

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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SC Court of Appeals

Appeal from Anderson County

Honorable R. Lawton McIntosh, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

SAVAYEA ANTWAN GLENN,

APPELLANT.

APPELLATE CASE NO. 2024-000289

RECORD ON APPEAL

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**THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:
STATE’S EXHIBIT NO. 5 (BODY CAMERA FOOTAGE).**

STATE OF SOUTH CAROLINA	)	IN THE CIRCUIT COURT OF THE
	)	TENTH JUDICIAL CIRCUIT
COUNTY OF ANDERSON	)	CASE NO: 2020-GS-04-02070
	)	
The State of South Carolina,	)	
	)	
PLAINTIFF,	)	
	)	
-vs-	)	TRANSCRIPT OF RECORD
	)	
Savayea Glenn,	)	
	)	
DEFENDANT.	)	
	)	
	)	

FEBRUARY 5 & 7, 2024
ANDERSON, SOUTH CAROLINA

B E F O R E:

THE HONORABLE R. LAWTON MCINTOSH

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LESA D. TAYLOR
Court Reporter

MOTION TO SUPPRESS

1 MOTION TO SUPPRESS

2 THE COURT: Okay, this is your motion to suppress --- if
3 you would, I don't know any of the alleged facts in this case
4 at all, so could you give me a general rundown as to the
5 arrest and what he's charged with?

6 MR. FULMER: He's charged with trafficking 28 to 100
7 grams. The Defendant was at Eddie's Minute Mart on Abbeville
8 Highway on May the 24th, 2020. The clerk at that mini mart
9 called 911 complaining about the Defendant -- someone called
10 911 complaining about the Defendant, that he had a gun, that
11 he was getting in people's faces ---

12 THE COURT: That he did what now?

13 MR. FULMER: Getting in people's faces and standing too
14 close to them, I guess is what they mean, that he was asking
15 for sexual favors, asking for a show, and that they wanted him
16 to -- you know, they wanted him out of the store. So, police
17 at that point responded out to the location and came in
18 contact with Mr. Glenn. There were several officers that were
19 on scene. Two of them will testify this afternoon. They both
20 have body cams on. They said that Mr. Glenn appeared to be
21 intoxicated, smelled of alcohol.

22 One of the officers lifted his shirt to check for a
23 weapon, because she had heard over the 911 dispatch that he
24 was armed in the store. I think she'll testify that she saw a
25 bulge, and there was an orange bag hanging down from his

MOTION TO SUPPRESS

1 waistband. So, I think that's the crux of it, was her lifting
2 his shirt to look for a weapon -- permissible under the
3 circumstances. They didn't find a weapon, they found drugs.

4 MR. LUCAS: And Your Honor, that -- Mr. Fulmer is
5 correct. So, I filed a motion and briefed it, but the
6 substance of the motion is that the officer coming up to my
7 client and lifting his shirt, that that's an impermissible
8 search that's outside of the scope of a permitted Terry frisk,
9 and our argument, which I'll make to you, is that she has to
10 frisk him for weapons, that she can't lift the shirt unless
11 there's some exceptional circumstance that allowed that.

12 THE COURT: Isn't Terry based on a reasonable,
13 articulable suspicion?

14 MR. LUCAS: That's correct, Judge. So, basically, you
15 have to have a reasonable, articulable suspicion that somebody
16 is committing a crime to do the stop. I don't really -- I'm
17 not sure -- and I certainly want to hear the facts concerning
18 the tip, because I'm not sure that they are exactly what Mr.
19 Fulmer is relaying. I want to hear what the officer has to
20 say. I'm not so certain that we take issue with whether
21 there's reasonable suspicion for the police to stop Mr. Glenn.
22 It -- so, it's -- they have to have reasonable suspicion for
23 the stop, and then also for the frisk, it has to be reasonable
24 suspicion that he has a weapon.

25 And if the tip is credible, Your Honor, I'm not sure we

MOTION TO SUPPRESS

1 take issue with that. Where the issue, as I see it, Your
2 Honor, is that what Terry permits is a pat-down frisk of the
3 outer clothing, and I think we would all agree that that's not
4 what happened here, that the officer simply reached in, lifted
5 his shirt -- and I think the testimony will be saw some
6 marijuana and then arrested him for that, and then a
7 subsequent search discovered the crack cocaine.

8 THE COURT: Okay. My understanding is that your client
9 may testify today?

10 MR. LUCAS: He may, Your Honor. In terms of the mode of
11 the hearing -- he may testify, Your Honor. I think he will.
12 In terms of the mode of the hearing, although it's my motion,
13 the State has the burden of proof, because it's a warrant-less
14 stop and arrest ---

15 THE COURT: Right.

16 MR. LUCAS: --- so I would propose the solicitor tender
17 his witnesses and the body camera footage, and I'll cross-
18 examine them and call Mr. Glenn.

19 THE COURT: I don't have a problem -- do you have a
20 problem with that?

21 MR. FULMER: No, sir, Judge. That's what I expected.

22 THE COURT: Okay. And the reason I'm asking that, do you
23 think your client -- normally, I'd give them Fifth Amendment
24 rights even though they're testifying at one of these
25 hearings.

MOTION TO SUPPRESS

1 MR. LUCAS: Well, Your Honor, I don't know that it's -- I
2 mean, you certainly can. I'm not sure that it's necessary in
3 the sense that him testifying here at the suppression hearing,
4 he's -- that doesn't obligate him to testify at trial ---

5 THE COURT: No.

6 MR. LUCAS: --- and I would intend to limit his ---

7 THE COURT: Well, I mean, I'm just thinking in terms of
8 if he were to sit up there, I know he's not going to say, oh,
9 yeah, I did this, that, and the other. I mean, I think the
10 State would want to use it against him later.

11 MR. LUCAS: Well, so, my position, Your Honor, will be
12 that unless he testifies later on, that it cannot be used
13 against him. My understanding, Judge, is he is not going to
14 be testifying as to, you know, where the drugs were found, who
15 they belong to, et cetera, just what the officer's actions
16 were during -- you know, during the stop and his own actions
17 leading up to it. His testimony ---

18 THE COURT: Mr. -- I'm sorry. I'm sorry.

19 MR. LUCAS: Oh, no. I was done, Your Honor.

20 THE COURT: All right. Mr. Fulmer, what's your position
21 on what happens if this Defendant testifies at trial as far as
22 your ability to use it later?

23 MR. FULMER: I don't think it's -- I don't think I can do
24 that, Judge, unless he does take the stand and testify
25 differently somehow.

MOTION TO SUPPRESS

1 THE COURT: I got you, okay. Then you don't have a need
2 to have the Fifth Amendment, then.

3 MR. LUCAS: I don't think so, Your Honor.

4 THE COURT: All right, sounds good. All right, call your
5 first witness.

6 MR. FULMER: Yes, sir, Judge. The State calls Deputy
7 Janessa Smith.

8 Whereupon,

9 JANESEA SMITH

10 was called as a witness, having been first duly sworn, was
11 examined and testified as follows:

12 CLERK: And please state your full name for the record
13 and spell your last name.

14 MS. SMITH: Master Deputy Janessa Smith. It's S-M-I-T-H.

15 DIRECT EXAMINATION

16 BY MR. FULMER:

17 Q Deputy Smith, where do you work?

18 A Anderson County Sheriff's Office.

19 Q How long have you worked there?

20 A Approximately six years.

21 Q Prior to the sheriff's office, where did you work?

22 A I worked in a detention facility, one in Asheville, North
23 Carolina, and one at Cherokee, North Carolina.

24 Q Is that the extent of your law enforcement experience?

25 A It is.

MOTION TO SUPPRESS

1 Q Okay. Were you working for the sheriff's office back on
2 May the 24th, 2020?

3 A Yes, sir.

4 Q Do you recall coming into contact with the Defendant that
5 day?

6 A Yes.

7 Q Okay. Do you recall where you were when you came into
8 contact with him?

9 A Where I was?

10 Q Yes.

11 A Yes. It was at 3300 Abbeville Highway, in Anderson
12 County, which is at the Eddie's Minute Mart.

13 Q That's a convenience store?

14 A It is.

15 Q Now why were you at this convenience store?

16 A I was dispatched in reference to a black male who was
17 wearing a dark blue shirt and red shoes. The male was on
18 scene intoxicated and was causing a disturbance in the store,
19 getting in a customer's personal space. At one point, he
20 showed the clerk a firearm, and he was making sexual comments
21 to the clerk.

22 Q So where were you when you received the call to go to
23 Eddie's? Do you recall?

24 A I'm not sure what my exact location was, no, sir.

25 Q Okay. So, you responded to the Eddie's Minute Mart?

MOTION TO SUPPRESS

1 A That's correct.

2 Q Were you the first officer on the scene?

3 A I was not.

4 Q Okay. Do you know who was there before you?

5 A It was Deputy Nesbitt at the time.

6 Q When you responded, what did you see?

7 A When I responded out, Deputy Nesbitt was already speaking
8 with the Defendant. He was speaking with him outside the
9 store beside a black SUV that was parked out front of the
10 store, which we were also advised that the Defendant had
11 driven up in. Deputy Nesbitt was speaking to the Defendant,
12 and at one point he -- I immediately observed there was a
13 bulge from the Defendant's front right waistband area. I
14 noticed there was some type of orange object that could be
15 seen sticking out from his pants and waistband area. I also
16 observed a strong odor of an alcoholic beverage -- type
17 beverage on his breath and body. His speech was slurred and
18 his eyes were glassy.

19 Q And did you have any interaction with him?

20 A I did. I spoke to him for a brief moment. He asked --
21 he was asked if he had a firearm, which he denied. And in
22 denying, based on all the circumstances of believing that he
23 had a firearm on his person and believing that he had a
24 firearm in his waistband, I did ask what he had there. He
25 maintained his hands in that general area, and when asked

MOTION TO SUPPRESS

1 about it, he reached in that area, and I did lift his shirt
2 and observed that there was a clear plastic bag, which was
3 consistent -- it had a very leafy substance consistent with
4 marijuana.

5 Q And was it immediately apparent to you that it was
6 marijuana?

7 A It was.

8 Q Was his shirt tucked in or out?

9 A His shirt was tucked out, so as he was waving his arms
10 around when he was talking to Deputy Nesbitt, his shirt raised
11 up and down, which was the time that I could see the orange
12 object sitting from underneath.

13 Q The bulge that you noticed under his shirt, was it
14 associated with the orange pouch, or was it separate from that
15 pouch, or could you tell?

16 A I could not see -- so I couldn't see -- you're talking
17 about the clear plastic?

18 Q Yes. Well, no, you said something was hanging down that
19 you could see?

20 A Yeah, some type of orange -- just I wasn't aware of
21 exactly what it was at the time, it appeared to be some type
22 of fabric or some bag of some sort or something of that nature
23 sticking out. And I believed that it was concealing a firearm
24 at the time based off of the surrounding circumstances and the
25 testimony we were given prior to response.

MOTION TO SUPPRESS

1 Q So you lifted his shirt. What did you do next?

2 A Once I lifted his shirt, I could immediately see the
3 clear plastic bag, which was consistent -- or that had the
4 green leafy substance which I believed to be marijuana. He
5 was immediately placed under arrest for public disorderly
6 conduct based off his gross intoxication, and as he was placed
7 under arrest at that point, I did seize the bag -- the clear
8 plastic bag, as well as the orange bag he had on his person.
9 Once he was placed under arrest, he did have another green bag
10 that he had in his hand that he dropped that bag to the ground
11 after being advised that he was under arrest. I did pick up
12 that bag, and inside that bag was an unknown amount of money.

13 Inside the orange bag was a white, rocklike substance.
14 There was also seven white tablets. The white rocklike
15 substance was identified -- field tested, and it did field
16 test positive for crack cocaine. And it a preliminary weight
17 of 77.3 grams. The white tablets, those were identified
18 through Pill Identifier as being hydrocodone, which is a
19 Schedule II controlled substance, which the Defendant did not
20 have a valid prescription or any lawful reason to have
21 possession of those.

22 Q You said you placed him under arrest for public
23 disorderly conduct. When you approached him and could smell
24 the alcohol and he seemed to be intoxicated to you, had you
25 decided at that point you were going to arrest him for public

MOTION TO SUPPRESS

1 disorderly conduct?

2 A Yes.

3 Q Based on what factors?

4 A His -- the strong odor of the alcoholic beverages, glassy
5 eyes, his speech was slurred. So, based off all those factors
6 together.

7 Q What about the information that you knew from the
8 dispatch?

9 A As far -- so, the information provided to dispatch on
10 arrival was him getting in a customer's personal space, as
11 well as showing a firearm and -- to the clerk, who called in
12 and said he was intoxicated and acting in an intoxicated
13 manner. All of those factors together.

14 Q Okay. And you did, in fact, charge him with public
15 disorderly conduct?

16 A I did. I obtained a warrant.

17 Q At the time this happened, were you wearing a body
18 camera?

19 A I was.

20 Q Let me show you a thumb drive. Have you seen that
21 before?

22 A I have.

23 Q How do you recognize it?

24 A I was shown it, and I have my initials there.

25 Q Okay. Is your body cam contained on this thumb drive?

MOTION TO SUPPRESS

1 A It is.

2 MR. FULMER: Thank you. You can answer any questions Mr.
3 Lucas might have for you.

4 MR. LUCAS: Judge, I'm going to use the podium, if you'll
5 give me just a second, please.

6 THE COURT: Absolutely.

7 MR. LUCAS: Did you make the body camera footage a
8 Court's exhibit? I've got my own copy, but I'm ---

9 MR. FULMER: I did not yet. I was going to let the other
10 witness testify before I did. You're welcome to use mine if
11 you want to.

12 CROSS EXAMINATION

13 BY MR. LUCAS:

14 Q Deputy Smith, thank you for being here today. You
15 testified that you've been a police officer for six years?

16 A Approximately six years, yes, sir.

17 Q And how long before that were you a detention officer?

18 A Approximately three years.

19 Q Three years. So you've been to the police academy for
20 training?

21 A That's correct.

22 Q And that would have been -- and correct me if I'm wrong,
23 but that would have been nine years ago?

24 A I can't remember the exact date that I went to the
25 corrections school.

MOTION TO SUPPRESS

1 Q That's fine. Okay, but during the course of your
2 employment as a law enforcement officer and at the police
3 academy, you were trained in how to perform Terry stops?

4 A That's correct.

5 Q Okay. How many Terry stops would you say that you have
6 performed over the course of your law enforcement career?

7 A There's been numerous ones. I couldn't put a number on
8 it.

9 Q I mean, more than ten? More than 25? Hundreds? I mean,
10 how many are we talking about?

11 A I wouldn't say hundreds, but I'm sure there's more than
12 ten.

13 Q Okay. So, a lot. This is not your first rodeo in doing
14 a Terry stop?

15 A This particular one? What are you referring to?

16 Q Well, you've done many Terry stops and frisks over the
17 course of your career, correct?

18 A Over the last six years, yes.

19 Q Okay. And is it your understanding that generally the
20 degree of intrusion that's permitted during Terry -- assuming
21 you have reasonable suspicion to believe a person is armed, is
22 a frisk, or a pat down, is that your understanding?

23 A That's correct.

24 Q Okay. And that just means -- that parlance for generally
25 a pat down of the outer clothing?

MOTION TO SUPPRESS

1 A Correct.

2 Q Okay. And that's generally what you've been trained to
3 do?

4 A Yes.

5 Q Okay. Let's move and talk about the tip or 911 call that
6 lead you to respond to Eddie's Minute Mart on May 24th. You
7 referenced details that you received from the dispatcher. How
8 exact -- tell the Court how exactly you're getting those. Are
9 you getting them on the radio? Is it on a ticker? Or is it
10 some combination of both?

11 A There's a combination of both. So, we have a computer
12 system, which has all the CAD notes that are provided to
13 dispatch, and dispatch types them in and we're able to see
14 them as they're updated. And dispatch also advised me over
15 the radio of certain information as well.

16 Q Okay. And the information that you testified to earlier,
17 did you know all of that at the time that you got out of the
18 car to talk to Mr. Glenn or some of this stuff that you've
19 since learned?

20 A I can't advise what I knew at the time. I don't recall.

21 Q You testified that the caller was the store clerk?

22 A There was a clerk -- per the notes in the CAD -- in the
23 system that we utilize, that's the way that dispatch had
24 written out, was the clerk.

25 Q Okay. Are you sure about that?

MOTION TO SUPPRESS

- 1 A I am.
- 2 Q Okay. Did you -- what is the clerk's name?
- 3 A Ms. Jenkins.
- 4 MR. LUCAS: Okay.
- 5 THE COURT: What was that?
- 6 DEPUTY SMITH: Ms. Jenkins.
- 7 THE COURT: Jenkins?
- 8 DEPUTY SMITH: Yes, sir.
- 9 BY MR. LUCAS:
- 10 Q And where did you get that information out of?
- 11 A I don't recall.
- 12 Q Okay. Did you speak with this Ms. Jenkins after -- right
- 13 after you arrived at Eddie's Minute Mart?
- 14 A I -- that I don't recall.
- 15 Q Excuse me?
- 16 A I don't recall speaking with Ms. Jenkins.
- 17 Q Okay.
- 18 A Directly on the scene.
- 19 Q So you were relying the information -- or you were
- 20 relying upon the information given to you by dispatch?
- 21 A As -- in reference to what?
- 22 Q So, in terms of deciding to stop Mr. Glenn, you were
- 23 relying upon information given by the dispatcher, and you've
- 24 not corroborated it with anyone else at the store at that
- 25 time?

MOTION TO SUPPRESS

1 A I wasn't the first on scene, so I -- Mr. Glenn was
2 already stopped by and speaking with another deputy that was
3 already on scene ---

4 Q Okay.

5 A --- at the time that I arrived.

6 Q But speaking for yourself, by the time you arrived, you
7 had not done anything to corroborate the information?

8 A Not that I recall.

9 MR. LUCAS: I'm going to show you a clip of your body
10 camera footage, starting at 1:50, and -- well, if I can --
11 what I really want to start at is 2:09, but let me see if I
12 can get it a little closer.

13 (Whereupon, a video was played.)

14 BY MR. LUCAS:

15 Q You would agree that's the store clerk, correct?

16 A It's an employee of the store, yes.

17 Q Okay. And she does -- she's saying is everything all
18 right, what's going on, is he wanted. Is that accurate?

19 A That is.

20 Q Okay. So, it kind of seems like she doesn't know why the
21 police have been called.

22 A It's possible. I'm not sure if she was the only clerk
23 there or not.

24 Q And did you ever speak with the caller? Like, later on
25 in your investigation?

MOTION TO SUPPRESS

1 A Not to my knowledge, not that I recall.

2 Q Okay. And did y'all ever get -- you know, look at the
3 surveillance footage to see whether or not Mr. Glenn actually
4 showed a gun in the store?

5 A We were unable to get video footage.

6 Q And it was your testimony on direct examination that you
7 arrived a little bit after Officer Nesbitt, right?

8 A That's correct.

9 Q And that you walked up, you heard a little bit of his
10 conversation with Mr. Glenn?

11 A That's correct.

12 Q And then you said that you asked Mr. Glenn if he had a
13 weapon?

14 A I don't believe I asked Mr. Glenn. I think Deputy
15 Nesbitt asked that.

16 Q Okay. Well, I tell you what, let's play a little clip of
17 the video, and then we'll talk about it. Well, and one
18 further question -- my notes say that you also testified on
19 direct that before lifting the shirt, you asked Mr. Glenn what
20 he had in his pants, is that correct?

21 A That is correct.

22 Q And you said that he wouldn't respond to you?

23 A I don't remember what his response was. He had some type
24 of response. I don't recall what it was. After he was asked
25 by Deputy Nesbitt if he had a firearm, he denied having a

MOTION TO SUPPRESS

1 firearm. That's when I asked him what the item was up under
2 his shirt in his waistband that he had tucked.

3 Q Okay. And then you testified that he reached into his
4 waistband?

5 A He reached and grabbed hold of the item, and shoved it
6 further in his waistband.

7 MR. LUCAS: Okay. And Your Honor, I'm going to play a
8 clip from the deputy's body camera footage.

9 THE COURT: Okay.

10 MR. LUCAS: Starting at 28 seconds.

11 (Whereupon, a video was played.)

12 BY MR. LUCAS:

13 Q Okay. Now, in watching that video, do you see at any
14 point that anyone asked Mr. Glenn if he had a weapon?

15 A No, not at that clip, no.

16 Q Okay. Well, is it your testimony that that's going to be
17 present in some other clip?

18 A It is.

19 Q Okay. On that clip, do you see at any time Mr. Glenn
20 reaching into his waistband to grab something before you go
21 lift up his shirt?

22 A Prior to lifting up his shirt, no.

23 Q Okay. So you -- basically what you're saying is that you
24 walked up to him, you lifted his shirt up. Right?

25 A That's correct.

MOTION TO SUPPRESS

1 Q And then he pulls his hand down, kind of pulling his
2 shirt back down.

3 A At one point he lifts his shirt and puts his hand on the
4 object and shoves it further in his waistband.

5 Q But he's not -- he has things in both of his hands,
6 right? He has a bag in his left hand?

7 A Right.

8 Q And he has cigarettes in his right hand.

9 A That's correct.

10 Q He -- and you would agree with me that he doesn't
11 actually reach into his waistband and make any grab for any
12 object?

13 A He reaches in his waistband and tucks the item further
14 into his ---

15 Q So his hands are kind of like this, right?

16 A He keeps his hands in the general area ---

17 Q So his -- he's not physically going into his waistband?

18 A He doesn't physically put his entire hand in his
19 waistband, no.

20 Q Okay. And his hands are completely visible that entire
21 time?

22 A They are.

23 Q Okay. And you testified that Officer Nesbitt arrived
24 first?

25 A That's correct, to my knowledge. He was the first one on

MOTION TO SUPPRESS

1 scene. It was not me.

2 Q No, but when you got there, he was already there, he's
3 talking with Mr. Glenn?

4 A That's correct.

5 Q And Mr. Glenn actually knows Mr. Nesbitt, right?

6 A I have no idea.

7 Q Do you know that -- did you know that Nesbitt used to be
8 his probation officer?

9 A I know that now. I didn't at the time.

10 Q Okay. But they're having, you know, what appears to be a
11 pretty friendly conversation.

12 A Mm-hmm.

13 Q And at that time -- and then when you arrive as well, Mr.
14 Glenn is not disobeying any police orders?

15 A No.

16 Q He's not trying to walk away from you?

17 A No.

18 Q He's not threatening you with a weapon or making any
19 threats?

20 A No. He's not making any direct or verbal threats.

21 Q Okay. And there was also a third officer present as
22 well, right? Officer Rowe?

23 A Deputy Rowe, yes.

24 Q Deputy Rowe. And once you get there, all three of you --
25 they kind of spread out and surround him, would that be fair

MOTION TO SUPPRESS

1 to say?

2 A Per this clip -- particular clip, but at one point,

3 Deputy Rowe does get behind him, yes.

4 Q And then you testified that you lifted his shirt because

5 you were concerned based off of the call that he might have a

6 weapon, is that correct?

7 A Yes.

8 Q Now, you lifted it the first time. What did you see when

9 you lifted it that first time?

10 A I could see the object that we -- the orange bag as well

11 as the clear plastic bag.

12 Q Okay. Were you able to see whether it had a weapon in it

13 at that point?

14 A I couldn't confirm whether it -- he had a weapon in

15 behind that item or not, no.

16 Q Okay.

17 A But I didn't see a weapon.

18 Q And so you're saying at that time, you did not see a

19 weapon?

20 A Not that at that time, I did not see a weapon.

21 Q And you're also -- you're testifying that at the time of

22 that first shirt lift, you were able to see the plastic bag at

23 that point and time?

24 A That I can't recall.

25 Q Okay.

MOTION TO SUPPRESS

1 A I don't know if it was the -- you're talking about the
2 first initial ---

3 Q Yes, ma'am.

4 A I can't recall ---

5 Q Okay.

6 A --- if it was during that time or not.

7 Q And then you lifted the shirt up again, and then at that
8 point and time, you saw the plastic bag?

9 A Whether I saw it the first time -- but I definitely saw
10 it the second time.

11 Q Okay.

12 A I believe I saw the bag the first time, but I can't
13 testify 100 percent sure to say that I did.

14 Q And then, at that point and time, you handcuffed him and
15 told him that he was under arrest, is that accurate?

16 A That is.

17 MR. LUCAS: Okay. And Your Honor, I'm going to play for
18 the Court the video clip again showing the arrest.

19 (Whereupon, a video was played.)

20 BY MR. LUCAS:

21 Q I can play it longer if you need to, but you would agree
22 that at that point and time, you didn't advise him that he was
23 under arrest for public disorderly conduct?

24 A No, during this clip, he wasn't advised that it was for
25 public disorderly conduct, no.

MOTION TO SUPPRESS

1 Q You say he was advised, or was not?

2 A Was not.

3 Q Okay. And you would agree that you made the decision to
4 arrest him right after you saw the plastic baggy with
5 marijuana?

6 A I wouldn't say that I made the decision. He was placed
7 under arrest at the time for public disorderly conduct. The
8 decision to place him under arrest for public disorderly
9 conduct in my mind was already made during brief moments of
10 speaking with him and the encounter, and ---

11 Q Okay. Well, do you remember having a phone call with
12 your supervisor later on where you explained what happened and
13 why you arrested him and what you found?

14 A I had a conversation with my supervisor, but as far as
15 what the conversation entailed, I don't know.

16 Q Not sure?

17 A No.

18 Q Do you know if you told him he was under -- that you had
19 arrested Mr. Glenn for public disorderly conduct at that time?

20 A I'm not sure.

21 MR. LUCAS: Your Honor, I'm going to play the Court a
22 clip, starting at 14:18. That's showing this conversation
23 with the supervisor. I may be a few seconds early on it.
24 (Whereupon a video was played.)

25 BY MR. LUCAS:

MOTION TO SUPPRESS

1 Q Now, Deputy Smith, in listening to that, you would agree,
2 you didn't say anything at that time to your supervisor about
3 arresting him for public disorderly conduct?

4 A No, I don't think that was a supervisor I was speaking to
5 at that point and time.

6 Q Okay, who were you speaking with?

7 A I believe it was another deputy. I can't recall exactly
8 who, but I don't believe that was a supervisor.

9 Q But you were explaining to him what happened at that time
10 when your memory was very fresh?

11 A I gave him a brief synopsis of what I had obtained.

12 Q And you would agree that in terms of an investigation for
13 public disorderly conduct, which requires, of course, gross
14 intoxication, you would agree with me that you didn't -- you
15 personally didn't ask Mr. Glenn whether he had been drinking?

16 A Not that I can recall.

17 Q Okay. You didn't give him any field sobriety tests or
18 anything like that?

19 A No.

20 Q And you would agree with me that at least what's shown on
21 this video where he's, you know, outside of the store in
22 public, what you were personally observing, he's not yelling
23 or hollering or anything like that?

24 A Not at the time that I encountered him, no.

25 Q Okay. And he may or may not have been getting into

MOTION TO SUPPRESS

1 people's space at the store, but you personally did not
2 observe that?

3 A That's correct, I did not.

4 Q Okay. And you recited the details of the call, but that
5 didn't include anything about him hollering or yelling or
6 anything like that. It was that he had made some offensive
7 comments.

8 A I don't believe, to my knowledge, as far as the call,
9 that there was any rendition of him yelling.

10 Q Okay. And to your knowledge, there was just the one call
11 to dispatch, there were not multiple calls?

12 A To my knowledge, that's correct. It's just the one.

13 MR. LUCAS: Beg the Court's indulgence for just a second,
14 Your Honor.

15 BY MR. LUCAS:

16 Q One last question for you, Deputy Smith. In terms of --
17 and I'm going to go back to when you talked about trying to
18 get the surveillance video from Eddie's Minute Mart, when did
19 you try to get that?

20 A I don't recall the exact -- I'm not sure.

21 Q Okay. But it certainly wasn't before Mr. Glenn was
22 stopped and arrested?

23 A Not before, no.

24 MR. LUCAS: Okay. I don't have any further questions,
25 Your Honor.

MOTION TO SUPPRESS

1 MR. FULMER: A couple, Your Honor.

2 THE COURT: Yes, sir.

3 REDIRECT EXAMINATION

4 BY MR. FULMER:

5 Q Just to be clear, you were aware that someone had
6 reported that Mr. Glenn had a gun when you arrived at Eddie's
7 Minute Mart, right?

8 A That's correct.

9 MR. FULMER: Okay.

10 THE COURT: Say that again.

11 BY MR. FULMER:

12 Q You were aware that it had been reported to dispatch that
13 Mr. Glenn had a gun?

14 A That's correct, and had shown it.

15 Q And had shown it.

16 A Inside the store, yes.

17 MR. FULMER: Okay. Let me ask you this, when you lifted
18 his shirt, is that more or less intrusive than what you
19 ordinarily do when you pat someone down?

20 MR. LUCAS: Your Honor, that calls for legal conclusion.

21 THE COURT: I hadn't got the question -- ask the
22 question.

23 MR. FULMER: When you lifted his shirt, would you
24 characterize that as more or less intrusive than when you
25 frisk somebody, when you pat them down?

MOTION TO SUPPRESS

1 DEPUTY SMITH: When I lift ---

2 THE COURT: Now make your objection. Go ahead.

3 MR. LUCAS: Your Honor, I'll withdraw it. Mr. Fulmer was
4 going a different place than I expected.

5 BY MR. FULMER:

6 Q Describe your normal frisk. How do you pat someone down?

7 A I check the outer clothing. We pat down from -- every
8 area of the outer clothing to ensure that there's no firearm
9 or any kind of weapon that, you know, could potential harm us.

10 Q So what parts of the body would you be touching with your
11 frisk?

12 A The upper body as well as the lower legs, arms, the pat
13 down of the shoes -- outer exterior of the shoes. So, arms --
14 definitely the waistband is huge. That's one of the first
15 areas that I do check. From my experience, we've had --
16 that's one of the main places that I've located firearms is
17 the waistband area, so that's one of the first places that I
18 check.

19 Q Let me ask you this. Would it be fair to say that your
20 focus changed dramatically when you realized that he had a
21 significant amount of drugs in his waistband?

22 A That's correct.

23 Q Would it be true that you weren't really as concerned as
24 you had been about the public disorderly conduct charge?

25 A That's correct.

MOTION TO SUPPRESS

1 Q Do you know how much time a public disorderly conduct
2 carries?

3 A I believe it's up to 30 days.

4 Q Much less than a significant amount of drugs would get?

5 A That's correct.

6 MR. FULMER: Thank you.

7 MR. LUCAS: Your Honor, I just have one further question.

8 THE COURT: Okay.

9 RECROSS EXAMINATION

10 BY MR. LUCAS:

11 Q And Deputy Smith, with regards to the tip about Mr.
12 Glenn, the tip was that he showed someone or showed the clerk
13 a firearm, is that correct?

14 A So, he showed the clerk, per the notes, he showed the
15 clerk the gun in a non-threatening manner.

16 Q Okay. And you would agree with me it would be odd for a
17 clerk to say he showed the clerk a gun. They'd probably
18 phrase it showed me a gun or something like that?

19 A Yeah, but it's not odd for dispatch to notate in there
20 who stated it.

21 Q Okay, so dispatch is giving a summary of what was related
22 to them?

23 A That's correct.

24 MR. LUCAS: Okay. Thank you.

25 THE COURT: All right, thank you. You may step down.

MOTION TO SUPPRESS

1 May this witness be excused, or is she here?

2 MR. FULMER: Well, until Wednesday she's excused.

3 Hopefully.

4 THE COURT: All right.

5 MR. LUCAS: I mean, Your Honor, we'll excuse her.

6 THE COURT: You're a good man.

7 MR. FULMER: State calls Josh Nesbitt.

8 Whereupon,

9 JOSH NESBITT

10 was called as a witness, having been first duly sworn, was
11 examined and testified as follows:

12 CLERK: If you would, please, state your full name for
13 the record and spell your last name.

14 MR. NESBITT: It's Joshua Wade Nesbitt, N-E-S-B-I-T-T.

15 DIRECT EXAMINATION

16 BY MR. FULMER:

17 Q Mr. Nesbitt, where do you work?

18 A I currently work at First Quality Enterprises.

19 Q Where were you working back in May of 2020?

20 A At the Anderson County Sheriff's Office.

21 Q How long did you work there at that time?

22 A Approximately three years at that time.

23 Q And did you have any law enforcement experience prior to
24 that?

25 A Yes, prior to the sheriff's office, I also spent

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1 approximately three years at the Department of Probation,
2 Parole, and Pardon Services.

3 Q Do you recall answering a call to Eddie's Minute Mart on
4 May the 24th, 2020?

5 A Yes, I do.

6 Q Do you recall why you were called out to the store?

7 A To my best recollection, it was a disturbance call. A
8 subject was causing a disturbance at the store.

9 Q But you don't recall any particulars about what the
10 disturbance was?

11 A No, I do not remember the details.

12 Q Do you recognize the Defendant in the courtroom today?

13 A Yes, I do.

14 Q How do you recognize him?

15 A From prior professional run-ins, I guess is how you would
16 say that.

17 Q Was he at the store that day?

18 A Yes, he was.

19 Q Did you come into contact with him?

20 A Yes, sir, I did.

21 Q Did you make -- were you able to make a determination
22 that he was connected to this disturbance call?

23 A Yes, I was. When I got there, he was in the doorway of
24 the store, and being loud, boisterous. At one point, I do
25 recall asking the store clerk if this was the subject. I

1 don't remember the indication of whether or not there was a
2 nod or a verbal yes, but that's how I came to interact with
3 him that day.

4 Q And what sort of interaction did you have?

5 A I just questioned him about what was going on, just began
6 speaking with him, trying to determine the details of the
7 incident in question, what exactly was happening, trying to
8 collect more information on if he was indeed the subject we
9 were there to speak with or interact with.

10 Q Did you detain him, or was this a voluntary sort of
11 interaction?

12 A This was all voluntary when I initially got there.

13 Q Okay. Did you notice anything about him as you were
14 talking to him?

15 A Yes. When I got there and I was talking with him, I did
16 smell the odor of alcohol. From those prior interactions, I
17 had noticed him to be a little more quiet and reserved this
18 time. As previously stated, he was loud and boisterous, not
19 in line with his normal nature.

20 Q So he didn't seem like himself to you, then?

21 A No, he did not.

22 Q Okay. Were you there when Officer Smith arrived?

23 A Yes, I was.

24 Q Okay. Did you see her remove something from his
25 waistline?

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1 A Yes. And at this point, he was still free. He was not
2 detained. In speaking with him, he became animated with his
3 hands and his shirt lifted above his waistband, and she
4 immediately saw something in a bag in his waistband. And once
5 he moved his hands and his shirt came above his waistband and
6 we saw it, she immediately questioned what it was and what it
7 was doing there.

8 Q And did you see her take those drugs from him?

9 A Yes. I was -- I did watch her remove the bag from his
10 waistband.

11 Q Okay. And were you involved in any way after that with
12 some testing or anything?

13 A Yes, I did happen to have some of the test kits that were
14 used when field testing the substances that we found.

15 Q Were you wearing a body cam at this time?

16 A Yes, I was.

17 Q Was it operating?

18 A Yes.

19 Q Let me show you a thumb drive and ask you if you
20 recognize it.

21 A Yes, that's -- I do recognize that.

22 Q Does that contain your body cam video?

23 A Yes, it does.

24 Q From this incident. Did you write a report about this
25 incident?

MOTION TO SUPPRESS

1 A I did not do a report.

2 MR. FULMER: Okay. That's all I have. Please answer any
3 questions Mr. Lucas has.

4 CROSS EXAMINATION

5 BY MR. LUCAS:

6 Q Thanks for being here, Mr. Nesbitt.

7 A Yes, sir. Thank you.

8 Q So, you came into contact with Mr. Glenn outside of
9 Eddie's Minute Mart?

10 A Yes, sir. In the doorway.

11 Q Okay. And he's an old probationer of yours, correct?

12 A That is correct.

13 Q And you would agree with me that the initial interaction
14 you had with Mr. Glenn was pretty friendly?

15 A Yeah, it was -- I wouldn't say we were on friendly terms,
16 but it was not in any way aggravated or frustrating or -- it
17 was an interaction you would have with just a normal person
18 you would meet.

19 Q Sure. So, it would be fair to say that he's cooperative?

20 A Yes. At that point, at the initial meeting, yes, sir.

21 Q He was not trying to walk away from you?

22 A No, sir, not initially.

23 Q He's not disobeying any commands or anything like that?

24 A No, sir.

25 Q And you indicate -- you described that initial encounter

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1 as voluntary?

2 A Yes, sir.

3 Q But you would agree with me that it became -- certainly
4 Mr. Glenn was seized by the time he was surrounded by two
5 additional officers and you, right?

6 A I wouldn't say seized.

7 Q Let me put it to you this way. Would he have been
8 allowed to walk away at that point and time?

9 A Not in the condition that he was in, no.

10 Q Okay. And say maybe 45 seconds or so after you got
11 there, give or take, Officer Janessa Smith and then one other
12 officer walk up, correct?

13 A Yes, sir.

14 Q Okay. And Officer Smith, she listens to you speaking
15 with Mr. Glenn, correct?

16 A Yes, sir.

17 Q And you're asking Mr. Glenn if he'd been drinking, right?

18 A Yes, sir.

19 Q And he says no.

20 A Yes, sir.

21 Q And then, within about 30 seconds, Officer Smith quickly
22 walked up to Mr. Glenn and she pulled his shirt up, right?

23 A I don't recall her pulling his shirt up initially.

24 Q Okay. What is your recollection of it?

25 A My recollection is like I said -- stated earlier, that he

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1 got animated with his hands, and I think his shirt lifted
2 above his waistband, and that was when she noticed the bag in
3 his waistband.

4 MR. LUCAS: Okay. Your Honor, I'm going to play Mr.
5 Nesbitt's body camera footage, just starting from the
6 beginning. I think he'll -- you'll see Mr. Glenn in maybe 15
7 seconds.

8 (Whereupon, a video was played.)

9 BY MR. LUCAS:

10 Q So, you would agree with me that that video definitely
11 shows Officer Smith come up and lift Mr. Glenn's shirt?

12 A Yes, I do. I do see her lifting his shirt in that ---

13 Q Okay.

14 A --- particular moment.

15 Q And she didn't do a Terry frisk on him before that?

16 A No. That was the first interaction.

17 Q And you had not either?

18 A No.

19 Q And you testified that you thought that Officer Smith had
20 seen a baggie of drugs inside of his pants before lifting the
21 shirt?

22 A Yeah. In that scene, just before she lifted his shirt,
23 when he moves his hands, the green bag catches his shirt,
24 flips his shirt up, and you briefly see the orange bag, and
25 that was the moment that she was standing to my left.

MOTION TO SUPPRESS

1 Q Okay, so you can see the orange bag, but you can't see
2 the contents of the orange bag?

3 A No, you can't see the contents of the bag.

4 Q Okay. So, don't let me put words in your mouth, but
5 really what you're saying is that he lifted his shirt up and
6 she could see the orange bag, but not the contents of it?

7 A Yes, in the movement of his hands, his shirt lifted, and
8 you could see the orange bag in the waistband, but not what
9 was in the orange bag.

10 Q And then, after that, she lifts his shirt up. He pulls
11 it down?

12 A Yes.

13 Q And then she lifts it up again?

14 A Yes.

15 Q And then, to your understanding at least, then she
16 arrested him after that second lift?

17 A Yes.

18 Q And at that time, was it your understanding that she was
19 arresting him for possession of marijuana?

20 A Not at that time.

21 Q At that time, did she say what she was arresting him for?

22 A I do not recall her stating what the actual arrest was --
23 or the reason of the arrest I should say.

24 Q Okay, I'm sorry. I didn't mean to interrupt you.

25 A Oh, you're fine.

MOTION TO SUPPRESS

1 Q And your body camera footage, that starts at the time you
2 arrived at Eddie's Minute Mart, correct?

3 A Yes.

4 Q And you had not spoken with anyone at Eddie's before
5 that?

6 A No.

7 Q You hadn't spoken with the 911 caller?

8 A No, not directly. Just what we were hearing through
9 dispatch.

10 Q Okay. And you indicated that you stuck your head inside
11 the store real quick. I mean, does your body camera footage
12 show the whole substance of your interaction with the clerk?

13 A Yes. That initial interaction in that segment, yes, sir.

14 MR. LUCAS: Okay. And I beg the Court's indulgence for
15 just a second, Your Honor.

16 BY MR. LUCAS:

17 Q And you would agree that the video shows you asking Mr.
18 Glenn whether he has any weapons?

19 A I don't recall asking him if he had any weapons or not.

20 Q Okay. And you didn't do a Terry frisk on him?

21 A No, I didn't.

22 Q Okay. I don't have any further questions. Thank you.

23 A Thank you.

24 THE COURT: Any further questions?

25 MR. FULMER: No, sir, Your Honor.

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1 THE COURT: All right, thank you, sir. You may step
2 down. Any other witnesses?

3 MR. FULMER: No, sir, Judge.

4 THE COURT: All right. Are you ready with your witness?

5 MR. LUCAS: I am, Your Honor.

6 THE COURT: Okay.

7 Whereupon,

8 SAVAYEA ANTWAN GLENN

9 was called as a witness, having been first duly sworn, was
10 examined and testified as follows:

11 CLERK: And just state your full name for the record.

12 MR. GLENN: Savayea Antwan Glenn.

13 DIRECT EXAMINATION

14 BY MR. LUCAS:

15 Q Mr. Glenn, on May 24th, were you bothering anyone at
16 Eddie's Minute Mart?

17 A No, sir.

18 Q Did you ever show the clerk a gun?

19 A No, sir.

20 Q What did you show the clerk?

21 A A bag of money that I had in my hand.

22 Q And what were you doing at Eddie's Minute Mart?

23 A I was about to go purchase a pack of cigarettes and a
24 coffee, which I had spilled right there at the counter while
25 purchasing.

MOTION TO SUPPRESS

- 1 Q Okay. Did you know the police officer who stopped you
2 outside of the store?
- 3 A Yes.
- 4 Q Did you cooperate with him?
- 5 A Yes, sir.
- 6 Q Did he ask you if you were drunk?
- 7 A Yes.
- 8 Q What'd you tell him?
- 9 A I told him -- well, he asked me if I was drinking, and I
10 told him I wasn't.
- 11 Q Okay. And were you drunk?
- 12 A No, sir.
- 13 Q Did any other police officers arrive after him?
- 14 A Yes.
- 15 Q Did you cooperate with them?
- 16 A Yes.
- 17 Q Did you ever try to walk away from them or flee?
- 18 A No, sir.
- 19 Q Did you ever threaten any of them?
- 20 A No, sir.
- 21 Q Did you ever reach into your waistband?
- 22 A No, sir.
- 23 Q What did you have in your hands, if anything?
- 24 A A pack of cigarettes and a Crown Royal bag.
- 25 Q So it would be fair to say your hands were not free?

MOTION TO SUPPRESS

1 A No, sir.

2 Q Now, did anyone ever frisk you?

3 A No, sir.

4 Q Can you tell the Court what Officer Smith did?

5 A When she arrived on scene, she lifted my shirt and I, you
6 know, pulled my shirt back down and she lifted it again.

7 MR. LUCAS: Okay. Thank you. I don't have any further
8 questions. Answer any questions that Mr. Fulmer might have.

9 THE COURT: Mr. Fulmer?

10 CROSS EXAMINATION

11 BY MR. FULMER:

12 Q Did you just testify you had not been drinking that day?

13 A No, I wasn't drunk.

14 Q But you had been drinking?

15 A No, sir, not within a three-hour span of ---

16 Q How did you get to Eddie's Minute Mart?

17 A I drove.

18 MR. FULMER: Did you drive the black SUV we see in the
19 video?

20 MR. LUCAS: Your Honor, I'm going to object. That's
21 outside the scope of the hearing -- beyond the scope of this
22 hearing.

23 THE COURT: He wasn't charged with DUI?

24 MR. FULMER: No, sir, Judge, but ---

25 THE COURT: All right.

MOTION TO SUPPRESS

1 MR. FULMER: --- I'm going to his truthfulness about
2 whether or not he'd been drinking, the reason I was asking the
3 question.

4 BY MR. FULMER:

5 Q Had you been drinking that day?

6 A Not that day, but that morning.

7 Q Well, this was 6:00 in the morning.

8 A Yeah. Not that day.

9 Q That morning?

10 A That morning.

11 Q Okay. Why were you buying people things inside the
12 store?

13 A I dropped a cup of coffee, and I was blocking the way
14 cleaning it up, so I offered to pay for people's gas.

15 MR. FULMER: That's all I have, Judge.

16 REDIRECT EXAMINATION

17 BY MR. LUCAS:

18 Q And Mr. Glenn, it was your testimony that you had had
19 several drinks earlier on in the night, correct?

20 A Yes, sir.

21 Q And it's your testimony that you were not drunk?

22 A Yes, sir.

23 MR. LUCAS: Okay. No further questions, Your Honor.

24 THE COURT: All right, thank you, sir. You can step
25 down. Mr. Fulmer, I'm going to let you go first.

MOTION TO SUPPRESS

1 MR. FULMER: Thank you, Judge. Judge, in this case --
2 this is a warrantless search, so I recognize the State bears
3 the burden of showing they had a reason -- a legal reason to
4 search the Defendant in this case. I think they had two
5 substantial legal reasons to search him, and number one, there
6 was probable cause to arrest him for public disorderly
7 conduct. And because of that, she's entitled to search him
8 subject to an arrest. And that search does not have to be
9 after the arrest is made. It can be immediately prior. It
10 can be contemporaneous with the search. So, assuming that she
11 has reasonable -- or probable cause to make an arrest for
12 public disorderly conduct, she could certainly search him.

13 The information that she had was that he was showing a
14 gun inside the store, he was getting in people's spaces, he
15 was making sexual remarks. She arrives, and the -- Officer
16 Smith -- Deputy Smith testified that she could smell alcohol
17 on him. He appeared to her to be intoxicated. Those factors
18 taken together, I think are plenty for probable cause to make
19 an arrest for public disorderly conduct.

20 THE COURT: I was a little unclear about how this was
21 called in. I mean, I thought I heard -- your first witness
22 said she really didn't talk to anybody from the dispatch about
23 it. He came over and -- I'm just not clear about that.

24 MR. FULMER: I think mostly she was getting her
25 information across her computer screen, maybe listening some

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1 to the radio, but I believe that she -- we have a CAD report
2 that records what was being called in, and I think she was
3 getting this information in real time, or semi-real time. So,
4 certainly she had second-hand ---

5 THE COURT: So, when they call it in, it came across
6 their screen?

7 MR. FULMER: Correct.

8 THE COURT: All right. Okay.

9 MR. FULMER: As dispatch types it in, it's being relayed
10 out to the patrol cars.

11 THE COURT: What does the CAD report say?

12 MR. FULMER: It's substantially the same as how she
13 testified. I can read it to you verbatim if you would like to
14 hear it, but ---

15 THE COURT: I'd like to see it.

16 MR. FULMER: Sure.

17 THE COURT: I mean, I'm just a little bit confused, to be
18 honest with you. Is 1056 intoxicated?

19 MR. FULMER: I don't know the answer to that, Judge.

20 MR. NESBITT: Yes, sir.

21 THE COURT: All right, thank you.

22 MR. FULMER: So grounds number one, Judge, for the
23 search, is a search instant to an arrest for public disorderly
24 conduct. If you find that she didn't have probable cause for
25 public disorderly conduct, then she had reasonable suspicion

MOTION TO SUPPRESS

1 that this man might be armed, based on the information she
2 received through dispatch that came from a complainant in the
3 store. And certainly, she's entitled for officers' safety
4 sake, to do a Terry stop, to make a frisk, and I -- there's
5 not a case on point that I found in South Carolina as to
6 whether a frisk can include a pat down versus a pull up of a
7 shirt. There's certainly cases that I've handed up that the
8 courts have found in other states that it's substantially the
9 same and there's no difference between a frisk and a pull up,
10 especially -- and I think this is the key element, is if the
11 officer believes or has a reasonable belief that the suspect
12 could be armed.

13 And certainly, I believe that she had a reasonable belief
14 with the information she had received from dispatch that he
15 might be armed, coupled with the bulge that she testified that
16 she saw on his waistband, coupled with his animated movements,
17 and the fact that he's intoxicated, I think clearly that's a
18 reasonable act on her part. And it's less intrusive than a
19 frisk would have been. It's less intrusive ---

20 THE COURT: Say that again.

21 MR. FULMER: It's less intrusive than a pat down would
22 have been. You know, she just pulled up the edge of his
23 shirt, and then could see in plain view what were drugs.
24 That, to me, is a less intrusive act than a full pat down.

25 THE COURT: Okay, you don't have any authority to that?

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1 Do you have any cases where a lift of the shirt like that is
2 not considered a -- or is considered a pat down as opposed to
3 a search?

4 MR. FULMER: Yes, sir, I handed up about five cases --
5 not in South Carolina. I could not find South Carolina
6 authority for that.

7 THE COURT: Okay. All right, thank you.

8 MR. FULMER: Yes, sir.

9 MR. LUCAS: Thank you, Your Honor. I want to get at this
10 the same way as Mr. Fulmer, essentially, Your Honor. I think
11 the proper analysis here is do we have a -- in a Terry Frisk
12 that is reasonable in scope, and if the Court finds that the
13 Terry Frisk was unreasonable in scope, then the Court can look
14 at whether they're ---

15 THE COURT: Well, let me ask you this. What would be the
16 difference in a Terry pat down and a search instant to an
17 arrest?

18 MR. LUCAS: Sure, Your Honor. So, the difference is the
19 -- essentially, it's reasonable suspicion versus probable
20 cause, so it's the degree of suspicion. So, a Terry frisk can
21 be justified by, you know, reasonable articulable suspicion
22 that a person is engaged in criminal activity. And then to
23 get the frisk, the officer has to also believe that they are
24 armed and dangerous, so that they have a weapon. What I am
25 saying, Your Honor ---

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1 THE COURT: Well, let me ask you this. What does the CAD
2 -- what part does the CAD report play in that reasonable
3 suspicion on the part of the officer that the Defendant
4 brandished a gun in a non-threatening manner to the clerk?

5 MR. LUCAS: Sure. So, Your Honor, what I am saying is
6 that I think that that's probably -- now, it's slightly
7 problematic that we don't know who the caller is, but I think
8 that is probably good enough to get to reasonable suspicion
9 for the Terry stop, and also to allow the police to do a Terry
10 frisk. The problem is that they didn't do a Terry frisk,
11 which that's limited in scope to a pat down of the outer
12 clothing.

13 THE COURT: Well, and I don't necessarily disagree with
14 you, but let me ask you this. Mr. Fulmer said that a search
15 instant to arrest doesn't have to be performed after the
16 arrest. It can be performed before.

17 MR. LUCAS: Well, so there's an important proviso with
18 that, Your Honor.

19 THE COURT: Sir?

20 MR. LUCAS: There's an important consideration to that.

21 THE COURT: Okay.

22 MR. LUCAS: So, technically, the police could search
23 instant before the arrest. But if, and only if, probable
24 cause existed already.

25 THE COURT: Well, would not the call have been probable

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1 cause?

2 MR. LUCAS: Well, the problem, Your Honor, and I have a
3 case that's very similar that I didn't hand up, but I'm happy
4 to. It's U.S. versus Wilhelm.

5 THE COURT: It's who? U.S. versus who?

6 MR. LUCAS: Wilhelm, and I'll ---

7 THE COURT: Okay.

8 MR. LUCAS: If you'll give me one second, I'll ---

9 THE COURT: Sure.

10 MR. LUCAS: --- get a copy for Mr. Fulmer as well. So,
11 Judge, I think the issue here is that if he police had
12 probably cause to arrest Mr. Glenn, I think it really has to
13 be based on what they observed themselves outside of the
14 store. And the reason for that, and it's what Wilhelm gets
15 at, is that the tip -- I struggle to see how that -- how the
16 tip can be used in the probable cause ---

17 THE COURT: Say that again.

18 MR. LUCAS: I struggle to see how the tip can be relied
19 upon for probable cause, because the police didn't do anything
20 to confirm it. So, when you're talking about probable cause,
21 it's a totality of the circumstances analysis that's, you know
22 -- Illinois versus Gates, Wilhelm gets to it. And one of the
23 main things that is, you know, one of the -- kind of the two
24 main considerations is the reliability of the caller. So,
25 essentially what Wilhelm says is that when there's a tip

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1 involved ---

2 THE COURT: Well, that's the difference between somebody
3 being a confidential informant and an informant, right? And
4 this is identified at the store so it wouldn't be an unknown
5 confidential informant. It's just an identified clerk.

6 MR. LUCAS: Well, it's not that it's -- so I'm unclear
7 whether the identity is known or not, Your Honor. I said I'm
8 unclear as to who the caller is. I think the testimony was
9 unclear.

10 THE COURT: Well, it's certainly not unknown. It may be
11 an unnamed, but not an unknown.

12 MR. LUCAS: Well, I think that there is a name given in
13 the CAD report, it's just unclear ---

14 THE COURT: Oh, is it?

15 MR. LUCAS: --- whether it's a clerk or a store customer.
16 And the issue is that the police, they just stop Mr. Glenn and
17 they search him before going to do -- going to determine
18 anything about the ---

19 THE COURT: Well, let me ask you a question.

20 MR. LUCAS: Sure.

21 THE COURT: You have a CAD report received by the officer
22 over their computer. It says the Defendant is at Eddie's
23 Minute Mart in the store buying people food, being
24 belligerent, somewhat being loud, showed a gun to a clerk in a
25 non-threatening way and is drunk. And then the officer walks

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1 up and smells alcohol on his person. You can see his
2 demonstrative actions at that point. At that juncture, does
3 it matter whether or not the arrest is for drugs that are
4 subsequently found later once the shirt is lifted, or at that
5 juncture, public disorderly conduct, which seems to be
6 appropriate at that juncture?

7 MR. LUCAS: Well, at that juncture, Your Honor, the
8 arrest can only be justified by public disorderly conduct.
9 The problem with justifying it -- if you're saying -- if
10 probable cause existed in making the arrest. So, the drugs
11 can't be that probable cause for the -- the drugs cannot be
12 the probable cause for both the search and the arrest.

13 THE COURT: Oh, yeah, I'm not saying ---

14 MR. LUCAS: Okay.

15 THE COURT: I'm saying the way he was when they walked up
16 after getting a report that he was drunk, he was being loud in
17 the store, showing a gun in a non-threatening way, she walks
18 up and he is very animated. They said they smelled alcohol,
19 eyes -- you know, the same standard, you know, slur in his
20 speech and eyes red, et cetera, et cetera. At that juncture,
21 do they have probable cause to arrest him for public
22 disorderly conduct?

23 MR. LUCAS: I think the answer is no, Your Honor. And
24 I'll tell you why.

25 THE COURT: Okay.

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1 MR. LUCAS: So, public disorderly conduct -- the statute
2 doesn't require just intoxication or evidence of drinking.
3 It's grossly intoxicated condition. So, Mr. Glenn just, you
4 know, showing some signs of drinking alcohol, that alone isn't
5 enough. If that's the standard that police could go up to,
6 you know, any bar in town and arrest people who are coming
7 outside at 12:30 or 1:00. The standard -- and so the statute
8 for public disorderly conduct requires the person be in a
9 public place and they either be in a grossly intoxicated
10 condition, or he was otherwise conducting himself in a
11 disorderly or boisterous manner.

12 THE COURT: Do you agree with that?

13 MR. FULMER: That's the statute, Judge, yes, sir.

14 MR. LUCAS: So, Judge, my position is that Mr. Glenn may
15 have had a little bit to drink that night -- I don't think
16 he's grossly intoxicated. Grossly intoxicated, I think, Your
17 Honor -- and I would concede that there's not a South Carolina
18 case on point that exactly explains what it is.

19 THE COURT: So, it seems to me then the question is did
20 the officer have a right to arrest him at that juncture before
21 the lifting of the shirt for public disorderly conduct or not?
22 Because obviously the drugs weren't there.

23 MR. LUCAS: Yes.

24 THE COURT: And if so, then the other things are kind of
25 incidental. But if they didn't, then we have to look closer

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1 at the search, is that right?

2 MR. LUCAS: Your Honor, I agree with that.

3 THE COURT: Okay.

4 MR. LUCAS: So, and my position is that they did not --
5 just alone, you know, based upon their observations, I don't
6 think that that's adequate probable cause to arrest for public
7 disorderly conduct. To me, I think, you know, grossly
8 intoxicated implies a difference, you know, between
9 intoxicated -- it's something more. It's falling down drunk.
10 It's, you know, having buddies having to get underneath you
11 and carry you out of the bar, and not being able to stand,
12 that type of thing. Mr. Glenn -- I mean, yeah, he's talking a
13 little bit loudly, but I don't see evident slurring in his
14 speech. He's not having trouble standing up, that type of
15 thing. To me, that's ---

16 THE COURT: Let me ask Mr. Fulmer. At that juncture,
17 when the first -- Mr. Nesbitt -- Officer Nesbitt walked up,
18 and the Defendant's obviously in the doorway of Eddie's Minute
19 Mart, he turns and says, oh, that old boy from the past, or
20 whatever he said, a little bit animated, but I mean, whatever.
21 At that juncture, in your view of the facts of this case, did
22 Nesbitt then have the probable cause to arrest ---

23 MR. FULMER: I think he did, Judge.

24 THE COURT: --- this gentleman for disorderly conduct?
25 And if so, tell me why.

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1 MR. FULMER: The public drunkenness that he could observe
2 at that point and time ---

3 THE COURT: Say that again.

4 MR. FULMER: The public drunkenness that he could observe
5 at that time coupled with the other information that he had,
6 which was, someone had called 911 because this guy was causing
7 a disturbance in the store and they wanted him gone, and he
8 didn't know the details of the disturbance, but Officer Smith
9 knew that he had been showing a gun and buying other customers
10 items, was in their personal space, and was making sexual
11 comments. So, I think those demonstrate not just drunkenness,
12 but what the statute also says, gathering -- being in a public
13 gathering in a grossly intoxicated condition or otherwise
14 conducts himself in a disorderly or boisterous manner. All of
15 those factors combined I think clearly are disorderly and a
16 boisterous manner, if it rises to the level of someone
17 actually calling 911 and complaining about it to law
18 enforcement.

19 THE COURT: Would you agree or do you disagree that the
20 officer lifting his shirt goes beyond the Terry search?

21 MR. FULMER: No, I disagree with that, Judge.

22 THE COURT: Do you?

23 MR. FULMER: I think she had a right to lift the shirt.

24 THE COURT: And that's where these cases provide the
25 lifting of the shirt is not a violation ---

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1 MR. FULMER: Yes, sir.

2 THE COURT: --- of Terry?

3 MR. FULMER: Yes, sir.

4 THE COURT: What about under Terry you can feel for the
5 outlines, but if you start manipulating around, then that goes
6 beyond the --- search.

7 MR. FULMER: I think that's right. I think that's
8 accurate.

9 THE COURT: Well, what's the difference between that and
10 lifting the shirt so you can see it right there, besides
11 manipulating?

12 MR. FULMER: Because I think in this particular case, it
13 was a localized focus -- her attention was on that point
14 because she, number one, had information he had a gun and
15 could see a bulge in his shirt. And that's no more intrusive
16 than patting him down.

17 THE COURT: Say that again -- I'm -- I got you. Go
18 ahead.

19 MR. FULMER: I'm arguing that that is no more intrusive
20 -- I think it's less intrusive than a pat down -- than a full
21 frisk, putting your hands all over somebody's body.

22 THE COURT: It's seems to me it's more kin to you feeling
23 around on somebody to get a better idea -- if you were just
24 looking up and said, well, this is what it is right here.
25 Otherwise, you're feeling the outline of what's under there

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1 and seeing if it potentially is a weapon that you could
2 protect yourself from. And that's what Terry is about, right?

3 MR. FULMER: Right. Well, I agree with that.

4 THE COURT: All right. Go ahead.

5 MR. LUCAS: Sure, Judge. As to the reasonable suspicion
6 -- you know, as to Terry, I briefed it, and I handed up a
7 couple of cases, along with an excerpt from LaFave's Treatise
8 on the Fourth Amendment, and what he has to say about that,
9 Your Honor, is that the degree of intrusion permitted by Terry
10 for weapons is a pat down frisk. So that means a pat down of
11 the outer clothing. He says that sometimes the police are
12 allowed to go straight in and grab a weapon, but it's only
13 under exceptional circumstances. And he draws the line
14 between this, Your Honor. If it's a case of the police just
15 have, you know, information that somebody might have a weapon,
16 he says that you have pat down.

17 And then, of course, if you feel -- you know, if you do a
18 pat down and feel a weapon, then of course, you can go in and
19 get it. Or like the Court was talking about, the Minnesota
20 versus Dickerson, if you know, do a pat down and you feel
21 something that is immediately apparently drugs, then you can
22 go get it. What he says, Your Honor, is that -- so if you
23 just have reasonable suspicion of a weapon, you've got to do
24 the frisk. He says that if there are exceptional
25 circumstances that would cause an immediate threat to the

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1 officer, then and only then can you bypass the requirement of
2 pat down. So the -- he gives examples of ---

3 THE COURT: What about the fact that the report was he
4 showed a gun to the clerk in a non-threatening gesture, but
5 then she -- the first officer testified and said he grabbed at
6 his waist around where this bulge was?

7 MR. LUCAS: Well, I think, Your Honor, if you look at the
8 video ---

9 THE COURT: I didn't necessarily see it on the video,
10 quite frankly.

11 MR. LUCAS: Yeah, if you look at the video, I see Mr.
12 Glenn kind of gesticulating, talking with his hands a little
13 bit. His pants are real low down, and I mean, I would
14 certainly concede that his hands are, on several occasions,
15 close to his waistband, but what you will not see is you will
16 not see him make any reach into his pants to go get something.
17 His hands are like this, held out in front of him or beside
18 him. So, you have no reach into the waistband. I handed up
19 to the Court a case.

20 It's from the New Jersey Supreme Court, it's called
21 Privott, that deals with almost the exact same circumstances,
22 where the police get a tip that somebody has a gun. They go,
23 you know, talk to this guy who initially tries to walk away
24 from him, and has a hand in his pocket. But then when they
25 tell him to stop, he cooperates. He puts his hand up, and the

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1 police officer just lifts his shirt up and finds a bag of
2 cocaine on his stomach. And those are facts very similar to
3 what we have here, because, you know, Mr. Glenn is cooperating
4 with the police, he's not threatening them. He's not reaching
5 into his waistband to go get something out.

6 In other words, he's not doing any of the things that
7 LaFave says are situations where the police would be allowed
8 to bypass the Terry frisk. And the Privott Court says -- you
9 know, they say you can't lift the shirt up. They say that
10 that is illegal, that it's -- you know, it violates the Terry
11 requirement that the police only do, you know, what is the
12 least intrusive to verify it. So, I think, Your Honor, that
13 the police are limited to this pat down frisk under these
14 circumstances.

15 THE COURT: Well, let me ask you this. The testimony
16 was, I think by Officer Nesbitt -- I'm not positive about that
17 -- that the Defendant was waving his arms around a little bit
18 and his shirt came up and then a green baggy came out from
19 under and went back. You could see a bag in plain view.

20 MR. LUCAS: So, the green baggy is in his hand. There's
21 an orange baggy that's tucked into his waistband.

22 THE COURT: There was no green baggy -- I know I saw the
23 orange.

24 MR. LUCAS: Well, so, he's holding a green baggy in his
25 hand. There's an orange baggy that's protruding out of his

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1 waistband. It's closed, Your Honor. So, if you look at the
2 video real carefully, what you will see is that the marijuana
3 that is -- that was the reason for the arrest, it's actually
4 tucked into his fly, Your Honor ---

5 THE COURT: Tucked into his fly?

6 MR. LUCAS: It's tucked into his fly.

7 THE COURT: All the way in, or is it poking out?

8 MR. LUCAS: I mean, you see a little bit of a plastic
9 baggy poking out.

10 THE COURT: Well, did the officer not say they saw a
11 plastic bag poking out?

12 MR. LUCAS: So, she said that she saw that after she
13 lifted the shirt.

14 THE COURT: No, uh-uh, that's not the testimony I heard
15 that she saw it and then went and lifted it.

16 MR. LUCAS: Well, she said that she saw the orange bag
17 before. But the problem ---

18 THE COURT: No, I don't think so.

19 MR. LUCAS: I'd ask you to go back and listen to it ---

20 THE COURT: I will.

21 MR. LUCAS: --- Your Honor. And also, if you look at the
22 video, I think you can clearly see that they don't see the
23 drugs before she lifts the shirt.

24 THE COURT: I will give you this. I didn't see it on the
25 film, okay. But, the testimony as I understood it, and you

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1 tell me, Mr. Fulmer, if I'm wrong, that the officer saw a
2 baggy under the shirt when he lifted his arms before she went
3 and lifted his shirt.

4 MR. FULMER: I think she was referring to the orange
5 baggy that was hanging down further. I don't believe she saw
6 the clear plastic bag that was ---

7 THE COURT: She didn't?

8 MR. FULMER: That's my understanding, Judge.

9 THE COURT: All right. I appreciate your candor. So, it
10 seems to me, two things. One, whether or not at the point of
11 the initial contact, or in that minute -- few minutes after,
12 whether or not law enforcement, at that juncture, had
13 sufficient probable cause to arrest him for public disorderly
14 conduct. Next, given -- if they did not have sufficient
15 probable cause to arrest him for public disorderly conduct,
16 whether or not the circumstances were such that his conduct
17 gave them the right to immediately avoid the pat down because
18 of his actions. I mean, do you disagree or -- do you disagree
19 with either one of those?

20 MR. FULMER: I don't. That's how I see it, Judge.

21 THE COURT: Okay. I'm not saying that either one was
22 there, I'm just saying that's the way I'm looking at it. If
23 I'm looking at it wrong, correct me now so I don't go down the
24 wrong street. So, you agree with that, too?

25 MR. LUCAS: Judge, I think that's the analytical

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1 framework -- I think that's the right way to look at it,
2 Judge.

3 THE COURT: Okay.

4 MR. LUCAS: And I would just ask you in deciding that, to
5 look at the -- what's the name of it -- the Wilhelm case that
6 I handed up about the corroboration of a tip, and they say --
7 you know, they talk about the importance of verifying that tip
8 if you're going to rely on it.

9 THE COURT: They do what now?

10 MR. LUCAS: They talk about the importance of having to
11 verify a tip if you're going to rely on it for probable cause.
12 And our position, and you heard them say, they didn't do
13 anything to verify it at the time that they had, you know,
14 contact with Mr. Glenn. So my position is because it's
15 unverified, what they're limited to in trying to find -- you
16 know, determining whether or not he was grossly intoxicated is
17 that, you know, minute and a half that they spend with him
18 outside of the store.

19 MR. FULMER: I would disagree with that, Judge. They can
20 -- I think, number one, a 911 call is different from a tip,
21 because that -- a 911 caller is identifiable, and if they make
22 a false report, there could be consequences, so that's a much
23 more reliable form of information than a tip is. And
24 officers, I think they're fully -- they can fully rely on that
25 information in making an arrest. I mean, this is a

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1 misdemeanor arrest, and I think I've got a case to that
2 effect, that it's not just what they see, but it's also the
3 facts and circumstances that are immediately apparent.

4 THE COURT: Okay.

5 MR. LUCAS: Your Honor, if I could just say one further
6 thing about that. I think when you're talking about whether
7 they can rely on the 911 call where they don't necessarily
8 know who the person is and haven't verified it, I agree with
9 Mr. Fulmer that that's certainly -- you know, will get you a
10 reasonable suspicion for a stop potentially. But I think it's
11 helpful to look at it, if somebody came to a magistrate judge
12 and tried to get an arrest -- so if somebody came to a
13 magistrate judge and tried to get an arrest warrant based
14 solely on this 911 call that was totally unverified, nobody
15 would issue an arrest warrant for that without the ---

16 THE COURT: Well, wouldn't the part of the verification
17 come with the confirmation that yeah, he is in the doorway,
18 yes, he has been drinking. He has the odor of alcohol about
19 him. So, there is at least some verification by law
20 enforcement as to the call itself, right?

21 MR. LUCAS: Well, so it may verify that he's intoxicated.
22 There's certainly no verification of anything about the
23 weapon, which was that original reason for them to respond
24 when they got there.

25 THE COURT: Hang on. You just said it may verify that

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1 he's intoxicated.

2 MR. LUCAS: Well, I guess what I'm saying, Your Honor, is

3 ---

4 THE COURT: I mean, that may be grounds to go ahead and
5 arrest him right then and there for public disorderly.

6 MR. LUCAS: Well, but again, Your Honor, the standard
7 for, you know, public disorderly is not just some
8 intoxication. It's grossly intoxicated.

9 THE COURT: Well, or other -- what was the other
10 qualifying language?

11 MR. FULMER: Disorderly and boisterous behavior.

12 MR. LUCAS: And Your Honor, what I would say is that it
13 is based on a report, which has not been corroborated, at
14 least with respect to any of that. You know, there's no
15 indication that he's yelling and hollering in there. I mean,
16 the tip was that he showed a gun. There's not any -- and they
17 didn't corroborate that at the time of the arrest. And you
18 know, if he had said some things that were, you know, not
19 nice, it's not necessarily illegal to say something that is
20 offensive. It's whether -- you know, in terms of the
21 disorderly conduct statute, it's whether you're doing it in a
22 way that is very loud or grossly intoxicated and that type of
23 thing.

24 THE COURT: Gentlemen, I appreciate it. Interesting
25 arguments. I'll read everything you've give to me. I'm glad

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1 we have a day in between so I can get more time to look at it,
2 but I will certainly try to get you my decision by tomorrow
3 afternoon so you don't get it ready for nothing, or more than
4 you already have. Okay?

5 MR. LUCAS: Thank you, Your Honor.

6 THE COURT: Thank you, guys.

7 MR. FULMER: Thank you, Judge.

8 THE COURT: Would you check with my law clerk and make
9 sure he has everything you want me to look at?

10 MR. FULMER: I do have one more case I'd like to hand up,
11 Judge.

12 (Recess for the day.)

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14 THE COURT: I'm not going to give you a specific rule. I
15 have the order drafted, and I'll file it when I'm ready to
16 file it.

17 MR. LUCAS: Okay, Your Honor. My understanding has
18 always been that to preserve the record, the order has to be
19 ---

20 THE COURT: You've asked for it, and I will tell you ---

21 MR. LUCAS: Okay. --- I'm protected on that issue.

22 THE COURT: Yes, sir, you're protected. I say you're
23 protected. Stephanie McDonald from the Court of Appeals was
24 reading one of transcripts -- I talked to her the other day,
25 and she said, you know, doing that gives them a false sense of

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1 security. They're not protected unless we find they're
2 protected. So, I can say it, but it doesn't make a
3 difference. If the Court of Appeals or Supreme Court doesn't
4 think that it is. So, you have to do what you got to do to
5 protect it. And I know you are.

6 MR. LUCAS: I understand that, Your Honor.

7 THE COURT: Okay.

8 MR. LUCAS: I'm asking for a specific ruling, and you say
9 ---

10 THE COURT: I know you are, and you're doing what you're
11 supposed to, and I appreciate it.

12 MR. LUCAS: Thank you, Your Honor. So, that was the
13 first issue. The second issue, Judge, is --- officer
14 disciplinary records --- concerning a reprimand for Janessa
15 Smith about failing to report a traffic accident and then
16 afterward, and Officer Jackson, there was a prior shoplifting
17 conviction that had been expunged. We had asked for the
18 disclosure of those, and intended to, you know, possibly use
19 them depending on how the case played out. My understanding
20 is that the Court's ruling is that those were not subject to
21 disclosure.

22 THE COURT: Yeah, and the first one was a traffic.
23 accident. I don't know what relevance that would have here.
24 I can't remember off the top of my head. Let me see that one
25 again. The other one, the alleged shoplifting, it was

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1 expunged, and according to our cases, the person who has their
2 records expunged has the right, if asked, to say I don't have
3 a criminal record. And so, looking back at the cases, it
4 looks like you wouldn't be able to use it against him, anyway,
5 so I think that's ---

6 MR. LUCAS: I understand, Your Honor.

7 THE COURT: There's no sense -- it's not relevant
8 anymore.

9 MR. LUCAS: And I would just ask the Court to make those
10 a Court's exhibit.

11 THE COURT: And let me go further, too. And you asked me
12 to give you the basis of my ruling earlier, and I've got a
13 bigger order that I am drafting. But essentially what I found
14 -- just since you asked me to do it, I think I will -- is that
15 I felt that the Defendant, upon being approached by these
16 officers, was subject to being arrested for disorderly
17 conduct. You argued that it was gross intoxication. It was
18 pointed out by the State it could mean boisterous activity.
19 Under the statute, it'd gross intoxication, disorderly
20 conduct, or the other, what you described.

21 MR. FULMER: Boisterous.

22 THE COURT: Yeah, being boisterous. And I looked at the
23 video, I looked at the officers' testimony, felt that he was
24 subject to being arrested for disorderly conduct, which would
25 have made the search -- it doesn't matter if it comes before

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1 or after the arrest, and it wouldn't be limited to a pat down
2 only. It could have been a search instant to arrest.

3 Also, I looked at your breakdown, and I thought that was
4 interesting. And I think you're right that if an officer --
5 and my understanding of your brief is that you argued
6 according to Lavare (sic) or Lavarr (sic) or what's --
7 whatever your professor's name is, but that you had two
8 classifications of these kinds of cases under Terry, that one,
9 an officer who only has a suspicion that the suspect may be
10 armed must perform a pat down, even if they don't have
11 anything other than a reasonable suspicion that somebody might
12 be armed.

13 On the other hand, the second class of cases, when you
14 have a suspicion that the suspect may be armed and their
15 conduct is such as the reasonable apprehension that the
16 officer's safety is immediately at peril, then they can skip
17 the pat down and go to a more invasive type of search, such as
18 lifting the shirt, grabbing a gun out of a holster, something
19 of that from the cases I saw. I felt that from the totality
20 of the circumstances, based on the report that came in from
21 Jenkins, either a patron of the store or a clerk, that was
22 sent out over dispatch as well as the officer's observations
23 upon arrival, that the Defendant met the second classification
24 that they had a reasonable apprehension of their fear.

25 Although I would admit to you that in looking at the body

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1 camera, the Defendant did not appear to be an immediate threat
2 to their safety, but based on all the facts and circumstances
3 they had over the dispatch as well as their observations, I
4 don't think that the officer has to be clairvoyant to see that
5 a person is going to turn to that or that they are going to be
6 an immediate threat to their safety if the circumstance is
7 such that they are probably going to be that way, then they
8 have a right to go forward -- or to not to do the pat down and
9 do the more invasive search, as in lifting the shirt, as was
10 done in this case twice. And so, all that said and done, and
11 I may not have worded it perfectly, but that's essentially the
12 gist of why I ruled the way I ruled. And I note your
13 objection to that.

14 MR. LUCAS: I understand that.

15 THE COURT: And I appreciate your brief. It was very
16 educational for me. I appreciate it. Any other matters you
17 need on the record?

18 MR. LUCAS: Yes, Your Honor. So, Mr. Fulmer and I had a
19 couple of evidentiary stipulations ---

20 THE COURT: Yeah, if you have exhibits y'all want to go
21 ahead and stipulate to ---

22 MR. FULMER: Have a what?

23 THE COURT: Exhibits that you want to stipulate to.

24 MR. FULMER: Yes, sir, Judge.

25 MR. LUCAS: Well, first of all, Your Honor, with the body

MOTION TO SUPPRESS

1 camera footage always raises some hearsay issues. And Mr.
2 Fulmer and I are in agreement to admitting the first four
3 minutes of each of those videos ---

4 THE COURT: Okay.

5 MR. LUCAS: --- and having them played for the jury.
6 There could be some potential hearsay objections, but most of
7 what my client says during that time would be, you know,
8 statement by party opponent. So, we're in agreement with
9 having the first four minutes ---

10 THE COURT: Is there a particular officer's body camera
11 you're talking about?

12 MR. LUCAS: I think that there are two. It's Officer
13 Nesbitt and ---

14 THE COURT: Smith.

15 MR. LUCAS: --- Officer Smith. So, we're agreeing to
16 that on ---

17 THE COURT: So, both their body cameras are coming in,
18 four minutes of each of them?

19 MR. LUCAS: I think that's what the State intends.

20 MR. FULMER: Yes, sir.

21 THE COURT: That's right? Okay.

22 MR. LUCAS: And, you know, we'll stipulate to those being
23 admitted.

24 THE COURT: Okay.

25 MR. LUCAS: On Officer Smith's body camera footage from

MOTION TO SUPPRESS

1 -- I think it's about four minutes -- four and a half minutes
2 to six minutes, there's some non-mirandized custodial
3 interrogation, so Mr. Glenn is handcuffs, in custody, and is
4 being asked questions without having first being read his
5 Miranda rights. We were going to move to have those
6 statements excluded, as I think would be proper.

7 THE COURT: Yeah.

8 MR. LUCAS: Mr. Fulmer has indicated that he's in
9 agreement with that.

10 THE COURT: Okay. Good.

11 MR. LUCAS: And ---

12 THE COURT: Have y'all looked at the -- if you're playing
13 the video, don't you have some kind of numbering sequence, you
14 can stop it and fast forward it, or know when to stop it, in
15 other words?

16 MR. FULMER: Yes, sir. Yes, sir.

17 THE COURT: Okay. Do you have your -- and I didn't mean
18 to interrupt you, but ---

19 MR. LUCAS: Oh, no, not at all, Your Honor.

20 THE COURT: Do you have your equipment set up so you're
21 ready to go? Have you tried it out this morning?

22 MR. FULMER: I believe it's ready to go, Judge.

23 THE COURT: Try it out so -- instead of waiting for the
24 jury. Other matters on the record?

25 MR. LUCAS: Your Honor, just one more thing about the

MOTION TO SUPPRESS

1 body camera footage. We may seek to impeach, with some other
2 clips that are outside of those four minutes.

3 THE COURT: You're not waiving that?

4 MR. LUCAS: And I'm not waiving that, Your Honor.

5 THE COURT: Right.

6 MR. LUCAS: Just to be clear ---

7 THE COURT: So, if I understand, you are allowing the --
8 whatever portion in, you're stipulating it as admissible,
9 without having the foundation laid or have any objections to
10 any hearsay that may be on it, but you're not waiving your
11 right to cross examine other parts of the tape? So, the whole
12 tape is actually in evidence?

13 MR. LUCAS: Well, I guess what I would like -- I think
14 there's an issue in the sense that the tape is not -- the clip
15 has not been redacted to just have the first four minutes, so
16 for the purposes of the evidentiary ruling, I'd like to have
17 the Court just admit the first, you know, four minutes into
18 evidence if we could agree to that. And if there are other
19 sections that want to be played ---

20 THE COURT: Well, let's do this. It might make it a
21 little bit simpler. Let's admit the entire body camera,
22 stipulate that only the first four minutes would be shown to
23 the jury, and at the end of the case, tell them if you want to
24 look at these things, you'll have to come into the courtroom
25 and we'll play it for you then.

MOTION TO SUPPRESS

1 MR. LUCAS: That's exactly what I had in mind, Your
2 Honor.

3 THE COURT: That'll work.

4 MR. LUCAS: To be clear, I'm not -- if Mr. Fulmer wants
5 to play other parts and there's a hearsay exception that fits
6 or something, I'm not ---

7 THE COURT: I don't think they even have equipment --
8 they don't have equipment back there, do they, Reena, to play
9 those video tapes?

10 CLERK: The solicitor's office, Your Honor, usually has a
11 laptop that they don't have access to the internet that they
12 bring up.

13 THE COURT: Oh, okay.

14 CLERK: Yes, sir.

15 THE COURT: Well, let's don't send that back yet. That's
16 the only thing -- those are the only videos that they have
17 back there, don't they?

18 MR. FULMER: Yes, sir.

19 THE COURT: Okay. And let me -- after you check that
20 out, Mr. Fulmer, do you have some exhibits that y'all want to
21 put on the record as being admissible?

22 MR. FULMER: I have some premarked here if you want to
23 take a look.

24 THE COURT: And just understand, you can't use any
25 exhibits in your opening statement unless they have been

OPENING STATEMENT BY MR. FULMER

1 your opening statements?

2 MR. LUCAS: I'd like to be excused real quick.

3 THE COURT: Go for it.

4 (Brief recess.)

5 THE COURT: Are there any exhibits -- I never asked you

6 this -- that you wished to have admitted that y'all can

7 stipulate to or you just want to wait and see?

8 MR. LUCAS: I'm not sure that we're going to admit

9 anything, Your Honor.

10 THE COURT: I figured that. Okay. You both ready?

11 MR. FULMER: Yes, sir.

12 MR. LUCAS: Yes, sir.

13 THE COURT: Bring the jury in, please. And do not let

14 anybody in and out of the courtroom during opening statements,

15 please, okay.

16 BAILIFF: You've got one in the restroom, Your Honor.

17 THE COURT: All right, sir.

18 (Whereupon, the jury enters the courtroom.)

19 THE COURT: All right, Mr. Fulmer, opening statement?

20 MR. FULMER: Thank you, Judge.

21 THE COURT: Yes, sir.

22 MR. FULMER: May it please the Court?

23 THE COURT: Yes, sir.

24 OPENING STATEMENT BY MR. FULMER

25 BY MR. FULMER:

OPENING STATEMENT BY MR. FULMER

1 Good morning, ladies and gentlemen. Thank you for being
2 here. My name's Danny Fulmer. As I told you earlier, I'm one
3 of the prosecutors. I represent the State in this case. This
4 is a case where Mr. Glenn was charged with trafficking in
5 crack cocaine or cocaine base. From the State's account, this
6 is a relatively simple case, and hopefully we won't keep you
7 here too long. This is a case that happened back on May 24th,
8 2020, at Eddie's Minute Mart on Abbeville Highway, if you're
9 familiar with that area.

10 Police were called out to Eddie's Minute Mart with a
11 complaint about someone causing a disturbance at that
12 location. Once they were at the convenience store, they came
13 in contact with Mr. Glenn. They searched him, and found on
14 his person about 72 grams of crack cocaine, and that's the
15 basis for this charge, trafficking in crack cocaine. And
16 those are the basic facts of this case.

17 You're going to hear from a couple of the officers who
18 responded that day. You'll also hear from an evidence
19 custodian at the sheriff's office who stored the evidence in
20 this case. And you'll hear from the chemist who tested the
21 drugs that were found. That will be the State's case in this
22 case. I ask that you please listen carefully to what you hear
23 from that witness stand, that you carefully review the
24 evidence that's presented to you. Use your common sense and
25 good judgment as you assess the evidence in the case, and then

OPENING STATEMENT BY MR. LUCAS

1 I ask you for a guilty verdict in this case when we're done.

2 I believe that's what the evidence will prove. Thank you.

3 THE COURT: Does the Defense wish to have an opening
4 statement?

5 MR. LUCAS: We do, Your Honor.

6 THE COURT: All right. Mr. Lucas.

7 OPENING STATEMENT BY MR. LUCAS

8 BY MR. LUCAS:

9 Ladies and gentlemen of the jury, things are not always
10 as they appear at first glance. You're going to hear from the
11 State that my client, Savayea Glenn, was found with a baggy
12 that had drugs in his waistband. I don't dispute that. But,
13 that's not the whole story. That is one snapshot of a
14 particular moment.

15 This is a very important day for Mr. Glenn. You hold his
16 fate in your hands. I ask while you listen to the evidence in
17 this case, that you keep a couple things in mind. First, I
18 want you to evaluate his behavior on the morning of May 24th,
19 at Eddie's Minute Mart, and ask whether he is behaving how you
20 expect a drug trafficker or drug dealer to behave. I think
21 generally we think, rightly, that drug traffickers are
22 secretive. They're not trying to attract the attention of
23 police.

24 That is exactly the opposite of what Mr. Glenn was doing
25 at Eddie's Minute Mart. You're going to hear that he was in a

OPENING STATEMENT BY MR. LUCAS

1 loudly and ostentatiously buying people stuff at the gas
2 station, that he was paying for people's gas. In listening to
3 the evidence in this case, I ask that you ask yourself whether
4 that's consistent with him being a drug trafficker, what that
5 says about him, or if there is some other explanation, if
6 there is some explanation that's so unlikely that it has to be
7 true.

8 Secondly, I ask that you look at the police investigation
9 in this case. I want you to look at what Officer Smith and
10 others did. After they stopped and searched Mr. Glenn, did
11 they do anything to confirm their initial thoughts. Did they
12 do anything to confirm that the drugs belonged to him?

13 And then third, the judge told you that you have to --
14 the State has to prove Mr. Glenn guilty beyond a reasonable
15 doubt. That's a high burden of proof. It's the highest in
16 our justice system. He'll instruct you more about what it
17 means, but I just want you to keep in mind essentially that
18 means that if you think that there is any reason to doubt his
19 guilt, even a small one, that you have acquit him. And at the
20 end of this case, that's exactly what we're going to ask you
21 to do. Thank you.

22 THE COURT: Call your first witness, please.

23 MR. FULMER: Yes, sir, Judge. The State calls Deputy
24 Janessa Smith.

25 Whereupon,

DIRECT EXAMINATION OF JANESEA SMITH

1 JANESEA SMITH

2 was called as a witness, having been first duly sworn, was
3 examined and testified as follows:

4 CLERK: If you would, please state your full name for the
5 record, and spell your last name.

6 DEPUTY SMITH: Master Deputy Janessa Smith. Last name is
7 S-M-I-T-H.

8 DIRECT EXAMINATION

9 BY MR. FULMER:

10 Q Deputy Smith, where do you work?

11 A Anderson County Sheriff's Office.

12 Q How long have you worked there?

13 A About six years.

14 Q Prior to that, did you have any law enforcement
15 experience?

16 A I did. I worked in corrections in a detention facility
17 for approximately three years.

18 Q So, you were working for the sheriff's office back on May
19 the 24th, 2020?

20 A I was.

21 Q You were on duty that day?

22 A Yes, sir.

23 Q Did you have an opportunity to come into contact with the
24 Defendant that day?

25 A I did.

DIRECT EXAMINATION OF JANESEA SMITH

1 Q And where was this?

2 A It was located at 3300 Abbeville Highway at the Eddie's
3 Minute Mart.

4 Q And is that a location inside Anderson County?

5 A It is.

6 Q And what brought you out to that location that day?

7 A I was dispatched out for a black male who was wearing a
8 blue shirt and red shoes causing a disturbance inside the
9 store. The male, we were told by dispatch, was getting in
10 customers' personal space. At one point, he showed a firearm
11 to one of the employees. And he was intoxicated. So, he was
12 causing a disturbance within the store.

13 Q Okay. So, based on the information you heard from
14 dispatch, you thought someone there might be armed with a gun?

15 A Yes.

16 Q Okay. And is this sort of an area where you normally
17 work?

18 A It was. At the time, yes.

19 Q Okay. So, when you arrived at Eddie's Minute Mart, could
20 you see the Defendant?

21 A I did.

22 Q What did you notice about him?

23 A So, when I arrived on scene, there was already another
24 deputy on scene who was speaking with the Defendant. Upon my
25 initial contact with him, he was speaking to Deputy Nesbitt.

DIRECT EXAMINATION OF JANESEA SMITH

1 I immediately noticed a bulge in his -- the right-side
2 waistband. There was some type of orange object, like a bag
3 or some type of fabric or something sticking out from under
4 his shirt that could be seen. Based off the information that
5 I was advised on while I was in route to the call regarding a
6 firearm, I believed that there was a firearm hidden behind
7 that orange object inside the waistband.

8 Also, upon contact, as he was speaking with Deputy
9 Nesbitt and answering some questions, in just having a
10 conversation with Deputy Nesbitt, I could detect a strong odor
11 of an alcoholic-type beverage about his breath and body. His
12 speech was slurred. His eyes were glassy.

13 Q And so based on that bulge you mentioned, did you do
14 anything? Did you search him?

15 A Once -- yes. I believe he was asked if he had a firearm
16 on him. He denied having a firearm, and again, seeing that
17 item and believing that he had a firearm on his person, I did
18 lift his shirt in the location where I believed that the
19 firearm was sitting behind the orange object.

20 Q And so what did you find when you did that?

21 A At that point, I was able to see a clear plastic bag
22 which contained a -- which had a green leafy substance inside,
23 which was consistent with marijuana, based off my training and
24 experience.

25 Q Okay. As a result of seeing that marijuana, what did you

1 do?

2 A He was placed under arrest for public disorderly conduct,
3 and I did, at that point, begin a search, and retrieved the
4 bag of marijuana. I also retrieved the orange bag that was
5 inside the waistband as well.

6 Q Okay. And what was inside the orange bag, if anything?

7 A Inside the orange bag, there was a white rock-like
8 substance. It was field tested, and it did have a -- it did
9 test -- field test positive for crack cocaine.

10 MR. FULMER: May I approach, Your Honor?

11 THE COURT: Yes, sir.

12 BY MR. FULMER:

13 Q I'm going to show you what is marked State's Exhibit 4,
14 3, 2 -- if you recognize those.

15 A I do.

16 Q And what are those?

17 A Those are the items that were located on the Defendant's
18 person. The white rock-like substance that you see there on
19 the scale was located inside that orange bag that was located
20 on his person in the waistband.

21 Q This photo?

22 A That's correct.

23 MR. FULMER: And what about that photo?

24 THE COURT: Would you call the exhibit number for us,
25 please?

DIRECT EXAMINATION OF JANESEA SMITH

1 MR. FULMER: I'm sorry, Judge. That's Exhibit number 3.

2 DEPUTY SMITH: Yes, that's the same item as you saw in
3 the previous picture, just on a different scale.

4 MR. FULMER: Got you. Judge, I'd move Exhibits --
5 State's Exhibits 2, 3, and 4 into evidence.

6 THE COURT: Any objection?

7 MR. LUCAS: Your Honor, we object to the admission of
8 those as being the product of an unlawful, warrantless search,
9 in violation of the Fourth Amendment and Article I, Section 10
10 of the South Carolina Constitution.

11 THE COURT: Thank you, that's overruled.

12 (Wherefore,

13 Plaintiff's Exhibits 2, 3, and 4
14 were entered into evidence.)

15 MR. FULMER: Judge, I'd like permission to publish it to
16 the jury?

17 THE COURT: Yes, sir, you may. If you would, just
18 identify each one as you go over it, please.

19 MR. FULMER: Yes, sir.

20 BY MR. FULMER:

21 Q So, I'm showing the jury what is State's Exhibit number
22 2. And Officer -- Deputy, can you tell us -- say what that
23 is?

24 A Yes. The item on the left is the rock-like substance
25 that was located inside the orange bag that was on the

DIRECT EXAMINATION OF JANESEA SMITH

- 1 Defendant's person in his waistband.
- 2 Q And is the orange we see near the top of the picture, is
3 that the orange bag?
- 4 A That is.
- 5 Q Okay. And what's in the middle here?
- 6 A That's our field test kit, which we utilize on roadside
7 for preliminary testing. And that's -- that did field test
8 positive for the crack cocaine.
- 9 Q All right, I'm going to show you State's Exhibit 3 at
10 this point. And what is that?
- 11 A That's the same item you saw in the previous photo. It's
12 just weighed on a scale that we utilize in our evidence room
13 at the Anderson County Sheriff's Office.
- 14 Q This would be back at the sheriff's office?
- 15 A That's correct.
- 16 Q Okay. And then State's Exhibit 4, what is that?
- 17 A That's the preliminary weight on -- at roadside. So,
18 that's a scale that was utilized to get an estimate at the
19 roadside.
- 20 Q At Eddie's Minute Mart?
- 21 A At Eddie's Minute Mart, that's correct.
- 22 Q Got you. So, these two scales are just different
23 pictures of the same scale?
- 24 A That's correct.
- 25 Q All right. So, after you field tested the drugs that you

DIRECT EXAMINATION OF JANESEA SMITH

1 found on Mr. Glenn, what did you do with those drugs?

2 DEPUTY SMITH: Those items were seized, placed in the
3 back of my -- or in my patrol vehicle, and transported to the
4 Anderson County Sheriff's Office evidence, where they were
5 submitted. They were placed into a -- they were submitted
6 into a Best Kit, which is our protocol, and they were
7 submitted in the Best Kit, C35 ---

8 MR. LUCAS: Your Honor, I have a brief objection to make.
9 It appears to me that Officer Smith is reading from her
10 incident -- Your Honor, I have an objection to Officer Smith
11 reading from her incident report. That's not permissible. If
12 she doesn't remember, she can have her recollection refreshed,
13 but it's not proper for her to read from her incident report,
14 and she has to testify, you know, what she remembers, not what
15 her report ---

16 THE COURT: All right, I note your objection. Just don't
17 read it verbatim, please, ma'am. You can use it to refresh
18 your memory.

19 DEPUTY SMITH: Yes, sir.

20 THE COURT: Do you have a copy of that? Do you want to
21 see a copy of it?

22 MR. LUCAS: I have the incident report.

23 THE COURT: All right, thank you.

24 BY MR. FULMER:

25 Q So, you mentioned you placed the drug evidence into a

DIRECT EXAMINATION OF JANESEA SMITH

1 Best Kit?

2 A That's correct.

3 Q Can you explain to the jury what a Best Kit is?

4 A It's a plastic bag -- so it's just a plastic bag and
5 comes with paperwork. Each one has its own individual one.
6 There's not two of the same number. And then we utilize that,
7 we place our drugs -- located drugs inside of that, and then
8 that is sealed, and then once it's sealed, and the paperwork's
9 filled out, it's submitted to the Anderson -- or to the
10 evidence, who does further testing on it.

11 Q And is a Best Kit made such that once it's sealed, it
12 can't be opened without it being obvious?

13 A That's correct.

14 Q So when you say you submit it into evidence, where is
15 evidence in relation to the sheriff's office?

16 A It's in the same parking lot, just the next building
17 over.

18 Q And when you say you submitted it to evidence, did you
19 put it into a drop box? Did you hand it someone?

20 A So, there's two ways, and I don't recall -- but there's
21 two ways to submit our evidence. One is in a -- there's a
22 locker, and once it's locked -- or once it's shut, it's
23 locked. It can't be accessed by anyone other than the
24 forensics team. Or there's a door slot, similar to like a
25 mail slot, and it can be dropped in there as well, and again,

DIRECT EXAMINATION OF JANESEA SMITH

1 can't be accessed by any of us outside -- until forensics
2 accesses it. So, it's placed in one of those two, I just
3 don't recall which one.

4 Q So you don't have a particular memory of which way you
5 did it?

6 A Correct.

7 MR. FULMER: I'm going to show you what's marked State's
8 Exhibit 6. May I approach, Judge?

9 THE COURT: Yes, sir.

10 BY MR. FULMER:

11 Q Can you tell the jury what's inside that bag?

12 A Yes, this is the located -- the crack cocaine that was
13 located on the Defendant inside that orange bag. And this is
14 the same substance that was seen on the photos that we just
15 showed, as well as the tablets.

16 Q Is there a Best Kit bag?

17 A There is a Best Kit bag, and this is the Best Kit bag
18 that was submitted on the day of the incident.

19 Q Does the control number on that Best Kit bag match the
20 control number that you submitted?

21 A It does.

22 Q And what is that number?

23 A It's C35534.

24 Q Thank you. At any time after you seized the drugs from
25 Mr. Glenn, did you alter them in any way?

DIRECT EXAMINATION OF JANESEA SMITH

- 1 A I did not.
- 2 Q Did you contaminate them in any way?
- 3 A I did not.
- 4 Q Did you add anything to them?
- 5 A No, sir.
- 6 Q Were you wearing a body cam through this time?
- 7 A I was.
- 8 Q I'm going to show you what's marked State's Exhibit
9 number 5, and ask if you recognize that.
- 10 A I do.
- 11 Q And how can you recognize it?
- 12 A I viewed the video on it, as well as initialed the thumb
13 drive.
- 14 Q Okay, so you've viewed what's on here and initialed it
15 acknowledging ---
- 16 A That's correct.
- 17 Q And is this a copy of your body cam from that day?
- 18 A It is.
- 19 MR. FULMER: Judge, I'd move State's Exhibit 5 into
20 evidence.
- 21 MR. LUCAS: Subject to our stipulations, in agreement,
22 Your Honor.
- 23 THE COURT: It's admitted.
- 24 (Wherefore,
- 25 Plaintiff's Exhibit 5

CROSS EXAMINATION OF JANESEA SMITH

1 was entered into evidence.)

2 MR. FULMER: I'd like to publish it to the jury.

3 THE COURT: Yes, sir.

4 (Whereupon, a video was played.)

5 BY MR. FULMER:

6 Q Deputy, I'm going to pause it right there. Your glove is
7 covering an orange -- something orange. Do you see that?

8 A I do.

9 Q Is that the orange bag you removed from him?

10 A It is.

11 (Whereupon, a video was played.)

12 BY MR. FULMER:

13 Q Is your body cam an accurate description of what went on
14 that day?

15 A It is.

16 Q Okay. And inside that orange bag, that's where you found
17 the drugs?

18 A That's correct.

19 MR. FULMER: Please answer any questions Mr. Lucas has
20 for you.

21 CROSS EXAMINATION

22 BY MR. LUCAS:

23 Q Deputy Smith, you went to Eddie's Minute Mart on May 24th
24 in response to a tip, correct?

25 A In response -- I'm sorry?

CROSS EXAMINATION OF JANESEA SMITH

- 1 Q In response to a 911 call?
- 2 A That's correct.
- 3 Q And you were uncertain of the exact identity of the 911
- 4 caller?
- 5 A The identity of the person?
- 6 Q Yes, ma'am.
- 7 A Yes. That's correct.
- 8 Q Okay. And the substance of the tip was that a black male
- 9 had shown the clerk a gun in a non-threatening manner and was
- 10 buying people stuff, causing a disturbance, that type of
- 11 thing?
- 12 A Yeah, we were also provided the description of -- as far
- 13 as the shirt and shoes.
- 14 Q Okay. And then, as a result of that, you responded to
- 15 Eddie's Minute Mart?
- 16 A That's correct.
- 17 Q When you got there, you didn't do anything to immediately
- 18 confirm the tip, correct?
- 19 A I did not, no.
- 20 Q Okay. You didn't go talk to the store clerk or watch the
- 21 surveillance footage, anything like that?
- 22 A I did not.
- 23 Q And isn't it true within 30 seconds of your arrival, you
- 24 walked straight up to Mr. Glenn and pulled his shirt up and
- 25 you looked down into his waistband?

CROSS EXAMINATION OF JANESEA SMITH

- 1 A I don't know how quickly, but it was fairly quick. I
2 don't know if it was 30 seconds or not.
- 3 Q But it was fast?
- 4 A It was pretty quick.
- 5 Q Less than a minute.
- 6 A Correct.
- 7 Q And you would agree, you went right up and lifted his
8 shirt up?
- 9 A Upon some conversation -- hearing conversation, and upon
10 my view of what I saw.
- 11 Q Okay. And so, essentially, you're saying after you
12 lifted his shirt up, you saw this little plastic baggy in his
13 pants?
- 14 A Yes, that's correct.
- 15 Q But not before?
- 16 A Not before, no.
- 17 Q And then, as a result of that, you immediately handcuffed
18 him and told him he was under arrest, right?
- 19 A He was under arrest for public disorderly conduct.
- 20 Q Did you tell him that?
- 21 A He was not told at the time.
- 22 Q Okay, so you would agree with me that you did not tell
23 him he was under arrest for public disorderly conduct?
- 24 A Not at the time, no.
- 25 Q And are you aware that there's a state statute, South

CROSS EXAMINATION OF JANESEA SMITH

1 Carolina Code 17-13-50 that states that a person is required
2 to be told the true grounds of their arrest?

3 A Yes.

4 MR. LUCAS: Okay. I'd just ask the Court's indulgence
5 for just one second, Your Honor.

6 THE COURT: Yes, sir.

7 BY MR. LUCAS:

8 Q And Officer Smith, you would agree with me that you had a
9 subsequent telephone call either with your supervisor or
10 another officer where you described the events that lead to
11 Mr. Glenn's arrest, right?

12 A I had a conversation. As far as what some of the details
13 of the -- of what I was out with, yes.

14 MR. LUCAS: Okay. Your Honor, I'm going to play that
15 clip for her very quickly. We're offering it for impeachment.

16 THE COURT: Yes, sir. And that's ---

17 MR. LUCAS: Pardon me, Judge?

18 THE COURT: That's from Exhibit 5?

19 MR. LUCAS: Your Honor, I'm playing it from the ---

20 THE COURT: Smith's body cam?

21 MR. LUCAS: That's correct.

22 THE COURT: Okay, sir.

23 (Whereupon, a video was played.)

24 BY MR. LUCAS:

25 Q Okay. You would agree that during that phone call, you

CROSS EXAMINATION OF JANESEA SMITH

1 didn't say anything about arresting Mr. Glenn for public
2 disorderly conduct?

3 A No, not during that conversation.

4 Q And you would also agree that you said that he pulled his
5 shirt up?

6 A He did, yes.

7 Q I thought you had testified that you pulled his shirt up?

8 A I did. But he pulled it up as well at one point.

9 Q So, you're saying that if the jury watches that video,
10 they are going to see him pulling his shirt up, and you'll be
11 able to see the plastic baggy of marijuana? Is that what
12 you're saying?

13 A At one point -- yeah, if you play the video foot at one
14 point, you will see him lift his shirt.

15 Q Okay. All the way up?

16 A No, I don't believe -- I mean, all the way, referring to,
17 like, off his head? He lifts it slightly, just -- about just
18 as much as I lifted it.

19 Q Okay. All right, and that -- the green bag -- just
20 moving to another topic. The green bag that you see there,
21 it's a little blurry on the screen, but you would agree that's
22 the green bag that Mr. Glenn was holding in his right hand
23 when you arrested him?

24 A Yes, that's correct.

25 Q And what was in that bag? Can you tell the jury, please?

CROSS EXAMINATION OF JANESEA SMITH

1 A There was an unknown amount of US currency inside that
2 bag.

3 Q Okay. A lot of money?

4 A It was quite a bit.

5 Q And you counted it on scene, right?

6 A Not all the way through, no, sir.

7 Q Oh, you didn't count it all the way through?

8 A No, sir.

9 MR. LUCAS: Okay. Your Honor, I'm going to play another
10 video clip.

11 THE COURT: Okay, sir.

12 MR. LUCAS: Your Honor, I'm going to play the clip, and
13 then ask a couple questions about it.

14 THE COURT: Yes, sir.

15 (Whereupon, a video was played.)

16 BY MR. LUCAS:

17 Q Okay. Officer Smith, does that refresh your
18 recollection?

19 A Of what?

20 Q Of counting the money?

21 A No.

22 Q So you have no recollection to counting it and
23 determining that it was \$3,500?

24 A There's no count -- full count of the money. That was
25 just an estimated guess.

CROSS EXAMINATION OF JANESEA SMITH

1 MR. LUCAS: Your Honor, I'm going to show another clip
2 here.

3 THE COURT: Yes, sir.

4 (Whereupon, a video was played.)

5 BY MR. LUCAS:

6 Q Ma'am, I'm not going to make you watch all that video,
7 but you would agree that this video shows you counting the
8 money?

9 A Yeah. And I don't deny counting some of the money. Not
10 all of the money was counted. It was not counted all the way
11 through.

12 Q Okay. So you're -- you're saying that that video isn't
13 going to show you counting every dollar bill there and putting
14 it in stacks of, you know, hundreds, and going through the
15 whole amount?

16 A I believe I organized the money into the same amount,
17 like same currency, as far as twenties -- same bills. But
18 there was no full count of the money, no.

19 Q Okay. And so, it's your testimony that if we watched
20 this whole video, the next ten minutes, it's not going to show
21 you counting the money from minute 44 to minute 58?

22 A No, not the full amount, I don't believe so.

23 Q Okay. And when you wrote your report, which was on May
24 24th, you just said the uncounted US currency was placed into
25 the Anderson County Sheriff's Office evidence division, right?

CROSS EXAMINATION OF JANESEA SMITH

1 A That's correct.

2 Q Okay. But to clarify, when Office Rowe asked you how
3 much money it was, you agree the video says \$3,500?

4 A Deputy Rowe didn't ask, but I did -- the person who
5 asked, I did say -- I gave an estimated approximate of \$3,500,
6 yes.

7 Q Okay. So that money was put into the evidence division.
8 What happened to it?

9 A Once it's placed into evidence, I had no further dealings
10 with it.

11 MR. LUCAS: So, you're not aware of an incident report
12 ---

13 MR. FULMER: Objection, Your Honor. This isn't -- this
14 witness has no knowledge of what he's about to ask about.

15 THE COURT: Let him ask the question, then object,
16 please.

17 BY MR. LUCAS:

18 Q Sure. So, Officer Smith, do you have any knowledge that
19 when the money was deposited on October 16th, \$2,938 were
20 deposited, not \$3,500?

21 A Once I submit it into evidence, I have no further
22 dealings, so I'm not sure.

23 Q You would agree with me that oftentimes when money is
24 collected, it is, you know, preserved in evidence and, you
25 know, brought back later on in the trial, right? That

CROSS EXAMINATION OF JANESEA SMITH

1 sometimes happens?

2 A I'm sorry, say that one more time.

3 Q You would agree with me that the money is oftentimes not
4 deposited into a narcotics holding account until after the
5 case is concluded?

6 A I have no idea.

7 Q Okay. That's fine. Thank you. So, after Mr. Glenn was
8 stopped and searched, you testified that you'd found some
9 drugs inside of an orange baggy that was in his waistband,
10 correct?

11 A That's correct.

12 Q And after you opened that, you know, you determined that
13 Mr. Glenn was going to be charged with that cocaine base,
14 correct?

15 A Once -- yeah, once I opened the bag, located the drugs
16 inside, and they were field tested for -- and positive for
17 crack cocaine.

18 Q Sure, sure. I understand. After that, did you do any
19 further investigation in this case?

20 A I believe a criminal history was ran, but outside that, I
21 don't recall further.

22 Q You believe what? I didn't hear you, I'm sorry.

23 A I'm sorry, a criminal history.

24 Q Okay.

25 A Yeah.

CROSS EXAMINATION OF JANESEA SMITH

1 Q So, you never actually went into the store to try to talk
2 to the 911 caller to see who it was?

3 A I don't believe I -- no, I don't think I talked to
4 anybody on the -- at the store.

5 Q Okay, so you don't know if that complaint was true, not
6 true, don't know who the caller was, any of that?

7 A I don't -- I do not know the caller.

8 Q Okay. You didn't go into the store to get the
9 surveillance footage to see if that actually happened?

10 A I personally did not.

11 Q Did anybody else?

12 A I'm not sure.

13 Q And you would agree with me that the body camera footage
14 shows that Mr. Glenn had two phones on him when he was
15 arrested?

16 A I did see that, yes.

17 Q Okay. Were those phones taken into evidence?

18 A I'm not sure. I don't believe so, but I can't recall.

19 Q All right, so you can testify that you didn't take them
20 into evidence.

21 A Not that I recall.

22 Q To your knowledge, did anyone else?

23 A Not that I recall.

24 Q Were they ever turned over to the sheriff's department to
25 do a forensic analysis or data dump?

CROSS EXAMINATION OF JANESEA SMITH

1 A Not to my knowledge.

2 Q And to be clear, you're aware that it's common practice
3 for the police to, you know, download the contents of
4 someone's phone to see what's on there, right?

5 A Under certain circumstances, yes.

6 Q Okay. In other words, you could look at a person's text
7 messages, emails, you know, Messenger, all of that, and you
8 can -- it's quite common for investigators to get into
9 people's phones.

10 A During certain investigations, yes, we have detectives
11 that do that.

12 Q Okay. In serious cases like this one?

13 A I don't -- our narcotics team handles that portion of it,
14 so I don't know. I don't know the process for that.

15 Q To your knowledge, that never happened here?

16 A Not to my knowledge, no.

17 Q And are you aware that Mr. Glenn made a statement to
18 Officer Nesbitt, telling him that he picked up the money at
19 the Belton bar?

20 A No, I was not aware of that.

21 Q So, Officer Nesbitt never relayed that information to
22 you?

23 A Not that I recall.

24 Q Okay. So, it would be fair to say that nothing was done
25 to look into the accuracy of that?

CROSS EXAMINATION OF JANESEA SMITH

1 A Not on my part. Again, it's -- our narcotics team takes
2 over that portion, so ---

3 Q Do you know if they did anything to look into that?

4 A I'm not sure.

5 Q Do you have any knowledge of what they might have done on
6 this case, if anything?

7 A I don't know.

8 Q As far as you know, not anything?

9 A I have no idea.

10 MR. LUCAS: Okay. Your Honor, I'd ask for just one
11 moment, please.

12 THE COURT: Yes, sir.

13 BY MR. LUCAS:

14 Q Two further questions, Officer Smith. Number one, you've
15 not had any dealings with Savayea Glenn before May 24th, 2020?

16 A Not to my knowledge, no.

17 Q Okay. And you didn't call the narcotics squad and ask
18 them to do any further investigation in this case?

19 A A phone call was made to a supervisor, and to my
20 knowledge, to my recollection, they contacted the narcotics
21 supervisor, which is common protocol. We don't -- as a
22 deputy, we don't actually make the phone calls. We notify our
23 supervisor and then that supervisor notifies the correct
24 people.

25 Q And to your knowledge, no further investigation was done?

REDIRECT EXAMINATION OF JANESEA SMITH

1 A Not -- I don't know. Not to my knowledge. I have no
2 idea what happened from that point.

3 Q Okay. But from -- at this point, this is, you know,
4 6:30, 6:45 in the morning. You're about to get off work,
5 right?

6 A That's correct.

7 Q Okay. So, you made an arrest and then after submitting
8 the drugs to evidence, from your perspective, this was -- that
9 was it?

10 A Yeah, it was about 1:00 in the afternoon.

11 Q Okay. I don't have any further questions. Thanks for
12 your time.

13 A Yes, sir.

14 MR. FULMER: Just a few, Judge.

15 REDIRECT EXAMINATION

16 BY MR. FULMER:

17 Q Deputy, would it be fair to say that when you were
18 responding to Eddie's Minute Mart, you thought you were going
19 to deal with an unruly person?

20 A That's correct.

21 Q Did your focus change once you found drugs on the
22 Defendant?

23 A It did.

24 MR. LUCAS: I object to leading, Your Honor.

25 THE COURT: What was the question?

REDIRECT EXAMINATION OF JANESEA SMITH

1 MR. FULMER: Did your focus change once you found drugs
2 on the Defendant?

3 THE COURT: Overruled.

4 DEPUTY SMITH: It did.

5 BY MR. FULMER:

6 Q And how did it change?

7 A Once the drugs were located inside the bag, there's a
8 process to go through. So, you know, I had to obviously
9 maintain custody of that substance that was located and
10 continue the investigation, which includes the weighing --
11 preliminary weight, field testing it to ensure that it does
12 field test positive for a narcotic. So, that was where my
13 focus went to.

14 Q It became a much more serious situation?

15 A It did.

16 Q Let me ask you about the counting the money. You counted
17 -- you say you counted a portion of the money, but not all of
18 it?

19 A That's correct.

20 Q Why were you counting the money?

21 A Per our policy, it's -- we have \$1,000, and at that
22 point, with \$1,000, we seize, and it gets -- we turn it over
23 the investigation to our narcotics team. So, I -- after the
24 phone call that I had made, that was one of the things that I
25 had been instructed, was hey, is this going to be over \$1,000.

RE CROSS EXAMINATION OF JANE S S A SMITH

1 And once I was able to observe that it was, that's when I
2 stopped counting.

3 Q So you admit you counted some portion, maybe most of this
4 money?

5 A Some portion of it, yes.

6 Q So you were able to determine that it was over a
7 threshold of \$1,000?

8 A That's correct.

9 Q But you didn't fully count the money?

10 A No, sir.

11 Q And that's how you noted it when you turned it in to
12 evidence as well, right?

13 A That's correct.

14 Q Uncounted currency.

15 A Uncounted.

16 MR. FULMER: That's all I have, Judge.

17 THE COURT: Thank you, ma'am, you may -- do you have any
18 questions?

19 MR. LUCAS: Just one further thing.

20 THE COURT: Yes, sir.

21 RE CROSS EXAMINATION

22 BY MR. LUCAS:

23 Q Officer Smith, so you're saying that that video is not
24 going to show you counting the money from minute 44 to minute
25 58?

RECROSS EXAMINATION OF JANESEA SMITH

1 A Not -- no.

2 Q It's not going to show you counting?

3 A Not a full amount, no. I believe it'll show me
4 organizing. And I think it will show me counting out loud.
5 And it may even possibly show counting in hundreds. But as
6 far as counting 100, 200, 300, 400, and so on, it's not going
7 to show that.

8 MR. LUCAS: I mean, Your Honor, I'd offer, you know, that
9 portion of the video into evidence. I know it's already ---

10 THE COURT: If you'd like to play it, then you can.

11 MR. LUCAS: Judge, I don't -- I'm not going to ask the
12 jury to sit through all, you know, 18 minutes now, but if they
13 decide they want to watch it back in the jury room, I'd offer
14 it for that purpose. I mean, it's ---

15 THE COURT: Any objection to that?

16 MR. FULMER: No, sir, Judge.

17 THE COURT: All right. That's granted, and that would be
18 admitted. Mr. Foreman, just so you know, because there are
19 things on the video that would not be appropriate for the jury
20 to see, we're going to have you, at the end of the day, watch
21 the video here in the courtroom, and somebody will make sure
22 that the parts that have been stipulated will be played for
23 you, but other parts will not be played for you, so you
24 understand, okay. And I'll remind you at the end of the case.
25 All right. You may -- is this witness done?

DIRECT EXAMINATION OF JOSHUA NESBITT

1 MR. FULMER: Yes, sir, Judge.

2 THE COURT: All right, you may step down.

3 DEPUTY SMITH: Thank you, Your Honor.

4 THE COURT: Call your next witness, please.

5 MR. FULMER: The State calls Joshua Nesbitt.

6 Whereupon,

7 JOSHUA NESBITT

8 was called as a witness, having been first duly sworn, was
9 examined and testified as follows:

10 CLERK: If you would, please, state your full name for
11 the record and spell your last name.

12 MR. NESBITT: It's Joshua Wade Nesbitt, N-E-S-B-I-T-T.

13 DIRECT EXAMINATION

14 BY MR. FULMER:

15 Q Mr. Nesbitt, where do you work?

16 A First Quality Enterprises currently.

17 Q Where were you working back on -- back in May of 2020?

18 A The Anderson County Sheriff's Office.

19 Q How long had you worked there?

20 A Approximately three years.

21 Q Prior to that, did you have any law enforcement
22 experience?

23 A Yes, sir. Before the sheriff's office, I worked at the
24 probation office here in Anderson, approximately the same
25 amount of time, three years.

DIRECT EXAMINATION OF JOSHUA NESBITT

- 1 Q So, were you on duty back on May 24th, 2020?
- 2 A Yes, sir, I was.
- 3 Q Did you have an opportunity to come in contact with the
- 4 Defendant on that day?
- 5 A Yes, sir, I did.
- 6 Q And where was that?
- 7 A At the Stop-A-Minit on Abbeville Highway, also known as
- 8 Eddie's Minute Mart.
- 9 Q And why were you at the -- at Eddie's Minute Mart?
- 10 A We received a call about a disturbance -- an individual
- 11 causing a disturbance at the -- that location.
- 12 Q So you responded out there?
- 13 A Yes, sir.
- 14 Q And you saw the Defendant there?
- 15 A Yes, sir.
- 16 Q Did you have a conversation with him?
- 17 A Yes, sir, briefly. Once I arrived on scene, he was
- 18 standing in the doorway of the location, and I just began
- 19 speaking with him about what was going on, the situation at
- 20 hand, what we were called out for.
- 21 Q Did you notice anything about him?
- 22 A At that initial interaction, I did smell the odor of
- 23 alcohol on him. And he was very animated in his speech, his
- 24 actions.
- 25 Q Were you there when Officer Smith arrived?

DIRECT EXAMINATION OF JOSHUA NESBITT

- 1 A Yes, sir, I was.
- 2 Q Okay. Did you see her search the Defendant?
- 3 A Yes, sir. Well, there as a point where we observed an
- 4 object in his waistband, and we proceeded to check for what
- 5 that was.
- 6 Q And ultimately, was the Defendant searched?
- 7 A Yes, sir.
- 8 Q And were you present when an orange bag was found on his
- 9 waistband?
- 10 A Yes, sir.
- 11 Q Were you present when an amount of crack cocaine was
- 12 found inside that orange bag?
- 13 A Yes, sir.
- 14 Q Did you help Deputy Smith with the field testing?
- 15 A Yes, I believe I provided the -- some of the test kits,
- 16 yes, sir.
- 17 Q Did you make a report about what you were doing that day?
- 18 A I don't recall making a report.
- 19 Q Did you have a body cam on that day?
- 20 A I did have the body camera.
- 21 Q I'm going to show you what is marked State's Exhibit 5.
- 22 A Yes, sir.
- 23 Q And ask you if you recognize that.
- 24 A Yes, I do. That's the flash drive containing my body
- 25 camera footage.

DIRECT EXAMINATION OF JOSHUA NESBITT

1 Q So you've viewed the contents of this?

2 A I have, yes, sir.

3 Q And it's your body cam from that day?

4 A Yes, sir.

5 MR. FULMER: Judge, I move Deputy Nesbitt's body cam on
6 State's Exhibit 5 into evidence.

7 MR. LUCAS: Subject to our agreement, Your Honor.

8 THE COURT: All right, that would be admitted. So it's
9 clear on the record, Smith is on Exhibit 5, Nesbitt is on
10 Exhibit 5?

11 MR. FULMER: Yes, sir.

12 THE COURT: All right.

13 (Wherefore,

14 Plaintiff's Exhibit 5

15 was entered into evidence.)

16 MR. FULMER: May I publish to the jury?

17 THE COURT: Yes, sir.

18 (Whereupon, a video was played.)

19 BY MR. FULMER:

20 Q Is that an accurate depiction of what happened that day?

21 A Yes, sir.

22 Q Did you go to school with the Defendant?

23 A No, sir.

24 Q But the Defendant here today is the same man you saw in
25 the Minute Mart May 24th?

CROSS EXAMINATION OF JOSHUA NESBITT

1 A Yes, sir.

2 MR. FULMER: Please answer any questions that Mr. Lucas
3 would have for you.

4 CROSS EXAMINATION

5 BY MR. LUCAS:

6 Q Mr. Nesbitt, it's your testimony that you stopped Mr.
7 Glenn outside of the store at Eddie's Minute Mart, and that
8 was what, about 6:15?

9 A I don't remember the exact time, but yeah, roughly an
10 hour or so before shift change, yes, sir.

11 Q And what time is the shift change you're referring to?

12 A Oh, at 7:00.

13 Q At 7:00?

14 A Yes, sir.

15 Q You were working nights at that time?

16 A If I remember correctly.

17 Q Okay. Anyway, when you saw Mr. Glenn coming out of
18 Eddie's Minute Mart, you described him as, you know, pretty
19 animated and boisterous, right?

20 A Yes, sir.

21 Q And you thought maybe he'd been drinking a little bit?

22 A Yes, sir.

23 Q Now -- and when he came out, he told you that he was
24 buying people stuff?

25 A Yes, sir.

CROSS EXAMINATION OF JOSHUA NESBITT

1 Q And that everybody walked in and he was buying it for
2 them, or something to that effect.

3 A Yes.

4 Q And a maybe 45 seconds, a minute after you get there,
5 something like that, it's pretty quickly, Officer Janessa
6 Smith arrives, right?

7 A Yes, sir.

8 Q And within 30 or 40 seconds she walks up to Mr. Glenn and
9 lifts his shirt right up?

10 A The shirt does get lifted, yes, sir.

11 Q Okay. And was it your understanding that she was then
12 arresting him for the baggy of marijuana that was in his
13 underwear?

14 A Not at that current moment, no.

15 Q So you didn't think she was arresting him for that?

16 A Not for that particular -- not for what was in his
17 waistband at that time, no.

18 Q Well, what did you think she was arresting him for?

19 A If I had been in the same situation, or if she had not
20 arrived on scene, he would have likely been placed under
21 arrest for some sort of public disorderly conduct based on
22 what we had received ---

23 Q Okay.

24 A --- and what I observed when I was there.

25 Q Okay. But you would agree with me that she lifts his

CROSS EXAMINATION OF JOSHUA NESBITT

1 shirt up, sees this bag of drugs, and then she arrests him
2 immediately afterwards?

3 A Yes, that's an accurate statement.

4 Q Okay. And when I say arrest, I mean she handcuffs him
5 and then 20 seconds later tells him that he's under arrest?

6 A Yes.

7 Q Okay. And you would agree with me that video shows the
8 store clerk coming outside and she says, you know, what are
9 you doing -- or sorry, is everything all right? What's going
10 on? Is he wanted?

11 A Yes, sir, that's in the video later on.

12 Q Okay. Now, fast forwarding a couple minutes after the
13 arrest, you would agree with me that Mr. Glenn told you that
14 he found the money at the Belton bar?

15 A I don't remember his exact statement later on in that.

16 MR. LUCAS: Your Honor, I'm going to play a video clip.
17 I'm offering it for the non-hearsay purpose of, you know, what
18 he was told and then what he did in his investigation.

19 THE COURT: All right, sir.

20 (Whereupon, a video was played.)

21 BY MR. LUCAS:

22 Q You would agree with me that he told you that he found it
23 at the Belton bar?

24 A Yes, sir.

25 Q Okay. And he's talking about -- he says everything.

- 1 A Yes.
- 2 Q And he's talking about money and that he's using it to
- 3 buy stuff for people at Eddie's Minute Mart?
- 4 A Yes, sir.
- 5 Q Okay. Did you ever relay that information to Officer
- 6 Smith or to anyone else?
- 7 A I don't recall.
- 8 Q Okay. Did you do anything to confirm that maybe he was
- 9 telling the truth?
- 10 A I don't recall much after this conversation here.
- 11 Q Okay. So, you don't recall going to the Belton bar to
- 12 look for any surveillance footage or speak with anyone about
- 13 it?
- 14 A No, I never went to the bar.
- 15 Q And are you aware that Belton bar is -- that's a name for
- 16 Cheers, that's kind of across the street from the Belton
- 17 Police Department?
- 18 A No, sir, I was not.
- 19 Q Okay. And to your knowledge, nobody checked that out?
- 20 A Not to my knowledge, no.
- 21 Q Okay. And when Mr. Glenn was arrested, he had two cell
- 22 phones on him, right?
- 23 A I do recall the two phones, yes.
- 24 Q Do you know if those were ever taken into evidence?
- 25 A I do not remember.

CROSS EXAMINATION OF JOSHUA NESBITT

1 Q Okay. So, to your knowledge, nobody ever did a data dump
2 or phone extraction of those to see what was on his phones?

3 A Not to the extent that I know of this case, no.

4 MR. LUCAS: Okay. Your Honor, permission to approach?

5 THE COURT: Yes, sir.

6 BY MR. LUCAS:

7 Q Can you identify that document, Mr. Nesbitt?

8 A Yes, sir. That's a vehicle impoundment sheet that we
9 would complete before a vehicle was towed.

10 Q Okay. And that's an impoundment sheet that you completed
11 for this case on May 24th?

12 A That's correct.

13 Q For a vehicle you thought Savayea Glenn was driving?

14 A That's correct.

15 Q And you indicate in there that you -- among other things,
16 you collected miscellaneous children's toys and a car seat?

17 A Yes, that was notated as items that were in the vehicle.

18 MR. LUCAS: Okay. Okay, thank you. Beg the Court's
19 indulgence for just a ---

20 THE COURT: Yes, sir.

21 MR. LUCAS: --- moment, Your Honor. Your Honor,
22 permission to approach the ---

23 THE COURT: Yes, sir.

24 MR. LUCAS: --- witness.

25 BY MR. LUCAS:

CROSS EXAMINATION OF JOSHUA NESBITT

1 Q Officer Nesbitt, I'm showing you a picture from your body
2 camera footage. Are you familiar with that? Do you remember
3 it?

4 A I don't vividly remember it. But I do recall seeing it
5 on the body camera footage.

6 Q Okay. Would that be a true and accurate depiction of the
7 inside of that black SUV?

8 A From what I recall, yes.

9 Q Okay. And can you tell the jury what it shows -- or what
10 the picture shows in terms of what's in the back seat?

11 A The back seat, according -- from this picture, shows some
12 kind of -- what appears to be a box Paw Patrol toy and some
13 other kind of box with the word adventure on it beside that
14 Paw Patrol on the back seat of this car.

15 Q Okay, so there's a closed Paw Patrol box that's a pretty
16 decent size?

17 A Yes, in that seat.

18 MR. LUCAS: Okay, thank you. Your Honor, I would ask to
19 have this admitted as Defendant's Exhibit 1.

20 THE COURT: Any objection?

21 MR. FULMER: No, sir, Your Honor.

22 THE COURT: It's admitted.

23 (Wherefore,

24 Defendant's Exhibit 1

25 was entered into evidence.)

CROSS EXAMINATION OF JOSHUA NESBITT

1 MR. LUCAS: Beg the Court's indulgence for just a moment,
2 Your Honor.

3 THE COURT: Yes, sir.

4 BY MR. LUCAS:

5 Q And -- so you testified earlier -- moving back to the
6 reason for the arrest -- that you arrested, or you thought it
7 was appropriate to arrest Mr. Glenn for public disorderly
8 conduct based on information that you had received?

9 A And observed, yes.

10 Q And observed, okay. In terms of the information you
11 received, that would have been the call to dispatch, right?

12 A Yes.

13 Q And you're getting that information over the radio and on
14 a ticker in your car?

15 A Yes, sir.

16 Q Okay. But after the arrest, you didn't do anything to
17 confirm that information was correct?

18 A No, sir.

19 Q Okay. You didn't go try to talk to the caller or figure
20 out who it was, anything like that?

21 A The only other contact I believe I had was to go in and
22 attempt to get a no trespass form signed.

23 Q And she refused to sign it, right?

24 A Yes. Yes.

25 MR. LUCAS: Okay. Thank you. No further questions.

DIRECT EXAMINATION OF BRAD MCGUIRE

1 THE COURT: Redirect?

2 MR. FULMER: No, sir, Judge.

3 THE COURT: May this witness be excused?

4 MR. FULMER: Yes, sir.

5 THE COURT: Any objection?

6 MR. LUCAS: None, Your Honor.

7 THE COURT: All right, thank you, sir. You're excused.

8 MR. NESBITT: Thank you, sir.

9 MR. FULMER: State calls Brad McGuire.

10 Whereupon,

11 BRAD MCGUIRE

12 was called as a witness, having been first duly sworn, was

13 examined and testified as follows:

14 CLERK: And if you will, please state your full name for
15 the record, and spell your last name.

16 MR. MCGUIRE: Neal Bradley McGuire, M-C-G-U-I-R-E.

17 DIRECT EXAMINATION

18 BY MR. FULMER:

19 Q Mr. McGuire, where do you work?

20 A Anderson County Sheriff's Office.

21 Q How long have you worked there?

22 A Almost 31 years.

23 Q What are your duties and responsibilities at the
24 sheriff's office?

25 A For the last seven years, I've been in forensics evidence

DIRECT EXAMINATION OF BRAD MCGUIRE

1 to maintain and control evidence and files.

2 Q So, you're an evidence custodian, would that be fair to
3 say?

4 A Yes, sir.

5 Q Back in May of 2020, did you receive into evidence a Best
6 Kit from Deputy Janessa Smith?

7 A Yes, I did.

8 Q Do your records reflect what Best Kit number that was?

9 A I can tell you in just a second. Best Kit should be C,
10 Charley, 35534.

11 Q And what happened to that Best Kit once it was in your
12 custody?

13 A Once I took possession of it, I placed it into our
14 computer system, issued it barcodes that would coincide with
15 the putting it into evidence, put it into the evidence for
16 further analysis.

17 Q Did anybody else handle the Best Kit while it was in
18 evidence?

19 A No, sir.

20 Q Would there have been anybody within the office that
21 handled it?

22 A When the Best Kit is transferred from our division, one
23 of the people there, myself, Pansy Allen [sic], which is
24 retired, and Jan Robinson, which is moved to another division,
25 one of the three of us would have signed it out and carried it

DIRECT EXAMINATION OF BRAD MCGUIRE

1 over to the Anderson-Ocone Forensics Lab, which is next door.

2 Q Let me show you the chain of custody in this case and ask
3 if you recognize that. You may have a copy of it.

4 A Okay.

5 Q So, in this case, did Pansy Allen at some point transfer
6 it within the office?

7 A Yes, she did.

8 Q Okay.

9 A That would be June the 1st, 2020. It was signed out at
10 9:24:01 am.

11 Q And then at some point was it taken to the Anderson-
12 Ocone Forensic Lab for testing?

13 A Yes, sir. On the 4th of June, 2020, at 9:52, Ms. Robinson
14 carried to the forensic lab for testing.

15 Q And where is the forensic lab in relationship to the
16 sheriff -- to the evidence building?

17 A It is the next door over. It's known as the David Coffee
18 building -- I'm sorry -- yeah, the David Coffee building.

19 Q And can you tell me about your evidence policy? Would
20 anybody within your office have altered or amended this Best
21 Kit?

22 A No, sir. That Best Kit is sealed, and once it is sealed,
23 the only person that can unseal it would be the forensics lab
24 technician or the chemist over there. They would open it,
25 and, you know, take the contents out, test it, and document

DIRECT EXAMINATION OF BRAD MCGUIRE

1 everything when they open it and everything. But it is --
2 once it's sealed, it's sealed.

3 Q And was this Best Kit, C35534, brought back into evidence
4 ---

5 A Yes, sir.

6 Q --- after testing?

7 A After it was tested, the -- it was signed in -- Ms.
8 Robinson signed the test kit into her name to be transported
9 to the lab at 9:52 on the 4th. When she walked to the next
10 door, at 9:57, she actually checked it in to the lab computer.
11 And then on the 15th of October, Ms. Robinson picked up the
12 test results and the test kit and brought it back and put it
13 into our evidence.

14 Q And that's where it's been ever since?

15 A Yes, sir.

16 Q Okay, I'm going to let you look at what's marked State's
17 Exhibit 6. Is this that same Best Kit?

18 A Yes, sir, that is it. And then once it's tested, it's
19 heat-sealed back, and then the lab will actually put a number
20 on it to identify it.

21 Q And is this evidence that you brought to the courthouse
22 today?

23 A Yes, sir.

24 MR. FULMER: That's all I have, Judge.

25 THE COURT: Cross examination?

CROSS EXAMINATION OF BRAD MCGUIRE

1 CROSS EXAMINATION

2 BY MS. CHAMBERS:

3 Q Mr. McGuire, you took some money into evidence, correct?

4 A Yes, ma'am.

5 Q Okay. And what was the amount of that money?

6 A The -- on the -- May 26th at 8:54, I received in an
7 undocumented amount of money. It was in a sealed bag. On the
8 16th of October, myself and Pansy Allen carried the narcotics
9 fund to the bank to have -- put into a narcotics holding
10 account. At that point, the teller would take that money,
11 would open it from the sealed condition, count it at least
12 twice in front of us, give us a total amount, would deposit it
13 into the narcotics holding account, would sign the deposit
14 slip. I would initial it and Pansy would.

15 We'd bring the slip back to the sheriff's office, and
16 then I would enter it into the files -- what we call a shares
17 file that -- and then put the hard copy in the actual seizure
18 packet for the actual civil part of the money. The copy of
19 the deposit slip would go to the accounting downtown for
20 verification and accountability. And that was on that
21 particular day, and there was some more money that was entered
22 the same time that was taken after the initial seizure that
23 was sealed, and it was for 62 cents.

24 And on 12/17/2020, I carried it, again with another
25 officer, to the bank and did the same thing for the 62 cents.

CROSS EXAMINATION OF BRAD MCGUIRE

1 And the reason for the difference would be that was cash money
2 in the sealed envelope. Once the arrest was made, a lot of
3 times the officers will have knives and different things that
4 does not necessarily, you know, get put in, so they'll put it
5 in separately, and that's what happened with this 62 cents.

6 Q Okay. So, the total amount that you would have deposited
7 in the bank, do you have that?

8 A Yes, I do.

9 Q What if I told you it was \$2,938.62, does that sound
10 correct?

11 A Yes, ma'am, that sounds pretty close to correct.

12 Q Okay. \$2,938.62, and you didn't count that. The bank
13 counted that, correct?

14 A Yes, ma'am. We do not -- with our policy and things,
15 when it's a large amount of cash like that, for discrepancies
16 and everything, the officer will actually take that money, and
17 many times they will get the person seizing it, if it's
18 possible to get them to initial the bag when it's sealed. You
19 know, that does not always happen. Sometimes it does. But
20 they try to seal that bag in front of the Defendant where they
21 won't be any discrepancy, and then it's unsealed in my
22 presence or at least -- we have a two-person policy to carry
23 money at all times. And if it's a large, large amount, there
24 will be even more than two. And we always document and
25 initial that. Everything is documented in the computer

1 system.

2 Q Okay. And to your knowledge, is that what happened in
3 this case? Did -- was it counted in front of the Defendant?
4 Was it initialed?

5 A That part I couldn't testify to because I don't know. I
6 can testify that once it got in my control, it stayed in to
7 the money vault until that particular day I testified that I
8 carried it, along with Pansy Allen, to the bank. That was the
9 big amount. And then when we go back in, there's -- we do an
10 audit in there ever so often, and we'll take other envelopes
11 in there, usually small amounts like the 62 cents, and we'll
12 make one large group of deposits, maybe 15 or 20, and we'll do
13 the same thing per the case. It goes into that, and then
14 again, it's documented the same way. That 62 cents deposit
15 slip actually went to the accountant downtown to be added for
16 records filing the next month.

17 MS. CHAMBERS: Okay. No further questions.

18 OFFICER MCGUIRE: Thank you.

19 THE COURT: Cross examination?

20 MR. FULMER: No, sir.

21 THE COURT: Or redirect, excuse me. May he be excused?

22 MR. FULMER: Yes, sir, Judge.

23 MR. LUCAS: No objection.

24 THE COURT: All right, thank you, sir. You are excused.

25 OFFICER MCGUIRE: Thank you.

DIRECT EXAMINATION OF KAREN BOWEN

1 MR. FULMER: State calls Karen Bowen.

2 THE COURT: Mr. Foreman?

3 FOREMAN: Yes, sir.

4 THE COURT: Do y'all need a break or are y'all okay?

5 FOREMAN: I'll just asked everybody. We're good.

6 THE COURT: You're good?

7 FOREMAN: Yes, sir. Thank you.

8 THE COURT: Very good.

9 Whereupon,

10 KAREN BOWEN

11 was called as a witness, having been first duly sworn, was
12 examined and testified as follows:

13 CLERK: If you would please, state your full name for the
14 record, and spell your last name.

15 MS. BOWEN: My name is Karen Bowen. It's B-O-W-E-N.

16 DIRECT EXAMINATION

17 BY MR. FULMER:

18 Q Ms. Bowen, where are you currently employed?

19 A I'm employed with the Anderson-Oconee Regional Forensic
20 Laboratory here in Anderson.

21 Q And what's your position there?

22 A I'm the Forensic Laboratory Director.

23 Q How long have you worked in that position?

24 A I've been in that position since December of 2021.

25 Q And prior to that, what were you doing?

DIRECT EXAMINATION OF KAREN BOWEN

1 A I was the technical leader in drug chemistry here in
2 Anderson since 2017. And prior to that, I was actually
3 employed with the Indiana State Police as a drug chemist since
4 2005.

5 Q What's your training and education that you received to
6 become a forensic scientist?

7 A I have a bachelor's degree in forensic science from
8 Eastern Kentucky University. Part of my degree program
9 included an internship in controlled substance or drug
10 analysis. I've also had trainings and workshops with the
11 instrumentation and techniques I use in the laboratory, as
12 well as ongoing trainings throughout my career.

13 Q Do you hold any certifications?

14 A I do. I'm certified in comprehensive criminalistics by
15 the American Board of Criminalistics. And I'm also a
16 certified forensic laboratory manager.

17 Q So, as a forensic chemist, what were your main job
18 duties?

19 A My main job duties as a chemist were to analyze evidence
20 for the presence of controlled substances or drugs, and to
21 write reports based on my analytical findings, and then
22 testify to those findings when called upon for court.

23 Q Are there methods and practices for the analysis of
24 controlled substances that are considered reliable?

25 A Yes. There are methods that we utilize in the laboratory

DIRECT EXAMINATION OF KAREN BOWEN

1 for the analysis of controlled substances. And these methods
2 are methods that have been adopted from other industries and
3 other agencies -- I'm sorry, not other agencies, but through
4 other scientific utilization. They have been found useful in
5 forensics laboratories as well.

6 Q And did you utilize these methods in the analysis of
7 evidence in this case?

8 A Yes, I did.

9 Q How long have these methods been in use?

10 A Some of the instrumental techniques I utilized have been
11 in use in forensic laboratories since the 1960s and 1970s.
12 They are part of the internationally recognized standards for
13 analysis in forensic laboratories.

14 Q And have they been peer reviewed by the scientific
15 community?

16 A Yes, they have.

17 Q Okay. How many cases over the course of your career do
18 you think you've analyzed for controlled substances?

19 A I've analyzed more than 8,000 cases that have included
20 more than 10,000 items over the course of my career.

21 Q And have you testified in court as an expert before?

22 A Yes, I have.

23 Q How many times do you think you've been qualified as an
24 expert?

25 A I've been qualified just over 80 times now.

DIRECT EXAMINATION OF KAREN BOWEN

1 MR. FULMER: Your Honor, at this time the State would
2 request that Ms. Bowen be qualified as an expert witness.

3 THE COURT: In what area?

4 MR. FULMER: In the area of controlled substance
5 analysis.

6 THE COURT: Any objection to that?

7 MR. LUCAS: No objection, Your Honor.

8 THE COURT: All right, ladies and gentlemen, usually a
9 witness is not allowed to give their opinion. They are
10 limited to testify about what they saw, they heard, they
11 smelled, or they felt. But, if a witness, because of their
12 education or experience, develops an expertise in an area that
13 may be helpful to you, the jury, upon qualification as an
14 expert, they are allowed to give their opinion and state the
15 reasons why.

16 In this case, it's stipulated that Ms. Bowen is an expert
17 in the field of controlled substance analysis. She'll be
18 allowed to give her opinion in that area and explain why. I
19 will tell you that expert testimony, ladies and gentlemen, is
20 like any other testimony you will hear in this case. You may
21 accept it. You may reject it, and give it as much weight as
22 you think it deserves. All right, Mr. Fulmer.

23 MR. FULMER: Thank you, Judge.

24 BY MR. FULMER:

25 Q Ms. Bowen, were you asked to analyze a chemical substance

DIRECT EXAMINATION OF KAREN BOWEN

1 in this case?

2 A Yes, I was.

3 Q And how did you obtain the item of evidence that you got
4 in this case?

5 A Evidence is submitted to the laboratory by
6 representatives from different law enforcement agencies. And
7 the items from this case were brought to the laboratory by Ms.
8 Robinson from the Anderson County Sheriff's Office.

9 MR. FULMER: And when did you receive the evidence in
10 this case?

11 MS. BOWEN: Your Honor, may I refer to my notes for the
12 exact date?

13 THE COURT: Yes, ma'am. Your request -- the Defense has
14 a right to look at them.

15 MS. BOWEN: Yes, sir. The exact date that I received the
16 evidence was June 4th of 2020.

17 BY MR. FULMER:

18 Q Ms. Bowen, I'm going to show you what's marked State's
19 exhibit 6, and ask if you recognize it.

20 A Yes, I do.

21 Q And how can you identify it?

22 A State's exhibit 6 has an evidence label here on the
23 outside that has the laboratory initials on it, and the
24 laboratory file number. I placed this sticker here on this
25 item. On the inside, this plastic bag inside has a blue

1 margin on it. I placed that bag on the inside, and on that
2 bag, it also has an evidence barcode sticker that I placed on
3 there, the handwritten laboratory file number, the date I
4 received that evidence, which also says 6/4/2020, that I have
5 written there on the package. And that's how I can recognize
6 the item here in this case.

7 Q So it was the inner bag with the blue trim that you
8 received into evidence?

9 A That's how it was presented to me first, just that inner
10 blue bag with the -- the material that is now outside of the
11 bag, I have repackaged into this outer kit, but it was brought
12 in with this inner bag with the blue margins. That's how I
13 initially received it.

14 Q And was it sealed and intact when you received it?

15 A Yes, it was.

16 Q And was the blue trimmed bag, the Best Kit, was it
17 labeled when you received it?

18 A Yes, it was.

19 Q Did it have a control number on it?

20 A Yes, it does. Each of these bags are labeled. We
21 actually have them printed for laboratory use, and each one is
22 identified by a control number. And the control number is
23 printed here at the top, C35534, and that is printed on this
24 blue -- it's not a blue bag. It is a bag with a blue border
25 on it.

DIRECT EXAMINATION OF KAREN BOWEN

1 Q And if it had been tampered with or if it had been
2 opened, that would have been obvious to you?

3 A Yes, it would.

4 Q So, after this evidence was submitted to you for
5 analysis, what did you do?

6 A When I receive evidence, I place it into storage until I
7 am ready to begin analysis. And that storage location is by
8 lock and key, where I have the only access. When I was ready
9 to begin analysis on this case, I removed it from storage,
10 took all the items out, and took notations, made records of
11 what the item looked like, how things were packaged, and took
12 any notes to begin sampling and analysis.

13 Q So, can you tell the jury how you analyzed items in this
14 case -- or the item in this case?

15 A Yes. There's a larger item that's now in about a four-
16 by-six ziplock bag. It was in a knotted sandwich bag. And at
17 the time, when I received it, it was like this off-white,
18 rock-like substance. I poured that substance out, took a
19 weight of the substance as I initially received it, removed a
20 sample for analysis, and repackaged the bulk of the material
21 in this plastic -- in its initial plastic bag I received and
22 in a new plastic bag to keep everything contained and
23 organized.

24 I also put my personal markings on that plastic bag, but
25 I can barely tell that those are visible now. I can see that

DIRECT EXAMINATION OF KAREN BOWEN

1 the markings were originally there, but there has been some
2 chemical reaction that has taken place inside this bag that
3 has deteriorated the ink on the inside of the bag.

4 So, I removed a sample from that item to begin chemical
5 and instrumental testing. I used those samples for color
6 tests -- a series of color tests. Those are similar to
7 officers' field test kits that you may have seen on television
8 or things like that. And I performed two instrumental tests,
9 one call fourier transform infrared spectroscopy, and also gas
10 chromatography mass spectrometry. It's the results from the
11 combination of these three techniques that allowed me to draw
12 conclusions and interpret those results to form a conclusion
13 for my results.

14 Q And the methods you were just describing, are those
15 considered reliable and accurate for identifying controlled
16 substances?

17 A Yes. It's that combination of techniques that have been
18 accepted as methods for identification of controlled
19 substance. We don't rely on one technique. Not one test can
20 give you an answer stand alone. We utilize multiple tests,
21 multiple techniques to collect different types of information
22 before we draw a conclusion about the contents of a particular
23 item.

24 Q And were you able to draw a conclusion in this case?

25 A Yes, I was.

DIRECT EXAMINATION OF KAREN BOWEN

- 1 Q And so what was that conclusion?
- 2 A Item A.01 from laboratory file L20000533 was found to
- 3 contain cocaine base, which is a controlled substance.
- 4 Q And when you say Item A.01, that's the larger item within
- 5 that bag?
- 6 A Yes, it is.
- 7 Q Not ---?
- 8 A Correct. Had my markings been a little more visible,
- 9 that would have been definitely more evident, but you can see
- 10 there are two separate items, and it is this larger item here.
- 11 Q And what was the weight once again?
- 12 A The weight of that item was 72.95 grams.
- 13 Q And when you say cocaine base, is that another name for
- 14 crack cocaine?
- 15 A Yes, it is.
- 16 Q Is that the same thing?
- 17 A Yes.
- 18 Q I'm going to show you what is marked State's Exhibit 1
- 19 and ask if you recognize that.
- 20 A Yes, I do.
- 21 Q And what is that?
- 22 A State's Exhibit 1 is a copy of my drug analysis report
- 23 for laboratory file L20-533.
- 24 Q And does it reflect your findings in this case?
- 25 A Yes, it does.

DIRECT EXAMINATION OF KAREN BOWEN

1 MR. FULMER: Your Honor, at this time, I would move
2 State's Exhibit 6 and State's Exhibit 1 into evidence.

3 THE COURT: Any objection?

4 MR. LUCAS: Exhibit 1, is that the controlled substance,
5 or is that ---

6 MR. FULMER: Yes.

7 THE COURT: Exhibit 1 is a report, and Exhibit 6 is the
8 best bag.

9 MR. LUCAS: Your Honor, I'm going to object on two
10 grounds. I'm unclear that a sufficient chain of custody has
11 been ---

12 THE COURT: Hang on for one second.

13 MR. LUCAS: Sure.

14 THE COURT: Mr. Foreman, let's go ahead and take a
15 morning break. And we'll call you back in just a few minutes,
16 okay, sir.

17 (Whereupon, the jury exits the courtroom.)

18 THE COURT: All right, sir.

19 MR. LUCAS: Thank you, Judge. I'm unclear, and perhaps I
20 -- Your Honor, perhaps I missed something, but I'm unclear
21 that a chain has been established. I didn't hear how Ms.
22 Bowen got the drugs.

23 THE COURT: She said that Ms. Robinson brought it over
24 there from the sheriff's office.

25 MR. LUCAS: She did?

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1 THE COURT: Yes, sir.

2 MR. LUCAS: Okay. And did she ---

3 THE COURT: That's my notes.

4 MR. LUCAS: I didn't catch that, Your Honor.

5 THE COURT: That was right, June the 4th.

6 MR. LUCAS: I understand. Did she indicate who Ms.

7 Robinson had gotten the drugs from? I didn't ---

8 THE COURT: My understanding is Mr. McGuire said that he
9 got them, put them in a locker, nobody has the keys or
10 whatever that is. On June the 4th, Ms. Robinson retrieved the
11 items from that locker, took them over to the forensic lab
12 next door and deposited them in whatever they have there. And
13 this lady at some point retrieved those and tested them.
14 That's my understanding of what I heard.

15 MR. LUCAS: Sure, Your Honor. So it looks like -- I have
16 the chain of custody form. It looks like there is one person
17 who has not testified to ---

18 THE COURT: Well, everybody does not have to testify, you
19 are aware of that.

20 MR. LUCAS: I am, Your Honor. But my understanding has
21 always been with fungible evidence, you have to -- my
22 understanding has been with fungible evidence, you have to
23 establish, at least through testimony, each person who's
24 handled it, even if they're not actually, physically in court.
25 I don't know that that has been done quite yet, Your Honor.

DIRECT EXAMINATION OF KAREN BOWEN

1 THE COURT: Okay. I mean, I don't -- I haven't seen the
2 -- if you can pass it forward, I'll be glad to look at it.

3 MR. LUCAS: If I could approach, Your Honor.

4 THE COURT: Sure.

5 MR. LUCAS: Danny, I'm just showing him the chain. And
6 Judge, I just haven't heard anything about one of the people
7 in the chain.

8 THE COURT: Okay. You want to point him out to me?

9 MR. LUCAS: Yes, sir. It's the Pansy Allen.

10 THE COURT: Pansy Allen.

11 MR. LUCAS: And I have not heard anything about that.

12 THE COURT: I haven't either. What's ---

13 MR. FULMER: I asked Mr. McGuire about Pansy, if she had
14 handled it, and he said she had moved it within the
15 laboratory.

16 THE COURT: She did -- you did ask that?

17 MR. FULMER: Within the evidence room, yes, sir.

18 THE COURT: I didn't get that in my notes, but ---

19 MR. LUCAS: I didn't either, Your Honor, but I mean, I
20 certainly -- I can see ---

21 THE COURT: I know Mr. Fulmer's not going to tell me he
22 asked if he hadn't.

23 MR. LUCAS: I mean, I can see her name is in the chain of
24 custody.

25 THE COURT: But you did ask that?

DIRECT EXAMINATION OF KAREN BOWEN

1 MR. FULMER: I did ask it, Judge. And I would also
2 assert that under Hatcher, it would not even be necessary to
3 name her, as long as I have established sufficiently that it
4 wasn't tampered with during the course of the chain of
5 custody.

6 THE COURT: All right. Okay. I note your objection, and
7 I'm going to overrule your objection. I think he has
8 sufficiently established chain of custody in that the evidence
9 that's collected was not tampered with and was received by a
10 testing group not having been tampered with.

11 MR. LUCAS: Understood, Your Honor. And we also -- I'm
12 also objecting to its admission on the grounds that it's a
13 product of an unlawful search -- an unlawful, warrantless
14 search.

15 THE COURT: Yeah, I don't think you're going to have to
16 keep objecting on that. If you want to, if you feel like you
17 need to, certainly, but you've established that the -- you
18 feel like the search was illegal and in violation of the
19 Fourth Amendment to the Constitution and the State
20 Constitution.

21 MR. LUCAS: That's correct, Your Honor. But appellate
22 defense tells me I've got to -- at the moment they introduce
23 the evidence, I've got to object to it again.

24 THE COURT: Keep on objecting. Well, then, do what
25 you're told, then.

DIRECT EXAMINATION OF KAREN BOWEN

1 MR. LUCAS: But Your Honor, that's the grounds for the
2 objection. You know, on the record, I'm happy to just say,
3 you know, we object under the Fourth Amendment and the South
4 Carolina Constitution.

5 THE COURT: You're good. I'm going to overrule on that
6 as well.

7 MR. LUCAS: I understand, Judge. Thank you.

8 THE COURT: All right.

9 MR. LUCAS: One further thing, Your Honor. Mr. Glenn
10 wants to take a bathroom break.

11 THE COURT: All right. Let's take about a ten-minute
12 break. Is that all right with you guys? All right. You can
13 step down. You can talk to people, but you can't talk to
14 anybody about your testimony, okay.

15 MS. BOWEN: Yes, sir.

16 THE COURT: All right, let's take about a ten-minute
17 break.

18 MR. LUCAS: Thank you, Your Honor.

19 (Brief recess.)

20 MR. LUCAS: --- need to bring up. Normally, I see the
21 indictment sent back with the jury. You're not doing that?
22 Okay. My concern was that the indictment -- it's -- he also
23 is indicted for a weapons charge that the State didn't go ---

24 THE COURT: Yeah, well ---

25 MR. LUCAS: --- through with.

DIRECT EXAMINATION OF KAREN BOWEN

1 THE COURT: --- I tell the jury in my closing charge to
2 them that the indictment is not evidence. I remind them of
3 that, and I tell them it is not going to go back there,
4 because it's not any evidence.

5 MR. LUCAS: Well, then, that's what we would have been
6 asking for, so that suits us fine.

7 THE COURT: Okay. Anything else?

8 MR. LUCAS: I mean, I'm going to renew the objection, but
9 other than that, Your Honor, nothing.

10 THE COURT: Are you really going to object on what?

11 MR. LUCAS: I said shockingly, I'm going to renew the
12 objection in the presence of the jury. But other than that
13 ---

14 THE COURT: Okay.

15 MR. LUCAS: --- nothing else.

16 THE COURT: You do what you got to do, brother. All
17 right, are you ready to go?

18 MR. FULMER: Yes, sir.

19 THE COURT: All right, would you bring the jury in?

20 BAILIFF: Yes, sir.

21 THE COURT: Did you move this Exhibit 1 in?

22 MR. FULMER: I moved 1 and 5 in.

23 MS. BOWEN: Six.

24 MR. FULMER: One and 6 in.

25 THE COURT: One and 6.

DIRECT EXAMINATION OF KAREN BOWEN

1 MS. BOWEN: Yes, Your Honor.

2 THE COURT: Okay. They are admitted over objection. Do
3 you want me to put that on the record in front of the jury?

4 MR. LUCAS: I think he's just going to move it -- offer
5 it again, and I'll object.

6 THE COURT: Okay.

7 MR. LUCAS: I think that's the way to do it.

8 THE COURT: Sounds good.

9 (Whereupon, the jury enters the courtroom.)

10 THE COURT: Mr. Fulmer?

11 MR. FULMER: Judge, at this point, I'd move State's
12 Exhibit 1, which is Ms. Bowen's report, and State's Exhibit 6,
13 which are the drugs, into evidence.

14 THE COURT: The Best Kit.

15 MR. LUCAS: And Your Honor ---

16 THE COURT: Any objections?

17 MR. LUCAS: --- we're objecting, you know, on the basis
18 that it was unlawfully obtained in violation of the Fourth
19 Amendment and South Carolina Constitution.

20 THE COURT: All right, overruled. Thank you.

21 (Wherefore,

22 Plaintiff's Exhibits 1 and 6
23 were entered into evidence.)

24 BY MR. FULMER:

25 Q Ms. Bowen, after you tested the drugs, they were returned

1 to the evidence building?

2 A Yes, they were. Ms. Robinson returned to the lab a
3 couple months later and picked up that Best Kit and returned
4 to the sheriff's office property in evidence and returned it
5 to their storage locations.

6 MR. FULMER: Thank you. Please answer any questions that
7 Mr. Lucas may have.

8 MR. LUCAS: No questions, Your Honor.

9 THE COURT: May this witness be excused?

10 MR. LUCAS: That's without objection.

11 THE COURT: Thank you, ma'am, you are excused.

12 MS. BOWEN: Thank you.

13 MR. FULMER: Your Honor, the State rests.

14 THE COURT: The State rests?

15 MR. FULMER: Yes, sir.

16 THE COURT: All right, very good. May I see the
17 attorneys up here right quick.

18 (Whereupon, a bench conference was held off the record.)

19 THE COURT: All right, Mr. Foreman, ladies and gentlemen
20 of the jury, I like to confer about logistics on the case with
21 the attorneys, because they know about -- more about it than I
22 do. I'm going to go ahead and break at this juncture. You
23 have heard the State say that they've rested. That means the
24 State has presented its case in chief. I have some
25 administrative matters to take up now, so I think it's a good

MOTION FOR DIRECTED VERDICT

1 time to go ahead and excuse you for lunch. If you could be
2 back -- what time do y'all want to start back? 1:30? 2:00?
3 What do y'all want to do?

4 MR. FULMER: 2:00 would be fine with me.

5 THE COURT: 2:00?

6 MR. LUCAS: I think that's fine, Your Honor.

7 THE COURT: Lawyers and bankers, I tell you what. All
8 right. All right, we're going to bring you back -- no, they
9 have actually -- they'll be working during those two hours.
10 We're going to excuse you until 2:00. If you would, leave
11 your notes in the jury room. They'll be under lock and key
12 that nobody can get to them. I'll remind you not to speak
13 with other people, including yourselves, about this case
14 during the break, and we'll see you back at 2:00. Thank you.
15 (Whereupon, the jury exits the courtroom.)

16 THE COURT: All right. Motions?

17 MOTION FOR DIRECTED VERDICT

18 MR. LUCAS: Your Honor at this time, the Defendant would
19 move for a directed verdict on the grounds of lack of any
20 competent evidence to prove his guilt, specifically that
21 there's -- our position is that there's a lack of lawfully
22 obtained competent evidence, and that we're, you know,
23 renewing all motions and arguments, specifically our argument
24 before trial, Your Honor, that the drugs that were found on
25 Mr. Glenn that were the basis of the State's case, our

MOTION FOR DIRECTED VERDICT

1 position is that they were unlawfully obtained through a
2 search that was outside of what is permitted by Terry. And
3 also, our position is that probable cause did not exist to
4 arrest Mr. Glenn for public disorderly conduct at that time,
5 although we, of course, respect the Court's ruling on that
6 subject. So, Your Honor, we move for a directed verdict on
7 that basis. I'd like to make my brief a Court's exhibit.

8 THE COURT: Absolutely make it a Court's exhibit.

9 MR. LUCAS: And then, I would just note for the record
10 that -- offer that as a Court's exhibit, ma'am -- and just
11 noting for the record, Your Honor, I think it's very clear
12 that the body camera footage that was referred to at the
13 suppression hearing is the same footage of Officers Smith and
14 Nesbitt that's been introduced.

15 THE COURT: And remind me from the suppression hearing,
16 was it only Officer Smith's, or was it both Nesbitt and Smith?

17 MR. LUCAS: It was Nesbitt and Smith.

18 THE COURT: Okay.

19 MR. LUCAS: Or at least I certainly referred to clips
20 from both of them. I don't remember if the ---

21 THE COURT: Both of which are admitted under Exhibit 5,
22 right?

23 MR. LUCAS: That's my understanding, Your Honor. And of
24 course, our position is that evidence was unlawfully obtained
25 in violation of both the Fourth Amendment and Article I,

MOTION FOR DIRECTED VERDICT

1 Section 10.

2 THE COURT: Very good.

3 MR. LUCAS: That's the basis of the motion, Your Honor.

4 THE COURT: Any other objections -- any other motions or
5 any other parts of your motion?

6 MR. LUCAS: I don't think so, Your Honor. That's ---

7 THE COURT. All right. Mr. Glenn, would you raise your
8 right hand, please, sir.

9 Whereupon,

10 SAVAYEA ANTWAN GLENN

11 was called as a witness, having been first duly sworn, was
12 examined and testified as follows:

13 DIRECT EXAMINATION

14 BY THE COURT:

15 Q Mr. Glenn, we've now reached the part in this trial where
16 you have a right to put up a defense. I'm advised that you
17 may be testifying in this case, so I want to go over with you
18 your rights under the Fifth Amendment. But before I do, have
19 your rights under the Fifth Amendment been explained to you by
20 your attorneys?

21 A Yes, sir.

22 Q Do you understand them?

23 A Yes.

24 Q Do you understand that the Fifth Amendment says no person
25 can be compelled to testify against himself in a criminal

DIRECT EXAMINATION OF SAVAYEA GLENN

1 outside the presence of the jury, and that way we can make a
2 better call on it, okay.

3 MR. FULMER: Yes, sir.

4 THE COURT: All right. Thank you. Everybody ready now?

5 MR. LUCAS: Yes, sir.

6 THE COURT: Good.

7 (Whereupon, the jury enters the courtroom.)

8 THE COURT: Mr. Lucas?

9 MR. LUCAS: Your Honor, the Defense calls Savayea Glenn.

10 THE COURT: Come around, please, sir.

11 Whereupon,

12 SAVAYEA ANTWAN GLENN

13 was called as a witness, having been first duly sworn, was
14 examined and testified as follows:

15 CLERK: And if you would, please state your full name for
16 the record and spell your last name.

17 MR. GLENN: Savayea Glenn, G-L-E-N-N.

18 DIRECT EXAMINATION

19 BY MR. LUCAS:

20 Q Mr. Glenn, did these belong to you?

21 A No, sir.

22 Q Can you tell the jury how you came to have that bag with
23 all the money and also these right here on May 24th?

24 A As I was leaving the night club, in the parking lot I
25 noticed two bags that were laying between two cars on the way

DIRECT EXAMINATION OF SAVAYEA GLENN

1 to my vehicle. And I kind of see some money protruding out
2 the big green bag. So, as I was going to my car, I picked
3 both bags up and went to the car with them.

4 Q Okay. Mr. Glenn, let me let you introduce yourself to
5 the jury a little bit. Can you tell them, you know, how old
6 you are and where you're from?

7 A I'm 32 years old, and I'm from Anderson, South Carolina.

8 Q How long have you lived in Anderson?

9 A My whole life.

10 Q Are you married?

11 A No, sir.

12 Q Do you have children?

13 A Yes, two, ages 10 and 5.

14 Q Okay. What do you like to do for fun?

15 A I enjoy spending time with my kids. And I currently have
16 multiple jobs that keep me busy, so ---

17 MR. FULMER: Objection, Your Honor. This is not relevant
18 to the case.

19 THE COURT: Overruled.

20 MR. LUCAS: I think he's allowed to tell the jury a
21 little bit about himself.

22 BY MR. LUCAS:

23 Q Anyway, Mr. Glenn, let me take you back to May of 2020.
24 What were you doing for a living then?

25 A I was doing construction work.

DIRECT EXAMINATION OF SAVAYEA GLENN

- 1 Q Who do you work for?
- 2 A Zirkelbach Construction.
- 3 Q How long have you worked for them?
- 4 A At that time, it was two years.
- 5 Q And what type of construction work?
- 6 A We pretty much covered all bases as far as construction-
- 7 wise.
- 8 Q Well, what type of work exactly?
- 9 A Demolition, we built, remodeled, we laid sod, irrigation
- 10 systems.
- 11 Q And was that all in South Carolina, or did you also do
- 12 some work out of state?
- 13 A No, we went state to state.
- 14 Q Okay. And I mean, around this time, were you working in
- 15 South Carolina or out of state?
- 16 A I was out of state, but I was home for a little vacation
- 17 leave.
- 18 Q Okay. And did you have any side jobs that you worked
- 19 while you were home?
- 20 A Yes. I cut hair, and I also sell food.
- 21 Q Where do you sell food? Or where did you sell food?
- 22 A I was in business with a couple of friends of mine that
- 23 owned a bar in Anderson, right there in Anderson, and I used
- 24 to deliver orders as far as food orders.
- 25 Q Okay. Well, let me -- so your story kind of ends at

DIRECT EXAMINATION OF SAVAYEA GLENN

1 Eddie's Minute Mart on May 24th. Let me take you back a little
2 bit earlier. What were you doing earlier that night, hours
3 before?

4 A Once I discovered the money, I had went to Walmart and I
5 had purchased some toys and stuff for my kids with the money
6 that I had found, and I was on the way to go pick my
7 girlfriend up from work and I stopped by Eddie's at that time.

8 Q Okay. Well, let me take you back to Belton bar. Tell
9 the jury how you wound up there and what happened.

10 A I was in town for the weekend, and I decided that, you
11 know, I wanted to just step out for a little bit, so I had
12 went to the Belton bar, which is called Cheers, around maybe
13 1:30 that night.

14 Q How long were you there?

15 A Maybe an hour and a half.

16 Q And what happened, or what did you notice when you left?

17 A That's when I noticed the two bags that was laying in the
18 parking lot in between two vehicles that was on the way
19 towards my vehicle.

20 Q Okay. Did you see anything in the bags?

21 A I saw money out the green bag, and that's what lead me to
22 pick up both bags.

23 Q Okay, so what do you do after that?

24 A I grabbed both bags, went to the car, and I immediately
25 just left the parking lot, just out of being nervous of

DIRECT EXAMINATION OF SAVAYEA GLENN

1 finding a bag with some money in it.

2 Q Okay. Where'd you go next?

3 A I went to Walmart.

4 Q Okay.

5 A Straight to Walmart.

6 Q And you said that you looked into the bag that had money
7 in it. Did you ever look into the other small bag, the orange
8 one?

9 A Not at that moment. Once I noticed that it was a money -
10 - a large amount of money in the bag, I immediately left the
11 parking lot and went to Walmart.

12 Q Okay. Did you ever look into the small bag?

13 A Later on that night, or that morning.

14 Q Okay. Okay. Well, I mean, why didn't you just get rid
15 of it?

16 A At the time, I was still kind of shocked and nervous
17 about, you know, what I had found, and didn't really know that
18 -- you know, didn't really --- with me or what to do with it.

19 Q Okay. So you said you went to Walmart. What did you do
20 then?

21 A I purchased toys and some games for my kids.

22 Q Okay. What did you purchase for them?

23 A I had a couple of Paw Patrol toys and a couple of little
24 games that, you know, me and my kids could play together.

25 Q Okay. Okay. Now, tell the jury how you wound up at

DIRECT EXAMINATION OF SAVAYEA GLENN

1 Eddie's Minute Mart and what you were doing there.

2 A I was on the way to pick up my girlfriend from work, and

3 I stopped by Eddie's to get some cigarettes, and in the

4 process, I got a coffee, which I had spilled at the counter.

5 And as I was paying for my food, the clerk noticed the bag of

6 money, so she asked me what I was doing with, you know, all

7 the money, and I told her that I had found it.

8 Q Okay. Well, let me back you up a little bit. How did

9 the orange bag wind up in your pants? Can you tell me about

10 that, please?

11 A Just mostly a silly mistake of, you know, just keeping it

12 on my person. You know, not really thinking about the

13 consequences of what, you know, the ---

14 Q Well, why didn't you want to leave it in the car?

15 A I didn't want -- you know, it would be a burden to my

16 girlfriend as far as her finding it, or even one of the kids

17 finding it.

18 Q And when did you expect to see your girlfriend?

19 A I was supposed to see her maybe 30 minutes after I was

20 stopped.

21 Q Okay, and where were you going? How would you have seen

22 her?

23 A Picked her up from work at Foam Fabrics.

24 Q Okay. Okay. So, did you -- tell the jury whether you

25 planned to keep the stuff -- or the drugs in the orange bag?

DIRECT EXAMINATION OF SAVAYEA GLENN

1 Was that something you intended to do?

2 A No, it wasn't something I intended to do.

3 Q Okay. Now, back at Eddie's Minute Mart, you mentioned
4 talking to the clerk. What were you doing there with all of
5 that money?

6 A Well, once she seen the money, she asked me what did I --
7 you know, what am I doing with it? And I told her that I had
8 found it. And she was like, I find it hard to believe, and
9 then that's when I had started purchasing items for people or
10 paying for their gas.

11 Q And -- I'm sorry, go ahead.

12 A Yeah, just to, you know, let her know, like you know, it
13 was -- I found it free, so I was giving it away at the time.

14 Q Okay. And how many people roundabouts did you buy gas or
15 other things for?

16 A It was well over 10 people.

17 MR. LUCAS: Okay. I don't have any further questions.
18 Thank you. And Your Honor, I do have a brief matter of law
19 I'd like to take up.

20 THE COURT: All right, just one second. Mr. Foreman,
21 would you take your jury back to the jury room, please, sir?

22 FOREMAN: Yes, sir.

23 (Whereupon, the jury exits the courtroom.)

24 MR. LUCAS: Thank you, Judge. So, before he testified,
25 my intention was to seek a pretrial ruling about the

DIRECT EXAMINATION OF SAVAYEA GLENN

1 admissibility of some convictions -- oh, I said, Your Honor,
2 my intention was to seek a pretrial ruling about the
3 admissibility of some convictions. I had understood Mr.
4 Fulmer to say he didn't intend to do that, but then he said
5 that he might do that ---

6 THE COURT: Well, depending on how he testified. If he
7 opened the door, he was going to after it, if I understand.

8 MR. LUCAS: Absolutely. So, I guess, Your Honor, if he's
9 intending to use them, I'd like to go ahead and ask Mr. Glenn
10 about them.

11 MR. FULMER: At this point ---

12 THE COURT: Hang on. You stopped questions, right?

13 MR. LUCAS: I did, Your Honor. I'll concede that.

14 THE COURT: I mean, I'm not going to ask him about your
15 cross examination. I think that I haven't heard anything that
16 opens the door.

17 MR. FULMER: Right.

18 THE COURT: And you told me earlier that the other
19 convictions that he has, you weren't planning on impeaching
20 him with those, so at this juncture, I think it's just
21 straight up cross examination.

22 MR. LUCAS: Okay.

23 THE COURT: However, if you think he does, just let me
24 know. I want to bring it up outside the presence of the jury.

25 MR. FULMER: Yes, sir.

CROSS EXAMINATION OF SAVAYEA GLENN

1 MR. LUCAS: Okay. Thank you, Your Honor.

2 THE COURT: Yes, sir. Would you bring the jury? Are
3 y'all ready to go?

4 MR. FULMER: Yes, sir.

5 THE COURT: All right, would you bring the jury in? Does
6 that satisfy you, Mr. Lucas?

7 MR. LUCAS: It does, I appreciate it.

8 THE COURT: All right.

9 (Whereupon, the jury enters the courtroom.)

10 THE COURT: Cross examination?

11 MR. FULMER: Yes, sir.

12 CROSS EXAMINATION

13 BY MR. FULMER:

14 Q Mr. Glenn, let's go back. So, you were arrested around
15 6:00 in the morning on May 24th, 2020, right?

16 A Yes, sir.

17 Q So, it's your testimony that around 1:30 am that same
18 morning, you went to a bar?

19 A Yes, sir.

20 Q And that would be the Belton bar?

21 A Yes.

22 Q Okay. Also known as Cheers?

23 A Yes, sir.

24 Q Okay. And how long were you at that bar?

25 A Roughly an hour and a half, two hours.

1 Q And so on your way out of the bar is when you say you
2 found some drugs and cash?

3 A Yes.

4 Q And tell me about that.

5 A Once I left the club, I was on the way towards my
6 vehicle, I was walking through the parking lot, and on my way
7 in between two vehicles there were two bags laying on the
8 ground in between both vehicles. And I noticed the money
9 hanging out of the green bag, so I picked both bags up.

10 Q That green bag didn't belong to you, did it?

11 A No.

12 Q So that wasn't your money?

13 A No, sir.

14 Q But you took it?

15 A Yes.

16 Q The orange bag, you're saying that didn't belong to you,
17 either?

18 A No, sir.

19 Q But you took it?

20 A Yes.

21 Q And ultimately, it wound up in your pants?

22 A Yes.

23 Q I think you testified earlier that you left the parking
24 lot quickly?

25 A Yes.

CROSS EXAMINATION OF SAVAYEA GLENN

- 1 Q Why is that?
- 2 A Just out of being nervous of finding the money.
- 3 Q Because you probably knew you shouldn't have been doing
- 4 that?
- 5 A Well, I mean, I guess so.
- 6 Q Well, you were taking some money that didn't belong to
- 7 you, would that be fair to say?
- 8 A Yes.
- 9 Q Okay. And taking some -- apparently some drugs that
- 10 didn't belong to you.
- 11 A Yes.
- 12 Q Okay. So where did you go after you left the parking lot
- 13 of the club?
- 14 A I drove back towards Anderson and then I went to Walmart
- 15 after noticing that it was a large amount of money in the bag.
- 16 Q And did you use the money that you'd found to buy things
- 17 at Walmart?
- 18 A Yes, I did. I purchased toys for my kids and some games.
- 19 Q At some point, you looked inside the orange bag?
- 20 A Yes.
- 21 Q Did you recognize what was inside?
- 22 A Yes, I did.
- 23 Q You knew that those were illegal drugs?
- 24 A Yes, but not quite sure what it was, but I knew it was
- 25 some drugs.

CROSS EXAMINATION OF SAVAYEA GLENN

1 Q So, after you left Walmart, where did you go?

2 A I was on my way to go pick up my girlfriend from work at
3 Foam Fabrics off of George Albert Lake. And on the way there,
4 I stopped by Eddie's Minute Mart to purchase a pack of
5 cigarettes.

6 Q But you hung around the store for a while?

7 A Yes.

8 Q Were you worried about picking up your girlfriend?

9 A I still had a little time to kill.

10 Q And you say you bought some people -- bought their items
11 that they wanted in the store?

12 A Yes.

13 Q Okay. At what point did you put the orange bag in your
14 pants?

15 A Before I got out of the car.

16 Q And so, you're leaving the mini mart, and you got
17 approached by some officers, is that right?

18 A Yes, sir.

19 Q You knew what was in your pants, right?

20 A Yes, at that moment.

21 Q So you had a good reason for them to not want to look in
22 your pants, didn't you?

23 A Yes.

24 Q So you're not denying to the jury that you were aware
25 that you were carrying drugs on your person, are you?

CROSS EXAMINATION OF SAVAYEA GLENN

1 A No, I'm not denying it.

2 MR. FULMER: Okay. That's all I have, Your Honor.

3 THE COURT: Redirect?

4 MR. LUCAS: Nothing further, Your Honor. The defense
5 rests.

6 THE COURT: All right, thank you. You may step down,
7 sir. Did I hear you say you rest?

8 MR. LUCAS: That's correct, Your Honor. The defense
9 rests.

10 THE COURT: All right, thank you, Mr. Lucas.

11 MR. LUCAS: And I just have a brief matter of law to take
12 up.

13 THE COURT: Sure. Mr. Foreman, ladies and gentlemen, the
14 Defense rests. If you remember earlier in this case, I was
15 telling you in the early instructions that there's five phases
16 of the case. You have your opening statements, you have the
17 presentation of the evidence. At this juncture, is there
18 going to be any reply from the State?

19 MR. FULMER: No, sir, Judge.

20 THE COURT: So, at this juncture, we just finished the
21 presentation of the evidence. In just a few minutes, we'll go
22 to closing arguments by the attorneys. I'll then charge you
23 on the law, and then you'll begin your deliberations. I've
24 got a few administrative matters to take up now, and we'll
25 bring you back up here for closing arguments, okay.

1 (Whereupon, the jury exits the courtroom.)

2 THE COURT: All right, sir, you have some matters to take
3 up. First, let me let -- Mr. Fulmer, do you have any motions?

4 MR. FULMER: No, sir, Judge.

5 THE COURT: All right.

6 MR. LUCAS: Your Honor, the Defense renews the directed
7 verdict motion, and again, the motion is based on there being
8 a lack of lawfully acquired competent evidence sufficient to
9 convict Mr. Glenn. And our position, of course, is that the
10 drugs that were found on him were obtained unlawfully, in
11 violation of Terry, the Fourth Amendment, and Article I,
12 Section 10.

13 THE COURT: All right, thank you, sir. That's denied.
14 All right. You want to go ahead and do a charge conference
15 now? Get it done.

16 MR. FULMER: Sure.

17 THE COURT: I know I've tried a case with you, Mr.
18 Fulmer. I don't know if I'd tried any with you.

19 MR. LUCAS: I don't believe so, Your Honor.

20 THE COURT: I have shamelessly plagiarized Justice Hill's
21 basic structure of his trials -- of his charge, so if you've
22 ever had a trial with him -- maybe you hadn't.

23 MR. LUCAS: No, sir.

24 THE COURT: Anyway, my charge is in three different
25 sections. The first part of my charge will be the general

CLOSING ARGUMENT BY MR. FULMER

1 MS. CHAMBERS: Yes.

2 THE COURT: Mr. Bailiff, could you bring us the jury?

3 And our bailiffs out there, don't let anybody in or out of the
4 courtroom during closing arguments or my charge, please.

5 BAILIFF: You're ready? You ready for the jury?

6 THE COURT: Yes, sir.

7 (Whereupon, the jury enters the courtroom.)

8 THE COURT: All right, Mr. Foreman, ladies and gentlemen
9 of the jury, we will now go into the third phase of this
10 trial, which will be closing arguments. The State will open
11 up on the law, and the Defense will follow up with their full
12 closing, and -- which the State will end up with their full
13 closing, just so you'll know the order. Mr. Fulmer.

14 MR. FULMER: Thank you, Judge.

15 THE COURT: Yes, sir.

16 CLOSING ARGUMENT BY MR. FULMER

17 BY MR. FULMER:

18 Thank you, ladies and gentlemen of the jury for your
19 attention. I appreciate your service in this matter. If I
20 say anything to you in the next few moments -- I'm going to be
21 brief -- and it's different from what you hear from the judge
22 in a little while, the judge is correct, okay. So, I'm just
23 going to tell you that before I start.

24 But the Defendant in this case, Mr. Glenn, he's charged
25 with trafficking in methamphetamine, more than 28 grams.

CLOSING ARGUMENT BY MR. FULMER

1 Trafficking methamphetamine in South Carolina -- I'm sorry,
2 not methamphetamine -- crack cocaine in South Carolina can be
3 -- can occur several ways. You can traffic in crack cocaine
4 by selling it, by dispensing it, and merely by possessing it.
5 And that's what the State has alleged in this particular case.
6 Mr. Glenn possessed more than 28 grams of crack cocaine, and
7 in doing so, he has committed the crime of trafficking in
8 crack cocaine or cocaine base.

9 Possession can be two different ways under the law.
10 There's a such a thing as actual possession, which means the
11 item you possess is on your person, it's in your pocket, it's
12 in your shoe. And there's also constructive possession under
13 the law. Constructive possession are things you intend to
14 possess and have control over. For instance, a jacket you
15 might have hanging in your closet at home. It's not in your
16 actual possession at this moment, but you intend to possess
17 it, and you hold that out to the world that that is your item,
18 your possession. So, as you consider the case, keep those two
19 forms of possession in mind.

20 And finally, as to weight of the drug, under South
21 Carolina law, a weight of any controlled substance is the
22 weight of the entire substance. It doesn't -- the purity of
23 the substance does not come into play. Any mixture of drug,
24 any purity of the drug, any compound of the drug -- the total
25 weight is what is considered under the law. So, if you'll

CLOSING ARGUMENT BY MS. CHAMBERS

1 keep those in mind as you consider the facts of the case.

2 CLOSING ARGUMENT BY MS. CHAMBERS

3 BY MS. CHAMBERS:

4 First off, I want to thank y'all for being here today. I
5 know it's probably a little cheesy, but what y'all do is
6 really important, and I've seen all of y'all just being very
7 careful, taking notes, really listening to everything y'all
8 have heard today, and I can see that you're going to consider
9 this all carefully. And I know Mr. Glenn certainly thanks you
10 for that, because this is his day. This is his day in court
11 that he has been waiting for to tell his story about an event
12 that really changed his life.

13 You know, he tried the day of to tell police what had
14 happened. And y'all saw, they were closing the door in his
15 face as he's trying to say, you know, I found this stuff. Do
16 y'all want more information about it? I'll tell you where.
17 You know, if you're looking for drugs, here's where to look.
18 And they're closing the car. They're done. Okay. They're
19 done at that point.

20 But y'all have heard his story. And you know, I'll
21 admit, you know, when I -- the first time I heard it, I was a
22 little bit skeptical. Sometimes you hear these things, and I
23 think the expression sometimes the truth is stranger than
24 fiction -- that's an expression for a reason. And in thinking
25 about this case, it reminded me of two examples from my life

CLOSING ARGUMENT BY MS. CHAMBERS

1 that I want to share with y'all, and I promise both of these
2 are completely true.

3 The -- and I think that they're important because they
4 kind of helped me -- or at least they helped me contextualize
5 kind of what someone might be thinking in a situation like Mr.
6 Glenn found himself in finding these drugs. And I think it's
7 hard when you haven't been in that circumstance to really
8 think about what would I do, how would I react to something
9 this out of the ordinary, this unexpected happening to me.
10 And for me, the first experience that I thought about -- and
11 again, wild.

12 But basically, what happened was, I found a meth pipe on
13 my property at my house. I was very confused. It was
14 underneath my grill, and I thought, how did this get here.
15 What is this? And then I remembered -- I mean, it was a wild
16 story. Basically, these people were running from the police.
17 They pulled into the first empty driveway, which happened to
18 be mine. The police told me about it later, asked if I knew
19 these people, all of that. Well, I guess that they had
20 stashed some stuff while they were trying to get away, and I
21 found it.

22 And I'll just tell you, I mean, I'm at my house, and I'm
23 here, and I'm thinking, what do I do. Do I touch it? I mean,
24 you start getting really conspiratorial really fast thinking,
25 you know, is someone going to come search my house? Are they

CLOSING ARGUMENT BY MS. CHAMBERS

1 going to pull my -- I mean, it's insane. No one's going to
2 find out about this. But you really do, you start -- you're
3 not thinking rationally about what you do in that
4 circumstance. Of course, I ended up picking up the pipe, I
5 threw it in my trash, you know, city came and picked it up.
6 Whatever. But it was wild looking back. Why was I thinking
7 this way? Why did I react this way? It was just so
8 unexpected to me that I didn't quite know what to do.

9 And then, even weirder, at our office, actually, an
10 employee of our office found in our parking lot, you know,
11 kind of in the bushes, a giant bag of marijuana. Okay. We're
12 talking ounce and a half, two ounces. And he thought, you
13 know, this is crazy. He picked it up, he brought it inside.
14 I promise you, that bag made the rounds. Everyone looking at
15 it, what is this, who left this. You know, we're talking
16 about it. Probably on someone's phone there's a picture of
17 that bag of marijuana. And I think you know, we moved it. We
18 picked it up. We held it. It wasn't ours. But if someone had
19 walked up on us in that moment, you know, look at this. What
20 could we have said?

21 MR. FULMER: Judge, I'm going to have to object. I don't
22 know how this is relevant.

23 THE COURT: I'll sustain your objection.

24 MS. CHAMBERS: I'll move on. It's just in that moment, I
25 guess this all comes down to, I sympathize with Mr. Glenn,

CLOSING ARGUMENT BY MS. CHAMBERS

1 because he didn't make a good choice. We all know that,
2 right? I mean, he found this money, and you know, he wanted
3 to keep it. It was several thousand dollars. I think that
4 anyone finding money in a parking lot would struggle with that
5 same decision.

6 And what did he do? The first thing he did was he went
7 and bought toys for his kids, okay. And then, he realizes, oh
8 my god, I've got these drugs, what do I do? What's he going
9 to do? Is he going to -- he's left. Is he going to throw
10 them out in the Walmart parking lot? Put them in the trash
11 can? I don't know. I mean, there are a lot of good decisions
12 that he could have made. He made a bad one. But we are
13 seeing him sort of in the process of just, you know, mental
14 journey to making the right decision. He didn't have time to
15 make it because this was all happening. And frankly, he'd had
16 a few drinks.

17 You know, he was not operating at full capacity and this
18 totally once in a lifetime out of the ordinary event has
19 happened to him, and he's not responding well. He's just not.
20 I think he'd be the first to tell you, hey, he doesn't know
21 what he was thinking, but it wasn't good. It wasn't good. But
22 he didn't know what was in that bag. You know, anyone
23 reasonable looking at a bag of powder is going to say it's
24 probably drugs, but he didn't know it was crack cocaine. You
25 know, he wasn't using it. He wasn't buying it. I mean, he

CLOSING ARGUMENT BY MS. CHAMBERS

1 just had it.

2 So, he doesn't know what he's got at this point. He
3 knows he probably needs to be a little smart, not leave it
4 laying out in his car, you know, not be waving it around. But
5 he's also not going to just throw it back out in a random
6 parking lot, let someone find it, let something happen,
7 whatever. You know, and then he gets to this gas station
8 where again, I was just reminded of how many things Mr. Glenn
9 did that's not what a drug trafficker would do. It's just
10 not.

11 I mean, I'm sure y'all don't really know any drug
12 traffickers, but let's just think about common sense, okay.
13 Is a savvy drug dealer going to put 70 grams of drugs and just
14 go out joy riding, you know, go to the bar, go drinking, go
15 call a bunch of attention to himself in a gas station? I
16 don't think so. You know, he wasn't using the stuff. Did
17 they find pipes, syringes, anything like that? No. It wasn't
18 his drugs. He didn't -- he wasn't using them.

19 You know, he's got this money. He's throwing it around,
20 making a scene. You know, here, toys for my kids, you get a
21 coffee, you get some gas. It's not my money. You know, the
22 clerk is noticing it, and he's trying to say oh, you don't
23 believe me, I'll show you. I mean, that's not how someone
24 spends their own money. You know, that's -- a drug dealer is
25 not going to run around with a bag full of cash waving it

CLOSING ARGUMENT BY MS. CHAMBERS

1 around, taking all the drugs out. I mean, this is a huge
2 quantity -- taking it all out at once. He's not going to do
3 that. A drug trafficker is not going to do that.

4 You know, and then, you get to this police interaction,
5 which is just wild, honestly. I wish there was more
6 information that we had, because I wish they had bothered to
7 do any sort of investigation or follow the procedure that they
8 are trained on. We don't know who called 911. It wasn't the
9 clerk. Y'all saw on the video the clerk is saying why are
10 y'all here? What are you doing with this man?

11 When we see on the body cam that the police first show
12 up, you know, and they don't go to the store. They don't try
13 to talk to people. They don't try to say what has happened
14 here. They've got this call that is totally unverified at
15 this point, okay, and then they show up and here's this line
16 of people -- and you can see him in the store. There's people
17 standing there, waiting to pay for their stuff when the
18 officer looks in and says hey, is this the guy? People aren't
19 saying, yeah, yeah, that's him, get him out him out of here,
20 he's driving us crazy. I mean, they're just kind of honestly
21 a little bit confused about what's going on, just oh, cops are
22 here.

23 You heard Deputy Nesbitt testify after this was all done,
24 he went in and tried to get this store clerk to sign a no
25 trespass notice, which is basically saying this person was

CLOSING ARGUMENT BY MS. CHAMBERS

1 such a nuisance, we don't want them back here. So if they do
2 come back here, let's get them arrested, because that's how
3 bad they were before. And she says no, I'm not going to sign
4 that. He wasn't causing a problem. I'm not going to do that.
5 So, you know -- so, there's a lot that we don't know about
6 what brought police out there, what the real problem was.

7 And then, it's hard to call this an investigation,
8 honestly. Deputy Smith says she, you know, had this decision
9 to arrest him for public disorderly conduct, but you know, I
10 think Deputy Nesbitt said it best. And I actually wrote it
11 down. He said our belief for public disorderly conduct was
12 based on what we had received. That was it. They get this
13 call, and it's the end -- you know, towards the end of their
14 shift, and they're just basically going there to get this over
15 with as quickly as possible. They don't try to ask what's
16 going on. They basically just find a guy -- you know, she
17 walks up, she's there for 30 seconds, and she walks up and
18 rips his shirt up. What's that?

19 And it's not even enough. She's got to do it again,
20 really look, okay. If they were worried about a gun -- I
21 didn't hear them ask about a gun. Did anybody say, do you
22 have a weapon on you? You know, he's standing there, he's
23 complying with everything they're asking -- or you know, he's
24 not trying to walk away. He's answering their questions. You
25 know, again, he'd had a few drinks. He's a little animated.

CLOSING ARGUMENT BY MS. CHAMBERS

1 The police are here, he's excited. He's been showering people
2 with money in the stores. He's excited. But he's not falling
3 down drunk. He's not causing a scene, and he's definitely not
4 acting like he's got a gun.

5 But anyway, she rips up his shirt, she sees something,
6 and she wants to know more, okay. So that's the point where
7 she's got to make something up. You know, she didn't tell
8 him. You heard, it's a rule in South Carolina. You have to
9 say what you're arresting people for. She didn't do that.
10 She sees the drugs, says all right, you're under arrest, and
11 you can even see her on the video go like she wants to reach
12 for the bag. She lifts his shirt up, she looks at it. She
13 goes to reach for the bag, and then she pulls her hands back.
14 Nope, can't do that. Got to come up with something. Okay,
15 you're under arrest and then we'll figure out later what it's
16 for.

17 So now she has this and she didn't bother to get
18 anything, any of his story. You know, because she wants to be
19 done with this. And that's how she behaved. And honestly, I
20 don't know. I mean, the way that she was absolutely refusing
21 to acknowledge some of the things that she did, like counting
22 the money. She's on camera for 18 minutes counting the money,
23 and then wants y'all to believe that she didn't. We have
24 video y'all saw of her saying 100, 200, 300. She's trying to
25 say she was just organizing it. Well, why are all the tens in

CLOSING ARGUMENT BY MS. CHAMBERS

1 different stacks? She's counting that money. And at the end
2 of it, she says, it's over \$3,500.

3 And then what was admitted into evidence was \$2,938.62.
4 Where is the money? You know, it's -- and I'm not going to
5 say that anyone stole the money. I'm just saying procedure
6 was not followed. This was sloppy, sloppy, sloppy. She
7 wanted to be done, okay. If this police officer or any of the
8 people out there with her cared about drugs, guess what,
9 they've got a man saying I know where you might find a drug
10 dealer. Why don't you go down to Belton bar. Someone forgot
11 these in the parking lot. Yeah, I'll give you the
12 information. Guess what that bar is across from? A police
13 station. They don't have cameras there? Let's go check.
14 Let's follow up.

15 You know, you've got these phones. Take the phones, look
16 at what he's been up to. This man is not a drug trafficker,
17 okay. He might be a little dumb. He might be a little drunk.
18 He's making bad decisions, but he is not a drug trafficker.
19 He doesn't know what he's got in this bag. He doesn't know
20 what exactly he's on the hook for. And I think he -- you
21 know, I think he knows that he probably doesn't want just
22 anyone seeing this or just anyone finding it, but he hadn't
23 decided yet what he's going to do about this. And you know, I
24 think it's been pretty clear that he wanted to get rid of it,
25 and I think he would have. You know, and it's just

CLOSING ARGUMENT BY MS. CHAMBERS

1 regrettable, I think, that these officers showed up and did
2 not give him this opportunity to explain himself, did not
3 bother to actually investigate or try to get drug dealers off
4 the street or do anything that they could have done.

5 She's going to -- Deputy Smith is going to sit up here
6 and tell y'all, oh, you know, we refer this to the drug unit
7 and, you know, that's their investigation. The drug unit
8 wasn't called. That wasn't in her police report. It just
9 wasn't. They don't care about this. They just showed up to
10 arrest the man and they arrested him. It was a foregone
11 conclusion, and that's what happened. You know, and at --
12 it's a shame. It's a shame that these officers feel this
13 confident to behave this way.

14 You know, if I have a few drinks and am out in public,
15 that's not illegal. You know, as long as I'm not interfering
16 with anyone, falling down drunk, causing a scene, you know,
17 that's not illegal. Do they have a right to come and just rip
18 my shirt up just because I'm drunk, just ---

19 MR. FULMER: Objection, Your Honor. That's not a jury
20 question.

21 THE COURT: Sustained.

22 MS. CHAMBERS: Y'all have a big decision to make. And
23 you know, at the end of it, I think what it boils down to is,
24 is this man a drug trafficker. No, he's not. He's just a guy
25 who found something in a parking lot, and frankly, was maybe a

CLOSING ARGUMENT BY MS. CHAMBERS

1 little too excited about the opportunity to have all this
2 cash. You know, he's doing dumb things that people don't do
3 with their own money that they've worked hard for. He's --
4 you know, I mean, he's making it rain on strangers in a gas
5 station, really. It's kind of wild. It's kind of funny.

6 You know, if it weren't such a serious situation,
7 unfortunately -- but y'all's decision that you have to make
8 has to be beyond a reasonable doubt. And of course, the drugs
9 were in his hands. We all know that. He told you how they
10 got there. But he told you, I don't know what it was, you
11 know, so did he have that knowledge to be trafficking in crack
12 cocaine? Or did he just know he maybe had something? You
13 know, he didn't know. And it's y'all's job to really get to
14 the bottom of what justice is in this situation. And
15 ultimately, I think my favorite way to explain what reasonable
16 doubt is y'all want to be able to go home at night, put your
17 head on that pillow, and have no lingering doubts about if the
18 right outcome happened today.

19 You know, that's basically as simple as it gets. Did I
20 make the right decision? Was this man a drug trafficker?
21 It's as simple as that. And, you know, frankly I wish the
22 police had done that a little bit better, or even at all
23 before it got here to y'all. If they care about getting drugs
24 off the street, if they care about finding drug dealers, they
25 have the power to do that and didn't. They're just harassing

CLOSING ARGUMENT BY MS. CHAMBERS

1 people in gas station parking lots. It's as simple as that.
2 And I'm going to ask that y'all hold all of this in your mind
3 and just make sure that when you go home at night, that y'all
4 are completely confident that justice has been served here.
5 And that's all we can ask you to do. Thank you.

6 CLOSING ARGUMENT BY MR. FULMER

7 BY MR. FULMER:

8 Ladies and gentlemen, this case is not about the police.
9 It's not about cash in a green bag. It's not about what Mr.
10 Glenn may have done the previous evening, whether or not he
11 was drunk or partially drunk, whether or not he was giving
12 away money to customers in the mini mart. The question before
13 you as a jury is did he possess crack cocaine in an amount
14 more than 28 grams. If you find that he did possess crack
15 cocaine in an amount more than 28 grams, he's guilty of
16 trafficking in crack cocaine and you should find him guilty.

17 So that's the question you need to consider. Let's think
18 back to the witnesses that we heard. We first heard from
19 Officer Smith -- Deputy Smith -- she was the arresting
20 officer. You were able to see her body cam. She testified as
21 to what she saw and heard as she approached Mr. Glenn. She
22 said she could smell alcohol on him. She was responding to a
23 disturbance. She thought he might have a weapon. She pulled
24 his shirt up to make sure that he didn't have a weapon and she
25 could see what was immediately apparent to her as some

1 marijuana.

2 A further search revealed crack cocaine in an amount more
3 than 28 grams. In fact, was 72.95 grams. That's what Ms.
4 Bowen told us. Her testimony is substantiated by her body
5 cam. We also heard from deputy -- prior Deputy Nesbitt. He
6 was the first one on the scene. He made contact with the
7 defendant. He felt like the defendant was probably drinking
8 as well. He saw Deputy Smith search the defendant, find the
9 drugs on the defendant, pull them from his waistband.

10 Then we heard from the evidence tech -- evidence
11 custodian who kept the drugs up until this point. And then we
12 heard from Ms. Bowen who testified she tested the drugs, and
13 she determined based on her scientific expertise, that the
14 drugs that were found were crack cocaine or cocaine base. And
15 she testified as to the weight, which was well above 28 grams.
16 Those are the facts of the case before you. That's the
17 evidence that you have regarding the actual charge, not
18 whether you may agree with how the police conducted their
19 investigation or whether you agree with the laws of search and
20 seizure in our country. But the question before you as a jury
21 is did the defendant possess crack cocaine?

22 And finally, we heard from the defendant. He told you,
23 yeah, I found a bag of money and I found a bag of what I knew
24 was drugs. I asked him specifically did you know those were
25 illegal drugs. Yes, I did. You heard it from the witness

CLOSING ARGUMENT BY MS. CHAMBERS

1 stand. He put them in his pants. I mean, where do you put
2 the things that you want to keep most secure that you are
3 indicating you have ownership of, that you are indicating you
4 have possession of? I mean, what more secure place could
5 there be other than his pants?

6 The fact that he may have been behaving bizarrely, maybe
7 that's explained by his drinking. I don't know. The fact
8 that he wasn't careful about how he's hiding these drugs,
9 maybe that's explained by the drinking. But that's not really
10 relevant to the case before you. The question that's being
11 asked of you is did the Defendant possess crack cocaine? And
12 based on the evidence that you've heard, there's no question
13 that he possessed that. There's no question that he intended
14 to possess it. He told you that he picked it up and took it
15 away from a place. It was not his, it didn't belong to him.
16 By his very words, he told you his intent.

17 Based on the facts, based on the evidence that you've
18 heard, I ask that you return the verdict of guilty in this
19 case. Thank you.

20 THE COURT: All right, Mr. Foreman, ladies and gentlemen
21 of the jury, I anticipate my charge to be in the neighborhood
22 of 25, 30 minutes, give or take. Would you like to have a
23 break before I get started or do you want to go ahead and I
24 give you the charge?

25 FOREMAN: I think we're good. We'd like to hear the

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1 charges.

2 THE COURT: Kind of like getting a whipping isn't it?

3 Just go ahead and get it over with. All right.

4 CHARGING OF THE JURY

5 THE COURT: Ladies and gentlemen, now that you have heard

6 all the evidence in this case, you've heard the arguments by

7 the attorneys, it is my duty to instruct you on the law that

8 applies in this case. My instructions will be in three parts.

9 The first part will be the general rules that define and

10 control your duties as jurors. The second will be the rules

11 of law that apply to this case. In other words, the law of

12 trafficking in cocaine more than 28 grams but less than 100

13 grams.

14 Then, after that, I will give you some pointers about or

15 some consideration for your deliberations. And Mr. Foreman,

16 I'll go over the verdict form with you and explain to you how

17 to fill it out. It's fairly simple. I will tell you in

18 advance I'm not nearly intelligent or articulate enough to do

19 all these without reading some of it to you, so I apologize in

20 advance. I don't like people reading stuff to me, but these

21 are very important points of law that I'm afraid if I tried to

22 go off the top of my head, I might misstate something.

23 So, with that being said, ladies and gentlemen, it's your

24 duty as jurors to find the facts in this case. You are the

25 sole judges of what the facts are. To those facts as you find

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1 them, you must apply the law as I give it to you now. You
2 must not and you may not be concerned with what you think the
3 law should be, but only what it is. You must not be
4 influenced by any personal likes, dislikes, opinions,
5 prejudice, or undue sympathy that you have for one side of
6 this case or the other. And what that simply means in total
7 is this, that you are to decide this case according to the
8 facts that have been presented to you here in this courtroom
9 and according to the law as I give it to you now.

10 And if you'll recall at the beginning of this case when
11 you took your oath, you swore or affirmed to do that just
12 that. Now, in following these instructions, it is important
13 that you follow all of them. You can't pick out certain
14 aspects of my charge and say we like that, so we're going to
15 agree with that, but other parts you don't like, not
16 following. They are all equally important. Also, if I have
17 done anything throughout the course of this trial that seems
18 to indicate to you how you are to find facts -- in other
19 words, the verdict you are to reach or anything that's in this
20 charge that seems to indicate to you the verdict that you are
21 to reach, I'm going to ask you but instruct you as well to
22 disregard it. I have no such feelings. The Constitution of
23 this state does not allow me to have an opinion or to state an
24 opinion about the facts of the case.

25 You and you alone will determine what these facts are by

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1 determining the facts of this case and applying the law as I
2 give it to you. And you will do so by evaluating and weighing
3 the evidence. Certainly, you don't weigh evidence in the
4 literal sense. You don't put them on a scale. But you use
5 your good common sense and your sound judgment that you bring
6 with you to the courtroom and going through and talking about
7 all of the evidence and ultimately to reach a decision in this
8 matter.

9 Now, there are certain things in this case that you may
10 consider as evidence, and there are certain things that you
11 may not consider as evidence. The only true evidence that you
12 may consider are the responses by the witnesses after they've
13 been sworn to questions being asked of them on the witness
14 stand. In other words, the questions by either of these
15 attorneys being asked, it's not evidence. The responses to
16 the questions is evidence. Also, the exhibits that I have
17 allowed into evidence is evidence. And those are the only
18 things that you can consider as evidence in this case.

19 Mr. Foreman, I will remind you that if you want to look
20 at the video, let us know, send us out a note, and we'll bring
21 it in here and T it up, and let you watch it here in the
22 courtroom as often and as long as you want. But we'll have to
23 have somebody to man it, because there's certain aspects of
24 that video that shouldn't be played to you, and certain
25 aspects that should, okay. That being said, what's not

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1 evidence? And as I've told you earlier, the arguments, the
2 statements by the attorneys is not evidence. That's not to
3 minimize their importance, because they are vital to this
4 trial.

5 But, what they've told you in their opening statements
6 and their closing statements is not evidence. What they've
7 said throughout the course of this trial is not evidence.
8 It's there to aid you in understanding what the case is about
9 and what their contentions are, but if your memory or the
10 facts differs from either or both of what these attorneys told
11 you throughout the course of this trial, your memory of those
12 facts will control.

13 Also, Mr. Foreman, just because something appears in one
14 of the juror's notes does not mean it appears in somebody's
15 memory. Again, that's why they're called deliberations.
16 You'll just have to hash them out. Also, the questions asked
17 by the attorneys are not -- is not evidence, and their
18 objections are not evidence. It would be improper for the
19 jury to go through and discuss the fact that there were
20 objections raised and to the extent I let you stay in here and
21 see my ruling on them in your deliberations. Suffice it to
22 say that in all cases, there will be objections, and that is
23 part of the procedure, and that's part of the oath that an
24 attorney takes when they're sworn in, to zealously represent
25 their client. So, if any one of your jurors tries to

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1 interject the fact that there's objections raised, you'll stop
2 that from being part of your jury's deliberations, okay, sir.

3 Now, in South Carolina, there are two types of evidence
4 that are generally presented during a trial. You have direct
5 evidence, and you have circumstantial evidence. Direct
6 evidence is this. It's evidence that directly proves the
7 existence of a fact and does not require a deduction or
8 inference to be drawn from those facts. For example, if the
9 issue in a case was whether or not I ran a stop sign, and my
10 law clerks says, I saw him run the stop sign, you don't have
11 to infer or deduce anything from that testimony. That
12 immediately establishes that fact.

13 Now, circumstantial evidence is a little trickier, but
14 it's this. It's proof of a chain of facts and circumstances
15 that indicate the existence of a fact. In other words, you do
16 make a deduction. You do make an inference. The example that
17 I like to give about circumstantial evidence is that if you
18 were all to go sleep one night and you had a fresh sheet of
19 snow in your yard, and if you'd have woke up in the morning
20 and you see tracks in the snow, you can reasonably deduce or
21 infer that someone or something walked through your yard
22 during the night, although you did not see it.

23 Now, the only prohibition is that the conclusion you
24 reach can't be speculation or surmise or conjecture. And
25 ladies and gentlemen, crimes may be proven by circumstantial

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1 evidence just like they may be proven by direct evidence. The
2 law makes no distinction between the weight of value to be
3 given to either direct evidence or circumstantial evidence.
4 However, to the extent that the State relies on circumstantial
5 evidence, the circumstances must be consistent with each other
6 and when taken together, point conclusively to the guilt of
7 the accused beyond a reasonable doubt. If these circumstances
8 merely betray the Defendant's behavior as suspicious, the
9 proof has failed.

10 Now, the State has the burden of proving the Defendant
11 guilty beyond a reasonable doubt, and that burden rests with
12 the State regardless of whether or not they used direct
13 evidence, circumstantial evidence, or a combination of the
14 two. Now, Mr. Foreman, ladies and gentlemen, in deciding what
15 the facts are, you must consider all the evidence. In doing
16 that, you have to decide which testimony you wish to believe
17 and whether or not there's any testimony you wish not to
18 believe. You collectively have the right to disbelieve all or
19 part of any witness' testimony that has been presented to you
20 during this trial. You have a right to believe all of any
21 witness' testimony.

22 In making this determination of what we call the
23 credibility of the witnesses, the credibility of the evidence,
24 I'm going to list for you some factors that you may consider.
25 These are not -- this is not an exclusive list of factors, but

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1 are things that I think would be helpful. First, you can ask
2 yourself was the witness able to see or hear or know about the
3 things which they testified about? How well were they able to
4 recall their testimony and describe the subject of their
5 testimony? What was their manner while they were on the
6 witness stand? What was their demeanor while they were
7 testifying?

8 You can ask yourself if there's some reason that a
9 witness would want to give testimony that would help or hurt
10 one side of the case or the other; whether or not that witness
11 had interest or bias or prejudice for or against one side of
12 the case or the other, or any issue involved in the case. You
13 can ask yourself how reasonable the witness' testimony was
14 considered the light of all the evidence, and whether that
15 witness testimony had any contradicting by what that witness
16 had said or done at another time or place or by the testimony
17 of other witnesses or other evidence in this case.

18 Now, Mr. Foreman, ladies and gentlemen, those are just
19 some factors that you may consider in making a determination
20 to credibility of the evidence. One thing you don't do when
21 you're sworn in is to check in your common sense. You should
22 use those things in your day to day lives that you find
23 indicative of truthfulness, and also indicative to lack of
24 truthfulness in making this determination. One thing you may
25 not do, Mr. Foreman, is add up the number of witnesses or

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1 exhibits that were presented by one side of this case or the
2 other in making that determination.

3 Now, ladies and gentlemen, you also heard testimony by a
4 witness that's been qualified as an expert. Normally,
5 witnesses are only allowed to testify as to what they saw,
6 they heard, they smelled, or they felt. However, if based on
7 their education or experience or combination of the two they
8 become an expert in an area that would be helpful to you, the
9 jury, upon qualification, they are allowed to give their
10 opinion in an area of their expertise and give the reasons for
11 their opinion. Expert opinion, Mr. Foreman, ladies and
12 gentlemen, is no different than any other testimony you've
13 heard in this case. You may reject it. You may accept it, or
14 give it as much weight as you think it deserves.

15 Now, I'll remind you, Mr. Foreman, ladies and gentlemen,
16 that this indictment, the charging mechanism which brought
17 this Defendant to this trial, is not evidence of his guilt.
18 It doesn't raise an inference nor a presumption of his guilt.
19 It will not be sent back to the jury room. This is simply the
20 mechanism by which the state of South Carolina brings the
21 Defendant before the Court for a trial and a determination by
22 you, the jury, of guilt or innocence. In fact, in this case,
23 the Defendant has plead not guilty to the charge in this
24 matter. And I'll tell you that a person who pleads not guilty
25 places the burden on the State to prove their guilt by proof

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1 beyond a reasonable doubt. And a person charged with
2 committing a criminal offense in this state is never required
3 to prove himself or herself innocent.

4 And I will tell you and charge you that it is an
5 important rule of law that no matter what the seriousness of
6 the crime may be, that a person will always be presumed
7 innocent of the crime for which they have been indicted,
8 unless guilt has been proven by evidence satisfying you, the
9 jury, of guilt beyond a reasonable doubt. This presumption,
10 ladies and gentlemen, does not end when you begin your
11 deliberations, but it accompanies the Defendant throughout
12 your trial, until you, the jury, is satisfied of guilt by
13 proof beyond a reasonable doubt.

14 It is said that the presumption of innocence is like a
15 robe of righteousness that's been placed upon the shoulders of
16 the Defendant, where it remains until it's been stripped by
17 evidence of proof beyond a reasonable doubt. Now, Mr.
18 Foreman, ladies and gentlemen, the presumption of innocence is
19 not a mere legal theory and it's not just a nice little legal
20 phrase. It is a substantial right which every Defendant is
21 entitled, unless you, the jury, are satisfied from the
22 evidence of the Defendant's guilt by proof beyond a reasonable
23 doubt.

24 So that leads me to what is a reasonable doubt. A
25 reasonable doubt is the kind of doubt that would cause a

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1 reasonable, sincere, honest, and conscientious person to
2 hesitate to act in an important matter in their own affairs.
3 Proof beyond a reasonable doubt is proof that leaves you
4 firmly convinced of the Defendant's guilt. Now, with that
5 being said, there are very few things in this world that we
6 know with absolute certainty, and the law does not require
7 that the State overcome every possible doubt that may occur in
8 the case.

9 If, based on your consideration of the evidence, you are
10 firmly convinced that the Defendant is guilty of the crime for
11 which he has been indicted, it is your duty to find him
12 guilty. On the other hand, if you think there is a real
13 possibility that the Defendant is not guilty, you must give
14 him the benefit of the doubt and find him not guilty. Ladies
15 and gentlemen, reasonable doubt may arise from the evidence or
16 from the lack of evidence, and I further instruct you that a
17 Defendant is entitled to every reasonable doubt that may arise
18 in a case.

19 And what that simply means is this, that if upon any
20 issue of fact essential to a verdict of guilty of an offense
21 for which a Defendant is charged, if you have any reasonable
22 doubt as to how that issue should be resolved, it is your duty
23 to resolve it in favor of the Defendant. Now, ladies and
24 gentlemen, in order to establish criminal liability, criminal
25 intent is required to be proven. For example, the mental

CHARGING OF THE JURY

1 state required to be proven by the State for a particular
2 crime might be purpose, intent, knowledge, recklessness, or
3 criminal negligence.

4 Criminal intent must be proven by the State by proof
5 beyond a reasonable doubt. Ladies and gentlemen, criminal
6 intent is always a matter that must be determined by you, the
7 jury, from the circumstances surrounding the situation.
8 There's no way to prove to a mass -- excuse me, there's no way
9 to prove to a mathematical certainty what a person intended to
10 do, and there's no way that medical science can dissect a
11 person's brain to determine what they intended to do. So, the
12 law says that criminal intent may be inferred from the
13 circumstances shown to have existed.

14 And ladies and gentlemen, that is how you make the
15 determination of whether or not the element requiring intent
16 is present. It is not necessary to establish intent by direct
17 or positive evidence, but intent may be established by
18 inference in the same way it's any other fact by taking into
19 consideration the acts of the parties and all the facts and
20 circumstances of the case. Criminal intent is a mental state.
21 It is a conscious wrongdoing. It is up to you to determine
22 what the Defendant intended to do based on the circumstances
23 shown to have existed. Criminal intent can arise from action
24 or from a failure to act. It may arise from negligence,
25 recklessness or an indifference to duty or to the consequences

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1 that is considered by the law to be equivalent to criminal
2 intent.

3 Now, Mr. Foreman, ladies and gentlemen, those are the
4 general rules that define and control your duties as jurors.
5 I do not send my charge back there, because I want you focused
6 on the facts and let me focus on the law. If at any time you
7 need me to recharge you on any aspect of the charge, just let
8 me know and I can go over it as many times with you as you
9 want me to. The second aspect of my charge will be the law
10 that you must apply to this case. And it's the law of
11 trafficking more than 28 grams but less than 100 grams of
12 cocaine base.

13 Ladies and gentlemen, the Defendant is charged with
14 trafficking in crack cocaine. The State must prove beyond a
15 reasonable doubt that the Defendant knowingly sold,
16 manufactured, cultivated, delivered, purchased, brought into
17 the state, provided financial assistance, or otherwise aided
18 abetted, attempted, or conspired to sell, manufacture,
19 cultivate, deliver, purchase, or bring into the state or is
20 knowingly or in actual constructive possession or knowingly or
21 attempted to become in actual constructive possession of crack
22 cocaine.

23 Knowingly means with knowledge, consciously, and not
24 accidentally. To prove possession, the State must prove
25 beyond a reasonable doubt that the Defendant had both the

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1 power and intent to control the disposition or the use of the
2 crack cocaine. Possession may be either actual or
3 constructive. Actual possession means that crack cocaine was
4 in the actual physical custody of the Defendant. Constructive
5 possession means that the Defendant had dominion and control
6 or the right to exercise dominion or control over either the
7 crack cocaine itself, or the property on which the crack
8 cocaine was found.

9 Mere presence at the scene where the drugs were found is
10 not enough to prove possession. Actual knowledge of the
11 presence of the crack cocaine is evidence of the Defendant's
12 intent to control its disposition or use. The Defendant's
13 knowledge and possession may be inferred when a substance is
14 found on the property under the Defendant's control. However,
15 this inference is simply an evidentiary fact to be taken into
16 consideration by you, along with the other evidence in this
17 case and to be given the weight you decide it should have.
18 The State must also prove beyond a reasonable doubt that the
19 amount of the crack cocaine was more than 28 grams but less
20 than 100 grams.

21 Mr. Foreman, ladies and gentlemen, that's the law that
22 you will apply. And again, I will go over that as many times
23 as you'd like me to. I know that particular charge is
24 somewhat wordy, but I'll go over it with you as much -- as
25 many times so you feel like you understand it if you want me

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1 to. And that leads me to the end of my charge, and I know
2 you're glad to get there, but these are considerations for
3 your deliberations.

4 When you're -- you go through the jury qualification and
5 you answered the questions either by express reply or by
6 omitting to answer, you represent that you can be fair and
7 impartial to both the State and to the Defendant in this
8 matter. And they have a right to depend on that, that you
9 will be fair and will be impartial to both sides. In other
10 words, you're not partisans or advocates in this case where
11 one side of this case or the other. All right, you are the
12 judges of the facts. So, when you go back and begin your
13 deliberations, use your experiences in life, your common sense
14 and sense of logic and judgment to come to a decision if
15 you're able to do so.

16 This is the definition of deliberation. It is a careful
17 consideration weighing up to a view to a decision. A careful
18 consideration weighing up with a view to a decision. In other
19 words, don't be in a rush. Now, the genius of our jury
20 system, ladies and gentlemen, is it allows 12 men and women
21 such as yourselves who come from different backgrounds, who
22 have different life experiences, and different perspectives,
23 to walk through and talk through the evidence and to
24 ultimately reach verdict in this matter. Now, we call them
25 deliberations for a reason. You are to consider all of the

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1 evidence carefully and deliberately, and discuss it in a calm,
2 courteous, and thorough manner.

3 Now, remember, you are not partisans or advocates.
4 You're judges of the facts. I'm going to ask you and instruct
5 you to let everyone tell you what they think about the facts
6 that are in this case, and tell you why they think those facts
7 are as they believe them to be. They will let you do the same
8 thing. Do not be afraid to change your feelings as to the
9 weight of the evidence if your deliberations with your fellow
10 jurors convinces you that it is the right thing to do. On the
11 other hand, do not change a firmly held belief as to the
12 weight of the evidence simply to appease your fellow jurors.

13 Now, in order for your verdict to stand, it will have to
14 be unanimous. With that being said, you will have to make
15 your decision on your own based on the testimony and evidence
16 you heard and according to the law as I've given it to you in
17 your deliberations with your fellow jurors. Now, Mr. Foreman,
18 if at any time the jury has a question or you need anything,
19 I'm going to ask you to follow the same procedure that you've
20 done in this case earlier, and that is to write what it is on
21 a piece of paper, sign your name, tell the bailiff that you
22 have a question. He'll bring it to us and we'll respond here
23 in open court with you either being present or send word back
24 to you, okay, sir.

25 One thing I'm going to ask you not to ever do is tell us

CHARGING OF THE JURY

1 where the jury stands numerically in its determination,
2 whether you're six-six, ten-two, or some other numerical
3 combination that equals 12. It's none of our business where
4 you stand, okay. Now, Mr. Foreman, once the jury has reached
5 a unanimous verdict, it's your job to fill out the verdict
6 form. In this case, you have two options, and whatever order
7 those options appear in, it's of no consequence to you. I've
8 got to put them in some order. But these are the options that
9 you have.

10 As to the charge of trafficking in crack cocaine, 28
11 grams or more but less than 100 grams, we the jury unanimously
12 find the Defendant A, not guilty, or B, guilty. And whichever
13 the jury's decision is, you'll simply put an X or a check by
14 that option A or B. You'll sign your name. You'll fold the
15 verdict form over. Do not give it to the bailiff. You hold
16 it in your hand. He'll bring the jury in here and I'll ask
17 you to present it to him and I'll go over it after they
18 present it to me and it'll be read by the Clerk. Okay, sir.

19 If at any time you have any questions about what you need
20 to do, please let me know, and we'll explain them to you to
21 your satisfaction. I'm going to ask that you go back to your
22 jury room. I think that -- I don't think, I know I need to go
23 over with these attorneys whether or not they have any
24 objections to my charge. I may bring you back and correct or
25 omit something I have said earlier. If not, the verdict form

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1 and the exhibits will be brought back to you and you'll be
2 told at that point to begin your deliberations. Do not begin
3 your deliberations until you are told to do so, please.

4 I'm going to ask that our alternate, get your personal
5 belongings and come back to the courtroom if we do not bring
6 the jury back in here, okay. If you'll go back to the jury
7 room now, please.

8 (Whereupon, the jury exits the courtroom.)

9 THE COURT: Any additions or exceptions to the charge by
10 the State?

11 MR. FULMER: No, Judge.

12 THE COURT: Any additions or exceptions from the Defense?

13 MR. LUCAS: No, Your Honor.

14 THE COURT: Very good. I want to thank the attorneys for
15 doing a well -- doing a great job. You were prepared, you
16 were professional, and you did a really good job presenting
17 your cases and doing your defense. I like to tell you that
18 now before the jury comes back. That being said, I'm going to
19 ask that y'all go over the exhibits and make sure they are all
20 accounted for. Does anybody have a problem with our bailiff
21 carrying the exhibits and the verdict form and telling the
22 jury that they are to start their deliberations?

23 MR. FULMER: No, sir.

24 MR. LUCAS: No, Your Honor.

25 THE COURT: All right. Would you go ahead and ask the

VERDICT

1 alternate to come on back in for me, please?

2 (Brief recess.)

3 THE COURT: All right, my understanding is we have a
4 verdict. Anything from the Defense before I bring the jury
5 out?

6 MR. LUCAS: Nothing, Your Honor.

7 THE COURT: From the State?

8 MR. FULMER: No, sir.

9 (Whereupon, the jury enters the courtroom.)

10 VERDICT

11 THE COURT: All right, Mr. Foreman, my understanding is
12 the jury has reached a verdict?

13 FOREMAN: That's correct, Your Honor.

14 THE COURT: Is it unanimous?

15 FOREMAN: Yes, it is, sir.

16 THE COURT: Have you signed the verdict form?

17 FOREMAN: Yes, I have.

18 THE COURT: Would you pass it forward, please, sir.

19 Would you publish please, ma'am?

20 CLERK: Yes, sir, Your Honor. State of South Carolina,
21 County of Anderson, in the Court of General Sessions Tenth
22 Judicial Circuit. State of South Carolina versus Savayea
23 Antwan Glenn, Defendant, indictment number 2020-GS-04-02070.
24 And this is the verdict form. Count one, trafficking crack
25 cocaine -- as to the charge of trafficking in crack cocaine,

VERDICT

1 28 grams or more, but less than 100 grams, indictment number
2 2020-GS-04-02070, the jury has indicated B, we the jury
3 unanimously find the Defendant guilty. And that is signed by
4 our foreperson, number 51, February 7th, 2024, Anderson, South
5 Carolina.

6 Ladies and gentlemen, if that was your verdict in the
7 jury room and it remains your verdict, please indicate so by
8 raising your right hand. Let the record reflect that all
9 jurors have raised their hand.

10 THE COURT: Thank you, ma'am. All right, Mr. Foreman,
11 can I get you to step up here and sign this indictment for me?

12 FOREMAN: Yes, sir.

13 THE COURT: Now, ladies and gentlemen, the Court is never
14 concerned with what your verdict is, but more importantly that
15 you paid attention and you followed the instructions of the
16 Court. You did that perfectly throughout the entire trial. I
17 want to thank you for your service -- not your verdict, but
18 for your service. I will tell you that without citizens such
19 as yourselves who are willing to take their time away from
20 their jobs and their lives and to come here and do the
21 unpleasant task of judging people, our system would break
22 down. We depend on juries to make our system of law work, and
23 without you it does not work.

24 I can tell you the threat of a jury disposes of a lot of
25 cases. This is the only case we tried this week, but you

SENTENCING

1 MR. LUCAS: I don't have any authority today, Your Honor.
2 I'll be happy to look into it.

3 THE COURT: You'll be able to send me a brief and I'll
4 look at it. I'm going to give him what he's entitled to, but
5 I'm not going to give him time for other things. Unless I
6 have to, okay.

7 MR. LUCAS: I understand, Your Honor. Particularly, in
8 light of that, and him sitting in jail for, you know, two and
9 a half years on charges that are unlikely to ever be tried,
10 I'd ask that the Court give him the 25 years and not more than
11 that.

12 THE COURT: Got you. Anything further from the State?

13 MR. FULMER: No, sir, Judge.

14 THE COURT: Mr. Glenn, would you like to speak?

15 MR. GLENN: No, sir.

16 THE COURT: All right. And I'm sure Mr. Lucas has stated
17 this, but you have ten days to appeal. The sentence will be
18 25 years and a \$50,000 fine. We will determine the credit for
19 time served. I'm not going to try to fill out the date today.
20 We'll determine that at a subsequent date.

21 MR. LUCAS: Thank you, Your Honor. And I just -- I'd ask
22 to be allowed, you know 10 to 15 days to research it and brief
23 it, Your Honor.

24 THE COURT: All right, whatever. Just remind me, because
25 I'll go off and forget about it and I'll be doing other things

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

State of South Carolina,

-vs-

Savayea Antwan Glenn,

Defendant.

IN THE COURT OF GENERAL SESSIONS
FOR THE TENTH JUDICIAL CIRCUIT

Warrant No.: 2020A0410200739-741

MOTION TO SUPPRESS
AND MEMORANDUM IN SUPPORT**MOTION TO SUPPRESS**

Because the police officer's act of lifting the Defendant's shirt to look into his waistband violated the scope of a permissible Terry frisk, the search was illegal under the Fourth Amendment of the United States Constitution and Article I, Section 10 of the South Carolina Constitution. Consequently, Defendant hereby moves to suppress all evidence seized from the Defendant's person and the subsequent search of his vehicle.

FACTS¹

On May 24, 2020, police went to Eddie's Mini-Mart in Anderson, South Carolina in response to a complaint that a black male in a dark blue shirt and red shoes had showed the store clerk his gun in a "non-threatening" manner. The caller reported that the black male was intoxicated, paid for other customers' food and was making people uncomfortable. Dispatch relayed this report to responding officers. The report contained no further details about a firearm.

Three police officers arrived several minutes after the report and stopped a black male, wearing a blue shirt and red shoes, who was exiting the store. The man identified himself as Savaya Glenn. The body camera footage shows Mr. Glenn having a friendly conversation with Officer Nesbitt, the first officer to arrive, who was his former probation agent. In response to questioning from Officer Nesbitt, Mr. Glenn denied causing a scene or being intoxicated, and stated that he was

¹ This recitation of facts is based upon the incident report and body camera footage from the Defendant's arrest,

just “buying people stuff.” Mr. Glenn did not try to walk away from the officer, reach for his pockets, or make any threatening movements at any point during his interaction with the police.

At the time of the stop, body camera footage shows Mr. Glenn holding a closed green bag in his right hand and a package of cigarettes in his left hand. An orange bag hung slightly below his shirt, apparently tucked into his waistband. The contents of the orange bag were not visible.

Two other officers arrived soon after Officer Nesbitt, including Officer Janessa Smith. The police officers quickly spread out and surrounded Mr. Glenn, who remained cooperative. **Within thirty seconds of arriving, Officer Smith approached Mr. Glenn and lifted his shirt to look down his pants and into the orange bag.** Mr. Glenn then pulled his shirt back down, after which Officer Smith lifted the shirt a second time. After she lifted the shirt for a second time, Officer Smith immediately told Mr. Glenn that he was under arrest and handcuffed him. In her report, Officer Smith stated that, after lifting the shirt, she could see a small plastic baggie with marijuana sticking out from Mr. Glenn’s boxers and then arrested him.

After arresting Mr. Glenn, the police searched both bags. Police found 72.95 grams of cocaine base in the orange bag and a large amount of cash in the green bag. The police searched Mr. Glenn’s vehicle incident to arrest and located a pistol.

The police did not speak to the store clerk or 911 caller (apparently a store customer) before stopping and searching Mr. Glenn.

ARGUMENT

The issue before the Court is whether a police officer may lift a suspect’s shirt to look for a gun during a Terry stop, instead of performing a Terry frisk, where nothing prevented the officer from performing the frisk and the defendant was cooperative and posed no immediate threat to the

along with the CAD Detail report.

officers' safety. Because a pat-down search is the only degree of search that appellate courts in South Carolina have sanctioned during a Terry stop, this court should rule that the officer's decision to twice lift the defendant's shirt exceeded the scope of a protective search permitted under Terry.

i. Applicable Law.

The Fourth Amendment protects a person's right against unreasonable searches and seizures. Warrantless searches and seizures are per se unreasonable under the Fourth Amendment, subject only to a few specifically established and well-delineated exceptions.² The Supreme Court created one such exception in Terry v. Ohio, where it recognized that a police officer may stop and briefly detain and question a person for investigative purposes when the officer has a reasonable suspicion supported by articulable facts, short of probable cause for arrest, that the person is involved in criminal activity.³ During a Terry stop, a police officer may conduct a pat-down search for weapons where the officer has reason to believe the suspect is armed and dangerous.⁴ The purpose of the frisk is not to discover evidence, but rather to enable a police officer to pursue his or her investigation without fear of violence.⁵ If the search goes beyond what is necessary to determine if the suspect is armed, it is no longer valid under Terry and its fruits will be suppressed.⁶

Appellate courts in South Carolina have recognized that "[t]he scope of a search authorized by Terry is limited."⁷ "Courts of this state have recognized and applied the principle that law enforcement officers are not granted, under the purview of Terry, a general warrant to rummage and

² State v. Woodruff, 344 S.C. 537 (Ct. App. 2001) (quoting Thompson v. Louisiana, 469 U.S. 17, 20 (1984)).

³ State v. Woodruff, 344 S.C. 537 (2001) (citing Terry v. Ohio, 392 U.S. 1 (1968)).

⁴ State v. Woodruff, 344 S.C. 537 (2001) (citing Ybarra v. Illinois, 444 U.S. 85 (1979) (under Terry doctrine, police officer, for his own protection and safety, may conduct pat-down search to find weapons he reasonably suspects are in possession of person he has stopped)).

⁵ State v. Abrams, 322 S.C. 286 (Ct. App. 1996); see also Terry, 392 U.S. at 29.

⁶ State v. Woodruff, 344 S.C. 537 (2001) (citing Minnesota v. Dickerson, 508 U.S. 366, 373 (1993)); see also State v. Abrams, 322 S.C. 286 (Ct. App. 1996).

⁷ See e.g. State v. Woodruff, 344 S.C. 537, 548 (2001).

seize at will, and that any evidence stemming from an unlawful detention must be excluded....”⁸ No reported appellate case in South Carolina has allowed a police officer to lift a suspect’s search during a Terry stop instead of doing a frisk.⁹ Rather, South Carolina appellate courts have consistently stated that a “frisk” or “pat-down” search (using these terms interchangeably) is the degree of intrusion permitted during a Terry stop.¹⁰

The State has the burden to “demonstrate that the seizure it seeks to justify on the basis of reasonable suspicion was sufficiently limited in scope and duration to satisfy the conditions of an investigative seizure.”¹¹

ii. Argument.

The Court should find that the officer’s act of twice lifting Mr. Glenn’s shirt to look for a weapon is an unlawful general search that went beyond the scope of the protective frisk authorized by Terry. As there is no South Carolina case directly on point, in assessing the legality of the police officer’s conduct, this court should refer to the general rules delineated in LaFave’s Search and Seizure: A Treatise on the Fourth Amendment. According to Professor LaFave, the exceptions to Terry’s pat-down requirement are few, particularly being limited to situations where the suspect’s actions made it impossible for the police to safely conduct a pat-down, the suspect ignored police

⁸ State v. Woodruff, 344 S.C. 537 (2001).

⁹ See 3 S.C. Jurisprudence Arrest § 19, III, F (“Investigatory Stops”) & § 28 (“Search and Seizure”); see also Trial Handbook for South Carolina Lawyers, § 30:10 (5th ed.)

¹⁰ See e.g. State v. Fowler, 322 S.C. 263 (Ct. App. 1996) (in order to support decision to frisk defendant during valid Terry stop, officer must be able to specify particular facts on which he based his belief suspect was armed and dangerous); State v. Butler, 353 S.C. 383 (2003) (“question before us, however, is whether Officer Cook had reasonable suspicion to conduct a pat-down or frisk of Butler.”); State v. Smith, 329 S.C. 550 (Ct. App. 1998) (during nighttime traffic stop on deserted road, driver acting edgy and looking around gave rise to reasonable suspicion that defendant might be armed and justified patdown search of defendant.); State v. Odom, 376 S.C. 330 (Ct. App. 2007 (Terry frisk justified where, during traffic stop, officer smell marijuana and officer noticed an empty gun holster in the back seat of car); State v. Brannon, 379 S.C. 487 (Ct. App. 2008) (frisk); State v. Burton, 349 S.C. 430 (Ct. App. 2002) (frisk for weapons); State v. Woodruff, 344 S.C. 537 (Ct. App. 2001) (patdown search); Milledge v. State, 422 S.C. 366 (2018) (frisk) State v. Banda, 371 S.C. 245 (2006) (frisk).

¹¹ State v. Woodruff, 344 S.C. 357 (2001) (citing Royer, 460 U.S. at 500).

commands, or the suspect made threatening movements.¹² Lafave distinguishes between cases where (1) the officer only has reasonable suspicion that the suspect may be armed (where the requirement of a pat-down must be observed), and (2) cases where the suspect has engaged in conduct that would lead a police officer to reasonably believe that the suspect is armed and prepared or threatening to use the weapon to harm the officer (where the police officer can lawfully dispense with the requirement of a pat-down).¹³ Significantly, in Lafave's analysis, if no exceptional circumstances exist justifying a "bypass of the pat-down phase," the police are limited to a pat-down search.¹⁴

LaFave provides examples of circumstances that justified police bypassing the pat-down requirement, including U.S. v. Andrade, 551 F.3d 103 (1st Cir. 2008) (defendant refused order to stop, did not look at officer and had hands in his pockets), State v. Roach, 796 A.2d 214 (2002) (defendant made sudden and repeated attempts to reach for a bulge in his pants and refused to obey officer's order to lift hands in the air), State v. Heitzman, 632 N.W.2d 1 (N.D. 2001) (officer properly reached into pockets without further pat-down where defendant "was attempting to frustrate the officer's pat-down efforts" by his "quick, evasive movements"); State v. Faulks, 633 N.W.2d 613 (S.D. 2001) (where defendant reached into pocket for the third time, officer could, without pat-down of pocket area, reach in and withdraw contents).¹⁵

The defendant's behavior during the Terry stop places this case squarely into the category of cases where the pat-down requirement must be observed because the police could

12 4 Search & Seizure s. 9.6(b) ("Need for and extent of pat-down of person) (6th ed.) (October 2022 update).

13 4 Search & Seizure s. 9.6(b) ("Need for and extent of pat-down of person) (6th ed.) (October 2022 update) (quoting People v. Superior Court, 15 Cal. App.3d 806 (1971)).

14 4 Search & Seizure s. 9.6(b) ("Need for and extent of pat-down of person) (6th ed.) (October 2022 update).

15 4 Search & Seizure s. 9.6(b), n. 162 ("Need for and extent of pat-down of person) (6th ed.) (October 2022 update).

have safely performed a pat-down. The police stopped him outside of the store after they received a complaint that he was bothering customers and showed the store clerk his gun in a non-threatening way. Assuming, *arguendo*, that this information formed reasonable suspicion that the defendant was armed, the officer could lawfully have frisked the defendant's outer clothing for weapons. **However, the officer did not perform a Terry frisk.** Instead, she lifted the defendant's shirt to look into his waistband (apparently trying to ascertain the contents of the orange bag), and then did it again. At the time of this unlawful search, the body camera footage shows that three officers were present and surrounded defendant. This footage shows that defendant cooperated with the police during the stop. He did not attempt to walk away from the officers. He did not put his hands in his pockets or reach into his waistband. He made no quick movements that could be construed as a threat to the police. In fact, his hands were visible during the entire interaction. **In short, the defendant took no action that posed any impediment to a pat-down search. The police officer could have safely and easily performed a pat-down search but simply elected not to. These circumstances are plainly inadequate to justify the police officer's decision to skip the pat-down requirement of Terry. Therefore, this court should rule that the officer's search of defendant was unlawful.**

Furthermore, the facts of this case could not be more different from the Andrade, Roach, Heitzman, or Faulks – that is, cases where police could lawfully dispense with the pat-down. In those cases, the defendants were disobeying police commands, refusing to show their hands, reaching into their pockets repeatedly and engaging in other threatening or unpredictable behavior that posed a potential threat to the police. Mr. Glenn did none of these things and, in marked contrast, was very cooperative with the police.

In deciding this case, the court should also consider State v. Privott, 999 A.2d 415 (N.J.

2010), a case from the New Jersey Supreme Court with similar facts, where that court held that the police officer's conduct in lifting the defendant's shirt to check for weapons, instead of doing a Terry frisk, was unreasonable. In Privott, the police officer received an anonymous tip of a man with a gun at a specific location. The officer then approached the defendant, who resembled the description given by the anonymous tipster, and who the officer recognized from prior narcotics arrests and knew was associated with gang activity.¹⁶ The defendant appeared nervous, walked away from the officer, and moved one hand towards his waistband.¹⁷ However, after the officer stopped the defendant, the defendant placed his hands against a fence as instructed by the officer and was cooperative. During the stop, instead of patting the defendant down for weapons, the police officer lifted the defendant's tee shirt to expose his stomach and, in so doing, observed a plastic bag with suspected drugs in the waistband of the defendant's pants.¹⁸ The Privott court determined that these facts supported an investigatory stop and would have justified a frisk of the defendant.¹⁹

The court then moved to assess whether the scope of the search conducted by the officer was reasonable, noting that "the investigative methods employed [in a Terry stop] should be the least intrusive means reasonably available to verify or dispel the officer's suspicion in a short period of time" and that "it is the State's burden to demonstrate that the seizure [and frisk] it seeks to justify on the basis of reasonable suspicion was sufficiently limited in scope and duration to satisfy the conditions of an investigative seizure."²⁰ Noting that the defendant was cooperative at all times and complied with the officer's instructions to place his hands on the fence, the Privott court concluded that "a reasonable search, as well as the least intrusive maneuver needed to protect the safety of the

16 State v. Privott, 999 A.2d 415, 416, 422 (2010).

17 State v. Privott, 999 A.2d 415, 416, 422 (2010) .

18 State v. Privott, 999 A.2d 415, 416, 422 (2010) .

19 Id. at 423.

20 State v. Privott, 999 A.2d 415, 416, 422 (2010) at 423-424.

officer against a weapon, would have been the traditional pat-down search of the defendant's outer clothing." **Consequently, the Privott court held that the officer's act of lifting the defendant's shirt to expose his stomach "exceeded the scope of the pat-down search needed to protect the officer" and was akin to a general search of the person for evidence of a crime.** In balancing the competing interests of an individual's right to privacy versus the need to protect the police from persons with weapons, the court decided "to strike the balance in favor of the traditional pat-down search."

This court should strike the same balance and find that it was unreasonable for the officer to skip the pat-down search in this case. Like the defendant in Privott, the defendant cooperated with the police. Indeed, the facts of the present case are more favorable than in Privott, since the Mr. Glenn didn't try to walk away from police, look nervous, or reach into his waistband immediately before the stop. Moreover, Mr. Glenn was surrounded by three police officers when the police officer lifted his shirt, while only one officer was present in Privott.

Like in Privott, the officer had a lawful means to determine whether the defendant had a weapon: she could have performed the traditional pat-down search.²¹ Instead, the officer decided to engage in the more intrusive act of lifting the defendant's shirt to look down his pants and into the small orange bag at the defendant's waist. This court should recognize this action for what it was: a general search, outside the scope of what is permitted by Terry, that was aimed at determining the contents of the small orange bag, not whether the defendant had a weapon.

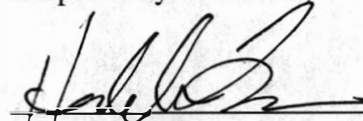
This holding in Privott is not novel. Numerous other courts have reached the conclusion that a pat-down frisk must come before an officer can raise a defendant's shirt or reach into a defendant's pocket. See e.g. Commonwealth v. Fleming, 76 Mass.App.Ct. 632 (Ct. App. MA 2010) (holding

that police officer acted unreasonably in failing, prior to lifting defendant's T-shirt and finding revolver tucked into his waistband, to conduct an "exterior patfrisk" of defendant's clothing to determine whether the suspicious bulge felt like a weapon); Epps v. State, 193 Md.App. 687 (Ct. App. Md. 2010) (holding officer's order that defendant lift his shirt exceeded permissible scope of Terry pat-down frisk of outer clothing for weapons); U.S. v. Casado, 303 F.3d 440 (2nd Cir 2002) (holding that officer's reach into his pocket and removal of its contents exceeded the scope of a protective search for weapons under Terry); U.S. v. Brown, 996 F.3d 998 (2021) (while police officer had ample justification to conduct protective frisk, the officer's search of defendant's right pocket exceed what was necessary to verify defendant did not possess a weapon and violated Terry).

Conclusion

This court should find that the police officer's decision to lift the defendant's shirt, instead of performing a pat-down, was an illegal search that went beyond the scope of the pat-down frisk permitted by Terry. Because all evidence discovered on the defendant's person was a direct result of this unlawful search, this court must suppress it.²²

Respectfully submitted,



Hadden Lucas
10th Circuit Public Defender's Office
500 South McDuffie Street
Anderson, South Carolina
(864) 260-4048

Anderson, South Carolina
February 4, 2024

²¹ If anything, this approach would be more effective in ascertaining whether the defendant had a weapon.

²² State v. Woodruff, 344 S.C. 537 (2001) (citing Wong Sun v. United States, 371 U.S. 471 (1963)).

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSION
	)	
COUNTY OF ANDERSON	)	
	)	
STATE OF SOUTH CAROLINA	)	CASE NO: 2020-GS-04-02070
	)	
vs.	)	
	)	
	)	<u>ORDER</u>
SAVAYEA GLENN	)	
	)	
	)	

The Defendant is charged with Trafficking Cocaine Base more than 28g but less than 100g. This matter is before the court upon Defendant's Motion to Suppress the results of an alleged illegal search and seizure. On May 24, 2020 law enforcement received a disturbance call from a store clerk or patron named Jenkins from Eddies Minute Mart located at 3200 Abbeville Highway in Anderson County. The caller reported that a black male wearing a dark blue shirt with red shoes was intoxicated in the store and had shown a sales clerk a gun in a non-threatening manner. The caller further described the person's conduct as boisterous and invading the personal space of customers (ie. getting into their faces). The individual was also reported to be making sexual comments to customers and buying strangers food.

The call with the reported description of conduct was dispatched to law enforcement. Three (3) officers responded to the scene. Officer Nesbitt of the Anderson County Sheriff's Office (ACSO) was the first to arrive. On arrival Officer Nesbitt found the defendant standing in the doorway of Eddie's Minute Mart holding the doors open and acting in a loud and boisterous manner. According to Nesbitt, the defendant had an odor of alcohol about his person. Officer Nesbitt knew the defendant from prior involvement with him through SCPPP. He described the defendant's conduct as loud and boisterous. Nesbitt noted that defendant's behavior was unlike his normal demeanor based upon his prior experience with the defendant. Body cam footage from the scene depicts the defendants conduct as described by Officer Nesbitt.

Officer Smith with ACSO arrived at the scene shortly after Nesbitt. Officer Smith and another officer took up defensive positions around defendant while he was being questioned by Officer Nesbitt. Smith described defendant as being very intoxicated with a strong odor of alcohol about his person. She also described his speech as slurred. Officer Smith also described defendant as having a bulge in his front waistband which appeared to be and that she thought was a gun.

Upon being questioned about the bulge, defendant denied having a firearm, however, defendant kept his hands in the vicinity of his waistband. Defendant did not make an overt move towards the bulge. Instead of conducting a pat down search of defendant, Officer Smith lifted the defendant's shirt two times to reveal the area of the

bulge. The shirt lift search revealed the presence of illegal drugs. A search of defendant, including bags he had in his possession and on his person, revealed over 72 grams of suspected cocaine base along with multiple suspected hydrocodone pills. Defendant was placed under arrest.

Defendant asserts that law enforcement exceeded the scope of a permissible "Terry" stop and search under the circumstances by lifting the defendant's shirt two (2) times instead of conducting a pat down search. The state contends that lifting defendant's shirt twice was not a violation of "Terry" based upon the circumstances present at the time. The state submitted multiple cases as persuasive authority where law enforcement was found not to have violated "Terry" by either lifting a defendant's shirt or requiring a defendant to do so (see Adams v. Williams 407 U.S. 143 (1972); State v. Michael 995 N.E. 2d 286 (2013); United States v. Baker 78 F. 3d 135 (4th Cir. 1996); State v. Privott 203 N.J 16 (2010). There is no South Carolina case directly on point.

The defense points out that each of the cases submitted by the state involves a suspect's conduct being such as would warrant law enforcement being in immediate fear for their safety thereby allowing law enforcement to bypass a pat down search in favor of a more intrusive search. The defense correctly points to the distinguishing factor in these cases:

"Scenario one" involves law enforcement ONLY having a reasonable suspicion that a suspect may be armed. In these cases, a pat down search is required. "Scenario two" involves those cases where law enforcement has a reasonable suspicion that the suspect may be armed accompanied by suspect conduct who leads law enforcement to reasonably believe that the suspect was not only armed but he is presently prepared to use the weapon or that he was threatening to do so. In these latter class of cases, law enforcement is justified. In bypassing a pat down search in favor of a more intrusive search such as lifting a shirt or grabbing a weapon. Defendant asserts that his conduct falls within the first class of cases which requires that a pat down search be performed. The Court finds that as the defendant's conduct falls more squarely under the class of cases where a pat down search may be by passed (see Lafave's Search and Seizure: A Treatise on the Fourth Amendment).

As an initial matter, the court finds that it is unnecessary to analyze defendant's conduct under either class of the above cases. Based upon defendant conduct reported by dispatch and his conduct upon being approached by law enforcement, the officers had the right to immediately place defendant under arrest for disorderly conduct. Defense urges that defendant had to be "grossly intoxicated" before he could be arrested for disorderly conduct. The state correctly points out that the statute also allows a suspect to be arrested based upon disorderly or boisterous behavior (see SC Code Ann §16-17-530 (A)). The court agrees with the state. Therefore, the search of defendant could have been one incident to arrest. It does not matter that the search occurred prior to the arrest. In this scenario, law enforcement was not limited to a pat down search.

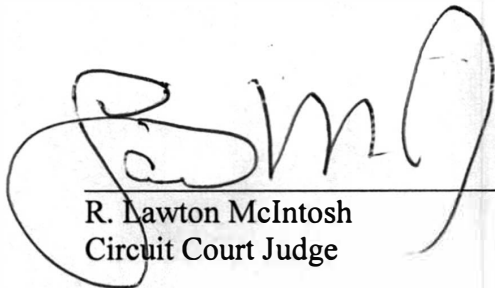
Notwithstanding, the court also finds that based upon a totality of the circumstances, defendant's conduct was such as would allow the responding officers to bypass a pat down search in favor of the more intrusive search of lifting up defendant's shirt. The dispatch to law enforcement relayed that defendant was intoxicated at Eddies Minute Mart; that defendant had shown a gun to a sales clerk in a non-threatening manner; that defendant was invading customer's personal spaces and that he was making suggestive sexual comments. Defendant was also allegedly buying strangers food. Officer Smith was aware of this as she approached defendant.

The court acknowledges that defendant was not acting in an immediately threatening manner when initially approached by law enforcement. However, the totality of defendant's conduct was sufficiently suspicious to cause a reasonably prudent officer to believe that defendant might present an immediate threat to their safety. Based upon a totality of the circumstances, the defendant was very intoxicated and had shown a gun to a sales clerk. Defendant smelled of alcohol and slurred his speech. Defendant disturbed customers and used inappropriate sexual language. Upon being approached by law enforcement defendant was animated, loud and boisterous. Defendant had a bulge in his waistband that he denied was a weapon while keeping his hands in the vicinity of the bulge during questioning by law enforcement. Law enforcement should not have to wait until a suspect becomes an actual threat to their safety nor should law enforcement have to be clairvoyant to determine that a suspect will become an immediate threat to their safety before conducting more intrusive searches for their safety. Based upon a totality of the circumstances, the officers were justified in by passing a pat down search in favor of lifting defendant's shirt (twice).

ACCORDINGLY, Defendant's motion to suppress the results of the search and seizure is Denied.

It is so ordered.

February 8, 2024
Anderson, SC



R. Lawton McIntosh
Circuit Court Judge

WITNESSES

Anderson Co. Sheriff's Office

J C Smith

201

ARREST WARRANT NUMBER

COUNT ONE 2020A0410200740
COUNT TWO 2020A0410200741

Make Return as to count 2 only - b4B

Henry J. Lee

**ACTION OF GRAND JURY
TRUE BILL**

OCT 27 2020

Foreperson of Grand Jury
Date:

[Signature]
Foreperson

VERDICT

[Signature]

Foreperson of Grand Jury
Date: *2-7-24*

DOCKET NO. 2020-GS-04- *02070*

The State of South Carolina

County of Anderson

COURT OF GENERAL SESSIONS

OCT 27 2020

_____, TERM

THE STATE

VS.

SAVAYEA ANTWAN GLENN

INDICTMENT FOR

**COUNT ONE - TRAFFICKING IN CRACK
COCAINE**

SC Code: § 44-53-375(C)
CDR Code: 0392

**COUNT TWO - POSSESSION OF A
WEAPON DURING THE COMMISSION OF
A VIOLENT CRIME**

SC Code: § 16-23-0490
CDR Code: 0549

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

INDICTMENT

OCT 27 2020

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

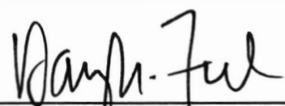
TRAFFICKING IN CRACK COCAINE

COUNT ONE: The defendant, Savayea Antwan Glenn, did on or about May 24, 2020, in Anderson County, South Carolina, knowingly sell, manufacture, deliver, purchase, or bring into this State, or did provide financial assistance or otherwise aid, abet, attempt, or conspire to sell, manufacture, deliver, purchase, or bring into this State, or was knowingly in actual or constructive possession or knowingly attempted to become in actual or constructive possession of twenty-eight (28) grams or more of Cocaine base (Crack Cocaine), a Schedule II controlled substance as defined and otherwise limited in Section 44-53-110, 44-53-210(d)(1), or 44-53-210(d)(2). All in violation of 44-53-375(C) of the South Carolina Code of Laws (1976), as amended.

POSSESSION OF A WEAPON DURING THE COMMISSION OF A VIOLENT CRIME

COUNT TWO: The defendant, Savayea Antwan Glenn, did, on or about on or about May 24, 2020, in Anderson County, South Carolina, while committing the crime of Trafficking in Crack Cocaine, a crime of violence, have in his possession a firearm. All in violation of 16-23-0490 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.



DANNY N. FULMER, JR.
SR. ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF ANDERSON

STATE

INDICTMENT/CASE#:

2020GS0402070

VS.

SAVAYEA ANTWAN GLENN

AKA:

Race: Black Sex: M Age: 32DOB: 1991 SS#: Address: City, State, Zip: Anderson, SC 29624200DL#* SID# A/W#: 2020A0410200740Date of Offense: 05/24/2020S.C. Code §: 44-53-375(C)CDR Code #: 0349

SENTENCE SHEET

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the above indictment comes now the Defendant who was

☒ CONVICTED OF or ☐ PLEADSTO: Trafficking Crack Cocaine 28g but <100g 3rd offenseIn violation of § 44-53-375(C) of the S.C. Code of Laws, bearing CDR Code # 0349☐ NON-VIOLENT ☒ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ § 17-25-45
(CSC w/minor 1st or CSC w/minor 3rd)The charge is: ☐ As indicted, ☐ Lesser Included Offense, ☐ Defendant Waives
Presentment to Grand Jury. (def.'s initia)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Danny N. Fulmer, Jr.,
Sr. Assistant Solicitor

SC Bar #

15693

Defendant

101794

Attorney for Defendant

SC Bar
#WHEREFORE, the Defendant is committed to the ☒ State Department of Correction ☐ County Detention Center,for a determinate term of 25 days/months/years Time Served ☐ Youthful Offender Act not to exceed yearsand/or to pay a fine of \$50,000 provided that upon the service of days/months/years/Time Served and or paymentof \$; plus costs and assessments as applicable*; the balance is suspended with **probation** for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

The sentence shall run

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on: ☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by SCDOC.
days/months☐ To include time spent on monitored house arrest prior to trial and sentencing.☐ The Defendant Shall be Released from County Detention Center.Pursuant to 18 U.S.C. § 922 and § 16-25-30 it is unlawful for a person convicted of a violation of § 16-25-20 or § 16-25-65
(Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ PTUP after _____ months/years

And Other Terms Listed Below:

- | | | |
|---|---|---|
| ☐ Substance Abuse Counseling | ☐ Completion of GED | ☐ Random Drug/Alcohol Testing |
| ☐ Attend Voc. Rehab. Or Job Corp | ☐ No Contact with Victim | ☐ Domestic Violence Intervention Program |
| ☐ Mental Health Counseling | ☐ May serve W/E beginning: _____ | |
| ☐ Sex Offender Registry pursuant to S.C. Code § 23-3-430 | ☐ Public Service Employment _____ days/hours | |
| ☐ Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135. | | |
| ☐ Other: _____ | | |

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total \$ _____ plus 20% fee: _____ \$ _____

Payment Terms: _____ ☐ Set by SCDPPPS

Recipient: _____

*Fine:

Fine may be pd. in equal consecutive weekly/monthly pmts. of \$ _____

§14-1-206 (Assessments 107.5%)
§14-1-211 (A)(1)(Conv. Surcharge)
§14-1-211 (A)(2)(DUI Surcharge)
§56-5-2995 (DUI Assessment)
§56-1-286 (DUI Breath Test)
§14-1-212 (Law Enforce. Funding)
§14-1-213 (Drug Court Surcharge)
§34-11-70(b)and(c), and 34-11-90(c)and(d) (Admin Fraud Check Court Costs)
§50-21-114 (BUI Breath Test Fee)
§56-5-2942(J) (Vehicle Assessment)
3% to County (if paid in installments)

Beginning

\$100

\$100

\$12

\$25

\$25

\$150

\$41

\$50

\$40/ea

TBD

\$500

TBD

TOTAL

- ☐ Appointed PD or appointed other counsel, Proviso requires \$500 be paid to Clerk during probation and shall be collected before any other fees
☐ § 17-3-30(B) Unpaid Application Fee to be paid to the Public Defender Fund

Clerk of Court/Deputy Clerk:

Court Reporter:

Presiding Judge:
Judge Code:

Sentence Date:

\$50,000.00

\$53,750.00

\$100.00

\$25.00

\$150.00

\$3,120.75

\$107,145.75

C. Reena Thomason
Lisa Taylor2155
2-7-25

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled “Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings.”

Respectfully Submitted,



Lara M. Caudy
Senior Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

ATTORNEY FOR APPELLANT

This 13th day of May, 2025.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Anderson County

Honorable R. Lawton McIntosh, Circuit Court Judge

RECEIVED

May 13 2025

THE STATE,

RESPONDENT,

SC Court of Appeals

V.

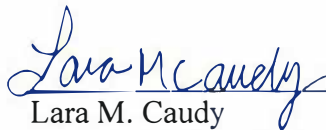
SAVAYEA ANTWAN GLENN,

APPELLANT.

APPELLATE CASE NO. 2024-000289

CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Record on Appeal in the above referenced case has been served upon Ambree M. Muller, Esquire, at her primary email address listed in the Attorney Information System (AIS), this 13th day of May, 2025.



Lara M. Caudy
Senior Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

ATTORNEY FOR APPELLANT