

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

Appeal from Charleston County

Honorable Jennifer B. McCoy, Circuit Court Judge

**RECEIVED**

**Aug 24 2020**

**SC Court of Appeals**

THE STATE,

RESPONDENT,

V.

FRANKIE LEE DAVIS III,

APPELLANT.

APPELLATE CASE NO. 2019-000416

RECORD ON APPEAL

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**THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:  
STATE’S EXHIBIT NO. 4 (FUSCO’S BODY CAMERA, REDACTED)  
COURT’S EXHIBIT NO. 1 (PERSONNEL FILE MAINTAINED UNDER SEAL)**



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March 1, 2019

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MOTION TO SUPPRESS

THE COURT: All right. We've got a Motion to Suppress so I need to hear what it is you're trying to suppress, although I've seen the video and I know a little bit about it. It's whether he paid the -- paid the thing or not.

MR. HEGGELKE: Well...

THE COURT: And I'll be happy if you want to waive the testimony, because we've got -- I assume that somebody is going to come that's going to testify that when the police came, they were told he didn't pay the bill.

MR. HEGGELKE: Yes, sir, we can waive testimony.

THE COURT: I mean, if that's what is going to be said, I can rule on everything.

MR. WEHRMAN: I don't want to be the one to tell the State how to present its case. I mean, I -- it's their burden. If they don't choose to put testimony together, then that's...

THE COURT: Well, I mean, they can put it. I'm just telling you that ---

MR. WEHRMAN: --- I'm certainly not asking them for anyone to testify.

THE COURT: All right. Well, that's fine.

MR. HEGGELKE: Your Honor, I think the video speaks

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1 for itself.

2 THE COURT: It speaks for itself, in my opinion.

3 Okay, I'll be happy to hear your arguments, then.

4 MR. WEHRMAN: Thank you. So, yes, Your Honor.

5 And, you know, I've got a lot of material here but that's

6 mainly for contingency purposes, although I don't think

7 we need to get into everything. I think I can recap this

8 fairly sufficiently and fairly succinctly.

9 You know, I filed a Motion to Suppress. Pretty much

10 all of the evidence that was obtained following what I

11 consider to be an unlawful seizure under both the Fourth

12 Amendment and under the South Carolina Constitution,

13 which provides essentially the same protection with some

14 additional privacy protections.

15 THE COURT: Right.

16 MR. WEHRMAN: You know, I think the point of that

17 unlawful seizure, and there is technically two theories,

18 but it's basically the point when the officers go to

19 handcuff Mr. Davis, which is very shortly, as you saw on

20 the video, very shortly after he was taken out of -- out

21 of the bar.

22 You know, I suppose I should make clear that the two

23 theories are either there was no reasonable suspicion to

24 detain him at all, in which case I guess the detention is

25 probably slightly before that point but the amount of

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1 information available is really the same, or that by  
2 using those handcuffs -- so supposing there was  
3 reasonable suspicion to detain him at all by using those  
4 handcuffs, my position is that the officers exceeded the  
5 scope and nature of a Terry detention. And I've laid out  
6 all of the law in my written motion, which I know is  
7 fairly involved.

8 THE COURT: Well, when you say Terry detention that  
9 changes the dynamics.

10 MR. WEHRMAN: Well, that's precisely my point.

11 THE COURT: Well, the bottom line is the detention,  
12 as I see it, was he failed to pay the bill.

13 MR. WEHRMAN: So, Your Honor, I guess what  
14 ultimately ---

15 THE COURT: --- that ain't got a thing in the world  
16 to do with Terry.

17 MR. WEHRMAN: Well, I mean, for them to detain him  
18 on reasonable suspicion ---

19 THE COURT: --- he was detained because he failed to  
20 pay the bill.

21 MR. WEHRMAN: And I think you're getting to the crux  
22 of the argument, because there ---

23 THE COURT: --- I don't know whether I'm getting to  
24 it. I'm just telling you that's my feeling.

25 MR. WEHRMAN: I would contend, and I outlined this

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1 fairly thoroughly ---

2 THE COURT: --- let me just tell you something. And  
3 I got affirmed on this. And I remember it was a lady  
4 with a public defender. I think she was married to a  
5 doctor that when she left, a great lawyer, and there was  
6 a Terry search. No articulated reason to think that it  
7 was armed. I suppress -- and they found drugs, so I  
8 suppressed it. They appealed it.

9 But I'll never forget, the officer came in -- and  
10 the officers shouldn't have presented themselves that  
11 way, but when they came in they came in with the boots on  
12 and their pants tucked in their boots and had everything  
13 ready.

14 And the defendant -- it's funny how you remember  
15 some things. This was Melbourne years. And the  
16 officers, he -- the defendant said, what did the officer  
17 do when he found the drugs. He said, he turned and they  
18 high-fived. And I thought, yeah, that wasn't any Terry  
19 search.

20 And I remember talking to Ralph King Anderson, who  
21 was still a Circuit Court judge, and he said, no, they've  
22 got to be able to articulate a basis and a reason to  
23 believe the person was armed. And so I suppressed it, no  
24 question about it.

25 That's why I'm saying to you I appreciate your

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1 brief, I appreciate your argument. I don't agree with  
2 you.

3 MR. WEHRMAN: I see. So...

4 THE COURT: I don't have to get to that point. They  
5 had every right to detain him because he didn't pay the  
6 bill. Now, he can argue, I paid the bill, all he wants  
7 but that's what a trial is all about.

8 MR. WEHRMAN: Well, Your Honor, I think that -- so  
9 that's the focus then is was there probable cause to  
10 detain ---

11 THE COURT: --- yes ---

12 MR. WEHRMAN: --- him for not paying the bill.

13 THE COURT: Yes.

14 MR. WEHRMAN: Your Honor, again, I would point out  
15 that the statement made on the video is pretty clear that  
16 he is refusing to pay his tab.

17 THE COURT: I appreciate that. But the person that  
18 called the police and is going to -- and has testified  
19 said he didn't pay the bill. He paid a portion of it I  
20 think is what was said.

21 MR. WEHRMAN: Your Honor, my argument is ---

22 THE COURT: --- listen, that goes to whether he did  
23 or did not. It has nothing to do with the arrest. And  
24 then the problem comes with the resisting arrest.  
25 There's no question he resisted the arrest.

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1 MR. WEHRMAN: Your Honor, if he's resisting an  
2 unlawful arrest, then ---

3 THE COURT: --- it's not an unlawful arrest, in my  
4 opinion. And I'll be happy to put that in the order.

5 I'm basing it on that. You can appeal it, do what  
6 you want. You're protected. You can argue that to the  
7 Supreme Court. I don't care. It doesn't offend me in  
8 the slightest. It won't offend me if they reverse it.

9 It was a lawful detention, a lawful arrest, and your  
10 client resisted, which he chose to do. But he doesn't  
11 have a right to resist a lawful arrest. Thank you.  
12 Whether or not he paid the bill, that's an issue for the  
13 charge itself. That has nothing to do with the  
14 detention.

15 MR. WEHRMAN: I think I've clarified my argument.  
16 And that's not exactly my argument, Your Honor, but  
17 that's -- I understand the Court's ruling.

18 THE COURT: Well, your argument is that it was a  
19 Terry search.

20 MR. WEHRMAN: My argument is that it was either a  
21 Terry stop ---

22 THE COURT: --- well, it wasn't a Terry stop. You  
23 can argue that to the Supreme Court. There's no evidence  
24 it was a Terry stop. The evidence is he failed to pay  
25 the bill.

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1 MR. WEHRMAN: All right. Okay. For the record,  
2 Your Honor, my argument is that that is not probable  
3 cause for any crime.

4 THE COURT: Yes, it is. Failure to pay a bill is a  
5 crime. Trying to leave without paying a bill is a crime.

6 MR. DAVIS: Excuse me, Your Honor. Can I speak?

7 THE COURT: You really don't need to, sir, but you  
8 can speak to your heart's content. But what you're  
9 saying now could be used against you going forward on the  
10 charges themselves. Do you understand that?

11 This is a Motion to Suppress evidence. You don't  
12 have to say a word but anything you say now, when the  
13 trial comes about this Solicitor gets to use it. So my  
14 advice to you is probably not to. But if you think it's  
15 necessary, go right ahead. I'm trying to help you there.  
16 Okay?

17 MR. WEHRMAN: I think I understand the ruling, Your  
18 Honor.

19 THE COURT: Thank you, sir. If you'll prepare ---

20 MR. WEHRMAN: --- we do have a subsequent -- we have  
21 a Motion for a Speedy Trial, Your Honor.

22 THE COURT: All right.  
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STATE OF SOUTH CAROLINA	)	COURT OF GENERAL SESSIONS
	)	
COUNTY OF CHARLESTON	)	DOCKET NO. 2018-GS-10-6274
	)	2018-GS-10-6275
	)	
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STATE OF SOUTH CAROLINA	)	
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vs.	)	
	)	
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FRANKIE LEE DAVIS, III	)	
	)	
Defendant	)	
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	)	TRANSCRIPT OF RECORD

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March 7, 2019  
Charleston, South Carolina

**Volume 2 (of 2)**

B E F O R E:

THE HONORABLE JENNIFER B. MCCOY, JUDGE

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

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Attorney for the Defendant

JOYCE C. RUEGER, CVR-M  
Circuit Court Reporter

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PRETRIAL MOTIONS

THE COURT: Okay. As I stated a minute ago, I have reviewed the body cam video that was sent to me from defense counsel. It was sent to my chambers. I've also reviewed the personal files of the officers. So I think I'm ready to proceed with pretrial motions from Mr. Wehrman.

I'm happy to hear from you. Whatever order you want to handle it is fine with me.

MR. WEHRMAN: Thank you, Your Honor.

I think I'll start with the personnel files. We're moving to compel those files, particularly with respect to one of the files that was noted by -- regarding Officer Fusco. You know, we think that it's certainly relevant here. I think it's actually quite relevant. I'm quite sure the defense here is going to be that there was an unlawful arrest, and I think that one of those disciplinary actions deals with a failure to comply with probable cause determinations.

So, you know, I think that the linkage there is pretty spot-on and I think it really goes to really part of the issue as to whether the arrest was lawful at the beginning of the incident.

So, you know, certainly we think that it's probative; we think that it's exculpatory in the sense

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1 that it does aid our defense, and we think that it should  
2 be compelled.

3 THE COURT: All right. Happy to hear from you.

4 MR. HEGGELKE: Your Honor, I don't believe it's  
5 exculpatory. It doesn't go towards truthfulness. I  
6 mean, a judge has already determined that there was valid  
7 probable cause for the arrest. We'll just go forward  
8 with that argument, as well.

9 THE COURT: Yes? Mr. Wehrman?

10 MR. WEHRMAN: Your Honor, I mean, I think the -- I  
11 think the jury also gets to decide that. I mean, there  
12 is, like I said, a law in South Carolina that you have a  
13 right to resist an unlawful arrest. And that's an issue  
14 that's gone to the jury in cases before. There are Court  
15 of Appeals decisions recognizing that that case can get  
16 to a jury or that issue can get to a jury.

17 And so we -- actually, we're requesting instructions  
18 on that. I believe the State has indicated they're going  
19 to consent to those instructions. So I do think I should  
20 be able to explore that issue to the fullest, and I think  
21 that it's quite relevant to that issue. And so in that  
22 sense, it is exculpatory.

23 THE COURT: Okay. I disagree. I've reviewed all  
24 the records. And I've got a copy of them in this  
25 envelope that we'll mark under seal as a Court's exhibit,

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1 for purposes of appeal, to preserve your issue for  
2 appeal. However, I'm denying your motion at this time.

3 I've reviewed -- there's not a whole lot of case law  
4 on this personnel file issue. I did review, however, an  
5 unpublished opinion from our Fourth Circuit, which was  
6 instructional toward me, with Judges Widner [phonetic],  
7 Motz and Traxler reviewing the personnel file issue and  
8 discussing the appraisal of the value of probative versus  
9 prejudicial attributes of such evidence.

10 And I've -- again, like I said, I've reviewed the  
11 file and I've determined that there's nothing within  
12 these files that reflect on any of these officers'  
13 voracity or anything of that nature. So for that reason,  
14 I'm respectfully declining to -- your request to admit  
15 personnel files.

16 And once again, I was going to have this -- I've got  
17 them in an envelope and we'll mark it as a Court's  
18 exhibit. It'll be Court's Exhibit 1, for the record.  
19 And that will be the personnel files.

20 [Whereupon, Court's Exhibit Number 1 is marked by  
21 the court reporter]

22 THE COURT: Now, whether or not you go in and ask an  
23 officer about these prior incidents is something we'll  
24 just deal with at the time of his examination. I'm just  
25 saying that's a different situation than the actual

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1 personnel file, obviously.

2 So okay? All right, next motion.

3 MR. WEHRMAN: I also ---

4 THE COURT: --- I'm sorry. I should have told you  
5 the case name I cited. I didn't mean to interrupt you,  
6 Mr. Wehrman. That was United States vs. Powell. Again,  
7 that's an unpublished decision from the Fourth Circuit,  
8 decision number 03-4278, for the record.

9 Alright. Go ahead. Yes, sir?

10 MR. WEHRMAN: Thank you, Your Honor.

11 And so I think the next -- probably the next sort of  
12 really wide controversy we have here is I filed a motion  
13 to redact certain statements from the video which I  
14 understand the State intends to introduce. And we're  
15 certainly happy to have them introduce most of it,  
16 although there is a section in that --

17 THE COURT: In the video?

18 MR. WEHRMAN: Yes, that's in the video. The reason  
19 that I provided it is ---

20 THE COURT: --- yes ---

21 MR. WEHRMAN: --- my understanding of the video that  
22 the State is going to be submitting. Although my actual  
23 understanding is they're actually cutting it off a little  
24 bit earlier in the video I would have shown you. But the  
25 section, really the first seven minutes, I believe --

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1 THE COURT: Email it to me, if you don't mind.  
2 [jmccoyj@sccourts.org](mailto:jmccoyj@sccourts.org).

3 And the same for the State. Any proposed charges  
4 you have, just email them.

5 MR. HEGGELKE: I just sent an email to your clerk  
6 earlier this week.

7 THE COURT: Yeah. If you don't mind --

8 MR. HEGGELKE: I can send them again.

9 THE COURT: She -- yeah. Just out of an abundance  
10 of caution, email it to me. That would be great.

11 MR. HEGGELKE: Absolutely.

12 THE COURT: Okay?

13 MR. WEHRMAN: And finally, Your Honor, I did want to  
14 mark, as a Court's exhibit, my motion that was heard by  
15 Judge Dennis. I don't think, again, we need to reargue  
16 it today but I think for the record, for the purposes of  
17 my expected contemporaneous objection --

18 THE COURT: Sure.

19 MR. WEHRMAN: -- I would like to mark that as a  
20 Court's exhibit.

21 THE COURT: That will be Court's Exhibit Number 2.  
22 If you'll hand that up to the court reporter at this  
23 time?

24 MR. WEHRMAN: Thank you, Your Honor.

25 THE COURT: Uh-huh.

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1 [Whereupon, Court's Exhibit Number 2 is marked by  
2 the court reporter]

3 THE COURT: And for the record, that was a Motion to  
4 Suppress heard by Judge Dennis; is that correct?

5 MR. WEHRMAN: It was, Your Honor.

6 THE COURT: Which he denied last Friday?

7 MR. WEHRMAN: That's correct.

8 THE COURT: All right. And that would have been  
9 March 1st, 2019. Anything else from the defense?

10 MR. WEHRMAN: Begging the Court's indulgence let me  
11 just sort of check.

12 THE COURT: Take your time.

13 [Whereupon, Mr. Wehrman reviews documents]

14 MR. WEHRMAN: Your Honor, I think we have taken care  
15 of everything pretrial.

16 THE COURT: Anything else from the State?

17 MR. HEGGELKE: No, Your Honor.

18 THE COURT: Okay. I believe my minor settlements  
19 are ready, and while we're getting the jury squared away  
20 we'll take a short break and I'll be back in a few  
21 minutes. Okay?

22 [Whereupon, court is in recess from 9:38 a.m. to  
23 9:57 a.m.]

24 THE COURT: All right. Are we ready for the jury to  
25 come in?

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OPENING STATEMENT

MR. HEGGELKE: I know we met briefly on Tuesday, but I'm Jason Heggelke. I'm an Assistant Solicitor here in Charleston. I represent the State. And while you may not be happy to be here, you could be stuck in a civil trial that takes two weeks. So this will hopefully be just one day, and will be pretty simple.

So why are we here? This incident occurred on August 19th, 2018, at midnight, right around that time, and it was at the Silver Dollar located on King Street, what used to be the up-and-coming area. If I can say, the happening area of town.

This defendant went into the bar, just hanging out, ordered drinks, and then was confronted with his tab. He refused to pay his tab; he was given multiple chances, so the bar got their own security to escort him out.

As he was walking out of the building, who was waiting on the other side? The police. The party notified the police at the same time. So as soon as he sees the police, he starts resisting with the bouncers. The bouncers then forcefully escort him out.

There's two officers there to begin with. They handcuff him, or at least attempt to. He then struggles, fights with the police, he's forced to the ground. Now, while this is all going on, there's a crowd forming

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1 around. Three additional officers have to come, so you  
2 have five officers taken out of service because he won't  
3 cooperate just to pay a bar tab.

4 They then try to move him over to the vehicle. He's  
5 struggling, won't stand, yelling. And, again, there's  
6 people that's starting to form a crowd around. The  
7 police eventually get him over to the vehicle. It takes  
8 all four officers.

9 And then what happens as they try to put him in?  
10 One officer said, stop, stop. They wanted to search him.  
11 Sure enough, a gun falls out. Now, the situation  
12 escalated a little bit but he was placed in the back of  
13 the patrol car without any incident and no injuries,  
14 luckily.

15 In this case you will hear from Leanne Benware. She  
16 was bartender on duty, and the manager. You will hear  
17 from Garland Jackson. He was the bouncer that night and  
18 that had to use physical force. And then you'll hear  
19 from Officer Fusco, who was the responding officer and  
20 the one that made the arrest.

21 Now, he is charged with resisting arrest and  
22 unlawful carrying of a pistol. I just wanted to go  
23 through those pretty briefly. So with resisting arrest  
24 there's three elements. The defendant must knowingly and  
25 willfully resist an arrest by a person that the defendant

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1 knows or should know is a law enforcement officer.

2 Pretty cut and dry. What you think resisting arrest is.

3 Now, for unlawful carrying of a pistol, I'm going to  
4 prove that he had a gun on him. It is then the defense's  
5 burden to show that he falls within an exception -- now,  
6 there are sixteen different exceptions, what may apply to  
7 this case, we'll see.

8 If he -- if the defense shows that he falls within  
9 an exception, I then have to prove that that exception  
10 does not apply beyond a reasonable doubt. Now, the judge  
11 will instruct you on the law, so listen to her over what  
12 I have to say or Mr. Wehrman.

13 And, folks, you're going to see body cam footage.  
14 It's going to speak for itself. You may not see  
15 everything, because that camera is attached to an  
16 officer's uniform, but you're going to see everything  
17 that you need to know.

18 And I'm going to ask you that you hold this  
19 defendant accountable for his actions and find him guilty  
20 on both charges. Thank you.

21 THE COURT: Thank you, Mr. Wehrman. Go ahead.

22 MR. WEHRMAN: Thank you, Your Honor.

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OPENING STATEMENT

MR. WEHRMAN: Good morning, everyone. Again, I'm Rob Wehrman. I represent Mr. Frankie Lee Davis.

The State has said that they have a simple story. And he said it was pretty simple. They say Mr. Davis stole some drinks, resisted arrest, the police find a gun on him. They want you to think this is a simple case. They want you to look at pieces of evidence that I'm sure they'll show us and say, this is all -- you can just focus on this and you can find Mr. Davis guilty.

I have to remind everyone -- but the Court will certainly be reminding us, as well. But the Government has to prove him guilty beyond a reasonable doubt. And that's a right that we all have as Americans, is to be presumed innocent until proven guilty beyond a reasonable doubt. That's one of the most important rights we have as Americans.

And it would be unreasonable to jump to conclusions, to focus in on one or two pieces of evidence, without considering everything in context, without considering the whole picture. That would be unreasonable. That would ignore possible reasonable doubt. So when you hear that the officers located a gun, I'm asking you not to rush to conclusions. I'm asking you not to rush to conclusions until you consider what all led up to that

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1 point. You heard a lot about struggling. Is it  
2 reasonable to think that they wouldn't have found a gun  
3 before that point? Who did find the gun? Who didn't  
4 find the gun? Does it make sense that the folks who wind  
5 up locating this are actually the folks who would have  
6 located it if it had been there the whole time like the  
7 State is obviously saying it happened?

8 You know, we heard a lot about a crowd, from the  
9 State. You know, it would be interesting to find out  
10 what that crowd might have had to say about the incident.  
11 You know, we might also want to wonder is there any other  
12 evidence that might link us to this gun -- or link Mr.  
13 Davis to the gun, rather. Did the police officers  
14 investigate it more thoroughly and were they able to find  
15 other evidence linking him to the gun?

16 So I'm asking you not to rush to conclusions without  
17 considering all of those possibilities, without  
18 considering all of that context that you need to make a  
19 decision beyond a reasonable doubt.

20 It's also important that police don't rush to  
21 conclusions when they arrest you. That's another right  
22 we're all guaranteed as Americans under the Fourth  
23 Amendment of the Constitution: the right to be free from  
24 unlawful search and seizures. And that basically means  
25 that a search or a seizure, and in this case an arrest,

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1 would be unlawful, would be an illegal arrest, if it's  
2 made without what's called probable cause. And, again,  
3 the judge will instruct you on the law. But basically  
4 what probable cause means is did the officers have enough  
5 information at the time of the arrest; at the time they  
6 arrested Mr. Davis, to convince a reasonable ordinarily  
7 prudent or cautious person if he was guilty of a crime.

8         We don't live in a world where the Constitution  
9 allows us to arrest a person and ask questions later.  
10 We've got to keep our eyes open to that. And you might  
11 -- you might be putting two and two together. One of the  
12 charges in this case is resisting arrest. You heard  
13 about some of the elements.

14         But you also know that you have a right to resist an  
15 unlawful arrest. So in addition to looking at whether he  
16 knew they were officers, or whether he arrested [sic],  
17 you also need to keep your eyes and ears open to see was  
18 this a lawful arrest.

19         And, you know, the evidence in this case is going to  
20 show that the officers were walking down King Street.  
21 They had a bouncer, from their perspective, to come and  
22 tell them there's a guy in here, he's not -- he's not  
23 paying a tab. They see Mr. Davis hauled out. Then  
24 within seconds, they're grabbing him to put him in cuffs.  
25 They didn't know anything other than that. They rushed

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1 to a conclusion to arrest Mr. Davis. That is an unlawful  
2 arrest. So, really, you would need to find that Mr.  
3 Davis was resisting, obviously, to find him guilty of  
4 resisting arrest.

5 But -- so I'm not saying you have to focus on that.  
6 What I -- what I am saying to focus on is make sure that  
7 we find out this is a lawful arrest before we ask further  
8 questions, because if it's not a lawful arrest, then he's  
9 not doing anything but exercising his right to resist the  
10 unlawful arrest.

11 You know, you're going to be asked in this case to  
12 take on an incredible responsibility. Not only are you  
13 deciding Mr. Davis' fate here, you're also evaluating  
14 whether the officers complied with the laws of our  
15 country, our Constitution, in arresting him. And each  
16 and every one of your opinion is going to matter in  
17 making that decision.

18 And as we sit here now, Mr. Davis is an innocent  
19 man. The Judge will instruct you he is innocent until  
20 you hear or see evidence that leaves you firmly convinced  
21 beyond a reasonable doubt that he's guilty of the crimes  
22 charged, that he's guilty of resisting a lawful arrest,  
23 that he had possession of this gun on him, on the night  
24 of the incident. You're not going to hear that evidence  
25 in this case. I'm going to ask you to return a verdict

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1 of not guilty. Thank you.

2 THE COURT: All right. The State may call its first  
3 witness.

4 MR. HEGGELKE: The State calls Leanne Benware.

5 THE COURT: Wait one minute. Let's get these  
6 notebooks passed out and just...

7 [Off the record momentarily]

8 THE COURT: All right. Please proceed.

9 CLERK OF COURT: If you would please place your left  
10 hand on the Bible. Raise your right hand.

11 [Whereupon, the witness is duly sworn by the Clerk  
12 of Court]

13 CLERK OF COURT: If you would please have a seat for  
14 me.

15 [Whereupon, the witness takes the witness stand]

16 CLERK OF COURT: And for the record, will you please  
17 state your name and spell your last name.

18 THE WITNESS: Leanne Benware. B-E-N-W-A-R-E.

19 THE COURT: Ms. Benware, you might have to point  
20 that -- either sit closer or, yeah, kind of pull it back  
21 to make sure we can all hear you. Thank you very much.

22 Go ahead.



State v Frankie Lee Davis, III  
Leanne Benware-Direct Examination by Mr. Heggelke  
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- 1 Q. Okay. So was he told more than once?
- 2 A. Yes.
- 3 Q. And what did you do when he refused to pay?
- 4 A. I asked him to leave. I got my bouncer, and asked  
5 him to leave.
- 6 Q. Okay. And how many bouncers were there?
- 7 A. Total working, three.
- 8 Q. Okay. And how many did it take to escort him out?
- 9 A. Two.
- 10 Q. And do you know their names?
- 11 A. Yes.
- 12 Q. What are their names?
- 13 A. Garland and Granger.
- 14 Q. And when you decided that he needed to be kicked  
15 out, did you request that the police come?
- 16 A. Yes.
- 17 Q. Okay. And was he cooperating with the bouncers or  
18 security as he was leaving the building?
- 19 A. At first, yes, he was.
- 20 Q. Okay. And when did he stop?
- 21 A. Right about where he hit the dance floor getting  
22 closer to the door.
- 23 Q. Okay. And do you know who was on the other side of  
24 that door?
- 25 A. The police.

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Leanne Benware-Direct Examination by Mr. Heggelke  
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1 Q. Now, I know this is kind of silly, but how did you  
2 know that they were the police?

3 A. They were wearing uniforms.

4 Q. Okay. Now, explain what you observed once he got to  
5 the actual door.

6 A. He started fighting and not cooperating. My bouncer  
7 had to grab him, get him out the door.

8 Q. Okay. Now, did you follow this situation outside?

9 A. Yes.

10 Q. Okay. And did you see what happened when the  
11 bouncer immediately took him outside? Were the police  
12 right there?

13 A. Yes.

14 Q. Okay. And did the police then attempt to detain  
15 him?

16 A. Yes.

17 Q. Okay. And while this was all happening, was he  
18 cooperating at all with the police?

19 A. No.

20 Q. Explain. What was he doing?

21 A. He was fighting with them, trying to get away. He  
22 kept grabbing at his waistband, just not cooperating at  
23 all.

24 Q. Okay. And then he eventually was taken to the  
25 ground?

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Leanne Benware-Direct Examination by Mr. Heggelke  
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1 A. Yes.

2 Q. Do you remember how many officers it took to take  
3 him down?

4 A. It was two of my bouncers, and then I believe two  
5 officers.

6 Q. Okay. Now, he eventually was on the ground. Now,  
7 did you have a conversation with the defendant?

8 A. I did.

9 Q. And what did you say?

10 A. He -- I explained to him that he didn't pay his tab  
11 and that's why this was happening.

12 Q. Okay. And so that all unfolds. Now, were you  
13 present when the officers tried to escort him over to the  
14 vehicle?

15 A. Yes.

16 Q. Now, were there more officers at this time?

17 A. Yes.

18 Q. Okay. Do you know how many?

19 A. Probably five or six, total.

20 Q. Okay.

21 A. There was four around him and there was one kind of  
22 holding back the crowd by the bar.

23 Q. Okay. And was he cooperating at all when they were  
24 trying to move him over to the vehicle?

25 A. No.

State v Frankie Lee Davis, III  
Leanne Benware-Direct Examination by Mr. Heggelke  
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1 Q. And, actually, let me rewind. So where was the  
2 vehicle located?

3 A. The middle of King Street.

4 Q. Facing like north?

5 A. Yes.

6 Q. And, now, was there anybody in that immediate  
7 capacity other than the police and the defendant?

8 A. No.

9 Q. Okay. Now, he was -- tell me what happened when he  
10 was assisted over to the vehicle.

11 A. He was refusing to stand. He was not cooperating.  
12 Fighting.

13 Q. And did you see when they were -- when they  
14 initially tried to place him in and then they put him  
15 towards the back of the vehicle?

16 A. Yes.

17 Q. Okay. And did you see it when they tried to search  
18 him?

19 A. Yes.

20 Q. And did you see anything hit the ground?

21 A. There was a gun that fell ---

22 MR. WEHRMAN: --- objection. Your Honor, I'm  
23 objecting on the basis of the issue we've discussed  
24 previously regarding my Motion to Suppress.

25 THE COURT: Okay. Your objection is noted for the

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1 record. She can testify as to her own observations.

2 Thank you very much.

3 MR. WEHRMAN: Thank you, Your Honor.

4 THE COURT: Overruled.

5 Continue. You might want to ask the question one  
6 more time.

7 Q. [Mr. Heggelke] Okay. So did you see the --  
8 anything fall from this person when he was being  
9 searched?

10 A. Yes. A gun fell out of his pants.

11 Q. Okay. And did he make any sudden movements?

12 A. So he was still continuing trying to fight, like not  
13 standing up, kicking his feet, and he was kind of trying  
14 -- I felt like he was kind of trying to like kick it  
15 under the car.

16 Q. Okay. And once again, he was the only person other  
17 than the police in this area?

18 A. Yes.

19 Q. Okay. Now, but there was a crowd forming in the  
20 area; correct?

21 A. Yes.

22 Q. Okay. So did they place him in the patrol car soon  
23 after?

24 A. Yes.

25 Q. Okay. And then what did you do following -- once he

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1 was detained and placed in the back of the patrol car,  
2 what did you do?

3 A. I printed out his tab and brought it back out to the  
4 officer.

5 Q. Okay. And let's just talk about your POS system at  
6 the Silver Dollar. How does it work?

7 A. So it depends on if you're paying with cash or card.

8 Q. Okay.

9 A. If you pay with cash I take your order, I ring it  
10 into the computer, you hand me your cash and you [sic]  
11 immediately is closed out.

12 If you're paying with a card, again, I take your  
13 order, I swipe your card, and it starts a tab under your  
14 name.

15 Q. And how do you keep track of tab closes in a  
16 customer?

17 A. If it's -- only if it's used by a credit card, and  
18 it would be your last name.

19 Q. Otherwise, you just give them the tab; right?

20 A. Yes.

21 Q. Okay. And did you do that in this case with this  
22 defendant?

23 A. My boss is the one who took the order. So he  
24 ordered two shots of Fire Ball and a Bud Light -- or a  
25 Bud Light ---

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1 MR. WEHRMAN: --- objection. Your Honor, this is a  
2 hearsay argument.

3 THE COURT: Okay. You have to maybe lay a little  
4 bit better foundation for her basis of her knowledge of  
5 this, so I'll sustain the objection for now.

6 MR. HEGGELKE: Okay.

7 Q. [Mr. Heggelke] Did you observe --

8 A. Yes.

9 Q. -- your manager take the order?

10 A. Yes.

11 Q. And, now, while you're -- are you the actual  
12 bartender on duty?

13 A. I was one of them, yes.

14 Q. Okay. Now, does he bartend or does he just assist  
15 you?

16 A. Who?

17 Q. The -- Steve, the --

18 A. The owner?

19 Q. -- the owner; the gentleman that took the order this  
20 time.

21 A. He bartends but ---

22 Q. --- okay ---

23 A. --- only when we need his help.

24 Q. Okay. Now, do you all, like, pool tips and like  
25 work together?

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1 A. Yes. Absolutely.

2 Q. So if he were to take an order, would you maybe cash  
3 it out?

4 A. Yes.

5 Q. Okay.

6 A. Yes.

7 Q. Now, going back to this. So in this case, you did  
8 observe Steve serve the drinks.

9 A. Yes.

10 Q. To the defendant?

11 A. Yes.

12 Q. And then he was refusing to pay?

13 A. Yes.

14 Q. Okay. And so just to make it abundantly clear. How  
15 did you know for sure what the defendant's order was?

16 A. I saw him get the two shots of Fire Ball and a  
17 Budweiser. And I also -- Steve told me that's what he  
18 had served him ---

19 MR. WEHRMAN: --- objection.

20 THE COURT: Sustained.

21 MR. HEGGELKE: Court's indulgence.

22 THE COURT: Uh-huh.

23 MR. HEGGELKE: Your Honor, may I approach?

24 THE COURT: Sure.

25 Q. [Mr. Heggelke] I'm handing you what's marked as

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1 State's Exhibit 3. And I believe --

2 MR. HEGGELKE: We would move to seek it into  
3 evidence. And without objection, I believe.

4 MR. WEHRMAN: That's correct, Your Honor.

5 THE COURT: All right. State's 3 admitted without  
6 objection.

7 [Whereupon, State's Exhibit Number 3 is admitted  
8 into evidence by the Court]

9 THE COURT: Go ahead.

10 Q. [Mr. Heggelke] Okay. And, Leanne, what is that?

11 [Whereupon, the witness is shown exhibit]

12 A. The tab.

13 Q. Okay. How do you know that?

14 A. Because it's what he was served that night. The  
15 Budweiser is what I rang in.

16 Q. Does it have the date on there?

17 A. Yes.

18 Q. Time?

19 A. August 19th, 2018. 12:24 a.m.

20 Q. Okay. I'll take that from you.

21 [Whereupon, the witness proffers documents to Mr.  
22 Heggelke]

23 Q. [Mr. Heggelke] And what did he drink that night?

24 A. A Budweiser and two shots of Fire Ball.

25 Q. Okay. Now, just to rewind back -- well, actually,

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March 7, 2019

1 so you do this after he was arrested?

2 A. Yes.

3 Q. Okay. And he was already gone?

4 A. Yes.

5 Q. Now, just to rewind. While that whole situation was  
6 going on, where he was resisting an arrest and whatnot,  
7 did the police -- the police punch him? The defendant.

8 A. No.

9 Q. Did they kick the defendant?

10 A. No.

11 Q. Did they grab at his waistband before the gun hit  
12 the ground?

13 A. No.

14 Q. Did -- in any way, in your opinion, did they use  
15 excessive force?

16 A. No.

17 Q. And just to be abundantly clear, he was reaching for  
18 his waistband before the gun hit the ground?

19 A. Yes.

20 Q. Okay.

21 [Whereupon, Mr. Heggelke and Mr. Osborne confer]

22 MR. HEGGELKE: Please answer any questions Mr.

23 Wehrman has.

24

25

State v Frankie Lee Davis, III  
Leanne Benware-Cross-Examination by Mr. Wehrman  
March 7, 2019

1 CROSS-EXAMINATION

2 BY MR. WEHRMAN:

3 Q. Good morning, Ms. Benware.

4 A. Good morning.

5 Q. This is the first time we've spoken; correct?

6 A. Yes.

7 Q. You've spoken with police?

8 A. Yes.

9 Q. And you've spoken with the attorneys for the State?

10 A. Yes.

11 Q. And my office has reached out to you?

12 A. Uh-huh.

13 THE COURT REPORTER: Is that a yes?

14 A. Yes; I'm sorry.

15 THE COURT: Try to say ---

16 THE WITNESS: --- I'm sorry ---

17 THE COURT: --- yes or no.

18 A. Yes.

19 THE WITNESS: Sorry.

20 THE COURT: That's okay.

21 Q. [Mr. Wehrman] And you declined to speak with us,

22 didn't you?

23 A. Yes.

24 Q. I believe you said, no, thank you, and hung up?

25 A. Yep. Yes.

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1 Q. Now, the Silver Dollar has a surveillance system;  
2 correct?

3 A. Yes.

4 Q. The surveillance system was on that night?

5 A. Yes.

6 Q. So did anyone ever try and obtain the surveillance  
7 from that evening?

8 A. No.

9 Q. When you stated that you -- the bar tab that you're  
10 -- that we're looking at here, that was printed out after  
11 all of this happened?

12 A. Yes.

13 MR. WEHRMAN: Court's indulgence.

14 [Whereupon, Mr. Wehrman and Ms. Ehrlich confer]

15 MR. WEHRMAN: Thank you, Your Honor.

16 Q. [Mr. Wehrman] Ms. Benware, just to be clear, you  
17 didn't take the order?

18 A. No.

19 MR. WEHRMAN: No further questions, Your Honor.

20 THE COURT: Okay. Thank you very much. Any  
21 redirect?

22 MR. HEGGELKE: Just briefly.

23

24

25

State v Frankie Lee Davis, III  
Leanne Benware-Redirect Examination by Mr. Heggelke  
March 7, 2019

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REDIRECT EXAMINATION

BY MR. HEGGELKE:

Q. Now, Leanne, you said you did not check to see if there was video surveillance?

A. No.

Q. Okay. But you wouldn't know if another employee was asked by my office ---

MR. WEHRMAN: --- objection. Leading.

THE COURT: Sustained. Rephrase.

Q. [Mr. Heggelke] Do you know if another employee was asked?

A. No.

Q. Do you know how long the video stays on the surveillance?

A. Two weeks, I believe.

Q. Two weeks.

MR. HEGGELKE: Thank you. Nothing further.

THE COURT: Any recross?

MR. WEHRMAN: No, Your Honor.

THE COURT: Okay. Thank you. You may step down from the witness stand.

Do you wish for this witness to be released or do you...

MR. HEGGELKE: I do, Your Honor.

THE COURT: All right. Any objection to this

State v Frankie Lee Davis, III  
Leanne Benware-Redirect Examination by Mr. Heggelke  
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1 witness being released from subpoena?

2 MR. WEHRMAN: No, Your Honor.

3 THE COURT: All right. You're free to leave. Thank  
4 you, ma'am.

5 [Whereupon, the witness is excused and exits the  
6 witness stand]

7 THE COURT: All right. You can call your next  
8 witness.

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State v Frankie Lee Davis, III  
Garland Jackson-Direct Examination by Mr. Heggelke  
March 7, 2019

1 MR. HEGGELKE: The State calls Garland Jackson.

2 [Whereupon, Mr. Jackson comes forward]

3 CLERK OF COURT: Place your left hand on the Bible.  
4 Raise your right hand.

5 [Whereupon, Mr. Jackson is duly sworn by the Clerk  
6 of Court]

7 CLERK OF COURT: Please, sir, if you would please  
8 have a seat for us. And for the record, will you please  
9 state your name and spell your last name.

10 THE WITNESS: My name is Garland Joseph Jackson. My  
11 last name is J-A-C-K-S-O-N.

12 - - - - -

13 GARLAND J. JACKSON,

14 Having Been First Duly Sworn,

15 was Examined and Testified as Follows:

16 DIRECT EXAMINATION

17 BY MR. HEGGELKE:

18 Q. Garland, where are you employed?

19 A. Silver Dollar.

20 Q. How long have you been working there?

21 A. A little over four years.

22 Q. Okay. And what's your position there?

23 A. I'm a bouncer for the security.

24 Q. And were you working the night of August the 18th  
25 into the morning of August the 19th?

State v Frankie Lee Davis, III  
Garland Jackson-Direct Examination by Mr. Heggelke  
March 7, 2019

1 A. That is correct.

2 Q. And what were you tasked to do?

3 A. I was doing security inside the door.

4 Q. Were there any other officers or security working  
5 that night?

6 A. There were two other bouncers, outside of myself.

7 Q. Okay. And do you recognize this man, the defendant?

8 A. Yes.

9 Q. And did you see him the night of the 18th into the  
10 morning of the 19th?

11 A. That is correct.

12 Q. Okay. And what was he doing when you observed him?

13 A. He was drinking at the bar.

14 Q. Okay. And were you present when he was given his  
15 tab?

16 A. When he was given his tab? I was walking up during  
17 -- around the process when they were trying to get the  
18 tab processed, so I didn't -- I wasn't there when they  
19 gave him his tab, but I was there when it wasn't  
20 processing through when it -- when it was declined.

21 Q. Okay. So was he refusing to pay?

22 A. That is correct.

23 Q. Okay. So what do you do then?

24 A. We started to remove him from the building because  
25 he was not cooperating with paying his tab.

State v Frankie Lee Davis, III  
Garland Jackson-Direct Examination by Mr. Heggelke  
March 7, 2019

1 Q. Okay. Well, was he initially, you know, cooperating  
2 and just walking out?

3 A. No.

4 Q. No?

5 A. No.

6 Q. Okay.

7 A. It required -- it required some force.

8 Q. Okay. Now, but at any point did you have to use  
9 more force while walking him through the bar?

10 A. While walking him through the bar? As we were  
11 getting closer to the door, it became more of a ---

12 Q. --- okay ---

13 A. --- more of a struggle.

14 Q. Okay. And did you know who was on the other side of  
15 that door?

16 A. As we were walking out, police were standing  
17 outside.

18 Q. Okay.

19 A. The officers were standing outside. And we're  
20 bringing him outside. And as soon as we got outside, it  
21 seemed like the struggle intensified. He got even more  
22 -- I restrained him at that point.

23 Q. Okay. Now, and just to be clear for the jury, are  
24 there windows in that bar? Can you -- could you -- could  
25 you personally see the outside?

State v Frankie Lee Davis, III  
Garland Jackson-Direct Examination by Mr. Heggelke  
March 7, 2019

1 A. The entire front face of the bar was -- is windows,  
2 so the -- the front door -- there's a double front door  
3 in the front that has two open-glass panes in the front.

4 And then there's a huge picture window. Picture --  
5 well, not just a window. It's almost an entire wall.

6 The entire wall of the front of the bar is entire glass,  
7 so you can see clearly outside of the -- outside of the  
8 bar.

9 Q. Okay. And you said -- so did you walk outside with  
10 like any issue, or was it physical?

11 A. It was physical, yes. The other bouncer was --  
12 literally almost had him by his -- you know, from the  
13 rear, holding him underneath his shoulders, removing him  
14 from the -- from the building.

15 Q. Now, what happened once you got him outside?

16 A. Once we got him outside, the police were outside and  
17 then the struggle intensified. And at that point, you  
18 know, because I didn't want this to escalate any further,  
19 I grabbed him and I held him and restrained him from  
20 moving at that point until the officers took him. And  
21 once the officers took him, I let him go.

22 Q. All right. Was the bar busy?

23 A. I'm sorry?

24 Q. Was the bar busy? There was a lot of people?

25 A. Yes, it was.

State v Frankie Lee Davis, III  
Garland Jackson-Direct Examination by Mr. Heggelke  
March 7, 2019

1 Q. Now, once you brought him outside, did you wait for  
2 the police? Or did you -- did you keep a hold of him or  
3 did you let the police take over?

4 A. Well, I kept a hold of him until the police -- until  
5 the police took him from me. You know, so -- as we're  
6 coming out of the door, he's -- the officers are  
7 literally walking across the front of the bar, so I'm  
8 seeing them as they're out there and the -- and as I'm  
9 holding him, they went ahead and took him after -- at  
10 that point.

11 Q. Right. And how many officers were present?

12 A. I'd say about between three and four.

13 Q. Okay. And so did -- once the police started to  
14 detain him, did he cooperate?

15 A. No. No.

16 Q. Okay.

17 A. It became an even more -- it became a prolonged  
18 struggle --

19 Q. Okay.

20 A. -- once they -- once they took him and they got him  
21 closer to the middle of King Street, where the police car  
22 was, it was a -- it was a continued and sustained  
23 struggle the entire time. A fight ---

24 Q. --- do you remember how many officers -- I'm sorry.

25 Do you remember how many officers it took to get him over

State v Frankie Lee Davis, III  
Garland Jackson-Direct Examination by Mr. Heggelke  
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1 to that vehicle?

2 A. It took all of them, all of them -- all of them  
3 that were there. It was a -- it was a -- it was a  
4 sustained fight.

5 Q. Okay. And did you see -- was it over by the --  
6 where was that located?

7 A. So if you're standing in front of the bar, the  
8 patrol vehicle was facing northbound on King Street in  
9 front of the bar.

10 Q. Okay. So was there anybody in that immediate  
11 capacity other than the defendant and police officers?

12 A. In the middle of the street all that was there was  
13 the defendant and the officers.

14 Q. Okay.

15 A. And then outside of that, once you -- about twelve,  
16 fifteen feet away, once you get to the sidewalk, that's  
17 where the crowd and the rest of us were standing.

18 Q. Right. And you were present when they tried to  
19 bring him over to the vehicle --

20 A. That is correct ---

21 Q. --- police vehicle? Now, while this was all going  
22 on, what exactly was he doing? Was he cooperating with  
23 any orders, was he ---

24 A. --- no. No.

25 Q. No?

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- 1 A. No, not a single order.
- 2 Q. Would he stand for the police?
- 3 A. It was -- it was -- it -- eventually he went to the  
4 ground because, again, it was just a complete struggle  
5 like.
- 6 Q. Right.
- 7 A. He was flailed out, stretched out, trying to just  
8 not be taken under the control that they were trying to  
9 do.
- 10 Q. Okay. And were you present when they frisked him  
11 for weapons?
- 12 A. When they frisked him for weapons? I was ---
- 13 Q. --- right ---
- 14 A. -- standing outside, but I wasn't --
- 15 Q. You didn't observe it?
- 16 A. I wasn't -- no, I wasn't.
- 17 Q. Okay. Now, did you see a gun on the ground?
- 18 A. Yes. Yes.
- 19 Q. Okay.
- 20 A. During the struggle, there was a gun that was  
21 sitting in the -- towards the rear of the vehicle. It  
22 was there, but it seemed like they were -- they were --  
23 the officers were so busy trying to restrain him that  
24 they -- that they didn't notice it at first.
- 25 Q. Right. And this is in the middle of King Street?

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1 A. The middle of King Street, yeah.

2 Q. On like a busy Saturday night?

3 A. A busy Saturday night. It was...

4 Q. And then he was placed in the patrol car shortly  
5 afterwards?

6 A. Correct.

7 MR. WEHRMAN: Objection.

8 THE COURT: Leading?

9 MR. WEHRMAN: Leading.

10 THE COURT: Yeah. Sustained.

11 Q. [Mr. Wehrman] Okay. Was he placed in the patrol  
12 car after that?

13 A. He was. He was placed in the patrol car after they  
14 were able to restrain him, yes.

15 Q. And what do you do following his arrest?

16 A. Following his arrest, I went back in and completed  
17 the rest of my shift.

18 Q. Okay.

19 A. Inside the bar.

20 MR. HEGGELKE: Court's indulgence.

21 THE COURT: Uh-huh.

22 [Whereupon, Mr. Heggelke and Mr. Osborne confer]

23 MR. HEGGELKE: Please answer anything Mr. Wehrman  
24 has.

25 THE WITNESS: Excuse me?

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1           MR. HEGGELKE: Please answer anything that the  
2 defense counsel has.

3           THE WITNESS: All right.  
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1 CROSS-EXAMINATION

2 BY MR. WEHRMAN:

3 Q. Mr. Jackson, so I want to clarify something.

4 Immediately after the incident, you spoke with the

5 officers?

6 A. That is correct.

7 Q. And you spoke with Officer Fusco; correct?

8 A. That is correct, yes.

9 Q. Okay. So at that point, everything you had seen

10 would have been fresh in your mind?

11 A. Absolutely.

12 Q. Okay. So you then later spoke with Officer Fusco a

13 few moments later after he left the scene and then

14 returned?

15 A. I'm not familiar with -- I'm trying to --

16 Q. I'm sorry. I ---

17 A. --- I remember speaking with him, yet I don't -- I

18 don't specifically remember if I came back to him after

19 he then -- are you saying after that? When are -- what

20 are you specifically ---

21 Q. --- you spoke ---

22 A. --- talking about?

23 Q. You spoke with him on two occasions that night?

24 A. Later on that night, yes.

25 Q. Correct. Okay. And the first time you spoke with

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1 him, y'all were just having a conversation in the street?

2 A. I'm not -- so when you're saying -- when  
3 specifically are you talking about? Are you talking  
4 about after the event or?

5 Q. After the event.

6 A. After the event, the first time I -- well, when I  
7 first saw him, we were in the middle of the issue like.  
8 It was going on at that moment.

9 At that point afterwards, yes, I've spoken to him  
10 because I work with -- I've worked with him on previous  
11 occasions where he's worked the street and I worked --  
12 I've worked at the Silver Dollar for almost four years  
13 now.

14 Q. Wait. Let me clarify. You spoke with him  
15 immediately after the event?

16 A. Yes.

17 Q. He left the scene?

18 A. I can't confirm that. I'm not a hundred percent of  
19 his whereabouts during that time.

20 Q. You subsequently spoke with him a second time that  
21 night?

22 A. Okay. Yes.

23 Q. Right. Okay. So in y'all's first conversation, he  
24 stated to you, that guy had a gun?

25 A. No, he didn't state to me that he had a gun because

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1 I had already recognized the fact that he had a -- that  
2 there was a gun on the ground. But he didn't tell me  
3 that -- he didn't say, oh, the guy's got a gun and that,  
4 while I'm trying -- I'm not understanding what you --  
5 what do you mean by he's got a gun.

6 Q. So you don't recall him telling you that that guy  
7 had a gun?

8 A. It was an already established fact that there was a  
9 gun, because I witnessed it on the street.

10 MR. WEHRMAN: Court's indulgence, Your Honor.

11 [Whereupon, Mr. Wehrman and Ms. Ehrlich confer]

12 Q. [Mr. Wehrman] So you're testifying, then, that  
13 during your initial conversation he didn't state that guy  
14 had a gun?

15 A. To the best of my recollection. You're -- well, I  
16 think -- he -- you're -- the way you're presenting the  
17 question to me is as if he presented to me the  
18 information that the gun was -- that he had a gun, as if  
19 I didn't know that.

20 It wasn't a conversation of, oh, hey; let me tell  
21 you that he had a gun. It was a situation of, oh, it was  
22 -- I already -- it was already an established fact that  
23 there was a gun -- that there was a gun.

24 Q. So he didn't -- so you're saying ---

25 A. --- he didn't present any new ---

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1 Q. --- he didn't tell you that ---

2 A. --- information to me, no.

3 Q. He didn't have to say, while we were searching along  
4 the car, he kicked it under our car?

5 A. No, he didn't. No.

6 Q. Okay.

7 A. It was already established at that point.

8 Q. You don't recall that?

9 A. No, he did not tell me that. It was already  
10 established that -- it was already established. I'd  
11 already recognized that ---

12 Q. --- would watching a video ---

13 A. --- there was a gun ---

14 Q. -- of your conversation help refresh your  
15 recollection?

16 A. It's been some time, but, yeah. It's been almost  
17 eight months but, yeah.

18 Q. What?

19 A. That's fine.

20 MR. WEHRMAN: Your Honor, may we approach?

21 THE COURT: Sure.

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

24 Q. [Mr. Wehrman] Mr. Jackson, I think we've having a  
25 little bit of a communication issue here so I'm going to

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1 try and clean this up because I think I've been a little  
2 confusing. Okay?

3 So clarify for me what your testimony is today.  
4 You're testifying that immediately following the  
5 incident, you had a conversation with Officer Fusco?

6 A. Yes.

7 Q. Okay. And you're testifying that during that  
8 conversation, you didn't tell him -- you told him about  
9 the gun?

10 A. When it comes to the specifics of the conversation,  
11 I just know that -- I don't remember the specific details  
12 of that conversation with Officer Fusco after that after  
13 that moment, but I do know that it was already  
14 established that it was -- there was a gun.

15 Q. So you don't recall telling him whether there was a  
16 gun or not?

17 A. To the best of my recollection, no.

18 Q. Would watching a conversation of that -- of that --  
19 would watching a video of that conversation help you?

20 A. That's fine. We can do that.

21 THE COURT: All right. You can do so outside the  
22 presence of the jury, I assume?

23 MR. WEHRMAN: I'd like to do this outside the  
24 presence of the jury, Your Honor.

25 THE COURT: That's fine. Ladies and gentlemen, I'm

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1 going to give you a quick morning break at this time. I  
2 ask that you be retired to your jury room. And please  
3 don't discuss the case at all amongst each other, and  
4 we'll call you back in here momentarily. Thank you very  
5 much.

6 [Whereupon, the jury exits at 10:48 a.m.]

7 THE COURT: Can you cue it up for us someone? Who's  
8 got the technology for that?

9 [Off the record momentarily]

10 [Whereupon, the video plays]

11 [Whereupon, the video stops]

12 [Not taken down]

13 THE COURT: Mr. Wehrman, was that the part you  
14 wanted to play for the witness?

15 MR. WEHRMAN: Yeah, mainly the last thirty seconds  
16 or so.

17 THE COURT: All right. Go ahead. Do you want to  
18 ask him if it refreshes his recollection to listen to  
19 that?

20 Q. [Mr. Wehrman] Does that refresh your recollection?

21 A. Yes, it does.

22 THE COURT: Okay. Are you ready for the jury to  
23 come back in?

24 MR. WEHRMAN: I am.

25 A. At the beginning of that conversation ---

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1 THE COURT: --- wait a minute. Hold on. We've got  
2 to bring the jury back in ---

3 THE WITNESS: --- yes, ma'am ---

4 THE COURT: --- before we go any further.

5 [Off the record momentarily]

6 [Whereupon, the jury enters at 10:55 a.m.]

7 THE BAILIFF: Your Honor, the jury is complete.

8 THE COURT: All right. Thank you very much. Mr.  
9 Wehrman, you may proceed?

10 MR. WEHRMAN: Thank you, Your Honor.

11 CONTINUED CROSS-EXAMINATION

12 BY MR. WEHRMAN:

13 Q. So, Mr. Jackson, do you remember your conversation  
14 with Officer Fusco immediately following the incident?

15 A. Yes.

16 Q. You didn't tell him about a gun?

17 A. No, he -- I didn't physically tell him about a gun  
18 but at that -- at that situation when he started talking  
19 about the situation, I acknowledged the fact that, yes,  
20 there was a gun.

21 It wasn't -- he was -- he was giving me the story,  
22 the story of -- he was telling me what was going on, but  
23 it wasn't a situation of him giving me something new that  
24 I didn't -- that I hadn't already known. We were talking  
25 about the situation after it happened, after it had

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1 occurred.

2 Q. So he gave you the information about the situation?

3 A. No, he didn't give me -- he gave -- he gave me his  
4 specific recollection. He gave me -- he told me the  
5 story from his point of view.

6 But it wasn't a situation of he's giving me  
7 information that I hadn't already received or that I  
8 didn't already have.

9 Q. But, again, you didn't tell him that you had seen  
10 the gun at that point?

11 A. That wasn't a question that was asked of me.

12 Q. And that was the first conversation. And  
13 subsequently you had a second conversation with Officer  
14 Fusco that evening?

15 A. Okay --

16 Q. And during that conversation --

17 THE COURT REPORTER: I'm sorry. What was your  
18 answer? I didn't hear you.

19 THE WITNESS: I acknowledged what he said and said  
20 that's okay.

21 THE COURT REPORTER: Okay. I just didn't hear you.

22 THE COURT: You've got to speak up. All right. Go  
23 ahead.

24 Q. [Mr. Wehrman] And during that conversation, you  
25 stated that you had seen the gun fall out during the

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1 struggle?

2 A. I'm not familiar with that portion. We can review

3 -- we can review that portion of the video, so...

4 Q. Would reviewing a record -- a recording of your  
5 conversation help you?

6 A. Why -- didn't we -- didn't we just do that?

7 Q. We reviewed the first conversation you had with  
8 Officer Fusco.

9 A. Okay.

10 Q. Would reviewing the second conversation you had with  
11 Officer Fusco ---

12 A. --- that's perfectly fine. I want to -- I want to  
13 make sure that it's -- that what I'm saying is correct.  
14 So, yes, we can go ahead and do that. So I just don't  
15 understand why we didn't do that five minutes ago.

16 Q. Well, we haven't been talking about that one yet.

17 MR. WEHRMAN: Your Honor, I...

18 THE COURT: Do you need another ---

19 MR. WEHRMAN: --- apologize to everyone but ---

20 THE COURT: --- jury to leave again?

21 MR. WEHRMAN: I do need to ask that we review this  
22 outside the presence of the jury.

23 THE COURT: All right. Ladies and gentlemen, it's  
24 like musical chairs. One more time. Thank you very  
25 much. You're going to get your exercise on jury duty.

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1 [Whereupon, the jury exits at 10:58 a.m.]

2 THE COURT: Yeah. I would have -- I would have  
3 asked that we went ahead and did it then, but I didn't  
4 realize that they were both recorded. But let's go ahead  
5 and cue up the second portion.

6 [Off the record momentarily]

7 [Whereupon, the video plays]

8 [Whereupon, the video stops]

9 [Not taken down]

10 MR. WEHRMAN: That's the end of this conversation.

11 THE COURT: Okay. All right. And are you ready for  
12 the jury to come back in?

13 MR. WEHRMAN: I am, Your Honor.

14 THE COURT: Okay. We'll get them back in here.  
15 Thank you.

16 [Whereupon, the jury enters at 11:03 a.m.]

17 THE BAILIFF: Your Honor, the jury is complete.

18 THE COURT: Alright. Thank you very much. You may  
19 proceed once again, Mr. Wehrman.

20 MR. WEHRMAN: Thank you, Your Honor. And thank you  
21 to the jury. Thank you, Mr. Jackson.

22 CONTINUED CROSS-EXAMINATION

23 BY MR. WEHRMAN:

24 Q. So, Mr. Jackson, after reviewing the second  
25 conversation you had with Officer Fusco that night, do

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1 you recall it?

2 A. Yes.

3 Q. Okay. And do you recall in the second conversation  
4 saying you saw the gun hit the ground?

5 A. That was what I -- that was what I said at that  
6 time. That's correct.

7 Q. Okay. And you said that you saw the struggle and  
8 you saw that the gun wound up at the rear of the car?

9 A. I saw the struggle and I -- speaking in the time  
10 that I was speaking, it was -- it was -- I saw the  
11 struggle.

12 When it comes to the gun, I don't -- unfortunately  
13 my recollection of that specifically wasn't that I saw it  
14 fall out. That's what I -- that's what I said to the  
15 officer on video.

16 Today, month's later, I can't a hundred percent say  
17 that, oh, yes, I saw the gun fall out. All I can speak  
18 of is, yes, that's what was said on tape when I was  
19 speaking to the officer at that time in the moment when  
20 it happened.

21 But today, months later, now that it's been so much  
22 time, I can't a hundred percent say that, yes, I saw the  
23 gun fall out. I can't -- I'm not going to tell you that,  
24 yes, I saw the gun fall out, because my -- to the best of  
25 my recollection, you know, that's what it is.

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1 Q. And I appreciate that. But let's just refresh or  
2 review what we've -- what we've discussed. So you had  
3 two conversations with Officer Fusco that evening?

4 A. Yes.

5 Q. One immediately after the incident?

6 A. Uh-huh.

7 Q. It was fresh in your mind?

8 A. Yes.

9 Q. And during that conversation, you didn't state that  
10 you had seen the gun?

11 A. It wasn't directly asked of me. He was talking  
12 about the situation and I said yes. I had said okay,  
13 because he was speaking to me and I allowed him to  
14 continue speaking to me.

15 It wasn't a situation of him questioning me like --  
16 in the first conversation, it wasn't a question of him  
17 questioning with what I saw. He was speaking to me about  
18 the situation. In the second conversation, it was -- it  
19 was a -- it was a question about what I saw.

20 Q. So in the first conversation, you heard from him ---

21 A. --- no, in the first ---

22 Q. --- what he had seen ---

23 A. --- in the first ---

24 Q. --- what he had seen ---

25 A. --- in the first conversation, I strictly just

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1 acknowledged the fact that he was speaking to me by  
2 saying okay.

3 Q. Okay.

4 A. And then he continued to tell me what was -- what he  
5 -- what he was seeing. In the second conversation, that  
6 was the only time that I spoke -- when I actually -- that  
7 I spoke what I saw there.

8 Q. And so it was in the second conversation that you  
9 then stated you saw the gun hit the ground?

10 A. That's correct.

11 Q. That you saw the struggle and you saw the gun?

12 A. I saw the struggle, yes. I saw the gun, I saw the  
13 struggle. Now, the only -- the only point of contention  
14 here is whether or not I saw it -- saw it fall. Okay?  
15 And that's to the best of my -- that's -- to my  
16 recollection, that's -- that's where the issue is.

17 Q. And today you can't recall whether you saw it hit  
18 the ground or not?

19 A. I can't recall whether or not I saw it hit the  
20 ground or not.

21 MR. WEHRMAN: Court's indulgence, Your Honor.

22 [Whereupon, Mr. Wehrman and Ms. Ehrlich confer]

23 MR. WEHRMAN: No further questions, Your Honor.

24 THE COURT: Okay.

25 MR. WEHRMAN: Thank you, Mr. Jackson.

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1           THE COURT: Any redirect?  
2           MR. HEGGELKE: Just briefly.  
3           THE COURT: Okay.  
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1 witness stand]

2 THE COURT: All right. Mr. Heggelke, you can call  
3 your next witness.

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Nicholas Fusco-Direct Examination by Mr. Osborne  
March 7, 2019

1 MR. OSBORNE: The State calls Officer Fusco.

2 THE COURT: Okay.

3 CLERK OF COURT: Place your left hand on the Bible.  
4 Raise your right hand.

5 [Whereupon, Mr. Fusco is duly sworn by the Clerk of  
6 Court]

7 CLERK OF COURT: Okay. Sir, if you would please  
8 have a seat for us.

9 [Whereupon, the witness takes the witness stand]

10 CLERK OF COURT: And for the record, will you please  
11 state your name spelling your last name?

12 THE WITNESS: Nicholas Fusco. F, as in Frank,-U-S,  
13 as in Sam-C-O.

14 - - - - -

15 NICHOLAS FUSCO,

16 Having Been First Duly Sworn,

17 was Examined and Testified as Follows:

18 DIRECT EXAMINATION

19 BY MR. OSBORNE:

20 Q. Good morning Officer Fusco.

21 A. Good morning, sir.

22 Q. Where do you work?

23 A. Work for the City of Charleston Police Department.

24 Q. And how long have you worked there?

25 A. Going on about five years.

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1 Q. Okay. Do you have any prior law enforcement  
2 experience?

3 A. I do. I was a police officer in Norfolk for just  
4 over three years.

5 Q. Norfolk, Virginia?

6 A. Norfolk, Virginia. Yes, sir.

7 Q. Okay. And then you moved your family here and  
8 started working here?

9 A. Yes, sir.

10 Q. What have been some of your various assignments  
11 while at CPD?

12 A. While at CPD, I worked in the second -- well, they  
13 call it Team Two, which is downtown, South Calhoun  
14 Street. And then I was transferred to what's called Team  
15 Nine, which is the entertainment district.

16 So we work at -- we work the bars, we work tourist  
17 areas. At night, we mainly work the bars assisting the  
18 bars with problems that they have.

19 Q. Okay. And what are your normal work hours working  
20 in the entertainment district?

21 A. My normal work hours are 5:00 p.m. to 3:00 a.m. so  
22 we can cover the afternoon shift and then we can cover  
23 the bar closings and cover those times.

24 Q. Do y'all work the upper King area?

25 A. Yes. We work from about Cannon or Spring Street

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1 down to the market on King Street. And we also work the  
2 market, as well.

3 Q. Okay. And is this mostly in a patrol car or mostly  
4 a foot beat?

5 A. At the beginning of the shift, prior to about ten  
6 o'clock, we either ride our bikes or -- which I tend to  
7 do, or we can ride our -- in our patrol car.

8 After about 10:30, eleven o'clock, we wind up going  
9 on foot on King Street so we can maintain the crowds more  
10 efficiently.

11 Q. Okay. Fair to say working those hours and those  
12 beats that you deal with a lot of intoxicated  
13 individuals?

14 A. Yes, that's fair to say.

15 Q. That's primarily, I believe, your purpose of being  
16 there; crowd control, things of that nature?

17 A. For the most part. Yes, sir.

18 Q. All right. So let's go back to August the 19th of  
19 last year around midnight. Were you working at that  
20 time?

21 A. I was.

22 Q. And were you working the entertainment district,  
23 again?

24 A. I was.

25 Q. All right. Now, and did you have the occasion to

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1 respond to the Silver Dollar at 478 King Street?

2 A. I did.

3 Q. And, well, is that in the city and county of  
4 Charleston?

5 A. It is.

6 Q. And what brought you to that location?

7 A. I was flagged down by one of the security people in  
8 reference to a party who failed to pay their tab.

9 Q. Okay. Is that a typical type of call that you would  
10 respond to in the entertainment district?

11 A. It is.

12 Q. All right. On that night, were you wearing body-  
13 worn camera footage?

14 A. I was.

15 Q. A body-worn camera, I guess.

16 A. Yes. A body-worn camera. Yes, sir.

17 Q. Okay. Now, let's explain to the jury how does that  
18 work. Where on your uniform is the body-worn camera?

19 A. Okay. So my body-worn camera usually sits right  
20 here [indicates] on my chest. That particular night, and  
21 most nights, I have my bike uniform on, which is a Polo  
22 shirt.

23 Right at the bottom of the three buttons that you  
24 would normally see on a Polo shirt, they have a -- they  
25 have a loop attached there and that's where I hang my

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1 body-worn camera. So it sits right here [indicates] on  
2 my chest.

3 Q. Okay. And do you go through any integrity check  
4 procedures at the beginning of your shift?

5 A. Yes, sir.

6 Q. In reference to the body camera?

7 A. We do. At the beginning of the shift they have us  
8 turn it on. We hit the record button, make sure that  
9 it's -- that it's recording. We do -- we do an integrity  
10 check and then we turn it -- we turn it back off.

11 And throughout that -- during our shift we have to  
12 keep it on but we have it in what's called buffer mode,  
13 so it records like the previous thirty seconds of  
14 everything without audio before it actually starts  
15 recording.

16 Sometimes the body cam gets turned off, like if the  
17 officer has to go to the bathroom or something like that,  
18 and then it gets turned back on afterwards.

19 Q. Okay. But you did the integrity check that night?

20 A. I did.

21 Q. And it was working fine; your camera?

22 A. It was.

23 Q. All right. So you said -- you talked about the  
24 buffer mode and turning it on. Now, do you actually  
25 control when you turn the camera on and when you turn it

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Nicholas Fusco-Direct Examination by Mr. Osborne  
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1 off?

2 A. I do.

3 Q. Okay. And there are departmental regulations  
4 regarding when that is to occur?

5 A. Yes, sir. Right.

6 Q. And did you follow those regulations that night?

7 A. I did.

8 Q. All right. Now, what happens at the end of your  
9 shift in reference to footage for an investigation?

10 A. At the end of the shift, we hook our cameras up to  
11 the computer that has a program on there that downloads  
12 our videos, allows us to tag them for whatever they are,  
13 whether it's a citizen encounter, an arrest, a traffic  
14 stop.

15 And then we take those, with the notes. We'll put  
16 the case number, the victim's name, the offender's name,  
17 and any other additional notes that we would have put in  
18 there.

19 Q. And so you flag or tag footage that's relevant to an  
20 investigation?

21 A. Yes, sir.

22 Q. And did you do that in this case?

23 A. I did.

24 MR. OSBORNE: Your Honor, may I approach?

25 THE COURT: Sure.

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1 Q. [Mr. Osborne] I'm showing you State's 4. Can you  
2 take a look at that and tell me if you recognize that?

3 [Whereupon, the witness is shown exhibit]

4 A. I do.

5 Q. And what is that?

6 A. This is going to be my body cam footage from that  
7 night.

8 Q. Okay.

9 MR. OSBORNE: Your Honor, at this time, I think  
10 without objection we would seek ---

11 MR. WEHRMAN: --- Your Honor --

12 MR. OSBORNE: -- to admit State's 4.

13 THE COURT: We'll see. All right. Yes, sir?

14 MR. WEHRMAN: I'm sorry. I actually do need to  
15 object to that. And I'm renewing my objection from the  
16 Motion to Suppress, which was heard by Judge Dennis.

17 THE COURT: Okay. Motion -- your objection is noted  
18 for the record. The standing ruling by Judge Dennis  
19 stands. And any admissions other -- apart from that to  
20 the video, just to make sure is this the one ---

21 MR. OSBORNE: --- yes ---

22 THE COURT: --- the version that we discussed  
23 pretrial?

24 MR. OSBORNE: Yes, ma'am.

25 THE COURT: Okay. All right. For the record.

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1 Thank you very much.

2 MR. WEHRMAN: Thank you, Your Honor.

3 THE COURT: Admitted, State's 4, over the defense's  
4 objection.

5 [Whereupon, State's Exhibit Number 4 is admitted  
6 into evidence by the Court]

7 [Whereupon, State's Exhibit Number 4, the video, is  
8 played for the jury, with questions from Mr. Osborne]

9 Q. [Mr. Osborne] Okay. So, officer, where we're  
10 picking up now, you said that you had been flagged down  
11 in reference to a party refusing to pay the tab?

12 A. Yes, sir.

13 Q. Has that already occurred?

14 A. Yeah. We're walking over there with the security  
15 guy that came and picked us up.

16 Q. Okay. So you're -- that's the security guard in  
17 front of you there?

18 A. Yes, sir.

19 Q. Okay.

20 [Whereupon, the video is played for the jury, with  
21 questions from Mr. Osborne]

22 Q. And I'm going to stop it right there just for a  
23 second.

24 [Whereupon, the video is paused]

25 Q. It was a little hard to see or hear. What did you

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1 just ask?

2 A. When they came out, at first I thought it was just a  
3 random person that they were kicking out while we were  
4 going to deal with the other one.

5 But I asked him, is this the guy who didn't pay his  
6 tab? At that point, I was given the affirmative. He  
7 nodded and said, yes, that's -- this is him.

8 Q. Okay. Back up just a tab --

9 [Whereupon, the video plays]

10 [Whereupon, the video is paused]

11 Q. [Mr. Osborne] Why is he on the ground? Why didn't  
12 you just put him in handcuffs?

13 A. We attempted to place him in handcuffs at that point  
14 but he was resisting, he was pulling away. He was trying  
15 to actively get away, trying to slip out of my grasp, my  
16 partner's grasp, at that point.

17 Q. All right. And with the information in hand, this  
18 was the person who was identified as not paying a tab,  
19 were you simply just trying to talk to him then?

20 A. No, not at this point.

21 Q. What were you trying to do?

22 A. At this point we were trying to place him in  
23 custody, because at that point they told me that he had  
24 not paid his tab. He was actively trying to flee, which  
25 would have furthered the fact that he wasn't going to pay

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1 his tab. So at that point, we placed him into custody  
2 for that --

3 Q. Just so -- just so -- I'm sorry. Just so there's no  
4 confusion. We are in arrest mode now?

5 A. Yes.

6 Q. We're trying to place him under arrest?

7 A. We are in arrest mode now.

8 [Whereupon, the video plays]

9 [Whereupon, the video is paused]

10 Q. All right. So when you just came on the radio then,  
11 what were you asking for?

12 A. I was asking for a car because he was being  
13 combative. There wasn't going to be a way that we could  
14 walk him back over to the car where we -- where we were  
15 parked. We're parked about a half a block away.

16 So I was asking for another car to come over and  
17 park in front of the establishment so we can get him over  
18 to that car and get him in there and get him off the  
19 street because, at this point, it was becoming a hazard  
20 because there was a lot of intoxicated people out there  
21 that were crowding around us and forming a crowd around  
22 us.

23 Q. Is crowd control an issue when you're working down  
24 in the entertainment district?

25 A. It is very much so. A lot of times what will happen

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1 is we'll have two officers dealing with the person and if  
2 it's turning into something like -- similar to this,  
3 where somebody is struggling, we have a crowd growing, a  
4 lot of times what will happen is if we have another  
5 officer they start backing people up.

6 If not, we call for somebody. They usually come  
7 over and that's the first thing that they're going to do,  
8 as long as we have control over the other -- the person  
9 that we're dealing with.

10 [Whereupon, the video plays]

11 [Whereupon, the video is paused]

12 Q. All right. Let me stop right there. I heard  
13 someone say, we all heard someone say, get in the car.  
14 Who said that?

15 A. That'll be Officer Coble.

16 Q. And then --

17 THE COURT REPORTER: Officer?

18 THE WITNESS: Coble. C-O-B-L-E.

19 Q. [Mr. Osborne] And then you replied?

20 A. Wait, wait, wait.

21 Q. Why?

22 A. Because even though we were trying to get him out of  
23 there in a hurry, because of the crowd issue, there's  
24 always a safety issue when you're putting somebody in the  
25 back of the car. You always want to search them because

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1 you never know if they have guns, drugs, knives,  
2 bazookas, anything like that, tucked in there. And at  
3 that point I wanted to -- especially with how combative  
4 he was being, I wanted to make sure he didn't have any of  
5 those weapons because I wanted my partner to be safe when  
6 he was transporting him.

7 Q. So up until this point, when he was on the ground  
8 when y'all were rolling, struggling, trying to get him  
9 handcuffed and all that, no one had searched him?

10 A. No. We hadn't had an opportunity to search him yet  
11 because we were trying to basically keep him contained  
12 until we got -- until we got other units there.

13 [Whereupon, the video plays]

14 [Whereupon, the video is paused]

15 Q. All right. What happened there?

16 A. At that point, we were searching him. While we were  
17 searching him, he kept folding his knees in and forcing  
18 us to have to grab him and pick him up by his pants so  
19 that we can keep him up on the -- on the car.

20 When you hear my partner and I say, well, there's  
21 nothing on this side, there's nothing on this side, you  
22 hear Officer Coble say, you know, did you search his  
23 waistband. That's when we started to do that. And if  
24 you back it up a couple of frames, what you'll see is  
25 another officer on the far side, right over here

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1 [indicates] in the bright-yellow, go underneath of the  
2 car and you'll see him retrieve a gun out right from  
3 where the defendant's feet are underneath the vehicle.

4 [Whereupon, the video plays]

5 [Whereupon, the video is paused]

6 Q. Is it fair to say when a gun was introduced, it  
7 escalated a little bit?

8 A. It did. But the other issue is that he kept coming  
9 off of the car and coming at me, which is also a safety  
10 issue because just because his hands are behind his back  
11 doesn't mean he can't head-butt me, he can't spit at me.

12 I've had that happen to me several times when we  
13 were -- I've had individuals spit at me. I even had one  
14 that spit blood in my face. So I'm very cautious about  
15 that even, especially when they're in handcuffs. So I'm  
16 trying to prevent any of that kind of stuff from  
17 happening.

18 Q. And does it mean just because he has one gun, he  
19 couldn't have two?

20 A. Exactly.

21 [Whereupon, the video plays]

22 [Whereupon, the video concludes]

23 Q. Okay. Where he's saying stop, please stop, please,  
24 are y'all doing anything like twisting his wrist or  
25 administering pain to him in any way?

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1 A. No. We're -- what we're doing is we're trying to  
2 place him in the car. A lot of times when people are  
3 resisting, what we do is we'll go and we'll open up the  
4 other car door and we'll grab them by their arms and just  
5 pull them through and then, say, they should wind up  
6 laying on their side or on their back, until we can get  
7 the doors closed, and then they normally sit up  
8 themselves out of that position --

9 THE COURT REPORTER: I'm sorry. I didn't hear the  
10 last part of your answer.

11 A. They normally -- they'll lay on their sides or their  
12 back and when we close the doors, then they sit up on  
13 their own.

14 MR. OSBORNE: Okay. Your Honor, may I approach?

15 THE COURT: Sure.

16 Q. [Mr. Osborne] I'm showing you State's 2. Can you  
17 take a look at that and tell me if you recognize that.

18 [Whereupon, the witness is shown exhibit]

19 A. I do.

20 Q. And what is that?

21 A. That is the pistol that was recovered underneath the  
22 vehicle that we saw in the body cam video.

23 Q. And how do you know?

24 A. Because of the serial number. I had that. When my  
25 supervisor retrieved it, he showed me the weapon in

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1 question and he took it, since he had possession of it,  
2 and he placed it into evidence immediately. But I was  
3 able to take a good look at it and record the serial  
4 number off of it.

5 Q. Okay. So the serial numbers match?

6 A. Yes.

7 MR. OSBORNE: Your Honor, at this time we would seek  
8 to admit State's 2 in evidence.

9 THE COURT: Any objection?

10 MR. WEHRMAN: Objection. Again, renewing my motion  
11 from -- the Motion to Suppress, which was heard in front  
12 of Judge Dennis.

13 THE COURT: Okay. Your objection is made clear for  
14 the record and timely as well, and I'll stand by Judge  
15 Dennis' ruling as to that issue. So it is admitted over  
16 your renewed objection.

17 MR. WEHRMAN: Thank you, Your Honor.

18 THE COURT: Uh-huh. State's 2. Go ahead.

19 [Whereupon, State's Exhibit Number 2 is admitted  
20 into evidence by the Court]

21 Q. [Mr. Osborne] And what type of gun is it?

22 A. It's a Glock. It's a .9 millimeter subcompact. Am  
23 I allowed to ---

24 Q. --- yeah ---

25 A. --- to look at it?

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- 1 Q. And it's secured.
- 2 A. It's going to be a -- it's going to be a Model 43.
- 3 THE COURT REPORTER: Model?
- 4 A. 43. Which is a subcompact .9 millimeter, is going  
5 to be the gun in question.
- 6 Q. [Mr. Osborne] Okay. And was it -- it was equipped  
7 with a magazine?
- 8 A. Has this [indicates] magazine. This was in the  
9 magazine well at the time. This round right here  
10 [indicates] was in the chamber. And these rounds right  
11 here [indicates] were in the magazine.
- 12 Q. What is the capacity of that magazine? Can you  
13 tell?
- 14 A. The capacity of this magazine is six.
- 15 Q. So it's a six-round capacity magazine. If you  
16 wanted, you could put one in the chamber, making seven.  
17 How many ---
- 18 A. --- yes ---
- 19 Q. --- bullets were there in total?
- 20 A. There were six bullets in total.
- 21 Q. Okay. Five in the -- so it was fully loaded?
- 22 A. Yes. There was -- there was five in the magazine  
23 and one in the chamber.
- 24 Q. Okay.
- 25 A. And that's why this one is separated out from the

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1 other ones, because this one was the one that was  
2 actually in the chamber.

3 Q. Okay. And just -- Glock is your service weapon;  
4 right?

5 A. Yes. It's the same style service weapon that we  
6 carry.

7 Q. Just for the jury's edification if they're not  
8 familiar with it, Glocks don't have external safeties?

9 A. They do not.

10 Q. So they're always ready to rock and roll if there's  
11 one in the chamber?

12 A. Yes. All they have to do is press the trigger.

13 Q. All right. So, now, what were all of the charges  
14 that you charged the defendant with for his conduct --

15 A. He was charged with defrauding public accommodation,  
16 disorderly conduct, resisting arrest, and the unlawful  
17 carrying.

18 Q. Okay. What was the first charge?

19 A. Oh. I'm sorry. Defrauding of public accommodation?

20 THE COURT REPORTER: Fighting?

21 A. Defrauding a public accommodation for not paying the  
22 tab; disorderly conduct, for the stuff that happened  
23 outside, gathering the crowd, his intoxicated state;  
24 resisting arrest, for fighting us; and then the unlawful  
25 carry for the pistol that was in his pants.

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1 Q. [Mr. Osborne] So defrauding the business that's  
2 refusing to pay?

3 A. Yes.

4 Q. And disorderly was the conduct with the bouncers?

5 A. It was with the bouncers and with us, as well.

6 Q. Okay. And those are municipal charges? They're not  
7 heard in this court?

8 A. Correct.

9 Q. Okay. My last question. All right. So in  
10 determining your probable cause when you made the arrest,  
11 when you affected the arrest, what were the facts and  
12 circumstances that you knew at the time you affected the  
13 arrest?

14 A. At the time that I affected the arrest, I was  
15 approached by one of the doormen that works for the  
16 Silver Dollar, told me that there was somebody inside  
17 that had not paid for the tab, they wanted us to come  
18 over there. So we approached.

19 The security brought out the individual, which was  
20 later identified as Frankie Lee Davis, and then  
21 specifically said this is the guy that did not pay.

22 At that point, we went to place him in custody. And  
23 also due to the fact that he was trying to flee from us  
24 and up the road so we knew that he wasn't going to pay  
25 anyway. So at that point, we went to place him into

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1 custody and that's when he resisted us.

2 MR. OSBORNE: No further questions.

3 MR. WEHRMAN: Thank you, Your Honor.

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1 CROSS-EXAMINATION

2 BY MR. WEHRMAN:

3 Q. Officer Fusco.

4 A. Good morning.

5 Q. So this all starts when you're flagged down by that

6 bouncer?

7 A. Yes, sir.

8 Q. They told you, I believe, that there was someone

9 inside the bar who had not paid?

10 A. Correct.

11 Q. Okay. And he's inside the bar at that point?

12 A. Yes, he's inside that bar.

13 Q. They didn't say anything more specific than that?

14 A. No, they did not.

15 Q. They didn't say what this was all about?

16 A. They just said we have a guy inside that is refusing

17 to pay his tab.

18 Q. So they didn't indicate any information on why he

19 would be refusing?

20 A. No.

21 Q. They didn't indicate that he tried to sneak out of

22 the bar?

23 A. No, they didn't indicate that to me at the time.

24 Q. They didn't say what they had done to try and get

25 him to pay?

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- 1 A. No, they had not.
- 2 Q. Okay. So bouncers go inside and bring Mr. Davis  
3 out, as you said?
- 4 A. Uh-huh.
- 5 THE COURT REPORTER: Is that a yes?
- 6 A. Yes.
- 7 Q. [Mr. Wehrman] Basically, they tell you this is the  
8 guy?
- 9 A. Yes. Correct.
- 10 Q. And at that point, y'all grab Mr. Davis; attempt to  
11 place him in handcuffs?
- 12 A. Yes, sir.
- 13 Q. And I believe you said at that point you were in  
14 arrest mode?
- 15 A. Yes, sir.
- 16 Q. Okay. All right. Now, y'all wind up having to take  
17 Mr. Davis to the ground to make this arrest, then?
- 18 A. Correct.
- 19 Q. Okay. Y'all have to wrestle with him?
- 20 A. Yes, sir.
- 21 Q. Y'all are grappling one way or another?
- 22 A. Yes, sir.
- 23 Q. And there's multiple people in there doing all of  
24 this?
- 25 A. It's me and one other officer, yes, sir, at this

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1 point.

2 Q. There was also a bouncer involved, I believe?

3 A. Yes.

4 Q. Okay. And eventually other officers had to get  
5 involved?

6 A. Yes, sir.

7 Q. Okay. So by my count, at least four other -- well,  
8 at least four people, including yourself, are having to  
9 grapple with Mr. Davis at this point?

10 A. Right outside the bar. Yes, sir.

11 Q. Okay. Y'all eventually got him cuffed. Y'all  
12 eventually called for that transport?

13 A. Yes, sir.

14 Q. Okay. And at that point, you didn't have any  
15 evidence that he was armed?

16 A. No, sir.

17 Q. Okay. No knowledge of a firearm. Hadn't seen a  
18 firearm?

19 A. No, sir.

20 Q. Hadn't felt a firearm?

21 A. No, sir, not at that point.

22 Q. So eventually that car comes and, again, it takes  
23 several officers to carry him over to the car?

24 A. Yes, sir.

25 Q. Okay. And y'all searched him at the car?

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- 1 A. Yes, sir.
- 2 Q. We sort of saw that on the video. The search went  
3 on for over a minute?
- 4 A. Yes, sir.
- 5 Q. Okay. And, again, there were multiple officers  
6 searching?
- 7 A. Yes, sir.
- 8 Q. You know that you, at one point, concluded there's  
9 nothing on his left side?
- 10 A. Yes, sir.
- 11 Q. Okay. Now, subsequent to that, another officer  
12 comes over and finds that gun under the car?
- 13 A. Yes, sir.
- 14 Q. That was not one of the officers that had been  
15 searching eventually?
- 16 A. No, sir.
- 17 Q. I believe that was Officer Hutzler?
- 18 A. NPO Hutzler, yes, sir --
- 19 Q. NPO Hutzler ---
- 20 A. --- he's a police officer.
- 21 Q. And he had been doing crowd control?
- 22 A. Yes, sir.
- 23 Q. Okay. So up to that point, y'all had been holding  
24 on to him for about three or four minutes.
- 25 A. Roughly. Yes, sir.

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1 Q. Between the initial contact outside the door,  
2 transporting him over to the car, and then the search on  
3 the car?

4 A. Yes, sir.

5 Q. I believe you maintained some sort of physical  
6 contact with him throughout that entire...

7 A. Yes, sir.

8 Q. Throughout that entire time, I should say. Okay.  
9 And you never had any indication that there was a gun on  
10 him throughout all of that?

11 A. Well, if you do listen to what I say when they  
12 pulled the gun out from under the car, I said, well, that  
13 is why he was reaching for his waistband.

14 Q. Okay.

15 A. He did -- he did do that at one point, and I did --  
16 I did notice that.

17 Q. But you never felt a gun?

18 A. I did not feel a gun.

19 Q. Never saw a gun?

20 A. No, sir.

21 Q. Now, you did eventually complete the search of Mr.  
22 Davis?

23 A. Yes, sir.

24 Q. Y'all found a bottle of liquor in his pocket?

25 A. Yes, sir.

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1 Q. He was rather adamant about that on the video, I  
2 believe?

3 A. Yes, sir.

4 Q. So he told you about that, and he told you about  
5 that repeatedly?

6 A. Yes, sir.

7 Q. And it's illegal to carry an open container of  
8 alcohol in Charleston?

9 A. Correct.

10 Q. So he told you about illegal items on him at the  
11 time?

12 A. Yes, sir.

13 Q. Okay. Now, I know we took -- you took the gun into  
14 evidence. Was the gun ever processed for fingerprints?

15 A. Yes, sir.

16 Q. Are you aware of the results of that processing?

17 A. I am.

18 Q. Were Mr. Davis' fingerprints found on the gun?

19 A. They were inconclusive.

20 Q. So?

21 A. There were no fingerprints found on the -- on the  
22 weapon at all.

23 Q. So Mr. Davis' fingerprints were not found?

24 A. Correct.

25 Q. Was the gun processed for DNA evidence?

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- 1 A. I don't recall if it was or not.
- 2 Q. Okay. And, again, when I say the gun, it wasn't  
3 just the gun that was processed?
- 4 A. Correct.
- 5 Q. It was the magazine?
- 6 A. Yes, sir.
- 7 Q. It was the rounds in the magazine?
- 8 A. Yes, sir.
- 9 Q. It was the round in the chamber?
- 10 A. Yes, sir.
- 11 Q. Okay. And y'all have the serial number of the gun?
- 12 A. Yes.
- 13 Q. Was any trace ever attempted to locate the  
14 registered owner of that gun?
- 15 A. I believe we did, but I don't recall what the result  
16 was on that.
- 17 Q. So after the gun's found, Mr. Davis eventually is  
18 put into the car?
- 19 A. Yes, sir.
- 20 Q. You remained on the scene?
- 21 A. Yes, sir.
- 22 Q. Okay. And you kept your body camera on for that  
23 period, as well?
- 24 A. Yes, sir.
- 25 Q. And I believe you wound up speaking with some of the

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1 folks who were standing around the sidewalk?

2 A. Yes. A couple of people told me they saw what  
3 happened.

4 Q. Okay. And you spoke with Mr. Jackson?

5 A. Yes, sir.

6 Q. And he's a bouncer at the bar, and one of the  
7 bouncers who was involved in the incident?

8 A. Correct.

9 Q. And I believe you told those people, that guy had a  
10 gun on him?

11 A. Uh-huh.

12 THE COURT REPORTER: Is that a yes?

13 A. Yes, yes ma'am.

14 Q. [Mr. Wehrman] In fact, you even clarified for Mr.  
15 Jackson: while we were searching him on the car, he  
16 kicked it under our car.

17 A. Yes.

18 Q. And during that conversation, Mr. Jackson didn't  
19 tell you that he had seen the gun?

20 A. No, he did not.

21 Q. And, again, this was directly after the incident?

22 A. Directly after the incident. Yes, sir.

23 Q. I believe you actually had to leave the scene to get  
24 your patrol car?

25 A. Yeah. Eventually I did, yes, sir.

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1 Q. So some time later, you went and got the patrol car.  
2 Then you came back to the scene?

3 A. After I left on foot, I did not go back to the  
4 scene.

5 Q. You don't recall returning to the scene and taking  
6 statements?

7 A. I stayed on the scene to take the statements and  
8 then I got -- I returned back to my patrol car  
9 afterwards, I believe.

10 Q. But there was some period between the initial --  
11 there was some period of time between that initial  
12 conversation we just discussed and then taking the  
13 statements?

14 A. A small window. Yes, sir.

15 Q. Alright. And then when you took those statements,  
16 that's when you learned -- that's when Mr. Jackson told  
17 you that he had seen the gun drop to the ground?

18 A. Honestly, I don't remember if he -- if he told me  
19 that or not.

20 Q. Okay.

21 MR. WEHRMAN: Court's indulgence.

22 THE COURT: Uh-huh.

23 [Whereupon, Mr. Wehrman and Ms. Ehrlich confer]

24 MR. WEHRMAN: Thank you, Your Honor.

25 Q. [Mr. Wehrman] All right. Now, to get back, we

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1 heard a little bit about your history as an officer. To  
2 become an officer, you're required to go to the Academy;  
3 right?

4 A. Yes, sir.

5 Q. And you receive training there on constitutional  
6 rights?

7 A. Yes, sir.

8 Q. Constitutional issues? When you can arrest people?

9 A. Yes, sir.

10 Q. When you can't?

11 A. Yes, sir.

12 Q. When you can search people?

13 A. Yes, sir.

14 Q. When you can't?

15 A. [No response]

16 Q. That normally turns on probable cause?

17 A. Reasonable articulable suspicion and probable cause.  
18 Yes, sir.

19 Q. Okay.

20 THE COURT REPORTER: Repeat that again.

21 A. Reasonable articulable suspicion and probable cause.

22 Q. [Mr. Wehrman] And the agency you work for,  
23 Charleston Police Department, has policies and procedures  
24 for complying with those constitutional requirements?

25 A. Yes, sir.

State v Frankie Lee Davis, III  
Nicholas Fusco-Cross-Examination by Mr. Wehrman  
March 7, 2019

1 Q. And as an officer, you're obviously expected to  
2 follow those procedures?

3 A. Yes, sir.

4 Q. And there's a disciplinary process when someone  
5 doesn't follow those procedures?

6 A. Yes, sir.

7 Q. There is that process that falls under  
8 investigation? We have some unfounded complaints?

9 A. Yes, sir.

10 Q. But if a complaint is found to be founded, then  
11 there might be some consequences?

12 A. Correct.

13 Q. And you've been through one of these investigations?

14 MR. OSBORNE: Objection, Your Honor. Relevance.

15 THE COURT: Sustained. 403.

16 MR. WEHRMAN: One moment, Your Honor.

17 THE COURT: Uh-huh.

18 [Whereupon, Mr. Wehrman and Ms. Ehrlich confer]

19 MR. WEHRMAN: Your Honor, may we approach?

20 THE COURT: Sure.

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

23 MR. WEHRMAN: I can -- I can proceed, Your Honor.

24 THE COURT: Okay. Yeah. Go ahead.

25 MR. WEHRMAN: Thank you.

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Nicholas Fusco-Cross-Examination by Mr. Wehrman  
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1 Q. [Mr. Wehrman] All right. Officer Fusco, let's just  
2 recap. In this case when you went to arrest Mr. Davis,  
3 you knew that he wasn't paying a bar tab?

4 A. Correct.

5 Q. He was inside the bar?

6 A. Correct.

7 Q. And that they had just brought him out to you?

8 A. Yes, sir.

9 MR. WEHRMAN: No further questions, Your Honor.

10 THE COURT: Okay. Thank you. Any redirect?

11 MR. OSBORNE: Just briefly, Your Honor.

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State v Frankie Lee Davis, III  
Nicholas Fusco-Redirect Examination by Mr. Osborne  
March 7, 2019

1 kept buckling his knees and forcing us to hold him, so I  
2 had one officer on one side, one officer on the other  
3 side. We're physically holding him up with one arm while  
4 we're searching each side of him.

5 And pretty much the whole time when we were on the  
6 ground, I had -- I had control over the top half of him  
7 because that's where his arms were while we were fighting  
8 with him.

9 When I rolled him over to his side to prevent  
10 positional asphyxiation, I had pulled up his arms because  
11 he once again was flailing and trying to roll, so I had  
12 control over his arms.

13 I did not go down to his feet at that point because  
14 it was just me and my partner and we were just trying to  
15 keep him pinned down at that point.

16 Q. Okay. So saving time so we don't have to go through  
17 it again, but -- or watch it again, but -- so you make  
18 the comment -- and is this correct; you tell me -- you  
19 make the comment nothing on the left side. Then the  
20 officer sees the gun on the ground?

21 A. Correct.

22 Q. So had you even got to his right side at all?

23 A. My partner was checking his right side.

24 Q. So that happens at the time with which the other  
25 officer recovers the gun from the ground? Is that fair

State v Frankie Lee Davis, III  
Nicholas Fusco-Redirect Examination by Mr. Osborne  
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1 to say?

2 A. Yes, sir.

3 Q. And I think the jury got a look at it. This is what  
4 they call a subcompact?

5 A. Yes.

6 Q. Is that correct? A small weapon?

7 A. Yes, sir.

8 Q. Easier to conceal, I take it?

9 A. Correct.

10 MR. OSBORNE: No further questions.

11 THE COURT: Any recross?

12 MR. WEHRMAN: [No response]

13 THE COURT: Any recross?

14 MR. WEHRMAN: Just briefly, Your Honor.

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1           THE COURT: All right. Mr. Wehrman, I told you I  
2 would give you an opportunity to flesh out your argument  
3 a little bit more. You objected to the when I sustained  
4 -- excuse me. You started to go into Fusco's personnel-  
5 file history related to a prior incident involving a lack  
6 of probable cause on an arrest, at which point the State  
7 objected.

8           I sustained the objection pursuant to Rule 403. I  
9 found that it was more prejudicial than probative. And  
10 for this incident, having reviewed the personnel files  
11 previously in camera, I determined that incident had no  
12 bearing whatsoever on this incident so I sustained the  
13 State's objection. Understanding, obviously, over your  
14 argument that it was relative and probative -- I mean,  
15 relevant and probative.

16           Is there anything else that you want to state for  
17 the record?

18           MR. WEHRMAN: No, Your Honor. I think I've stated  
19 the argument fairly concisely. I mean, just to -- just  
20 to frame it, we have an argument here that there was an  
21 unlawful arrest. The lawfulness of an arrest is going to  
22 -- and it's almost entirely dependent on whether probable  
23 cause existed at the time of the arrest.

24           I do have the information -- I obviously -- we were  
25 denied access to the records earlier so I can't proffer

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1 that. But I understand it's a Court's Exhibit. I would  
2 maybe like to make another Court's Exhibit, which is the  
3 information that was provided to me. It was basically a  
4 summary of officer disciplinary history, and then some  
5 indication from -- I think this was just typed up by  
6 mistake, indicating what those incidents were about. I  
7 would like to make those a Court's Exhibit, if possible.

8 THE COURT: Absolutely. That's no problem. This  
9 will be Court's 3, for the record. And you can pass it  
10 up to the court reporter.

11 THE COURT REPORTER: And that is one exhibit? Do  
12 you want this as one exhibit?

13 MR. WEHRMAN: Let's do it as two exhibits because  
14 one of them is just something that was a summary given to  
15 me by the State, and the other is -- appears to be an  
16 official summary from the police department.

17 THE COURT: Okay. 3 and 4, then. Court's 3 and 4.

18 MR. WEHRMAN: Okay. Thank you.

19 THE COURT: No problem.

20 [Off the record momentarily]

21 [Whereupon, Court's Exhibit Numbers 3 and 4 are  
22 marked by the court reporter]

23 THE COURT: Alright. They've been marked Court's 3  
24 and 4. My ruling stands, as I stated earlier. 403. I  
25 found it much more prejudicial than probative as to the

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1 facts of this case. So anything else before we break for  
2 lunch?

3 MR. HEGGELKE: No, Your Honor.

4 MR. WEHRMAN: I --

5 THE COURT: I know you have some motions you would  
6 probably like to make at this time.

7 MR. WEHRMAN: I do.

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State v Frankie Lee Davis, III  
Motion for Directed Verdict-Remarks by Mr. Wehrman  
March 7, 2019

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MOTION FOR A DIRECTED VERDICT

MR. WEHRMAN: I would move for a directed verdict, Your Honor. I move for a directed verdict on both charges but certainly on the resting arrest charge. And, again, this is the theme that you've heard from me this entire morning. But, you know, the law recognizes -- and I think that law is pretty well summarized in the proposed jury instructions, that an officer needs probable cause to make an arrest.

And we have to measure that probable cause at the time of the arrest. And we just heard from Officer Fusco that at the time that he went into arrest mode was when he was putting cuffs on Mr. Davis. And that was pretty much when Mr. Davis was identified as the guy who wasn't paying his bar tab.

Now, you know, I understand the State's argument that defrauding a business is a crime. I understand that that's -- I would not dispute that. My point, however -- my point in the probable cause argument is that's all we know, that there is a dispute about a bar tab. That's not necessarily defraud. Okay? And I think the -- I think common experience can tell us that there are a lot of reasons that a person might be disputing a bar tab. I think it's -- you know, was he not served what he wanted, was it an honest mistake? I don't even think it would be

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Motion for Directed Verdict-Remarks by Mr. Wehrman  
March 7, 2019

1 fraud for someone to order something, receive it, and  
2 then at that point realize that they don't have any money  
3 to pay for it. They would certainly owe the money, but  
4 that wouldn't be fraud because that has to do with intent  
5 at the time of the transaction. So there's numerous,  
6 innumerable reasons that this could have occurred.

7 I would point out that he has not left the bar.  
8 They had no information that he had ever tried to leave  
9 the bar, so there's no issue of absconding or sneaking  
10 out. I mean, that would certainly indicate some sort of  
11 fraudulent intent, but we don't have that here. We have  
12 basically knowledge of a disputed bar tab.

13 And, you know, to the extent the officer indicated  
14 that, you know, he took into account that Mr. Davis was  
15 kind of rowdy when he came out I mean, I don't know how  
16 probative that is on the issue of probable cause because  
17 I think you would expect that under all circumstances,  
18 you are all -- you would especially expect that if you  
19 were being pulled out for no reason and you haven't tried  
20 to defraud anybody.

21 So, you know, all in all, I don't think that there  
22 is evidence before the jury that -- even viewing it in  
23 the light most favorable to the State that supports --  
24 that supports a finding of probable cause in this case  
25 and, thus, I don't think there is evidence before the

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Motion for Directed Verdict-Remarks by Mr. Wehrman  
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1 jury that would support resisting arrest in this case.  
2 Now, on the gun, obviously, you know, they seem to be  
3 relying on the location. I would say that, you know,  
4 viewing it in the light most favorable to the State, that  
5 still doesn't explain how it wasn't discovered well  
6 beforehand; how Ms. Benware appears to be the -- Ms.  
7 Benware is the one person that says that she saw it.

8 Mr. Jackson also says he saw it now, but seems to be  
9 waffling on that. There's apparently a huge crowd. We  
10 haven't heard anything about that crowd. So I would  
11 argue that there's no evidence that could sustain a  
12 verdict on that charge, as well.

13 THE COURT: All right. Does the State want to  
14 respond?

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State v Frankie Lee Davis, III  
Motion for Directed Verdict-Remarks by Mr. Heggelke  
March 7, 2019

1 MR. HEGGELKE: Your Honor, as far as the resisting  
2 arrest, I mean, he's getting flagged down by the -- by a  
3 bouncer that works at the bar. As he comes to the door,  
4 the defendant is being basically carried out because he's  
5 refusing to cooperate with the bouncers.

6 He then confirms this is the guy that did not pay  
7 his tab. Now, I mean, as far as a totality of the  
8 circumstances, I don't know what else a -- or a bouncer  
9 needs, as far as defrauding an innkeeper, other than  
10 watching it himself, if he has witnesses saying this is  
11 the guy that did that. So as far as his argument that  
12 was it bad service, was it not what he ordered that would  
13 -- that would be a great argument for his municipal  
14 charges, not for this case.

15 And then going to the unlawful carry of pistol, we  
16 have Leanne, who testified that she saw it hit the  
17 ground, she saw him then try to kick it underneath the  
18 vehicle. And then we also have Officer Fusco, who said  
19 that in the -- that immediate area -- well, three  
20 witnesses said in that immediate area that he was the  
21 only layperson. And I'm pretty sure it wasn't a police  
22 officer's gun. So I would just say that we have proven  
23 there is evidence that he absolutely had a gun on his  
24 person and we've met our burden on both unlawful carrying  
25 and resisting arrest.

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Motion for Directed Verdict-Ruling by the Court  
March 7, 2019

1           THE COURT:  Alright.  I agree you've met your  
2 burden, at this point in time at least, to carry it over.  
3 I believe those are going to be questions for the jury.  
4 I think that there is at least some evidence in the  
5 record as to both of these charges.  Whether or not they  
6 meet the State's ultimate burden is going to be a  
7 question of fact for the jury.  So I'll carry it over.

8           Your directed verdict motions are respectfully  
9 denied at this time.

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1 [Whereupon, the jury enters at 1:23 p.m.]

2 THE BAILIFF: The jury all present, Your Honor.

3 THE COURT: Thank you very much. I appreciate that.  
4 Welcome back from lunch, ladies and gentlemen. All  
5 right. When we retired, the State rested.

6 Mr. Wehrman, do you have any witnesses you'd like to  
7 call?

8 MR. WEHRMAN: No, Your Honor.

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

10 MR. WEHRMAN: The defense rests.

11 THE COURT: Thank you very much.

12 All right. Ladies and gentlemen, once again, I hate  
13 to play musical chairs, we're going to ask you to step  
14 back out into your jury room and then we'll ask you to  
15 return momentarily. That's just how the process works.  
16 Thank you very much.

17 [Whereupon, the jury exits at 1:24 p.m.]

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State v Frankie Lee Davis, III  
Motion for Directed Verdict  
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1 MOTION FOR DIRECTED VERDICT

2 THE COURT: All right. I'm happy to hear from you.

3 Yes, sir.

4 MR. WEHRMAN: Your Honor, at this time I would renew

5 my directed verdict motion, as well as all prior motions

6 and objections I made. Again, the directed verdict

7 motion we discussed previously, and I would renew it on

8 those grounds and renew my objections throughout the

9 trial.

10 THE COURT: Okay. Any response from the State?

11 MR. HEGGELKE: No objection, Your Honor.

12 THE COURT: To their Motion for a Directed Verdict?

13 MR. HEGGELKE: Oh, for directed verdict? I

14 apologize.

15 THE COURT: That's okay. He just renewed his motion

16 for ---

17 MR. HEGGELKE: --- yeah ---

18 THE COURT: --- a directed verdict. Do you want to

19 respond? Go ahead.

20 MR. HEGGELKE: You know, throughout the testimony

21 and evidence presented, I think there is absolutely

22 probable cause to send the charges back for both

23 resisting arrest and unlawful carrying of pistol.

24 THE COURT: Okay. All right. Well, once again,

25 viewing the facts in the light most favorable to the

State v Frankie Lee Davis, III  
Motion for Directed Verdict  
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1 nonmoving party, which is the State, I respectfully deny  
2 your motion to -- for a directed verdict at this time on  
3 both charges. I find there is at least some evidence in  
4 the record which supports these charges going to the jury  
5 and the jury ultimately determining whether or not the  
6 State has proven these charges beyond a reasonable doubt.

7       Specifically as to the unlawful carrying of a pistol  
8 charge, with respect to your arguments, obviously the law  
9 doesn't require the gun to be on the person of the  
10 defendant, and there was testimony from the witness stand  
11 regarding the close proximity of the firearm to the  
12 defendant. Whether or not the jury attributes it to the  
13 defendant is ultimately going to be a question of fact  
14 for the jury to determine.

15       As to the resisting arrest charge, I've incorporated  
16 the charges, the specific jury request that you wanted me  
17 to incorporate with the charge into my overall charge. I  
18 think that would suffice. I do think there is evidence  
19 in the case that supports carrying that charge over to  
20 the jury, as well.

21       Your argument earlier about whether or not he had  
22 left the -- whether or not -- I guess you were talking  
23 about he hadn't left the door yet and the officer didn't  
24 know whether or not there was going to be sort of success  
25 on that underlying defrauding the restaurant charge. I

State v Frankie Lee Davis, III  
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1 don't find that the officer is really required to go  
2 through the entire mental process to determine whether or  
3 not there's a -- that charge would ultimately be  
4 successful, if you want to call it that. I think that,  
5 you know, based on his testimony, whether or not -- and  
6 once again, you know, if he had the probable cause to  
7 make the arrest is going to be within the purview of the  
8 jury.

9       So we'll incorporate the charge you requested and go  
10 from there. But, respectfully, your motion is denied.  
11 On top of those reasons, I wanted to set forth a little  
12 bit more specifically the facts upon which I was making  
13 that decision for the record.

14       MR. WEHRMAN: Thank you. Thank you, Your Honor.

15       THE COURT: Yeah. All right. Anything else?

16       MR. HEGGELKE: Nothing.

17       MR. WEHRMAN: Nothing from the defense.

18       THE COURT: All right. Do y'all need a break or are  
19 you ready? I know we just took a break.

20       MR. HEGGELKE: I'm ready, Your Honor.

21       THE COURT: You're ready to go forward?

22       MR. WEHRMAN: I'm ready, Your Honor.

23       THE COURT: You're all set? Okay.

24       All right. We can bring the jury back in, then.

25 Thank you very much.

State v Frankie Lee Davis, III  
Closing Arguments-Remarks by Mr. Heggelke  
March 7, 2019

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CLOSING ARGUMENT

BY MR. HEGGELKE:

All right. So it wasn't too long of a trial. Briefly, I'd like to start off just to go over the law with you again. And once again, you know; if I say anything that's anything different from what the judge says, listen to the judge, not me.

So he's charged with resisting arrest. And once again, there's three elements: that the defendant knowingly and willfully resisted an arrest by a person that the defendant knows or should know was a law enforcement officer.

Now, you saw his actions on the body-worn camera footage. You heard testimony from Leanne, the bartender, Garland, the bouncer, and the arresting officer, Officer Fusco. And you saw that they were wearing bright yellow uniforms. And there were glass windows immediately at the door. Now, you don't have to believe my words, because this defendant says it in his own words.

[Whereupon, a video clip plays]

MR. HEGGELKE: You're going to go to jail; no, I'm not. If that's not resisting, then I'm not real sure what is.

Now to go back to unlawful carrying of a pistol. Like I said in my opening, I have to prove that there was

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Closing Arguments-Remarks by Mr. Heggelke  
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1 a gun. The State doesn't have to show that it falls  
2 under the exception. There has been no evidence that  
3 he's fallen within any exception that is applicable to  
4 the statute. And I submit to you that I did prove that  
5 he had a gun.

6 You heard Leanne, who was out there as soon as he  
7 was exited out of the bar, who testified that she saw him  
8 reaching for his waistband and she saw the gun fall.  
9 Then you have the officer who stated that they received a  
10 firearm off the ground that was on his person. He  
11 recorded the serial number and placed it in his police  
12 report. We also heard that there was no one in that  
13 immediate capacity other than police officers and this  
14 defendant.

15 Now, the evidence presented: you have three pieces  
16 of evidence. You have the bar receipt, which you guys  
17 will later look at, and the drinks that he ordered. You  
18 will have the body-worn camera footage. That will have  
19 to remain in the courtroom for technology purposes but if  
20 you want to re-watch it, just let the bailiff know so  
21 that -- and you can re-watch it as many times as you  
22 want. And then the firearm which, for obvious reasons,  
23 won't be sent back. But, you know, if there's any  
24 questions about that, just tell the bailiff and we will  
25 address them.

State v Frankie Lee Davis, III  
Closing Arguments-Remarks by Mr. Heggelke  
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1           Now, as far as who you heard today: Officer Fusco,  
2 he testified that the defendant was combative, not  
3 compliant. You watched the body cam footage that  
4 depicted this. He was forced out of the club by the  
5 bouncers and immediately became more combative once he  
6 saw the police.

7           He then refused to even stand, to the point where  
8 more officers had to stop what they were doing to escort  
9 him over to a vehicle. And while they were escorting him  
10 over to the vehicle, what happens? A gun comes out. It  
11 makes sense why he's combative. It makes sense why he  
12 doesn't want to go in the back of the police car.

13           He knew he was going to jail for the drinks once he  
14 showed up -- when he got outside and saw the police.  
15 That's why he resisted, because he knew they were going  
16 to find that gun, whether it was going to be before he  
17 went to the car or when he got to the jail.

18           Now, lastly, you heard from -- or you heard from  
19 Garland Jackson. He stated that when it first was  
20 unfolding, you know, he was kind of walking towards the  
21 door, he really wasn't cooperating but wasn't being  
22 aggressive until he got to the other side and saw the  
23 police, once again. And he couldn't even just escort him  
24 out. You saw that he had to be physically removed.  
25 These are big guys. Obviously, I'm not a big guy.

State v Frankie Lee Davis, III  
Closing Arguments-Remarks by Mr. Heggelke  
March 7, 2019

1 Garland's a big guy. So imagine a packed bar where you  
2 have people his size trying to remove someone, people are  
3 trying to dance and enjoy their night. And he also  
4 stated, in various ways, that the defendant would not  
5 cooperate.

6 And then you heard from Leanne. She was the manager  
7 on duty and acting bartender. She said the defendant  
8 ordered drinks; he drank the drinks, was confronted with  
9 his bill, and refused to pay. You have the bar tab in  
10 evidence that'll list out that he had two shots of Fire  
11 Ball and a Budweiser. She further testified that she saw  
12 him reach for his waistband continuously during the  
13 struggle until he got onto the car.

14 I'm now going back to the body-worn camera. Now,  
15 it's in evidence and you can watch it in the courtroom if  
16 you need to again. And while it's not the best quality  
17 and it doesn't depict every single action, it still gives  
18 you what you need. You see the struggle. You hear him  
19 say, I'm not going to jail or, no, I'm not.

20 And you've just got to keep in mind you have an  
21 officer who is trying to make an arrest, with several  
22 other officers. And that's -- this is where it's  
23 strapped. So while it doesn't capture everything, it  
24 captures everything that you need to know.

25 And now I'm going to talk to you about reasonable

State v Frankie Lee Davis, III  
Closing Arguments-Remarks by Mr. Heggelke  
March 7, 2019

1 doubt. Reasonable doubt is proof that leaves you firmly  
2 convinced of the defendant's guilt.

3 Now, sometimes you'll hear reasonable doubt is the  
4 kind of doubt that would cause you to hesitate to act.  
5 Don't let that make you think that you can't go over it.  
6 I've heard some defense attorneys say that if you haven't  
7 made up your mind as soon as you get into the  
8 deliberation room that you hesitated. That is not true.  
9 You should deliberate. This is important. This is  
10 someone's right. Talk about the case. Deliberation is  
11 not hesitation.

12 And reasonable doubt is a high burden, as it should  
13 be, and it's a burden that we welcome. Now, if -- don't  
14 believe that it's an impossible burden. The burden is  
15 proof beyond a reasonable doubt, not all doubt. And if  
16 you knew for one hundred percent sure that he had a gun  
17 and he was resisting arrest, I would have called you to  
18 that stand.

19 I'm asking that you hold this defendant accountable  
20 for his actions and find him guilty on both charges.  
21 Thank you.

22 THE COURT: Yes, sir?

23 MR. WEHRMAN: Thank you, Your Honor.

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State v Frankie Lee Davis, III  
Closing Arguments-Remarks by Mr. Wehrman  
March 7, 2019

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CLOSING ARGUMENT

BY MR. WEHRMAN:

When we first spoke this morning, we talked about the importance of not rushing to conclusions. Now that we've seen everything that the State has chosen to show you, and we see everything they've presented, there is no way that Mr. Davis can be found guilty of these charges.

I'll take it one by one, just as Mr. Heggelke did. He did a little summary of the law, but as we both told you, the law that you are to use in this case is going to be what the Judge tells you at the end of this process. She's going to instruct you, I believe, that there is a right to resist an unlawful arrest and that if an arrest is not supported by probable cause, then that arrest is unlawful.

We've talked about what probable cause means, but I think you're going to hear that probable cause is defined as a good-faith belief that a person is guilty of a crime when that belief rests on facts that would induce an ordinarily prudent and cautious person, under the circumstances, to believe the person is guilty of a crime.

And in determining that, you can only look at the facts and circumstances that were known or should have been known to the officers at the time of the arrest. So

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1 that's a lot of legal jargon, but what it basically means  
2 is that considering all the circumstances that they knew  
3 at the time of the arrest, an ordinarily cautious,  
4 ordinarily reasonable, person would not be convinced that  
5 Mr. Davis had committed some sort of crime.

6       Again, we've got to focus on the time of the arrest.  
7 As I said, this is not a country where we can arrest  
8 first and ask questions later. Let's see exactly what  
9 happened in this case. You know, we heard from Officer  
10 Fusco what he knew at the time of the arrest. He knew  
11 basically that Mr. Davis hadn't paid his tab. That was  
12 about it. I asked him about the details.

13       I asked him if he knew anything about details, you  
14 know, did he know how this came to occur, did he know had  
15 Mr. Davis tried to evade, had he tried to leave the  
16 premises beforehand. I mean, it's suspicious enough that  
17 he's found inside the bar supposedly trying to get out of  
18 a bar tab. But we didn't hear anything about that.

19       Now, first of all, a reasonable person is going to  
20 understand that there's multiple sides to every story.  
21 You haven't even really heard the full side of the story  
22 today. I mean, Ms. Benware wasn't even the one who took  
23 the drink order. So we really don't fully know even  
24 today. But certainly at the time the officers were  
25 investigating this, they didn't know then. They hadn't

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1 talked to Ms. Benware. This tab that's in evidence is  
2 clearly something she stated she printed out after all  
3 this occurred. So they didn't know any of that.

4 And, you know, there's -- he's charged with  
5 defrauding a business. Now, there are many ways in which  
6 someone can be disputing a bar tab without committing  
7 fraud. We have -- we have no real information. And no  
8 information was certainly provided to the officers at the  
9 time as to whether the order was wrong, whether, you  
10 know, they refused him some sort of service, whether  
11 there was something on the tab that he didn't order.  
12 Even an honest mistake wouldn't be fraud. An honest  
13 mistake like leaving your credit card at home wouldn't be  
14 fraud.

15 There's dozens of ways, which probably play out on a  
16 regular basis every weekend on King Street, in which a  
17 bar tab can come into dispute, which don't amount to  
18 fraud. Fraud is entirely dependent on the circumstances  
19 that led to that dispute. It's entirely dependent on  
20 what led up to it and what Mr. Davis' intentions were at  
21 that time.

22 We don't have really evidence of that now, and the  
23 officers certainly didn't have evidence of that then.  
24 And yet, as you heard Officer Fusco say, he was in arrest  
25 mode. He said they indicated this is the guy with the

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1 tab dispute, and the cuffs went on. Now, again, that was  
2 not probable cause. If that was not enough to convince a  
3 reasonable person that he was guilty of a crime, then  
4 that's an unlawful and illegal arrest.

5 And Mr. Davis' resistance or not isn't exercising  
6 any rights that you and I and Mr. Davis all have, that  
7 right to resist an unlawful arrest. Now, even if you get  
8 past that issue, the issue of the unlawful arrest, you  
9 still have to be convinced that Mr. Davis was actually  
10 resisting, resisting beyond a reasonable doubt.

11 Now, you know, we all saw the video. We heard Mr.  
12 Davis crying out. We heard him saying that he can't  
13 stand up. We heard him saying that he's trying to roll  
14 over. We heard him saying that he's not resisting. We  
15 heard a lot about how many officers were involved, but  
16 we've only heard from one officer. We haven't seen the  
17 body cam of these other officers. We haven't been able  
18 to explore their perspective on the issue. We haven't  
19 heard from any of the other people in the crowd as to  
20 what is their perspective on the issue.

21 The State could have presented some of that evidence  
22 but they chose not to. So when you consider the thin  
23 slice of information we've been given, consider what we  
24 saw on that video, there's reasonable doubt as to whether  
25 Mr. Davis was resisting at all.

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1           Now, turning on to the gun charge here. You know,  
2 again, it's a simple -- it's a nice little story that  
3 they've laid out here and when you focus in and zoom in  
4 on their facts, that's the way that they want you to be  
5 convinced that, you know, it was found two feet away from  
6 him, Ms. Benware says she saw it, case closed.

7           But when you zoom out, when you take into account  
8 some of the other things that were said today, when you  
9 take into account some of the things that weren't said  
10 today, there is reason to doubt that account. There's  
11 reason to doubt the simple story that the State has  
12 presented.

13           You know, one thing you can take a look at, and I  
14 would invite you, just as the State has is to watch the  
15 video. You know, the theory here is obviously that it's  
16 in the waistband. I don't know how it gets out the  
17 bottom of his pants if it's in a pocket or something.  
18 There are some pretty great shots of his waistband on  
19 that video.

20           When he's coming out of the bar, you can see a  
21 pretty good shot of his waistband. When they've got him  
22 on the ground, you can see a pretty good shot of his  
23 waistband. But notice that his waistband is very low at  
24 that point, which, you know, his pants are practically  
25 falling off at that point, which might explain why he's

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1 reaching for the waistband or why there was testimony at  
2 least that he was reaching for his waistband. So you're  
3 free to explore that and I would encourage you to do so.

4 I would also suggest to you that if the gun was on  
5 him this entire time, it's very difficult to understand  
6 how, with the amount of people in the bar, with the  
7 crowd, and especially with the officers, where you can  
8 see on that video are right up on him for a long period  
9 of time, they never had any hint of this gun being in his  
10 waistband.

11 The only -- the only time it ever came up was when  
12 someone from outside the crowd indicated, supposedly that  
13 they had seen it drop. Swoop -- and in swoops another  
14 officer, that wasn't even involved in the situation, and  
15 pulls out this gun.

16 Now, you know, Officer Fusco even noted that in  
17 searching him said there's nothing on his left side. And  
18 I -- he kind of went back on that and said, well, we  
19 hadn't fully completed it. Well, he had completed it  
20 enough to conclude that there was nothing on his left  
21 side, I'll tell you that.

22 You can hear some discussion about his right side,  
23 as well. Nevertheless, none of those officers are the  
24 ones that find the gun. The real source of the gun idea  
25 in this case appears to be Ms. Benware, who says that she

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1 saw it drop and notified an officer. Now, keep in mind  
2 there's apparently a huge crowd out here, yet it's Ms.  
3 Benware, the same person who was getting him kicked out  
4 in the first place, the same person who had started this  
5 whole process of him getting arrested in the first place,  
6 is the one who sees it drop and sees the gun and notified  
7 the officers.

8 You know, interestingly enough, she apparently  
9 notified an officer. We haven't heard from that officer.  
10 Presumably, they have body cam video. Presumably, it was  
11 available. And yet we haven't heard it.

12 Now, we did hear testimony from Mr. Jackson and he  
13 kind of said he saw the gun. I think he -- we determined  
14 that there were about three conversations that we need to  
15 take into account: his initial conversation with Officer  
16 Fusco, which between hearing from Office Fusco describe  
17 what he stated in that conversation and between hearing  
18 Mr. Jackson say what he said in that conversation, we  
19 know now that Officer Fusco stated that guy had a gun.

20 Officer Fusco stated that it fell out of his -- it  
21 fell out while we were searching him and kicked it under  
22 our car. Now, it's a time period later when we actually  
23 get the statement from Mr. Jackson. Mr. Jackson says he  
24 knew it all along. But then he tells the officer, oh,  
25 yeah, I saw him, I saw him when they were struggling with

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1 it and I saw it drop and hit the ground. Now, even that  
2 he can't remember today but says, well, I saw it on the  
3 ground, I can't say that I necessarily saw it drop.

4 So Mr. Jackson, for as much as he tried, can't  
5 really get the story straight. So I'm not sure how we  
6 can -- how much we can even take from Mr. Jackson. And,  
7 again, I would highlight that Mr. Jackson works for the  
8 Silver Dollar. This is the establishment that is trying  
9 to get Mr. Davis taken away and arrested in the first  
10 place.

11 So those are the problems with the State's evidence.  
12 But there's also problems with the evidence that they  
13 didn't highlight, the evidence that wasn't presented to  
14 us. I believe we heard that the Silver Dollar has  
15 surveillance cameras. Those haven't been presented.  
16 It's not clear that they were even ever retrieved.

17 I've noted the number of the officers on the scene.  
18 We heard there are CPD, Charleston Police Department,  
19 policies about body cameras. We haven't seen any body  
20 cameras from the other officers on the scene. And we  
21 know there's about a half a dozen of them. We haven't  
22 heard from those officers.

23 We've heard about the crowd. Again, we haven't --  
24 we haven't been able to have any conversation with other  
25 folks from the crowd, maybe those who weren't involved

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1 with the Silver Dollar Club. We heard a little bit about  
2 forensic evidence. We found out the forensic evidence  
3 doesn't tie Mr. Davis to this -- to this gun at all.  
4 Fingerprints were done and apparently they came back  
5 without any match to Mr. Davis.

6 I don't know that Officer Fusco was even terribly  
7 clear on whether they even tried to do a DNA check or if  
8 they tried to trace the gun using the serial number. But  
9 I would suggest to you that if they did, they must not  
10 have liked the evidence because it's not here before us  
11 today.

12 There's also an odd issue with this liquor bottle.  
13 You know, it's curious to me why Mr. Davis would tell  
14 them about the liquor bottle. He tells them about the  
15 liquor bottle well in advance of anyone finding the gun.  
16 So, I mean, maybe he was telling them about the liquor  
17 bottle after he ditched the gun. That doesn't make any  
18 sense, because I believe he says that at first when we're  
19 on the ground, and certainly when they're beginning to  
20 search him.

21 I would encourage you to look for that on the video,  
22 as well. But he tells them about a liquor bottle in his  
23 pocket, so he's basically giving them a reason to search  
24 him. Now, I don't -- I don't know why someone who  
25 supposedly knows from the get-go once he sees through the

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1 windows that these officers are going to find this gun is  
2 then so inclined to indicate, oh, yeah, there's a liquor  
3 bottle on me. But he says it.

4 So when we zoom back, when we look at all of the  
5 evidence the State has provided, when we look at -- when  
6 we consider the evidence that the State hasn't provided  
7 you, and consider everything in context, one thing is  
8 clear, and that is that this case is not so simple at  
9 all. It's not as simple as we first thought.

10 When we consider everything, there is reasonable  
11 doubt in this case. You know, reasonable doubt is a  
12 strong standard. It's a high standard. And reasonable  
13 doubt means that even if you're willing to overlook all  
14 the problems I discussed with the State's case, all the  
15 problems with what they did and didn't present, and you  
16 may be thoroughly convinced that probably it was -- it  
17 was Mr. Davis' gun, although I don't know how you can be.

18 But even if you think that, probably is not enough.  
19 You have to be firmly convinced. You will hear that in  
20 the jury charge from the Court shortly. You have to be  
21 firmly convinced to be convinced beyond a reasonable  
22 doubt. Ladies and gentlemen, if you cannot be firmly  
23 convinced on either of the charges in this case and I ask  
24 that you return a verdict of not guilty on both charges.  
25 Thank you.

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JURY CHARGE

THE COURT: All right. Ladies and gentlemen, it now becomes my duty as trial Judge, under the Constitution of this state, to charge and instruct you on the law applicable to this case. It's your duty as jurors to accept and apply the law as the Court will now state it to you, and your exclusive duty to determine the effect -- the effect, the value, the weight, and the credibility of the evidence.

Both the State and Mr. Davis have a right to expect that you will conscientiously consider and evaluate the evidence and apply the law of the case thereto, and to that end both parties will receive and obtain a fair and impartial trial in this case.

When I use the word defendant, I refer to Mr. Davis. The defendant here has been accused in what we call indictments. Each indictment is a piece of paper on which accusations against defendants are placed. They are not exhibits. They are not evidence in the case.

The indictments in this case allege two separate offenses against the defendant. The charges are, number one, resisting arrest, number two, unlawful carrying of a pistol. Each indictment contains a separate and distinct offense. You must decide each indictment separately on the evidence and the law applicable to it, uninfluenced

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1 by your decision as to any other indictment. The  
2 defendant may be convicted or acquitted on any or all of  
3 the offenses charged. You will be asked to write a  
4 separate verdict of guilty or not guilty for each  
5 indictment.

6 Now, to these indictments the defendant has rendered  
7 a plea of not guilty, which then places upon the State  
8 the burden of proving beyond a reasonable doubt that the  
9 defendant is guilty. In this state and in this country,  
10 a person who is accused with the commission of a criminal  
11 offense is never required to come in and prove himself or  
12 herself innocent.

13 This principle of law is called the presumption of  
14 innocence. Each of you is required under our law and by  
15 your oath to actively presume that the defendant is not  
16 guilty. The presumption of innocence is maintained at  
17 all times throughout the trial of this case and is only  
18 removed when and if the State brings in enough evidence  
19 to persuade you beyond all reasonable doubt that the  
20 defendant is guilty.

21 So what is reasonable doubt? A reasonable doubt is  
22 a doubt which makes an honest, sincere, conscientious  
23 juror hesitate to act. Proof beyond a reasonable doubt  
24 is proof that leaves you firmly convinced of the  
25 defendant's guilt. There are very few things in this

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1 world that we know with absolute certainty, and in  
2 criminal cases the law does not require proof that  
3 overcomes every possible doubt. If based on your  
4 consideration of the evidence you are firmly convinced  
5 that the defendant is guilty of the crime charged, you  
6 must find him guilty.

7 If, on the other hand, you think there is a real  
8 possibility that he is not guilty, you must give him the  
9 benefit of the doubt and find him not guilty. Reasonable  
10 doubt may arise from evidence which is in the case or  
11 from the lack or absence of evidence in the case. It's  
12 up to you, ladies and gentlemen, to determine whether a  
13 reasonable doubt exists as to the guilt of this  
14 defendant.

15 I charge you that the defendant is entitled to every  
16 reasonable doubt arising in the whole case. If upon any  
17 issue of fact essential to conviction and a verdict of  
18 guilty you have a reasonable doubt as to how that issue  
19 should be resolved, it would be your duty to resolve that  
20 reasonable doubt in favor of the defendant.

21 As the sole fact finders, you should have listened  
22 closely to the evidence presented. Weighing the evidence  
23 is entirely a mental process. You must weigh the  
24 evidence using your good judgment and your common sense.

25 Ladies and gentlemen, cases can be presented or

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1 evidence can be presented in one of two ways: direct  
2 evidence or indirect evidence, which is also known as  
3 circumstantial evidence. Direct evidence is when someone  
4 comes in and testifies to the commission of a crime that  
5 they have perceived through their own senses.

6 For example, if a witness saw someone commit a  
7 crime. Indirect evidence or circumstantial is when  
8 someone testifies as to different events that occur and  
9 when you link all of them, they point to the commission  
10 of a crime. One or both methods can be used to present a  
11 case.

12 Crimes may be proven by circumstantial evidence.  
13 The law makes absolutely no distinction between the  
14 weight or value to be given to either direct or  
15 circumstantial evidence, nor is a greater degree of  
16 certainty required of circumstantial evidence than of  
17 direct evidence.

18 You should weigh all the evidence in the case. To  
19 the extent the State relies on circumstantial evidence,  
20 the law says it has to meet a certain test. First, the  
21 State has to prove each event or circumstance it relies  
22 on beyond a reasonable doubt. Additionally, the facts  
23 must point conclusively to the guilt of the accused  
24 beyond a reasonable doubt and they must be wholly,  
25 perfectly consistent with each other in every particular

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1 respect. The mere fact that circumstances brought out in  
2 a case are strongly suspicious of guilt or the  
3 circumstances are such that a defendant's guilt is  
4 probable is not enough.

5 If these circumstances merely portray a defendant's  
6 behavior as suspicious, the proof has failed. That is  
7 not sufficient to sustain a conviction because the proof  
8 offered by the State has to be more than suspicion. It  
9 has to be more than someone being probably guilty. It  
10 has to be proof that satisfies you beyond a reasonable  
11 doubt.

12 The State has the burden of proving the defendant  
13 guilty beyond a reasonable doubt. This burden rests with  
14 the State regardless of whether the State relies on  
15 direct evidence, circumstantial evidence, or some  
16 combination of the two.

17 The evidence you are to consider consists of the  
18 testimony of the witnesses and the exhibits that have  
19 been offered and received during the trial. Any rulings  
20 or matters that may have been excluded from the record  
21 are not to be considered by you in any fashion.

22 If it appears to you that I have commented, either  
23 during the trial or the giving of these instructions, you  
24 must disregard any comment entirely. Also, the remarks  
25 of the attorneys are not evidence. Their statements and

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1 their arguments are intended to help you understand the  
2 evidence and apply the law. You should disregard any  
3 remark, statement, or argument which is not supported by  
4 the evidence or the law as given to you by the Court.

5       So how do you decide the facts of the case? You do  
6 it through your exercise of your good judgment and your  
7 common sense, your sense of logic and reasoning, and your  
8 experiences in everyday life. Each day in your lives you  
9 judge credibility. You make decisions with regard to  
10 whether people are believable, persuasive, convincing or  
11 not.

12       You do the same thing as a juror. In deciding  
13 believability, you might consider what was the manner and  
14 appearance of the witness who testified. Was he or she  
15 straightforward or hesitant in answering? Was the  
16 testimony of a witness consistent or inconsistent? How  
17 did the witness come to know the facts that he or she  
18 testified to, or what was his or her ability to know  
19 these facts? Is there some reason a witness would want  
20 to give testimony which would help or hurt one side or  
21 the other?

22       In other words, was the witness biased or  
23 prejudiced? In making this determination, you may  
24 consider whether a particular witness has a motive to  
25 testify favorably for one party versus the other. Thus,

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1 you may consider whether a particular witness may gain  
2 some other reward, a payment, a personal advantage, or a  
3 vindication through testimony.

4 In determining the question of credibility or  
5 believability of a witness, you may believe one witness  
6 as against several or several witnesses as against one.  
7 You might believe a part of the testimony of a witness  
8 and reject another part of the testimony of that same  
9 witness.

10 You might believe the testimony of a witness in its  
11 entirety or reject the testimony of a witness in its  
12 entirety. You are to consider all the evidence in this  
13 case and determine -- and determine what you believe to  
14 be the facts in this dispute.

15 If you believe there has been evidence presented  
16 that witnesses have made prior statements which are not  
17 consistent with the witnesses' present testimony, you may  
18 use this evidence to decide whether to believe the  
19 witness. You may also use this evidence of the earlier  
20 contradictory statements to determine the truth of those  
21 statements.

22 It is up to you to decide whether to believe the  
23 earlier statement or the testimony given at trial. If a  
24 witness is shown to have knowingly testified untruthfully  
25 concerning any material matter, you may consider this in

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1 determining whether or not you trust the witness'  
2 testimony as to other matters. You may reject all  
3 testimony of a witness or give all or part of the  
4 testimony the weight that you think it deserves.

5 I instruct you and emphasize that the fact that the  
6 defendant did not testify is not a factor to be  
7 considered by you in any way in your deliberations and in  
8 your consideration on the question of the guilt or  
9 innocence of the defendant. It must not be considered by  
10 you in any manner whatsoever. A defendant has a  
11 constitutional right to remain silent and the assertion  
12 of this right must not be considered by you in your  
13 deliberations.

14 I repeat, you are to draw no conclusion whatsoever  
15 from the fact that the defendant in this case did not  
16 testify. The fact that this defendant did not testify  
17 should not even be discussed in the jury room. The  
18 burden of proof, as I have stated to you, is on the  
19 State. The defendant is not required to prove his  
20 innocence. The burden of proof remains on the State to  
21 prove guilt beyond a reasonable doubt.

22 Now, I have the additional duty to charge you on the  
23 law applicable to this case. As the presiding Judge, I  
24 am the sole judge of the law on this case and it is your  
25 duty as jurors to accept and apply the law as I now state

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1 it to you. As I've already told you, you are given a  
2 wide latitude in regard to determining believability and  
3 determining the facts in the case.

4 When it comes to the law, however, you have to  
5 accept the following legal principles as I now give them  
6 to you. You obviously can't change the law. You must  
7 take the law as I give it to you. You find the facts as  
8 you see them and then you apply the law to those facts,  
9 and that's the way you reach your verdict.

10 The defendant is charged with resisting arrest. The  
11 State must prove beyond a reasonable doubt that the  
12 defendant resisted a lawful arrest being made by a person  
13 the defendant knew, or reasonably should have known, was  
14 a law enforcement officer.

15 Knowingly means with knowledge, or consciously done.  
16 Willfully means done intentionally and not done by  
17 accident. Resist means to oppose, strive against, or  
18 obstruct. Obstruct means to impede, hinder, or interfere  
19 with. Even peaceful, nonviolent, indirect obstruction of  
20 an arrest or the service or execution of process is  
21 considered resisting arrest.

22 If the means used are sufficient to prevent the  
23 officer from making an arrest, the defendant is guilty of  
24 resisting arrest. A person has a right to resist an  
25 unlawful arrest. An arrest is unlawful if it is not

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1 supported by probable cause. Probable cause is defined  
2 as a good faith belief that a person is guilty of a crime  
3 when this belief rests on facts that would induce an  
4 ordinarily prudent and cautious person under the same  
5 circumstances to believe the person is guilty of a crime.  
6 In determining probable cause, only those facts and  
7 circumstances that were or should have been known to the  
8 officer at the time of the arrest should be considered.

9       The defendant is also charged with unlawful carrying  
10 of a pistol. The State must prove beyond a reasonable  
11 doubt that the defendant carried a pistol about his  
12 person, whether concealed or not. A weapon is about the  
13 defendant's person if it is readily accessible and  
14 convenient for immediate use. The pistol need not be  
15 actually touching the defendant.

16       Ladies and gentlemen, you are not partisans or  
17 advocates for the State of South Carolina or this  
18 defendant. You don't serve as jurors to reward friends,  
19 punish enemies -- or punish enemies; excuse me. You have  
20 been selected by both the State and this defendant as  
21 fair and impartial jurors.

22       It is your duty, then, by your joint deliberations,  
23 to determine the facts in this case, giving to this  
24 defendant the benefit of every reasonable doubt. Then,  
25 to the facts which you determine, you take and apply the

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1 law which has been given to you by me and thus arrive at  
2 a verdict. When you have accomplished this and written  
3 your verdict, you will have satisfied your oath you took  
4 as jurors and you will have discharged your duty to the  
5 State, to Mr. Davis, and to the Court.

6 There are several possible verdicts which you may  
7 find in this case. And there's no significance  
8 whatsoever in the order in which I state the possible  
9 verdicts. It's simply that one must be stated first.  
10 You'll receive two verdict forms, one for each charge, as  
11 I stated earlier.

12 The first verdict form states we, the jury, by  
13 unanimous consent, find the defendant, Frankie Lee Davis,  
14 III, on the charge of unlawful carrying of a pistol,  
15 either guilty or not guilty, and then the foreperson  
16 would sign and date the form. You go to the next verdict  
17 form. This states we, the jury, by unanimous consent,  
18 find the defendant, Frankie Lee Davis, III, on the charge  
19 of resisting arrest, once again, guilty or not guilty,  
20 and then once again the foreperson would sign and date  
21 the form.

22 Ladies and gentlemen, your verdict must be a  
23 unanimous one, meaning all twelve of you must agree.  
24 Madam Foreperson, when the jury agrees on the verdicts,  
25 you will indicate by checking the line next to the

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1 verdicts and signing your name as foreperson, then knock  
2 on the jury room door and tell the bailiff that you have  
3 reached a verdict. At that time, we will receive you  
4 back into the courtroom.

5 I ask now that you return to your jury room but do  
6 not begin deliberations yet until you are told to do so  
7 by the Clerk or bailiff. There are some additional  
8 matters which must be discussed with these attorneys  
9 before you begin your deliberations.

10 Thank you very much.

11 [Whereupon, the jury exits at 2:02 p.m.]

12 THE COURT: Make sure you pull the two alternates  
13 aside.

14 All right. Any exceptions or objections from the  
15 charges read from the Court. From the State?

16 MR. HEGGELKE: No, Your Honor.

17 THE COURT: Any from the defense?

18 MR. WEHRMAN: No, Your Honor.

19 THE COURT: Okay. All right. I'll allow y'all now  
20 to review the evidence that's going to go back to the  
21 jury and make sure you have both seen what will be sent  
22 back.

23 I will also give the bailiff the verdict forms at  
24 this time. And if you can bring the alternates in here?  
25 Any objection to me releasing the alternates at this

State v Frankie Lee Davis, III  
Verdict  
March 7, 2019

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VERDICT

[Whereupon, a verdict is reached at 4:25 p.m.]

THE COURT: Okay. I understand that the jury has reached a verdict, so if you'll bring the jury back in, that would be great.

[Whereupon, the jury enters at 4:31 p.m.]

THE BAILIFF: All present, Your Honor.

THE COURT: Thank you very much. Madam Foreperson, have you reached a verdict?

THE FOREPERSON: Yes, we have.

THE COURT: Okay. If you can hand those forms to the bailiff, he will then hand them to me and I will hand them to the Clerk for publication.

[Whereupon, the foreperson proffers documents to the bailiff]

[Whereupon, the bailiff proffers documents to the Court]

THE COURT: Thank you.

[Whereupon, the Court reviews documents]

[Whereupon, the Court proffers documents to the Clerk of Court]

THE COURT: If the defendant will please rise.

[Whereupon, the defendant complies]

CLERK OF COURT: On indictment number 2018-GS-10-06275, we, the jury, by unanimous consent, find the

State v Frankie Lee Davis, III  
Verdict  
March 7, 2019

1 defendant, Frankie Lee Davis, III, on the charge of  
2 resisting arrest, guilty. Signed by the Foreperson on  
3 March the 7th, 2019.

4 On indictment number 2018-GS-10-06274, we, the jury,  
5 by unanimous consent, find the defendant, Frankie Lee  
6 Davis, III, on the charge of the unlawful carrying of a  
7 pistol, not guilty. Signed by the Foreperson on March  
8 the 7th, 2019.

9 THE COURT: Thank you very much. Madam Foreperson,  
10 is that your verdict?

11 THE FOREPERSON: Yes, it is, Your Honor.

12 THE COURT: All right. Any post-verdict motion from  
13 the State?

14 MR. HEGGELKE: No, Your Honor.

15 THE COURT: Any from the defense?

16 MR. WEHRMAN: Your Honor, we'd like to poll the  
17 jury.

18 THE COURT: As to the resisting arrest charge?

19 MR. WEHRMAN: As to the resisting arrest charge.

20 THE COURT: Okay. All right. Go ahead.

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State v Frankie Lee Davis, III  
Polling of the Jury  
March 7, 2019

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POLLING OF THE JURY

CLERK OF COURT: Ladies and gentlemen, I'm going to ask you each two questions: is this your verdict; and is this still your verdict. Please answer each question appropriately. Also, please stand when I call your juror number.

Juror Number 341, is this your verdict on the -- on the one guilty charge?

JUROR NUMBER 341: Yes.

CLERK OF COURT: Is it still your verdict?

JUROR NUMBER 341: Yes.

CLERK OF COURT: Thank you. Juror Number 119, is this your verdict?

JUROR NUMBER 119: Yes.

CLERK OF COURT: Is this still your verdict?

JUROR NUMBER 119: Yes.

CLERK OF COURT: Thank you, sir. Juror Number 289, is this your verdict?

JUROR NUMBER 289: Yes.

CLERK OF COURT: Is this still your verdict?

JUROR NUMBER 289: Yes.

CLERK OF COURT: Thank you. Juror Number 50, is this your verdict?

JUROR NUMBER 50: Yes.

CLERK OF COURT: Is this still your verdict?

State v Frankie Lee Davis, III  
Polling of the Jury  
March 7, 2019

1 JUROR NUMBER 50: Yes.  
2 CLERK OF COURT: Thank you. Juror Number 44, is  
3 this your verdict?  
4 JUROR NUMBER 44: Yes.  
5 CLERK OF COURT: Is this still your verdict?  
6 JUROR NUMBER 44: Yes.  
7 CLERK OF COURT: Thank you. Juror Number 102, is  
8 this your verdict?  
9 JUROR NUMBER 102: Yes.  
10 CLERK OF COURT: Is this still your verdict?  
11 JUROR NUMBER 102: Yes.  
12 CLERK OF COURT: Thank you. Juror number 146, is  
13 this your verdict?  
14 JUROR NUMBER 146: Yes, ma'am.  
15 CLERK OF COURT: Is this still your verdict?  
16 JUROR NUMBER 146: Yes, ma'am.  
17 CLERK OF COURT: Thank you. Juror Number 156, is  
18 this your verdict?  
19 JUROR NUMBER 156: Yes.  
20 CLERK OF COURT: Is this still your verdict?  
21 JUROR NUMBER 156: Yes.  
22 CLERK OF COURT: Thank you. Juror Number 256, is  
23 this your verdict?  
24 JUROR NUMBER 256: Yes.  
25 CLERK OF COURT: Is this still your verdict?

State v Frankie Lee Davis, III  
Polling of the Jury  
March 7, 2019

1 JUROR NUMBER 256: Yes.

2 CLERK OF COURT: Thank you. Juror Number 238, is  
3 this your verdict?

4 JUROR NUMBER 238: Yes.

5 CLERK OF COURT: Is this still your verdict?

6 JUROR NUMBER 238: Yes.

7 CLERK OF COURT: Thank you. Juror Number 347, is  
8 this your verdict?

9 JUROR NUMBER 347: Yes, ma'am.

10 CLERK OF COURT: Is this still your verdict?

11 JUROR NUMBER 347: Yes.

12 CLERK OF COURT: Thank you. Juror Number 57, is  
13 this your verdict?

14 JUROR NUMBER 57: Yes.

15 CLERK OF COURT: Is this still your verdict?

16 JUROR NUMBER 57: Yes.

17 CLERK OF COURT: Your Honor, the jury has been  
18 polled and the verdict stands.

19 THE COURT: Thank you very much. Any further  
20 motions from the defense?

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State v Frankie Lee Davis, III  
Motion for New Trial  
March 7, 2019

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MOTION FOR A NEW TRIAL

MR. WEHRMAN: Your Honor, I would move for a new trial on the resisting arrest charge based on all my prior pretrial motions, motions during the trial, as well as the -- including the motion that was heard by Judge Dennis, and all objections, as well, Your Honor.

THE COURT: Thank you very much. Your motion is noted for the record and denied for all the previous reasons set forth during the course of the trial that we have put on the record.

All right. Thank you very much. Appreciate it.

The defendant may be seated at this point in time.

[Whereupon, the defendant complies]

THE COURT: Ladies and gentlemen, at this point in time I'm going to move to the sentencing phase of the trial, which is the next phase, and you absolutely don't have to stay for this part. But you can if you want to but you're not held hostage in here by any means.

On behalf of the State of South Carolina and the defendant, we appreciate your time and consideration in serving on a jury this week but your jury service has now been rendered and you are free to leave. Thank you very much.

[Whereupon, the jurors exit at 4:36 p.m.]

State v Frankie Lee Davis, III  
Sentencing  
March 7, 2019

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SENTENCING

THE COURT: All right. Does the Solicitor's Office have a sentencing sheet on the resisting arrest?

MR. HEGGELKE: I do, Your Honor.

THE COURT: All right.

MR. HEGGELKE: If I may approach?

THE COURT: Yes.

[Whereupon, Mr. Heggelke proffers documents to the Court]

[Whereupon, the Court reviews documents]

THE COURT: All right. Anything from the State? Obviously, I've heard the facts during the course of the trial. Is there anything else you would like to present by way of sentence for the sentencing phase of the trial, such as a record or anything of that nature?

MR. HEGGELKE: Yes, Your Honor, his prior record. In 2004 he has a B&E motor vehicle, two counts of simple assault; 2006 he has a possession of cocaine, failure to stop for a blue light, grand larceny, and burglary third, he also has a receiving stolen goods of more than 1,000; in 2008 he had a parole revocation; 2013 he had unlawful carrying of a weapon and a DUS; in 2014 he had a shoplifting enhancement and a strong-arm robbery; and in 2015 a probation violation. And he's on probation right now.

State v Frankie Lee Davis, III  
Sentencing  
March 7, 2019

1 THE COURT: Was he on probation at the time of this  
2 offense?

3 MR. HEGGELKE: Yes.

4 THE COURT: Okay. What was the sentence on the  
5 strong-arm robbery and shoplifting in 2014?

6 MR. HEGGELKE: I believe it was ten years suspended  
7 on the service of five years' probation.

8 THE COURT: All right. Anything else you want to  
9 tell me before I switch it over?

10 MR. HEGGELKE: No, Your Honor.

11 [Whereupon, Probation proffers documents to the  
12 Court]

13 THE COURT: All right. I'm being handed a probation  
14 violation report. All right. Mr. Wehrman, was your  
15 client aware this would constitute a violation of his  
16 probation?

17 MR. WEHRMAN: He is, Your Honor.

18 THE COURT: Okay. What would you like to tell me at  
19 this time?

20 MR. WEHRMAN: Your Honor, well, obviously sentencing  
21 after a trial is a little bit awkward because we do  
22 maintain innocence here. But what I can tell you ---

23 THE COURT: --- certainly ---

24 MR. WEHRMAN: --- obviously is that he has served  
25 some time on this charge. He served 201 days on this

State v Frankie Lee Davis, III  
Sentencing  
March 7, 2019

1 charge, and we would ask that that be taken into account.  
2 You know, by my calculations, that nearly, you know,  
3 maxes out what he would be getting with the credit from  
4 SCDC.

5 On the probation revocation, I can tell you that  
6 he's also served a very considerable amount --  
7 considerable amount of time on that. By my calculation,  
8 he would have 1,566 days of pretrial and he was also  
9 revoked one year, so it's really a nine-year sentence at  
10 this point, not a ten-year sentence.

11 THE COURT: Uh-huh.

12 MR. WEHRMAN: So taking all that into account, I did  
13 a little bit of math. Basically, if he had just done  
14 straight ten years when he was sentenced on the strong-  
15 arm robbery, my calculation -- which really, SCDC  
16 calculator's calculation, then he would have been out  
17 possibly as early as 2017. You know, I think at this  
18 point he might have actually served more time by having  
19 gone through the probation route.

20 You know, I can tell you that his girlfriend, who  
21 I've been in pretty constant contact with throughout this  
22 case, lives in Austin, Texas, with several children and I  
23 know that the family would really love for him to be able  
24 to get out there whenever he is allowed to be released.  
25 I would suggest that the probation issue just be

State v Frankie Lee Davis, III  
Sentencing  
March 7, 2019

1 terminated. The theory behind that is that, you know, he  
2 can do in-state, he can be on probation, after whatever  
3 sentence you give on the unlawful carry charge is, you  
4 know...

5 THE COURT: Resisting arrest.

6 MR. WEHRMAN: Sorry; resisting arrest charge. I  
7 mixed our charges here.

8 On the resisting arrest charge, it's just going to  
9 further complicate matters. I think that, you know, he  
10 has served a considerable amount of time on that sentence  
11 already and I think that the best thing for him is to  
12 have a fresh start as quickly as possible.

13 So we would certainly ask for his 201 days to be  
14 factored into his sentence on the resisting arrest  
15 charge. We would ask that Your Honor take in  
16 consideration the possibility really just that letting  
17 him press the reset button when he serves out his  
18 sentence on that charge and really just doing away with  
19 his probation, which has had obviously sort of a  
20 complicated history.

21 THE COURT: Okay. Let me hear from the probation  
22 agent on this probation issue.

23 AGENT HOLMES: Yes, Your Honor. Good afternoon.

24 Mr. Frankie Lee Davis, he's on probation for strong-  
25 armed robbery in which he was sentenced on May 8th of

State v Frankie Lee Davis, III  
Sentencing  
March 7, 2019

1 2014. The end date would be November the 6th of 2019.  
2 He was sentenced by The Honorable Judge Dennis to ten  
3 years suspended with five years' probation.

4 As the defense stated, he was previously revoked and  
5 his probation was tolled at that time by Judge Dennis on  
6 3/3 of 2015.

7 He did have an administrative hearing in front of  
8 Hearing Officer Gedalia [phonetic] in which she  
9 recommends a revocation in full.

10 THE COURT: When was that?

11 AGENT HOLMES: That hearing took place on August  
12 24th of 2018 and it was based off of the pending charges.

13 THE COURT: Okay. All right. Anything else? I'll  
14 let you respond to the probation agent.

15 MR. WEHRMAN: Your Honor, I would just note that  
16 obviously the hearing officer's recommendation would have  
17 been based on both charges he was just acquitted for and  
18 I would ask that the Court take that into account.

19 THE COURT: All right. Officer not around anymore?  
20 The victim statement for the resisting arrest charge ever  
21 taken?

22 MR. HEGGELKE: He's taking a class, Your Honor.

23 THE COURT: Okay. He didn't provide you a statement  
24 or anything like that?

25 MR. HEGGELKE: No, he did not.

State v Frankie Lee Davis, III  
Sentencing  
March 7, 2019

1 THE COURT: Okay. Just wanted to make sure.  
2 He served, on the probation; you said a thousand and  
3 something days at this point is your calculation?  
4 MR. WEHRMAN: Well over, Your Honor. He ---  
5 THE COURT: --- 1,566 days?  
6 MR. WEHRMAN: Yes. Yes. That is my calculation.  
7 And I will say that it is, as I said, complicated. I've  
8 done my best to make that accurate. I had some  
9 conversations with the folks from SCDC about that as to  
10 how that would be calculated. But that's my best  
11 estimate.  
12 THE COURT: Is that almost five years? I mean, I  
13 don't have a calculator in front of me. How is that, if  
14 he's only been revoked for one year?  
15 MR. WEHRMAN: Most of it is -- well, a lot of it is  
16 in County time. So he came in with I believe -- I  
17 believe the initial sentence, he was given 904 days  
18 credit or something like that.  
19 THE COURT: Uh-huh.  
20 MR. WEHRMAN: On Judge Dennis' first sentence.  
21 THE COURT: --- oh ---  
22 MR. WEHRMAN: --- so a lot of it predates it.  
23 There were also -- there were also charges that, you  
24 know, didn't result ---  
25 THE COURT: --- so at the time of sentencing he had

State v Frankie Lee Davis, III  
Sentencing  
March 7, 2019

1 already served 900 of those 1500 days.

2 MR. WEHRMAN: He had served 900 at the time of  
3 sentencing ---

4 THE COURT: --- that explains it ---

5 MR. WEHRMAN: --- and a lot of that is also County  
6 time.

7 THE COURT: That explains it.

8 MR. WEHRMAN: That does not factor in the one-year  
9 revocation.

10 THE COURT: From some other charges I assume he's  
11 picked up along the way, so he served County time.

12 MR. WEHRMAN: They have been disposed of ---

13 THE COURT: --- right ---

14 MR. WEHRMAN: --- and in some cases nol prossed.

15 THE COURT: Nol prossed. Okay. I'm just trying to  
16 figure out where he got to that number.

17 MR. WEHRMAN: Yes, Your Honor.

18 THE COURT: All right. Thank you for that. I  
19 appreciate it.

20 Okay. Sentence of the Court on indictment 2018-GS-  
21 10-06275, resisting arrest, of course this carries zero  
22 to one year, is that you be committed to the State  
23 Department of Corrections for a term of one year. You'll  
24 get credit for the 201 days you served on that charge.

25 Moving over to the probation violation portion, I'm

State v Frankie Lee Davis, III  
Sentencing  
March 7, 2019

1 going to revoke three years. You'll get credit for 1,566  
2 days and terminate.

3 AGENT HOLMES: Thank you, Your Honor.

4 THE COURT: Okay. All right. Thank you. Good  
5 luck.

6 [Whereupon, the jury trial concludes at 4:45 p.m.]

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STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON

IN THE COURT OF GENERAL SESSIONS  
MOTION COVERSHEET

STATE OF SOUTH CAROLINA

WARRANT/TICKET/

INDICTMENT #'s

2018A1010204785

2018A1010204786

-vs-

Frankie Lee Davis

DEFENDANT

Solicitor:  
Jason Heggelke, Bar No. \_\_\_\_\_  
Address: \_\_\_\_\_  
Phone: \_\_\_\_\_  
E-mail: \_\_\_\_\_

Defendant's Attorney:  
Robert L. Wehrman, Bar No. 102620  
Address:  
101 Meeting Street, 5th Floor  
Phone: 843-958-1850  
E-mail: rwehrman@charlestoncounty.org

- MOTION HEARING REQUESTED
- FORM MOTION, NO HEARING REQUESTED
- PROPOSED ORDER/CONSENT ORDER

SECTION I: Hearing Information

Nature of Motion: Motion To Suppress

Estimated Time Needed: 30 min

Court Reporter Needed:  YES/  NO

SECTION II: Motion/Order Type

- Written motion attached
- Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

[Signature]  
Signature of  Solicitor  Attorney for Defendant

2/11/19  
Date submitted


FILED  
2019 FEB 11 PM 4:22  
JULIE J. ARMSTRONG  
CLERK OF COURT  
BY MA



STATE OF SOUTH CAROLINA )  
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 COUNTY OF CHARLESTON )  
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 STATE OF SOUTH CAROLINA )  
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 -versus- )  
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 FRANKIE LEE DAVIS, )  
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 )  
 Defendant. )  
 \_\_\_\_\_ )

IN THE COURT OF GENERAL SESSIONS  
 FOR THE NINTH JUDICIAL CIRCUIT  
 Warrant Nos.: 2018A1010204785;  
 2018A1010204786  
 Charges: Unlawful Carrying of a Pistol;  
 Resisting Arrest

MOTION TO SUPPRESS

FILED  
 2019 FEB 11 PM 4:28  
 JULIE J. ARMSTRONG  
 CLERK OF COURT  
 BY 

Comes now the defendant, Frankie Lee Davis (“Davis”) and respectfully requests that this court suppress all evidence obtained as a result of his unconstitutional seizure, including, but not limited to: all items seized, all observations made by the arresting officers, and all statements made by Davis following said seizure. The officers lacked reasonable suspicion to seize Davis when he was detained outside of the Silver Dollar Night Club (the “Club”) while investigating an unpaid bar tab. Moreover, by handcuffing and forcing Davis to the ground during the detention, the officers transformed the encounter into a de facto arrest. A de facto arrest, like any other arrest, must be supported by a showing of probable cause. The officers did not have probable cause at the time. Therefore, Davis was seized in violation of the Fourth Amendment of the United States Constitution and Article I, Section 10 of the South Carolina Constitution.

**I. Facts**

Shortly after midnight on August 19, 2018, Officers Fusco and Pollett of the Charleston Police Department were patrolling the King Street area of downtown Charleston, South Carolina, when they were flagged down by an employee of the Club in reference to a patron—later identified as Davis—who had allegedly refused to pay his bar tab. Exhibit A, Prodoc Media 18-12468\_Fusco\_0014 at 00:07–10 (hereinafter, “Fusco BWC 14”). Curiously enough, Davis had

not left the Club when the officers arrived. Two of the Club's bouncers—Garland Jackson and another unnamed individual—forcibly removed Davis from the Club, while the officers remained outside. Id. at 00:34–57.

After carrying Davis outside, the bouncers identified Davis as the suspect in question. However, they did not simply release him and allow the officers to take over the investigation. Rather, they continued to exert their control over him, holding him close to their chests and grabbing his arms for around fifteen seconds until Officer Pollett attempted to place him in handcuffs. Id. at 01:13. Prior to this point, Davis did not curse or yell. He stated only that “[he] ain’t doing nothing” and begged for an explanation, asking “what was I doing?” Id. at 1:00–13. While the body-worn camera footage does appear to show Davis moving his arms and upper body,<sup>1</sup> Davis made no attempt to strike or injure either the bouncers or the officers. Nor did he make any attempt to flee the scene. The officers, meanwhile, did not attempt to question Davis before handcuffing him. Nor did the officers instruct him to stop moving or remain silent. Rather, they instructed Davis to simply “chill.” Id. at 0:59–1:01. When Officer Pollett went to handcuff Davis, Davis implored the officers, “please . . . no, no, no . . . listen, listen . . . I ain’t do nothing, for real.” Id. at 1:13–24. These pleas continued as Officer Pollett and at least one of the bouncers forced Davis to the ground in order to secure the handcuffs.<sup>2</sup> Id. at 1:24–2:00. The

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<sup>1</sup> It is difficult to tell whether Davis’s movements were even intentional. It seems just as likely that Davis was simply contorting his body as a response to the pain and discomfort caused by the bouncers. It is also very possible that Davis’s movements were simply the result of the bouncers adjusting his position.

<sup>2</sup> One might argue that the body-worn camera footage shows Davis pulling away as Officer Pollett approaches him with the handcuffs. Fusco BWC at 1:12–16. Even if this were accurate, it would have no impact on the arguments presented in this motion. This motion argues, in relevant part, that the officers’ use of handcuffs was unreasonable. Thus, the relevant facts are those which occurred before the officers attempted to handcuff Davis. Put simply, Davis’s reaction to the officers’ use of handcuffs cannot be used to justify their decision to use the handcuffs.

officers then reported to dispatch that they had “one in custody” and requested a car to transport Davis to jail. Id. at 2:12–19.

Leanne Benware, the Club’s manager, then came outside and spoke to Davis while he was handcuffed on the ground. Ms. Benware stated: “You didn’t pay your tab. You ordered drinks, and you didn’t pay for them. We gave you two chances. [It was] thirteen-fifty, [and] you gave me a dollar. You ordered two shots of Fireball and a Budweiser. It’s fine. We took care of it.” Id. at 2:49–3:12. Notably, this was the first time officers were made aware of any of the details concerning Davis’s alleged refusal to pay his bar tab. Officers never asked Davis for his account of the incident.

By the time the exchange with Ms. Benware ended, at least three other officers had arrived on scene. Officers moved Davis to a nearby police cruiser and advised him that he was under arrest for Resisting Arrest, Disorderly Conduct, and Defrauding a Public Accommodation. Following a search incident to the arrest, a firearm was found underneath the police cruiser, which Ms. Benware reported seeing fall from Davis’s pants during the search. Exhibit B, Rule 5 (hereinafter “R5”) at 4. Davis was then charged with Unlawful Carrying of Pistol.

In the process of moving Davis to the police cruiser and searching him, there were several instances when Davis cursed and raised his voice in desperate declarations of his innocence. There were also several points during this process when, according to the officers involved, Davis passively resisted the officers’ efforts to move and search him by going “dead leg.”<sup>3</sup> Importantly, however, all of these events occurred after Davis was forced to the ground and placed in handcuffs.

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<sup>3</sup> For the record, Davis denies any allegation that he resisted arrest. He can be heard on the body-worn camera footage at various points telling the officers that he was not resisting. Fusco BWC 14 at 5:57–6:00. Nevertheless, because these allegations were preceded by an

## II. Discussion

The officers detained Davis well before they had any basis to reasonably suspect him of a crime. This is due, in large part, to certain legal features of the statutory violation they were investigating—S.C. Code § 45-1-50. Because the officers violated the Fourth Amendment by detaining Davis, all evidence obtained as a result of the seizure must be suppressed.

Even if the officers possessed reasonable suspicion to detain Davis, they most certainly lacked probable cause to arrest him when he was placed in handcuffs. While officers are permitted to detain suspects on less than probable cause under Terry v. Ohio, the Fourth Amendment requires that the means used to execute such detentions be “reasonable” under the circumstances. When a detention is accomplished through unreasonable or excessive means, it becomes a de facto arrest. In this case, the officers’ use of handcuffs was not reasonable under the circumstances. Thus, the officers exceeded their authority under Terry by executing a de facto arrest, without probable cause. As a result, all items seized, observations made, and statements offered by Davis after the de facto arrest must be suppressed.

### **A. Legal Framework**

The Fourth Amendment provides that:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

---

illegal, de facto arrest, it is unnecessary to make any factual findings as to what occurred beyond that point. Indeed, even if Davis had resisted arrest, such resistance would be perfectly legal under State v. McGowan, because the arrest was illegal. 347 S.C. 618, 622, 557 S.E.2d 657, 659 (S.C. 2001) (recognizing that “a person has a right to resist an unlawful arrest . . .”).

U.S. Const. amend. IV. “Generally, evidence derived from an illegal search or arrest is deemed fruit of the poisonous tree and is inadmissible.” State v. Adams, 409 S.C. 641, 648, 763 S.E.2d 341, 345 (S.C. 2014) (quoting United States v. Najjar, 300 F.3d 466, 477 (4th Cir. 2002)).

Historically, the Fourth Amendment was held to require all seizures to be supported by probable cause. Florida v. Royer, 460 U.S. 491, 498, 103 S. Ct. 1319, 1324 (1983). Probable cause exists when an officer gathers sufficient facts to “convince a reasonable man that the person seized has committed, is committing, or is about to commit a particular crime.” Terry v. Ohio, 392 U.S. 1, 38, 88 S. Ct. 1868, 1888 (1968). The standard is undoubtedly a flexible one, but this flexibility should not be taken to reduce the probable cause requirement to a mere formality. To do so would render the protections of the Fourth Amendment—and indeed, the foundational principles of the Constitution—meaningless.

The United States Supreme Court introduced an exception to the probable cause requirement in Terry v Ohio. The Court recognized that a person may be “seized” within the meaning of the Fourth Amendment, even if he is not subject to the restraints normally associated with an “arrest.” Id. at 16, 88 S. Ct. at 1877. Indeed, the Court made clear that “whenever a police officer accosts an individual and restrains his freedom to walk away, he has ‘seized’ that person.” Id. at 1, 88 S. Ct. at 1877. But the Court held that seizures of this sort—i.e., “Terry stops” or “investigative detentions”—are constitutionally permissible when made for the limited purpose of investigating criminal activity, if the circumstances give rise to a “reasonable suspicion” that the suspect has committed or is about to commit a crime. Royer, 460 U.S. at 498, 103 S. Ct. at 1324.

This reasonable suspicion standard is more permissive than the traditional requirement of probable cause. For that very reason, police authority to conduct such seizures “must be []

narrowly drawn.” Terry, 392 U.S. at 27, 88 S. Ct. at 1883; Royer, 460 U.S. at 498, 103 S. Ct. at 1324 (explaining that “Terry created a limited exception” to the probable cause requirement). The justification for allowing police to stop citizens on less than probable cause is built on the assumption that such seizures will be “substantially less intrusive than arrests.” Dunaway, 442 U.S. at 210, 99 S. Ct. at 2255. Thus, an officer that seizes a citizen on mere reasonable suspicion must employ the “least intrusive means reasonably available to verify or dispel the officer’s suspicion in a short period of time.” Royer, 460 U.S. at 500, 103 S. Ct. at 1325–26. Where the scope of the detention exceeds this limitation, it becomes a de facto arrest, subject to same probable cause requirement applicable to every other arrest. Dunaway, 442 U.S. at 212, 99 S. Ct. at 2256–57 (analyzing the treatment of the petitioner in holding that the seizure, though not technically characterized as an arrest, must be supported by probable cause); United States v. Acosta-Colon, 157 F.3d 9, 14 (1st Cir. 1998) (“Terry was intended to carve out an exception to the probable cause requirement only for relatively brief, non-arrest detentions; plainly, a seizure that is, de facto, tantamount to an arrest cannot fit within that exception.”); see also United States v. Sharpe, 470 U.S. 675, 685, 105 S. Ct. 1568, 1575 (1985) (recognizing distinction between “an investigative stop and a de facto arrest”). This distinction maintains the integrity of the Fourth Amendment. If the boundaries of Terry’s narrow exception for investigative detentions were relaxed, the exception would threaten to “swallow the general rule that Fourth Amendment seizures are ‘reasonable’ only if based on probable cause.” Dunaway, 442 U.S. at 213, 99 S. Ct. at 2257.

In some instances, de facto arrests are easy to identify, such as when police simply apply a different label to the same actions that would normally constitute an arrest. See id. at 212–13, 99 S. Ct. at 2256–57 (finding that seizure constituted an arrest where petitioner “was taken from

a neighbor's home to a police car, transported to a police station, and placed in an interrogation room[,]” regardless of whether the seizure was considered an “arrest” under state law). In other instances, however, courts are faced with “borderline case[s], e.g., [cases] in which the detention at issue has one or two arrest-like features but otherwise [are] arguably consistent with a Terry stop . . . .” Acosta-Colon, 157 F.3d at 15 (alterations added). When such cases arise,

the analysis must revert to an examination of whether the particular arrest-like measures implemented can nevertheless be reconciled with the limited nature of a Terry-type stop. This assessment requires a fact-specific inquiry into whether the measures used were reasonable in light of the circumstances that prompted the stop or that developed during its course.

Id.; Houston v. Doe, 174 F.3d 809, 814 (6th Cir. 1999) (“Although there is no bright line that distinguishes an investigative stop from a de facto arrest[,] the length and manner of an investigative stop should be reasonably related to the basis for the initial intrusion.”) (internal citations omitted); Posr v. Doherty, 944 F.2d 91, 98 (2d Cir. 1991) (“Whether a seizure is an arrest or a merely an investigative detention, depends on the reasonableness of the level of intrusion under the totality of the circumstances.”); see also United States v. Foster, 891 F.3d 93, 106 (3d Cir. 2018) (“The reasonableness of a Terry stop’s scope is case-specific and [] judged by the totality of the circumstances.”); State v. Rodriquez, 323 S.C. 484, 493, 476 S.E.2d 161, 166 (S.C. Ct. App. 1996) (“[T]he scope and duration of a Terry detention must be strictly tied to and justified by the circumstances which rendered its initiation proper.”).

The use of handcuffs is widely considered to be “one of the most recognizable indicia of a traditional arrest, [which] ‘substantially aggravates the intrusiveness’” of a detention, requiring the government “to point to some specific fact or circumstance that could have supported a reasonable belief that the use of such restraints was necessary . . . .” Acosta-Colon, 157 F.3d at 18–19 (quoting United States v. Glenna, 878 F.2d at 972); El-Ghazzawy v. Berthiaume, 636 F.3d 452, 457 (8th Cir. 2011) (“[T]he use of handcuffs is greater than a de minimus intrusion and thus

requires the officer to demonstrate that the facts available to the officer would warrant a man of reasonable caution in the belief that the action taken was appropriate.” (quoting Lundstrom v. Romero, 616 F.3d 1108, 1122 (10th Cir. 2010) (internal alterations omitted)); see also United States v. Elston, 479 F.3d 314, 320 (4th Cir. 2007) (finding that officers “did not exceed the limits of a Terry stop by drawing their weapons and placing [the detainee] in handcuffs” because the officers had reason to believe the detainee was “armed and dangerous”). Of course, this does not mean that the use of handcuffs automatically renders the encounter a de facto arrest. Elston, 479 F.3d at 320. Courts have recognized that police must be able to take steps that are reasonably necessary to protect themselves and others while investigating potential crimes. But this allowance for the discretionary use of certain, “arrest-like” measures does not remove the need for careful scrutiny of the “specific facts and circumstances” offered to justify such measures. Acosta-Colon, 157 F.3d at 21. At bottom, the inquiry is not just whether the government can articulate some basis for the police action in question, but also, whether such action constitutes the “least intrusive means reasonably available” under the circumstances. Royer, 460 U.S. at 500, 103 S. Ct. at 1325–26.

## **B. Analysis**

In the instant case, the officers lacked even reasonable suspicion to detain Davis when they placed him in handcuffs. This alone is enough to warrant suppression of the evidence. But even if the officers possessed reasonable suspicion, they certainly lacked probable cause. This is crucial, because Officer Pollett’s use of handcuffs exceeded the narrow scope for allowed seizures based on mere reasonable suspicion, transforming the stop into a de facto arrest. By effecting an arrest without probable cause, the officers’ actions violated the Fourth Amendment, and consequently, all evidence obtained as a result of this violation must be suppressed.

### 1. Officers' Lacked Reasonable Suspicion to Seize Davis Because they

Officer Fusco has stated that he and Officer Pollett detained Davis in order to investigate a potential violation of S.C. Code § 45-1-50. Exhibit C, Prelim. Hr'g Tr. at 19:21-24.<sup>4</sup> This statute provides:

(A) A person who:

(1) obtains food, lodging or other service, or accommodation at any hotel, motel, inn, boarding or rooming house, campground, cafe, or restaurant and intentionally absconds without paying for it; or

(2) while a guest at any hotel, motel, inn, boarding or rooming house, campground, cafe, or restaurant, intentionally defrauds the keeper in a transaction arising out of the relationship as guest, is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than six months, or both.

At the outset, the plain language of S.C. Code § 45-1-50 does not even apply to establishments like the Club. The statute specifically covers “hotel[s], motel[s], inn[s], boarding or rooming house[s], campground[s], café[s], or restaurant[s].” *Id.* The Club is quite obviously not a hotel, motel, boarding house, or campground, and while it might arguably be considered a “café” or “restaurant,” such creative interpretations are not enforceable under South Carolina law.<sup>5</sup> South Carolina courts are bound to interpret statutes according to their “plain and ordinary meaning,” without resort to “subtle or forced construction in an attempt to . . . expand a statute’s scope.” *N.Y. Times Co. v. Spartanburg Cty. Sch. Dist. No. 7*, 374 S.C. 307, 310, 649 S.E.2d 28, 29-30 (S.C. 2007). No one would describe the Club—which bills itself as a “dance and night

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<sup>4</sup> In addition to the officers’ statements, this is the only offense that the officers could plausibly have been investigating at the time. They obviously had no reason to suspect him of Unlawful Carrying or Resisting Arrest. While Davis was also charged with Disorderly Conduct, he did not engage in any of the activity that appears to form the basis of that charge until well after he was seized.

<sup>5</sup> Other linguistic leaps required to shoehorn Davis’s case into § 45-1-50 include (1) considering the drinks Davis is alleged to have ordered to be either a “service” or an “accommodation,” and (2) considering Davis to have been a “guest” of the Club.

club” on Facebook and is calls itself a “bar” on its website—as a “café” or “restaurant,” in the ordinary sense of the words. Exhibit D, Printed Screenshots. Such interpretations are made more doubtful by the fact that the General Assembly is clearly aware of the terms “bar” and “nightclub,” given that these terms are used—opposite “restaurant,” no less—in a separate section of the code. See S.C. Code 57-25-120(7) (defining “adult businesses” as a specific subset of “nightclub[s], bar[s], restaurant[s], or another similar establishment[s] . . .”). If the General Assembly intended for § 45-1-50 to apply to nightclubs or bars, they could have easily used those terms in that section. Moreover, any ambiguity in the terms “restaurant” or “café” must be construed in Davis’s favor. State v. Blackmon, 304 S.C. 270, 273, 403 S.E.2d 660, 662 (S.C. 1991) (“When a statute is penal in nature, it must be construed strictly against the State and in favor of the defendant.”). Thus, under the basic rules of statutory construction, S.C. Code § 45-1-50 simply does not apply to bars and nightclubs.

Even if the Club could be considered a “café” or “restaurant” within the meaning of § 45-1-50, the officers still lacked any particularized reason to suspect that Davis violated the statute. When Davis was detained, all the officers knew was that employees of the Club had accused Davis of refusing to pay his bar tab. Fusco BWC 14 at 0:05–10. But refusing to pay a tab, in and of itself, is not prohibited under S.C. Code § 45-1-50. This was made clear in State v. Snelgrove, where the Supreme Court of South Carolina held that the defendant was entitled to a directed verdict after the evidence showed that he had refused to pay his bill at a Murrells Inlet buffet because he found the buffet’s offerings to be inadequate. 299 S.C. 290, 384 S.E.2d 705 (S.C. 1989). Indeed, the Snelgrove court held that “§ 45-1-50 applies only to situations where a patron obtains food from a restaurant and then attempts to avoid payment by departing in a secretive or clandestine manner.” Id. at 292, 384 S.E.2d at 706. The court went so far as to

declare that the case was “not a criminal matter, but merely a civil dispute over the amount of money owed for the food.” Id. at 293, 384 S.E.2d at 707. The officers had no reason to suspect that Davis had engaged the sort of “secretive or clandestine” activity described in Snelgrove. On the contrary, when the officers arrived on scene, Davis was still inside the Club, and all indications were that he intended to stay there; he just had not paid his tab.<sup>6</sup> Under these circumstances, no reasonable person would have suspected Davis of violating § 45-1-50(A).

It might be argued that the Snelgrove opinion only dealt with § 45-1-50(A)(1), which prohibits “absconding without paying,” while Davis’s case would be covered by § 45-150(A)(2), which prohibits “defrauding” the keeper of a restaurant or café. Of course, subsections (A)(1) and (2) were both in effect at the time Snelgrove was decided, and yet, the Snelgrove court repeatedly spoke in terms of § 45-1-50, as a whole. Thus, there is no reason to think the Supreme Court meant to limit its analysis in this way. The Snelgrove decision is unambiguous: any violation of § 45-1-50 requires some evidence of “secret or clandestine behavior” on the part of the defendant.

Even if one were to limit the Snelgrove opinion’s discussion of “secret or clandestine behavior” to subsection (A)(1), the court’s concluding declaration that “[the case] was not a criminal matter, but merely a civil dispute” makes it clear that the facts in Snelgrove did not implicate either subsection of the statute. 299 S.C. at 293, 384 S.E.2d at 707. From this observation, it follows that whether a guest’s refusal to pay constitutes a civil dispute or a criminal violation is entirely dependent on the circumstances surrounding that refusal. The officers who seized Davis were entirely unaware of such circumstances. They did not have any

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<sup>6</sup> To be clear, this is not an assertion of what actually happened inside the Club. It is simply a statement of the most negative, yet reasonable, inferences that could have been made against Davis, based on the information available to the officers at the time.

idea: (1) what Davis allegedly ordered; (2) how much Davis allegedly owed; (3) what efforts the Club's staff had made to procure payment;<sup>7</sup> and (4) why Davis allegedly refused payment. Without such information, no reasonable person could have suspected Davis of attempting to "defraud" the Club. To hold otherwise would place any patron who wished to dispute their bar tab under reasonable suspicion of "defrauding" the barkeep, subjecting them to police seizure and possibly worse.

Because the officers lacked reasonable suspicion to believe Davis was involved in criminal activity at the time he was seized, all evidence procured as a result of his seizure must be suppressed.

## 2. Officers Effectuated a De Facto Arrest Without Probable Cause

Even if the officers possessed reasonable suspicion to seize Davis, the evidence would still need to be suppressed because he was seized in a manner that was unreasonable under the circumstances. Davis was handcuffed and taken to the ground, after being forcibly removed from the Club, over an unpaid bar tab. By utilizing such unreasonable measures, the officers exceeded the limited scope allowed for seizures based on "reasonable suspicion." This transformed the seizure into a de facto arrest, requiring a showing of probable cause, which is absent in this case.

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<sup>7</sup> S.C. Code § 45-1-50(B) does contain a provision stating that "the failure or refusal of any guest at a hotel, motel, inn, boarding or rooming house, campground, cafe, or restaurant to pay, upon written demand, the established charge for food, lodging or other service, or accommodation" constitutes prima facie evidence of intent to defraud. Obviously, whether such prima facie evidence exists is irrelevant in a case such as this one, where no reasonable person could suspect the defendant of engaging in the "secret or clandestine behavior" required under Snelgrove. Nevertheless, even under the more limited reading of Snelgrove, this provision still has little bearing on the analysis in this case, as the officers had no information indicating the "established charge" for the drinks in question or whether Davis had been presented with a "written demand" for payment.

**a. Officers Lacked Probable Cause**

At the outset, the officers clearly lacked probable cause to arrest Davis when he was handcuffed outside the Club.<sup>8</sup> Little time needs to be spent on this issue. All the reasons outlined in part II.A.1., above, apply with even greater force in the probable cause context. In short, the only offense the officers could have plausibly been investigating when Davis was handcuffed was a violation of § 45-1-50. Even if the court were to ignore the legal arguments outlined above, no reasonable person would be convinced that a bar patron had engaged in fraudulent activity based purely on an employee's allegation that the patron refused to pay their tab. To do so, one would not only need to accept the allegation as true, without any corroborating evidence; one would also need to assume—on the basis of nothing—that the patron's refusal was somehow indicative of an attempt to defraud the barkeep. No reasonable person would reach such a conclusion.

**b. Officers Effectuated a De Facto Arrest**

Because it is clear that the officers lacked probable cause to arrest Davis when he was seized, the State must show that Davis was seized using “least intrusive means reasonably available” under the circumstances. Royer, 460 U.S. at 500, 103 S. Ct. at 1325–26. It cannot do so. The officers' have asserted several potential bases for their actions in their reports and preliminary hearing testimony. However, these assertions are largely unsupported by the evidence. The few that do find factual support are simply inadequate to justify the forcible

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<sup>8</sup> Though the officers' subjective beliefs on the issue are not determinative, it is notable that Officer Fusco essentially conceded this point at the preliminary hearing by stating that, when the officers went to handcuff Davis, the intent was to detain, not arrest, him. Prelim. Hr'g Tr. 13:3–6, 14:8–11.

application of handcuffs. Ultimately, the officers were unreasonable in both their assessment of the situation and their response to that assessment.

Before turning to the facts of this case, it is important to briefly note what facts are not present. A review of the relevant caselaw highlights several factors that are frequently used to justify the use of handcuffs, or other extraordinarily forceful measures, during an investigatory detention. By far the most common of these is the threat posed by armed suspects. See, e.g., United States v. Johnson, 592 F.3d 442, 448 (3d Cir. 2010) (holding that the use of handcuffs and other measures did not transform detention into de facto arrest where police “act[ed] on a credible tip that at least one of the taxi’s occupants was armed and dangerous”); Elston, 479 F.3d at 320 (“These officers reasonably suspected that Elston was armed and dangerous, and thus did not exceed the limits of a Terry stop by drawing their weapons and placing Elston in handcuffs.”); United States v. Newton, 369 F.3d 659, 675 (2d Cir. 2004) (holding that the use of handcuffs and other measures did not transform detention into de facto arrest where the “officers’ purpose in going to Ms. Wright’s apartment was to investigate a report that Newton illegally possessed a firearm and had recently threatened to kill his mother and her husband”); see also Oliveira v. Mayer, 23 F.3d 642, 646 (2d Cir. 1994) (noting that “whenever this Court and other circuits have found an intrusive detention to be only a Terry stop, the police have always had a reasonable basis to believe the suspect was armed or otherwise dangerous”); United States v. Flores, No. 2:16-cr-00044, 2016 U.S. Dist. LEXIS 175548, at \*11 (D. Me. Dec. 20, 2016) (“All of the cases cited by the Government where the use of handcuffs was found not to constitute a de facto arrest involve either knowledge or a reasonable suspicion that the suspects were armed and presented a safety risk.”). Another common justification arises when officers are outnumbered or placed in some sort of vulnerable position. See, e.g., United States v.

Fiseku, No. 17-cr-1222, 2018 U.S. App. LEXIS 35281, at \*19 (2d Cir. Oct. 4, 2018) (holding that use of handcuffs was not unreasonable where the officer “stumbled upon a suspicious scenario in the middle of the night in a remote, wooded location where three suspects had, it appeared, arranged to meet . . .”); Washington v. Lambert, 98 F.3d 1181, 1190 (9th Cir. 1996) (“An additional factor courts consider in analyzing the reasonableness of the use of aggressive investigatory tactics as part of a Terry stop is the number of police officers present.” (citing United States v. Shriver, 842 F.2d 968 (7th Cir. 1988))). Here, the officers had no information at the time they went to handcuff Davis indicating he was armed and dangerous, and this was certainly not a situation in which the officers were outnumbered or placed in an otherwise vulnerable position. On the contrary, Davis was outnumbered two-to-one, without even counting the bouncers. Concededly, the absence of these common justifications does not automatically render the encounter a de facto arrest. But it certainly indicates that the officers utilized their handcuffs in an unusual manner, and absent some unusual justification, this bears heavily on the question of reasonableness.

In this case, the officers have highlighted Davis’s behavior following his removal from the Club as a justification for their use of handcuffs. As noted above, Davis was still being held by the bouncers during this time, and it is not clear from the video how much Davis was even in control of his movements. Frankly, it is not even clear that the bouncers were acting legally by continuing to overpower Davis after they had removed him from the Club.<sup>9</sup> But even if one

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<sup>9</sup> While there is no need for this motion to devolve into a civil trial on the bouncers’ potential liability, Davis would point out that the bouncers were certainly not engaged in a valid citizen’s arrest. The right to make a citizen’s arrest is purely statutory, State v. McAteer, 340 S.C. 644, 650, 532 S.E.2d 865, 868 (S.C. 2000) (“[T]here is no common law right to make warrantless citizen’s arrests of any kind”), and that statutory right only exists in certain limited circumstances, none of which apply here. See S.C. Code §§ 17-13-10, 17-13-20. Though a citizen’s arrest may be made “in view of a larceny committed,” Davis’s alleged failure to pay for

assumes that the bouncers' actions were appropriate, Davis's actions did not justify the officers' use of handcuffs.

The officers describe Davis's behavior at the time as becoming "increasingly combative," noting that he engaged in "loud cursing and yelling." R5 at 4. The body-worn camera footage, however, indicates otherwise. It is clear from the video that Davis became decidedly less combative after he was removed from the Club and taken to the officers.<sup>10</sup> As the bouncers pulled him through the Club's entranceway, Davis cried out in what any reasonable person would interpret as an expression of pain and dismay. Fusco BWC 14 at 00:58. From that point on Davis did nothing but plead for an opportunity to explain himself. Id. at 1:00–24. He certainly did not curse, and to the extent his voice was raised at all, this was necessary in order to be heard over the music coming from the Club. Indeed, Davis does not appear to have been speaking at a higher volume than anyone else on the scene. The officers' rather general characterization of Davis's behavior as "combative" is also clearly mistaken. Officer Fusco testified at the preliminary hearing that Davis was in a "physical altercation" with the bouncers,

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his drinks would not constitute a larceny under South Carolina law, since it does not involve the "taking or carrying away of goods." State v. Condrey, 349 S.C. 184, 191, 562 S.E.2d 320, 323 (S.C. Ct. App. 2002). A citizen's arrest can also be made when a person flees "under circumstances which raise just suspicion of his design to steal," but in this case, Davis did not flee. S.C. Code § 16-13-140, which gives merchants a right to delay suspected shoplifters in a "reasonable manner" if "reasonable cause existed to believe that the person delayed had committed the crime of shoplifting," is also inapplicable, both because Davis was not under suspicion for "shoplifting" and because he was not even attempting to leave, so the bouncers' actions cannot possibly be justified by a need to keep him on the premises.

<sup>10</sup> It is clear that the officers did not base their decision to handcuff Davis on his actions prior to this point. While the body-worn camera footage appears to show Davis bracing himself against the door as he is pulled from the Club, the officers did not take any action at that time. Indeed, Officer Fusco indicated that they were not even going to get involved in the situation until they realized that Davis was the person allegedly refusing to pay his tab. Prelim Hr'g Tr. 19:14–18 ("At first I wasn't sure this was the person they were talking about. I thought it was just another random person until they said, 'This is the guy who didn't pay their tab.'").

Prelim. Hr'g Tr. 4:21–5:3 (“once that altercation ensued, [the officers] attempted to place [] Davis in custody”), and explained that Davis “took a swing” at one of the bouncers and struggled to free himself from their grasp. *Id.* at 12:18–19. Yet, the body-worn camera footage does not reveal anything resembling a “swing” at the bouncers. Fusco BWC 14 at 0:50–1:15. On the contrary, it appears Davis’s arms were restrained the entire time, preventing him from even attempting such an action.

To the extent the State claims that Davis was attempting to free himself from the bouncers’ grasp, this is perhaps a more reasonable interpretation of his movements, but it still does not justify the officers’ actions. To uphold the use of handcuffs on this basis would lose the forest for the trees. Ultimately, the officers were investigating an unpaid bar tab. Consider, then, a counterfactual scenario in which the officers encountered Davis unrestrained by the bouncers. Under these circumstances, there is no question that the use of handcuffs would have been unreasonable. Thus, if Davis had been successful in freeing himself from the bouncers’ control, the officers would have been placed in the same set of circumstances that would not have justified use handcuffs under the counterfactual. This is not to say that the court should—or even could—base its ruling on anything other than the specific circumstances of this case. The counterfactual simply demonstrates that there is nothing about Davis being free from the bouncers, in and of itself, that justifies the use of handcuffs.

To uphold the use of handcuffs in this case, then, the court must first find that it was reasonable for the officers to infer that Davis would go beyond simply freeing himself from the bouncers’ control and take some additional action. Presumably, the contention is that Davis might have gone on to harm either the officers or bouncers, or that he might have attempted to flee the scene entirely. As discussed above, the officers’ allegations of “combativeness” have

been significantly overstated—there simply was no loud cursing or attempt to “swing” at a bouncer—so the first option finds little factual support to begin with. Moreover, it is unreasonable to read some threat of violence into Davis’s movements when one considers the greater context in which Davis was placed. When Davis was handcuffed, he was being forcibly held by two bouncers. This was, by every indication, an uncomfortable and painful experience, see id. at 0:58 (showing Davis’s exclamation as he is removed from the Club), which was clearly exacerbated by the bouncers’ refusal to release Davis after removing him from the Club. Whatever legitimate goal the bouncers might have had when they took hold of Davis inside would have certainly been accomplished by taking him outside. Any person would feel aggrieved and frightened by the bouncers’ continued use of force under such circumstances.<sup>11</sup> The officers were not free to ignore this context any more than they would be free to ignore Davis’s words and movements in deciding whether the use of force was necessary. Thus, it was unreasonable to conclude, based simply on Davis’s attempts to free himself from the bouncers’ grasp, that he posed some threat to officer or citizen safety.

As for the suggestion that Davis might have attempted to flee the scene if he was released by the bouncers, such an argument is: (i) speculative, at best, and (ii) undermined by Davis’s repeated attempts to discuss the basis of his detention, as well as (iii) the number of the police and bouncers on the scene. It may be tempting to think that, if Davis wanted to free himself from the bouncers’ grasp, then it was reasonable to believe he might try to flee the investigatory detention. This rationale may have some appeal under different circumstances, but again, the

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<sup>11</sup> While fifteen seconds may sound like next to nothing in the abstract, it is helpful to imagine oneself being forcibly held by two bouncers while counting out a fifteen second interval. After conducting this exercise, it is easier to see why someone being subjected to such force would become distraught where, as here, there was no apparent explanation for why.

context outlined in the preceding paragraph is key. Because almost anyone placed in Davis's position would have had the same reaction to the bouncers' continued use of force, his attempts to resist that force do not tell us much about his risk of flight. Put differently, because one would expect many people to react the way Davis did to the bouncers' use of force—whether they intended to run or not—Davis's actions do nothing to indicate that he was particularly likely to flee. Davis's words, in contrast, tell us a great deal about his intent. From the moment he was pulled from the Club to the moment Officer Pollett placed him in handcuffs, Davis's statements indicated a desire to clear up the situation with the officers. See Fusco BWC 14 at 1:00–24 (stating “I ain't doing nothing,” “What was I doing?” and “please . . . no, no, no . . . listen, listen . . . I ain't do nothing, for real.”). Thus, the facts available to the officers at the time actually indicated that Davis was not likely to flee, to the extent they indicated anything at all.

Setting aside the unreasonableness of the officers' assessment of the situation, their response to that assessment was also unreasonable. Even if it was reasonable for the officers to act to prevent Davis from getting out of the bouncers' grasp, they still failed to utilize “least intrusive means reasonably available” to control the situation. Royer, 460 U.S. at 500, 103 S. Ct. at 1325–26. The Charleston Police Department's Policy and Procedure Manual: Administrative General Order No. 23, which deals with “situations where [officers] must respond to resistance or aggression,” provides that:

When reasonable under the totality of circumstances, officers should gather information about the incident, assess the risks, assemble resources, attempt to slow momentum, and communicate and coordinate a response. In their interaction with subjects, officers should use advisements, warnings, verbal persuasion, and other tactics and alternatives to higher levels of force.

Exhibit E, CPD General Order 23 ¶¶ 1, 3. This policy explicitly calls for the use of verbal commands before turning to “higher levels of force,” such as the use of handcuffs. There is no doubt that verbal commands would have been a viable option in this case. While it is true that

policies and procedures cannot prescribe a solution for every situation an officer might face in the field, the circumstances in this case did not require an escalation of force. Despite the officers' assumption that, if Davis freed himself from the bouncers' grasp, he would then attempt to flee the scene, Davis showed no signs of succeeding in that endeavor before the officers placed him in handcuffs. The bouncers, whose role in all of this simply cannot be ignored, had Davis under control. Fusco BWC 14 at 1:00–10. Thus, the officers were not facing some rapidly evolving, dangerous situation. By their own account, they were facing a suspected drink thief, who they felt might run if given the opportunity. Under these circumstances, de-escalation through the techniques described in General Order 23 was entirely possible, and thus, “reasonably available” within the meaning of Royer. 460 U.S. at 500, 103 S. Ct. at 1325–26.

The State may claim that the officers did attempt to gain control over the situation using verbal commands. However, the officers' vague instructions to “chill,” can hardly be considered a legitimate verbal command. The word “chill” does not clearly communicate any instruction to the listener. Davis had no way of knowing what specific actions he needed to take—or not take—in order to comply. Ultimately, if the officers wanted Davis to stop moving, stop speaking, or take any other action, they could have easily communicated that message to him in a clear, concise manner. They did not, and thus, they cannot have reasonably expected Davis to conform to their unstated expectations. By foregoing this eminently available option, the officers failed to utilize the least restrictive means reasonably available to conduct the detention.

For all the reasons outlined above, the officers' actions in this case were plainly unreasonable. To hold otherwise would allow anyone, innocent or guilty, to be forcibly hauled out of an establishment on nothing more than an accusation of an unpaid tab, held indefinitely by the bouncers, and handcuffed if they showed the least bit of distress under the circumstances.

See Brinegar v. United States, 338 U.S. 160, 181, 69 S. Ct. 1302, 1313 (1949) (Jackson, J., dissenting) (“Courts can protect the innocent against [invasions of personal liberty] only indirectly and through the medium of excluding evidence obtained against those who frequently are guilty.”) It would also allow police to forgo readily available, less intrusive means of conducting an investigation that are endorsed by their own policies and procedures. One cannot forget that police authority to detain a suspect on reasonable suspicion is an exception to the general requirement of probable cause. That exception must be closely guarded to ensure the integrity of the rule. This is why intrusive, arrest-like measures—such as the use of handcuffs—are only permitted when the officers possess a reasonable belief that such measures are necessary. The officers’ use of handcuffs in this case was not necessary. It was based on both an unreasonable assessment of the situation and an unreasonable reaction to the risks presented by that assessment. There was nothing to indicate that Davis posed a greater danger or risk of flight than any other suspect, and even if they were, the officers had other, less-intrusive means of controlling the situation, which they never employed. Therefore, the officers’ use of handcuffs transformed the detention into a de facto arrest, which can only be sustained on a showing of probable cause. Because the officers lacked probable cause, Davis’s de facto arrest violated the Fourth Amendment of the United States Constitution and Article I, Section 10 of the South Carolina Constitution.

III. Conclusion

For all of the foregoing reasons, Davis moves that this court suppress all evidence obtained by the arresting officers as a result of Davis's unlawful detention.

Respectfully Submitted,



Robert L. Wehrman  
Assistant Public Defender  
Attorney for Frankie Lee Davis

Charleston, South Carolina

Dated: 2/11/19

FILED

2019 FEB 11 PM 4:23

JULIE J. ARMSTRONG  
CLERK OF COURT

BY



Exhibit A

Disc provided with hard copy.

Exhibit B

**INCIDENT/INVESTIGATION  
REPORT**

INCIDENT DATA

Agency Name  
**Charleston Police Department**

ORI  
**SC0100100**

Location of Incident  
**478 King St, Charleston SC 29403-**

Premise Type  
**Bar/Night Club**

Zone/Tract  
**122**

Case#  
**18-12468**

Date / Time Reported  
**08/19/2018 01:38 Sun**

Last Known Secure  
**08/19/2018 01:38 Sun**

At Found  
**08/19/2018 01:38 Sun**

#1 Crime Incident(s) (Com)  
**All Other Larceny  
23K**

Weapon / Tools  
Entry Exit Security Activity

#2 Crime Incident (Com)  
**Weapon Law Violations  
520**

Weapon / Tools **Handgun**  
Entry Exit Security Activity **P**

#3 Crime Incident (Com)  
**Disorderly Conduct  
90C**

Weapon / Tools  
Entry Exit Security Activity

MO

VICTIM

# of Victims **2** Type: **BUSINESS** Injury:

V1 Victim/Business Name (Last, First, Middle)  
**SILVER DOLLAR** Victim of Crime # **1** DOB **Age** Race Sex Relationship To Offender Resident Status Military Branch/Status

Home Address  
**478 KING ST, Charleston, SC 29403-** Home Phone **843-224-2689**

Employer Name/Address Business Phone Mobile Phone

VYR Make Model Style Color Lic/Lis VIN

OTHERS INVOLVED

CODES: V- Victim (Denote V2, V3) O = Owner (If other than victim) R = Reporting Person (if other than victim)

Type: **SOCIETY/PUBLIC** Injury:

V2 Name (Last, First, Middle)  
**City of Charleston** Victim of Crime # **2,3,4** DOB **//** Age **Age** Race Sex Relationship To Offender Resident Status Military Branch/Status

Home Address Home Phone

Employer Name/Address Business Phone Mobile Phone

Type: **INDIVIDUAL/NOT LAW ENFORCEMENT** Injury:

CO Name (Last, First, Middle)  
**BENWARE, LEANNE** Victim of Crime # **Age 30** DOB **W F** Race Sex Relationship To Offender Resident Status Military Branch/Status

Home Address Home Phone

Employer Name/Address Business Phone Mobile Phone  
**Silver Dollar, 478 King St Charleston (BARTENDER) 843-224-2689**

PROPERTY

1 = None. 2 = Burned. 3 = Counterfeit / Forged. 4 = Damaged / Vandalized. 5 = Recovered. 6 = Seized. 7 = Stolen. 8 = Unknown. (\*OJ\* = Recovered for Other Jurisdiction)

VI #	Code	Status Fm/To	Value	OJ	QTY	Property Description	Make/Model	Serial Number
2	13	EPID	\$400.00		1	FIREARMS	GLOCK43	ADC1623
1	02	7	\$13.00		1	ALCOHOL BEVERAGES		

Officer/ID# **FUSCO, N. A. (PPTL, TM9P) (2144)** Outstanding Stolen Val [Total Stolen]: \$13.00 (\$13.00)

Invest ID# **(0)** Supervisor **RAY, S. H. (PPTL, TM9P) (113)**

Status Complainant Signature Case Status **Cleared** Date **08/19/2018** Case Disposition: Page 1

Incident Report Additional Offense List

OCA: 18-12468

Charleston Police Department

Offense List (Continued)

Page 2

Counter	Offense Description	Fel/Misd	Statute	Completed/Attempted
# 4	RESISTING ARREST		90N	Com

Incident Report Additional Name List

Charleston Police Department

OCA: 18-12468

Additional Name List

Name Code/#	Name (Last, First, Middle)	Victim of Crime #	DOB	Age	Race	Sex
1) WI 1	BENWARE, LEANNE		[REDACTED]	30	W	F
	Address [REDACTED]		H: [REDACTED]			
	Empl/Addr Silver Dollar, 478 King St Charleston		B: [REDACTED]			
			Mobile #: - -			
2) WI 2	JACKSON, GARLAND		[REDACTED]	33	B	M
	Address [REDACTED]		H: [REDACTED]			
	Empl/Addr Silver Dollar, 487 King St		B: - -			
			Mobile #: - -			

INCIDENT/INVESTIGATION REPORT

Charleston Police Department

Case # 18-12468

Status Codes 1 = None 2 = Burned 3 = Counterfeit / Forged 4 = Damaged / Vandalized 5 = Recovered 6 = Seized 7 = Stolen 8 = Unknown

D R U G S	IBR	Status	Quantity	Type Measure	Suspected Type

Assisting Officers

Suspect Hate / Bias Motivated:

NARRATIVE

On 08/19/2018 at approximately 0012 hours, Officer Pollett and R/O were on patrol in the area of 478 King St (Silver Dollar Night Club) when the R/O was flagged down in reference to a patron of the night club not paying his tab.

The R/O arrived on scene and the doorman/witness 2 (Garland Jackson) and a second doorman were confronting the offender (Frankie Lee Davis) for not paying his tab. The complainant/witness 1 (Leanne Benware) stated that the offender consumed a Budweiser and two Fireball's amounting to a tab of \$13.00. Ms. Benware then stated that the offender went to the restroom and attempted to leave without paying his bar tab. When Mr. Jackson confronted the offender he became incorrigible was made to leave the establishment by force.

The R/O observed the Mr. Jackson removing the offender from the establishment at which point the offender became increasingly combative and loud cursing and yelling. Attempts were made to detain the subject. The offender was unwilling to comply after the R/O advised him he was under arrest and to stop pushing away. The R/O and Officer Pollett gave several commands to stop resisting and the offender continued to pull away and prevent the officers on scene from placing the offender into handcuffs. The offender was taken to the ground in order to restrain him. After a struggle with the offender he was placed under arrest.

When the offender was detained, the R/O performed a search incident to arrest of the individual. During this time the R/O was notified of a small handgun underneath SPO Coble's Police Cruiser (That was being used at the time to detain the offender), by the complainant, who observed a small handgun (later identified as a Glock 43 9mm serial #:ADCA623) fall out of the offenders pants and was kicked under the vehicle. The complainant advised MPO Hutzler of what she observed and MPO Hutzler found the gun in the location described. Upon further inspection of the firearm there was one in the chamber and five in the magazine. It should be noted the Silver Dollar has a sign stating No Weapons Allowed.

It should also be noted that a half full bottle of Paul Masson Brandy was found in the offender's right pocket (Due to lack of prosecution for the open container, this was discarded). The offender had the odor of alcoholic beverage on his breath, glassy bloodshot eyes, and slurred speech.

The offender was cited with State Statutes 45-1-50 (Defrauding a Public Accommodations, Ticket #20180415330677), 16-17-0530 (Public Disorderly Conduct, Ticket#20180415330676), 16-23-20 (Unlawful Carry of a Handgun), and 16-9-320(A) (Resisting Arrest). The offender was then transported to SACDC by Officer Coble where the Sheriff's TAC unit met them in the receiving bay. The offender was advised of his Municipal court date 09/20/2018 at 1500 hours GS Court date is TBD. It should also be noted that MPO Hutzler was notified and arrived on scene.

The firearm was placed into evidence by MPO Hutzler, and a receipt of the bar tab was also placed into evidence as well.

INCIDENT/INVESTIGATION REPORT  
Charleston Police Department

Narr. (cont.) OCA: 18-12468

---

The incident was captured on BWC in accordance with CPD Policy.

---

Incident Report Suspect List

Charleston Police Department

OCA: 18-12468

I Name (Last, First, Middle) <b>DAVIS, FRANKIE LEE</b>		Also Known As <b>DAVIS, FRANKIE LEE III</b>				Home Address <b>825 SAVAGE RD CHARLESTON, SC 29414 843-270-7370</b>				
Business Address <b>STAFF WORKS, TEMP EMPLOYEE</b>										
DOB <b>11/21/1986</b>	Age <b>31</b>	Race <b>B</b>	Sex <b>M</b>	Eth <b>N</b>	Hgt <b>601</b>	Wgt <b>265</b>	Hair <b>BLK</b>	Eyes <b>BRO</b>	Skin <b>DRK</b>	Driver's License / State. <b>100230900 SC</b>
Scars, Marks, Tattoos, or other distinguishing features <b>TATT RIGH NECK / WRITING; TATT LEFT CHEST</b>										
Reported Suspect Detail		Suspect Age	Race	Sex	Eth	Height	Weight	SSN		
Weapon, Type	Feature	Make	Model		Color	Caliber	Dir of Travel		Mode of Travel	
VchYr/Make/Model	Drs	Style	Color		Lic/St	VIN				

Notes

Physical Char

**Build, LARGE**  
**Conversation, ABUSIVE LANGUAGE**  
**Facial Hair, GOATEE**  
**HAIR STYLE / BRAIDED, ORNROWS**  
**Hair Length, LONG**

Incident Report Related Property List

Charleston Police Department

OCA: 18-12468

1 Property Description <b>ALCOHOL BEVERAGES</b>		Make		Model		Caliber	
Color	Serial No.	Value	Qty	Unit	Jurisdiction		
		\$13.00	1.000		Locally		
Status	Date	NIC #	State #	Local #	OAN		
Stolen	08/19/2018						
Name (Last, First, Middle)			DOB	Age	Race	Sex	
Silver Dollar,							

Notes

1 Budweiser and 2 Fireball shots

2 Property Description <b>FIREARMS</b>		Make		Model		Caliber	
Color	Serial No.	Value	Qty	Unit	Jurisdiction		
Black	ADCA623	\$400.00	1.000		Locally		
Status	Date	NIC #	State #	Local #	OAN		
Evidence (non	08/19/2018	G88442691I					
Name (Last, First, Middle)			DOB	Age	Race	Sex	
* No name *							

Notes

Gun that was in the custody of the offender at the time of the incident.

CASE SUPPLEMENTAL REPORT

Printed: 08/26/2018 22:33

Charleston Police Department

OCA: 1812468

THE INFORMATION BELOW IS CONFIDENTIAL - FOR USE BY AUTHORIZED PERSONNEL ONLY

Case Status: *CLEARED*

Case Mng Status: *CLEARED BY ARREST*

Occurred: *08/19/2018*

Offense: *ALL OTHER LARCENY*

Investigator: *HUTZLER, T. C. (1305)*

Date / Time: *08/19/2018 02:58:04, Sunday*

Supervisor: *RAY, S. H. (1113)*

Supervisor Review Date / Time: *08/19/2018 03:28:58, Sunday*

Contact:

Reference: *Supplemental Report*

On 19 August 2018 at approximately 0020 hours, R/O arrived at 478 King Street to assist PO Fusco in arresting a an offender who was resisting arrest after having defrauded a business at the same location. Upon arrival, R/O observed PO Fusco, PPO Pollett, and SPO Coble remove a prisoner from the sidewalk and place him in a marked unit. The handcuffed prisoner was struggling with the officers and resisting. As they were attempting to secure the prisoner in a police vehicle, R/O kept watch of the heavily building and intoxicated crowd in order to prevent any interference or disruption to lawful police action.

While keeping the crowd at bay, R/O was approached by a staff member of the business (Leanne Michelle Benware; W-F, 10/23/1987). Benware advised that there was a handgun in the street below the rear of the marked police vehicle. R/O observed a black in color semi-auto Glock handgun (Model 43; Serial Number ADCA623) lying under the rear passenger side of the marked vehicle, approximately one to two feet from where the prisoner was standing. R/O secured the weapon and observed there was one (1) 9mm round chambered. Subsequent examination several moments later revealed five (5) additional rounds in the magazine.

When queried about what she saw, Benware replied "he [the prisoner] kept trying to reach for it and reach for it, and then it fell under".

NCIC query indicated the handgun has not been entered as stolen.

NIC number G884426911 was generated by CPD ID.

The handgun, magazine, and ammunition was secured at headquarters as evidence and a voucher was completed for the same.

R/O's actions were documented by CPD issued body worn camera and uploaded prior to the end of watch.

Nothing further.

Investigator Signature

Supervisor Signature

Exhibit C

STATE OF SOUTH CAROLINA)  
:  
COUNTY OF CHARLESTON )

Preliminary Hearing

THE STATE OF SOUTH CAROLINA, )  
)  
Plaintiff(s), )  
)  
-vs- )  
)  
FRANKIE LEE DAVIS, )  
)  
Defendant(s). )

Given before Molly C. Newton, Court Reporter and  
Notary Public, at the Charleston Judicial Court, 3831  
Leeds Avenue, Mark Clark Business Park, North  
Charleston, South Carolina, on Monday, November 19th,  
2018, commencing at 11:20 o'clock, a.m.

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Spartanburg	Summerville	Sumter	West Columbia

A P P E A R A N C E S

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For the Defendant(s): Charleston County Public Defender  
By: Robert Wehrman, Esquire  
101 Meeting Street, 5th floor  
Charleston, SC 29401

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Exhibits Marked for Identification

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No exhibits were proffered.

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1 THE COURT: We are in the preliminary hearing  
2 for the County of Charleston. Today is the 19th day  
3 of November, 2018. This is the case of The State  
4 versus Frankie Lee Davis. Mr. Davis has been  
5 charged with the unlawful carrying of a pistol and  
6 resisting arrest. Representing the defendant today  
7 is Mr. Robert Wehrman. Representing the state is  
8 Assistant Solicitor, Denton Matthews. Would the  
9 officer please state his name and agency of record?

10 MR. FUSKO: Officer Fusko, Charleston Police  
11 Department.

12 (Officer Fusko, being duly sworn, testified as  
13 follows:)

14 THE COURT: State your case to The Court,  
15 please, sir.

16 MR. FUSKO: Yes, Your Honor. I was flagged down  
17 in reference to a party inside of the Silver Dollar  
18 Bar on King Street in the City of Charleston in  
19 reference to a party who refused to pay for his tab.  
20 I arrived on scene, went inside, and had to  
21 physically remove him. They came outside, um, it  
22 was evident he was in a physical altercation with  
23 him.

24 THE COURT: With the bar bouncer?  
25

1           MR. FUSKO: With the bar bouncer. Um, once that  
2           altercation ensued, my partner and I, Officer  
3           Pollet, attempted to place Mr. Davis in custody at  
4           which point he continued to fight with us, reaching  
5           for his waistband. We were eventually able to get  
6           him into custody, um, after a struggle. Other  
7           officers had to show up at which point we had to  
8           physically pick him up because he continued to put  
9           on dead leg and pick his feet up off the ground,  
10          stuff like that, bring him over to the car. During  
11          the search, uh, one of the officers on the scene was  
12          notified by a bouncer that Mr. Davis had kicked  
13          something under the vehicle that had fallen out of  
14          his pant leg. Um, that officer went under the car  
15          and retrieved a semi-automatic Glock pistol out from  
16          underneath the car right where the bouncer said.

17          MR. MATTHEWS: They said it appeared to be a  
18          gun?

19          MR. FUSKO: They thought it looked like a gun as  
20          well. They told him he kicked it under the car.

21          MR. MATTHEWS: Tell us, what date did this  
22          happen?

23          MR. FUSKO: I don't have that off the top of my  
24          head.

25          MR. MATTHEWS:

1 MR. FUSKO: August 19th, 2018.

2 MR. MATTHEWS: Was this night time, day time?

3 MR. FUSKO: Night time.

4 MR. MATTHEWS: Okay. So you guys responded  
5 because a bar employee was flagging you down,  
6 correct?

7 MR. FUSKO: Yes.

8 MR. MATTHEWS: A disturbance was caused on the  
9 inside by the defendant because he didn't pay his  
10 tab; is that right?

11 MR. FUSKO: Yes. They stated they wanted to  
12 press charges on him for not paying his tab because  
13 he didn't want to pay his tab. That was what the  
14 fist initial call was. When we got there that's  
15 when they went inside to remove him out of the bar  
16 and that's when he started fighting with the  
17 bouncers.

18 MR. MATTHEWS: Okay. And so you are trying to  
19 apprehend the defendant because they want to press  
20 charges for this bar tab; is that right?

21 MR. FUSKO: Yes.

22 MR. MATTHEWS: Um, did you witness any  
23 physicality between the defendant and the bar  
24 bouncer?

25 MR. MATTHEWS: I did. They had a hold of

1           him and he's pulling away, swinging at them in an  
2           effort to run away at that point.

3           MR. MATTHEWS: Okay. He was trying to swing at  
4           the bouncer and also flee; is that what you're  
5           telling me?

6           MR. FUSKO: Yes. I know he continued to do that  
7           when we grabbed him and told him he was under  
8           arrest.

9           MR. MATTHEWS: Okay. Hold on, you're reading my  
10          mind; so the next thing is did you say to the  
11          defendant that he was under arrest?

12          MR. FUSKO: Yeah. We grabbed him, um, he  
13          started to pull away from us when we told him at  
14          that point that he was under arrest and that's when  
15          we started to fight with him, we continued to fight  
16          with him before we had to place him on the ground  
17          where he continued to fight with us and reach for  
18          his waistband.

19          MR. FUSKO: And it sounds like during the  
20          struggle other officers had to be called as backup?

21          MR. FUSKO: Yes. He kept pulling away,  
22          basically just trying to pull himself away from us  
23          and it's my belief to get whatever he had in his  
24          waistband down his pant leg.

25          MR. MATTHEWS: Okay. And a bouncer is the one

1           that saw an object be kicked under the patrol car?

2           MR. FUSKO: Yes.

3           MR. MATTHEWS: And they told you it looked like  
4           a weapon, a gun?

5           MR. FUSKO: Yes. They told the other officer,  
6           yes. He went underneath the car, where they said it  
7           was and he found the Glock.

8           MR. MATTHEWS: And that was underneath the  
9           patrol car because you guys were trying to get him  
10          in and he's right outside the car?

11          MR. FUSKO: Yes. We had him on the backside of  
12          the car where the trunk is, leaned up against the  
13          car while we were searching it and found the gun  
14          right underneath the trunk, right behind the back  
15          wheel on the passenger side where he was placed on  
16          the car.

17          MR. MATTHEWS: Did the defendant ever say  
18          anything about the gun at all; did he ever make any  
19          admissions about the gun?

20          MR. FUSKO: He said, What gun?

21          MR. MATTHEWS: Did he make any admissions about  
22          the bar tab?

23          MR. FUSKO: Um, not that I recall.

24          MR. MATTHEWS: Was there an encounter of any  
25          sort captured on your body cam?

1 MR. FUSKO: There was.

2 MR. MATTHEWS: Did you take a statement, a  
3 written statement or body camera statement on the  
4 bouncer that saw the gun being kicked?

5 MR. FUSKO: Yes. Um, Leanne, she was the  
6 manager, she was the one that observed it.

7 MR. MATTHEWS: Okay. So her statement was on  
8 the bodycam?

9 MR. FUSKO: Yes. And another gentleman by the  
10 name of Garland, he told the same thing.

11 MR. MATTHEWS: So at least two people saw the  
12 gun leave the defendant's pants leg and go under the  
13 car?

14 MR. FUSKO: Yes.

15 MR. MATTHEWS: And where your car is parked,  
16 you're on the street so you find the gun on top of  
17 the asphalt of the street?

18 MR. FUSKO: Yes.

19 MR. MATTHEWS: And I'm assuming the gun was  
20 collected; do you know if it's being processed for  
21 any kind of prints?

22 MR. FUSKO: I believe it was. NPO Hudslar  
23 placed that into evidence because he was the one  
24 that seized it. I believe that he has it being  
25 processed.

1           MR. MATTHEWS: Okay. So it sounds like multiple  
2 officers were on the scene for this incident; is  
3 that right?

4           MR. FUSKO: Yes, sir.

5           MR. MATTHEWS: Aside from your body camera and  
6 the body camera of your colleagues there, is there  
7 any kind of Silver Dollar Night Club video that you  
8 know of?

9           MR. FUSKO: Not that I know of.

10          MR. MATTHEWS: Was the defendant actually  
11 charged with not paying his bar tab?

12          MR. FUSKO: He was. There was evidence of a 32  
13 dollar bar tab.

14          MR. MATTHEWS: Did any officer feel anything on  
15 the defendant while you guys were struggling with  
16 him; I know you said he kept making movements toward  
17 his waist but did anyone feel anything on him?

18          MR. FUSKO: I did not. I cannot speak for  
19 Officer Pollet. I don't think he did because he  
20 would have said something. Um, we were more  
21 concerned about getting his arms behind his back so  
22 we were focused on his arms. One of the other  
23 bouncers was in there fighting with us said that he  
24 observed him reaching for his waistband so he did  
25 everything to make sure that his arms didn't go to

1 the waistband. Once we got him in custody we didn't  
2 notice anything either until we got over to the car.

3 MR. MATTHEWS: Okay. So aside from the bouncer,  
4 from a police perspective, the first time that you  
5 had actual evidence of the gun was when you found it  
6 under the police car?

7 MR. FUSKO: Right.

8 MR. MATTHEWS: Okay. Thank you so much,  
9 Officer. Please answer any questions the defense  
10 has.

11 MR. WEHRMAN: Thank you, Your Honor. Let's just  
12 sort rewind things to the beginning, Officer Fusko.  
13 So you're flagged down by one of the bouncers?

14 MR. FUSKO: Yes, sir.

15 MR. WEHRMAN: And they told you that Mr. Davis  
16 was refusing to pay a tab?

17 MR. FUSKO: Yes, sir.

18 MR. WEHRMAN: Did they tell you anything more  
19 specific than that?

20 MR. FUSKO: They just said he wouldn't pay his  
21 tab.

22 MR. WEHRMAN: Did they describe in any way what  
23 steps they had done to get him to pay?

24 MR. FUSKO: No, sir.

25 MR. WEHRMAN: Did they describe in any way what

1 he had done to evade paying?

2 MR. FUSKO: No.

3 MR. WEHRMAN: Okay. And of course y'all hadn't  
4 talked to Mr. Davis on the subject?

5 MR. FUSKO: Not that that point. We went in to  
6 go get him and bring him outside.

7 MR. WEHRMAN: Did you see them going to get him?

8 MR. FUSKO: Yes.

9 MR. WEHRMAN: Can you describe; they talk to him  
10 at all?

11 MR. FUSKO: There was a huge crowd. I saw them  
12 go into the bar and then I saw them come out with  
13 him as he was fighting with them. They were having  
14 to physically remove him from the bar.

15 MR. WEHRMAN: Okay. All right. Um, So they're  
16 pulling him out and you say he is fighting; can you  
17 describe how he is fighting.

18 MR. FUSKO: He took a swing at one of them and  
19 he was pulling away trying to get away. Um, when he  
20 first came out and we told everybody, Just calm  
21 down, calm down, he wasn't calming down. They were  
22 like, this is the guy, we want to press charges, we  
23 grabbed him, said, Put your hands behind your back,  
24 and he refused. We started fighting with him and  
25 told him he was under arrest several times while we

1           were fighting with him. Um, he continued to pull  
2           away from us, resisting.

3           MR. WEHRMAN: So when y'all made attempts to  
4           grab him were y'all trying to arrest him?

5           MR. FUSKO: At that point we were trying to  
6           detain him.

7           MR. WEHRMAN: Okay.

8           MR. FUSKO: Until we did tell him he was under  
9           arrest.

10          MR. WEHRMAN: Okay. Um, so in the struggle  
11          with the bartenders do you remember if it was, do  
12          you remember which bartender he took a swing at, was  
13          it Garland or was it the other fellow?

14          MR. FUSKO: I can't recall off the top of my  
15          head.

16          MR. WEHRMAN: I see.

17          MR. FUSKO: I believe it might have been - I  
18          don't want to say.

19          MR. WEHRMAN: Okay. That's fine. To be clear,  
20          he was never outside of their grasp; there's no  
21          point where he was sort of standing free?

22          MR. FUSKO: No.

23          MR. WEHRMAN: Okay. And y'all were telling him  
24          to calm down, you said?

25          MR. FUSKO: Mm-hmm.

1 MR. WEHRMAN: What was he saying at that time?

2 MR. FUSKO: I can't recall what he was saying.

3 MR. WEHRMAN: Okay. So could you describe how  
4 he was dressed at that moment?

5 MR. FUSKO: Uh, he was wearing - I can't  
6 recall off the top of my head exactly what he was  
7 wearing.

8 MR. WEHRMAN: Okay. Let's get back sort of to  
9 the arrest, so y'all make an attempt to detain him,  
10 using handcuffs?

11 MR. FUSKO: Yes.

12 MR. WEHRMAN: And that's based on him  
13 attempting to what, why did you feel like handcuffs  
14 were necessary?

15 MR. FUSKO: Because he was trying to flee.

16 MR. WEHRMAN: Okay. At what point did that  
17 detention turn into an arrest?

18 MR. FUSKO: When we were fighting with him. At  
19 that point we made the determination that he was  
20 going to be put under arrest.

21 MR. WEHRMAN: For what charges?

22 MR. FUSKO: Well, at that point we had  
23 determined that it would be for disorderly conduct  
24 but since it was defrauding public accommodation,  
25 that's what led to it, that's the charge because

1           they wanted to press charges.

2           MR. WEHRMAN: Okay. All right. About how many  
3 officers did it take to arrest him, do you think?

4           MR. FUSKO: It took myself, Officer Pollet, one  
5 of the other bouncers, uh, I want to say one more  
6 officer that arrived on scene actually put hands on  
7 him, um, that I can recall.

8           MR. WEHRMAN: And you said he resisted by going  
9 dead leg?

10          MR. FUSKO: Well, he was pulling away. He kept  
11 taking his hands and putting them towards his  
12 waistband. At the time I just thought he was trying  
13 to get his hands away from me to not allow me to put  
14 his hands behind his back but we were able to  
15 finally get one arm and put him on the ground and  
16 then the bouncer assisted me in putting the other  
17 arm behind his back.

18          MR. WEHRMAN: Was anyone grabbing his legs?

19          MR. FUSKO: Not that I can remember. I was  
20 paying attention to his arms.

21          MR. WEHRMAN: Now, this is out in the middle of  
22 King Street in the middle of the night, right, so  
23 there's kind of a crowd gathering?

24          MR. FUSKO: Yes, sir.

25          MR. WEHRMAN: People around, they start voicing

1           some opinions, I take it?

2           MR. FUSKO: Possibly.

3           MR. WEHRMAN: Did you hear anything that the  
4           crowd said at the time?

5           THE COURT: That's not the scope of the hearing  
6           today. I'm here for a weapons charge and resisting  
7           arrest. What's the crowd got to do with that?

8           MR. WEHRMAN: Your Honor, I have reason to  
9           believe that the crowd was indicating that he was  
10          not resisting.

11          THE COURT: That's evidence that you would be  
12          presenting at this time and you don't have the  
13          authority to do that at this time.

14          MR. WEHRMAN: Right. I'm just asking the  
15          officer if he has any information, if it was part of  
16          the circumstance he would have considered in making  
17          the arrest.

18          THE COURT: I'll let you ask questions as it  
19          pertains to the evidence that he's given in court  
20          but going to multiple details that you might think  
21          you might have, I'm not going to allow that.

22          MR. WEHRMAN: Okay.

23          THE COURT: I'll let you ask questions in  
24          regards to the testimony given today.

25          MR. WEHRMAN: I understand, Your Honor.

1 Officer, Fusko, we'll move to the point in which  
2 he's up against the car; so he's been moved by  
3 multiple officers forcibly over to the car and  
4 that's the point in which y'all began searching  
5 him?

6 MR. FUSKO: Yes.

7 MR. WEHRMAN: And you searched him by patting  
8 down his pant leg?

9 MR. FUSKO: We didn't get to the pant leg by  
10 the time that happened. We were going into his  
11 pockets but the whole time we were searching him he  
12 was pulling of the car, he was going dead leg,  
13 dropping all his body weight to the ground, forcing  
14 us to have to pick him up. I had physical contact  
15 with him from the moment that I placed hands on him  
16 to the point that we got him into the car and he did  
17 that several times. We basically had to pick him up  
18 and carry him to the car and put him against the  
19 car. He kept pulling away from the car and I'd  
20 physically push him back onto the car and he kept  
21 throwing dead leg. He kept dropping back to the  
22 ground doing dead weight on us. It took us a decent  
23 amount of time to get into his pockets at that  
24 point, to search his pockets much less anything  
25 else. By the time we got to that point is when

1           someone came over and an officer went underneath the  
2           car and grab the gun.

3           MR. WEHRMAN: To clarify then, a complete search  
4           was not done before the gun was found?

5           MR. FUSKO: Correct.

6           MR. WEHRMAN: And when the gun was found y'all  
7           terminated continuing the search?

8           MR. FUSKO: No. We continued the search.

9           MR. WEHRMAN: Just nothing was found?

10          MR. FUSKO: At that point, correct.

11          MR. WEHRMAN: And to the extent that the search  
12          was partially completed you're testifying that you  
13          had not completely checked his pant legs or pockets  
14          or waistband?

15          MR. FUSKO: I was unable to at that point.

16          MR. WEHRMAN: And the folks that saw the gun  
17          allegedly drop out of his pants you said were Leanne  
18          and Garland?

19          MR. FUSKO: Yes.

20          MR. WEHRMAN: Whom are employees of Silver  
21          Dollar?

22          MR. FUSKO: Yes.

23          MR. WEHRMAN: None of the folks in the crowd  
24          around?

25          MR. FUSKO: Not that I can recall.

1 MR. WEHRMAN: None of the officers?

2 MR. FUSKO: Not that I can recall.

3 MR. WEHRMAN: Okay. Just quickly, back to the  
4 point where he's pulled out by the bouncers, before  
5 y'all place hands on him to detain him, you said  
6 there was a struggle with the bouncers where he's  
7 trying to get away from them, and that's why y'all  
8 went to detain him; how long would you say he was  
9 sort of in the hands of the bouncers while outside  
10 the bar?

11 MR. FUSKO: 10, 15 seconds. When they came out  
12 they were telling us about a person who did not pay  
13 their tab and they said, Hold on a second, we'll be  
14 right back, they go inside, come right back out. At  
15 first I wasn't sure this was the person they were  
16 talking about. I thought it was just another random  
17 person until they said, This is the guy who didn't  
18 pay their tab.

19 MR. WEHRMAN: Okay.

20 MR. FUSKO: Because we were trying to calm him  
21 down to figure out what was going on but then they  
22 were like, This is the guy right here that didn't  
23 pay the tab, and at that point we went to try to  
24 detain him and he was trying to get away and  
25 fighting with the bouncers.

1 MR. WEHRMAN: Okay. Court's indulgence. No  
2 further questions, Your Honor. I do have a motion.

3 THE COURT: State?

4 MR. MATTHEWS: No follow up.

5 THE COURT: Motion?

6 MR. WEHRMAN: All right, Your Honor, I'm moving  
7 to dismiss on both charges; I'm going to focus,  
8 however on resisting arrest charge, there's sort of  
9 a couple of legal layers to this and I don't want to  
10 go to super finite details on every issue. To the  
11 extent The State disagrees with some of the law I  
12 might ask for a chance to reply but I think we're  
13 going to be in mostly agreement on that. Um,  
14 resisting arrest in South Carolina, there's sort of  
15 a long common law history of a right to resist an  
16 unlawful arrest. In this case, Your Honor, my basic  
17 argument is by the time there was an arrest there  
18 was no lawful evidence for the underlying cause, for  
19 probable cause on what I guess is now the charge for  
20 disorderly conduct to the extent the underlying  
21 charge might be failing to pay the bar tab. I would  
22 also argue there is no probable cause on that and I  
23 don't think that was the officer's testimony today.  
24 As far as the disorderly conduct goes we've heard  
25 today that Mr. Davis was pulled out, he was being

1 held by the bouncers for 10 to 15 seconds. It's not  
2 entirely clear why it was necessary for them to keep  
3 holding him so he's just been forcible escorted out  
4 of a bar. Two men are now holding onto him. His,  
5 you know, trying to struggle free from his grasp is  
6 entirely reasonable and I don't think is any reason  
7 to escalate the level of detention to using  
8 handcuffs. The law on handcuffs as part of a  
9 reasonable suspicion detention is that it's not per  
10 se impermissible. It's something that could happen  
11 but generally speaking it's something that certainly  
12 expands the nature and the scope of the detention so  
13 it needs to be justified by circumstances. In this  
14 case, um, I don't think that we have that. The  
15 officer testified that he had no inclination of any  
16 physical danger and the case law I looked up that  
17 seems to be the main issue when officers use  
18 handcuffs as part of a sort of terry stop,  
19 essentially.

20 I'll point The Court to a 2015 case section of  
21 The District of Vermont; I'm not citing it because  
22 it has any authority here; it just has a very good  
23 summary of the federal court law on it. It's called  
24 the USV Jenkins and I have the site if The Court is  
25 interested in that. So at that point my argument

1 would be that he is unlawfully detained to the  
2 extent that he is resisting at that point, I think  
3 that's consistent with South Carolina law. You  
4 know, obviously the arrest then comes in but I again  
5 submit there is no probable cause for the arrest  
6 because it was subsequent to an unlawful detention,  
7 and then obviously if there is no probable cause for  
8 the resisting arrest there would be no call for  
9 searching in the arrest and therefore no call for  
10 finding the gun. On the gun, however, I do want to  
11 point out, just more of a factual argument as well,  
12 you know the gun is found underneath the car in a  
13 place where Mr. Davis has not been. It's nearby  
14 where he is being searched but being searched after  
15 what sounds like a fairly long sort of physical  
16 encounter with multiple officers, none of whom had  
17 any inclination he was armed until these folks  
18 notified them of this gun being under the car.  
19 Nothing ties him to the gun. I believe we heard  
20 that there's no DNA evidence or anything like that.  
21 There's obviously a large crowd. No one other than  
22 the people who are trying to get him arrested in the  
23 first place are testifying or giving indications  
24 that it was his gun so we would argue that there is  
25 no probable cause for that arrest as well just as a

1 factual basis apart from the search and seizure  
2 issues, Your Honor.

3 MR. MATTHEWS: Tell us that there is ample  
4 evidence for the probable cause both charges that  
5 led to resisting arrest. This officer has direct  
6 eye witness knowledge of the defendant struggling  
7 with the bouncer. The officer said he saw the  
8 defendant take a swing at the bouncer and his first  
9 attempt was at the very least to charge public  
10 disorderly and then it turned into a second charge  
11 for defrauding once the bar employee said they  
12 wanted to charge for that charge as well so there is  
13 multiple evidences for probable cause. The  
14 resisting is self evident and the gun was seen by at  
15 least two people who saw it coming from the  
16 defendant.

17 THE COURT: Clarification on one point; did I  
18 hear in the testimony that dealt with the bouncers  
19 were the ones that saw the gun fall from pant leg  
20 and kicked underneath the vehicle?

21 MR. FUSKO: Yes, Your Honor. One was the  
22 manager and one was the bouncer.

23 THE COURT: All right, gentleman. After  
24 listening to the arguments and applying it I think  
25 you might have a suppression issue but you'll take

1           that downtown. At this time The State established  
2           has probable cause of these charges applied. Thank  
3           you very much. Appreciate it.

4

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(Hearing concluded at 11:46 o'clock, a.m.)

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1 STATE OF SOUTH CAROLINA )  
 2 : C-E-R-T-I-F-I-C-A-T-E  
 3 COUNTY OF BERKELEY )  
 4

5 I, Molly C. Newton, Court Reporter and Notary  
 6 Public, certify that I did have the aforementioned  
 7 parties to appear before me at 11:20 o'clock, a.m. at  
 8 the Charleston Judicial Court, 3831 Leeds Avenue, Mark  
 9 Clark Business Park, North Charleston, South Carolina;  
 10 that the witness was sworn and cautioned to tell the  
 11 truth, the pages constitute a true and accurate  
 12 transcript of the testimony given at that time and  
 13 place.

14 I further certify that I am not of counsel or kin to any  
 15 of the parties to this cause of action, nor am I  
 16 interested in any manner in its outcome.

17 IN WITNESS WHEREOF, I have hereunto set my hand and  
 18 seal this the 29th day of January, 2019.  
 19  
 20

21 \_\_\_\_\_  
 22 Notary Public for South Carolina  
 23 My Commission Expires: March 4, 2019  
 24  
 25

**Exhibit D**

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Silver dollar is my favorite bar in Charleston. Whether your just visiting or live there it's a place you have to check out. Great atmosphere, awesome DJ's, plenty of room to dance, cool bartenders, the drink prices can't be beat on Mondays and Wednesdays plus a couple pool tables make this spot amazing!!

November 28, 2017



Monday's are off the hook!!! Music/DJs are super dope! Staff is too! I recommend for sure!

July 4, 2018



This place is absolutely terrible. The bouncers try to start anything and everything to get people out. We saw, 3 times, bouncers or peacekeepers place Molly in the bathrooms to try to plant it on the people there as well as put people and in headlocks to intimidate them. They are extremely racist and it's overall actually disgusting. Paint chipping, cockroaches under the bar and pool tables covered in sand, alcohol, and blood surprisingly. If you are looking for somewhere fun and enjoyable in Charleston, you'd be better off going to the alley out back then here.

April 22, 2018

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Dance & Night Club in Charleston, South Carolina

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478 King Street (8.00 mi)  
Charleston, South Carolina 29403

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Dance & Night Club

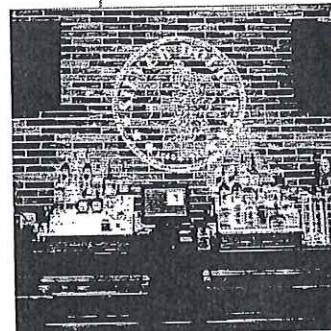
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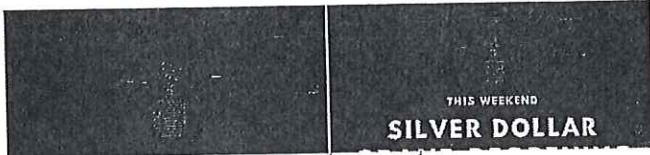
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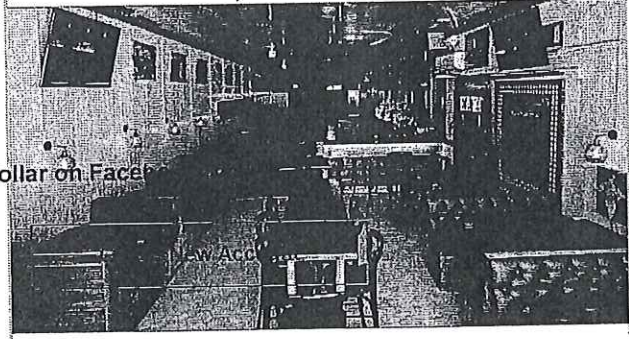
Silver Dollar  
February 1 at 7:00 AM

Holy City Sinner  
Grand Reopening party!! Doors  
open at 6:00 PM



Like Comment  
Buck Rogers, Seany Jay, Katie Fitzgerald Bell and 6 others like this.

Silver Dollar added an event.  
January 31 at 3:04 PM  
JOIN US- Friday, February 1st for our official Grand Reopening Party!!  
Doors will open at 6:00 PM, with live music all night starting with Chris  
Roberts Acoustic and DJ DollaMenu to follow!



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FRI, FEB 1  
**Silver Dollar Grand Reopening**  
Silver Dollar · Charleston  
 Party · 111 people

---

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Justyn Redd, Andrew Austin, Ward Shannahforhersix and 4 others like this.

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## Bars Downtown Charleston SC

Opened in December of 1999, the Silver Dollar is the longest running bar on upper King Street. Located in the heart of downtown Charleston's night life district, the "Dollar" is renowned for our fun, relaxed atmosphere. With nightly live music, dance floor, great drinks, and innovative drink specials, the Silver Dollar has provided Charlestonians a place to unwind for generations.

### History

The Silver Dollar was named in remembrance of the legendary Silver Dollar bar located on Washington St in Boston during the 1940s, owned by Harry Sher. Along with being an immensely popular destination for soldiers during World War Two, the Silver Dollar boasted the longest bar in the country, measuring over 100 feet. Harry's grandson Steve Sher moved to Charleston and opened the Silver Dollar at 478 King St on Dec. 30, 1999. Now the longest operating



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Silver Dollar

478 King St

Charleston, SC 29403

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Exhibit E

	Administrative General Order	23 Response to Resistance / Aggression	<b>PAGE 1 OF 6</b>
	<b>City of Charleston Police Department Policy and Procedure Manual</b>		EFFECTIVE DATE: <b>02/01/08</b>
			ORIGINATOR: <b>Strategic Analysis &amp; Innovations</b>
			REVISED: <b>02/01/17</b>
DISTRIBUTION: <b>ALL</b>	CALEA: 1.3.1; 1.3.2; 1.3.3; 1.3.4; 1.3.5; 1.3.6; 1.3.7; 1.3.8; 1.3.13		
BY THE AUTHORITY OF THE CHIEF OF POLICE: <i>D. D. Mullen</i>			

### 23.1 RESPONSE TO RESISTANCE / AGGRESSION (CALEA 1.2.7; 1.3.1)

In a complex urban society, officers are confronted daily with situations where they must respond to resistance or aggression in order to gain the control necessary to affect arrests and to ensure public safety. Control may be achieved through advice, warnings and persuasion, or by the proper use of physical force. While the use of proper and reasonable physical force may be necessary in situations that cannot be otherwise controlled, force may not be resorted to unless other reasonable alternatives have been exhausted or would clearly be ineffective under the particular circumstances. Officers are permitted to use whatever force is reasonable and necessary to protect others or themselves from bodily harm.

Therefore, it is the policy of the Charleston Police Department to treat all members of the public with respect and in adherence with the rights afforded by the United States Constitution and the Constitution and laws of the State of South Carolina.

In the course of their duties, officers of the Department may find it necessary to use force to overcome resistance, protect property and defend himself or herself or another person. In any encounter where an officer must respond to resistance or aggression, only reasonable force will be used. Under no circumstances will the force used be greater than necessary to achieve lawful objectives and to conduct lawful public safety activities.

### 23.2 RESPONSE TO RESISTANCE / AGGRESSION POLICY (CALEA 1.3.2)

Force is to be regarded as an unusual procedure and an absolute last resort in police operations. Applied force should be limited to the force that is objectively reasonable and necessary under the circumstances existing at the time force is applied.

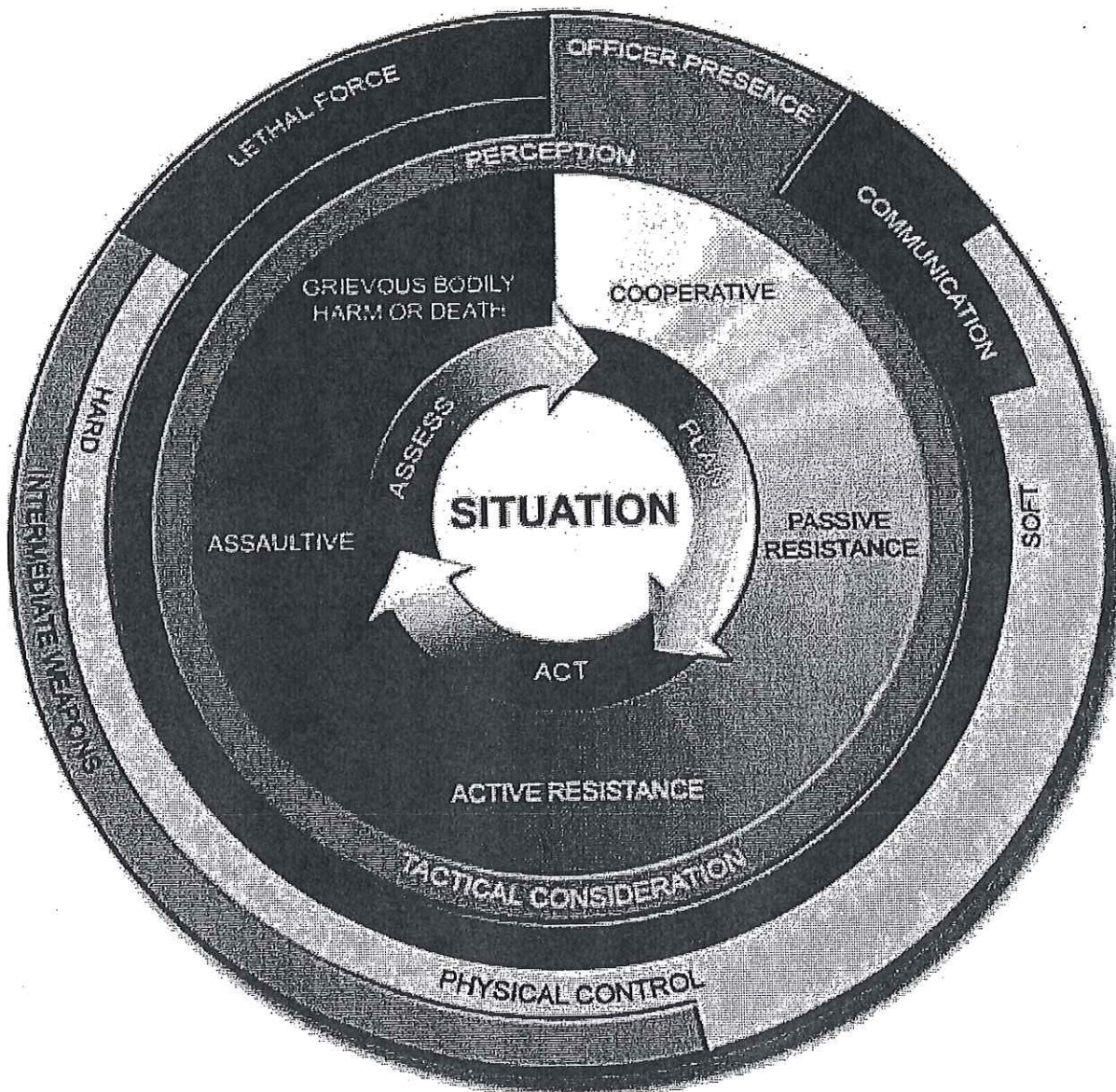
Employees of the Charleston Police Department will use only the force necessary to enforce lawful objectives and may use deadly force only when the officer reasonably believes that the action is in defense of human life, including the officer's own life, or in defense of any person in immediate danger of serious physical injury.

### 23.3 RESPONSE TO RESISTANCE / AGGRESSION DECISION MODEL

The Response to Resistance/Aggression decision model requires selection of the amount of force that is objectively reasonable and necessary relative to the situation. The officer relies upon reasoned discretion in terms of the Response to Resistance/Aggression options. Which option officers use depends on many factors, but the option is generally dictated by the amount of resistance offered by the subject. Depending upon the situation, the officer is trained to select the appropriate force

GENERAL ORDER #23

option. If the situation should worsen or improve, then the officer is trained to re-evaluate the situation and select a more appropriate force option based on the officer's knowledge, skills and ability to justify the force used.

23.4 DEFINITIONS (CALEA 1.3.2)

**Deadly Force:** That degree of force likely to cause death or great bodily harm. The term "deadly force" does not include the discharge of impact munitions by a law enforcement officer during and within the scope of his or her official duties.

**Less than Lethal Force:** Any response to resistance and/or aggression other than that which is considered deadly force.

**Reasonable Belief:** Facts or circumstances an officer knows, or should know, which cause an ordinary and prudent person to act or think in a similar way under similar circumstances.

**Physical Force:** Any force applied to the body, excluding the use of a weapon, in order to achieve compliance with lawful orders or to affect a lawful arrest.

**Slight Physical Harm:** An injury that is minor and does not require medical treatment (e.g. bruise, redness, slight strain).

**Moderate Physical Harm:** An injury that does require medical treatment (e.g. lacerations that require stitches, strains and

GENERAL ORDER #23

sprains).

**Serious Physical Injury:** Great bodily harm that creates a substantial risk of death, permanent disfigurement or long-term loss or impairment of the function of any bodily member or organ.

**Expandable Baton:** A departmental approved defensive impact weapon, designed to be used with specific techniques to subdue or control violent subjects.

**Chemical Agent:** A departmental approved defensive weapon that is an aerosol spray that causes profuse watering of the eyes and nose, which creates a sense of discomfort and disorientation, that may cause the person to cease violent acts.

**Conducted Electrical Weapon:** A departmental approved defensive weapon with projectiles that transmits electrical pulses to override the central nervous system and control the skeletal muscles.

**Less than Lethal Impact Munitions:** A departmental approved defensive impact munition that is discharged from a firearm, which is designed to stun, temporarily incapacitate, or cause temporary discomfort to a person without penetrating the person's body.

**De-Escalation:** The concept of de-escalation refers to behavior that is intended to prevent the escalation of commitment bias. *Commitment bias* refers to situations in which people make irrational decisions based upon past rational decisions or justify actions they have already taken. For example, if we make a request of another person and that person does not comply, it is our natural inclination to restate the request more forcefully, more emphatically, or more loudly. In doing so, we escalate our commitment to the request. Since escalation of commitment can lead to escalation of conflict, de-escalation can also refer to approaches used in conflict resolution. De-escalation, when done properly and under the right circumstances, can be a key officer safety resource. It can help officers avoid injuries to themselves and to others and it can make them safer while they perform their duties.

### 23.5 RESPONSE TO RESISTANCE / AGGRESSION DEFINED

Force is the striking of a person by the use of fist, hand, foot, baton or other object; or the application of any type of irritant or gas; or the application of any kind of hold or grip that results in the breaking of the skin, the swelling of the body or any of the limbs, or is used on a non-compliant subject.

Officers will not inflict or cause to be inflicted any force whatsoever which is designed to force a person to speak, confess, or answer any type of question.

### 23.6 DETERMINING OBJECTIVELY REASONABLE FORCE (CALEA 1.3.2)

Under the Fourth Amendment of the United States Constitution a police officer may only use such force as is "objectively reasonable" under the circumstances. The standard that courts will use to examine whether a use of force is constitutional was first set forth in *Graham v. Connor*, 490 U.S. 386 (1989) and expanded by subsequent court cases. The reasonableness of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with 20/20 vision of hindsight. The reasonableness must account for the fact that officers are often forced to make split-second judgments in circumstances that are tense, uncertain, and rapidly evolving.

The reasonableness inquiry in reviewing use of force is an objective one: the question is whether the officer's actions are objectively reasonable in light of the facts and circumstances confronting them. The officer's perception may be a consideration, but other objective factors will determine the reasonableness of force. These factors may include but are not limited to:

1. The severity of the crime(s) at issue;

GENERAL ORDER #23

2. Whether the subject poses an immediate threat to the safety of the officer (s) or others;
3. Whether the subject is actively resisting arrest or attempting to evade arrest by flight;
4. The influence of drugs/alcohol or the mental capacity of the subject;
5. The time available to an officer to make a decision;
6. The availability of officers/resources to de-escalate the situation.
7. The proximity or access of weapons to the subject;

The officer will use a level of force that is necessary and within the range of "objectively reasonable" options. When use of force is needed, officers will assess each incident to determine, based on policy, training and experience, which use of force option will de-escalate the situation and bring it under control in a safe and prudent manner.

Reasonable and sound judgment will dictate the force option to be employed. Therefore, the department examines all uses of force from an objective standard rather than a subjective standard.

23.7 DUTY TO INTERVENE

Any officer present and observing another officer using force that is clearly beyond that which is objectively reasonable under the circumstances shall, when in a position to do so, intercede to prevent the use of such excessive force. Officers shall promptly report these observations to a supervisor.

23.8 DE-ESCALATION

Policing requires that at times an officer must exercise control of a violent or resisting subject to make an arrest, or to protect the officer, other officers, or members of the community from risk of imminent harm. Clearly, not every potential violent confrontation can be de-escalated, but officers do have the ability to impact the direction and the outcome of many situations they handle, based on their decision-making and the tactics they choose to employ.

When reasonable under the totality of circumstances, officers should gather information about the incident, assess the risks, assemble resources, attempt to slow momentum, and communicate and coordinate a response. In their interaction with subjects, officers should use advisements, warnings, verbal persuasion, and other tactics and alternatives to higher levels of force. Officers should recognize that they may withdraw to a position that is tactically more secure or allows them greater distance in order to consider or deploy a greater variety of Force Options. Officers shall perform their work in a manner that avoids unduly jeopardizing their own safety or the safety of others through poor tactical decisions.

The prospect of a favorable outcome is often enhanced when supervisors become involved in the management of an overall response to potential violent encounters by coordinating resources and officers' tactical actions. Supervisors should possess a good knowledge of tactics and ensure that officers under their supervision perform to a standard.

23.9 SUPERVISORY RESPONSE

A supervisor shall acknowledge and respond to all situations involving the following:

1. An armed person or persons;
2. Any incident involving use of force beyond empty hand control or which results in injury.
3. An assault on an officer;
4. Resistance to arrest and/or;
5. Any other incident where police use of force is probable. (Warrant Service, Mental Health calls, etc.)

GENERAL ORDER #2323.10 LETHAL FORCE (CALEA 1.3.2; 1.3.3)

An officer may employ deadly force when the officer has a reasonable belief that his/her life or that of another is in immediate danger of death or serious bodily injury. This is based on the totality of the circumstances known to the officer at the time he/she employs the deadly force. When feasible, a verbal warning such as "POLICE, DON'T MOVE," should be utilized.

The use of deadly force cannot be used solely to prevent the escape of an unarmed felon or suspected felon. Deadly force may be used to prevent escape when the officer has a reasonable belief that the suspect poses a significant threat of death or serious physical injury to the officer or others. Strangle and choke holds and other similar holds that choke or restrict a person's ability to breathe or the flow of blood to the brain are not authorized unless the use of deadly force is appropriate. Firing warning shots from a weapon is prohibited.

Officers may aim or point their firearm when there is a reasonable belief of a threat to the safety of the officer or another person(s). In all cases, the officer must be prepared to provide an explanation of the incident.

23.11 PROCEDURES AFTER A RESPONSE TO RESISTANCE / AGGRESSION (CALEA 1.3.5)

Upon the occurrence of any type of situation in which force is used, whether on- or off-duty, the officer involved will:

1. Render medical aid immediately for any individual who has suffered an injury or requires medical attention;
2. Summon medical personnel as soon as practical to address the medical needs of injured persons;
3. Ask suspects or other parties, without obvious injuries, if they desire medical attention. If officers are in doubt about the medical condition of suspects or other parties, they should request medical personnel to respond and evaluate the situation;
4. Notify their shift commander after or while medical assistance is rendered; and
5. Submit a response to Resistance/Aggression report as detailed in this policy.

23.12 RESPONSE TO RESISTANCE/AGGRESSION REPORT (CALEA 1.3.6; 1.3.7; 1.3.13)

When a CPD employee exercises any response to resistance and/or aggression for other than training or recreational purposes, takes any action that results in, is alleged to have resulted in, injury or death of another person, applies force through the use of less-lethal or lethal weapons or applies force through any other means identified through this policy, a "Response to Resistance/Aggression Report" will be submitted by the employee using force directly to the Operations Bureau Commander, via his chain of command, before the end of the employee's shift. The "Response to Resistance/Aggression Report" will be submitted to the Professional Standards Office, through the chain of command, via the department's *Blue Team* program. The report will follow an outline of Situation (the nature of the call or situation that caused the officer to come into contact with the resistor) and Results. The report will also briefly outline the types of force used, the reason for its use, and the date and time and place of its occurrence. The "Response to Resistance/Aggression Report" will also note any injuries and list the names and addresses of civilian and police witnesses, if any. The original Incident Report OCA, if available, will be attached to the "Response to Resistance/Aggression Report". Failure to report the response to resistance/aggression will be cause for disciplinary action whether or not such force is justified. If any doubt exists as to whether or not force was used, a "Response to Resistance/Aggression Report" should be filed indicating the actions taken by the officer.

Responsibilities of supervisory members:

1. The immediate supervisor, while approving the interdepartmental report, will conduct a preliminary investigation

GENERAL ORDER #23

of the incident to determine compliance with departmental policy and procedure and will ensure the officer has properly documented the incident. The immediate supervisor will also be responsible for ensuring photographs have been taken.

2. Each ranking officer within the chain of command will approve the interdepartmental report acknowledging they have reviewed the incident and concur with the lower ranking supervisor's findings. The Bureau Commander will then forward the report to the Professional Standards Office for review and possible follow-up investigation. If a violation of policy has occurred, the Professional Standards Office will review and report directly to the Chief of Police.

The Professional Standards Office will conduct an annual analysis of all "Response to Resistance/Aggression Reports" and will submit a yearly report to the Chief of Police. The annual analysis will include, but is not limited to, Response to Resistance/Aggression activities, training needs, reporting procedures, Department policies and practices.

23.13 RELIEF FROM DUTY-DEADLY FORCE INCIDENT (CALEA 1.3.8)

Any employee who discharges a firearm at any individual or responds to resistance and/or aggression that has resulted in the death or serious physical injury to another person will be placed on administrative duty. The Chief of Police has the discretion to place employees on administrative duties that are involved in critical or traumatic incident, such as a fatal motor vehicle collision involving an employee.

The Chief of Police and Executive Staff will conduct an administrative review of all incidences of the use of deadly force in determining whether to return the employee to regular duty status.

23.14 RESPONSE TO RESISTANCE/AGGRESSION POLICY TRAINING (CALEA 1.3.11)

All agency personnel authorized to carry weapons are required to receive annual in-service training on the Department's Response to Resistance/Aggression policy and demonstrate proficiency with all approved lethal weapons and electronic controlled weapons that the employee is authorized to use. In-service training for other less than lethal weapons, weaponless control techniques and de-escalation shall also occur annually. All supervisors and officers will receive training to prepare for multiple officer situations regarding deadly force incidents through the use of reality based training.

Fusco:

2015-029-C Missed Court

2016-017-C Missed Court

2016-032-A Voluntary contact with a citizen which resulted in Officer Fusco attempting to search the person without probable cause.

Hutzler:

2010-005-E Officer Hutzler was rude and unprofessional when talking with a citizen.

2018-003-A Failed to assist another agency with an accident investigation.

I REQUESTED THE REPORTS.  
WHEN I GET THEM ILL DROP  
THEM OFF.

JH

RECEIVED  
CHARLESTON COUNTY  
MAR 05 2019  
9TH CIRCUIT  
PUBLIC DEFENDER

EXHIBIT  
Court 3  
PENGAD 800-631-6888

**Charleston Police Department**

Professional Standards

Officer Disciplinary History

PPO Nicholas Anthony Fusco [2144]

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Part I - Personal Information

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Name: PPO Nicholas Anthony Fusco  
Reporting Number: 2144 Badge No: 2144 Hire Dt: 11/25/2013

Bureau: Operations  
Division: Uniform Patrol  
Team / Assignment: Team Nine

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Part II - Discipline History

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**2015-029-C Investigation**

Aug 28, 2015: Written Reprimand - [Action/discipline completed]

**2016-032-A Investigation**

Nov 18, 2016: Letter of Counseling

Letter of Counseling and Additional Training - Review of Policy

Nov 18, 2016: Remedial Training

Letter of Counseling and Additional Training - Review of Policy

Printed: Mar 05, 2019 13:14 By: Sergeant Lee Mixon



**Charleston Police Department**

Professional Standards

Officer Disciplinary History

Master Police Officer Todd C. Hutzler [1305]

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**Part I - Personal Information**

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Name: Master Police Officer Todd C. Hutzler  
Reporting Number: 1305 Badge No: Hire Dt: 08/11/2003

Bureau: Operations  
Division: Peninsula Patrol  
Team / Assignment: Team Nine

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**Part II - Discipline History**

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**2010-005-E Investigation**

Feb 1, 2010: Written Reprimand - [Action/discipline completed]

**2018-003-A Investigation**

Feb 2, 2018: Counseling

Printed: Mar 05, 2019 13:17 By: Sergeant Lee Mixon

**Charleston Police Department**

Professional Standards

Officer Disciplinary History

PPO Jeremiah Pollett [2468]

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Part I - Personal Information

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Name: PPO Jeremiah Pollett  
Reporting Number: 2468 Badge No: 2468 Hire Dt: 12/11/2017

Bureau: Operations  
Division: Patrol Division-Peninsul  
Team / Assignment: Team Nine

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Part II - Discipline History

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Printed: Mar 05, 2019 13:15 By: Sergeant Lee Mixon

**Charleston Police Department**

Professional Standards

Officer Disciplinary History

Senior Police Officer Raymond J. Coble [1784]

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**Part I - Personal Information**

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Name: Senior Police Officer Raymond J. Coble  
Reporting Number: 1784 Badge No: Hire Dt: 01/11/2010

Bureau: Operations  
Division: Uniform Patrol  
Team / Assignment: Team Nine

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**Part II - Discipline History**

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**I2018-028 Information Call**

Oct 11, 2018: No Action Taken

Printed: Mar 05, 2019 13:16 By: Sergeant Lee Mixon

**Charleston Police Department**

Professional Standards

Officer Disciplinary History

PPO Jerry Wayne Bedenbaugh [2363]

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Part I - Personal Information

---

Name: PPO Jerry Wayne Bedenbaugh  
Reporting Number: 2363 Badge No: 2363 Hire Dt: 03/06/2017

Bureau: Operations  
Division: Peninsula Patrol  
Team / Assignment: Team Two

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Part II - Discipline History

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Printed: Mar 05, 2019 13:16 By: Sergeant Lee Mixon

DLO/0346617  
WITNESSES

Charleston City Police Department

AGENCY CASE NUMBER

2018-12468

ARREST WARRANT NUMBER

2018A1010204786

DATE OF ARREST

08/19/2018

ACTION OF GRAND JURY

**TRUE BILL**

*James L. Lewis*  
Foreperson of Grand Jury      DEC 10 2018  
Date:

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2018-GS-10-06275

The State of South Carolina  
County of Charleston

COURT OF GENERAL SESSIONS  
DECEMBER TERM 2018

THE STATE

VS.

FRANKIE LEE DAVIS, III  
B/M DOB: [REDACTED]-1986

Indictment for

**RESISTING ARREST**

SC Code: § 16-09-0320(A)  
CDR Code: 0326

**RECEIVED**  
MAR 14 2019  
SC Court of Appeals

STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON

INDICTMENT

At a Court of General Sessions, convened December 2018, the Grand Jurors of Charleston County present upon their oath:

RESISTING ARREST

That in Charleston County, South Carolina, on or about August 19, 2018, the Defendant, Frankie Lee Davis III, knowingly and willfully did oppose or resist Officer Nicholas A. Fusco, a law enforcement officer, while the officer was serving, executing or attempting to serve or execute a legal writ or process; or did resist an arrest being made by said officer who the Defendant knew or reasonably should have known was a law enforcement officer, in violation of Section 16-9-320(A) of the South Carolina Code of Laws (1976) as amended.

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



---

DAVID L. OSBORNE  
ASSISTANT SOLICITOR

DLO/0346617  
WITNESSES

Charleston City Police Department

AGENCY CASE NUMBER  
2018-12468

ARREST WARRANT NUMBER  
2018A1010204786

DATE OF ARREST  
08/19/2018

ACTION OF GRAND JURY

**TRUE BILL**

*Jeanette Lewis* DEC 10 2018  
for person of Grand Jury Date:

VERDICT

For person of Petit Jury

Date:

DOCKET NO. 2018-GS-10-06275

The State of South Carolina  
County of Charleston

COURT OF GENERAL SESSIONS  
DECEMBER TERM 2018

THE STATE

VS.

FRANKIE LEE DAVIS, III  
B/M DOB: [REDACTED]-1986

Indictment for

RESISTING ARREST

SC Code: § 16-09-0320(A)  
CDR Code: 0326

**FILED**

12/12/2018 4:46:10 PM  
JULIE J. ARMSTRONG  
CLERK OF COURT

**RECEIVED**  
MAR 14 2019  
SC Court of Appeals

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

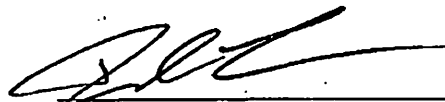
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Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



DAVID L. OSBORNE  
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,

**RECEIVED**

**Aug 24 2020**

**SC Court of Appeals**

s/Adam Ruffin

Adam Sinclair Ruffin

Appellate Defender

South Carolina Commission on Indigent Defense  
Division of Appellate Defense

PO Box 11589

Columbia, S.C. 29211-1589

This 24th day of August, 2020.

ATTORNEY FOR APPELLANT