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ORIGINAL

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM GREENWOOD COUNTY

Frank R. Addy, Circuit Court Judge

RECEIVED

APR 04 2016

THE STATE,

RESPONDENT

SC Court of Appeals

V.

JERRY JEROME ANDREWS, III

APPELLANT

APPELLATE CASE NO. 2015-001176

RECORD ON APPEAL

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**THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT
STATE'S EXHIBIT NO. 1 (BODY CAM VIDEO)**

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2	County of Greenwood	Court of General Sessions
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4		
5	State of South Carolina	) Transcript of Record
6	vs.	) 2012-GS-24-1753
7	Jerry Jerome Andrews,	) 2012-GS-24-1754
8	<u>Defendant.</u>	) 2015-GS-24-0394
9		) 2015-GS-24-0395
10		May 12th, 14th & 15th, 2015
11		Greenwood, South Carolina
12		May 18th, 2015
13		Abbeville, South Carolina
14	B E F O R E:	
15	The Honorable Frank R. Addy, Jr.; and a jury.	
16	A P P E A R A N C E S:	
17	Brian Moroney, Assistant Solicitor	
18	Demetri Andrews, Deputy Solicitor	
19	Attorneys for the State	
20	Thomas Adducci, Esquire	
21	Attorney for the Defendant	
22		
23	Tara T. Scott	
24	Circuit Court Reporter	
25		

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1 (Whereupon, the following proceedings were held on
2 May 12, 2015.)

3 **THE COURT:** All right. Ladies and gentlemen of the
4 jury pool, thank you for your continued patience with us.
5 We are about to try the case of the State of South Carolina
6 versus Jerry Jerome Andrews.

7 Solicitor, would you -- Mr. Moroney, do you want to
8 call the case or should I? I've got the indictments, but
9 either way. Or Solicitor Stumbo? Mr. Moroney?

10 **MR. STUMBO:** He can call it.

11 **THE COURT:** All right. Go ahead, sir.

12 **MR. MORONEY:** The State presents the following
13 indictment number in the case of State of South Carolina
14 versus Jerry Jerome Andrews. The indictment is
15 12-GS-24-1753, unlawful carrying of a handgun; 1754,
16 possession of a pistol after being convicted of a violent
17 crime. Indictment Number 15-GS-24-0394, possession of
18 marijuana, simple possession of marijuana; and 0395,
19 resisting arrest.

20 **THE COURT:** All right. I've got two of the
21 indictments. Do you have the other ones down there?

22 **MR. MORONEY:** I do, Your Honor. Can I approach?

23 **THE COURT:** Please.

24 **MR. MORONEY:** (Hanging.)

25 **THE COURT:** All right. Thank you.

1 All right. Now, ladies and gentlemen, we're about
2 to begin the trial of the case of the State of South
3 Carolina versus Jerry Jerome Andrews. And as I had
4 mentioned a moment ago, again, an indictment is nothing
5 more than an allegation. They are not proof -- these
6 indictments are not proof in any way, shape or form of
7 any of the allegations contained in the indictments. And,
8 of course, Mr. Andrews in this case has pled not guilty to
9 these indictments. That puts the burden on the State to
10 prove his guilt beyond a reasonable doubt.

11 Now in this case, the State of South Carolina is
12 being represented by Mr. Brian Moroney and Demetri
13 Andrews. Gentlemen, if you would care to stand and
14 introduce yourselves to the jury pool.

15 **MR. MORONEY:** Good morning. My name is Brian
16 Moroney. I'm an assistant solicitor of the Greenwood
17 County Solicitor's Office of the Eighth Circuit. With
18 me today is Deputy Solicitor Demetri Andrews, also of the
19 Eighth Circuit Solicitor's Office. And seated to the
20 right is Solicitor David Stumbo.

21 **THE COURT:** Thank you very much, Mr. Moroney.

22 The Defendant in this case, Mr. Andrews, is being
23 represented by Mr. Tom Adducci. Mr. Adducci, if you'd
24 care to introduce yourself and your client to the jury
25 panel, please.

1 **MR. ADDUCCI:** Good morning. Thomas Adducci from the
2 Greenwood Bar. Mr. Andrews, please stand up. This is my
3 client, Mr. Jerry Andrews. Thank you.

4 **THE COURT:** Thank you, sir.

5 All right. The same questions as before. Ladies and
6 gentlemen, the first question is: Is there any member of
7 the jury panel related by blood or marriage to any of the
8 attorneys involved in this case or does anyone have any
9 close business or close social relationships with regard to
10 those attorneys? If so, please stand.

11 (Juror stands.)

12 **THE COURT:** And, yes, sir. Your name again, please?

13 **JUROR:** George Schwab.

14 **THE COURT:** Mr. Schwab, and who is it that you know?

15 **JUROR:** David Stumbo.

16 **THE COURT:** All right. Mr. Stumbo is not gonna be
17 actively trying this case. He is, of course, the
18 Solicitor. The fact that you know Mr. Stumbo -- you don't
19 know any of the other lawyers though --

20 **JUROR:** I don't.

21 **THE COURT:** -- that are actively participating in
22 this? Okay. Mr. Schwab, I assume then your relationship
23 with Mr. Stumbo wouldn't cause you to --

24 **JUROR:** Not at all.

25 **THE COURT:** All right. Very good. You can have a

1 seat. Thank you, sir.

2 Anyone else? No one is standing.

3 Is there any member of the jury panel who is currently
4 being represented or has previously been represented by any
5 of the lawyers involved in this particular case? If so,
6 please stand. No one's standing.

7 Is there any member of the jury panel related
8 by blood or marriage or has any close business or social
9 relationship with the Defendant in this case, Jerry Jerome
10 Andrews? If so, please stand. All right. No one is
11 standing.

12 The following are witnesses in this particular case.
13 Again, once I read these names out, if there's -- I'm gonna
14 ask the question: If there's any member of the jury panel
15 related by blood or marriage to any of these folks or has
16 any close business or social relationship with any of these
17 folks.

18 Potential witnesses include Steven Osborne with the
19 McCormick Sheriff's Department, Vernon Peppers with the
20 Lander University Police Department, Jonathan Link with the
21 Greenwood Police Department, and Jonathan Pratt with the
22 Abbeville Sheriff's Department.

23 Any member of the jury panel related by blood or
24 marriage or has any close business or personal relationship
25 with any of those possible witnesses?

1 (Juror stands.)

2 Yes, ma'am. What's your name, please?

3 **JUROR:** Amber Young.

4 **THE COURT:** Ms. Young, who do you know on that list?

5 **JUROR:** Jonathan Pratt is my stepfather.

6 **THE COURT:** All right. Mr. Pratt's your stepfather?

7 **JUROR:** Yes.

8 **THE COURT:** Okay. Your last name was "Young",
9 correct?

10 **JUROR:** He previously was my stepfather. They're no
11 longer together, but...

12 **THE COURT:** All right. So he's no longer your
13 stepfather? He was, but is not?

14 **JUROR:** Yes.

15 **THE COURT:** Okay. The fact that he had that
16 relationship to you, would that affect your ability to be
17 fair to both the State and the defense?

18 **JUROR:** No.

19 **THE COURT:** Very good. You can sit down. Thank you,
20 Ms. Young.

21 Anyone else? All right. No one is standing.

22 Ladies and gentlemen, the State alleges that this
23 incident took place back on June the 30th of 2012 at
24 approximately 2:15 in the morning at Willson and Felder
25 Street, which is that road that's behind the Dixie, kind of

1 close to Lander University. So if you know where the Dixie
2 is, it's that street that runs parallel to Montague Avenue,
3 kind of behind the Dixie.

4 Is there any member of the jury panel who has formed
5 or expressed any opinion or thinks that they may know
6 anything about the allegations involved in this case? If
7 so, please stand. No one is standing.

8 Is there any member of the jury panel who is
9 vehemently opposed to the criminalization of marijuana?
10 Anyone who -- if I understand the question that's been put
11 to me, anyone who feels that -- well, let me ask it this
12 way. Anybody -- is there any member of the jury panel who
13 has any strong feelings, either pro or con, regarding the
14 criminalization of marijuana? If so, please stand. No one
15 is standing.

16 There is any member of the jury panel who has any
17 close relative who is currently in law enforcement? If so,
18 please stand. No one is --

19 (Juror stands.)

20 **THE COURT:** Yes, ma'am.

21 **JUROR:** Not currently, but previously for the
22 Greenwood County Sheriff's Department, my husband.

23 **THE COURT:** All right. And what's your name, please?

24 **JUROR:** Jill Hammett.

25 **THE COURT:** Ms. Hammett. And he worked at the police

1 department?

2 **JUROR:** The Greenwood County Sheriff's Department for
3 nine years.

4 **THE COURT:** Okay. And he's no longer employed there?

5 **JUROR:** No.

6 **THE COURT:** All right. Very good. Thank you, ma'am.
7 You can have a seat.

8 No one else is standing.

9 Is there anyone in the jury panel who is more or less
10 likely to believe the testimony of a police officer or a
11 law enforcement officer simply because they work in law
12 enforcement? If so, please stand. No one is standing.

13 Is there any member of the jury panel who knows of any
14 reason whatsoever why you cannot give both the State of
15 South Carolina and the Defendant in this case a fair and
16 impartial trial? If so, please stand.

17 (Juror stands.)

18 **THE COURT:** Yes, ma'am. Why don't you come forward,
19 please, and we'll talk down here. What's your name,
20 please, just for the record?

21 **JUROR:** Makeela Burries.

22 **THE COURT:** Ms. Burries, okay, come on down.

23 (Whereupon, the following proceedings were held at
24 the bench out of the hearing of the remaining jury panel
25 members.)

1 **THE COURT:** Yes, Ms. Burries.

2 **JUROR:** I have a case similar to dealing with drugs
3 and possession of marijuana.

4 **THE COURT:** Okay. Okay. Good enough. I'll let you
5 off of this case then, okay? You won't serve. What was
6 your juror number? That was Number 6, right, Ms. Burries?

7 **JUROR:** I think it's 15.

8 **THE COURT:** 15. All right. Ms. Burries won't serve
9 on this jury. Just have a seat out there.

10 **JUROR:** Okay.

11 **THE COURT:** Thank you, ma'am.

12 (The following proceedings were held in open court.)

13 **THE COURT:** Okay. I neglected to mention one
14 additional witness, ladies and gentlemen. An additional
15 witness who may testify is Shantavius Johnson.

16 Is there any member of the jury panel who is related
17 by blood or marriage or has any close business or social
18 relationship with Shantavius Johnson? If so, please stand.

19 All right. No one is standing.

20 Additional -- additional voir dire from the State?

21 **MR. MORONEY:** No, Your Honor.

22 **THE COURT:** All right. From the defense?

23 **MR. ADDUCCI:** No, Your Honor.

24 **THE COURT:** Very good. Strikes will be five and five.
25 We're gonna follow the same routine as before, ladies and

1 gentlemen.

2 So, Madam Clerk, if you'll give me a jury, please.

3 All right. Again, ladies and gentlemen, if your name
4 is called, I need you to come forward and stand where the
5 other jurors did at the prior jury selection and bring with
6 you any pocketbooks or personal items that you may have
7 brought to the courthouse, please.

8 Madam Clerk, please seat the jury.

9 **THE CLERK:** Juror Number 59, Jerry Horton.

10 (Whereupon, Jerry Horton, a white male, was called
11 forward.)

12 **MR. MORONEY:** Please present Mr. Horton.

13 **THE CLERK:** What say the defense?

14 **MR. ADDUCCI:** Please seat the juror.

15 **BAILIFF:** Take your seat, sir.

16 **THE CLERK:** Juror Number 78, Mr. John Langley.

17 (Whereupon, John Langley, a white male, was called
18 forward.)

19 **THE CLERK:** What say the State?

20 **MR. MORONEY:** Please seat Mr. Langley.

21 **THE CLERK:** What say the defense?

22 **MR. ADDUCCI:** Please seat the juror.

23 **BAILIFF:** Take your seat, sir.

24 **THE CLERK:** Juror Number 54, Jill Hammett?

25 (Whereupon, Jill Hammett, a white female, was called

1 forward.)

2 **THE CLERK:** What say the State?

3 **MR. MORONEY:** Please present Ms. Hammett.

4 **THE CLERK:** What say the defense?

5 **MR. ADDUCCI:** Please seat the juror.

6 **BAILIFF:** Take your seat.

7 **THE CLERK:** Juror Number 38, Karen Ferqueron.

8 (Whereupon, Karen Ferqueron, a white female, was
9 called forward.)

10 **THE CLERK:** What say the State?

11 **MR. MORONEY:** Please present Ms. Ferqueron.

12 **THE CLERK:** What say the defense?

13 **MR. ADDUCCI:** Please seat the juror.

14 **BAILIFF:** Come this way, please, ma'am. The first
15 chair in the front.

16 **THE CLERK:** Juror Number 28, Marion Creswell.

17 (Whereupon, Marion Creswell, a white male, was called
18 forward.)

19 **THE CLERK:** What say the State?

20 **MR. MORONEY:** Please present Mr. Creswell.

21 **THE CLERK:** What say the defense?

22 **MR. ADDUCCI:** Please seat the juror.

23 **BAILIFF:** The second chair in front, please, sir.

24 **THE CLERK:** Juror Number 149, Amber Young.

25 (Whereupon, Amber Young, a white female, was called

1 forward.)

2 **THE CLERK:** What say the State?

3 **MR. MORONEY:** Please excuse, Ms. Young.

4 **THE COURT:** You can have a seat, Ms. Young.

5 **THE CLERK:** Juror Number 110, Christine Philcox.

6 (Whereupon, Christine Philcox, a white female, was
7 called forward.)

8 **THE CLERK:** What say the State?

9 **MR. MORONEY:** Please present Ms. Philcox.

10 **THE CLERK:** What say the defense?

11 **MR. ADDUCCI:** Please seat the juror.

12 **BAILIFF:** The third chair in front.

13 **THE CLERK:** Juror Number 58, Tara Horne.

14 (Whereupon, Tara Horne, a white female, was called
15 forward.)

16 **THE CLERK:** What say the State?

17 **MR. MORONEY:** Please present Ms. Horne.

18 **THE CLERK:** What say the defense?

19 **MR. ADDUCCI:** Please seat the juror.

20 **BAILIFF:** Take a seat.

21 **THE CLERK:** Juror Number 113, Julius Pinson.

22 (Whereupon, Julius Pinson, a white male, was called
23 forward.)

24 **THE CLERK:** What say the State?

25 **MR. MORONEY:** Please present Mr. Pinson.

1 **THE CLERK:** What say the defense?

2 **MR. ADDUCCI:** Please seat the juror.

3 **BAILIFF:** The last chair in the front, please, sir.

4 **THE CLERK:** Juror Number 103, William Parkman.

5 (Whereupon, William Parkman, a white male, was called
6 forward.)

7 **THE CLERK:** What say the State?

8 **MR. MORONEY:** Please present Mr. Parkman.

9 **THE CLERK:** What say the defense?

10 **MR. MORONEY:** Please seat the juror.

11 **BAILIFF:** First chair, second row, please.

12 **THE CLERK:** Juror Number 82, Lebbie Ligon.

13 (Whereupon, Lebbie Ligon, a black female, was called
14 forward.)

15 **THE CLERK:** What say the State?

16 **MR. MORONEY:** Please excuse, Ms. Ligon.

17 **BAILIFF:** Go back to your seat, ma'am.

18 **THE CLERK:** Juror Number 143, Anna Monaghan.

19 (Whereupon, Anna Monaghan, a white female, was called
20 forward.)

21 **THE CLERK:** What say the State?

22 **MR. MORONEY:** Please present Ms. Monaghan.

23 **THE CLERK:** What say the defense?

24 **MR. ADDUCCI:** Please seat the juror.

25 **BAILIFF:** Second chair, second row, please.

1 **THE CLERK:** Juror Number 105, Travis Parris.

2 (Whereupon, Travis Parris, a white male, was called
3 forward.)

4 **THE CLERK:** What say the State?

5 **MR. MORONEY:** Please present Mr. Parris.

6 **THE CLERK:** What say the defense?

7 **MR. ADDUCCI:** Please seat the juror.

8 **BAILIFF:** Third chair, second row.

9 **THE CLERK:** Juror Number 33, Erika Dorn.

10 (Whereupon, Erika Dorn, a white female, was called
11 forward.)

12 **THE CLERK:** What say the State?

13 **MR. MORONEY:** Please present Ms. Dorn.

14 **THE CLERK:** What say the defense?

15 **MR. ADDUCCI:** Please thank and excuse the juror.

16 **BAILIFF:** Go back to your seat, please, ma'am.

17 **THE CLERK:** Juror Number 24, Kevin Champaigne.

18 (Whereupon, Kevin Champaigne, a white male, was called
19 forward.)

20 **THE CLERK:** What say the State?

21 **MR. MORONEY:** Please present Mr. Champaigne.

22 **THE CLERK:** What say the defense?

23 **MR. ADDUCCI:** Please seat the juror.

24 **BAILIFF:** Fourth chair, second row.

25 **THE CLERK:** Juror Number 55, Steven Harter.

1 (Whereupon, Steven Harter, a white male, was called
2 forward.)

3 **THE CLERK:** What say the State?

4 **MR. MORONEY:** Please present Mr. Harter.

5 **THE CLERK:** What say the defense?

6 **MR. ADDUCCI:** Please thank and excuse the juror.

7 **BAILIFF:** Go back to your seat, sir.

8 **THE CLERK:** Juror Number 44, Matarvis Garrett.

9 (Whereupon, Matarvis Garrett, a black male, was called
10 forward.)

11 **THE CLERK:** What say the State?

12 **MR. MORONEY:** Please excuse Mr. Garrett.

13 **BAILIFF:** Return to your seat.

14 **THE CLERK:** Juror Number 106, Trent Payne.

15 (Whereupon, Trent Payne, a white male, was called
16 forward.)

17 **THE CLERK:** What say the State?

18 **MR. MORONEY:** Please present Mr. Payne.

19 **MR. ADDUCCI:** Please seat --

20 **THE CLERK:** What say --

21 **MR. ADDUCCI:** Please seat the juror.

22 **THE CLERK:** Thank you.

23 **BAILIFF:** First chair, third row.

24 **THE CLERK:** Juror Number 138, Edgar Wells.

25 (Whereupon, Edgar Wells, a white male, was called

1 forward.

2 **THE CLERK:** What say the State?

3 **MR. MORONEY:** Please present Mr. Wells.

4 **MR. ADDUCCI:** Please seat the juror.

5 **THE CLERK:** My apologies.

6 **BAILIFF:** Second chair, third row.

7 **THE CLERK:** Katonya Parker, Juror Number 102.

8 (Whereupon, Katonya Parker, a black female, was called
9 forward.)

10 **THE CLERK:** What say the State?

11 **MR. MORONEY:** Please present Ms. Parker.

12 **THE CLERK:** Any excuse to show cause?

13 **MS. ADDUCCI:** No. Please seat the juror.

14 **BAILIFF:** Last chair on the third row.

15 **THE COURT:** All right. One alternate. The strikes
16 are one and two.

17 **THE CLERK:** Juror 125, Cecelia Shelley.

18 (Whereupon, Cecelia Shelley, a white female, was
19 called forward.)

20 **THE CLERK:** What say the State?

21 **MR. MORONEY:** Please present Ms. Shelley.

22 **THE CLERK:** What say the defense?

23 **MR. ADDUCCI:** Please thank and excuse the juror.

24 **BAILIFF:** Go back to your seat, please, ma'am.

25 **THE CLERK:** Juror Number 135, James Thompson.

1 (Whereupon, James Thompson, a white male, was called
2 forward.)

3 **THE CLERK:** What say the State?

4 **MR. MORONEY:** Please present Mr. Thompson.

5 **THE CLERK:** What say the defense?

6 **MR. ADDUCCI:** Please thank and excuse the juror.

7 **BAILIFF:** Go back to your seat, sir.

8 **THE CLERK:** Juror Number 29, Nancy Crooks.

9 (Whereupon, Nancy Crooks, a white female, was called
10 forward.)

11 **THE CLERK:** What say the State?

12 **MR. MORONEY:** Please present Ms. Crooks.

13 **THE CLERK:** Any excuse to show cause?

14 **MR. ADDUCCI:** No, please seat the juror.

15 **BAILIFF:** Take the last chair back there, please,
16 ma'am.

17 **THE COURT:** All right. Very good.

18 No issues concerning selection or composition of this
19 jury from the State, correct?

20 **MR. MORONEY:** No, Your Honor.

21 **THE COURT:** And none from the defense?

22 **MR. ADDUCCI:** No, Your Honor.

23 **THE COURT:** Very good.

24 All right. Ladies and gentlemen, of the jury, what
25 I'm gonna do -- you heard me talking to the previous jury.

1 Everything that I said to them goes for you. I don't see
2 a reason to repeat it unless anybody needs me to and I
3 don't see anybody indicating that I need to.

4 When we start this case is gonna depend largely upon
5 how quickly we can move through the other case. I hope to
6 be able to have the other case concluded by tomorrow. That
7 might be optimistic, but that's what my hopes are. So
8 what I'm gonna do is ask the Clerk of Court to get a phone
9 number from you, a good number that we can reach you at
10 tomorrow sometime, in the event that we are able to finish
11 that case. If we -- if you don't hear from us though
12 tomorrow by 6:00, I want you to call the number that's on
13 your juror slip and that's gonna give you the time to come
14 back on Thursday, okay?

15 So if we are able to get the first case done by
16 Thursday -- or by Wednesday evening, then I'm gonna have
17 the Clerk telephone you and have you come back in here
18 Thursday morning at 9:30; otherwise, if we're still working
19 Wednesday night, the phone message that you get -- if you
20 don't hear from the Clerk of Court, if she does not call
21 you, just call that number on the slip and it will tell you
22 when I need you to appear on Thursday, okay?

23 Keep those juror badges with you. Just remember to
24 wear them back whenever you come back in here. Please do
25 remember to come back with them. Those -- those cost the

1 County money and we sometimes run short of them.

2 So I will go ahead and excuse you until I see you
3 sometime on Thursday. The Clerk will meet you outside and
4 get a phone number from you, okay? With that, you're
5 excused and I'll see you Thursday.

6 **BAILIFF:** Come this way, please.

7 (Whereupon, the jury panel exited the courtroom at
8 12:37 PM.)

9 **THE COURT:** While we're on the record in this case,
10 however, the record should reflect that there were just a
11 few scrivener's errors, typos, in the indictments; namely,
12 Indictments 394 and 395. The Court has corrected those
13 without objection from the defense seeing as how they were
14 merely typographical errors.

15 Mr. Andrews has been out on bond for some time; is
16 that correct?

17 **MR. ADDUCCI:** That's correct.

18 **THE COURT:** All right. Mr. Andrews, I'm gonna let you
19 stay out on bond while the -- while we wait and figure out
20 exactly when we're gonna try this case, but you need to
21 stay in touch with Mr. Adducci, okay, Mr. Andrews? Because
22 you understand if you don't appear whenever we -- whenever
23 we are ready to try this case, if you don't show up, this
24 case is gonna go forward in your absence and that's gonna
25 put Mr. Adducci at somewhat of a disadvantage, okay? So

1 please be sure you stay in touch with him and absolutely no
2 shenanigans in the next couple of days, all right, sir?

3 **THE DEFENDANT:** Yes, sir.

4 **THE COURT:** All right. Very good.

5 We'll be at ease on the Andrews case then until
6 Thursday sometime.

7 **MR. ADDUCCI:** Thank you.

8 **MR. MORONEY:** Thank you, Your Honor.

9 (Whereupon, a luncheon recess was taken.)

10 (State's Exhibit Numbers 1 through 5 were marked for
11 identification.)

12 **THE COURT:** Okay. We're gonna go back on the
13 record, I believe, in the State versus Jerry Jerome
14 Andrews. Mr. Andrews is present with Mr. Adducci. I do
15 understand that -- I think we have a suppression motion on
16 the defense's behalf. Is that what you-all want to kick
17 off with?

18 **MR. ADDUCCI:** That's correct, Your Honor.

19 **MR. MORONEY:** Yes, Your Honor.

20 **THE COURT:** Let me go ahead and hear from you-all
21 then.

22 **MR. ADDUCCI:** Your Honor, we're making a motion to
23 suppress the gun, the marijuana that was found, and any
24 other evidence that may have come after what we call an
25 illegal seizure or an illegal search.

1 Do you want me to give you the highlights of the
2 facts ahead of time or do you want to just do it through
3 testimony?

4 **THE COURT:** However you want to do it. I'm -- I'm
5 comfortable to -- if we're gonna have to take testimony,
6 we may as well go ahead and take it --

7 **MR. ADDUCCI:** Okay.

8 **THE COURT:** -- and then just move forward with your
9 argument after that, if that's cool?

10 **MR. ADDUCCI:** Sounds good. We'd ask to sequester
11 witnesses.

12 **THE COURT:** All right. The grand jury room is
13 probably -- who's the first one that we're gonna be
14 calling?

15 **MR. MORONEY:** That would be Officer Osborne. Steve
16 Osborne.

17 **THE COURT:** All right. Mr. Osborne, if you'll stay
18 here; otherwise, the rest of you-all just make yourself
19 comfortable in the back in the grand jury room or wherever
20 you can find. Thanks.

21 (Whereupon, the potential witnesses exit the
22 courtroom.)

23 **MR. MORONEY:** Your Honor, the State calls Steven
24 Osborne.

25 **THE COURT:** Come on up and --

1 **BAILIFF:** Come on over here and raise your right hand.

2 STEVEN OSBORNE,

3 having been duly sworn, testified as follows:

4 DIRECT EXAMINATION (In-Camera)

5 BY MR. MORONEY:

6 Q. Good afternoon. Can you, please, state your name.

7 A. My name is Steve Osborne.

8 Q. And where are you employed?

9 A. I'm currently employed by the McCormick County
10 Sheriff's Department.

11 Q. And how long have you been employed there?

12 A. About two weeks.

13 Q. Where did you work before that?

14 A. I worked with the Lander University Police Department.

15 Q. And how long were you employed with Lander University
16 Police Department?

17 A. Almost five years.

18 Q. Did you have any certifications during your time
19 employed at Lander Police Department?

20 A. I was a Class I certified law enforcement officer in
21 South Carolina.

22 Q. Okay. And what were your various assignments with the
23 Lander Police Department?

24 A. General patrol police duties. General police duties
25 around the college campus.

1 Q. Were you working with Lander University Police
2 Department back on the night of June 30, 2012?

3 A. Yes, sir.

4 Q. And did you become involved in the investigation of a
5 gun possession case that night?

6 A. Yes, sir, I did.

7 Q. How did you become involved?

8 A. I was on routine patrol of the campus. During that
9 time of year there's not many students on campus. There's
10 approximately thirty summer school students that resided at
11 the Lide Apartments, so we patrol the campus, check the
12 property, make sure everything's secure, and that's what I
13 was doing that -- that evening or that morning actually.

14 Q. Okay. And how did you become involved in the
15 investigation of a gun possession case that night?

16 A. I was in the area of University Place Apartments,
17 Willson Street, Brookside, the main area of campus, and I
18 observed three gentlemen walking southbound on Willson
19 Street. That would be coming from Montague towards the
20 main campus. And they were sort of at the top of the hill
21 behind the Dixie Drive-In when I first made eye contact
22 with them.

23 And I was on routine patrol, so I -- I came down --
24 I believe I came down Willson Street, went into Lide
25 Apartments, take that, and come back out. As I drove back

1 up Willson Street, I noticed that there were only two
2 gentlemen now walking southbound. It was the same group,
3 but the third one was no longer there and they were in the
4 street, in the southbound lane of the street, so that sort
5 of aroused my suspicions because I couldn't see where the
6 other guy went, and they were heading toward campus or
7 walking towards our campus area. And I didn't recognize
8 them right off. I know most of the students by face
9 because there's only about thirty there during the
10 summertime.

11 So I radioed my supervisor, which was Lieutenant
12 Peppers, and he was in the car with -- in a patrol car with
13 Corporal Link, and I told them I was gonna stop with these
14 gentlemen and asked if they'd meet me over there.

15 Q. And at the location of the stop you mentioned, is that
16 in the city of Greenwood, South Carolina?

17 A. Yes, sir.

18 Q. Was there anything unusual to you about the third
19 person disappearing?

20 A. It just aroused my suspicions. I couldn't see where
21 he went, he sort of like disappeared, and so I was sort of
22 puzzled. I know most of the residents in that area. No
23 one was living at University Place Apartments at the time.
24 They were supposed to be vacant. That was the closest part
25 of our campus right there. The Human Resources office is a

1 -- looks like a house, but it's -- it's empty during that
2 time of morning and so I was just puzzled about where this
3 gentleman may have gone and I -- all three of the gentlemen
4 were -- I believe they were wearing dark colored clothing.
5 I just -- it just aroused my suspicions.

6 Q. Okay. Now is it common that individuals would be
7 walking in the roadway at this time of year at this time
8 of night?

9 A. Not at that time because there's no college kids there
10 at that time, so it was unusual --

11 Q. Okay.

12 A. -- to see somebody walking.

13 Q. And was it unusual at that time of night to see
14 individuals walking in the roadway?

15 A. Especially in the roadway. And that was a -- sort of
16 a dangerous area where they were walking. It was -- they
17 had walked over the crest of Willson Street hill, so
18 anybody coming over the hill from Montague would not have
19 been able to see them by the time they -- they were --
20 until they were right on top of them.

21 Q. Do you recall what time you had initiated the stop?

22 A. It was sometime after 2 AM.

23 Q. Had there been any recent incidents on campus that
24 were on your mind while patrolling that night?

25 A. Always we --

1 **MR. ADDUCCI:** Objection, Your Honor. Relevance.

2 **THE COURT:** Overruled. I'll at least let him proffer
3 it. Go ahead.

4 A. That's the reason for our patrol is to -- mainly
5 during this time our first priority is to protect the
6 students and -- and then the property. We'd had occasions
7 -- we've had a few occasions where when the kids aren't
8 there, when the college students aren't there, their
9 dormitory room are broken into, vacant rooms. We've had
10 that happen several times. Two months prior to that we had
11 a -- sort of a home invasion and a sexual assault on one
12 part of our campus by two gentlemen who came from another
13 college campus and actually broke into some ladies' rooms
14 and sexually assaulted them, and we'd had various other
15 property crimes, so we were on the lookout for those kind
16 of things.

17 Q. Did you conduct a records or warrants check with
18 Mr. Johnson and Mr. Andrews during that stop?

19 A. I did.

20 Q. And what was the result of that records check?

21 A. When -- that's a matter of routine when we get out to
22 stop anybody and ask for their identification, we always
23 run a records check, and my dispatcher radioed me back and
24 asked me to give him a telephone call, so I stepped away
25 from the gentlemen and Corporal Link and Lieutenant Peppers

1 had arrived there with me almost immediately, so I left
2 them with the two guys and -- Mr. Johnson and Mr. Andrews,
3 and I stepped away and called my dispatcher and he advised
4 me that Mr. Johnson had active warrants for attempted
5 murder.

6 Q. And did that conclude the stop there or what happened
7 next?

8 A. Based upon -- earlier, before that, I'd -- Mr. -- I
9 had observed -- as I pulled up behind Mr. Johnson and
10 Mr. Andrews, I had observed Mr. Johnson toss a silver
11 colored can to the shoulder of the road and I got out and
12 I marked the can visually, asked him about the can, and he
13 finally admitted it was a beer can and he had tossed it
14 over there. So when I re-approached him, I made eye
15 contact with Lieutenant Peppers and Corporal Link. And
16 when we get a call like that to call a dispatcher when they
17 send information over the radio, it usually alerts the
18 officers around that something's up, this person may be
19 wanted or this person may be dangerous, so I made eye
20 contact with Lieutenant Peppers. I set my walkie-talkie
21 and my notepad down on the asphalt and as nonchalantly as
22 possible approached Mr. Johnson. I secured his left arm,
23 Lieutenant Peppers secured his right arm, and advised him
24 that he was under arrest for the offense of open container
25 or beer.

1 Q. Was there a reason that you told him that he was under
2 arrest for an open container violation instead of an
3 attempted murder warrant?

4 A. Well, I was placing him under arrest for that offense.
5 I didn't want to alarm him. I wanted him to think it was
6 just a minor case at that point in time. Because he was
7 a suspect in an attempted murder and I wanted to treat
8 that suspect as an armed and dangerous person, so I did
9 everything I could to keep the situation as low key as
10 possible. So that's why I told him he was under arrest for
11 open container at that time.

12 Q. So officer safety, was that a concern of yours at that
13 time?

14 A. Yes, sir, very much so.

15 Q. And what happened next?

16 A. We secured Mr. Johnson. He asked me something to the
17 effect of what was going on. I said -- I said -- he said,
18 "What all am I being charged with?" I said, "I'm charging
19 you with open container of beer." He said, "Okay. I
20 apologize." I think he apologized for it and we were able
21 to handcuff him behind his back. He didn't give any
22 resistance or anything. Like I said, he apologized for it.
23 I glanced over at Mr. Andrews and I noticed Mr. Andrews had
24 been fidgeting with his hands during the whole interview.
25 He was a little agitated when I first got out and stopped

1 with him and then got to talking to him, he was fine after
2 that, but he kept -- he kept nervous rubbing his hands. So
3 I asked him. I said, "Mr. Andrews", I said, "do you mind"
4 -- something to the effect, "Do you mind if we pat you down
5 and make sure you don't have any weapons on you?" And he
6 said that "I do mind" or "I object" or something to that
7 effect, and I told him -- I said, "I'm sorry, we're gonna
8 have to do it anyway." So I asked him if he had any
9 weapons or guns, I can't remember the exact words I used.
10 He said he didn't have any weapons and Corporal Link
11 approached from his rear. We were sort of in a small group
12 triangulated together, all five of us, and Corporal Link
13 approached him from the rear. At that time when Corporal
14 Link touched him to do a pat-down search, Mr. Andrews
15 reached for something in his pocket. I don't know -- I
16 didn't know what he was going for, but we kept telling him
17 don't -- keep your hands out of your pocket, keep your
18 hands out of your pocket, something like that, and he still
19 kept trying to get something or get to something.

20 So I had Mr. Johnson by the cuffs. He was very
21 compliant, he never gave us any problems, and I reached to
22 try to grab Mr. Andrews' wrist and I think that Corporal
23 Link was doing the same thing, trying to secure his arms,
24 because it was obvious he was going for something either
25 in his waistband or his pockets or something. And it was

1 fairly dark out there at night and so we're -- we keep
2 shouting at him to, you know, keep your hands out of your
3 pockets, something to that effect, and during the midst of
4 the tussle I heard a loud clank on the pavement and I
5 looked down and there was a silver colored handgun laying
6 on the pavement and we -- it sort of shocked us.

7 At that moment, Mr. Andrews jerked away from Corporal
8 Link and myself and started running across the road and
9 there's an embankment and a wooded area and a creek at
10 the bottom and he was heading in that direction towards
11 the sidewalk and I don't know what happened to him, he
12 stumbled or fell, and he fell onto the sidewalk and sort
13 of rolled over the embankment and Corporal Link went
14 after him, Lieutenant Peppers went after him. I stayed
15 with Mr. Johnson and secured him while they apprehended
16 Mr. Andrews.

17 Q. And was there an officer safety reason that you chose
18 to request consent for a pat-down rather than just do it?

19 A. I've been doing this for about thirty-two years. I
20 always try to be as polite as people will let me be. I
21 was going to conduct a pat-down search for my safety and
22 officer safety anyway. I just -- I always ask for consent
23 to be polite.

24 Q. And you touched on this, but prior to that was there
25 anything particularized to Mr. Andrews' demeanor that --

1 A. I -- I noticed --

2 Q. -- was unusual?

3 A. -- he kept shuffling with his hands. Just like this,
4 in this manner, (demonstrating), over and over. And, like
5 I said, he was agitated at first. He kept going for his
6 pockets for a cell phone and Lieutenant Peppers told him to
7 keep his hands out of his pockets and he pulled out a cell
8 phone. He said, "I want to call my mom", and Lieutenant
9 Peppers told him you can't call your mom right now, and he
10 finally calmed down. Because, to begin with, all we
11 thought we were dealing with was an open container charge
12 or a littering charge, and then it turned into something
13 totally different.

14 Q. And did you keep eyes on the gun after it -- you
15 heard the metallic "clink" and saw it laying there on the
16 asphalt?

17 A. Yes, sir. As soon as it fell, we all saw the gun.
18 Corporal Link and Lieutenant Peppers immediately went after
19 Mr. Andrews. And they were out of my sight because they
20 went -- that embankment's pretty steep right there. So I
21 stayed with Mr. Johnson and I backed him away from the gun
22 and I asked him to get down on his knees to keep in -- in
23 as awkward a position as possible so he couldn't try to
24 flee or anything because I was there with him by myself.
25 And he was completely compliant and I got him several feet

1 away from the gun that was laying there that Mr. Andrews
2 had dropped and I asked Mr. Johnson, I said, "Son, do you
3 have a gun on you, too?" And he said, "Yes, sir, I do",
4 and he told me where it was. I think it was the left side
5 of his waistband or something and I said, "Just don't reach
6 for it and tell me where it is", and told me and I reached
7 for it and removed it, laid it down beside him and moved
8 him back away from that weapon, too. And he was handcuffed
9 behind him at that time.

10 **MR. MORONEY:** Your Honor, may I approach?

11 BY MR. MORONEY:

12 Q. Officer, I was gonna show you State's Exhibit Number 2
13 for identification and ask you to examine that. Have you
14 seen it before?

15 A. Yes, sir. That looks like the weapon Mr. Andrews
16 dropped.

17 Q. And when was the first time you saw this exhibit?

18 A. The first time I saw it was that night. June the --
19 or that morning, June the 30th.

20 Q. And how are you able to recognize this as being the
21 same handgun?

22 A. To positively identify it, I'd have to check the
23 serial numbers by my report, but it looks exactly like the
24 weapon.

25 Q. Is it the same in color and --

1 A. The same in color, the same...

2 Q. Is State's Exhibit Number 2 for identification in the
3 same or substantially the same condition as when you saw it
4 on the night of June 30, 2012?

5 A. Yes, sir, except the magazine was in the weapon at
6 the time and there were -- when we cleared the weapon, I
7 believe there was ammunition in the magazine, but not a
8 round in the chamber. But other than that, it's in the
9 same condition.

10 Q. Officer, I'm going to also show you what's been
11 pre-marked as State's Exhibit Number 4. Can you tell me
12 if you recognize what's inside that envelope?

13 A. Yes, those appear to be the rounds that were removed
14 from the weapon.

15 **MR. MORONEY:** Your Honor, at this time I'd ask that
16 State's Exhibit marked 2 for identification and 4 for
17 identification be admitted into evidence for purposes of
18 this hearing.

19 **THE COURT:** All right. For purposes of this hearing
20 they'll be introduced into evidence.

21 (State's Exhibit Number 2, a handgun, and State's
22 Exhibit 4, ammunition, were admitted into evidence.)

23 BY MR. MORONEY:

24 Q. Officer Osborne, did you receive custody of any
25 additional recovered evidence that night?

1 A. Yes, sir, I believe we found green leafy material
2 that was -- we believed to be marijuana, small packages,
3 on both gentlemen individually, and I found it on
4 Mr. Johnson. We collected all of that evidence at the
5 scene, I placed it in my patrol car, we all went back to
6 our office, and I logged the evidence into the locker
7 according to our policy.

8 Q. Did you retrieve -- did you take custody of the
9 marijuana from the person of Mr. Andrews?

10 A. No, sir, I did not from Mr. Andrews.

11 Q. How did you receive custody of marijuana from
12 Mr. Andrews?

13 A. I believe Lieutenant Peppers collected that from
14 Mr. Andrews and turned it over to me and I logged it all
15 into evidence. It was all collected together at the scene
16 and then taken back to the office.

17 Q. Okay. Officer Osborne, I'm gonna show you State's
18 Exhibit 3 for identification, and ask you to examine it and
19 if you've seen it before?

20 A. Yes, sir. That's the marijuana that was confiscated
21 that -- that morning.

22 Q. And how do you know that marijuana is the marijuana
23 that you confiscated that evening?

24 A. It was -- this was the marijuana that was turned over
25 to me by Lieutenant Peppers and I recognize the packing.

1 Q. Okay.

2 A. It is sealed. We sealed it that night.

3 Q. And, Mr. Osborne, you did say that you had entered
4 that evidence into a locked --

5 A. Yes.

6 Q. -- evidence locker?

7 A. We completed a chain of evidence log and I personally
8 placed it into the locker and secured it.

9 **MR. MORONEY:** No further questions, Your Honor.

10 **THE COURT:** Cross-examination.

11 **MR. ADDUCCI:** Thank you, Your Honor.

12 CROSS-EXAMINATION (In-Camera)

13 BY MR. ADDUCCI:

14 Q. Good afternoon, Officer Osborne.

15 A. Good day.

16 Q. Now you were the first officer to approach the two
17 individuals, correct?

18 A. Yes, sir.

19 Q. And were you in your vehicle?

20 A. Yes.

21 Q. And did you hit your blue lights?

22 A. Yes, sir, I believe I did.

23 Q. Okay. So you hit your blue lights and then you
24 stopped these two individuals, correct?

25 A. Yes, sir. I pulled up behind them, initiated the blue

1 lights, I believe, and got out to speak with the gentlemen.

2 Q. And you indicated that you saw Mr. Johnson throw what
3 you thought was a can of beer, right?

4 A. I didn't know what it was at the time. I just saw
5 him toss a silver colored can to the right shoulder of the
6 road.

7 Q. Okay. And then you asked Mr. Johnson about that can
8 and he told you that that was beer, correct?

9 A. First he said it wasn't his.

10 Q. Okay.

11 A. I can't remember -- he denied it, but after talking to
12 him a little bit he said, "Yes, sir. I -- I didn't know
13 that was against the law, I was drinking a beer." And he
14 had another beer in his pocket.

15 Q. Okay. And you said what peaked your interest was this
16 third person that wasn't there when you turned back around,
17 correct?

18 A. Yes, sir.

19 Q. Okay. And Mr. Andrews didn't have a can of beer on
20 him, correct?

21 A. No, sir. I don't -- I didn't see one.

22 Q. Okay. Now how long after you initiated this stop did
23 the other officers arrive?

24 A. Almost immediately. I had radioed them when I saw the
25 -- that the third gentleman was no longer with them and I'd

1 -- I'd made up my mind that I was gonna stop and speak with
2 them.

3 Q. Uh-huh.

4 A. I went ahead and radioed in and I told Lieutenant
5 Peppers I'm gonna be out with two guys over here on Willson
6 Street and they were almost -- they were already out near
7 me anyway, so they just pulled up behind me.

8 Q. Okay. And about two minutes into this, Mr. Andrews
9 asked if he could make a phone call to his mother, correct?

10 A. Yes, sir.

11 Q. And he was told he was not allowed to make a phone
12 call, correct?

13 A. Yes, sir.

14 Q. At that point he was not allowed to leave, correct?

15 A. Probably not.

16 Q. Okay. Now once you got their names, you called in for
17 warrant checks, correct?

18 A. Yes, sir.

19 Q. For both of them?

20 A. Yes, sir.

21 Q. And you received information that Mr. Johnson had an
22 active warrant for attempted murder, correct?

23 A. Yes, sir.

24 Q. Additionally, you received notification from dispatch
25 that Mr. Andrews did not have any active warrants, correct?

1 A. Correct.

2 Q. All right. And that was prior to you deciding to
3 search him, correct?

4 A. Search Mr. Andrews?

5 Q. Mr. Andrews, yes. I'm sorry.

6 A. Yes, sir.

7 Q. Up until the point where you indicate to Mr. Andrews
8 that he is going to be searched, he was cooperative,
9 correct?

10 A. He was a little agitated at first that -- that I had
11 stopped and got out to speak with them.

12 Q. Uh-huh.

13 A. Both of the gentlemen had a strong odor of alcohol
14 about them, so I don't know if that attributed to his
15 agitation or what, but he -- he calmed down pretty quickly
16 after I talked to him.

17 Q. And he answered your questions?

18 A. Yes, sir.

19 Q. And when you -- when he was told that he couldn't call
20 his mom, he said okay, correct?

21 A. I can't remember how he replied.

22 Q. But he didn't say --

23 A. I don't remember him creating a big fuss at -- at that
24 time.

25 Q. Okay." And then you asked him if he would consent to a

1 search, correct?

2 A. After I'd placed Mr. Johnson under arrest, I asked him
3 if -- if he minded if we patted him down for weapons.

4 Q. And he said, "No, you cannot", correct?

5 A. Right.

6 Q. And at that point officers grabbed Mr. Andrews,
7 correct?

8 A. No, we had already --

9 Q. You'd already --

10 A. We had already -- I'd already got Mr. Johnson by the
11 arm, Lieutenant Peppers had him by the other arm, and we
12 were -- we had already handcuffed Mr. Johnson.

13 Q. Mr. Andrews. I'm sorry. I'm speaking about
14 Mr. Andrews. At the moment when he said -- after he said
15 he did not want to consent to a search, he was told he was
16 going to be searched and then at that point his arm was
17 grabbed, correct?

18 A. Not immediately. I told Mr. Andrews he's -- I said,
19 "Do you mind if we pat you down?", and he objected. I
20 can't remember the exact words he used and I said -- I
21 believe I said I -- we're gonna have to pat you down anyway
22 or we're gonna have to do it anyway. And then I asked him
23 if he had any weapons --

24 Q. Uh-huh.

25 A. -- and he denied having any weapons and that's when

1 Officer Link approached him from behind him, sort of to the
2 -- his -- behind his right shoulder to initiate the
3 pat-down search.

4 Q. And that's when hands were placed on Mr. Andrews and
5 that's when the scuffle --

6 A. That's when Mr. Andrews -- Mr. Andrews dove into his
7 waistband or his pockets and we kept asking him -- shouting
8 to him don't put your hands in your pockets, don't, stop,
9 something to that effect, and I latched onto his wrist with
10 my hand trying to keep him from getting to whatever he had
11 in his pockets.

12 Q. Uh-huh. And then that's when he pulled away and ran?

13 A. Yes, sir.

14 Q. And then the other two officers chased him?

15 A. Well, actually after the -- he just lasted a couple
16 of seconds with him tussling over what he had in his
17 waistband, which turned out to be a firearm, and then it
18 fell to the ground, then he bolted and ran. So we really
19 didn't have -- I had him by the wrist and I think Corporal
20 Link was trying to get his hands away from his waistband,
21 too.

22 Q. Okay.

23 **MR. ADDUCCI:** No further questions, Your Honor.

24 **THE COURT:** Thank you. You can step down.

25 (Witness excused.)

1 **THE COURT:** Mr. Moroney, call your next witness,
2 please.

3 **MR. MORONEY:** Your Honor, the State would call
4 Jonathan Link.

5 JONATHAN LINK,
6 having been duly sworn, testified as follows:

7 DIRECT EXAMINATION (In-Camera)

8 BY MR. MORONEY:

9 Q. Good afternoon.

10 A. Good afternoon.

11 Q. Could you, please, state your name.

12 A. Officer Jonathan Link, Greenwood City Police
13 Department.

14 Q. And where are you currently employed?

15 A. I work for the City of Greenwood as a patrol officer.

16 Q. And how long have you been employed there?

17 A. I've been employed with the City for just over a year.

18 Q. And where were you employed before that?

19 A. Lander University Police Department.

20 Q. How long were you employed at Lander University Police
21 Department?

22 A. Just shy of two years. I believe it was a year and
23 ten months.

24 Q. What were your various assignments with Lander
25 University?

1 A. I was assigned to our uniform patrol division. I was
2 responsible for answering all calls for service on campus,
3 which could entail anything from non-emergency calls,
4 unlocking doors, maintaining physical security of campus.
5 We answered emergency calls for service and we also
6 conducted primary investigations of criminal activity.

7 Q. And did you have any law enforcement certification at
8 the time?

9 A. I did. I was certified through the Criminal Justice
10 Academy. I graduated in 2009 with my basic law enforcement
11 certificate.

12 Q. And were you working with Lander University Police
13 Department back on the night of June 30, 2012?

14 A. I was, sir.

15 Q. Did you become involved with Officer Osborne's
16 investigation involving a gun possession case?

17 A. I did.

18 Q. How did you become involved in Office Osborne's
19 investigation that night?

20 A. Myself and then Sergeant Peppers were on patrol
21 together and we were radioed by Officer Osborne. He
22 requested our presence on Willson Street to back him up as
23 he was stopping to talk to a couple of subjects.

24 Q. Was there any additional information relayed over --

25 A. He did. He stated --

1 **MR. ADDUCCI:** Objection. It's hearsay and he doesn't
2 have personal knowledge.

3 **THE COURT:** All right. Do you claim an exception?

4 **MR. MORONEY:** A moment's indulgence.

5 **THE COURT:** Sure.

6 (Discussion between counsel.)

7 **MR. MORONEY:** Your Honor, I'd just say that this is
8 background information while the officer is contra --
9 conducting his patrol duties. It's not offered for the
10 truth of the matter asserted. We're just trying to lay a
11 background as to information that brought him to the scene
12 that night.

13 **THE COURT:** All right. Fair enough. We're doing this
14 nonjury as well and the purpose is to determine reasonable
15 suspicion, so the -- you can answer.

16 **MR. ADDUCCI:** Thank you, Your Honor.

17 **THE COURT:** Do you want to repeat the question?

18 **MR. MORONEY:** Yes, Your Honor.

19 BY MR. MORONEY:

20 Q. Did you receive any additional information relayed
21 over the radio from Officer Osborne that night?

22 A. Yes. Officer Osborne radioed us and stated that he
23 had witnessed three subjects, which he believed to be black
24 males, walking down Willson Street. He turned around in a
25 parking lot on campus because he observed them walking in

1 the roadway and when he turned around he only observed two
2 subjects in the area and that heightened his suspicion.

3 Q. Were you riding alone that night?

4 A. I was not. I was in the vehicle with Sergeant
5 Peppers.

6 Q. Was that common? Is there a reason that you were
7 riding with Sergeant Peppers?

8 A. Yes, sir. I had only been hired on June 5th and I was
9 still in field training status with the Department.

10 Q. What did you observe when you arrived on-scene to
11 assist Officer Osborne?

12 A. When we pulled up, I was driving. I parked the patrol
13 vehicle behind Officer Osborne's vehicle, which was parked
14 on the shoulder of the road facing south. I exited our
15 vehicle and Officer Osborne was standing on the shoulder of
16 the -- the road next to our -- the Human Resources office
17 on Willson Street speaking with two subjects.

18 Q. And what did you do during the stop?

19 A. I merely walked up and stood sort of behind one of the
20 subjects. We formed a -- you know, somewhat of a triangle
21 around him. It was a tactical thing that officers commonly
22 do for safety purposes and to make sure that nobody's gonna
23 flee the area.

24 Q. Was there anything unusual about Mr. Johnson's
25 demeanor, the individual with the beer can?

1 A. His voice sounded a little excited. He sounded a
2 little nervous. Just the way he kind of stammered when he
3 answered some questions and things like that.

4 Q. Was there anything unusual about Mr. Andrews' demeanor
5 during the stop?

6 A. He was -- he was moving nervously, had his hands
7 together a lot, touched his face several times, and was
8 constantly looking at all the different officers, changing
9 his view around to each one of us.

10 Q. From your training and experience, did those
11 indicators mean anything to you?

12 A. They did. They heightened my sense that he was
13 possibly in -- in violation of some law; that he had
14 committed some kind of criminal infraction and he was
15 nervous about a contact with law enforcement.

16 Q. And during the stop, what was the nature of the
17 conversations?

18 A. We spoke mostly with the two subjects about where
19 they had come from, where they were going. Just kind of
20 establishing their -- their reason to be in the area.
21 Actually hoping maybe to dispel, you know, any suspicion.
22 Of criminal activity, but just basic investigative
23 questions.

24 Q. And were there -- was there anything unusual about.
25 The answers to any of the investigative questions?

1 A. They seemed to change. I initially asked Mr. Andrews
2 where they were coming from. He told me they were coming
3 from a friend's house on Janeway. I believe Officer
4 Osborne then asked him where they were going. He stated.
5 He was going home and that he lived on East Cambridge. He
6 later answered -- that question was sort of repeated to.
7 Him again. He answered it stating that his friend lived on
8 East Cambridge, but he stayed with his mother on Janeway.

9 Q. Was a records or warrants check conducted -- conducted
10 during the stop?

11 A. They were. Officer Osborne ran them both by their
12 South Carolina driver's license number.

13 Q. And what happened next?

14 A. We waited a couple of minutes and at one point during
15 the -- the conversation our dispatcher contacted Officer
16 Osborne over our walkie-talkies and asked him to give the
17 office a call on his cell phone.

18 Q. Did the stop complete there?

19 A. It did not. Officer Osborne stepped probably fifteen,
20 twenty feet away from us so that he could speak in private
21 with the dispatcher. He was on the phone for, I would say,
22 approximately a minute and upon coming back he moved
23 directly to the other subject and advised him to place his
24 hands behind his back; that he was under arrest.

25 Q. Did you notice a change in Mr. Andrews' demeanor when

1 Mr. Johnson was being placed in handcuffs?

2 A. He appeared to tense up to me. It looked like he was
3 getting a little more nervous by the -- the fact that the
4 other subject had been arrested.

5 Q. And did his tensing up mean anything to you from your
6 training and experience?

7 A. Just heightened my -- my suspicion that perhaps he had
8 a weapon or perhaps he was, you know, wanting to flee or,
9 you know, he didn't want -- he didn't want to be there with
10 us, he wanted to get out of the contact.

11 Q. And after Mr. Johnson was placed in handcuffs, what
12 happened next?

13 A. While Officer Osborne was handcuffing Mr. Johnson, he
14 looked over Mr. Johnson's shoulder and asked Mr. Andrews.
15 If he would mind if I conducted a pat-down or a Terry frisk
16 of his outer clothing to make sure that he had no weapons.
17 Mr. Andrews stated that he did not want us to do so and
18 Officer Osborne informed him that based on the situation.
19 We felt that, you know, we had reasonable suspicion to do
20 so and we needed to conduct that pat-down, at which point
21 Mr. Andrews reached for his waistband and his left pocket.
22 Multiple times he was told not to do so. I instructed.
23 Him: Take your hands out of your pockets, don't touch your
24 pants, but he continued to reach for that area of his body
25 despite being told not to do so.

1 Q. And after reaching for his bod -- body and you telling
2 him not to do so, what happened next?

3 A. I believe I told him twice not to touch his waistband,
4 not to touch his pocket. He continued to do so. I reached
5 in to grab his -- grasp his left wrist to restrain him
6 from reaching in there based on the fear that he probably
7 had a weapon or something he was trying to pull out of his
8 pocket, at which point I -- I did not see, but I heard a
9 metallic thud on -- on the pavement, something metallic
10 strike the pavement, and at that moment Mr. Andrews pulled
11 his arm away from me and began to run across the street
12 away from us.

13 Q. Did you have any particular thought when you heard
14 that metallic thud as you described it?

15 A. I -- like I say, I never saw anything, but my instinct
16 told me that the sound of the metallic clink on the
17 pavement, it sounded though the object had some weight to
18 it, and at the moment the flash message that went through
19 my brain was that it could only be one thing. It could be
20 a weapon.

21 Q. And after you heard the metallic clink, did you pursue
22 Mr. Andrews?

23 A. I did. I began to -- as soon as he ran from me, I
24 began to run after him. We had only made it to the other
25 side of the street at which point Mr. Andrews attempted to

1 turn to his right, I'm not sure where he was going, but he
2 -- he attempted to change his direction. He appeared to
3 lose his footing and the two of us slid down a -- a small
4 hill on that side of the road and I was giving him loud
5 verbal commands to stay on the ground, stay on the ground,
6 not to move, and then I -- I reached where he was laying
7 and I believe I placed my left knee in his back to restrain
8 him from getting up. I had hold of his left wrist, which
9 was behind his body, and Officer Peppers and I both
10 instructed him multiple times to give us his right hand,
11 which was tucked underneath his body.

12 Q. While you were placing Mr. John -- Andrews into
13 handcuffs, did you retrieve any contraband from
14 Mr. Andrews' person?

15 A. After being told several times to remove his right
16 hand from under his body, he did begin to pull it out. I
17 saw him reach, again, for the waistband and the pocket.
18 Area of his right side, and at that time I saw what
19 appeared to be a -- a small plastic baggy with a green
20 object in it fall from his hand onto the ground directly
21 where he was laying. We then placed him in handcuffs and
22 Sergeant Peppers retrieved it, which we later tested it to
23 be positive for marijuana.

24 Q. Officer Link, is there a video recording that shows an
25 account of what transpar -- transpired that night during

1 the stop?

2 A. There is, sir. I was wearing a -- a Body Cam on the
3 front of me.

4 Q. In preparing to testify today, have you had an
5 opportunity to view that video?

6 A. I did, sir.

7 **MR. MORONEY:** Your Honor, may I approach?

8 **MR. ADDUCCI:** Your Honor, no objection to that coming
9 in for purposes of this hearing.

10 **THE COURT:** All right. Very good.

11 **MR. MORONEY:** Judge, we'd ask if we could view the
12 Body Cam video.

13 **THE COURT:** Were you wanting -- my -- my only concern
14 is I do have to be out of here kind of -- I'd stay here
15 normally until six or so, but I've got to pick somebody up
16 at 5:00.

17 **MR. MORONEY:** Okay.

18 **THE COURT:** I could look at that later or were you
19 wanting to review it with this officer while he's on the
20 stand?

21 **MR. MORONEY:** We can do it later. This was gonna
22 conclude --

23 **THE COURT:** Okay. Very good.

24 **MR. ADDUCCI:** I have a couple of quick questions.

25 **THE COURT:** Certainly.

1 CROSS-EXAMINATION (In-Camera)

2 BY MR. ADDUCCI:

3 Q. Good afternoon.

4 A. Good afternoon, sir.

5 Q. Officer Link, when you arrived, you indicated that you
6 put a triangle around the two suspects, correct?

7 A. We did, sir.

8 Q. So that they could not leave, right?

9 A. Correct.

10 Q. And Mr. Andrews asked if he could call his mother?

11 A. Correct.

12 Q. And you said you couldn't -- I'm sorry.

13 A. Officer Peppers advised him that we did not want him
14 to make any phone calls at the time.

15 Q. Okay. And then Officer Osborne indicated for you to
16 search Mr. Andrews, correct?

17 A. He advised him that we would like to conduct a Terry
18 pat-down of his outer clothing.

19 Q. And he -- Mr. Andrews said, "No, I don't want you to
20 search me?", right?

21 A. That's correct.

22 Q. And then he was searched regardless, right?

23 A. He was in -- yes. Officer Osborne informed him that
24 we needed to conduct that pat-down for our safety based on
25 the situation.

1 Q. And at that point you advised him he was going to be
2 searched and you placed your hands on him, correct?

3 A. At that -- as soon as he was told that we needed to
4 conduct a pat-down, the affirmative statement was made,
5 then he did begin to reach for his clothing and that's when
6 we began to give him verbal commands not to reach into his
7 pockets.

8 Q. All right. And then at that point you grabbed one of
9 his wrists?

10 A. I grabbed his left wrist, yes, sir.

11 Q. Okay. And then he pulled away?

12 A. Correct.

13 Q. And you heard the clunk and then he ran off?

14 A. Yes, sir.

15 Q. And then you indicated that you did -- he was tackled
16 or he was in the ditch, right?

17 A. He lost his footing and slid down the hill. I came
18 down behind him and placed my knee across his back to
19 restrain him from getting back up while I handcuffed him.

20 Q. And you said you saw him pull marijuana out of his
21 pants pocket?

22 A. I -- I saw a plastic -- a small plastic baggy probably
23 about the size of a ping -- a little smaller than a ping
24 pong ball. He had it -- he pulled it -- his hand out of
25 his pocket and the object fell out of his hand onto the

1 ground and was retrieved by Sergeant Peppers.

2 **MR. ADDUCCI:** Thank you, Your Honor. No further
3 questions.

4 **THE COURT:** Thank you. You can step down.

5 **THE WITNESS:** Thank you, Your Honor.
6 (Witness excused.)

7 **MR. MORONEY:** Your Honor, just for the record, the
8 Body Cam video is marked as State's Exhibit ID 1.

9 **THE COURT:** All right. Very good.

10 **MR. MORONEY:** The State would call Vernon Peppers.

11 **THE COURT:** Could you ask Mr. Peppers to come out
12 while you're going back there? Thanks.

13 **VERNON PEPPERS,**

14 having been duly sworn, testified as follows:

15 **DIRECT EXAMINATION (In-Camera)**

16 **BY MR. MORONEY:**

17 **Q.** Good afternoon. Could you, please, state your name.

18 **A.** Vernon Peppers.

19 **Q.** And where are you employed, Mr. Peppers?

20 **A.** Lander University Police Department.

21 **Q.** And how long have you been employed there?

22 **A.** About three and a half years.

23 **Q.** And where were you employed before that?

24 **A.** Greenwood City Police Department.

25 **Q.** And how long were you employed at Greenwood City

1 Police Department?

2 A. From '99 to 2011, so about twelve years.

3 Q. What were your various assignments with the Lander
4 University Police Department?

5 A. A corporal on patrol, a sergeant -- well, let's see, a
6 supervisor on patrol, lieutenant as a supervisor on patrol,
7 and currently I'm a captain over uniform patrol.

8 Q. And what are your general responsibilities as an
9 officer?

10 A. Patrol the campus and the surrounding area to make
11 sure the campus is safe, the students are safe, the staff
12 are safe, buildings secure.

13 Q. And did you have any law enforcement certification
14 through Lander University?

15 A. I went through the South Carolina -- South Carolina
16 Criminal Justice Academy to be certified.

17 Q. Officer Peppers, were you working with Lander
18 University Police Department back on the night of June 30,
19 2012?

20 A. I was.

21 Q. And did you become involved in Officer Osborne's
22 investigation involving a gun possession case?

23 A. I did.

24 Q. How did you become involved in Officer Osborne's
25 investigation that night?

1 A. He radioed to me on the radio that he was about to get
2 out with two subjects and that one of the subjects had fled
3 on foot and he was gonna make contact with them on Willson
4 Street.

5 Q. Were you riding alone that night?

6 A. I had -- Corporal Link was riding with me.

7 Q. Was there a reason he was riding with you?

8 A. He was in training.

9 Q. And what did you observe when you arrived on-scene to
10 assist Officer Osborne?

11 A. Officer Osborne was out with two black males on the
12 side of the road opposite the sidewalk near an embankment
13 near to what we would refer to as the HR building. It's an
14 old house.

15 Q. What did you do during the stop?

16 A. Basically I provided cover. I stood to the side,
17 kind of on the grass side. The two subjects that they were
18 out with were in the road and Officer Osborne was behind
19 Mr. Johnson and Officer Link was behind Mr. Andrews and I
20 kind of stood on the other side in between both of them.

21 Q. Was there anything unusual about Mr. Johnson's
22 demeanor?

23 A. He acted nervous and he was standing kind of funny and
24 at that time I -- when I was observing him standing funny,
25 I observed a bulge in his left pants leg. I did a pat-down

1 of it and he told me it was an open beer -- I mean, not an
2 open beer, a closed beer that was in his pants leg.

3 Q. Was there anything unusual about Mr. Andrews' demeanor
4 that night?

5 A. He seemed nervous. He was kind of doing -- looking
6 from side to side like he was about to run from our -- my
7 indications. He kind of made contact with his face. I had
8 to tell him once to get his hands out of his pocket and he
9 also was rubbing his hands -- kind of rubbing his hands
10 together or messing with his hands. He seemed antsy to me.

11 Q. And during the stop, what was the nature of the
12 conversation?

13 A. Basically we were getting the information on both
14 subjects, asked them where they were coming from, where
15 they were going. I think they said they left a friend's
16 house on Gracemont and were walking to, I'm thinking, a
17 house on Cambridge. I don't remember if they said it was
18 a friend or what they said it was, but it was house on
19 Cambridge and we was doing an informations check on both
20 subjects, warrants checks, and so forth.

21 Q. So a -- was a records check or warrants check
22 completed by Officer Osborne that night during the stop?

23 A. It was.

24 Q. And what was the result of that records check?

25 A. Our dispatcher advised Osborne to call them and then

1 later find out that -- through conversation the dispatcher
2 told him that he had a warrant for attempted murder.

3 Q. And what happened next?

4 A. Officer Osborne approached the subject, grasped him
5 by his -- I believe his right arm, told him he was under
6 arrest. At the same time, I grabbed ahold of him and told
7 him he was under arrest and then that time he told --
8 Officer Osborne told him it was for the open beer that he
9 had seen him throw down on the ground and had possession as
10 we arrived.

11 Q. Now did you notice a change in Mr. Andrews' demeanor
12 after Johnson was being placed in the handcuffs?

13 A. He seemed to get more nervous. By that time Officer
14 Osborne told -- told Officer Link to pat them down. He
15 said something to the effect of "I'm not gonna pat you down
16 -- I'm not gonna let you pat me down", something to that
17 effect. They went to pat him down at the same time I come
18 around after handcuffing Mr. Johnson and Mr. Andrews
19 reached for something in his waistband/pocket area. When
20 he reached for that area, I heard a "clink", saw a silver
21 in color gun on the ground. He took off running and
22 Officer Link gave pursuit and I gave pursuit shortly
23 thereafter.

24 Q. Was Mr. Andrews ultimately apprehended?

25 A. Yeah, he -- he crossed over, well, two lanes of

1 traffic basically off the sidewalk and into the woods and
2 there were some briars there at the time and he tripped up
3 in the briars and he was down on the ground and as he was
4 down on the ground we kept on telling him he was under
5 arrest, put his hands behind his back. I grabbed his left
6 arm and was able to get it handcuffed, but his right arm
7 stayed underneath him, he was reaching for something in his
8 pocket. I was able to get him handcuffed and once I got
9 him handcuffed, I observed a clear plastic bag on the
10 ground with a green plant-like material that appeared to be
11 marijuana, and I then stuck that in my pocket as evidence
12 that it was coming from his person.

13 **MR. MORONEY:** Your Honor, may I approach?

14 BY MR. MORONEY

15 Q. Officer Peppers, I'm gonna show you what's marked as
16 State's Exhibit 3 for identification. Do you recognize
17 that?

18 A. I do.

19 Q. And what is it?

20 A. It's the evidence that I seized that night from
21 Mr. Andrews.

22 Q. And how do you know it's that evidence?

23 A. It was logged into evidence that night by Officer
24 Osborne and I checked it out today to bring it to court.

25 **MR. MORONEY:** Thank you. Nothing further, Your Honor.

1 **MR. ADDUCCI:** A few quick questions.

2 **THE WITNESS:** Yes, sir.

3 CROSS-EXAMINATION (In-Camera)

4 BY MR. ADDUCCI:

5 Q. Now when you approached, you indicated you were there
6 to help Officer Osborne, correct?

7 A. That's right.

8 Q. And you triangulated around the two individuals,
9 correct?

10 A. Basically.

11 Q. And Mr. Andrews wasn't free to leave at that point,
12 was he, when you arrived?

13 A. By that time we were making contact with them to see
14 where they were going.

15 Q. Okay. He was not free to leave. He was surrounded by
16 the three of you, correct?

17 A. I guess.

18 Q. If he would have attempted to leave, would you have
19 stopped him?

20 A. Yes.

21 Q. Okay. And he asked to call his mother, correct?

22 A. That's right.

23 Q. And you said, "You're not calling anybody"?

24 A. That's right.

25 **MR. ADDUCCI:** Nothing else for this witness, Your

1 Honor.

2 **THE COURT:** Thank you. You can step down.

3 (Witness excused.)

4 **THE COURT:** The final witness is Mr. -- Officer --

5 **MR. MORONEY:** It is Deputy Pratt, Your Honor.

6 Mr. Adducci had consented earlier to an item of evidence.

7 The last witness, Officer Pratt, Deputy Pratt, is just a

8 custodian with reference to the marijuana --

9 **MR. ADDUCCI:** Oh, yes.

10 **THE COURT:** Okay.

11 **MR. MORONEY:** -- so we could expedite it.

12 **THE COURT:** Very good. We won't need to take his

13 testimony then.

14 All right. Mr. Adducci, were you intending to call --

15 tell everybody they can -- if they're sticking around, tell

16 them that they can go if they're still back there.

17 **MR. ADDUCCI:** Your Honor, we got all the testimony

18 that we needed.

19 **THE COURT:** Okay.

20 **MR. ADDUCCI:** On the video, the relevant part, is

21 about seven and a half, eight minutes.

22 **THE COURT:** Okay.

23 **MR. ADDUCCI:** I don't know if you wanted to watch

24 that now. I know you've got to depart out right about

25 now.

1 **THE COURT:** Is it on DVD --

2 **MR. MORONEY:** It's on DVD.

3 **THE COURT:** -- and can you -- do you have it on your
4 hard drive or is it --

5 **MR. MORONEY:** I -- I have it on my hard drive. I have
6 several copies of --

7 **THE COURT:** Why don't you just e-mail it to me and
8 I'll look at it tonight, if that's okay with y'all, and
9 then we can talk about it more tomorrow if need be. Is
10 that acceptable?

11 **MR. MORONEY:** Is it okay if you just take the State's
12 Exhibit?

13 **THE COURT:** I'd rather not something that's in
14 evidence. So if it's on your computer, just maybe send me
15 an e-mail of that and I'll look at that.

16 **MR. MORONEY:** Okay.

17 **THE COURT:** I'm -- I'm assuming it will go through.
18 And if it doesn't, I'll --

19 **MR. MORONEY:** It depends on the quality of --

20 **MR. ADDUCCI:** If it doesn't -- if it doesn't, we can
21 sit in here tomorrow morning and -- and watch it.

22 **MR. ANDREWS:** We'll get it. We can put it like in
23 Google drive or something, Your Honor.

24 **THE COURT:** That sounds good. Let me look at the DVD
25 before we deal with motions on this and we can -- or before

1 I hear your argument on this. I know exactly where it is
2 that you're coming from, but I do, of course, want the
3 record to reflect your argument. But let me look at the
4 DVD first, and a picture's worth a thousand words, so that
5 might be the most judicious use of our time the next
6 couple of -- the next couple of days. Especially since we
7 probably won't reach this until Thursday at the earliest,
8 if then.

9 Anything further on this case, gentlemen? No?

10 **MR. MORONEY:** No, Your Honor.

11 **THE COURT:** Good deal. All right. I'll see y'all
12 tomorrow.

13 **MR. ADDUCCI:** Thank you very much.

14 **MR. MORONEY:** Thank you, Your Honor.

15 **THE COURT:** Yes, sir.

16 (Whereupon, the proceedings were concluded for May 12,
17 2015.)

18 (Whereupon, the following proceedings were held on
19 May 14, 2015.)

20 **THE COURT:** We're gonna go ahead and go on the record
21 in the State versus Jerry Jerome Andrews. These are
22 indictments 15-394, 395, 12-1754 and 1753. The record
23 should reflect that Mr. Andrews is present with
24 Mr. Adducci. I realize that we're a little bit late
25 beginning because that other jury came in with their

1 verdict about fifteen minutes ago, Mr. Adducci.

2 When we left off last Tuesday on this case, you had
3 made several motions concerning -- or you had made a motion
4 -- or we had taken testimony rather concerning this matter
5 and I'm assuming that your argument is going to center
6 around the propriety of the search and -- the propriety
7 of the search, whether they had probable cause for the
8 pat-down, the Terry frisk, et cetera. I did look at the
9 videotape last night and on Tuesday night, so I'm very
10 familiar with the tape recording that was -- or the
11 videotape that was taken at the time of the incident, and
12 I'm happy to hear your argument at this point in time.

13 **MR. ADDUCCI:** Thank you, Your Honor.

14 We're moving to suppress all evidence seized from
15 the moment that Mr. Andrews was stopped. We're starting
16 off with the presumption that seizures are, per se,
17 unreasonable within the meaning of the Fourth Amendment
18 unless such seizures are accomplished pursuant to judicial
19 warrants issued upon probable cause.

20 So that means the burden is on the State to show that
21 the stop was reasonable and there -- and then after that,
22 that the search after the stop was reasonable. This falls
23 under -- that analysis that we're gonna do is under Terry
24 and Terry is gonna ask us basically three questions.
25 First, whether Mr. Andrews was seized and, within that

1 question, if he was seized, at what point was he seized?
2 Two, if he was seized, was that seizure unreasonable and,
3 within that, did the seizure at some point become
4 unreasonable if it wasn't -- if it started off as a
5 reasonable seizure? And, third, even if the seizure was
6 reasonable, was the search reasonable?

7 With the Terry frisk it's only allowed if the officer
8 has specific articulable facts which taken together with
9 rational inferences warrant an intrusion. So basically
10 reasonable suspicion the Defendant was armed and dangerous.

11 The first question is whether he was seized. We
12 believe he was seized the moment that Officer Osborne hit the
13 blue lights and stopped he and Mr. Johnson. So the moment
14 that we need to do the analysis of whether that seizure was
15 reasonable needs to be at that moment. If we presume that
16 he is seized at that moment, I can go through the analysis
17 or I can offer the Court several -- if the Court doesn't
18 believe that he was seized at that point, there are several
19 other points throughout this encounter where we would argue
20 that he was seized for purposes of the Fourth Amendment.

21 So either when the blue lights were hit; two, when
22 the other two officers arrived and triangulated around
23 Mr. Andrews -- and their own testimony was that he was
24 not free to leave at that point; three, when Mr. Andrews
25 specifically asked if he could use his telephone and they

1 said, "You're not calling anybody", that is a show of force
2 and by Mr. Andrews not making a phone call, that is clearly
3 him submitting to that show of force. And, finally, even
4 if the Court believes that he was not seized at all at that
5 point, the moment that he says I do not want to be searched
6 and they say basically too bad, you're getting searched,
7 he's clearly seized at that point.

8 Now to the point when blue lights first come on, the
9 State had the burden to show that that stop was legal.
10 They need reasonable articulable suspicion that criminal
11 activity is afoot. The -- Officer Osborne was the
12 individual who initiated this traffic -- this stop. He
13 indicated that the -- his purpose and his reason was that,
14 first, there were three people walking and he turned around
15 and then there were two people, and that's when he decided
16 he was going to stop these two individuals. Then he
17 indicated that Mr. Johnson threw what he thought was a
18 beer can onto the ground. That does not lead to reasonable
19 articulable suspicion for Mr. Andrews. Mr. Johnson
20 potentially littering or having an open can -- container
21 of alcohol has nothing to do with whether there's
22 reasonable articulable suspicion for Mr. Andrews to be
23 stopped and seized.

24 He also indicated -- or the police indicated that
25 generally there was some crime in the area at some time

1 prior. That is not reasonable articulable suspicion for a
2 Terry stop.

3 So clearly we believe that he was seized initially
4 when he was stopped with the blue lights and that there
5 was no reason to stop Mr. Andrews. There might have been
6 reason to stop Mr. Johnson for either an open container or
7 for littering, but that does not entitle the police to
8 seize Mr. Andrews.

9 Later on in the -- in the encounter, Mr. Andrews is
10 polite, cooperative, yes, sir, no, sir. He asks if he can
11 make a phone call. There's -- they are not investigating
12 anything with Mr. Andrews because they have no suspicion,
13 this is just a hunch, and a hunch is not enough to support
14 a seizure.

15 Even if the Court believed that there was reasonable
16 articulable suspicion to stop Mr. Andrews, which we clearly
17 believe there is not, there is no reasonable suspicion that
18 the Defendant was armed and dangerous. The only reason
19 that they say that they are going to search him is because
20 he was in the company of somebody who has an arrest warrant
21 for an armed robbery. They indicate that he was touching
22 his face and seemed nervous. That does not account for
23 specific articulable facts which through rational
24 inferences reasonably warrant the intrusion.

25 If reason -- if -- if being in the company of somebody

1 who is charged with a crime is enough to search somebody,
2 I can stop -- get stopped and searched every day on my way
3 to work. Simply being in the company of somebody is not
4 enough to support a stop and later the search.

5 Everything that is seized after that; the gun,
6 marijuana, the arrest itself, should all be suppressed
7 because it is all the fruit of the poisonous tree from
8 the initial unreasonable seizure at the moment that the
9 blue lights get hit or at any of those other points along
10 the timeline in the encounter between the police and
11 Mr. Andrews.

12 I have some case law if you'd like me to point you to
13 some case law.

14 **THE COURT:** Certainly. I'm happy to entertain
15 anything that you have.

16 **MR. ADDUCCI:** And we're making this motion under the
17 Fourth Amendment of the United States Constitution and
18 the South Carolina Declaration of Rights, Article 10 --
19 let me see -- Article 1, Section 10. The South Carolina
20 Declaration of Rights has an additional right to privacy
21 that the United States Constitution does not have and
22 the -- State versus Forrester, which is 343 SC 637, hints
23 to the idea that there are increased rights in South
24 Carolina where if something might be -- if police action
25 under the United States Constitution might be legal, in

1 South Carolina it might not be legal because of that
2 additional --

3 **THE COURT:** Explicit guarantee of right to privacy.

4 **MR. ADDUCCI:** Exactly. I would also turn the Court
5 to Sikes versus State. It's a South Carolina case, which
6 is 323 SC 28. This is a time where -- it's a traffic stop
7 where the Defendant is a passenger in a car, which is not
8 really analogous to this, but here we are. He was detained
9 at the traffic stop and the police did a warrants check on
10 him. The warrant check came back that he had a warrant
11 and the police said that the seizure of that passenger was
12 illegal and invalid; therefore, the searching for the
13 warrant was invalid and the evidence that they seized off
14 of him after the arrest warrant was served should be
15 suppressed.

16 State versus Tindall, it's another traffic stop case,
17 basically goes to the argument that after the activity
18 investigating a traffic stop ends or is abandoned, that the
19 seizure and the continued detention of an individual at
20 that moment becomes unreasonable and anything found after
21 that moment should be suppressed. The cite on that is
22 388 SC 518. There was also a recent United States Supreme
23 Court case, Rodriguez versus United States, it was just
24 decided April 21st of this year, also goes to that same
25 point; that a -- once the police have sort of abandoned

1 the investigation of a traffic stop, at that point the
2 continued detention is considered unreasonable and anything
3 uncovered after that point should be suppressed.

4 If you have any questions for me about anything, I'd
5 be happy to respond.

6 **THE COURT:** All right. Thank you.

7 Solicitor, what's your position and argument on his
8 motion?

9 **MR. MORONEY:** Yes, Your Honor. With respect to the
10 seizure element and what time that happened, I would -- the
11 State would concede that a seizure did, in fact, occur at
12 the be -- at the outset of the stop when the officers were
13 surrounding him and they retained his ID's and did not
14 return the ID's during the warrant check; however, this was
15 supported via Terry v. Ohio and the reasonable articulable
16 suspicion for the stop. I think we heard testimony not
17 only from Officer Osborne, from Officer Peppers and Officer
18 Link, and specifically Officer Osborne testifying to the
19 time of night being 2:15 in the morning when this stop is
20 conducted, the three individuals that he observed walking
21 on the sidewalk and in the short time it took him to make
22 a U-turn to turn around there on Willson Street, the third
23 person had run off and now there were two individuals in
24 the roadway. Now I think it's of importance that when he
25 turned around and these individuals were walking on a

1 portion of the roadway where this is a downhill slope and
2 a blind hill curve -- a blind hill crest, I think that's
3 very important. So there was a safety issue not only for
4 motorists, but Mr. Johnson and Mr. Andrews.

5 It's also very relevant and important, I believe, and
6 it's the State's position, based upon that it was summer,
7 June 30th, and school was out. Officer Osborne testified
8 that he was aware that a small amount of student population
9 were on campus at the time and he didn't recognize these
10 individuals and the three people becoming two raised the
11 suspicions. I feel that the prior crimes that had happened
12 months previous were relevant in his consideration of
13 stopping and conducting an investigation with both
14 Mr. Andrews and Mr. Johnson.

15 Terry v. Ohio, with reference to the seizure, it is
16 established that a reasonable articulable suspicion of
17 criminal activity is afoot. We know that reasonable
18 suspicion is a lesser standard than probable cause and I
19 think the defense would like to have the Court see that
20 probable cause was necessary for the pat-down or for the
21 seizure that night during the Terry stop. While probable
22 cause as we know is a likely probability that contraband or
23 evidence on a person would be found, reasonable suspicion
24 for a Terry stop, which is required, is lesser than that.

25 Furthermore, the standard set in Terry v. Ohio looks

1 at officers and the facts are judged against an objective
2 standard of whether facts available to the officer at
3 the moment of seizure or search would warrant a man of
4 reasonable caution and belief the action taken was
5 appropriate. I feel -- it's the State's position that
6 it was entirely appropriate for Officer Osborne's
7 suspicions to be raised based on the time of night, the
8 three becoming two, the beer can, although that was
9 attributed to Mr. Johnson, that was a reason for the
10 stop. Them walking in the roadway was clearly a safety
11 issue and he had reasonable suspicion -- articulable
12 suspicion to conduct a Terry stop of both Mr. Andrews and
13 Mr. Johnson. It's important case law on -- with respect
14 to Terry stops. It's established that we look at the
15 totality of the circumstances, and that's very important
16 for this case.

17 With respect to the pat-down, the defense has
18 suggested that the only reason for the search was the
19 attempted murder warrant that came back. That's just not
20 the case. There were the other listed -- what I previously
21 mentioned, the time of night, the three becoming two,
22 et cetera, that Officer Osborne testified for his initial
23 reason for the stop that was weighed in his mind in
24 addition to this attempted murder warrant coming back as
25 confirmed.

1 It's not a mere happenstance of geography with -- and
2 this is a quote here from United State v. Nathaniel Black,
3 cited at 707 F.3d 531 from the Fourth Circuit. Just the
4 fact that Mr. Andrews was in the presence of Mr. Johnson
5 is not the reason why a pat-down, the Terry frisk, was
6 conducted that night. It was the -- the multiple factors
7 that I won't go into again I've listed several times. This
8 was more than a hunch that night. There was a reasonable
9 articulable suspicion that Mr. Andrews was armed and
10 dangerous, which is the requisite level of proof to -- for
11 suspicion required to do a Terry pat-down. He was looking
12 for an avenue of escape I believe Officer Osborne testified
13 to.

14 Also, I think it's important to note a couple of the
15 officers testified to him rubbing his hands and a closer
16 view or observation of the Body Cam video in a short, few
17 minute period Mr. Andrews rubs his hands -- the palms of
18 his hands back and forth sixteen separate times. He starts
19 and stops rubbing his hands sixteen separate times. And
20 the officers said based on their training and experience
21 -- that the rubbing of hands from their training and
22 experience meant that he was either armed or he was in
23 violation of some law at some point. I think that's very
24 relevant. I believe Mr. -- Officer Peppers and Officer
25 Osborne testified to that fact.

1 Essentially, Judge, the State's position is that there
2 was reasonable suspicion of criminal activity afoot that
3 justified the initial seizure and the Terry stop.
4 Moreover, there was reasonable articulable suspicion that
5 Mr. Andrews was armed and dangerous given the multiple
6 factors that played into Officer Osborne's decision that
7 night. Officers are -- clearly case law has established
8 that we -- that officers can protect themselves, especially
9 at 2:15 in the morning when there is reasonable articulable
10 suspicion that they're armed and dangerous -- the person
11 they're out with are armed and dangerous, they can conduct
12 a Terry pat-down.

13 **THE COURT:** All right. Here's sort of where the Court
14 is on the motion, Mr. Adducci. We -- we have a situation,
15 and, again, Mr. Moroney's argument that we have to view
16 this based upon the totality of the circumstances that
17 existed at that particular point in time, I think that
18 that's a correct statement of the law, one that you would
19 -- you would not take issue with. I would agree with you,
20 Mr. Adducci, if we were looking at simply any one of the
21 number or factors or any one of the number of things that
22 were going on at this particular time. I would agree that
23 Mr. Andrews was seized probably about the time -- at the
24 very least about the time the -- the blue lights started
25 flashing and they were asked not to go anywhere or the

1 intent -- or the obvious intent of the officer was to --
2 to ask them some questions. So I would agree that at least
3 an initial investigatory detention of a very minor sort
4 took place perhaps at that point in time.

5 Factually what we are dealing with is the officer's
6 testimony that he saw three individuals walking down the
7 street, does a U-turn and the three become two. He
8 activates the blue light, it is 2:30 in the morning in the
9 middle of summer and the street that they're walking down
10 is very close to Lander. From the officer's personal
11 knowledge, he indicated on the stand that only typically
12 thirty students are enrolled in summer school at Lander and
13 staying on campus and he usually is able to recognize those
14 students and clearly the individuals he saw that evening,
15 your client and Mr. Johnson, were not students there.

16 So he -- if I'm recalling his testimony correctly,
17 not being students, it being 2:30 in the morning at a time
18 when obviously class is not in session and very few people
19 are on campus and they've had incidents in the past, of
20 course, the -- the infamous rapes that took there -- took
21 place there some time ago, as well as the break-ins, the
22 breaking and entering of the -- some of the dorm rooms,
23 you take that and clearly he had authority to figure out
24 exactly why these two folks were walking down the middle of
25 the street, not using the sidewalk, but walking down the

1 middle of the roadway at that time of the evening. Not
2 only does the officer have an obligation to try to prevent
3 crime, but obviously he has an obligation to try to keep
4 people from hurting themselves, and as he testified at that
5 particular point in the road it's easy for a car to go over
6 the hill and the pedestrians in the roadway would be kind
7 of in a blind spot there, the officer has obviously an
8 obligation to try to protect them as well.

9 So I would find that there's sufficient reason for the
10 -- for the officer to stop the individuals and at least
11 kind of figure out what's going on or determine what the
12 circumstances are. Once he engaged in that conversation
13 with Mr. Johnson and Mr. Andrews, of course, two other
14 officers arrive. I'm sure in the back of his mind we still
15 have one third person who's unaccounted for, the third
16 individual who was walking with those folks, that person
17 is still unaccounted for, and he doesn't know where they
18 are -- or where that person is. So he starts talking to
19 them, gets the ID, gets the information, phones it in,
20 and Mr. Johnson has an outstanding warrant for attempted
21 murder.

22 Additionally, as the officer testified to on Tuesday,
23 the statements about where they were going just did not
24 make sense from a geographic standpoint. What they were
25 saying as far as where they were travelling to just really

1 did not make a great deal of sense, which I'm sure
2 heightened his suspicions. You're then in a position, as
3 the officer, and, again, this is -- this is pretty much
4 depicted on the videotape, you learn that he's wanted for
5 attempted murder so you're arresting Mr. Johnson for that
6 charge.

7 And the thing that kind of caught my eye on the
8 videotape, and this is only about a -- maybe a one and a
9 half to two second period of time, but it's at the point
10 where the two officers are attempting to place Mr. Johnson
11 under arrest and they're cuffing him and then the officer
12 says to Mr. Andrews, "Do you mind if we search you?". I
13 don't -- the Court does not take the statement of the
14 officer, do I mind -- or "Do you mind if I search you", I
15 don't take that as his effort necessarily to obtain
16 consent. I think that by asking that question in an
17 inquisitive way, in a questioning way, it accomplishes two
18 things, which is probably pretty helpful for the officer
19 and, as he said on Tuesday, first of all, it's much more
20 polite. It helps to lessen the tension than a declaratory
21 statement: I'm going to search you now. You will be
22 patted down for weapons; as opposed to, "Hey, sir, do you
23 mind if I search you for weapons?".

24 Second of all, and this is the interesting part, by
25 asking that question or by asking it as a question, the

1 officer also gets the opportunity to gauge the person's
2 response, to gauge Mr. Andrews' response, and that response
3 may lead to additional information. So he asks it as a
4 question. Mr. Andrews says "no". In the video, the moment
5 that Mr. Andrews says "no", I seem to recall one of the
6 officers' eyes just sort of popping up and lighting up as
7 in kind of "uh-oh". So we have two officers occupied with
8 trying to arrest Mr. Johnson, who is charged with attempted
9 murder. At this point in time they don't realize that
10 Mr. Johnson, in fact, has a weapon on himself, but they
11 have not finished making that arrest and it is clearly
12 reasonable for them to be concerned that perhaps the other
13 person standing there might in some way interfere with that
14 arrest. The testimony is that they smelled alcohol on both
15 of these people. Both of those individuals had admittedly
16 been drinking. They had observed Mr. Johnson drinking and
17 tossing a beer can away, which seems strange, and that's
18 another reason that this whole encounter is strange because
19 Johnson in the video says, "Well, I didn't realize it
20 was illegal to walk down the middle of the street while
21 drinking a beer." If that's the case, then why did he
22 feel the need to so quickly dispose of the beer can while
23 walking down the street? So that's a little bit strange
24 and could certainly peak their interest.

25 So long story short, they're trying to effect an

1 arrest of someone charged with attempted murder, it's 2:30
2 in the morning. They know that these two people are at
3 least acquaintances. They could be friends, they could be
4 close relatives.. At this point in time, I could certainly
5 see where for purposes of officer safety it would be
6 reasonable, articulable reasonable, for the officers to
7 want to verify that the other person standing right there,
8 less than two feet away from them, is not, in fact, armed.

9 Additionally, like I said a moment ago, they've got in
10 the back of their mind where's this third person that they
11 saw walking with them? Isn't it strange that as soon as we
12 turned -- or as soon as the blue lights came on and the
13 officer turned around, isn't it strange that that person
14 suddenly disappeared? Where is he? In the video, after --
15 after the officer informs Mr. Andrews, "Well, we're gonna
16 need to search you anyway", the video clearly depicts, in
17 my mind, or from what I recall looking at it, it depicts
18 Mr. Andrews as described sort of going for his waistband at
19 the same time as the other officer is moving in to place,
20 his hands on him, and to pat him down. I have somewhat of
21 a hard time -- I agree that perhaps a seizure has taken
22 place in the context of they weren't free to leave. The
23 question is: Did a search take place? Because if you look
24 at the video, the moment that Mr. Andrews goes for his
25 waist is about the same moment that the officer attempts to

1 place his arms on him, presumably to pat him down. That's
2 when the gun drops and Mr. Andrews takes off running. So
3 there is an open question as to whether or not a search, in
4 fact, took place or whether it was a situation where the
5 gun simply fell out of presumably Mr. Andrews' possession.
6 Andrews takes off running and is caught a short time later.
7 End of story.

8 Objectively, the Court would find that the detention
9 was reasonable. There was articulable suspicion based on
10 the totality of the circumstances which warranted not only
11 the momentary detention to try and find out what these
12 folks were doing walking down the middle of the street at
13 2:30 in the morning on a summer evening heading in a
14 direction opposite of where they said they were intending
15 to going -- to be going, so there is articulable reasonable
16 suspicion to make that stop. To the extent that there was,
17 in fact, a search, and I'm not convinced that there was,
18 but to the extent that there was, in fact, a Terry pat-down
19 that was, in fact, conducted and Mr. Andrews didn't just
20 drop the gun allegedly, then the Court would find based on
21 the totality of the circumstances that the Terry frisk was
22 reasonable. So that would be my ruling on that issue;
23 however, the record has been made and your motion has been
24 made and that's where we are.

25 I am told that the jury is here, gentlemen. I'm going

1 to have the bailiffs bring them in -- go ahead and bring
2 them into the jury room and then my intention is to go
3 ahead and start.

4 Do you have your officers here that are still
5 sequestered or --

6 **MR. MORONEY:** I'll have to check, Your Honor. They're
7 supposed to be here.

8 **THE COURT:** Sure.

9 **MR. MORONEY:** So I'll just --

10 **THE COURT:** All right.

11 **MR. ADDUCCI:** Your Honor, we have a -- a motion in
12 limine about the basis for their -- violent crime
13 basically.

14 **THE COURT:** Oh, okay. Very good. Very good. Yes, I
15 did mean to raise that with you-all. What -- what is the
16 nature of your motion then?

17 **MR. ADDUCCI:** So he's charged with possession of a
18 weapon as a violent felon. The State has provided me,
19 and I'm sure you see -- I think that's actually marked
20 State's 1 -- or, I'm sorry, State's Exhibit 6.

21 **THE COURT:** I haven't seen anything other than the
22 DVD, so.

23 **MR. ADDUCCI:** Okay. If I -- if I can approach?

24 **THE COURT:** Please.

25 **MR. ADDUCCI:** This is out of Georgia. It's a first

1 offender statute, which is kind of analogous to the South
2 Carolina conditional discharge. And I have the Georgia
3 Code pulled up. Unfortunately, I just don't have a copy of
4 it. It says: Upon verdict or a plea of guilty or a plea
5 of nolo, but before adjudication of guilt, in the case of
6 a defendant who has not been previously convicted of a
7 felony, the court may without entering a judgment of guilt
8 of defendant go under this first offender statute.

9 So that is the basis of their using for the -- what
10 they're calling a conviction, which the Georgia Code
11 specifically says there has not been an adjudication of
12 guilt, so we would ask the Court to prevent the State from
13 mentioning this Georgia case in opening or -- I mean,
14 attempting to introduce this certified copy of this Georgia
15 case that is not an adjudication, it's not a conviction
16 under Georgia law, from coming in as evidence in this case.

17 If you'd like to know the Georgia Code statute --

18 **THE COURT:** I might need that at some point in time.

19 Mr. Moroney, what's -- what's the State's position on
20 this and have you been able to do any research on this
21 question?

22 **MR. MORONEY:** Yes, Your Honor. Briefly, I pulled up
23 the statute that Mr. Adducci is referencing and I do need
24 to find it. The State's position is that contained within
25 the pages you're looking at, it appears to -- especially

1 on the sentencing sheet portion, it appears to conflict
2 with the statement under the first offender sentence that
3 Mr. Adducci is referencing that no judgment of guilt or
4 sentence be imposed at this time; however, in the pages
5 included, Mr. Andrews is waiving his constitutional rights
6 and entering a guilty plea. Moreover, he was sentenced to
7 an active portion of eighteen months, and I think this is
8 most important, an eighteen month sentence is, of course,
9 more than a twelve month felony requirement. It was an
10 eighteen month active sentence that he served and then it
11 was suspended, the remainder, to probation, which he is
12 currently serving now. That probation has been transferred
13 from Georgia to South Carolina. He's currently under South
14 Carolina supervision, so I think it's the -- the eighteen
15 month active sentence.

16 **MR. ADDUCCI:** Your Honor, the South -- the Georgia
17 Code, which is Georgia Code 42-8-60, Probation before
18 Adjudication, I read Subsection A. Subsection 2 under that
19 is the sentence of defendant to a term of confinement as
20 provided by law. So even if the defendant does serve a
21 sentence, it is still not considered an adjudication of
22 guilt under Georgia law. I believe that the certified copy
23 that the State has provided specifically says as a first
24 time offender under -- under this statute it is simply
25 not a conviction and not an adjudication of guilt, and,

1 therefore, would be irrelevant and prejudicial to even
2 bring it up.

3 **MR. MORONEY:** And, Your Honor, under the felony
4 sentence portion of that sentencing sheet the sentencing
5 sheet reads: Whereas, the above-named defendant has been
6 found guilty of the above-stated offense; whereupon, it is
7 ordered and adjudged by the court that the said defendant
8 is hereby sentenced to confinement for a period of eight
9 years to serve eighteen months in prison as to Count 1.

10 I feel, and the State's position is, that that is
11 clear that it is a guilty plea and a conviction and should
12 be treated as such for purposes of meeting the elements of
13 the statute possession of a pistol by a person convicted of
14 a violent crime.

15 And, Your Honor, the South Carolina Code of Law
16 Section 17-25-45 states that a conviction means any
17 conviction, guilty plea, or plea of nolo contendere. And
18 that section is 17-25-45, Subsection (c)(3).

19 **THE COURT:** This there any import to the fact that he
20 pled guilty to robbery as opposed to armed robbery under
21 Georgia law?

22 **MR. MORONEY:** With respect to a crime -- to a violent
23 crime definition, Your Honor?

24 **THE COURT:** Correct.

25 **MR. MORONEY:** The South Carolina Code 16-160, which

1 is the definitions of what is a crime of violence in South
2 Carolina, does not include robbery; however, under the
3 handgun statute the person's prevented from possessing,
4 robbery is listed as a -- what is considered a crime of
5 violence under that section.

6 **THE COURT:** Okay. Thank you for that clarification
7 and keeping me from having to research that. Thank you.

8 **MR. MORONEY:** Yeah, the handgun crime is under two
9 sections in South Carolina. There's the 500 section, which
10 lists a crime of violence as listed in 16-160 --

11 **THE COURT:** And 16-23 something.

12 **MR. ANDREWS:** 16-23-10, Your Honor, have the
13 definitions.

14 **MR. MORONEY:** Oh, there you go. There's just two
15 different sections.

16 **THE COURT:** All right. I'm looking at the sentencing
17 sheet here, gentlemen. I'm simply reading the sentencing
18 sheet and it says that -- guilty on Count 1 to lesser
19 included offense, robbery, on Count 1, plea. Whereas, the
20 above-named defendant has been found guilty, and this is
21 under the box check felony sentence, found guilty, yada,
22 yada, yada, of the above-stated offense. It is ordered
23 and adjudicated by the court. Said defendant is hereby
24 sentenced to confinement for a period of eight years, to
25 serve eighteen months in prison as to Count 1, robbery. He

1 gives him credit for time served in jail from April 29,
2 2008 to May 28, 2009, so about thirteen months of jail time
3 credit.

4 **MR. ADDUCCI:** Your Honor, I do believe that the first
5 offender box is checked --

6 **THE COURT:** Correct.

7 **MR. ADDUCCI:** -- and that's where this is coming from.

8 **THE COURT:** I -- I don't disagree with you.

9 That says upon fulfillment of the terms of probation
10 or upon release by the defendant -- by the court prior to
11 the termination of the period thereof, the defendant shall
12 stand discharged of said offense charged and shall be
13 completely exonerated of guilt of said offense charged.

14 So it's kind of like a YOA where -- I mean, in a sense
15 it's like a Youthful Offender Act where maybe you can get
16 it expunged at some later point in time, but I -- I do read
17 this as saying it goes away, it evaporates.

18 Now is he currently on supervision for this?

19 **MR. ADDUCCI:** That is correct. He's currently on
20 supervision and we would argue that because he's currently
21 on supervision he's in this limbo period, which is -- I
22 equate it to somebody who has attempted to plea, has been
23 stood down for some reason, and then we're just waiting on
24 some further action. The conviction and the adjudication,
25 it simply is not final at this point --

1 **THE COURT:** I -- I believe that the conviction -- I
2 believe that the conviction for purposes of the time that
3 he's under supervision would have to be considered final.
4 That has been adjudicated. That is final. That is
5 conclusively proven and it looks -- from the second page
6 of the transcript, Superior Court of DeKalb County, that's
7 the two-page, go-over-your-rights-with-you, form. If you
8 look where the judge signed, and I can't make out that
9 name, but it -- this looks very similar to what a guilty
10 plea sentencing sheet -- or looks similar to how that looks
11 and it -- it clearly indicates that he did enter a plea of
12 guilty.

13 **MR. ADDUCCI:** You Honor, I would only take -- point
14 you to the statute which says, "but before an adjudication
15 of guilt". That is -- that is the quote out of the
16 statute: Before an adjudication of guilt. So he has not
17 been adjudicated guilty if he is sentenced under this.

18 **THE COURT:** He -- he's pled guilty and he's gone to
19 prison, but he hasn't been adjudicated guilty under Georgia
20 law is what you're arguing?

21 **MR. ADDUCCI:** Yes.

22 **THE COURT:** All right. And that was the
23 48-8-60(a)(2)?

24 **MR. ADDUCCI:** 42-8-60.

25 **THE COURT:** Okay.

1 **MR. ADDUCCI:** Probation before adjudication violation.

2 **THE COURT:** Has anybody been able to find any law on
3 this particular question; either that would assist us out
4 of Georgia or out -- out of South Carolina?

5 **MR. MORONEY:** Not out of Georgia, Your Honor. Only
6 with respect to the conviction; pleas -- guilty pleas being
7 treated as conviction under South Carolina Code of Laws.

8 **THE COURT:** I'm sorry, say that again.

9 **MR. MORONEY:** Only with respect to the South Carolina
10 Code of Laws section which treats guilty pleas as a
11 conviction.

12 **THE COURT:** Okay. Y'all be at ease for about five or
13 ten minutes and let me take a harder look at that.

14 **MR. ADDUCCI:** Thank you, Your Honor.

15 **THE COURT:** Thank you.

16 (Recess taken.)

17 **THE COURT:** Okay. We're going to back on the record,
18 if we may. The Court has had an opportunity to reflect
19 on Mr. Adducci's motion, which is a very well-stated,
20 well-articulated motion, Mr. Adducci. The Court has looked
21 at the certified records from Georgia. It does indicate
22 that Mr. Andrews entered a plea of guilty to robbery back
23 on April 2, 2009. The other -- it looks like perhaps he
24 did it after a jury was selected. I'm really not sure of
25 what to make of page 4 where it has a jury list, but either

1 way the language that's contained on the last three pages
2 of this certified record would indicate that this was a
3 plea of guilty. He did enter that plea.

4 I feel that your motion might be more appropriate,
5 Mr. Adducci, had Mr. Andrews actually completed the period
6 of supervision under Georgia law. If that had been the
7 case, and maybe for whatever reason the day after he
8 completes supervision he gets in trouble in South Carolina
9 for having a gun, but he was off supervision under Georgia
10 law and the paperwork simply had not gone through to clear
11 all this up, then perhaps the Court would be inclined to
12 rule with you on this question of law.

13 Based upon the documents that I've reviewed from
14 Georgia, DeKalb County, as well as the provisions of South
15 Carolina law, however, I'm going to deny your motion, but
16 your objection is noted.

17 **MR. ADDUCCI:** Thank you, Your Honor.

18 **THE COURT:** Thank you.

19 All right. We have the jury here. Nothing before we
20 proceed with -- anything else?

21 **MR. ADDUCCI:** Your Honor, as to not interrupt his
22 opening --

23 **THE COURT:** Certainly.

24 **MR. ADDUCCI:** -- but if I could just grant my -- or
25 protect my record for the opening?

1 **THE COURT:** Yes. Yes. You are protected. You
2 don't have to object at the time that he is -- that he
3 makes reference to this Georgia conviction in his
4 opening. You're protected. You do not have to give a
5 contemporaneous objection.

6 **MR. ADDUCCI:** Thank you, Your Honor.

7 **THE COURT:** Very good.

8 All right. Let's have them in, please.

9 (Whereupon, the jury enters the courtroom at 3:30 PM.)

10 **BAILIFF:** Who was the last person chosen?

11 **THE COURT:** Who is the alternate is what he's asking?

12 **JUROR:** (Raises hand.)

13 **BAILIFF:** Ma'am, if you'd have --

14 **THE COURT:** You've got assigned seating, ma'am.

15 **JUROR:** Right here?

16 **THE COURT:** That's your -- that's your assigned seat,
17 yes, ma'am.

18 All right. Ladies and gentlemen of the jury, welcome
19 back. I -- I know that you were here at 2:30 and we had to
20 put you in the family court conference area. I am sorry
21 for that. The first case that we selected a jury on, they
22 deliberated until about 2:15 or 2:20. And it had been my
23 intention to address some pretrial matters on this case,
24 but because we were having to deal with that jury and the
25 first case up for trial, that's why we're late getting you

1 in here and that's why we're late with resuming this. So
2 you've been back there an hour. I'm sorry. It's just
3 logistics haven't been favoring me this week. I try to
4 minimize inconvenience to jurors because I know that none
5 of you are really wanting to be here today.

6 The first order of business before we begin the case,
7 I need to appoint a foreperson. And, Mr. Pinson, Julius
8 Pinson, if it's okay with you, I'd like to appoint you as
9 foreperson of the jury if that's all right?

10 **FOREPERSON:** Yes.

11 **THE COURT:** Okay. I'll tell you, Mr. Pinson, your
12 vote, of course, counts no more, no less than any other
13 juror's vote. You're basically first among equals. Your
14 primary job is to make sure everybody has a chance to have
15 their fair say once the jury starts deliberating and, if
16 need be, you would be the jury spokesperson here in court,
17 okay?

18 So what we'll do is when we take a break and you come
19 back in, I'll ask that you have a seat in this chair that's
20 closest to Mr. Willingham, the one that the gentleman in
21 the garnet or red shirt is in. The rest of you can feel
22 free to sit wherever you choose to sit. The first row is
23 generally better for being able to hear the testimony, so
24 if it comes to your attention that someone's having trouble
25 hearing, maybe let them have a seat on the first row and

1 they might be able to hear a little bit better.

2 If at any point during the trial anyone does have
3 difficulty hearing or you need a break for any reason, just
4 raise your hand. I'll either ask the lawyers to speak up
5 or talk -- the witness to talk a little bit more loudly,
6 okay?

7 Now, ladies and gentlemen, we're about to begin the
8 trial of the case of the State of South Carolina versus
9 Jerry Jerome Andrews. And before we begin the trial, I
10 want to let you know that this case is probably -- or this
11 trial is gonna be a little bit different from what you've
12 come to expect from seeing trials depicted on TV or in
13 the movies or reading about them in books. And from what
14 we see in popular culture, we all can get the impression
15 that trials are filled with intense drama and riveting
16 circumstances, and certainly sometimes that's the case.
17 More often than not though, trials take a little bit longer
18 than the hour on TV or two hours depicted in the movies.

19 I do realize that your being here is an inconvenience
20 to you. I want to thank you for your willingness to be
21 drafted, so to speak, and to come in here and serve on this
22 jury. Without your assistance this dispute between the
23 State of South Carolina and Mr. Andrews simply would not
24 get resolved. I don't anticipate that this is gonna be a
25 terribly protract -- protracted trial. I do think that

1 you'll have this case sometime hopefully tomorrow morning
2 for your deliberations, but I did want to thank you at the
3 get-go for your willingness to be here, for your patience
4 in dealing with us this week, and for the attention that
5 you're gonna give going forward.

6 So with that I'm gonna ask that you stand where you
7 are and raise your right hand so that the Clerk of Court
8 can administer your oath to you, please.

9 (Whereupon, the jurors were duly sworn by the Clerk of
10 Court.)

11 **THE COURT:** All right. Thank you. You can have a
12 seat.

13 Now, ladies and gentlemen, what I now say to you is
14 intended to serve as an introduction to the trial of this
15 case and these remarks are not an instruction on the law.
16 I'll instruct you on the law before you retire to
17 deliberate your verdict. Again, this is just an overview
18 of the process that we're gonna use going forward so that
19 you can better understand what is happening.

20 Now the Defendant in this case, ladies and gentlemen,
21 Mr. Andrews, is charged with four offenses. Those offenses
22 are possession of a pistol after being convicted of a
23 violent crime, carrying a pistol unlawfully, resisting
24 arrest, and possession of marijuana. I'll explain the
25 elements or what those charges are about to you at a later

1 point in time before you retire to deliberate your verdict.

2 I instruct you, ladies and gentlemen, that an
3 indictment is merely the means by which a charge is brought
4 into the court and these indictments are not in any sense
5 of the word evidence of any of the allegations contained
6 in these indictments. The Defendant in this case,
7 Mr. Andrews, has pled not guilty to these indictments and
8 that plea puts the burden of proof on the State to prove
9 his guilt beyond a reasonable doubt. It will be up to you,
10 ladies and gentlemen, to determine whether the State has
11 met that burden.

12 Your purpose as jurors is to find and determine the
13 facts in this case. You're the sole judge of the facts.
14 So if at any time I make any comment concerning the facts,
15 you have to disregard that comment. You'll determine the
16 facts from the testimony that you hear and the other
17 evidence which is introduced into the record. It's up to
18 you to determine the inferences which you feel can properly
19 be drawn from the evidence presented.

20 Now, ladies and gentlemen, it's especially important
21 that you perform your duty of determining the facts
22 diligently and conscientiously because ordinarily there is
23 no way to correct an erroneous determination of facts by a
24 trial jury.

25 Now, ladies and gentlemen, while you all are the

1 judges of the facts, the Court, of course, is the judge of
2 the law. The law as given by the Court is the only law
3 that you can consider and you'll have to accept it and
4 apply it even though you may disagree with it. Again, the
5 law doesn't let me tell you what the facts are and you're
6 not permitted to disagree with me about what the law is or
7 what the law ought to be. Your job will be to take the law
8 as I give it to you, apply it to the facts as you find them
9 to be and, thus, render a verdict under your solemn oath
10 that you have just taken.

11 Now until I advise you to begin your deliberations,
12 please don't talk about this case with anyone; not friends,
13 family members, not even your fellow jurors, okay? The
14 attorneys and the parties in this case have been told that
15 they're to have no contact with you while the case is going
16 on. So please understand if you happen to see one of the
17 lawyers or one of the individuals involved with this case
18 coming or going from the courthouse and they don't even say
19 "hello" to you, folks, they're not being rude. They're
20 just following my instruction to have nothing to do with
21 you while the case is going on. The reason for this
22 is self-apparent. If the other side saw you having a
23 conversation with the other side, then they might think
24 that that's an effort at jury tampering, so the easiest
25 way to keep that kind of an issue from arising is just to

1 say jurors are off limits while the case is going on.

2 Now, ladies and gentlemen, I don't think there's gonna
3 be any media coverage in the trial, but obviously, as I
4 said the other day, don't read anything that might be in
5 the paper, don't do any sort of Google search or perform
6 any sort of on-line search about the allegations involved
7 in this case. I assure you that you will get the
8 information that you need to render a verdict from the
9 evidence presented, and that evidence will be much more
10 trustworthy than anything that you would find on-line or
11 in popular -- or on -- on the media.

12 Now, ladies and gentlemen, it will be important that
13 you keep an open mind. Don't decide any fact in this case
14 until all the evidence has been present, you've heard the
15 argument of counsel, and you've received my instruction
16 on the law. It will be your solemn responsibility to
17 determine the guilt or the innocence of the Defendant
18 and your verdict must be based solely upon the evidence
19 presented in court.

20 Now in a moment, ladies and gentlemen, the Solicitor,
21 Mr. Moroney, will make what's known as his opening
22 statement in which he'll tell you what he believes the
23 issues are in this case. Mr. Adducci, for the Defendant,
24 will also have an opportunity to make an opening statement,
25 although he's not required to do so. Of course, what the

1 lawyers say during their opening is not evidence. It's
2 merely their contention as to what will be proven or not
3 proven because the evidence in this case will come from the
4 testimony of sworn witnesses, as well as any exhibits
5 introduced into evidence.

6 Now periodically throughout the trial, ladies and
7 gentlemen, it's normal for one of the lawyers to say
8 something like, "Judge, we have a matter of law that we
9 need to take up with you" or "Judge, can we take we take
10 up an issue of law?", and during those times it might be
11 necessary for me to ask you to leave the courtroom while I
12 discuss with the attorneys some issue of law out here on
13 the record with my court reporter. The reason that I'm
14 asking you to leave the courtroom is that often in ruling
15 on an issue of law it's necessary for me to make a comment
16 about what evidence has been presented, what facts have
17 been presented. Because you are the sole judges of the
18 facts, I have you leave the courtroom so that I can be sure
19 that anything that I say about the facts has no influence
20 or no bearing on what you ultimately find those facts to
21 be, okay?

22 During those breaks, please don't speculate as to what
23 I might be saying out here because, again, you're the sole
24 judges of the facts. What I think about the facts is
25 irrelevant.

1 Now, ladies and gentlemen, in determining what the
2 true facts of this case are, you have to decide -- or you
3 must decide whether or not the testimony of witnesses is
4 believable or not. It will be my responsibility to rule
5 as a matter of law as to whether certain testimony is
6 admitted, but once -- once it is admitted whether or not
7 you believe it is solely for you to determine. Now in
8 deciding whether to believe a witness, you have the right
9 to consider the interest of any witness, the bias of any
10 witness, the prejudice of any witness, the opportunity for
11 the witness to have seen the matters and things about which
12 the witness has testified, and the way the witness acts on
13 the witness stand.

14 You have the right to consider anything that's in
15 the record in this case that will help you evaluate the
16 testimony of the witnesses. That means it's your duty to
17 pay close attention to them, listen to them, absorb them,
18 and pay close attention to the attorneys and the Court.
19 Try and keep your thoughts from wandering so that at the
20 end of the trial after the argument of counsel and my
21 instruction on the law you'll be in as best a position
22 possible to render a verdict under the oath that you have
23 just taken.

24 Now in order to preserve everyone's rights, I'll give
25 the lawyers an opportunity to object to anything that I

1 have said to you during these opening remarks and then
2 we'll proceed with the trial, okay?

3 Any objections from the State, Mr. Moroney?

4 **MR. MORONEY:** No, Your Honor.

5 **THE COURT:** Mr. Adducci?

6 **MR. ADDUCCI:** None from the defense, Your Honor.

7 **THE COURT:** Very good. We'll now begin the trial.

8 Mr. Moroney, you're recognized -- or I'm sorry. All
9 right, Mr. Andrews.

10 Mr. Andrews, you are recognized, sir, for your opening
11 statement.

12 **MR. ANDREWS:** Thank you, Your Honor.

13 Good afternoon, ladies and gentlemen of the jury.

14 Just to get all this confusion out of the way, my last name
15 is Andrews and the Defendant in this case is Mr. Andrews.

16 Mr. Moroney is going to be the lead prosecutor for the
17 State. I'm just assisting him and this will likely be the
18 last time you'll hear from me, but I just wanted to make
19 sure I get that out of the way because throughout this
20 trial I'll be hearing the judge say "Mr. Andrews" and I
21 don't want to stand up every time I hear it, so that's why
22 I'm doing that in case you happen to see me flinch over
23 there.

24 Now on June 30th of 2012, Steve Osborne was an officer
25 with the Lander University Police Department. It was about

1 2:15 in the morning and he was on patrol and he saw three
2 guys walking down Willson Road. Willson Road is right
3 around Lander University. Again, it's about 2:15 in the
4 morning. They seem to be wearing dark clothes. Officer
5 Osborne turns around and then notices that these guys are
6 no longer on the sidewalk, they're in the road, and there's
7 not three, there's two. Also, they're in the road and
8 they're just over the crest of a hill, they're on the same
9 side of the road as oncoming traffic. So, in other words,
10 if a vehicle came over that hill, the driver of that
11 vehicle would only have fractions of a second to be able
12 to try to dodge these guys before that driver was right on
13 top of them.

14 Given this set of circumstances, this aroused Officer
15 Osborne's suspicions and he activated his blue lights. The
16 two guys he came in contact with were Shantavius Johnson
17 and the Defendant in this case, Mr. Jerry Andrews. Just
18 before he gets out of his car to talk with these guys, he
19 notices that Mr. Johnson throws what appears to be a beer
20 can onto the ground. Two other officers appear in the
21 case; Officer Link and Officer Peppers. They have a
22 discussion with these guys to try to find out what's going
23 on. Things aren't getting too heated, things are polite,
24 but, again, the officers are just trying to investigate the
25 situation, they're just trying to find out what's going on.

1 During the course of this encounter, the officers
2 realize that Mr. Johnson, Shantavius Johnson, has an active
3 arrest warrant for a felony offense. Officer Osborne
4 attempts to place Mr. Johnson into custody, under arrest.
5 He's successfully placed under arrest and then Officer
6 Osborne turns to Mr. Andrews and asks, "Hey, do you mind
7 if I pat you down?" Mr. Andrews says "No" or gives some
8 kind of negative response as though no, you can't do it.
9 Officer Osborne, who was really just trying to be polite,
10 wasn't really asking for any kind of consent, says, "Well,
11 I'm gonna have to do it anyway". There's kind of a
12 struggle. Mr. Andrews appears to be trying to go into the
13 waistband of his pants. The three officers hear what
14 sounds like a metallic clank on the ground. Mr. Andrews
15 runs away. Officers Link and Peppers pursue. Eventually
16 they catch up to Mr. Andrews, they arrest Mr. Andrews.
17 During the course of the arrest, Mr. Andrews resists. At
18 some point he tries to reach into his pocket. As he's
19 reaching into his pocket, he kind of fishes out a small
20 amount of marijuana. Officers later recover the gun that
21 was where Mr. Andrews was standing. It was a nine
22 millimeter pistol. I apologize, it was a .380.

23 Ladies and gentlemen, those are basically the facts
24 of this case. Or at least these are what we, the State,
25 believes the evidence is gonna show you in this case. Now

1 as the judge instructed you, you are the judge of the
2 facts. So ultimately what happened is gonna be up to you.
3 You're gonna be the ones who decide what happened in this
4 case.

5 Now the judge touched on this. He -- he mentioned
6 this to you, and I think it's very important. Most of you
7 have probably never had an encounter like this with the
8 criminal justice system. This is not television. This is
9 real life. And it won't necessarily be the high drama or
10 the -- the "oh, my gosh" kind of revelations that you see
11 on television, but this is crucially important. In that
12 way, it is even really more dramatic than anything you'll
13 ever see because there are -- there are critical things at
14 stake for both sides in this case. I mean, this courtroom
15 is a sacred place. The caption in the indictments on this
16 case is the State versus Jerry Andrews. This is where the
17 State comes to handle disputes with its citizens, so this
18 place is way above over any fictional thing you might ever
19 see, so keep that in mind as this trial progresses. Please
20 pay very close attention to the evidence coming out of the
21 witness stand and any exhibits that may be before you.

22 Now at the end of this case the judge is gonna charge
23 you on the law and I'm not gonna get into the nuts and
24 bolts of the actual offenses, but I am gonna tell you about
25 one specific part of the law. Now I've been doing this a

1 little while and, you know, obviously I place a lot of
2 faith in our criminal justice system and when we brag about
3 our criminal justice system really what we're bragging
4 about is the fact that the prosecution has such a high
5 burden in these cases, and it is a burden that the State
6 gracefully accepts and that we are honored to accept this
7 high burden, and that burden is that the State must prove
8 every element of every offense beyond a reasonable doubt.

9 Now what does that mean? The judge is gonna charge
10 you on what it means to be convinced beyond a reasonable
11 doubt. To be convinced beyond a reasonable doubt means
12 that you are firmly convinced of a thing. You might ask,
13 "Well, what is -- what is a reasonable doubt?" A
14 reasonable doubt is a doubt that would make a reasonable
15 persons hesitate to act. Now don't focus -- don't try to
16 break that sentence down. Don't focus on the word
17 hesitate. I don't want you to think that hesitating to
18 act means that something's got to be reflexive and
19 voluntary; that as soon as you hear something, you make
20 a determination. No, not at all. You've got to consider
21 and weigh the evidence. I like to think of reasonable
22 doubt as being stopped at an intersection. If you see a
23 green light, you can go, but you also look both ways just
24 to be safe. You're just making sure, you're weighing all
25 the evidence. It doesn't mean that just because you

1 stopped to consider the evidence that there's some
2 hesitancy to act or that you haven't been convinced beyond
3 a reasonable doubt.

4 Now at the end of this case, after the judge has --
5 has given you the charge on the law and you've had a chance
6 to consider all the facts and the evidence, you will be
7 convinced beyond a reasonable doubt that the Defendant in
8 this case, Jerry Andrews, is guilty on all counts.

9 Thank you.

10 **THE COURT:** Thank you, Mr. Andrews.

11 Mr. Adducci, you are recognized, sir.

12 **MR. ADDUCCI:** Thank you, Your Honor.

13 Good afternoon. My name's Thomas Adducci. I know
14 we got introduced Tuesday, a couple of days ago. I -- I
15 represent Mr. Andrews. Not that Mr. Andrews; the Defendant
16 Mr. Andrews who's standing right next to me. He's pled
17 not guilty and as the prosecutor indicated earlier, the
18 burden's on the State to prove its case beyond a reasonable
19 doubt, okay? That's what we need to keep in mind.

20 Now let's go back to that day. Mr. Andrews and
21 Mr. Johnson are walking down the street. It's late at
22 night, it's dark. Okay. Lander Police are driving by and
23 they say, "They look suspicious". Why? We don't know.
24 Just look suspicious. They turn around. They see as
25 opposed to just three people, there's now two. It's in

1 the summer near Lander University. Lander Police think
2 these folks just don't belong, so let's stop them. Let's
3 see what they're doing around here. Something must be up.

4 They stop them. Mr. Johnson's got a beer. He throws
5 the beer. Sorry, I had a beer, it's open. Mr. Andrews
6 doesn't have a beer. He stops. They have their encounter.
7 They're just chatting with each other; where you going,
8 where you coming from? Why are you out? Going to a
9 friend's house, going to my girlfriend's house. I was
10 just over there, headed back. They do a warrant check and
11 find out that Mr. Johnson has a warrant out for his arrest.
12 Mr. Andrews doesn't. Mr. Andrews doesn't. The police then
13 arrest Mr. Johnson. They then ask Mr. Andrews if they can
14 search him. He says, "No. No thank you. I'm okay". They
15 say, "Well, that's not your choice. We're gonna search
16 you".

17 At that point some sort of struggle ensues.
18 Mr. Andrews tries to run off, he trips, falls down. The
19 police get on top of him. They are going to testify he's
20 on his stomach, the police have got their knee in his back.
21 Get your arm out from underneath you, get your arm out
22 from underneath you. They eventually get his arm out
23 from underneath him, handcuffs him, takes him off. At
24 some point during all this mayhem police said they heard a
25 clank. Later on they come back and they looked and there's

1 a gun. Shantavius Johnson is going to come here today or
2 tomorrow if we don't get to him today. He's gonna say that
3 gun came of my waistband. He's going to testify that he
4 had two guns on him and that while he was handcuffed one
5 came out of his pant pocket and sort of -- he tried to kind
6 of kick it away from him trying to get it away from him,
7 and that's the clank that the police heard.

8 And that's the case. Remember, the burden is on the
9 State and I'm gonna come back to you in closing arguments
10 and the facts are up to you. You determine the facts. Now
11 please pay attention, listen to what people say, listen to
12 the questions, listen to their answers. You are the judge
13 of credibility. You determine what happened that night.

14 I appreciate your time. Thank you very much.

15 **THE COURT:** Thank you, Mr. Adducci.

16 All right. Solicitor, if you'll call your first
17 witness, please, sir.

18 **MR. MORONEY:** Yes, Your Honor. The State calls Steve
19 Osborne.

20 **THE COURT:** I think he's in the back. Can you have
21 someone go get him, please.

22 STEVEN OSBORNE,

23 having been duly sworn, testified as follows:

24 DIRECT EXAMINATION

25 BY MR. MORONEY:

1 Q. Good afternoon. Could you, please, state your name.

2 A. My name is Steve Osborne.

3 Q. And where are you employed, Mr. Osborne?

4 A. I currently am employed by the McCormick County
5 Sheriff's Department.

6 Q. How long have you been employed at the McCormick
7 County Sheriff's Department?

8 A. This is my third week.

9 Q. And where did you work before that?

10 A. I was employed by the Lander University Police
11 Department.

12 Q. And how long were you employed there?

13 A. Almost five years.

14 Q. What kind of certifications did you have while
15 employed at the Lander University Police Department?

16 A. I've been certified through the Criminal Justice
17 Academy since in 1983. I have a Class 1 certification.

18 Q. And what were your various assignments while working
19 there?

20 A. At Lander University I was a general police officer
21 conducting mainly patrol duties, protecting the campus,
22 policing the campus.

23 Q. Mr. Osborne, were you working with Lander University
24 Police Department back on the night of June 30, 2012?

25 A. Yes, sir.

1 Q. And did you become involved in the investigation of a
2 gun possession case that night?

3 A. I did.

4 Q. Where was the specific location of that investigation?

5 A. It was on Willson Street near our Human Resources
6 building.

7 Q. And is that in the city of Greenwood, South Carolina?

8 A. Yes, sir.

9 Q. How did your investigation begin that night?

10 A. I was on routine patrol of the campus. During that
11 time of year, it's -- summer school is the only school in
12 session and there's very few students that actually live
13 on campus, usually less than thirty or so, and they live
14 at Lide Apartments, which is at the bottom of the hill at
15 Willson Street. So we patrol campus, monitor the -- the
16 properties, the buildings. Lander has property on
17 Montague at the sports complex, they have a large set of
18 dormitories on the other side of Montague, off McGee Court
19 they have some duplex apartments, and all the way over
20 towards Grace Street they have a large dormitory, so we're
21 spread out. So I spent a good bit of my time during that
22 time of year patrolling the properties and checking on the
23 residence halls and the buildings.

24 Q. And how did your investigation of the gun possession
25 case commence that night?

1 A. I was on routine patrol of that area and was coming
2 down Willson Street, I believe, and I saw three gentlemen
3 walking down the street towards campus. I went all the way
4 down to the hill and patrolled Lide Apartments where our
5 summer school students are living at that time. I came
6 out of there and came back up the hill and this time I only
7 saw two students -- or two young men and they were in the
8 roadway. They were actually in the southbound lane of
9 Willson Street. So if you're familiar with Willson Street,
10 it sort of angles off of Montague behind the Dixie Drive-In
11 and they were in the right side lane heading towards
12 campus, but there were only two of them this time.

13 So -- and I -- I didn't see the other gentlemen, so I
14 was sort of suspicious about where the third fellow went
15 and I looked around because our -- we have one set of
16 dormitories at the top of the hill, it's University Place
17 Apartments, and no one's living there at that time of
18 year, so I knew no one was supposed to be there and I was
19 familiar with the other residences in that area, so I was
20 a little suspicious about where the third gentleman was and
21 I was concerned that these gentlemen were walking in the
22 roadway when there was a sidewalk across -- on the side of
23 the street, but they weren't on the sidewalk, they were
24 walking in the roadway. And they were sort of in a
25 precarious position. They were coming over the crest of

1 the hill, so any oncoming vehicle coming over the hill
2 would have probably ran into them both if they saw them.

3 So based upon those concerns, I called my supervisor,
4 who was on patrol nearby with a fellow corporal, Corporal
5 Link and Lieutenant Peppers, and told them that I was gonna
6 get out with these gentlemen and speak with them. And
7 they were close by, so I pulled up behind the gentlemen,
8 initiated my blue lights, and started to get out of the
9 car. As I did, one of the gentleman that -- identified
10 later as Mr. Johnson, had a silver colored can in his hand,
11 and when he turned to look at me and realized that I was
12 a police officer or whatever, he tossed the can over onto
13 the shoulder of the road. And about that time Lieutenant
14 Peppers and Corporal Link arrived with me and got out with
15 me.. And I got out to speak with the gentlemen.

16 Q. And from your training and experience, is it legal in
17 the city of Greenwood to carry an open container of alcohol
18 in public?

19 A. No, sir. I later determined that it was -- when I
20 got up close, I could see that it was a can of beer, and at
21 first Mr. Johnson denied that it was his beer, but as -- as
22 I spoke with him he -- he admitted that it was his beer.
23 And, no, there's a city ordinance that prohibits unlawful
24 open beer containers in public.

25 Q. And is it also legal to litter?

1 A. And it's also unlawful to litter on City property. Or
2 State property for that matter.

3 Q. Mr. Osborne, did you learn the names of both men you
4 were speaking with that night?

5 A. Yes. As a routine when I -- when I stop somebody
6 to speak with them, I ask for their ID, and both of the
7 gentlemen provided me with a state driver's license. I
8 believe it was a driver's license and not an ID, but it
9 was a state ID and I think it was a driver's license and
10 identified one as -- I can't remember his first name. His
11 last name was Johnson. And the other one was Mr. Andrews,
12 Jerry Andrews.

13 Q. Was there anything unusual about Mr. Johnson's
14 demeanor, the individual with the silver can?

15 A. All -- when I first stopped the three gentlemen, they
16 were all dressed in dark clothing. I -- when I got out to
17 speak with them, I detected an odor of alcohol about both
18 gentlemen, and I knew Mr. Johnson had a beer in his hand
19 at one time. And Mr. Johnson, first of all, when I was
20 speaking with him, he started -- bent over and started
21 tying his shoe. It took him a long time to tie his shoe.
22 Mr. Andrews started rubbing his hands for -- constantly,
23 just kept rubbing his hands, and he was a little agitated
24 when I first got out with him, and he kept going into --
25 into his pocket and we told him not to go into his pocket

1 just for our safety, just keep his hands where we could see
2 them, and he said he -- he pulled out a cell phone and he
3 wanted to know if he could call his mom. And I remember
4 Lieutenant Peppers told him, "No, you can't call your mom
5 right now".

6 And so it just -- all of those things together,
7 tossing the beer can, the smell of alcohol on the person,
8 walking in the middle of the road instead of -- or on the
9 right side of the road in the lane of traffic, not knowing
10 where the third gentleman was -- and I asked them where the
11 third gentlemen was and they said that he turned off near
12 Ellison and Willson across the street to go to his family's
13 house.

14 Well, I'm familiar with the people that live there and
15 they're employees of Lander and they're Caucasian families
16 and this gentlemen was an African-American, so I didn't --
17 I'd never seen anybody there before. And, like I said, I'm
18 familiar with those families, so I was concerned about what
19 they were doing in that area.

20 Q. So based upon your training and experience, it had
21 raised your suspicions based on their demeanor and the
22 answers to questions?

23 A. Yes, sir. And plus it was after 2:00 in the morning.

24 Q. Did you conduct a records or warrants check with
25 Mr. Johnson and Mr. Andrews?

1 A. I did. Based on their information on their driver's
2 license. Like I said, that's routine. Anytime we stop
3 anyone and ask for their ID, we run it to make sure that
4 everything's clear, that they're not wanted by any law
5 enforcement agency. They wasn't driving a vehicle, so I
6 didn't need to check their -- you know, their status as
7 drivers, so I did check that through our dispatch.

8 Q. And what was the result of that records check?

9 A. Our dispatcher radioed me and asked me to give him a
10 telephone call, which is usually a sign that something's
11 amiss. So I stepped away from the gentlemen and my two
12 fellow officers so they could not hear my conversation
13 with my dispatcher and my dispatcher advised me that
14 Mr. Andrews was not wanted, his record had come back clear,
15 but Mr. Johnson was wanted for attempted murder by the --

16 **MR. ADDUCCI:** Objection, relevance.

17 **THE COURT:** All right. Overruled. It would go
18 to this officer's perception of the events and any
19 apprehension he might feel and perhaps explain what he
20 did next.

21 Go ahead.

22 A. So my dispatcher advised -- advised me that
23 Mr. Johnson was wanted for the crime of attempted murder
24 by the Greenwood City Police Department and that he had
25 already notified the Greenwood City Police Department of --

1 that we were out with this gentleman. So after I got off
2 the phone with him -- I'm sure my fellow officers because
3 of prior experience know when you get a phone call like
4 that something's probably up -- so I turned, walked back
5 to where the men were as nonchalantly as possible, set my
6 equipment down, my radio and my notepad, on the pavement
7 and walked up to Mr. Johnson and I made eye contact with
8 Lieutenant Peppers so we had visual confirmation of what
9 I was getting ready to do.

10 And I know it's hard to understand, but when you've
11 been doing it as many years, you know, we can read what's
12 going through each other's mind sort of. So I placed my
13 hands on Mr. Johnson's right arm as Lieutenant Peppers did
14 so on this left side and I advised him that he was under
15 arrest.

16 Q. And was there an officer safety reason that you chose
17 to tell him he was being placed under arrest for an open
18 container violation instead of telling him he was wanted
19 for attempted murder?

20 A. Yes. I didn't want to alarm him to what I knew. I
21 didn't know the -- the facts of the attempted murder
22 allegation, but usually those involve weapons and --

23 **MR. ADDUCCI:** Objection; legalese.

24 **THE COURT:** All right. Sustained, but you can -- that
25 part's sustained, and it's struck, but you can continue

1 that you didn't want to alert him.

2 A. I didn't want to alert him and I wanted to maintain
3 safety, so I didn't want to alarm him to the -- to the real
4 reason that I was handcuffing him, even though I'd had
5 every right at that time to arrest him for an open
6 container of beer, and he was charged and arrested for
7 that as well.

8 Q. And what happened next?

9 A. Mr. Johnson was very compliant. I explained to him
10 that he was under arrest and he said, "Why?", and I said,
11 "Well, for right now you're under arrest for the -- the
12 offense of open container of beer", and he said, "I'm
13 sorry". He didn't offer any resistance or anything, put
14 his hands behind his back, and we handcuffed him,
15 double-locked and checked them, and everything was fine.

16 At that point because of my concerns for our safety,
17 I asked Mr. Andrews if he would mind if we patted down his
18 exterior clothing to make sure he didn't have any weapons,
19 and he refused. He said, "No, you can't". Or "No, I'm not
20 gonna let you", or something like it, "No, you can't", or
21 something, and I said, "Well, we're gonna have to anyway".
22 And I said, "Son, do you have any weapons on you?", and he
23 said, "No, I don't". At this time, I had Mr. Johnson by
24 the handcuffs -- between the handcuffs with my left hand
25 and Mr. Johnson -- I mean, Mr. Andrews is on my right and

1 Mr. Johnson's right here, Lieutenant Peppers is on the
2 other side of Mr. Johnson, and Corporal Link is behind
3 Mr. Andrews.

4 So Corporal Link comes up to Mr. Andrews because he's
5 getting a little agitated because we want to make sure
6 he's not got weapons, we were just gonna pat down his
7 outer clothing, and when Corporal Link comes up to him
8 Mr. Andrews uses his hands and tries to go into his --
9 either his waistband or his pockets, I -- I can't tell you
10 because I couldn't see what he was doing. We kept shouting
11 at him to keep his hands up where we could see them, keep
12 his hands up, and he still kept going into his waistband or
13 pockets.

14 So I still had Mr. Johnson. I reached over and
15 grabbed Mr. Andrews by the wrist to try to keep him from
16 getting to whatever he was going for, and this lasted for
17 a couple of seconds, three seconds maybe, and then I
18 heard a clank on the pavement and I looked down and
19 there's a silver colored pistol laying at our feet and
20 then Mr. Andrews breaks away, sort of turns in a
21 counterclockwise motion, jerks away from myself and
22 Corporal Link, and runs towards the sidewalk.

23 And there's a steep embankment where the sidewalk is
24 and he stumbled or fell or intentionally rolled over or
25 something right at the sidewalk and rolled over the

1 embankment. Corporal Link immediately went after him.
2 Lieutenant Peppers followed him because I -- he saw that
3 I had Mr. Johnson secured and they followed Mr. Andrews
4 over the edge of the embankment. And I lost sight of
5 them because it's steep. It's not straight down, but
6 it's pretty steep, and it's maybe twenty feet down.

7 Q. And can you describe what you do did while you had
8 Mr. Johnson secured and you were observing this transpire?

9 A. The weapon was still laying on the pavement. I had
10 Mr. Johnson handcuffed and he's compliant. He gave us no
11 problems whatsoever. So I back him away from the weapon
12 and I asked him to get on his knees, which he complied. I
13 tried to put him in as -- because I'm there with him by
14 myself, I tried to put him in as awkward a position as he
15 could be in, and he was very compliant, and I backed him
16 away and I said, "Son, do you have a weapon on you?", and
17 he said, "Yes, sir". I said, "Well, just tell me where
18 it is", and he told me it was in the left side of his
19 waistband I believe he told me. So I maintained control
20 of him, removed the weapon, placed it on the pavement and
21 then moved him back away from both weapons and about this
22 time I think Lieutenant Peppers come back over the hill and
23 they had apprehended Mr. Andrews and were bringing him back
24 up the hill.

25 Q. And, Mr. Osborne, were you able to take control of

1 that weapon and enter it into evidence that evening?

2 A. I did. We collected all the evidence that we had
3 obtained during that incident, placed them in my patrol
4 car. I took them back to the -- our office. They were
5 logged in and secured in a locker according to policy.

6 Q. And was the gun loaded that night?

7 A. The gun was loaded, the magazine was loaded, but there
8 was not a round in the chamber. Mr. Johnson's gun was
9 loaded fully and had one round in the chamber.

10 Q. Okay.

11 A. Mr. Andrews' magazine was full, but not one in the
12 chamber.

13 MR. MORONEY: Your Honor, may I approach?

14 THE COURT: Please.

15 BY MR. MORONEY:

16 Q. Officer Osborne, I'm showing you State's Exhibit
17 marked Number 2 for identification and ask you to examine
18 it. Have you seen it before?

19 A. Yes, sir.

20 Q. And when was the first time you saw this exhibit?

21 A. I believe this is the weapon that was laying on the
22 pavement. When I was tussling with Mr. Andrews and I heard
23 something fall and looked down, this is the weapon that was
24 laying except the magazine was inside the weapon and it was
25 not locked back.

1 Q. And how are you able to recognize that as the same
2 handgun?

3 A. Well, the brand, and if I could look at my notes, I
4 could match the serial numbers to give you an exact.

5 Q. Okay. And is that, State's Exhibit Number 2 for
6 identification, in the same or substantially the same
7 condition as it was on the night of June 30, 2012?

8 A. Yes, sir, other than when we found it the magazine
9 clip was inside the weapon. The lock, of course, wasn't
10 on it.

11 **MR. MORONEY:** Your Honor, at this time I'd ask that
12 State's Exhibit Number 2 for identification be admitted
13 into evidence.

14 **MR. ADDUCCI:** We would object on our previously stated
15 grounds, Your Honor.

16 **THE COURT:** All right. Based upon the previously
17 stated grounds, those are noted, the objection is
18 overruled. Obviously the firearm does not have bullet in
19 it and the clip is empty, correct?

20 **MR. MORONEY:** Yes, sir.

21 **THE COURT:** All right. The -- the firearm has been
22 rendered safe as y'all can see from the trigger lock in
23 there, so you do not have to concern yourself about a
24 firearm being in the courtroom with any live ammo in it,
25 okay?

1 Go ahead.

2 (State's Exhibit Number 2, a handgun, was admitted
3 into evidence.)

4 BY MR. MORONEY:

5 Q. And, Officer Osborne, I hand you what's marked as
6 State's Exhibit Number 4, and ask you to examine it. Have
7 you seen the contents of that envelope before?

8 A. Yes, sir. This appears to be the ammunition that was
9 inside the firearm.

10 Q. Is it substantially in the same condition as it was
11 the night of June 30, 2012?

12 A. Yes, sir.

13 **MR. MORONEY:** Your Honor, at this time I'd ask that
14 State's Exhibit Number 4 for identification be admitted
15 into evidence.

16 **THE COURT:** Subject to the earlier ruling on the
17 objection of defense, it is in evidence.

18 **MR. MORONEY:** Thank you, Your Honor.

19 (State's Exhibit Number 4, ammunition, was admitted
20 into evidence.)

21 BY MR. MORONEY:

22 Q. Officer Osborne, did you receive custody of any
23 additional recovered evidence that night?

24 A. Yes, sir, there was a small amount of marijuana --

25 **MR. ADDUCCI:** Objection; assumes -- he doesn't have

1 the ability to state what the substance is.

2 **THE COURT:** All right.

3 **MR. ADDUCCI:** That's a fact not in evidence, Your
4 Honor.

5 **THE COURT:** Okay.

6 **THE WITNESS:** Green leafy material.

7 **THE COURT:** That's a fair description then at this
8 point in time. Go ahead.

9 A. A small amount of green leaf was found on both
10 individuals.

11 Q. After the foot pursuit had taken place, did Officer
12 Peppers provide you with any evidence that was recovered
13 from Mr. Andrews?

14 A. Yes, sir, the -- that small amount of green leafy
15 material was found by Officer --

16 **MR. ADDUCCI:** Objection, Your Honor. That is not for
17 him to offer. He has no knowledge.

18 **THE COURT:** All right. That will all come in through
19 a different witness. That's fine.

20 **THE WITNESS:** Okay.

21 **THE COURT:** Sustained.

22 BY MR. MORONEY:

23 Q. Officer Osborne, I'm showing you what's been premarked
24 as State's Exhibit Number 3 for identification.

25 A. Yes, sir. This is --

1 Q. Do you recognize that?

2 A. Yes, sir. This is the small amount of green leafy
3 material that I logged into evidence that was provided to
4 me by either -- well, Lieutenant Peppers and Corporal Link.

5 Q. And based on the procedure that night, how do you know
6 that to be the same marijuana that was entered in evidence?

7 A. I --

8 **MR. ADDUCCI:** Objection, Your Honor. The question
9 assumes a fact not in evidence.

10 **THE COURT:** All right. Overruled. This is for
11 purposes of chain. Go ahead.

12 A. I -- I recognize the packaging and the material.

13 Q. And is it in substantially the same condition as it
14 was on the night of June 30, 2012?

15 A. Yes, sir, other than the sealed plastic. It was found
16 inside the small package connected to it.

17 **MR. MORONEY:** Your Honor, at this time I'd move to
18 admit State's Exhibit Number 3 for identification into
19 evidence.

20 **THE COURT:** Subject to the earlier objection and
21 subject to the -- because I think it was a different
22 officer --

23 **MR. MORONEY:** Excuse me. Strike that. I still have
24 to establish the chain. I'll withdraw --

25 **THE COURT:** Once you establish -- yeah, once you

1 establish the final link of the chain, we're fine to do
2 that, but I'm assuming that's not gonna be a problem. Go
3 ahead.

4 **MR. MORONEY:** Yes, Your Honor. No further questions
5 for this witness.

6 **THE COURT:** Cross, Mr. Adducci?

7 **MR. ADDUCCI:** Thank you, Your Honor.

8 CROSS-EXAMINATION

9 BY MR. ADDUCCI:

10 Q. Good afternoon.

11 A. Good afternoon.

12 Q. On this evening you said it was pretty dark out,
13 right? It was 2:30 in the morning?

14 A. Close to 2:30, yes, sir.

15 Q. Are there -- are there streetlights?

16 A. There are a few on either side of the road and that
17 particular segment is pretty dark.

18 Q. So you first indicate there were three people walking
19 down the road?

20 A. Yes, sir. When I first saw the gentlemen, there were
21 three of them.

22 Q. And that aroused your suspicion, correct?

23 A. Not three. It's when I saw two and couldn't find the
24 third one.

25 Q. But you turned around after you saw the three,

1 correct?

2 A. I went to check Lide Apartments and was just coming
3 back up the hill.

4 Q. Okay. About how much time expired between the time
5 that you'd first seen the three individuals and the time
6 that you came back around and just saw the two individuals?

7 A. At most, three minutes.

8 Q. So within three minutes one of the three people had
9 left?

10 A. Yes.

11 Q. Okay. And you decided to stop these two individuals,
12 correct?

13 A. Yes, sir, when I saw them walking in the roadway.

14 Q. And you indicated it was because you didn't recognize
15 them, correct?

16 A. Right.

17 Q. Well, you just --

18 A. Part -- part of the reason.

19 Q. You just said that it was dark where they were, right?

20 A. Where they were when the final stop was made, yes,
21 sir.

22 Q. When you first saw the three individuals and you drove
23 past them --

24 A. Uh-huh.

25 Q. -- was that a dark area?

1 A. When I first saw them, there were three gentlemen.

2 Q. Uh-huh.

3 A. I didn't pay much attention. I went and made another
4 check through a property and was coming back up the hill
5 and I saw the three gentlemen, I passed them going up the
6 hill. They were travelling in the southbound lane, I was
7 going north, so I drove past them like right outside my
8 window and then I noticed that there was only two and not
9 three and I did not recognize them. I'm pretty familiar
10 with most of the students who live on campus at that
11 time --

12 Q. Okay. How many --

13 A. -- and I didn't recognize those gentlemen.

14 Q. How many students are at Lander during the summer?

15 A. During the summer during daytime or nighttime?

16 Q. How many students are enrolled at Lander during the
17 summer?

18 A. There's only about thirty -- approximately thirty
19 students that are resident students during the summer.

20 Q. How many students are enrolled at Lander during the
21 summer?

22 A. There's only thirty students who are residents that
23 -- I don't know the total number who -- who come to class
24 during the daytime.

25 Q. Do you know how many students are enrolled in summer

1 classes at Lander?

2 A. No, sir.

3 Q. Thank you.

4 A. I know about thirty students live on campus during the
5 summertime.

6 Q. Okay. Did you know every single student in 2012 who
7 was enrolled in the summer term by name?

8 A. No, sir.

9 Q. Did you know them by face?

10 A. Yes.

11 Q. You know every single one of them?

12 A. I recognize them. I see them every night; cafeteria,
13 activities, classrooms. I speak to them.

14 Q. This was dark when you saw Mr. Andrews, correct?

15 A. It was 2:00 -- about 2:00 in the morning, yes, sir.

16 Q. It was dark?

17 A. It's -- it usually is at that time.

18 Q. All right. Now you stopped these two individuals,
19 correct?

20 A. Yes, sir.

21 Q. And Mr. Johnson had a beer in his hand and he tossed
22 it off when you approached, right?

23 A. When I first saw them, I just saw a silver can and I
24 got out and he tossed it. I saw him toss it and I got out
25 and as I approached him I could see where it was and it was

- 1 a beer can.
- 2 Q. Now you had two other officers report to this stop,
3 correct?
- 4 A. Yes, sir.
- 5 Q. And while he was there Mr. Andrews said, "Hey, can I
6 call my mom?", right?
- 7 A. Yeah, into the interview.
- 8 Q. And you denied him that opportunity?
- 9 A. Lieutenant Peppers told him he couldn't call his mom
10 right now.
- 11 Q. Okay. And you asked him about where this third person
12 went, right?
- 13 A. Yes, sir.
- 14 Q. And they told you he went to Winchester Place, right?
- 15 A. No, sir.
- 16 Q. Did they tell you where he went?
- 17 A. They told me he went across the street from Felder and
18 Willson and they pointed in the direction.
- 19 Q. Is there a Winchester Place Apartments in that
20 direction?
- 21 A. I don't -- I'm not familiar. Winchester is back up
22 the hill on the opposite side of the road.
- 23 Q. Okay. But at this time Mr. Andrews was compliant, he
24 was answering your questions, correct?
- 25 A. He was -- he was a little agitated, but he calmed

1 down.

2 Q. Once you found out that Mr. Johnson had an arrest
3 warrant, you also found out that Mr. Andrews did not have
4 one, correct?

5 A. Yes, sir. He was not wanted.

6 Q. All right. And let me just try to get an idea of
7 the geometry here. If you are Mr. Johnson, how close is
8 Mr. Andrews standing?

9 **MR. ADDUCCI:** If I may approach the witness, Your
10 Honor?

11 **THE COURT:** Please.

12 A. If I'm Mr. Johnson?

13 Q. Yes.

14 A. They were side by side.

15 Q. Side by side? So --

16 A. They were walking down the right side of the lane --
17 the right-hand lane side by side.

18 Q. No. When you went to arrest Mr. Johnson, how close is
19 Mr. Andrews to him?

20 A. Can I stand up?

21 Q. Yeah, stand next to me if -- or how about I'll be
22 Mr. Johnson and you be Mr. Andrews.

23 A. (Witness steps down from the stand.) Okay. You're
24 Mr. Johnson?

25 Q. Yes, sir.

1 A. Mr. Andrews is about right here.

2 Q. Okay. And you indicated that when you arrested
3 Mr. Johnson you also -- once you saw that Mr. Andrews was
4 going to try to go, you were able to get ahold of him,
5 correct?

6 A. Yes, sir. I grabbed his left wrist.

7 Q. So they were close enough for you to have them both in
8 your hands?

9 A. Yes, sir.

10 Q. Okay. You can go back up.

11 A. (Witness retakes the stand.)

12 Q. And when Mr. Andrews left, you stayed with
13 Mr. Johnson, correct?

14 A. Yes, sir.

15 Q. And you said that you heard a clank, correct?

16 A. I heard the clank and then he turned and ran.

17 Q. Okay. And after hearing the clank and after sort of
18 the commotion, you saw that there was a gun on the ground?

19 A. I saw that there was a gun when I heard the clank.

20 Q. Okay. How far from you was the gun?

21 A. At my feet.

22 Q. Okay.

23 **MR. ADDUCCI:** I have nothing further, Your Honor.

24 **THE COURT:** Anything in redirect?

25 **MR. MORONEY:** No, Your Honor.

1 **THE COURT:** Thank you, sir. You can step down.

2 **THE WITNESS:** Thank you.

3 (Witness excused.)

4 **THE COURT:** Thank you for coming. You're free to go
5 if you wish.

6 Call your next witness. Well, I'll tell you what,
7 let's take about a five-minute break and -- and then we'll
8 keep moving forward.

9 Ladies and gentlemen, we're going to take a brief
10 five-minute break. If you need to use the restroom, please
11 feel free to do so. If anybody smokes and you need to have
12 a cigarette, just let the bailiff know and we'll get you
13 outside and make that possible for you, okay? Don't
14 discuss the case yet. I'll let you know when you can.

15 Thank you. We'll be at ease for a few minutes.

16 **BAILIFF:** Come this way, please.

17 (Whereupon, the jury retires to the jury room at
18 4:21 PM.)

19 **THE COURT:** We'll be at ease for a few moments.

20 (Recess taken.)

21 **BAILIFF:** Remain seated. Court come to order.

22 **THE COURT:** Thank you.

23 All right. We'll go back on the record. Let's have
24 the jury in, please.

25 (Whereupon, the jury returns to the courtroom at

1 4:37 PM.)

2 **THE COURT:** The record should reflect that the jury is
3 back and seated.

4 At this point, Mr. Moroney, if you'll call your next
5 witness, please.

6 **MR. MORONEY:** Yes, Your Honor.

7 The State calls -- excuse me, the State calls Jonathan
8 Link to the stand.

9 JONATHAN LINK,

10 having been duly sworn, testified as follows:

11 DIRECT EXAMINATION

12 BY MR. MORONEY:

13 Q. Good afternoon. Could you, please, state your name.

14 A. Jonathan Link.

15 Q. And where are you employed?

16 A. I'm a police officer with the City of Greenwood.

17 Q. And how long have you been employed there?

18 A. A year. One year.

19 Q. Okay. And where were you employed before that,
20 Mr. Link?

21 A. With Lander University Police Department.

22 Q. And how long did you work at Lander University Police
23 Department?

24 A. Just short of two years.

25 Q. And what various assignments did you perform at Lander

1 University?

2 A. I was assigned to the patrol division. We were
3 responsible for answering all calls for service, emergency
4 and nonemergency. We were responsible for the physical
5 security of campus, locking and unlocking the buildings on
6 a daily basis, and investigating all preliminary criminal
7 investigations.

8 Q. And did you have any law enforcement certification
9 during your time at Lander University?

10 A. I did. I graduated from the South Carolina Criminal
11 Justice Academy on January 23rd of 2009 with my basic law
12 enforcement certification.

13 Q. Officer Link, were you working with Lander University
14 Police Department back on the night of June 30, 2012?

15 A. I was, sir.

16 Q. And did you become involved with Officer Osborne's
17 investigation involving a gun possession case?

18 A. I did.

19 Q. How did you become involved in Officer Osborne's
20 investigation that night?

21 A. I was riding in the vehicle with Sergeant Peppers.
22 Officer Osborne radioed us that he had --

23 **MR. ADDUCCI:** Objection, Your Honor. Hearsay.

24 **THE COURT:** All right. Why don't you ask him if he
25 received a radio message from the officer and what he did

1 as a result of that.

2 BY MR. MORONEY:

3 Q. Officer Link, did you receive a radio message from
4 Officer Osborne that night?

5 A. I did.

6 Q. And how did you respond to that message? What was the
7 nature of that message?

8 A. He requested a -- he stated that he was getting out
9 with two subjects on Willson Street and requested back-up.

10 Q. And did you respond to that request?

11 A. I did. We approached and I parked behind his patrol
12 vehicle facing south on Willson Street towards the main
13 Lander campus.

14 Q. And what happened next?

15 A. We -- I moved around the driver's side of the vehicle
16 and we were -- Sergeant Peppers and I witnessed Officer
17 Osborne speaking with two subjects on the side of the road
18 in front of his patrol vehicle.

19 Q.. And was the location of the stop in the county of
20 Greenwood, South Carolina?

21 A. It was.

22 Q. And what did you observe during that stop next?

23 A. Two subjects were standing speaking with Officer
24 Osborne and he was trying to get basic information; name,
25 date of birth, the normal things that we'd use to identify

1 someone when we speak with them.

2 Q. Did you observe anything unusual -- well, strike that.
3 Did you learn the names of the individuals --

4 A. I did.

5 Q. -- that you were out with that night?

6 A. I did. We spoke with a Shantavius Johnson and a
7 Jerome -- Jerry Jerome Andrews.

8 Q. And was there anything unusual about Mr. Johnson's
9 demeanor that night?

10 A. He was extremely nervous, he couldn't stand still. He
11 was constantly moving around, tying his shoes, or touching
12 his face. Just things that led me to believe that he was
13 highly nervous at speaking with law enforcement.

14 Q. And with respect to Mr. Andrews, was there anything
15 unusual about his demeanor when you arrived on-scene?

16 A. He was very talkative, very chatty. He also
17 seemed somewhat nervous at the -- the contact with law
18 enforcement. He continued to rub his hands together and
19 -- and was constantly in a state of motion. He did not
20 seem like he was comfortable.

21 Q. And was a records or warrants check conducted during
22 that stop that night?

23 A. There was. We can -- we checked both subjects through
24 dispatch for warrants.

25 Q. And what was the result of that records check?

1 A. The -- Mr. Johnson, he came back with an active
2 warrant with the City for attempted murder and also, I
3 believe, possession of a weapon with -- or from the
4 commission of a violent crime.

5 Q. Now did you notice the change -- strike that. And
6 what happened next after the warrant was confirmed?

7 A. Officer Osborne radioed dispatch with both subjects'
8 information, asked for a warrant check. A couple of
9 minutes later, our dispatcher radioed Officer Osborne and
10 asked him to call the office on his cell phone as opposed
11 to using the radio.

12 Q. And what happened after that?

13 A. Officer Osborne stepped about fifteen to twenty feet
14 away from the -- the conversation with the gentlemen and
15 spoke on the phone for a couple of minutes with our
16 dispatcher. Upon returning, I saw him hang up his phone.
17 He walked directly back to the Johnson subject and advised
18 him he was under arrest and placed him in handcuffs.

19 Q. And did you notice a change in Mr. Andrews' demeanor
20 after Johnson was being placed in handcuffs?

21 A. Yes, sir. He seemed to -- he seemed to tense up. He
22 kind of straighten up a little bit. It looked like it was
23 kind of an alarming situation for him when Mr. Johnson was
24 placed in handcuffs.

25 Q. And after Mr. Johnson was placed in handcuffs, what

1 transpired next?

2 A. While Officer Osborne and Sergeant Peppers were
3 placing Mr. Johnson in handcuffs, Officer Osborne informed
4 Mr. Andrews that we needed to conduct a -- what's called
5 a Terry frisk or a pat-down of his outer clothing to
6 ensure that he did not have a weapon on him, at which
7 point Mr. Andrews stated that he did not want us to do
8 that. He was informed that we needed to based on the --
9 the situation and he began to reach for his pockets and
10 his waistband area of his pants. Myself and Sergeant
11 Peppers both instructed him multiple times to not touch
12 his waistband, not put your hand in your pockets, don't
13 put your hands in your pockets. He continued to ignore
14 our verbal commands, at which point his left hand went for
15 his pocket about a third time. I reached up and grasped
16 his left wrist in an attempt to restrain him from going
17 into his pockets for fear that he did have a weapon, and
18 at that point I heard a -- I did not see anything, but I
19 heard a metallic sound hit the pavement, and at that point
20 Mr. Andrews took off running across the street.

21 Q. And did you pursue Mr. Andrews?

22 A. I did. I was two to three steps behind him. We ran
23 across the roadway towards the sidewalk and when we reached
24 the sidewalk he was, I would say, maybe five or six feet
25 in front of me. He attempted to change direction, turned

1 towards his right side and it appeared that he lost his
2 footing on -- because there's an embankment and as he went
3 into the grass he slipped and the two of us slid down the
4 embankment. I was able to get to him. I kept telling him
5 to stay on the ground and to show me his hands. I was
6 able to get ahold of his left wrist again and place it in
7 handcuffs. He had his right arm tucked underneath his body
8 and would not give it to us after several times of being
9 told to do so.

10 Q. So is it fair to say that Mr. Andrews resisted your
11 efforts to place him into handcuffs?

12 A. He did, sir.

13 Q. And how long did he resist approximately?

14 A. Maybe ten or fifteen seconds. He was told multiple
15 times by myself and Sergeant Peppers had run behind us and
16 caught up with us. We both told him to give us his right
17 hand and finally he did pull his right hand out from
18 underneath his body at which time he, again, went for his
19 pocket, his right front pocket on his right side of his
20 pants, and I noticed that he -- he got just the front of
21 his hand in there and when we pulled his hand back out of
22 his pocket, a small object, which looked like a plastic
23 baggy, fell out onto the ground. It was immediately
24 retrieved by Sergeant Peppers.

25 Q. And did you sustain any injuries resulting from the

1 foot pursuit and Mr. Andrews' resistance that night?

2 A. I did. We fell in a -- a small area where there was a
3 lot of brush and there was a line of briars and there was a
4 -- a vine went between two of my fingers and sliced the web
5 of my fingers open.

6 Q. Officer Link, is there a video recording that shows an
7 account of what transpired during this stop?

8 A. There is, sir. I was wearing a body camera on the
9 evening in question.

10 Q. And in preparing to testify today, have you had an
11 opportunity to view this video?

12 A. I did, sir.

13 **MR. MORONEY:** Your Honor, may I approach?

14 **THE COURT:** You may.

15 BY MR. MORONEY:

16 Q. Officer Link, I'm showing you what's been marked as
17 State's Exhibit Number 1 for identification, and ask you to
18 take a look at it. Have you seen it before?

19 A. I have, sir.

20 Q. And when was the first time you saw this exhibit?

21 A. I viewed this prior to coming into court today.

22 Q. And how are you able to recognize this as being the
23 same disc?

24 A. Upon viewing the disc, I took it out of the -- the
25 computer and signed my name and initials on it.

1 Q. And is State's Exhibit Number 1 for identification in
2 the same or substantially the same condition today as when
3 you first saw it earlier?

4 A. It is, sir.

5 **MR. MORONEY:** Your Honor, at this time I would ask
6 that State's Exhibit Number 1 for identification be
7 admitted into evidence.

8 **THE COURT:** Subject to the earlier objections and
9 rulings.

10 **MR. ADDUCCI:** Thank you, Your Honor.

11 (State's Exhibit Number 1, the Body Cam video, was
12 admitted into evidence.)

13 **MR. MORONEY:** Your Honor, we'd also ask --

14 **THE COURT:** Do you want to publish?

15 **MR. MORONEY:** -- to play the video..

16 **THE COURT:** You may publish.

17 **MR. ANDREWS:** Your Honor, if we could beg the Court's
18 indulgence just briefly.

19 **THE COURT:** Sure.

20 (Whereupon, State's Exhibit Number 1, the Body Cam
21 video, was played for the Court and jury.)

22 BY MR. MORONEY:

23 Q. Now I stopped the video, Officer Link. Where I'm
24 pointing to the -- can you identify the individuals that
25 you see in this video where the screen is stopped?

1 A. The gentlemen on his left that is sort of facing the
2 camera is the Shantavius Johnson subject. The gentleman
3 with the baseball cap that just sort of had his back to me,
4 is Jerry Andrews.

5 MR. MORONEY: Thank you.

6 (Whereupon, State's Exhibit Number 1 resumed playing
7 for the Court and jury.)

8 BY MR. MORONEY:

9 Q. And, Officer Link, with respect to the metallic clank
10 that you heard, can you describe the general location from
11 your hearing that sound that you thought that that sound
12 came from?

13 A. When I heard it, I was facing Mr. Andrews in an
14 attempt to restrain his arm and it -- it appeared to come
15 directly from in front of me.

16 Q. And, Officer Link, do you see the individual who ran
17 from you -- ran from your stop that night here in the
18 courtroom today?

19 A. I do, Your Honor -- or sir.

20 Q. And can you --

21 A. It's the Defendant, Mr. Andrews.

22 Q. And can you, please, point out that individual and
23 describe what they are wearing?

24 A. He's seated over here next to Mr. Adducci wearing an
25 orange hoody.

3 | **MR. MORONEY:** No further questions, Your Honor.

5 CROSS-EXAMINATION

7 | Q. Good afternoon.

9 Q. All right. When you arrived on-scene, Mr. Johnson and
0 Mr. Andrews were with Officer Osborne, correct?

12 Q. And you and Sergeant Peppers sort of triangulated
13 around them, right?

15 Q. In order to prevent them from leaving, right?

17 Q. Okay. Now Mr. Andrews told you that he was headed to
18 his girlfriend's house?

20 Q. Okay. After the records check, you find out that
21 Mr. Andrews came back as clear, right?

23 | Q. And Mr. Johnson did not, correct?

25 Q. And Mr. Johnson was then arrested, right?

1 A. Yes, sir.

2 Q. Now how close was everybody when this all happened?

3 A. I was probably, I would say, about four to five feet
4 from Mr. Andrews.

5 Q. Okay.

6 A. Mr. Johnson was probably a good ten or eleven feet
7 away from him because he was on the other side of
8 Mr. Andrews.

9 Q. Okay. So you were behind Mr. Andrews?

10 A. I was.

11 Q. So there was Mr. Andrews, then there was Mr. Johnson
12 and then, I think, Officer Osborne at the time of the
13 arrest was behind Mr. Johnson?

14 A. Yes, sir.

15 Q. Okay.

16 A. Yeah, he was standing behind Mr. Johnson and Officer
17 Peppers was between the two of them.

18 Q. All right. Now when Mr. Andrews refused to allow you
19 to search him, you guys grabbed his arm, right?

20 A. I instructed -- yes, sir. As soon as he -- as soon
21 as we told him that we needed to pat him down, he began
22 reaching for his pants, at which point you heard on the
23 video we gave him several commands to stop touching his
24 pockets, stop going for his pockets. He refused to do so,
25 at which point we did attempt to restrain his arm from

1 reaching and preventing from getting a weapon.

2 Q. And you moved forward in order to grab him, right?

3 A. Yes, sir.

4 Q. And Officer Osborne also grabbed ahold of him at that
5 point, correct?

6 A. Yes, sir. He had one hand on Mr. Johnson's handcuffs
7 and when it became apparent to him that Mr. Andrews was
8 resisting us, he did try and reach in and restrain his
9 right arm as Officer Peppers was moving in to -- to help
10 me.

11 Q. So Officer Osborne had his hands on Mr. Johnson, which
12 was behind his back right here?

13 A. Yes, sir.

14 Q. And then he reached around and assisted you and
15 grabbed Mr. Andrews, right?

16 A. He did -- he did attempt to do so, yes, sir.

17 Q. Okay. And he got ahold of his hand, correct?

18 A. I do not know if he did successfully.

19 Q. Okay. During that commotion, that's when you heard
20 the clank, right?

21 A. Yes, sir.

22 Q. And then Mr. Andrews ran off?

23 A. Yes, sir.

24 Q. There was a -- a short pursuit, it couldn't have been
25 more than a couple of seconds, and eventually you guys are

1 on the ground in the briar, right?

2 A. Correct. As soon as you crest the -- the side of the
3 roadway that has the sidewalk on it, then it goes down a
4 hill. It's not maybe more than ten feet in -- in distance,
5 but it does slope down and we slid down there.

6 Q. And I think you indicated in a previous testimony that
7 once Mr. Andrews was on the ground, you guys had his left
8 arm, correct?

9 A. Correct. When he went down, he was laying more on his
10 right side facing away from me at first and I grabbed his
11 left wrist and then he rolled onto his right side, so to
12 speak, and would not allow us to restrain his right arm.

13 Q. You put a knee in his back, right?

14 A. I did.

15 Q. So he's on the ground, left hand behind him --

16 A. Uh-huh.

17 Q. -- you with your knee on his back, correct?

18 A. Yes, sir.

19 Q. All right. Now was it you who said, "Tase his ass"?

20 A. No, sir, that was Sergeant Peppers.

21 Q. Okay. After that, you eventually -- he was able to
22 free his right hand and you were able to get his right
23 hand, correct?

24 A. Yes, sir. He pulled it out at which time he did put
25 his right hand near his right pocket.

1 Q. And then you grabbed his hand, put it behind his back,
2 double locked it?

3 A. Yes, sir.

4 MR. ADDUCCI: The Court's indulgence.

5 THE COURT: Yes, sir.

6 MR. ADDUCCI: Nothing further, Your Honor. Thank you.

7 THE COURT: Redirect?

8 MR. MORONEY: No, Your Honor.

9 THE COURT: Thank you. You can step down.

10 THE WITNESS: Thank you, Your Honor.

11 (Witness excused.)

12 BAILIFF: Watch your step, sir.

13 THE COURT: Do you think you can do the next witness
14 in thirty minutes or less, gentlemen?

15 MR. MORONEY: In how many minutes?

16 THE COURT: Thirty minutes or less.

17 MR. ADDUCCI: I'd say it would be the same amount of
18 time for this last witness.

19 THE COURT: All right. That would be thirty minutes.
20 Call your next witness.

21 MR. MORONEY: The State calls Officer Vernon Peppers.

22 VERNON PEPPERS,

23 having been duly sworn, testified as follows:

24 DIRECT EXAMINATION

25 BY MR. MORONEY:

1 Q. Good afternoon. Could you, please, state your name.

2 A. Vernon Peppers.

3 Q. And where are you employed, Mr. Peppers?

4 A. Lander University Police Department.

5 Q. And how long have you been employed at the Lander
6 University Police Department?

7 A. A little over three and a half years.

8 Q. Can you, please, state your various assignments at the
9 Lander University Police Department.

10 A. Corporal on patrol, then I was promoted to sergeant
11 over a shift, a lieutenant over a shift, and now I'm a
12 captain over the uniform patrol division.

13 Q. And what are your general responsibilities as an
14 officer there?

15 A. Protect the safety and security of the campus, the
16 students and the staff, make sure the buildings are secure,
17 respond to any activity on campus as far as state laws.

18 Q. And do you have any appropriate law enforcement
19 certification?

20 A. I was certified through the Criminal Justice Academy
21 in 1999.

22 Q. Officer Peppers, were you working with Lander
23 University Police Department back on the night of June 30th
24 of 2012?

25 A. I was.

1 Q. And did you have the chance to become involved with
2 Officer Osborne's investigation involving a gun possession
3 case?

4 A. I was.

5 Q. How did you become involved in Officer Osborne's
6 investigation that night?

7 A. He radioed us and -- me and Corporal Link, who was
8 riding with me at the time, and told us that there was
9 three black males travelling on Willson Street and he was
10 about to get out with them, and as he turned around it
11 ended up being two black males, and called us over there to
12 assist with him getting out with them and speak to them.

13 Q. And did you arrive on-scene to assist?

14 A. I did.

15 Q. And what did you observe when you arrived on the
16 scene?

17 A. I observed Corporal Osborne talking to the two black
18 males on the side of the road. It was the side opposite of
19 the sidewalk near the Human Resources building on Willson
20 Street. I then approached and stood in the grass while he
21 was talking to both subjects.

22 Q. At any point during the stop did you learn the
23 identity of the two subjects who Officer Osborne was out
24 with?

25 A. Yeah, he collected their information and ran a records

1 check through our dispatcher to see who they were and a
2 check for warrants and so forth.

3 Q. Did you learn the specific names of the two
4 individuals involved in the stop that night?

5 A. Yeah, Shavius Johnson and Jerry Andrews.

6 Q. Was there anything unusual about Mr. Johnson's
7 demeanor?

8 A. He seemed very nervous. He was rubbing his hands back
9 and forth. He touched his head a couple of times and I had
10 to tell him to take his hands out of his pocket. I told
11 him not to use the phone and he was looking from side to
12 side like -- to me it looked like he was looking for an
13 avenue of escape or to run the way he was looking back and
14 forth.

15 Q. And was there anything unusual about the other
16 subject, Mr. Andrews' demeanor that night?

17 A. That was Mr. Andrews that I just testified to, his --
18 his nervous ability. I think I misheard you. Mr. Johnson,
19 I observed that he was standing there. He just kind of had
20 an awkward stance. At that time I observed him to have
21 something in his pants pocket. I did a pat-down. He told
22 me it was an unopened beer in his pants leg -- his left
23 pants leg. He seemed sort of nervous and that's about it.

24 Q. And to clarify, that description you just gave was
25 with respect to Mr. Johnson?

1 A. That's correct.

2 Q. And the previous description you gave before that was
3 with respect to Mr. Andrews?

4 A. That's correct.

5 Q. Jerry Andrews?

6 A. That's correct.

7 Q. Now during the stop, what was the nature of the
8 conversation?

9 A. We asked them where they were coming from and where
10 they were going and inquired about the open beer that
11 Mr. Johnson had threw down on the ground and they were
12 talking about where they were going that night and where
13 they were headed to. They was walking to, I think, a
14 friend's house on Cambridge Avenue they said and they were
15 coming from Gracemont.

16 Q. And was a records or warrants check conducted during
17 the stop that night?

18 A. It was. It was called in to our dispatcher.

19 Q. And what was the result of that records check?

20 A. Corporal Osborne received a -- from over the radio
21 traffic to call dispatch on the phone. He stepped away
22 from the two subjects, called them on the phone. When he
23 got off the phone, he immediately come back and told --
24 grabbed ahold of Mr. Johnson and told him he was under
25 arrest. I assisted in handcuffing him. He told him he was

1 under arrest for open beer. It later turned out he was
2 also placed under arrest for an attempted murder warrant
3 from the City.

4 Q. After Mr. Johnson was placed in the handcuffs, did you
5 notice a change in demeanor in Mr. Andrews?

6 A. He just kind of tensed up, seemed more nervous, and
7 almost simultaneously Corporal Osborne said -- told
8 Corporal Link he needed to pat him down, asked him,
9 we're gonna pat you down for weapons, and then as they
10 made contact with him and I walked from Mr. Johnson to
11 Mr. Andrews we heard "clunk", seen a gun fall on the
12 ground, a silver in color gun, Mr. Andrews took off
13 running.

14 Q. And prior to hearing that, as you described it
15 "clunk", were there any physical manifestations or any
16 kind of movement with Mr. Andrews?

17 A. Yeah, he -- he reached for his waistband. At the same
18 time, Corporal Osborne gave Corporal Link instructions to
19 pat him down, he reached to his waistband and they said
20 "Stop, don't reach there".

21 Q. And what happened next?

22 A. We gave pursuit. I seen the gun on the ground, a
23 silver in color gun. Corporal Link immediately gave
24 pursuit. I followed behind him. Mr. Andrews run across
25 two lanes of traffic, across the sidewalk, into a brushy

1 area, I think he got tripped up in the briars there, fell
2 to the ground. We got -- we told him he was under arrest,
3 stop resisting. He was reaching with his -- I was able to
4 get his left hand almost immediately. His right hand was
5 underneath his body and he kept reaching in his waistband
6 area. I thought he was reaching for a weapon, I'm not sure
7 what it was, and told him to stop resisting, keep his hands
8 out. After a short struggle, I got -- got his hands out
9 and realized he was reaching for what appeared to be drugs.
10 It was a clear plastic baggy that I retrieved with green
11 plant-like material, I believe marijuana, inside, which I
12 seized, put in my pocket, and then I also handcuffed him
13 and told him he was under arrest.

14 Q. And, Office Peppers, after seizing the bag containing
15 the marijuana -- the green leafy substance as you described
16 it, from Mr. Andrews on June 30, 2012, what did you do with
17 it?

18 A. I -- I immediately put it in my possession, put it in
19 my pocket. After we cleared the arrest, we went back to
20 the office and logged all the evidence from that case in
21 the office. Steve Osborne, Officer Osborne, logged in the
22 evidence and that's when I turned it over to him before
23 placing it in the evidence locker.

24 **MR. MORONEY:** Your Honor, may I approach?

25 **THE COURT:** Please.

1 BY MR. MORONEY:

2 Q. I'm handing you what's been marked as State's
3 Exhibit 3 for identification purpose. If you'd take a look
4 at that. Do you recognize that?

5 A. That -- that's the evidence that I seized that nigh.

6 Q. And how do you recognize it to be the same evidence?

7 A. It's sealed. It was tested by our evidence custodian
8 at the time --

9 **MR. ADDUCCI:** Objection as to what happened to it
10 after he came -- after he got out of possession of it.

11 **MR. MORONEY:** I can rephrase.

12 **THE COURT:** Go ahead.

13 BY MR. MORONEY:

14 Q. Based on the procedure that you previously described,
15 how do you know that to be the marijuana that was seized
16 that night?

17 A. When -- when we took the evidence, we placed it in the
18 evidence locker. The evidence code -- custodian then logs
19 the evidence out and when he logged the evidence out he
20 tested it for marijuana --

21 **MR. ADDUCCI:** Objection.

22 A. -- to make sure it was marijuana.

23 **MR. ADDUCCI:** Objection.

24 **THE COURT:** Wait. Hold on one second. There's an
25 objection?

1 **MR. ADDUCCI:** Your Honor, he's testifying to something
2 he does not have direct knowledge of.

3 THE COURT: Y'all come on up.

4 (Proceedings held at the bench; not reported.)

5 | **THE COURT:** Please proceed, Solicitor.

6 BY MR. MORONEY:

7 Q. And just to reiterate, Officer Peppers, your actions
8 with respect to that marijuana, could you, please, describe
9 specifically what you did with the marijuana that night.

10 A. I turned it over to Corporal Osborne. He logged it
11 into evidence and then I signed it out today to bring it to
12 court for evidence.

13 Q. And let me jump back one second. This metallic sound
14 you described, I can't remember exactly how you put it, can
15 you describe specifically where you felt that that sound ,
16 came from?

17 A. It was directly at Mr. Andrews' feet. As soon as
18 he went to reach and turn, it -- it fell from his -- I
19 assumed his pants leg area. It was right at his feet. I
20 immediately saw it. I was right on top of him.

21 | **MR. MORONEY:** No further questions, Your Honor.

22 | **THE COURT:** Cross.

23 | **MR. ADDUCCI:** Thank you, Your Honor.

24 CROSS-EXAMINATION

25 BY MR. ADDUCCI:

1 Q. Good afternoon, Captain Peppers.

2 A. Good afternoon, sir.

3 Q. Now when you arrived on-scene, you and Officer Link
4 and Officer Osborne sort of formed a triangle around
5 Mr. Andrews and Mr. Johnson, correct?

6 A. Basically.

7 Q. Okay. Were you -- where were you in relation to
8 Mr. Andrews?

9 A. Mr. Andrews, he was -- if I'm Mr. Andrews, I was over
10 here to his -- he was over -- I was standing here.

11 Q. Okay. And you say you were in front of him?

12 A. It was -- I don't know if you'd call that the front.
13 I wasn't directly in front of him. I was kind of to the
14 side of him.

15 Q. Okay. Now you saw that Officer Osborne was placing
16 Mr. Johnson under arrest, correct?

17 A. That's correct.

18 Q. And you, I think -- did you indicate that you assisted
19 him in getting Mr. Johnson's hands behind him?

20 A. As soon as he grasped ahold of his -- it would have
21 been Mr. Johnson's right arm, I grasped his left arm.

22 Q. Okay. So you guys place him under arrest, handcuff
23 him, and you're then next to Mr. Johnson?

24 A. Yes, at that -- at that time, yes, my hands was on
25 him.

1 Q. Okay. And then Officer Osborne asks if he can search
2 Mr. Andrews, correct?

3 A. He told Officer Link to pat him down for weapons.

4 Q. Okay. And Mr. Andrews said, "No, I don't want you to
5 search me"?

6 A. Yeah.

7 Q. And then you guys just searched him, right?

8 A. We told him we was gonna pat him down for weapons
9 anyway.

10 Q. Okay. And then at that point, you indicated that you
11 saw Mr. Andrews fidgeting about with his right hand, right?

12 A. Yeah, he -- he made a motion toward his waistband and
13 pocket area.

14 Q. Okay. And that is when -- was it you grabbed him?

15 A. I don't -- I don't think anybody touched him until he
16 -- he got away from us.

17 Q. Okay. So you weren't arresting him at that point,
18 right?

19 A. That's right.

20 Q. Okay. Then he runs off, hits a briar patch, eats it,
21 right?

22 A. Yes, sir.

23 Q. So he is on his right side, correct?

24 A. He's bais -- he's on his stomach.

25 Q. He's on his stomach and I believe Officer Link has

1 control of his left arm, correct?

2 A. I think I grasped his left arm.

3 Q. Okay. You had his left arm?

4 A. I believe so.

5 Q. And Officer Link was on his back with his knee on his
6 back, correct?

7 A. I don't -- I don't know what -- I don't remember that.

8 Q. Okay. And you were telling him, you know, "Give us
9 your hand, give us your hand", right?

10 A. His right hand.

11 Q. You also said, "Tase his ass", right?

12 A. I did.

13 Q. Okay. And after a couple of seconds he did free his
14 right hand and you were able to --

15 A. I was able to free his right hand and put him under
16 arrest.

17 Q. Okay. Placed him under arrest and handcuffed him,
18 correct?

19 A. After several commands.

20 Q. And you said you saw this green leafy substance on his
21 right -- right pocket?

22 A. He reached and pulled it out of his right pocket.

23 Q. Okay.

24 **MR. ADDUCCI:** Nothing further, Your Honor.

25 **THE COURT:** Thank you, sir. You can step down.

1 (Witness excused.)

2 **THE COURT:** Do you have your final witness here?

3 **MR. MORONEY:** Yes, Your Honor.

4 **THE COURT:** That should be fairly quick. Go ahead and
5 call them, please.

6 **MR. MORONEY:** The State calls Jonathan Pratt.

7 JONATHAN PRATT,

8 having been duly sworn, testified as follows:

9 DIRECT EXAMINATION

10 BY MR. MORONEY:

11 Q. Good afternoon. Could you, please, state your name.

12 A. Jonathan Pratt.

13 Q. And where are you employed, Mr. Pratt?

14 A. Right now I'm a sergeant over in Abbeville County.

15 Q. And how long have you been employed there?

16 A. It will be two years in July.

17 Q. And where were you employed before then?

18 A. Before that I was at Greenwood City and then I was at
19 Lander University.

20 Q. And how long did you work at Lander University Police
21 Department?

22 A. About ten years.

23 Q. And what were your various assignments with the Lander
24 University Police Department?

25 A. While I was there, I was a patrol officer. Also, I

1 became the evidence custodian along with crime scene
2 technician.

3 Q. Could you, please, describe your responsibilities as
4 evidence custodian?

5 A. Basically I kept up with any and all evidence that
6 came into the department. I kept up the status as far as
7 where it was stored, the item number it was categorized
8 with, the condition, any treatment or testing that was
9 required of it for like drug evidence or anything else
10 processing-wise. I also kept up with the status of it and
11 any disposal that was needed once the case was disposed of.

12 Q. And did you have any law enforcement certification at
13 that time?

14 A. Yes, sir, I was a certified law enforcement officer at
15 that time.

16 Q. And could you, please, describe any training you've
17 had with respect to evidence storage.

18 A. I've been certified with the City of Greenwood as a
19 back-up crime scene technician, evidence custodian with
20 them. I went to various schools. Also, the field training
21 aspects of how to store, label, mark and keep up with
22 evidence. So when I came over to Lander, I pretty much
23 brought that with me.

24 Q. And do you have any specific training with -- to the
25 respect of analysis of drugs?

1 A. Yes, sir. I've been trained through SLED for the
2 analysis of marijuana probably close to fifteen years now
3 or more.

4 Q. Could you, please, describe that process through SLED?

5 A. According to SLED procedures, what we do is we get a
6 sample that we're not -- anything we have knowledge of we
7 cannot test. If we're involved in the arrest of a subject
8 in marijuana, we cannot analyze it to avoid a biased
9 situation. If I'm evidence custodian and I get a sample of
10 marijuana -- no other narcotics can I test, but marijuana I
11 can. I take it in. Usually what I do is I have a form
12 that I fill out. I take it to a laboratory that I had set
13 up at Lander. It was in the science building.

14 To test marijuana, it has to go through two types of
15 tests. One was a microscopic and, two, is a chemical test.
16 The microscopic test involves the finding or locating of --
17 identification of three different types of hairs that are
18 on the marijuana plant. If I find all three of those, it's
19 assigned a positive test for the microscopic. If I can't
20 find all three hairs, I have to show a negative result on
21 it. After I complete that, I do a chemical test where I
22 take a sample of the plant material. At that time, I put
23 it in a small spot dish or a little dimple dish. It
24 basically looks like the top of -- the surface of a golf
25 ball. I put a sample in there, I put a test sample of --

1 it's fresh ground coffee we use as testing for one of our
2 solutions. On one of the reagents we use it pops positive
3 for that to make sure that it is still active, that it's
4 still viable. If not, I have to make up a new solution.

5 Once I confirm that the solution is good, then I put
6 a sample of the marijuana and I test it the same and it
7 has a certain -- a certain color that it has to change
8 or a certain reaction that has to occur for it to be a
9 conclusive positive test for marijuana. If I don't have a
10 positive test on that, I mark it as negative. If I -- if
11 it shows positive, then I do a positive test on it. If
12 either one of those tests shows negative, then the whole
13 test is shown as negative for marijuana. If I have two
14 positive tests on it, then it tests positive for marijuana,
15 at which time I mark -- mark the results as well as the
16 findings on that sheet, then I log it into the -- back into
17 the evidence locker.

18 Q. And, Officer -- Deputy Pratt, did you become involved
19 with Officer Osborne's gun possession case from June 30,
20 2012, where a green leafy substance was seized and entered
21 into an evidence locker by Officer Osborne?

22 A. I became involved in that not through the actual
23 arrest; therefore, I had no knowledge of the actual arrest
24 or the occurrence at that time other than reading the
25 incident report, but as evidence custodian at that time I

1 did come in contact with the evidence as that it was
2 entered into the temporary locker before I got ahold of it.

3 Q. And as evidence custodian, what did you do with the
4 seized green leafy substance?

5 A. Once I seized -- once I took it out of the temporary
6 locker, I did take it up to the lab. I tested it for
7 positive identification of marijuana, at which time when I
8 concluded my test I logged it into the main evidence locker
9 for storage for further need.

10 Q. And with respect to the locker that you retrieved the
11 marijuana from, how many people had keys to unlock that
12 locker?

13 A. As far as the keys go, it's a combination lock.
14 Myself and only the chief at the time had access to that,
15 but I was the primary evidence custodian; therefore, I
16 would be the one that would retrieve it as long as I was
17 present, but at that time it would be just us. Nobody else
18 has access to it and I would be the only one handling the
19 evidence.

20 Q. And with respect to the main evidence locker that you
21 said you deposited it in finally?

22 A. It would be the same thing. The same thing.

23 Q. The same thing?

24 A. Yes, sir.

25 Q. Do you recall the result of your analysis of the

1 substance that had been stored by Officer Osborne?

2 **MR. ADDUCCI:** Objection, Your Honor. He hasn't been
3 qualified as an expert to give opinion testimony.

4 **THE COURT:** Do you move to qualify him as an expert in
5 the field of marijuana analysis?

6 **MR. MORONEY:** I do, Your Honor.

7 **THE COURT:** Any voir dire or an objection to his
8 qualifications?

9 **MR. ADDUCCI:** No, Your Honor.

10 **THE COURT:** Ladies and gentlemen, in this case the
11 parties have agreed that Mr. Pratt is an expert in the
12 field of marijuana analysis, so he can give opinion
13 testimony in that area; whereas, normally witnesses simply
14 have to testify as to things that they observed or saw with
15 one of their five senses. This is testimony that you can
16 use as you deem appropriate. It doesn't -- you're not
17 required, however, to accept his opinion even though it's
18 given by -- as an expert.

19 Go ahead, Mr. Moroney.

20 BY MR. MORONEY:

21 Q. And what was the result of your analysis of that
22 substance that Officer Osborne had stored in the locker?

23 A. If -- there's a possibility if there's the sheet that
24 I had filled out that day. I haven't had a chance to
25 review it. Do you have it? If I could look at it real

1 quick, I can read the results for it.

2 Q. I can grab that for you.

3 **MR. MORONEY:** I beg the Court's indulgence.

4 **THE COURT:** Yes, sir.

5 **THE WITNESS:** I'm sorry, Your Honor.

6 A. On the substance that I tested that day involved in
7 this case here, I did find that both the chemical and
8 microscopic tests proved to be positive for marijuana;
9 therefore, the results that I recorded was marijuana being
10 found.

11 Q. And how much did the marijuana weigh?

12 A. I show here that it weighed 2.3 grams or .08 ounces
13 total weight.

14 Q. And what did you do with the marijuana after the
15 analysis was complete?

16 A. Once the analysis was complete, we have a hermetic
17 sealer that I make a tube out of. I put the original
18 container that the substance was turned over to me in and
19 then I put the actual -- the actual marijuana in as a
20 separate component and seal them up in separate things.
21 Once I've sealed both ends of the sleeve, I initial both
22 ends across the seam to show that it hasn't been tampered
23 with.

24 **MR. MORONEY:** Your Honor, may I approach?

25 **THE COURT:** Yes, sir.

1 BY MR. MORONEY:

2 Q. Deputy Pratt, I'm showing you what has been previously
3 marked as State's Exhibit 3 for identification. Have you
4 seen it before?

5 A. Yes, I have.

6 Q. And when was the first time you saw this marijuana?

7 A. The first time I saw it was when it was submitted to
8 me. I show a date of 6-30 of 2012. That would have been
9 the first time I've seen it. This right here is what would
10 -- this is when I actually had completed my analysis and I
11 had -- pretty much had sealed it up. My initials, as I
12 stated, are on the corner of the seams, along with the date
13 -- or correction, the -- the storage number is written on
14 it, which would be L-184, which would have shown this is
15 the 184th item that I had listed into evidence and this is
16 the designation number.

17 Q. When you first received this exhibit, it was not
18 sealed in that bag?

19 A. It was not sealed in the bag. The original
20 compartment -- or the original packaging is this plastic
21 cellophane that I have in the first compartment. The
22 bottom of it right here is the substance that I was given
23 to test for positive marijuana or not, so that is the
24 original substance.

25 Q. And that's your seal and your initials on that bag?

1 A. Yes, it is.

2 Q. How do you recognize that bag as being the bag?

3 A. It's my handwriting and my initials that I put on each
4 seam that I created.

5 Q. Is there anything different about the bag this
6 afternoon from when you returned it to the evidence locker
7 on July 2, 2012?

8 A. No, sir. All the seams are still intact and my
9 signature -- my initials are still intact.

10 **MR. MORONEY:** Your Honor, at this time I'd ask that
11 State's Exhibit 3 for identification be admitted into
12 evidence.

13 **MR. ADDUCCI:** Previously stated objection, Your Honor.

14 **THE COURT:** Subject to the previous objection and
15 ruling made by the Court, State's 3 will be in evidence.

16 (State's Exhibit Number 3, marijuana, was admitted
17 into evidence.)

18 **MR. MORONEY:** No further questions, Your Honor.

19 **THE COURT:** Cross?

20 **MR. ADDUCCI:** Yes.

21 CROSS-EXAMINATION

22 BY MR. ADDUCCI:

23 Q. Good afternoon.

24 A. Good afternoon, sir.

25 Q. How are you doing?

1 A. Good. Thank you.

2 Q. All right. So you indicated that you do two tests for
3 marijuana, correct?

4 A. Yes, sir.

5 Q. There is a third test that can be done to determine
6 chemicals, right? That's called a gas chromatograph mass
7 spectrometer test, correct?

8 A. If I'm -- if there's a test like that, I'm not
9 qualified or been certified to be able to use that test.
10 I use the ones that I've been trained through SLED.

11 Q. Okay. So you -- you don't know about this GCMS test
12 that they do at SLED?

13 A. I know of a gas chromatograph, but I don't use it,
14 so, therefore, I don't know if it's used with marijuana,
15 no, sir.

16 Q. Okay. So the first test you did is a mic -- a
17 microscope test, correct?

18 A. Yes, sir.

19 Q. And you indicated that you look for three hairs?

20 A. Yes, sir.

21 Q. What are those three types of hairs?

22 A. The three hairs is one unicellular or simple hairs.
23 All plants do carry that particular hair. The other one
24 is multicellular or glandular hair, which is actually
25 where the THC or the tetrahydrocannabinol is actually

1 produced from on the marijuana plant. Then you have the
2 systolic or bear claw hairs. If all three of those are
3 present, then, therefore, it is classified as marijuana.

4 Q. Are there other plants that have glandular hairs?

5 A. There are glandular hairs that are present in certain
6 plants, but they do not produce -- they do not have all
7 three hairs that are involved in marijuana.

8 Q. Okay. And -- and are there other plants that have
9 bear claw hairs?

10 A. Not to my knowledge.

11 Q. Okay. After you did that, that's not yet a full
12 positive, correct?

13 A. No, sir. If I find all three hairs, it's a positive
14 on that test, but I do have to conduct a chemical test
15 separate from that to make sure -- to verify it as
16 marijuana.

17 Q. Yes. And when you're talking about this chemical
18 test, you indicated that you use something called a
19 reagent?

20 A. Yes, sir.

21 Q. Okay. And what is a reagent?

22 A. A reagent is basically a chemical or a substance that
23 reacts with some kind of catalyst or other substance that
24 it comes in contact with.

25 Q. Okay. Now how many different type of reagents do you

1 use?

2 A. There's three solutions that are involved in the
3 chemical test. One is the Duquenois test -- or the
4 Duquenois solution, which is a Solution A. It is a
5 compound made up of different compounds to make the
6 solution that is initially applied to the plant material.
7 Then what is also added to it is hydrochloric acid, which
8 is -- also reacts with that particular test. Then the
9 second portion -- or the third solution or the Levine part
10 of the test for the Duquenois-Levine test is chloroform,
11 and you apply drops inside the main test -- or the sample
12 test and it produces a reaction from there.

13 Q. Okay. Now you said that you -- you test your reagents
14 prior to doing the test on the suspected marijuana?

15 A. Yes.

16 Q. And you said that you use coffee?

17 A. For ground coffee, pure ground coffee, not the instant
18 material, there is a reaction that does apply for the
19 Duquenois solution. It does produce the same kind of
20 color, but when I add the chloroform to it, it's a highly
21 specific reaction only for marijuana. So, therefore, if I
22 get the right color or the right action from the Levine
23 test portion of that, then it is highly specific to
24 marijuana.

25 Q. Okay. So you've got sort of one dish that you put

1 coffee in and -- and do the reagents --

2 A. Uh-huh.

3 Q. -- and you get a certain color. What color is that?

4 A. It's from blue to purple color.

5 Q. Okay. And then that's how you test to determine
6 whether your reagents are up to date and good?

7 A. That's to make sure that it does still function as
8 it's supposed to, yes, sir.

9 Q. Okay. And do you make your own reagents?

10 A. I do make my own reagents. I have the chemical
11 makeups that I have that I do to make the solution.

12 Q. And do they expire? Is that why you test, to make
13 sure that they're still good?

14 A. They do have a shelf life. They can last a while.
15 They can last depending on how the makeup of it is, but if
16 it starts to show any change, then I do change it out even
17 before it quits working altogether.

18 Q. So you said that there isn't a specific amount of time
19 that it lasts?

20 A. We would change it depending on how often you test,
21 how much material you test, if it sits around inactive or
22 if you have a lot of test samples that you use. Some
23 people change it out every month, some people change it six
24 months, some people change it further. As long as it's
25 reacting as it's supposed to, it's still a viable solution

1 to use.

2 Q. Do you guys have a schedule that you -- okay, every
3 three months we clear everything out or just whenever they
4 stop reacting?

5 A. Generally, if I saw any kind of change in it, I would
6 then change out the solution and make up a new one.
7 Sometimes I've had these solutions last six months, I've
8 had one almost last a year, but as long as I don't see any
9 change that would show any significance to the problem of
10 it being able to test a solution -- a sample, I didn't
11 change it out, no, sir.

12 Q. Okay. After you're finished testing a -- a sample,
13 you have what you -- you said like the dimple of a golf
14 ball, like a little dish?

15 A. It's called a spot plate dish. It's basically a
16 square or rectangular dish that has the divots in it and
17 the only thing I can try to get you to see what it's like
18 is it looks like dimples of a golf ball and that's where
19 you put the samples at that you would test. It's made out
20 of a porcelain or ceramic material, so it's nonreactive in
21 itself so any material you put in it is what you're gonna
22 be testing.

23 Q. And what do you do once you are finished with a test
24 with that --

25 A. With that sample?

1 Q. Yes.

2 A. With the little bit of sample I have it is disposed of
3 either down -- it is flushed down a control drain or the
4 sample is so small that there is a -- the fuming tent --
5 the fuming hood that I used had a disposable drain in it
6 and it got treated through the science building.

7 Q. Then what do you do with that dish?

8 A. The dish is thoroughly cleaned, but the sample is
9 -- like I said, once it's disposed of I clean the dish
10 thoroughly. There is an acetone that I can use to actually
11 make sure it's clean. I then wash it thoroughly and then
12 I take an air hose that was actually hooked up to it and
13 dry it. At that time I always do a blank test, spot test,
14 and if I put the solution in there and there's any reaction
15 after that, I go and I clean it thoroughly again. Any time
16 I have a reaction on that, I always clean it thoroughly.

17 Q. Do you spot test the dish before you do the test?

18 A. There is a blank test that's done, yes, sir.

19 Q. Okay. Now when you test suspected marijuana, you said
20 a specific reaction happens. How do you know whether that
21 reaction is a positive for marijuana or not positive for
22 marijuana?

23 A. When I put the first solution -- the first two
24 solutions in there, if the correct color appears on it,
25 then that is part of that solution and then when I add the

1 third solution to it and if it has the proper reaction
2 there, then I realize that it's marijuana.

3 Q. Okay. So when you add the hydrochloric acid, what
4 happens?

5 A. After I've had the Duquenois solution put in, once I
6 add the hydrochloric acid it turns either a shade of blue
7 or a shade of purple depending on the amount of THC that's
8 there. Once that reaction has stopped or I'm satisfied
9 with the reaction that is given, I put in a few drops of
10 chloroform to produce what's called a fisheye, basically a
11 little circular pattern inside the solution itself, and it
12 has a pink ring around the outside of it. That was --
13 that's where it's determined it's a positive reaction for a
14 highly specific test for marijuana at that time.

15 Q. And that's what happened with this sample?

16 A. Yes, sir.

17 Q. Okay.

18 **MR. ADDUCCI:** Thank you very much, Your Honor. No
19 further questions.

20 **THE COURT:** Thank you, sir. You can step down.

21 **THE WITNESS:** Thank you.

22 (Witness excused.)

23 **BAILIFF:** Watch your step, sir.

24 **THE COURT:** All right. Now, ladies and gentlemen,
25 we've reached a pretty good stopping point in this case.

1 What I'm gonna do is go ahead and release you for the
2 evening and ask that you be back in the jury room tomorrow
3 morning at 9:30.

4 I will tell you I -- I have a meeting that I'm
5 supposed to go to tomorrow morning at 9:00. It's -- it's
6 one of those meetings that if it's terribly boring I'm
7 gonna use the excuse of having to get back here in order
8 to ditch it and so I anticipate being here perhaps at
9 9:30. If it's -- if it's a meeting that actually has some
10 substance to it, I might be running a little bit later than
11 9:30. I apologize, but this is involving the arcade uptown
12 and a building that my family owns and if it's gonna end up
13 costing me money, I want to stay there to tell them not to
14 cost me that money. So I might be a little bit late past
15 9:30, but if you would be in the jury room around 9:30 we
16 will resume with the trial of this case at that particular
17 point in time.

18 I trust you'll have a pleasant evening tonight.
19 Please don't talk about the case with anyone; not friends,
20 family members or relatives, and I'll see y'all tomorrow
21 morning right around 9:30. I hope you have a good night.
22 Wear those badges back, too, if you could. They'll help
23 identify you.

24 **BAILIFF:** Come this way, please.

25 (Whereupon, the jury was exited the courtroom and was

1 excused for the day.)

2 **THE COURT:** All right. The jury is out. We'll be at
3 ease until tomorrow at 9:30.

4 Just for your benefit though, I did e-mail the
5 proposed jury instructions that my clerk has worked up and
6 I worked up. I have e-mailed those to everybody, so if
7 you want to take a quick look at those tonight. I doubt
8 if there will be any surprises.

9 Additionally, if there's any issue -- I've seen the --
10 I've seen out of state convictions addressed in various
11 ways, either by stipulation or by the State seeking to move
12 to introduce it as self-authenticating, but I'll let y'all
13 ponder that tonight since we have obligations that my court
14 reporter must get to and we'll address it first thing in
15 the morning, okay?

16 Mr. Andrews, you have remained out on bond.
17 Understand, sir, if you don't show up tomorrow, the trial's
18 gonna continue in your absence and, again, Mr. Adducci
19 would be at a disadvantage -- a distinct disadvantage if
20 you don't show up, okay? It just don't look good. Do you
21 hear what I'm saying? So I trust that you'll be here
22 tomorrow morning at 9:30 at the latest?

23 **THE DEFENDANT:** Yes, sir.

24 **THE COURT:** Okay. If he wants you here sooner, just
25 follow his instructions --

1 **THE DEFENDANT:** Okay.

2 **THE COURT:** -- and I'll see you tomorrow, okay,
3 Mr. Andrews?

4 **THE DEFENDANT:** All right.

5 **THE COURT:** Y'all have a good night.

6 **MR. ADDUCCI:** Thank you.

7 **MR. MORONEY:** Thank you, Your Honor.

8 (Whereupon, the proceedings were concluded for May 14,
9 2015, at 5:34 PM.)

10 (Whereupon, the following proceedings were held on
11 May 15, 2015.)

12 **BAILIFF:** Court come to order. All rise.

13 **THE COURT:** Thanks. Have a seat, please.

14 All right. I'm told that the jury is present. Does
15 the State -- I'm assuming the State has completed all its
16 witnesses, finished all its witnesses?

17 **MR. MORONEY:** Yes, Your Honor.

18 **THE COURT:** All right. Did y'all discuss the Georgia
19 conviction and how that was going to be addressed or how we
20 need to deal with that or --

21 **MR. ADDUCCI:** Your Honor, I actually did a deep dive
22 on Georgia law and I was able to find a case on point out
23 of the Georgia Supreme Court.

24 **THE COURT:** Oh. May I see it, please?

25 **MR. ADDUCCI:** Yes. (Handing.)

1 In this situation, it is somebody in the same
2 scenario as Mr. Andrews. They are on probation for a
3 first offender; however, they've not been violated and the
4 Georgia Supreme Court said that that does not count as a
5 conviction for recidivist sentencing.

6 **THE COURT:** All right. I assume the State has had an
7 opportunity to review the Davis v. State case that's cited
8 by the defense. What's the State's position on this?

9 **MR. MORONEY:** Yes, Your Honor. The State's position
10 is just a difference in that that is Georgia law and South
11 Carolina law is controlling here; in particular with
12 respect to the definition of conviction under South
13 Carolina law.

14 In Davis v. State, the specific language, and I
15 quote, says: A first offender's guilty plea does not
16 constitute a conviction as that term is defined in the
17 criminal code of Georgia -- as conviction is defined in
18 the criminal code of Georgia. Yet we know under the
19 statute that Mr. Andrews is charged with here, 16-23-30,
20 it is unlawful for a person convicted of a crime of
21 violence. We looked at the definition section in South
22 Carolina, our code of laws, where conviction as used herein
23 shall include pleas of guilty.

24 **THE COURT:** That's under which section?

25 **MR. MORONEY:** The definition section of 16-23-10, Your

1 Honor.

2 **THE COURT:** All right. Well, Mr. Adducci, I must
3 congratulate you. It's been -- I've successfully avoided
4 having a conflict of law question for approximately
5 twenty-four years now and you've forced me to dust off an
6 old textbook to try to decide how this should come out.

7 Under conflicts of law theory, you've got two
8 competing interrelated concepts in criminal law;
9 jurisdiction and governing substantive law. Clearly, the
10 courts of one state do not enforce the laws -- the criminal
11 laws of another state. Crime is local. That's kind of the
12 adage.

13 Here we seem to have a definitional conflict between
14 what South Carolina would say and what Georgia would say on
15 this question. South Carolina law says he pled guilty, it
16 constitutes -- or he, therefore, cannot possess a firearm.
17 Under the case that you've cited, the Davis case, that
18 apparently may not be the same result.

19 I'm aware of other provisions of the South Carolina
20 Code such as the LWOP provisions that say you can get a
21 conviction or you can use an out-of-state conviction for an
22 LWOP in South Carolina. Correct me if I'm wrong though,
23 but that section basically says that whatever the foreign
24 conviction is it has to be substantially similar in nature
25 to -- to the South Carolina crime.

1 You gentlemen graduated law school more recently than
2 I. Hopefully, some of you have taken conflicts of laws.
3 Any suggestions?

4 **MR. ADDUCCI:** We clearly believe that -- because the
5 question is sort of the finality of whether this is a
6 conviction. Georgia believes -- and I think that they can
7 interpret their own intent there, is that the finality --
8 there is no finality to the proceeding until there is
9 either a successful discharge or a revocation and so I do
10 not believe that because there's that lack of finality
11 that it even comes in as a guilty plea or a -- it really is
12 a nonevent at that point. It's in this limbo status.

13 **THE COURT:** If you take -- if you take that approach
14 though, an individual placed on probation in South
15 Carolina, probation is a matter of grace with the court,
16 it can be revoked at any time so long as it's either
17 willful or the individual commits another crime, et cetera,
18 if there's a willful violation.

19 **MR. ADDUCCI:** I would disagree. I'd say that's a --
20 that's a final conviction. The question is the grace is
21 on the sentencing? The person gets the ten years. They
22 then are -- that period is suspended. The court can't then
23 go back later and give him twelve years. The ten years is
24 the final sentence. Only the violation of probation can
25 bring it up to -- can make you get the ten years. Here the

1 violation of probation creates the conviction, which is
2 why I think that it's significantly different from that
3 circumstance.

4 **MR. MORONEY:** Your Honor, I would say that guilty
5 pleas in this state are treated as convictions or -- with
6 respect to probationary sentences and I think it is
7 relevant that Mr. Andrews' probation has been transferred
8 to the state of South Carolina and he's currently under
9 supervision in the state of South Carolina.

10 **THE COURT:** But if he were to violate that
11 supervision, the remedy is not in South Carolina. He's
12 done nothing to violate the laws of this state. The remedy
13 would be send him back to Georgia.

14 **MR. MORONEY:** That's correct. However, I would just
15 go back to my previously stated comment with respect to
16 the definition in the South Carolina Code of Laws of
17 conviction that treats a guilty plea as a conviction of a
18 crime of violence in this particular circumstance. And,
19 specifically, in the Davis v. State case it says a guilty
20 plea does not constitute a conviction as that term is
21 defined in the Criminal Code of Georgia, as specifically
22 that's defined in Georgia.

23 **THE COURT:** Would this be analogous perhaps to a
24 situation where a person pleads guilty in another state to
25 an offense which according to that state's law would not

1 require sex offender registry, they then move to South
2 Carolina, it's discovered they have that conviction and
3 they have to register as a sex offender here?

4 **MR. MORONEY:** I would say that's perfectly analogous,
5 Your Honor.

6 **MR. ADDUCCI:** Again, I would disagree because I'd say
7 that there simply is not a conviction at this point.

8 **THE COURT:** All right. Give me a few more moments.
9 We'll be at ease. Is the next witness here and do you
10 intend to call your client?

11 **MR. ADDUCCI:** I do not intend to call Mr. Andrews.

12 **THE COURT:** Very good.

13 **MR. ANDREWS:** Your Honor, we don't have to handle this
14 right now, but we did have an issue with regard to the next
15 witness based on the testimony we anticipate.

16 **THE COURT:** Okay. What's -- go ahead and tell me what
17 the issue is.

18 **MR. ANDREWS:** I mean, our assumption is that
19 Shantavius Johnson is going to be the next witness. We
20 think that Mr. Johnson may need to be advised of his rights
21 against self-incrimination.

22 **THE COURT:** Does he have counsel on the pending
23 charges?

24 **MR. ANDREWS:** Your Honor, his charges are all closed.
25 It appears he had Mr. Geddes Anderson.

1 **THE COURT:** All right.

2 **MR. ANDREWS:** I take that back. Yeah, I believe he
3 did have Geddes Anderson on the resolved charges, Your
4 Honor. Now I -- I don't know. It kind of feels like I'm
5 seeking guidance from the Court about how to try our case,
6 but Mr. Johnson was charged with unlawful carrying of a
7 pistol for the incident that occurred on June 30, 2012.
8 Based on the way the guilty plea worked out, it looks
9 like he pleaded guilty to a few offenses. The unlawful
10 carrying of a pistol that occurred on June 30th of 2012 was
11 nol prossed. While the indictment doesn't reflect it, it
12 appears that it was a nol pros in consideration for a
13 guilty plea. And, again, this is a bizarre request, but I
14 suppose if the Court is not going to advise Mr. Johnson of
15 his rights, I guess we would be seeking some kind of
16 judicial notice that because the case -- because the gun
17 charge was nol prossed in consideration, I guess we would
18 want the Court to take judicial notice that he could not be
19 charged for admitting that he had a second gun.

20 **THE COURT:** I'm not touching that with a ten-foot
21 pole. That will come up if the State elects to charge
22 Mr. Johnson with possession of this particular firearm.
23 As far as Mr. Johnson's understanding of what was
24 dismissed in return of his pleas of guilty, I mean, you
25 can discuss that. I think you can go into that. At

1 this point in time, he's being called as witness. If he
2 intends to invoke his Fifth Amendment right against
3 self-incrimination, that's his business. I'm assuming
4 that he's well aware of those rights having had them
5 explained to him previously when he pled guilty. I don't
6 know that I necessarily do need to advise him of his
7 rights.

8 **MR. ANDREWS:** Okay. I guess -- again, our concern is
9 that if he's gonna come in here and potentially admit to a
10 second offense or -- or an offense that wasn't handled as
11 part of this, we would think he would need to be advised of
12 his rights.

13 **THE COURT:** All right. Well, I'll -- I'll think about
14 it. I'll think about it.

15 We'll be at ease.

16 (Recess taken.)

17 **THE COURT:** All right. What the Court has basically
18 decided on the question that we have on the table is as
19 follows: South Carolina is free to define its criminal
20 laws in the manner that it chooses to and clearly the
21 intent of 16-23 et seq. is to keep a firearm out of the
22 hands of the individuals that South Carolina has decided
23 simply should not possess a handgun, and South Carolina is
24 free to say that a person who is convicted of fishing
25 without a license is not prohibited -- or is not allowed to

1 possess a firearm. We can say that if we want to. South
2 Carolina has full control over its old -- over its own
3 criminal laws.

4 When I look at the definition of conviction under
5 Subsection 6 of 16-23-10, it becomes quite clear that --
6 to the Court that the intent of the Legislature is to cast
7 as wide a net as possible. It includes in the definition
8 of conviction pleas of guilty, pleas of no contest, and
9 forfeiture of bail. So it's possible for someone in
10 another state to simply forfeit bond -- or in this state
11 to simply forfeit bond on some charge that would prohibit
12 them from possessing a firearm. They don't even enter into
13 a plea of guilty, but they merely forfeit bond and they
14 would thereafter be prohibited from possessing a firearm.
15 So clearly the intent of the Legislature when they created
16 this section is to cast an extremely -- extremely broad
17 net.

18 I realize that the irony of this ruling, the irony
19 of this finding, is that this conviction is not final and
20 maybe that's what was hanging the Court up for so long is
21 the question of finality. Clearly under Georgia law
22 Mr. Andrews' conviction is not final. He is not even
23 convicted yet. To say that he is -- that he has not
24 already had some sort of adjudication, that he has not
25 already pled guilty though, clearly that's not the --

1 that's not the case.

2 So regardless of whatever the collateral consequences
3 might be in Georgia for his conviction on the robbery
4 charge, under South Carolina law, even though that
5 conviction is not final in Georgia, it is final for
6 purposes of the firearm statute or the handgun statute in
7 Title 16.

8 So the Court is comfortable with that ruling and based
9 upon my review of the conflict of laws that upholds both
10 the intent of South Carolina law and also gives due
11 deference to the courts of Georgia and the interpretation
12 of their laws because clearly I -- there is an obligation
13 to look to Georgia, but based upon my understanding of the
14 Legislative intent and the conflict of laws issues involved
15 in this case, the Court would find that because he pled
16 guilty, assuming for the moment he possessed the firearm,
17 that that can -- that plea of guilty does, in fact,
18 constitute a conviction under our law, and that's where we
19 are on that.

20 Back to the original question that got us into this
21 discussion, have we decided how the conviction in Georgia
22 is going to be addressed? Is it simply going to be a
23 stipulation or were you gonna seek to introduce the
24 authenticated document or how were you planning on doing
25 that?

1 **MR. MORONEY:** Yes, Your Honor. The State's gonna
2 seek to introduce the document pursuant to Rule 902, the
3 self-authenticating certified conviction.

4 **THE COURT:** Subject to the Defendant's objection of
5 course?

6 **MR. ADDUCCI:** That's correct, Your Honor.

7 **THE COURT:** Very good. After we do that, the State
8 will rest, so let's -- I'm gonna go ahead and allow that
9 to be introduced subject to the Defendant's objection for
10 the reasons that we've just discussed. So whatever that
11 exhibit is, the Georgia document, that is now in evidence.
12 You can reintroduce it in front of the jury. I'll repeat
13 the exact same thing.

14 The State rests at this point in time, and I just want
15 to do this, let you move for a DV so that we don't have to
16 send the jury right back out. So at this point in time,
17 let me hear your motions for a directed verdict.

18 **MR. ADDUCCI:** Your Honor, we're making a motion for a
19 directed verdict on both of the gun charges, on -- well,
20 for the felony charge, again, we don't believe that that
21 counts as a conviction, we've already gone over that. And
22 second off, the statute says that the person must be in
23 possession of a handgun and a handgun is -- let me pull it
24 up -- defined as a --

25 **THE COURT:** Any firearm designed to expel a projectile

1 and designed to be fired from the hand, but does not
2 include, yada, yada, yada.

3 **MR. ADDUCCI:** Exactly, Your Honor. Yes. The term
4 firearm is -- is not defined in this section; however, it
5 is defined in Section 23-31 -- 23-31-1050. A firearm means
6 a weapon, including a starter gun, which will, is designed
7 to, or may readily convert -- be converted to expel a
8 projectile by the action of an explosive.

9 There has been no testimony that that device right
10 there has any capability to -- to expel a projectile
11 through the use of an explosive. It has not been tested
12 to say that it actually does or there has been no expert
13 testimony to say that this item has been inspected and it
14 has been -- and because of -- through that inspection and
15 through this person's expert opinion that it can be used
16 to fire a projectile through the use of an explosive.

17 In light of the fact that they have not shown this is
18 a firearm, that is not a handgun, and, therefore, both of
19 the handgun charges should be DV'd.

20 **THE COURT:** All right. I appreciate your position.
21 I think that's largely a jury issue. If the jury were to
22 conclude that that's not a handgun, that's clearly within
23 their right.

24 Thank you for your motion.

25 All right. Anything else? No?

1 **MR. MORONEY:** No, Your Honor.

2 **THE COURT:** Let's have the jury in, move that in
3 evidence, rest. Your case.

4 (Whereupon, the jury enters the courtroom at
5 10:41 AM.)

6 **THE COURT:** The record should reflect that the jury is
7 back and seated.

8 Ladies and gentlemen of the jury, thank you for your
9 continued patience. As I mentioned last night, I did have
10 a meeting this morning. The meeting did not run all that
11 long. Or at least I left a little bit early because I felt
12 like I could. We've been working on this case and there
13 were a few issues that I did need to take up before I
14 brought you out, so that's the reason I've kept you back
15 there so long. I do apologize.

16 But at this point in time we are still in the State's
17 case in chief. Mr. Moroney, you may proceed, sir.

18 **MR. MORONEY:** Yes, Your Honor.

19 Your Honor, I'm holding a copy of the Defendant's
20 certified conviction for robbery, which is defined as a
21 crime of violence in the state of South Carolina, and at
22 this time pursuant to Rule of Evidence 902, I'd ask that
23 this be admitted into evidence.

24 **THE COURT:** All right. Subject to the earlier
25 objections or reservations, that's State's -- what's the

1 exhibit number?

2 **MR. MORONEY:** It's Exhibit 6.

3 **THE COURT:** State's 6. All right. State's 6 will be
4 in evidence.

5 (State's Exhibit Number 6, Defendant's Certified
6 Conviction, was marked for identification and admitted into
7 evidence.)

8 **THE COURT:** All right. Mr. Moroney.

9 **MR. MORONEY:** Your Honor, the State rests.

10 **THE COURT:** Very good.

11 Mr. Adducci, your case, sir.

12 **MR. ADDUCCI:** Your Honor, the defense calls Shantavius
13 Johnson.

14 SHANTAVIUS JOHNSON,

15 having been duly sworn, testified as follows:

16 **THE COURT:** If you'd have a seat up here, Mr. Johnson.

17 DIRECT EXAMINATION

18 BY MR. ADDUCCI:

19 Q. Good morning, Mr. Johnson.

20 A. Good morning.

21 Q. You're wearing orange.

22 A. Yeah.

23 Q. Everybody can see that. You're currently incarcerated
24 at the South Carolina Division of Corrections?

25 A. Yeah.

1 Q. Okay. Now let me take you back to June 30th of 2012
2 in the early morning hours, okay?

3 A. Uh-huh.

4 Q. Who were you with that evening?

5 A. Jerry Andrews.

6 Q. Was there anybody else that you were with that day?

7 A. There was a friend of mine we had just recently met.

8 Q. Okay. And were you approached by police that evening?

9 A. Yes.

10 Q. Okay. When you were approached by police, how many
11 police first approached you?

12 A. It was one at first.

13 Q. Okay. Did he hit the blue lights behind you?

14 A. Yes, sir.

15 Q. Okay. And after that, what happened?

16 A. After that, I had a beer. I tossed the beer to the
17 side of the road. He walked up on us, questioned us, asked
18 for ID's, we gave him his ID -- or we gave him our ID's.
19 By this time a couple of other police had pulled up.

20 Q. Okay. Now when he asked for your ID, you had an
21 active warrant for your arrest, right?

22 A. I later found out, yeah.

23 Q. Okay. And were you arrested?

24 A. Yeah.

25 Q. When you were arrested, how close were you to

1 Mr. Andrews?

2 A. Approximately -- I'd say anywhere from three --
3 anywhere between three and five feet. It wasn't far.

4 Q. Okay. And when you were arrested, did the police
5 approach Mr. Andrews?

6 A. Yeah, once they put me in handcuffs.

7 Q. Okay. And did they grab Mr. Andrews?

8 A. They did.

9 Q. Okay. But this is when you were in handcuffs?

10 A. Yeah, this was while I'm in handcuffs.

11 Q. Okay. That day were you armed?

12 A. Yes, sir.

13 Q. How many guns did you have on you?

14 A. Two.

15 Q. Okay.

16 **MR. ADDUCCI:** Your Honor, if I may approach?

17 Q. Let me show you what the State has marked as State's
18 Exhibit Number 2.

19 **MR. ADDUCCI:** If I may approach, Your Honor?

20 **THE COURT:** Please.

21 BY MR. ADDUCCI:

22 Q. Do you recognize that?

23 A. Yes, sir.

24 Q. And what is that?

25 A. A .380 pistol.

1 Q. Were you in possession of that weapon on the day of
2 June 30th?

3 A. Yes, sir.

4 Q. Thank you very much. Now did that weapon fall onto
5 the ground?

6 A. Yes, sir.

7 Q. And where was it before it fell onto the ground?

8 A. On my left side.

9 Q. Okay. And there was another handgun on you that day,
10 too, correct?

11 A. A nine millimeter hand -- Highpoint.

12 Q. And where was that on you?

13 A. On my right side.

14 Q. Okay. How did this gun fall out of your waistband?

15 A. I had sweatpants on, so when he pulled my arm behind
16 me and put me into handcuffs, it had started to slide and
17 he didn't search me before this and then the next thing you
18 know they asked Mr. Andrews could they search him. He was
19 like "No, you can't". They was like, "Well, we gonna
20 search you anyway", and during this commotion the pistol
21 had fell down my leg and it was like right on the top of
22 my shoe and by the time of the commotion I had kicked the
23 pistol and so while they was scrambling the pistol -- I
24 tried to kick it out the way, but it ended in between all
25 the commotion and so by this time Mr. Andrews tried to get

1 away from the officer and he moves taking off running. The
2 police officer clips him, they roll down the hill, got into
3 a scuffle down the hill, next thing you know they're coming
4 back up the hill. By this time the officer had searched
5 me, pulled the other pistol off me, some marijuana out of
6 my left pocket and another beer out of my other pocket.

7 **MR. ADDUCCI:** Thank you very much. No further
8 questions.

9 **THE COURT:** Mr. Moroney.

10 **MR. MORONEY:** Yes, Your Honor.

11 CROSS-EXAMINATION

12 BY MR. MORONEY:

13 Q. Mr. Johnson, you're currently incarcerated at the
14 South Carolina Department of Corrections?

15 A. Correct.

16 Q. What facility are you currently incarcerated in?

17 A. Trenton Correctional Institute.

18 **THE COURT:** Did you say Trenton?

19 **THE WITNESS:** Trenton.

20 **THE COURT:** Trenton.

21 BY MR. MORONEY:

22 Q. And what are you there for?

23 A. I just recently got charged -- I pled guilty to drug
24 charges and got violated on my probation.

25 Q. And isn't it true that you've been convicted of a

1 felony, firing into a dwelling?

2 A. Yeah, discharging. That's what I was put on probation
3 for.

4 Q. Discharging a firearm into a dwelling?

5 A. Yeah, into a -- yeah.

6 Q. And you know Jerry Andrews, correct?

7 A. Yeah.

8 Q. How long have you know Jerry Andrews?

9 A. Since about -- it's been about, I want to say, seven
10 years. About since '08.

11 Q. And this incident occurred in 2012?

12 A. 2012. January -- June. June 30th.

13 Q. So you knew him about four years before that?

14 A. Yeah.

15 Q. So y'all are friends, correct?

16 A. Yeah.

17 Q. And that night you were placed under arrest, correct?

18 A. Yeah.

19 Q. And you had a warrant outstanding for your arrest on
20 that night?

21 A. Yeah, I later found out when they checked -- ran our
22 names.

23 Q. And at that time, what was that warrant for?

24 A. Attempted murder.

25 Q. And you say you were standing about three to five

1 feet away from Mr. Andrews, correct?

2 A. Yeah, anywhere approximately -- like I could probably
3 take a step and touch him, you know what I'm saying? Like
4 it wasn't -- we wasn't too far apart.

5 Q. And you state that you had two guns on you that
6 night?

7 A. Yeah.

8 Q. You said one on one side --

9 A. And one on the other side.

10 Q. -- and one on the other side. On your hip region?

11 A. Yeah.

12 Q. And you were wearing loose fitting sweatpants that
13 night, correct?

14 A. I had on basketball shorts and sweatpants.

15 Q. Okay. Then you state that while being place in
16 handcuffs with your hands behind your back you kicked the
17 gun --

18 A. I was already in handcuffs.

19 Q. -- Mr. Adducci showed you?

20 A. Yeah. I was already in handcuffs and then the
21 commotion started; boom, that's when I kicked the pistol
22 and it (descriptive sound) and by this time that's when
23 Mr. Andrews took off.

24 Q. So you -- the gun fell down and you made a kicking
25 motion, correct?

1 A. Yeah, it was like a kicking motion. (Demonstrating.)

2 **MR. MORONEY:** No further questions, Your Honor.

3 **THE COURT:** All right. Thank you, sir. You can --

4 **MR. MORONEY:** I beg the Court -- I beg the Court's
5 indulgence.

6 **THE COURT:** Yes, sir.

7 (Discussion between counsel.)

8 **MR. MORONEY:** One more question, Your Honor.

9 BY MR. MORONEY:

10 Q. Mr. Johnson, why have you waited this long to bring up
11 this information that you were in possession of two guns
12 that night?

13 A. We told -- I told the police that when we locked --
14 got locked up when we was in the holding cell and they gave
15 him the warrant talking about the pistol. We -- I said
16 something about it that night 'cause he was like, "Man,
17 they done charged me with the pistol", and I told the
18 officer. I was like, "Man, he ain't had no gun". 'Cause
19 I knew he was on probation and I knew from the jump that he
20 didn't even have no gun on him. So once I told them that,
21 they still charged him with it. He bonded out, but he was
22 like, "Brother, they still trying to charge me with the
23 pistol", so I said something about it. It's never just
24 been just now.

25 Q. And you know that Mr. Andrews was on probation at

1 that time of the stop, right?

2 A. Yeah, at the time of the stop I knew he was on
3 probation.

4 **MR. MORONEY:** No further questions, Your Honor.

5 **THE COURT:** Redirect, Mr. Adducci?

6 **MR. ADDUCCI:** No, Your Honor.

7 **THE COURT:** All right. Thank you, sir. You can step
8 down.

9 (Witness excused.)

10 **THE COURT:** All right. Call your next witness,
11 Mr. Adducci.

12 **MR. ADDUCCI:** That's our case, Your Honor.

13 **THE COURT:** All right. Anything in the way of reply
14 from the State?

15 **MR. MORONEY:** I beg the Court's indulgence one moment.

16 **THE COURT:** Yes, sir.

17 **MR. MORONEY:** Your Honor, we have -- the State has a
18 brief case in reply.

19 **THE COURT:** All right. Call your witness.

20 **MR. MORONEY:** The State calls Vernon Peppers.

21 **MR. ADDUCCI:** Your Honor, we would ask to -- we have
22 an objection to him testifying. If we may approach?

23 **THE COURT:** All right. Come on up.

24 (Proceedings held at the bench; not reported.)

25 **THE COURT:** Please proceed, Mr. Moroney.

1 **MR. MORONEY:** Yes, Your Honor. The State calls Vernon
2 Peppers.

3 **THE COURT:** If you'll come back around, sir. You're
4 still under oath from yesterday.

5 VERNON PEPPERS,

6 having been previously sworn, testified as follows:

7 REDIRECT EXAMINATION

8 BY MR. MORONEY:

9 Q. Good afternoon. Could you, please, again state your
10 name for the record.

11 A. Vernon Peppers.

12 Q. Officer Peppers, on June 30, 2012, during the gun
13 possession case, did Mr. Johnson make any statements to
14 you regarding him having two guns that night?

15 A. I don't recall anything like that.

16 **MR. MORONEY:** No further questions, Your Honor.

17 **THE COURT:** Mr. Adducci.

18 RE CROSS EXAMINATION

19 BY MR. ADDUCCI:

20 Q. Officer Peppers, did you escort Mr. Johnson to
21 booking?

22 A. I don't think I did.

23 Q. All right. So you weren't there when he was going
24 through booking?

25 A. I think we ended up there at the same time, but I

1 don't think I was there for the whole booking process.

2 Q. So if Mr. Johnson had said something to somebody at
3 booking, you wouldn't know?

4 A. He could have said something to somebody besides
5 myself.

6 **MR. ADDUCCI:** Thank you very much.

7 **THE COURT:** Thank you, sir. You can step down.

8 (Witness excused.)

9 **THE COURT:** No additional witnesses?

10 **MR. MORONEY:** No, Your Honor.

11 **THE COURT:** All right. Ladies and gentlemen, we've
12 finished the portion of the trial where you've received all
13 the testimony that you're gonna get in this particular case
14 and at this point the law requires me to have a very brief
15 -- what's called the charge conference where I discuss with
16 the lawyers the -- the law that I was gonna instruct you
17 on. I've already e-mailed that information to them last
18 night, so they have had an opportunity to review it, but I
19 still need to review it with them before I proceed further
20 with the case.

21 So if you would, adjourn to the back. Don't discuss
22 the case yet. I promised you I will have you in here in
23 about five or ten minutes hopefully. Fingers crossed. See
24 you shortly.

25 (Whereupon, the jury retires to the jury room at

1 10:56 AM.)

2 **THE COURT:** All right. The jury is out. Have both
3 sides had a chance to review the proposed instructions that
4 I sent?

5 **MR. ADDUCCI:** Yes, Your Honor.

6 **THE COURT:** Mr. Moroney?

7 **MR. MORONEY:** Yes, Your Honor.

8 **THE COURT:** Any issues?

9 **MR. ADDUCCI:** The only issue I have is you have the
10 wrong code section cited on possession of a weapon by a
11 felon. He's charged under the 30 section as opposed to the
12 500.

13 **THE COURT:** Okay.

14 **MR. ADDUCCI:** But otherwise the language is
15 appropriate.

16 **THE COURT:** Okay. I actually -- in the version that I
17 edited, I actually just deleted all code section references
18 and didn't think that the jury really needed that.

19 One thing I also did change was I eliminated -- under
20 possession of marijuana, there was a lot of language about
21 constructive possession. This isn't a constructive
22 possession case; he either had it or he didn't, so I just
23 kind of got rid of it. Dominion and control I didn't
24 really think played into it. I'll add it back in if you
25 feel strongly about it, but --

1 **MR. ADDUCCI:** We're fine with the Court's --

2 **THE COURT:** Okay. Does the State have any other
3 problems with it?

4 **MR. MORONEY:** No, Your Honor.

5 **THE COURT:** Okay. All right. Very good. We'll just
6 go with the instructions then as I've worked them up.

7 My clerk is gonna show you-all the verdict form real
8 quick. She's printing that out, so we'll be off the record
9 for a few moments while I go collect that stuff.

10 (Recess taken.)

11 **THE COURT:** Okay. We're back on the record. Before I
12 bring the jury out, Mr. Adducci, are you -- are you gonna
13 require the State to open on the -- on the law or are you
14 comfortable just taking first argument and letting them go?

15 **MR. ADDUCCI:** I'll take first argument. But before we
16 go, Your Honor --

17 **THE COURT:** Yes, sir.

18 **MR. ADDUCCI:** -- in closing I was planning on arguing
19 that that is not a conviction. I don't know if the State
20 wants to make a motion in limine to prevent me from doing
21 that just before.

22 **THE COURT:** It seems to be -- that does seem to be a
23 legal issue. What's the State's --

24 **MR. MORONEY:** I -- I think such an argument would be
25 at odds with the Court's ruling that it is a certified

1 conviction under South Carolina Code of Laws and would be
2 an incorrect statement.

3 **MR. ADDUCCI:** I foresaw this argument, so I figured
4 I'd bring it to your attention before we got into it in the
5 middle of closings.

6 **THE COURT:** I appreciate you doing that.

7 **MR. ADDUCCI:** Yes, sir.

8 **THE COURT:** I'd ask that you stay away from that,
9 Mr. Adducci. I think that is purely a legal question
10 whether it's a conviction or not. The record is protected
11 and clearly -- of course, you renew all -- at this point in
12 time, now that all the evidence is closed, you renew all
13 previous motions, the same rulings as before, and I'm gonna
14 stick with the ruling. I think that's a legal issue.

15 **MR. ADDUCCI:** Thank you, Your Honor.

16 **THE COURT:** Thank you.

17 Let's have the jury in, please.

18 (Whereupon, the jury returned to the courtroom at
19 11:09 AM.)

20 **THE COURT:** All right. The record should reflect
21 that the jury is back and seated.

22 Ladies and gentlemen of the jury, we're now at that
23 portion in the trial where you will hear the closing
24 arguments of the attorneys. And the way that we'll
25 proceed is Mr. Adducci will go first to be followed by

1 Mr. Moroney.

2 It's normal for lawyers to make reference to
3 testimony or facts in their closing arguments; however,
4 I will let you know that if at any time any of the
5 lawyers say anything concerning -- concerning the facts
6 and what they say about the facts differs from what you
7 recall the testimony being or the evidence being, you
8 should go with your recollection obviously because you're
9 the sole judges of the facts, okay?

10 So should they say anything that conflicts with what
11 you recall the testimony being, go with your recollection
12 as opposed to what they say.

13 At this point in time, Mr. Adducci, you are recognized
14 for your closing, sir.

15 **MR. ADDUCCI:** May it please the Court?

16 **THE COURT:** Yes, sir.

17 **MR. ADDUCCI:** Good morning, everybody.

18 I'm, again, Thomas Adducci, representing the
19 Defendant, Mr. Andrews.

20 What I'd like to do is sort of bring this in three
21 sections. First we're going to talk a little about the
22 law and ultimately you're going to be instructed by Judge
23 Addy as to what the law is, but we're gonna talk about the
24 law a little bit, talk about the testimony that we've seen,
25 the facts of the case, and then talk about sort of some

1 conclusions that we can make by filtering those facts
2 through that law.

3 So, first off, presumption of innocence. In the
4 United States of America, everybody is presumed innocent.
5 The fact that he's standing next to me, Mr. Defense
6 Attorney, means absolutely nothing. He is cloaked in
7 innocence, as the Court has said, and with that comes a
8 burden on the State. The State has to prove Mr. Andrews
9 guilty.

10 Now they have to bring forth evidence and testimony.
11 In the United States of American we have a -- sort of a
12 couple of standards that we go by in courts. We have
13 preponderance of the evidence, right? If we imagine this
14 is some sort of continuum of evidence from nothing at all
15 over here to absolute mathematical certainty, there is no
16 doubt in anybody's mind, and there could not possibly be
17 any doubt, right? Believe all the -- aliens couldn't
18 have even done it, right? Halfway down the middle,
19 preponderance of the evidence. That's a civil standard.
20 More likely than not.

21 That's not what we're dealing with today. We are
22 dealing with proof beyond a reasonable doubt. The judge
23 is gonna tell you that proof beyond a reasonable doubt is
24 that proof that makes you so certain that you would not
25 hesitate to act in an important decision in your own life,

1 and that is the burden that the State has to meet before
2 you can find Mr. Andrews guilty of any charge. And they
3 have to prove each and every element of these offenses
4 before you can find him guilty. So that's just the
5 groundwork as far as what the State's burden is.

6 Now let's move on to the charges themselves.
7 Possession of marijuana. Pretty simple to understand. Is
8 this pot and did Mr. Andrews have it? We don't need a lot
9 of explanation there. Possession of a handgun by a felon.
10 Again, fairly simple. Was Mr. Andrews in possession of a
11 handgun? Has the State shown that he's a convicted felon?
12 Unlawful carry of a handgun. Is he carrying a handgun on
13 or about his person? And then resisting arrest. Did he
14 impede or hinder an arrest? That's basically the law that
15 we need to talk about.

16 So let's talk about the facts that we've heard.
17 You've heard from the State's witnesses. They indicated
18 that Mr. Andrews and two other guys were just -- just
19 walking. It's in the evening, it's 2:30. Apparently
20 Mr. Osborne thinks he knows everybody who belongs on that
21 street. Officer Osborne said those guys look like they
22 don't belong, I don't like that they're here, I'm gonna go
23 stop them because that's what I'm gonna do.

24 You saw the tape. He stops them, hits the blue
25 lights. Mr. Johnson and Mr. Andrews are there; polite,

1 cooperative, answering the questions, giving their ID.
2 They're all sort of huddled around each other as you saw
3 on the video. They're asked about where you're going,
4 what you're doing. Mr. Andrews says, "Oh, I'm going to my
5 girlfriend's house, he's coming with me". Mr. Johnson got
6 some beer; sorry. He had some beer, he chucked it in the
7 ditch, you know, apologized about that. Mr. Andrews said,
8 "Hey, can I call my mom?". No, you can't. You're not
9 calling anybody.

10 Okay. They do the warrant checks. Mr. Andrews comes
11 back clear. There's nothing. Mr. Johnson, on the other
12 hand, has a warrant for attempted murder. The police then
13 decide to arrest Mr. Johnson. They hook him up, say you're
14 under arrest. He had some questions, everybody seems to be
15 fairly calm. The guy who has no arrest warrants, they say,
16 "Well, can we search you?" No, no, you can't. I prefer if
17 you didn't. Well, too bad, so we're gonna search you.
18 They say he starts reaching towards his -- his right
19 pocket, okay? That's interesting they think. There's a
20 scuffle. Officer Osborne testifies that during this
21 scuffle he has Mr. Johnson by the back of his hands and he
22 grabs onto Mr. Andrews. I'm six-three. That is about as
23 far as I can reach. So this is how close we are. This is
24 the close proximity these two folks are.

25 They said -- none of the officers testified that they

1 saw a weapon in Mr. Andrews' possession. They said when
2 they were grabbing at him, they did hear a clank and then
3 looked down and in the middle of the group they saw this
4 weapon right there. Mr. Andrews then takes off. He trips
5 and he falls. The police at that point are attempting to
6 place him under arrest once they place his hands on him,
7 once he's on the ground in the ditch. When they're trying
8 to search him, that's not an arrest, so -- and running from
9 a search is not resisting arrest. So when we're talking
10 about the analysis of is Mr. Andrews resisting arrest, the
11 analysis happens when the police lay their hands on him
12 when he's on the ground.

13 So Mr. Andrews fell. The police officers told you
14 he's on the ground on his right side. They get control of
15 his left hand. I believe it was Officer Link said he had
16 a knee in his back and Mr. Andrews is lying on his right
17 side, arm underneath him. Police have his left hand.
18 Give me your arm, give me you arm, with a police officer
19 on his back. It's pretty difficult to rip your arm out
20 when you've got a big guy with a gun on top of you. In
21 addition, he said, "Tase his ass". That's what the police
22 think. Just Tase his ass.

23 So after a couple of seconds Mr. Andrews had his hand
24 by his right pocket. That same right pocket they were
25 interested in earlier. What was in it? Marijuana. Now it

1 makes sense. Why did Mr. Andrews not want to be searched?
2 He knew he had pot. This is what he had. This is what he
3 didn't want them to find. That's the same side that police
4 said that he was around when they were going to search him.
5 That's the same side that his hand was near when they were
6 trying to rip his arm out from underneath him. This is
7 what Mr. Andrews was afraid of. He didn't have this gun.

8 Mr. Johnson came in here and testified under oath
9 that that gun right here was in his waistband. That when
10 he was getting locked up and this -- he had loose fitting
11 pants, it started falling down his leg, falling down my
12 leg, what am I gonna do? I'm trying to kick it out of my
13 pant leg and get it out of here because I don't want to be
14 caught with that. I don't want this gun. Again, when
15 Mr. Osborne is holding them both he kicks it out and it
16 gets right in between the both of them. And, again, none
17 of the police said that they saw Mr. Andrews in possession
18 of that gun. They just said it was at his feet after we
19 heard a clank and Mr. Johnson explains exactly why he --
20 you heard -- they heard that clank and exactly how that gun
21 got where the police found it.

22 So Mr. Andrews ran because of pot. He didn't want to
23 get searched because of some pot. He didn't have a gun
24 because we know where that gun came from. Mr. Johnson told
25 you where that gun came from. And once he was arrest --

1 once he was on the ground and they were trying to wrench
2 his arm around, he's not resisting, he's just physically
3 incapable of wrenching his right arm around him when he's
4 got his left arm up here. On the ground, a police officer
5 on his back. A couple of seconds it takes to get his arm
6 out. Ladies and gentlemen, that's not resisting arrest.
7 That's just, I guess, not being a contortionist.

8 So those are the facts of the case. That's the
9 testimony that you've heard. So I'm going to tell you to
10 do something defense attorneys generally don't. You're
11 gonna find my client guilty of possession of marijuana.
12 It feels weird doing that, but that's what he's guilty of
13 today. He had pot on him that day and that's what the
14 State's proven beyond a reasonable doubt. And this case
15 is a great example of what proof beyond a reasonable doubt
16 looks like. On this continuum of evidence the State's met
17 a burden. I agree with them. Mr. Andrews is in possession
18 of marijuana. Fine. Check that off, guilty.

19 But that's what proof beyond a reasonable doubts looks
20 like. You do not have a doubt, you do not hesitate to act
21 with the facts that you've heard regarding that marijuana;
22 however, with this gun, Mr. Johnson gave you every reason
23 to hesitate to act. He said, "That's mine. It came out of
24 my pants pocket or came out of my pant waistband, and I
25 tried to get it away from me." Perfectly reasonable. It

1 falls in line and is consistent with what the testimony of
2 the police officers was. That is what reasonable doubt
3 looks like. More than reasonable doubt in my -- in my
4 opinion.

5 Now to the resisting arrest. Again, on the ground on
6 his side. That's important. His left arm is behind him,
7 he's leaning on this right side and they're asking him to
8 bring his right arm back around his back with somebody on
9 his back. It's simply not possible. Once they moved him
10 around, he was able to rip his arm out and got it there,
11 but you saw the video. It was a couple of seconds that
12 it took for him to do that. Again, that's not resisting
13 arrest. That's just being on the ground and having
14 somebody on top of you over your arm.

15 So when you look at the facts and the testimony that
16 we've seen today and yesterday and you apply the law and
17 the burdens that the State have, proof beyond a reasonable
18 doubt? When it comes to marijuana, they met it. That's
19 what proof beyond a reasonable doubt looks like. When
20 it comes to the gun charges, Mr. Johnson gave you that
21 reasonable doubt, Mr. Johnson took responsibility for that
22 gun. And as far as resisting arrest, you saw the video.
23 You saw how they were explaining how he was on his back --
24 or on his side with the police officer with their knee in
25 his back and he couldn't rip his arm out. That's simply

1 not resisting arrest. The State has not met its burden,
2 on those charges and because of that you should find
3 Mr. Andrews not guilty. Thank you very much.

4 **THE COURT:** Mr. Adducci, thank you.

5 Mr. Moroney, you're recognized for your closing, sir.

6 **MR. MORONEY:** Yes, Your Honor. May it please the
7 Court?

8 **THE COURT:** Yes, sir.

9 **MR. MORONEY:** Good morning. Ladies and gentlemen,
10 you've seen how quick a law enforcement encounter and a
11 stop with individuals can change in this case. We saw
12 how this stop escalated very quickly. Initially this was
13 just a routine investigation for some suspicious behavior.
14 There were three individuals, the third individual ran off,
15 and now they're only two remaining.

16 Officer Osborne turns around. I remind you this is
17 2:15 in the morning, slightly after, and now they're in the
18 roadway, which is a safety hazard. Mr. Adducci mentioned
19 that Mr. Osborne was just stopping these gentlemen, but at
20 that point I would submit that the officer had some
21 reasonable suspicion to stop these gentlemen and find out
22 what's going on. After all, it's his duty to enforce the
23 laws on Lander University's campus and uphold his oath as
24 a certified law enforcement officer.

25 That stop which started off on just some reasonable

1 suspicion escalated quickly to a person who's wanted for
2 attempted murder being placed into custody who has a gun
3 in his waistband and also another individual, Mr. Jerry
4 Andrews, sitting right there, who has a gun in his
5 waistband who attempts to discard the gun and run off from
6 law enforcement officers resisting a lawful arrest after
7 they observed the gun fall right underneath his person. So
8 this stop can change very quickly.

9 In this case, we know. We have the Body Cam video,
10 which is extremely helpful. Nowadays there's much
11 discussion with reference to Body Cam videos and how
12 helpful they can be. You have this video, you've watched
13 it, and you'll be able to watch that video if you'd like to
14 take another look at it, the proximity of Mr. Andrews and
15 Mr. Johnson in relation to the officers and the movements
16 that were conducted during that time when there was a
17 scuffle, the gun was dropped by Mr. Andrews and he took off
18 running.

19 Now the defense wants you to believe that Shantavius
20 Johnson had two guns on him and he kicked the gun directly
21 under Mr. Andrews and then Mr. Andrews took off running and
22 that gun doesn't belong to Mr. Andrews. Folks, I submit
23 that you have the common sense to realize that that is
24 highly implausible and an unreasonable statement of what
25 happened that night, and you have the video to back that

1 up.

2 Let's remember that at this time Mr. Johnson was in
3 handcuffs, hands behind his back. And we've seen the
4 video, and you can look at it, he stands still, he's not
5 moving; yet he's got up here on the stand and testified
6 that he kicks this gun. Mr. Andrews -- he's not moving,
7 but I'll tell you who is moving, who's doing a lot of
8 moving that night, and you can see it on the video. It's
9 Mr. Andrews. It's not a question of being polite because
10 they were legally justified to conduct a pat-down just of
11 his outer clothing, not a search, diving into his pockets,
12 just to ensure their safety because he's in the company of
13 somebody wanted for attempted murder.

14 And in doing so, Mr. Andrews begins reaching for his
15 waistband, which is an indication to these officers that
16 he may be reaching for a weapon. We've heard that based
17 on their training and experience. He's reaching for
18 his pockets and there's a scuffle and this happens
19 simultaneously as you see as they're getting ready to
20 perform this pat-down, and that's when the metallic clink
21 or thud that officers described was heard and the gun
22 rested directly underneath Mr. Andrews. Mr. Johnson on
23 this video is standing still, his hands behind his back.
24 Mr. Andrews is doing a lot of moving around.

25 And the gun wasn't the only thing to hit the road

1 that night because Mr. Andrews hits the road quickly
2 thereafter. Immediately after that metallic sound when
3 the gun hits the ground, he takes off running. Presumably,
4 from Mr. Adducci's argument, it was because of a couple
5 of grams of marijuana in his pocket..

6 Why does he take off running? He takes off running
7 because of this gun that he was trying to get rid of and
8 distance himself from. He had just dropped the gun in
9 front of three uniformed law enforcement officers, two of
10 which observed the gun fall at his feet directly underneath
11 him, one did not because he was trying to grasp ahold of
12 Mr. Andrews' hands as he was reaching for what he thought
13 may be a weapon.

14 Now Shantavius Johnson is headed back to prison after
15 this case. He has nothing to lose in this case. He's
16 testified that he's been friends with Mr. Andrews since
17 2008, so at the time of this stop he'd know him for
18 approximately four years; a friend now of Mr. Andrews for
19 about eight years, seven years. Don't you think such a
20 friend at the time of this stop would not wait until the
21 booking process to say, "Hey, that gun is mine"? If he
22 knew his friend who was on probation was gonna be getting
23 in trouble, wouldn't at the outset of Mr. Andrews being
24 charged with this gun, wouldn't Mr. Johnson want to mention
25 that information then rather than sit on it?

1 Ladies and gentlemen, you've head the testimony from
2 the three officers who were on that stop and on this video
3 that night. Officer Peppers, Officer Link and Officer
4 Osborne, the investigating officer. You have the facts
5 before you based on their testimony and you have the
6 evidence to consider in this case. They did an outstanding
7 job that night in keeping that campus safe and performing
8 their duties as law enforcement officers. They not only
9 took Mr. Johnson off the street, who was currently wanted
10 for attempted murder, but placed Mr. Andrews in custody for
11 unlawfully carrying this handgun.

12 I want to address the specific charges. Mr. Andrews
13 is charged with four charges. The first being unlawful
14 carrying of a pistol. The State must prove beyond a
15 reasonable doubt that the Defendant carried a pistol about
16 his person, whether concealed or not. I submit to you
17 based on what I've stated to you that he was carrying that
18 pistol on his person. Just because he was able to drop it
19 right underneath him and take off running does not mean
20 that he was not in possession of that pistol.

21 Additionally, Mr. Andrews is charged with possession
22 of a pistol after being convicted of a crime of violence.
23 I've established that he has been in possession of that
24 pistol and also you have his certified criminal conviction
25 right here from the state of Georgia. In 2009, this

1 conviction was entered for robbery, which is a crime of
2 violence according to the South Carolina Code of Laws.
3 The State has to meet the burden to prove that charge that
4 he had been convicted of was a crime of violence and he was
5 in possession of the pistol, and we have done that to you.
6 I submit that we've done that to you -- done that for you.

7 The third charge, resisting arrest, requires that
8 the State prove beyond a reasonable doubt the Defendant
9 resisted a lawful arrest being made by a person the
10 Defendant knew or reasonably should have know was a law
11 enforcement officer. All three officers that night were
12 in uniform. We've seen that on the video. And after
13 the scuffle Mr. Andrews drops the gun, two of the three
14 officers observed that gun directly under Mr. Andrews.
15 At that point there was probable cause for an arrest of
16 Mr. Andrews. He can't run off. He was under arrest and
17 he tried to flee.

18 Let's not forget after they caught up with him it
19 took about, from my estimation, approximately thirty
20 seconds for him to comply and remove hands from underneath
21 his stomach area. You can see that there's a struggle
22 there as he's trying to fish out this bag of marijuana
23 in his right pocket that Mr. -- that Officer Peppers
24 testified to. And during that struggle Officer Link --
25 Officer Link sustained a minor cut to his hand.

1 Finally, this brings us to possession to marijuana,
2 which the defense has conceded Mr. Andrews is guilty of;
3 however, you heard the testimony that bag of marijuana was
4 in his right pocket at the time they placed him into
5 handcuffs. He was in possession of that marijuana.

6 At the outset of this case Deputy Solicitor Demetri
7 Andrews addressed you and spoke about the burden that
8 the State has in proving the Defendant's guilt beyond a
9 reasonable doubt and spoke to you and mentioned that we
10 welcomed that burden. And proof beyond a reasonable doubt
11 is not absolute certainty. There are not many things in
12 this world that we know with absolute certainty; however,
13 the State must prove the Defendant's guilt. I can equate
14 it easily to if the State has proved -- that you are firmly
15 convinced of the Defendant's guilt. Firmly convinced of
16 the Defendant's guilt.

17 Ladies and gentlemen, I submit to you that we have
18 demonstrated through the testimony of the officers, the
19 evidence in this case and the facts before you that
20 Mr. Jerry Andrews is guilty of all four charges before
21 you and I'd ask that you find him guilty of all four
22 charges.

23 Thank you for your time and thank you for your
24 attention.

25 **THE COURT:** Thank you, Mr. Moroney.

1 All right. Now, ladies and gentlemen, it now becomes
2 my responsibility to instruct you on the law that applies
3 in this particular case and, traditionally, when I first
4 started practicing the way that this had been done was that
5 the judge would just sit up here and read you twelve or
6 thirteen pages of the law and you're supposed to take it
7 all in and understand it and then just go back there and
8 apply it to the facts, and I've always found that a little
9 bit unreasonable because like most people it took me three
10 years to get through law school, so I don't really think
11 it's fair to ask y'all to learn in fifteen minutes that
12 took me three years to learn.

13 So what I'm saying in a roundabout way is that, of
14 course, you'll have a copy of these instructions that you
15 can refer to if you need to during your deliberations,
16 okay? Please don't simply pay attention to part of the
17 instructions to the detriment of the other portions of the
18 instructions. And if you have any questions about the
19 law, I'll be more than happy to try and assist you. I'm
20 more than happy to answer any question that you may have
21 concerning the law.

22 Factually, however, at this point in time the record
23 is closed. So if you have any questions about the facts,
24 I'm not in a position to help you with those. You'll have
25 to rely upon your memory and what you recall the testimony

1 being on any factual kind of a question because it's not
2 possible at this point to reopen the record or produce
3 additional evidence.

4 Now, ladies and gentlemen, I remind you that the
5 indictments in this case charge Mr. Andrews with four
6 offense, and those offenses are: Possession of a pistol
7 after being convicted of a violent crime, carrying a pistol
8 unlawfully, resisting arrest, and possession of marijuana.
9 I remind you that the fact that Mr. Andrews was arrested,
10 charged and indicted in this case, of course, cannot be
11 considered by you as evidence of guilt in the case, nor
12 does it create any presumption or inference of guilt. The
13 indictments, those documents, are simply the formal written
14 instruments by which these charges are brought against the
15 Defendant.

16 Now the Defendant, Mr. Andrews, has pled not guilty
17 to these charges and that plea puts the burden of proof on
18 the State. A person charged with committing a criminal
19 offense, ladies and gentlemen, is never required to prove
20 himself innocent. I instruct you that it's an important
21 rule of law that the Defendant in a criminal trial, no
22 matter what the seriousness of the charge may be, will
23 always be presumed to be innocent of the charges unless
24 guilt has been proven by evidence satisfying you of his
25 guilt beyond a reasonable doubt.

1 Ladies and gentlemen, this presumption of innocence
2 doesn't end when you begin your deliberations, but it
3 accompanies the Defendant and stays with them throughout
4 the trial until you reach a verdict of guilt based on
5 evidence satisfying you of his guilt beyond a reasonable
6 doubt.

7 Ladies and gentlemen, the presumption of innocence
8 is like a robe of righteousness that's placed about the
9 shoulders of the Defendant and it remains with him until
10 it's been stripped from him by evidence satisfying his
11 guilt beyond a reasonable doubt. The presumption of
12 innocence, ladies and gentlemen, is not merely a legal
13 theory, it's not just a legal phrase. It's a substantial
14 right to which every citizen is entitled unless you, the
15 jury, have been satisfied from the evidence of his guilt
16 beyond a reasonable doubt.

17 Well, what is a reasonable doubt under the law? A
18 reasonable doubt is the kind of doubt that would cause a
19 reasonable person to hesitate to act. Now there are very
20 few things -- or I'm sorry. The State has the burden of
21 proving his guilt beyond a reasonable doubt. And some of
22 you may have served as jurors in civil cases where you were
23 told that it's only necessary to prove that a fact is more
24 likely true than not true, such as by the greater weight or
25 the preponderance of the evidence. In criminal cases, the

1 State's proof must be much more powerful than that. It has
2 to be proof beyond a reasonable doubt. Proof beyond a
3 reasonable doubt is proof that leaves you firmly convinced
4 of the Defendant's guilt.

5 Now there are few things that we know with absolute
6 certainty in this world and in criminal cases the law does
7 not require proof that overcomes every possible doubt.
8 If, based upon your consideration of the evidence, you're
9 firmly convinced that the Defendant is guilty, you should
10 find him guilty. If, on the other hand, you find that
11 there is a real possibility that the Defendant is not
12 guilty, you must give him the benefit of the doubt and
13 find him not guilty.

14 Now, ladies and gentlemen, I remind you that during
15 this trial you and I have certain duties to perform and as
16 the trial judge it's my responsibility to rule over the
17 admissibility of evidence and preside over the trial of
18 the case. You are to consider only the competent evidence
19 before you. So any evidence that was ordered stricken
20 from the record, you must disregard that testimony because
21 you're to consider only the testimony which has been
22 presented from the witness stand, any exhibits which have
23 been made a part of the record in this case, and any
24 stipulations of counsel.

25 I have the additional duty to charge the law that

1 applies and as the presiding judge I'm the sole judge of
2 the law. It will be your duty to accept it and apply it as
3 I state it to you now. If you've got any ideas as to what
4 the law is or what it should be and it differs from what I
5 now tell you the law is, you have to abandon this idea
6 because you're sworn to accept and apply -- apply the law
7 as I now state it to you.

8 In every case tried in this court before a jury, the
9 jury becomes the sole and exclusive judge of the facts in
10 a case. A trial judge cannot intimate, state, comment on,
11 or make any statement concerning the facts to a trial
12 jury. Since you, the jury, are the sole judges of the
13 facts, you're not to infer from what I've said during the
14 progress of this trial in ruling upon the admissibility of
15 evidence or otherwise, or anything that I say to you now
16 that I have any opinion about the facts in this case.

17 Ladies and gentlemen, I have no opinion about the
18 facts in this case. The law does not permit me to have an
19 opinion about the facts. This is solely a matter for you
20 to determine. As jurors, it will be -- is your duty to
21 determine the effect, value, weight, and truth of the
22 evidence presented during the course of the trial.

23 Now, ladies and gentlemen, typically in a trial there
24 are two types of evidence which are generally presented;
25 direct evidence and circumstantial evidence. Direct

1 evidence -- excuse me. Direct evidence directly proves the
2 existence of a fact. Circumstantial evidence is proof of a
3 chain of facts and circumstances indicating the existence
4 of a fact. I instruct you that crimes can be proven by
5 both circumstantial evidence and direct evidence. If
6 proven by circumstantial evidence, the -- sorry. Let me
7 back up. I missed a spot.

8 All right. Crimes can be proven by circumstantial
9 evidence and the law makes no distinction between the
10 weight or the value to be given to either direct or
11 circumstantial evidence. However, to the extent the
12 State may rely upon circumstantial evidence, all the
13 circumstances must be consistent with each other and when
14 taken together point conclusively to the guilt of the
15 accused beyond a reasonable doubt.

16 If the circumstances are merely portray -- or merely
17 portray the Defendant's behavior as suspicious, then the
18 State's proof has failed. Again, the State has the burden
19 of proving the Defendant's guilt beyond a reasonable
20 doubt and this burden rests with the State regardless
21 upon whether the State relies upon direct evidence,
22 circumstantial evidence or some combination of the two.

23 Now, necessarily, ladies and gentlemen, you have to
24 determine -- determine the credibility of witnesses who
25 have testified. And, again, credibility simply means

1 believability. It becomes your duty as jurors to analyze
2 and to evaluate the evidence and determine which evidence
3 convinces you of its truth. In determining the
4 believability of witnesses who have testified, you can
5 believe one witness over several witnesses or several
6 witnesses over one witness. You may believe a part of
7 the testimony of a witness and reject the remaining part
8 of the testimony of that same witness. You may believe
9 the testimony of a witness in its entirety or reject the
10 testimony of a witness in its entirety. You can consider
11 whether the witness has exhibited to you any interest,
12 bias, prejudice, or other motive in this case, and you may
13 also consider the appearance or the manner of the witness
14 while on the witness stand.

15 Now, ladies and gentlemen, I instruct you and
16 emphasize to you that the fact that the Defendant in this
17 case did not testify is not a factor to be considered
18 by you in any way in your deliberations and in your
19 consideration on the question of his guilt or innocence.
20 It must not be considered by you in any manner whatsoever.
21 A defendant has the constitutional right to remain silent
22 and the assertion of this right must not be considered by
23 you in your deliberations. I repeat, ladies and gentlemen.
24 Under your oath you're to draw no conclusions whatsoever
25 from the fact that Mr. Andrews did not testify in this

1 case. The fact that he did not testify shouldn't even be
2 discussed in the jury room. The burden of proof as I
3 have stated to you is on the State. The Defendant is not
4 required to prove himself innocent. The burden of proof
5 remains on the State to prove guilt beyond a reasonable
6 doubt.

7 Now with regard to the specific charges that
8 Mr. Andrews faces, ladies and gentlemen, I'll address
9 possession of marijuana first. To prove possession of
10 marijuana, the State must prove beyond a reasonable
11 doubt that the Defendant had both the power and the
12 intent to control the disposition or use of the marijuana.
13 Possession may be either actual or constructive. I
14 instruct you that actual possession means that the
15 marijuana was in the actual physical custody of the
16 Defendant.

17 With regard to the resisting arrest charge, the
18 Defendant is charged with resisting arrest so that the
19 State must prove beyond a reasonable doubt that the
20 Defendant resisted a lawful arrest being made by a person
21 the Defendant knew or reasonably should have known was a
22 law enforcement officer. Resist means to oppose, strike
23 against, or obstruct. Obstruct means to impede, hinder,
24 or interfere with. Even peaceful, nonviolent, indirect
25 obstruction of an arrest or the service or execution of

1 process is considered resisting arrest. If the means used
2 are sufficient to prevent the officer from making an
3 arrest, the Defendant is guilty of resisting arrest.

4 Concerning the possession of a pistol after being
5 convicted of a violent crime charge, ladies and gentlemen,
6 again, the Defendant is charged with possession of a pistol
7 by a person convicted of a violent crime. The State must
8 prove beyond a reasonable doubt that the Defendant was in
9 possession of a pistol and that he had previously been
10 convicted of a crime of violence. I instruct you that
11 under the laws of South Carolina robbery is defined -- or
12 classified as a crime of violence.

13 Finally, ladies and gentlemen, the Defendant is
14 charged with carrying a pistol unlawfully. Therefore, the
15 State must prove beyond a reasonable doubt the Defendant
16 carried a pistol about his person regardless of whether it
17 was concealed or not. A weapon about the Defendant's
18 person -- a weapon is about the Defendant's person if it
19 is readily accessible and convenient for immediate use.
20 The pistol need not be actually touching his person or the
21 person of the Defendant.

22 Now, ladies and gentlemen, there are basically two
23 possible verdicts for each of the four charges, and I've
24 prepared this verdict form, Mr. Foreman, just to kind of
25 simplify things and guide y'all's deliberations a little

1 bit. It basically lists the four charges and it makes
2 four statements which are identical for all the charges.
3 For example, the first statement says: We, the jury, in
4 the above-captioned case on the charge of possession of
5 marijuana unanimously find Jerry Andrews, and then there
6 are two options, either guilty or not guilty. If you find
7 that the State has met its burden of proving his guilt
8 beyond a reasonable doubt on the marijuana charge, you
9 would initial next to "guilty" and then proceed to the next
10 question that deals with the resisting arrest charge, okay,
11 and just keep doing that for all four of them.

12 If, however, you find the State has failed to meet its
13 burden of proving his guilt beyond a reasonable doubt on
14 that marijuana charge, you would initial "not guilty" and
15 then proceed on down, okay? It's pretty self-explanatory.
16 If you have any problems with it, just let me know and I'll
17 try and explain it to you.

18 Now, ladies and gentlemen, in South Caroline we do not
19 have unanimous verdicts -- or we do not have majority
20 verdicts, we have unanimous verdicts, and I hope we never,
21 ever have majority verdicts. So unanimous verdict means
22 all twelve of you must agree on the outcome with regard to
23 all four of the individual charges.

24 Now, ladies and gentlemen, I remind you that you have
25 no enemies to punish in this case, you have no friends to

1 reward. You've been picked as twelve fair and impartial
2 individuals who have no outcome -- or no stake in the
3 outcome of this particular case, all right? Your job is
4 simply to find the facts as you find them to be, apply the
5 law to those facts, and thus render a verdict under the
6 oath that you have just taken.

7 Now in this case, ladies and gentlemen, there is a
8 firearm that has been introduced into evidence. General
9 safe-handling instructions for firearms in the courtroom
10 means that -- what I'll do is I'll send the actual pistol
11 back with you, the handgun back with you, but I'm not
12 gonna send the ammunition out. Even if I sent the
13 ammunition back, I doubt that you would be able to make
14 that gun fire with the trigger lock the way it is, but
15 out of an abundance of caution the rule is guns and ammo
16 are never in the same room at the same time. If for some
17 reason you want to look at the ammo or you need to see the
18 ammo, let the bailiff know, hand him the pistol and he'll
19 send the ammo in.

20 Additionally, the videotape that was shown to you
21 yesterday, if you want to see that again, that's perfectly
22 fine, let us know. If you want to watch it out here,
23 that's okay. If you want to watch it back there, we can
24 probably find a laptop or something that we can send back
25 and let y'all see it back there, but it might be easier for

1 all twelve of you to look at it on that screen up there as
2 opposed to a small foot and a half by one foot laptop.
3 However you want to do it though is up to you, okay?

4 Additionally, it's about ten of twelve. If you want
5 to order lunch, it usually takes us about an hour to get it
6 here. We normally order from the Dixie. It usually takes
7 maybe forty-five minutes to an hour. Certainly that's
8 something that the County will pay for. That will be on
9 the County's dime. So if you want to order lunch, if you
10 feel like your deliberations are gonna take a while, just
11 let us know and we'll go ahead and place that order. We'll
12 send someone in and they'll take your order. If you have
13 any special dietary restrictions, let us know what those
14 are. We'll try and accommodate those to the extent that we
15 can, okay?

16 At this point in time, please return to the jury room,
17 but don't start your deliberations yet. You cue to begin
18 your deliberations will be receipt of the verdict form,
19 these instructions, the exhibits, and my asking the
20 alternate to step out, all right? That will be your cue,
21 but if you want to survey them real quick and see if they
22 want lunch or if everybody wants lunch, that's fine, go
23 ahead and do that and I'll send someone in to take that
24 order while I address a few more final matters with the
25 attorneys.

1 (Whereupon, the jury retires to the jury room at
2 11:51 AM.)

3 **THE COURT:** The jury is out. Exceptions, additions
4 from the State?

5 **MR. MORONEY:** No, Your Honor.

6 **THE COURT:** All right. Anything from the defense?

7 **MR. ADDUCCI:** No, Your Honor.

8 **THE COURT:** Very good. Let's make sure that we're
9 correct on the exhibits that are going back and we'll find
10 out if they want lunch.

11 (Recess taken.)

12 **THE COURT:** Let's ask the alternate, who is
13 Ms. Crooks --

14 **BAILIFF:** Ms. What?

15 **THE COURT:** Ms. Crooks. Nancy Crooks.

16 (Whereupon, the alternate juror was dismissed.)

17 (Whereupon, the jury receives the evidence and verdict
18 form and begins deliberations.)

19 **THE COURT:** We'll be at ease on this.

20 (Recess taken.)

21 **THE COURT:** Are we okay to just do this without your
22 client here?

23 **MR. ADDUCCI:** That's fine.

24 **THE COURT:** All right. Let's have them on out then,
25 please.

1 **BAILIFF:** They've got a question.

2 **THE COURT:** It looks like they've got a question, too.
3 Bring them on back out, Mr. Willingham.

4 **BAILIFF:** All right, sir.

5 (Whereupon, the jury returns to the courtroom at
6 12:20 PM.)

7 **THE COURT:** All right. We've got all twelve jurors
8 present. I was told y'all wanted to see the video again.
9 We'll watch it here. I've asked the Solicitor to go ahead
10 and boot it up, so at your leisure, Solicitor.

11 If y'all need to move around to see it better, move
12 wherever you need to. Don't feel glued to the seats.

13 (Whereupon, State's Exhibit Number 1, the Body Cam
14 video, was played for the jury.)

15 **THE COURT:** That's pretty much where it ended,
16 Solicitor?

17 **MR. MORONEY:** That's pretty much the end of that stop.

18 **THE COURT:** All right. Does anybody need us to play
19 that again while you're already out here or are you okay
20 or --

21 All right. Additionally, Mr. Foreman, I was told
22 by the bailiff that you wanted further explanation on --
23 on the resisting arrest charge. I really don't know what
24 to tell you other than what's already in here, but if
25 there's a specific question about that or something in that

1 that you don't understand or that you're having trouble
2 understanding, just send me a note and I'll try and clarify
3 that further, okay? Otherwise, just go with the charge as
4 written in these instructions, okay?

5 The food should be here probably in about fifteen or
6 twenty minutes. They said it would be forty-five minutes,
7 so hopefully your meal will be here soon, okay?

8 Continue to deliberate and thanks.

9 (Whereupon, the jury retires to the jury room to
10 continue their deliberations at 12:29 PM.)

11 **THE COURT:** We'll remain at ease.

12 (Recess taken.)

13 **BAILIFF:** Remain seated. Court will come to order.

14 **THE COURT:** All right. I've received a question from
15 the jury. They're asking, "Does an officer have to tell a
16 person that they are under arrest to be under arrest?"

17 And basically having met with counsel in chambers,
18 the Court is going to instruct the jury that there's no
19 specific requirement for the officer to verbally tell the
20 person they're being arrested, but his intent to arrest
21 -- the officer's intent to arrest must be conveyed in such
22 a manner that a reasonable person would understand that
23 they are, in fact, being arrested.

24 I think that's an accurate statement of the law and
25 we're pretty much all in agreement, so let's go ahead and

1 have the jury out, please.

2 (Whereupon, the jury returns to the courtroom at
3 1:10 PM.)

4 **THE COURT:** All right. The record should reflect that
5 the jury is back and seated. Mr. Foreman, I've received
6 the question that you had for us. The question reads:
7 Does an officer have to tell a person that they are under
8 arrest to be under arrest?

9 Understand that under the law there is no specific
10 requirement for an officer to verbally tell a person that
11 they are being placed under arrest; however, the officer's
12 intent to arrest must still be conveyed to an individual in
13 a manner that a reasonable person would understand that
14 they are, in fact, being arrested, okay?

15 So are there any magic words to effect an arrest? No.
16 At the same time, the conduct must be such that the officer
17 is unambiguously conveying to that person their intent to
18 place that person into custody, okay? So specific words
19 are not required is the short answer, but there is still
20 the requirement the officer convey his intent to arrest
21 in such a way that a reasonable person would understand
22 they're being taken into custody.

23 I hope that answers your question. I hope the food
24 is here soon, okay? If I can help you further, let me
25 know and I'll bring you back out and try and answer your

1 questions.

2 Thank you.

3 (Whereupon, the jury retires to the jury room to
4 continue their deliberations at 1:13 PM.)

5 **THE COURT:** All right. We'll remain at ease. That
6 will be Court's 1.

7 (Court's Exhibit Number 1, a jury note, was marked for
8 identification.)

9 **THE COURT:** Okay. We've received another
10 communication from the jury. They are requesting to hear
11 or read the testimony of Officers Osborne, Link and
12 Peppers from that point where Mr. Johnson is being placed
13 in handcuffs.

14 I've talked to the attorneys and we're in agreement
15 again that obviously a transcript cannot be provided and
16 to replay this testimony would be somewhat awkward and
17 cumbersome and so I'm going to explain that to them and
18 basically the answer to the question will essentially be
19 "no".

20 So let's have them out, please.

21 (Whereupon, the jury returns to the courtroom at
22 2:14 PM.)

23 **THE COURT:** All right. The jury is back and seated.

24 Mr. Foreman, I've gotten your latest note.

25 Unfortunately, it's not possible to produce a transcript

1 of the testimony so far. That actually usually takes
2 several weeks because it has to be typed up and then it
3 has to be reviewed and compared against the audio recording
4 and the voice recording that my court reporter takes down
5 and so there is no paper way or no paper transcript that
6 we can provide to you.

7 Additionally, it would be rather awkward and
8 cumbersome if we were to try to locate that portion of the
9 officer's testimony dealing with Mr. Johnson being placed
10 in handcuffs because as you probably recall with all three
11 officers sometimes the testimony was not entirely linear.
12 Sometimes it jumped around from moment to moment and in
13 order to replay that for you, I would then need to get
14 with the attorneys and we would have to hear it first and
15 everybody would have to agree or I would have to rule on
16 what parts are germane to your question, and I'd have to do
17 that for all three of those witnesses, which probably would
18 take maybe some time.

19 So I just wanted to let you know that I'm -- I'm not
20 gonna be able to probably help you with this just because
21 logistically we can't work that out, okay? If you would,
22 just whatever it is that you're struggling with try to rely
23 on your memory and your recollection of the testimony and
24 I think you should be in fairly good shape, okay?

25 With that, I'm gonna ask you to keep trying. Thank

1 you.

2 (Whereupon, the jury retires to the jury room to
3 continue their deliberations at 2:16 PM.)

4 (Court's Exhibit Number 2, a jury note, was marked for
5 identification.)

6 **THE COURT:** Okay. We'll remain at ease.

7 (Recess taken.)

8 **BAILIFF:** Court come to order.

9 **THE COURT:** All right. Let's go back on the record.

10 And I've received a note that the jury is having
11 difficulty making a unanimous decision on the -- both of
12 the pistol-related charges, CPU and possession of a pistol
13 by someone convicted of a violent crime.

14 My usual MO in a situation like this is to give an
15 Allen charge, but I'm curious as to how entrenched the
16 positions might be. What I'm gonna do is basically go
17 ahead and give that Allen charge, see if we can get a
18 verdict on that, and just keep at it since I think that's
19 the most appropriate thing to do.

20 Any major disagreement with that from anybody?

21 **MR. MORONEY:** No, Your Honor.

22 **MR. ADDUCCI:** No, Your Honor.

23 **THE COURT:** All right. Let's have them, please.

24 (Court's Exhibit Number 3, a jury note, was marked for
25 identification.)

1 (Whereupon, the jury returns to the courtroom at
2 2:52 PM.)

3 **THE COURT:** All right. Y'all bear with me for just a
4 moment if you could, please.

5 All right. Mr. Foreman, I've gotten your note that
6 the jury's having difficulty making a unanimous decision
7 on the two pistol-related charges. Is that correct?

8 **THE FOREPERSON:** Correct.

9 **THE COURT:** Okay. I don't want to know the division
10 involved, the -- you know, what the vote count is or
11 anything like that, but do you feel like -- I do have an
12 additional instruction that I would like to give you;
13 however, I'm not going to waste your time with that
14 instruction if you feel like heels are dug in to the point
15 where further deliberation would be futile. If you're at
16 that point, and that's what you're telling me, then -- then
17 what I'll have to do is declare a mistrial on those two
18 counts and they would be subject to being retried at a
19 later point in time. However, if you feel that there's the
20 possibility that maybe a little bit further deliberations
21 might result in a verdict on those two charges, I'll be
22 happy to give you that additional instruction.

23 What's -- what's your feeling? Do you feel --

24 **THE FOREPERSON:** I feel we're dug in.

25 **THE COURT:** You're dug in?

1 **THE FOREPERSON:** Yes, sir.

2 **THE COURT:** All right. Not much of a hope of moving
3 forward?

4 **THE FOREPERSON:** No, sir.

5 **THE COURT:** All right. If that's the case then, what
6 we'll do is we'll go ahead and receive a verdict. You
7 did reach a unanimous verdict on the first two charges --

8 **THE FOREPERSON:** Yes, sir.

9 **THE COURT:** -- the marijuana and the other charge?

10 **THE FOREPERSON:** Yes, sir.

11 **THE COURT:** All right. If you would hand that verdict
12 to the -- to Mr. Willingham.

13 **THE FOREPERSON:** Excuse me. Do I sign it even though
14 the --

15 **THE COURT:** Yeah, go ahead and -- go ahead and -- do
16 you have a pen for him?

17 **BAILIFF:** (Handing.)

18 **THE COURT:** Thanks.

19 All right. Thank you.

20 Madam Clerk, if you'll publish the verdict on the
21 first two counts -- or the first two charges.

22 **THE CLERK:** The State of South Carolina, County of
23 Greenwood, State versus Jerry Jerome Andrews. We, the
24 jury, in the above-captioned case, on the charge of
25 possession of marijuana, unanimously find Jerry Andrews

1 guilty.

2 We, the jury, in the above-captioned case, on the
3 charge of resisting arrest, unanimously find Jerry Andrews
4 guilty.

5 Signed by the foreperson and dated May 15, 2015.

6 **THE COURT:** All right. Ladies and gentlemen of the
7 jury, if this is your verdict on those two charges, if you
8 would indicate by raising your right hand, please.

9 All right. Let the record reflect that all twelve
10 hands did go up.

11 Ladies and gentlemen, I'm not gonna keep you long at
12 this point because I've kept you for a long time for a
13 couple of days. I am, however, gonna say thank you and let
14 you know that you will get a check in the mail. I'm not
15 gonna call it payment for jury service because, quite
16 honestly, I'm not sure you should get paid for it. This
17 is one of those public service things like you do -- it's
18 like voting, it's like participating in your democracy.
19 It's like just being a good citizen. You've got to do it
20 because we live in a pretty good country and this is part
21 of being a citizen. So don't consider the forty-five bucks
22 you're gonna get in the mail as payment for this because
23 that's clearly inadequate for the help that you have given
24 the Court this week. Consider it a gift or a tax refund
25 from the nice people of the Greenwood County taxpayers,

1 okay, and y'all are probably some of them. So take it out,
2 blow it, do something fun with it.

3 Secondly, you will get a letter from me thanking you
4 for your jury service this week. I genuinely do appreciate
5 your patience here and your willingness to work with us.
6 The purpose of the letter is twofold. First, of course, it
7 is to thank you for your service here this week. Secondly,
8 and more what I need from you, if there's anything that you
9 liked about jury service, please feel free to tell me. If
10 there's anything that you did not like about jury service
11 or if you feel like we could do better, definitely tell me,
12 okay? Please, please tell me. It will have my contact
13 information in there; snail mail, e-mail, telephone. So if
14 there's anything that you did not like, I definitely want
15 to hear about it because I've actually changed the way the
16 court operates based on feedback I've gotten from folks
17 like you, okay? As I said on Tuesday, because of your
18 service here this week, you'll get a three-year
19 get-out-of-jury-service-free card. So if you're summoned
20 for common pleas or general sessions in the next three
21 years and you're asked to report, you can contact the
22 Clerk's office and let them know and they will probably
23 make it so that you don't even have to show up on that
24 first day of court, okay? So for three years you're good
25 as far as this courtroom's concerned. I can't help you

1 with federal court, city court, or magistrate's court, but
2 general sessions or common pleas you're good to go for
3 three years if you choose to use that exemption.

4 I'm not gonna keep you any longer. Thank you very
5 much for your patience, your hard work on this, and you
6 are excused. Have a good day.

7 Oh, Mr. Foreman, I need to get one thing from you. I
8 need you to sign the actual indictments.

9 (Whereupon, the jury exits the courtroom.)

10 **THE COURT:** All right. Let's go back on the record,
11 if we could.

12 Mr. Adducci, I assume you move for a new trial on the
13 charges and all -- and renew all previous motions, correct?

14 **MR. ADDUCCI:** That's correct, Your Honor.

15 **THE COURT:** All right. Same ruling before on the
16 previous motions. The motion for a new trial is denied at
17 this point.

18 Just out of curiosity, where's your client? It's very
19 unusual that he would be here --

20 **MR. ADDUCCI:** I do not know.

21 **THE COURT:** -- the whole trial and then all of a
22 sudden --

23 **MR. ADDUCCI:** I -- I don't know. I saw his mother
24 after lunch and I told her to go out and look for him and
25 she has -- he's not here.

1 **THE COURT:** All right. Have you really had any
2 trouble reaching him previously?

3 **MR. ADDUCCI:** Previously our phone number for him
4 wasn't working.

5 **THE COURT:** Yeah.

6 **MR. ADDUCCI:** He answered to letters. Whenever we
7 sent letters, he -- he would get in contact with us, but
8 the phone number that we had for him hasn't worked for
9 quite some time.

10 **THE COURT:** All right. Let's do this. I'm just gonna
11 issue a bench warrant for him at this point in time. I'm
12 not gonna go ahead and do sentencing. I don't want to mess
13 with the whole sealed sentence. And, Mr. Adducci, that
14 will give you the weekend to find him and get in touch with
15 him. I have to believe -- because he's been here every day
16 when he's supposed to be here, I've got to believe that --
17 I don't know what to believe to tell you the truth. It
18 seems very strange that he'd decide not to stick around. I
19 -- I'm sure he had incredible faith in you and your skill
20 and maybe he just figured it was a sure thing he was gonna
21 be acquitted.

22 I'll be in Abbeville next week. We can handle this
23 then. If he doesn't show up by then, perhaps I'll do a
24 sealed sentence, but the -- the Court will not be going
25 sine die on this case. The Court will hold the issue of

1 sentencing in abeyance and address it Monday of next week.
2 Hopefully you can locate him over the weekend.

3 **MR. ADDUCCI:** Thank you very much. I appreciate it.

4 **THE COURT:** Not a problem.

5 **MR. MORONEY:** Thank you, Your Honor.

6 **THE COURT:** All right. We're done.

7 (Whereupon, the proceedings were concluded for May 15,
8 2015.)

9 (Whereupon, the following proceedings were held on
10 May 18, 2015, in Abbeville County.)

11 **THE COURT:** We'll go back on the record on the State
12 versus Jerry Jerome Andrews. The case is 15-395 and 394.
13 These are Greenwood cases. The trial concluded on Friday.
14 There was a guilty verdict on the resisting arrest charge
15 and the possession of marijuana charge. The two other
16 charges that we were trying resulted in a hung jury and
17 instead of just sealing a sentence on Friday, I figured I
18 would give Mr. Adducci an opportunity to try and locate
19 Mr. Andrews over the weekend. I was told earlier by
20 Mr. Adducci apparently he turned himself in on Friday, so.

21 I'm already familiar history. Does he have anything
22 other than the conviction out of Georgia that he's on
23 probation for?

24 **MR. MORONEY:** Yes, Your Honor. His history is showing
25 a conviction from January of 2011 for unlawful carrying of

1 a weapon. I believe that is it in addition to the Georgia
2 conviction that you're aware of.

3 **THE COURT:** All right. That predates the Georgia
4 conviction? I can't recall.

5 **MR. MORONEY:** That is after.

6 **THE COURT:** After the Georgia conviction.

7 **MR. MORONEY:** The Georgia conviction was in 2009.

8 **THE COURT:** All right. Mr. Adducci, I'm happy to hear
9 from you, sir, on the question of sentencing then.

10 **MR. ADDUCCI:** Your Honor, I've been working with
11 Mr. Andrews for quite some time. He's always been great
12 about coming to my office whenever I asked. He's been on
13 the trial docket a couple of times prior to this court
14 term and he always came to court. I don't know if he was
15 getting sort of frustrated with coming and having to leave.

16 As to Friday, I spoke with his mother because his
17 mother came back to court and I said, "Where -- where's
18 Jerry?" She said, you know, we went and grabbed lunch, he
19 was gonna get a ride from a friend, and Jerry doesn't have
20 a cell phone, so she said I -- I told him that I would meet
21 him at the courthouse and I -- I don't know where he is.
22 So she went out and was running all around town to see --
23 trying to get ahold of him. I was able to get in contact
24 with him shortly after the verdict was read. He came to
25 my office and we walked down to the sheriff's office and

1 turned him in immediately. He knew that he could have
2 just walked away and, you know, he knew that you gave me
3 forty-eight hours and I said, you know what, it's much
4 better for everybody if you are here immediately and you
5 voluntarily bring yourself over.. He agreed and so we
6 walked over to the sheriff's office and he turned himself
7 in.

8 He doesn't have a -- I mean, his criminal record is
9 two convictions. He -- this happened in 2012 and he
10 hasn't been in any trouble since then. The last job he
11 had was at Dominos. He has two children that he wants to
12 be a father to. That's his goal in life right now. It
13 sounds like since this happened he's been just focusing
14 on his family. Whatever the Court does today, this is a
15 conviction that Georgia is going to look at. I don't know
16 what they're going to do. They may place a hold on him,
17 they may bring him back and violate him, so he does have
18 that to deal with.. He spent twelve days in jail total on
19 these charges.

20 Your Honor, I think, you know -- you watched the
21 trial. We had, I think, some legitimate legal and factual
22 issues with the case. This isn't once where we were just
23 trying the case just to -- to burn court time, so I think
24 that the Court should take that into consideration. That
25 wasn't -- this wasn't the case where it was a long, slow

1 guilty plea before a jury. We had some legitimate issues
2 that we think needed to be hashed out at trial.

3 Mr. Andrews, I know you wanted to address the Court.
4 Anything else that you'd like to say?

5 **THE DEFENDANT:** I just wanted to address you,
6 Mr. Addy. I'm sorry, Judge Addy, that I wasn't here on
7 time, but I -- my friend that I was riding with he had car
8 trouble. It was an oil -- I think it was oil or something
9 went on, it was an oil leak or something, but I -- I wore
10 the shirt, the undershirt, that I had on. It's got oil
11 stains on it. I really don't want you to think that I
12 attempted to leave or elude anything because I -- I'm --
13 I'm a man who knows when I make mistakes. I know that I
14 have the resisting arrest. I didn't want you to think
15 that I was resisting arrest or anything by that. That's
16 why I -- I walked in -- in the jail. And I wanted to let
17 you know that my mom, she runs the -- the food bank at
18 United Way. I can do any type of community service. I
19 do community service on the weekends. As is, I work at
20 the Salvation Army and then I do litter pick-up, too, and
21 I just wanted to let you know that I just want to be a --
22 a father to my kids. I don't want my kids to -- to have
23 to see me locked up or in a bad situation and I'm just --
24 I'm sorry. I'm actually really apologetic about the
25 night, about everything that happened.

1 **THE COURT:** Very good.

2 All right. Well, Mr. Andrews, I'm glad that it
3 sounds like you're getting your life back on track. I'll
4 accept your explanation that you had engine problems on
5 Friday. I did find it strange that you were there for the
6 entire time and then all of a sudden you weren't there for
7 perhaps the most important part of the trial, so I -- for
8 lack of a better explanation. Obviously you weren't trying
9 to run. You could have run, so I'm -- I'm buying your
10 suggestion that you had engine problems.

11 And I do realize that you've got ramifications in
12 Georgia. I also realize that this is not the most
13 egregious resisting. At the same time, Mr. Andrews,
14 understand -- I know that sometimes police make mistakes,
15 but the way to handle those mistakes is not to run away
16 from them, okay? It's not to try and get away from them.
17 That just escalates the situation and puts you at risk and
18 puts them at risk, okay?

19 And, again, I know that you've got ramifications in
20 Georgia. I appreciate that there was a defense on the
21 other two charges at trial and clearly there were some
22 legal issues that needed to be flushed out, but this isn't
23 your first contact with the law.

24 All things considered, in light of the fact that this
25 was not a terribly egregious resisting, it was more of a

1 momentary effort to keep from being cuffed, without an
2 officer being assaulted, so I've given you four months on
3 that charge and giving you credit for twelve days. On the
4 marijuana charge, thirty days, credit twelve days, and
5 these will run concurrent.

6 So good luck to you, sir.

7 **MR. ADDUCCI:** Thank you, Your Honor.

8 **MR. MORONEY:** Thank you, Your Honor.

9 (End of proceedings.)
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1 CERTIFICATE OF TRANSCRIPTION

2
3 I, the undersigned, Stacy S. Johnson, do hereby
4 certify that I transcribed the proceedings in the captioned
5 case that were reported by Tara T. Scott, Circuit Court
6 Reporter for the State of South Carolina, in the Court of
7 General Sessions in and for the State of South Carolina, on
8 the 12th, 14th, 15th and 18th of May, 2015, to the best of
9 my ability.

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

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

14
15 August 5, 2015
16
17

18 *Stacy S. Johnson*
19 STACY S. JOHNSON
20 CIRCUIT COURT REPORTER
21
22
23
24
25

WITNESSES

Jeremy Adams
Greenwood Police Department

WARRANT NUMBER

89683FT

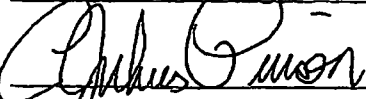
True Bill



Date: 3/27/15 Foreman of the Grand Jury

VERDICT

~~Verdict~~ Guilty



Foreman 5-15-15

THE STATE OF SOUTH CAROLINA

COUNTY OF GREENWOOD

COURT OF GENERAL SESSIONS

March Term, 2015

Indictment # 15GS24- 0395

THE STATE

vs.

Jerry Jerome Andrews 

INDICTMENT FOR

RESISTING ARREST
§ 16-09-0320

CDR: 0326

THE STATE OF SOUTH CAROLINA

COUNTY OF GREENWOOD

INDICTMENT FOR

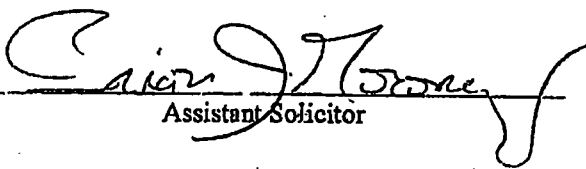
RESISTING ARREST

§ 16-09-0320

At a Court of General Sessions, convened on the 27th day of March, 2015, the Grand Jurors of
Greenwood County present upon their oath:

That Jerry Jerome Andrews ^{2M} did on or about June 30, 2012, in Greenwood County, willfully, unlawfully and knowingly oppose or resist a law enforcement officer, to wit: Steve Osborne, of Lander University Public Safety, and Vernon Peppers and Jonathan Link, of the Greenwood Police Department, while the said officer was serving, executing, or attempting to serve or execute a legal writ or process or did resist an arrest being made by one whom the person knew or reasonably should have known was a law enforcement officer, whether under process or not, in violation of Section 16-9-320(A) 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 cases made and provided.


Assistant Solicitor

WITNESSES

Jeremy Adams
Greenwood Police Department

RECEIVED

JUN 01 2015

SC Court of Appeals

THE STATE OF SOUTH CAROLINA

COUNTY OF GREENWOOD

COURT OF GENERAL SESSIONS

March Term, 2015

Indictment # 15GS24-0394

WARRANT NUMBER

89682FT

THE STATE

vs.

Jerry Jerome Andrews *an*

THE STATE

Jerry Jerome Andrews *an*

INDICTMENT FOR

POSSESSION OF MARIJUANA

§ 44-53-0370

CDR: 0659

VERDICT

Guilty
Paul Simon
Foreman
5-15-15

True Bill

[Signature]

Foreman of the Grand Jury

Date: 3/27/15

THE STATE OF SOUTH CAROLINA

COUNTY OF GREENWOOD

INDICTMENT FOR

POSSESSION OF MARIJUANA

§ 44-53-0370

At a Court of General Sessions, convened on the 27th day of March, 2015, the Grand Jurors of Greenwood County present upon their oath:

That Jerry Jerome Andrews ^{DNK} did on or about June 30, 2012, in Greenwood County, willfully, unlawfully, and knowingly possess a quantity of marijuana in violation of the provisions of Section 44-53-370 of the South Carolina Code of Laws, 1976, as amended

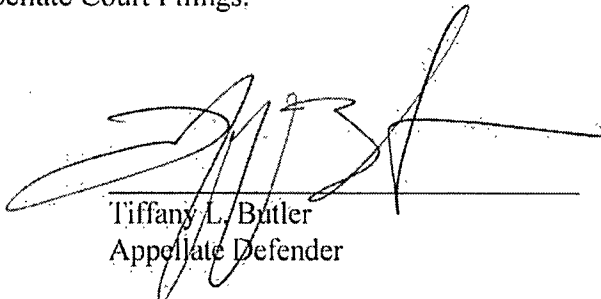
Against the peace and dignity of the State, and contrary to the statute in such cases made and provided.


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."

April 4th, 2016

A handwritten signature in black ink, appearing to read 'T. Butler', is written over a horizontal line.

Tiffany L. Butler
Appellate Defender

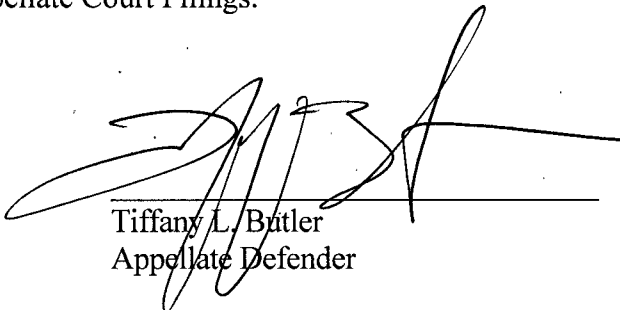
South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

CERTIFICATE OF COUNSEL FOR APPELLANT

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April 4th, 2016



Tiffany L. Butler
Appellate Defender

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ATTORNEY FOR APPELLANT

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APR 04 2016

SC Court of Appeals