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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Newberry County
The Honorable Frank R. Addy, Circuit Court Judge
Appellate Case No. 2026-000865

THE STATE,

Petitioner,

vs.

JONATHAN C. DAWKINS,

Respondent.

APPENDIX

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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Newberry County
The Honorable William P. Keesley, Circuit Court Judge
The Honorable Frank R. Addy, Circuit Court Judge
Appellate Case No. 2023-000274

THE STATE,

Appellant,

vs.

JONATHAN C. DAWKINS,

Respondent.

RECORD ON APPEAL

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1 STATE OF SOUTH CAROLINA)
) COURT OF GENERAL SESSIONS
 2) 2022-GS-36-0476
 COUNTY OF NEWBERRY)

3
 4 STATE OF SOUTH CAROLINA,)
 5)
 Plaintiff,)
 6)
 7 vs.) TRANSCRIPT OF RECORD
) (Suppression Hearing)
 8 DAWKINS, JONATHAN CONARD,)
)
 9 Defendant.)

10
 11 December 5, 2022
 12 Newberry, South Carolina

13 B E F O R E:
 14 HONORABLE WILLIAM P. KEESLEY, JUDGE

15 A P P E A R A N C E S:
 16 Taylor W. Daniel, Esquire
 17 Attorney for the State
 18 Tristan M. Shaffer, Esquire
 19 Attorney for the Defendant

20
 21 Lisa G. Amick
 Court reporter

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 23
 24
 25

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3	911 call	X		7
4	Coulombe's body cam footage	X	X	18
5	Pill bottle	X		24
6	Evidence bag containing			
	marijuana	X		25
7	Avey's body cam footage	X		39

1 THE COURT: Alright. Are you ready to proceed,
2 Solicitor?

3 MR. DANIEL: We are, Your Honor. Your Honor, the
4 State's going to call James Davis as our first witness in the
5 suppression hearing. Your Honor, I'm going to use the, there
6 is going to be an exhibit to play or a recording.

7 THE COURT: You want to swear the witness?

8 THE CLERK: Yes, sir. Mr. Davis, will you raise your
9 right hand, please? Do you solemnly swear or affirm that the
10 testimony you will give the Court will be the truth, the whole
11 truth and nothing but the truth so help you God?

12 MR. DAVIS: Yes, ma'am.

13 THE CLERK: Please have a seat. Thank you.

14 THE COURT: What's your full name?

15 MR. DAVIS: James Robert Davis, Jr.

16 THE COURT: Alright. Answer the solicitor's
17 questions please.

18 MR. DANIEL: Thank you, Your Honor.

19 DIRECT EXAMINATION

20 BY MR. DANIEL:

21 Q Alright, Mr. Davis, you live at 823 Wise Street in the
22 city of Newberry, is that correct?

23 A Yes, sir.

24 Q How long have you lived there?

25 A Been there about three years now.

1 Q Can you pull that microphone up to you a little bit?

2 A Been over there now going on four years.

3 Q You've been living at the Wise Street address for about
4 four years, you said?

5 A Yes, sir.

6 Q Okay. And who do you live there with?

7 A With my friend Barbara Ann.

8 Q Barbara Ann?

9 A Yeah, Barbara Ann Hillard.

10 Q Barbara Hillard?

11 A Yes, sir.

12 Q Okay. Do you know an individual by the name of Jonathan
13 Dawkins?

14 A Yes, sir.

15 Q Okay. And how do you know this individual?

16 A I didn't know him until this complication.

17 Q Scoot up, scoot your chair up. Alright. Speak into that
18 mic Mr. Davis. Alright. The question was how do you know Mr.
19 Jonathan Dawkins?

20 A I know him by my friend, Barbara Ann. We were staying on
21 Wise Street, she know him a little bit better, but I know him
22 by going up and down the street.

23 Q Okay. You know Mr. Dawkins from the neighborhood area, is
24 that correct?

25 A Correct.

1 Q Where does Mr. Dawkins live in relation to you and
2 Barbara?

3 A I don't know where he lives to be honest with you, he's
4 always over there on Wise Street.

5 Q But you see him walking around the neighborhood?

6 A Yes, sir.

7 Q Alright. I want to go back to October 30th of last year,
8 so about 13 months ago, give or take, over a year ago. Did you
9 have an occasion to call 9-1-1 on that day?

10 A Yes, sir.

11 Q Okay. And what if anything did that have to do with
12 Jonathan Dawkins?

13 A Because what I had to do with him is I was in the house
14 and I hear my wife was saying he's going threaten to shoot the
15 car up and shoot her. I got nervous and I came out there and
16 then he had threatened to shoot me and I called 9-1-1, and I
17 had called them two times.

18 Q Okay. Jonathan Dawkins, and could you please identify, is
19 he present in the Courtroom today, Mr. Dawkins?

20 A Yes, sir.

21 Q Alright. Where is he sitting?

22 A Right over there.

23 Q Okay. And you heard Mr. Dawkins threaten Barbara?

24 A Yes, sir.

25 Q And he threatened you, correct?

1 A When I came out, when I came outside because they was out
2 there arguing and he had threatened to shoot her car up and
3 shoot her.

4 Q Alright. So he verbally was threatening to shoot at
5 Barbara ---

6 A In the case, he had told her when I came out and then when
7 he threatened to shoot me that's when I called 9-1-1.

8 Q So threatening to shoot, did you think he was armed with a
9 gun?

10 A He said wait til I get back, that's all I could think.

11 Q Alright.

12 MR. DANIEL: Pre-mark this as Court's Exhibit Number
13 1.

14 Q Alright. So you called 9-1-1- ---

15 MR. DANIEL: Oh, Court's Number 3? Court's Exhibit
16 Number 3.

17 Q And you've had, have you had the occasion to listen to the
18 9-1-1 call you said you made?

19 A Yes, sir.

20 Q Okay. And is that 9-1-1 call a fair and accurate
21 representation of the call you made on October 30th of last
22 year?

23 A Yes, sir.

24 (Whereupon a 911 call was submitted as Court's Number 3
25 for identification.)

1 MR. DANIEL: Your Honor, at this time, I'd ask to
2 publish Mr. Davis' 9-1-1 call.

3 THE COURT: Any objection?

4 MR. SHAFFER: No objection.

5 THE COURT: Alright, sir.

6 (9-1-1 call being published.)

7 Q Alright, Mr. Davis. Who's that in the background?

8 A That was Barbara Ann he was threatening, my friend
9 Barbara Ann.

10 Q Alright. And you said in the 9-1-1 call that
11 you had reported to 9-1-1 before as it pertained to
12 Mr. Dawkins, is that correct?

13 A That's correct.

14 Q And what was that prior report that you
15 referenced?

16 A Same thing, threatened us and wanted to fight me and
17 threatened me and all that. Same thing like I told 9-1-1,
18 that was my second call to them.

19 Q Okay. And when was that prior report that you
20 referenced in the 9-1-1 call, when was that in relation
21 to this October 30th incident?

22 A Probably that same month, I don't know, probably
23 was in that same month, October, maybe a week or so
24 after.

25 Q A week or so prior?

1 A Two weeks or two weeks after for this 9-1-1 call, that's
2 when we got, we got threatened before, but I didn't call 9-1-1,
3 this was my second call to 9-1-1.

4 Q Okay. So that call that we just played was the second
5 time calling 9-11 about Jonathan Dawkins threatening you?

6 A Yes, sir.

7 Q Both you and Barbara?

8 A Yes, sir.

9 Q And why was Jonathan Dawkins making these threats towards
10 you and Barbara?

11 A I guess he didn't like us, I don't know why, I guess he
12 just didn't like us up in the neighborhood starting trouble,
13 because, you know, just walking around hollering, we got just
14 tired of it and told him why are you around here bugging us and
15 making all kind of noise early in the morning and all the stuff
16 like that, I guess he got fed up with us.

17 Q So he's out on Wise Street?

18 A He was out there every day.

19 Q What time was it? Was it late at night?

20 A Early in the morning all the way through. When that
21 second time, that night he got arrested was nighttime when they
22 picked him up.

23 Q Okay. But he's out in the street yelling?

24 A Yelling and going on, what he going to do, killing, who he
25 going to kill and all that.

1 Q Okay. So he's yelling, talking about killing out in the
2 street?

3 A Yes, sir.

4 Q So he's creating a disturbance, would that be fair?

5 A Yes, sir.

6 Q Alright.

7 MR. DANIEL: Thank you, Mr. Davis.

8 MR. DAVIS: You're welcome.

9 THE COURT: Cross?

10 CROSS EXAMINATION

11 BY MR. SHAFFER:

12 Q Are you related to Christine Davis?

13 A No, sir.

14 Q Okay. Or Lavonda Davis?

15 A No, sir.

16 Q Okay. Is it fair to say that other than, other than the
17 fact that you made a complaint, well, tell me this, did you,
18 and I withdraw that other question, okay? What I'm asking you
19 here is that did you actually see a gun?

20 A I can't say I seen a gun, but he said he'd be right back.
21 I thought it might have been one.

22 Q Okay. Alright. Did you tell the officers he had
23 a gun?

24 A I said he's threatening me, said he'd be right back
25 and he might have had a gun.

1 Q Okay. But you didn't tell the officers that he actually
2 had a gun?

3 A No, I didn't.

4 Q Okay. Is it fair to say that other than making the
5 initial complaint, you don't really have a whole lot to add
6 about whether or not he was possessing drugs that day, correct?

7 A I don't know what he was possessing, I just know he was
8 threatening me and had me halfway scared. I don't know what he
9 had, what he had on him or nothing, but the officer, they took
10 care of that, I don't know.

11 Q Did he seem intoxicated?

12 A Yes.

13 Q Okay. Did, but you, you don't have any knowledge about
14 whether he was possessing with intent to distribute fentanyl
15 pills that day, right?

16 A I know one thing; he kept it on him so I can't say what he
17 was doing that day.

18 Q Okay. But you didn't actually see them pull the drugs out
19 of, out of his pocket or anything like that, did you?

20 A No. I was, when they came that night, they had him on top
21 of the hill, so, no, I couldn't see him there.

22 Q Okay.

23 MR. SHAFFER: No further questions.

24 THE COURT: Redirect?

25 MR. DANIEL: No, Your Honor.

1 THE COURT: Thank you, sir, you may step down.

2 MR. DAVIS: Thank you, Judge.

3 THE COURT: Call your next witness.

4 MR. DANIEL: Your Honor, the State calls Officer
5 Daniel Coulombe.

6 THE CLERK: Please raise your right hand. Do you
7 solemnly swear or affirm that the testimony you will give the
8 Court will be the truth, the whole truth, and nothing but the
9 truth so help you God?

10 MR. COULOMBE: Yes, I do.

11 THE CLERK: Okay. Have a seat and state your name
12 for the record.

13 MR. COULOMBE: My full name is Daniel Arthur
14 Coulombe.

15 THE COURT: Spell your last name.

16 MR. COULOMBE: The last name is spelled C-o-u-l-o-m-
17 b-e.

18 THE COURT: Alright, sir. Listen to the solicitor's
19 questions.

20 DIRECT EXAMINATION

21 BY MR. DANIEL:

22 Q Alright. Officer Coulombe, you are, actually, you
23 formerly worked for the City of Newberry Police Department,
24 correct?

25 A Yes.

1 Q Currently you are not in law enforcement?

2 A Also correct.

3 Q Okay. But going back to October 30th, last year at that
4 time, on that date, you were employed as a road patrol officer
5 of the City of Newberry Police Department, correct?

6 A Yes, sir.

7 Q Okay. Were you on duty that Friday night, October 29th
8 leading into the early morning hours of October 30th of 2021?

9 A Yes, sir, I was.

10 Q Okay. And did you have occasion to be dispatched out to
11 the Wise Street, Eleanor Street area in the City of Newberry?

12 A That's correct, we were.

13 Q Okay. And what was that in reference to?

14 A It was in reference to the subject making threats to shoot
15 up a house, a car, several subjects. Jonathan Dawkins was the
16 name that was given to us over the radio.

17 Q Okay. So the dispatcher informed you that Jonathan
18 Dawkins had been identified as a suspect?

19 A That's correct.

20 Q And the information you had was that Jonathan Dawkins was
21 issuing threats related to shooting people?

22 A Yes, sir.

23 Q Alright. So that's the, that's the information you had at
24 the time you responded to this particular area?

25 A That's correct.

1 Q Okay. Approximately what time did you arrive on location?

2 A I believe it was just after midnight.

3 Q Okay. Just after midnight, so that would be October 30th
4 at that point?

5 A That's correct.

6 Q Alright. And had a description been given of Jonathan
7 Dawkins?

8 A I don't believe a description was given other than that he
9 was walking up Eleanor Street.

10 Q Okay. Were you familiar with Jonathan Dawkins?

11 A Yes, sir, I was.

12 Q Okay. And how were you familiar with him?

13 A I spent time working at the county jail where he was in
14 and out several times. Got to know him real well there as well
15 as several occasions on the road.

16 Q Okay. So you, you could identify him independently based
17 on prior interactions with him, is that correct?

18 A Yes, sir.

19 Q Okay. And were you able to locate Jonathan Dawkins?

20 A Yes, I did. As a matter of fact, when I pulled up and
21 located him, I stepped out of my patrol car and called his
22 name, he turned around and started walking back towards me.

23 Q Alright. And what happens next? Proceed from there.

24 A At that point, he proceeded to walk away from us, he got
25 within 10 feet, I think we got up to within a few feet of him

1 at one time or another. And then he continued to try to create
2 distance from us, he started walking behind one of the houses
3 on Wise Street. I wasn't sure if he was trying to get rid of
4 something or if he was going to run.

5 Q He was making movements towards, he was having his hands
6 in his pockets and things of that nature?

7 A I don't remember specifically if he had his hands in his
8 pockets or not. I know I made it a point not to lose sight of
9 him, I was concerned about whether or not he had any weapons on
10 him. And the fact that he was starting to create distance from
11 us was making me a little nervous as to whether or not he was
12 going to try to do something.

13 Q So you were under the impression that he was potentially
14 armed with a firearm?

15 A That's correct, or something.

16 Q Or some kind of deadly weapon?

17 A Yes, sir.

18 Q Okay. And that was based on the 9-1-1 call and the
19 dispatcher's information?

20 A That's correct.

21 Q Okay. And was it, did you have information about the 9-1-
22 1 call we played with the previous witness, James Davis?

23 A As far as information from him, we had a previous call
24 dealing with Jonathan Dawkins probably about a week earlier?

25

1 Q Okay. So a week prior -- I'm going to hand you, hand you
2 this report to refresh your memory. You said about a week
3 prior you had a report dealing with Jonathan Dawkins. Can you
4 elaborate on that?

5 A I don't remember specific dates or times. I know we were
6 out there I believe it was my lieutenant that answered the call
7 at the time, and I was backing him up. And it was, again, had
8 to do with threats being made, you know, back and forth,
9 possibly one person spitting on the other, but I can't remember
10 what came from that.

11 Q So you had previously responded there prior to October
12 30th?

13 A Yes, sir.

14 Q And what date?

15 A If it's this report here that I'm looking at, 10-21-2021.

16 Q So October 21st you were out at that same location. Did
17 that involve the same parties exactly?

18 A Yes. It's going to be Mr. James Davis and Jonathan
19 Dawkins.

20 Q And, so this is the second time you're going out there now
21 on October 30th, right?

22 A That's correct.

23 Q Same allegations?

24 A Yes, sir. It was threats being made, verbal dispute
25 between the two.

1 Q And Jonathan Dawkins allegedly being armed was your
2 concern?

3 A On the night of the 31st, or the night of the 30th,
4 yes.

5 Q Okay.

6 A I don't remember the specifics on this case. It'll
7 take a few minutes to read over the report.

8 Q Alright. So you encounter Jonathan Dawkins and
9 then eventually you and other officers, there were other
10 officers, there are other units out there on October
11 30th?

12 A That's correct.

13 Q Okay. Are you eventually able to place him in
14 investigative detention to ---

15 A Yeah. I talked with him. Having had a rapport with him,
16 I tried to talk our way into being able to allow other officers
17 to get in a position where if he tried to run, we would be able
18 to apprehend. And once I was comfortable enough, we had
19 officers in position, I went ahead and placed him in
20 investigative detention.

21 Q And you were equipped with a body worn camera, is that
22 correct?

23 A That's correct.

24 Q Alright. And have you had a chance to review that
25 footage?

1 A I have.

2 Q Okay. And so that captured essentially what you're
3 testifying to right now?

4 A That's correct.

5 Q Alright. And is that a fair and accurate representation
6 of what's depicted on that body cam?

7 A I believe it is.

8 Q Are those your initials on Court's, I think Court's Number
9 5, or Court's Number 4?

10 A Yes, sir.

11 Q Those are your initials?

12 A Yes.

13 MR. DANIEL: Your Honor, I ask at this time to
14 introduce Court's Number 4, the body worn camera footage into
15 evidence and publish it?

16 THE COURT: Any objection?

17 MR. SHAFFER: No objection.

18 THE COURT: Alright. In evidence.

19 MR. SHAFFER: Obviously, for the purposes of this
20 hearing.

21 THE COURT: As a Court's Exhibit I meant to
22 say.

23 (Whereupon Coulombe's body cam footage was introduced
24 as Court's Exhibit Number 4 for identification and entered into
25 evidence.)

1 MR. DANIEL: Your Honor, the tv, I can only face it
2 this way for the jury to view it. You have to come over here,
3 Judge. I could turn it, but the wiring is not situated for
4 that.

5 THE COURT: You want to come over here?

6 MR. SHAFFER: Yes, sir.

7 THE COURT: You want him to come?

8 MR. SHAFFER: Your Honor, he, he, one of the things
9 we discussed earlier is he's never seen it before. Can I try
10 to redo the tv in a different direction?

11 THE COURT: Put a chair up there and let him see it.

12 MR. SHAFFER: Okay.

13 THE COURT: Or you can sit in the jury box.

14 (Court's Exhibit Number 4 is being published.)

15 MR. DANIEL: That's all I intend, Your Honor, to
16 publish for this portion of Officer Coulombe's testimony.

17 MR. SHAFFER: And, Taylor, Your Honor, it may be for
18 the purposes of time, it may just be better to watch the
19 remainder of that. I guess I plan on moving to suppress
20 basically everything else after that.

21 MR. DANIEL: I'll, Your Honor, I'll
22 stipulate really 8:23 forward, time stamp that the
23 State's not seeking to introduce that in its case
24 in chief.

25 THE COURT: What do I need to do Mr. Shaffer?

1 MR. SHAFFER: That would be it, Your Honor, we don't
2 need to watch it.

3 DIRECT EXAMINATION (CONT'D)

4 BY MR. DANIEL:

5 Q Alright, Officer Coulombe, we played roughly, a little
6 over 8 minutes of your body cam footage of your interaction
7 with Mr. Dawkins. Eventually, I believe you testified earlier
8 that you did place him in investigative detention, correct?

9 A Yes, sir.

10 Q And that's the video on your body cam footage?

11 A That's correct.

12 Q Alright. And at one point, you begin to pat down almost
13 immediately thereafter placing him in handcuffs for
14 investigative detention purposes?

15 A Yes, me and one other officer.

16 Q At that particular time that he's initially, the handcuffs
17 come on, did you have any intention of, for arresting Mr.
18 Dawkins for any type of criminal offense at that point in time?

19 A Oh, many times.

20 Q Okay. So you suspected he was intoxicated?

21 A That's correct.

22 Q And would that be a Newberry Municipal violation, public
23 intoxication?

24 A Yes, sir.

25 Q And why did you suspect he was intoxicated, what evidence?

1 A I can smell alcoholic beverage coming off his person. His
2 speech was slurred, he was overly emotional. Everything
3 consistent with someone who's been consuming alcohol.

4 Q You said overly emotional?

5 A That's correct.

6 Q So somewhat boisterous, I guess?

7 A Boisterous, crying.

8 Q And had you taken into account the report that James Davis
9 had made as well, into that consideration?

10 A That's correct.

11 Q So you were considering the threats that were, that were
12 alleged to have been made against James Davis and Margaret
13 Hillard, is that correct?

14 MR. SHAFFER: Objection, leading.

15 THE COURT: Sustained. Don't, don't lead, please.

16 MR. DANIEL: Yes, Your Honor.

17 Q Alright. The 9-1-1 call from James Davis is why you were
18 dispatched out there initially, correct?

19 A That's correct.

20 Q You were factoring that in ---

21 MR. SHAFFER: Objection, leading.

22 THE COURT: Still leading.

23 Q Were you factoring that in at all?

24 A Yes, I was factoring that in.

25 Q Okay. It was your decision to charge him with public

1 intoxication, is that correct?

2 MR. SHAFFER: Objection.

3 A I was ---

4 THE COURT: Hold on, sir.

5 MR. SHAFFER: Objection, leading.

6 THE COURT: Still leading.

7 Q Alright. When the cuffs come on, you, you testified
8 earlier that you had evidence that suggested public
9 intoxication, is that correct?

10 A That's correct.

11 Q Okay. Did you, any other violations that you suspected
12 initially?

13 A No. I had no reason other than I was still concerned
14 about whether or not he had a weapon on him.

15 Q So at that point you search him for weapons after the
16 handcuffs go on, is that correct?

17 A I did a Terry frisk pat down.

18 Q You're describing a Terry frisk?

19 A That's correct.

20 Q Okay. Alright. So at that point after the Terry
21 frisk begins, do you, what if anything do you find?

22 A I located a hard object in his upper left pocket,
23 but I wasn't sure what it was, couldn't identify it as
24 not being a weapon.

25 Q Okay. So you feel a hard object in the upper

1 left jacket pocket, is that correct?

2 A That's correct.

3 Q Okay. And so you couldn't rule out that is was not a
4 weapon?

5 A That's correct.

6 MR. SHAFFER: Objection, leading.

7 THE COURT: You need to ---

8 MR. DANIEL: Your Honor, he testified to it earlier.

9 THE COURT: Well, that doesn't, it doesn't matter as
10 far as whether it's leading or not.

11 MR. DANIEL: Yes, sir.

12 THE COURT: State your questions in a non-leading
13 fashion, please.

14 Q Alright. Did you suspect that hard object could possibly
15 be a weapon?

16 A I suspected it could be based on the nature of the call.

17 Q And what if anything did you find after searching that
18 upper left jacket pocket area?

19 A I found a green pill bottle commonly used to carry drugs
20 as well as prescription drugs.

21 Q Okay. I'm going to hand you what's been pre-marked as
22 Court's Number 5. Do you recognize Court's Exhibit Number 5?

23 A Yes, sir. That is the bottle I pulled out of Jonathan
24 Dawkins' pocket.

25 Q That's the pill bottle?

1 A That is the pill bottle.

2 (Whereupon a pill bottle was submitted as Court's Exhibit
3 Number 5 for identification.)

4 Q And what if anything was contained within that pill
5 bottle?

6 A I believe it was four packages of pills that were inside
7 that bottle.

8 Q Four packages of pills, is that depicted here in this
9 exhibit ---

10 A It is.

11 Q --- Court's Number 5?

12 A It is, yes. It's right here.

13 Q Approximately how many blue pills was in that pill
14 bottle?

15 A I never took a count, but I'd say about a hundred.

16 Q So within that pill bottle, four individual plastic
17 baggies?

18 A Yes, sir.

19 Q All of the same blue pills?

20 A Yes, sir.

21 Q Okay. And any other contraband located on Mr. Dawkins'
22 person?

23 A Yeah. A little bit of marijuana as well.

24 Q And they were found at the same time?

25 A Yeah. They were found in the same pocket.

1 Q I'm going to hand you what's been pre-marked as Court's
2 Number 6. Do you recognize Court's Number 6?

3 A Yes. It's the evidence bag. The evidence sheet I filled
4 out when I entered it.

5 Q And what evidence is that, Court's Number 6?

6 A The marijuana.

7 (Whereupon an evidence bag containing marijuana was
8 submitted as Court's Exhibit Number 6 for identification.)

9 Q And both were contained within the same pocket area on Mr.
10 Dawkins?

11 A Yes, that's correct.

12 Q And that was the upper left jacket pocket?

13 A That is correct.

14 Q Alright. And what was the reason for the pat down again?

15 A We believed he may have had a weapon on him, officer
16 safety reasons. Again, because of the nature of the call we
17 did a pat down.

18 Q The nature of the call?

19 A Yes, sir.

20 Q Being ---

21 A Being that he made threats to the subjects that lived on
22 the corner of Eleanor and Wise.

23 Q Threats of bodily harm?

24 A That's correct.

25 Q And what time of night was it? You said you

1 were dispatched at what time again?

2 A I believe we arrived on scene just after midnight.

3 Q Shortly after midnight?

4 A Yes, sir.

5 Q Okay. So late at night?

6 A Very late at night.

7 Q And is Wise Street and Eleanor Street, is it a fair
8 characterization to call that a high crime area?

9 A Yes, sir.

10 Q Drug activity?

11 A Yes, sir.

12 Q Shootings?

13 A Yes, sir.

14 Q And did you know Mr. Dawkins, you had previous
15 interactions with Mr. Dawkins, as well, is that correct?

16 A That is correct.

17 Q And did you know that he was out on bond or
18 anything?

19 A Yeah, I believe he was out. I'm not sure what for, he got
20 out 10 months previously, I believe.

21 Q Okay. So he's out on bond for a criminal charge, you were
22 aware of that as well?

23 A Yes.

24 MR. DANIEL: Please answer any questions Defense
25 counsel has.

CROSS EXAMINATION

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BY MR. SHAFFER:

Q State's Exhibit 5, you're saying that State's Exhibit 5 -- well, do you think that it's about 3 inch by, maybe, an inch and a half prescription pill bottle?

A That's correct.

Q Okay. And it's like any other pill bottle that's flat on the top, correct?

A That's correct.

Q And flat on the bottom, correct?

A Correct.

Q A cylindrical shape?

A That's correct.

Q And you're saying that you thought State's Exhibit 5 could have been a weapon?

A I felt the somewhat cylindrical shape, I didn't feel any flat edges when we were doing our Terry pat down, not manipulating his pockets at the time, so when I felt it, I thought it could be the barrel of a weapon or something of that sort.

Q A barrel of a weapon. There's no, it's like an inch and a half cylinder and you thought it could have been a barrel of a weapon?

A That's correct, sir.

Q And there was no handle anywhere?

1 A I only felt that one part of it. Again, I wasn't
2 manipulating the pocket.

3 Q Okay. You didn't manipulate the pocket, you just unzipped
4 the pocket, is that fair to say?

5 A To try to discover what it was at that point, yes. It was
6 after I already felt it in his pocket.

7 Q Okay. You didn't pretty much immediately unzip the
8 pocket?

9 A Yeah. When I went to go search to discover what it was,
10 yes.

11 Q Okay. Does your video show you patting him down and
12 feeling the pocket?

13 A I don't believe it showed where I felt the object, no.

14 Q Okay. And you said that there were four bags of 50 pills
15 each in your incident report, correct? This would have been in
16 your incident report.

17 A Yeah. I'm looking to confirm. That's correct, that is
18 what I put in my report.

19 Q Okay. Four bags of 50 is a hundred, correct?

20 A No, sir.

21 Q Four bags of 50 is 200, correct?

22 A That's correct.

23 Q And you testified there were approximately a hundred
24 pills?

25 A That's correct.

1 Q Okay. Do you recall saying at least four times, no one's
2 trying to arrest you? Or I guess what you actually said was
3 nobody's trying to hook you up, nobody's trying to hem you up,
4 nobody's trying to lock you up, nobody's trying to hem you up,
5 do you recall that?

6 A Yes.

7 Q Okay. But your testimony here today is you were trying to
8 arrest him, correct?

9 A At that point, I hadn't made the decision.

10 Q Okay.

11 A I was trying to keep him from running, building a rapport
12 with him, talking with him until I could get officers in
13 position to where we could get him detained.

14 Q So at the time you said, at 2:55 on the video,
15 nobody's trying to hem you up, you had not made a
16 decision to arrest him or not arrest him, is that
17 correct?

18 A That's correct. I didn't make any decision yet.

19 Q And you recall saying as long as they say the same thing,
20 we're going to put you out of these handcuffs?

21 A Yeah. I was explaining that it was investigative
22 detention, and the handcuffs can come off just as quick as they
23 can go on.

24 Q So up to that point, you had not made the decision to
25 actually arrest him, correct?

1 A That's correct. I was trying to get all the information.

2 Q And do you recall an officer at the scene saying we're not
3 arresting you for what they're saying happened meaning the
4 Davis' or Mr. Davis said, we're arresting you for what we found
5 in your pocket?

6 A I do not recall that.

7 Q But that was true, you didn't actually arrest him on what
8 the Davis' said, correct?

9 A That's correct.

10 Q You said you planned on arresting him for public
11 intoxication?

12 A Yes. As I began interacting with him, and had hands on
13 him, after we got him in investigative detention, I could
14 smell the alcohol coming off of him. An open bottle of
15 alcoholic beverage was found on his person at that
16 point.

17 Q And, so the point that y'all essentially found the open
18 bottle on there and you smelled alcohol on him, you decided you
19 were going to arrest him for, for public intoxication under
20 that city violation, correct?

21 A That's the direction I was leaning towards, yes.

22 Q And just for clarification, you didn't actually arrest him
23 for that city violation, correct?

24 A No. I didn't feel it was necessary to stack charges.

25 Q Okay.

1 MR. SHAFFER: Nothing further.

2 THE COURT: Redirect?

3 MR. DANIEL: Briefly, Your Honor.

4 REDIRECT EXAMINATION

5 BY MR. DANIEL:

6 Q The pill bottle, Court's Number 5. Based on the playing
7 field, what turned out to be the pill bottle, could you rule
8 out whether or not it was a weapon at that point in time?

9 A No.

10 Q And again, it was dark, correct?

11 A Very dark out, after midnight.

12 Q How long had you been in law enforcement?

13 A Six years, eight years if you include two years at the
14 jailhouse detention center.

15 Q Do people often carry illicit drugs in otherwise legal
16 prescription pill bottles?

17 A Yes, it's very common.

18 Q And that's in your experience in law enforcement?

19 A That's absolutely in my experience in law enforcement,
20 yes, sir.

21 Q Would you often times see crack rocks in prescription pill
22 bottles?

23 A I've seen many types of drugs in those pill bottles.

24 Q And then Court's Number, Court's Number 6, the baggy, what
25 is that again? I'm sorry.

1 A I believe it was marijuana, it was the marijuana we found
2 in his pocket.

3 Q And that was in, was that in the same pocket as the blue
4 pills were found?

5 A That's correct, it was.

6 Q And which was found first, the marijuana or the blue
7 pills?

8 A I believe the marijuana was found first.

9 Q And what was that in, the marijuana?

10 A It was in a baggy, like a container, I believe.

11 Q Plastic baggy?

12 A Like a, a, I don't know how to describe it. A package.

13 Q So based on that playing field, did you suspect that that
14 was contraband?

15 A That, I didn't know at the time what it was, I was trying
16 to clear the pocket so I could see what the foreign object was,
17 I was concerned about that.

18 Q So the hard object turned out to be the pill bottle,
19 you could not definitively say based on the playing field
20 whether that was a weapon or not?

21 A That's correct.

22 Q And that's why it required further investigation?

23 A That's correct.

24 Q And you told Jonathan Dawkins that no one's trying to hem
25 you up, is that correct, in your body cam?

1 A Yes, I did.

2 Q Why didn't you just tell Jonathan Dawkins that you were
3 planning on arresting him right away for public intoxication?

4 A I've had experience with Jonathan Dawkins one other time
5 where he ran. With the way he was trying to create distance
6 with us, I was afraid he was going to try to run again.

7 Q But in your head, in your mind, you had it ---

8 MR. SHAFFER: Objection. Leading.

9 Q Did, did you think in your head that you were going to
10 arrest him for public intoxication?

11 A I had smelled alcohol on him for a quick minute when he,
12 we first made contact and got real close before he started
13 creating that distance. So yeah, I was thinking in that
14 direction already. My concern was he wasn't within arms reach
15 having officers in place in case he decided to run.

16 Q But you elected not to convey in him that you were leaning
17 towards arresting him for public intoxication?

18 A That's correct. If I had did that, he would have run.

19 Q Okay. So just because on the body cam you didn't tell Mr.
20 Dawkins you were going to arrest him, subjectively in your
21 head, you were leaning in that direction?

22 A That's correct.

23 Q Okay.

24 MR. DANIEL: Thank you, officer.

25 THE COURT: Anything further of the witness?

RECROSS EXAMINATION

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BY MR. SHAFFER:

Q The term playing field that the solicitor kept using, what does that term mean to you?

A The same thing as a Terry frisk. Not manipulating pockets, you're patting down looking for objects you can identify as a weapon or might be a weapon.

Q Okay. So in your view, the playing field includes things that might be a weapon?

A That's correct.

Q And in your view of things, it's related to weapons and not necessarily contraband, correct?

A That's correct. I wasn't looking for contraband, I was looking for weapons.

Q So whenever you felt that, that round object, you didn't know that it was a pill bottle by playing field, did you?

A No. I also didn't know it was not a weapon.

Q But you also didn't know whenever you felt the object above it, that that was contraband, did you?

A No. It was obscuring the object I was trying to get out of the way so that I could identify what that hard object in his pocket was.

Q So going into his pocket, you didn't, you didn't necessarily think that there was contraband in there, correct?

1 A I had no reason to at that time.

2 Q Okay.

3 A I was more concerned about a weapon.

4 MR. SHAFFER: Nothing further.

5 THE COURT: Thank you, sir, you may step down. Call
6 your next witness.

7 MR. DANIEL: Your Honor, the State calls Officer
8 Kristin Avery.

9 THE CLERK: Raise your right hand. Do you solemnly
10 swear or affirm that the testimony you will give the Court will
11 be the truth, the whole truth, and nothing but the truth so
12 help you God?

13 OFFICER AVEY: I do.

14 CLERK: Alright. Have a seat and state your name for
15 the record.

16 OFFICER AVEY: Kristin Tara Avey.

17 DIRECT EXAMINATION

18 BY MR. DANIEL:

19 Q Officer Avey, I'm sorry, I may have said Avery at first.
20 Officer Avey, where are you currently employed?

21 A Ninety-six Police Department.

22 Q Okay. And how long have you been with the Ninety-six
23 Police Department?

24 A It'll be a year February 14th.

25 Q Okay. So you've been there less than a year?

1 A Yes, sir.

2 Q Alright. Going back to October 30th, 2021, where were you
3 employed then?

4 A Newberry City Police Department.

5 Q Okay. And overall, how much law enforcement experience do
6 you have?

7 A I'm working on my ninth year.

8 Q Okay. So nine years total in law enforcement?

9 A Yes, sir.

10 Q On October 30th, 2021, you were with the City of Newberry
11 Police Department?

12 A Yes, sir.

13 Q Okay. Did you have an occasion to be dispatched out to
14 the Wise Street, Eleanor Street area early morning hours?

15 A Yes, sir.

16 Q Okay. Were you working that Friday night shift, October
17 29th?

18 A Yes, sir.

19 Q Okay. And that would lead into October 30th early morning
20 hours?

21 A Yes, sir.

22 Q Alright. Approximately what time were you dispatched out
23 to the Wise Street, Eleanor Street area?

24 A On the report it says 12:01.

25 Q Alright. So one minute into October 30th?

1 A Yes, sir.

2 Q Alright. And what was the, why were you dispatched to
3 that area?

4 A It came out as a subject was making threats to kill the
5 residents at the, at 823 Wise Street with a gun, with a
6 possible weapon.

7 Q Okay. And had a subject been identified as the one making
8 those threats?

9 A Jonathan Dawkins.

10 Q Did you get a physical description of Jonathan Dawkins?

11 A Not that I believe, I don't remember that one.

12 THE COURT: Can you get a little bit closer to that
13 microphone and speak louder? Thank you.

14 Q But you had Jonathan Dawkins as the name of the individual
15 issuing threats?

16 A Yes, sir.

17 Q Okay. And a potential situation where Jonathan Dawkins
18 may be armed with a weapon?

19 A Yes, sir.

20 Q And what was that based on? That report?

21 A Dispatch, we get our calls from dispatch.

22 Q Would they have been relaying what a 9-1-1 caller stated,
23 dispatch?

24 A Yes, sir.

25 Q Alright. So you arrive out there a little after

1 midnight, is that correct?

2 A Yes, sir.

3 Q Alright. Are there any other units on scene at the time
4 you arrive?

5 A Yes, sir.

6 Q Who was on the scene already?

7 A Corporal Coulombe.

8 Q So you arrived after Corporal Coulombe?

9 A Yes, sir.

10 Q Okay. And were you wearing a body cam, a body worn
11 camera?

12 A Yes, sir.

13 Q Okay. And have you had a chance to review that body worn
14 camera?

15 A Yes, sir.

16 Q Alright. Are those your initials on what's marked as
17 Court Number 7? Are these your initials right here?

18 A Yes, sir.

19 Q Okay. And so you had a chance to view this body camera
20 footage?

21 A Yes, sir.

22 Q And is it a fair and accurate representation of what's
23 depicted on there as what you observed on October 30th of last
24 year?

25 A Yes, sir.

1 MR. DANIEL: Your Honor, I'd ask to publish this body
2 cam footage at this time from Officer Avey.

3 (Whereupon Avey's body cam footage was submitted as
4 Court's Exhibit Number 7 for identification.)

5 MR. SHAFFER: Your Honor, can we do the same thing?

6 THE COURT: Yes, sir.

7 (Court's Exhibit Number 7 is being published.)

8 MR. DANIEL: Your Honor, that's all I intend to play
9 for purposes of this hearing.

10 MR. SHAFFER: Your Honor, just the same sort of
11 thing, is the State planning on playing anything past 10:37 on
12 the time for the actual video on that? I think it would be
13 015, 04 as to what the stamp is.

14 MR. DANIEL: I don't really anticipate for Officer
15 Avey's body cam video playing anything in our case in chief
16 past the, really 8 minute and 30 second mark, time stamp mark
17 for trial.

18 MR. SHAFFER: Okay. Thank you, Your Honor.

19 THE COURT: Alright.

20 DIRECT EXAMINATION (CONT'D)

21 BY MR. DANIEL:

22 Q Alright. Officer Avey, when I paused the video, what if
23 anything was in your hand right before I paused the video?

24 A An open alcoholic beverage ---

25 Q Okay.

1 A --- container.

2 Q And what was it?

3 A I do believe it was a vodka of some sort.

4 Q So a liquor bottle?

5 A Yes.

6 Q Okay. And did you suspect Mr. Dawkins to be under the
7 influence?

8 A Yes.

9 Q And what made you suspect that?

10 A Whenever I first approached, you could smell alcohol on
11 his person. He was slurring a lot, his voice was raising,
12 dropping, he had erratic behavior.

13 Q And where was that liquor bottle, where was that located,
14 where did you find that?

15 A It was on the right side of his back pocket of his jeans.

16 Q Okay. And that was just after the, the pat down occurred
17 where the drugs were located?

18 A I do believe I found that first.

19 Q Okay. So the liquor bottle, drug evidence, that's all the
20 same type of thing?

21 A Yes, sir.

22 Q Okay. That's depicted on the body cam footage?

23 A Yes, sir.

24 Q Okay. What officers, what, did any officers go to
25 interview James Davis, the 9-1-1 call?

1 A Yes.

2 Q Did you interview James Davis, the informant?

3 A No.

4 Q Do you know if another officer did?

5 A Yes.

6 Q Do you know which officer happened to interview James
7 Davis?

8 A I do believe it was Corporal Roop.

9 Q Okay. And to your knowledge, were those allegations
10 verified by James Davis to law enforcement?

11 A Yes, sir.

12 Q Okay. And did you get that information at some point in
13 this interaction where you had Mr. Dawkins in custody?

14 A Yes, sir.

15 Q Okay. Alright. And is it, is it a violation of any
16 Newberry Municipal ordinance to have open liquor bottle on your
17 person walking around?

18 A Yes, sir.

19 Q Where did y'all initially locate Mr. Dawkins?

20 A When I pulled up, him and Corporal Coulombe were standing
21 in the middle of Eleanor Street.

22 Q Eleanor Street?

23 A Facing away from Wise Street.

24 Q They were standing directly in the middle of Eleanor
25 Street?

1 A Yes, sir.

2 Q Okay. That's a public street?

3 A Yes, sir.

4 Q Okay. So Mr. Dawkins was not on private property?

5 A I'm unsure.

6 Q Well, didn't you get information that Mr. Dawkins was at
7 some point a pedestrian on public streets?

8 A Yes, sir.

9 Q Okay. Did y'all field test, do you recognize Court's
10 Number 5?

11 A Yes, sir.

12 Q Did y'all do any field tests for the substance, anything
13 like that?

14 A I'm unsure of that.

15 Q Okay. Thank you.

16 MR. DANIEL: Please answer any questions Mr. Shaffer
17 has.

18 CROSS EXAMINATION

19 BY MR. SHAFFER:

20 Q The liquor bottle was not sealed, correct?

21 A No, sir, it was open.

22 Q It was open, but it didn't have a cap on it?

23 A It had a blue cap.

24 Q It had a cap that was screwed in, correct?

25 A Yes.

1 Q So the entire time that you were out there and the entire
2 time that you're able to speak about, other than whenever I
3 guess you poured it out, it has a blue cap on it, correct?

4 A Yes.

5 Q So it wasn't like spilling out, correct?

6 A No, sir.

7 Q I mean, he wasn't taking a drink out of it at any given
8 point, correct?

9 A No, sir.

10 Q Okay. It was just unsealed, correct?

11 A Yes.

12 Q Okay. Who is that officer that was standing in front of,
13 I think he said something like no hard feelings, he was asking
14 a question and said when we're out here, we're looking for
15 something, we find something else, we've got to do something
16 about it, no hard feelings. Do you recall that in your
17 video?

18 A I do not recall that specific statement.

19 Q Do you recall a male officer standing sort of,
20 I guess, in front of Mr. Dawkins?

21 A While we had him in ---

22 Q While y'all were patting him down?

23 A Yes.

24 Q Who is that?

25 A That's Corporal Roop.

1 Q Corporal? Can you spell his name, I'm
2 sorry?

3 A That's going to be R-o-o-p.

4 Q Okay. Corporal Roop is, he had a body cam on him,
5 correct?

6 A As far as my knowledge, yes.

7 Q Okay. And you watched the video, the body camera, it
8 looked like a little black box ---

9 A Yes.

10 Q --- on his chest ---

11 A Yes.

12 Q --- correct?

13 A Yes.

14 Q Do you have any idea what happened to that body
15 cam?

16 A I'm not in charge of that.

17 Q Okay. Who would be in charge?

18 A I'm not sure.

19 Q Okay. Would you agree that initially when you were
20 patting, patting him down, you basically took his jacket and
21 went like this, correct?

22 A Yes.

23 Q Shined a flashlight around his waistband,
24 correct?

25 A Yes.

1 Q And do you recall in your video, it looked like a hand
2 going up there and feeling the inside of the pocket? Do you
3 recall that in the video?

4 A I'm unsure because it wasn't my hand.

5 Q Okay. But if I backed it up and let, you saw the part, do
6 you think that that would refresh your recollection of whose
7 hand it was?

8 A (Nonverbal response).

9 Q Okay.

10 MR. SHAFFER: Your Honor, may I have her step down
11 very briefly?

12 THE COURT: Sure.

13 (Court's Exhibit Number 7 playing.)

14 Q At 7:47, did you see the hand?

15 A Yes, sir.

16 Q Whose hand was that?

17 A Corporal Coulombe.

18 Q Alright. Corporal Coulombe's hand is actually going
19 inside, y'all had moved the jacket out the way, correct?

20 A Yes, sir.

21 Q And it was on the inside of the pocket feeling the inside
22 of the pocket, correct?

23 A Trying to frisk, yes, sir.

24 Q Okay. And that was after y'all had actually manipulated
25 the clothing to feel, correct?

1 A We moved it.

2 Q Okay. But you, you clearly moved out of the way and then
3 Corporal Coulombe was feeling the inside of the pocket,
4 correct?

5 A We opened the coat to see if there was a weapon inside of
6 the coat.

7 Q Okay. And right at the beginning, just so we go back to
8 this, that was Corporal Roop, the guy standing in front of Mr.
9 Dawkins, correct?

10 A Yes, sir.

11 Q And you saw that on the video, correct?

12 A Yes, sir.

13 Q Did he appear to have a body camera on him?

14 A And it was active, yes, sir.

15 Q Okay. How do you know it was active?

16 A Because it has a green light on it.

17 Q Okay. Alright.

18 MR. SHAFFER: No further questions.

19 THE COURT: Redirect?

20 REDIRECT EXAMINATION

21 BY MR. DANIEL:

22 Q Just prior to locating the drug evidence, is it true that
23 you said on the body cam footage, do you have a gun on you?

24 A Yes, sir.

25 Q Thank you.

1 MR. DANIEL: That's all I have.

2 THE COURT: Redirect, recross, excuse me?

3 MR. SHAFFER: Nothing further, Your Honor.

4 THE COURT: Thank you. You may step down. Call your
5 next witness.

6 MR. DANIEL: Your Honor, for purposes of Defense's
7 Fourth Amendment Motion to Suppress, I think that's all the
8 State's witnesses. I don't know if he wants to challenge any
9 chain of custody pretrial, I've seen it done pretrial, but then
10 again, he's free to raise that during the trial itself, but I
11 think that's all the witnesses I have on the Fourth Amendment
12 issues, Your Honor.

13 THE COURT: Mr. Shaffer?

14 MR. SHAFFER: Your Honor, I do have some argument
15 related to this. Your Honor, I mean, I think that the evidence
16 is that they were not planning on actually arresting him
17 necessarily until that point. And I say that because of the
18 fact that I think Coulombe said that he planned on arresting
19 him about the time the liquor bottle came out, that he changed
20 his mind at that point. Your Honor, this is, first of all, I
21 don't know how credible the Court finds that Coulombe thought
22 it was a gun in the pocket. It's a pill bottle, it's not
23 shaped anything like a gun. I just don't see how that's in any
24 way, I mean, he didn't mention this, but maybe he thought it
25 was a hand grenade or something like that, I mean it's shaped

1 in a cylinder, I don't think he could think that it's a weapon.
2 I don't think anyone would think that was a weapon, he said
3 that it was a barrel of a gun. Clearly, the Court's probably
4 familiar with firearms and that would not look anything or feel
5 anything like a weapon. I will also note the fact that the way
6 he felt it was not, not a, pursuant to a Terry frisk. He felt
7 it by actually manipulating clothing, moving the jacket out of
8 the way, and then feeling the inside of the pocket. He was
9 actually move, they actually moved the clothing in order, you
10 know, moved the jacket out of the way in order to test, to look
11 around, that's not a Terry frisk. It's the outside of the
12 clothing, you know, you can't take off or manipulate the
13 clothing in order to, to visually search for a weapon. You
14 have to actually pat them down, and if you know that there's a
15 weapon based off the feel, you obviously do something. If you
16 know it's contraband based off the feel, which is not the case
17 here, you can do something about it. But, Your Honor, if you
18 actually watch the video, I don't think that, I think that you
19 can, you can see that essentially, they're not following a
20 Terry frisk protocol here. And quite honestly, I think that
21 the, hey, we're going to arrest you whenever they say over and
22 over and over again that they weren't going to arrest him, I
23 think that that's sort of backwards thinking in saying, okay,
24 well, we know we have a bad Terry frisk here so let's come up
25 with some argument for why it's illegal to have. I will note

1 that the county ordinance, he did not violate the open
2 container or municipal ordinance for, for Newberry, you know,
3 it's not a broken seal violation, it's an open container. Open
4 container does not include closed containers, which this was
5 closed by a cap. I think based off of that, Your Honor, you
6 know, and I know we're sort of contemplating two different
7 arguments here because the State's basically grasping for
8 straws in trying to say, oh, it's a Terry frisk, but if you
9 don't believe it's a Terry frisk, he was going to arrest him.
10 And I think that essentially, that's, either of those arguments
11 fail based off of the video and the objective evidence of this
12 case.

13 THE COURT: What's the State's position?

14 MR. DANIEL: Well, Your Honor, it's really, it could
15 be certainly both. I think certainly the Terry frisk is valid
16 to form in the first place based on the nature of the 9-1-1
17 call. That Mr. Dawkins had threatened the lives of James Davis
18 and Margaret Hiller. Also, Your Honor, I could note Officer
19 Coulombe's testimony, that Officer Coulombe had actually
20 responded out there over a week prior to this incident, October
21 21st, actually, for similar allegations involving the same
22 parties. So I think he's well within reasonable suspicion to,
23 to suspect that Mr. Dawkins was armed and dangerous based on
24 the very nature of the allegation. But also, once Officer
25 Coulombe, he's the first officer that responds, can smell

1 alcohol on his breath, he's being evasive, he's boisterous,
2 essentially is his, is what his testimony was, being loud,
3 things of that nature. I think it also is public intoxication
4 to search incident to arrest. And that point, too, even though
5 despite what Officer Coulombe was communicating to Mr. Dawkins
6 that he wasn't going to hem him up, things of that nature,
7 Officer Coulombe testified that he had, his basis for deceiving
8 Mr. Dawkins even though subjectively Officer Coulombe felt he
9 had probable cause to arrest him for public intoxication, he
10 didn't want to vocalize that or verbalize that with Mr. Dawkins
11 because he's had interactions where Mr. Dawkins has run before.
12 And clearly, you can see Mr. Dawkins not standing still, not
13 allowing the officers to investigate the allegations, he's
14 being evasive, walking off onto private property. And then
15 obviously, Officer Avey's testimony, once she arrives to assist
16 Officer Coulombe, Officer Avey discovers that liquor bottle on
17 Mr. Dawkins' person, the seal broken, and it still has liquor
18 in it in violation of city ordinances. But certainly, I think
19 it can be both, Your Honor. As far as the playing field, as
20 far as the playing field doctrine and whether Officer Coulombe
21 performed a proper Terry frisk, a proper outer clothing pat
22 down, I think that was testified to. As soon as Officer
23 Coulombe felt a hard object in that upper left jacket pocket
24 area, at that point in time, Officer Coulombe can't
25 definitively rule out whether it's a weapon, he can't say it's

1 not a weapon. So that's why it requires further investigation.
2 I think the case law, Judge, speaks to this point, this
3 situation. And it's actually a Fourth Circuit Federal case,
4 Fourth Circuit Court of Appeals, US v Swan, 149 F.3d 271, the
5 citation is a 1998 Fourth Circuit Court of Appeals, and that
6 stands for the proposition that an officer who is not satisfied
7 that the hard, rectangular object he felt in the suspect's sock
8 is not a weapon may lawfully seize it to determine that it is
9 not a weapon. So that was consistent with Officer Coulombe's
10 testimony, that he, he couldn't rule out that it was not a
11 weapon. All he knows is it's a hard object, doesn't
12 necessarily suspect that's it's illegal contraband. But also,
13 in his experience he does point out that often times he's seen
14 illicit drugs being contained within an otherwise legal
15 prescription pill bottle such as crack rocks and things of that
16 nature of being in a prescription pill bottle. But in any
17 event, based on the nature of the allegations, Officer Coulombe
18 had to be able to rule out that it was not a weapon and I
19 believe that latitude is given to law enforcement to, to
20 further manipulate objects when they can't determine what they
21 are. I mean, it's easy to say in retrospect that, oh, yeah,
22 Officer Coulombe should have known that was a pill bottle.
23 Well, that's hindsight if there ever was, Judge, because,
24 again, this is after midnight, high crime area, reports that
25 Jonathan Dawkins was threatening to kill people, not once but

1 twice, the same people, threats that he was possibly armed and
2 was going to shoot them as well. And then you feel a hard
3 object in his coat pocket. I think, Judge, it's incumbent upon
4 of Officer Coulombe to take out that object, and it turned out
5 it was a pill bottle. But, again, Officer Coulombe would be
6 entitled under this particular case law. State v Smith, Judge,
7 is another, that's a South Carolina case, 329 S.C. 550, it
8 talks about that, it talks about if an officer lawfully pats
9 down a person's outer clothing, and they do allow a minimum
10 amount of squeezing being permissible, and if the officer feels
11 an object whose contour and mass makes it's identity
12 immediately apparent, there is no invasion of that person's
13 privacy beyond that already authorized by an officer's search
14 for weapons. Well, here, Judge, it was not immediately
15 apparent that that was a pill bottle. And even if it was
16 immediately apparent that it was a pill bottle, I think Officer
17 Coulombe, I think certainly the State has the argument that in
18 his training and experience as a law enforcement officer that
19 often times illegal drugs are contained within what would
20 otherwise be, you know, prescription pill bottle that somebody
21 may otherwise carry their blood pressure medication in. That's
22 not what these officers see out in the field. They see illegal
23 drugs in prescription pill bottles quite frequently are
24 certainly not uncommon. So I think this search is within the
25 proper bounds of Terry under the playing field line of case.

1 And also Judge, I think this also could be construed as search
2 incident to arrest based on these officers are considering the
3 threats that Mr. Dawkins was making based on that 9-1-1 call to
4 dispatch relayed to officers. And they're also considering his
5 demeanor, the smell of alcohol on his breath, just his general
6 demeanor which I think it's certainly fair to say that there
7 was indicia of intoxication at a minimum plus coupled with the
8 liquor bottle sticking out of his pocket that could easily be
9 seen during the course of that Terry frisk once Officer Avey is
10 able to assist Officer Coulombe. So I think all that coupled
11 together makes the drug evidence, the blue fentanyl pill
12 admissible, Judge. I think it's also inevitable discovery
13 issue, too. I think no matter what, these officers were going
14 to find the contraband that night. So I think it ultimately
15 was inevitable discovery that these officers made that
16 particular evening, Judge, or that particular, that night.

17 THE COURT: Mr. Shaffer?

18 MR. SHAFFER: Your Honor, one problem with his
19 playing field argument that he's making, which I don't think
20 it's playing field because playing field is when you know what
21 it is based off the field, that's sort of in the name. But
22 that being said, one problem here, the argument the State's
23 making is that what they cannot do, what constitutes a search
24 is actually the opening of his jacket. There is case law,
25 federal case law that says the mere opening of someone's jacket

1 is a unlawful seizure or unlawful search. At that point, they
2 had actually conceded that they also [sic] of Terry which they
3 immediately did. If you look at the video, they immediately
4 just start looking inside pockets and unzipping things, but
5 what they first do is open the jacket up to, to, to look, not
6 pat down, but look at what's going on. And that's when you see
7 the officer's hand actually manipulating the pocket, it's from
8 the inside of the jacket, which at that point, that field was,
9 was inappropriate to be honest with you. They couldn't have
10 actually opened the jacket and make that field, so I think that
11 the problem starts not, I think there's a problem with the
12 search, with feeling the pocket and actually having an issue.
13 But I think the problem actually starts initially before they
14 even touch the area of the pocket, they decide that they're
15 going to open the jacket, and by opening the jacket they see
16 the bounds of what they're entitled to do at that point and
17 that constitutes a search.

18 THE COURT: Anything else?

19 MR. SHAFFER: I will say that we cited a lot
20 of municipal codes and what they say, but we haven't actually
21 cited to what those code sections are. I would like the State
22 to put on the record what those code sections are just so that
23 we can make sure the record's clear about that because we have
24 a, you know, it's, they're citing something saying that it's
25 illegal to have it, they say open container, but they mean this

1 container wasn't open, it's a broken seal, but I don't know
2 what code section they're referring to. Section 11-19 says
3 open container, open bottle, which means open, not broken seal.

4 MR. DANIEL: Your Honor, I can cite summary code
5 violations that Mr. Shaffer's asking the State to produce.

6 THE COURT: Alright.

7 MR. DANIEL: Your Honor, 61-6-4720, that relates to
8 drinking open liquor in public conveyances. Also, really, the
9 public disorderly conduct statute encompasses the grossly
10 intoxicated in the public sphere, that's 16-17-530. I do not
11 have the Newberry Municipal code in front of me, but those are
12 just, of course, State statutes that would potentially be
13 applicable here, and under a search incident to arrest
14 argument.

15 MR. SHAFFER: And Your Honor, the problem is is they
16 said that they were talking about a municipal code, the
17 municipal code is 11-19 from what I can tell, which they're not
18 saying that they were going to arrest him for disorderly
19 conduct.

20 THE COURT: Be at ease for about 10 minutes. We're
21 at ease.

22 (Off the record.)

23 THE COURT: Alright. While I was back there reading
24 the law, I was told that two more videos have just been
25 provided to the Defense?

1 MR. SHAFFER: Your Honor, as best I can tell, it's
2 actually three new videos that, there were four videos and a
3 flash drive that were given to me that I don't think either of
4 these videos are one of them. I may be confused, but there are
5 at least two new videos that have been provided. These,
6 apparently, were given to the Solicitor's Office, but not
7 turned over in discovery.

8 THE COURT: Do they have exculpatory material on
9 them?

10 MR. SHAFFER: Your Honor, I think that they have. I
11 think that they are necessary for the preparation of the search
12 where it's a pat down because one of them shows Officer
13 Coulombe basically just not patting down, I'm not talking about
14 the upper zip up jacket pocket, it's the lower pocket. He
15 doesn't pat him down; he just sort of reaches inside his pocket
16 and he goes from nothing to going in the pocket and feeling
17 inside the pocket. Additionally, it shows, if you look at it
18 with Avey's body camera, I think it shows that Coulombe never
19 would have felt the drugs until he had actually manipulated the
20 jacket by pulling it back and feeling the inside of the jacket.
21 There's, which I, I think is actually, at that point, they
22 exceed the scope of Terry once they actually pull back the
23 jacket, there's cases that I can provide to that, Your Honor.

24 THE COURT: You want to put anything on the record
25 Solicitor?

1 MR. DANIEL: Your Honor, I have not seen this
2 additional video that Mr. Shaffer's just described Your Honor.
3 And I would just ask the Court to review it and not rely on
4 Defense counsel's characterization of it.

5 THE COURT: When am I going to review it?

6 MR. DANIEL: It's really just a what, a 30 second
7 portion that you want to show?

8 MR. SHAFFER: Well, it's multiple 30 second portions.
9 And one thing that I had to do in order to see it is actually
10 change the, the, the tent of one of the videos because you
11 can't really see anything unless you adjust the tent or the
12 brightness of that, the video. Your Honor, given the fact that
13 it's this and I'm trying to link up four or five videos in time
14 because they are time stamped at that bottom, I would actually
15 ask for the ability to wait until tomorrow morning to do this
16 even though I hate to do that because I probably, it's pushing
17 us into another day. I mean, we're here, I ended up, and is,
18 literally got the information 20 minutes ago so I'm trying to
19 figure out what I need to show in order to prove the
20 point that I'm trying to make. I can show you parts of
21 it, but I don't know if it's complete without having viewed the
22 videos.

23 THE COURT: Anything else?

24 MR. DANIEL: Your Honor, as I said in chambers about
25 the search incident to arrest argument, I would just add State

1 v Freiburger, 366 S.C. 125 as it relates to the proposition
2 that it's not necessary that the subject was actually under
3 arrest at the time of the pat down. As long as the subject was
4 going to be arrested because of the need to disarm a person to
5 take into custody. And also, it does not matter if the subject
6 is not ultimately arrested for the underlying crime. And this
7 pertains to the potential public intoxication, disorderly
8 conduct, open container of liquor in public violations that
9 they had probable cause to arrest him and elected not to
10 actually charge him. That would just bolster that particular
11 argument that the drugs were found after they had probable
12 cause to arrest him for these municipal or Summary Court
13 violations.

14 THE COURT: Alright. I'm going to tell you how I
15 feel about this, and not upset with anybody, not casting
16 aspersion [sic]. I'm inclined to revisit my ruling on
17 continuing this case. But ---

18 MR. SHAFFER: My client would like to move for the
19 continuance, Your Honor.

20 THE COURT: What I want y'all to do is this; I told
21 the jury to, I knew I should have done it before, I should have
22 had the jury call in, but the jury's coming at 9:30 in the
23 morning. And ---

24 THE CLERK: We can call them.

25 THE COURT: Alright. The Clerk's going

1 to try to call them. Y'all meet me at 9:30 in the morning, if
2 this is not something we can do fairly quickly, I'm continuing
3 this case. Y'all turning over three videos at the end of the
4 hearing, and I don't know if it's got anything exculpatory on
5 there or not based on the little bit Mr. Shaffer said, he
6 thinks some of it might be exculpatory. But I think he would
7 probably want to use that. I understand a lot of times the
8 Solicitor's office doesn't get the materials from different
9 sources, but you have an obligation under Rule 5 and under
10 Brady to turn this material over. And you know, we were
11 talking about earlier that the Defendant has not had an
12 opportunity to see some of the videos, now we're talking about
13 three more videos. The Court's in recess until 9:30 in the
14 morning. Thank you.

15 (Whereupon proceedings were concluded at 5:07 pm.)

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1 STATE OF SOUTH CAROLINA)
) COURT OF GENERAL SESSIONS
 2) 2022-GS-36-0476
 COUNTY OF NEWBERRY)
 3

4 STATE OF SOUTH CAROLINA,)
 5)
 Plaintiff,)
 6)
 vs.) TRANSCRIPT OF RECORD
 7)
 8 DAWKINS, JONATHAN CONARD,)
)
 9 Defendant.)

10
 11 December 6, 2022
 12 Newberry, South Carolina

13 B E F O R E:
 14 HONORABLE WILLIAM P. KEESLEY, JUDGE
 15

16 A P P E A R A N C E S:
 17 Taylor W. Daniel, Esquire
 Attorney for the State
 18
 19 Tristan M. Shaffer, Esquire
 Attorney for the Defendant

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 21 Lisa G. Amick
 Court reporter
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INDEX OF WITNESSES

(No witnesses called.)

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EXHIBITS

(No exhibits introduced.)

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1 THE COURT: Alright. Mr. Shaffer, how many videos
2 were you given around 5 yesterday?

3 MR. SHAFFER: Your Honor, there were two that I had
4 not received beforehand. There was one that's, had a different
5 name and that is why there was some confusion when I initially
6 said two then maybe three. But there were two that I was not
7 given up until basically after the testimony at the suppression
8 hearing.

9 THE COURT: Have you had a chance to review them?

10 MR. SHAFFER: I have, my client has not. I haven't
11 had a chance to review the entirety of them. I had a chance to
12 review some pertinent parts related to the suppression
13 argument. I have prepared a video that basically shows
14 multiple angles lined up within maybe half a second of each
15 other, all four angles, all four cameras line up within about
16 half a second of each other of the, of the Terry frisk, or the
17 attempted Terry frisk.

18 MR. DANIEL: And Your Honor, if Mr. Shaffer can
19 articulate I guess, why this other body cam video is, I guess,
20 relevant, I guess I'd like to hear that. What, what does he
21 feel it shows to change the analysis of the Terry frisk
22 argument.

23 THE COURT: Yesterday he said it showed the officer
24 went directly into the pocket and didn't do any pat down.

25 MR. SHAFFER: Yeah, and the first move

1 Coulombe does is to go directly into his pocket, he does not
2 pat down the outside of his clothes. It's not the pocket that
3 they ultimately find drugs in, but what he does initially is go
4 straight into the pocket. He doesn't pat down the outside of
5 the clothes, he goes in the pocket, they lift up the jacket, he
6 feels the inside of the jacket and that's where, when, when I'm
7 assuming, his hand then goes over here and unzips the outside
8 pocket and goes in that pocket. So he's actually manipulating
9 the jacket at the time he feels this, this pill bottle in there
10 that he claims was a, or could have been a gun barrel. But, I
11 mean, I think the manipulation of the jacket's unlawful. I
12 emailed y'all a case just a few minutes ago related to it.
13 Also, I think it pretty much impeaches what he's saying
14 happened, happened. I mean, like these other angles impeach
15 what he claims occurred in this. I think there's material
16 under Brady, honestly, I mean, I honestly think it's a Brady
17 violation not to give it to me prior to the suppression
18 hearing, but, and I say that because I don't like throwing
19 around saying that people intentionally withheld things, and
20 things like that, I'm not trying to say that. But from an
21 objective standpoint from my client's perspective, I mean, he
22 has to think that, that the officer, I mean, the Solicitor's
23 office is holding back stuff. I mean, there's no, oh, no, they
24 just missed it, it's just something that they missed. I can
25 say that all day long subjectively, you know, because I try to

1 give other attorneys the benefit of the doubt because quite
2 honestly, I mess up all the time, so I try to give other
3 attorneys the benefit of the doubt. But from an objective
4 standpoint, I have to think that my client thinks that they
5 actually intentionally withheld it because it directly
6 contradicts what the officer's testimony was.

7 THE COURT: Well, as I said yesterday, it's not
8 unusual for the attorneys to get this material late, and I'm
9 not saying there's anything intentional. Where do you live Mr.
10 Shaffer?

11 MR. SHAFFER: I'm in Irmo, or Chapin.

12 THE COURT: Your client was in Fairfield jail before,
13 but he was kept in Newberry last night?

14 MR. SHAFFER: I have no idea where he was kept last
15 night ---

16 THE COURT: Ask him.

17 MR. SHAFFER: He indicates in Newberry.

18 THE COURT: Alright. Solicitor, you need to put
19 anything on the record?

20 MR. DANIEL: Yes, sir. I would take exception to, I
21 guess, the Defense's characterization that this is Brady
22 material because it doesn't meet the definition of exculpatory
23 evidence because what he's suggesting does not establish Mr.
24 Dawkins' innocence, this just merely is an argument of
25 technicality argument. Establishing innocence is not

1 exculpatory in that, the traditional sense. This was an
2 inadvertent non-disclosure to the Defense. The material that I
3 didn't know that we had, even though it's imputed to us because
4 law enforcement has it, I was not aware of it. We just focused
5 on the two officers that were directly involved in the search
6 and seizure of the drug evidence. Because that, by that logic,
7 we should produce three or four other body cams of officers
8 that showed up later who provide nothing to the case. It was
9 nothing that we ever intended to introduce in our case in
10 chief. It's just, it's tedious and it's bogging down this
11 trial, I mean, because we can look at different vantage points
12 all day long. And another thing, Your Honor, this particular
13 body cam footage that Mr. Shaffer references, that body cam
14 footage cannot even be properly authenticated because the
15 officer who that body cam belonged to at the time is actually
16 no longer in law enforcement and has since moved to West
17 Virginia and is no longer in law enforcement period and has
18 expressed to his former colleagues that he would have no
19 intention of really ever returning to South Carolina,
20 particularly to testify. So Mr. Shaffer's argument about
21 evidence that really is inadmissible because we don't have the
22 witness to lay the foundation to authenticate that body cam
23 footage which is precisely why I didn't know it was in
24 existence, nor was it really pertinent. And we're talking
25 about microseconds here, Judge. Officer Coulombe's testimony

1 was he quickly touched the breast area of the jacket and then
2 felt the hard object which turned out to be the pill bottle,
3 so, and then immediately opens the jacket, pulls out the drugs,
4 I mean, this happens very quickly. So other, whether he
5 prolonged the outer clothing pat down then opened, I mean, this
6 takes place so quickly, I just think it's, we're getting so
7 into the weeds on this argument and we're certainly in a
8 position to move on from this, Judge. But we understand Mr.
9 Shaffer has to make a record of this. But this, this officer
10 is unavailable to testify to authenticate this body cam footage
11 is another issue.

12 MR. SHAFFER: And Your Honor, this is what I'd like
13 to put on the record related to that. And this is, this is,
14 and not, I understand you're a visiting Judge, but especially
15 if this was one of our resident Judges I would say this, this
16 is exactly the attitude that causes problems in this circuit,
17 oh, it wasn't exculpatory therefore we weren't going to give it
18 to them, oh, we weren't going to introduce it, therefore we
19 weren't going to give it to them. The problem is is that you
20 don't just have to be exculpatory to be Brady, it can be
21 impeachment value. And the thing is is when you have the
22 officer who testifies I patted down the outside of his
23 clothing, and it clearly shows that his initial move is to go
24 inside the pocket. That is not, that's not consistent with
25 what he's saying. I mean, this is the exact same issue as to

1 why the trial in Greenwood this week is actually getting
2 continued. The Solicitor's office didn't bother to follow up
3 on videos and figure out whether or not there was actually
4 videos. That's the reason that the trial in Greenwood got
5 continued from what I understand, I know that's a rumor, but
6 they were supposed to try a case in Greenwood they've been
7 trying to try for six months, the Solicitor's office didn't
8 bother to figure out there were actually videos until last
9 week. Here's the thing, I mentioned it during the suppression
10 hearing, two minutes later the evidence custodian or the
11 officers had the video, I mean, they have them in this
12 building, I mean, you know, like, they were on a flash drive, I
13 have to assume that that flash drive was given to the
14 Solicitor's office is how they made a copy of the two videos
15 that they made a copy of, they just didn't bother to look at
16 it. And as for subpoenaing the officer, first of all, I don't
17 think I need to have the officer there to authenticate whether
18 or not that true and accurate depiction of what happened, but
19 secondly, even if, even if so, that's even more of a reason
20 they should have handed it over to me so then I could have
21 subpoenaed, gotten an out of state subpoena, gotten the officer
22 here from West Virginia regardless of if he wanted to show up
23 or not. You know, he's a witness in this case, I could have
24 gotten service had they actually given me notice of it that he
25 wasn't going to show up and that we somehow needed him. But I

1 honestly don't think we necessarily need him. I just think
2 this is a massive problem, and I understand that maybe, maybe
3 it got swept between the cracks, and there's not some, you
4 know, conspiracy out there for Jonathan Dawkins to hurt him or
5 anything like that, that it's intentional. I just think this
6 is, like, sloppiness on the part of the, the State. I don't
7 know if the Solicitor's office or law enforcement, but
8 honestly, the Solicitor's office should have gone and figured
9 it out just like they should have figured out in the trial in
10 Greenwood months ago that they should have gone there and
11 actually looked at whether or not there were videos. This is
12 the reason cases get continued because they don't bother to
13 actually look for evidence other than the stuff that they want.
14 They cherry pick what they want and then they hand over what
15 they plan on introducing. They're not looking at everything.

16 THE COURT: There's a case in this state that's cited
17 in the rule book notations following Rule 5, it states that
18 Brady applies to both impeachment and exculpatory evidence.
19 With regard to a witness in another state that just says I'm
20 not coming back, well, there are ways to make people come back.
21 Had the, the real difficulty is that, well, I shouldn't say the
22 real difficulty, one of the difficulties is that the officers
23 testified that this was a Terry frisk. Now, the testimony was
24 a little bit here and a little bit there and the Solicitor was
25 trying to guide them, I think, properly toward this being a

1 search incident to arrest where I wouldn't have some of these
2 issues to deal with because a search incident to arrest they
3 can inventory. I just don't think it's fair to require the
4 Defense to go to trial under these circumstances this week.
5 The motion to continue is granted, reluctantly. Thank you.
6 Y'all don't have any pleas for me today or anything, do you?

7 MR. DANIEL: Not at this time, Your Honor. Is the
8 Court going to be in a position to rule whether this is a
9 search incident to arrest or just ---

10 THE COURT: No. I've got to hear, I got to see all
11 the evidence, and again, I don't think it's fair to kind of
12 piece mill this stuff around. As I've indicated earlier, I'm
13 not casting any aspersions on the Eighth Circuit as opposed to
14 any other circuit, but I will tell you, this happens a lot.
15 The eve of trial or not normally during the trial, but on the
16 eve of trial it's not unusual for all of a sudden this stuff
17 comes out of the woodwork and then the Solicitor's tell me,
18 well, Judge, we didn't get it until today and I turned it over
19 as quickly as I got it, and I believe them. But there's a lack
20 of a, there's a disjoiner between what should be going on and
21 what is going on and I'm not saying any of it's intentional.
22 This comes down to fundamental fairness in my mind.
23 Fundamentally fair thing to do is to continue the case until
24 another time.

25 (Whereupon proceedings were concluded at 9:56 am.)

1 State of South Carolina) Court of General Sessions
2 County of Newberry) Eighth Judicial Circuit

3

4 State of South Carolina,) Transcript of Record
)
5 vs.) 2022-GS-36-0476
6 Jonathan Conard Dawkins,)
)
7 Defendant.)

7

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February 21, 2023
Newberry, South Carolina

9

10 B E F O R E:

11 The Honorable Frank Addy, Jr., Judge

12

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

13

Taylor W. Daniel, Esquire
Attorney for the Plaintiff

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Tristan M. Shaffer, Esquire
Attorney for the Defendant

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Reported by: Stacy S. Johnson, RPR
Circuit Court Reporter

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E X H I B I T S

NO.

DESCRIPTION

ID.

EVD.

C-3

Rupp Body Cam Video

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C-5

December 5, 2022 transcript

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C-6

December 6, 2022 transcript

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D-1

Flash drive/videos/incident report

19

1 (The following proceedings were held February 21,
2 2023, beginning at 10:31 AM.)

3 THE COURT: We're gonna go on the record in
4 2022-GS-36-476. This is the case of the State versus
5 Jonathan Conrad Dawkins charged with PWID fentanyl and
6 I do believe that this is a third.

7 In discussion with the attorneys in chambers, I
8 wanted to before we move forward kind of put on the
9 record somewhat of a procedural history of this case.
10 It's the Court's understanding that Judge Hocker
11 previously ruled that there is no such crime as
12 trafficking in fentanyl currently and that the State
13 subsequently indicted Mr. Dawkins for the PWID charge.

14 I have been provided with transcripts from the
15 hearings that took place on December the 5th and 6th
16 of last year in front of Judge Keesley. I have had an
17 opportunity to review those transcripts. The gravamen
18 of that hearing related to a motion to suppress by the
19 defense and, additionally, Judge Keesley was unable to
20 rule in that case because my understanding is, and the
21 transcript of December 6th reflects that an additional
22 video came to light, that he wanted to afford Mr. Shaffer
23 the opportunity to -- to review in full.

24 I've had some communications by e-mail with the
25 attorneys on this case last week and I did have an

1 opportunity to review the videos, at least the
2 compilation that was made of the videos of the search,
3 and, of course, I've had a chance to read through the
4 transcripts a couple of times on this case, and so the
5 purpose this morning is basically to hear argument and
6 rule on the admissibility question prior to proceeding
7 with a jury trial.

8 Obviously I've released the jury and they're to
9 report back at about a quarter after 11 and hopefully
10 by that time we'll have an idea of which direction this
11 case is headed in.

12 The record, of course, should also reflect that I
13 encouraged a resolution this morning in chambers, which
14 apparently has not been fruitful, so that is essentially
15 where we are.

16 I know that the officers who were involved in this
17 arrest and search are present, but I don't see the need
18 at this point in time to rehash the testimony that was
19 already presented in December. The issue I think is a
20 strictly legal one concerning the legality of the search
21 where the drugs were found.

22 And, Mr. Shaffer, I guess since you're the moving
23 party on that issue, let me let you have first bite of
24 that apple, okay?

25 MR. SHAFFER: Thank you, Your Honor. If you've

1 reviewed the -- I mean, you have reviewed the video
2 obviously. The video indicates that the officer is
3 immediately -- that the officer that found the drugs
4 immediately went into the lower outside pocket of the
5 jacket. He did not attempt to pat him down with --
6 over that pocket, he just immediately went in the
7 pocket. It's clear from the testimony or -- well, at
8 least he testified that it was a Terry frisk. It's in
9 the incident report as being a Terry frisk. That's not
10 a proper Terry frisk. You can't just immediately go in
11 someone's pocket on the frisk.

12 The other issue is that whenever they ultimately
13 found the drugs what happened was they essentially
14 lifted the jacket up and manipulated the jacket and felt
15 on the inside pocket of the jacket, which is also not a
16 proper Terry frisk.

17 You know, I had sent an e-mail -- and obviously
18 I don't have a problem with the Court reviewing the
19 transcript. You know, my only problem is that, you know,
20 no one can say that -- without having live testimony --
21 I don't think you can make a credibility determination
22 that the officer's testimony is more credible than the
23 video. I mean, the video is what it is and it shows
24 what it shows and it shows that the officer lifted the
25 jacket, felt on the inside of the jacket and that's

1 where he then went inside the pocket and found -- in
2 the upper jacket pocket he found the narcotic -- or the
3 drug in the upper -- the fentanyl in the upper pocket
4 in a pill bottle.

5 It is a -- I mean, I think that it's pretty clear.
6 There's been a case out of the D.C. circuit that I
7 wanted to cite to that is U.S. versus Askew. It's
8 529 F.3d 119, and I believe that's the case I was
9 planning on citing to. My notes are not with me at
10 the moment. But in this case essentially what happened
11 is they manipulated the jacket and by manipulating the
12 jacket and then finding the drugs, they went beyond the
13 scope of what they can do in Terry, and that's what
14 these officers did here today -- or did here with
15 Mr. Dawkins is essentially they manipulated the jacket
16 and then found the drugs inside by -- by feeling on the
17 inside pocket or the inside of the jacket, which you
18 can't really -- I mean, you can't do. That's not a
19 proper Terry frisk. He didn't pat him down in the
20 upper area before he did that.

21 THE COURT: He did or did not? My recollection
22 is he did not pat him down on the outside of the jacket
23 prior to going into the inside pocket.

24 MR. SHAFFER: That's correct. He -- he only felt
25 on the inside of the jacket before going inside that

1 pocket.

2 THE COURT: Okay.

3 MR. SHAFFER: And obviously it shows the intent of
4 him whenever he immediately doesn't pat down the lower
5 pocket, the outside pocket, and immediately just goes
6 inside the outside pocket. It's not a prior Terry
7 frisk. You know, if the drugs were in the lower front
8 pocket, there would be no question it was not a proper
9 Terry frisk. I also think there's no question that he
10 can't move the jacket in order to feel the -- feel
11 whether or not the drugs are on the inside pocket.

12 THE COURT: All right. Well, Solicitor, let me
13 hear from you and try to explain to me because the --
14 the transcript kind of reflects that this is -- the
15 transcript's kind of all over the place as to whether
16 this is a search incident to arrest, whether it's a
17 Terry frisk. You made allusion in the transcript to
18 inevitable discovery, which I'm really not sure how
19 that's gonna apply or -- but let me -- let me hear from
20 you on why this is not an improper search, please.

21 MR. DANIEL: Yes. May it please the Court, Your
22 Honor? I guess as far as the defense's characterization
23 of just immediately going straight into the jacket not
24 being a proper frisk within the bounds of Terry, I think
25 the -- the additional body camera footage that was the

1 basis for the continuance actually reflects just the
2 opposite. You do see Officer Coulombe's hand touch
3 the outer -- excuse me -- the outer left breast of the
4 jacket before further opening it up to actually access
5 the drug evidence. So actually you can see Officer
6 Coulombe's hand grab the left breast pocket area of
7 the jacket on the outer portion of the jacket before
8 actually opening up the jacket to seize the prescription
9 pill bottle of the fentanyl pills.

10 So, I guess, the argument that this wasn't a proper
11 Terry frisk to me is contradicted by the testimony and
12 the additional body cam footage that shows the other
13 vantage point.

14 And in any event, Judge, I think what Mr. Shaffer
15 envisions as a Terry frisk is what occurs every day at
16 the airport with TSA. You know, a latex glove on, back
17 of the hand where you just -- it overly dramatized how
18 a frisk should be, whereas here we're talking about
19 midnight, a high crime area, and that was testified to.
20 Reports that Mr. Dawkins had a gun, was threatening to
21 shoot two specific people with the gun. And keep in
22 mind, Judge, on October 30th of 2021 when they get this
23 report from James Davis, who actually testified in the
24 transcript, Officer Coulombe, the responding officer,
25 had actually been out there a little over a week prior

1 to this for the same precise threats, so they had every
2 reason to believe that he had a handgun on him. And if
3 you look at Officer Coulombe's testimony in the
4 transcript, Judge, he could not rule out that that hard
5 prescription pill bottle was not a weapon and so that's
6 why it required further manipulation.

7 And I think, Judge, if you look at U.S. v. Swann.
8 That's a Fourth Circuit appellate court case, Judge,
9 which is controlling within South Carolina, South
10 Carolina's within the Fourth Circuit, 149 F.3d 271.

11 Judge, that stands for the proposition that an
12 officer who is not satisfied that the hard rectangular
13 object he felt in the -- and these are the facts in
14 that case, in the suspect's socks is not a weapon, may
15 lawfully seize it to determine that it is not a weapon.
16 So Officer Coulombe could not rule out that it was not
17 a weapon, in any event, Judge, and it's a very specific
18 report that Jonathan Dawkins, who he can independently
19 identify, is armed with a gun, midnight, at Wise and
20 Eleanor Streets in the city of Newberry, a high crime
21 area, and he had independent knowledge of Jonathan
22 Dawkins also causing a disturbance in this same area a
23 little over a week prior to this, Judge.

24 So, again, we're talking about microseconds from
25 the time it takes to touch the outer left breast jacket

1 area from outside to the inside and he feels a hard
2 object, as he testified to, which turned out to be the
3 pill bottle.

4 But also, Judge, it can be both. It can be search
5 incident to arrest because as was testified to prior to
6 the Terry frisk both Officer Coulombe and Officer Avey
7 testified that Jonathan Dawkins smelled of alcohol,
8 slurred speech, saw him on a public street and in plain
9 view in his back pocket was an open liquor bottle. So
10 before they even conduct the Terry frisk, Judge, they
11 actually have probable cause to arrest him for summary
12 court violations, whether it be open container of liquor
13 on a public conveyance, disorderly conduct, but they
14 elected not to actually ticket him for that, Judge.

15 But in any event, there's case law that basically
16 it's a search incident to arrest argument in the
17 alternative. State v. Freiburger, Judge. That's
18 366 S.C. 125. That stands for the proposition that it
19 is not necessary that the subject was actually under
20 arrest at the time of the pat down as long as he was
21 going to be arrested because of the need to disarm a
22 person to take him into custody.

23 Also it does not matter if the suspect is not
24 ultimately arrested for the underlying crime, and that's
25 also citing Devenpeck v. Alford. That's a U.S. Supreme

1 Court case, 125 S. CT. 588.

2 So, again, Judge, I think it's both. I think it's
3 a proper Terry frisk, but, again, you don't see the
4 typical TSA airport pat down where they're using the
5 back of their hand and they're going very slowly and
6 methodically as if they -- he was boarding an airplane.
7 You don't see that. This is out in the field. It
8 happens very quickly, Judge. I think Officer Rupp's
9 body cam footage reflects that, that you do see touching
10 of the outer breast area of the jacket before actually
11 reaching in, and as far as the testimony, the testimony
12 reflects that, Judge, as well.

13 And I can make the transcripts from December 5th
14 and, I believe, December's 6th, Court's exhibits as well,
15 Your Honor, but I think it's both. In the alternative,
16 I think it's a search incident to arrest, but it's also a
17 proper Terry frisk because these violations of municipal
18 law -- municipal code violations, those were plainly
19 observable to the officers prior to them conducting the
20 Terry frisk and they testified that they did not want to
21 tell Mr. Dawkins he was under arrest because in prior
22 interactions with him he had run before.

23 But subjectively Officer Coulombe testified that
24 yes, he did observe these violations, but did not want
25 to tip Mr. Dawkins off that he was eventually gonna be

1 arrested -- inevitably going to be arrested one way or
2 the other.

3 THE COURT: And I understand that, and that's
4 certainly not an unreasonable position for the officer
5 to take. He doesn't want to cause the person to run by
6 alerting them to the fact that he's under arrest, but
7 here's the problem with that line of thought. The prior
8 transcript reflects a characterization of this encounter
9 as investigative detention, which is not arrest. So if
10 it's an investigative detention, he's not under arrest,
11 you can certainly do a Terry frisk. A Terry frisk would
12 be subject to the plain feel doctrine, which I think is
13 not accurately reflected in the transcript. I can't
14 remember what the transcript calls it, but I'm talking
15 about P-L-A-I-N F-E-E-L doctrine.

16 So essentially the problem that the Court has, and
17 quite honestly, I think the problem Judge Keesley had,
18 is what is this, and it's not really the Court's job to
19 try to speculate which road we go down. If the testimony
20 at trial had been -- or the testimony in December had
21 been yeah, he was definitely under arrest, he was under
22 arrest, I had made up my mind to arrest him, I was gonna
23 cuff him and take him down and book him, then it's game
24 over. You've got a search incident to arrest and the
25 pill bottle is fair game regardless of where it was

1 located, regardless of how the pat down played out.
2 But you've got the search incident to arrest issue all
3 muddled in and mixed in with the investigative detention
4 testimony and this entire discussion of plain feel. I
5 mean, if the State wants it to be both, then it can't
6 be both because we're using different legal standards
7 to judge the reasonableness and the legality of the
8 underlying search.

9 Like John Freeman used to say, you know, everybody's
10 got to be something, and I know he was talking about in
11 the business context in law school, but, you know, I
12 don't see how it can be both a Terry frisk and a search
13 incident to arrest. If it's a Terry frisk, then that
14 means he's not under arrest, they're just investigating
15 and trying to determine if he has a gun on him. If it's
16 a search incident to arrest, then Terry doesn't apply.
17 They're searching -- doing a pat down to try to determine
18 if he has weapons, if it's a Terry frisk. If it's just
19 investigative detention, then plain feel comes into play,
20 and, I mean, a medicine bottle is never gonna feel like
21 the barrel of a weapon. I'm having major issues with
22 that.

23 Do you want to speak to that, Solicitor?

24 MR. DANIEL: Yes, Your Honor. And your point's
25 well taken, Judge. I guess by way of analogy, if you

1 have a case where the police have a search warrant, but
2 before they can actually announce they have a search
3 warrant and execute it, the defendant answers the door
4 and gives them consent and then he goes to challenge
5 the admissibility of the -- the evidence at trial, then,
6 of course, the State would argue they have a search
7 warrant and consent; that the drug -- the evidence would
8 be admissible under either avenue, and that's essentially
9 why we're arguing both, Judge, because the Terry frisk
10 applies based on the nature of the 9-1-1 call.

11 And, Judge, if you look at page 23, part 1 of the
12 transcript in question, Judge, I ask Officer Coulombe:
13 Did you suspect that the hard object could possibly be
14 a weapon? Answer: I suspected it could be based on the
15 nature of the call. Question: And what, if anything,
16 did you find after searching that upper left jacket
17 pocket area? And then the answer: I found a green pill
18 bottle commonly used to carry drugs.

19 And so -- and that goes and there was a whole other
20 line of questioning related to he couldn't say that it
21 was not a weapon and things of that nature and then
22 also whether a pill bottle based on its plain feel he
23 recognized that as contraband and he testified that
24 oftentimes in narcotics investigations people will use
25 otherwise legal prescription pill bottles to carry

1 illicit drugs in, and that's based on his training and
2 experience.

3 So I questioned to all of that, Judge, but then
4 Officer Avey's testimony, that can't be ignored either,
5 Judge, because before the Terry frisk occurs in earnest,
6 she sees the liquor bottle in his back pocket in plain
7 view, so that right there in and of itself, Judge, the
8 fact that he was on a public street, they already had
9 evidence indicia of intoxication, that comes out just
10 prior to the Terry frisk occurring in earnest, so that's
11 why I say it's both. It's search incident to arrest,
12 but also -- because it happens contemporaneous, Judge.
13 I just don't think that the State should necessarily
14 have to elect which theory that the drug evidence is
15 admissible when you can have a multitude of reasons why
16 drug evidence could be admissible, like with my example
17 of consent and also a search warrant.

18 THE COURT: And I don't disagree perhaps, but why
19 -- why go down these two different paths? If it's a
20 search incident to arrest, all you would have needed to
21 elicit in December was yeah, I may have told him he
22 wasn't under arrest, but in my mind he was going down
23 because he had the open liquor bottle and in my mind he
24 was being arrested and that's why he was in cuffs and
25 you don't even go down this road with investigative

1 detention and the Terry frisk, which is obviously a
2 more rigorous standard that the State has to meet. If
3 the decision had been made to arrest him, then the
4 testimony could have easily been hey, I meant to arrest
5 him, this was a search incident to arrest, end of story,
6 and all this about Terry becomes irrelevant, and that's
7 where the Court's having -- the Court shouldn't have to
8 judge or guess rather as to which legal search analysis
9 the Court has to engage in.

10 Yes.

11 MR. DANIEL: Your Honor -- and actually I found the
12 page on the transcript that's pertinent to your -- to
13 your line of inquiry here, Judge. On page 33 of part
14 one transcript, Question: Why didn't you just tell
15 Jonathan Dawkins that you were planning on arresting him
16 right after -- or right away for public intoxication?
17 Answer: I've had experience with Jonathan Dawkins one
18 other time where he ran. With the way he was trying to
19 create distance with us, I was afraid he was gonna try
20 to run again. And then if you go down further: But you
21 elected not to convey to him that you were leaning towards
22 arresting him for public intoxication? Answer: That's
23 correct. If I had done -- if I did that, he would have
24 run. Okay. Question: So just because on the body cam
25 you didn't tell Mr. Dawkins you were going to arrest

1 him, subjectively in your head you were leaning in that
2 direction? Answer: That's correct.

3 THE COURT: And I'm very familiar with that portion
4 of the transcript and I take you were leading in that
5 direction, which appears on line 21 of page 33 as being
6 yeah, I was going to arrest him, which is all well and
7 good, but you understand the Court's problem with these
8 conflicting rationales for the pat down raise an issue
9 as to the legitimacy of the explanations being given
10 for the Terry pat down and obviously on the video, the
11 video in my opinion, and correct me if I'm wrong,
12 Mr. Shaffer, I'll let you speak in a minute, but the
13 video seems to reflect that there was not a pat down
14 of the upper part of the jacket on the outside of the
15 breast area, the pill bottle was found on the inside of
16 the jacket in the breast pocket, and the transcript and
17 the video are not consistent. The video reflects that
18 there was not a pat down of the upper torso of the
19 gentleman on the outside, yet I think the transcript
20 reflects that yeah, I was doing a Terry frisk and I felt
21 the bottle, I felt the bottle, and that's when I went
22 into the pocket to make sure it wasn't a gun. The video
23 contradicts that version of events or at least the one
24 that I -- the ones that I looked at.

25 But, Mr. Shaffer, do you want to speak to that or

1 correct me if I'm mistaken?

2 MR. SHAFFER: And, Your Honor, that is correct. The
3 only time that he comes close to the pocket is whenever
4 he's grabbing the zipper -- the zipper of the jacket to
5 open it and then starts feeling on the inside of the
6 jacket. He does not touch the upper -- upper portion of
7 my client's body until he -- basically he grabs around
8 the zipper and then he puts his hand in inside the jacket
9 and feels on the inside pocket and that's when he then
10 goes in, which is directly in contradiction to what he
11 said in the -- in the testimony.

12 It's also -- I would like to point out -- I was
13 going to make this flash drive with the four original
14 videos and my two -- two other videos that have the
15 compilation and the incident report, and the incident
16 report also indicates that it was a Terry frisk, so I
17 think that there's a credibility -- it's hard to say --
18 I guess if they wanted to do that, they should have said
19 this is a search incident to arrest and he was being
20 arrested and that's what we're dealing with, but it does
21 call into question I think everything you're saying. I
22 think it's different than what the testimony during the
23 hearing was.

24 THE COURT: And just so the record is clear, the
25 videos, have they already been made a part of the record

1 or do they need to be introduced at this point?

2 MR. SHAFFER: I think that the -- two of the
3 original videos were made part of the record last time.
4 I do have them all on one flash drive, along with the
5 incident report, and I'd like to make that -- that flash
6 drive a part of the record.

7 THE COURT: Okay.

8 Let's clear -- you've got the ones that are part of
9 the record?

10 MR. DANIEL: Yes, sir. From the December hearing,
11 Officer Coulombe, and then -- his body-worn camera, and
12 then Officer Avey's body-worn camera. The only thing
13 additional, I believe, is from Officer Rupp that I would
14 invite the Court to watch, which in my opinion, Judge,
15 does show the outer jacket being frisked by Officer
16 Coulombe.

17 MR. SHAFFER: And I'm happy to --

18 THE COURT: That will be Defendant's 1 just for
19 identification.

20 MR. DANIEL: And, Your Honor, my preference would
21 be for the Court --

22 THE COURT: Hold on one second. One second.

23 (Defendant's Exhibit Number 1 was marked for
24 identification.)

25 THE COURT: And you said there was one additional

1 video, Solicitor, you wanted me to watch?

2 MR. DANIEL: Yes, Your Honor. And the reason the
3 case got continued is Officer Rupp's body cam was not
4 provided to the defense and it's Officer Rupp's body
5 cam that I would invite the Court to see which does
6 show in my opinion the pat down beginning on the outside
7 of the jacket area.

8 THE COURT: The record will reflect that Mr. Daniels
9 is playing that right now.

10 MR. DANIEL: And, Your Honor, I'll burn a copy of
11 Officer Rupp's body cam after this hearing and make it a
12 part of the record.

13 THE COURT: I'm watching from the 4:15 mark on this
14 exhibit.

15 (Court's Exhibit Number 3 was played.)

16 MR. DANIEL: Your Honor -- Your Honor, if I may
17 replay it? I think maybe I missed the initial portion
18 I wanted the Court to view.

19 THE COURT: Sure. Okay.

20 MR. DANIEL: If I could just back it up, Your Honor.
21 I believe after the 4 minute 20 second mark, Your
22 Honor --

23 THE COURT: You're at 4:15 -- sorry, 4:14 now, so
24 go ahead and hit play.

25 MR. DANIEL: Yes, sir.

1 (Court's Exhibit Number 3 was replayed.)

2 MR. DANIEL: And, Judge, it's that quick where
3 you can see Officer Coulombe's hand.

4 THE COURT: And the other problem is he goes
5 straight to a pocket without touching the outside of
6 the outside pocket. I know the drugs were found on the
7 inside, but play that again and let me see that at 4:20.

8 MR. DANIEL: Yes. And it goes to my point, Judge.
9 Microseconds, I guess, is essentially what we're talking
10 about.

11 (Court's Exhibit Number 3 was replayed.)

12 THE COURT: You can stop it. At the 4:20 mark,
13 it looks more like he's just grabbing the lapel of
14 his jacket as opposed to the upper zipper part. I
15 say lapel, where a lapel would be, without necessarily
16 patting where the breast pocket would be on that kind
17 of a jacket.

18 Let's go ahead and make that a State's exhibit what
19 you just showed me though. It looks like it will be
20 State's --

21 MR. DANIEL: Your Honor, we can make that -- well,
22 Court's Exhibit Number 3.

23 THE COURT: That's fine. Whatever -- it will be
24 Court's Number 3, the video I just viewed.

25 (Court's Exhibit Number 3 was marked for

1 identification.)

2 MR. DANIEL: And, Judge, from the testimony you'll
3 recall that you do see Officer Coulombe go into a --
4 the outside pocket, but as you recall the testimony the
5 drugs are found inside jacket left breast area. You can
6 see on that video Officer Coulombe grabbing the outside
7 of the left breast jacket area, the outside, and almost
8 simultaneously then opening it and then you don't have
9 the vantage point anymore from that body cam. That's
10 what I saw, Your Honor.

11 THE COURT: And I think it was the body cam that
12 Mr. Shaffer obtained at trial that reflects the jacket
13 being basically opened and the hand immediately goes
14 in.

15 Is that the point you were about to make when you
16 stood up?

17 MR. SHAFFER: Yes, Your Honor. If you -- if you
18 look at the other vantage point, it's pretty clear he's
19 just grabbing the outside to open it and then starts
20 feeling on the inside.

21 THE COURT: All right. Solicitor, the Court's
22 problem again is that the rationale for the search is
23 factually and legally inherently contradictory and a lot
24 of what was testified to is, in my opinion, contradicted
25 by the video that only became apparent -- or only became

1 -- or that the defense only became aware of at trial.

2 And I know that Judge Keesley had some reservations
3 about how all this played out. I have those same
4 reservations. If this was a straight search incident
5 to arrest, then it would be game over, but the
6 characterization of this as an investigative detention,
7 and I don't even know why you're going -- or why that
8 phrase was used. That's usually something that's used
9 in an effort to address a Miranda type of situation,
10 but, fine, it's investigative detention, so Terry frisk
11 applies.

12 Based on the contradictions that I observed in the
13 video, as opposed to what was testified to, I feel like
14 the Court has no choice but to suppress the drugs in
15 this case.

16 So the Court's ruling will be that the -- although
17 the initial interaction was certainly proper, although
18 they had the right to arrest him and could have arrested
19 him for the open container, for the open liquor bottle,
20 the testimony from the December hearing was that this
21 was an investigative detention. Again, the testimony's
22 contradictory in and of itself and it conflicts with what
23 the video cameras show, what the body cam videos show.
24 Based upon all of that, the Court finds that the search
25 did not meet constitutional muster and that a -- and that

1 the State's failed to put forward a rational basis to
2 support the actions of the officers that evening when
3 they conducted the search. They were certainly doing a
4 good job in terms of trying to investigate the situation,
5 but the Court can't be left to guess at what the legal
6 rationale was for the search.

7 Obviously, Solicitor, you can let three to five
8 other additional people take a look at this and hopefully
9 the record's sufficiently clear in terms of the body
10 cam videos, et cetera, and they can make their own
11 determination if I and Judge Keesley are mistaken, but
12 that's where I'm leaving it.

13 All right.

14 MR. DANIEL: Yes, sir. And just to be clear for
15 the record, it's the drugs are being suppressed under
16 an improper Terry frisk and that is the --

17 THE COURT: Yes, because if it was a search incident
18 to arrest, I don't see why there was any testimony
19 elicited about investigative detention or Terry frisk
20 or plain feel. All of that is irrelevant to a search
21 incident to arrest. That's why I'm saying the inherently
22 contradictory nature of the testimony in December has
23 just got the Court scratching its head and so, yes, I am
24 suppressing it because it's an illegal Terry frisk. If
25 it was a search incident to arrest, I presume that you

1 would have led with that and it would have been game
2 over. I don't -- I can't help the internally and
3 inherently contradictory nature of the justifications put
4 forward for this search, and so it is being suppressed,
5 and that's the Court's ruling.

6 MR. DANIEL: Yes, sir. Thank you, Your Honor.

7 THE COURT: I can't guess at what the intentions
8 could have been, may have been, should have been, would
9 have been.

10 Very good.

11 (Court's Exhibit Numbers 5 and 6 were marked for
12 identification.)

13 (Whereupon, the proceedings were concluded at
14 11:08 AM.)

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C E R T I F I C A T E

I, Stacy S. Johnson, Official Court Reporter for the Eleventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and the evidence introduced in the hearing of the captioned case in Circuit Court on the 21st day of February, 2023.

This transcript may contain quoted material. Such material is reproduced as read by the speaker.

I do further certify that I am neither of kin, counsel, nor have an interest to any party hereto.

April 24, 2023

Stacy S. Johnson
STACY S. JOHNSON
CIRCUIT COURT REPORTER

WITNESSES

Sgt. Wilbur S. Bouknight
Newberry Police Department

WARRANT NUMBER

Direct Indictment

Shana McLean

TRUE BILL

Foreman of the Grand Jury

Date: *11-10-22*

VERDICT

Search Suppressed.

F. J. L.
2-21-2023

Foreman

THE STATE OF SOUTH CAROLINA

COUNTY OF NEWBERRY

COURT OF GENERAL SESSIONS

November Term, 2022

Indictment # 2022-GS-36- 00476

THE STATE

vs.

JONATHAN CONARD DAWKINS

INDICTMENT FOR

Possession with Intent to Distribute Fentanyl

SC Code: § 44-53-370

CDR: 0185

I hereby waive presentment to the Grand Jury.

Defendant

Witness:

THE STATE OF SOUTH CAROLINA

COUNTY OF NEWBERRY

INDICTMENT FOR

**Possession with Intent to Distribute Fentanyl
§44-53-370**

At a Court of General Sessions, convened on the 11th day of November, 2022, the Grand Jurors of Newberry County present upon their oath:

The defendant, Jonathan Conard Dawkins, did on or about October 30, 2021, in Newberry County, South Carolina, possess with the intent to distribute, dispense or deliver fentanyl, a schedule II controlled substance narcotic, all in violation of Section 44-53-370(b)(1), Code of Laws South Carolina (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such cases made and provided.

s/ Taylor Daniel



Taylor W. Daniel
Assistant Solicitor

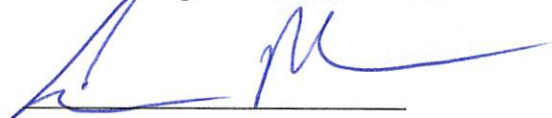
CERTIFICATE OF COUNSEL

Counsel for Appellant certifies this Record on Appeal contains all material proposed to be included by 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."

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May 3, 2024

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Newberry County
Honorable William P. Keesley Circuit Court Judge
Honorable Frank Addy, Jr., Circuit Court Judge
Appellate Case No. 2023-000274

THE STATE,

Appellant,

vs.

JONATHAN C. DAWKINS,

Respondent.

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

The trial judge reversibly erred by granting Dawkins' motion to suppress illegal drugs recovered on Dawkins' person when the search was proper as a search incident to arrest.

STATEMENT OF THE CASE

In October of 2021, Respondent Jonathan Dawkins was arrested after illegal drugs were found in a search of his clothing. In November of 2022, the Newberry County Grand Jury indicted Dawkins for possession with intent to distribute fentanyl. On December 5, 2022, Dawkins' case was called for trial in the Newberry County Court of General Sessions with the Honorable William P. Keesley circuit court judge, presiding. Dawkins was represented by Tristan M. Shaffer, Esquire. At the outset of the trial proceedings, Dawkins' counsel moved for the illegal drugs to be suppressed, and the trial judge conducted a suppression hearing on the matter. At the conclusion of the hearing, defense counsel indicated that two more videos had surfaced. The trial judge continued the case until December 6, 2022, to give Dawkins and his counsel time to review the other videos. On December 6, 2022, defense asked for a continuance to give Dawkins time to review the footage because only defense counsel had done so at that point. The trial judge continued the case and stated that he was not going to rule on the suppression motion at that time. On February 21, 2023, the suppression motion was heard again in front of the Honorable Frank Addy, Jr., circuit court judge. The trial judge granted the suppression motion, and the trial was aborted prior to the jury being sworn. The State then timely filed a notice of appeal.¹

¹ Because the trial judge's suppression of the drugs substantially impairs the State's ability to prosecute Dawkins for the indicted drug-related offenses, the State can properly appeal the trial judge's suppression ruling. See State v. McKnight, 287 S.C. 167, 168, 337 S.E.2d 208, 209 (1985) ("A pre-trial order granting the suppression of evidence which significantly impairs the prosecution of a criminal case is directly appealable[.]").

STATEMENT OF FACTS

On October 29, 2021, officers were dispatched to Wise St. in Newberry County in reference to Jonathan Dawkins making threats to “Shoot up a house, a car, several subjects.” (R. 13). Officers arrived just after midnight and located Dawkins. (R. 14). Officers made contact with Dawkins and placed him in investigative detention. (R. 17). During the search of Dawkins, an open liquor container, a small baggy of a green leafy substance, and a pill bottle that contained four bags of pills were located on his person. (R. 24; 40). Dawkins was arrested and charged with possession with intent to distribute fentanyl.

A suppression hearing for the drugs found on Dawkins was held on December 5, 2022. Officer Daniel Coulombe testified that he was familiar with Dawkins from previous interactions and so when he arrived on scene, he exited his vehicle, called Dawkins’ name, and began to approach him. (R. 14). Coulombe testified that Dawkins began to create distance and Coulombe was concerned that Dawkins might have a weapon based on his actions and the nature of the call. (R. 15-16). Once officers were in a position where Dawkins could not flee, he was placed in investigative detention. (R. 17). Coulombe testified that he intended to arrest Dawkins for public intoxication based on his odor and behavior and considered the threats Dawkins had been reported to have made. (R. 20-21). Coulombe and another officer conducted a pat down of Dawkins after being placed in investigative detention. (Court’s Exhibit 4; R. 20). Coulombe testified that he felt a hard object in Dawkins upper left pocket that he could not exclude from being a weapon. (R. 22-23). Coulombe looked inside the upper left pocket of Dawkins jacket and found a green pill bottle commonly used to carry prescription drugs as well as a small baggy of marijuana. (R. 23-24). The pill bottle contained four packages of pills. (R. 24). Coulombe

testified that the reason for the pat down was that he believed he had a weapon on him and that it was a Terry frisk. (R. 25).

On cross examination, Coulombe testified that he thought the pill bottle could have been the barrel of a gun. (R. 27). Coulombe admitted that he had not decided to arrest Dawkins at the time of the search because he was trying to get more information but was leaning towards arresting him for public intoxication. (R. 29-30). Defense counsel also questioned Coulombe about how he repeatedly told Dawkins he was not trying to “hem him up.” (R. 29-31). Coulombe testified that he did not tell Dawkins of the plan to arrest him because he had run in a previous encounter. (R. 33). He further testified that he smelled alcohol on him at the first contact, so he was thinking in that direction; however, Dawkins was not in arms reach so he did not communicate that to him. (R. 33).

Officer Kristin Avey, with Newberry Police Department was also on scene and testified at the suppression hearing. Avey testified that she suspected Dawkins was under the influence when she first approached him because Dawkins was slurring his speech, behaving erratically, and smelled of alcohol. (R. 40). Avey testified and her body camera shows that an open liquor bottle was found in Dawkins’ back pocket of his jeans prior to the pat down of Dawkins’ jacket that led to the discovery of the drugs. (R. 40; Court’s Exhibit 7).

After the witnesses testified, defense counsel argued that the evidence presented established officers not planning on arresting Dawkins prior to finding the drugs and that the testimony about the pill bottle being a gun barrel was not credible. (R. 47). Defense counsel further asserted that the method of search was not consistent with a frisk search and that neither the Terry frisk nor the search incident to arrest were valid arguments. (R. 48-49). The State argued that it was a valid Terry frisk due to the report of threats provided reasonable suspicion to

believe Dawkins was armed and dangerous as well as the search was valid incident to arrest because Dawkins was publicly intoxicated. (R. 49-50).

Defense counsel then indicated to the court that an additional recording had surfaced, and therefore, the case was continued to the next day. (R. 56-59). Defense counsel had the opportunity to review the other videos; however, Dawkins did not. Judge Keesley stated that he would not rule on the suppression motion and continued the case to give the defense time to review the footage. (R. 61-71).

The case proceeded in front of the Honorable Frank Addy, Jr., on February 21, 2023. Judge Addy indicated that he had read both previous transcripts and reviewed all the footage, including the compilation made by defense counsel. (R. 75; Court's Exhibit 3, Defense Exhibit 1). Defense counsel again asserted that the Terry frisk was improper because the recording showed officers immediately search the pocket inside the jacket and manipulate the jacket. (R. 77-78). The State argued that the recording showed Officer Coloumbe touch the outer left pocket of jacket before reaching inside and seizing the fentanyl and that a proper Terry frisk occurred. (R. 79-81). The State further argued that the search was a proper search incident to arrest because probable cause existed to arrest Dawkins due to his intoxication and possession of an open container of alcohol. (R. 82).

In analyzing the testimony the trial judge states:

If the testimony in December had been yeah, he was definitely under arrest, he was under arrest, I made up my mind to arrest him, I was gonna cuff him and take him down and book him, then it's game over. You've got a search incident to arrest, and the pill bottle is fair game regardless of where it was located, regardless of how the pat down played out. But you've got the search incident to arrest issue all muddled in and mixed in with the investigative detention testimony and this entire discussion of plain feel. I mean, if the State wants it to be both, then **it can't be both because we're using different legal standards to judge the reasonableness and the legality of the underlying search.**

(R. 84-85) (emphasis added). The State argued that the Terry frisk and search incident to arrest were contemporaneous. (R. 86-87). The trial judge further stated:

The Court's problem again is that the rationale for the search is factually and legally inherently contradictory and a lot of what was testified to, in my opinion, contradicted by the video that only became apparent--or only became--or that the defense only became aware of at trial...**If this was a straight search incident to arrest, then it would be game over**, but the characterization of this as an investigative detention and I don't even know why you're going--or why that phrase was used.

(R. 94-95) (emphasis added). The trial judge further stated that because of the contradiction in testimony he had to suppress the drugs. The trial judge stated that despite that officers "had the right to arrest" Dawkins and "could have arrested" Dawkins at the time of the search, the testimony seems that Dawkins was in investigative detention and the search did not "meet constitutional muster" for a Terry frisk. (R. 95). In his conclusion, he states that if it was search incident to arrest there was no need to elicit testimony about Terry frisk; therefore, he was suppressing the drugs. (R. 96-97).

STANDARD OF REVIEW

In criminal cases, appellate courts sit to review errors of law only. State v. Baccus, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006). “Historically, we have repeatedly noted that appellate courts review and appeal from a motion to suppress based on a violation of the Fourth Amendment under the deferential “any evidence” standard.” State v. Frasier, 437 S.C. 625, 632, 879 S.E.2d 762, 765 (2022). “Pursuant to this standard, our appellate courts ‘will not reverse a trial court’s finding of fact simply because it would have decided the case differently.’” Id. “Appellate review of a motion to suppress based on the Fourth Amendment involves a two-step analysis. This dual inquiry means we review the trial court’s factual findings for evidentiary support, but the ultimate legal conclusion... is a question of law subject to de novo review.” Id. at 633-634, 879 S.E.2d at 766.

ARGUMENT

The trial judge reversibly erred by granting Dawkins' motion to suppress illegal drugs recovered on Dawkins' person when the search was proper as a search incident to arrest.

Following an in limine suppression hearing, the trial judge ruled the illegal drugs recovered in Dawkins' case should be excluded from trial after finding that, because of the contradictory positions advanced, the search of Dawkins was improper. Contrary to the trial judge's ruling, the evidence and testimony presented during the suppression hearing established that the search was proper under search incident to arrest. Despite there being testimony about a Terry frisk, there was probable cause to arrest Dawkins, and, therefore, the search was proper as a valid search incident to arrest. Under such circumstances, the officers actions were entirely reasonable and did not constitute an unreasonable invasion of Dawkins' right to privacy, and the trial judge's conclusions to the contrary were clearly erroneous as a matter of law. The trial judge's suppression ruling should be reversed, and Dawkins's case should be remanded for trial.

The Fourth Amendment of the United States Constitution protects “[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures.” U.S. Const. amend. IV. In addition to those protections, the South Carolina Constitution provides its own protections to the state's citizens against unreasonable searches and seizures. State v. Forrester, 343 S.C. 637, 643, 541 S.E.2d 837, 840 (2001); see S.C. Const. art. I, § 10 (“The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures and unreasonable invasions of privacy shall not be violated[.]”). Furthermore, primarily in order to guard against invasive technological advancements, the South Carolina Constitution also expressly protects our citizens from “unreasonable invasions of privacy.” S.C. Const. art. I, § 10; see Forrester, 343 S.C. at 647, 541

S.E.2d at 842 (“[T]he drafters of our state constitution’s right to privacy provision were principally concerned with the emergence of new electronic technologies that increased the government’s ability to conduct searches.”).

Through the additional provision regarding invasions of privacy, “the people of South Carolina have indicated that searches and seizures that do not offend the federal Constitution may still offend the South Carolina Constitution.” State v. Weaver, 374 S.C. 313, 322, 649 S.E.2d 479, 483 (2007). Thus, “the South Carolina Constitution favors an interpretation offering a higher level of privacy protection than the Fourth Amendment.” Id. However, the South Carolina Constitution by its express language only forbids searches, seizures, and invasions of privacy that are *unreasonable*. S.C. Const. art. I, § 10; see State v. Foster, 269 S.C. 373, 378, 237 S.E.2d 589, 591 (1977) (“It is only unreasonable searches and seizures that are prohibited.”); see also Maryland v. Buie, 494 U.S. 325, 331 (1990) (“It goes without saying that the Fourth Amendment bars only unreasonable searches and seizures[.]”). Accordingly, just like the search and seizure protections offered by the federal constitution, the touchstone of our state constitution’s search and seizure protections is reasonableness. See Florida v. Jimeno, 500 U.S. 248, 250 (1991) (“The touchstone of the Fourth Amendment is reasonableness.”); see also Heien v. North Carolina, 574 U.S. 54, 60-61 (2014) (“To be reasonable is not to be perfect, and so the Fourth Amendment allows for some mistakes on the part of government officials, giving them ‘fair leeway for enforcing the law in the community’s protection.’” (citation omitted)).

“A warrantless search is unreasonable per se, unless it falls within a recognized exception to the warrant requirement.” State v. German, 439 S.C. 449, 461, 887 S.E.2d 912, 918 (2023). “The recognized exceptions to the warrant requirement are search incident to lawful arrest, hot pursuit, stop and frisk, the automobile exception, the plain view doctrine, consent and

abandonment.” Id. “The prosecution bears the burden of establishing probable cause as well as the existence of circumstances constituting an exception to the general prohibition against unreasonable search and seizures.” State v. Gamble, 405 S.C. 409, 416, 747 S.E.2d 784, 787 (2013). “Probable cause is defined as a good faith belief that a person is guilty of a crime when this belief rests upon such grounds as would induce and ordinarily prudent and cautious person, under the circumstances, to believe likewise.” Id.

“A search may be conducted incident to arrest only if it is substantially contemporaneous with the arrest and is confined to the immediate vicinity of the arrest.” State v. Freiburger, 366 S.C. 125, 132, 620 S.E.2d 737, 740 (2005). “There are situations in a warrantless search which immediately precedes an arrest is held lawful, in cases where the police officer is held to have probable cause from the outset.” Id. “The fact that an arresting officer improperly based a search of an individual on a Terry stop rationale does not prevent the State from otherwise justifying the search by proving probable cause to make a warrantless arrest of the individual existed prior to the search.” State v. Moultrie, 316 S.C. 547, 551, 451 S.E.2d 34, 37 (Ct. App. 1994). A search may precede a formal arrest if the officer has probable cause to arrest at the time of the search and the fruits of the search were not necessary to support probable cause to arrest. Rawlings v. Kentucky, 448 U.S. 98, 111, 100 S.Ct. 2556, 2564 (1980). In State v. Freiburger, a taxi driver was murdered by a passenger in his cab with a gun shot wound to the head. Freiburger, 366 S.C. 125, 620 S.E.2d 737 (2005). About a month later Freiburger was stopped by a Tennessee Highway Patrolman for hitch hiking. Id. The Patrolman questioned him and then patted him down, discovering a gun. Id. The gun was confiscated and Freiburger was ultimately arrested for carrying arms. Id. Our South Carolina Supreme Court held that “the fact that Freiburger was not ultimately arrested for hitchhiking is not dispositive. As recently stated by the United State

Supreme Court, an officer's 'subjective reason for making the arrest need not be the criminal offense as to which the known facts provide probable cause...the fact that the officer did not have state of mind which is hypothecated by the reasons which provide the legal justification for the officer's actions does not invalidate the action taken as long as the circumstances, **viewed objectively**, justify that action.'" Id. at 133, 620 S.E.2d at 741 (emphasis added).

In this case, there was testimony that Dawkins, who had just threatened two people who non anonymously and immediately reported these threats, was intoxicated when first approached. (R. 40). He was slurring his speech, behaving erratically, and smelled of alcohol. (R. 40). Coulombe testified that he did not tell Dawkins he planned to arrest him for public intoxication because he was afraid he would flee if he did; however, he testified that he was "in the direction" of arresting Dawkins for public intoxication. However, because drugs were quickly found in the ensuing search of Dawkins, he ended up being arrested for something other than the public intoxication due to the more serious crime uncovered. Similar to Freiburger, while Dawkins was not arrested for the initial crime that he could have been arrested for there was probable cause for the arrest making the search valid. The trial judge erred in suppressing the drugs simply because of the contradictory testimony from the officers and his view that the State could not assert contradictory points. See Florida v. Royer, 460 U.S. 491, 103 S. Ct. 1319 (1983) (holding the fact the officers did not believe there was probable cause and proceeded on a consensual Terry stop rationale would not foreclose the State from justifying the defendant's custody by proving probable cause). As held in Freiburger, the subjective intent of the officer does not matter. Objectively, the officers here had probable cause to arrest Dawkins for public intoxication. Therefore, the search was valid as a legitimate search incident to arrest, and the drugs should not have been suppressed.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted the ruling of the circuit court judge should be reversed and the case should be remanded for trial.

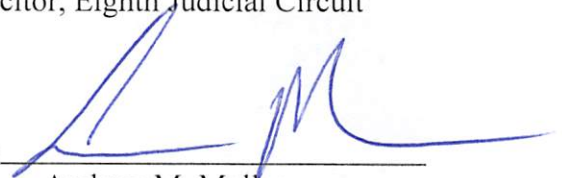
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May 3, 2024

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Newberry County
Honorable William P. Keesley, Circuit Court Judge
Honorable Frank R. Addy, Jr., Circuit Court Judge
Appellate Case No. 2023-000274

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Respondent.

CERTIFICATE OF COUNSEL

The undersigned certifies this Final Brief of Appellant complies with Rule 211(b), SCACR, and 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."

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The Honorable Frank Addy, Jr., Circuit Court Judge

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THE STATE,

Appellant,

v.

JONATHAN C. DAWKINS,

Respondent.

PROOF OF SERVICE

I, Grace Sommer, certify that I have served the within Final Brief of Appellant and Record on Appeal on Breen R. Stevens, Esquire, counsel of record for the Respondent by electronic mail to the address listed for counsel in AIS.

I further certify that all parties required by Rule to be served have been served.
This 3rd day of May, 2024.



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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Newberry County

Honorable Frank R. Addy, Circuit Court Judge

THE STATE,

APPELLANT,

V.

JONATHAN C. DAWKINS,

RESPONDENT

APPELLATE CASE NO 2023-000274

FINAL BRIEF OF RESPONDENT

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STATEMENT OF THE ISSUE

The trial judge reversibly erred by granting Dawkins' motion to suppress illegal drugs recovered on Dawkins' person when the search was proper as a search incident to arrest.

COUNTER STATEMENT OF THE ISSUE

Whether the record supports the trial court's suppression of evidence from the search of Respondent as beyond the scope of a Terry¹ frisk and that the search incident to arrest exception did not apply where, under the totality of the circumstances, testimony of the officers regarding the encounter was not credible due to contradictions with body worn camera videos, with the incident report, and with the alleged alternate reasons for the search?

¹ Terry v. Ohio, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968).

STATEMENT OF THE CASE

In the early morning hours of October 30, 2021, Respondent Jonathan Conard Dawkins was arrested by the City of Newberry Police Department for trafficking a schedule II substance, and simple possession of marijuana. R. 9, ll. 20-22; Defendant's #1, Incident Report. On November 10, 2022, the State indicted Respondent for possession with intent to distribute fentanyl. R. 99-100.

Respondent's case proceeded to a pre-trial suppression hearing before the Honorable William P. Keesley on December 5, 2022. Respondent was represented by Tristan M. Shaffer (Counsel), while the State was represented by Taylor W. Daniel. R. 1. At the end of testimony and arguments, the hearing was continued until the following morning to provide the defense with time to examine two (2) body worn camera (BWC) videos being turned over by the State after all testimony concluded. R. 55, ln. 23—R. 59, ln. 14. The following morning, the court held that Brady² applied to both exculpatory and impeachment evidence, and indicated “a disjoin[er] between what should be going on and what is going on....” As such, the court granted a continuance on the basis of fundamental fairness. R. 70, ln. 10—R. 71, ln. 24.

On February 21, 2023, the pre-trial suppression hearing reconvened before the Honorable Frank Addy, Jr. Respondent was still represented by Mr. Shaffer, and the State by Mr. Daniel. R.73. After reviewing all evidence presented and arguments of the parties, the trial court determined that the “rationale for the search is factually and legally inherently contradictory and a lot of what was testified to is, in my opinion, contradicted by the video. . . .” R. 94, ll. 22-25. Accordingly, the court suppressed the evidence. R. 95, ln. 12—R. 97, ln. 10.

² Brady v. Maryland, 373 U.S. 83, 83 S.Ct. 1194, 14 L.Ed.2d 215 (1963)

STANDARD OF REVIEW

In criminal cases, the appellate court sits to review errors of law only and is bound by the factual findings of the trial court unless clearly erroneous. State v. Wilson, 345 S.C. 1, 5–6, 545 S.E.2d 827, 829 (2001). “[A]ppellate review of a motion to suppress based on the Fourth Amendment involves a two-step analysis. This dual inquiry means we review the trial court’s factual findings for any evidentiary support, but the ultimate legal conclusion . . . is a question of law subject to de novo review.” State v. Frasier, 437 S.C. 625, 633-34, 879 S.E.2d 762, 766 (2022). The trial court’s factual findings on whether evidence should be suppressed due to a Fourth Amendment violation are reviewed only for clear error. State v. Brockman, 339 S.C. 57, 66, 528 S.E.2d 661, 666 (2000). Thus, on appeal from a suppression hearing, appellate courts are bound by the circuit court’s factual findings if any evidence supports the findings. State v. Abdullah, 357 S.C. 344, 349, 592 S.E.2d 344, 347 (Ct. App. 2004).

STATEMENT OF THE FACTS

In the early morning of October 30, 2021, Respondent Jonathan C. Dawkins was walking on Eleanor Street in Newberry, South Carolina. Corporal Daniel Coulombe (Cpl. Coulombe), of the Newberry Police Department was dispatched shortly after midnight in response to a complaint of Respondent allegedly making threats to a man and his friend on nearby Wise Street, and saw Respondent walking on Eleanor Street. He stopped his vehicle and called Respondent. Respondent walked toward Cpl. Coulombe, and eventually away from him. R. 6, ll. 7-17; R. 13, ll. 8-16; R. 14, ln. 19—R. 15, ln. 3. More officers arrived soon after, and Cpl. Coulombe made multiple assurances to Respondent indicating they were not going to arrest him. Respondent was placed in handcuffs by Cpl. Coulombe for “investigative detention,” and searched. R. 17, ll. 3-20; R. 20, ll. 7-15; R. 29, ll. 1-9. A bottle of vodka was immediately removed from his back pocket by Officer Kristin Avey; Cpl. Coulombe opened Respondent’s jacket and searched his pockets. Cpl. Coulombe retrieved a pill bottle containing four plastic baggies with approximately 50 blue pills in each, and a package with a small amount of marijuana. R. 22, ln. 15—R. 24, ln. 25; R. 28, ll. 14-25; R. 42, ll. 20-25. Respondent was arrested, for trafficking schedule II substance, and possession of marijuana.

After being indicted on November 10, 2022, for possession with intent to distribute (PWID) fentanyl, Respondent’s case proceeded to a pre-trial suppression hearing on December 5, 2022, before the Honorable William P. Keesley. R. 1; R. 99-100. The State called two witnesses: Cpl. Coulombe and Ofc. Avey. Regarding his basis for stopping and searching Respondent, Cpl. Coulombe testified under oath that he was concerned Respondent may have had a gun based upon the nature of the initial complaint. R. 15, ll. 5-22. Despite the State’s efforts to lead Ofc. Coulombe into saying otherwise, he recounted the following:

Q- Alright. When the cuffs come on, you, you testified earlier that you had evidence that suggested public intoxication, is that correct?

A- That's correct.

Q- Okay. Did you, any other violations that you suspected initially?

A- No. I had no reason other than I was still concerned about whether or not he had a weapon on him.

Q- So at that point you search him for weapons after the handcuffs go on, is that correct?

A- I did a Terry frisk pat down.

Q- You're describing a Terry frisk?

A- That's correct.

R. 22, ll. 7-19. Cpl. Coulombe then told the court that, during the Terry pat down, he “located a hard object in his upper left pocket, but I wasn’t sure what it was, couldn’t identify it as not being a weapon.” R. 22, ll. 22-24. He claimed that he suspected the object could have been a weapon “based on the nature of the call.” R. 23, ln. 16; R. 25, ll. 14-24. When asked again “the reason for the pat down,” Cpl. Coulombe confirmed his stated reason for patting down Respondent was that he “believed [Respondent] may have had a weapon on him, officer safety reasons. Again, because of the nature of the call we did a pat down.” R. 25, ll. 14-17. He removed the object, which was a green pill bottle “commonly used to carry drugs as well as prescription drugs.” Upon opening the prescription pill bottle, four baggies containing blue pills in each were found. He also removed a package to access the bottle with what was believed to be marijuana from the same left breast pocket. In fact, Cpl. Coulombe only removed the package of possible marijuana in order to determine whether the hard object—the bottle—was a weapon. R. 23, ll. 17-20; R. 24, ln. 4—R. 25, ln. 13; R. 32, ll. 1-17; R. 34, ll. 19-23.

On cross examination, Cpl. Coulombe acknowledged that he did not decide to arrest Respondent when he first encountered Respondent, and even told Respondent that nobody was trying to “hook him up.” Further, even after he handcuffed Respondent, and a bottle of vodka was found in Respondent’s back pocket and Respondent smelled of alcohol, Cpl. Coulombe was “leaning towards” the direction of arrest for public intoxication. However, Respondent was never arrested for public intoxication, or any other city ordinance violation. R. 30, ll. 17-24.

On redirect examination, the State asked, “Why didn’t you just tell [Respondent] that you were planning to arrest him right away for public intoxication?” Cpl. Coulombe responded that he “was afraid [Respondent] was going to try to run again.” R. 33, ll. 2-6. The State further asked Cpl. Coulombe if he thought “in your head that you were going to arrest [Respondent]m for public intoxication.” Cpl. Coulombe answered, “I had smelled alcohol on him for a quick minute when he, we first made contact and got real close before he started creating that distance. So yeah, I was thinking in that direction already. My concern was he wasn’t within arm’s reach having officers in place in case he decided to run.” R. 33, ll. 9-15. Yet on Recross, Cpl. Coulombe again confirmed that he “wasn’t looking for contraband, [he] was just looking for weapons,” ostensibly under the plain feel doctrine³ of Terry. R. 34, ln. 8—R. 35, ln. 3.

Ofc. Avey also testified at the suppression hearing. She arrived next at Eleanor Street and encountered Respondent with Cpl. Coulombe. She suspected Respondent was intoxicated, and indicated her belief that the liquor bottle was located before the pill bottle was found. R. 40, ll. 13-18. On cross, she acknowledged that although the seal was broken, the bottle cap itself

³ Although the transcript from December 5, 2022, states the “playing field” doctrine, the term as written appears to be a scrivener’s error that is later clarified on February 21, 2023, as the “plain feel” doctrine. R. 31, ll. 6-9; R. 34, ll. 3-18; R. 84, ll. 11-15.

was closed on the bottle, and Respondent was not observed drinking from it at any time. R. 42, ln. 20—R. 43, ln. 11.

BWC's of Cpl. Coulombe and Ofc. Avey were also entered as exhibits. The videos depicted Cpl. Coulombe and Ofc. Avey approaching Respondent. Early on, Cpl. Coulombe tells Respondent that "nobody's trying to hook you up." Court's Ex. #4, BWC Cpl. Coulombe, starting at 1:43.⁴ However, Cpl. Coulombe informs Respondent, "I can't let you leave until we talk to them [complaining witnesses] and get both sides of the story." Court's Ex. #4, BWC Cpl. Coulombe, starting at 1:47. When both Cpl. Coulombe and Ofc. Avey are both standing within arm's reach of Respondent in a yard and speaking with him, Respondent states his concern that "they're gonna charge me with intoxicated." However, Cpl. Coulombe assures him, "No, nobody is trying to lock you up. Chill man." Further, Ofc. Avey likewise stated, "No, no, that's why we're just talking to you." Court's Ex. #4, BWC Cpl. Coulombe, starting at 2:34; Court's Ex. #7, BWC Ofc. Avey, starting at 4:10.

Shortly after, Cpl. Coulombe tells Respondent, "Come here, come here." Petitioner complies, saying, "I'm not gonna run." Regardless, Cpl. Coulombe tells Respondent, "You're not giving me any chance right now. You give me no choice, no choice, 'cause you trying to walk away." Court's Ex. #4, BWC Cpl. Coulombe, starting at 3:50; Court's Ex. #7, BWC Ofc. Avey, starting at 5:35. Thus, with just Cpl. Coulombe and Ofc. Avey present, Cpl. Coulombe places Respondent in handcuffs and tells him, "It's investigative detention so I know you're not going anywhere. It's that simple." Court's Ex. #4, BWC Cpl. Coulombe, starting at 4:06; Court's Ex. #7, BWC Ofc. Avey, starting at 5:35.

⁴ No transcripts were made of any BWC footage. Accordingly, the quotations from BWC videos are approximated start times from each respective video counter, and based upon Respondent's good faith effort to present what he believes to be present. If any discrepancies exist, Respondent respectfully refers the Court to the BWC's.

Cpl. Coulombe and Ofc. Avey then walk Respondent to the street, and the top of the vodka bottle can be seen in the back pocket of Respondent's pants. Other officers arrive. Ofc. Avey asks Respondent if he has a gun on him, begins to look in his waist band, and eventually pulls out the vodka bottle from his back pocket. Court's Ex. #7, BWC Ofc. Avey, starting at 6:02 & 7:09. Cpl. Coulombe looks inside Respondents inner jacket pocket, then unzips the outer breast pocket and removes items. Court's Ex. #4, BWC Cpl. Coulombe, starting at 6:07; Court's Ex. #7, BWC Ofc. Avey, starting at 7:09. Specifically, he first finds a package, and asks Respondent if they are edibles; Respondent answers Cpl. Coulombe's question, "It's a little weed, man." Cpl. Coulombe then goes back into the same pocket and finds the large green pill bottle. Id. Respondent was neither Mirandized nor told he was under arrest prior to being searched.

Counsel argued that Coulombe's testimony was not credible, specifically regarding the feel of the pill bottle in this case being like a gun barrel. Additionally, Counsel asserted the frisk of Respondent violated the scope permitted by Terry. Specifically, police here went beyond patting down the outside of Respondent's clothing for weapons; instead, they moved clothing and searched inside his pockets. R. 47, ln. 20—R. 48, ln. 20; R. 53, ln. 18—R. 54, ln. 17. Finally, Counsel indicated the claim that police were going to arrest Respondent—despite repeated statements on video to the contrary—was merely the State's way of saying "we know we have a bad Terry frisk here so let's come up with some argument for why it's illegal to have."⁵ R. 48, ll. 20-25. As such, Counsel indicated the State was "grasping for straws" by saying the search was a Terry frisk, but if that is not believable, then Respondent was going to be

⁵ Counsel also asserted that the municipal ordinance outlawed an open container, not a broken seal. Based upon the evidence adduced in the case, Counsel argued Respondent had not violated the ordinance. R. 49, ll. 1-5.

arrested anyway. Counsel asserted those arguments of the government fail in light of “the video and the objective evidence of this case.” R. 49, ll. 7-12.

The State argued that the search could be both a valid Terry frisk and a search incident to arrest. R. 49, ll. 14-15; R. 50, ll. 18-19; R. 53, ll. 1-10. As to its argument regarding search incident to arrest, the State asserted officers were responding to a 911 call regarding threats. It further argued Respondent’s demeanor and breath, along with the vodka bottle in Respondent’s pants, indicated Respondent was intoxicated. R. 53, ll. 1-12. After arguments, two BWC videos were turned over by the State to Respondent at approximately 5:00 pm. R. 55, ln. 23—R. 59, ln. 14; R. 64, ll. 1-8. The following morning, the court determined that Brady applied to both exculpatory and impeachment evidence, and indicated “a disjoin[d]er between what should be going on and what is going on....” As such, the court granted a continuance on the basis of fundamental fairness. R. 70, ln. 10—R. 71, ln. 24.

On February 21, 2023, the pre-trial suppression hearing reconvened before the Honorable Frank Addy, Jr. R. 73. The court reviewed all transcripts and videos previously placed in evidence, as well as the BWC videos produced after the last hearing. On the BWC of Officer Rupp (Ofc. Rupp), he first speaks with the complaining witnesses, and then walks over to speak with Respondent. As Respondent is being moved towards the road, Cpl. Coulombe asks what their side of the story is. Ofc. Rupp responds, “Hey, he’s threatening them and stuff like that.” Court’s Ex. # 3, BWC Ofc. Rupp, starting at 2:55. Respondent answers, saying, “I’m telling y’all I didn’t say anything.” Court’s Ex. # 3, BWC Ofc. Rupp, starting at 3:03. Ofc. Rupp then questions Respondent about where he lives and what he was doing that night. Id. Respondent then indicates he exchanged no words with the complaining witnesses that night. Court’s Ex. # 3, BWC Ofc. Rupp, starting at 3:29.

A blonde female officer on the left of the camera then instructs Cpl. Coulombe and Ofc. Avey, **“Pat him down, because we’re talking about a gun, so.”** Court’s Ex. # 3, BWC Ofc. Rupp, starting at 3:38 (emphasis added). Ofc. Avey then begins feeling the back of Respondent’s jacket, and asks if he has a gun on him, to which Respondent says, “No, ma’am.” Court’s Ex. # 3, BWC Ofc. Rupp, starting at 3:45. Without patting down the front of Respondent’s Carhart jacket, Cpl. Coulombe puts his hand directly into the left front pocket of the jacket and asks about Respondent’s cell phone shortly after. Court’s Ex. # 3, BWC Ofc. Rupp, starting at 4:15. Ofc. Avey then comes to the front of Respondent and opens the front of his Carhart jacket and continues to search while Cpl. Coulombe is off camera. Court’s Ex. # 3, BWC Ofc. Rupp, starting at 4:20. Cpl. Coulombe then asks, “Is that edibles?”, which corresponds to him asking the same question on his own BWC during the search. Court’s Ex. # 3, BWC Ofc. Rupp, starting at 4:40; Court’s Ex. #4, BWC Cpl. Coulombe, starting at 6:07. Respondent later informs Ofc. Rupp that he didn’t have a gun, and Ofc. Rupp responds, “You know how it works man, we’re out for whatever, we come across that, we do what we gotta do.” Court’s Ex. # 3, BWC Ofc. Rupp, starting at 5:20. As Respondent was about to be put into the police cruiser, Ofc. Rupp then told Respondent, “If I believed what [the complaining witnesses] were saying, you’d be arrested for something different. We’re not arresting you for that. It’s only what you got on you, that’s all.” Court’s Ex. # 3, BWC Ofc. Rupp, starting at 5:54.

Counsel argued the search was indeed a Terry frisk based upon the evidence presented, especially from the BWC’s and even Cpl. Coulombe’s incident report stating as much. Counsel further asserted the State exceeded the scope of search permitted by Terry when police moved Respondent’s jacket and went into his pocket. Finally, Counsel argued the testimony of Cpl. Coulombe and Ofc. Avey was not credible and in contradiction to the other evidence, and such

contradictions especially called into question any assertions made at the hearing that the search was incident to arrest. R. 77, ll. 1-16; R. 78, ln. 1—R. 79, ln. 11; R. 90, ll. 2-23; Defense Ex.# 1, Flash drive/videos/incident report.

The State still maintained its primary argument that the search was lawful under Terry. However, the State also averred it was justified as a search incident to arrest largely based upon the testimony of Cpl. Coulombe and Ofc. Avey, and the presence of the vodka bottle. R. 79, ln. 12—R. 84, ln. 2; R. 85, ln. 24—R. 87, ln. 17; R. 88, ln. 11—R. 89, ln. 2.

The trial court rebuffed the State’s assertions, stating it was troubled by “these conflicting rationales for the pat down” which it determined “raise an issue as to the legitimacy of the explanations being given for the Terry pat down and obviously the video. . . . The video contradicts that version of events or at least . . . the ones that I looked at.” R. 89, ll. 3-24; R. 93, ll. 2-17; R. 94, ll. 11-14. As such, the trial court held as follows:

[T]he Court's problem again is that **the rationale for the search is factually and legally inherently contradictory and a lot of what was testified to is, in my opinion, contradicted by the video . . .** that the defense only became aware of at trial. And I know that Judge Keesley had some reservations about how all this played out. I have those same reservations. If this was a straight search incident to arrest, then it would be game over, but the characterization of this as an investigative detention, . . . but, fine, it's investigative detention, so Terry frisk applies.

Based on the contradictions that I observed in the video, as opposed to what was testified to, I feel like the Court has no choice but to suppress the drugs in this case.

So the Court's ruling will be that the—although the initial interaction was certainly proper, although they had the right to arrest him and could have arrested him for the open container, for the open liquor bottle, **the testimony from the December hearing was that this was an investigative detention. Again, the testimony's contradictory in and of itself and it conflicts with what the video cameras show, what the body cam videos show. Based upon all of that, the Court finds that the search did not**

meet constitutional muster and that a—and that the State's failed to put forward a rational basis to support the actions of the officers that evening when they conducted the search. They were certainly doing a good job in terms of trying to investigate the situation, but the Court can't be left to guess at what the legal rationale was for the search.

R. 94, ln. 21—R. 96, ln. 6 (emphasis added). Upon further questioning by the State, the court further stated the following:

[I]f it was a search incident to arrest, I don't see why there was any testimony elicited about investigative detention or Terry frisk or plain feel. All of that is irrelevant to a search incident to arrest. That's why I'm saying the inherently contradictory nature of the testimony in December has just got the Court scratching its head and so, yes, I am suppressing it because it's an illegal Terry frisk. If it was a search incident to arrest, I presume that you would have led with that and it would have been game over. I don't—I **can't help the internally and inherently contradictory nature of the justifications put forward for this search, and so it is being suppressed,** and that's the Court's ruling.

R. 96, ln. 14—R. 97, ln. 5. The State appealed the trial court's ruling.

This response follows.

ARGUMENT

The record supports the trial court's suppression of evidence from the search of Respondent as beyond the scope of a Terry frisk and that the search incident to arrest exception did not apply where, under the totality of the circumstances, testimony of the officers regarding the encounter was not credible due to contradictions with body worn camera videos, with the incident report, and with the alleged alternate reasons for the search.

The trial court's ruling that the search carried out by police was pursuant to Terry rather than a search incident to arrest is supported by the evidence in the case, including BWC video footage and Cpl. Coulombe's incident report. Further, the trial court's concerns regarding contradictions between the testimony of Cpl. Coulombe and Ofc Avey with the other evidence in the case, highlights the lack of credibility given to the testimony of Cpl. Coulombe and Ofc. Avey regarding their version of events. These findings must stand because they are supported by evidence in the record. Further, because the trial court's determination that the officers' testimony was contradicted by other evidence, and that such contradictions revealed the fact that the true nature of the search was pursuant to Terry and not a search incident to arrest, this ruling is likewise supported by the evidence in the record and must also be upheld. As such, the State's efforts to resuscitate the bad Terry search under a search incident to arrest theory is likewise foreclosed since the State's theory is dependent upon the credibility of testimony from Cpl. Coulombe and Ofc. Avey, which was inherently tainted by their inconsistency with the other evidence presented. Accordingly, the trial court's ruling suppressing the evidence as an unlawful search pursuant to Terry and not a search incident to arrest should be upheld.

"The security and protection of persons and property provided by the Fourth Amendment are fundamental values." State v. Gamble, 405 S.C. 409, 420, 747 S.E.2d 784, 789 (2013) (citing Alderman v. United States, 394 U.S. 165, 175, 89 S.Ct. 961, 22 L.Ed.2d 176 (1969)). "No right is held more sacred, or is more carefully guarded by the common law, than the right of every

individual to the possession and control of his own person, free from all restraint or interference of others, unless by clear and unquestionable authority of law.” State v. Woodruff, 344 S.C. 537, 544, 544 S.E.2d 290, 294 (Ct. App. 2001) (citing Union Pacific Ry. Co. v. Botsford, 141 U.S. 250, 251, 11 S.Ct. 1000, 1001, 35 L.Ed. 734, 737 (1891)). “The Fourth Amendment to the Constitution of the United States grants citizens the right to be secure against unreasonable search and seizure.” State v. Tindall, 388 S.C. 518, 521, 698 S.E.2d 203, 205 (2010) (citing U.S. Const. amend. IV). Also, the Fourth Amendment is applicable to the States through the Due Process Clause of the Fourteenth Amendment. Mapp v. Ohio, 367 U.S. 643, 655, 81 S.Ct. 1684, 1691, 6 L.Ed.2d 1081 (1961). “The purpose of the Fourth Amendment is not to eliminate all contact between the police and the citizenry, but ‘to prevent arbitrary and oppressive interference by enforcement officials with the privacy and personal security of individuals.’” Woodruff, 344 S.C. at 544, 544 S.E.2d at 294 (quoting United States v. Mendenhall, 446 U.S. 544, 553–54, 100 S.Ct. 1870, 1877, 64 L.Ed.2d 497, 509 (1980)).

“The manner in which the seizure and search were conducted is, of course, as vital a part of the inquiry as whether they were warranted at all. The Fourth Amendment proceeds as much by limitations upon the scope of governmental action as by imposing preconditions upon its initiation.” Terry v. Ohio, 392 U.S. 1, 28–29, 88 S.Ct. 1868, 1883–84, 20 L.Ed.2d 889 (1968). “The entire deterrent purpose of the rule excluding evidence seized in violation of the Fourth Amendment rests on the assumption that ‘limitations upon the fruit to be gathered tend to limit the quest itself.’” Id. (citing United States v. Poller, 43 F.2d 911, 914, 74 A.L.R. 1382 (C.A.2d Cir. 1930)). “Thus, evidence may not be introduced if it was discovered by means of a seizure and search which were not reasonably related in scope to the justification for their initiation” Id. 392 U.S. at 29, 88 S. Ct. at

1884, 20 L.Ed.2d at 889 (citing Warden v. Hayden, 387 U.S. 294, 310, 87 S.Ct. 1642, 1652, 18 L.Ed.2d 782 (1967)).

“[S]earches conducted outside the judicial process, without prior approval by judge or magistrate, are per se unreasonable under the Fourth Amendment—subject only to a few specifically established and well delineated exceptions.” Thompson v. Louisiana, 469 U.S. 17, 19–20, 105 S.Ct. 409, 410, 83 L.Ed.2d 246 (1984) (citing Katz v. United States, 389 U.S. 347, 357, 88 S.Ct. 507, 514, 19 L.Ed.2d 576 (1967)). One such exception is commonly known as a frisk of a defendant by police for weapons: “A police officer may stop and briefly detain and question a person for investigative purposes, without treading upon his Fourth Amendment rights, 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.” State v. Blassingame, 338 S.C. 240, 248, 525 S.E.2d 535, 539 (Ct. App. 1999) (citing Terry v. Ohio, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968)). “‘When an officer is justified in believing that the individual whose suspicious behavior he is investigating at close range is armed and presently dangerous to the officer or to others,’ he may conduct a limited protective search for concealed weapons.” Adams v. Williams, 407 U.S. 143, 146, 92 S.Ct. 1921, 1923, 32 L.Ed.2d 612 (1972) (quoting Terry, 392 U.S., at 24, 88 S.Ct., at 1881). “The purpose of this limited search is not to discover evidence of crime, but to allow the officer to pursue his investigation without fear of violence, and thus the frisk for weapons might be equally necessary and reasonable, whether or not carrying a concealed weapon violated any applicable state law.” Id.

Another exception to the warrant requirement is a search incident to arrest. “Where the formal arrest followed quickly on the heels of the challenged search of petitioner’s person,” it is not “particularly important that the search preceded the arrest rather than vice versa.” Rawlings v.

Kentucky, 448 U.S. 98, 111, 100 S. Ct. 2556, 2564, 65 L. Ed. 2d 633 (1980). “The fact that an arresting officer improperly based a search of an individual on a Terry-stop rationale does not prevent the State from otherwise justifying the search by proving probable cause to make a warrantless arrest of the individual existed prior to the search.” State v. Moultrie, 316 S.C. 547, 551, 451 S.E.2d 34, 37 (Ct. App. 1994) (citing Florida v. Royer, 460 U.S. 491, 103 S.Ct. 1319, 75 L.Ed.2d 229 (1983)). “In general, a warrantless arrest is proper for purposes of the Fourth Amendment where the facts and circumstances within the arresting officer’s knowledge are sufficient for a reasonable person to believe that a crime has been or is being committed by the person to be arrested.” United States v. Miller, 925 F.2d 695, 698 (4th Cir. 1991) (citing Brinegar v. United States, 338 U.S. 160, 175–76, 69 S.Ct. 1302, 1310–11, 93 L.Ed. 1879 (1949)). “A search may be conducted incident to an arrest only if it is substantially contemporaneous with the arrest and is confined to the immediate vicinity of the arrest.” State v. Freiburger, 366 S.C. 125, 132, 620 S.E.2d 737, 740 (2005) (citing State v. Brown, 289 S.C. 581, 347 S.E.2d 882 (1986)).

In the present case, the facts as displayed by the array of BWC videos readily indicate the search of Respondent was under the auspices of Terry.⁶ First, Cpl. Coulombe approached Respondent on Eleanor Street following-up on the 911 call from dispatch regarding alleged threats. R. 6, ll. 7-17; R. 13, ll. 8-16; R. 14, ln. 19—R. 15, ln. 3. He and Ofc. Avey spoke with Respondent, and placed him in “investigative detention” for the purpose of preventing him from leaving the area prior to resolution of the 911 complaint.⁷ In fact, Cpl. Coulombe and Ofc. Avey

⁶ Court’s Ex. # 3, BWC Ofc. Rupp; Court’s Ex. #4, BWC Cpl. Coulombe; Court’s Ex. #7, BWC Ofc. Avey.

⁷ Court’s Ex. #4, BWC Cpl. Coulombe, starting at 3:50, and at 4:06; Court’s Ex. #7, BWC Ofc. Avey, starting at 5:35.

specifically denied detaining Respondent for intoxication at the time of his detention.⁸ In other words, despite their testimony at the suppression hearing to the contrary, both the conduct and language of Cpl. Coulombe and Ofc. Avey on their BWC's highlighted the fact that Respondent's detention was not for anything to do with alcohol; rather, it was to further investigate allegations of his purported threats, and nothing in their words or actions indicated an intent to arrest Respondent for anything else. This is squarely within the ambit of a Terry stop and frisk.

Second, once near the roadway and upon Ofc. Rupp's arrival, Respondent was confronted with the allegations of the complaining witnesses, and briefly questioned regarding his purported interaction with them. After denying speaking with the complaining witnesses that night, Respondent was searched in a "pat down" only after another officer present specifically directed Ofc. Avey and Cpl. Coulombe to pat him down because a firearm was alleged in the complaint.⁹ It was at this time, at the specific direction to pat down Respondent for weapons,¹⁰ that Cpl. Coulombe and Ofc. Avey searched Respondent. This too would have been under the color of Terry. As Cpl. Coulombe wrote in his incident report, "While R/Os were performing a Terry frisk, he located a round object in [Respondent's] upper left outer pocket." Defense Ex.# 1, Flash drive/videos/incident report.

However, Cpl. Coulombe and Ofc. Avey clearly exceeded the recognized boundaries of a Terry search when, contrary to testimony yet consistent with the BWC footage, they moved Respondent's Carhart jacket to search inside, and searched the insides of Respondent's pockets

⁸ Court's Ex. #4, BWC Cpl. Coulombe, starting at 2:34; Court's Ex. #7, BWC Ofc. Avey, starting at 4:10.

⁹ Court's Ex. # 3, BWC Ofc. Rupp, starting at 2:55.

¹⁰ The officer directed Cpl. Coulombe and Ofc. Avey to "pat him down, because we're talking about a gun, so." Court's Ex. # 3, BWC Ofc. Rupp, starting at 3:38.

rather than conducting a simple pat down on the outside of his clothing for weapons.¹¹ Under such circumstances, the trial court's determination is supported by evidence in the record that the seizure and search of Respondent was indeed conducted under the auspices of Terry rather than a search incident to arrest, and that the search itself exceeded the scope permitted by Terry.¹² See, e.g., Adams v. Williams, 407 U.S. 143, 146, 92 S.Ct. 1921, 1923, 32 L.Ed.2d 612 (1972) (quoting Terry, 392 U.S., at 24, 88 S.Ct., at 1881); see also State v. Abdullah, 357 S.C. 344, 349, 592 S.E.2d 344, 347 (Ct. App. 2004); State v. Brockman, 339 S.C. 57, 66, 528 S.E.2d 661, 666 (2000); State v. Frasier, 437 S.C. 625, 633-34, 879 S.E.2d 762, 766 (2022); State v. Wilson, 345 S.C. 1, 5-6, 545 S.E.2d 827, 829 (2001).

The trial court was also rightly troubled by the contradictory arguments made by the State and testimony by the officers when compared to the other evidence in the case. Despite the State's efforts to generate testimony for its argument that police were going to arrest Respondent for public intoxication regardless of their investigation into the purported threats, such a position was again

¹¹ Court's Ex. # 3, BWC Ofc. Rupp, starting at 4:15; Court's Ex. # 3, BWC Ofc. Rupp, starting at 4:20.

¹² Perhaps this is why the State has abandoned its prior argument to the trial court attempting to justify the search under Terry. On appeal, the issue advanced by the State regarding the admissibility of items found in the search of Respondent was neither Terry nor inevitable discovery; rather, the sole theory for admissibility now argued by the State to this Court is under search incident to arrest. R. 53, ll. 10-15; R. 79, ll. 15-19. Accordingly, all other theories argued by the State at trial are abandoned. See State v. Baccus, 367 S.C. 41, 50 n.1, 625 S.E.2d 216, 221 n.1 (2006) (holding an issue not argued in the brief was abandoned on appeal) (citing State v. Hiott, 278 S.C. 72, 276 S.E.2d 163 (1981)); see also First Sav. Bank v. McLean, 314 S.C. 361, 363, 444 S.E.2d 513, 514 (1994) ("On appeal, the burden of showing abuse of discretion is on the party challenging the trial court's ruling.") (citing State ex rel. McLeod v. Wilson, 279 S.C. 562, 310 S.E.2d 818 (Ct.App.1983)); S.C. Dep't of Transp. v. M & T Enterprises of Mt. Pleasant, LLC, 379 S.C. 645, 659, 667 S.E.2d 7, 15 (Ct. App. 2008) ("[E]ven if an issue is preserved at the trial court level, it must still be properly raised and argued to the appellate court.") (citing Fields v. Fields, 342 S.C. 182, 191, 536 S.E.2d 684, 689 (Ct. App. 2000) (stating "issues not argued in the brief are deemed abandoned and will not be considered on appeal."); Rule 208(b)(1)(B) and (D), SCACR.

belied by evidence on the BWC's and incident report. As indicated above, the BWC's show that at no time was Respondent going to be arrested for public intoxication, nor did the words and actions of the officers on the BWC's support their testimony indicating they were going to do so.

Furthermore, the fact that Respondent had a bottle in his back pocket was of no moment; as Counsel argued, the municipal ordinance under which the State argued was for an open container, not a broken seal. R. 48, ln. 25—R. 49, ln. 5. As police acknowledged, the vodka bottle was closed, and Respondent was not drinking from it. R. 43, ll. 1-11. Therefore, the trial court was rightly concerned by the evidence in the case conflicting with both the testimony of police and theory of the State. If, as the trial court told the State in apparent exasperation, this was a search incident to arrest, then the State certainly would have led with that theory. However, such a theory was not supported by the BWC's or incident report of Cpl. Coulombe, and the credibility of Cpl. Coulombe's and Ofc. Avey's testimony in support of such a theory was already tainted and subverted by the BWC videos.

Thus, under the totality of the circumstances, Counsel's argument before the trial court rings true: the State was "grasping for straws" in its attempt to salvage what was openly a bad Terry frisk under the guise of a search incident to arrest at the suppression hearing. Although some warrantless searches may be valid under the search incident to arrest exception, that was simply not the case here. The trial court rejected the testimony of the officers and argument of the State due to inconsistencies with the BWC's. In other words, the trial court's ruling readily indicates the lack of credibility of the testimony provided by Cpl. Coulombe and Ofc. Avey. Without credibility of the State's witnesses to buoy its alternate argument to justify the warrantless unconstitutional search of Respondent, it is likewise without evidentiary support. As such, the trial court correctly held that the actual basis for the search was a Terry frisk, and that the parameters of Terry were violated by

law enforcement. Under such circumstances, the trial court's rulings were supported by both fact and law. Accordingly, the trial court's suppression of evidence should be upheld.

CONCLUSION

For the foregoing reasons, Respondent Jonathan Conard Dawkins respectfully requests that the trial court's ruling be affirmed.



Breen Richard Stevens
Appellate Defender

ATTORNEY FOR RESPONDENT

This 20th day of May, 2024.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final Brief of Appellant complies with Rule 211(b), SCACR, and 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.”

May 20, 2024.



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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Newberry County

Honorable Frank R. Addy, Circuit Court Judge

THE STATE,

APPELLANT,

V.

JONATHAN C. DAWKINS,

RESPONDENT

CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Final Brief of Respondent in the above-referenced case has been served upon Ambree M. Muller, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS), this 20th day of May, 2024.



Breen Richard Stevens
Appellate Defender

ATTORNEY FOR RESPONDENT

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Appellant,

v.

Jonathan C. Dawkins, Respondent.

Appellate Case No. 2023-000274

Appeal From Newberry County
Frank R. Addy, Jr., Circuit Court Judge

Unpublished Opinion No. 2026-UP-058
Heard December 10, 2025 – Filed February 11, 2026

AFFIRMED

Attorney General Alan McCrory Wilson, Senior
Assistant Attorney General Mark Reynolds Farthing, and
Assistant Attorney General Ambree Michele Muller, all
of Columbia, for Appellant.

Senior Appellate Defender Kathrine Haggard Hudgins, of
Columbia, for Respondent.

PER CURIAM: The State appeals an order on a pretrial motion to suppress evidence. The circuit court found the evidence was seized during an unlawful "*Terry* frisk." The State argues that even if the search exceeded what is permitted by *Terry*

v. Ohio, 392 U.S. 1 (1968), the search can be justified as a lawful search incident to arrest.

Though some of the language in the circuit court's oral ruling supports the State's argument, we respectfully reject it for two reasons. First, despite the circuit court's comment that the officers "had the right" to arrest Respondent and "could have done so," we do not see an objective basis supporting probable cause for an arrest. Much of the evidence for probable cause depended on the credibility of the officers, and two circuit court judges had serious questions about credibility. Second, the State has not consistently identified the offense (or offenses) for which Respondent supposedly could have been arrested. We will discuss these reasons in more detail below.

The State argues the circuit court erred in evaluating the credibility of officer testimony rather than analyzing whether there was an objective basis to substantiate probable cause. In support of that argument, the State relies on cases holding an officer's subjective beliefs are irrelevant and that a search must be upheld if an officer had probable cause to make an arrest. *See State v. Moultrie*, 316 S.C. 547, 551, 451 S.E.2d 34, 37 (Ct. App. 1994) ("The fact that an arresting officer improperly based a search of an individual on a *Terry*-stop rationale does not prevent the State from otherwise justifying the search by proving probable cause to make a warrantless arrest of the individual existed prior to the search."); *see also Devenpeck v. Alford*, 543 U.S. 146, 153 (2004) (explaining an officer's subjective intent "is irrelevant to the existence of probable cause"). "But those cases merely hold that a stop or search *that is objectively reasonable* is not vitiated by the fact that the officer's real reason for making the stop or search has nothing to do with the validating reason." *Florida v. Jardines*, 569 U.S. 1, 10 (2013).

In *Moultrie*, this court explained that "probable cause for a warrantless arrest generally exists 'where the facts and circumstances within the arresting officer's knowledge are sufficient for a reasonable person to believe that a crime has been or is being committed by the person to be arrested.'" 316 S.C. at 552, 451 S.E.2d at 37 (quoting *United States v. Miller*, 925 F.2d 695, 698 (4th Cir. 1991)). There was no serious dispute about probable cause in *Moultrie* because when deputies arrived on the scene, there was "a crowd of people surrounding Moultrie, a package of marijuana at Moultrie's feet, and a paper bag filled with cocaine, crack cocaine, and marijuana at the edge of the woods, exactly where [the informant] had told the deputies Moultrie stored his inventory of drugs." *Id.* at 552–53, 451 S.E.2d at 38. This court affirmed because "[t]h[o]se facts, when viewed under the totality of circumstances, were sufficient for a reasonable person to believe that Moultrie had

been, or was currently, conducting drug transactions in front of his house." *Id.* at 553, 451 S.E.2d at 38.

Conversely, in *State v. Bash*, the circuit court suppressed the fruits of a search finding the officers "roll[ed] up in the backyard solely to search for drugs. And there's no reasonable interpretation of the officers' testimony other than . . . [t]hey were there to see if they could find any [drugs]." 419 S.C. 263, 273, 797 S.E.2d 721, 726 (2017). Our supreme court agreed because "the totality of the circumstances surrounding the officers' entry into the grassy area objectively demonstrate[d] their purpose was to conduct a search of the grassy area" *Id.* at 274, 797 S.E.2d at 727.

We do not see abundant probable cause in this record like there was in *Moultrie*. Respondent was unarmed when the officers approached him and they acknowledged that Respondent was "minding his own business." The officers testified their suspicion only arose after Respondent stated he believed he was going to be searched—an assertion later characterized as "giving himself away." The body camera videos show that there was no pat down of Respondent's clothes for weapons as *Terry* allows. *See Terry*, 392 U.S. at 24, 28–29 (permitting an officer to conduct a protective pat-down search for weapons when the "officer is justified in believing that the individual whose suspicious behavior he is investigating at close range is armed and presently dangerous to the officer or to others"). Instead, the officers reached directly into Respondent's pockets as if looking for contraband. *See Minnesota v. Dickerson*, 508 U.S. 366, 375–76 (1993) (finding an officer may seize contraband during a *Terry* frisk only "[i]f a police officer lawfully pats down a suspect's outer clothing and feels an object whose contour or mass makes its identity immediately apparent"); *see also id.* at 378 (agreeing with the Minnesota supreme court's conclusion that the challenged evidence was inadmissible because the officer only determined the object was contraband after "manipulating the contents of the defendant's pocket"). We cannot say the circuit court erred in viewing this as a case where the officer's justification followed—rather than preceded—the search itself.

The State has not consistently or definitively identified a justification or offense providing probable cause to arrest Respondent. At the first suppression hearing, the officers initially testified that this was a *Terry* frisk. As the hearing evolved, the solicitor attempted to guide them towards it being a search incident to arrest for unidentified violations of the local municipal code. During oral argument at this court, the State asserted officers had probable cause to arrest Respondent for a litany of offenses including third degree assault and battery.

We cannot consider new arguments that were not presented below. *See State v. Passmore*, 363 S.C. 568, 583, 611 S.E.2d 273, 281 (Ct. App. 2005) ("The general rule of issue preservation states that if an issue was not raised and ruled upon below, it will not be considered for the first time on appeal."). As for the argument that the officers had probable cause to arrest Respondent for public intoxication, we interpret the circuit court's ruling as rejecting this because the court appears to have been deeply troubled, and understandably so, by the fact that the officers' testimony was directly contradicted by the body camera videos of what actually occurred. The standard of review requires us to defer to the circuit court. *See Laughon v. O'Braitis*, 360 S.C. 520, 524–25, 602 S.E.2d 108, 110 (Ct. App. 2004) (explaining appellate courts defer to credibility determinations because the circuit court "was in a better position to assess the credibility of the witnesses"). The argument that Respondent exhibited signs of public intoxication turns on the credibility of the officers' testimony. The mere fact that Respondent had a bottle of vodka in his back pocket, standing alone, does not objectively establish probable cause sufficient to justify a search incident to arrest.

AFFIRMED.

MCDONALD, HEWITT, and TURNER, JJ., concur.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Newberry County
Honorable Frank R. Addy, Jr., Circuit Court Judge
Appellate Case No. 2023-000274
Opinion No. 2026-UP-058

The State,

Appellant,

vs.

Jonathan C. Dawkins,

Respondent.

PETITION FOR REHEARING

Through an unpublished opinion issued on February 11, 2026, this Court affirmed the trial judge’s ruling suppressing fentanyl that was found in Respondent Jonathan C. Dawkins’s pocket after he was stopped, handcuffed, and searched by multiple law enforcement officers just before he was advised he was under arrest. In affirming, this Court recognized—quite correctly—the trial judge made some statements that supported the State’s appellate arguments seeking a reversal of his ruling. Nevertheless, this Court affirmed the trial judge’s decision to suppress the evidence for two reasons: (1) even the trial judge found the officers had a right to arrest Dawkins and could have done so, this Court “d[id] not see an objective basis supporting probable cause for an arrest”; and (2) the State failed to “consistently” identify the offense or offenses for which Dawkins supposedly could have been arrested. More specifically, in its opinion in Dawkins’s case, this Court stated:

We do not see abundant probable cause in this record like there was in Moultrie. Respondent was unarmed when the officers approached him and they acknowledged that Respondent was ‘minding his own business.’ The officers testified their suspicion only arose after

Respondent stated he believed he was going to be searched—an assertion later characterized as ‘giving himself away.’

State v. Dawkins, Op. No. 2026-UP-058 (S.C. Ct. App. filed Feb. 11, 2026).

Importantly though, the trial judge—before suppressing the evidence—*did* find what occurred to be a valid search incident to arrest. In particular, he expressly affirmed that if the testimony from Officer Coulombe had been “I had made up my mind to arrest him, I was gonna cuff him and take him down and book him, then it’s *game over*. You’ve got search incident to arrest and the pill bottle is fair game regardless of where it was located, regardless of how the pat down played out.” (R. 84-85) (emphasis added). He later reiterated that “if this was a straight search incident to arrest, then it would be game over.” (R. 95). Based on what he said in his discussions, the trial judge had no issues whatsoever as to whether the officers, prior to searching Dawkins and finding his drugs, **could** have been validly arrested for the various crimes he had already committed. But he still suppressed. That decision was erroneous, and this Court should grant rehearing and reverse it.

As to the trial judge’s error, he incorrectly believed a single search could not be justified in multiple ways. He applied a subjective analysis rather than the objective analysis that should have been applied. There was testimony presented from officers that the search was both a valid Terry frisk search *and* a valid search incident to arrest. In the trial judge’s incorrect view, “it [couldn’t] be both” (R. 85). In suppressing the evidence, the trial judge pointed to the fact that Officer Coulombe personally characterized the seizure as “investigative detention” as opposed to arrest and therefore determined that the sole applicable analysis was Terry.

Contrary to the trial judge’s view, the search absolutely and unequivocally can be justified in multiple different ways. “[T]he fact that the officer did not believe there was probable cause and proceeded on a consensual or Terry-stop rationale would not foreclose the State from justifying

Royer's custody by providing probable cause and hence removing any barrier to relying on Royer's consent to search." Florida v. Royer, 460 U.S. 491, 507, 103 S.Ct. 1319, 1329 (1983). Both the United States Supreme Court and our courts have emphasized that we apply objective standards to search and seizure issues with few exceptions. "The fact that an arresting officer improperly based a search of an individual on a Terry stop rationale does not prevent the State from otherwise justifying the search by proving probable cause to make a warrantless arrest of the individual prior to the search." State v. Moultrie, 316 S.C. 547, 551, 451 S.E.2d 34, 37 (Ct. App. 1994). This Court held that, unlike in Moultrie, probable cause was not abundant in this record. Respectfully, just as the trial judge himself recognized and found, that is not correct as there was ample probable cause to arrest Dawkins prior to and at the time of the search that led to the discovery of his fentanyl.

More specifically, the officers—prior to the search—had received a non-anonymous report from two individuals that Dawkins was making threats that very night to “shoot up a house, a car, and several subjects.” (R. 13). While not specifically argued in the brief, the record itself further established there was probable cause to believe Dawkins was guilty of, at a minimum, third-degree assault and battery and possibly a higher degree of assault and battery since the threat involved threat of use of deadly force. Further still, the victims described disturbance to the neighborhood which could have constituted breach of peace. Moreover, as argued during the briefing stage, there was testimony from victims and multiple officers that Respondent was intoxicated, and he had an open container of alcohol on him. Based on all that, the officers—just as the solicitor argued below and the trial judge found—had probable cause to believe Dawkins had committed multiple arrestable offenses.

The proper analysis that should have been used in this case was an objective analysis. In determining whether a search is proper search incident to arrest, there are two things to determine: (1) was there a legitimate basis for an arrest prior to the search being conducted?; and (2) did the arrest follow shortly after? The answer to both those questions in Dawkin’s case was “yes,” so the search that led to discovery of Dawkins’s fentanyl was constitutionally reasonable.

Here, had the trial judge recognized the proper analysis to apply and applied it, he would have denied the suppression motion since he believed—correctly—a probable cause basis existed to arrest Dawkins. But he did not do so because he believed—incorrectly—he could not consider two separate bases for upholding a single search since “it can’t be both.” The trial judge’s ruling was wrong, and, therefore, it should be reversed.

For all the foregoing reasons coupled with the reasons articulated in the State’s brief and during oral argument before this Court, the State respectfully asks this Court to reconsider the matter pursuant to Rule 221(a) of the South Carolina Appellate Court Rules, vacate its prior opinion, and issue a new opinion reversing the trial judge’s ruling and remanding for trial. Notably, by doing so, this Court will afford the trial judge an opportunity to apply the correct analysis, issue a ruling on the issue of whether a valid search incident to arrest had been establish, and decide whether there was—as he previously found there was—probable cause for Dawkins to be arrested prior to and at the time of the search conducted.

Respectfully submitted,

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Attorney General

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Solicitor, Eighth Judicial Circuit

BY:



Ambree M. Muller
S.C. Bar No. 104213

ATTORNEYS FOR APPELLANT

February 26, 2026

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Newberry County
Honorable Frank R. Addy, Jr., Circuit Court Judge
Appellate Case No. 2023-000274
Opinion No. 2026-UP-058

The State,

Appellant,

vs.

Jonathan C. Dawkins,

Respondent.

PROOF OF SERVICE

I, Grace Sommer, certify that I have served the State's Petition for Rehearing on Kathrine H. Hudgins, Esquire, counsel of record for the Respondent, by electronic mail to the address listed for counsel in AIS.

I further certify that all parties required by Rule to be served have been served.
This 26th day of February, 2026.



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The South Carolina Court of Appeals

The State, Appellant,

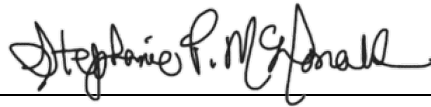
v.

Jonathan C. Dawkins, Respondent.


Appellate Case No. 2023-000274

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.



J.



J.



J.

Columbia, South Carolina

cc:

Alan McCrory Wilson, Esquire
Mark Reynolds Farthing, Esquire
Ambree Michele Muller, Esquire
Kathrine Haggard Hudgins, Esquire

FILED
Mar 11 2026

David Matthew Stumbo, Esquire
The Honorable Frank R. Addy, Jr.