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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Anderson County

Honorable Daniel D. Hall, Circuit Court Judge

PHILIP WESLEY WALKER,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2025-000328

APPENDIX

WANDA H. CARTER
Interim Chief Appellate Defender

ALAN WILSON
Attorney General

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

DONALD J. ZELENKA
Deputy Attorney General
Rembert Dennis Building
1000 Assembly Street, Room 519
Columbia, SC 29201

ATTORNEY FOR PETITIONER

ATTORNEYS FOR RESPONDENT

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State of South Carolina
County of Anderson

Court of General Sessions

State of South Carolina	)	
	)	
	)	Transcript of Record
v.	)	2016-GS-04-00594
	)	2016-GS-04-00595
Philip Wesley Walker	)	
	)	
<u>Defendant.</u>	)	

December 7, 2016
Anderson, South Carolina

B E F O R E:

The Honorable Lawton McIntosh, Judge; and a
jury.

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

Catherine Huey, Assistant Solicitor
Attorney for the State

William Yarborough, Esquire
Attorney for the Defendant

Lisa Scott
Circuit Court Reporter

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<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
1	State's - Interview of defendant		X
2	State's - Redacted transcript		X
2(b)	State's - Non-redacted transcript		X
10	State's - Family Dollar receipt		X
3(a)-(f)	State's - photos		X
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12(a)-(d)	State's - surveillance pics		X

- - -

1 P R O C E E D I N G S

2 - - -

3 THE COURT: Mr. Yarborough, have you heard
4 anything from your client?

5 MR. YARBOROUGH: I have not heard from my
6 client. I got an e-mail from his bondsman. He
7 hadn't seen him either. Before court started this
8 morning, I tried to call again. I did talk to the
9 bondsman Monday afternoon I think, and he was -- he
10 had been in contact with him, so, I mean, it's...

11 THE COURT: Okay. All right. Well, listen,
12 I've read -- I've read the transcript and looked at
13 the video.

14 MS. HUEY: Yes, sir.

15 THE COURT: And so let's just expedite it. I
16 don't need watch it again today.

17 MS. HUEY: Yes, sir. I had planned on
18 publishing it, but there is one little snafu. I
19 talked to Mr. Yarborough about it yesterday.

20 Mr. McKee, who was the officer involved in the
21 interview, one of the officers I should say, and had
22 the medical procedure, he was unable to come today.

23 THE COURT: I hate that for him.

24 MS. HUEY: Exactly. I told him that we were
25 going to proceed without him and just put up the

1 witness instead, Your Honor.

2 THE COURT: And I'm not being ugly.

3 MS. HUEY: I understand. I understand. And
4 that's what I told him.

5 And I believe Mr. Yarborough plans to object,
6 but I think we're fine under the situation. So I'm
7 just going to mark these really quickly.

8 THE COURT: Have you tried -- oh, I'm sorry.

9 MS. HUEY: That's okay, Judge.

10 THE COURT: All right. Go ahead.

11 MS. HUEY: I was just going to mark these
12 exhibits really quickly, and then we can put up
13 Mr. Simmons real quickly, Judge.

14 THE COURT: Have you tried to call your guy
15 this morning?

16 MR. YARBOROUGH: I have, Your Honor.

17 THE COURT: Okay. All right. So call your
18 first witness.

19 MS. HUEY: Yes, sir. If I may just...

20 (Exhibits being marked.)

21 MS. HUEY: Your Honor, the State calls Sergeant
22 Trevor Simmons to the stand.

23 (Witness approached.)

24 THE CLERK: If you'd please raise your right
25 hand.

1 THE WITNESS: (Complying.)

2 THE CLERK: Do you solemnly swear or affirm
3 that the testimony you'll give today in this case
4 will be the truth, the whole truth, and nothing but
5 the truth?

6 THE WITNESS: I do.

7 THE CLERK: If you would take the witness stand
8 please, sir, and state your name and spell your last
9 name for the reporter, please.

10 THE WITNESS: Trevor Simmons, S-i-m-m-o-n-s.

11 SERGEANT TREVOR SIMMONS,
12 having been produced and first duly sworn as a
13 witness on behalf of the State, then testified as
14 follows:

15 DIRECT EXAMINATION

16 BY MS. HUEY:

17 Q. Sergeant Simmons, where do you work?

18 A. Anderson City Police Department.

19 Q. And how long have you been there?

20 A. Eight years.

21 Q. And were you working on December 16th of 2015?

22 A. Yes, ma'am.

23 Q. And did you become involved in the
24 investigation of this case, *State v. Philip Walker*?

25 A. I did.

1 Q. Specifically, did you speak with Mr. Walker
2 regarding taking a statement from him?

3 A. Yes, ma'am.

4 Q. Okay. And then were you the lead in this case
5 or were you a witness?

6 A. Lieutenant Joel McKee was the lead. I was the
7 witness to the entire.

8 Q. All right. And when you were the witness to
9 it, just describe that process in terms of the room
10 in which this took place?

11 A. The room is our shift office. It's a small
12 room with two desks, a computer, and three chairs in
13 it.

14 We brought Mr. Walker in there, and I spoke
15 with him in that area there and read him his Miranda
16 warning ---

17 Q. Okay.

18 A. --- Lieutenant McKee did.

19 Q. All right. And so you were present, Lieutenant
20 McKee, and then the defendant in this room?

21 A. Yes.

22 Q. Now, are you on the video?

23 A. I believe I'm out of the video ---

24 Q. But at least from time to time ---

25 A. --- but the whole time you can hear my voice.

1 I'm sitting beside the camera, rather than in front
2 of it.

3 Q. So speaking of the camera, was this entire
4 interview recorded?

5 A. Yes. It's all recorded by the camera.

6 Q. And that's your specific camera?

7 A. Yes, ma'am.

8 Q. All right. So you were a witness to this
9 entire event?

10 A. Yes, ma'am.

11 Q. And so did -- was the defendant advised of his
12 rights then?

13 A. He was.

14 Q. And what rights were those?

15 A. The Miranda warning, which includes, you know,
16 the right to remain silent. Anything you say can
17 and will be used against you in a court of law.

18 You have the right to speak to an attorney and
19 have an attorney present during any questioning.

20 If you cannot afford an attorney, one will be
21 provided to you at government expense.

22 Knowing and understanding your rights as I have
23 explained them to you, are you willing to answer any
24 questions without an attorney present, basically.

25 Q. Those are general directions?

1 A. General directions. Yes.

2 Q. And did he seem to understand those rights?

3 A. He did.

4 Q. And did he wish to waive those rights that were
5 explained to him?

6 A. He did.

7 Q. And did he then -- and let me back up. Was he
8 ever denied any restroom breaks or something to
9 drink?

10 A. No, ma'am. He was offered drinks.

11 Q. Okay. And was he seated?

12 THE COURT: Excuse me.

13 MR. YARBOROUGH: I think what he's testify to
14 about the Miranda warnings being read to him is
15 hearsay. I don't think he -- he's not the one that
16 did it. He just -- he heard somebody say it, so I'd
17 object to the Miranda warnings.

18 THE COURT: Overruled. Go ahead.

19 BY MS. HUEY:

20 Q. And he was seated in this room you said?

21 A. Yes.

22 Q. Okay. But was he handcuffed?

23 A. He was handcuffed to the front, just for his
24 comfort.

25 Q. Meaning in front of him?

1 A. Yes. His hands would be like this
2 (demonstrating).

3 Q. Okay. All right. Did he seem to be
4 intoxicated or under the influence of any drugs?

5 A. No, ma'am.

6 Q. And were any threats or promises made in order
7 to get him to waive his rights on this day?

8 A. No, ma'am.

9 Q. Any intimidation?

10 A. No, ma'am.

11 Q. So was his waiver of rights voluntary in your
12 opinion?

13 A. Yes.

14 Q. And did the defendant indicate that he wished
15 to give a statement?

16 A. He did.

17 Q. And did he then do so?

18 A. He did.

19 Q. And, again, this is also on the recording?

20 A. It was all recorded. Yes.

21 Q. And, again, you're a witness to this entire
22 process?

23 A. Yes, ma'am.

24 Q. Were you ever out of, like, the defendant's or
25 Lieutenant McKee's presence during this interview?

1 A. No, ma'am.

2 Q. I'm going to show you what's been marked as
3 State's Exhibit 1. Can you please take a look at
4 this for me?

5 A. Yes.

6 Q. Do you recognize that item?

7 A. I do.

8 Q. Okay. And how are you able to recognize it?

9 A. I initialed and dated it the day that we
10 watched it.

11 Q. And does that fairly and accurately represent
12 the interview that took place between Lieutenant
13 McKee, the defendant, and then yourself as a
14 witness?

15 A. It does.

16 Q. On December 16th of 2015?

17 A. Yes, ma'am.

18 Q. And was this interview transcribed as well?

19 A. Yes, it was.

20 Q. And were you able to review that transcript?

21 A. I did.

22 Q. Does it also fairly and accurately depict what
23 was contained in that recording on December 16th of
24 2015?

25 A. Yes, ma'am.

1 Q. I'm showing you what's been marked as State's
2 Exhibit 2. Again, is that the transcript?

3 A. Yes, it is.

4 MS. HUEY: Okay. Your Honor, for purposes of
5 this hearing, the State would seek to introduce
6 State's 1 and 2 into evidence.

7 THE COURT: Any objection?

8 MR. YARBOROUGH: Your Honor, my previous
9 objection that it's hearsay and also that he's not
10 the one that read his Miranda warnings to him, so
11 that was my objection. I'd like that noted for the
12 record.

13 THE COURT: All right. Noted and overruled.
14 Is that -- the transcript appears to have been done
15 by a certified court reporter; is that correct?

16 MS. HUEY: Yes, sir, it was.

17 THE COURT: Very good.

18 (State's Exhibit Nos. 1 and 2 entered into
19 evidence.)

20 MS. HUEY: And, Your Honor, if I may put
21 something else on the record for purposes of this
22 hearing.

23 THE COURT: Yes, ma'am.

24 MS. HUEY: The defense attorney and I have
25 agreed that -- I believe you have a copy of the

1 transcript, Judge -- that on page 14 at line 4, I
2 have actually redacted the rest -- the rest of the
3 transcript, Your Honor, for purposes of the trial
4 because it does mention some of his prior
5 convictions.

6 THE COURT: Okay.

7 MS. HUEY: And so we just stopped it and we
8 plan on doing that with the interview as well during
9 the trial.

10 THE COURT: So for the record, what part would
11 be excluded?

12 MS. HUEY: After -- as far as the transcript
13 goes, Your Honor, after page 14, line 4, the
14 remainder of the transcript will be redacted.

15 THE COURT: Okay.

16 MS. HUEY: And I can also admit though as
17 State's 2(b), the original transcript in its
18 entirety.

19 THE COURT: Are you seeking to admit the
20 transcript?

21 MS. HUEY: Yes, sir. Yes, sir.

22 THE COURT: All right.

23 MS. HUEY: And if I may, I'll go ahead and put
24 State's 2(b) into evidence as well, Your Honor.

25 THE COURT: Okay. Admitted.

1 (State's Exhibit No. 2(b) received into
2 evidence.)

3 MS. HUEY: Judge, that's all I have for this
4 witness.

5 THE COURT: Cross-examination, Mr. Yarborough?

6 MR. YARBOROUGH: Briefly, Your Honor.

7 CROSS-EXAMINATION

8 BY MR. YARBOROUGH:

9 Q. I know you didn't read Mr. Walkers' rights to
10 him, but did he appear to be under the influence of
11 any narcotics or drugs?

12 A. No, sir. He did not appear to be.

13 Q. Did he -- did you ask him what grade he had
14 completed or how much -- how much education he had?

15 A. I believe Lieutenant McKee went over that as
16 well as his -- as his ability to read and write, but
17 I do not remember what grade he said he completed.

18 Q. Okay. Did he say he could read and write?

19 A. He did.

20 MR. YARBOROUGH: Okay. I don't have anything
21 further, Judge.

22 THE COURT: Any redirect, Ms. Huey?

23 MS. HUEY: No, sir, Your Honor.

24 THE COURT: Thank you, Officer. You can step
25 down.

1 (Witness excused.)

2 THE COURT: Any other witnesses?

3 MS. HUEY: No, sir. Not for this hearing.

4 THE COURT: And let me state for the record
5 that on Monday when we picked the jury, Ms. Huey
6 provided me a copy of the CD of the interview, as
7 well as the transcript. I have read and viewed both
8 of them.

9 And considering all the factors from the *State*
10 *v. Miller* which would include coercion, length of
11 interrogation, location, defendant's maturity,
12 education, physical and mental health, his
13 experience, any misrepresentation provided by law
14 enforcement, threats of violence, leniency, or any
15 isolation which would not be involved in this case,
16 from the totality of the circumstances, it's clear
17 from the CD that this was a custodial interrogation
18 and it's clear that there was a voluntary statement
19 made by the defendant, so I'm finding it's
20 admissible.

21 That being said ---

22 MR. YARBOROUGH: You've got me protected on the
23 record?

24 THE COURT: Sure. You need to and I note your
25 objections.

1 MR. YARBOROUGH: Yeah, I don't want it ---

2 THE COURT: If you want to, you can continue to
3 object to it and you do what you think is necessary
4 because I sometimes say things that people don't
5 necessarily agree with.

6 But that being said, your objection to the
7 admission of the video and the transcript on a
8 hearsay basis, what was your other one?

9 MR. YARBOROUGH: I think his education, I
10 mean...

11 THE COURT: That he may meet all the factors?

12 MR. YARBOROUGH: Yeah.

13 THE COURT: If you want -- and I'm leaving it
14 to your discretion -- as far as I'm concerned, you
15 do not need to object again during the course of
16 this trial since you've objected now. Now, if you
17 feel like you need to just to be safe, then
18 certainly.

19 MR. YARBOROUGH: No. I think that's fine. I
20 think the record is protected, Your Honor.

21 THE COURT: Okay. Very good. All right.
22 Ms. Huey.

23 MS. HUEY: Yes, sir.

24 THE COURT: Anything before we break to bring
25 the jury in?

1 MS. HUEY: Your Honor, I do need to mark a few
2 exhibits.

3 THE COURT: Okay.

4 MS. HUEY: But I don't know if you want me to
5 do that.

6 THE COURT: Once y'all do that, send word back
7 to me.

8 MS. HUEY: Okay.

9 THE COURT: And then I want you ready to go
10 when we bring the jury in.

11 MS. HUEY: Okay. Thank you, Judge.

12 THE COURT: Mr. Yarborough, anything before we
13 get started?

14 MR. YARBOROUGH: No, sir. I'm going to go try
15 to call his father. I'll check and see if he's
16 called me back.

17 THE COURT: Okay. Just see where -- yes, sir.

18 THE CLERK: Do we know if all the jury is here?
19 I'll go ask.

20 MR. YARBOROUGH: Your Honor, while we're on the
21 record, I guess I should probably re-ask the Court
22 to consider a continuance based on the fact that my
23 client's not here.

24 THE COURT: All right. That is denied.

25 MR. YARBOROUGH: And note that I -- note that

1 for the rest of it as well.

2 THE COURT: And admitted for your protection.
3 You -- when we met in chambers on Monday, I believe
4 you told me that you had spoken with your client
5 several times last week, were supposed to meet with
6 him ---

7 MR. YARBOROUGH: Sunday.

8 THE COURT: --- on the weekend and did show
9 that you were in communication with his father.

10 MR. YARBOROUGH: I did.

11 THE COURT: And actually had a call from him
12 last night, so...

13 MR. YARBOROUGH: I did. I had a call in the
14 middle of the night. I tried to call him back. But
15 at that point, his father told me he's still not
16 been able to get in touch with him.

17 THE COURT: Okay. All right. Very good.
18 Thank you.

19 MR. YARBOROUGH: Thank you, Your Honor.

20 MS. HUEY: And, Your Honor, if I may add, we
21 certainly noticed the defendant of this trial. We
22 sent a card -- a bond card November 18th. We mailed
23 that out to him, his bondsman, and then of course
24 Mr. Yarborough.

25 THE COURT: All right. Very good. Thank you,

1 guys.

2 THE CLERK: We do have 13, Your Honor.

3 THE COURT: We do? All right.

4 (From 9:36 to 9:53 a.m., a recess was taken.)

5 THE COURT: All right. Did you mark the entire
6 transcript as Court's Exhibit No. 2?

7 MS. HUEY: We can correct that to make it
8 happen.

9 THE COURT: Okay. Anything further from the
10 State before we bring the jury in?

11 MS. HUEY: No, sir, Your Honor.

12 MR. YARBOROUGH: No, sir, Your Honor.

13 THE COURT: All right. Would you bring the
14 jury in, please, ma'am?

15 THE BAILIFF: (Complying.)

16 (At 9:54 a.m., jury entered the courtroom.)

17 THE COURT: Good morning.

18 THE JURORS: (Collectively:) Good morning.

19 THE COURT: I apologize to all of y'all. I
20 neglected to tell you we were moving downstairs, but
21 I noticed that our alternate and our forelady heeded
22 what I asked them to do. Thank you very much.
23 Thank you all for being here on time.

24 Mr. Foreman -- I'm sorry. Mr. Clerk, would you
25 swear the jury, please, sir?

1 THE CLERK: I'll be glad to, Your Honor. If it
2 pleases the Court?

3 THE COURT: Yes, sir.

4 THE CLERK: If I could have you stand and raise
5 your right hands, please.

6 THE JURORS: (Complying.)

7 THE CLERK: Do you and each of you solemnly
8 swear or affirm that you shall well and truly try
9 and a true deliverance made for the State of South
10 Carolina and the defendant whom you shall have in
11 charge and a true verdict render according to the
12 law and the evidence. If you will, say "I do."

13 THE JURORS: (Collectively:) I do.

14 THE CLERK: Have a seat.

15 THE JURORS: (Complying.)

16 THE COURT: All right. Ladies and gentlemen,
17 if you recall, this is the case of the *State of*
18 *South Carolina v. Philip Wesley Walker*, who has been
19 charged with armed robbery and possession of a
20 weapon during the commission of a violent crime.

21 Let me just give you some general instructions
22 before we start with the opening statements. I
23 don't know if any of you have ever been involved in
24 court proceedings at all, whether you watched court
25 in a real courtroom before, but I suspect that each

1 and every one of you have watched on TV and movies
2 something that purports to be a criminal trial.

3 Let me just dispel right now, what you're about
4 to engage in is nothing like you see on TV. Trials
5 are very slow. They're very methodical and
6 deliberate. They are a fundamental part of our
7 democracy, and they are a search for the truth to
8 try to see that justice is done for all sides, for
9 the State and for the defense.

10 Now, these attorneys you have before you today,
11 when they're sworn in like any other attorneys, they
12 take an oath that they will zealously represent
13 their clients' interests in the courtroom, and you
14 can expect no less from either one of them today,
15 all three of them. Excuse me.

16 However, they are officers of the court. What
17 that means is, you can expect them to be
18 professional, competent, and ethical to one another,
19 to me, to witnesses in all their actions here in the
20 courtroom.

21 Now, you just took an oath from the Clerk of
22 Court. And I saw that each one of you affirmed or
23 swore that you would be fair, that you would be
24 impartial, and you'd be ethical in your dealings in
25 this matter. And -- and that means that the Court

1 and these parties and these attorneys have a right
2 to expect that you -- that you would've acted fair
3 and impartial and that you'll follow the
4 instructions that I'll give to you throughout this
5 case.

6 Now, what I'm telling you now is not the law
7 that you will apply during the course of this trial.
8 I will give that to you at the end before you begin
9 your deliberations. And I'm not going back through
10 my admonitions to you yesterday -- yesterday about
11 not speaking with each other or not looking up
12 anything, which reminds us -- everybody remembers
13 those, correct?

14 THE JURORS: (Affirmative responses.)

15 THE COURT: Okay. Now, some of you have
16 requested a pad and pen. Does everybody have that?

17 THE CLERK: I have not passed them out yet.

18 THE COURT: Okay. Would you do that, please,
19 sir?

20 THE CLERK: (Complying.) I think I had eight
21 that wanted a pad.

22 THE COURT: All right. Madam forelady, I'm
23 going to remind you too that any time I call you
24 back in here and you're not ready, just say you're
25 not ready. If anyone needs to have a break, raise

1 your hand or somebody -- especially in this small
2 courtroom, if somebody blocks your view or you can't
3 see or hear what's going on, let us know. It's very
4 important that you're able to see and hear all the
5 proceedings. Okay?

6 Ladies and gentlemen, you've seen in my hand
7 several times during jury qualification and this
8 morning what is known as an indictment. Let me tell
9 you, the fact that the defendant in this case has
10 been arrested and charged and indicted is not
11 evidence of his guilt.

12 It does -- does not raise a presumption of his
13 guilt. It does not raise an inference of his guilt.
14 This -- this is just the mechanism the State of --
15 State of South Carolina uses to bring somebody
16 before the Court and before a jury such as
17 yourselves for a trial and determination of his
18 guilt or his innocence.

19 In fact, in this case the defendant has said,
20 "I'm not guilty." Under the law, he is presumed
21 innocent until at the end of the day you the jury
22 find that he is guilty by proof of guilt beyond a
23 reasonable doubt. The State of South Carolina at
24 all times has the burden of proving his guilt by
25 proof beyond a reasonable doubt.

1 So that being said, let me give you a quick
2 definition of what reasonable doubt is. A
3 reasonable doubt is the kind of doubt that would
4 cause a reasonable person to hesitate to act in
5 important matters or affairs. And as I told you,
6 the State has the burden of proving each element of
7 the charges for which the defendant is before you by
8 proof beyond a reasonable doubt.

9 And if any of you have ever served in a civil
10 case, not a criminal case, the burden on those cases
11 is called a preponderance of the evidence.
12 Typically, we will give an example of the scale of
13 justice being equal. And in that case in civil
14 cases, the scale only has to tilt ever so slightly
15 in favor of the person who has the burden of proof
16 in order to prove their case.

17 In criminal cases, the burden is much higher.
18 It's the highest standard we recognize in law.
19 Proof -- reasonable doubt is proof that leaves you
20 firmly convinced of the defendant's guilt.

21 Now, with that being said, ladies and
22 gentlemen, there are very few things in this world
23 that we know with absolute certainty. And in law,
24 it does not require the State to overcome every
25 possible doubt that may exist. At the end of the

1 day, if based on your consideration of evidence, if
2 you are firmly convinced the defendant is guilty of
3 the charge for which he has come before you, it is
4 your duty to find him guilty.

5 On the other hand, if you think there's a real
6 possibility that he is not guilty, you must give him
7 the benefit of the doubt and find him not guilty.

8 Now, ladies and gentlemen, some of you have
9 requested notes -- a pad and pen to take notes. Let
10 me caution each of you before you go back to your
11 deliberation in this trial, that some people are
12 better note takers than others. And at the end of
13 the day, madam forelady, just because something
14 appears in one of your juror's notes doesn't mean it
15 trumps somebody's memory of that particular issue.
16 That's why they call them deliberations. You just
17 have to hash them out.

18 Also, in determining what you want to do as far
19 as the verdict, in other words the facts that you
20 want to find, you need to watch the witnesses on the
21 stand and see how they act, see what their demeanor
22 is, and see which testimony you wish to believe and
23 see which testimony you wish not to believe.

24 But if you're so busy taking notes that you
25 miss somebody's reaction to a question or their

1 demeanor on the stand, you may miss something that's
2 important to you in making that decision as to
3 whether or not you want to believe them or not
4 believe them.

5 Now, ladies and gentlemen, in the vernacular of
6 the law, you are called the judges of the facts.
7 You are the sole judges of the facts. No one,
8 including myself, can interfere with your function
9 of finding what the facts are. In other words, what
10 your verdict's going to be.

11 Therefore, if I do anything throughout the
12 course of this trial, if I make a comment or a
13 gesture that seems to indicate to you how you are to
14 find your facts or the verdict you're to reach, I'm
15 going to ask you and also instruct you to disregard
16 it.

17 Our constitution does not allow any trial judge
18 to make a comment on the facts nor to have an
19 opinion on the facts. We are essentially referees
20 to make sure that each side has a fair and impartial
21 trial and instruct you on the law at the end of this
22 case.

23 But you'll determine what the facts are, ladies
24 and gentlemen, from the testimony you hear from this
25 witness stand and the evidence that is admitted and

1 I allow to come in before you. And that's only --
2 that's the only evidence that will be before you
3 from which you will determine the facts. And you
4 will apply -- you will find those facts in
5 accordance with the law that I give you at the end
6 of this case. You're not to be influenced by
7 anything you see or hear outside of this courtroom.

8 Now, the same law that makes you the sole
9 judges of the facts makes me the sole judge of the
10 law. In other words, if I give you the law, you may
11 disagree with it. You may think it should be
12 something other than what it is, but I'll tell you
13 and I'll instruct you, it is your obligation and
14 your sworn duty under your oath that you just took
15 to follow the law which I give to you.

16 If I'm mistaken as a matter of law, there are
17 groups down in Columbia who will correct my rulings.
18 But on the other hand, errors of fact generally are
19 not correctable on appeal.

20 So what that simply means is, during the course
21 of this trial -- it's not going to be real long.
22 But during the course of this trial you need to pay
23 close attention to all the testimony and evidence,
24 the statements by these attorneys, and the charges I
25 give to you so that when you begin your

1 deliberations you don't make a factual error.

2 Now, ladies and gentlemen, in all cases there
3 are five sets. In just a minute, there will be
4 opening statements by the State. They're required
5 to open and tell you what the case is about.

6 The defense is also able but not required to
7 give you an opening statement. The reason being,
8 the State has the burden of proof in this matter.
9 But what these attorneys tell you is helpful. It's
10 a guide to help you understand what the issues in
11 this case are about, but they're not put on the
12 witness stand. They're not sworn in. It's not true
13 evidence. The only true evidence that you'll have
14 is the testimony and exhibits that are admitted
15 during the course of this trial.

16 After opening statements, you'll have the
17 presentation of the evidence. After which, we'll
18 have closing arguments. I will then charge you on
19 the law, and then you'll begin your deliberations.
20 I just give you those sets so, typically, you'll
21 know where you are during the course of this trial.

22 Now, ladies and gentlemen, in every trial I was
23 ever involved with as an attorney, every trial I've
24 been involved with as a circuit court judge, there
25 are objections. Let me tell you this, lawyers have

1 an ethical duty to object anytime he or she sees
2 something that goes on in the courtroom which they
3 feel is improper.

4 Madam forelady and ladies and gentlemen, if
5 there is an objection, you are not to engage
6 yourself as to why that objection is being made. It
7 shall not and may not be part of your deliberations.
8 Let me just tell you this: Part of every trial,
9 that's the process that we go through. I may send
10 you out of the courtroom so I can hear things that
11 would not be proper for you to hear. I may let you
12 stay in here. Sometimes you may feel like a coward
13 running out of the courtroom. It just depends on
14 how the trial progresses.

15 But at the end of the day, madam forelady, if
16 somebody -- one of your jurors wants to raise the
17 issue that an objection was made and I rule on it,
18 it would be improper for your deliberations. You
19 have to stop it. Okay?

20 With that being said, let me just tell you one
21 thing further before I give you a quick break, under
22 the laws of this state, a defendant may be tried
23 even if he does not attend the trial. As you see
24 here, the defendant is not here today. But the fact
25 that the defendant is not here may not be considered

1 by you at any time during your deliberations and in
2 any manner because the burden remains on the State
3 of South Carolina to prove his guilt by proof beyond
4 a reasonable doubt.

5 Okay. With that being said, if you'll go back
6 to your jury room, I need to discuss with these
7 lawyers whether or not I have misstated something or
8 failed to tell you something I should have. You
9 probably won't have much time to sit down, but we'll
10 bring you back in a minute for opening statements.

11 (At 10:08 a.m., jury left the courtroom.)

12 THE COURT: Any additions or exemptions from
13 the State?

14 MS. HUEY: Nothing from the State, Your Honor.

15 THE COURT: From the defense?

16 MR. YARBOROUGH: No, sir, Your Honor.

17 THE COURT: You want a quick break?

18 MS. HUEY: Just really quickly.

19 THE COURT: Just give me five -- just please
20 say we're back, and I'll come back in the courtroom.

21 MS. HUEY: Yes, sir, I will. Thank you.

22 THE COURT: All right. Thank you, guys.

23 (From 10:08 to 10:13 a.m., recess was taken.)

24 THE COURT: Bring the jury in, please.

25 THE BAILIFF: (Complying.)

1 (At 10:14 a.m., jury entered the courtroom.)

2 THE COURT: Ms. Huey, the State ready to
3 proceed?

4 MS. HUEY: Yes, sir, Your Honor.

5 THE COURT: Mr. Yarborough, defense?

6 MR. YARBOROUGH: Yes, Your Honor.

7 OPENING STATEMENTS

8 MS. HUEY: On December 16, 2015, Natasha Oliver
9 was working at the Family Dollar located at 1402
10 East River Street. It's in the city limits of
11 Anderson, also in the county. She works as a
12 cashier there, and she has for the last nine years.

13 Well, on this particular day about 12:15,
14 12:17, something like that, a customer approached
15 her. He had on a big, bulky brown or dark jacket
16 and a dark hat and he approached her and bought some
17 Pringles and Airheads. And he used his EBT card to
18 do so.

19 Natasha rang him up, and gave him a receipt.
20 Put the Pringles and the Airheads in the bag and
21 handed him the bag.

22 Well, then he decides he wanted some
23 cigarettes. The cigarettes are behind her in a
24 glass case. So she turned around to get a pack of
25 Newport's out of the glass case at his request. And

1 when she turned back around, he had a gun in her
2 face.

3 Now, it was a small gun, but it was a gun
4 nonetheless. And he said, "Give me the money in the
5 register. No change. Don't scream or I'll pull the
6 trigger." Well, you know what? Natasha did just
7 that. She didn't scream. She rung up a lighter so
8 the register would open again, and she grabbed that
9 cash in the drawer and handed it to him.

10 And off he walked out the store. A little -- a
11 little get up in his step, but not too fast. He was
12 trying to act calm and cool. He left the store and
13 he walked on down the street.

14 Natasha, as soon as he left, pulls the panic
15 button. Anderson City Police Department gets there
16 so quickly luckily.

17 On the way, Trevor Simmons, a sergeant with the
18 police department and his partner at the time,
19 Lieutenant McKee, were in a patrol car. And as they
20 were responding to the Family Dollar in reference to
21 the armed robbery, they noticed a fellow walking
22 down the street with a Family Dollar bag.

23 And as all of these police sirens are going by
24 and cars, this guy is not looking up at all. Has
25 his head down acting like nothings going on. He

1 doesn't -- he doesn't try and look and see where
2 they're going because he knows where they're going.
3 They're going to the Family Dollar that he just
4 robbed.

5 Now, he didn't have a brown jacket on at this
6 point. So in the meantime, as the police are
7 responding to the Family Dollar, Sara Smith with the
8 Housing Authority, which is right near the Family
9 Dollar, notices a fellow dumping his clothes in the
10 dumpster. And she thinks, now, something's weird
11 about that. He must be up to something.

12 And so God bless her, she took a picture. And
13 not only did she take a picture, she then called the
14 police and said, "This guy was just throwing his
15 clothes in the dumpster."

16 Well, the clerk, Natasha Oliver, also said,
17 "Well, yeah, he had a brown jacket on, but he also
18 had a red hoody and like a teal blue turquoise shirt
19 under that." Well, guess what? That guy with the
20 Family Dollar bag had just that outfit on.

21 So the police were luckily able to get right
22 back to him within a few minutes and detain him. So
23 not only was he wearing that red hoody and a blue
24 turquoise shirt underneath, he also had a Family
25 Dollar bag with a receipt for it, and also Pringles

1 and Airheads in his bag, a receipt, and he had his
2 EBT card that he used to purchase those items.

3 Now, forensics with the city responded to that
4 dumpster that Sara Smith called about. And they
5 found in that dumpster a brown jacket, a brown hat,
6 and a .22-caliber handgun.

7 The defendant also had about \$240 in cash with
8 him when he was detained, which is just the amount
9 again that was missing from the Family Dollar. So
10 he was taken into custody at that point and actually
11 went on to admit to this crime.

12 That is why we're all here today, folks. The
13 defendant has been charged with armed robbery and
14 that -- that's exactly what it is. He robbed
15 someone while he was armed with a deadly weapon.

16 He's also charged with possession of a weapon
17 during the commission of a violent crime, which,
18 again, is just that. He had in his possession a gun
19 when he committed the violent crime of armed
20 robbery.

21 I think this case is going to go pretty
22 quickly. I thank y'all so much for your service
23 today and I look forward to working with you.

24 THE COURT: Mr. Yarborough.

25 MR. YARBOROUGH: Good morning, ladies and

1 gentlemen.

2 THE JURORS: (Collectively:) Good morning.

3 MR. YARBOROUGH: My name is Bill Yarborough. I
4 practice over in Greenville. It's my pleasure to
5 represent Mr. Walker this morning.

6 Ms. Huey paints a pretty vivid-colored painting
7 in here that she's discussed in the case. And the
8 reason we have -- have a trial is for you to be able
9 to listen to the evidence and you make the decisions
10 based on the law what this case is all about.

11 I think here what you're going to find is -- is
12 that your question is as to whether or not there was
13 an armed robbery involved in this case and whether
14 or not there was a firearm involved. I think that
15 the rest of it is pretty -- pretty -- pretty black
16 and white.

17 I'd ask you to listen clearly, listen to -- to
18 what the testimony is, listen to what Judge McIntosh
19 tells you is the law, and I think that at that point
20 you will look and he's already told you that the
21 questions are beyond a reasonable doubt. That's to
22 hesitate. If you hesitate, then, you know, I think
23 you've got to return a verdict of not guilty.

24 It's my job, you know, to -- try to get the --
25 the -- the evidence presented in the best light for

1 Mr. Walker. And so I'd ask that you listen to my
2 questions and also listen to what the witnesses say
3 as well, and we appreciate your service. Thank you.

4 THE COURT: Are you going use this podium?

5 MS. HUEY: Yes, sir.

6 THE COURT: Could we slide it so we don't block
7 these jurors from the witnesses?

8 MS. HUEY: Yes, sir. The State calls Natasha
9 Oliver.

10 (Witness approached.)

11 THE CLERK: Just need for you to raise your
12 right hand.

13 THE WITNESS: (Complying.)

14 THE CLERK: Do you solemnly swear or affirm the
15 testimony you'll give the Court today in this case
16 will be the truth, the whole truth, and nothing but
17 the truth?

18 THE WITNESS: Yes, sir.

19 THE CLERK: If you would take the stand,
20 Ms. Oliver, and state your name and spell your last
21 name for the reporter, please.

22 THE WITNESS: Okay. Natasha Oliver,
23 O-l-i-v-e-r.

24 NATASHA OLIVER,
25 having been produced and first duly sworn as a

1 witness on behalf of the State, then testified as
2 follows:

3 DIRECT EXAMINATION

4 BY MS. HUEY:

5 Q. Ms. Oliver, how old are you?

6 A. Thirty-nine.

7 Q. And how far did you go in school?

8 A. Twelfth grade.

9 Q. Where do you work?

10 A. Family Dollar.

11 Q. And which Family Dollar is that?

12 A. On River Street.

13 Q. How long have you been working there?

14 A. Since '07.

15 Q. And so were you working there on December 16th
16 of 2015?

17 A. Yes, I was.

18 Q. And on that particular day, what exactly were
19 you doing?

20 A. Running the cash register.

21 Q. And is that what you usually do?

22 A. Yes, ma'am.

23 Q. What happened on this particular day though?

24 A. I was running the register. We was kind of
25 busy. We had customers in and out.

1 And then I noticed that there was a gentleman
2 standing over to my right, and he kept looking at me
3 and that's when I thought, okay, something's not
4 right. So then he kept saying, "Go ahead. Go
5 ahead." You know, so then ---

6 Q. Let me stop you right there. So he was letting
7 other customers ---

8 A. He was letting customers ---

9 Q. --- go ahead of him?

10 A. Yes, ma'am.

11 Q. Okay.

12 A. And then he -- I said, "May I help you?"

13 And he said, "Yes. Do you take EBT?"

14 I told him, "Yes, we do."

15 So he said he was looking for some snacks and
16 he was looking at toys in the store.

17 I said, "Okay."

18 So at that time he kept watching me, so I was
19 watching him. Then he came up to the register. He
20 got a can of Pringles and I believe Airheads. I
21 rung them up.

22 And then he asked me did we take -- do we sell
23 cigarettes.

24 I said, "Yes."

25 He said, "How much for the Newport's?"

1 I told him how much they were.

2 And then when I turned around, he had a gun
3 pointed in my face. He told me to give ---

4 Q. Slow down for one second.

5 A. Yes, ma'am.

6 Q. Okay?

7 A. Okay.

8 Q. Can you tell me what he looked like?

9 A. Yes. He was a brown-skinned guy.

10 Q. Okay.

11 A. He was wearing glasses. He had on a brown,
12 like, Carhartt jacket, a hoody jacket, and a
13 turquoise t-shirt underneath it.

14 Q. So his -- and did he have anything on his head?

15 A. He had a ball cap and some dirty jeans.

16 Q. Okay. And so you first rang up the Pringles
17 and Airheads; is that correct?

18 A. Yes, ma'am.

19 Q. Okay. And he used his EBT card?

20 A. Yes, ma'am.

21 Q. All right. And -- and did you give him a
22 receipt for that transaction?

23 A. I did.

24 Q. And what did you put these items in?

25 A. In a Family Dollar bag.

1 Q. And did the receipt go in the bag as well?

2 A. Yes, ma'am.

3 Q. And once you did that, I think you said that he
4 then asked for cigarettes?

5 A. Yes, he did.

6 Q. Now, can you buy cigarettes with an EBT card?

7 A. No, ma'am.

8 Q. So he would've had to pay another way ---

9 A. Yes, ma'am.

10 Q. --- for those? Okay. So what did you then do
11 once he asked for the Newport's?

12 A. I turned around because they were behind me. I
13 turn around. I got the cigarettes out. And then
14 when I turned back to the register, he had the gun
15 pointed at me.

16 Q. Okay. And what did the gun look like?

17 A. It was a small little gun, rusty looking.

18 Q. Okay. And were you able to tell what kind of
19 caliber you thought it was?

20 A. No.

21 Q. Okay. But it was a small gun?

22 A. Yes, ma'am.

23 Q. And it looked rusty as well?

24 A. Yes, ma'am.

25 Q. And so while he has this gun pointed at you,

1 what is he saying, if anything?

2 A. He told me to give him all the bills, no
3 change. So I took the cigarette lighter to get the
4 cash out the register. So then I did that, and I
5 gave him the cash. And then when I gave him the
6 cash, he went out the door and down the sidewalk.

7 Q. Okay. So you had to ring up the lighter ---

8 A. Yes.

9 Q. --- to get the drawer to open again?

10 A. Yes, ma'am.

11 Q. All right. And did you know how much money was
12 in the drawer?

13 A. I did not.

14 Q. Okay. But you gave him all the cash on top?

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

16 Q. But no change?

17 A. No change.

18 Q. Now, do you have a -- are you familiar with the
19 store receipts?

20 A. I am.

21 Q. Okay. And what kind of information is
22 contained on those receipts?

23 A. It has the day, the time, my ID number, the
24 register, and then the transaction number.

25 Q. Okay. And does it have a number for you on

1 there?

2 A. It does.

3 Q. Okay. Do you have a certain number as a
4 cashier?

5 A. Yes, ma'am.

6 Q. Okay. I'm going to show you what's been marked
7 as State's Exhibit 10. If you could take a look at
8 that for me.

9 A. Yes, ma'am.

10 Q. Are you familiar with, as you just said, the
11 receipts from Family Dollar?

12 A. Yes.

13 Q. Okay. And so does that represent the
14 transaction that took place between you and that
15 customer who turned out to be a robber on
16 December 16th of 2015?

17 A. Yes, ma'am.

18 MS. HUEY: Okay. Your Honor, at this time we'd
19 seek to admit State's 10 into evidence.

20 THE COURT: Any objection?

21 MR. YARBOROUGH: (No objection.)

22 THE COURT: Admitted.

23 (State's Exhibit No. 10 was received into
24 evidence.)

25 BY MS. HUEY:

1 Q. Okay. So now, Ms. Oliver, if you could read
2 off of that. It does have your cashier number on
3 there, correct?

4 A. Yes, ma'am.

5 Q. All right. And what's your number?

6 A. It's 567463.

7 Q. Okay. And what time does this transaction take
8 place?

9 A. It's at 12:18:20.

10 Q. 12:18:20. And what are the items on that
11 receipt?

12 A. Airhead and Pringles and Airheads. Pringles
13 and Airheads.

14 Q. Okay. And those are the two items that the
15 robber bought from you?

16 A. Yes, ma'am.

17 Q. All right. I'll take that from you.

18 A. Okay.

19 Q. All right. Now, so let's back up and talk
20 about the gun then.

21 A. Okay.

22 Q. Can you describe it once again for me?

23 A. Okay. It was a small, a little rusty looking
24 gun.

25 Q. Okay. And you said it had rust on it?

1 A. Yes.

2 Q. Could you tell what color it was or anything
3 like that?

4 A. No.

5 Q. Okay. I'm going to show you what's been marked
6 as State's 9. And don't take it out. Just take a
7 look -- take a look at it.

8 A. Okay.

9 Q. Does that look familiar?

10 A. Yes, ma'am.

11 Q. Is that consistent with the weapon that was
12 pointed at you on December 16th of 2015?

13 A. Yes, ma'am.

14 Q. Okay. So, Ms. Oliver, you handed him all the
15 money. Do you know what he did with the money?

16 A. I think -- I think he put it in the bag.

17 Q. Okay. And then -- and then he walked on out
18 the store?

19 A. Yes, ma'am.

20 Q. All right. And then what did you do?

21 A. I pulled the panic button.

22 Q. And once you pull the panic button, how long
23 did it take for the police to get there you think?

24 A. It wasn't long.

25 Q. A matter of minutes?

1 A. Yes.

2 Q. Okay. Now, could you tell which way he went or
3 anything?

4 A. He went down the sidewalk.

5 Q. Down the sidewalk when he left?

6 A. Yes, ma'am.

7 Q. But did you go outside?

8 A. No, ma'am.

9 Q. All right. You stayed inside?

10 A. Yes, ma'am.

11 Q. All right. I'm going to show you a group of
12 photos, Ms. Oliver, and I want you to take a look at
13 all of them. These are State's 3(a) through (f).

14 A. Okay.

15 Q. If you will take a look at all of those for me.

16 A. Okay.

17 Q. Now, do you recognize all of those?

18 A. Yes, ma'am.

19 Q. All right. And do those photos fairly and
20 accurately depict the Family Dollar on December 16,
21 2015, the day you were robbed?

22 A. Yes, ma'am.

23 MS. HUEY: Okay. Your Honor, at this time we'd
24 admit State's (a) through (f) into evidence.

25 THE COURT: Any objection?

1 MR. YARBOROUGH: No, sir.

2 THE COURT: Admitted.

3 (State's Exhibit Nos. 3(a) through (f) is
4 admitted into evidence.)

5 BY MS. HUEY:

6 Q. All right. Ms. Oliver, I'm going to publish
7 these to the jury, these in this machine over here.

8 All right. This is State's 3(a). The picture
9 looks a little dark for some reason, but what time
10 of day was this again?

11 A. Daytime.

12 Q. Daytime. Around just after lunchtime?

13 A. Yes, ma'am.

14 Q. Okay. And so can you tell the jury what that
15 picture depicts?

16 A. It's the store.

17 Q. Can you see from there? Do you want to step
18 down?

19 A. It's the store.

20 Q. Okay. And which store is it?

21 A. Family Dollar.

22 Q. And are you sure you can see from there?

23 A. Yes, ma'am. I can see.

24 Q. All right. So this is State's 3(b). And
25 again -- and can you tell the jury what that is?

1 A. That's the front of the door of the store.

2 Q. And is that the address above it?

3 A. Yes, ma'am.

4 Q. And now I'm going to show you State's 3(c).

5 And can you tell the jury what that is?

6 A. That's the cash register I was running.

7 Q. Okay. And that's where you were working on
8 that particular day?

9 A. Yes, ma'am.

10 Q. Okay. And then this is State's 3(d). Can you
11 tell the jury what that is?

12 A. That's right across from the register.

13 Q. Okay. Does that show you -- if you were
14 standing at the register, does that show you looking
15 out?

16 A. Yes, ma'am, it does.

17 Q. Okay. And this is State's 3(e). Can you tell
18 the jury what that is?

19 A. That's our cash register.

20 Q. Okay. And so I don't see any cash, but I see
21 change.

22 A. Yes, ma'am.

23 Q. So is that once you gave the defendant all the
24 money?

25 A. That is.

1 Q. Now, can you explain State's 3(f)? I do see
2 some cash there.

3 A. That's underneath the change drawer.

4 Q. Okay. So there was more cash underneath the
5 drawer, but you didn't give him that?

6 A. No, I didn't.

7 Q. Okay. So once the police got there,
8 Ms. Oliver, did you speak with law enforcement ---

9 A. I did.

10 Q. --- about what happened to you?

11 A. I did.

12 Q. And so you told them what happened to you?

13 A. Yes, ma'am.

14 Q. Okay. And at that time, were you able to give
15 a description of the defendant?

16 A. I did.

17 Q. Now, when you were working on this particular
18 day ---

19 MR. YARBOROUGH: Your Honor, sidebar.

20 (Sidebar discussion.)

21 BY MS. HUEY:

22 Q. Okay. Ms. Oliver, I know you were working on
23 this particular day. Had you been drinking or doing
24 drugs or anything like that?

25 A. No, ma'am.

1 Q. All right. Were you able to get a good look at
2 the person who robbed you?

3 A. Yes, ma'am.

4 Q. How close do you think you were to him?

5 A. I guess about maybe three or four feet.

6 Q. And were you able to see him eye-to-eye?

7 A. I was.

8 Q. Was anything blocking your view?

9 A. No, ma'am.

10 Q. And do you have good eyesight?

11 A. I do.

12 Q. I see you're wearing glasses. Were you wearing
13 them that day?

14 A. I was.

15 Q. And did you get a good enough look at him to be
16 able to identify him?

17 A. I did.

18 Q. Did he have anything obstructing his face?

19 A. No, ma'am.

20 Q. And what was the lighting like inside the store
21 at the time?

22 A. It was well lit.

23 Q. And so how attentive were you to the robber
24 before the actual robbery?

25 A. I looked at him very good.

1 Q. Okay. And -- and why was that?

2 A. He gave me a nervous feeling about him, so I
3 said, okay, I better look at him real good.

4 Q. Keep an eye on him?

5 A. Keep an eye on him. Yes, ma'am.

6 Q. Okay. Did you notice anything unusual about
7 him though?

8 A. No.

9 Q. And so how quickly after the robbery did you
10 report it?

11 A. Right then.

12 Q. Did you pull that button right away?

13 A. Yes, ma'am.

14 Q. And then when law enforcement came to speak
15 with you, what description did you give them?

16 A. I told them that he had on a Carhartt jacket
17 and he was dirty looking. He had on a turquoise and
18 a red shirt underneath it.

19 Q. Underneath that jacket?

20 A. Oh, yes, ma'am. Yes, ma'am.

21 Q. And so did an officer take you to identify a
22 potential suspect in this case?

23 A. Yes, ma'am.

24 Q. Did he give you any specific instructions
25 regarding identifying anybody?

1 A. He just told me to say "yes" or "no."

2 Q. And did he -- so he didn't tell you this was
3 definitely the person who robbed you?

4 A. No, ma'am.

5 Q. Were you led to believe that you had to
6 pick ---

7 A. No.

8 Q. --- someone? Did you feel any pressure to pick
9 out?

10 A. No, ma'am.

11 Q. And so was the incident still fresh in your
12 mind when you went with this officer?

13 A. Yes, ma'am.

14 Q. How quickly thereafter the robbery to the time
15 you went and looked at a potential suspect?

16 A. I guess about 30 minutes maybe.

17 Q. And so when you were taken to see this person,
18 did you identify him as the person who robbed your
19 store?

20 A. Yes.

21 Q. He rather ---

22 A. Yes, ma'am.

23 Q. --- not your store. And were you certain of
24 his identification?

25 A. I was.

1 Q. And what caused you to make that selection?

2 MR. YARBOROUGH: Your Honor, I would like to
3 note my previous objection.

4 THE COURT: Noted for the record.

5 BY MS. HUEY:

6 Q. And what caused you to make that
7 identification?

8 A. I remembered what he looked like and what he
9 was wearing.

10 Q. And did that turn out to be the defendant in
11 this case, Philip Walker?

12 A. Yes, ma'am.

13 Q. And I'm not sure if I missed this earlier.
14 When he was holding the gun pointing it at you, what
15 did he say, if anything?

16 A. He told me if I screamed he would pull the
17 trigger.

18 Q. And did you believe that?

19 A. I did.

20 Q. And is that why you gave him the money?

21 A. Uh-huh. Yes, ma'am.

22 MS. HUEY: That's all I have for this witness
23 at this time, Judge.

24 THE COURT: Cross-examination?

25 MR. YARBOROUGH: Thank you, Your Honor.

1 CROSS-EXAMINATION

2 BY MR. YARBOROUGH:

3 Q. Ms. Oliver, how -- how -- how long have
4 y'all -- you worked there?

5 A. Since '07.

6 Q. So about eight ---

7 A. Nine years.

8 Q. --- nine years?

9 A. Yes, sir.

10 Q. And have you been robbed before?

11 A. No, sir.

12 Q. It's the first time?

13 A. Yes, sir.

14 Q. Did the person that -- that came in the store
15 that day, they used their -- I think you called it
16 an EBT card?

17 A. Yes, sir.

18 Q. Now, what -- what is an EBT card?

19 A. It's where they can buy food with ---

20 Q. Okay.

21 A. --- that the State provides for them.

22 Q. But it -- it goes to a specific bill, right?

23 It's -- money comes out of the account? Do you

24 know -- know how it works?

25 A. They do -- I don't really know how to say it.

1 He used the card and it just pays for all of the
2 merchandise.

3 Q. Okay. And does it have his name on it?

4 A. Uh-huh.

5 Q. Okay. So he -- he used the -- the -- the card
6 to buy the cigarette -- or the -- the Pringles and
7 the Airheads or whatever with a card with his name
8 on it?

9 A. Yes.

10 Q. Now, you were startled when this happened?

11 A. Right.

12 Q. And you said that the -- the thing that you --
13 you thought it looked like a gun; is that right?

14 A. Say what now?

15 Q. You -- you thought that -- that he -- after --
16 after he asked for the cigarettes, you thought he
17 had a gun. Is that what you said?

18 A. He did have a gun.

19 Q. And how'd you -- the -- the gun -- you said the
20 gun was rusted?

21 A. Yes. Rusty looking.

22 Q. And it was -- it was old?

23 A. Yeah, it looked like it was.

24 Q. Okay. Did -- so you must've gotten a pretty
25 good look at it?

1 A. Yeah.

2 Q. Okay. And did it -- I mean, did it look like
3 it -- it worked?

4 A. I assumed it did. He was pointing it at me.

5 Q. Okay. Did you know -- did you know the guy
6 that was in the store?

7 A. No, I did not.

8 Q. Had he been in there before?

9 A. I had never seen him before.

10 Q. Okay. And y'all take EBT cards all the time?

11 A. We do.

12 Q. Now, when -- you said you -- you saw somebody
13 that you identified 30 minutes later. Was that
14 person standing around police?

15 A. He was in handcuffs.

16 Q. He was in handcuff with the police and -- and
17 you were -- were you in the -- the car or were you
18 in the outside the car?

19 A. I was in the car.

20 Q. Okay. So they pulled up and -- and showed you
21 somebody standing with -- with handcuffs?

22 A. Uh-huh.

23 Q. And they asked you if that was him?

24 A. I told them, yes, that was him.

25 Q. It was him. And had you given a description of

1 him before?

2 A. Yes, I did. I told the police what he was
3 wearing.

4 Q. But -- but did you give a description of his
5 face or talk to an artist or anything like that?

6 A. No, I did not.

7 Q. What did you tell them about his face?

8 A. He was a black, brown -- black guy, brown skin.

9 Q. Did you tell them how -- how -- how tall he
10 was?

11 A. I don't know, about five-six, seven, or eight.
12 I don't know.

13 Q. Did you tell them that?

14 A. I can't remember if I did or not.

15 MR. YARBOROUGH: Okay. I don't have any
16 further questions. Thank you, Your Honor.

17 THE COURT: Redirect?

18 MS. HUEY: No, sir, Your Honor.

19 THE COURT: All right. Thank you, ma'am. You
20 may step down.

21 THE WITNESS: (Complying.)

22 THE COURT: May this witness be excused?

23 MS. HUEY: I believe she's going to stay,
24 Judge.

25 THE COURT: Okay. Very good. Call your next

1 witness, please.

2 MS. HUEY: Your Honor, the State calls Joshua
3 Genthner.

4 (Witness approached.)

5 THE CLERK: I just need for you to raise your
6 right hand, please, sir.

7 THE WITNESS: (Complying.)

8 THE CLERK: Do you solemnly swear or affirm the
9 testimony you'll give the Court today in this case
10 will be the truth, the whole truth, and nothing but
11 the truth?

12 THE WITNESS: I do.

13 THE CLERK: If you would take the witness stand
14 please, sir, and state your name and spell your last
15 name for the reporter, please.

16 THE WITNESS: My name is Joshua Genthner,
17 G-e-n-t-h-n-e-r.

18 JOSHUA GENTHNER,
19 having been produced and first duly sworn as a
20 witness on behalf of the State, then testified as
21 follows:

22 DIRECT EXAMINATION

23 BY MS. HUEY:

24 Q. Officer Genthner, where do you work?

25 A. Anderson City Police Department.

1 Q. And how long have you been there?

2 A. Four years.

3 Q. In what capacity do you work there?

4 A. Patrol officer.

5 Q. So as a patrol officer, what are some of your
6 duties?

7 A. I answer calls on a day to day basis in my --
8 my zone.

9 Q. Calls such as respond to an armed robbery?

10 A. Correct.

11 Q. And did you do so in this particular case on
12 December 16th of 2015?

13 A. I did.

14 Q. And where exactly did you respond?

15 A. I responded to 1402 East River Street at the
16 Family Dollar.

17 Q. And is that in the city limits of Anderson?

18 A. It is.

19 Q. But it's also in the county?

20 A. (Nonverbal response.)

21 Q. Yes?

22 A. Yes.

23 Q. Okay. About what time did you respond?

24 A. The call was given out at 12:23. We arrived on
25 the scene at 12:24.

1 Q. And so upon your arrival, what -- what was the
2 first thing you did?

3 A. First thing I did was speak to the victim at
4 the time, Ms. Oliver, and figure out the description
5 of the male and what exactly happened at the time.

6 Q. Now, when you respond, are you the only one
7 responding to this location?

8 A. At this time when I responded, it was myself,
9 my lieutenant, and my sergeant.

10 Q. Okay. And who would that be?

11 A. Sergeant Simmons and Lieutenant McKee.

12 Q. And so how many patrol cars would that have
13 been?

14 A. Two cars.

15 Q. But you were the first one to get there?

16 A. We arrived at the same time.

17 Q. Right.

18 A. We were right behind each other.

19 Q. Okay. So you spoke with Ms. Oliver to try and
20 get a description of who you were looking for?

21 A. Correct.

22 Q. And did you take a statement from her?

23 A. Took a written statement. I filmed one off the
24 body cam, a verbal statement at the time.

25 Q. What else did they get you to do on scene or

1 otherwise?

2 A. Just kept a log, a crime sheet log, and wrote
3 it down for evidence.

4 Q. And then were you able to determine how much
5 money was missing from the register?

6 A. I believe it was \$240 what was stated was
7 missing.

8 Q. Did you determine if a surveillance video was
9 available as it relates to the robbery?

10 A. I believe it was given to, but I can't explain
11 to who it was given to, but there was video
12 evidence.

13 Q. And so while you were at the Family Dollar, are
14 you also responding with -- or communicating rather
15 with other officers?

16 A. Yes. The description -- it was dispatched the
17 description for a brown jacket, red shirt. It
18 changed a little bit, but we were communicating back
19 and forth exactly what he had in his possession and
20 what he bought.

21 Q. All right. And was that essentially your
22 involvement in the case then?

23 A. Correct.

24 MS. HUEY: That's all I have for this witness
25 at this time, Your Honor.

1 THE COURT: Cross-examination?

2 MR. YARBOROUGH: I don't have any questions for
3 this witness.

4 THE COURT: Thank you. May this officer be
5 excused?

6 MS. HUEY: Yes, sir.

7 THE COURT: Any objection?

8 MR. YARBOROUGH: No, sir.

9 THE COURT: Thank you, sir. You may step down.
10 (Witness excused.)

11 THE COURT: Would you call your next witness,
12 please, ma'am?

13 MS. HUEY: Your Honor, the State calls Sergeant
14 Trevor Simmons.

15 (Witness approached.)

16 THE CLERK: Raise your right hand.

17 THE WITNESS: (Complying.)

18 THE CLERK: Do you solemnly swear or affirm the
19 testimony you'll give the Court today in this case
20 will be the truth, the whole truth, and nothing but
21 the truth?

22 THE WITNESS: I do, sir.

23 THE CLERK: If you'll take the witness stand,
24 Sergeant, and state your name and spell your last
25 name for the reporter, please.

1 THE WITNESS: Trevor Simmons, S-i-m-m-o-n-s.

2 SERGEANT TREVOR SIMMONS,

3 having been produced and first duly sworn as a

4 witness on behalf of the State, then testified as

5 follows:

6 DIRECT EXAMINATION

7 BY MS. HUEY:

8 Q. Sergeant Simmons, where are you employed?

9 A. Anderson City Police Department.

10 Q. And in what capacity?

11 A. Sergeant over Charlie shift.

12 Q. And what does that mean?

13 A. I'm the supervisor over Charlie shift. I also
14 work with Lieutenant Joel McKee who is the senior
15 supervisor on that shift.

16 Q. Okay. And is this over road patrol?

17 A. It is a patrol shift. Yes, ma'am.

18 Q. And were you working in this capacity on
19 December 16th of 2015?

20 A. I was. We were actually both on a different
21 shift, Bravo shift, but it's the same capacity.

22 Q. Okay. And on this particular date, were you
23 and Lieutenant McKee working together?

24 A. Yes.

25 Q. All right. And in the same patrol car?

1 A. Yes.

2 Q. Did you have an occasion to respond to the
3 Family Dollar at 1402 East River Street?

4 A. Yes, we did. We took the call about an armed
5 robbery at that location.

6 Q. What happened upon your arrival?

7 A. As we were driving down, first of all, as we
8 were approaching the location, I believe Officer
9 Genthner was a good bit in front of us, but we could
10 see him.

11 Lieutenant McKee noticed -- I was driving, but
12 Lieutenant McKee noticed because he was able to be a
13 passenger. He was looking more intently.

14 Q. And is that because y'all were looking for a
15 suspect already?

16 A. Yes. They had already put out a general
17 description concerning him that they had received
18 over the phone I believe or the first maybe officer.
19 Honestly, I don't remember exactly how they got that
20 description, but it's the description that dispatch
21 gave ---

22 Q. Okay.

23 A. --- which I presume they got over the phone
24 from the victim.

25 Q. Okay. And so you all noticed an individual as

1 you were driving?

2 A. Yes. The reason we noticed him was that the
3 police cars were driving by him with lights and
4 sirens on, and he was just looking straight ahead
5 and not looking to the right like you would consider
6 normal.

7 Lieutenant McKee noticed him. He -- he said
8 that -- I believe he said at that time, "That's our
9 guy right there." However ---

10 Q. But he didn't quite match the description at
11 that time; is that correct?

12 A. Not quite because of the brown Carhartt jacket.

13 Q. All right. And so you went ahead and responded
14 to the Family Dollar then?

15 A. Yes.

16 Q. All right. And then once you got to the Family
17 Dollar, did you gather more information about a
18 description?

19 A. Yes. She fairly quickly gave us more clothing
20 information concerning the red hoody-type zip up and
21 the -- I call blue, she calls I believe turquoise
22 shirt underneath.

23 Q. Okay.

24 A. And that's when he decided that's probably him,
25 and we left right back out the door and went back

1 looking for him.

2 Q. Because -- could you tell us where you first
3 noticed him or thereabouts as it relates to the
4 Family Dollar? How close was it?

5 A. We first noticed him maybe three-tenths of a
6 mile. He was about halfway to where we finally got
7 up with him, which is up near the Good-O's
8 restaurant. I don't know it's not a good cross
9 street, but it's about three-tenths of a mile.

10 Q. Okay. So within a half mile of the store where
11 the robbery took place?

12 A. Yes. Less than -- less than half a mile.

13 Q. And so then you and Lieutenant McKee tried to
14 locate him?

15 A. Yes.

16 Q. All right. And how quickly were you able to
17 locate this individual?

18 A. Fairly quickly, just three or four minutes
19 driving down White Street and consider -- and we
20 spotted him on Thomas -- walking up Thomas toward
21 the roadway.

22 Q. Okay. And so what was your next step once you
23 spotted him?

24 A. We had to get turned around. We came back to
25 him. We called out on the radio of course that we

1 were getting out with a person matching the
2 description.

3 Got out and asked him to please come over and
4 speak with us, which he did. He didn't try to run
5 or anything. He just crossed back over to the
6 vehicle.

7 Q. Okay. And so back up. When you say he matched
8 the description, he didn't have the brown jacket on?

9 A. Correct.

10 Q. But he had a red hoody?

11 A. He matched the updated description of the red
12 hoody-type zip up with the blue shirt.

13 Q. Okay. All right. And so did you get out with
14 this individual then?

15 A. Yes.

16 Q. And did you determine that individual's name?

17 A. That was Philip Walker.

18 Q. Okay. The defendant in this case?

19 A. Yes.

20 Q. So as you are speaking or getting out with
21 Mr. Walker, what did you notice about his demeanor?

22 A. He was sweating profusely. I believe it was
23 approximately 70 degrees that day. That didn't seem
24 to be normal for someone who was just walking, which
25 both times we saw him he was just walking, but he

1 was sweating profusely. He seemed a little bit
2 nervous.

3 Q. Okay. And what, if anything, did you do to him
4 when you got out with him initially?

5 A. When we first got out with him, asked him to
6 come over to the vehicle. I could notice a wad of
7 cash in his pocket, what appeared to be a wad of
8 cash in his jacket pocket, the right front. It was
9 gapped open where I could see it.

10 I went ahead and detained him at that time, at
11 the same time conducting a terry frisk for our
12 safety due to the fact that he said that he did have
13 a gun. Wanted to make sure he did not have a gun on
14 him.

15 Q. Okay. And a terry frisk is what?

16 A. That is simply for officer's safety. It's
17 just -- a terry frisk would be a pat down of your
18 outer clothing just to make sure you do not have a
19 weapon on you that would endanger us while we're
20 speaking with you.

21 Q. Okay. All right. So he did not have a weapon
22 on him at that time?

23 A. He did not.

24 Q. Okay. But you did notice a wad of money?

25 A. Yes.

1 Q. Okay. And then what, if anything, did you
2 notice about what he was carrying?

3 A. He did have Pringles -- or not the Pringles
4 bag. He had a Family Dollar bag, which did have the
5 Pringles receipt and the Airheads in that bag.

6 Q. Okay. What about anything else? Did he have a
7 wallet on him?

8 A. He did have a wallet. You could clearly see
9 the EBT card stacked in there in such a manner you
10 could tell there was an EBT card in there, and I
11 think it did contain his EBT card. He had the pack
12 of cigarettes on him also.

13 Q. And a lighter is with the cigarettes?

14 A. I believe so. Yes.

15 Q. Okay. So all of these items -- the money, the
16 Family Dollar bag, the Pringles, the Airheads, the
17 receipt, the EBT card, the cigarettes -- was all of
18 that taken into evidence?

19 A. Yes.

20 Q. Okay. Now, did you actually do that, or did
21 you turn that over to someone else?

22 A. I turned it over to Investigator Blackwell. He
23 was our -- it stayed right there on the hood in my
24 patrol ---

25 Q. Okay.

1 A. --- until the time ended.

2 Q. Until he came and collected it?

3 A. Yes.

4 Q. And he's with forensics?

5 A. At Anderson City Police Department. Yes,
6 ma'am.

7 Q. Okay. This is State's Exhibit 7. Would you
8 just take a look at -- look at that bag and the
9 contents?

10 A. (Complying.)

11 Q. Do you recognize those items?

12 A. Yes.

13 Q. And are those the items you removed from the
14 defendant on December 16th of 2015?

15 A. Yes. In this bag.

16 Q. Okay. Now, the money wasn't taken into
17 evidence though. Was that handled by Detective
18 Blackwell?

19 A. It originally was taken into evidence by him
20 and then turned back over to the ---

21 Q. To the store?

22 A. Yes, ma'am.

23 Q. Okay. I'm going to show you what's been marked
24 as State's 4(a) through 4(h). If you could take a
25 look at all of those items for me.

1 A. (Complying.) Yes, ma'am.

2 Q. And do you recognize all those items?

3 A. Yes, ma'am.

4 Q. All right. Do those photos fairly and
5 accurately depict the defendant and the belongings
6 he had on him or the items he had on -- had on him
7 December 16th of 2015?

8 A. Yes, ma'am.

9 Q. Have they been altered in any way?

10 A. No.

11 MS. HUEY: Your Honor, at this time we'd admit
12 State's 4(a) through (h).

13 THE COURT: Any objection?

14 MR. YARBOROUGH: No, sir.

15 THE COURT: Admitted.

16 (State's 4(a) through (h) was received into
17 evidence.)

18 BY MS. HUEY:

19 Q. And before we get any further. I'm also going
20 to show you State's 10, which has been admitted into
21 evidence. Would you take a look at that item?

22 A. (Complying.) Yes, ma'am.

23 Q. Okay. And is that the receipt that was found
24 in the Family Dollar bag on December 16th of
25 2015 ---

1 A. Yes, ma'am, it was.

2 Q. --- that you retrieved from the defendant?

3 A. Yes.

4 Q. I'm also going to show you what's been marked
5 as State's 6. If you'll take a look at that.

6 A. (Complying.)

7 Q. Okay. And do you recognize that item?

8 A. Yes. The EBT card of Mr. Walker.

9 Q. And is that from his wallet on December 16th of
10 2015?

11 A. Yes, ma'am.

12 MS. HUEY: All right. At this time I'd like to
13 publish State's 4(a) through (h).

14 THE COURT: Yes, ma'am.

15 (State's 4(a) through (h) was published to the
16 jury.)

17 BY MS. HUEY:

18 Q. All right. Sergeant Simmons, if you can't see,
19 you can step down to get a better look.

20 A. I believe I can see, ma'am.

21 Q. I'm going to show you what's been marked as
22 State's 4(a). Can you tell the jury what that is a
23 picture of?

24 A. That is Mr. Walker with the red zip up -- what
25 I'm calling a hoody and a teal or turquoise shirt.

1 Q. Underneath?

2 A. And that's -- yes. And that's the side of the
3 road at the corner of Thomas and Broadway.

4 Q. Okay. Where you detained him?

5 A. Yes.

6 Q. All right. And this is State's 4(b). Can you
7 tell the jury what that is?

8 A. That's the bag with its contents. You cannot
9 see the Airheads, but it's the Pringles and the
10 receipt inside that bag.

11 Q. And the Airheads were in there as well?

12 A. Yes.

13 Q. All right. And this is State's 4(c). Can you
14 tell the jury what that is?

15 A. Mr. Walker's wallet, which we got from him at
16 the time on the side of the road, his EBT card, and
17 ID it looks like.

18 Q. And his driver's license?

19 A. Driver's license. Yes, ma'am.

20 Q. And this is State's 4(e). Can you tell the
21 jury what that is?

22 A. Yeah, Mr. Walker's EBT card.

23 Q. That came out of his wallet?

24 A. Yes, ma'am.

25 Q. And this is State's 4(e). And can you tell the

1 jury what that is?

2 A. That is a picture of Mr. -- the inside of
3 Mr. Walker's wallet which we took off of him.

4 Q. And there was no cash inside of there?

5 A. No, ma'am.

6 Q. So all the money was found ---

7 A. In his pockets folded in half in two different
8 pockets.

9 Q. Okay. And it was two different wads of money?

10 A. Yes. One in his right jacket pocket and one in
11 his left pants' pocket, front pants.

12 Q. All right. And this is State's 4(e).

13 A. Yes. That's the receipt from Family Dollar for
14 Airheads and the Pringles.

15 Q. All right. And that was in the Family Dollar
16 bag?

17 A. In the bag with the Airheads.

18 Q. That the defendant was carrying?

19 A. Correct.

20 Q. And this is State's 4(g).

21 A. That is the bottom of the same ---

22 Q. Okay.

23 A. --- receipt.

24 Q. And does that indicate the time of the
25 transaction?

1 A. Yes. Time and date I believe.

2 Q. And did that correspond with the time of the
3 robbery?

4 A. Yes.

5 Q. And then I'm showing you State's 4(h). Can you
6 tell the jury what that is?

7 A. That is the cash that's been separated out and
8 banded together.

9 Q. By bills?

10 A. That -- right. That we took from the two
11 different wads of cash that were in his pockets.

12 Q. And, again, all of these items were then given
13 to Detective Blackwell with forensics; is that ---

14 A. Correct.

15 Q. --- correct?

16 A. Correct.

17 Q. Now, Sergeant Simmons, once the defendant was
18 taken into custody, did you all attempt to interview
19 him?

20 A. Yes.

21 Q. Okay. And who was involved in this interview
22 process?

23 A. I was there for the entire process. Lieutenant
24 McKee took the lead on that, Joel McKee.

25 Q. Okay. And when you say he took the lead, so

1 does that mean he was asking the majority of the
2 questions?

3 A. Correct.

4 Q. But you were present the entire time?

5 A. Yes, ma'am.

6 Q. Can you describe the room where this took
7 place?

8 A. It is our shift office. It's a fairly small
9 office, cinder block office with two desks, a
10 computer, and three chairs -- office-type chairs.

11 Q. And was this interview recorded?

12 A. Yes. On my VIEVU body camera.

13 Q. And that's your particular camera?

14 A. Correct.

15 Q. And so the camera was set up to record all the
16 audio in the room as well as visual?

17 A. Audio and visual.

18 Q. And so the visual we can see Lieutenant McKee
19 and the defendant; is that correct?

20 A. Correct.

21 Q. All right. And then we can't see you though;
22 is that correct?

23 A. Correct. But you can hear me on a few
24 occasions.

25 Q. Okay. But you were present the entire time?

1 A. Correct.

2 Q. So to begin this process, was -- was the
3 defendant advised of his rights?

4 A. Yes, he was.

5 Q. All right. And you actually witnessed this
6 again?

7 A. Yes.

8 Q. Can you tell the jury what rights he was
9 advised of then?

10 A. He was advised of his Miranda warnings, which I
11 can read if you would like me to.

12 MR. YARBOROUGH: Your Honor, I note my previous
13 objection.

14 THE COURT: Noted for the record.

15 THE WITNESS: The standard Miranda warning. I
16 carry a card because I don't trust my memory.
17 Lieutenant McKee is much more well-versed. He was
18 also reading -- reading it anyway.

19 It states that you have the right to remain
20 silent. Anything you say can and will be used
21 against you in a court of law.

22 You have the right to speak to an attorney and
23 to have an attorney present with you during any
24 questioning. If you cannot afford an attorney, one
25 will be provided for you at government expense.

1 Knowing and understanding your rights as I have
2 explained them to you, are you willing to answer any
3 questions without an attorney present?

4 BY MS. HUEY:

5 Q. And so Lieutenant McKee read his rights for the
6 most part as you read them?

7 A. Correct.

8 Q. Okay. And did the defendant seem to understand
9 those rights?

10 A. He did.

11 Q. All right. And did he seem to be intoxicated
12 or under the influence of anything?

13 A. He did not seem to be.

14 Q. Did y'all threaten him or promise him to get
15 him to give a statement or waive his rights?

16 A. No, we did not.

17 Q. Was there any intimidation?

18 A. No, ma'am.

19 Q. Did he, in fact, waive his rights then ---

20 A. He did.

21 Q. --- and give a statement?

22 A. Yes, ma'am, he did.

23 Q. And, again, you were a witness to this entire
24 process?

25 A. Yes, ma'am.

1 Q. Were you ever out of either the defendant's or
2 Lieutenant McKee's presence during this interview?

3 A. No, ma'am.

4 Q. I'm going to show you what's been previously
5 admitted as State's 1. If you could tell the jury
6 what that is.

7 A. This is the videotape from my body -- body
8 camera that was taken of Mr. Walker in the room at
9 the Bravo shift office on 11/28.

10 Q. Okay. And has it been altered in any way?
11 -- (cross-talking) --

12

13 Q. I'm sorry.

14 A. I apologize.

15 Q. December 16th?

16 A. Yes, ma'am.

17 Q. And has it been altered in any way?

18 A. It has not.

19 Q. Would this fairly and accurately depict the
20 interview that took place between Lieutenant McKee,
21 the defendant Philip Walker, and yourself as a
22 witness?

23 A. Yes, ma'am.

24 Q. All right. I'm also showing you what's been
25 marked as State's Exhibit -- or excuse me --

1 admitted as State's Exhibit 2. Was this interview
2 transcribed?

3 A. Yes, ma'am.

4 Q. Okay. And have you had an opportunity to
5 review that transcript?

6 A. I did.

7 Q. And does it fairly and accurately depict the
8 interview -- the contents of the interview on
9 December 16th of 2015?

10 A. Yes, it does.

11 MS. HUEY: Your Honor, at this time we'd like
12 to publish. We may need just a minute to get it set
13 up.

14 THE COURT: Okay. And this is a good time to
15 take a quick break anyway.

16 Madam forelady, ladies and gentlemen, let's
17 take a quick break. We'll come back and we'll have
18 this audio played for you, but if you'd go back to
19 your jury room, please.

20 MS. HUEY: Thank you.

21 (At 11:06 a.m., the jury exited the courtroom.)

22 THE COURT: You can step down. Just don't
23 speak to anybody during the break. You can speak to
24 them. Just don't talk to them about the case.

25 THE WITNESS: Yes, sir.

1 (From 11:07 to 11:21 a.m., a recess was taken.)

2 MS. HUEY: A couple things to address before
3 the jury comes back. I talked to Mr. Yarborough.
4 I've made copies of the transcript that's been
5 admitted.

6 THE COURT: Yeah, you want to publish that to
7 the jurors?

8 MS. HUEY: Yes, sir, if that's okay.

9 THE COURT: That would be fine.

10 MS. HUEY: And then also just for the record,
11 the interview again is in its entirety, but we are
12 going to stop it on page 14 of the transcript ---

13 THE COURT: Okay.

14 MS. HUEY: --- line 4.

15 THE COURT: Okay. And your operator, I can't
16 see who that is.

17 MS. HUEY: It's Rosemary Wilson. Yes, sir.

18 THE COURT: You know where to stop it,
19 Rosemary?

20 MS. WILSON: Yes, sir.

21 THE COURT: Okay. And I note, again, for the
22 record that Mr. Yarborough has objected
23 appropriately to the admission of the transcript and
24 the video.

25 MS. HUEY: Yes, sir.

1 THE COURT: All right. Otherwise, we're ready
2 to roll?

3 MS. HUEY: Yes, sir.

4 THE COURT: Mr. Yarborough?

5 MR. YARBOROUGH: Yes, sir.

6 (At 11:22 a.m., jury entered the courtroom.)

7 MS. HUEY: Your Honor, at this time we'd like
8 to publish the interview, which is State's --
9 State's 2, Your Honor. And I have transcripts
10 available for the jury.

11 THE COURT: Okay.

12 MS. HUEY: May I publish?

13 THE COURT: Yes, ma'am. If you would.

14 MS. HUEY: (Complying.)

15 THE COURT: Does everyone have a copy of the
16 transcript?

17 THE JURORS: (Affirmative responses.)

18 THE COURT: Okay. Very good. All right.

19 MS. HUEY: Thank you, Judge.

20 (Publishing State's Exhibit No. 2 to the jury.)

21 BY MS. HUEY:

22 Q. And again, Sergeant Simmons, does that
23 accurately reflect the interview that took place on
24 December 16th of 2015?

25 A. Yes, ma'am, it does.

1 MS. HUEY: That's all I have for this witness
2 at this time, Your Honor.

3 THE COURT: Cross-examination?

4 CROSS-EXAMINATION

5 BY MR. YARBOROUGH:

6 Q. Mr. -- Mr. Walker was cooperative with you?

7 A. Yes, sir.

8 Q. And he -- he seemed like he was emotionally
9 distressed?

10 A. I wouldn't call him emotionally distressed.

11 Q. Did he -- he said that the -- what he had
12 was -- was a -- I think he called it a "pop gun."

13 A. He called it several things. He called it a
14 "dust buster," which is a slang term for a pistol.
15 And he was trying to say it was a -- not trying. He
16 was -- that's where I helped him out with it. He
17 was trying to say it was one of those pellet-type
18 pistols, which is airsoft, but that's how he put it.
19 That's when I suggested that.

20 Q. Was that the word he was looking for?

21 A. Right. But he also referred to it as a .22, so
22 he referred to it as several different things.

23 Q. It -- it didn't have a firing pin, right?

24 A. I have no idea.

25 MR. YARBOROUGH: Thank you, Your Honor. No

1 further questions.

2 THE COURT: Redirect?

3 MS. HUEY: No, sir, Your Honor.

4 THE COURT: Thank you, sir. You can step down.

5 (Witness excused.)

6 MS. HUEY: State calls Craig Gardner to the
7 stand.

8 (Witness approached.)

9 THE CLERK: Just need for you to raise your
10 right hand.

11 THE WITNESS: (Complying.)

12 THE CLERK: Do you solemnly swear or affirm the
13 testimony you'll give the Court today in this case
14 will be the truth, the whole truth, and nothing but
15 the truth?

16 THE WITNESS: Yes, sir.

17 THE CLERK: If you'll take the witness stand
18 please, sir, and state your name and spell your last
19 name for the reporter, please.

20 THE WITNESS: My name is Craig Gardner. My
21 last name is spelled G-a-r-d-n-e-r.

22 OFFICER CRAIG GARDNER,
23 having been produced and first duly sworn as a
24 witness on behalf of the State, then testified as
25 follows:

1 DIRECT EXAMINATION

2 BY MR. STOLARSKI:

3 Q. Where do you currently work, Mr. Gardner?

4 A. I'm employed with Anderson City Police
5 Department.

6 Q. And how long have you worked there?

7 A. I've been there for four years and two months.

8 Q. Okay. And were you on duty on December 16,
9 2015?

10 A. Yes, I was.

11 Q. Okay. And did you take Natasha Oliver, the
12 clerk, to identify a suspect on that day?

13 A. I did.

14 Q. Okay. Did you say anything to her on the ride
15 over?

16 A. Yes, I did.

17 Q. Can you tell me what you said?

18 A. Yes. I advised her that I was going to
19 transport her from the store to a location about a
20 block or so away, that there was an individual that
21 police officers were out looking and talking to, and
22 that I wanted her to look at this individual and see
23 if he may or may not be the individual that was
24 involved in the incident at her store.

25 I told her that they would have the individual

1 step out so she could get a look at him, but I told
2 her that I did not want her to feel like she had to
3 identify a subject. I told her that it was equally
4 as important that she did not identify him if she
5 wasn't sure that he was the person.

6 So, essentially, my conversation was, you know,
7 "When you look at the guy, if you are not sure it's
8 him, then do not identify him. If you are
9 100 percent sure it's him, then let me know. If it
10 is not him, let me know." Mainly because it is just
11 as important to not detain someone who did not
12 commit a crime as it was to identify the person that
13 did.

14 Q. Do you remember how long the car ride was?

15 A. The what?

16 Q. The car ride in between the store and then
17 where you -- ultimately the suspect had been
18 detained?

19 A. I couldn't give an exact time. We're talking
20 about maybe a mile or less from the store to where
21 they were.

22 Q. And did Natasha Oliver identify the suspect?

23 MR. YARBOROUGH: I want to note my previous
24 objection.

25 THE COURT: Noted for the record.

1 BY MR. STOLARSKI:

2 Q. Same question.

3 A. Yes, she did.

4 Q. Okay. And did she seem certain in her
5 identification?

6 A. Yes, she did.

7 MR. STOLARSKI: Thank you. No further
8 questions.

9 THE COURT: Cross-examination?

10 CROSS-EXAMINATION

11 BY MR. YARBOROUGH:

12 Q. The only person that -- that you had in custody
13 was -- was Mr. Walker at that time, right?

14 A. That's correct.

15 Q. And he was in handcuffs?

16 A. I believe he was. I can't remember, but I
17 believe that he was.

18 Q. There were three or four other police officers
19 around?

20 A. There were two that I recall.

21 Q. Okay. And then you, so that's three?

22 A. I would be the third, but I was separate from
23 where he was. I was a block away in the car with
24 the clerk from the store.

25 Q. Okay. There wasn't -- there wasn't anybody

1 else out there?

2 A. Define anyone else.

3 Q. Besides Mr. Walker, he was the only one in
4 plain clothes that was out there?

5 A. In the vehicle with the officers, yes.

6 MR. YARBOROUGH: Okay. Thank you. I don't
7 have any further questions.

8 THE COURT: Redirect?

9 MR. STOLARSKI: None, Your Honor.

10 THE COURT: May this officer be excused?

11 MS. HUEY: Yes, please, Your Honor.

12 THE COURT: Thank you, sir. You're excused.

13 (Witness excused.)

14 MS. HUEY: The state calls Sara Smith.

15 (Witness approached.)

16 THE COURT: While we're waiting, can I see the
17 attorneys, please?

18 MS. HUEY: Yes, sir.

19 (Sidebar discussion.)

20 THE COURT: All right. Mr. Clerk.

21 THE CLERK: Thank you, Your Honor. Can I ask
22 you to raise your right hand.

23 THE WITNESS: (Complying.)

24 THE CLERK: Do you solemnly swear or affirm the
25 testimony you'll give the Court today in this case

1 will be the truth, the whole truth, and nothing but
2 the truth?

3 THE WITNESS: I do.

4 THE CLERK: If you would take the witness stand
5 please, ma'am, and state your name and spell your
6 last name for the reporter, please.

7 THE WITNESS: Sara Smith, S-m-i-t-h.

8 SARA SMITH,
9 having been produced and first duly sworn as a
10 witness on behalf of the State, then testified as
11 follows:

12 DIRECT EXAMINATION

13 BY MS. HUEY:

14 Q. Ms. Smith, where do you work?

15 A. Anderson Housing Authority.

16 Q. And can you tell us where that's located?

17 A. 1335 East River Street.

18 Q. And how close is that to the Family Dollar?

19 A. It's right across the street.

20 Q. Were you working on December 16th of last year?

21 A. I was.

22 Q. And what, if anything, unusual did you notice
23 on that particular day?

24 A. Well, I was standing up front looking out
25 across the road, and I noticed this guy taking

1 clothes off and throwing them in the dumpster. And
2 I'm like, now, this is strange, so I stepped out on
3 the porch. And after he finished taking his clothes
4 off, I snapped a picture of him.

5 Q. And then once you took the picture, what did
6 you then do?

7 A. I asked some police officers when they pulled
8 up later, and I went across the street and told them
9 that I had a picture of him so they knew what he had
10 on.

11 Q. And I'm going to show you what's been marked as
12 State's 11. Would you take a look at that for me
13 please, ma'am?

14 A. That's the picture I took.

15 Q. Okay. And did you do that using your cell
16 phone?

17 A. Uh-huh.

18 Q. Okay. And has it been altered in any way?

19 A. No.

20 Q. All right. And so does that fairly and
21 accurately depict the person you saw shedding
22 clothes?

23 A. Yes, ma'am.

24 Q. Putting them in the dumpster?

25 A. Yes, ma'am.

1 Q. And then walking away?

2 A. Yes, ma'am.

3 MS. HUEY: Your Honor, at this time we admit
4 State's 11 into evidence.

5 THE COURT: Any objection?

6 MR. YARBOROUGH: No, sir, Your Honor.

7 THE COURT: Admitted.

8 (State's Exhibit No. 11 was received into
9 evidence.)

10 BY MS. HUEY:

11 Q. And, Ms. Smith, if you don't mind, I think I'm
12 marking just this one picture and have you step down
13 and show the jury what you see here.

14 A. This is the guy walking here that was taking
15 his clothes off.

16 Q. And what color jacket does he have on?

17 A. A shirt. It's a red shirt and black pants.

18 Q. And this is the person you saw ---

19 A. Taking his clothes off.

20 Q. --- taking clothes off and putting them in the
21 dumpster?

22 A. Yes, ma'am.

23 Q. All right. Right behind the Family Dollar?

24 A. Yes, ma'am.

25 MS. HUEY: Can everybody see that?

1 THE JURORS: (Affirmative responses.)

2 MS. HUEY: That's all I have for Ms. Smith,
3 Your Honor.

4 THE COURT: Cross-examination?

5 CROSS-EXAMINATION

6 BY MR. YARBOROUGH:

7 Q. Ms. Smith, you didn't see the robbery, right?

8 A. No. Oh, I'm sorry. No, sir.

9 Q. Okay. And all you did was take that picture?

10 A. Yes, sir.

11 MR. YARBOROUGH: Okay. Thank you. I don't
12 have any further questions. Thanks for coming
13 today.

14 THE COURT: Any redirect?

15 MS. HUEY: No, sir. May she be excused?

16 THE COURT: Any problem, Mr. Yarborough, with
17 her being excused?

18 MR. YARBOROUGH: No, sir, Your Honor.

19 THE COURT: Thank you, ma'am. You may be
20 excused.

21 (Witness excused.)

22 MS. HUEY: Your Honor, the State calls Ty
23 Blackwell next.

24 (Witness approached.)

25 THE CLERK: Just need for you to raise your

1 right hand.

2 THE WITNESS: (Complying.)

3 THE CLERK: Do you solemnly swear or affirm the
4 testimony you'll give the Court today in this case
5 to be the truth, the whole truth, and nothing but
6 the truth?

7 THE WITNESS: I do.

8 THE CLERK: If you would take the stand please,
9 sir, and state your name and spell your last name
10 for the reporter, please.

11 THE WITNESS: Tyrone Blackwell. Blackwell is
12 capital B-l-a-c-k-w-e-l-l.

13 DETECTIVE TYRONE BLACKWELL,
14 having been produced and first duly sworn as a
15 witness on behalf of the State, then testified as
16 follows:

17 DIRECT EXAMINATION

18 BY MS. HUEY:

19 Q. Detective Blackwell, where are you employed?

20 A. Anderson City Police Department.

21 Q. And what position do you hold there?

22 A. Forensic detective.

23 Q. As a detective in forensics, what are some of
24 your duties?

25 A. It is to process crime scene as it occurred,

1 collecting evidence, and actually placing into our
2 evidence vault.

3 Q. And did you become involved in the
4 investigation of this particular armed robbery that
5 occurred at the Family Dollar at 1402 East River
6 Street on December 16th of 2015?

7 A. Yes, ma'am, I did.

8 Q. So where did you first respond?

9 A. Actually responded to the incident location
10 behind the building. I was advised on my way there
11 that the subject may have taken off clothing at a
12 dumpster, so I responded at the back of the
13 dumpster.

14 Q. Okay. So your first step was to go to this
15 dumpster?

16 A. Correct.

17 Q. But it's behind the Family Dollar?

18 A. That's correct.

19 Q. I'm going to show you what's been marked as
20 State's 5(a) through 5(h). If you could take a look
21 at all of those photos for me.

22 A. (Complying.)

23 Q. Do you recognize those?

24 A. Yes, ma'am.

25 Q. And how are you able to recognize those?

1 A. I actually photographed the items in the
2 dumpster.

3 Q. Okay. And is this the dumpster that you
4 responded to on December 16th of 2015?

5 A. That is correct.

6 Q. All right. And have they been altered in any
7 way?

8 A. No, ma'am.

9 MS. HUEY: Your Honor, at this time we'd admit
10 State's 5(a) through 5(h) into evidence.

11 MR. YARBOROUGH: Without objection.

12 THE COURT: Admitted.

13 (State's Exhibit Nos. 5(a) through 5(h) were
14 received into evidence.)

15 BY MS. HUEY:

16 Q. Okay. So Detective Blackwell, we'll get to the
17 pictures in just a minute, but could you tell the
18 jury what you did when you first got to the
19 dumpster?

20 A. When I first got to the dumpster, I was advised
21 that, again, someone had seen the subject taking off
22 clothes. I looked into the dumpster. I could see a
23 brown jacket with a hat.

24 At that time I roped off the dumpster for
25 evidence preservation and waited for officers to see

1 if they could find the person in question.

2 After they were located, I actually was
3 contacted over the radio that a person of interest
4 had been located.

5 Q. And so had you already searched the dumpster at
6 this point?

7 A. No, ma'am. I left it there just in case if
8 they had to run a dog track or anything like that
9 before I compromised the scene.

10 Q. Okay. And so what was your next step then?

11 A. My next step, I actually had to rope it off
12 again. And I left the officer there to standby the
13 dumpster so no one could actually get to it, and I
14 had to respond to the location where Sergeant
15 Simmons had got with the subject.

16 Q. Okay. And so when you responded to that scene
17 or that area, did you see the defendant in this
18 case?

19 A. I did.

20 Q. And did you collect any evidence at that time
21 from him or from -- from Sergeant Simmons I should
22 say?

23 A. I did. I had Sergeant Simmons fill out an
24 evidence sheet to transfer the item that he had
25 taken from the subject over to me. At that time it

1 was photographed before it came into my possession.

2 Q. All right. So I'm going to show you what's
3 been previously marked as State's 7. If you could
4 take a look at this item.

5 A. (Complying.)

6 Q. Are you able to recognize that?

7 A. Yes, ma'am.

8 Q. All right. And are these the items you
9 collected from Sergeant Simmons on December 16th of
10 2015?

11 A. Yes, ma'am.

12 Q. From the defendant, Philip Walker?

13 A. Yes, ma'am.

14 MS. HUEY: All right. At this time we'd admit
15 State's 7 into evidence, Your Honor.

16 THE COURT: Any objection?

17 MR. YARBOROUGH: No.

18 THE COURT: Admitted.

19 (State's Exhibit No. 7 was received into
20 evidence.)

21 BY MS. HUEY:

22 Q. I'm also going to show you what's been marked
23 as State's 6. If you'll take a look at that.

24 A. (Complying.)

25 Q. And are you able to recognize that?

1 A. Yes, ma'am.

2 Q. Okay. And how are you able to recognize it?

3 A. This is also taken from the defendant.

4 Sergeant Simmons had taken off his person.

5 Q. And has it been altered in any way?

6 A. No, ma'am.

7 MS. HUEY: All right. At this time we'd admit
8 State's 6 into evidence.

9 THE COURT: Any objection?

10 MR. YARBOROUGH: No, objection.

11 THE COURT: Admitted.

12 (State's Exhibit No. 6 was admitted into
13 evidence.)

14 BY MS. HUEY:

15 Q. And, Detective Blackwell, what is this?

16 A. This is a South Carolina EBT card with the
17 suspect's name.

18 Q. Which is?

19 A. Philip -- Philip Walker.

20 Q. Okay. That was State's 6. I'm also showing
21 you what was previously admitted as State's 10. Do
22 you recognize that item?

23 A. Yes, ma'am.

24 Q. And what is that?

25 A. It's a receipt from the Family Dollar with some

1 items purchased with an EBT card.

2 Q. Okay. And, again, was this all together when
3 you collected it from Sergeant Simmons who was out
4 with the defendant on December 16th of 2015?

5 A. Yes, ma'am.

6 Q. Okay. Detective Blackwell, at this time I'd
7 like to -- well, actually, let me back up.

8 So once you took into evidence all the items
9 from the defendant who was out with Sergeant Simmons
10 or vice versa, what did you then do?

11 A. At that time I took all the items, and I
12 responded back to the store ---

13 Q. Okay.

14 A. --- back at the dumpster.

15 Q. And ---

16 A. We were ---

17 Q. I'm sorry. Let me stop you right there.

18 A. Okay.

19 Q. There was also some money collected; is that
20 correct?

21 A. That's correct.

22 Q. All right. And about how much money was
23 actually collected?

24 A. I believe it was \$234.

25 Q. Okay. And what did you then do with that

1 money?

2 A. I actually had Sergeant Simmons sign that over
3 to me as well.

4 Q. Okay.

5 A. And that was taken into evidence.

6 Q. Okay. And we don't actually have that money;
7 is that correct?

8 A. No, ma'am.

9 Q. Where is it?

10 A. It was returned back to the store.

11 Q. And -- but you took photographs of it prior to
12 it being returned?

13 A. That's correct.

14 Q. Okay. All right. So then you went back to the
15 dumpster?

16 A. Yes, ma'am.

17 Q. All right. And what happened at the dumpster
18 then?

19 A. At that time I did -- we did have a suspect. I
20 did enter the dumpster. Umm ---

21 Q. Hold on. You had to climb in the dumpster?

22 A. Yes.

23 Q. All right. And just you? You were the lucky
24 one to do that?

25 A. Yes.

1 Q. All right. And so what did you find after
2 that?

3 A. Once I got into the dumpster, I could see the
4 jacket clearly which was brown in color, along with
5 a hat.

6 After picking up the jacket and folding it and
7 placing it into an evidence bag, I could see a small
8 caliber handgun that's right underneath the jacket.

9 Q. And so had you already seen the hat as well
10 then?

11 A. That's correct.

12 Q. Okay. So when you peered into the dumpster,
13 you can see the crumpled up jacket?

14 A. Yes.

15 Q. All right. And then once you climbed in to
16 get, that's when you could see the hat?

17 A. You could the hat. It was close to the jacket.
18 The bag was just kind of hiding it just a little
19 bit.

20 Q. But the gun that you found was under all that?

21 A. Yes, ma'am.

22 Q. All right. I'm going to show you or publish
23 rather. This is State's 5(a). Can you tell the
24 jury what that is? Can you see from there,
25 Detective Blackwell? You can step down if you need

1 to.

2 A. Yes, ma'am. This is going to be the back of
3 the store of Family Dollar.

4 Q. Okay. And do these dumpsters actually belong
5 to Family Dollar or do you know?

6 A. I don't know.

7 Q. Okay. But they were behind Family Dollar
8 nonetheless?

9 A. Yes.

10 Q. And this is State's 5(b). And what is that?

11 A. This is an open dumpster which the items was
12 located in.

13 Q. So when you respond, was the dumpster already
14 open or did you open it?

15 A. Yes, ma'am. It was already open.

16 Q. And that was State's B. This is State's 5(c).
17 Can you tell the jury what that is?

18 A. This is inside that same dumpster that was
19 open, and that is the brown jacket that I can see.

20 Q. Down in the corner here, that's what you could
21 see?

22 A. Yes, ma'am.

23 Q. And this is State's 5(d).

24 A. This is another picture of the jacket with me
25 inside the dumpster.

1 Q. Okay. Is that your boot I see?

2 A. Yes, ma'am.

3 Q. Okay. So you're taking that from inside the
4 dumpster?

5 A. Yes, ma'am.

6 Q. And why was this brown jacket important,
7 Detective Blackwell?

8 A. As I was advised that the subject was seen
9 taking off clothing and placing it inside the
10 dumpster.

11 Q. And this is State's 5(e). Can you tell what
12 that is a picture of?

13 A. This is a picture of the gun that's in the four
14 corner of the dumpster with me standing right above
15 it.

16 Q. Okay. And this is State's 5(f).

17 A. That's -- that's going to be the brown hat
18 that's going to be right next to the jacket.

19 Q. Okay. And here is State's 5(g). And what is
20 that?

21 A. That small caliber handgun that I located in
22 the fourth corner of the dumpster.

23 Q. Okay. Underneath all the clothing.

24 A. It's going to be right next to the clothing.

25 Q. Okay. But that -- you couldn't see that from

1 outside the dumpster?

2 A. No, ma'am.

3 Q. And this is State's 5(h).

4 A. This is a close-up picture of the small caliber
5 handgun after I picked it up and actually took the
6 photograph.

7 Q. And the hat, the jacket, and the small caliber
8 handgun, were those all placed into evidence as
9 well?

10 A. Yes, ma'am.

11 Q. You can have a seat, Detective Blackwell.

12 A. (Complying.)

13 Q. I'm going to show you what's been previously
14 marked as State's Exhibit 8. If you could take a
15 look inside there and tell me if you recognize those
16 items.

17 A. Yes, ma'am. It's going to be the brown in
18 color jacket and the brown in color hat.

19 Q. And are those the items you collected from the
20 dumpster on December 16th of 2015?

21 A. Yes, ma'am.

22 Q. Have they be altered in any way?

23 A. No, ma'am.

24 MS. HUEY: Your Honor, at this time we'd admit
25 State's 8 into evidence.

1 THE COURT: Any objection?

2 MR. YARBOROUGH: No, sir.

3 THE COURT: Admitted.

4 (State's Exhibit No. 8 was received into
5 evidence.)

6 BY MS. HUEY:

7 Q. If you could take it out, if you don't mind
8 showing the jury.

9 A. (Complying.)

10 Q. So that's the brown jacket you collected from
11 the dumpster?

12 A. That's correct.

13 Q. And then the other items. And that's the brown
14 hat you collected from the dumpster?

15 A. Correct.

16 Q. Okay. I'm also going to show you what's been
17 marked at State's 9. And I would like to instruct
18 you that this shouldn't be pointed at anybody. And
19 I believe you told me prior this has been disabled;
20 is that correct?

21 A. Correct.

22 Q. I'm going to show you then State's 9. If you
23 could take a look inside that envelope, please?

24 A. (Complying.)

25 Q. And is that the gun you retrieved from the

1 dumpster on December 16th of 2015?

2 A. Yes, ma'am.

3 Q. And, again, it is disabled; is that correct?

4 A. Yes, ma'am.

5 MS. HUEY: At this time we'd like to just show
6 it to the jury, Your Honor, and admit into evidence.

7 THE COURT: Just make sure that you do not
8 point it in anybody's direction, okay, sir.

9 THE WITNESS: Yes, sir.

10 MS. HUEY: So that's State's 9 admitted into
11 evidence, Your Honor.

12 THE COURT: Any objection?

13 MR. YARBOROUGH: No, sir.

14 THE COURT: Admitted.

15 (State's Exhibit No. 9 was received into
16 evidence.)

17 BY MS. HUEY:

18 Q. Now, Detective Blackwell, what, if anything,
19 can you tell me about that gun?

20 A. The first of what I can tell you about the gun,
21 it's a small caliber handgun. It was empty at the
22 time when I located it. I did secure the gun with a
23 zip tie just to make sure nothing went wrong.

24 Q. Okay. And so is it an actual handgun?

25 A. Yes, ma'am.

1 Q. All right. And how do you know that?

2 A. With previous experience with guns and
3 collecting, I was able to determine it was a real
4 handgun.

5 Q. Okay. So it should have fired at one point?

6 A. That's correct.

7 Q. All right. But you didn't do any testing on it
8 necessarily?

9 A. No.

10 Q. Okay. And what caliber gun do you believe it
11 to be?

12 A. A .22.

13 Q. Okay. And -- and can a 20 -- in your
14 experience, you responded to how many scenes before?

15 A. Countless scenes. Approximately, 20 or more.

16 Q. Okay. Any involving .22-caliber handguns?

17 A. A couple.

18 Q. Okay. And in your experience, can a .22
19 caliber cause great bodily injury or death?

20 A. Yes, ma'am. It could.

21 Q. What, if any, other involvement did you have in
22 this case then, Detective Blackwell?

23 A. I actually went inside the store and I actually
24 photographed inside the store. I actually dusted
25 the exit door -- inside of the exit door. Was

1 unable to lift any latent prints from the door.

2 Q. So you attempted to -- to get prints from the
3 store?

4 A. Correct.

5 Q. Okay. But you didn't get -- have any luck with
6 that?

7 A. No.

8 MS. HUEY: That's all I have for this witness,
9 Judge.

10 THE COURT: Cross-examination?

11 CROSS-EXAMINATION

12 BY MR. YARBOROUGH:

13 Q. Did you actually test that firearm to see if it
14 would work?

15 A. No, sir. I'm not a firearm expert.

16 Q. Okay. Did you look and see if the -- the pin
17 on that gun had been removed?

18 A. I'm not a firearm expert.

19 Q. Had you dusted for prints?

20 A. No, sir, I did not.

21 Q. Okay. But you could have?

22 A. Yes.

23 Q. Did you check the -- the clothes for any prints
24 or anything like that?

25 A. Not fingerprints.

1 Q. Did you check to see if the jacket would've fit
2 Mr. Walker?

3 A. At that time, no, I did not.

4 Q. How about the hat?

5 A. No, sir.

6 Q. Okay. So you didn't do anything to get the
7 stuff out of the dumpster?

8 A. That's correct.

9 Q. And you -- you -- to your knowledge, that --
10 that gun -- you don't -- you don't know if it fires
11 or doesn't fire, right?

12 A. Not to my knowledge because I'm not a firearm
13 expert. I did not test the gun.

14 Q. But it's extremely rusty?

15 A. It does have rust on it.

16 MR. YARBOROUGH: I don't have any further
17 questions. Thanks, Your Honor.

18 THE COURT: Redirect?

19 MS. HUEY: No, sir, Your Honor. May this
20 witness be excused?

21 THE COURT: Any objections?

22 MR. YARBOROUGH: No, sir.

23 THE COURT: Thank you, sir. You may be
24 excused.

25 (Witness excused.)

1 MS. HUEY: Judge, may I approach?

2 THE COURT: Yes, ma'am. Mr. Yarborough.

3 (Sidebar discussion.)

4 THE COURT: Madam forelady, let's take a quick
5 break while they set up the technical aspects and
6 we'll bring you right back.

7 (At 12:06 p.m., the jury exited the courtroom.)

8 (From 12:06 to 12:12, a recess was taken.)

9 THE COURT: Are you ready to proceed?

10 MS. HUEY: Yes, sir.

11 THE COURT: Mr. Yarborough, are you ready?

12 MR. YARBOROUGH: Yes, sir.

13 THE COURT: Would you bring the jury in?

14 THE BAILIFF: (Complying.)

15 (At 12:15 p.m., jury entered the courtroom.)

16 THE COURT: Ms. Huey.

17 MS. HUEY: The State calls Yoshika Chapman.

18 (Witness approached.)

19 THE CLERK: I just need for you to raise your
20 right hand.

21 THE WITNESS: (Complying.)

22 THE CLERK: Do you solemnly swear or affirm
23 that the testimony you'll give the Court today in
24 this case be the truth, the whole truth, and nothing
25 but the truth?

1 THE WITNESS: Yes, sir.

2 THE COURT: If you'll take the witness stand
3 please, ma'am, and state your name and spell your
4 last name for the reporter, please.

5 THE WITNESS: Okay. Yoshika Chapman,
6 C-h-a-p-m-a-n.

7 YOSHIKA CHAPMAN,
8 having been produced and first duly sworn as a
9 witness on behalf of the State, then testified as
10 follows:

11 DIRECT EXAMINATION

12 BY MS. HUEY:

13 Q. Ms. Chapman, where are you employed?

14 A. Family Dollar.

15 Q. And what is your title there?

16 A. Store manager.

17 Q. And as the store manager, are you responsible
18 for the surveillance equipment?

19 A. I am responsible for not only the store
20 surveillance, but everything in the store.

21 Q. Okay. So were you working on December 16th of
22 2015?

23 A. I was not working on December 16th. Actually,
24 I was given that store at 9:00 a.m. that morning.

25 Q. Oh, I see. So -- but nonetheless, did you

1 become aware of the armed robbery that occurred at
2 that store since it became in your control or
3 custody?

4 A. Yes. Around 12:35 or 12:40, I got a phone
5 call.

6 Q. And as a result, did you pull surveillance
7 video for that?

8 A. Yes, ma'am.

9 Q. Okay. Could you tell the jury a little bit
10 about the system?

11 A. Our system is a -- it's a server. It's a DVR
12 server. And we have to go into the server and pull
13 to do that search a month. So we have to get the
14 archives and go to the date and time range and put
15 that information and it records from there. And you
16 can do it on a DVD, a CD, or either a -- those
17 little...

18 Q. A jump drive?

19 A. Yeah, jump drive. Thank you.

20 Q. And -- and so was that done in this particular
21 case?

22 A. Yes, ma'am.

23 Q. I'm going to show you what's been previously
24 marked as State's 12(a) through 12(d). Could you
25 take a look at all of these?

1 A. Okay. Yes, ma'am.

2 Q. And do you recognize all those items?

3 A. Yes, ma'am.

4 Q. And how are you able to recognize them?

5 A. I'm able to recognize them because those are
6 our parent system broke down by screens.

7 Q. And what do your initials and the date indicate
8 on those?

9 A. The initials are saying that I recorded the
10 video and that at -- and the times and date frame.

11 Q. And -- and have they been altered in any way?

12 A. We can't alter our information. It comes from
13 the server.

14 MS. HUEY: Your Honor, at this time we'd admit
15 State's A through D -- excuse me -- 12(a) through
16 (d) into evidence.

17 THE COURT: Any objection?

18 MR. YARBOROUGH: No, sir, Your Honor.

19 THE COURT: Admitted.

20 (State's Exhibit Nos. 12(a) through (d) were
21 received into evidence.)

22 BY MS. HUEY:

23 Q. So, Ms. Chapman, are there various cameras set
24 up around the store?

25 A. It is. We have camera systems. We actually

1 have 12 operational cameras, 4 of them are blind
2 sided to us and is only for corporate use only.

3 But with the 12 operation cameras, they're over
4 register 1; register 2. We have the doorway coming
5 in; going out. We have the back camera where our
6 electronics is and where the cooler area,
7 automotive, and about four other cameras staged
8 throughout the store to give us a wide variety of
9 the store.

10 MS. HUEY: I'm going to publish 12(a) at this
11 time.

12 (State's Exhibit 12(a) was published for the
13 jury.

14 BY MS. HUEY:

15 Q. Now, is this just visual or does it have audio
16 as well?

17 A. It doesn't have -- you can't hear.

18 Q. Okay. So can you tell us what register this
19 is?

20 A. That's register 1 camera. And what that camera
21 shows, it shows our register and it shows part of
22 our cash.

23 Q. Okay. And is that your employee?

24 A. Yes.

25 Q. What register and who is that?

1 A. That was Ms. Natasha Oliver.

2 Q. On the date and time in question?

3 A. That would've been 12/16/2015.

4 Q. Yes, ma'am. And what can you tell the jury
5 about the panic button, how that works?

6 A. It's on the register. So we have been informed
7 to actually try to let them leave the building
8 before we hit the panic button because they don't
9 want us to hit the panic button while the person is
10 still in the building and the police pull up and
11 them get into an altercation with the police
12 afterward when they go outside.

13 So we've been instructed that as soon as we
14 can, to get to the button to -- or actually do
15 anything they're asking us to do.

16 Q. So the training is to wait until the suspect
17 leaves and then press the button?

18 A. Yes.

19 Q. This is State's 12(b). Now, Ms. Chapman, can
20 you tell which angle this is?

21 A. Yes. That's actually our door camera on the
22 out door. It has an individual camera that is
23 visible to the outer person and it actually records
24 the weight or the height of the person that's going
25 out, so it takes a shot of them from a smaller point

1 to being close up. And actually this is our own
2 checkpoint system, so there's -- there's a little
3 small camera.

4 Q. Okay. Now, this is 12(c). Can you describe
5 this angle?

6 A. That angle is actually pointed to the outside
7 of the door. It's a camera that is staged in the
8 middle of the door so that we can see actually who's
9 coming in and who's going out. It's mostly for the
10 front door footage for the store.

11 On the last video, that captures when they're
12 leaving. And that one actually videos when they're
13 coming in.

14 Q. Okay. And this is 12(d). And what angle is
15 this, Ms. Chapman?

16 A. That camera is our outside camera. It actually
17 takes footage of our parking lot and our sidewalk,
18 you know, in front of the storefront.

19 Q. Okay. The sidewalk right in front of the
20 store?

21 A. Yes, ma'am.

22 Q. And, again, all of these surveillance videos
23 were obtained from the time frame of the robbery
24 that occurred on December 16th of 2015?

25 A. Yes, ma'am.

1 Q. Now, as the store manager, do you -- were you
2 aware of how much money -- about how much money was
3 removed from the register?

4 A. I am, but it -- I know it was 235 or 45
5 dollars, in that range somewhere. It's been almost
6 a year now, so...

7 Q. But somewhere in that range?

8 A. Yeah, somewhere in that range. And it was all
9 in fives and ones.

10 MS. HUEY: That's all I have for this witness,
11 Judge.

12 THE COURT: Cross-examination?

13 MR. YARBOROUGH: No questions, Your Honor.

14 THE COURT: Thank you, ma'am. You may be
15 excused.

16 (Witness excused.)

17 THE CLERK: Your Honor, may I ask you a
18 question?

19 THE COURT: Madam forelady, would you take the
20 jurors to the jury room right quick?

21 (At 12:32 p.m., jurors left the courtroom.)

22 (Sidebar discussion.)

23 THE COURT: Just for the record, let's go
24 ahead, Lisa.

25 THE REPORTER: Yes, sir.

1 THE COURT: Juror No. -- do you have that?

2 THE CLERK: Fifty-five.

3 THE COURT: --- 55, Ms. Gardner ---

4 THE CLERK: Gardiner.

5 THE COURT: --- Gardiner just got notice that
6 her grandmother died.

7 I met with counsel. What I'm going to do is
8 excuse her, move the alternate as the primary juror,
9 and both the State and defense has agreed that I can
10 go back with the bailiff and knock on the door and
11 do that.

12 MS. HUEY: Yes, sir.

13 THE COURT: If there's a problem, is there any
14 way I can get you guys to help her get home if she
15 needs it?

16 THE BAILIFF: Yes, sir. We'll be able to do
17 that.

18 THE COURT: Just hold on a second.

19 (From 12:33 to 12:35 p.m., brief recess.)

20 THE COURT: At the bench conference, I asked
21 State if they -- they rested, but at this point I
22 figured we'd come back after lunch and say, "Call
23 your next witness." Well, let's do that now and
24 I'll excuse the jury for lunch. Did I hear you say
25 you rested?

1 MS. HUEY: Yes, sir.

2 THE COURT: All right. And I assume you have
3 no witnesses.

4 MR. YARBOROUGH: I don't have any witnesses
5 and, Your Honor, I know they're getting ready to
6 rest. Do you want me to put my directed verdict on
7 the record?

8 THE COURT: Yeah, we can do that real quick
9 once they get that all that done. Would you bring
10 the jury in once they clear and get their stuff?

11 THE BAILIFF: (Complying.)

12 (At 12:37 p.m., jury entered the courtroom.)

13 THE COURT: All right. Madam forelady, just so
14 you know, one of your juror's grandparents passed
15 away, and so I went ahead and excused her from the
16 jury.

17 Our alternate, I'm going to move you over to
18 the primary juror, okay, so that means you can sit
19 where you want to, but that's kinda inconsequential
20 at this point.

21 All right. Would you call your next witness
22 please, ma'am?

23 MS. HUEY: Your Honor, the State rests.

24 THE COURT: You rest. Okay. Madam forelady,
25 if you recall when I told you in this case you had

1 opening statements and you had the presentation of
2 the evidence. The State says it's rest -- they
3 rest, so that means that they have presented its
4 case in chief.

5 I have certain administrative matters I need to
6 take up at this point. I'm going to go ahead and
7 call a lunch break. And I ask that you be back in
8 your jury room about ten after 2:00, and we'll try
9 to proceed at 2:15. If you will leave your pads in
10 the jury room when you leave, please, ma'am. Thank
11 you very much.

12 (At 12:38 p.m., the jury was excused for the
13 lunch recess.)

14 THE COURT: Motions, Mr. Yarborough?

15 MR. YARBOROUGH: Your Honor, at this time I'd
16 move for a directed verdict of acquittal. I don't
17 believe the State has met its burden in regards to
18 the elements of armed robbery or possession of a
19 weapon during the commission of a violent crime.
20 I'd ask that the Court dismiss the case at this
21 point.

22 THE COURT: All right. That's denied. I
23 really can't think of any more cases where it's met
24 its burden quite frankly. But all that being said,
25 I deny.

1 All right. Let's break until 2:15. Do you --
2 do y'all need to get in the courtroom earlier?

3 MR. YARBOROUGH: I'd -- I'd ask the Court to
4 charge strong armed robbery in this case just based
5 on what they saw on the tape, what he said during
6 his interview that it was a cap gun. I think
7 looking at the tape, you don't really see -- see a
8 firearm. I'd ask the Court to consider charging
9 strong armed robbery.

10 THE COURT: I'll consider it, but I think all
11 the evidence firmly points to armed robbery. I
12 don't think there's any evidence in the record that
13 would support a charge of just common law strong
14 armed robbery. I will give it consideration, but
15 I'll tell you, don't plan that on your closing
16 arguments because I doubt it. Okay?

17 MR. YARBOROUGH: Thank you, Your Honor.

18 THE COURT: Anything further?

19 MS. HUEY: No, sir, Judge.

20 MR. YARBOROUGH: No, sir.

21 THE COURT: All right. Let's break until 2:15.

22 (At 12:40 p.m., the courtroom personnel
23 recessed for lunch.)

24 THE COURT: Do you want me to charge first, or
25 do you want to argue first?

1 MS. HUEY: I'm happy to do either. I would
2 like to address the armed robbery charge if I may.

3 THE COURT: The common law or armed robbery
4 charge?

5 MS. HUEY: The armed robbery.

6 THE COURT: Oh, okay. Yes, ma'am.

7 MS. HUEY: Your Honor, I would like to include,
8 the statute reads that armed robbery can be proved
9 by -- while alleging either by action or words he
10 was armed while having a representation of a deadly
11 weapon or any act which a weapon was present during
12 the commission of a robbery reasonably believed to
13 be a deadly weapon.

14 My concern is that there has been testimony
15 that it was rusty, it wasn't loaded, and that the
16 defense admission that it couldn't even fire. So I
17 would like that additional language added in the
18 case so the jury doesn't get hung up on that.

19 THE COURT: Do you have a proposed -- you have
20 the language you are proposing?

21 MS. HUEY: I have the statute right here,
22 Judge, I can pass up. And there's a case ---

23 THE COURT: Okay. It makes it easier instead
24 of me writing it down.

25 MS. HUEY: I understand. Let me pass it up to

1 you.

2 THE COURT: (Reading.) All right.

3 Mr. Yarborough.

4 MR. YARBOROUGH: Your Honor, I'd ask the Court
5 to charge common law or strong armed robbery. The
6 felonious or involved taking money, goods, or other
7 personal property with any value from a person or
8 another whether expressing by violence or by putting
9 such a person in fear. I think that's a lesser
10 included of armed robbery.

11 THE COURT: I asked -- I thought about that.
12 There's no evidence in the record. If it was, I'd
13 be glad to charge it, but there's no evidence it was
14 a common law strong arm robbery.

15 MR. YARBOROUGH: I just -- I think the -- the
16 video that they put in tends to show -- just so he
17 asked for money. And then I think his confession, I
18 guess you would call it, he doesn't have -- he
19 doesn't say he has the gun. He just says he has
20 p-zero -- popper or something.

21 THE COURT: Well, I hear you. And that's one
22 of the reasons I asked earlier is this a real gun
23 because then he ultimately does say .22 I believe.
24 There's just no evidence that he didn't have a
25 weapon in the case, and I still think it's

1 appropriate. So I'm not going to charge the common
2 law strong armed robbery.

3 I note your objection. Just not -- what about
4 the language that Ms. Huey asked that I charge in
5 this case.

6 MR. YARBOROUGH: Your Honor, I -- I had looked
7 at the -- what you had put together before, and I
8 thought that that was appropriate. I think that by
9 adding what she says is calling more attention to --
10 to the armed robbery part of it and I'd object to
11 it.

12 Even if you were going to put that in there, I
13 again go back and ask you to reconsider putting
14 common law or strong armed robbery in there.

15 THE COURT: All right. I hear you. I'm not
16 going to do common law robbery.

17 (Brief recess.)

18 THE COURT: All right. I don't know how the
19 latest statute couldn't be appropriate in this case,
20 but what I'm going to do is, on the second page of
21 the armed robbery charge, which says the taking and
22 carrying away of the property must have been done
23 with violence or by putting the owner of the
24 property in fear of violence. I'm going to add that
25 as by alleging either by action or words, he was

1 armed while using a representation of a deadly
2 weapon or any object which a person present and
3 reasonably believed to be a deadly weapon.

4 Okay. So there subject to Mr. Yarborough's
5 objection of course. Other than what's been present
6 and requested by the State and the defense, any
7 other requested charge?

8 MR. YARBOROUGH: You're going to charge your
9 normal reasonable doubt?

10 THE COURT: I was about to go over that with
11 you right quick. What I was going to do, both of
12 you have been with me before, but I had my first
13 part of the jury's duties I'm going to go over. I
14 am going to tell them what is evidence and what's
15 not.

16 I'm going to charge the circumstantial and
17 direct evidence charge, that is *State v. Clarence*.
18 Credibility of witnesses. There's no expert
19 testimony in this case, right?

20 MS. HUEY: No, sir, Your Honor.

21 THE COURT: And then I'm going to remind them
22 that the indictment is not evidence and then
23 presumption of innocence, reasonable doubt, intent.

24 Now, from your perspective, Mr. Yarborough, I
25 don't want to over do it, but I am going to give

1 them the charge about the fact that the defendant is
2 absent, but I guess I need to also reiterate to them
3 that the Fifth Amendment on the failure to not show
4 shall not be discussed at all.

5 MR. YARBOROUGH: Your Honor, I don't know if
6 there's any need to mention the fact that he's not
7 here again, I mean...

8 THE COURT: Okay. I mean, well, you tell me.
9 It's your -- it's your -- I'll do whatever you want
10 me to do.

11 MR. YARBOROUGH: I just ---

12 THE COURT: You think I'm putting too much
13 emphasis on it?

14 MR. YARBOROUGH: Well, no. I just -- I mean,
15 it's mentioned. It's out of the way. It's gone. I
16 just think that by -- by re-bringing it up, you're
17 asking the jury to make a comment.

18 THE COURT: Well, I mean, I think that charge
19 is more for -- it's for the benefit of the defense
20 in this case anyway.

21 MR. YARBOROUGH: Sure.

22 THE COURT: And so if you don't want it, I
23 won't give it. Okay?

24 MR. YARBOROUGH: That's good.

25 THE COURT: How about failure to testify, the

1 Fifth Amendment charge? You want me to...

2 MR. YARBOROUGH: The thing about that ---

3 -- (cross-talking) --

4 MR. YARBOROUGH: I know. The thing about that
5 is he -- he wasn't -- he was here. I mean, you
6 know, and so...

7 THE COURT: I won't give it if you don't, I
8 mean...

9 MR. YARBOROUGH: I don't want it. Don't,
10 please.

11 THE COURT: Okay. I assume that you don't have
12 any problem with that, do you, Ms. Huey?

13 MS. HUEY: No, sir, Your Honor.

14 THE COURT: Okay. All right. That's done.

15 Has there been a bench warrant issued for this
16 guy?

17 MS. HUEY: No, sir.

18 THE COURT: So we need to do that.

19 MS. HUEY: Yes, sir.

20 THE COURT: All right. Now, do you want to
21 argue first, or me charge first? Whatever you --
22 whatever your preference. It doesn't matter to me.

23 MR. YARBOROUGH: You know, I think the last
24 time you did it first, you were the only person I've
25 seen do it. I like it. Go ahead.

1 THE COURT: Okay. It sounds like a winner to
2 me. Are we ready to go?

3 MS. HUEY: Yes, sir.

4 THE COURT: You get last argument, right?
5 There's no evidence.

6 MS. HUEY: Correct. And so I'm sorry. You are
7 going to charge first then, Judge; is that correct?

8 THE COURT: You agree with that?

9 MS. HUEY: Yes, sir. That's fine. I just want
10 to make sure ---

11 THE COURT: Yes, let's do that. I'll go ahead
12 and knock it out and get it done.

13 MR. YARBOROUGH: Because I think my last
14 co-counsel told me the only time we're ever going to
15 get the last word in this courtroom.

16 THE COURT: Yeah, it's hard for you without
17 said counsel, I know.

18 All right. Are y'all ready to go?

19 MS. HUEY: Yes, sir.

20 THE COURT: Would you bring the jury in?

21 THE BAILIFF: (Complying.)

22 (At 2:30 p.m., the jury entered the courtroom.)

23 THE COURT: All right. Ladies and gentlemen of
24 the jury, all the evidence has been presented that's
25 going to be presented has been presented.

1 Normally, that would lead us to the next phase
2 that I talked to you about at the beginning of the
3 case and that is the closing arguments by the
4 attorneys. Because these attorneys are well-versed
5 and they've been around for a long time, what we've
6 agreed to do is, I'm going to go ahead and charge
7 you on the law that you must apply. Then the
8 lawyers will give you their closing arguments.
9 After that, I'll go ahead and I'll go over the
10 verdict form with you. Okay?

11 So, ladies and gentlemen, I'm going to charge
12 you on the law that you must apply, and please
13 follow with me. Let me apologize in advance, some
14 of it will be read to you because there are very
15 important points of law and I'm just not smart or
16 articulate enough to just do it off the top of my
17 head.

18 But now that you've heard the evidence in this
19 case, it's my duty to instruct you on the law that
20 you must apply. My charge is going to be in three
21 different parts.

22 The first part will be the duties that
23 generally define and control your role as jurors.

24 The next will be the law, the substantive law
25 that the State must prove in order to make its case

1 out against this defendant, and that's the law of
2 armed robbery and possession of a weapon during the
3 commission of a violent crime. Then I'm going to
4 give you some considerations about your
5 deliberations.

6 If at any time you need a break, madam
7 forelady, or any of the jurors, let me know and I'll
8 give you the option to do that about midway through
9 the charge. Okay?

10 As you'll recall, ladies and gentlemen, I told
11 you at the beginning of this case it is your duty to
12 find facts from the evidence that's been presented
13 here in the courtroom of this case. Now, should the
14 facts as you find them to be, you must apply the law
15 as I give it to you now, and you have to follow the
16 law as I give it to you now and you must not and
17 shall not be concerned with what you think it should
18 be, but only what it is.

19 Also, you must not and shall not be influenced
20 by any personal dislikes or opinions or prejudice or
21 undue sympathy that you may have for one side or the
22 other. That means that you are to decide the case
23 solely on the evidence that's been presented to you
24 here in this courtroom in accord with the law as I
25 give it to you now. And if you recall at the

1 beginning of this case, when you took your oath, you
2 swore or affirmed to do just that.

3 Also, following these instructions now, you
4 can't pick out parts of it that you say are likely
5 to agree with that and follow those and not apply
6 the ones that you may not agree with. All of them
7 are equally important. Also, I'll remind you that
8 if I've done anything throughout the course of this
9 trial that seems to indicate to you the verdict that
10 you're to reach or the facts that you are to find,
11 you are to disregard that. I can assure you, I have
12 no prior knowledge of this matter. I have no
13 opinion one way or the other. It is up to you
14 solely to make that decision based on the law as I
15 give it to you now.

16 And you will determine what the facts are by
17 evaluating and weighing the evidence. We hear
18 sometimes people speak of the set of scales of
19 justice. And that's literally -- that's
20 not literal. Weighing the evidence is a mental
21 process that you'll go through on a thorough basis
22 with one another by using your common sense and your
23 sound judgments that you brought today with you when
24 you were sworn in as jurors.

25 Now, again, ladies and gentlemen, the evidence

1 that you may consider as evidence in this case is
2 the following: It's the sworn testimony of
3 witnesses, whether it be on direct examination or
4 cross-examination. Also, the exhibits that have
5 been received into evidence is evidence. Other than
6 that, there's no real evidence in this case that you
7 may consider as evidence.

8 So that leads me to a brief discussion of
9 what's not evidence. I'll remind you, ladies and
10 gentlemen, that the arguments by these lawyers,
11 their statements in opening arguments and in just a
12 minute their closings, is designed to help you
13 understand what they contend this case is about and
14 what their issues are, but it is not evidence.

15 If what either or both of them tell you differs
16 from your collective memory as that particular issue
17 or facts, then your memory will control.

18 And, madam forelady, I remind you that just
19 because something may appear on one of your fellow
20 jurors' notes, it doesn't mean it trumps somebody's
21 memory that's at issue. That's why they're called
22 deliberations. You'll have to hash that out.

23 Also, ladies and gentlemen, the lawyers'
24 questions to the witnesses are not -- is not
25 evidence. I will also would point out again that

1 objections are required of the lawyers under their
2 ethical duty. The fact that there was an objection
3 or the fact that I let you stay in the courtroom
4 while I ruled on that objection shall not be
5 considered by the jury in its deliberations.

6 And, madam forelady, it'll be up to you to make
7 sure that rule is followed.

8 Finally, ladies and gentlemen, anything that
9 you might've heard when court was not in session is
10 not evidence.

11 Now, we follow two types of evidence in South
12 Carolina. We have direct evidence and
13 circumstantial evidence. Direct evidence is
14 evidence that directly proves the existence of a
15 fact and does not require deduction or inference.
16 Circumstantial evidence is a proof of a chain of
17 facts and circumstances -- excuse me -- it's proof
18 of a chain of facts and circumstances indicating the
19 existence of a fact.

20 In other words, it does require an inference.
21 For example, direct evidence, if an issue in the
22 case was whether or not I ran a stop sign and my law
23 clerk testified that she saw me run the stop sign,
24 that would be direct evidence of that point because
25 it immediately establishes the point at issue.

1 Now, if each of you were to go to bed at night
2 and have a fresh sheet of snow in your front yard,
3 if you would wake up in the morning and see tracks
4 through the snow, you could infer that someone or
5 something walked through your yard during the night,
6 although you did not actually see it yourself.
7 That's circumstantial evidence.

8 Ladies and gentlemen, in South Carolina, crimes
9 may be proven by circumstantial evidence and direct
10 evidence. And the law makes no distinction between
11 the weight or value to be given to either direct or
12 circumstantial evidence. However, to the extent
13 that the State relies on circumstantial evidence,
14 all of the circumstances must be consistent with
15 each other, and when taken together point
16 conclusively to the guilt of the accused beyond a
17 reasonable doubt.

18 If these circumstances merely portray the
19 defendant's behavior as suspicious, that proof has
20 failed. The State has the burden of proving the
21 defendant guilty beyond a reasonable doubt, and this
22 burden rests with the State regardless of whether
23 the State relies on direct evidence, circumstantial
24 evidence, or a combination of both -- of the two.

25 Now, in deciding what the facts are, as I

1 remind you or told at the first of this case, you
2 have to decide which testimony you wish to believe
3 and which testimony, if any, you wish not to
4 believe. And in the vernacular of lawyers, we call
5 that determining the credibility of the witnesses.
6 You have a right to disbelieve all or part of any
7 witness's testimony that you wish to. You have a
8 right to believe all of any witness's testimony that
9 you wish to.

10 But in making this determination of the
11 credibility of the witnesses or the believability of
12 the witnesses, you may take into consideration the
13 following factors and this is certainly not an
14 exhaustive list.

15 You may ask yourself, was the witness able to
16 hear or see or know the things about which that
17 witness testified? How well was the witness able to
18 recall and describe the subject of their testimony?
19 What was that witness's manner or their demeanor
20 while they were sitting right here on the witness
21 stand?

22 You can ask yourself if there's a reason that
23 the witness would want to help or hurt one side or
24 the other or do they have an interest in the outcome
25 of this case. Do they have any bias or prejudice

1 toward any party or any issue involved in this case?

2 You can ask yourself how reasonable the
3 witness's testimony was in light of all the evidence
4 in this case, and also whether that witness's
5 testimony had been contradicted by what that witness
6 said at another date and time, by other witness's
7 testimony or evidence in this case.

8 And, ladies and gentlemen, those are some, but
9 not all the factors you may consider in deciding
10 which testimony, if any, you wish to believe or not.

11 Certainly, when you're sworn in, you don't
12 check your good common sense at the door, and you
13 should not do so in this case. You should use those
14 things in your day-to-day lives that you find
15 indicative of truthfulness and indicative of lack of
16 truthfulness when you decide which testimony you
17 believe and which you do not wish not to believe.

18 One thing that you may not do, however, is add
19 up the number of witnesses who appeared in this case
20 for one side or the other and make that
21 determination because it doesn't matter for you
22 where the truth comes from, either on direct or
23 cross-examination or any witness, but your sole
24 objective is to try to find the truth from the
25 testimony and evidence that you have before you in

1 this case.

2 Also remind you, ladies and gentlemen, that
3 this indictment is not evidence of the defendant's
4 guilt. It's not -- it doesn't raise a presumption
5 or an inference of his guilt. It is simply the
6 mechanism by which the State brings a person before
7 the Court for a trial and a determination of guilt
8 or innocence.

9 If you recall, madam forelady, there are two
10 charges that will be submitted to you. The first
11 one is armed robbery; the second one is a possession
12 of a weapon during the commission of a violent
13 crime. Usually -- usually, you would evaluate each
14 charge independent of your decision on the other.
15 In this case because one is related to the other,
16 you'll have to make a decision on the armed robbery
17 first.

18 And then depending on what your decision is on
19 the armed robbery charge, whether or not you'll
20 consider the possession of a weapon during the
21 commission of a violent crime charge. And I'll tell
22 you more about that when I go over the verdict form
23 with you. Okay?

24 Now, in this case as I've told you, the
25 defendant has pled not guilty to the charge or

1 charges in this case. Therefore, that puts the
2 burden on the State to prove the defendant guilty.
3 A person, ladies and gentlemen, in South Carolina
4 charged with committing a criminal offense is never
5 required to prove himself or herself innocent.

6 Now, I charge you that it is an important rule
7 of law that the defendant in a criminal trial, no
8 matter what the seriousness of the charge may be,
9 will always be presumed innocent of the crime or
10 crimes for which he has been indicted, unless there
11 is evidence satisfying you of guilt beyond a
12 reasonable doubt.

13 Now, ladies and gentlemen, this presumption of
14 innocence does not end when you begin your
15 deliberations, but it accompanies the defendant
16 throughout the trial until you reach a verdict of
17 guilt based on the evidence satisfying you of guilt
18 beyond a reasonable doubt.

19 It is said that the presumption of innocence is
20 like a robe of righteousness that's been placed
21 around the shoulders of the defendant where it
22 remains until it has been stripped by evidence
23 satisfying you the jury of guilt beyond a reasonable
24 doubt.

25 Ladies and gentlemen, the presumption of

1 innocence is not a mere theory. It's not a simple
2 legal phrase. It is a substantial right which every
3 jury and which every defendant is entitled to unless
4 you the jury are satisfied of his guilt by proof
5 beyond a reasonable doubt.

6 So that leads me to a further or more blown up
7 explanation or definition of what reasonable doubt
8 is and this is that, a reasonable doubt is the kind
9 of doubt that would cause a reasonable, sincere,
10 honest, and conscientious person to hesitate to act
11 in an important matter in their own affairs.

12 Proof beyond a reasonable doubt is proof that
13 leaves you firmly convinced of the defendant's
14 guilt. There are very few things in this world that
15 we know with absolute certainty. And in criminal
16 cases, the law does not require proof that overcomes
17 every possible doubt.

18 If based on your consideration of the evidence,
19 you are firmly convinced that the defendant is
20 guilty of the crime or crimes for which he has been
21 charged, it is your duty to find him guilty.

22 If on the other hand you think there's a real
23 possibility that the defendant is not guilty, you
24 must give the defendant a reasonable doubt -- a
25 reasonable benefit or a doubt and find him not

1 guilty. A reasonable doubt may arise from the
2 evidence or from a lack of the evidence.

3 And I further instruct you that the defendant
4 is entitled to every reasonable doubt that may arise
5 in the case. And what that simply means is this,
6 that if upon any issue of fact essential to a
7 conviction and a verdict of guilty of an offense, if
8 you have any reasonable doubt as to how that issue
9 should be resolved, it is your duty to resolve that
10 in favor of the defendant.

11 And let me apologize, I said -- I meant to say
12 expanded definition as to blown up definition.

13 Now, ladies and gentlemen, in order to
14 establish criminal liability, criminal intent is
15 required. For example, the mental state requiring
16 proof by the State for a particular crime might be
17 purpose, intent, knowledge, recklessness or criminal
18 negligence.

19 Criminal intent must be proven by the State
20 beyond a reasonable doubt. Criminal intent is
21 always a matter that must be determined by you the
22 jury from the circumstances surrounding the
23 situation.

24 Now, there's no way to prove intent to a
25 math -- to a mathematical certainty, and there's no

1 way that medical science can dissect a person's
2 brain to determine what they had in mind. So the
3 law says that criminal intent may be inferred from
4 the circumstances shown to have existed.

5 And, ladies and gentlemen, that's how you make
6 a determination of whether or not the element
7 requiring intent is present. It is not necessary to
8 establish intent by direct and positive evidence,
9 but intent may be established by inference in the
10 same way as any other fact by taking into
11 consideration the acts of the parties and all of the
12 facts and circumstances of the case.

13 Criminal intent is a mental state, a conscious
14 wrongdoing. It is up to you to determine what the
15 defendant intended to do based on the circumstances
16 shown to have existed.

17 Criminal intent can arise from action or a
18 failure to act. It may arise from negligence,
19 recklessness, or indifference to duty or to
20 consequences that's considered by law to be the
21 equivalent of criminal intent.

22 Now, an issue in this case, ladies and
23 gentlemen, is the identification of the defendant as
24 to the person who committed the crime for which he's
25 being charged. The State has the burden of proving

1 the identity by proof beyond a reasonable doubt.

2 And you must be satisfied beyond a reasonable
3 doubt of the accuracy of the identification of the
4 defendant before you may convict the defendant.

5 Identification testimony is an expression of belief
6 or impression by a witness. You must determine the
7 accuracy of the identification of the defendant.

8 You must consider the believability of each
9 identification witness in the same way as any other
10 witness. You may consider whether the witness had
11 an adequate opportunity to observe the offender at
12 the time of the offense.

13 This will be affected by things like how long
14 or short a time was available, how far or close the
15 witness was, the lighting conditions, and whether
16 the witness had the chance to see or know the person
17 in the past. It's not essential that the witness
18 himself be free from doubt as to the correctness of
19 his or her statement.

20 Once again, I charge you the burden of proof is
21 on the -- on the State. It extends to every element
22 of the crime charged and this specifically includes
23 the burden of proof and beyond a reasonable doubt
24 the identity of the defendant as to person who
25 committed the crime. If after examining the

1 testimony you have a reasonable doubt as to the
2 accuracy of the identification, it is your duty to
3 find the defendant not guilty.

4 Now, madam forelady, those are the general
5 rules that define and control your duties as jurors.
6 Would you check with your fellow jurors and see if
7 y'all want to take a quick break? I imagine that
8 the rest of my charge is going to take about 12 or
9 15 minutes, somewhere in that neighborhood, or would
10 you like to proceed?

11 THE FORELADY: I think we're good, Your Honor.
12 We can continue.

13 THE COURT: You want to proceed?

14 THE FORELADY: Yes, Your Honor.

15 THE COURT: I knew that's what you were going
16 to say.

17 Ladies and gentlemen, a statement that has been
18 alleged to have been made by the defendant has been
19 admitted into evidence in this case. While the
20 Court has determined that the statement is
21 admissible, I instruct you that you make the
22 ultimate decision of whether or not the defendant
23 made the statement.

24 If the defendant did make the statement, you
25 must determine whether the statement was made by the

1 defendant voluntarily and of his own freewill. This
2 means that the statement was not caused by pressure,
3 force, fear, threats, coercion, or intimidation or
4 by hope or a promise of leniency or a reward of any
5 kind.

6 In determining whether the statement was
7 voluntary, you should consider both the
8 characteristics of the defendant and the details of
9 the questioning.

10 Some of the factors that you must consider are:
11 (1) The age of the defendant, (2) the defendant's
12 education or lack of education, (3) the defendant's
13 mental ability or capacity, (4) the defendant's IQ
14 or intelligence, (5) the defendant's background and
15 environment, (6) the place and length of detention,
16 (7) the nature of the questioning, and (8) the
17 advice or lack thereof to the defendant of his
18 constitutional rights, including but not limited to
19 the right to remain silent, that any statement could
20 be used against him in a court of law, the right to
21 have a lawyer present, that if he could not afford a
22 lawyer, a lawyer would be appointed to represent him
23 without any cost, and that he could stop making a
24 statement at any time.

25 You must carefully consider all the surrounding

1 circumstances before you give any weight to an
2 alleged statement. The statement has the burden of
3 proving beyond a reasonable doubt that the alleged
4 statement was voluntary.

5 If you determine that it was, you may then give
6 the statement any further consideration that you
7 deem is proper. You must decide what weight, if
8 any, should be given to the alleged statement. If
9 you determine the alleged statement was not the free
10 and voluntary statement of the defendant, you should
11 not consider the statement at all.

12 Ladies and gentlemen, this the law of armed
13 robbery under our Statute 16-11-330. The defendant
14 is charged with armed robbery. In order to prove
15 this offense, the State must first prove beyond a
16 reasonable doubt that the defendant took personal
17 property from a person or presence of another
18 person.

19 Property is in the presence of a person if it
20 is within the person's reach, inspection,
21 observation, or control, so that the person could if
22 not overcome with violence or prevented by fear keep
23 possession of the property. The statements also
24 prove beyond a reasonable doubt that the defendant
25 carried the property away intending to permanently

1 deprive the owner of the property and to keep the
2 property for the defendant's own use.

3 The slightest removal of the property or the
4 complete possession of the property, even for an
5 instant by the defendant is sufficient to show a
6 taking and carrying away of the property. The
7 taking and carrying away of the property must have
8 been done with violence or by putting the owner of
9 the property in fear of violence, that is by
10 alleging either by action or words that he was armed
11 while using a representation of a deadly weapon or
12 any object which a person present reasonably
13 believed to be a deadly weapon.

14 Finally, ladies and gentlemen, the State must
15 prove beyond a reasonable doubt that the defendant
16 was armed with a deadly weapon during the commission
17 of the robbery -- during the robbery. A deadly
18 weapon is any article, instrument, or substance
19 which is likely to cause death or great bodily harm.
20 Whether an instrument has been used as a deadly
21 weapon depends on the facts and circumstances of the
22 case.

23 Now, the following are examples. They're
24 aren't a complete exhaustive list of items which we
25 consider deadly weapons: A shotgun, a rifle, a

1 dirk, a dagger, a knife, a slingshot, metal
2 knuckles, a razor, gasoline, a fire bomb, a Molotov
3 cocktail, and lighter fluid. A gun may be a deadly
4 weapon even if it is not operated.

5 Ladies and gentlemen, in our courts, no
6 distinction is made between corporations and
7 individuals. A corporation is a person in the eyes
8 of the law. A corporation is -- a corporation is
9 entitled to the same fair and impartial
10 consideration and to the same justice as any other
11 person in the state. That is the law of armed
12 robbery.

13 This is the law of commission of a weapon
14 during -- the possession of a weapon and commission
15 of a violent crime. The defendant is charged with
16 possession of a weapon during the commission of or
17 an attempt to commit a violent crime. The State
18 must prove beyond a reasonable doubt that the
19 defendant was in possession of a firearm or visibly
20 displayed what appeared to be a firearm during the
21 commission of a violent crime. A firearm means any
22 machine gun, automatic rifle, revolver, pistol, or
23 any weapon which will is designed to or may be
24 readily converted to expel a projectile.

25 In order to find the defendant guilty of

1 possession of a weapon during the commission of a
2 violent crime, you must first find the defendant
3 guilty of either committing a violent crime or
4 attempting to commit a violent crime.

5 And I'll charge you, madam forelady, that armed
6 robbery in South Carolina is considered a violent
7 crime. The State must prove beyond a reasonable
8 doubt that the weapon further advanced or helped in
9 the commission of a crime.

10 All right. Ladies and gentlemen, that's the
11 substantive law that you must apply. In just a few
12 minutes after these attorneys have given you their
13 closing arguments, I will send word back with you
14 and the exhibits and your verdict form and that
15 tells you to begin your deliberations. Until that
16 time, please do not begin to do so.

17 However, before and after you the jurors and
18 you as jurors, we went through the qualification
19 process, represented yourselves to the State and to
20 the defense that you could be fair and impartial and
21 make your decision based on the testimony, based on
22 the evidence, and according to the law as I give to
23 you.

24 You do not act as jurors to be partizans or
25 advocates for one side or the other. Your sole

1 objective is to try to find the truth from the
2 testimony and evidence presented here in this
3 courtroom and according to the law as I give to you.

4 When you engage in your deliberations, I'm
5 going to ask you, but I also will charge you that
6 you should use your experiences in life, your good
7 common sense, and your sense of logic and reasoning
8 in discussing the evidence and hopefully coming up
9 with a unanimous verdict. Deliberations is defined
10 as this: It is a careful consideration weighing up
11 with a view to a decision.

12 Now, regardless what any of you may think about
13 our judicial system, I will point to you and urge
14 you to believe that the genius of the system is it
15 allows 12 men and women such as yourselves who come
16 from different backgrounds, you have different life
17 experiences, and you have different perspectives to
18 listen to the testimony, to listen to the evidence,
19 to go back and engage in courteous but thorough
20 deliberations and ultimately to reach a unanimous
21 verdict as to the issue in this case.

22 Again, you're not partisans or advocates for
23 one side or the other, but you're judges of the
24 facts. When you go back, you are to listen to
25 everyone's points and their points of view, consider

1 them, talk them through, let everyone have their
2 say, look at and talk about all the evidence that
3 you need to and all the evidence that's presented to
4 you.

5 You should not be in a hurry. This is the
6 parties only day in court. They cannot come back
7 for a second bite at the apple. Remember this, in
8 order to come to a decision, you will have to come
9 to your own opinion as to the facts in this case.
10 In other words, what your verdict is going to be.

11 However, do not be afraid to change your idea
12 about what the facts are or what your verdict should
13 be if your discussion with your fellow jurors
14 convinces you it is the right thing to do. On the
15 other hand, do not change a firmly held belief about
16 what the facts of this case are just to appease your
17 fellow jurors.

18 Now, madam forelady, if at any time you need to
19 ask the Court for anything, I ask that you write it
20 down on a piece of paper, knock on the door, give it
21 to our bailiff. We'll receive it here in the
22 courtroom in open court and act accordingly. Okay?
23 And before I excuse you after closing arguments,
24 I'll go over the verdict form with you.

25 But right now, I need to have a quick

1 conference with the attorneys to see if they have
2 any objections to my charge or if I forgot to give
3 you some relevant information. If you'd go back to
4 the jury room, we'll bring you back in just a few
5 minutes for the closing arguments.

6 (At 2:58 p.m., jurors left the courtroom.)

7 THE COURT: Additions or exceptions from the
8 State?

9 MS. HUEY: No, sir, Your Honor.

10 THE COURT: From the defense?

11 MR. YARBOROUGH: Just my previous objection
12 requesting for strong armed robbery.

13 THE COURT: All right. Note that for the
14 record.

15 Do y'all need a break or are you ready to go?

16 MS. HUEY: Can I just really quickly?

17 THE COURT: Sure. Go right ahead.

18 (From 2:59 to 3:03 p.m., recess was taken.)

19 THE COURT: All right. Are you ready?

20 MS. HUEY: Yes, sir.

21 THE COURT: Are you ready?

22 MR. YARBOROUGH: Yes, sir.

23 THE COURT: Would you bring the jury in please,
24 ma'am?

25 THE BAILIFF: (Complying.)

1 (At 3:05 p.m., jury entered the courtroom.)

2 THE COURT: Ms. Huey, State ready with its
3 closing?

4 MS. HUEY: Yes, sir.

5 THE COURT: Mr. Yarborough?

6 MR. YARBOROUGH: Yes, sir.

7 THE COURT: All right. Ms. Huey.

8 CLOSING ARGUMENTS

9 MS. HUEY: Thank y'all for your service. When
10 we started this case, I told you it was going to be
11 a short one and I'm not going to belabor this
12 closing argument either.

13 What I am going to start with is Natasha
14 Oliver's testimony. She testified that she served a
15 customer. He wanted to buy Pringles and Airheads.
16 He used an EBT card. He was wearing a brown jacket
17 and dark hat. He had on a red shirt, jacket over
18 that, and a turquoise shirt under that.

19 She rang up those items, the Pringles and the
20 Airheads. Put them in a Family Dollar bag. Put the
21 receipt in the Family Dollar bag. She turned around
22 to get him cigarettes after his second request. And
23 when she turned back around, he had a gun, a small
24 caliber rusty gun, but a gun nonetheless. She was
25 shown this gun, and said this gun is consistent with

1 what was pointed at her on December 16th of 2015.

2 Now, that's a real gun and that was pointed at
3 her. And on the video you may notice that she does
4 stay calm because he told her to. He said, "Don't
5 scream or I'll pull the trigger." And he had a gun
6 in his hand when he did it. So she did just that.
7 She stayed calm, she gave him the money, and then he
8 ran out.

9 As soon as he left, she pushed that panic
10 button. The police arrive very quickly thereafter
11 and were able to detain someone shortly thereafter.
12 Turned out to be this defendant, Philip Walker.

13 In the meantime, Sarah Smith with the housing
14 authority, noticed a gentleman shedding his clothes,
15 throwing them in a dumpster behind the Family
16 Dollar. She takes a picture of that person. And
17 she pointed it out to you, that's the person who
18 dumped clothes in the dumpster behind the Family
19 Dollar and walked away. He has a red shirt on,
20 possibly a jacket. Walked away.

21 Ty Blackwell with forensics came and testified
22 that he had to climb in that dumpster. And when he
23 did, he found a brown working -- a Carhartt-type
24 jacket, a brown hat, and then he found a .22-caliber
25 rusty gun in that same dumpster with the jacket and

1 the hat. This gun is a .22 caliber. It is a real
2 gun. It's considered a deadly weapon because it can
3 cause great bodily injury and/or death. It's a
4 deadly weapon.

5 Now, as I mentioned, the defendant was
6 eventually detained shortly thereafter, and again
7 had that red jacket on and a turquoise shirt
8 underneath. All matching the description that
9 Natasha Oliver gave.

10 Additionally, what else did he have on? A
11 Family Dollar bag with Pringles, Airheads, and a
12 receipt, and he had an EBT card. This was all used
13 moments before at the Family Dollar when Natasha was
14 the cashier.

15 He also had two wads of money on him that
16 equalled about \$234 I believe was the testimony, and
17 that's, in fact, what the store manager said
18 thereabouts was missing. She also said it was
19 mostly in fives and ones, which again this was --
20 the money found was in fives and ones. And he
21 didn't have any money in his wallet. It was all in
22 a wad in his pockets.

23 Now, Natasha Oliver was also brought to where
24 the defendant was detained, and she said yes
25 immediately. "That's the guy who robbed me at my

1 store just a little while ago. That's him."

2 Then we have surveillance footage which
3 matches. If you look at the jacket and the hat that
4 was found in the dumpster, that matches the
5 surveillance video.

6 And, finally, you have a confession. And I
7 believe the defendant in his own words on page 12 of
8 the transcript said that the gun he used was a .22.
9 Again, .22 caliber. He also admits to shedding his
10 clothes in that dumpster. And he ultimately admits
11 to using a gun, pointing it at Natasha Oliver, and
12 telling her to give him the money.

13 Now, she has no way of knowing, as the
14 defendant may be trying to add, that it was rusty,
15 never worked, wasn't loaded, and all this. She
16 doesn't know that. She's got a gun pointed at her,
17 and she believes what he said. "Don't scream, give
18 me the money, or I'll pull the trigger." And what
19 does that imply? That it works and that he's
20 willing to use it.

21 This defendant, Philip Walker, committed armed
22 robbery. He had a weapon while he did it, a .22
23 caliber. He is guilty of armed robbery and the
24 possession of a weapon during the commission of a
25 violent crime. Thank you.

1 THE COURT: Mr. Yarborough?

2 MR. YARBOROUGH: Thank you, Your Honor.

3 THE COURT: Yes, sir.

4 MR. YARBOROUGH: Ms. Huey.

5 Ladies and gentlemen of the jury, I haven't
6 asked a lot of questions during the course of this
7 case because I've always thought this case was about
8 one thing, and that case is about was there an armed
9 robbery? Did there an armed robbery take place on
10 December 16th a year ago?

11 Now, I don't know what happened that day. I
12 wasn't there, but you've seen the video of what
13 happened. And what happens on that video does not
14 appear to be an armed robbery. Okay. It looks like
15 a very calm reaction to something that happens.

16 The defendant walks in. Something happens with
17 the cash register. But I'll tell you this, I got a
18 lot of money here in my hands. I've been around
19 this business for a long time, but defendant's don't
20 commit armed robberies by coming there and buying
21 Pringles and buying little pieces of candy -- I
22 can't remember what they're called -- with the --
23 with the card with his name on it. I mean, there's
24 something to say.

25 The judge says you -- you've got to look at the

1 evidence. You've got to look and use your common
2 sense, and that's what your job is. And here how
3 does that make any sense? It doesn't. It doesn't
4 make any sense.

5 So Your Honor told you you've got to look at
6 the evidence beyond a reasonable doubt. That's a
7 hesitance. It's a hesitation. Does it make you
8 hesitate? Well, I'll tell that right there, that
9 makes you hesitate. Why would -- why would somebody
10 go up to a place and give their card and do that?
11 All right.

12 Now, let me give you another thing to hesitate
13 about. The police sat down and had a long
14 conversation with Mr. Walker. They talked to him.
15 You watched the video. Heard Mr. Walker talk. He
16 talked about having a hard time and talked about
17 what was going on, but he never said that he used
18 anything that was an armed pistol, something that --
19 he, in fact, said it was something else. You can go
20 back and look at it and you can listen to it. Did
21 he shoot a dart thing? I mean, this gun to me does
22 not look like anything but a toy.

23 Now, that maybe is why you have the reaction
24 from Ms. Oliver at the counter, is that because you
25 got to say, what in the world is going on there? Is

1 something wrong? Is -- you know, does this make any
2 sense? Could this be? Maybe it's a robbery, but
3 it's not an armed robbery and certainly not a
4 firearm in the commission of a violent crime.

5 And it's your job to look at -- you've heard
6 him charged, you know what the evidence is, but it's
7 your job to look at the evidence. And I'm not
8 saying that the evidence doesn't present that
9 something happened that day, that there was some --
10 some -- some money that was transferred right there
11 at the counter, that something happened. Why it
12 happened? I don't know. I'm not there. You don't
13 know, but the State's obligation is to figure that
14 out and to bring you evidence to tell you there was
15 an armed robbery committed.

16 Now, that gun, pistol, pea shooter, whatever
17 you want to call it, is rusty, it's beat up, but
18 they never could tie it to Mr. Walker. They never
19 could tie that gun to him. They could've very
20 easily that afternoon or evening when they were
21 talking to him on the -- on the video camera and
22 said, "Hey, what is this? Is this -- what is this?
23 Is this a firearm?"

24 He said it wasn't a firearm. They could have
25 asked him if that was it. I asked the -- the -- the

1 forensic guy, the guy that had the stuff in the
2 dumpster. I couldn't shoot -- I didn't dust that
3 thing for fingerprints."

4 "Did you check it?"

5 He said, "No. I didn't bother checking it."

6 It's the State's obligation to prove Mr. Walker
7 is guilty beyond a reasonable doubt, and there are
8 reasons here that maybe you hesitate, they make you
9 say what in the world is going on here?

10 Now, the State has the burden. The burden of
11 proof in a criminal courtroom comes from that side.
12 Judge McIntosh told you, we ain't got to prove
13 nothing. We ain't got to do anything. We don't
14 have to do anything. It's their obligation to prove
15 him guilty, to convict him of armed robbery beyond a
16 reasonable doubt, and they have to do that by giving
17 you the evidence. If they don't give you the
18 evidence, then you don't have a choice but to go
19 back and acquit.

20 And I would submit to you, that there are a
21 bunch of reasons to wonder why. Wonder why they
22 didn't show him that gun on that videotape? Wonder
23 why they didn't dust that thing for prints? Wonder
24 why Ms. Oliver didn't act anymore upset at the scene
25 of the crime? Wonder why somebody went there with

1 an EBT card to buy candy and buy potato chips that
2 had his name on it and then they want to say he
3 committed an armed robbery?

4 Come on. That's not normal. That's not what
5 somebody does. That's not what people do. That
6 doesn't make any sense. And I'm not -- I'm not a
7 rocket scientist. These guys investigate this stuff
8 all the time. They should've -- they should've
9 said, you know, come on, Mr. Walker, what is really
10 going on here? They had him there. He was
11 cooperating with them. He told them he was having a
12 hard time. He told them it was a holiday. He told
13 him he had kids. He told him there were problems
14 going on.

15 Could've said, well, did you rob the place with
16 a gun? Was this the firearm you used? They had it.
17 He said he found it. But couldn't they have gone
18 and dusted it for prints? Couldn't they ask him why
19 did you use your EBT card? I think that's the real
20 question. Why would somebody use their EBT card
21 which has got their name on it and prints out a
22 receipt, the money comes out of their account, and
23 rob a place?

24 And why does he look so calm walking away? I
25 mean, it just doesn't make any sense. There's

1 something more to it. And when there's something
2 more to it, you can -- you can -- you can wonder.
3 State's obligation to present the evidence and you
4 can question it. I think there's enough questioning
5 here that you need to let Mr. Walker go beyond a
6 reasonable doubt of armed robbery and using a gun --
7 a gun during the commission of a violent crime.
8 Thank you.

9 THE COURT: All right. Madam forelady, this is
10 the verdict form that I'm going to have sent back to
11 you with the evidence. And let me point out to you,
12 I have to put the form in some order. I have to put
13 the options in some order, so the order in which
14 they appear is of no consequence. It's just that's
15 just the way it is, but your first option is to
16 consider the charge of armed robbery.

17 Once the jury makes its decision, you'll check
18 the appropriate box. The first option you would
19 have is as to the charge of armed robbery. "We the
20 jury unanimously find the defendant not guilty." If
21 that's what your decision is, you'll check, as the
22 forelady, that box. And then you'll just go on and
23 sign as to the jury foreperson, and you would not
24 consider the other charge. Okay?

25 The second option is as to the charge of armed

1 robbery. "We the jury unanimously find the
2 defendant guilty." If that's what the jury comes up
3 with unanimously, you'll check that option. If that
4 is the jury's decision, you would then consider the
5 second charge of possession of a weapon during the
6 commission of a violent crime.

7 Again, the order in which your options appear
8 is of no consequence, but your options are as to
9 this charge: "We the jury unanimously find the
10 defendant not guilty" or "We the jury -- we the jury
11 unanimously find the defendant guilty."

12 Whichever the jury unanimously decides, you'll
13 check. Then you'll sign off on the verdict form.
14 If you can remember to try to fold the verdict form
15 over and crease it, knock on the door, and let the
16 bailiffs know that you have a verdict. And then
17 we'll receive you here and have it read in open
18 court. Okay?

19 Let me point out just a couple things before I
20 let you go. First, jurors ask all the time for more
21 information. All the evidence and testimony that's
22 going to be had has been had. There will be no more
23 evidence taken in this case.

24 The videos that were played to you in the
25 courtroom, if you want to view those, we'll need to

1 set them up here in the courtroom because these
2 computers have other information -- other -- other
3 information on them other than just this trial. We
4 have no clean computers, so we got to ensure that
5 just the videos are played here. So if you want --
6 that's what you want to do, just let us know and
7 we'll watch it as often -- as many times as you
8 want.

9 Finally, the indictment that I've gone over
10 with you does not go back. It's not in evidence in
11 this case. Okay?

12 If you would go back to your jury room. I'll
13 send the verdict form and the exhibits with the
14 bailiff, and they will tell you to begin your
15 deliberations.

16 (At 3:22 p.m., jury left the courtroom.)

17 THE COURT: All right. Any additions or
18 exceptions from the State?

19 MS. HUEY: None from the State.

20 THE COURT: From the defense?

21 MR. YARBOROUGH: No, sir, Your Honor.

22 THE COURT: All right. Let me thank both the
23 attorneys. Y'all did a fine job as you always do,
24 especially you're sitting by yourself.

25 All right. Guys, if y'all will go over the

1 exhibits. And once you agree that everything is
2 accounted for, madam bailiff, would you take the
3 verdict form and those exhibits and tell the jury to
4 begin their deliberations?

5 (At 3:27 p.m., jury began deliberating.)

6 (At 3:52 p.m., verdict reached.)

7 (At 3:56 p.m., jury entered the courtroom.)

8 THE COURT: All right. Madam forelady, my
9 understanding is the jury has reached a verdict; is
10 that correct?

11 THE FORELADY: Yes, Your Honor.

12 THE COURT: And this is the form you gave to
13 the bailiff; is that correct?

14 THE FORELADY: Yes, Your Honor.

15 THE COURT: And would you publish the verdict
16 please, Mr. Clerk?

17 THE CLERK: If the pleases the Court.

18 This is State of South Carolina, County of
19 Anderson, in the Court of General Sessions, Tenth
20 Judicial Circuit. This is Indictment No.
21 2016-GS-04-00594, the case of *State of South*
22 *Carolina v. Philip Wesley Walker*, defendant, verdict
23 form.

24 First item on robbery. As to the charge of
25 armed robbery, Indictment No. 2016-GS-04-00594, we

1 the jury unanimously find the defendant guilty.

2 Number two, possession of a weapon during the
3 commission of or attempt to commit a violent crime.
4 As to this charge, Indictment No. 2016-GS-04-0594,
5 we the jury unanimously find the defendant guilty.

6 It is signed by the foreperson and dated
7 today's date, December 7, 2016.

8 THE COURT: All right. Ladies and gentlemen,
9 if that was your verdict in the jury room and that
10 is your verdict now, would you raise your right
11 hands?

12 THE JURORS: (Indicating.)

13 THE COURT: Let the record reflect that all 12
14 jurors responded in the affirmative.

15 All right. Ladies and gentlemen, the Court is
16 never concerned with the verdict; however, it is
17 concerned that you follow the process and follow the
18 trial and follow my instructions. I watched you
19 variously throughout the trial, and you did just
20 that. So I want to thank you for your service.

21 Ms. Huey?

22 MS. HUEY: Yes, sir.

23 THE COURT: Do you -- well, I tell you what, if
24 you would, call back tonight after 6:00. There will
25 be a message on the voicemail as to whether or not

1 we are going to have any other trials. I think
2 maybe this will be the only one we're having, but
3 I'll find out more this afternoon. We'll leave word
4 for you after six o'clock. Does each one of you
5 have the form that you would call in with?

6 A JUROR: No.

7 THE COURT: Our clerk will get it for you. And
8 in the event, ladies and gentlemen, that we are not
9 going to do other trials or do other matters, let me
10 thank you for your service. Without people like you
11 who are willing to do their civic duty and take time
12 away from their families and their jobs, there's no
13 way our system could work. All you have to do is
14 look on the TV each night where countries who do not
15 have our judicial system in place and do not have a
16 place to resolve their differences in a civilized
17 manner what they resort to. So as much as you may
18 criticize it, I challenge you to find a better
19 system in the world.

20 That being said, if you'll go back to the jury
21 room, I will need to get some paperwork signed by
22 you, madam clerk, and I'll speak to all of y'all for
23 just one second and then I'll let you go.

24 By the way, what will happen since the
25 defendant is not here, I will sentence him. I will

1 hear from his attorney. I will sentence him. That
2 will be sealed. Eventually, they'll catch him.
3 They always do. Then he'll be brought before some
4 judge, and then they'll sentence him to whatever I
5 decide the sentence will be.

6 All right. If you'll go to the jury room,
7 please.

8 (At 4:00 p.m., jury left the courtroom.)

9 THE COURT: All right. I'll give you ten days
10 if you want to do post-trial motions, or do you want
11 to go ahead and do them now?

12 MR. YARBOROUGH: I'll go ahead and do them now.

13 THE COURT: Okay.

14 MR. YARBOROUGH: Your Honor, we request a --
15 we'll do it like in state court like felony court, a
16 judgment of acquittal based on the fact that there
17 was not enough evidence presented. He was
18 presented. He had a firearm. The firearm was --
19 was -- was actually something that could be used,
20 but it -- it -- he was involved in a threatening act
21 and that the -- Ms. Oliver had actually been scared.

22 And we'd also say that the -- as far as the
23 second count, that they didn't prove that it -- it
24 was a -- a violent -- a violent weapon.

25 THE COURT: Okay. Thank you, sir. Those will

1 be denied. If you would prepare me a sentencing
2 sheet.

3 MS. HUEY: Yes, sir.

4 THE COURT: And I'll be right back.

5 MS. HUEY: Yes, sir.

6 (From 4:01 to 4:06 p.m., brief recess.)

7 THE COURT: Do I understand this boy has no
8 criminal record?

9 MS. HUEY: No, sir. He has quite the criminal
10 record.

11 THE COURT: Oh, okay.

12 MS. HUEY: Yes, sir.

13 THE COURT: Let me hear what that record is.

14 MS. HUEY: Yes, sir. He has a 1998, breaking
15 and entering; 2001, auto breaking, resisting a
16 public officer, fleeing, eluding arrest with a motor
17 vehicle. These are from North Carolina, Your Honor,
18 so they sound a little different.

19 He has four counts of common law robbery from
20 2001. And then he has two counts of common law
21 robbery from 2005.

22 THE COURT: So '98 being the auto breaking,
23 fleeing from law, four counts of common law robbery,
24 and two counts of common law robbery?

25 MS. HUEY: Yes, sir.

1 THE COURT: Okay.

2 MR. YARBOROUGH: Your Honor, I can tell you
3 that the story that he told the officers is
4 basically what he told me. He spent about, what,
5 six -- six months in jail I think, something along
6 those lines.

7 MS. HUEY: Yeah, I don't have that.

8 THE COURT: He did.

9 MR. YARBOROUGH: He -- he did here. And he was
10 going through -- and I get a lot of this second-hand
11 from his father, but they were -- the two children
12 that -- that they were talking about on the tape,
13 the -- those two children, they -- they lost -- were
14 not with the custody of their mother anymore, and so
15 the dad got custody and they were trying to get
16 everybody to move up to North Carolina and try to
17 help with this until he had to go to prison.

18 And, you know, I don't -- I don't know what
19 happened. I was in regular contact with him and,
20 you know, and we -- we talked a lot about -- about a
21 plea and he was always going to -- he wanted to
22 plead to a strong armed robbery. He didn't want to
23 plead to the armed robbery for a lot of reasons.
24 And he was always helpful with me.

25 I can tell you his dad -- his dad, good Lord,

1 him and his mother got their hands full with those
2 two small children. I know that he does have a
3 prior record. The record is -- is somewhat old.

4 I'd ask the Court -- I think 2004 was the last
5 conviction. I'd ask the Court to be as lenient on
6 him as possible, based on the fact that he did -- he
7 did cooperate with the police at the scene. He --
8 he told them what happened. He was cooperative.

9 THE COURT: I'm listening.

10 MR. YARBOROUGH: He told them where -- he told
11 them where the stuff was. You know, he -- he was
12 apologetic. He was -- he was sorry that -- that it
13 happened. I'd just ask the Court for some -- some
14 mercy on the sentence.

15 THE COURT: Okay. Anyone from the store?

16 MS. HUEY: Ms. Oliver is still here.

17 THE COURT: You got a manager here? That's
18 right, Ms. Oliver. And how about the manager? Is
19 she here?

20 MS. HUEY: I'm not sure if she stayed.

21 THE COURT: I guess my question is, does
22 anybody want to speak on behalf of the store?

23 MS. HUEY: She said she doesn't want to speak,
24 Judge.

25 And it looks like if I'm reading correctly from

1 the bond sheet, he served from December 16th of 2015
2 to August 8th of 2016. Does that sound right?

3 MR. YARBOROUGH: I think that's right. It was
4 eight months, Judge.

5 MS. HUEY: Mr. Clerk, do you have that fancy
6 computing ---

7 THE CLERK: No. I can get them ---

8 MS. HUEY: --- to figure out the days. We can
9 do that.

10 THE COURT: What I'm going to do is just put
11 these under seal and then they catch him, they'll...

12 Anything else further? Normally, I'd say ten
13 days to appeal, but I guess you already know that.

14 MR. YARBOROUGH: Thanks, Judge.

15 THE COURT: Umm...

16 MR. YARBOROUGH: Your Honor, I'd just ask that
17 you give him some credit for the fact that he did
18 talk to them and he was cooperative with them at the
19 time.

20 THE COURT: I mean, it was such a blatant
21 thing, I just don't even know how I'm gonna --
22 probably one of the more blatant cases that I've
23 seen. But you're right, I mean, he just said,
24 "Okay. Here I am. I give up. I did it." Give him
25 some credit for that.

1 MR. YARBOROUGH: Thanks.

2 THE COURT: Not much. All right. Thank you.
3 Appreciate it.

4 MS. HUEY: Thank you, Judge. I appreciate it.

5 THE COURT: I've issued the bench warrant.

6 MS. HUEY: Yes, sir.

7 THE COURT: I'll give it to the clerk to put
8 these under seal. Thank you for our law enforcement
9 members. I appreciate it.

10 MS. HUEY: Thank you, Judge.

11 (The proceedings concluded at 4:10 p.m.)

12 - - -

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1 C E R T I F I C A T E O F R E P O R T E R

2

3 STATE OF SOUTH CAROLINA

4 COUNTY OF ANDERSON

5

6 I, the undersigned, Lisa Scott, Circuit Court
7 Reporter for the Tenth Judicial Circuit of the State
8 of South Carolina, do hereby certify that the
9 foregoing is a true, accurate and complete
10 transcript of record of all the proceedings had and
11 the evidence introduced in the trial of the
12 captioned cause, relative to appeal in the Criminal
13 Court for Anderson County, South Carolina, on the
14 7th day of December, 2016.

15 I do further certify that I am neither of kin,
16 counsel, nor interest to any party hereto.

17

18 April 17, 2018

19

20 /s/Lisa Scott

21

22 *Lisa Scott*
23 *Circuit Court Reporter*

24

25

26

STATE OF SOUTH CAROLINA)
)
 COUNTY OF ANDERSON) COURT OF GENERAL SESSIONS

State of South Carolina,)
)
 v.)
)
 Philip Wesley Walker,)
)
 Defendant.)

Case No. 16-GS-04-0594

TRANSCRIPT OF HEARING

The within Hearing in the above-captioned matter was held on October 12, 2017, before The Honorable R. Lawton McIntosh in the Court of General Sessions; attended by counsel as follows:

APPEARANCES:

Catherine T. Huey, Solicitor
 10TH CIRCUIT SOLICITOR'S OFFICE
 Appearing for State of South Carolina

William G. Yarborough, III, Esq.
 Appearing for Defendant

Vivian H. Cross
Circuit Court Reporter – 10th Judicial Circuit
 P O Box 704
 Belton, South Carolina 29627
vcross@sccourts.org

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Case No. 16-GS-04-0594

Hearing of October 12, 2017

Before The Honorable R. Lawton McIntosh

(DEFENDANT SWORN)

1
2 SOLICITOR HUEY: Philip Walker, Your
3 Honor.

4 THE COURT: Mr. Yarborough.

5 MR. YARBOROUGH: Good morning, Your
6 Honor.

7 SOLICITOR HUEY: Your Honor, may it
8 please the Court, before you is Philip Wesley
9 Walker. He was tried in his absence in front
10 of Your Honor in December of last year.

11 THE COURT: Okay.

12 SOLICITOR HUEY: So this would be a
13 sealed sentence, Your Honor. I'm passing up
14 Indictment 16-GS-04-594.

15 THE COURT: All right. Under Indict-
16 ment 16-594, armed robbery, the sentence is
17 twenty (20) years. It is concurrent --
18 credit for two hundred thirty-six (236) days
19 -- with Indictment 16-0594 (sic) the sentence
20 is five (5) years, with credit for two
21 hundred thirty-six days. You have ten days
22 to appeal that.

23 MR. YARBOROUGH: Your Honor, could I
24 address a couple of sentencing issues at this
25 point?

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1 THE COURT: Yes, you may.

2 MR. YARBOROUGH: That's his father who
3 is present today. Mr. Walker -- I'd just
4 like to -- I know that you sat through the
5 trial.

6 THE COURT: Quite frankly, Mr.
7 Yarborough, I don't have any independent
8 recollection of the facts.

9 MR. YARBOROUGH: I'll tell you a bit
10 and maybe it will help you to remember it a
11 little bit. There was a gun that didn't have
12 a pin in it. He didn't show up -- he'd gone
13 in near Christmas, he'd swiped his care that
14 had name on it and bought -- food stamp card
15 that had his name on it. He bought some food
16 stamp stuff. Because he didn't have the
17 money to pay his light bill, he robbed the
18 store. He confessed to it. He did all that
19 along with ---



20 THE COURT: What store was it that he
21 robbed?

22 DEFENDANT: Family Dollar.

23 THE COURT: Family Dollar?

24 MR. YARBOROUGH: Yes, sir, and ---

25 THE COURT: Wasn't he brandishing a gun

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1 at employees in the store?

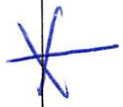
2 MR. YARBOROUGH: Yeah, it was an old
3 beat up -- I don't know if it was an old beat
4 up gun but it didn't have a firing pin in it.
5 And none of that -- I looked at the law. You
6 know, I was looking for a way to get it into
7 a strong-armed robbery and just never did.

8 I'd just like to tell you that he robbed
9 that store, then his dad let him sit in jail
10 for about nine months, or ever how many days
11 that it was.

12 THE COURT: Two hundred thirty-six.

13 MR. YARBOROUGH: Then his dad got him
14 out on bond and said that he could go try to
15 help -- he's got a six-year-old and a four-
16 year-old, he was trying to help them so that
17 they could get out of DSS custody and get
18 into some kind of circumstance where his
19 parents or his sister could try to help the
20 kids.

21 Then right before he was supposed to go
22 to trial, he knew that he was supposed to be
23 here, he decided that he was going to try to
24 get himself together before he had to face
25 this sentence. It's the darnest thing I've



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1 ever heard. Nobody heard from him, nobody
2 did anything, uh, and he -- he was out with
3 -- I don't think that he was staying in
4 constant contact with his dad but -- but he
5 came down here and he went to DSS and he --
6 he met with his six-year-old and his four-
7 year-old. You know, to try to see what he
8 could do to help them even knowing that he
9 had this sentence. This has always been
10 about trying to help his kids out.

11 It's just -- I just wish you could think
12 about that sentence again, knowing those
13 things that you didn't know that day. I
14 mean, it was -- literally, Judge, it's --
15 armed robbery is armed robbery, and it's
16 terrible. You heard the people testify.
17 They were scared. I mean, I get it.

18 But it's just a -- it's a vicious cycle.
19 I don't know if they just don't think through
20 the process or -- his father thinks that he
21 has had some thought issues. But I'll tell
22 you this, I've never had any trouble
23 communicating with him.

24 THE COURT: Except when it came time
25 for trial.

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1 MR. YARBOROUGH: Except when it came
2 time for trial, (affirmative nod).

3 And he's sorry. He's before the court
4 and I -- I just -- I -- it's just a -- you
5 know, it's just the -- the icing on this cake
6 is that he came back down here to see those
7 kids, to try to figure out what he could do
8 to help them through DSS and to try to ---

9 DEFENDANT: I came ---

10 MR. YARBOROUGH: Go ahead.

11 DEFENDANT: I came back down here to
12 try to ---

13 THE COURT: Where were you?

14 DEFENDANT: Texas.

15 THE COURT: In Texas?

16 DEFENDANT: Yeah. I had to get myself
17 together.

18 THE COURT: What did you do to get
19 yourself together in Texas?

20 DEFENDANT: I entered a program called
21 the Dallas Life Program, rehabilitation that
22 helps you get yourself off drugs, substance
23 abuse, anything that's holding you. They do
24 it with Christian values, it's a Godly
25 program. My parents always instilled the

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1 power of religion ---

2 THE COURT: I'm sorry, what was the
3 last thing?

4 DEFENDANT: My parents always instilled
5 in me religion. You know what I'm saying?
6 To put God first. That is something that I
7 wasn't doing in my life. Losing my kids
8 probably was (emotional) -- phew -- for the
9 first time in my life, I'm not worried about
10 the time but my kids. You know?
11 (Emotional).

12 I love my parents, I tell them not to
13 stress.

14 Yeah, I did something wrong, I admit
15 that, you know, but at the time my wife had
16 then lost her job. Duke Power cut our power
17 off like a week. You know, my parents are
18 seventy-two and seventy-one. I can't keep an
19 eye on them and on my kids, man. They didn't
20 even have anything for Christmas. So I was
21 trying to figure out the best possible way of
22 doing it, you know, at that time. I was
23 trying to use a positive frame, you know, at
24 that time. I went about it the wrong way but
25 -- and it wasn't something that I had planned

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1 on doing. I'd gone into Family Dollar and I
2 didn't go in thinking 'I'm going to rob it
3 today.' It wasn't like that.

4 THE COURT: Well, if you carry a gun
5 with you, you were planning on doing it?

6 DEFENDANT: Yeah. See, I had it and --
7 some people just do it, but I actually sat
8 there and -- I bought me a can of Pringles
9 and a pack of AirHeads and a soda first and
10 was eating while, you know, I was talking to
11 myself. Then I was like, 'Ma'am, I'm so
12 sorry. I have something that I have to do.
13 I have something I have to take care of. I'm
14 sorry.' You know, I just -- I barely showed
15 it to her, I didn't go swinging it around all
16 the store, nothing like that. 'Just please
17 don't panic' -- and I walked out of the
18 store, walked down the store.

19 When they caught me, you know, I didn't
20 run. You know what I'm saying? Not like
21 some people do. I told the officer 'yeah, I
22 did it.' And he said, like, 'I don't see a
23 lot of people that admit their wrongdoings.'
24 I said, 'yeah, I admit that I was wrong.' I
25 know. It was an old rusty .22 to the point

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1 where you couldn't have even opened it up to
2 get a bullet in it if you tried. You'd have
3 to basically clean it maybe five or six
4 years, you know, to get it back to working
5 condition. It didn't have a firing pin in
6 it, the handle was coming off. I had dug it
7 out of the dirt, it had been in there about
8 four years, in an old bus.

9 When I left and I got out -- I stayed out
10 for over a year, focused on getting myself
11 together because I'm no good to nobody, you
12 know, when I -- when I'm under the influence
13 of anything.

14 I told myself -- I said -- once I got
15 myself together, I come back home and I told
16 my daddy that eventually I know I have to go
17 to South Carolina and deal with this. It is
18 nothing like -- you know, some people keep
19 running. No, I can't keep running.

20 Yes, I wanted to see my kids. I hadn't
21 seen my kids in a year. I wanted to see my
22 kids. They asked me, are you sure you
23 coming? I said 'yes, I'll be there.' I knew
24 I had a bench warrant. I showed up. I got
25 to see my kids. Greatest thing, brought me

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1 joy was to see that smile on my dad's face
2 when he saw the grandbabies. You know, that
3 made my day. Even after they arrested me, I
4 was good. You know, I had a smile. You
5 know?

6 Yeah, I've done some things a bad person
7 does. I reacted before I thought about it.
8 Something some people don't do. I'm not
9 perfect, far from it.

10 I want to do better. You know what I'm
11 saying? Given an opportunity, I know that I
12 can -- you know, I can do better back out in
13 society because that's the way I am. I'm
14 working, getting jobs. When I came back home
15 I had job opportunities, to go to work and
16 try to take care of my kids, try to get my
17 kids. That was my goal. It's always been my
18 goal, you know? That's what I take pride in.

19 I guess I am wrong for what I did, but
20 I'm trying to do better. I know that I can
21 do better.

22 THE COURT: Ms. Huey?

23 SOLICITOR HUEY: Yes, sir, Your Honor,
24 I'd like to remind you of a few things.

25 THE COURT: Please do. I'm trying to

State of South Carolina v. Philip Wesley Walker

11

Case No. 16-GS-04-0594

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Before The Honorable R. Lawton McIntosh

1 remember.

2 SOLICITOR HUEY: I think that the State
3 would concede that the gun wouldn't have
4 necessarily worked. Of course the victim
5 whose face that was pointed in had no way of
6 knowing that, especially when it's coupled
7 with him saying that he would shoot her if
8 she didn't hand over the money. So he's
9 leaving that out.

10 I believe that he was under the
11 influence. I don't know if he was getting
12 money to pay for any Christmas gifts. It was
13 probably to further his habit.

14 He has numerous robbery convictions from
15 North Carolina, Your Honor.

16 THE COURT: How many does he have?

17 SOLICITOR HUEY: He had four at the
18 time, 2001 and 2006 from North Carolina.
19 So this isn't his first rodeo either. I
20 think that's what you took into account,
21 Your Honor, when you were sentencing him.

22 THE COURT: Other than the four
23 robberies ---

24 SOLICITOR HUEY: He also has a
25 breaking-and-entering. It's mostly from

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1 North Carolina.

2 THE COURT: For the record, I'm going
3 to treat this as a Motion to reconsider the
4 sentence.

5 MR. YARBOROUGH: Yeah, that's -- I was
6 going to ask you to do that.

7 THE COURT: I have some memory, besides
8 the fact that you didn't show up at trial,
9 besides the fact that you brandished the gun
10 in the clerk's face as opposed to what you
11 just said, your prior record belied the fact
12 that, uh, this was not an isolated incident.
13 It was more of a routine or practice for you.
14 That being said, I'll give you an Order and
15 let you know what I decide.

16 MR. YARBOROUGH: Thank you, Your Honor.

17 THE COURT: You still, once that Order
18 is issued, you'll have ten days to appeal.
19 Good luck to you.

20 (HEARING CONCLUDED)

21

22

23

24

25

State of South Carolina v. Philip Wesley Walker

Case No. 16-GS-04-0594

Hearing of October 12, 2017

Before The Honorable R. Lawton McIntosh

1

STATE OF SOUTH CAROLINA)
) CERTIFICATE
COUNTY OF GREENVILLE)

I, the undersigned Deborah Garrison,
Circuit Court Reporter for the 13th Judicial
Circuit, hereby certify that the foregoing is a
complete and accurate transcript of the hearing
held in the within action heard on October 12,
2017, before The Honorable R. Lawton McIntosh as
prepared from the audio notes of Vivian Cross,
assigned court reporter; May 13, 2016, before The
Honorable Perry H. Gravelly;

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

Reborah Garrison

Deborah Garrison

Greenville, South Carolina

1 (Officer Joel McKee asked questions and Phillip
2 Walker answered those questions as follows, Sgt.
3 Simmons was also present:)

4 Q All right. Mr. Walker, I'm Lt. McKee. This is
5 Sgt. Simmons.

6 A I know both you-all.

7 Q You know both of us? How do you know both of us?
8 From earlier today or before that?

9 A Yeah, earlier. I have never been in trouble.

10 SGT. SIMMONS: You haven't?

11 A (Shakes head from side to side.) My first charge
12 ever.

13 SGT. SIMMONS: Really. Okay.

14 A (Shakes head from side to side.) my first charge
15 ever. I don't even have a ticket.

16 Q Let me tell you what we're going to do. It's almost
17 like TV. Have you ever watched cops on TV and stuff?

18 A I watched every news analyst, CSI program --

19 Q Okay. All right. Some of it's real some of it
20 ain't. This part is real. I have to read you what your
21 rights and tell you what your rights are before I can go
22 any further. And you have to understand what your rights
23 are. I need to make sure you understand them. Okay?

24 This is not making fun of you. Did you finish school?

25 A Uh-huh.

1 Q Okay. So you, I mean, you're okay with understanding
2 English and everything, and all that? Reading and writing
3 and all that?

4 A (Nods head up and down.)

5 Q Okay. I'm going to give you your rights, tell you
6 what all your rights are, and that you can stop talking at
7 any time and all that. And I need to make sure you
8 understand all that. Okay? If there's something you
9 don't understand, stop me and let me explain it to you.
10 Okay? But it's just like you see on TV. I've got to do
11 that before we go any further.

12 A (Nods head up and down.) Mirandize rights. Saves you
13 and me.

14 Q All right.

15 A You and me.

16 Q Today is Wednesday, and it's December 16. The time
17 is 8:40 p.m. in the evening. Okay. Present is Lt. McKee
18 Sgt. Simmons, and state your name for me.

19 A Phillip Walker.

20 Q Phillip Walker.

21 Mr. Walker, you have the right to remain silent.
22 Anything you say can be used against you in a Court of
23 law. You have a right to talk to a lawyer and have one
24 present while you're being questioned if you wish. If you
25 want a lawyer before or during questioning but cannot

1 afford to hire a lawyer, one will be appointed to
2 represent you at no cost before any questioning.

3 If you decide to waive your rights, then that means
4 you're freely and voluntarily going to talk to us about
5 what happened today. But that's only if you decide to
6 waive your rights; and that is something you had to
7 decide. I can't do that for you. Only you can do that.

8 A All right, then.

9 Q So are you waiving your rights? You want to talk to
10 us about what happened today?

11 A Sure, I will. I told the officer earlier that
12 arrested me, I said, "Yeah."

13 Q I need you to clearly tell me that you want to talk
14 to us.

15 A I'll talk. I'll tell you what happened, you know.

16 Q You are waiving your rights? You want to talk about
17 it today?

18 A Yeah. Yeah.

19 Q I'm taking it that you're saying you want to talk?

20 A Yeah. That's fine.

21 Q Okay. All right. Leading up to us getting out with
22 you, can you tell me what went on today? You had a bag
23 that had a receipt in it from Family Dollar.

24 A Yeah. Actually bought my chips.

25 Q Uh-huh.

1 A And cigarette too. My chips, my cigarette, and my
2 candy.

3 Q Right. We still have it. Yeah, we have all that.
4 But tell me what happened at Family Dollar.

5 A I mean, I had bought my chips, my drink -- I mean, my
6 chips, my candy, and cigarettes, you know. And, I mean,
7 it just been a bad, you know, couple of months.

8 Q Hard times?

9 A Yeah. Old lady lost her job. I lost mine. I have
10 two young kids, a 4-year-old and 2-year-old. I wanted
11 them to have something for Christmas. I just been
12 stressed out, trying to figure out how I'm going to do it.
13 How I'm going to do it, you know. I ain't never been in
14 trouble, you know. Sometimes, you know how you see -- you
15 second guess, like, when I bought the stuff, I second
16 guessed. Like, I shouldn't do this. Should I do it?
17 Should I do it? Should I do it? You know, I kept
18 contemplating. When the lady --

19 Q When somebody is having hard times there's a lot of
20 things that goes through peoples minds.

21 A Yeah, and the lady was looking at me like, "Sir, are
22 you okay?"

23 I was just -- I just couldn't say nothing to her at
24 the time, you know. And I was like (grunting sound). And
25 she was like, huh? Just I was like (grunting), "Give me a

1 lighter."

2 And when she give me the lighter, I said, "Just give
3 me the rest of the money out of the register."

4 She was like, "Huh?"

5 I was like, "Yeah."

6 Q So when you told her to give you the lighter, she
7 gave you the lighter and you said --

8 A No, she had rang up the lighter.

9 Q You said give -- "go ahead and give me the rest of
10 the money out of register"?

11 A Out of the register. Yeah. And she was like -- I
12 was like, "Yeah, please don't scream."

13 Q Oh, you told her not to scream?

14 A And I didn't --

15 Q Did she scream or did she not scream?

16 A No. She was like -- she looked at me kind of like,
17 it's weird. Because some people like, "Don't scream.
18 Shut up," you know. And she was like --

19 Q Tell me about the gun.

20 A You probably be like --

21 Q Well, I mean, just tell me --

22 A You probably slap me in the back of the head.

23 Q No, I mean just -- no, I mean a long time.

24 A Not saying like that. But the type of gun it was, it
25 wasn't even like, okay. You know you get them guns that

1 shoot the caps out of them?

2 Q Uh-huh.

3 A All right. You know the ones they have nowadays that
4 are almost like they real; but they shoot, not like the
5 pellet, but the --

6 SGT. SIMMONS: The air soft stuff?

7 A Yeah.

8 SGT. SIMMONS: Yeah, little white --

9 A I had a small one --

10 Q Okay.

11 A -- I had been shooting for a while.

12 Q Okay.

13 A Little dust buster, what I call a little dust buster
14 gun.

15 Q Okay.

16 A Kids found out, man, that's it. Man, that's your old
17 gun. Son, he said, he said, "Dad, I know. I won it."

18 I said, "No, you can't have it." He's too young. He
19 likes playing with stuff.

20 When I left the house I was like, I don't even know
21 what the hell I did. I just know when I -- I walked and
22 then ran and then walked.

23 Q To the Family Dollar or after?

24 A No, after.

25 Q Well, when you went to Family Dollar you had a

1 Carhartt or some kind of brown coat on, right?

2 A Yeah.

3 Q Where was the gun at in the coat when you went in the
4 store?

5 A In the pocket.

6 Q Like, in the front pocket?

7 A Yeah. In the front pocket.

8 Q So you just went on in, done your thing?

9 A I just bought the stuff that I, you know, I had a
10 craving for, for me and my kids. Some people like --

11 Q When you asked her for the rest of the money, is that
12 when you pulled the gun out?

13 A Yeah, I showed it to her. I was like, "Please, just
14 don't scream."

15 Q You showed it to her?

16 A Yeah. She didn't scream, she was just like -- at
17 first, like, shocked that it actually --

18 Q That you were pointing a gun at her?

19 A Yeah.

20 Q I know.

21 A And in a way I felt bad. I ain't going to -- I felt
22 bad as hell. I felt like shit.

23 Most people like, "Why?" Because I know I'm better
24 than that and I could have done something probably totally
25 different instead of getting in trouble for the first time

1 doing something stupid like that. In the back of my mind
2 once I did it, I was like --

3 Q Had second thoughts?

4 A I had second thoughts. I was running. I was like,
5 you know what? That was the dumbest thing I ever did.

6 Q Well, let me ask you this, Mr. Walker. Did she just
7 empty the drawers out and give it to you? Is that what
8 she did when you said "Don't scream"?

9 A Yeah, she just --

10 Q She just emptied it out and gave it to you?

11 A She just took the money, you know. I didn't want all
12 of it. I said, "Just give me that right there." She just
13 put it in the bag.

14 Q And then tell me what happened after that.

15 A I walked out the store. I didn't run or nothing.

16 Q Right.

17 A I walked out the store, walked down the street, and
18 ran and started shedding. Like a turkey.

19 Q Yeah, well, tell me about the shedding. You went
20 around, tell me -- because I know what you shedded and
21 where you shed it at. I just need you to tell me where
22 you shed it.

23 A I knew I -- I started throwing stuff. The bin was
24 right there. That's the first thing I --

25 Q You talking about the bin you threw it in?

1 A Yeah. I ditched it. I was like, I got to shed it
2 off, you know. And I said, "I got to walk." I said,
3 "Maybe if I walk" -- I think I probably passed like three
4 you-all probably.

5 Q You did. You did. You were smoking a cigarette when
6 I went by you.

7 A See, just opened up my pack of cigarettes, just
8 packed them, opened them up, smoking a cigarette walking
9 by.

10 Q You went straight up River Street and turned left on
11 White.

12 A And I was like --

13 Q You was just steady, just walking like nothing ever
14 happened.

15 A And most -- yeah. I mean, and most like, "Why
16 weren't you running like some people?" I had people when
17 they took me upstairs, "Man, why didn't you start
18 running?"

19 I said, because you-all fixing to realize, you-all
20 don't watch TV like I do.

21 They like, what's that?

22 I'm like, "If you do something, and when you're
23 running and they see somebody running and they pass you,
24 they're going to -- the first thing they're going to do,
25 they're going to send one to that scene. Then they're

1 going to immediately turn around --

2 SGT. SIMMONS: Right.

3 A And chase you. But if you're walking, look casual,
4 you trying to blend in, you know, they be like, well --

5 Q That's true.

6 A -- maybe, maybe not.

7 SGT. SIMMONS: You see all kind of people.

8 A Yeah, you see all kind of people walking down the
9 street.

10 Q You have a better chance that way than you do
11 running.

12 A Yeah.

13 Q Because it makes it not stand out, like you say.

14 A I mean, you know, and --

15 Q So you had several of us pass you. Because, like I
16 said, I saw you smoking a cigarette because you had your
17 red hoody, you had it zipped up.

18 A That little bit, where you could see the tie-dyed
19 shirt.

20 Q Yeah, we passed you.

21 A Yeah, I figure -- I looked back. When I saw, I don't
22 know if it was you -- I don't know if it was you that
23 backed up. Or you. I think you backed up that caught me
24 first. One of you-all passed me when I got to Thomas --

25 Q We both did. We were in the same car together.

1 SGT. SIMMONS: We were in the same car.

2 A Is that what it was?

3 SGT. SIMMONS: Yeah.

4 A I said --

5 Q We turned around. We turned around on Cleveland and
6 come back down.

7 A I saw y'all when y'all turned. That's why I turned.

8 Q Yeah, you turned --

9 A I was paying attention.

10 Q We turned on Cleveland, you turned Thomas.

11 A I was paying attention. I saw you-all go up. I
12 said, "Lord, they coming for me." I said, "Well, I might
13 as well face the traffic." See, most people would have
14 ran.

15 SGT. SIMMONS: Right.

16 A Most people be like took off, get out of here. You
17 know, like probably like, "What street is this on?"
18 You-all trying to probably find it. I said, "Man, nah, I
19 ain't going to make it so bad." My conscience kicked in.
20 That's why I --

21 Q You wasn't hardly -- you cooperated fully. I
22 appreciate that.

23 A I ain't going to -- I have a very strong conscience.
24 I feel sorry as crap about it. I wanted to go back and
25 tell the lady, you know, "Look, I'm so sorry. I should

1 have never done that, ma'am." I felt like crap. And I
2 was going to say, "Could I get a Pringle before I go?"

3 You know, I was like, man, you know, if they know I
4 paid for this stuff, they'll probably give my Pringle
5 back.

6 Q Well, we got your receipt with it. So we seen where
7 you paid with your card.

8 A Yeah. I figured. I said they probably put that, no
9 problem, when I leave.

10 Q It is.

11 A Bond out or whatever they going to do when I see the
12 judge tomorrow.

13 Q Yeah, you'll see a judge first thing in the morning.
14 It was too late. He hadn't even had a chance to -- he
15 typed the warrants. But you'll see him first thing.

16 Let me ask a question. Will you describe the gun to
17 me? Tell me what the gun looked like.

18 A Old dust buster .22.

19 Q I mean, color?

20 A It was kind of a white handle and rusted as hell.
21 You can tell I had it sitting out in my garage for a long
22 time. Long -- I mean long time.

23 SGT. SIMMONS: Right.

24 A It was messed up. It didn't even work no more. You
25 know what I'm saying?

1 SGT. SIMMONS: Right.

2 A It was just broke down, ragged, and I knew once I did
3 it, I was like, crap. But, you know, people -- but you
4 get upstairs people, "Yeah, man. Hey, that's 25 -- 15 to
5 25."

6 I said, "Look, dude."

7 Q That's not up to us. That's up to the solicitor.

8 A But you know what I told them? I said, "Really, it's
9 really past the solicitor."

10 They say, "Why you said that?"

11 I said, "Really, it's up to God first."

12 Q Well, I'll give you that.

13 A I said, "The Man upstairs" -- I said, "The Man
14 upstairs, He can put on that person's heart whether or
15 not, you know." You feel me?

16 I said, "I pray. Yeah."

17 Q You see what's hanging over my desk?

18 A Yeah. I got one sitting in my bedroom. Above my
19 head. And I -- what's why I said, you know, a lot of
20 people --

21 Q It is past the solicitor, it is up to God.

22 A That's why I say, I just started thinking about a lot
23 of things, man. I sat there and said -- and I was like, I
24 did the crime, so I might as well go ahead and finish, do
25 the time, you know. But I said, hopefully they lenient.

14

1 Because, you know, they look at people's track record,
2 history, see if they been in trouble, if they did
3 anything.

4 SGT. SIMMONS: Right. They certainly do.

FORM 5

 '21 OCT 4 AM 9:43:25
 Anderson, SC CCC, CP/66

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF ANDERSON)

Philip Wesley Walker, SCDC# 374226)

Full name and prison number (if any) of Applicant.)

2021 CP04 01938

v.

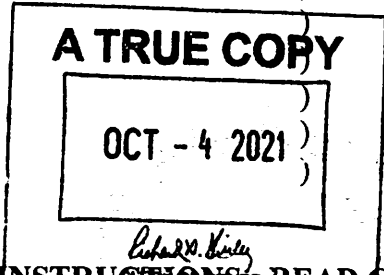
A TRUE COPY

APPLICATION FOR

State of South Carolina

OCT - 4 2021

POST-CONVICTION RELIEF


 INSTRUCTIONS: READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention McCormick Correctional Institution.
2. Name and location of Court which imposed sentence The Honorable R. Lawton McIntosh, Presiding Judge for Anderson County, imposed the sentence.
3. Name(s) of co-defendant(s) (if any) None.
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2016-GS-04-00594 (Count 1), Armed Robbery.
 - (b) 2016-GS-04-00594 (Count 2), Possession of a Weapon During the Commission of a Violent Crime.
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence: _____

- (a) On December 7, 2016, the trial court imposed 20 years for armed robbery.
 - (b) On Decemeber 7, 2016, the trial court imposed a concrement 5 years for possession of a firearm during the commission of a violent crime.
 - (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty No.
 - (b) after a plea of not guilty Yes.
 - (c) after a plea of nolo contendere No.
7. Did you appeal from the judgment of conviction or the imposition of sentence? Yes.
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
 - i. Court of Appeals of South Carolina.
 - ii. Supreme Court of South Carolina.
 - iii. _____
 - (b) the result in each such Court to which you appealed:
 - i. Convictions and Sentences Affirmed.
 - ii. Petition for Writ of Certiorari Denied.
 - iii. _____
 - (c) the date of each such result:
 - i. October 24, 2020.
 - ii. August 6, 2021.
 - iii. _____
 - (d) if known, citations of any written opinion or orders entered pursuant to such results:
 - i. State v. Walker, Unpublished Opinion No. 2020-UP-290.
 - ii. State v. Walker, Appellate Case No. 2021-000022.
 - iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) N/A.
 - (b) _____
 - (c) _____

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(a) Denied the right to effective assistance of trial counsel during the trial, which is guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and by Article I, §§ 3 and 14 of the South Carolina Constitution.

(b) Denied the right to effective assistance of trial counsel during the trial, which is guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and by Article I, §§ 3 and 14 of the South Carolina Constitution.

(c) _____

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

(a) Trial counsel advised me to reject the State's guilty plea offer of 10 years because of his mistaken belief that the offense should be common law robbery (strong arm robbery) instead of armed robbery.

(b) Failing to object to the trial court trying me in absentia, in violation of the Sixth Amendment, S.C. Const. Art. I, § 14, and Rule 15, SCRCrimP, thereby failing to preserve this issue for appellate review, resulting in prejudice when the Court of Appeals held this issue was not preserved for appellate review because trial counsel "did not specifically object to a trial in absentia or argue to the trial court that [I] did not receive notice of trial or was unaware the trial would proceed in [my] absence."

(c) _____

12. Prior to this application have you filed with respect to this conviction:

(a) any petition in a State Court under South Carolina Law? No.

(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No.

(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No.

(d) any other petitions, motions or applications in this or any other Court? No.

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

(a) the specific nature thereof:

i. N/A.

ii. _____

iii. _____

iv. _____

(b) the name and location of the Court in which each was filed:

i. N/A.

ii. _____

iii. _____

iv. _____

(c) the disposition thereof:

i. N/A.

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. N/A.

ii. _____

iii. _____

iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. N/A.

ii. _____

iii. _____

iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

No.

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i. N/A.

- ii. _____
- iii. _____
- (b) the proceedings in which each ground was raised:
 - i. N/A.
 - ii. _____
 - iii. _____
- 16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:
 - (a) Post-conviction relief is the first opportunity to present allegations of ineffective assistance of counsel.
 - (b) _____
 - (c) _____
- 17. Were you represented by an attorney at any time during the course of:
 - (a) your arraignment and plea? _____
 - (b) your trial, if any? Yes.
 - (c) your sentencing? Yes.
 - (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes.
 - (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?
- 18. If you answered "yes" to one or more parts of (17), list:
 - (a) the name and address of each attorney who represented you:
 - i. William G. Yarborough, III, 308 W. Stone Avenue, Greenville, SC 20609.
 - ii. E. Charles Grose, Jr., The Grose Law Firm, 404 Main Street, Greenwood, SC 29646.
 - iii. _____
 - (b) the proceedings at which each such attorney represented you:
 - i. Trial and Sentencing.
 - ii. Appeal to the Court of Appeals and Supreme Court.
 - iii. _____

19. State clearly the relief you seek in filing this application:

This Court should order a new trial.

20. Are you now under sentence from any other court that you have not challenged?

No.

STATE OF SOUTH CAROLINA)

County of McCormick)

VERIFICATION

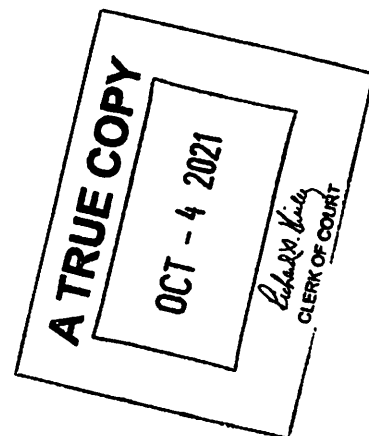
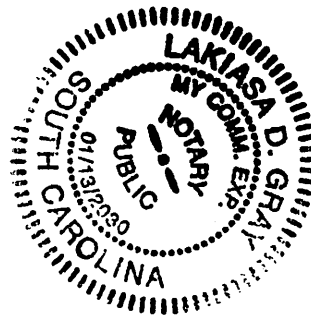
I, Philip Wesley Walker, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Philip Wesley Walker

SWORN to and subscribed before me this 20th
day of September, 2021

Lakisha D. Gray (L.S.)
Notary Public

My Commission Expires: 01/13/30



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Ander son, SC COC, CP/SS

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, Philip Wesley Walker, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

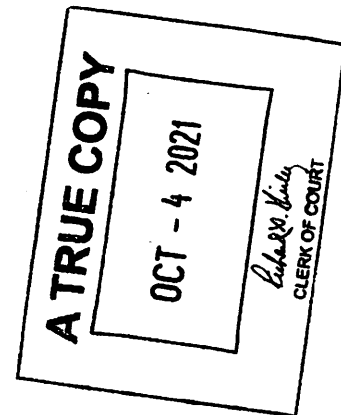
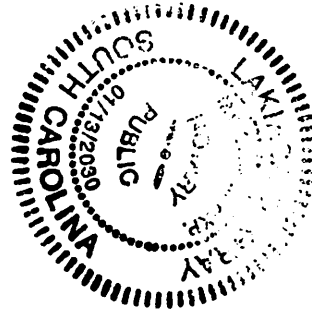
- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Philip Wesley Walker
Applicant

SWORN or affirmed to and subscribed before me this
20th day of September, 2021

Lakeisha D. Hargis
Notary Public

My Commission Expires: 01/13/20



STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF ANDERSON	)	FOR THE TENTH JUDICIAL CIRCUIT
	)	
Phillip Wesley Walker, SCDC #374226,	)	Case No. 2021-CP-04-1938
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	(Counsel Appointed)
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	
	)	

In response to the post-conviction relief (PCR) action commenced by Phillip Wesley Walker (Applicant) on October 4, 2021, the State makes this return:

I. FACTS & PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Anderson County Clerk of Court. Applicant was arrested on December 16, 2015, following an investigation into an armed robbery that occurred at the Family Dollar on 1402 East River Street. During its March 2016 term, the Anderson County Grand Jury indicted Applicant for armed robbery and possession of a weapon during the commission of a violent crime (2016-GS-04-0594).

On December 5, 2016, the case was called to trial before the Honorable R. Lawton McIntosh and a jury. William G. Yarborough, III (Counsel) represented Applicant. Assistant Solicitors Catherine T. Huey and William E. Stolarski prosecuted the case.

A. Pre-Trial

On the morning of December 5, 2016, the prosecution and defense counsel selected a jury and the trial court heard a motion challenging the victim's identification of Applicant as the robber

pursuant to *Neil v. Biggers*, 409 U.S. 188 (1972). (R. 4). Applicant was not present. Consequently, Counsel moved for a continuance, noting that he had previously been in contact with Applicant and had no idea where he was or why he was not present. (R. 4–5). Noting that they had previously discussed Applicant’s absence back in chambers, Judge McIntosh denied Counsel’s motion. (R. 5). The *Biggers* hearing then proceeded. Judge McIntosh ultimately found the identification admissible. (R. 50).

The court reconvened on December 7, 2016. Counsel again informed the trial court that he had not been able to make contact with Applicant. (R. 56). A hearing then proceeded regarding the admissibility of Applicant’s December 16, 2015, statement to law enforcement pursuant to *Jackson v. Denno*, 378 U.S. 368 (1964). Judge McIntosh found the statement was admissible. (R. 67). Counsel then asked the court to reconsider a continuance because Applicant was not there. (R. 69). Counsel stated that he had spoken with Applicant’s father the night before, who informed Counsel he had not been able to get in touch with Applicant. (R. 70). Judge McIntosh again denied the motion. (R. 69–70). Solicitor Huey noted, “[W]e certainly noticed the defendant of this trial. We sent a card – a bond card November 18th. We mailed that out to him, his bondsman, and then of course Mr. Yarborough.” (R. 70). The trial then proceeded *in absentia*.

B. Summary of Evidence Adduced at Trial

Applicant entered the Family Dollar, located at 1402 East River Street, to purchase Pringles and Airheads with an EBT card. (R. 14–15). The cashier, Natasha Oliver (Victim), rang up the items. (R. 15). Applicant then asked for a pack of Newport cigarettes, and she rang those up as well. (R. 15). She turned around to see Applicant pointing a small and rusty gun at her face. (R. 92). Applicant warned Victim that he would pull the trigger if she screamed. (R. 15). Fearing for her life, the Victim complied with Applicant’s demand for money. (R. 93). She quickly emptied

all the cash out of the drawer. (R. 93). With money in hand, Applicant left the store and proceeded down the sidewalk. (R. 96). As soon as Applicant left the building, Victim pushed the panic button. (R. 96).

Sergeant Trevor Simmons and his partner responded to Family Dollar. (R. 114–15). On the way, they observed a man looking straight ahead, intently ignoring the passing vehicles with sirens blaring. (R. 116). They suspected the man was the robber, but he did not have on a brown jacket per Victim's description. (R. 116). After speaking with Victim and receiving a more detailed description, they decided that the man they suspected really was the robber and went back to try and find him. (R. 116–17). They located him in about three or four minutes. (R. 117). He had a wad of cash in his pockets; cigarettes; a Family Dollar bag with a receipt for Pringles and Airheads; and an EBT card. (R. 119–20). Applicant was cooperative, admitted to the robbery, and admitted he had what he described as a "pop gun," but what he also referred to as a .22. (R. 134, 238, 132–33). Thirty minutes after the robbery, law enforcement asked the Victim to verify whether the man they had in custody was the robber. (R. 102–03). Victim immediately recognized Applicant as the man who had robbed the Family Dollar. (R. 103).

Sara Smith worked across the street from Family Dollar. She saw a man throwing clothes in a dumpster and found it suspicious enough to take pictures of him. She notified the officers that had gathered at Family Dollar. (R. 102–03). Detective Ty Blackwell then searched the dumpster and located a brown jacket and hat consistent with the Victim's description to law enforcement as to what the robber was wearing. Underneath the jacket, they found a small caliber handgun, a .22 type pistol that was rusty and empty. (R. 152, 155, 158, 160).

Throughout the trial, Counsel argued the surveillance did not depict a robbery because Applicant made a purchase. (R. 207).

C. Verdict & Sentencing

At the conclusion of trial, the jury convicted Applicant as indicted. During sentencing, Counsel advised the court that he had been in regular contact with Applicant prior to trial and that he had no idea what happened. (R. 220). He noted that they had discussed a plea offer, and Applicant indicated he would plead guilty to armed robbery. (R. 220). Counsel asked the court for some leniency, stating that Applicant was cooperative when apprehended. (R. 222). At that time, Judge McIntosh sealed Applicant's sentence to be imposed once found and arrested.¹

On October 12, 2017, Applicant and Counsel appeared before Judge McIntosh. At the start of the hearing, Judge McIntosh unsealed the concurrent sentences of twenty years' imprisonment for armed robbery and five years for possession of a weapon during the commission of a violent crime. (R. 226). The court heard further mitigation from Counsel. (R. 226–30). Applicant then addressed the court. (R. 230–34). Finally, Assistant Solicitor Huey spoke on behalf of the State and Victim. (R. 234–36). At the end of the hearing, Judge McIntosh noted that he was interpreting the hearing as a motion to reconsider the sentence. (R. 236). He stated he was taking the matter under advisement. (R. 236). Later that afternoon, Judge McIntosh issued an order denying the motion to reconsider. (R. 256).

D. Direct Appeal

Applicant filed a timely notice of appeal. E. Charles Grose, Jr., perfected Applicant's appeal by briefing the Court of Appeals on the following issue:

Did the trial judge err by denying trial counsel's motion to continue the trial so Phillip Walker could be present at his jury trial when the trial judge did not make findings of fact regarding whether the Mr.

¹ Counsel filed a notice of appeal on December 14, 2016. The Court of Appeals dismissed the appeal by order dated March 29, 2017, because the sentence remained unsealed at that time. *See State v. Washington*, 285 S.C. 457, 458, 330 S.E.2d 28, 2899 (1985) ("So long as the sentence remains sealed, no appeal can be taken.").

Walker had received notice of his right to be present and whether the Mr. Walker had been warned that the trial would proceed in his absence upon a failure to attend court?

Following briefing and oral argument, the Court of Appeals affirmed Applicant's convictions and sentences, finding:

Walker's Rule 16, SCRCrimP objection is not preserved because he did not specifically object to a trial *in absentia* or argue to the trial court that he did not receive notice of the trial or was unaware the trial would proceed in his absence. A motion for a continuance is not in itself enough to preserve a Rule 16, SCRCrimP objection.

State v. Walker, Op. No. 2020-UP-290 (S.C. Ct. App. filed Oct. 14, 2020). Applicant's subsequent petition for rehearing was denied by order dated December 9, 2020.

On January 8, 2021, Applicant filed a petition for a writ of certiorari to our Supreme Court on the following issues:

- I. The Court of Appeals erred as a matter of law when it agreed with the State and held Phillip Walker failed to raise this issue to the trial court, and it is therefore unpreserved for appellate review.
- II. The trial judge erred by denying trial counsel's motion to continue the trial so Phillip Walker could be present at his jury trial when the trial court did not make findings of fact regarding whether the Mr. Walker had received notice of his right to be present and whether the Mr. Walker had been warned that the trial would proceed in his absence upon a failure to attend court.

The State filed its return to the petition on January 21, 2021. Applicant then filed a reply to the State's return on February 1, 2021. On August 6, 2021, the Court issued an order denying Applicant's petition. *State v. Walker*, S.C. Sup. Ct. Order filed Aug. 6, 2021. The remittitur was issued that same day.

II. CURRENT APPLICATION

In his application for post-conviction relief, Applicant alleges he is being held in custody unlawfully based on the following (excerpted verbatim):

1. Ineffective assistance of trial counsel
 - a. "Trial counsel advised me to reject the State's guilty plea offer of 10 years because of his mistaken belief that the offense should be common law robbery (strong arm robbery) instead of armed robbery."
 - b. "Failing to object to the trial court trying me in absentia, in violation of the Sixth Amendment S.C. Const. Art. I, § 14. and Rule 15. SCRCrimP, thereby failing to preserve this issue for appellate review, resulting in prejudice when the Court of Appeals held this issue was not preserved for appellate review because trial counsel "did not specifically object to a trial in absentia or argue to the trial court that [I] did not receive notice of trial or was unaware the trial would proceed in [my] absence."

Applicant requests relief in the form of a new trial.

Attached to this return and incorporated by reference are the Anderson County Clerk of Court records regarding the subject convictions; Applicant's records from the South Carolina Department of Corrections; a full and complete record of Applicant's direct appeal, including the trial transcript; and the records of the current PCR action. The State reserves the right to amend this return upon receipt of any relevant materials.

III. RESPONSE TO ALLEGATIONS OF INEFFECTIVE ASSISTANCE OF COUNSEL

In *Strickland v. Washington*, the United States Supreme Court established that, to challenge a conviction based on ineffective assistance of counsel, a prisoner must prove two elements: (1) his counsel was deficient in his representation and (2) he was prejudiced as a result. 466 U.S. 668, 687 (1984). To satisfy the first prong, a prisoner must show that "counsel's representation fell below an objective standard of reasonableness." *Id.* at 688. To satisfy the second prong, a prisoner

must show that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” *Id.* at 694. The Supreme Court has cautioned that “[j]udicial scrutiny of counsel’s performance must be highly deferential,” and “[b]ecause of the difficulties inherent in making the evaluation, a court must indulge a strong presumption that counsel’s conduct falls within the wide range of reasonable professional assistance.” *Id.* at 689.

The Sixth and Fourteenth Amendments to the United States Constitution guarantee Applicant—like all other defendants—the right to “assistance by an attorney, whether retained or appointed, who plays the role necessary to ensure that the trial is fair.” *Strickland v. Washington*, 466 U.S. 668, 685 (1984). Ordinarily, PCR allegations are centered upon an allegation that the applicant did not receive *effective* assistance of counsel guaranteed by the Sixth Amendment. *See generally* S.C. Code Ann. § 17-27-20(A) (enumerating allegations cognizable in PCR actions). The allegation of denial of such representation sets forth a *prima facie* violation of this constitutional right and raises a question of fact that can only be determined by an evidentiary hearing. *Rogers v. State*, 261 S.C. 288, 291, 199 S.E.2d 761, 762 (1973).

In a post-conviction relief action, the applicant bears the burden of proving the allegations by a preponderance of the evidence. *Butler v. State*, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985); Rule 71.1(e), SCRPC. The reviewing court applies the two-part test outlined in *Strickland* to determine whether counsel’s conduct “was so ineffective as to require reversal” of the applicant’s conviction. 466 U.S. at 687. To obtain relief, a PCR applicant must prove (1) counsel’s performance fell below an objective standard of reasonableness, and (2) the applicant sustained prejudice as a result of counsel’s deficient performance. *Id.* at 687–88; *Cherry v. State*, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989). Failure to make the required showing of either deficient performance or sufficient prejudice defeats the ineffectiveness claim. *Strickland*, 466 U.S. at 700;

see also *Bell v. Cone*, 535 U.S. 685, 695 (2002) (explaining that “[w]ithout proof of both deficient performance and prejudice to the defense, . . . it could not be said that the sentence or conviction resulted from a breakdown in the adversary process that rendered the result of the proceeding unreliable” (citation and internal quotation marks omitted)).

The first prong—constitutional deficiency—is “necessarily linked to the practice and expectations of the legal community.” *Padilla v. Kentucky*, 559 U.S. 356, 366 (2010). An applicant making a claim of ineffective assistance “must identify the acts or omissions of counsel that are alleged *not* to have been the result of reasonable professional judgment.” *Strickland*, 466 U.S. at 690 (emphasis added). The reviewing court must then “determine whether, in light of all the circumstances, the identified acts or omissions were outside the wide range of professionally competent assistance” demanded of attorneys in criminal cases. *Id.*

Because of the difficulties inherent in making such an evaluation, the reviewing court must indulge in a “strong presumption that counsel’s conduct falls within the wide range of reasonably professional assistance.” *Butler*, 286 S.C. at 445, 334 S.E.2d at 816. “The burden of rebutting this presumption ‘rests squarely on the defendant,’ and ‘[i]t should go without saying that the absence of evidence cannot overcome [i]t.’ ” *Dunn v. Reeves*, 594 U.S. ___, ___, 141 S. Ct. 2405, 2410 (2021) (alteration in original) (quoting *Burt v. Titlow*, 571 U.S. 12, 22–23 (2013)). In fact, “even if there is reason to think that counsel’s conduct ‘was far from exemplary,’ a court still may not grant relief if ‘[t]he record does not reveal’ that counsel took an approach that *no competent lawyer would have chosen*.” *Id.* (alteration in original) (emphasis added) (quoting *Titlow*, 571 U.S. at 23–24).

“When counsel focuses on some issues to the exclusion of others, there is a strong presumption that he [or she] did so for tactical reasons rather than through sheer neglect.”

Yarborough v. Gentry, 540 U.S. 1, 5 (2003) (citing *Strickland*, 466 U.S. at 690). The Court, in determining deficiency, must affirmatively entertain the range of possible reasons counsel may have had for proceeding as they did. *Cullen v. Pinholster*, 563 U.S. 170, 196 (2011); *Harrington v. Richter*, 562 U.S. 86, 109–10 (2011). “[E]ven if an omission is inadvertent, relief is not automatic. The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight.” *Yarborough*, 540 U.S. at 6; *see also* *Murphy v. Davis*, 901 F.3d 578, 592 (5th Cir. 2018) (“[C]ounsel’s performance need not be optimal to be reasonable.”).

Review of counsel’s actions is hallmarked by deference, as “it is all too tempting for a defendant to second-guess counsel’s assistance after conviction or an adverse sentence, and it is all too easy for a court, examining counsel’s defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable.” *Strickland*, 466 U.S. at 689. No particular set of detailed rules for counsel’s conduct can satisfactorily take account of the variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how best to represent a criminal defendant. *Strickland*, 466 U.S. at 688–89; *see id.* at 691 (“Representation is an art, and an act or omission that is unprofessional in one case may be sound or even brilliant in another.”). “Defense lawyers have ‘limited’ time and resources, and so must choose from among ‘countless’ strategic options.” *Dunn*, 594 U.S. ___, 141 S. Ct. at 2410 (quoting *Harrington*, 562 U.S. at 106–107). “Such decisions are particularly difficult because certain tactics carry the risk of ‘harm[ing] the defense’ by undermining credibility with the jury or distracting from more important issues.” *Id.* (quoting *Harrington*, 562 U.S. at 108). Thus, a fair assessment of attorney performance requires every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel’s challenged conduct, and to evaluate the conduct from counsel’s perspective at the time. *Strickland*, 466 U.S. at 689. The ultimate question is not whether

counsel's actions were reasonable, but whether there is any reasonable argument counsel satisfied *Strickland*'s deferential standard.

The second, or "prejudice" prong of *Strickland* is rooted in the very purpose of the Sixth Amendment guarantee of counsel—to ensure a defendant has the assistance necessary to justify reliance on the outcome of the proceeding. *Id.* at 691–92. In order to prove prejudice, an applicant must demonstrate counsel's deficient performance prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Cherry*, 300 S.C. at 117–18, 386 S.E.2d at 625. A reasonable probability is a probability "sufficient to undermine confidence in the outcome." *Strickland*, 466 U.S. at 694; *see id.* at 695 (explaining that, where a defendant challenges his conviction, he must show that there exists "a reasonable probability that, absent the errors, the factfinder would have had a reasonable doubt respecting guilt").

In determining prejudice, the reviewing court must consider the totality of the evidence before the jury. *Id.* at 695. It is not sufficient "to show [counsel's] errors had some conceivable effect" on the outcome of the proceeding—counsel's errors must be "so serious as to *deprive the defendant of a fair trial.*" *Id.* at 687 (emphasis added). "An error by counsel, even if professionally unreasonable, does not warrant setting aside the judgment of a criminal proceeding if the error had no effect on the judgment." *Id.* at 691. Moreover, the South Carolina Supreme Court has repeatedly held a PCR applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice. *Bannister v. State*, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998).

The *Strickland* standard must be applied with scrupulous care, lest "intrusive post-trial inquiry" threaten the integrity of the very adversary process the right to counsel is meant to serve.

466 U.S. at 689–90. Courts must be wary of second-guessing counsel’s trial tactics; and where counsel articulates a valid reason for employing such strategy, such conduct is not ineffective assistance of counsel. *Whitehead v. State*, 308 S.C. 119, 417 S.E.2d 529 (1992). The applicant’s burden of proving both *Strickland* components is heavy in light of the strong presumption that counsel’s conduct fell within the range of reasonable professional legal assistance. 466 U.S. at 690. Representation is constitutionally ineffective only if counsel’s conduct “so undermined the proper functioning of the adversarial process” that the defendant was denied a fair proceeding. *Id.* at 686; *see Nix v. Whiteside*, 475 U.S. 157, 175 (1986) (noting that under *Strickland*, the “benchmark” of the right to counsel is the “fairness of the adversary proceeding”); *cf. United States v. Morrow*, 977 F.2d 222, 229 (6th Cir. 1992) (“[T]he threshold issue is not whether [the applicant’s] attorney was inadequate; rather, it is whether he was so *manifestly* ineffective that defeat was snatched from the hands of probable victory.”).

The State submits Applicant can satisfy neither requirement of *Strickland*. However, the record likely does not refute or disprove Applicant’s allegations of ineffective assistance of trial counsel; therefore, the State requests an evidentiary hearing to fully resolve the issues. *See Sharper v. State*, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (providing an evidentiary hearing shall be held when a PCR application “alleges specific instances of ineffective assistance of counsel which are not conclusively refuted by the record before the lower court”).

IV. ANY FUTURE AMENDMENTS AND INVOCATION OF DISCOVERY PROCESS

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. *See* Rule 11, SCRPC. *Pro se* filings will not be considered at the

PCR hearing. The State reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to the State pursuant to *Love v. State*, 428 S.C. 231, 834 S.E.2d 196 (2019), or, alternatively, the State will request a continuance in the matter. *Id.* at 245, 834 S.E.2d at 203 (Kittredge, J., dissenting) (“If, however, the proposed amendment . . . would truly prejudice the State, the better course of action would be to continue the matter and thus remove any possibility of prejudice resulting from the belated amendments.”).

If Applicant fails to file a timely and responsive amended application setting forth specific allegations for relief, the State reserves the right to move to dismiss this allegation or claim. S.C. Code Ann. §§ 17-27-10 to -160; Rule 71.1, SCRPC; *see also* Rules 15(a)-(b), SCRPC. The State reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to the State. *See* Rule 15(a), SCRPC.

Pursuant to S.C. Code Ann. § 17-27-150, Applicant may not invoke formal discovery processes to issue subpoenas or otherwise obtain discovery materials unless granted leave from the Court upon a showing of good cause. Furthermore, the State requests that all potential exhibits and materials used to produce potential expert witness testimony be sent to the State well in advance of the evidentiary hearing. The State reserves the right to request a continuance and oppose witness testimony and exhibits that are withheld until the last minute resulting in undue prejudice to the State.

V. GENERAL DENIAL

Each and every allegation contained within the application not expressly admitted, qualified, or explained in this return is hereby denied.

VI. CONCLUSION

WHEREFORE, the State respectfully requests an evidentiary hearing be held on the claims of ineffective assistance of counsel.

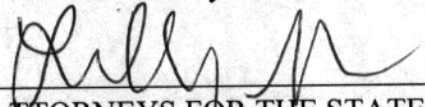
Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

LILLIAN L. MEADOWS
Assistant Attorney General

By: 
ATTORNEYS FOR THE STATE
Office of the Attorney General
P.O. Box 11549
Columbia, S.C. 29211

May 11, 2022

State of South Carolina
County of Anderson

Court of Common Pleas

Phillip Wesley Walker	)	
	)	
Plaintiff,	)	Transcript of Record
v.	)	2021-CP-04-01938
	)	
State of South Carolina	)	
	)	
<u>Defendant.</u>	)	

August 21, 2023
Anderson, South Carolina

B E F O R E:

The Honorable Daniel D. Hall, Judge.

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

Susannah Ross, Esquire
Attorney for the Applicant

Donald Zelenka, Esquire
Attorney for the Respondent

Lisa Scott
Circuit Court Reporter

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E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
1	Respondent's - bond card		X
2	Respondent's - bond card		X
3	Respondent's - bond card		X
4	Respondent's - trial docket		X

- - -

P R O C E E D I N G S

- - -

THE COURT: All right. Mr. Zelenka, we're here in Anderson for a term of post-conviction relief hearings. Mr. Zelenka, call your first case.

MR. ZELENKA: Thank you, Your Honor. The first case is *Phillip Wesley Walker v. State of South Carolina*, Civil Action 2021-CP-04-1938. We're here on application for post-conviction relief that was filed October 4, 2021.

This case involves an arrest in Anderson County on December 16, 2015, for armed robbery. He was indicted during the March 2016 term for armed robbery; possession of a weapon during the commission of a violent crime.

On December 5, 2016, the matter was called to trial before Judge McIntosh and a jury. He was represented by William Yarborough, who's present in court today, and it was prosecuted by Assistant -- Assistant Solicitors Catherine Huey and Lauren Zolarski. And he was convicted of those particular crimes.

He was sentenced back on -- bear with me. He was sentenced to -- actually, it's not in the term -- I apologize, but there was a direct appeal

1 handled by Charles Grose to the Court of Appeals,
2 and that was denied on August 6, 2021.

3 In his current allegations in his application
4 is ineffective assistance of trial counsel. The
5 allegations are that he was advised to reject the
6 plea offer of ten years because of his mistaken
7 belief that the offense should be common law robbery
8 instead of armed robbery, and the counsel failed to
9 object to the trial court trying him in absentia.

10 We made a return on the matter on May 11, 2022,
11 and we're here and prepared to go forward.

12 THE COURT: All right. Thank you. Ms. Ross,
13 you represent Mr. Walker?

14 MS. ROSS: I do, Your Honor. And those are the
15 issues. They're fairly simple. There was a trial
16 in absence. If you look at the *State v. Walker*, the
17 unpublished opinion, it should be in your packet.

18 THE COURT: I have that.

19 MS. ROSS: In that opinion, it finds that trial
20 counsel failed to preserve the record. There was no
21 finding pursuant to Rule 6 that he received a notice
22 of his right to be present at trial or a warning
23 that he would be tried in his absence if he failed
24 to appear as that was not effectually raised at
25 trial court. Mr. Walker was tried in his absence.

1 He had been coming to court quite often. And he was
2 denied his effective assistance of counsel because
3 he was denied his right to be present at trial.

4 The second allegation as stated, he was
5 misadvised to turn down a plea offer for ten years
6 for armed robbery.

7 THE COURT: All right. Are you prepared to go
8 forward?

9 MS. ROSS: Yes.

10 THE COURT: All right. Call your first
11 witness.

12 MS. ROSS: Thank you, Your Honor. We would
13 call Charles Grose.

14 THE CLERK: Would you please come forward and
15 raise your right hand?

16 THE WITNESS: (Complying.)

17 THE CLERK: Do you swear or affirm the
18 testimony you're about to give shall be the truth,
19 the whole truth, and nothing but the truth?

20 THE WITNESS: I do.

21 THE CLERK: Thank you. Please take a seat at
22 the witness stand.

23 THE WITNESS: (Complying.)

24 CHARLES GROSE,
25 having been produced and first duly sworn as a

1 witness on behalf of the Applicant, then testified
2 as follows:

3 DIRECT EXAMINATION

4 BY MS. ROSS:

5 Q. Good morning. Mr. Grose, did you do the appeal
6 in this case?

7 A. I did.

8 Q. And you actually filled out the application for
9 post-conviction relief as well, didn't you?

10 A. I did.

11 Q. Why didn't you proceed as counsel for
12 post-conviction relief?

13 A. Well, as you know, there's a statute that says
14 that if somebody is going to proceed with either
15 trial counsel or appellate counsel, they have to do
16 a waiver. And I believed based on handling the
17 appeal, that I could potentially be a witness in the
18 case.

19 Q. What would your testimony consist of or can you
20 tell the judge what you would be a witness as to
21 today?

22 A. Well, as you indicated, I drafted an
23 application for post-conviction relief and sent it
24 to Mr. Walker raising two issues that I thought were
25 potentially very viable.

1 The first issue was: He was tried in his
2 absence and the record was incomplete. Well, let me
3 say this. Let me back up. The Court of Appeals
4 found that that issue was not preserved for appeal.
5 The record did not reflect that what normally needs
6 to be done. The findings that the judge needs to
7 make for a case to be tried. The judge did not make
8 those findings, nor was, in my opinion, adequate
9 information put in front of the judge in order to
10 make those findings.

11 The second issue had to do with the ten-year
12 plea offer. Both Mr. Walker, the client, and his
13 father, Mr. Walker, who I see in the courtroom here
14 today, had indicated to me ---

15 MR. ZELENKA: Objection. Hearsay.

16 THE COURT: Yeah, I sustain the objection.

17 BY MS. ROSS:

18 Q. What did you put in the allegation regarding
19 turning down the plea offer of ten years for armed
20 robbery?

21 A. My understanding was is that there was a
22 ten-year plea offer, and that it was rejected based
23 on the belief that the charge should be reduced --
24 legally should be reduced from strong arm robbery
25 to -- I mean, from armed robbery to common law

1 robbery, sometimes referred to as strong arm
2 robbery.

3 Q. And that was because the gun that was used was
4 inoperable?

5 MR. ZELENKA: Objection. Leading.

6 THE COURT: Yeah, I sustain that objection.

7 BY MS. ROSS:

8 Q. Why -- did you review the transcript of the
9 trial in your preparation for the appeal?

10 A. I did.

11 Q. What arguments did trial counsel make regarding
12 the weapon that was used in the robbery?

13 A. Well, there was a -- a directed verdict motion,
14 which was, I guess, a fairly generalized directed
15 verdict motion, but even following that --
16 immediately following that, there was a request for
17 Judge McIntosh to instruct common law robbery as a
18 lesser included offense.

19 And then that was raised again -- well,
20 actually, it raised again by the Solicitor. The
21 Solicitor wanted to make certain that the -- the
22 charge was clear with regard to, you know, even the
23 representation of a gun would be sufficient for
24 armed robbery.

25 And after that, trial counsel again renewed the

1 request for common law robbery to be charged as a
2 lesser included.

3 Q. Now, my transcript is loose here. It's
4 unbound, but I'm going to try to refer you to page
5 120, line 4.

6 A. Okay.

7 Q. Do you have it there?

8 A. One twenty of the record or 120 of the ---

9 Q. Of the -- of the ---

10 A. --- trial transcript?

11 Q. --- transcript, not the ---

12 A. I was on the record, but now I'm at 120 of the
13 transcript.

14 Q. And what is mister -- is this what you were
15 referring to? What is Mr. Yarborough asking for of
16 the Court?

17 A. Well, actually, beginning at line 3, it says,
18 "I'd ask the Court to charge strong arm robbery in
19 this case just based on what they saw on the tape
20 and what he said during his interview that the gun
21 was a cap gun. I think looking at the tape, you
22 don't really see -- see a firearm, I'd ask the Court
23 to consider charging strong arm robbery."

24 Q. And then continuing on page 121. The Court
25 makes a ruling on that, correct, or what does he ---

1 A. Well, actually, on page 120, the Court says
2 they would consider it or that he would consider it,
3 but wasn't inclined to charge it and warned counsel
4 not to plan on that in the closing argument.

5 And then on 121, that's where I refer to the
6 Solicitor bringing up the issue again. And the --
7 let's see. It's actually, I think, on 122 at line
8 11. "After hearing from both the prosecutor and
9 defense counsel," line 11, the judge says, "I ask --
10 I thought about that. There's no evidence in the
11 record. If it was, I'd be glad to charge it, but
12 there's no evidence it was a common law strong armed
13 robbery."

14 Q. Okay. So what you saw from reading that
15 transcript was trial counsel continued to argue
16 there was a basis for a strong arm robbery in this
17 case?

18 A. That's correct. It appears that it was tried
19 as if it was a strong arm robbery case.

20 Q. Okay. And going back to the trial in absence,
21 when reading the transcript, did Mr. Yarborough help
22 his client's position that he should not be tried in
23 his absence the way he spoke during the transcript?

24 A. He did request that the trial not go forward in
25 his absence, but not because of the lack of notice.

1 It was more because it would be a better practice to
2 try him while he was there. And I tried to use the
3 objection that was made and make an argument that
4 that issue was preserved, but the Court of Appeals
5 rejected it.

6 Q. And had they not rejected it, what was your
7 opinion of the strength of your case if there was an
8 effective objection to the trial in absence?

9 A. Well, it is based on what was in the -- in the
10 -- in the trial record. They -- aware of the
11 standard bond forms that are used in every case.
12 That was never called to any Court's attention until
13 on the appeal. That was not what was really argued
14 in front Judge McIntosh that I remember.

15 What was argued was something about a bond card
16 having been sent, but there was -- there was nothing
17 in the record regarding the date that the bond card
18 was sent, the date that it noticed it for Court, how
19 it was addressed, you know, things -- things of that
20 nature.

21 And the way I understand the law, on trials in
22 the absence, you not only have to be told that your
23 case can go forward in your absence, which is
24 certainly accomplished by the -- you know, the
25 standard bond forms, you also have to have notice of

1 the -- actual notice of the trial date. And here,
2 there was no evidence in the record that there
3 was -- that Mr. Walker had actual notice of the date
4 of trial. And -- and, certainly, there was no
5 finding. The judge has to make a finding regarding
6 the notice and the date of trial and being on notice
7 that the case could be tried in their absence.

8 Q. And that's pursuant to Rule 16, Rules of
9 Criminal Procedure and the case law, correct?

10 A. The rule escapes -- the rule number escapes. I
11 believe it's 16, but there is -- there's a lot of
12 case law on it and there's a number of cases that
13 say that, you know, you have to have notice of the
14 actual trial date in order for it to proceed in your
15 absence.

16 MS. ROSS: Okay. I've got no further
17 questions.

18 THE COURT: Mr. Zelenka.

19 MR. ZELENKA: Just a couple of questions.

20 CROSS-EXAMINATION

21 BY MR. ZELENKA:

22 Q. When you handled the appeal, did you have
23 access to all the court records before you prepared
24 the appeal?

25 A. I know I had access to a good many of the

1 records. I don't recall coming up here and looking
2 at the records.

3 Q. Okay. At any time in preparation of the
4 appeal, did you communicate directly with
5 Mr. Yarborough?

6 A. I probably talked to him at the beginning of
7 the appeal. I'd have to go back and look. It
8 would've been before I had reviewed the records and
9 the transcript.

10 MR. ZELENKA: Okay. No further questions.

11 THE COURT: All right. Anything any redirect?

12 MS. ROSS: No, Your Honor.

13 THE COURT: Mr. Grose, you can step down.

14 Thank you.

15 (Witness excused.)

16 THE COURT: Ms. Ross, call your next witness.

17 MS. ROSS: Thank you, Your Honor. We would
18 call Phillip Walker at this time.

19 THE CLERK: If you're able to, please raise
20 your right hand.

21 THE APPLICANT: (Complying.)

22 THE CLERK: Do you swear or affirm the
23 testimony you're about to give shall be the truth,
24 the whole truth, and nothing but the truth?

25 THE APPLICANT: Yes, ma'am.

1 THE CLERK: Thank you, sir. Please take a seat
2 there at the witness stand.

3 THE APPLICANT: (Complying.)

4 PHILLIP W. WALKER,
5 having been produced and first duly sworn as a
6 witness on behalf of the Applicant, then testified
7 as follows:

8 DIRECT EXAMINATION

9 BY MS. ROSS:

10 Q. Good morning.

11 A. Good morning.

12 Q. First thing, you understand that what your
13 relief would be if you win this hearing?

14 A. Correct.

15 Q. And what would that be?

16 A. Starting over. Starting the process over.
17 Actually, like starting the trial.

18 Q. Now, do you feel that you received a fair
19 trial?

20 (Brief interruption.)

21 THE COURT: Hold -- hold on a minute. Is there
22 a child in the courtroom? Is there a child in the
23 courtroom? No children -- no babies in the
24 courtroom. Please take the baby out.

25 (Complying.)

1 BY MS. ROSS:

2 Q. Were you present at your trial?

3 A. No. I was not. Had I known, I would've
4 been -- I would've been in Court. I had already
5 been in court two or three times already that year.

6 Me and my dad, we would take that trip to
7 court. The bondsman would call me. He'd show me
8 the bond card and say this is the day you need to be
9 in court and the time to be there for roll call
10 count, I would be there. And I didn't have a
11 problem.

12 Q. How many times had you been there?

13 A. We'd been to the Anderson County Courthouse I
14 think about three times.

15 Q. And what happened every time you were there?

16 A. It was continued. My lawyer would say, you
17 know, we need a continuance. I'm trying to work
18 with the Solicitor on getting it to a strong arm
19 robbery. So that was the perception me and my
20 father had. And we'd say okay. You know, we might
21 be there 20 minutes, you know. He'd come to us and
22 say, "Okay. Y'all, can leave. I got it continued.
23 I'll let you know when your next court date is.
24 It's not a problem."

25 Q. What would you -- how would you -- how did you

1 perceive your lawyer's confidence level in getting
2 the strong arm robbery in your case?

3 A. I really believed he had a good chance of
4 getting it. You know, I felt in my heart we had a
5 good chance, you know, because of the way he was
6 talking. It seemed like it was a possibility that
7 it could happen. I knew that I could face armed
8 robbery. You know, I mean, I'm an intelligent
9 person. I knew that, but I had confidence that he
10 could get it to strong arm robbery. I had a good,
11 strong confidence in that.

12 Q. What did he tell you to -- to give you that
13 confidence?

14 A. Well, based on the fact that I knew the weapon
15 that I had. You know, it was like the type of
16 weapon that was used. It was a rusted .22. Beat
17 up. Been in the dirt for over ten years or more,
18 you know, when it was dug up. When I dug it -- I
19 didn't realize when I dug it up I found it in my
20 wife's -- in my ex-wife's old garden. And you --
21 you couldn't even -- like, it didn't have a firing
22 pin. There was still dirt in it, you know, and it
23 looked -- it wasn't like even usable.

24 So I figured with it being that, you know, I
25 told the police, when they -- when they arrested me,

1 I explained to them just like I understand that, you
2 know, I was like I'm trying to -- I was like I'm
3 getting myself together because this was wrong. And
4 I said it really wasn't no damage done. It was a
5 gun, period. I understand. A weapon is a weapon,
6 but I was thinking that the possibility of being
7 that it was -- with the degree of the weapon, the
8 devastation of it. You know, it was worn down with
9 the oldness, I thought that might take into
10 consideration, you know, for the Solicitor maybe to
11 get it to strong arm robbery.

12 Q. What was your plea offer?

13 A. Ten years. When I first -- before we hired
14 Mr. Yarborough, I had Wendy Hartford and she was a
15 court-appointed attorney. She first gave me the ten
16 years, and I told my family, you know, that. And I
17 told them at first I was going to take the ten
18 years. And my parents was like, "Don't take it, you
19 know. Let's hire a lawyer and we'll see what we can
20 do from there."

21 I said, "Okay. It's not a problem." So that's
22 when we got Mr. Yarborough. And the whole time I
23 knew the ten years was there. So, you know, in the
24 back of my mind I was like, okay, ten years is
25 strong armed. That's eight years, you know, it

1 started at eight. That's not bad. So I waited with
2 the exceptions of that in mind.

3 Q. And you waited based on whose advice?

4 A. Pretty much my lawyer. You know, when he kept
5 saying, "Continued -- I'm going to continue it. I'm
6 going to continue it." You know what? Maybe he can
7 get it down to less than ten. You know, because at
8 the time, I didn't have a record really. The last
9 time I was -- had committed a crime was in North
10 Carolina in 2006 for common law robbery, which is
11 Class E felony. That's when I walked into a grocery
12 store and walked out with the stuff without paying
13 for it. I'm not a perfect person.

14 Q. Just on that, when you were sentenced, do you
15 think your prior record was overstated?

16 A. It was. I read my whole transcript when I
17 received it from my appellate attorney, and the way
18 she used it and the type of words that she used for
19 the judge, she misused my record.

20 Don't get me wrong, anybody commits a crime,
21 it's wrong, period. But I understand I was -- I
22 made choices and decisions in my life that affected
23 others. And the way she used my record from 1998,
24 breaking entering into motor vehicles, that has
25 nothing to do with armed robbery.

1 Common law robbery from 2001. Common law
2 robbery from 2006. I understand, you know,
3 that's -- it's a crime, but it's not violent. So I
4 was thinking, okay, nonviolent. This a big
5 difference. It's a big jump between going from
6 there to committing a violent crime. When she did
7 that, she told the judge, "This is not his first
8 rodeo." That was her words. "This is not his first
9 rodeo." So the judge used that a means of enhancing
10 the sentence time frame.

11 Q. Okay. And also during your sentencing, you
12 talked a little bit about how you had gone to Texas
13 to ---

14 A. Right. What a lot of people don't realize is,
15 at the time when I got locked up December 16th of
16 2015, it was a lot going on in my life. You know, I
17 had two beautiful kids right -- they're right there.
18 Me and their mother was going through, you know,
19 terrible custody at the time. And I knew that I
20 still had a drug problem because I had got addicted
21 to drugs, and no parent wants to raise kids when
22 they have a situation that they're dealing with
23 themselves. They're not the person to be dealing
24 with.

25 So I -- knowing that I was still dealing with

1 DSS with the custody of my kids, I left to go to
2 Dallas. But at the time, my family, now that's one
3 thing about us, we talk. As -- as we communicate,
4 we might not -- I might not see them every single
5 day, but we on that phone, "Hey, how are you doing,
6 Mama? How you doing, Daddy? How you doing, Sis?
7 How you doing, Bro? We communicate because that's
8 how we are. We've also been like that.

9 And, you know, it was weird that, you know,
10 when I left, I left to get myself together because I
11 wanted to go to my parents -- I wanted to get to
12 myself because of things I have done in life. It
13 didn't hurt me. It hurt my family more, you know.

14 Q. Now, but when you were saying that you left,
15 were you leaving to avoid this trial?

16 A. No.

17 Q. Talking about communicating ---

18 A. Right. Had I known -- we talk on the phone.
19 My family and I, we all have cell phones.

20 Q. How did you know to come to court the three
21 other times you came to court?

22 A. Because me and my dad, we would -- the bondsman
23 would call me. The bondsman would call my phone, my
24 cell phone. He showed me the bond card on my cell
25 phone -- on his -- from his phone that would say,

1 "Mr. Walker, you need to be in court this day." I'd
2 say, "Okay." And my daddy would be right there.
3 I'd say, "Pop, we got to be in court." My dad would
4 say, "Okay."

5 Q. Did you get any information like that when you
6 were in Texas?

7 A. No. I got nothing at all. My family -- my
8 dad -- you can talk to my dad and my sister. I
9 never knew. Had I known ---

10 Q. Your dad and sister knew where you were?

11 A. Right. They always -- they always have a way
12 of contacting me. They can call my phone. My phone
13 stayed on 24/7. My matter of fact, my sister was
14 the one paying my cell phone bill at the time. I
15 knew my phone stayed on, so it was no way of me
16 not -- not knowing I need to be in court.

17 Now, that being said, had I known I was
18 supposed to be in court in December, I would've been
19 there. I'm not going to avoid something that --
20 that could potentially give me more time than what
21 it was, you know. I had already been in court two
22 or three times.

23 Q. And how -- how would that have changed the
24 outcome of your case do you think if you had been in
25 court?

1 A. If I had been in court, push come to shove, if,
2 you know, when the trial came, if they said, "You
3 still get the ten, I'd took it right then. I'd took
4 that ten years right then instead of coming back
5 finding out from a job interview when I was in Texas
6 that I had a civil conviction. That's how I found
7 out that I had a civil conviction, I filled out job
8 application. As part of the treatment program, you
9 had to fill out for a job. So I filled it out. The
10 lady said, "You have a civil conviction." I said,
11 "What's that?" She explained it to me. Once she
12 explained to me, I said, "What county?" She said,
13 "Anderson." I said, "Huh."

14 Q. What did she tell you about the bond, whether
15 the bond had been the issue?

16 A. When I -- when I came back August -- matter of
17 fact, like, August 14, 2017, I came to a visit to
18 see my kids. They was in DSS custody at the time.
19 I came to a visit to see them, because one thing I
20 take pride is my kids. That's one thing I love to
21 death is those two right there.

22 I came. And after my visit, Anderson County
23 Sheriff was, you know, waiting for me. So once
24 they -- once they took me down to the county jail
25 and I got in the county jail, the lady that you see

1 on the video when you come into the county, she
2 said, "This is weird. I've never seen nothing like
3 this." I said, "What's that?" She said, "You have
4 a civil conviction. And you have a" -- she said,
5 "They never revoked your bond." She said, "They
6 issued a bench warrant." She said, "You're still
7 technically on bond." She said both judges ---

8 Q. And your bondsman never called you?

9 A. Right. My bondsman never called me. I never
10 received a letter. They had -- the bondsman had my
11 address to my parents' house because that was --
12 that was part of the rule that I had to get out on
13 bond was I had to stay at my mom and my dad's house.
14 They had both addresses on the paperwork that went
15 to the courthouse. So there was no way of them
16 saying that there was a bond card sent here. Return
17 to sender. I wasn't living there. I was living in
18 North Carolina as part of the contract that I made
19 with the bondsman. I had to live in North Carolina.
20 I couldn't come back to South Carolina, period.

21 Q. So the bondsman knew where you were?

22 A. Right. The bondsman knew I was in North
23 Carolina. That was part of the stipulations I had
24 to get out. I had to stay in North Carolina. I
25 couldn't come back to South Carolina, unless with my

1 family to see my kids, you know, for a visitation,
2 and then I had to go back. I couldn't come, linger,
3 do none of that. That was part of the stipulations
4 the bondsman made with me, and I agreed to that when
5 I got my bond.

6 When I did that, so it was kind of surprising
7 that -- when I found out that I had a civil
8 conviction how much time I had. I didn't know how
9 much time I got until the day I came to court.

10 The day I came to court, I saw my attorney,
11 Mr. Yarborough, and he looked at me and said, "He
12 gave you max pretty much." I said, "Okay. What's
13 that?" He said, "25." He said, "You just should've
14 -- you should've stayed gone for ten years." In my
15 opinion, what lawyer says that to a man facing 25
16 years. His exact words to me was, "You should've
17 stayed gone ten years. After that, there's nothing
18 they could do about it."

19 That's how I am. I'm up here to face no matter
20 what I face. If I do something, I'm willing to face
21 the time to deal with it because I've done time
22 before. If I know I needed that, I needed that.
23 You know, my own lawyer telling me that right there,
24 that hurt me because that lets me know that you
25 really didn't care. You was just basically doing

1 what the Solicitor wanted you to do instead of you
2 trying to help me. You was helping yourself. You
3 should never tell your client you should stay gone
4 for ten years and you wouldn't have to worry about
5 it. No. I'm not -- I don't run. I don't have to
6 look over my shoulder the rest of my life while I'm
7 trying to raise my kids worrying if I do this, will
8 they come get me? If I do that, will they come get
9 me? You know, I mean, that's not right.

10 Q. And you were cooperative and turned yourself
11 in?

12 A. Yeah, when -- when I was arrested, to be
13 honest, once I committed the crime, I actually stood
14 in Family Dollar for about 30 minutes. And the lady
15 looked at me like I was going crazy, like what is he
16 doing. I'm sitting there eating a can of Pringles
17 and a pack of Airheads and drinking a soda trying to
18 figure out what to do, you know, and it was just
19 like a battle. I shouldn't do it. Should I do it?
20 I shouldn't do it. Should I do it? Once it was
21 done, I left. And once I ran and I saw the police,
22 I stopped. You know, I was like, I can't do this no
23 more. You know, I'm like I need help.

24 MS. ROSS: Okay. Unless there's anything else
25 you'd like to say, please answer any questions from

1 the State.

2 THE COURT: Mr. Zelenka.

3 MR. ZELENKA: Thank you, Your Honor.

4 CROSS-EXAMINATION

5 BY MR. ZELENKA:

6 Q. Mr. Walker, how are you today?

7 A. I'm blessed. I'm truly blessed.

8 Q. Okay. Back in 2016 when you appeared in court
9 after you were arrested and signed the bond form ---

10 A. Right.

11 Q. --- you were required to show up to court upon
12 call; isn't that right?

13 A. Yes. The bondsman would call me. And he would
14 call me and my dad and let me know because he had my
15 cell phone. He had my dad's cell phone. He would
16 show us the bond card. He would call and say,
17 "Phillip, you need to be in court this day. Make
18 sure you're there. If not, I'll know because the
19 Court would have a record -- a record of you not
20 showing up in county." He said, "I'll come get
21 you." I said, "I don't want that." And I was still
22 paying for my bondsman to do that.

23 Q. And on that bond form that you signed on
24 December 17, 2015, what was the address you put on
25 that bond form, the address where you could be

1 located?

2 A. [REDACTED] Dumont Drive, Hillsborough, North Carolina,
3 27278.

4 Q. How about [REDACTED] Hall Street, Anderson, South
5 Carolina?

6 A. No. That was -- he was -- that was the
7 address -- he asked me for my parents' address. He
8 asked where I was residing when I got arrested,
9 which was [REDACTED] Hall Street. That was the address I
10 was living when I got arrested. That was my address
11 in Anderson, but he said he needed the address to
12 where I'm going to be staying because that was the
13 stipulation, which was my parents' address, which
14 was my dad, which was [REDACTED] Dumont Drive,
15 Hillsborough, North Carolina, 27278. And every time
16 he would call, my dad would get -- would get a
17 letter saying to be in court that day at that
18 address in Hillsborough, North Carolina. That
19 was -- that was the reason he let me out on that
20 bond.

21 Q. And who exactly did you notify of that address?

22 A. The bondsman. That was part of the paperwork,
23 stipulation my father filled out and I filled out.

24 Q. Okay. Did you ever notify the Court of that
25 change of address?

1 A. No. The bondsman said -- when I filled out the
2 paperwork, the bondsman -- the paperwork goes to the
3 courthouse. I didn't have -- I was still in the
4 county jail, so there was no way I could change my
5 address if I'm locked up at the time during all
6 this. The bondsman did all the paperwork for that.
7 He said the only he would stipulate and do the bond,
8 because I was going to be out of state, was for me
9 to actually stipulate that to be at my parents'
10 address. And he actually put it on the paperwork
11 the address I'd be staying [REDACTED] Dumont Drive. And
12 then my mom's address, you know, which was [REDACTED]
13 Beauty, Raleigh, North Carolina. Those are the two
14 addresses on the bonds form that I agreed to be at
15 one of those two places in order for him to secure
16 the bond and let me out.

17 Q. Okay. But you never notified the Court. You
18 never notified the Solicitor?

19 A. No. I -- I couldn't. I was still -- I did not
20 get out of the county jail until December 17, 2016.
21 I was still in the county. I sat in the county 8
22 months and 26 days. I had -- I got locked up
23 December 16, 2015. There was no way I could notify
24 the courthouse if I'm in the county jail at the
25 time.

1 Q. Okay. I understand that.

2 A. Right.

3 Q. But after you were released, where did you move
4 to?

5 A. I lived with my family. The bonds -- I had
6 stated the bond stipulated I had to be in North
7 Carolina. I had -- I could have no contact nowhere
8 in South Carolina at all. That was part of the
9 stipulation she put on the bond that he would only
10 release me if I stayed out of South Carolina, unless
11 it was accompanied by my father or my mother to
12 visit my kids or come to court because I was doing
13 custody. I was still coming to DSS to see my kids
14 doing custody at the time. That's the only way that
15 he would actually do the bond.

16 Q. Who was "he"? The bondsman?

17 A. The bondsman. Right, the bondsman.

18 Q. But the clerk of court was never notified of
19 the different address?

20 A. I -- I have no idea about that. I don't know.
21 Never ---

22 Q. You didn't do it?

23 A. Right. I had -- I had no idea about anything
24 other than, you know, what I signed and the address
25 I had put on the bond paper for the bondsman to make

1 sure that that's where I would be staying.

2 Q. Okay. When you got out, after you let your
3 family's house at [REDACTED] Hall Street in Anderson, what
4 was the address of where you moved?

5 A. What do you mean once I got out?

6 Q. After you got out of jail, you said you were
7 going to live at [REDACTED] ---

8 A. No.

9 Q. --- Hall Street.

10 A. No. Before -- when I got arrested, I was
11 living at [REDACTED] Hall Street in Anderson. When I got
12 out on bond, I had to move -- I had to leave with my
13 father and go to North Carolina. I couldn't come to
14 South Carolina to get nothing.

15 Q. Okay. I'm just asking what that address is.

16 A. The address in South Carolina?

17 Q. The address where you were living.

18 A. When I got out, [REDACTED] Dumont Drive, Hillsborough,
19 North Carolina.

20 Q. Okay. And how long did you live there?

21 A. About six or seven months. Then I moved to my
22 mother's house.

23 Q. And where was your mother's house?

24 A. [REDACTED] Beauty Ave, Raleigh, North Carolina. The
25 other address the bondsman had.

1 Q. Okay. Did you notify the Court of that
2 address?

3 A. The Court supposed to have both addresses
4 pursuant to what the bondsman put on the paperwork.
5 Whenever I got -- whenever I had to be in court, the
6 bondsman had the address of both of them and it
7 allegedly sent to both addresses. Both of my
8 parents knew when I had to be in court because the
9 bondman notified not only my father but my mother
10 and myself at that time. That was one of the rules
11 of me getting out on that bond.

12 I could not come to South Carolina, period.
13 And I had -- and I understood that and I respected
14 that. So they had the bondsman put on the address
15 my mother's and father's address for the bond. I
16 had no way -- I had no way of contacting the Court.
17 When I came to court, the Court knew I come from
18 North Carolina.

19 My lawyer knew I was coming from North
20 Carolina. So it's -- there was not for me to my
21 lawyer -- if my lawyer knew where I was staying and
22 where I was living, and if he sent mail to the house
23 from me saying that, you know, this is when you need
24 to be in court and this is what you're trying to do,
25 he would send it to North Carolina. He never sent

1 it to South Carolina. I would get mail from my
2 lawyer at the time in North Carolina at my father's
3 house and my mother's house.

4 Q. Okay. When did you move from your mother's
5 house?

6 A. I left there to go to Texas in 2016 probably.
7 Right before Thanksgiving, about November. I had
8 already been to court like twice that year, and both
9 times it was continued by my lawyer. And he would
10 tell me, he said, "I'll notify you. I'll let you
11 know when you need to be in court." I said, "Okay."

12 I left in about November of 2016. Right before
13 Thanksgiving, I went to Texas.

14 Q. Where were you at the time your case was tried?

15 A. I was in Texas. I didn't know it. Yeah, I
16 was -- I was still in Texas.

17 Q. Okay.

18 A. I came -- when I came back from Texas.

19 Q. Had you notified your lawyer you were in Texas?

20 A. No. I didn't even know I had to be in court.
21 I didn't even know I had to be in court.

22 Q. Let me back up one step.

23 A. Okay.

24 Q. Did you notify your lawyer that you had moved
25 to Texas?

1 A. No.

2 Q. Why didn't you notify your lawyer you had moved
3 to Texas?

4 A. Why didn't I -- well, that's a good question.
5 Why didn't I notify? Well, I entered a rehab
6 program when I went to Texas, and my family knew
7 that I was in that place. So like talking to my
8 lawyer was a hard thing to do. Trying to catch him.
9 My father and I used to -- my father used to call
10 him regularly, you know, trying to catch up to
11 figure out what was going on with my case at the
12 time, and he would not be there. They'd say, "Well,
13 I'll leave a message. We'll get him to call back."
14 It would be weeks, you know, before he called back
15 and say, "I forgot. I had this other case," doing
16 this and doing that.

17 So my father talked to my lawyer more than I
18 did, so I knew my father would say, you know, going
19 on, let me know. I also know that when it was time
20 for me to go to court and let me know, I would be
21 there.

22 Q. Okay. Did you notify your dad you had moved to
23 Texas?

24 A. Yeah, my family knew I was gone. I'm going to
25 get myself together to rehab. I couldn't be a good

1 parent to my kids. I couldn't be a better person to
2 myself if I didn't get help for the drug problem
3 that I had.

4 Q. Okay. But you did not notify your lawyer. Did
5 you notify your bondsman you were living in Texas?

6 A. No. I didn't notify my bondsman.

7 Q. Okay. So you did not notify your lawyer, you
8 didn't notify your bondsman, and you didn't notify
9 the clerk of court that you were living in Texas at
10 the time the case was tried, correct?

11 A. Correct. At the time the case was tried, I
12 didn't know I was supposed to be in court at all.

13 Q. All right. At the time that court was tried in
14 November, you had not notified the clerk, you had
15 not notified your lawyer, and you had not notified
16 your bondsman that you were located in Texas at that
17 time, correct?

18 A. In November? I was not tried in November. I
19 was tried December 6, 2016. The case was continued
20 to December 7, 2016. In November, I talked to my
21 lawyer. That's how I know. In November, I talked
22 to my lawyer because he called me when I was with my
23 mother at the Kia place. She was getting her car
24 serviced. That's how I know I talked to my lawyer
25 in November.

1 So in November, I was still in North Carolina
2 when I talked to my lawyer about this. So I had not
3 had -- we was not going to trial then. He said,
4 "I'll get it continued." And he said, "I'll let you
5 know in the next month or two." He said, "It might
6 not be at the end of this year, but the beginning of
7 2017 when you go to court." I said, "Okay."

8 I remember talking to my lawyer because me and
9 my mother -- my mother, her car had been at the Kia
10 dealership getting her car serviced. So in
11 November, I talked to my lawyer at that time. I had
12 left to go to the rehab place there. I had
13 already -- I actually talked to him in November.

14 Come December, I did not know nothing. Had I
15 known I should've been to court, my bondsman -- I
16 always told my bondsman, he called me, I'm there.
17 It was no problem. I said if I go to Jamaica, he
18 can call me, I'm going to come to court. He never
19 called me to say I needed to be in court. So I was
20 like, okay. I asked my dad, I said, "Have you heard
21 anything about me going to court?" And he said,
22 "No, son, I haven't." And I talk to my dad. I talk
23 to my sister. I talk to my mom on the regular on
24 the monthly.

25 Q. Okay.

1 A. So, yeah, that's what I'm saying. In November,
2 I had done left. I didn't leave until about a week
3 before Thanksgiving in November. That's what I'm
4 saying. I had left by then.

5 Before that, I had talked to him in beginning
6 of November. I talked to Mr. Yarborough already.
7 You know what he said that -- he told me and my dad
8 and my mom that the cases are probably get a little
9 slow, court's are backed up, so it would probably be
10 in December.

11 Q. But in December, you had not notified your
12 bondsman you were living in Texas. You had not
13 notified your lawyer you were living in Texas. You
14 had not notified the clerk's office?

15 A. Oh, the bond -- the bondsman -- the bondsman
16 knew where I was because the simple fact is ---

17 Q. How did he know -- how did he know where you
18 were?

19 A. Because I had to make payments to the bond. I
20 was still paying my bond.

21 Q. How did he know you were living ---

22 A. Okay.

23 Q. --- in Texas?

24 A. When I -- when I had to go to a bank, the bank
25 you go to, when you -- when you wire money to an

1 account, you get a wire transfer from one place to
2 another, it's going to show up from where it comes
3 from. So I would wire money to the bondsman from a
4 bank in Texas. And it might be 250 -- between 250
5 to \$500 I had to pay every month, you know, until I
6 finished paying off the bond. So I would wire 250
7 from a bank in Texas, Dallas, Texas, the Bank of
8 America in Dallas, Texas. It would come up as Bank
9 of America in Dallas, Texas. He never said a word
10 to me about it because he was getting his payments
11 on time. He said the only time he would come get me
12 is if I missed court. He said his exact words from
13 my bondsman was, he said, "As long as you make the
14 payments and come to court, you're okay. You know,
15 I'm not going to worry about it."

16 Q. What was your address in Texas?

17 A. I can't remember at this very moment. It was
18 the Dallas Life Center. That's where I was, Dallas
19 Life Center in Dallas, Texas. Trying to think of
20 the exact address. It'll come to me in a minute.

21 Q. Did you give your lawyer that address?

22 A. No, I didn't.

23 Q. Did you give your bondsman that address?

24 A. No. I hadn't talked to my bondsman.

25 Q. Okay. Let's talk about the plea offers.

1 A. Okay.

2 Q. What offer were you made prior to December when
3 the case was tried? What were the offers you
4 were ---

5 A. The only offer I have ever received was the ten
6 years that originally came from my court-appointed
7 attorney. Wendy Hartford had got -- when she first
8 got the case before I hired Mr. Yarborough, and
9 Mr. Yarborough knew the ten years was still there.
10 He just told me to not take it and just wait. He
11 was going to try to get to strong arm. So that's
12 the reason why I didn't take the ten years pursuant
13 to me going to trial. You know, had I known that
14 the outcome would've been like that, I would've took
15 the ten years.

16 Q. Okay. I understand that, but you rejected the
17 ten-year plea offer?

18 A. No. I didn't reject it. Pursuant to my advice
19 from my attorney. I didn't reject nothing. I had
20 to pay the attorney. He's paid. I paid
21 Mr. Yarborough.

22 Q. Okay.

23 A. So he represented me. And he -- under his
24 advice, he was, like, just wait. Let's see if we
25 can get it down to strong arm robbery. I said,

1 okay. So I never rejected the ten years. I never
2 said, no, I don't want it.

3 Q. Okay. But you didn't choose to plead guilty in
4 response to that offer at that time, correct?

5 A. No. I -- I told him when I first got offered
6 the ten years with the court-appointed attorney, I
7 told my family I wasn't going to take the chance.
8 You know I'm saying? I'd plead guilty and take the
9 ten years. And my family was, like, "Let's get a
10 lawyer first and see if maybe they can get a better
11 offer other than the ten." I said, "Okay. That's
12 fine."

13 So at the first advice of my family, that's
14 when we hired Mr. Yarborough. So that's -- that's
15 the reason we hired Mr. Yarborough to see if we
16 could get something maybe eight years, nine years,
17 you know, under the ten, so that's what we did. I
18 never rejected the ten. I just did the advice of my
19 lawyer.

20 Q. Was there -- was there any other offer that was
21 made by the Solicitor?

22 A. None that I know of.

23 Q. Okay.

24 A. That's the only thing I ever knew was -- the
25 only offer was just the 13 years. That's all I

1 knew.

2 Q. Okay.

3 A. I was never informed of anything else.

4 Q. Let me ask about the -- the weapon that was
5 used in the robbery. What was that weapon?

6 A. It was a .22. I believe they call it a
7 Saturday night special, a .22 pistol. It was --
8 been in the dirt for about 10 or 12 years. When I
9 found it, I was -- I was digging up -- digging out
10 so I could put a couple of plants in there. I found
11 it and asked what is this? And I set to the side.
12 And I knew it didn't have a firing -- I knew it
13 didn't have a firing pin because I -- I owned guns
14 at the time. I was a registered gun owner in South
15 Carolina. And I knew the gun didn't work. It
16 didn't have no firing pin. It still had dirt in it.
17 You couldn't even open it up to -- to put a bullet
18 in there. You couldn't turn the revolver or
19 nothing. It didn't even fire. It was just that
20 old. It was coming apart, but it was...

21 And, you know, I was wrong for the crime. I
22 was wrong for that. I tell people I admit to my
23 crime. I admit I'm guilty of my crime. I never
24 denied that. That's the difference. I don't deny
25 that I committed my crimes. I admit I committed my

1 crimes, but...

2 Q. Okay. So you admitted that you committed an
3 armed robbery?

4 A. I admit I committed a crime.

5 Q. Well, you may have committed an armed robbery
6 because you had a pistol?

7 A. Right. The weapon.

8 Q. A .22, right?

9 A. Correct. I -- I told people, that's why I said
10 there's a difference of people not saying, "Well, I
11 didn't do it." I told them, I said, "I'm guilty of
12 that part. Yes, I admit I did my crime. I'm not
13 going to deny that." When I told the police, you
14 know, I said I committed my crime. I can't -- can't
15 deny that.

16 But it was the fact that however the weapon
17 was, you know, the type it was, the degradation of
18 it, the wariness, the oldness. It was incapable of
19 anything, you know. I thought maybe that could kind
20 of help me, you know, get it down to under ten
21 years, you know.

22 Q. Okay.

23 A. I was kind of working with my lawyer to try to
24 see if he could me down to that because of the type
25 of ---

1 Q. Why did you use that weapon rather than your
2 other weapons when you committed the armed robbery?

3 A. To be honest, them other weapons were bigger.
4 I had -- I was a registered gun owner. I had two
5 Mossberg 12-gauge shotguns with a 6-shot, one
6 9-shot, a 45-caliber pistol, and .38, and a .9. And
7 those are pretty much good size guns, you know, you
8 could tell.

9 And I seen that 'ole rusty thing, and I said,
10 at the time, to be honest, I was high, you know.
11 And I was telling the truth when I said that. I was
12 in panic mode, you know, after I got out because I
13 had gave my ex-wife, the mother of my children, the
14 money to pay the light bill, and she did something
15 else with it. And it panicked me because I was
16 like, well, my kids are going to be in the house.
17 It's dark. No power. You know, what am I going to
18 do? What am I going to do? What am I going to do?
19 And I panicked.

20 At first, when I actually saw it was a gun. I
21 didn't think about the rest of, you know, put it up
22 in a higher place to keep it away from the kids
23 because they was always loaded, and I kept them put
24 up and locked. And I seen that up there. Heck with
25 it. I took with me. Grabbed it and took it with

1 me.

2 Q. Okay. And the victim in the case would not
3 have known whether it was operable or not, correct?

4 A. Yeah, at time, you're right. They would not
5 have known.

6 MR. ZELENKA: Okay. I don't think I have any
7 further questions. Thank you, Your Honor.

8 THE COURT: Redirect?

9 MS. ROSS: No redirect, Your Honor.

10 THE COURT: All right. Thank you. Mr. Walker,
11 you can step down.

12 (Witness excused.)

13 THE COURT: Ms. Ross, call your next witness.

14 MS. ROSS: Thank you, Your Honor. We call
15 Neeko Walker.

16 THE CLERK: Would you please come forward and
17 raise your right hand?

18 THE WITNESS: (Complying.)

19 THE CLERK: Do you swear or affirm to tell the
20 truth, the whole truth, and nothing but the truth?

21 THE WITNESS: I do.

22 THE CLERK: Thank you, sir. Please take a seat
23 there at the witness stand.

24 THE WITNESS: (Complying.)

25 NEEKO WALKER,

1 having been produced and first duly sworn as a
2 witness on behalf of the Applicant, then testified
3 as follows:

4 DIRECT EXAMINATION

5 BY MS. ROSS:

6 Q. Good morning, Mr. Walker. How are you related
7 to Phillip Walker?

8 A. That's my son.

9 Q. And how -- did -- did you retain his attorney
10 for him?

11 A. Yes, I did.

12 Q. And what were -- what did Mr. Yarborough tell
13 you about the case when you retained him; do you
14 recall?

15 A. Yes. My son was offered a plea deal. It was
16 ten years. And I told him we would check with an
17 attorney first. I talked with an attorney. I
18 talked with Attorney Yarborough. He told us to
19 wait. Do not take that. He said he could do better
20 because he worked for the -- he worked in the DA
21 office and he knew all of the DA there. And, plus,
22 he knew some of the judges. He said to wait and he
23 would have -- have the strong arm robbery charge to
24 reduced to -- that's one thing.

25 The second thing, he would have the case moved

1 from South Carolina to North Carolina. And he told
2 me what he would charge. So I made a trip down to
3 South Carolina and paid him \$5,000. And I had the
4 impression that the gun charge had been dropped,
5 which I found out it was not dropped.

6 Q. Now, you had the impression the gun charge had
7 been dropped. Why?

8 A. Because the attorney told me he would have the
9 gun charge dropped and he would have the charges
10 reduced to common law robbery.

11 Q. So when you retained Bill Yarborough, he told
12 you he would get the gun charge dropped and the
13 armed robbery reduced to strong arm?

14 A. Yes. I have -- I made notes on everything back
15 then. One second, please. This was back in -- this
16 was back in August -- August -- August the 6th,
17 2018. And I appeal attorney. There are so many --
18 there are so many -- there are so many untruths and
19 promises made by my trial attorney. He gave me the
20 gun charges would be dropped and the gun charges
21 would be dropped and would put on -- and the case
22 transferred to North Carolina.

23 Q. And you mean the probation or whatever the
24 punishment?

25 A. That was August 6, 2018.

1 Q. Now, your son wasn't at his jury trial, was he?

2 A. Sorry. Say again, please.

3 Q. Phillip Walker wasn't present at his jury
4 trial. He was tried in his absence.

5 A. No, he was not.

6 Q. Now, did you get any notice of that jury trial?

7 A. No, ma'am. I got a call from Attorney
8 Yarborough the day -- a day before the trial saying
9 they were trying my son and he wanted me to contact
10 him, but I did not have his phone number. He called
11 back again and said that they were going to try him
12 without his presence if I do not contact him, so
13 that's what happened.

14 Q. Okay. And -- and that was the day before the
15 trial?

16 A. Yes.

17 Q. Did the bondsman ever contact you?

18 A. No. That was the day before the trial and the
19 day they pulled for the trial because he wasn't
20 there. And then they would have it the following
21 day, so but they would have the trial whether he was
22 there or not.

23 Q. Okay. Did you ever communicate that to your
24 son?

25 A. No, I did not.

1 Q. Now, did the bondsman ever call you?

2 A. No. No, he did not.

3 Q. In the past, had you son gone to court?

4 A. Had he gone to court?

5 Q. On those charges, had your son gone to court
6 before?

7 A. I don't think so. I think that he was supposed
8 to go to court, and then they postponed it.

9 Q. Okay. Were you notified then by the bondsman?

10 A. Oh, yes, ma'am. Well, I was notified by the
11 attorney that the trial was post -- postponed.

12 MS. ROSS: All right. I have no further
13 questions.

14 THE COURT: Mr. Zelenka.

15 CROSS-EXAMINATION

16 BY MR. ZELENKA:

17 Q. Mr. Walker ---

18 A. Yes.

19 Q. --- what is the date of the note that you have?
20 Can I see those notes?

21 A. Yeah, sure. This is the bond -- this is the
22 bond paper. This is the letter I wrote to Attorney
23 Ross, his attorney that we had to cover his appeal.

24 Q. Okay. That -- that date ---

25 A. But we see -- this had already happened when I

1 wrote this letter. Okay. So it's not the same
2 date, but this is the date that I wrote this letter,
3 this date.

4 Q. Okay. That date is August 6, 2018, and a
5 letter that ---

6 A. To -- to ---

7 Q. --- that you were writing Charles Grose who was
8 handling the appeal?

9 A. Yes. Yes. Yes. That's correct.

10 Q. Okay.

11 A. And this was another letter that I wrote him
12 the notes on.

13 Q. Okay. And those notes, were you sending ---

14 A. No. These ---

15 Q. Go ahead.

16 A. These are some notes that I wrote that I talked
17 to the appeal attorney about right here. And this
18 is the letter that I wrote for the jury -- for the
19 Court for him to be sentenced. I wanted to talk to
20 the jury before he got sentenced, but -- excuse me.

21 Q. Do you need water?

22 A. No, thank you.

23 Q. And the date on that is September 18, 2017,
24 which is right before ---

25 A. He was being sentenced.

1 Q. --- he came and was going to be sentenced.

2 A. Right.

3 Q. Okay.

4 A. And then this was a letter where we -- and my
5 son, he had seen a doctor several times. And this
6 was what she wrote, but she didn't have it on file
7 because it's been so long and the files have been
8 destroyed.

9 Q. Okay. So those letters were all written and
10 information were all written after your son had
11 already been tried, correct?

12 A. Yes. Right. Yes.

13 Q. All right. So it's not contemporaneous with a
14 meeting that you had with Mr. Walker -- excuse me --
15 Mr. Yarborough when you first meet him; is that
16 correct?

17 A. Yes. That's correct.

18 Q. Okay. A couple of things. When -- before the
19 trial in December, you say you got a call from
20 Mr. Yarborough, correct?

21 A. Yes. Right.

22 Q. And that call told you your son was going to be
23 tried the next day?

24 A. He was -- he -- he called me. You know what?
25 It may have been a couple of days before. I don't

1 know, but he -- he called me and that day -- the day
2 he was supposed to have been tried and wanted me to
3 get in contact with him. And I didn't have any --
4 so they had the trial on that first day. He called
5 me the next day, we -- they had the trial, but
6 they're going have it again tomorrow. And if he was
7 not there, they're going to have the trial so that's
8 what they done.

9 Q. Okay. And why didn't you contact your son?

10 A. I didn't have a phone number.

11 Q. Pardon me?

12 A. I didn't have a phone number at the time.

13 Q. You didn't have a phone number ---

14 A. At the time.

15 Q. --- so there was no way -- did you -- did you
16 have an address or anything where he was located?

17 A. Well, he was living with me for a period of
18 time until he moved to Raleigh, but he got a job up
19 there. And he turned himself into a rehabilitation
20 center and that's where he was.

21 Q. Okay. When Mr. Walker talked to you either of
22 those times, either the first time or the second
23 time about the trial, did you tell Mr. Walker he was
24 in Texas at a rehab center ---

25 A. Mister ---

1 Q. --- Mr. Yarborough, did you tell him that he
2 was in Texas?

3 A. No. Because I didn't know his whereabouts.
4 You know what? I may have said it. I don't know,
5 but I know I told him. I didn't know. I didn't
6 know -- you know, I didn't have his phone number and
7 I couldn't contact him.

8 MR. ZELENKA: Okay. That's all I have, Your
9 Honor.

10 THE COURT: Redirect?

11 MS. ROSS: No redirect, Your Honor.

12 THE COURT: Mr. Walker, you can step down.

13 (Witness excused.)

14 THE COURT: Ms. Ross, call your next witness.

15 MS. ROSS: We rest at this time.

16 THE COURT: Any motions?

17 MR. ZELENKA: Pardon?

18 THE COURT: She rests. Are you prepared to go
19 forward?

20 MR. ZELENKA: I can go forward. I'll have two
21 witnesses.

22 THE COURT: All right. Then I'll let you take
23 those witnesses.

24 MR. ZELENKA: Okay.

25 THE COURT: Call your first witness.

1 MR. ZELENKA: Catherine Huey.

2 THE CLERK: Please raise your right hand.

3 THE WITNESS: (Complying.)

4 THE CLERK: Do you swear or affirm the
5 testimony your about to give shall be the truth, the
6 whole truth, and nothing but the truth?

7 THE WITNESS: I do.

8 THE CLERK: Please take a seat at the witness
9 stand.

10 THE WITNESS: (Complying.)

11 CATHERINE HUEY,
12 having been produced and first duly sworn as a
13 witness on behalf of the Respondent, then testified
14 as follows:

15 DIRECT EXAMINATION

16 BY MR. ZELENKA:

17 Q. Catherine, please state your name for the
18 record.

19 A. My name is Catherine Huey, H-u-e-y. I'm the
20 Deputy Solicitor here for Anderson County.

21 Q. Okay. How were you employed in 2016 through
22 2018?

23 A. I believe my title was Senior Assistant
24 Solicitor.

25 Q. Okay. And as part of your duties, were you

1 involved in the case of *State v. Phillip Walker*?

2 A. I was.

3 Q. And what was your role in that case?

4 A. I was the lead prosecutor in that case.

5 Q. Okay. And in your responsibility of the lead
6 prosecutor at that time, were you involved in the
7 scheduling of that particular trial?

8 A. Yes. I absolutely was.

9 Q. And -- and how was that done at that time with
10 the State?

11 A. At that time we would've sent a couple of
12 things. First of all, I would've noticed the
13 defense attorney. I usually do that via e-mail well
14 before the trial date to give him as much notice as
15 possible to get ahold of his client.

16 Then I would've published the trial docket ten
17 days prior to the trial term, which is what I did,
18 and also sent that to Mr. Yarborough.

19 And then in terms of notifying the defendant,
20 we would've sent a bond card to the address on the
21 bond form and also the bondsman and also the defense
22 attorney once again.

23 Q. Okay. Let me show a document that you provided
24 me and see if you can identify that.

25 A. This seems to be the bond form for Mr. Walker.

1 Q. And for purposes of scheduling trial, what is
2 important about that particular bond form?

3 A. Well, first of all, he -- it clearly reads that
4 the defendant can be tried in his absence if he does
5 not appear for court. And I believe it also
6 indicates that he has a duty to notify the court of
7 any changes of address.

8 Q. Okay. And notification of any changes of
9 address, that's on page 1, I believe?

10 A. Yes, sir.

11 Q. At the bottom of page 1?

12 A. Yes, sir.

13 Q. And on page 2, there's a particular address
14 that was included on that; is that correct?

15 A. Correct. That address was [REDACTED] Hall Street,
16 Anderson, South Carolina 29624.

17 MR. ZELENKA: Okay. Your Honor, we would like
18 to introduce this as Respondent's Exhibit No. 1.

19 MS. ROSS: Judge, and -- and I would object
20 based on this is sort of supplementing the record.
21 The issue here was that these items were not
22 presented to the trial judge and that ruling
23 didn't -- his denial of the continuance was not
24 preserved at that time. So this -- we would argue
25 this is supplementing the record and object at this

1 time to that.

2 THE COURT: Well, certainly, the Court has the
3 bond form that it's in the record and this is --
4 what he's moving is to place this part, his exhibit
5 for this hearing ---

6 MR. ZELENKA: That's correct.

7 THE COURT: --- the bond form that the Court
8 already has in its possession to review. I'll
9 overrule the objection.

10 MS. ROSS: Thank you, Your Honor.

11 MR. ZELENKA: Thank you, Your Honor.

12 (Respondent's Exhibit No. 1 was received in
13 evidence.)

14 MR. ZELENKA: And Court's indulgence one
15 moment.

16 BY MR. ZELENKA:

17 Q. Upon my request, did you bring the cards you
18 sent out?

19 A. Yes, I did. I brought two cards with me. One
20 in particular for the trial term that's marked
21 "trial." And then I also brought the previous card
22 I had sent to Mr. Walker on October 18th, and that
23 indicates that I would've brought him in to try and
24 resolve it by way of plea prior to putting him on
25 the trial docket.

1 Q. Okay. And -- and what do those cards reflect?
2 If you can identify ---

3 MS. ROSS: Judge, again, I just object. These
4 cards were not made a part of the record as the
5 original trial in absence. They were not sworn or
6 attested to at that time. So I just argue that this
7 proceeding, I would object to them coming in at this
8 time.

9 THE COURT: All right. Thank you. I -- I note
10 your objection; however, I'll overrule the
11 objection.

12 MS. ROSS: Thank you, Your Honor.

13 MR. ZELENKA: Thank you, Your Honor.

14 THE WITNESS: I'll refer to the first card
15 from -- the court date would've October 18th of
16 2016. It did come back to our office as "Return to
17 sender. No mail receptacle. Unable to forward."
18 But this is the same card we also send to the
19 bondsman and the defense attorney. And each of
20 these cards looks the same. It's clearly in bold,
21 they say, "We can try you in your absence if you
22 don't appear."

23 The second part of that ---

24 MR. ZELENKA: Let me ---

25 THE WITNESS: Yes, sir.

1 MR. ZELENKA: --- introduce that as Respondent's
2 Exhibit No. 2.

3 THE COURT: Respondent's Exhibit 2 is in
4 evidence, and I've noted the objection that the
5 applicant has to that being admitted.

6 MS. ROSS: Thank you, Your Honor.

7 (Respondent's Exhibit No. 2 was received into
8 evidence.)

9 BY MR. ZELENKA:

10 Q. And what is that an additional card?

11 A. And then the additional card is for the court
12 date of December 5th of 2016. And, again, it was
13 returned to our office as "Return to sender. No
14 mail receptacle. Unable to forward." And, again,
15 it's the same exact card we typically send.

16 Q. Okay. And, again, what's the date on that
17 card?

18 A. This was for the court date of December 5,
19 2016, which would've been the trial term.

20 Q. And that was the time he was actually tried?

21 A. Yes, sir.

22 MR. ZELENKA: Respondent's Exhibit No. 3.

23 THE COURT: Same ---

24 MS. ROSS: Same objection.

25 THE COURT: --- same objection. I note the

1 objection. I'll overrule the objection. It's
2 admitted into evidence.

3 (Respondent's Exhibit No. 3 was received
4 evidence.)

5 BY MR. ZELENKA:

6 Q. And you indicated you also have a practice in
7 the Solicitor's Office of posting the docket, the
8 trial docket?

9 A. Yes, I do.

10 Q. Let me show you a document and see if you can
11 identify that.

12 A. Yes. This is a trial docket I would've
13 published typically via e-mail to all the defense
14 attorneys on the docket, as well as obviously people
15 within the courthouse. And it was also at that time
16 published on our website.

17 Q. Okay. And is that provided in any additional
18 way to the lawyers, the bondsman, who are involved
19 in these cases?

20 A. Again, it would've been by way of bond card to
21 the defendant or at least the known address for the
22 defendant from the bond form, the defense attorney,
23 and the bondsman. And then, again, this was
24 e-mailed to Mr. Yarborough directly.

25 MR. ZELENKA: Okay. Respondent's Exhibit No.

1 4.

2 MS. ROSS: Same objection, Your Honor.

3 THE COURT: I note your objection. I overrule
4 the objection. It's in evidence.

5 (Respondent's Exhibit No. 4 was received into
6 evidence.)

7 BY MR. ZELENKA:

8 Q. When the case proceeded to trial, what
9 indication did you have concerning the absence of
10 Mr. Walker from the courtroom?

11 A. It was my understanding that, you know, right
12 up until the end of -- we started the trial.
13 Mr. Yarborough really wanted his client to plead
14 guilty. The evidence was overwhelming against him,
15 and he didn't really feel like he had a viable
16 defense.

17 And so my understanding was, he was still
18 trying to do that and that he even tried to meet
19 with Mr. Walker the weekend before trial. My
20 recollection is, I had a phone call with
21 Mr. Yarborough that weekend. And, again, he was
22 still trying to get him to plead guilty.

23 Q. Okay. Did you have any understanding from
24 personal knowledge or written records that
25 Mr. Walker was no longer at the address in Anderson,

1 South Carolina?

2 A. Not at all. I'm not aware of any of those
3 other addresses that he mentioned when he testified.
4 And, certainly, for that October date that I
5 mentioned earlier, I know he appeared for court that
6 date.

7 Q. Okay. Did you have any knowledge that he
8 relocated had to Texas?

9 A. Not that I'm aware of.

10 Q. Okay.

11 A. Or not that I was aware of.

12 Q. Did you first -- did you learn that he had been
13 in Texas prior to the motion for resentencing and
14 when the sentence was unsealed?

15 A. I believe that was mentioned in the sentencing
16 then.

17 Q. Okay. What plea offers were made to Mr. Walker
18 through his attorney?

19 A. So, again, my recollection in looking back
20 through the file, he initially had Wendy Hartford,
21 who was a public defender at that time. My offer to
22 her was 15 years on the armed robbery, but she could
23 argue for less.

24 When Mr. Yarborough was retained, I extended
25 that same offer to him. Each attorney wanted me to

1 reduce it to common law or strong arm robbery, and I
2 was unwilling to do so because of his prior record
3 and the fact that there was a gun used in this case.

4 Q. Okay. Did they ever indicate to you or did
5 Mr. Yarborough indicate to you that the client was
6 going to plead guilty?

7 A. Well, I know at one point he asked for a
8 sentencing sheets. I think he really thought he
9 could get him to plead guilty, and then that never
10 came to fruition. It was one of those where he
11 really wanted that third door.

12 Q. Okay. When you tried the case, other than the
13 motion to continue, why didn't you proceed to show,
14 in fact, the same thing that you showed today on --
15 under Rule 16 by trial in absence?

16 A. Right. I indicated to the judge that I had,
17 certainly as far as I could, made the defendant
18 aware that he was going to trial by way of his last
19 known address, his defense attorney, and bondsman.
20 And, again, because of prior court dealings where he
21 had shown up before and refused the plea offer.

22 Q. Okay. And you made those representations in
23 court to the judge on the record?

24 A. I believe so.

25 MR. ZELENKA: Okay. I have no further

1 questions.

2 THE COURT: Cross?

3 MS. ROSS: Thank you, Your Honor.

4 CROSS-EXAMINATION

5 BY MS. ROSS:

6 Q. You were saying that Mr. Walker refused the
7 plea offer, but did you talk to him directly?

8 A. No. Because I'm not allowed to.

9 Q. So you don't know that he refused it based on
10 accord, just on counsel's ---

11 A. Just my communications with Mr. Yarborough.

12 Q. And when you were putting the charge on the
13 docket, you e-mailed Mr. Yarborough and he was still
14 asking for strong arm robbery?

15 A. Absolutely.

16 MS. ROSS: Thank you. No further questions.

17 THE COURT: Any redirect?

18 MR. ZELENKA: Not from her.

19 THE COURT: Thank you.

20 THE WITNESS: Thank you, Judge.

21 THE COURT: You can step down, Ms. Huey.

22 (Witness excused.)

23 THE COURT: Tell you what, let's take a
24 five-minute break. A five-minute break and we'll
25 get your next witness.

1 (From 10:53 to 11:02 a.m., recess was had.)

2 THE COURT: Mr. Zelenka, call your next
3 witness.

4 MR. ZELENKA: William Yarborough.

5 THE CLERK: Please come forward and raise your
6 right.

7 THE WITNESS: (Complying.)

8 THE CLERK: Do you swear or affirm the
9 testimony you're about to give shall be the truth,
10 the whole truth, and nothing but the truth?

11 THE WITNESS: I do.

12 THE CLERK: Thank you, sir.

13 WILLIAM YARBOROUGH,
14 having been produced and first duly sworn as a
15 witness on behalf of the Respondent, testified as
16 follows:

17 DIRECT EXAMINATION

18 BY MR. ZELENKA:

19 Q. Mr. Yarborough, how are you currently employed?

20 A. I have my own practice in Greenville, South
21 Carolina.

22 Q. Okay. How were you employed from 2016 through
23 2018?

24 A. I had my own practice in Greenville, South
25 Carolina for the second time. I don't think we were

1 in the same building though.

2 Q. How long have you been practicing law?

3 A. I've probably practiced law for about 30 years.

4 Q. And what part of your practice has been
5 criminal law?

6 A. Ninety-five percent; 96 percent.

7 Q. Okay. Have you always been a defense lawyer?

8 A. No. I've been an Assistant State Prosecutor,
9 and I was an Assistant United State's Attorney for
10 seven years.

11 Q. Okay. As part of your practice, were you
12 involved in violent crimes?

13 A. Yes, sir. Like 20 or 30 percent of my practice
14 is violent.

15 Q. Armed robbery cases?

16 A. Armed robbery cases.

17 Q. Common law robbery?

18 A. Common law robbery.

19 Q. Have those violent crime cases been a
20 significant part of your practice?

21 A. They have been over the years.

22 Q. Okay. And as part of your practice, did you
23 become involved in representing Phillip Walker?

24 A. I did become involved in representing Phillip
25 Walker. He was paid by -- his father paid me to try

1 to help him.

2 Q. Okay. Do you recall when you became retained
3 in that?

4 A. I sent a letter of representation on 4/21/16.

5 Q. Okay. And at that time, had Mr. Walker been
6 represented previously?

7 A. I believe so. I'm not exactly sure who was
8 representing him before, but it was someone in the
9 Public Defender's Office here.

10 Q. Okay. And as part of that representation, did
11 you have discussions with Mr. Walker concerning his
12 obligations as a defendant?

13 A. Of course. We -- we -- I met with him on
14 numerous times when he was in -- in custody.

15 Q. Okay. Was -- did you talk to him about his
16 obligations to keep you notified of his addresses,
17 phone numbers?

18 A. No. What was interesting about that is, I
19 think probably for -- I'm not sure what date he got
20 out. I was hired on 4/21/16. Whatever the bond
21 form says after that. I remember him being in jail
22 five or six months, but I could be off a month
23 before that. So, yes, we would've discussed the
24 discovery, potential outcomes, possible trials, the
25 strength of the State's case.

1 And I remember at some point, his father
2 calling me and I'm not sure if I filed a motion to
3 have the bond reduced or if his father told me he
4 was getting him out on bond.

5 Q. Okay. And after he got released on bond, were
6 you aware that he had relocated from the address on
7 the bond form to North Carolina?

8 A. Yes. We -- we -- we had the address of his
9 father as the address that was where he was living.

10 Q. Okay. And were you able to communicate with
11 him fairly regularly?

12 A. I spoke to him regularly, and as I'm going back
13 and looking at my -- the transcripts. I spoke to
14 him several times the week before trial.

15 Q. Okay. You personally spoke with Mr. Walker a
16 week before trial?

17 A. That's what I told Judge ---

18 Q. --- McIntosh?

19 A. Yeah, McIntosh.

20 Q. Okay. And how did that discussion go? Was it
21 by phone? Was it in person?

22 A. It was -- it was by phone. We had a meeting
23 scheduled. I want to say that they came down and we
24 met with them and -- and with him and his father I
25 think in October or November. And then they were

1 going to come back on -- because I think we were
2 number one on the trial docket or close to it. I
3 had an appointment scheduled at two o'clock on
4 Sunday the day before trial. And at that point,
5 they -- his father called me and said they weren't
6 coming. His father -- neither one of them were
7 coming.

8 Q. Okay. So prior to that meeting, had you had
9 discussions with him about the fact that his case
10 was going to be tried that week of December 5th?

11 A. Yes, I did.

12 Q. Did he indicate to you that he would be there?

13 A. He did. He had an appointment with me the day
14 before, so, yes, he did.

15 Q. Okay. Was your client aware that his failure
16 to come to trial could result in a trial in absence?

17 MS. ROSS: I'd object to speculation.

18 THE WITNESS: Yeah, I'm going to ---

19 THE COURT: I sustain the objection.

20 BY MR. ZELENKA:

21 Q. Well, let me show you State's Exhibit 1 and
22 show you page 2 of Respondent's Exhibit No. 1. Does
23 that ---

24 A. I would not have gone over this with him, but
25 that would've been his bond paperwork.

1 Q. Okay. And that bond paperwork says that he
2 understands an informed right and obligation to be
3 present at the trial. And failure to attend, the
4 court -- the trial will proceed in my absence. And
5 he acknowledged that in signing the bond form on
6 that date; is that correct?

7 A. Yes. That's what it looks like to me.

8 Q. Okay. And so how exactly did you notify him of
9 that December 5th trial date?

10 A. I -- I knew that he had gotten a letter about
11 it because we were in discussions about the date
12 coming up. And he had come in the month or two
13 before because I think we were on a docket at that
14 point, and so I knew that he knew. I mean, we were
15 -- we had regular communications. I've gone back
16 and looked at our -- our online file. I could not
17 find in our waive where we sent him direct letters,
18 and so I'm not a hundred percent positive that -- I
19 know we had letters back and forth with his father,
20 and so -- but I know I communicated with him because
21 I told Lawton McIntosh that I did.

22 Q. Okay. Did -- were you aware that he had
23 relocated in Texas at that time?

24 A. I think I learned that he had relocated in
25 Texas after he didn't show up for trial here. I

1 think that would've been how. Somehow or another I
2 heard that -- I had heard that before.

3 Q. Okay. But prior to trial and prior to that
4 trial date, even in your communications with him
5 directly, he had indicated to you his intent to come
6 to court and appear at that December 5th date?

7 A. He -- he had come numerous times, at least two
8 or three times before he actually got out of jail.
9 So, yes, his intentions were to come.

10 Q. Okay. And in that week when you were having
11 telephone communications with him, did he indicate
12 to you he intended to come?

13 A. He did indicate to me he intended to come. I
14 had an appointment with him at two o'clock on
15 Sunday.

16 Q. Okay. Did you attempt, after that first day of
17 Monday, to get in touch with him?

18 A. I -- I did attempt to get in touch with him
19 because I had noticed that he had called me in the
20 middle of the night on the Sunday night before
21 trial. I had a missed phone call from my cell
22 phone, and it was from him. And I contacted his
23 father because nobody answered the other phone. And
24 at that point, I knew -- his father told me he
25 wasn't coming.

1 Q. Okay.

2 A. I -- I -- you know what? His father didn't
3 even tell me at that point he was in Texas, so, no,
4 I didn't know he was in Texas.

5 Q. Okay. So the defendant had tried to call you
6 midnight our time the day before trial was supposed
7 to start?

8 A. In the night. Yes. That's correct.

9 Q. Okay. And up until that time, the indication
10 was he was supposed to have met with you at two
11 o'clock that same day that he called you later at
12 midnight, correct?

13 A. That's correct.

14 Q. And he never indicated to you, as you reflected
15 to the court a number of times during the trial,
16 that he did not intend to come to court?

17 A. That's correct.

18 Q. Okay.

19 A. He told me that what he'd do is, he was busy
20 trying to get everything lined up so that his father
21 and -- and mother could take care of his children.
22 That's what I understood was going on.

23 Q. Did you understand that from him?

24 A. Yeah.

25 Q. Okay. And after that first day, you attempted

1 to get in touch with him again, according to the
2 trial transcript?

3 A. Correct. I did. I tried again without any
4 luck.

5 Q. Okay. You moved for a continuance?

6 A. I did.

7 Q. And that was based upon his failure to appear,
8 correct?

9 A. That's correct. I moved for a continuance. I
10 think I said that my client's not here and the best
11 alternative is to -- for the State to wait and try
12 him later when he is here. That's what I think I
13 said.

14 Q. And I think what you're looking at is record on
15 appeal, page 4, in transcript page 20; is that ---

16 A. That's correct.

17 Q. Okay. Did you have an opinion that your client
18 knew his case was supposed to be tried December 5th?

19 MS. ROSS: I object to speculation.

20 THE COURT: He's his lawyer. I'll overrule the
21 objection.

22 THE WITNESS: I -- you know, I believe he did.
23 Yes.

24 BY MR. ZELENKA:

25 Q. Okay. Do you believe your client understood

1 that this case was going to be tried either with him
2 or without him?

3 MS. ROSS: I object to speculation.

4 THE COURT: I note your objection. I'll
5 overrule the objection.

6 THE WITNESS: Okay. And I'll say this, I
7 don't -- I can't answer that in the affirmative or
8 negative. I don't -- I don't believe I told him. I
9 think the bond form tells him that he would be tried
10 in his absence. I do not have an independent
11 recollection of telling him that he would be tried
12 in his absence. I did tell his father that I think.

13 BY MR. ZELENKA:

14 Q. You did tell his father that?

15 A. I told his father that.

16 Q. Okay. When did you tell his father that?

17 A. I think right before we were getting ready to
18 start the trial.

19 Q. Was his father here at trial?

20 A. I don't recall him being here. I believe he
21 was in North Carolina.

22 Q. Okay. So he didn't come down for the trial?

23 A. My -- my recollection is he did not come down
24 for the trial. No, sir.

25 Q. When you met with him before the September

1 unsealing of the sentence, did he indicate to you at
2 all in your conversations with him that he wasn't
3 aware the trial was going to occur on December 5th?

4 A. No.

5 Q. Did he acknowledge why he chose not to appear
6 in two years on that day?

7 A. I think he was trying to get the custody issue
8 for his kids outlined. That's what he told me when
9 I met with him later.

10 MS. ROSS: Again, I object to speculation. The
11 transcript will speak for itself as to what he said.

12 THE COURT: He answered the question about what
13 he was told at a later date. I note your objection.

14 THE WITNESS: I didn't know at the time. It
15 was much later.

16 BY MR. ZELENKA:

17 Q. Okay. Did you learn at a later date?

18 A. Yeah, at a later date. He was continuing -- he
19 was always very worried about his children. They
20 were very important to him. And it's my
21 understanding -- I didn't know he was in a treatment
22 center. It was my understanding he was working on
23 trying to get the custody set up for his children is
24 what I understood the reason for him getting out of
25 jail after he had been in that long. That's a long

1 time to be in jail.

2 Q. Okay. Concerning a guilty plea, what offers
3 had been made to you that you shared with your
4 client? What representations did you make?

5 A. Every one of the offers was for armed robbery.
6 I -- this gun was old. It was beat up.

7 I kept thinking Catherine would come around and
8 let him have a strong arm robbery or a common law
9 robbery. I -- I tried every way I could to try to
10 get her to agree to that, and she just wouldn't. I
11 think at the time she felt like that it was the
12 right thing to do was to not -- not let him have an
13 armed robbery -- I mean, not let him have a strong
14 arm robbery. I had a bunch of cases like this and
15 had been able to get a strong arm or a common law
16 robbery.

17 Q. Even though the facts fit the elements of armed
18 robbery?

19 A. The facts fit. I remember the week before and
20 probably right up to it going back and researching
21 that and just going -- a gun that didn't look like
22 it -- it didn't work. Anyway...

23 Q. Yeah. But there was never any change in that
24 throughout your representation?

25 A. Never any change throughout my representation.

1 Q. And your client, in the discussions, didn't
2 want to take the plea as it was offered?

3 A. He did not. I think he was -- he was always on
4 the fact that it was not an armed robbery. I think
5 he'd had some experience with this in North Carolina
6 before.

7 Q. And he had a couple of common law robbery
8 convictions on his record?

9 A. That's correct.

10 Q. As revealed by Solicitor Huey to the Court at
11 the time of the trial?

12 A. That's correct.

13 MR. ZELENKA: Okay. Please answer any
14 questions by the applicant's lawyer.

15 THE COURT: Thank you. Ms. Ross.

16 MS. ROSS: May it please the Court?

17 CROSS-EXAMINATION

18 BY MS. ROSS:

19 Q. Hi there, Mr. Yarborough. You talk about
20 communications about this trial date with
21 Mr. Phillip Walker, the applicant here. Those were
22 not in person, were they?

23 A. They were always on the phone. Yeah, they
24 were -- they were -- now, he did appear here a
25 couple of times I think. I think his father brought

1 him down here. I think that's correct. And I don't
2 know if it was once or twice, but I remember meeting
3 him over here and then those cases being continued.
4 That's the way I understood it.

5 Q. But all of those communications talking about a
6 trial date were over the phone?

7 A. Correct.

8 Q. And is it fair to say that most of those
9 communications were with his father, not with
10 Mr. Walker, Phillip Walker?

11 A. Most I don't know. I mean, I think.

12 Q. Wasn't some testimony ---

13 A. A lot of times I would talk to his dad. You're
14 right.

15 Q. Okay. And wasn't there some testimony that I
16 think that you presented at the trial that you seen
17 a call from what you thought was Mr. Phillip
18 Walker's phone number at midnight the night before?

19 A. Correct. Now, I did have two. I know I had a
20 number for his dad. There was another number
21 that -- that Phillip would use at times, and so I
22 believe that was from Phillip. I don't think -- I
23 think that's what I told the judge. I think that
24 was from Phillip. I don't think that was from his
25 father. His father would never call me late in the

1 evening, middle of the night.

2 Q. Okay. But that didn't believe -- you don't --
3 that was just a number on a phone that you had seen
4 before?

5 A. Yeah, I could've been -- I could've been wrong
6 and I told the Court that same thing.

7 Q. All right. And just quickly on the notice form
8 that was in here. As far as maybe acknowledgement
9 by the defendant that's often used in trial in
10 absence, this bond form.

11 A. Right.

12 Q. Nowhere on that form does it actually notify of
13 the trial date, does it?

14 A. It doesn't. No.

15 Q. And unlike when you get Miranda rights, he's
16 not initialling any of this acknowledging that he
17 signed when he gets out?

18 A. That -- that's correct. Yeah.

19 Q. So you can't say whether he actually knew he
20 would be tried in his absence?

21 A. No. I don't think I said that. I don't
22 remember -- I don't think I normally talk to clients
23 about that. Maybe I should.

24 MS. ROSS: Okay. I have no further questions.

25 THE COURT: All right. Mr. Yarborough, you can

1 step down.

2 THE WITNESS: May I be excused, Your Honor?

3 THE COURT: Any objection to Mr. Yarborough
4 being excused?

5 MR. ZELENKA: No objection.

6 MS. ROSS: No objection.

7 THE COURT: Thank you.

8 THE WITNESS: Thank you, Your Honor.

9 (Witness excused.)

10 THE COURT: Mr. Zelenka, any other witnesses?

11 MR. ZELENKA: No further witnesses. The State
12 will -- will rest on -- on the conclusion of the
13 trial transcript, which was provided to the Court
14 previously which indicates throughout the inquiries
15 that Ms. Huey and Mr. Yarborough made to the Court.

16 THE COURT: All right. Thank you. Anything
17 else for the record?

18 MR. ZELENKA: Nothing else, Your Honor, from
19 the State.

20 THE COURT: Ms. Ross.

21 MS. ROSS: I would just briefly argue that the
22 -- the appellate opinion speaks for itself whether
23 that trial in absence went forward properly because
24 Rule 16 was not followed. And if you look at *State*
25 *v. Rapp*, 808 S.E. 2d 821 and 823, there has to be a

1 finding that notice of his right to be -- that --
2 excuse me -- the defendant has been given notice of
3 his right to be present at trial and a warning that
4 he could be tried in his absence if he failed to
5 appear. That simply was not met and that was the
6 finding of the Court of Appeals. And for that
7 reason, the whole argument is part of your record
8 that Mr. Grose made in his appeal was not preserved
9 and we would say that that is a strong argument that
10 it wasn't presented in that -- in that appeal and in
11 his appellate filings. And for that reason, we'd --
12 we argue that Mr. Walker's constitutional rights
13 were violated.

14 We have also the Sixth Amendment through the
15 Fourteenth U.S. Constitutional, that Article 1,
16 Section 14, and I believe it's Rule 16 of the Rules
17 of Criminal Procedure were not followed and that
18 denied Mr. Walker that right to be present in trial.

19 Had he been present, the prejudice there is in
20 all likelihood he testified to, he would've, in
21 turn, pled guilty. He'd been advised not to plead
22 guilty and just to wait. If he had pled guilty, he
23 would've received a substantially lesser, you know,
24 lesser sentence and we'd argue that was prejudiced
25 to him.

1 As to the mis-advice about his asking for a
2 strong arm, that has been testified to, but we would
3 just put forward that Mr. Yarborough admitted that
4 he was waiting and telling his client not to take
5 that -- the offer of an armed robbery and that
6 certainly did prejudice Mr. Walker.

7 THE COURT: All right. Thank you.

8 MS. ROSS: Thank you, Your Honor.

9 THE COURT: I'll consider your arguments for
10 the testimony today and everything that's been made
11 part of the record. I'll issue -- I'll take it
12 under advisement. I'll issue my ruling by the end
13 of next week.

14 I'm sorry, Mr. Zelenka.

15 MR. ZELENKA: Yes. A couple of things, Your
16 Honor, just to follow-up what she said. We
17 acknowledge an individual has the right to notice to
18 be tried and can be tried in his absence if he's
19 aware that his failure to appear with that notice
20 would cause him to be tried in his absence.

21 We think the record that's been presented has
22 established that he was aware that the case was
23 going to be tried on December 5th to the
24 communications he had with his lawyer. He was aware
25 from the bond form, page 2 that he signed, that he,

1 in fact, could be tried in his absence if he failed
2 to appear as a result of the bond. He had notice of
3 the trial based on the communications that he had
4 with his lawyer at that particular time.

5 The State did the best effort it could've based
6 on the information as a result of the bond form to
7 provide that information to the address that was
8 reflected on the bond form, which was appropriate
9 for giving that type of notice.

10 What I think is additionally unique here is the
11 individual from the witness stand today acknowledged
12 he committed the crime. He acknowledges he
13 committed the robbery. He acknowledged that he
14 committed the robbery with the .22, sufficient to
15 meet the terms of an armed robbery.

16 There's a case in the South Carolina Supreme
17 Court, *State v. Sroka*, I believe, and additional
18 cases, *Whetsell v. State* and *Holly v. State*, which
19 says when a defendant under oath after conviction
20 admits that he had committed the crime, that voids
21 his ability to get relief from that particular
22 conviction. He's done that here today. I can
23 provide those cites in the record on *State v. Sroka*,
24 S-r-o-k-a. And I believe it's *Whetsell v. State*,
25 Whetsell.

1 THE COURT: I'm sorry. What was the last one?
2 Whetsell?

3 MR. ZELENKA: *Whetsell v. State* and *Hawley v.*
4 *State*, H-a-w-l-e-y. If I'm in error on these, I'll
5 provide those cites both to the Court and to
6 counsel.

7 The last two cases were post-conviction relief
8 cases out of Charleston County, where such cases
9 occurred during the PCR hearing, but we would
10 further submit that counsel did not have efficiently
11 in advising his client about the circumstances of
12 the plea offers that were made. He gave his client
13 the opportunity, an option, to enter pleas to armed
14 robbery with the sentence credibly given by
15 Solicitor Huey, but it was an armed robbery for 15
16 years with the ability to argue something less.

17 And the defendant had not agreed to do that
18 during that interim time period, and I don't think
19 that counsel could be held inefficient or prejudiced
20 and shown based purely on the fact of the outcome of
21 that particular crime.

22 And the defendant during the September
23 proceeding, the judge treated it as not only the
24 unsuitable sentence, but a motion for
25 reconsideration of the sentence. And he took those

1 factors into account. There were representatives of
2 the family and by the defendant. And I think it was
3 well represented, that Mr. Yarborough met the
4 standards required under *Strickland v. Washington*
5 and did not perform inefficient for the record.

6 And I would submit that had the record been
7 fully presented as were revealed through Counsel
8 Yarborough on his communications with the defendant,
9 the bond form, and the like, I submit that the
10 technical satisfaction of Rule 16 would've been met
11 and the case would've gone forward.

12 THE COURT: All right. Thank you. Ms. Ross.

13 MS. ROSS: Brief reply. I didn't argue before
14 that you'll note from the bond cards that were sent
15 up there were returned to sender as undeliverable
16 for what it's worth some of those things. And
17 Ms. Huey did testify that there was no actual
18 mailbox at that place, and that would just go to
19 whether notice was given ---

20 THE COURT: All right.

21 MS. ROSS: --- to the applicant. Thank you.

22 THE COURT: All right. Thank you. Court will
23 take it under advisement. I'll issue my ruling by
24 the end of next week. Thank you.

25 (At 11:30 a.m., the proceedings concluded.)

* * * * *

C E R T I F I C A T E O F R E P O R T E R

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

I, the undersigned, Lisa Scott, Circuit Court Reporter for the Tenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and the evidence introduced in the hearing of the captioned cause, relative to appeal in the Circuit Court for Anderson County, South Carolina, on the 21st day of August, 2023.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

April 22, 2024

/s/Lisa Scott

Lisa Scott
Circuit Court Reporter

FILED-CLERK'S OFFICE

ANDERSON SC

BAIL PROCEEDING

FORM II

2016 AUG 12 PM 12:49

IN THE

COMMON PLEAS AND
GENERAL SESSIONS2015A0420701014, 2015A0420701015
Criminal Charging Document No.

STATE OF SOUTH CAROLINA

COUNTY OF Anderson☒ COURT OF GENERAL SESSIONS☐ MAGISTRATE COURT☐ MUNICIPAL COURT OF _____

STATE OF SOUTH CAROLINA

ORDER SPECIFYING METHODS AND CONDITIONS OF RELEASE

Philip Walker
NAME OF DEFENDANTOffense Charged: Armed Robbery, Possession of Weapon during violent crime

At a bail proceeding conducted by the undersigned judge, for the defendant named above, it was determined by the court (check one or both):

☒ The release of the defendant on recognizance will not reasonably assure his appearance as required.☒ The release of the defendant on recognizance will result in an unreasonable danger to the community.

This determination was based upon the following findings of fact: _____

(Considerations: Nature and circumstances of the offense charged, the defendant's family ties, employment, financial resources, character and mental condition, the length of his residence in the community, his record of convictions, and any record of flight to avoid prosecution or failure to appear at other court proceedings.)

THEREFORE, IT IS HEREBY ORDERED:

1. That the above named defendant be released from custody on the condition that he will personally appear before the designated court at the place, date and time required to answer the charge made against him and do what shall be ordered by the court and not depart the State without the permission of the court and be of good behavior.

2. That the above named defendant be released from custody provided as follows:

CASH IN LIEU OF BOND

☐ The defendant, acknowledges himself to be indebted to the State of South Carolina in the sum of _____ to secure his release from custody. Should the defendant fail to comply with all terms and conditions of this Order, this sum of money is subject to being forfeited to the State.

CASH PERCENTAGE IN LIEU OF BOND

☐ The defendant, acknowledging himself to be indebted to the State of South Carolina in the full amount of _____, his release to be obtained by payment to the court of _____ % (not to exceed 10%) of the full amount of the bond, deposits _____ to secure his release from custody. Should the defendant fail to perform the conditions of this Order, the full amount shall be levied on his real and personal property for the use of the State.

APPEARANCE RECOGNIZANCE WITH SURETY

1 ☒ The defendant will provide good and sufficient surety approved by the court, in the form hereinafter set forth in this Order, acknowledging an indebtedness to the State in the amount of \$50,000.

3. That the defendant shall appear at (check one):

☒ the term of _____ COURT OF GENERAL SESSIONS beginning on 1/22/16
at 9 o'clock, A.M. at Anderson County Court House 100 S. Main St
and remain there throughout that term of court. If no disposition is made during that term, the defendant shall appear and remain throughout each succeeding term of court until final disposition is made of his case, unless otherwise ordered by the court.☐ the session of _____ MAGISTRATE COURT _____ MUNICIPAL COURT beginning on _____
at _____ o'clock, _____ M, at _____
If no final disposition is made during that session, the defendant shall appear at such other times and places as ordered by the court.

4. That the defendant will notify the court promptly if he changes his address from the one contained in this order and he will comply with those conditions described hereinafter in the Order.

INITIALS OF DEFENDANT PWSIGNATURE OF JUDGE [Signature]DATE 12/17/15ORIGINAL AND ONE COPY OF THIS FORM ARE TO BE COMPLETED IN EVERY BAIL PROCEEDING IN WHICH IT IS USED
SCCA/511 (Revised 9/2006) Original Copy For The Trial Court - Copy For The Defendant

PENGAD 800-681-6889

EXHIBIT

#1

23 AUG 23 AM 9:59:50
Anderson, SC DOC. CP/68

ACKNOWLEDGEMENT BY DEFENDANT

I understand that if I violate any condition of this Order, a warrant for my arrest will be issued.

I understand and have been informed that I have a right and obligation to be present at trial and should I fail to attend the court, the trial will proceed in my absence.

It has been explained to me that if I fail to appear before the court as required, a warrant for my arrest will be issued.

ADDRESS Hall St SIGNATURE OF DEFENDANT Philip W. Walker
 CITY/STATE/ZIP Anderson, SC 29624 DATE _____
 SOCIAL SECURITY NUMBER _____ DRIVER'S LICENSE OR ID NUMBER _____ ATTORNEY REPRESENTING ACCUSED (IF KNOWN) _____

SPECIAL CONDITIONS OF RELEASE

a. ☐ Placement in custody. The defendant is placed in the custody of: _____ NAME OF PERSON OR ORGANIZATION _____

ADDRESS _____ CITY/STATE _____ ZIP _____ TELEPHONE _____
 who agrees (1) to supervise the defendant as set forth by the court, (2) to use every effort to assure the appearance of the defendant at all scheduled hearings before the court, and (3) to notify the court immediately in the event the defendant violates any conditions of his release or disappears.

SIGNATURE OF CUSTODIAN (IF APPROVED)

DATE

b. ☐ Restrictions on Travel, Association or Residence. The defendant will comply with each of the following conditions: _____

c. ☐ Part-time Release. The defendant will be released from custody from _____ o'clock, _____ to _____ o'clock, _____
 on _____ on condition that he return to the custody of _____
 at _____ as designated.
 LOCATION _____

d. ☐ Other Conditions. The defendant will comply with the following other conditions of release: _____

APPEARANCE RECOGNIZANCE WITH SURETY

On the 8th day of August, 2016, personally appeared before the undersigned judge the surety named below who acknowledged himself indebted to the State of South Carolina, in the sum of \$50,000, such sum to be levied on his real and personal property for the use of the State, should named defendant fail in performing the conditions of this Order.

The surety, being duly sworn, says that he is a resident and free holder within the State and is worth the sum acknowledged and underwritten herein, over all his debts and liabilities, and exclusive of property exempt from execution.

Alden Wheeler 603-673-8388 SIGNATURE OF SURETY BONDSMAN A. Wheeler
 NAME OF SURETY BONDSMAN 124 Grand Oak Circle
 ADDRESS OF SURETY BONDSMAN Pendleton SC 29670
 CITY/STATE/ZIP Pendleton, SC 29670 SIGNATURE OF JUDGE Philip M. Malone
 NAME OF INSURANCE COMPANY Roche Surety DATE 8/8/2016
 ADDRESS OF INSURANCE COMPANY 4107 N. Hines Ave
 CITY/STATE/ZIP Tampa, FL 33607

ANDERSON SOLICITORS OFFICE

P.O. Box 8002

Anderson, SC 29622

PENGAD 800-631-6889

EXHIBIT

#2

USA FOREVER

Appearance Date: October 18, 2016 at 9:00 AM

4th Floor Courtroom

Prosecutor: Catherine T. Huey

Ref: Philip Wesley Walker

Philin Wesley Walker

NIXIE

296 SE 1

0010/10/16

RETURN TO SENDER
NO MAIL RECEIPT
UNABLE TO FORWARD

NMR

BC: 29622800202

*0954-08520-06-36

You are **REQUIRED** to be in court on the date and time shown on the **FRONT** of this card. Failure to appear and remain until discharged will result in a bench warrant being issued for your arrest. Also bond estreatment proceedings will begin and **you could be tried in your absence**. If you have not retained an attorney and feel you need one, you must hire one **OR** contact the Public Defender **PRIOR TO COURT**. If you believe you qualify for the Public Defender you must complete the application with the Clerk of Court, pay your fee and contact the Public Defender's Office. Do not wait until your court date to contact an attorney.

Be prepared to have your case disposed of on your appearance date.

C Adams

Solicitor, Tenth Judicial Circuit

23 AUG 23 AM 9:54:07
HENDERSON, SC COCL CP/65

YOU MUST REMAIN IN COURT UNLESS EXCUSED BY THE SOLICITOR'S OFFICE

*(No Shorts, Tank Tops, Offensive T-shirts, Cellphones,
or other electronic devices allowed in Court)*



GREENVILLE SC 296
ANDERSON SOLICITOR'S OFFICE

P.O. Box 8002

Anderson, SC 29622

Appearance Date: **December 5, 2016 at 9:00 AM**

4th Floor Courtroom

Prosecutor: Catherine T. Huey

Ref: Philip Wesley Walker

NIXIE

296 SE 1

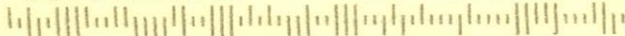
0011/29/16

RETURN TO SENDER
NO MAIL RECEPTACLE
UNABLE TO FORWARD

NMR

BC: 29622800202

*2954-06203-21-38



You are **REQUIRED** to be in court on the date and time shown on the **FRONT** of this card. Failure to appear and remain until discharged will result in a bench warrant being issued for your arrest. Also bond estreatment proceedings will begin and **you could be tried in your absence**. If you have not retained an attorney and feel you need one, you must hire one OR contact the Public Defender **PRIOR TO COURT**. If you believe you qualify for the Public Defender you must complete the application with the Clerk of Court, pay your fee and contact the Public Defender's Office. Do not wait until your court date to contact an attorney.

Be prepared to have your case disposed of on your appearance date.

C. Adams

Solicitor, Tenth Judicial Circuit

ANDERSON, SC COCL CP/66

128 AUG 28 AM 9:54:14

YOU MUST REMAIN IN COURT UNLESS EXCUSED BY THE SOLICITOR'S OFFICE

*(No Shorts, Tank Tops, Offensive T-shirts, Cellphones,
or other electronic devices allowed in Court)*

23 AUG 23 AM 9:54:20
 Anderson, SC CDC, CP/GS

****MONDAY, DECEMBER 5, 2016****

ANDERSON COUNTY GENERAL SESSIONS
PRESIDING JUDGE(S): McINTOSH
TERM: December 5-9, 2016

Published: Friday, November 18, 2016

Indictment Number(s)	Defendant [jail or bond]	Offense(s)	Arrest Date	Defense Attorney	Asst. Sol.
2016-GS-04-0594	Phillip Walker [bond]	Armed Robbery; PWDCVC	12.16.2015	Bill Yarborough	CTH
2016-GS-04-2426 to 2429	Christopher Eugene Self	Murder x 2; Attempted Murder x 2 *Hearing only*	05.02.2016	Joe Watson	LDP
2016-GS-04-0864 to 0867	Oscar Ernest Lance	Murder; Burglary 1 st ; Arson 3 rd x 2 *Hearing only*	11.13.2015	Lee Cole	LDP

*****Cases will roll day to day if not reached on Monday, and their order may vary. ALL attorneys should report to the 4th floor courtroom at 9:30 a.m. on Monday.***

DNF, Danny Fulmer
 CTH, Catherine T. Huey
 AGM, Austin McLain
 AAM, Al Means

CLM, Chelsey Moore
 SLO, Stan Overby
 LDP, Lauren D. Price
 KWR, Kristin W. Reeves



25 FEB 19 AM 11:21:28
Anderson, SC CDC CP/06

STATE OF SOUTH CAROLINA
COUNTY ANDERSON

Philip Wesley Walker, SCDC #374226,

Applicant,

v.

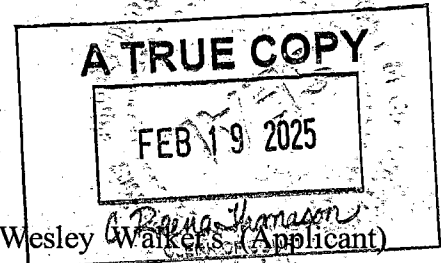
State of South Carolina,

Respondent.

) IN THE COURT OF COMMON PLEAS
) FOR THE TENTH JUDICIAL CIRCUIT

) CASE NO. 2021-CP-04-01938

ORDER OF DISMISSAL



This matter comes before the Court by way of Philip Wesley Walker's application for post-conviction relief (PCR) filed on October 4, 2021. Respondent, the State of South Carolina, filed its Return on May 11, 2022, requesting an evidentiary hearing to resolve the claims set forth in the application.

On August 21, 2023, an evidentiary hearing was held at the Anderson County Courthouse before the Honorable Daniel Dewitt Hall. Applicant was present and represented by Susannah C. Ross, Esquire. Deputy Attorney General Donald J. Zelenka represented Respondent. In support of these claims, Testimony was received from Charles Grose, the Applicant, and the Applicant's father. Respondent presented testimony from Senior Solicitor Catherine Huey, and William G. Yarborough, III, Esquire (Trial Counsel).

Following a thorough review of the record in its entirety, along with the testimony and evidence presented at the evidentiary hearing, this Court finds Applicant has failed to establish any constitutional violations or deprivations entitling him to relief and, accordingly, denies and dismisses this action with prejudice.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Anderson County Clerk of Court. Applicant was arrested on December 16, 2015, following an investigation into an armed robbery that occurred at the Family Dollar on 1402 East River Street. During its March 2016 term, the November 17, 2021, the Anderson County Grand Jury indicted Applicant for armed robbery and possession of a weapon during the commission of a violent crime (2016-GS-04-0594).

On December 5, 2016, the case was called to trial before the Honorable R. Lawton McIntosh and a jury. William G. Yarborough, III, Esquire, represented Applicant. Assistant Solicitors Catherine T. Huey and William E. Stolarski prosecuted the case.

PRE-TRIAL

On the morning of December 5, 2016, the prosecution and defense counsel selected a jury and the trial court heard a motion challenging the victim's identification of Applicant as the robber pursuant to Neil v. Biggers, 409 U.S. 188 (1972). (R. 4). Applicant was not present during the proceedings on that date. Counsel at the beginning of the hearing moved for a continuance, "based on that my client is not here. The best alternative is for the State to wait and try him when he is here." R. p. 4-5. Counsel advised he had been in contact with Walker and did not understand why he was not present in court. R. p. 4, line 25 – p. 5, line 3. Noting that they had previously discussed Applicant's absence back in chambers, Judge McIntosh denied counsel's motion for a continuance. (R. 5). The *Biggers* hearing then proceeded. Judge McIntosh ultimately found the identification admissible. (R. 50).

The court reconvened on December 7, 2016. Counsel Yarborough again informed the trial court that he had not been able to make contact with Applicant. (R. 56). He stated he had

tried to talk with the Applicant that morning without success. He stated that he had received an email from his bondsman who had not heard from him either. R.p. 56. Yarborough stated he had spoken with the bondsman on Monday afternoon who indicated he had been in contact with him.

A hearing then proceeded regarding the admissibility of Applicant's December 16, 2015, statement to law enforcement pursuant to Jackson v. Denno, 378 U.S. 368 (1964). Judge McIntosh found the statement was admissible. (R. 67).

Counsel then asked the court to reconsider a continuance because Applicant was not there which the court denied. (R. 69). The trial court observed, "[W]hen we met in chambers on Monday, I believe you told me that you had spoken with your client several times last week, were supposed to meet with him . . . on the weekend and did show that you were in communication with his father." R. p. 70, lines 2-9. The trial court mentioned counsel "actually had a call from him last night" and counsel confirmed he did and that he attempted to call him back. R. p. 70, lines 8-16. Yarborough stated that he had received a call from him in the middle of the night and tried to call him back. His father told Yarborough that he had still not been able to get in touch with him. R.p. 70, l. 13-18.

Judge McIntosh again denied the motion. (R. 69-70). Solicitor Huey noted, "[W]e certainly noticed the defendant of this trial. We sent a card – a bond card November 18th. We mailed that out to him, his bondsman, and then of course Mr. Yarborough." (R. 70). The trial then proceeded *in absentia*.

SUMMARY OF EVIDENCE ADDUCED AT TRIAL

Applicant entered the Family Dollar store, located at 1402 East River Street, to purchase Pringles and Airheads with an EBT card. (R. 14-15). The cashier, Natasha Oliver (Victim),

rang up the items. (R. 15). Applicant then asked for a pack of Newport cigarettes, and she rang those up as well. (R. 15). She turned around to see Applicant pointing a small and rusty gun at her face. (R. 92). Applicant warned Victim that he would pull the trigger if she screamed. (R. 15). **She assumed the gun worked when he pointed it at her.** R.p. 107, l. 2-4. Fearing for her life, the Victim complied with Applicant's demand for money. (R. 93). She quickly emptied all the cash out of the drawer. (R. 93). With money in hand, Applicant left the store and proceeded down the sidewalk. (R. 96). As soon as Applicant left the building, Victim pushed the panic button. (R. 96).

Sergeant Trevor Simmons and his partner responded to Family Dollar. (R. 114-15). On the way, they observed a man looking straight ahead, intently ignoring the passing vehicles with sirens blaring. (R. 116). They suspected the man was the robber, but he did not have on a brown jacket per Victim's description. (R. 116). After speaking with Victim and receiving a more detailed description, they decided that the man they suspected really was the robber and went back to try and find him. (R. 116-17). They located him in about three or four minutes. (R. 117). He had a wad of cash in his pockets; cigarettes; a Family Dollar bag with a receipt for Pringles and Airheads; and an EBT card. (R. 119-20). Applicant was cooperative, admitted to the robbery, and admitted he had what he described as a "pop gun," but what he also referred to as a .22. (R. 134, 238, 132-33). Thirty minutes after the robbery, law enforcement asked the Victim to verify whether the man they had in custody was the robber. (R. 102-03). Victim immediately recognized Applicant as the man who had robbed the Family Dollar. (R. 103).

Sara Smith worked across the street from Family Dollar. She saw a man throwing clothes in a dumpster and found it suspicious enough to take pictures of him. She notified the officers that had gathered at Family Dollar. (R. 102-03). Detective Ty Blackwell then searched

the dumpster and located a brown jacket and hat consistent with the Victim's description to law enforcement as to what the robber was wearing. Underneath the jacket, they found a small caliber handgun, a .22 type pistol that was rusty and empty. (R. 152, 155, 158, 160).

Throughout the trial, Counsel argued the surveillance did not depict a robbery because Applicant made a purchase. (R. 207).

DECEMBER 7, 2016 VERDICT & SENTENCING

At the conclusion of trial on December 7, 2016, the jury convicted Applicant as indicted. During sentencing, Counsel advised the court that he had been in regular contact with Applicant prior to trial and that he had no idea what happened. (R. 220). He noted that they had discussed a plea offer, and Applicant indicated he would plead guilty to strong armed robbery.¹ (R. 220). Counsel asked the court for some leniency, stating that Applicant was cooperative when apprehended. (R. 222). Judge McIntosh replied, "[Y]ou're right, I mean, he just said, 'Okay. Here I am. I give up. I did it.' Give him some credit for that." R. p. 222, lines 20-25. At that time, Judge McIntosh sealed Applicant's sentence to be imposed once found and arrested.²

OCTOBER 12, 2017 UNSEALING OF SENTENCE

On October 12, 2017, Applicant and Counsel Yarborough appeared before Judge McIntosh. At the start of the hearing, Judge McIntosh unsealed the concurrent sentences of twenty years' imprisonment for armed robbery and five years for possession of a weapon during the commission of a violent crime. (R. 226).

¹ Based upon Senior Solicitor Huey's credible testimony, there was no offer for strong armed robbery.

² Counsel filed a notice of appeal on December 14, 2016. The Court of Appeals dismissed the appeal by order dated March 29, 2017, because the sentence remained unsealed at that time. See State v. Washington, 285 S.C. 457, 458, 330 S.E.2d 28, 2899 (1985) ("So long as the sentence remains sealed, no appeal can be taken.").

The court heard further mitigation from counsel Yarborough. (R. 226–30). Counsel explained, “Because he didn’t have the money to pay his light bill, he robbed the store. He confessed to it.” R. p. 227. Counsel admitted Walker “knew he was supposed to be here, . . .” R. p. 228, lines 21-23. However, counsel explained, Walker “decided that he was going to try to get himself together before he had to face this sentence.” R. pp. 228-29. Walker came back to South Carolina and went to DSS to meet his children, even knowing he had the sentence. R. p. 229, lines 7-10. At this point Judge McIntosh asked Walker where he was and he admitted he was in Texas, supposedly to enter a rehabilitation program in Dallas. R. pp. 229-30. Walker admitted, “I did something wrong,” but his wife lost her job and Duke Power cut off their electricity. R. p. 231.

Walker explained “I’d gone into Family Dollar and I didn’t go in thinking I’m going to rob it today. It wasn’t like that.” R. p. 232, lines 1-3. He described how he bought a can of Pringles and Airheads and then sheepishly robbed her, apologizing for the robbery as he committed it. R. p. 232, lines 6-18. Walker recounted how he admitted to the robbery to the officers. R. p. 232, lines 19-24. He stated that that the gun he used was unworkable.

Finally, Assistant Solicitor Huey spoke on behalf of the State and Victim. (R. 234–36). She stated that the State would concede that the gun would not necessarily work, but that he had pointed the gun at the victim and said to her that he would shoot her if she did not hand over the money. She further stated that he was under the influence at the time of the crime and speculate that the theft was not for paying for Christmas gifts but was for his furthering his habit. She also pointed out that he had four robbery convictions in North Carolina from 2001 and 2006.

At the end of the hearing, Judge McIntosh noted that he was interpreting the hearing as a motion to reconsider the sentence. (R. 236). He stated he was taking the matter under

advisement. (R. 236). Later that afternoon, Judge McIntosh issued an order denying the motion to reconsider. (R. 256).

DIRECT APPEAL

Applicant filed a timely notice of appeal. E. Charles Grose, Jr., perfected Applicant's appeal by briefing the Court of Appeals on the following issue:

Did the trial judge err by denying trial counsel's motion to continue the trial so Phillip Walker could be present at his jury trial when the trial judge did not make findings of fact regarding whether the Mr. Walker had received notice of his right to be present and whether the Mr. Walker had been warned that the trial would proceed in his absence upon a failure to attend court?

Following briefing and oral argument, the Court of Appeals affirmed Applicant's convictions and sentences, finding:

Walker's Rule 16, SCRCrimP objection is not preserved because he did not specifically object to a trial *in absentia* or argue to the trial court that he did not receive notice of the trial or was unaware the trial would proceed in his absence. A motion for a continuance is not in itself enough to preserve a Rule 16, SCRCrimP objection.

State v. Walker, Op. No. 2020-UP-290 (S.C. Ct. App. filed Oct. 14, 2020). Applicant's subsequent petition for rehearing was denied by order dated December 9, 2020.

On January 8, 2021, Applicant filed a petition for a writ of certiorari to our Supreme Court on the following issues:

- I. The Court of Appeals erred as a matter of law when it agreed with the State and held Phillip Walker failed to raise this issue to the trial court, and it is therefore unpreserved for appellate review.
- II. The trial judge erred by denying trial counsel's motion to continue the trial so Phillip Walker could be present at his jury trial when the trial court did not make findings of fact regarding whether the Mr. Walker had received notice of his right to be present and whether the Mr. Walker had been warned that the trial would proceed in his absence upon a failure to attend court.

The State filed its return to the petition on January 21, 2021. Applicant then filed a reply to the State's return on February 1, 2021. On August 6, 2021, the Court issued an order denying Applicant's petition. State v. Walker, S.C. Sup. Ct. Order filed Aug. 6, 2021. The remittitur was issued that same day.

CURRENT ACTION BEFORE THIS COURT

In his application for post-conviction relief, Applicant alleged he is being held in custody unlawfully based on the following (excerpted verbatim):

1. Ineffective assistance of trial counsel
 - a. "Trial counsel advised me to reject the State's guilty plea offer of 10 years because of his mistaken belief that the offense should be common law robbery (strong arm 1110.)"
 - b. "Failing to object to the trial court trying me in absentia, in violation of the Sixth Amendment S.C. Const. Art. I, § 14. and Rule 15. SCRCrimP, thereby failing to preserve this issue for appellate review, resulting in prejudice when the Court of Appeals held this issue was not preserved for appellate review because trial counsel "did not specifically object to a trial in absentia or argue to the trial court that [I] did not receive notice of trial or was unaware the trial would proceed in [my] absence."

Applicant requested relief in the form of a new trial.

SUMMARY OF THE TESTIMONY AT THE EVIDENTIARY HEARING

APPELLATE COUNSEL'S TESTIMONY

On direct examination, Appellate Counsel Charles Grose testified he filled out Applicant's PCR application but was not representing Applicant's in his PCR action because of the potential for him to be called as a witness. Appellate Counsel Grose testified the Court of Appeals found the issue of Applicant being tried *in absentia* not preserved but the record of Applicant's trial *in absentia* did not reflect the trial judge making specific findings in order to

properly try Applicant *in absentia*. Appellate Counsel testified second issue on appeal related to the ten-year plea offer the he was of an understanding that trial counsel advised Applicant to reject. Appellate Counsel stated that there was a directed verdict motion. R. 171-72; Tr.p. 119-120. Appellate Counsel claimed Applicant's charge legally could have been reduced to strong armed robbery. (Trial counsel requested a charge on strong armed robbery or common law robbery that was denied based upon the Applicant stating in the interview that it was a cap gun. R. 172; Tr.p. 120). Appellate Counsel testified that it was his understanding that Trial Counsel reneged on request for reduced charge³, and Trial Counsel requested for trial to not go forward in absence based on better practice and not based on lack of notice to Applicant. Appellate Counsel testified pursuant to Rule 16, SCRCrimP⁴, a defendant needs actual notice of trial date, and trial transcript does not evidence that notice was given to Applicant of trial date.

On cross-examination, Appellate Counsel testified he did not recall looking at the clerk's report or records before preparing appeal. Lastly, Appellate Counsel testified he might have consulted with Trial Counsel at beginning of appeal but does not clearly recall.

APPLICANT'S TESTIMONY

On direct examination, Applicant testified that had he known he would have been at the trial. He testified prior to trial *in absentia* he had been to court about two or three times, and his

³ Appellate Counsel referenced Trial Transcript page 120 to 122. See R. p. 172-174. Trial record shows that counsel requested a charge on strong arm robbery which the trial court denied. The court concluded that there was no evidence to support it. Tr.p. 120-124. R. p. 172-176. This Court does not construe this testimony to create an additional ground for post-conviction relief. Counsel was not deficient since he made a request for a jury instruction for strong arm robbery which was rejected by the court. He did not renege on a request for a lesser jury instruction.

⁴ "Except in cases wherein capital punishment is a permissible sentence, a person indicted for misdemeanors and/or felonies may voluntarily waive his right to be present and may be tried in his absence upon a finding by the court that such person has received notice of his right to be present and that a warning was given that the trial would proceed in his absence upon a failure to attend the court." Rule 16, SCRCrimP.

father would show him bond card and go to court with him. Applicant testified each time he appeared at court his case was continued. He stated that trial counsel Yarborough advised him he was trying to get Applicant's armed robbery charge reduced to strong armed robbery. Walker testified that he was confident it would be reduced because he found the weapon in his ex-wife's garden and claimed it did not have a firing pin in it. Walker declared that when he told the police that it was wrong to rob, but also that although it was a gun, it was not a dangerous weapon. He wanted the degree of the weapon to be taken into consideration by the solicitor. Applicant stated that his earlier conviction in North Carolina was for common law robbery.

Applicant testified Yarborough seemed confident he could reduce his charge to strong arm robbery. Applicant testified Yarborough advised him his trial strategy was to argue the gun was not dangerous as it was not workable. Applicant testified before Yarborough was retained, the applicant's earlier counsel from the Public Defender's office brought Applicant a ten-year plea offer to armed robbery.⁵ Applicant testified his family advised him not to take it but to wait. He stated that Yarborough also advised him to wait based on possibility of obtaining a reduced charge and Applicant was hoping for an eight (8) year offer.⁶ Applicant testified prior to this crime he had committed a crime in North Carolina and claimed Solicitor Huey misused his prior record to get trial judge to enhance his sentence.⁷ Applicant complained his prior record from 1988 had nothing to do with the charges against him, but it was used against him in sentencing.

⁵ This alleged ten year offer is not consistent with Solicitor Huey's testimony of a 15 year offer from the State.

⁶ This would require a lesser offense of strong arm robbery since armed robbery carries a minimum sentence of 10 years.

⁷ During the initial sentencing proceeding, Solicitor Huey indicated that the Applicant's criminal history of a 1998 breaking and entering, a 2001 auto breaking and resisting a public officer, fleeing, eluding arrest with a motor vehicle from North Carolina, four counts of common law robbery and from 2005 two counts of common law robbery. R.p. 219. During the October 2017 unsealing of the sentence proceeding, Solicitor Huey indicated that Applicant had he had four

Applicant testified at the time of the incident he was in a custody battle with his ex-wife, and he had a drug problem. Walker claimed he did not go to Texas to avoid the trial but to get help. Applicant testified he went to Dallas, Texas, to get help, and he was in constant communication with his father and sister during that time. Applicant testified his father would notify him of his court dates. Applicant claimed he did not receive any information about his trial date in December while in Dallas and asserted that had he been informed of the date he would have been in court. In hindsight, Applicant also now claimed that if he knew of his trial date he would have taken the original plea offer. Applicant testified he found out about his conviction during a job interview, and he turned himself in once he found out. He stated that he returned to Anderson on August 16, 2017 to visit his children. At that point he was re-arrested by the sheriff.

On cross-examination, Applicant admitted he signed the bond form after his initial arrest. He testified his father would notify him about court dates, and he was consistently paying his bond. Applicant testified he notified bond court he was staying at his father's address in Hillsborough, North Carolina. Applicant testified he could not notify court and Solicitor Huey of

robbery convictions from North Carolina from 2001 and 2006 and asserted that this case "isn't his first rodeo." She also indicated he also had mostly breaking and entering from North Carolina. R.p. 235-236. The Applicant has failed to assert how the prosecution misused his prior criminal record. At sentencing, a judge has an obligation to consider information material to punishment. A sentencing judge may appropriately conduct an inquiry broad in scope, largely unlimited as to either the kind of information he may consider, or the source from which it may come. Hayden v. State, 283 S.C. 121, 123, 322 S.E.2d 14 (1984). The Applicant has failed to assert how the presentation of his prior North Carolina record was improper. To the extent he may be asserting that this was an ineffective assistance of counsel claim for failing to object, he has failed to prove that counsel was deficient or that he was prejudiced. Cf. State v. Payne, 332 S.C. 266, 504 S.E.2d 335 (Ct. App. 1998) (defendant bears the burden of proof when collaterally attacking a prior conviction which the state seeks to use under a sentence enhancement statute.).

address because he did not get out of county jail until December 17, 2015. Applicant testified after his release he went to live with his family in North Carolina. Applicant testified at time of arrest he lived at [REDACTED] Hall Street, Anderson, SC. which was different than his father's North Carolina address where he was actually staying. He claimed he later filled out the North Carolina address on the bond form. Applicant testified the court was responsible for obtaining his address pursuant to bond agreement, and bondsman had previously notified court of agreement. At the time Applicant's case was tried, Applicant testified he was in Texas and acknowledged that he did not notify Yarborough of his move. He claimed that communication with his lawyer was difficult. He claimed he left for Texas a week before Thanksgiving. He stated he entered a rehab program while he was in Texas. Applicant claimed he did not notify his bondsman that he was in Texas either but felt that the bondsman should have known because he wired money to pay bond from Texas. He confirmed that he did not give either his lawyer or the bondsman his address in Texas.

Applicant testified the only plea offer made to him was for ten years, and that he never rejected the offer. However, he also confirmed that he did not choose to plead guilty based upon the offer. He was still trying to get a better offer. Applicant testified his family advised him to hire Yarborough and see if Applicant could get a better offer. Applicant testified he used a 22-pistol with no firing pin. Applicant testified he does not deny committing the crime. Applicant testified he used the 22-pistol and not his other guns to commit the crime because it was the first gun he saw. Lastly, Applicant testified the victim did not know that the 22-pistol was not operable.

APPLICANT'S FATHER'S TESTIMONY

On direct examination, Applicant's father testified he retained Yarborough, and Yarborough advised Applicant not to take the ten-year plea. Applicant's father testified he paid Yarborough five thousand dollars (\$5000.00), and Yarborough gave Applicant's father the impression he would get gun charge dropped and Applicant's charge reduced. Applicant's father testified he received a telephone call from Yarborough about trial date the day before the trial and the fact Applicant would be tried in absence if Applicant did not show up to court. Applicant's father testified he told Yarborough to contact Applicant, and testified he did not communicate what Yarborough told him to Applicant. Applicant's father testified the bondsman did not call him before trial.

On cross-examination, Applicant's father testified he was not sure how many days before trial Yarborough called him and informed him of Applicant's trial date. Applicant's Father testified he could not call Applicant and tell him because he did not have his phone number and Applicant was at a detention center. Applicant's father testified he did not tell Yarborough Applicant was in Texas but told Yarborough he did not know where Applicant was and had no way to contact him.

SOLICITOR HUEY'S TESTIMONY

On direct examination by the Respondent, Senior Solicitor Catherine Huey testified she was the lead prosecutor on Applicant's case. Solicitor Huey testified she was involved in scheduling Applicant's trial and notified Yarborough well in advance of trial date, publicly published the trial docket online with the trial date, and also sent a bond card to Applicant, bondsman, and Yarborough. Solicitor Huey testified the bond form was important, as it clearly read Applicant could be tried in his absence and that the Applicant has the duty to notify the court of any address change. Solicitor Huey testified the address on Applicant's bond card was

■ Hall Street, Anderson, S.C. Solicitor Huey presented various documentary evidence to corroborate her testimony: the bond form evidencing that he could be tried in his absence, two bond cards, one of which was sent to Applicant on October 18, 2016 evidencing attempt to resolve case by plea (Exhibit 1); a bond card marked return to sender to Walker's Anderson address, also sent to Yarborough and bondsman (Willis Hollis of Pendleton, S.C.) which clearly stated Applicant could be tried in absence (Exhibit 2); a bond card with trial date, December 5, 2016, that was returned to sender (Exhibit 3); and screenshot of the published trial docket (Exhibit 4). Solicitor Huey testified Yarborough was trying to get Applicant to plead guilty before trial. Solicitor Huey testified she was not aware Applicant did not live at address listed on bond card. Solicitor Huey recalled the previous offer made to the public defender of fifteen (15) years,⁸ and both the public defender and Yarborough both tried to have Applicant's charge reduced to strong armed robbery which she rejected. Solicitor Huey testified she informed trial court on the record that she notified Applicant of trial and that Applicant had previously refused plea offer.

On cross-examination, Solicitor Huey testified she understood from counsel Yarborough Applicant had refused the armed robbery plea offer, and Counsel Yarborough was still asking for reduced charge of strong armed robbery after the trial docket published for the December trial.

TRIAL COUNSEL'S TESTIMONY

On direct examination, trial counsel William Yarborough testified he has been practicing for thirty years, with criminal law encompassing ninety-five percent of practice. Trial counsel testified he previously was employed as a prosecutor as an Assistant United States Attorney and has experience dealing with violent crimes. Trial counsel testified he sent a letter of

⁸ Armed Robbery carries a minimum sentence of ten years nor more than thirty years. S.C. Code Ann. §16-11-330.

representation on April 21, 2016, and Applicant had been previously represented by a public defender. Counsel Yarborough testified reviewed discovery, discussed potential outcomes, and discussed the strength of the State's case with Applicant numerous times while Applicant was still in custody. He recalled Applicant being in jail five or six months before he was out on bond.

Counsel Yarborough recalled Applicant's Father calling him about moving to have Applicant released on bond. Counsel Yarborough was aware Applicant had relocated from Anderson. Counsel Yarborough testified he spoke with Applicant regularly, including several times a week before Applicant's trial. Counsel Yarborough testified the record reflected he spoke with Applicant personally before his trial by phone. Counsel Yarborough testified he scheduled appointment with Applicant and Applicant's father the day before trial was to start, but neither of them came to the meeting.

Counsel Yarborough testified he notified Applicant of trial date, as he received letter with date. He stated Applicant had met with Yarborough a month or two before date, and the trial date was number one on the trial docket. Counsel Yarborough testified he was sure Applicant was aware of the trial date.

Counsel Yarborough testified he learned Applicant moved to Texas after his trial. Counsel Yarborough testified he attempted to get in contact with Applicant during the trial, but Applicant did not answer his call. Counsel Yarborough testified he thought Applicant attempted to call him Yarborough around midnight before his trial started. Counsel Yarborough testified Applicant never indicated he would not be at court, but Applicant failed to meet with Counsel Yarborough before trial as he indicated he would to prepare for the trial. Counsel Yarborough testified Applicant made it seem like he would be at trial, and said Applicant was trying to get everything lined up. Counsel Yarborough testified he moved for a continuance, referencing page

four of the trial transcript. R.p. 4. Counsel Yarborough testified he does not recall specifically informing Applicant he could be tried in his absence, but he did inform Applicant's father, and Applicant had never indicated he was not aware of trial date in their earlier communication.⁹

Concerning plea offers, Counsel Yarborough testified all the plea offers were for armed robbery, and he tried to convince Solicitor Huey to reduce it to strong armed robbery. Counsel Yarborough testified that in their discussions, Applicant indicated he did not wish to take the plea offer.

On cross-examination, Counsel Yarborough testified his communications with Applicant were always on the phone, except when Applicant appeared at court several times while on bond. Counsel Yarborough testified he met in person with Applicant at court with Applicant's father earlier when they were at court and communicated with Applicant about this trial date over phone. Counsel Yarborough testified he spoke many times with Applicant's father, and he had Applicant's father's phone number, and another phone number Applicant would use at times. Counsel Yarborough testified Applicant's father would never call at midnight, and the number that had called him day before Applicant's trial was a number he had seen before. Counsel Yarborough testified he informed trial court he could be wrong, and it was possible the number that called at midnight was not Applicant's number. Trial Counsel confirmed the original bond form did not notify Applicant of his specific trial date. Counsel acknowledged he did not specifically notify Applicant of fact he could be tried *in absentia* after the date was set.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Applicant has alleged and elected to pursue various claims of ineffective assistance of counsel through the post-conviction relief action presently before this Court. In analyzing these

⁹ This is consistent with what Yarborough told Judge McIntosh. R. p. 4, 70.

claims, this Court has considered the legal arguments by counsel and thoroughly reviewed the record in its entirety. This Court additionally heard the testimony presented at the evidentiary hearing and was able to observe the witnesses, which allowed the Court to evaluate and scrutinize their credibility.

Upon conducting and completing its analysis, this Court finds that Applicant has failed to establish any constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief. See Rule 71.1(e), SCRCP (stating that in a post-conviction relief action, "[t]he applicant has the burden of establishing his entitlement to relief by a preponderance of the evidence."); Lucero v. State, 414 S.C. 238, 244, 777 S.E.2d 409, 412 (Ct. App. 2015) ("In a PCR proceeding, the applicant bears the burden of establishing that he or she is entitled to relief."); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) ("The burden of proof is on the Applicant in post-conviction proceedings to prove the allegations in his application.").

Accordingly, set forth below are the relevant findings of facts and conclusions of law as required by § 17-27-80 of the South Carolina Code:

STANDARD OF REVIEW

The Uniform Post-Conviction Procedure Act¹⁰ (the Act) provides that any person who has been convicted of a crime may seek post-conviction relief based upon the following types of allegations:

1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
2. That the court was without jurisdiction to impose sentence;
3. That the sentence exceeds the maximum authorized by law;

¹⁰ S.C. Code Ann. §§ 17-27-10 to -160.

4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
5. That his sentence has expired, his probation, parole or conditional release unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or
6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy[.]

S.C. Code Ann. § 17-27-20(A).

In a post-conviction relief action, the applicant bears the burden of proving the allegations by a preponderance of the evidence – the mere allegation of ineffective assistance is not sufficient to warrant granting relief. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL, GENERALLY

The reviewing court applies the two-part test outlined in Strickland to determine whether counsel's conduct "was so [ineffective] as to require reversal" of the applicant's conviction. Strickland v. Washington, 466 U.S. 668 at 687 (1984). To obtain relief, a PCR applicant must prove (1) counsel's performance fell below an objective standard of reasonableness, and (2) the applicant sustained prejudice as a result of counsel's deficient performance. Id. at 687-88; Cherry v. State, 300 S.C. 115, 117-118, 386 S.E.2d 624,625 (1989). Failure to make the required showing of either deficient performance or sufficient prejudice defeats the ineffectiveness claim. Strickland, 466 U.S. at 700; see also Bell v. Cone, 535 U.S. 685, 695 (2002) (explaining that "[without proof of both deficient performance and prejudice to the defense... it could not be said that the sentence or conviction resulted from a breakdown in the adversary process that rendered the result of the proceeding unreliable" (citation and internal quotation marks omitted)).

INITIAL FINDINGS

As a matter of general impression, this Court finds Counsel Yarborough's testimony at the evidentiary hearing credible and persuasive, where he presented well-recalled testimony of relevant background, facts, and discussions leading up to and during the trial. This Court further finds applicable the strong presumption that at all stages of Counsel Yarborough's representation of Applicant, he rendered adequate assistance and exercised reasonable professional judgment in her representation. Ard v. Catoe, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007) (citing Strickland, *supra*). The United States Supreme Court has cautioned that "every effort be made to eliminate the distorting effects of hindsight" and evaluate counsel's decisions at the time they were made. Strickland, 466 U.S. at 689, 104 S.Ct. 2052; see Whitehead v. State, 308 S.C. 119, 122, 417 S.E.2d 529, 531 (1992).

INEFFECTIVE ASSISTANCE OF PLEA COUNSEL ALLEGATIONS ON THE MERITS

Allegation (a): **Trial Counsel misadvised Applicant he could reduce Applicant's charge from Armed Robbery to Common Law Robbery (Strong Arm Robbery) and advised Applicant to not accept the ten-year plea offer.**

Applicant alleged Counsel Yarborough advised him to wait and not accept the ten-year plea offer, because Counsel Yarborough promised he could reduce Applicant's charge from Armed Robbery to Common Law or Strong Arm Robbery. This Court finds that the Applicant has failed to prove that counsel was deficient in his attempts at plea negotiation in this matter. This Court finds credible Senior Solicitor Huey's testimony that the only offer made was to armed robbery with a cap of 15 years and the necessary statutory minimum of 10 years. This Court further finds that counsel Yarborough was diligent in attempting to get the prosecution to agree to a lesser charge of strong arm robbery, but that the prosecution was firm it would not offer a different offer. This Court rejects that there was a promise from counsel Yarborough to

either the Applicant or his father that there would be a lesser offer. This Court finds that the Applicant rejected the state's offer prior to trial to plead guilty by failing to plead guilty at the earlier trial date and desired counsel to seek further, albeit unsuccessful negotiations.

A defendant has the right to effective assistance of counsel during the plea-bargaining process. Davie v. State, 381 S.C. 601, 607, 675 S.E.2d 416, 419 (2009) (citing Judge v. State, 321 S.C. 554, 471 S.E.2d 146 (1996)); Lafler v. Cooper, 566 U.S. 156, 162 (2012) (quoting McMann v. Richardson, 397 U.S. 759, 771 (1970)). Misadvising a defendant such that he rejects a plea offer and instead proceeds to trial may constitute deficient performance. See, e.g. Lafler, 566 U.S. at 161 (counsel misadvised defendant "that the prosecution would be unable to establish his intent to murder [the victim] because she had been shot below the waist."); Lee v. United States, 582 U.S. 357, 137 S.Ct. 1958 (2017) (counsel misadvised a noncitizen defendant that he would not be deported as a consequence of his guilty plea). To show prejudice from the improvident rejection of a plea offer based upon the misadvice of counsel, an applicant must show (1) that but for the ineffective advice there is a reasonable probability the plea offer would have been presented to the court, (2) that the court would have accepted its terms, and (3) that the conviction, sentence, or both would have been less severe under the terms of the plea than was in fact imposed. Lafler, 566 U.S. at 164.

The Applicant was charged with armed robbery involving the use of a gun during the theft. S.C. Code Ann. §16-11-330(A) sets forth in pertinent part:

(A) A person who commits robbery **while armed with a pistol, dirk, slingshot, metal knuckles, razor, or other deadly weapon, or while alleging, either by action or words, he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon**, is guilty of a felony and, upon conviction, must be imprisoned for a mandatory minimum term of not less than ten years or more than thirty years, no part of which may be suspended

or probation granted. A person convicted under this subsection is not eligible for parole until the person has served at least seven years of the sentence.

S.C. Code Ann. § 16-11-330. In South Carolina a gun used in a robbery is a deadly weapon regardless of its alleged inoperability. State v. Henderson, 286 S.C. 465, 472, 334 S.E.2d 519, 523 (Ct. App. 1985); State v. Bailey, 273 S.C. 467, 257 S.E.2d 231, 8 A.L.R. 4th 145 (1979), cert. denied, 444 U.S. 1083, 100 S.Ct. 1039, 62 L.Ed.2d 768 (1980) (claim that gun used was unloaded). We further note that the offense of armed robbery occurs in this state when a person commits a robbery “while armed with a pistol.” S.C.Code of Laws § 16-11-330 (1976); see State v. Lawrence, 266 S.C. 423, 223 S.E.2d 856 (1976). See State v. Heck, 304 S.C. 345, 404 S.E.2d 514 (Ct.App.1991) (a BB gun is capable of producing great bodily harm and therefore it is a jury question as to whether it qualifies the incident as armed robbery). In State v. Tasco, 292 S.C. 270, 272, 356 S.E.2d 117, 118 (1987), we held “[w]hen a person perpetrates a robbery by brandishing an instrument which appears to be a firearm ... in the absence of any evidence to the contrary, the law will presume the instrument to be what his conduct represented it to be, a firearm....” (emphasis added). Strong arm robbery or common law robbery is defined as the “felonious or unlawful taking of money, goods, or other personal property of any value from the person of another or in his presence by violence or by putting such person in fear.” State v. Drayton, 293 S.C. 417, 361 S.E.2d 329, 335 (1987); State v. Gourdine, 322 S.C. 396, 398, 472 S.E.2d 241, 241 (1996).

The Applicant’s assertion that the weapon the Applicant allegedly brandished was inoperable does not remove the legal possibility that the crime was armed robbery. As stated at trial the weapon used, under the Applicant’s theory was a .22 caliber pistol which he claims lacked a firing pin. However, it was not a toy but an actual weapon. As the victim testified, she

feared for her life. She turned around to see Applicant pointing a “small little gun, rusty looking” at her face. (R. 92, 95). Applicant warned Victim that “if I screamed he would pull the trigger” and she believed that. R.p. 104-105. She assumed the gun worked when he pointed it at her. R.p. 107, 1. 2-4. Fearing for her life, the Victim complied with Applicant’s demand for money. (R. 93). She quickly emptied all the cash out of the drawer. (R. 93). Under these facts, like the trial court, this Court must conclude that there was factual basis to support the charge on armed robbery and to reject a charge on strong arm robbery.

At this hearing, counsel Yarborough credibly testified that all the plea offers made to Applicant were for armed robbery consistent with Solicitor Huey’s testimony. This Court must find that he attempted throughout his representation to get the State to reduce it to a common law robbery based upon the assertion that the weapon was inoperable. However, Solicitor Huey consistently rejected the request. However, this Court cannot find counsel was deficient in failing to succeed in those negotiations where a factual basis existed for the greater charge.

This Court finds credible the testimony of Counsel Yarborough and Solicitor Huey and finds not credible the testimony of Applicant and Applicant's father that there was a promise of success of a lesser plea offer. Counsel Yarborough advised him there was a *possibility* of obtaining a reduced charge for Applicant and Applicant did not testify counsel Yarborough promised him a reduced charge. Counsel Yarborough credibly testified Applicant did not wish to plead to armed robbery under the plea offer, and Solicitor Huey credibly testified Counsel Yarborough attempted to convince Applicant to plea and Applicant refused the plea offer to armed robbery. Counsel Yarborough and Solicitor Huey's testimony shows Applicant's decision not to plea was not prompted by any misadvice by counsel Yarborough. Applicant is unable to overcome the strong presumption that at all stages of Counsel Yarborough's representation, he

rendered adequate assistance and exercised professional judgment in his representation. Ard v. Catoe, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007) (citing Strickland, *supra*). Therefore, Applicant's allegation is **DENIED** and **DISMISSED WITH PREJUDICE**.

Allegation (b): Trial Counsel failed to object to trial court trying Applicant in *absentia*, and thereby failing to preserve the issue for appeal.

Applicant alleged Counsel Yarborough was ineffective for failing to object to his trial proceeding in his absence. Specifically, Applicant alleged Counsel Yarborough failed to object on the basis that Applicant has not received notice of his trial date or that Applicant was unaware of the trial date. This Court must find that the Applicant has failed in his burden of proof. First, based upon counsel Yarborough credible testimony, this Court must find that the Applicant was aware of his trial date in December 2016 based upon his communications with counsel and he avoided coming to court with that knowledge. This Court must further find that the counsel was credible when he advised the trial court at sentencing that "he knew he was supposed to be here." R.p. 228. This Court finds not credible the Applicant's testimony that he was not aware of the trial based upon the communications with counsel and his failure to come to the scheduled meeting for trial preparation Sunday before the during trial week. This Court further notes persuasive that he was aware in the prior months while out on bond that he had to show up to court and did do so, yet from the time of actual trial date from December until August 2017 he did not return to South Carolina nor communicate with counsel, the court or presumably his bondsman who he had failed to indicate his location, until after his re-arrest.

The Applicant claims that had he been notified to appear in December 2016 for court, he would have appeared. This Court must find that testimony by Applicant is not credible. First, counsel Yarborough credibly testified that he had communicated with the Applicant by telephone

about the trial date and that he was supposed to meet before that date for trial preparation but refused to show up as well as his father. Applicant's self-serving assertion is also not credible because he never communicated with counsel his location in Texas before or after the trial when he was aware of his obligations to appear in court or be tried in his absence. This knowledge was based upon his bond form as well as the earlier notices that went to him as well as his lawyer and bondsman, who was also unable to locate him because he had not advised him of his location in December 2016. Although the bond postcard notices to Applicant's Anderson address from the Solicitor was returned to sender from the October 13, 2016 and December 5, 2016 appearance date, this Court finds that he was aware of those matters and had appeared at the October 2016 appearance.

Applicant's testimony is that he went to Texas right before Thanksgiving. The December 6, 2016 appearance postcards were mailed out November 21, 2016 and the public trial docket was published Friday November 18, 2016 showing the Walker trial set for December 6, 2016. (Exhibit 4). The appearance postcard went to counsel and the bondsman. The Applicant had indicated that he went to the rehabilitation facility in Texas to get himself together (off drugs, before he had to face the sentence. R. 228, 230 233.

Counsel Yarborough credibly testified that he had telephone communication with the Applicant concerning preparation for the December trial. This Court has found that to be credible. This Court finds credible counsel Yarborough's testimony about his communication with the Applicant prior to the trial. This Court finds as a fact that Counsel Yarborough spoke with Applicant regularly, including several times a week before trial. Additionally, this Court finds that Yarborough spoke with Applicant personally before his trial. (App. pp. 58-59); (App. pp. 123-124) (Counsel Yarborough renewing his motion for continuance, and informing the

court he notified Applicant of his trial date and spoke with him the week of his trial)). This Court further finds that Yarborough notified Applicant of his December trial date. Counsel Yarborough credibly testified Applicant made it seem like he would be at trial, but he never showed up for their meeting the Sunday before trial and did not answer when Counsel Yarborough attempted to contact him. It appears the reason he allegedly returned to South Carolina was he became aware that the existence of the South Carolina conviction became an issue in a job interview in Texas and he wanted to see his children.

Although the Sixth Amendment of the Constitution guarantees the right of an accused to be present at every stage of his trial, this right may be waived. State v. Bell, 293 S.C. 391, 401, 360 S.E.2d 706, 711 (1987); Ellis v. State, 267 S.C. 257, 260, 227 S.E.2d 304, 305 (1976). Rule 16 of the South Carolina Rules of Criminal Procedure provides:

[A] person indicted for misdemeanors and/or felonies may voluntarily waive his right to be present and may be tried in his absence upon a finding by the court that such person has received notice of his right to be present and that a warning was given that the trial would proceed in his absence upon a failure to attend the court.

Rule 16, SCRCrimP. A waiver of this right is only permitted in limited circumstances. City of Aiken v. Koontz, 368 S.C. 542, 547, 629 S.E.2d 686, 689 (2006). Therefore, before a defendant may be tried *in absentia*, the trial court must determine a defendant voluntarily waived his right to be present at trial, making findings of fact on the record that the defendant (1) received notice of his right to be present and (2) was warned that the trial would proceed in his absence. Id. “The deliberate absence of a defendant who knows that he stands accused in a criminal case and that his trial will begin during a specific period of time indicates nothing less than an intention to obstruct the orderly processes of justice.” Ellis v. State, 267 S.C. 257, 227 S.E.2d 304, 306

(S.C.1976). A bond form that provides notice that a defendant can be tried *in absentia* may serve as the requisite notice. Id.; see also State v. Fairey, 374 S.C. 92, 646 S.E.2d 445 (S.C.App. 2007).

The State satisfied the notice requirements as Walker, by signing the bond paperwork, was on notice that he had the right to be present at his trial and could be tried in his absence if he failed to appear. See State v. Ravenell, 387 S.C. 449, 454, 692 S.E.2d 554, 557 (Ct. App. 2010) State v. Fairey, 374 S.C. 92, 101, 646 S.E.2d 445, 449 (Ct. App. 2007) (“A bond form that provides notice that a defendant can be tried in absentia may serve as the requisite notice.”). Also, Walker did not receive actual notice of his trial date because of his own actions as the State attempted to serve Walker via the mail and in person to no avail because Walker failed to notify the court of his current address, despite his acknowledgement of his obligation to do so. See id. at 100, 646 S.E.2d at 448 (“Notice of the term of court for which the trial is set constitutes sufficient notice to enable a criminal defendant to make an effective waiver of his right to be present.” (quoting City of Aiken v. Koontz, 368 S.C. 542, 547, 629 S.E.2d 686, 689 (Ct. App. 2006))); see also State v. Wrapp, 421 S.C. 531, 537, 808 S.E.2d 821, 824 (Ct. App. 2017) (“It seems logical that for one to voluntarily fail to attend trial or otherwise waive his trial appearance, one must actually know when the trial is to occur.”); Fairey, 374 S.C. at 101, 646 S.E.2d at 449 (holding the defendant received adequate notice when the State mailed the notice to the last official, permanent address he provided to the court and the State, and he failed to keep the court or the State informed of his change in address); Ellis v. State, 267 S.C. 257, 261, 227 S.E.2d 304, 306 (1976) (“The deliberate absence of a defendant who knows that he stands

accused in a criminal case and that his trial will begin during a specific period of time indicates nothing less than an intention to obstruct the orderly processes of justice.”).¹¹

In the direct appeal, the South Carolina Court of Appeals found:

Walker’s Rule 16, SCRCrimP objection is not preserved because he did not specifically object to a trial *in absentia* or argue to the trial court that he did not receive notice of the trial or was unaware the trial would proceed in his absence. A motion for a continuance is not in itself enough to preserve a Rule 16, SCRCrimP objection.

State v. Walker, Op. No. 2020-UP-290 (S.C. Ct. App. filed Oct. 14, 2020).

The Applicant before this Court essentially asserts that counsel was ineffective because 1) he did not raise an objection or argue that that the Applicant did not receive notice of the pending trial in December 2016 and 2) that Applicant was not aware or advised that if he did not appear the trial would proceed *in absentia*. This Court must find as a fact that counsel did advise the Applicant that the trial was proceeding on December 6, 2016. Contrary to the assertion in this proceeding, counsel could not assert the Applicant was not aware of the trial when counsel had direct communications with the Applicant about the trial date. This Court does find credible that trial counsel was not aware of the Applicant’s alleged location in Texas because the Applicant and his family had kept that location information from counsel as well as the court and his bondsman,¹² assuming that he was in fact in Texas at the time of the trial.¹³ The

¹¹ This Court further finds credible Senior Solicitor Huey’s testimony. She testified the bond form clearly notified Applicant he could be tried in his absence and it was Applicant’s duty to notify the court of an address change. Solicitor Huey testified Applicant’s bond card listed Anderson, South Carolina as his address and it was mailed to the address that Applicant had advised the Court. Solicitor Huey presented a screenshot of the publicly published trial docket with Applicant December trial date on it. (Exhibit 4). Solicitor Huey testified she was not aware Applicant lived at another address than the one listed on the bond card, and she informed Counsel Yarborough of the trial date well in advance.

¹² The Applicant testified that he had wired money to his bondsman from Texas as a condition of his obligations on his bond suggesting that his bondman could have known where he was located. It is unclear to this Court when and where or if those alleged wired payments from

Court finds the Applicant's protestations before this Court to the contrary without merit.

This Court further finds that while counsel Yarborough could not recall whether he specifically advised the Applicant that if he did not appear for trial that he would be tried in his absence, he was aware that Applicant was aware that he would be tried in his absence if he did not appear. Counsel was aware that Applicant had been put on notice of this when he signed the bond form, which justified counsel's statement to the trial court. On the August 8, 2016 bond form that authorized his release, he acknowledged: "I understand and have been informed that I have a right and obligation to be present at trial and should I fail to attend the court, the trial will proceed in my absence." State v. Walker, Order Specifying Methods and Conditions of Release, filed August 16, 2016, p. 2. (Acknowledgement by Defendant). This Court also notes that the bond notices sent out by the Solicitor's office included the language about trial in absence. The Applicant acknowledged in his PCR testimony that when he did appear in court his father showed him the bond card that had been sent out for those matters. This Court notes that the postcard included the trial in absence information.

In State v. Wright, 304 S.C. 529, 531, 405 S.E.2d 825, 826 (1991), Wright was not present for his trial on a charge of distributing cocaine. At the outset of trial, Wright's defense counsel moved for a continuance, asserting he had recently been in contact with Wright and believed Wright could be located. Id. at 532, 405 S.E.2d at 827. The trial court denied the

Texas were made before or after the December 2016 trial which occurred shortly after his alleged relocation to Texas. Nevertheless, Applicant testified that he never advised his bondsman of his exact location in Texas. Applicant's testimony appears to claim that since his bondsman was allegedly receiving wired money at some time from Applicant through a bank in Texas, he should have figured out his actual location. However, his counsel advised the trial court that his bondsman had not been able to locate the Applicant at the time of the trial. R.p. 56, 69-70.

¹³ It is not without notice to this Court that the Applicant's extended trip to Texas from November 2016 to August 2017 occurred at the time that notice of the December 2016 trial was sent out before Thanksgiving.

continuance motion and proceeded with a trial *in absentia*. Id. Following his conviction, Wright appealed, arguing the trial court erred in denying the continuance motion. Id. The Supreme Court affirmed the trial court's ruling, finding the trial court did not abuse its discretion in denying Wright's continuance motion because the record reflected Wright was aware of the term of court in which he was set to be tried and knew he would be tried in his absence if he failed to appear. Id.

In the present case, based on counsel's representations and the notice the prosecution mailed to Walker, Walker was aware of the term of court he was to be tried, differentiating the case from State v. Wrapp, 421 S.C. 531, 808 S.E.2d 821 (Ct. App. 2017). In Wrapp, the defendant signed bond paperwork advising his court date was December 6, 2013. The case was scheduled for trial, but continued at defense counsel's request, on July 14, 2014. The prosecution told Wrapp the case would go to trial "the next time we could get to it." The case was called for trial again on September 29, 2014. Counsel moved for a continuance, unaware of why the defendant was not present. Id. at 533-34, 808 S.E.2d at 822. Following the trial court's denial of his motion for continuance, Wrapp's trial counsel explained, "For the record . . . I don't feel like Mr. Wrapp has been adequately noticed and we object to going to trial." Id. at 534-35, 808 S.E.2d at 822-23.

Unlike Wrapp's attorney, Walker's counsel could not object to notice because he had given the Applicant notice and conceded Walker knew he was supposed to be present. Further, unlike the facts explained in Wrapp, the record is clear Walker knew what term his case was going to be tried, which undoubtedly prompted his alleged flight to Texas. Wright, supra.

Counsel was not deficient in failing to assert that the notice that he would be tried *in absentia* when he had been duly advised of this risk in the paperwork he had received. Similarly,

counsel was not deficient in noting whether or not he had readvised Applicant that his case could proceed in his absence if he does not appear for trial. It is important to note that the Applicant did not testify that he was unaware that he could be tried in his absence if he did not appear. He assertion was only that he was not aware of the trial date, which this Court has expressly found that he was aware through trial counsel.

In summary, this Court finds a combination of the trial record, credible testimony of Counsel Yarborough and Solicitor Huey, and documentary evidence admitted show Counsel Yarborough notified Applicant of his trial date. First, this Court finds as facts that based upon Yarborough's credible testimony that Counsel Yarborough was in constant communication with Applicant, personally made him aware of his trial date, and Applicant never indicated to Counsel Yarborough he would not appear in court for his trial. Based on this, Counsel Yarborough had no basis to object or assert that Applicant had not received notice of his trial date. Underwood v. State, 309 S.C. 560, 425 S.E.2d 20 (1992) (when counsel articulates a valid strategic reason for his action or inaction, counsel's performance should not be found ineffective)); see Whitehead v. State, 308 S.C. 119, 417 S.E.2d 529 (1992) ("Courts must be wary of second-guessing counsel's trial tactics; and where counsel articulates a valid reason for employing such strategy, such conduct is not ineffective assistance of counsel).

Second, Applicant was aware that if he failed to appear he would be tried in his absence. As the bond form exhibits show and as Solicitor Huey credibly testified, the bond form notified Applicant he could be tried in his absence if he failed to appear. Moreover, Solicitor Huey credibly testified she sent bond cards to the appropriate address listed on the form and the trial docket was available to the public.

Applicant's testimony at the evidentiary hearing only served to hurt him. Applicant

admitted he never informed his bondsman, court, or Counsel Yarborough he had moved to Dallas. Applicant's testimony indicated he relied on his father to notify him of his court dates and claimed that while he was in Dallas he was in constant communication with his father. However, Applicant's Father testified he had no way to contact Applicant while he was in Dallas, and thus was unable to notify him of his court date. Applicant's contention Counsel Yarborough was deficient for not objecting to his trial in absentia on an erroneous basis is untenable, especially where the record reflects Counsel Yarborough informed the court he spoke with Applicant the week of his trial, and Solicitor Huey notified the court she sent a bond card to Applicant notifying him of the date. Applicant's obvious neglect to inform the court and Counsel Yarborough of his location, and failure to appear in court on his trial date even though numerous avenues of notification cannot impute deficiency on part of Trial Counsel. Therefore, Applicant's allegation is **DENIED** and **DISMISSED WITH PREJUDICE**.

SROKA / WHETSELL ALTERNATIVE FINDING

As an alternate ground, this PCR action must be dismissed because of the Applicant's sworn testimony before this Court acknowledging his guilt of armed robbery and the use of a pistol. He testified before this Court that he did use a gun although he claimed it did not have a firing pin in the robbery and admitted that it was wrong. He also admitted that the robbery victim did not know that it was inoperable. State v. Sroka, 267 S.C. 664, 665, 230 S.E.2d 816, 817 (1976) ("Any doubt about the correctness of [affirming the appellant's conviction] is eliminated by the admission of appellant in open court, after conviction and during the pre-sentence inquiry by the trial judge that he had participated in the robbery Further review of the record, therefore, is rendered unnecessary."). In Whetsell v. State, 276 S.C. 295, 277 S.E.2d 891 (1981), the Court found that because petitioner admitted his guilt, his PCR application should be denied.

In Whetsell, the petitioner pled guilty to the crimes. On PCR, he alleged ineffective assistance of counsel in failing to make a motion to suppress evidence. The Court found that the petitioner's admission of his guilt, as well as his testimony that he would plead guilty again if granted a new trial, rendered a review of trial error unnecessary. The rule set forth in Whetsell applies only where the applicant is not prejudiced by any allegations of the PCR application because of the admission of guilt. Here, the Applicant admitted that he used a .22 pistol in the robbery and that the victim did not know it was inoperable. This alternate ground should similarly deny relief.

CONCLUSION

Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be **DENIED and DISMISSED with PREJUDICE**.

This Court notifies the Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP, provides that PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf if the Applicant wishes to seek appellate review. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and

2. The Applicant must be remanded to the custody of the South Carolina Department of Corrections.

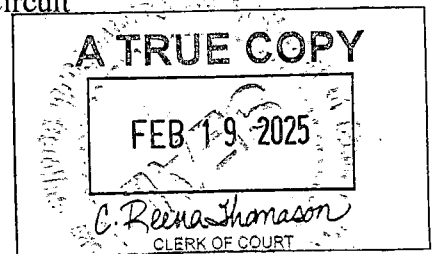
AND IT IS SO ORDERED this 13th day of February, 2025

Daniel D. Hall

THE HONORABLE DANIEL DEWITT HALL
Presiding Judge Daniel Dewitt Hall
Tenth Judicial Circuit

York

, South Carolina



WITNESSES

Anderson Police Dept.
Joshua D. Genthner

ARREST WARRANT NUMBER

COUNT ONE 2015A0420701014
COUNT TWO 2015A0420701015

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date: MAR 22 2016

[Signature]
Foreperson

VERDICT

[Signature]
[Signature]
Foreperson of Grand Jury
Date: 12-7-16

DOCKET NO. 2016-GS-04- 00594

The State of South Carolina
County of Anderson

COURT OF GENERAL SESSIONS

MAR 22 2016, TERM

THE STATE

VS.

PHILIP WESLEY WALKER

INDICTMENT FOR

COUNT ONE - ARMED ROBBERY

SC Code: § 16-11-0330(A)
CDR Code: 0139

**COUNT TWO - POSSESSION OF A
WEAPON DURING THE COMMISSION OF
A VIOLENT CRIME**

SC Code: § 16-23-0490
CDR Code: 0549

A TRUE COPY

OCT - 4 2021

[Signature]
CLERK OF COURT

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

INDICTMENT

At a Court of General Sessions, convened on MAR 22 2016, the
Grand Jurors of Anderson County present upon their oath:

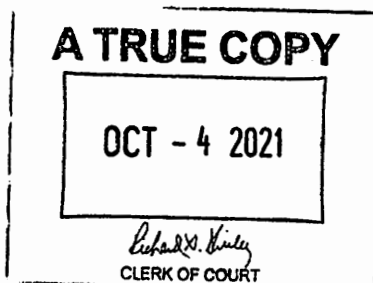
COUNT ONE - ARMED ROBBERY

The defendant, Philip Wesley Walker, did on or about December 16, 2015 in Anderson County, South Carolina, while armed with a deadly weapon or while displaying what a person present during the robbery would reasonably believe to be a deadly weapon, take by means of force, threats, or intimidation, goods or monies described as cash in the amount of \$240.00 from the person or presence of Natasha L. Oliver, an employee of Family Dollar Store. All in violation of 16-11-0330(A) of the South Carolina Code of Laws (1976) as amended.

**COUNT TWO - POSSESSION OF A WEAPON DURING THE COMMISSION OF A
VIOLENT CRIME**

The defendant, Philip Wesley Walker, did, on or about on or about December 16, 2015, in Anderson County, South Carolina, while committing the crime of Armed Robbery, a crime of violence, have in his possession a firearm. All in violation of 16-23-0490 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.



Catherine T. Huey
CATHERINE T. HUEY
SR. CAREER PROSECUTOR