THE STATE OF SOUTH CAROLINA
In the Supreme Court

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S.C. SUPREME COURT

APPEAL FROM PICKENS COUNTY
Court of General Sessions

Jessica A. Salvini, Circuit Court Judge

Appellate Case No. 2025-002334

THE STATE OF SOUTH CAROLINA,

Respondent,

v.

BENJAMIN ALLEN WEMP,

Appellant.

INITIAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

Appellant's Issue Statements

I. "Did the trial court err in finding the appellant's conduct was not constitutionally protected under the Second Amendment to the United States Constitution?" (Int. App. Br. 7).

II. "Did the trial court err in finding the statute met strict scrutiny under Article I, section 20 of the South Carolina Constitution of 1895?" (Int. App. Br. 7).

III. "Did the trial court err in ruling that there was no *mens rea* requirement as to Appellant's conduct in being on Clemson University property and in denying Appellant's motion for a new trial upon the same ground?" (Int. App. Br. 7).

IV. "Did the trial court err in refusing to charge Appellant's requests to charge as to the *mens rea* required for the offense as they represented a correct statement of the law and in denying Appellant's motion for a new trial upon the same ground?" (Int. App. Br. 7).

V. "Did the trial court err in granting the State a constructive amendment of the indictment and in denying the appellant's motions for directed verdict and for verdict in arrest of judgment?" (Int. App. Br. 7).

Respondent's Counterstatements

I. Whether the trial court erred by finding that section 16-23-420 of the South Carolina Code was constitutional under the Second Amendment.

II. Whether the trial court erred by finding that section 16-23-420 of the South Carolina Code was constitutional under Article I, section 20 of the South Carolina Constitution.

III. Whether the trial court erred by denying Appellant's motion for a new trial based on Appellant's incorrect argument that section 16-23-420 of the South Carolina Code required the State to prove Appellant knew he was on property owned by Clemson University.

IV. Whether the trial court erred by declining to charge Appellant's requested charges and by denying Appellant's motion for a new trial both based on his incorrect assertion that the State needed to offer proof of his intent to be on Clemson University property, which he claimed the State failed to do.

V. Whether the trial court erred by denying Appellant's motions for directed verdict and for a verdict in arrest of judgment based on his incorrect assertion that the trial court allowed a constructive amendment of the indictment.

STATEMENT OF THE CASE

In October 2025, a Pickens County grand jury indicted Appellant for possession of a firearm on the school property of Clemson University (the "University") in violation of section 16-23-420 of the South Carolina Code. (Indictment No. 2025-GS-39-2391). S.C. Code Ann. § 16-23-420(A) ("It is unlawful for a person to possess a firearm of any kind on any premises or property owned, operated, or controlled by a private or public . . . university, . . . without the express permission of the authorities in charge of the premises or property."). Specifically, the indictment alleged "[t]hat [Appellant] did in Pickens County on or about the 26th day of October, 2024, while on the premises of Clemson University, willfully and unlawfully possess a firearm without the express permission of the authorities in charge of the premises to do so. This is in violation of [section] 16-23-420 of the South Carolina Code . . . ." (Indictment No. 2025-GS-39-2391). On November 17-18, 2025, Appellant proceeded to a jury trial before the Honorable Jessica A. Salvini. (Tr. 1, 79-A).

Prior to trial, Appellant filed his Demurrer to Indictment and Motion to Dismiss Warrant. (Mot. 1). Appellant argued, *inter alia*, that section 16-23-420 was unconstitutional under the Second Amendment to the United States Constitution and Article I, section 20 of the South Carolina Constitution. (Mot. 1).

Appellant contended *Bruen*[1] provided the applicable framework under which to evaluate his Second Amendment argument. (Mot. 5). He asserted he plainly met the first part of the *Bruen* framework—whether the Second Amendment's plain language covered his conduct—because the Second Amendment protects a citizen's right to possess a firearm outside the home. (Mot. 5). Appellant argued that because the first part of the *Bruen* test was met, the State then bore the

[1] *N.Y. State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1 (2022).

responsibility to "justify its regulation" by showing that the regulation or statute was consistent with the historical tradition of firearm regulation in the United States. (Mot. 6). Appellant acknowledged that the State could restrict firearm possession in sensitive places, but he asserted that the breadth of section 16-23-420 was "breathtakingly large." (Mot. 7-8). Appellant stated that the State needed to present historical analogues to support its prohibition of firearms at schools. (Mot. 10). He contended that none existed in South Carolina until the passage of this statute. (Mot. 11). Appellant asserted that the State could not point to any relevant historical analogue to justify the restrictions in the statute. (Mot. 12-13).

Despite identical language, apart from two conspicuously missing commas, Appellant asserted that South Carolina law is unclear on whether Article I, section 20 of the South Carolina Constitution affords greater protections than those provided by the Second Amendment. (Mot. 14). Thus, Appellant argued that under existing precedent, it was unclear whether Article I, section 20 was co-extensive with the Second Amendment (which would lead to the same *Bruen* analysis as under the Second Amendment) or if the South Carolina Constitution provided greater protections than the Second Amendment (which he argued would subject section 16-23-420 to a strict scrutiny analysis). (Mot. 14-15). Appellant contended that Article I, section 20 provided greater protection despite language identical to the Second Amendment and asserted strict scrutiny was the appropriate test to determine the constitutionality of section 16-23-420 under the South Carolina Constitution. (Mot. 16).

Appellant conceded that section 16-23-420 furthered a compelling government interest as it was designed to protect against gun violence on school and government-owned property. (Mot. 16). However, he asserted the statute was not narrowly tailored because it did "not merely protect those buildings or places integral to a university's academic mission" and pointed to areas

that he asserted had no bearing on a university's academic mission. (Mot. 17). However, Appellant only identified properties owned and utilized by the University for research, education, and/or student activities. (Mot. 17). Thus, he concluded that section 16-23-420 impermissibly and unconstitutionally infringed upon his right to bear arms. (Mot. 17).

In its Reply, the State noted that Appellant failed to articulate whether his constitutional challenge was a facial or an as-applied challenge. (Reply 5). However, the State agreed with Appellant that the *Bruen* framework applied to Second Amendment challenges. (Reply 6). The State asserted that a court should first consider whether a defendant's conduct is covered by the plain text of the Second Amendment. (Reply 6). The State contended that if a defendant's conduct is presumptively protected, only then should a court consider whether the statute or regulation involves a "sensitive place." (Reply 6). The State, citing to *Bruen*, argued that if the statute or regulation involves a sensitive place, then "it is settled that a prohibition on arms carrying is consistent with the Second Amendment." (Reply 6). The State argued that the United States Supreme Court had repeatedly acknowledged, in dicta, that schools are sensitive places for the purposes of the Second Amendment. (Reply 6). Citing *Wade v. University of Michigan*[2] and *LaFave v. County of Fairfax, Virginia*,[3] the State asserted that the University fell into the historical tradition of schools and was, therefore, a sensitive place. (Reply 7-9). The State contended that this satisfied its burden as to a facial challenge of section 16-23-420. (Reply 10).

As to an as-applied challenge, the State noted that Appellant relied on a comparison to *State v. Radomski*.[4] (Reply 10). The State argued that *Radomski* was distinguishable from this case

[2] 16 N.W.3d 543 (Mich. Ct. App. 2023), *application for leave to appeal denied*, 12 N.W.3d 6 (Mich. 2024), *cert. denied*, 145 S.Ct. 1923 (Mem) (2025).
[3] 149 F.4th 476 (4th Cir. 2025).
[4] 901 S.E.2d 908 (N.C. Ct. App. 2024), *review denied*, 904 S.E.2d 548 (Mem.) (N.C. 2024).

because of the particular location where Radomski was found as opposed to where Appellant was found. (Reply 10). The State noted Radomski was found in a parking lot owned by a state university hospital and shared with a football field and another healthcare facility, which the North Carolina Court of Appeals determined was commonly accessed by the public for non-educational purposes and, therefore, was not a sensitive place. (Reply 10). Here, Appellant was found with two firearms on a bench on the University's campus directly outside of Mell Hall, which is home to the University's on-campus housing office. (Reply 10). The State emphasized that a large brick and stone sign for "Clemson University" was located within the area in which Appellant was found. (Reply 10). The State contended that due to the differences in the places Radomski and Appellant were found, Appellant's reliance on *Radomski* was misplaced. (Reply 11). Therefore, again citing *Wade* and *LaFave*, the State asserted that section 16-23-420 was well within the scope of the sensitive places doctrine. (Reply 11).

The State asserted that a sufficient historical tradition of firearm regulation existed to support the constitutionality of section 16-23-420. (Reply 11). In support of this, the State discussed historical regulations of various public and private universities as well as relying on the extensive historical analyses in *Bruen*, *Allam*,[5] *Heller*,[6] and *Rahimi*.[7] (Reply 11-13).

In response to Appellant's state constitutional argument, the State asserted that the Second Amendment and Article I, section 20 are co-extensive because the language of the two are identical. (Reply 14). However, the State argued Appellant bore the burden of showing section

[5] *United States v. Allam*, 140 F.4th 289 (5th Cir. 2025).
[6] *District of Columbia v. Heller*, 554 U.S. 570 (2008).
[7] *United States v. Rahimi*, 602 U.S. 680 (2024).

16-23-420 was unconstitutional under the state constitution because of prevailing state case law, such as *Bolin*[8] and *White*.[9] (Reply 15).

Prior to trial, the parties argued Appellant's motion to the trial court in general conformity with their pretrial filings. (Tr. 37-52).

During opening arguments, the State argued it had the burden to show Appellant possessed a firearm while on the University's campus. (Tr. 87). In his opening argument, Appellant argued the issue was instead whether he knew he was on the University's campus. (Tr. 92). The State objected to Appellant's opening, and the trial court held a sidebar conference. (Tr. 93). Thereafter, Appellant did not mention this argument again in his opening statement.

Eli Warnock, a student at the University, testified that he spent a "good amount of time" on the University's campus due to being a student and a campus tour guide as well as from his involvement with on-campus student organizations. (Tr. 95). He "vividly" recalled an incident on October 26, 2024. (Tr. 96). That early afternoon after finishing a campus tour, he and a friend walked on the University's campus toward the downtown area off campus. (Tr. 97). While he walked, he noticed a "commotion," which he described as a "really loud" "street-corner preaching" event, and decided to see what was going on. (Tr. 97). Warnock stated he was walking on the sidewalk on the Bowman Field side of Highway 93[10] toward a stoplight where pedestrians can cross from the University's campus into downtown. (Tr. 97). He noted that a large "Clemson University" sign sits at the T-shaped intersection. (Tr. 97). Further, Mell Hall and a plaza dedicated to the University's Class of 1944 are near that intersection. (Tr. 97).

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[8] *State v. Bolin*, 378 S.C. 96, 662 S.E.2d 38 (2008).
[9] *State v. White*, 348 S.C. 532, 662 S.E.2d 420 (2002), *cert. denied*, 537 U.S. 825 (2002).
[10] South Carolina Highway 93 is also referred to as "Highway 93," "Old Greenville Highway," and "Walter T. Cox Boulevard" interchangeably throughout the transcript.

Warnock stated he passed the intersection, walked toward Mell Hall, and turned left toward Holtzendorff Hall to go farther into the University's campus. (Tr. 97). As he approached the plaza in front of Mell Hall, he noticed a group of people on the plaza, including one sitting on a bench. (Tr. 98). Warnock stated he saw a wooden hilt of a revolver on the man who was sitting on the bench. (Tr. 98). Despite growing up around firearms, Warnock stated he was uncomfortable with someone having a firearm on a university campus because "that is illegal." (Tr. 98). After discussing what he saw with a friend, Warnock circled back and again observed the man sitting on the bench on the plaza in front of Mell Hall. (Tr. 99). Warnock confirmed that the man had a gun on his right hip and that he was confident the gun was a revolver. (Tr. 99). He testified that the large brick "Clemson University" sign would have been visible to anyone sitting on that bench. (Tr. 100). Warnock confirmed the bench was on the University's campus. (Tr. 101).

Warnock called the direct line for the Clemson University Police Department ("CUPD") to ensure that CUPD responded instead of the City of Clemson Police Department. (Tr. 99). Warnock testified that while on the phone with CUPD, he described the man on the bench with the revolver, including that the man was wearing dark clothing unseasonably heavy for the temperature. (Tr. 99). Shortly after his call to CUPD, he received a University Safe Alert notification that an individual with a weapon had been apprehended in front of Mell Hall. (Tr. 100).

Christopher Harrington, Deputy Chief of Police at CUPD, testified that he knew the University's campus boundaries and that CUPD typically did not make arrests outside of the University's main campus. (Tr. 107-08). Harrington confirmed Mell Hall and the plaza in front of it are both on the University's campus and under CUPD's jurisdiction. (Tr. 110-11). According to Harrington, only law enforcement officers have authority to have firearms on campus. (Tr. 111). However, he noted that the University's president had the statutory authority to grant exceptions

to that general rule. (Tr. 111). Harrington confirmed that if the University's president grants any exceptions, then CUPD would be notified. (Tr. 111). CUPD did not receive any authorizations for Appellant to carry firearms on the University's campus. (Tr. 111-12). Harrington testified that during his time with CUPD, the University's president has not made exceptions for regular citizens to carry firearms on the University's campus. (Tr. 112).

Clayton Barnes, an officer with CUPD, testified that he responded to an incident outside of Mell Hall on the University's campus on October 26, 2026. (Tr. 118). As he approached Appellant on the plaza in front of Mell Hall, he noticed that Appellant had a revolver in a holster on his right hip. (Tr. 119). Barnes stated that Appellant was sitting on a bench on the plaza across from a large "Clemson University" sign. (Tr. 119). Barnes testified that after Appellant was handcuffed, he escorted Appellant to a parking lot behind Mell Hall where his patrol car was located. (Tr. 122). During a search of Appellant's person, a second firearm was found in Appellant's left front pants pocket. (Tr. 122). Barnes confirmed Appellant did not brandish either firearm and had not threatened anyone. (Tr. 124). Barnes stated Appellant was compliant "[f]or the most part." (Tr. 124-25). He testified that Appellant had a concealed weapons permit. (Tr. 125). Barnes confirmed that required training for a concealed weapons permit would instruct an individual on where they were and were not allowed to carry a concealed weapon. (Tr. 130).

During a break in proceedings and while the jury was out of the courtroom, the trial court placed the substance of the State's objection to Appellant's opening argument on the record. (Tr. 145-55). The trial court stated that the State's objection concerned Appellant's assertion that the State had to prove Appellant "knew he was on school property when he possessed the firearm." (Tr. 146). The trial court noted that Appellant's position was that if the State did not have to prove such knowledge, then section 16-23-420 created a strict liability offense. (Tr. 146).

The trial court indicated it had researched the matter and determined that "[t]he State does not need to prove [Appellant] was possessing a firearm on school property and knew that he was on school property." (Tr. 146). The trial court clarified that the language of section 16-23-420 did not include a requirement that Appellant knew he was on school property to be convicted of the offense charged. (Tr. 146). The trial court indicated it reviewed another statute that prohibited carrying firearms at elementary and middle schools, which also did not contain Appellant's asserted knowledge requirement. (Tr. 146). The trial court noted that it compared section 16-23-420 to section 44-53-445 (concerning a drug-related offense in proximity of a school) merely to compare the language between them. (Tr. 146-47). The trial court noted the drug-related proximity statute specifically required the State to prove a defendant knew he was in proximity to a school to be convicted of that specific offense. (Tr. 147). The trial court stated section 16-23-420 did not require the same. (Tr. 147).

The trial court found, based on the construction of the statute by the legislature, that section 16-23-420 did not impose strict liability because the State had to prove Appellant had knowledge of a firearm, which provided a mens rea requirement. (Tr. 147). The trial court then allowed both parties to place any further argument or clarification on the record. (Tr. 147).

Appellant argued that section 16-23-420 did have an intent to be on school property element because it would otherwise take a lawful activity and make it unlawful without an intent element. (Tr. 148). The trial court responded that the large "Clemson University" sign was within feet from where Appellant was sitting and that the State introduced evidence that Appellant had a concealed weapons permit, which would require him to know where he could and could not carry his firearms. (Tr. 148). Appellant argued that any offense in South Carolina that does not have a specifically noted intent requirement is a general intent crime. (Tr. 149). Appellant asserted that

if section 16-23-420 created a strict liability offense, he would not be able to argue the defense of mistake. (Tr. 149). Appellant argued that the fact he was sitting near the large "Clemson University" sign would relate to the reasonableness of a potential mistake defense, but he claimed it did not relate to whether the offense was a strict liability offense. (Tr. 149).

Appellant attempted to distinguish cases involving strict liability by arguing that the relevant crimes in those cases involved contraband per se, such as illicit drugs or illegal weapons, instead of a legally owned gun. (Tr. 151). He also asserted that because a rule of statutory construction precludes courts from interpreting statutes in ways that would create absurd results, the trial court could not interpret section 16-23-420 to not require an intent or a knowledge requirement regarding being on school property because that would, in Appellant's view, create absurd results. (Tr. 151-52). Appellant also made an argument against the indictment that the State's position regarding his knowledge of being on school property was an enlargement of the indictment pursuant to *State v. Dent*.[11]

The trial court reiterated that pursuant to section 16-23-420, the State must show Appellant willfully possessed a firearm, Appellant did not have permission to do so, and Appellant was on the University's property. (Tr. 153). The State agreed with the trial court's understanding of the statute and stated the same reasoning was why it worded the indictment to say "on Clemson University's premises[,] willfully and unlawfully possessed a firearm." (Tr. 155; Indictment No. 2025-GS-39-2391).

Other CUPD officers, including Dakota Callis, Randy Freeman, and Matthew Prisco, testified in a substantially consistent manner with testimony discussed above. (Tr. 131-40, 159-205). Thereafter, the State rested. (Tr. 205).

[11] 446 S.C. 121, 919 S.E.2d 394 (2025).

Appellant made a directed verdict argument, asserting an as-applied *Bruen* challenge. (Tr. 206). He again asserted that his conduct fell under the plain scope of the Second Amendment because he armed himself in self-defense. (Tr. 206-07). Appellant argued that the burden shifted to the State to present a historical analogue to support the gun restrictions found in section 16-23-420. (Tr. 207). Appellant claimed that the State attempted to "side-step" this second part of the *Bruen* analysis by saying the University's campus is subject to the sensitive place doctrine because it is a university. (Tr. 207). Appellant asserted that the State did not present anything that would suggest firearms could lawfully have been prohibited at the time of the founding or when the Second Amendment was ratified. (Tr. 207).

As for his argument under Article I, section 20 of the state constitution, Appellant asserted that *Bruen* provided a non-ideal framework and encouraged the trial court to consider his argument that strict scrutiny applied instead. (Tr. 207-08). While conceding the legitimate interest of the State in restricting firearm possession on school property, Appellant argued that section 16-23-420 was "clearly not the least restrictive" means of accomplishing the State's legitimate interest. (Tr. 208). Appellant contended that because Mell Hall, the University's on-campus housing office, was not "in any way related to the educational functions of the [U]niversity," restricting deadly firearms in Mell Hall and the plaza in front of Mell Hall did not further the State's legitimate interest of restricting firearms on school property. (Tr. 208). Appellant also discussed *Radomski* as support for his position because the North Carolina Court of Appeals found a state university hospital parking facility shared with other non-education related facilities did not qualify as a protected sensitive place under North Carolina's school property statute. (Tr. 208-09). Appellant's state constitutional argument concluded with his assertion that section 16-23-420 was "just way too overbroad." (Tr. 209).

Appellant moved into his indictment and mens rea argument by reasserting that intent or knowledge to be on school property should be an element of the offense. (Tr. 210). He reasserted that "willfully" should apply to every element of the offense. (Tr. 211). Appellant presented the trial court with proposed jury instructions regarding intent and knowledge, which the trial court declined to charge. (Tr. 220-22).

The State started by asserting that the amount of property a university owns only matters for a facial challenge, not an as-applied challenge. (Tr. 215). The State also pointed to a distinguishing feature in *Radomski*—in that case, the parking facility was not solely utilized by the state university, whereas the plaza in front of Mell Hall, as a central feature in the middle of the University's main campus, was utilized for university purposes. (Tr. 215). The State argued even minute areas around a school are still part of the school. (Tr. 216).

As for the state constitutional challenge, the State asserted that Article I, section 20 was co-extensive with the Second Amendment and, therefore, should be analyzed under *Bruen*. (Tr. 216). The State again cited to *Allam*, *LaFave*, and *Wade* in support of its sensitive places analysis. (Tr. 216-17). The State argued that Mell Hall and the plaza in front of it are sensitive places because they are on a university campus. (Tr. 217). The State contended if they are not sensitive places, then a sufficient framework existed under *Bruen* to establish a historical tradition of firearm prohibition on school property. (Tr. 217).

The trial court determined, in the light most favorable to the State, that the State presented sufficient evidence for the case to be submitted to the jury. (Tr. 218). The trial court also agreed with the State that section 16-23-420 is constitutional under the Second Amendment and Article I, section 20 of the South Carolina Constitution. (Tr. 219).

Appellant rested when the jury returned to the courtroom. (Tr. 235). He renewed his directed verdict motion, which the trial court denied. (Tr. 235). During the trial court's jury charge, the trial court included a general intent charge, including:

> Now, in order to establish criminal liability[,] criminal intent is required. For example, the mental state required to be proven by [t]he State for a particular crime might be purpose, intent, knowledge, recklessness, or criminal negligence. Criminal intent must be proven by [t]he State beyond a reasonable doubt.

(Tr. 261). The jury found Appellant guilty as indicted. (Tr. 267). Appellant made a new trial motion on the same grounds as his directed verdict motion. (Tr. 269). He also made a motion for verdict in arrest of judgment based in part on his mens rea argument that he previously raised to the trial court. (Tr. 269-70). The trial court denied Appellant's motions. (Tr. 270). Pursuant to the Youthful Offender Act,[12] the trial court sentenced Appellant to five years' imprisonment, suspended to eighteen months' probation. (Tr. 227).

This appeal followed.

[12] S.C. Code Ann. §§ 24-19-5 to -160.

ARGUMENT

I. & II. As Clemson University is a school and schools are "sensitive places," the trial court properly determined that the prohibition on carrying firearms on Clemson University's premises found in section 16-23-420 of the South Carolina Code is consistent with the Second Amendment of the United States Constitution and Article I, section 20 of the South Carolina Constitution.

A. Standard of Review

"The party challenging the validity of a statute bears the burden of proving it is unconstitutional." *Planned Parenthood S. Atl. v. State*, 438 S.C. 188, 197-98, 882 S.E.2d 770, 775 (2023); *see also Knotts v. S.C. Dep't of Nat. Res.*, 348 S.C. 1, 6, 558 S.E.2d 511, 513 (2002) (noting the appellant bore the burden of proving the statute unconstitutional). "This Court has a limited scope of review in cases involving a constitutional challenge to a statute because all statutes are presumed constitutional and, if possible, will be construed to render them valid." *Curtis v. State*, 345 S.C. 557, 569, 549 S.E.2d 591, 597 (2001). "A legislative act will not be declared unconstitutional unless its repugnance to the constitution is clear and beyond a reasonable doubt." *Joytime Distribs. & Amusement Co. v. State*, 338 S.C. 634, 640, 528 S.E.2d 647, 650 (1999). Further, this Court generally does not reach constitutional issues unless necessary to the solution of the case. *Tucker v. Catoe*, 346 S.C. 483, 489, 552 S.E.2d 712, 715 (2001).

B. The Second Amendment and Article I, section 20 of the South Carolina Constitution are co-extensive. Therefore, the analysis under both is identical.

The Second Amendment provides: "A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed." U.S. Const. amend. II.

Similarly, the first clause of Article I, section 20 of the South Carolina Constitution provides the exact same language, differing only by the omission of the first and third commas and the capitalization of the word "militia." *See* S.C. Const. art. I, § 20, cl. 1 ("A well regulated militia

being necessary to the security of a free State, the right of the people to keep and bear arms shall not be infringed.").

The State acknowledges that this Court is the final arbiter of the South Carolina Constitution, which is not subject to interpretation by the United States Supreme Court. *See generally Baddourah v. McMaster*, 433 S.C. 89, 103, 856 S.E.2d 561, 568 (2021) ("It is well settled that the interpretation of the state's constitution is a matter for the courts."). Because the language employed in both the Second Amendment and the South Carolina Constitution is identical and concerns the exact same longstanding right to bear arms, the provisions of the Second Amendment and of Article I, section 20 are co-extensive. *See generally City of Rock Hill v. Henry*, 244 S.C. 74, 76, 135 S.E.2d 718, 719 (1963) (holding that the rights protected by the First Amendment are also fully protected by Article 1, section 4 of the South Carolina Constitution, and therefore, the two were co-extensive), *rev'd on other grounds sub nom. Henry v. City of Rock Hill*, 376 U.S. 776 (1964).

This Court has stated the United States Constitution sets the floor for individual rights and the South Carolina Constitution establishes the ceiling. *See State v. Forrester*, 343 S.C. 637, 643-44, 541 S.E.2d 837, 840 (2001) ("This relationship is often described as a recognition that the federal Constitution sets the floor for individual rights while the state constitution establishes the ceiling."). Therefore, Appellant's argument that section 16-23-420 is subject to a strict scrutiny analysis to determine its constitutionality under Article I, section 20 of the South Carolina Constitution is without merit because the United States Supreme Court has rejected any scrutiny analysis as not sufficiently stringent to protect the right to bear arms under the Second Amendment. *See Wolford v. Lopez*, 609 U.S. __, __, 146 S.Ct. 2032, 2042 (2026) ("And to emphasize the point, *Heller* emphatically rejected the ahistorical and 'judge-empowering "interest-balancing inquiry"'

suggested in the dissent. . . . *Heller* acknowledged that the history-based analysis it prescribed would not always be easy, but it found that mode of analysis necessary to prevent judges from balancing away the right that the Second Amendment was adopted to protect, . . . which is precisely what the dissent did.").

A holding that the South Carolina Constitution requires a strict scrutiny analysis would establish a ceiling for the state constitutional right to bear arms *below* the floor set by the Second Amendment's federal constitutional right to bear arms. This would, in effect, render the state constitutional ceiling ineffective and superfluous as the federal constitutional right would preempt the state constitutional right's ceiling under the Fourteenth Amendment. Because the language of the Second Amendment and Article I, section 20 is identical, these rights are the same in practice and effect. Therefore, the United States Supreme Court's framework as set forth and applied in *Heller*, *Bruen*, and subsequent cases is applicable to both Appellant's Second Amendment challenge and to his Article I, section 20 challenge.

C. *Heller*, *McDonald*, *Bruen*, and Related Applicable Law.

As noted above, the Second Amendment provides: "A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear arms, shall not be infringed." U.S. Const. amend. II.

In *District of Columbia v. Heller*, the United States Supreme Court struck down the District of Columbia's complete ban on handgun possession in the home, including the District's requirement that any lawfully-owned firearm be either disassembled or trigger locked at all times. 554 U.S. 570, 635 (2008). However, before addressing the District's ban, Justice Scalia, writing for the majority, stated:

> Although we do not undertake an exhaustive historical analysis today of the full scope of the Second Amendment, nothing in our

> opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill, or *laws forbidding the carrying of firearms in sensitive places such as schools* and government buildings, or laws imposing conditions and qualifications on the commercial sale of arms.

Id. at 626-27 (emphasis added). The Court noted that this list of "presumptively lawful regulatory measures" was merely a list of examples and was not exhaustive. *Id*. at 627 n.26.

Subsequently, in *McDonald v. City of Chicago, Illinois*, the United States Supreme Court reaffirmed that the Second Amendment was fully applicable to the States through the Fourteenth Amendment. 561 U.S. 742, 750 (2010). Justice Alito, writing for the majority, reiterated the Court's "sensitive places" position, stating:

> We made it clear in *Heller* that our holding did not cast doubt on such longstanding regulatory measures as "prohibitions on the possession of firearms by felons and the mentally ill," "*laws forbidding the carrying of firearms in sensitive places such as schools* and government buildings, or laws imposing conditions and qualifications on the commercial sale of arms."

Id. at 786 (emphasis added). Notably, the Court did not include the "presumptively lawful" language found in *Heller*.

In *New York State Rifle & Pistol Association, Inc. v. Bruen*, Justice Thomas, writing for the majority, stated that "the Second and Fourteenth Amendments protect an individual's right to carry a handgun for self-defense outside the home." 597 U.S. 1, 10 (2022). In *Bruen*, the United States Supreme Court struck down New York's licensing regulations regarding carrying handguns for self-defense. *Id*. at 11. However, before discussing the New York statute, Justice Thomas addressed the framework for analyzing Second Amendment challenges. *Id*. at 17-19. The Supreme Court declined to adopt the two-part approach combining history with means ends scrutiny used by lower courts in the decade following *Heller* and *McDonald*. *Id*. Instead, the Supreme Court held:

> [W]hen the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct. To justify its regulation, the government may not simply posit that the regulation promotes an important interest. Rather, the government must demonstrate that the regulation is consistent with this Nation's historical tradition of firearm regulation. Only if a firearm regulation is consistent with this Nation's historical tradition may a court conclude that the individual's conduct falls outside the Second Amendment's "unqualified command."

Id. at 17 (citation omitted).

Justice Thomas explained:

> The test that we set forth in *Heller* and apply today requires courts to assess whether modern firearms regulations are consistent with the Second Amendment's text and historical understanding. In some cases, that inquiry will be fairly straightforward. For instance, when a challenged regulation addresses a general societal problem that has persisted since the 18th century, the lack of a distinctly similar historical regulation addressing that problem is relevant evidence that the challenged regulation is inconsistent with the Second Amendment. Likewise, if earlier generations addressed the societal problem, but did so through materially different means, that also could be evidence that a modern regulation is unconstitutional. And if some jurisdictions actually attempted to enact analogous regulations during this timeframe, but those proposals were rejected on constitutional grounds, that rejection surely would provide some probative evidence of unconstitutionality.

Id. at 26-27. Justice Thomas continued, stating:

> While the historical analogies here and in *Heller* are relatively simple to draw, other cases implicating unprecedented societal concerns or dramatic technological changes may require a more nuanced approach. The regulatory challenges posed by firearms today are not always the same as those that preoccupied the Founders in 1791 or the Reconstruction generation in 1868. Fortunately, the Founders created a Constitution—and a Second Amendment—"intended to endure for ages to come, and consequently, to be adapted to the various crises of human affairs." Although its meaning is fixed according to the understandings of those who ratified it, the Constitution can, and must, apply to circumstances beyond those the Founders specifically anticipated.

Id. at 27-28 (citation modified).

The Supreme Court then stated that *Heller* and *McDonald* indicated at least two metrics could be used to decide if the regulation at issue is relevantly similar to identified historical analogues. *Id*. at 29. Those metrics are "how and why the regulations burden a law-abiding citizen's right to armed self-defense." *Id*. The Supreme Court explained that when a court engages in an analogue analysis, the main considerations are "whether modern and historical regulations impose a comparable burden on the right of armed self-defense and whether that burden is comparable-defense and whether that burden is comparably justified . . . ." *Id*.

The Supreme Court clarified that under the Second Amendment, a historical analogue analysis is neither a "regulatory straightjacket" nor a "regulatory blank check." *Id*. at 30. The Supreme Court cautioned against upholding "'every modern law that remotely resembles a historical analogue' because doing so 'risks endorsing outliers that our ancestors would never have accepted.'" *Id*. (quoting *Drummond v. Robinson*, 9 F.4th 217, 226 (3d Cir. 2021)). The Court then stated that a historical analogue analysis only required that the government "identify a well-established and representative historical *analogue*, not a historical *twin*." *Id*. at 30 (emphasis original). Therefore, even if a modern regulation is not a "dead ringer" for a historical regulation, it might still be analogous enough to be constitutional. *Id*.

The Supreme Court then discussed "sensitive places," stating:

> Consider, for example, *Heller*'s discussion of "longstanding" "laws forbidding the carrying of firearms in sensitive places such as schools and government buildings." 554 U.S. at 626 . . . . Although the historical record yields relatively few 18th- and 19th-century "sensitive places" where weapons were altogether prohibited—e.g., legislative assemblies, polling places, and courthouses—we are also aware of no disputes regarding the lawfulness of such prohibitions. *See* D. Kopel & J. Greenlee, *The "Sensitive Places" Doctrine*, 13 Charleston L. Rev. 205, 229-236, 244-247 (2018) . . . . **We therefore can assume it settled that these locations were "sensitive places" where arms carrying could be prohibited consistent with the Second Amendment.** And courts can use

> analogies to those historical regulations of "sensitive places" to determine that modern regulations prohibiting the carry of firearms in new and analogous sensitive places are constitutionally permissible.

Id. (emphasis added).

In its analysis of the New York law, the Supreme Court first held that the proposed conduct—publicly carrying firearms for self-defense—of the ordinary, law abiding, adult, citizen petitioners fell under the plain language of the Second Amendment and was therefore presumptively protected conduct. *Id*. at 31-32. Before beginning its historical analogue analysis, the Supreme Court discussed whether it was proper to consider historical laws from 1791, when the Second Amendment was adopted, or from 1868, when the Fourteenth Amendment was adopted. *Id*. at 34-35. While the Court did not decide this issue because it determined that the result would be the same regardless, the Court did suggest that 1791 would be the proper time period from which to begin a historical analogue analysis because the "individual rights enumerated in the Bill of Rights and applicable against the States through the Fourteenth Amendment have the same scope as against the Federal Government," which depended on public understanding of the Bill of Rights when it was adopted in 1791. *Id*. at 37.

The Court then considered the historical evidence presented by New York, concluding that the State did not demonstrate a historical tradition of "broadly" prohibiting the public carry of common firearms for self-defense. *Id*. at 37-71. The Court also rejected New York's argument that "sensitive places" included all "places where people typically congregate and where law-enforcement and other public-safety professionals are presumptively available." *Id*. at 30-31.

In *United States v. Rahimi*, the Supreme Court considered the constitutionality of a federal statute prohibiting individuals subject to a domestic violence restraining order from possessing firearms. 602 U.S. 680, 684 (2024). In its opinion utilizing the framework discussed in *Bruen*,

the Court did not discuss "sensitive places" in the majority opinion, as this case concerned a different longstanding firearms prohibition regulation. *Id*. However, Justice Kavanaugh stated in his concurring opinion that *Heller* recognized "sensitive places such as schools" as a category of traditional exceptions to the right to bear arms that are presumptively constitutional. *Id*. at 735 (Kavanaugh, J., concurring) (quoting *Heller*, 554 U.S. at 626-27).

In *United States v. Hemani*, the Supreme Court considered the constitutionality of a federal statute prohibiting the knowing possession of a firearm while being an unlawful user of a controlled substance. 608 U.S. __, __, 146 S.Ct. 1677, 1684 (2026). The Supreme Court determined that the Federal Government's prosecution of the defendant was inconsistent with the Second Amendment after a thorough discussion on the analogue between the federal statute and "habitual drunkard" laws, which the Court held failed on every metric because the statute differed dramatically from the habitual drunkard laws. *Id*. at __, 146 S.Ct. at 1687. This case did not contain a reference to sensitive places as the regulation in question did not concern a sensitive place.

In *Wolford v. Lopez*, the Supreme Court considered the constitutionality of a Hawaii statute that prohibited firearms on private property open to the public without the express and affirmative consent of the property owner. 609 U.S. __, __, 146 S.Ct. 2032, 2040-41 (2026). This case did not involve a "sensitive place" but rather a discussion on the history of firearms regulation in Hawaii, given its markedly different history with firearms as a formerly independent kingdom, as compared to the rest of the United States. *Id*. at __, 146 S.Ct. at 2049-53. In the majority opinion, Justice Alito once again reiterated that the Second Amendment is not an absolute right and, in his foundational rule statement, referenced the *Heller* court's warning about longstanding laws forbidding firearms in "sensitive places":

> But while the founding generation cherished the Second Amendment right, they did not think it was absolute. *Heller* explained—and later cases have reiterated—that the Second Amendment "codified a pre-existing right." And this right, as understood at the time, was not an "unlimited" right "to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose." Similarly, *Heller* warned that "nothing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill, or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings."

Id. at __, 146 S.Ct. at 2042 (internal citations omitted). Ultimately, the Supreme Court concluded that the historical analogues presented by Hawaii, none of which involved "sensitive places," were not sufficiently similar to Hawaii's statute; therefore, the statute violated the constitutional right to bear arms. *Id*. at 2049-53.

i. ***Bruen*** **Framework**

The following framework for analyzing Second Amendment challenges can be interpreted from *Bruen* and its progeny:

(1) A court must consider whether the Second Amendment presumptively protects the conduct at issue based on the plain language of the Second Amendment. If the Second Amendment does not protect the conduct at issue, then the inquiry ends because the regulation does not violate the Second Amendment. *Bruen*, 597 U.S. at 17, 31-32; *see generally Hemani*, 608 U.S. at __, 146 S.Ct. at 1687; *see also Wade v. Univ. of Mich.*, 16 N.W.3d 543, 553 (Mich. Ct. App. 2023).

(2) If the conduct at issue is presumptively protected by the Second Amendment and does not involve a sensitive place, then a court must consider whether the government has demonstrated that the regulation or statute is consistent with the historical tradition of firearms regulation in this country. This part of the framework generally involves analogical reasoning to determine if regulations and statutes are relevantly similar for

the purposes of the Second Amendment. The United States Supreme Court noted that if the case involves "unprecedented societal concerns or dramatic technological changes," then a "more nuanced approach" could be utilized. *Bruen*, 597 at 17, 27; *see generally Hemani*, 608 U.S. at __, 146 S.Ct. at 1687; *see also Wade*, 16 N.W.3d at 553.

(a) However, a court must consider if the regulation or statute at issue concerns a traditional "sensitive place." If the regulation or statute does concern a traditional "sensitive place," then it is settled that a prohibition on the carrying of arms is consistent with the Second Amendment. *Bruen*, 597 at 30; *see also Wade*, 16 N.W.3d at 553.

(b) If the regulation or statute does not involve a traditional "sensitive place," then a court can look to and utilize historical analogues to determine whether the regulation prohibits possession of arms in a new and analogous "sensitive place." If a court determined that the regulation or statute involves a new and analogous "sensitive place," then the regulation does not violate the Second Amendment. *Bruen*, 597 at 29-30; *see also Wade*, 16 N.W.3d at 553.

D. The Second Amendment's plain text covers Appellant's conduct.

Under *Bruen*, the first step is to determine whether the plain text of the Second Amendment covers Appellant's conduct. If so, then the Constitution presumptively protects that conduct. Appellant's conduct consisted of carrying two loaded and lawfully owned firearms, allegedly for self-defense, on property owned by the University. As in *Bruen*, Appellant was an ordinary, generally law-abiding, adult citizen; therefore, he is part of the "people" that the Second Amendment protects. *Bruen*, 597 U.S. at 31-32. Further, handguns are weapons "in common use" for self-defense. *Id*. at 32. Therefore, because Appellant's conduct was presumptively protected

by the Second Amendment, the State bears the burden to show that section 16-23-420, a statute prohibiting all firearms on the University's property, involves a traditional "sensitive place."

E. The University is a school; therefore, the University is a sensitive place. Thus, settled law permits a firearms prohibition on the University's premises and property as consistent with the Second Amendment.

In *Heller*, the United States Supreme Court confirmed that the Second Amendment protects "an individual right to keep and bear arms." 554 U.S. at 595. The *Heller* court stated that "[l]ike most rights, the right secured by the Second Amendment is not unlimited." *Id*. at 626.

In *Bruen*, the United States Supreme Court considered the *Heller* court's discussion of "'longstanding' 'laws forbidding the carrying of firearms in sensitive places such as schools and government buildings.'" *Bruen*, 597 U.S. at 30 (quoting *Heller*, 554 U.S. at 626). The Court noted that the historical record provided "relatively few" "sensitive places" where weapons were completely prohibited in the eighteenth and nineteenth centuries, listing only legislative assemblies, polling places, and courthouses as those few examples of "sensitive places" where weapons were completely banned. *Id*. at 30. The Court also noted that it was not aware of any disputes regarding the lawfulness of firearm prohibitions at sensitive places such as schools and government buildings. *Id*. (citing D. Kopel & J. Greenlee, *The "Sensitive Places" Doctrine*, 13 Charleston L. Rev. 205, 229-36, 244-47 (2018) ("Widespread bans on arms in government buildings and schools came in the later part of the twentieth century.")). Therefore, the Court assumed it settled that schools and government buildings were "sensitive places" where "arms carrying could be prohibited consistent with the Second Amendment." *Bruen*, 597 U.S. at 30. Thus, if the University is a school, then section 16-23-420 does not violate the Second Amendment.

Universities have long been considered "schools." Samuel Johnson's dictionary from 1773—notably published almost two decades *before* the Second Amendment was adopted—defines "school" in several ways, including "[a] house of discipline and instruction" and "[a] place

of literary education; *an university*." Samuel Johnson, *A Dictionary of the English Language*, Vol. II, p. 622 (4th ed. 1773) (emphasis added).[13] Therefore, at the time of the Second Amendment's adoption, "schools" included universities.

Reference to "schools" in regard to the Second Amendment did not appear until Justice Scalia's majority opinion in *Heller*. However, Justice Scalia did not define the term nor did he cite or otherwise rely on any authority; instead, Justice Scalia appears to employ the term broadly. *Heller*, 554 U.S. at 626. The broad meaning of "schools" when Justice Scalia used the term in 2008 included universities. *See Wade*, 16 N.W.3d at 616-17 ("[T]he plain meaning of 'school' when Justice SCALIA used the term in 2008 . . . similarly included universities. *Mirriam Webster's Collegiate Dictionary* (2003) defines 'school,' in part, as 'an organization that provides instruction,' such as a 'COLLEGE, UNIVERSITY.'"). Because Justice Scalia did not define the term or limit the term to non-university schools (such as K-12), instead using the term in a seemingly colloquial fashion, any reliance on a legal dictionary for a supposed unique, legal meaning would be misplaced. *See id*. at 617-18.

Significantly, in the Charleston Law Review article cited by Justice Thomas in *Bruen*, the article's authors presumed that Justice Scalia's reference to "schools" included universities. *See The "Sensitive" Places Doctrine*, 13 Charleston L. Rev. at 251-52 (discussing arms carrying at universities under the heading of "Schools"). Therefore, the definition of "schools" has long included universities. As the University is—as its name suggests—a university, the University is a school and therefore a "sensitive place."

[13] Also available at https://babel.hathitrust.org/cgi/pt?id=osu.32435030881106&view=1up&seq=644 (last visited Aug. 24, 2026).

Moreover, nearly every federal circuit that has considered "sensitive places" has held or otherwise acknowledged that schools are traditional "sensitive places" where government restrictions on carrying firearms are presumptively constitutional. *See generally United States v. Rene E.*, 583 F.3d 8, 12 (1st Cir. 2009) (acknowledging schools as sensitive places where historical restrictions limit Second Amendment rights), *abrogated by Bruen*, 597 U.S. 1 (2022); *Koons v. Att'y Gen. New Jersey*, 156 F.4th 210, 236 (3d Cir. 2025) (holding schools are traditional sensitive places), *reh'g en banc granted, opinion vacated*, 162 F.4th 100 (3d Cir. 2025); *Kipke v. Moore*, 165 F.4th 194, 212 (4th Cir. 2026) (upholding Maryland's prohibition of guns on school grounds as constitutional); *LaFave v. County of Fairfax, Virginia*, 149 F.4th 476, 484 (4th Cir. 2025) (holding that the court had "no trouble concluding that restrictions on carrying firearms at schools, including the four preschools located within the County's parks, are presumptively constitutional"), *cert. denied sub nom. LaFave v. Fairfax County, Virginia*, 146 S.Ct. 1799 (Mem) (2026); *United States v. Allam*, 140 F.4th 289, 299 (5th Cir. 2025) (holding that there is a historical tradition of regulating menacing behavior that applies to regulating guns around schools, and therefore, guns can be constitutionally restricted in the 1,000 yard buffer zone around a school); *United States v. Combs*, No. 23-5121, 2024 WL 4512533 (6th Cir. 2024) (acknowledging in rule statement *Heller*'s sensitive places doctrine for schools and government buildings); *Schoenthal v. Raoul*, 150 F.4th 889, 909 (7th Cir. 2025) (noting that *Bruen* permits prohibiting all individuals from having firearms on school campuses, not just students), *cert. denied*, 146 S. Ct. 2158 (Mem) (2026); *United States v. Adams*, 914 F.3d 602, 605 (8th Cir. 2019) (noting that under *Heller* prohibitions forbidding the carrying of firearms in sensitive places such as schools are presumptively lawful); *Wolford v. Lopez*, 116 F.4th 959, 985 (9th Cir. 2024) (holding that schools fall under the category of sensitive places where there is a historical tradition of banning firearms), *cert. granted in*

part, 146 S. Ct. 79 (2025), *rev'd and remanded on other grounds*, 146 S. Ct. 2032 (2026); *Mai v. United States*, 952 F.3d 1106, 1113 (9th Cir. 2020) (noting that under *Heller* prohibitions forbidding the carrying of firearms in sensitive places such as schools are presumptively lawful), *abrogated by Bruen*, 597 U.S. 1 (2022); *Nat'l Rifle Ass'n v. Bondi*, 133 F.4th 1108, 1120-21 (11th Cir. 2025) (acknowledging that historical private school regulations may be used to justify modern regulations preventing minors from owning guns), *cert. denied sub nom. NRA, Inc. v. Glass*, No. 24-1185, 2026 WL 1871313 (2026); *United States v. Class*, 930 F.3d 460, 465 (D.C. Cir. 2019) (holding that schools are paradigmatic sensitive places), *abrogated by Bruen*, 597 U.S. 1 (2022).

Next, to the extent Appellant suggests the "sensitive places" doctrine is a mere presumption or suggestion, which could be rebutted absent a historical analogue, the Supreme Court has stated otherwise. In *Heller*, the Supreme Court included a footnote in its "sensitive places" discussion, reading: "We identify these presumptively lawful regulatory measures only as examples; our list does not purport to be exhaustive." 554 U.S. at 627 n.26. Without further analysis, Appellant's contention might be supported by this footnote. However, in *Bruen*, Justice Thomas wrote in the majority opinion that the Supreme Court could assume that it was "*settled* that these locations were 'sensitive places' where arms carrying *could be prohibited* consistent with the Second Amendment." 597 U.S. at 30 (emphasis added). Therefore, the Supreme Court in *Bruen* removed any presumption from the *Heller* footnote; thus, Appellant lacks support for any argument that a finding of a sensitive place where the carrying of a firearm can be prohibited consistent with the Second Amendment may be rebutted.

To the extent Appellant argues that parts of the premises or property owned, operated, or controlled by the University may not be considered a "sensitive place," Appellant's contention is untenable and without merit. Appellant's suggestion would require parts of the University's

landholdings to be partitioned off from other areas of the University and subjugated to differing standards, despite the University's landholdings being used either for academic purposes, including research, or otherwise in support of academic purposes. Moreover, Appellant provided no mandatory support for partitioning the University into "sensitive places" and non-sensitive places, and no such support can be found for any such partition in *Heller*, *Bruen*, or any South Carolina authority.

Finally, to the extent Appellant relies on the North Carolina case, *State v. Radomski*, any such reliance is misplaced. In that case, the North Carolina Court of Appeals held that the North Carolina statute prohibiting knowing possession and carrying of firearms on "any kind of educational property" was unconstitutional as applied to the defendant "due to the non-sensitive nature of the parking lot" where the defendant was arrested for being in possession of firearms inside his vehicle. *Radomski*, 901 S.E.2d 908, 914 (N.C. Ct. App. 2024), *review denied*, 904 S.E.2d 542 (Mem.) (N.C. 2024). The North Carolina Court of Appeals determined that the parking facility's main function was "non-educational in nature" because its purpose was to provide parking access to the University of North Carolina's on-campus hospital and other health care facilities in the surrounding area. *Id*., 901 S.E.2d at 914; *see also* N.C.G.S. § 14-269.2(a)(1) (defining "[e]ducational property" for the purposes of North Carolina's statute prohibiting knowing possession and carrying of firearms on any educational property as "[a]ny school building or bus, school campus, grounds, recreational area, athletic field, or other property owned, used, or operated by any board of education or school board of trustees, or directors for the administration of any school").

The North Carolina Court of Appeals also noted the defendant's argument that testimony presented at trial supported his as-applied challenge because although the University of North

Carolina's hospital was considered to be "immediately in the vicinity" of the university's campus, "engulfed by" the campus, and "considered to be part of" the campus, it was policed separately from the rest of the university's campus by a different police department, namely the UNC Hospital Police Department. *Id*. at 915. The North Carolina Court of Appeals stated that restricting the defendant's Second Amendment right under the facts of his case and pursuant to the North Carolina statute would be unconstitutional as applied because the defendant's firearms remained in his vehicle in a parking lot of a hospital he went to in search of medical treatment. *Id*.

Here, Appellant was not in a parking lot. He was firmly and definitively on property or premises owned, operated, and controlled by the University. (Tr. 101, 136). Further, the specific educational nature of the property is not an aspect of section 16-23-420 as it is under the North Carolina statute. In fact, section 16-23-420 does not distinguish or define the nature of the premises or property owned, operated, or controlled in any way, which is a stark difference from the North Carolina statute. *Compare* S.C. Code Ann. § 16-23-420, *with* N.C.G.S. § 14-269.2(a)(1).

In short, there is a significant difference between where Appellant was found with firearms and where Radomski was found with firearms. Appellant was found on a University-owned plaza outside the University's housing office with two firearms. (Tr. 101, 119-22, 136, 138-40). Radomski was found inside his car at a university hospital parking lot. *Radomski*, 901 S.E.2d at 911. The North Carolina Court of Appeals determination that the North Carolina statutory provision as related to a university hospital parking lot did not pass constitutional muster when applied to an individual in their vehicle with firearms in that parking lot has no bearing on an analysis under South Carolina's *different* statutory provision when applied to an individual outside in broad daylight on a plaza in front of the University's housing office.

As the University is a school and as schools are "sensitive places" where firearm carrying can be prohibited consistent with the Second Amendment, the trial court did not err in finding section 16-23-420 to be constitutional under the Second Amendment and the co-extensive first clause of Article I, section 20 of the South Carolina Constitution.

F. Should the Court determine a historical tradition or historical analogues analysis is needed, the United States Supreme Court has assumed the law concerning schools as "sensitive places" is settled and arms-carrying can be prohibited in "sensitive places" consistent with the Second Amendment. Therefore, a historical analogue analysis is not necessary.

To demonstrate section 16-23-420 is constitutional, the State must show that the law is consistent with the historical understanding of the right to bear arms. *See Bruen*, 597 U.S. at 26. "A variety of sources, including scholarship, may aid this inquiry . . . [b]ut often, the best evidence may be what *Bruen* called historical analogues." *Wolford*, 609 U.S. at __, 146 S.Ct. at 2044 (2026). "These are old legal rules from which a court may draw a strong inference that the modern law at issue is consistent with the codified right. A party defending against a Second Amendment claim may rely on a single analogue or a group of analogues." *Id*.

The *Bruen* court identified three considerations courts should undertake when evaluating the government's proffered analogues. *Id*. "The first is the number of jurisdictions in which they were adopted." *Id*.; *see also Bruen*, 597 U.S. at 67 ("[W]e will not stake our interpretation . . . upon a law in effect in a single State, or a single city . . . ."). "The second is the extent to which these analogous regulations were well accepted." *Wolford*, 609 U.S. at __, 146 S.Ct. at 2044. "This acceptance may be express, as when judicial decisions explicitly acknowledged the rule's legality, or the acceptance may be tacit, as when a restriction on the keeping or carrying of arms was 'open, widespread, and unchallenged.'" *Id*.; *see also Bruen*, 597 U.S. at 35-36. "The third is whether any analogue or collection of analogues is "relevantly similar" to the modern law." *Wolford*, 609 U.S. at__, 146 S.Ct. at 2044; *see also Bruen*, 597 U.S. at 29.

"Determining whether this condition is met requires consideration of 'how' the analogue restricted the keeping or bearing of arms—whether it imposed a restriction similar to that imposed by the challenged law." *Wolford*, 609 U.S. at __, 146 S.Ct. at 2044. "[A] court must also consider 'why' the analogue restricted the keeping or bearing of arms—that is, whether its rationale was similar to that of the new law." *Id*. An analogue need not be a "historical twin" but must be close enough to enable a court to say that "[b]ecause this historical law was understood to be compatible with the right codified by the Second Amendment, we can infer that the restriction imposed by the modern law is likewise consistent with that right." *Id*. However, when a modern law addresses a situation that could not have arisen when the Second or Fourteenth Amendment were adopted, it is too much to demand a "dead ringer" match. *Id*.

However, because the Supreme Court stated that it is settled law that schools are "sensitive places" where carrying firearms can be prohibited consistent with the Second Amendment as discussed above in subsection E, this Court need not conduct a historical analogue analysis because the Supreme Court has already determined that prohibition of firearms in sensitive places is consistent with the historical understanding of the right to bear arms. *See Bruen*, 597 U.S. at 30 ("Consider, for example, *Heller*'s discussion of 'longstanding' 'laws forbidding the carrying of firearms in sensitive places such as schools and government buildings. Although the historical record yields relatively few 18th- and 19th-century 'sensitive places' where weapons were altogether prohibited—*e.g.*, legislative assemblies, polling places, and courthouses—we are also aware of no disputes regarding the lawfulness of such prohibitions. We therefore can assume it settled that these locations were 'sensitive places' where arms carrying could be prohibited consistent with the Second Amendment. And courts can use analogies to those historical regulations of 'sensitive places' to determine that modern regulations prohibiting the carry of

firearms in *new* and analogous sensitive places are constitutionally permissible." (emphasis original) (internal citations omitted)).

If anything, the Supreme Court in *Bruen* stated that the government can use historical regulations of firearms at schools to support analogues of gun restriction in *new* sensitive places. *Id*. Therefore, unless this Court deems it necessary to conduct an analysis of how the regulation of firearms at schools is similar to the regulation of firearms at schools, which would constitute an unnecessary circular analysis, then section 16-23-420 is constitutional because the University is a school and a school is a "sensitive place" where firearms can be prohibited consistent with the Second Amendment.

III. The trial court properly determined any mens rea requirement applied only to the possession of a firearm portion of section 16-23-420; therefore, the trial court did not abuse its discretion by denying Appellant's new trial motion. Even if the trial court did abuse its discretion, any such error was harmless.

A. Standard of Review

"In criminal cases, the appellate court sits to review errors of law only." *State v. Baccus*, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006). "It is well settled that the grant or refusal of a new trial is within the sound discretion of the trial judge." *State v. Taylor*, 348 S.C. 152, 159, 558 S.E.2d 917, 920 (Ct. App. 2001). "[W]here there is competent evidence to sustain the jury's verdict, the judge may not substitute his judgment for that of the jury." *State v. Prince*, 316 S.C. 57, 63, 447 S.E.2d 177, 181 (1993). "The granting or refusal of a motion for a new trial is within the discretion of the trial judge and will not be disturbed absent a clear abuse of discretion." *State v. Simmons*, 279 S.C. 165, 166, 303 S.E.2d 857, 858 (1983). "An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law." *State v. Pagan*, 369 S.C. 201, 208, 631 S.E.2d 262, 265 (2006).

B. Mens rea requirement of section 16-23-420

"Few areas of criminal law pose more difficulty than the proper definition of the *mens rea* required for any particular crime." *United States v. Bailey*, 444 U.S. 394, 403 (1980). "Criminal liability is normally based on the concurrence of two factors, 'an evil mind [and] an evil doing hand.'" *Id*. at 402. However, this Court has "recognized that the legislature may declare an act criminal regardless of the mental state of the actor." *State v. Jefferies*, 316 S.C. 13, 17, 446 S.E.2d 427, 430 (1994); *see also State v. Ferguson*, 302 S.C. 269, 395 S.E.2d 182 (1990); *State v. Manos*, 179 S.C. 45, 183 S.E. 582 (1936).

This Court has classified mens rea requirements for particular crimes into a "hierarchy of culpable states of mind," which include in descending order of culpability: "purpose, knowledge, recklessness, and negligence." *Jefferies*, 316 S.C. at 18, 446 S.E.2d at 430. When a criminal statute does not expressly state whether a mens rea is required, courts "look to the common law and the development of the statute to determine whether the legislature intended the crime to require a *mens rea*." *Id*.

Here, the General Assembly did not provide a specific mens rea for section 16-23-420. *See* S.C. Code Ann. § 16-23-420(A) ("It is unlawful for a person to possess a firearm of any kind on any premises or property owned, operated, or controlled by a private or public . . . university . . . without the express permission of the authorities in charge of the premises or property."). Therefore, this Court can look to the development of the statute and to the common law to determine what, if any, mens rea is required.

Since this statute was enacted, it has not had any specifically stated mens rea requirement. *See generally* 1962 Code § 16-141.1; 1969 (56) 319; 1993 Act No. 184, § 47; 1996 Act No. 464,

§ 6; 2002 Act No. 274, § 1, eff May 28, 2002; 2004 Act No. 294, § 3, eff August 16, 2004; 2009 Act No. 32, § 2, eff June 2, 2009; 2024 Act No. 111 (H.3594), § 6, eff March 7, 2024.

Interestingly, other statutes in this statutory scheme have been amended to include specific mens rea requirements. *See generally* S.C. Code Ann. § 16-23-440 ("It is unlawful for a person to *knowingly*, unlawfully *and deliberately or with reckless disregard* for life [to] discharge . . . firearms at or into [delineated buildings]." (emphasis added)). Other statutes in this statutory scheme provide mens rea requirements by the wording of the statute, which imply an evil hand. *See generally* S.C. Code Ann. § 16-23-450 ("It shall be unlawful for any person to construct, set or place a loaded trap gun, spring gun or any like device in any manner in any building . . . ."). The General Assembly could have placed either type of mens rea requirements in section 16-23-420 but chose to word the statute specifically without a mens rea requirement. *Cf. Ferguson*, 302 S.C. at 272-73, 395 S.E.2d at 184 ("A reading of the entire statutory scheme convinces us that the legislature intended to place a mental state requirement in the offense contained in [the relevant statutory provision].").

This statute also does not borrow terms of art from the common law, which indicates that the General Assembly did not intend to adopt meaning from the common law. *Cf. Morissette v. United States*, 342 U.S. 246, 263 (1952) ("And where Congress borrows terms of art in which are accumulated the legal tradition and meaning of centuries of practice, it presumably knows and adopts the cluster of ideas that were attached to each borrowed word in the body of learning from which it was taken and the meaning its use will convey to the judicial mind unless otherwise instructed."); *see also State v. Haskins*, 585 S.E.2d 766, 768-70 (N.C. Ct. App. 2003) (holding, prior to subsequent legislative revision adding a specific mens rea requirement, that North Carolina's statute prohibiting weapons on education property did not have a mens rea requirement

as the North Carolina legislature did not specifically mention one or borrow terms of art from the common law indicating an adoption of those terms).

Moreover, as the trial court considered and found, if General Assembly had intended a mens rea requirement for section 16-23-420, it could and would have expressly included one, much like it did for section 44-53-445 of the South Carolina Code. *See generally* S.C. Code Ann. § 44-53-445(B)(1) (requiring a defendant to have knowledge "he is in, on, or within a one-half mile radius of the grounds" of a school to be convicted of distribution of a controlled substance within proximity of a school). As the trial court concluded, the General Assembly's intentional omission of mens rea requirement in section 16-23-420, especially considering its intentional *inclusion* of a mens rea requirement for other crimes located at or near schools, evidenced that the General Assembly did not intend to place a mens rea requirement for the crime of possession of a firearm on school property.

To the extent Appellant argues that the trial court's reliance on drug statutes is misplaced because "possession of narcotics is presumptively unlawful at all places and times" while firearm possession is presumptively legal (Int. App. Br. 34), this argument is without merit because the United States Supreme Court has determined that firearm prohibitions regarding "sensitive places," such as schools, are consistent with the Second Amendment. *See Bruen*, 597 U.S. at 30 ("Consider, for example, *Heller*'s discussion of 'longstanding' 'laws forbidding the carrying of firearms in sensitive places such as schools and government buildings. . . . We therefore can assume it settled that these locations were 'sensitive places' where arms carrying could be prohibited consistent with the Second Amendment.").

Therefore, much like possession of illegal drugs is "unlawful at all places and times," possession of firearms is also unlawful at all times and in all places on the University's premises

and properties. *See* § 16-23-420. There is no place on the University's premises or properties where a defendant, such as Appellant, may legally possess a firearm without express permission of the University's administration. *Id*. Therefore, the State was not required to prove any mens rea related to Appellant being on the University's premises or property.

Thus, the mens rea requirement for section 16-23-420, much like the mens rea requirement for drug possession crimes (some of which have expressly stated statutory mens rea requirements), requires only that the State prove that Appellant had either actual physical custody of a firearm or the right or ability to exercise control over one, and also that Appellant had knowledge of the presence of a firearm. *See State v. Stewart*, 433 S.C. 382, 389-90, 858 S.E.2d 808, 811-12 (2021) (discussing the principle of possession and the elements the State must prove for possession crimes).

Because section 16-23-420 does not require a specific mens rea outside of the possession of a firearm, the trial court did not abuse its discretion in determining that the General Assembly only intended to a specific mental state for the possession of a firearm and nothing more. Thus, the trial court did not abuse its discretion by denying Appellant's motion for a new trial.

C. Harmless Error

Should this Court determine that some culpable state of mind exists for section 16-23-420, then any error by the trial court in determining otherwise is harmless because the State presented evidence from which a jury could reasonably conclude the State proved Appellant knew he was on the University's premises or property beyond a reasonable doubt.

"Most trial errors, even those [that] violate a defendant's constitutional rights, are subject to harmless-error analysis." *State v. Rivera*, 402 S.C. 225, 246, 741 S.E.2d 694, 705 (2013). "Harmless error analyses are fact-intensive inquiries and are not governed by a definite set of

rules." *State v. Jenkins*, 412 S.C. 643, 651, 773 S.E.2d 906, 909 (2015). "Rather, appellate courts must determine the materiality and prejudicial character of the error in relation to the entire case." *Id*. at 651, 773 S.E.2d at 910. "An error is harmless if it did not reasonably affect the result of the trial." *Id*.

Here, Appellant contends the State did not prove the requisite mental state to show he knew he was on the University's campus. He asserts that because the State only showed he was physically on campus rather than proving he intended to be or knew he was on campus, any conviction could not stand. While the State argued that it did not need to show anything more than Appellant's physical presence on the University's campus, the State did show Appellant knew where he was.

Eli Warnock, the student who first observed Appellant and called CUPD, testified that from the bench on which Appellant was sitting, the large brick "Clemson University" sign would be visible to the left of the bench. (Tr. 100). Warnock confirmed that the bench Appellant sat on was, in fact, on the University's campus. (Tr. 101). CUPD Officer Clayton Barnes also testified that Appellant was sitting on a bench across the Mell Hall plaza from the brick sign. (Tr. 119). The brick sign, the plaza in front of Mell Hall, and the bench upon which Appellant sat are visible with a portion of the adjacent roadway in State's Exhibit 9, which is a screenshot of a CUPD officer's body worn camera footage. (Tr. 133). Barnes further stated that Appellant had a concealed weapons permit and that training for such a permit instructs individuals on where they can and cannot carry firearms. (Tr. 125, 130). As identified on the map listed as State's Exhibit 4, the only way to get to the plaza in front of Mell Hall is to either come from farther inside the University's campus or enter the plaza from the street side and directly in front of the University's large brick sign. Based on testimony that Appellant would have been able to see the University's sign and the

map that shows Appellant would have had to enter this plaza from either deeper in the University's campus or while passing the large brick sign, the State provided evidence from which a jury could determine beyond a reasonable doubt that Appellant knew he was on premises or property owned, operated, or controlled by the University.

Therefore, even though the State did not have to show Appellant knew he was or intended to be on the University's campus, the State did so anyway. Thus, any error regarding the mens rea requirement was harmless because it could not reasonably have affected the result of Appellant's trial.

IV. The trial court properly exercised its discretion by declining to charge Appellant's mens rea jury charges because none of the requested charges accurately represented the required intent, if any, of section 16-23-420. The generic general intent charge given by the trial court was sufficient as it contained the proper substance of the law. Moreover, Appellant cannot show prejudice from any alleged abuse of discretion due to overwhelming evidence of his guilt.

A. Standard of Review

"'The trial court is required to charge only the current and correct law of South Carolina.'" *State v. Marin*, 415 S.C. 475, 482, 783 S.E.2d 808, 812 (2016) (citation modified) (quoting *State v. Brandt*, 393 S.C. 526, 549, 713 S.E.2d 591, 603 (2011). "The law to be charged must be determined from the evidence presented at trial." *State v. Knoten*, 347 S.C. 296, 302, 555 S.E.2d 391, 394 (2001). "An appellate court will not reverse the trial judge's decision regarding a jury charge absent an abuse of discretion." *State v. Mattison*, 388 S.C. 469, 479, 697 S.E.2d 578, 584 (2010). "In reviewing jury charges for error, we must consider the court's jury charge as a whole in light of the evidence and issues presented at trial." *State v. Adkins*, 353 S.C. 312, 318, 577 S.E.2d 460, 463 (Ct. App. 2013). "The substance of the law is what must be instructed to the jury, not any particular verbiage." *State v. Smith*, 315 S.C. 547, 554, 446 S.E.2d 411, 415 (1994). "To

warrant reversal, a trial judge's refusal to give a requested jury charge must be both erroneous and prejudicial to the defendant." *Mattison,* 388 S.C. at 479, 697 S.E.2d at 583.

B. The trial court's generic general intent charge conveyed the substance of the law.

Appellant submitted multiple proposed jury charges to the trial court on different culpable states of mind, including willfully, knowingly, purposefully, and recklessly. (Court's Ex. 1). Appellant did not assert that any of the various mens rea charges he proposed was the appropriate charge; instead, he provided all of them for the trial court to choose from. However, as discussed in Argument III above, none of Appellant's requested mens rea charges were a correct statement of South Carolina law. Therefore, the trial court did not abuse its discretion by declining to charge them. *See Marin*, 415 S.C. at 482, 783 S.E.2d at 812 ("The trial court is required to charge only the current and correct law of South Carolina." (quoting *Brandt*, 393 S.C. at 549, 713 S.E.2d at 603)). Moreover, the generic general intent charge that the trial court did provide to the jury was an accurate statement of general intent to the extent that an intent jury charge was needed. Appellant even agrees that the charge as given was a correct statement of law, albeit "at a very high level." (Int. App. Br. 36).

Here, the trial court charged the jury that:

> Criminal intent is a mental state; a consideration of wrongdoing. It is up to you to determine what [Appellant] intended to do based on the circumstances shown to have existed. Criminal intent can arise from action or a failure to act; it may [arise] from negligence, recklessness, or indifference to duty or consequences that is considered by the law to be the equivalent of criminal intent.

(Tr. 261-62). The trial court then charged the jury with the statutory language of section 16-23-420. (Tr. 262). Thus, the trial court provided the jury with a proper charge on intent.

To the extent Appellant asserts that he is uncertain the jury's verdict was unanimous as to the level of mens rea required, this argument is not preserved for appellate review as it was not

raised to the trial court. *See S.C. Dep't of Transp. v. First Carolina Corp. of S.C.*, 372 S.C. 295, 302, 641 S.E.2d 903, 907 (2007) ("The issue must have been (1) raised to and ruled upon by the trial court, (2) raised by the appellant, (3) raised in a timely manner, and (4) raised to the trial court with sufficient specificity." (quoting Jean Hoefer Toal et al., *Appellate Practice in South Carolina* 57 (2d ed. 2002))). Moreover, it is without merit. The jury did not have a single question regarding the trial court's charge and did not ask for clarification or definition of any part of the trial court's general intent instruction. The jury also affirmatively indicated that its verdict was unanimous. (Tr. 267). *Cf. Jefferies*, 316 S.C. at 20-23, 446 S.E.2d at 431-33 (holding that where a mens rea charge was inadequate because the incomplete recharge provided to jury after it requested a definition or explanation of a term used in the jury charge, any such error was harmless because the impermissible jury charge did not contribute to the guilty verdict beyond a reasonable doubt).

Therefore, as the trial court's jury charge was a correct statement of the law and as Appellant's requested charges were not, the trial court did not abuse its discretion by declining to charge every potentially applicable mens rea of which Appellant could think and request.

C. If the trial court abused its discretion in denying Appellant's motions, Appellant was not prejudiced by any such alleged abuse because of the overwhelming evidence of his guilt.

To the extent that the trial court abused its discretion by not charging all or some of Appellant's numerous mens rea jury charges and his mistake of fact charge, any such alleged error is harmless, and therefore not prejudicial, because the State offered evidence tending to prove Appellant's guilt beyond a reasonable doubt. *See Mattison*, 388 S.C. at 479, 697 S.E.2d at 583 ("To warrant reversal, a trial judge's refusal to give a requested jury charge must be both erroneous and prejudicial to the defendant."). This argument mirrors the harmless error argument above in Argument III.C.

"Harmless error analyses are fact-intensive inquiries and are not governed by a definite set of rules." *State v. Jenkins*, 412 S.C. 643, 651, 773 S.E.2d 906, 909 (2015). "Rather, appellate courts must determine the materiality and prejudicial character of the error in relation to the entire case." *Id*. at 651, 773 S.E.2d at 910. "An error is harmless if it did not reasonably affect the result of the trial." *Id*.

Here, Appellant contends the State did not prove the requisite mental state to show he knew he was on the University's campus. He asserts that because the State only showed he was physically on campus rather than proving he intended to be or knew he was on campus, any conviction could not stand. While the State argued that it did not need to show anything more than Appellant's physical presence on the University's campus, the State did conclusively show Appellant knew where he was.

Eli Warnock, the student who first observed Appellant and called CUPD, testified that from the bench on which Appellant was sitting, the large brick "Clemson University" sign would be visible to the left of the bench. (Tr. 100). Warnock confirmed that the bench Appellant sat on was, in fact, on the University's campus. (Tr. 101). CUPD Officer Clayton Barnes also testified that Appellant was sitting on a bench across the Mell Hall plaza from the brick sign. (Tr. 119). The brick sign, the plaza in front of Mell Hall, and the bench upon which Appellant sat are visible with a portion of the adjacent roadway in State's Exhibit 9, which is a screenshot of a CUPD officer's body worn camera footage. (Tr. 133). Barnes further stated that Appellant had a concealed weapons permit and that training for such a permit instructs individuals on where they can and cannot carry firearms. (Tr. 125, 130). As identified on the map listed as State's Exhibit 4, the only way to get to the plaza in front of Mell Hall is to either come from farther inside the University's campus or enter the plaza from the street side and directly in front of the University's large brick

sign. Based on testimony that Appellant would have been able to see the University's sign and the map that shows Appellant would have had to enter this plaza from either deeper in the University's campus or while passing the large brick sign, the State provided evidence that showed beyond a reasonable doubt that Appellant knew he was on premises or property owned, operated, or controlled by the University.

Under the circumstances, it "strains credulity past the breaking point" to follow Appellant's theory that he simply did not know he was on the University's campus while in close proximity to and in visible range of a large brick sign clearly stating "Clemson University" in large, all-capital letters. *See Ferguson*, 302 S.C. at 273, 395 S.E.2d at 184 (holding that an inadequate mental state jury instruction was error but harmless because the overwhelming evidence presenting at trial showed the defendant was well aware he was distributing cocaine and stating "it strains credulity past the breaking point to adhere to [the defendant's] theory that he was just an honest delivery man with no knowledge or reason to know he was distributing cocaine"). Therefore, to the extent the trial court abused its discretion, any such error was harmless.

V. As the State maintained the same theory throughout this case—that while on the University's property, Appellant possessed a firearm—the trial court did not abuse its discretion in denying Appellant's directed verdict motion where the State provided ample evidence of his guilt. To the extent Appellant argues the trial court abused its discretion by denying his motion for verdict in arrest of judgment, this argument is without merit because such a motion is an untimely challenge of the sufficiency of the indictment.

A. Standard of Review

An appellate court "review[s] the denial of a directed verdict motion in a criminal case under the any evidence standard of review." *State v. Cain*, 419 S.C. 24, 33, 795 S.E.2d 846, 851 (2017). "When reviewing a denial of a directed verdict, [an appellate court] views the evidence and all reasonable inferences in the light most favorable to the [S]tate. If there is any direct evidence or any substantial circumstantial evidence reasonably tending to prove the guilt of the

accused, the [c]ourt must find the case was properly submitted to the jury." *State v. Weston*, 367 S.C. 279, 292-93, 625 S.E.2d 641, 648 (2006).

B. Contrary to Appellant's claim, the State's prosecution of this case was in line with the indictment because both asserted intent only for possession of a firearm, not for Appellant's presence on the University's property. However, the State provided evidence of Appellant's knowing presence on the University's property.

In the light most favorable to the State, evidence exists in the record reasonably tending to prove Appellant's guilt. Section 16-23-420 provides, in relevant part:

> It is unlawful for a person to possess a firearm of any kind on any premises or property owned, operated, or controlled by a private or public . . . university, . . . without the express permission of the authorities in charge of the premises or property.

In the indictment, the State charged:

> That [Appellant] did in Pickens County on or about the 26th day of October, 2024, while on the campus of Clemson University, willfully and unlawfully possess a firearm without the express permission of the authorities in charge of the premises to do so.

(Indictment No. 2025-GS-39-2391). *See also Haskins*, 585 S.E.2d at 770 ("However, the use of the words willfully, feloniously, and unlawfully in an indictment are not an indication of the level of *mens rea* to be proven beyond a reasonable doubt in order to convict a defendant of the indicted offense. Rather, these words are used to characterize the offense and to put the defendant on notice that he must defend against a felony charge.").

Here, the State showed Appellant was in possession of two firearms on his person. (Tr. 99, 138-39). The State showed that the University is a public university, which was without contest. (Tr. 95). The State presented evidence that the plaza in front of Mell Hall was a premises of the University. (Tr. 101, 110-11, 136). The State presented testimony that the University's administration had not given permission for Appellant to bring firearms onto the University's premises. (Tr. 111-12).

Importantly, the only element in contention concerned Appellant's physical presence on the University's property. The State showed Appellant was on the University's campus through testimony of several witnesses. (Tr. 101, 110-11, 136, 192). Further, even though the State contended it did not need to show Appellant knew he was on campus, the evidence in the record supports a finding, in the light most favorable to the State, that the State did so anyway.

Eli Warnock, the student who first observed Appellant and called CUPD, testified that from the bench on which Appellant was sitting, the large brick "Clemson University" sign would be visible to the left of the bench. (Tr. 100). Warnock confirmed that the bench Appellant sat on was, in fact, on the University's campus. (Tr. 101). CUPD Officer Clayton Barnes also testified that Appellant was sitting on a bench across the Mell Hall plaza from the brick sign. (Tr. 119). The brick sign, the plaza in front of Mell Hall, and the bench upon which Appellant sat are visible with a portion of the adjacent roadway in State's Exhibit 9, which is a screenshot of a CUPD officer's body worn camera footage. (Tr. 133). Barnes further stated that Appellant had a concealed weapons permit and that training for such a permit instructs individuals on where they can and cannot carry firearms. (Tr. 125, 130). As identified on the map listed as State's Exhibit 4, the only way to get to the plaza in front of Mell Hall is to either come from farther inside the University's campus or enter the plaza from the street side and directly in front of the University's large brick sign. Based on testimony that Appellant would have been able to see the University's sign and the map that shows Appellant would have had to enter this plaza from either deeper in the University's campus or while passing the large brick sign, the State provided evidence that showed beyond a reasonable doubt that Appellant knew he was on premises or property owned, operated, or controlled by the University.

Therefore, in the light most favorable to the State, evidence existed reasonably tending to support Appellant's guilt, regardless of whether the State had to show a mens rea for Appellant's physical presence on the University's campus. Thus, the trial court did not abuse its discretion by denying Appellant's motion for a directed verdict.

C. To the extent Appellant argues the trial court abused its discretion by denying his motion for verdict in arrest of judgment, this argument is without merit because such a motion is an untimely challenge of the sufficiency of the indictment.

Appellant asserts that the trial court abused its discretion by denying his motion for verdict in arrest of judgment based on his assertion that the State pursued a different theory at trial from the one presented in the indictment. South Carolina has previously allowed for a motion for verdict in arrest of judgment "to prevent entry of judgment on the insufficiency of the indictment or some other fatal defect appearing on the face of the record." *State v. Taylor*, 348 S.C. 152, 159, 558 S.E.2d 917, 920 (Ct. App. 2001), *aff'd in result*, 355 S.C. 392, 585 S.E.2d 303 (2003). However, "[i]t is well-settled that a verdict in arrest of judgment should not be granted based on the insufficiency of the evidence; the proper remedy is a new trial." *State v. Taylor*, 355 S.C. 392, 394, 585 S.E.2d 303, 304 (2003).

Subsequently, this Court has determined that any argument as to the sufficiency of an indictment *must* be raised before the jury is sworn. *See State v. Gentry*, 363 S.C. 93, 101, 610 S.E.2d 494, 499 (2005) ("[W]e now conclusively hold that if an indictment is challenged as insufficient or defective, the defendant must raise that issue before the jury is sworn and not afterwards."); *see also* S.C. Code Ann. § 17-19-90 ("Every objection to any indictment for any defect apparent on the face thereof shall be taken by demurrer or on motion to quash such indictment before the jury shall be sworn and not afterwards.").

Here, Appellant filed a demurrer to the indictment. However, his demurrer focused solely on his constitutional arguments rather than this "constructive amendment" argument. (Mot. 1-17).

Therefore, the trial court did not abuse its discretion by denying Appellant's motion for verdict in arrest of judgment because it was an untimely motion on the sufficiency of the indictment and should have been raised before the jury was sworn, which it was not.

However, to the extent that this issue is properly before this Court, the trial court properly denied Appellant's motion because the State made clear its position in the indictment and followed that same theory throughout trial. The wording of the indictment clearly indicates that the State's position was that it only needed to show intent for possession of a firearm, not for Appellant's physical presence on the University's campus. (Indictment No. 2025-GS-39-2391 (" . . . while on the premises of Clemson University, willfully and unlawfully possess a firearm . . . .")). The State even reiterated that it constructed the language of the indictment to indicate that the State need only to show Appellant was on the University's premises, not that some mental state was required for his physical presence. (Tr. 155). The State's theory for this case has always been that the only intent requirement, if any, applied solely to the possession of a firearm. (Indictment No. 2025-GS-39-2391). (Tr. 155).

This is not a case of the State trying Appellant on charges not presented in the indictment. This is also not a case of impermissibly enlarging the indictment. *Cf. State v. Dent*, 446 S.C. 121, 134, 919 S.E.2d 394, 401 (2025) ("A material variance that violates a defendant's substantial right to be tried only on charges presented in an indictment constitutes fatal error and warrants a reversal on an appeal of a judgment of conviction of the offense not charged in the indictment." (quoting *Bailey v. State*, 392 S.C. 422, 434, 709 S.E.2d 671, 677 (2011))). This argument merely concerns Appellant's choice to read a mental state requirement into the indictment that the State did not include and was not otherwise present, which does not constitute a "constructive amendment" to

the indictment. Therefore, as no "constructive amendment" to the indictment actually existed, the trial court properly denied Appellant's motion for verdict in arrest of judgment.

CONCLUSION

Based on the foregoing, the State requests that this Court affirm Appellant's conviction for possession of a firearm on school property, as well as his associated sentence.

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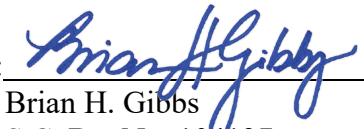
By: 
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September 4, 2026
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