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STATE OF SOUTH CAROLINA

In The Court of Appeals

 ORIGINAL

APPEAL FROM CHARLESTON COUNTY

Kristi Lea Harrington, Circuit Court Judge

THE STATE,

RECEIVED
JUL 27 2015
RESPONDENT
SC Court of Appeals

V.

DOMINIQUE LAVAR WILLIAMS,

APPELLANT

APPELLATE CASE NO. 2014-001617

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA) COURT OF GENERAL SESSIONS
) NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON) CASE NO.: 2012-GS-10-6872

STATE OF SOUTH CAROLINA)
)
VS.)
)
DOMINIQUE LAVAR WILLIAMS,)
)
DEFENDANT.)

JURY TRIAL

VOLUME 1 OF 2

held before the Honorable Kristi L. Harrington
Mia Perron, Circuit Court Reporter, 9th Judicial Circuit
in the Charleston County Courthouse
Charleston, South Carolina
on June 18, 2014, Commencing at 3:49 a.m.

SUSAN "MIA" PERRON, CVR-CM-M
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MARKED/ADMITTED

Defendant's Exhibit Number 1
[Incident Report]

24 /

State v. Dominique Williams
Proceedings
June 18, 2014

PROCEEDINGS

THE COURT: And are we ready to begin?

MR. LIETZOW: The State is, Your Honor.

THE COURT: Mr. Cooper, are you ready?

MR. COOPER: Yes, Your Honor.

Your Honor, it's not a real pretrial matter but I ask the Court -- I don't think we're going to finish, and we'll pick a jury tomorrow morning --

THE COURT: Correct.

MR. COOPER: -- if Mr. Williams will remain out on bond tonight. I don't think the State has any objection to that. He's made all of his court appearances. He was at roll call on Friday -- or Thursday, I guess it was, last week and he's here today and I expect him to be here tomorrow morning. I've talked to him that if he doesn't show up tomorrow morning, that he could be tried in his absence.

THE COURT: All right. Are you Dominique Lavar Williams?

MR. WILLIAMS: Yes, ma'am.

THE COURT: Please stand.

[Whereupon, Mr. Williams complies]

THE CLERK OF COURT: Mr. Williams, raise your right hand, please.

[Whereupon, Mr. Williams is duly sworn by the

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Proceedings
June 18, 2014

1 clerk of court as follows: do you swear or affirm to
2 tell the truth, the whole truth, and nothing but the
3 truth, so help you God]

4 MR. WILLIAMS: Yes, sir.

5 THE COURT: Mr. Williams, do you understand what
6 we're doing here today?

7 MR. WILLIAMS: Yes, ma'am.

8 THE COURT: What are we doing here today?

9 MR. WILLIAMS: Pretrial hearing.

10 THE COURT: And what will be doing tomorrow?

11 MR. WILLIAMS: Trial. Picking a jury and then
12 the trial..

13 THE COURT: And you have been out on bond?

14 MR. WILLIAMS: Yes, ma'am.

15 THE COURT: Have you been abiding by the
16 conditions of your bond?

17 MR. WILLIAMS: Yes, ma'am.

18 THE COURT: Do you have any reason to believe
19 that is incorrect?

20 MR. LIETZOW: No reason, Your Honor.

21 THE COURT: Any new arrests or anything of that
22 nature?

23 MR. LIETZOW: Not at the general sessions level,
24 Your Honor.

25 THE COURT: At any level?

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Proceedings
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1 MR. LIETZOW: I can't speak for the magistrate
2 level, Your Honor.

3 THE COURT: Mr. Cooper, has he been re-arrested?
4 Any contact with law enforcement?

5 MR. COOPER: I think he had a driving without a
6 license some time ago, but I think that might have
7 been 2013 or 2012. It's been a while ago now.

8 THE COURT: And what is the State's position as
9 to remaining out on bond?

10 MR. LIETZOW: Your Honor, the State has no
11 objection to that.

12 THE COURT: Mr. Williams, I do not know what my
13 decision will be but you understand that if you fail
14 to appear tomorrow for trial, we are going to proceed
15 without you. Do you understand?

16 MR. WILLIAMS: Yes, ma'am.

17 THE COURT: All right. I will hear -- what's
18 his prior record?

19 MR. LIETZOW: The Court's indulgence, please.

20 Your Honor, he had no record before this arrest.
21 This case was originally referred to pretrial
22 intervention. While that application was pending,
23 Mr. Williams got a simple possession of marijuana
24 charge, reapplied, missed a meeting, and PTI was no
25 longer an option. And besides that, he has a driving

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Proceedings
June 18, 2014

1 under suspension and a driving without a license. And
2 that's his -- that's all of his record.

3 THE COURT: What happened to the possession of
4 marijuana? Did he plead to that?

5 MR. COOPER: I think he paid a ticket, Your
6 Honor.

7 MR. WILLIAMS: Yeah. I was supposed to --

8 THE COURT: Let Mr. Cooper speak for you unless
9 I address you directly. Sometimes I find that there
10 are some things that your attorney needs to address to
11 the Court, Mr. Williams. All right?

12 Let me consider this, whether or not I'm going
13 to have him remain out on bond. Thank you.

14 MR. COOPER: Yes, ma'am. Thank you, Your Honor.

15 THE COURT: I understand there's two pretrial
16 motions that we'll be addressing today, and then Mr.
17 Cooper has some witnesses that will be present
18 tomorrow to wrap up?

19 MR. COOPER: Yes, ma'am. I have one witness
20 that I will call tomorrow. Antonio Simmons.

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State v. Dominique Williams
Pretrial Motions
June 18, 2014

PRETRIAL MOTIONS

MR. LIETZOW: Your Honor, we're not sure how you want to proceed. We have two motions to be heard. The defense has a motion to suppress the evidence based on the fourth amendment.

The defense is also requesting a Jackson v. Denno. It's going to be our position that a Jackson v. Denno isn't going to be necessary.

THE COURT: It's not necessary?

MR. LIETZOW: Yes, ma'am.

So Ms. Newman would like to handle the fourth amendment argument and I would like to handle the lack of Jackson v. Denno.

How would you like to proceed, as far as testimony. We have one officer, Officer Greenawalt, who can testify to both incidents. Would you like to just question everything and then argue? Or --

THE COURT: Mr. Cooper, tell me what your position is and then maybe that will clarify how we need to proceed from here.

MR. COOPER: Your Honor, may I approach?

THE COURT: You may.

MR. COOPER: I'm handing the Court two motions in limine. One is the fourth amendment violation and the second is Jackson v. Denno, Your Honor.

State v. Dominique Williams
Pretrial Motions
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1 [Whereupon, Mr. Cooper proffers documents to the
2 Court]

3 MR. COOPER: It's our position that if the
4 State intends to introduce any statements against
5 Mr. Williams, the State has the burden to show that
6 those statements were elicited in compliance with the
7 United States and South Carolina constitutions.

8 THE COURT: Do you anticipate introducing any
9 evidence?

10 MR. COOPER: Yes, ma'am.

11 THE COURT: Any statements?

12 MR. COOPER: Yes, ma'am.

13 THE COURT: All right. Thank you.

14 MR. COOPER: And so it's our position that we
15 are therefore entitled to a hearing.

16 THE COURT: Well, let me -- well, since it's the
17 same witness, it's going to make it easy, let me hear
18 from your officer.

19 MR. LIETZOW: Okay. The State calls Officer
20 Greenawalt, North Charleston Police Department.

21 [Whereupon, Mr. Greenawalt comes forward]

22 [Whereupon, Mr. Greenawalt is duly sworn by the
23 clerk of court as follows: do you swear or affirm
24 that your testimony will be the truth, the whole
25 truth, and nothing but the truth, so help you God]

State v. Dominique Williams
Pretrial Motions
June 18, 2014

1 THE WITNESS: Yes, sir.

2 THE CLERK OF COURT: Be seated.

3 [Whereupon, Mr. Greenawalt takes the witness
4 stand]

5 THE CLERK OF COURT: State your full name and
6 spell your last name for the record.

7 THE WITNESS: My name is James Greenawalt. Last
8 name is spelled G-R-E-E-N-A-W-A-L-T.

9 MR. COOPER: Thank you, Officer

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Pretrial Motions
James Greenawalt
Direct Examination by Mr. Lietzow

JAMES GREENAWALT,

Having Been First Duly Sworn,
was Examined and Testified as Follows:

DIRECT EXAMINATION

BY MR. LIETZOW:

Q. Could you tell Judge Harrington where you work,
please?

A. I work for the North Charleston Police
Department K-9 division.

Q. How long have you worked in that capacity?

A. I've been with North Charleston for six years
now.

Q. And you mentioned your position was with the K-9
unit?

A. Yes, sir.

Q. How long have you been a K-9 officer?

A. Been a K-9 officer for going on three and a half
years now.

Q. And what's your total involvement in law
enforcement? How many years?

A. Twelve.

Q. Do you remember what you were doing on the night
of July 24th, 2012?

A. Our K-9 unit was assigned to patrol specific bar
areas due to problems they had been having in the areas.

MIA PERRON, CVR-CM-M

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Pretrial Motions
James Greenawalt
Direct Examination by Mr. Lietzow

1 Q. And on this night, what bar or club were you at?

2 A. I believe it was called Club Pulse at the time.

3 Q. Could you tell us where that's located?

4 A. Club Pulse is located at and

5 which is in the State of South Carolina in North
6 Charleston.

7 Q. What time would you say this was? About.

8 A. Roughly around 11:00, maybe around midnight.

9 Q. And why were you at this particular club on this
10 night?

11 A. Our police department has had numerous calls for
12 service at this bar ranging from unlawful carrying of
13 guns, to shootings themselves, to stabbings.

14 Q. So y'all were on proactive patrol then?

15 A. Absolutely.

16 Q. Okay. So while you were patrolling, tell us
17 what you saw.

18 A. Well, I'm patrolling the parking lot, walking
19 through, making sure nobody was loitering inside vehicles,
20 because that's where many problems occur. I happened to
21 look in the defendant's vehicle and in the defendant's
22 vehicle, was in plain view, was a handgun.

23 Q. Okay. And let me back up just one second.
24 You're lawfully -- under your jurisdiction as a police
25 officer, you're lawfully allowed to be patrolling this

Pretrial Motions
James Greenawalt
Direct Examination by Mr. Lietzow

1 particular parking lot of the club?

2 A. Absolutely. There are several signs posted
3 throughout the parking lot.

4 Q. I just wanted to clear that up. Let's move
5 forward to --

6 You mentioned that you saw a gun in plain view.
7 Give us a little bit more detail surrounding that.

8 A. Like I said, while walking around through the
9 parking lot, happened to look in the defendant's vehicle
10 as I'm passing through. I was able to plainly see a
11 black-color pistol between the driver and passenger seat.

12 Q. Now, was there a center console or was it --
13 tell us -- give us more detail about where the gun
14 actually was.

15 A. The vehicle was an older model Crown Vic, looked
16 a little bit like an older police vehicle, so the center
17 console was not there. It looked like that's where the
18 radio and stuff used to be for the police vehicle. So it
19 was barren between the passenger and driver's seat. It's
20 just a hump there for where the drive train is.

21 Q. Okay. And did you have to look very hard to see
22 the weapon --

23 A. No.

24 Q. -- to see the weapon?

25 Did you use a flashlight to have to see the

Pretrial Motions
James Greenawalt
Direct Examination by Mr. Lietzow

1 weapon?

2 A. You -- well, the parking lot -- I did have a
3 flashlight with me. However, you could see it with the
4 parking-lot light. It was in plain view.

5 Q. Okay. Explain what happened next.

6 A. At that time, backed away from the vehicle since
7 the vehicle was unoccupied at the time. We knew the
8 occupants were inside the nightclub. We backed away to a
9 point to where we could keep the vehicle in an
10 unobstructive view.

11 Q. Did you know that they were in there for a fact,
12 or was that just an assumption?

13 A. An assumption.

14 Q. Okay.

15 A. So backed away from the vehicle, kept it plain
16 -- kept the vehicle in an unobstructed view at all times
17 to make sure nobody had a chance to tamper with the
18 vehicle or go near the vehicle. And then at that time we
19 observed two black males, one being --

20 Q. Wait a minute.

21 A. -- the defendant. Okay.

22 Q. How long between when you noticed the weapon and
23 the defendant exiting the club? How long would you say
24 elapsed?

25 A. Maybe an hour.

Pretrial Motions
James Greenawalt
Direct Examination by Mr. Lietzow

1 Q. So you're out there for about sixty minutes
2 staking it out, essentially?

3 A. Probably.

4 Q. So go ahead. I'm sorry I interrupted you, but
5 go ahead and --

6 A. No.

7 Q. -- finish what you were saying.

8 A. At that time, we observed the defendant and
9 another subject walk out of the nightclub.

10 Q. At that time did you know he was the defendant
11 or --

12 A. No.

13 Q. Just a person of interest?

14 A. Just a person of interest. He was walking
15 towards the area of the vehicle that we had our eyes on.

16 As he got closer, we made sure we kept an eye on
17 him. Observed the defendant actually open the vehicle,
18 the passenger door, unlock it.

19 Q. Okay. How did he -- how did he unlock it?

20 A. He had the car keys in his hand.

21 Q. Was it electronic or did he insert a key into
22 the car?

23 A. I believe he had a key fob.

24 Q. So it was electronic?

25 A. I believe so.

Pretrial Motions
James Greenawalt
Direct Examination by Mr. Lietzow

1 The passenger door was unlocked, the driver's
2 door was unlocked. The defendant then opened the driver's
3 door. And once the driver door was ajarred to the point
4 that he could make entry to the vehicle, that's when we
5 made our self -- our presence known. We identified
6 ourselves as police officers. The defendant and the
7 passenger were both detained at that time in handcuffs.

8 Q. And why do you detain them in handcuffs at this
9 point? What's the purpose of that?

10 A. Every incident that we deal with out there, as
11 far as it involving a weapon, every person that's
12 detained. And that's for officer-safety reasons, just to
13 make sure that there is no people getting away, jumping in
14 the vehicle, or rounds being fired off in the vehicle.

15 Q. I mean, and it's also -- is that so that they
16 can't access the weapon, too?

17 A. Absolutely.

18 Q. Let's really focus in on this because this is
19 what we're here for this afternoon, part of the reason.
20 You mentioned you detained him. At this time did you tell
21 this individual that he was under arrest?

22 A. No.

23 Q. What did you say exactly to him as you remember
24 it?

25 A. The subject was advised that he was being -- he

Pretrial Motions
James Greenawalt
Direct Examination by Mr. Lietzow

1 asked if he -- what he was being arrested for. He was
2 advised that he was not under arrest right at that point,
3 he was just being detained. At that time --

4 Q. And did you ask him any questions at that point?

5 A. No, no questions were asked.

6 Q. So you advised him he was being detained. You
7 had not asked him any questions. What happened next?

8 A. The subject was brought to the rear of his car
9 at that time.

10 Q. So how -- feet?

11 A. A few feet from the driver's door, to get him
12 away from the actual area where the weapon was.

13 Q. Okay. Is that done for safety, as well?

14 A. Yes.

15 Q. Okay.

16 A. Lieutenant Hill, who at that time was a sargent,
17 went into the vehicle, recovered the pistol, actually
18 bringing the pistol out of the vehicle. The defendant
19 decided to make an utterance to me in saying that the
20 weapon was his, it fell out of his pocket.

21 Q. Did you ask him any questions or did he just
22 volunteer?

23 A. No. I was just standing by with him for -- we
24 have an officer on standby with the defendants or with the
25 people that are detained. I was just standing by and he

Pretrial Motions
James Greenawalt
Direct Examination by Mr. Lietzow

1 openly admitted that the weapon was his, it fell out of
2 his pocket as he was exiting the vehicle.

3 Q. Did y'all ask him any questions?

4 A. No.

5 Q. So he saw the weapon and just volunteered that
6 it was his?

7 A. Right.

8 MR. LIETZOW: The Court's indulgence, please.

9 THE COURT: Take your time.

10 [Whereupon, Mr. Lietzow and Ms. Newman confer]

11 Q. [Mr. Lietzow] When you approached the defendant
12 and you announced your presence, and you had weapons
13 drawn, what was the defendant's demeanor like?

14 A. He was caught off-guard, as most people are. We
15 try not to let people see us walking up as we're coming.
16 However, he was compliant. He didn't try to run, didn't
17 try to fight. He was advised to place his hands on top of
18 the vehicle and to not move, and he did so.

19 [Whereupon, Mr. Lietzow and Ms. Newman confer.]

20 MR. LIETZOW: Officer, please answer any
21 questions that Mr. Cooper and Ms. Andrews might have
22 for you.

23 THE WITNESS: Absolutely.

24 MR. COOPER: Thank you, Your Honor. May it
25 please the Court.

Pretrial Motions
James Greenawalt
Direct Examination by Mr. Lietzow

1 THE COURT: Yes, sir. Thank you, Mr. Cooper.

2 MR. COOPER: Good afternoon, Officer Greenawalt.

3 THE WITNESS: Afternoon.

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Pretrial Motions
James Greenawalt
Cross-Examination by Mr. Cooper

CROSS-EXAMINATION

BY MR. COOPER:

Q. Now, let me start out: at no time did the defendant consent to a search of his car; correct?

A. Correct.

Q. And to -- you testified that Sargent Hill was the one that went into the car to get the gun?

A. Yes, sir.

Q. And you testified that the defendant had ajarred the door. But then Sargent Hill would have opened the door to go to get the gun; correct?

A. The door was already opened.

Q. Was it --

A. What I mean by ajar, it was open to a point that the defendant could actually make entry into the vehicle, yes.

Q. But Sargent Hill went into the vehicle and got the gun?

A. Yes.

Q. The defendant didn't get the gun for you?

A. No.

Q. The defendant didn't consent?

A. No.

Q. And you didn't have a warrant; correct?

A. Correct.

Pretrial Motions
James Greenawalt
Cross-Examination by Mr. Cooper

1 Q. It's true that the defendant was never actually
2 inside the vehicle in your presence; correct?

3 A. Correct. We never allowed him to make entry
4 into the vehicle.

5 Q. Okay. And when they got to the -- when Mr.
6 Williams and Mr. Simmons got to the car, you approached
7 them with your department -- or your issued firearm
8 displayed?

9 A. Correct.

10 Q. And you told them basically to stop, or put
11 their hands up? What did you tell them?

12 A. They were advised, North Charleston police, put
13 your hands on top of the vehicle, do not move.

14 Q. So you told them to put their hands on top of
15 the vehicle?

16 A. Correct.

17 Q. And what did they do?

18 A. They complied.

19 Q. And then after they put their hands on top of
20 the vehicle, they were placed in handcuffs?

21 A. Correct.

22 Q. And detained?

23 A. Correct.

24 Q. And then they were removed from beside of the
25 vehicle over to some back area of the vehicle?

Pretrial Motions
James Greenawalt
Cross-Examination by Mr. Cooper

1 A. They were moved to the rear of the vehicle to
2 get away from the actual being in the apex of the doors.

3 Q. And you moved them back there?

4 A. Yes.

5 Q. And then it was once that Mr. Williams was in
6 handcuffs and moved to the back of the vehicle, then the
7 gun was retrieved from the car?

8 A. Correct.

9 Q. And then once the gun was retrieved from the car
10 and the defendant had been moved to the back of the
11 vehicle and was in handcuffs, did he say that the gun
12 belonged to him?

13 A. Yes.

14 Q. And then he said, according to you, that it fell
15 out of his lap?

16 A. It fell out of his pocket as he exited -- he
17 said it fell out of his pocket as he exited the vehicle.

18 Q. Did he offer any explanation why it didn't fall
19 out of the vehicle [sic] and into the middle of the car?

20 A. No.

21 Q. And that's the only statement he made?

22 A. At that time to me.

23 Q. Now, Officer Greenawalt, you wrote a report in
24 this case; correct?

25 A. Correct.

Pretrial Motions
James Greenawalt
Cross-Examination by Mr. Cooper

1 Q. And it's your testimony today that you were with
2 the defendant at the back of the vehicle and that Sargent
3 Hill retrieved the firearm?

4 A. Yes, Sargent Hill retrieved the firearm from the
5 vehicle.

6 MR. COOPER: Now, Your Honor, permission to
7 approach the witness?

8 THE COURT: You may. You have continuing
9 permission.

10 MR. COOPER: Thank you.

11 Q. [Mr. Cooper] Officer Greenawalt, I'm going to
12 hand you --

13 MR. COOPER: Which I apologize to the Court.
14 It's not pre-marked.

15 [Whereupon, Defendant's Exhibit Number 1 is
16 marked by the court reporter]

17 Q. [Mr. Cooper] I'm handing you what has been pre-
18 marked for purposes of this hearing only. And it is a
19 copy of the incident report in this case. Okay?

20 A. Right.

21 Q. Is that -- do you recognize that report?

22 A. I do.

23 Q. Is that the incident report in this case?

24 A. Yes.

25 Q. Did you write that report?

Pretrial Motions
James Greenawalt
Cross-Examination by Mr. Cooper

1 A. Yes, I did.

2 Q. Okay. If you go to the second page of that
3 report, it says that: I had both suspects stand by with
4 Sargent Hill while I went -- while I went to recover the
5 pistol.

6 Is that not what it says in your report?

7 A. You're correct. I was mistaken. I must have
8 been the one inside the vehicle. This had happened two
9 years ago.

10 Q. And so it was Sargent Hill who was standing by
11 with Mr. Simmons and Mr. Williams while you recovered the
12 pistol?

13 A. Correct.

14 Q. Okay. Thank you.

15 And so did you walk -- so when did the defendant
16 say that he had the gun and it fell out of his lap? Did
17 you take the gun back over to him? How did that work?

18 A. As I recovered the pistol, according to the
19 report, the subject made the statement.

20 Q. So were you still in the car? Or had you walked
21 back over to him?

22 A. I was outside the vehicle.

23 Q. And Sargent Hill was there, too?

24 A. Yes.

25 Q. Did you ever ask him who the gun belonged to?

Pretrial Motions
James Greenawalt
Cross-Examination by Mr. Cooper

1 A. I did not.

2 Q. He just offered that up?

3 A. He offered it up.

4 Q. Okay. And earlier you testified that the gun
5 was able to be seen under the like lighting in the parking
6 lot?

7 A. The parking lot is lit.

8 Q. And you testified that you did have a
9 flashlight?

10 A. Yes.

11 Q. And you used the flashlight to look into the
12 car?

13 A. Yes. I was using the flashlight walking around.

14 Q. Because that helps you see into the vehicles;
15 right?

16 A. Correct.

17 Q. Because a vehicle is not lit on its own?

18 A. No.

19 Q. All right. How did you -- how were you able to
20 tell that the gun you saw between the seats was a real
21 gun?

22 A. As opposed to a toy gun?

23 Q. Yeah. I mean, as opposed to a prop or
24 something.

25 A. I was able to tell because of my experience as a

Pretrial Motions
James Greenawalt
Cross-Examination by Mr. Cooper

1 police officer. You could see the serial numbers and
2 everything. Also, it was made out of metal.

3 Q. So you were standing outside of the car and you
4 were literally able to see the serial number?

5 A. You could see that there was serial numbers
6 on -- I couldn't make out the serial number, like read it,
7 but --

8 Q. Right.

9 A. -- but you could see it. You could also see the
10 safeties and everything else on it. I mean, it looked
11 very real.

12 Q. Okay. But you weren't -- I mean, by looking at
13 it, could you tell whether it was a prop or a real gun?

14 A. At that time, no.

15 Q. Okay. It took actually getting the gun and
16 inspecting it to determine whether or not it was a real
17 gun?

18 A. Correct.

19 Q. And by looking at the gun, you couldn't tell if
20 it was stolen; right?

21 A. No.

22 Q. Well, you said you could see that there was a
23 serial number.

24 A. Right.

25 Q. So I guess you wouldn't know -- I was going to

Pretrial Motions
James Greenawalt
Cross-Examination by Mr. Cooper

1 ask you if it was an obliterated serial number. I guess
2 you were able to see that there was a serial number?

3 A. You could see that there was something stamped
4 on it.

5 Q. Right.

6 A. You couldn't make out what it was.

7 Q. So the only thing illegal about the gun, in your
8 opinion, was where it was placed in the vehicle?

9 A. Correct.

10 Q. And that you didn't -- you couldn't tell if it
11 was stolen: right? Or it came back that it wasn't stolen,
12 in fact; right?

13 A. Right.

14 Q. And it was a, you know, legally registered
15 firearm to Mr. Williams?

16 A. I believe so. I don't have access to that
17 information.

18 Q. You would know if it was stolen, wouldn't you?

19 A. Yes. It was ran through NCIC.

20 Q. Okay. And to your knowledge, it wasn't stolen?

21 A. It was not.

22 MR. LIETZOW: Objection, Your Honor. This line
23 of questioning isn't relevant.

24 THE COURT: What is the purpose for this
25 hearing, Mr. Cooper, as to whether or not it was

Pretrial Motions
James Greenawalt
Cross-Examination by Mr. Cooper

1 stolen?

2 MR. COOPER: Well, the hearing has two points.
3 One is whether or not the gun was retrieved within the
4 confines of the fourth amendment. And so the
5 illegality of the gun on its face is an issue whether
6 or not -- the officer testified that he viewed the gun
7 in plain view. I think we'll have legal argument
8 about what plain view means. And so he's not able to
9 see that the gun -- the gun, in itself, is not
10 illegal. He couldn't tell that it was stolen or not.
11 In fact, it's not stolen. It had a proper serial
12 number on it. It wasn't an obliterated serial number.

13 THE COURT: Isn't it by the very fact that he
14 could see it in an open vehicle makes it unlawful
15 carrying?

16 MR. COOPER: No, ma'am. It's our argument and
17 contention that that's not correct.

18 THE COURT: How would that be, Mr. Cooper?

19 MR. COOPER: May it please the Court.

20 THE COURT: My question specifically is is it
21 legal in the state of South Carolina to have a gun in
22 between the seats.

23 MR. COOPER: Not when there is a person in the
24 vehicle. There is no person in the vehicle in this
25 case.

Pretrial Motions
James Greenawalt
Cross-Examination by Mr. Cooper

1 MR. LIETZOW: Objection, Your Honor.

2 MR. COOPER: The law in South Carolina --

3 THE COURT: I'm questioning. You can't object
4 to my question. Thank you.

5 MR. COOPER: Your Honor, if I may?

6 THE COURT: Yes.

7 MR. COOPER: The law in South Carolina for
8 unlawful carry of a handgun is that it is unlawful for
9 anyone to carry about the person any handgun, whether
10 concealed or not, except as follows. Unless otherwise
11 specifically prohibited by law. So the unlawful carry
12 statute prohibits the carrying about the person of a
13 handgun.

14 Now, there is an automobile exception, Your
15 Honor. Which is the defense's burden to prove an
16 exception to that law. And under the automobile
17 exception it states under South Carolina Code Section
18 16-23-20, part 9: if a person is in a vehicle, if --
19 excuse me -- part 9: a person in a vehicle, if the
20 handgun is -- and then part A of part 9: secured in a
21 closed glove compartment, closed console, closed trunk
22 or in a closed container secured by an integral
23 fastener and transported in the luggage compartment of
24 a vehicle. And then it goes on to talk about if that
25 compartment is opened in the presence of law

Pretrial Motions
James Greenawalt
Cross-Examination by Mr. Cooper

1 enforcement.

2 Under the statute, there's nothing illegal about
3 having a handgun not in the glove compartment when
4 there's nobody in the vehicle. The gun between the
5 two seats is the same as the gun on the ground or
6 anywhere else. The gun in itself is not illegal.
7 There has to be a person in the car within -- where it
8 would be about his person for it to be illegal.

9 THE COURT: So it's your position that the
10 statute does not preclude a weapon being on the
11 floorboard or on a passenger seat in a vehicle locked
12 or unlocked? That's your position, under the statute?

13 MR. COOPER: If it's an unoccupied vehicle, yes,
14 ma'am. Absolutely. That is my position, that in
15 order for it to be an unlawful carry of a pistol, the
16 vehicle has to be occupied and then if the vehicle is
17 occupied, the gun has to be placed in the prescribed
18 locations, locked compartment, glove compartment, et
19 cetera, that the gun, whether on the floorboard or
20 not, doesn't make it illegal.

21 Because the statute says it's unlawful to carry
22 about the person a handgun when it's an unoccupied
23 vehicle and the gun is just on the ground. It's just
24 a gun on the ground. There's nothing illegal about
25 it.

Pretrial Motions
James Greenawalt
Cross-Examination by Mr. Cooper

1 If the defendant was operating the vehicle and
2 had stopped --

3 THE COURT: But you would agree with me there's
4 a difference between the ground and a vehicle, as far
5 as extending to a person?

6 MR. COOPER: I agree that there is a specific
7 exception within the unlawful carry statute that
8 allows a defendant to show that it's not unlawful
9 carry if the gun is placed in the glove compartment or
10 locked container. And there's also in the vehicle.
11 But the statute, the plain language of the statute,
12 says unlawful for anyone to carry about the person any
13 handgun. There's no prescription about placing
14 handguns anywhere else, except for persons in the
15 vehicle. And in this case the vehicle was unoccupied.
16 There's nothing illegal about the gun on the ground --
17 I mean, on the floorboard.

18 THE COURT: Am I understanding your argument to
19 be as long as the person is in the vehicle, the gun
20 must be in a locked compartment? when the person exits
21 the vehicle, the law does not preclude them from
22 placing it on the floorboard, a passenger's seat,
23 driver's set, the back window? That's your position,
24 Mr. Cooper?

25 MR. COOPER: Yes, ma'am. And I think that's the

Pretrial Motions
James Greenawalt
Cross-Examination by Mr. Cooper

1 plain language --

2 THE COURT: And do you have -- do you have case
3 law that says that?

4 MR. COOPER: No, Your Honor.

5 I did an exhaustive research on unlawful carry
6 of a handgun cases, in anticipation of this issue for
7 trial, and South Carolina has not addressed that
8 issue. However --

9 THE COURT: I'm not sure I've heard argument
10 before, so I --

11 MR. COOPER: I agree. It's an unusual case
12 because typically in this situation the defendant will
13 have been operating the car and there would be a
14 traffic stop and the gun would be found in the course
15 of that traffic stop. And so the statute says that
16 when there is a person in the car and then they don't
17 comply with the locked compartment or glove
18 compartment.

19 In our case the defendant was not in the
20 vehicle. He was walking back towards the vehicle and
21 had not yet gotten into the car. He had opened the
22 door, as the officer testified, when he was detained.
23 So he's not a person in a vehicle and he didn't have
24 the handgun about his person. The gun on the
25 floorboard of his car, or wherever it is in the car,

Pretrial Motions
James Greenawalt
Cross-Examination by Mr. Cooper

1 is not apparently illegal. There's no law that
2 prescribes --

3 THE COURT: Assuming that I agree with you, I'm
4 going to -- I think you've made the point that the
5 officer has determined that it was not an obliterated
6 serial number --

7 MR. COOPER: Yes, ma'am.

8 THE COURT: -- and that it came back registered.
9 So move on.

10 MR. COOPER: Beg the Court's indulgence.

11 THE COURT: Take your time.

12 I'm going to allow you time to articulate that
13 point. I guess we'll do that tomorrow after your
14 final witness.

15 MR. COOPER: Yes, ma'am.

16 THE COURT: Thank you.

17 MR. COOPER: Your Honor, those are all the
18 questions I have for this officer. Thank you.

19 THE COURT: All right. Any redirect?

20 MR. LIETZOW: Briefly, Your Honor.

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Pretrial Motions
James Greenawalt
Redirect Examination by Mr. Lietzow

REDIRECT EXAMINATION

BY MR. LIETZOW:

Q. You mentioned you couldn't tell whether it was a prop or a real gun, Officer?

THE COURT: One more time, Mr. Lietzow. I didn't hear you.

MR. LIETZOW: I'm sorry.

Q. [Mr. Lietzow] You mentioned that you couldn't tell whether the weapon was a prop or a real gun; right?

A. Right.

Q. Did the muzzle of the gun have an orange or a red tip or anything like that?

A. Did not.

Q. Would that indicate that a weapon was a prop, in your experience?

A. Absolutely.

MR. LIETZOW: Okay. No further questions, Your Honor.

THE COURT: Recross?

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RECROSS-EXAMINATION

MR. COOPER: Yes, ma'am. Antonio Simmons is my

Pretrial Motions
James Greenawalt
Recross-Examination by Mr. Cooper

1 only witness for this.

2 MR. LIETZOW: Your Honor, if I may?

3 THE COURT: Yes.

4 MR. LIETZOW: The State would like to call
5 Detective Monroe in the morning, as well, if Your
6 Honor allowed it, just briefly.

7 THE COURT: Where is Detective Monroe?

8 MR. LIETZOW: I made an error in judgment, and I
9 take responsibility for that and I apologize.

10 THE COURT: Can he come back? Can you see how
11 far he is?

12 MR. COOPER: Well, Your Honor, let me see if
13 it's something that we can't stipulate to.

14 THE COURT: Okay. Great.

15 [Whereupon, Mr. Cooper and Mr. Lietzow confer]

16 [Off the record momentarily]

17 MR. COOPER: Your Honor?

18 THE COURT: Yes?

19 MR. COOPER: For purposes of this hearing --

20 THE COURT: Yes.

21 MR. COOPER: -- Mr. Williams can stipulate that
22 Detective Monroe elicited limited testimony in
23 conformity with, you know, our constitutional
24 constraints in that Detective Monroe will state that
25 at post Miranda he asked Mr. Williams several

Pretrial Motions
James Greenawalt
Recross-Examination by Mr. Cooper

1 questions. Where did you get the gun. Money Man Pawn
2 Shop. Is the gun stolen. No. I've used -- how long
3 have you had this gun. Response, February 2012. Why
4 do you have this gun. Response, protection. Has this
5 gun -- has this gun been used in any crimes.

6 Response, no. Can you get more guns. Response, no.
7 Do you know where any guns are hidden. Response, no.

8 We have no issue with Detective Monroe
9 testifying to those statements made by Mr. Williams.

10 THE COURT: Is that what you were calling him to
11 testify for, or was there anything --

12 MR. LIETZOW: Yes, ma'am.

13 THE COURT: All right. So we do not need him.
14 Thank you.

15 And so, Mr. Cooper, you have indicated you have
16 done an exhaustive search on this issue so I'm going
17 to exhaust it over the evening hour prior to court.

18 MR. COOPER: I hope so, Your Honor. I had two
19 eager law clerks working on it, as well, with me and
20 can't find anything that's close. There's one
21 unpublished opinion that's sort of similar, but I
22 don't think it shed light on our case.

23 THE COURT: Do you have any case law,
24 Ms. Newman?

25 MS. NEWMAN: I'm sorry?

Pretrial Motions
James Greenawalt
Recross-Examination by Mr. Cooper

1 THE COURT: Do you have any cases that you wish
2 for me to review over the evening hour prior to your
3 argument?

4 MS. NEWMAN: Yes, Your Honor.

5 Your Honor, the case is State v. Wright and it's
6 regarding the plain view exception.

7 THE COURT: Do you happen to have a copy of
8 those to give to me?

9 MS. NEWMAN: I do, Your Honor.

10 THE COURT: Thank you.

11 MS. NEWMAN: May I approach, Your Honor?

12 THE COURT: You may.

13 [Whereupon, Ms. Newman proffers documents to the
14 Court]

15 THE COURT: And you've provided -- Mr. Cooper,
16 you have a copy of all these cases?

17 MR. COOPER: I do not.

18 MS. ANDREWS: But State v. Wright is seminal
19 plain view doctrine. I know the case, Your Honor.

20 THE COURT: She has given me three --

21 MS. NEWMAN: I have copies. I'll give him one.

22 THE COURT: Great. Thank you.

23 MS. NEWMAN: Sure.

24 THE COURT: All right. We'll be at ease until
25 9:00 a.m.

Pretrial Motions
James Greenawalt
Recross-Examination by Mr. Cooper

1 MR. COOPER: I apologize, Your Honor. Maybe I
2 spoke too soon. Is State v. Wright the only case
3 submitted to the Court?

4 THE COURT: No. She's admitted three, which is
5 why I wanted to make sure. And she then said --

6 MR. COOPER: No, I've not --

7 THE COURT: She then responded that she has
8 copies for you.

9 MR. COOPER: Okay. Thank you.

10 THE COURT: Thank you.

11 All right. Counsel, let me see y'all in
12 chambers.

13 Mr. Williams, you are not free to go, so do not
14 leave. If you choose to leave and you leave the
15 courtroom, we will be trying this case in the morning.
16 Do you understand that?

17 MR. WILLIAMS: Yes, ma'am.

18 THE COURT: Is that a yes?

19 MR. WILLIAMS: Yes, ma'am.

20 THE COURT: All right. Thank you.

21 And do you understand a bench warrant will
22 issue?

23 MR. WILLIAMS: Yes, ma'am.

24 THE COURT: And that you could suffer separate
25 penalties for contempt of court for failing to appear?

Pretrial Motions
James Greenawalt
Recross-Examination by Mr. Cooper

1 MR. WILLIAMS: Yes, ma'am.

2 THE COURT: Thank you. Let me see y'all in
3 chambers.

4 [JURY TRIAL ADJOURNS AT 4:26 P.M.]
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Pretrial Motions
James Greenawalt
Recross-Examination by Mr. Cooper

C E R T I F I C A T E

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

I, the undersigned Mia Perron, Circuit Court Reporter for the 9th Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of the hearing held before the Honorable Kristi L. Harrington, on Wednesday, June 18, 2014.

I do further certify that I am neither kin nor counsel to any of the parties and have no interest in the outcome of this action.

Dated this 21st day of August, 2014.



Mia Perron, CVR-CM-M
Circuit Court Reporter
9th Judicial Circuit

STATE OF SOUTH CAROLINA) COURT OF GENERAL SESSIONS
) NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON) CASE NO.: 2012-GS-10-6872

STATE OF SOUTH CAROLINA)
)
VS.)
)
DOMINIQUE LAVAR WILLIAMS,)
)
DEFENDANT.)

JURY TRIAL

VOLUME 2 OF 2

held before the Honorable Kristi L. Harrington
Mia Perron, Circuit Court Reporter, 9th Judicial Circuit
in the Charleston County Courthouse
Charleston, South Carolina
on June 19, 2014, Commencing at 9:28 a.m.

SUSAN "MIA" PERRON, CVR-CM-M
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State v. Dominique Williams
Continued Pretrial Motions
June 19, 2014

PROCEEDINGS

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CONTINUED PRETRIAL MOTIONS

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THE COURT: All right. Call your witness.

MR. COOPER: Thank you, Your Honor. The defense
calls Antonio Simmons.

[Whereupon, Mr. Simmons comes forward]

THE CLERK OF COURT: Raise your right hand.

[Whereupon, Mr. Simmons is duly sworn by the
clerk of court as follows: do you swear or affirm
that your testimony will be the truth, the whole
truth, and nothing but the truth, so help you God]

THE WITNESS: Yes, sir.

THE CLERK OF COURT: Be seated. You need to
speak into this mike. You need to get kind of close
to it.

State your full name and then spell your last
name.

THE WITNESS: Antonio Simmons. S-I-M-M-O-N-S.

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Pretrial Motions
Antonio Simmons
Direct Examination by Mr. Cooper

ANTONIO SIMMONS,

Having Been First Duly Sworn,
was Examined and Testified as Follows:

DIRECT EXAMINATION

BY MR. COOPER:

Q. Mr. Simmons, how do you know Dominique Williams?

A. Best friend.

Q. He's your best friend?

A. Yes, sir.

Q. Okay. Were you with him on the night that he
was arrested for unlawful carry of a pistol?

A. Yes, sir.

Q. Where were y'all?

A. At the club.

Q. What club?

A. The Pulse.

Q. Where is that at?

A. Road.

Q. Okay. And so what were y'all doing when you
were together?

A. We was walking to the car.

Q. And were you going to leave with him?

A. No, I wasn't going to leave with him.

Q. Okay. But you were walking over to his car?

A. Yes.

Pretrial Motions
Antonio Simmons
Direct Examination by Mr. Cooper

1 Q. And so when you're walking over to his car, what
2 happened?

3 A. We was chatting, joking around about what was
4 going on in the club, about females, and then the next
5 thing you know I looked up and had a gun pointed at me.
6 And I was like, what's going on. And then I told my best
7 friend, I was like, look, whatever you do, just put your
8 hand up; we know we ain't done nothing wrong; maybe we
9 might fit the description of somebody they looking for.

10 Q. Right.

11 A. Because he was looking for his keys in his
12 pocket and I was like, just put your hands up.

13 Q. Okay. And so did the police pull firearms on
14 y'all?

15 A. Yes.

16 Q. And how far were they from you with the firearm?

17 A. I mean, in my face, like point-blank range.

18 Q. And then what did they tell you?

19 A. Put your hand up.

20 Q. Did you feel like you could disobey them at all?

21 A. No, I couldn't have.

22 Q. If you wanted to walk away, would you have been
23 able to walk away?

24 A. No, I can't. Not with a firearm in my face I
25 couldn't.

Pretrial Motions
Antonio Simmons
Direct Examination by Mr. Cooper

1 Q. Okay. And so then what happens after they tell
2 you to put your hands up?

3 A. He walked me to the back of the car and walked
4 my friend to the front of the car and --

5 Q. By your -- by your friend, who do you mean?

6 A. Dominique Williams.

7 Q. Okay.

8 A. And they search us both and that's when they got
9 the keys out of his pocket, went inside the car. And the
10 officer came on us like, what is this. And he was like,
11 sir, that's mine, that's registered, that's in my name.
12 And he was like, there's no registration in South
13 Carolina, or whatever he said that day.

14 Q. And so the officer pulled -- got the keys out of
15 Dominique's pocket?

16 A. Yes, sir.

17 Q. And then went into the car himself?

18 A. Yes, sir.

19 Q. Was Dominique in the car?

20 A. We never did make it to the car.

21 Q. So you had gotten like right at the car but you
22 never got into the car at all?

23 A. No, we never did get inside the car.

24 Q. Okay. And then so the police then separated
25 y'all?

Pretrial Motions
Antonio Simmons
Direct Examination by Mr. Cooper

1 A. Yes.

2 Q. And then the police officer pulled the gun out
3 of the car?

4 A. Yes.

5 Q. And then what did he say?

6 A. He was like, what is this.

7 Q. And then what did Dominique say?

8 A. He was like, what you mean, this is mine, it's
9 registered, it's in my name, you can check the paperwork
10 and all that.

11 Q. Okay. And then do you remember if Dominique
12 said anything like, it fell out of my pocket, or anything
13 like that?

14 A. No, sir.

15 Q. Would you have been able to hear that if that's
16 what Dominique said?

17 A. No, I wouldn't be able to hear it because at the
18 same time the club was just getting out. I guess that
19 they had a big fight. And the accident was like probably
20 a couple of feet from us.

21 MR. COOPER: All right. Antonio, I want you to
22 answer any questions that the State might have. Okay?

23 THE WITNESS: Okay.

24 MR. LIETZOW: May it please the Court, Your
25 Honor?

Pretrial Motions
Antonio Simmons
Direct Examination by Mr. Cooper

1 THE COURT: Yes, sir.

2 MR. LIETZOW: Good morning, Mr. Simmons. How
3 are you?

4 THE WITNESS: I'm doing fine. Yourself?

5 MR. LIETZOW: Good. Thank you. I just have a
6 few questions for you.

7 THE WITNESS: Okay.

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Pretrial Motions
Antonio Simmons
Cross-Examination by Mr. Lietzow

CROSS-EXAMINATION

BY MR. LIETZOW:

Q. You mentioned that the officers approached you and then put a firearm in your face; is that right?

A. Yes, sir.

Q. And I imagine it's not every day that you have a gun stuck in your face; right?

A. No.

Q. So would you agree that it was a pretty stressful situation at that point?

A. Yes, because I was unaware of what was going on.

Q. Right. Yes, sir.

And on top of the fact that you had two officers armed with guns in your face, there was also a fight going on in close proximity to you from the club?

A. No. Inside the club.

Q. Okay. But did you say that had spilled out? Or you didn't say that?

A. No.

I said when he asked me about did I hear him say anything about the gun fell out I said, no, I couldn't hear him because at the same time the club -- the fight was in the club. And when they herd people out of the club, like it be a lot of noise. And an accident was a couple of feet away from us.

Pretrial Motions
Antonio Simmons
Cross-Examination by Mr. Lietzow

1 Q. Okay. So there was a fight going on in the club
2 and a car accident a few feet --

3 A. Yes.

4 Q. Okay. So we have guns in your face, loud noises
5 from a club fight --

6 A. Yes.

7 Q. -- and then a car accident a few feet away?

8 A. Yes.

9 Q. Probably like a once in a couple of years
10 situation; right?

11 A. Yes.

12 Q. And I'm sure you've been in other high-stress
13 situations like this. Maybe not exactly like this. But
14 you would agree that you've been in high-stress situations
15 before; right?

16 A. Yes.

17 Q. And do you play sports, by chance?

18 A. Basketball.

19 Q. Bit game coming down the line, you're the one
20 taking the shot. That's a stressful situation; right?

21 A. Not really. Confidence.

22 Q. Okay. I admire that, then.

23 Anyways in stress situations, though, you would
24 agree that sometimes, you know, the world just kinds of
25 seems to tunnel around you?

Pretrial Motions
Antonio Simmons
Cross-Examination by Mr. Lietzow

1 A. Depend on the situation.

2 Q. Would you say that the world was kind of
3 tunneling in around you in this situation?

4 A. I wouldn't really say that. I was just saying
5 like it was a big shocker.

6 Q. A big shocker. Okay.

7 But you would agree that in these situations,
8 sometimes it's hard to remember exactly what was said or
9 what happened; right?

10 A. No, sir.

11 Q. No?

12 A. I have a very good memory.

13 Q. Do you remember what night it was this happened?

14 A. No, I don't remember the night. I know it was
15 the 24th because I was celebrating one of my home boy's
16 party.

17 Q. So two years ago your memory -- remember
18 everything you did that day -- did that day; right?

19 A. Yes.

20 Q. And do you remember what time y'all were leaving
21 the nightclub?

22 A. Around 12:20, 12:30.

23 Q. You didn't go home and immediately write
24 everything down that occurred that night; right?

25 A. No, I didn't.

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1 Q. So you would agree, then, it might be possible
2 that your memory might be a little bit fuzzy from that
3 night if you didn't write it down and could review it?

4 A. No.

5 MR. COOPER: I think this is asked and answered
6 at this point, Your Honor.

7 MR. LIETZOW: I'll move on, Your Honor.

8 THE COURT: Thank you.

9 MR. LIETZOW: The Court's indulgence.

10 THE COURT: Take your time.

11 [Whereupon, Mr. Lietzow reviews documents]

12 Q. [Mr. Lietzow] You testified that the defendant
13 never had the keys in his hands?

14 A. No, it was never in his hand.

15 Q. You don't remember him pulling the keys out and
16 unlocking the car?

17 A. I'm positive it wasn't in his hand because we
18 was joking, chuckling, about females and what our plan was
19 going to be for that night. So I know the keys wasn't
20 there because when the police officer pulled the gun out
21 on me, he was searching his own self like where's the keys
22 and he didn't even know until I told him to put his hands
23 up.

24 Q. And it's your testimony today, then, that the
25 doors were never opened?

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1 A. No, the doors were never opened.

2 Q. And you mentioned Mr. Williams is your best
3 friend; right?

4 A. That's right.

5 MR. LIETZOW: No further questions, Your Honor.

6 THE COURT: Redirect?

7 MR. COOPER: No, ma'am. It's not necessary.

8 THE COURT: You may step down, Mr. Simmons.

9 MR. COOPER: Mr. Simmons --

10 If the Court will remind him since he's under
11 subpoena, we'll need him again in a little bit.

12 THE COURT: All right. Mr. Simmons, we are
13 likely going to begin a jury trial here in just a few
14 moments and you are a witness under subpoena. Do you
15 understand what that means?

16 THE WITNESS: Yes, ma'am.

17 THE COURT: Until Mr. Cooper tells you you can
18 go, you are not -- you are still under that subpoena.
19 Or until I tell you you can go. Do you understand?

20 THE WITNESS: Yes, ma'am.

21 THE COURT: So if you would just stay in the
22 hallway so that we know where you are.

23 THE WITNESS: Okay.

24 THE COURT: All right. And please do not
25 discuss this case with anyone.

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1 THE WITNESS: Yes, ma'am.

2 THE COURT: All right. Thank you. Thank you so
3 much.

4 [Whereupon, Mr. Simmons is excused and exits the
5 witness stand]

6 THE COURT: Call your next witness.

7 MR. COOPER: Your Honor, I don't have any other
8 witnesses for this matter.

9 THE COURT: All right. Reserving all motions
10 and matters, does the State have any rebuttal
11 witnesses?

12 MR. LIETZOW: We do not, Your Honor.

13 THE COURT: All right. So let me hear argument,
14 Mr. Cooper.

15 MR. COOPER: Thank you, Your Honor. May it
16 please the Court.

17 In terms of our motion to suppress the firearm
18 under the fourth amendment, warrant for searches and
19 seizures are presumed unlawful and unreasonable under
20 State v. Bright and State v. Dupree. And under State
21 v. Dupree the citation is 462 S.E.2nd 279, 1995.

22 The gun, Your Honor, was seized without a
23 warrant from Dominique Williams' car. The officer
24 testified that Dominique Williams at no time gave
25 consent to the search. And the State has the burden

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1 to prove an exception to the warrant requirement
2 existed. It was not a search incident to arrest.
3 There are not exigent circumstances testified to by
4 anybody in law enforcement.

5 The only exception possibly presented to the
6 Court would be under the plain view doctrine. Under
7 Arizona v. Hicks, which is I guess our United State
8 South Carolina seminal plain view case, the illegal
9 nature of the object must be apparent on its face.
10 And under the Hicks case it dealt with the
11 manipulation of stereo equipment in an apartment to
12 get serial number in determining whether or not it was
13 stolen.

14 Here the gun in the car is no different than a
15 piece of stereo equipment, essentially. A pistol is
16 not illegal, in and of itself, to own in South
17 Carolina. The officer testified, as well, that by
18 looking at it he was not able to tell whether it was a
19 real gun until he held it. So he could not
20 distinguish by looking at it whether or not it was a
21 prop or a real firearm. And under -- it's an
22 inspection object beyond plain sight. In order to
23 validate the police believe that an item is contraband
24 violates the fourth amendment. And the Penn cite is
25 480 US 321 at 326 through 28.

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1 The statute that Mr. Williams is charged with is
2 the unlawful carry of a handgun. It's unlawful to
3 carry about the person any handgun whether concealed
4 or not. That's what the illegality is here. There is
5 no specific separate statute that says it's illegal
6 for a firearm to be placed on the floorboard of a car.

7 And I've provided for the Court the case State
8 v. Berry Clark from the Supreme Court of South
9 Carolina. And I've given a copy of it to the State,
10 as well. And the citation for that case is 302 South
11 Carolina -- or SC 423. And the other cite is 396
12 S.E.2nd 827.

13 And I'll point the Court to the second page of
14 the case in the -- about halfway down to the first
15 paragraph on that page. The Supreme Court of South
16 Carolina states that the statute clearly states that
17 it is unlawful to carry a pistol and the exceptions
18 are not descriptive of the offense. And this case
19 dealt with whether or not it is the State's burden or
20 defense's burden to negate the exceptions. And so
21 when the Supreme Court states that the exceptions are
22 not descriptive of the offense, it's not a separate
23 penalty or it's not illegal for the gun to be on the
24 floorboard of the car unless you're dealing with that
25 exception, and then it is the defense's burden to

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1 prove that if a person is in the car, the gun has to
2 be placed in the proscribed locations.

3 Under statute 16-23-20, and I cited it for the
4 Court on yesterday. But part 9(a), which states that
5 a person in a vehicle, if the handgun is secured in an
6 enclosed glove compartment, closed console, closed
7 trunk, et cetera. And so under the Clark case, the
8 statute is not to be read into the nature of the
9 statute. What is illegal is that it's unlawful for
10 anyone to carry about the person any handgun whether
11 concealed or not.

12 And in our case, the court -- the undisputed
13 facts are that the gun was on the floorboard of the
14 car between the driver's seat and the passenger's seat
15 at this point, after which time the car was
16 unoccupied. And Dominique Williams was in the club,
17 Club Pulse. He walked out of Club Pulse and
18 approached his car. The officer -- there was a
19 discrepancy in testimony before the Court, but I think
20 the undisputed fact is that Dominique Williams never
21 entered the car.

22 The officer testified that Dominique Williams
23 opened the door and ajarred the door but that
24 testimony was contradicted by Antonio Simmons who said
25 that Mr. Williams never even got the keys out of his

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1 pocket.

2 It's my argument that the officer's testimony is
3 questionable because the officer could not remember
4 which officer stood beside Mr. Williams and Mr.
5 Simmons and which officer got the gun out of the car.
6 I think his recollection of facts before this Court is
7 suspect. He couldn't remember which officer actually
8 got the gun out of the car. And he testified that it
9 was two years ago and he had -- you know, he's maybe
10 not required to remember everything that's happened on
11 a case two years old. The officer testified to that.

12 So, Your Honor, under the plain view doctrine,
13 the illegality has to be apparent on its face. And in
14 this case there is no illegality that's apparent on
15 the face. The gun is not stolen. It didn't have an
16 obliterated serial number, and nobody was in the car
17 carrying. So there's no exception to the warrant
18 requirement here and the gun ought to be suppressed.
19 I believe that's the only conclusion that the Court
20 can come to.

21 MS. NEWMAN: Thank you, Your Honor. May it
22 please the Court.

23 THE COURT: Ms. Newman.

24 MS. NEWMAN: Your Honor, the State would argue
25 that this kind of clearly falls within a plain view

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1 exception to the search warrant requirement.

2 There are two elements necessary under State v.
3 Wright to meet that exception: number one, that the
4 initial intrusion, which according to the authorities
5 the plain view was lawful; and, number two, the
6 incriminating nature of the evidence was immediately
7 apparent.

8 In this case the initial intrusion was lawful.
9 Officer Greenawalt was lawfully patrolling in a
10 parking lot in North Charleston in a known crime-
11 ridden area. He saw into the car and immediately
12 observed the gun through the window between the
13 driver's seat and the passenger's seat and the
14 incriminating nature of the gun was immediately
15 apparent. It was in a place it was not supposed to
16 me: in the wide-open area of the car --

17 THE COURT: Tell me under what statute that the
18 gun was not where it was supposed to be.

19 MS. NEWMAN: Well, I would look to 16-23-20,
20 subsection 9. Just by plain reading of that, a person
21 -- it's an exception if a person is in a vehicle and
22 the handgun is secured in a closed glove compartment,
23 closed console, closed drum, or a closed container.
24 It doesn't mention anything about a gun being open on
25 a floor of a car.

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1 THE COURT: But the beginning of this statute
2 indicates it is unlawful for anyone to carry about the
3 person.

4 MS. NEWMAN: Yes, Your Honor.

5 And I would argue that he had constructive
6 possession by virtue of the fact that the keys were in
7 his pocket, he walked up to the car, he opened the
8 door, was about to get in. He had dominion and
9 control over the vehicle. The car was registered to
10 him. No one else -- there's no testimony that anyone
11 else approached that car between the time that the
12 officer got there and was watching until he walked to
13 the car. He drove the car there. Had they --

14 THE COURT: Have we heard testimony that he
15 drove the car there?

16 MR. COOPER: No, we have not, Your Honor.
17 That's not in the record.

18 MS. NEWMAN: Well, Your Honor, I think that's
19 the only -- I think you can glean that from the fact
20 that where the gun was located, it -- had it -- he
21 said that it dropped out of his pocket. He told the
22 officer that. And so by virtue of the location where
23 it was between the driver's seat and the passenger's
24 seat, I mean, had he not dropped the gun he would have
25 had a gun on his person.

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1 THE COURT: I'm not sure that that's the only
2 assumption you could make from that scenario, Ms.
3 Newman.

4 MS. NEWMAN: Well, Your Honor, I think the State
5 [sic] has presented no case law that would advance
6 their position. There's no cases -- I mean, I'm
7 sorry. The defense. There's no cases that will
8 advance their position.

9 THE COURT: It's your burden.

10 MS. NEWMAN: Well, yes, Your Honor.

11 But if we look at all the case law, it's clear
12 that this would fall within a plain view exception to
13 the search warrant requirement. And there -- this
14 wasn't a search. It was just the seizure of a gun
15 that was within plain view in a car.

16 THE COURT: This issue becomes that under
17 Wright, one of the prongs is the incriminating nature
18 of the evidence must be immediately apparent.

19 What I'm asking you: if that had been an
20 abandoned car, would it be illegal? Would it be
21 carrying, if there was no one around it?

22 MS. NEWMAN: I would argue probably not. But I
23 think in this case we have constructive possession.

24 THE COURT: All right. And when did that
25 constructive possession begin?

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1 MS. NEWMAN: I would say it began before he got
2 out of the vehicle. He was in --

3 THE COURT: Before he got out of the vehicle?
4 Did anyone see him in the vehicle?

5 MS. NEWMAN: No, Your Honor.

6 But he had to have been in the vehicle for the
7 gun to have been left in the car, for him to have the
8 keys in his pocket when he walked out of the club to
9 open the door.

10 THE COURT: Ms. Newman, have you ever seen a
11 valet at a bar, a nightclub?

12 MS. NEWMAN: Yes, Your Honor.

13 THE COURT: All right.

14 MS. NEWMAN: I think that -- I mean, I think
15 looking at everything in totality shows that he had
16 constructive possession of that handgun and it was a
17 place in the vehicle that was not lawful.

18 THE COURT: All right. Let me -- I'll hear from
19 you regarding any response to that, as well as then to
20 the statement.

21 MR. COOPER: Thank you, Your Honor. May it
22 please the Court.

23 As far as -- I think that the only argument that
24 I feel like I need to address is the State's
25 constructive possession argument.

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1 The unlawful carry of a pistol is not a
2 possession because it's not the possession of a stolen
3 pistol or an obliterated serial number pistol or a
4 drug case. There's no constructive possession. It's
5 either unlawful carry or it's not.

6 If the gun -- if the officer had been able to
7 look through the window and observe an obliterated
8 serial number, and then we go into that statute, which
9 is a totally different crime, then constructive
10 possession would be a valid argument before the Court.
11 But under what we're dealing with and the facts that
12 have been presented to the Court, constructive
13 possession is not relevant to our case at all.

14 Your Honor, in terms of the statement, the
15 defendant was clearly in police custody. The officers
16 approached and, for lack of a better word, ambushed
17 them. I can't remember the term that the officer
18 used. But they snuck up on them as to not being seen,
19 presented firearms, and then showed force with
20 multiple police officers, told them to put their hands
21 up, put their -- they ended up -- put their hands on
22 top of the car, placed them in handcuffs and then
23 moved Mr. Williams and Mr. Simmons to separate parts
24 of the car, ultimately placing Mr. Williams in the
25 back seat of the patrol car. So Mr. Williams is

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1 clearly in police custody.

2 The officer testified that he did not Mirandize
3 Mr. Williams. And so Miranda is applicable when you
4 have custodial interrogation. Mr. Simmons testified
5 that once the officer performed his illegal search and
6 retrieved the firearm, he asked Mr. Williams, what is
7 this. And that is a question that is testimony on the
8 -- so it would fall under the ambient of
9 interrogation. So we are now within the requirements
10 that the defendant be Mirandized.

11 And the officer should have, under an abundance
12 of caution, placed Mr. Simmons [phonetic] in handcuffs
13 or re-advised him. And if he had Mirandized him, then
14 anything he said could be used against him. But he
15 didn't. He chose not to. And so it violated the
16 defendant's right under Miranda because it's clearly
17 custodial interrogation when he's in handcuffs, moved
18 and shown -- under show of force, and asked what is
19 this when presented with the firearm.

20 Those are -- that's a question that's elicited
21 in -- that's testimonial nature and intended to be
22 used against the defendant at a future criminal
23 proceeding. And Miranda would apply, and Miranda
24 warnings were not given in this case, and so that
25 statement should be suppressed. That any -- if the

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1 statement was elicited under questioning by the
2 officer, to suppress that -- defendant to Officer
3 Greenawalt said, that's my gun, it's registered in my
4 name, and stated that it fell out of my pants pocket.
5 Because those statements were elicited at the same
6 time as Officer Greenawalt testified. Thank you.

7 THE COURT: Any response?

8 MR. LIETZOW: May it please the Court, Your
9 Honor.

10 THE COURT: To the statements.

11 MR. LIETZOW: Thank you.

12 You heard Officer Greenawalt testify yesterday
13 that he has multiple years of law enforcement
14 experience. I can only infer from that that Officer
15 Greenawalt would have, in fact, addressed Miranda and
16 given Mr. Williams his Miranda rights had he intended
17 to ask a question and elicit any incriminating
18 statements.

19 You heard direct testimony and direct sworn
20 testimony yesterday from Officer Greenawalt that he
21 did not ask any questions that prompted Mr. Williams'
22 response that he had a firearm. He did not coax him,
23 he did not do anything at all, to elicit a statement
24 from Mr. Williams about ownership.

25 You've heard conflicting testimony today that he

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1 did ask a question. But at that point, Your Honor, I
2 would ask you to weigh the credibility between the two
3 witnesses. Officer Greenawalt is a sworn officer, has
4 multiple years of law enforcement, and he has no
5 reason to come in here today and lie to the Court.
6 I'm not suggesting that Mr. Simmons did, in fact, lie;
7 however, I'm suggesting that there's a credibility of
8 bias that you need to weigh here.

9 THE COURT: But did your officer also testify
10 one way and then when shown his written report
11 testified a completely different way as to --

12 MR. LIETZOW: Yes, ma'am.

13 THE COURT: -- who located the gun?

14 MR. LIETZOW: Yes, ma'am.

15 And I truly believe that's an honest mistake.
16 And he told the Court, I did make an honest mistake,
17 you're right, that's exactly why I write these
18 reports.

19 My belief, Your Honor, is that --

20 THE COURT: But doesn't credibility simply go to
21 believability? So just because somebody may not --
22 may intentionally tell an untruth, an inadvertent
23 untruth is still unbelievable; correct?

24 MR. LIETZOW: I would consent that, Your Honor.

25 THE COURT: And it would go to the totality of

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1 his believability; correct?

2 MR. LIETZOW: Yes, ma'am.

3 But I would ask you that you wouldn't hold the
4 lack of preparation too much against the witness in
5 this case. You know, he clearly came right out and
6 fessed up and said, I made an honest mistake --

7 THE COURT: Well, there's a difference between
8 preparation and recollection of the facts. You would
9 agree?

10 MR. LIETZOW: Yes, ma'am.

11 But the recollection of the facts that he's
12 mistaken on are not going toward weight and --

13 THE COURT: They were critical --

14 MR. LIETZOW: -- credibility right now.

15 THE COURT: -- were critical as to who located
16 the gun.

17 MR. LIETZOW: But I disagree that they're
18 critical in that he might have asked the question, you
19 know, had he not retrieved the gun or had he retrieved
20 the gun.

21 But the fact of the matter is the State's
22 testimony and the State's argument is that Officer
23 Greenawalt did not ask a question to elicit a response
24 from Mr. Williams. That's our position, whether he
25 retrieved it or not. He made a mistake, he owned up

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1 to that, but that mistake was not critical to the
2 issue that the Court is faced here today; and that is,
3 as far as the statements are concerned, did Officer
4 Greenawalt ask Mr. Williams a question. And it is our
5 position that it's no.

6 And if you're going to believe whether Officer
7 Greenawalt asked a question or not, I ask you to
8 simply weigh the credibility in this case. I know
9 you're concerned that the credibility might look bad
10 for a witness who misremembered a fact that isn't
11 significant in this decision. But the fact that he
12 wrote down a report immediately following this
13 incident -- he has no reason to come in here and lie
14 to manipulate this Court, whereas Mr. Simmons has
15 admitted he is his best friend with Mr. Williams. He
16 has every reason to not see Mr. Williams get in any
17 trouble, whether or not he has a great memory like he
18 says. It's a very high-stress environment. And he
19 admitted that.

20 So I ask you that when weighing the credibility,
21 you must find that Officer Greenawalt did not ask a
22 question. If you do find that he asked a question,
23 which I urge you not to do, it's still our position
24 that Miranda did not attach.

25 You know, Mr. Simmons said that they had guns

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1 pointed in their face. But it's our contention that
2 Officer Greenawalt specifically said yesterday, I did
3 not arrest the defendant at that point, he was merely
4 being detained for officer safety and for the safety
5 of the citizens surrounding because there was a
6 firearm readily available.

7 THE COURT: Was his testimony that he drew his
8 weapon on the defendant?

9 MR. LIETZOW: Yes, ma'am, he did draw his weapon
10 on the defendant.

11 THE COURT: And placed him in handcuffs;
12 correct?

13 MR. LIETZOW: Yes, ma'am.

14 But he testified yesterday that the defendant
15 specifically asked, am I under arrest. And he
16 specifically said he responded, no, you are being
17 detained right now for further investigation.

18 So custody does not attach, is our belief. And
19 we also believe that interrogation doesn't attach.
20 Two prongs requiring Miranda, both the State is --

21 THE COURT: Was he free to leave? Was the
22 defendant free to leave at that point?

23 MR. LIETZOW: I believe that pursuant to Terry
24 v. Ohio, had they not found any incriminating
25 evidence, had the defendant not taken constructive

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1 possession of this firearm and been in unlawful
2 carrying of it, he would have been absolutely free to
3 leave.

4 THE COURT: So it's your position that the
5 handcuffing and moving the defendant from the side of
6 the vehicle to the back was for officer safety and
7 just investigatory purposes?

8 MR. LIETZOW: Yes, ma'am.

9 They had -- they saw a firearm in a high-crime
10 area in a place that is otherwise not supposed to be
11 inside of a car. I know there's debate about that
12 right now. But those are the facts that he was
13 presented with on the scene at that time. He did what
14 he had to do, and was department protocol, in securing
15 the scene and making sure that there were going to be
16 no safety issues. He specifically told the defendant,
17 you are not under arrest, you are merely being
18 detained.

19 So, again, just in reiteration, Your Honor,
20 custody was not met. And it is the State's contention
21 -- you heard testimony from Officer Greenawalt that he
22 did not ask any questions of the defendant. There was
23 a spontaneous utterance. He wrote that in his report.
24 And he wrote that report to have his memory refreshed
25 after more than -- almost two years removed from the

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1 incident. And, therefore, interrogation isn't met.
2 And because custody and interrogation aren't met, it's
3 the State's position that Miranda does not attach.

4 And the statements that Mr. Williams made, that
5 that is my firearm and it fell out of my pocket as I
6 was getting out of the car, are absolutely admissible
7 in court, Your Honor. Thank you.

8 THE COURT: Your response, Mr. Cooper.

9 MR. COOPER: Thank you, Your Honor.

10 As the Court has already pointed out to the
11 State, that credibility of Officer Greenawalt is an
12 issue of this case. He could not remember which
13 officer got the gun out of the car and which officer
14 remained with Mr. Williams and Mr. Simmons. I believe
15 that's important because whichever one was remaining
16 with them would have been the one to hear the
17 statement. So I think it calls into question if he
18 even heard the statement or not.

19 It's not about malicious -- credibility is not
20 -- as the Court pointed out, is not an issue about
21 malicious lying or anything like that. It's about
22 believability. And the officer's believability has
23 been called into question. He was impeached by what
24 was actually in his report.

25 The State argues that Mr. Simmons is not

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1 believable merely because he's friends with
2 Mr. Williams. The State cannot and did not impeach
3 Mr. Simmons on this. They didn't pursue any line of
4 questioning about bias. They asked him if he was
5 friends. He said, yes, he's friends. Well, that's
6 the nature of the two guys leaving the nightclub
7 together. Of course they're going to be friends.
8 Otherwise, they wouldn't have been together.

9 And just because they're friends doesn't make
10 Mr. Simmons is going to come into court and lie. The
11 State was not able to impeach him on any -- and his
12 credibility hasn't been called into question except
13 for alleging that because they're friends, that he
14 would lie.

15 THE COURT: All right. Anything further?

16 MR. COOPER: Your Honor, also -- and just
17 because Officer Greenawalt is employed by law
18 enforcement doesn't make him more credible than a
19 private citizen. There's no law that says officers
20 are more believable simply because they are employed
21 by police, as well, Your Honor.

22 And briefly to address -- it's clear that the
23 defendant was detained. Being detained is custody.
24 You don't have to be under arrest to be in custody. I
25 think the custody issue, they're clearly in custody.

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1 So I don't think it matters whether or not the officer
2 asked him --- or whether or not he was arrested or not,
3 for purposes of Miranda.

4 THE COURT: All right. I'm going to take just a
5 few moments. Y'all go ahead and take your comfort
6 break..

7 [Off the record momentarily]

8 MR. COOPER: Your Honor, I apologize.

9 Also, the State did -- they handed the Court a
10 case State v. Daniels. And I'll address that case if
11 the Court is going to consider it, but I don't think
12 it's applicable.

13 THE COURT: I've heard enough. Thank you.

14 MR. COOPER: Yes, ma'am.

15 THE COURT: Thank you.

16 [Whereupon, a recess is taken from 10:02 a.m. to
17 10:03 a.m.]

18 THE COURT: Anything further before I issue my
19 ruling? From Mr. Cooper?

20 MR. COOPER: No, ma'am.

21 THE COURT: All right. As to the question of
22 the search and seizure of the weapon: based upon the
23 testimony that has been presented, I find that the two
24 elements that are needed to satisfy the plain view
25 exception, the initial intrusion, which afforded the

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1 authorities the plain view was lawful okay the officer
2 testified that he was in an area and the gun was in
3 plain view, illuminated by a street light. I find
4 that that prong has been satisfied, based upon the
5 testimony that has been presented.

6 The second prong, the incriminating nature of
7 the evidence, was immediately apparent. Based upon
8 the position and location of the weapon, I find that
9 that, for the purposes of this hearing, has been
10 satisfied.

11 Note your exception to my ruling, Mr. Cooper.

12 As to the statements that were given: based
13 upon the testimony that has been presented, I do not
14 find that the statements were the voluntary -- were
15 voluntarily given.

16 I did look at the totality of the circumstances.
17 I considered the defendant's age, education,
18 intoxication, the interrogation. The officer
19 indicated that he had placed handcuffs on the
20 defendant, moved him to the back. There was some
21 question as to whether or not there was a question
22 given.

23 Based upon the totality of the circumstances, I
24 do not find that the statement was voluntary. The
25 officer further stated that he did not give Miranda.

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1 Note your exception to my ruling.

2 Based upon that, do you need to speak to your
3 client, Mr. Cooper?

4 MR. COOPER: No, ma'am. I think we're ready to
5 pick a jury.

6 THE COURT: Do you want just a few moments to
7 tell him what happened?

8 And you probably need a few moments to --

9 MR. LIETZOW: Your Honor, I would need to
10 counsel the officer to eliminate that line of answers
11 from his testimony.

12 THE COURT: And strikes are five and five;
13 correct?

14 MR. LIETZOW: Yes, ma'am.

15 MR. COOPER: Yes, ma'am.

16 Does the Court give us a strike sheet --

17 THE COURT: I do not.

18 MR. COOPER: -- like civil court?

19 THE COURT: I do not.

20 MR. COOPER: Okay. Thank you. I just wanted to
21 ask.

22 THE COURT: Thank you.

23 We'll take about five minutes.

24 [Whereupon, a recess is taken from 10:17 a.m. to
25 10:27 a.m.]

Pretrial Motions
Antonio Simmons
Cross-Examination by Mr. Lietzow

1 THE COURT: Anything before we bring in the
2 jury? From the State?

3 MR. LIETZOW: Nothing from the State, Your
4 Honor.

5 THE COURT: From the defendant?

6 MR. COOPER: No, ma'am. I don't think I can
7 renew anything else.

8 THE COURT: I don't think so, but I'll allow you
9 to renew it before we begin.

10 MR. COOPER: Yes, ma'am.

11 THE COURT: It's noted for the record.

12 [Off the record momentarily]

13 THE COURT: Mr. Cooper, does your client waive
14 formal arraignment?

15 MR. COOPER: Yes, Your Honor, he does. Thank
16 you.

17 [Whereupon, the jury panel enters at 10:28 a.m.]

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State v. Dominique Williams
Opening statement by Mr. Lietzow
June 19, 2014

OPENING STATEMENT

MR. LIETZOW: I want to thank y'all for being here today. I'm sure y'all probably had a few things you had rather be doing than sitting with us. But on behalf of our office, the ninth circuit solicitor's office, thank you. And along those same lines, I promise y'all that I will present this case as efficiently as possible.

One of the first things I just want to get out there is telling you that this is not the case of the century. It just isn't. This isn't a case that I'm looking to send this man to prison and throw away the key to. But at the same time, I have a job. I'm a sworn officer of this Court and of the State of South Carolina, and that's a job that I take very seriously. And it's my job to enforce the laws of South Carolina and hold those accountable that break those laws. And that's what we have here today.

I may say to y'all that this is a case about responsible gun ownership. When an individual makes a very serious decision to arm themselves with a deadly weapon, they should do so knowing the applicable laws of the state of South Carolina. As I'm sure most of y'all are familiar, South Carolina allows for the ownership of weapons; however, they have placed

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1 certain guidelines on those -- on that ability to
2 insure safety to the community and to the gun owner
3 himself or herself.

4 Now, at the end of the trial, Judge Harrington
5 already mentioned that you'll hear in depth exactly
6 what the statute is that we're dealing with. But I
7 think it's really important in the beginning, until we
8 give you a summary of that, so that along the way
9 during trial, when you hear certain testimony and some
10 of my questions and answers and you understand why I'm
11 asking certain things and how those certain things may
12 or may not be important throughout the case.

13 So today we're here for an unlawful carrying of
14 a handgun. And in summary of that, as it applies to
15 this case, the State -- the law of the state of South
16 Carolina says it is unlawful for anyone to carry a
17 handgun about their person, and then it gives several
18 exceptions. And in this case the exception is unless
19 it is in a vehicle. So, essentially, it's legal to
20 carry a handgun as long as it's in a vehicle. And
21 inside that vehicle it has to be kept in very, very
22 specific areas. Those areas are a closed glove
23 compartment. It has to be closed. Closed center
24 console, in a closed trunk, or in some sort of storage
25 compartment that's closed and stored in the rear of

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1 the vehicle where you would keep the luggage. So it's
2 lawful to carry -- it's unlawful to carry a handgun
3 unless you're in a car and it's kept in one of those
4 very specific areas.

5 As I promised y'all I was going to be very
6 efficient in this case, you'll hear from two witnesses
7 today. And through their testimony you'll learn that
8 they were patrolling a known problem area, a known
9 problem nightclub, in North Charleston. And they'll
10 tell you how they came to learn that there was a
11 firearm that was being unlawfully carried.

12 Then they'll tell you how they watched the
13 defendant approach his car, they watched the defendant
14 pull his keys out of his pocket, and then they watched
15 the defendant unlock the car, walk around to the
16 driver's side door, open it all the way up. And at
17 that point the officers approached the defendant to
18 detain him. And you'll hear all about that from him.

19 You'll also hear how the car was registered to
20 the defendant and later, after the situation calmed
21 down, you'll hear that the defendant told officers
22 where he bought the handgun, how long he owned the
23 handgun for, and exactly why he thought it was
24 necessary for him to have a handgun.

25 And after all that evidence has been presented,

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1 I'm going to stand up here again in front of y'all and
2 I'm going to ask y'all to find the defendant guilty of
3 unlawful carrying. Thank you.

4 THE COURT: Mr. Cooper?

5 MR. COOPER: Thank you, Your Honor. May it
6 please the Court.
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State v. Dominique Williams
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OPENING STATEMENT

MR. COOPER: Good morning, y'all.

I'm sorry y'all have to be here today, okay?

And, you know, when we go to trial college and stuff, they say never apologize to the jury, don't thank them for being here.

But I'm sorry that you have to be here today because I don't get to pick the cases I try. The solicitor's office and the State are the ones that pick the cases that come to trial. And they're also the ones that could dismiss a case. And this is a case that they wouldn't dismiss.

MR. LIETZOW: Objection, Your Honor. May we approach?

THE COURT: You may.

[Whereupon, an off-the-record bench conference is held]

THE COURT: Ladies and gentlemen, I will instruct you on the law applicable to this case. As I've already indicated to you, we are here on the indictment for unlawful carrying of a firearm. I will explain the elements of that charge to you.

Please remember what is contained in opening statements, and I will also give you the same admonition as what is contained in closing arguments,

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1 is not evidence in this case. It is merely the
2 attorneys' intention as to what the evidence will show
3 you and, in closings, what the evidence has shown you.

4 Please remember I am the sole judge of the law
5 in this case and I will instruct you on the law that
6 is applicable to this case.

7 Mr. Cooper?

8 MR. COOPER: Thank you, Your Honor.

9 THE COURT: Thank you.

10 MR. COOPER: My point was that you're here now
11 and I'm going to ask you at the close of all the
12 evidence to acquit Mr. Williams.

13 There are some cases that are who-done-its,
14 right, like we don't know who the perpetrator is.
15 There are some cases that we present complicated legal
16 arguments. This case is about as simple as it can be.
17 You have to decide did Dominique Williams violate the
18 unlawful carry of a pistol statute.

19 The statute says, and this is a quote, not a
20 summary: it is unlawful for anyone to carry about the
21 person any handgun unless a certain exception is made.
22 That's what you have to decide today is did Dominique
23 Williams violate that statute. Did he unlawfully
24 carry a gun about his person?

25 And you'll hear a lot of testimony. But there

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1 are two facts that are undisputed and that cannot be
2 changed. And it's really simple. Officer Greenawalt
3 saw the handgun in an unoccupied car at Club Pulse.
4 Dominique Williams walked out of Club Pulse with the
5 keys in-hand to go get into the car. And before he
6 ever set foot in the car, the officers placed him
7 under arrest and carted him off to jail for unlawful
8 carry of a pistol. It's really easy.

9 Now, I apologize that y'all are here. And
10 you'll hear testimony. But the case cannot be
11 simpler. And after you hear all this testimony, I'm
12 asking you to return a verdict of not guilty because
13 it's not a who-done-it, it's not complicated, it's
14 just the law wasn't broken. Thank you.

15 THE COURT: Call your first witness.

16 MR. LIETZOW: The State calls Officer James
17 Greenawalt.

18 [Whereupon, Mr. Greenawalt comes forward]

19 [Whereupon, Mr. Greenawalt is duly sworn by the
20 clerk of court as follows: do you swear or affirm
21 that your testimony will be the truth, the whole
22 truth, and nothing but the truth, so help you God]

23 THE WITNESS: Yes.

24 THE CLERK OF COURT: Be seated.

25 [Whereupon, Mr. Greenawalt takes the witness

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1 stand]

2 THE CLERK OF COURT: Please state your full name
3 and spell your last name for the record.

4 THE WITNESS: James Greenawalt. G-R-E-E-N-A-W-
5 A-L-T.

6 MR. LIETZOW: Good morning, Officer. How are
7 you?

8 THE WITNESS: Good.

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James Greenawalt
Direct Examination by Mr. Lietzow
June 16, 2014

JAMES GREENAWALT,

Having Been First Duly Sworn,
was Examined and Testified as Follows:

DIRECT EXAMINATION

BY MR. LIETZOW:

Q. Can you please tell the jury where you work at?

A. The North Charleston Police Department.

Q. And how long have you been with North
Charleston?

A. About six years.

Q. And what is your position at North Charleston?

A. I'm a K-9 handler.

Q. Explain to the jury a little bit about what that
involves, please.

A. K-9 handlers work with the K-9 dogs. We patrol
certain areas, respond to high-incident crimes.

Q. And were you employed in North Charleston in
July 2012?

A. I was.

Q. And was your position the same then?

A. Yes, sir.

Q. How long have you been a K-9 officer?

A. About three and a half years. Four years,
almost.

Q. And in that amount of time, or in all of the

James Greenawalt
Direct Examination by Mr. Lietzow
June 16, 2014

1 time you've been a law enforcement officer, can you
2 estimate how many firearms cases you've been involved
3 with?

4 A. Numerous.

5 I could say at least probably thirty-five, forty
6 cases.

7 Q. Do you remember what you were doing on the night
8 of July 24th, 2012?

9 A. Our K-9 unit had been assigned to work high-
10 crime areas, one of those areas being Club Pulse.

11 Q. Do you know the address of Club Pulse, please?

12 A. It's . That's in North
13 Charleston, South Carolina.

14 Q. And approximately what time were y'all
15 patrolling there for?

16 A. We usually get to the parking lots around eleven
17 o'clock at night.

18 Q. So you actively go to the parking lots and then
19 patrol?

20 A. Yes.

21 Q. And tell the jury why you do that and, in
22 particular, why you do that at this club.

23 A. We've had numerous incidents, particularly at
24 this club itself, where we've had shootings inside and
25 outside the club in the parking lot. We've also had

James Greenawalt
Direct Examination by Mr. Lietzow
June 16, 2014

1 stabbings in the parking lots, numerous fights, and
2 drunken disorderly conducts inside and outside the parking
3 lot.

4 Q. So in this particular incident, can you explain
5 to the jury what it is you saw that got your attention?

6 A. One of our duties that we've been tasked to do
7 is walk the parking lot after the patrol to make sure
8 there's nobody hanging out inside the vehicles. A lot of
9 our problems occur while people are hanging out in the
10 vehicles outside the club.

11 But as we're patrolling around the parking lot
12 looking inside the cars, I actively was able to see in
13 plain view a firearm on the center console of this
14 defendant's vehicle.

15 Q. Now, when you say you were able to see it in
16 plain view, talk about that a little bit more. Did you
17 have to use a flashlight? Explain that situation, please.

18 A. The parking lot is actually pretty well-lit. I
19 did have a flashlight in my possession. I was able to see
20 the firearm through the driver's window.

21 Q. And based on your experience as a law
22 enforcement officer, that got your attention?

23 A. Absolutely.

24 Q. And is it normally against the law for a handgun
25 to be kept --

James Greenawalt
Direct Examination by Mr. Lietzow
June 16, 2014

1 MR. COOPER: Objection. Calls for a legal
2 conclusion.

3 THE COURT: Rephrase your question.

4 Q. [Mr. Lietzow] As a police officer, do you know
5 it to violate a law for a --

6 MR. COOPER: Same objection, Your Honor.

7 THE COURT: Rephrase your question.

8 MR. LIETZOW: We'll move on, Your Honor.

9 Q. [Mr. Lietzow] So you didn't have to look very
10 hard to see it?

11 A. No.

12 It was absolutely in plain view. Able to make
13 out the make of the gun itself.

14 MR. LIETZOW: Beg the Court's indulgence, Your
15 Honor.

16 THE COURT: Yes.

17 [Whereupon, Mr. Lietzow reviews documents]

18 Q. [Mr. Lietzow] Do you recognize this object?

19 MR. COOPER: May we approach, Your Honor?

20 THE COURT: You may.

21 [Whereupon, an off-the-record bench conference
22 is held]

23 THE COURT: Mr. Lietzow, if you'll just mark
24 that exhibit before we go any further. Thank you.

25 MR. LIETZOW: Yes, ma'am.

James Greenawalt
Direct Examination by Mr. Lietzow
June 16, 2014

1 May I please have this marked for identification
2 purposes only, at this point, as State's Exhibit
3 Number 1.

4 [Whereupon, State's Exhibit Number 1 is marked
5 by the court reporter]

6 MR. LIETZOW: May I approach the witness, Your
7 Honor?

8 THE COURT: You may.

9 Q. [Mr. Lietzow] Officer Greenawalt, do you
10 recognize this box?

11 A. I do.

12 MR. LIETZOW: And may I hand the object to the
13 witness?

14 THE COURT: You may.

15 Q. [Mr. Lietzow] How do you recognize this box?

16 A. This is a gun box that we use for submitting
17 firearms into our evidence.

18 Q. And opening the box, do you recognize that
19 particular item?

20 A. I do.

21 Q. And how are you able to specifically identify
22 that item?

23 A. This is the firearm I recovered from the
24 defendant's vehicle and was secured into evidence and
25 placed into our evidence locker.

James Greenawalt
Direct Examination by Mr. Lietzow
June 16, 2014

1 Q. Are you the individual that secured the firearm
2 and placed the firearm into evidence?

3 A. I am.

4 MR. COOPER: Your Honor, I don't --

5 THE COURT: Hold on. He hasn't asked to do
6 anything with it. He's just moving it around.

7 MR. COOPER: Yes, ma'am.

8 THE COURT: Thank you.

9 MR. LIETZOW: Court's indulgence.

10 THE COURT: Take your time.

11 [Whereupon, Mr. Lietzow and Ms. Newman confer]

12 MR. LIETZOW: May I approach the witness, Your
13 Honor?

14 THE COURT: You may.

15 Q. [Mr. Lietzow] If I show you this object, would
16 that help you identify a serial number on the firearm?

17 A. It would.

18 Q. And are you able to specifically identify this
19 firearm as the one that's involved in the crime that night
20 by matching the serial number on that sheet, that
21 refreshed your recollection, to the firearm serial number
22 on that weapon?

23 A. Yes.

24 Q. And in between you transporting that weapon from
25 the crime scene and taking that into evidence, did anybody

James Greenawalt
Direct Examination by Mr. Lietzow
June 16, 2014

1 else come into possession of that firearm? Was it
2 tampered in any way or could anybody have taken that away
3 from you and altered it in any way?

4 A. It stayed in my possession at all times.

5 MR. LIETZOW: Your Honor, at this point I would
6 move to have State's Exhibit Number 1 as -- what's
7 been pre-marked State's Exhibit 1 as State's Exhibit
8 1.

9 MR. COOPER: And I clarify. No objection as to
10 the chain. I reserve my pretrial objections, Your
11 Honor.

12 THE COURT: Nothing your pretrial objections,
13 State's 1 into evidence.

14 [Whereupon, State's Exhibit Number 1 is admitted
15 into evidence by the Court]

16 THE COURT: Counsel, just approach for just a
17 moment.

18 [Whereupon, an off-the-record bench conference
19 is held]

20 THE COURT: Thank you.

21 MR. LIETZOW: Permission to publish the evidence
22 to the jury, Your Honor?

23 THE COURT: You may, considering all my
24 admonitions about that. Thank you.

25 And, ladies and gentlemen, the red tie is a gun

James Greenawalt
Direct Examination by Mr. Lietzow
June 16, 2014

1 block. Thank you.

2 Q. [Mr. Lietzow] I think we've exhausted the fact
3 that this is the firearm that you saw out in plain view,
4 in the open, in that vehicle?

5 A. Yes. Without question.

6 Q. Okay. What happened next?

7 A. Well, the vehicle was unoccupied at the time.
8 We backed away from the vehicle, keeping the vehicle in an
9 unobstructed view to make sure that nobody came into the
10 vehicle or tampered with the vehicle. Waited for the --
11 or the driver to come out to the vehicle itself.

12 Q. I may or may not have misheard you. Did you say
13 the vehicle was occupied or unoccupied?

14 A. It was unoccupied.

15 Q. How much time passed between when you noticed
16 this and when the defendant -- or when you were first
17 alerted that somebody may be approaching the car?

18 A. If I had to estimate, maybe an hour.

19 [Whereupon, the witness reviews documents]

20 A. Yeah. Maybe an hour.

21 Q. [Mr. Lietzow] In that hour time frame, did
22 anybody else go up to the vehicle and try to unlock it or
23 tamper with it in any way?

24 A. No.

25 Q. Can you explain what happened next?

James Greenawalt
Direct Examination by Mr. Lietzow
June 16, 2014

1 A. We later observed two black males exit the
2 nightclub and started walking towards the direction of the
3 vehicle, which raised our suspicion that they may be the
4 occupants of the vehicle. Keep an eye on them and the
5 vehicle. I observed the defendant unlock the passenger
6 door and go to unlock the driver's side door. He opened
7 the driver's side door. And before he was able to make
8 entry into the vehicle, that's when we identified
9 ourselves as police officers and stopped them from
10 entering the vehicle.

11 Q. How far between where the vehicle was located
12 and where y'all were?

13 A. Maybe fifty feet, sixty feet.

14 Q. And I want to just go into a little bit more
15 detail when you say the defendant unlocked the car.
16 Explain that, please.

17 A. The defendant was able to -- had the keys for
18 the vehicle in his hand. I believe there was a key fob,
19 I'm not positive, to unlock the passenger door and the
20 driver's side door.

21 Q. Now, you mentioned that the defendant opened the
22 vehicle before y'all made contact. How far open was that
23 vehicle door?

24 A. The door was open enough for him to make entry
25 into the vehicle.

James Greenawalt
Direct Examination by Mr. Lietzow
June 16, 2014

1 Q. If y'all hadn't have gotten there as fast as you
2 did, could the defendant have accessed the handgun?

3 A. Absolutely.

4 MR. COOPER: Objection. Speculation.

5 THE COURT: Overruled.

6 Q. [Mr. Lietzow] Answer that question, please.

7 A. Absolutely he would have been able to make entry
8 into the vehicle and have access to the firearm.

9 Q. Now, let's talk about why you waited until the
10 driver's side door was open. Why do you do that?

11 A. I do that so it's actually possession of the
12 firearm. He has access to the firearm --

13 MR. COOPER: Again, objection. Legal
14 conclusion.

15 THE COURT: Rephrase your question. Sustained.

16 Q. [Mr. Lietzow] Do you do that for safety
17 purposes?

18 A. Yes.

19 Q. Let's back up a little bit and take us through
20 what happened when you were approaching the defendant and
21 the other male that was with him.

22 A. As we approached the vehicle, we had our
23 department-issued firearms drawn for the simple fact we
24 know it's a firearm incident involving a suspect with a
25 firearm. Due to the door being open and him having --

James Greenawalt
Direct Examination by Mr. Lietzow
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1 being able to access to get into the vehicle, and that
2 firearm being in play, we identified ourselves as police
3 officers, had both subjects place their hands on top of
4 the vehicle. Both subjects were detained in handcuffs at
5 that time, for officer safety reasons, so they want --
6 they were near to the firearm. And then both suspects
7 were brought to the rear of the vehicle.

8 Q. What was Mr. Williams' reaction to all of this?

9 MR. COOPER: It calls for hearsay.

10 THE COURT: Overruled.

11 A. As I was saying, as most people are, he was
12 startled at first. We -- because, like I said, we were
13 coming from behind him. We identified ourselves as police
14 officers. He calmed, and was actually very compliant with
15 what our commands were.

16 Q. What happened next?

17 A. After they were detained, both subjects were
18 brought away from the open doors for officer safety. We
19 didn't want them being near their -- access to a pistol.
20 They were brought to the rear of the vehicle. They stood
21 by with another officer.

22 Q. And at that point, did you -- was the handgun
23 removed from the vehicle?

24 A. The handgun was removed from the vehicle,
25 secured.

James Greenawalt
Direct Examination by Mr. Lietzow
June 16, 2014

1 Q. Who removed the handgun from the vehicle?

2 A. I did.

3 Q. Was the handgun loaded?

4 A. Yes.

5 Q. Do you remember how many rounds were in the
6 weapon?

7 A. Eight rounds.

8 Q. Were you ever able to determine who the car was
9 registered to?

10 MR. COOPER: Objection. May we approach?

11 THE COURT: You may.

12 [Whereupon, an off-the-record bench conference
13 is held]

14 THE COURT: I'm going to sustain your objection
15 as to Rule 5.

16 Move on, Mr. Lietzow.

17 MR. LIETZOW: Yes, ma'am.

18 Q. [Mr. Lietzow] What made you arrest the
19 defendant?

20 A. Due to the fact that the suspect had the keys to
21 the vehicle in his hand, he unlocked the driver's side
22 door, was going to make entry into the driver's side door,
23 the firearm was between the driver's seat and the
24 passenger seat.

25 Q. And do you write down what happened following an

James Greenawalt
Direct Examination by Mr. Lietzow
June 16, 2014

1 incident like this?

2 A. I do.

3 Q. And why do you do that?

4 A. For incidents like this. This case was back in
5 2012. I write down as much happened at the scene, in my
6 incident report, so that I can recall from the report
7 itself.

8 Q. Is it protocol that y'all are required to do
9 something like that?

10 A. Yes.

11 Q. And how much time had passed between the
12 incident occurring and you writing your report?

13 A. Maybe an hour.

14 MR. LIETZOW: Just one second, Your Honor,
15 please.

16 THE COURT: Take your time.

17 Q. [Mr. Lietzow] I want to clear up just one
18 thing, the location of the weapon. I believe you used the
19 word center console. But can you explain a little bit
20 more about that area that the firearm was in?

21 A. The vehicle that the defendant was driving was a
22 -- looked like it was an older-model police Ford Crown
23 Victoria. There is no center console actual per se in
24 between the driver's seat and the passenger's seat. All
25 it is is a passenger's seat, and the driver's seat and in

James Greenawalt
Direct Examination by Mr. Lietzow
June 16, 2014

1 the middle is just the hump for the drive train where our
2 police radios would normally go and stuff like that. And
3 the firearm was sitting on top of that hump in plain view.

4 Q. So there was no compartment there? It was just
5 an open area?

6 A. Open area.

7 MR. LIETZOW: Thank you. Please answer any
8 questions Mr. Cooper has for you.

9 THE COURT: Mr. Cooper?

10 MR. COOPER: Thank you, Your Honor. May it
11 please the Court.

12 Good morning, Officer Greenawalt.

13 THE WITNESS: Good morning.

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James Greenawalt
Cross-Examination by Mr. Cooper
June 19, 2014

CROSS-EXAMINATION

BY MR. COOPER:

Q. So who recovered the gun?

A. I did.

Q. You did.

Because yesterday there was a little bit of
confusion about that; right?

A. Yeah.

I didn't read through the report thoroughly. I
didn't know if it was me or the other officer that
actually recovered the firearm.

Q. But it's clear that you recovered it?

A. Absolutely.

Q. All right. You testified that Club Pulse is a
dangerous place?

A. Correct.

Q. Right? It's no longer in business now?

A. It had changed names to a new club, Club
Camouflage, and since then they've had numerous more
incidents and their business license has been revoked by
the City of North Charleston.

Q. Okay. And there's a significant amount of
violence?

A. Yes.

Q. Shootings, et cetera?

James Greenawalt
Cross-Examination by Mr. Cooper
June 19, 2014

1 A. Enough to pull their license, yes.

2 Q. Would you go to that club, the -- without your
3 issued firearm?

4 A. Would I? No.

5 Q. Okay. And Dominique Williams was not barred
6 from owning a firearm?

7 A. Not as far as I know, no.

8 Q. You performed an NCIC check; right?

9 A. Correct.

10 Q. And the gun came back clean?

11 A. Correct.

12 Q. And that means -- clean means it's not stolen;
13 right?

14 A. Correct.

15 Q. And it's not been in -- you don't know that it's
16 been involved in any crimes; right?

17 A. As far as I know, no.

18 Q. Right.

19 And it didn't have -- it was like completely
20 legal --

21 MR. LIETZOW: Objection, Your Honor. Relevance.

22 THE COURT: Overruled.

23 Q. [Mr. Cooper] It's completely legal for
24 Dominique Williams to own a firearm?

25 A. Correct.

James Greenawalt
Cross-Examination by Mr. Cooper
June 19, 2014

1 Q. Now, you saw the gun on the floor of the car
2 between the driver's and the passenger seat; right?

3 A. Yes.

4 Q. And at that time you testified that the car was
5 unoccupied?

6 A. Right.

7 Q. There was nobody in the car?

8 A. No.

9 Q. Okay. And when Dominique came up to the car,
10 right, he walked out of the club --

11 A. Yes.

12 Q. -- and he came up to the car?

13 A. Yes.

14 Q. He didn't have a gun on his like physical
15 person?

16 A. No.

17 Q. Okay. The only gun involved in this case is the
18 one that is in-between the seats and the car?

19 A. Correct.

20 Q. In the unoccupied car?

21 A. Correct.

22 Q. Which means that nobody's in the car?

23 A. [Indicates affirmatively]

24 Q. All right. And Dominique actually did not
25 physically get into the car, did he?

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- 1 A. No. We didn't allow him.
- 2 Q. Right.
- 3 You stopped him before he was able to get into
- 4 the car?
- 5 A. Correct.
- 6 Q. He didn't get into the car? He opened the door?
- 7 A. Right.
- 8 Q. And when you say you stopped him, you pointed
- 9 your firearm at him and told him to put his hands up;
- 10 right?
- 11 A. Correct.
- 12 Q. And then you told him to put his hands on top of
- 13 the car?
- 14 A. Right.
- 15 Q. And then you put him in handcuffs?
- 16 A. Correct.
- 17 Q. And then you carted him from where he was by the
- 18 doorway to the back side of the car?
- 19 A. To the rear of the trunk. Yes.
- 20 Q. And you did that to his friend, too, and put him
- 21 in a different spot?
- 22 A. Yes.
- 23 Q. And that's Antonio Simmons?
- 24 A. Correct.
- 25 Q. Now, you didn't see who drove the car to the

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1 club at all?

2 A. No.

3 Q. You have no idea who was in the car when it
4 arrived at the club?

5 A. Do not.

6 Q. So you have no idea how the gun got onto the
7 floor? You cannot say for certain how the gun got on the
8 floor?

9 A. I can -- no, I cannot.

10 Q. Based on your observations -- ?

11 A. No.

12 Q. -- you have no idea how the gun got on the
13 floor?

14 A. No.

15 Q. Now, the gun was actually tested for
16 fingerprints; right?

17 A. According to our --

18 MR. LIETZOW: Objection, Your Honor. May we
19 approach?

20 THE COURT: You may.

21 [Whereupon, an off-the-record bench conference
22 is held]

23 THE COURT: Ladies and gentlemen, there is a
24 matter of law that I must take up outside of your
25 presence. Do not begin your deliberations. Do not

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1 discuss this case amongst yourselves.

2 You may leave your notepads right in that chair.

3 We'll receive you back momentarily. Thank you.

4 Please rise for the jury.

5 [Whereupon, the jury exits the courtroom at
6 11:55 a.m.]

7 THE COURT: Please be seated.

8 Mr. Cooper, I'm going to allow you outside the
9 presence of the jury to ask the question so that --

10 MR. COOPER: Yes, ma'am.

11 THE COURT: I'm concerned that once you open
12 that door, if I find that it's inappropriate for this
13 witness to answer those questions, then I can't have
14 them stricken from the jury.

15 MR. COOPER: Yes, ma'am.

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JAMES Greenawalt
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PROFFER

BY MR. COOPER:

Q. Officer Greenawalt, the North Charleston Police Department has certain policies and protocols in dealing with firearms?

A. Yes.

Q. And these are policies and protocols that you employ in any case where there is a firearm?

A. Yes.

Q. And one of those protocols is that you attempt to obtain fingerprint or latent print evidence from the firearm?

A. I believe so.

Q. And that was done as part of that protocol in this case?

A. I'm not -- I don't have firsthand knowledge of that.

Q. Okay. You are testifying here today as the case agent on this case?

A. Correct.

Q. And you have copies of all the reports in this case?

A. I have copies of what was given to me here. I don't have anything else, other than my report that I wrote.

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1 Q. So as case agent who's in charge of all the
2 reports in dealing with the case, the only thing that you
3 have is your initial report summary?

4 A. Correct.

5 I don't get copies of anything else that's done
6 to -- inside this case.

7 Q. Okay.

8 MR. LIETZOW: May I cross?

9 MR. COOPER: Well, I think --

10 THE COURT: I don't know that he's done yet,
11 Mr. Lietzow.

12 MR. COOPER: No.

13 THE COURT: Thank you.

14 Q. [Mr. Cooper] And so you don't know -- even
15 though it's police policy and procedure, and standard
16 protocol on ever case in dealing with a firearm, you don't
17 know whether they dealt with fingerprint evidence in this
18 case?

19 A. I have no idea.

20 Q. Okay. And even though it's standard police
21 policy and procedure on every case dealing with a firearm,
22 do you know whether or not they swabbed for DNA from the
23 firearm in this case?

24 A. I do not.

25 MR. COOPER: Judge, I'm at a loss for words, but

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1 that's where we're at.

2 THE COURT: Well, if he doesn't know, I don't
3 know how you can ask him about it.

4 MR. COOPER: Right.

5 But I think that I'm allowed to cross him in
6 front of the jury at the lack of -- in order to
7 impeach his interest in this case.

8 I mean, he's the case agent. He's in charge of
9 all these -- I think it --

10 MR. LIETZOW: I think it goes to credibility at
11 this point. If it is policy and procedure to test
12 every gun --

13 THE COURT: Hold on. Hold on.

14 Are you the case agent?

15 THE WITNESS: I was the arresting officer and
16 that's --

17 THE COURT: All right. Which is different from
18 a case agent; correct?

19 THE WITNESS: Yes, ma'am. Yes, ma'am, it is.

20 MR. COOPER: Your Honor, he testified just
21 minutes ago that he was the case agent.

22 THE COURT: To you?

23 MR. COOPER: Yes.

24 THE COURT: Because you asked him and he
25 answered your question?

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1 Do you --

2 MR. COOPER: Yes.

3 THE COURT: Do you find a distinction between
4 case agent and arresting officer?

5 THE WITNESS: Yes.

6 A case agent sticks with a case from the
7 beginning to end. As an arresting officer, I handled
8 the arrest of the suspects.

9 Q. [Mr. Cooper] Officer Greenawalt, is there
10 anybody in this case who would be a case agent if it were
11 not you?

12 A. No.

13 Q. Okay. So it is your case?

14 A. As of all the 41s that I have, yes.

15 Q. So no matter what terminology we use, this is
16 your case and you're in charge of it?

17 A. Correct.

18 Q. From beginning to end?

19 A. Correct.

20 MR. COOPER: Okay.

21 THE COURT: Are you done?

22 MR. COOPER: Yes.

23 THE COURT: Mr. Lietzow?

24 MR. LIETZOW: I just -- may I make arguments
25 without questioning? I mean, I can question, too.

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1 THE COURT: What's your argument?

2 MR. LIETZOW: Your Honor, my argument is that
3 this is protocol. A case agent would want something
4 to be done. He had no choice in the matter. He
5 placed the firearm into evidence and then months later
6 somebody came and got it. And they might not have
7 even known that we're going to contend post Miranda,
8 the defendant, oh, claimed ownership of the firearm,
9 what does it matter if there's touch DNA or
10 fingerprints on it.

11 You know, he is merely the arresting officer and
12 he placed the evidence -- the firearm into evidence
13 and that was that. He doesn't have any firsthand
14 knowledge. He cannot testify directly about these
15 words I can't even pronounce, because we would need an
16 expert to do this, Your Honor. And I specifically
17 chose not to make that an issue in my case-in-chief,
18 because I didn't think it helped or hurt my case.

19 THE COURT: Well, he gets to cross-examine on
20 any relevant issue in this case, Mr. Lietzow. Just
21 because you didn't make an issue of it doesn't mean
22 that's what he's tied to.

23 Mr. Cooper, what are you asking?

24 MR. COOPER: Judge, at this point I would
25 proceed with the line of questioning about the

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1 standard policies and procedures from North Charleston
2 Police Department in dealing with firearms. And then
3 this officer can testify to whether firsthand
4 knowledge -- whether or not those policies and
5 procedures were complied with, which he testified now
6 that he has no firsthand knowledge.

7 But I think a lack of fingerprints is definitely
8 relevant and goes to the possession of a firearm,
9 which is --

10 THE COURT: But I don't know that he can testify
11 as to fingerprints or lack of fingerprints.

12 MR. COOPER: No, ma'am.

13 I can -- I think I can get in at least what the
14 policies and procedures are, that an officer knows
15 what the policies and procedures are. But I guess at
16 this point he can't testify whether or not those were
17 followed.

18 But we have Detective Monroe coming up later and
19 I can pursue the same line with him, if he has any
20 personal knowledge.

21 But Officer Greenawalt, while not using the
22 terminology case agent, he's the agent from beginning
23 to end. He said that if he's not the case agent,
24 there isn't one. So this is stuff that he should
25 know.

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1 THE COURT: I don't know that you've established
2 any should or should not know this.

3 Mr. Lietzow, do you understand what he's asking
4 to go into? Let me hear from you.

5 MR. LIETZOW: It's my understanding that
6 Mr. Cooper wants to question is it protocol to have a
7 firearm fingerprinted, is it protocol to have a
8 firearm swabbed for touch DNA. That's my
9 understanding. And anything further, I would object
10 to for the same reasons I've already objected, Your
11 Honor.

12 THE COURT: And then what is your next set of
13 questions, Mr. Cooper?

14 MR. COOPER: Besides Officer Greenawalt's
15 knowledge as to whether those were complied with, I'm
16 moving on because if he can't -- if he can't say that
17 they were complied with, I can't talk about it.

18 THE COURT: I think that's a fair question. All
19 right? And I don't -- you don't need to -- you get
20 that next follow-up question. And I think we
21 understand what that answer would be.

22 Do y'all need a break, while we're taking a
23 break?

24 MR. LIETZOW: I'm fine, Your Honor, unless you
25 need a break.

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1 MR. COOPER: Yes, Your Honor, we would. Just a
2 brief break.

3 THE COURT: Five minutes. Officer, you can sit
4 right there, you can go take your own comfort break,
5 but do not discuss this case with anyone. All right?

6 THE WITNESS: I'll stay right here.

7 THE COURT: Thank you. Five minutes.

8 MR. COOPER: Thank you, Your Honor.

9 [Whereupon, a recess is taken from 12:03 p.m. to
10 12:07 p.m.]

11 THE COURT: Please rise for the jury.

12 [Whereupon, the jury enters the courtroom at
13 12:07 p.m.]

14 THE BAILIFF: All jurors are present, Your
15 Honor.

16 THE COURT: Thank you. Please be seated.

17 Mr. Cooper, you may continue.

18 MR. COOPER: Thank you, Your Honor. May it
19 please the Court.

20 THE COURT: Yes, sir.

21 MR. COOPER: Officer Greenawalt, I apologize. I
22 don't exactly remember where we left off, so some of
23 this might be repetitive so that I can get us back on
24 track. Is that okay?

25 THE WITNESS: Sure.

James Greenawalt
Continued Cross-Examination by Mr. Cooper
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CONTINUED CROSS-EXAMINATION

BY MR. COOPER:

Q. We've established that Dominique did not get in the car; right?

A. Correct.

Q. Okay. And we've established that you didn't see who drove the car to the club?

A. Correct.

Q. And you didn't see who all was in the car when the car arrived at the club?

A. Correct.

Q. Now, you are testifying here today as I guess maybe case agent? Or, you know, you're the agent in charge of this case?

A. I'm the arresting officer, yes.

Q. The arresting officer.

So you did everything from the initial arrest all the way to controlling the case until it comes here today?

A. All I'm in charge of was making the arrest itself.

Q. And did you maintain a case file?

A. I completed a report. That was it.

Q. North Charleston Police Department has standard policies and procedures in dealing with firearms, do they

James Greenawalt
Continued Cross-Examination by Mr. Cooper
June 19, 2014

1 not?

2 A. Correct.

3 Q. And anytime where there is a crime that a
4 firearm is involved, these firearm policies and procedures
5 kick into place; right?

6 A. Correct.

7 Q. And it could be unlawful carry of a pistol or
8 armed robbery. It doesn't matter?

9 A. Correct.

10 Q. And so the policy of North Charleston Police
11 Department is to fingerprint the firearm when it's
12 recovered; correct?

13 A. Correct.

14 Q. And do you know whether or not that was done in
15 this case?

16 A. I do not.

17 Q. And then the other policy and procedure is that
18 when a firearm is recovered, it is swabbed for touch DNA;
19 correct?

20 A. Correct.

21 Q. And touch DNA, to sort of give a simplistic
22 explanation to the jury, is that our hands have skin
23 particles on them; right?

24 A. Yes.

25 Q. And your skin has DNA on it; right?

James Greenawalt
Continued Cross-Examination by Mr. Cooper
June 19, 2014

1 A. Correct.

2 MR. LIETZOW: Objection, Your Honor. He's not
3 qualified to discuss touch DNA.

4 MR. COOPER: He answered the question, Judge.

5 THE COURT: Counsel, please remember there's no
6 speaking objections.

7 Move on, Mr. Cooper.

8 Q. [Mr. Cooper] It is possible to determine who
9 touched a certain item by touch DNA analysis; correct?

10 MR. LIETZOW: Objection, Your Honor.

11 A. I'm not a --

12 THE COURT: Hold on one --

13 A. -- scientist.

14 THE COURT: -- second.

15 There's an objection. Don't answer the
16 question.

17 MR. LIETZOW: Expert training.

18 THE COURT: This officer has not been qualified
19 as an expert, Mr. Cooper.

20 Q. [Mr. Cooper] Officer Greenawalt, have you ever
21 been involved in any case that involved DNA analysis?

22 A. Yes.

23 Q. So do you know how DNA analysis works on a basic
24 level?

25 A. I have no idea. I've had no training on DNA

James Greenawalt
Continued Cross-Examination by Mr. Cooper
June 19, 2014

1 analysis.

2 Q. Despite your lack of training on DNA analysis,
3 you know that it's a policy and procedure that touch DNA
4 is sought every time -- or, you know, they look for touch
5 DNA every time a firearm is recovered?

6 A. Correct.

7 Q. And can you testify whether or not that was done
8 in this case?

9 A. I cannot.

10 Q. You cannot.

11 So you don't know. You don't know who touched
12 the gun?

13 A. As far as --

14 Q. You can't testify to it?

15 A. As touching it when?

16 Q. You don't have touch DNA evidence; right?

17 A. I don't have any, no.

18 Q. Would you know if touch DNA analysis came back
19 from SLED?

20 A. I would not.

21 Q. You would not know that?

22 A. No.

23 Q. Can you tell me who would know that?

24 A. I would guess whoever --

25 MR. LIETZOW: Objection, Your Honor. It calls

James Greenawalt
Continued Cross-Examination by Mr. Cooper
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1 for speculation.

2 THE COURT: Rephrase your question, Mr. Cooper.

3 Q. [Mr. Cooper] Involving Mr. Williams's charge,
4 unlawful carry of a pistol, and complying with the North
5 Charleston Police Department's policies and procedures
6 involving the attempted recovery of DNA analysis, in this
7 case who would have been in charge of that?

8 A. I imagine one of our crime scene techs.

9 Q. And you -- but you don't know who that person
10 was?

11 A. We have several.

12 Q. You have several.

13 But this night you don't know?

14 A. No.

15 Q. And you don't have it in the report that you
16 have with you?

17 A. No. I'm not privy to that information.

18 MR. COOPER: Court's indulgence, Your Honor.

19 THE COURT: Take your time.

20 [Whereupon, Mr. Cooper and Ms. Andrews confer]

21 Q. [Mr. Cooper] Officer Greenawalt, you testified
22 a minute ago that you were simply the arresting officer on
23 this case?

24 A. Correct.

25 Q. Did you have a supervising officer on this case?

James Greenawalt
Continued Cross-Examination by Mr. Cooper
June 19, 2014

1 A. No.

2 Q. Do you know who would have managed the case file
3 if it weren't you?

4 A. Several people. It's just like a normal officer
5 going on patrol. If they responded to forty calls on one
6 night, they don't follow up on all forty calls. We have
7 other people that handle that for us.

8 Q. Typically, when there's an arrest made there is
9 a case agent, correct, somebody that's in charge of the
10 case and the case file from arrest all the way until you
11 get to court?

12 A. Depending on the charge, yes.

13 Q. And do you know if there is a case agent in this
14 case?

15 MR. LIETZOW: Objection, Your Honor. Asked and
16 answered.

17 THE COURT: I'm going to allow him -- you may
18 answer that question.

19 A. There is not a specific person, case agent, that
20 has been assigned to this case, no.

21 Q. [Mr. Cooper] But you're here testifying today?

22 A. As the arresting officer, yes.

23 MR. COOPER: All right. Thank you.

24 THE COURT: Redirect?

25 MR. LIETZOW: Yes, Your Honor. Briefly.

James Greenawalt
Redirect Examination by Mr. Lietzow
June 17, 2014

REDIRECT EXAMINATION

BY MR. LIETZOW:

Q. You testified that you didn't let the defendant gain complete control of the vehicle?

A. Correct.

Q. Why not?

A. It's for officer safety reasons.

You don't want the person to get into the vehicle, grab ahold of the gun, manage to fire off a couple of rounds or just have any access possible to that firearm. It's safety protocol --

Q. Is that --

A. -- common sense.

Q. Is that how you're trained by North Charleston Police Department?

A. Absolutely.

Q. And was the defendant in very close proximity to the firearm and such that he could have reached the firearm?

A. Yes.

He was in the apex of the door. As he opened the door, he was within two to three feet of the firearm.

Q. And you mentioned that there was no one in the car when you saw the firearm. Can you clarify which side the firearm was closer to? Was it closer to the driver's

James Greenawalt
Redirect Examination by Mr. Lietzow
June 17, 2014

1 seat or the passenger seat?

2 A. It was closer to the driver's seat.

3 There was that hump that's in the middle. The
4 firearm was actually touching the driver's seat on the
5 hump itself.

6 Q. Was it in a closed compartment?

7 A. No.

8 Q. And did you touch the gun when you removed it
9 from the vehicle?

10 A. I did.

11 MR. LIETZOW: No further questions, Your Honor.

12 THE COURT: Mr. Cooper?

13 MR. COOPER: No questions, Your Honor.

14 THE COURT: You may step down. Thank you.

15 [Whereupon, Mr. Greenawalt is excused and exits
16 the witness stand]

17 THE COURT: Call your next witness.

18 MS. NEWMAN: The State calls Detective Jason
19 Monroe.

20 [Whereupon, Mr. Monroe comes forward]

21 [Whereupon, Mr. Monroe is duly sworn by the
22 clerk of court as follows: do you swear or affirm
23 that your testimony be the truth, the whole truth, and
24 nothing but the truth, so help you God]

25 THE WITNESS: I do.

James Greenawalt
Redirect Examination by Mr. Lietzow
June 17, 2014

1 THE CLERK OF COURT: Be seated.

2 [Whereupon, Mr. Monroe takes the witness stand]

3 THE CLERK OF COURT: If you'll please state your
4 full name and then spell your last name for the
5 record.

6 THE WITNESS: Phillip Jason Monroe.
7 M-O-N-R-O-E.

8 MS. NEWMAN: Thank you, Your Honor. May it
9 please the Court.

10 THE COURT: Yes.

11 MS. NEWMAN: Good morning, Detective.

12 THE WITNESS: Good morning.

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Jason Monroe
Direct Examination by Ms. Newman
June 19, 2014

JASON MONROE,

Having Been First Duly Sworn,
was Examined and Testified as Follows:

DIRECT EXAMINATION

BY MS. NEWMAN:

Q. Could you please tell the jury where you work.

A. North Charleston Police Department.

Q. How long have you worked there?

A. Eleven years.

Q. What is your position with the Department?

A. I'm a detective.

Q. And what does that involve?

A. Primarily, I am a financial crimes investigator.

However, during the month we have to take an on-call session, which is what I was doing at the time of this incident, where I respond to anything from homicides to people with guns.

Q. So you were employed with the Department back in July of 2012?

A. Yes.

Q. And how long have you been in law enforcement total?

A. Eleven years.

Q. So you've been a detective for eleven years?

A. No. I've been a detective for three and a half.

Jason Monroe
Direct Examination by Ms. Newman
June 19, 2014

1 Q. Three and a half.

2 Do you remember what you were doing back on July
3 24th, 2012?

4 A. I was working from 8:00 p.m. to 4:00 a.m., on
5 the on-call shift, with Detective Schmidt.

6 Q. And what brought you to Club Pulse on that
7 night?

8 A. Sargent Hill called for an available detective
9 to conduct a gun protocol interview with the suspect.

10 Q. And did you respond due to department protocol?

11 A. Yes.

12 Q. What did you do when you got there?

13 A. I can't be exactly specific about the exact
14 chain of events. But during any gun protocol, we meet
15 with the officer, ask them what happened. And then we
16 meet with the suspect or the person who is found in
17 possession of the gun. We Mirandize them and then ask
18 them the standard questions that are in the form.

19 Q. And what are those standard questions?

20 A. I'll read them verbatim off the sheet. Post
21 Miranda, after they're given their rights, we ask them
22 where did you get the gun; if you don't own this gun, who
23 is the owner; is the gun stolen; how long have you had
24 this gun; why do you have this gun; has this gun been used
25 in any crimes; can you get more guns; and do you know

Jason Monroe
Direct Examination by Ms. Newman
June 19, 2014

1 where any guns are hidden.

2 Q. Let's back up a little bit.

3 A. Okay.

4 Q. Before you asked these questions, did you
5 pressure at all the defendant into talking with you?

6 A. No.

7 Q. And was he pretty cooperative?

8 A. Yes.

9 Q. So you asked him where he bought the gun;
10 correct?

11 A. Yes.

12 Q. And what did he respond?

13 A. The Money Man Pawn Shop.

14 Q. Did you ask him how long he had owned the gun?

15 A. Yes.

16 Q. And what did he respond to that?

17 A. February, 2012.

18 Q. Did you ask him why he had a gun?

19 A. Yes.

20 Q. And what was his response?

21 A. Protection.

22 Q. Did you have any other involvement in the case
23 after that?

24 A. No.

25 MS. NEWMAN: Beg the Court's indulgence.

Jason Monroe
Direct Examination by Ms. Newman
June 19, 2014

1 THE COURT: Take your time.

2 [Whereupon, Ms. Newman and Mr. Lietzow confer]

3 MS. NEWMAN: No further questions. Please
4 answer any questions that the defense has.

5 THE WITNESS: Thank you.

6 THE COURT: Mr. Cooper?

7 MR. COOPER: Thank you, Your Honor. May it
8 please the Court.

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Jason Monroe
Cross-Examination by Mr. Cooper
June 19, 2014

CROSS-EXAMINATION

BY MR. COOPER:

Q. Detective Monroe, you completed this interview as part of the gun protocol; correct?

A. Yes.

Q. North Charleston has certain policies and procedures in dealing with guns; right?

A. Yes.

Q. And completing that questionnaire is part of that protocol?

A. Exactly.

Q. Other parts of that protocol include fingerprinting, testing the gun for fingerprints?

A. We fingerprint guns and they go to IBIS, yes. So it should have been fingerprinted.

Q. In this case forensic units responded; is that correct?

A. Yes.

Q. And but you -- do you know what the forensics unit did?

A. I have the forensic report. However, I can't -- I can only testify to what's written on it.

Q. And in your report, can you state what forensics did?

MR. LIETZOW: Objection, Your Honor. Asking --

Jason Monroe
Cross-Examination by Mr. Cooper.
June 19, 2014

1 THE COURT: Counsel approach.

2 [Whereupon, an off-the-record bench conference
3 is held]

4 Q. [Mr. Cooper] Detective, do you know who was the
5 forensic personnel who responded?

6 A. Detective Angela Elmer.

7 Q. Detective Angela Omar?

8 A. Elmer.

9 Q. Elmer.

10 A. E-L-M-E-R.

11 Q. And you can't testify to what's in the report.

12 But it's standard protocol to test for
13 fingerprint evidence; right?

14 A. Yes.

15 Q. Okay. And do you know if that was done in this
16 case?

17 A. The forensic report shows it was done, so I have
18 to assume yes.

19 Q. And it's standard protocol to test for touch DNA
20 in terms of gun crimes; correct?

21 A. No.

22 Q. Is it -- does it happen?

23 A. Touch DNA --

24 Q. Or to test for DNA in terms of handgun crimes.

25 A. They typically take a swab --

Jason Monroe
Cross-Examination by Mr. Cooper
June 19, 2014

1 Q. Right.

2 A. -- that is associated with that gun.

3 Now, not every swab is sent off to SLED. Not
4 every gun is sent off to SLED, because you have to have
5 known standards. And the severity of the crime is whether
6 SLED would test it at all or not.

7 So just like when we get unlawful carry and
8 stuff like that, they take the swab but it's not
9 necessarily always a hundred percent that it's going to go
10 to SLED and get processed.

11 Q. Okay. Do you know if a swab was taken in this
12 case, based on your --

13 MS. NEWMAN: Objection, Your Honor.

14 Q. [Mr. Cooper] -- personal knowledge?

15 THE COURT: Hold on. What's your basis?

16 MS. NEWMAN: Personal knowledge.

17 THE COURT: Rephrase. Sustained. Rephrase your
18 question.

19 Q. [Mr. Cooper] To your personal knowledge, do you
20 know if a DNA swab was done on this case?

21 A. I was not present when one was taken.

22 However, it is indicated in the forensic report
23 that one was taken.

24 Q. Okay. But you can't testify to the results of
25 that at all?

Jason Monroe
Cross-Examination by Mr. Cooper
June 19, 2014

1 A. Cannot.

2 Q. Okay. And you performed an ATF trace of the
3 weapon?

4 A. I did not. The task force officer, Jeremy
5 Schmidt, did.

6 Q. And the weapon comes back completely legal?

7 A. Yes.

8 MR. COOPER: The Court's indulgence, Your Honor.

9 THE COURT: Take your time.

10 [Whereupon, Mr. Cooper and Ms. Andrews confer]

11 MR. COOPER: I have no other questions for this
12 witness. Thank you.

13 THE COURT: Ms. Newman, redirect?

14 MS. NEWMAN: No further questions, Your Honor.

15 THE COURT: You may step down. You're free to
16 stay with us but you're also free to leave.

17 Thank you, Your Honor.

18 [Whereupon, Mr. Monroe is excused and exits the
19 witness stand]

20 THE COURT: Call your next witness.

21 MR. LIETZOW: Your Honor, at this time the State
22 rests its case.

23 THE COURT: Ladies and gentlemen, it indicates
24 to the Court that there is a matter of law that I must
25 take up outside of your presence.

Jason Monroe
Cross-Examination by Mr. Cooper
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1 Do not begin your deliberations. Do not discuss
2 this case amongst yourselves.

3 Your lunch has arrived so please enjoy your
4 lunch. We'll receive you back into the courtroom
5 momentarily. So enjoy your lunch and we'll be
6 checking I with you.

7 You may leave your notepads in the chair or take
8 them with you. Your preference.

9 Please rise for the jury.

10 [Whereupon, the jury exits the courtroom at
11 12:25 p.m.]

12 THE COURT: Thank you. Be seated.
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State v. Dominique Williams
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MOTION FOR A DIRECTED VERDICT

THE COURT: Any motions or matters?

MR. COOPER: Yes, ma'am.

THE COURT: All right. I'll be happy to hear from you.

MR. COOPER: At this time, we renew our motions under the fourth amendment for suppression of the firearm. I don't think there's been any different testimony than we heard pretrial, but I would renew that motion to preserve.

In addition to that, Your Honor, I move for a directed verdict on two grounds. First, on jurisdiction and venue. Officer Greenawalt testified that he was on which is in North Charleston. He never testified that he was in the county of Charleston. North Charleston is in Charleston and Dorchester and Berkeley counties.

Road runs through Charleston to Dorchester County. The officer Greenawalt nor Officer Monroe ever testified that this incident occurred in the county of Charleston.

Secondly, Your Honor, I move for a directed verdict on the actual --

THE COURT: Hold on. Let me --

MR. COOPER: Yes, ma'am.

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1 THE COURT: Let me hear from you --

2 MR. LIETZOW: Yes, Your Honor.

3 THE COURT: -- about jurisdiction.

4 MR. LIETZOW: Officer Greenawalt testified that
5 this incident happened at Road in
6 North Charleston, South Carolina. You know, that's
7 clear that that's in Charleston County.

8 THE COURT: How is that clear it's in Charleston
9 County?

10 MR. LIETZOW: Your Honor, he gave --

11 THE COURT: Ashley Phosphate happens to be the
12 dividing line between Charleston and Dorchester --

13 MR. LIETZOW: But he --

14 THE COURT: -- did you know that?

15 MR. LIETZOW: Ma'am?

16 THE COURT: Did you know that?

17 MR. LIETZOW: Can you please repeat your
18 question?

19 THE COURT: That area happens to be the dividing
20 line between Charleston and Dorchester County.

21 MR. LIETZOW: Yes, ma'am. I didn't know that.

22 However, he stated specifically the address
23 where the incident occurred. And he also stated that
24 he had lawful jurisdiction to be there. I think those
25 two factors combined together --

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1 THE COURT: He's not a county officer. He's a
2 city officer. So he would have jurisdiction in
3 Charleston County and Dorchester County.

4 MR. LIETZOW: Yes, ma'am.

5 But I think the presence of the exact specific
6 address of the incident location is enough, in and of
7 itself, to give jurisdiction to this case, Your Honor.

8 THE COURT: But no one has told me which county
9 this occurred in.

10 MR. LIETZOW: Your Honor, if it had been a broad
11 , I would be really upset with me,
12 because, I mean, I would be in agreement. But,
13 however, he gave a very specific address, which
14 clearly indicates that anybody can look that up and it
15 can be Charleston County in North Charleston, South
16 Carolina. In the absence of a specific address, I
17 would think there would be a problem. But with the
18 specific address that he gave, I don't understand how
19 we couldn't have met the jurisdictional requirement,
20 Your Honor.

21 THE COURT: I don't know -- by that address, I
22 don't have that knowledge, Mr. Lietzow, that that is
23 Charleston County by that. Now, are you asking me to
24 look it up and take judicial notice of that fact?

25 MR. LIETZOW: If that will satisfy Your Honor

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1 that that is, in fact, in Charleston County, I think
2 that would be a very good point of judicial notice,
3 that that specific address could be judicially noticed
4 that it is in Charleston County.

5 Now, I maintain that a specific address is
6 sufficient for jurisdictional purposes.

7 THE COURT: Correct.

8 But you haven't now even presented to me which
9 county it's in.

10 MR. LIETZOW: Your Honor, it's in Charleston
11 County.

12 THE COURT: How do I know that, Mr. Lietzow?

13 MR. LIETZOW: You could take judicial notice of
14 that fact through the specific address that was given.

15 THE COURT: Mr. Cooper, do you have an
16 objection to me having a specific address, and I
17 happen to know where that address is located, it could
18 be Charleston or it could be Dorchester -- do you have
19 an objection to me Googling that address and
20 determining which location, which county, and taking
21 judicial notice of that?

22 MR. COOPER: Your Honor, respectfully, I would
23 object.

24 It's the State's burden to prove each and every
25 element of the crime, as well as jurisdiction. The

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1 State did not introduce any evidence about
2 jurisdiction. They introduced an address but there's
3 no testimony on which county that address belongs. I
4 cannot consent to the Court taking judicial notice of
5 the jurisdiction, other than it's the State's burden
6 to prove it.

7 THE COURT: So that was your first motion for a
8 directed verdict. What is your second?

9 MR. COOPER: Thank you, Your Honor. May it
10 please the Court.

11 In terms of the unlawful carry of the pistol,
12 there has been no evidence that Mr. Williams carried
13 the pistol. There is -- the statute states -- I
14 apologize, Your Honor. The statute states that it's
15 unlawful for anyone to carry about the person any
16 handgun, whether concealed or not, except as follows,
17 unless otherwise specifically prohibited by law.

18 And during pretrial arguments I cited for the
19 Court the case State v. Berry Clark, from the Supreme
20 Court of South Carolina, 302 SC 432, 396 S.E.2nd 827,
21 in which the Supreme Court states the statute clearly
22 states it is unlawful to carry a pistol and exceptions
23 are not descriptive of the offense.

24 The State has attempted to present evidence that
25 would make the exceptions read into the offense. The

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1 offense in the indictment is that it is unlawful to
2 carry about the person any handgun, whether concealed
3 or not.

4 The testimony is clear that Mr. Williams did not
5 have a handgun on his actual person. The handgun was
6 found in the vehicle. The vehicle was unoccupied.
7 And so the State is attempting to mix the exception,
8 which under part 9 -- and we've raised as pretrial.
9 But states that a person in a vehicle if the handgun
10 is, and then it goes on to say secured in a closed
11 glove compartment, closed console or closed trunk.

12 Now, that would be our burden to raise that
13 statutory exception if Mr. Williams was in the
14 vehicle. There was nobody in the vehicle. The
15 officer testified that he merely opened the door, at
16 most, and that there was nobody in the vehicle. So
17 the exception, at this point, wouldn't even apply for
18 us to raise it as a defense.

19 The Court is -- is considering the plain
20 language of unlawful carry, which has to be about the
21 person. When Mr. Williams was not in the vehicle, the
22 vehicle was unoccupied, the gun is laying on the floor
23 of the vehicle, it's not an unlawful carry. There's
24 nothing illegal about that.

25 As the Court pointed out in pretrial motions,

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1 the outcome wouldn't be different if it was an
2 abandoned car or it was his car. There has to be some
3 carrying of the weapon. And in this case the State
4 has shown no carry of the weapon by Mr. Williams.

5 The officer testified that he had no personal
6 knowledge of who drove the car there, who occupied the
7 car on the way there. He simply saw a gun on the
8 floorboard at one point in time and then attempted to
9 arrest Mr. Williams, because he had the keys to that
10 vehicle, for an unlawful carry, while Mr. Williams
11 never actually carried the weapon. The weapon was
12 never about his person.

13 I think the commonsense and plain reading of the
14 statute, there has been no substantial circumstantial
15 evidence or no evidence whatsoever to show that Mr.
16 Williams carried the weapon. Thank you.

17 Now, I will cite for the Court -- I apologize --
18 in terms of the substantial circumstantial evidence
19 burden, State v. Schrock, State v. Arnold, and State
20 v. Bostick lines of cases.

21 THE COURT: All right. Mr. Lietzow, is this
22 your argument?

23 MR. LIETZOW: Yes, ma'am.

24 THE COURT: What I would like for you to do is
25 go through the statute, tell me the elements that you

State v. Dominique Williams
Motion for a Directed Verdict by Mr. Cooper
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1 believe are met with the testimony.

2 MR. LIETZOW: Yes, ma'am.

3 Your Honor, it is unlawful for anyone to carry
4 about the person any handgun, whether concealed or
5 not, except as follows. Section 16-23-20 9(a) --
6 well, 9 says, a person in a vehicle where the handgun
7 is. Section a says secured in a closed glove
8 compartment, closed console, closed trunk, or in a
9 closed container secured by an integral fastener and
10 transported in the luggage compartment of a vehicle.

11 We have to flip that on -- we have to invert
12 that in order to determine what is unlawful behavior
13 because that essentially gives what is lawful
14 behavior. So when doing that, we can infer from the
15 statute that it is unlawful to carry a handgun about a
16 person unless it is in one of those four very specific
17 areas within a vehicle.

18 Now, Mr. Cooper has made a big deal about
19 whether or not the firearm was in Mr. Williams'
20 possession. It is the testimony from the State, and
21 it is our position, that the defendant exercised
22 dominion, control and constructive possession of that
23 firearm. Officer Greenawalt testified that he could
24 have easily gotten access to that firearm but through
25 their training, they were able to stop that before it

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1 happened.

2 THE COURT: Is that what the statute allows?
3 For actual or constructive possession?

4 MR. LIETZOW: Your Honor, about their person.

5 THE COURT: Right.

6 What does that mean? What's the legal
7 definition of about their person?

8 MR. LIETZOW: I do not have a case in front of
9 me. Would you like me to give you my legal opinion of
10 what that means?

11 THE COURT: I would like for you to give me what
12 the State of South Carolina says that means.

13 MR. LIETZOW: A person means any individual,
14 corporation, company, association, firm, partnership,
15 or joint stock company.

16 However, Your Honor, about the person. If the
17 legislatures had wanted it to be on a person, they
18 would have specifically delineated that within the
19 statute. I don't think you can read the statute any
20 other way. Doing so would mean that a person driving
21 a firearm [sic] --

22 THE COURT: Just state the legal definition of
23 about a defendant's person.

24 MR. LIETZOW: I do not believe it's been defined
25 in specific regards to this. In fact, I researched it

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1 and there's not a lot of case law on this particular
2 offense, Your Honor.

3 THE COURT: Mr. Cooper, do you have a legal
4 definition of about a defendant's person?

5 MR. COOPER: No, ma'am.

6 Performed several exhaustive searches in South
7 Carolina. And the Supreme Court, to my knowledge, has
8 not defined about the person.

9 If the Court has a case that defines about the
10 person in terms of the unlawful carry of a weapon --

11 MR. LIETZOW: May I continue, Your Honor?

12 THE COURT: You may.

13 MR. LIETZOW: Your Honor, the statute does not
14 specifically define it. There's been no case law.

15 I think there's only one conclusion we can come
16 to, and that's to give it its reasonable definition.
17 About the person, Your Honor, means anywhere about the
18 person that the person has access to. I think that's
19 the very definition of about the person, particularly,
20 Your Honor --

21 This is a fourth circuit case but I think, you
22 know, while it's not binding -- I think it's
23 persuasive, State v. Martin, 483 SO2D1223, Louisiana
24 Court of Appeals, Fourth Circuit, 1986, states:
25 although the defendant was not found in a vehicle

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1 where a gun was discovered, the Court nevertheless
2 held that he was in constructive possession of that
3 firearm.

4 With that persuasive argument, Your Honor, and
5 on top of the fact that in considering directed
6 verdict motions the trial judge must view the evidence
7 and all reasonable inferences in light of -- in light
8 of -- the most favorable to the State.

9 There is clearly a question of fact been
10 presented. The jury can determine whether or not that
11 firearm was about their person. And I believe that
12 you should respectfully deny the defense's motion and
13 allow this to become a matter that the jury decides.
14 Thank you.

15 THE COURT: Mr. Lietzow, how is it that a jury
16 can reasonably find that the weapon was about the
17 defendant's person, even using your definition, in a
18 locked vehicle if he was not inside?

19 MR. LIETZOW: Our position is that the vehicle
20 was unlocked and the door was wide open and that he
21 had ready access about his person to that firearm.
22 That's the State's position. That's the testimony
23 that was elicited from Officer Greenawalt.

24 THE COURT: And so the moment that he unlocked
25 the vehicle, he became -- that is the moment that it

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1 became an unlawful carrying?

2 MR. LIETZOW: Yes, Your Honor.

3 Before that, the police were just merely
4 investigating. At that point, the defendant's conduct
5 crossed the threshold.

6 THE COURT: All right. Mr. Cooper?

7 MR. COOPER: Yes, ma'am.

8 In terms of commonsense and obligation of the
9 law, the State has advanced the argument that as soon
10 as Mr. Williams opened the door to the car, that it
11 would amount to an unlawful carry of a pistol.

12 There's been no testimony, but assuming that Mr.
13 Williams did not put the gun on the floor of the car
14 and he comes to his car and discovers that his weapon
15 is then on the floor, is he then not allowed to pick
16 up the weapon momentarily and place it in the glove
17 box where it is lawfully allowed to be? So under the
18 State's contention of what the law would mean, Mr.
19 Williams, upon walking up to his car, would have to
20 see the gun on the floor and back away from his own
21 car and say, Officer, I need you to come and put the
22 gun in the glove box for me because when I pick up the
23 gun to put it in the glove box, I'm violating the
24 unlawful carry statute.

25 It's just -- it doesn't make -- it confounds

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1 reason that that would break the law. The defendant
2 is allowed -- you know, going down their line of
3 argument, he would be allowed to put the gun back into
4 its rightful place. Because he comes up to the car
5 and opens the door doesn't make it an unlawful carry.

6 If he were then to get in the car and the gun
7 were to remain on the floorboard and he were to drive
8 off and the police conducted a traffic stop knowing
9 that the gun is in the car, and then, you know, have
10 some pretextual traffic stop, just like in drug cases,
11 and searched the car and the gun is still in the
12 floorboard, he would have unlawfully carried the
13 weapon. That part -- that's how he would have broken
14 the law. But the officer didn't, you know, give him
15 an opportunity to either correct where the gun was
16 located or to violate the law. Mr. Williams never
17 violated the law in this case.

18 And constructive possession, Your Honor, is not
19 a part of unlawful carry. It's whether he carried it
20 or not, whether it's about the person. This isn't a
21 drug case or an illegal gun case. Constructive
22 possession has no bearing on it.

23 THE COURT: All right. Pursuant to Rule 19 in
24 the Rules of Criminal Procedure, in ruling on a motion
25 for a directed verdict the Court must view the

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1 evidence and all inferences in the light most
2 favorable to the nonmoving party. I am concerned only
3 with the existence or nonexistence of the evidence.

4 The defendant is charged with unlawful carrying
5 of a pistol. For committing the crime of unlawful
6 carrying of a pistol, the State must prove beyond a
7 reasonable doubt that the defendant carried a pistol
8 on -- excuse me -- about his person, whether concealed
9 or not. They must also prove that the crime occurred
10 in Charleston County.

11 I am going to take judicial notice of the fact
12 that that address is within Charleston County. Note
13 your exception to that ruling.

14 A weapon is about the defendant's person if it
15 is readily accessible and is convenient for immediate
16 use. The pistol may not be actually touching the
17 person of the defendant. Carrying implies personal
18 agency and some degree of possession.

19 There are exceptions to a general law against
20 carrying a pistol, which allows certain people to
21 carry a pistol. The exceptions include the one that
22 is applicable to this case, is a person in a vehicle
23 where the pistol is secured in a closed glove
24 compartment, closed console or closed trunk.

25 Officer Greenawalt testified that on the night

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1 of July 24th, 2012, he was on foot patrol in the
2 parking lot of Club Pulse. He testified that upon
3 approaching an older model Crown Victoria, he noticed
4 that a handgun was in the vehicle where the center
5 console would typically be. Officer Greenawalt then
6 testified that the defendant and Mr. Simmons came out
7 of the club and approached the vehicle, the defendant
8 had the keys and approached and opened the driver's
9 side door of the vehicle. He testified that the
10 defendant and Mr. Simmons were approached and were
11 asked to place their hands on the vehicle and they
12 were led to the rear of the vehicle. He testified
13 that he went in and retrieved the weapon.

14 Detective Monroe further testified that the
15 defendant acknowledged to him that the gun did belong
16 to him.

17 Viewed in the light --

18 MR. COOPER: Your Honor?

19 THE COURT: Yes?

20 MR. COOPER: The statement has been suppressed.
21 I apologize. I was not listening close enough -- I'm
22 sorry.

23 THE COURT: Thank you.

24 MR. COOPER: Yes, ma'am.

25 THE COURT: May I continue?

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1 MR. COOPER: Yes, ma'am.

2 THE COURT: Viewed in the light most favorable
3 to the nonmoving party, the State -- and I, again, am
4 concerned only with the existence or nonexistence of
5 the evidence, the defendant's motion for directed
6 verdict, based upon -- because I've already address
7 the jurisdictional issue. Based upon what I believe
8 is the carrying issue, the motion for a directed
9 verdict is denied at this time.
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State v. Dominique Williams
Defendant's Rights
June 19, 2014

DEFENDANT'S RIGHTS

THE COURT: Counsel, I'm going to go ahead and advise your client of his right to testify.

Are you planning to call Mr. Simmons?

MR. COOPER: I need to talk with Mr. Williams about how we plan to proceed from here.

THE COURT: All right. Let me advise your client.

Mr. Williams, I'm going to advise you of your right to testify, then we are going to take a recess for lunch so you'll have time to talk to your attorney. And then over that period, when we come back I'm going to have you tell me whether or not you wish to testify. Do you understand?

MR. WILLIAMS: Yes, Your Honor.

THE COURT: I'm going to place you back under oath. I believe you were under oath before, but I'm going to place you under oath today.

[Whereupon, Mr. Williams is duly sworn by the clerk of court as follows: do you swear or affirm to tell the truth, the whole truth, and nothing but the truth, so help you God]

MR. WILLIAMS: Yes, sir.

THE COURT: All right. Mr. Williams, we've reached the stage of the trial where you may present

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Defendant's Rights
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1 your defense. You have the right to claim the
2 protections given to you by the fifth amendment to the
3 constitution of the United States. This amendment
4 states in part that no person shall be compelled in
5 any criminal case to be a witness against himself.
6 This means that you cannot be required to testify.
7 You do have the right to testify on your own behalf,
8 however, no one can waive this right except for you.
9 Do you understand?

10 MR. WILLIAMS: Yes, ma'am.

11 THE COURT: If you decide to testify, you will
12 be subject to the same rules that govern other
13 witnesses and you may be examined and cross-examined
14 on any relevant issue in this case.

15 In addition, if you have any convictions
16 involving dishonesty or false statements or for crimes
17 punishable by imprisonment for more than one year and
18 I determine that the probative value outweighs its
19 prejudicial effect to you, the solicitor will be able
20 to introduce your record.

21 I understand he has no convictions that will
22 meet that criteria; is that correct?

23 MR. LIETZOW: Yes, ma'am.

24 THE COURT: All right.

25 MR. COOPER: That's our understanding, too, Your

State v. Dominique Williams
Defendant's Rights
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1 Honor.

2 THE COURT: Thank you.

3 If you decide to testify, this decision on your
4 part must be freely, voluntarily and intelligently
5 made with the knowledge of the protections that are
6 given to you by the fifth amendment to the
7 constitution of the United States. If you decide not
8 to testify, I will instruct the jury that they cannot
9 give the consideration that you did not testify any
10 weight whatsoever. Do you understand what that means?

11 MR. WILLIAMS: Yes, ma'am.

12 THE COURT: The fact that you did not testify
13 would not even be discussed in the jury room.

14 Do you understand everything that I've explained
15 to you?

16 MR. WILLIAMS: Yes, ma'am.

17 THE COURT: Do you need me to explain anything
18 in further detail?

19 MR. WILLIAMS: No, ma'am.

20 THE COURT: I'm going to give you this
21 opportunity. I'll give you until --

22 And we'll be ready just to roll into closing
23 argument, regardless, for the afternoon.

24 I'll give you until 1:30. 1:30.

25 All right. We're at ease until 1:30.

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Defendant's Rights
June 19, 2014

1 Mr. Williams, I'm going to let you go for lunch.
2 All right? I'm going to let you -- you'll be free to
3 go, to come and go. But you understand the same
4 admonitions. We will continue with this trial,
5 regardless of whether or not you decide to reappear.

6 MR. WILLIAMS: Yes, ma'am.

7 THE COURT: Do you understand?

8 MR. WILLIAMS: Yes, ma'am.

9 THE COURT: Any questions about the consequences
10 of you not appearing?

11 MR. WILLIAMS: No, ma'am.

12 THE COURT: All right. Thank you. What time
13 will you be back in the courtroom?

14 MR. WILLIAMS: 1:20.

15 THE COURT: Thank you.

16 What time will you be back in the courtroom,
17 Mr. Lietzow?

18 MR. LIETZOW: 1:15, Your Honor.

19 THE COURT: All right. Thank you. Y'all have a
20 nice break.

21 If you have any further requests to charge, let
22 me know. Okay?

23 [Off the record momentarily]

24 [Whereupon, a recess is taken from 12:49 p.m. to
25 1:39 p.m.]

State v. Dominique Williams
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1 THE COURT: Thank you.

2 Anything before we bring in the jury,

3 Mr. Lietzow?

4 MR. LIETZOW: No, ma'am.

5 THE COURT: Do you have an additional witness
6 besides your client?

7 MR. COOPER: Your Honor, we've discussed the
8 matter and Mr. Williams has chosen not to testify.
9 And I'm not calling Antonio Simmons.

10 And so at this point, the defendant is not
11 putting up any witnesses and we'll proceed to closing
12 arguments after I've renewed my motions at the
13 appropriate time.

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State v. Dominique Williams
Renewed Motion for a Directed Verdict
By Mr. Cooper

1 RENEWED MOTION FOR A DIRECTED VERDICT

2 THE COURT: I'll be happy to hear from you.

3 MR. COOPER: Thank you, Your Honor.

4 Now that the defense rests, or is not putting up
5 a case, we renew our motions for a directed verdict
6 and we renew our motion to suppress the firearm under
7 the fourth amendment. We've argued it recently and so
8 I don't think I need to restate all of my arguments.
9 I ask that my previous arguments just be incorporated
10 into my motion now.

11 THE COURT: Is there anything else, Mr. Lietzow?

12 MR. LIETZOW: Your Honor, for the reasons that
13 you've already ruled, I would ask the Court to rule in
14 the same way. Thank you.

15 THE COURT: I haven't heard any additional
16 testimony that would make me change my rulings.

17 And are you prepared to go forward with close?

18 MR. COOPER: Yes, ma'am.

19 Your Honor, may I submit two -- or several
20 requests to charge at this point?

21 THE COURT: You may. I had asked for them.
22 I've already prepared --

23 MR. COOPER: Yes, ma'am. I apologize. May I
24 approach?

25 THE COURT: You may. What do you have?

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Renewed Motion for a Directed Verdict
By Mr. Cooper

1 MR. COOPER: This is the Clarence Logan
2 circumstantial evidence charge.

3 THE COURT: All right.

4 MR. COOPER: And I don't know if the Court has
5 already incorporated that into its circumstantial
6 evidence charge.

7 I would ask that the Court would charge what I
8 guess a lot of -- as the new circumstantial evidence
9 charge due to the Logan case.

10 THE COURT: All right. What else?

11 MR. COOPER: And then the other thing, Your
12 Honor, I would ask the Court is that they charge the
13 jury on statutory interpretation, the rules of
14 statutory interpretation.

15 When a Court asks a jury to interpret the law,
16 they need to be charged on the rules of statutory
17 interpretation, mainly that terms would be given their
18 ordinary and plain meaning. As well as that statute's
19 many ambiguities in the statute are to be interpreted
20 in favor of the defendant.

21 And, Your Honor, I have case law on both of
22 those points. May I approach?

23 THE COURT: You may.

24 [Whereupon, Mr. Cooper proffers documents to the
25 Court]

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Renewed Motion for a Directed Verdict
By Mr. Cooper

1 MR. COOPER: They stand for the principles,
2 although I sort of scrambled to put it together over
3 our short lunch break.

4 THE COURT: Mr. Lietzow?

5 MR. LIETZOW: Your Honor, I haven't been
6 provided copies of those. Would it be too much to ask
7 for me to approach and look at them?

8 THE COURT: You haven't given him copies?

9 MR. COOPER: No, ma'am, I haven't.

10 I don't -- I just gave the Court my only copies.
11 I'm sorry. I was scratching it together before coming
12 over here, Your Honor. I apologize.

13 THE COURT: Mr. Cooper, do you have your
14 proposal on the statutory instruction, what you would
15 wish for me to charge?

16 MR. COOPER: May I approach? I can -- there is
17 language in those cases.

18 THE COURT: But you don't have anything written
19 out?

20 MR. COOPER: No, ma'am, I do not.

21 THE COURT: I'm going to mark State v. Hackett
22 as Court's 1, State v. Lewis as Court's 2,
23 circumstantial evidence proposed charge as Court's 3.
24 That is my circumstantial evidence charge.

25 MR. COOPER: Yes, ma'am.

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1 THE COURT: And so that is the one that I
2 charge.

3 I will not be charging statutory interpretation
4 to the jury. It is -- the two cases will be made part
5 of the record.

6 MR. COOPER: Yes, ma'am.

7 And while I don't have anything written out, my
8 request is simple, that the terms be given -- terms of
9 statute be given a plain and ordinary meaning, as well
10 as that statute's -- any ambiguity of the statute is
11 to be interpreted in favor of the defendant. So
12 that's what I'm requesting the Court to charge.

13 THE COURT: I will not be charging that, but it
14 is preserved for the record.

15 [Whereupon, Court's Exhibit Number 1 is marked
16 by the court reporter]

17 [Whereupon, Court's Exhibit Number 2 is marked
18 by the court reporter]

19 [Whereupon, Court's Exhibit Number 3 is marked
20 by the court reporter]

21 THE COURT: Do you have last close, Mr. Cooper?

22 MR. COOPER: Yes, ma'am. Thank you.

23 MR. LIETZOW: Your Honor, the State also has a
24 request to charge. May I approach?

25 THE COURT: I'm sorry, counsel. What was it

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1 about if you had any extra, anything additional, send
2 it to me over the lunch hour?

3 MR. LIETZOW: Well, we used our lunch hour
4 sparingly, Your Honor, to find this.

5 [Whereupon, Mr. Lietzow proffers documents to
6 the Court]

7 MR. LIETZOW: This is a case about constructive
8 possession of a firearm and how an individual can be
9 convicted with constructive possession of a firearm.

10 THE COURT: For unlawful carrying? Is this an
11 unlawful carrying charge -- case?

12 MR. LIETZOW: Applicable in regard to possession
13 of firearm, yes, ma'am.

14 Is it unlawful carrying, per se, or is it
15 unlawful possession of a firearm?

16 MS. NEWMAN: It's possession of a firearm.

17 THE COURT: Ms. Newman, is this --

18 MR. LIETZOW: Your Honor, it says one can be
19 convicted of possession of a firearm based upon proof
20 of either actual or constructive possession.

21 THE COURT: There's a difference between
22 possession of a firearm and unlawful carrying.

23 MR. LIETZOW: Yes, ma'am.

24 MS. NEWMAN: Your Honor, I have to go look back,
25 just to make sure.

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1 THE COURT: This will be Court's 4. I'm not
2 even going to review it. You don't even provide me
3 the case when you gave me that. I asked for it over
4 the lunch hour. Thank you.

5 [Whereupon, Court's Exhibit Number 4 is marked
6 by the court reporter]

7 THE COURT: Anything before we bring in the
8 jury? Mr. Lietzow?

9 MR. LIETZOW: Nothing from the State, Your
10 Honor.

11 MR. COOPER: No, ma'am. Thank you.

12 THE COURT: All right. Let's bring in the jury.
13 [Off the record momentarily]

14 THE COURT: Mr. Cooper, you will need to rest in
15 front of the jury.

16 MR. COOPER: Yes, ma'am.

17 THE COURT: That will be the first thing that we
18 do.

19 MR. COOPER: Thank you.

20 THE COURT: And then, Mr. Lietzow, you're
21 closing?

22 MR. LIETZOW: Yes, ma'am.

23 THE COURT: Please rise for the jury.

24 [Whereupon, the jury enters the courtroom at
25 1:45 p.m.]

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1 THE BAILIFF: The jury is present, Your Honor.

2 THE COURT: Thank you. Please be seated.

3 Did every member of the jury panel comply with
4 my instructions over the lunch break? If you did not,
5 please stand.

6 [Whereupon, there is no response]

7 THE COURT: All thirteen jurors have complied
8 with the Court's instructions.

9 Mr. Cooper?

10 MR. COOPER: Thank you, Your Honor.

11 The defense doesn't find it necessary to call
12 any witnesses. We now rest.

13 THE COURT: Ladies and gentlemen, you have now
14 heard all of the testimony that you will hear in this
15 case and received into evidence all of the exhibits
16 that have been made part of the record.

17 You will now hear closing arguments on behalf of
18 counsel. You will hear first on behalf of Mr. Lietzow
19 on behalf of the State, and then you will hear from
20 Mr. Cooper on behalf of the defendant.

21 Ladies and gentlemen, as I indicated to you,
22 what was contained in opening statements is not
23 evidence. Neither is what is contained in closing
24 arguments. After you have heard closing arguments, I
25 will instruct you on the law applicable to this case

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1 and then you will retire to consider your verdict.

2 Please give your strict attention.

3 Mr. Lietzow?

4 MR. LIETZOW: Thank you. May it please the
5 Court, Your Honor?

6 THE COURT: Yes.

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State v. Dominique Williams
Closing Argument by Mr. Lietzow
June 19, 2014

CLOSING ARGUMENT

MR. LIETZOW: Ladies and gentlemen, I am thankful. The defense is sorry that you're here, but I am thankful that you're here. I'm thankful that y'all are all sitting here paying attention.

And I trust that every one of y'all will follow the oath that you took as a juror. That oath is that you would sit here attentively and listen to the facts and apply those facts that you've heard today through testimony to the law as Judge Harrington will instruct you in just a minute.

You saw a lot of legal argument today between the attorneys, but that doesn't change what the facts are that you heard today. Remember, this case is about responsible gunmanship. In South Carolina, you are legally allowed to own a firearm as long as you follow the rules that are required by the statutory law.

The defendant made the decision to arm himself with a deadly weapon for protection. However --

MR. COOPER: Objection. That misstates facts in the record. The defendant never armed himself.

THE COURT: Counsel, no speaking objections.

Ladies and gentlemen, as I indicated to you, what is contained in closing arguments is not to be

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1 considered evidence. It is merely the attorneys'
2 contention as to what the evidence has shown you.

3 Mr. Lietzow?

4 MR. LIETZOW: The defendant decided to own a
5 firearm for protections, and in doing so he decided to
6 neglect the laws of South Carolina. And as I've
7 explained earlier, it is my job to enforce those laws.

8 I would like to just briefly again talk about
9 the elements of this crime to reinforce it one more
10 time. It is unlawful for a person -- it is unlawful
11 to carry a handgun about the person unless it is in a
12 vehicle and within that vehicle it is locked in a
13 closed glove compartment, closed center console,
14 closed trunk, or an enclosed storage compartment in
15 the luggage container of the car.

16 You've heard arguments and testimony and I think
17 you-all are aware that this case turns on what is
18 about the person. You've heard testimony that the
19 defendant wasn't inside the car, he was entering the
20 car. And I contend to y'all that that is a very
21 important issue in this case: what is about the
22 person. Is the defendant guilty of unlawfully
23 carrying a handgun about the person? In just a
24 minute, the judge is going to tell you that a
25 weapon -- and I'm --

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1 A weapon is about the defendant's person if it
2 is readily accessible and convenient for immediate
3 use. The pistol need not be actually touching the
4 person of the defendant. The weapon is about the
5 person, about the defendant's person, if it is readily
6 accessible and convenient for immediate use. It does
7 not need to be touching the defendant or the
8 individual.

9 Let's talk about the facts of the case that
10 you've heard today. The officer testified that he
11 observed a handgun in an area of the car that he knew
12 it should not have been. He told y'all that he was in
13 a high-crime area, told y'all about all the crimes
14 that this nightclub has had, and in his training as a
15 law enforcement officer he was immediately alerted by
16 this. So he staked the car out. Waited he said about
17 an hour, and then he observed the defendant exit the
18 club. As the defendant was approaching this vehicle,
19 it spiked his attention. He then observed the
20 defendant pull his keys out of his pockets, unlock the
21 vehicle with the electronic key fob, he said, and then
22 he observed the defendant reaching to open the door.
23 And he told y'all that the defendant did open the
24 door. At that point he and his colleague rushed in,
25 with guns drawn, to secure the scene and they detained

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1 the individual.

2 You might be thinking, why didn't he just go
3 ahead and let him get all the way in the car, just to
4 be safe. There is a very important component of
5 officer and public safety here. They are dealing with
6 a firearm. They follow the protocol that they are
7 taught. And he told you that had they not arrived at
8 the situation as fast as they did, the defendant would
9 have had immediate and ready access to that firearm.
10 Those were his own words.

11 After Officer Greenawalt testified, you heard
12 from Detective Monroe. And through his testimony you
13 learned that he responded, as part of protocol, in
14 order to ask some standard questions of the defendant.
15 The defendant told Detective Monroe that he owned the
16 firearm, the firearm was his. He told Detective
17 Monroe that he owned the firearm for protection. And
18 he told him where he bought it. He said he bought it
19 at the Money Man Pawn and he had had it for about five
20 months. He got it in February of 2012 and this
21 occurred in July of 2012.

22 The evidence clearly supports that fact, is the
23 elements of this crime have been satisfied beyond a
24 reasonable doubt. I maintain to you that there is no
25 dispute, through the officers' testimony, that he had

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1 the keys in the car and he unlocked the car and he
2 opened the door and he had immediate and ready access,
3 had he wanted to, to reach into that car and grab that
4 firearm. Fortunately, the officers were trained and
5 they prevented that from happening. But that doesn't
6 stop the fact that he did have that access to that
7 firearm. He said he owned the gun. It's his gun.
8 Like Mr. Cooper said, this isn't a who-done-it. He
9 said he had it for protection.

10 Now, you heard the line of questioning just a
11 little bit ago about fingerprints and DNA. The State
12 chose not to address any of this in their case-in-
13 chief because this evidence doesn't matter to us. And
14 why doesn't it matter? Is because we didn't need
15 fingerprints on the weapon because the defendant said
16 the weapon was his. We didn't need DNA on the weapon
17 because the defendant said the weapon was his. That's
18 not going to help us prove anything. We've already
19 proved it. What that is doing is that is an attempt
20 to take your attention away from what actually
21 happened and put it onto something that didn't happen.
22 Don't fall for that.

23 Thank you-all for being here. And please find
24 that the defendant is guilty of unlawfully carrying of
25 a handgun. Thank you.

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Closing Argument by Mr. Lietzow
June 19, 2014

1 THE COURT: Mr. Cooper?

2 MR. COOPER: Thank you, Your Honor. May it
3 please the Court.

4 [Off the record momentarily]
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State v. Dominique Williams
Closing Argument by Mr. Cooper
June 19, 2014

CLOSING ARGUMENT

MR. COOPER: This is what we're here about. Okay? It's unlawful for anyone to carry about the person any handgun, whether concealed or not, except as follows, unless otherwise specifically prohibited by law.

So the criminal charge, right, is is it unlawful for anyone to carry. Okay? They have to show that he carried the gun -- about the person, and any handgun, whether concealed or not, except as follows for unless -- you're going to have a bunch of exceptions here in the law where you're allowed to carry the gun from your house to your car and back to your house. Right? And one of those exceptions, okay, is right here.

And I apologize. I feel a little bit like a law professor. And I'm sorry.

And one exception is if a person is in a vehicle, right -- and that language is important because if the gun is in the vehicle and a person is also in the vehicle, then the way the statement is written it presumes that it's about the person, you're driving around and you're carrying. So that's why that's important. A person is in a vehicle if the handgun is secured in a closed glove compartment, closed consolé, et cetera, et cetera. Okay? So it is.

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1 a defense. It's a defense to this. It's not illegal.
2 That other stuff, that's not what's illegal.

3 What's illegal is carrying about the person any
4 handgun. And you don't have any of that here. You
5 don't have any carrying. The officers testified they
6 didn't see -- they don't know how the gun got to the
7 floorboard. They don't know when it got there. They
8 don't know who drove the car there. Right?

9 So the State wants you to believe that there is
10 a gun on the floorboard, which isn't illegal in an
11 unoccupied car -- that if a gun is on the floorboard
12 and you open up the door, that you are now carrying
13 that gun. Right? I mean, that doesn't make any
14 sense. That's just not the way the law is written,
15 and that's not the way it works. And that's why I was
16 apologizing to you from the very beginning. And now
17 I'm grateful that you're here and you can put an end
18 to this, because it's time to find the defendant not
19 guilty.

20 The facts are undisputed. The defendant wasn't
21 in the car with the gun. All he did was open the
22 door. Okay? He got close to the gun. Sure. Fine.
23 Maybe it was almost about his person. But there is no
24 carrying. If the police wanted to convict him for
25 carrying, what they could have done and what they

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1 probably should have done, what would have been good
2 law enforcement, despite maybe officer safety risk --
3 but, you know, we've heard Mr. Williams is a law-
4 abiding citizen who lawfully possesses the gun. He's
5 not involved in shootings. He's got a gun for
6 protection. And the officer testified he wouldn't
7 show up at that club without a handgun. So, you know,
8 he's not doing anything wrong there.

9 So they want to catch him doing something wrong.
10 They wait until he gets in his car, then he drives
11 away. Then you do some pretextual traffic violation,
12 like in a drug case and if the gun is on the
13 floorboard, yeah, he's unlawfully carried the gun.
14 But you can't assume that, because that's not what we
15 have here. That's not in evidence.

16 What likely happened is Mr. Williams got --
17 opened the door, like what the heck's the gun doing
18 there, picked it up and put it in the glove box and
19 continues on. You can't assume that he would have
20 acted illegally. Right? That's what reasonable doubt
21 is about. That's what the presumption of innocence is
22 about. And he's presumed innocent.

23 And clearly, from the facts, there's no
24 carrying. It's barely about the person. The
25 defendant, big deal, he opened the door. How ajar was

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1 the door. Fully open, or was it just ajar. That's
2 where to stop. Right? Because it's not -- he's just
3 got to get to about the person. He can barely get
4 there. He can't show carry. There's no carry that's
5 been shown in this case at all.

6 And, you know, the about the person language,
7 really that's about, you know -- the Court will
8 instruct you that it doesn't have to be on the person
9 like, you know, my cell phone. Right? Is on my
10 person, so then it's about my person. But if I take
11 my cell phone and I put it in my briefcase, right,
12 it's not on my person, it's about my person. That's
13 what the law is meant to say. It's not, hey, you're
14 close to a gun on the floorboard of a car. That's not
15 the intent of the law. That's not what's illegal.
16 Mr. Williams didn't do anything illegal. It's not a
17 who-done-it, it's just it's not illegal.

18 The prints and DNA, right, the State states that
19 they don't have it and they didn't want to bring it
20 in. But it shows who had handled the gun. Don't you
21 want to know who handled the gun? And I promise you
22 that if it was only the defendant's fingerprints and
23 DNA on the gun, they would have brought it to you.

24 The thing is you have one decision, and that's
25 an acquittal in this case. He's not guilty. He

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1 didn't violate the statute. And I'll tell you what,
2 if it were me and my handgun on the floorboard walking
3 up to my car at Publix, I would have not been
4 arrested. There's no way that a cop would have hauled
5 me in on that. Thank you.

6 THE COURT: Mr. Cooper, could I have you move
7 the podium back just a few feet. Thank you.

8 MR. COOPER: Yes, Your Honor.
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State v. Dominique Williams
Charge of the Court
June 19, 2014

CHARGE OF THE COURT

THE COURT: Ladies and gentlemen, I'm now going to instruct you on the law applicable to this case. Ladies and gentlemen, I typically do not send back a copy of my charges, so please pay close attention.

I remind you that during this trial, you and I have had certain duties to perform. As the trial judge, it is my responsibility to preside over the trial and to rule over the admissibility of the evidence that has been offered before you. If there was any testimony ordered stricken from the record, you must disregard that testimony. You are to consider only the testimony that you heard from the witness stand, the exhibits that are made part of the record in this case, as well as any stipulations of counsel. I have the additional duty to charge you the law applicable to this case. As the presiding judge, I am the sole judge of the law in this case. You must accept it and apply it exactly as I state it to you now. If you have any idea as to what the law is or what the law ought to be and it does not agree with what I'm about to tell you, you must abandon your idea because you are sworn to accept the law and apply the law exactly as I state it to you now.

In every case tried in this court before a jury, the jury becomes the sole and exclusive judges of the

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1 facts. A trial judge may not make any comment regarding
2 the facts in this case. Do not think by anything that I
3 have said or done throughout the progress of this trial,
4 or during my charge on the law to you, that I have any
5 opinion about the facts in this case. The law does not
6 allow me to have an opinion about the facts in this case.

7 The indictment in this case charges the
8 defendant with unlawful carrying of a pistol. I remind
9 you, the fact that the defendant was arrested and indicted
10 is not to be considered as evidence in this case, nor does
11 it create any presumption or inference of guilt. An
12 indictment is simply the formal written instrument which
13 contains the charge made against the defendant. Mr.
14 Williams has pled not guilty to this indictment.

15 A person charged with committing a criminal
16 offense in South Carolina is never required to prove
17 himself innocent. I charge you it is an important rule of
18 law that the defendant in a criminal trial, no matter what
19 the seriousness of the charge may be, will always be
20 presumed to be innocent of the crime for which the
21 indictment was issued unless guilt has been proven, by
22 evidence, satisfying you of that guilt beyond a reasonable
23 doubt. This presumption does not end when you begin your
24 deliberations but it accompanies the defendant throughout
25 the trial until you reach a verdict of guilt based upon

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1 evidence satisfying you of that guilt beyond a reasonable
2 doubt. The presumption of innocence is not mere legal
3 theory. It is not just a legal phrase. It is a
4 substantial right to which every defendant is titled --
5 entitled unless you, the jury, are satisfied from the
6 evidence of the defendant's guilt beyond a reasonable
7 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 before in civil cases where you
11 were told that it is only necessary to prove that a fact
12 is more likely true than not true, such as by a greater
13 weight or preponderance of the evidence. Proof beyond a
14 reasonable doubt is proof that leaves you firmly convinced
15 of the defendant's guilt. There are very few things in
16 this world that we do know with absolute certainty and in
17 criminal cases the law does not require proof that
18 overcomes every possible doubt. If, based upon your
19 consideration of the evidence, you are firmly convinced
20 that Mr. Williams is guilty of the crime charged, you must
21 find him guilty. If, on the other hand, you think there
22 is a real possibility that Mr. Williams is not guilty, you
23 must give him the benefit of the doubt and find him not
24 guilty.

25 There are two types of evidence that are

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1 generally introduced in a trial: direct evidence and
2 circumstantial evidence. Direct evidence directly proves
3 the existence of a fact and does not require deduction.
4 Circumstantial evidence is proof of a chain of facts and
5 circumstances indicating the existence of a fact. Crimes
6 may be proven by either direct or circumstantial evidence.
7 The law makes no distinction between the weight or value
8 to be given either direct or circumstantial evidence.
9 However, to the extent the State relies on circumstantial
10 evidence, all of the circumstances must be consistent with
11 each other and when taken together, point conclusively to
12 the guilt of the defendant beyond a reasonable doubt. If
13 these circumstances merely portray Mr. Williams' behavior
14 as suspicious, the proof has failed. The State has the
15 burden of proving the defendant guilty beyond a reasonable
16 doubt. This burden rests with the State regardless of
17 whether the State relies on direct evidence,
18 circumstantial evidence, or a combination of the two.

19 Necessarily, you must determine the credibility
20 of the witnesses who have testified. Credibility simply
21 means believability. It becomes your duty as jurors to
22 analyze the evidence and determine which evidence
23 convinces you of its truth. In determining the
24 believability of the witnesses who have testified in this
25 case, you may believe one witness over several witnesses

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1 or several witnesses over one witness. You may believe a
2 part of the testimony of one witness and reject the
3 remaining part of the testimony of that same witness. You
4 may believe the testimony of a witness in its entirety or
5 reject the testimony of a witness in its entirety. You
6 may consider whether the witness has exhibited to you any
7 interest, bias, prejudice, or other motive in this case,
8 and you may also consider the appearance and the manner of
9 the witness while that witness testified.

10 I instruct you and emphasize the fact that
11 Mr. Williams did not testify is not a factor to be
12 considered by you in any way in your deliberation and in
13 your consideration on the question of the innocence or
14 guilt of the defendant. It must not be considered by you
15 in any manner whatsoever. A defendant has the
16 constitutional right to remain silent and the assertion of
17 this right must not be considered by you in your
18 deliberations. I repeat: under your oath, you are to
19 draw no conclusion whatsoever from the fact that the
20 defendant in this case did not testify. The fact that
21 Mr. Williams did not testify should not even be discussed
22 in the jury room. The burden of proof, as I have stated
23 to you before, is upon the State. The defendant is not
24 required to prove his innocence. The burden of proof
25 remains on the State to prove guilt beyond a reasonable

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1 doubt.

2 In order to establish criminal intent -- excuse
3 me. In order to establish criminal liability, criminal
4 intent is required. The mental state required to be
5 proven by the State for a particular crime might be
6 purpose, intent, knowledge, recklessness or criminal
7 negligence. Criminal intent must be proven by the State
8 beyond a reasonable doubt. Criminal intent is always a
9 matter that must be determined by the jury from the
10 circumstances surrounding the situation. There is no way
11 to prove intent to a mathematical certainty. Because
12 there is no way to tell with exact certainty what the
13 person had in mind, the law says that criminal intent may
14 be inferred from the circumstances shown to have existed.
15 This is how you make a determination of whether or not the
16 element requiring intent was present. It is not necessary
17 to establish intent by direct and positive evidence but
18 intent may be established by inference in the same way as
19 any other fact, by taking into consideration the acts of
20 the parties and all the facts and circumstances of this
21 case. Criminal intent is a mental state. It is a
22 conscious wrongdoing. It is up to you to determine what
23 the defendant intended to do based upon the circumstances
24 shown to have existed.

25 Mr. Williams is charged with unlawful carrying

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1 of a pistol. The State must prove beyond a reasonable
2 doubt that Mr. Williams carried a pistol about his person,
3 whether concealed or not. A weapon is about the
4 defendant's person if it is readily accessible and
5 convenient for immediate use. The pistol need not be
6 actually touching the person of the defendant. There are
7 exceptions to this general law against carrying a pistol
8 which allows certain people to carry pistols. The
9 exception in this case is a person in a vehicle where the
10 pistol is secured in a closed glove compartment, closed
11 console or closed trunk.

12 Ladies and gentlemen, you have heard statements
13 concerning the penalty a person can serve for the crime
14 alleged in this indictment. In determining the guilt or
15 innocence of Mr. Williams, you cannot consider any
16 possible penalty for any particular crime. The punishment
17 for the crime is a matter for me to determine and should
18 never be considered by you in any way whatsoever in
19 arriving at an impartial verdict as to the guilt or
20 innocence of Mr. Williams.

21 Ladies and gentlemen, I'm now going to go over
22 the verdict form with you. There is absolutely no
23 significance in the way that the items are placed on the
24 verdict form. It's simply something must go first.

25 Madam Foreperson, you are responsible for

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1 completing this verdict form. It must be a unanimous
2 verdict, meaning all twelve of you must agree.

3 Ladies and gentlemen, in the Court of General
4 Sessions for the Ninth Judicial Circuit, 2012-GS-10-6872,
5 County of Charleston, State of South Carolina versus
6 Dominique William: number one, we, the jury, find the
7 defendant, Dominique Williams, not guilty, or we, the
8 jury, find the defendant, Dominique Williams, guilty, of
9 unlawful carrying of a pistol.

10 Once again, when you have reached a unanimous
11 decision, meaning all twelve of you agree, you will sign
12 the verdict form, date it, and alert the bailiff that you
13 have reached a verdict. We will then receive you back
14 into the courtroom. I will take the verdict form from you
15 and it will be published, so you do not have to worry
16 about announcing the verdict here in open court.

17 Ladies and gentlemen, this is the last time that
18 I will say this to you: Do not begin your deliberations.
19 Do not discuss this case amongst yourselves. We'll be
20 gathering the evidence and the verdict form to go back to
21 you. The bailiff will then alert you that you may begin
22 your deliberations. Please take all your belongings with
23 you.

24 To my alternate, please remember the same
25 admonitions. Once the first twelve have begun their

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Charge of the Court
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1 deliberations, I will come in and release your from your
2 service. But until I release you, do not begin your
3 deliberations. Do not discuss this case with anyone.

4 Please rise for the jury.

5 [Whereupon, the jury exits the courtroom at 2:12
6 p.m.]

7 THE COURT: Thank you. Be seated.

8 Any objection, correction, to the charge as
9 read?

10 MR. LIETZOW:

11 MR. LIETZOW: No, ma'am.

12 MR. COOPER: Not from the defense, Your Honor.

13 THE COURT: All right. Thank you. We're at
14 ease. Just check the verdict form.

15 [Whereupon, counsel review documents]

16 [Off the record momentarily]

17 MR. COOPER: No objection to the verdict form.

18 THE COURT: No objection to the verdict form,
19 Mr. Lietzow?

20 MR. LIETZOW: No objection to the verdict form,
21 Your Honor.

22 THE COURT: No objection, Mr. Cooper?

23 MR. COOPER: No, ma'am.

24 THE COURT: All right. Thank you. We're at
25 ease.

State v. Dominique Williams
Charge of the Court
June 19, 2014

1 MR. COOPER: Thank you, Judge.

2 THE COURT: Mr. Williams, I'm going to let you
3 stay right there, but you cannot leave the courtroom
4 at this time. I'm going to hang on to you until the
5 verdict. Okay?

6 MR. WILLIAMS: Yes, ma'am.

7 THE COURT: And that is in no way a comment.
8 You've been here all the time, even before the
9 appointed times. But just out of an abundance of
10 caution, if you need -- you cannot leave the
11 courtroom. All right? Thank you.

12 Is there anything else I need to address? Who's
13 doing --

14 We're off the record.

15 [Whereupon, evidence goes out to the jury at
16 2:14 p.m.]

17 [Whereupon, a recess is taken from 2:14 p.m. to
18 2:39 p.m.]

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State v. Dominique Williams
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VERDICT

THE COURT: We have a verdict. Anything before we bring in the verdict [phonetic]?

MR. LIETZOW: No, ma'am.

MR. COOPER: No, Your Honor.

THE COURT: All right.

[Whereupon, the jury enters the courtroom at 2:41 p.m.]

THE BAILIFF: The jury is present, Your Honor.

THE COURT: Thank you. Please be seated.

Madam Foreperson, if you'll please hand the verdict form to the bailiff.

[Whereupon, the foreperson proffers documents to the bailiff. The bailiff proffers documents to the Court]

THE COURT: Thank you.

[Whereupon, the Court reviews documents]

[Whereupon, the Court proffers documents to the clerk of court]

THE CLERK OF COURT: Please have the defendant stand.

[Whereupon, Mr. Williams complies]

THE CLERK OF COURT: Verdict form in the matter of the State of South Carolina vs. Dominique Williams. We, the jury, find the defendant, Dominique Williams,

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1 guilty of unlawful carrying of a pistol. Signed by
2 the foreperson of the jury on June 19th, 2014.

3 Ladies and gentlemen of the jury, if this was
4 your verdict, please raise your right hand.

5 [Whereupon, jurors comply]

6 THE CLERK OF COURT: Thank you.

7 Please let the record reflect that all twelve
8 jurors raised their right hand.

9 THE COURT: Thank you.

10 Anything further required, Mr. Cooper?

11 MR. COOPER: Your Honor, I would request that
12 you poll the jury.

13 THE COURT: All right.
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POLLING OF THE JURY

1
2 THE CLERK OF COURT: Ladies and gentlemen of the
3 jury, what we're going to do now is called polling the
4 jury. When I call your juror number, if you'll please
5 raise your hand. I'll acknowledge you. You may put
6 your hand down. I'll then ask you two questions.
7 They will be is that your verdict, and is that still
8 your verdict. Please respond back to me verbally.

9 Juror number 232, was that your verdict?

10 MS. MILES: Yes.

11 THE CLERK OF COURT: Is that still your verdict?

12 MS. MILES: Yes.

13 THE CLERK OF COURT: Thank you.

14 Juror number 148, was that your verdict?

15 MS. BLACKWELL: Yes.

16 THE CLERK OF COURT: Is that still your verdict?

17 MS. BLACKWELL: Yes.

18 THE CLERK OF COURT: Juror number 32, was that
19 your verdict?

20 MS. BROWN: Yes.

21 THE CLERK OF COURT: Is that still your verdict?

22 MS. BROWN: Yes.

23 THE CLERK OF COURT: Thank you.

24 Juror number 44, was that your verdict?

25 MR. CAREY: Yes.

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1 THE CLERK OF COURT: Is that still your verdict?

2 MR. CAREY: Yes.

3 THE CLERK OF COURT: Juror number 87, was that
4 your verdict?

5 MS. DUKES: Yes, sir.

6 THE CLERK OF COURT: Is that still your verdict?

7 MS. DUKES: Yes, sir.

8 THE CLERK OF COURT: Thank you.

9 Juror number 89, was that your verdict?

10 MS. DUPRE: Yes, sir.

11 THE CLERK OF COURT: Is that still your verdict?

12 MS. DUPRE: Yes, sir.

13 THE CLERK OF COURT: Is that still your verdict?

14 MS. DUPRE: Yes, sir.

15 THE CLERK OF COURT: Thank you.

16 Juror number 171, was that your verdict?

17 MR. JONES: Yes.

18 THE CLERK OF COURT: Is that still your verdict?

19 MR. JONES: Yes.

20 THE CLERK OF COURT: Thank you.

21 Juror 191, was that your verdict?

22 MS. LEDBETTER: Yes.

23 THE CLERK OF COURT: Is that still your verdict?

24 MS. LEDBETTER: Yes.

25 THE CLERK OF COURT: Thank you.

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1 Juror number 196, was that your verdict?
2 MR. LEWIS: Yes, sir.
3 THE CLERK OF COURT: Is that still your verdict?
4 MR. LEWIS: Yes, sir.
5 THE CLERK OF COURT: Thank you.
6 Juror number 270, was that your verdict?
7 MR. PEEPLES: Yes, sir.
8 THE CLERK OF COURT: Is that still your verdict?
9 MR. PEEPLES: Yes, sir.
10 THE CLERK OF COURT: Thank you.
11 Juror number 302, was that your verdict?
12 MS. ROBINSON: Yes, sir.
13 THE CLERK OF COURT: Is that still your verdict?
14 MS. ROBINSON: Yes, sir.
15 THE CLERK OF COURT: Juror number 322, was that
16 your verdict?
17 MS. SEABROOK: Yes, sir.
18 THE CLERK OF COURT: Is that still your verdict?
19 MS. SEABROOK: Yes, sir.
20 THE CLERK OF COURT: Is there any juror whose
21 number I did not call? Please raise your hand.
22 Your Honor, the jury has been polled and the
23 verdict stands.
24 THE COURT: Anything further, Mr. Cooper?
25 MR. COOPER: Not in front of the jury, Your

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1 Honor.

2 THE COURT: Anything required of the jury,

3 Mr. Lietzow?

4 MR. LIETZOW: Nothing from the jury, Your Honor.

5 THE COURT: Ladies and gentlemen, this completes
6 your service to this case. If you'll please return
7 back to your jury room. I'll be there in just a few
8 moments. Thank you.

9 Please rise for the jury.

10 [Whereupon, the jury exits the courtroom at 2:44
11 p.m.]

12 THE COURT: Thank you. Please be seated.

13 Mr. Cooper, I'm assuming you were going to make
14 post-trial motions; is that correct?

15 MR. COOPER: Yes, ma'am.

16 THE COURT: I'm going to postpone sentencing
17 until the week of the 21st, which is not a general
18 sessions week, of July. It's the next week I'm back
19 in Charleston. Does anyone have any conflicts with
20 that week?

21 MR. LIETZOW: July 21st, Your Honor?

22 THE COURT: Yes.

23 MR. LIETZOW: We'll be here.

24 THE COURT: If the two of y'all will get
25 together and let me know which week will work for you

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1 for post-trial motions and for sentencing at that
2 time.

3 Mr. Williams, I'm going to allow you to remain
4 out on -- you've satisfied the conditions of your bond
5 but if you do not appear for sentencing, I'm going to
6 take that into account for sentencing. Do you
7 understand?

8 MR. WILLIAMS: Yes, ma'am.

9 THE COURT: I'm also going to -- a bench warrant
10 would issue for your arrest. Do you understand?

11 MR. WILLIAMS: Yes, ma'am.

12 THE COURT: Any questions?

13 MR. WILLIAMS: No, ma'am.

14 THE COURT: Let's go ahead, since you're here.
15 July 22nd, July 22nd, at 9:00 a.m.

16 Did you hear that, Mr. Williams?

17 MR. WILLIAMS: Yes, ma'am.

18 THE COURT: And what is going to happen if
19 you're not here?

20 MR. WILLIAMS: Bench warrant.

21 THE COURT: Thank you.

22 All right. We're at ease. Anything further
23 required, counsel?

24 MR. LIETZOW: No, ma'am. Thank you.

25 [JURY TRIAL ADJOURNS AT 2:45 P.M.]

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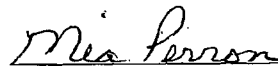
C E R T I F I C A T E

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

I, the undersigned Mia Perron, Circuit Court Reporter for the 9th Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of the hearing held before the Honorable Kristi L. Harrington, on Thursday, June 19, 2014.

I do further certify that I am neither kin nor counsel to any of the parties and have no interest in the outcome of this action.

Dated this 21st day of August, 2014.



Mia Perron, CVR-CM-M
Circuit Court Reporter
9th Judicial Circuit

1 State of South Carolina
2 County of Charleston Court of General Sessions
3 Transcript of Record
4 2012-GS-10-06872

5 State of South Carolina,)
6 vs.)
7 Dominique Lavar Williams,)
8 Defendant.)

9
10 July 22, 2014
11 Charleston, South Carolina

12 B E F O R E:

13 The Honorable Kristi Lea Harrington, Judge

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

15 Christopher Scott Lietzow, Esquire
16 Attorney for the State

17 Thomas Michael Cooper, Esquire
18 Attorney for the Defendant

19
20 Stacy S. Johnson, RPR
21 Circuit Court Reporter
22
23
24
25

I N D E X

PAGE

CERTIFICATE OF REPORTER

22

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Court's 1

Motion for New Trial

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P R O C E E D I N G S

THE COURT: All right. Counsel, if you'll state your name for the record and the party you represent.

MR. LIETZOW: Okay. My name is Chris Lietzow on behalf of the State.

MR. COOPER: Good morning, Your Honor. Thank you. May it please the Court, my name is Michael Cooper from the Charleston County Public Defender's Office, appearing on behalf of Dominique Williams, the Defendant in this matter.

THE COURT: Okay. And, Counsel, we're here for your post-trial motion?

MR. COOPER: Yes, ma'am.

THE COURT: And for sentencing pending upon the outcome of your motion?

MR. COOPER: Yes, ma'am. Your Honor, may it please the Court, on June 27th of 2014, I filed a motion with the Clerk of Court for a new trial. May I approach, Your Honor?

THE COURT: You may.

MR. COOPER: What I'm handing the Court, and would request be made Court's Exhibit Number 1 for purposes of this hearing, is my written motion for a new trial, Your Honor.

THE COURT: That will be marked as Court's 1.

1 **MR. COOPER:** Yes, ma'am. I sent a copy of that
2 motion to the Solicitor's office and to the Court by
3 e-mail.

4 **THE COURT:** Yes, we received it and I have a
5 copy printed.

6 (Court's Exhibit Number 1 was marked for
7 identification.)

8 **MR. COOPER:** And I don't know if Your Honor has had
9 a chance to review the written motion?

10 **THE COURT:** I have.

11 **MR. COOPER:** Your Honor, if the Court has reviewed
12 that written motion, I'll just incorporate that motion
13 in my argument now and I have no oral argument to
14 supplement it except that at this time I'd like to move
15 for a new trial, renew my motion for a directed verdict
16 and renew all objections made and overruled during the
17 course of this trial.

18 **THE COURT:** All right. Mr. Lietzow, have you
19 received a copy of Mr. Cooper's motion for a new trial?

20 **MR. LIETZOW:** Yes, ma'am, I have.

21 **THE COURT:** Are you prepared to go forward at this
22 time?

23 **MR. LIETZOW:** Yes, ma'am, I am.

24 **THE COURT:** All right. Thank you.

25 **MR. LIETZOW:** Your Honor, I would just ask you

1 to humbly uphold all your previous rulings in this case.
2 Mr. Cooper has argued that there's no evidence in this
3 case to support a conviction and the order granting a
4 new trial should be upheld. The State's position is
5 that there's ample evidence in this case, Your Honor.
6 Officer Greenawalt testified that the Defendant was
7 entering or in the process of getting inside of his car
8 when they made the arrest; therefore, it's our position
9 that he unlawfully carried a pistol about his person.
10 Your Honor instructed the jury that a weapon is about
11 the person if it is readily accessible and convenient
12 for immediate use and the pistol need not actually be
13 touching the person of the Defendant to be considered
14 about the person.

15 In addition, Your Honor, it's my position that
16 the defense is asking you to set a horrible precedent
17 going forward for law enforcement and public safety
18 purposes. It seems as though that the defense would
19 have liked the Defendant to be entirely inside the
20 car and have his hand around the pistol. It's our
21 position that that just would put the officers in a
22 grave danger. In addition, the public safety issues
23 would be catastrophic as far as we're concerned, so we
24 just ask you to uphold all your previous rulings and
25 deny the defense's motion for a new trial. Thank you.

1. **THE COURT:** Mr. Cooper?

2 **MR. COOPER:** Thank you, Your Honor. Just in reply,
3 again, the State fails to maintain that -- the crux of
4 the argument is that there's no evidence of a carry at
5 all. The statute requires a carry of a pistol, and in
6 my written motion Black's Law defines it as "to bear
7 the burden of, or transport, or convey", and the State
8 has presented no evidence whatsoever in this matter that
9 Mr. Williams ever transported, conveyed or beared the
10 weight of it. While bearing the weight isn't required
11 by statute, there still has to be some carrying, and
12 they have not shown that at all. The second argument
13 was whether or not it was about the person, but really
14 my stronger argument is that the gun was never carried
15 by Mr. Williams.

16 And the only other thing I would address, Your
17 Honor, is that public safety and policy concerns can't
18 trump the plain language of the statute and the ordinary
19 reading of the statute which requires a carry of the gun
20 and it requires the gun to be about the person, which
21 they have not shown. Thank you.

22 **THE COURT:** All right. Counsel, I believe in
23 our pre-trial motions -- first, all of these -- as I
24 indicated to you, I thought from the beginning that you
25 made a very well-reasoned and well-articulated argument.

1 You're moving for a new trial based upon this verdict
2 that was handed down on June 19th of 2014. I passed
3 this case to allow -- I typically don't allow extra time
4 for post-trial motions, but I did so in this case to
5 allow you and the State to review any circumstances or
6 any case law because I do believe that this is a very
7 novel argument based upon the facts as presented.

8 You argued that the verdict that was rendered
9 is against the greater weight of the evidence based
10 upon your motion for a new trial that I have read and
11 is now marked as Court's Exhibit Number 1 for the
12 purposes of this hearing. I find that the evidence
13 that was presented by the State and that was thus
14 considered by the jury was sufficient to sustain the
15 verdict that was returned. I cannot substitute my own
16 judgment and based upon the arguments that we've had,
17 I cannot base my own judgment for that of the jury
18 where there was competent evidence that does support
19 the jury's verdict.

20 The Defendant further argues that the handgun
21 should have been suppressed. That was one of the first
22 arguments that was made based upon the illegal search
23 and seizure in violating the Fourth Amendment of the
24 Constitution of the United States. The State proved
25 based upon the testimony that the gun was properly

1 seized under the plain view exception, the testimony
2 was clear that the handgun was readily apparent in
3 the nature of what -- that it was a handgun in the
4 floorboard. So the first prong was satisfied by
5 showing that the officers were patrolling the area,
6 they were lawfully where they were supposed to be.

7 I further found that the question should go before
8 the jury of whether the gun was illegally placed under
9 the code section under which Defendant was denied it,
10 upon -- again, reviewing all of the testimony and my
11 previous rulings that your motion to suppress was
12 properly denied and that the State did present
13 sufficient evidence of an exception to the warrant
14 requirement.

15 Based -- reviewing, again, that -- your argument
16 that the jury instructions were given, and you did
17 properly, I believe, preserve that argument for
18 appellate purposes, that when I gave the instructions
19 that they were confusing and misleading, I disagree.
20 I had charged what I believed to be the appropriate
21 law in the state of South Carolina based upon the
22 facts that were given. The instructions reflected the
23 testimony and the evidence that was presented at trial
24 and I crafted them in such a way as to make the statute
25 and the definitions that were brought up during the

1 trial clear to the jury and the exception under
2 Subsection 9 was mentioned several times throughout
3 the trial, and I find that the instruction was not
4 prejudicial to the Defendant. I find that they were
5 adequately and thoroughly given to the jury, they
6 thoroughly explained the law on the evidence that was
7 presented throughout the trial. The issues, again,
8 were clear. I do believe that the plain reading of the
9 statute was satisfied and your motion for a new trial
10 is denied.

11 **MR. COOPER:** Thank you, Your Honor.

12 **THE COURT:** Based upon that, Mr. Cooper, is your
13 client ready to go forward with sentencing at this
14 time?

15 **MR. COOPER:** Yes, ma'am, he is.

16 **THE COURT:** Mr. Williams, are you prepared to go
17 forward at this time?

18 **THE DEFENDANT:** Yes, ma'am.

19 **THE COURT:** All right. Do you have a sentencing
20 sheet?

21 **MR. LIETZOW:** Yes, ma'am. May I approach?

22 **THE COURT:** You may. And, Mr. Cooper, are you
23 going to sign the sentencing sheet? You're not
24 required to do so. Have you reviewed it to make sure
25 it's appropriate?

1 **MR. COOPER:** Yes, Your Honor, I've reviewed the
2 sentencing sheet.

3 **THE COURT:** If you will approach.

4 **MR. LIETZOW:** (Handing.)

5 **THE COURT:** All right. Please place Mr. Williams
6 under oath.

7 (Whereupon, Dominique Lavar Williams, was duly
8 sworn by the Clerk of Court.)

9 **THE COURT:** Okay. Mr. Williams, you have -- we've
10 reached the stage now where I'm going to impose sentence
11 upon you. Are you prepared to go forward at this time?

12 **THE DEFENDANT:** Yes, ma'am.

13 **THE COURT:** What else do I need to know,
14 Mr. Lietzow?

15 **MR. LIETZOW:** Your Honor, I believe you've heard
16 ample evidence in this case and considered all the
17 issues. I would just ask you to consider the fact
18 that Mr. Williams, although it didn't come in at trial,
19 admitted that he brought the handgun to the club for a
20 matter of protection and that it fell out of his pocket
21 and so he had every intention of taking that firearm
22 into the club, a club that is known as a high crime
23 area where alcohol is consumed.

24 Your Honor, we are cognizant of the Second
25 Amendment, of course, but in this case we would ask

1 you to, at a minimum, hold the Defendant accountable
2 and put him in prison for a term in your judgment.
3 We believe that that would be sufficient in this case,
4 particularly where the Defendant unlawfully carried a
5 handgun and had every intention to take that into a
6 high crime nightclub where alcohol is consumed. Thank
7 you, Your Honor.

8 **THE COURT:** Prior record?

9 **MR. LIETZOW:** I beg the Court's indulgence.

10 **MR. COOPER:** Your Honor, he had no record before
11 this event and his only subsequent conviction was
12 simple possession of marijuana for which he was given
13 a courtesy summons for.

14 **THE COURT:** That's what I recalled the testimony
15 to be, but I just wanted to make sure.

16 **MR. LIETZOW:** That's correct. Yeah, he had a --
17 let me make sure I get the right one here. He had a
18 2010 driving under suspension and a 2013 driving without
19 a license, Your Honor.

20 **THE COURT:** Okay. I'll be happy to hear from you,
21 Mr. Cooper.

22 **MR. COOPER:** Thank you, Your Honor. May it please
23 Court. Your Honor --

24 **THE COURT:** Mr. Lietzow, you agree that this
25 carries up to one year or a fine not more than \$1,000

1 or both?

2 **MR. LIETZOW:** Yes, ma'am.

3 **MR. COOPER:** Your Honor, may I approach?

4 **THE COURT:** You may.

5 **MR. COOPER:** What I'm handing the Court for review
6 is Mr. Williams' pay stub for
7 where he works, as well as -- he doesn't have a pay
8 stub, but he also works out at That's his
9 parking pass, Your Honor, for that job. And then,
10 finally, this is the orientation booklet for his son,
11 D.W. (ph.).

12 Your Honor, Mr. Williams is 26 years old. He
13 spent two days in jail on this charge. He's been
14 working at for seven years where he works
15 at the Aquarium garage. He makes minimum wage at
16 that job, Your Honor. As you can see on his pay stub,
17 that's two weeks' pay at \$475. He also work at
18 as a prep cook. It's seasonal work, Your Honor,
19 at the out there and so he tries to
20 supplement his income that way. He also has a child,
21 D.W. , who is four years old, who's going
22 to start school in August at
23 School. It's a Pre-K elementary school in West Ashley.
24 Mr. Williams is a good father, he's very involved with
25 his son. He lives with him and Mr. Williams' mother

1 and then D.W. mother.

2 Your Honor, I'm asking the Court to impose a
3 time-served sentence. I think it is -- I have
4 difficulty finding comment for the State's request
5 for an active prison sentence.

6 **THE COURT:** I don't need you to comment on their
7 request. I just need to hear about your client.

8 **MR. COOPER:** Yes, ma'am. The State's original
9 offer in this case was for pre-trial intervention.
10 so to go from pre-trial intervention to an active
11 prison sentence for asserting his right to a trial
12 and asserting his Fourth Amendment rights I think is
13 a drastic measure. He has no record aside from the
14 marijuana, which he was given a courtesy summons and
15 paid a fine on, he wasn't even taken to jail on that
16 charge, and two driving offenses.

17 Your Honor, this is a statutory violation. There's
18 no criminal intent. I think a time-served sentence and
19 a conviction on his record is punishment enough. He
20 spent the two days in jail, as I said, and he paid
21 close to \$1,500 to a bondsman on this matter, so it has
22 significantly hurt him financially.

23 **THE COURT:** What do you wish to tell me
24 Mr. Williams?

25 **THE DEFENDANT:** Ma'am?

1 **THE COURT:** What do you wish to tell me before I
2 impose sentence?

3 **MR. COOPER:** You don't have to say anything.

4 **THE COURT:** And, Mr. Williams, your attorney is
5 correct. You do not have to say anything. I am not
6 going to base -- I will not hold the fact that you do
7 not give me any indication or speak to me about being
8 remorseful or anything. I'm not gonna hold that against
9 you if you choose not to. You have the right to --
10 your attorney, I'm assuming, will likely appeal this
11 matter, and so I understand that you may not wish to
12 address me at this time, all right?

13 **THE DEFENDANT:** Okay.

14 **THE COURT:** But if you do wish to address me, I
15 would really appreciate hearing from you.

16 **THE WITNESS:** I would just like to say one thing.
17 I was never -- had any intent of carrying a handgun in
18 the club. I only -- that was my first time actually
19 going to the club and it was never my idea of going in
20 the club. I don't know what he based that upon, but
21 that's not me, Your Honor. I've worked at
22 for seven years now. I've been at the
23 for seasonal -- for three seasons already and me going
24 -- me doing any type of prison time would lose both
25 jobs and I take care of both families, my child's mother

1 and my mother. She has high blood pressure.

2 **THE COURT:** How many your children do you have,
3 one?

4 **THE DEFENDANT:** One.

5 **THE COURT:** And what grade is he in?

6 **THE DEFENDANT:** He's going to . He's four years
7 old.

8 **THE COURT:** He's going to where?

9 **THE DEFENDANT:** .

10 **THE COURT:** What's that?

11 **THE DEFENDANT:** It's Pre-K.

12 **THE COURT:** Okay. And so tell me -- tell me what
13 you were doing with the weapon. :

14 **THE DEFENDANT:** I moved in a bad neighborhood. At
15 the time, my record was clear, so I got a handgun for
16 protection of my house.

17 **THE COURT:** Where did you get the handgun?

18 **THE DEFENDANT:** Money Man Pawn. I never took
19 it from anywhere.. I had it out in the car and I
20 transferred it back to my house. I didn't touch the
21 gun, I never fired the gun, I never showed it off to
22 anyone, so -- but other than that I just had it for
23 protection.. Protection may seem like I'm going to --
24 you know, protection as far as like streetwise, but I
25 work job and live in a bad neighborhood. People look

1 at me, yeah, you know, he works a job, he must be weak,
2 so -- and I didn't want anything to happen to my child
3 and --

4 **THE COURT:** Explain that to me. Explain that
5 statement to me.

6 **THE DEFENDANT:** Which one?

7 **THE COURT:** He has a job. He must be weak. Is
8 that what you said?

9 **THE DEFENDANT:** Yes.

10 **THE COURT:** Explain that to me, Mr. Williams.

11 **THE DEFENDANT:** A lot of people think if you have
12 a job, then you're not, you know, someone who would --
13 but -- you know, put up much of a fight.

14 **MR. COOPER:** He doesn't want to make himself a
15 victim, Your Honor.

16 **THE DEFENDANT:** Yeah, I don't want no one coming
17 into my house and vandalizing my house or --

18 **THE COURT:** I'm just -- Mr. Williams, I'm just
19 trying to understand that rationale, that mentality,
20 because I don't think there's anybody in this room that
21 would think that is a correct statement. Would you
22 agree?

23 **MR. COOPER:** We grew up in a different environment.

24 **THE COURT:** I understand, Mr. Williams -- I
25 understand, Mr. Cooper, but Mr. Williams --

1 **THE DEFENDANT:** I was living in --

2 **THE COURT:** My concern is when you -- and you
3 are very aware, I'm sure, living in the neighborhood
4 a's Mr. Cooper has indicated what I see and what we see
5 every day that is occurring in neighborhoods like yours
6 with weapons like are in -- were in your vehicle --

7 **THE DEFENDANT:** Uh-huh.

8 **THE COURT:** -- and I'm just trying to understand
9 why you had that gun and what your intent was with it.

10 **THE DEFENDANT:** I took it to my car to go to the
11 club and then go straight home.

12 **THE COURT:** Were you gonna take it in the club
13 with you?

14 **THE DEFENDANT:** No, ma'am. Not at all.

15 **THE COURT:** Why did you leave it where you left
16 it?

17 **THE DEFENDANT:** Because my son was at my house
18 with my child's mother and she doesn't want to handle
19 the gun and I didn't want my child to be anywhere
20 near it.

21 **THE COURT:** Why didn't you put it in the glove
22 compartment like you were supposed to?

23 **MR. COOPER:** Your Honor, I can't let him answer
24 that question. I apologize, Your Honor.

25 **THE COURT:** This is where it gets a little --

1 **MR. COOPER:** Yes, ma'am. I understand.

2 **THE COURT:** -- a little impossible for me.

3 **THE DEFENDANT:** Can I explain?

4 **THE COURT:** Actually, I'm not -- I don't want
5 to put Mr. Cooper in a situation and I understand -- I
6 understand, Mr. Cooper. It's just very frustrating for
7 me because your client is atypical of the clients that
8 typically stand in front of me with this type of charge.

9 **MR. COOPER:** Yes, ma'am.

10 **THE COURT:** And to have gotten 26 years with no
11 felony convictions, not to be in general sessions, says
12 a lot to me.

13 **MR. COOPER:** Yes, ma'am. Exactly. He is what I
14 see as a well-spoken, intelligent young man who cares
15 for his child, wants to take care of his child, tries
16 to live a responsible and good life and, you know, he
17 grew up in an environment that fortunately I'm not
18 familiar with, but, you know, people of all sorts have
19 handguns in their homes to protect them and carry them
20 to their car and it's their right to do so under the
21 Second Amendment and there are certain statutes that
22 sort of prescribe that right, but his record -- and
23 nothing indicates that he had ever any mal intent with
24 the handgun. It's merely a statutory violation by
25 where the handgun was.

1 **THE COURT:** All right. Anything further,
2 Mr. Williams?

3 **THE DEFENDANT:** No, ma'am.

4 **THE COURT:** Anything further, Mr. Cooper?

5 **MR. COOPER:** Your Honor, I would ask just that
6 you don't -- if the Court doesn't deem a time-served
7 sentence on the two days appropriate, that you would
8 place Mr. Williams on a short term of probation.

9 **THE COURT:** What is short to you, Mr. Cooper? What
10 do you think would be appropriate?

11 **MR. COOPER:** Your Honor, this charge happened in
12 2012. I don't have -- I don't remember the exact date
13 offhand.

14 **THE COURT:** July 24th.

15 **MR. COOPER:** Yes, Your Honor. So it's been two
16 years since this offense occurred. He's been largely
17 trouble-free. I don't think really -- you know, the
18 supervision is not to keep him necessarily from more
19 criminal conduct, it's just a penalty, I guess, and I
20 think six months would be appropriate. Mr. Williams
21 isn't somebody that the State needs to keep tabs on to
22 make sure he's not out breaking the law further. It
23 would just be merely a punishment that he would have
24 to comply with supervision and pay supervision costs.
25 Thank you, Your Honor.

1 **THE COURT:** Mr. Cooper, did you advise your client
2 of his right to appeal this decision?

3 **MR. COOPER:** Yes, ma'am.

4 **THE COURT:** Mr. Williams, you understand you
5 have the right to appeal the sentence that I'm about
6 to impose upon you?

7 **THE DEFENDANT:** Yes, ma'am.

8 **THE COURT:** Anything further, Mr. Williams, before
9 I impose sentence?

10 **THE DEFENDANT:** No, ma'am.

11 **THE COURT:** Mr. Williams, I am taking into account
12 your prior record and substantial lack thereof, the
13 fact that that offense occurred two years ago, the
14 facts and circumstances of the offense, as well as the
15 application of the statute under which you were charged,
16 the fact that you are gainfully employed with -- in one
17 -- not one, but two jobs. It's the order of the Court
18 on 2012-GS-10-6872 that you be committed to the county
19 detention center for a term of two days, I'll give you
20 credit for two days. Good luck to you, sir.

21 **THE DEFENDANT:** Thank you.

22 **MR. COOPER:** Thank you, Your Honor.

23 **MR. LIETZOW:** Thank you, Judge.

24 **THE COURT:** And, again, Mr. Cooper and
25 Mr. Lietzow, thank you. Not only for today, but

1 throughout the trial, and I thought you both handled
2 this case exceptionally well and very professionally.
3 Thank you. Good luck to you, Mr. Williams. Do not
4 let me see you back here again.

5 **THE DEFENDANT:** Thank you.

6 **THE COURT:** Thank you.

7 **MR. COOPER:** Yes, ma'am. Thank you very much.

8 (Proceedings were concluded at 9:27 AM.)
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C E R T I F I C A T E

I, Stacy S. Johnson, Official Court Reporter
for the Eighth Judicial Circuit of the State of South
Carolina, do hereby certify that the foregoing is a
true, accurate and complete transcript of record of all
the proceedings had and the evidence introduced in the
hearing of the captioned case in Circuit Court on the
22nd day of July, 2014.

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

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

October 3, 2014

s/ Stacy S. Johnson

STACY S. JOHNSON
CIRCUIT COURT REPORTER

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

FILED

2014 JUN 27

) IN THE COURT OF GENERAL SESSIONS
) FOR THE NINTH JUDICIAL CIRCUIT

) Case No(s): 2012-GS-6872

JULIE J. ARMSWORTH
CLERK OF COURT

) Case No(s): 2012A1010200451

) Charge(s): Unlawful Carry Pistol

STATE OF SOUTH CAROLINA

vs.

DOMINIQUE LAVAR WILLIAMS,

Defendant

Motion for A New Trial

YOU WILL PLEASE TAKE NOTICE that Dominique Lavar Williams, the Defendant, respectfully requests this Court grant a new trial on the above captioned offense of Unlawful Carry of a Pistol pursuant to Rule 29 of the South Carolina Rules of Criminal Procedure. The Defendant, indicted for Unlawful Carry of a Pistol, proceeded to trial before the Honorable Kristi Lea Harrington on June 18, 2014. The jury returned a verdict of guilty on June 19, 2014. The Court delayed sentencing until July 22, 2014. The Defendant now respectfully moves for a new trial.

STATEMENT OF FACTS

On July 24, 2012 at approximately 12:37 A.M., while conducting foot patrol at Road, Club Pulse, Officer James Greenawalt observed what he believed to be a handgun resting between the driver's seat and the passenger seat inside and unoccupied car. Officer Greenawalt testified that while he believed the item to be a handgun, he could not tell for certain by simply looking at the item. He was only able to confirm that it was a gun after he went into the car and seized it. The gun did not have an obliterated serial number. The gun was not stolen. It was a properly registered weapon to Dominique Williams.

Having seen what he believed to be a handgun in the unoccupied car, Officer Greenawalt backed away from the car and kept it in his unobstructed view. After approximately an hour, two black males walked out of Club Pulse and headed towards the car. These two individuals were later identified to be Antonio Simmons and Dominique Williams. Officer Greenawalt testified that Mr. Williams had the keys to the car in his hand, unlocked the passenger door, and then unlocked driver's side door.

Once Mr. Williams unlocked the driver door and opened the door, Officer Greenawalt and Sargent Hill stopped Mr. Williams and Mr. Simmons. Neither individual ever entered the car. While displaying their department issued weapons, the officers ordered the two individuals to put their hands up. They placed Mr. Williams and Mr. Simmons in handcuffs and separated the two men, putting one at the front of the car and another at the rear of the car.

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Without consent from either individual and without a warrant, Officer Greenawalt went into the car and retrieved what was later confirmed to be a handgun.

After being Mirandized and questioned by Detective Monroe, Mr. Williams told the detective that the gun belonged to him and was legally purchased from Money Man Pawn Shop.

The above facts were presented at Mr. Williams' trial. The defendant's pretrial 4th Amendment motion to suppress the handgun was denied. At the close of the State's case, the defendant's Motion for Directed Verdict was denied. The jury returned a verdict of guilty on the charge of Unlawful Carry of a Pistol.

ARGUMENT

I. The Verdict is Against the Greater Weight of the Evidence

The Court must grant a New Trial, because Mr. Williams' conviction is against the greater weight of the evidence. The trial judge has the authority to grant a new trial upon the facts. *See State v. Taylor*, 348 S.C. 152, 158m 558 S.E.2d 917, 920 (2001); *State v. Prince*, 316 S.C. 57, 447 S.E.2d 177 (1993). It is well settled that it is within the sound discretion of the trial judge to grant a new trial. *Id.*; *State v. Simmons*, 219 S.C. 165, 303 S.E.2d 857 (1983). "Where there is no evidence to support a conviction, an order granting a new trial should be upheld." *State v. Smith*, 316 S.C. 53, 55, 447 S.E.2d 175, 176 (1993). "Criminal statutes must be strictly construed against the State and in favor of the Defendant." *Williams v. State*, 306 S.C. 89, 91, 410 S.E.2d 563, 564 (1991). In interpreting a statute, the words must be given their plain and ordinary meaning without resort to subtle or forced construction that limit or expand the statute's operation. *Rowe v. Hyatt*, 321 S.C. 366, 369, 468 S.E.2d 649, 650 (1996).

The indicted offense of Unlawful Carry of a Pistol is defined in S.C. Code section 16-23-20: "It is unlawful for anyone to carry about the person any handgun, whether concealed or not, except as follows, unless otherwise specifically prohibited by law." S.C. Code 16-23-20 (2013). The State must prove three elements to show and Unlawful Carry of a Pistol: (1) the item is, in fact, a handgun, (2) the defendant carried the handgun, (3) the carrying took place "about the person."

In the case at hand, the State was able to prove that the weapon was in fact a handgun. The weapon was introduced over defendant's Fourth Amendment objections. However, the State produced no evidence to show that the weapon was either (1) carried or (2) about the person of Mr. Williams.

There is no evidence in the record that Mr. Williams ever carried the handgun. Black's Law Dictionary defines the word *Carry* as "(1) to sustain the weight or burden of; to hold or bear (2) to convey or transport." *Blacks Law Dictionary* 227 (8th ed. 2007). As described above, the facts presented through testimony from law enforcement were that Mr. Williams walked out of Club Pulse and up to the car with the keys in his hand. He unlocked the passenger door for Mr.

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Simmons and then unlocked and opened the driver door. Before he entered the car whatsoever, Officer Greenawalt and Sargent Hill stopped Mr. Williams, placed him in handcuffs and moved him away from the side of the car.

Officer Greenawalt testified that he did not observe the defendant ever drive the vehicle. He did not know who was present in the vehicle when it arrived at Club Pulse. Even though Officer Greenawalt observed the car for approximately an hour after he saw the gun on the floorboard of the car between the seats, he did not have the car under surveillance prior to seeing the gun. He could not testify whether someone entered the car between it arriving at the club and his observing the interior of the car.

The handgun was not about the person of Mr. Williams. Officer Greenawalt testified that the gun was never actually on the person of Mr. Williams. Mr. Williams was arrested and charged for the gun on the floorboard of the unoccupied car. He was never actually in the car. The Court charged the jury that "it is about the person if it is readily accessible and convenient for immediate use. It need not be actually touching the person of the defendant." The quoted language is from an Attorney General Opinion construing the repealed code of 1962. Op. Atty. Gen, No 1704, p. 164. An exhaustive search of South Carolina case law produced no Appellate or Supreme Court opinions interpreting the statutory language of "about the person" for Unlawful Carry of a Pistol. Even if this standard applies, the gun was not readily accessible because Mr. Williams was detained by law enforcement before he was inside the vehicle where he would have had the opportunity to access the gun. The gun is not readily accessible when the Defendant was outside the car and the gun was inside the car.

The Unlawful Carry statute provides a statutory exception for persons in a vehicle. The Statute provides an exception for "a person in a vehicle if the handgun is: (a) secured in a closed glove compartment, closed console, closed trunk, or in a closed container secured by an integral fastener and transported in the luggage compartment of the vehicle . . . " S.C. Code 16-23-20 (9)(a). This exception is a statutory defense available to persons charged with the unlawful carry of a pistol as described above. Interpreting the Unlawful Carry statute, our Supreme Court said, "[t]he statute clearly states that it is unlawful to carry a pistol, and the exceptions are not descriptive of the offense." *State v. Clarke*, 302 S.C. 423, 425, 396 S.E.2d 827, 828 (1990) (addressing which party bears the burden of proof for the enumerated statutory exceptions).

The exception does not expand the illegal behavior covered by the statute. That is, it is not illegal for a handgun to be outside of the prescribed constraints of a "closed glove compartment, closed console, etc." in an unoccupied vehicle. The statutory exception plainly applies when there is "a person in a vehicle." S.C. Code 16-23-20 (9). The statute provides that it is not unlawful to carry a handgun in a car when that gun is in a closed glove compartment or other listed closed compartment. The exception is enumerated because when a person is inside a vehicle and transporting the handgun, it may be "about the person" unless it falls within the prescribed methods within the exception.

However, in the case at hand, Mr. Williams was not in the car. The closest he was ever to the handgun was standing outside the car with the door ajar immediately before being detained

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by law enforcement.

Because no evidence was presented by the State that Mr. Williams carried the handgun or that the handgun was about his person, the Court must grant Mr. Williams a new trial. No reasonable juror could find that either he carried the handgun or that it was about his person.

Mr. Williams hereby incorporates all arguments orally presented during his Motion for Directed Verdict that are not presented above.

II. The Handgun Should Have Been Suppressed As an Illegal Search and Seizure Violating the Constraints of the Fourth Amendment.

Mr. Williams moves for a new trial because the Court should have suppressed the handgun pursuant to the Fourth Amendment of the United States Constitution as incorporated to the States. The State failed to show any exception to the warrant requirement.

Warrantless searches and seizures are per se unreasonable unless an exception to the warrant requirement applies. *Coolidge v. New Hampshire*, 403 U.S. 443 (1971); *United States v. Place*, 462 U.S. 696 (1983); *State v. Bailey*, 276 S.C. 32, 274 S.E.2d 913 (1981). It is the State's burden to show that an exception to the warrant requirement is present. *State v. Dupree*, 319 S.C. 454, 462 S.E.2d 279 (1995).

The only exception offered by the State in Mr. Williams' case is the plain view exception. The plain view exception requires that the initial intrusion which afforded the authorities the plain view was lawful and the incriminating nature of the evidence was immediately apparent to the seizing authorities. *State v. Beckham*, 334 S.C. 302, 317, 513 S.E.2d 606, 613 (1999); *Arizona v. Hicks*, 480 U.S. 321 (1987) (finding that moving an object even few inches to confirm police suspicion of its illegality violates the Fourth Amendment).

Officer Greenawalt testified that he could not tell by looking through the window with his flashlight whether what he saw was a real handgun or not. He could not tell if it were a prop or a toy gun. He believed it to be a handgun, but he could not tell without seizing it and manipulating it to be certain.

Officer Greenawalt testified that he could not tell by looking at the gun whether it was stolen or otherwise an illegal weapon. In fact, the weapon was a legally owned firearm.

As discussed above and orally argued at the pretrial hearing on Defendant's Motion to Suppress, the handgun on the floorboard of an unoccupied car is not prohibited by any South Carolina law. The statutory exception for carrying a handgun in a vehicle is "not descriptive of the offense." *Clarke*, 302 S.C. at 425, 396 S.E.2d at 828. The handgun on the floorboard of an unoccupied car is no different than the stereo equipment from the *Hicks* case. There is no illegality readily apparent.

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The plain view doctrine was the only exception to the warrant requirement offered by the State. The State cannot show that this exception applies, because there is no incriminating nature that is immediately apparent with respect to the later discovered handgun on the floor of an unoccupied car. The search of the car and seizure of the handgun should have been suppressed as violating Mr. Williams Constitutional Rights under the Fourth Amendment.

III. The Jury Instructions Given Were Confusing and Misleading.

The Defendant moves for a new trial based on the confusing and misleading charges presented to the jury. The Court erroneously denied the Defendant's request to charge the jury on the rules of statutory interpretation cited above. *See Williams v. State*, 306 S.C. 89, 91, 410 S.E.2d 563, 564 (1991); and *see Rowe v. Hyatt*, 321 S.C. 366, 369, 468 S.E.2d 649, 650 (1996).

In reaching their verdict, the jury was forced to interpret the law of Unlawful Carry of a Pistol. The jury had to decide what it meant to "carry" the pistol and what it meant to be "about the person." The rules of statutory construction would have aided the jury in doing so. The requested charge is a fair statement of the law and failure to give the charge has prejudiced Mr. Williams.

The Court erroneously charged the jury on the above discussed language from the Attorney General's opinion of "about the person" from 1963. There is no South Carolina precedent stating that "about the person" means "readily accessible and convenient for immediate use." The statutory language makes it clear that the gun need not be actually on the defendant's person, because the General Assembly used the word *about* instead of the word *on*. However in charging the jury the above language, the Court violated a cardinal rule of statutory construction: the words must be given their plain and ordinary meaning without resort to subtle or forced construction that limit or expand the statute's operation. *Rowe v. Hyatt*, 321 S.C. 366, 369, 468 S.E.2d 649, 650 (1996).

In addition, the Court erred by charging the jury on the statutory exception provided for carrying handgun in automobiles: "a person in a vehicle if the handgun is: (a) secured in a closed glove compartment, closed console, closed trunk, or in a closed container secured by an integral fastener and transported in the luggage compartment of the vehicle . . . " S.C. Code 16-23-20 (9)(a). As argued above, this exception is a statutory defense available to persons charged with the unlawful carry of a pistol as described above. Interpreting the Unlawful Carry statute, our Supreme Court said, "[t]he statute clearly states that it is unlawful to carry a pistol, and the exceptions are not descriptive of the offense." *State v. Clarke*, 302 S.C. 423, 425, 396 S.E.2d 827, 828 (1990) (addressing which party bears the burden of proof for the enumerated statutory exceptions).

It is the Defendant's burden to raise the statutory exception and assert that defense. At no time did Mr. Williams request that the jury be charged the the statutory exception for automobiles. Charging the jury on the statutory exception created a misleading and confusing charge on the law of Unlawful Carry of a Pistol. The court did not charge any other exceptions

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included in the statute. By charging only the automobile exception enumerated in part (9)(a), the Court expanded the operation of the statute and violated a cardinal rule of statutory interpretation.

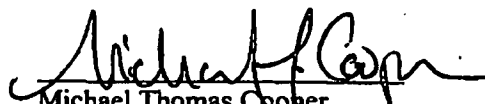
IV. The Defendant's Additional Grounds for a New Trial

The Defendant hereby moves for a new trial based on all Defense Motions made but denied and all Defense Objections made but overruled.

Additionally, the trial court erred in denying the Defense's Motion for a Directed Verdict, because the State did not meet its evidentiary burden of going forward. *See State v. Arnold*, 361 S.C. 386 (2004); *State v. Bostick*, 392 S.C. 134 (2011). The State presented no direct evidence in its case to show that Mr. Williams ever carried about his person the pistol. The State also failed to present substantial circumstantial evidence showing that the pistol was carried about his person by Mr. Williams.

THEREFORE, based on the above reasons and other grounds argued orally the Defendant respectfully requests this Court order a new trial on the above captioned matter.

Respectfully Submitted,


Michael Thomas Cooper
Attorney for Defendant

Dated: 6/27/14

FILED
2014 JUN 27 PM 3:37
JULIE J. ARMSTRONG
CLERK OF COURT
BY 

222
AD 120705537

WITNESSES

North Charleston Police Department

AGENCY CASE NUMBER

2012026540

ARREST WARRANT NUMBER

2012A1010200451

DATE OF ARREST

July 24, 2012

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date:

NOV 14 2012

VERDICT

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2012GS1006872

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

November Term 2012

THE STATE

vs.

DOMINIQUE LAVAR WILLIAMS

DOB:

Indictment for

Unlawful Carrying of a Pistol

FILED

11/28/2012 3:01:08 PM

JULIE J. ARMSTRONG

CLERK OF COURT

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

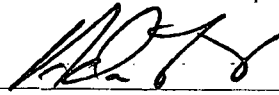
INDICTMENT

At a Court of General Sessions, convened on November 13, 2012 the Grand Jurors of Charleston County present upon their oath:

Unlawful Carrying of a Pistol

That in Charleston County, South Carolina, on or about July 24, 2012, the Defendant, DOMINIQUE LAVAR WILLIAMS, unlawfully did carry about his person a handgun, described as follows: a Hi-Point 9mm pistol; in violation of Section 16-23-20 of the South Carolina Code of Laws (1976) as amended.

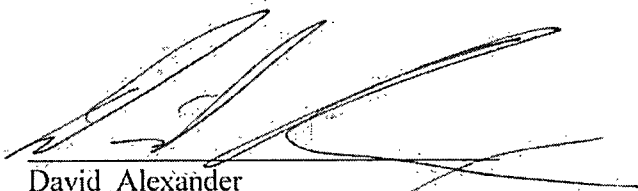
Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


ADAM D. YOUNG
ASSISTANT 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."

July 27th, 2015



David Alexander
Appellate Defender

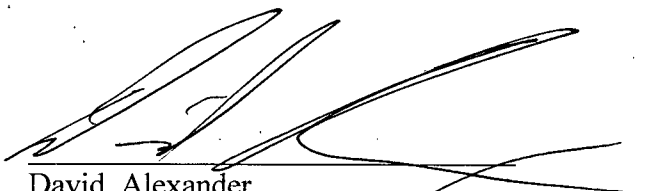
South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

CERTIFICATE OF COUNSEL FOR APPELLANT

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."

July 27th, 2015



David Alexander
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

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JUL 27 2015
SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Charleston County

Kristi Lea Harrington, Circuit Court Judge

 ORIGINAL
RECEIVED

JUL 27 2015
SC Court of Appeals

THE STATE,

RESPONDENT,

V.

DOMINIQUE LAVAR WILLIAMS,

APPELLANT

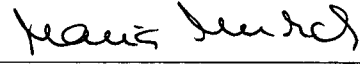
APPELLATE CASE NO. 2014-001617

CERTIFICATE OF SERVICE

I certify that a true copy of the Record on Appeal in the above referenced case has been served upon Christina Catoe Bigelow, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201 this 27th day of July, 2015.


Cruise Mitchell
Administrative Specialist

SUBSCRIBED AND SWORN TO before me
this 27th day of July, 2015.

 (L.S.)
Notary Public for South Carolina

My Commission Expires: July 3, 2023.