

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Lexington County

Honorable Eugene C. Griffith, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

THOMAS EDMUND DUKES,

APPELLANT

APPELLATE CASE NO 2016-002363

RECORD ON APPEAL

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SC Court of Appeals

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THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:

**STATE’S EXHIBIT #5 – 911 CALL
STATE’S EXHIBIT #6 – DASH CAM VIDEO
DEFENDANT’S EXHIBIT #6 – DASH CAM VIDEO**

1 State of South Carolina) In the Court
) Of General Sessions
 2 County of Lexington) Indictment No.: 2016-GS-32-00477
)
 3 State of South Carolina,)
)
 4 Plaintiff,)
 vs.) Transcript of Record
 5)
 6 Thomas Edmund Dukes,)
)
 7 Defendant.)
 _____)

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November 15, 2016
 Lexington, South Carolina

BEFORE:

The Honorable Eugene C. Griffith, Junior, Judge

APPEARANCES:

Robert Elam, Assistant State Solicitor
 Todd Wagoner, Assistant State Solicitor
 Attorneys for the State

Elizabeth Fullwood, Assistant Public Defender
 Attorney for the Defendant

ALSO PRESENT:

Thomas Edmund Dukes

1 Thereupon, the following proceedings were had,

2 THE COURT: All right. Mr. Elam, Mr. Wagoner.

3 MR. ELAM: Please the Court, Your Honor. We are
4 here on the case of State versus Thomas Edmund Dukes.
5 It's an unlawful carrying of pistol charge. The State is
6 ready for trial. We understand there may be an issue
7 involving the relationship between the defense attorney
8 and her client and we thought it best to maybe visit that
9 issue tonight rather than first thing in the morning with
10 all the witnesses for the trial here. The State is ready
11 to go forward on this case.

12 THE COURT: How many witnesses are there going to
13 be? How many witnesses are you going to have?

14 MR. ELAM: Best estimate right now is five. There
15 would be three responding officers and some records
16 keepers.

17 THE COURT: For a CPU?

18 MR. ELAM: Yes, sir.

19 THE COURT: Okay. Normally there's one. All right.
20 Ms. Fullwood.

21 MS. FULLWOOD: Your Honor, you might recall
22 Mr. Edmunds was before you three or four weeks ago. At
23 that time he had said he wanted to discharge me, and then
24 at that hearing he changed his mind. He now says again
25 that he wants to discharge me so I guess I would ask the

1 court to inquire of Mr. Edmunds exactly what he wants to
2 do.

3 THE COURT: Is it Dukes or Edmunds?

4 MS. FULLWOOD: I'm sorry. Mr. Dukes.

5 MR. DUKES: That's like the third time she's called
6 me that today.

7 MS. FULLWOOD: I know. I used to have a neighbor
8 whose last name was Edmunds.

9 THE COURT: Edmund singular or Dukes plural. Mr.
10 Dukes, stand up.

11 MR. DUKES: (Complies.)

12 THE COURT: You don't want Ms. Fullwood?

13 MR. DUKES: No. No. No. We just can't see eye to
14 eye on some things about this and I haven't been
15 convinced by her that I'm wrong and I can't convince her
16 that she's wrong so...

17 THE COURT: This is -- Does this need to be a jury
18 trial or can it be a bench trial? These cases aren't
19 complicated. I mean, carrying a pistol unlawfully is not
20 a tricky case.

21 MR. ELAM: The State would be all right with a bench
22 trial, Your Honor.

23 THE COURT: Do you understand what a bench trial,
24 jury trial difference is?

25 MR. DUKES: Pretty much.

1 THE COURT: A bench trial is when the court hears
2 it. I'll be the judge and the jury. I mean, I know I
3 told you at the last hearing this carries, I think I
4 might have said six months. It carries up to a year
5 and/or a fine.

6 MR. DUKES: I mean, that's a big deal to me.

7 THE COURT: I'm not talking about that. That ain't
8 a big deal in the big scheme of things. Zero to 20 and
9 85 percent and all that sort of stuff. I mean, you don't
10 look like you've been to the penitentiary to me so if you
11 don't have a prior record, you're not likely to go to
12 jail. But you know what I mean. Probation is more
13 likely than unlikely.

14 MR. DUKES: I'm fine with a bench trial or whatever.

15 THE COURT: Do y'all care?

16 MR. ELAM: No. Really, Your Honor, we don't.

17 MS. FULLWOOD: I guess I would just ask him. Do you
18 want a chance to talk to me before you make up your mind?

19 THE COURT: Do you want to go to trial this week?

20 MR. DUKES: I just want to make sure that - I have
21 like four or five pages of questions that I would like to
22 ask to the prosecution.

23 THE COURT: Well, you can't ask the prosecutor
24 because he's not a witness. He's just the advocate for
25 the State. His witnesses are the police officers or

1 whomever.

2 MR. DUKES: I gave those to Ms. Fullwood as this is
3 what I would ask. I'm not saying that's what she needs
4 to ask them. Understand? I think some of those
5 questions need to be answered.

6 THE COURT: Okay. How far did you go in school?

7 MR. DUKES: 16 years.

8 THE COURT: Okay. What do you do for a living?

9 MR. DUKES: I work for my brother at the family
10 business, Dukes Equipment over on Piney Grove Road.

11 THE COURT: Heavy equipment stuff?

12 MR. DUKES: Not heavy equipment. Side order
13 equipment.

14 THE COURT: Do you want to represent yourself?

15 MR. DUKES: Not really.

16 THE COURT: She's pretty good.

17 MR. DUKES: I've heard. I've heard. I mean, it's
18 just some of the --

19 THE COURT: What about this --

20 MR. DUKES: I think what it comes down to is we have
21 to agree to disagree.

22 THE COURT: All right. So that being the case, do
23 you want to handle the case and let her sit with you to
24 advise you procedurally on a bench trial like be standby
25 counsel?

1 MR. DUKES: I trust her. I have been pretty upset
2 about this for over a year.

3 THE COURT: Well, do you want to start a trial
4 tomorrow? Because that's what we're looking at.

5 MR. DUKES: Yes.

6 THE COURT: It should be with five witnesses be all
7 done tomorrow.

8 MR. DUKES: Yes.

9 THE COURT: You want to do it tomorrow?

10 MR. DUKES: Fine with me.

11 THE COURT: All right. Here's the deal. You think
12 about it overnight. Ms. Fullwood has got to get ready
13 and I don't imagine since you gave her all those
14 questions that she is not ready right now. Ms. Fullwood
15 would probably say she's not ready. But y'all got any
16 witnesses you can't locate, Ms. Fullwood?

17 MS. FULLWOOD: No, sir. He might disagree because
18 there's an out of state witness that would really be a
19 State's witness but he's in jail in Virginia.

20 THE COURT: Well, the State's not in control of him.
21 We can't get the inference so that if he would testify
22 unfavorably to the State that would be handy but that's
23 not really --

24 MS. FULLWOOD: No. He would testify favorably for
25 them.

1 THE COURT: Okay.

2 MS. FULLWOOD: I think Mr. Edmunds wants him here to
3 impeach him.

4 MR. DUKES: Yes.

5 THE COURT: Well, if he's not gonna be testifying,
6 then he can't be impeached so you won't have his
7 unfavorable testimony.

8 MS. FULLWOOD: Well, there's a 911 tape.

9 THE COURT: Can y'all get that in?

10 MR. ELAM: I believe so.

11 THE COURT: Y'all gonna argue again so...

12 MS. FULLWOOD: That's right.

13 MR. ELAM: This will shed a little bit of light.

14 I'll just say this: The background of this case is this
15 is a road rage that leads up to the pistol being found.

16 THE COURT: What if we reconvene tomorrow at 9:30
17 and try to pick a jury and get this case heard tomorrow?
18 That suit everybody?

19 MS. FULLWOOD: Certainly does.

20 THE COURT: Suit you?

21 MR. DUKES: Suits me fine. I need to put this
22 behind me one way or the other.

23 THE COURT: And she can stick with you.

24 MR. DUKES: Yes, sir.

25 THE COURT: All right. Ms. Fullwood, I think we're

1 gonna move forward tomorrow morning with this trial.

2 THE CLERK: I thought he said bench trial.

3 THE COURT: I talked him back out of it. Are we
4 going with a jury trial or a bench trial?

5 MS. FULLWOOD: What do you want to do?

6 THE COURT: I need to know that tonight because the
7 jury is calling in here in a little bit. It would suit
8 me better to have a jury trial. I was just offering it.
9 It would be easier for me to manage a pro se litigant as
10 a bench trial.

11 MS. FULLWOOD: I think he would like - isn't opposed
12 to a bench trial. But it's up to you now because you
13 have a right to a jury trial.

14 THE COURT: I'll tell you what. Y'all sit down.
15 Let me get this verdict. I'll give you 15 or 20 minutes
16 to think about it and decide because we're gonna put the
17 recording on here in about an hour. The jury will call
18 in and want to know do we need to come in tomorrow or
19 not. That's what I've got to do. Ms. Frick is wanting
20 to know what to tell the jury on the recording. Y'all be
21 ready to go either way.

22 MR. ELAM: Yes, sir.

23 THE COURT: All right. Good.

24 * * * * *

25 THE COURT: All right. Ms. Fullwood, did you decide

1 what you are going to do?

2 MS. FULLWOOD: Yes, sir.

3 THE COURT: Jury?

4 MS. FULLWOOD: He wants a bench trial.

5 THE COURT: Okay. That being the case, Mr. Elam and
6 Mr. Wagoner, do we need the jury the rest of the week?
7 You want to go ask?

8 MR. WAGONER: I would feel more comfortable if I
9 track down Ms. Usry.

10 THE COURT: All right. Go get her. I may tell them
11 to call back tomorrow night.

12 THE CLERK: We can do that.

13 THE COURT: I'll tell you what, if I find your guy
14 with the bench warrant, I would like to do him
15 Thursday.

16 THE CLERK: I'll just put the message out everybody
17 is to call back tomorrow night.

18 THE COURT: Okay. Let's do that. Call back
19 tomorrow night. That's what we'll do either way. All
20 right. Mr. Edmund Dukes, I got it now. Let's start at
21 9:30, okay?

22 MS. FULLWOOD: Yes, sir.

23 MR. DUKES: Right here in this room?

24 THE COURT: Yes, sir. In this room. All right.
25 Y'all are free to go. I'll tell Ms. Usry we'll call them

1 back. We've resolved that.

2 MR. ELAM: Thank you, Your Honor. I'll give them
3 the word.

4 THE CLERK: We'll just have them call back after
5 6:00 tomorrow night and see what happens.

6 (Whereupon, court was adjourned for the day at 4:40
7 p.m.)

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CERTIFICATE OF REPORTER

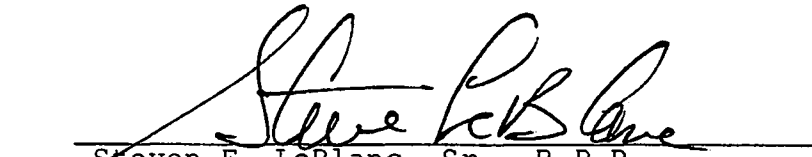
(STATE OF SOUTH CAROLINA)
(COUNTY OF LEXINGTON)

I, THE UNDERSIGNED, Steven E. LeBlanc, Sr., R.P.R.,
and Official Circuit Court Reporter for the Eleventh Judicial
Circuit in and for the State of South Carolina, do hereby
certify that I reported the proceedings in the before
captioned case in the Court of General Sessions in and for the
State of South Carolina on the 15th day of November, 2016.

I FURTHER CERTIFY that the forgoing 10 pages
constitute a true and accurate record of said proceedings.

I FURTHER CERTIFY that I am neither related, counsel
to, nor of interest to any party hereto.

IN WITNESS WHEREOF, I have hereunto set my hand at
Lexington County, this 25th day of January, 2017.



Steven E. LeBlanc, Sr., R.P.R.
Eleventh Circuit Court Reporter
State of South Carolina.

1	State of South Carolina)	In the Court
)	Of General Sessions
2	County of Lexington)	Indictment No.: 2016-GS-32-00477
)	
3	State of South Carolina,)	
)	
4	Plaintiff,)	
	vs.)	Transcript of Record
5)	
	Thomas Edmund Dukes,)	
6)	
	Defendant.)	
7	_____)	

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November 16, 2016

Lexington, South Carolina

BEFORE:

The Honorable Eugene C. Griffith, Junior, Judge

APPEARANCES:

Robert Elam, Assistant State Solicitor
Todd Wagoner, Assistant State Solicitor
Attorneys for the State

Elizabeth Fullwood, Assistant Public Defender
Attorney for the Defendant

ALSO PRESENT:

Thomas Edmund Dukes

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1 November 16, 2016

2 (Whereupon, State's Exhibit #1 through #7 marked for
3 identification.)

4 (Whereupon, Defendant's Exhibit #1 through #6 marked
5 for identification.)

6 BAILIFF: All rise. The Honorable Eugene C.
7 Griffith, Junior, presiding.

8 THE COURT: Y'all be seated. Y'all ready to go?

9 MR. ELAM: The State is ready, Your Honor.

10 MS. FULLWOOD: The defense is ready, Your Honor.

11 MR. ELAM: By the way, Your Honor, the State and
12 defense have both marked all their exhibits, pre-marked
13 them. We have talked about certain stipulations that
14 would streamline the case and that would cut out some of
15 the witnesses in the case.

16 THE COURT: And I'm all about that. As a matter of
17 fact, the site of the offense, I drove that this morning
18 unknowingly. I drove it in reverse order though because
19 I was coming this way. I drive it most every morning.
20 Going home I don't drive it that way. I go through the
21 traffic circle going home so I travel around the lake
22 everyday. All right. I'm glad y'all have streamlined
23 things. Let's get going.

24 MR. ELAM: If I may, Your Honor, just to start with
25 the stipulations, the defense has graciously agreed to

1 stipulate that we don't need to have a Jackson v. Denno
2 hearing on the written statement that the defendant gave
3 at the scene of this incident, first of all. Second of
4 all, they stipulate that the 911 call, it's about maybe a
5 10 to 15 minute long audio call to 911 can come into
6 evidence. We have Nikki Rodgers here. She's the
7 custodian of the 911 records. She always testifies in
8 our trials, really signifies that we can cut them
9 loose.

10 THE COURT: Okay. Y'all good with that?

11 MS. FULLWOOD: That's our stipulation.

12 MR. ELAM: There's a part B to the stipulation is we
13 were going to have her testify that only one call came in
14 about this incident and it wasn't a call from the
15 defendant. They are stipulating that the defendant
16 did not call 911.

17 THE COURT: The guy is unavailable, right?

18 MR. ELAM: He will tell you that he tried to but
19 they are going to say he did not call 911.

20 THE COURT: The caller is from the unavailable guy,
21 right?

22 MS. FULLWOOD: That's right.

23 THE COURT: I don't remember who he was, but I
24 remember he's not available and that's where it was.

25 MR. ELAM: Yes, sir.

1 MS. FULLWOOD: What we're saying is that he did not
2 have any call to 911 that went through.

3 MR. ELAM: That went through. They did not receive
4 a call from the defendant.

5 THE COURT: Okay.

6 MS. FULLWOOD: Right.

7 THE COURT: Now, let's put on the record and make
8 certain, Ms. Fullwood, you and your client freely and
9 knowingly and willingly are waiving his rights to have a
10 jury trial and let the court hear the case in full?

11 MS. FULLWOOD: That's correct. That's what we told
12 Your Honor yesterday afternoon.

13 THE COURT: Okay. I think that will make a much
14 more efficient trial.

15 MR. ELAM: At this point I guess I can excuse Ms.
16 Rodgers. Thank you for being here.

17 THE COURT: Thank you, Ms. Rodgers. We'll rough you
18 up next time.

19 MR. ELAM: We also had another witness scheduled
20 from SLED, Lynn Rolin. She was going to testify that the
21 defendant did not have a concealed weapon permit, never
22 did have one in the past or have one currently and they
23 are stipulating to that as well.

24 THE COURT: You agree to that?

25 MS. FULLWOOD: That's right.

1 THE COURT: Easy enough to prove. Okay.

2 MR. ELAM: Let me see. All the evidence that is
3 pre-marked can be accepted into evidence at this point?

4 MS. FULLWOOD: That's right.

5 MR. ELAM: Your Honor, we have seven items marked in
6 evidence. Item 1 is an overhead aerial plat of the
7 scene, the surroundings just for orientation purposes.
8 Number 2 is the pistol that we allege was taken from the
9 car. Item 3 is a holster along with the pistol. Item 4
10 is bullets. Item 5 is the 911 call recording itself.
11 Item 6 is the dash cam video. You will hear there was a
12 dash cam video in the defendant's pickup truck and he
13 recorded the incident preceding the encounter with the
14 police before the police station. Item 7 is the written
15 statement from the defendant. That's all our exhibits.

16 THE COURT: The exhibits regarding the gun, the
17 holster and the cartridges, the bullets that go in there,
18 is there any reason to accept them into evidence? Can
19 the Court recognize that that was the gun that was
20 involved? I don't want them in evidence.

21 MR. ELAM: I don't want to burden the Clerk of Court
22 with having to hold onto that just in case of a
23 particular verdict.

24 THE COURT: I don't want that to be a reason for a
25 directed verdict because you didn't introduce it.

1 Certainly if they said this is it or it's identified,
2 this is what we recovered, please admit it, the Court
3 would have to accept it. Is there any way we can
4 stipulate that this is what we are talking about and not
5 accept it into evidence?

6 MR. ELAM: Or alternatively could we substitute a
7 photograph for it ultimately if it comes down to that?

8 THE COURT: That suits me.

9 MS. FULLWOOD: That sounds like a good solution.

10 THE COURT: Okay. That way it just stays with
11 y'all.

12 MS. FULLWOOD: That's right.

13 THE COURT: Okay. I like that. I like the
14 photograph. That makes it a lot cleaner and Mr. LeBlanc
15 won't sweat so much.

16 MR. ELAM: So if those are essentially in evidence
17 and with the special condition of number 2, the gun, we
18 also stipulate that the exhibits that the defense has
19 pre-marked, we have no objection to those. We might
20 refer to the task of talking about it, although the
21 foundation has been laid before we get it in.

22 THE COURT: Okay.

23 MS. FULLWOOD: That's right, Your Honor. We have
24 five exhibits. They are all photographs.

25 THE COURT: All right. We're good. Okay. All

1 right. So there's three stipulations. There's a 911
2 call made. You've got a recording of it. It was made
3 from someone else, not the defendant. There was no 911
4 call that went through from the defendant. I understand
5 him to state I tried, but it didn't go through. There's
6 no concealed weapons permit ever possessed by the
7 defendant. Those are our three stipulations, in addition
8 to substituting a photograph of the weapon and all the
9 ancillary stuff.

10 MR. ELAM: And they are waiving Jackson v. Denno in
11 this case with regard to the statement. If you said
12 that, I apologize.

13 MS. FULLWOOD: That's correct, Your Honor.

14 THE COURT: All right. Fair enough. Let's go.
15 Call your first witness.

16 MR. ELAM: Please the Court, Your Honor. The State
17 calls Brian Currence.

18 Thereupon,

19 DANIEL BRIAN CURRENCE

20 after having been first duly sworn, testified as follows,

21 THE CLERK: Please have a seat. After you're
22 seated, please state your full name spelling your last
23 name for the record.

24 THE WITNESS: My name is Daniel Brian Currence,
25 C-u-r-r-e-n-c-e.

1 THE COURT: Before you ask the first question,
2 everybody okay since this is a bench trial once I hear
3 the question the second time, when I say move on, that's
4 what I'm talking about? That way I don't get caught in a
5 three or four questions which I don't believe you would
6 do that, Mr. Elam. Other attorneys have done that in my
7 presence and to keep things streamlined I'll say move on.
8 I've got it.

9 MR. ELAM: I'm perfectly fine with that, Your
10 Honor.

11 THE COURT: And that's not disrespect to anybody.
12 That's just moving on, keeping it moving. Keeping it
13 streamlined and moving on.

14 MR. ELAM: If I violate that, just prod me.

15 DIRECT EXAMINATION

16 BY MR. ELAM:

17 Q. Can you tell the Judge where you work please.

18 A. Lexington County Sheriff's Department.

19 Q. Speak up real loud so we make sure we have a good
20 record of all of this. How long have you worked at the
21 Sheriff's Department?

22 A. December will be 22 years.

23 Q. What's your current rank?

24 A. Captain.

25 Q. How long have you been a captain?

1 A. About eight years.

2 Q. Tell me just a little bit about your duties as a
3 captain at the Sheriff's Department?

4 A. As a region captain we are over a third of the
5 county that includes, Irmo, Chapin, Harbison, St. Andrews,
6 Cayce, West Columbia. I have approximately seven employees of
7 various capacities from road deputy to investigators to the
8 school resource officers, code enforcement, et cetera. My
9 jobs are mainly relegated to paper pushing administrative
10 stuff for the majority of the time.

11 Q. I'll get to the heart of it. Do you normally
12 respond to radio calls?

13 A. Not typically.

14 Q. Okay. Let me turn to October 26th of 2015 say about
15 8:30 in the morning. What were you doing at that time?

16 A. I was about to cross the dam heading to work that
17 morning.

18 Q. And where is work?

19 A. 111 Lincreek off Lake Murray Boulevard close to the
20 intersection of 6th and 60 just past the dam.

21 Q. Just north of the dam?

22 A. Coming from Lexington just past the dam going toward
23 Irmo.

24 Q. So where those apartments are at that little nexus
25 you have got a little sub station back there?

1 A. Just beyond that about a half mile down on the left
2 where the magistrate and the fire department are.

3 Q. Were you heading straight to work or did you plan
4 any detours?

5 A. My intent was to go straight to work.

6 Q. Did you actually go straight to work?

7 A. I did not.

8 Q. Why not?

9 A. Due to a call for service that came over the radio
10 that I heard.

11 Q. So what kind of call would have diverted you from
12 going straight to work?

13 A. Typically only a call of exigency and reasonable
14 closeness would bring me involved.

15 Q. All right. Tell me what kind of call you got?

16 A. This particular call was a road rage incident very
17 close to where I was that involved a subject with a gun.

18 Q. All right. That's the reason you reacted the way
19 you did?

20 A. Yes, sir.

21 Q. Tell me what you did. Tell me what you understood
22 from the call to explain why you did what you did?

23 A. It sounded like very shortly ahead of me on my
24 projected path was some what of a road rage incident where one
25 party pulled a gun and presented it to another and as the call

1 unfolded in segments it sounded like they had stopped at the
2 Exxon Station right near the intersection of 6 and 60 by the
3 dam which again put me in close proximity to all parties that
4 seemed to be involved.

5 Q. When you said they stopped, were you referring to --

6 A. The caller and the suspect.

7 Q. -- both sides of the road rage?

8 A. Correct.

9 Q. Okay. Did you get any details in your call to help
10 you focus once you got to that location? We'll talk more
11 about the location. But did you get any information that
12 helped you along?

13 A. Yeah. Clarified that the actual resting point for
14 both parties was the gas station right ahead of my projected
15 path.

16 Q. Was that the Exxon Station?

17 A. Exxon Station. I think it's also called Quick Way.
18 We call it the Exxon at 6 and 60 because that's the closest
19 major intersection.

20 Q. Just to get this out of the way, what county is that
21 located in?

22 A. In Lexington County.

23 Q. What county is the road, North Lake Drive going
24 across the dam located in?

25 A. Lexington County.

1 Q. So you're saying you reported to the Exxon
2 quickly?

3 A. Correct.

4 Q. Straight there?

5 A. Yes, sir.

6 Q. Did you know what to look for when you got there?

7 A. They did give a description of the vehicles
8 involved. There was a black Dodge that the caller was in and
9 the reported suspect was in a tan or brown pickup truck.
10 Subsequently they did get a tag and they ran the tag and gave
11 the registration information back over the radio as I was
12 approaching as well.

13 Q. Did you make a mental note of the tag number?

14 A. Not the number itself as much as the registered
15 owner when it came back on the radio.

16 Q. Did you recognize the registered owner's name?

17 A. I did.

18 Q. How so?

19 A. Uhm, the name that they said the vehicle was
20 registered to was Thomas Dukes and I was familiar with
21 Mr. Dukes from some other issues.

22 Can you elaborate just a little bit on those issues?

23 MS. FULLWOOD: Objection, Your Honor, as to
24 relevancy and character type of evidence.

25 THE COURT: Okay. I'll sustain that. He knew who

1 he was.

2 MR. ELAM: I'll move on.

3 BY MR. ELAM:

4 Q. When you got to the Quick Way Exxon Station, did it
5 take you a long time to get there?

6 A. No.

7 Q. What kind of vehicle were you in?

8 A. I was in a black unmarked Tahoe.

9 Q. Did you respond with your blue light on?

10 A. I did not. I was close enough that although it was
11 an exigent type scenario my proximity to it didn't necessitate
12 doing such.

13 Q. What were you wearing, plain clothes or uniform?

14 A. Uniform just like this.

15 Q. All right. What was your concern as you drove up to
16 the Quick Way?

17 A. Well, my first concern just as it is in every call
18 is going to be officer safety. Secondarily there was a public
19 safety concern since it involved a road rage which gave me a
20 state of mind for the people involved and then kind of a, of
21 course, multiplier in that is when you present a gun and
22 having empirical knowledge of the nature of people involved it
23 put me on a very heightened state of awareness.

24 MR. ELAM: Your Honor, I was going to take this in
25 segments but I'm trying to streamline it even more. With

1 your permission I would like to approach the witness with
2 State's exhibit number 1. I want to show it to him
3 now.

4 THE COURT: Okay.

5 MR. ELAM: Rather than go through all his testimony
6 and then show him with this diagram, I think I'm gonna
7 just try it right now and save some steps.

8 COURT: Okay.

9 BY MR. ELAM:

10 Q. This is State's exhibit number 1, that's in evidence.
11 Have you had a chance to look at this before?

12 A. Yes, sir.

13 Q. Can you briefly tell the Judge what this is?

14 A. As you are coming from the dam this is North Lake
15 Drive as it intersects with Bush River Road and Lake Murray
16 Boulevard.

17 THE COURT: And the lake is over here on this
18 side.

19 BY THE WITNESS:

20 A. Yes, sir. Exactly. And as you cross the dam left
21 would take you to Ballentine. Straight is toward Irmo.
22 That's the SCANA Center right there and this is Bush River
23 Road going down to eventually Saluda Shoals and Seven Oaks and
24 all of that and that would be the Exxon Quick Way Gas Station
25 right there at the intersection.

1 MR. ELAM: I know I'm close to him on the witness
2 bench, but if I may continue to just question him right
3 here, I think we can cut out a little bit of time.

4 THE COURT: Suits me.

5 BY MR. ELAM:

6 Q. Show the Judge where you came in and what you
7 observed.

8 A. I came down the entrance crossing the dam, turned
9 right and as I came up to the business location there's a
10 black Dodge right here. I recognized that as the description
11 of the complainant, the caller in the case, and as I came in I
12 also could see the brown tan pickup truck that ended up being
13 the suspect's vehicle parked very close to the front door on
14 the front parking space.

15 Q. Were there other brown or tan pickup trucks in the
16 parking lot that drew your attention?

17 A. Not that I saw.

18 Q. So where did you stop?

19 A. Not knowing where the involved subjects were, I came
20 through and I posted up at a gas pump right here. Being that
21 I was in an unmarked car and at that point was by myself I
22 didn't know who or where the gun may be or what dynamics had
23 unfolded in the interim, I posted up here to evaluate the
24 situation to see if, in fact, this vehicle was occupied, if
25 that vehicle was occupied, if the man with the gun was doing

1 anything that I needed to pay attention to before I committed
2 myself to going in so I posted up right at the gas pump.

3 Q. Let me clarify this. Were there any police at the
4 scene before you got there?

5 A. Not that I saw.

6 Q. So you were first. So when you posted up right here
7 at one of the gas pumps, what did you observe?

8 A. Uhm, I saw the vehicle. It didn't appear to be
9 occupied by anyone and I could look through the glass of the
10 window and see the people in there having been familiar with
11 the place. I have gone in there and having gotten breakfast
12 myself knew kind of the logistics of where you order, where
13 the food is prepped, where you pay for it, and where ingress
14 and egress is in the building so I was able to look in and
15 kind of assess all that.

16 Q. Could you characterize that place for the Judge?
17 Just describe the place a little bit.

18 A. It's a gas station that has a built in restaurant
19 type scenario. It's kind of like you walk through, look at
20 the food and make your selections and pay at the front desk
21 and exit.

22 Q. Does it tend to be popular at 8:30 in the morning?

23 A. Yes. Very. And they have very good food. A lot of
24 people frequent that place.

25 Q. All right. You're watching the door and what

1 happens next?

2 A. As I'm looking in I can see several people inside.
3 I can see who I can tell is Mr. Dukes ostensibly waiting for
4 his food. Again, knowing the logistics of where you order and
5 then you kind of move down and get out of the way for the
6 other people and wait, I presumed he was waiting for his food
7 which, in fact, ended up being the case.

8 Q. How did you know that looking through the door if
9 you saw a particular gentleman, was he the only one in the
10 store?

11 A. No. There were several other people in there, but I
12 had, in the communication we had recently gotten we had reason
13 to know his face particularly.

14 Q. Okay. And did you remain alone? Did you get
15 reinforcements?

16 A. Shortly thereafter Detective Stoner arrived.
17 Chronologically that doesn't fall into all the pieces but in
18 specific relation to another officer coming she was the next
19 one on scene that came in the parking lot and right in front
20 of me and I briefed her.

21 Q. And is Detective Stoner here in the courtroom?

22 A. She is. The young lady in the blue.

23 Q. What did you tell her?

24 A. Uhm, she had heard the radio communications. I told
25 her that he being the suspect of the call was in the store;

1 that he was the one that we had the history on with some --

2 MS. FULLWOOD: Objection, Your Honor.

3 BY THE WITNESS:

4 A. That's what I told her.

5 THE COURT: Sustained as to the objection.

6 MR. ELAM: Understood.

7 BY MR. ELAM:

8 Q. What concerns did you have? I mean, did you go on
9 into the store --

10 A. Absolutely not.

11 Q. -- to try to get the person described as the
12 suspect?

13 A. No. Not at all. With it being a populated store
14 and there being a subject who had just come from a road rage
15 incident that was purportedly in possession of a gun I did not
16 want to confront a potentially armed upset individual in a
17 store with a bunch of other people around if I could
18 comparatively get him isolated away from the innocent and
19 address him in a more neutral environment without other
20 citizens around.

21 Q. Okay. So you're waiting for him to come out?

22 A. Basically what I was doing is was sitting here
23 formulating a game plan of how do I deal with this potential
24 aforementioned dynamic subject without jeopardizing any other
25 innocent civilians in there if, in fact, he's still armed at

1 the time. So as Detective Stoner came around I said our game
2 plan will be this. Let's get him to talk to him after he
3 exits the store but prior to him getting in the vehicle and
4 knowing that the two likely places that the gun may still be
5 is either on his person or in the vehicle so either way I
6 didn't want to confront him in the store in the surroundings
7 and I didn't want to let him get in the vehicle to where I
8 know the potential location for the gun may be.

9 Q. Okay. Did the person you were waiting on eventually
10 come out of the store?

11 A. Yes, sir.

12 Q. How long did you have to wait about?

13 A. Just a few minutes.

14 Q. Okay. Did any other officers during that interval
15 come up?

16 A. At some point Officer Gadson came up as well. In
17 that my attention was focused on them and I knew I had
18 back up, I know a couple other officers eventually came up.
19 As far as exactly when, it was secondary knowing that I had a
20 back up unit and still a primary threat in front of me.

21 Q. I want to back up just a little bit just to make
22 sure I'm clear on everything. You mentioned that you saw a
23 black Dodge when you drove in, when you first drove in. Did
24 you have any contact whatsoever with any person connected with
25 that Dodge before the suspect came out of the store?

1 A. That's rough. I gave the caveat of the chronology.
2 He ostensibly recognized me since he knew he had called the
3 cops and he saw what was frequently known as a fleet police
4 vehicle, that Tahoe, he drove around, rolled his window down
5 and looked out at me and I rolled my window down. Yeah, I'm
6 here. I need you to get over on the side. So he came to
7 check in with me. I briefed with him window to window from a
8 bit of a distance and then I directed him to go into a neutral
9 part of the parking lot so we could still get him for
10 reference but have him out of play for the potential encounter
11 with the armed subject.

12 Q. You said you could see the suspect through the
13 window?

14 A. Yes, sir.

15 Q. At least at some point?

16 A. Yes, sir.

17 Q. And tell me what he was doing?

18 A. He was standing around waiting for his food to
19 come.

20 Q. Okay. Standing in line?

21 A. At that point he had already ordered. He was kind
22 of milling around not necessarily in a regimented line but
23 standing among a group of people sporadically. Sometimes it
24 was just a couple. Sometimes more. Again with a busy
25 business it varies as to the density in there but he was

1 standing in a place that I have previously stood waiting for
2 the food to get ready and pay.

3 Q. When the suspect came out, did he have anything in
4 his hands?

5 A. Yes, sir. He had what I saw to be a bag of food.

6 Q. What happened when he came out?

7 A. So as he came out Detective Stoner and I went and
8 interceded prior to him being able to get in his car according
9 to plan. We got him out of the store away from people and
10 prior to him getting in the car we approached him, probably
11 intercepted - his vehicle, I think, was right around in here
12 and we intercepted him right there at the sidewalk.

13 Q. You're indicating in front of the door of the actual
14 store?

15 A. Actually to the left. We had to angle a little bit
16 to him coming out would have been to the right to get there
17 but we got him right at the front of his bumper. Kind of our
18 intersection trajectory met right about where the sidewalk
19 ended by his front quarter panel of the vehicle.

20 Q. Are you talking people or cars or what when you talk
21 about trajectory?

22 A. Us having come from this way, him having come from
23 that way and we met right at the front corner panel of his
24 vehicle, his truck.

25 Q. And were any words exchanged?

1 A. Yes. We kind of almost simultaneously Detective
2 Stoner said where is the gun? Don't get in the truck. I said
3 where is the gun? Because our primary objective at that point
4 was safety for ourselves and everybody around to first isolate
5 that weapon. So we didn't - told him we didn't want him to
6 get in the truck. We wanted to know where the gun was. To
7 continue on your question of what was said, he freely and
8 vehemently said without surprise I got the whole thing on
9 video making what I assume was reference to the preceding road
10 rage incident that lead us to there which ended up being
11 accurate. He followed with some urgency of I need you to stop
12 -- I'm paraphrasing -- I need to you stop the video so it
13 doesn't override. He had a very good mental bead on what the
14 duration of his capacity was of his video and knew the urgency
15 of getting it cut off so it wouldn't overwrite the incident.

16 Q. Are you referring to the dash cam video in his
17 pickup truck?

18 A. Yes, sir.

19 Q. I'm saying his. I call him suspect. Did you have
20 an idea that a crime had been committed at this point?

21 A. We were still investigating, but it was too far
22 early into it to know whether or not one had been.
23 At that point our primary focus was safety and identifying the
24 gun and rendering it safe for us and others involved.

25 Q. All right. Did he answer your question about where

1 the gun was?

2 A. Yes.

3 Q. What did he say?

4 A. On the passenger floorboard.

5 Q. Did you confirm that?

6 A. Yes. I was again going to positioning of where we
7 all were in relation to the vehicle. As I was asking him
8 that, I was about at the location that I could look in the
9 window as well. He told me it was in the car. Not knowing
10 whether he was telling me the truth or not I said do you mind
11 if I pat you down first to make sure not wanting to fall into
12 a ruse to turn my attention away and have him capitalize on
13 that so I patted him down, confirmed that he didn't have a
14 weapon on him, looked through the window, saw the weapon on
15 the passenger's floorboard as he indicated it was.

16 Q. Okay. Did you have a chance to confirm whether the
17 gun was on the floorboard of the pickup truck?

18 A. Absolutely. In several ways. I looked in where he
19 indicated it was through the window. I saw it on the
20 passenger floorboard much as he indicated.

21 Q. Did you manipulate anything to see it or was it just
22 looking through the window?

23 A. That was before I even entered the compartment of
24 the vehicle just seeing it standing in the parking lot looking
25 in the window seeing it.

1 Q. At what point did you enter the compartment of the
2 truck?

3 A. When he told me that there was, my translation is
4 potential evidence could be lost if we didn't immediately stop
5 the dash cam from recording, he asked me to go in and turn the
6 thing off so I opened the door, got in, turned the thing off
7 and additionally saw the weapon. Knowing it was there, now
8 safe, I was able to turn my focus away from the weapon and
9 kind of concentrate on the interaction with him.

10 Q. Did you touch the weapon?

11 A. No.

12 Q. What kind of weapon was it?

13 A. A pistol.

14 Q. I don't know that we need to hold this up any
15 longer.

16 THE COURT: I'm familiar with the intersection.

17 BY MR. ELAM:

18 Q. All right. After you disabled the dash cam video,
19 what happened next?

20 A. Disabled the dash cam. Spoke with him a while. I
21 knew that I had a back up officer and I think shortly
22 thereafter another back up officer. Once again kind of going
23 to my capacity and what I typically do, I'm kind of a fireman
24 in cases like that. I put out the immediate fire and leave
25 the details to the guys who do it at a more detailed level.

1 Knowing that we kind of rendered the situation safe, spoke
2 with Mr. Dukes intermittently and as far as the logistics of
3 what they were doing with the gun and the statements and that
4 kind of turned the crux of it over to the other folks.

5 Q. And the gentleman who came out of the store with the
6 breakfast, the gentleman who said you need to turn that dash
7 cam video off or evidence is gonna be lost, is he in this
8 courtroom?

9 A. Yes, sir. Mr. Dukes right there.

10 Q. Point him out for the Judge please.

11 A. The gentleman in the tie.

12 MR. ELAM: Let the record reflect that the witness
13 has indicated the defendant in this case.

14 THE COURT: So reflected.

15 BY MR. ELAM:

16 Q. So you were the first responder but you are not the
17 case officer?

18 A. Correct.

19 Q. Is that the lingo?

20 A. Correct. Yes, sir. Like I said, I put the fire out
21 and turned it over to Deputy Gadson to actually work the case
22 itself knowing there would be a lot of logistics and details
23 to get down in the weeds of what would need to be done.

24 Q. At some point not long after that you're saying you
25 left the scene?

1 A. Correct.

2 Q. Did you see the weapon actually get recovered from
3 the truck?

4 A. Yes. As I remember, it started to lightly rain and
5 Detective Stoner had actually manipulated the weapon, rendered
6 it safe and we wanted to make sure that his weapon didn't get
7 damaged by the rain so we had it put back in the vehicle once
8 it was rendered safe so it wouldn't get wet.

9 Q. All right. I'm just going to touch on this briefly.
10 I know we stipulated to no Jackson v. Denno statement. Were
11 you still there when the statement was actually taken from the
12 defendant, a written statement?

13 A. I was. Resident Deputy Gadson actually did the
14 statement. I was there as Mr. Dukes started a statement. I
15 remember it having started to very lightly rain. I saw
16 Mr. Dukes writing the statement on the hood of his truck and I
17 offered for him to get out of the elements. I availed the
18 inside of the restaurant to him if he wanted to go inside and
19 sit at a table out of the rain and write it and he said he was
20 fine doing it right where he was.

21 Q. The gun in the vehicle, you didn't actually lay
22 hands on the gun. Can you say whether this State's exhibit
23 was the gun in the vehicle on the floorboard?

24 A. Yes, sir. Turned the other way and inverted and
25 down. Just like that.

1 Q. Like this?

2 A. Right. From my perspective.

3 MR. ELAM: Okay. Thank you, sir. Your Honor,
4 that's all I have for this witness.

5 THE COURT: Ms. Fullwood.

6 MS. FULLWOOD: Thank you, Your Honor.

7 CROSS EXAMINATION

8 BY MS. FULLWOOD:

9 Q. Officer Currence, good morning.

10 A. Good morning.

11 Q. Did I understand you correctly to testify that the
12 black Dodge was parked on the right-hand side of that
13 convenient store gas station?

14 A. Yes, ma'am.

15 Q. Okay. And can you maybe get a little more specific.
16 That's a pretty large area in here, where you first saw it?

17 A. Where I first saw it was somewhere in this area over
18 here close to the road versus talking in relative terms it
19 wasn't close to the front door, it wasn't in the roadway, but
20 somewhere around in here. As that wasn't what was identified
21 as the suspect vehicle my focus wasn't primarily on that other
22 than a passing notice.

23 Q. Did the driver of the black Dodge actually come up
24 to your vehicle at the pump or did you non verbally
25 communicate with him while he was still in his car or did he

1 come up and talk to you of the Dodge?

2 A. Right. As I testified, he drove past, rolled down
3 his window and we spoke window to window.

4 Q. Okay. So you spoke through the window?

5 A. Yes, ma'am.

6 Q. You said you directed him to a different part of the
7 parking lot?

8 A. I did.

9 Q. Which part was that? Did he go back to where he was
10 or did he go to a different area?

11 A. No. As I testified before, I directed him to the
12 other side of the parking lot close to the front. I can point
13 it out.

14 Q. You directed him to the opposite side of the parking
15 lot that he had been parked on?

16 A. Yes, ma'am.

17 Q. Okay. At what point did any of the officers
18 responding talk to the driver of the Dodge?

19 A. I can't testify to that because I was dealing
20 specifically with Mr. Dukes at the time. What the others did
21 behind me, my focus of attention wasn't on the complainant
22 behind me. It was on the suspect in front of me that I was
23 dealing with personally.

24 Q. So you never observed anyone from the Sheriff's
25 Department talking to the victim?

1 A. I didn't say that. At what point, I don't know at
2 what point, but at some point I know they did because I did
3 see them interchanging but to answer at what point, I don't
4 know exactly what the first point was that they encountered
5 him, no.

6 Q. Do you know who he talked to?

7 A. I believe he talked to at least Gadson. I really
8 don't know. My primary focus was on Mr. Dukes. I know the
9 other ones I saw going within proximity of the complainant but
10 as far as again when each individual did, I can't speak to
11 that.

12 Q. You and Officer Stoner intercepted Mr. Dukes,
13 correct?

14 A. Yes, ma'am.

15 Q. And he did not resist you in any way, correct?

16 A. No, ma'am.

17 Q. He was polite to you, correct?

18 A. Yes, ma'am.

19 Q. And you asked him where the gun was and he told you,
20 right?

21 A. Yes, ma'am.

22 Q. Like you have testified, that was your primary focus
23 was to discover where it was so you could secure it?

24 A. Correct.

25 Q. And it was in a locked car, right?

1 A. Whether it was locked or not, I can't tell you
2 whether he locked his car or not. I know it was unlocked when
3 I opened it to go in at his direction.

4 Q. Well, did you have him unlock the car?

5 A. I don't remember the logistics of who or how we got
6 in. I remember going in at his direction. Whether it was
7 locked or unlocked I don't remember that.

8 Q. Okay. But it was Detective Stoner who actually took
9 the gun out of the car, right?

10 A. Yes, ma'am. It's a truck, but yes.

11 Q. That's correct.

12 A. I do the same thing.

13 Q. It's a pickup vehicle?

14 A. Right.

15 Q. And you were present when she did that?

16 A. Yes, ma'am.

17 Q. And you could see the gun through the window of the
18 car before you went in?

19 A. Mm-hmm.

20 Q. Okay. Before the gun was taken out of the car, did
21 either of you document where the gun was in the car through a
22 photograph?

23 A. No, ma'am.

24 Q. All right. When you went in the car, you unplugged
25 the dash cam? Is that what you did in the car?

1 didn't need to be the one to physically lay hands on something
2 that we had already kind of rendered safe as far as
3 logistically us being able to secure it.

4 Q. That's what I wanted to clarify. In your mind was
5 that gun going to be seized?

6 A. Oh, sure.

7 MR. ELAM: Thank you. That's all.

8 THE COURT: You may step down.

9 MR. WAGONER: Your Honor, at this time the State
10 will publish the 911 call which is State's exhibit 5.

11 THE COURT: All right. This is just an audio
12 recording, correct?

13 MR. WAGONER: This is just an audio recording.

14 (Whereupon, State's exhibit #5, the 911 call was
15 played.)

16 MR. ELAM: The State will call the next witness.

17 The State calls Patricia Stoner to the stand.

18 Thereupon,

19 PATRICIA STONER

20 after having been first duly sworn, testified as follows,

21 THE CLERK: Please have a seat. After you're
22 seated, please state your full name spelling your last
23 name for the record.

24 THE WITNESS: Patricia Stoner, S-t-o-n-e-r.

25 DIRECT EXAMINATION

1 BY MR. ELAM:

2 Q. Deputy Stoner, can you tell the Judge where you work
3 please.

4 A. Lexington County Sheriff's Department.

5 Q. How long have you worked there?

6 A. 16 years.

7 Q. How long have you been in law enforcement?

8 A. 17 years.

9 Q. What are your duties at the Sheriff's Department?
10 What's your title?

11 A. I'm an investigator.

12 Q. Investigator. As an investigator do you routinely
13 respond to radio calls that you might hear on the police
14 radio?

15 A. Not routinely. Only exigent circumstances.

16 Q. Okay. I want to turn to October 26th, 2015 at about
17 8:30 in the morning and ask what you were doing at that
18 time?

19 A. I was on my way to work at the north region
20 headquarters which is located at 111 Lynn Creek Drive. I have
21 to drive across the dam to get there.

22 Q. Is that the same sub station that Captain Currence
23 testified about working at?

24 A. It is.

25 Q. So y'all work in the same building?

1 A. We did.

2 Q. Okay. Did you plan on going straight to work? Did
3 you have any detours in mind?

4 A. I planned on going straight to the office that
5 morning.

6 Q. Did you get there straight?

7 A. I did not.

8 Q. What happened?

9 A. I heard Captain Currence - I heard a radio call
10 about a man with a gun and a possible road rage incident, and
11 then I heard Captain Currence sign out at the Exxon Gas
12 Station and didn't hear anyone else sign out with him and I
13 knew I was close so I went over there to back him up.

14 Q. And what kind of call was it?

15 A. It was a man with a gun, road rage incident.

16 Q. Where did you know to go to?

17 A. The dispatch -- Well, Captain Currence had signed
18 out at the Exxon Gas Station at the corner of 6 and 60 and I
19 knew exactly where that was.

20 Q. What kind of vehicle were you driving?

21 A. An unmarked blue Ford Escape.

22 Q. What were you wearing?

23 A. Plain clothes.

24 Q. Plain clothes. Did you have your blue light or any
25 kind of siren going?

1 A. I did not.

2 Q. Did you hear any or see any kind of blue light or
3 hear any kind of siren from any law enforcement in response to
4 this case?

5 A. I did not.

6 Q. When you got to the Exxon Station, what did you
7 observe?

8 A. I located Captain Currence's vehicle, drove up to
9 him and got a briefing on what was going on, where the suspect
10 was. He knew from previous incidents who the suspect --

11 MS. FULLWOOD: Objection, Your Honor.

12 THE COURT: I've got the flavor of that.

13 BY THE WITNESS:

14 A. He knew the suspect. He knew who he was so he
15 explained to me who he was and where he was located at the
16 time.

17 BY MR. ELAM:

18 Q. Okay. How many officers were on the scene before
19 you got there?

20 A. Just Captain Currence.

21 Q. So you're number 2 there?

22 A. I am.

23 Q. What happens next? You're briefed on the
24 situation?

25 A. Correct. So I drive over. He tells me that the

1 caller is parked over to what would be my left just closest to
2 Lake Murray Boulevard so I drive around and park my car close
3 to his and walk back over to Captain Currence and we discuss
4 what we are going to do when Mr. Dukes comes out of the
5 store.

6 Q. Okay. I do want to nail that down just briefly.
7 Have you seen this before?

8 A. I have.

9 Q. Are you familiar with it?

10 A. I am.

11 Q. You mentioned you saw the caller. Are you referring
12 to whom when you say the caller?

13 A. The gentleman in the black Dodge.

14 Q. Where did you see him just for clarification?

15 A. Captain Currence pointed to him. He was parked
16 here.

17 Q. Okay.

18 A. He was in a black Dodge car.

19 Q. For the record, you're pointing towards the back
20 area of the parking lot close to the entrance closest to the
21 dam?

22 A. Correct.

23 Q. All right. And you went and parked next to the
24 Dodge you said?

25 A. Yes. I parked over in this area as well.

1 Q. Then did what?

2 A. Walked back over to where Captain Currence's car was
3 parked which was underneath here at a gas pump.

4 Q. What was your purpose?

5 A. To discuss what we were going to do next.

6 Q. What did you decide to do?

7 A. We decided to wait until Mr. Dukes exited the store.
8 Captain Currence was going to drive up behind him and we were
9 going to ask him not to get in his vehicle and then determine
10 where the gun was.

11 Q. Okay. Long story short, did that happen?

12 A. Yes. It did.

13 Q. Okay. Can you describe Mr. Dukes when he came out
14 of the convenience store?

15 A. When he exited, he didn't seem surprised to see us.
16 He immediately said I have it all on video.

17 Q. Okay. Was he carrying anything?

18 A. He had his bag of food.

19 Q. All right. Did anybody ask him about the point of
20 interest to the gun?

21 A. Yes. At the same time I was asking him not to get
22 in the car, Captain Currence was asking him where the gun was
23 and he stated that it was on the floorboard of his truck.

24 Q. Did you confirm that?

25 A. I did.

1 Q. How so?

2 A. I walked over to the passenger side of his vehicle,
3 looked in the window and saw the gun laying next to where the
4 transmission is on the passenger side floorboard of the
5 truck.

6 Q. What kind of gun was it?

7 A. A handgun black.

8 Q. Was it in a lawful place?

9 A. It was not.

10 What's your understanding of where a gun should be?

11 MS. FULLWOOD: Objection. Calls for a legal
12 opinion.

13 THE COURT: The Court's aware of the statute. Go
14 ahead.

15 BY MR. ELAM:

16 Q. All right. When you saw the handgun on the
17 floorboard of the truck, what, if any, action did you take?

18 A. I initially was going to open the door and get it
19 and then I noticed the dog sitting on the seat. I asked
20 Mr. Dukes if it would be okay if I opened the door to get the
21 gun out and if the dog would be vicious or bite me or have any
22 issues with me entering the vehicle.

23 Q. Was the dog a problem?

24 A. The dog was not a problem.

25 Q. Okay. So I take it you opened the door?

1 A. I did and I retrieved the handgun, took the magazine
2 out and rendered it safe.

3 Q. Okay. State's exhibit number 2, can you identify
4 this?

5 A. That's the gun that I retrieved from Mr. Dukes'
6 vehicle.

7 Q. Is there anything else in this bag that's State's
8 number 2?

9 A. The magazine that was in the gun at the time.

10 Q. What did you do with the magazine?

11 A. I removed it from the gun. I noticed it had bullets
12 in the magazine.

13 Q. It did at the time?

14 A. It did.

15 Q. What did you do with those?

16 A. I left them in the magazine.

17 Q. All right. I'll show you State's exhibit number 3.
18 If you can extract that from the bag marked exhibit 3 and tell
19 me what this is.

20 A. This is a holster that I also retrieved from
21 Mr. Dukes' vehicle.

22 Q. Okay. Where was it?

23 A. On the floorboard of the car on the front passenger
24 floorboard.

25 Q. Was it close to the gun?

1 A. I don't recall exactly where it was. I just
2 remember that the gun was not in the holster when I retrieved
3 it.

4 Q. Once you removed the magazine from the gun, what did
5 you do with it?

6 A. I placed it on the tool box of Mr. Dukes' truck and
7 then because it was raining Captain Currence had said let's
8 get it out of the rain so it doesn't get ruined. Also there
9 was a lot of people around. We didn't want anybody to be able
10 to get that one so I put it back onto the floorboard of the
11 car. The slide was locked back and the magazine was still out
12 of the gun and I placed them both on the passenger floorboard
13 of Mr. Dukes' truck until it could be turned over to Deputy
14 Gadson.

15 Q. All right. So you just explained why you put it
16 back in. You were not going to collect it yourself?

17 A. I was not.

18 Q. Why would you leave it for deputy Gadson?

19 A. Because he was going to be the case officer.

20 Q. And as such she's responsible for what?

21 A. All the evidence in the case.

22 Q. Once that part of the incident was handled, did you
23 do anything else relative to the case?

24 A. I went and spoke with the caller.

25 Q. Are we talking back at the black Dodge?

1 A. Yes.

2 Q. Was he still in the same position near the
3 entrance?

4 A. Yes.

5 Q. All right. Did you conduct any official police
6 business with him? Let me put it that way.

7 A. I did. I asked him if he wanted to prosecute for
8 having a gun pointed at him.

9 Q. What was the result of that?

10 A. He said he did not want to so I had him sign a
11 refusal to prosecute form.

12 Q. After that, did he remain on the scene?

13 A. He remained for a few minutes. I walked back over
14 to Captain Currence and Deputy Gadson and was helping with
15 that situation.

16 Q. What was his demeanor like?

17 A. The caller's?

18 Q. Yes.

19 A. He was fine. He just didn't really want to be
20 there.

21 Q. All right. What was his name? We keep talking
22 about the caller.

23 A. If you let me look at the refusal to prosecute, I
24 could tell you. I don't remember offhand.

25 Q. (Proffering.)

1 A. Anthony Smith.

2 Q. Okay. After you dealt with the caller, what did you
3 do next at the scene?

4 A. Walked back over and Deputy Gadson was having Mr.
5 Dukes fill out a statement.

6 Q. Where did that take place?

7 A. On the hood of Mr. Dukes' car.

8 Q. You said it was raining. Heavy rain or what?

9 A. Like a very light mist. Captain Currence had asked
10 Mr. Dukes if he wanted to go into the store to write the
11 statement or somewhere else so he could be out of the
12 elements.

13 Q. He chose not to?

14 A. Correct.

15 Q. All right. Did you see the result of the -- Did you
16 actually see the statement yourself at the scene?

17 A. I did. I saw Mr. Dukes writing on that paper and
18 then when he was finished, I looked over it and completed some
19 follow up questions.

20 Q. All right. I'll approach you with State's exhibit
21 number 7 and ask you if you recognize that?

22 A. I do.

23 Q. Tell the Judge what that is.

24 A. That is the statement that Mr. Dukes wrote.

25 Q. Does it indicate at the top, and I know Deputy

1 Gadson may go into this, but does this indicate at the top
2 that Miranda was complied with?

3 A. It does by his initials by each Miranda right.

4 Q. So what was your part in the statement, if any?
5 What did you do with the statement?

6 A. On the second page I wrote two follow up questions
7 and then Mr. Dukes answered them.

8 Q. What were the two questions?

9 A. What did the other driver say to you? And where did
10 you have the gun in your truck prior to the incident?

11 Q. All right. What were the answers?

12 A. The answer to the first one was I could not
13 understand what he was saying. The answer to the second one
14 was the gun was located on the floorboard on the passenger
15 side of my pickup.

16 Q. Okay. Thank you. After participating in the
17 written statement portion of the case, did you do anything
18 else relevant to the case?

19 A. I lent Deputy Gadson a flash drive because Mr. Dukes
20 had stated that he wanted somebody to see the video so in
21 order for Deputy Gadson to be able to retrieve a copy of it, I
22 lent him one of my flash drives.

23 Q. What was your understanding of what was going to
24 happen at that point?

25 A. That this incident was going to be followed up on.

1 That Deputy Gadson was going to go review the video and the
2 claims of the road rage and it would be further investigated
3 from there.

4 Q. Let's back up a little bit and make sure. You
5 testified you looked in the window and saw the gun and then
6 opened the door and disabled, took the magazine out of the
7 gun. Did you have to open any kind of box or container to get
8 to the gun?

9 A. I did not.

10 MR. ELAM: Your Honor, I think this might be a good
11 time to go ahead and put the dash cam video in since
12 everything is in evidence.

13 THE COURT: Okay. You want to publish it now?

14 MR. ELAM: Yes, sir.

15 THE COURT: Okay. Let's take a break right now.
16 But it's stipulated it's coming in, right?

17 MS. FULLWOOD: Right.

18 THE COURT: Fair enough. Let's take a few minutes
19 break. Ten minutes enough for everybody? Back here in
20 about ten minutes on the 11 on that clock.

21 (Short break.)

22 THE COURT: All right. We're back on the record.

23 BY MR. ELAM:

24 Q. Investigator Stoner, did you have occasion to
25 actually view the video yourself?

1 A. I did after Deputy Gadson obtained it from
2 Mr. Dukes.

3 MR. ELAM: Let's have a look at it then. That's
4 State's exhibit 6, your Honor, for the record.

5 THE COURT: All right. Play it.

6 (Whereupon, State's exhibit #6, video of dash cam
7 recording played.)

8 BY MR. ELAM:

9 Q. Detective Stoner, did you have a hand in preparing
10 this video or helping to preserve it?

11 A. Deputy Gadson brought the flash drive to me and I
12 transferred the video to a CD so that he could place that into
13 evidence.

14 Q. Is this the entire video that you had?

15 A. It is.

16 Q. Did it show the police interaction with the
17 defendant?

18 A. No, sir. That was all that I saw.

19 Q. All right. We talked about this video earlier after
20 having a chance to review it?

21 A. We discussed it.

22 Q. Was there a point in the video where you mentioned a
23 particular sound that you heard in the video?

24 A. It sounded like an unsnapping of a holster.

25 Q. That was what your opinion was?

1 A. Correct.

2 Q. I heard a siren --

3 MS. FULLWOOD: Your Honor, object to an opinion on
4 that point. I don't think that's a proper subject of
5 opinion.

6 THE COURT: It's okay. I listened to the video.
7 Overruled.

8 BY MR. ELAM:

9 Q. I believe there was testimony that there wasn't any
10 sirens, blue lights or anything like that from any approaching
11 police but we did hear a siren on the video. What was that?

12 A. It appeared to be from an ambulance.

13 Q. Could you actually see the reflection of the
14 ambulance and red lights?

15 A. I could see the reflection of the ambulance and I
16 could see the red lights.

17 Q. Other than this video, did you have any other follow
18 up on this case? For example --

19 A. I did.

20 Q. Okay.

21 A. I contacted SLED to confirm whether or not Mr. Dukes
22 had a concealed weapons permit or had applied for one.

23 Q. And we have stipulated to the answer but the answer
24 is?

25 A. That he did not and had not applied for one.

1 MR. ELAM: That's all the questions I have for you.
2 Thank you.

3 MS. FULLWOOD: Please the Court, Your Honor.

4 CROSS EXAMINATION

5 BY MS. FULLWOOD:

6 Q. Deputy Stoner, hello. You were the person who
7 ultimately took the gun from the car, correct?

8 A. Correct.

9 Q. Okay. Prior to doing so, you did not take any
10 pictures of the gun as to where it was in the truck,
11 correct?

12 A. No, ma'am.

13 Q. You also talked to the man who was driving the Dodge
14 Avenger, correct?

15 A. Correct.

16 Q. And he told you his name was what?

17 A. He wrote it on the form.

18 Q. Okay.

19 A. As Anthony Smith.

20 Q. Yet he identifies himself in the 911 call as Alfonso
21 Smith, doesn't he?

22 A. Yes, ma'am. I did not know that when I had my
23 interaction with him.

24 Q. Okay. When you were having your interaction with
25 him, at that point you weren't sure what was going on,

1 correct?

2 A. Correct.

3 Q. So did you ask him for his driver's license to
4 confirm his identity?

5 A. I did not.

6 Q. And since you didn't do that, of course, you didn't
7 run his driver's license, did you?

8 A. No, ma'am.

9 Q. And haven't you subsequently learned that on the day
10 that that happened, he was driving on a suspended license?

11 A. I have.

12 Q. And is it correct that he had some bench warrants
13 out for him?

14 A. I don't know.

15 Q. Okay. Of course, he's not here today?

16 A. Correct.

17 Q. You wrote a supplemental case report concerning your
18 involvement, right?

19 A. Yes, ma'am.

20 Q. Do you have it with you?

21 A. I do.

22 Q. Okay. That report says nothing one way or another
23 about a holster, does it?

24 A. No, ma'am. It does not.

25 MS. FULLWOOD: No further questions, Your Honor.

1 THE COURT: Okay. Anything else?

2 REDIRECT EXAMINATION

3 BY MR. ELAM:

4 Q. Ms. Fullwood asked you if you took photos of the gun
5 before you unloaded it and before you actually touched it and
6 moved it. Did you have a camera?

7 A. It was in my vehicle. It wasn't on me at the
8 time.

9 Q. Okay. Was your car equipped with a dash cam?

10 A. No, sir. It's not.

11 Q. Do you know if there is a video available from the
12 store?

13 A. I don't believe there is but I'm not sure.

14 MR. ELAM: That's all.

15 MS. FULLWOOD: May I ask, Your Honor?

16 THE COURT: Sure.

17 RE CROSS EXAMINATION

18 BY MS. FULLWOOD:

19 Q. You could have retrieved the camera, couldn't you
20 have?

21 A. I could have. Yes, ma'am.

22 Q. And you had a cell phone, right?

23 A. I don't believe I had a smart phone at that time.
24 The county had not issued them at the time. The cameras on
25 the flip phones are not good.

1 Q. But you had one?

2 A. Yes, ma'am.

3 Q. You chose not to use it?

4 A. I did not use it. Yes.

5 MS. FULLWOOD: Nothing further, Your Honor.

6 THE COURT: Step down.

7 MR. WAGONER: Your Honor, the State would call
8 Deputy Gadson.

9 Thereupon,

10 STACEY GADSON

11 after having been first duly sworn, testified as follows,

12 THE CLERK: Please have a seat. After you're
13 seated, please state your full name spelling your last
14 name for the record.

15 THE WITNESS: Stacey Gadson, G-a-d-s-o-n.

16 DIRECT EXAMINATION

17 BY MR. WAGONER:

18 Q. I guess it's still good morning. Would you tell the
19 Judge where you are employed and how long have you been
20 employed there?

21 A. Lexington County Sheriff's Department. 16 years.

22 Q. Is that your only law enforcement experience with
23 the Lexington County Sheriff's Department?

24 A. I did two years prior.

25 Q. And where was that?

1 A. Santee Police Department.

2 Q. Did you have an opportunity to respond to the Exxon
3 at 6230 Bush River Road on October 26th, 2015?

4 A. Yes, sir.

5 Q. Kind of tell me what lead you to respond there?

6 A. Yes, sir. I heard Captain Currence sign out to a
7 civil dispute involving a gun and I headed that way.

8 Q. Did you respond blue lights and siren?

9 A. No, sir.

10 Q. Neither?

11 A. No, sir. Neither.

12 Q. Any reason for that? Any reason to not respond with
13 blue lights and siren?

14 A. No, sir.

15 Q. When you got to the Exxon, who did you speak to?

16 A. When I first got there, I saw Captain Currence and
17 Investigator Stoner and I spoke with them.

18 Q. Were they talking with an individual when you got
19 there?

20 A. Yes, sir. Mr. Dukes.

21 Q. Okay. Did you speak with the caller, the other
22 driver?

23 A. Yes. Captain Currence told me that he was in the
24 black Dodge Avenger.

25 Q. And after speaking with that other driver, did you

1 then go speak at some point with Mr. Dukes?

2 A. Yes. When I left him, I went and got back with
3 Captain Currence and Investigator Stoner and told them he
4 didn't want to prosecute. That's when I was advised that
5 Mr. Dukes wanted to write a statement.

6 Q. Prior to him writing a statement, did you ask Mr.
7 Dukes what happened?

8 A. No, sir.

9 Q. Okay. So you went - your purpose of speaking with
10 Mr. Dukes was to get him to write a statement?

11 A. Yes, sir.

12 Q. Was he under arrest?

13 A. No, sir.

14 Q. Was he in custody?

15 A. No, sir.

16 Q. However, did you advise him of his Miranda Rights?

17 A. Yes. It's in a statement form.

18 Q. I'm handing you what's been marked as State's
19 exhibit 7 already stipulated into evidence. Whose initials
20 appear beside each of those Miranda Rights?

21 A. Mr. Thomas Dukes.

22 Q. And whose handwriting is that statement form in
23 other than the questions on the second page?

24 A. Mr. Thomas Dukes.

25 Q. Did you watch him write that?

1 A. Yes, sir.

2 Q. Did you force him to write anything?

3 A. No, sir.

4 Q. At this point, Deputy Gadson, would you read that
5 statement to the Court? You do not have to go through the
6 Miranda Rights that you gave him. Just his written statement.

7 A. Okay.

8 THE COURT: Read it slowly. I can't listen fast.

9 The court reporter can though.

10 BY THE WITNESS:

11 A. It reads, today October 26th, 2015 on my way to work
12 driving on Highway 6 north in the right lane a black Dodge
13 tried to change lanes into me. There was not enough room to
14 let the driver over. The driver got angry and began cursing
15 and yelling at me. When I changed lanes, the driver came up
16 beside me again yelling and cursing. On the third time I
17 showed this driver I was armed. He then followed me to the
18 above address and appeared to be waiting for me. All this
19 should be documented on my dash cam video. I showed the
20 driver I was armed by showing him a holstered gun. I did not
21 point it towards him. The gun was never removed from its
22 holster.

23 BY MR. WAGONER:

24 Q. Now, on the second page did you observe the question
25 being written out by Investigator Stoner?

- 1 A. Yes, sir.
- 2 Q. How many questions did she write out?
- 3 A. Two.
- 4 Q. Whose handwriting answered them?
- 5 A. Mr. Dukes.
- 6 Q. Could you read those questions and answers please?
- 7 A. It says question: What did the other driver say to
8 you? Was the question. The answer was, I could not
9 understand what he was saying. The second question was:
10 Where did you have the gun in your truck prior to the
11 incident? The answer was: The gun was located in the
12 floorboard on the passenger side of my pickup.
- 13 Q. Does anything else follows after that?
- 14 A. Nothing else follows.
- 15 Q. Did he sign at the bottom?
- 16 A. Yes, sir. He signed and dated it.
- 17 Q. Did Investigator Stoner sign as a witness?
- 18 A. Yes, sir.
- 19 Q. On the bottom of page 1 does it indicate whether or
20 not he received a copy of his statement?
- 21 A. Yes, sir.
- 22 Q. Did you arrest him immediately?
- 23 A. No, sir.
- 24 Q. Now, he mentioned about having the dash cam video.
25 Were you able to watch it at the scene?

- 1 A. No, sir.
- 2 Q. Did he invite you someplace to watch it?
- 3 A. To his family business.
- 4 Q. Do you recall where his family business is?
- 5 A. Yes, sir. It's on Piney Grove Road.
- 6 Q. Do you recall the name of it?
- 7 A. I believe it's called Dukes Equipment.
- 8 Q. So did you follow him or did you put him in your
- 9 car? How did that happen?
- 10 A. I followed him straight to his business.
- 11 Q. You followed him down Bush River Road?
- 12 A. Yes, sir, and made a right on St. Andrews and a left
- 13 on Piney Grove.
- 14 Q. And you arrived at his business?
- 15 A. Yes, sir.
- 16 Q. Did he invite you into his business?
- 17 A. Yes, sir.
- 18 Q. Tell me about, did he show you a video?
- 19 A. Yes, sir. On his computer.
- 20 Q. Did you watch that entire video on the computer?
- 21 A. I believe so.
- 22 Q. Did you ask him for a copy of that video?
- 23 A. Yes, sir.
- 24 Q. Did he provide a copy of that video?
- 25 A. He did.

1 Q. Later on when you took that to, I guess,
2 Investigator Stoner where ever you put it onto a disk, did you
3 watch it again at some point?

4 A. Yes, sir.

5 Q. What you watched after placing it onto the disk, was
6 that exactly what you saw at the business?

7 A. Yes, sir.

8 Q. And do you recall Mr. Elam e-mailing you asking if
9 there was more video?

10 A. Yes, sir.

11 Q. Asking you if there was video that included the
12 interaction with law enforcement and Mr. Dukes?

13 A. Yes, sir.

14 Q. Did you double check?

15 A. I did double check.

16 Q. And does it?

17 A. It doesn't, sir.

18 Q. Now, after reviewing -- Actually before I go into
19 that. Back at the scene, did you obtain the firearm from
20 Investigator Stoner that's State's 2?

21 A. Yes, sir.

22 Q. Did you secure that in an evidence bag?

23 A. That day?

24 Q. Or at some point?

25 A. Yes, sir.

1 Q. Did you handle the magazine?

2 A. Yes, sir.

3 Q. Did you do anything with the magazine when you got
4 to evidence?

5 A. I took the rounds out.

6 Q. Would that be what's contained in State's 4?

7 A. Yes, sir.

8 Q. That was done at the Sheriff's Department evidence
9 department?

10 A. Yes, sir.

11 Q. Did you review his statement?

12 A. I did.

13 Q. Did you review the entire video?

14 A. Yes, sir.

15 Q. Did you review the statement of the other driver?

16 A. The failure to prosecute statement?

17 Q. Yes.

18 A. Yes, sir.

19 Q. Did you review what the investigator told you that
20 he said?

21 A. Yes.

22 Q. That Dukes said?

23 A. Yes.

24 Q. Did you review the information that the investigator
25 and the captain told you about what the other driver said?

1 A. Yes.

2 Q. With all that being reviewed what did you do?

3 A. I went and presented it to a judge and got an arrest
4 warrant.

5 Q. What was the arrest warrant for?

6 A. Unlawful carry.

7 Q. Why was it unlawful carry?

8 A. Because it wasn't secured in the proper manner in
9 the vehicle.

10 Q. What is the proper manner to secure a weapon inside
11 a vehicle?

12 MS. FULLWOOD: Objection. There is no testimony
13 about the law. The Court knows the law.

14 THE COURT: The Court knows the law. The Court
15 knows what he's testified to.

16 BY MR. WAGONER:

17 Q. Okay. Did you go to the Quick Way to see if there
18 were any surveillance videos available?

19 A. I did.

20 Q. Were there any available?

21 A. They said that they didn't have a camera pointed to
22 the outside of that door.

23 Q. Okay. The gentleman who provided that video to you,
24 is he in the courtroom today?

25 A. Yes, sir.

1 Q. Could you point him out for the Judge?

2 A. Mr. Thomas Dukes.

3 MR. WAGONER: Nothing further. Please answer any
4 questions of Ms. Fullwood.

5 THE COURT: Ms. Fullwood.

6 CROSS EXAMINATION

7 BY MS. FULLWOOD:

8 Q. Deputy Gadson, hi.

9 A. Hello.

10 Q. So you talked to this Anthony James Smith, too,
11 right?

12 A. Yes, ma'am.

13 Q. All right. This man presumably who identified
14 himself as Alfonso Smith on that 911 tape, right?

15 A. I guess.

16 Q. Okay. Did you ask him for any identification?

17 A. No, ma'am.

18 Q. You didn't run his license?

19 A. No, ma'am.

20 Q. Okay. Didn't do anything to try to be able to get
21 in touch with him if you ever needed him again?

22 A. Did I do anything to try to -- No, ma'am. He said
23 he didn't want to prosecute.

24 Q. But ultimately your agency is the agency that makes
25 the decision about whether or not to prosecute, not a witness,

1 correct? Is that right?

2 A. Yes.

3 MS. FULLWOOD: Okay. All right. No further
4 questions.

5 THE COURT: Okay. You can step down.

6 MR. ELAM: Your Honor, at this point the State of
7 South Carolina rests.

8 THE COURT: Okay. All right. Ms. Fullwood.

9 MS. FULLWOOD: All right. Judge, I know this is a
10 bench trial but at this point I would move for a directed
11 verdict on grounds that at this point where the weapon
12 was recovered it was actually not in Mr. Dukes'
13 possession. He did not have physical actual possession
14 of the gun and he did not have constructive possession of
15 the gun because it was in a vehicle, he was being
16 detained, he was without any power to exercise control
17 over the gun so we ask for a directed verdict.

18 THE COURT: I think he was in constructive
19 possession of his vehicle. He got out of it per his dash
20 cam video, goes inside the store momentarily. In a light
21 most favorable to the State I think that gets by the
22 directed verdict. I don't disagree with you. He was in
23 the store when they drove up, but he never went outside
24 that camera angle that I didn't see. I think
25 constructive possession would be very plausible so...

1 All right. Who are you going to call?

2 MS. FULLWOOD: I'm going to call Thomas Dukes.

3 THE COURT: All right. Come around, Mr. Dukes, to
4 be sworn.

5 Thereupon,

6 THOMAS EDMUND DUKES

7 after having been first duly sworn, testified as follows,

8 THE CLERK: Please have a seat. After you're
9 seated, please state your full name spelling your last
10 name for the record.

11 THE WITNESS: Thomas Edmund Dukes, D-u-k-e-s.

12 MS. FULLWOOD: And, Your Honor, at this point I want
13 the Court to know that there is now a defendant's exhibit
14 6. Right now it is video information that's on a sim
15 card and we have mutually agreed that we can play it, but
16 then ultimately we are going to transfer it to a disk for
17 actual admission into evidence.

18 THE COURT: Okay.

19 MS. FULLWOOD: I don't believe there is any
20 objection to it going in that way.

21 THE COURT: You can play it off the sim card today?

22 MS. FULLWOOD: Yes, sir. I am.

23 THE COURT: All right. So it will be utilized and
24 then transferred to me on a DVD or CD, whichever it is.
25 I have never understood the difference from a DVD and a

1 CD but it's a round thing that slides into a computer but
2 it will eventually be entered into evidence?

3 MS. FULLWOOD: That's right. That's what we're
4 gonna do.

5 THE COURT: We had a debate yesterday in a trial
6 whether, and I asked Detective Stoner whether she was an
7 investigator or a detective. It turns out it's personal
8 preference.

9 MS. FULLWOOD: I see. Okay. All right. Good to
10 know.

11 DIRECT EXAMINATION

12 BY MS. FULLWOOD:

13 Q. All right. Mr. Dukes, the Court has heard a little
14 bit about you yesterday. You live here in Lexington?

15 A. Yes, ma'am. I do.

16 Q. Okay. And what area of Lexington?

17 A. I live in the Whiteford subdivision.

18 Q. You own your house now?

19 A. I'm still buying it.

20 Q. In the process of owning it?

21 A. Yes.

22 Q. All right. So how old are you now, Mr. Dukes?

23 A. I just turned 60 last month.

24 Q. So at the time this happened you were 59?

25 A. That's correct.

1 Q. Mr. Dukes, are you in good health or do you suffer
2 from any illnesses or injuries that don't make you in the best
3 of health?

4 A. Well, uhm, I have high blood pressure. I didn't
5 find that out until I went to the Lexington County jail and
6 they did a health screening on me. I also was in an accident,
7 a pretty severe automobile accident back in 2013 and injured
8 my hip, lower back, shoulder and neck. I still have pains
9 from those today.

10 Q. Okay. On October 26th of last year what were you
11 doing when you got in your car that we have seen on the dash
12 cam? Can you explain to us what you were doing that day and
13 where you were going?

14 A. I left my house and was headed into work and as I
15 approached Hope Ferry Road going through the intersection, I
16 didn't see the guy immediately until he swerved, that he was
17 trying to change lanes and at that point it was too late to
18 let him over safely and I went past him. He blew the horn and
19 then I later changed lanes a little bit and then he came
20 zooming up beside me and he started cursing me. Well, I
21 cursed back. I probably shouldn't have done that but I did.
22 And then he went on ahead and then he later got behind some
23 traffic turning onto Corley Mill Road and I was having to pass
24 him but I did look over at him and he was giving me all the
25 fingers and I couldn't see what he was saying but you know

1 what I mean and, of course, I kind of cursed back at him under
2 my breath. Well, going down a little bit further I see him
3 coming up hard again. I mean, he was flying like, you know.
4 So I reached back behind my seat on the passenger side between
5 the --

6 Q. Okay. You reached back where, behind what seat now?

7 A. The passenger seat what is considered the luggage
8 compartment in a pickup truck, SUV or van.

9 Q. All right.

10 A. I put the bag in my lap, unzipped it, took the gun
11 out holding the bag with my finger and I flung the bag and I
12 wasn't trying to hide the gun from him. I wanted that man
13 right then to back off because I was afraid he was going to
14 cause a wreck because I had already been through six months of
15 therapy two or three times a week and I don't want to do that
16 again and I didn't know what my choices were at that time. I
17 guess I could have swerved over at him or something, you know.
18 So I just wanted him to leave me alone.

19 Q. Okay. So explain, did you normally carry your gun
20 around with you?

21 A. Not everyday. Just whenever I more or less thought
22 about it and I don't leave the gun in the car. I don't keep
23 it in the glove box. I don't keep it in the console just for
24 the simple fact that if I left it in there, it could get
25 stolen. So the bag comes in and out with me every evening and

1 goes inside and stays in the truck while I'm at work because
2 I'm usually the one that opens up in the morning. We have a
3 bunch of homeless people that live behind our shop back in the
4 woods.

5 Q. Explain to the Judge where you work.

6 A. Dukes Equipment.

7 Q. Well, where is it located?

8 A. It's on the corner of Bower Parkway and Piney Grove
9 Road.

10 Q. So is it an industrial area, deserted area or
11 what?

12 A. It's more retail, several hotels right in the area,
13 gas station or two.

14 Q. So is it sort of dicey sometimes when you open up?

15 A. Yeah. It is.

16 Q. Were you alone that day?

17 A. In the vehicle?

18 Q. Yes.

19 A. Yes, ma'am. Well, I had my dog. My dog goes with
20 me to work everyday.

21 Q. Okay. So did I ask you to take some pictures of
22 your vehicle and, of course, we couldn't use this gun, but the
23 other gun and the whole big bag and whatnot?

24 A. Right. That's the same handgun that I showed Deputy
25 Gadson when he was at my shop and we were reviewing the video

1 that was in the bag under the counter.

2 Q. Okay. I'm going to show you defendant's exhibit 1
3 and ask you if this is a reasonable facsimile or recreation of
4 what the front portion of your vehicle looked like on that
5 day?

6 A. Right. Yes, ma'am.

7 Q. Okay. And so you kept the gun in a bag and describe
8 that bag inasmuch detail as you can.

9 A. Okay. It's just a cheap nylon tool bag I purchased
10 over at Harbor Firearms for eight dollars. I have two of
11 them.

12 Q. Does it have a fastener?

13 A. It does. It has a zipper.

14 Q. When you transported that gun, would you keep it
15 zipped or unzipped?

16 A. It was zipped.

17 Q. And apart from that was the gun just sitting loose
18 in the bag or was it in anything?

19 A. The gun was in a holster in the bag.

20 Q. Holster in the bag. Okay. And you would keep that
21 bag where in your truck?

22 A. Uhm, behind the passenger seat on the floorboard,
23 passenger side floorboard.

24 Q. So in the luggage area of the truck?

25 A. In the luggage area of the truck. Yes, ma'am.

1 Q. Okay. I want to show you defendant's exhibit 3 and
2 ask you if this is a reasonable recreation of where that gun
3 would have been that day and your ability to grasp the bag if
4 you needed to?

5 A. Yes, ma'am.

6 Q. You testified that the third time the guy came up on
7 you you felt like you needed to do something?

8 A. Uhm, I passed him one time so I wouldn't count that
9 as the third time, but the second time he was coming up for a
10 reason and it kind of scared me because like I said, I didn't
11 know what his intentions were and I did not want to continue
12 cursing him all the way to where I was going to go and I
13 didn't, you know, I just wanted him to back off.

14 Q. Okay. So is that when you displayed the holstered
15 gun?

16 A. That's correct.

17 Q. Did he back off?

18 A. He did immediately.

19 Q. Did you go on ahead?

20 A. I went on ahead. Yes, ma'am.

21 Q. Okay. At that point did you think that was it?

22 A. I thought so.

23 Q. Okay.

24 A. Well, I did try to call 911.

25 Q. Tell the Court this. Do you feel comfortable using

1 a telephone while you were driving?

2 A. No.

3 Q. Have you done something with the truck to be able to
4 use hands free calls?

5 A. I did.

6 Q. What's that?

7 A. Well, the radio in my truck was apparently damaged
8 when I was in the wreck and I replaced it with an after market
9 and it had the Blue Tooth feature on it.

10 Q. What does that let you do?

11 A. You have to have a phone that has Blue Tooth
12 capabilities and you can pair it up with the other device and
13 they talk to each other and so...

14 Q. And at the time that this happened to you were you
15 very familiar with using that system?

16 A. No. No. I have answered a few incoming calls when
17 I have seen it's been from my brother or a family member or
18 someone at work, but just in random phone call I don't
19 answer.

20 Q. So about what point did you try to make a call to
21 911?

22 A. About the point where we started going down below
23 the dam, somewhere around in there.

24 Q. What happened?

25 A. I got a pop up, a menu on my phone how I wanted to

1 make the call. I just wanted to make the call and I had about
2 three or four selections on there and I'm trying to watch the
3 road, trying to watch him. I just gave up on it.

4 Q. I'm gonna show you defendant's exhibit 2 and ask you
5 what this is a picture of?

6 A. That's the pop up.

7 Q. Is that what showed up on the phone screen?

8 A. Yes, ma'am.

9 Q. So did you decide it was safe just to concentrate on
10 driving?

11 A. I did.

12 Q. Okay. So where did you go?

13 A. Well, at that time on Monday, Wednesday and Friday
14 it was my day to stop and pick up breakfast. I knew I was
15 going to be going to the Quick Way and so when I turned in
16 there, my hopes was that he was going to keep going up North
17 Lake Drive on into Irmo but instead he followed in behind me
18 into the Quick Way which that ramped up the situation in my
19 book.

20 Q. Okay. So did you decide to stay there or leave or
21 what? Obviously you stayed.

22 A. Well, it takes about ten minutes to get your food.
23 I figured the guy would either give up and go, but then before
24 I came out the store that's when the deputy showed up.

25 Q. But before you went in, you saw that he had followed

1 you?

2 A. Right. I did.

3 Q. Okay. And where did you leave your gun when you
4 left the vehicle?

5 A. Well, I still had the gun in my lap. The handgun in
6 my lap. But the bag that it was in was up against the fire
7 wall on the passenger side in the front. I couldn't reach the
8 bag from there so I set the gun, laid it up against the hump,
9 the transmission hump because the man was still in the parking
10 lot and if I needed to get to it, I wanted to be able to get
11 to it.

12 Q. Okay. I'm going to show you defendant's exhibit
13 number 4 and ask you what it is a picture of?

14 A. That would be the holster. I mean, the bag. It
15 probably should be a little closer to the fire wall, but
16 that's about where I placed the handgun when I exited the
17 truck.

18 Q. Okay. And defendant's exhibit number 5?

19 A. Well, that's not the handgun --

20 Q. Is this an example of the type of holster that the
21 gun was in?

22 A. That's a larger model.

23 Q. Is this basically the type of holster you used?

24 A. It is.

25 Q. Okay. Did you leave your truck locked or unlocked?

1 A. I locked it.

2 Q. Okay. And left the dog in obviously?

3 A. Right.

4 Q. So you went inside?

5 A. That's correct.

6 Q. Ordered your food. Why didn't you call 911 from the
7 store if the man was still out there?

8 A. Well, I was really hoping he would go away and I
9 didn't want to act like a girl.

10 Q. Figured you would be seen as making a fuss about
11 something silly or something?

12 A. Yeah. And I'm not even sure I had the phone with me
13 when I went in the store.

14 Q. Okay. And were you apprehensive of you or anybody
15 else being seriously hurt by this guy's conduct towards you on
16 the road?

17 A. Yes, ma'am. The way he was driving, I mean, he
18 could easily cause a wreck.

19 Q. Did you feel that you needed to take some action to
20 protect yourself --

21 A. Yes, ma'am.

22 Q. -- in that situation?

23 A. Yes, ma'am.

24 Q. Did you feel safe inside the store?

25 A. Yes, ma'am.

1 Q. Were you concerned about your continued safety once
2 you had left the store?

3 A. Say that again.

4 Q. Did you think -- When you went into the store, you
5 felt you would be safe inside?

6 A. I did.

7 Q. Were you concerned that something could possibly
8 happen once you left?

9 A. If the police hadn't showed up, yes, ma'am. If he
10 had still been in the parking lot, yes, ma'am.

11 Q. Is that why you left the gun where it --

12 A. Yes, ma'am.

13 Q. Okay. I'm not going to ask for your opinion about
14 the law, okay? Are you familiar with the gun laws being a gun
15 owner?

16 A. Very much so. In fact, that handgun was purchased
17 about seven or eight years ago with the intention of getting a
18 CWP.

19 Q. But you decided not to?

20 A. But I decided not to. I have never even shot that
21 gun.

22 Q. Have you always tried to take reasonable steps to
23 comply with the law?

24 A. I do.

25 Q. Do you have a criminal record?

1 A. No.

2 MS. FULLWOOD: Judge, with the Court's permission I
3 was going to take Mr. Dukes through the video the Court
4 has seen and let him explain what's going on as the video
5 is played. I don't want to wear the Court's patience
6 thin so...

7 THE COURT: So far what I have heard everybody's
8 testimony has been consistent with the video. I don't
9 have a question of fact present. The 911 tape sounds
10 consistent with the video I saw. The video is consistent
11 in comparison with the officers' testimony. Thus far I
12 don't see y'all disputing what happened. It's just
13 whether it was justified or not is kind of what I'm
14 hearing. Am I missing something? Mr. Dukes' actions,
15 were they justified.

16 MS. FULLWOOD: Right. Exactly.

17 THE COURT: So far I haven't heard anything,
18 somebody saying something happened that didn't.

19 MS. FULLWOOD: All right.

20 THE COURT: I haven't heard a challenge to an event
21 from the time he pulled out of his driveway until the
22 time he pulled up to the gas station.

23 MS. FULLWOOD: Well, then let's move on then and
24 we'll revisit it if it becomes necessary.

25 THE COURT: Okay.

1 BY MS. FULLWOOD:

2 Q. Did you bring a second video with you today?

3 A. I did.

4 Q. Okay. What does that video show?

5 A. It shows me exiting the convenient store and the
6 initial contact with the deputies.

7 (Whereupon, Defendant's exhibit #6, a video,
8 played.)

9 MS. FULLWOOD: Mr. Dukes, those are all the
10 questions I have. Answer any questions Mr. Wagoner or
11 Mr. Elam have.

12 CROSS EXAMINATION

13 BY MR. WAGONER:

14 Q. Is your dog named Buddy?

15 A. Buddy. That's correct.

16 Q. Do you mind if I refer to your dog as Buddy if I end
17 up referring to your dog?

18 A. No problem.

19 Q. All right. You stated that you were fearful of the
20 situation?

21 A. Yes, sir.

22 Q. And you stated you were so fearful that you grabbed
23 your weapon?

24 A. I didn't hear you.

25 Q. You were so fearful that you grabbed your weapon?

1 A. That's correct.

2 Q. You stated that you drove ahead of that black
3 vehicle? He was behind you?

4 A. Right. He was behind me.

5 Q. Your testimony today is that you attempted to call
6 911 on your phone?

7 A. I did.

8 Q. Is it a smart phone?

9 A. Smart phone.

10 Q. What type of phone is it?

11 A. Apple 6.

12 Q. Does it have that Siri thing on there?

13 A. I think it does. I don't know how to use all
14 that.

15 Q. Now, so you attempted to call 911. You continued on
16 number 6. Took a right on Bush River Road?

17 A. That's right.

18 Q. Took a left into the Exxon Station?

19 A. I did.

20 Q. You parked in a parking spot at the Exxon Station
21 right in front of the door?

22 A. Right in front of the door.

23 Q. You didn't immediately jump up out of the vehicle
24 when you parked, did you?

25 A. No, sir.

- 1 Q. You actually told Buddy, I'll be right back.
- 2 A. I did.
- 3 Q. And you at some point placed the gun on the, I guess
- 4 it's called the transmission hump?
- 5 A. That's correct.
- 6 Q. On the passenger floorboard?
- 7 A. Right.
- 8 Q. You walked into the Exxon?
- 9 A. Yes, sir.
- 10 Q. You locked the door?
- 11 A. I locked the door.
- 12 Q. Did you go right up to order food or did you use the
- 13 restroom or anything like that?
- 14 A. I went straight to the order line towards the back
- 15 of the store.
- 16 Q. And you placed your order?
- 17 A. That's correct.
- 18 Q. How many people were you ordering for if you don't
- 19 mind me asking?
- 20 A. Myself and my brother.
- 21 Q. Two people. Did they have to prepare the food for
- 22 you after you ordered it?
- 23 A. Just the eggs.
- 24 Q. It takes some time?
- 25 A. Just the eggs. They had other orders ahead of

1 mine.

2 Q. So you waited in the Exxon for the food to be
3 ready?

4 A. Correct.

5 Q. You never left the restaurant or the Exxon
6 building?

7 A. No.

8 Q. In fact, we can see you through the window, can't
9 we?

10 A. That's right.

11 Q. And your back is to the parking lot?

12 A. That's correct.

13 Q. And when your back is to the parking lot pretty much
14 except for when you ordered the food and come on out, it's
15 pretty much the entire time your back is to that window?

16 A. Right.

17 Q. Let's go back a little bit to once you turn onto 6
18 from your house. It's obviously your house. You're going to
19 work.

20 A. Right.

21 Q. Turn onto 6. How many lanes each way are on Highway
22 6?

23 A. It's a four lane road.

24 Q. So two north, two south?

25 A. That's correct.

- 1 Q. Are those lanes divided in any way?
- 2 A. They are.
- 3 Q. Dotted lines?
- 4 A. They are.
- 5 Q. For the different directions solid yellow; is that
- 6 correct?
- 7 A. Right.
- 8 Q. I think you said it was the Wise Ferry intersection,
- 9 is that correct, where the black vehicle was?
- 10 A. Hope Ferry.
- 11 Q. Hope Ferry. I apologize.
- 12 A. I think it's Hope Ferry.
- 13 Q. It was at an intersection though?
- 14 A. That's correct.
- 15 Q. And there was a light there?
- 16 A. That's correct.
- 17 Q. And as you approached that intersection the vehicles
- 18 in your lane still had their taillights on? As you
- 19 approached, their vehicles still had the taillights on?
- 20 A. Right.
- 21 Q. Meaning it had recently changed from red --
- 22 A. I caught the light green.
- 23 Q. -- to green. Okay. Did you see in the left hand
- 24 lane which vehicles were in the left hand lane as you
- 25 approached that intersection?

1 A. I saw. I was watching the dump truck.

2 Q. Okay. So you saw a large dump truck?

3 A. Right. Right.

4 Q. Would it be reasonable to assume that there are
5 vehicles behind the large dump truck?

6 A. Of course.

7 Q. Now, have you ever referred to the left hand of
8 travel as the passing lane or a speed lane?

9 A. Yes, sir.

10 Q. Okay. Now, a dump truck, are they going to be fast
11 off the lines, zero to 60? It's going to be a slow start,
12 right?

13 A. That's right.

14 Q. Now, that black, I think it was an Avenger or a
15 sports car?

16 A. (Witness nodding head.)

17 Q. It comes a little bit to the right side of its lane,
18 right?

19 A. Yes, sir.

20 Q. At some point there is a turn signal that's
21 eliminated?

22 A. Right.

23 Q. Then there's a swerve back to the left to safety?

24 A. Mm-hmm.

25 Q. So obviously that driver saw you?

- 1 A. That's correct.
- 2 Q. And he never went into your lane at that point?
- 3 A. I believe he did.
- 4 Q. You saw him cross --
- 5 A. I saw him swerve. That's when I saw him.
- 6 Q. But did he ever cross that dotted line into your
7 lane?
- 8 A. I don't recall, but I believe he did.
- 9 Q. Well, the Judge can watch that on that video as part
10 of his deliberations.
- 11 A. Yeah.
- 12 Q. Okay. After you passed that black vehicle that was
13 on your left and you went ahead of it --
- 14 A. Right. That's correct.
- 15 Q. -- and you changed lanes into the left hand lane?
- 16 A. That's correct.
- 17 Q. That vehicle your testimony was came up on your
18 right side?
- 19 A. Right. That's correct.
- 20 Q. And you can hear as it approached you that other
21 party saying F you?
- 22 A. Yes. That's correct.
- 23 Q. And you responded, was it F you mother F'er?
- 24 A. Right.
- 25 Q. And that other vehicle drove ahead?

1 A. They did.

2 Q. You caught up to it?

3 A. Right.

4 Q. So you caught up to that black vehicle?

5 A. I never changed my speed and he was - he got himself
6 hung up again in traffic.

7 Q. And again, at some point you held your firearm and
8 it's State's 2. Is State's 2 your firearm?

9 A. That looks like it. Yes, sir.

10 Q. But at some point you handled that firearm within
11 your truck?

12 A. That's correct.

13 Q. And you showed that to another motorist?

14 A. I did.

15 Q. Now, we can hear you talk on that video.

16 A. Mm-hmm. Yes, sir.

17 Q. And we can hear you say the FU. We hear that?

18 A. Right.

19 Q. That's your voice?

20 A. Right.

21 Q. So we obviously can hear when you talk?

22 A. Right.

23 Q. On a lighter note we can hear you say to Buddy I'll
24 be right back?

25 A. Right.

1 Q. You never expressed frustration of not being able to
2 call 911?

3 A. I think I did.

4 Q. It's not on that video.

5 A. It is.

6 Q. What did you say?

7 A. Come on. I was talking to the phone. It's on that
8 video.

9 Q. Then you got to the Exxon. You parked.

10 A. Right.

11 Q. You put it in park?

12 A. Right.

13 Q. You're motionless. You had your phone. You didn't
14 call.

15 A. No. I'm not sure I had it with me when I went in
16 the store either.

17 Q. But you had it with you in the vehicle.

18 A. Right.

19 Q. You had it with you when you were motionless at a
20 parking spot.

21 A. That's correct.

22 Q. Now, you stated that you knew that the other
23 motorist had followed you into that parking lot; is that
24 correct?

25 A. That's correct.

1 Q. Now, is it obvious to assume that that other
2 motorist knew that you were in that parking lot?

3 A. I don't understand the question.

4 Q. Basically would that other motorist have recognized
5 your vehicle?

6 A. Right.

7 Q. That other motorist can walk up to your vehicle
8 while you were inside?

9 A. He could have.

10 Q. And your dog is in there?

11 A. The dog is in there.

12 Q. Sorry. Buddy is in there.

13 A. Yeah.

14 Q. And you left that weapon on the passenger
15 floorboard?

16 A. That's correct.

17 Q. I'll ask a few questions and hopefully it's not too
18 tedious for you. You're not a law enforcement officer, are
19 you?

20 A. Me? No, sir.

21 Q. You're not a retired law enforcement officer, are
22 you?

23 A. No.

24 Q. You weren't -- On October 26th, 2015 you weren't an
25 on duty member of the Armed Forces?

- 1 A. No.
- 2 Q. You already stated you probably never fired that
3 gun?
- 4 A. That's right.
- 5 Q. So you were simply going from home to your work?
- 6 A. Correct.
- 7 Q. Now, do you recall the officers talking to you?
- 8 A. Sir? I didn't hear you.
- 9 Q. Do you recall the officers talking to you?
- 10 A. Yes, sir. Yes, sir.
- 11 Q. Do you recall Deputy Gadson giving you a form?
- 12 A. I do.
- 13 Q. And is that your handwriting on that form?
- 14 A. It is.
- 15 Q. Would you like to see it?
- 16 A. I feel sure that's it.
- 17 Q. Did you tell the officers the truth?
- 18 A. I did.
- 19 Q. Did you answer their questions they had?
- 20 A. I did. I tried to cooperate one hundred percent
21 with them.
- 22 Q. Did you answer their questions truthfully?
- 23 A. I did.
- 24 Q. Do you recall the question, where did you have your
25 gun in your truck prior to the incident?

1 A. I do.

2 Q. And do you recall what you wrote?

3 A. I put that it was on the floorboard on the passenger
4 side. Now, the question was vague. They asked a vague
5 question because I wasn't sure prior, how prior to the
6 incident they were talking about.

7 Q. Now, the entire time of your written statement you
8 are talking about the interaction between you and the other
9 driver?

10 A. Right. I assumed they were talking about where was
11 it when they arrived on the scene.

12 Q. So you would refer to the arrival of the law
13 enforcement officers as the incident?

14 A. That's the incident location.

15 Q. Did you ever ask them to clarify?

16 A. No. I didn't.

17 Q. Now, we heard you say that and we heard all the
18 testimony. You said it's all on video. Did they allow you to
19 drive to your business?

20 A. They did.

21 Q. Did Deputy Gadson follow?

22 A. He did.

23 Q. Did you allow him into the business?

24 A. Of course. I wanted him to.

25 Q. And you showed him another weapon that was lawfully

1 stored?

2 A. Only so he wouldn't get freaked out that it was
3 right there within reach.

4 Q. Sure. And he didn't seize that?

5 A. No.

6 Q. He didn't take it into custody? He didn't arrest
7 you on that?

8 A. No.

9 Q. Did y'all view that video on a computer?

10 A. My PC. Laptop.

11 Q. And did you watch the entire video with Deputy
12 Gadson?

13 A. Uhm, I think we skipped some of the first part of it
14 and started it at about North Lake Drive or something like
15 that.

16 Q. And did Deputy Gadson ask for a copy of that
17 video?

18 A. Uhm, well, I offered it to him.

19 Q. You offered it?

20 A. Yes.

21 Q. Okay. So did you put that video onto some sort of
22 jump drive?

23 A. I did.

24 Q. Was that the video of the incident?

25 A. Correct.

1 Q. Actually did you place that on your website, too,
2 that video of the incident?

3 A. Excuse me.

4 Q. Did you place the video of the incident on your
5 website as well?

6 A. I did.

7 Q. Did you make sure that you gave him the video of the
8 entire incident?

9 A. Well, at the time I did not know it was two, when
10 Deputy Gadson was there, I did not know there was two videos.
11 I don't think we watched the entire 15 minutes worth of it.

12 Q. Does it record onto like a SD drive?

13 A. It does.

14 Q. Like in the computer now?

15 A. 15 minute loops and at some point when it gets full,
16 it will start overwriting itself.

17 Q. Do you organize that? Is it organized by month?

18 A. I didn't hear you.

19 Q. Is the storage device, the SD card computer thingy,
20 does it organize the videos by month?

21 A. It does.

22 Q. Does it organize the videos by date?

23 A. It does.

24 Q. In fact, when this was uncovered, when you brought
25 it to our attention, did you watch me access the SD video?

1 A. I did.

2 Q. And we saw, you and I both saw different dates; is
3 that correct?

4 A. That's right.

5 Q. And we clicked on the 26th?

6 A. Correct.

7 Q. And that's for October 26th, 2015?

8 A. Right.

9 Q. How many videos were on that SD drive?

10 A. Just two.

11 Q. Is that the same SD drive --

12 A. It is.

13 Q. -- that was used October 26th, 2015?

14 A. Right.

15 Q. That SD drive has been in your custody, possession
16 and control the entire time?

17 A. It has.

18 Q. And again that's your handwriting on that exhibit?

19 A. On that statement?

20 Q. State's 7, on that statement?

21 A. Yes, sir.

22 MR. WAGONER: No further questions.

23 MS. FULLWOOD. Briefly, Your Honor.

24 REDIRECT EXAMINATION

25 BY MS. FULLWOOD:

1 Q. Mr. Dukes, can you explain to the Court as well as
2 you can, we can use the video if you want, but see first if
3 you can explain it, where in the video, what's going on in the
4 video at the time you felt you needed to get the gun and
5 display it?

6 A. I don't understand the question.

7 Q. Okay. Where in the video is the part, say, what are
8 you driving by when you show him the gun?

9 A. Oh, I was just approaching the park, the entrance to
10 the park just before you start onto the spillway.

11 Q. Okay. So that's when the gun came out?

12 A. Right. Just right in that area. Right.

13 Q. And you just showed it to him how many times?

14 A. Once.

15 Q. Okay. Is it correct that the video doesn't show you
16 expressing any frustration about not being able to make a
17 phone call?

18 A. I believe I hear myself say come on.

19 Q. What did you want to come on?

20 A. I wanted to get on the phone but it wouldn't
21 cooperate.

22 Q. So you wanted the phone to work?

23 A. Right.

24 Q. And you were talking about your dog. How big is
25 Buddy?

1 A. He's about 82 pounds.

2 Q. So he's a pretty big boy?

3 A. Pretty good sized boy.

4 Q. Did anybody from the Sheriff's Department ever ask
5 you if there was any additional footage from your dash cam
6 that showed the part where the police arrived?

7 A. No.

8 Q. So they never contacted you about that, did they?

9 A. No. Let me point this out, too. If I'm not
10 mistaken, if I disconnect the power cord and it hasn't
11 finished the 15 minute loop, when I plug it back in, it starts
12 that same one over. I mean, it's like hitting a pause
13 button.

14 Q. So it just continues recording?

15 A. Right. I saw the big file on the SD card and that's
16 what I gave him because I figured the other one was maybe a
17 prior one that didn't, you know...

18 MS. FULLWOOD: Okay. No further questions.

19 THE COURT: Okay. You can step down.

20 MS. FULLWOOD: The defense rests.

21 THE COURT: Okay. Does the whole case turn on
22 whether or not the gun was properly left in the truck
23 after he exited it?

24 MS. FULLWOOD: My position is, our defense is
25 necessity basically. Our defense is that he was

1 threatened to the extent that he was entitled to take
2 reasonable measures to ward off this perceived threat
3 from this man who keeps coming up and screaming at him
4 and making gestures. Our position is that it was
5 reasonable for him to display that he was armed. He was
6 in his own car. Under our law it's not a habitation but
7 it's a place where you can stand your ground. He didn't
8 take it out. He didn't point it at the 'guy. He just
9 displayed it and put it down, continued on his way and
10 got to a place basically of safety, of withdrawal. All
11 right? When he gets there, he sees this irate enraged
12 person has followed him. He goes inside because he is
13 retreating, however, he's concerned that when he has to
14 leave, that the fellow may re-engage so out of necessity
15 he left the gun where it would be accessible should the
16 fellow try to reignite his confrontation in case he was
17 put in a position where he had to act in self defense
18 again. So it's basically the defense of necessity and I
19 think we meet the elements of that offense.

20 And let's see. I'm looking here at State v. Cole
21 which you can find at 403 Southeast Second 117, that
22 there was a present and imminent emergency arising
23 without his fault. The emergency was of such a nature as
24 to induce a well grounded apprehension of death or
25 serious bodily harm if the act is not done. And finally

1 there was no other reasonable alternative other than
2 committing the crime that he's charged with to avoid that
3 threat. And I think that he fairly falls within the
4 parameters of that defense. And I would like to point
5 out there is not a lot of law about necessity in this
6 state. Most of the cases are older and they describe it
7 as an affirmative defense that he has to show by a
8 preponderance of the evidence. It's our position that
9 that rule is outmoded, outdated. Has been overruled by
10 implication by State v. Belcher. It's a burden shifting
11 presumption or burden shifting requirement and that it's
12 unconstitutional under today's law and that the State is
13 required to disprove that there is a necessity. The
14 State has not done so in this case. The only thing that
15 contradicts his account of what happened are some
16 statements on a 911 call made by a man who hasn't had the
17 fortune to be believed. He's not here. The Court knows
18 why. He lied about his identity to the officers. He was
19 in the process of breaking the law himself that day.
20 They simply have not proved that he didn't do what he
21 needed to do. So I guess this is in the nature of a
22 closing argument and a motion, a renewal of the motion
23 for directed verdict.

24 THE COURT: Okay.

25 MR. WAGONER: Judge, to answer your initial

1 question, if it hinges on the location of the gun at the
2 Exxon, the answer is no. Based on his statement he gave
3 to law enforcement officers that he wrote in his
4 handwriting he said he told the officers the truth while
5 he was a little confused on whether the incident meant
6 the incident or law enforcement responding, he does
7 respond to the question, where did you have your gun in
8 your vehicle prior to the incident? Answer: The gun was
9 located on the floorboard passenger side of my pickup.
10 When he refers to the video, he refers to it as the video
11 of the incident which includes the driving, the alleged
12 threat. Your Honor, as to necessity again, it has to be
13 a present and imminent emergency arising without the
14 defendant's fault. Again, they were instigating each
15 other. The FU and then the response, no, FU, and you
16 know the rest. The emergency is of such a nature to
17 cause a well grounded fear of death or serious injury.
18 Again, you can observe the other driver's driving. Is
19 there no other reasonable alternative other than
20 committing the crime to avoid the threat? Slowing down.
21 Letting the black vehicle go ahead. Going forward.
22 Going a little bit faster to get out of his way.
23 Again, when he's talking about he was afraid to
24 re-engage with the other driver, his actions on that
25 video contradict that. He leaves the gun in his truck.

1 He goes in to order breakfast and has his back to the
2 door most of that video. As for the credibility of the
3 911 call, I'll submit to you it makes it more credible
4 that we have someone that's driving under suspension
5 that's taking the risk of calling for law enforcement,
6 reporting this, staying there so that he can talk to law
7 enforcement. Yeah. He doesn't want to prosecute but he
8 wants law enforcement to intercede for this dangerous
9 man. Therefore, Your Honor, I do not believe the case
10 hinges solely on the location of the gun at the Exxon.
11 It's a continuing thing. I believe that his statement to
12 law enforcement that prior to the incident the gun was
13 located on the floorboard on the passenger side of my
14 pickup, that is in large part the crux of this case.

15 THE COURT: All right. I want to read this case.
16 Y'all don't dispute any facts. The facts are clear of
17 what happened to me. I don't see a dispute as to what or
18 where other than one thing about the gun behind the seat
19 or the front of the seat and the question of when the
20 incident began. Other than that y'all are spot on both
21 ways so... All right. Let me go read this case.
22 You want to sit at ease for a few minutes. All right.
23 I'll be back.

24 (Short break.)

25 BAILIFF: All rise.

1 THE COURT: Have a seat. You want to present
2 anything else? All right. I read State v. Cole. That
3 was a driving case on necessity and the one factor I'm
4 worried about on the necessity is there is no other
5 reasonable alternative. I just don't believe that there
6 was no other reasonable alternative to pull a gun out. I
7 think there was other alternatives. Slowing down.
8 Staying in the store and calling 911. All sorts of
9 alternatives so I don't believe there's necessity here.
10 I don't see it. I think until the gun left from behind
11 the seat in a zipped up bag that appears to be properly
12 stored under the law the way it's written behind the rear
13 most seat and that front seat is the rear most seat, but
14 once it's laid on the floorboard on the front, then it's
15 not properly stored and it's unlawfully in the car even
16 though the car is locked and the dog is there. That
17 seems to me to be clear.

18 Now, when it went from the zipped up bag behind the
19 seat to the front floorboard doesn't really matter
20 because it ended up on the front floorboard in the truck
21 without the benefit of the bag and not behind the seat.
22 So that's how I see the facts. So I don't believe it was
23 a properly carried pistol. I think it's carrying a
24 pistol unlawfully. I can't remember how the statute
25 reads, but when I was younger it was always charged as a

1 CPU was the acronym that I learned as a young lawyer and
2 I think it's used differently now.

3 Anyway, I would - I find the State proved its case
4 beyond a reasonable doubt. That pistol was carried
5 improperly if that's the way the statute reads. That's
6 just what I see or what I find. Anything else from
7 y'all? Unlawful carrying of a pistol. I always remember
8 carrying a pistol unlawfully. It's the same statute.
9 It's the same law. Why wasn't this case worked out ahead
10 of time? Why wasn't something done? PTI or something
11 like that? Why didn't that happen?

12 MR. ELAM: Well, for one thing from my part PTI
13 didn't come up. We always had PTI personnel in the
14 courtroom at appearances that were there if anybody
15 wanted to avail themselves of the services. I have to be
16 honest with the Court and say I'm not a hundred percent
17 sure that he would have successfully gotten into PTI.

18 THE COURT: If that's the reason. If there's
19 something else out there, that's fine. I don't need to
20 hear all the explanation of it.

21 MS. FULLWOOD: I would just say I got into this case
22 later in the process. I did ask Mr. Elam about that and
23 he said that was not going to be something that he would
24 put forward.

25 THE COURT: Okay. The Solicitor decides. It's a

1 discretionary thing. At one time it was the discretion
2 of the Court too.

3 MS. FULLWOOD: Not now.

4 THE COURT: And that was a narrow window of time. I
5 remember when it happened and I remember when it was
6 undone. All right. I have signed the indictment. Now,
7 all things considered, I'm likely to impose a reasonable
8 fine and time to pay it. I'm not going to put Mr. Dukes
9 in jail unless y'all got some prior record out there that
10 now you want for sentencing purposes to tell me that
11 because he walked out of the store. He was cooperative.
12 I don't think he misled law enforcement at all. Gave
13 them a copy of the video. Pistol is right there. Dog
14 won't bite. I mean, he didn't do anything in his
15 interaction with the police and in their investigation
16 that caused me any concern. I mean, it's the way the
17 police would hope to be received. They knew they were
18 going into a gun situation and that was defused
19 immediately by their behaviors and his behavior so I
20 don't see --

21 MR. ELAM: Your Honor, everybody on the State's side
22 is in agreement with you.

23 THE COURT: Okay. Ms. Fullwood, anything you would
24 like to say? I haven't offered an opportunity for you to
25 provide any mitigating facts.

1 MS. FULLWOOD: Well, first, just as a housekeeping
2 matter, I would now make a motion for a new trial based
3 on all the motions made, objections taken and on the
4 basis of the denial of my motion for directed verdict.
5 Having done that --

6 THE COURT: Respectfully a new trial is denied,
7 okay?

8 MS. FULLWOOD: Yes, sir.

9 THE COURT: Go ahead.

10 MS. FULLWOOD: Thank you. I'm sure Mr. Dukes is
11 very disappointed and of course he has heard it and
12 accepts it. I do think that this would be an appropriate
13 case for a reasonable fine and time to pay it.

14 THE COURT: Okay.

15 MS. FULLWOOD: Certainly isn't the type of person
16 who wants to become some sort of outlaw or anything like
17 that.

18 THE COURT: All right. The sentence of the Court
19 will be that Mr. Dukes be allowed to pay a \$250.00 fine.
20 I'm gonna allow him 90 days to pay the fine, costs and
21 assessment directly to the Clerk of Court. Anything
22 else?

23 MR. ELAM: Nothing from the State, Your Honor.

24 MS. FULLWOOD: Nothing from the defense.

25 THE COURT: Okay. All right. Thank you all for

1 streamlining everything.

2 MR. ELAM: Thank you, Your Honor.

3 MR. WAGONER: Thank you, Your Honor.

4 MS. FULLWOOD: Thank you, Your Honor.

5 WHEREUPON, THE BENCH TRIAL WAS CONCLUDED AT 1:05

6 P.M.

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1 CERTIFICATE OF REPORTER

2 (STATE OF SOUTH CAROLINA)

3 (COUNTY OF LEXINGTON)

4

5 I, THE UNDERSIGNED, Steven E. LeBlanc, Sr., R.P.R.,
6 and Official Circuit Court Reporter for the Eleventh Judicial
7 Circuit in and for the State of South Carolina, do hereby
8 certify that I reported the proceedings in the before
9 captioned case in the Court of General Sessions in and for the
10 State of South Carolina on the 16th day of November, 2016.

11 I FURTHER CERTIFY that the forgoing 101 pages
12 constitute a true and accurate record of said proceedings.

13 I FURTHER CERTIFY that I am neither related, counsel
14 to, nor of interest to any party hereto.

15 IN WITNESS WHEREOF, I have hereunto set my hand at
16 Lexington County, this 25th day of January, 2017.

17

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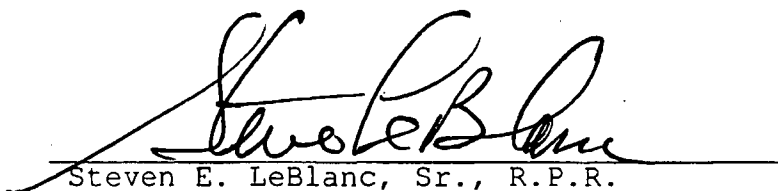
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Steven E. LeBlanc, Sr., R.P.R.
Eleventh Circuit Court Reporter
State of South Carolina.

DATE 10-26-15 PLACE 6230 BUSH ROAD RD TIME STARTED 9:00 AM M.

I, the undersigned, THOMAS E. NILES am 59 years of age, my date and place of birth being the [redacted], 1956, at ORANGEVILLE, SC.

My present address is [redacted] Ln. LEXINGTON, SC 29072.

Before answering any questions or making any statements, DEPUTY GADSON, a person who identified himself as a LEXINGTON COUNTY DEPUTY SHERIFF,

DULY WARNED AND ADVISED ME:

- TEA 1. That I have the right to remain silent and not make any statement at all.
- TEA 2. That any statement I do make can be used against me in court.
- TEA 3. That I have the right to have an attorney present at any time during questioning.
- TEA 4. That if I cannot afford an attorney, I can apply to the court to have one appointed at no cost to me.
- TEA 5. That if I decide to talk to an officer without an attorney present, I may stop at any time and request an attorney be present for further questioning.

UNDERSTANDING THESE RIGHTS, I MAKE THE FOLLOWING STATEMENT:

TODAY, OCT. 24, 2015 ON MY WAY TO WORK DRIVING ON HWY 6 NORTH IN THE RIGHT LANE, A BLACK DODGE TRUCK TO CHANGE LANES INTO ME. THERE WAS NOT ENOUGH ROOM TO GET THE DRIVER OVER, THE DRIVER GOT AHEAD AND BEGAN CURSING AND YELLING AT ME. WHEN I CHANGED LANES THE DRIVER ^{TO} ~~WAS~~ CAME UP BESIDE ME AGAIN, YELLING AND CURSING. ON THE SECOND TIME, I SHOWED THE DRIVER I WAS ARMED. HE THEN FOLLOWED ME TO THE ABOVE ADDRESS AND APPEARED TO BE ^{TO} ~~WAITING~~ WAITING FOR ME. ALL THIS SHOULD BE DOCUMENTED ON MY DASH CAM VIDEO

I SHOWED THE DRIVER I WAS ARMED BY SHOWING HIM A HOLSTERED GUN. I DID NOT POINT IT TOWARDS HIM. THE GUN WAS NEVER REMOVED ^{TO} ~~FROM~~ FROM ITS HOLSTER

Witness Det. Stenon, ICSO Det.
 Notary Public _____
 My Commission expires _____

TEA
 Person giving Statement
10-26-15
 Date



TEA I have received a copy of this statement

VOLUNTARY STATEMENT

Page 2 of 2 pages.

Q. What did the other Driver say to you?

A. I could not understand what he was saying.

Q. Where did you have the gun in your truck prior to the incident?

A. THE GUN WAS LOCATED IN THE FOOT BOARD ON PASSENGER SIDE OF MY PICKUP.

NO MORE FOLLOWUP ASK

I have read this page, initialed corrections or changes, if any, and received a copy of this page. I certify that the facts contained herein are true and correct to the best of my knowledge.

WITNESS AD Stener

[Signature]

Signature of person giving voluntary statement

10-26-15

Sworn to before me this ___ day of ___ 20__

Notary Public of South Carolina:

WITNESSES

Lexington County Sheriffs Department

S. T. Gadson

Law Enforcement Case #: 15020718

RJE

ARREST WARRANT NUMBER

2015A3210800418

ACTION OF GRAND JURY

TRUE BILL

Wick

Foreperson of Grand Jury

Date: 2-8-16

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2016GS3200477

The State of South Carolina

County of Lexington

COURT OF GENERAL SESSIONS

FEBRUARY TERM 2016

THE STATE

vs.

Thomas Edmund Dukes

CDR #: 0044

Indictment for

Unlawfully Carrying Pistol

§ 16-23-0020

DONALD V. MYERS, SOLICITOR

RECEIVED

NOV 23 2016

SC Court of Appeals

STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON)
)

INDICTMENT FOR
Unlawfully Carrying Pistol

§ 16-23-0020

At a Court of General Sessions, convened on February 2016, the Grand Jurors of Lexington County present upon their oath:

That **Thomas Edmund Dukes** did in Lexington County, South Carolina, on or about October 26, 2015, knowingly and willfully carry about the person any pistol, to wit: Taurus Millenium 9mm pistol, whether concealed or not, without the proper legal authority to do so; the defendant's pistol was in his vehicle but was not secured in a closed glove compartment, closed console, or closed trunk, in violation of Section 16-23-20 of the South Carolina Code of Laws (1976), as amended.

RECEIVED
NOV 23 2016
SC Court of Appeals

Against the peace and dignity of the State, and contrary to the statute in such case 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."

Respectfully Submitted,



Taylor D. Gilham
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT

This 26th day of June, 2017.

RECEIVED
JUN 26 2017
SC Court of Appeals