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STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM RICHLAND COUNTY

Robert E. Hood, Circuit Court Judge

ORIGINAL

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SC Court of Appeals

THE STATE,

RESPONDENT,

V.

BRICE DRIGGERS,

APPELLANT

APPELLATE CASE NO. 2014-002293

RECORD ON APPEAL

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1 STATE OF SOUTH CAROLINA
 2 COUNTY OF RICHLAND

COURT OF GENERAL SESSIONS

5 STATE OF SOUTH CAROLINA)

6 -vs-)

7 BRICE DRIGGERS,)

8)
 9 Defendant.

TRANSCRIPT OF RECORD

12-GS-40-00270, et al

10 June 11, 2014
 11 October 20, 2014
 12 Columbia, South Carolina

14 B E F O R E:

15 HONORABLE ROBERT E. HOOD, Judge; and a jury.

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

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 20 RAMIE SHALABI, Asst. Solicitor
 Attorneys for the State

21 MEGAN ASHLEY EIGENBROT , Asst. Public Defender
 22 ALICIA G. DYAR, Asst. Public Defender
 Attorneys for the defendant

23 Reported by: KAREN E. AMBROZIAK, RPR
 24 Circuit Court Reporter
 25 Transcribed by: L. COCONUT PANTSARI, RPR
 Circuit Court Reporter

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STATE'S EXHIBITS

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
1	Statement (Herlong)	5	
2	Statement (Rock)	5	
3	Statement (Henderson)	5	
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5	Ruger revolver	5	141
6	Taurus revolver	5	141
7	Photograph (defendant)	90	
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1 (The following proceedings are reported on
2 June 11, 2014.)

3 (State's Exhibits Number 1-6 are marked for
4 identification.)

5 THE COURT: All right. We're on the record in
6 2012-GS-40-270 and 2012-GS-40-269, the State of South
7 Carolina versus Brice Joseph Driggers. Mr. Driggers is
8 not present in the courtroom; however, he has been
9 meeting with his attorney now for somewhere close to 30
10 minutes.

11 Let's go through all the rational and the
12 basis on why the State believes they can go forward with
13 a TIA.

14 MR. CONRAD: Your Honor, I think Mr. Driggers
15 has been given ample notification for trial. He's been
16 on the trial list for the last month. His original
17 notice that he was given was that he could be called
18 starting the week of -- I believe it was May 21st and
19 any week thereafter.

20 He was here that first week and was advised,
21 after he backed out of a plea, that his case would still
22 be called to trial in the next couple of weeks. He
23 actually showed up on Monday, the 28th.

24 We did not have a trial judge that week --
25 excuse me -- it was Tuesday, the 28th. I instructed

1 my staff to go ahead and handle the notice, just to
2 remind him that he was on notice for trial any week
3 after that.

4 THE COURT: Was that done?

5 MR. CONRAD: Yes, our staff did.

6 THE COURT: Do you have proof of that?

7 MR. CONRAD: Your Honor, a copy of the notice
8 that we handed him was made a part of the Court's
9 Exhibit with Judge Goodstein.

10 THE COURT: Okay. That's what's in the file
11 which I've seen this morning.

12 MR. CONRAD: Yes, Your Honor. From what
13 Ms. Eigenbrot has been telling me since she has been
14 coming to court is she has had numerous conversations
15 with Mr. Driggers over the last couple of weeks that we
16 would be starting this week.

17 I believe she specifically told him that we
18 would be starting this morning. Unless she wants to
19 correct me, I believe she told him this morning that we
20 were going to start.

21 THE COURT: Is that right, Ms. Eigenbrot?

22 MS. EIGENBROT: Yes, Your Honor, it is. Your
23 Honor, at this point we would concede that he had
24 notification.

25 THE COURT: All right. Very well. Pretrial

1 issues?

2 MR. CONRAD: Your Honor, I think we are going
3 to have a few statements that we are going to seek to
4 introduce, Mr. Driggers's statements, that we want to
5 introduce at trial.

6 THE COURT: Okay.

7 MR. CONRAD: So we are going to do a Jackson
8 v. Denno hearing.

9 THE COURT: All right.

10 MR. CONRAD: Your Honor, we can get started in
11 a second; but just as an overview of what we'll seek to
12 introduce, the responding officer and the arresting
13 officer left his video on pretty much during the entire
14 arrest sequence, which frankly takes about 20, 25
15 minutes.

16 All of it is on audio. The defense has been
17 provided an unedited copy of that. There are numerous
18 statements by officers, by the defendant, by other
19 witnesses on there.

20 Frankly, it gets a little confusing. I think
21 it would be confusing to the jury to show the whole
22 video, although it's available. The defense has it.
23 It's available.

24 So what the State would seek to introduce is
25 there is a second portion of the video where the

1 officers are taking Mr. Driggers to the jail. He starts
2 talking again.

3 The State would contend it was not in response
4 to any interrogation, although we can have a hearing to
5 determine that. He makes a couple of incriminating
6 statements during that -- during while he's talking.

7 Specifically he says that -- he asked the
8 officer while they're on the way to jail, "Hey, where's
9 my guns?" which is the issue presented through this
10 trial is two guns. I took the counter off of here.

11 He actually asked where those are. We're
12 prepared to put the officer on the stand. We have that
13 statement on video. That 20 seconds is sandwiched by
14 about another 20 minutes of him -- of the defendant's --
15 unsolicited comments about many things, most of which
16 frankly are just not relevant to the case.

17 Again, it's available if the defense wants to
18 show it if we need to see it. So that's the first
19 statement the State would seek to introduce. Secondly,
20 the defendant made statements to EMS workers in regards
21 to the guns that we'd seek to introduce.

22 The State's contention is that the EMS
23 workers, Jackson vs. Denno requires -- it covers
24 statements made to law enforcement. The EMS workers'
25 statements are then not law enforcement; and therefore,

1 I don't think those statements would be subject to
2 Jackson v. Denno testing.

3 However, the State would concede that he was
4 in custody at that point when he made those statements.
5 But if we need to lay a factual basis, we can proceed
6 with those to make that determination.

7 THE COURT: And those are the statements you
8 intend to introduce by the defendant?

9 MR. CONRAD: Yes, sir.

10 THE COURT: Ms. Eigenbrot, what is your
11 position? Are you contesting those statements? Do you
12 want a hearing?

13 MS. EIGENBROT: Your Honor, we would ask that
14 we do have a brief Denno hearing to determine the
15 voluntariness of those statements.

16 THE COURT: All right. Very well. Call your
17 first witness.

18 MR. CONRAD: The State calls Officer Smith
19 with the Forest Acres Police Department.

20 THE COURT: All right. Officer Smith, please
21 come forward.

22 (The witness comes forward.)

23 MICHAEL SMITH, being
24 first duly sworn, testifies as follows:

25 THE CLERK: Have a seat in the witness stand,

1 please.

2 THE WITNESS: Thank you.

3 THE CLERK: State your name for the record.

4 THE WITNESS: Michael Smith.

5 IN CAMERA DIRECT EXAMINATION

6 BY MR. CONRAD:

7 Q Good morning, Officer Smith.

8 A Good morning, sir.

9 THE COURT: Yes, sir.

10 MR. CONRAD: If it please the Court.

11 BY MR. CONRAD:

12 Q Where do you currently work?

13 A Forest Acres Police Department.

14 Q And what's your current duties there?

15 A I'm a patrolman.

16 Q Just generally what does that involve?

17 A I'm in a patrol car, marked patrol car, in uniform
18 on the road, answering calls and dispatch.

19 Q Just to keep things as brief as possible, I'm going
20 to direct your attention back to July 26th of 2011.
21 Do you recall that day?

22 A I do, sir.

23 Q Were you working that day?

24 A I was.

25 Q All right. Did you have an occasion to get a call

1 and respond to the Dollar General on Covenant Road
2 here in Richland County?

3 A I did.

4 Q And do you recall what the nature of that call was?

5 A It was a call of a person with a handgun.

6 Q Okay. To the best of your recollection, what
7 information did you have when you were on the scene
8 before you?

9 A That there was a white male that had entered the
10 store. He had a pistol in his waistband. He also
11 was wearing a backpack. He had entered the store
12 and left the store one or two times.

13 Q Okay. So when you got to the store, just briefly
14 so the Court understands, what were your actions
15 when you went inside the store?

16 A When I went inside the store, I saw the manager for
17 the store; and I asked, you know, where? She
18 pointed over to the side of the store. I went over
19 to the side of the store and made contact with
20 Mr. Driggers.

21 Q Okay. And Mr. Driggers is not in the courtroom,
22 but what were your actions when you first contacted
23 him?

24 A When I first contacted him -- when I first came
25 around the corner, we were pretty close, probably

1 two feet apart, three feet apart, at the end of the
2 aisle. As soon as he saw me, he reached into his
3 backpack really fast. I didn't know if he was
4 reaching for a gun or not.

5 Q So what did you do?

6 A I took him -- I got him by his hands and handcuffed
7 him and told him he wasn't under arrest, but it was
8 obvious that he was in the store with a gun.

9 Q And did you pat him down or did you search him at
10 that point?

11 A I asked if I could search him and his backpack, and
12 he gave me permission.

13 Q What did you find when you searched him?

14 A I found, I believe, two magazines that would fit
15 into a pistol and also I believe it was three
16 knives, two or three knives.

17 Q And did you ask him at this point about any guns?

18 A He said he didn't have any guns on him.

19 Q All right. And what occurred next? What did you
20 do next?

21 A Two other officers had arrived, Officer Denizard
22 and Officer Shumard; and they came inside to assist
23 me.

24 Q Okay.

25 A I went outside and I had Mr. Driggers's ID. I

1 checked him.

2 Q All right. You did not find any guns on his
3 person. Did you search anywhere after that to try
4 to find these guns?

5 A I did.

6 Q Where did you find them?

7 A I found them on the side of the store.

8 Q Did you talk to any individuals to determine, you
9 know, how those guns got there?

10 A I did.

11 Q Who did you talk to?

12 A Ms. Herlong.

13 Q And not bringing her statements in at this point,
14 but after talking to her, did you determine how
15 those guns got there, where you found them?

16 A Yes.

17 Q How did they get there?

18 A She had stated he put them there at the back of the
19 store.

20 Q At some point during this, was he placed under
21 arrest?

22 A He was.

23 Q After he was placed under arrest, what did you do
24 with him or did another officer do something with
25 him?

1 A Officer Denizard put him in his car, the back seat
2 of his car.

3 Q So he was in custody at that point in the back seat
4 of his car?

5 A He was.

6 Q Did you read him his rights at that point or did
7 you ever read him his rights?

8 A Officer Denizard did.

9 Q Okay. And that was after the defendant was
10 outside; correct?

11 A Correct.

12 Q And he was in the car. He was read his rights by
13 Officer Denizard?

14 A Correct.

15 Q Now, without -- again, trying to be as brief as
16 possible -- what happened to Mr. Driggers at that
17 point after he was read his rights and he was in
18 Officer Denizard's car?

19 A He was in the back of Officer Denizard's car. He
20 was lethargic like, nonresponsive. So we called
21 EMS.

22 Q You called EMS. And they responded?

23 A They did.

24 Q Again, not talking about what happened when they
25 were there; but did they end up transporting him

1 somewhere?

2 A They did.

3 Q To where?

4 A Richland Memorial Hospital.

5 Q And did you go to the hospital as well?

6 A I did.

7 Q After he was seen by medical, did they clear him to
8 leave?

9 A Yes, they did.

10 Q And you took him -- you left him in the back of
11 your car at that point?

12 A Correct.

13 Q And you were going to the jail?

14 A Correct.

15 Q So when you were on your way to the jail, did he
16 make any statements at this point to you?

17 A He was talking in the back of the car. I never
18 asked him any questions. He just talked.

19 Q Okay. Did he ask you questions?

20 A He asked me quite a few questions.

21 Q All right. Did you respond to his questions?

22 A I think I responded to one when he asked me what he
23 was under arrest for.

24 Q After that point did you talk to him at all?

25 A No.

1 Q Did you ask him any questions at all?

2 A No.

3 Q But he was in cuffs, and he was in the back of the
4 car; correct?

5 A Correct.

6 Q About how long after his rights had been read was
7 this, would you estimate?

8 A Probably within an hour or two.

9 Q Okay. And, again, you were not asking questions;
10 right?

11 A Correct.

12 Q He says a whole host of things. At any point
13 during this rambling, did he say anything about the
14 guns, about guns or anything?

15 A Quite a few times.

16 Q All right. Do you recall what he said to the best
17 of your ability about the guns?

18 A He said that they were his guns, and he was going
19 to have me arrested for taking his guns.

20 Q But he basically said -- did he ask you anything
21 about the guns at all or -- well, I'll tell you
22 what. We'll stop at this point. This is on video;
23 right?

24 A Yes, sir.

25 MR. CONRAD: Your Honor, we'd like to play, as

1 soon as we get set up here, at least a short portion of
2 the video so you can hear him exactly.

3 THE COURT: Have you seen the video?

4 MS. EIGENBROT: Yes, Your Honor, we have.

5 THE COURT: Okay. Keep going while that is
6 getting set up.

7 BY MR. CONRAD:

8 Q So he makes statements about the guns, and he
9 indicated ownership, didn't he?

10 A Yes.

11 Q And you end up taking him to the jail; correct?

12 A Correct.

13 Q After you drop him off at the jail, there is no
14 more interaction; correct?

15 A Correct.

16 MR. CONRAD: Your Honor, we just need to play
17 the video.

18 THE COURT: Okay. Let's go ahead and do cross
19 examination while she is getting that set up. I can
20 view the video.

21 MS. DYAR: Thank you, Your Honor.

22 THE COURT: Ms. Dyar, is that the name you
23 want me to use this week?

24 MR. DYAR: We'll go with that.

25 THE COURT: Okay. Go ahead.

1 IN CAMERA CROSS EXAMINATION

2 BY MS. DYAR:

3 Q Hey, Officer Smith. Just quickly, Officer Denizard
4 is actually the officer that places Brice under
5 arrest? Or is it you that placed him under arrest
6 and puts the cuffs on him?

7 A I put the cuffs on him.

8 Q But it's Officer Denizard that actually puts him in
9 his car?

10 A Correct.

11 Q And Denizard is the one that reads him his rights?

12 A Correct.

13 Q Did anybody else hear that?

14 A I don't know. I wasn't in the car.

15 Q Is that on video?

16 A I don't believe so.

17 Q Did Officer Denizard have a video going?

18 A I don't believe so.

19 Q And the statements in the car, he basically just
20 indicates ownership, not possession; correct?

21 A I'd have to listen to the whole thing again.

22 Q Okay. And Mr. Driggers, he was intoxicated that
23 evening?

24 A He was.

25 Q Extremely intoxicated?

1 A He was very intoxicated.

2 Q Okay. Did he say anything to anybody at the
3 hospital or anything? I mean, you were there at
4 the hospital with him?

5 A I wasn't in the room when the doctor was talking to
6 him.

7 Q Okay.

8 MS. DYAR: I have nothing further.

9 THE COURT: All right. Do you have the video?

10 MR. CONRAD: We have to get it. I apologize,
11 Your Honor.

12 THE COURT: Okay. Do you have any redirect
13 for this witness?

14 MR. CONRAD: I do not at this point.

15 THE COURT: Okay. Call your next witness.

16 MR. CONRAD: The State calls Officer Denizard
17 with the Forest Acres Police Department.

18 (The witness comes forward.)

19 GABRIEL DENIZARD, being
20 first duly sworn, testifies as follows:

21 THE CLERK: Have a seat in the witness stand,
22 please, and state your name for the record.

23 THE WITNESS: Gabriel Denizard.

24 THE COURT: Yes, sir.

25 MR. CONRAD: May it please the Court.

1 IN CAMERA DIRECT EXAMINATION

2 BY MR. CONRAD:

3 Q Officer Denizard, where do you currently work?

4 A Forest Acres Police Department.

5 Q What are your current duties?

6 A I'm currently an investigator with Forest Acres.

7 Q Going back to July 26, 2011, did you work at Forest
8 Acres Police Department that day?

9 A Yes, sir.

10 Q And what were your duties back then?

11 A I was a patrolman.

12 Q Okay. And do you recall having occasion on that
13 day, July 26th, to respond to the Dollar General on
14 Covenant Road that is here in Richland County?

15 A Yes, sir.

16 Q And do you recall coming in contact with the
17 defendant in this case, Brice Driggers, there?

18 A Yes, sir.

19 Q And do you -- when you came in contact with him,
20 what did you do?21 A I had come to the store, to the incident location,
22 came inside with Officer Shumard; and I had
23 observed that Officer Smith at the time had Brice
24 Driggers detained in handcuffs at that time.

25 From then on, I believe, Officer Smith and

GABRIEL DENIZARD -- IN CAMERA DIRECT -- MR. CONRAD 21

1 Officer Shumard, they went outside and came back
2 in. We decided to take him out of the store due to
3 him being irate and very intoxicated. So we
4 decided to put him in my patrol car at that time.

5 Q When you put him in the patrol car, did he make any
6 statements to you at that point?

7 A Not that I can remember.

8 Q And do you remember -- at any point after you put
9 him in the car, did you read him his rights?

10 A Officer Smith came to my car once they discovered
11 he had two guns and asked for me to read him his
12 rights.

13 Q And you did?

14 A I did.

15 Q Did you give him a written statement?

16 A No, sir, I read it off the card.

17 MR. CONRAD: Just one second, Your Honor.

18 (Pause.)

19 BY MR. CONRAD:

20 Q Do you still have a copy of the card that you read?

21 A No, sir.

22 Q All right. Do you remember substantially what it
23 said?

24 A Yeah. I have another card that pretty much says
25 the same thing on me all the time.

1 Q It's substantially the same, says the same thing?

2 A Yes, sir.

3 Q Do you have one with you?

4 A I do.

5 Q Can you read it to the Court.

6 A All right. "You have the right to remain silent.
7 Anything you say can and will be used against you
8 in a court of law. You have the right to speak to
9 an attorney and to have your attorney present
10 during any questioning.

11 If you cannot afford a lawyer, one will be
12 provided for you at government expense. Knowing
13 and understanding your rights as I have explained
14 them to you, are you willing to answer my questions
15 without an attorney present?"

16 Q And that is materially the same thing you read to
17 the defendant?

18 A Yes, sir.

19 Q All right. One last question, this was -- you read
20 those rights prior to him being transported to the
21 hospital?

22 A Yes, sir.

23 MR. CONRAD: Your Honor, nothing further for
24 this witness. We can, if you want, proceed with cross
25 examination.

1 IN CAMERA CROSS EXAMINATION

2 BY MS. DYAR:

3 Q Just real quick, Officer Denizard -- or
4 Investigator Denizard -- excuse me..

5 A That's okay.

6 Q So you say he gave no statements when you were
7 reading him his rights?

8 A Yes, ma'am.

9 Q Was your patrol car at that time equipped with any
10 video?

11 A It was.

12 Q Was that running?

13 A At that time, no, ma'am, it was not.

14 Q Is that policy? I mean, in what capacity were you
15 supposed to be there?16 A Honestly, it was about three years ago that I
17 believe it happened. I don't remember if it was a
18 malfunction with my camera. I can't remember why
19 it wasn't recorded.

20 Q Any body mike?

21 A I do have a body mike, but it wasn't -- it has to
22 work in conjunction with the camera at the time.

23 Q The camera in the car?

24 A In the car, yes, ma'am.

25 Q Okay. Is it generally the policy of Forest Acres

1 not to have a defendant, a person under arrest,
2 sign a written --

3 A We don't have a straightforward policy.

4 Q All right.

5 MS. DYAR: Beg the Court's indulgence.

6 (Pause.)

7 MS. DYAR: Nothing further.

8 THE COURT: Redirect?

9 MR. CONRAD: No redirect, Your Honor.

10 THE COURT: Thank you, sir. You may step
11 down.

12 THE WITNESS: Thank you.

13 (The witness leaves the witness stand.)

14 MR. CONRAD: The next witnesses that the State
15 would have would be the EMS regarding the statements
16 made to EMS. I don't know if the defense is challenging
17 those statements or not.

18 MS. DYAR: I'm sorry. I missed that.

19 MR. CONRAD: The next witnesses the State
20 would have would be the EMS workers regarding statements
21 made to them. I don't know if the defense is
22 challenging those statements or not for voluntariness.

23 The State would argue that EMS witnesses are
24 not law enforcement, which is what Jackson v. Denno
25 covers and, of course, not necessary; but we're prepared

1 to call them to make a factual determination.

2 MS. DYAR: He was in custody at the time, Your
3 Honor.

4 THE COURT: The issue is: Is EMS law
5 enforcement? They're not disputing custody.

6 MS. DYAR: If he is under arrest at that time,
7 I'm guessing that law enforcement would be present with
8 him during this time; and we don't know what kind of
9 questions they were asking him or things like that.

10 THE COURT: So what's the response to: Is EMS
11 law enforcement?

12 MR. CONRAD: Your Honor, the State --

13 THE COURT: What's the response, Ms. Dyar, to
14 statements to EMS? As opposed to the speculation of
15 whether or not there was other people around, is EMS law
16 enforcement under your position?

17 MS. DYAR: No. No, sir, they're not.

18 THE COURT: All right. So let's call an EMS
19 person, and they can describe the surroundings.

20 MR. CONRAD: Thank you, Your Honor.

21 THE COURT: Okay.

22 MR. CONRAD: The State is going to call
23 Matthew Rock.

24 (The witness comes forward.)

25 MATTHEW ROCK, being

1 first duly sworn, testifies as follows:

2 THE CLERK: Thank you. Have a seat in the
3 witness stand. State your name for the record.

4 THE WITNESS: Matthew Rock.

5 THE COURT: What is your last name, sir?

6 THE WITNESS: Rock, R-O-C-K.

7 THE COURT: Thank you.

8 IN CAMERA DIRECT EXAMINATION

9 BY MR. SHALABI:

10 Q Mr. Rock, where are you currently employed?

11 A Richland County Emergency Services.

12 Q And how long have you been working there?

13 A Almost four years.

14 Q Were you employed on July 26, 2011?

15 A Yes, sir.

16 Q And what were your duties then?

17 A I'm an emergency medical technician at the basic
18 level.

19 Q Were you dispatched to 3724 Covenant Road, the
20 Dollar General, on that day?

21 A Yes, sir.

22 Q Why?

23 A For anxiety issues.

24 Q Did you come across the defendant, Brice Driggers?

25 A Yes, sir.

1 Q And what was his condition when you saw him?

2 A Heavily intoxicated, kind of belligerent,
3 uncooperative.

4 Q Was he handcuffed?

5 A Yes, sir.

6 Q Did you treat him in any way?

7 A We did our initial assessment with him in the cop
8 car. Once he stated he wanted to go to the
9 hospital, we transported him into the back of our
10 unit.

11 Q What statements did he make to you?

12 A He advised that he wanted to harm himself. By
13 that, we have to take him.

14 Q How? Did he mention how?

15 A He was going to shoot himself.

16 Q Did he make any reference to guns?

17 A Yes, sir.

18 Q Were any law enforcement officials around you or
19 him when he made those statements?

20 A There was no law enforcement in the back of the
21 unit with us, but they were outside the unit.

22 Q Go ahead.

23 A Outside and around the unit.

24 Q But he made those statements inside the unit?

25 A Yes, sir.

1 Q Were any law enforcement officials involved at all
2 during that discussion?

3 A No, sir.

4 Q Did they direct him in any way to answer any
5 questions?

6 A No, sir.

7 Q Were the doors to the back of the unit opened or
8 closed?

9 A One door was opened; one was closed.

10 Q Were there any law enforcement officials inside the
11 unit with you two?

12 A No, sir.

13 Q It was just you two that were in the back of that
14 unit?

15 A Yes, sir.

16 MR. SHALABI: No further questions.

17 THE COURT: Cross?

18 MS. DYAR: Thank you, Your Honor. May it
19 please the Court.

20 IN CAMERA DIRECT EXAMINATION

21 BY MR. DYAR:

22 Q Mr. Rock, you said that he made the initial
23 statements -- he made these statements in the back
24 of the unit; correct?

25 A Yes, ma'am.

1 Q And the unit had not left for the hospital at that
2 time?

3 A No, ma'am.

4 Q So the officers were located directly outside of
5 the unit?

6 A Yes, ma'am.

7 Q Did he make any statements on the way to the
8 hospital?

9 A No, ma'am, he kind of shut down from there.

10 Q And were --

11 A We didn't ask him anymore questions.

12 Q Were any law enforcement officers in the unit when
13 you were transporting him to the hospital?

14 A No, ma'am.

15 Q But they were there at the hospital afterwards?

16 A Yes, ma'am.

17 Q And you said he was heavily intoxicated when you
18 arrived?

19 A Yes, ma'am, he was showing signs of intoxication.

20 Q Thank you, Mr. Rock.

21 THE COURT: Redirect?

22 MR. SHALABI: No, Your Honor.

23 THE COURT: Thank you, sir. You may step
24 down.

25 (The witness leaves the witness stand.)

1 THE COURT: All right. Do you have the video?

2 MR. CONRAD: Yes, sir.

3 THE COURT: Are you just going to play that
4 relevant portion?

5 MR. CONRAD: Your Honor, yes. I apologize.
6 I'm going to seek -- I'm just going to go through the
7 relevant portion, obviously more the car ride to the
8 jail. There's more, a lot more. We can show the Court
9 as much of the things to get the ID of the
10 surrounding --

11 THE COURT: Okay.

12 MR. CONRAD: -- what's going on. I'm going to
13 fast forward to the statement that I seek to introduce
14 with the jury.

15 (The video is played for the Court.)

16 MR. CONRAD: That would be the sum of what the
17 State would seek to introduce at trial.

18 THE COURT: Okay. All right. Very well. Any
19 further witnesses on this issue?

20 MR. CONRAD: We have one more witness, an EMS
21 worker.

22 MR. SHALABI: The State calls Jade Steedley.

23 THE COURT: Okay. Please come forward.

24 (The witness comes forward.)

25 JADE STEEDLEY, being

1 first duly sworn, testifies as follows:

2 THE CLERK: Thank you. Have a seat in the
3 witness stand, please. State your name for the record.

4 THE WITNESS: Sergeant Jade Steedley.

5 IN CAMERA DIRECT EXAMINATION

6 BY MR. SHALABI:

7 Q Ms. Steedley, where are you employed?

8 A Richland County EMS.

9 Q How long have you been working there?

10 A Four years.

11 Q What are your duties?

12 A I'm a sergeant, like a field manager, also run
13 calls for patient care.

14 Q Were you employed at Richland County EMS on
15 July 26, 2011?

16 A Yes, I was.

17 Q What was your job title back then?

18 A I was a corporal crew chief.

19 Q Were you working on July 26, 2011?

20 A Yes, I was.

21 Q Were you dispatched to 3724 Covenant Road, which is
22 the Dollar General?

23 A Yes, we were.

24 Q Why were you dispatched there?

25 A We were dispatched for psychiatric.

1 Q Describe the scene at that location when you
2 arrived.

3 A When we got to the Dollar General, they were
4 outside in the parking lot. Forest Acres PD was on
5 the scene with the patient. He was extremely
6 agitated. His girlfriend was also there.

7 They were trying to de-escalate the situation.
8 He was back and forth initially, kind of agitated.
9 Then him and his girlfriend would argue a little
10 bit and then calm down a little bit. Then it just
11 kind of escalated from there.

12 Q Who was the patient?

13 A The patient was Brice Driggers.

14 Q Did you have any other action with him?

15 A Yes, we did for a brief amount of time in the back
16 of the truck. Initially, after we got him secured
17 in the truck, the girlfriend kept coming to the
18 back of the truck and agitating him even more. So
19 I was back and forth in and out of the unit trying
20 to get that situation calmed down. He was making
21 threats.

22 Q Was he handcuffed at that time?

23 A Yes, he was.

24 Q The interaction you had with him, where was it
25 exactly?

1 A Initially, we had it outside by the police car.
2 Then after they determined that they wanted him
3 transported and he started making threats about
4 hurting himself, we put him in the truck.

5 Q What were those threats specifically?

6 A He initially made threats to hurt himself. He was
7 going to harm himself or others. Then he made
8 statements about having the guns, that they were --
9 the purpose of them was to harm himself.

10 Q I want to draw your attention to the statement
11 about the guns. When did he say -- was he in the
12 back of the truck?

13 A He was in the back of the unit at that time. It
14 was prior to our departure.

15 Q Where were you when he said that?

16 A I was standing at the back door.

17 Q So you weren't actually inside?

18 A No, I was standing on the back bumper to the back
19 of the truck.

20 Q Okay.

21 A At the time we were trying to determine, because of
22 his level of agitation, if we were going to further
23 restrain him, as opposed to just the handcuffs, for
24 safety precautions.

25 Q Were there any other law enforcement officials

1 around you during this interaction?

2 A During that period, no. They were trying to get
3 the girlfriend to go away. Like I said, he would
4 calm down momentarily; and as soon as she would
5 come back -- because she was back and forth all
6 over the parking lot -- she would agitate him even
7 more.

8 Then he would become more aggressive several
9 more times. They kept telling her to leave. They
10 told her if she didn't leave, they were going to
11 arrest her.

12 Q Approximately how far away were they from you and
13 Mr. Driggers?

14 A Not too far, maybe five, nor more than ten feet.

15 Q Were you working under the direction of law
16 enforcement at this time?

17 A No, I was not.

18 Q Did they tell you to ask him any questions?

19 A No, I was not.

20 Q Were you with him when he was transported to the
21 hospital?

22 A No, Matthew was in the back with him.

23 MR. CONRAD: No further questions.

24 THE COURT: Cross?

25 MS. DYAR: Thank you, Your Honor. May it

1 please the Court.

2 THE COURT: Yes, ma'am.

3 IN CAMERA CROSS EXAMINATION

4 BY MS. DYAR:

5 Q Sergeant Steedley, you stated that you were by the
6 back door of the unit when he made these
7 statements?

8 A Yes, ma'am.

9 Q And you said there were no law enforcement officers
10 around?

11 A No, ma'am.

12 Q They were still present at the scene?

13 A Yes, ma'am, they were outside behind the unit
14 trying to get her to leave.

15 Q And you all were called there because of a law
16 enforcement issue?

17 A Yes, ma'am. We were initially dispatched because
18 they thought he was having an anxiety attack. When
19 we got there, he started to yell on the scene that
20 he wanted to hurt himself. Then it kind of
21 escalated from there.

22 Q And you were driving the unit on the way to the
23 hospital?

24 A Yeah, I was driving.

25 Q So you had no contact with him after that?

1 A No.

2 Q And when you say agitated, were you aware that he
3 was intoxicated at the time?

4 A We had belief of it, but he kept denying that he
5 had anything to drink. We can't, by our laws,
6 unless they confess to us, we can't document it in
7 the paperwork. We can just say they present signs
8 of intoxication.

9 MS. DYAR: Thank you, Your Honor. Nothing
10 further.

11 THE COURT: Redirect?

12 MR. SHALABI: No, Your Honor.

13 THE COURT: Thank you, ma'am. You may step
14 down.

15 (The witness leaves the witness stand.)

16 THE COURT: Any further witnesses?

17 MR. CONRAD: None from the State.

18 THE COURT: All right. Ms. Eigenbrot, I'll be
19 happy to hear from you or Ms. Dyar, either one.

20 MS. DYAR: Thank you, Your Honor. We would
21 argue that these statements were not voluntarily made
22 for several -- for one main reason. Mr. Driggers, as
23 testified to, was clearly intoxicated at the scene. We
24 would argue that the intoxication would make his
25 statements involuntary.

1 Your Honor, he was placed in custody initially
2 by Officer Smith. While Officer Smith told him he
3 wasn't under arrest, he was placed in handcuffs and
4 detained.

5 He was then placed in the back of a police
6 car. So, Your Honor, we would argue that he was under
7 custody, that the statements were involuntary based on
8 his intoxication.

9 As to the statements to the EMS workers, Your
10 Honor, we would contend that, because EMS was called
11 there based on law enforcement, law enforcement was
12 present, that they were acting under the direction of
13 law enforcement. As such, those statements would also
14 be involuntary based on his intoxication.

15 THE COURT: Mr. Conrad?

16 MR. CONRAD: Your Honor, I think the State
17 would agree that certainly by the time he was placed by
18 Officer Denizard in the back of the car, he is in
19 custody for purposes of Jackson v. Denno.

20 However, the statement he made to Officer
21 Smith in the back of his car on the way to the jail, we
22 would say that that was not in response to an
23 interrogation, and that was purely a voluntary
24 statement.

25 Officer Smith testified that he actually

1 answered one of Mr. Driggers's questions; and after that
2 he made no statements to Mr. Driggers, no questions, no
3 statements, no anything.

4 Mr. Driggers's voluntarily said what you heard
5 which is, "Where are my blanking guns at?" So the State
6 would argue that that was a voluntary statement.
7 Miranda had been given prior to that point. While he
8 was in custody, that statement was not in response to
9 any sort of interrogation, implied or direct of any
10 sort.

11 In regards to the EMS, Mr. Shalabi will
12 address that.

13 MR. SHALABI: In regards to the statements
14 made to the EMTs at the time, Your Honor, they testified
15 they were not under the direction of law enforcement.
16 Law enforcement didn't asked them to question or
17 interrogate the defendant. Further, Your Honor, I would
18 contend that Jackson vs. Denno only applies to
19 statements made to law enforcement.

20 THE COURT: All right. I'm going to find that
21 the statements were freely and voluntarily, knowingly
22 and intelligently made, number one. He was in custody
23 once he gets the handcuffs put on him and gets put in
24 the patrol car.

25 The problem with the defense's argument is

1 that he wasn't questioned by anybody. It wasn't a
2 situation at that point where he is in the patrol car
3 making these statements and under some form of
4 interrogation. He is in custody.

5 As to EMS, again, EMS isn't questioning him or
6 interrogating him; nor are they doing anything at law
7 enforcement's request. Therefore, I'm going to deem
8 that all these statements are admissible under those
9 premises.

10 As to the issue of voluntary intoxication, the
11 issue of voluntary intoxication in regards to the
12 admissibility of the statement, is well-settled law in
13 South Carolina.

14 There is a case directly on point which states
15 that the defense has to prove that the level of
16 intoxication of the defendant was so great and was so
17 exorbitant that he would have been able -- not even have
18 been able to understand exactly what was going on.

19 There is none of that testimony in the record
20 before this Court. There is testimony as to the fact
21 that he was intoxicated, that he was very intoxicated.
22 However, that case law is very clear.

23 There's been a case after that where the
24 person admitted to drinking north of six 24-ounce beers
25 and smoking five or six blunts, and all of his

1 statements were deemed admissible.

2 So as to the intoxication issue, I do not
3 believe it rises to the level to deem his statements
4 inadmissible under Jackson versus Denno. That's an
5 issue that the defense can argue to the jury as to the
6 admissibility or what weight, if any, they give to the
7 statements at all.

8 Any other pretrial issues?

9 MR. CONRAD: Not from the State, Your Honor.

10 MS. DYAR: Your Honor, we would have a few.

11 At this time we would renew our Rule 5 and Riddle
12 motions if there is anything else. If the State has
13 anything else at this point, we'd like to hear it.

14 THE COURT: All right.

15 MR. CONRAD: There is nothing in our
16 possession. I gave Ms. Dyar some ATF paperwork a little
17 while ago. I informed Ms. Dyar there was a
18 clarification in one of our witness's statements. There
19 is nothing else that I'm aware of.

20 THE COURT: Okay.

21 MS. DYAR: Your Honor, we would also make a
22 motion to limit the statements of the EMS workers to
23 simply Mr. Driggers's statements towards the guns, not
24 about the self-harm or what his intentions were. This
25 is not -- unlawful carrying of a pistol is not a

1 specific intent crime.

2 THE COURT: Right. I was going to deal with
3 that if you didn't. Here is my question. I'm not going
4 to let them testify that he said he was going to harm
5 others. That's definitely out. So the statement that
6 he made to EMS about he was going to harm others, that's
7 not going to be admissible.

8 The statement -- here is my issue. My issue
9 is how are they going to explain why they're taking him
10 to the hospital. The reason I heard is they said they
11 were going to take him to the hospital because of
12 self-harm. So how do you want me to get around that?
13 That's my question.

14 MS. DYAR: Your Honor, if we could just limit
15 it to the fact that -- I believe based on what my
16 understanding of Officer Denizard's statement initially
17 was that Mr. Driggers had made some statements about
18 chest pains, which is why they were initially called.
19 If we could limit their testimony to simply being called
20 based on those issues and being transported.

21 THE COURT: Yes. And the issue of whether or
22 not he was going to harm himself, I'm not disputing what
23 EMS did or how they did it or why they did it or the
24 protocols. But the issue that he was going to harm
25 himself, we don't need to go into that at all.

1 The issue -- anything that he says about the
2 guns or admitting guns or ownership of the guns or
3 possession of the guns, all that is admissible. If
4 you'll just work with your witnesses on that little bit
5 of information and make sure there is nothing about
6 harming himself or harming other people.

7 Neither one of those are elements of this
8 crime. They're not relevant to the matter, and their
9 prejudicial effect would outweigh the probative value.
10 Anything further?

11 MS. EIGENBROT: Your Honor, we would simply
12 ask that the State be limited to that portion of the
13 video they showed you during the Jackson v. Denno
14 hearing.

15 THE COURT: And do you intend to show more of
16 the video than that?

17 MR. CONRAD: I do not in my case in chief,
18 Your Honor. I don't know if the defense is planning on
19 calling any witnesses; but in my case in chief, I do
20 not.

21 It may be potentially -- I mean, there's a lot
22 of video on there with some of our witnesses. Some of
23 it may become relevant for impeachment or something of
24 that nature.

25 THE COURT: Okay.

1 MR. CONRAD: But in terms of our case in
2 chief, no.

3 THE COURT: What else, Ms Eigenbrot?

4 MS. EIGENBROT: Your Honor, there is also some
5 mention of knives being found in his backpack.

6 THE COURT: Okay.

7 MS. EIGENBROT: When he was initially -- when
8 Officer Smith initially stopped him. Your Honor, we
9 would ask that that testimony also be inadmissible as
10 prejudicial.

11 THE COURT: Was he charged with that?

12 MR. CONRAD: Yes, Your Honor, Forest Acres, I
13 believe Forest Acres City Code, regarding concealed and
14 unconcealed weapons.

15 THE COURT: What was the result of that case?

16 MR. CONRAD: I believe Officer Smith said he
17 was convicted of that.

18 OFFICER SMITH: I believe he was.

19 MR. CONRAD: The knives.

20 OFFICER SMITH: I believe he was convicted of
21 it.

22 THE COURT: Let's not mention anything about
23 the knives just for the sake of protecting the record.
24 You know, the fact that he was found with knives, I
25 don't know if that's relevant to whether or not he was

1 unlawfully caring the pistol.

2 The magazines, I believe, are directly
3 relevant. When I say magazines, I mean magazines to
4 hold ammunition, would be directly relevant to whether
5 or not he was unlawfully possessing a firearm.

6 MR. CONRAD: Very well.

7 THE COURT: Anything else, Ms. Eigenbrot?

8 MS. EIGENBROT: No, Your Honor. We would just
9 ask that we settle the records of the parties at this
10 time, of the witnesses.

11 THE COURT: Do you have criminal records on
12 your witnesses?

13 MR. CONRAD: We did hand our criminal record
14 on the witness, Herlong, yesterday. That is the only
15 criminal record that we have.

16 THE COURT: What does Ms. Herlong have?

17 MS. EIGENBROT: Your Honor, I believe she has
18 two fraudulent checks under 500 from 2002.

19 THE COURT: Okay.

20 MS. EIGENBROT: She does have some pending
21 charges, as well. I believe it's a burg third
22 from 2012. There is a 2013 pending, obtaining signature
23 by false pretenses.

24 THE COURT: All right. Well, the fraudulent
25 check are over ten years; right?

1 MR. CONRAD: Correct, Your Honor.

2 THE COURT: So they're not in. And as to the
3 pending charges?

4 MR. CONRAD: Your Honor, the State would
5 ask -- we will ask Ms. Herlong -- the only way they're
6 relevant is in terms of procuring her testimony here,
7 that nothing has been promised, nothing has been
8 offered. I would that ask the nature of the offenses, I
9 don't think they're relevant --

10 THE COURT: Right.

11 MR. CONRAD: -- just that there's pending
12 charges.

13 THE COURT: Okay. Anything else?

14 MS. EIGENBROT: Nothing further from the
15 defense, Your Honor.

16 THE COURT: All right. Let's take ten
17 minutes. Then we'll come back in and pick a jury.

18 (Whereupon there is a recess.)

19 THE COURT: All right. I find for the record
20 that the defendant has received notice of his right to
21 be present at trial and that the defendant was issued a
22 warning that he would be tried in his absence should he
23 fail to attend court this morning.

24 According to Ms. Eigenbrot who has told me,
25 out of her duty as an officer of this court, to inform

1 me that he was present in the building this morning,
2 knew of the trial going forward, and still failed to
3 appear.

4 Therefore, I find a trial in absence to be
5 appropriate under the standards set forth in our case
6 law that sufficient notice has been given. He has been
7 warned that a trial would go forward whether or not he
8 decided to appear at trial.

9 I will give the jury a warning about his
10 failure to appear at the beginning of the trial and at
11 the conclusion of the trial to make sure that they know
12 that that cannot be used against him and cannot be
13 considered by them as an admission of guilt.

14 Anything further from the State?

15 MR. CONRAD: No, Your Honor.

16 THE COURT: Okay. Let's go through this voir
17 dire.

18 All right. I'm looking at defendant's
19 requested voir dire. Number one, I will ask. Number
20 two, I will ask. Number three, I will ask. Number
21 four, I already ask. Number five, I already ask.

22 Number six, I will ask. Number seven is part
23 of the normal charge. Number eight is part of the
24 normal. Number nine is part of the normal. Number ten,
25 I will ask.

1 Number 11 is already in. Number 13, I will
2 ask. Number 14 should be in their juror questionnaire.
3 Number 15, I will ask. Number 16 is in their
4 questionnaire. Number 17 is not relevant.

5 Number 18 is inadmissible under South Carolina
6 law. Number 19 is inadmissible under South Carolina
7 law. Number 20 will be explained to them. Number 21 is
8 not appropriate.

9 Number 22 is part of the normal charge; so is
10 23; so is 25. There is no 24 for the record. So is 26,
11 27, 28, 29, 30, 31, and 32. All that is part of the
12 normal charge on the law.

13 Anything further from the State?

14 MR. CONRAD: No, Your Honor.

15 THE COURT: Ms. Eigenbrot?

16 MS. EIGENBROT: No, Your Honor.

17 THE COURT: Okay. All right. Let's bring up
18 the panel.

19 When I bring in the panel, Mr. Conrad, I will
20 ask you to call your case.

21 MR. CONRAD: Yes, Your Honor.

22 (Pause.)

23 (The jury panel enters the courtroom.)

24 THE COURT: All right. Thank you very much
25 for coming back today. I know I saw all of you on

1 Monday, and you were hoping that you had officially
2 escaped the week; however, you were asked to return
3 today much to your own dismay. Let me begin by saying
4 thank you very much. I know that I said that to you on
5 Monday. I do sincerely mean that.

6 Today we have a criminal case that will be
7 called before you; and in just a few moments, we're
8 going to begin the jury selection process for that
9 case. Before we begin there's a few things I need to
10 tell you.

11 This trial will be different from what you
12 might expect. Many people do not have the opportunity
13 to attend actual court sessions as you are doing now.
14 Some people may think from television or books or movies
15 that trials are always full of high drama and intense
16 action and rifting circumstances.

17 While all of these things may be true at
18 times, this trial is not for entertainment. It is a
19 fundamental part of our democracy and is a search for
20 the truth in an effort to make sure justice is done
21 between the parties.

22 Searching for the truth and making sure that
23 justice is done is often slow, deliberate, and
24 repetitive, the opposite of what you may have seen on
25 television or in movies or read in books.

1 This courtroom is a place of honor dedicated
2 to the protection and preservation of citizens' rights
3 through what many have called the greatest justice
4 system ever created.

5 The attorneys that will appear before you are
6 advocates for the parties they represent; but first and
7 foremost, they are officers of this court, sworn to
8 uphold the integrity and the fairness of our judicial
9 system and to help you in a search for the truth.

10 You should expect them to be professional,
11 competent, and ethical in the representation of their
12 client's interests. Remember, if you get selected as a
13 juror on this case, you will also take an oath to try
14 this case and reach a fair and just verdict. You are
15 also expected to be professional, reasonable, and
16 ethical.

17 Thank you for accepting this important
18 responsibility and for your contribution to our justice
19 system. We are now ready to select a jury. The State
20 may call their case.

21 MR. CONRAD: Thank you, Your Honor. The State
22 calls State vs. Brice Joseph Driggers, Indictment
23 Numbers 2012-GS-40-269, which is a count of unlawful
24 carrying of a pistol, and 2012-GS-40-270, which is also
25 a count of unlawful carrying of a pistol.

1 THE COURT: All right. Ladies and gentlemen,
2 the State has called their case. The first indictment
3 is 2012-GS-40-269. This is an indictment against Brice
4 Joseph Driggers for unlawful carrying of a pistol.

5 It states in part that Brice Joseph Driggers
6 did in Richland County, on or about July 26th of 2011,
7 carry a pistol about the person, such carrying not being
8 authorized by law in violation of the South Carolina
9 Code of Laws.

10 The second indictment is Number 270, also for
11 unlawful carrying of a pistol. It states that
12 Mr. Driggers, did in Richland County on or about
13 July 26th of 2011, carry about the person a pistol, such
14 carrying not being authorized by law in violation of the
15 South Carolina Code of Laws.

16 Now, ladies and gentlemen, these indictments
17 which I hold in my hand are not proof of anything. They
18 are not evidence of anything. They are merely the
19 documents that allow this Court to hear this case. They
20 should not be considered by you as proof of anything or
21 evidence of anything.

22 The fact that Mr. Driggers has been indicted
23 by the Richland County Grand Jury is not proof of any of
24 the elements of any of the crimes that are charged in
25 any way, shape, or form. To this charge Mr. Driggers

1 has pled not guilty and has requested a trial by jury.

2 Will you please swear in the jurors,
3 Ms. Becky, so I can question them on voir dire.

4 THE CLERK: Certainly. Ladies and gentlemen
5 of the jury, will you please stand and raise your right
6 hand.

7 (The jury panel is duly sworn.)

8 THE COURT: Thank you, ladies and gentlemen.
9 Now, if you will remember on Monday, I asked you
10 questions about your qualifications to serve: Your
11 education, do you live in the county, things like that.

12 Today I'm going to ask you more case specific
13 questions. Today the questions will center around: Do
14 you know the witnesses? Do you know the lawyers? Do
15 you know the parties?

16 So when I ask you these questions, as I told
17 you on Monday and as I specifically have requested of
18 you, please give us the most accurate information
19 possible.

20 The purpose of jury selection is so that both
21 sides can consider the potential jurors, assess them
22 based upon the information they provide, and make a
23 decision on whether or not to select you on the case or
24 to set you aside and may potentially be called for
25 another case.

1 So as I ask you these questions, I ask that
2 you give me the most accurate and truthful information
3 possible. That is absolutely essential to us going
4 forward.

5 All right. Now, let's start with the State.
6 If you would, Mr. Conrad, if you would please -- and
7 Mr. Shalabi -- stand up please and introduce yourselves.

8 MR. CONRAD: My name is Johnson Conrad. I am
9 an Assistant Solicitor here in the Fifth Judicial
10 Circuit Solicitor's Office.

11 MR. SHALABI: I am Ramie Shalabi, also an
12 Assistant Solicitor here in Richland County in the Fifth
13 Judicial Circuit.

14 THE COURT: All right. Thank you, gentlemen.

15 Ladies and gentlemen, is anybody related by
16 blood or marriage, close personal friends with, have any
17 connection to either one of these lawyers? Have you
18 ever been represented by them or on the other side of a
19 case from them? If so, please stand.

20 (There is no response.)

21 THE COURT: Is anybody connected in any way,
22 shape, or form to anyone at the Fifth Circuit
23 Solicitor's Office? The Fifth Circuit Solicitor is Dan
24 Johnson. The Fifth Circuit covers Richland and Kershaw
25 Counties.

1 If you have any connection to the Fifth
2 Circuit Solicitor's Office or any of the employees
3 there, whether they be attorneys or not attorneys,
4 either in Richland or Kershaw County, if so, please
5 stand.

6 (There is no response.)

7 THE COURT: All right. Ms. Eigenbrot, if you
8 and Ms. Dyar, will please stand and introduce
9 yourselves.

10 MS. EIGENBROT: Megan Eigenbrot, counsel for
11 the defense, Brice Driggers.

12 MS. DYAR: And I'm Alicia Dyar, co-counsel.

13 THE COURT: All right. Is anybody related by
14 blood or marriage, close personal friends with, or
15 connected to Ms. Eigenbrot or Ms. Dyar in any way,
16 shape, or form? Have you ever been represented by them
17 or on the other side of the case from them? If so,
18 please stand.

19 (There is no response.)

20 THE COURT: All right. Now, the defendant in
21 this case is Mr. Brice Joseph Driggers. Is anybody
22 related by blood or marriage, close personal friends
23 with, have any connection to or have any association
24 with Brice Joseph Driggers, D-R-I-G-G-E-R-S? If so,
25 please stand.

1 (There is no response.)

2 THE COURT: The next thing I'm going to do,
3 ladies and gentlemen, is read you a list of potential
4 witnesses. Now, I asked the attorneys to give me a list
5 of any potential witness. It does not mean that all of
6 these witnesses will be called, but they could be
7 called. I just want to go over their names with you.

8 Again, if any of these people are close
9 personal friends, blood relationship, if you're kin to
10 them in any way, shape, or form, have a business
11 association, social association, or if you know these
12 people or think you know them, go ahead and stand up;
13 and we will collect a little bit of information from
14 you.

15 The first potential witness is M. Smith with
16 the Forest Acres Police Department.

17 Officer Smith, are you here?

18 OFFICER SMITH: Yes, sir.

19 THE COURT: If you would please stand up.
20 That's Officer Smith in the back row with the Forest
21 Acres Police Department.

22 Thank you, Officer Smith.

23 The next witness is G. Denizard?

24 OFFICER DENIZARD: Correct.

25 THE COURT: Investigator Denizard. Again, I

1 apologize if I say your name incorrectly, sir.

2 OFFICER DENIZARD: You said it right.

3 THE COURT: He is also with the Forest Acres
4 Police Department.

5 Amanda Herlong? Is Ms. Herlong here?

6 (Witness stands.)

7 THE COURT: Thank you, Ms. Herlong.

8 Linda Henderson? Ms. Henderson?

9 (Witness stands.)

10 THE COURT: Thank you, ma'am. I appreciate
11 that. Matthew Rock with EMS?

12 (Witness stands.)

13 THE COURT: Mr. Rock is in the back of the
14 courtroom. Thank you, Mr. Rock.

15 Jade Steedley?

16 (Witness stands.)

17 THE COURT: Ms. Steedley is also in the back
18 of the courtroom with EMS.

19 Does anybody know any of these witnesses? Are
20 you personal friends with them? Have a close
21 relationship with? Related by blood or marriage?
22 Business association? Social association? Anything at
23 all with any of these witnesses? If so, please stand.

24 (There is no response.)

25 THE COURT: All right. Has any member of the

1 jury panel formed or expressed an opinion about any
2 issue or matter involved in this case? This incident
3 allegedly occurred in July of 2011.

4 MR. CONRAD: That's right.

5 THE COURT: In the Forest Acres part of the
6 county. At a -- what was it?

7 MR. CONRAD: A Dollar General store.

8 THE COURT: Again, these are allegations at
9 this point, a Dollar General store off of Covenant Road?

10 MR. CONRAD: Correct, Your Honor.

11 THE COURT: Here in Richland County, the
12 Forest Acres part of town.

13 Is anybody familiar with this case, know
14 anything about it, heard anything about it, seen it on
15 TV, radio, internet, anything like that? If so, please
16 stand.

17 (There is no response.)

18 THE COURT: Again, these are just allegations.
19 I'm just trying to give you a little bit of information
20 to see if anybody knows anything about the case.

21 Is there any member of the jury panel who is
22 aware of any bias or prejudice that you may have towards
23 either the State or the defendant in this case? If so,
24 please stand.

25 (There is no response.)

1 THE COURT: Is there any member of the jury
2 panel who is a member of or a contributor to any group
3 which has as its primary concern the promotion of law
4 enforcement or victims' rights?

5 Examples of these groups -- certainly not
6 limited to this list -- but that would be MADD, SADD,
7 CAVE, or defendants' rights, such as the Innocence
8 Project? Those are just examples of groups.

9 (There is no response.)

10 THE COURT: All right. Is there any member of
11 the jury panel who has a religious or moral opposition
12 to the consumption of alcohol? If so, please stand.

13 (There is no response.)

14 THE COURT: Does any member of the jury panel
15 know of any reason whatsoever why he or she would not be
16 able to serve as juror in this case? If so, please
17 stand.

18 (There is no response.)

19 THE COURT: Now, I have a few additional
20 questions to ask you. If some of them are repetitive, I
21 apologize. I work off two or three different lists. We
22 just want to make sure we ask all the questions.

23 Is there any member of the jury panel related
24 by blood or marriage to or a friend of or acquaintance
25 of someone that is in law enforcement? If so, please

1 stand.

2 (Jurors stand.)

3 THE COURT: Okay. Just stand up. This young
4 lady right here in the red sweater, what's your number,
5 ma'am?

6 PROSPECTIVE JUROR: 202.

7 THE COURT: 202. Okay. Who do you know in
8 law enforcement? What's their connection to you?

9 PROSPECTIVE JUROR: My first cousin, Doris
10 Taylor, is a Richland County sheriff.

11 THE COURT: Would that affect your ability to
12 be fair and impartial in this case?

13 PROSPECTIVE JUROR: No, it would not.

14 THE COURT: Are you willing to base your
15 decision solely off the evidence and the law as it comes
16 from this courtroom?

17 PROSPECTIVE JUROR: Yes, sir.

18 THE COURT: All right. Thank you very much.
19 You may be seated.

20 Right behind her, what's your number?

21 PROSPECTIVE JUROR: 198.

22 THE COURT: 198. All right. Ms. Nevitt?

23 PROSPECTIVE JUROR: Yes.

24 THE COURT: What's your connection?

25 PROSPECTIVE JUROR: I have a close friend

1 that's a police officer.

2 THE COURT: Where?

3 PROSPECTIVE JUROR: I'm not sure.

4 THE COURT: Do you know what agency?

5 PROSPECTIVE JUROR: No.

6 THE COURT: Is it in South Carolina?

7 PROSPECTIVE JUROR: Yes.

8 THE COURT: Is it here locally?

9 PROSPECTIVE JUROR: Yes.

10 THE COURT: Would that affect your ability to
11 be fair and impartial in this case?

12 PROSPECTIVE JUROR: No.

13 THE COURT: Are you willing to base your
14 decision solely off the evidence and the law?

15 PROSPECTIVE JUROR: Yes.

16 THE COURT: And will you do that?

17 PROSPECTIVE JUROR: Yes.

18 THE COURT: Yes, ma'am, right here
19 (indicating). What is your number?

20 PROSPECTIVE JUROR: 284.

21 THE COURT: All right. Hold on. Let
22 everybody find you. Just one second. Okay.
23 Ms. Whitlock?

24 PROSPECTIVE JUROR: Yes, sir.

25 THE COURT: Tell me your connection.

1 PROSPECTIVE JUROR: My husband is a law
2 enforcement officer in Lexington, and I was a law
3 enforcement officer until two years ago.

4 THE COURT: Would that affect your ability to
5 be fair and impartial in this case?

6 PROSPECTIVE JUROR: No, sir.

7 THE COURT: Are you willing to base your
8 decision solely off the evidence and the law as it comes
9 into this courtroom?

10 PROSPECTIVE JUROR: Yes, sir.

11 THE COURT: Will you do that?

12 PROSPECTIVE JUROR: Yes.

13 THE COURT: Thank you.

14 Yes, ma'am, what's your number?

15 PROSPECTIVE JUROR: 305.

16 THE COURT: Number 305. Ms. Archie?

17 PROSPECTIVE JUROR: Yes.

18 THE COURT: Okay. What's your connection,
19 ma'am?

20 PROSPECTIVE JUROR: My father is with the
21 Richland County Sheriff's Department.

22 THE COURT: And would that affect your ability
23 to be fair and impartial in this case?

24 PROSPECTIVE JUROR: No, sir.

25 THE COURT: Are you willing to base your

1 decision solely off the evidence and the law as it comes
2 into this courtroom?

3 PROSPECTIVE JUROR: Yes, sir.

4 THE COURT: And will you do that?

5 PROSPECTIVE JUROR: Yes, sir.

6 THE COURT: Thank you, ma'am.

7 Yes, ma'am, what's your number?

8 PROSPECTIVE JUROR: 43.

9 THE COURT: 43. Ms. Chapman?

10 PROSPECTIVE JUROR: Yes.

11 THE COURT: Tell me your connection,
12 Ms. Chapman?

13 PROSPECTIVE JUROR: Chris Lindler is an
14 acquaintance. He has worked a couple of cases I've been
15 involved in.

16 THE COURT: Is he with the Sheriff's
17 Department?

18 PROSPECTIVE JUROR: Richland County.

19 THE COURT: And what capacity were you
20 involved in those cases?

21 PROSPECTIVE JUROR: My house has been broken
22 into twice.

23 THE COURT: Would that affect your ability to
24 be fair and impartial in this case?

25 PROSPECTIVE JUROR: It may.

1 THE COURT: All right. Just have a seat.

2 All right. Anybody else?

3 (There is no response.)

4 THE COURT: Okay. Is there any member of the
5 jury panel who is related by blood or marriage or friend
6 or acquaintance of anyone employed by the Attorney
7 General's Office -- I've already asked you about the
8 Solicitor's Office -- or any other prosecuting
9 attorney's office. If so, please stand.

10 (Juror stands.)

11 THE COURT: Yes, ma'am, tell me your name one
12 more time.

13 PROSPECTIVE JUROR: Nevitt.

14 THE COURT: Number 198. Okay. Tell me that
15 connection.

16 PROSPECTIVE JUROR: I have an aunt that's an
17 administrative assistant for the Attorney General's
18 Office.

19 THE COURT: And would that affect your ability
20 to be fair and impartial in this case?

21 PROSPECTIVE JUROR: No.

22 THE COURT: Are you willing to base your
23 decision solely off the evidence and the law?

24 PROSPECTIVE JUROR: Yes.

25 THE COURT: And will you do that?

1 PROSPECTIVE JUROR: Yes.

2 THE COURT: Is there any member of the jury
3 panel who has heard or read anything about -- I've
4 already asked that question. See, I have to catch
5 myself sometimes.

6 Has any member of the jury panel ever been a
7 witness in a criminal trial, besides Ms. Chapman? If
8 so, please stand.

9 (There is no response.)

10 THE COURT: Is any member of the jury panel or
11 a member of your family or close personal friend ever
12 been the victim of a crime involving a gun or similar
13 offense, besides Ms. Chapman?

14 (There is no response.)

15 THE COURT: Is there any member of the jury
16 panel who is a regular customer of or a friend or
17 acquaintance of any of the employees of the Dollar
18 General at 3724 Covenant Road in the Forest Acres part
19 of town?

20 (There is no response.)

21 THE COURT: Do you regularly go to that store?

22 (There is no response).

23 THE COURT: Covenant Road runs off of Beltline
24 Road. Officers; is that right? You're talking about
25 Covenant and Beltline?

1 OFFICER: Yes, sir.

2 THE COURT: Where approximately is the Dollar
3 General?

4 OFFICER: At the corner of Bethel Church Road
5 and Covenant Road.

6 THE COURT: Is anybody a regular customer of
7 that store or know anybody that works there or have any
8 connection to that store?

9 (Juror stands).

10 THE COURT: All right. Ms. Nevitt, what's
11 your connection?

12 PROSPECTIVE JUROR: My parents live a couple
13 blocks away from that store.

14 THE COURT: Do they go to that store?

15 PROSPECTIVE JUROR: Yes.

16 THE COURT: Would that affect your ability to
17 be fair and impartial in this case?

18 PROSPECTIVE JUROR: No.

19 THE COURT: Are you willing to base your
20 decision solely off the evidence and the law?

21 PROSPECTIVE JUROR: Yes.

22 THE COURT: Thank you very much. Anybody
23 else?

24 (There is no response.)

25 THE COURT: All right. Any additional voir

1 dire from the State?

2 MR. CONRAD: None, Your Honor.

3 THE COURT: From the defense, other than that
4 requested?

5 MS. DYAR: No, Your Honor.

6 THE COURT: And, again, ladies and gentlemen,
7 I ask you one more time: Does anybody know of any
8 reason why you could not be fair and impartial in this
9 case?

10 I will tell you that what all of those
11 attorneys and the parties to the case want is 12 jurors
12 who come in here with nobody to reward, nobody to
13 punish, completely fair, completely impartial, willing
14 to listen to the testimony and the evidence in the case,
15 apply the law as I give it to you and to make a decision
16 completely fair and impartial without any bias or
17 prejudice. Does anybody believe they cannot do that?

18 (Cell phone rings.)

19 THE COURT: Turn the phone off. Let's make
20 sure it's off. Okay?

21 THE BAILIFF: Yes, sir.

22 THE COURT: All right. Thank you very much.
23 If you have a phone, make sure it's off, please.

24 Attorneys approach real quick.

25 (Whereupon there is a bench conference off the

1 record in the presence of the jury panel but out of the
2 hearing of the jury panel.)

3 THE COURT: Ladies and gentlemen, what we're
4 going to do now is your name is going to be called and
5 your number. When your number is called, gather all
6 your personal belongings, and come to the front.

7 You'll come to this microphone. Face out
8 towards the audience and tell us what you do for a
9 living. All you need to do is: My employment is I'm a
10 judge.

11 The State will get to select whether or not
12 they want to seat you first, then the defense. If you
13 are excused, you'll return to the back of the courtroom.
14 If you are seated, then you will head right over here to
15 the jury box. Bring all of your belongings with you.

16 The strikes are five and five. Let's go.

17 THE CLERK: Number 514, Samuel Knight.

18 (The juror, a white male, comes forward.)

19 PROSPECTIVE JUROR: I'm an engineer.

20 THE CLERK: What says the State?

21 MR. CONRAD: Please seat the juror.

22 THE CLERK: What says the defense?

23 MS. DYAR: Please seat the juror.

24 THE CLERK: Have a seat in the jury box,
25 please.

1 Number 221, Annette Robinson.
2 (The juror, a black female, comes forward.)
3 PROSPECTIVE JUROR: Bankruptcy assistant.
4 THE CLERK: What says the State?
5 MR. CONRAD: Please seat the juror.
6 THE CLERK: What says the defense?
7 MS. EIGENBROT: Please seat the juror.
8 THE CLERK: Have a seat in the jury box.
9 Number 198, Laura Nevitt.
10 (The juror, a white female, comes forward.)
11 PROSPECTIVE JUROR: I'm a teacher.
12 THE CLERK: What says the State?
13 MR. CONRAD: Please seat the juror.
14 THE CLERK: What says the defense?
15 MS. EIGENBROT: Please excuse the juror.
16 THE CLERK: Please have a seat in the back of
17 the courtroom.
18 Number 302, Brandon Harrison.
19 (The juror, a black male, comes forward.)
20 PROSPECTIVE JUROR: Teacher.
21 THE CLERK: What says the State?
22 MR. CONRAD: Please seat the juror.
23 THE CLERK: What says the defense?
24 MS. DYAR: Please seat the juror.
25 THE CLERK: Have a seat in the jury box.

1 Number 32, Jeanette Brock.

2 (The juror, a black female, comes forward.)

3 PROSPECTIVE JUROR: Working in health and
4 beauty.

5 THE CLERK: What says the State?

6 MR. CONRAD: Please seat the juror.

7 THE CLERK: What says the defense?

8 MS. DYAR: Please seat the juror.

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

11 Number 96, Travis George.

12 (The juror, a white male, comes forward.)

13 PROSPECTIVE JUROR: I'm a fraud investigator.

14 THE CLERK: What says the State?

15 MR. CONRAD: Please seat the juror.

16 THE CLERK: What says the defense?

17 MS. DYAR: Please seat the juror.

18 THE CLERK: Please have a seat in the jury
19 box.

20 Number 215, Christopher Reeder.

21 (The juror, a black male, comes forward.)

22 PROSPECTIVE JUROR: Student and part-time
23 sales associate.

24 THE CLERK: What says the State?

25 MR. CONRAD: Please excuse the juror.

1 THE CLERK: Have a seat in the back of the
2 courtroom, please.
3 Number 264, Eric Thompson.
4 (The juror, a white male, comes forward.)
5 PROSPECTIVE JUROR: Residential construction.
6 THE CLERK: What says the State?
7 MR. CONRAD: Please excuse the juror.
8 THE CLERK: Have a seat in the back of the
9 courtroom, please.
10 Number 53, Elizabeth Cotter.
11 (The juror, a white female, comes forward.)
12 PROSPECTIVE JUROR: I'm a housewife.
13 THE CLERK: What says the State?
14 MR. CONRAD: Please seat the juror.
15 THE CLERK: What says the defense?
16 MS. DYAR: Please seat the juror.
17 THE CLERK: Have a seat in the jury box,
18 please.
19 203, Christina Owens.
20 (The juror, a white female, comes forward.)
21 PROSPECTIVE JUROR: I'm a stay-at-home mom.
22 THE CLERK: What says the State?
23 MR. CONRAD: Please seat the juror.
24 THE CLERK: What says the defense?
25 MS. DYAR: Please seat the juror.

1 THE CLERK: Have a seat in the jury box,
2 please.

3 Number 113, Loreal Ham.

4 (The juror, a black female, comes forward.)

5 PROSPECTIVE JUROR: I'm a dental assistant.

6 THE CLERK: What says the State?

7 MR. CONRAD: Please seat the juror.

8 THE CLERK: What says the defense?

9 MS. DYAR: Please seat the juror.

10 THE CLERK: Have a seat in the jury box.

11 Number 14, Brandon Beatty.

12 (The juror, a black male, comes forward.)

13 PROSPECTIVE JUROR: I'm a part-time hospital
14 security guard.

15 THE CLERK: What says the State?

16 MR. CONRAD: Please seat the juror.

17 THE CLERK: What says the defense?

18 MS. DYAR: Please excuse this juror.

19 THE CLERK: Have a seat in the back of the
20 courtroom, please.

21 Number 246, Jason Stephens.

22 (The juror, a white male, comes forward.)

23 PROSPECTIVE JUROR: Service manager.

24 THE CLERK: What says the State?

25 MR. CONRAD: Please excuse the juror.

1 THE CLERK: Have a seat in the back of the
2 courtroom, please.
3 Number 145, Adam Hyde.
4 (The juror, a white male, comes forward.)
5 PROSPECTIVE JUROR: Air traffic control.
6 THE CLERK: What says the State?
7 MR. CONRAD: Please seat the juror.
8 THE CLERK: What says the defense?
9 MS. DYAR: Please seat the juror.
10 THE CLERK: Have a seat in the jury box.
11 Number 40, Linda Campbell.
12 (The juror, a black female, comes forward.)
13 PROSPECTIVE JUROR: Library technician.
14 THE CLERK: What says the State?
15 MR. CONRAD: Please seat the juror.
16 THE CLERK: What says the defense?
17 MR. DYAR: Please seat the juror.
18 THE CLERK: Have a seat in the jury box.
19 Number 39, James Camp.
20 (The juror, a white male, comes forward.)
21 PROSPECTIVE JUROR: President and CEO, Better
22 Business Bureau.
23 THE CLERK: What says the State?
24 MR. CONRAD: Please seat the juror.
25 THE CLERK: What says the defense?

1 MS. DYAR: Please seat the juror.

2 THE CLERK: Have a seat in the jury box,
3 please.

4 Number 121, Amy Head.

5 (The juror, a white female, comes forward.)

6 PROSPECTIVE JUROR: I'm a special ed teacher
7 and grad student in social work.

8 THE CLERK: What says the State?

9 MR. CONRAD: Please seat the juror.

10 THE CLERK: What says the defense?

11 MS. DYAR: Please seat the juror.

12 THE CLERK: Have a seat in the jury box.

13 THE COURT: All right. We'll do one
14 alternate. The strikes are one and two on the
15 alternate.

16 THE CLERK: Number 233, Warren Sewell.

17 (The juror, a black male, comes forward.)

18 PROSPECTIVE JUROR: Teacher.

19 THE CLERK: What says the State?

20 MR. CONRAD: Please seat the juror.

21 THE CLERK: What says the defense?

22 MS. DYAR: Please seat the juror.

23 THE CLERK: Have a seat in the jury box.

24 (The jury is impaneled at 11:40 A.M.)

25 THE COURT: All right. Any exceptions to the

1 panel from the State?

2 MR. CONRAD: None from the State, Your Honor.

3 THE COURT: Any exceptions to the panel from
4 the defense?

5 MS. DYAR: None, Your Honor.

6 THE COURT: All right. Ladies and gentlemen,
7 if you are seated out in the audience, then you are
8 going to be excused from service in this case to go back
9 downstairs to the jury assembly room to await further
10 instructions from them there. Thank you very much for
11 your willingness to serve and have a good week.

12 Everyone remained seated while the jurors are
13 excused.

14 (The jury panel leaves the courtroom.)

15 THE COURT: All right. Ladies and gentlemen,
16 let me do -- the first thing I want to do before we get
17 started is kind of give you an introduction to who
18 everybody is so that you know.

19 You probably have a little bit of fear of the
20 unknown: How long am I going to be here? How long is
21 this going to take? That kind of thing. Let me give
22 you a little bit of that information before we start.

23 I know that you met me on Monday, but my name
24 is Robert Hood. I'm one of your resident circuit
25 judges. That means I actually live in your circuit. I

1 will be with you throughout the trial of this case.

2 Seated right over here is Ms. Ambroziak. She
3 is my court reporter. She is the most important person
4 in the courtroom. She is the only person who will be
5 working the entire time we are in the courtroom.

6 This is a court of record. She will be taking
7 down literally every single word that is said in the
8 courtroom. So whenever she needs a break, we take a
9 break. Her hands are constantly moving while we're in
10 here, and she will be with us throughout this trial
11 taking down everything that is said.

12 Seated down below me is Ms. Stevens. She is
13 with the Clerk of Court's Office, and she will be our
14 courtroom clerk for this trial. She will be swearing in
15 witnesses and handling exhibits and things like that.

16 Seated to my left is Ms. Hedgeco. Ms. Hedgeco
17 is my law clerk. She is a lawyer who has graduated law
18 school and has passed the bar examination. She has been
19 with me now for close to 18 months. Her time will be up
20 in August where she will have to go get a real job and
21 go do real work every day.

22 I am the Chief Administrative Judge for the
23 county, for the circuit for criminal cases. So I have
24 literally dozens of other things that are going on at
25 the same time as this trial.

1 So you will see her constantly working and
2 constantly on her computer. She may be coming in and
3 out of the courtroom and managing other things that are
4 going on while this trial is going on.

5 Seated to my right is Ms. Simpkins. She just
6 finished her first year; is that right?

7 MS. SIMPKINS: Second year.

8 THE COURT: Second year of law school. She is
9 interning with me for the summer. So she is getting
10 experience and giving up a paying job with some law firm
11 to come and hang out with us and learn how courtrooms
12 really work and how trials really work.

13 Now, your most important contact people are
14 the three gentlemen in what -- we'll call them garnet --
15 coats. In the back corner, turn around and check out
16 Mr. Tolbert back there. That's bailiff number -- we'll
17 call him bailiff number one.

18 Down here in the front in the corner is
19 Mr. Burgess, and then in the back is Mr. Addison. He is
20 way back there. Now, this is the only time you will see
21 all three of them awake. So enjoy it while you can.

22 They are known to snooze in my courtroom,
23 regardless of how exciting things are going on. But
24 they will be your main contact people. Okay. So when
25 we take a break in a little while, they will show you

1 how to come in. They will show you how to go out.

2 They will take your phones from you. They
3 will make sure you have your badges on. They will be
4 essentially in charge of you, and you have three of my
5 favorite bailiffs. You are very lucky.

6 They will be very good to you, and they will
7 help you in anything that you need. They really do know
8 what's going on. They know how to get you in and get
9 you out and make sure you have what you need. Be very
10 kind to them, as I know they will be very kind to you.

11 Let me give you a little bit of a road map of
12 where we are going. This case is very important, and
13 this is a very important case; however, I do not expect
14 it to be a rather lengthy case.

15 In fact, my best guess and best estimate is we
16 should be able to finish this case today. Now, I'm not
17 holding any of the attorneys to that because things
18 happen in trials that I have no control over; and they
19 have no control over. We may go into tomorrow. But
20 worst case scenario, we will be finished with this case
21 tomorrow.

22 To speed the process through along today, I'm
23 going to order you lunch in; and the county will pay and
24 provide for your lunch today. I don't normally do that
25 in very short trials; but in the interest of trying to

1 get through this as efficiently as possible and getting
2 you back to your normal lives as efficiently as
3 possible, we are going to order lunch in today.

4 When we take a break in a few moments, they
5 will provide you menus from where we are ordering lunch
6 from. You will be able to select what you want. Then
7 we will stop once the food gets here and break for
8 lunch. That's the general plan for the day, and the
9 plan for how things will proceed.

10 The first thing that's going to happen is
11 you're going to be sworn in. So the plan is I'm going
12 to swear you in or the clerk is going to swear you in.
13 I will give you a little bit of a brief opening on the
14 law in this case. We will then take a short break so
15 you can order your lunch, and then we'll come back and
16 jump right into the case.

17 Ms. Stevens, if you will swear in the jurors.

18 THE CLERK: Thank you very much, Your Honor.

19 Ladies and gentlemen of the jury, if would
20 please stand and raise your right hands.

21 (The jury is duly sworn.)

22 THE COURT: Thank you very much, ladies and
23 gentlemen. Before we begin the actual trial of the
24 case, I thought it might be helpful if I explain to you
25 how this case will proceed.

1 First, the State will make an opening
2 statement. An opening statement is not evidence. It is
3 simply an outline to help you understand what that party
4 expects the evidence will show. The defendant may, if
5 he chooses to, present an opening statement; but he does
6 not have to for reasons I will explain to you in just a
7 moment.

8 Following the opening statements, you will
9 hear testimony and evidence in the case. This will
10 consist of testimony from the State's witnesses, as well
11 as any physical evidence or exhibits which they intend
12 to introduce.

13 Following the completion of the testimony, the
14 attorneys will again have an opportunity to come before
15 you and make what is called closing statements or a
16 summation to you.

17 This is an opportunity for the attorneys to
18 summarize from their perspective what they believe the
19 case has shown or the evidence has shown. Again, the
20 opening statements and closing arguments of the
21 attorneys are not evidence.

22 Following the closing statements by the
23 attorneys, I will tell you what the law is in South
24 Carolina as it pertains to this case. When I have
25 completed my instructions to you, you will then be

1 permitted to begin your deliberations in order to reach
2 a verdict.

3 Now, you are now the jury in this case. I
4 need to take a few minutes to tell you something about
5 your duty as jurors and to give you instructions. At
6 the end of the trial, I will give you more detailed
7 instructions.

8 It will be your duty to decide from the
9 evidence what the facts are. So if you want to see this
10 as roles, it is my role to be the judge of the law. I
11 will make all the legal decisions in this case.

12 Your role will be to determine what the facts
13 are. You are the fact finders in this case, and you and
14 you alone are the judges of the facts. Essentially you
15 wear your own black robes.

16 You sit there fairly and impartially and
17 figure out from the evidence that comes in from the
18 witness stand and the exhibits that are introduced what
19 the evidence or what the facts are in this case.

20 You then apply those facts to the law which I
21 will give you at the conclusion of the trial. That is
22 how you will reach your verdict. In doing so, you must
23 follow the law that I give you, whether you agree with
24 it or not.

25 The evidence will consist of testimony from

1 witnesses, documents, and other things that may be
2 received into evidence as exhibits or any facts which
3 the lawyers agree on or which I instruct you to accept.

4 You should not take anything that I do or say
5 during the trial as indicating what I think the evidence
6 is or what I think the evidence shows or what I think
7 your verdict should be.

8 Now, this is a criminal case brought by the
9 State of South Carolina. The State has charged the
10 defendant with two counts of unlawful carrying of a
11 pistol.

12 The charge against the defendant is contained
13 in the indictments that I read to you earlier. Again,
14 as I told you earlier, these indictments are not
15 evidence of anything. They are not proof of anything.

16 They are merely the description of the charge
17 made by the State against the defendant. To this
18 charge, the defendant has pled not guilty and is
19 presumed innocent unless and until he is proven guilty
20 beyond a reasonable doubt.

21 Proof beyond a reasonable doubt is proof that
22 leaves you firmly convinced of the defendant's guilt. A
23 defendant has the right not to testify and never has to
24 prove innocence or present any evidence. The burden of
25 proof in this case is always upon the State of South

1 Carolina.

2 Now, you may have noticed that the defendant
3 did not appear for his trial. A defendant has a
4 constitutional right not to be present for his trial
5 because he doesn't have to prove anything. The burden
6 of proof is upon the State.

7 When a defendant is tried in his absence, the
8 defendant's failure to appear may not be construed by
9 you in any way, shape, or form as an admission of guilt.
10 You are to consider the facts and the law as it applies
11 to this case.

12 Some things that you will hear are not
13 evidence, and you must not consider them as evidence.
14 The statements and the arguments of the lawyers, the
15 questions and the objections of the lawyers, or any
16 other testimony that I tell you to disregard.

17 There are two types of evidence which may come
18 into play in this case. One is direct evidence. Direct
19 evidence is testimony by a witness as to what they saw,
20 heard, or did. They have personal knowledge of the
21 event.

22 Circumstantial evidence is indirect evidence.
23 It is proof of one or more facts from which you can find
24 another fact. You are to consider both direct and
25 circumstantial evidence. The law permits you to give

1 equal weight to both, but it is for you to decide how
2 much weight to give any evidence.

3 Now, there are rules of evidence which control
4 in this courtroom. They control in every courtroom in
5 the State of South Carolina. When a lawyer asks a
6 question or offers an exhibits that the other lawyer
7 believes is not permitted by the rules of evidence, the
8 other lawyer may object.

9 If I overrule the objection, then the question
10 may be answered or the exhibit may be introduced. If I
11 sustain the objection, then the question should not be
12 answered or will not be answered or the exhibit will not
13 be introduced.

14 Now, whenever I sustain an objection or deny a
15 motion to admit an exhibit into evidence, you must
16 ignore the question or the existence of the exhibit.
17 You must not guess what the answer would have been or
18 what the exhibit would have shown.

19 Sometimes it may be necessary for me to ask
20 you to leave the room while I discuss a legal matter
21 with the lawyers. This happens in every single trial.
22 It will happen today more than likely. Okay.

23 When I do that, do not guess or speculate as
24 to what we are discussing. We are merely resolving a
25 legal issue that it is my decision to resolve and my

1 duty to resolve.

2 So do not speculate about what we are
3 discussing. We are not keeping anything from you. This
4 is simply a procedure that the law requires when certain
5 legal issues come up.

6 Likewise, sometimes I may ask the attorneys to
7 approach, say, "Approach the bench," and we will discuss
8 a legal matter at the bench. Now, something new I
9 started, which we are going to continue because we're
10 going to see how it works -- is when I ask the lawyers
11 to approach, you are going to be allowed to stand up,
12 stretch your legs, talk amongst yourselves. Just do not
13 talk about the case.

14 That allows us to discuss something without
15 having to send you out or send you back in or send you
16 back and forth. If this happens, again, please do not
17 think that anybody is trying to hide anything from you
18 or keep anything from you. This is a procedure used by
19 all lawyers and by all courts to determine and to decide
20 legal questions.

21 Now, in deciding the facts of this case, you
22 may have to decide who to believe and who not to
23 believe. You may believe everything a witness says,
24 none of what a witness says, or part of what a witness
25 says.

1 In deciding this you can judge their
2 credibility. Credibility is just a big word for
3 believability. You can consider among other things:
4 What was that witness's ability to see, hear, or know
5 what he or she testified to?

6 What was the quality of the witness's memory?
7 What was the witness's demeanor? Does the witness have
8 an interest in the outcome of the case or any motive,
9 bias, or prejudice?

10 Was the witness contradicted by anything the
11 witness said before or wrote before or by other
12 evidence? How reasonable was the witness's testimony
13 when considered in light of the other evidence which you
14 believe?

15 Now, the most confusing thing that I'm about
16 to tell you is this. You're not allowed to talk about
17 this case. Okay. You are not allowed to discuss the
18 case with anyone, including each other, until I tell you
19 it is time to deliberate at the very end of the case.

20 When you go back into your jury room, you can
21 talk about the weather. You can talk about the heat.
22 You can talk about the elections yesterdays. But you
23 cannot talk about this case in any way, shape, or form
24 to anybody: To your husband, your wife, your
25 girlfriend, your boyfriend, your children, anybody that

1 you can imagine.

2 Because you are to base your decision solely
3 on what happens in this courtroom and not until you've
4 heard all of the evidence and heard what the law is that
5 I will give you at the conclusion of the case.

6 So until I advise you to begin your
7 deliberations, you must not discuss this case with
8 anyone, including your fellow jurors, friends, family
9 members, or anyone involved in the case.

10 This includes discussions that are
11 face-to-face, telephone, e-mail, text message, blog,
12 some form of chat device, Facebook, Twitter, LinkedIn,
13 any type of blog or any type of social media.

14 You've may not use a computer, a cell phone,
15 or any other electronic device with communication
16 capabilities at any time while in the courtroom or
17 during deliberations.

18 During your breaks for meals or overnight, we
19 will give these devices to you; but you may not at any
20 time use them at any time to get or send information
21 about a case.

22 This includes information about a party, a
23 witness, an attorney, or a court officer. You cannot
24 view any news accounts about this case or research any
25 topics on the case or any topics that you think may be

1 helpful in figuring out the facts of this case.

2 During the trial do not read, listen to, or
3 watch any news reports about this case. I have no
4 knowledge that there is any news media involved in this
5 case at all; but if there is, you are not allowed to
6 view it. After the case is submitted to you, you must
7 discuss it only in the jury room and only with your
8 fellow jurors.

9 The attorneys and parties in this case have
10 been told and instructed not to have any contact with
11 you. So if they see you in the hallway and they do not
12 speak, they are not being rude. They are merely
13 following my instructions.

14 It is important that you keep an open mind and
15 not decide any issue in this case until all of the
16 evidence has been presented, the parties have made their
17 closing arguments, and I have told you what the law is
18 in this case.

19 It is your responsibility to determine the
20 guilt or the innocence of the defendant, and your
21 verdict must be based solely on the evidence as it is
22 presented to you in this trial and on the law as I
23 instruct you during and at the close of the trial.

24 Now, I'm going to give you one example. Okay.
25 This is a good case for this example. Now, we have

1 discussed the Dollar General on Covenant Road in Forest
2 Acres.

3 If this case goes overnight tonight, you can
4 not go drive by the Dollar General. That will be doing
5 your own research. Because how do you know that the
6 Dollar General looks the same today as it did when this
7 case allegedly happened? The answer is you don't.
8 That's just a good example for you.

9 You're only going to base your decision on
10 what happens in this courtroom. That's a very basic
11 example, but that's a very good example because the only
12 thing that matters is what happens in this courtroom
13 from the witness stand and the exhibits that are
14 introduced and the law that I give to you.

15 Now, there will not be any note taking in this
16 case. I do not expect this case to take very long. So
17 there will not be any note taking. Now, I'm going to
18 let you pick your own foreperson. So when we take a
19 break here in a minute, you all will need to decide who
20 all will be your foreperson.

21 A foreperson is also known as the presiding
22 juror. Now, your vote doesn't count anymore and you
23 don't get paid any extra. Somebody laughed. That was a
24 joke. Okay.

25 You do need to pick a presiding juror or

1 foreperson. Where this young man right here with the
2 glasses is seated, the foreperson will need to sit in
3 that seat.

4 Your sole responsibility is to communicate
5 with the Court and to be in some way, shape, or form in
6 charge of putting in the deliberation time. You will be
7 charged with communicating with the Court.

8 My alternate on the back row. Sir, you can
9 sit anywhere on the back row that you would like, but
10 you do need to sit on the back row. Nobody else has
11 assigned seats, except the foreperson and the alternate.

12 At this time I'm going to release you to your
13 jury room. Do not discuss the case. Keep an open
14 minds. Pick a foreperson. Let's get lunch ordered, and
15 then we'll come right back in and start the case
16 probably in about the next 10 or 15 minutes. Thank you
17 very much. Do not discuss the case and keep an open
18 mind.

19 (The jury retires to the jury room at
20 12:01 P.M.)

21 THE COURT: Anything from the State before we
22 break?

23 MR. CONRAD: Your Honor, just one quick matter
24 I should have brought up earlier. As the defendant is
25 not here, I think with all our witnesses, we were

1 planning on making in-court identifications with, which
2 we don't have the ability now.

3 I have a picture of him from the jail that was
4 taken the night he was arrested and taken to the jail.
5 I plan on having each witness identify as the person,
6 Mr. Brice Driggers.

7 There is no reference on it to where it came
8 from. I don't know if the defense objects to that
9 method or what method the Court would have us use
10 because the State still has to prove Mr. Driggers's
11 identity beyond a reasonable doubt.

12 THE COURT: Right.

13 MR. CONRAD: He is not here.

14 THE COURT: Ms. Eigenbrot?

15 MS. EIGENBROT: Your Honor, we would simply
16 ask the jury not see that picture. It's a mug shot.

17 THE COURT: Let me see it.

18 (Hands to Court.)

19 THE COURT: Go ahead.

20 MS. EIGENBROT: Your Honor, it's a pretty
21 awful picture of my client the night of his arrest. I
22 would ask that it just be simply shown. It can be
23 entered as an exhibit and the jury just not see it.

24 THE COURT: So we want to do it for
25 identification purposes?

1 MS. EIGENBROT: Yes, Your Honor.

2 THE COURT: You will allow them -- if that's
3 consistent with their testimony -- that's the individual
4 they dealt with that night. Okay?

5 MS. EIGENBROT: Thank you, Your Honor.

6 THE COURT: All right. Very well. Anything
7 further?

8 MR. CONRAD: Nothing from the State, Your
9 Honor.

10 MS. EIGENBROT: Nothing from the defense, Your
11 Honor.

12 THE COURT: All right. Let's take about a
13 ten-minute break. I want everybody to be able to put
14 their thoughts together and everything before we jump
15 right into it.

16 MS. EIGENBROT: Thank you.

17 THE COURT: All right. Thank you very much.

18 MR. CONRAD: I'll get this other marked for
19 identification also.

20 (State's Exhibit Number 7 is marked for
21 identification.)

22 (Whereupon there is a recess.)

23 THE COURT: Anything from the State before we
24 begin?

25 MR. CONRAD: No, Your Honor.

1 THE COURT: Okay. Ms. Eigenbrot?

2 MS. EIGENBROT: Nothing from the defense, Your
3 Honor.

4 THE COURT: All right. Bring them in.

5 (The jury returns to the courtroom at
6 12:17 P.M.)

7 THE BAILIFF: All jurors are accounted for,
8 Your Honor.

9 THE COURT: All right. Thank you very much.
10 Mr. Knight, congratulations.

11 FOREPERSON: Thank you.

12 THE COURT: You've been selected as foreperson
13 of this jury.

14 We will now proceed with opening statements.
15 I'll be happy to hear from the State.

16 MR. SHALABI: May it please the Court.

17 THE COURT: Yes, sir.

18 OPENING STATEMENT:

19 MR. SHALABI: Guns are dangerous weapons.
20 Now, it's not illegal to own a gun. Just about anybody
21 can buy one. However, if you choose to own a gun, there
22 are certain laws that you must follow to protect people,
23 to protect you. The defendant choose not to follow
24 those laws; and as a result, he was charged with two
25 counts of unlawful carrying of a pistol.

1 It's July 26, 2011. Ms. Linda Henderson was
2 working her job at the Dollar General at Forest Acres.
3 She sees the defendant and his girlfriend at the time,
4 Amanda Herlong, arguing outside.

5 They are going back and forth; and at some
6 point or at one point during the argument, Ms. Henderson
7 sees the defendant reach into his waistband, grab a gun,
8 put it into his backpack, and walk into the store.

9 Ms. Linda is afraid. She calls 9-1-1, just
10 about what any other person would do in that situation.
11 Meanwhile, the defendant walks back out of the store and
12 comes back in still holding that backpack.

13 A short time later the police department
14 arrives, a couple of officers. They see Amanda Herlong
15 standing outside, and Officer Smith immediately goes
16 inside in search of this man with a gun.

17 He makes contact with this person, with the
18 defendant, Brice Driggers; and he searches his backpack.
19 Inside that backpack he sees a magazine clip for a
20 .22-caliber handgun.

21 He asks him about the gun, and Mr. Driggers
22 refuses to answer any questions about it. At this point
23 for everyone's safety in the store, Officer Smith puts
24 the defendant in handcuffs.

25 He then goes and searches for this gun. He

1 walks around the store, doesn't see it, goes outside;
2 and outside the store on the side are two guns, one of
3 them being a .22-caliber handgun, that just so happened
4 to have the same magazine clip as the one found inside
5 the defendant's backpack.

6 Meanwhile, officers are making contact with
7 Amanda Herlong, the defendant's girlfriend at the time.
8 She will take the stand. You will hear from her. She
9 finally admits to the defendant having two guns at that
10 time.

11 While this is occurring, the defendant appears
12 to have some medical issues. So officers, for the
13 defendant's own safety, call EMS. The ambulance
14 arrives. Two EMT technicians come and treat the
15 defendant.

16 As they're treating the defendant, he is
17 acting obnoxious. They are unable to control him. He
18 makes statements about these guns that he had. You're
19 going to hear from them on this stand.

20 You will also hear from Officer Smith, the
21 officer who found these guns. You are going to hear
22 about him and his testimony. You'll also see the video
23 of the defendant in the patrol car being transported to
24 the jail, talking about his guns and how he was going to
25 get his guns back.

1 Now, again, the defendant is charged with two
2 counts of unlawful carrying of a handgun. As the judge
3 said, we have the burden of proof beyond a reasonable
4 doubt; and we welcome that burden. I'm confident that
5 by the end of this trial, you'll find the defendant
6 guilty of two counts of unlawful carrying of a handgun.
7 Thank you.

8 THE COURT: Thank you, Mr. Shalabi.
9 Ms. Eigenbrot?

10 MS. EIGENBROT: Thank you, Your Honor. May it
11 please the Court.

12 THE COURT: Yes, ma'am.

13 OPENING STATEMENT:

14 MS. EIGENBROT: Good afternoon, members of the
15 jury. Now, what Mr. Shalabi told you is a story about
16 my client, Mr. Driggers. Mr. Driggers was present at
17 the Dollar General that day. He was there with his
18 girlfriend at the time, Ms. Amanda Herlong.

19 Now, Mr. Driggers, you'll also hear, was
20 extremely intoxicated. Him and Ms. Herlong had been
21 arguing at some point. He was in and out of the store,
22 but I want you to think about the things that you will
23 not hear today.

24 First and foremost, the most important part is
25 that you will not hear the police or the EMT officers

1 see my client in possession of a gun. They do not find
2 the guns on him. The guns were found behind the Dollar
3 General while my client was inside.

4 You will also not hear that when the guns were
5 found, they were not tested. No fingerprints were done.
6 No DNA was taken. So anyone could have put those guns
7 back there.

8 You will also not hear or see any surveillance
9 video from outside Dollar General. You will also not
10 hear a 9-1-1 call. We do not know what Ms. Henderson
11 told police. We do not hear the description on the
12 9-1-1 phone call.

13 So these are things I want you to focus on
14 that we are arguing in this case today. You will not
15 hear any of these pieces of evidence. I want you to
16 take that into consideration when you are back there
17 deliberating.

18 Once again, Mr. Driggers was not found in
19 possession of the guns. The guns were found out in the
20 back. Ms. Herlong was the only individual outside when
21 police arrived, and there was no forensic evidence tying
22 my client to the gun.

23 As the State has told you, they do have the
24 burden in this case, which means as the defense, we
25 don't have to prove a single thing to you. The burden

1 is completely on them, and their burden is beyond a
2 reasonable doubt. It's the highest burden in the State.

3 We would ask you guys to consider all the
4 facts; and if you have any hesitation in convicting
5 Mr. Driggers today, we hope that you find Mr. Driggers
6 not guilty of these two unlawful carrying of a pistol
7 charges. Thank you.

8 THE COURT: Thank you, Ms. Eigenbrot.
9 Call your first witness.

10 MR. CONRAD: Thank you, Your Honor. The State
11 calls Linda Henderson.

12 THE COURT: All right. Ms. Henderson, please
13 come forward and be sworn.

14 (The witness comes forward.)

15 LINDA HENDERSON, being
16 first duly sworn, testifies as follows:

17 THE CLERK: Have a seat in the witness box.
18 State your name for the record.

19 THE WITNESS: Linda Henderson.

20 MR. CONRAD: May it please the Court.

21 THE COURT: Yes, sir.

22 **DIRECT EXAMINATION**

23 BY MR. CONRAD:

24 Q Good afternoon, Ms. Henderson.

25 A Good afternoon.

1 Q Ms. Henderson, how long have you lived -- or,
2 first, do you live in Columbia currently?

3 A Yes.

4 Q How long have you lived in Columbia?

5 A Almost ten years.

6 Q Ten years. And did you go to high school in
7 Columbia?

8 A No.

9 Q Okay. Where did you go to high school?

10 A Springfield, Illinois.

11 Q Did you get your high school diploma there?

12 A Yes.

13 Q Did you go to college at all?

14 A For a little bit.

15 Q All right. Where do you currently work?

16 A I'm the manager at Grand Street Apartments. The
17 owner is Pendegraph Management.

18 Q Can you just briefly tell the jury what your
19 day-to-day responsibilities are there?

20 A I rent apartments. I collect rent. I do
21 evictions. I renew leases.

22 Q All right.

23 THE COURT: Can you scoot up just a little
24 bit. Thank you.

25 THE WITNESS: You're welcome.

1 THE COURT: Make sure everybody can hear you.

2 THE WITNESS: Okay.

3 BY MR. CONRAD:

4 Q I'm going to direct your attention back to July 26,
5 2011. Were you working at the Covenant Apartments
6 [sic] back then?

7 A Yes. Are you talking about at Dollar General?

8 Q Well, were you working at Covenant Apartments at
9 that point?

10 A I was working at Grand Street Apartments. That was
11 my full-time day job.

12 Q My apologies. Did you also have a second job at
13 that point?

14 A Yes.

15 Q And where was your second job?

16 A Dollar General.

17 Q What did you do at Dollar General?

18 A Check out customers, stock shelves, but mostly
19 check out customers.

20 Q How long did you work there?

21 A It was less than a year.

22 Q Okay. And, again, directing your attention to
23 July 26, 2011, do you recall if you worked that
24 day?

25 A Yes.

1 Q Do you recall what shift you worked?

2 A Second.

3 Q Okay. And the defendant in this case, a gentleman
4 by the name of Brice Driggers, do you recall him at
5 all coming into the Dollar General on that day?

6 A Yes.

7 Q Okay. I'm going to --

8 MR. CONRAD: If I can approach the witness,
9 Your Honor?

10 THE COURT: You may.

11 BY MR. CONRAD:

12 Q What has been marked as State's Exhibit Number 7,
13 do you recognize that picture, ma'am?

14 A Yes, sir.

15 Q Who do you recognize that picture as?

16 A The person that came into the Dollar General.

17 Q Okay. And that was Brice Driggers. Did you -- was
18 Mr. Driggers there with anybody?

19 A Yes.

20 Q Who was he there with?

21 A The young lady that's sitting on the first row.

22 Q Okay.

23 A With the pink blouse on.

24 Q Did anything about his behavior or her behavior
25 strike you as unusual about what was going on?

1 A He was like talking to her, kind of mean at her;
2 and she was shaking her head no.

3 Q Okay.

4 A The whole time they were talking.

5 Q Would it be fair to say they were having some sort
6 of argument?

7 A Yeah, it looked like they were kind of fussing back
8 and forth. He was; she was just shaking her head
9 no.

10 Q And that's the reason you were directing your
11 attention towards him?

12 A Yes, because I could hear him. When the customers
13 came into the store, they were like, "Ms. Linda,"
14 because there was regular customers. I said,
15 "Yeah, I see them."

16 Q So at this point it's fair to say you were paying
17 attention and watching them?

18 A Yeah, because I didn't know what they were doing.

19 Q At various points during this argument or
20 conversation, were they inside or outside or both
21 or what?

22 A Both. They came in the store; they went out. They
23 came in, went back out. It was always on the side
24 of the building that they would go in in front of
25 the ice machine.

1 Q And from where the ice machine was, could you see
2 that from where you were?

3 A Yeah, it's a glass window.

4 Q This whole time you were standing at the checkout
5 counter?

6 A The cash register. Yeah, I never moved.

7 Q Was the store busy at this point? Were there a lot
8 of customers? Do you remember?

9 A It was in and out.

10 Q Okay.

11 A It wasn't packed.

12 Q At some point during this argument, did you see
13 Mr. Driggers do anything that caused you concern?

14 A Yes.

15 Q What did he do?

16 A He pulled a gun, a silver gun, out. And as soon as
17 I saw it, I just looked down and picked up the
18 phone and dialed Forest Acres, the actual number.
19 I didn't call 9-1-1.

20 Q Okay.

21 A It was a direct dial to Forest Acres.

22 Q You said he pulled a gun. Do you remember where
23 that gun came from?

24 A The backpack that he had on.

25 Q It came from his backpack?

1 A Yeah, he pulled it out of the backpack.

2 Q Okay. Do you remember: Did you see him pull the
3 gun from the backpack or put it in there?

4 A He pulled it from his pants and put in the pack
5 that he had.

6 Q All right.

7 A Before he walked in the store, I was ringing up a
8 customer. I just stopped and didn't know why. I
9 didn't say anything. I just looked down and called
10 the police.

11 Q I'm not asking you to speculate about what could
12 have or might have happened; but seeing the gun,
13 did that cause you concern?

14 A Yeah.

15 Q And you were scared?

16 A Yes.

17 Q Okay. And so you called Forest Acres directly?

18 A Yes.

19 Q Do you recall what you said to then?

20 A I told the lady on the phone, "I will not repeat
21 this. I will say it one time. I'm at Dollar
22 General on Covenant Road, and you need to send the
23 police over here because a man just walked in with
24 a gun, and I'm getting ready to leave."

25 She was like, "Ma'am, calm down." I said, "I

1 am calm but I'm getting ready to leave." She said,
2 "Are there customers in the store?" I said, "Yeah,
3 but I'm not staying in here." But I ended up on
4 the phone with her the whole time. The police came
5 right away.

6 Q Did you give her a description of the man?

7 A Yeah. I said, "It was a white guy, and he looks
8 kind of scraggily." But when that policeman came
9 in, I just pointed to the back where he was.

10 Q Okay. All right. If I showed you a couple of guns
11 today, do you think you might recognize the gun
12 you saw in Mr. Driggers's hand?

13 A Yes.

14 MR. CONRAD: Okay. If I can approach, Your
15 Honor?

16 THE COURT: Yes.

17 BY MR. CONRAD:

18 Q I'm going to show you what's been marked as State's
19 Exhibit 6 --

20 THE COURT: Tell me how that is secured,
21 Mr. Conrad.

22 MR. CONRAD: We have gunlocks on them, Your
23 Honor.

24 THE COURT: The gunlocks through them?

25 MR. CONRAD: Yes, sir.

1 THE COURT: Very good. Thank you.

2 BY MR. CONRAD:

3 Q I show you State's Exhibit 6 and State's Exhibit 5.

4 Do you recognize either of these guns?

5 A (No response.)

6 Q If not it's okay.

7 A I don't know.

8 Q It's okay. Do you recall giving a description of
9 the gun to the person on the phone?

10 A Yeah, I just told them it was a big silver gun.

11 Q A silver gun?

12 A Yes.

13 Q Would you agree with me that both of those guns are
14 silver?

15 A Yes.

16 Q And you said when the officer arrived, you
17 pointed --

18 A -- to the back.

19 Q -- to where Mr. Driggers was? Where was he
20 standing when the officer got there?

21 A He was -- if I'm standing in the front looking at
22 the store, he would have been to the left towards
23 the back; and there's a door that you can go into
24 that would keep supplies and all the store items.

25 Q And he was standing in the aisle?

1 A He was back that way, yes.

2 Q All right. And you said that the other lady that
3 you saw him with, having an argument with, at this
4 point, where was she standing when the officer got
5 there?

6 A She was outside by the ice machine.

7 Q Okay. And after you saw the defendant take the gun
8 out of his waistband, which you said already, and
9 put it into his backpack, did you see what exactly
10 he did the next moment or were you calling the
11 police?

12 A Once I saw the gun?

13 Q Uh-huh.

14 A I looked down, dialed the number. The phone was
15 down there under the counter; and when I looked to
16 my right, he was walking past me. That's what I
17 told the lady on the phone, that they needed to
18 send somebody because I was getting out of the
19 store.

20 Q All right.

21 MR. CONRAD: Beg the Court's indulgence.

22 THE COURT: Yes, sir.

23 (Pause.)

24 BY MR. CONRAD:

25 Q Do you recall, Ms. Henderson, after you saw him

1 came in, after you called police, do you recall if
2 he went back outside or do you remember?

3 A No, he went straight back and to the left.

4 Q Okay.

5 MR. CONRAD: Nothing further from the State.

6 THE COURT: Cross?

7 MS. DYAR: Thank you, Your Honor. May it
8 please the Court.

9 THE COURT: Yes, ma'am.

10 **CROSS EXAMINATION**

11 BY MS. DYAR:

12 Q All right. So we're just going to -- we're going
13 to go straight to the day that you were working.
14 Had you worked that day at the apartment complex
15 previously into going into your shift at Dollar
16 General?

17 A I believe it was on a weekend.

18 Q Okay. So you only work at your full-time job
19 Monday through Friday?

20 A Monday through Friday.

21 Q Okay.

22 A Nine to 5:00.

23 Q And you said second shift; right?

24 A At Dollar General?

25 Q Yes.

1 A Yes, first shift or second. I can't work first
2 because I work 9:00 to 5:00.

3 Q And what time does the second shift start?

4 A Normally at 4:00 but I got off at 5:00. Ms. Eloise
5 knew what time I worked at the complex. She hired
6 me to give me a chance, knowing I got off at 5:00.

7 Q On this particular day I'm talking about, did you
8 start at 4:00 on that day?

9 A I believe I came in at 2:00. I can't remember.

10 Q And you said on this particular day at that
11 particular time, there were some people in and out
12 of the store; but it wasn't particularly busy?

13 A No. It was like normal, people in and out
14 shopping.

15 Q How many people would you say were in the store or
16 around the store about that time?

17 A I have no idea.

18 Q Okay. But there was a person at your cash
19 register?

20 A Yes, there were people in line.

21 Q Okay. And you choose to call Forest Acres Police
22 directly instead of 9-1-1?

23 A Yes, that's what we were told to do.

24 Q Okay.

25 A And the number was typed out and taped down.

1 Q So you're at the cash register. When you walk in
2 the front door, is the cash register directly -- I
3 know the setup of Dollar General generally; but
4 when you walk in, is the cash register going to the
5 left of the door or to the right of the door?

6 A Walking into the store?

7 Q Yes, ma'am.

8 A I was on the right. The one on the left is for the
9 manager.

10 Q Okay. So you would be on the right-hand side. If
11 you're walking in the front door, the ice machine
12 is going to be to the left of the front door if
13 you're facing the front door?

14 A If I'm coming into the store facing it, the ice
15 machine is on the left.

16 Q Okay. Where you're at your cash register to the
17 ice machine, can you give us an estimation of how
18 many feet that is? How far away? (Walking.)
19 Again, you can tell me to stop if you want to.

20 A No, it's not that far.

21 Q Okay. Closer? (Walking.)

22 A About right where you are. It's right outside the
23 door.

24 Q Okay. Now, you give the description of a gun. You
25 say that he is pulling it from his pants. Okay.

1 Is this from the back, from the back waistband?

2 A Yes. The only reason I kept looking at it is
3 because they were arguing.

4 Q And what time of day is this?

5 A I guess it was after lunch. It was more towards
6 the...

7 Q Would it be around 8:00 o'clock in the evening?

8 A I don't think it was that late.

9 Q So Mr. Driggers comes to the store. You're on the
10 phone with police at this point. You're on the
11 phone with Forest Acres. Okay. You call them as
12 soon as you see Mr. Driggers pull a gun?

13 A (Nods in the affirmative.)

14 Q And put it in his backpack?

15 A Yes.

16 Q And then he comes in the store?

17 A Yes.

18 Q As you're on the phone with Forest Acres?

19 A Yes.

20 Q So at this point, he is -- he hasn't left the store
21 at any point while you're on the phone with the
22 police. He stays in the store?

23 A Yes.

24 Q Okay. And Ms. Herlong, the female that was with
25 him that day, stays outside? She doesn't come in

1 the store at all either?

2 A No, she was by the ice machine.

3 Q I'm going to assume you don't know much about the
4 surveillance or anything at the Dollar General, but
5 was there anything that would have possibly
6 recorded this incident at that time that you're
7 aware of?

8 A I have no idea.

9 Q Okay.

10 MS. DYAR: Beg the Court's indulgence.

11 THE COURT: Yes, ma'am.

12 (Pause.)

13 BY MS. DYAR:

14 Q But you did tell a police officer with Forest Acres
15 that you did actually call 9-1-1. You gave a
16 written statement. Do you remember that?

17 A Do what now?

18 Q Do you remember giving a written statement to law
19 enforcement?

20 A Yeah.

21 Q Okay. Do you remember telling them that you called
22 9-1-1?

23 A Do I remember telling them that I called 9-1-1?

24 Q You told a Forest Acres police officer that you
25 called 9-1-1?

1 A There were about six police cars that came.

2 MS. DYAR: Nothing further, Your Honor.

3 THE COURT: Redirect?

4 MR. CONRAD: Just briefly, Your Honor.

5 REDIRECT EXAMINATION

6 BY MR. CONRAD:

7 Q Ms. Henderson, you testified you saw the silver gun
8 in the male's hand, Mr. Driggers's hand; correct?

9 A Yes.

10 Q Did you ever see it in Ms. Herlong's hand, the
11 female's hand?

12 A No.

13 Q And I believe you testified that you weren't -- you
14 think you believe, to the best of your
15 recollection, you worked second shift that day?

16 A Yes. I can't remember what time of day it was. I
17 know it wasn't late, like we close at 9:00.

18 Q Uh-huh.

19 A And I don't believe it was as late as 8:00 o'clock.

20 Q Do you recall the typical second shift hours?

21 A Mine were different; so I can't remember.

22 Q Okay. And finally you testified that you saw the
23 defendant with a gun in his hand and put it in his
24 backpack?

25 A Yes.

1 Q And then you looked down and called Forest Acres
2 Police Department?

3 A Yes.

4 Q So it's fair to say for at least some period of
5 time that you took your eyes off of him while you
6 were making the phone call before he came inside;
7 is that correct?

8 A Yes.

9 MR. CONRAD: No further questions.

10 THE COURT: Recross?

11 MS. DYAR: No, Your Honor.

12 THE COURT: Thank you, ma'am. You are
13 excused. Have a nice day.

14 (The witness leaves the witness stand.)

15 THE COURT: Any objection to her being
16 excused?

17 MR. DYAR: No objection, Your Honor.

18 MR. CONRAD: No, Your Honor.

19 THE COURT: Okay. Thank you, Ms. Henderson.
20 Call your next witness.

21 MR. CONRAD: The State calls Amanda Herlong.

22 THE COURT: All right. Ms. Herlong, please
23 come forward and be sworn.

24 (The witness comes forward.)

25 AMANDA HERLONG, being

1 first duly sworn, testifies as follows:

2 THE CLERK: Thank you. Have a seat in the
3 witness stand, please. State your name for the record.

4 THE WITNESS: Amanda Herlong.

5 THE COURT: Yes, sir.

6 MR. CONRAD: Thank you, Your Honor. If it
7 please the Court.

8 THE COURT: Yes, sir.

9 DIRECT EXAMINATION

10 BY MR. CONRAD:

11 Q Good afternoon, Ms. Herlong.

12 A Good afternoon.

13 Q Thank you for being here today. Do you know the
14 defendant in this case, Brice Driggers?

15 A Yes.

16 Q Okay. How do you know him?

17 A I've known him since middle school.

18 Q I'm going to show you a picture that's been marked
19 as State's Exhibit 7. Do you recognize that
20 individual?

21 A (Nods in the affirmative.)

22 Q Who is that?

23 A Brice Driggers.

24 Q Okay. I'm going to direct your attention to the
25 day we've been talking about, which is July 26,

1 2011. Do you recall that day at all?

2 A Yes, I do.

3 Q On that day could you just summarize to the jury
4 what the status of your relationship with
5 Mr. Driggers was on that day?

6 A I can't really say I was his girlfriend. We were
7 just kind of together, hanging out together. I
8 mean, I've known him for a long time. So we just
9 hung out. I wouldn't say I was his girlfriend.

10 Q Okay. But you had some sort of relationship with
11 him at that point?

12 A Yes.

13 Q Do you still have any sort of relationship with
14 him?

15 A No.

16 Q And do you recall on that day going to the Dollar
17 General on Covenant Road?

18 A Yes.

19 Q And who did you go with?

20 A Brice Driggers.

21 Q And that's the person I showed you in the picture?

22 A Yes.

23 Q And when you went there with him, did you know when
24 you went there with him, did he have any guns in
25 his possession?

1 A Yes.

2 Q All right. Do you know how many he had?

3 A Two.

4 Q And do you know where he carried them?

5 A Where he carried them? I guess he had them -- I
6 thought he had them in his bag. He had them in his
7 bag to begin with.

8 Q Okay.

9 A And that's one of the reasons why we were arguing.

10 Q All right. But how did you know he had those guns
11 before he went to the Dollar General?

12 A Because we were at his house first. He had taken
13 them from his house. They were at his house.

14 Q And so when you and he arrived at the Dollar
15 General, you said you were arguing?

16 A Yes.

17 Q About the guns?

18 A Yes.

19 Q And do you recall him ever touching or pulling one
20 of those guns out?

21 A Yes.

22 Q Do you remember what he did with that gun when he
23 pulled it out?

24 A He wanted me to put them on my person.

25 Q Why?

1 A Because he wanted to go into the Dollar General.

2 Q And did you accept the gun?

3 A No.

4 Q Did you take the gun from him?

5 A No.

6 Q So what did he do instead?

7 A He took them and hid them behind the store or
8 beside the side of the store.

9 Q Okay. About how far around the store was that from
10 the entrance?

11 A Not all the way to the back of the store, pretty
12 much to the side of the store. There's a lot of
13 brush and trash and all that.

14 Q Could you just give a rough estimate about how many
15 feet it was from the side of the store?

16 A Probably about from me to you.

17 Q Okay.

18 A And it was the left side of the store.

19 Q And did you actually see him take those guns back
20 there or did you just see him walk back in that
21 direction?

22 A I saw him walk back there.

23 Q And then he went in. What did he do next?

24 A Then he went into the store.

25 Q Did you go into the store at that point?

1 A No.

2 Q During this argument or conversation, did you ever
3 go inside the store?

4 A No.

5 Q So you stayed outside?

6 A Yes.

7 Q Your testimony is you stayed outside. When the
8 police arrived, where were you?

9 A I was standing by the ice -- by the ice machine
10 outside.

11 Q And at any point did the police approach you and
12 talk to you?

13 A Yes.

14 Q What did they -- do you recall what they asked you?

15 A I mean, they just asked me, you know, my
16 relationship to Brice and why he had the guns and
17 what he was planning on doing and things like that.

18 Q Did they ask you about the guns themselves, where
19 they were?

20 A They asked where they were and whose they were and
21 what he was planning on doing with them.

22 Q When you were first asked about the guns, were you
23 truthful in your response?

24 A Well, I wasn't -- I didn't lie. I just said I
25 don't know. I don't know. I just kept saying I

1 don't know.

2 Q Did you claim that -- did you claim Mr. Driggers
3 did not have the guns at first?

4 A At first, yes.

5 Q So you weren't truthful at first; right?

6 A Not at first. I was scared honestly.

7 Q But after some further questioning, did you come
8 clean --

9 A Yes, yes.

10 Q -- to the police? What did you tell them?

11 A I told them that they were Brice's guns.

12 Q Had they found the guns?

13 A Yes.

14 Q And they showed those guns to you?

15 A I can't say.

16 Q All right.

17 A I mean, I know they had them. They didn't come up
18 to me and, you know...

19 Q Did they ask you if you had seen Mr. Driggers with
20 those guns?

21 A Yes.

22 Q How did you respond?

23 A Yes. And I also told them that he tried to put
24 them on -- he wanted me to hold them.

25 Q All right. And did they ask you how the guns got

1 to where they were, where they found them?

2 A Yes.

3 Q What did you tell them?

4 A I don't know.

5 Q All right. That was your first answer; correct?

6 A Yes. I mean, I assumed they were his.

7 Q Did they ask you again later on how they got back
8 to where they were found?

9 A Yes.

10 Q And did you answer it differently later?

11 A Yes.

12 Q And what did you tell them?

13 A I told them he had taken it back there.

14 Q He, meaning Mr. Driggers?

15 A Yes, Brice.

16 Q If I showed you those guns today, do you think you
17 would recognize them?

18 A Maybe.

19 Q Maybe. Okay. I'm going to show them to you real
20 quick.

21 MR. CONRAD: If I can approach, Your Honor?

22 THE COURT: Yes, sir.

23 BY MR. CONRAD:

24 Q Again, State's Exhibit's 6 and 5. Do these look
25 familiar to you?

1 A (Nods in the affirmative.)

2 Q Why do those look familiar to you?

3 A I just remember the orange.

4 Q And were those the guns that Mr. Driggers had on
5 that day, July 26, 2011?

6 A Yes.

7 Q Okay. Ms. Driggers -- excuse me. I apologize --
8 Ms. Herlong, it's true that you have current
9 pending criminal charges against you?

10 A Yes.

11 Q Do they have anything to do with this case?

12 A No, this is way after.

13 Q And has anything been offered to you by my office
14 or any law enforcement of any sort of deal or plea
15 or negotiation that's contingent on your testimony
16 today?

17 A No.

18 Q So you're not getting any benefit from testifying
19 today?

20 A No.

21 MR. CONRAD: Beg the Court's indulgence.

22 (Pause.)

23 BY MR. CONRAD:

24 Q Ms. Herlong, one last question. After going to
25 Dollar General, did you and Mr. Driggers have a

1 plan about where you were going after you went to
2 the Dollar General or do you recall?

3 A No.

4 MR. CONRAD: Nothing further from the State.

5 MS. EIGENBROT: Thank you, Your Honor. May it
6 please the Court.

7 THE COURT: Yes, ma'am.

8 CROSS EXAMINATION

9 BY MS. EIGENBROT:

10 Q Hi, Ms. Herlong.

11 A Hi.

12 Q I want to talk to you a little about -- you said
13 you've known Brice since middle school; correct?

14 A Yes.

15 Q You two were not dating, but you had some sort of a
16 relationship going on?

17 A Right.

18 Q You were with him earlier that day?

19 A Yes.

20 Q Along with being at Dollar General; correct?

21 A Yes.

22 Q You said you were at his house?

23 A Yes -- or his parent's house.

24 Q Okay. Now, after leaving the house, you went to
25 the Dollar General; correct?

- 1 A Yes.
- 2 Q And you were actually there waiting on a ride?
- 3 Does that sound familiar to you?
- 4 A (Indicating in the negative.)
- 5 Q No?
- 6 A No.
- 7 Q Now, Mr. Driggers, he went into the store at some
- 8 point; is that correct?
- 9 A Yes.
- 10 Q With a backpack?
- 11 A Yes.
- 12 Q And was that -- that was before he had taken the
- 13 gun out of -- well, I'll try that question again.
- 14 You stated that he had the guns in his bag;
- 15 correct? The backpack?
- 16 A At first, yes. When we were walking -- when we
- 17 walked to the Dollar General.
- 18 Q Now, Ms. Herlong, have you ever had -- have you
- 19 ever seen him with these guns before?
- 20 A No.
- 21 Q Had you possessed these guns at some point?
- 22 A No.
- 23 Q Now, you stated that you went -- you were at the
- 24 Dollar General and you two were arguing outside;
- 25 correct?

1 A Correct.

2 Q You were, I guess I would say, arguing with him?

3 You were pretty upset with him; correct?

4 A Yes.

5 Q And after the argument is when he went inside the

6 store; correct?

7 A Well, we argued the whole time, like before and

8 after. Up until he went off in the ambulance, we

9 argued.

10 Q Now, you never went in the store with Mr. Driggers;

11 correct?

12 A No.

13 Q You stayed outside the entire time?

14 A Yes.

15 Q And the guns were found outside; correct?

16 A Yes.

17 Q Now, Ms. Herlong, let's talk a little bit about

18 when police arrived on the scene. You were outside

19 by the ice machine; right?

20 A Yes.

21 Q And when they went inside, you stayed by the ice

22 machine?

23 A Yes.

24 Q When they -- now, when they came back outside, at

25 that point did you know they were there to arrest

1 Brice?

2 A I assumed, yeah.

3 Q Now, they approached you at some point; correct?

4 A Yes.

5 Q When they approached you, they asked about the
6 guns?

7 A Yes.

8 Q And you denied knowing anything about guns, him not
9 having any guns; correct?

10 A At first, yes.

11 Q And you also told police you were there just
12 getting a drink and waiting on a ride; is that
13 correct?

14 A I know we were there getting a drink. I don't know
15 about waiting on the ride, no.

16 Q Now, eventually the police come back and say, "We
17 founds some guns." Is that right?

18 A Yes.

19 Q And your initial reaction to the police finding the
20 gun is saying, "Well, they shouldn't be loaded."
21 Isn't that correct?

22 A I don't understand that. I don't know why I said
23 that.

24 MS. EIGENBROT: I beg the Court's indulgence.

25 THE COURT: Yes, ma'am.

1 (Pause.)

2 BY MS. EIGENBROT:

3 Q Now, you remember talking to Officer Smith;
4 correct?

5 A Yes.

6 Q He was the one that brought the guns to you;
7 correct?

8 A Yes.

9 Q But you do not remember saying to Officer Smith,
10 "They shouldn't be loaded"?

11 A No, I don't remember. I may have. I don't know.

12 Q And at that point Officer Smith starts questioning
13 you further; is that correct?

14 A Yes.

15 Q He even Mirandizes you, doesn't he?

16 A No.

17 Q He reads you the Miranda rights?

18 A No.

19 Q He did not read you the Miranda rights?

20 A No, I wasn't being arrested.

21 Q But he did -- he told you -- he read you the
22 Miranda rights, but you were not under arrest at
23 the time?

24 A Right. I don't remember him reading me my rights,
25 no.

1 Q At that point is when you tell the officer, Officer
2 Smith, that the guns belong to Brice; isn't that
3 correct?

4 A Yes.

5 Q After he starts questioning you about finding the
6 guns?

7 A Yes.

8 Q And after you made statements about guns?

9 A Yes.

10 Q Now, Ms. Herlong, you said you were with Brice
11 earlier that day?

12 A Yes.

13 Q And you knew he had -- you claim you knew he had
14 the guns on him?

15 A Not the whole day, no, just right before we went to
16 the Dollar General. We had been swimming, stuff
17 like that. He didn't have them on him all day.

18 Q At some point Mr. Driggers gave you the guns,
19 didn't he?

20 A No, he tried to.

21 Q You took them to the back of the store; isn't that
22 correct?

23 A No.

24 Q And when the police approached you though, your
25 first statement was, "They shouldn't be loaded"?

1 A I don't recall saying that but, I mean, maybe I
2 did. I don't know.

3 MS. EIGENBROT: Beg the Court's indulgence.
4 (Pause.)

5 MS. EIGENBROT: Nothing further, Your Honor.

6 THE COURT: Redirect?

7 MR. CONRAD: Nothing further for this witness,
8 Your Honor.

9 THE COURT: May this witness be excused?

10 MR. CONRAD: No objection.

11 MS. EIGENBROT: I have no objection.

12 THE COURT: Thank you, ma'am. You are free to
13 leave. Have a nice day.

14 (The witness leaves the witness stand.)

15 THE COURT: Call your next witness.

16 MR. CONRAD: The State calls Officer Smith.

17 THE COURT: All right. Please come forward
18 and be sworn, sir.

19 (The witness comes forward.)

20 MICHAEL SMITH, being
21 first duly sworn, testifies as follows:

22 THE COURT: Thank you very much. Have a seat.
23 State your name for the record.

24 THE WITNESS: Michael Smith.

25 THE COURT: Your witness.

1 MR. CONRAD: Thank you, Your Honor. If it
2 please the Court.

3 DIRECT EXAMINATION

4 BY MR. CONRAD:

5 Q Officer Smith, where are you currently employed?

6 A Forest Acres Police Department.

7 Q How long have you been employed there?

8 A A little over five years.

9 Q How long have you been a law enforcement officer?

10 A Quite a while. I was with the Richland County
11 Sheriff's Department before coming over to Forest
12 Acres.

13 Q Approximately how many years?

14 A Fifteen years.

15 Q And just give the jury just a brief description of
16 the training you received and what your experience
17 has been.

18 A I went to the Criminal Justice Academy here in
19 Columbia, received my Class I certification there
20 and would have gone through annual firearms
21 qualifications. Depending on which agency you are
22 with, you might see extra qualifications, such as
23 radar certification, NCIC certification,
24 Breathalyzer, that sort of thing.

25 Q And what are your current duties with Forest Acres

1 Police Department?

2 A Patrolman.

3 Q And please tell the jury, what does that involve?

4 What are your day-to-day duties and tasks?

5 A We work the streets in a marked patrol car in a
6 uniform. We take calls from dispatch, whether it
7 be a traffic accident or armed robbery. We also do
8 some medical calls, things like that. So a basic
9 policeman, like a deputy sheriff or police officer.

10 Q Okay. I'm going to direct your attention to
11 July 26, 2011. Do you recall that day, sir?

12 A Yes, sir.

13 Q Do you recall if you were working that day?

14 A I was.

15 Q You were working in your normal capacity as a
16 patrolman?

17 A Yes, sir.

18 Q Do you recall at some point during that day getting
19 a call about something happening at the Dollar
20 General on Covenant Road?

21 A I did.

22 Q Is that the address there at 3724 Covenant Road?

23 A It is.

24 Q Is that in the City of Forest Acres?

25 A It is.

1 Q Which county is that in?

2 A Richland County.

3 Q And do you recall what the nature of that call was?

4 A A person at the store -- in the store with a
5 pistol.

6 Q And you received that over your radio dispatch?

7 A I did.

8 Q And did the dispatcher give a description of the
9 person with the gun?

10 A Yes.

11 Q And what was the description they gave you?

12 A It was a white male with a backpack and a black
13 baseball cap, I believe.

14 Q Okay. So at this point you're responding to the
15 Dollar General and what you know is there is a man
16 with a gun. Do you know if the dispatcher said he
17 was inside or outside?

18 A She said he was inside.

19 Q About how far away were you from the Dollar General
20 when you received the call?

21 A Just a couple of blocks. I was pretty close.

22 Q So how long did it take for you to respond to the
23 Dollar General?

24 A Probably less than a minute, I guess, maybe a
25 minute.

1 Q And did you know the name of who you were going to
2 be looking for before you got there? Did you know
3 who you might be looking for?

4 A As far as the suspect?

5 Q Yes.

6 A No, sir.

7 Q And when you pulled up initially, what did you
8 observe outside?

9 A I observed Ms. Herlong who was standing to the left
10 on the outside of the store by the ice machine.

11 Q Why did you take note of her being there?

12 A It was mentioned by our dispatcher that she was out
13 there with him and gave a description of her
14 wearing a pink top.

15 Q And what did you do when you got there?

16 A I pulled up. I looked at her. Then I didn't see
17 anything on her. So I went inside and made contact
18 with Ms. Henderson.

19 Q And you saw Ms. Henderson. Where was she standing?

20 A Right up front.

21 Q Did you have a conversation with her? Did you ask
22 her any questions?

23 A I pretty much -- just when I pulled up and went
24 inside, I motioned to her. She pointed over to the
25 left side of the store.

1 Q Okay. Did you go towards that direction she
2 pointed?

3 A I did.

4 Q What did you see when you went that way?

5 A When you round the aisle, it's the first aisle on
6 the left, all the way around to the left side of
7 the store. As soon as I turned the aisle,
8 Mr. Driggers was there.

9 Q When you say Mr. Driggers --

10 MR. CONRAD: If I could approach, Your Honor?

11 THE COURT: Yes, sir.

12 BY MR. CONRAD:

13 Q I'm going to show you a picture that's been marked
14 as State's Exhibit 7. Do you recognize that
15 picture?

16 A Yes.

17 Q And who do you recognize as that picture?

18 A Mr. Driggers.

19 Q And that's the person your saw standing in the
20 aisle --

21 A Yes, sir.

22 Q -- when you approached. What was he doing at that
23 point?

24 A Right there he was standing looking at some items
25 on the shelf.

1 Q Did you call his attention? Did you get his
2 attention?

3 A As soon as he saw me, he looked at me; and he
4 immediately reached into the side of his backpack.

5 MR. CONRAD: Beg the Court's indulgence.

6 (Pause.)

7 BY MR. CONRAD:

8 Q When you saw his hand reach into the backpack, what
9 did you do?

10 A I thought he was reaching for a gun.

11 Q Okay. What did you do at that point?

12 A Well, his hand was inside of the backpack. It's
13 like a zipper. I saw his hand go in. I grabbed
14 his wrist in case he was pulling out a gun.

15 Q So you were concerned about him potentially pulling
16 out a gun?

17 A Yes.

18 Q So you grabbed his wrist. What did you do at that
19 point?

20 A I went ahead and put him in handcuffs. I told him
21 to put his hands out, and I put him in handcuffs.

22 Q At that point did he match the description of the
23 person that you had been given over the radio as
24 the person having the gun?

25 A Yes, sir.

1 Q And is he the person who was in the area that
2 Ms. Henderson pointed you to?

3 A Yes, sir.

4 Q He had a backpack; correct?

5 A Yes, sir.

6 Q And that was specifically mentioned in the radio
7 call?

8 A Yes, sir.

9 Q And so at this point did you search or pat him down
10 looking for this gun?

11 A Yes.

12 Q Okay.

13 A I asked permission. He said I could search.

14 Q You patted him down. Did you find any guns?

15 A No, sir.

16 Q All right. Did you look in that backpack?

17 A I did.

18 Q Did you see any guns in the backpack?

19 A No, sir.

20 Q Did you see anything else in the backpack?

21 A Yes, sir.

22 Q What did you see?

23 A A magazine for a gun.

24 Q I'm going to show you what's been marked as State's
25 Exhibit 8. I believe there's two things in there

1 that look like they are magazines. Is one of
2 those --

3 A Yes, sir.

4 Q -- the thing that you found in his backpack. Okay.
5 But you did not find any other actual guns on him
6 at that point?

7 A That's correct.

8 Q Okay. Okay. So you had him in cuffs at this
9 point. You patted him down. You didn't find guns;
10 correct?

11 A That's correct.

12 Q What did you do next?

13 A I got his ID. I believe at that time other
14 officers were arriving on the scene as well.

15 Q Did you stay inside with his ID or did you go
16 outside at that point?

17 A Once another officer came to me, I went outside
18 with the ID to run it.

19 Q Okay. And while you're outside, did you -- were
20 you concerned about those guns and where they could
21 be?

22 A Yes.

23 Q What did you do at that point?

24 A I searched the area.

25 Q Did you find any guns in the area?

1 A I did.

2 Q Where did you find these guns?

3 A If you're standing looking at the store, it's on
4 the left-hand side of the wall that goes around
5 towards the back.

6 Q I heard some of the other witnesses reference an
7 ice machine?

8 A Yes.

9 Q Where was it -- where were they in reference to the
10 ice machine?

11 A The machine is up front. Then once you get to the
12 corner of the store, it goes back. From the ice
13 machine to the end of the store is probably maybe
14 10 feet.

15 Q All right. Where you found these guns, how were
16 they situated when you found them?

17 A They were up against the building. If I remember
18 right, there were two pieces of plastic pipe that
19 were covering them up.

20 Q So there was something that had been set on top of
21 them? There was a pipe set on top of them?

22 A Right.

23 Q What did you do at that point when you saw those
24 guns?

25 A I had my gloves on. So I went ahead and picked

1 them up and took them up towards the front of the
2 store.

3 Q Did you check to see if they were loaded?

4 A Yes, sir.

5 Q Were they loaded?

6 A Yes, sir.

7 Q All right. Again, I'm going to show you State's
8 Exhibit 8. Can you describe the guns to the jury,
9 what kind of guns they were -- actually before we
10 look at that...

11 A One of them was a .22-caliber. The other was a
12 .45-caliber.

13 Q Was the .45-caliber, was that -- would you term it
14 as an automatic or a revolver?

15 A It's a revolver.

16 Q And the .22 was that an automatic or a revolver?

17 A Yes, semiautomatic.

18 Q So when you say loaded, the revolver, the .45
19 revolver, where were those bullets? Do you see
20 those bullets in State's Exhibit 8?

21 A Yes, sir, the individual ones right there.

22 Q And when you say the .22-caliber was loaded, how
23 was that loaded?

24 A The magazine was in the gun.

25 Q So there was a second magazine, and it was inside

1 the gun?

2 A Correct.

3 Q And that is the other magazine that's in State's
4 Exhibit 8?

5 A Eight, yes.

6 Q All right, sir. I'm going to show you what's been
7 marked as State's Exhibit 6 and 5 and ask you --
8 let's start with State's Exhibit 6. Do you
9 recognize this?

10 A Yes.

11 Q I'm going to hand this to you. That gun has been
12 rendered safe so nobody can shoot it right now;
13 correct?

14 A Correct.

15 Q Do you see a serial number on that gun anywhere?

16 A (Pause.) Yes.

17 Q Can you read to the jury that serial number?

18 A YJ347520.

19 Q You can put that gun down real quick. Do you have
20 a copy of your report you wrote?

21 A I don't have it with me.

22 Q All right.

23 MR. CONRAD: If I could approach again, Your
24 Honor?

25 THE COURT: Yes, sir.

1 BY MR. CONRAD:

2 Q I'm going to hand you this. Let's go ahead and
3 mark it. I apologize.

4 THE COURT: He is just using it to refresh his
5 memory?

6 MR. CONRAD: Yes, Your Honor. We're going to
7 use to it refresh his memory specifically about the
8 serial number, just to let him see it.

9 THE COURT: You don't need to mark it.

10 BY MR. CONRAD:

11 Q Okay. Officer Smith, when you wrote your report
12 for this, did you write down the serial number of
13 the gun that you found that day?

14 A I did.

15 Q Can you read to the jury what serial number you
16 wrote down that day for the Ruger?

17 A For the Ruger?

18 Q The .45-caliber.

19 A The serial number is YJ347520.

20 Q And that's the same serial number as the gun
21 sitting in front of you?

22 A Yes.

23 Q In your experience would you call that a handgun or
24 pistol?

25 A Yes, sir.

1 Q So that is the same gun you recovered that day
2 behind or beside the Dollar General; correct?

3 A Yes, sir.

4 Q Or one of the same guns?

5 A Yes, sir.

6 Q And you said -- you testified a minute ago that
7 there were those five bullets in State's Exhibit 8,
8 some loose bullets, were inside or in the chamber
9 of that revolver?

10 A Yes, in the silver area.

11 Q You can hand that back to me.

12 A (Witness complies.)

13 Q Okay. I'm going to hand you what's been marked as
14 State's Exhibit 5. Do you recognize that, sir?

15 A Yes, sir.

16 Q What is that?

17 A That's a .22-caliber pistol.

18 Q And it's been rendered safe too. It can't be fired
19 right now; correct?

20 A Correct.

21 Q Can you read to the jury the serial number you see
22 on that gun, please?

23 A 27015792.

24 Q And, again, referencing the report you wrote that
25 day, did you record a serial number when you wrote

1 that report following this incident?

2 A Yes, sir.

3 Q Can you read to the jury the serial number you
4 wrote down that day?

5 A 27015792.

6 Q So indeed that pistol that you have in front of you
7 right now is the same pistol you recovered?

8 A Yes, sir.

9 MR. CONRAD: At this point, Your Honor, the
10 State would move to admit State's Exhibits 5 and 6 into
11 evidence.

12 MS. DYAR: No objection.

13 THE COURT: State's 5 and 6 without objection.

14 (State's Exhibits Number 5-6 are received into
15 evidence.)

16 BY MR. CONRAD:

17 Q Okay. You can hand that back.

18 A (Witness complies.)

19 Q And, once again, you said you found it with a
20 magazine inserted; is that correct?

21 A Yes, sir.

22 Q After you found those guns, did you go and approach
23 or try to talk to anybody about those guns?

24 A Ms. Herlong.

25 Q When you approached her, did she initially -- what

1 did she say when you initially asked her about the
2 guns?

3 A I believe she said she didn't have any. She didn't
4 know anything about them.

5 Q Did you believe her at that point?

6 A I was unsure but I didn't believe her.

7 Q And after you found those guns, did you show her
8 those guns after you found them?

9 A I did.

10 Q Did she say anything in response or did you ask her
11 anymore questions?

12 A I asked her some more questions. She denied it.
13 Then I Mirandized her.

14 Q Okay.

15 A Then she admitted that Mr. Driggers had them.

16 Q And when she first saw them, did she make any
17 remarks about them being loaded or anything of that
18 nature?

19 A She said they shouldn't be loaded.

20 Q And how did you respond to her?

21 A I said, "How would you know?"

22 Q So up to that point, she denied any knowledge of
23 it?

24 A Correct.

25 Q But after Miranda she told you they were Brice

1 Driggers's guns?

2 A Correct.

3 Q Did you ask her how those guns got stashed beside
4 the store there?

5 A Yes, sir.

6 Q How did she answer it at that point?

7 A She said he had put them back there.

8 Q Can you just give the jury an estimate from where,
9 say, the ice machine is that's been referenced
10 multiple times to where you found these guns, about
11 how far is that?

12 A It may be 10 feet from the ice machine to the
13 corner of the store.

14 Q Uh-huh.

15 A And then as you walk along -- once you make that
16 turn and start walking towards the back of the
17 store, it was probably maybe 25 feet.

18 Q So from the ice machine a total of 35 feet but
19 around the corner; correct?

20 A Correct.

21 Q Okay. And at that point after you found those guns
22 and Ms. Herlong told you they were Mr. Driggers's,
23 what did you do with Mr. Driggers at that point?

24 A We placed him under arrest.

25 Q Did you or another officer read him his Miranda

1 rights at that point?

2 A Yes, Officer Denizard did.

3 Q After his Miranda warnings were read to him, did
4 his behavior in any way cause you or Officer
5 Denizard any concerns about him?

6 A He started acting a little off and becoming
7 lethargic and stuff like that.

8 Q If you have a person in custody who you're
9 concerned about, their medical wellbeing, what is
10 your department's standard procedure?

11 A We call EMS.

12 Q So did you call EMS?

13 A We did.

14 Q To have him checked out?

15 A Yes.

16 Q And to your knowledge after EMS arrived, did they
17 transport him to the hospital?

18 A They did.

19 Q And after he had been to the hospital -- and I
20 believe he was released from the hospital?

21 A Yes, sir.

22 Q Did you have occasion to see him after that?

23 A Yes, sir, I transported him to jail.

24 Q And while you were transporting him, did he say
25 anything to you? Did he make any statements?

1 A Yes, sir.

2 Q Were you at this point trying to question him or
3 were you trying to engage him in any conversation
4 at all?

5 A No, sir.

6 Q In fact, after a certain period of time, did you
7 say anything at all to him?

8 A He asked one time what his charges were, and I told
9 him.

10 Q After that did you say anything to him?

11 A No, sir.

12 Q Did you ask him any questions?

13 A No, sir.

14 Q Did he keep talking?

15 A He did.

16 Q I'm not asking for any specifics at this point, but
17 did he say a number of things?

18 A He did.

19 Q Did he go on for a little bit?

20 A He did.

21 Q Let me ask you this: During this time that you
22 observed him, did you in your judgment think he
23 might have been intoxicated?

24 A Yes.

25 Q Would you say severely intoxicated or could you

1 give a...

2 A I would say grossly intoxicated.

3 Q But he could still talk; right?

4 A Yes, sir.

5 Q And you could still understand what he was saying;
6 correct?

7 A Yes, sir.

8 Q He could still form words?

9 MS. DYAR: Objection, Your Honor, leading.

10 THE COURT: Sustained.

11 BY MR. CONRAD:

12 Q All right. So at any point during this car ride,
13 did he say anything about the gun or guns?

14 A Yes, sir.

15 Q What did he say?

16 A He said he was going to get his guns back, and he
17 was going to charge me with grand larceny for
18 taking his guns.

19 Q And he specifically said they were his guns;
20 correct?

21 A Yes, sir.

22 Q Now, during this time did you -- do you have a way
23 to record anything in your car, your patrol car?

24 A I do.

25 Q Did you have that on at that point?

1 A I did.

2 Q Did you record him saying that?

3 A Yes, sir.

4 Q All right.

5 MR. CONRAD: Beg the Court's indulgence.

6 We're going to set it up.

7 THE COURT: Is it ready to go?

8 MR. CONRAD: Yes, Your Honor.

9 THE COURT: All right. If you can't see,
10 raise your hands.

11 (There is no response.)

12 BY MR. CONRAD:

13 Q Officer Smith, I'm going to play this video. Tell
14 me if you recognize any of it.

15 A Okay.

16 MR. CONRAD: Beg the Court's indulgence.

17 (Pause.)

18 MS. DYAR: Your Honor, may we approach?

19 THE COURT: You may.

20 (Whereupon there is a bench conference off the
21 record in the presence of the jury but out of the
22 hearing of the jury.)

23 MR. CONRAD: Actually, can we approach again?

24 THE COURT: Sure.

25 (Whereupon there is a bench conference off the

1 record in the presence of the jury but out of the
2 hearing of the jury.)

3 THE COURT: All right. Here is what we're
4 going to do, ladies and gentlemen. It is about 1:20.
5 Your food is here. We're going to take a break in the
6 middle of this witness.

7 That way when you come back in, all of this --
8 these technical things happen all the time. It's
9 nobody's fault or anything. It's just part of trying to
10 do that. We'll get all of that set up and have it ready
11 to go when you come back.

12 It is 1:20. We will start back promptly at
13 2:00 o'clock. If you will retire to your jury room. Do
14 not discuss the case. Keep an open mind. Thank you
15 very much.

16 Everyone remain seated while the jurors are
17 excused.

18 (The jury retires to the jury room at
19 1:20 P.M.)

20 THE COURT: All right. Officer Smith, you
21 will be allowed to step down during this break. You are
22 not allowed to discuss your testimony with anybody in
23 any way, shape, or form; but you need to be seated right
24 there at 2:00 o'clock.

25 THE WITNESS: Yes, sir.

1 THE COURT: Is there anything further from the
2 State?

3 MR. CONRAD: No, Your Honor.

4 THE COURT: Defense?

5 MS. EIGENBROT: No, Your Honor.

6 THE COURT: All right. Two o'clock. Have
7 whatever this is ready to go.

8 MR. CONRAD: We'll be ready, Your Honor.

9 (Whereupon there is a luncheon recess.)

10 (State's Exhibit Number 9 is marked for
11 identification.)

12 THE COURT: All right. Let's bring in the
13 jury.

14 (Whereupon, the jury entered the courtroom at
15 2:02 P.M.)

16 THE BAILIFF: All jurors are present, Your
17 Honor.

18 THE COURT: Thank you very much. Welcome
19 back.

20 MR. CONRAD: Thank you, Your Honor. May it
21 please the Court.

22 DIRECT EXAMINATION

23 BY MR. CONRAD:

24 Q Officer Smith, I'm going to show you what's been
25 marked as State's Exhibit 9. It's a CD. Have you

1 seen this before?

2 A I believe so.

3 Q And are you familiar with the contents that are on
4 this CD?

5 A Yes, sir.

6 Q And what is that?

7 A That's a video from my in-car camera in my patrol
8 car.

9 Q So you have reviewed this video?

10 A Yes, sir.

11 Q And it's substantially the same as what you
12 recorded that night as you were transporting
13 Mr. Driggers to the jail?

14 A Yes, sir.

15 MR. CONRAD: Your Honor, at this time the
16 State moves to introduce State's Exhibit 9 as evidence
17 and to publish it to the jury.

18 THE COURT: All right.

19 MS. DYAR: No objections.

20 THE COURT: All right. State's Exhibit 9
21 without objection.

22 (State's Exhibit Number 9 is received into
23 evidence.)

24 (The video, State's Exhibit Number 9 is played
25 for the jury.)

1 BY MR. CONRAD:

2 Q So what you just heard, is that exactly the same as
3 what Mr. Driggers said that night? It's not
4 altered in any way?

5 A No, it's not altered.

6 Q Can you just clarify to the jury in case anybody
7 had any trouble hearing exactly what he said, what
8 Mr. Driggers said.

9 A Can I say the cuss word?

10 Q Yes.

11 A He said, "Where the fuck are my guns at?"

12 Q He said "guns," as in plural or "gun" as in
13 singular?

14 A Yes, guns.

15 Q Okay. One last question. To your knowledge did
16 you come across any evidence that Mr. Driggers had
17 a concealed weapons permit of any sort?

18 A No, sir.

19 MR. CONRAD: Beg the Court's indulgence.

20 (Pause.)

21 BY MR. CONRAD:

22 Q One final question. The magazine that we showed
23 you, I believe it's State's Exhibit 8, the magazine
24 that was found or you found in Mr. Driggers's
25 backpack, that is the exact same magazine and does

1 it fit the .22-caliber handgun I showed you?

2 A Yes.

3 Q All right.

4 MR. CONRAD: Nothing further from the State.

5 THE COURT: Do you need that up?

6 MS. DYAR: No, I don't need that.

7 THE COURT: All right. Cross examination?

8 MS. DYAR: Thank you, Your Honor. May it
9 please the Court.

10 THE COURT: Yes, ma'am.

11 **CROSS EXAMINATION**

12 BY MS. DYAR:

13 Q Okay. So, Officer Smith, you were originally
14 dispatched around 8:00 o'clock on the evening of
15 July 26, 2011; is that correct?

16 A I'm not sure of the exact time but, yes, ma'am.

17 Q Do you have a copy of your report?

18 A I don't have it in front of me.

19 Q Okay.

20 MS. DYAR: May I approach?

21 THE COURT: Yes, ma'am.

22 BY MS. DYAR:

23 Q Okay. So you were dispatched around 8:00 o'clock
24 on that evening; correct?

25 A Yes, ma'am.

- 1 Q It took you a couple of minutes to get there. It
2 looks like you arrived a few minutes later, at
3 8:05?
- 4 A Yes, ma'am.
- 5 Q And you said the first person you made contact with
6 was actually the store cashier?
- 7 A Ms. Henderson, I believe her name is .
- 8 Q You did see Ms. Herlong outside; correct?
- 9 A I did.
- 10 Q But you didn't approach her at first?
- 11 A I did not.
- 12 Q Were there any other officers that arrived that
13 spoke to Ms. Herlong first before you did?
- 14 A Probably, I would believe Officer Denizard or
15 Shumard. I was inside dealing with Mr. Driggers.
- 16 Q So Ms. Henderson points you to where the defendant
17 is in the store?
- 18 A Correct.
- 19 Q And you made contact with him?
- 20 A Yes, ma'am.
- 21 Q He gives you consent to search the book bag he was
22 wearing?
- 23 A Yes, ma'am.
- 24 Q You don't find any guns though?
- 25 A No, ma'am.

1 Q He actually tells you he didn't have any guns on
2 him; right?

3 A Correct.

4 Q Now, you testified that there were other officers
5 arriving on the scene; right?

6 A Yes, ma'am.

7 Q And we've got -- we have you as the reporting
8 officer, Officer Denizard or Investigator Denizard
9 now and a Sergeant Shumard?

10 A Yes, ma'am.

11 Q You're the one that actually -- you made contact
12 with Mr. Driggers in the store; right?

13 A Yes, ma'am.

14 Q And then according to your incident report, you
15 then, along with Sergeant Shumard, begin speaking
16 to Ms. Herlong outside?

17 A Once Officer Denizard came in.

18 Q And took --

19 A -- and stayed with Mr. Driggers.

20 Q At that point Ms. Herlong actually tells you she
21 doesn't know anything about the guns?

22 A Correct.

23 Q It's only after you Mirandized her that she
24 acknowledges any knowledge about the guns; correct?

25 A Correct.

1 Q In fact, she goes on to tell you that she doesn't
2 know why -- that the guns shouldn't be loaded?

3 A Correct.

4 Q But, in fact, they were loaded?

5 A Yes, ma'am.

6 Q And these guns were found on the outside of the
7 store; correct?

8 A Correct.

9 Q But Mr. Driggers is inside the store?

10 A Correct.

11 Q And the only thing that Mr. Driggers had on him
12 was -- or what was found in his book bag was
13 actually bullets or rounds for a .22?

14 A Well, it was the magazine.

15 Q The magazine.

16 A With bullets.

17 Q With bullets?

18 A Correct.

19 Q But no guns?

20 A Correct.

21 Q And whenever you were talking to Ms. Herlong after
22 Mr. Driggers was with Officer Denizard, you
23 actually testified that you didn't believe her
24 about her not knowing anything about the guns?

25 A Correct.

1 Q But then again she admits it after you Mirandize
2 her; right?

3 A Yes, ma'am.

4 Q And she places the blame on Brice?

5 A Yes, ma'am.

6 Q Your involvement with Mr. Driggers, you said in
7 your opinion, you said he was grossly intoxicated?

8 A Yes, ma'am.

9 Q Now, we have the two guns here that have been
10 admitted into evidence. At any point once you
11 found the guns, were they ever tested for DNA?

12 A Not that I'm aware of.

13 Q They weren't tested for DNA?

14 A No.

15 Q As the jury saw the video of Mr. Driggers being
16 transported from the hospital that night to the
17 jail in your patrol car, he never tells you -- and
18 you don't ask him any questions -- but his
19 statements are only that they were his guns;
20 correct?

21 A Yes, ma'am.

22 Q Not that he had the guns on him; correct?

23 A I don't believe he ever said that.

24 Q Just that he indicated ownership to you --

25 A Yes, ma'am.

1 Q -- through his statements?

2 MS. DYAR: Beg the Court's indulgence.

3 THE COURT: Yes, ma'am.

4 (Pause.)

5 BY MS. DYAR:

6 Q Just a few more questions. You, along with several
7 other officers, arrived on the scene at the Dollar
8 General. At any point did anybody try to inquire
9 about any surveillance at the Dollar General?

10 A I don't recall. We usually do. I don't recall if
11 we did that day or not.

12 Q Were you able to determine if any of the other
13 reporting officers had any sort of video or body
14 mikes or anything like that that would possibly
15 provide other information for the jury to hear?

16 A I don't believe anybody did, no, ma'am.

17 Q And roughly there were about four or five police
18 officers that showed up that night?

19 A There was three from Forest Acres.

20 Q Three from Forest Acres?

21 A Correct.

22 Q And there was another one from Richland County as
23 well; correct?

24 A He stopped by.

25 Q And according to some testimony that we've heard

1 today, I mean, this is a business that's open for
2 the public. Anybody can come; correct?

3 A Yes, ma'am.

4 Q And there were several other people there
5 throughout this alleged incident; correct?
6 Patrons?

7 A Yes, ma'am, like customers.

8 Q Were any of those people interviewed?

9 A I didn't. I don't know if any of the other
10 officers did.

11 Q Now, I want to go back to Ms. Herlong for just a
12 second. You say you initially didn't believe her,
13 that she didn't -- that her saying that she didn't
14 know anything about the guns was a lie. She wasn't
15 charged that day with anything?

16 A No, ma'am.

17 Q And we actually have in your incident report where
18 you saw -- or that Sergeant Shumard, another
19 officer that responded -- actually saw subject
20 number two, Ms. Herlong, come from around the side
21 of the building whenever he approached; is that
22 correct?

23 A Yes, that's in the report.

24 Q And these reports are done because the incident is
25 fresh in your mind at that time; correct?

1 A Uh-huh.

2 Q That's why we have these reports. So in situations
3 like this, we know exactly what's going on because
4 this happened three years ago, and you -- I'm sure
5 you've dealt with many cases since then; right?

6 A Yes, ma'am.

7 Q So we want to have all the information as it is at
8 that time; correct? And at that time Sergeant
9 Shumard actually says he sees subject two come from
10 behind the store where the guns are later located;
11 correct?

12 A Yes, ma'am.

13 Q And, again, no guns found on Mr. Driggers?

14 A Correct.

15 MS. DYAR: Nothing further, Your Honor.

16 THE COURT: Yes, sir.

17 MR. CONRAD: Nothing further from this
18 witness.

19 THE COURT: Thank you. Have a nice day. Call
20 your next witness.

21 (The witness leaves the witness stand.)

22 MR. SHALABI: The State calls Officer
23 Denizard.

24 THE COURT: Please come forward and be sworn.

25 (The witness comes forward.)

1 GABRIEL DENIZARD, being
2 first duly sworn, testifies as follows:

3 THE CLERK: Have a seat in the witness stand,
4 please. State your name for the record.

5 THE WITNESS: Gabriel Denizard.

6 MR. SHALABI: May it please the Court.

7 THE COURT: Yes, sir.

8 DIRECT EXAMINATION

9 BY MR. SHALABI:

10 Q Good afternoon. I called you officer,
11 investigator.

12 A That's right.

13 Q Where are you currently employed?

14 A Forest Acres Police Department.

15 Q How long have you been employed with them?

16 A About eight years now.

17 Q And what's your current title?

18 A Investigator.

19 Q What certifications or training did you go through
20 and receive in order to obtain your position?

21 A As investigator?

22 Q As a law enforcement official.

23 A Initially, I was a patrolman. I went to the police
24 academy to get certified. Then from there we did
25 FTO training for three months with another officer

1 until we are done with all three phases. Then from
2 there we do multiple trainings: Firearms, radar,
3 Breathalyzer.

4 Q Were you employed with the Forest Acres Police
5 Department on July 26, 2011?

6 A Yes.

7 Q And what was your job description back then?

8 A I was a patrolman.

9 Q And what are your duties as a patrolman?

10 A Basically I'm with Forest Acres. We patrol the
11 streets. Our volume is not as high but we get
12 calls. Any kind of calls we respond to, take
13 incident reports, traffic stops.

14 Q And just to draw your attention to that day,
15 specifically July 26, 2011, were you dispatched to
16 the Dollar General on Covenant Road?

17 A Yes, sir.

18 Q In regards to what?

19 A In regards to a white male having possession of a
20 weapon, a gun.

21 Q And how long did it take? Approximately how long
22 did it take you to get to that Dollar General?

23 A I can't recall. Usually our response is within
24 five minutes.

25 Q When you arrived at the Dollar General, tell the

1 jury what the scene was like, what the incident
2 location was like when you got there.

3 A Officer Smith, I believe, was there before I was.
4 I arrived around the same time Sergeant Shumard
5 did. I remember seeing Amanda Herlong at the ice
6 machine, and I believe Officer Smith was inside at
7 that time.

8 MR. SHALABI: May I approach the witness?

9 THE COURT: Yes, sir.

10 BY MR. SHALABI:

11 Q Was this man there?

12 A Yes.

13 Q Who is this?

14 A That's Brice Driggers.

15 Q Did you have any interaction with Mr. Driggers?

16 A I did.

17 Q And what was that?

18 A I went in the store with Sergeant Shumard and saw
19 that Officer Smith had him detained at that time.

20 Q Did you know what he was detained for?

21 A It was explained to me that he was detained due to
22 reaching in the bag when Officer Smith first got
23 there for safety purposes to further investigate.

24 Q At the time did you have any knowledge of a gun
25 potentially being at the scene?

1 A Based off of dispatch only.

2 Q Was the defendant cooperative with you?

3 MR. DYAR: Objection, relevance.

4 THE COURT: Sustained.

5 BY MR. SHALABI:

6 Q Did you Mirandize the defendant?

7 A I did.

8 Q What did you use? Did you give him his Miranda
9 rights based off of memory or was it off a -- did
10 you use something to refer to?

11 A At that time I used a card to Mirandize him.

12 Q What's on that card?

13 A The Miranda rights.

14 Q The Miranda rights?

15 A Yes.

16 Q Where was he located when you Mirandized him?

17 A He was in my patrol car in the back at that time.

18 Q And what was his condition when you interacted with
19 Mr. Driggers, his physical condition?

20 A He seemed very intoxicated when we first arrived at
21 the -- when I first went inside the store. I could
22 tell that he was intoxicated, and he was acting a
23 little belligerent after we were there for a while.
24 So we took him outside and put him in the patrol
25 car.

1 Q Did he appear to be ill?

2 A Once after I Mirandized him in the back of the car,
3 he start hyperventilating and sweating profusely.
4 So I was a little concerned. So I went ahead and
5 called for EMS at that time. He wasn't responding
6 to anything at that time, to any of any questions.

7 Q And how long did it take for EMS to arrive at the
8 Dollar General?

9 A I can't recall, probably within maybe ten minutes.

10 Q And when they arrived, did you have any interaction
11 with the defendant?

12 A After they arrived, no, I didn't.

13 MR. SHALABI: Beg the Court's indulgence.

14 (Pause.)

15 BY MR. SHALABI:

16 Q You said you read his Miranda rights to him?

17 A Yes, sir.

18 Q Was that before or after EMS arrived?

19 A That was before.

20 Q And was that before or after he was taken to the
21 jail?

22 A That was before he went to the jail.

23 Q All right.

24 MR. SHALABI: No further questions.

25 THE COURT: Yes, ma'am.

1 MR. DYAR: Thank you, Your Honor. May it
2 please the Court.

3 THE COURT: Yes, ma'am.

4 CROSS EXAMINATION

5 BY MR. DYAR:

6 Q Investigator Denizard, just briefly. You did state
7 that Mr. Driggers appeared to be intoxicated;
8 correct?

9 A Yes, ma'am.

10 Q And you yourself did not see Mr. Driggers in
11 possession of any guns at any point in time;
12 correct?

13 A No, ma'am, I did not.

14 MS. DYAR: Thank you. Nothing further, Your
15 Honor.

16 THE COURT: You may step down. Have a nice
17 day.

18 (The witness leaves the witness stand.)

19 THE COURT: Call your next witness.

20 MR. SHALABI: The State calls Jade Steedley.

21 THE COURT: All right. Please come forward.

22 (The witness comes forward.)

23 JADE STEEDLEY, being
24 first duly sworn, testifies as follows:

25 THE CLERK: Thank you. Have a seat in the

1 witness stand, please. State your name for the record.

2 THE WITNESS: Jade Steedley.

3 DIRECT EXAMINATION

4 BY MR. SHALABI:

5 Q Good afternoon. Ms. Steedley, where are you
6 currently employed?

7 A Richland County EMS.

8 Q And how long have you been employed with them?

9 A About four years.

10 Q And what is your job title currently?

11 A Currently a sergeant, senior paramedic.

12 Q And what do you do as a sergeant and senior
13 paramedic?

14 A Field management, kind of like in a supervisor
15 role. We also do patient care and ride on the
16 units.

17 Q What certification do you have to obtain your
18 position?

19 A Multiple. We went through the additional
20 paramedics school, and I did additional training
21 outside of it and also have other credentials.

22 Q Were you employed with Richland County EMS on
23 July 26, 2011?

24 A I was.

25 Q And what was your position on that day?

1 A At the time I was a corporal.

2 Q Were you dispatched to Dollar General on Covenant
3 Road on that day?

4 A I was.

5 Q And why was that?

6 A We were dispatched for psychiatric.

7 Q And what do you typically do when you are
8 dispatched for that reason?

9 A We talk to the officers and see what happened
10 before we go. Then we talk to the patient and see
11 what's going on and kind of go from there.

12 MR. SHALABI: May I approach the witness?

13 MS. EIGENBROT: Your Honor, I would just ask
14 that he be careful how the picture is presented to the
15 witness.

16 THE COURT: Okay.

17 BY MR. SHALABI:

18 Q Was this man at that location?

19 A Yes.

20 Q And who is this?

21 A Mr. Driggers.

22 Q Is this the patient you saw?

23 A Yes.

24 Q And what did you do to treat Mr. Driggers?

25 A Initially, we talked to him. After we decided we

1 were going to transport him, we put him into the
2 unit. We had to calm him down a little bit because
3 we thought we were going to have to do additional
4 restraints on top of the handcuffs.

5 Q Did he make any statements to you when he was on
6 the back of the ambulance?

7 A He made multiple statements to my partner prior to
8 talking to me. At the time him and his girlfriend
9 were going back and forth in the back of the truck.
10 I was in and out of the truck trying to get her
11 away. We were trying to calm him down because he
12 calmed down when she wasn't there. He made
13 statements about having guns in possession --

14 Q You heard him -- go ahead. I'm sorry.

15 A Yeah, the guns were in his possession.

16 Q And you heard him say that?

17 A Yes, sir.

18 Q And where were you located when he stated he had
19 guns?

20 A I was standing on the back bumper of the truck. He
21 was on the stretcher, and Rock was on the bench
22 seat.

23 Q Was that singular or plural?

24 A Plural.

25 Q Were any law enforcement officials around when he

1 made those statements?

2 A They were within a five to ten-foot radius behind
3 the unit, but at the time they were trying to get
4 his girlfriend away from him.

5 Q So they weren't involved at all with Mr. Driggers?

6 A No.

7 Q You weren't working under their direction?

8 A No.

9 Q Did they tell you to ask him anything?

10 A No.

11 MR. SHALABI: No further questions.

12 THE COURT: Yes, ma'am.

13 MS. EIGENBROT: Thank you, Your Honor. May it
14 please the Court.

15 CROSS EXAMINATION

16 BY MS. EIGENBROT:

17 Q Was it Agent Steedley?

18 A Sergeant.

19 Q Sergeant Steedley. I'm sorry. I knew there was a
20 title in there somewhere. You arrived on the scene
21 approximately what time?

22 A We were dispatched to the call at 2030, which means
23 we received it from them. We arrived on the scene
24 at 2036.

25 Q So would that be 8:36?

1 A 8:36.

2 Q And when you arrived on the scene, Mr. Driggers was
3 already in custody; correct?

4 A Yes, ma'am.

5 Q At that point in time, he was in restraints?

6 A Yes, ma'am, he was in handcuffs.

7 Q And you evaluated Mr. Driggers at that point in
8 time?

9 A Yes, ma'am.

10 Q You did not at any point in time see any weapons on
11 him, any guns or anything like that; correct?

12 A No.

13 MS. EIGENBROT: No further questions.

14 THE COURT: Redirect?

15 MR. SHALABI: No, Your Honor.

16 THE COURT: Thank you, ma'am. Have a nice
17 day. You are excused from your subpoena.

18 (The witness leaves the witness stand.)

19 THE COURT: Call your next witness.

20 MR. SHALABI: The State calls Matthew Rock.

21 THE COURT: All right. Please come forward,
22 sir.

23 (The witness comes forward.)

24 MATTHEW ROCK, being

25 first duly sworn, testifies as follows:

1 THE CLERK: Have a seat in the witness box,
2 please. State your name for the record.

3 THE WITNESS: Matthew Rock.

4 DIRECT EXAMINATION

5 BY MR. SHALABI:

6 Q Good afternoon, Mr. Rock. Where are you currently
7 employed?

8 A Richland County EMS.

9 Q How long have you been employed there?

10 A Approximately four years.

11 Q What's your job title?

12 A EMT.

13 Q And what are your duties as an EMT?

14 A Basic life support, CPR.

15 Q And what sort of training and certifications did
16 you go through for that?

17 A The EMT course, do an annual 40 hours a year
18 continuing education.

19 Q Were you employed with Richland County EMS on
20 July 26, 2011?

21 A Yes, sir.

22 Q And what was your job title on that day?

23 A EMT.

24 Q Were you working on that day?

25 A Yes, sir.

1 Q Were you dispatched to Dollar General on Covenant
2 Road on that day?

3 A Yes, sir.

4 Q And why were you dispatched there?

5 A For psychiatric.

6 Q And did you come in contact with -- I'm going to
7 show you a picture -- with this individual?

8 A Yes, sir.

9 Q And who is this?

10 A Mr. Driggers.

11 Q Is that the patient you saw?

12 A Yes, sir.

13 Q Is he the reason why you were dispatched to that
14 location?

15 A Yes, sir.

16 Q And what was his condition when you saw him?

17 A He appeared to be intoxicated, kind of aggressive,
18 belligerent. We made our initial assessment. Then
19 we decided -- he wanted to go to the hospital. So
20 we loaded him on the back of the truck and
21 continued our initial assessment on him.

22 Q So you're at the back of the truck with
23 Mr. Driggers?

24 A Yes, sir.

25 Q Was anyone else in the truck with you two?

1 A No. My partner was standing in and out of the
2 back, but it was just me and him.

3 Q And there were no law enforcement officials?

4 A No, sir.

5 Q Inside the truck?

6 A No, sir.

7 Q Were you under the direction of law enforcement
8 officials?

9 A No, sir.

10 Q Did they talk to you about talking to the
11 defendant?

12 A No, sir.

13 Q Were you there strictly for treatment and
14 transporting him as an EMT?

15 A Yes, sir.

16 Q Did he make any statements to you while you were
17 inside the truck?

18 A Yes, sir.

19 Q What did he tell you?

20 A He advised that he had guns and that him and his
21 girlfriend at the time supposedly were heading to
22 the shooting range.

23 Q Did he say gun or guns --

24 A Guns, plural.

25 Q -- do you remember. Plural.

1 MR. SHALABI: No further questions.

2 THE COURT: Cross examination?

3 MS. EIGENBROT: Thank you, Your Honor. May it
4 please the Court.

5 THE COURT: Yes, ma'am.

6 CROSS EXAMINATION

7 BY MS. EIGENBROT:

8 Q Mr. Rock, again, you did not see Mr. Driggers in
9 possession of any gun at that point in time?

10 A No.

11 Q And you did say that he was intoxicated; correct?

12 A He was showing signs and symptoms of alcohol
13 impairment.

14 MS. EIGENBROT: Nothing further, Your Honor.
15 Thank you.

16 THE COURT: Redirect?

17 REDIRECT EXAMINATION

18 BY MR. SHALABI:

19 Q Did he appear aware of the situation?

20 A Yes, he answered all my questions appropriately
21 when I asked.

22 MR. SHALABI: No further questions, Your
23 Honor.

24 MS. EIGENBROT: No recross.

25 THE COURT: Thank you very much. You're

1 excused. Have a nice day.

2 (The witness leaves the witness stand.)

3 THE COURT: All right. Call your next
4 witness.

5 MR. CONRAD: We rest, Your Honor.

6 THE COURT: Okay. Ladies and gentlemen, the
7 State has rested its case. That's the conclusion of the
8 testimony that you will hear from them at this time.

9 I have a matter of law that I must take up
10 with the lawyers. If you will retire to your jury room.
11 You are still not allowed to discuss the case and please
12 keep an open mind. We will be back with you just as
13 soon as we finish. Thank you very much.

14 Everyone remain seated while the jury is
15 excused.

16 (The jury retires to the jury room at
17 2:31 P.M.)

18 THE COURT: All right. Yes, ma'am.

19 MS. DYAR: Thank you, Your Honor. At this
20 time we would move for a directed verdict. I guess it
21 would be a two-part argument here. I have a motion for
22 a directed verdict on both charges.

23 We have no testimony that anybody ever
24 actually -- we have conflicting testimony on who -- if
25 he even has a gun on him. You know, this is a crime of

1 possession, not ownership.

2 I think it is established that he claimed
3 ownership of the guns, but we don't -- as far as
4 possession goes, I think the fact that they're on the
5 backside of the building, I think it doesn't rise to the
6 level of having it on his person at the time.

7 I don't think the evidence presented is
8 substantial circumstantial evidence to prove that
9 Mr. Driggers was actually in possession of the guns at
10 the time of the incident.

11 If Your Honor is not inclined to do that, I
12 would ask for a directed verdict motion, a directed
13 verdict on one count. We have testimony from a cashier
14 that says she sees a gun on him at one point, and that's
15 really the extent of the evidence as far as that goes.

16 So at this point I feel like that would be --
17 there's substantial -- I mean, based on her testimony,
18 that gives us one gun but not the other. I don't think
19 there's really been any other evidence presented today
20 that rises to the level that the jury would -- that it
21 should go to the jury.

22 I think at this point it fails to provide a
23 basis for the jury to consider that and would ask for a
24 directed verdict on at least one count.

25 THE COURT: All right.

1 MR. CONRAD: Your Honor, the State would
2 oppose both arguments. As Ms. Dyar herself stated, we
3 do have direct evidence of at least one in possession,
4 Ms. Henderson's testimony.

5 She saw the defendant pull a gun out from his
6 waistband and put it in a backpack that he was holding.
7 I think that's actual possession instead of constructive
8 possession. That's direct evidence on one count.

9 On top of the that, we have Ms. Herlong's
10 testimony, which in the light most favorable to the
11 State taken as truth, she said she knew and she saw him
12 have two guns in his backpack, that he was carrying the
13 backpack.

14 I would argue that's direct possession and
15 certainly constructive possession. He was carrying a
16 backpack with two handguns. Additionally, both handguns
17 were found in the near vicinity at the time by the
18 officer.

19 Finally, we have the defendant's own
20 statements. On the videotape that the Court heard,
21 which he states, "Where are my F-ing guns at?" plural;
22 and then the statements he made to EMS where he was
23 talking about having possession of the guns, plural.

24 THE COURT: All right.

25 MS. DYAR: And, again, his statements were

1 that he -- they were his guns.

2 THE COURT: I completely understand your
3 argument on the ownership versus the possession. I
4 mean, I believe that his statements go to ownership.
5 Ownership is not an element of the crime. It's the
6 possession. So I follow you on that. Anything else you
7 want to respond to on what they said?

8 MS. DYAR: No, Your Honor.

9 THE COURT: All right. I'm going to deny your
10 motions for directed verdict under Rule 19 of the South
11 Carolina Rules of Criminal Procedure. The standard is
12 that I apply the existence of the evidence, not the
13 weight of the evidence, in the light most favorable to
14 the State. I believe the State has met its burden, and
15 it's sufficient to go forward to the jury based upon the
16 evidence that has been presented.

17 Okay. Are you calling any witnesses?

18 MS. DYAR: No, Your Honor.

19 THE COURT: Okay. All right. Let's talk
20 about jury charges.

21 MR. CONRAD: Your Honor, the only specific
22 request the State would have would be the standard --
23 out of Judge Anderson's request to charge -- the general
24 possession's charge, constructive versus actual
25 possession.

1 THE COURT: We were just pulling that up.
2 What about the defendant?

3 MS. EIGENBROT: We have no objection to that,
4 Your Honor. We would just ask that you add an
5 instruction about the defendant not being present.

6 THE COURT: That's definitely in there.

7 MS. EIGENBROT: And, Your Honor, if there's
8 any case law or jury charge regarding possession versus
9 ownership, I think that should be included, considering
10 the facts and circumstances here.

11 THE COURT: All right. We're going to pull up
12 what we have. Everybody just stay right here. Let's
13 pull up what we have, what's in the charge book on that,
14 so we can all talk about it at one time.

15 (Pause.)

16 THE COURT: Do you have a copy of the Anderson
17 charge book?

18 MR. CONRAD: Your Honor, I do. It's upstairs.
19 I have the book.

20 THE COURT: The first one we found is actual
21 possession means that the handgun is in the actual
22 physical custody of the defendant. Constructive
23 possession means that the defendant had dominion and
24 control or the right to exercise dominion and control
25 over the property. That's in the general charge book.

1 The second one says this: Next, I want to
2 explain something about possession. The State does not
3 necessarily have to prove that the defendant physically
4 possessed the firearms -- or I would insert handguns
5 there -- for you to find him guilty of this crime.

6 The law recognizes two kinds of possession,
7 actual and constructive. Either one of these, if proved
8 by the government, is enough to convict. To establish
9 possession, the government must prove that the defendant
10 had -- to establish actual possession -- the government
11 must prove that the defendant had direct physical
12 control over the handgun and knew that he had control
13 over it.

14 To establish constructive possession, the
15 government must prove the defendant had the right to
16 exercise physical control over the handgun and knew that
17 he had this right and that he intended to exercise
18 physical control over the handgun at some time, either
19 directly or through other persons.

20 MR. CONRAD: That's the charge I was referring
21 to, Your Honor.

22 THE COURT: That's the one you were referring
23 to?

24 MR. CONRAD: Yes, sir.

25 THE COURT: Okay. What about that?

1 MS. EIGENBROT: Your Honor, we have no
2 objection.

3 THE COURT: There is an example in here. Do
4 you want to hear that? Do you want to hear the example
5 they give?

6 MR. CONRAD: Yes, sir.

7 THE COURT: For example, if you left something
8 with a friend, intending to come back later to pick it
9 up or intending to send someone else to pick it up for
10 you, you would have constructive possession of it while
11 it was in the actual possession of your friend.

12 Understand, that just being present where
13 something is located does not equal possession. The
14 State must prove that the defendant had actual or
15 constructive possession and knew that he did for you to
16 find him guilty of this crime. This, of course, is all
17 for you to decide.

18 MR. CONRAD: Yes, Your Honor. I think that's
19 appropriate, Your Honor.

20 THE COURT: Okay. Are you okay with that part
21 of it?

22 MS. EIGENBROT: Yes, Your Honor.

23 THE COURT: So I'm going to insert the one I
24 just read, actual and constructive, and the example into
25 the charge. Anything else specifically you want in the

1 charge?

2 MR. CONRAD: Well, Your Honor, I'm not sure if
3 the voluntary intoxication charge is appropriate. It
4 seems like they were alluding to his intoxication
5 throughout their cross examination.

6 THE COURT: I don't have any problem with
7 that. Do you have a problem with that?

8 MS. EIGENBROT: None, Your Honor.

9 THE COURT: It will be just simply voluntary
10 intoxication -- whatever we did last time -- is not a
11 defense. It's something short and sweet. There is a
12 voluntary intoxication charge that goes into insanity
13 and not able to -- all that kind of stuff. We have just
14 a very short one.

15 Voluntary intoxication is not a defense to a
16 crime. A person who voluntarily becomes intoxicated is
17 just as responsible for the acts committed while
18 intoxicated as when the person is not intoxicated, just
19 short and sweet.

20 MR. CONRAD: Yes, sir. I think that's
21 appropriate, Your Honor.

22 THE COURT: All right. What else?

23 MR. CONRAD: That's all from the State, Your
24 Honor.

25 THE COURT: All right. Ms. Eigenbrot?

1 MS. EIGENBROT: That's all, Your Honor.

2 THE COURT: How long do y'all want? What time
3 do you want to start back?

4 MR. CONRAD: Probably don't need more than ten
5 minutes, Your Honor.

6 THE COURT: Is that okay?

7 MS. DYAR: Yes.

8 THE COURT: Let's start back just a little bit
9 before 3:00. Okay.

10 (Whereupon there is a recess.)

11 MS. EIGENBROT: Your Honor, after briefly
12 conferring further with other counsel, we would object
13 to the example being charged to the jury at this point.

14 I think the instruction on actual and
15 constructive possession is pretty clear. If they have
16 any questions, we do not object to the example being
17 read later on; but at this point I think the
18 constructive itself is enough to be sent to the jury.

19 MR. CONRAD: The State thinks it's appropriate
20 and should be included, Your Honor.

21 THE COURT: I'll take it out. I mean, it's
22 not the law. It's just trying to explain something. So
23 I'm going to take it out.

24 MS. EIGENBROT: Thank you, Your Honor.

25 THE COURT: All right. Anything further?

1 MR. CONRAD: No, sir.

2 THE COURT: Who is arguing for the State?

3 MR. CONRAD: I am.

4 THE COURT: And who is arguing for the
5 defense?

6 MS. DYAR: I am, Your Honor.

7 THE COURT: All right. Bring in the jury.

8 (The jury returns to the courtroom at
9 3:04 P.M.)

10 THE BAILIFF: All jurors are accounted for,
11 Your Honor.

12 THE COURT: All right. Thank you very much.

13 Ladies and gentlemen, as you know when we last
14 broke, the State rested their case. The defense has the
15 opportunity, if they wish, to put up a case.

16 However, they do not have to because the
17 defendant is presumed innocent and has no burden of
18 proof in this case. The burden of proof lies with the
19 State.

20 Ms. Eigenbrot, do you wish to present any
21 evidence?

22 MS. EIGENBROT: No, Your Honor. The defense
23 rests.

24 THE COURT: Ladies and gentlemen, we have
25 reached the point of the trial known as closing

1 arguments. The State will give the first closing
2 argument, and the defense will give the second closing
3 argument. After that I will instruct you on what the
4 law is in this case. Just depending on how long things
5 go, we will determine whether or not we will take a
6 break.

7 You have paid very close attention throughout
8 the entire day to everything presented in this trial,
9 and I would ask that you give the attorneys your same
10 undivided attention that you have given them throughout
11 this trial during their closing arguments.

12 Mr. Conrad.

13 MR. CONRAD: Thank you, Your Honor.

14 MS. DYAR: Your Honor, if we may approach
15 quickly?

16 THE COURT: Sure.

17 (Whereupon there is a bench conference off the
18 record in the presence of the jury but out of the
19 hearing of the jury.)

20 MS. DYAR: Your Honor, at this time we just
21 renew all of our previous objections.

22 THE COURT: All right. That is noted for the
23 record. My ruling on all your objections would be the
24 same as before based on my previous reasons.

25 All right. Mr. Conrad.

1 CLOSING ARGUMENT

2 MR. CONRAD: Thank you, Your Honor. May it
3 please the Court.

4 Ladies and gentlemen, I'm going to join the
5 judge in thanking you today for your time and your
6 attention. We've pretty much reached the end of this.
7 You'll be hearing our arguments, and the case will be
8 over.

9 You're here today because Brice Driggers was
10 charged with two counts of unlawful carrying of a
11 pistol. He was illegally carrying two pistols here in
12 the County of Richland.

13 We'll talk about exactly what the law is
14 around unlawfully carrying of a pistol. Judge Hood is
15 going to instruct you further on the law in a little
16 bit.

17 I want to just quickly review what you heard
18 today from the witnesses. You heard from Ms. Linda
19 Henderson first. She was the clerk at the Dollar
20 General. All right.

21 She told you that she saw Brice Driggers pull
22 a gun out of his waistband and put it in a backpack.
23 Ladies and gentlemen, that is as direct evidence of the
24 defendant possessing a pistol as you can get. That is
25 one pistol that she saw in his hands.

1 Now, of course, her memory is a little fuzzy
2 about some of the details about what time of day it was
3 and so on and so forth. This did occur three years ago.
4 I think it's pretty reasonable to think some of the
5 ancillary facts are not perfectly remembered.

6 But what she does remember was seeing Brice
7 Driggers pull a gun out because she was scared, and she
8 told you she was scared. So that's what stuck out in
9 her mind. That's what she remembers and that's what she
10 told you about.

11 You next heard from Amanda Herlong. That's
12 Brice's kind of, sort of ex-girlfriend, depending on how
13 she wants to state it. Ms. Herlong told you that she
14 was with him that day. She was with Brice Driggers.

15 She told you that she went to the Dollar
16 General with him. She told you that she knew and she
17 saw him have two pistols in his bag. Those two pistols
18 are sitting right over there on that table.

19 He carried them in his backpack on his person.
20 He had actual possession of those pistols. They were
21 with him for the entire time, right up to and right
22 after they got to the store.

23 He then tried to hand it to Ms. Herlong and
24 she refused, and then he stashed them on the side of the
25 store. I believe the testimony was about 35 feet or

1 10 yards from the entrance.

2 Now, we heard Ms. Henderson say that when she
3 saw him pull the gun, she then immediately became
4 scared. She looked down and she started to call the
5 Forest Acres Police Department.

6 So she was not watching him the entire time he
7 was out there arguing with Amanda Herlong. During that
8 time I would submit is when the defendant walked those
9 35 feet and stashed those guns where Officer Smith found
10 them.

11 I would submit to you that would not take more
12 than a few seconds. Before she is done with her phone
13 call, he is already back inside in the store, walking
14 past Ms. Henderson with that backpack.

15 Now, nobody is going to argue that Ms. Amanda
16 Herlong is a model citizen. Of course, she isn't. She
17 certainly wasn't fully truthful with the police when
18 they showed up.

19 She did eventually come clean, and I think she
20 ultimately came clean to you today in the witness box.
21 You know, why should you believe her when she certainly
22 started out lying?

23 Well, I think if you look at the facts of what
24 you heard from Ms. Henderson, what you heard from
25 officers, what she finally came clean about matches the

1 rest of the evidence.

2 It matches where the guns were found. It
3 matches what Ms. Henderson saw. It matches what Officer
4 Smith saw. It matches what the defendant later told
5 Officer Smith in the car and EMS.

6 So you also heard from Officer Smith, and he
7 told you about how he found Brice Driggers inside with
8 the backpack. He found a magazine inside his backpack
9 that matches the gun that sits on that table.

10 He said that it's the same magazine. You have
11 two witnesses who told you that there was at least one,
12 according to Ms. Henderson, and certainly two, according
13 to Ms. Herlong, in that backpack where that magazine was
14 found by Officer Smith.

15 He told you that he later found those guns
16 about 35 feet from the entrance about right around the
17 corner, easy walking distance where Mr. Driggers could
18 have gotten them stashed within a quick few seconds.

19 You also heard from Officer Denizard who told
20 you about the reading of the rights, his rights, to the
21 defendant; and you heard from our two EMS workers, Jade
22 Steedley and Matthew Rock.

23 They told you about how they heard, when they
24 were taking Mr. Driggers to the hospital, he told them
25 that he had guns in his possession -- guns as in

1 plural -- and they were very, very clear on that when
2 they were asked. They said, according to Matthew Rock,
3 that he admitted to having those guns in his possession.

4 Then finally, you saw the video yourself.
5 When Officer Smith transported Mr. Driggers, you saw on
6 that video yourself when Mr. Driggers ask Officer Smith
7 where his fucking guns are at.

8 Now, you could argue that maybe, when he was
9 referring to his guns, he was only claiming ownership of
10 those guns and not that he actually possessed them. I'd
11 ask you to use your common sense, which is why we have
12 the juries here, to use your common sense.

13 What was he talking about? What he was
14 talking about were his guns. They were his guns that
15 were found beside that store. They were his guns they
16 he brought up in that backpack. It was his gun that
17 Ms. Henderson saw him with, and they were his guns that
18 Ms. Herlong knew he had with him.

19 Now, I said I'd talk a little bit about the
20 law. The judge is going to talk more about this. If
21 you hear me say something that is different from what
22 the judge tells you, you need to listen to the judge in
23 case I make a mistake.

24 Now, you've heard about reasonable doubt
25 today. What I want you to remember about reasonable

1 doubt: Yes, the State has the burden of proof to prove
2 to you beyond a reasonable doubt.

3 What does that mean? I want to make sure you
4 know. That's not every doubt in the world. All that
5 means is you need to be firmly convinced that Brice
6 Driggers is guilty of possessing those two pistols. All
7 right.

8 What is possession? And you'll hear more
9 about this from the judge, but under the law there's two
10 types of possession. There is actual possession and
11 constructive possession.

12 Actual possession is probably what, in your
13 common sense, is what you think it is. You have it in
14 your control. You're holding something. It's in your
15 bag. It's something that you directly control.

16 Constructive possession is more of a legal
17 term, and that's when you have the right to control
18 something or you have dominion over something, meaning
19 it may not be in your direct physical presence, it may
20 not be in your hand; but you still have the right to
21 control it. As I said, you'll hear more about that from
22 the judge.

23 I'm going to submit to you that what the
24 evidence showed today was that Brice Driggers had direct
25 possession of both those pistols. You heard evidence

1 that he had them in his backpack. You heard evidence
2 that he had at least one in his hand. I would submit to
3 you that that is direct evidence that the defendant had
4 two pistols in his possession.

5 Okay. So we've been talking about unlawful
6 carrying of a pistol. What is the law about that in
7 South Carolina? When can someone have a pistol and when
8 can they not?

9 Well, the law, at least as it starts, is
10 fairly simple. It is unlawful for anyone to carry about
11 their person any handgun, whether concealed or not,
12 except as follows.

13 So what that means is in the normal course of
14 events, absent some other exceptions we'll talk about,
15 it is illegal in South Carolina to carry a pistol,
16 whether it is concealed somewhere or whether it is not
17 concealed.

18 There are exceptions. There are times when it
19 is permissible, but I'm going to submit to you, you
20 heard no evidence today; and there is no way it can be
21 inferred that any of these exceptions apply to
22 Mr. Driggers on that day, on July 26, 2011.

23 So one possible exception is law enforcement
24 officers. Well, you heard no evidence about that.
25 Mr. Driggers is not a law enforcement officer. Members

1 of the Armed Forces of the United States. You heard no
2 evidence of him being in the military.

3 Licensed hunters or fisherman who are engaged
4 in hunting or fishing. That's not what he was doing at
5 the Dollar General that day. He wasn't hunting or
6 fishing.

7 Someone who engages in the manufacturing or
8 repairing or some nature of firearms. You heard no
9 evidence. Mr. Driggers doesn't manufacture guns or
10 repair them. You heard no evidence about that. Certain
11 guards that are employed are allowed to possess
12 handguns. Mr. Driggers was not employed as a security
13 guard that day.

14 Someone while they're on their own property
15 and the property they own or someone that had permission
16 from that owner can have a handgun with him. He was not
17 on his own property. He certainly didn't have
18 permission from the owners of the Dollar General to have
19 his pistols up there.

20 If it's in a vehicle. You can lawfully posses
21 a pistol in your vehicle if you have it secure and
22 contained like in the glove box or something of the
23 nature. You heard no evidence of that. He wasn't in a
24 vehicle that day. He was at the Dollar General on foot.
25 All right.

1 One exception is if he had a valid concealed
2 weapons permit under the law of South Carolina. We
3 asked Officer Smith about that. Mr. Driggers did not
4 possess a valid concealed weapons permit on that day.
5 Mr. Driggers isn't a prison guard.

6 So I think that will cover the exceptions
7 that -- I would submit -- that can possibly apply, which
8 they don't as I argued. That's the law in South
9 Carolina.

10 Again, Judge Hood will instruct your further
11 on that. If I said something that you think is
12 different than what the judge says, you need to listen
13 to the judge.

14 As I said, ladies and gentlemen, I think you
15 heard ample evidence today that Mr. Driggers had direct
16 control over two pistols. As such he is charged with
17 two counts of unlawful carrying of a pistol. We are
18 asking you to find him guilty of those two offenses.

19 The key pieces of evidence that I want you to
20 remember when you go back there is what Ms. Henderson
21 said. Ms. Henderson, she was just a cashier. She was
22 doing her job.

23 Here comes a man walking into her store with a
24 gun, who she thinks has a gun. She saw him outside with
25 it, and she thinks he comes inside with a gun. She had

1 no reason to lie to you. She is up here because she was
2 scared that day.

3 You also heard from Ms. Herlong, who while she
4 isn't a model citizen, I think ultimately told you the
5 truth today. She knew he had those two guns. She
6 initially tried to cover for her friend at that point,
7 her boyfriend, or whatever you want to call him but she
8 knew. She came clean when she realized what was going
9 on.

10 Remember, Officer Smith found the magazine
11 that belongs to that gun in Brice Driggers's backpack,
12 the backpack he held when Officer Smith first approached
13 him.

14 Finally, remember his own statements. He
15 said -- you heard his own words on that tape -- you
16 heard him say, "Where are my fucking guns at?" or
17 something similar to that. They're sitting right there.
18 He also told EMS that he had guns, plural, in his
19 possession. All right.

20 Ladies and gentlemen, I want to thank you
21 again for your time and attention. On behalf of my
22 co-counsel, Ramie Shalabi, and our boss, Solicitor Dan
23 Johnson, I want to thank you again for today. I, again,
24 am respectfully asking you to return a verdict of guilty
25 on both counts. Thank you.

1 THE COURT: Thank you, Mr. Conrad.

2 Ms. Dyar.

3 MS. DYAR: Thank you, Your Honor. May it
4 please the Court.

5 THE COURT: Yes, ma'am.

6 CLOSING ARGUMENT

7 MS. DYAR: Okay, ladies and gentlemen. You've
8 heard from the State. You heard the evidence, what they
9 did investigate. Okay. So what do we have? Let's go
10 back to what we do have.

11 We have a cashier that puts the gun in
12 Mr. Brice's waistband. She also got up there and
13 testified that she saw him pull it out of his backpack.
14 That's conflicting testimony there.

15 That's conflicting testimony with Ms. Herlong,
16 the ex-girlfriend of Mr. Driggers. Doesn't remember
17 telling law enforcement that the gun shouldn't be
18 loaded; but she did, in fact, tell law enforcement that
19 at the time. You heard that from Officer Smith.

20 She also tells you that he has got both the
21 guns in his backpack. That's conflicting from what
22 Ms. Henderson says. Okay. You also heard from Officer
23 Smith. He tells you he confronts Brice inside the
24 store. Okay.

25 He also tells you that the guns are outside

1 the store. So I ask: How can Brice have the guns when
2 he is inside the store and they're outside? This is a
3 crime of possession -- okay -- not ownership.

4 They go on about actual possession versus
5 constructive possession, but constructive possession
6 also requires that it be readily assessable and
7 convenient for immediate use. They're outside the
8 store; he is inside the store. Law enforcement makes
9 contact with him. He says, "Yep, search my bag," no
10 guns.

11 I'm going to tell you what we don't have in
12 this case and a lot of what we're missing. Okay. We
13 don't have surveillance from the Dollar General. That
14 probably could have helped. Okay.

15 We don't have any -- we have four or five
16 officers that showed up that day. We have one report.
17 We have one video for you to see. Where are all the
18 other reports? Where are all the other videos?

19 This is also a public store with plenty of
20 people coming in and out. You heard Ms. Henderson's
21 testimony. She had people in line. Did law enforcement
22 interview any of those? Nope. Do you have any of their
23 statements? Nope. Were they called to testify against
24 Mr. Driggers today? Nope.

25 We also have Sergeant Shumard who responded to

1 the scene with Officer Denizard, Investigator Denizard,
2 and Officer Smith. We didn't hear from him. He, by
3 Officer Smith's own testimony and in his report,
4 Sergeant Shumard actually saw Amanda Herlong coming from
5 around the building where the guns are eventually found;
6 but he is not here to testify to that today.

7 Again, this is a crime of possession, not
8 ownership. You heard over and over and over again
9 Brice, yeah, he admitted to the guns. They were his
10 guns but possession versus ownership. Guns on the
11 outside; Mr. Driggers on the inside of the store.

12 What we have is conflicting testimony and a
13 lack of evidence in this case. I submit to you that you
14 should hold the State accountable for that. They should
15 take this serious. This is serious. Mr. Driggers takes
16 this seriously. He is not here today, but I don't want
17 you to hold that against him. This is scary for anyone.
18 Okay.

19 But what we have at a minimum here is
20 conflicting testimony between a cashier and a person who
21 was actually seen coming from where the guns were and
22 lied to law enforcement initially. After speaking with
23 law enforcement for whatever reason, she changes her
24 story and puts the guns on Brice.

25 You've heard from all the -- you heard all the

1 testimony here. We don't dispute the fact that
2 Mr. Driggers admits that those were his guns, but the
3 evidence is lacking to show that he was actually in
4 possession of those guns on that day at that time.

5 We're asking that you find Mr. Driggers not
6 guilty on both counts. Hold the State accountable for
7 their lack of investigation in this case, the lack of
8 evidence presented to you here today. You deserve more
9 than that. Brice deserves more than that.

10 We have nothing further.

11 (Whereupon the Court charged the jury as
12 follows.)

13 THE COURT: All right. Thank you very much.

14 Ladies and gentlemen, we have now reached the
15 point of the trial where I will tell you what the law is
16 in this case. If the bailiff will please go ahead and
17 lock the back door.

18 Ladies and gentlemen, the indictments have
19 charged the defendant with two counts of unlawful
20 carrying of a pistol. I remind you that the fact that
21 the defendant was arrested, charged, and indicted in
22 this case is not evidence in this case and cannot be
23 considered by you as evidence of guilt in this case, nor
24 does it create any presumption or inference of guilt.

25 The documents known as the indictments are

1 simply the formal written instruments which contain the
2 charges made against the defendant. They are the formal
3 documents by which these cases are brought into this
4 court.

5 Now, the indictments in this case allege two
6 offenses against the defendant. The defendant is
7 charged with two counts of unlawful carrying of a
8 pistol.

9 Each indictment charges a separate and
10 distinct offense. You must decide each indictment
11 separately on the evidence and the law applicable to it,
12 uninfluenced by your decision as to any other
13 indictment.

14 The defendant may be convicted or acquitted on
15 any or all of the offenses charged. You will be asked
16 to write a separate verdict of guilty or not guilty for
17 each indictment.

18 Now, under the laws of this State, a defendant
19 may be tried even if the defendant is not present at
20 trial; but the fact that the defendant is not present
21 may not be considered against the defendant in any
22 manner whatsoever.

23 You are to consider only the evidence
24 presented during this trial in rendering your verdict.
25 Absence in no way should be construed as an admission of

1 the defendant's guilt.

2 I remind you that the State has the burden of
3 proof in this case. A defendant never has to prove he
4 is innocent and has a constitutional right to remain
5 silent.

6 The defendant has pled not guilty to these
7 indictments. That plea puts the burden on the State to
8 prove the defendant guilty. A person charged with
9 committing a criminal offense in South Carolina is never
10 required to prove himself innocent.

11 I charge you that it is an important rule of
12 law that the defendant in a criminal trial, no matter
13 what the seriousness of the charge may be, will always
14 be presumed to be innocent of the crime for which the
15 defendant was charged unless guilt has been proven by
16 evidence satisfying you of that guilt beyond a
17 reasonable doubt.

18 The presumption of innocence does not end when
19 you begin your deliberations, but it accompanies the
20 defendant throughout the trial until you reach a verdict
21 of guilt based upon evidence satisfying you of the guilt
22 beyond a reasonable doubt.

23 The presumption of innocence is like a robe of
24 righteousness placed about the shoulders of the
25 defendant which remains with the defendant until it has

1 been stripped from the defendant by evidence satisfying
2 you of the defendant's guilt beyond a reasonable doubt.

3 The presumption of innocence is not a mere
4 legal theory. It is just not a legal phrase. It is a
5 substantial right to which every defendant is entitled
6 unless you the jury are satisfied from the evidence of
7 the defendant's guilt beyond a reasonable doubt.

8 The State has the burden of proving the
9 defendant guilty beyond a reasonable doubt. Some of you
10 may have served as jurors in civil cases where you were
11 told that it is only necessary to prove that a fact is
12 more likely true than not true, such as by the greater
13 weight or the preponderance of the evidence.

14 In criminal cases the State's proof must be
15 more powerful than that. It must be beyond a reasonable
16 doubt. Proof beyond a reasonable doubt is proof that
17 leaves you firmly convinced of the defendant's guilt.

18 There are very few things in this world that
19 we know with absolute certainty. In criminal cases the
20 law does not require proof that overcomes every possible
21 doubt.

22 If, based upon your consideration of the
23 evidence, you are firmly convinced that the defendant is
24 guilty, you must find the defendant guilty. If on the
25 other hand you think there is a real possibility that

1 the defendant is not guilty, you must give the defendant
2 the benefit of the doubt and find him not guilty.

3 I remind you that during this trial, you and I
4 have certain duties to perform. As the trial judge, it
5 is my responsibility to preside over the trial of this
6 case. I also have the duty to rule on the admissibility
7 of the evidence offered during this trial.

8 You are to consider only the competent
9 evidence before you. If there was any testimony ordered
10 stricken from the record in this case, you will
11 disregard that testimony.

12 You are only to consider the testimony which
13 has been presented from the witness stand and the
14 exhibits which have been made a part of the record and
15 any stipulations of counsel.

16 I have the additional duty to charge you the
17 law applicable to this case. As the presiding judge, I
18 am the sole judge of the law in this case; and it is
19 your duty as jurors to accept and apply the law as I
20 give it to you.

21 If you already have an idea as to what the law
22 is or what the law should be and it does not agree with
23 what I tell you, you must abandon your own idea because
24 you are sworn to accept and apply the law exactly as I
25 give it to you.

1 In every case tried in this court before a
2 jury, the jury becomes the sole and exclusive judge of
3 the facts. A trial judge cannot state, comment on, or
4 make a statement to a trial jury about the facts in a
5 case.

6 Since you the jury are the sole judge of the
7 facts, you are not to infer from anything that I have
8 said during the progress of this trial or in ruling upon
9 the admissibility of evidence or otherwise or anything
10 that I say now that I have any opinion about the facts
11 in this case.

12 The law does not allow me to have an opinion
13 about the facts. This is a matter solely for you to
14 determine. It is your duty to determine the effect, the
15 value, the weight, and the truth of the evidence
16 presented during this trial.

17 The evidence by which you are to decide what
18 the facts are consists of the sworn testimony of the
19 witnesses, both on direct and cross examination,
20 regardless of who called the witness, the exhibits that
21 have been received into evidence, or any fact that has
22 been stipulated upon.

23 Now, some things are not evidence. I
24 explained this to you earlier, and I will explain this
25 to you again. The opening statements and the closing

1 arguments of the lawyers are not evidence.

2 Lawyers are not witnesses. What they have
3 said in their opening statements or closing arguments or
4 at other times is intended to help you interpret the
5 evidence, but it is not evidence. If the facts as you
6 remember them differ from what the lawyers say, your
7 memory controls.

8 Questions and objections by the lawyers are
9 not evidence. Attorneys have a duty to their clients to
10 object when they believe a question is improper. You
11 should not be influenced by any ruling I made on
12 objections.

13 Any testimony that has been excluded or
14 stricken or that I told you to disregard is not
15 evidence. Anything that you may have seen or heard
16 while court was not in session is not evidence. You are
17 to decide this case solely on the evidence received
18 during this trial.

19 Now, there are two types of evidence which are
20 generally presented during a trial, direct and
21 circumstantial evidence. Direct evidence is the
22 testimony of a person who claims to have actual
23 knowledge of a fact, such as an eye witnesses. It is
24 evidence which immediately establishes the main fact to
25 be proved.

1 Circumstantial evidence is proof of a chain of
2 facts and circumstances indicating the existence of a
3 fact. It is evidence which immediately establishes
4 collateral facts from which the main fact may be
5 inferred.

6 Now, I find that sentence right there a little
7 bit confusing. So let me give you an example of
8 circumstantial evidence. An example of circumstantial
9 evidence is this.

10 Remember back in January, you went to bed one
11 night and you looked out across your front yard and your
12 grass was brown. There was nothing in the sky and there
13 was nothing on the ground. You went to sleep about
14 11:00 o'clock at night, and you woke up the next morning
15 and the ground was covered in snow.

16 Now, did you see it snow during the night?
17 No. Did you hear it snow? No. But can you infer that
18 it snowed during the night? The answer is yes. That's
19 an example of circumstantial evidence.

20 The law makes absolutely no distinction
21 between the weight or the value to be given to either
22 direct or circumstantial evidence, nor is a greater
23 degree of certainty required.

24 You should weigh all of the evidence and after
25 weighing all the evidence if you are not convinced of

1 the guilt of the defendant beyond a reasonable doubt,
2 you must find the defendant not guilty.

3 You must also determine the credibility of the
4 witnesses who have testified in this case. Credibility
5 is just a big word for believability. It becomes your
6 duty as jurors to analyze and to evaluate the evidence
7 and to determine which evidence convinces you of its
8 truth.

9 In determining the believability or
10 credibility, you may believe everything a witness says,
11 none of what a witness says, or part of what a witness
12 says.

13 You may consider whether any witness has
14 exhibited to you any interest, bias, prejudice, or other
15 motive in the case. You may also consider the
16 appearance and the manner of a witness while on the
17 stand.

18 In order to establish criminal liability,
19 criminal intent is required. For example, the mental
20 state required to be proven by the State for a
21 particular crime might be purpose, intent, knowledge
22 recklessness, or criminal negligence.

23 Criminal intent must be proven by the State
24 beyond a reasonable doubt. Criminal intent is always a
25 matter that must be determined by the jury from the

1 circumstances surrounding the situation.

2 Now, there is no way to prove intent to a
3 mathematical certainty. There is no way medical science
4 can dissect a person's brain and determine what the
5 person had in mind.

6 So the law says that criminal intent may be
7 inferred from the circumstances that existed or shown to
8 have existed. This is how you make a determination of
9 whether or not the element requiring intent was present.

10 It is not necessary to establish intent by
11 direct and positive evidence, but intent may be
12 established by inference in the same way as any other
13 fact, by taking into consideration the acts of the
14 parties and all the facts and circumstances of the case.

15 Criminal intent is a mental state, a conscious
16 wrongdoing. It is up to you to determine what the
17 defendant intended to do based upon the circumstances
18 shown to have existed.

19 Criminal intent can arise from action or a
20 failure to act. It may arise from negligence,
21 recklessness, or indifference to duty or to consequences
22 that is considered by the law to be the equivalent of
23 criminal intent.

24 Now, statements alleged to have been made by
25 the defendant have been admitted into evidence in this

1 case. While I have determined that the statement is
2 admissible, I instruct you that you make the ultimate
3 decision of whether or not the defendant made the
4 statement.

5 If the defendant did make the statement or
6 statements, you must determine whether the statements
7 were made by the defendant voluntarily and of his own
8 free will.

9 This means that the statement was not caused
10 by pressure, force, fear, threat, coercion, or
11 intimidation or by hope or a promise of leniency or of a
12 reward of any kind.

13 In determining whether the statement was
14 voluntary, you should consider both the characteristics
15 of the defendant and the details of any questioning.
16 Some of the factors that you could consider are:

17 The age of the defendant, the education or
18 lack of education, the defendant's mental ability or
19 capacity, the defendant's intelligence, the defendant's
20 background and environment, the place and the length of
21 detention, the nature of the questioning, and the advice
22 or lack thereof of his constitutional rights, including
23 but not limited to:

24 His right to remain silent; that any statement
25 could be used against him in court; the right to have a

1 lawyer; that if he can't not afford a lawyer, a lawyer
2 would be appointed to represent him without any cost;
3 and that he could stop making a statement at any time.

4 You must carefully consider all of the
5 surrounding circumstances before you give any weight to
6 an alleged statement of the defendant. The State has
7 the burden of proving beyond a reasonable doubt that the
8 alleged statement was voluntary.

9 If you determine it was, you may give the
10 statement any further consideration that you deem
11 proper. You must decide what weight, if any, should be
12 given to the alleged statements. If you determine the
13 alleged statements were not the free and voluntary
14 statements of the defendant, you should not consider the
15 statements at all.

16 I instruct you and I emphasize to you that the
17 fact that the defendant did not testify is not a factor
18 to be considered by you in any way in your deliberation
19 and in your consideration on the question of the guilt
20 or innocence of the defendant.

21 It must not be considered by you in any manner
22 whatsoever. A defendant has a constitutional right to
23 remain silent. The assertion of this right must not be
24 considered by you in your deliberations at all.

25 I repeat: Under your oath you are to draw no

1 conclusion whatsoever from the fact that the defendant
2 in this case did not testify. The fact that the
3 defendant did not testify should not even be discussed
4 in the jury room.

5 The burden of proof, as I have stated to you
6 throughout this trial, is upon the State. The defendant
7 is not required to prove his innocence. The burden of
8 proof remains on the State to prove guilt beyond a
9 reasonable doubt.

10 Voluntary intoxication is not a defense to a
11 crime. A person who voluntarily becomes intoxicated is
12 just as responsible for the acts committed as when the
13 person is not intoxicated.

14 Now, let me get to the elements of the crime
15 of unlawful carrying of a pistol. Remember, there are
16 two separate indictments here. You have to consider
17 each of them separately, applying the elements of the
18 crime I am about to now give you.

19 The defendant is charged with unlawful
20 carrying of a pistol. The State must prove beyond a
21 reasonable doubt that the defendant carried a pistol
22 about his person whether concealed or not.

23 A weapon is about the defendant's person if it
24 is readily accessible and convenient for immediate use.
25 The pistol need not be actually touching the person of

1 the defendant.

2 Next, I need to explain to you something about
3 possession. The State does not necessarily have to
4 prove that the defendant physically possessed the pistol
5 or pistols for you to find him guilty of this crime.

6 The law recognizes two kinds of possession,
7 actual possession and constructive possession. Either
8 one of these if proved by the State is enough to
9 convict.

10 To establish actual possession, the State must
11 prove that the defendant had direct physical control
12 over the pistol or pistols and knew that he had control
13 over it.

14 To establish constructive possession, the
15 State must prove that the defendant had the right to
16 exercise physical control over the pistol or pistols and
17 knew that he had this right and that he intended to
18 exercise physical control over the pistol or pistols at
19 sometime, either directly or through other persons.

20 Now, the final part of my instruction to you
21 are some rules for your deliberations. You don't serve
22 as a juror to be a partisan or advocate for either
23 side.

24 You were chosen because both sides believed
25 you could be fair and impartial and decide this case

1 solely on the evidence and without any bias or without
2 any prejudice.

3 That means you are to use your experiences in
4 life, your good common sense, and your sense of logic
5 and reason. You bring those things to bear on what you
6 have heard in this courtroom.

7 Once you do that, you will be able to
8 determine the truth of this case. Once you have decided
9 the truth, you take it and apply the law I have just
10 given you. When you have done that, you will be able to
11 reach a verdict that will speak the truth.

12 Let me say something to you about
13 deliberations. A deliberation is defined as a careful
14 consideration weighing up with a view to decision. The
15 genius of our jury system is that it allows 12 good men
16 and woman from 12 totally different backgrounds, life
17 experiences, and perspectives to consider the evidence,
18 talk about it, and reach a verdict.

19 We call them deliberations for a reason. You
20 are to consider the evidence in this case carefully and
21 deliberately and discuss it in a calm, thorough, and
22 courteous manner.

23 Remember, you are not a partisan or an
24 advocate for either side, favoring one side over the
25 other. You are a judge. You are the judge of the

1 facts.

2 Your sole interest is to find the truth from
3 the evidence you have heard in this courtroom, listen to
4 the views of all of your fellow jurors, consider other
5 people's points and their points of view, and talk
6 through and discuss the evidence.

7 Remember, if you are doing something
8 deliberately, you are not in a big hurry; and you should
9 not be in a big hurry here. The case is very important
10 to both sides. This is their only day in court.

11 When you retire to the jury room, you should
12 discuss the case with your fellow jurors to reach
13 agreement if you can do so. Your verdict must be
14 unanimous.

15 Each of you must decide the case for yourself,
16 but you should do so only after you have impartially
17 considered the evidence, discussed it fully, and
18 listened to the views of your fellow jurors.

19 Do not be afraid to change your opinion if the
20 discussion persuades you to do so but do not come to a
21 decision simply because the other jurors think it is
22 right.

23 It is important that you reach a unanimous
24 verdict but only if each of you can do so after having
25 made your own decision. Do not change an honest belief

1 about the weight and the effect of the evidence simply
2 to reach a verdict. In other words, do not change your
3 opinion solely for the sake of reaching a unanimous
4 verdict.

5 Now, I have prepared a verdict form for you,
6 and the lawyers have seen it. So they know what's on
7 it. This is typed out for you. So I am going to give
8 this to Mr. Foreperson.

9 It has the case caption at the top, and it has
10 each charge. Each charge is listed separately because
11 you are required to consider each charge separately,
12 just as I have told you.

13 Now, I have a spot for guilty and a spot for
14 not guilty. There is no meaning to the order that I
15 have put them in on the form. I simply have to put one
16 before the other.

17 At the conclusion once you have reached a
18 unanimous verdict as to the first count and as to the
19 second count, Mr. Foreperson, if you will sign it, knock
20 on the door, give it to the bailiff; and they will
21 return it to me.

22 Now, just a couple more rules. Rule number
23 one is this. You all 12 have to be in the room to
24 deliberate. So if somebody needs to go to the bathroom
25 or somebody needs to smoke or somebody needs to step

1 outside, the deliberations have to stop. Okay. All 12
2 of you have to be in there to deliberate.

3 Even now you may not deliberate. I'm about to
4 send you to your jury room here in the next 60 seconds
5 or so, and I have one more legal matter to discuss with
6 the lawyers.

7 Here is your sign. Once the evidence comes
8 back in your jury room, that is your sign that you may
9 deliberate. So when the bailiffs give you the physical
10 exhibits, that's your sign from me that you may
11 deliberate.

12 Mr. Alternate, once deliberations begin, they
13 will pull you out. The alternate is not allowed to be
14 with you during deliberations.

15 Let me check my notes. Okay. Last thing.
16 That's why I make notes so I don't forget anything. If
17 you need to communicate with me while you're
18 deliberating, just write a note as you did before.

19 Now, the one thing I never need to know from
20 you is what your count is. For some reason when I
21 started doing this, jurors loved to tell me what their
22 count was. It doesn't matter.

23 Your count is between you and only between
24 you. I only need to know when you've reached a
25 unanimous verdict. So there is no point in any of your

1 communication that you should say, "The count is this."
2 That is irrelevant to me. It does not matter. That's
3 amongst yourselves.

4 If you will retire to your jury room.
5 Mr. Foreman, you take the form. Do not discuss the
6 case. Once the evidence comes back, you may discuss it.
7 Thank you very much.

8 (The jury retires to the jury room at
9 3:47 P.M.)

10 THE COURT: I realized in the middle of it
11 that I left out the defendant's failure to testify. So
12 we threw that in. Does anybody have an objection to
13 that?

14 MS. DYAR: We didn't notice either.

15 MR. CONRAD: No.

16 THE COURT: I was just going through and as I
17 was reading, I said to myself we had forgotten that. So
18 we added it in. Anything from the State as to the
19 charge?

20 MR. CONRAD: Nothing, Your Honor.

21 THE COURT: From the defense?

22 MS. EIGENBROT: No, Your Honor.

23 THE COURT: Now, the lawyers are responsible
24 to get with the court reporter and the clerk to make
25 sure the right exhibits go back. So don't leave. Make

1 sure Becky or Elizabeth has your phone numbers so we can
2 find you quickly. That's it. Thank you very much.

3 (Pause.)

4 MR. CONRAD: Your Honor, just a clarification.
5 I think all parties agree that the CD with the video is
6 in evidence. Obviously, they need to have something to
7 play it. The Solicitor's Office has what we call a
8 clean computer.

9 THE COURT: If they ask for it, we'll send it
10 back.

11 MR. CONRAD: Is there any objection to using
12 this computer. Do you want to look at it?

13 MS. EIGENBROT: No, we have no objections.

14 THE COURT: Mr. Burgess, tell them if they
15 need something to play the CD on, they just need to let
16 us know; and we'll provide that for them.

17 THE BAILIFF: Okay.

18 (The jury commences its deliberation at
19 3:50 P.M.)

20 (The following occurred at 4:48 P.M.)

21 THE COURT: All right. It's my understanding
22 we have a verdict.

23 Is that right, Mr. Addison?

24 THE BAILIFF: Yes, sir, that's right.

25 THE COURT: Bring in the jury, please.

1 (The jury returns to open court to report its
2 verdict).

3 THE BAILIFF: The jury is seated, Your Honor.

4 THE COURT: All right. Thank you very much.

5 Mr. Foreman, do you have a verdict?

6 THE FOREMAN: Yes, we do.

7 THE COURT: Is it unanimous?

8 THE FOREMAN: Yes.

9 THE COURT: If you will hand it to
10 Mr. Addison.

11 (Hands to Court.)

12 THE COURT: All right. The verdict is in its
13 proper form. The clerk may publish it.

14 (Whereupon the verdicts of the jury are
15 published as follows).

16 THE CLERK: In the Court of General Sessions,
17 State of South Carolina, County of Richland, the State
18 of South Carolina versus Brice Joseph Driggers.

19 On Indictment Number 2012-GS-40-00269 and 270,
20 we the jury by unanimous consent find the defendant,
21 Brice Joseph Driggers, as to the charge of unlawful
22 carrying of a pistol on Indictment Number
23 2012-GS-40-00269, guilty.

24 As to the charge of unlawful carrying of a
25 pistol on Indictment 2012-GS-40-00270, guilty, signed by

1 the foreperson and dated June 11, 2014.

2 Mr. Foreman, is this your verdict and the
3 verdict of the entire jury?

4 THE FOREMAN: Yes, it is.

5 THE CLERK: Thank you.

6 THE COURT: All right. Polling?

7 MS. DYAR: Yes, Your Honor.

8 THE COURT: All right. Ladies and gentlemen,
9 they're going to ask you -- madam clerk is going to ask
10 you two questions: Are these your verdicts? And are
11 these still your verdicts? She'll ask you by number.

12 THE CLERK: Number 154, was this your verdict?

13 JUROR: Yes.

14 THE CLERK: Is it still your verdict?

15 JUROR: Yes.

16 THE CLERK: Number 221, was this your verdict?

17 JUROR: Yes.

18 THE CLERK: Is it still your verdict?

19 JUROR: Yes.

20 THE CLERK: Number 302, was this your verdict?

21 JUROR: Yes.

22 THE CLERK: Is it still your verdict?

23 JUROR: Yes.

24 THE CLERK: Number 32, was this your verdict?

25 JUROR: Yes.

1 THE CLERK: Is it still your verdict?

2 JUROR: Yes.

3 THE CLERK: Number 96, was this your verdict?

4 JUROR: Yes.

5 THE CLERK: Is it still your verdict?

6 JUROR: Yes.

7 THE CLERK: Number 53, was this your verdict?

8 JUROR: Yes.

9 THE CLERK: Is it still your verdict?

10 JUROR: Yes.

11 THE CLERK: Number 203, was this your verdict?

12 JUROR: Yes.

13 THE CLERK: Is it still your verdict?

14 JUROR: Yes.

15 THE CLERK: Number 113, was this your verdict?

16 JUROR: Yes.

17 THE CLERK: Is it still your verdict?

18 JUROR: Yes.

19 THE CLERK: Number 135, was this your verdict?

20 JUROR: Yes.

21 THE CLERK: Is it still your verdict?

22 JUROR: Yes.

23 THE CLERK: Number 40, was this your verdict?

24 JUROR: Yes.

25 THE CLERK: Is it still your verdict?

1 JUROR: Yes.

2 THE CLERK: Number 39, was this your verdict?

3 JUROR: Yes.

4 THE CLERK: Is it still your verdict?

5 JUROR: Yes.

6 THE CLERK: Number 121, was this your verdict?

7 JUROR: Yes..

8 THE CLERK: Is it still your verdict?

9 JUROR: Yes.

10 THE CLERK: The jury has been polled, Your
11 Honor.

12 THE COURT: All right. Thank you very much.

13 Ladies and gentlemen, this concludes your jury
14 service. You will be officially done for the week. You
15 will not need to call back in or report back here for
16 the rest of the week.

17 I remind you that because of your service this
18 week, you have an exemption from service in circuit
19 court for the next three years. That covers this year
20 and the two following years.

21 If you get called again for jury duty in
22 circuit court, you may claim that exemption. They will
23 need to look you up on the computer, but you will be
24 able to take that exemption if you get called.

25 Now, one final thing before I release you back

1 to your jury room. Sometimes at the end of cases,
2 lawyers -- and I say that specifically -- lawyers like
3 to call jurors and say, "Tell me what we did right.
4 Tell me what we did wrong. Help us to do better the
5 next time around."

6 If a lawyer reaches out to you and contacts
7 you, you are more than welcome to discuss the case with
8 them or discuss anything with them. Feel free to do so.
9 However, if you do not want to be bothered by them or
10 you do not want to be questioned by them or you do not
11 want to speak with them, just tell them so.

12 If they do not immediately get off the phone,
13 then you just pick up the phone and call the Clerk of
14 Court's Office. I promise you that a circuit court
15 judge will deal with that very quick. You have a right
16 not to be harassed.

17 If somebody does contact you and you want to
18 discuss things with them, you are more than welcome to
19 do so. You are free to discuss the case now with
20 anybody that you see fit.

21 Thank you very much for your service. If you
22 will retire to your jury room, you'll be dismissed by
23 the clerk. Thank you very much.

24 (The jury is excused.)

25 THE COURT: I will need two sentencing sheets

1 and an envelope to seal the sentencing.

2 MR. CONRAD: Yes, Your Honor.

3 THE COURT: I'll be right back.

4 (Pause.)

5 THE COURT: Is there anything you want to tell
6 me about your client?

7 MS. DYAR: Just a few things, Your Honor. We
8 want to renew all of our pretrial motions, objections,
9 motion for a directed verdict. Just given the brevity
10 of the deliberations, the jury deliberations, we would,
11 on behalf of Mr. Driggers, request a new trial. As far
12 as sentencing goes, if Megan wants to address, Your
13 Honor, for that.

14 THE COURT: Okay. Let me rule. All your
15 previous motions are noted for the record, and I do rule
16 the same way that I would have ruled before on those
17 based on my previous reasoning.

18 As to the length of the deliberations based
19 upon the speed of the trial today, by my count the jury
20 was out somewhere just south of an hour. I deem that to
21 be appropriate under the circumstances to evaluate the
22 facts and the evidence and the law as presented to them
23 and will deny that motion for a new trial.

24 As to sentencing, Ms. Eigenbrot?

25 MS. EIGENBROT: Thank you, Your Honor. I

1 would like Your Honor to take into consideration that
2 the offer on this case had always been time served. He
3 did spend 98 days in jail initially when he was arrested
4 on these two charges.

5 If Your Honor is not inclined to give him a
6 time served, as he had been offered up to this point, we
7 would just simply ask that you run the sentences
8 concurrent, Your Honor.

9 THE COURT: All right. Anything else you want
10 to tell me about your client?

11 MS. EIGENBROT: Your Honor, just that he
12 stayed out of trouble after he was arrested on these
13 charges. He's been out on bond since November 1st of
14 2011 and has stayed out of trouble since then. Your
15 Honor, he did just get married. That's about it.

16 THE COURT: Thank you. As to his prior record
17 or anything the State wants to present as to sentencing?

18 MR. CONRAD: Just his prior record, Your
19 Honor. From 2007 in Florida it looks like he has a
20 failure to appear for a felony offense. In South
21 Carolina it looks like the only actual convictions he
22 had in South Carolina were 2010, one count of improper
23 start of a vehicle and one for DUS.

24 He has a DUI from Georgia. It looks like it
25 was from 1994 and a giving a false name or address or

1 birthday to law enforcement. That was from 2001. That
2 is also in Georgia.

3 He also has -- his only felony conviction is
4 from Texas, which is a -- it states it's a possession
5 charge of marijuana between 5 and 50 pounds, and I
6 believe that was from 2008 or '09. That's his record,
7 Your Honor.

8 The State feels justified, I think based upon
9 the totality of this, that I don't think that time
10 served is appropriate at this point. I'd ask for
11 consecutive time if the Court is willing.

12 THE COURT: All right. I filled out the
13 sentencing sheets as I deem appropriate and will seal
14 the sentence in accordance with the law as required in
15 this area.

16 I will ask that the Solicitor's Office prepare
17 a warrant for Mr. Driggers arrest for me to sign. Thank
18 you very much. Thank you all. You did a good job.

19 MS. DYAR: Thank you, Your Honor.

20 (Whereupon the proceedings are concluded for
21 June 11, 2014.)

22 (The following proceedings are reported on
23 October 20, 2014.)

24 THE CLERK: Please raise your right hand.

25 BRICE JOSEPH DRIGGERS is first

1 duly sworn.

2 MR. CONRAD: Thank you, Your Honor. This is
3 Brice Driggers represented by Megan Eigenbrot from the
4 Public Defender's Office. We tried Mr. Driggers in his
5 absence a few months ago for two counts of unlawful
6 carrying of a pistol.

7 The jury came back with a guilty verdict on
8 both counts. I believe the Court signed a sentence and
9 placed it under seal. That's why we are here today is
10 to reveal the sentence for Mr. Driggers.

11 THE COURT: Are you Brice Driggers?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Ms. Eigenbrot, is there anything
14 you want to tell me?

15 MS. EIGENBROT: Your Honor, yes. I would like
16 to make a motion based on what the sentence is.

17 THE COURT: All right. Mr. Driggers was
18 convicted by a jury trial on June 11, 2014. He was
19 charged with two counts of unlawful carrying of a pistol
20 in Indictments 2012-GS-40-269 and 270.

21 I'm reviewing the verdict form signed by the
22 foreperson on that day. During that trial Mr. Driggers
23 was not present; however, he was represented by counsel,
24 and counsel was present for the trial and did
25 participate during the trial.

1 Mr. Driggers was not present and was properly
2 noticed for court.

3 Is this the one where he actually showed up
4 that morning and then left?

5 MS. EIGENBROT: Yes, Your Honor.

6 THE COURT: Okay. That was the information
7 the Court had and the record will reflect the
8 information that the Court used in deciding to go
9 forward in the trial without the presence of the
10 defendant.

11 Mr. Driggers is now in front of me, and the
12 proper thing at this point in time is to read the
13 sentence that was imposed on that date. As
14 to 2012-GS-40-269, the defendant is committed to the
15 State Department of Corrections for one year.

16 As to Indictment 2012-GS-40-270, the defendant
17 is sentenced to the Department of Corrections for one
18 year. That is to be consecutive. He is to be given
19 credit for time served on both charges.

20 Anything further, Ms. Eigenbrot?

21 (The following proceedings were reported on
22 date).

23 MS. EIGENBROT: Your Honor, I would make a
24 motion to reconsider his sentence at this time. Your
25 Honor, before trial the offer the entire time for

1 Mr. Driggers was a time-served sentence.

2 This case was from 2011. Mr. Driggers
3 remained on bond after initially serving approximately
4 four months. He stayed out of trouble that entire time.
5 He, to this day, still denies actually being in
6 possession of the guns.

7 Your Honor, after the trial he has been
8 working mainly to help get financially straight, as his
9 wife is now pregnant. He is working for a friend's
10 restaurant.

11 He is the main cook in the back, and he tells
12 me that he is pretty much paramount to the running of
13 that business. It's called the Beaver Tree out in
14 Eastover. He basically runs the kitchen.

15 Your Honor, he did not get himself in more
16 trouble. He actually was picked up because his car fit
17 the description of a hit and run, and the police pulled
18 him over to question him. At that time they realized he
19 had these warrants pending.

20 Your Honor, as I said, he has always denied
21 being in possession of the guns. I would ask that you
22 reconsider the sentence and allow him probation at this
23 point, simply because of the news I recently received of
24 his wife being pregnant; and he is financially
25 supporting her as of right now.

1 She unfortunately is not here today because I
2 simply could not get ahold of her. As Your Honor knows,
3 I was in trial; and I don't think she has any minutes on
4 her phone even though I've been trying all weekend.
5 Your Honor, I would ask that you reconsider the sentence
6 at this time.

7 THE COURT: Anything you want to tell me,
8 Mr. Driggers?

9 THE DEFENDANT: Sir, I know that all the
10 evidence wasn't produced. On the video that was
11 removed, they clearly state that they were going to put
12 me in front of the camera and read me my rights.

13 In that video it shows the person that was in
14 possession of those guns, which was Amanda. She was the
15 one carrying the guns. She took the guns out of my
16 house without permission.

17 The only reason that the lady in the store
18 even seen the guns because Amanda told me she had the
19 guns, and I checked them just to make sure they were not
20 loaded.

21 I have never carried a gun ever, other than to
22 a shooting range or whenever I'm out hunting or fishing.
23 I'm not that type of person. I don't carry guns like
24 that.

25 My dad was a drill sergeant. I've been raised

1 around guns all my life. I've been hunting and fishing
2 all my life. I just don't carry guns like that, never
3 have, never will. I don't know what else to do.

4 MS. EIGENBROT: Your Honor, he has informed me
5 that he did attempt to get his concealed weapons permit
6 so this will never be an issue again. Obviously, these
7 were still pending. So he was unable to, but he does
8 tell me that he intends to get a concealed weapons
9 permit.

10 THE DEFENDANT: That way in case I ever had to
11 carry a gun. I've never in my entire life carried one.
12 I've been a victim of several assaults. I've been
13 jumped. I've been run over, been beat up; but I still
14 have never carried a weapon, and I never plan on
15 carrying a weapon.

16 THE COURT: Was this the case at the Dollar
17 General?

18 THE DEFENDANT: Yes, it was.

19 MR. CONRAD: That's correct, Your Honor.

20 THE COURT: With a female?

21 THE DEFENDANT: Yes, sir.

22 MR. CONRAD: Yes, Your Honor. His girlfriend
23 was there with him. A store clerk originally saw him
24 and she testified, if I remember correctly, that she saw
25 him pull it out of his waistband.

1 THE COURT: At Beltline Boulevard?

2 MR. CONRAD: Yes, Your Honor.

3 THE COURT: Is that right?

4 THE DEFENDANT: She was mistaken, sir. I
5 never pulled a gun out of my waistband. I couldn't
6 carry a gun this long in my waistband. I mean, they are
7 long. One is a .22 competition pistol, and the other
8 was a .44 long barrel rifle.

9 I mean, there's no way I could have carried
10 either one of them in my waistband. I was fishing
11 earlier that day on the river. I never carried the guns
12 with me.

13 Earlier that day Amanda and a friend of mine
14 got into an altercation. Amanda got her nose broke.
15 She went crazy, went into my kitchen, and got a butcher
16 knife out and sliced her armed up.

17 Me and my friend took her to the Doctor's Care
18 on Rosewood -- Beltline and Rosewood -- dropped her off;
19 and she went to my room and got her backpack. She also
20 got my pistols.

21 Later on that afternoon, I met up with a man
22 at a friend's house right there at -- what's that
23 called? -- the Landing right there on Covenant Road. On
24 our way back to my house, that's when she told me. So I
25 was stopping at the store.

1 She could not go in the store because she was
2 carrying the pistols. I yelled at her. I checked the
3 pistols. I took a clip out of the .22 because she had
4 the clip in the .22. I checked it. There wasn't
5 nothing in the chamber.

6 I checked the revolver and there was nothing
7 in the revolver. She did not know how to load it.
8 That's why there was nothing in it. I was not carrying
9 them guns. She had the guns in front of the store in
10 her backpack.

11 When I was in the store, that's when I was put
12 under arrest for carrying guns. I've never carried a
13 gun ever illegally. The times that I go to the shooting
14 range, I put them on my scooter; and they stay on my
15 scooter until I get to the shooting range and I shoot
16 them and put them back and go home. I've never in my
17 life carried a gun illegally.

18 THE COURT: Is there anything else you'd like
19 to tell me?

20 THE DEFENDANT: I'm sorry for all this. I
21 never meant for any of this to happen. It was my
22 stupidity for even showing her where my guns were.

23 THE COURT: Anything else, Ms. Eigenbrot?

24 MS. EIGENBROT: Nothing, Your Honor.

25 THE COURT: All right. Your motion to

1 reconsider the sentence is denied.

2 Pat, please fill out a form. Good luck to
3 you, sir.

4 MR. CONRAD: Your Honor, is there a copy of a
5 bench warrant in that file you have there?

6 THE COURT: Yes.

7 MR. CONRAD: We will need to vacate that.

8 *** END OF REQUESTED TRANSCRIPT OF RECORD ***

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C E R T I F I C A T E

I, the undersigned L. Coconut Pantsari, Official Reporter for the Fifth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of all the proceedings had, as reported by Karen Ambroziak, and transcribed by me to the best of my ability, and the evidence introduced in the trial of the captioned cause, relative to appeal, in the Criminal Court for Richland County, South Carolina, on the 11th day of June and the 20th day of October, 2014

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

December 11, 2014

s/L. Coconut Pantsari

Court Reporter

WITNESSES

(S) M P Smith - Forest Acres Police
Department

ARREST WARRANT NUMBER

I-292275

ACTION OF GRAND JURY

TRUE BILL

For person of Grand Jury

Date:

JAN 18 2012

VERDICT

For person of Petit Jury

Date:

DOCKET NO. 2012-GS-40- 00269

The State of South Carolina
County of Richland

COURT OF GENERAL SESSIONS

JANUARY TERM 2012

213

THE STATE

vs.

BRICE JOSEPH DRIGGERS

Indictment for

UNLAWFUL CARRYING OF A PISTOL

SC Code: 16-23-0020

CDR Code: 0044

After being fully advised as to my
legal rights, I hereby waive presentment
to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead
guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

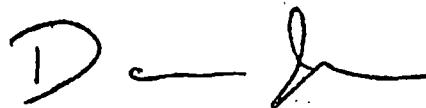
INDICTMENT

At a Court of General Sessions, convened on **JANUARY 18, 2012**,
the Grand Jurors of Richland County present upon their oath:

UNLAWFUL CARRYING OF A PISTOL

That **BRICE JOSEPH DRIGGERS** did in Richland County on or about
✓ **JULY 26, 2011**, carry about the person a pistol, such carrying not being
authorized by law, in violation of Section 16-23-0020, S. C. Code of Laws,
1976, as amended.

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



DAN JOHNSON, SOLICITOR

WITNESSES

(S) M P Smith – Forest Acres Police
Department

ARREST WARRANT NUMBER

1-292274

ACTION OF GRAND JURY

TRUE BILL

Margaret H. Dickerson
Foreperson of Grand Jury
Date: *JAN 18 2012*

VERDICT

DOCKET NO. 2012-GS-40- 00 270

The State of South Carolina
County of Richland

COURT OF GENERAL SESSIONS

JANUARY TERM 2012

213

THE STATE
vs.

BRICE JOSEPH DRIGGERS

Indictment for
UNLAWFUL CARRYING OF A PISTOL

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legal rights, I hereby waive presentment
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I
hereby appear in my own proper person and plead
guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

Foreperson of Petit Jury

Date:

230

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

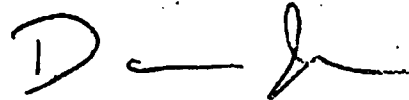
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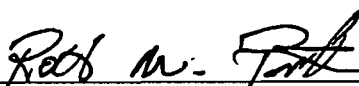


DAN JOHNSON, SOLICITOR

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

This 17th day of February, 2015



Robert M. Pachak
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

CERTIFICATE OF COUNSEL FOR APPELLANT

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This 17th day of February, 2015



Robert M. Pachak
Appellate Defender

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(803) 734-1330

ATTORNEY FOR APPELLANT

9
STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Richland County

Robert E. Hood, Circuit Court Judge

ORIGINAL

RECEIVED

FEB 17 2015

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

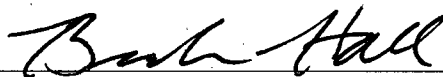
BRICE DRIGGERS,

APPELLANT

APPELLATE CASE NO. 2014-002293

CERTIFICATE OF SERVICE

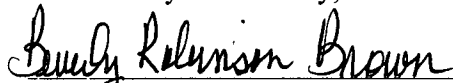
I certify that a true copy of the Record on Appeal in the above referenced case has been served upon Salley W. Elliott, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201 and Brice Driggers, Kirkland Correctional Institution, 4344 Broad River Road, Columbia, SC 29210, this 17th day of February, 2015.



Brandon Hall

Administrative Specialist

SUBSCRIBED AND SWORN TO before me
this 17th day of February, 2015.

 (L.S.)
Notary Public for South Carolina

My Commission Expires: December 9, 2024