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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Greenville County
Honorable Daniel D. Hall, Circuit Court Judge
Honorable Patrick Cleburne Fant, III, Circuit Court Judge

RONALD TYRONE DOWNS, JR.,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2025-001171

APPENDIX

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STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

COURT OF GENERAL SESSIONS

2012-GS-23-10568

2012-GS-23-10569

2013-GS-23-0087A

STATE OF SOUTH CAROLINA,)

vs.)

TRANSCRIPT OF RECORD

RONALD TYRONE DOWNS, JR.,)
DEFENDANT.)

ORIGINAL

August 14 and 15, 2013
Greenville, South Carolina

B E F O R E:

THE HONORABLE EUGENE C. GRIFFITH, JR., JUDGE; and a
jury.

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

L. MARK MOYER, ESQ.
Assistant Solicitor

CLIFFORD F. GADDY, JR., ESQ.
Attorney for the Defendant

HOLLIE M. JENKINS
Circuit Court Reporter

I N D E X

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(DW) - Denotes Defense Witness

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THE COURT: Folks, tell me who everybody is.

MR. MOYER: I'm Mark Moyer. I'll be representing the State.

THE COURT: All right, Mr. Moyer.

MR. GADDY: I'm Cliff Gaddy. I'll be representing the Defendant.

THE COURT: All right, Mr. Gaddy.

Do we have any pre-trial issues we need to take up or --

MR. GADDY: No, no motions.

MR. MOYER: I think we're ready to go, Judge. I have -- the State has no motions.

MR. GADDY: We're ready for the Defendant to be asked how does he plead.

THE COURT: Yes, sir.

Mr. Downs, I have three indictments, #2012-GS-23-10568, kidnapping; 2012-GS-23-10569, armed robbery; and 2013-GS-23-0087A, assault and battery first. To those indictments, which all three have been true billed by the Greenville County Grand Jury, Mr. Downs, how do you plead?

DEFENDANT DOWNS: Not guilty.

THE COURT: Not guilty?

DEFENDANT DOWNS: Yes, sir.

1 THE COURT: All right. That being the case, you're
2 entitled to a jury trial. And all these events -- or
3 indictments are allegedly occurring on the 11th day of
4 October, 2012; is that right?

5 MR. MOYER: That's right, Your Honor.

6 THE COURT: Very well.

7 All right. Where is the jury panel?

8 THE CLERK: I just haven't called them up yet.

9 THE COURT: Okay.

10 THE CLERK: Do you want -- are you ready for them?

11 THE COURT: If they're ready, I'm ready.

12 THE CLERK: All right. I'll get them up here.

13 (Pause.)

14 (WHEREUPON, the jury panel entered the courtroom.)

15 THE COURT: Good morning, ladies and gentlemen.

16 Thank you.

17 Welcome to courtroom #3 on the second floor. My name
18 is Eugene Griffith. And I'm a resident circuit judge from
19 the Eighth Judicial Circuit. But I'm assigned to hold
20 court here in Greenville County, which is in the
21 Thirteenth Circuit --

22 Is it not?

23 Yes, it's the Thirteenth Circuit.

24 I live in Newberry. So I'm about an hour way. I get
25 to -- all circuit judges get rotated around changing

1 counties week by week. And so this is my week. I got
 2 assigned to Greenville. A couple weeks ago, I was in
 3 Anderson. I've been in Lexington. And I've been in
 4 Laurens since July 4th. So they keep us moving and try to
 5 keep the faces fresh in the different counties so it's not
 6 the same judge presiding over the same county each week.

7 In any event, it is my pleasure to be here. I
 8 believe this is the last trial to be called this week for
 9 this term of General Sessions. Y'all were qualified as a
 10 large group by, I believe, Judge Hayes earlier this week.
 11 And he qualified you in full.

12 My purpose today is to qualify you for a particular
 13 case. And so my questions are going to be a little more
 14 pointed as to the participants in the trial, the lawyers,
 15 the witnesses, and any prior knowledge you may have of any
 16 events which are surrounding this case.

17 Now, what I'm looking for is 13 people, 12 jurors and
 18 an alternate, but 13 jurors who have no prior knowledge of
 19 the case, or the facts of the case, and who have no reason
 20 to be anything but fair and impartial jurors to both the
 21 State and the Defense. That's what I'm looking for. I
 22 want 13 good listeners who don't know anything about the
 23 case, and who don't have any idea of anything about it,
 24 just like me. I walked in this morning. They handed me
 25 the indictments and said this is your first case today.

1 So I know what y'all know. And so, now, I've got to ask
2 you some questions to that end.

3 So this is what we're going to do. I'm going to ask
4 the attorneys to introduce themselves and their respective
5 parties at their tables. Then I'm going to ask a
6 question, does any member of the jury panel know them, or
7 are related by blood or marriage, close personal friends
8 to these parties. And, likewise, I'm going to do that to
9 the witnesses, and that kind of thing. So my questions
10 will be the same.

11 Now, here is what I don't need. Once I start asking
12 questions or you stand up and it's appropriate for you to
13 say, well, I know one of the lawyers, or I know one of the
14 witnesses, don't tell me what you know, just I know. And
15 then let me ask the next question so I don't get a whole
16 long detailed explanation of why that lawyer is a thug,
17 and a lying, cheating, stealing lawyer and he ought not be
18 practicing. I don't need to hear that. Because the fact
19 that you know that doesn't mean everybody else needs to
20 know that. But these are good lawyers, so that's not
21 going to be the case. That was just an example I just
22 used.

23 All right. Mr. Moyer.

24 MR. MOYER: My name is Mark Moyer. I'll be
25 representing the State. This is Paula Carpenter. She's a

1 legal investigator with our office. She'll be assisting
2 me in this case.

3 MR. GADDY: Good morning. I'm Cliff Gaddy. And I
4 have been practicing law in Greenville for a number of
5 years, as you can probably observe.

6 And I'm here representing Ron Downs, Jr. Now, his
7 parents were in court a few minutes ago. And I think
8 they're outside at the moment. But his parents will,
9 also, be here, along with his sister.

10 So that kind of completes my introduction.

11 JURY QUALIFICATION

12 THE COURT: All right. Ladies and gentlemen of the
13 jury, does any member of the jury panel -- are you related
14 by blood, marriage, close personal friends to any of
15 the -- either of the attorneys in this matter? If so,
16 please, stand.

17 (WHEREUPON, there was no response.)

18 THE COURT: And this is a court of record. My court
19 reporter this week is Ms. Jenkins, who's seated right in
20 front of me. And so every question I ask -- in order to
21 make a complete record, sometimes I have to answer my own
22 questions. And the fact that nobody stood up, I'm really
23 not talking to myself. I'm answering a question for the
24 record. So that's my explanation on that. But she's
25 seated right here in front of me. And she's taking down

1 everything that I'm saying and does a great job of that.

2 All right. Has any member of the jury panel ever
3 been represented in any matter or member of your immediate
4 family been represented by either of the lawyers in this
5 matter? If so, please, stand.

6 (WHEREUPON, there was no response.)

7 THE COURT: For the record, no one is standing.

8 Is any member of the jury panel related by blood or
9 marriage, or close personal friends to either of the
10 parties in this case, that being Ms. Carpenter [sic] or
11 Mr. Downs in this case? If so, please, stand.

12 (WHEREUPON, there was no response.)

13 THE COURT: No one is standing.

14 Potential witnesses in no particular order, I'll read
15 them. Then I'll ask the question again just like I did.
16 Potential witnesses are: Brenda Wilkinson, Robbie Spicer,
17 Jamike Nedwards, George Smith, Stephanie Hodges, Ashley
18 Johnson, Kadiezcha Leak, Rick Mahlsted, Sean Calhoun,
19 Jason Peterson, George Miller, Kara Boyd, Robert Thacker,
20 Chris McCord, Linda Carpenter, Ben Ford, Tracy King, Chris
21 Gary. Is any member of the jury panel related by blood,
22 marriage, close personal friends with any of those
23 potential witnesses? If so, please, stand.

24 And if you're concerned -- like some of these names
25 are kind of common, Steve Smith, or something like that.

1 Is it the Steve Smith that is a police officer? I will
2 respond to those questions.

3 But is any member of the jury panel related by blood
4 or marriage, or close personal friends to any of those
5 potential witnesses? If so, please, stand.

6 (WHEREUPON, there was no response.)

7 THE COURT: No one is standing.

8 Now, I have three indictments. And for y'all's
9 understanding, these indictments are formal allegations
10 made by the State of South Carolina against any Defendant
11 charged in the State of South Carolina. So that you'll
12 understand, a formal allegation is just a mere accusation
13 made by the State and, in this case, Greenville County
14 against Mr. Ronald Tyrone Downs, Jr.

15 These allegations concern an event which occurred in
16 Greenville County on the 11th day of October of 2012,
17 regarding an incident, an armed robbery at the Dollar
18 General store. The three indictments make allegations
19 against Mr. Downs that he's committed the offense of armed
20 robbery, assault and battery first degree, and the offense
21 of kidnapping. And I tell you, these are mere allegations
22 made by the State against Mr. Downs regarding this
23 incident that occurred on October 11th, 2012.

24 To that end, is -- any member of this jury panel,
25 have you read any news accounts, heard any news reports,

1 seen anything on television, heard on the radio, read on
2 the Internet, or otherwise know anything about the events
3 surrounding this incident at Dollar General in October of
4 2012? If so, please, stand.

5 (WHEREUPON, there was no response.)

6 THE COURT: No one is standing.

7 Is any member of this jury panel related by blood or
8 marriage -- is a member of your immediate family a member
9 of the law enforcement community? For information
10 purposes, if you're -- a member of your immediate family
11 is employed in any fashion as a law enforcement officer,
12 please, stand.

13 I've got one.

14 Ma'am, tell me your name.

15 JUROR #27, SARAH BROWN: Sarah Brown.

16 THE COURT: Ms. Brown, a member of your immediate
17 family?

18 JUROR #27, SARAH BROWN: My husband.

19 THE COURT: And who -- which department does he
20 work --

21 JUROR #27, SARAH BROWN: Greenville County Sheriff's
22 Department.

23 THE COURT: This incident does not involve Greenville
24 County --

25 Or does it?

1 MR. MOYER: Judge, there's one potential officer with
2 Greenville County who possibly will testify, but it's
3 probably unlikely.

4 THE COURT: All right. Ma'am, I'm going to --
5 Ms. Brown, I'm going to set you aside for this just to
6 eliminate the possibility of putting you in a position.

7 So Ms. Brown will be removed from the jury list.

8 Is any member of this jury panel or a member of your
9 immediate family a member of any type of group such as
10 Citizens Against Violent Crimes, CAVE, I believe is the
11 acronym that's used publically, or any type of
12 organization which its purpose is to participate in
13 neighborhood watch zones, violent crimes ratification,
14 that type of thing? If so, please, stand.

15 (WHEREUPON, there was no response.)

16 THE COURT: No one is standing.

17 Does any member of this jury panel know of any reason
18 whatsoever that you cannot give both the State of South
19 Carolina and Mr. Ronald Downs a fair trial in this matter?
20 If so, please, stand.

21 Yes, sir. Tell me your name.

22 JUROR #71, FRANKIE FULLER: Frankie Fuller.

23 THE COURT: Mr. Fuller, what's your juror number?

24 JUROR #71, FRANKIE FULLER: #71.

25 THE COURT: #71. All right. Why don't you come

1 forward.

2 I want to hear this on the record, please.

3 MR. MOYER: May we approach, Judge?

4 THE COURT: Yes, sir.

5 Come forward.

6 (WHEREUPON, a sidebar was held with the Court, the
7 attorneys and Juror #71, Frankie Fuller.)

8 THE COURT: Talk loud enough for her to hear you and
9 it'll be okay.

10 Now, what's up?

11 JUROR #71, FRANKIE FULLER: Well, I'm a firm believer
12 of staying out of government affairs. And I'm a full
13 believer that if I didn't see it with my own eyes, it
14 didn't happen to me. And it wouldn't be fair for me to
15 have somebody else's fate in my hands.

16 THE COURT: Okay. Well, I'll tell you what, this
17 happens to me in Abbeville County, which is one of my home
18 counties. I have some citizens over there that have
19 similar beliefs. Some of them are tied to their religion.
20 And what I ask of them is that they remain and sit -- not
21 participate in they jury, but sit and observe the trial.
22 And that will be your contribution to the participation in
23 this trial.

24 Will you do that?

25 JUROR #71, FRANKIE FULLER: Yes, sir.

1 THE COURT: All right. He'll just sit as an
2 observer.

3 THE CLERK: Okay. What was the juror number?

4 JUROR #71, FRANKIE FULLER: #71.

5 THE COURT: #71.

6 THE CLERK: Thank you.

7 (WHEREUPON, the sidebar was concluded.)

8 THE COURT: Any other voir dire from the State?

9 MR. MOYER: No, Your Honor.

10 THE COURT: Mr. Gaddy, from the Defense?

11 MR. GADDY: Nothing, Your Honor.

12 THE COURT: All right. Ladies and gentlemen, what
13 will happen next -- and I don't know if y'all have been up
14 in the courtrooms and been called up. But the Clerk of
15 Court has a list from your group randomly drawn. And she
16 will call you one at a time, except for the -- Ms. Brown,
17 who I excused from this trial and --

18 Sir, I didn't catch your name. You told me your
19 name. Mr. Franklin?

20 JUROR #71, FRANKIE FULLER: Frankie.

21 THE COURT: Mr. Frankie [sic]. He'll observe the
22 trial.

23 If y'all will come forward, turn about where
24 Mr. Doherty is, and face the attorneys so that they can look
25 at you. They have a certain number of challenges, or please

1 excuse the jurors each. And they can excuse you for
2 whatever reason they deem appropriate, except certain things
3 in which the law applies, which I apply. But they want to
4 look at you.

5 So bring your pocketbook, if you're a lady. And, if
6 you're a guy and you've got a book -- whatever you've got,
7 bring your personal belongings with you. If you get
8 selected, you're going to sit in the jury box. If you're
9 not going to be seated, you'll be seated back where you
10 are.

11 So, as she calls your name, please, come forward.

12 And I tell -- I told this story earlier this week. I
13 had a pro se defendant in Laurens County about three weeks
14 ago. And he didn't realize -- it didn't occur to him that
15 everybody was eager to be jurors. He thought -- he was
16 surprised by the fact that there was a reluctance shown on
17 the jurors faces. And he couldn't believe it.

18 But I understand this is a new experience. Most of
19 you are not experienced jurors. You don't get called to
20 serve as jurors very often. But I promise you, I will try
21 to make this experience comfortable to you. I provide
22 candy. As you can see, I've already got it staged over
23 there on the jury railing. You can ask the jury that was
24 here yesterday, if you know them, that I do my best to
25 minimize your inconvenience.

1 So, on behalf of Mr. Robinson [sic], I hope you don't
2 have reluctant looks on your face as you come forward
3 like, oh, no, please, don't strike me, don't strike me. I
4 understand it. But we're glad to have you here. And we
5 appreciate your willingness to serve as jurors.

6 All right. Madam Clerk.

7 JURY SELECTION

8 THE CLERK: Thank you.

9 Juror #213, Waddy Talley.

10 (WHEREUPON, Waddy Talley, a black male, came
11 forward.)

12 MR. GADDY: Swear the juror.

13 THE CLERK: Okay. One minute, please.
14 What says the State?

15 MR. MOYER: Please present the juror.

16 THE CLERK: Pardon me?

17 MR. MOYER: Please present the juror.

18 THE CLERK: Thank you.
19 You may be seated in the jury box.

20 MR. MOYER: May it please the Court.
21 Could -- may we approach?

22 THE COURT: Yes, sir.

23 MR. MOYER: Mr. Gaddy.

24 (WHEREUPON, a bench conference was held.)

25 THE CLERK: Juror #90, Alexander Guest.

1 (WHEREUPON, Alexander Guest, a white male, came
2 forward.)

3 MR. MOYER: Please present Mr. Guest.

4 THE CLERK: Thank you.

5 MR. GADDY: Please swear the juror.

6 THE CLERK: Thank you.

7 You may be seated in the jury box.

8 Juror #61, Mary Elliott.

9 (WHEREUPON, Mary Elliott, a white female, came
10 forward.)

11 THE CLERK: What says the State?

12 MR. MOYER: Please present Ms. Elliott.

13 THE CLERK: Thank you.

14 What says the Defendant?

15 MR. GADDY: Excuse the juror.

16 THE CLERK: Thank you.

17 You may be seated. You're excused from the trial of
18 this case.

19 Juror #97, Jessica Hartline.

20 (WHEREUPON, Jessica Hartline, a white female,
21 came forward.)

22 THE CLERK: What says the State?

23 MR. MOYER: Please present Ms. Hartline.

24 THE CLERK: Thank you.

25 What says the Defendant?

1 MR. GADDY: Please excuse the juror.

2 THE CLERK: Thank you.

3 You may be seated. You're excused from the trial of
4 this case.

5 Juror #34, Anna Bush.

6 (WHEREUPON, Anna Bush, a white female, came forward.)

7 MR. MOYER: Please present Ms. Bush.

8 THE CLERK: Thank you.

9 MR. GADDY: Excuse the juror.

10 THE CLERK: Thank you.

11 You may be seated. You're excused from the trial of
12 this case.

13 Juror #126, Kim Latimer.

14 (WHEREUPON, Kim Latimer, a black female, came
15 forward.)

16 MR. MOYER: Please excuse the juror from this case.

17 THE CLERK: Thank you.

18 You may be seated. You're excused from the trial of
19 this case.

20 Juror #181, Karen Salerno.

21 (WHEREUPON, Karen Salerno, a white female, came
22 forward.)

23 THE CLERK: What says the State?

24 MR. MOYER: Please present Ms. Salerno.

25 THE CLERK: Thank you.

1 What says --

2 MR. GADDY: Excuse the juror.

3 THE CLERK: Thank you.

4 You may be seated. You're excused from the trial of
5 this case.

6 Juror #129 -- I'm sorry, #121, Kenneth Kirkland.

7 (WHEREUPON, Kenneth Kirkland, a white male, came
8 forward.)

9 THE CLERK: What says the State?

10 MR. MOYER: Please present Mr. Kirkland.

11 THE CLERK: Thank you.

12 MR. GADDY: Present the juror.

13 THE CLERK: Thank you.

14 You may be seated in the jury box.

15 Juror #146, John McCuen.

16 (WHEREUPON, John McCuen, a white male, came
17 forward.)

18 THE CLERK: What says the State?

19 MR. MOYER: Please present Mr. McCuen.

20 THE CLERK: Thank you.

21 What says the Defendant?

22 MR. GADDY: Swear the juror.

23 THE CLERK: Thank you.

24 You may be seated in the jury box.

25 Juror #221, Barbara Suppinger.

1 (WHEREUPON, Barbara Suppinger, a white female,
2 came forward.)

3 THE CLERK: What says the State?

4 MR. MOYER: Please present Ms. Suppinger.

5 THE CLERK: Thank you.

6 What says the Defendant?

7 MR. GADDY: Present the juror.

8 THE CLERK: Thank you.

9 You may be seated in the jury box.

10 Juror #25, Benjamin Brown.

11 (WHEREUPON, Benjamin Brown, a white male, came
12 forward.)

13 THE CLERK: What says the State?

14 MR. MOYER: Please present Mr. Brown.

15 THE CLERK: Thank you.

16 What says the Defendant?

17 MR. GADDY: Swear the juror.

18 THE CLERK: Thank you.

19 You may be seated in the jury box.

20 Juror #199, Travonnis Smith.

21 (WHEREUPON, Travonnis Smith, a black male, came
22 forward.)

23 THE CLERK: What says the State?

24 MR. MOYER: Please present Mr. Smith.

25 THE CLERK: Thank you.

1 What says the Defendant?

2 MR. GADDY: Swear the juror.

3 THE CLERK: Thank you.

4 You may be seated in the jury box.

5 Juror #195, Linda Shuster.

6 (WHEREUPON, Linda Shuster, a white female, came
7 forward.)

8 THE CLERK: What says the State?

9 MR. MOYER: Please present Ms. Shuster.

10 THE CLERK: Thank you.

11 What says the Defendant?

12 MR. GADDY: Excuse the juror.

13 THE CLERK: Thank you.

14 You may be seated. You're excused from the trial of
15 this case.

16 Juror #118, Jessica Key.

17 (WHEREUPON, Jessica Key, a white female, came
18 forward.)

19 THE CLERK: What says the State?

20 MR. MOYER: Please present Ms. Key.

21 THE CLERK: Thank you.

22 What says the Defendant?

23 MR. GADDY: Swear the juror.

24 THE CLERK: Thank you.

25 You may be seated in the jury box.

1 Juror #172, Zachary Rigsby.

2 (WHEREUPON, Zachary Rigsby, a white male, came
3 forward.)

4 THE CLERK: What says the State?

5 MR. MOYER: Please present Mr. Rigsby.

6 THE CLERK: Thank you.

7 What --

8 MR. GADDY: Swear the juror.

9 THE CLERK: Thank you.

10 You may be seated in the jury box.

11 Juror #254, Paul Maves.

12 (WHEREUPON, Paul Maves, a white male, came forward.)

13 THE CLERK: What says the State?

14 MR. MOYER: Please present Mr. Maves.

15 THE CLERK: Thank you.

16 What says --

17 MR. GADDY: Swear the juror.

18 THE CLERK: Thank you.

19 You may be seated in the jury box.

20 Juror #223, Matthew Vissac.

21 (WHEREUPON, Matthew Vissac, a white male, came
22 forward.)

23 THE CLERK: What says the Sate?

24 MR. MOYER: Please present Mr. Vissac.

25 MR. GADDY: Swear the juror.

1 THE CLERK: Thank you.

2 You may be seated in the jury box.

3 Juror #253, Joseph Long.

4 (WHEREUPON, Joseph Long, a white male, came forward.)

5 MR. MOYER: Please present Mr. Long.

6 THE CLERK: Thank you.

7 MR. GADDY: Swear the juror.

8 THE CLERK: Thank you.

9 You may be seated in the jury box.

10 Juror #106, Anita Holcombe.

11 (WHEREUPON, Anita Holcombe, a white female, came
12 forward.)

13 THE CLERK: What says the State?

14 MR. MOYER: Please present Ms. Holcombe.

15 THE CLERK: Thank --

16 MR. GADDY: Excuse the juror.

17 THE CLERK: Thank you.

18 You may be seated. You're excused from the trial of
19 this case.

20 Juror #14, Melinda Bertka.

21 (WHEREUPON, Melinda Bertka, a white female, came
22 forward.)

23 THE CLERK: What says the State?

24 MR. MOYER: Please present Ms. Bertka.

25 THE CLERK: Thank you.

1 What says the Defendant?

2 MR. GADDY: I think I've used all of my challenges.

3 THE COURT: No. You've got one more on the

4 alternate.

5 MR. GADDY: Okay. Excuse the juror.

6 THE CLERK: You may be seated -- you're excused --

7 THE COURT: This is on the alternate.

8 THE CLERK: Juror #84, Michael Gray.

9 (WHEREUPON, Michael Gray, a white male, came
10 forward.)

11 THE CLERK: What says the State?

12 MR. MOYER: Please present Mr. Gray.

13 MR. GADDY: Swear the juror.

14 THE CLERK: You may be seated in the jury box.

15 THE COURT: All right. Gentlemen, are there any
16 matters of law the Court needs to take up regarding the
17 selection process employed by the Court and/or the
18 composition of this jury?

19 MR. MOYER: Not from the State, Your Honor.

20 THE COURT: Mr. Gaddy, anything from you? Any
21 matters of law we need to take up?

22 MR. GADDY: Either way.

23 THE COURT: All right. What I want to know is, are
24 there any matters of law that I need to take up outside
25 the presence of the jury regarding the selection process I

1 employed in selecting this jury, or the composition of the
2 jury?

3 MR. GADDY: Well, we'll select the alternate then.

4 THE COURT: We did a minute ago. That's your
5 alternate there.

6 MR. GADDY: That'll be fine.

7 THE COURT: Are you good with him?

8 MR. GADDY: Yeah.

9 THE COURT: All right. Good enough.

10 Joelle, are the jurors finished?

11 THE CLERK: They can go see Judy for further
12 instructions.

13 THE COURT: Okay. So they're going back to the
14 assembly room?

15 THE CLERK: Yes, please.

16 THE COURT: Folks, I'm sorry you didn't get picked.
17 I did my best. So you need to go back to the assembly
18 room and await for further instructions. These people get
19 candy.

20 I'm going to hold Mr. Frankie. He gets to stay with
21 me. He's going to sit up here and watch.

22 (WHEREUPON, the remaining jury panel members
23 exited the courtroom.)

24 THE COURT: Do we have any pre-trial matters, or are
25 we ready to go?

1 MR. MOYER: We're ready to go, Judge.

2 MR. GADDY: The Defense is ready, Your Honor.

3 THE COURT: All right. Good deal.

4 INTRODUCTORY REMARKS

5 THE COURT: What's that?

6 JUROR #25, BENJAMIN BROWN: A book.

7 THE COURT: Tell me your name.

8 JUROR #25, BENJAMIN BROWN: Benjamin Brown.

9 THE COURT: Mr. Brown, you're the Foreperson. I just
10 picked you. You don't get paid extra. What you get to do
11 is preside over the deliberations. You get to send notes
12 through the bailiff, if you need anything during
13 deliberations. And, otherwise, you just get to sit there.
14 That's all the responsibilities you've got. But you don't
15 get paid extra.

16 You do get to monitor the candy dish. That is candy
17 I provide to the jurors. A judge told me when I went to
18 the Judicial College out in Reno, the National Judicial
19 College, they send us out there for two weeks to give us
20 additional training in addition to what we do here in
21 South Carolina. And a judge from Seattle, Washington,
22 said buy those jurors candy, provide it to the jurors, and
23 make them a little more relaxed and a little more
24 comfortable. And so I do that. And I find that jurors
25 love it.

1 Now, I don't have any chocolate in there, so I'm
2 sorry for that. But I'll work on that. I kind of was on
3 quick notice to come to Greenville, and I didn't get the
4 good candy. But this is what I'm eating, so it's what
5 y'all get.

6 Anyway, in a few moments, I'm going to have the Clerk
7 of Court place you under oath. For the purpose of this
8 trial, I want you to understand several things, some
9 ground rules, so to speak. This is a criminal case. It's
10 the Court of General Sessions. It's a criminal case.

11 The State has the burden of proving this case beyond
12 a reasonable doubt. I will explain to you exactly what
13 that means at the very end. A simple definition of
14 reasonable doubt is it's the kind of doubt that would
15 cause a reasonable person to hesitate to act. So kind of
16 keep that in mind. The State's got to prove each and
17 every allegation, each and every element that the law
18 requires against Mr. Downs on all three of these charges
19 to sustain a conviction.

20 Mr. Downs has nothing to prove and nothing to
21 disprove. He can sit there throughout this entire trial
22 and not say a word. His lawyer can cross-examine the
23 witnesses. He can challenge the evidence. He doesn't
24 have to say anything. The law requires him to prove
25 nothing and to disprove nothing. It's the State's

1 responsibility.

2 Now, because of that, the State sits closer to you.
3 And the State calls its witnesses first because they have
4 to. Every courtroom you go in -- you may not recognize
5 this, but whatever side the jury box is, there's the table
6 and that's where the State gets to sit. If the jury box
7 were on that side, they'd be to swapping tables. They go
8 first. They sit closer.

9 If it were a civil case, the person that was suing
10 would go first. The Defendant doesn't have to disprove
11 it. It's the same way in a criminal case. The person
12 bringing the case has to do the proving. So understand
13 that.

14 Now, this is important. I want y'all to understand
15 that everything y'all need to decide this case, you'll
16 hear in this courtroom altogether 13 of you under my
17 supervision and with the court record. Ms. Jenkins is
18 taking everything down, every comment I'm making from the
19 time I qualified you and asked you those questions to the
20 very end. We've got a court record. So comments on TV,
21 is this on the record or off the record? Everything will
22 be on the record here.

23 Y'all will hear the witnesses from the witness stand.
24 And y'all get to watch them, observe them, hear them, hear
25 their voice inflection, their tone of voice, their

1 hesitation, any of that stuff. Y'all get to see it as a
2 group. Half of y'all aren't going hear some of it, and
3 half of you won't hear some other of it. Y'all will hear
4 it altogether at the same time all the way through.

5 And that's important because I don't want you
6 deciding this case on something you heard outside of the
7 courtroom, something you read in the newspaper, something
8 you saw on the Internet. The law of South Carolina is my
9 job to explain to you. South Carolina has some curious
10 laws that other states might not have.

11 So it's my job to explain to you what the law of
12 South Carolina is. And, because of that, you've got to
13 forget about or try to ignore any understanding of what
14 you see on TV as to what the law is. I'm going to tell
15 you what the law is. And I'm tasked with getting it
16 right. If I get it wrong, there's another time and place
17 to fix that error.

18 Television is not the law. And I tell jurors that
19 all the time. Just wait until I give you the instructions
20 of what the law is, and what the State is required to
21 prove. I'll tell you that. That's my job.

22 Now, all the witnesses will testify from up here.
23 And y'all get to hear them as a group. Since the State
24 calls witnesses first, you can't decide the case on the
25 first witness, second witness, third witness. You can't

1 decide or even discuss the case at all until everything
2 has been presented to you, all of it, whatever the State
3 wants to present, and whatever the Defense chooses to
4 present.

5 Then my instructions are here is what you do to
6 evaluate what you've heard, and you'll go into
7 deliberations. When that happens, that's when I want you
8 to start talking about the case. Until then, each and
9 every break we're going to take -- we may take five. We
10 may take ten. We may take none. I'll be stunned if we
11 take none. Because there will be breaks in the trial and
12 we've got to eat lunch. So I'm pretty good about breaks.
13 And I already promised you candy, so.

14 At every break, I will most likely instruct you,
15 remember, don't discuss the case. And I really am going
16 to insist on that. Because I don't want these two talking
17 about the case, and these two talking about the case, and
18 somebody not hearing it. Y'all can talk about it in the
19 jury room altogether at the same time with my
20 instructions.

21 Now, likewise, this is important. Don't tell anybody
22 other than your immediate family, I'm on jury duty and the
23 judge told me not to talk about the case. Young people
24 especially with the invention of the Internet, Facebook,
25 and Myspace and Twitter, and all that nonsense that I

1 don't understand, but my kids do -- nobody wants to
2 influence you on how to do your job. I want you to do
3 your job right and free from any outside influence.

4 So if somebody were to put on Twitter, I'm on jury
5 duty and the Judge provided us candy, some other person
6 that may be a friend unknowingly will make certain that
7 you hear so and so witness in so and so case. The next
8 thing you know you're getting outside influences because
9 you put it out there. So, please, don't do that.

10 Some of the older people I'm not worried about. They
11 probably don't go on Twitter, or Instagram, or all that
12 sort of stuff. So just stay off the Internet. Stay off
13 Facebook. Don't tell anybody you're on jury duty.
14 Because that will alleviate the need for anybody to
15 comment back to you. Because I just -- we don't need that
16 and the law requires you not to utilize that. You utilize
17 what you hear here under my supervision. Because certain
18 things probably -- I mean, I don't know what the facts are
19 going to be or how the witnesses are going to testify,
20 which brings me to my next point.

21 Certain things will be testified to. There may be
22 some testimony that's not allowed, or there may be some
23 that needs to be allowed. Those are my decisions.
24 They're legal decisions as to whether or not a rule of
25 evidence allows testimony or allows evidence before the

1 jury. If one of the lawyers stands up and says, Judge,
2 objection, hearsay, or objection, Judge, relevance, I'm
3 going to make a ruling on those one-word objections.
4 Because I kind of know and I'm listening for certain
5 things, and y'all might not be because I'm in court every
6 day all year long just about.

7 I mean, so I'm listening for certain things that I
8 know are proper or improper. And I'll say, overruled, or
9 sustained. And the lawyers know what that means. And
10 they'll either move on to something else, or rephrase the
11 question, or whatever I tell them to do.

12 Lawyers are allowed, if I rule against them, to ask
13 to be heard further. When I hear them further, it's on
14 the record. And they want to say, Judge, wait a minute,
15 Rule 403, or Rule 407, or Rule 12 says this, this, and
16 this. And what I want you to understand is I'm not trying
17 to violate that rule, I think it allows me to do this.
18 Well, they want to go more into depth in the rules and I'm
19 willing to hear them.

20 So I don't need y'all in here listening to legal
21 arguments. And so I'm going to excuse you and let you go
22 in the jury room and have a break while I hear a legal
23 question. I just asked them a minute ago did they have
24 any legal issues about how we picked y'all. And neither
25 side did. They're good with it. But that was what I was

1 asking for. Do y'all want to argue to me further about
2 how we picked the jury? Both sides said we've got a good
3 jury. I know that's what they meant, it's a good jury.

4 When y'all begin y'all's deliberations and y'all are
5 back in the back, I won't be in there. The bailiff won't
6 be in there. It will just be the 12 of y'all. And y'all
7 will sort out the questions of fact that you're asked to
8 sort out. And since y'all are going to be back there
9 without me, I don't want y'all in here with me when I'm
10 doing my job and doing the legal decisions. Okay.

11 Y'all are the fact finders. And I'm not certain
12 y'all know what that means. But what it means is this,
13 there's going to be a question of fact whether something
14 happened or something didn't happen. That's a fact
15 question. A legal question is, is this evidence allowed
16 in or not? I do the legal questions, y'all do the fact
17 questions. I won't disturb y'all's rulings, y'all won't
18 disturb mine. So I don't need you to disturb me while I'm
19 doing mine. And that's why I send you out because -- and
20 it's a good time to give you a break, too.

21 So let me see what else. I'm trying to give all my
22 preliminary stuff to you off the top of my head without
23 notes.

24 All right. If y'all need a break, you give the code
25 to Mr. Doherty. And Mr. Doherty will come up there and

1 say, Judge, we need a break. I doubt we'll get that far
2 that you have to ask for one. But if you do, and we go
3 too long -- it's an observation by me after trying cases
4 for five years as a judge, the first witnesses are,
5 generally, the longer ones. As you get about halfway
6 through, the witnesses get shorter. They get shorter and
7 shorter as the trial goes on.

8 But I take breaks about every hour, hour and
9 15 minutes, unless something happens at 55 minutes and
10 I'll take a break then just so we don't go an hour and a
11 half. Because I drink a lot of coffee and so I need a
12 break, too. So that shouldn't be a problem. I've never
13 been accused of taking too much testimony. But I do try
14 to work steadily. If I say 10 minutes, I'm going to have
15 you back in here at 11 minutes so we get right back to
16 work and minimize your inconvenience as much as possible.

17 If we need something, ask Mr. Doherty. He's the
18 bailiff. He is your go-to guy for I need to step outside
19 and use my phone, I need to do so and so.

20 I don't know if we have any smokers. But if we do,
21 there's got to be some place somewhere here in Greenville,
22 unless it's a non-smoking city. I don't know that.

23 Is it?

24 THE BAILIFF: It's a smoking city, sir.

25 THE COURT: Oh, a smoking city. So if we have any

1 smokers and y'all need an extended break, I'll give it to
2 you. If you need to step outside and use your cell phone
3 to call and check on your family or something, I allow
4 that, too. But I have a little longer break mid morning
5 and mid afternoon for those things. I believe that's it.

6 So with those preliminary instructions -- oh, I knew
7 there was something else.

8 Mr. Foreman, if any of the other jurors would like a
9 note pad to take notes, I allow note taking. It's only
10 for the benefit of the note taker. But you're allowed to
11 take notes. You're not required to. It's optional. Some
12 people want something to do with their hand. I take notes
13 because I have to because I'm listening for certain things
14 that I've got to keep track of. And so I'm taking notes.
15 And the law clerk up there, he's, likewise, taking notes.
16 So I'm going to work on the computer a little bit and take
17 notes.

18 If you need note pads, ask right now and we'll
19 retrieve them before we start. Okay. So if you need note
20 pads, take a little poll real quick and we'll get them.
21 Mr. Doherty will round them up. It won't take long.

22 So you can ask.

23 JUROR #25, BENJAMIN BROWN: Does anybody need a note
24 pad?

25 (WHEREUPON, several jurors raised their hands.)

1 THE COURT: We've three or four.

2 THE BAILIFF: We're good, Your Honor. I've got 10 or
3 12 back there.

4 THE COURT: Okay. Let's go get them before we do the
5 opening arguments.

6 THE BAILIFF: Yes, sir.

7 THE COURT: All right. We'll stand at ease until we
8 get the pads and then we'll start.

9 While he's gone, Madam Clerk, will you, please, swear
10 the jury.

11 THE CLERK: Sure.

12 Would you, please, stand and raise your right hand.

13 The response to the oath is "I will."

14 (WHEREUPON the jury was sworn at approximately
15 10:39 a.m.)

16 THE CLERK: Thank you.

17 You may be seated.

18 (Pause.)

19 THE COURT: Mr. Moyer.

20 MR. MOYER: Thank you, Your Honor.

21 May it please the Court.

22 THE COURT: Yes, sir.

23 OPENING STATEMENTS

24 MR. MOYER: Mr. Foreman, ladies and gentlemen of the
25 jury, my name is Mark Moyer. I am an assistant solicitor.

1 In South Carolina, if you're not aware of it, we call our
2 prosecutors what most states call district attorneys. We
3 call them solicitors here in South Carolina. I'm an
4 assistant solicitor. I work for the Solicitor of
5 Greenville and Pickens County, Walt Wilkins. It is my job
6 to represent the State of South Carolina, the people of
7 Greenville in criminal cases. And that's what we're doing
8 today.

9 We are here because this Defendant, Ronald Downs, has
10 been charged and indicted for the charges that you just
11 heard read to you a brief period of time ago by the Judge,
12 armed robbery, assault and battery first degree, and
13 kidnapping.

14 Now, what are those charges? What is an armed
15 robbery? Well, an armed robbery is a type of theft. It
16 is a form of theft. It is stealing -- taking goods or
17 money from the person or presence of another person
18 through force or intimidation. That's what separates it
19 from a larceny, with force or intimidation.

20 Now, what makes a robbery armed robbery? Well, the
21 person has to either be armed with a deadly weapon, or the
22 person has to have some representation of a deadly weapon.
23 In other words, it's not the victim's responsibility when
24 being robbed to make sure that this weapon is real or not.
25 If the robber is representing it to be either a pistol or

1 some other deadly weapon and acting as if it is, and the
2 victim would reasonably believe that that's what it is,
3 that is enough to make it armed robbery.

4 The second charge is assault and battery first
5 degree. Assault and battery first degree means an
6 assault, which is an offer or attempt to injure another
7 person, accompanied by this additional circumstance that
8 it takes place during the commission of either a burglary,
9 robbery, kidnapping, or theft, one of those separate
10 crimes.

11 So if an assault occurs, it doesn't matter how badly
12 the person is injured or even if the person was injured.
13 If the assault occurs during the crime -- one of those
14 four crimes, then it is assault and battery first degree.

15 The final charge is kidnapping. Now, kidnapping, the
16 definition in South Carolina is broad. We think of a
17 kidnapping -- the typical perception is it is somebody,
18 you know, lying in wait, nabbing somebody, tying them up
19 with duct tape, throwing them in the trunk, and holding
20 them for ransom. Well, that, certainly, would be a
21 kidnapping. But, in South Carolina, it covers a much
22 broader spectrum than that.

23 Kidnapping means to seize, to confine, to inveigle,
24 which means to decoy, to abduct, or to carry away. So,
25 essentially, if you deprive someone of their freedom,

1 however briefly, it is kidnapping.

2 Now, we're going to start the trial here in just a
3 few minutes. And you are going to meet Brenda Wilkinson
4 very early in this trial.

5 Now, when Brenda Wilkinson awoke on the morning of
6 October the 11th of 2012, last year, she knew several
7 things. She knew that she was about to go to work. She
8 had a job, a full-time job where she had worked for 16 to
9 17 years. She knew that after she finished that job, she
10 was going to go to her second job. She worked two jobs.
11 She worked at the Dollar General. And she worked there in
12 the evenings.

13 She also knew, in fact, that the following day was
14 going to be her last day. October 12th was going to be
15 her last day working at that Dollar General. She had
16 worked there five years. And she was going to scale back
17 and only work one full-time job and not work the second
18 job. She knew that she was 63 years old. She knew that
19 she was a grandmother of four. What she did not know that
20 morning when she woke up is that about 10 minutes till
21 8:00 that evening while at the Dollar General, she was
22 going to be robbed and she was going to be beaten.

23 Now, the testimony that you're going to hear in this
24 case is that this incident happened at the Dollar General
25 on Butler Road in Mauldin. At about 10 minutes until 8:00

1 on that evening, Ms. Wilkinson was at the cash register
2 when a man burst in. This man had a mask covering his
3 face. And he walked up to her and he stuck something in
4 her face, some object that's wrapped up in some type of
5 cloth. And he tells her it's a gun and he demands money.

6 Well, Ms. Wilkinson is holding a clipboard. And she
7 holds it up in front of the robber. At that point, the
8 robber takes whatever object he has in his hand, which he
9 said is a gun, strikes the clipboard, breaking the
10 clipboard and smashing it on the floor.

11 Ms. Wilkinson knows now that this is very serious.
12 She turns and she runs. She has -- she's going to attempt
13 to get away. The entrance to the cashier area is back
14 behind her a little ways. So she turns to run. However,
15 the robber turns, also, and comes around the other way and
16 stops her. Ms. Wilkinson grabs something and throws at
17 him, misses him. She grabs something else and throws at
18 him, misses him again. The robber confronts her and stops
19 her from leaving.

20 Ms. Wilkinson, at that point, actually, reaches over
21 and pulls down the robber's mask and exposes his face
22 that -- hoping that this would maybe scare him away.
23 Well, it doesn't. He pulls the mask back up and he robs
24 her. He takes her to the cashier -- to the cash register
25 where Ms. Wilkinson had just been. And you're going to

1 see this on video. You're going to see how he demands
2 that she open the cash register, and how she's flustered
3 understandably and cannot get it open in time. Because
4 you have to, actually, scan something in order for the
5 register to open.

6 And when she does not move quickly enough, he strikes
7 her. He strikes her in the head. And you're going to see
8 that she, finally, gets that cash register door open and
9 he takes the money out of that drawer.

10 But you'll hear that it's not finished. You're going
11 to see testimony, and hear testimony, and see the video
12 that he then takes her to the other cash register and he
13 demands that she open it, but she can't. She had not
14 logged in, or there was some technical reason why it could
15 not open.

16 And you're going to see, at that point, that he
17 begins hitting her over and over. He, actually, takes her
18 and throws her onto the floor, drags her back up to the
19 register, and demands that she open it. And you're going
20 to hear testimony that she is telling him, I'm sorry, I
21 can't. And he continues to act this way.

22 The video does not have audio. But if it did, you
23 would hear him -- you would hear that he's calling her a
24 bitch and worse. This goes on. This entire robbery lasts
25 somewhere from three to four minutes.

1 Finally, either because this is taking so long or
2 because an alarm is sounded, you're going to hear that the
3 robber turns and leaves. What the robber did not know is
4 that a police officer was waiting outside. There was,
5 actually, a number of people in the Dollar General while
6 this was taking place. And you're going to see on the
7 video how they run out the back door. Several of them are
8 on the telephone calling 911.

9 And you're going to hear testimony that an officer
10 with the Mauldin Police Department, Sean Calhoun, drove
11 up. And he was waiting in the parking lot. And he knew
12 the robber was still inside. And he sees the robber come
13 outside still wearing the mask, still with the object in
14 his hand.

15 And the officer tells him, Get down, I'm a police
16 officer. The robber turns and runs. He starts running
17 through a field. Officer Calhoun chases him. He chases
18 him back through the field until they get to a fence.
19 Officer Calhoun has a flashlight so he can watch where he
20 goes. He, actually, sees money falling out of his
21 pockets. He chases him to a fence. Well, the robber
22 begins to scale the fence.

23 Officer Calhoun runs back to his car. He's familiar
24 with this area. He gets in his car and he drives around
25 to these condos where he knows that this robber would end

1 up. And when he gets back there just a few minutes after
2 he had just chased him, he sees the robber bend over
3 gasping for breath, at this point, still having the mask
4 on his face.

5 The robber then begins climbing over several fences
6 in this residential area. Officer Calhoun knew exactly
7 where he was going. So he goes around knowing where he
8 was going to come out. He sees the man come over the
9 fence. And, again, a brief confrontation. The officer
10 had to use his taser. He arrests the man. And he's taken
11 into custody. The testimony is going to be that that man
12 that Officer Calhoun arrested was this Defendant, Ronald
13 Downs.

14 Thank you.

15 MR. GADDY: Your Honor --

16 THE COURT: Yes, sir.

17 MR. GADDY: -- I object to the -- a portion of the
18 argument of the Solicitor. He attempted to define armed
19 robbery and said that it included a representation of a
20 deadly weapon. I object to that portion of his argument.
21 And I would ask that the Court take note of that and give
22 a correct definition of what armed robbery is. It -- I
23 contend that it is not -- a representation of a deadly
24 weapon does not constitute armed robbery.

25 MR. MOYER: And, Judge, my response to that is it's

1 black and white in the statute that that is what -- that
2 that is included in the definition of armed robbery.

3 THE COURT: All right. Ladies and gentlemen, as I
4 told you, and the lawyers will, perhaps, tell you, also,
5 y'all are going to be judges of questions of fact. I'm
6 going to be the instructor of the law. And I'll define
7 armed robbery and the exact elements of what it shall be.
8 And I'll be very clear on what the elements are. Armed
9 robbery is proof one, two, three, four. And, so to that
10 end, I will instruct you on the elements of armed robbery.

11 And the lawyers will make reference to the statute
12 from time to time. And they're allowed to do that,
13 provided they do it properly.

14 But I think that was a proper argument. So I
15 understand your objection. But I think it was a proper
16 description of the statute for armed robbery.

17 All right. Mr. Gaddy.

18 (WHEREUPON, there was no response.)

19 THE COURT: Mr. Gaddy, go ahead.

20 MR. GADDY: Ladies and gentlemen of the jury, I'm
21 Cliff Gaddy, as I introduced myself earlier.

22 The Defendant has pled not guilty. His decision is,
23 or what he's got to say, or what his case is, I'm not the
24 person, I'm not the person. You've got the wrong man.
25 That's what his defense is.

1 THE COURT: Folks, I'm ready for a break. I've been
2 here since about 9:35, 9:40. And so I'm going to take a
3 brief break. We've heard the opening comments. When we
4 come back from the break, we'll start hearing testimony
5 from witnesses.

6 So y'all step into the jury room. Do not begin
7 discussing the case.

8 (WHEREUPON, the jury was excused from open court at
9 approximately 10:51 a.m.)

10 THE COURT: All right. Folks, we'll stand at ease
11 for a few minutes. I'm going to step in the back. And
12 I'll be back out.

13 (WHEREUPON, a break was taken.)

14 (WHEREUPON, State's Exhibit Nos. 1, 2, 3, 4, 5, 6, 7,
15 8, 9, 10, 11, 12, 13, 14, 15, and 16 were marked for
16 identification only.)

17 THE COURT: Bring the jury in.

18 (WHEREUPON, the jury came into open court at
19 approximately 11:03 a.m.)

20 THE COURT: Folks, y'all help yourself to that candy.
21 I've got plenty more in the back.

22 All right. Mr. Moyer.

23 MR. MOYER: Thank you, Your Honor.

24 May it please the Court.

25 The State would call Robbie Spicer.

1 THE COURT: Ms. Spicer, come forward to be sworn.

2 THE CLERK: Please place your left hand on the Bible
3 and raise your right.

4 WHEREUPON,

5 ROBBIE SPICER,

6 after first having been duly sworn, testified as follows:

7 THE CLERK: Thank you.

8 You may be seated.

9 Would you, please, state your name for the record?

10 THE WITNESS: Robbie Spicer.

11 THE CLERK: Thank you.

12 DIRECT EXAMINATION

13 BY MR. MOYER:

14 Q Ms. Spicer, how old are you?

15 A 53.

16 Q And where do you work?

17 A Dollar General.

18 Q How long have you worked for Dollar General?

19 A Four and a half years.

20 Q Now, in case the jurors are unaware, just tell the
21 jury what -- what is Dollar General? What kind of store
22 is it?

23 A It's a variety store.

24 Q Okay. It's a retail store --

25 A Yeah, retail.

1 Q Where general merchandise is sold, would you say?

2 A Yes, sir.

3 Q Okay. Now, what is your position with Dollar
4 General?

5 A Store manager.

6 Q And over one store, or more than one store?

7 A Just one store.

8 Q Okay. And which store is that?

9 A The one at 412 West Butler in Mauldin.

10 Q Now, what are your duties?

11 A I make deposits. I manage the employees. I order
12 products for the store.

13 Q Now, are you familiar with -- is there a Dollar
14 General in Mauldin -- on Butler Road in Mauldin?

15 A Yeah, 412 West Butler.

16 Q Okay. And you're familiar with that?

17 A Yes.

18 Q It's in Greenville County?

19 A Yes, sir.

20 Q Okay. I want to show you what has been marked as
21 State's Exhibit No. 1. I would just ask if you would just
22 take a look at that for a minute. And tell us, do you
23 recognize what I'm showing you?

24 A Yes. That's my store.

25 Q Okay. Is that -- that's an aerial photograph of the

1 store?

2 A Yes.

3 Q On Mauldin Road?

4 A Yes, sir.

5 Q Now, is that a true and accurate representation of
6 the layout of the store, and the roads, and so forth?

7 A Yes, sir.

8 MR. MOYER: Your Honor, at this time, I would move to
9 have State's Exhibit No. 1 entered into evidence.

10 MR. GADDY: We have no objection.

11 THE COURT: Very well. State's Exhibit No. 1 is
12 admitted without objection.

13 (WHEREUPON, State's Exhibit No. 1 was admitted into
14 evidence.)

15 BY MR. MOYER:

16 Q If I could ask you just to step down for one moment.
17 I want to ask you just a couple of questions about the
18 store.

19 A (Witness complied.)

20 Q Would you, please, point out for the jury where the
21 store is?

22 A This is the store here.

23 Q Okay. Where is the front entrance to the store?

24 A The front door is right there.

25 Q Okay. And where is the register inside the store?

1 A The registers are right inside the door right here.

2 Q On the right-hand side as you're going in?

3 A Yes, correct.

4 Q Now, the parking lot there, is that well lit in the
5 evening?

6 A In evenings, it's like daylight.

7 Q It's like daylight out there?

8 A Yes.

9 Q Okay. And what all -- that entire parking lot area?

10 A Up to about here.

11 Q So both the front and the side?

12 A The front and the sides are well lit.

13 Q Would you point out that entire area to the jury
14 where the --

15 A Yeah. This area up through here.

16 Q Okay. Thank you.

17 Please have a seat.

18 A (Witness complied.)

19 Q All right. Now, did you go to the store on the
20 evening of October the 11th, 2012?

21 A Yes, I did.

22 Q And what took you there that day?

23 A I received a phone call from my manager on duty
24 telling me the store had been robbed.

25 Q Okay. Now, what was taking place when you arrived

1 there at the store?

2 A The police were there. The paramedics had just
3 arrived to check out Brenda Wilkinson. And they were just
4 bringing the guy back to the parking lot that they had
5 caught.

6 Q Okay. Now, did you -- who is Ms. Wilkinson?

7 A She was my cashier.

8 Q Brenda Wilkinson?

9 A Yes.

10 Q Did you notice anything about her demeanor or her
11 physical appearance at that time?

12 A Yes. She was -- she had a bloody eye where like
13 somebody had -- the blood vessels were broke in her eye.
14 She had some bruises. And she was very upset and angry.

15 Q Okay. Now, did you speak to officers while you were
16 there?

17 A Yes.

18 Q Now, after speaking to the officer, did you do
19 anything to determine how much money was missing from the
20 store?

21 A Yes. When I got there, they allowed me to go into
22 the building and cut off the alarm that they had set off
23 when they ran out the back door. And I had to pull up a
24 videotape of the incident.

25 And then once they brought and handed me the money

1 back, I had to count all the tills and tell them how much
2 was missing.

3 Q Okay. And how much was missing?

4 A \$300 and -- it was supposed to be \$346.54 in
5 Ms. Wilkinson till. And we got back \$342.25.

6 Q Okay. And I'll get to the getting it back in just a
7 moment. But so the register then was off by \$346.00?

8 A And 54 cents.

9 Q And 54 cents. Now, are registers often off a little
10 bit at the end of the day?

11 A Not Ms. Brenda's.

12 Q Okay.

13 A She took pride in her drawer always being accurate.
14 She was never off more than a quarter or 50 cents.

15 Q Okay. And let's say just, in general, with other
16 cashiers, are they often off a little bit?

17 A Never more than a dollar or two.

18 Q Okay. And is there a policy in place about --

19 A Yeah. Company standard is if they're over or short
20 \$2, they get a write up. And after three write ups,
21 they're terminated.

22 Q Okay. Now, you mentioned that by the time you got
23 there, the suspect had been apprehended?

24 A Yes.

25 Q Now, you had -- you -- was any money returned to you

1 by any police officers?

2 A Yeah. Kara Boyd brought me back \$342.25.

3 Q Kara Boyd was a Mauldin police officer?

4 A Yes, sir.

5 Q And when did that take place? Was it that evening?

6 A That evening.

7 Q Okay. What denominations were the bills in?

8 A We had 11 \$20's; four \$10's; 14 \$5's; 12 \$1's; and a
9 quarter.

10 Q Okay. Now, does the store have a video system?

11 A Yes, it does.

12 Q Okay. And can you tell us a little bit about that
13 video system?

14 A It's a closed-circuit TV system that is -- that has
15 nine cameras in the store that records what goes on in the
16 store at all times.

17 Q Now, did you watch it that evening?

18 A Yes, I did.

19 Q And was -- the robbery, the incident, was it recorded
20 on the video?

21 A Yes, it was.

22 Q On more than one camera angle?

23 A Yes.

24 Q Now, did you show it to the police officers that
25 night?

1 A Yes, I did.

2 Q Now, did you, also, make a copy of that video?

3 A Yes, I did.

4 Q And what did you do with it after you made the copy?

5 A I gave it to the police officers.

6 Q Okay. And did you watch it -- so you watched it at
7 the time you made the copy?

8 A Yes.

9 Q Now, have you, subsequently, gone back and watched
10 the copy that we have here for court?

11 A Yes. I watched it.

12 Q And is it a true and accurate representation of what
13 you saw that night?

14 A Yes, it is.

15 Q Any changes, deletions --

16 A No.

17 Q I'm going to hand you State's Exhibit No. 3. And do
18 you recognize that?

19 A Yes.

20 Q And what is that --

21 MR. GADDY: Maybe I didn't understand everything
22 correctly. I understand that she was -- saw a videotape.

23 THE WITNESS: I made this disk, a disk of the video.

24 MR. GADDY: It was not a videotape that you saw, it
25 was a CD?

1 THE WITNESS: It was a CD.

2 MR. GADDY: Okay.

3 BY MR. MOYER:

4 Q And is that the copy of that CD that you made?

5 A Yes, it is.

6 Q Okay. And that's the one you --

7 MR. GADDY: I object to that. She doesn't know
8 whether it's a copy or not.

9 THE COURT: I thought she just said she made it
10 herself.

11 MR. GADDY: I object to it.

12 THE WITNESS: This is a true representation --

13 THE COURT: I understand his objection.

14 Lay further foundation.

15 MR. MOYER: Okay.

16 BY MR. MOYER:

17 Q So how do you recognize what I've just shown you?

18 A I initialled it.

19 Q And is that the copy you've gone back and watched?

20 A Yes.

21 Q And is that a true and accurate representation of the
22 copy that you made for the police officers that night?

23 A Yes, it is.

24 MR. MOYER: Your Honor, at this time, I move to have
25 State's Exhibit No. 3 entered into evidence.

1 MR. GADDY: Well, I object to it. I say that she
2 doesn't know if that's a copy, or what that is.

3 THE COURT: I believe she's authenticated it enough
4 having made the duplication herself. And I think it's
5 been clarified. I think videotape is a synonym for a
6 media disk copy of a video system. CD, DVD, videotape
7 all, to me, are synonyms. And it's been properly
8 identified and authenticated as a copy of the video from
9 the store on October 11th --

10 THE WITNESS: Yes, sir.

11 THE COURT: -- 2012. So I'll allow it.

12 It's a State's exhibit -- has it been pre-marked?

13 MR. MOYER: Yes, it has, Your Honor. It's State's
14 Exhibit No. 3.

15 THE COURT: State's Exhibit No. 3. Very well.

16 Subject to your objection, it's admitted.

17 (WHEREUPON, State's Exhibit No. 3 was admitted into
18 evidence.)

19 MR. MOYER: I have no further questions for this
20 witness.

21 THE COURT: All right. Mr. Gaddy.

22 CROSS-EXAMINATION

23 BY MR. GADDY:

24 Q Ma'am, you're the manager of this Dollar General
25 store over in Mauldin, which was robbed; is that correct?

1 A Yes.

2 Q And you received word on the night of the robbery
3 about this robbery taking place; is that correct?

4 A Yes, sir.

5 Q And how much money did you -- you went to the store;
6 is that correct?

7 A Yes, sir.

8 Q How much money did you determine was missing?

9 A \$346.54.

10 Q \$346.50?

11 A 54 cents.

12 Q 54 cents?

13 A Uh-huh.

14 Q \$346.54 was how much you determined was missing; is
15 that correct?

16 A Yes, sir.

17 Q And, subsequently, the police gave you a quantity of
18 money that same day or soon thereafter, did they not?

19 A Yes, sir.

20 Q And how much was that?

21 A \$342.25.

22 Q \$342.55?

23 A 25 cents.

24 Q \$300 -- okay. Give it to me again.

25 A \$342.25.

1 Q Okay. So to the closest dollar, the Dollar General
2 was out-of-pocket or missing about \$4. Would that be
3 correct?

4 A \$4.29.

5 Q Missing \$4.29?

6 A Uh-huh.

7 Q Okay. Now, this Dollar General store is open, what,
8 seven days a week?

9 A Yes, sir.

10 Q And how many cashiers does this store employ?

11 A Five.

12 Q It employs five; is that correct?

13 A Yes, sir.

14 Q What kind of audit or review is made of a cashier's
15 money before the shift changes?

16 A Before the shift changes?

17 Q Yes.

18 A There's -- we count every till at the end of every
19 shift.

20 Q You count everything at the end of every shift?

21 A Yes, sir.

22 Q Do you find sometimes there's a difference between
23 what the cash register tape or whatever it is shows and
24 the actual money?

25 A Rarely in my store.

1 Q Rarely, but sometimes?

2 A Yeah.

3 Q And would that shortage be as much as \$2, \$3, \$4?

4 A Always less than \$2.

5 Q What?

6 A Always less than \$2.

7 Q Always less than \$2?

8 A Uh-huh.

9 Q But could it be up as high as much as \$2?

10 A It could be.

11 Q All right. Now, going back to some sort of video
12 equipment being in the store. There's a video camera in
13 the store, is there not?

14 A Yes.

15 Q And that video camera is recording on some sort of
16 tape, or is it recording on a CD?

17 A It records on a hard drive.

18 Q It records on a hard drive?

19 A Uh-huh.

20 Q Everybody may not know what a hard drive is. Would
21 you tell us what you consider to be a hard drive?

22 A A hard drive is a -- it's a piece of equipment that
23 records the memory on -- it has memory.

24 Q Okay. And that hard drive is part of this video
25 equipment; is that correct?

1 A It's part of a DVR.

2 Q Okay. And is it your testimony that you have the
3 ability to make a copy of that hard drive?

4 A Yes.

5 Q And you gave a copy of the hard drive to a police
6 officer on the day of the robbery?

7 A Yes, sir.

8 Q Okay. Now, did you see the copy of the video --
9 excuse me. I withdraw that.

10 Did you see a copy of the hard drive after you gave
11 it to the police officer? Did you ever see it again?

12 A The hard drive or the --

13 Q No. The copy that you made.

14 A Yes.

15 Q You did see it again?

16 A Uh-huh.

17 Q And where did you see it?

18 A In the assistant solicitor's office.

19 Q In the Solicitor's Office?

20 A Uh-huh.

21 Q All right. And you feel that the copy you saw in the
22 Solicitor's Office was the same copy you made?

23 A It is a true representation of the copy I made.

24 Q Say that again.

25 A It's a true representation of the copy I --

1 Q It's a true representation of the copy you made?

2 A Yes. There's --

3 Q How do you know that?

4 A I watched it.

5 Q And you felt it was the same copy that you made?

6 A Yes. It's an identical copy.

7 MR. GADDY: That's all the questions I have.

8 THE COURT: Any redirect?

9 MR. MOYER: No redirect, Your Honor.

10 THE COURT: Ma'am, you may step down.

11 MR. MOYER: Your Honor, may we approach for --

12 THE COURT: You may.

13 MR. GADDY: The witness may be excused from my point
14 of view.

15 (WHEREUPON, a bench conference was held.)

16 MR. MOYER: The State would call Brenda Wilkinson to
17 the stand.

18 THE CLERK: Ma'am, please, come forward to be sworn
19 in.

20 Please place your left hand on the Bible and raise
21 your right.

22 WHEREUPON,

23 BRENDA R. WILKINSON,

24 after first having been duly sworn, testified as follows:

25 THE CLERK: Thank you.

1 You may be seated.

2 Would you, please, state your name for the record?

3 THE WITNESS: Brenda R. Wilkinson.

4 THE CLERK: Thank you.

5 DIRECT EXAMINATION

6 BY MR. MOYER:

7 Q Ms. Wilkinson, how old are you?

8 A 64.

9 Q Would you pull that microphone a little bit closer?

10 A 64.

11 Q Okay. And you're currently single?

12 A Single.

13 Q And you have a daughter from a previous marriage?

14 A I do.

15 Q And your daughter has a family?

16 A She does.

17 Q How many children does your daughter have?

18 A There are four.

19 Q Okay. Now, do you work now?

20 A I do.

21 Q Where?

22 A I work for Dealers Supply and Lumber.

23 THE COURT: Y'all, can -- I want to make sure
24 everybody can hear.

25 Ms. Wilkinson, adjust it just a little bit. Because

1 I'm having a little trouble hearing you. And I want to
2 make sure the jury hears you well. Mr. Moyer talks
3 loudly.

4 THE WITNESS: Dealers Supply and Lumber Company.

5 BY MR. MOYER:

6 Q That's perfect --

7 THE COURT: Yes. That's much better.

8 BY MR. MOYER:

9 Q Okay. Now, how long have you worked for Dealers
10 Supply?

11 A Since 1996.

12 Q Okay. I think we did the math. It's 17 years or so,
13 16, 17?

14 A Yes.

15 Q Okay. Is that a full-time job?

16 A It is.

17 Q Okay. So you work how many hours a week?

18 A Full-time, 40. When I cut back -- I think it should
19 be 32 now.

20 Q Okay. Now, you used to -- so you just cut back the
21 hours there?

22 A I did.

23 Q Now, you used to work a second job as well?

24 A I did.

25 Q Where was that?

1 A At the Dollar General.

2 Q And is that the Dollar General that was just shown on
3 that map that we just had up here a minute ago?

4 A The one in Mauldin, yes, it is.

5 Q Okay. And what -- when did you work at the Dollar
6 General?

7 A When?

8 Q What years did you work there?

9 A Oh...

10 Q Do you remember about how many years you worked
11 there?

12 A I know it was five, but I don't remember the years.

13 Q Okay.

14 A I'm sorry.

15 Q That's okay. Now, when did you stop working there?

16 A October the 11th of last year.

17 Q Okay. That was the date this incident happened?

18 A It was.

19 Q And you were -- when were you planning to stop
20 working there?

21 A The next day.

22 Q October the 12th?

23 A Right.

24 Q How many hours a week did you work at the Dollar
25 General?

1 A I'm thinking maybe 27, maybe more.

2 Q A week?

3 A A week.

4 Q What hours would you work there?

5 A From 6:00 until we closed.

6 Q Okay. From 6:00 in the evening?

7 A Right.

8 Q So you would leave your other job and go there?

9 A I would.

10 Q Now, were you working at Dollar General on the
11 evening of October the 11th of 2012?

12 A I was there, yes.

13 Q Okay. And did you -- you got there about the regular
14 time, about 6:00?

15 A I did.

16 Q So let's talk about what happened that night. Do you
17 remember about what time this incident happened?

18 A It was a little bit before 8:00.

19 Q In the evening?

20 A Right.

21 Q Okay. And what were you doing when the robbery took
22 place?

23 A I had just finished my last customer. And I believe
24 I was writing up an item that she did not want. When we
25 scan something and they decide they don't want it, you

1 have to write it up and void it. You have to document it.

2 And then you put it away when you have time.

3 Q Okay. And were you holding anything?

4 A At that time, I believe I had the clipboard in my
5 hand.

6 Q Okay. And then what happened while you were holding
7 the clipboard?

8 A In walks a man wearing gray and jeans.

9 Q Gray what?

10 A It's a gray jersey shirt.

11 Q Okay. So a gray shirt?

12 A Right.

13 Q And jeans?

14 A And jeans. And he has a gray mask over his face and
15 some gray -- it looks like a hood or something over his
16 hand.

17 Q Okay. Was there anything on top of his -- and let me
18 ask you to get a little bit closer so we can all hear you.

19 A I'm sorry.

20 Q And was there anything on top of his head?

21 A There was. He was wearing a hat or some covering,
22 yes.

23 Q And what did that look like?

24 A A scarf.

25 Q And what color, I guess?

1 A A shade of blue.

2 Q Okay. Now, was this person white, black, Asian,
3 Hispanic? What race?

4 A He was black.

5 Q And what did he do when he entered the store?

6 A He came right to the register and said, This is a
7 gun. Open your drawer.

8 Q And what -- you made a pointing motion with your
9 hand. What did he --

10 A Right. That was at me.

11 Q Okay.

12 A I picked up my clipboard.

13 Q So what did he point at you?

14 A Whatever was in his hand. It was covered.

15 Q It was covered?

16 A Right.

17 Q Okay.

18 A The shape was there.

19 Q There was a shape?

20 A Right.

21 Q What did the shape look like?

22 A It could have been a gun. It was -- you know, it
23 could have been.

24 Q Okay. But it was covered up and you couldn't see it?

25 A Exactly.

1 Q But he said it was a gun?

2 A He did.

3 Q And then what did you do when he did that and pointed
4 it at you?

5 A Well, all I had to pick up was my clipboard, so I
6 did. He broke it. And I think he hit me at the same
7 time, or thereafter. And the clipboard landed in the
8 floor.

9 So I decided if I could get out of there, I was going
10 to get out of there. And I turned around and almost made
11 it out. But he ran around and caught me.

12 Q And where were you running? Where were you trying to
13 get to?

14 A The center of the store.

15 Q And so you came around and you were unable to get
16 out?

17 A Exactly.

18 Q And why were you unable to get out?

19 A There he was.

20 Q Okay. It was your intention to leave then?

21 A Oh, yes, definitely.

22 Q Now, when he came around to you, did you do anything
23 to him to try to scare him, or for any other reason?

24 A Yes, I did. I thought, well, you know, it couldn't
25 hurt. So I pulled his mask down.

1 Q Now, let's back up before that. When he was coming
2 towards you, did you make any --

3 A Oh, I was throwing whatever I had in my hand so I
4 could get someone's attention so that they might,
5 hopefully, call the police, or do something. Because, at
6 that point, I knew I could not escape probably.

7 So I think I had maybe a roll of tape, whatever it
8 was I had picked up. I threw it over. Hopefully, someone
9 would notice that's a little weird, maybe there's
10 something going on.

11 Q Okay. So there were other customers in the store?

12 A Yeah. There were quite a few, really.

13 Q Okay. So then he came around, you said. You
14 mentioned you pulled his mask down. Tell me about that.

15 A Well, he had grabbed my arm. So, at that point, I
16 pulled his mask down and had a look at his face.

17 Q Could you see his full -- whole face?

18 A I did. I was hoping that it would be on the tape
19 clearly, but it wasn't a real good close up.

20 Q Okay. And what did he do when you pulled his mask
21 down?

22 A Well, he put it back up and started hitting me, and
23 demanding the safe to be opened -- the drawer to be
24 opened. And so we went back to my register.

25 Q Did you want to go back to the register?

1 A No.

2 Q Why did you go back there?

3 A Well, I really didn't have a choice. He was pretty
4 strong. And he had his hands on me. He was hitting me
5 with whatever it was he had a lot.

6 Q So what happened when you got back to your register?

7 A I could not open it.

8 Q And were you wearing glasses?

9 A Oh, yes.

10 Q And what happened to your glasses?

11 A I think that's when he hit me and knocked my glasses
12 off.

13 Q Okay. And did -- are they the ones -- are you
14 wearing glasses right now?

15 A I am.

16 Q Yes, you are.

17 Are they the glasses you were wearing --

18 A These are new.

19 Q So were they broke? Were they --

20 A They were damaged, yes. They were not shattered,
21 though.

22 Q Okay. Well, tell us what happened when you got to
23 the cash register.

24 A He kept insisting that I open the drawer. And, of
25 course, you can't do that unless you have a sale.

1 Q Okay.

2 A And I explained that. Well, meanwhile, he's hitting
3 me. He doesn't like the idea that I can't do it.

4 So I grabbed whatever I could find and scanned it.
5 And then you have a sale. So I hit "cash," because
6 there's no money otherwise.

7 Q Now, did the drawer open at that point?

8 A It did.

9 Q Okay. And was there money in the --

10 A There was.

11 Q And is it like a typical cash register that has
12 \$20's, \$10's, \$5's, \$1's?

13 A Exactly.

14 Q Okay. And were there bills in each of those --

15 A There were.

16 Q And what did he do with regard to those -- that
17 money?

18 A Well, we started pulling -- I think he started
19 pulling some money out of the drawer. And I said, Do you
20 want the change, too?

21 I want everything.

22 So we were taking that money out. And we had to move
23 over to the second register so there would be room to pull
24 it all out of the drawer. And then when we finished that,
25 he wanted the next drawer opened.

1 Q Okay. And before we get to that, so he took the
2 money out. And we'll see it on the video. But do you
3 remember what he did with the money?

4 A I think it went into his pocket.

5 Q So then you went to the other cash register?

6 A Right.

7 Q And what happened at that cash register?

8 A Well, you can't open those. You have to have a
9 number. And you should never open them without a sale of
10 something -- well, you can't. Well, I told him I did not
11 have a number. The register is locked.

12 Q What do you mean by not having a number?

13 A You have to have an identification number.

14 Q Okay. In order to get in?

15 A Right.

16 Q So you didn't have that?

17 A No.

18 Q And so did you tell him that?

19 A I did.

20 Q And what was his response?

21 A He hit me I think, at some point, right about there.
22 I ended up in the floor. It was a pretty good hit. And
23 then I was back on my feet. And we were trying the drawer
24 again.

25 Well, finally, he got it through that you have to

1 have a sale. So he grabbed some cups and tried to scan
2 them. And it won't open. And it didn't. And he tried
3 like a couple of times to scan the cups. And then he just
4 suddenly stopped and left.

5 Q Okay.

6 A And I didn't know the alarm had gone on off at that
7 time.

8 Q You didn't know?

9 A I didn't hear it, but I'm glad it did.

10 Q Now, was he saying anything to you during this
11 incident?

12 A Yes, he was.

13 Q Was he talking constantly?

14 A Open the drawer, bitch.

15 Q Okay.

16 A I said I can't. And then it got to, Open the drawer,
17 you F-ing bitch. And, you know, he got a little more
18 violent.

19 So I decided I would open what I could and pray that
20 someone would called the police meanwhile.

21 Q What was going through your mind while this was
22 taking place?

23 A I was yelling for help since everybody was gone. All
24 I wanted was someone to call the police. Because I wasn't
25 sure what would happen.

1 Q Okay. And what were you afraid was going to happen?

2 A You could very easily be shot.

3 Q Is that what was going through your mind?

4 A Yes. While I was on the floor, that was definitely
5 going through my mind. He was in my face. And this was
6 at my head.

7 Q The object that was in -- that was covered up?

8 A Right.

9 Q And what did you think that object was?

10 A I felt like if this is a gun, he could very well kill
11 me. And a gun was what he said it was, so I believed him.

12 Q Okay. Was he yielding it and holding it as if it was
13 a gun?

14 A Yes.

15 Q Okay. Now, after he left, what did you do?

16 A I walked around.

17 Q Okay. Did the police show up?

18 A They did.

19 Q Okay. And they came in and talked to you?

20 A Eventually, yes.

21 Q Eventually. And you gave a statement?

22 A Right.

23 Q Now, do you remember anyone -- was EMS called to
24 the --

25 A They were.

1 Q Okay. And were you attended to by an attendant?

2 A I was.

3 Q Did you go to the hospital?

4 A No.

5 Q Okay. Did you ever go seek any medical attention?

6 A The next day I did. I was bruised everywhere.

7 Q So tell us about the bruising.

8 A Well, there were minimum minor bruises most
9 everywhere. But this arm from here to there was black and
10 swollen, but I could still move it.

11 Q Okay.

12 A But we did have it looked at.

13 Q How much did you weigh at that time?

14 A 110.

15 Q Now, did you get a look at his -- when you pulled
16 that mask down for that brief period of time, did you get
17 a look at his face?

18 A I did.

19 Q How close was he to you when you did that?

20 A Oh, very close.

21 Q Seated is -- there's a box of tissues in front of
22 you. Were you that close?

23 A Oh, we were -- he had his hand on me at that time.
24 We were that close, yes.

25 Q Now, you looked him full in the face at that time?

1 A I did.

2 Q Now, did you get a good enough look at him to be able
3 to identify the person?

4 A I would [sic].

5 Q Do you see the man who robbed you here in this
6 courtroom?

7 A Behind the water pitcher and the microphone, I do.

8 Q So it's the Defendant seated over here?

9 A Yes, sir.

10 Q Now, have you seen him on one -- on another occasion
11 between the time this incident happened and now?

12 A Preliminaries.

13 Q Another court hearing?

14 A Right.

15 Q Now, when you saw him on that occasion, what went
16 through your mind when you saw him at that time?

17 A What went through my mind?

18 Q As far as identification about whether it was him or
19 not, the person who robbed you.

20 A The same thing, the chin.

21 Q So you were sure about it?

22 A Uh-huh.

23 Q And you're sure about it today?

24 A I am.

25 Q Now, there's -- State's Exhibit No. 3 is already in

1 evidence. And being a disk -- it's a video recording of
2 the incident that happened. Now, have you had a chance to
3 sit down and look at that and watch it?

4 A We have looked at it in your office.

5 Q Okay. And even though it's still in evidence -- oh,
6 it's already in evidence. I'll ask you this. Is that a
7 true and accurate representation of what happened that
8 day?

9 A It seems it is to me.

10 Q Okay. You didn't notice anything added to it, or
11 left out, or edited in any way?

12 A No.

13 Q It's an accurate depiction of what happened to you?

14 A To the best of my memory, it is.

15 MR. MOYER: Okay. Thank you.

16 Your Honor, at this time, I'd like to publish State's
17 Exhibit No. 3 to the jury.

18 THE COURT: All right.

19 BY MR. MOYER:

20 Q And it's going to be displayed right behind you. So,
21 if you would, let me ask you --

22 A Sure.

23 Q So it doesn't get in your eyes, if you would, just
24 step down here with me.

25 A (Witness complied.)

1 (WHEREUPON, a portion of State's Exhibit No. 3 was
2 played in open court.)

3 BY MR. MOYER:

4 Q We're going to start off with camera number one. I'm
5 going to hand you the laser pointer. Using that button,
6 would you point out to the jury where you are using that
7 laser pointer?

8 A (Witness complied.)

9 Q Thank you.

10 (WHEREUPON, State's Exhibit No. 3 continued to be
11 played in open court.)

12 BY MR. MOYER:

13 Q Is that customer in the red who you were talking
14 about that you had to make the exchange with?

15 A No. The one before, the one in blue.

16 Q Okay.

17 A And you have to do it pretty quick because you could
18 forget.

19 Q Is that the clipboard you were talking about?

20 A Yes. That's it.

21 (WHEREUPON, State's Exhibit No. 3 continued to be
22 played in open court.)

23 BY MR. MOYER:

24 Q So you're now taking the money out. Is that what
25 you're doing there?

1 A Yes.

2 Q And he takes it from you right there?

3 A Yes, he does.

4 Q Okay. We'll move on now to camera number nine.

5 (WHEREUPON, State's Exhibit No. 3 continued to be
6 played in open court.)

7 BY MR. MOYER:

8 Q And, once again, is this showing that -- the area
9 behind the cash register?

10 A It is, yes.

11 Q Is this when you were trying to run away?

12 A That is it.

13 Q Is that you throwing --

14 A Yes, it is.

15 Q Now, show us when you pulled his mask down?

16 A Right there.

17 Q Okay. Now, we're going to go to camera number two.

18 (WHEREUPON, State's Exhibit No. 3 continued to be
19 played in open court.)

20 BY MR. MOYER:

21 Q And this is -- is this, once again, the time
22 period -- would you point yourself out using the laser
23 gun -- the laser pointer?

24 A (Witness complied.)

25 Q Okay. Thank you.

1 You can take your seat again.

2 A (Witness complied.)

3 Q I'm going to hand you State's Exhibit No. 4. Would
4 you take a look at the photograph I've just handed you?
5 And can you recognize what is shown?

6 A Dixie cups on the register scanner.

7 Q Okay. Is that the --

8 A And the clipboard that is broken.

9 Q Okay. And that's from the Dollar General that night?

10 A Yes.

11 Q Is that a true and accurate representation of that
12 area behind the counter, including the clipboard?

13 A Yes, it is.

14 MR. MOYER: Your Honor, at this time, I'd move to
15 have State's Exhibit No. 4 entered into evidence.

16 THE COURT: Is that without objection?

17 MR. GADDY: No objection.

18 THE COURT: All right. State's Exhibit No. 4 is
19 admitted without objection.

20 (WHEREUPON, State's Exhibit No. 4 was admitted into
21 evidence.)

22 BY MR. MOYER:

23 Q Now, what does it -- what is depicted about the
24 clipboard in that photograph?

25 A That it is broken.

1 Q And that's as a result of it being struck?

2 A Yes.

3 MR. MOYER: I have no further questions at this time.

4 Please answer any questions the Defense may have.

5 THE WITNESS: Okay.

6 THE COURT: All right. Mr. Gaddy, your witness.

7 CROSS-EXAMINATION

8 BY MR. GADDY:

9 Q Ms. Wilkinson, you've testified about being bruised?

10 A Yes.

11 Q And that would have been around your shoulders and
12 especially on your left arm. Is that --

13 A Yes.

14 Q Okay. And those bruises would have come from this
15 robber striking you; is that correct?

16 A That is correct.

17 Q Okay. And we've looked at this video CD. And it
18 seemed from that CD that this robber always had a hand
19 that was covered by a gray piece of cloth. Is that a fair
20 statement?

21 A It is, yes.

22 Q Okay. Did he tell you he had a gun?

23 A He did.

24 Q You never saw a gun, however, did you?

25 A I did not.

1 Q You did not see a gun. Okay. He seemed to be
2 keeping his hand in the shape of a gun under that cloth,
3 did he not?

4 A Correct.

5 Q Okay. Now, it would be fair to say that you got
6 pushed, and shoved, and knocked down, wouldn't it?

7 A I think that would be fair.

8 Q He knocked you on the floor more than once, didn't
9 he?

10 A Yes.

11 Q And then he picked you up?

12 A Yes.

13 Q And you felt in fear and that you would get seriously
14 hurt if you didn't do what he said?

15 A I did.

16 Q Okay. Now, but at the same time, you're pretty
17 spunky, aren't you?

18 A How so?

19 Q You didn't run and get in the corner, for example.
20 You tried to protect yourself with the clipboard to start
21 with?

22 A I did.

23 Q Yeah. And then you pulled his mask down?

24 A I did.

25 Q And you pulled it back up?

1 A He did.

2 Q Okay. Now, the video CD showed you going back and
3 forth behind that counter; is that a fair statement?

4 A Yes.

5 Q Okay. And that's going to be a distance of, what, 10
6 or 12 feet?

7 A I think maybe 10.

8 Q Maybe 10 feet?

9 A (Witness nodded.)

10 Q All right. So you -- were you ever picked up by this
11 robber and carried anywhere?

12 A Picked up, no. Carried, no. He did not carry me
13 anywhere.

14 Q You said -- are you telling me that you got picked
15 up, but you weren't carried? Is that right?

16 A Yes.

17 Q Okay. And you were -- he held you by one arm and you
18 got bruises from that grabbing and holding that he did?

19 A Some of the bruises, yes.

20 Q Okay. And so while you were held by one arm, you had
21 the other arm free; is that right?

22 A I did.

23 Q And while you were knocked to the floor, you got back
24 up one time, I think. And then the robber picked you up
25 another time; is that fair?

1 A It would seem so, yes.

2 Q Okay. So he didn't try to go out of the store
3 holding you, did he?

4 A No.

5 Q Okay. And he didn't grab you in a way and then drag
6 you several feet, did he?

7 A No. He pushed me.

8 Q He pushed you?

9 A Right, grabbed and pushed.

10 Q Okay.

11 A And struck.

12 Q You were doing the best you could to resist him,
13 weren't you?

14 A I was.

15 Q And you -- would it be fair to say you, basically,
16 fought him off, except for getting pushed down?

17 A I don't know if -- that didn't look so much like I
18 did.

19 Q Well, what would you call it? Maybe fought him off,
20 that's my words. What words would you use in terms of
21 combating him?

22 A Evaded, avoided.

23 Q Say it again.

24 A I evaded and avoided.

25 Q You evaded and avoided. All right. All the time

1 that he was grabbing you and striking you, he kept -- I
2 believe it would be his right hand under this gray cloth;
3 is that a fair statement?

4 A I believe it was, yes.

5 MR. GADDY: Okay. That's all the questions I have.

6 THE COURT: Redirect?

7 MR. MOYER: Just one brief matter on redirect.

8 REDIRECT EXAMINATION

9 BY MR. MOYER:

10 Q When you were struck with the hand that had the gray
11 cloth around it, did you feel like you were being struck
12 with a hand, or was there an object?

13 A An object. It felt like metal.

14 MR. MOYER: Thank you.

15 THE WITNESS: You're welcome.

16 REXCROSS-EXAMINATION

17 BY MR. GADDY:

18 Q What -- I -- did you say that you felt like you were
19 struck with an object?

20 A I did.

21 Q Okay. But you never saw what the object was; is that
22 correct?

23 A Correct.

24 Q As far as you were concerned, it was -- you got
25 struck with an object, but you don't know what the object

1 was?

2 A Correct.

3 Q Is that a fair statement?

4 A It is.

5 MR. GADDY: Okay. That's all.

6 THE COURT: Okay.

7 MR. MOYER: Nothing further.

8 THE COURT: You may step down, ma'am.

9 MR. MOYER: The State would call Ashley Johnson.

10 THE CLERK: Ms. Johnson, would you, please, come
11 forward to be sworn in?

12 Please place your left hand on the Bible and raise
13 your right.

14 WHEREUPON,

15 ASHLEY JOHNSON,

16 after first having been duly sworn, testified as follows:

17 THE CLERK: Thank you.

18 You may be seated.

19 Would you, please, state your name for the record?

20 THE WITNESS: Ashley Johnson.

21 THE CLERK: If you could get closer to the
22 microphone.

23 DIRECT EXAMINATION

24 BY MR. MOYER:

25 Q Okay. Ms. Johnson --

1 THE WITNESS: My name is Ashley --

2 MR. MOYER: I'm sorry. I didn't mean to talk over
3 you.

4 Did you hear --

5 THE CLERK: I did.

6 BY MR. MOYER:

7 Q You're Ashley Johnson. You're a bit soft spoken. So
8 let me make sure you move up to the microphone. And maybe
9 pull the microphone into you a little bit, and speak into
10 it.

11 Now, how old are you, Ms. Johnson?

12 A 22.

13 Q Now, are you kind of nervous to be here today?

14 A Uh-huh.

15 Q Okay. You've never had to do anything like this
16 before?

17 A No, sir.

18 Q Okay. So just calm down. I'm just going to ask you
19 a series of questions just like I did Ms. Wilkinson.

20 Okay.

21 A Okay.

22 Q Okay. Now, did you work at the Dollar General in
23 Mauldin in October of 2012?

24 A Yes, sir.

25 Q Were you working on the evening of October the 11th

1 when the robbery took place that we just saw on the video?

2 A Yes, sir.

3 Q Okay. Now, where were you and what were you doing
4 when you first noticed something going on?

5 A In the back corner of the store helping a customer
6 look for an item.

7 Q Okay. And what happened that alerted you that
8 something was going on up front?

9 A Just hearing faint noises in the background that
10 sounded like kids playing. So I was going to go check it
11 out. And when I saw him run -- I saw him go behind -- I
12 saw a blue flash behind the register.

13 Q You saw a blue flash?

14 A Uh-huh. And that's what -- I knew that was odd. And
15 then I heard screaming.

16 Q Now, the blue flash, you just saw the video that
17 showed the robber with a blue something or other on his
18 head. Is that what the blue flash looked like?

19 A Yes, sir.

20 Q Okay. And then you heard some screaming, you said?

21 A Uh-huh.

22 Q So when you saw the blue flash and you heard the
23 screaming, what did you do?

24 A I pulled out the phone and called 911.

25 Q Okay. And did you just stand there in the middle of

1 the store, or did you go anywhere?

2 A Actually, I believe I may have panicked and then took
3 off like, -- like I went to the back. Because I had a
4 couple of customers that were telling me to come on to the
5 back with them.

6 Q Okay. Now, did you observe anything else that was
7 going on up front?

8 A Other than I saw motion from -- I saw motion from
9 where I was at the front just going back and forth.
10 That's all I saw.

11 Q And did you see any hands raised, or did you see
12 anything like that?

13 A Yeah. He had his hand raised up in the air the whole
14 time.

15 Q Okay. And when you saw that hand raised, what did
16 you think was in that hand?

17 A From a distance, it looked like a gun.

18 Q Okay. Is that what you thought it was?

19 A Yes, sir.

20 Q And so you went to the back of the store, and you
21 said you called 911?

22 A Yes, sir.

23 Q And what happened while you were in the back of the
24 store?

25 A (There was no response.)

1 Q What did y'all do?

2 A My customers were in the back asking me to, please,
3 get them out, where could they go. And, at that point in
4 time, I was answering questions and talking to the lady on
5 the other line.

6 Q Okay. The lady being the 911 operator?

7 A Yes, sir.

8 Q And were there a number of customers back there?

9 A Yes, sir.

10 Q And then where did -- did y'all stay there in the
11 back, or where -- did you go anywhere, or what did you do?

12 A I was taking them to the back room.

13 Q And what's -- what do you mean? It's like a
14 stockroom?

15 A Yes, sir. It's our stockroom.

16 Q And did y'all go back to the stockroom?

17 A Yes. We went to the stockroom.

18 Q And what happened when you got to the stockroom?

19 A When we entered through the stockroom doors, I then
20 had a customer run -- like see our exit door. It's our
21 loading dock. Like at the loading dock, we have a loading
22 door. It's a door where we bring the product through into
23 the stockroom. And a customer had gone and hit the bar on
24 it and set the alarm off. And everybody ran out.

25 Q Okay. And everybody ran out that side door?

1 A Yes, sir.

2 Q Okay. Now, what happened when you got outside?

3 A When I got outside, my customers gathered. And I
4 began walking back up to the front of the store while
5 still on the phone with 911.

6 Q Okay. And what happened when you got to the front of
7 the store?

8 A By the time I had gotten to the front of the store, I
9 had done passed the robber. And the cops had pulled in
10 the parking lot.

11 Q Okay. Now, before you saw the robber, did you --
12 were you able to look inside the store and see anything?

13 A No, sir.

14 Q You didn't see anything through the front door when
15 you got to the front going on inside?

16 A No. Because by the time I got to the front,
17 everything had done happened.

18 Q Okay. And so then the robber came out and you saw
19 the person?

20 A Uh-huh.

21 Q And what -- how did you -- how did he look at this
22 time?

23 A It was in pass and go. He was running towards me and
24 still holding the gun in his hand.

25 Q Okay.

1 A And he ran past me and went that way. That's all I
2 saw.

3 Q Okay. And was his face still covered?

4 A Yes, sir. I saw that.

5 Q Okay. And did you see that blue thing?

6 A Yes. That was still on his head.

7 Q Okay. Now, I want to ask you, if you would, to step
8 down. And we're going to try to describe what you just
9 told us to the jury using this map.

10 A (Witness complied.)

11 Q This is State's Exhibit No. 1. Okay. We have a
12 laser pointer. Maybe -- if I could get you maybe to step
13 right over here with me. And you push this button.

14 A Okay.

15 Q Can you hold this?

16 A Uh-huh.

17 Q Now, first off, show us where the back room is that
18 you were talking about.

19 A That would be this little area right here.

20 Q Okay. And where is the door that you all went out?

21 A Right about there.

22 Q Okay. And when you got outside, where -- what
23 direction did you go?

24 A When I got outside, I came up this way.

25 Q Okay. And then where did you see the robber?

1 A When I got right about here, I'd say I saw him right
2 around the corner and got a good look at him right about
3 there.

4 Q Now, did you see any police officers or anything?

5 A Yes, sir.

6 Q Tell us about that.

7 A I saw the police officer come in from this direction.

8 Q Okay.

9 A And he came in, shot down the parking lot, and
10 stopped right about there.

11 Q Okay. And did anybody get out of that police car?

12 A The officer did, yes, sir.

13 Q And what did the officer do when he got out?

14 A He just asked me where is he -- like what way -- I
15 can't tell you exactly what he said. But he was asking
16 about it. And I pointed. I pointed in that direction.

17 Q Okay. Did you point to the man -- to the robber?

18 A Yes, sir.

19 Q Okay. And did you see the officer chase the robber?

20 A I did.

21 Q Okay. The person that the officer chased, was it the
22 person who had just done that robbery?

23 A Yes, sir.

24 Q Okay. And where did they go, what direction?

25 A They went straight back through this field right

1 here.

2 Q Okay. And so you lost sight of them when they got
3 back in that field?

4 A Uh-huh. Yeah. I didn't -- I, actually, didn't look
5 very long. Because I was in the process of going up to
6 the front.

7 Q Okay. So where did you go?

8 A I came around the building and went in our front
9 doors right here and blocked them.

10 Q Okay. Thank you.

11 You can take your seat again.

12 A (Witness complied.)

13 Q Now, have you, also, seen the -- you've watched the
14 video that shows you leaving the store, that shows you
15 leaving out the back room?

16 A Yes, sir.

17 Q Okay. Is that a true and accurate representation of
18 what happened when y'all left?

19 A Yes, sir.

20 MR. MOYER: Your Honor, at this time, I'd like to
21 publish another section of the -- of State's Exhibit No. 3
22 to the jury.

23 THE COURT: Very well.

24 BY MR. MOYER:

25 Q And, actually, I'm going to have to ask you to step

1 down again so you don't...

2 THE COURT: I must say, you're working Mr. Doherty
3 pretty hard today.

4 THE BAILIFF: I think I'm up to the challenge, Your
5 Honor.

6 THE COURT: Okay.

7 BY MR. MOYER:

8 Q We're going to watch camera number three.

9 A Okay.

10 (WHEREUPON, a portion of State's Exhibit No. 3 was
11 played in open court.)

12 BY MR. MOYER:

13 Q Does that show that stockroom that you were talking
14 about?

15 A (There was no response.)

16 Q Let me back it up. I'm sorry.

17 If you would, use this laser pointer and point out
18 when we see you come into the picture.

19 A Right there.

20 Q Is that you?

21 A Yeah.

22 Q Is that you holding the door?

23 A Yes, sir.

24 Q Okay. Thank you.

25 Now, I'll ask you to go back and take your seat.

1 A (Witness complied.)

2 Q Now, you mentioned you called 911?

3 A Yes, sir.

4 Q And you stayed on the phone with the 911 operator?

5 A Uh-huh.

6 Q Now, have you gone back and taken a listen to a
7 recording of your 911 call?

8 A Yes, sir.

9 Q And let me hand you what's been marked as State's
10 Exhibit No. 2. And can you take a look at that? And can
11 you recognize that?

12 A Yes, I do.

13 Q And what do you recognize that as -- or what is that
14 that I've just handed you?

15 A It's a copy of the -- is it the police recording?

16 Q Does it have --

17 A It's what we just watched. Because I initialled it.

18 Q Now, did you, also, initial the 911 tape?

19 A (There was no response.)

20 Q Remember, didn't you go back and listen to the 911
21 call?

22 A I did go back and listen to it --

23 MR. GADDY: Your Honor, I don't know what relevance
24 the 911 call is. She was present at the scene. She's
25 testified about details that she observed. What she had

1 to say on the 911 call, I believe, is irrelevant and
2 improper. I object to it.

3 MR. MOYER: Well, if there's any --

4 THE COURT: I'm going to let you lay further
5 foundation.

6 Go ahead.

7 MR. MOYER: Okay.

8 BY MR. MOYER:

9 Q So is that the copy of the 911 recording that you
10 listened to?

11 A Yes, sir.

12 Q Now, when you listened to that 911 recording, was
13 that a true and accurate representation -- was that a true
14 and accurate copy of that conversation that you had?

15 A Uh-huh.

16 MR. GADDY: I object to that, also. She can't
17 possibly know without listening to it.

18 THE COURT: I thought she testified she listened to
19 it just prior to this hearing and initialed the media disk
20 that -- the duplicated copy of the recording.

21 Is that not -- did I miss that?

22 MR. MOYER: No. That's what she said.

23 THE WITNESS: Yeah.

24 BY MR. MOYER:

25 Q Did you put the date down that you listened to it?

1 A Yes, 8/12/13.

2 MR. MOYER: Your Honor, at this time, I move to have
3 State's Exhibit No. 4 [sic] entered into evidence.

4 MR. GADDY: No. I object to it.

5 THE COURT: Subject to the objection, I'll admit it.
6 It's been authenticated by the witness as an accurate copy
7 of the recording of her conversation with the 911
8 operator.

9 (WHEREUPON, State's Exhibit No. 2 was admitted into
10 evidence.)

11 (WHEREUPON, State's Exhibit No. 2 was played in open.
12 court.)

13 MR. MOYER: Thank you.

14 I have no further questions at this time. Please
15 answer any questions the Defense attorney has.

16 CROSS-EXAMINATION

17 BY MR. GADDY:

18 Q We just saw this video where you were helping people
19 get out at the back of the store. That was you helping
20 them get out, wasn't it?

21 A Yes, sir.

22 Q Were you back there at that door helping them get
23 out, or were you back in the storeroom when they were
24 leaving? I couldn't tell from the video if you were there
25 or not.

1 A Yes, sir. I was in the middle. I was like one of
2 the first probably three or four people that had got
3 through the doors. And I was holding them.

4 Q Okay. So you were back at the back door where the
5 people were leaving the store building; is that right?

6 A Yes, sir.

7 Q Okay. Now, you testified earlier that you -- well,
8 let me back up. When you first became aware that this
9 robbery was taking place, where were you in the store?

10 A I was -- at that time, I was in -- up closer to --
11 probably about the -- in the first half of the store.

12 Q About the first half of the store?

13 A Uh-huh.

14 Q I know we've got the building in the photograph there
15 of the store. I don't know how to measure it to scale.
16 Can you tell us how big that building -- Dollar Store is?
17 Can you tell us how big it is, how long it is?

18 A Not right offhand I can't.

19 Q Well, what I'm after is your estimate of about how
20 far you were away from where the robbery was taking place
21 is what I'm asking?

22 A Maybe from -- probably the length of this room.

23 Q You were about the length of this room away from
24 where the robbery was taking place; is that right?

25 A Uh-huh. Just an estimate.

1 Q Okay. And you saw this robber with his hand raised
2 up; is that right?

3 A Yes, sir.

4 Q And did his -- was his hand covered with the gray
5 cloth?

6 A It was.

7 Q It was?

8 A I saw that.

9 Q And you did not see a gun; is that correct?

10 A From a distance.

11 Q Well, where -- from where you were, did you see a gun
12 when he was holding his hand up?

13 A No, sir.

14 Q You did not?

15 A I did not physically see it, but it --

16 Q It looked like he did?

17 A Yes. What he had looked like it.

18 Q Okay. So then going on to some -- moving on with
19 your testimony. You were outside of the store and the
20 robber came by; is that correct?

21 A Yes, sir.

22 Q Okay. Did he have -- did you see him with a gun in
23 his hand then, or any -- did you see him with a gun
24 anywhere?

25 A I saw him with an object in his hand.

1 Q I'm not quite sure I follow what you just said. What
2 did you say?

3 A When he passed -- as he was passing --

4 Q Yeah, when he passed you.

5 A -- whatever he had in his hand inside the store was
6 still there.

7 Q Okay. Whatever he had in his hand inside the store
8 was still there; is that right?

9 A Uh-huh.

10 Q Okay. And the robber went past you. And did you
11 observe where he went?

12 A Yeah. He went straight back.

13 Q He went straight back?

14 A By that time, I had -- I was -- by that time, I was
15 telling the officer that showed up and showing him what
16 direction. And I did see him still running.

17 Q Okay. So the closest you -- well, so you saw the
18 robber twice. Once you were about halfway in the store,
19 which you believe is the distance of this courtroom. And
20 the other time you were close to him outside of the store
21 and he brushed by you?

22 A Yes, sir.

23 MR. GADDY: Okay. That's all the questions I have.

24 THE COURT: Any redirect?

25 MR. MOYER: No redirect, Your Honor.

1 THE COURT: All right. You may step down.

2 We've been going a little more than an hour. And I
3 promised the jury I wouldn't keep them too much longer
4 past that.

5 Is it a good time for a lunch break?

6 MR. MOYER: Whatever you like, Judge. I mean, the
7 next witnesses are going to speed up a good bit. But
8 however you --

9 THE COURT: Let's take a lunch break. Let's break
10 until -- I thought I had enough time to get over and eat
11 and get back, and I was a couple minutes late yesterday.
12 I'm going to give y'all until 1:45. I'll give you an hour
13 and 25 minutes just so we have enough time. So y'all be
14 back in the jury room at 1:45, and we'll start back.

15 Remember, you can't begin discussing the case. Y'all
16 are taking notes. Leave the notes either in your seat or
17 you can leave them in the jury room, either way. The
18 courtroom will be secure during the break. Nobody is
19 going to come and peruse your notes.

20 (WHEREUPON, the jury was excused from open court at
21 approximately 12:16 p.m.)

22 THE COURT: We'll stand at ease until 1:45.

23 (WHEREUPON, a lunch break was taken.)

24 THE COURT: Are we ready to go?

25 Go get the jury.

1 (WHEREUPON, the jury came into open court at
2 approximately 1:46 p.m.)

3 THE COURT: Another observation I have, once jurors
4 kind of get acclimated and you get your seat, it's kind of
5 like church. You don't want anybody having your seat.
6 And I'm like that, too. I like my seat, too. So y'all
7 can sit anywhere you like. But I find that people,
8 generally, go back home to their seat once they get
9 involved and comfortable in a trial.

10 All right. We're ready to continue.

11 Mr. Moyer, call your next witness.

12 MR. MOYER: Thank you, Your Honor.

13 May it please the Court.

14 THE COURT: Yes, sir.

15 MR. MOYER: The State calls Jamike Nedwards.

16 THE CLERK: Ms. Nedwards, please, come forward to be
17 sworn in.

18 Place your left hand on the Bible and raise your
19 right, please.

20 WHEREUPON,

21 JAMIKE NEDWARDS,

22 after first having been duly sworn, testified as follows:

23 THE CLERK: Thank you.

24 You may be seated.

25 Would you, please, state your name for the record?

1 THE WITNESS: Jamike Nedwards.

2 THE CLERK: Thank you.

3 DIRECT EXAMINATION

4 BY MR. MOYER:

5 Q Ms. Nedwards, how old are you?

6 A I am 30.

7 Q Okay. And where are you employed?

8 A I work at the Julie Valentine Center.

9 Q What is the Julie Valentine Center?

10 A It is a sexual assault and child abuse recovery
11 center.

12 Q Okay. Now, you have a child, a daughter who's 12?

13 A She's 13 now.

14 Q She's 13 now?

15 A Uh-huh.

16 Q Well, let me take you back to October the 11th of
17 2012. Did you work that day?

18 A I did, yes.

19 Q Okay. And what did you do after work?

20 A I went and picked my daughter up from her friend's
21 house who was keeping her while I worked late.

22 Q Okay. And where did y'all go after that?

23 A We went to the Dollar Store in Mauldin on the way
24 home.

25 Q Was it the Dollar General store that we've been --

1 A Yes, the Dollar General on West Butler.

2 Q Now, so you were there when this robbery took place?

3 A Yes.

4 Q Would you tell us where you were in the store when
5 the robbery took place?

6 A I was in the back of the store when I first noticed
7 that a robbery was going on.

8 Q And what -- do you remember what you were doing?

9 A We were picking up -- I want to say maybe tissue, or
10 some dish detergent, or something like that off a shelf.

11 Q Okay. And what alerted you to the fact that
12 something was happening?

13 A I heard a scream, somebody saying, Sir, no, please,
14 stop. And it caused me to look up, because my head was
15 down.

16 Q And so when you -- what direction was that coming
17 from?

18 A The front of the store.

19 Q And so when you heard that, what did you do?

20 A I looked up. And that's when I noticed a guy behind
21 the register holding what I thought to be a gun to the
22 cashier's head.

23 Q Okay. And what do you remember about what this
24 person looked like and --

25 A I remember that he had on a light-colored shirt.

1 When -- that's all I could see at the time from that far
2 back. And he had something blue. It was very bright
3 blue. I remember it looking like a turquoise blue either
4 around his face or around his head.

5 I didn't pay a lot of attention to that. I was more
6 focused on that his hand was at her head like this. And
7 that's what scared me the most.

8 Q Okay. And what about that scared you?

9 A I thought he was going to shoot her.

10 Q And did you hear -- what do you remember hearing the
11 cashier saying?

12 A She was saying, Sir, no, stop. Somebody help me.
13 Please, somebody help me, please.

14 Q What do you -- do you remember anything about the
15 tone of her voice, or the way she was saying it?

16 A Oh, she was afraid for her life. She was screaming.
17 I won't be able to get her scream out of my head, for
18 sure.

19 Q Now, when you observed that, and when you heard what
20 you heard, what did you do?

21 A For some reason, my instinct was just to yell as loud
22 as I could in the deepest voice I could find thinking that
23 maybe if the person thought another male was in the store,
24 he would stop. And when I did that, it was no change in
25 his movement. He didn't look or pay me any attention.

1 His focus was still on the cashier.

2 And, at that time, I grabbed my daughter's hand. And
3 we ran to the other side of the store that we were just
4 on. And I had her get behind me and crouch down. And I
5 was trying to calm her down, because she was crying
6 hysterically at that time.

7 Q Your daughter was?

8 A Yes.

9 Q Okay. So you went to the back of the store. And
10 could you observe anything when you were in the back of
11 the store?

12 A No. I couldn't see anything going on in the front at
13 that time.

14 Q So how long did you wait there? And what did you do?

15 A It seemed like forever, so I'm not sure of the time.
16 But I know when I got to the back of the store, I seen a
17 lady in front of me taking some wallet -- her wallet out
18 of her pocketbook and putting it behind like the pillows
19 and things.

20 And, for some reason, at that time, it dawned on me
21 that I needed to call 911. So that's when I called the
22 police.

23 Q Okay. And then did y'all stay there, or did you
24 leave out the back like --

25 A I left out of the back, yes.

1 Q So that video we saw of people leaving the -- out
2 through the back of the store, you were one of the people?

3 A Yes. I think me and my daughter were the last ones
4 to come out, or very close to the last ones to come out.

5 Q Okay. Now, when you got outside, what did you do?

6 A When I got outside, I walked up the sidewalk to get
7 back to my car. Because my car was parked in the very
8 front of the store. And I was told -- and I don't
9 remember by who -- that he had left. I just remember us
10 being under the assumption that he had left. Somebody
11 yelled that.

12 But when I got to the front of the store, I looked
13 back inside the doorway. And that's when I seen him
14 beating her over the head, and kind of tossing her around.
15 And I just lost it. I just started screaming on the
16 phone. Because I was so scared that he was going to shoot
17 her. And I walked -- me and my daughter started walking
18 back down and ran across the parking lot to jump into
19 somebody's car.

20 Q Okay. Was it somebody you knew or --

21 A No. I didn't know who that person was. I was just
22 trying to get out of there.

23 Q And was this other person going to that car as well?

24 A No. She was already in the car.

25 Q Okay.

1 A She was kind of driving off in slow motion. She was,
2 actually, in the store as well, but she had got gotten out
3 before I did.

4 Q Okay. Now, while you were going through the parking
5 lot towards this other car, what did you observe?

6 A I was kind of looking around. I think I looked once
7 to my left and I seen an officer coming up the road and
8 turning in.

9 And then I remember kind of jumping in the car. And
10 when I turned back, the officer was literally opening the
11 door, jumping out, and was chasing the suspect through the
12 parking lot.

13 Q Okay. So you saw the suspect then when he came out?

14 A Oh, yes, definitely.

15 Q Did you see him before you saw the officer chase him?

16 A Yes.

17 Q So tell us about that. At what point did you see --

18 A When I went to the front of the store and I turned
19 around to look at -- or looked in the front of the store
20 and I seen the -- him beating her, I turned around. And
21 the other employee who had let us out of the door was
22 behind me. And I just screamed to her, He's still in
23 there, he's still in there.

24 And I kind of started going across the parking lot.

25 But when I looked behind me, he was coming out of the

1 store and around the corner then.

2 Q Now, did you -- and he still looked the same --

3 A Yes.

4 Q -- with the blue turquoise thing on his head --

5 A Yes.

6 Q -- and the mask on his face?

7 A Yes.

8 Q Still -- do you remember if he still had the object?

9 A I don't remember seeing the object. I didn't even
10 look down.

11 Q Okay. Now, did you see the officer chase --

12 A Yes.

13 Q And was the officer chasing that same man who you saw
14 beating --

15 A Yes --

16 Q -- the victim?

17 A Yes. He didn't even get out of the parking lot
18 before the officer was out of his car chasing him.

19 Q Okay. And what entered your mind when you saw the
20 officer chasing him?

21 A I was scared that he was going to shoot him. And so
22 I kept --

23 Q That who was going to shoot who?

24 A The officer -- the suspect was going to shoot the
25 officer. Because he was by himself. He -- from what I

1 seen, he just got out of the car and started the chase.

2 And so I was screaming on the 911 call for somebody
3 to get him some help. Because I was scared that they were
4 going in the woods and that he might get hurt.

5 Q Okay. And so was that parking lot well lit? Did you
6 have any trouble seeing?

7 A I didn't, no.

8 Q And, at some point, they got out of your sight?

9 A Yes.

10 Q When they got --

11 A Well, before when he was -- when I seen the officer
12 jump out of the car and started chasing him, that's when I
13 went -- the car that I was getting into drove off. And we
14 went to the parking lot of the library and just stayed
15 there for a minute.

16 Q Okay. And then how long did you stay there?

17 A Maybe a minute or two, not very long. Just enough to
18 kind of calm down and calm my daughter down.

19 Q Okay. Your daughter was still hysterical?

20 A Yes. She was very upset.

21 Q What -- did y'all go -- well, what did y'all do after
22 you sat there at the library parking lot?

23 A We just sat there. And then afterwards, we came
24 back. I wanted to check on the cashier. And so we got
25 back -- we went to the front where she was and just began

1 to talk to her and see what we could do to help.

2 Q Okay. And the police were all there all that time?

3 A Yes. There was a police officer standing in front of
4 the door. He was guarding the door at the time.

5 Q Okay. So you spoke to the officers and told them
6 what you saw, and they took a statement?

7 A Yes.

8 Q Okay. Now, just real briefly. In just a moment, I'm
9 going to ask you to step down --

10 A Okay.

11 Q -- and just show the jury where these actions took
12 place that you just described.

13 A (Witness complied.)

14 Q If you would, maybe step right over here next to me.
15 And use this laser pointer.

16 So, first off, show us the area on the map where you
17 came out.

18 A Out of the door around this side.

19 Q Okay. And then you walked in what direction?

20 A I walked up this walkway right here. I was,
21 actually, on the sidewalk.

22 Q And then, at one point, you said you could see into
23 the store and see the assault still taking place?

24 A Yes. My car was --

25 Q Show --

1 A -- parked right about here. So I was crossing --
2 coming up the sidewalk crossing over this way trying to
3 get to my car. And when I got about right here, that's
4 when I looked behind me and noticed that he was still
5 hitting her with the gun and slinging her across the -- up
6 against the wall and stuff.

7 Q So there's a glass --

8 A Yes. The doors are glass.

9 Q Okay. You could see in there without any problem?

10 A Absolutely.

11 Q Okay. And then where was this other car that you
12 went and got into?

13 A It was over here.

14 Q So when you saw that taking place, you --

15 A I turned around and I screamed to the other
16 cashier -- or other worker, He's still in there. I might
17 have made it right there and started going across the
18 parking lot. When I looked behind me, I seen him kind of
19 coming around this corner.

20 Q "Him" being who?

21 A The robber.

22 Q The robber.

23 A And then I seen an officer kind of turning in from
24 this way. And I got in the car. And right as I was
25 getting in and my daughter was getting in, I looked behind

1 me again. And that's when I seen the officer maybe parked
2 about right here jumping out. The suspect may have been
3 around in that area there. And he was chasing him.

4 Q Okay. Thank you.

5 You can have your seat.

6 A (Witness complied.)

7 MR. MOYER: Please answer any questions the Defense
8 may have.

9 CROSS-EXAMINATION

10 BY MR. GADDY:

11 Q You left the Dollar Store and drove down to the
12 library, is that what you did?

13 A I did not drive. I got in the car with someone else.
14 But we did go to the library.

15 Q And so you and this other person drove to the Mauldin
16 library?

17 A Yes, sir.

18 Q And then you decided you'd come back to the store?

19 A Yes, sir.

20 Q Okay. Now, you left through the back of the store,
21 didn't you?

22 A Yes.

23 Q And then you came around to the front where your car
24 was?

25 A Yes.

1 Q And you came around to the front. Before you got
2 into your car, you looked back and you could see through,
3 what, the glass at the front?

4 A Right. I didn't even make it to my car. I just made
5 it around the corner of the store.

6 Q Okay. And you looked back and you could see through
7 the glass?

8 A Yes, sir.

9 Q And you saw this robber. He was beating on the
10 person who's been identified as the cashier, Ms. Wilkinson?

11 A Yes, sir.

12 Q Okay. Now, when -- did you stay there and watch the
13 robber come out of the store?

14 A No. I -- when I seen him hitting her and I realized
15 he was still in there, I instantly turned around and just
16 yelled, He's still in there, he's still in there.

17 Q And then you went -- what did -- then you went to
18 somebody else's car. What did you do there?

19 A Yes. I turned around, ran a little bit back down the
20 walkway, and started heading across the parking lot to try
21 to get in -- just to get away. And it just so happened
22 this lady was in her car right there.

23 Q Okay. So did you see this robber come out of the
24 store?

25 A No.

1 Q Did you see this robber in the parking lot?

2 A Yes.

3 Q And when you saw him in the parking lot, was he
4 headed towards the back of the store?

5 A Yes.

6 Q Okay. Now, when you saw him in the parking lot, was
7 he carrying a gun?

8 A I did not notice a gun.

9 Q You did not notice a gun?

10 A Huh-uh.

11 Q Okay. But he had a mask on?

12 A Yes.

13 Q All right. Now, when you were inside the store
14 looking up -- you were inside the store looking up at the
15 front at one point; right?

16 A Yes.

17 Q And are you telling us that you saw the robber with a
18 gun at that point?

19 A It looked like a gun to me.

20 Q It looked like a gun?

21 A Uh-huh.

22 Q And you were how far away from where the robber was?

23 A I was at the back of the store.

24 Q Now, we've heard one of the other witnesses testify
25 that -- I think she was another employee -- the store

1 was -- the back from the front was, at least, as long as
2 this courtroom?

3 A Maybe even longer.

4 Q Maybe even longer?

5 A Uh-huh.

6 Q And so you were at the back of the store looking
7 towards the front where you knew all this commotion and
8 screaming was going on?

9 A Yes.

10 Q Okay. And whatever you saw looked like a gun, but
11 you didn't see a gun?

12 A No.

13 Q Okay. Did you see the robber hold any other kind of
14 a -- hold any object in his hand?

15 A No. I didn't see an object. I just seen...

16 MR. GADDY: Okay.

17 THE COURT: Any redirect?

18 MR. GADDY: No. I'm not quite through.

19 THE COURT: Oh, okay.

20 (Pause.)

21 MR. GADDY: That's all.

22 THE COURT: All right. Any redirect?

23 MR. MOYER: No redirect, Your Honor.

24 THE COURT: Very good.

25 Ma'am, you may step down.

1 MR. MOYER: The State calls Stephanie Hodges.

2 THE CLERK: Ms. Hodges, please, come forward to be
3 sworn in.

4 Place your left hand on the Bible and raise your
5 right.

6 WHEREUPON,

7 STEPHANIE HODGES,

8 after first having been duly sworn, testified as follows:

9 THE CLERK: Thank you.

10 You may be seated.

11 Would you, please, state your name for the record?

12 THE WITNESS: Stephanie Hodges.

13 THE CLERK: Thank you.

14 DIRECT EXAMINATION

15 BY MR. MOYER:

16 Q Ms. Hodges, how old are you?

17 A 45.

18 Q Okay. Are you married? Do you have children?

19 A Yes, widowed.

20 Q Okay. Widowed. And you do have some children?

21 A Yes, I do.

22 Q How many children do you have?

23 A I have three children and two grandchildren.

24 Q Okay. Now, let me ask -- take you back to October
25 the 11th of 2012, last year. Were you at the Dollar

1 General store on Mauldin [sic] Road on that date?

2 A Yes, I was.

3 Q And was it the Dollar General that we've shown on the
4 map, and that we've depicted in the videos?

5 A Yes, it is.

6 Q And were you present there when that robbery took
7 place?

8 A Yes, I was.

9 Q Okay. Tell us where you were inside the store.
10 Describe to us where in the store you were when you first
11 noticed something happening?

12 A I was going up the aisle that was like directly from
13 where she tried to get out.

14 Q Okay.

15 A And it was directly -- when she threw the pricing
16 gun, it hit like right in front of me.

17 Q Okay. So you were walking up towards the front?

18 A To checkout.

19 Q So you were walking up there to checkout?

20 A Uh-huh.

21 Q Okay. And you had a buggy or a cart?

22 A Yes. I had a cart.

23 Q Okay. About how close do you think you got to the
24 cashier before this happened?

25 A Probably from here to that --

1 Q You can use me if -- as a --

2 A Come up.

3 Q Come up closer?

4 A Yes. Right there.

5 Q Okay. Right about here.

6 And then -- so was it this object that you saw
7 flying, is that what alerted you to the robbery going on?

8 A Yes, it is.

9 Q Okay. So after that -- it landed at your feet?

10 A No. It landed like from me to the edge of the corner
11 of that right there.

12 Q Okay. Did you know what it was that was thrown?

13 A A pricing gun.

14 Q A pricing gun?

15 A Uh-huh.

16 Q Okay. Now, when you saw that object fly through the
17 air and hit the ground, what did you -- did you make any
18 other observations about what was going on?

19 A Well, I was on the phone with my daughter. And I was
20 like what in the world. And I looked up and she's -- the
21 cashier is standing there with -- and the suspect had what
22 looked to be like a gun wrapped up. And it was square.
23 It looked to be like a gun. And he had it stuck to her
24 head like, you know, from the side.

25 Q Like we saw in the video?

1 A Yes.

2 Q So when you saw that object in his hand, what did you
3 think it was?

4 A I thought it was a gun.

5 Q Okay. Based on the appearance and the way he was --

6 A The way it looked and the way he was holding it to
7 her head, and, you know, instead of -- the fear in her
8 voice was...

9 Q So tell me about that. Did you hear her --

10 A Yeah.

11 Q What do you remember hearing her say?

12 A She was saying, Sir, I can't. Sir, I can't. Sir, I
13 cannot. I can't.

14 Q And what do you remember about the tone of her voice?

15 A She was scared, very scared. It sounded like she
16 thought she was going to die, get killed.

17 Q Okay. Now, so when you saw that, what did you do at
18 that point?

19 A Well, I started telling my daughter that they --
20 whispering to her, They're being robbed, they are being
21 robbed. And, at that point, my daughter hung up and
22 called the police. And I --

23 Q Okay. Well, what did --

24 A -- started backing up to go back to the back of the
25 store.

1 Q Okay. And so you backed up. Did you go to the back
2 of the store?

3 A Yes, sir, I did.

4 Q Okay. What did you do when you got to the back of
5 the store?

6 A I asked the other employee if she could let us out
7 the back, would it set the alarm off or what would it --
8 could she let us out.

9 Q That was the lady who testified earlier today?

10 A Yes.

11 Q Ashley Johnson?

12 A Yes.

13 Q So were you one of the people we saw filing out the
14 back door in the video?

15 A Yes, I was.

16 Q What did you do when you got outside?

17 A I went straight to my car, which was parked right in
18 the first parking spot.

19 Q Okay. And so then did you get out of there?

20 A I got in my car and I backed out. And I went to go
21 out and my son-in-law and daughter was -- they were like
22 right there in the parking -- in the drive. Because they
23 were trying to block if any -- you know, if he tried to
24 escape out of there.

25 Q Did you see the robber come out of the building?

1 A No, I did not.

2 Q Okay. You weren't paying attention to that at all?

3 A No, sir.

4 Q Okay. And did you wait there and talk to the police?

5 A Well, I -- yes, I did.

6 Q So you didn't leave and come back, you stayed there?

7 A No. I just -- I pulled up to my daughter's car. And
8 then I backed up and re-parked in my parking spot.

9 MR. MOYER: Okay. I have no further questions for
10 this witness.

11 CROSS-EXAMINATION

12 BY MR. GADDY:

13 Q Just to make sure that we understand your testimony.
14 Was the closest you got to the robber the difference from
15 where you're standing and where this projector set is
16 located. Is that -- that's the closest you got?

17 A Yes, sir.

18 Q Okay. And you saw -- he was holding in his hand an
19 object you thought was a gun?

20 A Yes, sir.

21 Q Now, did you see a gray cloth at the same time?

22 A Yes, sir, I did.

23 Q And it would appear to you that the gun was under the
24 gray cloth?

25 A Yes.

1 Q Okay. It was not an object that he was holding in
2 his hand with no gray cloth; is that right?

3 A Correct.

4 Q Okay. Now, what attracted your attention to the
5 robber? The screaming?

6 A The cashier threw a pricing gun and it hit the stuff
7 on the ground right in front of me.

8 Q Okay. Now, was there another man up in the area
9 where the cashier was, or in the front of the store at
10 that time?

11 A Yes, sir.

12 Q There was another man there?

13 A No.

14 Q No other man?

15 A No, there was. There was the suspect.

16 Q The only person up there was the robber and the
17 cashier, Ms. Wilkinson?

18 A Yes.

19 Q All right. So what action did you take after you saw
20 the robber up there and the lady was screaming? What did
21 you do then?

22 A I told my daughter on the phone that they were being
23 robbed.

24 Q But then you turned around and went out the back of
25 the store?

1 A And then I turned around and went to the back of the
2 store.

3 Q Okay. Did you ever see the robber with the mask off?

4 A No, I did not.

5 Q Okay. You never saw a gun, but you saw something
6 that looked like a gun?

7 A Yes, sir.

8 Q Is that because -- when you say that, you never saw
9 an object of any kind, did you?

10 A I saw the shape of something underneath the --

11 Q You saw the shape of something --

12 A Yes.

13 Q -- and it was wrapped up in a cloth?

14 A Yes.

15 Q Okay. What it was that was wrapped up in a cloth
16 you're not sure, but you believe it was a gun?

17 A Yes, sir.

18 MR. GADDY: Okay. No other questions.

19 THE COURT: Any redirect?

20 MR. MOYER: No redirect, Your Honor.

21 THE COURT: Ms. Hodges, you may step down.

22 THE WITNESS: Thank you.

23 MR. MOYER: The State calls Sean Calhoun to the
24 stand.

25 THE CLERK: Sir, come forward to be sworn in.

1 Place your left hand on the Bible and raise your
2 right.

3 WHEREUPON,

4 SEAN CALHOUN,

5 after first having been duly sworn, testified as follows:

6 THE CLERK: Thank you.

7 You may be seated.

8 Would you, please, state your name for the record?

9 THE WITNESS: Sean Calhoun.

10 THE CLERK: Thank you.

11 DIRECT EXAMINATION

12 BY MR. MOYER:

13 Q Officer Calhoun, how long have you been in law
14 enforcement?

15 A A total of 20 years.

16 Q Okay. And tell us where all you have worked in law
17 enforcement.

18 A My law enforcement career started in the U.S. Air
19 Force, four years of service as a law enforcement
20 specialist. Also, in the Army National Guard as a
21 military police officer, two years with them. Eight years
22 with the Greenville County Sheriff's Office. I resigned
23 from the Sheriff's Office and left and took contract work
24 with the United Nations as an international police officer
25 for a year and a half.

1 I returned to Greenville, South Carolina. I was
2 employed with the Greenville City Police Department for
3 approximately two years. I was recruited back to the
4 United Nations as a law enforcement specialist. I did
5 another year and a half doing contract work with them.
6 And then I returned back to Greenville, South Carolina.
7 And I'm now employed with the Mauldin Police Department.

8 Q How long have you been with the Mauldin Police
9 Department?

10 A Four years.

11 Q What is your position with the police department?

12 A Uniform patrol.

13 Q Now, tell us about the duties of a uniform patrol
14 officer, someone in your position.

15 A Typically, calls for service such as handling
16 domestic calls, any calls that come in through 911,
17 handling reports such as burglaries, larcenies, traffic
18 stops, routine patrolling of neighborhoods and business.

19 Q Okay. Now, were you working on the evening of
20 October the 11th of 2012?

21 A I was.

22 Q Did you hear the call go out for this incident that
23 we've been talking about today?

24 A I did.

25 Q And what did this call go out as?

1 A Dispatch alerted through tones, which is, basically,
2 they have an alarm system that goes across all radio
3 frequencies to notify all police officers that have their
4 radio on to alert them that there's an immediate call for
5 service. And it came across as a 1045, which is our code
6 for armed robbery in progress with the suspect having a
7 1049, which is our code for the person having a weapon.

8 Q Now, we heard -- were you in here when the 911 tape
9 was played earlier today?

10 A Yes, I was.

11 Q And you heard the dispatcher talking about a 45 and a
12 49?

13 A Yes. I -- if you're referring to being on the phone
14 with the other witness --

15 Q Yes.

16 A -- yes, sir, correct.

17 Q Okay. And so that's the 1045 and the 1049 you were
18 talking about?

19 A Correct.

20 Q Okay. Now, were you close by?

21 A I was.

22 Q Do you remember where you were and what you were
23 doing?

24 A Yes. I was on routine patrol. I had just left
25 Sunset Park, which is located on Fowler Circle. And I

1 was, actually, near the intersection of Fowler Circle -- I
2 was on Fowler Circle near the intersection of West Butler
3 Road.

4 Q And did you --

5 A I was going to say, that's roughly maybe an eighth of
6 a mile from the actual dollar store.

7 Q And so when this dispatch came out -- and it came out
8 for what location?

9 A It came out for the Dollar General.

10 Q Okay. And that's in the city limits of Mauldin?

11 A It's within the city limits of Mauldin.

12 Q Which is in Greenville County?

13 A Correct.

14 Q And so you went immediately there?

15 A Correct.

16 Q Blue lights and siren?

17 A Correct.

18 Q Okay. Now, did you -- was the time that you arrived
19 notated at all?

20 A It is.

21 Q And what was your arrival time?

22 A The call was dispatched -- well, the call came in at
23 7:54. It was dispatched at 7:55. I arrived on scene at
24 7:56.

25 Q Okay. Now, and you were in a patrol car?

1 A Marked patrol car, yes.

2 Q And you were in uniform as well?

3 A Correct.

4 Q You had a firearm?

5 A Correct.

6 Q So when you arrived on the scene, tell us what you
7 did and what you, initially, observed when you got there.

8 And, actually, to have you go through this testimony,
9 I'm going to ask for you to step down and we'll use the
10 map.

11 A Sure.

12 Q We'll use State's Exhibit No. 1, the aerial map, to
13 describe -- and if you could use this laser pointer, and
14 step over here.

15 A (Witness complied.)

16 Q So, if you would, show us where you pulled into the
17 parking lot?

18 A Well, initially, where I was approached from the area
19 was -- like I said, the intersection was West Butler. And
20 Fowler is located further off the map towards this area
21 here.

22 Q Okay.

23 A So I approached from West Butler this way and turned
24 directly into the parking lot.

25 Q And what did you see when you pulled into the parking

1 lot? What caught your attention at that time?

2 A A lot of chaos. There was people that were running
3 from the scene. There was cars trying to exit and enter
4 into the parking lot. There were pedestrians that were,
5 actually, I guess, for what -- appeared to be trying to
6 wave people off from turning into the parking lot.

7 Like I said, I was using my blue lights. And, at the
8 time, I turned my siren off. I didn't want to alert the
9 suspect or the person that was robbing the place that I
10 was on scene. So I used my blue lights and was able to
11 weave through the crowd of cars and, initially, came into
12 the parking lot.

13 At the bottom of the parking lot, I observed a light
14 blue car that was driving pretty erratic that looked like
15 maybe it was trying to get away. So I just assumed that
16 this person was part of the robbery.

17 So I, initially, drove down towards the bottom of the
18 parking lot area. I had my windows rolled down. So when
19 I was trying to make contact with this vehicle, I heard
20 people yelling, He's still inside the store, he's still
21 inside the store.

22 Q Okay. So what did you do at that point? So these
23 were some -- just people that were milling out there in
24 the parking lot?

25 A Correct. These were people that I saw that were,

1 basically, running. I saw people running. There was
2 people still screaming. I heard several people yell out
3 that he's still inside the store.

4 So, initially, I backed -- put my vehicle -- patrol
5 vehicle in reverse. And I backed out. And I angled my
6 patrol car kind of at an angle so that I could see not
7 only the front of the store, which is located here, but
8 the side door exit. And that's just standard procedure
9 for when we set up perimeters. It's in order to be able
10 for -- one officer or two officers can observe all four
11 corners of the building.

12 Q And so you sat there and you watched the building?

13 A No. Initially, as soon as I put the vehicle in park
14 right about here, I was getting ready to advise dispatch
15 of my position and start calling out since I was the first
16 on scene to direct other officers into the area with
17 positions to take up.

18 I heard another -- someone yelling. I looked up and
19 I saw an individual exiting the store that was dressed in
20 jeans, T-shirt -- gray T-shirt, kind of what I would
21 describe as an aqua-blue hair net or some type of scarf
22 over his head, and a gray shirt -- or a gray scarf over
23 his face.

24 Q Okay.

25 A And, at that time, I assumed that this was the

1 suspect at the time.

2 Q And did you notice anything in either of the man's
3 hands?

4 A The man was -- initially, from what I saw, he was
5 carrying something gray in his right hand.

6 Q Okay.

7 A I immediately, what I call, draw down. What I mean
8 is I pulled my duty weapon from the holster, pointed it at
9 him, identified myself as a police officer, and told him
10 to stop and get on the ground.

11 Q And you got out of your police car?

12 A Correct. I was already out of my police car at this
13 time.

14 Q Okay. And about how close were you to him at that
15 point? You can use me as a reference, if you like --

16 A I would -- just as a rough estimate, I would --
17 because I really wasn't -- when I pulled my patrol car on
18 this corner here, I was trying to block off this area here
19 just to prevent other people from going down into this
20 area, and any other cars that were trying to flee from the
21 scene. Because, again, I didn't know if there was a
22 get-away car, or anything like that.

23 So I would say, roughly, my patrol car was probably
24 the length of this room. Using the front door as the
25 corner, I would say my patrol car was probably the length

1 of this room.

2 Q Okay. Where you saw him and you told him to stop?

3 A Correct.

4 Q And what did -- when you drew down and told him to
5 stop and get on the ground or whatever, what was his
6 reaction?

7 A Well, the man, initially, looked directly at me. We
8 made eye contact. And, basically, he turned. He turned
9 to the right and fled the scene. He just fled on foot.

10 Q So show which direction he fled.

11 A Initially, this is the front door here. He just
12 casually walked out. When I heard people screaming, I
13 looked at the front door. And he was just casually
14 walking out the front door as if he was looking for
15 something or somebody, maybe the get-away car. I don't
16 know.

17 And he paused right here in this area here. And when
18 I made contact with him by yelling at him to stop, police
19 officer, he turned to the right and then fled on foot
20 through the parking lot into the grassy area.

21 Q Okay. Now, you were in the courtroom today when we
22 showed the videos?

23 A Uh-huh.

24 Q And you saw the robber on the videos from three
25 different angles; correct?

1 A Correct.

2 Q Now, the person you saw coming out of the store, did
3 it look like the person who was on that video?

4 A It matched the identification exactly.

5 Q Okay. And here, we're talking about the rag that was
6 on his head --

7 A Correct.

8 Q -- and everything you just described?

9 A Correct. He had the -- the same individual was
10 wearing a gray shirt. The doo rag -- or the aqua-colored
11 blue shirt -- I mean blue rag on his face stood out
12 because, basically, you just don't see something like that
13 normally. And then plus the fact that he did have a gray
14 shirt or scarf over his face.

15 Q Okay. So when you saw him start running back through
16 the parking lot, what did you do?

17 A Initially, I took -- I gave chase. Again, I wasn't
18 sure where he was going. There were still pedestrians,
19 people down in this area here. I didn't know if this
20 individual was going to try to grab some -- one of the
21 people for a hostage situation, or some type of situation.
22 So I, basically, ran and chased him through the crowd into
23 the wooded area.

24 We proceeded through the wooded --

25 Q Now, is that wooded, or is it --

1 A Oh, I'm sorry. This is an open field.

2 Q Okay.

3 A Right around here, this is the wooded area, when it
4 becomes woods.

5 Q So, initially, it's a field?

6 A Correct. Initially, it's a field.

7 We ran through this wooded -- excuse me, this open
8 field to the fence line, which is back here. And, again,
9 this is the wooded area.

10 Q Okay. Now, did you have any trouble seeing him in
11 the parking lot?

12 A No, I did not. The parking lot is pretty well lit.
13 It has several street lamps inside the parking area just
14 through the past businesses that have been in this area --
15 particular location. They have well lit lighting.

16 Q Okay. Now, once you got back behind this store into
17 this field, what was the lighting like back there?

18 A This was all moonlight. Now, I did -- was carrying
19 my flashlight. Normally, on the night shift, I carry two
20 flashlights.

21 So I kept my flashlight on the suspect at the time
22 just to keep it well lit -- keep him well lit just in case
23 he did turn around and try to fire at me, or just,
24 basically, keep it in the same direction where he was
25 going.

1 The initial idea was to, basically, keep him in sight
2 the entire time. I knew other officers were responding.
3 But, instead of, initially, trying to tackle him and then
4 wrestle with him over a gun, or anything like that, or any
5 other weapon, it was just to keep him contained. I
6 figured that he wasn't going to be able to get into this
7 wood line area.

8 Q Did you know about that fence back there?

9 A No, I did not.

10 Q Okay.

11 A So I figured that, hopefully, if I could keep him
12 contained in this area here, I knew other officers were
13 responding. We could set a perimeter up.

14 Q Okay. And so you kept the flashlight?

15 A Correct. I kept the flashlight lit on him.

16 Q And you didn't lose him until he got to the fence?

17 A Correct.

18 Q So what did you observe once he got back to that back
19 fence?

20 A Well, initially, when we got to the wooded area, I
21 slowed down just enough. Because we were going into an
22 unknown area --

23 Q So let me, actually, stop you for one moment. So
24 it's a little wooded area and then the fence?

25 A Correct.

1 Q Okay.

2 A We went into the wooded area. There's a chain link
3 fence, barbed wire. It's maybe eight or nine feet tall.
4 I saw the individual go over the fence. And, as he was
5 going over the fence, because I had my flashlight on, I
6 saw money falling from his person. I heard change falling
7 from his person.

8 He went over the barbed wire fence. I, initially,
9 stopped. I just didn't think for officer's safety it
10 would be wise for me to go over the fence, me get hung up
11 on the barbed wire, and potentially become just a hanging
12 target.

13 Q So there's -- where's the barbed wire on this fence.

14 A The barbed wire is at the very top.

15 Q The very top.

16 A So the chain link fence. And then at the very top is
17 the barbed wire.

18 Q Okay. Now, let me, also, ask you about something you
19 just mentioned. You just mentioned about seeing money --

20 A Correct.

21 Q -- coming off the person. Could you tell where it
22 was coming from, or --

23 A Well, as far as saying what part of the body it was
24 coming from, I could not say. As I was running, I was
25 just noticing trails, just small pockets of actual

1 currency on the ground.

2 Q Okay. In the field?

3 A In the field.

4 Q Okay. So you watched him go over the fence?

5 A Correct.

6 Q And then what did you do at that point?

7 A I stopped, got -- watched him as he entered into this
8 long area. This is, actually, a separate subdivision over
9 here.

10 Q Are they condos? Houses or --

11 A They're condos.

12 Q Okay.

13 A And this is Daniel Court right here. And this is
14 Daniel -- all this is Daniel Court, excuse me. And this
15 little loop right here is, also, Daniel Court.

16 Basically, I knew I wasn't going to hop the fence.
17 So I ran all the way back to my patrol car. I ran back
18 through the wooded area, through the open field to my
19 patrol car. And I advised dispatch of his last known
20 location.

21 I drove into -- drove back to this circle here. And
22 I parked my car right here at the very entrance. And I
23 got out and conducted a foot patrol.

24 Q Now, that field, can you give us an idea of the
25 distance, like how long would it take you to get from that

1 fence line back to your car?

2 A Roughly, this field -- I've never went out and
3 measured it. But I would say it was probably about 250
4 yards, maybe two and a half football lengths.

5 Q Okay. And then you immediately got in your car when
6 you got back?

7 A Correct.

8 Q And you immediately drove back there?

9 A Correct.

10 Q So how much time would you say elapsed from when you
11 left the fence to when you got back there?

12 A 45 seconds, not even a full minute. I went at a full
13 sprint to get to my car. Of course, like I said, the
14 parking lot was almost emptied out, so there was no
15 obstruction for my police car. And I had on blue lights
16 and siren. And I went directly here.

17 Q Okay. And so you say you got out and entered on foot
18 patrol. Where did you go? And what did you see?

19 A I went to -- initially, I parked right here in this
20 area where the -- this is a grassy area where I,
21 initially, last lost contact with him. And, like I said,
22 I went out and did a foot patrol. This area was clear.
23 Because approaching in, it's wide open. There's no trees
24 or any other obstructions. I walked around. This is 101.
25 This is 103. And this is 105.

1 So I checked the front areas for any type of
2 footprints, or anything like that, any type of garments he
3 may have dropped. And I went to this grassy area between
4 103 and 105.

5 My initial thought was that, perhaps, he may have ran
6 from this area into the woods to try to lose us. My other
7 supervisor was, actually, on the other side of another
8 subdivision on the other side of the wood line.

9 Q Okay. So what did you see when you got back there
10 between those two condos?

11 A When I, initially, got in this area, I heard a little
12 bit of rustling. I turned to the left. And the
13 individual that was wearing the jeans and gray shirt that
14 was matching the same description as the person who robbed
15 the bank -- excuse me, robbed the Goodwill [sic] was right
16 here roughly bent over puffing as if he was out of breath.

17 Q Okay. Did he still have the mask on?

18 A No. At that particular time, he had the -- I saw the
19 gray shirt and doo rag that was gray. The garment or
20 scarf on his hand, also, with the aqua-blue doo rag, also,
21 was in his hand.

22 Q Okay. The --

23 A The head garment.

24 Q Okay. So, instead of being on his head, now he's
25 holding it in his hand?

1 A Correct.

2 Q And so was it the same person that you had just
3 chased through the field?

4 A Yes.

5 Q No question about it?

6 A No question.

7 Q And so what did you do? Did you make any commands?
8 Did you say anything to him?

9 A I immediately withdrew my duty weapon and pointed it
10 at him, and identified myself as a police officer again,
11 and commanded him to get on the ground. He looked
12 directly at me, turned, and then hopped the -- this, I
13 guess, wooden fence between this -- that guards this
14 wooded -- I mean, excuse me, this open fence area. He
15 hopped over the fence.

16 Q How tall a fence is that?

17 A I'd say about six feet.

18 Q Okay.

19 A It's just a basic privacy fence is what it is. I
20 just assumed instead of hopping the fence again just to
21 run around to the front and catch him on the other side.

22 So, initially, he hopped over the fence behind 103,
23 and came out behind 101 in this area. And that's where I,
24 actually, made contact with him again.

25 Q So you were just sitting there waiting for him?

1 A Maybe -- it was maybe not 22 -- not even two or three
2 seconds. As soon as I got around the corner, he was
3 coming over the fence.

4 Q Okay. And so what did you do when you saw him again?

5 A Again, I withdrew my duty weapon, pointed it at him,
6 identified myself as a police officer. This individual
7 looked directly at me, turned his back to me, and put his
8 hands up -- it looked -- appeared to be up near his chest.
9 So I could not see his hands at all.

10 So, basically, if you are the officer, he looked at
11 me. He turned and put his arms up like this. At that
12 particular time, I didn't know if he was reaching for a
13 gun or anything, any type of weapon. But because of the
14 situation, I decided to holster my duty weapon and use my
15 taser. I gave him one more verbal command to let me see
16 his hands. He refused. And I discharged my taser.

17 Q Okay. And what happened to him when you discharged
18 the taser?

19 A The taser -- when -- I aimed for his back, the center
20 mass of his back. I made contact. The prongs made
21 contact. It initiated an electrical charge. He tensed
22 and fell backwards. I gave him commands to roll over. He
23 refused again. I said, Roll over and let me see your
24 hands. He refused. I gave him one more discharge of
25 electric current. Then he complied. I handcuffed him.

1 And, by that time, other units had started arriving on
2 scene.

3 Q Tell us just a very brief description. How does a
4 taser work? Does it --

5 A Well, as you can see, this is the taser. It's
6 yellow. And it's marked correctly so that we don't get it
7 confused with our duty weapons, which are, basically,
8 metal and black.

9 Just real quickly, it is on safe. At the time, you
10 have to, actually, put it on fire in order for it to
11 discharge. Once it's discharged, two prongs come out kind
12 of like fish hooks. And they attach to the skin or the
13 clothing. And then they initiate an electrical charge
14 between the two prongs.

15 Q So they're wires that go out --

16 A Correct.

17 Q -- from your gun to that --

18 A Correct.

19 Q And then does it automatically discharge, or do you
20 have to do something else to make the electrical current
21 go?

22 A Once it's discharged, the electrical current
23 initiates.

24 Q Okay.

25 A So there's no -- if you're asking if the prongs are

1 attached to the end to another button for the electrical
2 charge, no, it isn't. It's once it makes contact, it
3 sends the electrical current.

4 Q But then the second charge --

5 A You can, actually -- and it -- primarily, once it's
6 discharged, it gives a five-second countdown of current.
7 You can turn it off by engaging the safety. You can turn
8 the electrical current off. Or you can if you want to
9 re-engage, which is what I did, I put the selected -- I
10 put the weapon -- excuse me. I put the safety back on
11 fire. And I pulled the trigger again, which gave another
12 five-second charge.

13 Q All right. Let me ask you to take your seat again.

14 Thank you.

15 A (Witness complied.)

16 Q Now, so after you got him in handcuffs, what did you
17 do with him at that point?

18 A I Mirandized him, gave him his Fifth Amendment rights
19 as far as what you would -- typically, what you would see
20 in most cop movies, you have the right to remain silent,
21 so forth and so on. I advised him of his rights.

22 Q Okay. And did you take him anywhere? Did you
23 attend -- let me ask you this. Did you attend to those
24 fish hook-like apparatuses that were embedded in him?

25 A Initially, we got him off the ground. And I patted

1 him down for any type of weapons, any property that may
2 have been on his person.

3 Once that was -- once we did that pat down, we moved
4 him to the patrol car to a more secure location. And --

5 Q Just to be clear, you didn't find anything on him?

6 A Correct. I did not.

7 We moved him to the patrol car, my patrol car. I
8 placed him in the back seat. Then I took a look at his
9 back to make sure he wasn't -- there wasn't any permanent
10 damage that was done to him from him falling backwards.

11 I did notice that there was one prong that was
12 attached to his shirt. And the other prong was embedded
13 into his back. I attempted to remove the prongs -- the
14 one prong from his back and could not. And I called EMS
15 and the fire department to come out to render first aid.

16 Q Did they take it out or --

17 A No. Due to OSHA requirements and their standards,
18 the fire department and EMS declined to remove them. So I
19 had to transport him to Greenville Memorial Hospital to
20 have a doctor remove them.

21 Q Okay. And was he kept there at the hospital long?

22 A If I can refer to my notes.

23 Q He wasn't kept overnight, or anything like that?

24 A No, he was not. It was a matter of -- if I can
25 locate it in my notes. I believe roughly around 20

1 minutes or so.

2 Q Okay. Just enough time to take the prong out of his
3 back and then --

4 A Correct. There was no other medical attention
5 needed, just the removal of the prong. And he received a
6 tetanus shot, also.

7 Q Okay. Now, is -- the person that you chased through
8 that field -- who came out of Dollar General and you
9 chased through the field, and then apprehended on the
10 other side of that fence, is that person here in this
11 courtroom?

12 A He is.

13 Q Would you identify him to the jury?

14 A It's the African-American male that is sitting behind
15 the desk with the striped shirt.

16 Q Okay. The Defendant in this case, Ronald Downs?

17 A Correct.

18 Q Okay. Now, at some point, did you go with the other
19 officers to look back through the field where you had
20 chased him where -- that you had chased him through? Did
21 you go back and look for anything that may have dropped or
22 anything that --

23 A No.

24 Q Or you left that up to the other officers?

25 A I left that up to the other officers. There was --

1 one of our K9 units responded, also, for a track. I
2 explained the situation to him. And then he proceeded
3 with his K9 to walk the fence line and to do any type of
4 track to locate money, or any other property.

5 Q Okay. And did you notice anything -- did you notice
6 any -- you mentioned about seeing money falling out of his
7 pockets --

8 A Correct.

9 Q -- or off his person as you were going through the
10 field. On the other side of the fence when you
11 apprehended him, did you notice anything else like that?

12 A Once I got him handcuffed and was picking him up off
13 the ground and walking him to my patrol car because of --
14 he was wearing very baggy and loose clothing. There was
15 contraband -- no, excuse me, not contraband. There was
16 currency falling from his person.

17 Q So more money fell out of his pockets?

18 A Correct.

19 Q And this is after you had apprehended him and taken
20 him to your patrol car?

21 A Correct. It was as we were walking back to my patrol
22 car.

23 Q Okay. And did you point it out to the officers who
24 came to collect the money?

25 A Correct.

1 Q Okay. Now, let me hand you --

2 MR. MOYER: Would you mark this?

3 (WHEREUPON, State's Exhibit No. 17 was marked for
4 identification only.)

5 BY MR. MOYER:

6 Q Let me hand you what's been marked as State's Exhibit
7 No. 17. And I'm not going to open the bag. But can you
8 just look at the contents of that bag, and tell us if you
9 recognize what is in there.

10 A Yes. This blue or aqua -- what I would classify as
11 aqua-blue is the same garment that was on the Defendant's
12 head as he exited. And, also, it was found on his person
13 when I, initially, made contact between the two condos.
14 And then he still had it on him when I initiated the
15 arrest.

16 Q Okay. And then --

17 A And, also, the gray shirt -- or the rag, we later
18 found out once we took him into custody that it was,
19 actually, a T-shirt -- part of his T-shirt. This was,
20 also, worn over his face.

21 Q All right. And you recognize those -- that as what
22 he had on that day?

23 A Correct.

24 MR. MOYER: Your Honor, at this time, I would move to
25 have State's Exhibit No. 17 entered into evidence.

1 THE COURT: Any objection?

2 MR. GADDY: No objection.

3 THE COURT: State's Exhibit No. 17 is admitted
4 without objection.

5 (WHEREUPON, State's Exhibit No. 17 was admitted into
6 evidence.)

7 BY MR. MOYER:

8 Q I'm going to hand you now State's Exhibit Nos. 5 and
9 6. And, if you would, just take a look at each of those,
10 and see if you can recognize what is displayed in each of
11 those photographs. Don't tell us yet. Just look and --
12 just look at them both and --

13 A These are from the scene.

14 Q Okay. You do recognize them?

15 A Yes, I do.

16 Q Okay. Let's start with State's Exhibit No. 6. Can
17 you tell us what is depicted in that photograph?

18 A This is the chain link fence --

19 Q Actually, don't hold it up yet. Just describe it to
20 me.

21 Is that the chain link fence that you chased him to?

22 A Correct. And in this -- this is a picture of the
23 chain link fence where he crossed over. In this chain
24 link fence -- in this picture, I see what appears to be a
25 gray cloth that is possibly on the ground, and a gray

1 cloth over the barbwire fence that looks to be -- was
2 ripped off of his shirt that he was carrying -- wearing.
3 Also, this appears to be blue lights from my patrol car in
4 the picture, also.

5 Q Okay. Now, in State's Exhibit -- let me back up. In
6 State's Exhibit No. 6, is that a true and accurate
7 representation of the way that fence looked on October the
8 11th of 2012?

9 A It is.

10 Q Now, if you would, look at State's Exhibit No. 5.
11 What is depicted in that photograph?

12 A This is a picture of the Defendant wearing jeans that
13 are dirty and baggy, a gray T-shirt, which is ripped at
14 the bottom, and him sitting in the backseat of my patrol
15 car. And, in the picture, it has one of my unit numbers
16 on the car, so it is my patrol car.

17 Q Okay. And is that a true and accurate representation
18 of the way the Defendant, Ronald Downs, looked on the
19 night of October the 11th, 2012, after you arrested him?

20 A This is an accurate picture of what he looked like
21 exiting the store and after being arrested.

22 MR. MOYER: Your Honor, at this time, I move to have
23 State's Exhibit Nos. 5 and 6 entered into evidence.

24 MR. GADDY: No objection.

25 THE COURT: No objection. State's Exhibit Nos. 5 and

1 6 are admitted.

2 (WHEREUPON, State's Exhibit Nos. 5 and 6 were admitted
3 into evidence.)

4 BY MR. MOYER:

5 Q Actually, rather than show this on the -- just these
6 two pictures on the screen, let me just ask you to step
7 down and just point this out to the jury.

8 A (Witness complied.)

9 Q Let's start with State's Exhibit No. 6. Can you just
10 point out to the jury what is shown in that photograph?

11 A This is the path that the Defendant did take. As you
12 can see here, this is the gray cloth that, apparently,
13 came from his shirt. Here is the barbed wire above the
14 fence. This is, also, a gray garment that, I assume, came
15 from his shirt as he crossed over. In the background, you
16 can, actually, see my blue lights from my patrol car.

17 Q Okay. So that's that fence right there?

18 A Correct.

19 Q And State's Exhibit No. 6.

20 A This is a picture of the Defendant after he was
21 arrested. As you can see, the baggy clothing. Again, you
22 can see the underwear or under garments underneath his
23 jeans. The gray shirt, which is torn and soiled. There's
24 a cut on the shirt, basically, either torn or cut straight
25 across. And the tail end of it, I guess to use that as

1 the mask.

2 Q And, actually, that was State's Exhibit No. 5, not
3 State's Exhibit No. 6.

4 A Correct. This is State's Exhibit No. 5. And this is
5 State's Exhibit No. 6.

6 Q Okay. Please take your seat again.

7 A (Witness complied.)

8 MR. MOYER: I have no further questions at this time.
9 Please answer any questions the Defense may have.

10 CROSS-EXAMINATION

11 BY MR. GADDY:

12 Q Sir, would you come down and stand in front of this
13 aerial photograph, which is State's Exhibit No. 1?

14 A Yes, sir.

15 Q Let's pull it back so the jury can see it.

16 Thank you.

17 Now, you testified that when you first saw the
18 robber, he was out at the front of the store; is that
19 correct?

20 A Yes, sir. He was, actually, exiting. I saw him
21 exiting the store.

22 Q Okay. And you went to the right of the store and
23 went down alongside the store; is that right?

24 A Yes, sir. He, actually, entered into the parking lot
25 and ran to the back of the store, correct.

1 Q And you told us that this grassy area behind the
2 store is about 250 yards; is that right?

3 A In my rough estimate, yes, sir.

4 Q Okay. And that's where the robber went, down through
5 that grassy area?

6 A Yes, sir.

7 Q And you've called this little blotch of green back
8 there a patch of woods; is that right?

9 A Correct.

10 Q And somewhere on one side or the other of that patch
11 of woods, there's a fence, you said, that's eight or nine
12 feet long; is that right?

13 A Yes, sir. About nine feet tall, yes, sir.

14 Q Okay. Now, while this guy was running down that 250
15 yards, where were you?

16 A Directly behind him.

17 Q You were running behind him?

18 A Yes, sir.

19 Q And you had your flashlight on?

20 A Yes, sir.

21 Q Okay. And was he flailing his arms running as fast
22 as he could, or was he holding one in his belt? What was
23 he doing with his arms?

24 A He was running pretty fast. As far as was he
25 flailing his arms, initially, I don't know if you would

1 consider that to be flailing. But he was running as if he
2 was running in a track --

3 Q Okay. Which it would mean his arms were going back
4 and forth?

5 A Yes, sir.

6 Q Okay. Now, you saw him go to the fence?

7 A Yes, sir, I did.

8 Q Okay. Now, during that time that you saw him running
9 when you saw him get to that fence to go over the fence,
10 did you see a gun?

11 A No, sir, I did not.

12 Q You did not. Did you see any kind of object in his
13 hands?

14 A Outside of the shirt -- the gray -- what I thought
15 was a gray garment over his right arm -- I mean over his
16 right hand, no, sir.

17 Q He had a gray garment over his right arm, is that
18 what you're saying?

19 A Yes, sir. He had some type of garment over his right
20 hand.

21 Q He had a gray garment over his right hand?

22 A Yes, sir.

23 Q You saw no object in it?

24 A Outside the gray garment, that's all I saw.

25 Q Okay. And he was able to go over the fence with the

1 gray garment wrapped around his hand?

2 A Yes, sir. He, initially, took a large leap and
3 scaled the fence.

4 Q Okay. And you saw him when he came down on the other
5 side?

6 A Yes, sir. He, initially, fell.

7 Q And you saw no object, did you?

8 A At the time, I did not.

9 Q At the time, you didn't. Not only that time, any
10 other time, did you?

11 A Well, I guess all I can testify to, sir, is he was
12 carrying the gray garment.

13 Q All right. Did you and your fellow officers go back
14 and search this area to see if there was a gun anywhere?

15 A I cannot testify to the other officers. I can only
16 testify that I, initially, searched this area here where I
17 made contact with him and made the arrest.

18 Q And you found no gun, did you?

19 A No, sir, I did not.

20 Q Okay. Now, directing your attention back to when you
21 first arrived on the scene. You told us that there was a
22 car -- I think your words were driving erratically, or
23 something like that?

24 A Yes, sir. It was like a light blue --

25 Q A light blue car that was driving erratically. Now,

1 where was that car relative to the parking lot, or
2 whatever?

3 A This vehicle was towards the back of the parking lot
4 area, the back of the store. When I, initially, turned in
5 and came straight in, I was looking to the right for the
6 store -- at the store. But there was a car, like I said,
7 that caught my attention because of the head lights. It
8 drove straight down, then tried to back out, and make a
9 U-turn. So I just, initially, thought that that might
10 have been the suspect's vehicle.

11 Q Did you stop that person? Did you stop that car?

12 A I tried -- initially, I tried to make contact with
13 the car by stopping it. But I did not because I heard
14 people screaming that there was -- that he was still
15 inside. That was the quote.

16 Q So you can't identify who was in the car then?

17 A No, sir, I cannot.

18 Q And so after you stopped -- I mean, the car went on
19 by you and went out of the parking lot into the street, or
20 somewhere?

21 A I cannot testify as to where the vehicle went to.
22 Initially, when people were saying that he was still
23 inside, I backed up and tried to set up, like I said, on
24 the corner. And then, initially --

25 Q Well, anyway, the driver of this light blue car went

1 by you and went somewhere?

2 A I can't testify if he went by me or if he stayed at
3 the scene. It happened so quickly, sir, that once I
4 parked and set my car up in that particular angle, the
5 suspect came out of the building. So --

6 Q All right. Now, you did not try to climb over the
7 fence yourself, did you?

8 A No, sir, I did not.

9 Q And you were back at the fence, though, back here 250
10 yards away from the store --

11 A Yes, sir.

12 Q -- is that right?

13 A Yes, sir.

14 Q And so the robber went over the fence. You, what,
15 walked back out to the front of the building where your
16 car was?

17 A No, sir, I ran.

18 Q You ran. Okay.

19 A Full sprint.

20 Q Do you think you did it in four or five seconds?

21 A I don't think I testified that it was four or five
22 seconds.

23 Q What did you say it was?

24 A Roughly, I said it was about 45 seconds.

25 Q Did you say 45, or four or five?

1 A I said -- no, sir, not four or five. No, I'm not
2 that quick.

3 Q Well, what did you say?

4 A Roughly, about 45 seconds for me to run from here to
5 my patrol car.

6 Q Okay. Roughly. So you got back in your patrol car?

7 A Yes, sir.

8 Q And where did you drive to?

9 A I exited the parking lot, turned onto West Butler
10 Road. I turned onto Daniel Court. And I drove to this
11 cul-de-sac kind of area, this kind of half-loop area. I
12 shouldn't say cul-de-sac. It's like a half circle.

13 Q All right. So you pulled out of the parking lot, got
14 on Butler Road, did a left turn, came up to Daniel Court,
15 made another left turn, and drove, at least, 250 yards
16 back to this area behind these houses or condos; is that
17 right?

18 A Yes, sir.

19 Q And then you parked your car?

20 A Yes, sir.

21 Q And you got out?

22 A Correct.

23 Q And when you parked your car, where did you go?

24 A Initially, I initiated foot patrol and advised
25 dispatch that I was on foot patrol. Initially, I went up

1 to this area here and then proceeded to walk from 101 to
2 the grassy area, then to 103 and 105.

3 Q So there was this black man that was bending over
4 like he was out of breath?

5 A Yes, sir.

6 Q That's your first sight of him?

7 A Yes, sir.

8 Q I'm through with this. You can take the stand back.

9 A (Witness complied.)

10 Q Now, you said you gave this black man back there
11 Miranda warnings?

12 A After I arrested him, yes, sir.

13 Q After you arrested him. All right. Did he make any
14 comments to you?

15 A Initially, after I advised him of his rights -- and
16 I'm going to refer back to my notes. If you can give me
17 one second to find it.

18 Suspect still had in his possession the blue rag and
19 gray rag. I then advised the suspect of his Miranda
20 rights. The suspect began denying any involvement with
21 the robbery at the Dollar General.

22 Q Okay. May I see your notes, please?

23 A That's the -- if you're looking at that, that is the
24 CAD report or the -- dispatch that keeps our notices as
25 far as what times, what officers were doing...

1 Q All right. Did you ever find out who was driving
2 that light blue car that you said was driving erratically
3 and you don't know what happened to it?

4 A No, sir. I do not.

5 Q You can take them back.

6 A Okay.

7 MR. GADDY: That's all.

8 THE COURT: Any redirect?

9 MR. MOYER: No redirect, Your Honor.

10 THE COURT: All right. Officer, you may step down.

11 Now is a good time for a break. We'll take a few
12 minutes. Y'all step into the jury room. You may not
13 begin discussing the case.

14 If you need to -- anybody needs to step outside, let
15 Mr. Doherty know. We'll take a little longer break if
16 anybody does. Otherwise, we'll take about -- I don't
17 know -- 10 or 12 minutes.

18 (WHEREUPON, the jury was excused from open court at
19 approximately 2:49 p.m.)

20 (WHEREUPON, a break was taken.)

21 THE COURT: Are we ready to continue?

22 MR. MOYER: We're ready, Your Honor.

23 THE COURT: All right. Bring the jury in.

24 (WHEREUPON, the jury came into open court at
25 approximately 3:03 p.m.)

1 THE COURT: All right. Mr. Moyer.

2 MR. MOYER: Thank you, Your Honor.

3 May it please the Court.

4 The State calls Rick [sic] Mahlsted to the stand.

5 THE COURT: Mr. Mahlsted, please, come forward and be
6 sworn.

7 THE CLERK: Please place your left hand on the Bible
8 and raise your right.

9 WHEREUPON,

10 GREG MAHLSTED,

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

12 THE CLERK: Thank you.

13 You can be seated.

14 Would you, please, state your name for the record?

15 THE WITNESS: Greg Mahlsted.

16 THE CLERK: Thank you.

17 DIRECT EXAMINATION

18 BY MR. MOYER:

19 Q Where are you employed?

20 A The Mauldin Police Department.

21 Q How long have you been in law enforcement?

22 A About 23 years.

23 Q How long have you been with the Mauldin Police
24 Department?

25 A In all, about eight or 10 years.

1 Q Okay. You worked there back in early 2000, left,
2 went somewhere else. And now you're back at the Mauldin
3 Police Department?

4 A Yes, sir.

5 Q Now, you -- what is your position with the Mauldin
6 Police Department?

7 A I'm an MPO.

8 Q Okay. And what is that?

9 A Magistrate patrol officer.

10 Q And what are your duties as a magistrate patrol
11 officer?

12 A When the sergeant is not there, on vacation, we
13 supervise the shift. And, other than that, we perform the
14 duties of a patrol officer.

15 Q Okay. Let me take you back to October the 11th,
16 2012, and ask you just a few questions about that day.
17 Were you working on that day?

18 A Yes, sir.

19 Q And did you receive a call?

20 A I heard a call go out for an armed robbery at the
21 Dollar General.

22 Q Okay. What did you do when you heard that call go
23 out?

24 A I started in that direction, activated my blue
25 lights, siren, and started heading in that direction.

1 Q Okay. Were you a good bit farther away than Officer
2 Calhoun was?

3 A I was on East Butler around 385.

4 Q So it look you a little while to get over there?

5 A Yes, sir.

6 Q Do you know about what time you got over there?

7 A I got over there around 8:00.

8 Q Okay. So what was taking place when you got there?

9 A From the radio transmission, Officer Calhoun had
10 already apprehended the suspect when I got to the scene.
11 And when I arrived at the scene, there was a group of
12 people outside. My radio dispatch had told me that the
13 cashier may be injured.

14 So I went and located Ms. Wilkinson, and asked her if
15 she was okay. She was very shaken up and upset, and told
16 me that he had beat her bad.

17 So shortly after that, first responders arrived and
18 looked at her. I asked her then if she wanted to write a
19 statement. She said she was too shook up and upset to
20 write a statement at that time, which she was. She was
21 physically shaking.

22 After that, I went back to the front of the store and
23 tried to organize the people in the parking lot. And I
24 began taking written statements from them.

25 Q Okay. And so the people who testified here today --

1 A Yes, sir.

2 Q -- you took the statements there on the scene?

3 A Yes, sir.

4 Q Okay. And did you secure the scene?

5 A Yes, sir. There was --

6 Q What does that mean? What does securing a scene
7 mean?

8 A Well, I posted -- an off-duty officer had shown up.
9 And I posted him at the front door of Dollar General to
10 keep a log of who entered the store, and just to keep the
11 scene secure while I talked with the people who had been
12 there.

13 Q Okay. Now, did you view the video surveillance that
14 night?

15 A No, I didn't.

16 Q Okay. But you collected the video surveillance?

17 A Yes, I did.

18 Q Okay. And you collected it from whom?

19 A The store manager.

20 Q Ms. Spicer?

21 A Yes, sir.

22 Q And what did you do with it after you collected it?

23 A I kept it in my folder. And when I got back to
24 the police department, I logged it in the evidence
25 room.

1 Q So you were present then when she made the copy off
2 her video surveillance system, and you collected it from
3 her?

4 A Yes, sir.

5 Q Then you -- what's your -- what do you mean by
6 property and evidence room?

7 A It's a room at the police department that is
8 locked -- kept locked. Only two people are allowed to
9 enter and exit that room. It's where evidence is logged
10 and kept for court.

11 Q Is that where it has been kept up until the time it
12 was brought here to court?

13 A Yes, sir.

14 MR. MOYER: Okay. Please answer any questions the
15 Defense may have.

16 THE WITNESS: Yes, sir.

17 MR. GADDY: I have no questions.

18 THE COURT: You may step down, Officer.

19 THE WITNESS: All right, sir.

20 MR. MOYER: The State calls George Miller to the
21 stand.

22 THE CLERK: Officer Miller, please, come forward to
23 be sworn in, please.

24 Please place your left hand on the Bible and raise
25 your right.

1 WHEREUPON,

2 GEORGE MILLER,

3 after first having been duly sworn, testified as follows:

4 THE CLERK: Thank you.

5 You may be seated.

6 Would you, please, state your name for the record?

7 THE WITNESS: George Miller.

8 THE CLERK: Thank you.

9 DIRECT EXAMINATION

10 BY MR. MOYER:

11 Q And where are you employed, sir?

12 A The Mauldin Police Department.

13 Q How long have you been in law enforcement?

14 A 15 years.

15 Q Has it all been with Mauldin, or have you worked at
16 other places?

17 A No, sir. I worked for Mauldin from '98 to 2000. And
18 I went to Pickens County and worked there in 2000 -- until
19 2005. And then I came back in 2005.

20 Q Okay. Now, what is your position with the Mauldin
21 Police Department now?

22 A I'm a corporal acting -- right now, I'm filling in as
23 a shift supervisor and, also, a K9 officer.

24 Q Okay. What are your positions -- what are your
25 duties as a corporal?

1 A Right now, the supervisor is out on medical leave,
2 and I run the shift.

3 Q Okay. Now, were you working back on October the 11th
4 of 2012?

5 A Yes, sir.

6 Q And did you go to that scene on that particular day?

7 A Yes, sir.

8 Q And what was your arrival time?

9 A It was approximately 8:00.

10 Q And when I say the "scene," I'm talking about the
11 Dollar General on Butler Road.

12 A Yes, sir.

13 Q It was about 8:00?

14 A Yes, sir.

15 Q Okay. Now, I'm going to ask you a few questions
16 about your experience with K9's.

17 A Yes, sir.

18 Q So K9 is dog handling. Is that --

19 A Yes, sir. I have a full service patrol dog.

20 Q Okay. And what is the name of your dog?

21 A Paco.

22 Q How long had Paco been in service?

23 A Paco has been in service for about four years now.

24 Q And what law enforcement functions does Paco do?

25 A Like I said, he's a full service patrol dog. He's a

1 narcotics detection dog. He tracks. He does area
2 searchs. We do building searches. He, also, does handler
3 protection.

4 Q Now, had he performed tracking prior to October the
5 11th of 2011?

6 A Yes, sir.

7 Q Had he been successful?

8 A Yes, sir.

9 Q And what kind of training had he had?

10 A Training as far as?

11 Q For tracking.

12 A Tracking. When I got my first dog, I, initially,
13 went for a three-week handler course. We went over
14 tracking during that time. Since 2005, I've been to
15 NAPWDA certification and certified in tracking those eight
16 years. Also, weekly, we train eight hours a week in the
17 different aspects of the K9 and tracking. And we do it
18 once to twice a month.

19 Q Now, how long have you been doing this?

20 A I've been doing it since 2003.

21 Q Okay. Since 2003. And how old is Paco?

22 A Paco is seven.

23 Q Okay. Now, are you or Paco certified by any
24 organizations?

25 A Yes, sir. We're certified through NAPWDA, the North

1 American Police Work Dog Association.

2 Q And when you do the annual training that you were
3 talking about, that's done through that organization?

4 A Yes, sir.

5 Q And you talked about additional training being eight
6 hours a week that you have to keep up with?

7 A Yes, sir. We have two other K9s. And we do eight
8 hours of training. Sometimes, we do it with other
9 agencies. Sometimes, we do it with just the three of us.

10 Q Okay. Now, what breed is Paco?

11 A He's a Belgian Malinois.

12 Q Is that a breed commonly used for tracking?

13 A Yes, sir.

14 Q Is it a breed known for its acute power of sense?

15 A Yes, sir.

16 Q Now, has Paco been proven reliable in tracking?

17 A Yes, sir.

18 Q Now, do you personally keep up with the literature
19 and updates in the field of dog tracking and handling?

20 A Yes, sir. We get Police K9 monthly. And, in that,
21 it has legal updates. And, also, we get legal updates
22 every year when we go to our NAPWDA certification.

23 Q Okay. Now, would you just tell the jury how a dog --
24 just a very brief description of how a dog will track a
25 scent?

1 A Basically, you get a general area where the person
2 was, or took off running, or walked away. And the K9 is
3 going to -- you cast him, which means you just let him
4 sniff the area. And he's going to pick up the freshest
5 trail. And you go on to track from there and pick up
6 their smell.

7 Q Okay. Now, there's something, also, called an
8 article search; right?

9 A Yes, sir.

10 Q And what do we mean by an article search?

11 A An article search is pretty much the same way. It's
12 going to pick up the most recently dropped things. And,
13 during a track, the dog will be pretty much open minded.
14 He's going through the track. And if he smells something
15 that was dropped, he'll come and alert on it. And once
16 that is -- once the article is recovered, then we get back
17 on the track and go.

18 Q Okay. So the dog can, actually, perform both of
19 these functions at the same time?

20 A Yes, sir.

21 Q And so the article search, the dog is, actually,
22 looking for something that's been discarded, some kind of
23 article?

24 A Yes, sir.

25 Q And how can it distinguish something -- I mean, can

1 it distinguish something that's been recently thrown down,
2 as opposed to something that's been there for a while?

3 A Yes, sir, he can.

4 Q And then what's your dog's -- what will your dog do
5 when it hits on something?

6 A He's -- there's two kinds of dogs. There's a passive
7 and aggressive dog. The aggressive dog scratches..

8 Paco is a passive dog. So what he'll do is once he
9 finds it, he'll lay down on it or next to it.

10 Q Okay. Just lay down. And that's a signal to you
11 that he's found something?

12 A That's a signal he's found something, yes, sir.

13 Q All right. Now, when you got to the Dollar General
14 that night, what time did you start working your dog?

15 A It was approximately 8:05 p.m.

16 Q So just about five minutes after you got there?

17 A Yes, sir.

18 Q Okay. Now, where did you start the track?

19 A What had happened was I was told that the suspect had
20 stolen approximately \$400, and he had a gun on him. When
21 he was apprehended, he didn't have that -- I guess he
22 didn't -- they said he didn't have that much money on him
23 and there was no gun.

24 So what I did is I went back to the area where
25 Officer Calhoun said that he had chased the subject. I

1 cast him. He got on a track and tracked to the back of
2 the field.

3 Q Okay. So he went through that field?

4 A Yes, sir.

5 Q And we're going to show it on the map in just a
6 moment.

7 But -- so is there any reason for you to believe that
8 in the short period of time it was from when this incident
9 happened to when you began your track that the track had
10 been contaminated by anything?

11 A No, sir. There was already officers on the scene.
12 There was already --

13 MR. GADDY: Your Honor, I object to his testimony on
14 the ground of relevancy. It's kind of interesting how a
15 K9 operates. But the officer named Sean Calhoun was the
16 arresting officer. And this officer arrived on the scene,
17 what, 30 minutes later. And he hasn't tied it up with any
18 of -- details of the offense. So I object to his
19 testimony.

20 THE COURT: He was laying a foundation. He's -- I
21 think that's where he's about to get to. He's cast the
22 dog out in the search area, and that was about where we
23 were.

24 MR. MOYER: Yes, sir. I'm almost finished. Just --
25 I'm just laying the foundation per case law on having --

1 on a dog handler qualified as an expert. And I'm almost
2 finished with that line of questioning.

3 BY MR. MOYER:

4 Q But just to follow-up on this. Do you know whether
5 other environmental factors that you were aware of from
6 that night that could have contaminated the tracking
7 scene?

8 A No, sir.

9 MR. MOYER: Your Honor, at this time, I'd move to
10 have Officer Miller qualified as an expert in K9 tracking
11 procedures.

12 MR. GADDY: We agree he's an expert in K9 operations.

13 THE COURT: Sure. You stipulate.

14 All right. Ladies and gentlemen of the jury, what
15 that means, this is a little different type of witness.
16 Normally, an eye witness says this is what I saw, heard,
17 smelled. Certain witnesses can be qualified as an expert
18 in a particular field.

19 This officer has been qualified and agreed qualified
20 by both attorneys that he's an expert in the field of dog
21 handling tracking procedures for law enforcement. So, to
22 that extent, he can provide opinions to you to consider in
23 this case.

24 Mr. Moyer.

25 MR. MOYER: Thank you, Judge.

1 BY MR. MOYER:

2 Q Now, Officer Miller, I'm going to ask you to step
3 down. And we're going to use this map to show -- describe
4 to the jury the area that you took your -- took Paco.

5 I'm going to ask you, if you would, just step over on
6 this side. I have a laser pointer. If you would use that
7 button right there.

8 Can you start off by showing the jury the location
9 where you started the tracking?

10 A Okay. What I did was when I came into the parking
11 lot, I came here off of West Butler. I turned into the
12 parking lot. And right here is where the asphalt ends.
13 And there's a trash can right here. I parked my vehicle
14 right here.

15 Q Okay. And is that the area where you started the
16 tracking?

17 A Yes, sir.

18 Q And where did you follow it?

19 A What I did was I casted him out around here. And
20 right around in this area, he picked up on a track. We
21 went back in this direction. And it's hard to tell
22 because of the shadows right here, but there's several
23 burrows right in this area right here.

24 Q Several -- what did --

25 A Oh, I'm sorry. Hills, small hills.

1 Q Little small hills?

2 A Yes, sir.

3 Q And you went through that?

4 A Yes, sir. We got into this area right here. And,
5 like I said, the dog had picked up on the strong track.
6 Once he got into this area, he sat down -- or I mean laid
7 down.

8 Q Okay. And, again, what did that indicate to you?

9 A That indicated that he had alerted on something.
10 What I did is I pulled out my flashlight at that point.
11 And there was some money that he was laying on.

12 Q What kind of -- cash? Coins?

13 A It was cash. That's all we located. We didn't
14 locate any coins or anything, just cash.

15 Q Okay.

16 A He was rewarded. When the dog is -- once they do a
17 good job and find something, they'll be rewarded with a
18 toy, which, in this case, is a rubber kong. I let him
19 play with it for a few seconds. I took it back away from
20 him and gave him the search command again.

21 And just probably about 10, 15 feet away, he alerted
22 on another pile of money. And the same process, I
23 rewarded him, played with him. And then I got him back in
24 game [phonetic]. And then he alerted on another one.

25 So we did the area search in this area for a little

1 while. We didn't find anything. Back in here where it
2 gets a little thick, there's a little hill. I had
3 turned -- I had started the area search up in here. At that
4 point, he located a shoe. It was a blue Croc.

5 Q A Croc. Okay.

6 A Sergeant Boyd was with me. And what I had done was I
7 told her about the money, the shoe. And then when I was
8 looking up, I had seen some gray cloth hanging across the
9 top of the barbed wire fence.

10 Q The top of the barbed wire fence?

11 A Yes, sir.

12 Q Okay. So you were -- you kind of reached the end of
13 your track, I assume, at that point when you got to the
14 fence?

15 A Yes, sir. The fence was the deadline right there.
16 We couldn't go any further.

17 Q And so after you got to that point, what did you do?

18 A At that point, Sergeant Peterson had been called by
19 Sergeant Boyd. They had taken pictures of the money and
20 collected it.

21 Q Okay.

22 A What I did was, at that point, I went ahead and took
23 the K9 back to the car. And then I went back to Daniel
24 Court where Sergeant -- or I'm sorry, Officer Calhoun was
25 at. And we -- I -- right here is the roadway. We stopped

1 right here. And I got out and did an area search.

2 He had the suspect against the fence line over here.

3 I advised him I was going to be doing an area search, just
4 keep him over there so we wouldn't have any contact, so
5 they wouldn't have any contact with the K9.

6 Q So you got your K9 back out, Paco?

7 A Yes, sir.

8 Q And you did another article search?

9 A I did another article search right in here. I found
10 another blue Croc on that side of the fence next to the
11 tree. And the K9 was awarded. And then I did another
12 area search and located another little pile of money.

13 Q Okay. And were you with -- or who collected the
14 money?

15 A Sergeant Boyd.

16 Q And you were with Sergeant -- you pointed out to
17 Sergeant Boyd the areas where the money was?

18 A Yes, sir.

19 Q Okay. And you were with her when she picked all that
20 money up?

21 A Yes, sir.

22 Q All right. Now, let me ask you -- let me ask you to,
23 please, take the witness stand again for just a moment.

24 A (Witness complied.)

25 Q Okay. I'm going to hand you a series of exhibits and

1 ask you if you're able to recognize these exhibits. And,
2 if so, I want you to tell me if you can and how you're
3 able to. Let me start off with State's Exhibit No. 9.
4 And take a look at that and tell me, can you recognize
5 what I just showed you?

6 A Yes, sir. It's a blue shoe. It's a Croc.

7 Q It's the Croc?

8 A Yes, sir.

9 Q And is that the Croc you saw the night of October the
10 12th of 2012?

11 A Yes, sir.

12 Q The one you just described seeing against the fence?

13 A Yes, sir.

14 Q Okay. And I'm going to show you State's Exhibit
15 No. 8. Can you recognize what's shown in that --

16 A Yes, sir. That's the Croc on the other side of the
17 fence.

18 MR. MOYER: And, actually, before I go through each
19 one of these, if there's no -- if there's not going to be
20 an objection to the photographs, I would just --

21 MR. GADDY: Well, I'm going to object to the shoes.
22 Because there's been no information from any other
23 witnesses about any shoes. And for him to identify -- for
24 you to bring some pictures of shoes out here, it's not
25 tied up with the Defendant. So I object to it, yes.

1 MR. MOYER: Well, Your Honor, I think it's relevant
2 testimony because it's evidence that was seen and
3 collected along the route of the area where the Defendant
4 was chased through the field. There's, certainly, no
5 prejudice -- or unfair prejudice to this evidence. And
6 it's...

7 MR. GADDY: They've testified -- they've had a lot of
8 testimony about clothes, but nothing about any shoes. And
9 for him to put pictures up with shoes, I say it's
10 irrelevant and hasn't been tied into it.

11 MR. MOYER: Well, Judge, there's plenty of inferences
12 that can be made about shoes that are left along the route
13 of a fleeing suspect. And I think -- like I said, there's
14 no unfair prejudice to the Defendant from this.

15 THE COURT: I'm going to allow the photographs. I
16 think under a 403 analysis, they're probative, but not
17 prejudicial.

18 We'll see if you can tie them together.

19 MR. MOYER: Okay. So it's my understanding that --

20 MR. GADDY: What?

21 MR. MOYER: I guess what I'm asking, before I waste
22 all the time going through each of these photographs, if
23 they're -- I'll just ask Mr. Gaddy if he has any objection
24 to the photographs.

25 MR. GADDY: I think there was money out there.

1 No objection.

2 MR. MOYER: Your Honor, at this time, the State would
3 move to have State's Exhibit Nos. 8, 9, 12, 13, 14, 15,
4 16, 10, 11, and 7 admitted into evidence.

5 THE COURT: Did you say State's Exhibit No. 14 or
6 not?

7 MR. MOYER: I believe I did, Judge.

8 Yes, State's Exhibit No. 14.

9 THE COURT: No objection to those photographs?

10 MR. GADDY: No.

11 THE COURT: No objection. So --

12 MR. GADDY: Just of the shoes.

13 THE COURT: Just of the shoes.

14 And the shoes are which ones.

15 MR. MOYER: They are State's Exhibit Nos. 8 and 9.

16 THE COURT: State's Exhibit No. 8 and 9. So no
17 objection to State's Exhibit Nos. 7, 12, 13, 14, 15, 16,
18 10, and 11.

19 State's Exhibit Nos. 8 and 9 are accepted into
20 evidence subject to the objection provided by Mr. Gaddy.

21 MR. MOYER: Thank you, Judge.

22 (WHEREUPON, State's Exhibit Nos. 7, 8, 9, 10, 11, 12,
23 13, 14, 15, and 16 were admitted into evidence.)

24 BY MR. MOYER:

25 Q Officer Miller, I'm going to ask you to step back

1 down, because we're going to show these photographs on the
2 screen behind you.

3 A (Witness complied.)

4 Q If you would, take that laser pointer right there and
5 step to the side over here.

6 I'm going to start off with State's Exhibit No. 6
7 that's already in evidence. There's a little bit of a
8 glare, unfortunately. But if I hold it this way -- can
9 you -- using the laser pointer, can you point out to the
10 jury what it is that is depicted in this particular
11 exhibit, State's Exhibit No. 6?

12 A I can't really see it good myself.

13 Q You can't see it?

14 A There's a blue Croc right here.

15 Q Okay. That's a Croc down at the foot --

16 A Yes, sir.

17 Q -- of the fence?

18 A Right there.

19 Q Okay.

20 A And that right there is a piece of gray cloth that's
21 on top of the fence line.

22 Q Now, State's Exhibit No. 7.

23 A That's gray cloth that's hooked into the barbed wire
24 on top of the fence.

25 Q Okay. So that's the gray cloth. And that's the top

1 of the fence?

2 A Yes, sir.

3 Q And that's the same gray cloth that we see here in
4 State's Exhibit No. 6?

5 A Yes, sir.

6 Q Okay. Now, I'm going to move on to State's Exhibit
7 No. 8 -- I'm sorry, State's Exhibit No. 9. And can you
8 just describe to the jury what is shown in State's Exhibit
9 No. 9?

10 A That right there is a blue Croc on the Dollar General
11 side of the fence where the big field is. That's where we
12 tracked up to the fence. And that's where it was at,
13 right there against the fence line.

14 Q So that's a close up of what is seen in State's
15 Exhibit No. 6 on the bottom of the --

16 A Yes, sir.

17 Q -- fence?

18 A Yes, sir.

19 Q Okay. Now, State's Exhibit No. 8.

20 A That is --

21 MR. GADDY: Your Honor, your ruling that he can go
22 into testimony about the Croc shoes he finds out there.

23 THE COURT: One more time now.

24 MR. GADDY: Well, I've objected to the testimony
25 about shoes on the grounds that they haven't been

1 identified with the Defendant. But the questions are
2 going on about it. And I'm asking if Your Honor hasn't
3 ruled that the questions about the shoes are inadmissible.

4 THE COURT: No, I've not. I ruled that they were
5 admissible under 403.

6 BY MR. MOYER:

7 Q State's Exhibit No. 8.

8 A This is a Croc that was located on the Daniel Court
9 side of the fence, just on the other side of the fence.

10 Q So that Croc was on the other side of the fence?

11 A Yes, sir. That's when we went down Daniel Court and
12 got the dog out and located that one on the other side of
13 the fence.

14 Q Now, can you see that aerial map enough to be able to
15 sort of point out where the second shoe was found?

16 A The second shoe -- they may need a little bit of
17 light. Here's the -- let's see. Let me put it up here so
18 you can see it.

19 Q Okay.

20 A This right here is the fence line right here. Right
21 here is a little spruce tree. It was right in that area
22 beside that tree.

23 Q Okay. And that's on the other side of the fence?

24 A Yes, sir. The fence line is here. One shoe was
25 found here. And the other shoe was found here.

1 Q Okay. Thank you.

2 Now, we'll move on to State's Exhibit No. 12. Can
3 you tell the jury what we see in that photograph? Can you
4 see it?

5 A This is a picture of the field. Right in here is
6 a -- is some -- I don't know exactly what the denomination
7 of them were at the time. But here is money right here,
8 U.S. currency in this little area right here.

9 Q Okay. And where would the fence be?

10 A It's just right behind it. You can see through the
11 fence on that side.

12 Q Okay. So that's in that grassy area on the Dollar
13 General side of the field?

14 A Yes, sir.

15 Q Okay. State's Exhibit No. 13.

16 A There is some U.S. currency right there. That was
17 the -- that was, actually, in the -- right up against the
18 burrow, the little hill right here. That's the U.S.
19 currency right there.

20 Q So that's some of the money that your dog hit on?

21 A Yes, sir. He alerted on it.

22 Q He alerted on it. State's Exhibit No. 14.

23 A Another \$20 bill that was discarded on the Dollar
24 General side of the fence.

25 Q Okay. State's Exhibit 15.

1 A That would be a \$5 bill that was discarded around the
2 same area as the last picture in the burrow and some
3 wooded -- some grassy area.

4 Q State's Exhibit No. 16.

5 A That right there was located on the Dollar General
6 side in just a little open area in between the burrow.

7 Q Okay. And what is being -- what is displayed in that
8 photograph?

9 A U.S. currency.

10 Q Bills of different denominations?

11 A Yes, sir.

12 Q State's Exhibit No. 16 -- I'm sorry, State's Exhibit
13 No. 10.

14 A State's Exhibit No. 10. That's going to be U.S.
15 currency, also.

16 Q And, again, this was on the Dollar General side of
17 the --

18 A No. That was, actually -- this is on the Dollar
19 General side right here. That was on the Daniel Court
20 side right there.

21 Q So State's Exhibit No. 10, that was money that you
22 just described being found on the other side of the fence?

23 A Yes, sir.

24 Q Okay. And then, finally, State's Exhibit No. 11.

25 A This right here is U.S. currency. Right there is

1 some. It's U.S. currency that was located on the Dollar
2 General side of the fence.

3 Q Okay. Thank you.

4 You may take your seat.

5 A (Witness complied.)

6 Q Now, you, also, searched for -- did you try to search
7 for a weapon of any kind?

8 A Yes, sir. During that process, we searched for the
9 weapon. And then I did go back to the field and did a
10 grid search, which, basically, I started from one end of
11 the field and went from left to right -- or left to right
12 all the way across the field from one end to the other and
13 didn't locate it.

14 Q You didn't locate a pistol?

15 A No, sir.

16 MR. MOYER: Okay. Please answer any questions that
17 the Defense has.

18 THE WITNESS: Yes, sir.

19 CROSS-EXAMINATION

20 BY MR. GADDY:

21 Q All this currency that you found out there, that was
22 within how many feet of this fence?

23 A It was probably -- from the first bill to the last
24 bill, it was probably within 15 feet, 15 to 20 feet.

25 Q And so you feel that you searched that area very

1 carefully, don't you?

2 A Yes, sir.

3 Q And you did not find any kind of gun, did you?

4 A No, sir.

5 Q Did you find any hard objects of any kind?

6 A No, sir.

7 Q All right. Did you search -- without getting the
8 stand back up. We've got 250 yards of grassy space behind
9 the building. Did you search that?

10 A Yes, sir. That's what I was telling him. I did a
11 graph -- a grid search. I started and I just worked the
12 dog -- the K9 all the way across the back across that
13 whole field.

14 Q And you found no objects that you considered -- well,
15 you didn't find any objects at all, did you?

16 A Just money and the shoes.

17 Q Just money and the shoes?

18 A Yes, sir.

19 Q Okay. Did you find any objects out in the parking
20 lot, or find a gun out in the parking lot?

21 A No, sir. There was no gun located in the parking
22 lot.

23 Q What?

24 A There was no gun located in the parking lot.

25 MR. GADDY: That's all the questions.

1 MR. MOYER: I have no follow-up -- no further
2 questions for this witness.

3 THE COURT: You may step down.

4 THE WITNESS: Yes, sir.

5 MR. MOYER: Your Honor, at this time, the State would
6 like to recall Jamike Nedwards for one brief line of
7 questioning.

8 THE COURT: All right. Ms. Nedwards, come forward.

9 THE CLERK: She's still under oath?

10 THE COURT: She's still under oath.

11 Ms. Nedwards, you're still under oath.

12 DIRECT EXAMINATION

13 BY MR. MOYER:

14 Q Ms. Nedwards, I just have a couple of quick questions
15 for you.

16 Just to refresh our memory with your testimony, you
17 testified about how you came out of the Dollar General in
18 the back. And you came -- walked down to the front and
19 looked in and saw the robbery still taking place. Instead
20 of going to your car, you went to another car in the
21 parking lot. And can you tell us again where -- what
22 location that other car was in?

23 A It was closer to the back side of the parking lot.

24 Q Okay. And did you get in the car?

25 A Yes.

1 Q And did the car start to move? Did it start to
2 drive?

3 A Yes.

4 Q Okay. And what did that car look like?

5 A It was light blue.

6 Q Okay. And was it -- it was a light blue car. And
7 did the officer show up while you were back there in that
8 light blue car?

9 A Yes.

10 Q Okay. And that's the car that ended up driving away
11 to the library and then came back?

12 A Yes. She, actually, pulled up in front of some
13 dumpsters in the back, kind of pulled up, turned around,
14 and then drove out of the parking lot.

15 Q Okay. So kind of some abrupt quick movements?

16 A I would think so.

17 Q Were you both -- was she in the --

18 A Yes. She was, also, in the store. She, actually,
19 was the lady that was hiding her wallet behind the
20 pillows.

21 Q So you -- you already testified you were shaken up?

22 A Oh, absolutely.

23 Q And was -- did she appear to be shaken up as well?

24 A Definitely.

25 MR. MOYER: Thank you.

1 She never saw an object. And if he had had an object that
2 was -- it was her testimony that showed he had an
3 object -- or a gun, it'd be different.

4 But for a person -- all they've shown is that it was
5 believed that he had a gun. He said he had a gun. But,
6 in fact, he had no object or a gun. And for a person to
7 use his hand in such a way that it appears to be a gun to
8 an outsider does not meet the definition of armed robbery.

9 It's got to be -- it's my contention that there's got
10 to be some sort of deadly weapon involved. And that a
11 hand, which is all that was involved based on the
12 reasonable interpretation of the evidence, does not
13 constitute a deadly weapon or appearance of a deadly
14 weapon. So that's my point with respect to the armed
15 robbery.

16 With respect to kidnapping, the --

17 (Pause.)

18 MR. GADDY: The code is going to require an unlawful
19 seizure, confining, inveigling, decoy, abducting, or
20 carrying away of a person. It's my contention that
21 grabbing a person by the arm, pushing them down, striking
22 them does not constitute an unlawful seizure.

23 The person -- the closest that comes to a confinement
24 is that the person -- the cashier was in the place that
25 she was working and the Defendant came around where she

1 was pushing and grabbing her. But pushing and grabbing
2 does not constitute kidnapping, or it wasn't inveigling in
3 any way. There was no decoying going on. She was not
4 abducted to go anywhere. And she was not carried off
5 anywhere. And they have not proven the elements that are
6 required for a kidnapping.

7 So I ask that the kidnapping charge be thrown out and
8 dismissed.

9 THE COURT: All right. Based upon the testimony I've
10 heard and the evidence that's been presented to the jury,
11 the armed robbery charge, it appears that either by
12 actions or words -- and I believe there was actions and
13 words by the person in the video that he was armed --
14 concealed something in his hand. There was testimony that
15 the investigator's dog didn't find an object. But there
16 was testimony from two, maybe three witnesses that he had
17 wrapped up in his right hand what appeared to be a weapon,
18 a gun, different words were used.

19 But Ms. Wilkinson testified that she felt like she
20 was hit with an object in his hand. She didn't identify
21 the object. She was hit from behind. So she didn't know.
22 But I think that's enough evidence to get past a directed
23 verdict motion as to whether or not there was an object
24 represented as a gun. In the video itself, there appears
25 to be a representation of some type.

1 So it's a factual question, as I understand it, on
2 the armed robbery. And I think the jury will make that
3 determination. I understand your motion. A gun was not
4 found. And his hand was wrapped. But that's a factual
5 question for the jury. And they'll have to resolve that.

6 As to the kidnapping -- and kidnapping is a little
7 different. But, as I understand the kidnapping elements,
8 when she departed the counter and then was forced to come
9 back, that was -- factually could be determined by the
10 jury to be an abduction.

11 Because she was forced from going to the back of the
12 store where she wanted to go. And she was compelled to
13 come back behind the counter to open the cash register.
14 And that, factually, would support denial of the directed
15 verdict motion. I don't know that it would support a
16 conviction. That's for a jury to determine. But it will
17 get past directed verdict in that that behavior in and of
18 itself, in my determination, factually is enough to get to
19 the jury.

20 So I respectfully decline to grant that motion.

21 Anything else?

22 MR. MOYER: Nothing from the State.

23 MR. GADDY: Before the jury comes back, I need about
24 five minutes with my client to make a decision about
25 testifying.

1 THE COURT: Okay. We'll -- I'll tell you what. I'll
2 give you 10. I'll give you until 4:00. I don't want to
3 rush that decision. So we'll take about --

4 And let the jury know they've got extra time if they
5 want to step outside.

6 MR. GADDY: Okay. Five minutes?

7 THE COURT: I'll give you 10.

8 MR. MOYER: Judge, either way, would we do closing
9 arguments today, or wait until tomorrow?

10 THE COURT: That would not be my preference to argue
11 and charge after 4:00.

12 MR. MOYER: Okay.

13 THE COURT: I would just assume come back tomorrow
14 and be fresh, the jury be fresh, the lawyers be fresh. I
15 am not inclined to submit it to the jury this afternoon.

16 MR. MOYER: Thank you, Judge.

17 THE COURT: I don't have a charge ready. I'd like
18 this evening to prepare it.

19 All right. We'll stand at ease for a few minutes.

20 (WHEREUPON, a break was taken.)

21 MR. GADDY: Your Honor, I have two items.

22 THE COURT: Pardon?

23 MR. GADDY: I have two items.

24 THE COURT: Okay. I'll be glad to hear you.

25 MR. GADDY: The Defendant has decided he will not

1 testify.

2 The second item is the Defendant wants me to advise
3 the Court that he was never served with a warrant for
4 assault and battery. He was served with warrants for
5 kidnapping and armed robbery, but he never was served with
6 a warrant for assault and battery. He wanted me to so
7 advise the Court.

8 MR. MOYER: That's true, Judge. There was not a
9 warrant for assault and battery first. But we got a
10 direct presentment for that charge. And it was provided
11 to the Defense back when we got it.

12 THE COURT: Basically, the indictment says arrest
13 warrant number, direct presentment. So --

14 MR. GADDY: I am in possession of an indictment,
15 Judge.

16 THE COURT: Okay. So it appears the indictment was
17 directly presented properly and true billed by the
18 Greenville County Grand Jury. And so that would negate
19 the need for the service of the warrant after that.

20 All right. Mr. Gaddy, do y'all plan to introduce any
21 evidence?

22 MR. GADDY: We're not going to present any further
23 case.

24 THE COURT: So we're done.

25 I just communicated with the team leader. In order

1 to coordinate trial number three, perhaps, this is what I
2 want to do, if it suits y'all. Can we argue and charge
3 commencing at 10:00?

4 I can deal with the other pre-trial matters at 9:00,
5 9:15. And once we're done, we can argue and charge at
6 10:00 and get that done.

7 Does that suit y'all?

8 MR. MOYER: That's fine with me, Judge.

9 THE COURT: Mr. Gaddy, does it suit you?

10 MR. GADDY: I'll probably have a charge on the armed
11 robbery tomorrow. But, other than that, I have no other
12 further charges.

13 THE COURT: Okay. That's fine.

14 But does 10:00 suit you, so I can do something
15 beforehand?

16 (WHEREUPON, there was no response.)

17 THE COURT: What I want -- what I'm trying to do is
18 plan for the next trial. I want the jury to call back by
19 a certain time tomorrow. The third trial is likely a
20 plea. If he pleads, I want it either done or refused
21 before 10:00. And that way, the next jury can be
22 notified. If I get that done or if he refuses to plead,
23 I'll know by 10:00. And then I'll deal with y'all at
24 10:00 for the closing arguments.

25 MR. GADDY: So you're telling us to be ready at

1 10:00?

2 THE COURT: Yes, sir.

3 MR. GADDY: We'll be here.

4 THE COURT: All right. Will you deliver that message
5 to the jury, please, and have them in the jury room --

6 THE BAILIFF: At 9:45?

7 THE COURT: At 9:45. And tell them what -- they're
8 free to go, but don't talk about the case.

9 All right. Mr. Frankie [sic], you need to be back in
10 the courtroom at 10:00 for this trial. Okay.

11 JUROR #71, FRANKIE FULLER: Thank you.

12 THE COURT: All right. We'll see y'all in the
13 morning at 10:00.

14 (WHEREUPON, the proceedings were concluded at
15 approximately 3:59 p.m., to be reconvened on
16 Thursday, August 15, 2013.)

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THURSDAY, AUGUST 15, 2013

THE COURT: Gentlemen, are we ready?

MR. GADDY: Your Honor, I have a motion to make to the Court.

THE COURT: Very well. The record is yours.

MOTIONS

MR. GADDY: I move for a directed verdict of acquittal. I know the evidence has not substantially changed since I made a motion for dismissal. But I think, for the record, on behalf of the Defendant I should make that motion.

And the grounds of my motion are that the offense of armed robbery requires that a deadly weapon be used in the commission of the robbery. And while the deadly weapon can be an object, it's not necessarily a gun, the elements of the offense still require some sort of object. And the fact that there's evidence, which the Defendant said he had a gun and made motions with his hand which was covered up that he had a gun, that is not sufficient to prove the elements of armed robbery. And, for that reason, I would ask for a directed verdict of acquittal.

I have a charge, which I'll just pass up to the Court. I know it's not time. But I thought the Court would like to have it in advance.

THE COURT: I would.

1 MR. GADDY: And I've given one to opposing counsel.

2 But that's my comments on the motion for directed
3 verdict -- for verdict of acquittal, rather.

4 THE COURT: I thought there was additional testimony
5 in this case from the victim that she believed that there
6 was an object of -- an unidentified object in the hand of
7 the Defendant that she was struck with, but she felt what
8 she described as a metal object and -- when being struck
9 during the struggle behind the counter. And understanding
10 that, that is a fact presented to the jury. And that
11 makes it a factual question for the jury to consider.

12 So, respectfully, I will deny your motion for
13 directed verdict of acquittal.

14 MR. MOYER: Judge, if I may just add one matter
15 regarding that for the record. I think the statute,
16 also -- the statute says, A representation of a weapon or an
17 object.

18 So I think an interpretation of that statute is that
19 a representation of a weapon could be a hand. I mean, so
20 even if the jury believes that the only thing in that
21 cloth was his hand, that would be sufficient in and of --
22 along with the Defendant's representation of -- or
23 allegations that there was a gun, that even if we believed
24 he didn't have an object in the cloth, I think -- I would
25 argue that there's still enough evidence for this to go

1 forward to the jury and that the jury could convict.

2 THE COURT: Additionally, the video shows his hand.

3 And the jury could consider that video --

4 MR. MOYER: Yes.

5 THE COURT: -- as to whether or not an object was
6 present --

7 MR. MOYER: Yes.

8 THE COURT: -- and make an evaluation based upon the
9 testimony, plus the photographs.

10 MR. GADDY: Your Honor, I read the representation
11 differently. I view representation as an element of the
12 offense. To me, that's an object. And it's an object
13 beyond the human body that is required to prove armed
14 robbery.

15 THE COURT: Well, what's this comment in
16 Mr. Ferguson's book, Seven B, the last clause, While
17 having possession of an object, which reasonably could be
18 believed to be a deadly weapon and alleging by actions or
19 words that he is armed. The victim believed he had an
20 object, or she testified to that effect. And I think that
21 makes it a jury question. I mean, that's just -- that's
22 the testimony I heard, and it's in my notes.

23 So I think the fact that her testimony relays that
24 gets by the directed verdict motion. The jury may not
25 believe that testimony, but that was her testimony. So

1 that's my -- I do not change my ruling.

2 All right. Are y'all ready to go?

3 MR. MOYER: May we hear what your charge will be as
4 to kidnapping? Is that something -- I didn't know if --

5 THE COURT: To be honest with you, I'm not certain
6 I've ever charged kidnapping before.

7 You don't have a proposed charge on kidnapping?

8 MR. MOYER: Judge, I, actually -- I do have a -- here
9 is a marked up copy that I've -- that has been used in
10 some previous -- that's been charged in some previous
11 kidnapping cases that I've had. If you'd like, I can pass
12 that up.

13 Here, I'll let you take a look at that.

14 MR. GADDY: Well, I would agree with his first page.
15 And I would agree with his second page down through the
16 paragraph which ends with the phrase, Find the Defendant
17 guilty of kidnapping. I don't agree with the rest of it,
18 the page that he's going to give you. And I would object
19 to it.

20 THE COURT: I mean, normally, kidnapping is --

21 MR. MOYER: This jury instruction sort of defines
22 some of the terms that are used in the statute. And I
23 don't remember which judge used that particular charge.
24 But the judge shared it with us.

25 THE COURT: This is identical to the one that's in

1 my -- the instruction book --

2 MR. MOYER: Okay.

3 THE COURT: That Mr. Cluxy [phonetic] has been
4 working through. And I believe it's verbatim.

5 MR. MOYER: Okay.

6 THE COURT: It is substantially the same.

7 What part, Mr. Gaddy, did you object to?

8 (WHEREUPON, there was no response.)

9 THE COURT: What part did you object to? You were
10 reading along --

11 MR. GADDY: I agree with the bottom half of his
12 second -- I disagree with the bottom half of his second
13 page, which, in substance, is rephrasing of -- or comments
14 that the Solicitor has made to the Court. He's,
15 basically, contending that any restriction of freedom is
16 kidnapping. And I don't agree with that. I don't think
17 that's the law.

18 THE COURT: My instruction is substantially the same
19 as yours, Mr. Moyer.

20 And I -- as I understand it, and in looking at my
21 notes -- as y'all are arguing, I'll consider it. But I'm
22 likely to go along with the -- what I understand to be the
23 kidnapping statute, which is 16-3-910, I'm going to study
24 this while y'all are arguing and make a decision on
25 what -- but I'm going to be substantially close to this.

1 MR. MOYER: May it please the Court.

2 If I could just -- there's a quote from State v.
3 Kornahrens, a 1986 case, 290 S.C. 281, which states that a
4 kidnapping commences when one is lawfully deprived of his
5 freedom and continues until the freedom is restored. And
6 that's, basically, what I was relying on in some of my
7 comments in my opening.

8 MR. GADDY: Your Honor --

9 THE COURT: Yes, sir.

10 MR. GADDY: -- changing the subject. May I have a
11 comment from the Court concerning the arguments of
12 counsel, meaning that is the Solicitor going to have the
13 right to open and close, or can I require -- can he be
14 required to open on the law and have to close on the
15 facts, or something of that nature?

16 THE COURT: As I understand it, since you presented
17 nothing, he's got to open in full and then you close. And
18 that's it.

19 MR. GADDY: All right. That's fine.

20 THE COURT: That's my understanding.

21 MR. GADDY: That's fine.

22 THE COURT: Mr. Moyer, is that consistent with your
23 understanding?

24 MR. MOYER: Yes, it is. That's what I was prepared
25 to do.

1 THE COURT: Okay. That's what I was expecting.

2 MR. GADDY: That's fine.

3 THE COURT: Mr. Moyer, I'm going to think about the
4 kidnapping instruction. But I'm not certain I'm going
5 to -- I'll comment on that case.

6 MR. MOYER: Okay.

7 THE COURT: It may be law. But I don't think I --
8 that's part of my charge.

9 MR. MOYER: Okay.

10 THE COURT: I'll have to think about that.

11 MR. MOYER: Okay. And just one comment regarding
12 Mr. Gaddy's proposed request for armed robbery. He quotes
13 part of the statute. And I think it does not quote the
14 statute in full.

15 So, I mean, I would object, obviously, to this being
16 your only definition of the offense of armed robbery. But
17 I think when you give your full definition, it will
18 include what Mr. Gaddy proposes, but just have more to it.

19 THE COURT: Yes. I think mine will be a little more
20 extensive than this.

21 MR. MOYER: Yes.

22 THE COURT: So I will -- like I said, as y'all argue,
23 I'm going to be looking at this thing, and make my
24 decision then. But we'll have a short charge conference
25 before I get to it.

1 Are y'all ready to go?

2 They've been sitting back there about 30 minutes.

3 Bring them in.

4 (WHEREUPON, the jury came into open court at
5 approximately 10:27 a.m.)

6 THE COURT: Mr. Brown, and ladies and gentlemen of
7 the jury, so y'all understand, there was a third trial to
8 be called. They came in this morning. And I got to
9 dealing with them, and got that case resolved. And so
10 that was the majority of the cause of the delay and
11 holding y'all back there. I was dealing with the next
12 trial and got it done. So I'm trying to keep things
13 compartmentalized.

14 Now, it's an opportunity now for the lawyers in this
15 case to summarize their respective positions, or summarize
16 what they believe the facts have shown y'all in this
17 trial. So give your careful attention to the lawyers as
18 they present their summaries.

19 And after they do their summaries, we'll take a brief
20 break. And then I'll give you my instructions on the law.
21 And then, after that, you'll begin your deliberations.

22 With that in mind, Mr. Moyer.

23 MR. MOYER: Thank you, Your Honor.

24 May it please the Court.

25 THE COURT: Yes, sir.

CLOSING ARGUMENTS

1
2 MR. MOYER: Good morning, ladies and gentlemen.

3 As you have heard from the Judge, both in his initial
4 comments and some comments yesterday, the testimony part
5 of this trial has now ended. So what that means is you're
6 not going to receive any more evidence or testimony in the
7 way of witnesses taking the stand, or exhibits, or
8 anything coming to you.

9 Every once in a while, we have jurors who will send a
10 question back through the bailiff asking, you know, can we
11 have another witness testify, or to get a statement, or to
12 see something else. And that cannot happen at this stage
13 of the proceedings. Except in rare situations, police
14 reports, and statements, and things like that are not
15 admissible. So you've heard all the testimony that you're
16 going to hear before you begin your deliberations.

17 So what I would propose to you, ladies and gentlemen,
18 is that when you get to your jury deliberation room,
19 you're really going to -- your argument is really going to
20 come down to two questions. Number one, were these crimes
21 committed, these three crimes of armed robbery,
22 kidnapping, and assault and battery first degree? And
23 then, secondly, if you decide they have been committed, do
24 we have the right guy? Is this man, Ronald Downs, the one
25 who committed these crimes?

1 So let's -- in my closing, let's go through those two
2 questions together. And let's start off with that first
3 question. Were these crimes committed? And I think we'll
4 start off with the -- what I think is probably the most
5 straightforward of the charge, that is of assault and
6 battery first degree. His Honor is going to instruct you
7 fully on the law. But I'm going to give you just a
8 summary of what the law is on these particular charges.

9 Assault and battery, essentially, means -- it kind of
10 boils down to two different parts. First off, you have to
11 either injure or attempt to injure another person. Okay.
12 You don't have to, actually, injure. But injury to any
13 extent, to any degree. You don't have to go to the
14 hospital. You don't have to have blood pouring from the
15 wound, but it's if you're injured or if the person
16 attempts to injure you. And the second part of that is,
17 if this happens during the commission of either a
18 burglary, kidnapping, robbery, or theft. So let's talk
19 about that.

20 Was this crime committed against Brenda Wilkinson?
21 Well, we know she was injured. She, in fact, was injured.
22 She had -- according to the testimony of one witness, she
23 had an eye that was all red from having been beaten. She
24 had bruises up and down her arms. This robber swung at
25 her over and over again attempting to injure her. He

1 struck her many times. So, yes, she very clearly was
2 injured.

3 And, secondly, did this happen during the commission
4 of one of these offenses? Well, yes, in fact, three out
5 of the four. You only need one. There wasn't a burglary
6 involved, but all three of those other offenses, the
7 robbery, a theft, and a kidnapping. So it happened during
8 that. So we can check that off. Yes, this assault and
9 battery did occur.

10 Now, let's move on to the charge of armed robbery.
11 And His Honor is going to, again, charge you fully on the
12 law. But it, again, boils down to this, that, first off,
13 there has to be a robbery. And then that robbery has to
14 happen either while the person is armed, or has a
15 representation of a deadly weapon.

16 Let's talk about it a little more in depth. What is
17 a robbery? Well, a robbery is a kind of theft. If I left
18 my wallet here on this table and I walked out of the room
19 and someone took it, it would be a type of theft. It
20 would be a larceny.

21 However, if someone came up to me while I was
22 standing next to this table and my wallet was here and
23 pushed me out of the way and took my wallet, then that
24 would be a robbery. Because there was force or
25 intimidation involved. It's within my presence and force

1 or intimidation was used. So that's what a robbery is.

2 Now, what makes a robbery an armed robbery? Well,
3 the person has to either be armed with a deadly weapon --
4 and the statute says either a pistol, a dirk -- I can't
5 remember all the other -- a razor, I think, a slingshot is
6 even in the statute. It has to be some kind -- or other
7 deadly weapon, something that could be used as a deadly
8 weapon. Or the person -- the robber alleges either by
9 saying so or acting as if he has a deadly weapon, and
10 either has a representation of a deadly weapon or some
11 object which a person would reasonably believe to be a
12 deadly weapon.

13 Do you follow what I'm saying?

14 Like I said in my opening, the victim doesn't -- it's
15 not the victim's responsibility to say, well, look, let me
16 make sure you really have a deadly weapon. Let me see if
17 that's a real or fake gun. No. If a victim would
18 reasonably believe that that's a deadly weapon and the
19 person is acting as if it is, then we still have armed
20 robbery.

21 So, in this case, with Ms. Wilkinson, we, clearly,
22 have a robbery. The money taken from that cash register
23 was taken from her presence. In fact, the Defendant held
24 her close to him as -- and made her pull the money out of
25 that cash register. And then he took it from her and

1 stuffed it into his pockets. You can see that very
2 clearly.

3 There's, clearly, force or intimidation, force and
4 intimidation being used. And I don't have to even comment
5 any further from what you saw in that video. There was
6 plenty of force and intimidation.

7 Now, was he armed? Ladies and gentlemen, he may have
8 had a pistol. He may have had a pistol in that rag. We
9 don't know, because he kept something covering it.

10 Why do I say he may have had a pistol? Well, first
11 off, he said he did. The first thing he said to
12 Ms. Wilkinson when he walked up on her and stuck that object
13 in her face was, This is a gun, give me all the money. And
14 there was, clearly, something in that cloth. You could see
15 it, clearly, in the video. And we're going to show that
16 video, just a portion of it at the end of my closing. But
17 you can see something in that cloth.

18 We know there was something in that cloth, also,
19 because when he struck this -- when Ms. Wilkinson held up
20 this clipboard between her face and the suspect and he hit
21 it, it knocked it so hard that it, actually, broke this
22 clipboard. A hand wouldn't do that. There was something
23 in there.

24 Everyone in that store thought it was a gun. Do you
25 remember every witness who came up and testified and said

1 they were there and they saw him holding something.
 2 Everyone thought it was a pistol. He may have had it.
 3 And then Ms. Wilkinson testified that when she was struck
 4 with that, it wasn't a hand. There was something solid.
 5 There was something in that cloth when it hit her. So he
 6 may have had it.

7 Well, what happened to it? I mean, the officers
 8 searched for it. They looked. And they couldn't find it.
 9 Well, ladies and gentlemen, I argue to you that about
 10 anything could have happened to that thing. I mean, he
 11 could have thrown it into these -- into the -- into these
 12 deep woods back here while he was running through the
 13 field.

14 When he got to the other side of that fence and he
 15 was left alone for a little while while Officer Calhoun
 16 went and got his car, he could have thrown it into those
 17 woods. I had a case once where officers searched and
 18 searched and searched for a weapon and, finally, someone
 19 thought, well, for whatever reason, I'm going to look on
 20 the roof. And the suspect had thrown the pistol up on the
 21 roof. I mean, a robber -- a gunman's first priority when
 22 running from the police is to get rid of the gun, maybe he
 23 put it in the trash can, maybe he threw it.

24 So he could have had a gun. But there's no need to
 25 analyze whether he really did or did not. Because whether

1 he really had a gun or not, he acted as if he did. He
2 alleged he had one both by saying it, and by the way he
3 held that, the way he pointed it in her face, the way he
4 struck her with it. He acted as if he had one. And
5 everyone believed it. Ms. Wilkinson, clearly, believed he
6 had a gun. She thought she was going to be killed. She
7 said she was afraid during this incident that he was going
8 to shoot her. So, based on that, ladies and gentlemen,
9 the robber is guilty of armed robbery.

10 And so let's move on to the third, kidnapping. As I
11 stated in my opening, also, you often think of a
12 kidnapping as somebody, you know, tying someone up with
13 duct tape, and throwing them in the trunk, and driving
14 away. But a kidnapping is much more broad than that.

15 Kidnapping, the definition, means to seize, to
16 confine, to inveigle, to decoy, to kidnap, abduct, or
17 carry away. The definition is very broad. It's depriving
18 someone of his or her freedom. And there's no set period
19 of time that it has to take place.

20 Seize, you know, we all know what seize means. It
21 means to take ahold of suddenly or forcibly, to grab
22 somebody and not let them go. And we can, clearly, see
23 that in the video. And Ms. Wilkinson, clearly, testified
24 that happened to her. To confine means to limit, to
25 restrict, or enclose within bounds, to imprison or shut

1 in.

2 I mean, I asked Ms. Wilkinson when she was
3 testifying, I said, When you turned and ran after your
4 clipboard was knocked away, what were you doing? She
5 said, I was trying to get away. I wanted to get to that
6 opening behind the cash register and get to the back of
7 that store and get away. Well, why didn't you do so?
8 Because he came around and blocked and would not let me
9 go. He confined her.

10 Then I asked her, also, Why -- After you were
11 confronted, why did you go back over to that register?
12 And she said, He made me. He seized her. He was
13 controlling her movements.

14 And, ladies and gentlemen, I want you to think about
15 how long that was. You saw that video and how long that
16 incident took. It was well over three minutes long, that
17 entire ordeal. It was over three minutes. And it must
18 have seemed like hours, somebody having what they thought
19 was a gun pointed at their head and being knocked around
20 like that. She was confined. And she was seized. So,
21 ladies and gentlemen, I would argue to you that that shows
22 that he -- the robber was guilty of kidnapping as well.

23 So these three crimes were committed. There was an
24 assault first degree. There was an armed robbery. And
25 there was a kidnapping.

1 So now that we've answered that question, we move on
2 to the second question, which is this, do we have the
3 right guy? Is Ronald Downs the man who did this? Well,
4 we have now the folks -- the testimony of two people
5 primarily. And, first off, we have Ms. Wilkinson.

6 Ms. Wilkinson testified on the stand yesterday that
7 she knows who did this. And I asked her, Can you identify
8 the person who did this? And she said, Yes, I can.
9 Because, as she testified to and as you saw on that video,
10 for whatever reason, whether it was out of fear, whether
11 it was trying to see if she could chase him away by
12 scaring him, she pulled down that mask. And she was
13 within inches of his face. And she looked him full in the
14 face. And she said, Yes, I can identify him. And she
15 looked at him. And she pointed to him yesterday. And she
16 said, The man who did this to me is seated right over
17 there. It's the Defendant. But we don't have just her
18 word.

19 We, also, have the word of Officer Calhoun, Officer
20 Sean Calhoun. And you heard his testimony, also,
21 yesterday. He was very close by when this incident
22 happened.

23 And when he arrived at the scene within a minute of
24 when this call came out, he pulled in the driveway. And,
25 as you recall, he first -- there was so much commotion.

1 There were people moving about. There was cars. And you
2 can imagine why. You saw how many people were streaming
3 out of that store. There were a lot of customers in
4 there. So we can understand why there was all this
5 confusion.

6 And he saw a car. And it was acting kind of erratic
7 when he -- his first thought was that must be the person
8 either trying to get away, or maybe it's a get-away car.
9 So he went back to that car. And everybody said, no, no,
10 no, that's not the person. He's still inside. So Officer
11 Calhoun backed up.

12 And, if you recall, I put Ms. Nedwards back on the
13 stand at the very end just to clear up any confusion about
14 that blue car. So it's not a red herring to make you
15 wonder about that back in the jury room. But that was
16 simply them trying to get away. And I can understand why
17 that car maybe could have aroused some suspicion. I can
18 only imagine somebody in that state of mind trying to
19 drive a car and backing away.

20 So Officer Calhoun backed up. And he started
21 watching the two corners of the store. He could see the
22 front. And he could see the side. And he watched that
23 man walk out. And the man who walked out had the blue cap
24 on his head. He had the mask on his face. And he still
25 had something wrapped up in his arm.

1 Officer Calhoun got out of the car, drew down on him
2 and told him to get on the ground. And the man did not.
3 Officer Calhoun testified how he ran and he chased him.
4 He chased him back through the field. Money starts
5 falling out of his pocket as he gets close to the fence.

6 And then they get to the fence. And what happens at
7 the fence? Officer Calhoun realized that this could be a
8 dangerous situation. And it was. Because we can see what
9 happened to the Defendant when he got to the fence. First
10 off, he lost his shoe. He lost one of those Crocs, which
11 you can see clearly in the video, by the way. He then
12 lost one of the gray pieces of cloth.

13 And, ladies and gentlemen, there were, clearly, two
14 pieces -- two gray pieces of cloth. There was one that
15 was around his hand, and there was one around his lower
16 face. He lost one of them, probably the one on his hand,
17 I would guess, while he's going over the fence. Then he
18 gets to the other side of the fence and he drops -- he
19 loses his other shoe, the other Croc. And then he kept
20 running.

21 Officer Calhoun runs back to his car, he said, about
22 200 to 300 yards. He gets in it, drives around. And you
23 heard his testimony how he confronts him. And the man now
24 is holding the blue -- the turquoise cloth and a gray
25 cloth, which would be the other one, probably the one from

1 his face. What I would argue to you, ladies and
2 gentlemen, is that, most likely, when he got to the other
3 side of the fence, he's hot and tired after having run all
4 this way. He's pulls them off. And he's bent down. And
5 he's gasping for breath. And Officer Calhoun draws on him
6 again.

7 What does the Defendant do? That's when he starts
8 hopping over those fences. Officer Calhoun knew exactly
9 where he was going to go. So he walks around to the other
10 side. The man jumps over the fence. Officer Calhoun
11 confronts him again. He, again, does not comply with
12 Officer Calhoun's commands. However, at this point, he's
13 trapped. He has the fences all around him. He can't go
14 anywhere. He turns around. And he gets shot with the
15 taser, and he goes down.

16 Officer Calhoun -- I asked Officer Calhoun, Can you
17 identify the man you arrested? Not only did he do so in
18 that photograph, but he pointed to the Defendant and said,
19 That's the man I arrested.

20 There's no getting away from it. The man is still in
21 the jeans. He still has the gray T-shirt on. He is
22 holding the two masks in his hand. As he's being walked
23 to the police car, more money is falling out of his
24 pocket. He still had money in his pocket at that point.

25 And we heard testimony about how all that money was

1 collected. And it was given back to the clerk. And it
2 was within like \$3 or \$4 of what the total amount was that
3 was stolen. I imagine they probably missed a dollar or
4 two, or maybe the cash register was off a couple of
5 dollars. But they returned all the money. So it was,
6 clearly, him.

7 And I want to finish my argument, ladies and
8 gentlemen, by just showing you a portion of the video.
9 And when I do so -- and you'll have the opportunity to
10 watch it all, if you so choose, watch all three of the
11 videos that show the robbery. I'm not going to do so now.

12 But, as I do so, I want you to take notice of several
13 things. I want you to take notice of the evidence of the
14 crime. You can see what I would argue to you is either
15 the gun or the representation of the gun, clearly, in his
16 hand. You can see him taking the money and putting it
17 into his pocket. You see, clearly, the assaults. And you
18 see the kidnapping by the Defendant, him seizing her and
19 confining her.

20 I want you to take note, also, of his actions while
21 he's doing this, how he's careful not to touch anything.
22 How when he -- the only things he touches he does so once
23 with his right hand, which is covered with the cloth when
24 he grabs the cash drawer. And another time when he tries
25 to scan, he takes his left hand and puts it in his T-shirt

1 and holds it that way. He's careful not to leave any
2 fingerprints behind.

3 And then, also, note some identifying features. You
4 see the Crocs that were found near him that we have
5 photographs of. You can see those on his feet. You see
6 the gray T-shirt and the jeans as we see in the photograph
7 of the Defendant when he was caught. We see the two gray
8 pieces of cloth, the one that was covering the lower part
9 of his face and the one that was wrapped up in the gun.
10 Then you see the turquoise material, which is exactly in
11 the shape and color of the turquoise rag that he was
12 caught with when he was arrested.

13 MR. GADDY: Your Honor, I'm going to object to going
14 into the CDs on the screen. If he wants to talk about
15 what a witness said or what the tape shows, fine. But as
16 far as him putting that back on the screen, I object to
17 it.

18 MR. MOYER: I'm not sure of the basis of that
19 objection, Judge. I don't think there's any prohibition
20 of me showing evidence to the jury during the closing
21 argument.

22 THE COURT: I think I've seen it used before. I
23 think it's allowable because it's evidence. I'll allow
24 it. It's evidence that's been presented. It's been used.
25 And you can argue that. It's for the jury to consider.

1 So I'll allow it.

2 MR. MOYER: Thank you, Your Honor.

3 (WHEREUPON, a portion of State's Exhibit No. 3 was
4 played in open court.)

5 MR. MOYER: Now, ladies and gentlemen, in closing, as
6 I'm sure you know, we have another term for our legal
7 system, which is we call it our justice system as well.
8 And that is this system is -- the purpose is the
9 administration of reward and punishment for people or
10 their actions. Our purpose today is to hold people
11 responsible for their actions.

12 And this man, Ronald Downs, inflicted a horrifying
13 act on Ms. Wilkinson. She's going to live with that for
14 the rest of her life. She's going to live with what --
15 those three minutes that happened to her on October 11th,
16 2012.

17 It's going to have a rippling effect. It didn't
18 effect just her. Think of those others who were in that
19 back room and had to file out after being terrified of
20 this gunman in the store. Think of Ms Nedwards'
21 12-year-old daughter and wonder when, if ever, she's going
22 to be able to enter a retail store without remembering
23 October the 11th of 2012.

24 A crime against one in our community is a crime
25 against us all. And it is now your time to administer

1 justice. And, ladies and gentlemen, I would argue to you
2 that finding justice in this case, there's only one
3 answer. And that is to find this Defendant guilty of
4 armed robbery, kidnapping, and assault and battery first
5 degree.

6 Thank you.

7 THE COURT: Thank you, sir.

8 Mr. Gaddy.

9 MR. GADDY: Ladies and gentlemen of the jury, there's
10 a Constitutional right in this country that when people
11 are accused of a crime, they have a right to a trial by
12 jury, a jury of the people of the community. And you
13 are -- your names were on a panel. And you were selected
14 to serve as the jury in this case. And your role is the
15 trier of fact. It is your job to determine what the facts
16 are, and then give a verdict. The verdict will be guilty
17 or not guilty of the offenses charged.

18 The role of the Judge is to give you the law, which
19 you'll turn and apply those facts and come up with your
20 decision. There's never been a better system devised in
21 our history to come up with a decision about who is guilty
22 and who is not guilty than the jury system.

23 I appreciate your serving on the jury. I've had to
24 serve -- I served on a jury one time. I think it's a
25 privilege and a pleasure to do that. It may not be always

1 a pleasure for everybody. But it's one of our
2 Constitutional rights. And I thank you for doing it.

3 Now, the law is that the Defendant must be found
4 guilty beyond a reasonable doubt. Now, reasonable doubt
5 is whether or not you think there's any question about
6 what happened. And that -- and the Prosecution must prove
7 all the elements of a criminal offense, not just some of
8 them.

9 They've got to prove -- the State has got to prove
10 with respect to armed robbery that there's more than a
11 robbery going on. It was an armed robbery, which I'll get
12 back into. And that's one of the elements, that there was
13 some instrument or object that was deemed a dangerous
14 weapon that was being used. I'll get more into that. But
15 they've got to prove all of it, not just a robbery
16 occurred. Of course, a robbery occurred.

17 Was Ms. Wilkinson beaten up? Yeah, she was beaten.
18 Yes. Yes, she was. So they have to prove the assault and
19 battery. Have they proved armed robbery? And I'm telling
20 you, no, I don't think -- and I contend that the State has
21 not proved armed robbery. They've only proved robbery.
22 And there's a big difference.

23 Now, what is it -- let's go back to kidnapping first.
24 This -- the Prosecutor -- the Solicitor is telling you,
25 basically, that a kidnapping has occurred because there

1 was a restriction of freedom of Ms. Wilkinson, of the
2 cashier. She had her freedom restricted. I'm telling you
3 that it's my assertion that it takes more for kidnapping
4 than to restrict somebody's freedom, restrict their
5 movements. Was her movements restricted? Was her freedom
6 of movement controlled? Yes. But I say there's more to
7 that for kidnapping.

8 The Judge is going to give you all the elements of
9 kidnapping. I just ask that you, in fairness, look at the
10 elements that the Judge is going to give you with respect
11 to kidnapping. And decide if a kidnapping occurred. We
12 don't, generally, think of kidnapping as somebody getting
13 robbed. That's something they're stuck on. And they've
14 gone too far is my contention with respect to kidnapping.
15 And all the elements of kidnapping have not been proven.

16 But you've heard all the evidence. It's your role to
17 make a decision. That's my point is that to kidnap
18 somebody, it takes more than to restrict their freedom or
19 restrict what their actions are. There's more to it than
20 that.

21 But let's go on to this armed robbery thing. Armed
22 robbery requires a commission of a robbery with a gun or a
23 deadly weapon, or it can be a representation of a deadly
24 weapon. It can -- it's got -- my contention is that that
25 representation has to be an object. It has to be an

1 object. It's not restricted solely to a gun. It can be a
2 knife. It can be -- it could be a rock. It could be --
3 any object could be a representation that it's going to be
4 something that's used with deadly force.

5 Now, what's going on here? We've got this Defendant
6 with a hand wrapped up. And he's claiming that he's got a
7 gun. Now, if he had a gun, there wouldn't be any question
8 that it would be armed robbery; right? But he didn't have
9 a gun. And it's never been shown that he had any kind of
10 object.

11 The Solicitor in his statements to you, I think, made
12 several significant comments, which I would like to draw
13 your attention to. That is, he said there was, clearly,
14 something in that cloth. He hasn't identified it. And
15 nobody has found it. So I think that creates a reasonable
16 doubt. He said we -- he might have had a pistol.

17 Well, the State is required to go further than to say
18 what he might have. That's not a reasonable doubt what
19 the Defendant might have. The Solicitor, also, said there
20 was something in that cloth. I didn't see anything in
21 that cloth. He hasn't identified anything in the cloth.
22 And nobody else -- I mean, the police have not identified
23 anything. And Ms. Wilkinson, who got treated pretty bad,
24 she hasn't identified anything. The Defendant said he had
25 a gun, but he didn't.

1 It's my contention that even though a robber will say
2 he's got a gun, if all he's got is his two hands and his
3 feet, that does not constitute armed robbery.

4 And the Solicitor, also, said to you, well, it could
5 be this and it could be that. Well, as soon as he says
6 that, he's telling you he has not proved all the elements
7 of armed robbery. They've only proven an actual robbery,
8 not armed robbery. So that element of the offense of
9 armed robbery has not been shown.

10 And if there's a doubt in your mind about it, the
11 Defendant is entitled to that doubt being resolved in his
12 favor. That's the American system, resolve the doubts in
13 favor of an accused. And there is a doubt that there was
14 no deadly weapon being used. There was no object being
15 used that could be deemed a deadly weapon. And that's
16 what keeps this offense from being armed robbery. What
17 happened was a robbery.

18 There is some testimony -- it's interesting how the
19 facts got presented. My recollection of the officer's
20 testimony was that he saw a man come out -- that a man was
21 driving this car, which he said was erratically. And he
22 thought that was the suspect. They produced the lady,
23 Ms. Nedwards, who said, no, that was a woman with two
24 children in it. It's just a little bit of a difference of
25 opinion there about who they saw and what they saw. But I

1 wanted to call that to your attention as showing some doubt
2 about the certainty of the whole situation.

3 So, basically, after you've seen the evidence, you've
4 seen those tapes, heard the testimony, there was no
5 evidence of any kind of an object being used. When they
6 talk about -- the Judge is going to say you can have a
7 representation of a deadly weapon. The representation has
8 got to be an object is my contention. That it can't be
9 just saying that I've got a weapon and not having one.
10 That's not a -- that's not the kind of representation that
11 armed robbery requires.

12 And, for those reasons, I urge -- I believe, in
13 fairness, that a robbery was committed, but not armed
14 robbery. That -- and the kidnapping did not occur,
15 although the cashier, certainly, suffered an assault and
16 battery. And I ask you to think about those things when
17 you are in the jury room. And give us a verdict that you
18 think is fair and based upon what you've heard in court.

19 THE COURT: Thank you, sir.

20 All right. Mr. Brown, we're going to take a brief
21 break and have you back in momentarily. And I'll give
22 y'all instructions on the law and what to do when
23 considering your deliberations.

24 (WHEREUPON, the jury was excused from open court at
25 approximately 11:01 a.m.)

1 THE COURT: Gentlemen, regarding the instructions,
2 the lesser included, it would be my belief that armed
3 robbery, lesser included strong armed robbery, kidnapping,
4 assault and battery first, assault and battery second,
5 assault and battery third, or not?

6 MR. MOYER: Your Honor, I agree that robbery should
7 be charged. As far as the assault and battery, I don't
8 think there's been any dispute in the fact there was, at a
9 very minimum, a theft, a robbery. So I don't think that
10 either lesser included of assault and battery first degree
11 should be charged.

12 THE COURT: All right. What say you, Mr. Gaddy, on
13 the lesser included of assault and battery?

14 MR. GADDY: No. It's -- I think the evidence only
15 shows the commission of the offense for which he's been
16 charged.

17 THE COURT: Okay. So --

18 MR. GADDY: I don't ask for a charge on lesser -- any
19 lesser included offense on assault and battery.

20 THE COURT: Okay. Well, if y'all had asked, I'd
21 given it to you.

22 All right. The only expert witness who testified was
23 Officer Miller with the dog tracking and --

24 MR. MOYER: That's correct.

25 THE COURT: Okay. Let's stand at ease for a couple

1 of minutes. And we'll come back in and we'll get this
2 done.

3 (WHEREUPON, a break was taken.)

4 THE COURT: Bring the jury out.

5 (WHEREUPON, the jury came into open court at
6 approximately 11:10 a.m.)

7 THE COURT: I need to speak to the lawyers real
8 quick. I've got a phone call I need to make. I'm trying
9 to get my daughter's tuition paid.

10 Y'all step back in the jury room real quick. I just
11 got a phone message. I'm going to tell the lawyers. But
12 just give us a couple of minutes.

13 (WHEREUPON, the jury was excused from open court at
14 approximately 11:11 a.m.)

15 THE COURT: I'd like to speak to the lawyers.

16 (WHEREUPON, a bench conference was held.)

17 THE COURT: We're going to take a quick break.

18 (WHEREUPON, a break was taken.)

19 THE COURT: Bring the jury in.

20 (WHEREUPON, the jury came into open court at
21 approximately 11:15 a.m.)

22 THE COURT: All right. Mr. Brown, I was concerned
23 y'all weren't getting enough exercise. And I'm going to
24 see to it that y'all get your proper exercise today. And
25 I will, too.

1 But I have two children enrolled at Presbyterian.
2 They both are freshmen right now. And I'm getting the run
3 around about how much money -- they're different amounts.
4 And I can't figure out why two freshmen would have
5 different tuitions. But I am struggling with that issue.

6 CHARGE ON THE LAW

7 THE COURT: But, now, let's deal with the issue at
8 the present, which is here in the courtroom, which is my
9 purpose for being here. I'm going to give y'all the
10 instructions. The instructions are -- I wouldn't consider
11 them lengthy. But they are lengthy, certainly, from
12 y'all's perspective. I'm going to read mostly. I will
13 talk and read. I apologize for not being able to cast
14 these from -- without notes. But the specifics of some of
15 the statutes I want to read directly to make certain y'all
16 understand them.

17 And understand that once you begin your
18 deliberations, if you need additional instructions or
19 re-instructions on any particular area, I'm going to allow
20 that. I always do. So, Judge, we have a question about
21 something you said, it was this, this, and this. I'll
22 re-instruct you. So y'all are not allowed to commit this
23 to memory, but good luck with it.

24 Anyway, the instructions are, Mr. Brown, and, ladies
25 and gentlemen of the jury, the State of South Carolina

1 charges the Defendant, Ronald Downs, Jr., with the
2 offenses of armed robbery, kidnapping, and assault and
3 battery first degree. And you, of course, bear in mind
4 that Mr. Downs has entered a plea of not guilty. And, by
5 that, he has denied all the allegations in all three of
6 the indictments.

7 Now, you will have in the jury room a verdict form
8 for the indictments. As I told you earlier, indictments
9 are mere accusations made by the State of South Carolina
10 against him. The evidence you must consider in this case
11 was the evidence which was presented during the trial, and
12 the evidence which has been admitted and is on the table
13 before you. You will have that in the jury room for your
14 review.

15 Now, a defendant comes into court clothed with the
16 presumption of innocence. And this presumption of
17 innocence continues with him throughout the case and
18 entitles him to a verdict of not guilty, unless and until
19 it is dispelled by the evidence satisfying you, the jury,
20 beyond a reasonable doubt of his guilt of the offenses
21 charged. You must bear in mind that the State must prove
22 each and every element of the alleged crimes beyond a
23 reasonable doubt.

24 Now, under the Constitution and laws of South
25 Carolina, I told you in my preliminary instructions that

1 you 12 are the sole finders of the facts in this case. I
2 am not allowed to suggest what I may think about the facts
3 in this case, that being the guilt or innocence of the
4 Defendant in this case. You are the judges of the
5 credibility and the believability of the witnesses who
6 have testified in this case. And so you must pass upon
7 their believability and credibility in making your
8 findings of fact.

9 Now, several things which you may use, including your
10 good judgment and common sense in passing upon the
11 credibility or believability of the witnesses, are what
12 was the manner and appearance of the witness who
13 testified? Was the witness straightforward, or were they
14 hesitant in answering? Did the witness -- how did the
15 witness come to know the facts to which he or she
16 testified to? What was his or her ability to know or to
17 recant -- recall these facts? Is there some reason one
18 witness would want to give testimony which would help or
19 hurt one side or the other? In other words, were any of
20 the witnesses bias or prejudice toward one side or the
21 other? Was a witnesses testimony strengthened or weakened
22 by other testimony or other evidence?

23 As the jury, you may believe as much or as little of
24 each witnesses testimony as you deem proper and
25 appropriate. You may believe the testimony of a single

1 witness as that against many, or just the opposite. You
2 can believe part of a witnesses testimony, and disbelieve
3 the rest. The fact that testimony is not disputed does
4 not mean you must accept it as true and undisputed. You
5 must still gauge the credibility of the witness or the
6 witnesses who have testified to determine their
7 believability of the truth of the facts offered through
8 their testimony.

9 Now, during a trial of this type, there are
10 generally, two types of evidence presented. There's
11 direct evidence and circumstantial evidence. Direct
12 evidence is the testimony of a person who asserts or
13 claims to have actual knowledge of facts, such as an
14 eyewitness.

15 Circumstantial evidence is proof of a chain of facts
16 and circumstances indicating the existence of another
17 fact. Our law makes absolutely no distinction between the
18 weight or value to be given to either direct or
19 circumstantial evidence, nor is a greater degree of
20 certainty required of circumstantial evidence than that of
21 direct evidence.

22 You should weigh all of the evidence in this case.
23 And, after weighing all the evidence, if you're not
24 convinced of the guilt of the Defendant beyond a
25 reasonable doubt, you must find the Defendant not guilty.

1 Now, during the testimony presentation, I explained
2 to you that, normally, a person cannot give opinion
3 testimony. When a person testifies, they must testify as
4 to what they saw, heard, or sensed by smell, or something
5 of that nature. There is an exception to that rule when
6 someone is qualified as an expert in a field because of
7 their education and experience. Then they are allowed to
8 give opinion testimony in certain areas when they're so
9 qualified.

10 One witness was qualified as an expert in this trial,
11 and that was Officer Miller, who was qualified as an
12 expert in dog handling for search and tracking. Experts
13 are allowed to give opinion testimony in their areas of
14 expertise. Now, that does not mean you must accept that
15 opinion. But it is additional evidence for you to
16 consider during your deliberations.

17 Now, as the sole fact finders, you should have
18 listened closely to all the evidence. And you're going to
19 weigh the evidence using your good judgment and common
20 sense. I tell you that the weighing of evidence is
21 entirely a mental process. Evidence weighs with you that
22 convinces you of its truth regardless of where it came
23 from.

24 Now, additionally, the same Constitution and law
25 which makes you the finders of fact and the evidence which

1 I've discussed with you makes me, the Judge, the sole and
2 only instructor of the law. You must accept as correct
3 the law which I instruct, and apply to it the evidence as
4 you find it and reach a verdict.

5 As I told you earlier, if I should make an error in
6 the law as I am instructing it to you, there is yet
7 another time and another place that that error can be
8 considered and, if necessary, corrected. For the purposes
9 of our case here today, you must accept the law as I am
10 instructing it to you. And so, in that regard, I tell you
11 that neither you nor I should be concerned about what we
12 think the law ought to be, but only concern ourselves with
13 what I charge you the law to, in fact, be.

14 In my preliminary instructions, I told you that in
15 all criminal cases the State -- and that's the
16 Prosecution -- has the burden of proving the guilt of the
17 Defendant. The Defense has no burden whatsoever. And the
18 Defendant is presumed innocent throughout the entire
19 trial.

20 In this state, according to our Constitution, the
21 Prosecution must prove its case to the standard or proof
22 called beyond a reasonable doubt before a finding of guilt
23 may occur. Now, if the State fails to meet this high
24 burden, then the Defendant is entitled to a verdict of
25 acquittal or not guilty.

1 Reasonable doubt. What is a reasonable doubt? A
2 reasonable doubt is the kind of doubt which would cause a
3 reasonable person to hesitate to act. A reasonable doubt
4 is a doubt which would make an honest, sincere,
5 conscientious person in the search of the truth hesitate
6 to act. Proof beyond a reasonable doubt is proof which
7 leaves you firmly convinced of the Defendant's guilt.

8 If you have a doubt for which you can give or assign
9 a reason as to the guilt or innocence of the Defendant,
10 then he is entitled to have that doubt resolved in his
11 favor. Reasonable doubt may arise from evidence which is
12 in this case, or from the lack or absence of evidence in
13 this case. You, the jury, must make the determination of
14 whether or not a reasonable doubt exists as to the guilt
15 of the Defendant.

16 I instruct you, also, that the very fact that the
17 jury engages in a full and free discussion of the guilt or
18 innocence of the Defendant in this case does not
19 automatically mean that a reasonable doubt exists in this
20 case.

21 Now, a necessary element in crimes is criminal
22 intent. Criminal intent is a necessary element that must
23 be proved by the State beyond a reasonable doubt.
24 Criminal intent is always a matter that must be determined
25 from the circumstances surrounding the situation. There

1 is no way to prove to a mathematical certainty whether
2 criminal intent is present. Medical science cannot
3 dissect a person's brain and determine what he or she had
4 in mind.

5 So the law states that criminal intent may be
6 inferred from the circumstances shown to have existed both
7 before and after the facts. This is how you, the jury,
8 make a determination of whether or not the element
9 requiring an intent was present.

10 Criminal intent is a state of mind that operates
11 jointly with an act or an omission in the commission of a
12 crime. Criminal intent is a mental state of conscious
13 wrongdoing. So it is up to you, the jury, to determine
14 what the Defendant intended to do based upon the
15 circumstances shown to have existed. And I tell you that
16 the State must prove criminal intent beyond a reasonable
17 doubt just as it must prove all the elements beyond a
18 reasonable doubt.

19 Now, I instruct to you and emphasize the fact that
20 the Defendant did not testify in this case -- and the fact
21 that he did not testify is not a factor to be considered
22 by you, the jury, in any way during your deliberations and
23 in your consideration of the question of his guilt or
24 innocence. It must not be considered by you in any manner
25 whatsoever.

1 A defendant has a Constitutional right to remain
2 silent. And his assertion of this right must not be
3 considered in your deliberations. I point to the fact
4 that under your oath that you were provided at the
5 beginning of this trial, you're to draw no conclusions
6 whatsoever from the fact that the Defendant did not
7 testify in this case.

8 Now, also, I allowed jurors to take notes during this
9 trial. And some of you have taken notes. And, please,
10 remember that some people are better note takers than
11 others. Jurors notes should not be given any greater
12 weight than the recollection of other jurors. The
13 recollection of any individual juror should be considered
14 as reliable as the notes taken by any other juror.

15 Now, this case involves multiple indictments. And I
16 charge you and instruct you that these indictments are
17 separate and distinct, and must be considered
18 individually. Your verdict on one does not control your
19 verdict on the others.

20 As I've already instructed you, the Defendant,
21 Mr. Downs, is charged with the following crimes: armed
22 robbery, kidnapping, and assault and battery in the first
23 degree. I'm going to try to instruct you now on the
24 offenses of each of these charges.

25 Now, Mr. Downs is charged with the offense of armed

1 robbery. And our statute defines armed robbery as a
2 person who commits a robbery while armed with a pistol,
3 dirk, slingshot, metal knuckles, razor, or other deadly
4 weapon, or while alleging either by actions or words that
5 he was armed while using a representation of a deadly
6 weapon, or any object where a person present during the
7 commission of a robbery reasonably believes to be a deadly
8 weapon.

9 In order to prove this offense, the State must prove
10 these elements. First, the State must prove beyond a
11 reasonable doubt that the Defendant took personal property
12 from the person or presence of another person. Property
13 is in the presence of a person if it is within the
14 person's reach, inspection, observation, or control so
15 that the person could, if not overcome with violence or
16 prevented by fear, keep possession of the property.

17 The State must, also, prove beyond a reasonable doubt
18 that the Defendant carried the property away intending to
19 keep the property for the Defendant's own use. The
20 slightest removal of the property or the complete
21 possession of the property, even for an instant by the
22 Defendant, is sufficient to show a taking and carrying
23 away of the property. The taking and carrying away of the
24 property must have been done with violence or by putting
25 the owner of the property in fear of violence.

1 Finally, the State must prove beyond a reasonable
2 doubt that the Defendant was armed with a deadly weapon
3 during this robbery. A deadly weapon is any article,
4 instrument, or substance which is likely to cause death or
5 great bodily harm. Whether an instrument has been used as
6 a deadly weapon depends on the facts and circumstances of
7 each case. Ordinary objects may be considered weapons
8 when the facts show that they have been used to inflict
9 serious bodily harm or death.

10 Now, if you find that the State has failed to prove
11 the Defendant was armed with a deadly weapon, you may then
12 consider whether the State has proved beyond a reasonable
13 doubt that the Defendant committed the offense of common
14 law robbery. In order to prove common law robbery, the
15 State must prove beyond a reasonable doubt all the
16 elements which I have just explained to you, except that
17 the Defendant -- except the offense that the Defendant was
18 armed with a deadly weapon.

19 Now, regarding the offense of kidnapping. Mr. Downs
20 is charged with the offense of kidnapping. The State must
21 prove beyond a reasonable doubt that the Defendant
22 knowingly and unlawfully seized, confined, decoyed,
23 abducted, kidnapped, or carried away another person
24 without authority of law.

25 To do a thing unlawfully is to do it willfully

1 against the law. Knowingly means with knowledge,
2 consciously, and not accidentally. Seize means to take
3 hold of suddenly or forcibly. Confine means to limit,
4 restrict, or enclose within bounds, imprison, or shut or
5 keep in. Inveigle means to lure, entice, or lead astray
6 by false representation. Decoy means to lure by or as if
7 by a decoy to entice a person into a trap. Kidnap means
8 to remove a person by unlawful force or fraud. Abduct
9 means to carry off secretly or by force of an illegal
10 purpose. Carry away means to remove.

11 The State does not have to prove that the Defendant
12 did all of these things. Instead, if you find beyond a
13 reasonable doubt that the Defendant did any of these
14 things, you may find the Defendant guilty of the offense
15 of kidnapping. Something done without authority of law is
16 something done which the law does not sanction, permit,
17 allow, condone, or provide justification for. The
18 kidnapping does not have to be for any personal or
19 monetary gain or any illegal purpose, but may be for any
20 reason whatsoever.

21 Now, as to the offense of assault and battery in the
22 first degree. A person commits the offense of assault and
23 battery in the first degree if the person unlawfully
24 injures another person and the act occurred during the
25 commission of a robbery, burglary, kidnapping, or theft.

1 A person may, also, commit the offense of assault and
2 battery first degree if he unlawfully attempts to injure
3 another person with the present ability to do so and the
4 actor either -- I'm sorry, the act is either accomplished
5 by means likely to produce death or great bodily injury,
6 or occurred during the commission of a robbery, burglary,
7 kidnapping, or theft.

8 Now, if you find that the -- I'm sorry. That's the
9 offense of assault and battery in the first degree.

10 Now, I instruct you, again, that the elements of
11 these offenses the State must prove beyond a reasonable
12 doubt. The Defendant has nothing whatsoever to prove.
13 Again, I instruct you that the fact that the Defendant did
14 not testify should not even be discussed in the jury room.
15 The burden of proof is upon the State. The Defendant is
16 not required to prove his innocence. The burden of proof
17 remains with the State to prove his guilt of these
18 offenses beyond a reasonable doubt.

19 Now, Mr. Brown, and, ladies and gentlemen of the
20 jury, I wish to express the hope that you'll be mindful of
21 the importance of your responsibilities of your duties as
22 jurors. It has been my responsibility during this trial
23 to conduct this trial fairly and objectively within the
24 laws of South Carolina.

25 It is your responsibility to be certain that the

1 verdict you reach is just and according to my instructions
2 and the evidence which you have heard. I'm confident that
3 you will do just that, that you will confine your
4 deliberations to the evidence presented and the law as
5 instructed in reaching a unanimous verdict.

6 Now, I, also, instruct you -- I forgot this.
7 Everyone is entitled to justice in this case, the State
8 and the Defendant, nothing more and nothing less. I'm
9 confident that you will confine and consider your
10 deliberations understanding that. Remember, your verdicts
11 must be unanimous.

12 Now, I'm going to show you your verdict form and
13 explain it to you momentarily. Then I'm going to ask you
14 to step in the jury room. Because I have to allow the
15 attorneys to make comments on my instructions as given as
16 I didn't give them a copy to read along with me. They
17 just heard them as you did. And they had certain
18 instructions they hoped I would give regarding the law.

19 I allow them the opportunity to say, Judge, you
20 glossed over a certain aspect. Will you reinstruct or
21 give additional instructions on this area, or this aspect.
22 I think your instruction was glossed through. And I allow
23 that.

24 Understanding that was my law clerk, Mr. Close. He's
25 a young lawyer that just started. He took the bar exam

1 last month. And he's my lawyer. And he helped me write
2 that last night. So that was his first shot at doing the
3 instruction. And he did pretty well, I think. But since
4 it was his first try and these lawyers are very
5 experienced, I'm going to allow them to make comments.
6 And if there's an area that I glossed over, I'll bring you
7 back in here and say, all right, for your understanding,
8 this is -- I'm going to clarify.

9 If they have no exceptions, then I'll let y'all begin
10 your deliberations. The evidence will then be delivered
11 to you with the verdict form. Once that happens, y'all
12 can begin talking about the case, but not until then.

13 Now, the verdict form has count one, count two, and
14 count three. The indictments will stay in here. Count
15 one, it shows the offense of armed robbery, you've got
16 three choices, not guilty, guilty of armed robbery, guilty
17 of robbery. As to the kidnapping, same thing, not guilty,
18 guilty. As to assault and battery first, not guilty or
19 guilty. It's just there's a lesser included in the
20 offense up here. And you'll sign and date there.

21 Now, if y'all begin your deliberations -- and, like I
22 say, y'all will have the evidence in there. My guess is
23 you may want to see the video again.

24 Do we have the availability of a DVD player in the
25 jury room, or do we have to bring them back in the

1 courtroom?

2 THE BAILIFF: We can bring it in the jury room, sir.

3 THE COURT: You can?

4 THE BAILIFF: Yes, sir.

5 THE COURT: Is that good with the lawyers?

6 MR. MOYER: I'm not sure they know how to work it --

7 THE COURT: I'm not either.

8 MR. MOYER: -- enough to get that going.

9 THE COURT: All right. What you need to know is if
10 you want to see the video -- and, you remember, they had
11 several cameras and that sort of thing -- write it down,
12 we'd like to see the video of the entire incident, or each
13 camera, or one camera, or the view of. Give me a little
14 description of it so that the lawyers and I can find it,
15 or Ms. Jenkins can direct -- because y'all can hear
16 testimony again of any of the witnesses. She has it all
17 recorded. We'd like to hear the testimony of the girl,
18 the -- whomever.

19 So if you need something replayed so you can re-see
20 it and review it -- because y'all will have questions like
21 I remember this witness saying this and so and so, or this
22 and so and so. Y'all are allowed to review it as much as
23 you like to clarify in reaching your verdict. So you're
24 not confined to the testimony one time through. Y'all can
25 hear it again.

1 So if you want to hear testimony again, write it
2 down, give it to Mr. Doherty. He'll bring it to me. The
3 lawyers, and Ms. Jenkins, and I will find it and get it
4 for you. If you want to see the video again, likewise,
5 we'll do the same thing. If you want to be instructed on
6 the law again, Judge, we didn't understand your charge on
7 the offense of. I'll be glad to reinstruct you.

8 I'm trying to think of what else. All right.
9 Another thing. Once you begin your deliberations --
10 where's my alternate? Right here still. I'll pull him
11 out as soon as y'all begin your deliberations. And then
12 y'all -- the 12 of y'all will be confined to do that.

13 Once you begin your deliberations, you'll continue
14 until you need a break. You're on your time then. So if
15 you need a break, if somebody wants to step outside and
16 get some fresh air, stop. All 12 of you have got to be
17 there to talk. So if somebody is in the restroom or
18 outside taking a break, it's your job to make certain the
19 deliberations stop. Because when you deliberate, everyone
20 has to be there. If you need a break, everybody take a
21 break. So everybody must be present to continue
22 deliberations.

23 All right. Those are my instructions. Step in the
24 jury room.

25 You're included. And once I'm clear out here and I

1 deliver the evidence, I'll pull you out.

2 Okay. So there you go.

3 (WHEREUPON, the jury was excused from open court at
4 approximately 11:37 a.m.)

5 THE COURT: All right. Any exceptions to the
6 instructions given to the jury by the State or the
7 Defense?

8 MR. GADDY: I do, Your Honor.

9 THE COURT: Okay. Let me hear you.

10 MR. GADDY: I request that the Court give a further
11 charge concerning the difference between the elements of
12 robbery and armed robbery.

13 And, also, an instruction that armed robbery is not
14 proven by a representation -- by a person committing a
15 robbery that that person has a gun when, in fact, the
16 person has used no gun or object -- if he's used no gun or
17 object. That would not constitute armed robbery.

18 THE COURT: All right. I was -- that was part of my
19 biggest concern is how to instruct that. And I thought
20 that I went over the elements of armed robbery very
21 specifically as to the taking away of goods by another
22 person with force and violence, and armed. And armed can
23 be either armed or representing something.

24 And then common law robbery, I thought, was
25 everything except the being armed. What I read was, In

1 order to prove robbery, the State must prove beyond a
2 reasonable doubt all the elements, which I've just
3 explained, except the State does not have to prove that
4 the Defendant was armed with a deadly weapon. That was my
5 instruction. And I believe that's accurate and consistent
6 with the law.

7 MR. MOYER: And I would, actually, ask for a little
8 more clarification on the issue as well. Because if he
9 doesn't have to be armed -- let me see how I can phrase
10 this? It's -- robbery would be all of the elements of
11 armed robbery, except whether he was armed -- or whether
12 he had a representation of a deadly weapon.

13 And to back up, when it was, initially, given, the
14 statute was read. But then when you went through the
15 elements, you talked about taking property away -- taking
16 property, carried away by violence or fear of violence.
17 And then fourth was armed with a deadly weapon.

18 And then the instruction further went on to say that
19 if you do not find the Defendant was armed, then you can
20 find him -- you may find -- you look at the element of
21 robbery. I would ask that you clarify to the jury that
22 if, at that point, that the further instruction about
23 there can be a representation of a weapon.

24 If the jury does not find that he's armed or that he
25 had a representation of a deadly weapon, then they should

1 move on to the issue of robbery. And I know that's the
2 standard charge that's been read. We -- I went through
3 this with Judge Miller once. And he brought the jury back
4 in and clarified that issue with the jury in that case.

5 But I just think that leads to confusion. Because
6 the statute is first read, and you read about the
7 representation of a weapon. Then when it goes through the
8 elements, it leaves that out. So I would just ask that
9 they be brought in and that be clarified.

10 THE COURT: All right. Anything else, Mr. Gaddy?

11 MR. GADDY: Well, it's my contention that even though
12 a defendant may represent that he has a gun or a weapon,
13 if, in fact, he does not have that weapon or any object
14 that can be deemed a deadly weapon, there's no proof of
15 armed robbery.

16 MR. MOYER: And just to further that point, Your
17 Honor. The statute, I think, speaks for itself. It says,
18 A representation of a deadly weapon. Then it says, Or any
19 object.

20 So a representation does not have to include an
21 object. As to -- I think if the jury found that all he
22 did was have a hand -- I mean, a hand can be a
23 representation. A representation just means, you know,
24 some mimicry [sic] of some type --

25 THE COURT: There used to be --

1 MR. GADDY: I don't agree with that.

2 THE COURT: There used to be an instruction that a
3 hand could be considered a deadly weapon, depending on how
4 it was used.

5 MR. MOYER: I mean, they wouldn't have put in "or an
6 object" if it didn't mean both. It would have just said
7 an object. So I don't think what Mr. Gaddy is asking for
8 is required.

9 However, I would ask that that other issue be --

10 MR. GADDY: It takes some object in addition to a
11 hand to have a -- to meet the elements of an armed
12 robbery.

13 THE COURT: I was always of the opinion -- and I
14 thought it was in the common law somewhere that a hand or
15 a fist could be considered a deadly weapon. I didn't
16 charge that, but -- because y'all have been arguing it
17 factually different. But I was of the opinion -- or it
18 was my belief that that was -- could be considered a
19 deadly weapon.

20 MR. MOYER: Yes. I mean, I've had that charge. I
21 had an armed robbery where, you know, a fist has been
22 considered a deadly weapon. A beating can be severe
23 enough that that can cause death.

24 So, you know, I think the statute is clear. It
25 doesn't require an object. It just requires some kind

1 of -- some action on the part of the Defendant that
2 indicates he has a deadly weapon. I think if he just
3 walked in with his hands in his pocket and said I have a
4 pistol or, you know, had his hands out, then maybe that
5 would not be enough. But there has to be some further
6 action. And, you know, a hand, an object, or whatever
7 could be considered --

8 THE COURT: All right. Well, this is what I'm going
9 to do. I'm going to bring them back in. And I'm going to
10 give the instruction on common law robbery first and say
11 the additional element for armed robbery is to be armed or
12 make a representation by actions or words that he was
13 armed.

14 MR. MOYER: Okay.

15 THE COURT: And that distinguishes it. I'm going to
16 go in reverse order of the original instruction.

17 MR. MOYER: I think that would be great.

18 THE COURT: That makes it more clear to me.

19 MR. MOYER: I think -- yeah. I agree.

20 THE COURT: All right. Bring the jury back in.

21 (WHEREUPON, the jury came into open court at
22 approximately 11:43 a.m.)

23 THE COURT: Folks, I'm going to try to clarify just
24 so we know the difference between a common law robbery,
25 also, known as a strong armed robbery -- it's the same

1 thing -- and an armed robbery. The elements are
2 different. I'm going to try to explain those to you. And
3 we'll do it in reverse order to, perhaps, make it easier.

4 Common law robbery or strong armed robbery is the
5 State must prove beyond a reasonable doubt that a
6 defendant took personal property from the person or
7 presence of another without that person's consent.
8 Property is in the presence of a person if it was within
9 that person's reach, inspection, or observation, or
10 control so that the person could, if not overcome by
11 violence or prevented by fear, retain possession of the
12 property.

13 The State must prove beyond a reasonable doubt that
14 the Defendant carried the property away with the intent to
15 deprive the owner or the possessor of the property
16 permanently, and to convert the property to the
17 Defendant's own use. The slightest removal of the
18 property or the complete possession of the property, even
19 for an instant by the Defendant, is sufficient to show a
20 taking and carrying away.

21 The taking and carrying away of the property must
22 have been done with violence or by putting the owner of
23 that property in fear of violence. That is a common law
24 robbery.

25 In addition to those three indictments -- elements

1 for common law robbery, in order to prove armed robbery,
2 the State must show that the person -- I'm sorry, the
3 State must prove beyond a reasonable doubt that the
4 Defendant was armed with a deadly weapon, or made a
5 representation by his actions or words that he was armed
6 with a deadly weapon.

7 A deadly weapon can be considered an article, an
8 instrument, or substance which is likely to cause great
9 bodily harm or death. Whether an instrument has been used
10 as a deadly weapon depends on the facts and circumstances
11 in the case. Examples of instruments are pistols,
12 shotguns, rifles, knives, dirks, knuckles, many such
13 examples. Ordinary objects may, also, be considered
14 weapons when the facts show that they've been used to
15 inflict serious bodily harm or death.

16 So that element that a person either was armed or
17 while alleging either by actions or words that he was
18 armed and making a representation that he had a deadly
19 weapon or an object presented as a deadly weapon is the
20 additional element between common law robbery and armed
21 robbery.

22 Is that sufficient?

23 MR. GADDY: Well, I --

24 THE COURT: No. I don't want --

25 MR. GADDY: I just --

1 THE COURT: No, no. Stop. I don't want your
2 argument in front of the jury.

3 MR. GADDY: Okay.

4 THE COURT: All right. Y'all step out. I think I've
5 got it right.

6 (WHEREUPON, the jury was excused from open court at
7 approximately 11:47 a.m.)

8 THE COURT: Now, Mr. Gaddy, the record is yours.

9 MR. GADDY: Okay. I object to that part of the
10 instruction which says that a representation by a
11 defendant committing a robbery that he has a gun --

12 THE COURT: And I, also --

13 MR. GADDY: -- or an --

14 THE COURT: -- said --

15 MR. GADDY: -- object.

16 THE COURT: And I said that. I said a gun or object.
17 I said both.

18 MR. GADDY: If he doesn't have one, it's not -- an
19 element of armed robbery has not been proven.

20 THE COURT: I'm not going to give that last clause
21 you want me to give. I'm not going to do it. I don't
22 think that's the law.

23 MR. GADDY: Well, I understood Your Honor to say that
24 a representation -- and this is what the Solicitor
25 contends. I understood Your Honor to say that a

1 representation by a robber that he has a gun is sufficient
2 to prove armed robbery. And I object to that.

3 THE COURT: All right. I think I gave a more broad
4 and conclusive instruction on what -- a person who was
5 either armed with a deadly weapon, or while alleging by
6 actions or words that he was armed with a deadly weapon or
7 object during the commission of the robbery. I think
8 those were my words. And I think that's consistent with
9 the statute.

10 All right. Unless the jury asks for additional
11 instructions on that, I'm not going to give any more to
12 that end. I understand your objection as to the
13 antithesis comment to that. I understand your request,
14 but I'm not going to give it.

15 Will y'all inventory the evidence with Ms. Jenkins
16 and make certain it's complete? And then we'll submit the
17 verdict form to the jury.

18 And find out if the jury wants --

19 THE BAILIFF: That's what I was going to ask you,
20 Your Honor.

21 THE COURT: -- for us to feed them.

22 (Pause.)

23 MR. MOYER: We're fine, Judge, with the evidence.

24 THE COURT: Have y'all got it right?

25 MR. MOYER: Yes, sir.

1 MR. GADDY: Yes.

2 THE COURT: The court reporter tells me she's good,
3 then I'm ready for you to deliver it.

4 Deal with lunch and then come and get the evidence.

5 THE BAILIFF: I can take care of both at the same
6 time.

7 THE COURT: All right. Go ahead. I'll take you on
8 your word.

9 We'll stand at ease.

10 (WHEREUPON, the proceedings were recessed at
11 approximately 11:51 a.m.)

12 QUESTIONS FROM THE JURY

13 THE COURT: Y'all, I trust, have reviewed the jury's
14 request to see the videos.

15 MR. MOYER: They want to see the videos? Is that --

16 THE COURT: Yes. I thought y'all had read their
17 note. All they want to see is the videos with the
18 Defendant present.

19 MR. MOYER: Okay.

20 THE COURT: So it was real simple. It was just,
21 Please show the videos. I assume not the one going out
22 the back door.

23 MR. MOYER: Okay.

24 THE COURT: But the other ones. That's what I read.
25 Y'all can read the note. That's how I read it.

1 So we need to queue up those.

2 Can you do it pretty quick?

3 MR. MOYER: Yes, sir.

4 THE COURT: Bring them in.

5 MR. MOYER: We'll need to -- they need to bring the
6 video disk with them.

7 THE COURT: Yes. Bring the disk with them.

8 THE BAILIFF: I'll bring the CD, sir.

9 THE COURT: Okay. Thank you.

10 (WHEREUPON, Court's Exhibit No. 1 was marked for
11 identification and admitted into evidence.)

12 (WHEREUPON, the jury came into open court at
13 approximately 12:28 p.m.)

14 THE COURT: Folks, we'll play the videos for you. As
15 I understand it, it's the videos from inside the store,
16 not the one in the back room. So all of them but the back
17 room video.

18 Mr. Moyer, if you'll play those.

19 MR. MOYER: Yes, sir.

20 THE COURT: Mr. Brown, if you'd like any part of it
21 stopped, backed up, and replayed, please, tell us.

22 (WHEREUPON, a portion of State's Exhibit No. 3 was
23 played in open court.)

24 THE COURT: Mr. Brown, do you want to see any of them
25 again?

1 JUROR #25, BENJAMIN BROWN: (Juror #25, Benjamin
2 Brown, shook his head.)

3 THE COURT: All right. Lunch should be here shortly.
4 When you get lunch, if y'all want to stop deliberations --
5 y'all are on y'all's time now. Okay. But, remember, if
6 somebody steps out or is in the bathroom, y'all stop.

7 (WHEREUPON, the jury was excused from open court at
8 approximately 12:40 p.m.)

9 THE COURT: Mr. Moyer.

10 MR. MOYER: Judge, did you want to send this video
11 back with them, or leave it out here?

12 THE COURT: Just leave it out here, unless they've
13 got really good eyes.

14 All right. We'll stand at ease.

15 (WHEREUPON, the proceedings were recessed at
16 approximately 12:40 p.m.)

17 (WHEREUPON, Court's Exhibit No. 2 was marked for
18 identification and admitted into evidence.)

19 THE COURT: The jury has just sent out a note and
20 they want the definition of what kidnapping is. I'll cut
21 it out of the charge to give them the definition.

22 MR. MOYER: Sounds good to me.

23 THE COURT: And I'll let y'all see it before we give
24 it to them.

25 MR. GADDY: Yeah. That's fine.

1 (Pause.)

2 THE COURT: This is my kidnapping instruction that I
3 give.

4 MR. MOYER: Looks good to me.

5 MR. GADDY: Well, I'd like to object, but I'm afraid
6 it's an accurate statement.

7 THE COURT: Well, I just -- what part of it is
8 inaccurate?

9 MR. GADDY: I said I'm afraid it's accurate.

10 THE COURT: Oh, okay. I feel better about your
11 comment. I understand your objection. This is what I
12 read verbatim. And I'm -- we've placed it on a
13 page-and-a-half document to be marked as Court's Exhibit
14 No. 3. And I will have this handed to the Foreperson.

15 We'll be in recess.

16 (WHEREUPON, Court's Exhibit No. 3 was marked for
17 identification and admitted into evidence.)

18 (WHEREUPON, the proceedings were recessed at
19 approximately 1:22 p.m.)

20 (WHEREUPON, Court's Exhibit No. 4 was marked for
21 identification and admitted into evidence.)

22 THE COURT: The jury wants to see the videos in the
23 jury room.

24 Bring Mr. Brown in the courtroom.

25 THE BAILIFF: Yes, sir.

1 (WHEREUPON, Juror #25, Benjamin Brown, entered the
2 courtroom.)

3 THE COURT: All right. Mr. Brown, come here. I try
4 to do everything on the record, so I have a copy of what
5 our discussion is.

6 We have a video player on that computer. Are you
7 comfortable running it, or do you want me to send someone
8 back there to help operate it that's not part of the case?

9 JUROR #25, BENJAMIN BROWN: There's a gentleman in
10 there that said he's comfortable with it.

11 THE COURT: All right. Well, the videos are one, two
12 and nine. What I'll do is, we'll send that back with you.
13 The video player is cued up. And the list of the files
14 with the cameras are there. If you get to a point you
15 can't do it, ask Mr. Doherty. And we'll come back and
16 we'll give you a tutorial, perhaps, or send me the
17 computer guy back out.

18 MR. MOYER: Can I show him one thing?

19 THE COURT: Yes.

20 MR. MOYER: Like once the video is queued up, always
21 hit this water mark. And then to watch another video,
22 just open the file here. And that brings it back to the
23 screen again. And then you can go to here. And then,
24 once again, you can move on to another one.

25 JUROR #25, BENJAMIN BROWN: Okay.

1 THE COURT: Very good. Let me know if you need
2 something else. Or if you have a computer problem, send
3 me the computer guy out.

4 (WHEREUPON, Juror #25, Benjamin Brown, exited the
5 courtroom.)

6 THE COURT: We'll be at ease.

7 (WHEREUPON, the proceedings were recessed at
8 approximately 2:09 p.m.)

9 (WHEREUPON, Court's Exhibit No. 5 was marked for
10 identification and admitted into evidence.)

11 THE COURT: The jury wants to hear the testimony of
12 Ms. Wilkinson. And we've got that ready to play for them.
13 Bring the jury in.

14 (WHEREUPON, the jury came into open court at
15 approximately 2:39 p.m.)

16 THE COURT: Mr. Brown, so y'all understand, we've got
17 the audio recording and we're going to replay it for you,
18 the testimony of Ms. Wilkinson.

19 I was speaking to Ms. Jenkins and she told me that
20 she had the recording going on. And then there was some
21 video played during the testimony and there's a blank
22 spot. So when we get to that blank spot, she's going to
23 try to advance it and not go too far. So just bear with
24 her. She's not hiding anything from you or not playing
25 the full amount. But when nobody is talking, we want to

1 skip that part, I trust. So that's what she's going to
2 attempt to do.

3 All right. Ms. Jenkins, when you're ready.

4 (WHEREUPON, the testimony of Brenda Wilkinson was
5 played in open court.)

6 THE COURT: Okay. That's the testimony. Step back
7 in the jury room. And let me know if you need something
8 else.

9 (WHEREUPON, the jury was excused from open court at
10 approximately 3:07 p.m.)

11 THE COURT: All right. Folks we'll stand at ease.

12 (WHEREUPON the proceedings were recessed at
13 approximately 3:08 p.m.)

14 THE COURT: I've been informed that the jury has a
15 verdict.

16 Bring the jury in.

17 (WHEREUPON, the jury came into open court at
18 approximately 3:25 p.m.)

19 THE COURT: Mr. Brown, have y'all reached a verdict?

20 JUROR #25, BENJAMIN BROWN: Yes, sir.

21 THE COURT: Was it unanimous?

22 JUROR #25, BENJAMIN BROWN: Yes, sir.

23 THE COURT: All right. Hand it to Mr. Doherty,
24 please.

25 Madam Clerk, will you publish the verdict?

VERDICT

1
2 THE CLERK: Your Honor, this is case
3 #2012-GS-23-10568; 10569; and 0087A, we, the jury, find
4 the -- the State of South Carolina v. Ronald Downs, Jr.,
5 Defendant. We, the jury, find the -- find as follows:
6 Count one, armed robbery, we the -- we find the Defendant
7 guilty of armed robbery. Count two, kidnapping, we the
8 Defendant -- we find the Defendant, Ronald Downs, Jr., not
9 guilty. Count three, assault and battery in the first
10 degree, we find the Defendant, Ronald Downs, Jr., guilty,
11 signed the Foreperson, Benjamin Brown.

12 If this is --

13 THE COURT: All right. Any issue --

14 MR. GADDY: Your Honor, can I see the jury page?

15 THE COURT: You may.

16 (Pause.)

17 MR. GADDY: Thank you.

18 THE COURT: Any issue for the jury by either party?

19 MR. MOYER: Not from the State, Your Honor.

20 THE COURT: Mr. Gaddy, any issue for the jury?

21 MR. GADDY: Nothing for the jury.

22 THE COURT: All right. Mr. Brown, y'all step back in
23 the jury room and I'll come back and speak to y'all
24 momentarily.

25 And thank you for your service.

1 (WHEREUPON, the jury was excused from open court at
2 approximately 3:34 p.m.)

3 THE COURT: All right. Mr. Moyer, are you prepared
4 for sentencing?

5 MR. MOYER: We're ready, Judge.

6 THE COURT: Mr. Gaddy?

7 MR. GADDY: We're ready.

8 THE COURT: All right. Come on up.

9 Mr. Moyer, tell me the prior record of Mr. Downs. I
10 heard all the facts in -- of the two charges of the
11 convictions, so you don't need to go into that. But tell
12 me the -- any substantial prior record he has.

13 MR. MOYER: Your Honor, he does not have a criminal
14 history yet -- no -- he has no convictions at this time.
15 I will tell the Court he has about eight other armed
16 robberies that are pending --

17 MR. GADDY: Your Honor, I think that's illegal
18 information. That's improper information for him to tell
19 the Court. He's telling about arrest warrants. There's
20 no convictions. He hasn't gone to trial.

21 MR. MOYER: And there's nothing improper about that,
22 Judge. Your Honor has discretion -- has wide discretion
23 in sentencing. I'm not offering them as convictions yet.
24 I'm just telling -- I'm informing the Court of the
25 Defendant's arrest history. These are cases that are

1 still pending.

2 MR. GADDY: I think that's improper and prejudicial
3 information.

4 THE COURT: Well, I --

5 MR. GADDY: I know we can strike it. But it is --

6 THE COURT: I think the Court is tasked with the
7 ability to disregard any information he's not supposed to
8 consider in sentencing. But I think that's allowable
9 information. Certainly, I could use it as a prior
10 conviction or any type of -- for sentence enhancement
11 purposes. I wouldn't do that. But I think it's proper
12 for the Court to understand that.

13 MR. MOYER: He was arrested in November of 2011 for
14 one count of armed robbery. He was released on bond. And
15 then in May of 2012, he was arrested for about six counts
16 of armed robbery. He was released on bond. And then he
17 was --

18 MR. GADDY: Your Honor, I think for him to talk about
19 arrests is absolutely improper and prejudicial to the
20 Defendant.

21 THE COURT: Well, it's in front of the Court. I
22 mean, it's okay. If it was in front of the jury, that's
23 one thing. But it's not -- I don't believe that's
24 prejudicial to be told to the presiding court. I can't
25 see that.

1 MR. MOYER: And I just was going to add. Then he was
2 arrested on this charge when he was out on bond the second
3 time. And this case was brought first, even though it was
4 his most recent arrest. It was because of the strength of
5 the case. And so I just wanted to inform the Court of
6 that.

7 THE COURT: All right. Now, since this was the most
8 recent arrest, how many days has he served to date on this
9 charge?

10 MR. GADDY: He's been confined since the day --

11 MR. MOYER: Since the date this happened, October --

12 MR. GADDY: -- of this incident, October 11 of last
13 year.

14 MR. MOYER: Yes, sir. And I can add up the days, if
15 you would like.

16 THE COURT: So it would appropriate for him to get
17 credit for the days since October 11th of 2012.

18 MR. MOYER: Yes, sir.

19 THE COURT: All right. Mr. Gaddy, let me hear from
20 you. I want to hear the mitigating facts.

21 MR. GADDY: Well, Your Honor, the Defendant is
22 19 years old. This is his first conviction. We ask that
23 the Court be as lenient as possible. I make that
24 comment -- that request on behalf of his family and the
25 Defendant that the Court be as lenient as possible.

1 THE COURT: Mr. Downs, anything you want to tell me?

2 DEFENDANT DOWNS: (There was no response.)

3 THE COURT: You don't have to. I mean, if you like,
4 you may. I'll be happy to consider anything you say.

5 DEFENDANT DOWNS: As far as this?

6 THE COURT: Yes.

7 DEFENDANT DOWNS: To my family or you?

8 THE COURT: To me.

9 You can say anything you want to your family. But
10 for purposes of sentencing, I don't mind and I'm glad to
11 take into consideration anything you say.

12 DEFENDANT DOWNS: (There was no response.)

13 THE COURT: You don't have to.

14 MR. MOYER: May it please the Court.

15 THE COURT: Yes, sir.

16 MR. MOYER: I just want to say the victim -- as you
17 know, the victim is here. She does not wish to address
18 the Court at this time as to sentencing.

19 I would just like to add that I know Your Honor heard
20 the case and saw the video. And just on behalf of the
21 State, I would just remark that this is -- this was as
22 brutal and vicious an armed robbery as you can get. I
23 think -- well, it was very close to it. It was a very
24 brutal and vicious attack on Ms. Wilkinson. And the State
25 would ask for the maximum sentence.

SENTENCING

1
2 THE COURT: All right. Considering the trial, and
3 the facts, and the video, and the violence observed by the
4 Court, the sentence of the Court is, on the assault and
5 battery first, 10 years. Credit for days since October
6 11th, 2012. That sentence will run concurrent to the
7 sentence on indictment 10569. The sentence of the Court
8 is he be confined for a term of 25 years. Credit for the
9 days since October 11th, 2012.

10 Okay. Good luck.

11 *****END OF TRANSCRIPT OF RECORD*****
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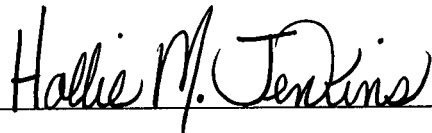
CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

I, HOLLIE JENKINS, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of the proceedings had and the evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Greenville County, South Carolina, on the 14th and 15th days of August, 2013.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

July 21, 2014



Hollie M. Jenkins, Court Reporter

My Commission Expires: 09/24/20

FORM 5

STATE OF SOUTH CAROLINA)

County of GREENVILLE)

RONALD TYRONE DOWNS, JR #356640)

Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

2014-CP-23- 02474

APPLICATION FOR

POST-CONVICTION RELIEF

FILED IN COURT OF COMMON PLEAS
GREENVILLE COUNTY, S.C.
PAUL B. ...
2014 MAY 9 PM 9 42

ENTERED COMPUTER

INSTRUCTIONS B 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 Lee Correctional Institution 990 Wisacky Highway
Bishopville, South Carolina 29010

2. Name and location of Court which imposed sentence Greenville County Court Of
General Sessions

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) Armed Robbery (2012-GS-23-10569)

(b) Assault & Battery 1st Degree (2013-GS-23-00087 A)

(c) _____

5. The date upon which sentence was imposed and the terms of the sentence:

(a) August 15, 2013 25 years concurrent

(b) August 15, 2013 10 years concurrent

(c) _____

6. Check whether a finding of guilty was made:

(a) after a plea of guilty (Yes)

(b) after a plea of not guilty _____

(c) after a plea of nolo contendere _____

7. Did you appeal from the judgment of conviction or the imposition of sentence?

(NO)

8. If you answered Ayes@ to (7), list:

(a) the name of each Court to which you appealed:

i. _____

ii. _____

iii. _____

(b) the result in each such Court to which you appealed:

i. _____

ii. _____

iii. _____

(c) the date of each such result:

i. _____

ii. _____

iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. _____

ii. _____

iii. _____

9. If you answered Ano@ to (7), state your reasons for not so appealing:

(a) Trial Attorney refused and failed to file Notice Of Appeal.

(b) Attorney failed to consult & inform me of my Appeal Rights.

(c) _____

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(a) Ineffective Assistance Of Counsel during plea negotiations.,

(b) Ineffective Assistance Of Counsel During Trial & Post Trial Procedures.,

(c) _____

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

(a) See Attached Page which list supporting facts:

(b) See Attached Page which list supporting facts:

(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)? None

(d) any other petitions, motions or applications in this or any other Court? NO

13. If you answered Ayes@ to any part of (12), list with respect to each petition, motion or application:

(a) the specific nature thereof:

i. _____

ii. _____

iii. _____

iv. _____

(b) the name and location of the Court in which each was filed:

i. _____

ii. _____

iii. _____

(ATTACHED PAGE ONE)

****Continued from page 3 , question 11 (a,b) of PCR Application****

Question 10(a) Ineffective Assistance Of Counsel During Plea negotiation and proceedings.

11(A) Supporting Facts: The Greenville County Assistant Solicitor handling my case offered a plea bargain for 15 years., My trial attorney advised me not to accept the plea bargain. Trial Attorney erroneously informed me that I could not be found guilty of armed robbery because the victim nor the video saw or shows a gun...

I, the applicant, acted on Attorney's erroneous advise and proceeded to trial, but for Attorneys erroneous advise, and an accurate understanding of the law as defined by the statute of armed robbery, I would have accepted the 15 year plea bargain.,

NOTE: The facts listed above are further supported by the trial transcript, where my trial lawyer throughout the trial, closing arguments and motions argue to jury and judge that he does not believe there is any evidence of my having a gun and therefore, I cannot be found guilty of Armed Robbery.,

There is also an eye witness who was present when Attorney told me I could not be found guilty of Armed Robbery because noone ever saw a gun., The Witness is my Grandmother, who will be present at Post Conviction Relief Hearing to testify to this fact.

PREJUDICE: The Applicant Loss the benefit of recieving a 15 year sentence, instead of the 25 year sentence he is currently serving.,

+Supporting Legal Authorities: The United States Supreme Court has made it clear that defendant's are entitled to effective assistance of counsel during plea bargaining stages, because it is a critical stage., Missouri v. Frye, 132 S.Ct. 1399 & Lafler v. Cooper 132 S.Ct. 1376 (2012).

The Court went on to say, The sixth amendment right to effective assistance of counsel extends to the consideration of plea offers that lapse or are rejected. The right extends to 'all' critical stages of the proceedings. Montejo v. Louisiana, 556 U.S. 778, 129 S.Ct. 2079.

**SEE Attached Sworn Supporting Affidavit* →

continued from question 10(B), Ineffective Assistance Of Counsel during pretrial, trial, and post trial proceedings:

11(B) Supporting facts: Trial counsel never informed or consulted with applicant regarding his rights to appeal prior, during, or after trial when he was found guilty., The Applicant did not find out he could appeal the jury guilty verdict until he got to jail about a week later., Applicant, then contacted his grandmother and had her contact attorney and inform him that applicant wanted to appeal his conviction., The trial Attorney told grandmother that he could-

continued on next attached page

(Attached Page Two)

(Continued from attached page one)

appeal the decision, but it would cost them a lot of money and she would have to pay him up front..... The Trial Attorney was ineffective for failing to inform my grandmother if she did not have the money to pay him, that he could file a 'Notice Of Appeal', free of charge and have the Office Of Appellate Defense represent Applicant on Appeal free of charge., All of these events took place within the time allowed for the Notice Of Appeal to be timely filed...

***When the jury guilty verdict was read out in court room, Applicant asked trial attorney was there anything they could do, and attorney stated, 'No'. This was an opportunity for trial counsel to inform applicant of his appeal rights and from the question, Attorney should have known applicant would want to appeal. and, then when, the applicant's grandmother talk with attorney approximately 5 days later about an appeal, Attorney should have known applicant wanted an appeal and atleast filed a Notice Of Appeal and turned the matter over to the office of Appellate Defense.

Note: The Applicant's grandmother will testify to the above facts at the Post Conviction Relief Hearing to further support this allegation.

Supporting legal authorities: See: Roe v. Flores-Ortega, 528 U.S. 470, 120 S.Ct. 1029 (2000). See: White v. State, 208 SE 2d. 35; Nelson v. Peyton, 415 F2d 1154, Shiflett v. Virginia 447 F2d.50 : Frazer f3d. 696.....

PREJUDICE: If applicant had been made aware of his right to appeal the day the jury found him guilty, applicant would have vehemently demanded trial counsel file appeal. (2). Once Applicant discovered within the week that he could have an appeal filed, he sent his grandmother to tell attorney to file appeal, which attorney did not nor file Notice Of Appeal as required., It denied applicant his rights to appeal., Further, If Applicant would have known Attorney could have filed Notice Of Appeal and turn the matter over to Office Of Appellate Defense, Applicant would have vehemently demanded such.,

For the record, Applicant has never voluntarily, intelligently, or knowingly waived his right to Appeal conviction...

-----**** SEE Attached Supporting Affidavit ****----->

VERY IMPORTANT NOTICE: The Applicant is a layman in matters of the law and legal proceedings such as these., therefore, please be advised there are 'Three Additional Grounds Of Ineffective Assistance Of Counsel', which need and will be amended, once the trial transcript, has been prepared and provided., because the burden of proof will be on the Applicant to prove his allegations and all allegations must be included in this initial PCR Application and proceedings, the Applicant, WILL NEED, the trial transcript so he can review it, and "AMEND" the other three allegations, referencing portions from the trial transcript to support and meet his burden of proof, as required.

Therefore, Take Notice, This Application is to be left Open for 'Amendments' Applicant also request appointment of counsel.....

iv. _____

(c) the disposition thereof:

i. _____

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. _____

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?

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i. _____

ii. _____

iii. _____

(b) the proceedings in which each ground was raised:

i. _____

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) State Statutes require these Ineffective Assistance claims are to be presented-
- (b) -initially in Post Conviction Proceedings, which I am now presenting them, any
- (c) other remedy would be improper and barred.
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? _____
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? _____
18. If you answered Ayes@ to one or more parts of (17), list:
- (a) the name and address of each attorney who represented you:
- i. _____
- ii. Clifford F. Gaddy, Jr. 408 North Church Street, Suite B Greenville, South Carolina 29601-2149 (Represented at Trial & Sentencing)
- iii. _____
- (b) the proceedings at which each such attorney represented you:
- i. _____
- ii. Clifford F. Gaddy, Jr. (Represented at Trial & Sentencing)
- iii. _____

19. State clearly the relief you seek in filing this application: ~~Granted A Belated Direct Appeal And- Or-~~
-That Court would 'Order' Applicant recieve a New Trial or that
Applicant's Conviction be vacated and Applicant be allowed to
Recieve and plead to the initial 15 year plea bargain... or Belated Appeal.
20. Are you now under sentence from any other court that you have not challenged?
Yes, And Applicant will be challenging that conviction within the
-next few month via Post Conviction Relief Proceedings.

Revised 3/2003

STATE OF SOUTH CAROLINA)
)
 County of Bishopville)

VERIFICATION

I, Donald Tyrone Downs Jr., 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.

Donald Tyrone Downs Jr.

SWORN to and subscribed before me this 15
 day of April 2014.

Debra Swales (L.S.)
 Notary Public

My Commission Expires: 11-4-2015

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, _____, 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.

Thomas D. Grooms
Applicant

SWORN or affirmed to and subscribed before me this

15 day of April, 2014.

Debra Sims
Notary Public

My Commission Expires: 11-4-2015

STATE OF SOUTH CAROLINA)
 County Of Greenville)

IN THE COURT OF COMMON PLEAS

Ronald Tyrone Downs, Jr., #356640) Case Number: _____
 Applicant,)
)
 -versus-) 'Sworn Affidavit In Support Of
 State Of South Carolina) Application For Post Conviction
 Respondent,) Relief'

PERSONALLY, APPEARED BEFORE ME, Ronald Tyrone Downs, who being first duly sworn deposes and states that the following is true and accurate to the best of his knowledge and so swears under penalty of perjury that:

(1). That, I, Ronald Tyrone Downs am the applicant in the above captioned case, which are Post Conviction Proceedings.,

(2). That my Trial Attorney Clifford F. Gaddy, Jr never informed me of my Right to appeal my August 15, 2013 convictions, nor was I aware that I had a right to appeal at the end of my trial and had I known I had such right at the end of my trial. I would have demanded an appeal be filed on my behalf.... It was not until I got back to jail that I found out from other inmates that I could appeal., Upon finding out, I, immediately, contacted my grandmother who then immediately contacted my trial Attorney informing him that I wanted an appeal., this all took place within a matter of 5-7 days after my trial, therefore, my trial attorney could have filed the Notice Of Intent To Appeal timely.

(3) I never knowingly, voluntarily, or intelligently waived my rights to Direct appeal nor would I have ever waived my rights to Direct Appeal,.

(4) My Trial Attorney repeatedly informed me that he did not think I could be found guilty of armed robbery because the victim never saw a gun nor does the store video ever show a gun, therefore, he did not think I should take the 15 year plea offer,. Based on my attorney's advise, I rejected the plea offer.... But for attorney's erroneous advise I would have accepted the plea bargain because I could have

(continued from page one of sworn affidavit)

gotton 15 years instead of the 25 I recieved after trial. The reason I believe attorney was ineffective because the statute and clearly established case law existed at the time of my trial which made it clear that by simply displaying a representation by gesture or verbally stating one has a gun, that an individual can be found guilty of armed robbery. For example: See: State v. Muldrow, Opinion Number 25414, filed February 11, 2002., But For Attorney failing to make me aware of all the elements and legal understandings, I would have accepted the 15 year plea bargain and pleaded guilty...

I, Ronald Tyrone Downs, hereby swear that all the above and fore-mentioned is accurate and true to the best of my knowlege and memory.

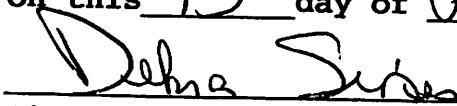
"Respectfully Submitted!"

_____.


 Ronald Tyrone Downs, Jr #356640

SWORN TO AND SUBSCRIBED Before Me

on this 15 day of April, 2014


 Signature Of Notary Public For S.C.

My commission expires: 11-4-2015.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	C.A. No. 2014-CP-23-2474
COUNTY OF GREENVILLE)	
)	
Ronald Tyrone Downs, Jr.,)	
S.C.D.C. No. 356640,)	
)	
Applicant,)	
	)	RETURN
v.)	
)	
State of South Carolina,)	
)	
Respondent.)	
_____)	

In response to the post-conviction relief application filed May 2, 2014, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Greenville County Clerk of Court's orders of commitment. The Greenville County Grand Jury indicted the Applicant at the January 2013 term of General Sessions for kidnapping (2012-GS-23-10568), armed robbery (2012-GS-23-10569) and first-degree assault and battery (2013-GS-23-0087A). Clifford F. Gaddy, Jr., Esquire represented the Applicant.

After the State called the case to trial, the Applicant was found guilty of armed robbery and first-degree assault and battery. On August 15, 2013, the Honorable Eugene C. Griffith sentenced the Applicant to concurrent terms of 25 years for armed robbery and 10 years for first-degree assault and battery. The Applicant did not appeal.

Attached herewith and incorporated herein by reference are the records of the Greenville County Clerk of Court regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, and the trial transcript.

II.

In his application for post-conviction relief, the Applicant alleges he is being held in custody unlawfully for the following reason:

1. Ineffective assistance of counsel.
 - a. Erroneously advised the Applicant not to accept a 15-year plea offer.
 - b. Failed to consult with the Applicant about his right to appeal.

III.

The Respondent asserts the Applicant's allegation that his attorney was ineffective is without merit. The Respondent asserts the Applicant's attorney rendered effective assistance well within the standard of "reasonableness within professional norms" for a defense attorney.

Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume counsel "rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Strickland, 466 U.S. at 690, 104 S. Ct. at 2066. The Applicant must overcome this presumption in order to receive relief. See Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove counsel's performance was deficient. Under this prong, attorney

performance is measured by its “reasonableness under prevailing professional norms.” Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688, 104 S. Ct. at 2065). Second, counsel’s deficient performance must have 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 of trial.” Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984)).

The Respondent submits the Applicant cannot satisfy either requirement of the Strickland v. Washington test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (citing Norman v. State, 276 S.C. 278, 277 S.E.2d 707 (1981)).

IV.

The Respondent denies each allegation not expressly admitted, qualified or explained.

V.

WHEREFORE, having made its Return, the Respondent requests that a hearing be held and counsel appointed to represent the Applicant.

Respectfully submitted,

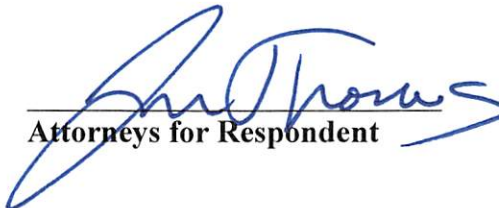
ALAN WILSON
Attorney General

JOHN W. MCINTOSH
Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

P.O. Box 11549
Columbia, S.C. 29211

By:


Attorneys for Respondent


Oct. 21, 2014

STATE OF SOUTH CAROLINA)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE)	
)	
	)	2014-CP-23-2474
)	
RONALD TYRONE DOWNS, JR., 356640)	
)	
Applicant,)	
)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
)	
STATE OF SOUTH CAROLINA,)	
)	
Respondent.)	
_____)	

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Ronald Tyrone Downs, Jr., 356640
Perry Correctional Institution
430 Oaklawn Road
Pelzer SC 29669

DATED this 21st day of October, 2014.


 Judy A. C. Carey, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)
)
 Ronald Tyrone Downs, Jr.,)
 S.C.D.C. No. 356640,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 C.A. No. 2014-CP-23-2474

FILED-CLERK OF COURT
 GREENVILLE CO. S.C.
 PAUL B. WICKENSIMMER
 2015 FEB 19 AM 11 34

ORDER OF DISMISSAL

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed May 2, 2014. The Respondent made its return on October 21, 2014. A hearing was held on February 19, 2015 at the Greenville County Courthouse. The Applicant was present and represented by Brian P. Johnson, Esquire. Karen C. Ratigan, Esquire of the South Carolina Office of the Attorney General represented the Respondent.

The Applicant testified on his own behalf at the PCR hearing. Also testifying was the Applicant's trial counsel, Clifford F. Gaddy, Jr., Esquire. The Court had before it the trial transcript, the Greenville County Clerk of Court records, the Applicant's South Carolina Department of Corrections records, the PCR application, and the return.

PROCEDURAL HISTORY

The Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Greenville County Clerk of Court. The Applicant was indicted at the January 2013 term of the Greenville County Grand Jury for kidnapping (2012-GS-23-10568), armed robbery (2012-GS-23-10569) and first-degree assault and battery (2013-GS-23-0087A). He was represented by Clifford F. Gaddy, Jr., Esquire.

After the State called the case to trial, the Applicant was found guilty of armed robbery and first-degree assault and battery. On August 15, 2013, the Honorable Eugene C. Griffith sentenced the Applicant to concurrent terms of 25 years for armed robbery and 10 years for first-degree assault and battery. The Applicant did not appeal.

ALLEGATIONS

In his application, the Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel.
 - a. Erroneously advised the Applicant not to accept a 15-year plea offer.
 - b. Failed to consult with the Applicant about his right to appeal.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record and has heard the testimony and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court has weighed the testimony accordingly. Set forth below are findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

Ineffective Assistance of Counsel

The Applicant alleges he received ineffective assistance of counsel. In a PCR action, “[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence.” Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002).

For an applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms. and (2) that he was prejudiced by his counsel’s ineffective

performance. See Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984); Porter v. State, 368 S.C. 378, 383, 629 S.E.2d 353, 356 (2006). In order to prove prejudice, an applicant must show “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Cherry v. State, 300 S.C. 115, 117-18, 386 S.E.2d 624, 625 (1989). “A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial.” Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052).

The Applicant stated he had three meetings with trial counsel before trial. The Applicant stated they discussed the case (but did not review discovery) and reviewed the two different plea offers. The Applicant stated trial counsel said not to accept the plea offers. The Applicant stated trial counsel stated that, as there was no weapon found, he would not be convicted of armed robbery. The Applicant stated if he had known the representation of a weapon was sufficient, he would have taken either the 10- or 15-year plea offer. The Applicant stated trial counsel said there was nothing they could do after the trial. The Applicant stated trial counsel subsequently sent him a letter in which he stated he did not file an appeal because the Applicant did not have the money to do so. The Applicant stated he would have asked for an appeal.

Trial counsel testified he filed discovery motions, received those materials, and reviewed them with the Applicant and his grandmother. Trial counsel testified he had at least four meetings with the Applicant. Trial counsel testified he explained the elements and sentence ranges of the charges to the Applicant. Trial counsel testified he explained the maximum sentence for armed robbery was 30 years and also explained the difference between armed robbery and strong arm robbery. Trial counsel testified there was no evidence the Applicant had a gun, so he brought this issue out at trial to persuade the jury this was not an armed robbery.

Trial counsel testified he conveyed the plea offers to the Applicant but did not make recommendations as to whether or not they should be accepted. Trial counsel testified the Applicant never explained why he rejected the plea offers. Trial counsel testified the Applicant was fairly uncooperative during his representation. Trial counsel testified the Applicant asked what could be done about his case after the verdict but that he was not aware of any grounds to appeal. Trial counsel testified he explained this (and that he did not believe their money would be well spent on an appeal) to the Applicant's grandmother and in the letter sent to the Applicant. Trial counsel testified he would have filed an appeal if the Applicant had requested it.

This Court finds the Applicant failed to meet his burden of proving trial counsel misadvised him about the elements of armed robbery. Trial counsel testified he explained the elements of the charges to the Applicant. Trial counsel testified he stated that if the evidence showed the Applicant represented by words or actions that he had a gun, it would be the same as if he had a gun. Trial counsel testified, however, that his strategy was to argue to the jury that there was no weapon in this case and thus it was not an armed robbery. This Court finds trial counsel's testimony is credible.¹ This Court notes trial counsel is an experienced attorney and finds he properly explained the elements of both armed robbery and strong arm robbery to the Applicant. This Court finds trial counsel articulated a valid strategy that he employed at trial. Where trial counsel articulates a valid reason for employing a certain strategy, such conduct should not be deemed ineffective assistance of counsel. Roseboro v. State, 317 S.C. 292, 294, 454 S.E.2d 312, 313 (1995). "Counsel's strategy will be reviewed under an objective standard of reasonableness." Huggler v. State, 360 S.C. 627, 633, 602 S.E.2d 753, 756 (2004) (citation

¹ As such, this Court does not find credible the Applicant's testimony that he would have taken one of the plea offers in this case if he had known a representation of a weapon was sufficient for an armed robbery conviction.

omitted). “Courts must be wary of second-guessing counsel’s trial tactics.” Whitehead v. State, 308 S.C. 119, 122, 417 S.E.2d 529, 531 (1992). This Court concludes the Applicant failed to meet his burden of proving trial counsel’s performance was deficient.

This Court finds the Applicant failed to meet his burden of proving he was entitled to a review of his direct appeal issues. The Applicant did not testify that he asked for an appeal to be filed on his behalf. Trial counsel testified, however, that he advised the Applicant he was not aware of any grounds to appeal but that he would have filed a notice of appeal if asked to do so. This Court finds trial counsel’s testimony is credible. This Court finds the Applicant was advised of the possibility of an appeal (though counsel believed it would have been fruitless) and chose not to pursue it. See Turner v. State, 380 S.C. 223, 224, 670 S.E.2d 373, 374 (2008) (“Following a trial, counsel is required to make certain the defendant is made fully aware of the right to appeal.”).

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that trial counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that trial counsel committed either errors or omissions in his representation of the Applicant. This Court also finds the Applicant has failed to prove the second prong of Strickland – that he was prejudiced by trial counsel’s performance. This Court concludes the Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. See Frasier v. State, 351 S.C. at 389, 570 S.E.2d at 174.

All Other Allegations

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this Order, this Court finds the Applicant failed to

present any testimony, argument, or evidence at the hearing regarding such allegations. Accordingly, this Court finds the Applicant has abandoned any such allegations.

CONCLUSION


Based on all the foregoing, this Court finds and concludes the Applicant has not established any constitutional violations or deprivations before or during his trial and sentencing proceedings. Counsel was not deficient and the Applicant was not prejudiced by counsel's representation. Therefore, this PCR application must be denied and dismissed with prejudice.

This Court advises the Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order if he wants to secure appropriate appellate review. His attention is also directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely filed.

IT IS THEREFORE ORDERED:

1. That the application for post-conviction relief be denied and dismissed with prejudice; and
2. That the Applicant be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 2nd day of March, 2015.



Daniel D. Hall
Presiding Judge
Thirteenth Judicial Circuit

York, South Carolina.

FORM 5

STATE OF SOUTH CAROLINA)
County of Greenville)
Ronald Downo #356640)
Full name and prison number (if any) of Applicant)

IN THE COURT OF COMMON PLEAS

2023-CP-23- 02199

2023 NOV 09 PM 1:28
PREF. MAIL PERMIT NO. 010000, SC

v.

State of South Carolina

APPLICATION FOR
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 Tallahatchie, Ms (SCDC)
2. Name and location of Court which imposed sentence Greenville County Court house, Greenville, S.C.
3. Name(s) of co-defendant(s) (if any) No
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) Armed Robbery (2012-GS-23-10569)
 - (b) Assault & Battery 1st Degree (2013-GS-23-00087A)

(c) _____

5. The date upon which sentence was imposed and the terms of the sentence:

(a) August 15, 2013 25 years

(b) _____

(c) _____

6. Check whether a finding of guilty was made:

(a) after a plea of guilty _____

(b) after a plea of not guilty _____

(c) after a plea of nolo contendere _____

7. Did you appeal from the judgment of conviction or the imposition of sentence?

No

8. If you answered "yes" to (7), list:

(a) the name of each Court to which you appealed:

i. _____

ii. _____

iii. _____

(b) the result in each such Court to which you appealed:

i. _____

ii. _____

iii. _____

(c) the date of each such result:

i. _____

ii. _____

iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. _____

ii. _____

iii. _____

9. If you answered "no" to (7), state your reasons for not so appealing:

(a) _____

(b) _____

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) _____
-
- (b) _____
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) _____
- (b) _____
- (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? _____
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? _____
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? _____
- (d) any other petitions, motions or applications in this or any other Court? _____
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. _____
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. _____
- ii. _____
- iii. _____
- iv. _____

(c) the disposition thereof:

- i. _____
- ii. _____
- iii. _____

iv. _____

(d) the date of each such disposition:

- i. _____
- ii. _____
- iii. _____
- iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. _____
- 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?

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

- i. _____
- ii. _____
- iii. _____

(b) the proceedings in which each ground was raised:

- i. _____
- 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) _____

(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? _____

(c) your sentencing? _____

(d) your appeal, if any, from the judgment of conviction or the imposition of sentence? _____

(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. _____

ii. _____

iii. _____

(b) the proceedings at which each such attorney represented you:

i. _____

ii. _____

iii. _____

APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF

I, Ronald Tyrone Downs Jr., 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.

Ronald Tyrone Downs Jr. RD
Applicant

SWORN or affirmed to and subscribed before me this

09 day of February, 2023.

[Signature]
Notary Public

My Commission Expires: 01/2024



19. State clearly the relief you seek in filing this application:

I wish to have a hearing pursuant to
Austin vs. State 305, S.C. 453

~~20. Are you now under sentence from any other court that you have not challenged?~~

No

STATE OF SOUTH CAROLINA)
County of Greenville)

VERIFICATION

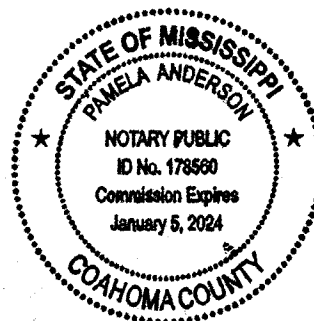
I, Donald Tyrone Downs Jr., being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Donald Tyrone Downs Jr. RD.

SWORN to and subscribed before me this 09
day of February, 2023

[Signature] (L.S.)
Notary Public

My Commission Expires: 01/2024



LAW OFFICE OF BRIAN P. JOHNSON, LLC

P. 864.331.1630
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www.brianpjohnsonlaw.com

522 North Church Street
Greenville, SC 29601
brian@brianpjohnsonlaw.com

April 30, 2015

VIA U.S. POSTAL ONLY

Ronald Tyrone Downs, Jr.
#356640
Perry Correctional Institute
430 Oaklawn Rd.
Pelzer, SC 29669

**Re: State of South Carolina vs. Ronald Tyrone Downs, Jr.
PCR Case No.: 2014-CP-23-02474**

Dear Mr. Downs:

I am writing regarding the above referenced action, specifically regarding your right to appeal the order dismissing your application for Post Conviction Relief ("Application").


On March 24, 2015, I wrote you notifying you that I would file an appeal on your behalf. On April 2, 2015, I spoke to Betty Downs who told me you wanted to file a 59(e) motion and would call me back with instructions. Therefore, I held off on filing the appeal. On April 30, 2015, Betty Downs contacted me asking to file an appeal. However, the time has passed for filing a timely appeal. I do not believe that I notified you or Ms. Down's that we had thirty (30) days to file an appeal.

★ Therefore, I am writing you to notify you of this fact, and to further advise you that you may be entitled to a belated appeal pursuant to *White v. State*, 263 S.C. 110, 208 S.E.2d 35 (1974). This case allows those who did not knowingly waive their right to appeal to file an application for Post Conviction Relief ("PCR") against their PCR Hearing counsel and request the relief of a belated appeal. I have enclosed a copy of *White v. State* for your review.

If you have any questions or concerns feel free to write me at the above address.

Thank you.

Sincerely,



Brian P. Johnson, Esquire

BPJ/lf

STATE OF SOUTH CAROLINA)
 COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS
 THIRTEENTH JUDICIAL CIRCUIT

Ronald Tyrone Downs Jr., #356640,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)
 _____)

Case No.: 2023-CP-23-2199

RETURN TO PCR APPLICATION
 (Hearing Requested)

Applicant, Ronald Tyrone Downs Jr., filed the captioned post-conviction relief (PCR) action on July 5, 2023. Respondent now makes this Return. Applicant seeks a belated appeal from his first PCR action pursuant to *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991). Respondent submits an evidentiary hearing is likely necessary to determine whether a belated appeal is warranted.

Relevant Procedural History

Applicant is currently being held in custody by SCDC at an out of state facility. A Greenville County grand jury indicted Applicant in January 2013 for kidnapping, armed robbery and first-degree assault and battery. Clifford F. Gaddy, Jr., Esq., represented him on the charges. A jury trial was held August 14-15, 2013. The jury found Applicant guilty of armed robbery and first-degree assault and battery but acquitted as to kidnapping. The Honorable Eugene C. Griffith sentenced him to concurrent terms of 25 years for armed robbery and 10 years for first-degree assault and battery. (Attachment 1). Applicant did not appeal.

Applicant filed his first PCR application on May 1, 2014. (Attachment 2). Brian P. Johnson, Esq., represented Applicant in the action. An evidentiary hearing was held on February

19, 2015, at the Greenville County Courthouse. Applicant and trial counsel testified at the hearing. On March 19, 2013, the application was denied and dismissed with prejudice. (Attachment 3). Applicant did not appeal.

Allegations

Applicant seeks a hearing to request a belated appeal pursuant to *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991).

Attachments

Respondent attaches, and incorporated by reference, the following:

1. Sentencing Sheets;
2. 2014 PCR Application;
3. 2014 PCR Action Order of Dismissal.

Discussion

“[C]ounsel is required to advise an applicant of the right to appellate review of the denial of PCR.” *Bray v. State*, 366 S.C. 137, 140, 620 S.E.2d 743, 745 (2005). “If an applicant represented by counsel desires to appeal, counsel shall serve and file a Notice of Appeal as required by Rule 243, SCACR....” Rule 71.1(g), SCRCPP. A PCR applicant is entitled to an *Austin* appeal if, after an evidentiary hearing on the matter, the PCR judge finds that applicant asked for appeal, but “was denied an opportunity to seek appellate review.” *Austin*, 305 S.C. at 454, 409 S.E.2d at 396. Applicant has the burden of showing “his entitlement to relief by a preponderance of the evidence.” Rule 71.1(e), SCRCPP.

Applicant has submitted with his application a letter from former PCR counsel. The letter reflects counsel did advise of the right to appeal. Even so, counsel did not recall advising of the time limit in seeking an appeal, and, ultimately, Applicant’s request to file a notice of

appeal was not timely made. Notably, the letter is dated April 30, 2015, and advises Applicant of the possibility of seeking a belated appeal. But in addition to the letter, the Court has before it the prior Order of Dismissal from March 2015. The order indicates that a notice of appeal must be filed within 30 days. (Attachment 3, at 6). Further, part of the prior PCR action was based on an allegation Applicant's trial counsel failed to consult about an appeal. (Attachment 3, at 5). This indicates he was aware that the right to appeal can be lost if not timely sought. Based on these items, Respondent submits that Applicant will not be able to carry his burden of proof. Further, this request was made 8 years after the date of counsel's letter. The action is not timely and likely barred by laches.

Because Applicant asserts an *Austin* claim, the statute of limitations, S.C. Code Ann. § 17-27-45(A), does not apply. *Whitehead v. State*, 352 S.C. 215, 219, 574 S.E.2d 200, 202 (2002) (citing *Odom v. State*, 337 S.C. 256, 523 S.E.2d 753 (1999)). However, the doctrine of *laches* may independently bar an action. *Id.*, at 220, 574 S.E.2d at 202. See also *Bray v. State*, 366 S.C. 137, 140, 620 S.E.2d 743, 745 (2005) (applying laches where applicant delayed seven years in seeking appellate review pursuant to *Austin*). *Laches* is, essentially, the failure to timely “‘assert a known right.’” *Whitehead*, at 219, 574 S.E.2d at 202 (quoting *Ex parte Stokes*, 256 S.C. 260, 182 S.E.2d 306 (1971)). “Whether a claim is barred by laches is to be determined in light of the facts of each case, taking into consideration whether the delay has worked injury, prejudice, or disadvantage to the other party; delay alone in assertion of a right does not constitute laches.” *Whitehead*, at 219, 574 S.E.2d at 202 (quoting *Hallums v. Hallums*, 296 S.C. 195, 198-199, 371 S.E.2d 525, 527 (1988)).

Respondent submits a hearing is necessary to fully develop evidence to demonstrate whether Applicant may carry his burden, and whether *laches* bars relief. *Bray, supra*.

Conclusion

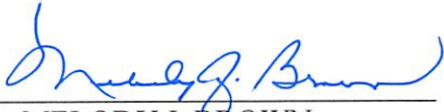
Based on the foregoing, Respondent requests an evidentiary hearing for the Court to review Applicant's *Austin* claim and the State's *laches* defense.

Respectfully submitted,

ALAN WILSON
Attorney General

DONALD J. ZELENKA
Deputy Attorney General

MELODY J. BROWN
Senior Assistant Deputy Attorney General
mbrown@scag.gov

By: 
MELODY J. BROWN

Office of the Attorney General
P.O. Box 11549
Columbia, South Carolina 29211-1549
(803) 734-6305

ATTORNEYS FOR RESPONDENT

February 28, 2024

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

Ronald T. Downs, Jr., #356640,)

C/A No.2023-CP-23-2199

Applicant,)

v.)

AFFIDVAIT OF SERVICE

State of South Carolina,)

Respondent.)

1. I am an employee for Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return to PCR Application**, in the above-captioned matter on the following by depositing same in the United States mail, postage prepaid:

Ronald Tyrone Downs, Jr., #356640
 Tallahatchie County Correctional Facility
 415 U.S. Highway 49 North
 Tutwiler, MS 38963

DATED this 28th day of February, 2024.



Angela Brown
Administrative Coordinator

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	2023-CP-23-02199
COUNTY OF GREENVILLE)	
)	
)	
)	
)	
RONALD TYRONE DOWNS, JR.,)	
APPLICANT,)	
)	
vs.	)	TRANSCRIPT OF RECORD
)	
STATE OF SOUTH CAROLINA,)	
RESPONDENT.)	
_____)	

October 9, 2024
Greenville, South Carolina

B E F O R E:

THE HONORABLE PATRICK CLEBURNE FANT, III, JUDGE

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

ISAAC L. JOHNSON, JR., ESQ.
Attorney for the Applicant

TOMMY EVANS, JR., ESQ.
Attorney for the Respondent

CHERYL A. SMITH
Circuit Court Reporter

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(AW) - Denotes Applicant's Witness
(RW) - Denotes Respondent's Witness

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Reporter's Note:

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EXHIBITS

<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EVD</u>
	(Applicant's Exhibits)		
1	Letter from Brian Johnson Dated 4/30/15	14	
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P R O C E E D I N G S

(WHEREUPON, proceedings commenced at 9:43 AM.)

MR. EVANS: This is Ronald Downs, Docket Number 2023-CP-23-2199. Mr. Downs is currently serving a sentence -- he filed a PCR motion in 2014. He had a hearing in 2015 and his PCR was dismissed. His allegations now is that he was not informed of his right to appeal so he should have this case -- this order from this court to give him a right to appeal since he wasn't notified of that right, Your Honor.

THE COURT: So there was an underlying -- an underlying case, I guess, with the original attorney Mr. Gaddy at the -- I guess the original hearing, and there was an appeal from that -- or I guess there was a PCR on failure to do an appeal on that case. So that was a belated appeal.

MR. EVANS: Right.

THE COURT: And then that's already gone through.

MR. EVANS: Right.

THE COURT: And then now we're here on a failure ---

MR. EVANS: His PCR counsel -- he's saying his PCR counsel didn't inform him of the right to appeal the PCR. And so that's why we're here, Your Honor.

THE COURT: Failed to appeal that. I thought that I read it correctly. I just wanted to be sure. So this is

1 a belated appeal pursuant to Austin vs. State.

2 MR. EVANS: Yes, sir.

3 THE COURT: Okay. Please proceed.

4 Did you call it? I'm sorry if you've already called
5 it out.

6 MR. EVANS: Yes, sir.

7 THE COURT: You did. That's right. I wrote it down
8 here. Okay.

9 Please proceed, Mr. Johnson.

10 MR. JOHNSON: Thank you. At this time, I'd call
11 Mr. Downs to the stand.

12 THE CLERK: Mr. Downs, please place your left hand
13 on the Bible and raise your right hand.

14 WHEREUPON,

15 RONALD DOWNS, JR.

16 After having been duly sworn, testified as follows:

17 THE CLERK: Thank you. You may be seated. And
18 please state your full name for the record.

19 THE WITNESS: Ronald Downs, 356640.

20 MR. JOHNSON: Judge, old habits are hard to break.
21 I've been a -- I was a federal prosecutor for a number of
22 years, state prosecutor. And I guess I have a tendency
23 to stand over near the jury box and close to my client.
24 I just wanted to make sure that ---

25 THE COURT: You stand wherever you need to.

1 MR. JOHNSON: If there's no objection.

2 MR. EVANS: No. No objection.

3 MR. JOHNSON: Okay. Appreciate that. Thank you.

4 THE COURT: We've got a court reporter today, so
5 it's not like we're trying to make these attorneys stand
6 in front of a microphone like we have to do when we're
7 doing all these other....

8 MR. JOHNSON: Sure.

9 DIRECT EXAMINATION

10 BY MR. JOHNSON:

11 Q Mr. Downs, how are you this morning?

12 A I'm doing fine, sir.

13 Q Good. And back in August of 2013, is it true, is it
14 correct that you were convicted of armed robbery and
15 first-degree assault and battery?

16 A Yes, sir, it is.

17 Q Do you recall what your sentence was on those
18 charges?

19 A Yes. It was 25 years on the armed robbery and it
20 was ten on the assault and battery. And it was ran
21 concurrent.

22 Q Concurrent?

23 A Yes.

24 Q Who was your attorney?

25 A Mr. Clifford Gaddy.

1 Q Gaddis?

2 A Gaddy -- Gaddy, Gaddy.

3 Q Gaddis. Okay.

4 Now, after you were convicted of these charges where
5 you got 25 years, did you ever talk to Mr. Gaddis about
6 an appeal?

7 A Well, I haven't spoke to him about an appeal, but
8 after, you know, the verdict had found me guilty, I asked
9 him is there anything we can do. And he was like no. So
10 from that point ---

11 Q Let me ask you this before you go any farther. You
12 said he said no. Did he explain to you why his answer or
13 his response was no?

14 A No, sir, he didn't.

15 Q After he told you no, what happened? What did you
16 do? Did you respond to that?

17 A Well, the only thing I could do that was in my poles
18 [phonetic] was contact my grandmother and, you know,
19 inform her to inform him that, you know, we need to go
20 over there and have an appeal. And ---

21 Q And this was regarding Mr. Gaddis?

22 A Yes, sir. Yes, sir.

23 And he told me -- what he told her, actually, and he
24 wrote me in a letter, he said he don't feel like there's
25 any grounds that we need to go on appeal. And he said

1 there wouldn't be no -- the money wouldn't be well spent.
2 So when he said that, then I didn't really know where to
3 go from there.

4 Q Now, regarding the appeal in that case, did
5 Mr. Gaddis ever tell you how much time you had to file an
6 appeal?

7 A No, sir. No, sir.

8 Q So you were unaware at that time how much time you
9 have to file an appeal.

10 A Yes, sir. I was unaware.

11 Q And that was in a setting of a jury trial where you
12 were convicted, correct?

13 A Yes, sir.

14 Q Not a PCR hearing.

15 A Yes, sir.

16 Q This was a jury trial.

17 A Yes, sir.

18 Q And you had some discussions with Mr. Gaddis, but
19 you were never informed as to how much time you had to
20 appeal that verdict.

21 A Yes, sir.

22 Q Okay. What is your max-out date?

23 A Last time I checked it was 2034. 2034.

24 Q And this is '24. Approximately ten years from now?

25 A Yes, sir.

1 Q How much time have you already served?

2 A Next year will be 13 years, sir.

3 Q You've served almost 13 years in prison.

4 A Yes, sir.

5 Q Now, in May of 2014, did you file an application for
6 a PCR hearing?

7 A May 2014? Yes, sir, I did.

8 Q And who was appointed to represent you?

9 A Brian P. Johnson.

10 Q After Mr. Johnson was appointed to represent you,
11 did you ever talk to Mr. Johnson?

12 A No. The only time I spoke with Mr. Johnson was the
13 day of my hearing.

14 Q The day of the PCR hearing?

15 A The day of my PCR hearing.

16 Q Let me ask you this. So you never spoke with him in
17 person.

18 A No. Never.

19 Q You never spoke with him on the phone.

20 A Never.

21 Q Did he write you?

22 A I have received maybe ---

23 Q Prior to the hearing, now. Prior to the hearing.

24 A Prior to the hearing, the only thing that he wrote
25 me was to inform me of, you know, that I'm not going to

1 be -- when I was going to be on the court docket and
2 things of that nature, like, you know, him not receiving
3 my PCR transcripts and things of that nature. But other
4 than that, no, that's the only thing he wrote me about.

5 Q So you never discussed the issues of your PCR --
6 your PCR, your allegations of ineffectiveness, anything
7 of that nature prior to the date you appeared in court.

8 A No, sir.

9 Q Do you recall when the PCR hearing was actually
10 held?

11 A You know, this is my life so pretty -- pretty much
12 February 19, 2015.

13 Q And did you appear in court on that date?

14 A If I'm -- if I'm not mistaken, yes, sir.

15 Q On that date, did you speak with Mr. Brian -- prior
16 to being -- appearing in court, did you speak with
17 Mr. Johnson anytime during that day prior to you being in
18 court?

19 A When I came ---

20 Q Other than sitting right at that table.

21 A No, sir. Before I came in the courtroom, I spoke
22 with him between the glass.

23 Q Okay.

24 A And that was the first and the last -- that was my
25 first time actually seeing him and that was my last time

1 seeing him.

2 But when I spoke with him between the glass, you
3 know, I didn't even think we was ready then, you know. I
4 mean, that was my first time speaking to him about my
5 situation, I mean, the first he hearing about my
6 situation from my -- from my mouth. So, you know, that
7 was the first and last time I heard from him.

8 Q Did you make a request of him through that glass?

9 A Requesting?

10 Q What did you tell him?

11 A Oh, well, I told the man that I felt like I wasn't
12 prepared, you know, because I didn't -- you know, this
13 was my first time seeing him so I felt like I wasn't
14 prepared and I had requested him to -- you know, for a
15 continuance. I actually, you know, emphasized that to
16 him. And he told me that there's no need for me to have
17 a continuance because my lawyer, I was letting him know
18 the elements of armed robbery. And I also told him that
19 the reason that I needed a continuance is because I need
20 my grandmother present, you know, to -- to testify on my
21 behalf. And he still said we don't -- he don't think we
22 should need a continuance. So, you know, me taking his
23 advice, and, you know, I didn't know nothing. So I went
24 on ahead with -- with the process.

25 Q You went on ahead with the PCR hearing.

1 A Yes, sir.

2 Q You testified at the PCR hearing?

3 A Yes, sir.

4 Q I think you said you wanted your grandmother to be
5 at that prior PCR hearing, correct?

6 A Yes, sir.

7 Q Was she there?

8 A No, sir.

9 Q Is she here today?

10 A Yes, sir.

11 Q Do you see her in the courtroom?

12 A Yes, sir, I do.

13 Q The lady in the black, is that your grandmother?

14 A Yes, sir, it is.

15 Q What's her name?

16 A Her name is Betty Downs.

17 Q Betty Downs.

18 Now, after you went through this hearing, did you
19 receive a letter from Mr. Johnson, your PCR counsel?

20 A Yes. I received a letter from him informing me that
21 -- you know, that he would file an appeal on my behalf.

22 And also in that letter, he stated that he spoke with my
23 grandmother and -- you know, and about the 59(e) motion
24 and about the ---

25 Q 59(e) motion?

1 A 59(e) motion and about pursuing an appeal.

2 Q After the PCR hearing, you never received any
3 correspondence from Mr. Johnson or talked to Mr. Johnson
4 until -- at all.

5 A After that appeal -- I mean after that PCR hearing,
6 I never received anything but that letter.

7 Q But a letter.

8 A But that letter.

9 MR. JOHNSON: May I approach the witness, Your
10 Honor?

11 THE COURT: Yes, sir.

12 BY MR. JOHNSON:

13 Q Can you identify this letter?

14 A Yes, sir. Yes, sir.

15 Q What is it?

16 A It's a letter informing me that he would, you know,
17 file an appeal on my behalf.

18 Q He who?

19 A Mr. Brian P. Johnson.

20 Q What's the date on it?

21 A August 30, 2015.

22 Q And you got this from Mr. Johnson. You received
23 this from Mr. Johnson.

24 A Yes, sir. Via mail.

25 Q Okay. And you've kept this in your possession from

1 the time you received it.

2 A Yes, sir. That and other letters.

3 MR. JOHNSON: Okay. The Court should have a copy of
4 this letter, Your Honor. I've talked with -- at this
5 time, I'd like to introduce it.

6 MR. EVANS: No objection.

7 THE COURT: Yeah. It's part of the file.

8 MR. JOHNSON: Part of the file.

9 THE COURT: All right. So you're going to mark it
10 as Number 1?

11 (WHEREUPON, Applicant's Exhibit Number 1 was marked for
12 identification.)

13 BY MR. JOHNSON:

14 Q This is Applicant's Exhibit Number 1. I want you to
15 read it from the beginning starting with the date up at
16 the top.

17 A "April 30, 2015, via U.S. postal only."

18 Q It's addressed to you. You don't need to read that
19 part. Just go -- just start where it says, "Dear
20 Mr. Downs."

21 A "Dear Mr. Downs: I am writing regarding the above
22 referenced action, specifically regarding your right to
23 appeal the order dismissing your application for Post
24 Conviction Relief application.

25 "On March 24, 2015, I wrote you notifying you that I

1 would file an appeal on your behalf. On April 2, 2015, I
2 spoke to Betty Downs who told me you wanted to file a
3 59(e) motion and would call me back with instructions.
4 Therefore, I held off on the appeal. On April 30, 2015,
5 Betty Downs contacted me asking to file an appeal.
6 However, the time has passed for filing a timely appeal.
7 I do not believe that I notified you or Ms. Down's that
8 we had 30 days to file an appeal.

9 "Therefore, I am writing you to notify you of this
10 fact, and to further advise you that you may be entitled
11 to a belated appeal pursuant to White v. State, 263 S.C.
12 110, 208 S.E.2d 35, 1974. This case allows those who did
13 not knowingly waive their right to an appeal to file an
14 application for a Post Conviction Relief, PCR, against
15 their PCR Hearing counsel and request the relief of a
16 belated appeal. I have enclosed a copy of White v. ___
17 State for your review.

18 "If you have any questions or concerns feel free to
19 write me at the above address.

20 "Thank you."

21 Q Now, after you received this letter, did Mr. Johnson
22 ever contact you again?

23 A No, sir. Not after this letter. I never heard from
24 him ever again.

25 Q Did you have an understanding at this point after he

1 had written you this letter whether he was even still
2 representing you or not?

3 A No. I really didn't. I really thought that, you
4 know, he was going to proceed with the PCR matter. So
5 I ---

6 Q So -- go ahead.

7 A You know, I thought he was going to do that then,
8 but, I mean, obviously, it never happened.

9 Q So in your mind with your level of understanding,
10 you thought that Mr. Johnson would, in fact, file a
11 belated -- an appeal.

12 A Right.

13 Q Did he ever inform you that he was not going to do
14 that?

15 A No, sir, he didn't.

16 Q Did he ever tell you that you have a right to file a
17 belated appeal and give you a time period as to which you
18 must file the appeal?

19 A No, sir. Not prior to this letter.

20 Q Okay. But even after this letter, if you read it
21 carefully, he says in the second paragraph that I do not
22 believe that I notified you or Ms. Downs that we had
23 30 days to file an appeal. Now, that's talking --
24 correct me if I'm wrong, but in your mind, was he talking
25 about the prior appeal that you had with him in the

1 original PCR hearing? He never told you all that you had
2 30 days.

3 A No.

4 Q Now, regarding your filing a belated appeal, did he
5 ever tell you how much time you had to file that one ---

6 A No.

7 Q --- if it were your responsibility to even file it?

8 A No, sir. He never notified me.

9 Q So after receiving this letter, did you know who was
10 representing you?

11 A No, sir.

12 Q Did you know it was your responsibility to file a
13 belated appeal?

14 A No, sir, I didn't.

15 Q So from 2015 to 2018, where were you incarcerated?

16 A In SCDC.

17 Q And what facility were you in?

18 A Well, in 2015, at that particular -- when I went to
19 my hearing, I was at Perry Correctional facility. And
20 probably like April 1st I had got transferred to Lieber
21 Correctional facility. And then I reside there for like
22 two years and some change. And then I went from Lieber
23 to Broad River, and then from Broad River to McCormick.

24 Q So during this period from 2015 to 2018, you were
25 still here in the State of South Carolina ---

1 A Yes, sir.

2 Q --- in a Department of Corrections institution.

3 A Yes, sir.

4 Q During those three years while you're sitting there
5 with no full understanding of the process after this
6 letter, did Mr. Johnson ever call you or contact you
7 during that period at all?

8 A No, sir, he didn't.

9 Q Okay. What happened in 2018?

10 A Well, in 2018, I was on McCormick lockup. And I was
11 informed that I was about to be released to the yard.
12 And instead of being released to the yard, they shipped
13 me to Kirkland.

14 Q They. They who?

15 A The officers transferred me from McCormick.

16 Q Actually, the South Carolina Department of
17 Corrections; would that be right?

18 A Yes, sir.

19 Q Transferred you to where?

20 A To Kirkland for like a day. And then from that day,
21 the next day I was on my way to Mississippi.

22 Q So how long did you stay in the State of
23 Mississippi?

24 A I stayed in Mississippi like six years, like from
25 2018 to just recently I got back in April -- April 19th,

1 April 20th of this year.

2 Q That seems a long time between the time you were --
3 the issuance of that order of dismissal until you filed
4 your own PCR hearing -- I mean application in 2013. Why
5 did you wait so long?

6 A I waited -- to be honest, I waited so long because I
7 thought it was over for me. I thought I had been
8 procedurally barred from ---

9 Q You thought you had been procedurally barred?

10 A Yeah. I thought I was procedurally barred from even
11 being heard, you know,

12 Q Does any -- I'm sorry. I didn't mean to cut you
13 off.

14 A No. So, I mean, that's why I never, you know, did
15 anything or -- or attempted to do anything because I was
16 -- you know, I didn't know. I didn't know if I was, you
17 know, able to do anything. And then -- but it was ---

18 Q Let me ask you this. Did any legally trained or any
19 lawyer or anybody tell you that you had been barred from
20 filing a belated appeal?

21 A No, sir.

22 Q What gave you the idea to say, you know what? Maybe
23 there is something I can do. Given that you are two or
24 three states away from South Carolina, you're sitting in
25 Mississippi, what gave you the idea that, you know, maybe

1 there is something I can do?

2 A Well, honestly, I was, you know, down in
3 Mississippi. You know, we was doing things to, you know,
4 rehabilitate us and doing classes and other things like
5 that. And I was, you know, speaking with one of my
6 fellow inmates, and, you know, getting to know each other
7 over the course of years and stuff like that. He just,
8 you know, became interested in looking over my case. And
9 so when he asked me what stage I was in, I told him -- I
10 told him -- I informed him everything I was going
11 through.

12 And he looked at me. He was like, man, what you
13 been waiting on? He was like why you been waiting so
14 long?

15 I was like, shoot, man, I thought I was barred, man.

16 He was like you're not barred. He was like from
17 what I'm looking at, you are tolling. And then he
18 pointed me to this ---

19 Q You were tolled?

20 A I was tolled.

21 And he pointed this case out which is 2244. And
22 that's like the finality of the determination. He
23 pointed out (d)(2). And I can't really quote it
24 verbatim, but it let me know that I was tolling and that,
25 you know, I was not barred.

1 So after that, he then pointed out the Austin v.
2 State case to me. And then I took it upon myself to file
3 a, you know, PCR application on that behalf and I went
4 from there.

5 Q So you had the good fortune of coming into contact
6 with what we call a jailhouse lawyer, that man in
7 Mississippi that you talked to.

8 A Yes, sir.

9 Q Now, after reviewing -- that's a federal section
10 that you quoted, if I'm not mistaken. But you mentioned
11 a case. And what is the case again?

12 A You're referring to the ---

13 Q The case you and the gentleman you talked to out in
14 Mississippi while y'all were incarcerated out there.

15 A The Austin v. State or ---

16 Q Right.

17 A The Austin v. State.

18 Q After reading that, what did you do?

19 A I took it upon myself to get me a PCR application
20 and submit it.

21 Q Prior to talking with that gentleman, did you know
22 anything about the State vs. Austin? Did you know ---

23 A I didn't even know anything about the 2244.

24 Q But you were aware that some folks, according to
25 Mr. Johnson in his letter, are entitled to file a belated

1 appeal under White vs. State which never happened, right?

2 A Which never happened.

3 Q But at some point in 2003, you met with that
4 gentleman and he introduced you to another case, the
5 Austin case, did he not?

6 A Yes, sir, he did.

7 Q Based on that, what did you do? You filed the
8 appeal, right?

9 A Yes, sir.

10 Q Okay. After you got this letter -- just out of
11 curiosity, after you got this letter on April 15 -- I
12 mean April 30th from Mr. Johnson, did he ever provide you
13 with any instructions or directions about filing an
14 appeal under White vs. State? Not Austin now, but White
15 vs. State.

16 A No, sir.

17 Q In your mind based on that letter, did you think
18 that it was his responsibility to file a belated appeal
19 since he didn't file the original -- I mean the first
20 notice of intention to appeal or the first appeal?

21 A Yes, sir. I actually thought he had everything
22 under control.

23 Q Let me ask you this. Now, when you were out there
24 in Mississippi from 2015 to 2024, did you have access to
25 computers out there or anything like that?

1 A Well, yes, we did. Actually, the first I say maybe
2 two or three years, they didn't even have an updated
3 system. So you had individuals down there, you know,
4 send a request to South Carolina referring to the system
5 update. And they wasn't doing nothing but boomeranging
6 us back and forth saying that should be up to
7 Mississippi. Mississippi would tell us to go notify
8 South Carolina, you know, vice versa. So maybe after
9 that two- or three-year span, then the system started
10 updating on like for South Carolina cases, and -- you
11 know, and then we started being able to get access to the
12 computer, the law library and things like that.

13 Q So for the first few years in Mississippi, you
14 didn't have access to South Carolina law?

15 A No, sir.

16 Q Based on everything that's transpired from 2015 up
17 until now, did you ever freely and voluntarily waive
18 your right to appeal the order of dismissal issued in
19 2015?

20 A No, sir.

21 MR. JOHNSON: No further questions at this time.

22 THE COURT: Thank you.

23 Mr. Evans?

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

CROSS EXAMINATION

1
2 BY MR. EVANS:

3 Q Good morning, Mr. Downs. How are you today?

4 A Good morning, sir.

5 Q Now, Mr. Johnson was your PCR attorney; isn't that
6 correct?

7 A Mr. Brian P. Johnson, yes, sir.

8 Q Okay. So you had a PCR application that was filed
9 on your behalf for that previous case, the one you was
10 incarcerated for; isn't that correct?

11 A Yeah. After my trial.

12 Q Okay. And you filed that PCR; isn't that correct?

13 A Yes, sir.

14 Q So you know how to file PCRs, know how the actual
15 system works in filing a PCR because you filed an
16 original PCR, did you not?

17 A Well, I didn't file it myself particularly, but....

18 Q But you know what steps to take to file a PCR
19 because you had one filed.

20 A What steps to take?

21 Q Yes.

22 A I know that you have to fill it out properly before
23 you submit it.

24 Q Right. Okay. So you know how to file a PCR, yes or
25 no?

1 A Not me like steps, like me personally, no, sir.

2 Q Okay. Well, somebody on your behalf filed a PCR
3 because one was filed, wasn't it?

4 A Yes, sir.

5 Q Okay. So you knew how to get a PCR filed; isn't
6 that correct? Because one was filed.

7 A Yes, sir.

8 Q Okay. And one of the allegations in that PCR was
9 you was not notified -- or your attorney didn't notify
10 you about your right to appeal; isn't that correct?

11 A Yes, sir.

12 Q Okay. So you knew you had a right to appeal?

13 A No one informed me that I had a right to -- of a
14 direct appeal.

15 Q Right. But one of your allegations in the PCR was
16 that you wasn't informed of your right to appeal. So
17 after that PCR was filed, you knew you had a right to
18 appeal, correct?

19 A I mean, if you want to put it that way, then yes,
20 sir.

21 Q Okay. Now, you said that Ms. Downs is your
22 grandmother.

23 A Yes, sir.

24 Q Did she raise you?

25 A The majority of my life.

1 Q Okay. My grandmother raised me, too. Grandmothers
2 are special. I understand that.

3 A Yes, sir.

4 Q Now, in this letter that you got from Mr. Johnson,
5 it says that he spoke to Ms. Downs who told him you
6 wanted a 59(e) motion filed; isn't that correct?

7 A Yes, sir.

8 Q Okay. So you know what a 59(e) motion is.

9 A No, sir. Actually, I don't. I was, you know,
10 congregating amongst my fellow inmates, and the only
11 thing that I know at that time that they informed me of
12 was they told me to tell my counsel to file a 59(e)
13 motion, and that was to preserve my issues if the judge
14 did not rule on my behalf.

15 Q Well, you said on direct Mr. Johnson told you he was
16 filing one, but as for that letter, it says that you
17 asked him to file one; isn't that correct?

18 A Excuse me? Repeat that.

19 Q On direct, you said that Mr. Johnson told you he was
20 going to file a 59(e) motion and was in that letter. But
21 that's not true. You asked Mr. Johnson to file one.

22 Well, you asked your grandmother to tell Mr. Johnson to
23 file a 59(e) motion, correct, according to that letter?

24 A According -- yes, sir.

25 Q Okay. And also according to this letter, supposedly

1 Ms. Downs told him that you will get back to him with
2 instructions according to that letter?

3 A According to his letter.

4 Q Okay. But you never contacted Mr. Johnson with
5 instructions regarding the 59(e) motion; isn't that
6 correct?

7 A No, sir.

8 Q Okay. Now, you say during your PCR that the first
9 time you actually saw Mr. Johnson was that day.

10 A Of the hearing.

11 Q Okay. Did you ever move to the Court to have him
12 relieved as your counsel?

13 A No, sir. I was actually oblivious to any of those
14 steps.

15 Q Okay. Now, your PCR was dismissed; is that correct?

16 A Yes, sir.

17 Q How did you find out it was dismissed?

18 A I received the order of dismissal from Mr. Brian P.
19 Johnson.

20 Q Okay. Do you recognize what that is? That's the
21 order of dismissal you received; isn't that correct?

22 A Yes, sir.

23 Q Okay. And if you look at the last page, it says,
24 "The Court advised the applicant that he must file a
25 notice of appeal within 30 days from the receipt of this

1 order if he wants to secure appellate review." It says
2 that, doesn't it?

3 A Yes, sir.

4 Q Okay. So you knew you had the right to appeal once
5 you got this order.

6 A I knew that he told me that he would file an appeal
7 on my behalf. I didn't know -- I'm not familiar -- I
8 wasn't really familiar with the actual process.

9 Q Okay.

10 A But it does say 30 days.

11 Q So you knew you had the right to file an appeal.

12 Now, the last paragraph of the letter, I'm going to
13 read it verbatim, "Therefore, I'm writing to notify you
14 of this fact and further advise you that you may be
15 entitled to a belated appeal pursuant to White v. State."

16 Now, the Department of Corrections has access to
17 case law; isn't that correct? South Carolina Department
18 of Corrections.

19 A Yes. South Carolina.

20 Q Okay. And did you look up the White v. State law
21 and read that opinion?

22 A I had a copy of it. I had a copy of it.

23 Q Okay. All right. And it says here, "This case
24 allows who did not knowingly waive their right to appeal
25 to file an application for postconviction relief against

1 the PCR hearing counsel."

2 Now, you knew the process of filing a postconviction
3 relief action, did you not?

4 A Did I know the process?

5 Q Yes.

6 A As far as?

7 Q Filing a postconviction relief action. Because you
8 filed one before so you have to know the process.

9 A Yes, sir.

10 Q Okay. But you did not do that, did you?

11 A No, sir.

12 Q Okay. And there's nothing in this letter that says
13 from Mr. Johnson that I'm going to file a postconviction
14 action for you. It doesn't say that.

15 A No. But it says that he's going to file one on my
16 behalf. It says that at the beginning of the letter.

17 Q Where does it say I'm going to file a postconviction
18 relief action for you? Where does it say that in this
19 letter? It doesn't say that, does it?

20 A It says, "On March 24, 2015, I wrote you notifying
21 you that I will file an appeal on your behalf."

22 Q I'm not talking about the appeal. I'm talking about
23 the postconviction relief.

24 A Oh, no. I'm -- no. No, sir.

25 Q He never said that he was going to file one for you,

1 did he?

2 A No, no. No, sir.

3 Q Okay. Now, you went from 2015 to 2018 in South
4 Carolina Department of Corrections and you never filed a
5 postconviction relief action regarding this matter, did
6 you?

7 A No, sir.

8 Q Even though you knew you had a right to appeal.

9 A No, no. No, sir. No, sir.

10 Q You didn't know you had a right to appeal?

11 A No. I didn't file.

12 Q You didn't file it.

13 A I didn't file a PCR.

14 MR. EVANS: All right. I have nothing further, Your
15 Honor.

16 THE COURT: Anything else, Mr. Johnson?

17 MR. JOHNSON: Yes, sir, Your Honor.

18 THE COURT: All right. Redirect.

19 MR. JOHNSON: Thank you.

20 REDIRECT EXAMINATION

21 BY MR. JOHNSON:

22 Q Now, Mr. Downs, you've been examined and
23 cross-examination -- you've been examined and
24 cross-examined about this letter that you received. Now,
25 when you first filed your PCR hearing in the case with

1 Mr. Gaddis, were you represented by an attorney at that
2 time?

3 A No, sir.

4 Q Okay. But now after you got appointed Mr. Johnson,
5 you were represented by an attorney, right?

6 A Yes, sir.

7 Q Did Mr. Johnson ever tell you that that relationship
8 that you had with him, the attorney-client relationship
9 was severed, that it was over?

10 A No, sir. He never did.

11 Q Does it say in this letter that I am no longer
12 representing you as of the date of this letter?

13 A No, sir.

14 Q Did your grandmother ever tell you that Mr. Johnson
15 said I ain't representing him anymore April 15th --
16 excuse me -- April 30th?

17 A No, sir.

18 Q Did Mr. Johnson ever tell you I'm not representing
19 you anymore after April 30th ---

20 A No, sir.

21 Q --- says you're on your own, buddy? Did he ever
22 tell you that?

23 A No, sir.

24 Q So are you telling this court that after you
25 received that letter, you were unaware that Mr. Johnson

1 was no longer representing you?

2 A Yes, sir.

3 Q And you went the whole time with being in limbo, not
4 knowing whether you had an attorney or not.

5 A Yes, sir.

6 Q And you thought that the case -- that you, at some
7 point, barred. That was the mentality that you were
8 laboring under; is that correct?

9 A Yes, sir.

10 Q Whose responsibility -- I'm asking you this
11 question. Who do you think the responsibility is to keep
12 you informed as to the dates that you must file an
13 appeal? Whose responsibility is that? Is that your
14 responsibility?

15 A No. No, sir, it's not.

16 Q Whose responsibility to tell you that I'm no longer
17 representing you? Is that your responsibility to just
18 somehow know that?

19 A No, sir.

20 Q Whose responsibility would you suggest that is?

21 A My counsel that's appointed.

22 Q But he never corresponded with you after that
23 letter.

24 A No, sir, he hadn't.

25 Q He never called you?

1 A No, sir.

2 Q He never wrote you?

3 A No, sir.

4 Q He never told your grandmother that he was no longer
5 representing you?

6 A No, sir.

7 MR. JOHNSON: Nothing further.

8 MR. EVANS: Recross, Your Honor?

9 THE COURT: Yes, sir.

10 RECROSS EXAMINATION

11 BY MR. EVANS:

12 Q Now, you said that you thought Mr. Johnson was
13 representing you after he wrote you the letter; isn't
14 that correct? You just said that.

15 A I said ---

16 Q I'm talking what you just testified to. You thought
17 Mr. Johnson was representing you because he never told
18 you he wasn't representing you.

19 A Correct.

20 Q Okay. And -- but in this letter, he advised you
21 that you may be entitled to a PCR. He doesn't say I'm
22 going to file a PCR for you, did he not?

23 A (Reviews exhibit.)

24 Q He advised you you may be entitled to a PCR, but he
25 did not say I'm going to file the PCR on your behalf.

1 A Yes, sir. Here he advised me.

2 Q Okay. Now, three years went by, you didn't hear
3 nothing from Mr. Johnson. You never wrote him and say
4 what's going on with my case, did you?

5 A No, sir.

6 Q Okay. You never wrote him to say did you file my
7 PCR yet?

8 A No -- well, actually, I take that back. I did write
9 him a letter, but I never received anything back.

10 Q When did you write this letter?

11 A Can I grab that Manila envelope over there? Will it
12 be okay to grab that Manila envelope on the desk over
13 there? (Reviews document.)

14 THE COURT: To help move things along, Mr. Johnson,
15 do you want to help him go through that?

16 THE WITNESS: I actually don't currently have it
17 with me in my possession now. But if I can remember
18 correctly, it'd been -- I wrote him -- I know I was in
19 Mississippi.

20 BY MR. EVANS:

21 Q Oh, you was in Mississippi.

22 A Yeah. I know I was in Mississippi.

23 Q Okay. So it's past 2015 when you wrote him.

24 A Yes, sir.

25 Q Okay. Now, did you talk to your grandmother, tell

1 your grandmother to notify Mr. Johnson, tell Mr. Johnson
2 what's going on in my case?

3 A No. Not after August 30th.

4 Q All right. So whose responsibility was it to notify
5 him to ask about his case? Was it his responsibility or
6 yours?

7 A Well, from my understanding, I would think that -- I
8 do believe that it would be his responsibility to contact
9 me, you know.

10 Q I'm not asking about that. I'm asking who ---

11 MR. JOHNSON: Let -- I would ask to at least let him
12 finish answering the question before he asks another.

13 MR. EVANS: Okay. He can answer my question but he
14 wasn't answering it.

15 BY MR. EVANS:

16 Q Go ahead and finish your answer.

17 A I just say I would think it would be his
18 responsibility to notify me of anything, any updates or
19 anything dealing with my case.

20 Q And that wasn't my question. My question was whose
21 responsibility would it be to ask him what's going on
22 with my case?

23 A That would be me.

24 Q Okay. Whose responsibility would it be to write him
25 and tell him, look, I haven't heard anything, what's

1 going on?

2 A Me.

3 Q Okay. But you didn't do it until four or five years
4 after the fact, after you got his letter; isn't that
5 correct?

6 A Yes, sir.

7 Q Okay.

8 A I wouldn't say four or five years, but yeah.

9 Q Well, you spent three years in the Department of
10 Corrections, correct?

11 A Yes, sir.

12 Q Okay. And you say you wrote him in Mississippi, so
13 it's at least three years since his letters that you
14 contacted your lawyer.

15 A I went to Mississippi in 2018, yes, sir.

16 Q You contacted your lawyer to ask him what's going
17 on.

18 A I wrote him.

19 Q Three years after this letter was mailed; isn't that
20 correct?

21 A Yes, sir.

22 Q Okay. And it was your responsibility to ask him --
23 even ask him do you represent me. That's your
24 responsibility to ask him, not his; isn't it?

25 A Yes, sir.

1 MR. EVANS: Okay. Nothing further, Your Honor.

2 THE COURT: Anything else, Mr. Johnson?

3 MR. JOHNSON: Nothing further.

4 THE COURT: All right. Sir, you can step down.

5 All right. Any other witnesses, Mr. Johnson?

6 MR. JOHNSON: The State [sic] would call Ms. Betty
7 Downs to the stand.

8 THE CLERK: Please raise your right -- left hand on
9 the Bible, raise your right hand.

10 WHEREUPON,

11 BETTY DOWNS

12 After having been duly sworn, testified as follows:

13 THE CLERK: Thank you. You may be seated. Please
14 state your full name for the record.

15 THE WITNESS: Betty Downs.

16 DIRECT EXAMINATION

17 BY MR. JOHNSON:

18 Q Ms. Downs, how are you?

19 A Doing well.

20 Q How old are you, by the way? I hate to ask you
21 that, but I don't think you'd mind my asking that
22 question.

23 A I'm 68.

24 Q Now, Ronald is your grandson; is that right?

25 A Yes.

1 Q Did you happen to have contact with Mr. Brian
2 Johnson at any point in the year of -- between 2013 and
3 2015?

4 A I did. I talked with him on April 2, 2015.

5 Q And what did you talk to him about? That is
6 Mr. Johnson.

7 A About filing an appeal for Ronald and doing that E
8 59 motion.

9 Q E 59? Do you mean a 59(e) motion?

10 A 59(e) motion.

11 Q Okay.

12 A And on April the 30th, I called back to ensure that,
13 you know, he filed it, the, you know, appeal.

14 Q Okay. Now, give me that date again when you first
15 had contact with Mr. Johnson? What date did you say?

16 A April the 2nd.

17 Q April -- what now?

18 A April the 2nd.

19 Q 2nd.

20 A 2015.

21 Q Okay. And at that time on April 2, 2015, did you
22 know anything about an appeal or what that action
23 constitutes?

24 A Well, the appeal, I assumed it was to get him back
25 into court.

1 Q Okay. How about at that time, were you familiar
2 with a 59(e) motion and its purpose?

3 A No, sir.

4 Q Okay. Where did you get those terms from? Appeal,
5 59(e) motion, where did you get those terms from?

6 A Well, I had talked to my grandson.

7 Q You had talked to Ronald?

8 A Yes.

9 And we talked about, you know, trying to get him
10 back into court.

11 Q Okay.

12 A Yes, sir.

13 Q And during your conversations with your grandson,
14 did the topics come up of appeal and 59(e)? Did you
15 talk to Ron about it?

16 A Yes. Uh-huh.

17 Q And you talked to Mr. Johnson, Brian Johnson; is
18 that correct?

19 A Yes, sir.

20 Q And you've told us what you and Mr. Johnson talked
21 about. You've also told us that you didn't really know
22 what those terms meant. But how many times did you talk
23 with Mr. Brian Johnson about those two matters?

24 A Twice.

25 Q When was the second time you talked with him?

1 A The second time to ensure that he followed
2 through.

3 Q Do you recall the date of that second time?

4 A That was April the 30th.

5 Q April 30th.

6 A Yes, sir.

7 Q What do you recall Mr. Johnson told you on
8 April 30th?

9 A Well, he said that he would file the appeal.

10 Q Okay. He said he would file what?

11 A File the appeal and the -- I keep getting ---

12 Q So he told you he was going to do that.

13 A Yes, sir. Yes, sir.

14 Q Now, did you ever retain Mr. Johnson to represent
15 Mr. Downs?

16 A Yes.

17 Q Did you ever pay him any money to represent
18 Mr. Downs?

19 A Oh, no, no. He was appointed through the courts.

20 Q Right. Did you ever enter into a contractual
21 relationship where you became Mr. Johnson's client?

22 A No.

23 Q So is it correct in my saying that you were like a
24 conveyor of information between your grandson,
25 Mr. Downs, and Mr. Johnson?

1 A Yes, sir.

2 Q You were never party to any action, correct?

3 A No, sir. No. I never talked to the attorney about,
4 you know, what he was going -- how he was going to help
5 Ronald, no.

6 Q Did Mr. Johnson ever tell you personally that he
7 didn't file the appeal?

8 A No, sir.

9 Q Did he ever call you and say what are you waiting
10 on? Why don't you give me the 59(e) information?

11 A No, sir.

12 Q After that second conversation, you never heard from
13 Mr. Johnson again?

14 A No, sir.

15 Q Just to be sure, Mr. Johnson never wrote you or
16 telephoned you and said, oh, Ms. Downs, I'm sorry. I
17 didn't file the 59(e) motion?

18 A No, sir.

19 Q I didn't file the appeal?

20 A No, sir.

21 Q Never?

22 A No, sir. Never.

23 MR. JOHNSON: No further questions.

24 THE COURT: Cross-examination.

25 MR. EVANS: Thank you, Your Honor.

CROSS EXAMINATION

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BY MR. EVANS:

Q Ms. Downs, how are you doing this morning?

A I'm doing well. And yourself?

Q Huh?

A I said and yourself?

Q I'm good. I'm good.

Now, you said earlier you spoke with Mr. Johnson on April the 2nd; is that correct?

A Yes, sir.

Q Okay. Who told you to go talk to Mr. Johnson? Was it your grandson?

A Yes, sir.

Q Okay. And ---

A Since he wasn't able to.

Q Right. And being the good grandmother you are, you're going to help out your grandson, of course.

A Yes, sir.

Q Okay. And so did your grandson tell you to ask Mr. Johnson about the appeal and the 59(e) motion at that time?

A No, sir. Ask -- well, the second call was to ensure him that he, you know, filed the appeal.

Q Okay. But the 59(e) motion, did your grandson tell you to talk to Mr. Johnson and have that filed first?

1 A We discussed it.

2 Q You discussed it. Okay.

3 And on April the 30th, you went back to talk to
4 Mr. Johnson.

5 A Yes, sir.

6 Q Did your grandson ask you to go talk to him or you
7 did that on your own?

8 A I did that on my own to make sure.

9 Q Did it on your own.

10 A Yes, sir.

11 Q Make sure it got filed.

12 And he told you he was going to file an appeal on
13 April 30th.

14 A That was to ensure that he filed the appeal and the
15 motion.

16 Q What did he tell you when you went and talked to
17 him?

18 A He said that he would do it.

19 Q That he would do it. Okay.

20 A Yes, sir.

21 Q The first time you met Mr. Johnson April the 2nd,
22 did you tell him that you're going to contact him with
23 further instructions? Do you remember telling him
24 that?

25 A No, sir. I can't remember.

1 Q Can't remember that. Okay.

2 And you spoke with him those two times and never
3 spoke to him since; isn't that correct?

4 A Correct.

5 Q Okay. Now, if your grandson calls and asks you to
6 go talk to him in this whole span of time, you would have
7 went and talked to him, wouldn't you?

8 A Yes. If it was -- yeah.

9 Q Okay. But your grandson never called you or talked
10 to you and say go talk to my lawyer and see what's going
11 on, did he?

12 A No, sir.

13 So after, you know, he came to court on that, you
14 know, last time, he really thought that that was the end
15 of, you know, him appealing.

16 Q Okay.

17 A We did discuss that.

18 Q All right. But he never asked you to talk to
19 Mr. Johnson to confirm that, did he?

20 A No, sir.

21 MR. EVANS: Okay. I have nothing further.

22 THE COURT: Thank you.

23 Mr. Johnson, anything in redirect?

24 MR. JOHNSON: Just one quick question -- well, a
25 couple. One for certain.

REDIRECT EXAMINATION

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BY MR. JOHNSON:

Q Ms. Downs, tell me again, because the attorney for the State asked you the second date that you talked with Mr. Johnson, do you recall that date?

A The second date?

Q The second date that you talked with Mr. Johnson.

A On the 30th of April.

MR. JOHNSON: April. Okay.

Nothing further, Your Honor.

THE COURT: Okay. Any recross, Mr. Evans?

MR. EVANS: No. No recross, Your Honor.

THE COURT: Okay. Mrs. Downs, you can step down.

Be careful when you step down.

THE WITNESS: Thank you.

THE COURT: Okay. I need to take a quick break. So we'll take a five-minute, six-minute break.

(WHEREUPON, a recess is taken at 10:40 AM; proceedings reconvened at 10:46 AM.)

THE COURT: All right. Mr. Johnson?

MR. JOHNSON: The applicant rests.

THE COURT: Okay. Mr. Evans?

MR. EVANS: Yes, sir, Your Honor. At this time, the State will call Mr. Brian Johnson to the stand.

THE CLERK: Mr. Johnson, please raise your right

1 hand.

2 WHEREUPON,

3 BRIAN JOHNSON

4 After having been duly sworn, testified as follows:

5 THE CLERK: Thank you. You may be seated. And
6 please state your name for the record.

7 THE WITNESS: My name is Brian Patrick Johnson.

8 DIRECT EXAMINATION

9 BY MR. EVANS:

10 Q Mr. Johnson, where are you currently employed?

11 A I have my own office in Greenville.

12 Q And how long have you had your own office?

13 A I've had my own office since 2009.

14 Q Okay. So about, what, 13 years?

15 A I guess that's 15.

16 Q 15?

17 A Yes, sir.

18 Q Yeah. 15 years.

19 And exactly what do you do in your office? What
20 kind of law do you actually practice in the office?

21 A At this point in time, I do criminal defense and
22 family law.

23 Q Okay. And so postconviction relief actions, that's
24 part of your practice also?

25 A It was. I took a contract from indigent defense to

1 do postconviction relief up until about 2016 or 2017. I
2 stopped doing -- I stopped taking a contract.

3 Q Okay. And as part of that postconviction relief
4 contract, were you appointed to represent a Mr. Ronald
5 Tyrone Downs?

6 A Yes, sir.

7 Q What was Mr. Downs charged with, if you remember?

8 A The charges, I believe, were armed robbery. I think
9 he got -- I think the -- when I got him, the two main
10 concerns were the right to an appeal as well as a plea
11 offer that apparently was not communicated to Mr. Downs
12 as I can recall.

13 Q Okay. So one of the allegations he had in his
14 application was he wasn't informed of his right to
15 appeal.

16 A I believe it was the fact that Mr. Gaddy didn't file
17 it. If I recall correctly, Mr. Gaddy told him that there
18 was no reason to appeal it, it was not good grounds and
19 so he did not file it. And that was, in a nutshell --
20 you have to excuse me. It's been so long.

21 Q Right.

22 A But what I did was just I went through my email,
23 which I document everything and able to kind of apprise
24 myself. But based on my understanding, that's what the
25 problem was.

1 Q I know it's hard to remember. This case was back in
2 2015, so it's a while ago.

3 Now, do you remember how many times did you speak to
4 Mr. Downs prior to the PCR hearing?

5 A I only spoke to him in person once.

6 Q Okay. For the hearing?

7 A Yes.

8 Q Okay. How would you contact him? How did you
9 communicate with him?

10 A Before then I would send him letters.

11 Q Send him letters. Okay.

12 A I was appointed to Mr. Downs on November 4, 2014,
13 and we went to court, I believe, on February 19th. When
14 you're talking about a PCR, typically, there's a longer
15 period of time. But the amount of time since I was
16 appointed and had a hearing was short.

17 Q Okay. Were you prepared to go forward with a PCR
18 hearing?

19 A Yes, sir.

20 Q Now, after this PCR hearing -- well, after he was
21 denied his postconviction relief, did you tell him you
22 was going to file an appeal on his behalf?

23 A I believe I did. I don't have a copy of that
24 specific letter, but I do believe I have notes that I
25 dictated a letter notifying him that I would file one on

1 March 24th.

2 Q Okay. But you heard prior testimony his grandmother
3 contacted you on April the 2nd?

4 A Yes.

5 Q Okay. And she informed you that Mr. Downs told her
6 she wanted a -- he wanted a 59(e) motion.

7 A Correct, correct.

8 Q Okay. Now, did she tell you anything about further
9 instructions? Do you remember that?

10 A To my recollection, my only recollection is from the
11 letter.

12 Q Okay.

13 A And I can look at my emails and see that I got a
14 message from my paralegal that specifically said she
15 wanted to discuss a 59(e) ---

16 Q Okay.

17 A --- and that I did speak with her.

18 And, again, the part about the details, if I put it
19 in a letter, I believe that's exactly what happened.

20 Q Okay. And then she contacted you again April 30th,
21 but it was already past the time to file an appeal.

22 A Correct.

23 Q Okay. Now, Mr. Downs knew -- well, Mr. Downs knew
24 that his PCR was dismissed.

25 A He did.

1 MR. JOHNSON: Can you read that question? I didn't
2 hear it.

3 MR. EVANS: Mr. Downs knew his PCR was dismissed.

4 BY MR. EVANS:

5 Q He knew his PCR was dismissed.

6 A Yes, sir.

7 Q And did you give him a copy of the order?

8 A Yes. Mailed him a copy.

9 Q You mailed him a copy of the order?

10 A Yes, sir.

11 Q And at the end of this order, it states that he has
12 30 days to file an appeal.

13 A The order does state that.

14 Q Okay. And you have in front of you the letter you
15 wrote?

16 A Yeah. I have Applicant's Exhibit 1 in front of me.

17 Q Okay. Now, in this letter, you do state that you
18 told him you were going to file an appeal but Mr. Downs
19 informed you that she wanted -- that he wanted a 59(e)
20 motion filed first. The letter states that.

21 A Correct. Because 59(e) would have needed to be
22 filed before the appeal, yes.

23 Q Okay. And it says in the letter you held off filing
24 an appeal because you were supposed to get further
25 instructions.

1 A Correct.

2 Q Okay. And that had to have happened or it wouldn't
3 be in this letter; isn't that correct?

4 A Yes.

5 Q Okay. Now, and in this letter, you also informed
6 him of the ability to file a PCR against you for failing
7 to file an appeal.

8 A Yes. I believe I -- I believe that that's
9 communicated.

10 Q Okay. And you even give him the statute -- I mean,
11 not statute -- the cite of White v. State that actually
12 says this.

13 A Yes. And I also -- the letter notes that I enclosed
14 a copy of the case.

15 Q Okay. Did they ever get in touch with you to file a
16 PCR on his behalf?

17 A No, sir.

18 Q Okay. And explain exactly when does your
19 responsibilities end regarding representation on the PCR?

20 A Well, with a PCR, if the application is denied, I
21 file an appeal. And then typically what we do is we --
22 if it's an appointed case, I would, after filing the
23 appeal, refer them to appellate defense who would then
24 take over the defense of the applicant.

25 Q Okay. What if an appeal is not filed? When does

1 your responsibility end?

2 A Then it's over.

3 Q Once it's dismissed, your responsibility ends.

4 A Yes. Yes, yes.

5 Q So it's not your responsibility to file anything if
6 an appeal is not filed.

7 A That's my understanding unless -- yes.

8 Q All right. And you never promised in this letter
9 that you were going to file a PCR on behalf of Mr. Downs.

10 A The only thing I did is I know I spoke with Betty,
11 and I think I remember speaking with her even if I don't
12 remember all the details. But I remember her being one
13 of the nicest people as, I think, is evident.

14 Q Right.

15 A And I was concerned that we discussed the 59(e) but
16 I didn't tell her, like, listen, this is the time frame.

17 Q Right.

18 A And so that's why I also included that in the letter
19 and tried to make sure that I told him what he could do
20 to remedy the problem.

21 Q Okay. So you're actually thinking you were trying
22 to help him ---

23 A Right.

24 Q --- with this letter telling that you can do this.

25 A Right.

1 Q And you maybe remedied that.

2 A It was apparent to me that maybe there was some sort
3 of misunderstanding, and so I said I'd better put this in
4 writing and send him what he needs so that he can do what
5 he needed to do.

6 Q Right. But you made it his responsibility because
7 your responsibility had ended at that time.

8 A Right. I mean, I don't -- I can't file a PCR
9 against myself.

10 MR. EVANS: Right. Exactly,
11 Nothing further, Your Honor.

12 THE COURT: Thank you.

13 Any cross?

14 MR. JOHNSON: Yes, sir, Your Honor.

15 CROSS EXAMINATION

16 BY MR. JOHNSON:

17 Q Mr. Johnson, I think it's unequivocally clear that
18 you did not timely file an appeal in this matter; is that
19 correct?

20 A I would agree.

21 Q And did you -- now, you also mentioned that
22 Mr. Gaddis was or should have been aware of an appeal
23 because of his being convicted at a trial for armed
24 robbery, that he should -- based on his discussions with
25 Mr. Gaddis, that he should have had some concept or idea

1 of the appeal process.

2 A Correct me if I'm wrong. I don't recall seeing that
3 specifically.

4 Q Okay. But in a trial, when you're convicted of an
5 offense, how long do you have -- do you know how long you
6 have to file a notice of intention to appeal?

7 A Criminal, I think it's seven days.

8 Q Okay. But that would not be the case if you are in
9 Common Pleas Court and you filed a PCR action. That
10 statutory time limit is not applicable; is that right?

11 A That's correct. It's 30 days.

12 Q 30 days. Okay.

13 So wouldn't you agree with me that the process of
14 appeal in criminal court is different than the process
15 and the time limit for an appeal in Common Pleas Court in
16 a PCR action?

17 A Yes, sir.

18 Q So his being aware -- vaguely aware of the appeal
19 process in criminal court really is very little -- very
20 little interest in a PCR matter; wouldn't you agree?

21 A I would agree.

22 Q And you -- the first time that you met Mr. Johnson
23 -- I mean Mr. Downs in the PCR action was the day in
24 court.

25 A Correct.

1 Q And you said you wrote him several times?

2 A Yes, sir.

3 Q Do you have those letters?

4 A I do not.

5 Q Okay. Does this letter to you look familiar?

6 A (Reviews document) It appears to be a letter I would
7 typically send after I receive an appointment.

8 Q And what is the date of that letter?

9 A November 5, 2014.

10 Q Do you mind reading what is depicted in that letter?

11 A "Please be advised I've been appointed to represent
12 you regarding your application for postconviction relief.
13 Please forward to me any information and/or documents you
14 believe would be helpful to me in this matter. By copy
15 of this letter, I'm requesting your criminal file from
16 your previous attorney."

17 Q Okay. Did Mr. Downs respond to that letter?

18 A I believe that he may have. And, again, I'm going
19 off -- what I had to do was go off of my records from
20 emails is kind of what I did communicate with my office.
21 I see that I did receive a letter that I believe that I
22 replied on February 3, 2015. He probably also was mailed
23 -- as I received his file I also would kind of forward
24 that as well from the attorney general.

25 Q Okay. Does that letter look familiar to you?

1 MR. EVANS: Your Honor, at this time, I would
2 object. I mean, he's giving him letters. I have no idea
3 what they say or what they look like.

4 THE COURT: Yeah. Just show it to counsel.

5 MR. JOHNSON: Sure.

6 THE COURT: Unless y'all tell me, I have no idea to
7 know whether you have or....

8 You got other letters?

9 MR. JOHNSON: I do.

10 THE COURT: Why don't you go ahead and let him see
11 those if you're planning on cross-examining him on those.

12 MR. JOHNSON: All right. I've shown defense counsel
13 the proposed letters for introduction, and he -- as long
14 as he has no objection to my introducing them, at this
15 time, I move to introduce them.

16 MR. EVANS: No objections, Your Honor.

17 THE COURT: Okay. Noted. No objection.

18 And will you identify specifically? I know you said
19 November 5, 2014, letter. And what else?

20 MR. JOHNSON: Yes, sir. There's one that I move
21 into evidence dated November 17, 2014, January 21, 2015,
22 February 3, 2015.

23 THE COURT: So four letters.

24 MR. JOHNSON: Yes, sir.

25 THE COURT: Are you going to mark those just as

1 Number 1? Or actually, it would be Number 2. You've
2 already put in ---

3 MR. JOHNSON: Number 2 collectively. Number 2
4 collectively.

5 THE COURT: Yeah. That's fine.

6 MR. JOHNSON: Thank you.

7 THE COURT: And I understand, again, no objection
8 from the State ---

9 MR. EVANS: No objection.

10 THE COURT: --- as to those four letters. Thank
11 you.

12 (WHEREUPON, Applicant's Exhibit Number 2 was marked for
13 identification and admitted into evidence.)

14 BY MR. JOHNSON:

15 Q You've already seen, Mr. Johnson, a letter from
16 November 5th. Can you just review these other three
17 letters?

18 A Yes, sir (reviews exhibit).

19 Q Do you know whether you sent any other letters to
20 Mr. Downs?

21 A I'm not sure.

22 Q Okay. Now, after you received those letters --
23 after you sent those letters to Mr. Downs, did you ever
24 have a conversation or an interview with him regarding
25 the substance of his PCR application?

1 A Not to my recollection.

2 Q And you received the State's response to his
3 application?

4 A You mean the return?

5 Q Return.

6 A I would have, I believe.

7 Q And you are familiar with the government's responses
8 to his application?

9 A I would have been.

10 Q But you never talked to him about any of the
11 information in the return, any information in his
12 application. You never talked with him about any of
13 that; is that right?

14 A To my recollection, my only meeting in that way was
15 the day of the hearing.

16 Q So what would the answer to the question be?

17 A I'm sorry?

18 Q What would the answer to the question be? Did you
19 ever talk with him regarding the substantive issues in
20 his complaint?

21 A Yes.

22 Q I mean in his application.

23 A Yes.

24 Q When?

25 A The day of the hearing. Typically, my office would

1 schedule phone conferences, but I don't have any proof to
2 say that that happened, you know, so I can't say that it
3 did.

4 Q So how long did you get to talk with him about the
5 substantive matters of the hearing that day?

6 A It would have been that morning. I'm not certain.

7 Q Is that the way you typically practice PCR actions
8 is that you don't discuss anything ---

9 MR. EVANS: Your Honor, I think he's veering off his
10 actual accusation in the application. I mean, his
11 accusation in the application regarding the notice of
12 appeal had nothing to do with what was conducted during
13 the actual PCR.

14 THE COURT: Well, I think he's asking about what
15 interaction they had regarding the substance of the
16 return and the PCR.

17 MR. EVANS: Well, I understand that, Your Honor.
18 But my argument is, is that that's not on the
19 application. He's not PCRing on his PCR attorney
20 regarding his action during the PCR. He's PCRing on his
21 PCR attorney because of the failure to file an appeal.
22 So he's veering away from the actual allegations in the
23 application, Your Honor. And under Aice v. State, you
24 cannot PCR your PCR attorney, and that's what it sounds
25 like he's trying to do. He's veering away from the

1 actual allegation in the application by asking questions
2 regarding what they talked about during the PCR.

3 MR. JOHNSON: And to my response ---

4 THE COURT: And I'll let you respond. Go ahead.

5 MR. JOHNSON: My response to that is that the
6 failure to file a 59(e) motion, the failure to file a
7 motion to appeal is, in my mind, a dilatory action on the
8 part of the attorney because the attorney is responsible
9 for knowing time limits and filing the matters in a
10 timely fashion, to be familiar with everything involved
11 in the case.

12 This line of questioning is basically going to the
13 fact that it proves that Mr. Johnson was not only
14 dilatory in the aspect of not filing an appeal on a 59(e)
15 action, but he was dilatory -- and this seems to be
16 almost a pattern -- if he was dilatory in not even
17 meeting with his client until the day of the hearing.
18 And that is probative of his being dilatory in not timely
19 filing a 59(e) motion and a notice -- and an appeal.

20 MR. EVANS: And my argument is, is that has nothing
21 to do with the failure to file a 59(e) or the appeal.
22 What conversation they had prior to the PCR had nothing
23 to do with that. And what it sounds like to me is trying
24 -- he's trying to PCR his PCR attorney for ineffective
25 assistance of counsel. In Aice v. State, the Supreme

1 Court does not allow that; therefore, that's the reason
2 for my objection. If he can talk about what -- I mean,
3 in my opinion, he can talk about what happened after the
4 case ended, what conversations he had with Ms. Downs,
5 what actions he took regarding filing the PCR and not
6 filing the PCR and why he didn't do so, but the
7 conversation regarding this actual case, I think, goes
8 beyond the actual case law Aice v. State because now he's
9 venturing off saying his PCR attorney was ineffective
10 which you cannot do.

11 THE COURT: And, Counsel, you're objection's noted
12 for the record. I'm going to overrule it. But move on.
13 I think you have established what you were trying to ask.

14 MR. JOHNSON: Thank you.

15 BY MR. JOHNSON:

16 Q Mr. Johnson, have you ever been in a situation where
17 you were the PCR attorney and you did not timely file an
18 appeal other than this one?

19 A Did not timely file an appeal?

20 Q Right.

21 A There was one other instance where I had to send
22 somebody a similar letter based upon them letting me know
23 that they wanted to appeal after the time frame. And I
24 always just kind of out of there's some sort of
25 miscommunication or if you didn't understand, that's

1 actually where I understood that's what the method was.
2 That's when I did the research. It was one other time.

3 Q Okay. So are you classifying what happened in this
4 case where you didn't timely file an appeal as just a
5 misunderstanding?

6 A Well, here's the thing. Talking about a 59(e), you
7 know, typically, you file that, you need to have grounds
8 for it.

9 So it appeared to me that Mr. Downs had spoken to
10 someone, I guess, where he was located about that
11 situation. So as an attorney, I, you know, would --
12 needed to understand what would be the grounds for that.
13 And so if, during that conversation, I didn't reinforce
14 that, listen, we ain't got but so much time to handle
15 this, I wanted to make sure that, okay, I expressed that
16 probable misunderstanding in the letter and let him know
17 he's right.

18 Q Did you ever discuss that with your client? Not
19 with his grandmother but with his [sic] client the 59(e)
20 motion? Did you ever discuss that with Mr. Downs?

21 A No, sir.

22 Q Did you ever personally discuss the issue of appeal
23 with Mr. Downs?

24 A The only time it would have been done was via letter
25 that I think has been established on the record.

1 Q How about after the issuance of the order of
2 dismissal?

3 A Just the letter that I would have written him
4 telling him I would -- that I would file the notice and
5 then to file the letter that's Applicant's Exhibit 1.

6 Q So based on that letter you filed [sic] him, you
7 made it clear that that was your responsibility to file
8 at that time the appeal, not his responsibility, right?

9 A Yes. To file the notice of appeal from the denial
10 of his application, absolutely.

11 Q Now, in this letter that you sent him -- let me ask
12 you this. I'm going to wrap it up. But you would admit
13 that this situation regarding Mr. Downs is an atypical
14 situation. It's not one of those situations where this
15 routinely occurred in your practice that nine times out
16 of ten you sent the 59-3, (e) motion if requested, you
17 filed an appeal on time if your client wanted an appeal.
18 You typically did all that, right?

19 A Well, it's a little different. A 59(e) in an appeal
20 is different because in an appeal, you just file the
21 notice. You don't have to specify anything. A 59(e)
22 requires details. And I think I'm required under the
23 rules to make sure that I set forth, you know, actual
24 grounds that I believe in.

25 Q But you were waiting on Ms. Downs to provide you

1 with that information, but you never told Ms. Downs that
2 you had a time limit in order to do that.

3 A And that's my concern. I don't -- I don't recall
4 that I did.

5 Q Okay. Okay. And in this letter, did you ever
6 unequivocally state to Mr. Downs that I no longer
7 represent you, that from this point on it is your
8 responsibility to file a belated appeal?

9 A When I sent the letter, I believe that I did it in a
10 way that it would be understandable what -- his next
11 course of action.

12 Q How so? I didn't ask you that. I didn't ask you
13 that.

14 A I understand. Because I -- the letter basically
15 informs him of his right to request a belated appeal
16 under the PCR.

17 Q I understand that. But did you tell him in the
18 letter that as of the writing of this letter, that our
19 relationship no longer exists, that it is your sole
20 responsibility to file a belated appeal?

21 A I believe I -- I know you're asking me a question.
22 I'm afraid that the letter tells him, I believe, what to
23 do related to what his next steps would be now that an
24 appeal was not filed timely.

25 Q Right. But, again, does the letter unequivocally

1 tell him that your relationship with him has been severed
2 and that it is his sole responsibility to file the
3 appeal?

4 A Unequivocally no. I can't say that it unequivocally
5 does that.

6 Q So it's your contention that it's his responsibility
7 to discern that this relationship, based on this letter,
8 that our attorney-client relationship is over.

9 A I believe that it would have been clear when I asked
10 -- basically informed him what to do as it relates to
11 filing a PCR basically versus me. And so I do believe
12 that that was appropriately communicated.

13 Q Okay. Well, if you read the last paragraph, it
14 says, "Therefore, I am writing you to notify you of this
15 fact and to further advise you that you may be entitled
16 to a belated appeal pursuant to White vs. State." May be
17 entitled. That's correct. He may be entitled.

18 A Correct.

19 Q But does it say that you may be entitled to appeal
20 and it's your responsibility to file the appeal?

21 A Well, I believe that it clearly communicates that
22 you have -- I mean, that next sentence, the case allows
23 those that knowingly waive their right to an appeal to
24 file an application for PCR against their PCR hearing
25 counsel.

1 Q Right, right. But did you tell him it was his
2 responsibility to do that?

3 A I believe the letter communicates that.

4 Q All right. Okay. One other question. Now, you
5 tell him in the letter that I do not believe I notified
6 you or Ms. Downs that we had 30 days to file an appeal.
7 So let's assume that your assumption, based on this
8 letter to Mr. Downs, knew it was his responsibility to
9 file a belated appeal, do you state to him the time limit
10 that he has to file that belated appeal? Is that in the
11 letter?

12 A It's not.

13 Q Do you think you should have advised him of how much
14 time he had to file that belated appeal?

15 A Well, he -- certain facts were assumed with him
16 filing his own PCR case and you have one year from -- you
17 know, to file your PCR case. I did -- I thought -- I
18 believed I communicated it what I thought would be
19 concisely and clearly as best I could.

20 Q Okay. But you did not tell him the time he had to
21 file the appeal ---

22 A I did not.

23 Q --- whether it was 30 days or one year.

24 A I did not.

25 Q Did you ever have any contact with Mr. Downs after

1 you wrote him that letter on April 30, 2015?

2 A No, sir.

3 Q Based on your representations in your letter and
4 based on the information that you have at this date, do
5 you feel that Mr. Downs knowingly and voluntarily waived
6 his right to file a belated appeal?

7 A The answer would be pretty highly speculative on my
8 part. I -- based on being here today, I tend to believe
9 that he might not have completely understood.

10 Q I just want to make it clear. We're not talking
11 about the original here. We're talking about that
12 answer ---

13 A Right.

14 Q --- in response to your belated -- to his not filing
15 a belated appeal.

16 A Well, I never received any response from him or any
17 other feedback relative to the April 30th letter, so I
18 have no reason to believe one way or the other.

19 MR. JOHNSON: Okay. Thank you.

20 MR. EVANS: Redirect, Your Honor?

21 THE COURT: Yes, sir.

22 REDIRECT EXAMINATION

23 BY MR. EVANS:

24 Q Who filed the PCR, you or the inmate?

25 A The inmate did.

1 Q Okay. So the responsibility to file a PCR is up to
2 the inmate, not to you; isn't that correct?

3 A Yes.

4 Q And so to receive the belated appeal, you have to
5 file a PCR according to this letter; isn't that true?

6 A I believe that the letter indicates that.

7 Q The responsibility to file a PCR was to the inmate
8 and not you; isn't that correct?

9 A Correct.

10 Q Now, on direct, the attorney asked you did you
11 inform Ms. Downs of the amount of time you have to file
12 an appeal. You say you did not; isn't that correct?

13 A That's correct.

14 Q Okay. However, you said you mailed a copy of the
15 order of dismissal to Mr. Downs.

16 A Yes.

17 Q And as far as you know, Mr. Downs can read, can't
18 he?

19 A I believe he can read.

20 Q Okay. And the order of dismissal simply states you
21 have 30 days to file an appeal.

22 A It does say that.

23 Q And all this time frame you never received a letter
24 from Mr. Downs saying what's going on in my case.

25 A I don't -- I don't recall receiving anything. The

1 only thing I have per my notes, someone called me --
2 Doris Downs called me in 2021 and left a message, and I
3 had one of my people call her back. They had asked about
4 the PCR transcript, and so I had somebody call them back.
5 But that's the only communication that I'm aware of.

6 Q Okay. And let me be clear. Mr. Downs should have
7 known from the order he had 30 days to file an appeal.

8 MR. JOHNSON: That's been asked and answered.
9 That's speculative.

10 THE COURT: I'm going to allow it.

11 BY MR. EVANS:

12 Q Okay. The order states he had 30 days to file.

13 A That's what the order states.

14 Q Okay. And you gave him a copy of that order?

15 A Yes, sir.

16 Q He had a copy.

17 A Yes, sir.

18 Q Okay. And in this letter, you never stated you were
19 going to file a PCR on his behalf.

20 A I did not.

21 Q Okay. Because you can't do that. A PCR attorney
22 can't PCR on myself.

23 A That's correct.

24 MR. EVANS: Okay. Nothing further, Your Honor.

25 THE COURT: All right. Any recross, Mr. Johnson?

1 MR. JOHNSON: No, sir, Your Honor.

2 THE COURT: Okay. You may step down.

3 THE WITNESS: Thank you, Your Honor.

4 THE COURT: Good to see you.

5 THE WITNESS: You as well.

6 THE COURT: Can he be released?

7 MR. EVANS: Yes.

8 THE COURT: Any other witnesses?

9 MR. EVANS: No, Your Honor. The State rests in this
10 case, Your Honor.

11 THE COURT: Anything else, Mr. Johnson, in reply
12 before I hear closing arguments?

13 MR. JOHNSON: Nothing in reply, Your Honor.

14 THE COURT: Do y'all wish to give me arguments?

15 MR. EVANS: Just briefly, Your Honor.

16 It's clear that, you know, the obligation to file
17 the PCR is up to the defendant. It's not up to his
18 counsel to file that. He was given notice as per the
19 order of dismissal that he had 30 days to file an appeal.
20 His grandmother notified the attorney about the appeal,
21 but he also, according to this letter, notified there'd
22 be further instructions regarding the 59(e) motion.
23 That's why he waited. I mean, the letter's clear on
24 that. And by the time she got back to him, the 30 days
25 was up. However, the defendant knew that deadline was

1 30 days according to that order; therefore, we would
2 state that the delay in filing this appeal was the fault
3 of Mr. Downs, not the fault of his counsel, Your Honor.
4 And so we would ask for this PCR to be dismissed.

5 Thank you.

6 THE COURT: Okay. Mr. Johnson?

7 MR. JOHNSON: Judge, I would agree with the attorney
8 general. Typically, it is the responsibility of the
9 applicant to file an application, and that's what's
10 typically done. And it has to be filed, unless there are
11 certain circumstances, within one year of the date of
12 conviction.

13 But what we're talking about here is not your
14 typical situation where an inmate, on his own volition,
15 decides to file an application. This is a case where it
16 had gone beyond that point. And while he had a
17 responsibility to file the initial application, the
18 complexion of his responsibility has changed because he
19 was appointed an attorney. And the reason -- I know the
20 government objected to it, but the reason that I pointed
21 out the -- what transpired between his being appointed an
22 attorney and the PCR hearing was that there was no actual
23 direct communication about the substantive matters, no
24 kind of interaction until the day of the hearing.

25 The hearing was held. Order of dismissal was

1 issued. From that point on, his counsel failed to file
2 an appeal, did not file a 59-3, 59(e) motion. And he
3 wrote him a letter telling him that -- conceding that he
4 did not file the appeal within 30 days and that you --
5 that you may be entitled to a belated appeal pursuant to
6 White vs. State, and tells him that this case allows
7 those who did not knowingly waive their right to appeal.
8 Okay. Granted. But at no point did Mr. Johnson
9 unequivocally tell Mr. Downs that it's your
10 responsibility to file the appeal, and from the date of
11 this letter, I am no longer representing you because I
12 can't file a PCR on myself. The government understands
13 that. I understand that. But the question is did
14 Mr. Downs understand that. I submit that he did not.

15 And he has explained why he was late in filing his
16 appeal because he was in limbo about who was representing
17 him, that he thought that the statute might have run, so
18 on and so forth. When he found out, hey, man, you still
19 have the possibility to file a belated appeal, what did
20 he do? He filed it as a responsible person should have
21 done because he was armed with the knowledge. Up to that
22 point, he was not armed with any knowledge about time
23 limits, about when to file, or that it's my right or it's
24 my responsibility to file. He was left in limbo.

25 And the lapse of time under the defense of laches, a

1 lapse of time is only one factor that must be considered.
2 It is not the determining factor. And it was not because
3 Mr. Downs was dilatory in filing that belated appeal. It
4 was simply because he didn't know his rights, his
5 responsibilities. And that was the responsibility, I
6 submit, of his counsel, Mr. Johnson.

7 And even Mr. Johnson, I asked him a similar
8 question. I said do you believe that Mr. Downs knowingly
9 and voluntarily waived his right to a belated appeal?
10 And he gave kind of a -- it certainly was an unequivocal
11 answer. He said I really don't believe he was. I don't
12 -- I'm just not sure. That's not enough. As his
13 counsel, he has to know that he, Mr. Downs, freely and
14 voluntarily waived his right, and Mr. Johnson cannot
15 affirmatively answer that question. Therefore, I submit
16 he's a good lawyer, a good friend of mine, but in this
17 instance, his -- if you look at his representation
18 holistically, he was ineffective in representing
19 Mr. Downs from A to Z.

20 Thank you.

21 THE COURT: Anything else from the State?

22 MR. EVANS: Nothing else, Your Honor.

23 THE COURT: Okay. All right. I'll take it under
24 advisement. Thank you both for doing an excellent job.

25 (WHEREUPON, proceedings concluded at 11:26 AM.)

CERTIFICATE OF REPORTER

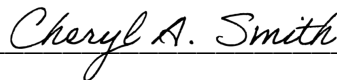
STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

I, CHERYL A. SMITH, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas for Greenville County, South Carolina, on the 9th day of October, 2024.

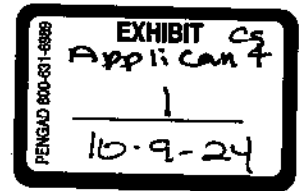
I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

July 29, 2025



Cheryl A. Smith, CVR-M

Court Reporter



LAW OFFICE OF BRIAN P. JOHNSON, LLC

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522 North Church Street
Greenville, SC 29601
brian@brianpjohnsonlaw.com

April 30, 2015

VIA U.S. POSTAL ONLY

Ronald Tyrone Downs, Jr.
#356640
Perry Correctional Institute
430 Oaklawn Rd.
Pelzer, SC 29669

**Re: State of South Carolina vs. Ronald Tyrone Downs, Jr.
PCR Case No.: 2014-CP-23-02474**

Dear Mr. Downs:

I am writing regarding the above referenced action, specifically regarding your right to appeal the order dismissing your application for Post Conviction Relief ("Application").

On March 24, 2015, I wrote you notifying you that I would file an appeal on your behalf. On April 2, 2015, I spoke to Betty Downs who told me you wanted to file a 59(e) motion and would call me back with instructions. Therefore, I held off on filing the appeal. On April 30, 2015, Betty Downs contacted me asking to file an appeal. However, the time has passed for filing a timely appeal. I do not believe that I notified you or Ms. Down's that we had thirty (30) days to file an appeal.

★ Therefore, I am writing you to notify you of this fact, and to further advise you that you may be entitled to a belated appeal pursuant to *White v. State*, 263 S.C. 110, 208 S.E.2d 35 (1974). This case allows those who did not knowingly waive their right to appeal to file an application for Post Conviction Relief ("PCR") against their PCR Hearing counsel and request the relief of a belated appeal. I have enclosed a copy of *White v. State* for your review.

If you have any questions or concerns feel free to write me at the above address.

Thank you.

Sincerely,



Brian P. Johnson, Esquire

BPJ/f

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brian@brianpjohnsonlaw.com

November 5, 2014

VIA U.S. POSTAL ONLYRonald Tyrone Downs, Jr.
#356640
Perry Correctional Institute
430 Oaklawn Rd.
Pelzer, SC 29669**Re: State of South Carolina vs. Ronald Tyrone Downs, Jr.**
PCR Case No.: 2014-CP-23-02474

Dear Mr. Downs:

Please be advised that I have been appointed to represent you regarding your application for Post-Conviction Relief. Please forward to me any information and/or documents you believe would be helpful to me in this matter. By copy of this letter, I am requesting your criminal file from your previous attorney.

If you have any questions or concerns feel free to write me at the above address.

Thank you.

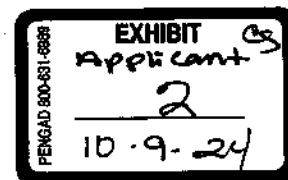
Sincerely,



Brian P. Johnson, Esquire

BPJ/lf

cc: Clifford F. Gaddy, Esquire



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November 17, 2014

VIA U.S. POSTAL ONLY

Ronald Tyrone Downs, Jr.
#356640
Perry Correctional Institute
430 Oaklawn Rd.
Pelzer, SC 29669

Re: State of South Carolina vs. Ronald Tyrone Downs, Jr.
PCR Case No.: 2014-CP-23-02474

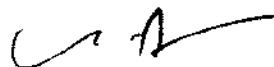
Dear Mr. Downs:

We regret to inform you that your case is not on December's PCR docket. Once your case has been scheduled, I will schedule a conference with you to discuss your case.

Meanwhile, please feel free to write with any concerns or questions about your case.

Thank you.

Yours truly,



Brian P. Johnson, Esq.

BPJ/lf

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522 North Church Street
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January 21, 2015

VIA U.S. POSTAL

Ronald Tyrone Downs, Jr.
#356640
Perry Correctional Institute
430 Oaklawn Rd.
Pelzer, SC 29669

Re: State of South Carolina vs. Ronald Tyrone Downs, Jr.
PCR Case No.: 2014-CP-23-02474

Dear Mr. Downs:

We are pleased to inform you that your Hearing has been scheduled for Thursday, February 19, 2015 at 9:30 am. We will be setting a meeting with you to discuss your case.

If you have any questions or concerns feel free to write me at the above address.

Thank you.

Sincerely,



Brian P. Johnson, Esq.

BPJ/lf

LAW OFFICE OF BRIAN P. JOHNSON, LLC

P 864.331.1630
F 864.672.4009
www.brianpjohnsonlaw.com

522 North Church Street
Greenville, SC 29601
brian@brianpjohnsonlaw.com

February 3, 2015

VIA U.S. POSTAL

Ronald Tyrone Downs, Jr.
#356640
Perry Correctional Institute
430 Oaklawn Rd.
Pelzer, SC 29669

**Re: State of South Carolina vs. Ronald Tyrone Downs, Jr.
PCR Case No.: 2014-CP-23-02474**

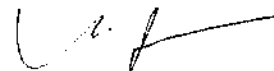
Dear Mr. Downs:

I am writing to you regarding the above referenced case, specifically in response to your letter read February 3, 2015. At this time we have not received a copy of your transcript. We will notify you when we have received a copy.

If you have any questions or concerns feel free to write me at the above address.

Thank you.

Sincerely,



Brian P. Johnson, Esquire

BPJ/lf

review” as specified in *Austin*, 305 S.C. at 454, 409 S.E.2d at 396. Consequently, Applicant’s request for post-conviction relief is **DENIED** and the application is **DISMISSED** with prejudice.

PROCEDURAL HISTORY

Applicant is currently incarcerated in the South Carolina Department of Corrections (SCDC), Perry Correctional Institution, pursuant to orders of commitment from the Greenville County Clerk of Court. A Greenville County grand jury indicted Applicant in January 2013 for kidnapping (2912-GS-23-10568), armed robbery (2012-GS-23-10569) and first-degree assault and battery (2013-GS-23-0087A).

A jury trial was held August 14-15, 2013, with the Honorable Eugene C. Griffith Clifford presiding. (Trial Tr. at 1). Clifford F. Gaddy, Jr., Esq., represented Applicant on the charges and Assistant Solicitor L. Mark Moyer of the Thirteenth Circuit Solicitor’s Office prosecuted the case. (Trial Tr. at 1). At the conclusion of trial, the jury found Applicant guilty of armed robbery and first-degree assault and battery but acquitted as to kidnapping. (Trial Tr. at 264). Judge Griffith sentenced Applicant to twenty-five (25) years for armed robbery and ten (10) years for first-degree assault and battery, to be served concurrently with credit for time served. (Trial Tr. at 269). Applicant did not appeal.

Initial PCR Action (2014-CP-23-2474)

Applicant filed his first *pro se* PCR application on May 1, 2014, raising the following ineffective assistance of counsel allegations:

1. Erroneously advised Applicant not to accept a 15-year plea offer;
2. Failed to consult with the Applicant about his right to appeal.

Brian P. Johnson, Esq., was appointed to represent Applicant in the action. An evidentiary hearing was held on February 19, 2015, at the Greenville County Courthouse with the Honorable

Daniel D. Hall presiding. Applicant and trial counsel testified at the hearing. On March 19, 2013, the application was denied and dismissed with prejudice. Applicant did not appeal.

CURRENT ALLEGATIONS AND RELIEF SOUGHT

In the current PCR action, Applicant seeks a hearing to pursue a belated appeal as provided by *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After carefully considering the record and the arguments presented by counsel, this Court now presents the relevant findings of fact and conclusions of law as required by S.C. Code Ann. §17-27-80 (2003). This Court finds that Applicant has failed to meet his burden of proof.

STANDARD OF REVIEW: AUSTIN CLAIMS

Under *Austin*, a defendant can appeal a denial of a PCR application after the statute of limitations has expired if the defendant either requested and was denied an opportunity to seek appellate review, or did not knowingly and intelligently waive the right to appeal. *Austin*, 305 S.C. 453, 409 S.E.2d 395; *see also King v. State*, 308 S.C. 348, 417 S.E.2d 868 (1992). “[C]ounsel is required to advise an applicant of the right to appellate review of the denial of PCR.” *Bray v. State*, 366 S.C. 137, 140, 620 S.E.2d 743, 745 (2005). “If an applicant represented by counsel desires to appeal, counsel shall serve and file a Notice of Appeal as required by Rule 243, SCACR....” Rule 71.1(g), SCRCF. A PCR applicant is entitled to an *Austin* appeal if, after an evidentiary hearing on the matter, the PCR judge finds that applicant asked for appeal, but “was denied an opportunity to seek appellate review.” *Austin*, 305 S.C. at 454, 409 S.E.2d at 396. Applicant has the burden of showing “his entitlement to relief by a preponderance of the evidence.” Rule 71.1(e), SCRCF.

MERITS OF APPLICANT’S AUSTIN CLAIM

Applicant claims that he did not voluntarily waive his right to appeal the denial of his 2015

PCR application to PCR counsel and seeks a belated appeal to challenge the denial of his ineffective assistance of counsel allegations. This Court finds that Applicant was advised of the opportunity to seek appellate review, was aware of the timeframe to file a notice of appeal, and did not advise counsel that he wished to appeal though he knew he could do so.

At the evidentiary hearing, Applicant testified that he only spoke with Mr. Johnson on the day of the evidentiary hearing and that they did not discuss his allegations prior to appearing in court. He testified that he asked Mr. Johnson to request a continuance because he felt that he was unprepared, and he also wanted his grandmother present at the hearing. Applicant testified that the only correspondence he had with Mr. Johnson after the evidentiary hearing was a letter from Mr. Johnson informing him that he may be able to file a belated appeal pursuant to *White v. State*, 208 S.E.2d 35 (S.C. 1974).¹ (Applicant's Exhibit 1 – Letter to Applicant, dated March 30, 2015). He testified that Mr. Johnson did not contact him again, and Applicant was unsure if Mr. Johnson still represented him. He testified that he thought Mr. Johnson would file a belated appeal, and that he did not relay the timeframe of filing the appeal or that it was Applicant's responsibility to file.

Applicant confirmed that he knows how to file a PCR application and knows how to appeal his conviction. He testified that he never called Mr. Johnson concerning questions about filing an appeal. Applicant also acknowledged that he received the Order of Dismissal from his PCR action

¹ PCR Counsel incorrectly stated in the letter that Applicant may be entitled to a belated appeal of his first PCR action pursuant to *White v. State*, 263 S.C. 110, 208 S.E.2d 35 (1974) which allows for a belated review of direct appeal issues.

PCR Counsel likely meant to state Petitioner may be entitled to a belated appeal pursuant to *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991), which “is used when an applicant is prevented from seeking appellate review of a denial of his or her PCR application, such as when an attorney fails to seek timely review.” *Odom v. State*, 337 S.C. 256, 523 S.E.2d 753 (1999).

and that the Order notified him that he has thirty (30) days to appeal the denial of relief. Applicant testified that he wrote a letter to Mr. Johnson while he was incarcerated in Mississippi, but he could not locate the letter or confirm Mr. Johnson's receipt of the letter. As to asking Mr. Johnson to file an appeal on his behalf, he testified that he did not ask, nor did he ask his grandmother to notify Mr. Johnson to file an appeal.

Applicant's grandmother, Betty Downs, testified that she spoke with Applicant about filing a Rule 59(e) Motion,² and that she followed up with Mr. Johnson twice about doing so.³ She testified that the second time she followed up with Mr. Johnson was on April 30, 2015, and that Mr. Johnson told her that he would file an appeal on Applicant's behalf. She testified that Mr. Johnson did not tell her that he did not file the appeal and that she did not hear from him again. She testified that she discussed an appeal with Applicant, and that if he had asked her to speak to his lawyer then she would have. She testified that Applicant believed his case was over when he left court after the hearing.

Mr. Johnson testified that he was prepared to go forward with Applicant's PCR action on the day of the hearing. As to the request to file a Rule 59(e) Motion, Mr. Johnson deferred to what was written in his letter to Applicant because he could remember the details of events. The letter states that Mr. Johnson spoke to Ms. Downs who informed him that Applicant wanted to file a Rule 59(e) Motion and that she would call him back with instructions, and as a result Mr. Johnson

² Rule 59(e) Motion to Alter or Amend Judgment, South Carolina Rules of Civil Procedure (“On a motion for a new trial in an action tried without a jury, the court may open the judgment if one has been entered, take additional testimony, amend findings of fact and conclusions of law or make new findings and conclusions, and direct the entry of a new judgment.”).

³ The testimony is unclear if Ms. Downs is referring to a request for counsel to file a Rule 59(e) Motion or an appeal. Ms. Downs seems to use a Rule 59(e) Motion and a Notice of Appeal interchangeably throughout her testimony.

held off on filing an notice of appeal. At the PCR hearing, Mr. Johnson notes that Rule 59(e), SCRCF, requires specificity of error while the notice appeal only requires notice. The letter states that Ms. Downs contacted Mr. Johnson on April 30, 2015, and asked Mr. Johnson to file an appeal, but the thirty (30) day deadline had already passed. He testified that Applicant knew his PCR action had been dismissed and had given Applicant a copy of the Order of Dismissal. He testified that it is his understanding that his responsibility ends when an appeal is filed and then the matter is referred to appellate defense. If no appeal is filed, then representation ends. He testified that he did not personally discuss an appeal with Applicant after the Order of Dismissal, but as the letter reflects, he spoke with Applicant's grandmother. He testified that he was concerned that he had not relayed the correct time frame to Applicant's grandmother in regard to timely filing a Rule 59(e) Motion or a notice of appeal, so he sent the letter giving instructions on how to file a belated appeal. He testified that he believed it was clear his representation ended because it required Applicant to allege error against him. He further testified that he did not have any contact with Applicant after he sent him the letter.

Applicant testified that he received the Order of Dismissal which indicated that an appeal must be filed within thirty (30) days. Thus, Applicant knew the time frame in which he had to decide whether he wanted to appeal, and did not ask counsel to file one directly or through his grandmother, until after the deadline had passed. Notably, there is no testimony presented that Applicant directly requested Mr. Johnson to file an appeal on his behalf. Further, the letter states that Mr. Johnson told Applicant he would file an appeal on his behalf, but that Applicant's grandmother told him otherwise, and that Mr. Johnson would wait for Applicant's instructions. It is clear that Applicant was advised of his appellate rights and the timeframe in which to exercise them, yet his failure to inform counsel that he wanted to appeal must be considered as waiver of

appellate review.

AFFIRMATIVE DEFENSE OF LACHES

The doctrine of laches is an affirmative defense against an *Austin* claim that must be raised by the State in the return to the application or within the motion to dismiss the application. *Whitehead v. State*, 352 S.C. 215, 220, 574 S.E.2d 200, 202 (2002). The statute of limitations set forth in the S.C. Code Ann. § 17-27-45(A) does not apply to *Austin* claims, however laches may independently bar the action. *Id.*, 352 S.C. at 219, 574 S.E.2d at 202. Laches is defined as:

Neglect for an unreasonable and unexplained length of time, under circumstances affording opportunity for diligence, to do what in law should have been done. Whether a claim is barred by laches is to be determined in light of the facts of each case, taking into consideration whether the delay has worked injury, prejudice, or disadvantage to the other party; delay alone in assertion of a right does not constitute laches.

Id., 352 S.C. at 219, 574 S.E.2d at 202 (citing *Hallums v. Hallums*, 296 S.C. 195, 198-199, 371 S.E.2d 525, 527 (1988)). “The determination of whether laches has been established is largely within the discretion of the [circuit] court.” *Brown v. Butler*, 347 S.C. 259, 265, 554 S.E.2d 431, 434 (Ct. App. 2001) (citing *Grossman v. Grossman*, 242 S.C. 298, 130 S.E.2d 850 (1963)).

APPLICANT’S CLAIM IS BARRED BY LACHES

This Court finds that Applicant’s *Austin* claim is likewise barred by the doctrine of laches. The State properly asserted the defense in its responsive pleading, arguing that Applicant’s *eight* (8) year delay in filing after receiving Mr. Johnson’s letter likely bars the action. After receiving testimony, this Court finds that Applicant has failed to justify the unreasonable length of time in which he waited to assert an *Austin* claim, despite being notified that he could do so shortly after the deadline to file the notice of appeal concluded.

Applicant offers no explanation for the delay other than that he was incarcerated in SCDC

from 2015 to 2018 and was subsequently transferred to Mississippi in 2018, where he remained incarcerated until 2024, when he was transferred back to SCDC. He testified that he did not have access to South Carolina case law while he was incarcerated in Mississippi. He testified that he waited so long to file this action because he believed he was procedurally barred from being heard, and that a fellow inmate looked over his case and told him the action was tolled, not barred, and that he should file a PCR application referencing *Austin*. Despite Applicant's explanation, the letter Applicant references and presents at the evidentiary hearing from Mr. Johnson, contradicts the assertion that he did not know he could seek a belated appeal. The letter explicitly informs Applicant that he can file an application for relief against PCR hearing counsel. Further, Applicant did not reach out to Mr. Johnson to inquire about the letter, though he contends he wrote him a letter in 2018 – three (3) years later – while he was incarcerated in Mississippi.

Mr. Johnson testified that he wrote Applicant the letter because he was concerned that he didn't notify Ms. Downs, Applicant's grandmother, of the time frame for filing a Rule 59(e) Motion or a notice of appeal. He testified that he believed the letter made clear that Applicant would be filing a claim against him for not filing an appeal, and that he did not receive any contact from Applicant after sending the letter.

Applicant's first PCR evidentiary hearing was on February 19, 2015, and the Order denying and dismissing the action was filed on March 19, 2015. The letter from Mr. Johnson sent to Applicant advising him of his right to pursue a belated appeal is dated April 30, 2015. No further action was taken which would require retention of the PCR transcript, thus the transcript is unavailable. *See* Rule 607(i), SCACR (allowing allows court reporters to reuse or destroy tapes of a proceeding after five years). The unavailability of the PCR transcript is prejudicial to Respondent, as well as Applicant. Additionally, reconstruction of the record would not be feasible

as Applicant's trial counsel is deceased, and the claims of error are ineffective assistance of counsel allegations that require trial counsel's testimony.

This Court finds that Applicant's claim is barred by laches based on Applicant's failure to pursue the claim in a diligent manner. Applicant was given the opportunity to act sooner and was notified by counsel that he could file an *Austin* claim *eight* (8) years prior to pursuing this action. *See Bray v. State*, 366 S.C. 137, 140, 620 S.E.2d 743, 745 (2005) (applying laches where applicant delayed seven years in seeking appellate review pursuant to *Austin*). Applicant's delay in asserting this right frustrates the critical need for finality and "only the very rarest of exceptions, when the system has simply failed a defendant and where to continue the defendant's imprisonment without review would amount to a gross miscarriage of justice." *Aice v. State*, 305 S.C. 448,451,409 S.E.2d 392, 394 (1991); *Williams v. Ozmint*, 380 S.C. 473,479,671 S.E.2d 600, 603 (2008) (same). "[T]he principle of finality ... is essential to the operation of our criminal justice system" because "[w]ithout finality, the criminal law is deprived of much of its deterrent effect." *Teague v. Lane*, 489 U.S. 288, 309 (1989). *See also Williams v. United States*, 401 U.S. 667, 691 (1971) ("If law, criminal or otherwise, is worth having and enforcing, it must at some time provide a definitive answer to the question litigants present or else it never provides an answer at all.") (Harlan, J., concurring in judgments in part and dissenting in part).

Therefore, in addition to Applicant's failure to establish that relief is warranted under the merits of *Austin*, Applicant's claim is additionally barred by the doctrine of laches, and the application for post-conviction relief must be denied.

CONCLUSION

Based on all the foregoing, this Court finds and concludes that the Applicant has not established that he is entitled to the relief which *Austin* can provide. Therefore, this PCR application must be **DENIED** and **DISMISSED** with prejudice.

This Court advises the Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order if he wants to secure appropriate appellate review. His attention is also directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules and *King v. State*, 308 S.C. 348, 417 S.E.2d 868 (1992) for the appropriate procedures to follow after notice of intent to appeal has been timely filed.

IT IS THEREFORE ORDERED:

1. Applicant’s application for post-conviction relief is denied and dismissed with prejudice; and
2. Applicant is remanded to the custody of Respondent for completion of his sentence.

AND IT IS SO ORDERED this 6th day of May, 2025.

PATRICK C. FANT, III
Thirteenth Judicial Circuit, Presiding Judge

, South Carolina

Copy mailed to
Attorney <u>general / App. Atty</u>
on <u>5 / 6 / 2025</u>

The Supreme Court of South Carolina

Ronald Tyrone Downs, Jr., Petitioner,

v.

State of South Carolina, Respondent.

Appellate Case No. 2025-001171

ORDER

This matter is before the Court by way of a notice of appeal from an order of the circuit court finding Petitioner is not entitled to a belated review of the order issued in Petitioner's first post-conviction relief (PCR) action pursuant to *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991). Counsel for Petitioner states the record of Petitioner's first PCR hearing is not available. Accordingly, counsel asks this Court to hold this appeal in abeyance and remand the case to the circuit court for reconstruction of the record of the hearing. The State has not filed a return to the motion.

We hereby hold this appeal in abeyance and remand the matter to the Honorable Daniel D. Hall to reconstruct the record of the evidentiary hearing on Petitioner's first PCR application. *See Koon v. State*, 358 S.C. 359, 595 S.E.2d 456 (2004), *overruled on other grounds by State v. Gentry*, 363 S.C. 93, 610 S.E.2d 494 (2005); *State v. Ladson*, 373 S.C. 320, 644 S.E.2d 271 (Ct. App. 2007). Counsel for Petitioner is ordered to contact counsel for Respondent and Judge Hall within ten days of the date of this order to schedule such hearings as Judge Hall deems appropriate. Counsel for Petitioner shall provide an update to the Clerk of this Court no later than fifteen days from the date of this order, and every fifteen days thereafter, with copies of the updates provided to counsel for Respondent. If Judge Hall determines reconstruction is not possible, he shall immediately notify this Court and the parties of that determination. If the record is reconstructed, counsel for Petitioner shall notify this Court, and the matter will proceed upon Petitioner's receipt of the transcript from the reconstruction hearing.

John Kittidge C.J.
John Cannon Jew J.
John Cannon Jew J.
John Cannon Jew J.
John Cannon Jew J.

Columbia, South Carolina
November 19, 2025

cc:
Kaylee Christene Kemp
Wesley Chandler Norville
The Honorable Daniel D. Hall
The Honorable Jay Gresham

STATE OF SOUTH CAROLINA)	
	)	COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	2014-CP-23-02474
)	
)	
)	
)	
RONALD TYRONE DOWNS, JR.,)	
APPLICANT,)	
)	
vs.	)	TRANSCRIPT OF RECORD
)	
STATE OF SOUTH CAROLINA,)	
RESPONDENT.)	
_____)	

February 11 and 13, 2026
Greenville, 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:

W. CHANDLER NORVILLE, ESQ.
Attorney for the Applicant

TOMMY EVANS, JR., ESQ.
Attorney for the Respondent

HOLLIE M. JENKINS
Circuit Court Reporter

I N D E X

(AW) - Denotes Applicant's Witness
(RW) - Denotes Respondent's Witness

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All Exhibits were retained by the Clerk of Court for Greenville County.

P R O C E E D I N G S

(WHEREUPON, Plaintiff's Exhibit Nos. 1 and 2 were marked for identification only.)

THE COURT: We're on the record in the matter of Ronald T. Downs vs. the State. This is coming out of a civil action, a PCR, 2014CP232474.

We're here today. It appears that this Court received an order from our State Supreme Court instructing this Court to hold a hearing on the reconstruction of the record, the record that was -- that was made back when this initial PCR was heard back on February the 19th, 2015.

And so present in the courtroom are the Applicant, Mr. Ronald T. Downs, and his attorney, Chandler Norville. Representing the State, the Respondent, is Assistant Attorney General Mr. Tommy Evans. They're both present in the courtroom.

So with that, Mr. Norville, I'm going to turn it over to you and give us an explanation of what we're doing here and what we need to do to proceed.

MR. NORVILLE: Thank you, Your Honor.

So -- and you explained it pretty well. Just briefly, the posture of this case is that we currently have a pending appeal from the denial of Austin vs. State relief that Mr. Downs filed. This was the underlying PCR

1 action. Because of the passage of time, we just don't
2 have the transcript of that 2015 PCR action anymore.

3 The process that -- that I think we'll take here is
4 that I'll call my client, as well as the two attorneys who
5 were at the original PCR hearing. And that's Brian
6 Johnson and Karen Ratigan. And they will testify to their
7 recollection.

8 Before we get started, Judge, if I can approach
9 briefly.

10 THE COURT: Yes, you may.

11 MR. NORVILLE: And we're going to be entering by
12 stipulation Applicant's one and two.

13 (WHEREUPON, Plaintiff's Exhibit Nos. 1 and 2 were
14 admitted into evidence.)

15 MR. NORVILLE: Number one is the notes that the clerk
16 of court took from the 2015 PCR action. And number two is
17 e-mail correspondence between myself and Mr. Duncan, I
18 believe, who was your law clerk at the time, who just said
19 he had absolutely no recollection, nor did he retain any
20 notes.

21 So we're not going to be calling him. But since he
22 was there, we wanted the -- the record to reflect that we
23 attempted to see if he had any recollection of this
24 hearing.

25 THE COURT: All right. Thank you.

1 MR. EVANS: And we received copies of all those --

2 THE COURT: Mr. Evans, are you --

3 MR. EVANS: -- the information --

4 THE COURT: -- ready to proceed as well?

5 MR. EVANS: Yes, sir, Your Honor.

6 THE COURT: All right. Mr. Norville, call your first
7 witness.

8 MR. NORVILLE: All right. At this time, we're going
9 to call Mr. Johnson.

10 THE CLERK: Mr. Johnson, raise your right hand.

11 WHEREUPON,

12 BRIAN P. JOHNSON,

13 after first having been duly sworn, testified as follows:

14 THE CLERK: Thank you.

15 You may be seated.

16 And state your full name for the record.

17 THE WITNESS: Brian P. Johnson.

18 DIRECT EXAMINATION

19 BY MR. NORVILLE:

20 Q Good afternoon, Mr. Johnson.

21 A Good afternoon.

22 Q Where are you presently employed?

23 A I have my own law office in Greenville.

24 Q And how long have you had that law office?

25 A Since 2009.

1 Q Since 2009. Okay. And what types of law do you
2 practice?

3 A Primarily criminal defense and family law at this
4 point. I'm, also, a -- a magistrate judge.

5 Q How long have you been practicing law?

6 A Since 2005.

7 Q All right. And have you done primarily family and
8 criminal defense for your entire career?

9 A Pretty much, yes.

10 Q Okay. Now, I'd like to draw your attention to the
11 date of February 19th, 2015. Do you remember that date?

12 A I do after being sent some materials either by
13 yourself or another attorney. I was able to go back and
14 look about what this is with regard to.

15 Q Okay. And so on that date, you know that you were
16 here for a hearing for post-conviction relief?

17 A Yes, sir.

18 Q All right. And do you have any independent
19 recollection of that hearing?

20 A Not independent, no. I've tried to piece some things
21 together from the stuff I was sent over, but that's all.

22 Q All right. So you don't remember just from the top
23 of your head anything about the facts of the case?

24 A Well, I remember that the other attorney -- the --
25 the -- representing Mr. Downs -- the post-conviction

1 relief action was against Clifford Gaddy. And I think the
2 two main things were that he was not advised of his right
3 to an appeal. And then, also, he was not advised
4 appropriately regarding a plea offer.

5 Q Okay. And we'll come back to that in a moment.

6 Do you recall being called to testify in the Austin
7 vs. State PCR hearing that arose from this case?

8 A Yes, sir.

9 Q All right. And when was that hearing?

10 A I believe in '24.

11 Q So about eight or nine years after the first PCR
12 hearing?

13 A Yes, sir.

14 Q And how did you prepare to testify at that hearing?

15 A The same way as today. I had to -- I was sent some
16 materials. And then I, also, went back and looked through
17 in my e-mails and things to see what I could piece
18 together.

19 Q Okay. So you don't have any of your own materials?

20 A No. My file's gone.

21 Q Okay. Did Mr. Downs retain you or were you
22 appointed?

23 A I was appointed.

24 Q And you were appointed under Rule 608?

25 A I believe so.

1 Q And how long have you been accepting 608 contracts
2 for PCR matters?

3 A I haven't -- I haven't taken any in quite some time
4 at this point. I believe Mr. Downs was one of my last
5 few, actually.

6 Q All right. Would you be able to give any indication
7 about how many times you've represented an Applicant in a
8 PCR application?

9 A If I -- I could -- I could give an estimation.

10 Q An estimation would be fine.

11 A Maybe 40 or 50 times.

12 Q Okay. And could you speak a little bit as to your
13 general practices about how you would go about preparing
14 for a PCR action?

15 A Yeah. When I got -- when I get the case, eventually,
16 I get the file. And if I -- if I -- when I got each of
17 those things or if I got anything from the Attorney
18 General's Office, I would send it -- send it down to my
19 client with a letter. And then I would encourage my
20 client, also, to communicate via letter. Because, most
21 times, they're not, like, at Greenville County, or
22 anything of that nature, anywhere close by.

23 And so I would do that and then, eventually, have a
24 conversation with my client and, you know, make sure that
25 we're able to proceed with whatever -- which -- whatever

1 causes of action that we decided were most able to be
2 proved.

3 Q Okay. And of the PCR hearings that you've done in
4 your career, would you agree that all or almost all the
5 primary allegation was ineffective assistance of counsel?

6 A Yes, sir.

7 Q All right. Would you agree -- so you would agree
8 that most PCR cases involve ineffective assistance. So
9 this case involved an allegation of ineffective
10 assistance, like you said, based on trial counsel giving
11 erroneous advice about taking a plea deal. In your
12 experience, how common is that specific allegation?

13 A It's quite common.

14 Q Okay. So you did multiple evidentiary hearings where
15 that would have been one of the primary allegations?

16 A Yes, sir.

17 Q Okay. And you called Mr. Downs as a witness at that
18 hearing; correct?

19 A Yes, sir.

20 Q Do you recall whether Mr. Downs was cross-examined?

21 A I believe he was.

22 Q Okay. And do you have any memory at all of Mr. Downs
23 testimony?

24 A Not the specifics of the testimony. I -- I recall --
25 and I can remember the case from the standpoint of what

1 the issues were, but I cannot remember the details of his
2 testimony.

3 Q Do you have any idea what you may have asked him?

4 A Well, I would have asked him to communicate whether
5 or not they discussed an appeal, and whether or not he
6 asked his client -- or whether or not he asked his
7 attorney, specifically, to do an appeal.

8 And, also, regarding the -- the plea offer, I believe
9 I would have questioned him regarding whether or not he
10 explained why he should accept a plea offer or decline it.

11 Q All right. And the trial counsel in this case was
12 Mr. Gaddy; correct?

13 A That's correct.

14 Q Do you know Mr. Gaddy?

15 A I knew him. I believe he's passed.

16 Q Okay. That was going to be my next question.

17 A Yeah.

18 Q To your knowledge, Mr. Gaddy is now deceased?

19 A Yeah. I think he passed away.

20 MR. NORVILLE: All right. Thank you very much.

21 I beg the Court's indulgence for one moment.

22 (Pause.)

23 BY MR. NORVILLE:

24 Q Do you recall reviewing the order of dismissal in
25 this case?

1 A Yes.

2 Q To your knowledge, was the summary of the testimony
3 presented in that order an accurate representation of what
4 occurred?

5 A I believe so.

6 Q All right. The order references a letter that was
7 brought up during both Mr. Downs and Mr. Gaddy's
8 testimony. Do you know what that's referring to?

9 A I have a copy of the order of dismissal in front of
10 me. Would you like me to review it? Because I can't
11 remember offhand.

12 Q Sure.

13 A Do you know what portion of the -- of the order?

14 Q That would be --

15 MR. NORVILLE: May I approach the witness?

16 THE COURT: Yeah. And if you don't mind, hand me a
17 copy, too.

18 MR. NORVILLE: Judge, I apologize. We made you this
19 copy of all of the documents. And your order would be in
20 there.

21 THE COURT: Thank you.

22 BY MR. NORVILLE:

23 Q And, for the record, that's Page 3 in the middle
24 paragraph.

25 A I see that.

1 Q Did you ever see a copy of the letter that that was
2 referring to?

3 A I don't recall. And I can't see that we entered it
4 into evidence, or anything of that nature. I don't -- I
5 don't -- I don't remember whether I saw the letter. I'm
6 not sure that there was one.

7 MR. NORVILLE: All right. Thank you, sir.

8 Please answer any questions the State may have.

9 THE WITNESS: Thank you.

10 CROSS-EXAMINATION

11 BY MR. EVANS:

12 Q Mr. Johnson, you said that you represented Mr. Downs
13 for his PCR hearing?

14 A Yes, sir.

15 Q Do you remember Mr. Gaddy testifying?

16 A I -- I do vaguely.

17 Q Okay. And Mr. Gaddy -- do you remember what he said
18 during his testimony?

19 A Not outside of the details of what I can see in this
20 order of dismissal.

21 Q Okay. So you don't remember Mr. Gaddy saying that he
22 informed Mr. Downs that he was facing 30 years for the
23 armed robbery charge?

24 A I -- I believe I -- I do recall -- I recall the
25 testimony being that he did advise him that he -- that he

1 knew what -- that he advised him what the charge carried.

2 Q And that they made an offer of 15 years?

3 A Yes. I remember that, specifically.

4 Q And that he -- Mr. Gaddy, basically, told him, You
5 can take the deal or not?

6 A That -- that was Mr. Gaddy's testimony. I think that
7 Mr. Downs felt like he didn't explain that the armed
8 robbery could have been proven by saying that I have a
9 gun. You don't have to present a gun. I believe that was
10 the crux of what the problem was.

11 Q Okay. But -- but then Mr. Gaddy testified he
12 explained to him about armed robbery and strong armed
13 robbery and the differences -- however, you can be
14 convicted of armed robbery if the victim thought you had a
15 gun?

16 A That portion of the testimony I don't recall.

17 Q And you said earlier that Mr. Gaddy is now deceased?

18 A He is. He is.

19 MR. EVANS: Okay. Nothing further, Your Honor.

20 MR. NORVILLE: May I ask one question?

21 THE COURT: Yes, you may.

22 REDIRECT EXAMINATION

23 BY MR. NORVILLE:

24 Q Just to clarify, you said that you had some
25 recollection that Mr. Gaddy said that he advised him

1 whether he could take the deal or not?

2 A Yes.

3 Q Okay. But he did -- he testified that he did not
4 advise him to take it, just that he told him what the deal
5 was?

6 A Right.

7 MR. NORVILLE: Okay. Thank you.

8 No further questions.

9 THE COURT: All right. Thank you.

10 You can step down.

11 THE WITNESS: Thank you, Judge.

12 THE COURT: Call your next witness.

13 MR. NORVILLE: Do we have the virtual court up?

14 And, Your Honor, if there's no objection, can I
15 release him from his subpoena?

16 MR. EVANS: No objection, Your Honor.

17 THE COURT: Yes, you may.

18 THE WITNESS: Thank you, Your Honor.

19 THE COURT: Ms. Ratigan, can you hear me?

20 (WHEREUPON, there was no response.)

21 THE COURT: Ms. Ratigan, can you hear me?

22 Well, she's showing up on my screen.

23 (WHEREUPON, there was no response.)

24 (WHEREUPON, a break was taken.)

25 THE COURT: All right. Ms. Ratigan, you're now in --

1 we don't have you on video. If you want to hit your -- we
2 don't necessarily have to have that, but it would be very
3 helpful.

4 Can you still hear me?

5 MS. KAREN RATIGAN: Yeah. I just hit the button for
6 it and it's not doing anything. I see the light on the
7 camera, but for some reason -- pardon me. It's not
8 working. I don't know why.

9 THE COURT: Mr. Norville, are you ready to go
10 forward, even if we can't see her?

11 MR. NORVILLE: I have no problem with that.

12 THE COURT: Mr. Evans?

13 MR. EVANS: I have no problem, Your Honor.

14 THE COURT: We don't see you, but I'm going to turn
15 you over to Mr. Norville.

16 MR. NORVILLE: Thank you, Your Honor.

17 THE CLERK: Do you want me to swear her in?

18 THE COURT: Yeah. Let's swear her in.

19 THE CLERK: Can she hear me?

20 THE COURT: Ms. Ratigan, can you hear the clerk?

21 MS. KAREN RATIGAN: Yes.

22 THE CLERK: Please raise your right hand.

23 WHEREUPON,

24 KAREN RATIGAN,

25 after first having been duly sworn, testified as follows:

DIRECT EXAMINATION

1
2 BY MR. NORVILLE:

3 Q Good afternoon, Mr. Ratigan.

4 A Good afternoon.

5 Q Ms. Ratigan, where are you presently employed?

6 A At the South Carolina Department of Environmental
7 Services, which up until 2024 was known as DHEC.

8 Q All right. And in February of 2015, where were you
9 employed?

10 A At the South Carolina Office of the Attorney General.

11 Q And which division?

12 A Post-conviction relief.

13 Q I'd like to draw your attention to the date of
14 February 19th, 2015. Do you remember that date?

15 A I have no independent recollection of that date.

16 Q Would you -- based on the -- the documents that have
17 been sent to you by my office, would you agree that that
18 is the date of a PCR hearing for Ronald T. Downs, Jr.?

19 A Yes.

20 Q All right. And do you remember what your role was at
21 that hearing?

22 A I was representing the Office of the Attorney
23 General. Prosecuting is not the right word, but we were
24 responding to the post-conviction relief application filed
25 by Mr. Downs. I had several hearings that day and several

1 hearings that week, and his was one of them.

2 Q Okay. And you just testified that you have no
3 independent recollection of that hearing; correct?

4 A Yes.

5 Q All right. So you don't remember anything at all
6 about the facts of the case?

7 A Not before I reviewed -- I had taken notes from the
8 transcript -- my reading of the transcript and notes from
9 the hearing. I had no independent recollection until I
10 reviewed those.

11 Q Okay. So I guess another way to ask is, other than
12 the documents that have been supplied to you, all of your
13 knowledge would come from the documents that have been
14 supplied to you?

15 A Yes. The only other thing I would add is I think
16 this was my only case with Mr. Gaddy, the trial attorney.
17 And that -- you know, that's always rare because it seems
18 like once you've gotten yourself into the criminal defense
19 racket, you see a PCR attorney a lot.

20 So it was a little unusual. I had never seen him
21 before. And I'd been at that office for almost 11 years
22 at that point.

23 Q So I'd like to ask you some question about your
24 general practices in PCR cases. How long did you work in
25 the PCR division of the Attorney General's Office?

1 A I started as an assistant attorney general in April,
2 I believe, of 2004. I was in the PCR section. At some
3 point, the date of which escapes me, I was promoted to be
4 assistant deputy attorney general. They had decided to
5 have PCR -- have two deputies, basically, under one chief.
6 And I was one of those deputies. That would have been
7 somewhere in between '07 and '13, I'd say.

8 And then in '13, I was promoted to be the senior
9 assistant deputy attorney general in charge of PCR. And
10 that's, basically, the head of the section. I was the
11 SADAG from the summer of 2013 until, I'd say, the summer
12 of 2016. The last six months that I was at the Attorney
13 General's Office, I had moved out of PCR and into criminal
14 appeals.

15 Q All right.

16 A And that would have been from around the summer of
17 2016 until December of 2016.

18 Q Okay. Thank you.

19 Would you be able to estimate how many PCR
20 evidentiary hearings you appeared at?

21 A Yeah. I -- let's see. Until the summer of 2013, I
22 was responsible for two judicial circuits. So that would
23 have been the thirteenth, which is Greenville and Pickens,
24 and then the fourth, which is Chesterfield, Darlington,
25 Dillon, and Marlboro. I did -- so from '04 until the

1 middle of 2013, I was in court one week a month. And we
2 did every other month in the thirteenth circuit and then
3 every other month for, at least, a few years in the fourth
4 circuit.

5 I would do probably -- in each of those court weeks
6 from 2004 to the middle of 2013, I'd say I did 20 to 25
7 full evidentiary hearings a week, and then a number of
8 withdrawals and motion hearings. But I'd say full
9 evidentiary hearings, 25 a week for nine years.

10 Q So -- and that number -- so the total number would
11 run into the hundreds then?

12 A Oh, yeah, easily.

13 Q Okay. Of the PCR hearings that you did, would you
14 agree that the -- all or almost all of them the primary
15 allegation was ineffective assistance of counsel?

16 A Correct.

17 Q And, generally, how would you go about preparing for
18 a PCR hearing?

19 A Well, for me, it started with putting a roster
20 together because -- I'm not sure how things have changed.
21 But I would put the roster together, I think, about two
22 months before the trial dates to give time to move things
23 around.

24 And so what I would usually do is I would schedule
25 the first day in Pickens and then the rest of the week in

1 Greenville. I would schedule everything, generally,
2 according to either the PCR attorney or the trial attorney
3 so that I didn't have the same PCR attorney coming every
4 day. I'd try to get them all in one day or the trial
5 attorney, same thing. I didn't want one of the public
6 defender's having to take half a day every day for a week.
7 So it kind of started that way. And that -- that could
8 bite me in the behind.

9 Sometimes, I would end up with having eight trials in
10 a day, sometimes, it didn't. But when it came to,
11 actually, preparing for court, what I would do is I had
12 a -- I would go through and prepare for all the pleas
13 first because they were quicker. And then I would go
14 through and I'd prepare for the trials.

15 And what I would do is I would take my own notes of
16 relevant page number, relevant testimony. And the way I
17 deemed it relevant is if it was something the Applicant
18 had alleged in their application, I would keep an eye out
19 for it. If it was issues of jury charge, or instructions,
20 or motions, I would -- I would make note of that just so
21 that it would be easier to flip to that transcript page
22 during the hearing.

23 After I prepared, what I would usually do is --
24 pardon me -- I would e-mail both the trial or plea
25 attorney and the PCR attorney and I would say, Now, I'm

1 ready to go next week. I'm fully prepared. Come at me
2 with anything you have.

3 The PCR attorney would nine times out of 10 call me
4 up and we'd have a conversation about what they thought
5 the issues would be and/or whether or not they thought
6 their client needed more time. And the plea or trial
7 attorney, if I knew them well, they would usually call me
8 up and we would talk about it a little bit and just kind
9 of get an idea of their level of recollection, their level
10 of what they had in the files, you know. Some people, the
11 second they can get rid of the file, that file is out the
12 door. So some people had files, some didn't.

13 If I didn't know the attorney very well or they were
14 not a person that was inclined to cooperate with the
15 State, I would say, they would not talk to me usually
16 until the day of the hearing. And then I would, you know,
17 drag numerous banker boxes full of stuff into court and be
18 in court all week.

19 And then I would write orders within -- at the most,
20 three weeks after a hearing, I'd say. I'd try to get
21 orders written within the first two weeks.

22 Q All right. And so this case involved an allegation
23 of ineffective assistance, which was based on trial
24 counsel giving erroneous advice about whether to reject a
25 plea deal. How common in your experience is that specific

1 allegation of ineffective assistance?

2 A It's extremely common.

3 Q Okay. So you did multiple evidentiary hearings where
4 that was the primary allegation?

5 A Yes.

6 Q And in such a case, you would still employ the same
7 general practices as in other cases?

8 A Yes.

9 Q So, now, in this case, the notes taken by the clerk
10 of court indicate that you did not cross-examine Mr. Downs
11 at that PCR hearing. Does that sound correct?

12 A Based on the notes that I took at the hearing, that's
13 correct.

14 Q All right. And would there be a reason for that?

15 A There could be a lot of reasons. I don't know what
16 the reason, specifically, for this case was. But, in
17 general, it could be if the Defendant -- if the Applicant
18 was on the stand and was behaving in such a manner that I
19 did not think they would be very receptive to my
20 questions.

21 I may not cross-examine if I did not think that
22 anything had been brought up that I could not challenge
23 either by transcript citations or through the trial
24 attorney. I could choose not to cross-examine somebody
25 because, frankly, their attorney had told me ahead of time

1 that it would be pointless because all that person was
2 going to do was scream at me.

3 I could choose not to cross-examine if we had the
4 victims family or the victim in the -- in the courtroom.
5 And I perceived there would be a chance that something may
6 be said that would upset that person or people.

7 But, again, in this case, I don't know the specific
8 reason I chose not to cross-examine Mr. Downs.

9 Q All right. Would you say that it is common or
10 uncommon for you to not cross-examine a PCR Applicant?

11 A I don't know. I mean, honestly, in a trial, I think
12 it's more likely that I would not cross-examine.

13 Q Okay.

14 A I think in a plea, it's much more likely I would have
15 cross-examined the Applicant.

16 Q Do you have any notes regarding this hearing in your
17 possession?

18 A I do.

19 Q You do?

20 A I do.

21 Q And what do those -- what -- what are those notes?
22 Can you describe them?

23 A Sure. It is two pages taken on yellow legal paper.
24 And the first page is -- or I should say are -- the first
25 page are notes of the direct testimony of Mr. Downs. And

1 the second page are notes of both my direct examination of
2 Mr. Gaddy and the cross-examination.

3 MR. NORVILLE: All right. Your Honor, may we
4 approach briefly?

5 THE COURT: Yes, you may.

6 (WHEREUPON, a bench conference was held.)

7 MR. NORVILLE: And, for the record, I did not think
8 that she did have notes, just based on prior
9 conversations.

10 What we just discussed at the bench was that I would
11 obtain copies of those notes and then supplement the
12 record with them at a later time.

13 THE COURT: All right. And then -- and we had a
14 discussion at the bench, you'd be sure -- obviously, you'd
15 be sure to provide those -- a copy of those notes to -- to
16 Mr. Evans.

17 MR. NORVILLE: Absolutely.

18 BY MR. NORVILLE:

19 Q And, Ms. Ratigan, would you be willing to e-mail me
20 copies of those notes?

21 A Sure. I was, actually, provided them by the Attorney
22 General's Office. So they should be in the closed file
23 that Mr. Evans has.

24 MR. EVANS: They --

25 THE COURT: All right.

1 MR. EVANS: They, actually, were not. I never saw
2 them, so.

3 THE COURT: Yeah. Do you have those -- have you ever
4 had those notes in your possession?

5 THE WITNESS: No. I would leave court, write the
6 order, and punch them into the file.

7 THE COURT: Have you seen those notes when you got
8 notice of being subpoenaed as a witness in this case?

9 THE WITNESS: Yes. I e-mailed the Attorney General's
10 Office and asked if they could send me the notes, and they
11 did.

12 THE COURT: Well, that's the question, do you still
13 have those notes?

14 THE WITNESS: Oh, yes, Your Honor, I do. I have them
15 in front of me. I'm sorry. I printed them out.

16 THE COURT: Okay. I think we cleared it up.

17 All right. Now, ask the question again.

18 BY MR. NORVILLE:

19 Q All right. So would you be willing to e-mail me
20 copies of those?

21 A Yeah, absolutely.

22 MR. NORVILLE: All right. I beg the Court's
23 indulgence for one moment.

24 (Pause.)

25 BY MR. NORVILLE:

1 Q In your notes, specifically, the ones relating
2 Mr. Gaddy's testimony, would you agree or disagree that
3 Mr. Gaddy testified that he told Mr. Downs of the plea
4 offer, but did not tell him whether he should accept it or
5 not?

6 A I assume I may look at my notes to refresh?

7 Q Yes.

8 A Okay. Yes. My notes convey there were, actually,
9 two different plea offers, one for 15 years and one for 10
10 years. And that Mr. Gaddy did not say one way or the
11 other whether Mr. Downs should accept.

12 MR. NORVILLE: Thank you.

13 Please answer any questions the State might have.

14 THE COURT: Mr. Evans.

15 MR. EVANS: Thank you, Your Honor.

16 CROSS-EXAMINATION

17 BY MR. EVANS:

18 Q Now, the notes you have -- it sounds like you have
19 the original. Are those the original notes that you took?

20 A I have a copy of the original notes.

21 Q Okay. And in your notes, it says that Mr. Gaddy
22 testified that there were two different plea offers. And
23 he didn't advise one way or the other whether or not
24 the -- Mr. Downs should take the -- the offers; is that
25 correct?

1 A To be more specific, Mr. Downs testified of the two
2 plea offers. And Mr. Gaddy was just testifying --
3 Mr. Downs testified, I had a 10-year offer and a 15-year
4 offer.

5 Q Okay.

6 A And Mr. Gaddy just referred to them as the plea
7 offers. So I would assume he meant the 15 year and the 10
8 year.

9 Q Okay. Did Mr. Gaddy testify that he, actually, told
10 Mr. Downs about the offers?

11 A Yes.

12 Q That Mr. Downs knew about them?

13 A Yes. If you would like, I mean, I can read these
14 notes verbatim.

15 Q Oh, I would love that. Could you do that, please?

16 A I, certainly, shall. From Mr. Gaddy's direct -- do
17 you want me just to discuss the conveyance of the plea
18 offers or everything that he said?

19 Q If you can say everything he said, I would -- I would
20 appreciate that.

21 A Okay. He stated he was retained by Mr. Downs'
22 grandmother. He filed discovery motions. He received
23 discovery materials. He reviewed them with both Mr. Downs
24 and his grandmother. He explained the elements of the
25 charges and the minimum and maximum sentences of each.

1 Regarding armed robbery, he told Mr. Downs the
2 maximum was 30 years. He told him the difference between
3 strong armed robbery and armed robbery. He said if the
4 evidence showed that Mr. Downs was represent --
5 represented by words or actions that he had a gun, it
6 would be the same as if he did, actually, have a gun.

7 He said the evidence was Mr. Downs did not have a
8 gun. And at trial, he brought out that no gun was ever
9 found to persuade the jury that it was not an armed
10 robbery. He said his strategy was to argue for strong
11 armed robbery at trial.

12 He stated he conveyed the plea offers, but did not
13 make a recommendation of whether or not to accept. He
14 stated he had, at least, four meetings with Mr. Downs.
15 Mr. Downs knew the assistant solicitor would -- would
16 recommend a 10-year sentence at one point, but then it had
17 been withdrawn. The assistant solicitor then offered 15
18 years.

19 He had two different meetings -- Mr. Gaddy had two
20 different meetings discussing the consequences of that
21 15-year offer. He didn't recommend taking or leaving the
22 15 years. Mr. Downs did not tell him why he rejected the
23 offer.

24 He stated Mr. Downs was fairly uncooperative the
25 whole time. That Mr. Downs said the facts were all wrong

1 and he had an alibi, even though the State's file showed
2 his involvement.

3 And then we got into the issue of the appeal. I
4 asked if he could explain whether he advised Mr. Downs of
5 the right to appeal. Mr. Gaddy said Mr. Downs asked what
6 was to be done. And he was not aware of anything that
7 could be done. That they had exchanged letters. And he
8 had told Mr. Downs that he had the right to an appeal, but
9 he knew of no grounds for such an appeal. He says he,
10 also, told Mr. Downs' grandmother. And he said that money
11 would not have been well spent on an appeal.

12 He then concluded by saying if the -- if Mr. Downs
13 had asked, he would have filed the notice of appeal, but
14 Mr. Downs did not ask.

15 And that is -- those are the notes I took from the
16 direct of Mr. Gaddy. There was a very limited cross.

17 MR. EVANS: I don't think I have anything further,
18 Your Honor.

19 THE COURT: All right. Thank you.

20 Any redirect?

21 MR. NORVILLE: I beg the Court's indulgence for one
22 moment.

23 (Pause.)

24 MR. NORVILLE: Very briefly, Judge.

25 THE COURT: All right.

REDIRECT EXAMINATION

1
2 BY MR. NORVILLE:

3 Q So you had in your notes that Mr. Gaddy testified
4 that he explained the difference between armed robbery and
5 strong armed robbery?

6 A Yes.

7 Q And that Mr. Gaddy said that his strategy at trial
8 was to point out that there was no gun?

9 A Yes. And to argue for strong arm.

10 Q All right. Was he asked at any point on cross how --
11 whether he felt that was a meritorious defense?

12 A He was asked about trial strategy further. I mean, I
13 can tell you what my notes reflect. That on
14 cross-examination, he said his trial strategy was to
15 persuade the jury that a robbery occurred without the use
16 of a weapon. That there was video of the robbery. And
17 Mr. Downs had his right hand covered and held as if he
18 were to hold a pistol, but that it was obvious there was
19 no gun.

20 He, also, said he believed the jury had grounds to
21 find that Mr. Downs did not use a weapon.

22 MR. NORVILLE: Okay. No further questions.

23 THE COURT: All right. Any recross?

24 MR. EVANS: No, Your Honor.

25 THE COURT: Thank you, Ms. Ratigan. Thank you for

1 appearing virtually.

2 We're going -- I'm going to go ahead and click her
3 off; is that right?

4 MR. NORVILLE: No objection.

5 MR. EVANS: No objection.

6 THE COURT: All right. Thank you, Ms. Ratigan.

7 THE WITNESS: Thank you, Judge.

8 THE COURT: All right. Call your next witness.

9 MR. NORVILLE: Your Honor, at this time, we would
10 call Ronald Tyrone Downs, Jr.

11 THE BAILIFF: Place your left hand on the Bible and
12 raise your right hand, and face the clerk.

13 WHEREUPON,

14 RONALD TYRONE DOWNS, JR.,
15 after first having been duly sworn, testified as follows:

16 THE CLERK: Thank you.

17 You may be seated.

18 THE WITNESS: Thank you.

19 THE CLERK: Please state your full name for the
20 record.

21 THE WITNESS: Ronald Tyrone Downs, Jr.

22 DIRECT EXAMINATION

23 BY MR. NORVILLE:

24 Q Good afternoon, Mr. Downs.

25 A Good afternoon.

1 Q I'd like to draw your attention to the date of
2 February 19th, 2015. Do you remember that date?

3 A Yes.

4 Q And do you remember being in this courtroom for a
5 hearing on that date?

6 A Yes.

7 Q And what was that hearing for?

8 A A PCR hearing.

9 Q How good is your memory of that hearing?

10 A It's good, but a lot of things are vague.

11 Q Okay. So you remember some things well, and other
12 things not so well?

13 A Correct.

14 Q All right. You were convicted of armed robbery on
15 August 15th, 2013; is that right?

16 A Yes.

17 Q All right. And who represented you at that trial?

18 A Clifford Gaddy.

19 Q And did you hire him, or was he appointed?

20 A I hired.

21 Q And was Mr. Gaddy the attorney that you allege was
22 ineffective at the 2015 PCR hearing?

23 A Yes, sir.

24 Q All right. And did Mr. Gaddy testify at that
25 hearing?

1 A Yes.

2 Q And, to your knowledge, Mr. Gaddy is now deceased?

3 A To my knowledge.

4 Q On what grounds did you allege that Mr. Gaddy was
5 ineffective?

6 A Well, he was ineffective doing, like, my plea
7 negotiations and advising me of my rights on appeal.

8 Q All right. And what relief were you seeking from
9 your 2015 PCR application?

10 A Well, I was -- I was trying to get the plea offer
11 back on the table. And I was seeking a late appeal on my
12 behalf.

13 Q Okay. And I want to ask you some questions about
14 what you remember testifying about at your hearing. Okay.

15 A Okay.

16 Q Who called you as a witness?

17 A Mr. Brian -- are you talking about at the hearing or
18 the trial?

19 Q At the PCR hearing.

20 A At the PCR, Mr. Brian P. Johnson.

21 Q And that was your attorney for the PCR?

22 A Yes.

23 Q Was he appointed to you?

24 A Yes.

25 Q And were you cross-examined?

1 A I can't remember.

2 Q Okay. Were you asked about plea offers that were
3 made to you before your trial?

4 A Yes.

5 Q All right. And what plea offers did you testify
6 about?

7 A Well, a -- a 10-year and 15-year plea offer.

8 Q All right. And did you testify that you had reviewed
9 those plea offers with Mr. Gaddy?

10 A Yes.

11 Q And what did you testify that Mr. Gaddy told you
12 about those plea offers?

13 A Well, he told me that it wouldn't be no point in
14 taking the pleas because they did not have a weapon to,
15 actually, convict me on armed robbery. So there was
16 really no purpose in accepting the pleas.

17 Q All right. And was it -- so it was your testimony at
18 the PCR hearing that Mr. Gaddy told you not to accept the
19 plea offers?

20 A Yes.

21 Q All right. And did you testify that in between the
22 time of your trial and the time of the PCR hearing that
23 that advice was incorrect?

24 A Excuse me. Can you repeat that?

25 Q Let me -- let me rephrase. So did you testify at the

1 PCR hearing that you learned that a representation of a
2 weapon was sufficient?

3 A Yes.

4 Q Okay. And it was your testimony at the
5 reconstruction hearing that Mr. Gaddy -- or I'm sorry. It
6 was your testimony at the PCR hearing that Mr. Gaddy told
7 you that a -- a literal gun was required?

8 A Yes.

9 Q All right. Did you testify that you would have taken
10 one of the plea offers had Mr. Gaddy given you correct
11 advice?

12 A I can't remember.

13 Q Do you know if you would have alleged that in your
14 application?

15 A Do I know if I would have alleged it?

16 Q Yes.

17 A Probably so.

18 Q So you're not denying that you would have alleged it,
19 you're just saying that you don't remember?

20 A Correct.

21 Q Would seeing your application refresh your
22 recollection?

23 A Yes.

24 MR. NORVILLE: I beg the Court's indulgence.

25 (Pause.)

1 MR. NORVILLE: Let's come back to that in a moment,
2 actually.

3 BY MR. NORVILLE:

4 Q So let's talk about the other allegation that you
5 made in your PRC hearing, which was that Mr. Gaddy didn't
6 file an appeal. What did you tell the Court about that
7 allegation?

8 A As far as? You're referring to?

9 Q What was your testimony at the PCR hearing regarding
10 your -- you said that one of your allegations was that he
11 didn't file an appeal on your behalf; correct?

12 A Correct. Correct.

13 Q What did you testify about regarding that allegation?

14 A Well, if I'm being completely honest, I testified
15 that -- I asked him at the end of my trial was there
16 anything could be done. And he told me, No.

17 Q So he told you, no, that there wasn't anything to be
18 done?

19 A Correct.

20 Q Now, the order of dismissal for that PCR hearing
21 references a letter that Mr. Gaddy sent you about the
22 appeal. Was that letter entered into evidence?

23 A Not to my knowledge.

24 Q And do you know which specific letter that that's
25 referring to?

1 A Yes, I do.

2 Q And what did you testify about the letter?

3 A Well, the letter, basically, said the same thing I
4 said, you know, he was not sure that my money would be
5 well spent on an appeal. And that's pretty much what --
6 you know.

7 Q Do you remember anything else about the hearing that
8 I haven't asked you yet and you'd like to put on the
9 record?

10 A No.

11 MR. NORVILLE: All right. Thank you.

12 Please answer any questions the State may have.

13 THE WITNESS: All right.

14 THE COURT: Mr. Evans.

15 MR. EVANS: Thank you, Your Honor.

16 CROSS-EXAMINATION

17 BY MR. EVANS:

18 Q So, Mr. Downs, you hired Mr. Gaddy?

19 A Yes, sir.

20 Q And who paid for Mr. Gaddy's services?

21 A Excuse me?

22 Q Who paid for the services? Who paid for -- who,
23 actually, paid him?

24 A I'm pretty sure it was, like, a family effort.

25 Q Your family -- your family did. Okay. But you hired

1 him because he was an experienced attorney, if you can
2 remember?

3 A Well, like I say, my family hired him. It was a
4 family effort. My family hired him.

5 Q Okay. The family hired him because he was
6 experienced?

7 A Well, because he's an attorney, you know.

8 Q Okay. Now, you stated on direct that Mr. Downs -- I
9 mean, Mr. Gaddy never told you that -- that if the victim
10 thought you had a gun, it would be considered armed
11 robbery. You stated that during your PCR hearing?

12 A Can you repeat that for me?

13 Q I think you said -- said on direct that Mr. Gaddy
14 never told you that if the victim thought you had a gun,
15 that could be considered armed robbery?

16 A Correct.

17 Q Okay. And did you state that during your PCR
18 hearing?

19 A I don't remember.

20 Q Okay. Now, you said Mr. Gaddy never filed an appeal
21 for you?

22 A No, he didn't.

23 Q Do you remember him telling you that you really
24 didn't have any grounds to appeal?

25 A Well, he said -- like I say, at the end of the trial,

1 I asked him could anything be done. And he was like, No.
2 And then, you know, in the -- in the letter, he said that
3 he didn't think my money would be well spent, so, you
4 know.

5 Q Okay. Do you remember when that letter was sent?

6 MR. NORVILLE: Objection, Your Honor. That exceeds
7 the scope of this hearing. The purpose is just what he
8 testified to, not what happened.

9 THE COURT: Well, I overrule the objection. We're
10 trying to figure out what he did testify to.

11 So go ahead, Mr. Evans.

12 BY MR. EVANS:

13 Q Do you remember the date of that letter?

14 A I can't -- it's not -- not the exact date. It's been
15 quite a while.

16 Q That's okay. That's okay. I don't want you
17 guessing. That's okay. If you don't remember, that's
18 fine.

19 But you never filed an appeal on your own after
20 getting this letter?

21 A You said have I ever filed an appeal --

22 Q Did you testify about filing an appeal on your own
23 after receiving this letter?

24 A No.

25 Q Or try to file an appeal on your own. Did you ever

1 testify to that?

2 A No, not to my knowledge.

3 MR. EVANS: Okay. I have nothing further, Your
4 Honor.

5 THE COURT: All right. Any redirect?

6 MR. NORVILLE: No, Your Honor.

7 THE COURT: All right. Thank you, Mr. Downs.
8 You can step down.

9 THE WITNESS: All right. Thank you, Your Honor.

10 THE COURT: Any other witnesses, Mr. Norville?

11 MR. NORVILLE: No, Your Honor.

12 The Applicant rests.

13 THE COURT: Mr. Evans, do you have any witnesses?

14 MR. EVANS: No, Your Honor.

15 The State rests.

16 THE COURT: Let me hear some arguments, Mr. Norville.

17 MR. NORVILLE: And I have to admit this is kind of
18 a -- an odd posture that we're in. Because a lot of the
19 time when we're trying to reconstruct records, it's,
20 actually, better for us if it can't be reconstructed.
21 But, Your Honor, I do believe that there has been enough
22 presented to reconstruct the record.

23 Ms. Ratigan testified to the contents of her notes,
24 which she will send me and we'll supplement into the
25 record, which, essentially, summarized all of -- all of

1 Mr. Gaddy's testimony. The salient point being that he
2 was -- Mr. Downs was asserting that Mr. Gaddy was
3 ineffective because he advised him not to take a plea
4 deal. Mr. Gaddy testified that, I didn't advise him one
5 way or the other.

6 Your Honor, in our opinion, that is sufficient facts
7 to reconstruct the record as to that allegation and to
8 allow an appeal as to that allegation, which is the
9 standard.

10 As to the other allegation, which is he was seeking a
11 belated appeal pursuant to White vs. State. We, also,
12 think that between the order of dismissal and between the
13 testimony of these witnesses that we've pieced together
14 enough of it to say that the record has been
15 reconstructed, based on what's been presented today.

16 THE COURT: All right. Thank you.

17 Mr. Evans, do you wish to be heard?

18 MR. EVANS: There's really nothing more I need to
19 add, Your Honor. Basically, there's enough evidence for
20 the record -- reconstruction -- reconstructed in order for
21 the Court of Appeals or the Supreme Court to make an
22 intelligent finding whether or not the Applicant did prove
23 that his attorney was ineffective.

24 So we will have nothing further to add.

25 THE COURT: All right. Well, let me ask you all this

1 just as a practical procedural question. As far as a
2 hearing on the -- on the reconstruct of the record, do we
3 treat that like the Court normally treats orders that
4 we -- that the Court asks one party to prepare what they
5 have perceived to be the proposed record?

6 I mean, is that -- you've got to help me with that,
7 Mr. Norville.

8 MR. NORVILLE: Your Honor, my understanding is that
9 you would enter an order finding -- if you were to find
10 this way, you would enter an order finding that the record
11 had been reconstructed, based upon the testimony that was
12 presented and the evidence presented at the reconstruction
13 hearing.

14 THE COURT: So as far as any formal reconstruction,
15 what has been -- what gets presented at this hearing, in
16 essence, becomes the reconstructed record.

17 Is that your understanding?

18 MR. NORVILLE: Yes.

19 THE COURT: So that would include the exhibits and
20 then -- and then, also, what's already, I assume, in the
21 record -- the PCR, which would have been the original
22 transcript, and then my order, and then an order from
23 Judge Fant. And then, in addition, you're going to --
24 you're going to submit Karen Ratigan's notes?

25 MR. NORVILLE: Right. All of that, as well as a

1 transcript of this proceeding.

2 THE COURT: Right.

3 Mr. Evans, have you got any way to help the Court on
4 figuring out if that's the proper procedure to follow?

5 MR. EVANS: The only other thing is I don't think
6 your order is in this packet.

7 THE COURT: It is. I had to -- I was like you, I had
8 to --

9 MR. EVANS: Okay.

10 THE COURT: It seems out of place. It is stuck in
11 the middle. You can't -- you can't -- it's not numbered.
12 It's in there. I had some concerns it wasn't in there
13 either. But I found it. It's -- it's in there.

14 MR. NORVILLE: And, Your Honor, I apologize for not
15 having that indexed. My assistant completed the printing
16 of it this morning.

17 THE COURT: It is actually --

18 MR. EVANS: Yes. I see it.

19 THE COURT: It's at the end. It begins at the end of
20 the -- the trial record.

21 MR. EVANS: Yes, sir. I found it.

22 THE COURT: You found it. I'm like you, I couldn't
23 find it either. But I was going to ask the same question
24 you did, but -- but it's in there.

25 MR. EVANS: I -- I think opposing counsel pretty much

1 summed it up. I think what happens is you make an order
2 that the reconstruction is complete and a transcript and
3 her notes will be added to the record.

4 THE COURT: All right.

5 MR. EVANS: And it's sent to the Supreme Court.

6 THE COURT: All right. Well, let's -- just give me
7 those notes, Mr. Evans -- those notes as soon as you get
8 them, Mr. Norville.

9 And then I'll take a look at those and then what's
10 been presented today. And I'll issue a ruling shortly
11 after I receive those notes and have an opportunity to go
12 over those.

13 All right. Anything else from -- from the Applicant,
14 Mr. Norville?

15 MR. NORVILLE: No, Your Honor.

16 THE COURT: Anything else from the State?

17 MR. EVANS: No, Your Honor.

18 THE COURT: All right. Thank you.

19 That concludes this hearing.

20 (WHEREUPON, the proceedings were concluded at
21 approximately 3:05 p.m.)

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FRIDAY, FEBRUARY 13, 2026

(WHEREUPON, Plaintiff's Exhibit No. 3 was marked for
identification only.)

*****END OF TRANSCRIPT OF RECORD*****

CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

I, HOLLIE JENKINS, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of the proceedings had and the evidence introduced in the captioned case, relative to appeal, in the Court of Common Pleas for Greenville County, South Carolina, on the 11th and 13th days of February, 2026.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

March 2, 2026



Hollie M. Jenkins, Court Reporter

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON
	)	PLEAS
COUNTY OF GREENVILLE	)	THIRTEENTH JUDICIAL CIRCUIT
)	
Ronald T. Downs, Jr.,	)	Case No. 2014-CP-23-2474
Applicant)	
v.	)	ORDER FINDING RECORD
	)	RECONSTRUCTED
The State of South Carolina,)	
Respondent)	

FILED: 26MAR19AM10:29
COC JAY GRESHAM GUL SC

THIS MATTER comes before the Court by order of the Supreme Court of South Carolina directing this Court to reconstruct the appellate record of the above-captioned case. This Court held an evidentiary hearing on February 11, 2026, in the Greenville County courthouse. Applicant was represented by his appellate counsel, W. Chandler Norville, Esquire. The state was represented by Tommy Evans, Jr., Esquire. After careful consideration, the Court finds that the hearing on the Motion to Reconstruct the Record held on Wednesday, February 11, 2026, in Greenville County, provided the court with sufficient testimony, documentation and exhibits to become the record of the original evidentiary hearing held before this court on February 19, 2015.

PROCEDURAL POSTURE

Applicant was convicted of armed robbery and assault and battery, first degree, by a petit jury in Greenville County on August 15, 2013. He did not appeal. On May 1, 2014, Applicant filed a timely application for post-conviction relief (PCR) in this Court. He alleged that trial counsel provided ineffective assistance of counsel by: (1) advising him not to accept a ten and fifteen-year plea offer from the state; and (2) failing to file an appeal from his conviction. An evidentiary hearing was held on the application by this Court on February 19, 2015. Brian P. Johnson, Esquire, was appointed to represent Applicant, and Karen C. Ratigan, Esquire, appeared on behalf of the state. The Court heard testimony from two witnesses: Applicant and

Clifford F. Gaddy, Jr., Esquire, who was Applicant's trial counsel. On March 2, 2015, this Court dismissed the application with prejudice in a written order. Applicant did not appeal.

On May 9, 2023, Applicant filed a second PCR application, pursuant to *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991), seeking a belated appeal from the denial of his first PCR application. An evidentiary hearing on the *Austin* claim was held before the Honorable Patrick C. Fant, III. On May 6, 2025, Judge Fant denied relief and dismissed the application with prejudice. From that order, Applicant noted a timely appeal. This appeal remains pending.

During the pendency of the appeal, the Office of Indigent Defense requested the transcript from the February 2015 PCR hearing. The court reporter was unable to produce the transcript because the five-year window for retaining tape recordings under Rule 607, SCACR, had closed. Applicant, through counsel, moved the Supreme Court to remand the matter to this Court to attempt reconstruction of the record. On November 19, 2025, the Supreme Court granted the motion and ordered this Court to reconstruct the record.

RECONSTRUCTION HEARING EVIDENCE

At the hearing, the Court heard testimony from three witnesses: Applicant, Brian P. Johnson, Esquire, and Karen C. Ratigan, Esquire. Mr. Johnson testified that he had no independent recollection of the 2015 PCR hearing, except that he remembered that trial counsel testified that he did not advise Applicant whether to accept the state's plea offers or not.

Applicant testified that his memory of the 2015 PCR hearing was spotty in some respects, but good in other respects. Applicant testified that his testimony at the 2015 PCR hearing was as follows:

- Trial counsel advised Applicant not to accept the state's plea offers, because the state could not produce evidence that he was in possession of a weapon.

- Trial counsel advised Applicant that he could not be convicted of armed robbery unless the state proved that he utilized a weapon.
- Applicant would have accepted the state's plea offer had he known that armed robbery could be accomplished with the representation of a weapon, in the absence of an actual weapon.
- Applicant asked trial counsel what could be done, and trial counsel informed him there was nothing that could be done, and "that his money wouldn't be well spent."

Ms. Ratigan testified that she had no independent recollection of the 2015 PCR hearing. However, Ms. Ratigan was in possession of the notes that she took during the 2015 PCR hearing. Those notes were entered as Applicant's Exhibit 3. Ms. Ratigan's notes reflected the following:

As to Applicant's testimony

- Applicant testified that trial counsel advised him not to accept either of two plea offers made to him by the state, one for ten years, the other for fifteen. Applicant was under the impression that going to trial "was [his] best bet," so he rejected the offers.
- Applicant testified that he and trial counsel did not discuss whether his case was good or bad prior to trial, nor did they discuss the elements of armed robbery. Applicant testified that trial counsel advised him he could not be convicted of armed robbery since no weapon was found.
- Applicant testified that, had he known a representation of a weapon was sufficient to be convicted of armed robbery, he would have accepted one of the state's plea offers.
- Applicant testified that, after the trial, he asked trial counsel "what they can do." Trial counsel told him that there was nothing that could be done. Applicant wrote a letter to

trial counsel asking him to file an appeal. In response, trial counsel “said they [did not] have the [money].”

As to trial counsel’s testimony

- Trial counsel testified that he explained the elements of the charges to Applicant, as well as the minimum and maximum sentences on each. He explained that armed robbery carried a maximum penalty of thirty years, and that armed robbery could be committed “if [evidence] showed that [defendant] was [representing] by words/actions that he had a gun, it’d be [the] same as if [defendant] had a gun.”
- Trial counsel testified that his trial strategy was to bring out the fact that Applicant did not have a gun to persuade the jury that Applicant was guilty of common law robbery rather than armed robbery.
- Trial counsel believed the jury had grounds to find that Applicant did not use a weapon.
- Trial counsel testified that he conveyed the state’s plea offers but made no recommendation to Applicant as to whether he should accept them.
- Trial counsel testified that he met at least four times with Applicant and that Applicant did not say why he rejected the plea offers. Trial counsel testified that Applicant “was fairly uncooperative the whole time.”
- Trial counsel testified that, after the trial, Applicant asked him what could be done. Trial counsel told him he “wasn’t aware of anything to be done.” He testified that he told Applicant he “knew of no grounds for [an appeal]” and that his money would not be “well spent on an appeal.”
- Trial counsel testified that he would have filed the appeal had Applicant asked him to, but Applicant did not.

ANALYSIS

For the reasons that follow, the Court finds that the evidence presented at the reconstruction hearing, taken together with the documents in the record, are sufficient to reconstruct the record to provide Applicant with “meaningful appellate review.”

The authority to set the record for an appeal lies with the trial court. *State v. Ladson*, 373 S.C. 320, 324, 644 S.E.2d 271, 273 (Ct. App. 2007). When a transcript of a trial has been lost or destroyed, an appellate court may remand the case to the trial court to have the record reconstructed. *Whitehead v. State*, 352 S.C. 215, 221, 574 S.E.2d 200, 203 (2002). The record must be sufficient “to allow for ‘meaningful appellate review.’” *Ladson*, 373 S.C. at 325, 644 S.E.2d at 274. “The inability to prepare a complete verbatim transcript, in and of itself, does not necessarily present a sufficient ground for reversal.” *Id.* at 324, 644 S.E.2d at 273 (*quoting Smith v. State*, 433 A.2d 1143, 1148 (Md. 1981)). In other words, the reconstructed record need not be a carbon-copy of the original, but it must not leave the appellate courts to speculate. *Id.* at 327, 644 S.E.2d at 274 (“In short, we are left to speculate, and we decline to do so.”).

At the 2015 PCR hearing, Applicant alleged two grounds of ineffective assistance of counsel: (1) trial counsel advised him against accepting the state’s plea offers; and (2) trial counsel failed to file an appeal on Applicant’s behalf. Therefore, the issue before this Court is whether the evidence presented at the reconstruction hearing sufficiently conveys the evidence presented at the 2015 PCR hearing to provide for meaningful appellate review. The Court finds that it does.

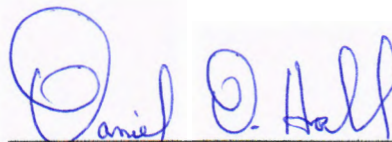
The Court heard testimony from Applicant, who remembered a substantial amount of his own testimony at the 2015 PCR hearing. The Court also received Ms. Ratigan’s hand-written, contemporaneous notes from the 2015 PCR hearing. Because of Ms. Ratigan’s testimony that she

would have taken such notes in her normal practice, and because of the similarities between Ms. Ratigan's notations of the testimony, and Applicant's recollection of the testimony, the Court finds both Applicant's recollection and Ms. Ratigan's notes to be credible.

The issues from the 2015 PCR hearing that will be presented on appeal by Applicant are that trial counsel failed to advise him to accept the state's plea offers and that trial counsel did not file an appeal on Applicant's behalf. The Court finds that, based on the evidence presented at the reconstruction hearing and the documents already in the record, the appellate record is not so "incomplete" as to prevent "the appellate court from conducting a 'meaningful appellate review.'" *Ladson*, 373 S.C. at 325, 644 S.E.2d at 274 (quoting *In re D.W.*, 615 S.E.2d 90, 94 (N.C. Ct. App. 2005)).

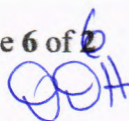
Accordingly, the Court finds the record in this case to be reconstructed.

AND IT IS SO ORDERED.



Hon. Daniel D. Hall
Circuit Court Judge (Ret.)

This 9th day of March, 2026
Greenville, South Carolina



WITNESSES

Sean Calhoun BF

Mauldin Police Department

10/12/2012

ARREST WARRANT NUMBER
2012A2320300060

ACTION OF GRAND JURY
TRUE BILL

James Nelson

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Not Guilty

Benjamin [Signature]
Foreperson of Petit Jury

Date:

DOCKET NO. 2012-GS-23- 010560
LMM

✓ The State of South Carolina
County of Greenville

COURT OF GENERAL SESSIONS
January TERM 2012 ²⁰¹³

THE STATE

vs.

RONALD TYRONE DOWNS, JR.

✓
0095 Indictment for

KIDNAPPING

VIOLATION § 16-03-0910

RECEIVED

DEC 27 2012

Clerk of Court
Greenville County

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
KIDNAPPING

At a Court of General Sessions, convened on

JAN 08 2013

the Grand Jurors of Greenville

County present upon their oath:

That RONALD TYRONE DOWNS, JR. did in Greenville County, on or about the 11th day of October, 2012, unlawfully seize, abduct, confine, inveigle, decoy or carry away Brenda Wilkinson, without the authority of law.

This is in violation of §16-03-0910 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.


SOLICITOR

WITNESSES

Sean Calhoun BF

Mauldin Police Department

10/12/2012

ARREST WARRANT NUMBER

2012A2320300059

ACTION OF GRAND JURY
TRUE BILL

[Signature]
FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Guilty

[Signature]
Foreperson of Petit Jury

Date:

452

DOCKET NO. 2012-GS-23-
LMM

010509

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

January

TERM 2012²⁰¹³

THE STATE

vs.

RONALD TYRONE DOWNS, JR.

Indictment for

0139

ARMED ROBBERY

VIOLATION § 16-11-0330

RECEIVED

DEC 27 2012

Clerk of Court
Greenville County

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
ARMED ROBBERY

At a Court of General Sessions, convened on **JAN 08 2013** the Grand Jurors of Greenville

County present upon their oath:

That RONALD TYRONE DOWNS, JR. did in Greenville County, on or about the 11th day of October, 2012, while armed with a 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 would reasonably believe to be a deadly weapon, take by means of force or intimidation, goods or monies described as: Money belonging to Dollar General from the person or presence of Brenda Wilkinson. This is in violation of §16-11-330 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.



SOLICITOR

WITNESSES

Sean Calhoun

BF

Mauldin Police Department

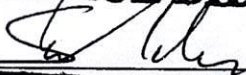
DOA: 10/12/2012 B/M DOB: 02/28/1993

SSN: 249-91-7683

ARREST WARRANT NUMBER
DIRECT PRESENTMENT

ACTION OF GRAND JURY

TRUE BILL



FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Guilty

Foreperson of Petit Jury

Date:

DOCKET NO. 2012-GS-23-

3

LMM

000007A

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

January

TERM 2012

2013

THE STATE

vs.

RONALD TYRONE DOWNS, JR.

Indictment for

3412

ASSAULT AND BATTERY 1ST DEGREE

VIOLATION § 16-03-0600

454

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
ASSAULT AND BATTERY 1ST DEGREE

At a Court of General Sessions, convened on **JAN 08 2013** the Grand Jurors of Greenville

County present upon their oath:

That RONALD TYRONE DOWNS, JR. did in Greenville County, on or about the 11th day of October 2012, unlawfully injure Brenda Wilkinson and the act occurred during the commission of a robbery, burglary, kidnapping or theft. This is in violation of 16-03-0600 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.



SOLICITOR