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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM PICKENS COUNTY
Court of General Sessions

Jessica A. Salvini, Circuit Judge

Appellate Case No. 2025-002334

The State of South Carolina, Respondent,

v.

Benjamin Allen Wemp, Appellant.

INITIAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

1. DID THE TRIAL COURT ERR IN FINDING THE APPELLANT'S CONDUCT WAS NOT CONSTITUTIONALLY PROTECTED UNDER THE SECOND AMENDMENT TO THE UNITED STATES CONSTITUTION?

2. DID THE TRIAL COUR ERR IN FINDING THE STATUTE MET STRICT SCRUTINY UNDER ARTICLE I, SECTION 20 OF THE SOUTH CAROLINA CONSTITUTION OF 1895?

3. DID THE TRIAL COURT ERR IN RULING THAT THERE WAS NO *MENS REA* REQUIREMENT AS TO APPELLANT'S CONDUCT IN BEING ON CLEMSON UNIVERSITY PROPERTY AND IN DENYING APPELLANT'S MOTION FOR NEW TRIAL UPON THE SAME GROUND?

4. DID THE TRIAL COURT ERR IN REFUSING TO CHARGE APPELLANT'S REQUESTS TO CHARGE AS TO THE *MENS REA* REQUIRED FOR THE OFFENSE AS THEY REPRESENTED A CORRECT STATEMENT OF THE LAW AND IN DENYING APPELLANT'S MOTION FOR NEW TRIAL UPON THE SAME GROUND?

5. DID THE TRIAL COURT ERR IN GRANTING THE STATE A CONSTRUCTIVE AMENDMENT OF THE INDICTMENT AND IN DENYING THE APPELLANT'S MOTIONS FOR DIRECTED VERDICT AND FOR VERDICT IN ARREST OF JUDGMENT?

STATEMENT OF THE CASE

This matter arises from the Appellant's arrest for possessing two (2) firearms on the campus of Clemson University ("Clemson") on October 26, 2024. Appellant was charged under Warrant Number 2024A3920300078 with the offense of "Carrying or Displaying Firearms in Public Buildings, School Property, or Adjacent Areas" in violation of S.C. Code Ann. § 16-23-420. The Appellant was indicted under Indictment Number 2025-GS-39-02391 by the Grand Jury of Pickens County on October 21, 2025, and pled Not Guilty to the same. Appellant's case was called for trial on November 17, 2025, before the Honorable Jessica A. Salvini, Circuit Judge, and a jury. Prior to trial the Appellant filed a Demurrer to the Indictment and Motion to Dismiss the Warrant based upon the Supreme Court of the United States' ruling in *New York State Rifle & Pistol Association, Inc. v . Bruen*, 597 U.S. 1 (2022). Appellant further filed a pre-trial Motion to Quash the Indictment or Elect upon the grounds that the indictment was duplicitous. Judge Salvini denied these motions from the bench on November 17, 2025, and the case proceeded to trial.

The Appellant did not testify in his own defense and presented no evidence. The Appellant was found Guilty as to the indictment on November 18, 2025. Appellant made two (2) post-trial motions, one for a new trial absolute and the second for verdict in arrest of judgment. Judge Salvini denied both motions. The Appellant was sentenced on November 18 to a term of imprisonment not to exceed five (5) years suspended upon the service of eighteen (18) months' probation under the Youthful Offenders Act. Appellant served and filed his Notice of Appeal on November 19, 2025. This Court's appellate jurisdiction was invoked pursuant to S.C. Code Ann. § 14-8-200(3) and Rule 203(d)(1)(A)(ii), *SCACR*, as it involved a challenge to the constitutionality of a state statute under both the State and Federal constitutions.

FACTUAL BACKGROUND

The facts of this case are largely undisputed. On October 26, 2024, a local group had gathered in front of Mell Hall to engage in "street preaching." Tr. p.97, ll.5-10. Appellant, who was a member of the group, was in attendance. A Clemson student, Eli Warnock ("Warnock"), testified that he observed one (1) member of the group speaking into a microphone or megaphone, and behind him was another member of the group sitting on a bench. Tr. p.98, ll.6-11. Warnock further testified that he observed what appeared to be the wooden hilt of a revolver on the right hip of the man sitting on the bench. Tr. at ll.12-20. Warnock then called 9-1-1 to report the man with a firearm to police and to provide a description. Tr. at pp.98, ll.21-25 to p.99, ll.1-19. Warnock further testified that, to his knowledge, the bench where the man was located was on Clemson property. Tr. p.101, ll.1-6.

Seargent Matthew J. Prisco ("Sgt. Prisco"), Officer Clayten L. Barnes ("Officer Barnes"), Officer Dakoda Callis ("Officer Callis"), and Officer Randy C. Freeman ("Office Freeman") all responded to the scene. Sgt. Prisco and Officer Callis approached the gathering from the direction of Bowman Field while Officer Barnes approached from the parking lot behind Mell Hall. Tr. p.134, ll.8-10; p.143, ll.21-23. The officers found the man matching the description provided by Warnock and determined him to be the Appellant. Tr. p.187, ll.15-22. The identification of the Appellant was based upon the Appellant's Concealed Weapons Permit ("CWP") and his social security card, both of which were found in his wallet. Tr. p.200, ll.23-25 to p.201, l.1 The responding officers all agreed that Appellant was calm, cooperative, and non-threatening. Tr. p.124, ll.16-25 to p.125, l.1. There was no testimony that Appellant ever brandished the firearm, discharged the firearm, or otherwise was engaged in unlawful behavior other than being on

Clemson's property. *Id*. Furthermore, at the time the officers approached the Appellant he was still sitting on the bench and was reading a Bible. Tr. p.124,l.14.

When the officers approached the Appellant they noticed that the Appellant was opening carrying a firearm on his right hip in a holster. Tr. p.138, ll. 4-5. Sgt. Prisco placed the Appellant under arrest for carrying a firearm on school property and retrieved the firearm from the Appellant's holster. Tr. p.190, ll.12-20. The firearm retrieved from Appellant's holster was determined to be a .45 Long Colt caliber single-action revolver.[1] Tr. p.177, ll.13-15. After Appellant was placed under arrest he was taken to Officer Barnes' vehicle located in the parking lot behind Mell Hall. In a search incident to arrest Appellant was found to be in possession of a second firearm in his front left pants pocket. Tr.122, ll.14-21. This firearm was later determined to be a .38 Special caliber double-action revolver. Tr. p.166, ll.1-5. The Appellant made no statements to law enforcement.

Appellant was charged with Carrying or Displaying Firearms in Public Buildings, School Property or Adjacent Areas in violation of S.C. Code Ann. § 16-23-420 on warrant number 2024A3920300078. *See* Warrant. Appellant was arraigned on this charge before the Honorable Gary Clary, Municipal Court Judge, and Judge Clary set the Appellant's bail at Twenty-Five Thousand ($25,000.00) Dollars, cash only. Appellant was indicted by the Grand Jury of Pickens County on October 21, 2025, and trial commenced before Judge Salvini on November 17, 2025. *See* Indictment. Prior to trial the Appellant made a motion challenging the constitutionality of § 16-23-420 on Second Amendment grounds and pursuant to Art. I, § 20 of the South Carolina

[1] A single-action revolver must be manually cocked each time before the gun is fired. Once the trigger is pulled, and the gun has been fired, the hammer must be manually cocked again before the firearm will fire again. *Burleson v. RSR Grp. Fla., Inc.,* 981 So. 2d 1109, 1111 (Ala. 2007). A double-action revolver will fire even if the hammer is not "cocked" and after firing immediately re-cocks the hammer.

Constitution. *See* Def.'s Demurrer to Indictment and Motion to Dismiss Warrant. The trial court denied the Appellant's constitutional challenge on the grounds that it was improperly brought as a facial challenge, and that the argument was more properly made at directed verdict. Tr. p.52.

During the Appellant's opening statement to the jury, counsel for the Appellant stated:

> "The indictment alleges that while on the premises of Clemson University, he willfully and unlawfully possessed a firearm. The issue is whether or not he knew he was on Clemson's [c]ampus. That is going to be the factual issue in this case. The factual issue in this case is, Where was he; can they prove where he was; can they prove that it satisfies the requirements in the statute for being on campus of a university; but then also whether or not he had knowledge sufficient to inform that. And so to prove that, what do they need? They're going to need to show you how he got there; they're going to need to show you what he saw; they're going to need to show you how long he was there; they're going to need to show you what he knew and how he knew it. It's a case – she said don't speculate. But they're going to ask you to speculate, they're going to ask you to speculate about what he knew and how he knew it."

Tr. p.92, ll.20-25 to p.93, ll.1-10.

At this juncture the State objected and a side-bar conference was convened with the Court. Tr. p.93, ll.11-15. Late the trial court placed the substance of the conference, and its ruling, on the record. Tr. pp.145-47. As noted by the trial court, the State's objection to Appellant's opening statement was the Appellant's reading of the statute and the indictment that the State had to prove some form of intent as to being on school property. Tr. p.146, ll.1-11. The trial court, in explaining its reasoning for sustaining the objection, held that the State was not required to prove any intent as to the Appellant's being on Clemson's property, but solely as to his possession of the firearm. *Id*.

At the close of the State's case the Appellant moved for directed verdict. Tr. pp.206-19. Appellant again argued that the State had failed to come forward with a sufficient historical analogue under *Bruen* to support the charge. Tr. p.207, ll.6-11. Furthermore, Appellant argued that

the State's reliance upon the "Sensitive Places Doctrine" was misplaced as the State had simply rested upon a presumption that all of Clemson was a sensitive place. Tr. p.207, ll.17-23. Appellant additionally argued that the statute violated the Second Amendment, and the holding in *Bruen*, in being substantially overbroad as it essentially declared all of property under Clemson's control to be a "sensitive place." *Id*. Appellant further argued that the trial court should apply strict scrutiny, as opposed to the test set forth in *Bruen*, in deciding Appellant's state constitutional challenge. *See* Demurrer at pp.15-17. Appellant, conceding the first prong of the strict scrutiny analysis, contended that the statute was not narrowly tailored as it did not use the lease restrictive means to achieve the State's compelling interest. *Id.* at p.17.

Appellant further moved for directed verdict on the grounds that the State had failed to show the requisite *mens rea* to the offense, and specifically that the State had failed to show any evidence as to the Appellant's intention as to being on Clemson's property. Tr. p.210, ll.12-24. Furthermore, the Appellant renewed his objection, and moved for directed verdict based upon the variance, to the trial court's prior ruling which had worked a constructive amendment of the indictment. Tr. p.211, ll.2-8. The trial court denied the Appellant's motions.

The Appellant presented no evidence, and moved again for directed verdict based upon the same grounds. Tr. pp.235-36. The trial court again denied the Appellant's motions. The trial court, during the charge conference, declined to charge Appellant's Requests to Charge Nos. 4, 5, 5A, 5B, 5C, 6, and 6A. Tr. p.222, ll.10-14. These requested the trial court to charge to the jury the definition of "willfully"; the definition for the mental state of "knowingly;" the definition for the mental state of "general intent;" the definition for the mental state of "recklessly;" mistake of fact; and mistake of fact for a general intent offense, respectfully. *See* Def.'s Requests to Charge 4, 5, 5A, 5B, 5C, 6, and 6A.

During closing arguments, the State highlighted the trial court's ruling, and the objection which it sustained during opening statements, to the jury. Particularly, the State argued:

> "Members of the jury, when the Defendant opened, when they came up here and they talked to you, they told you that the State had to specifically prove that the Defendant knew he was on Clemson University [c]ampus with those guns. *That is objectively wrong. That is incorrect.* I'm not up here asserting intentionality or anything like that, but that is misleading. *That is not the law*. And the Judge is going to tell you all that in a minute. *They told you all wrong*. We have to prove that he was on Clemson University [c]ampus, *nothing about him knowing that he was there. There is no intent requirement with that regard*." (emphasis added)

Tr. p.244, ll.5-16.

During the trial court's charge on the law it gave the following charge as to criminal intent:

> "Now, in order to establish criminal liability criminal intent is required. For example, the mental state required to be proven by the State for a particular crime might be purpose, intent, knowledge, recklessness, or criminal negligence. Criminal intent must be proven by the State beyond a reasonable doubt.
>
> Criminal intent is always a matter that must be determined by the jury from the circumstances surrounding the situation. There is no way to prove intent to a mathematical certainty; there is no way medical science can dissect a person's brain and determine what the person had in mind, so the law says that criminal intent may be inferred from the circumstances shown to have existed. This is how you make a determination of whether or not the element requiring intent was present.
>
> It is not necessary to establish intent by direct and positive evidence, but intent may be established by inference in the same way as any other fact, by taking into consideration the acts of the parties and all the facts and circumstances of the case.
>
> Criminal intent is a mental state; a [considered] wrongdoing It is up to you to determine what the Defendant intended to do based on the circumstances shown to have existed. Criminal intent can arise from action or a failure to act; it may arises from negligence, recklessness, or indifference to duty or consequences that [are] considered by the law to be the equivalent of criminal intent." (cleaned up).

Tr. p.261, ll.6-25 to p.262, ll.1-6.

The trial court charged the jury as to § 16-23-420 by reciting, substantially, the words of the statute.Tr.p.262, ll.7-14. Furthermore, the trial court charged the jury that to found the Appellant guilty that it must find beyond a reasonable doubt that (1) the Appellant possessed; (2) a firearm; (3) on a premises or property owned, operated, or controlled by; (4) a private or public college or university; and (5) that he did so without the express permission of the authorities in charge of the premises or property. Tr. p.262, ll.15-21. The trial court further charged the jury as to actual possession and the requirement that the Appellant "had knowledge of its presence." Tr. p.263, ll.2-7.

At the close of the charge the Appellant renewed his request to charge numbers 4, 5, 5A, 5B, 5C, 6, 6A, and 7. Tr. 265, l.25 to p.266, ll.1-3. The jury returned a verdict of guilty as to the indictment. Appellant made a post-trial motion for a new trial absolute based upon the State's failure to prove each and every element of the offense, the failure to charge the jury as to the requisite intent, Appellant's constitutional challenge, and all other prior directed verdict motions. Tr. pp. 269-70. Appellant further moved for verdict in arrest of judgment upon the grounds that the indictment was duplicitous and the trial court's constructive amendment of the indictment. Tr. pp.269-70. The trial court denied both motions orally from the bench. Tr. p.270, ll.5-8. The Appellant, who had no prior criminal record, was sentenced to a term of imprisonment not to exceed five (5) years under the Youthful Offender Act suspended upon the service of eighteen (18) months' probation. *See* Sentencing Sheet.

ARGUMENTS

I. DID THE TRIAL COURT ERR IN FINDING THE APPELLANT'S CONDUCT WAS NOT CONSTITUTIONALLY PROTECTED UNDER THE SECOND AMENDMENT TO THE UNITED STATES CONSTITUTION?

As set forth above, Appellant moved prior to trial, at directed verdict, and in his motion for a new trial for a determination by the trial court that the offense for which the Appellant was charged violated the Second Amendment to the United States Constitution. For the reasons set forth below, the trial court ruling that the Second Amendment was not implicated should be reversed. The Second Amendment provides, "A well-regulated Milita, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed."

STANDARD OF REVIEW

Generally, in South Carolina, "The party challenging the constitutionality of a statute must prove it is unconstitutional." *Owens v. Stirling,* 443 S.C. 246, 261, 904 S.E.2d 580, 588 (2024). This Court has a limited scope of review in such cases, and all statutes are presumed to be constitutional. *S.C. Hum. Affs. Comm'n v. Zeyi Chen*, 430 S.C. 509, 528, 846 S.E.2d 861, 871 (2020). Enactments by the General Assembly will only be declared unconstitutional where the statute's invalidity is clearly shown beyond a reasonable doubt. *Id*. at 528-29, 846 S.E.2d at 871. "The party challenging the statute's constitutionality bears the burden of proof." *In re Justin B.*, 405 S.C. 391, 395, 747 S.E.2d 774, 776 (2013).

However, in *Bruen*, the United States Supreme Court set forth, for the first time, the determinative test for analyzing challenges under the Second Amendment. Under *Bruen* " '[w]hen the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct.' " *United States v. Gould*, 163 F.4th 795, 800 (4th Cir. 2026) (*quoting Bruen*,

597 U.S. at 24). Essentially, *Bruen* created a two-step framework where the Court must first determine whether the Appellant's conduct fell within the scope of the Second Amendment. "[T]he second step requires, the government [to] justify its regulation by demonstrating that it is *consistent with* the Nation's historical tradition of firearm regulation.' " *Gould*, 163 F.4th at 800 (*quoting Bruen,* 597 U.S. at 24) (emphasis original).

In analyzing the Appellant's Second Amendment challenge the Court must apply the test set forth in *Bruen*. As this Court has noted, a state court "form of practice may not defeat a federal right." *Norton v. Norfolk S. Ry. Co.*, 350 S.C. 473, 476, 567 S.E.2d 851, 853 (2002); *see also Cooper v. Aaron*, 358 U.S. 1, 18 (1958) (holding that the United States Supreme Court's interpretation of the Federal constitution is the "supreme law of the land."). Accordingly, the burden rests upon the State to justify the regulation, not upon the Appellant to show its infirmity.

Additionally, at the trial of this case there was much discussion of whether Appellant's challenge was facial or as-applied. " 'A facial challenge is an attack on a statute itself as opposed to a particular application.' " *Doe v. State*, 421 S.C. 490, 502, 808 S.E.2d 807, 813 (2017) (*quoting State v. Legg*, 416 S.C. 9, 13, 785 S.E.2d 369, 371 (2016)). In an "as-applied" challenge the party challenges the statute solely as to how he or she has acted or proposes to act. *Doe*, 421 S.C. at 503, 808 S.E.2d at 813 (quotation omitted). " 'The line between facial and as-applied relief is [a] fluid one, and many constitutional challenges may occupy an intermediate position on the spectrum between purely as-applied relief and complete facial invalidation.' " *State v. German*, 439 S.C. 449, 466, 887 S.E.2d 912, 920 (2023) (*quoting Doe*, 421 S.C. at 502, 808 S.E.2d at 813). The difference between the two (2) types of challenges lies in the remedy employed. In a successful facial challenge the entire statute is rendered inoperative, while in an "as-applied" challenge the statute is rendered inoperative as to future conduct in similar circumstances. *Doe*, 421 S.C. at 503,

808 S.E.2d at 814. The Supreme Court of the United States has recognized the continued validity of the facial and as-applied distinction within the context of Second Amendment challenges. *See, generally, United States v. Rahimi*, 602 U.S. 680 (2024). Appellant brought a challenge to the statute both facially and as-applied.

ARGUMENT

As noted above, the facts of this case are largely undisputed. The Appellant was found on Clemson's property, reading a Bible, while possessed of two (2) firearms. There was no evidence that the Appellant brandished the firearms, threatened anyone, otherwise breach the peace, nor did the Appellant offer any resistance to his arrest. Indeed, all the testimony was to the effect that the Appellant was compliant and peaceful. Furthermore, Appellant had no prior convictions and there was no evidence that he was otherwise prevented from carrying a firearm. The only reason the Appellant's conduct was deemed unlawful was because the property on which he sat, and read his Bible, was owned by Clemson University.

Appellant's conduct plainly meets the first prong of the *Bruen* test as the Second Amendment provides for an individual right to carry firearms outside of the home for self-defense. In make a determination under the first prong of *Bruen* the High Court look at three (3) factors: (1) whether the person challenging the law was part of the people whom the Second Amendment protects; (2) whether the weapons regulated by the statute were in common use for a lawful purpose, *e.g.* self-defense; and (3) whether the Second Amendment protects the challengers course of conduct. *United States v. Price*, 111 F.4th 392, 400 (4th Cir. 2024) (*citing Bruen*, 597 U.S. at 31-32). There is no dispute that the Appellant is a citizen of this State and of the United States, and accordingly, one of the "people" under the terms of the Second Amendment. Additionally, the firearms carried by the Appellant, handguns, are plainly in common use for self-defense. *See*

District of Columbia v. Heller, 554 U.S. 570, 629 (2008) (holding that handguns are weapons in common use for self-defense). Finally, the plain text of the Second Amendment presumptively guarantees the right to carry firearms in public for self-defense. *Bruen*, 597 U.S. at 33. Therefore, the Court must proceed to the second-prong analysis, which is whether the State can justify the regulation as one that is consistent with our country' s history of firearm regulation. *Id.* at 24.

At trial the State attempted to sidestep its duty to justify the regulation with historical analogues by invoking the "Sensitive Places Doctrine." The Sensitive Places Doctrine had its origins in *dicta* from the Supreme Court's decision in *Heller* and *McDonald v. City of Chicago*, 561 U.S. 742 (2010). In *Heller* the Court stated:

> "Although we do not undertake an exhaustive historical analysis today of the full scope of the Second Amendment, nothing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill, or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, or laws imposing conditions and qualifications on the commercial sale of arms."

554 U.S. at 626-27. In *Bruen* the Court again affirmed the continued validity of the Sensitive Places Doctrine, but cautioned against reading the doctrine too broadly. *See* 597 U.S. at 31 ("But expanding the category of 'sensitive places' simply to all places of public congregation that are not isolated from law enforcement defines the category of 'sensitive places' far too broadly.").

In the present case the State, and by extension the trial court, erred by treating the Sensitive Places Doctrine as essentially an intermediate step between *Bruen*'s two-step framework. Indeed, the State in the brief it provided to the trial court on the date of the hearing, and never served upon the Appellant, asserted that the "If the conduct is presumptively protected *and a sensitive place is not at issue*" only then should the trial court consider whether the State has produced sufficient historical analogues to justify the regulation. However, this is incorrect. There is no "is it a sensitive

place" step under the *Bruen* framework. "Sensitive place laws 'directly impact the right to bear' arms and are therefore, as the Fifth Circuit concluded, 'subject to *Bruen*'s historical analysis' at step two." *Kipke v. Moore*, 165 F.4th 194, 207 (4th Cir. 2026) (*quoting McRorey v. Garland*, 99 F.4th 831, 838 (5th Cir. 2024)). Contrary to the State's assertion below, the Sensitive Places Doctrine is not a "get out of jail free" card which the State may use to withstand a Second Amendment challenge. The sole reliance for this proposition was a Michigan Court of Appeals opinion where the court held that, upon a determination that a place was a "sensitive place," the inquiry was at an end. *See Wade v. University of Michigan*, 16 N.W.3d 543, 555 (Mich. Ct. App. 2023). However, this reading is flatly contrary to the Supreme Court's holding in *Bruen*. *See* 597 U.S. at 30 ("And courts can use analogies to those historical regulations of "sensitive places" to determine that modern regulations prohibiting the carry of firearms in *new* and analogous sensitive places are constitutionally permissible."). As one Justice of the Michigan Supreme Court put it, "The core error [of the Michigan Court of Appeals' decision] is the wooden application of the Supreme Court's discussion of sensitive places." *Wade v. University of Michigan*, 12 N.W.3d 6, 9 (Mich. 2024) (Viviano, J., dissenting).

In terms of actual historical analogues presented to the trial court, the State recycle old college ordinances affecting students which had already been rejected by the courts whose decisions they cited. The State merely cited to four (4) college ordinances, one from a private university, which were cited in a United States District Court decision. The State cited a 1795 regulation of Yale University, a private institution, which prohibited students from keeping firearms or gunpowder. The State also cited to regulations from the University of Georgia and the University of North Carolina which prohibited students from possessing firearms *anywhere*. The State further cited an ordinance from the University of Virginia which prohibited students from

possessing liquor or firearms on school property. Finally, the State cited to two (2) statutes from Texas and Missouri which prohibited any person from carrying a firearm into "any school room, or other place where persons are assembled for…educational or scientific purposes." It is readily apparent that the State did not actually examine any of these regulations, but instead merely plagiarized their descriptions from the Fifth Circuit Court of Appeals decision in *United States v. Allam*, 140 F.4th 289 (5th Cir. 2025) (*Allam II*). However, compounding this error is the fact that the State failed to reveal that the Fifth Circuit had rejected every one of these analogies.[2] *Allam*, 140 F.4th at 298; *see also United States v. Allam*, 677 F.Supp.3d 545, 569-72 (E.D. Tex. 2023) (*Allam I*) (rejecting college ordinances as well).

As the District Court noted, "three university regulations that applied only to students cannot be said to be representative of our Nation's tradition of firearms regulation." *Allam I*, 677 F.Supp.3d at 572. Additionally, and absent from the State's brief, the District Court noted that the Texas statute in question also prohibited the carrying of firearms into any "circus, show, public exhibition of any kind, ballroom, social party or gathering." *Id*.fn.42. Likewise, the Missouri statute "did not 'go as far as Texas,' in that Missouri's prohibition *did not restrict open carry*." *Id*. at 574 (emphasis added). Finally, and most damning, was the failure of the State to consider the context in which the *Allam* decisions were decided. In *Allam* the defendant had parked his vehicle, which he was living in, next to a private school which had grades Pre-K through 8th grade. *Allam II*, 140 F.4th at 291. For seven (7) days the defendant remained parked next to the school and

[2] The sole exception is the ordinance made by Yale University. However, private institutions are not bound by the Bill of Rights. *See, generally, Civil Rights Cases*, 109 U.S. 3 (1883) (holding that the Fourteenth Amendment's Due Process Clause applies only to state actions). Accordingly, what a private institution does over its own property, and those who voluntarily enter into a contract with it, has no bearing on *government* regulations of firearms. Appellant does not, and has not, asserted that private property owners cannot exclude firearms under the Second Amendment.

refused to leave. *Id*. Due to the defendant's presence the school stopped having all outdoor activities. *Id.* at 291-92. Finally, when confronted by a parent, the defendant ominously stated that he was on a "mission" and that once it was complete "no one would ever see him again[.]" *Id*. at 292. Based upon these remarks officers conducted a traffic stop on the defendant, and attempted to arrest him for the traffic violation. *Id.* The defendant resisted the arrest and was discovered to be in possession of an AR-15 style[3] rifle, 150 rounds of ammunition, and a loaded thirty (30) round magazine. *Id*. Additionally, a search of the defendant's car revealed notes containing descriptions of violent acts directed at government officials and the defendant's phone contained videos and images of the defendant disemboweling cats and setting live cats on fire. *Id.*fn.3. The search also revealed marijuana residue and cocaine. *Id*. In denying the defendant's as applied challenge, the Fifth Circuit held that the buffer law was constitutional because the historical analogues corroborate the constitutionality of disarming a visibly threatening individual as near a school as [defendant] was." *Id*. at 299. This is of course an extremely far cry from the Appellant's conduct.

Again, the State presented no *real* historical analogues for the trial court to base its decision upon. Instead, the State merely relied upon the Michigan Court of Appeals' decision in *Ward* for the, incorrect, proposition that the sensitive places doctrine presumptively rendered the statute constitutional. Next the State erred by presenting historical analogues which were rejected by other courts, while insinuating they were accepted, and then misapplying the decision reached by the Fifth Circuit in *Allam*.

Additionally, the trial court erred in its Second Amendment analysis by failing to consider the sweep of § 16-23-420. As noted above, § 16-23-420 declares it "unlawful for a person to

[3] "AR-15 style" refers to a series of rifles which are all ultimately derived from the ArmaLite 15 design by Eugene Stoner and share, generally, a common direct impingement gas operation system.

possess a firearm of any kind on any premises or property owned, operated, or controlled by a private or public school, college, university, technical college, other post-secondary institution." The sweep of this statute is staggering. As noted by the Appellant at trial this statute would apply to property under Clemson's control which has no relation to any academic mission. This would include property such as Clemson's experimental forest, an agricultural station in Barnwell County, and even property which is open for hunting with firearms.[4] The State argued, repeatedly, to the trial court that Appellant's argument in this regard was a "red herring" as Appellant was found in the "core campus."[5]

Appellant admits that as far as an "as-applied" challenge goes where the Appellant was is a consideration. However, the sweep of the statute is not rendered superfluous just because Appellant was admittedly on Clemon property. The sweep of the statute presents the exact problem noted by the Supreme Court in *Bruen*. The State continually found itself in a circular argument whereby the Appellant's conduct could be lawfully prohibited because he was in a sensitive place, and he was in a sensitive place because it was Clemson property. This exact line of logic was rejected in *Bruen*. In *Bruen* New York characterized its "proper-cause requirement as a 'sensitive place' law." 597 U.S. at 30. In rejecting this characterization, the Court held "expanding the category of 'sensitive places' simply to all places of public congregation that are not isolated from law enforcement defines the category of 'sensitive places' far too broadly. Respondents' argument would in effect exempt cities from the Second Amendment and would eviscerate the general right to publicly carry arms for self-defense[.]" *Id* at 31. Contrary to the State's assertion to the trial

[4] *See* Keowee Wildlife Management Area, *S.C. Dep't of Nat. Resources*, https://public-lands-scdnr.hub.arcgis.com/pages/keowee-wma (last accessed Mar. 22, 2026).

[5] The State never offered an explanation for what the "core campus" was, nor did any witness testify as to what this phrase meant.

court, the sweep of the statute is important to the courts' consideration as it the statute in this case "eviscerate[s] the general right to publicly carry arms for self-defense" based solely upon whether the property is under the control of a public university.

The sweeping breadth of this portion of the statute is further highlighted by the second provision of the statute. § 16-23-420 declares it unlawful "to possess a firearm of any kind…in any publicly owned building[.]" Under the plain and ordinary meaning of the second part of the statute the General Assembly clearly limited the prohibition on possession of firearms to a person who is "in" a publicly owned building. However, as it relates to public universities, the General Assembly broadened the sweep of the statute to any person "on any premises or property owned, operated, or controlled by a….public" college or university. *Id*.

Here the trial court erred in adopting the State's position by (1) utilizing the Sensitive Places Doctrine as an intermediate step to relieve the State of its burden to produce to come forward with historical analogues; (2) relying upon the historical analogues offered by the State which such analogues were of little relevance and inconsistent with the historical understanding of the Second Amendment; and (3) by failing to consider the broad sweep of the statute which prohibits the carry of firearms on *any* property which is "owned, leased or controlled" by a public university. Under the set forth in *Bruen* Appellant's conduct squarely falls within the plain text of the Second Amendment, and the State has failed to demonstrate sufficient historical analogues to justify the statute as applied to the Appellant's conduct. Accordingly, the trial court erred in failing to grant Appellant's directed verdict and in failing to grant Appellant's motion for a new trial absolute.

II. DID THE TRIAL COUR ERR IN FINDING THE STATUTE MET STRICT SCRUTINY UNDER ARTICLE I, SECTION 20 OF THE SOUTH CAROLINA CONSTITUTION OF 1895?

At the trial of this case the Appellant challenged the statute not only on the basis of the Second Amendment, but also Article I, Section 20 of the South Carolina Constitution of 1895. Appellant's position before the trial court, and before this Court, is that the right to bear arms guaranteed by the South Carolina Constitution is a fundamental right and statutes restricting such a right are subject to strict scrutiny. Appellant moved for both directed verdict and for a new trial absolute on this ground, and both motions were denied by the trial court.

STANDARD OF REVIEW

As Appellant brings a challenge under the State Constitution the Appellant concedes that he bears the burden of proving the unconstitutionality of the statute by proof beyond a reasonable doubt. *See Planned Parenthood S. Atl. v. State*, 440 S.C. 465, 476, 892 S.E.2d 121, 127 (2023) (holding that proof beyond a reasonable doubt standard applied in challenge to state statute on state constitutional grounds). Secondly, Appellant further concedes that the South Carolina Constitution of 1895 is not a grant of, but a limitation on, legislative power, and the General Assembly may enact any law which is not expressly, or by clear implication, forbidden by the state or federal constitutions. *Segars-Andrews v. Jud. Merit Selection Comm'n*, 387 S.C. 109, 118, 691 S.E.2d 453, 458 (2010). The standard of scrutiny to be employed is determined by whether the statute restricts or impairs a fundamental right. *In re Luckabaugh*, 351 S.C. 122, 140, 568 S.E.2d 338, 347 (2002). If a fundamental right is restricted or impaired the statute is subject to strict scrutiny, otherwise the Court employs the rational basis test. *Id*.

Under strict scrutiny the State must show that the law meets a compelling state interest and is narrowly tailored to effectuate that interest. *League of Women Voters of S.C. v. Alexander*, 446 S.C. 591, 612, 921 S.E.2d 660, 672 (2025). A statutory enactment is narrowly tailored where it uses the least restrictive means of achieving the compelling state interest. *Shelton v. Tucker*, 364

U.S. 479, 488 (1960). "A statute is narrowly tailored if it targets and eliminates no more than the exact source of the 'evil' it seeks to remedy." *Frisby v. Schultz*, 487 U.S. 474, 485 (1988).

ARGUMENT

As a first matter, the Court must determine if the right to bear arms found in Article I, Section 20 is a "fundamental right."[6] Article I, Section 20 provides, in part, "A well regulated militia being necessary to the security of a free State, the right of the people to keep and bear arms shall not be infringed." It is patently obvious that the language employed in the South Carolina Constitution is fundamentally the same as that employed in the Second Amendment. Indeed, the only differences are the lack of a comma after the word "militia" and the fact that "militia" is not capitalized. It is of course beyond dispute that the Second Amendment has been recognized as a fundamental right. *McDonald*, 561 U.S. at 778.

Appellant admits that no decision of this Court has ever held that the right to bear arms found in the state constitution is a fundamental right. The Appellant must further note that, until the adoption of the Constitution of 1868, none of South Carolina's prior constitutions contained an explicit recognition of the right to bear arms. Instead, such a right seemed to be recognized, in *dicta*, as a pre-existing one right. *See, e.g., State v. Carew*, 47 S.C.L. (13 Rich.) 498, 547 (1866) ("What rights were these? They were not conferred by law, but they were natural rights which existed independently of law, and with which neither States nor Congress were allowed to interfere."); *see also Planned Parenthood S. Atl. v. State*, 438 S.C. 188, 199-200, 882 S.E.2d 770,

[6] If the Court concludes that it is not a fundamental right then Appellant's argument is a moot point. In that case rational basis review would apply and *Bruen* would control as the Second Amendment would then provide greater protections than the state constitution. *See State v. Forrester*, 343 S.C. 637, 643-44, 541 S.E.2d 837, 840 (2001) ("This relationship is often described as a recognition that the federal Constitution sets the floor for individual rights while the state constitution establishes the ceiling.").

776 (2023) (Hearn, J.) (stating that the Second Amendment's text contains an implicit recognition of the pre-existence of the right).

Furthermore, state constitutional challenges under this provision appear to have been exceedingly rare. In the case of *State v. Johnson* this Court upheld a Charleston municipal ordinance which, among other things, prohibited the firing of "any gun, pistol or other firearm within the limits of the city[.]" 76 S.C. 39, 56 S.E. 544, 545 (1907). In upholding the ordinance this Court noted "It does not prohibit…the accused, from possessing a shotgun on his own premises. All it does is to prevent his firing such gun within the city limits, and this is clearly within the power of such city council[.]" *Id*. Indeed, this Court would not directly confront this issue again until a century later in *State v. Bolin*, 378 S.C. 96, 662 S.E.2d 38 (2008). In *Bolin* the defendant was prosecuted under S.C. Code Ann. § 16-23-30(A) for being in possession of a handgun when he was under twenty-one (21). *Id.* at 98, 662 S.E.2d at 39. The Circuit Court quashed the indictment on the grounds that it violated Article I, § 20. This Court held that the § 16-23-30's prohibition on possession of handguns by persons under the age of twenty-one did not violate Article I, § 20, because "The legislatures regulation of who may have access to handguns does not infringe upon that right because persons under the age of 21 have access to other types of guns." *Id*. at 99, 662 S.E.2d at 39. This Court further seemed to imply that firearm regulations were subject to rational basis review as opposed to strict scrutiny. *Id*.fn.2.

However, it is hard to square this Court's pronouncements in *Bolin* with the established rules of this Court. As a first matter, this Court upheld the Circuit Court's decision to quash the indictment on the grounds that it was contrary to Article XVII, § 14 of the South Carolina Constitution. *Bolin*, 378 S.C. at 100, 662 S.E.2d at 39-40. As the Court affirmed the Circuit Court's judgment on this ground, its pronouncements were not necessary to render the decision reached

and could be viewed as *dictum*. *See Yaeger v. Murphy*, 291 S.C. 485, 490, 354 S.E.2d 393, 396fn.2 (Ct. App. 1987) ("As everyone knows, dictum technically does not count because it is outside of what is necessary in resolving a matter.")[7] *overruled on other grounds by Paradis v. Charleston Cnty. Sch. Dist.*, 433 S.C. 562, 861 S.E.2d 774 (2021). Additionally, answering a constitutional question which is not necessary to the judgment contravenes one of this Court's long-standing practice that it will not answer constitutional questions unless such a rule is required for a resolution of the matter before the Court. *In re McCracken*, 346 S.C. 87, 92, 551 S.E.2d 235, 238 (2001). Furthermore, this Court, generally, will decline to address other issues raised in the appeal when one issue is dispositive. *Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999).

In any event, assuming *Bolin* was binding, this Court's subsequent cases appear to undermine *Bolin*'s apparent endorsement of a rational basis test. Additionally, pronouncements by the General Assembly bolster the conclusion that the right to bear arms under Article I, § 20 is a fundamental right. In *State v. Jones*, this Court held that prohibiting an accused from seeking immunity under the Protection of Persons and Property Act when attacked by a person who had permission to be in the home "would undoubtedly infringe" upon the accused's right to bear arms. 416 S.C. 283, 297-98, 786 S.E.2d 132, 140 (2016). Additionally, as part of the Protection of Persons and Property Act the General Assembly specifically found that the Article I, § 20 provided an individual right to bear arms for self-defense. S.C. Code Ann. § 16-11-420. " While the construction placed upon this constitutional provision by the legislature is not necessarily

[7] Appellant is aware of the remainder of Chief Judge Sanders quote in *Yaeger* that "those who disregard dictum, either in law or in life, do so at their peril." *Id*. However, the Court sojourn in *Bolin* regarding the right to bear arms made no ultimate difference in the outcome of that decision. So, to again quote Judge Sanders, "[W]hatever doesn't make any difference, doesn't matter." *McCall v. Finley*, 294 S.C. 1, 4, 362 S.E.2d 26, 28 (Ct. App. 1987).

controlling, there is a strong presumption that it is correct and should be adopted by the court." *Gebhardt v. McGinty*, 243 S.C. 495, 500, 134 S.E.2d 749, 752 (1964).

Accordingly, and as Appellant argued to the trial court, the right to bear arms is a fundamental right. The question then is what test does this Court apply as to the *state* constitutional right to bear arms? In the trial court the Appellant urged that the test applied should be strict scrutiny as this is the general test for legislation which infringe upon fundamental rights in South Carolina. *League of Women Voters of S.C.*, 446 S.C. at 612, 921 S.E.2d at 672. However, Appellant acknowledged that many of the rights found in Article I of the South Carolina Constitution are construed as being co-extensive with their counterparts found in the Bill of Rights. *See, e.g., City of Rock Hill v. Henry*, 244 S.C. 74, 76, 135 S.E.2d 718, 719 (1963) (holding that rights protected Article I, § 2 of the South Carolina Constitution are the same rights protected by the First Amendment) *rev'd on other grounds sub nomen Henry v. City of Rock Hill*, 376 U.S. 776 (1964). If the right to bear arms found in Article I, § 20 is co-extensive with the Second Amendment then the test set forth in *Bruen* would control.[8] However, as South Carolina has traditionally held fast to the strict scrutiny standard, and the State Constitution may be interpreted to provide a higher

[8] This line of argument seemed to bewilder the State in the trial court. In responding to Appellant's motion, the State took the position that the United States Supreme Court could not dictate how this Court interpreted the South Carolina Constitution. However, Appellant never asserted any such argument. No one seriously disputes that this Court is the final arbiter of the meaning of the South Carolina Constitution. *Baddourah v. McMaster*, 433 S.C. 89, 103, 856 S.E.2d 561, 568 (2021). However, if Article I, § 20 is co-extensive with the Second Amendment then the *Bruen* test must be used. If Article I, § 20 provides greater, or lesser, protections than *Bruen* then it *ipso facto* cannot be co-extensive with the Second Amendment. The State's arguments then became hopelessly muddled by confusing the test employed for determining constitutionality with the burden of showing its unconstitutionality. *See In re Luckabaugh*, 351 S.C. at 140, 568 S.E.2d at 347 ("Under either type of analysis, the one who attacks the law bears the burden of showing it is unconstitutional.").

degree of protection, then Appellant would assert that appropriate standard of review is strict scrutiny.

Appellant conceded before the trial court, and concedes again here, that the State clearly can meet the first prong of the strict scrutiny test, *i.e.* the statute meets a compelling state interest The issue then becomes whether the statute is narrowly tailored to serve that interest while not unduly burdening Appellant's rights. *In re Lickabaugh*, 351 S.C. at 141, 568 S.E.2d at 347. Again, under these facts, the law is not narrowly tailored.

The law flatly prohibits the carrying of firearms on *any property* which is "owned, leased or controlled" by a public university. Appellant acknowledges at the outset that the compelling state interest the statute seeks to serve is the prevention of gun violence at educational facilities, public or private. Appellant believes it goes without saying that this issue is one of which almost no one in today's society is ignorant. However, the Act in this case fails to target and eliminate the exact source of the evil which it seeks to prevent. *Frisby*, 487 U.S. at 485. For instance, the statute as it relates to educational facilities could have been written to apply only to persons "in" buildings owned, leased or controlled by educational institutions. This would, presumably, narrow the act to the area where students are required to congregate as part of their educational activities. Additionally, this would bring the educational portion of the statute in-line with the portion relating to publicly owned buildings.

Furthermore, the General Assembly could have limited the law to those areas of a college or university campus which are not open to the general public. Again, Appellant has never asserted that it is impermissible for the State to prohibit firearms inside school buildings, whether its primary, secondary, or post-secondary. However, under the facts of Appellant's case the statute reaches to far. Indeed, there is no evidence that Appellant was actually near any academic buildings

at all but instead was next to administrative offices in an area adjoining a public road. The State's contention that this was "core campus," whatever this term meant, was belied by the fact that multiple witnesses admitted that Defendant could have been mere feet away and been off of Clemson University's property. Simply put, the State merely relied upon the constitutional presumption but did nothing to justify the statute's staggering breadth except to repeat its mantra of "core campus" over and over. However, if the purpose of the statute is to protect students from gun violence while receiving an education then statute must have some reference to areas which are actually used for educational purposes. Again, as the statute sweeps up broad areas of university owned, leased or controlled land, regardless of their educational nature or lack thereof, it is not narrowly tailored and does not survive strict scrutiny. Accordingly, the trial court erred in denying Appellant's motion for a directed verdict and motion for a new trial absolute.

III. DID THE TRIAL COURT ERR IN RULING THAT THERE WAS NO *MENS REA* REQUIREMENT AS TO APPELLANT'S CONDUCT IN BEING ON CLEMSON UNIVERSITY PROPERTY AND IN DENYING APPELLANT'S MOTION FOR NEW TRIAL UPON THE SAME GROUND?

At trial the Appellant's primary defense was that Appellant was unaware of the fact that he was on Clemson University's property. As such Appellant contended that the State could not prove beyond a reasonable doubt that Appellant acted with the requisite *mens rea* to support a conviction. The trial court, due to an objection by the State during opening statements, ruled that the State was not required to prove that Appellant had any particular *mens rea* as it related to being on Clemson University property, but only as to the possession of the firearms. The trial court's error was compounded as the State actively used the trial court's erroneous ruling in the State's closing argument and highlighted it extensively during the State's closing argument. Appellant moved for a new trial based upon the trial court's error.

STANDARD OF REVIEW

"In criminal cases, appellate courts sit to review errors of law only." *State v. Cross*, 427 S.C. 465, 473, 832 S.E.2d 281, 285 (2019). "The granting or refusal of a motion for a new trial is within the discretion of the trial judge and will not be disturbed absent a clear abuse of discretion." *State v. Simmons*, 279 S.C. 165, 166, 303 S.E.2d 857, 859 (1983). "An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law." *State v. Douglas*, 369 S.C. 424, 429-30, 632 S.E.2d 845, 848 (2006).

ARGUMENT

In the case below the trial court ruled that the State was not required to show that Appellant had any requisite mental state as it related to entering onto Clemson University's property. Instead the trial court, relying upon cases relating to drug possession, ruled that the State need only show that the Appellant had knowledge of the possession of the weapon. The trial court's decision in this regard, and its subsequent decision to deny Appellant's motion for a new trial, are therefore controlled by an error of law.

It has long been the rule in Anglo-American jurisprudence that " 'Criminal liability is normally based upon the concurrence of two factors, 'an evil meaning mind [and] an evil doing hand.' " *State v. Jeffries*, 316 S.C. 13, 17, 446 S.E.2d 427, 429-30 (1994) (*quoting United States v. Bailey*, 444 U.S. 394, 403 (1980)). However, "Few areas of criminal law pose more difficulty than the proper definition of the *mens rea* required for any particular crime.' " *Id*. At common law crimes were classified as either general intent or specific intent. *Jeffries*, 316 S.C. at 18, 446 S.E.2d at 430. However, more modern statutes sometimes adopt a descending order of culpability purpose, knowledge, recklessness, and negligence." *United States v. Clemons*, 442 S.C. 670, 674, 901 S.E.2d 280, 282 (2024) (*quoting Borden v. United States*, 593 U.S. 420, 426 (2021)). The particular *mens rea* required by a statute, or whether the statute is one of strict liability, is a question of

legislative intent. *State v. Ferguson*, 302 S.C. 269, 272, 395 S.E.2d 182, 184 (1990). Where a statute does not express state the requisite *mens rea* the Court looks to the common law and the development of the statute to determine the General Assembly's intention. *Jefferies*, 316 S.C. 18, 446 S.E.2d at 430.

§ 16-23-420 contains no express *mens rea* element in the statutory language. The trial court, held that the plain language of the statute excluded a *mens rea* requirement as to being on university property. Reasoning by analogy, the trial court held that if such a requirement were required the General Assembly would have expressly included it as it had done for the offense Distribution of Controlled Substance within Proximity of a School, S.C. Code Ann. § 44-53-445. However, the trial court's analogy in this regard was flawed. The trial court (1) failed to adhere to this Court's prior precedent regarding the interpretation of statutes where there is no express intent element; and (2) improperly analogized to statutes concerning possession of items which are contraband *per se*.

As a first matter, the trial court erred in finding that the plain language of the statute prohibited the finding of a *mens rea* requirement as it relates to being on school property. The trial court felt that it was constrained by the plain language of the statute. In *Ferguson* this Court held that the General Assembly did not intend to make distribution of cocaine a strict liability offense, even though the statute contained no express *mens rea* element. 302 S.C. at 272-73, 395 S.E.2d at 184. Instead, the Court found that the statutory scheme required the State to prove the defendant was at least criminally negligent. *Id*. at 273, 395 S.E.2d at 184. Likewise, in *Jefferies* the Court was confronted with what level of *mens rea* was required for the offense of kidnapping when the statute contained no express *mens rea* requirement. 316 S.C. at 18, 446 S.E.2d at 430. The Court, after examining the statutory history, found that the offense required the State to prove that the

defendant at least acted knowingly. *Id*. at 19, 446 S.E.2d at 430-31. The trial court's ruling that the General Assembly's failure to include a *mens rea* requirement precluded such a finding ignores these prior precedents and was therefore controlled by an error of law.

Secondly, the trial court erred by holding that any *mens rea* requirement, if any, would apply solely to the possession of the firearms itself. Again, the trial court seemed to analogize by comparing the offense to one involving drugs or other forms of contraband. However, again, the trial court failed to consider prior precedent from this Court, and in any event, used an improper analogy.

In the present case, the trial court charged the jury that to find the Appellant guilty the State had to prove beyond a reasonable doubt that the Appellant: (1) possessed; (2) a firearm; (3) on a premises owned operated or controlled by; (4) a private or public college or university; and (5) that he did so without the express permission of the authorities in charge of the premises or property. The trial court's decision regarding intent essentially limited any *mens rea* requirement to the first two (2) elements set forth above. However, this ruling ignores the long-standing common-law presumption that a scienter requirement will be applied to each and every material element of the offense. *See Rehaif v. United States*, 588 U.S. 225, 228-29 (2019) ("In determining Congress' intent, we start from a longstanding presumption, traceable to the common law, that Congress intends to require a defendant to possess a culpable mental state regarding 'each of the statutory elements that criminalize otherwise innocent conduct.') (*quoting United States v. X-Citement Video, Inc.*, 513 U.S. 64, 72 (1992)).

Furthermore, it cannot be denied that Appellant's conduct falls within the plain language of both the Second Amendment and Article I, § 20 of the South Carolina Constitution. As this Court has long recognized, it will indulge all possible constructions of a statute which will render

them constitutional. *Zeyi Chen*, 430 S.C. at 528-29, 846 S.E.2d at 871. Where the lack of an intent requirement as to an element would raise serious constitutional doubts it is incumbent upon the Court to apply an intent element so as to eliminate those doubts. *X-Citement Video, Inc.*, 513 U.S. at 78. Here the trial court's ruling that a defendant need not have any particular intent as to being on university property raises serious constitutional doubts to the statute. In effect the trial court ruled that a person who lawfully arms themselves but then accidentally, and without even criminal negligence, enters onto university property commits a felony offense which would strip them of their gun rights. Such doubts must be resolved by applying an intent element as to each and every element of the offense.

The trial court further erred by comparing § 16-23-420 to a drug statute. It is axiomatic that illegal drugs are contraband *per se*. *Farmer v. Florence Cnty. Sheriff's Off.*, 401 S.C. 606, 614, 738 S.E.2d 473, 478 (2013). However, a handgun, which the Appellant had a constitutional right to possess, is not. Generally, in prosecutions for simple possession of narcotics, the State need only show that the defendant was in actual or constructive possession of the drugs and the intent to control their disposition or use. *State v. Stewart*, 433 S.C. 382, 387, 858 S.E.2d 808, 810 (2021). As applied to drugs this makes sense. There is no lawful place where a defendant may possess illegal drugs, their possession is flatly prohibited. In other words, the possession of narcotics is presumptively unlawful at all places and times. However, in the present case the converse is true. The possession of a firearm is presumptively lawful, and the State must prove the facts establishing the possession was in fact unlawful. Simply put analogies between drugs and firearms are less than helpful. Therefore, to the extent the trial court relied upon drug analogies in arriving at its decision this was an abuse of discretion.

The trial courts ruling that the State was not required to prove *mens rea* as it applies to the element of being on university property constituted legal error. Accordingly, the trial court's decision to deny the Appellant's motion for new trial was controlled by an error of law and should be reversed.

IV. DID THE TRIAL COURT ERR IN REFUSING TO CHARGE APPELLANT'S REQUESTS TO CHARGE AS TO THE *MENS REA* REQUIRED FOR THE OFFENSE AS THEY REPRESENTED A CORRECT STATEMENT OF THE LAW AND IN DENYING APPELLANT'S MOTION FOR NEW TRIAL UPON THE SAME GROUND?

As set forth above, the trial court erred in failing to find that the requisite *mens rea* applied to each and every element of the offense. However, even if the trial court's decision was not erroneous, the trial court still erred by failing to charge the particular level of *mens rea* required for the offense. Appellant requested that the trial court to charge the definition of the appropriate level of intent. However, the trial court failed to instruct the jury as to *any* of the different levels of intent. Instead, the trial court merely gave a general charge as to intent which set forth the different levels of intent without explaining any of them. The trial court's failure to charge *any* of the requisite intent charges was error.

STANDARD OF REVIEW

"The trial court is required to charge the correct law applicable to the case." *State v. Marin*, 404 S.C. 615, 620, 745 S.E.2d 148, 151 (Ct. App. 2013). "When a party requests the trial court charge a correct and applicable principle of law, the court must charge it." *Id.* It is not error for the trial court to give a specific charge, which is a correct statement of the law, only where the actual charge covers the substance of the offense. *State v. Brownlee*, 318 S.C. 34, 37, 455 S.E.2d 704, 706 (Ct. App. 1995).

ARGUMENT

In the present case the trial court refused to charge any particular level of *mens rea* to the jury. Instead, the trial court gave the general charge on intent found in the Circuit Court Bench Book. *See McKnight v. State*, 378 S.C. 33, 47, 661 S.E.2d 354, 361 (2008) (setting forth the generalized intent charge). This charge does set forth the law regarding intent at a very high level. However, it does not tell the jury exactly which level of intent applies to the case at hand. In *McKnight* this Court found the use of the general intent to be adequate where it was coupled with a statute which had an express intent element present. 378 S.C. at 48, 661 S.E.2d at 361. However, in *McKnight* the defendant was charged with Homicide by Child Abuse which required the State to prove the defendant acted with extreme indifference to human life. *Id*. at 47, 661 S.E.2d at 361. This Court found the charge was not incorrect because "the specification of the *mens rea* in the HCA statute in conjunction with the general charge on criminal intent was proper." *Id*. However, the jury later returned a note requesting a further charge on criminal intent to which the trial court merely re-charged the general charge on intent. This Court found the supplemental charge to be error as it was evident the jury was confused as to the applicable level of intent. *Id*. at 48, 661 S.E.2d at 362.

In the present case the saving feature from *McKnight* is not present. The trial court's charge as to the statute did not provide the jury with enlightentment as to the requisite level of intent. The general charge on intent did not clarify which specific level of *mens rea* the jury was required to find. Instead, the jury was left with a buffet of options to choose from including purpose, knowledge, recklessness, intent, and negligence with none of these terms defined. Indeed, it is uncertain whether the jury was actually in unanimous agreement as to the level of *mens rea* required. *See State v. Adams*, 430 S.C. 420, 431, 845 S.E.2d 217, 223 (Ct. App. 2020) (jury's

verdict must be unanimous as to each and every element of the offense under state and federal constitutions).

Appellant requested a jury charge defining the specific level of intent required under the offense. The Appellant provided multiple proposed jury charges for the different levels of *mens rea*. However, the trial court refused to charge any of them and the trial court's general charge failed to provide the substance of the request as the court never specified the level of intent required. As such the trial court's decision was controlled by an error of law and Appellant's motion for a new trial should have been granted as to this ground. Even assuming that the requisite *mens rea* was something less than "willful" it was error on the party of the trial court not to identify the exact *mens rea* required.

Likewise, the trial court erred by failing to charge the Appellant's requested charges as to mistake of fact. "It is well-settled the law to be charged is determined from the evidence presented at trial, and if any evidence exists to support a charge, it should be given. The trial court commits reversible error if it fails to give a requested charge on an issue raised by the evidence." *State v. Burriss*, 334 S.C. 256, 262, 513 S.E.2d 104, 108 (1999). Here the Appellant presented evidence from which the jury could have inferred that the Appellant entered onto Clemson's property under the mistaken belief that he was still inside the City of Clemson. The failure of the trial court to give this charge when it was supported by the evidence is likewise error and Appellant's motion for new trial should have been granted on this ground as well.

V. DID THE TRIAL COURT ERR IN GRANTING THE STATE A CONSTRUCTIVE AMENDMENT OF THE INDICTMENT AND IN DENYING THE APPELLANT'S MOTIONS FOR DIRECTED VERDICT AND FOR VERDICT IN ARREST OF JUDGMENT?

Regardless of the exact level of intent required by the statute the State in this case chose to allege a higher burden of *mens rea* by alleging that the Appellant "willfully" possessed a firearm

on the property of Clemson University. However, at the trial of the case the State pursued a different theory from the one presented in the indictment. The trial court, by agreeing with the State's position regarding *mens rea*, effectively worked a constructive amendment of the indictment. In short, the State's case contained a fatal variance between the indictment and the State's case at trial. The trial court erred by effectively blessing this constructive amendment, failing to direct a verdict based upon the variance, and in failing to grant Appellant's motion for verdict in arrest of judgment.

STANDARD OF REVIEW

An indictment is a notice document. *State v. Gentry*, 363 S.C. 93, 102, 610 S.E.2d 494, 500 (2005). An indictment is sufficient if it states the offense charged with sufficient clarity to allow the trial court to know what judgment to pronounce and the defendant to know what he is called upon to answer. *Id*. at 102-03, 610 S.E.2d at 500. A sufficient indictment must also sufficiently appraise the defendant of the elements of the offense intended to be charged. *Id*. at 103, 610 S.E.2d at 500. However, a material variance between the charge in the indictment and the proof at trial entitles the defendant to a directed verdict. *State v. Evans*, 322 S.C. 78, 81, 470 S.E.2d 97, 99 (1996). "Moreover, a conviction will not be overturned due to evidence that tends to show a narrower charge than that contained in the indictment if the narrower charge is fully included within the indictment." *Id*. at 82, 470 S.E.2d at 99.

A defendant may move for verdict in arrest of judgment on the grounds of the insufficiency of the indictment or some other fatal defect appearing on the face of the record. *State v. Taylor*, 348 S.C. 152, 159, 558 S.E.2d 917, 920 (Ct. App. 2001) (*quoting State v. Miller*, 287 S.C. 280, 286, 337 S.E.2d 883, 886-87 (1985) (Ness, J., concurring in part and dissenting in part). An indictment may be only amended at trial if the amendment does not change the nature of the offense

charged. *Granger v. State*, 333 S.C. 2, 5, 507 S.E.2d 322, 324 (1998); *see also* S.C. Code Ann. § 17-19-100. An amendment changes the nature of the offense if it modifies what the defendant is called upon to answer at trial. *State v. Guthrie*, 352 S.C. 103, 111-12, 572 S.E.2d 309, 314 (Ct. App. 2002) *abrogated in part by Gentry*, 362 S.C. 93, 610 S.E.2d 494.

ARGUMENT

As set forth above, the indictment in this case alleged that the Appellant "willfully" possessed a firearm while on Clemson University's property. A "willful" act is synonymous with an act which is done "intentionally." *State v. Bryant*, 316 S.C. 216, 219, 447 S.E.2d 852, 854 (1994). A willful act is defined as one 'done voluntarily and intentionally with the specific intent to do something the law forbids, or with the specific intent to fail to do something the law requires to be done; that is to say, with bad purpose either to disobey or disregard the law.' " *Spartanburg Cnty. Dep't of Social Servs. v. Padgett*, 296 S.C. 79, 82-83, 370 S.E.2d 872, 874 (1988) (*quoting Black's Law Dictionary* 1434 (5th ed. 1979)). "Intent" is a state of mind which directs a person's mind towards a specific action or object. *State v. Cogdell*, 273 S.C. 563, 568, 257 S.E.2d 748, 750 (1979). When used in the criminal context the term "willful" denotes an act undertaken with a bad purpose, *i.e.* " 'the defendant acted with knowledge that his conduct was unlawful.' " *Bryan v. United States*, 524 U.S. 184, 191-92 (1998) (*quoting Ratzlaf v. United States*, 510 U.S. 135, 137 (1994)).

In short, the only fair reading of the indictment in this case was that the Appellant was alleged to have possessed a firearm on Clemson University's property knowing that such conduct was unlawful. However, this was not the theory that the State proceeded under at trial. Instead, the State argued that it need only show that the Appellant knowingly possessed a firearm and happened to be upon Clemson University's property while doing so. Where an indictment facially charges a

complete offense, the State may not pursue a different theory than the one alleged in the indictment. *Bailey v. State*, 392 S.C. 422, 433, 709 S.E.2d 671, 677 (2011) (quotation omitted). "An indictment is a critical document that must state the charged offense with particularity, apprising a defendant of the elements of that offense." *State v. Dent*, 446 S.C. 121, 130, 919 S.E.2d 394, 399 (2025). Where the State alleges that a crime is committed in a particular way, the State undertakes the burden of proving that offense in that particular manner. *Id*. at 132, 919 S.E.2d at 400. Where the State has assumed this burden, it may not change horses' mid-stream and seek a conviction "under a different and expanded theory" of liability. *Id*. at 133, 919 S.E.2d at 400.

The indictment in this case alleged that the Appellant committed the offense in a particular manner, that is "willfully." However, the State then worked a material change by stating that it need to only show knowledge as to the possession of the firearm and did not need to show any evidence of intent as it related to being on Clemson University's property. This is the exact same scenario this Court faced in *Dent* where the State accused "Dent of one thing in the indictment but pursuing an alternative theory of liability during closing arguments." *Id*. at 126, 919 S.E.2d at 396. Additionally, and just like in *Dent*, the trial court acquiesced in the variance by failing to correct the State's variance and by instructing the jury upon the expanded offense. *Id.* at 134, 919 S.E.2d at 401. "In doing so, the trial court impermissibly enlarged the indictment, creating a material variance between the evidence sufficient to convict [Appellant] and the specific allegations in the indictment." *Id*.

As this Court remarked in *Dent*, "Indictments matter. In criminal trials, where the weight of the government comes to bear against an individual citizen, indictments are a foundational part of that citizen's constitutional right to due process: they put the citizen on formal notice of the charges against him and the theories the government intends to present at trial to show the citizen

violated the law, thereby allowing the citizen to prepare a defense." 446 S.C. at 125, 919 S.E.2d at 396. It is readily apparent from the record that Appellant, who prepared his defense based upon the language used in the indictment, was blind sided by the State's sudden switch in tactics *after* the jury was sworn and opening statements were being made. Noticeably, the State claimed that it was "not trying to hide the ball," however, Appellant repeatedly argued that intent was required as to being on Clemson University's property the day before trial commenced, and before the jury was sworn. However, the State waited until trial had commenced to make its new theory known. The State's assurances therefore ring hollow.

"We end where we began: indictments matter. The law does not mandate perfection in the drafting of indictments, but it does require fair notice of the charge against the accused." *Dent*, 446 S.C. at 136, 919 S.E.2d at 402. Here the Appellant was denied fair notice of the charge against him and this lack of fair notice materially impacted the Appellant's defense. The trial court erred by impermissibly enlarging the indictment over Appellant's objection. Additionally, the trial court erred in denying the Appellant's motion for directed verdict as it constituted a material variance from the indictment. Finally, the trial court erred in denying Appellant's motion for verdict in arrest of judgment as this constituted an error on the face of the record concerning the indictment.

CONCLUSION

For the reasons set forth above, the § 16-23-420, as applied to the Appellant, fails to pass constitutional muster under the Second Amendment. In particular, the State has failed to present historical analogues which justify the sweep of the statute to include the Appellant. Accordingly, the statute fails to pass the test set forth in *Bruen*. Additionally, under Article I, § 20 of the South Carolina Constitution the statute fails to pass the strict scrutiny test as it (1) infringes upon a fundamental right, and (2) is not narrowly tailored.

Additionally, the trial court erred in finding that there was no *mens rea* requirement as it relates to being upon university or college property under § 16-23-420. The trial court's misapprehended this Court's precedent concerning the interpretation of scienter requirements for statutes which do not expressly provide for one and also improperly compared the statute at bar to drug offenses. Furthermore, the trial court erred by failing to define *any* level of *mens rea*, even in regard to possession, even when specifically requested by the Appellant. As Appellant's requests to charge were correct statements of the law it was error for the trial court to not charge, at least, what it believed to be the applicable one. Finally, the trial court erred by allowing the State to make a material variance to the indictment by essentially deleting the term "willfully." As such the trial court impermissibly enlarged the indictment.

Accordingly, the judgment of the trial court should be reversed.

Respectfully Submitted,

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