what -- I mean, I don't know
10 how -- because "last part of the video," I'm not sure --
11 you know, there was three videos. I don't know if they're
12 talking about can we see all of the last video, or what.

13 So I'm going to ask them to bring the -- the disk
14 out. I'm going to ask them --

15 Have we got lunch ordered?

16 THE CLERK: I have not done that.

17 THE COURT: Okay. We -- that's fine. It'll -- it
18 should be here by the time they are through watching this.

19 All right. So you're ready on that.

20 Acceptable to the State?

21 MS. ODOM: Yes, sir, Your Honor.

22 THE COURT: Acceptable to the Defendant?

23 MR. RECKENBEIL: Yes, Your Honor.

24 THE COURT: All right. You can bring them out. And
25 tell them to bring the disk.

1 (WHEREUPON, the jury came into open court at
2 approximately 11:59 a.m.)

3 THE COURT: Mr. Clerk, if you could get the DVD from
4 him.

5 Ladies and gentlemen, I -- first of all, thank you
6 for your patience. I -- I got this note a few minutes
7 ago. The problem is we had kind of switched into another
8 matter that I had to finish up with before we brought you
9 out. I do apologize for that. And we do have lunch on
10 the way.

11 All right. Let me ask you a question here,
12 Mr. Foreman, it says, "Can we see the last part of the
13 video?" We've got that set up. I'm not exactly sure --
14 when you say, "last part," you know, there were three
15 videos separate. Are you talking about the last video, or
16 exactly --

17 JUROR #71, DANIEL HESTER: I'm pretty sure that what
18 we're wanting to see is the last video.

19 THE COURT: The last -- the third video?

20 JUROR #71, DANIEL HESTER: The last one that she
21 showed yesterday.

22 THE COURT: Okay. That's what I -- I just wanted to
23 make sure before we played that.

24 All right. And you're prepared to play the last
25 video.

1 (WHEREUPON, a portion of State's Exhibit No. 2 was
2 played in open court.)

3 JUROR #71, DANIEL HESTER: Can we watch, like, the
4 last five minutes of the second video? What we're looking
5 for was not in that one.

6 THE COURT: All right. How long is the whole video?

7 MS. ODOM: It's 16 minutes.

8 THE COURT: All right. I guess run it to about --
9 Does that cover it if we run it at about nine
10 minutes?

11 JUROR #71, DANIEL HESTER: It should.

12 (WHEREUPON, a portion of State's Exhibit No. 2 was
13 played in open court.)

14 JUROR #71, DANIEL HESTER: Can you go back right
15 before they got out of the car?

16 THE COURT: All right. Do you want to just play the
17 whole thing?

18 JUROR #71, DANIEL HESTER: That'll work.

19 THE COURT: Yeah. Play the whole -- play the whole
20 video.

21 MS. ODOM: Okay.

22 (WHEREUPON, a portion of State's Exhibit No. 2 was
23 played in open court.)

24 THE COURT: All right. That should have covered
25 everything you needed there. All right. If you'll go

1 back and continue your deliberations.

2 And we'll bring lunch in there. I'll just let you
3 know, it's pizza usually, so.

4 (WHEREUPON, the jury was excused from open court at
5 approximately 12:28 p.m.)

6 THE COURT: All right. The jury is secure.

7 Any objections from -- or exceptions from the State?

8 MS. ODOM: Nothing from the State.

9 THE COURT: From the Defendant?

10 MR. RECKENBEIL: Nothing from the Defense, Your
11 Honor.

12 THE COURT: All right. We will be in recess.

13 (WHEREUPON, the proceedings were recessed at
14 approximately 12:29 p.m.)

15 THE COURT: All right. It's my understanding we have
16 a verdict.

17 Anything from the State before we bring the jury in?

18 MS. ODOM: Nothing from the State, Your Honor.

19 THE COURT: Anything from the Defendant?

20 MR. RECKENBEIL: Nothing from the Defendant, Your
21 Honor.

22 THE COURT: All right. If the jury is ready, bring
23 them in.

24 (WHEREUPON, the jury came into open court at
25 approximately 12:50 p.m.)

1 THE COURT: All right. Mr. Foreman, I understand
2 you've reached a verdict.

3 JUROR #71, DANIEL HESTER: Yes, sir.

4 THE COURT: If you could hand that to the Clerk.

5 All right. It looks like it's in proper form.

6 If you could publish the verdict.

7 VERDICT

8 THE CLERK: Yes, sir.

9 As to the charge of driving under suspension under
10 indictment 2018-GS-39-00464, we, the jury, unanimously
11 find the Defendant, Robert D. Shores, guilty.

12 As to the charge of providing false information to
13 police under indictment 2018-GS-39-00465, we, the jury,
14 unanimously find the Defendant, Robert D. Shores, guilty.

15 As to the charge of resisting arrest under indictment
16 2018-GS-39-00466, we, the jury, unanimously find the
17 Defendant, Robert D. Shores, guilty.

18 As to the charge of open container violation under
19 indictment 2018-GS-39-01715, we, the jury, unanimously
20 find the Defendant, Robert D. Shores, guilty.

21 Is this your verdict and still your verdict? So say
22 you all by raising your right hand.

23 (WHEREUPON, all of the jurors raised their right
24 hand.)

25 THE CLERK: Thank you very much.

1 THE COURT: All right. Anything from the jury from
2 the State?

3 MS. ODOM: Nothing from the State.

4 THE COURT: Anything from the jury from the
5 Defendant?

6 MR. RECKENBEIL: Nothing from the Defendant, Your
7 Honor.

8 THE COURT: All right. Ladies and gentlemen, thank
9 you for your service this week.

10 I know some of you had two juries this week and you
11 had double duty. So I will release you.

12 Again, thank you again.

13 And I'll step back there. If anybody has any
14 questions or comments, I'll be glad to hear from you. If
15 you'll step back in your jury room. But if you need to
16 leave then, by all means, go ahead. And I think we --
17 well, we'll tell you about that in a minute about the
18 pizza.

19 All right. Thank you.

20 (WHEREUPON, the jury was excused from open court at
21 approximately 12:52 p.m.)

22 THE COURT: And I'm going to step back here. And
23 I'll give y'all -- I'll give y'all a few minutes to gather
24 your thoughts. And motions -- I'll be glad to hear
25 motions.

My client has asked me if -- that you would defer sentencing.

MR. RECKENBEIL: Understood, Your Honor.

And I'll hear any motions on the verdict as well.

(WHEREUPON, a break was taken.)

MOTIONS

MR. RECKENBEIL: Your Honor, respectfully, under Rule 29 of the South Carolina Rules of Criminal Procedure, the Defendant's required to -- post-verdict to make a motion for a new trial based upon the thirteenth juror doctrine, and the fact of -- that the evidence could not let a reasonable jury conclude the guilty verdicts on all four

1 counts.

2 THE COURT: You know, I think that the way the -- the
3 evidence was laid out and the argument, I think it is a --
4 was clearly a factual issue for the jury to determine.
5 And I'm not going to make any changes on that.

6 MR. RECKENBEIL: Understood, Your Honor.

7 THE COURT: So motion is denied.

8 Are y'all ready for sentencing?

9 MR. RECKENBEIL: Yes, sir.

10 MS. ODOM: Yes, sir.

11 Do you want us to come forward or stay at Counsel
12 table?

13 THE COURT: Yeah. Why don't y'all step up.

14 Mr. Reckenbeil, usually, I'll -- I'll hear from -- I
15 want y'all to get the last word. So let me just hear from
16 Ms. Odom, if she has anything she wants to add to it. And
17 then I'll hear from y'all before sentencing.

18 MS. ODOM: All right. Thank you, Your Honor.

19 I did want to put his criminal history on the record.
20 1994, breach of trust; 2001, grand larceny and receiving
21 stolen goods; 2003, two fraudulent checks; 2006, HTO and a
22 DUS; 2007, HTO; 2009, HTO and failure to stop for a blue
23 light, which was pled in 2012; 2012, use of vehicle
24 without permission, harassment; 2013, DUS; 2014, DUS.

25 And, Your Honor, as to sentencing, Your Honor has

1 heard the case and is fully aware of all the facts. And
2 the State would defer any sentencing to the Court.

3 THE COURT: Did he serve -- have any -- serve any
4 time in jail?

5 MS. ODOM: He -- according to my records, he did a
6 night.

7 THE COURT: Okay. Is that what y'all have, one day?

8 DEFENDANT SHORES: Yes, sir.

9 MR. RECKENBEIL: Yes, Your Honor.

10 THE COURT: All right. Mr. Reckenbeil, I'll be glad
11 to listen to you.

12 MR. RECKENBEIL: Your Honor, obviously, we've had two
13 days of trial. You've seen all the facts and evidence.
14 And we, obviously, respect the jury's verdict, even though
15 we may factually disagree. But, of course, you know, in
16 our system, the jury has spoken. And we respect the rule
17 of law.

18 Understanding the fact, it's -- I think the thing I
19 could honestly say is that his lack of crime of
20 violence -- we don't need to practice Constitutional law
21 the day before Thanksgiving at 11:30 at night outside of a
22 Bojangles'. But, at least, it wasn't turned violent.

23 And we -- we, obviously, respect, the fact that the
24 police were just doing their job in that context. And we
25 have to understand that, you know, the jury has spoken

1 with the fact that you can't disobey lawful given commands
2 from the officers.

3 Obviously, I'd like to convey my client's request for
4 a probationary sentence, recognizing the severity of lack
5 of following the commands of the police officers. We
6 understand and just respectfully request the Court to go
7 on the lower end of the -- the range of sentencing.

8 THE COURT: All right. Mr. Shores, I'll be glad to
9 hear anything you want to tell me as well.

10 DEFENDANT SHORES: Your Honor, I'm -- I'm just
11 devastated that things went the way they did. And I was
12 in a panic that -- that night, you know. I know the
13 jury's verdict is what you have to go by.

14 But, you know -- and I do ask for your leniency and
15 allow me to, at least, get probation so that I can
16 continue taking care of my household and continue as a --
17 a good citizen. Because I don't cause trouble. I wasn't
18 out for that. And I apologize that everything transpired
19 the way it did.

20 THE COURT: When was his last charge on his prior
21 record?

22 MS. ODOM: Let's see. I believe 2014 -- well, that's
23 South -- South Carolina.

24 THE COURT: His last conviction.

25 MS. ODOM: In South Carolina, it's 2014. The Florida

1 record's unclear.

2 THE COURT: What did he have in 2014 in South
3 Carolina?

4 MS. ODOM: DUS.

5 THE COURT: All right. Anything else?

6 MR. RECKENBEIL: Your Honor, in -- understanding the
7 fact that our system is -- it's a snowball effect of
8 individuals not being able to get their driver's license
9 back. We're now -- he would have been inside the two-year
10 threshold of the immunity if that was still going on where
11 there's opportunities for individuals to get their license
12 back where [sic] the amnesty program. And I do not know
13 if that is still a part of what South Carolina does. But
14 it was three years between offenses.

15 THE COURT: You know, I would think though -- and,
16 again, it's been a while since I've looked at it. From
17 what all she just mentioned, I'm surprised -- especially
18 with habitual traffic offender, I'm surprised they haven't
19 moved to revoke his South Carolina license.

20 And -- and, also, none of these charges in an of
21 themselves are very significant charges. I definitely
22 realize that.

23 All right. Anything else?

24 DEFENDANT SHORES: I just -- all I tried to do was
25 just, you know, work and make an honest living like I've

1 always done. And that's one reason that I have driven
2 and -- because, you know, a livelihood. But I don't do
3 nothing illegal as far as earning a living. I try to do
4 everything as -- and work hard. And that's what I was
5 raised and brought up to do.

6 SENTENCING

7 THE COURT: All right. The sentence of the Court on
8 the resisting arrest is one year, suspended on 90 days,
9 followed by probation of 18 months. Credit for one day.
10 All of these are to run concurrent.

11 On the driving under suspension, that's 90 days,
12 suspended during probation.

13 On the giving false information, that's 30 days.
14 That's to run concurrent. So it will just be served at
15 the same time.

16 Open container, 10 days.

17 All right. Good luck to you.

18 *****END OF TRANSCRIPT OF RECORD*****
19

CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

I, HOLLIE JENKINS, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of the proceedings had and the evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Pickens County, South Carolina, on the 1st and 2nd days of October, 2019.

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

April 1, 2020

A handwritten signature in black ink, reading "Hollie M. Jenkins", is written over a horizontal line.

Hollie M. Jenkins, Court Reporter

My Commission Expires: 09/24/20

WITNESSES

Jeremiah W Vissage

Pickens County Sheriff's Office

11/23/2017

ARREST WARRANT NUMBER
5102P0556713

ACTION OF GRAND JURY

TRUE BILL

APR 10 2018

BY

Beatrice Phillips

Foreperson of Grand Jury

VERDICT

Dani Hester

Foreperson of Petit Jury

Date: 10-2-19

DOCKET NO. 2018-GS-39-
BST

0464

The State of South Carolina

County of Pickens

COURT OF GENERAL SESSIONS

APR 10 2018

TERM 2018

THE STATE

vs.

ROBERT DARRELL SHORES

Indictment for

3798

DRIVING UNDER SUSPENSION

VIOLATION § 56-01-0460

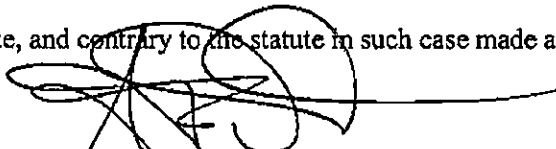
STATE OF SOUTH CAROLINA)
)
COUNTY OF PICKENS)

INDICTMENT FOR
DRIVING UNDER SUSPENSION

At a Court of General Sessions, convened on **APR 10 2018** the Grand Jurors of Pickens
County present upon their oath:

That ROBERT DARRELL SHORES did in Pickens County, on or about the 23rd day of November, 2017, drive a
motor vehicle on a public highway of this state when his license to drive was suspended, such not being the first
such offense within a period of five years including and immediately preceding the foregoing date. This is in
violation of §56-1-460 of the South Carolina Code of Laws (1976) as amended.

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


SOLICITOR

BAR # 102383

WITNESSES

Jeremiah W Vissage

Pickens County Sheriff's Office

11/23/2017

ARREST WARRANT NUMBER

5102P0556711

ACTION OF GRAND JURY

TRUE BILL

Date

APR 10 2018

Beatrix Phillips

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury *Danni Hesse*

Date: 10-2-19

DOCKET NO. 2018-GS-39-

BST

0465

The State of South Carolina

County of Pickens

COURT OF GENERAL SESSIONS

APR 10 2018

TERM 2018

THE STATE

vs.

ROBERT DARRELL SHORES

Indictment for

1223

PROVIDING FALSE INFORMATION TO POLICE

VIOLATION § 16-17-0725(B)

STATE OF SOUTH CAROLINA)
)
COUNTY OF PICKENS)

INDICTMENT FOR
PROVIDING FALSE INFORMATION TO POLICE

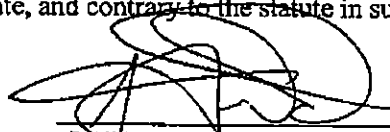
At a Court of General Sessions, convened on
County present upon their oath:

APR 10 2018

the Grand Jurors of Pickens

That ROBERT DARRELL SHORES did in Pickens County, on or about the 23rd day of November, 2017, when stopped/while under arrest, give false information to a law enforcement officer. This is in violation of §16-17-725 of the South Carolina Code of Laws (1976) as amended.

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


SOLICITOR

BAR # 102383

WITNESSES

Jeremiah W Vissage

Pickens County Sheriff's Office

11/23/2017

ARREST WARRANT NUMBER
5102P0556712

ACTION OF GRAND JURY

TRUE BILL

Date

APR 10 2018

Beatrice Phillips
Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury *Dan...*
Date: 10/2/19DOCKET NO. 2018-GS-39-
BST

0466

The State of South Carolina

County of Pickens

COURT OF GENERAL SESSIONS

APR 10 2018

TERM 2018

THE STATE

vs.

ROBERT DARRELL SHORES

Indictment for

0326

RESISTING ARREST

VIOLATION § 16-09-0320(A)

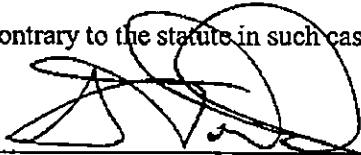
STATE OF SOUTH CAROLINA)
)
COUNTY OF PICKENS)

INDICTMENT FOR
RESISTING ARREST

At a Court of General Sessions, convened on **APR 10 2018** the Grand Jurors of Pickens
County present upon their oath:

That ROBERT DARRELL SHORES did in Pickens County, on or about the 23rd day of November, 2017,
knowingly, willfully and unlawfully oppose or resist an arrest being made by Jeremiah W Vissage with the
Pickens County Sheriff's Office whom he knew or reasonably should have known was a law enforcement officer.
This is in violation of §16-9-320(A) of the South Carolina Code of Laws (1976) as amended.

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


SOLICITOR

BAR # 102383

WITNESSES

Jeremiah W Vissage

Pickens County Sheriff's Office

11/23/2017

ARREST WARRANT NUMBER
5102P0556714

ACTION OF GRAND JURY

TRUE BILL
Date AUG 13 2019

Tia R Probst
Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury *Daniel Hester*
Date: 10-2-19

DOCKET NO. 2019-GS-39-SSO 1715

The State of South Carolina

County of Pickens

COURT OF GENERAL SESSIONS

AUG 13 2019 TERM 2019

THE STATE

vs.

ROBERT DARRELL SHORES

Indictment for

0660

OPEN CONTAINER VIOLATION

VIOLATION § 61-04-0110

[illegible]

INDICTMENT FOR
OPEN CONTAINER VIOLATION

At a Court of General Sessions, convened on **AUG 13 2019** the Grand Jurors of Pickens

County present upon their oath:

That ROBERT DARRELL SHORES did in Pickens County, on or about the 22nd day of November, 2017, have in his possession an open container of an alcoholic beverage in a vehicle in which he was inside. This is in violation of § 61-4-110 of the South Carolina Code of Laws (1976) as amended.

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

Shawn S. Odom
SOLICITOR BAR # 0077891

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled “Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings.”

Respectfully Submitted,

RECEIVED

Oct 23 2020

SC Court of Appeals

s/Wanda H. Carter
Wanda H. Carter
Deputy Chief Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT

This 23rd day of October, 2020.