

RECEIVED

Apr 30 2026

SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Anderson County

Honorable Kristi F. Curtis, Circuit Court Judge

DARRELL E. BLACKWELL,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2025-001437

AMENDED APPENDIX

SUSANNAH ROSS, ESQ.
Ross and Enderlin, PA

330 E. Coffee St.
Greenville, SC 29601
(864) 242-0029

ATTORNEY FOR PETITIONER

ALAN WILSON
Attorney General

D. RUSSELL BARLOW, II
Senior Assistant Deputy Attorney General
Rembert Dennis Bldg.
1000 Assembly St.
Columbia, SC 20201
(864) 734-3372

ATTORNEYS FOR RESPONDENT

INDEX

INDEX	i
TRIAL TRANSCRIPT DATED.....	1
BRIEF OF APPELLANT	263
COURT OF APPEALS OPINION NO. 2021-UP-144 (FILED MAY 5, 2021)	307
APPLICATION FOR POST-CONVICTION RELIEF	310
RETURN.....	319
AMENDED APPLICATION	336
POST-CONVICTION RELIEF HEARING TRANSCRIPT	338
ORDER OF DISMISSAL.....	381
INDICTMENT(S).....	419
SENTENCING SHEETS.....	421

State of South Carolina
County of Anderson

Court of General Sessions

State of South Carolina	)	
	)	
	)	Transcript of Record
v.	)	2016-GS-04-00433
	)	
Darrell Eugene Blackwell	)	
	)	
<u>Defendant.</u>	)	

October 8-9, 2018
Anderson, South Carolina

B E F O R E:

The Honorable J.C. Buddy Nicholson, Judge; and
a jury.

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

Catherine Huey, Deputy Solicitor
Attorney for the State

Stan Overby, Assistant Solicitor
Attorney for the State

Hadden Lucas, Assistant Public Defender
Attorney for the Defendant

Gordon Senerius, Assistant Public Defender
Attorney for the Defendant

Lisa Scott
Circuit Court Reporter

I N D E X

<u>WITNESS</u>	<u>PAGE</u>
Investigator Scotty Hill - Jackson v. Denno	
Direct examination by Ms. Huey.....	53
Cross-examination by Mr. Lucas.....	62
Rhonda Phillips	
Direct examination by Mr. Overby.....	79
Deputy Craig Holbrooks	
Direct examination by Mr. Overby.....	84
Cross-examination by Mr. Lucas.....	102
Lieutenant Robert Gebing	
Direct examination by Ms. Huey.....	104
Cross-examination by Mr. Lucas.....	122
Investigator Kenneth Pigman	
Direct examination by Ms. Huey.....	154
Cross-examination by Mr. Lucas.....	166
Redirect examination by Mr. Lucas.....	168
Mark Steven Blackwell	
Direct examination by Ms. Huey.....	169
Cross-examination by Mr. Lucas.....	174
Investigator Scotty Hill	
Direct examination by Ms. Huey.....	175
Cross-examination by Mr. Lucas.....	200

E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
1	State's - advisory rights		X
2-A	State's - redacted CD		X
4	State's - disk		X
5-11	State's - pictures		X
12	State's - bandanna		X
13	State's - camouflage pants		X
14	State's - black jacket		X
15-19	State's - photos		X
20	State's - Carhartt stocking cap		X
22	State's - photo		X
23	State's - consent to search		X
26	State's - photo of black jacket		X
27	State's - black hoody		X

- - -

P R O C E E D I N G S

* * * * *

THE COURT: You ready?

MR. LUCAS: We're ready. I've spoken with Mr. Blackwell, and he wishes that we request a continuance on this matter, Your Honor.

THE COURT: He wants to do what now?

MR. LUCAS: He wishes to request a continuance ---

THE COURT: Okay.

MR. LUCAS: --- of this trial date. The basis of his request is that he wants to seek new representation.

THE COURT: Okay. Any other reason he wants to continue it?

MR. LUCAS: He also tells me, Your Honor, that his mother is sick, and he's concerned that she might not live past January and he wants a continuance until that date.

THE COURT: Okay. All right. How long has he knowledge, Solicitor, about the trial?

MS. HUEY: I'm sorry, Judge?

THE COURT: How long has he had knowledge that the trial was set today?

MS. HUEY: Oh, Your Honor, it's been in the

1 works for several months. He had -- has turned down
2 plea offer after plea offer, has been through --
3 this is at least his third attorney, Your Honor.
4 And I notified Mr. Lucas specifically as to this
5 date though 20 days ago.

6 MR. LUCAS: I think it was early September, so
7 it would be about, I would guess, four weeks, Your
8 Honor.

9 THE COURT: Okay. All right. Mr. Blackwell,
10 anything you want to say to the Court continuing
11 your request -- asking for a requested continuance?
12 I'll be glad to hear you. Speak up so I can hear
13 you, please, sir.

14 THE DEFENDANT: Yes, sir. At this time it's
15 not about me; it's about my mom. My mom is 78 years
16 old. I live with her. I take care of her. I got a
17 brother, but, you know, he has his own job and his
18 life. My mom is very sick. She's been real sick
19 the last week. I don't think she's going to make it
20 very long at all. I live with my mom. I love my
21 mom.

22 THE COURT: Well, if you live with your mom and
23 wanted to continue because of that, how would you
24 ever get it tried? If the Court keeps continuing it
25 as long as you live with your mother, how would you

1 ever get the case tried?

2 THE DEFENDANT: Yes, sir. I'm just asking for
3 a few more weeks with her. She's leaving and I just
4 don't want her to die and me going to prison, you
5 know. I just ask for mercy to have a few more weeks
6 with her.

7 THE COURT: Anything else you want to tell me?

8 THE DEFENDANT: No.

9 THE COURT: Thank you very much. Mr. Lucas,
10 have you had sufficient notice to get ready for
11 trial?

12 MR. LUCAS: I have, Your Honor.

13 THE COURT: Okay. All right. Anything else
14 the State would like to put on the record?

15 (No responses.)

16 THE COURT: All right. The motion for
17 continuance is denied.

18 MR. LUCAS: Thank you, Your Honor. We also
19 have an issue concerning Mr. Blackwell's criminal
20 responsibility and whether he was able to conform
21 his conduct to the law at the time this took place.

22 He has told me that he wishes to assert an
23 insanity defense. He has been evaluated by the
24 South Carolina Department of Mental Health, and they
25 found him competent to stand trial and also

1 criminally responsible for his actions at the time
2 this occurred. I think we needed to put that on the
3 record, Your Honor. And that's why we would not --
4 we do not intend to proceed with an insanity
5 defense.

6 THE COURT: Okay. Thank you very much.

7 MS. HUEY: And, Your Honor, if I may put the
8 evaluations ---

9 THE COURT: Yes, ma'am. I'll mark as Court's
10 exhibits?

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

12 THE COURT: All right. The evaluation by the
13 Department of Mental Health on September -- the last
14 day of September 15, 2017, I'll mark as Court's
15 Exhibit No. 1.

16 (Court's Exhibit No. 1 was marked for
17 identification.)

18 THE COURT: All right. Anything else from the
19 defense?

20 MR. LUCAS: Your Honor, we spoke about it
21 briefly earlier concerning a *Jackson v. Denno*
22 hearing concerning the admissibility of
23 Mr. Blackwell's statements. He has told me that he
24 believes he was under the influence at the time
25 those statements were made, so I think that we do

1 need a *Jackson v. Denno* hearing.

2 THE COURT: Okay. Solicitor?

3 MS. HUEY: Yes, sir. We're prepared to do a
4 *Jackson Denno* [sic], Your Honor. We would prefer to
5 go ahead and pick the jury though, and then we could
6 start that pretrial.

7 THE COURT: Is that alright with you?

8 MR. LUCAS: That's fine by me, Judge.

9 THE COURT: Okay. All right. Anything else
10 pretrial?

11 MS. HUEY: I think that's all, Judge.

12 THE COURT: Okay. I've reviewed your request
13 for voir dire. I don't have any problem with it.
14 The State just wants a standard voir dire.

15 And I understand, Mr. Lucas, that if you have a
16 witness, it would just be Mr. Blackwell; is that
17 correct.

18 MR. LUCAS: That is correct, Your Honor.

19 THE COURT: All right. The jury will be back
20 in probably about -- hopefully about 15 to
21 20 minutes. We'll draw the jury on this case at
22 that time. All right?

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

24 THE COURT: All right. Thank you very much.
25 We'll take about a 15-minute recess.

1 (From 10:57 to 11:20 a.m., recess was taken.)

2 THE COURT: All right. Juror No. 63, Franklin
3 Dyches. Is he here?

4 PROSPECTIVE JUROR: Yes, sir.

5 THE COURT: Would you please stand?

6 PROSPECTIVE JUROR: (Complying.)

7 THE COURT: All right. You're excused.

8 Okay. Thomas Lancos, Juror No. 115, are you
9 here?

10 PROSPECTIVE JUROR: Yes, sir.

11 THE COURT: You're excused. Y'all are free to
12 go. Please leave.

13 (Prospective Juror Nos. 63 and 115 were
14 excused.)

15 THE COURT: All right. I believe the State's
16 calling the case of *State v. Darrell Eugene*
17 *Blackwell*; is that correct?

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

19 THE COURT: All right. Is the State ready to
20 draw the jury?

21 MS. HUEY: Yes, sir.

22 THE COURT: Is defense counsel ready to draw
23 the jury?

24 MR. LUCAS: We are, Your Honor. We just had
25 those additional voir dire questions.

1 THE COURT: Pardon?

2 MR. LUCAS: We just had the additional voir
3 dire questions that we would like asked.

4 THE COURT: Okay. All right. The State has
5 charged Darrell Eugene Blackwell with armed robbery.
6 This occurred on or about January 8, 2018, where he
7 took cash, a laptop computer, cigarettes from a
8 person at the Shop Rite.

9 Now, ladies and gentlemen, that's the
10 indictment. That's not evidence. That's not an
11 indication of the defendant's innocence or guilt.
12 That's merely the administrative process by which
13 the defendant is brought before the Court for trial.
14 And you're not to consider the indictment as far as
15 or any indication of his guilt or innocence.

16 I'm just going to ask you certain questions.
17 And I'm going to ask -- all right. The first thing
18 I'm going to do is call out a list of names, and
19 then I'm going to ask you the same question about
20 every name. I'm going to ask if you know the
21 individual, related by blood or marriage, or have
22 you had any personal contact with that particular
23 individual.

24 The first name is Mikayla Chambers. Is anybody
25 related by blood or marriage or does anybody know

1 Mikayla Chambers? If so, please stand.

2 PROSPECTIVE JURORS: (No responses.)

3 THE COURT: The next name is Ashok Patel. Is
4 anybody related by blood or marriage or does anybody
5 know Ashok Patel? Is it "Es-Co" or "Ash-Co"?

6 MS. HUEY: It's "Ash-oak," Your Honor.

7 THE COURT: "Ash-oak" Patel. Is anybody
8 related by blood or marriage or anybody know Patel?
9 If so, please stand.

10 PROSPECTIVE JURORS: (No responses.)

11 THE COURT: The next name is Rhonda Phillips,
12 Anderson County Sheriff's Office. Anybody related
13 by blood or marriage or does anybody know Rhonda
14 Phillips? If so, please stand.

15 PROSPECTIVE JURORS: (No responses.)

16 THE COURT: The next name is J.J. Jacobs,
17 Anderson County Sheriff's Office. Anybody related
18 by blood or marriage or anybody know J.J. Jacobs?
19 If so, please stand.

20 PROSPECTIVE JURORS: (No responses.)

21 THE COURT: Next name is Brian Harbin, also of
22 the Anderson County Sheriff's Office. Anybody
23 related by blood or marriage or anybody know Brian
24 Harbin? If so, please stand.

25 PROSPECTIVE JUROR: (Standing.)

1 THE COURT: Yes, sir, your name?

2 PROSPECTIVE JUROR: Joseph Barr.

3 THE COURT: What's your number?

4 PROSPECTIVE JUROR: Number eight.

5 THE COURT: Number eight? Yes, sir. How do
6 you know Mr. Harbin?

7 PROSPECTIVE JUROR: I've known him
8 professionally for ---

9 THE COURT: Pardon?

10 PROSPECTIVE JUROR: I've known him
11 professionally as a paramedic for probably 20 years.

12 THE COURT: How often do you see him?

13 PROSPECTIVE JUROR: Probably once every six
14 months.

15 THE COURT: Once every six months?

16 PROSPECTIVE JUROR: Yes, sir.

17 THE COURT: Will that relationship with him
18 interfere with your ability to be a fair and
19 impartial juror?

20 PROSPECTIVE JUROR: No, sir.

21 THE COURT: Can you listen to testimony and
22 make a decision on what you hear in this courtroom
23 setting that relationship aside?

24 PROSPECTIVE JUROR: Yes, sir. I can set it
25 aside.

1 THE COURT: Thank you very much. The next name
2 is Greg Holbrooks, also of the sheriff's department.
3 Anybody related by blood or marriage to Greg
4 Holbrooks? If so, please stand.

5 PROSPECTIVE JURORS: (No responses.)

6 THE COURT: I think I said Holbrook. It's
7 Holbrooks. If so, please stand.

8 PROSPECTIVE JURORS: (No responses.)

9 THE COURT: The next name is Robert Gebing,
10 Anderson County Sheriff's Department. Anybody
11 related by blood or marriage to Robert Gebing? If
12 so, please stand. Does anybody know him? Please
13 stand.

14 PROSPECTIVE JURORS: (No responses.)

15 THE COURT: The next name is Kenny Pigman.
16 Anybody related by blood or marriage or anybody know
17 Kenny Pigman, also with the sheriff's department?
18 If so, please stand.

19 PROSPECTIVE JURORS: (No responses.)

20 THE COURT: The next name is Scotty Hill.
21 Anybody related by blood or marriage or does anybody
22 know Scotty Hill? If so, please stand.

23 PROSPECTIVE JURORS: (No responses.)

24 THE COURT: The next name is Caleb Carroll,
25 also sheriff's department. Anybody related by blood

1 or marriage? Does anybody know Caleb Carroll? If
2 so, please stand.

3 PROSPECTIVE JURORS: (No responses.)

4 THE COURT: The next name is Steve Blackwell.
5 Is anybody related by blood or marriage? Does
6 anybody know Steve Blackwell? If so, please stand.

7 PROSPECTIVE JURORS: (Standing.)

8 THE COURT: Mr. Darrell Blackwell, will you --
9 yes, sir. I'm sorry. What's your name?

10 PROSPECTIVE JUROR: David King, Number 111.

11 THE COURT: 111?

12 PROSPECTIVE JUROR: Yes, sir.

13 THE COURT: Yes, sir, Mr. King. How do you
14 know Mr. Blackwell?

15 PROSPECTIVE JUROR: I've got a Steve Blackwell
16 that works or subcontracts for me.

17 THE COURT: Is he the same person, or do you
18 know?

19 PROSPECTIVE JUROR: I do not know.

20 THE COURT: Pardon?

21 PROSPECTIVE JUROR: I do not know.

22 THE COURT: Okay. Where do you work?

23 PROSPECTIVE JUROR: I originally am
24 self-employed.

25 THE COURT: Solicitor, do you know where Steve

1 Blackwell works?

2 MR. LUCAS: Your Honor, he's sitting right back
3 there.

4 THE COURT: Mr. Blackwell, would you stand,
5 please?

6 MR. BLACKWELL: (Complying.)

7 THE COURT: This is the Steve Blackwell.

8 PROSPECTIVE JUROR: It's not the same person.
9 No, sir.

10 THE COURT: Pardon?

11 PROSPECTIVE JUROR: It's not the same person I
12 know.

13 THE COURT: Okay. That's a different person?

14 PROSPECTIVE JUROR: Yes, sir.

15 THE COURT: All right. Thank you so very much,
16 Mr. King.

17 All right. Mr. Darrell Blackwell, would you
18 stand and face the jury, please, sir? Face the jury
19 so the jury can see you.

20 THE DEFENDANT: (Complying.)

21 THE COURT: Thank you, sir. Have a seat,
22 Mr. Blackwell.

23 THE DEFENDANT: (Complying.)

24 THE COURT: Thank you. Is anybody related by
25 blood or marriage or does anybody know Darrell

1 Blackwell? If so, please stand.

2 PROSPECTIVE JURORS: (No responses.)

3 THE COURT: Is any member of the jury panel or
4 a member of your family or a close friend ever been
5 the victim of a robbery or an armed robbery? If so,
6 please stand.

7 PROSPECTIVE JUROR: (Standing.) Robert
8 Davidson, 51.

9 THE COURT: Yes. What's your name?

10 PROSPECTIVE JUROR: Robert Davidson, 51.

11 THE COURT: All right. Mr. Davidson, we got
12 four people standing. Would y'all just form a line
13 right here in front. I'll bring you around to me.
14 Lawyers can join me up here.

15 PROSPECTIVE JURORS: (Complying.)

16 THE COURT: Mr. Davidson; is that correct?

17 PROSPECTIVE JUROR: Yes, sir.

18 THE COURT: All right. Tell me what happened.
19 Was it you or a friend of yours?

20 PROSPECTIVE JUROR: My youngest sister; armed
21 robbery.

22 THE COURT: You sister. How long ago?

23 PROSPECTIVE JUROR: Forty years ago.

24 THE COURT: Forty years ago. Okay. You were a
25 child I assume then?

1 PROSPECTIVE JUROR: No. I was an adult. She
2 was -- she was finishing up high school.

3 THE COURT: Okay. Were you involved in the
4 criminal process at all?

5 PROSPECTIVE JUROR: No, I wasn't.

6 THE COURT: Do you know what happened to the
7 case?

8 PROSPECTIVE JUROR: Arrest and conviction.

9 THE COURT: Conviction. Was it a guilty plea?

10 PROSPECTIVE JUROR: Yes.

11 THE COURT: Were you involved in it at all?

12 PROSPECTIVE JUROR: No.

13 THE COURT: Do you have any bias or prejudice
14 toward defendants in general because of that?

15 PROSPECTIVE JUROR: No.

16 THE COURT: Do you think you can be fair and
17 impartial in this case?

18 PROSPECTIVE JUROR: Yes.

19 THE COURT: You think you can be fair to both
20 the State and the defendant in this case?

21 PROSPECTIVE JUROR: Yes.

22 THE COURT: Any questions from the State?

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

24 THE COURT: Any from the defendant?

25 MR. LUCAS: No, sir.

1 THE COURT: All right. Go have a seat. Thank
2 you very much.

3 PROSPECTIVE JUROR: (Complying.)

4 THE COURT: State your name.

5 PROSPECTIVE JUROR: Jessica Franklin, Number
6 77.

7 THE COURT: Seventy-seven?

8 PROSPECTIVE JUROR: Uh-huh.

9 THE COURT: All right. Ms. Franklin, what --
10 what transpired or what happened?

11 PROSPECTIVE JUROR: My mom was robbed.

12 THE COURT: Pardon?

13 PROSPECTIVE JUROR: My mom was robbed.

14 THE COURT: When?

15 PROSPECTIVE JUROR: Five or six years ago.

16 THE COURT: Five or six years ago your mother
17 was robbed?

18 PROSPECTIVE JUROR: Uh-huh, at her home -- at
19 her home. She wasn't home though.

20 THE COURT: Where did it occur?

21 PROSPECTIVE JUROR: In Greer.

22 THE COURT: Where?

23 PROSPECTIVE JUROR: Greer.

24 THE COURT: Greer. Did they come in the house
25 or was she working or what?

1 PROSPECTIVE JUROR: No. It was at their home.
2 They had motorcycles stolen.

3 THE COURT: Motorcycles were stolen?

4 PROSPECTIVE JUROR: Multiple were stolen and
5 there was a trial, conviction, and arrest.

6 THE COURT: All right. So it was arrest and a
7 conviction. Were you involved in that process at
8 all?

9 PROSPECTIVE JUROR: No, sir.

10 THE COURT: Was your mother injured or hurt?

11 PROSPECTIVE JUROR: No.

12 THE COURT: Do you have any bias or prejudice
13 towards defendants in general as a result of that?

14 PROSPECTIVE JUROR: No, sir.

15 THE COURT: Can you been fair and impartial in
16 this case?

17 PROSPECTIVE JUROR: Yes, sir.

18 THE COURT: Okay. Thank you very much.

19 If either one of you want to ask questions, let
20 me know.

21 MS. HUEY: Yes, sir.

22 THE COURT: I'll give you the opportunity. I'm
23 not going to ask you each time. Just let me know
24 you want to ask questions.

25 MS. HUEY: Yes, sir.

1 THE COURT: Yes, ma'am. Your name?

2 PROSPECTIVE JUROR: I'm Bailey Crenshaw, 45.

3 THE COURT: Number 45. Yes, ma'am,

4 Ms. Crenshaw.

5 PROSPECTIVE JUROR: My home was broken into

6 between two and three times.

7 THE COURT: Three times?

8 PROSPECTIVE JUROR: Uh-huh.

9 THE COURT: When?

10 PROSPECTIVE JUROR: Between 2010 and '11.

11 Springtime.

12 THE COURT: Okay. Did they catch anybody that

13 broke in?

14 PROSPECTIVE JUROR: Yes. He was put in jail.

15 THE COURT: Were you at home when they broke

16 in?

17 PROSPECTIVE JUROR: No, sir. No one told us.

18 THE COURT: What did they take from your home?

19 PROSPECTIVE JUROR: Guns; electronics. They

20 did a lot of damage to the house.

21 THE COURT: Were you involved in the criminal

22 process at all?

23 PROSPECTIVE JUROR: My parents handled it.

24 THE COURT: Pardon?

25 PROSPECTIVE JUROR: My parents handled it.

1 THE COURT: Your parents?

2 PROSPECTIVE JUROR: I was in the eighth and
3 ninth grade.

4 THE COURT: You were in the ninth grade?

5 PROSPECTIVE JUROR: Uh-huh.

6 THE COURT: Would that affect you in any way by
7 siting on this jury?

8 PROSPECTIVE JUROR: No, sir.

9 THE COURT: Can you been fair and impartial ---

10 PROSPECTIVE JUROR: Yes, sir.

11 THE COURT: --- as a juror?

12 PROSPECTIVE JUROR: Yes, sir.

13 THE COURT: You don't think that would
14 prejudice you towards defendants in general?

15 PROSPECTIVE JUROR: No, sir.

16 THE COURT: Okay. Thank you very much.

17 PROSPECTIVE JUROR: Thank you.

18 THE COURT: Yes, sir. How are you doing?

19 PROSPECTIVE JUROR: Doing good. You?

20 THE COURT: Okay.

21 PROSPECTIVE JUROR: 213.

22 THE COURT: 213. Mr. Whitfield?

23 PROSPECTIVE JUROR: Uh-huh.

24 THE COURT: Correct?

25 PROSPECTIVE JUROR: That's correct.

1 THE COURT: Tell me what happened.

2 PROSPECTIVE JUROR: My shop got broke into back
3 in 2004. They got over \$20,000 worth of tools.

4 THE COURT: 2004. That was a long time ago.

5 PROSPECTIVE JUROR: Yeah, and they got me --
6 they broke in my utility room at my house and
7 cleaned it out. That's been four years ago.

8 THE COURT: Did they catch anybody?

9 PROSPECTIVE JUROR: No.

10 THE COURT: No?

11 PROSPECTIVE JUROR: Huh-uh.

12 THE COURT: You think you got any bias or
13 prejudice towards anybody?

14 PROSPECTIVE JUROR: No, sir. Just thought it
15 would be best if I told upfront.

16 THE COURT: Do what?

17 PROSPECTIVE JUROR: I thought we were supposed
18 to tell.

19 THE COURT: Oh, I understand, but do you got
20 any bias or prejudice ---

21 PROSPECTIVE JUROR: No, sir.

22 THE COURT: --- against the State because they
23 didn't catch anybody?

24 PROSPECTIVE JUROR: No, sir.

25 THE COURT: You're still working good?

1 PROSPECTIVE JUROR: Yeah.

2 THE COURT: Working on machinery?

3 PROSPECTIVE JUROR: No, sir. I'm a manager of
4 service support for Verizon.

5 THE COURT: For Verizon?

6 PROSPECTIVE JUROR: Well, I work at home
7 getting them repaired.

8 THE COURT: Okay. You been doing okay?

9 PROSPECTIVE JUROR: Cancer.

10 THE COURT: I haven't seen you in a while.

11 PROSPECTIVE JUROR: Yeah, cancer almost got me.

12 THE COURT: Really? What kind?

13 PROSPECTIVE JUROR: Sarcoma.

14 THE COURT: But you're doing okay?

15 PROSPECTIVE JUROR: Yeah.

16 THE COURT: Would that experience prejudice you
17 in any way in this case?

18 PROSPECTIVE JUROR: No.

19 THE COURT: Can you been fair and impartial?

20 PROSPECTIVE JUROR: You know I can.

21 THE COURT: All right. Take care, Greg. Nice
22 seeing you.

23 PROSPECTIVE JUROR: Nice to see you.

24 THE COURT: Yes, sir. Your name?

25 PROSPECTIVE JUROR: Tim Davis.

1 THE COURT: Do you know your number?

2 PROSPECTIVE JUROR: Fifty-three.

3 THE COURT: Fifty-three. Yes, sir, Mr. Davis.

4 What happened?

5 PROSPECTIVE JUROR: My mother's house was broke
6 into. It's been about ten years. And my brother's
7 about eight years ago.

8 THE COURT: Did they catch anybody that broke
9 into your mother and brother's house?

10 PROSPECTIVE JUROR: They caught the one that
11 broke in my mother's. Yes, sir.

12 THE COURT: Not your brother's?

13 PROSPECTIVE JUROR: No.

14 THE COURT: Were you -- did they ever convict
15 him or did they try him?

16 PROSPECTIVE JUROR: He was convicted. Yes.

17 THE COURT: Were you involved in the conviction
18 process?

19 PROSPECTIVE JUROR: No. None of us were.

20 THE COURT: None of you were? Just your
21 mother?

22 PROSPECTIVE JUROR: Yeah.

23 THE COURT: Okay. Do you have any bias or
24 prejudice towards defendants in general because of
25 that experience?

1 PROSPECTIVE JUROR: I don't think so.

2 THE COURT: Can you be fair and impartial in
3 this case?

4 PROSPECTIVE JUROR: Yes.

5 THE COURT: Can you be fair in this case?

6 PROSPECTIVE JUROR: Yes, sir.

7 THE COURT: All right. Thank you, Mr. Davis.

8 PROSPECTIVE JUROR: Harold Brooks, Number 14.

9 THE COURT: What number?

10 PROSPECTIVE JUROR: Number 14.

11 THE COURT: Fourteen. Mr. Brooks.

12 PROSPECTIVE JUROR: Our house was broke into
13 December of 2013.

14 THE COURT: 2013. Did they catch who broke in?

15 PROSPECTIVE JUROR: Yeah, I think he served.
16 They had him on video camera breaking into other
17 houses on the street.

18 THE COURT: Okay. And did they convict him or
19 do you know?

20 PROSPECTIVE JUROR: I think he served some
21 time.

22 THE COURT: Were you involved in the process at
23 all?

24 PROSPECTIVE JUROR: Other than them taking --
25 taking items from our house.

1 THE COURT: Did the police talk to you or take
2 a statement from you?

3 PROSPECTIVE JUROR: Yeah, they took statements
4 from us.

5 THE COURT: Did you meet with the Solicitor or
6 anything like that?

7 PROSPECTIVE JUROR: No.

8 THE COURT: Do you have any bias or prejudice
9 towards defendants in general as a result of the
10 break-in of your home?

11 PROSPECTIVE JUROR: No.

12 THE COURT: Pardon?

13 PROSPECTIVE JUROR: No.

14 THE COURT: Can you been fair and impartial in
15 this case?

16 PROSPECTIVE JUROR: Yes, sir.

17 THE COURT: All right. Thank you so very much.

18 PROSPECTIVE JUROR: Russell Taylor, 199.

19 THE COURT: Yes, sir. Mr. Taylor.

20 PROSPECTIVE JUROR: I've got a brother-in-law
21 that about 15 years ago was held up at gunpoint.
22 Bicycle was stolen, motorbike.

23 THE COURT: He was held up at gunpoint?

24 PROSPECTIVE JUROR: Out in the public.

25 THE COURT: Out in the public?

1 PROSPECTIVE JUROR: Yeah.

2 THE COURT: They stole his bike?

3 PROSPECTIVE JUROR: Right. That's all he had.

4 THE COURT: Fifteen years ago?

5 PROSPECTIVE JUROR: Yes.

6 THE COURT: Was anybody ever arrested?

7 PROSPECTIVE JUROR: They weren't arrested, but
8 the police knew where to go and got the bike back
9 for him.

10 THE COURT: So he got the bike back?

11 PROSPECTIVE JUROR: Yes.

12 THE COURT: Were you involved in the process at
13 all.

14 PROSPECTIVE JUROR: No. Not at all.

15 THE COURT: Was he tried or convicted or do you
16 know?

17 PROSPECTIVE JUROR: I don't know if there was a
18 trial or not.

19 THE COURT: You don't know. Okay. Do you have
20 any bias or prejudice towards defendants in general
21 as a result of your brother being robbed?

22 PROSPECTIVE JUROR: No, sir.

23 THE COURT: Can you be fair and impartial in
24 this case?

25 PROSPECTIVE JUROR: Yes, sir.

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

2 Yes, sir. Your name?

3 PROSPECTIVE JUROR: Ken Koenig, Juror 114.

4 THE COURT: 114. Yes, sir, Mr. Koenig.

5 PROSPECTIVE JUROR: When I was an intern at
6 pharmaceutical, I was working at a drug store and we
7 got held up.

8 THE COURT: How long ago?

9 PROSPECTIVE JUROR: 1982.

10 THE COURT: '82. That's a while back. Was
11 anybody arrested or do you know?

12 PROSPECTIVE JUROR: I don't think they ever
13 caught the guy. I ran out and chased him.

14 THE COURT: You chased him?

15 PROSPECTIVE JUROR: Yeah, he had a gun too.

16 THE COURT: What were you doing chasing him
17 with a gun?

18 PROSPECTIVE JUROR: I don't know. I was young
19 and crazy.

20 THE COURT: Young and crazy. You thought you
21 were bullet proof?

22 PROSPECTIVE JUROR: Well, I didn't chase him
23 that far.

24 THE COURT: Did chase him that far. Okay. But
25 nobody ever caught him?

1 PROSPECTIVE JUROR: No, sir.

2 THE COURT: Okay. Would that affect you in any
3 way sitting on this jury?

4 PROSPECTIVE JUROR: I don't think so.

5 THE COURT: You don't think so. Well, I need
6 to know positive whether it would or whether it
7 wouldn't. I can understand why it would.

8 PROSPECTIVE JUROR: No.

9 THE COURT: Pardon?

10 PROSPECTIVE JUROR: I don't think so.

11 THE COURT: You don't think it would affect you
12 in this case?

13 PROSPECTIVE JUROR: No.

14 THE COURT: You think you can be fair and
15 impartial?

16 PROSPECTIVE JUROR: Yes.

17 THE COURT: Any questions from the State?

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

19 THE COURT: Any from the defense?

20 MR. LUCAS: None, Your Honor.

21 THE COURT: You can go have a seat. Thank you
22 very much.

23 PROSPECTIVE JUROR: (Complying.)

24 THE COURT: Yes, sir. Your name?

25 PROSPECTIVE JUROR: Nicholas Jones.

1 THE COURT: What number?

2 PROSPECTIVE JUROR: 107.

3 THE COURT: Nicholas Jones. Yes, sir,
4 Mr. Jones. What happened? Speak up so they can
5 hear you.

6 PROSPECTIVE JUROR: I think it was 2012, a guy
7 forced his way into my house with my mom and my
8 sister were home.

9 THE COURT: Did they steal anything?

10 PROSPECTIVE JUROR: Yeah, they stole like
11 watches and stuff throughout the house.

12 THE COURT: Did they hurt your mom or your
13 sister?

14 PROSPECTIVE JUROR: No. My mom was able to run
15 out of the house.

16 THE COURT: Okay. Were you -- were you there?

17 PROSPECTIVE JUROR: I was not there.

18 THE COURT: Was anybody arrested or do you
19 know?

20 PROSPECTIVE JUROR: Yeah, I think he was
21 arrested, but he didn't stay in jail.

22 THE COURT: Were you involved in that process?

23 PROSPECTIVE JUROR: No, sir.

24 THE COURT: Was he ever convicted or tried or
25 do you know?

1 PROSPECTIVE JUROR: I don't know.

2 THE COURT: You don't know. Do you have any
3 bias or prejudice as a result of that towards
4 defendants in general?

5 PROSPECTIVE JUROR: No, sir.

6 THE COURT: Can you be fair and impartial in
7 this case?

8 PROSPECTIVE JUROR: I could.

9 THE COURT: Pardon?

10 PROSPECTIVE JUROR: I could.

11 THE COURT: Okay. Thank you, Mr. Jones.
12 Yes, ma'am. Your name.

13 PROSPECTIVE JUROR: My name is Martha Moore.
14 I'm 144.

15 THE COURT: 144. Okay.

16 PROSPECTIVE JUROR: Are you talking about
17 something that happened like 30 years ago? Because
18 my mama was robbed about -- it's been about
19 30 years.

20 THE COURT: This happened 30 years ago?

21 PROSPECTIVE JUROR: Yeah.

22 THE COURT: What happened 30 years ago?

23 PROSPECTIVE JUROR: She was working at a
24 convenient store and she got hit in the head and
25 robbed.

1 THE COURT: Okay. Was she hurt -- was she hurt
2 bad?

3 PROSPECTIVE JUROR: No. She -- well, she had
4 to go to the hospital. There were ---

5 THE COURT: Okay. Go ahead. I'm sorry.

6 PROSPECTIVE JUROR: There were two guys that
7 were caught. They got caught with the merchandise
8 and stuff.

9 THE COURT: Okay. Did they -- did they convict
10 them?

11 PROSPECTIVE JUROR: Yeah, I think they went to
12 jail.

13 THE COURT: How old were you -- how old were
14 you when it happened?

15 PROSPECTIVE JUROR: I was -- I was in my 20s,
16 so I can't remember exactly what happened, but I
17 know they -- they did go to jail.

18 THE COURT: So they served some time?

19 PROSPECTIVE JUROR: Uh-huh.

20 THE COURT: Do you any bias or prejudice
21 towards defendants in general?

22 PROSPECTIVE JUROR: No.

23 THE COURT: Think you can be fair and impartial
24 in this case?

25 PROSPECTIVE JUROR: Uh-huh.

1 THE COURT: Was your mother hurt bad?

2 PROSPECTIVE JUROR: No. She got -- she -- she
3 had stiches and all in her head.

4 THE COURT: Stiches in her head?

5 PROSPECTIVE JUROR: Yeah, but she didn't have
6 to stay in the hospital.

7 THE COURT: Okay. Well, I'm glad your mother
8 was okay. Thank you so very much.

9 PROSPECTIVE JUROR: All right.

10 THE COURT: All right. Any motions on any of
11 those jurors?

12 MR. LUCAS: 114.

13 THE COURT: Pardon?

14 MR. LUCAS: 114.

15 THE COURT: Mr. Moore? Martha Moore? I'm
16 sorry. I'm looking at the wrong one.

17 MR. LUCAS: 114.

18 THE COURT: What's your motion?

19 MR. LUCAS: We'd move to have him ---

20 THE COURT: Pardon?

21 MR. LUCAS: We'd move to have him struck. He's
22 not -- not -- wasn't -- kind of wishy-washy on his
23 ability to be fair.

24 THE COURT: What's the State's position?

25 MS. HUEY: And, Judge, I think you asked

1 follow-up questions to clarify that. I think he's
2 fine.

3 THE COURT: All right. Motion denied. Okay.
4 Any motion on any of these others that we brought up
5 here? I brought them up here because they didn't
6 need to tell ---

7 MR. OVERBY: Yes, sir.

8 THE COURT: Any other motions.

9 MR. LUCAS: I'd move to strike 144.

10 THE COURT: Pardon?

11 MR. LUCAS: 144.

12 THE COURT: 144?

13 MR. LUCAS: Just based upon the nature of the
14 circumstances, the robbery.

15 THE COURT: Come around here. I can't hear
16 you. Talk louder.

17 MR. LUCAS: I move to strike 144 based on the
18 nature and circumstances of the crime against her
19 mother. I think it likely would prevent her from
20 being fair and impartial.

21 THE COURT: Well, she said it was, what,
22 30 years ago?

23 MS. HUEY: Yes, sir.

24 MR. OVERBY: That's correct, Your Honor.

25 THE COURT: She said it was 30 years ago.

1 MR. LUCAS: It's a serious crime.

2 THE COURT: Pardon?

3 MR. LUCAS: It's a real serious crime, Judge,
4 of a very personal nature against one's mom. I know
5 that I couldn't put that aside personally.

6 THE COURT: Okay. Anything from the State?

7 MS. HUEY: Your Honor, again, I think you were
8 able to ask questions to clarify that.

9 THE COURT: I think I'll -- I know what she
10 said, but the fact that it was her mother and she
11 got hit in the head and a set of stitches, I think
12 that's very personal. I think she'll have probably
13 difficulty in setting it aside. I'm going to strike
14 her for cause.

15 MR. LUCAS: Thank you, Your Honor.

16 THE COURT: Can I see the lawyers up here just
17 a second?

18 (Sidebar discussion.)

19 THE COURT: Has any member of the jury panel or
20 have any family ever had a violent crime committed
21 against them that they thought involved drug use?
22 In other words, the person that committed the crime
23 was on drugs. Anybody have that situation, please
24 stand.

25 PROSPECTIVE JUROR: Me.

1 THE COURT: Yes, sir. Your name?

2 PROSPECTIVE JUROR: Michael Haynes, 94.

3 THE COURT: Ninety-four? All right.

4 Mr. Haynes, come around here to the front, please.

5 PROSPECTIVE JUROR: (Complying.)

6 THE COURT: Okay. Mr. Haynes, first of all,
7 what kind of crime was it?

8 PROSPECTIVE JUROR: My dad was murdered.

9 THE COURT: Your dad was murdered?

10 PROSPECTIVE JUROR: Uh-huh.

11 THE COURT: Okay. How long ago?

12 PROSPECTIVE JUROR: I was ten, so 2005.

13 THE COURT: You were ten?

14 PROSPECTIVE JUROR: Uh-huh. 2005.

15 THE COURT: Okay. Year 2005. And did they
16 catch the person that shot him and killed him?

17 PROSPECTIVE JUROR: Yeah, Anderson County got a
18 warrant for a shoot to kill.

19 THE COURT: They what?

20 PROSPECTIVE JUROR: Anderson County killed him,
21 the guy that killed my dad.

22 THE COURT: Okay. So the deputy shot him on
23 the scene?

24 PROSPECTIVE JUROR: Uh-huh.

25 THE COURT: Okay. And how was it drug related

1 involved in this?

2 PROSPECTIVE JUROR: From what I was told, the
3 guy was on drugs and drinking.

4 THE COURT: So the police told you that the guy
5 that shot your father was on drugs?

6 PROSPECTIVE JUROR: The police told my mother.

7 THE COURT: And your mother told you? You were
8 ten years old?

9 PROSPECTIVE JUROR: Correct.

10 THE COURT: How would that affect you sitting
11 on this jury?

12 PROSPECTIVE JUROR: I don't think it would
13 affect me.

14 THE COURT: You don't think it would affect
15 you?

16 PROSPECTIVE JUROR: No. I just didn't want
17 to ---

18 THE COURT: Pardon?

19 PROSPECTIVE JUROR: I just didn't want to walk
20 away and not stand up. I don't think it would
21 affect me though.

22 THE COURT: But you think you can be fair?

23 PROSPECTIVE JUROR: Yes, sir.

24 THE COURT: Why is that?

25 PROSPECTIVE JUROR: My parents were divorced.

1 My dad was a great dad, but also in and out. And it
2 was so long ago, that I was far passed it.

3 THE COURT: But you lived with your mom at the
4 time?

5 PROSPECTIVE JUROR: I did. Yes, sir.

6 THE COURT: But you think you can be fair and
7 impartial?

8 PROSPECTIVE JUROR: Yes, sir.

9 THE COURT: Any questions from the State?

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

11 THE COURT: From the defense?

12 MR. LUCAS: No, sir.

13 THE COURT: Have a seat. Thank you so very
14 much.

15 PROSPECTIVE JUROR: Appreciate it.

16 THE COURT: Motions?

17 MR. LUCAS: I would move to strike for cause,
18 Your Honor.

19 THE COURT: Why?

20 MR. LUCAS: Given the fact that it was his
21 father involved and he was killed.

22 THE COURT: Did you hear what he said at the
23 end?

24 MR. LUCAS: About his parents being divorced?

25 THE COURT: Yeah.

1 MR. LUCAS: I did. I still think it's of a
2 very personal nature and makes it hard to be fair
3 and impartial.

4 MS. HUEY: I would disagree, Your Honor. This
5 isn't even a murder case.

6 THE COURT: Motion denied on that one. Okay.

7 MR. LUCAS: Thank you, Your Honor.

8 THE COURT: Does any member of the jury panel
9 believe that identification by law enforcement are
10 always accurate? If you believe that, please stand.

11 PROSPECTIVE JURORS: (No responses.)

12 THE COURT: All right. Does any member of the
13 jury panel have any knowledge of this case other
14 than what the Court's told you this morning? Have
15 you heard anybody talk about the case, seen anything
16 in the newspaper, or heard anything on the radio or
17 TV, please stand.

18 PROSPECTIVE JURORS: (No responses.)

19 THE COURT: Has any member of the jury panel
20 formed or expressed an opinion about any issue or
21 matter involving this case? If so, please stand.

22 PROSPECTIVE JURORS: (No responses.)

23 THE COURT: Solicitor, would you stand and
24 introduce yourself, please?

25 MS. HUEY: Yes, sir, Your Honor. My name is

1 Catherine Huey. I'm the Deputy Solicitor for
2 Anderson County.

3 With me is Stan Overby. He's assisting me this
4 week.

5 And then also Lieutenant Gebing who was
6 introduced earlier.

7 THE COURT: All right. Is any member of the
8 jury panel close friends with anyone in the
9 Solicitor's office, Catherine Huey and Stan Overby,
10 who are trying this case today or anyone else in the
11 Solicitor's Office? If you're close friends with
12 anyone, please stand.

13 PROSPECTIVE JURORS: (No responses.)

14 THE COURT: All right. Mr. Lucas, if you'd
15 stand and introduce yourself, please, sir.

16 MR. LUCAS: My name is Hadden Lucas. I'm an
17 Assistant Public Defender with the Anderson County
18 Public Defender's Office. This is my client,
19 Darrell Blackwell.

20 And Gordon Senerius, also with the Public
21 Defender's Office, who's assisting with jury
22 selection.

23 THE COURT: Thank you very much. Has any
24 member of the jury panel ever been represented by
25 anyone in the Public Defender's Office, close

1 friends with anyone in the Public Defender's Office?
2 If so, please stand?

3 PROSPECTIVE JURORS: (No responses.)

4 THE COURT: Is any member of the jury panel
5 aware of any bias or prejudice towards either the
6 State or the defendant in this case? If so, please
7 stand.

8 PROSPECTIVE JUROR: (No responses.)

9 THE COURT: Is any member of the jury panel a
10 member or contributor to any group that has its
11 primary concern the promotion of law enforcement or
12 victim's rights? These groups include, but not
13 limited to: MADD, SADD, CAVE, or Citizens Against
14 Violent Crime? If so, please stand.

15 PROSPECTIVE JURORS: (No responses.)

16 THE COURT: Does any member of the jury panel
17 know of any reason whatsoever why he or she should
18 not serve as a juror in this case with particular
19 emphasis on your level to be fair and impartial
20 towards the State and the defendant? If so, please
21 stand.

22 PROSPECTIVE JURORS: (No responses.)

23 THE COURT: All right. Any further questions
24 from the State?

25 MS. HUEY: None from the State.

1 THE COURT: Any from the defendant?

2 MR. LUCAS: None, Your Honor.

3 THE COURT: Mr. Clerk, if you would give us the
4 jury, please, sir.

5 THE CLERK: Please the Court?

6 THE COURT: Yes, sir.

7 THE CLERK: Ladies and gentlemen, when I call
8 your name, what I'd like for you to do is come to me
9 and turn and face the audience, please.

10 First potential juror is Number 27, David C.
11 Cantrell.

12 PROSPECTIVE JUROR: (Approaching.)

13 THE CLERK: What say you for the State?

14 MS. HUEY: Please present this juror.

15 THE CLERK: What say you for the defense?

16 MR. LUCAS: Please seat Mr. Cantrell.

17 THE CLERK: Next potential juror is Number 3,
18 Heather G. Amidon.

19 PROSPECTIVE JUROR: (Approaching.)

20 THE CLERK: What say you for the State?

21 MS. HUEY: Please present this juror.

22 THE CLERK: What say you for the defense?

23 MR. LUCAS: Please excuse the juror.

24 THE CLERK: Next is Number 4, Juanita D.
25 Anderson.

1 PROSPECTIVE JUROR: (Approaching.)

2 THE CLERK: What say you for the State?

3 MS. HUEY: Please present this juror.

4 THE CLERK: What say you for the defense?

5 MR. LUCAS: Please excuse Ms. Anderson.

6 THE CLERK: Next is Number 138, Michael P.
7 McGraw.

8 PROSPECTIVE JUROR: (Approaching.)

9 THE CLERK: What say you for the State?

10 MS. HUEY: Please present this juror.

11 THE CLERK: What say you for the defense?

12 MR. LUCAS: Please seat Mr. McGraw.

13 THE CLERK: Next is Number 196, Henry P.
14 Strzelecki.

15 PROSPECTIVE JUROR: (Approaching.)

16 THE CLERK: What say you for the State?

17 MS. HUEY: Please present this juror.

18 THE CLERK: What say you for the defense?

19 MR. LUCAS: Please excuse the juror.

20 THE CLERK: Next is Number 135, Quentin
21 McDowell.

22 PROSPECTIVE JUROR: (Approaching.)

23 THE CLERK: What say you for the State?

24 MS. HUEY: Please excuse this juror.

25 THE CLERK: Juror No. 75, Nicole R. Fowler.

1 PROSPECTIVE JUROR: (Approaching.)

2 THE CLERK: What say you for the State?

3 MS. HUEY: Please present this juror.

4 THE CLERK: What say you for the defense?

5 MR. LUCAS: Please seat Ms. Fowler.

6 THE CLERK: Juror No. 98, Lacey T. Howard.

7 PROSPECTIVE JUROR: (Approaching.)

8 THE CLERK: What say you for the State?

9 MS. HUEY: Please present this juror.

10 THE CLERK: What say you for the defense?

11 MR. LUCAS: Please seat Ms. Howard.

12 THE CLERK: Juror No. 160, Jessica R. Perez.

13 PROSPECTIVE JUROR: (Approaching.)

14 THE CLERK: What say you for the State?

15 MS. HUEY: Please present this juror.

16 THE CLERK: What say you for the defense?

17 MR. LUCAS: Please seat Ms. Perez.

18 THE CLERK: Juror No. 223, Angela W. Wyndham.

19 PROSPECTIVE JUROR: (Approaching.)

20 THE CLERK: What say you for the State?

21 MS. HUEY: Please present this juror.

22 THE CLERK: What say you for the defense?

23 MR. LUCAS: Please excuse Ms. Wyndham.

24 THE CLERK: Juror No. 167, James W. Reynolds.

25 PROSPECTIVE JUROR: (Approaching.)

1 THE CLERK: What say you for the State?

2 MS. HUEY: Please excuse this juror.

3 THE CLERK: Juror No. 2, Michael J. Adams.

4 PROSPECTIVE JUROR: (Approaching.)

5 THE CLERK: What say you for the State?

6 MS. HUEY: Please present this juror.

7 THE CLERK: What say you for the defense?

8 MR. LUCAS: Please excuse Mr. Adams.

9 THE CLERK: Juror No. 51, Robert J. Davidson.

10 PROSPECTIVE JUROR: (Approaching.)

11 THE CLERK: What say you for the State?

12 MS. HUEY: Please present this juror.

13 THE CLERK: What say you for the defense?

14 MR. LUCAS: Please excuse the juror.

15 THE CLERK: Juror No. 8, Joseph K. Barr, Jr.

16 PROSPECTIVE JUROR: (Approaching.)

17 THE CLERK: What say you for the State?

18 MS. HUEY: Please present this juror.

19 THE CLERK: What say you for the defense?

20 MR. LUCAS: Please excuse the juror.

21 THE CLERK: Juror No. 83, Fritzlene F. Gilles.

22 PROSPECTIVE JUROR: (Approaching.)

23 THE CLERK: What say you for the State?

24 MS. HUEY: Please present this juror.

25 THE CLERK: What say you for the defense?

1 MR. LUCAS: Please seat the juror.

2 THE CLERK: Juror No. 119, Ricky W. Livingston.

3 PROSPECTIVE JUROR: (Approaching.)

4 THE CLERK: What say you for the State?

5 MS. HUEY: Please excuse this juror.

6 THE CLERK: Juror No. 90, Justin C. Hamlin.

7 PROSPECTIVE JUROR: (Approaching.)

8 THE CLERK: What say you for the State?

9 MS. HUEY: Please present this juror.

10 THE CLERK: What say you for the defense?

11 MR. LUCAS: Please seat the juror.

12 THE CLERK: Juror No. 33, Daniel E. Charron.

13 PROSPECTIVE JUROR: (Approaching.)

14 THE CLERK: What say you for the State?

15 MS. HUEY: Please present this juror.

16 THE CLERK: What say you for the defense?

17 MR. LUCAS: Please seat the juror.

18 THE CLERK: Juror No. 1, Bethany F. Adair.

19 PROSPECTIVE JUROR: (Approaching.)

20 THE CLERK: What say you for the State?

21 MS. HUEY: Please present this juror.

22 THE CLERK: What say you for the defense?

23 MR. LUCAS: Please seat the juror.

24 THE CLERK: Juror No. 48, Patrick N. Cromer.

25 PROSPECTIVE JUROR: (Approaching.)

1 THE CLERK: What say you for the State?

2 MS. HUEY: Please present this juror.

3 THE CLERK: What say you for the defense?

4 MR. LUCAS: Please seat the juror.

5 THE CLERK: Juror No. 117, Colin J. Lenz.

6 PROSPECTIVE JUROR: (Approaching.)

7 THE CLERK: What say you for the State?

8 MS. HUEY: Please excuse this juror.

9 THE CLERK: Juror No. 37, Deborah A. Collins.

10 PROSPECTIVE JUROR: (Approaching.)

11 THE CLERK: What say you for the State?

12 MS. HUEY: Please present this juror.

13 THE CLERK: What say you for the defense?

14 MR. LUCAS: Please seat the juror.

15 THE CLERK: Juror No. 77, Jessica W. Franklin.

16 PROSPECTIVE JUROR: (Approaching.)

17 THE CLERK: What say you for the State?

18 MS. HUEY: Please present this juror.

19 THE CLERK: What say you for the defense?

20 MR. LUCAS: Please excuse the juror.

21 THE CLERK: Juror No. 120, Cory M. Lundeen.

22 PROSPECTIVE JUROR: (Approaching.)

23 THE CLERK: What say you for the State?

24 MS. HUEY: Please present this juror.

25 THE CLERK: What say you for the defense?

1 MR. LUCAS: Please excuse the juror.

2 THE CLERK: Juror No. 128, William R. Martin.

3 PROSPECTIVE JUROR: (Approaching.)

4 THE CLERK: What say you for the State?

5 MS. HUEY: Please excuse this juror.

6 THE CLERK: Juror No. 213, Gregory L.

7 Whitfield.

8 PROSPECTIVE JUROR: (Approaching.)

9 THE CLERK: What say you for the State?

10 MS. HUEY: Please present this juror.

11 THE CLERK: What say you for the defense?

12 MR. LUCAS: Please excuse the juror.

13 THE CLERK: Juror No. 127, Mark Martin.

14 PROSPECTIVE JUROR: (Approaching.)

15 THE CLERK: Your Honor, I have that both

16 parties are out of strikes.

17 THE COURT: Yes, sir.

18 THE CLERK: For cause, any reason? Cause.

19 MS. HUEY: No.

20 MR. LUCAS: I have none.

21 THE CLERK: Mr. Martin, that way, please.

22 THE COURT: And we'll draw two alternates.

23 THE CLERK: Juror No. 144, Martha S. Moore.

24 MR. LUCAS: I think she's already been struck

25 for cause.

1 THE COURT: Pardon?

2 MR. LUCAS: I think that this juror has already
3 been struck.

4 THE COURT: I think we already that motion and
5 that motion is denied.

6 MR. LUCAS: I guess I'm mistaken, Your Honor.

7 THE COURT: I'm sorry. What's your ---

8 MS. HUEY: Judge, if we may approach?

9 THE COURT: Pardon?

10 MR. OVERBY: May we approach, Your Honor.

11 (Sidebar discussion.)

12 THE COURT: Ms. Moore, you can go have a seat,
13 please, ma'am. She was excused earlier for cause by
14 the Court.

15 THE CLERK: Juror No. 216, Stewart M. Wilson.

16 PROSPECTIVE JUROR: (Approaching.)

17 THE COURT: What say you for the State?

18 MS. HUEY: Please present this juror.

19 THE CLERK: What say you for the defense?

20 MR. LUCAS: Please seat the juror.

21 THE CLERK: Juror No. 158, Brooke I. Bagwell.

22 PROSPECTIVE JUROR: (Approaching.)

23 THE CLERK: What say you for the State?

24 MS. HUEY: Please present this juror.

25 MR. LUCAS: Please seat the juror.

1 THE CLERK: Your Honor, that is 12 jurors and 2
2 alternates.

3 THE COURT: Okay. All right. Ladies and
4 gentlemen of the jury panel, I have to ask you to go
5 to the jury room. I'll get you back hopefully very
6 shortly. I got to take up motions with the
7 attorneys. I'll get you back very shortly. Just
8 follow them to the jury room. Don't discuss the
9 case among yourselves.

10 (At 12:14 p.m., jury left the courtroom.)

11 THE COURT: All right. Other than the motions
12 that have already been made at the bench, any motion
13 from the State on the drawing of the jury or any
14 motions from the State on the qualification for
15 cause?

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

17 THE COURT: Any from the defendant, other than
18 what's already been made?

19 MR. LUCAS: None, Your Honor.

20 THE COURT: All right. Let me see the
21 attorneys up here just a second.

22 (Sidebar discussion.)

23 THE COURT: All right. The remaining panel
24 members, call in after six o'clock. Is there any
25 member of the jury panel that does not have a number

1 to call? If you do not have a number, raise your
2 right hand.

3 PROSPECTIVE JURORS: (Indicating.)

4 THE COURT: Nobody does. All right. Get the
5 number. Call in after six o'clock. Follow those
6 instructions. The instruction may be to report
7 tomorrow, report Wednesday, or call back the next
8 day. Follow the instructions. I don't want to send
9 a deputy sheriff out to bring you back up here.

10 (At 12:16 p.m., jurors that were not selected
11 to serve were excused for the day.)

12 THE COURT: Bring the jury, please, sir.

13 THE BAILIFF: (Complying.)

14 (At 12:20 p.m., jury entered the courtroom.)

15 THE COURT: All right. Members of the jury
16 panel, we're going to take a lunch break at this
17 time, and I'm going give you a longer lunch break
18 than we're going to receive because I've got to
19 attend to some other matters in another trial for
20 another case. So if you'll be back in the jury room
21 at three o'clock, we'll get started with testimony
22 at that time.

23 Please don't discuss the case amongst
24 yourselves. Don't use any Facebook. Don't use any
25 electronic means of investigating anything about

1 this case. I want you to make a decision on what
2 you hear in this courtroom, not what you read on the
3 internet or read on a newspaper article or
4 investigating the particular crime charged --
5 charged -- as charged here. So don't do anything.
6 Don't look at anything electronically about the case
7 or any crime the defendant is charged with.

8 See you at three o'clock. When you come in the
9 courthouse, come straight to the jury room. The
10 bailiff will show you where to come. Have a good
11 lunch.

12 (At 12:21 p.m., jury was excused for lunch.)

13 THE COURT: All right. We'll adjourn until,
14 what, 2:30; is that correct?

15 MR. OVERBY: Correct, Your Honor.

16 THE COURT: Okay. All right. We'll adjourn
17 till 2:30. See you at 2:30.

18 MS. HUEY: Thank you, Judge.

19 THE COURT: I'm sorry. 1:30. See you at 1:30.

20 (From 12:22 to 1:30 p.m., lunch recess.)

21 (Other matters on the Court's docket were heard
22 until 2:48 p.m.)

23 THE COURT: Glad to hear from you, Solicitor.

24 MS. HUEY: Thank you, Judge. The State would
25 call Scotty Hill to the stand.

1 THE COURT: Okay.

2 THE WITNESS: (Approaching.)

3 THE CLERK: You do solemnly swear or affirm the
4 testimony you'll give this Court is the truth, the
5 whole truth, and nothing but the truth?

6 THE WITNESS: Yes, ma'am.

7 THE CLERK: Thank you. Please have a seat in
8 the witness chair.

9 THE WITNESS: (Complying.)

10 THE CLERK: And state your full name for the
11 record and spell your last name, please.

12 THE WITNESS: Scotty Hill, H-i-l-l.

13 INVESTIGATOR SCOTTY HILL,
14 having been produced and first duly sworn as a
15 witness on behalf of the States, then testified as
16 follows:

17 DIRECT EXAMINATION

18 BY MS. HUEY:

19 Q. Investigator Hill, where are you currently
20 employed?

21 A. With the Anderson County Sheriff's Office.

22 Q. How long have you been employed there?

23 A. Almost six years.

24 Q. And what is your position?

25 A. I'm a detective in the criminal investigations

1 division.

2 Q. And is this a position you held back in January
3 and February of 2016?

4 A. It is.

5 Q. Did you talk with the defendant in this case
6 regarding taking a statement from him?

7 A. I did. Yes, ma'am. Well, I was present while
8 he was spoken with.

9 Q. And were you the lead in this case, or were you
10 there as a witness?

11 A. I was there as a witness.

12 Q. And so who took the lead when it came to taking
13 a statement from the defendant?

14 A. Detective Jamie Garrett.

15 Q. And were you with Detective Garrett throughout
16 this entire process though?

17 A. Yes, ma'am.

18 Q. Where did this interview take place?

19 A. It was at the Anderson County Detention Center.

20 Q. So the defendant, Darrell Blackwell, is he in
21 the courtroom today?

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

23 Q. Okay. And is this the person that you spoke to
24 back in January, February of 2016?

25 A. It is.

1 Q. Okay. So this took place at the Anderson
2 County Detention Center, so he was already in
3 custody?

4 A. Yes, ma'am, he was.

5 Q. And where exactly in the detention center did
6 it take place?

7 A. It was the newer side of the jail, a
8 multi-purpose room. It's an office, slash, kind of
9 a storage room. It has a small desk and chairs.
10 And then the rest of the room is storage for
11 cleaning supplies.

12 Q. So who was present then?

13 A. It was Detective Garrett, I, and Mr. Blackwell.

14 Q. Just the three of you all?

15 A. Yes, ma'am.

16 Q. Okay. And did you all sit down at this table?

17 A. We did. Yes, ma'am.

18 Q. So there was a seat for everybody?

19 A. There was. Yes, ma'am.

20 Q. Was Mr. Blackwell in handcuffs?

21 A. No, he was not.

22 Q. But he'd obviously come from his jail cell?

23 A. Yes, ma'am.

24 Q. And was the defendant advised of his rights?

25 A. He was.

1 Q. And did you witness this?

2 A. I did.

3 Q. Was a form used ---

4 A. Yes, ma'am.

5 Q. --- to advise him of his rights?

6 A. Yes, ma'am.

7 Q. And did that form list out his rights?

8 A. It does. Yes, ma'am.

9 Q. Now, during the course of this interview and
10 having been -- when you were reading him his rights
11 or Detective Garrett was, was he denied anything?
12 Did he ever say he was hungry or needed something to
13 drink or he was in pain, anything along those lines?

14 A. He never mentioned anything like that. No.

15 Q. Did he seem to be under the influence of
16 anything?

17 A. He did not.

18 Q. Because, again, he'd been coming from the jail?

19 A. Right.

20 Q. Do you know about how long he had been there?

21 A. A little over two weeks.

22 Q. Okay. Since the date of arrest?

23 A. Yes, ma'am.

24 Q. So when his rights were explained to him by
25 Detective Garrett, did he seem to understand those

1 rights, Mr. Blackwell?

2 A. He did.

3 Q. Were any threats or promises made in order to
4 get him to sign the form?

5 A. No, ma'am.

6 Q. Any intimidation?

7 A. No.

8 Q. And so in your opinion, was his waiver of
9 rights voluntary?

10 A. Yes, ma'am.

11 Q. And did he then indicate he wished to give a
12 statement?

13 A. He did.

14 Q. And was that a written or an oral statement?

15 A. It was oral.

16 Q. And why is that?

17 A. We audio record our statements, so it was
18 captured on audio recording.

19 Q. And so when you say it was audio recorded, does
20 that include the Miranda, as well?

21 A. Yes, ma'am.

22 Q. I'm going to show you a few items. All right.
23 Investigator Hill, I'm going to show you what's been
24 marked as State's 1 for this hearing. If you could
25 take a look at that, please.

1 A. (Complying.)

2 Q. And do you recognize that form?

3 A. I do.

4 Q. And how are you able to recognize it?

5 A. It's the standard advisory rights form we use
6 at the sheriff's office, and it also has my
7 signature on it.

8 Q. Okay. And what does your signature indicate?

9 A. That I witnessed this form be filled out.

10 Q. Okay. And is the defendant's signature on
11 that?

12 A. It is. Yes, ma'am.

13 Q. And what does the defendant's signature
14 indicate?

15 A. At the top it indicates that he understood his
16 rights, and at the bottom it indicates that he
17 waived his rights and was willing to make a
18 statement.

19 MS. HUEY: Your Honor, at this time we'd admit
20 State's 1 for purposes of this hearing?

21 THE COURT: Any objection?

22 MR. LUCAS: Without objection, Judge.

23 THE COURT: All right. Admitted -- admitted
24 without objection.

25 (State's Exhibit No. 1 was received into

1 evidence.)

2 BY MS. HUEY:

3 Q. Investigator Hill, I'm also going to show you
4 State's 2. If you could take a look at that,
5 please.

6 A. (Complying.)

7 Q. And do you recognize that CD?

8 A. I do.

9 Q. And how are you able to recognize it?

10 A. I initialled and dated it last month.

11 Q. Okay. And what do your initials and date
12 indicate?

13 A. That is the statement that was given to us by
14 Mr. Blackwell on February 1, 2016.

15 Q. And does that fairly and accurately represent
16 the entire interview?

17 A. It does. Yes, ma'am.

18 Q. Including his Miranda and waiver?

19 A. Yes, ma'am.

20 Q. And does -- has it been altered in any way?

21 A. No.

22 MS. HUEY: Okay. Your Honor, at this time we'd
23 admit State's 2 for purposes of this hearing.

24 THE COURT: Any objection?

25 MR. LUCAS: Without objection.

1 THE COURT: Admitted without objection.

2 (State's Exhibit No. 2 was received into
3 evidence.)

4 BY MS. HUEY:

5 Q. And, Investigator Hill, finally I'm going to
6 show you State's 3. If you could take a look at
7 that.

8 A. (Complying.)

9 Q. And what is that, Investigator Hill?

10 A. That's the transcript of the interview.

11 Q. Okay. And have you reviewed that transcript
12 prior to your testimony today?

13 A. I have. Yes, ma'am.

14 Q. And does it fairly and accurately represent the
15 audio recording of the interview that took place on
16 February 1, 2016?

17 A. It does. Yes, ma'am.

18 MS. HUEY: Okay. Your Honor, at this time we'd
19 admit State's 3 into evidence for purposes of this
20 hearing.

21 THE COURT: Okay.

22 MR. LUCAS: No objection. Just for the purpose
23 of this hearing.

24 THE COURT: All right. Thank you, sir.

25 (State's Exhibit No. 3 was received into

1 evidence.)

2 MS. HUEY: So Investigator Hill -- and, Your
3 Honor, at this time we are happy to publish the
4 audio or the transcript, or we can ask Investigator
5 Hill a few questions in terms of what the statement
6 Mr. Blackwell gave included.

7 THE COURT: (No response.)

8 MS. HUEY: Judge?

9 THE COURT: Yes, ma'am. I'm sorry.

10 MS. HUEY: That's okay, Judge. At this time
11 I'm happy to publish the audio and -- and I know
12 I've provided copies of the transcript for Your
13 Honor. We also just ask Investigator Hill a few
14 questions regarding the statement.

15 THE COURT: You've already marked the
16 transcript, right?

17 MS. HUEY: I'm sorry, Judge?

18 THE COURT: You already marked the transcript?

19 MS. HUEY: Yes. It's already been admitted.

20 Yes, sir.

21 THE COURT: Okay.

22 MS. HUEY: Would you like to hear the audio ---

23 THE COURT: No.

24 MS. HUEY: --- at this time? Okay.

25 THE COURT: I was reading the transcript, but

1 go ahead.

2 MS. HUEY: Oh, well, Judge, just a couple more
3 questions then.

4 BY MS. HUEY:

5 Q. Just a couple more for follow-up. Investigator
6 Hill, were you ever out of Detective Garrett's
7 presence while he was speaking with the defendant,
8 Darrell Blackwell?

9 A. No, ma'am.

10 Q. You assisted him the entire time?

11 A. I did.

12 Q. And you were a witness to the entire incident?

13 A. Yes, ma'am.

14 MS. HUEY: That's all I have at this time,
15 Judge.

16 THE COURT: Cross-examination?

17 MR. LUCAS: Yes, Your Honor.

18 CROSS-EXAMINATION

19 BY MR. LUCAS:

20 Q. Is it Detective Hill?

21 A. Yes, sir.

22 Q. On what date was Mr. Blackwell arrested?

23 A. I believe it was January 16, 2016. It's about
24 two weeks before we spoke with him.

25 Q. And the interview took place on February 1st of

1 2016?

2 A. Yes, sir.

3 Q. What was Mr. Blackwell's appearance during the
4 interview?

5 A. Similar to how he appears today, other than he
6 was in an orange jumpsuit.

7 Q. How would you describe his mental status during
8 that interview?

9 A. Seemed normal to me.

10 Q. Did he appear sleepy?

11 A. No, sir.

12 Q. Strung out?

13 A. No, sir.

14 Q. Under the influence of drugs?

15 A. No, sir.

16 Q. Did it appear that he knew what was going on
17 during the course of the interview?

18 A. Yes, sir.

19 Q. Now, during the interview, he was told that
20 there was a video recording of what occurred?

21 A. That's correct.

22 Q. But it wasn't shown to him immediately, was it?

23 A. Not right away. It was before the end of the
24 interview.

25 Q. And he was told what happened in the store,

1 correct?

2 A. Yes, sir.

3 Q. And that's used as an interrogation tactic?

4 A. Yes. Detective Garrett did that. I don't know
5 what his motives were behind it.

6 Q. Usually the idea is to get someone to agree
7 with you that, in fact, it happened a certain -- a
8 certain way, correct?

9 A. The motive is to find out what happened from
10 the person we're speaking with.

11 Q. Not to obtain a confession?

12 A. If they're guilty, then, yes, confession.

13 Q. So he was shown a video, and then without
14 seeing it he was told what happened?

15 A. Yes.

16 MR. LUCAS: No further questions, Judge.

17 THE COURT: Any redirect?

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

19 THE COURT: Detective, you may step down.

20 Thank you very much.

21 (Witness excused.)

22 THE COURT: Any other questions? Any other
23 witnesses?

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

25 THE COURT: Do you want to call any witnesses

1 on your behalf concerning just the *Jackson v. Denno*
2 issue?

3 MR. LUCAS: I don't think so, Your Honor.

4 THE COURT: Pardon?

5 MR. LUCAS: No -- no, Your Honor.

6 THE COURT: Okay. All right.

7 All right. Mr. Lucas, what is your objection
8 on the -- I read -- it's about almost half of it.
9 What's your objection as far as the statements are
10 concerned?

11 MR. LUCAS: Your Honor, we object to ---

12 THE COURT: From what I've been hearing, that
13 didn't have anything to do with the crime, but go
14 ahead.

15 MR. LUCAS: We object to it on the basis that
16 we don't think it was freely and voluntarily given.

17 THE COURT: It's what?

18 MR. LUCAS: We do not believe that it was
19 freely and voluntarily given.

20 THE COURT: Why not?

21 MR. LUCAS: I believe that Mr. Blackwell's will
22 was overborne during the course of this. He was
23 told what happened and that the video would show it
24 a certain way. They wouldn't show him the video.
25 And ---

1 THE COURT: Was he told what happened, or did
2 he say he had a video? I thought Detective Hill
3 told him he had a video, and he would show it to him
4 if he wanted to because he couldn't remember having
5 the knife.

6 MR. LUCAS: He was actually not able to get it
7 to play for -- for a while. And he told him what
8 the video showed and then got Mr. Blackwell to make
9 some incriminating statements. And then later on
10 towards the end, they -- they did, in fact, play it.
11 That -- that's the basis of my objection is that
12 opposition, Your Honor.

13 THE COURT: Have you looked at the transcript
14 on page 8, Mr. Lucas? It is line 17. This is
15 before he talked about -- he said he had a video.

16 It says, "Why you -- why this happened? This
17 happened from my end. You got to say it is. I'd
18 rather not talk about it how that could happen.
19 Just a minute and then start this."

20 And he said, "Yes, sir."

21 And the detective said, "Whatever you need to
22 do. Give me a couple of minutes."

23 And he goes on and he says -- tells him
24 basically what happened. Parked the truck in the
25 back of the store and tells the van was running hot,

1 said pull up to the front of the store and parked in
2 the back. And he went to the store to get some
3 water from her and talk to her. "I found that
4 little play gun. I had it on me that day." And
5 went on and on explaining what happened.

6 Where in that transcript does it indicate that
7 it wasn't voluntarily given?

8 MR. LUCAS: Your honor, in regards to the
9 video.

10 THE COURT: Pardon?

11 MR. LUCAS: In regards to ---

12 THE COURT: Tell me the page and line number,
13 and I'll be happy to read it.

14 MR. LUCAS: Sure. Page 18 ---

15 THE COURT: Page 18?

16 MR. LUCAS: --- line 21. And then further on
17 page 27, line 10.

18 THE COURT: All right. Page 18, line 20 what,
19 21?

20 MR. LUCAS: I'm sorry. Line 23.

21 THE COURT: Twenty-three?

22 MR. LUCAS: And then on the next page, the
23 detective ---

24 THE COURT: The detective says, "Yeah, he was.
25 It's on video, man. I mean, plain as day." Is that

1 what you're talking about?

2 MR. LUCAS: Yes, Your Honor. And then
3 continuing on -- onto page 19, as well.

4 THE COURT: Okay. Anything else?

5 MR. LUCAS: And then the -- the same kind of
6 thing, Your Honor.

7 THE COURT: What page?

8 MR. LUCAS: Page 27, line 17.

9 THE COURT: Line 17?

10 MR. LUCAS: And then going on after that.

11 THE COURT: It says, "Detective, did you
12 release the video? Why -- tell me why FF."

13 MR. LUCAS: And that fits -- fits into the
14 theme, Your Honor, of I think they're telling him
15 that there is a video, that it shows him acting a
16 certain way, and then trying to get him to agree to
17 that without actually showing him the video.

18 THE COURT: All right. Solicitor?

19 MS. HUEY: Your Honor, if I may just add a
20 couple of things.

21 Inside this interview room, they had trouble
22 pulling up the video. The investigator in no way
23 mislead Mr. Blackwell. They told him what was on
24 the video and then were able to finally pull it up.
25 You go to page 30, Your Honor, they were able to

1 finally pull up the video and show, in fact, yes,
2 that's him. He entered the store with a gun and a
3 knife and you could see him plain as day. They were
4 not misleading him. It's literally -- the entire
5 thing is on video. And once they were able to show
6 it to him, they did, in fact, show him the video.

7 THE COURT: Okay.

8 MS. HUEY: And -- and numerous times throughout
9 the transcript as you can see, Your Honor,
10 Investigator Garrett went out of his way to say, "If
11 you want to talk to me, we can stop at any time, you
12 know, you just tell me."

13 THE COURT: Well, he -- he asked him that
14 several times.

15 MS. HUEY: Yes, sir.

16 THE COURT: He told him that several times.

17 All right. Mr. Lucas, if you would please, be
18 very specific with me factual-wise and where-wise
19 why you think that the Court should suppress the
20 statement.

21 MR. LUCAS: Your Honor, Mr. Blackwell is not a
22 sophisticated man. He was led along through a
23 confession being told that the video showed certain
24 things and not actually being shown it. That's the
25 basis of our argument, Judge. Nothing more; nothing

1 less. And we think that that led to his willing to
2 be overborne and makes this confession not -- not
3 freely and voluntarily given.

4 THE COURT: All right. Motion to suppress
5 statements denied. The Court finds he was fully
6 advised of his rights under the Fifth and Sixth
7 Amendments. He had a right to remain silent. He
8 waived that right. It's cited as well in the
9 transcript. He had the right to select an attorney.
10 The State went through all his particular rights and
11 at certain times the detective told him if he wanted
12 to stop, he could stop.

13 He had a right to interrupt and term --
14 terminate. He had rights for an attorney. And I
15 find the statement was given without duress, without
16 coercion, without undue influence, without reward,
17 without promise, hope, reward, without promise,
18 without threats or injury, without compulsion.

19 In addition, any kind of situation. The
20 statement was voluntarily, freely, and conscious
21 will -- unrestrained will of the defendant. I find
22 the statements admissible. Anything else?

23 MS. HUEY: Nothing, Judge.

24 THE COURT: Anything else from the defendant?

25 MR. LUCAS: Nothing further, Your Honor.

1 THE COURT: All right. It's about -- what time
2 is it? Five after 3:00?

3 MS. HUEY: Yes, sir.

4 THE COURT: What do you -- are y'all wanting to
5 make opening statements and call witnesses for the
6 State to start testimony? What's your pleasure?

7 MS. HUEY: Your Honor, we have several
8 witnesses that are fairly short, and I think the
9 opening statement will be fairly short, as well.

10 THE COURT: Okay. So do the opening statements
11 and then some witnesses?

12 MS. HUEY: That would be great, Judge.

13 THE COURT: Okay. All right. That's fine. Is
14 that agreeable with the defense?

15 MR. LUCAS: We're here, Your Honor. That's
16 fine by me.

17 THE COURT: All right. We're going to take
18 about a five-minute break. Okay?

19 MS. HUEY: Yes, sir.

20 THE COURT: And then we'll bring the jury out.

21 (From 3:08 to 3:22, recess was taken.)

22 THE COURT: Bring the jury in.

23 THE BAILIFF: (Complying.)

24 (At 3:22 p.m., jury entered the courtroom.)

25 THE COURT: So Ms. Gilles?

1 THE JUROR: Yes, sir.

2 THE COURT: I'm going to appoint you as
3 forelady. If you'll swap seats with the gentleman
4 here on the front row on the left. And when you
5 come in, if you'll sit in that seat as forelady and
6 the two alternates sit where they are. The rest of
7 you can sit wherever you choose when filing into the
8 courtroom.

9 If the clerk would swear the jury, please, sir.

10 THE CLERK: If it pleases the Court.

11 Ladies and gentleman, if I could have you stand
12 and raise your right hand, please.

13 THE JURORS: (Complying.)

14 THE CLERK: Do you and each of you solemnly
15 swear or affirm that you shall well and truly try
16 and a true deliverance make upon the State of South
17 Carolina and the defendant whom you shall have been
18 charged and a true verdict rendered according to the
19 law and the evidence. If you will, say "I do."

20 THE JURORS: (Collectively:) "I do."

21 THE CLERK: You can have a seat.

22 THE JURORS: (Complying.)

23 THE COURT: Solicitor.

24 MS. OVERBY: May it please the Court, Your
25 Honor?

1 THE COURT: Yes, sir.

2 MR. OVERBY: Ladies and gentlemen of the jury,
3 I want to be very clear and upfront when we talk
4 about this case. The man in the video conducting an
5 armed robbery at the Shop Rite on 714 Sayre Street
6 in January of 2016, the video surveillance you'll
7 see, the man in that the video is without a doubt
8 Darrell Blackwell, without a doubt.

9 And when I say without a doubt, when you see
10 this video, you will know exactly what I mean. You
11 will see Mr. Blackwell come into the -- come into
12 the store with a little small silver pistol. A
13 statement that he gave to law enforcement, which
14 will come in, will say it was cap gun, but you'll
15 also see him come in with a knife in his other hand.

16 You'll see him very clearly attempt to jump
17 over the cash register, over the counter, fail to do
18 so, walk back around to the back, open the money
19 drawer, take cash out, take cigarettes, and take a
20 box and walk out of the store. All on video.

21 You will see that he's wearing very distinctive
22 clothing, camouflage pants with a rip in the knee.
23 And you will hear from Investigator Rob Gebing of
24 the Anderson County Sheriff's Office that those
25 exact clothes on the video are found in the

1 possession of Mr. Darrell Blackwell on a consent to
2 search.

3 Mr. Blackwell is charged with armed robbery.
4 And armed robbery is something -- I'm not going to
5 spend a ton of time talking to you about the law.
6 The reason is, the judge has the province of
7 discussing the law, but generally speaking, armed
8 robbery is what you think it is. The use of a
9 weapon or what could reasonably appear to be a
10 weapon in the taking of a -- in the taking of a
11 person -- of property from another.

12 And this time, it's all on video. Every single
13 bit of it. There's no evidence of disguise his
14 identity whatsoever. This case is all about taking
15 a look at this and coming to the one possible
16 conclusion, that Mr. Blackwell robbed this store.
17 And as I said, when you see this evidence, you will
18 have no doubt that that is exactly what happened.

19 You may hear some reasons. I don't know. I
20 can't tell you what all is going come out -- come
21 around in this case. I have the sole burden of
22 proof, but I know what my evidence is going to show.
23 And that's what I want you to really consider when
24 you make the determination about whether or not
25 Mr. Blackwell committed this crime.

1 THE COURT: Mr. Lucas.

2 MR. LUCAS: May it please the Court?

3 THE COURT: Yes, sir.

4 MR. LUCAS: Thank y'all for being here today.

5 The right to a jury trial is a fundamental
6 constitutional right for every man, but it was not
7 always so. There have been times in our history
8 where that right has been infringed upon.

9 1765 Parliament. And I suspect -- bet you
10 didn't think you were going to hear about coming in
11 today. The Parliament passed the Stamp Act which
12 was a tax on every single piece of printed paper in
13 the American economy. The equivalent today of
14 taxing every time you're on the internet and you hit
15 that enter key and you go to another website.
16 Incredibly unpopular.

17 And as part of the Stamp Act, Parliament made
18 it so that any violators would not have a right to a
19 trial by jury. It would be tried in Admiralty Court
20 where the sole judge of the fact and the law was a
21 royal judge appointed by the crown to be agent of
22 the Government. There would be no trial by jury
23 there.

24 Now, fast forward a couple of years later and
25 Parliament passed another act. And this one was

1 insulated with real officials from the trial in the
2 colonies. So any royal official charged with a
3 crime could not be try -- tried in the American
4 colonies in New England or New York or South
5 Carolina or wherever this crime occurred, but they
6 would have to go to England to be tried, and only
7 there could justice be found.

8 Well, needless to say, that was a problem for
9 the colonials. And it was one of the reasons that
10 eventually led to the American Revolution. One of
11 many, but still it was important enough that Thomas
12 Jefferson put it into the Declaration of
13 Independence. As of one of his grievances against
14 the crown, he complained of the denial of a right to
15 a jury trial in many cases that the colonials.

16 And later on even after that in 1791, the right
17 to a jury trial was included in the Bill of Rights.
18 In several other parts of the Constitution as well,
19 but most pertinent here in the Sixth Amendment which
20 provides that in all criminal prosecutions, an
21 accused has the right to a speedy and public trial
22 before an impartial jury.

23 Now, why so much emphasis on this? Why did the
24 founders think it was so important? Why is a trial
25 by jury so important today? It is a check on the

1 power of the Government. It is a check on
2 Governmental oppression on overreach. And the
3 founders would've said a check on tyranny, as well.

4 So in our system, a jury is the only thing that
5 stands between a criminal defendant and the vast
6 power of the Government. The only thing that stands
7 between a criminal defendant and loss of freedom, of
8 property rights, even life. And that is the role
9 these next two days, to find the facts in this
10 matter and to serve as a check on the power of the
11 Government, of the prosecution, of the judge.

12 Now, that's not the only thing that is
13 protecting Mr. Blackwell. We also have the Fifth
14 Amendments and the Fourteenth Amendments and a long
15 history of common law that provides other
16 protections, the presumption of innocence, that any
17 person accused of a crime and called for a trial is
18 presumed innocent until they -- until they're proven
19 guilty. And also reasonable doubt, the fact that
20 the prosecution has to prove every element necessary
21 to convict beyond a reasonable doubt.

22 Now, the judge is going to tell you what that
23 means later on. I think that there is some
24 confusion about it. It can seem a nebulous term,
25 but reasonable doubt simply means that the State has

1 to provide proof that leaves you firmly convinced
2 that a defendant is guilty. That's a high standard.
3 It, in fact, is the highest standard that we have in
4 our criminal justice system, and it is a heavy
5 burden for them to meet.

6 So during these next two days, I -- I ask only
7 that you fulfill your Constitutional duty, that you
8 stand between the defendant and the power of the
9 Government, and that you serve as a check on the
10 Government. And at the end of this case, I'm going
11 to come back and I'm going to ask you to fulfill
12 that role and to find Mr. Blackwell not guilty.
13 Thank you.

14 THE COURT: Solicitor, if you'll call your
15 first witness, please.

16 MR. OVERBY: May it please the Court, Your
17 Honor? The State calls Rhonda Phillips to the
18 stand.

19 (Witness approached.)

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

24 THE WITNESS: Yes, I do.

25 THE CLERK: If you would take the witness

1 stand, please, ma'am, and state your name and spell
2 your last name for the reporter, please.

3 THE WITNESS: My name is Rhonda Phillips.

4 RHONDA PHILLIPS,
5 having been produced and first duly sworn as a
6 witness on behalf of the State, testified as
7 follows:

8 DIRECT EXAMINATION

9 BY MR. OVERBY:

10 Q. Good afternoon, Ms. Phillips. How are you?

11 A. I'm good. Thank you.

12 Q. Where are you employed presently?

13 A. I'm not employed at the moment.

14 Q. Okay. Where were you previously employed?

15 A. Anderson County Sheriff's Office.

16 Q. And what was -- what was your position with the
17 Anderson County Sheriff's Office?

18 A. I was a road deputy.

19 Q. Okay. What were some of your duties and
20 responsibilities as a road deputy?

21 A. Answer calls -- excuse me. I have a bit of a
22 cold. Answer calls that dispatch sends in. We
23 would obtain warrants if needed, do routine alarm
24 checks, just anything that's on the road.

25 Q. Okay. Would that include responding to armed

1 robberies?

2 A. Yes, sir, it would.

3 Q. Okay. How long were you in this position?

4 A. About a year and a half with the Sheriff's
5 Office.

6 Q. Okay. And on the night of January 9, 2016,
7 were you off -- were you in that position at that
8 time?

9 A. Yes, sir, I was.

10 Q. And on duty?

11 A. Yes, sir.

12 Q. Okay. Were you dispatched to the Shop Rite
13 convenient store at 714 Sayre Street on that
14 evening?

15 A. Yes, sir, I was.

16 Q. Okay. Is that in Anderson County?

17 A. Yes, sir.

18 Q. Okay. Why were you dispatched there?

19 A. It was a robbery in progress.

20 Q. Okay. Talk about how you came to be -- talk
21 about how you came to be dispatched out there, what
22 time you got there, et cetera.

23 A. It was right -- a couple minutes before nine
24 o'clock. Actually, it was a toned call. And when
25 it's an urgent situation that is happening at the

1 moment, the dispatch will just drop a tone on our
2 radios. The closest responding officers get there
3 as quick as you can.

4 Q. Okay. And were you the -- were you the first
5 responding officer there?

6 A. There was a couple of us that pulled up about
7 the same time. Corporal Harbin and Sergeant Jacobs
8 was there.

9 Q. And those are individuals that you worked with
10 on your shift?

11 A. Yes, sir.

12 Q. Okay. Now when you arrived, who else was there
13 aside from law enforcement?

14 A. There were two witnesses. Draquise Witcher and
15 Mikayla -- I'm sorry -- Chambers. And then the two
16 Patels that were at the store was Ashok and Hare
17 Krishna.

18 Q. Okay. So four people in total?

19 A. Yes, sir.

20 Q. Okay. Did you speak with these individuals?

21 A. I spoke with the two witnesses, and I believe
22 my sergeant spoke with the Patels.

23 Q. Okay. Did you personally take any statements?

24 A. Yes, sir. I took an audio statement.

25 Q. Okay.

1 A. And Corporal Harbin took the other audio
2 statement.

3 Q. Based on the information that you received, did
4 you determine a description of who you were looking
5 for?

6 A. We did. It came out over the radio, and we
7 also got a description on scene that it was a white
8 man with a beard that left in a van.

9 Q. Okay. And do you remember what color the van
10 was?

11 A. It was a white van.

12 Q. Okay. Do you know if the individual was
13 disguised?

14 A. Not to my knowledge.

15 MR. LUCAS: Object, Your Honor.

16 THE COURT: What's your objection?

17 MR. LUCAS: I don't think she has personal
18 knowledge regarding the appearance of the robber.

19 THE COURT: Overruled. Go ahead.

20 BY MR. OVERBY:

21 Q. And did you actually observe the surveillance
22 video from the store in this case?

23 A. No, sir, I did not.

24 Q. Okay. Were you able to locate the suspect on
25 this particular evening?

1 A. No, sir.

2 Q. Okay. Was anybody stopped by law enforcement
3 on this particular evening to your knowledge?

4 A. There was a call that went out that a van that
5 was matching the description and a deputy stopped
6 him on a traffic stop.

7 Q. Was that van determined to be involved in this?

8 A. No, sir.

9 Q. Okay. Did you have any other involvement in
10 this case?

11 A. No, sir, I did not.

12 MR. OVERBY: I have no further questions for
13 this witness. Please answer any questions from the
14 defense counsel.

15 THE WITNESS: Yes, sir.

16 THE COURT: Cross-examination?

17 MR. LUCAS: No questions, Your Honor.

18 THE COURT: Ms. Phillips, you may be step --
19 step down and you may be excused. Thank you so
20 much.

21 THE WITNESS: Thank you, sir.

22 (Witness excused.)

23 THE COURT: Call your next witness, please.

24 MR. OVERBY: Yes, Your Honor. At this time the
25 State calls Deputy Craig Holbrooks to the stand.

1 (Witness approached.)

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

6 THE WITNESS: I do.

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

10 THE WITNESS: Craig Holbrooks,
11 H-o-l-b-r-o-o-k-s.

12 DEPUTY CRAIG HOLBROOKS,
13 having been produced and first duly sworn as a
14 witness on behalf of the State, testified as
15 follows:

16 DIRECT EXAMINATION

17 BY MR. OVERBY:

18 Q. Dependent Holbrooks, where are you employed?

19 A. The Anderson County Sheriff's Office.

20 Q. What is your position at the Anderson County
21 Sheriff's Office?

22 A. I'm a forensics investigator.

23 Q. Okay. And what are your duties and
24 responsibilities as a forensics investigator?

25 A. We identify, collect, document, transport any

1 evidence of a crime from a crime scene.

2 Q. Okay. And how long have you been in this
3 position?

4 A. Since April of 2014.

5 Q. Okay. And so you were in this position on the
6 night of January 9, 2016?

7 A. Yes, sir.

8 Q. Okay. Were you dispatched to the Shop Rite
9 convenient store at 714 Sayre Street on that
10 evening?

11 A. Yes, sir, I was.

12 Q. Okay. And why were you dispatched there?

13 A. I was requested to the scene in reference to an
14 armed robbery that had occurred.

15 Q. Okay. What were you asked to do?

16 A. I was asked to take photographs of some tire
17 impressions behind a business and also collect
18 evidence from inside the business.

19 Q. Okay. And when you say "evidence from inside
20 the business -- inside the business," what sort of
21 evidence do you mean?

22 A. I believe there was a flashlight on the floor
23 and also the video from the surveillance system.

24 Q. Okay. Did you observe the surveillance video?

25 A. Yes, sir. I watched it that night.

1 Q. As part of your duties, do you often -- are you
2 often responsible for collecting surveillance videos
3 in these matters?

4 A. Yes, sir. We typically collect all
5 surveillance video from any type of serious crime.

6 Q. And as a part of that, do you have familiarity
7 with surveillance videos and operations of
8 surveillance systems?

9 A. Most of the systems, I been able to use and
10 have used before.

11 Q. Okay. And in this particular case, were you
12 able to use this one?

13 A. I was able to use this one and I also spoke to
14 the store owner's son and had him on the phone
15 helping me work through the system to make sure I
16 was downloading it.

17 Q. Okay. Do you know whether this system records
18 in realtime?

19 A. Yes, sir, it does.

20 Q. Okay. And did you watch the video on that
21 particular evening?

22 A. Yes, sir. I watched it prior to downloading
23 it.

24 Q. Okay. And did you download and collect the
25 video, as well?

1 A. Yes, sir. I downloaded it onto a thumb drive
2 and then transported it back to the office. And
3 played -- after viewing it, I downloaded it and then
4 transported it back to the office and put it on the
5 video focus storage computer.

6 Q. Okay. Talk about what the video focus storage
7 computer is.

8 A. It is a storage -- it is a computer system
9 inside the secure evidence building where all videos
10 that are collected from crime scenes or from
11 incidents that we respond to or road patrol deputies
12 respond to, all the videos go on that one computer.

13 Q. And are those videos capable of being modified
14 or altered in any way?

15 A. No, sir.

16 Q. Did you and -- have you had an opportunity to
17 see this video since this incident?

18 A. I watched it yesterday after afternoon.

19 Q. And why did you do that?

20 A. Because I made a copy to bring to court.

21 Q. Okay. Did you bring that copy with you to
22 court here today?

23 A. Yes, sir.

24 MR. OVERBY: Okay. Your Honor, I'd like to
25 have this video disk marked as State's Exhibit

1 No. 4.

2 THE COURT: Any objection to State Exhibit 4?

3 MR. LUCAS: No, Your Honor.

4 THE COURT: All right. State's Exhibit 4
5 identified.

6 MR. OVERBY: Thank you, Your Honor.

7 (State's Exhibit No. 4 was received into
8 evidence.)

9 BY MR. OVERBY:

10 Q. Now on State's Exhibit No. 4, is the video
11 surveillance from the Shop Rite?

12 A. Yes, sir.

13 Q. Okay. And it has not been modified, changed,
14 altered, or dealt with in any way since the evening
15 in which you collected it?

16 A. No, sir, it's not.

17 MR. OVERBY: Okay. Your Honor, at this time
18 I'd like publish State's Exhibit No. 4?

19 THE COURT: All right. The statement or the
20 video? Are you going to publish the statement or
21 video? You said statement.

22 MR. OVERBY: Oh, I apologize. I thought I said
23 State's Exhibit No. 4.

24 THE COURT: Okay. I thought you said video,
25 but go ahead or statement.

1 MR. OVERBY: I apologize.

2 (State's Exhibit No. 4 was published for the
3 jury.)

4 BY MR. OVERBY:

5 Q. Now, you're able to see on your video screen
6 what I'm able to see; is that correct?

7 A. Yes, sir.

8 Q. So I'm going to reference a few things. The
9 manner in which this video drive catalogs is
10 basically separate camera feeds; is that correct?

11 A. That is correct.

12 Q. Okay. And various places within the store?

13 A. Yes, sir.

14 Q. Okay. I'm going to show you very specifically
15 20511100. Do you know where this camera is located
16 inside that store?

17 A. That's right behind the two registers inside
18 the business.

19 Q. In regards to the time stamp, are those always
20 accurate?

21 A. No, sir, they're not. It depends on how the
22 system was set up when it was -- when they started
23 the recording.

24 Q. Okay. Show another camera feed if that's okay,
25 20511500. That's not the one I'm looking for.

1 This is -- I apologize for that. This is
2 20511200. And, obviously, these are capturing
3 different angles at different -- at the same time,
4 correct?

5 A. That's correct.

6 Q. Now, you've already saw all these surveillance
7 videos, correct?

8 A. That's correct, sir.

9 Q. And so you've seen everything that's in them?

10 A. Yes, sir.

11 MR. OVERBY: I'm going to show you a series of
12 photographs which I'd like to have marked as State's
13 Exhibit Nos. 5, 6, 7, 8, 9, 10, and 11.

14 MR. LUCAS: Your Honor, I'm going to object on
15 the basis that we were not provided these photos in
16 discovery.

17 THE COURT: Object to all or just ---

18 MR. LUCAS: Object to all of them, Your Honor.
19 I've looked at my discovery packet.

20 THE COURT: What is your objection?

21 MR. LUCAS: It was not provided in discovery,
22 Your Honor. Other than that, I don't have any
23 further objection.

24 MR. OVERBY: Your Honor?

25 THE COURT: Yes, sir. All right. Madam

1 forelady and ladies and gentlemen of the jury, I'm
2 going to ask you to go to the jury room very
3 briefly. I'll get you back just as soon as I can.
4 Please don't discuss the case amongst yourselves.

5 (At 3:55 p.m., jury left the courtroom.)

6 THE COURT: All right. You say it was not
7 provided for you, number one. What did you request
8 and how did you request it?

9 MR. LUCAS: We sent a discovery motion in 2016.

10 THE COURT: Under what, Rule 5, or what?

11 MR. LUCAS: Rule 5 and Brady and also weekly
12 materials as well.

13 THE COURT: For the photos?

14 MR. LUCAS: I think that it would ---

15 THE COURT: They sent you the video, right?
16 And this is just stills of the video?

17 MR. OVERBY: That's correct.

18 THE COURT: You haven't received the stills; is
19 that correct?

20 MR. LUCAS: That is correct.

21 THE COURT: But you received the video?

22 MR. LUCAS: That's correct, Your Honor. So
23 we've been getting ---

24 THE COURT: All right. And your request for,
25 it looks like, under Rule 5 or whatever you're

1 objecting. You're saying you're entitled to it -- I
2 meant, where do you think you're entitled to the
3 stills since you got the video itself?

4 MR. LUCAS: Yes, Your Honor. I think we are
5 entitled to the stills because we're entitled to
6 know what evidence is going to be presented.

7 THE COURT: Well you did, the -- the whole
8 video.

9 MR. LUCAS: I was not aware they were going to
10 present the stills, Your Honor.

11 THE COURT: All right. Did you specifically
12 request the stills and the video, or what did you
13 just generally request?

14 MR. LUCAS: I would have to check, Your Honor.

15 THE COURT: And you requested the stills?

16 MR. LUCAS: I'll be happy to do so. I've got
17 it here.

18 THE COURT: Pardon?

19 MR. LUCAS: It covers photographs, Your Honor.
20 If I may approach?

21 THE COURT: Well this is not really
22 photographs. This is just a portion of what was on
23 the video. I mean, it's a still -- a still. It's
24 not a photograph by itself; is that correct?

25 MR. OVERBY: That's correct, Your Honor.

1 THE COURT: Now, I understand Rule 5 I believe
2 it's 1. Let's see. It's documents enhanced that
3 does infer photographs. Okay. Where else do you
4 think you may be entitled to it?

5 MR. LUCAS: Your Honor, if I can hand up our
6 discovery motion? It has specific language which
7 requests ---

8 THE COURT: I'll be glad to look at it if
9 you'll hand it up.

10 MR. LUCAS: It's request number three. And it
11 covers the documents that are material to the
12 preparation that may be used as evidence in the
13 State's case in chief, which these definitely are.

14 THE COURT: Well, that's just regurgitating
15 what Rule 5 says on line 3.

16 MR. LUCAS: Pretty close to it, Your Honor.

17 THE COURT: Almost verbatim. All right. I'll
18 be glad to hear why you think it should not be
19 admitted, assuming you're correct, that it should've
20 been produced under Rule 5. I'm not taking that
21 position, but the question assuming you are correct.

22 MR. LUCAS: It's also cumulative, Your Honor.

23 THE COURT: Pardon?

24 MR. LUCAS: It's also cumulative, as well. The
25 jury's already seen the video. Given that it was

1 not provided in discovery. I would think that it's
2 going to be keeping the case from -- or keeping the
3 State from presenting any evidence that they don't
4 have another means to get it into evidence,
5 specifically the video which was already published
6 to the jury.

7 THE COURT: Well, how have you been harmed?
8 You had the video. You could've cut what stills you
9 wanted out of it.

10 MR. LUCAS: Well, Your Honor, I think that ---

11 THE COURT: It's different if that photograph
12 was taken outside of the video itself. I understand
13 your argument there, but here you've got the video
14 and all they're doing is taking some stills. I
15 haven't seen them. Let me look at them.

16 MR. OVERBY: Yes, Your Honor.

17 THE COURT: Okay. Go ahead. I'm listening.

18 MR. LUCAS: Well, Your Honor, given that they
19 may be introduced into evidence, our discovery
20 request covers that. I think that it's appropriate
21 for the State to turn it over in abeyance of the
22 trial so that we could be prepared to meet that.

23 THE COURT: I'm sorry. It's what?

24 MR. LUCAS: Your Honor, given that our
25 discovery request covers that and also all documents

1 and tangible objects the State is going to use at
2 trial, I think they've got an obligation to turn it
3 over to us in advance of trial so that we could be
4 prepared to meet it.

5 The video is one thing. We knew that was
6 coming. The still shots, which I think are most
7 closely akin to the photographs, those were not
8 provided. We didn't know they were coming. We got
9 a number of other photographs that we're prepared to
10 meet, but this is new.

11 THE COURT: You got some other photographs?

12 MR. LUCAS: Well, sure.

13 THE COURT: Were they taken from the video?

14 MR. LUCAS: No, sir, Your Honor.

15 THE COURT: They're separate from the video?

16 MR. LUCAS: Separate from the video, so we've
17 had a large number of other photographs turned over,
18 you know, from the gas station and whatnot. And we
19 were aware of those, but these we were not aware of.

20 THE COURT: Okay.

21 MR. LUCAS: And defense takes the position that
22 to be used at trial, they ought to be turned over in
23 advance.

24 THE COURT: Anything else, Mr. Lucas?

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

1 THE COURT: Solicitor, I'll be glad to hear
2 you.

3 MR. OVERBY: Your Honor, the bottom line is, is
4 that the still -- the video itself is what was
5 provided.

6 THE COURT: Well, my question is, why didn't
7 you get him the stills?

8 MR. OVERBY: Well ---

9 THE COURT: I mean, that's the question.

10 MR. OVERBY: I mean, the fact of the matter is,
11 is these stills we printed last week.

12 THE COURT: Why didn't you give them to him
13 last week?

14 MR. OVERBY: Well, that's kind of the
15 difficultly for -- difficult thing for me to
16 explain. So to be perfectly honest ---

17 THE COURT: Well, you need to explain it.

18 MR. OVERBY: Yes, Your Honor.

19 THE COURT: This the time to explain it.

20 MR. OVERBY: These stills are on a CD. Okay.

21 THE COURT: On a what?

22 MR. OVERBY: On a CD, on a disk. Okay. And we
23 printed them straight from this disk. My
24 understanding was that that had been provided in
25 discovery.

1 THE COURT: The CD? The CD had?

2 MR. OVERBY: Yes, Your Honor. So I'm looking
3 through my discovery responses to try and see if I
4 can find them.

5 THE COURT: Does the CD have various stills on
6 them?

7 MR. OVERBY: It did. Yes, sir.

8 THE COURT: All right. Then let me see if you
9 provided the CD to him.

10 MR. LUCAS: Your Honor, as an officer of the
11 court, I don't have -- I don't think that I've seen
12 it. I'm going from the best of my memory, but I do
13 not recall getting that CD.

14 THE COURT: Well, I understand, but they're
15 looking to see. Okay.

16 MR. LUCAS: Thank you, Your Honor.

17 MR. OVERBY: I'm checking this disk, Your
18 Honor.

19 THE COURT: While y'all are looking, I'm going
20 to take a short break. Okay. All I want to know is
21 if you sent him a CD that had the stills on it.
22 Okay?

23 MR. OVERBY: Yes, Your Honor.

24 THE COURT: All right. I'm going to take a
25 short break while you're looking.

1 MR. OVERBY: Yes, Your Honor.

2 THE COURT: Mr. Lucas, if you wouldn't mind,
3 take a look and see if you did receive the CD.

4 MR. LUCAS: I'm doing that right now, Your
5 Honor.

6 THE COURT: Take a short break.

7 (From 4:03 to 4:07 p.m., brief recess.)

8 THE COURT: We'll go back on the record. Go
9 ahead.

10 MR. OVERBY: Okay. We have a discovery
11 response dated September 20, 2018. It's Item No. 2
12 on the ---

13 THE COURT: When did you say?

14 MR. OVERBY: September 20, 2018, Your Honor.

15 THE COURT: Okay.

16 MR. OVERBY: And Item No. 2 on that discovery
17 response, which we provided obviously to Mr. Lucas,
18 is a copy of the search warrant that's labelled
19 "copy of search warrant photos and defendant
20 photos."

21 Now, four -- or three rather -- of these photos
22 that we're seeking to introduce are on those disks.
23 So these three have, in fact, been provided.

24 Mistakenly, as I received a copy of this, I
25 thought that an additional CD that we had, had

1 disclosed some of these stills which are simply
2 stills taken directly from the video itself.

3 THE COURT: Okay.

4 MR. OVERBY: But I didn't realize that we
5 hadn't disclosed these actual stills.

6 THE COURT: All right. Anything else to add?

7 MR. LUCAS: No, Your Honor.

8 THE COURT: All right. I'm going to deny your
9 motion and admit them with the objection, primarily
10 because the Court's of the opinion you got the video
11 and the still -- the purpose of the discovery is to
12 know what they have. You knew they had pictures.
13 You knew they had the photo showing your client's
14 face. You should've known that they were going
15 provide stills.

16 It would've been convenient if they had
17 provided those stills to you, but apparently they
18 were prepared until last week and I understand that.
19 Probably didn't start preparing for trial until last
20 week, but I think it's encompassed -- the stills
21 themselves are encompassed in the video and that's
22 been provided. If it was a photo outside the video
23 or in addition to the video, I'd probably take a
24 different position. Okay?

25 MR. LUCAS: Thank you, Your Honor.

1 THE COURT: So your motion is denied.

2 MR. OVERBY: Thank you, Your Honor.

3 THE COURT: All right. Anything else before we
4 bring the jury in?

5 MR. OVERBY: Nothing further from the State,
6 Your Honor.

7 THE COURT: Anything further from the defense?

8 MR. LUCAS: No, Your Honor.

9 THE COURT: Bring the jury, please.

10 THE BAILIFF: (Complying.)

11 THE COURT: And for the record, I -- the
12 Court's of the opinion it's not cumulative. It's
13 just a copy of what you already have.

14 For the record, identify the three photos that
15 were in the CD you sent in September. What number
16 are they?

17 MR. OVERBY: Yes, Your Honor. Those photos
18 will be State's Exhibit No. 5, State's Exhibit No.
19 6, and State's Exhibit No. 7.

20 THE COURT: Okay. So those three were provided
21 September the 18th?

22 MR. OVERBY: The 20th, Your Honor.

23 THE COURT: The 20th. Okay.

24 (At 4:10 p.m., jury entered the courtroom.)

25 THE COURT: All right. State's Exhibit 5, 6,

1 7, 8, 9, 10, and 11 are admitted with objection.

2 MR. OVERBY: Thank you, Your Honor.

3 (State's Exhibit Nos. 5, 6, 7, 8, 9, 10, and 11
4 are received into evidence.)

5 MR. OVERBY: Your Honor, at this time I'm
6 showing State's Exhibit 5 through 11 to
7 Mr. Holbrooks.

8 BY MR. OVERBY:

9 Q. Are those stills fair and accurate
10 representations of the contents of the video?

11 A. Yes, sir.

12 MR. OVERBY: Okay. Permission to publish, Your
13 Honor?

14 THE COURT: Yes, sir.

15 MR. OVERBY: State's Exhibit 5; State's
16 Exhibit 6; State's Exhibit 7; State's Exhibit No. 8;
17 State's Exhibit No. 9; State's Exhibit No. 10.

18 BY MR. OVERBY:

19 Q. What does he appear to be holding in his hand,
20 sir?

21 MR. LUCAS: Object to speculation, Your Honor,
22 and also ---

23 THE COURT: What's the legal objection?

24 MR. LUCAS: Speculation and also opinion
25 testimony. The photo should speak for itself, Your

1 Honor.

2 THE COURT: I'll overrule it. Go ahead.

3 THE WITNESS: It appears to be some type of
4 bladed object.

5 BY MR. OVERBY:

6 Q. Of what, sir?

7 A. A bladed object.

8 Q. Okay. Thank you, Your -- thank you. And
9 State's Exhibit Number 11?

10 MR. LUCAS: Same objection, Your Honor.

11 THE COURT: Overruled.

12 BY MR. OVERBY:

13 Q. Did you have any other involvement with this
14 case?

15 A. No, sir, I did not.

16 MR. OVERBY: Okay. I have no further questions
17 for you. Please answer any questions defense
18 counsel may have.

19 THE COURT: Cross-examination?

20 CROSS-EXAMINATION

21 BY MR. LUCAS:

22 Q. You're a forensics investigator?

23 A. Yes, sir.

24 Q. So you went out to the scene to see if there
25 was any evidence to collect?

1 A. Yes, sir, I did.

2 Q. And there weren't any fingerprints at the
3 scene?

4 A. No, sir.

5 Q. You didn't collect any DNA from Mr. Blackwell?

6 A. No, sir.

7 Q. Any blood from Mr. Blackwell?

8 A. No, sir.

9 Q. In fact, there was not any -- I'm sorry. Also,
10 you didn't collect the firearm from the scene, did
11 you?

12 A. No, sir, I did not.

13 Q. And there was no evidence to suggest that a
14 firearm was discharged?

15 A. Not that I'm aware of that night. No, sir.

16 Q. No casings?

17 A. No, sir.

18 Q. No bullets?

19 A. No, sir.

20 Q. No gunshot residue?

21 A. No, sir.

22 MR. LUCAS: Nothing further. Thank you.

23 THE COURT: Any redirect?

24 MR. OVERBY: None, Your Honor.

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

1 Thank you very much.

2 (Witness excused.)

3 THE COURT: You have another witness?

4 MS. HUEY: Yes, sir. Your Honor, the State
5 calls Lieutenant Gebing to the stand.

6 (Witness approached.)

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

11 THE WITNESS: I do, sir.

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

15 THE WITNESS: My name is Robert Ken Gebing,
16 Jr., G-e-b-i-n-g.

17 LIEUTENANT ROBERT GEBING,
18 having been produced and first duly sworn as a
19 witness on behalf of the State, testified as
20 follows:

21 DIRECT EXAMINATION

22 BY MS. HUEY:

23 Q. Lieutenant Gebing, where are you currently
24 employed?

25 A. With the Anderson County Sheriff's Office.

1 Q. And your current position is what?

2 A. I'm the lieutenant over the criminal
3 investigations division.

4 Q. How long have you been in that position?

5 A. In that position, since January of 2017.

6 Q. And what was your position prior to that?

7 A. Prior to that, I was the sergeant over the gang
8 unit. Prior to that, I was the sergeant in criminal
9 investigations. And prior to that, I was a
10 detective in criminal investigations. So I've been
11 in some vast of criminal investigations since June
12 of 2005.

13 Q. So were you working then in the criminal
14 investigations division in January of 2016,
15 January 9th?

16 A. I was in the gang unit, but it was a subsection
17 of criminal investigations.

18 Q. Did you have an occasion to become involved in
19 the investigation to this particular case ---

20 A. I did.

21 Q. --- *State v. Darrell Blackwell*?

22 A. I did.

23 Q. And how did you become involved?

24 A. After we had gotten the -- after the robbery
25 took place, I had seen Detective Garrett who was the

1 lead on this case, and he asked everybody to look at
2 the video just in case we recognized the gentleman.
3 So I did take the opportunity to do that.

4 And then a few days later, I was asked to
5 accompany Detective Garrett to a residence where we
6 believed we had built up enough of a lead that a
7 potential suspect was going to be there or something
8 leading to the resolution of this case.

9 Q. So as Deputy Holbrooks just testified, there
10 was a video taken from the incident location?

11 A. Yes.

12 Q. And as such, is that sort of thing typically
13 released to the media, because you didn't know who
14 was on the video?

15 MR. LUCAS: Objection to leading, Your Honor.

16 THE COURT: I hadn't heard -- she hasn't
17 finished the question yet. Finish the question.

18 BY MS. HUEY:

19 Q. Did you know who was on the video ---

20 A. I did not.

21 Q. --- when you first saw it?

22 A. I did not.

23 THE COURT: All right. What's your objection?

24 MR. LUCAS: Leading, Your Honor.

25 THE COURT: Overruled. Go ahead.

1 BY MS. HUEY:

2 Q. Did anyone within the sheriff's office know who
3 it was on the video?

4 A. It was my understanding at the time, no.

5 Q. Okay. And so as a result of that, what is the
6 common practice, if any?

7 A. Typically, our best practice is if we have by
8 our video made some leads by being presented to the
9 public, we will reach out to local media outlets.

10 And we have inhouse now, we've got a gentleman
11 who manages our media releases through Facebook and
12 other outlets, but that's common practice and has
13 been for quite some time.

14 Q. And the purpose of the media release is what?

15 A. Again, just to get information out to the
16 public and ask for the public's help in identifying
17 somebody or generating some tips.

18 Q. And to generate tips; is that correct?

19 A. Correct.

20 Q. Okay. And so did you develop tips or leads as
21 a result of this?

22 A. We did.

23 Q. And is it common to receive tips or calls
24 during the course of an investigation such as this?

25 A. It is. You know, it's hit and miss, but if you

1 have decent video and it's something that the public
2 takes an interest in. Some we -- you know, it's not
3 uncommon at all for us to generate some sort of tip
4 from a media release.

5 Q. And did you do so in this particular case?

6 A. We did.

7 MR. LUCAS: Objection to leading.

8 THE COURT: (No response.)

9 MR. LUCAS: Object to leading, Judge.

10 THE COURT: I'm sorry?

11 MR. LUCAS: I objected to leading. I don't
12 know if you heard.

13 THE COURT: Overruled. Go ahead.

14 BY MS. HUEY:

15 Q. So what was your specific involvement as it
16 relates to this case?

17 A. After the investigation started to steer in a
18 certain direction, I was asked to accompany
19 Detective Garrett to a -- to a residence in
20 following-up on some leads that had been generated
21 as a result of incoming tips.

22 Q. And what residence was that?

23 A. That was 202 and 203 Gilbert Street.

24 Q. And who did you discover to have lived in these
25 locations?

1 A. 202 is the residence of Johnnie Taylor. And
2 then, you know, at the time we weren't necessarily
3 able to determine the extent of Johnnie Taylor and
4 Darrell Blackwell.

5 Q. At these two residences?

6 A. Correct. They're side by side.

7 Q. And how is Johnnie Taylor related to Darrell
8 Blackwell?

9 A. It's his mother.

10 Q. And were you able to speak with Ms. Taylor?

11 A. We were.

12 Q. And as a result of your conversation with her,
13 what, if anything, did you then do?

14 A. During the course of that contact, we learned,
15 again, that Mr. Blackwell had ties to that
16 residence. We observed that there was a van
17 matching one that we were interested in. And we
18 also were able to locate some clothing items that we
19 believed very closely matched items that were seen
20 on the video.

21 Q. Okay. So let me back you up. In terms of the
22 van, what was of interest, if anything, as it
23 relates to the van?

24 A. Earlier witnesses had apparently told us that
25 they had seen a ---

1 MR. LUCAS: Object to hearsay, Judge.

2 THE COURT: What? I'm sorry. What?

3 MR. LUCAS: Hearsay. He's stating what earlier
4 witnesses had told him or he's getting ready to.
5 They can come in and testify to that, Your Honor,
6 but it's not appropriate to come through an
7 investigator.

8 THE COURT: Rephrase your question.

9 BY MS. HUEY:

10 Q. Had a BOLO been issued as a result of the armed
11 robbery at the Shop Rite on January 9th of 2016?

12 MR. LUCAS: Object to leading, Your Honor.

13 THE COURT: Overruled. She said, "Was one
14 issued?" Go ahead.

15 THE WITNESS: I was aware that we were looking
16 for a white in color van that may have been involved
17 in this instance.

18 BY MS. HUEY:

19 Q. And did you yourself observe a white van then
20 at 202 or 203 Gilbert?

21 A. It was at 203. Myself and Detective Garrett
22 actually had been out there the day prior to make
23 contact with Ms. Taylor, observed that van on the
24 back of the property at 203. We observed a power
25 cord running from 202 to 203. We were not able to

1 make contact with anybody that day, so we left it
2 alone and returned the following day which was
3 January 13th.

4 Q. And did you determine who that van was
5 registered to?

6 A. The tag on the van was registered to
7 Mr. Blackwell.

8 Q. The defendant in this case?

9 A. Yes.

10 Q. Now, I believe you also testified that you did
11 obtain a consent to search; is that correct?

12 A. Again, during the course of the contact with
13 Ms. Taylor, we learned of some clothing items that
14 we thought may have been of interest in this case.
15 They closely resembled what we observed on the
16 video.

17 Once we were steered in the direction of the
18 clothing, we did engage Ms. Taylor and asked for
19 consent to search, thus collect those -- enabling us
20 to collect those items for evidence purposes.

21 Q. And so what, if anything, did you locate?

22 A. A pair of like darker colored camouflage pants,
23 which, again, in our opinion were consistent with
24 what was on the video.

25 There was a white in color bandanna which we

1 had observed -- or myself included on the video that
2 as the suspect came in and out of the store. He had
3 some sort of a white item either tied to or adhered
4 to his right lower leg. And this bandanna was,
5 again, consistent with that. And it was actually
6 located with the camouflage pants.

7 And then a grayish hoody-type sweatshirt.

8 Q. Okay. And what was the significance of the
9 hooded sweatshirt?

10 A. Again, we knew that we were looking for
11 something with a black outer that had something
12 grey. And not knowing necessarily at the time if
13 those were all, you know, a black item with an
14 attached gray hood or a black item with a
15 secondary -- you know, a secondary item of clothing
16 underneath.

17 We seized it just for the -- in the event that
18 it was two separate clothing items, but our suspect
19 on video had some sort of gray hood.

20 Q. And then the purpose of collecting these items
21 as it compares to the video, as well?

22 A. Again, it's confirmatory for us. As we
23 developed Mr. Blackwell's lead, you know, we --
24 we -- we noted physical similarities. We noted,
25 again, finding the van and then these clothing items

1 that very, very closely resembled what was on the
2 video. It was further confirmation that we may be
3 on the right -- the right track.

4 Q. And did you yourself collect these items?

5 A. I did.

6 Q. And do you remember where they were?

7 A. They were in like a laundry area towards the
8 back of the house.

9 Q. And when you collect items, how do you -- how
10 do you go about doing that?

11 A. In this particular case, I excused myself for a
12 minute. I -- I borrowed Detective Garrett for a few
13 moments, took some pictures, and then I left the
14 house to go outside and retrieve a paper bag from my
15 vehicle. And came back in and collected them and
16 bagged them.

17 After that, we closed out the consent to search
18 and provided Ms. Taylor with a copy noting what
19 items we were seizing. And then those items were
20 then transported to our -- our evidence holding
21 facility at the Anderson County Sheriff's Office.

22 Q. And what kind of facility is that?

23 A. It's a secured facility. It's a -- it was a
24 former law enforcement center. Now it houses our
25 forensics. Our forensics areas and our evidence

1 holding areas.

2 You go in the back door which is, you know,
3 secured gate with a lock. And then there's various
4 lockers, so you can place your items in a locker and
5 you submit evidence sheet so that way the evidence
6 technicians have something to reference. They'll
7 take your sheet and they'll catalog it and put in
8 the computer and they'll actually store it longer,
9 but it's -- the onus is on me to bag it up, seal it,
10 initial, date, things of that nature.

11 Q. And did you so in this case?

12 A. I did.

13 Q. All right. Lieutenant Gebing, I'm going to
14 show you what's been marked as State's 12, 13, and
15 14. And do you have gloves, Lieutenant Gebing?

16 A. I have some on the desk.

17 Q. Okay. I will pass them to you. Are you able
18 recognize 12, 13, and 14?

19 A. Without opening the bag, I can tell from the
20 outside that they're -- the red evidence tape is
21 what I put there. I know this because it bears my
22 initials and the like, handwritten date of
23 January 13, 2016.

24 These generated labels are from our evidence
25 division. They are able to generate this after I

1 turn in the handwritten sheet.

2 And then at some point it's been re-examined
3 and resealed by our evidence division as part of our
4 investigation in this case.

5 Q. And does each label have a particular item
6 number?

7 A. Yes, it does.

8 Q. And that number corresponds with what's in the
9 bag; is that correct?

10 A. Yes.

11 Q. Okay. Do have something to open the bag,
12 Lieutenant Gebing?

13 A. (Opening.)_

14 Q. Okay. Now do you recognize what's in the bag,
15 Lieutenant Gebing?

16 A. I do.

17 Q. Okay. And how are you able to recognize those?

18 A. Again, these are the items that I collected and
19 then I placed in the bag. We photographed these
20 prior to collecting them. These were the pants that
21 we had found.

22 As we found them, this rip was there prior to
23 us collecting them. This was the bandanna that we
24 found with the pants. And then this sweatshirt was
25 hanging up in the laundry area, as well.

1 Q. And how many days did you respond to
2 Ms. Taylor's home after this incident?

3 A. I went twice. I went on the 12th with
4 Detective Garrett briefly. When we did not make
5 contact, we left. And then I returned on the 13th
6 in the morning and made contact with Ms. Taylor and
7 collected these items.

8 Q. Okay. So several days after the incident
9 though?

10 A. Yes.

11 Q. Okay. And, again, Ms. Taylor is the
12 defendant's mother?

13 A. Correct.

14 MS. HUEY: Your Honor, at this time we'd admit
15 State's 12, 13, and 14 into evidence.

16 THE COURT: Any objection?

17 MR. LUCAS: Your Honor, I would simply object
18 on the basis that it's not clear to me that
19 Ms. Taylor was the homeowner and had the right to
20 consent to the search and would base the objection
21 upon that, Your Honor.

22 MS. HUEY: Your Honor, may we approach?

23 THE COURT: Pardon?

24 MS. HUEY: May we approach?

25 THE COURT: Yes, ma'am.

1 (Sidebar discussion.)

2 THE COURT: All right. Ladies and gentlemen of
3 the jury, I'm going have to send you back out again.
4 Let me just say this to you, I'm not necessarily
5 trying to hide something from you, but during this
6 trial I'm not permitted to comment on the facts.
7 When an objection comes along, sometimes I may have
8 to comment on the facts. So what I do is send you
9 out of the jury room, so I'll be free to comment on
10 facts and make a decision on whether it should be
11 admissible under the rules of evidence or not
12 admissible under the rules of evidence.

13 And when I use the word "sustain," that means I
14 agree with the attorney making the objection. It's
15 not admissible under the rules of evidence. When I
16 use the word "overrule," that means I disagree and
17 it is allowed into evidence.

18 So I'm going to have to probably comment on the
19 facts and discuss the facts with the attorneys on
20 this motion. So I'm going to ask that you go to the
21 jury room, and I'll get you back as soon as I can.

22 (At 4:32 p.m., jury left the courtroom.)

23 THE COURT: All right. Solicitor, before we
24 get into the motion, let me make sure. It's a bag
25 with a pants, a sweatshirt, and a bandanna that he

1 opened. Is that 12, 13, and 14?

2 MS. HUEY: Yes, sir.

3 THE COURT: Or are we putting the bag in as
4 Number 12?

5 MS. HUEY: Your Honor, if I may? What I've
6 done is I put a sticker next to each label on the
7 bag. So for clarification, 12 would be the white
8 bandanna.

9 THE COURT: All right. Twelve is the bandanna?

10 MS. HUEY: Yes, sir. Thirteen is the pair of
11 camo pants.

12 THE COURT: Pants. Okay.

13 MS. HUEY: And 14 is a gray hooded sweatshirt.

14 THE COURT: Okay. All right. My understanding
15 the objection, Mr. Lucas, is you do not think that
16 your client, Mr. Darrell -- Mr. Blackwell, had the
17 authority to grant a consent to search. I assume it
18 came from one of them. I think the pants were
19 hanging up in the laundry room. The other two, I'm
20 not sure where he got them from; is that correct?

21 MR. LUCAS: Not exactly, Your Honor.

22 THE COURT: Then what's your objection?

23 MR. LUCAS: Consent to search was given by his
24 mother, Johnnie Taylor.

25 THE COURT: Okay.

1 MR. LUCAS: And I'm uncertain whether that that
2 house belongs to Ms. Taylor or not.

3 THE COURT: Well, I don't know. That's what
4 we're ready to get into. Whether it belonged to
5 Ms. Taylor or didn't belong to Ms. Taylor, it's
6 still the question of who had the authority to grant
7 the search, right?

8 MR. LUCAS: Yes Your, Honor.

9 THE COURT: All right. Solicitor.

10 BY MS. HUEY:

11 Q. Lieutenant Gebing, where did you understand
12 Ms. Taylor to live?

13 A. 202 Gilbert Street.

14 Q. And when you responded to her home on this
15 particular date, did you speak with her about her
16 son?

17 A. We did.

18 Q. Okay. And you came to find out that her son is
19 Darrell Blackwell?

20 A. Correct.

21 Q. And tell me the living arrangements if you will
22 between -- or arrangements between Darrell Blackwell
23 and Johnnie Taylor as it relates to those two
24 residences?

25 A. As was explained to us that day, Ms. Taylor

1 lived there. She's the one who greeted us. She's
2 the one who opened the door. She's the one who
3 invited us in and offered us a seat. As I recall,
4 we had just woken her up.

5 During the course of that conversation, she
6 said the Darrell didn't necessarily stay there. He
7 stayed with some woman somewhere. He did own the
8 property next door. And he did come and go. He
9 would visit. Come by. She would do the laundry.
10 Offer him meals.

11 So, again, we weren't able to confirm the
12 extent at which he stayed there. We knew he came,
13 but we didn't know with what frequency. But it was
14 our belief based on what she was telling us that she
15 was, you know, primarily responsible for the home
16 there and obviously the common areas, and then he
17 had the property next door.

18 Q. So she was -- she basically lived at 202 where
19 as he potentially lived or stayed at 203 sometimes
20 or off with someone else?

21 A. Correct. 203, as I recall, it did not seem as
22 if it was necessarily fit for habitation, so we did
23 not initially think he was living in there or at
24 least on a full-time basis, because, again,
25 according to the conversation we had with her, he

1 did -- he came by with some frequency, but according
2 to her he was staying somewhere else.

3 Q. And as a result of your conversation or prior
4 to even your consent to search, was she walking you
5 around the home?

6 A. She's the one who pointed out these items. We
7 asked her if she remembered what he was wearing that
8 Saturday night. She's the one that told us where
9 they were. Again, this one area is kind of a common
10 area towards the backside of the house.

11 Q. And, Lieutenant Gebing, if I may show you --
12 I'm going to show you what's been marked as State's
13 23. Can you take a look at that item?

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

15 Q. And do you recognize that item?

16 A. This is a copy of the consent to search form
17 that was used at 202 Gibert Street on January 13,
18 2016.

19 Q. And how does it read?

20 A. The -- the entire body?

21 Q. What's the purpose of the consent to search?

22 A. It is basically to get permission from a person
23 in control of a property to search for items and
24 seize any items that we deem applicable to whatever
25 case we've got going on at the time.

1 Q. And this was obtained after Ms. Taylor actually
2 showed you the items herself?

3 A. It was. This was several minutes in the
4 conversation when we learned that she knew what he
5 was wearing and knew where they were at. She
6 pointed them out to us as Detective Garrett began
7 this sheet, thus to help us with the seizure of it.
8 And I actually finished out the portion of it and
9 finished the execution of it.

10 Q. Okay. And did Ms. Taylor, in fact, sign the
11 consent to search form?

12 A. She did.

13 Q. In your presence?

14 A. Yes, ma'am.

15 MS. HUEY: At this time we'd admit States's 23
16 for purposes of this motion, Your Honor?

17 MR. LUCAS: Without objection, Your Honor.

18 THE COURT: All right. Twenty-three admitted
19 for purposes of this objection, Ms. Taylor's consent
20 to search.

21 MS. HUEY: Or for purposes of this trial, Your
22 Honor.

23 THE COURT: Cross-examination of the search.

24 CROSS-EXAMINATION

25 BY MR. LUCAS:

1 Q. Did you look into any real estate records to
2 determine who was the owner of the home?

3 A. I did not. Not at that point, no.

4 Q. How about a lease?

5 A. No.

6 Q. So you're uncertain as to whether Darrell
7 Blackwell's name would be on a lease for that home?

8 A. I'm not.

9 MR. LUCAS: Okay. Nothing further, Your Honor.

10 THE COURT: Solicitor, hand me that consent to
11 search.

12 MS. HUEY: Yes, sir.

13 THE COURT: Do you have any recross -- I mean
14 redirect on his cross?

15 MS. HUEY: I don't think so, Judge.

16 THE COURT: Okay. All right. Having listened
17 to testimony and looking at the consent to search
18 signed by Ms. Taylor, there's no indication that she
19 didn't have the authority to do it. She said it was
20 with her permission to search her premises. It says
21 "my premises," so the motion is denied.

22 MR. LUCAS: Your Honor, just for purposes ---

23 THE COURT: Do you have any other objections
24 that we could hear while -- that we need to hear
25 while the jury is out?

1 MR. LUCAS: For purposes of the record on this
2 one, Your Honor, I'd just like to add that we
3 believe that Mr. Blackwell, because of the testimony
4 that he was staying at the residence from time to
5 time, also has an expectation of privacy.

6 THE COURT: Is what now?

7 MR. LUCAS: How far -- how much of that did you
8 hear, Judge?

9 THE COURT: Well, your objection was to
10 evidence on the failure to consent by a person.
11 What's -- what's another one you have? Do you have
12 another objection?

13 MR. LUCAS: Yes, Your Honor.

14 THE COURT: What is that objection?

15 MR. LUCAS: That objection would be that
16 Mr. Blackwell also has a reasonable expectation of
17 privacy in that house on the basis that there's been
18 testimony that he was staying there and that 203
19 where he was supposedly living.

20 THE COURT: Well, if you want to put
21 Mr. Blackwell up to establish that, that's fine.
22 What do you want me to do, tell him he can't testify
23 to it? What's your problem?

24 MR. LUCAS: I think that Mr. Blackwell also has
25 a privacy interest in that home. And I'm unsure

1 whether he ---

2 THE COURT: Well, I don't know. All I know is
3 what the officer has testified to. Now, if you want
4 to put up some testimony contrary to that, I'll be
5 glad to hear it.

6 MR. LUCAS: One moment, Your Honor.

7 THE COURT: All I can go by is what I heard
8 under oath.

9 (Counsel conferring with cocounsel.)

10 THE COURT: Yes, sir.

11 MR. LUCAS: Your Honor, I don't think we'll put
12 up additional testimony.

13 THE COURT: I'm sorry?

14 MR. LUCAS: I do not think we'll put up
15 additional testimony on that point.

16 THE COURT: Okay. That's fine. All right.
17 Solicitor, he's got a new objection. Now, the way I
18 understand it, he's saying that he had an
19 expectation of privacy because he was coming and
20 going, and she didn't -- couldn't violate the
21 expectation of privacy I think is what he's saying.
22 Do you want to offer any other further testimony on
23 that issue? I assume it's a new objection, right?

24 MR. LUCAS: That's the basis of my objection.

25 THE COURT: Pardon?

1 MR. LUCAS: That's the basis of my objection,
2 Your Honor.

3 THE COURT: Okay. Do you want to ask any
4 questions on that issue?

5 MS. HUEY: Your Honor, I think we've already
6 covered it. She -- she lived there. And I think
7 because she lived there, she had a right to give
8 consent to search and she did.

9 THE COURT: Well, I'll -- let me ask you this
10 question.

11 THE WITNESS: Yes, sir.

12 THE COURT: From the time you entered the home,
13 did it appear to be Ms. Turner's [sic] residence?

14 THE WITNESS: Oh, absolutely.

15 THE COURT: Was there any indication otherwise
16 that it was not her residence?

17 THE WITNESS: No, sir.

18 THE COURT: Was there any indication she did
19 not have control over the whole household?

20 THE WITNESS: No, sir.

21 THE COURT: Was there any indication otherwise?

22 THE WITNESS: No, sir.

23 THE COURT: Did she indicate to you that she
24 lived there and it was her house?

25 THE WITNESS: Yes, sir.

1 THE COURT: Okay. That motion denied.

2 MR. LUCAS: Thank you, Your Honor.

3 THE COURT: All right. Anything else before we
4 bring the jury in?

5 MS. HUEY: Judge, if I may ---

6 THE COURT: Any other -- any other motion or
7 anything we need to hear right now?

8 MR. LUCAS: Well, Your Honor, I'm going to
9 object to both search warrants, as well.

10 THE COURT: On what?

11 MR. LUCAS: I'm going to object to both search
12 warrants to preserve the record on the basis that
13 there's an insufficient nexus between the crime and
14 the house.

15 THE COURT: Okay.

16 MS. HUEY: Judge, these are pretrial motions.

17 THE COURT: I'm sorry?

18 MS. HUEY: These are pretrial motions. We are
19 literally in the middle of trial.

20 THE COURT: I understand. You know, we started
21 going from one. He loses one and comes up with
22 another one. What's your third motion? What's your
23 legal motion?

24 MR. LUCAS: Well, Your Honor, I'm simply
25 objecting to these things.

1 THE COURT: Objecting to what?

2 MR. LUCAS: I'm going to object to any evidence
3 coming in on the basis of the search warrants, on
4 the sole grounds that there's an insufficient nexus
5 between the crime and ---

6 THE COURT: Well, right now we're talking about
7 the consent. We hadn't gotten to whether the search
8 warrant he had done.

9 MR. LUCAS: That's correct, Your Honor. I
10 thought you were asking me to go ahead and go into
11 that.

12 THE COURT: So your objection is on the search
13 warrant. What's coming under the search warrant,
14 Solicitor?

15 MS. HUEY: Your Honor, what's coming under the
16 search warrant, if it's secure, is a brown Carhartt
17 hat.

18 THE COURT: What number?

19 MS. HUEY: It hasn't been identified yet, Your
20 Honor.

21 THE COURT: All right. We're talking about
22 pictures of the grounds. What else?

23 MS. HUEY: I'm sorry, Judge. If you give me
24 one second, I can get you the list.

25 THE COURT: Okay.

1 MS. HUEY: So we have, Your Honor, it'll be the
2 Carhartt stocking cap, which would be Item 20.

3 THE COURT: All right. Got Number 20. All
4 right. That is the stocking cap. Okay. What else?

5 MS. HUEY: And then we have a photo of the
6 white van.

7 THE COURT: All right. That's Number 19,
8 right?

9 MS. HUEY: And that would be Number 19, Judge.
10 And they're obviously photos associated with each of
11 these, as well.

12 THE COURT: Okay. All right. Anything else
13 that came in under the search warrant that you're
14 going offer in the search warrant, other than 19 and
15 20?

16 MS. HUEY: That's it, Judge, for the search
17 warrant. And that would be handled through our next
18 witness, Judge.

19 THE COURT: I understand. All right. She's
20 going to offer the photo of the white van and the
21 taking of the Carhartt stocking cap, which is Number
22 20, with the next witness. Issued the search
23 warrant and took those two items. What is your
24 legal objection to suppress that evidence?

25 MR. LUCAS: My objection, Your Honor, is that

1 on the base of the affidavit, it does not show a
2 sufficient connection between the crime and the
3 house, such that evidence would be expected.

4 THE COURT: Well, the van wasn't in the house.
5 The van was parked behind the house out in the
6 public view.

7 MR. LUCAS: Well, I'm really referring more to
8 the -- that stocking cap.

9 THE COURT: Okay. Let's talk about the
10 stocking cap.

11 MR. LUCAS: I was -- my understanding is the
12 search warrant at 203 only covered the stocking cap.
13 Maybe I'm mistaken on that, but that was the search
14 warrant for Mr. Blackwell's house.

15 THE COURT: All right. This issue for search
16 warrant for 203 or 202?

17 MS. HUEY: Both, Your Honor.

18 THE COURT: Issue search warrant for both.

19 MR. LUCAS: That's -- the basis of my motion is
20 203, Your Honor. I think that there's an
21 insufficient nexus ---

22 THE COURT: Well, she said the search warrant
23 was issued for both houses.

24 MR. LUCAS: There are two separate search
25 warrants, Your Honor. One for 202 and then one for

1 203.

2 THE COURT: Okay.

3 MR. LUCAS: I'm not concerned with the one for
4 202. I'm objecting to 203.

5 THE COURT: Where they found that cap?

6 MR. LUCAS: Where they found the cap. Yes,
7 Your Honor.

8 THE COURT: Okay. What's your objection?

9 MR. LUCAS: The objection is that there's an
10 insufficient nexus between the crime and the house
11 to suggest ---

12 THE COURT: Well, the pictures show a -- show
13 the alleged defendant with a black stocking cap.

14 MR. LUCAS: Well, but the issue really, Judge,
15 is whether there would be an expectation to find
16 evidence of the crime at his home. And my
17 understanding is that there's testimony of
18 Mr. Blackwell went to his mother's house and that
19 was understood at the time of the search warrant,
20 but that doesn't necessarily mean that evidence of a
21 crime is going to be found in this home that
22 supposedly looks like no one is living there.

23 THE COURT: Well, was Mr. Blackwell living at
24 122 or 123?

25 MR. LUCAS: I believe it's 203, Your Honor.

1 THE COURT: 203?

2 MR. LUCAS: Yes, sir.

3 THE COURT: I'm sorry. I used the wrong
4 numbers, didn't I?

5 What about the cigarettes? Are you going to be
6 offering those?

7 MR. LUCAS: I'm not objecting to those, Your
8 Honor.

9 THE COURT: You're not objecting to cigarettes?

10 MR. LUCAS: No, Your Honor.

11 THE COURT: All right. Mr. Lucas, I will tell
12 you again, if you want to put up your client to
13 establish some of the evidence that you're saying
14 about the houses, where he stayed, et cetera, et
15 cetera, et cetera, to contest the issues, I'll be
16 glad to let you do that on the motion even though
17 the search warrant hadn't been offered yet. I'll be
18 happy for you to do that either now or at a later
19 time. Okay.

20 MR. LUCAS: Thank you, Your Honor. We're not
21 going to do that.

22 THE COURT: All right. What I'm going to do is
23 take the issue on the stocking cap under advisement
24 until I hear from the police officer that issued the
25 warrant, okay, the search warrant to seize the cap.

1 MR. LUCAS: Thank you, Your Honor.

2 THE COURT: I thank you for making the motion
3 and making the Court aware of it. Thank you very
4 much.

5 All right. Any other motions that you know
6 you're going to probably make where we can take it
7 outside the jury?

8 MR. LUCAS: None at this time, Your Honor.

9 THE COURT: Okay. Thank you very much. All
10 right. Anything before we bring the jury in?

11 MS. HUEY: I'm going to go ahead and mark these
12 pictures really quickly, Judge, if I may?

13 THE COURT: Do you want these back?

14 MS. HUEY: Yes, sir.

15 (Brief recess while exhibits were marked.)

16 MS. HUEY: All right. Judge, we're ready.

17 THE COURT: Pardon?

18 MS. HUEY: I said I'm ready.

19 THE COURT: You're ready. Bring the jury,
20 please.

21 THE BAILIFF: (Complying.)

22 (At 4:54 p.m., jury entered the courtroom.)

23 THE COURT: All right. State's Exhibit 12, 13,
24 and 14, which is in one particular bag; 12 is the
25 bandanna; 13 is the pants; 14 is the sweatshirt.

1 And 12, 13, and 14 are marked. And that's on the
2 outside of the brown paper bag and admitted with
3 objection. Please proceed.

4 MS. HUEY: Thank you, Judge.

5 BY MS. HUEY:

6 Q. Just a few more questions, Lieutenant Gebing.
7 I'm also going to show you what's been marked as
8 State's 15, 16, and 17. If you could take a look at
9 those photos, please.

10 A. Yes, ma'am.

11 Q. And are you able to recognize those photos?

12 A. I am.

13 Q. And how are you able to recognize them?

14 A. These are photos that I took of the pants and
15 the bandanna as we found it at 202 Gilbert Street.

16 Q. And that is as a result of Ms. Taylor's consent
17 to search?

18 A. Correct.

19 Q. Signed consent to search?

20 A. Correct.

21 Q. Okay. Have they been -- they fairly and
22 accurately depict what you collected on that
23 particular date?

24 A. They do.

25 Q. And have they be altered or changed in any way?

1 A. They have not.

2 MS. HUEY: Your Honor, at this time we'd admit
3 15, 16, and 17 into evidence.

4 THE COURT: Any objection to 16 and 17?

5 MR. LUCAS: None, Your Honor.

6 THE COURT: All right. Sixteen and 17 admitted
7 without objection.

8 MS. HUEY: And 15, Your Honor.

9 THE COURT: And 15 without objection.

10 (State's Exhibit Nos. 15, 16, and 17 were
11 received into evidence.)

12 BY MS. HUEY:

13 Q. Okay. Investigator -- Lieutenant Gebing,
14 excuse me. Okay. Lieutenant Gebing, this is
15 State's 15. Could you describe what that is to the
16 jury?

17 A. At the center of the photo, these are the
18 camouflage pants and the white bandana hanging on a
19 hanger in the laundry area as we were directed.

20 Q. Okay. That's where Ms. Taylor directed you?

21 A. Yes.

22 Q. And this is State's 16.

23 A. Again, in the center, the camouflage pants, the
24 bandanna, slightly closer.

25 Q. And State's 17.

1 A. This photo depicts the rip in the pant leg of
2 the camouflage pants as we found them.

3 Q. And, Lieutenant Gebing, if you could, what was
4 the significance of these particular items to you?

5 A. Again, they -- they were confirmatory in that
6 our tips had steered us in a certain direction in
7 that we were beginning to find clothing that was
8 very, very consistent with what we were observing on
9 the -- that was the evidentiary value as far as we
10 were concerned.

11 MS. HUEY: Your Honor, that's all I have for
12 this witness.

13 THE COURT: Cross-examination?

14 CROSS-EXAMINATION

15 BY MR. LUCAS:

16 Q. Investigator Gebing, the lead investigator in
17 this case was Detective Garrett?

18 A. Correct.

19 Q. And he was responsible for supervising and
20 running the investigation?

21 A. Not necessarily supervising. He was the
22 collection point. It was that he had overall
23 responsibility of the entire case.

24 Q. Does he still work for the Anderson County
25 Sheriff's Department?

1 A. He does not. He works for an agency in
2 Washington State.

3 Q. And when you were given a consent to search for
4 Ms. Taylor's home, did you do anything beyond going
5 to retrieve the clothing from the laundry room?

6 A. No. We focused on common areas of that home
7 that we felt she could give consent to. There was a
8 room that we felt was probably one that the
9 defendant may identify as his. And then again, the
10 property next door he may very well identify as his
11 and have a reasonable expectation of privacy there.
12 So what she consented to was the things that we felt
13 she could, you know, overly controlled and give us
14 consent of the common areas such as the laundry
15 room.

16 Q. So you searched part of the house, but not all
17 of it?

18 A. We didn't really even search. We went straight
19 to what she directed us to.

20 Q. But you walked through the house and had the
21 ability to observe things ---

22 A. Oh, yeah.

23 Q. --- within it?

24 A. I mean, she wasn't -- we didn't obviously turn
25 off our senses. We -- we were able to look at

1 things that we could observe from a place we had a
2 right to be.

3 Q. Absolutely. I understand. So during the
4 course of that, you didn't see a gun, did you?

5 A. No, sir.

6 Q. No cigarette coupons?

7 A. No, sir.

8 Q. No large amounts of cash?

9 A. No, sir.

10 Q. None of that?

11 A. No, sir.

12 MR. LUCAS: Okay. Nothing further. Thank you.

13 THE COURT: Any redirect?

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

15 THE COURT: You may step down. Thank you very
16 much.

17 THE WITNESS: Thank you, Your Honor.

18 (Witness excused.)

19 THE COURT: Could I see the Solicitor up here
20 for just a second on tomorrow's schedule for
21 tomorrow?

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

23 THE COURT: Not about this case.

24 (Sidebar discussion.)

25 THE COURT: All right. Ladies and gentlemen of

1 the jury, I believe we will stop for the day. And
2 I'm going ask you to -- I've got another matter I've
3 got to take up in the morning at 9:30 on another
4 case, so I'm going to ask you to come in the jury
5 room at ten o'clock tomorrow.

6 When you come to the courthouse, come straight
7 to the jury room, please. Do not discuss the case
8 amongst yourselves or with anyone else or get on any
9 website or Facebook, Twitter, or whatever you use
10 and tell anybody about the case or read anything
11 about the case.

12 I want you to make a decision on what you hear
13 in the courtroom, not what somebody outside the
14 courtroom has an opinion about, but they don't know
15 what has taken place in this courtroom. So please
16 don't discuss the case amongst yourselves. I'll see
17 you in the morning at ten o'clock. And when you
18 come to the courthouse, come straight to the jury
19 room. Thank you very much. See you tomorrow.

20 (At 5:03 p.m., jury was excused for the day.)

21 THE COURT: All right. Anything from the
22 State? The juror just wanted to know if she needed
23 to let her employer know that she'll be on jury duty
24 tomorrow. I hold her, yes, she'll be here all day.
25 Anything from the State before we adjourn?

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

2 THE COURT: Anything from the defense?

3 MR. LUCAS: Nothing, Your Honor.

4 THE COURT: I thank y'all very much. See you
5 in the morning at 9:30. And we'll -- Mr. Lucas,
6 we'll go into the search warrant issue with the
7 officer at 9:30. Okay?

8 MR. LUCAS: Your Honor, I think that I've
9 adequately stated the basis of my objection already.
10 I'm satisfied.

11 THE COURT: Well, my problem with it, I
12 understand your objection, but you've got to make an
13 objection on some type of facts. And so you got to
14 get the facts on the record one way or the other
15 before I can rule since I took it under advisement.
16 You understand?

17 MR. LUCAS: I understand, Your Honor.

18 THE COURT: Okay. You just can't pull the
19 objections out the air and say, "Judge, this is a
20 fact." You have to take it by testimony or
21 introduce some form of testimony. Okay?

22 MR. LUCAS: I understand, Your Honor.

23 THE COURT: All right. See you in the morning
24 at 9:30.

25 (At 5:04 p.m., recess for the day.)

1 October 9, 2018

2 THE COURT: What's your objection for the
3 search warrant?

4 MR. LUCAS: Your Honor, the basis for the
5 objection is that the search warrant affidavit does
6 not provide sufficient probable cause for a warrant
7 to be issued. Specifically, in that it does not
8 show a specific nexus between the ---

9 THE COURT: You're saying that the search
10 warrant itself is invalid?

11 MR. LUCAS: Yes, Your Honor. Based on the
12 affidavit, it simply ---

13 THE COURT: Somebody give me a copy of the
14 search warrant. I might be able to follow you.

15 MR. OVERBY: Judge, I intended to kind of argue
16 about the validity of this in my response, but for
17 the purposes of this, I have marked the search
18 warrant affidavit specifically as State's Exhibit
19 No. 24.

20 THE COURT: All right. So your position is the
21 affidavit is not sufficient for the magistrate to
22 issue the search warrant at the home?

23 MR. LUCAS: That's correct, Your Honor.

24 THE COURT: All right.

25 MR. LUCAS: And the basis of that objection ---

1 THE COURT: Well, let me ask a question. I
2 want to hear what you're telling me, but I can't
3 listen to you and read this at the same time. What
4 do you want me to do? Unless you're going to read
5 it.

6 MR. LUCAS: If you want to read it, I'll sit
7 down, Judge.

8 THE COURT: Well, I'll be happy to listen to
9 you and then read it if that's what you want me to
10 do, but I can't do both.

11 MR. LUCAS: Whichever you prefer, Your Honor.

12 THE COURT: I'll be glad to listen to you and
13 then I'll read it. Okay?

14 MR. LUCAS: Okay. Thank you, Your Honor. The
15 facts cited to the judge in the affidavit are simply
16 that Mr. Blackwell's house is 203 Garrett Street.

17 THE COURT: Gilbert Street.

18 MR. LUCAS: I'm sorry. Gilbert. 203 Gilbert
19 Street and that there was a white van parked behind
20 the house. There's nothing else in the affidavit
21 that would show any reason to believe that evidence
22 of the crime be found at the house, simply a
23 statement of opinion that the affiant believes a
24 full search of the premises would unearth evidence
25 of the robbery scene. Our position is there needs

1 to be something more than that to provide probable
2 cause.

3 Now, maybe Investigator Garrett told the
4 magistrate something else, but he's not here and we
5 can't speculate as to what he might've told the
6 magistrate beyond what is in this affidavit.

7 THE COURT: I believe the only thing received
8 from or seized that's going to be put in evidence is
9 the stocking cap; is that correct?

10 MR. OVERBY: That's correct, Your Honor.

11 THE COURT: All right. Give me a chance to
12 read the affidavit. Okay? Thank you.

13 MR. LUCAS: Thank you, Your Honor.

14 THE COURT: I'm glad to hear -- glad to hear
15 from the State.

16 MR. OVERBY: Yes, Your Honor. May it please
17 the Court? I'm going to hand up a case for you, if
18 you don't mind, Your Honor.

19 THE COURT: Do you want to offer any testimony
20 after this, or you just going to stand on what's in
21 here?

22 MR. OVERBY: Your Honor, I'm going to stand on
23 what the warrant -- the affidavit says.

24 THE COURT: What's in the affidavit. Okay.

25 MR. OVERBY: I'm going to hand you the case of

1 *State v. Sullivan*, Your Honor. And I've actually
2 highlighted a portion that I'm going to reference
3 specifically to you. This is *State v. Sullivan*, 267
4 S.C. 610, specifically 17 -- 617 for the record.
5 I'm going to hand a copy to the court reporter as
6 well, so she can see where I'm referring to.

7 The language in *State v. Sullivan* essentially
8 establishes what the test is as far as -- as far as
9 the analysis of the search warrants are concerned.
10 It's the totality of the circumstances test.

11 "These affidavits are not meticulously drawn by
12 lawyers," and that's what *State v. Sullivan*
13 essentially says, and they should be given deference
14 by the review in court in that light.

15 The question becomes ultimately, what does the
16 affidavit say that establishes the probable cause
17 here? Well, as far as that is concerned,
18 Mr. Blackwell was clearly identified. It highlights
19 that and he lives at 202 Gilbert Street.

20 Law enforcement knew a white van was involved
21 in this. And he said -- and by the way, this
22 includes his photo going up indicating that he was
23 identified by the clerk after numerous tips. And he
24 says specifically he left in a white in color van
25 that is located behind the residence next door to

1 his mother's house at 202 Gilbert Street, Anderson,
2 South Carolina.

3 The white van is the nexus, Judge. The white
4 van was the vehicle that was used to leave the crime
5 scene. The white van was found next door behind the
6 residence. It was behind the residence at his
7 mother's house. And the white van establishes the
8 probable cause to search to find additional evidence
9 that may be present over there. That is your nexus.
10 So on its face, the affidavit states probable cause
11 sufficient to justify the search.

12 THE COURT: Okay.

13 MR. LUCAS: If I may respond to that?

14 THE COURT: Let -- let me read this case, and
15 I'll hear from you.

16 MR. LUCAS: Thank you, Your Honor.

17 MR. OVERBY: And for the record, Your Honor, I
18 move State's Exhibit No. 24, the affidavit, into
19 evidence for the purposes of this hearing only.

20 THE COURT: Any objection to that?

21 MR. LUCAS: No objection.

22 THE COURT: All right. Twenty-four admitted
23 without objection for purposes of the motion.

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

1 THE COURT: Glad to hear from you.

2 MR. LUCAS: Your Honor, the key is the white
3 van. The search warrant affidavit says he left in a
4 white van.

5 THE COURT: Well, the affidavit says more than
6 this white van. It says he resides there and
7 resides at his mother's house, which is next door,
8 and the white van was behind the house next door.
9 So it says more than just white van. Go ahead.

10 MR. LUCAS: There's no indication that it's the
11 same white van that was behind the store. There are
12 a lot of white vans, Your Honor, and there's nothing
13 to suggest that this is the same white van.

14 THE COURT: There's nothing what?

15 MR. LUCAS: There's nothing in the affidavit
16 that would stand for the idea that the same white
17 van that was behind Mr. Blackwell's house was also
18 the white van.

19 THE COURT: Well, that's the purpose of the
20 search warrant, wasn't it, to determine whether it
21 was or whether it wasn't.

22 MR. LUCAS: Well, I think you would need some
23 license plate.

24 THE COURT: For one of the purposes.

25 MR. LUCAS: That -- that is, Your Honor, but

1 they're using it to get the probable cause for the
2 search warrant. Seems to me that it is a leap not
3 supported by anything in the search warrant
4 affidavit that the white van behind the stoplight is
5 also the same white van at Mr. Blackwell's house. I
6 don't see anything in there to support that
7 inference.

8 THE COURT: Well, the affidavit says, and I'll
9 read it, "The white male has been identified as
10 Darrell Blackwell of 202 Gilbert Street. He was
11 identified through a photo lineup with the clerk, as
12 well as members of the public. He left in a
13 white -- in a white in color van that is located
14 behind the residence next door to his mother's house
15 at 202 Gilbert Street in Anderson, South Carolina.
16 The affiant believes that a full search of the
17 premises will unearth evidence from the robbery
18 scene." That's basically what this affidavit says
19 as to the van.

20 And based upon case law and reading the
21 affidavit, the motion to suppress the black -- I'm
22 sorry -- the black cap is -- the stocking cap is
23 denied. Okay.

24 MR. LUCAS: Thank you, Your Honor.

25 MS. HUEY: Thank you, Judge.

1 THE COURT: Anything else?

2 MR. LUCAS: Since we are -- the jury has not
3 come in yet, Your Honor. I anticipate an issue
4 regarding the admissibility of the video recorded
5 statement from Mr. Blackwell. I know that the
6 Solicitor's Office has redacted in part to remove
7 any references that would violate 403 or 401 or
8 prior convictions.

9 I have some additional concerns, Your Honor,
10 relating both to hearsay and confrontation clause.
11 Based on the testimony of *Jackson v. Denno* hearing,
12 the entire interrogation was conducted by Detective
13 Garrett. He's asking all the questions. Detective
14 Garrett is not here. So we think that raises some
15 issues with hearsay statements and also the
16 confrontation clause.

17 Because the way the interrogation is done,
18 Detective Garrett will make a statement and then try
19 to get Mr. Blackwell to agree to it. We think to
20 get those into evidence, Detective Garrett has to be
21 here. And also he's not available to be
22 cross-examined.

23 In addition, Your Honor, there are also some
24 hearsay concerns with it. Hearsay within hearsay
25 and that there are witness statements that are made

1 within it. We think that this is akin to a
2 situation of a jail phone call where you have the
3 defendant on the line and then another person who's
4 not being called to testify. I think the
5 appropriate way to deal with it is just to play the
6 victim's -- the defendant testify -- or the
7 defendant making the statement.

8 And I have a case on it as well, Your Honor,
9 relating to audio recorded statements. If I may
10 hand it up? It's *State v. Jaquawn Brewer*. And it's
11 cited at 2015, South Carolina Supreme Court case,
12 Appellate Case No. 2012208487.

13 THE COURT: I assume -- we haven't heard from
14 him, but I assume Detective Scotty Hill who was
15 present during the -- during the taking of
16 statements will be testifying about this; is that
17 correct?

18 MR. OVERBY: That's correct, Your Honor.

19 THE COURT: All right. What I'll do is, I'll
20 take your motion under advisement until we hear from
21 Dr. Hill -- excuse me -- Detective Hill, unless
22 y'all want to address it now before we bring the
23 jury in? I don't know what you plan on doing as far
24 as the statement is concerned.

25 MS. HUEY: Your Honor, we will seek to

1 introduce it. Investigator Hill will probably be the
2 last witness we'll call. We only have a couple more
3 to call.

4 Our position is that we have redacted the
5 references to drug use that Mr. Lucas suggested to
6 us yesterday afternoon. And so our position is that
7 the rest of the audio can come in. This is an audio
8 statement. We did have it transcribed, Your Honor.

9 THE COURT: Are you planning on introducing the
10 audio or a copy of the transcription or both?

11 MS. HUEY: Well, Your Honor, we had originally
12 planned on introducing the transcript because it's
13 easier to redact ---

14 THE COURT: Right.

15 MS. HUEY: --- but Mr. Lucas has an objection to
16 that; so therefore, we went back to the CD and
17 redacted the CD. And so then our intention is to
18 admit the audio.

19 THE COURT: Okay. So you are -- you are going
20 to introduce the audio through Detective Garrett?

21 MS. HUEY: Yes, sir. Because he was a witness
22 to the entire incident as he testified to at Jackson
23 Denno.

24 THE COURT: All right. I believe the part of
25 what Mr. Lucas was referring to was the detective

1 asking the questions. I believe it was Investigator
2 Garrett who's not here. I believe he testified it
3 was -- I forget where he said he was, but he's no
4 longer employed at the Sheriff's Department.

5 MS. HUEY: Correct, Your Honor.

6 THE COURT: What's -- what's your position on
7 the fact that he doesn't have the right to confront
8 Garrett since he's not present?

9 MS. HUEY: I think he has a right to confront
10 Investigator Hill who was present for the entire
11 process.

12 THE COURT: Okay.

13 MS. HUEY: That's the purpose of -- that's why
14 there are generally two officers involved in these
15 hearings, Your Honor.

16 THE COURT: I understand. All right. Anything
17 you want to say to the Court?

18 MR. LUCAS: Investigator Hill didn't ask any of
19 the questions.

20 THE COURT: I'm sorry. What?

21 MR. LUCAS: I'm sorry, Your Honor.

22 Investigator Hill did not ask any of the questions.

23 THE COURT: I understand, but Investigator Hill
24 was sitting there listening to the questions. He
25 was there. I assume he was in the room the entire

1 time. We haven't heard from him, so I don't know
2 what he's going to say.

3 MR. LUCAS: We heard from him in a depo.

4 THE COURT: Do you want -- do you want to hear
5 from Hill outside the presence of the jury, or do
6 you want to wait for his testimony?

7 MR. LUCAS: Whichever you prefer, Your Honor.

8 THE COURT: It doesn't matter to me.

9 MR. LUCAS: We can wait until his testimony.

10 THE COURT: Pardon?

11 MR. LUCAS: We can wait until his testimony,
12 Your Honor.

13 THE COURT: All right. When it gets to a
14 pertinent point, I'll be glad to send the jury out
15 and listen to it in en camera if you want me to.
16 Okay?

17 MR. LUCAS: Yes, Your Honor.

18 THE COURT: Just let me know when you want to
19 do that.

20 MR LUCAS: I'll do that. Thank you.

21 THE COURT: Anything else before we bring the
22 jury in? As far as the motion is concerned, I'll
23 take it under advisement until we hear from
24 Investigator Hill.

25 MS. HUEY: Yes, sir. We're ready to proceed.

1 THE COURT: Is the defense ready?

2 MR. LUCAS: May I have one moment, Your Honor?

3 THE COURT: Yes, sir.

4 (Brief recess.)

5 THE COURT: Anything else from the defendant?

6 Ready to bring the jury?

7 MR. LUCAS: Nothing at this time, Your Honor.

8 THE COURT: Okay. Bring the jury, please, sir.

9 THE BAILIFF: (Complying.)

10 THE DEFENDANT: Your Honor, can I speak with
11 you?

12 THE COURT: Pardon?

13 THE DEFENDANT: Can I speak with you for just a
14 minute?

15 THE COURT: Can you speak with me?

16 THE DEFENDANT: Yes. Maybe in private. I need
17 to talk to you.

18 THE COURT: I'll be glad to talk to you if
19 you'll -- why don't you talk to your attorney first?

20 THE DEFENDANT: It's about my attorney.

21 THE COURT: Huh?

22 THE DEFENDANT: It's to do with my attorney.

23 THE COURT: Well, I'll take that up with you
24 later on when it's your turn to testify. Okay?

25 THE DEFENDANT: Okay.

1 THE COURT: All right.

2 (At 10:16 a.m., jury entered the courtroom.)

3 THE COURT: Solicitor, can call your next
4 witness, please?

5 MS. HUEY: Yes, Your Honor. The State calls
6 Investigator Pigman to the stand.

7 (Witness approached.)

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

12 THE WITNESS: I do.

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

16 THE WITNESS: Kenneth Pigman, P-i-g-m-a-n.

17 INVESTIGATOR KENNETH PIGMAN,
18 having been produced and first duly sworn as a
19 witness on behalf of the State, then testified as
20 follows:

21 DIRECT EXAMINATION

22 BY MS. HUEY:

23 Q. Investigator Pigman, where are you currently
24 employed?

25 A. The Anderson County Sheriff's Office.

1 Q. And in what position there?

2 A. I'm a detective with the criminal
3 investigations division.

4 Q. And were you employed in that position in
5 January of 2016?

6 A. I was.

7 Q. And did you work with an Investigator Garrett
8 at that time?

9 A. I did.

10 Q. As such, did you have an occasion to become
11 involved in the investigation of this particular
12 case against Darrell Blackwell?

13 A. I did.

14 Q. And how so?

15 A. Investigator Garrett needed assistance
16 executing two search warrants, and I was available
17 that day and went with him to assist him.

18 Q. And which locations were those search warrants
19 executed?

20 A. 202 and 203 Gilbert Street in Anderson.

21 Q. And do you know why those particular locations
22 were being searched, or were you just there
23 assist -- assisting Investigator Garrett?

24 A. I was there assisting Investigator Garrett.

25 Q. Were you familiar with this case at all? Did

1 you see the video in particular?

2 A. I have seen the video. Yes.

3 Q. So when you went to this location, these are
4 two residences; is that correct?

5 A. Yes. That's correct.

6 Q. And can you describe them?

7 A. They are older mill hill-style houses, smaller
8 single-story residences.

9 Q. How close do you think they are to one another?

10 A. They're side by side. They're fairly close.

11 Q. Where was the search warrant first executed,
12 which location?

13 A. The first search warrant was executed at 203
14 Gilbert.

15 Q. At 203 Gilbert Street?

16 A. That's correct.

17 Q. And who was the person that lived there?

18 A. That was reported to be Darrell Blackwell's
19 residence, himself.

20 Q. And so when you arrived at 203, what, if
21 anything, did you notice upon your arrival?

22 A. There was a van parked around back and the
23 residence didn't appear that anyone was staying
24 there full-time. It appeared to be somewhat
25 unoccupied.

1 Q. But you noticed a what van?

2 A. Yes.

3 Q. Are you aware of any significance of a white
4 van?

5 A. I believe the white van was mentioned somewhere
6 by Investigator Garrett as a possible suspect.

7 MR. LUCAS: Object to speculation, Your Honor.

8 THE COURT: I'll sustain the objection. Don't
9 testify to what somebody else told you. Okay. Just
10 testify to what you observed.

11 THE WITNESS: Okay.

12 BY MS. HUEY:

13 Q. Did you know the white van was of some
14 significance?

15 A. I do not recall.

16 Q. But investigate -- Investigator Garrett want
17 that photographs?

18 A. Yes.

19 MR. LUCAS: Objection, Your Honor. That goes
20 to what Investigator Garrett wanted.

21 THE COURT: What's your legal objection?

22 MR. LUCAS: A lack of knowledge, Your Honor.

23 He does not know what Investigator ---

24 THE COURT: Overruled. Go ahead.

25 BY MS. HUEY:

1 Q. And as such, was a photo taken of the white
2 van?

3 A. Yes, it was.

4 Q. I'm going to show you what's been marked as
5 State's 19. If you could take a look at that,
6 please.

7 A. (Complying.)

8 Q. Do you recognize that van?

9 A. I do.

10 Q. And how are you able to do so?

11 A. That is the van that was in the back side of
12 the residence, and that is me in the picture next to
13 the van.

14 Q. So -- and is that what you witnessed yourself
15 then, observed ---

16 A. Yes.

17 Q. --- on the day of the execution of the search
18 warrant?

19 A. Yes.

20 Q. Okay. And it fairly and accurately depicts
21 what you observed?

22 A. Yes.

23 MS. HUEY: Your Honor, at this time we'd admit
24 State's 19 into evidence.

25 THE COURT: Any objection?

1 MR. LUCAS: Only to the search warrant, Your
2 Honor. I just renew that.

3 THE COURT: Pardon? I'm sorry.

4 MR. LUCAS: I'd simply like to renew my
5 objection to the search warrant, but other than
6 that, no objection.

7 THE COURT: Okay. All right. State's
8 Exhibit 19 is admitted.

9 MS. HUEY: Thank you, Judge.

10 (State's Exhibit No. 19 was received into
11 evidence.)

12 THE COURT: Assuming the search warrant is
13 appropriate, then the Court overrules it at the
14 time, okay, so don't publish it to the jury.

15 MS. HUEY: Thank you, Judge.

16 BY MS. HUEY:

17 Q. So this was the white van you observed when you
18 first arrived ---

19 A. Yes.

20 Q. --- at Gilbert Street?

21 THE COURT: Don't publish it to the jury.

22 MS. HUEY: You said don't publish it? I'm
23 sorry.

24 THE COURT: Do not publish it until we hear the
25 search warrant issue. Okay?

1 MS. HUEY: Judge, may I approach?

2 THE COURT: Yes, ma'am.

3 (Sidebar discussion.)

4 MS. HUEY: May I publish?

5 THE COURT: All right. Ladies and gentlemen,
6 that's the Court's error. The Court's ruling the
7 photograph is admissible, and she -- the State can
8 publish it to the jury at this time.

9 MS. HUEY: Thank you, Judge.

10 BY MS. HUEY:

11 Q. Again, this is State's 19. Investigator
12 Pigman, this the white van you observed at Gilbert
13 Street?

14 A. Yes.

15 Q. So, Investigator Pigman, what, if anything,
16 else was collected then at that particular location?

17 A. 203 Gilbert Street, we located a brown stocking
18 cap in the backyard of the residence hanging on a
19 fence. It appears as if it had been hung up to dry
20 like it were wet when they hung it.

21 Q. Okay. I'm going show you what's been marked as
22 State's 18. Would you take a look at that, please?

23 A. Yes. That's the stocking cap I was speaking
24 of.

25 Q. Okay. And is that the stocking cap you

1 observed then?

2 A. Yes.

3 Q. On that particular date of the execution of the
4 search warrant?

5 A. It is.

6 Q. Does it fairly and accurately depict what you
7 observed?

8 A. It does.

9 Q. And was that item then collected afterward?

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

11 MS. HUEY: Your Honor, at this time we'd
12 admit -- admit -- move to admit, excuse me, State's
13 18 into evidence.

14 THE COURT: Okay. Solicitor, I admitted your
15 objection -- previous objection as to the search
16 warrant.

17 MR. LUCAS: Thank you, Your Honor.

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

19 (State's Exhibit No. 18 was received into
20 evidence.)

21 BY MS. HUEY:

22 Q. So, again, State's 18, Investigator Pigman,
23 this is the brown Carhartt hat that was collected
24 where the defendant was reported to have been
25 staying at some point; is that correct?

1 A. Yes.

2 Q. Now, did you also search another residence at
3 that time, Investigator Pigman?

4 A. Yes. We did also search 202 Gilbert Street.

5 Q. And what, if anything, did you locate at that
6 particular residence?

7 A. At 202 we located two unopened packs of Seneca
8 cigarettes, which matched items that were stolen
9 during this incident.

10 Also, a black jacket with a gray hood which
11 resembled what the defendant was wearing in the
12 surveillance video.

13 Q. Investigator Pigman, I'm going to show you
14 what's been marked as State's 26.

15 THE COURT: I'm sorry. What number?

16 MS. HUEY: State's 26.

17 THE COURT: Twenty-six. Okay.

18 BY MS. HUEY:

19 Q. If you'll take a look at that, please.

20 A. (Complying.) Yes. That's the jacket I was
21 speaking of.

22 Q. Okay. And, again, that was -- jacket was
23 collected at the execution of the search warrant?

24 A. That's correct. At 202.

25 Q. Okay. Does it fairly and accurately depict

1 what was collected and what you observed?

2 A. Yes.

3 MS. HUEY: Your Honor, at this time we'd admit
4 States's 26 into evidence.

5 THE COURT: Any objection?

6 MR. LUCAS: Without objection, Judge.

7 THE COURT: State's 26 be admitted without
8 objection.

9 (State's Exhibit No. 26 was received into
10 evidence.)

11 BY MS. HUEY:

12 Q. And so this was the black jacket collected ---

13 A. Yes.

14 Q. --- is that correct, Investigator Pigman?

15 A. Yes, it is.

16 Q. And when we say these items are collected,
17 Investigator Pigman, when you collect them, what do
18 you then do with them?

19 A. They would be collected and taken and placed
20 into property and evidence.

21 Q. And that is -- what is property and evidence?

22 A. It's a secured building next door to the
23 sheriff's office where all the evidence is securely
24 kept.

25 Q. And did you do so in this case?

1 A. Yes.

2 Q. Or did you assist in this?

3 A. I assisted.

4 Q. Investigator Pigman, I'm going to show you
5 what's been marked as State's 20 and ask you to open
6 the bag without taking it out.

7 A. (Complying.)

8 Q. And do you recognize that item, Investigator
9 Pigman?

10 A. Yes. That's the brown stocking cap that we
11 collected.

12 Q. Okay. That you and Investigator Garrett
13 collected and then turned into property and
14 evidence?

15 A. That's correct.

16 Q. Is it in substantially the same condition as it
17 was before?

18 A. Yes, it is.

19 Q. Okay. Altered in any way?

20 A. No, ma'am.

21 MS. HUEY: Your Honor, at this time we'd admit
22 State's 20 into evidence.

23 THE COURT: Any objection?

24 MR. LUCAS: Just the search warrant objection,
25 Your Honor.

1 THE COURT: Okay. State's Exhibit 20?

2 MS. HUEY: Yes, sir.

3 THE COURT: Will be admitted with objection.

4 (State's Exhibit No. 20 was received into
5 evidence.)

6 BY MS. HUEY:

7 Q. And, Investigator Pigman, if you can now take
8 it out of the bag, please, and show the jury.

9 A. (Complying.)

10 Q. And, again, that was located outside the
11 defendant's residence?

12 A. Yes.

13 Q. Now, show you one other thing. All right.
14 Investigator Pigman, I'm going to show you what's
15 going to be marked as State's 27 in reference to the
16 black hoody that was collected.

17 A. Okay.

18 Q. And when you open this, I would ask that you
19 just address the black hoody.

20 A. Okay. (Complying.) Yes. This appears to be
21 the black jacket that we collected that day.

22 Q. And is it a fairly and accurately in a -- or is
23 it -- is it essentially in the same condition?

24 Excuse me.

25 A. Yes, it is.

1 Q. As the one you observed and collected at the
2 defendant's mother's house?

3 A. Yes.

4 MS. HUEY: At this time we'd admit State's 27
5 into evidence, Your Honor.

6 THE COURT: Any objection?

7 MR. LUCAS: Without objection, Judge.

8 THE COURT: Twenty-seven admitted without
9 objection.

10 (State's Exhibit No. 27 was received into
11 evidence.)

12 BY MS. HUEY:

13 Q. I'm going to ask you to just pull out the black
14 hoody then and show that to the jury, please.

15 A. (Complying.)

16 Q. That was State's 27. So, Investigator Pigman,
17 all of these items then were put into property and
18 evidence and brought here this week. Did you have
19 any other involvement in the case?

20 A. No, I didn't.

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

23 THE COURT: Any cross-examination?

24 MR. LUCAS: Thank you, Your Honor.

25 CROSS-EXAMINATION

1 BY MR. LUCAS:

2 Q. Detective Pigman, you testified that you were
3 present for the search of both 202 Gilbert Street
4 and 203?

5 A. That's correct.

6 Q. Okay. And 203 Gilbert Street is the house of
7 Darrell Blackwell?

8 A. Darrell Blackwell's mother. I'm sorry. 203 is
9 the residence of Darrell Blackwell. That's correct.

10 Q. And you searched the whole house?

11 A. Yes.

12 Q. Didn't find a laptop there?

13 A. Not that I recall.

14 Q. Didn't find any large amounts of money?

15 A. Not that I recall.

16 Q. Well, so you didn't or you just don't remember?

17 A. It wasn't collected, so I assume we did not.

18 Q. Okay. No cigarette coupons?

19 A. No.

20 Q. And no large number of cigarette packs?

21 A. No.

22 Q. And you were also present for the search of
23 202 ---

24 A. Yes.

25 Q. --- Gilbert Street?

1 A. Yes.

2 Q. And same thing there, no -- no laptop?

3 A. Not that was collected. No.

4 Q. No large sums of money? No gun or knife?

5 A. Not that was collected. No.

6 Q. And the same would go for 202 Gilbert Street,
7 no gun or knife was collected there either?

8 A. No.

9 MR. LUCAS: Nothing further. Thank you.

10 THE COURT: Any redirect?

11 MS. HUEY: Just one question.

12 REDIRECT EXAMINATION

13 BY MS. HUEY:

14 Q. Investigator Pigman, what was the date the
15 search warrants were executed?

16 A. I do not have a copy of the search warrant, but
17 I believe it was January 13th of 2016.

18 MS. HUEY: That's all I have, Judge.

19 THE COURT: You may step down. Thank you very
20 much.

21 THE WITNESS: Thank you.

22 (Witness excused.)

23 THE COURT: Call your next witness.

24 MS. HUEY: Your Honor, the State calls Steve
25 Blackwell to the stand.

1 MR. LUCAS: Your Honor, I have a brief matter
2 of law regarding Mr. Steve Blackwell.

3 THE COURT: A matter of what?

4 MR. LUCAS: A matter of law.

5 THE COURT: All right. If the lawyers will
6 come up here for just a second while Mr. Blackwell's
7 coming in the courtroom.

8 (Sidebar discussion.)

9 (Witness approached.)

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

14 THE WITNESS: I do.

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

18 THE WITNESS: Mark Steven Blackwell,
19 B-l-a-c-k-w-e-l-l.

20 MARK STEVEN BLACKWELL,
21 having been produced and first duly sworn as a
22 witness on behalf of the State, testified as
23 follows:

24 DIRECT EXAMINATION

25 BY MS. HUEY:

1 Q. Mr. Blackwell, how old are you?

2 A. Fifty-one.

3 Q. And where do you work?

4 A. Wood Engineering in Greenville.

5 Q. Are you from Anderson?

6 A. I'm from Anderson.

7 Q. How long have you lived in Anderson?

8 A. My whole life.

9 Q. And do you have family in the area?

10 A. I do.

11 Q. All right. And who's your family?

12 A. My wife's family are Mets from Iva. And then
13 my family is my mother. She's still living. And my
14 brother Darrell and my children. I have a son and a
15 daughter-in-law. My son is at Clemson. Attends
16 Clemson. And my other daughter is married and her
17 husband is in the Army. And three grandkids in
18 Texas.

19 Q. So you have a lot of family close by?

20 A. I do.

21 Q. But in particular, your mother is still alive,
22 as well as your brother?

23 A. Yes.

24 Q. Okay. And what is your mother's name?

25 A. Johnnie Sue Taylor.

1 Q. And how long was she married to your father?

2 A. He was 54 when he passed away and they were
3 married in their early 20s, so for almost 30 years I
4 guess.

5 Q. And you mentioned the defendant in this case.
6 I believe you acknowledged that he's seated at
7 defense table; is that correct?

8 A. Yes.

9 Q. And his name is Darrell?

10 A. Yes.

11 Q. And is he your full brother?

12 A. Yes.

13 Q. So did you all grow up in the same house
14 together and everything?

15 A. Yes.

16 THE COURT: Can the jury hear this witness? Is
17 there anybody who can't hear? Speak up a little
18 bit, okay, so the jury can hear you.

19 THE WITNESS: I'm sorry.

20 THE COURT: Speak into the microphone. I'm
21 sorry. Go ahead.

22 BY MS. HUEY:

23 Q. But you all grew up together ---

24 A. We did.

25 Q. --- you and your brother?

1 THE WITNESS: Is that better?

2 THE COURT: Yes, sir.

3 BY MS. HUEY:

4 Q. Where does your mother live now?

5 A. Gilbert Street in Anderson off of Whitner.

6 Q. Now, Mr. Blackwell, specifically in reference
7 to January of 2016, did you observe some video
8 surveillance stills on TV or on Facebook related to
9 this case?

10 A. Yes.

11 MR. LUCAS: Your Honor, objection. Based
12 on ---

13 THE COURT: Pardon?

14 MR. LUCAS: I object to this line of testimony
15 based upon the lack of personal knowledge.

16 THE COURT: Overruled. Go ahead.

17 MS. HUEY: And as ---

18 THE COURT: She asked if he observed the video.
19 I don't know what video he observed yet. Go ahead.

20 BY MS. HUEY:

21 Q. And can you describe what you observed then?

22 A. I seen several videos. It was on the local
23 news and Facebook. It was different videos of a
24 robbery.

25 MR. LUCAS: Your Honor ---

1 THE WITNESS: What I assumed to be a robbery.

2 MR. LUCAS: Your Honor, I'm going to make the
3 same objection on the grounds that Mr. Blackwell has
4 no personal knowledge regarding the robbery.

5 THE COURT: He's testifying to what he
6 observed. How can he not have personal knowledge of
7 what he observed? Overruled. Please proceed.

8 MR. LUCAS: Thank you, Your Honor.

9 BY MS. HUEY:

10 Q. As a result of what you observed, what did you
11 do, if anything, regarding law enforcement?

12 A. What I observed was, again, those photographs
13 or still images and I think there was some video as
14 well, which caused a lot of contradiction within the
15 family. There was a lot of people calling, calling
16 myself, calling my mother, calling my niece.

17 And, you know, I called. They had a hotline or
18 whatever set up to call in for tips or whatever, and
19 I called in.

20 Q. And what did you say when you called in?

21 A. I identified who I thought was my brother in
22 the picture.

23 MS. HUEY: That's all I have, Judge.

24 THE COURT: Cross-examination?

25 CROSS-EXAMINATION

1 BY MR. LUCAS:

2 Q. Mr. Blackwell, we spoke on the phone this
3 weekend, did we not?

4 A. Yes.

5 Q. And you told me that Darrell Blackwell was
6 living with your mother?

7 A. That's correct.

8 Q. And you're concerned that he is a burden upon
9 her?

10 A. She's an enabler.

11 MR. LUCAS: Nothing further, Your Honor.

12 THE COURT: Any redirect?

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

14 THE COURT: You may step down, Mr. Blackwell.

15 Thank you so very much.

16 (Witness excused.)

17 THE COURT: Call your next witness, please.

18 MS. HUEY: Your Honor, the State calls

19 Investigator Scotty Hill.

20 (Witness approached.)

21 THE CLERK: Do you solemnly swear or affirm the
22 testimony you'll give the Court today in this case
23 to be the truth, the whole truth, and nothing but
24 the truth?

25 THE WITNESS: Yes, sir.

1 THE CLERK: If you'll take the witness stand
2 please, sir, and state your name and spell your last
3 name for the reporter, please.

4 THE WITNESS: Scotty Hill, H-i-l-l.

5 INVESTIGATOR SCOTTY HILL,
6 having been produced and first duly sworn as a
7 witness on behalf of the State, then testified as
8 follows:

9 DIRECT EXAMINATION

10 BY MS. HUEY:

11 Q. Investigator Hill, where do you currently work?

12 A. I work for the Anderson County Sheriff's
13 Office.

14 Q. And what's your position there?

15 A. I'm a detective in the criminal investigations
16 division.

17 Q. And was that your position in February of 2016?

18 A. Yes, ma'am.

19 Q. Did you talk with the defendant in this case
20 regarding taking a statement from him?

21 A. I was present while another detective spoke
22 with him.

23 Q. And tell -- tell the jury a little bit about
24 that. Is that a common procedure?

25 A. Yes, ma'am. It's normal for us to take two

1 detectives to speak with somebody about a case.

2 It's usually a safety thing, also to have a witness
3 to the interview.

4 Q. And so were you a witness to this entire
5 interview?

6 A. Yes, ma'am.

7 Q. Were you ever outside of -- let me back up.
8 Who else was present for the interview?

9 A. Myself, Detective Jeramy Garrett, and
10 Mr. Blackwell.

11 Q. And in this particular case, was Detective
12 Garrett taking the lead so to speak?

13 A. Yes, ma'am.

14 Q. And what does that mean?

15 A. Well, it's his case so he had the most
16 knowledge about the case, so he would do -- he would
17 do most of the talking.

18 Q. So he was the one actually doing the
19 questioning; is that correct?

20 A. Yes, ma'am.

21 Q. And you were there to witness the entire
22 incident?

23 A. I was.

24 Q. And were you ever outside of Detective
25 Garrett's or the defendant's presence?

1 A. No, ma'am.

2 Q. It was the three of you all the time?

3 A. Yes.

4 Q. Okay. And so tell us where this interview took
5 place.

6 A. It was at the detention center. And at the
7 time, it was a multi-purpose room. It was used for
8 storage, and it also had a small desk in like an
9 office area that we would use as -- for an interview
10 room.

11 Q. And that's where this interview took place?

12 A. Yes, ma'am.

13 Q. And was it recorded in any way?

14 A. It was audio recorded.

15 Q. What's the first step when you do an interview
16 such as this?

17 A. Advise the person of their rights and then we
18 read their rights.

19 Q. And was that done in this particular case?

20 A. It was.

21 Q. And, again, you were a witness to that?

22 A. I was.

23 Q. Investigator Hill, I'm going to show what's
24 been previously marked as State's 1. If you could
25 take a look at that, please.

1 A. (Complying.)

2 Q. Do you recognize that item?

3 A. Yes, I do.

4 Q. And how are you able to recognize that?

5 A. It's the standard form we use, advisory rights
6 form we use at the sheriff's office and it also has
7 my signature on it.

8 Q. And what does your signature indicate?

9 A. That I witnessed this form be completed.

10 Q. Does it fairly and accurately depict the form
11 as it was used on February 1st of 2016?

12 A. Yes, ma'am.

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

14 A. No.

15 MS. HUEY: Your Honor, at this time we'd move
16 to admit State's 1 into evidence.

17 THE COURT: Any objection?

18 MR. LUCAS: Without objection, Your Honor.

19 THE COURT: All right. State's Exhibit 1
20 admitted without objection.

21 (State's Exhibit No. 1 was received into
22 evidence.)

23 BY MS. HUEY:

24 Q. So, Investigator Hill, if you could just tell
25 the jury a little bit what is on that form as

1 State's 1.

2 A. It's, you know, advisory rights. We usually
3 fill out the person we're talking to and put their
4 name, the date, and the location, which here it says
5 ACDC which is the Anderson County Detention Center.

6 It's common practice for us to have the person
7 we're interviewing read the first two lines out
8 loud, just demonstrating that they can read and
9 write. So then we'll have them initial that they
10 read those two lines out loud, and then usually the
11 detective will read the rest of the form to them
12 while they follow along.

13 Once we finish the top portion of the form, we
14 ask them if they understand their rights. If the
15 person says yes, they'll sign it saying they
16 understand their rights and that's what we witness
17 and date and time stamp that right down there.

18 The bottom of the form is a waiver of rights.
19 After they sign the top saying they understand their
20 rights, we go over the bottom, making sure the
21 person's freely waiving their right to counsel and
22 are willing to speak with us. So the detective will
23 read the entire paragraph here to the person.

24 We also underline coercion. A lot of people
25 don't know what coercion means, so we'll explain it

1 to them, and we have them initial that that was
2 explained to them. And if they're willing to speak
3 with us, they'll sign it. And then we'll witness it
4 and again we'll date it and time it.

5 Q. And was all that done in this case?

6 A. Yes, ma'am.

7 Q. So the first part of the form is their rights,
8 making sure the defendant's aware of their rights;
9 is that correct?

10 A. Yes, ma'am.

11 Q. And so could you read specifically what those
12 rights are?

13 A. Yes. It starts with, "Before you're asked any
14 questions, you must understand your rights.

15 "You have the right to remain silent. Anything
16 you say can be used against you.

17 "You have the right to speak to a lawyer for
18 advice before you're asked any questions and have
19 him with you during questioning. If you cannot
20 afford a lawyer, one will be appointed for you
21 before your questioned if you wish.

22 "If you decide to answer questions now without
23 a lawyer present, you'll still have the right to
24 stop answering questions at any time.

25 "You also have the right to stop answering

1 questions at any time until you speak with a
2 lawyer."

3 Q. And so those are his rights ---

4 A. Yes.

5 Q. --- that were read to him, and he initialled
6 accordingly?

7 A. Yes.

8 Q. And then did he say he wanted to give a
9 statement?

10 A. He did.

11 Q. Okay. And so that's where he would sign the
12 bottom of the form; is that correct?

13 A. Yes, ma'am.

14 Q. Now, during the course of this interview, did
15 the defendant seem comfortable?

16 A. Yes, he did.

17 Q. Did he ever ask for anything, something to
18 drink, something to eat?

19 A. No, ma'am.

20 Q. Did he ever act like he was tired?

21 A. No, ma'am.

22 Q. He seemed comfortable throughout the process?

23 A. He did.

24 Q. And so in your view, was the statement he gave
25 voluntarily given?

1 A. Yes, ma'am.

2 Q. So, Investigator Hill, you originally or
3 initially said that you -- this was audio recorded;
4 is that correct?

5 A. That is.

6 Q. I'm going to show you what's been marked as --
7 previously marked as State's 2. If you'll take a
8 look at this, please.

9 A. (Complying.)

10 Q. Do you recognize that item?

11 A. Yes, ma'am.

12 Q. And how are you able to recognize it?

13 A. It's a disk with the audio recording from the
14 interview on it.

15 Q. And have you had an opportunity to listen to
16 that again?

17 A. Yes.

18 Q. And what, if anything, indicates that -- that
19 was done?

20 A. Oh, I -- sorry. I initialled it and dated it
21 when I listened to it.

22 Q. And does that fairly and accurately depict the
23 entire interview as you recall it from February 1st
24 of 2016?

25 A. Yes, ma'am.

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

2 A. No, ma'am.

3 MS. HUEY: Your Honor, at this time we'd like
4 to admit State's 2 into evidence.

5 THE COURT: You have an objection; is that
6 correct?

7 MR. LUCAS: I do, Your Honor.

8 THE COURT: Let me see the attorneys up here
9 just a second, please.

10 (Sidebar discussion.)

11 THE COURT: All right. Ladies and gentlemen of
12 the jury, I know you -- you've been in the courtroom
13 for about 50 minutes now. We've been in the
14 courtroom for an hour and a half. We're going to
15 take a break at this time. Please do not discuss
16 the case amongst yourselves. We'll take about a 15,
17 20-minute break.

18 Mr. Clerk, do you take smokers anywhere if they
19 need to smoke?

20 THE CLERK: Yes, sir. If they -- if they care
21 to, the bailiffs will take them.

22 THE COURT: If anybody needs to smoke, let us
23 know. They'll take an appropriate break for
24 smoking. Please don't discuss the case. Please
25 follow the bailiff to the jury room.

1 (At 10:56 a.m., jury left the courtroom.)

2 THE COURT: We're going to take a break at this
3 time. During the break, don't discuss the case with
4 anyone.

5 THE WITNESS: Yes, sir. No problem.

6 THE COURT: Thank you very much. We'll take
7 about a 15-minute break, and then I'll allow you to
8 cross-examine this witness. And citing your
9 objection to the audio, the Court can finish it.
10 And then they can redirect, and I'll listen to
11 arguments and make a decision. Okay?

12 MR. LUCAS: Thank you, Your Honor.

13 THE COURT: Thank you very much.

14 (From 10:53 to 11:32 a.m., recess was taken.)

15 THE COURT: All right. Mr. Lucas, you want to
16 put a motion on the record to suppress the video; is
17 that correct?

18 MR. LUCAS: That -- that is correct, Your
19 Honor.

20 THE COURT: I'm going to allow you to
21 cross-examine Mr. -- Detective Hill who was present
22 at the recording the entire time I understand, but
23 he was not the detective that actually asked the
24 questions; is that correct?

25 MR. LUCAS: That's my understanding.

1 THE COURT: So I'll be glad to hear your motion
2 and all. Do you want to ask questions before you
3 make your motion or your arguments, or how do you
4 want to proceed?

5 MR. LUCAS: If I may, I have two questions,
6 Your Honor.

7 THE COURT: Be my guest.

8 CROSS-EXAMINATION

9 BY MR. LUCAS:

10 Q. Detective Hill, it's my understanding you were
11 present for the entirety of the interview?

12 A. Yes, sir.

13 Q. But did not ask any questions?

14 A. That's correct.

15 MR. LUCAS: And if I may, I have a third
16 question, Your Honor.

17 BY MR. LUCAS:

18 Q. All questions were asked by Investigator
19 Garrett?

20 A. Yes, sir.

21 MR. LUCAS: Thank you.

22 THE COURT: Is that all the cross you have?

23 MR. LUCAS: That's all the cross I have.

24 THE COURT: All right. Any redirect as to that
25 cross on behalf of the State?

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

2 THE COURT: I'll be glad to hear your motion.

3 MR. LUCAS: Your Honor, the motion is that
4 based upon the fact that we think that Investigator
5 Garrett not being here is, first, a violation of
6 Mr. Blackwell's Sixth Amendment confrontation
7 rights. It violates the confrontation clause
8 because we do not have the ability to cross-examine
9 Investigator Garrett due to him being in Washington
10 State and not here in this courtroom.

11 And then, secondly, Your Honor, it's the
12 defense position that any statements made by
13 Investigator Garrett during the course of the
14 interrogation are hearsay. And it's clear that
15 they're being offered for truth and not some
16 non-hearsay purpose because it's an interrogation
17 video. It's being offered for the truth of any
18 admissions.

19 It's important to exclude his statements
20 because they're offered for context. So he'll say
21 something and then ask Mr. Blackwell if that is
22 accurate. And it's our position that's improper,
23 Your Honor, that it's inadmissible hearsay, and it's
24 a violation of the confrontation clause. And also
25 that that type of use is prohibited by *State v.*

1 *Brewer* or *State v. Jaquwn Brewer*, which I've ---

2 THE COURT: Do you have any cases that
3 substantiate that position; i.e., a police officer
4 observed the confession and the police officer who's
5 asking the question, that violates the confrontation
6 clause? Do you have a case that says that on that
7 fact scenario anywhere east of the Mississippi?

8 MR. LUCAS: It's a South Carolina case, and if
9 I can go down with the facts?

10 THE COURT: What are the facts? What's the
11 cite in the case?

12 MR. LUCAS: The case is, again, *Jaquwn Brewer*.
13 I don't have the reporter's cite, but it's Appellate
14 Case No. 2012-208 ---

15 THE COURT: All right. What's the facts of the
16 case and what's the ruling?

17 MR. LUCAS: The facts of the case, Your Honor,
18 is that you have a -- there was an interrogation.
19 And during the course of that, it included a number
20 of hearsay statements, assertions by officers and
21 whatnot. And the State offered an un-redacted ---

22 THE COURT: Well, a hearsay statement is
23 different than confrontation. We're talking about
24 confrontation. We're not talking about hearsay. I
25 asked if you have a case that says the fact scenario

1 we have here violates the confrontation clause of
2 the Constitution is my question to you.

3 MR. LUCAS: This is a hearsay case, Your Honor.
4 I do not have a confrontation clause case.

5 THE COURT: Do you have one in any other state
6 out -- even outside of South Carolina?

7 MR. LUCAS: I do not, Your Honor.

8 THE COURT: Do you have any Federal cases?

9 MR. LUCAS: Not at hand, but I think that it's
10 a clear Constitutional violation. I don't think I
11 need a case.

12 THE COURT: Well, if it's that clear, there
13 would be some cases on it, would it not?

14 MR. LUCAS: I expect that there is, Your Honor.

15 THE COURT: But you haven't looked for them, or
16 what's the situation?

17 MR. LUCAS: It caught me by surprise that
18 Investigator Garrett is not here testifying today.
19 This is a new issue for me as of yesterday. I don't
20 have case law, Your Honor, but I think it's a clear
21 confrontation.

22 THE COURT: Well, do you need time to do some
23 research? I'm not trying to hurry you. I just want
24 to be fair with you. If there is a case out there,
25 I'd like to see if. I don't want to see a hearsay

1 case, but I'd like to see one on confrontation.

2 MR. LUCAS: I'll stand on my arguments, Your
3 Honor.

4 THE COURT: You'll stand on your argument?

5 MR. LUCAS: Yes, Your Honor.

6 THE COURT: If you want more time to do some
7 research, I'll give you some time to do some
8 research if you so choose.

9 MR. LUCAS: I don't think it's necessary, Your
10 Honor. I think just based on the fact that they're
11 offering statements made by Investigator Garrett.
12 He's not here for cross-examination. That's the
13 basis of the argument. I'll stand on that.

14 THE COURT: Thank you. I'll be glad to hear
15 from the State.

16 MS. HUEY: Your Honor, obviously our position
17 is different, it's the opposite. We don't think
18 it's a confrontation matter because it's an exhibit.
19 It's a piece of evidence. This is a recording. For
20 years, I'm sure as you're aware, Judge, the defense
21 has argued, "Why didn't you record this? That would
22 be the best piece of evidence if it was all
23 recorded." Well, here it is recorded, Your Honor,
24 and that's what we're seeking to introduce.

25 In terms of the hearsay, we do not think

1 statements made by Investigator Garrett are offered
2 for the truth of the matter therein. We do concede
3 certain statements and we've already redacted where
4 Investigator Garrett mentions what the defendant's
5 mother, for instance, heard or said. That's fine.
6 We have redacted those.

7 But in terms of the statements -- the question
8 that Jeramy Garrett asked the defendant in front of
9 Scotty Hill, the other investigator present, those
10 are not being offered for the truth of the matter
11 therein. And they simply provide context to what
12 the defendant is saying.

13 If you take out all of the defendant's
14 questioning and only leave or -- and you're only
15 left with what the defendant says, it also has no
16 context.

17 THE COURT: Thank you very much. Anything you
18 want to say very briefly in rebuttal before I rule?

19 MR. LUCAS: Yes, Your Honor. The Brewer case
20 addresses the context argument in Section 2(a),
21 third paragraph down. The Court says, "Indeed, we
22 find no support in the law for the State's argument
23 that interrogators' statements were admissible for
24 purposes of context or for the effect the statements
25 had on Brewer."

1 And it says, "Allowing agents to narrate the
2 course of their investigations, and thus spread
3 before juries damning information that is not
4 subject to cross-examination, would go far toward
5 abrogating the defendant's rights under the Sixth
6 Amendment and the hearsay rule."

7 THE COURT: All right. Where are you reading
8 from?

9 MR. LUCAS: That's *State v. Jaquwn Brewer*, Your
10 Honor. And that is in Section 2(a), third paragraph
11 down of the case. And I apologize for not having a
12 pen site, Your Honor.

13 THE COURT: I'm sorry. What? You want to
14 add -- do you have the whole case there?

15 MR. LUCAS: I handed it up earlier, Your Honor,
16 but I will circle the language that I am referring
17 to.

18 THE COURT: Is this what you're handing up?

19 MR. LUCAS: That -- that is correct, Your
20 Honor.

21 THE COURT: Thank you.

22 MS. HUEY: And, Your Honor, if I may offer the
23 State's position as to how that be distinguished?

24 THE COURT: I'm sorry. What?

25 MS. HUEY: May I offer the State's position as

1 to how that can be distinguished?

2 THE COURT: Go ahead.

3 MS. HUEY: Brewer specifically talks about
4 other witness's statements that the interrogating
5 officer uses.

6 THE COURT: Right.

7 MS. HUEY: That's what they're saying he can't
8 get into, and we're conceding that. We've redacted
9 that.

10 THE COURT: Y'all have redacted all that?

11 MS. HUEY: Yes, sir.

12 THE COURT: Yeah. All right. *The State v.*
13 *Brewer* is 111 S.C. 44, 2015 Supreme Court case. The
14 Court's of the opinion that that case's statements
15 and confessions that were hearsay or double
16 hearsay or however you want to refer to it. And on
17 the hearsay within hearsay, I think Brewer said that
18 it had a right to confrontation.

19 In this case, it's been redacted. And those
20 statements are not being -- being played on the
21 video; therefore, I don't think Brewer applies. And
22 your motion is denied. Thank you very much. All
23 right.

24 MR. OVERBY: Your Honor ---

25 THE COURT: Are you ready to bring the jury?

1 MR. OVERBY: --- perhaps just if I may just
2 briefly convince Your Honor.

3 I think it's important to put on the record
4 exactly what the redactions are in reference to the
5 transcript, which is already in evidence. That's
6 how I've already -- that's how I've done it. I've
7 done an audio recording redaction, which will be
8 marked as Exhibit 2-A.

9 THE COURT: All right. Mr. Lucas, is there any
10 other redactions that you feel are necessary to
11 avoid the confrontation as to the hearsay and the
12 statements?

13 MR. LUCAS: I do not, Your Honor. Obviously,
14 our position is that it shouldn't come in at all,
15 but I have gone over it with the -- or I've gone
16 over it with Mr. Overby with their redactions, and
17 we've agreed upon the ones that we think are
18 necessary.

19 THE COURT: All right.

20 MR. OVERBY: If I could just put those -- can I
21 put those on the record?

22 MS. LUCAS: Yes.

23 THE COURT: Yes, sir.

24 MR. OVERBY: Page 7, line 17 through 21,
25 reference a potential prior bad acts or act thereof.

1 Page 10, line 25, and page 11, lines 1 through
2 10, reference a prior drug usage.

3 Page 12, line 22 through 24, "I don't know if
4 you were that doped up. You didn't know that you
5 went in there to rob that place."

6 Page 16, line 11 through 25. All of page 17.
7 Page 18, line 1 through 4. Page 20, line 23 through
8 25. Page 21, line 22 through 25. Page 23, line 24
9 and 25. And also page 22, lines 1 through 24. Page
10 24, lines 1 through 17. Page 25, lines 12 through
11 25. Page 26, lines 1 through 3. Page 28, line 13
12 through 28. Page 29, lines 1 through 21.

13 I actually included page 12, line 16 through
14 19. That was a hearsay statement as to one of the
15 witnesses who came into the store.

16 Page ten, lines 20 through 24. Page -- well,
17 23 and 24. We actually included portions of that,
18 and I have discussed that with Mr. Lucas already.

19 Page 20, line 4 through 8. And -- and that is
20 the extent of the redaction.

21 THE COURT: Okay. And you were reading from a
22 recorded interview of Darrell Eugene Blackwell, May
23 15, 2016, which was transcribed by Dianne
24 Marcengill, Circuit Court Reporter in Walhalla; is
25 that correct?

1 MR. OVERBY: That is correct, Your Honor.

2 THE COURT: I'm going to mark that
3 transcription that you just referred to as Court's
4 Exhibit -- I believe it would be Court's Exhibit No.
5 1.

6 MS. HUEY: And, Your Honor, as a matter of
7 housekeeping, Mr. Lucas and I discussed earlier the
8 date is actually incorrect. And I believe he's
9 willing to stipulate to a consent.

10 THE COURT: What date is incorrect?

11 MS. HUEY: It's listed as March or May I think
12 you said, but it's actually February 1, 2016.

13 MR. LUCAS: And we'll stipulate to that, Your
14 Honor.

15 THE COURT: All right. You want me to
16 handwrite it on the Court's exhibit?

17 MS. HUEY: Yes, sir. If you don't mind, or I
18 can do it, whichever.

19 THE COURT: Just as soon as she marks it,
20 I'll -- soon as she marks it, I'll put the correct
21 date on it.

22 (Court's Exhibit No. 1 was marked for
23 identification.)

24 THE COURT: Okay. Anything else before we
25 bring the jury in?

1 MR. LUCAS: Just to renew my objections from
2 earlier in the case, Your Honor.

3 We move that the statement not be admitted
4 because it was not freely and voluntarily given. I
5 just wanted to renew that objection before the jury
6 came in.

7 THE COURT: Well, why don't you wait and bring
8 that when they offer it? Okay.

9 MR. LUCAS: I'll be happy to do so.

10 THE COURT: Please do it then rather than now.
11 Okay? I think that's the appropriate time to do it.
12 Anything else?

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

14 THE COURT: All right. Bring us the jury,
15 please.

16 THE BAILIFF: (Complying.)

17 (At 11:52 a.m., jury entered the courtroom.)

18 THE COURT: Solicitor?

19 MS. HUEY: Your Honor, at this time the State
20 seeks to introduce 2-A into evidence and publish to
21 the jury.

22 THE COURT: That is the audio recording; is
23 that correct?

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

25 THE COURT: All right. Does the defense have

1 an objection they want me to hear on that?

2 MR. LUCAS: Yes, Your Honor. Defense's
3 objection is based upon the fact that it's a
4 violation of Mr. Blackwell's Sixth Amendment
5 confrontation clause rights, that all statements by
6 Investigator Garrett are inadmissible hearsay.

7 And, lastly, that the statement was not freely
8 and voluntarily given. I would incorporate all
9 prior argument into that objection.

10 THE COURT: All right. As the Court ruled in
11 two in camera hearings, that motion is denied.
12 Thank you very much.

13 MR. LUCAS: It's overruled, Your Honor?

14 THE COURT: Pardon?

15 MR. LUCAS: It's overruled?

16 THE COURT: All of them that you mentioned.

17 MR. LUCAS: Thank you, Your Honor.

18 THE COURT: Thank you.

19 MS. HUEY: Thank you, Judge.

20 (State's Exhibit No. 2-A was received into
21 evidence.)

22 (Playing the audio.)

23 BY MS. HUEY:

24 Q. So, Investigator Hill, is that the statement as
25 you remember it?

1 A. Yes, ma'am.

2 Q. Okay. And, again, you were present for the
3 entire interview?

4 A. I was.

5 Q. And I think sometimes we can hear -- is that
6 your voice we hear on the recording just a few
7 times?

8 A. Yes, ma'am. The third voice you hear is me.

9 Q. Now toward the end of the interview, is
10 Investigator Garrett able to pull up the video?

11 A. He was.

12 Q. Okay. And so is that what's going on toward
13 the end?

14 A. Yes, ma'am.

15 Q. You can't see that, but...

16 A. Yeah, we were watching it.

17 Q. Okay. But Mr. Blackwell was shown the video?

18 A. Yes, ma'am.

19 Q. Okay. And so during the course of that, did he
20 acknowledge that was him?

21 A. He did.

22 Q. And did he acknowledge going in that day?

23 A. He did.

24 Q. At the Shop Rite on 714 Sayre Street in
25 Anderson County?

1 A. Yes, ma'am.

2 Q. The other thing -- Investigator Hill, I'm also
3 going to show you what's been marked as State's 22.
4 Can you take a look at that?

5 A. Yes, ma'am.

6 Q. Are you able to recognize the person in that
7 photo?

8 A. I am.

9 Q. Okay. And who is the person in that photo?

10 A. It's Mr. Blackwell. The person we spoke with
11 in that recording.

12 Q. Okay. And that is the same person you spoke
13 with on February 1st of 2016?

14 A. It is. Yes, ma'am.

15 MS. HUEY: And at this time, Your Honor, we'd
16 admit State's 22 into evidence.

17 THE COURT: Any objection?

18 MR. LUCAS: None, Your Honor.

19 THE COURT: All right. Twenty-two admitted
20 without objection.

21 (State's Exhibit No. 22 was received into
22 evidence.)

23 BY MS. HUEY:

24 Q. So this is Darrell Blackwell. And, again, I
25 believe you acknowledge that Mr. Blackwell is also

1 in the courtroom today; is that correct?

2 A. He is.

3 Q. And where is he seated?

4 A. Right there (indicating).

5 Q. Okay. And at the defense table; is that
6 correct?

7 A. Yes, ma'am.

8 MS. HUEY: That's all I have at this time,
9 Judge.

10 THE COURT: Cross-examination?

11 MR. LUCAS: Yes, Your Honor.

12 CROSS-EXAMINATION

13 BY MR. LUCAS:

14 Q. Detective Hill, Mr. Blackwell was originally
15 charged with grand larceny to its value 2,000 to
16 \$10,000, correct?

17 A. I'm not sure about that.

18 MS. HUEY: Objection.

19 THE COURT: What's the legal objection?

20 MS. HUEY: Relevance, Your Honor.

21 MR. LUCAS: It's within the scope of direct,
22 Your Honor.

23 THE COURT: Go ahead. I'll overrule.

24 BY MR. LUCAS:

25 Q. And he was originally accused of stealing \$1600

1 in cash?

2 A. I don't know. It wasn't my case, so I don't
3 know all the details like that.

4 Q. \$500 in cigarettes?

5 A. I don't know.

6 Q. Cigarette coupons of \$600?

7 A. Again, I'm not sure.

8 Q. And a laptop?

9 A. I don't know.

10 Q. And in -- in the course of this interview, he
11 denied taking any laptop?

12 A. He did deny it. Yes, sir.

13 Q. And any cigarette coupons?

14 A. I don't remember him saying he took cigarette
15 coupons. No.

16 Q. And there's also reference to three other
17 people in the store, two clerks?

18 A. Yes, sir.

19 Q. And then one other woman inside the store?

20 A. Yes, sir.

21 Q. And those are Hare Krishna Patel?

22 A. I'm not sure of their names.

23 Q. Does Hare Krishna Patel sound correct?

24 A. I remember the last name Patel.

25 Q. And there was a second Patel?

1 A. Yes, sir. I believe so.

2 Q. Ashok Patel?

3 A. I just remember the last names. Again, I don't
4 know the first names.

5 Q. And do you know if both of those Patels still
6 live in Anderson County?

7 A. I do not.

8 MR. LUCAS: One moment, Your Honor.

9 (Counsel conferred briefly.)

10 BY MR. LUCAS:

11 Q. And the woman inside the store, was that
12 Mikayla Chambers?

13 A. I don't know.

14 Q. Any idea whether she still lives in Anderson
15 County, South Carolina?

16 A. I don't know.

17 MR. LUCAS: Okay. Thank you. Nothing further,
18 Your Honor.

19 THE COURT: Any redirect?

20 MS. HUEY: I don't have any further, Judge.

21 THE COURT: Thank you. You may step down.

22 Thank you very much.

23 THE WITNESS: Thank you.

24 (Witness excused.)

25 THE COURT: Call your next witness, please.

1 MS. HUEY: Your Honor, the State rests.

2 THE COURT: All right. Madam forelady and
3 ladies and gentlemen of the jury, it's 12:30 at this
4 time. And since the State has rested their case,
5 that means they're not going to offer any further
6 testimony at this time, and I have to take up
7 certain motions with the parties concerning the
8 case.

9 Therefore, what I'm going to do is send you to
10 lunch at this time, take up the motions, and we'll
11 continue when you get back from lunch. It's 12:30.
12 I assume the motion -- I'm not sure how long the
13 motion may take, but if you'll be back in the jury
14 room at 2:30, we'll continue at that time.

15 Please don't discuss the case amongst
16 yourselves. I'll see you at 2:30. When you come to
17 the courthouse, come straight to the court -- excuse
18 me -- come straight to the jury room. See you then
19 at 2:30.

20 (At 12:29 p.m., jury left the courtroom.)

21 THE COURT: Any motions from the State?

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

23 THE COURT: Any from the defendant?

24 MR. LUCAS: Just the motion for directed
25 verdict, Your Honor. The grounds being

1 insufficiency of the evidence, and then also
2 violation of my client's confrontation clause
3 rights, and then the admission of inadmissible
4 hearsay against being Detective Garrett, and also
5 renew all the other objections and motions.

6 THE COURT: All right. That motion is denied.

7 All right. Mr. Blackwell, if you would pull
8 that microphone up to you so I can hear you. You
9 said you wanted to talk to me earlier. I told you
10 at this opportunity I would give you a chance to do
11 that. Before I listen to whatever you want to tell
12 me, I'm going to explain your Constitutional right
13 to remain silent to you. Do you understand?

14 THE DEFENDANT: Yes.

15 THE COURT: Speak up so I can hear you.

16 THE DEFENDANT: Yes, sir.

17 THE COURT: All right. I'm going to ask you
18 some questions about your Fifth Amendment right to
19 remain silent. If you don't understand the
20 question, please tell me. If you want to discuss
21 any of the questions with your attorney before you
22 answer, please tell me and I'll give you an
23 opportunity. Do you understand?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: All right. Under the Constitution

1 of the United States as well as the South Carolina
2 Constitution, no person shall be compelled in any
3 criminal case to be a witness against themselves.
4 That means that you cannot be compelled or required
5 to testify in this particular case. It's a right
6 and a privilege to which the law is extended to you.
7 Do you understand?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: It's a personal privilege. It's
10 not your attorney's privilege. It's not my
11 privilege. This is your privilege and only you can
12 waive that right to testify or not testify. Do you
13 understand?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: You have the right to testify, and
16 you have the right not to testify. Do you
17 understand?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: I will give you the right to
20 consult with your attorney before you make a
21 decision on whether you want to testify. Have you
22 discussed it with your attorney prior to now?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Have you understood the
25 conversations that you've had with your attorney?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Do you understand if you decide not
3 to testify, your failure to testify cannot be used
4 by the State as any inference of guilt? And your
5 failure to testify cannot be considered by the jury,
6 and I will instruct the jury to that. Do you
7 understand?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Now, if you do decide to testify,
10 then you're assuming the role of a witness and you
11 will be required to answer the questions. Do you
12 understand?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: In other words, it's not like on
15 television where you can take the Fifth Amendment to
16 one question and you can answer the next question.
17 You either take the Fifth Amendment and not testify
18 or you take the witness stand and testify. Do you
19 understand that and answer the questions?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: You can answer the questions yes or
22 no, I don't understand, I don't remember, or you can
23 give any explanation you choose to the question. Do
24 you understand ---

25 THE DEFENDANT: Yes, sir.

1 THE COURT: --- if you decide to testify? Has
2 anybody forced you or threatened you to make you
3 testify?

4 THE DEFENDANT: No, sir.

5 THE COURT: Has anybody forced you or
6 threatened you or told you not to testify?

7 THE DEFENDANT: No, sir.

8 THE COURT: Have you understood all the
9 questions that I have asked you about your right to
10 testify?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Do you have any questions that you
13 would like to ask about your right to testify?

14 THE DEFENDANT: No, sir.

15 THE COURT: All right. Do you want to discuss
16 your decision to testify or not testify with your
17 attorney before you give me your answer?

18 THE DEFENDANT: Yeah.

19 THE COURT: You do not want to discuss it any
20 further with your attorney?

21 THE DEFENDANT: No. I would like to discuss it
22 with him one more time.

23 THE COURT: Pardon?

24 THE DEFENDANT: Yeah, I would like to talk to
25 him one more time.

1 THE COURT: All right. Do you want to testify?

2 MR. LUCAS: Your Honor, he's saying he would
3 like a brief minute to discuss it.

4 THE COURT: I'm sorry?

5 MR. LUCAS: He said he'd like a brief minute to
6 further discuss it.

7 THE COURT: Okay.

8 (Brief recess.)

9 THE COURT: All right. Mr. Lucas, before I ask
10 the question again from your client on whether he
11 wants to testify or not testify, do you want to ask
12 your client any questions concerning the right to
13 testify or not testify for the record before I -- he
14 makes his decision?

15 MR. LUCAS: I think you've covered it, Your
16 Honor.

17 THE COURT: Pardon?

18 MR. LUCAS: I think you've covered it
19 adequately, Your Honor.

20 THE COURT: Okay. All right. Mr. Blackwell,
21 do you want to testify or do you not want to
22 testify?

23 THE DEFENDANT: I do.

24 THE COURT: Pardon?

25 THE DEFENDANT: I do.

1 THE COURT: You do want to testify?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Okay. All right. That's fine.

4 Then we will adjourn. Before we adjourn, is there
5 anything from the State before we adjourn for lunch?

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

7 THE COURT: Anything from the defendant?

8 MR. LUCAS: No, Your Honor.

9 THE COURT: All right. Now, you made your
10 decision to testify and that's fine. Earlier you
11 said you wanted to talk to me or say something to me
12 about your attorney. I'll be glad to hear anything
13 you want to tell me. If you speak in the microphone
14 clearly so I can hear you, I'll be glad to hear
15 anything you want to tell me.

16 THE DEFENDANT: Yes, sir. I know my rights.
17 I'm supposed to get a just trial, but in this trial
18 I'm sitting here forced to have this attorney
19 because I asked -- I asked for a continuance to get
20 another attorney, but this attorney has lied to me
21 face to face over plea bargains. You get three
22 pleas. They told me three pleas. You get three
23 pleas.

24 After the third plea, there is no more. I went
25 to see Mr. Hadden or whatever his name. I can't

1 even think of his name, but he told me the third
2 plea, he said, "This is it. This is your third
3 offer, 15 years. If you do not take the 15 years,
4 this is it. You're going to trial. They're going
5 to find you guilty, and you're probably going to get
6 the maximum sentence." This is what he told me.

7 One week later, he tells me to come into the
8 office and offers me 15 years. He said, "This is
9 over. If you don't take this 15 years, you're going
10 to trial. You're going to be found guilty and
11 you're going to get the maximum." I don't see how
12 that is just.

13 THE COURT: You don't see how that is what?

14 THE DEFENDANT: I don't see that is fair and
15 just to me because he told me if I did not take the
16 15 years, if I listened to him and took his advice,
17 I would be in prison today. I wouldn't even be here
18 today by what he advised me. He said 15 years.
19 That was it. That was my final offer. There wasn't
20 going to be no more offers.

21 One week later, they called me in the office
22 and said there's been a change. The attorney was no
23 longer with the State, so we're offering you seven
24 years. What if I would've listened to him? I
25 wouldn't have listened to that seven years. You

1 know, I wouldn't be here today. I don't think I'm
2 being justified by him being my lawyer.

3 THE COURT: All right. Well, I ---

4 THE DEFENDANT: He lied to me. He threatened
5 me. He coerced me and told me 15 years. If I did
6 not take the 15 years, that was it. There would be
7 no more offers. So that's a lie to me when he calls
8 me the next week. I didn't know this happened.
9 When my daughter, that right there, she's a witness
10 to tell you that he did this. I don't understand
11 how can it be just when my own attorney lied to me
12 and now I'm depending on him to defend me.

13 THE COURT: Well, you're telling me that you
14 want -- what's your question?

15 THE DEFENDANT: I'm just saying, how can it be
16 just and fair, my trial?

17 THE COURT: You think what?

18 THE DEFENDANT: How can it be just and fair if
19 I'm forced to take him and use him as my attorney
20 and he's already lied to me? If I would have
21 listened to him, I would be in prison today for
22 15 years because that was his advice. No more
23 pleas. No more bargains. Nothing else. That's all
24 you get, 15 years. The next week, he called me and
25 offered me seven years. How can he change?

1 THE COURT: Well, Mr. Blackwell, the only thing
2 I can tell you, I don't know what transpired between
3 your attorney and the Solicitor's Office, but I can
4 tell you this. In my experience, that could change
5 on a daily basis. Okay. In other words, the State
6 may offer one thing and your client negotiates.
7 It's a very fluctuating thing.

8 THE DEFENDANT: Your Honor ---

9 THE COURT: I did not interrupt you.

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Okay. Don't interrupt me. If you
12 don't want me to explain it to you, that's fine.

13 THE DEFENDANT: I'm sorry.

14 THE COURT: If you want me to listen to you,
15 that's fine.

16 THE DEFENDANT: Yes, sir.

17 THE COURT: I'm trying to explain it to you.
18 I'm not saying you have to agree with it.

19 THE DEFENDANT: Yes, sir.

20 THE COURT: But what happens throughout the
21 process of negotiations is that changes. I don't
22 know what negotiations were. Okay. Now, the only
23 thing I can tell you under the law, if your jury
24 does convict you, the minimum I can give you is 10
25 years. The maximum I believe is 30 years; is that

1 correct, Solicitor?

2 MS. HUEY: Yes, sir.

3 THE COURT: So it's 10 to 30. I cannot give
4 you anything less than ten years under the law.
5 Okay. Now, what's transpired prior to today, I
6 don't know. The only thing I can tell you is your
7 attorney was trying to get you to take some type of
8 offer. I don't know. But that's irrespective and
9 irrelevant as to what's taking place during this
10 trial.

11 Quite frankly, I think your attorney has done a
12 very good job on your behalf with you showing up on
13 video at the store. Okay. Now, I'm not sure what
14 you're asking the Court to do, but I'll be glad to
15 answer any questions that you may have.

16 THE DEFENDANT: I wouldn't -- I did not -- I
17 mean, like I said, he told me 15 years. That was
18 it. And I thought, you know, that's his word. Your
19 word is bond, the truth. I didn't have no other
20 choice. That's why I turned it down. You know,
21 fifteen years, I can't -- I can't agree with that.

22 THE COURT: Well, that's fine. You have the
23 right to turn it down. That's your prerogative.

24 THE DEFENDANT: Then he came back the next week
25 and offered me seven. You know, it threw me through

1 a loop. All he was telling me, if I would've
2 listened to him and took the 15 years, then I would
3 not be here today. You know what I'm saying? I'm
4 sorry.

5 THE COURT: I don't know if the seven years was
6 offered or not. I don't know. All I know is you're
7 here at trial, and the jury is going to make a
8 decision. Okay.

9 Do you have any -- any other objections that
10 you want to address the Court? As far as the
11 continuance, that was the Court's decision. I
12 denied your attorney's motion for that. Okay?

13 Mr. Lucas, anything you'd like to put on the
14 record?

15 MR. LUCAS: Yes, Your Honor. I just put on the
16 record that every plea offer I've received, I've
17 relayed it to Mr. Blackwell in writing. And that
18 each time I received an offer, of which we did, in
19 fact, get three while I was representing him, each
20 time I wrote him, brought him into my office to
21 discuss it, and he declined each offer.

22 THE COURT: Well, did the State offer seven
23 years?

24 MR. LUCAS: Your Honor, the State ---

25 THE COURT: It would have to be strong arm

1 robbery for seven years.

2 MR. LUCAS: That's correct. So the State made
3 four offers. Before I represented Mr. Blackwell,
4 they offered 15 years, armed robbery.

5 After I represented him, it was ten years,
6 armed robbery.

7 Then 15 years for common law robbery, which
8 actually requires less than eight months.

9 And then last, seven years for common law
10 robbery.

11 THE COURT: And your client rejected that?

12 MR. LUCAS: He rejected each one, Your Honor.

13 THE COURT: Okay.

14 MR. LUCAS: And that was against my advice.

15 THE COURT: Okay. Anything else before we
16 break for lunch?

17 MR. LUCAS: Nothing from the defense, Your
18 Honor.

19 THE COURT: All right. We'll recess until
20 2:30.

21 MS. HUEY: Yes, sir.

22 MR. OVERBY: Thank you, Your Honor.

23 (12:44 to 2:39 p.m., lunch recess.)

24 THE COURT: Anything from the State before we
25 bring the jury in?

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

2 THE COURT: Anything from the defendant?

3 MR. LUCAS: Yes, Your Honor. Mr. Blackwell has
4 changed his mind about testifying. He tells me that
5 he now does not wish to testify.

6 THE COURT: He's decided not to testify?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Mr. Blackwell; is that correct?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: All right. Has anybody put any
11 pressure on you or promised you anything ---

12 THE DEFENDANT: No.

13 THE COURT: --- to make you change your mind?

14 THE DEFENDANT: No.

15 THE COURT: Pardon?

16 THE DEFENDANT: I did not -- I didn't
17 understand you.

18 THE COURT: Has anybody put any pressure on you
19 to make you change your mind about testifying?

20 THE DEFENDANT: No.

21 THE COURT: Do you understand your right to
22 testify?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Understand that you do have a right
25 to testify if you so choose?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Okay. All right. Do you have any
3 requested charge from the defendant?

4 MR. LUCAS: I do, Your Honor.

5 THE COURT: Pardon?

6 MR. LUCAS: Just -- just one, Your Honor.

7 THE COURT: Does the State have any?

8 MR. LUCAS: Permission to approach, Your Honor.

9 THE COURT: All right. Everyone bring the
10 requested charge up here.

11 MS. HUEY: Potential voluntary intoxication is
12 not a defense.

13 THE COURT: Well, come on up here and we can
14 have a private talk rather than putting it on the
15 record.

16 (Sidebar discussion.)

17 MS. HUEY: Judge, the State is ready to
18 proceed.

19 THE COURT: Is the defense ready?

20 MR. LUCAS: We are ready, Your Honor.

21 THE COURT: Bring the jury, please, sir.

22 THE BAILIFF: (Complying.)

23 (At 3:08 p.m., jury entered the courtroom.)

24 THE COURT: Mr. Lucas, while the jury is coming
25 in, you renew your motions that you made at the end

1 of the State's case; is that correct?

2 MR. LUCAS: I am renewing it, Your Honor. I'd
3 love to make it in more details once the jury comes
4 back.

5 THE COURT: That motion is denied. Okay?

6 MR. LUCAS: Thank you, Your Honor.

7 THE COURT: I'll take into consideration with
8 everything you said previously. Okay?

9 MR. LUCAS: Thank you, Your Honor.

10 THE COURT: Solicitor?

11 MS. HUEY: Your Honor, we rest.

12 THE COURT: Pardon? State rests?

13 MS. HUEY: Yes, sir. The State rests.

14 THE COURT: All right. Is the defense going to
15 offer any testimony?

16 MR. LUCAS: No, Your Honor. The defense would
17 rest, as well.

18 THE COURT: Okay. Ladies and gentlemen, the
19 only thing left of the trial will be the closing
20 arguments by the attorneys and the charge on the
21 law, and we'll proceed with the closing arguments at
22 this time.

23 MR. LUCAS: Your Honor, if I may, I would like
24 to make my directed verdict motion.

25 THE COURT: You'd like to make what?

1 MR. LUCAS: I'd like to make the directed
2 verdict motion in more detail to accurately preserve
3 the record.

4 THE COURT: Okay. Are you making it at this
5 time?

6 MR. LUCAS: I'd like to, Your Honor.

7 THE COURT: Well, go ahead and make it. I said
8 do you have anything you want to add that you didn't
9 make at the end of the State's case.

10 MR. LUCAS: I -- I do, Your Honor.

11 THE COURT: You got another portion?

12 MR. LUCAS: It'll take two to three minutes,
13 Your Honor.

14 THE COURT: All right. Madam forelady and
15 ladies and gentlemen of the jury, go to the jury
16 room, please.

17 (At 3:10 p.m., jury left the courtroom.)

18 THE COURT: Let me hear you on your motion.

19 MR. LUCAS: Thank you, Your Honor. The defense
20 is renewing the directed verdict motion on the basis
21 of insufficiency of the evidence, specifically that
22 the State has not been able to prove beyond a
23 reasonable doubt that the defendant was armed.

24 The armed robbery statute, which is S.C. Code
25 Section 16-11-330, requires the State to prove that

1 during the commission of a robbery, the defendant
2 was either armed with a pistol, knife, slingshot,
3 metal knuckles, or other deadly weapon or that while
4 alleging either by action or words, the defendant
5 was, one, armed while using a representation of a
6 deadly weapon or, two, any other object which a
7 person present during the commission of the robbery
8 believed to be a deadly weapon.

9 The key part of that is a person present during
10 the commission of the robbery reasonably believed.
11 So, Your Honor, we believe the State has not proved
12 beyond a reasonable doubt that the defendant had a
13 gun. No gun has been recovered. There was no
14 indication that a real gun was used during the
15 commission of the crime.

16 The defendant only stated that he had a toy
17 gun, which he alleged was a cap gun. A knife is not
18 clearly shown on the video. So our position is they
19 have not proven the existence of a weapon and have
20 not met that portion of the statute, and by
21 definition cannot meet the second part about a
22 representation because that part requires a person
23 present during the commission of the robbery
24 reasonably believed it to be a deadly weapon.

25 The State has not called anybody present during

1 the robbery to testify to that and by definition
2 cannot be that. That's the basis for the motion,
3 Your Honor.

4 THE COURT: Solicitor?

5 MS. HUEY: Your Honor, the entire incident is
6 on video. Rhonda Phillips testified that she was
7 the first responding officer to a robbery in
8 progress.

9 Once she arrived, forensics was called out.
10 Greg Holbrooks collected the video. And on the
11 video, you can clearly see the clerk jump back when
12 the defendant enters the store and tries to get over
13 the counter with a knife in one hand and a gun in
14 the other.

15 The knife is clearly visible from a still
16 that's been admitted into evidence. So that in and
17 of itself is a deadly weapon to satisfy the first
18 part of the statute. And we also believe the fact
19 that the clerk jumped back, in addition to the
20 defendant admitting to having a toy gun, that is
21 enough to establish the second part of the statute,
22 as well. There are two deadly weapons involved
23 here.

24 THE COURT: As far as the pistol is concerned,
25 what's your opinion on the fact the statute says the

1 person present.

2 MS. HUEY: A person present, which is shown on
3 the video. I don't think it says a person has to
4 testify to that. We test -- I mean, we try cases
5 all the time without victims, Your Honor. And in
6 this case, we actually have a video of the incident
7 which usually quite rare.

8 THE COURT: Thank you very much. Anything in
9 brief rebuttal?

10 MR. LUCAS: Just briefly, Your Honor. This --
11 the standard is proof beyond a reasonable doubt.
12 Any number of reasons why somebody could jump back.
13 That alone is not sufficient to prove that that
14 person actually reasonably believed that
15 Mr. Blackwell ---

16 THE COURT: Well, that's as to the pistol, but
17 the still video or the still picture from the camera
18 very clearly shows a blade -- a knife blade. That
19 in itself meets the criteria for you to get to a toy
20 pistol, whether it's a toy pistol or not or whether
21 anyone was present.

22 And I'm of the opinion it would probably affect
23 the charge itself, not -- granted not -- the remedy
24 is not to give you a directed verdict. Okay?

25 MR. LUCAS: Thank you, Your Honor.

1 THE COURT: That motion is denied.

2 All right. Anything else before we bring the
3 jury for closing arguments? I assume you're going
4 first; they go last.

5 MS. HUEY: I believe so, Judge.

6 THE COURT: Is that correct?

7 MR. LUCAS: That -- that's correct, Your Honor.

8 THE COURT: Anything else before we bring the
9 jury in?

10 MR. LUCAS: Nothing from the defense.

11 THE COURT: All right. Bring us the jury
12 please, sir.

13 THE BAILIFF: (Complying.)

14 (At 3:15 p.m., jury entered the courtroom.)

15 THE COURT: Solicitor?

16 MS. HUEY: May it please the Court?

17 THE COURT: Yes, ma'am.

18 MS. HUEY: You all may have heard the phrase,
19 "Things aren't always as they seem." But you know
20 what? Sometimes they are. And that's what we have
21 in this case.

22 The defendant, Darrell Blackwell, entered the
23 Shop Rite store at 714 Sayre Street in Anderson
24 County on January 9th of 2016. He had a gun in one
25 hand and a knife in the other. Entered the store.

1 Tried to hop up on the counter. When that didn't
2 work, he then went around the counter and proceeded
3 to take money and other items behind the counter.
4 Money from the register and other items --
5 cigarettes, a box. And then he walked out of the
6 store. The entire thing is literally on video.

7 In addition to that, these images, these
8 videos, stills were released to the public. You had
9 witnesses on scene saying that he left in a white
10 van. When the images were released to the public,
11 tips came in pointing law enforcement in the
12 direction of Darrell Blackwell.

13 Tips came in. Including a tip from the
14 defendant's own brother, Steve Blackwell, who had
15 come and testified today rather, that, yes, he
16 recognized him as his brother. And as a result, he
17 called the police himself.

18 Consent to search was done at mom's house.
19 What did law enforcement find at mom's house? Camo
20 pants, a white bandanna matching what the robber was
21 wearing during the incident with a rip in the
22 pock -- the pants no less.

23 Then search warrants were executed at mom's
24 house later, as well as the defendant's house. We
25 see the white van, which you will have a picture of.

1 White van registered to Darrell Blackwell. Again,
2 matching the description of the vehicle that left
3 the Shop Rite on January 9, 2016, after the robbery.

4 You also have as a result of the search warrant
5 a brown Carhartt hat. The actual hat is in
6 evidence, as well. Now that's important to note
7 from the video because a brown Carhartt-type hat is
8 being worn by the robber. And that is collected at
9 the defendant's residence. You have all that.

10 Then you have law enforcement speaking with
11 Darrell Blackwell himself. And what does he say in
12 his own words freely and voluntarily? "Yes, I had a
13 gun. Yes, I was there." There's no question he was
14 there. He says it himself. His memory gets a
15 little hazy regarding what he actually did when he
16 was there, but luckily we have the video to fill in
17 those gaps.

18 I'm going to show the video to you again. This
19 is the portion of the video where the defendant is
20 entering the store.

21 (Playing the video.)

22 MS. HUEY: In that video, you can clearly see
23 the defendant walk in. And at various parts in that
24 video, you can see a gun in one hand and a knife in
25 the other. You see the clerk jump back because

1 what? He has seen a knife and a gun, and he's
2 getting out of the way. And he lets Darrell
3 Blackwell do what he wants, take that money and get
4 out of here. And that's exactly what Darrell
5 Blackwell does.

6 The defendant is charged with armed robbery.
7 That's the only charge before you today. There's no
8 dollar amount associated with armed robbery. He
9 could've taken one pack of cigarettes. He could've
10 taken \$1 while he was armed. That, of course, he
11 took much more than that, but it doesn't matter.
12 There's no dollar value. It doesn't even have to be
13 money. It can be other items. That's what he's
14 charged with.

15 Additionally, the robbery, which you can
16 clearly see, has to be with a deadly weapon. In
17 this case, we have two weapons. We have the knife,
18 which, again, you can clearly see, and there's an
19 actual still that shows the knife blade. This isn't
20 some little pocketknife. This is a substantial
21 knife. That constitutes a deadly weapon that the
22 judge will charge you on later.

23 In addition to that, and by the defendant's own
24 admission, he has a gun. Now he says it's a cap
25 gun. We don't know. We don't have the gun, but

1 what you'll also hear the judge charge is that the
2 reason -- if a reasonable person believed that to be
3 a gun, then that counts as a deadly weapon. The
4 clerk doesn't know that's a cap gun, but he sees a
5 knife and what looks like a gun, and he hops back
6 and gets out of the way. That's because an armed
7 robbery is being committed in that store.

8 Now, the defense opened their case on the
9 defendant's fundamental rights to a jury trial, and
10 that is absolutely the case. And that's why we're
11 all here. You've been chosen. I'm here presenting
12 evidence. We've had various witnesses. And, of
13 course, the defendant is present. That is a
14 fundamental right. And it is my burden to prove to
15 you beyond a reasonable doubt that the defendant is,
16 in fact, guilty of this armed robbery.

17 But sometimes things are really what they
18 appear to be. You take your common sense back with
19 you in that jury room. It's clearly on video. This
20 isn't a kind of case where I have to stand up in
21 front of you and say -- because I've had other cases
22 where the face is covered or they're wearing a mask,
23 and I have to show you all that I think it's this
24 person. We know it's Darrell Blackwell. He admits
25 to being there. He admits to carrying a gun, albeit

1 a cap gun.

2 I also usually have to spend a lot of time
3 talking about beyond a reasonable doubt because
4 that's the burden I have, which is a very high
5 burden. I also say, and the judge will charge you,
6 that that means not beyond every doubt though
7 because there are few things in life we know with
8 absolute certainty.

9 But you know what we know with absolute
10 certainty in this case? Darrell Blackwell committed
11 that armed robbery. And please don't mistake my
12 brevity for a lack of seriousness. This is an
13 important case. It's an important case to Darrell
14 Blackwell certainly, and it's an important case to
15 the State, but sometimes things really are what they
16 appear to be. And we are lucky enough to have it on
17 video and have it corroborated. Find the defendant
18 guilty of armed robbery. Thank you.

19 MR. LUCAS: May it please the Court?

20 THE COURT: Yes, sir.

21 MR. LUCAS: Thank you. Ladies and gentlemen,
22 thank y'all for being here these two days. I know
23 it's an inconvenience. I know that we all
24 appreciate you taking time out of your lives to be
25 here.

1 The issue in this case is real simple. Was
2 Darrell Blackwell armed when he went into the store?
3 You've heard the Solicitor tell you that sometimes
4 things are what they appear, but I've got some
5 questions about what we heard these last two days
6 and maybe things are what they appear and maybe
7 they're not.

8 But what I do know is that the people who were
9 best positioned, the people who were in that store
10 are not here today. Right at the beginning of this
11 case, you heard that there were two clerks in the
12 store, the Patel brothers.

13 And then two other people, Mikayla Chambers and
14 a Mr. Witcher. They were all at the store, which is
15 here in Anderson County. They could've been called
16 in to testify, to tell you what happened in there,
17 whether they thought that Mr. Blackwell had a weapon
18 or whether they didn't. The State didn't call them.

19 And that -- that raises a question for me.
20 What do they not want you to hear? What do the
21 Patel brothers have to say? What does Mr. Witcher
22 have to say? What does Mikayla Chambers have to say
23 that they don't want you to hear?

24 I also wonder the same about the lead
25 investigator. We've heard about Detective Garrett.

1 He's apparently in Washington State now, no longer
2 employed by the Anderson County Sheriff's Office,
3 but it's not that hard to bring somebody back to
4 testify.

5 And Detective Garrett, he's a plane ticket
6 away. Well, they have all the resources of the
7 Government available to them. They didn't choose to
8 bring him. And why didn't they bring him? Because
9 there's something we could've cross-examined him
10 about that they don't want you to hear.

11 Now, the statute is real clear about what the
12 State has to prove to convict Mr. Blackwell of armed
13 robbery, and the judge is going to instruct you on
14 that here in a few minutes. They have to prove, and
15 they have to prove this beyond a reasonable doubt,
16 which is the highest standard that we have. So it's
17 not "we think" or "it might be." You have to be
18 very certain of it. You have to be firmly convinced
19 they have met their burden of proof.

20 They have to prove that either Mr. Blackwell --
21 and I'm reading from the statute -- was armed with a
22 pistol, a dirk, a slingshot, metal knuckles -- metal
23 knuckles, a razor, or another deadly weapon. So
24 either that he actually had a weapon or, secondly,
25 that he alleged, either by actions or by words, that

1 he was armed while using a representation of a
2 deadly weapon or any object which a person present
3 during the commission of the robbery reasonably
4 believed to be a deadly weapon.

5 Now, the State has argued that the clerk
6 jumping back, that that means that he reasonably
7 believed that Mr. Blackwell had a deadly weapon.
8 Well, what happened right before that? He crawled
9 over the counter. And if I -- if Mr. Blackwell
10 crawled over the counter at someone, I can assure
11 you what a reasonable response is, to step back from
12 someone. And I submit to you that if the State
13 wants to argue that a person reasonably believed
14 something and the statute says a person present
15 during the commission of the robbery, they need to
16 bring that person or those persons in here to court
17 to testify about it, and that didn't happen.

18 Now, you heard Mr. Blackwell's statement, and
19 he was not trying to hide the ball. He talked to
20 investigators. He didn't have to. He could've
21 invoked his right to counsel or his right to remain
22 silent, but instead of doing that, he said, "Yeah.
23 I'll talk to you." And he told investigators that
24 he was there. He disagreed with what was taken.
25 They were asking him and initially charged him with

1 taking \$2500, a laptop, and \$650 worth of
2 cigarettes. He said that didn't happen. It appears
3 the State doesn't think that that happened either
4 because they're not proceeding on it.

5 But what he did say and what he told
6 Investigator Garrett was that it was not a real gun.
7 It was a cap gun. And we've not seen anything over
8 the course of these two days to prove that it was a
9 real gun. There's no gun ever recovered from
10 Mr. Blackwell's house or his mother's house. You
11 heard Investigator Holbrooks testify that there was
12 no indication that a gun was actually used during
13 the commission of a crime.

14 So what the State is asking you to do is to
15 speculate, to speculate that what Mr. Blackwell
16 tells you is a cap gun, if that's a real gun. Well,
17 I submit to you that speculation is not proof beyond
18 a reasonable doubt.

19 And so if it's not actual -- he doesn't
20 actually have a gun, then does he have a knife?
21 Well, look at the video. Look at the video and
22 decide for yourselves, but I would tell you that the
23 way the law is written, he either has to actually
24 have a deadly weapon. Or if he doesn't, then a
25 person has to be present who reasonably believed

1 that he did. Well, there was no one present brought
2 into court to testify to that. You didn't hear from
3 them. They were not brought in.

4 So, ladies and gentlemen, I would ask you to
5 find Mr. Blackwell not guilty because he was not
6 armed when this occurred. And the State has --
7 their burden of proof is very high on that. It's
8 beyond a reasonable doubt. And they have to present
9 evidence that suggests only one logical conclusion
10 and they've not done that. Find him not guilty.
11 Thank you.

12 THE COURT: All right. Madam forelady and
13 ladies and gentlemen of the jury, I want to give you
14 a copy of these instructions in written form. And
15 during your deliberations, you may refer to the
16 instructions to guide your decision making. You
17 must consider the instructions as a whole and not on
18 some or others. And, madam forelady, after you
19 finish reaching your verdict, please return the
20 charge form back to the Court, please.

21 Under our Constitution and code of laws, only
22 you, the jury, can make findings of fact in this
23 case. I am not permitted to indicate to you how I
24 may feel about the testimony and evidence, which has
25 been presented. Throughout this trial, it has been

1 my intention to be fair and impartial toward each of
2 the parties involved.

3 Necessarily, you must determine the credibility
4 of the witnesses who have testified in this case.
5 Credibility means believability. It is your duty as
6 jurors to analyze and to evaluate the evidence and
7 determine which evidence convinces you it of its
8 truth.

9 As you decide whether or not to believe a
10 witness's testimony about a particular matter, you
11 may consider the following:

12 The manner and appearance of the witness while
13 on the witness stand. Was he or she straightforward
14 or hesitant in answering?

15 The testimony of the witness. Was it
16 consistent or inconsistent?

17 How the witness came to know the facts that he
18 or she testified to. Was the witness present during
19 the incident or did the witness happen on the scene
20 after the incident occurred?

21 The reason the witness would want to give
22 testimony, which could help or hurt one side or the
23 other. Has the witness exhibited to you any
24 interest, bias, prejudice, or other motive in the
25 case? Thus, you may consider whether a particular

1 witness may gain some other reward, payment,
2 personal advantage, or vindication through his or
3 her testimony.

4 The strength of the testimony of the witness.
5 Was the testimony of the witness strengthened or
6 weakened by other testimony or evidence?

7 The duration and length of time between the
8 incident and when they reported the incident. Would
9 the duration and length of time weaken or strengthen
10 the testimony?

11 All prior statements. Were prior statements
12 made by the witness consistent or inconsistent?

13 In determining the believability of the
14 witnesses who have testified, you may believe one
15 witness over several or several witnesses over one.
16 You may believe a part of the testimony of a witness
17 and reject the remaining part of the same witness.
18 You may believe the testimony of a witness in its
19 entirety or reject the testimony of a witness in its
20 entirety.

21 Of course, you do not determine the truth by
22 counting the number of witnesses who testified.

23 I instruct you and emphasize that the fact that
24 the defendant did not testify is not a factor to be
25 considered by you in any way in your deliberations

1 and in your consideration on the question of the
2 guilt or the innocence of the defendant. It must
3 not be considered by you in any manner whatsoever.
4 A defendant has the Constitutional right to remain
5 silent, and the assertion of this right must not be
6 considered by you in your deliberations. I repeat,
7 under your oath, you are to draw no conclusion
8 whatsoever from the fact that the defendant in this
9 case did not testify. The fact that this defendant
10 did not testify should not even be discussed in the
11 jury room. The burden of proof, as I have stated to
12 you, is on the State. The defendant is not required
13 to prove his innocence. The burden of proof remains
14 with the State to prove guilt beyond a reasonable
15 doubt.

16 As finders of the facts, this does not mean you
17 are limited to fabricated facts. You must determine
18 the facts based on the evidence you hear in the
19 courtroom alone. You may not draw conclusions from
20 facts that do not exist or are not supported by any
21 evidence at all. You may, however, draw reasonable
22 conclusions from facts you find are supported by
23 evidence presented in the courtroom.

24 The same constitutional laws, which designate
25 and make you the finders of the fact, make me the

1 sole instructor of the law. It is my duty to charge
2 you the law applicable to this case, and it is your
3 duty as jurors to accept and apply the law as I now
4 state it to you. The lawyers are not the
5 instructors of the law. You must accept the law and
6 apply the law exactly as I state it to you. You
7 must not base your decisionmaking on your idea of
8 what the law is or what you think the law should be.

9 The defendant has pled not guilty to these
10 indictments -- this indictment which places the
11 burden on the State to prove the defendant guilty.
12 A person charged with committing a criminal offense
13 in South Carolina is never required to prove himself
14 innocent.

15 I charge you that it is a vital, important rule
16 of law that the defendant in a criminal trial, no
17 matter what the seriousness of the charge may be,
18 must always be presumed to be innocent until his
19 guilt has been proven beyond a reasonable doubt.
20 This presumption of innocence remains with the
21 defendant at all times, from the moment he appears
22 in this court, throughout the trial, and until you
23 the jury reach a verdict of guilt beyond a
24 reasonable doubt based on the testimony and evidence
25 presented.

1 The presumption of innocence is a substantial
2 right to which every defendant is entitled, unless
3 and until you reach a verdict of guilty beyond a
4 reasonable doubt. If you the jury do not find the
5 defendant guilty beyond a reasonable doubt, it is
6 your duty to acquit the defendant.

7 Now, what is a reasonable doubt? A reasonable
8 doubt is kind of the doubt that would cause a
9 reasonable person to hesitate to act. The State has
10 the burden of proving the defendant guilty beyond a
11 reasonable doubt. Some of you may have served as
12 jurors in civil cases, where you were told that it
13 is only necessary to prove that a fact is more
14 likely true than not true, such as by the greater
15 weight or preponderance of the evidence. In
16 criminal cases, the State's burden is more and must
17 be proven more powerful than that and it must be
18 proof beyond a reasonable doubt.

19 Proof beyond a reasonable doubt is proof that
20 leaves you firmly convinced of the defendant's
21 guilt. There are very few things in this world that
22 we know with absolute certainty. And in criminal
23 cases, the law does not require proof that overcomes
24 every possible doubt. If, based on your
25 consideration of evidence, you are firmly convinced

1 that the defendant is guilty of the crime charged,
2 you must find the defendant guilty. On the other
3 hand, you find there is a real possibility the
4 defendant is not guilty, you must give him the
5 benefit of the doubt and find him not guilty. The
6 evidence or lack of evidence from which you are to
7 determine the facts includes the following:

8 The sworn testimony of the witnesses, both on
9 direct and cross-examination, regardless of which
10 side called the witness.

11 The exhibits that have been received into
12 evidence by the Court.

13 And any facts which have been agreed to or
14 stipulated.

15 Arguments and statements made by the lawyers
16 are not evidence. The lawyers are not witnesses.
17 Their opening statement, closing arguments, and
18 other statements are intended to help you interpret
19 the evidence but are not evidence. If the facts, as
20 you remember them, differ from the lawyers
21 statements, you memory controls.

22 Questions and objections by the lawyers are not
23 evidence. Lawyers have a duty to their client to
24 make -- excuse me -- to make objections when they
25 believe a question is improper under the rules of

1 evidence. You should not allow any objections or
2 the Court's ruling on the objections to influence
3 you.

4 Testimony that has been stricken, or that you
5 have been instructed to disregard.

6 Anything you may have seen on television, read
7 in the newspaper or on the internet, or heard from
8 others when court is not in session is not evidence.
9 You should base your decision solely on the sworn
10 testimony of witnesses, exhibits received into
11 evidence by the Court, and any facts agreed to.

12 The fact the defendant was arrested, charged,
13 and indicted in this case is not evidence and cannot
14 be considered as evidence of guilt, nor does it
15 create a presumption or inference of guilt. The
16 indictment is simply the formal written instrument
17 which contains the charges made against the
18 defendant.

19 There are two types of evidence which are
20 generally presented during a trial -- circumstantial
21 evidence and direct evidence. Direct evidence
22 directly proves the existence of a fact and does not
23 require deduction. Circumstantial evidence is proof
24 of chain of facts and circumstances indicating the
25 existence of a fact.

1 Crimes may be proven by circumstantial
2 evidence. The law makes no distinction between the
3 weight or value to be given to either direct or
4 circumstantial evidence. However, to the extent the
5 State relies on circumstantial evidence, all of the
6 circumstances must be consistent with each other,
7 and when taken together, point conclusively to the
8 guilt of the accused beyond a reasonable doubt. If
9 these circumstances merely portray the defendant's
10 behavior as suspicious, the proof has failed.

11 The State has the burden of proving the
12 defendant guilty beyond a reasonable doubt. This
13 burden rests with the State regardless of whether
14 the defendant -- the State relies on direct or
15 circumstantial evidence.

16 In determining the guilt or innocence of the
17 defendant, you cannot consider any possible penalty
18 for any particular crime. The punishment for the
19 crime is a matter for me to determine and should
20 never be considered by you in any way whatsoever in
21 arriving at an impartial verdict as to the guilt or
22 innocence of the defendant.

23 A statement alleged to have been made by the
24 defendant has been admitted into evidence in this
25 case. While the Court has determined that the

1 statement is admissible, I instruct you that you
2 make the ultimate discussion of whether or not the
3 defendant made the statement.

4 If the defendant did make the statement, you
5 must determine whether the statement was made by the
6 defendant voluntarily and of his own free will.
7 This means that the statement was not caused by
8 pressure, force, fear, threats, coercion, or
9 intimidation, or by hope or a promise of leniency or
10 a reward of any kind.

11 In determining whether the statement was
12 voluntary, you should consider both the
13 characteristics of the defendant and the details of
14 the questioning. Some of the factors that you may
15 consider are the age of the defendant; the
16 defendant's education or lack thereof; the
17 defendant's mental capacity or ability; the
18 defendant's IQ or intelligence; the defendant's
19 background and environment; the place and length of
20 the detention; the nature of the questioning; and
21 the advice, or the lack thereof, to the defendant of
22 his Constitutional rights including, but not limited
23 to, the right to remain silent; that any statement
24 could be used against him in a court of law; the
25 right to have a lawyer present; that if he could not

1 afford a lawyer, a lawyer would be appointed to
2 represent him without any cost; that he could stop
3 making a statement at any time. You must carefully
4 consider all of the surrounding circumstances
5 surrounding before you give any weight to an alleged
6 statement.

7 The State has the burden of proving beyond a
8 reasonable doubt that the alleged statement was
9 voluntary. If you determine it was, you may give
10 the statement any further consideration you deem
11 proper. You must decide what weight, if any, should
12 be given to the alleged statement. If you determine
13 the alleged statement was not the free and voluntary
14 statement of the defendant, you should not consider
15 the statement at all.

16 Armed robbery. The defendant is charged with
17 armed robbery. In order to prove this offense, the
18 State must first prove beyond a reasonable doubt
19 that the defendant took personal property from the
20 person or presence of another person.

21 Property is a presence -- in the presence of a
22 person if it is within the person's reach,
23 inspection, observation, or control so that the
24 person could, if not overcome with violence or
25 prevented by fear, keep possession of the property.

1 The State must also prove beyond a reasonable
2 doubt that the defendant carried the property away
3 intending to permanently deprive the owner of the
4 property and to keep the property for the
5 defendant's own use. The slightest removal of the
6 property or the complete possession of the property,
7 even if for an instant, by the defendant is
8 sufficient to show a taking and carrying away of the
9 property.

10 The taking and carrying away of the property
11 must have been done with violence or by putting the
12 owner of the property in fear of violence.

13 Finally, the State must prove beyond a
14 reasonable doubt that the defendant was armed with a
15 deadly weapon during the robbery. The State must
16 prove either that the defendant was armed with a
17 deadly weapon or that the defendant alleged, either
18 by his actions or words, that he was armed while
19 using a representation of a deadly weapon or any
20 object which a person present during the commission
21 of the robbery reasonably believed to be a deadly
22 weapon.

23 A deadly weapon is any article, instrument, or
24 substance which is likely to cause death or great
25 bodily harm. Whether an instrument has been used as

1 a deadly weapon depends on the facts and
2 circumstances of each case.

3 The following are examples of instruments which
4 may be deadly weapons: A pistol, a shotgun, a
5 rifle, a dirk, a dagger, a knife, a slingshot, metal
6 knuckles, a razor, gasoline, a firebomb or Molotov
7 cocktail, and lighter fluid. A gun may be a deadly
8 weapon even it is not operational.

9 Now, you've been chosen and selected as fair
10 and impartial jurors whose purpose is to impartially
11 find and determine the facts of this case. You are
12 to decide this case from the testimony you have
13 heard and any evidence that has been presented.

14 I charge you that, as jurors, you must decide
15 the issues in this proceeding without bias or
16 prejudice to any party. You cannot allow yourself
17 to be governed by sympathy, by prejudice, by
18 passion, by public opinion, or by any other
19 arbitrary factor.

20 Both the State and the defendant have the right
21 to expect that each of you will carefully and
22 impartially consider all of the evidence in the case
23 and that you will follow the law as I have explained
24 it to you. If you render your verdict in accordance
25 with what I have just charged you, no one will have

1 a right to criticize your verdict, and you will have
2 fully discharged your duty as jurors.

3 Madam forelady, the defense has prepared a
4 verdict -- prepared a verdict form. And at the top
5 it says, *The State of South Carolina v. Darrell*
6 *Eugene Blackwell*, in the Court of General Sessions,
7 Tenth Circuit, County of Anderson, with the
8 indictment number and it says armed robbery.

9 (A) As to the charge of armed robbery,
10 Indictment No. 2016-GS-04-00433, we the jury
11 unanimously find the defendant not guilty.

12 (B) As to the charge of armed robbery,
13 indictment number, we the jury unanimously find the
14 defendant guilty. A place for the forelady to sign
15 and date it today.

16 As the verdict form says, ladies and gentlemen,
17 the verdict has to be unanimous. I'll tell you it's
18 a collective reason and process on all your parts.
19 Please consider each other's opinions, evaluate the
20 testimony, evaluate the evidence, and reach a fair
21 and just verdict.

22 Madam forelady, I'm going to ask you to go to
23 the jury room. But before you begin your
24 deliberation, wait till the bailiff brings you the
25 verdict form, the charge book, and all the evidence

1 that has been presented because I have to take up
2 the charge with the attorneys before you begin your
3 deliberations.

4 As to the alternates, let me see, Bagwell and
5 Wilson. If you would just keep your seats while the
6 rest of the 12 go to the jury room. I'll talk with
7 you shortly.

8 Madam forelady and ladies and gentlemen of the
9 jury, if you'll follow the bailiff to the jury room,
10 please.

11 (At 3:50 p.m., jury left the courtroom.)

12 THE COURT: Any exceptions to the charge from
13 the State?

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

15 THE COURT: Any exceptions from the charge from
16 the defendant?

17 MR. LUCAS: Your Honor, like we discussed at
18 the bench conference earlier, I just wanted to put
19 on the record that we requested the charge of strong
20 arm robbery. And we're requesting it on the basis
21 that we believe the defendant's statements, that he
22 did not have a knife and it was a toy gun, would
23 substantiate that charge.

24 THE COURT: All right. Do you have a proposed
25 charge?

1 MR. LUCAS: I do, Your Honor.

2 THE COURT: You can mark it. I believe it's
3 Court Exhibit No. 2; is that correct?

4 MR. LUCAS: Number 3.

5 THE COURT: Number 3. Okay. Number 3.

6 I'm sorry. Solicitor, do you want to add
7 something to that?

8 MS. HUEY: I would say, I think it's Number 3,
9 Judge.

10 THE COURT: I'm sorry. What?

11 MS. HUEY: Court's Exhibit 3, I believe is what
12 it is.

13 THE COURT: All right. Court's Exhibit 3.

14 (Court's Exhibit No. 3 was marked for
15 identification.)

16 THE COURT: State have any response to his
17 requested charge, whether you desire for the record
18 if you so choose?

19 MS. HUEY: Your Honor, we -- we don't believe
20 that strong arm robbery should be charged as
21 previously discussed. The only evidence in the
22 record is that a knife was used based on the video
23 and stills.

24 Additionally, the defendant himself does admit
25 to having a gun, albeit a toy gun. That still lends

1 itself to armed robbery as opposed to strong arm.

2 THE COURT: All right. As I stated earlier in
3 our charge conference, I'm not going to charge that,
4 so your motion to make it strong arm robbery is
5 denied.

6 If there's any other motions?

7 MR. LUCAS: None at this time, Your Honor.

8 THE COURT: All right. If the parties would
9 come forward, make sure all the exhibits that were
10 put on the record and all the exhibits put up on
11 behalf of the State and defendant, and we'll get the
12 bailiff to take the exhibits back and the verdict
13 form and they can begin deliberations.

14 MS. HUEY: If I may put one other thing on the
15 record, Your Honor?

16 THE COURT: Yes, ma'am.

17 MS. HUEY: Mr. Lucas and I discussed prior to
18 lunch Exhibit 23. I don't know that -- I think we
19 just need to clarify that that was admitted into
20 evidence, and I believe Mr. Lucas doesn't have an
21 objection to that.

22 THE COURT: Twenty-three?

23 MS. HUEY: I believe it's 23, Your Honor.

24 THE COURT: The consent form?

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

1 THE COURT: It's never been admitted.

2 MS. HUEY: Well, it was -- I don't know that it
3 was heard by me, Judge. I tried to admit it in
4 terms of -- I admitted it with a hearing and I
5 wanted to admit it for the trial, as well.

6 THE COURT: Okay. Do you have any objection?

7 MR. LUCAS: I don't have an objection to that,
8 Your Honor.

9 THE COURT: All right. The copy of the consent
10 form which was admitted for the motion, and I'll
11 admit without objection for the trial.

12 (State's Exhibit No. 23 was received into
13 evidence.)

14 THE COURT: All right. Anything else?

15 (No responses.)

16 THE COURT: All right. Make sure all the
17 exhibits there are put on the record if you would.
18 We'll send it into the jury room.

19 MS. HUEY: Yes, sir.

20 (At 3:54 p.m., jury began deliberations.)

21 THE COURT: All right. Anything from the State
22 before we bring the jury?

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

24 THE COURT: Defense?

25 MR. LUCAS: I have nothing, Your Honor.

1 THE COURT: Bring us the jury, please.

2 THE BAILIFF: (Complying.)

3 (At 4:12 p.m., jury entered the courtroom.)

4 THE COURT: All right. Madam forelady, I
5 understand you reached a verdict; is that correct?

6 THE FORELADY: We have.

7 THE COURT: Would you hand the verdict form to
8 the bailiff, please?

9 THE FORELADY: (Complying.)

10 THE COURT: Publish the verdict, please.

11 THE CLERK: Yes, sir. The State of South
12 Carolina, County of Anderson, in the Court of
13 General Sessions, Tenth Judicial Circuit, Indictment
14 No. 2016-GS-04-00433, this is the verdict form in
15 the case of *The State of South Carolina v. Darrell*
16 *Eugene Blackwell*, defendant.

17 Question one, armed robbery. As to charge of
18 armed robbery, Indictment No. 2016-GS-04-00433, we
19 the jury unanimously find the defendant guilty. And
20 that is signed by juror foreperson, and it is dated
21 today in Anderson, South Carolina.

22 THE COURT: Thank you very much. Madam
23 forelady, this is the indictment. I have written on
24 there guilty, dated it today, October 9, 2018, and I
25 will give this to the bailiff and ask you to sign it

1 if you would, please.

2 THE FORELADY: Yes, sir.

3 THE COURT: Anybody got a sentencing sheet?

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

5 THE COURT: Thank you very much, madam

6 forelady.

7 All right. Solicitor, I was just looking at
8 the -- I read the mental evaluation. Mr. Lucas gave
9 me a sentence and memorandum, and his prior record
10 is a 1984 DUI; public drunk -- two public drunks;
11 one, two -- looks like several DUI's; driving under
12 the influence; shoplifting; false information;
13 assault and battery; some more DUI's; and looks like
14 hindering on officer and possession of
15 methamphetamines.

16 Anything you want to add on the sentence before
17 I hear from the defendant from the State?

18 (No response.)

19 THE COURT: Anything the State wants to tell me
20 about sentencing before I hear from the defendant?

21 MS. HUEY: Well, Your Honor, I can correct it.
22 It's actually 2008 AB hand charge as opposed to --

23 THE COURT: Right. The AB hand -- the AB and
24 the assault and battery, high and aggravated, is in
25 the Department of Mental Health report that I read.

1 MS. HUEY: And then since this incident, Your
2 Honor, he has some pending charges, as well. He had
3 a failure to stop for blue light that's still
4 pending, as well as public disorderly conduct, and
5 another possession of marijuana that I believe is
6 still pending.

7 THE COURT: All right. Mr. Lucas, I didn't
8 have a complete chance to look at your -- your
9 memorandum. I was reading it when they told me the
10 jury reached a verdict. That didn't give me enough
11 time to get it read. I'll be glad to hear, if you
12 would just sort of summarize. I've looked at his
13 record that you have in that memorandum and also
14 appears is recommended a mental health evaluation.
15 I believe you've got a life expectancy table. He's
16 52. What is his life expectancy?

17 MR. LUCAS: Your Honor, if I may just briefly
18 for purposes to preserve the record. I'm just going
19 to renew our directed verdict motion and ask for a
20 DV based on the insufficiency of the evidence. Just
21 for purposes of protecting the record.

22 THE COURT: All right. Okay. Any motions?

23 MR. LUCAS: Just the motion for directed
24 verdict, Your Honor.

25 THE COURT: I'm sorry. What?

1 MR. LUCAS: Just for the motion for directed
2 verdict and renewing that.

3 THE COURT: Do you have any motions as far as
4 the jury is concerned?

5 MR. LUCAS: Nothing as far as the jury is
6 concerned, Your Honor.

7 THE COURT: Okay. All right. I'll give you an
8 opportunity if you want to file written motions.
9 You made all your motions during the trial and
10 you're pretty well protected. You made motion after
11 motion after motion, so the record is pretty
12 protected.

13 What's your motion now before I sentence him?
14 I want to hear about his sentencing.

15 MR. LUCAS: Okay.

16 THE COURT: That's what I want to hear about.

17 MR. LUCAS: In terms of sentencing, Your Honor,
18 we've handed up a sentence -- sentencing memorandum
19 related to Mr. Blackwell.

20 He's 53 years old. He has a number of prior
21 drug and alcohol related convictions -- mostly DUI,
22 public disorderly conduct.

23 THE COURT: Well, that -- that's true an issue,
24 but more recently, it's some of the violent, high
25 and aggravated, burglary first, assault and battery,

1 high and aggravated, larceny concern me more to some
2 violent conduct.

3 MR. LUCAS: He has, Your Honor, from 2008, I
4 believe it is, he had a conviction for assault and
5 battery of a high and aggravated nature. That's his
6 only prior felony conviction. I don't see anything
7 else on here that would qualify as a felony. He was
8 sentenced to a year in prison and five years
9 probation on that, Your Honor.

10 And he did, as Ms. Huey alluded to, he picked
11 up a failure to stop for a blue light and I believe
12 a marijuana possession. He's not been convicted of
13 either of those. Those were in 2017.

14 What we'd like you to take into consideration,
15 Your Honor, is his life expectancy. I've provided
16 some actuarial data.

17 THE COURT: I understand. I looked at it. I
18 asked you what -- what is his life expectancy on the
19 actuarial tables.

20 MR. LUCAS: In SCDC, Your Honor, is 13 years.
21 The average life expectancy for an American male who
22 at 53 years of age would be 80. In the South
23 Carolina Department of Corrections, that drops to
24 66. So in SCDC, Mr. Blackwell could be expected to
25 live an additional 13 years. We'd like you to take

1 that into consideration and not give him more time
2 than that, Your Honor, so he has some chance of
3 reentry into society.

4 In addition, Judge, we'd like you to take into
5 consideration the sentences recommended by the State
6 during the plea negotiations. The first offer was
7 15 years.

8 THE COURT: I don't get in on offers. Okay. I
9 read what you had in the offer, but I don't think
10 that's necessarily pertinent as to sentencing at
11 this time. Okay?

12 MR. LUCAS: I understand, Your Honor. I think
13 to a degree it suggests what the State feels is
14 the ---

15 THE COURT: The psychological report says he
16 had no mental illness to the extent where he had the
17 ability to know what was right and wrong.

18 MR. LUCAS: That is correct.

19 THE COURT: He has the ability to control his
20 conduct. And he's had a long history of cocaine,
21 amphetamines, pain -- pain pill use, and alcohol,
22 and apparently extensive use of -- I believe those
23 were the only drugs or members of pain pills, the
24 amphetamines and cocaine. And then the marijuana
25 and extensive use of alcohol, if I remember --

1 remember the report correctly; is that correct?

2 MR. LUCAS: I think that is correct, Your
3 Honor.

4 THE COURT: All right.

5 MR. LUCAS: We just ask that you get --
6 consider something in the range of 10 to 15 years.

7 THE COURT: Well, under the law, I'm required
8 to give him a minimum of ten years. I don't have
9 any choice on that issue. I can't suspend it. Ten
10 years to 30 years is the maximum. Thirty is the
11 maximum; 10 the minimum. It's not a suspendable
12 sentence.

13 MR. LUCAS: I understand, Judge. We -- we just
14 ask that you please consider the low end and don't
15 punish him for exercising the right to a jury trial.

16 THE COURT: Well, he's even been to Holmesview
17 Treatment over in Greenville. I mean, he's had
18 opportunities to clean his act up. He went to
19 Holmesview for 28 days. He stayed sober and clean
20 for about two years. Here recently, he's gone down
21 the other path. I mean, he's had opportunity after
22 opportunity to turn his life around. Now he's out
23 robbing people, so why ain't he a danger to society
24 at this point in time, even though theoretically he
25 had a toy gun? Those people in that store didn't

1 know it was a toy gun and the pictures show a knife.

2 MR. LUCAS: Your Honor, all of that is
3 absolutely true. I simply ask that you give him the
4 chance of -- to give him a sentence that he's able
5 to serve out and still have some chance of having a
6 normal life, Your Honor, even if it is, you know, in
7 his late -- mid to late 60s. We just ask that.

8 THE COURT: I appreciate it. Thank you so very
9 much and thank you for preparing the memo that you
10 prepared. I appreciate you doing that. That was
11 very, very helpful.

12 All right. Mr. Blackwell, anything you would
13 like to tell me prior to sentencing? I'll be glad
14 to hear anything you would like to say.

15 THE DEFENDANT: Have mercy.

16 THE COURT: Do you want to say anything?

17 THE DEFENDANT: Have mercy, please.

18 THE COURT: Pardon?

19 THE DEFENDANT: Have mercy on me. Please have
20 mercy on me on the sentence. That's all I can say.
21 I'm sorry for what I've done.

22 THE COURT: Anything else?

23 THE DEFENDANT: I don't know what else to say,
24 Your Honor. It happened in the blink of an eye.
25 Things happen in mysterious ways. There was a lot

THE COURT: And the boyfriend then pulled a gun on you. I read that.

Then the girl that worked at the store, she
came out of the store.

THE COURT: I read all of that where she said they were mean to her and you wanted to go in there and set it straight.

THE DEFENDANT: Yeah, that's what happened.

THE COURT: Anything else?

THE DEFENDANT: No.

THE COURT: Indictment No. 0433, armed robbery,
sentence you to the State Department of Corrections
for a period of 18 years. Thank you very much.

(The proceedings concluded at 4:25 p.m.)

— — —

C E R T I F I C A T E O F R E P O R T E R

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

I, the undersigned, Lisa Scott, Circuit Court Reporter for the Tenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and the evidence introduced in the trial of the captioned cause, relative to appeal in the Criminal Court for Anderson County, South Carolina, on the 9th day of October, 2018.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

January 7, 2019

/s/Lisa Scott

Lisa Scott
Circuit Court Reporter

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Anderson County

Honorable J. C. Buddy Nicholson, Circuit Court Judge

ORIGINAL
RECEIVED
FEB 24 2020
SC Court of Appeals

THE STATE,

RESPONDENT,

V.

DARRELL EUGENE BLACKWELL,

APPELLANT

APPELLATE CASE NO. 2018-001892

FINAL BRIEF OF APPELLANT

ROBERT M. DUDEK
Chief Appellate Defender

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

ATTORNEY FOR APPELLANT

TABLE OF CONTENTS

TABLE OF CONTENTS.....	i
TABLE OF AUTHORITIES	ii
STATEMENT OF ISSUES ON APPEAL	1
STATEMENT OF THE CASE.....	2
STANDARD OF REVIEW	3
ARGUMENT	
1.	
The court erred by admitting appellant's recorded statement into evidence, where the interrogating Detective, Garrett, did not testify, and was not subject to cross-examination, since this violated appellant's right to Confrontation and admitted hearsay evidence including Garrett repeatedly telling appellant the videotape showed appellant robbing the store, and asserted that appellant was using a knife during the robbery, and insinuated the robbery was an "inside job" between appellant and the clerk who was supposed to be working that night.....	5
Relevant Facts.....	5
Testimony Before the Jury.....	8
The Taped Interview Between Garrett and Appellant.....	9
Discussion.....	11
2.	
The court erred by refusing to instruct the jury on the lesser-included offense of strong arm robbery, where there was no testimony appellant was armed with a deadly weapon, appellant denied using a knife, and the videotape was inconclusive on the knife, and where there was no evidence the clerk working at the store thought the toy gun was represented as being a real gun, since appellant was entitled to that lesser-included offense instruction under the "any evidence" standard	14
Relevant Facts.....	14
Discussion.....	15
CONCLUSION.....	18

TABLE OF AUTHORITIES

Cases

<u>Brightman v. State</u> , 336 S.C. 348, 520 S.E.2d 614 (1999)	16, 17
<u>Delaware v. Van Arsdall</u> , 475 U.S. 673 (2012)	12
<u>Jackson v. Denno</u> , 378 U.S. 368 (1964)	6, 7
<u>Pointer v. Texas</u> , 380 U.S. 400, 85 S.Ct. 1065, 13 L.Ed.2d 923 (1965)	3
<u>State v. Asbury</u> , 328 S.C. 187, 493 S.E.2d 349 (1997)	3
<u>State v. Bennett</u> , 328 S.C. 251, 493 S.E.2d 845 (1997)	16
<u>State v. Brewer</u> , 411 S.C. 401, 768 S.E.2d 656 (2015)	9, 11, 12, 13
<u>State v. Cole</u> , 338 S.C. 97, 525 S.E.2d 511 (2000)	4
<u>State v. Cooney</u> , 320 S.C. 107, 463 S.E.2d 597 (1995)	4
<u>State v. Davis</u> , 309 S.C. 326, 422 S.E.2d 133 (1992)	16
<u>State v. Douglas</u> , 369 S.C. 424, 632 S.E.2d 845 (2006)	3
<u>State v. Drafts</u> , 288 S.C. 30, 340 S.E.2d 784 (1986)	4
<u>State v. Gadsden</u> , 314 S.C. 229, 442 S.E.2d 594 (1994)	4
<u>State v. Gourdine</u> , 322 S.C. 396, 472 S.E.2d 241 (1996)	4, 17
<u>State v. Gracely</u> , 399 S.C. 363, 731 S.E.2d 880 (2012)	12
<u>State v. Hill</u> , 315 S.C. 260, 433 S.E.2d 848 (1993)	4
<u>State v. Miller</u> , 197 N.C. App. 78, 676 S.E.2d 546 (2009)	11
<u>State v. Myers</u> , 359 S.C. 40, 596 S.E.2d 488 (2004)	3
<u>State v. Pittman</u> , 373 S.C. 527, 647 S.E.2d 144 (2007)	4
<u>State v. Reed</u> , 332 S.C. 35, 503 S.E.2d 747 (1998)	3
<u>State v. Rochester</u> , 301 S.C. 196, 391 S.E.2d 244 (1990)	3

<u>State v. Saltz</u> , 346 S.C. 114, 551 S.E.2d 240 (2001)	13
<u>State v. Sams</u> , 410 S.C. 303, 764 S.E.2d 511 (2014).....	4
<u>State v. Simmons</u> , 360 S.C. 33, 599 S.E.2d 448 (2004)	16, 17
<u>State v. Stokes</u> , 381 S.C. 390, 673 S.E.2d 434 (2009).....	12
<u>State v. Tucker</u> , 324 S.C. 155, 478 S.E.2d 260 (1996).....	4
<u>State v. Von Dohlen</u> , 322 S.C. 234, 471 S.E.2d 689 (1996).....	11
<u>State v. Washington</u> , 379 S.C. 120, 665 S.E.2d 602 (2008).....	13

Statutes

S.C. Code § 16-11-330(A)	15, 16, 17

STATEMENT OF ISSUES ON APPEAL

1.

Whether the court erred by admitting appellant's recorded statement into evidence, where the interrogating Detective, Garrett, did not testify, and was not subject to cross-examination, since this violated appellant's right to Confrontation and admitted hearsay evidence including Garrett repeatedly telling appellant the videotape showed appellant robbing the store, and asserted that appellant was using a knife during the robbery, and insinuated the robbery was an "inside job" between appellant and the clerk who was supposed to be working that night?

2.

Whether the court erred by refusing to instruct the jury on the lesser-included offense of strong arm robbery, where there was no testimony appellant was armed with a deadly weapon, appellant denied using a knife, where the videotape was inconclusive on the knife, and where there was no evidence the clerk working at the store thought the toy gun was represented as being a real gun, since appellant was entitled to that lesser-included offense instruction under the "any evidence" standard?

STATEMENT OF THE CASE

Appellant was indicted by the Anderson County Grand Jury for the offense of armed robbery. R. 182. His case was called to trial on October 8, 2018, before the Honorable J.C. Nicholson, and a jury. Hadden Lucas and Gordon Senerius represented appellant. Deputy solicitor Catherine Huey and assistant solicitor Stan Overby represented the state. R. 1.

On October 9, 2018, the jury found appellant guilty. Judge Nicholson sentenced appellant to eighteen years' imprisonment. R. 158, ll. 20-22.

This appeal follows.

STANDARD OF REVIEW

Tape the Interview – Voluntariness, Confrontation Clause and Hearsay

Voluntariness: “On appeal, the conclusion of the trial judge on issues of fact as to the voluntariness of a confession will not be disturbed unless so manifestly erroneous as to show an abuse of discretion.” State v. Rochester, 301 S.C. 196, 200, 391 S.E.2d 244, 247 (1990); see also State v. Reed, 332 S.C. 35, 43, 503 S.E.2d 747, 751 (1998). Put another way, the reviewing court will reverse a trial judge’s ruling on the voluntariness of the confession when the ruling is “so erroneous as to constitute an abuse of discretion.” State v. Myers, 359 S.C. 40, 47, 596 S.E.2d 488, 492 (2004). “In criminal cases, appellate courts are bound by fact finding in response to preliminary motions where there has been conflicting testimony or where the findings are supported by the evidence and not clearly wrong or controlled by an error of law.” State v. Asbury, 328 S.C. 187, 193, 493 S.E.2d 349, 352 (1997).

Confrontation Clause: The Sixth Amendment to the United States Constitution guarantees that “[i]n all criminal prosecutions, the accused shall enjoy the right ... to be confronted with the witnesses against him.” This procedural protection applies in both federal and state prosecutions by virtue of the Fourteenth Amendment. Pointer v. Texas, 380 U.S. 400, 406, 85 S.Ct. 1065, 13 L.Ed.2d 923 (1965).

Hearsay: “The admission or exclusion of evidence is a matter addressed to the sound discretion of the trial court and its ruling will not be disturbed in the absence of a manifest abuse of discretion accompanied by probable prejudice.” State v. Douglas, 369 S.C. 424, 429, 632 S.E.2d 845, 847–48 (2006). “An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law.” Id. at 429–30, 632 S.E.2d at 848.

Lesser-included Offense: “The law to be charged to the jury is determined by the evidence presented at trial.” State v. Hill, 315 S.C. 260, 262, 433 S.E.2d 848, 849 (1993). “The trial court is required to charge a jury on a lesser-included offense if there is evidence from which it could be inferred that the defendant committed the lesser, rather than the greater, offense.” State v. Sams, 410 S.C. 303, 308, 764 S.E.2d 511, 513 (2014); see also State v. Drafts, 288 S.C. 30, 340 S.E.2d 784 (1986); State v. Gourdine, 322 S.C. 396, 472 S.E.2d 241 (1996). “An appellate court will not reverse the trial [court]’s decision absent an abuse of discretion.” State v. Pittman, 373 S.C. 527, 570, 647 S.E.2d 144, 166 (2007). “An abuse of discretion occurs when the trial court’s ruling is based on an error of law or, when grounded in factual conclusions, is without evidentiary support.” Id. at 570, 647 S.E.2d at 166–67. “The refusal to grant a requested jury charge that states a sound principle of law applicable to the case at hand is an error of law.” Id. at 570, 647 S.E.2d at 167. “In determining whether the evidence requires a charge on a lesser-included offense, the [appellate court] must view the facts in the light most favorable to the defendant.” Sams, 410 S.C. at 308, 764 S.E.2d at 513 (citing State v. Cole, 338 S.C. 97, 525 S.E.2d 511 (2000)). “The charge request is properly rejected when there is no evidence tending to show the defendant was guilty of the lesser offense.” Id. (citing State v. Tucker, 324 S.C. 155, 478 S.E.2d 260 (1996); State v. Cooney, 320 S.C. 107, 463 S.E.2d 597 (1995); State v. Gadsden, 314 S.C. 229, 442 S.E.2d 594 (1994)).

ARGUMENT

1.

The court erred by admitting appellant's recorded statement into evidence, where the interrogating Detective, Garrett, did not testify, and was not subject to cross-examination, since this violated appellant's right to Confrontation and admitted hearsay evidence including Garrett repeatedly telling appellant the videotape showed appellant robbing the store, and asserted that appellant was using a knife during the robbery, and insinuated the robbery was an "inside job" between appellant and the clerk who was supposed to be working that night

Relevant Facts

This case involves the robbery of the Shop Rite in Anderson on January 9, 2016. R. 27, ll. 6-19. This is a strange case, and appellant's memory may unfortunately have been compromised in his own defense due to intoxication. The clerk who was robbed that night did not testify, nor did anyone working in the store testify or identify appellant as being the robber from the videotape.¹

If appellant was the robber, defense counsel told the jury in closing, "Was Darrell Blackwell armed when he went into the store?" R. 137, ll. 1-7. The videotape of the robbery, State's Exhibit 4, was played for the jury and is an exhibit before this Court. Assuming appellant was the robber, since there was no normal in court identification, it was not abundantly clear that appellant was armed with a knife. Garrett told appellant during the interview that he had a gun

¹ Appellant's brother, Mark Blackwell, who thought appellant was taking advantage of their elderly mother by living with her, said still photographs of the robbery "[c]aused a lot of contradiction within the family. There was a lot of people calling myself, calling my mother, calling my niece . . . I identified who I thought was my brother in the picture." R. 95, ll. 10-22. This was hardly a confident identification by appellant's brother, Mark, and Mark asserted his mother was an "enabler," when challenged to admit his bias about his concern appellant was a burden on his elderly mother, and that he was using her by still living with her. R. 96, ll. 2-11.

in his right hand, and a knife in his left hand. A close review of the videotape, which was shown to the jury in “real time” reveals that if the object in appellant’s left hand was a knife it had to be in a case or appellant would have badly cut himself given the dramatic movements of the robber, including jumping over the counter, and using both hands, while grabbing merchandise and money from the cash register. Further, as will be seen infra, appellant told Garrett he only had owned a toy gun, a “cap gun,” and there was no testimony from the clerk who was robbed that he thought the gun was real -- if appellant was the robber. Garrett told appellant on the interrogation audiotape -- admitted over appellant’s confrontation clause and hearsay objections - - that he was armed with a knife, that he went into the store with the intent to rob it, that he stole cigarettes and cigarette coupons as well as a laptop, and insinuated that the robbery was an inside job with Sherry, the “mysteriously missing” clerk who should have been working at the time of the robbery.

Prior to trial, a Jackson v. Denno, 378 U.S. 368 (1964), hearing was held on the admissibility of appellant’s statement during his interview with Investigator Garrett. Garrett did not appear or testify during the trial. The state called Investigator Scotty Hill of the Anderson County Sherriff’s Department as a witness. R. 2, l. 13 – 3, l. 4.

Hill remembered that appellant was interviewed by Detective Jamie Garrett at the Anderson County Detention Center in February, 2016. R. 3; ll. 5-25. The interview took place in a small office where cleaning supplies were also stored. Appellant was not handcuffed at the time. R. 4, ll. 1-21. Appellant was given his Miranda warnings, and Hill said appellant understood his rights. R. 7, ll. 5-18.

Hill said appellant’s interview with Garrett on February 1, 2016, and that it was tape recorded. R. 8, l. 7 – 10, l. 23. Hill said he was present during the interview, but he did not say a

word. The judge said he did not want to listen to the audiotape that the state wanted him to admit, but that he would read whatever transcript the parties were relying on at the time of the Jackson v. Denno statement. R. 10, l. 10 – 11, l. 9.

Hill said the video recording of the robbery was not shown to appellant until the end of the interview. R. 12, ll. 19-24. Investigator Hill admitted that Detective Garrett telling appellant what allegedly happened in the store before showing him the videotape *was an "interrogation tactic."* Hill added, "Detective Garrett did that. I don't know what his motives were behind it." R. 13, ll. 3-5. (emphasis added). The following occurred on cross-examination of Investigator Hill:

Q: Usually the idea is to get someone to agree with you that, in fact, it happened a certain – a certain way, correct?

A: The motive is to find out what happened from the person we're speaking with.

Q: Not to obtain a confession?

A: If they're guilty, then, yes, confession.

Q: So he was shown a video, and then without seeing it he was told what happened?

A: Yes.

R. 13, ll. 6-15.

Defense counsel then argued that appellant's will was overborne during the statement and that it was not freely and voluntarily given. Defense counsel argued, "Mr. Blackwell is not a sophisticated man. He was led along through a confession being told that the video showed certain things and not actually being shown it. That's the basis of our argument, Judge. Nothing more, nothing less. And we think that that led to his will to be overborne and makes this

confession not -- not freely and voluntarily given.” R. 14, l. 21 – 19, l. 3. The judge denied the motion to suppress appellant’s statement given during the interview. R. 19, ll. 4-22.

Defense counsel Lucas, the next day, added Confrontation Clause and hearsay objections to the admission of the Detective Garrett - Appellant interview audiotape when he learned Detective Garrett was not being brought back to Anderson from Washington State to testify, and be subject to cross-examination. R. 108, l. 2 – 119, l. 11.

Testimony Before the Jury

Anderson County Sherriff’s Deputy Rhonda Phillips testified on the night of January 9, 2016, she was dispatched to the Shop Rite on Sayre Street. R. 26, l. 4 – 28, l. 11. The description of the robber was that he was a “white man with a beard that left in a [white] van.” Phillips did not know if the robber was disguised, and she did not watch the surveillance tape of the robbery. R. 29, l. 3 – 30, l. 11.

During the investigation, the police went to a house owned by appellant’s mother, which was located next to a dilapidated house – the police thought was “unoccupied” -- where appellant apparently lived. The white van the police believed was present during the robbery was parked behind one of the houses. The police found a brown stocking cap and “a black jacket with a gray hood” which they believed from the videotape appellant was wearing at the time of the robbery. R. 76, l. 23 – 90, l. 17.

When the state went to introduce the audiotape of appellant’s interview with Detective Garrett, defense counsel objected. R. 104, l. 6 – 106, l. 14. Defense counsel Lucas said Investigator Hill admitted he did not ask any questions during the interview and that “all questions were asked by Detective Garrett.” R. 107, ll. 10-20. Defense counsel argued that admitting the audiotape of appellant’s interview without a chance to confront and cross-examine

Detective Garrett violated appellant's right to confrontation. Counsel also noted that Detective Garrett's statements during the interrogation were hearsay and it was clear some of them were offered for the truth of the matter asserted.

Defense counsel told the judge his argument was grounded in State v. Brewer, 411 S.C. 401, 768 S.E.2d 656 (2015), as to hearsay statements that were made during an interrogation not being admissible in evidence against the defendant. R. 108, l. 3 – 119, l. 12. The judge denied appellant's confrontation clause and hearsay objections as they pertained to the interview between Detective Garrett and appellant. Defense counsel said he was "caught by surprise" when Detective Garrett was not testifying "today," and that "this is a new issue for me as of yesterday." R. 110, l. 17 – 119, l. 22. The Garrett-Appellant interview was then played for the jury over appellant's objection. R. 119, ll. 20-22.

The Taped Interview Between Garrett and Appellant

Investigator Hill claimed appellant acknowledged that he was the man on the videotape, although the audiotape itself seems to have appellant never admitting that fact and stating, "If I did it, I did it," and that he needed help if he did it. Again, the audiotape is on file with this Court. R. 120, l. 2 – 122, l. 7.

In the audiotaped statement between Detective Garrett and appellant, the following occurred in what can only be described as a very bizarre police interview with appellant. Again, the tape is on file with this Court.

Investigator Garrett, who did not testify at trial told appellant he was captured on videotape robbing the store. No one identified appellant in court as the robber on the videotape. Garrett told appellant during the interview the video was "very damning" although Garrett allegedly could not get the video to play until the end of the interview. (Hill testified this was an

interrogation tactic). Garrett told appellant that it “was plain as day” that he had a gun in one hand, and a knife in his left hand where he claimed he could not get the video to play. Again, no one, including Garrett, or the person behind the counter on the videotape at the time the robber entered, identified appellant at trial as the robber on the tape.

Appellant – his voice rising – denied having a knife with him, and he said he only had a toy gun, a cap gun. He said he never had owned a real gun, and he said he either bought or sold the toy gun on Craigslist. No gun was ever recovered.

Appellant said his van was running hot that night, so he went to the store to see Sherry. Appellant said he knew Sherry would give him water for the van, and apparently money to fix it. Garrett noted that Sherry was supposed to be working that night, but she “mysteriously had to leave” before the robbery occurred. Later in the interview, Garrett asked appellant if Sherry “was in on” the robbery, thereby signaling he had reason to think the robbery was an “inside job,” or he was using deception to further his confession cause.

Appellant never admitted he was the robber even when Garrett told appellant he went into the store to “rob it,” and that it was allegedly “plain as day” he had a gun and a knife during the robbery. Garrett said he understood appellant’s mother denied it was appellant on the videotape, but Garrett said it was understandable appellant’s mother would say that. Appellant’s mother also did not testify at trial.

Appellant admitted to taking \$98.00, and cigarettes from the store but he denied taking a laptop or to stealing cigarette coupons. At one point, appellant seemed to maintain no one was in the store at the time he took these items. When Garrett finally played the videotape of the robbery, appellant still did not admit it was him on the videotape. Appellant only said after watching the videotape that he did not remember it, and he said if “I did it, I did it,” and that he

needed help. Appellant asked Garrett for advice, and Garrett told appellant he had a good lawyer, and to talk to his attorney, and pray.

Discussion

In State v. Brewer, 411 S.C. 401, 768 S.E.2d 656 (2015), the Supreme Court acknowledged that law enforcement investigation techniques can include misrepresenting the existence and strength of evidence against an accused as well as asking the accused to produce evidence voluntarily. State v. Von Dohlen, 322 S.C. 234, 244, 471 S.E.2d 689, 695 (1996). The Court in Brewer noted that the investigators frequently referenced and quoted purported eyewitnesses to Brewer about shooting both victims. The Court held the evidence was hearsay, it was offered for the purpose of proving the truth of the matter asserted, and it ruled that they were inadmissible.

The Court wrote, “We emphasize that today’s decision is not a categorical rule that any statement by an investigator during an interrogation is inadmissible at trial. As recognized by the North Carolina Court of Appeals, however, caution must be exercised in the admission of such evidence to ensure that all out-of-court statements are either ‘admissible for a valid non-hearsay purpose or as an exception to the hearsay rule in order to safeguard against an end-run around the evidentiary and constitutional proscriptions against the admission of hearsay.’ State v. Miller, 197 N.C. App. 78, 676 S.E.2d 546, 556 (2009). To that end, ‘we would like to remind trial courts that the questions police pose during suspect interviews may contain false accusations, inherently unreliable, unconfirmed or false statements, and inflammatory remarks that constitute legitimate points of inquiry during a police interrogation, but would otherwise be inadmissible in open court.’” State v. Brewer, 411 S.C. 401, 407-08, 768 S.E.2d 656, 659 (2015).

As seen, Investigator Hill, the testifying witness for the state, testified in the absence of Detective Garrett that Garrett was using investigatory tactics by telling appellant what was on the videotape without showing appellant the videotape until the very end of the interview. Detective Garrett told appellant throughout the interview that he was the robber, that he was armed with a gun and a knife, and that he stole various items including a laptop and cigarette coupons, as well as cigarettes, from the store that night. Garrett insinuated he had reason to believe the robbery was an “inside job” between appellant and Sherry who was “mysteriously missing” that night.

The audiotape can be difficult to decipher at times, but Investigator Hill’s interpretation of the audiotape, particularly as it pertains to Hill’s bold statement that appellant admitted his guilt, shows the very difficulty that State v. Brewer warned against, because it denied appellant the opportunity to confront and cross-examine Detective Garrett, and it allowed Detective Garrett’s hearsay statements about the robbery to be placed before the jury.

Appellant had the right under the Confrontation clause to confront and cross-examine Garrett about his interrogation tactics, and him telling appellant it was clear that appellant was armed with a knife in his left hand where that was not apparent, particularly in the seconds the jury had to watch the videotape in “real time.”

A defendant demonstrates a Confrontation Clause violation when he is prohibited from engaging in otherwise appropriate cross-examination designed to show a prototypical for of bias . . . from which jurors . . . could draw inferences relating to the reliability of the witness.” State v. Stokes, 381 S.C. 390, 401-01, 673 S.E.2d 434, 439 (2009), *citing* Delaware v. Van Arsdall, 475 U.S. 673, 680 (2012). State v. Gracely, 399 S.C. 363, 372, 731 S.E.2d 880, 885 (2012).

Appellant had the right to confront and cross-examine Garrett about his assertions that it was appellant that went into the store, that appellant planned to rob the store, that appellant was

armed with a knife in his left hand, about what appellant's mother actually said about the videotape, and his insinuations that Sherry may have "been in" on the crime, as they were, Garrett's hearsay assertions. See State v. Washington, 379 S.C. 120, 665 S.E.2d 602 (2008) *citing* State v. Saltz, 346 S.C. 114, 551 S.E.2d 240 (2001). Defense counsel made the proper objection that the admission of the audiotape without the opportunity to confront and cross-examine Garrett denied appellant his rights under the Confrontation Clause and allowed the admission of hearsay assertions to go unchallenged. Appellant should be granted a new trial. State v. Brewer, 411 S.C. 401, 407-08, 768 S.E.2d 656, 659 (2015).

2.

The court erred by refusing to instruct the jury on the lesser-included offense of strong arm robbery, where there was no testimony appellant was armed with a deadly weapon, appellant denied using a knife, and the videotape was inconclusive on the knife, and where there was no evidence the clerk working at the store thought the toy gun was represented as being a real gun, since appellant was entitled to that lesser-included offense instruction under the “any evidence” standard

Relevant Facts

Defense counsel requested a charge on the lesser included offense of strong-arm robbery. “And we’re requesting it on the basis that we believe the defendant’s statements, that he did not have a knife and it was a toy gun, would substantiate that charge.” R. 155, ll. 17-23. The request to charge was marked as Court’s Exhibit 3 and it is before this Court to review.

The solicitor argued that “[t]he only evidence in the record is that a knife was used based on the video and stills. Additionally, the defendant himself does admit to having a gun, albeit a toy gun. That still lends itself to armed robbery as opposed to strong arm [robbery].” R. 156, l. 19 – 157, l. 2.

The judge responded, “All right. As I stated earlier in our charge conference, I’m not going to charge that, so your motion to make it strong arm robbery is denied.” R. 157, ll. 2-5. Thus, the record shows defense counsel requested the instruction on the lesser-included offense at the charge conference, which was denied, and he again took exception to the judge’s refusal to give that instruction after the judge charged the jury.

Defense counsel argued that the clerk jumping back when the robber approached did not prove that appellant, if he was the robber, was armed with a deadly weapon. Counsel argued that

jumping back was a reasonable response when somebody was coming over the counter toward the clerk, and that the state did not bring in the clerk from the store to testify whether he thought appellant was armed with a deadly weapon – the toy gun being real or him having a knife. The state also did not bring back Detective Garrett from Washington State, even though “he’s a plane ticket away,” to testify about what occurred during the interview with appellant. R. 137, l. 1 – 140, l. 4.

Appellant told Detective Garrett “it was not a real gun. It was a cap gun. . . . There’s no gun ever recovered from Mr. Blackwell’s house or his mother’s house.” Defense counsel asked the jury to determine from the video “does he have a knife?” Again, defense counsel reminded the jury that no one present during the robbery was brought to court to testify. R. 140, l. 5 – 141, l. 11.

Discussion

South Carolina Code § 16-11-330(A) states that “A person who commits robbery *while armed with a pistol, dirk, slingshot, metal knuckles, razor, or other deadly weapon, or while alleging either by action or words, he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon*, is guilty of a felony and, upon conviction, must be imprisoned for a mandatory minimum term of not less than ten years or more than thirty years, no part of which may be suspended or probation granted.” (emphasis added).

This is a very unusual case where the state chose, for reasons that it will only understand, not to call Detective Garrett to testify as to appellant’s statement, and it chose not to call the clerk who was working at the time of the robbery. Undersigned counsel has watched the videotape of the robbery many times -- something the jury did not have the opportunity to do --

and while it does show a gun, albeit a toy gun, there was no testimony that the clerk thought the toy gun was real. Further, the videotape was less clear as to the robber using a knife as a deadly weapon. If there was an object in the robber's left hand, which the state claimed was a knife, it would have had to have been inside a case or the robber would have badly cut his hand as he jumped about and over the counter during the robbery. Again, the clerk from the store did not testify.

Further, there were a lot of things happening on the videotape outside the matter of whether appellant was armed with a knife as a deadly weapon for the jury to observe.

Whether an object has been used as a deadly weapon depends upon the facts and circumstances of each case. State v. Davis, 309 S.C. 326, 422 S.E.2d 133 (1992) (fist); State v. Bennett, 328 S.C. 251, 493 S.E.2d 845 (1997)(fists). A trial judge must charge the lesser-included offense, here, strong arm robbery, if there is any evidence from which it can be inferred that the defendant committed the lesser rather than the greater offense. See, State v. Simmons, 360 S.C. 33, 43-44, 599 S.E.2d 448, 453 (2004) *citing* Brightman v. State, 336 S.C. 348, 520 S.E.2d 614 (1999).

There was no evidence in this case that a person present during the commission of the robbery reasonably believed that appellant, if he was the robber, represented that he was armed with a deadly weapon during the robbery. See S.C. Code § 16-11-330(A). The videotape was inconclusive on the knife issue, and the only evidence outside of the videotape itself, was that the gun was a toy gun, "a cap gun."

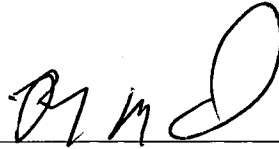
A jury question was presented in this unusual case whether appellant was armed with a deadly weapon where it was unclear the object in his left hand was a knife, a deadly weapon, and where the only evidence was that the gun used in the robbery was a toy gun. Cf. State v.

Gourdine, 322 S.C. 396, 472 S.E.2d 241 (1996), wherein the Supreme Court held, that all of the evidence must be considered when considering whether a lesser-included offense must be charged to the jury. The amending of the armed robbery statute on “representation of a deadly weapon” did not change this principle.

The trial judge erred by refusing to charge the lesser-included offense of strong arm robbery, given the highly unusual facts of this case regarding the videotape, where the clerk present during the robbery was not being called as a witness by the state, and there was the “any evidence” needed to justify strong armed robbery being charged as a verdict option. See S.C. Code § 16-11-330(A); State v. Simmons, 360 S.C. 33, 43-44, 599 S.E.2d 448, 453 (2004); Brightman v. State, 336 S.C. 348, 520 S.E.2d 614 (1999).

CONCLUSION

By reason of the foregoing arguments, appellant's conviction should be reversed, and this case remanded to the Anderson County Court of General Sessions for a new trial.

A handwritten signature in black ink, appearing to read 'R M D', is written over a horizontal line.

Robert M. Dudek
Chief Appellate Defender

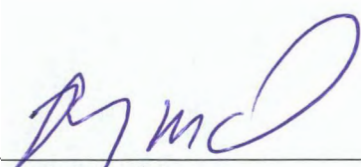
ATTORNEY FOR APPELLANT

This 24th day of February, 2020.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final Brief of Appellant complies with Rule 211(b), SCACR, and the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

February 24, 2020.



Robert M. Dudek
Chief Appellate Defender

S.C. Commission on Indigent Defense
Division of Appellate Defense
1330 Lady Street, Suite 401
Post Office Box 11589
Columbia, South Carolina 29211-1589



RECEIVED
FEB 24 2020
SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

ORIGINAL

Appeal from Anderson County
The Honorable J.C. Buddy Nicholson, Circuit Court Judge

Appellate Case No. 2018-001892

RECEIVED

FEB 24 2020

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

DARRELL EUGENE BLACKWELL,

APPELLANT.

FINAL BRIEF OF RESPONDENT

ALAN WILSON
Attorney General

WILLIAM F. SCHUMACHER, IV
Assistant Attorney General

Post Office Box 11549
Columbia, SC 29211
(803) 734-3713

DAVID R. WAGNER
Solicitor, Tenth Judicial Circuit

100 South Main St.
Anderson, SC 29624
(864) 260-4046

ATTORNEYS FOR RESPONDENT

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Anderson County
The Honorable J.C. Buddy Nicholson, Circuit Court Judge

Appellate Case No. 2018-001892

THE STATE,

RESPONDENT,

V.

DARRELL EUGENE BLACKWELL,

APPELLANT.

FINAL BRIEF OF RESPONDENT

ALAN WILSON
Attorney General

WILLIAM F. SCHUMACHER, IV
Assistant Attorney General

Post Office Box 11549
Columbia, SC 29211
(803) 734-3713

DAVID R. WAGNER
Solicitor, Tenth Judicial Circuit

100 South Main St.
Anderson, SC 29624
(864) 260-4046

ATTORNEYS FOR RESPONDENT

TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

STATEMENT OF ISSUES ON APPEAL 1

STATEMENT OF THE CASE.....2

STATEMENT OF FACTS 3

STANDARD OF REVIEW 7

ARGUMENT 8

 I. The trial judge properly admitted Appellant’s recorded statement into evidence because the non-testifying officer’s statements were not hearsay or a violation of the Confrontation Clause because his statements in the recording were not utilized as evidence against Appellant. Regardless, any error in the admission of the statements is harmless given the overwhelming evidence of Appellant’s guilt, including the video recording of the crime.. 8

 II. The trial judge properly refused to charge the jury on the lesser-included offense of strong arm robbery because the undisputed evidence at trial showed Appellant robbed his victims using either a real weapon or a convincing representation thereof.....14

CONCLUSION 17

TABLE OF AUTHORITIES

Cases

<u>Crawford v. Washington</u> , 541 U.S. 36 (2004)	9, 12
<u>Delaware v. Fensterer</u> , 474 U.S. 15 (1985).....	9
<u>Delaware v. Van Arsdall</u> , 475 U.S. 673 (1986)	9
<u>Hawkins v. Pathology Assocs. of Greenville, P.A.</u> , 330 S.C. 92, 498 S.E.2d 395 (Ct.App.1998)10	
<u>Inc. Pub. Corp. v. Manhattan Magazine, Inc.</u> , 616 F.Supp. 370 (S.D.N.Y.1985)	10
<u>State v. Aleskey</u> , 343 S.C. 20, 538 S.E.2d 248 (2000)	9
<u>State v. Baccus</u> , 367 S.C. 41, 625 S.E.2d 216 (2006).....	12
<u>State v. Black</u> , 400 S.C. 10, 732 S.E.2d 880 (2012).....	8
<u>State v. Blackburn</u> , 271 S.C. 324, 247 S.E.2d 334 (1978).....	9
<u>State v. Brewer</u> , 411 S.C. 401, 768 S.E.2d 656 (2015).....	5, 10, 11
<u>State v. Bryant</u> , 372 S.C. 305, 642 S.E.2d 582 (2007)	7
<u>State v. Fletcher</u> , 379 S.C. 17, 664 S.E.2d 480 (2008)	12, 13
<u>State v. Geiger</u> , 370 S.C. 600, 635 S.E.2d 669 (Ct. App. 2006).....	15
<u>State v. Gracely</u> , 399 S.C. 363, 731 S.E.2d 880 (2012).....	8
<u>State v. Green</u> , 397 S.C. 268, 724 S.E.2d 664 (2012).....	14
<u>State v. Hill</u> , 315 S.C. 260, 433 S.E.2d 838 (1993)	14
<u>State v. Holland</u> , 385 S.C. 159, 682 S.E.2d 898 (Ct. App. 2009).....	14
<u>State v. Jennings</u> , 394 S.C. 473, 716 S.E.2d 91 (2011)	8
<u>State v. Johnson</u> , 324 S.C. 38, 476 S.E.2d 681 (1996)	10
<u>State v. Peer</u> , 320 S.C. 546, 466 S.E.2d 375 (Ct. App. 1996)	14
<u>State v. Santiago</u> , 370 S.C. 153, 634 S.E.2d 23 (Ct. App. 2006).....	15
<u>State v. Sherard</u> , 303 S.C. 172, 399 S.E.2d 595 (1991).....	12
<u>State v. Simmons</u> , 384 S.C. 145, 682 S.E.2d 19 (Ct. App. 2009).....	15
<u>State v. Weaver</u> , 265 S.C. 130, 217 S.E.2d 31 (1975).....	14
<u>State v. Weston</u> , 367 S.C. 279, 625 S.E.2d 641 (2006)	12
<u>State v. Wilson</u> , 345 S.C. 1, 545 S.E.2d 827 (2001).....	14
<u>United States v. Detrich</u> , 865 F.2d 17 (2d Cir.1988)	10
<u>Watson v. Wall</u> , 239 S.C. 109, 121 S.E.2d 427 (1961)	10

Statutes

S.C. Code Ann. § 16-11-330.....	15

Rules

Rule 801, SCRE	10
Rule 802, SCRE	10

STATEMENT OF ISSUES ON APPEAL

- I. The trial judge properly admitted Appellant's recorded statement into evidence because the non-testifying officer's statements were not hearsay or a violation of the Confrontation Clause because his statements in the recording were not utilized as evidence against Appellant. Regardless, any error in the admission of the statements is harmless given the overwhelming evidence of Appellant's guilt, including the video recording of the crime.
- II. The trial judge properly refused to charge the jury on the lesser-included offense of strong arm robbery because the undisputed evidence at trial showed Appellant robbed his victims using either a real weapon or a convincing representation thereof.

STATEMENT OF THE CASE

In March of 2016, an Anderson County grand jury indicted Appellant for armed robbery. On October 8–9, 2018, Appellant proceeded to a jury trial before the Honorable J.C. Buddy Nicholson. Hadden Lucas, Esquire, and Gordon Senerius, Esquire represented Appellant; Assistant Solicitors Catherine Huey, Esquire, and Stat Overby, Esquire, represented the State. The jury found Appellant guilty as charged. The trial judge sentenced Appellant to eighteen years' incarceration.

Appellant timely filed a notice of appeal and an initial brief. This brief of Respondent now follows.

STATEMENT OF FACTS

Prior to trial, an audio recording of Appellant's interview with police was proffered by the State during a Jackson v. Denno hearing. Investigator Scotty Hill was present during the entirety of Appellant's interview, although Detective Jamie Garrett primarily interacted with Appellant. Investigator Hill testified Appellant agreed to the questioning. Investigator Hill testified Detective Garrett never mislead Appellant about the information in law enforcement's possession. During the interview, Appellant admits to robbing the store that day, confirming that it was him captured on surveillance cameras within the store and claiming that the gun he used was a toy gun he found." (R.p.2; line 13–R.p.18, line 16; State's Exhibit 2-A)

Trial counsel objected to admission of the audio recording, arguing it should be suppressed on the basis of Appellant not being "a sophisticated man" and that he was "led along through a confession" without first viewing the surveillance video of the robbery. Based on this limited objection, the trial motion denied the motion to suppress. (R.p.18, line 17–R.p.19, line 25)

On January 9, 2016, the Shop Rite convenience store was robbed. Officer Rhonda Phillips responded to the scene of the robbery and met with the two witnesses to the crime. The witnesses reported a bearded white male left the scene of the crime in a white van. She also collected a copy of the surveillance video for the investigation. Deputy Craig Holbrooks watched the video that night and placed it into storage at the Anderson County Sheriff's Office. Additionally, he made a copy of it for trial and confirmed the video used by the State was the same one he reviewed that night. Deputy Holbrooks noted that the person in the video was shown holding a knife and gun in the video. (R.p.26, line 4–R.p.49, line 15; State's Exhibits 4–11)

Lieutenant Robert Gebing noted that after other officers were unable to identify the suspect in the video, the sheriff's office reached out to local media in an attempt to generate potential tips. Appellant's brother, Mark Steven Blackwell, recognized him and informed police of his identity. Following the tip, Lieutenant Gebing and Detective Garrett went to the homes at 202 and 203 Gilbert Street, which they were informed were residences occupied by Johnnie Taylor, Appellant's mother, and Appellant. Upon arriving, officers observed a white van outside which matched the description of the vehicle used in the robbery. Taylor spoke with the officers and showed them around her home, during which time they saw several items of clothing similar to those worn by the suspect in the surveillance video. Taylor gave officers permission to collect the clothing. (R.p.51, line 17–R.p.63, line 13; R.p.65, line 6–R.p.69, line 11; R.p.91, line 20–R.p.95, line 23; State's Exhibits 15–19)

Investigator Kenneth Pigman accompanied Investigator Garrett while he executed search warrants on both the 202 and 203 Gilbert Street homes. Again, the white van was observed outside the home and the men photographed it. The men also located a brown stocking cap behind the 203 Gilbert Street residence. At 202 Gilbert, the officers found two unopened packs of Seneca cigarettes—the brand of cigarette stolen from the convenience store—and black jacket with an attached gray hood. Both the hat and jacket matched those worn by the suspect in the surveillance video. (R.p.76, line 17–R.p.90, line 8; State's Exhibits 22, 26)

Investigator Scotty Hill testified he was one of two officers present at Appellant's interview, and was there for the entirety of it. Investigator Hill noted Appellant's statements to police were intelligently, knowingly, and voluntarily made. (R.p.97, line 5–R.p.105, line 4)

Trial counsel objected to the admission of the statement, claiming that Investigator Garrett's failure to testify at trial was a violation of Appellant's Sixth Amendment right to

confront his accusers. Citing to State v. Brewer, 411 S.C. 401, 768 S.E.2d 656 (2015), counsel claimed any statement made by Investigator Garrett during the interrogation was hearsay and were “clear[ly]” offered for truth and not non-hearsay purposes. Trial counsel also claimed it was important to exclude Garrett’s statements because they were “offered for context” as to Appellant’s statements to police. (R.p.105, line 5–R.p.111, line 13)

The State disagreed with trial counsel’s objection and explained the facts of its case were opposite those of Brewer because it redacted any and all of Investigator Garrett’s statements in which he referenced what any other person, including Appellant’s mother, said to officers.¹ The remaining portion of the recording only included Investigator Garrett’s questions to Garrett and his explanations of what officer’s found, including the content of the security footage also played at trial. The State further explained the recording was not being admitted for the “truth” in Garrett’s unredacted comments in the tape; Garrett’s statements were present merely to provide context for Appellant’s admissions to police. Trial counsel noted that he had gone over the recording with the State and agreed upon portions of it which needed redaction in order to avoid the confrontation clause and hearsay issues; counsel clarified its position was that the video, in general, should be inadmissible because “all statements by Investigator Garrett [were] inadmissible hearsay” violating the confrontation clause, and the statement was not freely and voluntarily given, (emphasis added). The trial judge, noting Garrett’s hearsay statements were redacted, found Brewer did not apply and denied trial counsel’s motion. (R.p.111, line 14–R.p.119, line 12; State’s Exhibit 2-A)

¹ Although unrelated to this Appeal, the State also redacted references to Appellant’s history of drug use and use of drugs the night of the robbery. The State provided a description of all redacted materials via argument and reference to printed transcript of the recording. (R.p.115, line 20–R.p.117, line 1) (Court’s Exhibit 1)

At the conclusion of the trial, trial counsel requested a charge on the offense of strong arm robbery because during Appellant's interview, he did not recall having a knife with him and claimed the gun he used was a not a lethal firearm, but an expensive toy gun he found sometime before the crime. The solicitor argued the recording on the crime clearly demonstrated Appellant possessed a knife and that Appellant did not dispute using a toy gun during the crime, rendering a strong arm robbery charge inappropriate for jury consideration. The trial judge denied the motion. (R.p.127, line 19–R.p.131, line 1; R.p.155, line 17–R.p.157, line 5)

STANDARD OF REVIEW

“In criminal cases, an appellate court reviews errors of law only and is bound by the factual findings of the trial court unless clearly erroneous.” State v. Bryant, 372 S.C. 305, 312, 642 S.E.2d 582, 586 (2007). “The conduct of a criminal trial is left largely to the sound discretion of the trial judge, who will not be reversed in the absence of a prejudicial abuse of discretion. Id. “An abuse of discretion occurs when a trial court’s decision is unsupported by the evidence or controlled by an error of law.” Id.

ARGUMENT

I.

The trial judge properly admitted Appellant's recorded statement into evidence because the non-testifying officer's statements were not hearsay or a violation of the Confrontation Clause because his statements in the recording were not utilized as evidence against Appellant. Regardless, any error in the admission of the statements is harmless given the overwhelming evidence of Appellant's guilt, including the video recording of the crime.

Appellant argues the trial judge erred in admitting Garrett's recorded statements because his unavailability as a witness rendered those statements as inadmissible violations of the Confrontation Clause and hearsay rules. The State disagrees with these allegations of error. Garrett's statements were used as evidence or for any "truth" therein and thus did not violate rules. Further, any alleged error in the admission of the recorded statements were harmless given the overwhelming evidence of Appellant's guilt, including the video recording of the crime which showed his face while he robbed the store.

"The admission or exclusion of evidence is left to the sound discretion of the trial judge, whose decision will not be reversed on appeal absent an abuse of discretion." State v. Black, 400 S.C. 10, 16, 732 S.E.2d 880, 884 (2012). "An abuse of discretion occurs when the trial court's ruling is based on an error of law or, when grounded in factual conclusions, is without evidentiary support." State v. Jennings, 394 S.C. 473, 477–78, 716 S.E.2d 91, 93 (2011). A defendant demonstrates a Confrontation Clause violation when he is prohibited from engaging in otherwise appropriate **cross-examination** designed to show a prototypical form of bias . . . from which jurors . . . could draw inferences relating to the reliability of the witness." State v. Gracely, 399 S.C. 363, 372, 731 S.E.2d 880, 884 (2012) (emphasis added).

"The right to meaningful cross-examination of an adverse witness is included in the defendant's Sixth Amendment right to confront his accusers. This does not mean, however, that

trial courts conducting criminal trials lose their usual discretion to limit the scope of cross-examination. On the contrary, 'trial judges retain wide latitude insofar as the Confrontation Clause is concerned to impose reasonable limits on such **cross-examination** based on concerns about, among other things, harassment, prejudice, confusion of the issues, witness' safety, or interrogation that is repetitive or only marginally relevant.' State v. Aleskey, 343 S.C. 20, 33, 538 S.E.2d 248, 255 (2000) (citing Delaware v. Van Arsdall, 475 U.S. 673 (1986)) (emphasis added).

"The principal evil at which the Confrontation Clause was directed was the civil-law mode of criminal procedure, and particularly its use of ex parte examinations as evidence **against the accused**." Crawford v. Washington, 541 U.S. 36, 50 (2004) (emphasis added). Generally speaking, the Confrontation Clause guarantees an opportunity for effective **cross-examination**, not cross-examination that is effective in whatever way, and to whatever extent, the defense might wish. Delaware v. Fensterer, 474 U.S. 15, 20 (1985) (emphasis added).

In South Carolina, hearsay is inadmissible "except as provided by these rules or by other rules prescribed by the Supreme Court of this State or by statute." Rule 802, SCRE. Our rules of evidence define hearsay as "a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." Rule 801(c), SCRE. Admissions by a party opponent offered against him in criminal proceeding are not hearsay. See Rule 801(d)(2), SCRE.

Importantly, a statement that is not offered to prove the truth of the matter asserted should not be excluded as hearsay. See State v. Blackburn, 271 S.C. 324, 247 S.E.2d 334 (1978) (statement implicating defendant in alleged prior crimes, which was not offered to prove the truth of the matter asserted, that is, that defendant in fact committed the prior crimes, but to

establish motive, was not “hearsay” and its admission was not error); Hawkins v. Pathology Assocs. of Greenville, P.A., 330 S.C. 92, 498 S.E.2d 395 (Ct.App.1998) (allowing admission of letters, an anniversary card, and video to show close familial bond between the decedent, her husband, and her children in a malpractice action). Evidence of an out of court statement offered to prove the effect on a person hearing the statement is outside of the definition of hearsay because the statements are not offered to prove their truth. Watson v. Wall, 239 S.C. 109, 121 S.E.2d 427 (1961).

Further, non-assertive statements or conduct is not hearsay. See Danny R. Collins, South Carolina Evidence, Section 16.6, pp. 487- 488, (2nd ed., S.C. Bar 2000). Several categories of statements as non-assertive include questions and exclamation. Id. A question is not hearsay because it is not assertive. State v. Johnson, 324 S.C. 38, 476 S.E.2d 681 (1996). “An inquiry is not an ‘assertion,’ and accordingly is not and cannot be a hearsay statement.” Inc. Pub. Corp. v. Manhattan Magazine, Inc., 616 F.Supp. 370, 388 (S.D.N.Y.1985), *aff’d*, 788 F.2d 3 (2d Cir.1986). Because a question cannot be used to show the truth of the matter asserted, the dangers necessitating the hearsay rule are not present. See United States v. Detrich, 865 F.2d 17, 20–21 (2d Cir.1988).

In State v. Brewer, 411 S.C. 401, 768 S.E.2d 656 (2015), the Supreme Court of South Carolina found an officer’s portion of an audio recorded interview constituted inadmissible hearsay evidence. The court’s ruling focused on the fact that investigators frequently referenced and quoted purported eyewitnesses to the defendant shooting the victims. Id. at 406–07, 768 S.E.2d at 659. The court found the challenged statements were offered solely in an attempt to prove the truth of Brewer shooting the victims because Appellant never incriminated himself during the recording and repeatedly denied shooting anyone; the only information in the

recording pertaining to guilt were the investigator's hearsay statements. Id. at 407, 768 S.E.2d at 659. However, the court "emphasize[d] that [its] decision [was] not a categorical rule that any statement by an investigator during an interrogation is inadmissible at trial," but a decision indicating such out-of-court statements are either admissible as valid non-hearsay statements or, if hearsay, under one of the exceptions to the rule. Id. at 407–08, 768 S.E.2d at 659.

The present case is quite distinguishable from Brewer. In fact, the parties and the trial judge discussed Brewer and applied its logic to the redaction of Appellant's audio statement. The State made sure to redact the portions of the recording in which the investigator referenced any statements made by other witnesses. Such behavior is opposite of that which occurred in Brewer, in which the only substantive information within the recording was the officer's recitation of what other people told police. Id. at 407, 768 S.E.2d at 659.

Further, Garrett's recorded statements were not hearsay because they were not submitted for the truth of the matter asserted. Investigator Garrett's questions were not submitted as proof of Appellant's guilt; trial counsel conceded at trial that Garrett's statements were "offered for context." Investigator Garrett informed Appellant of information within investigators' possession, but gave Appellant the opportunity to contradict the information and explain what occurred. Investigator Garrett's questions, including those pertaining to a possible coconspirator,² were not part of the State's case against Appellant and the State did not present any information regarding these statements and questions at trial. The questions were only played to the jury because they were reference points for the incriminating admissions made by

² As noted by Appellant, officers were initially investigating the possibility that Appellant may, to some extent, have committed the crime with some degree of cooperation with "Sherry," a clerk working at the robbed store the night in question who left shortly before the crime. (Br. of Appellant, p.12). However, this was not a claim pursued at trial; the State did not contradict this claim nor was Appellant charged with criminal conspiracy. Thus, the truth of such assertions was irrelevant to Appellant's trial and ultimate conviction.

Appellant. Both at trial and now, Appellant has been unable to identify any “truth” in Garrett’s statements used in his prosecution.

Additionally, the admission of Garrett’s statements was not a violation of the Confrontation Clause. Again, as noted above, Garrett’s statements were not submitted as evidence or proof of Appellant’s guilt; thus there was no witness to “confront” on cross-examination. See Crawford, 541 U.S. at 50.

Accordingly, the trial judge properly admitted Garrett’s statements from the audio recording.

Harmless Error

Even if improper hearsay evidence is admitted, any error in the admission of the hearsay evidence is subject to a harmless error analysis and only warrants reversal if it results in actual prejudice. State v. Weston, 367 S.C. 279, 288, 625 S.E.2d 641, 646 (2006). Appellate courts will generally not set aside a judgment based on insubstantial errors not affecting the result. State v. Sherard, 303 S.C. 172, 176, 399 S.E.2d 595, 597 (1991). After an error is found, the appellate court must then review the other evidence considered at trial besides the erroneously admitted evidence. State v. Baccus, 367 S.C. 41, 55, 625 S.E.2d 216, 223 (2006). Error is harmless beyond a reasonable doubt if it does not contribute to the verdict. State v. Fletcher, 379 S.C. 17, 25, 664 S.E.2d 480, 484 (2008).

In the instant case, even without redactions to the recording of Appellant’s statement to police, the overwhelming evidence demonstrates his guilt. Notably, Appellant’s own statements of guilt, including his admission to going to the gas station that night and possessing the “gun” would still be admissible in a retrial. Further, Appellant does not dispute the admissibility of the video recording of the armed robbery or the images taken therefrom which show his face and clearly identify him as the culprit of the crime. Alone, these items would leave no doubt as to his

guilt, but they are also supported by the circumstantial evidence collected by the officers, including cigarettes matching the brand of those stolen and pieces of clothing identical to those worn by the robber. Accordingly, any alleged error in the admission of the investigator's statements within the recording must be harmless given the substantial evidence of Appellant's guilt. See Fletcher, 379 S.C. at 25, 664 S.E.2d at 484.

II.

The trial judge properly refused to charge the jury on the lesser-included offense of strong arm robbery because the undisputed evidence at trial showed Appellant robbed his victims using either a real weapon or a convincing representation thereof.

Appellant argues the trial judge erred in refusing to charge the jury on the offense of strong arm robbery. The State disagrees with this allegation of error because the only evidence at trial indicated Appellant robbed the store with either real weapons or items he represented as such. Thus there was no evidence Appellant was guilty of strong arm robbery and not armed robbery.

In criminal cases, the appellate court sits to review errors of law only. State v. Wilson, 345 S.C. 1, 5, 545 S.E.2d 827, 829 (2001). The law to be charged to the jury is determined by the evidence presented at trial. State v. Holland, 385 S.C. 159, 165, 682 S.E.2d 898, 901 (Ct. App. 2009). “No instruction should be given by the trial judge, at the request of the appellant, which tenders an issue which is not presented or supported by the evidence.” State v. Weaver, 265 S.C. 130, 137, 217 S.E.2d 31, 34 (1975). “Ordinarily, the trial court has the duty to give requested instructions which correctly state the law applicable to the issues and which are supported by the evidence.” State v. Peer, 320 S.C. 546, 553, 466 S.E.2d 375, 380 (Ct. App. 1996). The trial court only commits reversible error if it fails to give a requested charge on an issue raised by the evidence. State v. Hill, 315 S.C. 260, 262, 433 S.E.2d 838, 849 (1993).

“A trial judge is required to charge the jury on a lesser-included offense if there is evidence from which it could be inferred the lesser, rather than the greater, offense was committed.” State v. Green, 397 S.C. 268, 289, 724 S.E.2d 664, 674 (2012). “The mere contention that the jury might accept the State’s evidence in part and reject it in part is

insufficient to satisfy the requirement that some evidence tends to show the defendant was guilty only of the lesser offense.” State v. Geiger, 370 S.C. 600, 608, 635 S.E.2d 669, 674 (Ct. App. 2006). In reviewing a trial judge’s jury instructions, the appellate court must view the jury charge as a whole and in light of the evidence and issues from trial. State v. Simmons, 384 S.C. 145, 178, 682 S.E.2d 19, 36 (Ct. App. 2009). An appellate court will not reverse a trial judge’s decision regarding a jury charge absent an abuse of discretion. State v. Santiago, 370 S.C. 153, 159, 634 S.E.2d 23, 26 (Ct. App. 2006).

Pursuant to S.C. Code Ann. § 16-11-330(A) a person is guilty of armed robbery if he or she commits a robbery “while armed with a pistol, dirk, slingshot, metal knuckles, razor, or other deadly weapon.” Additionally, a person is also guilty of armed robbery if he does not use one of the items listed above, but alleges, “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 robbery reasonably believed to be a deadly weapon.

In the instant case, the trial judge properly denied Appellant’s request to charge strong arm robbery because all evidence presented indicated Appellant, at the very least, was armed with a toy gun when he committed the robbery. In the recording of the robbery, Appellant is seen holding both a knife and a gun-shaped object and extending them towards the store clerk operating the register, who then flees. In his audio-recorded statement, Appellant did not recall using a knife but did admit to using a gun like object; Appellant described the item as a high-quality toy worth several hundred dollars. The only evidence presented at trial indicated Appellant was armed with actual weapons or items which appeared to be such, both of which are defined as armed robbery under South Carolina law. See S.C. Code Ann. § 16-11-330. Because

the only evidence presented indicated Appellant's actions were armed robbery, the trial judge properly refused to charge the jury on the offense of strong arm robbery.

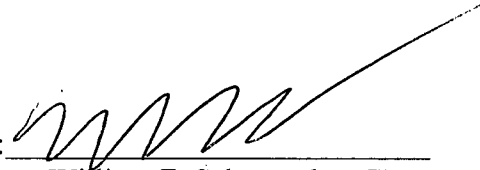
CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

ALAN WILSON
Attorney General

WILLIAM F. SCHUMACHER, IV
Assistant Attorney General

DAVID R. WAGNER
Solicitor, Tenth Judicial Circuit

BY: 

William F. Schumacher, IV
Bar # 100231
Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-0368

ATTORNEYS FOR RESPONDENT

February 24, 2020

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Anderson County
The Honorable J.C. Buddy Nicholson, Circuit Court Judge

Appellate Case No. 2018-001892

THE STATE,

RESPONDENT,

v.

DARRELL EUGENE BLACKWELL,

RECEIVED
FEB 24 2020
SC Court of Appeals
APPELLANT.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCAR, and the April 15, 2014, order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Findings."

ALAN WILSON
Attorney General

WILLIAM F. SCHUMACHER, IV
Assistant Attorney General

DAVID R. WAGNER
Solicitor, Tenth Judicial Circuit

BY: 
WILLIAM F. SCHUMACHER, IV
Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

February 24, 2020

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

Darrell Eugene Blackwell, Appellant.

Appellate Case No. 2018-001892

Appeal From Anderson County
J. C. Nicholson, Jr., Circuit Court Judge

Unpublished Opinion No. 2021-UP-144
Submitted April 1, 2021 – Filed May 5, 2021

AFFIRMED

Chief Appellate Defender Robert Michael Dudek, of
Columbia, for Appellant.

Attorney General Alan McCrory Wilson and Assistant
Attorney General William Frederick Schumacher, IV,
both of Columbia; and Solicitor David Rhys Wagner, Jr.,
of Anderson, all for Respondent.

PER CURIAM: Darrell Eugene Blackwell appeals his conviction for armed robbery and sentence of eighteen years' imprisonment. On appeal, he argues the trial court erred by admitting an audio recording of his custodial interview into

evidence and by failing to charge the jury on the lesser-included offense of strong arm robbery. We affirm pursuant to Rule 220(b), SCACR.

1. Any error in admitting the audio recording of Blackwell's custodial interview was harmless based on the overwhelming evidence of Blackwell's guilt. *See State v. Brewer*, 411 S.C. 401, 408, 768 S.E.2d 656, 660 (2015) (stating the "[i]mproper admission of hearsay testimony constitutes reversible error only when the admission causes prejudice." (quoting *State v. Jennings*, 394 S.C. 473, 478, 716 S.E.2d 91, 93 (2011))); *State v. Gracely*, 399 S.C. 363, 375, 731 S.E.2d 880, 886 (2012) ("A violation of the Confrontation Clause is not per se reversible but is subject to a harmless error analysis."). At trial, Investigator Jamie Hill testified Blackwell admitted during the interview that he was the robber shown in the Shop Rite surveillance video. Investigator Hill also identified Blackwell as the man in the surveillance video, and the clothing police recovered from Blackwell's house matched the clothing the robber wore in the video. Further, Blackwell's brother testified he recognized Blackwell in the surveillance video and called the police tip hotline and identified Blackwell as the robber in the video. Based on this testimony the State presented at trial, we find any error in admitting the audio of Blackwell's interview could not have reasonably affected the result of trial. *See Brewer*, 411 S.C. at 408-09, 768 S.E.2d at 660 (stating an error "is deemed harmless when it could not have reasonably affected the result of trial, and an appellate court will not set aside a conviction for such insubstantial errors." (quoting *Jennings*, 394 S.C. at 478, 716 S.E.2d at 93)).

2. The trial court did not err by denying Blackwell's request to charge the jury on the lesser-included offense of strong arm robbery because Blackwell admitted in an interview with police that he was carrying a toy gun during the commission of the robbery. *See State v. Gilmore*, 396 S.C. 72, 77, 719 S.E.2d 688, 690 (Ct. App. 2011) ("In criminal cases, we review the decisions of the trial court only for errors of law. Therefore, in the context of a trial court's decision not to charge a requested lesser-included offense, [this court] review[s] the trial court's decision de novo."); *State v. White*, 361 S.C. 407, 412, 605 S.E.2d 540, 542 (2004) ("[A] trial [court] does not err by refusing to charge a [lesser-included] offense where there is no evidence tending to show the defendant was guilty *only* of the lesser offense." (emphasis added)); *State v. Muldrow*, 348 S.C. 264, 267-68, 559 S.E.2d 847, 849 (2002) ("Under § 16-11-330(A) [of the South Carolina Code (2015)], the State may prove armed robbery by establishing the commission of a robbery and either one of two additional elements: (1) that the robber was armed with a deadly weapon or (2) that the robber alleged he was armed with a deadly weapon, either by action or words, *while using a representation of a deadly weapon* or any object which a

person present during the commission of the robbery reasonably believed to be a deadly weapon." (emphasis added)); *Abney v. State*, 408 S.C. 41, 45, 757 S.E.2d 544, 546 (Ct. App. 2014) ("Strong arm robbery is defined under common law 'as the felonious or unlawful taking of money, goods, or other personal property of any value from the person of another or in his presence by violence or by putting such person in fear.'" (quoting *State v. Rosemond*, 356 S.C. 426, 430, 589 S.E.2d 757, 758 (2003))); *State v. Tasco*, 292 S.C. 270, 272, 356 S.E.2d 117, 118 (1987) ("[W]hen a person perpetrates a robbery by brandishing an instrument which appears to be a firearm . . . in the absence of any evidence to the contrary, the law will presume the instrument to be what his conduct represents it to be" (quoting *State v. Thompson*, 254 S.E.2d 526, 528 (N.C. 1979))).

AFFIRMED.¹

WILLIAMS, THOMAS, and HILL, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

STATE OF SOUTH CAROLINA

County of ANDERSON

IN THE COURT OF COMMON PLEAS

Darrell Eugene Blackwell - 325994

Full name and prison number (if any) of Applicant

2022CP0400877

v.

APPLICATION FOR

State of South Carolina

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 ~~Anderson Correctional Institute~~
EVAN'S Correction Institute
2. Name and location of Court which imposed sentence Anderson County
3. Name(s) of co-defendant(s) (if any) None
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2016-GS-04-00433
 - (b) _____

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) OCT 9, 2018
- (b) _____
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) ☒ after a plea of not guilty B
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. State of South Carolina In the Court of Appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. AFFIRMED
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. MAY 5, 2021
- 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) _____

10. Do Trial Court erred in not granting trial counsel's motion for Direct Verdict

E. Trial judge erred by making unestablished statements

F. Court erred allowing Investigator Hill to testify on truthfulness of Interrogation

(11) A. Interrogating Detective Garrett who also took Applicant's statement was not made available at trial and was therefore Not subject to Cross Examination

B. The Court allowed applicant's statement into evidence and interrogation. Garrett stated that the video tape showed applicant robbing the store and asserted applicant was using a Knife and gun during the robbery. Also that the robbery was an "Upside Job"

C. The Video was inconclusive on the Knife, which the applicant Over

to testify on truthfulness of investigation
(Appeals Counsel Failed to raise it)

Page 5 (16) A Trial judge erred in not granting
Trial Counsel's Motion For a "direct Verdict"
(Appeal's Counsel Failed to raise it)

(16) B. Trial judge erred by making unestablished
statements (Appeal lawyer Failed to raise it)

(16) C. Court erred allowing Investigator Hill
to testify on truthfulness of investigation
(Appeal's Counsel Failed to raise it)

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) 6th Addendum Confrontation Clause Violation
- (b) Court erred admitting hearsay Evidence
- (c) Court erred in refusing to instruct jury on the lesser included defense of Strong Armed Robbery
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) See Paper attached not enough room
- (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? In Court of Appeals
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
- (d) any other petitions, motions or applications in this or any other Court? NO
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof: Appeal
- i. _____
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. The South Carolina Court of Appeals
- ii. 1220 Senate Street Columbia S.C. 29201
- iii. _____
- iv. _____

(c) the disposition thereof:

- i. Affirmed
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. May 5 2021
- 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?

yes

15. If you answered "yes" to (14) identify:

- 6th Amendment Confrontation Clause Violation
- (a) which grounds have been presented:
- i. Court erred by admitting hearsay evidence
 - ii. Court erred by refusing to instruct jury on the
 - iii. lesser Included offence of Strong arm Robbery
- (b) the proceedings in which each ground was raised:
- i. Appeal's Court
 - ii. Appeal's Court
 - iii. Appeal's Court

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) on Page attached
 (b) _____
 (c) _____

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? Yes
 (b) your trial, if any? Yes
 (c) your sentencing? Yes
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?
NO

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. Hayden Lucas, Anderson County
Public Defender's Office
 ii. _____

iii. Robert Dudek (Division of Appellate defense
1350 Lady Street, Suite 401 Columbia S.C. 29201

(b) the proceedings at which each such attorney represented you:

i. _____
 ii. _____
 iii. _____

19. State clearly the relief you seek in filing this application:

Sentence ~~reversed~~ and vacated
Reversed sentence

20. Are you now under sentence from any other court that you have not challenged?

NO

STATE OF SOUTH CAROLINA)

County of Anderson)

VERIFICATION

I, Darrell E. Blackwell, 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.

Darrell Blackwell

SWORN to and subscribed before me this 28th
day of March, _____.

[Signature] (L.S.)
Notary Public

My Commission Expires: May 05 2022

2117/24

APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF

I, Darrell E. Blackwell, 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.

Darrell Blackwell
Applicant

SWORN or affirmed to and subscribed before me this

28th day of march.

[Signature]
Notary Public

My Commission Expires: May 5, 2022

2117124

Respondent.

**RETURN AND PARTIAL
MOTION TO DISMISS
(Counsel Appointed)**

Darrell Eugene Blackwell | Return and Partial Motion to Dismiss, | 2022-CP-04-00877

Applicant was identified as the robber by video. During its March 2016 term, the Anderson County Grand Jury indicted Applicant on the charge of Armed Robbery (2016-GS-04-0043).

On May 24, 2021, Applicant proceeded to a jury trial before the Honorable J.C. Buddy Nicholson. Hadden Lucas (Trial Counsel) and Gordon Senerius of the Tenth Circuit Public Defender's Office represented Applicant. Deputy Solicitor Catherine T. Huey and Assistant Solicitor Stan Overby of the Tenth Circuit Solicitor's Office prosecuted the case. At the conclusion of the trial, the jury found Applicant guilty as indicted, and Judge Nicholson (trial judge) sentenced Applicant to eighteen years imprisonment, with credit for thirty-three days.

Applicant filed a timely notice of appeal on October 18, 2018. Applicant's appeal was perfected by Chief Appellate Defender Robert M. Dudek of the South Carolina Commission on Indigent Defense. Applicant asserted two issues in his Initial Brief before the South Carolina Court of Appeals:

1. Whether the court erred by admitting appellant's recorded statement into evidence, where the interrogating Detective, Garrett, did not testify, and was not subject to cross-examination, since this violated appellant's right to Confrontation and admitted hearsay evidence including Garrett repeatedly telling appellant the videotape showed appellant robbing the store, and asserted that appellant was using a knife during the robbery, and insinuated the robbery was an "inside job" between appellant and the clerk who was supposed to be working that night?
2. Whether the court erred by refusing to instruct the jury on the lesser-included offense of strong arm robbery, where there was no testimony appellant was armed with a deadly weapon, appellant denied using a knife, where the videotape was inconclusive on the knife, and where there was no evidence the clerk working at the store thought the toy gun was represented as being a real gun, since appellant was entitled to that lesser-included offense instruction under the "any evidence" standard?

In an unpublished opinion, the Court of Appeals dismissed the appeal and affirmed Applicant's

sentence and conviction. State v. Blackwell, Unpub. Op. No. 2021-UP-144 (filed May 5, 2021)³.

The Remittitur was returned to the lower court on June 1, 2021.

SUMMARY OF FACTS ADDUCED AT TRIAL

On January 9, 2016, the Shop Rite convenience on Sayre Street store was robbed. Officer Rhonda Phillips (Officer Phillips) responded to the scene of the robbery and met with the two witnesses to the crime. The witnesses reported a bearded white male left the scene of the crime in a white van. Officer Phillips also collected a copy of the surveillance video for the investigation. Deputy Craig Holbrooks (Deputy Holbrooks) watched the video that night and placed it into storage at the Anderson County Sheriff's Office. Additionally, Deputy Holbrooks made a copy of the video for trial and confirmed the video used by the State was the same one he reviewed that night. Deputy Holbrooks noted that the person in the video was shown holding a knife and gun in the video. (Trial Tr. pp. 79, ll. 4 – 102, ll. 15; St. Ex. 4-11).

³ The Court of Appeals found (1) The testimony of Investigator Jamie Hill and Applicant's brother identifying him as the robber in the video outweighed any error in admitting the audio of Applicant's interview, as it could not have reasonably affected the trial. See State v. Brewer, 411 S.C. 401, 408, 768 S.E.2d 656, 660 (2015) (stating the "[i]mproper admission of hearsay testimony constitutes reversible error only when the admission causes prejudice." (quoting State v. Jennings, 394 S.C. 473, 478, 716 S.E.2d 91, 93 (2011))); State v. Gracely, 399 S.C. 363, 375, 731 S.E.2d 880, 886 (2012) ("A violation of the Confrontation Clause is not per se reversible but is subject to a harmless error analysis."); and (2) The Trial Court did not err in not charging the jury on the lesser included offense of strong armed-robbery because Applicant admitted during interview with police that he was carrying a toy gun during the commission of the robbery. State v. White, 361 S.C. 407, 412, 605 S.E.2d 540, 542 (2004) ("[A] trial [court] does not err by refusing to charge a [lesser-included] offense where there is no evidence tending to show the defendant was guilty only of the lesser offense." (emphasis added)); State v. Muldrow, 348 S.C. 264, 267-68, 559 S.E.2d 847, 849 (2002) ("Under § 16-1-330(A) [of the South Carolina Code (2015)], the State may prove armed robbery by establishing the commission of a robbery and either one of two additional elements: (1) that the robber was armed with a deadly weapon or (2) that the robber alleged he was armed with a deadly weapon, either by action or words, while using a representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon." (emphasis added)).

Lieutenant Robert Gebing (Lieutenant Gebing) noted that after other officers could not identify the suspect in the video, the Sheriff's office contacted local media to generate potential tips. Applicant's brother, Mark Steven Blackwell (Mark), recognized Applicant and informed police of his identity. Following the tip, Lieutenant Gebing and Detective Garrett went to the homes at 202 and 203 Gilbert Street, which they were informed were residences occupied by Johnnie Taylor (Taylor), Applicant's mother, and Applicant. Upon arriving, officers observed a white van outside which matched the description of the vehicle used in the robbery. Taylor spoke with the officers and showed them around her home, during which they saw several items of clothing similar to those worn by the suspect in the surveillance video. Taylor gave officers permission to collect the clothing. (Trial Tr. pp. 104, ll. 17 – pp. 116, ll. 13; Trial Tr. pp. 134, ll. 6 – pp. 134, ll. 11; Trial Tr. pp. 169, ll. 20 – pp. 173, ll. 23; St. Ex. 15-19).

Investigator Kenneth Pigman accompanied Detective Garrett while he executed search warrants on both the 202 and 203 Gilbert Street homes. Again, the white van was observed outside the home and the men photographed it. The officers also located a brown stocking cap behind the 203 Gilbert Street residence. At 202 Gilbert, the officers found two unopened packs of Seneca cigarettes—the brand of cigarette stolen from the convenience store—and a black jacket with an attached gray hood. Both the hat and jacket matched those worn by the suspect in the surveillance video. (Trial Tr. pp. 154, ll. 17 -- pp. 168, ll. 8; St. Ex. 22, 26). Applicant was arrested on January 16, 2016, was later indicted for armed robbery, and proceeded to trial.

At the conclusion of the trial, trial counsel requested a charge on the offense of strongarm robbery because, during Applicant's interview, he did not recall having a knife with him and claimed the gun he used was not a lethal firearm but an expensive toy gun he found sometime before the crime. The solicitor argued the video recording of the crime clearly demonstrated

Applicant possessed a knife and that Applicant did not dispute using a toy gun during the crime, rendering a strong arm robbery charge inappropriate for jury consideration. The trial judge denied the motion. (Trial Tr. pp. 219, ll. 19 – pp. 223, ll. 1; Trial Tr. pp. 247, ll. 17 – pp. 249, l. 5).

PRE-TRIAL JACKSON V. DENNO HEARING

Prior to trial, an audio recording of Applicant's interview with police was proffered by the State during a Jackson v. Denno⁴ hearing. Investigator Scotty Hill (Investigator Hill) was present during the entirety of Applicant's interview, although Detective Garrett primarily interacted with Applicant. Investigator Hill testified Applicant agreed to the questioning. Investigator Hill testified Detective Garrett never misled Applicant about the information in law enforcement's possession. During the interview, Applicant admits to robbing the store that day, confirming that it was him captured on surveillance cameras within the store and claiming that the gun he used was a toy gun he found." (Trial Tr. pp. 53, ll. 13 – pp. 69, ll. 16; St. Ex. 2-A).

Trial Counsel objected to the admission of the audio recording, arguing it should be suppressed based on Applicant not being "a sophisticated man" and that he was "led along through a confession" without first viewing the surveillance video of the robbery. Based on this limited objection, the trial court denied the motion to suppress. (Trial Tr. pp. 69, ll. 17 – pp. 70, ll. 25).

Investigator Hill testified he was one of two officers present at Applicant's interview and was there for the entirety of it. Investigator Hill noted Applicant's statements to police were intelligently, knowingly, and voluntarily made. (Trial Tr. pp. 157, ll. 5 – pp. 183, ll. 4).

Trial Counsel objected to the statement's admission, claiming that Detective Garrett's failure to testify at trial violated Applicant's Sixth Amendment right to confront his accusers.

⁴ Jackson v. Denno, 378 U.S. 368 (1964).

Citing State v. Brewer, 411 S.C. 401, 768 S.E.2d 656 (2015), Trial Counsel claimed any statement made by Detective Garrett during the interrogation was hearsay and were "clear[ly]" offered for truth and not non-hearsay purposes. Trial Counsel also claimed it was important to exclude Detective Garrett's statements because they were "offered for context" regarding Applicant's statements to police. (Trial Tr. pp. 183, ll. 5 – pp. 189, ll. 13).

The State disagreed with Trial Counsel's objection and explained the facts of its case were opposite those of Brewer because it redacted any and all of Detective Garrett's statements in which he referenced what any other person, including Applicant's mother, said to officers. The remaining portion of the recording only included Detective Garrett's questions to Applicant and his explanations of what officers found, including the content of the security footage played at trial. The State further explained the recording was not being admitted for the "truth" in Detective Garrett's unredacted comments in the tape. Detective Garrett's statements were present merely to provide context for Applicant's admissions to police.

Trial Counsel noted that he had gone over the recording with the State and agreed upon portions of it which needed redaction to avoid the confrontation clause and hearsay issues. Trial Counsel clarified its position was that the video, in general, should be inadmissible because "all statements by [Detective] Garrett [were] inadmissible hearsay," violating the confrontation clause, and the statement was not freely and voluntarily given, (emphasis added). The trial judge, noting Detective Garrett's hearsay statements were redacted, found Brewer did not apply and denied trial counsel's motion. (Trial Tr. pp. 189, ll. 14 – pp. 197, ll. 12; St. Ex. 2-A).

CURRENT APPLICATION

In his application for post-conviction relief, Applicant alleges he is being held in custody unlawfully based on the following reasons:

1. Trial Court Error
 - a. "[Trial] Court erred [in] admitting hearsay evidence [when] the [Trial] Court allowed [Applicant's] statement into evidence and interrogation. [Detective] Garrett stated that the video tape showed [Applicant] robbing the store and asserted [Applicant] as using a knife and gun during the robbery. Also that the robbery was on [illegible]."
 - b. "[Trial] Court erred by refusing to instruct jury on the lesser included defense of strong armed robbery [when] the video was inconclusive on the knife, which the [Applicant] over to testify on truthfulness of interrogation."
 - c. "Trial Court erred in not granting trial counsel's motion for direct[ed] verdict."
 - d. "[Trial Court] erred by making unestablished statements."
 - e. "[Trial] Court erred [in] allowing Investigator Hill to testify on truthfulness of interrogation."
2. Denied 6th Amendment Rights
 - a. "Interrogating Detective Garrett who also took [Applicant's] statement was not made available at trial and was therefore not subject to cross examination."
3. Ineffective Assistance of Appellate Counsel
 - a. Appellate Counsel failed to raise issue on direct appeal of Trial Court's denial of trial counsel's motion for directed verdict.
 - b. Appellate Counsel failed to raise issue on direct appeal of trial judge making unestablished statements.
 - c. Appellate Counsel failed to raise issues on direct appeal of Trial Court error in allowing Investigator Hill to testify on truthfulness of investigation.

Attached to this return and incorporated by reference are the Anderson County Clerk of Court records regarding the subject convictions; Applicant's records from the South Carolina Department of Corrections; a complete record of Applicant's direct appeal including the trial transcript; and the records of the current PCR action. Respondent reserves the right to amend this return upon receipt of any relevant materials.

MOTION TO DISMISS

Respondent moves to summarily dismiss Applicant's claims of Trial Court Error and violation of Applicant's right to confront his accusers be dismissed for failure to state a cognizable

claim under the Uniform Post-Conviction Procedure Act, S.C. Code Ann. §17-27-10 to -160. An

Applicant may commence a post-conviction relief action on the following grounds:

1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
2. That the court was without jurisdiction to impose sentence;
3. That the sentence exceeds the maximum authorized by law;
4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
5. That his sentence has expired, his probation, parole or conditional release [was] unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or
6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy....

S.C. Code Ann. § 17-27-20.

Even if the facts alleged by Applicant are accurate, these facts do not support a cognizable claim for post-conviction relief under any of the statutory grounds. PCR relief is only proper when the application collaterally attacks the validity of the conviction or sentence. Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000). These issues are improper for post-conviction relief because they could have been raised on direct appeal and are procedurally barred by S.C. Code Ann. §17-27-20(b) (2003). Post-conviction relief is not a substitute for a direct appeal. Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on direct appeal. Ashley v. State, 260 S.C. 436, 196 S.E.2d 501 (1973). Applicant could have raised this issue at trial or on appeal. Importantly, Applicant did raise the issue of the violation of his right to confront his accusers and trial court error, and after review, the Court of Appeals affirmed his sentence and conviction.

For these reasons and pursuant to Rule 12(b)(6), SCRCP, Respondent requests the Court

dismiss these allegations for failing to state a cognizable claim for which relief can be granted under the Uniform Post-Conviction Relief Act.

RESPONSE TO ALLEGATIONS OF INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL

Applicant does not allege any ineffective assistance of Trial Counsel claims. Therefore, Respondent responds in general as most PCR allegation center around ineffective assistance of counsel.

In Strickland v. Washington,⁵ the United States Supreme Court established that to challenge a conviction based on ineffective assistance of counsel, a prisoner must prove two elements: (1) his counsel was deficient in his representation, and (2) he was prejudiced as a result. To satisfy the first prong, a prisoner "must show that counsel's representation fell below an objective standard of reasonableness." Id. at 688. To satisfy the second prong, a prisoner must show that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 694. The Supreme Court has cautioned that "[j]udicial scrutiny of counsel's performance must be highly deferential," and "[b]ecause of the difficulties inherent in making the evaluation, a court must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance." Id. at 689.

The Sixth and Fourteenth Amendments to the United States Constitution guarantee Applicant—like all other defendants—the right to "assist[ance] by an attorney, whether retained or appointed, who plays the role necessary to ensure that the trial is fair." Id. at 685. Ordinarily, PCR allegations are centered upon an allegation that the applicant did not receive *effective* assistance of counsel guaranteed by the Sixth Amendment. See generally S.C. Code Ann. § 17-

⁵ 466 U.S. 668 (1984).

27-20(A) (enumerating allegations cognizable in PCR actions). The allegation of denial of such representation sets forth a *prima facie* violation of this constitutional right and raises a question of fact that an evidentiary hearing can only determine. Rogers v. State, 261 S.C. 288, 291, 199 S.E.2d 761, 762 (1973).

In a post-conviction relief action, the applicant bears the burden of proving the allegations by a preponderance of the evidence. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985); Rule 71.1(e), SCRCP. The reviewing court applies the two-part test outlined in Strickland to determine whether counsel's conduct "was so [ineffective] as to require reversal" of the applicant's conviction. Strickland, 466 U.S. at 687. Applicants seeking PCR relief must provide claims that satisfy both prongs in Strickland, and failure to satisfy both prongs defeat the ineffectiveness claim. Id. at 700; see also Bell v. Cone, 535 U.S. 685, 695 (2002) (explaining that "[w]ithout proof of both deficient performance and prejudice to the defense, . . . it could not be said that the sentence or conviction resulted from a breakdown in the adversary process that rendered the result of the proceeding unreliable" (citation and internal quotation marks omitted)). In the first prong of Strickland, constitutional deficiency is "necessarily linked to the practice and expectations of the legal community." Padilla v. Kentucky, 559 U.S. 356, 366 (2010). An applicant claiming ineffective assistance "must identify the acts or omissions of counsel that are alleged *not* to have been the result of reasonable professional judgment." Strickland, 466 U.S. at 690 (emphasis added). The reviewing court must then "determine whether, in light of all the circumstances, the identified acts or omissions were outside the wide range of professionally competent assistance" demanded of attorneys in criminal cases. Id.

Further, because of the difficulties inherent in making such an evaluation, the reviewing court must indulge in a "strong presumption that counsel's conduct falls within the wide range of

reasonable professional assistance." Butler, 286 S.C. at 445, 334 S.E.2d at 816. "The burden of rebutting this presumption 'rests squarely on the defendant,' and '[i]t should go without saying that the absence of evidence cannot overcome [it].'" Dunn v. Reeves, 594 U.S. ___, ___, 141 S. Ct. 2405, 2410 (2021) (alteration in original) (quoting Burt v. Titlow, 571 U.S. 12, 22–23 (2013)). In fact, "even if there is reason to think that counsel's conduct 'was far from exemplary,' a court still may not grant relief if '[t]he record does not reveal' that counsel took an approach that *no competent lawyer would have chosen*." Id. (alteration in original) (emphasis added) (quoting Titlow, 571 U.S. at 23– 24).

"When counsel focuses on some issues to the exclusion of others, there is a strong presumption that he [or she] did so for tactical reasons rather than through sheer neglect." Yarborough v. Gentry, 540 U.S. 1, 8 (2003) (citing Strickland, 466 U.S. at 690). In determining the deficiency, the court must affirmatively entertain the range of possible reasons counsel may have had for proceeding as they did. Cullen v. Pinholster, 563 U.S. 170, 196 (2011); Harrington v. Richter, 562 U.S. 86, 109– 10 (2011). "[E]ven if an omission is inadvertent, relief is not automatic. The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight." Yarborough, 540 U.S. at 8; see also Murphy v. Davis, 901 F.3d 578, 592 (5th Cir. 2018) ("[C]ounsel's performance need not be optimal to be reasonable.").

Review of counsel's actions is hallmarked by deference, as "it is all too tempting for a defendant to second-guess counsel's assistance after conviction or adverse sentence, and it is all too easy for a court, examining counsel's defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable." Strickland, 466 U.S. at 689. No particular set of detailed rules for counsel's conduct can satisfactorily take account of the variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how best

to represent a criminal defendant. Strickland, 466 U.S. at 688– 89; see id. at 693 ("Representation is an art, and an act or omission that is unprofessional in one case may be sound or even brilliant in another."). "Defense lawyers have 'limited' time and resources, and so must choose from among 'countless' strategic options." Dunn, 594 U.S. ___, 141 S. Ct. at 2410 (quoting Harrington, 562 U.S. at 106– 107). "Such decisions are particularly difficult because certain tactics carry the risk of 'harm[ing] the defense' by undermining credibility with the jury or distracting from more important issues." Id. (quoting Harrington, 562 U.S. at 108).

Thus, a fair assessment of attorney performance requires every effort to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time. Strickland, 466 U.S. at 689. The ultimate question is not whether counsel's actions were reasonable but whether there is any reasonable argument counsel satisfied the Strickland deferential standard.

The second, or "prejudice" prong of Strickland is rooted in the very purpose of the Sixth Amendment guarantee of counsel that ensures a defendant has the assistance necessary to justify reliance on the outcome of the proceeding. Id. at 691– 92. An applicant seeking to prove prejudice must demonstrate counsel's deficient performance prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry v. State, 300 S.C. 115, 117– 18, 386 S.E.2d 624, 625 (1989). A reasonable probability is one that is "sufficient to undermine confidence in the outcome." Strickland, 466 U.S. at 694; see id. at 695 (explaining that, where a defendant challenges his conviction, he must show that there exists "a reasonable probability that, absent the errors, the factfinder would have had a reasonable doubt respecting guilt").

To determine prejudice, the reviewing court must consider the totality of the evidence before the jury. *Id.* at 695. It is not sufficient "to show [counsel's] errors had some conceivable effect" on the outcome of the proceeding— counsel's errors must be "so serious as to *deprive the defendant of a fair trial.*" *Id.* at 693 (emphasis added). "An error by counsel, even if professionally unreasonable, does not warrant setting aside the judgment of a criminal proceeding if the error had no effect on the judgment." *Id.* at 691. Moreover, the South Carolina Supreme Court has repeatedly held that a PCR applicant must produce the testimony of a favorable witness or otherwise offer the testimony according to the rules of evidence at the PCR hearing to establish prejudice. *Bannister v. State*, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998).

The Strickland standard must be applied with scrupulous care, lest "intrusive post-trial inquiry" threaten the integrity of the very adversary process the right to counsel is meant to serve. Strickland, 466 U.S. at 689–90. Courts must be wary of second-guessing counsel's trial tactics, and where counsel articulates a valid reason for employing such strategy, such conduct is not ineffective assistance of counsel. *Whitehead v. State*, 308 S.C. 119, 417 S.E.2d 529 (1992). The applicant's burden of proving both Strickland components is heavy considering the strong presumption that counsel's conduct fell within the range of reasonable professional legal assistance. Strickland, 466 U.S. at 690.

Representation is constitutionally ineffective only if counsel's conduct "so undermined the proper functioning of the adversarial process" that the defendant was denied a fair proceeding. *Id.* at 686; see *Nix v. Whiteside*, 475 U.S. 157, 175 (1986) (noting that under Strickland, the "benchmark" of the right to counsel is the "fairness of the adversary proceeding"); cf. *United States v. Morrow*, 977 F.2d 222, 229 (6th Cir. 1992) ("[T]he threshold issue is not whether [the

applicant's] attorney was inadequate; rather, it is whether he was so *manifestly* ineffective that defeat was snatched from the hands of probable victory.").

RESPONSE TO ALLEGATIONS OF INEFFECTIVE ASSISTANCE OF APPELLATE COUNSEL

Just as a defendant is entitled to effective representation during his general sessions proceeding, a defendant is also entitled to effective assistance of appellate counsel. Tisdale v. State, 357 S.C. 474, 476, 594 S.E.2d 166, 167 (2004) (citing Southerland v. State, 337 S.C. 610, 615, 524 S.E.2d 833, 836 (1999)). To prevail on a claim of ineffective assistance of appellate counsel, an applicant must establish both deficiency and prejudice as outlined above. Southerland, 337 S.C. at 616, 524 S.E.2d at 836. If an applicant can establish both deficiency according to professional norms and prejudice to the extent that he would have been successful on appeal, he is entitled to a new trial. Ezell v. State, 345 S.C. 312, 316, 548 S.E.2d 852, 854 (2001); Southerland, 337 S.C. 615-16, 524 S.E.2d at 836; see also Simpkins v. State, 303 S.C. 364, 401 S.E.2d 142 (1991) (post-conviction relief of a new trial granted based on appellate counsel's failure to raise an issue on appeal that constituted reversible error).

Although ineffective assistance of appellate counsel claims for failure to raise a particular issue on direct appeal can be successful, the United States Supreme Court has reiterated that it is "difficult to demonstrate that counsel was incompetent." Smith v. Robbins, 528 U.S. 259, 288 (2000). While appellate counsel is required to provide effective assistance of counsel, "appellate counsel is not required to raise every non-frivolous issue that is presented by the record." Thrift v. State, 302 S.C. 535, 539, 397 S.E.2d 523, 526 (1990) (citing Jones v. Barnes, 463 U.S. 745 (1983)). "For judges to second-guess reasonable professional judgments and impose on . . . counsel a duty to raise every 'colorable' claim suggested by a client would disserve the very goal

of vigorous and effective advocacy . . ." Jones, 463 U.S. at 754. Additionally, our South Carolina Supreme Court has expressly rejected the notion that appellate counsel has an obligation to raise all meritorious issues on appeal. Tisdale, 357 S.C. at 476, 594 S.E.2d at 167. "Generally, only when ignored issues are clearly stronger than those presented, will the presumption of effective assistance of counsel be overcome." Smith, 528 U.S. at 288 (quoting Gray v. Greer, 800 F.2d 644, 646 (7th Cir. 1986)).

Respondent submits the record likely refutes Applicant's allegations, and Applicant cannot satisfy either requirement of Strickland. However, Applicant alleged specific instances of ineffective assistance of appellate counsel, which is not conclusively refuted by the record, raising a question which can only be resolved by a hearing. Norman v. State, 276 S.C. 278, 277 S.E.2d 707 (1981). Therefore, the State requests an evidentiary hearing to fully resolve the issues. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (providing an evidentiary hearing shall be held when a PCR application "alleges specific instances of ineffective assistance of counsel which are not conclusively refuted by the record before the lower court").

ANY FUTURE AMENDMENTS AND INVOCATION OF DISCOVERY PROCESS

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. See Rule 11, SCRCP. *Pro se* filings will not be considered at the PCR hearing. The State reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to the State pursuant to Love v. State, 428 S.C. 231, 834 S.E.2d 196 (2019), or, alternatively, the State will request a continuance in the matter. Id., 428 S.C. at 245, 834 S.E.2d at 203 (Kittredge, J., dissenting) ("If, however, the proposed

amendment . . . would truly prejudice the State, the better course of action would be to continue the matter and thus remove any possibility of prejudice resulting from the belated amendments.”).

If Applicant fails to file a timely and responsive amended application setting forth specific allegations for relief, the State reserves the right to move to dismiss this allegation or claim. S.C. Code Ann. §§ 17-27-10 to -160; Rule 71.1, SCRPC; see also Rules 15(a)-(b), SCRPC. The State reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to the State. See Rule 15(a), SCRPC.

Pursuant to S.C. Code Ann. § 17-27-150, Applicant may not invoke formal discovery processes to issue subpoenas or otherwise obtain discovery materials unless granted leave from the Court upon a showing of good cause. Furthermore, the State requests that all potential exhibits and materials used to produce potential expert witness testimony be sent to the State well in advance of the evidentiary hearing. The State reserves the right to request a continuance and oppose witness testimony and exhibits that are withheld until the last minute resulting in undue prejudice to the State.

[CONCLUSION AND SIGNATURE ON THE FOLLOWING PAGE]

CONCLUSION

WHEREFORE, Respondent respectfully requests this Court grant its motion to dismiss the allegations of trial court error and violation of Applicant's right to confront his accusers, and hold an evidentiary hearing on the allegations of ineffective assistance of appellate counsel.

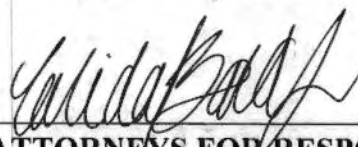
Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

DONALD J. ZELENKA
Deputy Attorney General

TALIDA BALAJ
Assistant Attorney General

By: 

ATTORNEYS FOR RESPONDENT
Office of the Attorney General
P.O. Box 11549
Columbia, S.C. 29211

February 12, 2024

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF ANDERSON	)	TENTH JUDICIAL CIRCUIT
	)	
DARRELL BLACKWELL,	)	AMENDED APPLICATION
APPLICANT.	)	
v.	)	
	)	
THE STATE OF SOUTH CAROLINA,	)	CASE # 2022-CP-04-0877
RESPONDENT.	)	
	)	

This matter comes before the Court by way of application of post-conviction relief filed April 20, 2022, alleging trial court error, denial of 6th Amendment Rights when an audio recording of the Applicant's statement was played even though the interrogating investigator witness was not made available for cross-examination at trial, and ineffective assistance of appellate counsel for failing to raise the issues of the trial judge's error in his denial of a directed verdict, making unestablished statements, and allowing Investigator Hill to testify to the truthfulness of the investigation. A Return and Partial Motion to Dismiss was made on February 12, 2024. This application is intended to incorporate and clarify the allegations of the original application. The Applicant withdraws the allegation of trial court error. The Applicant argues the violation of his right to confront his accusers is a cognizable PCR claim and is proceeding on the additional allegations of Fifth, Sixth, Eighth and Fourteenth Amendment violations of the Constitution of the United States & Art. I Sec. 3, 10, & 14 of the South Carolina Constitution.

Ineffective assistance of trial counsel for:

- 1) failing to review discovery with Applicant and advise him that still photographs could be taken from the video and admitted as evidence showing the presence of a gun and knife;
- 2) failing to advise that Applicant that a toy gun was "a representation of a deadly weapon" that satisfied the elements of armed robbery;

3) failing to advise the Applicant that the absence of available State witnesses to testify against him did not prevent the State from presenting an overwhelming case of guilt using the video and recorded statements only; and

4) failing to argue that the use of photo stills of a knife allegedly taken from the store video violated the best evidence rule. (R. p. 90, l. 21 & SCRE 1002)

Ineffective assistance of appellate counsel for:

1) failing to brief the issue that the judge erred in allowing deputy Craig Holbrooks to testify that a photo still allegedly taken from the in-store video showed a bladed object. (R. P. 102, l.4).

Due Process violations due to the absence of available witnesses violating the Applicants Constitutional right to confront his accusers.

Respectfully submitted,



Susannah Ross
Bar # 11205
Attorney for the Applicant
330 E. Coffee St,
Greenville, SC 29601
(864) 242-0029

This 10th day of September, 2014

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

TENTH JUDICIAL CIRCUIT
IN THE COURT OF COMMON PLEAS

Darrell E. Blackwell,)
Applicant,)
)
)
)
)
)
State of South Carolina,)
Respondent.)

)

2022-CP-04-00877
TRANSCRIPT OF RECORD

September 16, 2024
Anderson, South Carolina

B E F O R E:

The Honorable Kristi F. Curtis, Judge

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

ATTORNEY FOR APPLICANT:
Susannah C. Ross, Esquire

ATTORNEY FOR RESPONDENT:
D. Russell Barlow, II., Assistant Attorney General

Tara T. Scott, CVR
Official Court Reporter

INDEX

<u>WITNESS</u>	<u>PAGE NO.</u>
Darrell E. Blackwell	
Direct Examination.....	8
Cross-Examination.....	17
Alexander H. Lucas	
Direct Examination.....	24
Cross-Examination.....	31
Redirect Examination.....	35
Recross-Examination.....	36
Robert M. Dudek	
Direct Examination.....	38
Cross-Examination.....	39
Certificate of Court Reporter.....	43

(NO EXHIBITS INTRODUCED DURING THIS HEARING)

1 MR. BARLOW: May it please the Court? Russ Barlow on
2 behalf of the State of South Carolina. This is the post
3 conviction relief matter of *Darrell E. Blackwell v The*
4 *State*, case number 2022-CP-04-00877 out of Anderson County.
5 During its March 2016 term, the Anderson County Grand Jury
6 indicted Applicant on charge of armed robbery. That's 2016-
7 GS-04-0043. On May 24, 2021, Applicant proceeded to a jury
8 trial before the Honorable J.C. "Buddy" Nicholson. Hadden
9 Lucas and Gordon Senerius of the Tenth Circuit Public
10 Defender's office represented Applicant. Deputy Solicitor
11 Catherine T. Huey and Assistant Solicitor Stan Overby of the
12 Tenth Circuit Solicitor's office prosecuted the case. The
13 jury found Applicant guilty as indicted, and Judge Nicholson
14 sentenced Applicant to 18 years imprisonment.

15 Applicant filed a timely notice of appeal, and his appeal
16 was perfected by Chief Appellate Defender Robert M. Dudek of
17 the South Carolina Commission on Indigent Defense.

18 Applicant asserted two issues in its initial brief with the
19 South Carolina Court of Appeals, and in an unpublished
20 opinion the Court of Appeals dismissed the appeal and
21 affirmed Applicant's sentence and conviction. That is *State*
22 *v Blackwell*, Opinion number 2021-UP-144 filed May 5, 2021.
23 The remittitur was returned to the lower court on June 1,
24 2021.

25 In his original application for post-conviction

1 relief, Applicant alleged multiple errors of trial court
2 error, to count at least five of them; an allegation of
3 denied his Sixth Amendment right to cross-examine Detective
4 Garrett, and three ineffective assistance of appellate
5 counsel allegations. Respondent made its return and partial
6 motion to dismiss on February 15, 2024. Ms. Ross served us
7 with an amended application, which was filed on September
8 13, 2024. In the amended application, Applicant raises the
9 following allegations; ineffective assistance of counsel for
10 failure to review discovery with applicant and advising that
11 still photographs could be taken from the video and admitted
12 as evidence showing the presence of a gun at night, failing
13 to advise Applicant that a toy gun was a representation of a
14 deadly weapon that satisfied the elements of armed robbery,
15 failing to advise the Applicant that the absence of
16 available State witnesses to testify against him did not
17 prevent the State from presenting an overwhelming case of
18 guilt, using the video and recorded statements only, failing
19 to argue that the use of photo stills of a knife, allegedly
20 taken from the store video, violated the best evidence rule,
21 and that an allegation of ineffective assistance of
22 Appellate counsel. Failing to brief the issue that the
23 judge erred in allowing Deputy Craig Holbrook who testified
24 that a photo still, allegedly taken from the in store video,
25 showed a bladed object.

1 As relief, Applicant is requesting that the Court
2 reverse his conviction and vacate his sentence. Before this
3 Court are the Anderson County Clerk of Court records,
4 Applicant's records from the South Carolina Department of
5 Corrections, Applicant's appellate records, which include
6 the entire trial transcript, and the records of this PCR
7 action. At this time, we'd ask Ms. Ross to indicate which
8 allegations she intends to move forward on.

9 MS. ROSS: Judge, I really tried to make it more
10 concise in my amended application as the allegations I
11 thought were strongest to go forward with today, though I
12 don't want to waive Mr. Blackwell's -- any of his
13 allegations if something comes up during the testimony, I'd
14 like to further explore. So, I will attempt to stick
15 largely with the allegations I put in that amended
16 application.

17 THE COURT: The prior allegations that he raised.

18 MS. ROSS: I don't want to waive them at that time.
19 I did say in the amended application that I believe this
20 might be another case that I waived any allegations of trial
21 judge error that I believe are in there. Yes. Applicant
22 withdraws the allegations of trial of court error, but does
23 go forward on some of the other allegations. I just don't
24 like to waive allegations of an applicant until the end of
25 the hearing in case some things can come up. This is sort

1 of a tragic situation that occurred where Mr. Blackwell, I
2 believe, turned down an offer of seven years for strong arm.
3 Witnesses were not presented.

4 It was a strange trial where the investigating officer
5 did not testify. Witnesses at the scene did not testify.
6 This case proceeded almost solely on the Applicant's
7 statement to law enforcement and a video. He was told by a
8 private attorney that he spoke to, who he was planning to
9 hire, that it would be impossible to convict without the
10 witnesses appearing in trial. And he can explain that to
11 you a little bit more, but at this point, we call Mr.
12 Blackwell to the stand.

13 THE COURT: Okay, and let me just go over with Mr.
14 Blackwell first before we get started. So again, we're
15 going to go forward on the grounds of the amended
16 application, and then at the end, I'll ask you just to
17 clarify that those are the grounds that you're going forward
18 on today.

19 THE APPLICANT: I can't hear. I'm sorry. What did
20 she say?

21 THE COURT: Sir -

22 THE APPLICANT: I can't hardly hear out of my right
23 ear.

24 THE COURT: That's fine. Can you hear me better now?

25 THE APPLICANT: Yeah, I can hear you.

1 (WHEREUPON, the Applicant, Darrell E. Blackwell, was
2 sworn by the Court.)

3 THE COURT: I just want to go over a few things with
4 you before we go forward with your application. I want to
5 make sure that you understand there's two things that I can
6 do in your case. I can grant your application for PCR, or I
7 can deny the application. If I grant your application, and
8 I agree with everything you're saying, and say that you need
9 a new trial, and I remand it back, you understand that you
10 start out as if the trial never happened. So, there is no
11 obligation on the State to make you any offers for a plea.
12 I can't tell you what the outcome of that trial would be.
13 So, this is an offense that carries up to 30 years. You
14 received a sentence of 18 in your case, which I'm not making
15 light of. That's a substantial sentence. But I want to
16 make sure you understand if the case goes back, there is no
17 guarantee that you'll get less time than 18 years. And I
18 just want to make sure you're aware of that.

19 (WHEREUPON, Applicant speaks to counsel off the record.)

20 THE APPLICANT: I would like to go forward.

21 THE COURT: Okay, that's fine. I'm not trying to talk
22 you out of anything, I just want to make sure you understand
23 you can win the battle and lose the war. If I deny your
24 application, it just means you would continue to serve the
25 remainder of your time. But I want to make sure that you

Darrell Blackwell-Direct Examination

8

1 understand the consequences of us granting your application
2 doesn't mean the charges go away. It doesn't mean that
3 you're necessarily getting a shorter sentence than the
4 sentence you're currently serving. And you understand that?

5 THE APPLICANT: Can I talk to my...

6 MS. ROSS: These are his daughters in the courtroom
7 behind us. If he might have a moment.

8 THE COURT: Sure.

9 THE APPLICANT: I'd like to go forward.

10 THE COURT: And you're not under the influence of any
11 drugs or alcohol today?

12 THE APPLICANT: No, ma'am. Not today. I've been clean
13 five years, but when all this happened I was completely out
14 of my mind.

15 THE COURT: Okay. I'll certainly allow you to go
16 forward.

17 THE APPLICANT: Thank you, ma'am.

18 MS. ROSS: Your Honor, we would call Darrell Blackwell
19 to the stand.

20 THE COURT: And you're already sworn, sir, so you can
21 go ahead and have a seat.

22 DIRECT EXAMINATION

23 BY MS. ROSS:

24 Q We discussed this a little while. You know that you
25 could get sent back and possibly resentenced to up to 30

1 years. And what do you want to do today?

2 A I wish to go forward.

3 Q All right. And you've alleged ineffective assistance
4 of trial counsel for a number of things, but can you talk
5 about a few of them? As far as your trial, why didn't you
6 take that plea offer? Or tell the Judge what your plea
7 offer was and why you didn't take it.

8 A They had offered me three pleas, but I was on my
9 fourth Public Defender. It was Lucas, Hadden Lucas, and he
10 said it wouldn't be no more pleas if I didn't accept the
11 last one, which was, I think, 15 years. And I said I just
12 didn't feel like I could plead to it. I didn't do it. And
13 he said it wouldn't be no more. But he had went to the
14 Solicitor and talked with him, and told him about my case.
15 And they agreed. And they came back with a seven-year
16 offer, but I didn't take it, because they had Garrett, the
17 investigator. When he came and investigated me, he kept
18 telling me over and over that he had a video of me robbing
19 the store with a gun and a knife. He kept telling me, and
20 he said he had it on the video, but he never showed me the
21 video. He said he couldn't get it to come up on his phone,
22 so he kept telling me over and over, but he was asking me
23 questions the whole time while he was doing this. He would
24 tell me, ask me a question, and I would answer, but he would
25 say, "You might as well plead guilty, because I got it on

Darrell Blackwell-Direct Examination

10

1 the video." But he never showed me the video the whole
2 time. So, after that, like I said, I turned the plea down
3 with Hadden, because the video that Lucas showed me was --
4 you couldn't see a weapon in my hand. Nowhere in that video
5 did I see a weapon in my hand, or I would've took seven
6 years if I would have. But even Robert Dudek in Columbia,
7 in my PCR, he said the video he looked at was inconclusive.
8 You could not see a weapon in my hand. And I believed that.
9 I've been locked up five years and ten months, eleven months
10 today. And I believed that I didn't have any weapons in my
11 hand until 20 minutes ago. I told Ms. Ross to go back and
12 look at the video. And I told her that she would not find a
13 weapon in that video. Because the video I saw, like I said,
14 it was inconclusive. And when I looked at it, I didn't see
15 a weapon. Robert Dudek, he said he didn't see a weapon. It
16 was inconclusive. Ms. Ross went back and found -- she said
17 she looked at three videos, and the video she looked at and
18 showed me today, it's pretty much undeniable. But I never
19 saw that video. So, I believed -- I've been telling my
20 daughters and everybody I know that I didn't have a weapon,
21 but I was so high out of my mind when it happened that I
22 didn't even remember doing it, period. But I never saw the
23 video with a weapon in my hand or a representation of a
24 weapon in my hand. I never saw a video of that. That's why
25 when he offered me seven years, I said, "I didn't have a

1 weapon. I can't plead guilty to something that I didn't
2 do." And I honestly believed I didn't have a weapon. The
3 reason I went in the store was because a friend girl of mine
4 lived right behind the store. I was on my way home. I
5 stopped at her house and cut my van off. And I wasn't there
6 a minute. And this girl that lived behind the store, she
7 came out of that store, came across the field, and was
8 wailing, just bawling, crying. (CRYING SOUND) I got out of
9 my van. I went and met her, and it took me about five
10 minutes to get her to calm down and tell me what was wrong
11 with her. She said the people in the store was being mean
12 to her, accusing her of stealing, and touching her on the
13 ass. She said, being mean last. And I said, "I'll show
14 them mean", and I just run in the stove to confront the guy.
15 That's what happened. But I was so high. I'd been on
16 drugs. Me and my wife separated. Before this, I was in
17 church two years clean. I did heating and air
18 subcontracting. Made \$1,500, \$2,000 a week. And I never
19 arm robbed anybody in my life. I mean, I got two daughters.
20 I had full custody and raised those girls in church and I
21 lived a good life. But I married my wife twice, and when I
22 found out she was running around on me and I just lost it.
23 I just lost my mind and went back -- went to doing drugs. I
24 done a lot of things in my life, made a lot of mistakes, and
25 90 percent of it was because of drugs and alcohol. Whatever

Darrell Blackwell-Direct Examination

12

1 happened that day, I was out of my mind. I was so high. I
2 didn't even really realize what I was doing.

3 Q Let's talk a little more about this little portion of
4 video. I queued up a little part. I had times written down
5 and I queued up a little portion. Had you seen that before?

6 A Never had I seen that video. When you showed me that
7 while ago it blew my mind. I could not believe that it
8 showed me with something in my hand, because they showed me
9 another video and it did not show that. And Robert Dudek,
10 evidently he saw the same video I seen, because he said it
11 was inconclusive.

12 Q Now, would you have taken the plea offer if you had
13 seen that video?

14 A Yes, yes. In one minute I would have took that plea
15 if I would have ever saw that video with me looking the way
16 I was out of my mind and looked on the video and it showed
17 me. I had no idea what I was doing. Couldn't comprehend.
18 But I would've took the plea in a second, but I turned it
19 down. That's my ignorance. But like I said, I did not see
20 that video.

21 Q Now, when you gave a statement, right? Remember your
22 statement that you gave to the investigator? Who was it?

23 A Garrett.

24 Q You talked about a toy gun. What was that about?

25 A About what?

1 Q You talked about having a toy gun or seeing a toy
2 gun.

3 A I told him that I had found a toy gun that morning,
4 and that I had had a friend to look it up on eBay, and it
5 was worth \$250, but I never told him I had a gun. I never
6 told him it was me that was in the store. He kept saying it
7 to me over and over and over. And I told him if it was me,
8 that I did not have a weapon. But I don't remember doing
9 any of it, honestly. Truthfully.

10 Q How about what state of mind were you when you gave
11 that statement to Investigator Garrett?

12 A I had been doing drugs four years, every day.
13 Drinking, smoking weed, doing methamphetamine, taking pills.
14 Like I said, I practically almost killed myself. I wrecked
15 the car, flipped it three times. I wrecked my Harley and
16 got threw up in the top of the tree. I knocked my own teeth
17 out with a crowbar just being high out of my mind. I don't
18 know. I lost it. But thank God, you know, like I said,
19 I've been locked up five years and eleven months today, and
20 I've been clean five years out of that five eleven. I've
21 been clean and I love my daughters with all my heart.

22 Q Talk about that toy gun again. Did you and your
23 trial lawyer ever have a sit down, hard talk, about how a
24 toy gun, if they thought you even had a toy gun, you'd get
25 convicted of armed robbery?

Darrell Blackwell-Direct Examination

14

1 A We never talked about a gun really. Because, like I
2 said, I didn't see it in the video. That's why I turned
3 that down. I honestly believed to today that I did not have
4 a weapon in my hand. If I would have saw that video that
5 you showed me earlier, I would have took the plea and run
6 home, because it was pretty different. It made me sick to
7 see it.

8 Q Now, as far as the way your case was tried, did the
9 investigator testify at your trial?

10 A No, he was not at trial. And my attorney, he didn't
11 know he wasn't going to be there until the day of trial.
12 The two witnesses in the store, they were at the trial.
13 They got extradited from the United States of America for
14 tax evasion after this happened.

15 MR. BARLOW: Your Honor, I'm going to object to the
16 relevance of this. He's talking about the victims and some
17 crimes that they had committed and they're not here.

18 THE APPLICANT: They wasn't at my trial either.
19 That's what I'm saying.

20 THE COURT: Does that appear in the record of the
21 trial transcript at all?

22 MR. BARLOW: I don't think so, Your Honor.

23 THE COURT: Okay. If I can get you ---

24 THE APPLICANT: They wasn't at trial or my
25 investigator. He wasn't at the trial either. They had no

1 witness. My brother testified he thought it was me from a
2 video.

3 Q And had someone told you about the State's chances of
4 proceeding and winning a trial if the victims and
5 investigator weren't there to testify against you?

6 A Yeah, I talked to the attorney. I had to go to, roll
7 call is what they called it, at the courthouse. And I
8 talked to a lawyer in the elevator and told him that the two
9 witnesses had been extradited. And he said, well, they
10 can't try you if they don't have any witnesses. That's what
11 he told me. And I believed that. And that was another
12 reason I turned down the seven years. I said, well, surely
13 he knows what he's talking about.

14 Q Did you and your trial attorney discuss that matter?
15 Whether they could still convict you without victims
16 testifying?

17 A Really, I was still getting high. I don't even --
18 really couldn't tell you what me and my lawyer talked about.
19 That's the honest truth.

20 Q Did you think it was fair, the use of that photo
21 image of what looked like a knife or something, taken from
22 the video was used in your trial?

23 A No, I didn't think it was, because I didn't believe.
24 And I never saw a knife in a video. I never saw a knife.
25 So, I questioned it when he brought it -- oh, my attorney,

1 that was his main argument in a trial. He said that the
2 motion of discovery, the picture of the knife was not given
3 in the motion of discovery. He argued that over and over
4 and over. The Solicitor brought a picture of the knife
5 laying on the table. And my lawyer argued over and over and
6 over. The Judge allowed the picture because he said he took
7 it off the video. But clearly in that video, I never saw a
8 knife.

9 Q And if you had seen the video you saw this morning,
10 you ---

11 A Definitely. I would've took seven years and run.

12 MS. ROSS: I have no further questions.

13 THE COURT: Mr. Barlow?

14 MR. BARLOW: Briefly, one second.

15 THE APPLICANT: Didn't you tell me you saw -- I asked
16 her. I told her when she called me at prison on the phone.
17 I told her to go and get the video and look at the video,
18 and there would be no weapon on the video. And I believed
19 that with all my heart. I believed that because when she
20 showed me that today, told me that the video was not the
21 same video. So I've been thinking to myself the whole time
22 I've been lying to myself and everybody I know. I would
23 never lie to my daughters and I told them I did not have a
24 weapon and there was no evidence to prove it was. Like I
25 said, Garrett told me over and over and over he had one, but

1 he never showed it to me. He acted like he couldn't get it
2 on the phone, but he was using that. But if I would've
3 knew, I would've definitely did something different.

4 THE COURT: Thank you, sir. Mr. Barlow?

5 MR. BARLOW: Thank you, Your Honor. May it please
6 the Court.

7 CROSS-EXAMINATION

8 BY MR. BARLOW:

9 Q Good morning, Mr. Blackwell.

10 A Good morning.

11 Q All right, so they've already explained to you what
12 the relief that this Court can give you is, that you go back
13 to square one. Your indictment comes back on, you
14 potentially get a new trial. And the maximum exposure at a
15 new trial is 30 years. You understand that? Correct.

16 A I understand that.

17 Q And what did you get in this trial?

18 A Eighteen.

19 Q Okay. All right. So, let's jump into your
20 allegations. In your direct, you said that Mr. Dudek told
21 you that he did not find, or -- tell us again what Mr. Dudek
22 told you.

23 A Robert Dudek, he said in a transcript that he did
24 that said it was inconclusive. He saw the video. The same
25 video I saw. He said it was inconclusive. That you could

Darrell Blackwell-Cross-Examination

18

1 not tell that it was weapons in my hand. It was
2 inconclusive what was, if anything, was in my hand. And he
3 said he believed the case would be overturned.

4 MR. BARLOW: Beg the Court's indulgence.

5 A I don't know what video he saw. Ms. Ross told me she
6 saw three different videos. I guess it had three cameras.

7 Q Mr. Blackwell, would it surprise you if I told you
8 that the issue that he raised, Mr. Dudek raised for you, was
9 that the issue with the knife was inconclusive, not the gun?

10 A As far as I remember, he said it was inconclusive on
11 both.

12 MR. BARLOW: Your Honor, may I approach?

13 A I'm not sure.

14 Q I'm just going to show you something real quick and
15 let you read it. This is the brief from appeal. Read issue
16 number two.

17 A (READING DOCUMENT) "The trial judge improperly
18 refused to charge the jury on the lesser included attempted
19 strong armed robbery because the undisputed evidence at
20 trial show Defendant robbed the victim using either a weapon
21 or a convincing representation thereof." I understand what
22 it says. That's from Robert Dudek?

23 Q This would be the issues that were raised on appeal.
24 Let's jump into -- is your testimony that Mr. Hadden did not
25 review discovery with you?

1 A Robert Dudek?

2 Q No, sir. Mr. Lucas, Hadden Lucas.

3 A Like I said, I really don't -- I couldn't tell you
4 what we talked about.

5 Q Well, you ---

6 A It's not that I don't know, it's just that I can't
7 remember. Like I said, I was still on drugs. The day he
8 offered me seven years I was high out of my mind that day.
9 My daughter, she went with me.

10 Q How long before trial were you incarcerated?

11 A I stayed 35 days in the county and bonded out. I was
12 out on bond two years.

13 Q So, when you met with Mr. Lucas, you don't recall
14 anything that y'all did?

15 A I really don't remember what we talked about. I know
16 he showed me a video of me going in the store, but it was
17 not the video I saw this morning. That's all I can remember
18 of it.

19 Q Mr. Blackwell, did you meet with Mr. Lucas out while
20 you were on bond?

21 A Yeah, we did talk. Yeah, we talked. And like I said,
22 he believed what I told him, and he went before the
23 Solicitor and the Solicitor came back with seven years. I
24 believe he believed me, what I told him, but actually I
25 never saw the video, so I can't testify to what really

1 happened.

2 Q Well, I'm trying to kind of -- I'm trying to narrow
3 the scope here for us. Like, you said a failure to review
4 discovery. So, you were out on bond, correct?

5 A Yeah.

6 Q And that's when you met with Mr. Lucas?

7 A Yeah.

8 Q And while you're on bond and meeting with Mr. Lucas,
9 Mr. Lucas showed you stuff, but you don't remember what it
10 was?

11 A I couldn't tell you two sentences he told me,
12 honestly.

13 Q Why is that?

14 A Drugs.

15 Q You were doing drugs while you were bonded out?

16 A Yes. I did drugs up until -- the day he offered me
17 seven years I was still doing drugs. That was the whole
18 problem. That's what caused the appeal was drugs and
19 alcohol.

20 Q Could Mr. Lucas have showed you stuff and you don't
21 remember because of the drugs?

22 A Yes, he could. And the reason I say that, I went to
23 Columbia on evaluation, and that's the only thing that they
24 evaluated me that the doctor told me that I had short term
25 and long term memory loss from a hard blow to the head. I'm

1 not making excuses, but that's in his statement where he
2 showed me in the evacuation that I had. Through his
3 evaluation he said that I had short term and long term
4 memory loss from a hard blow to the head. I remember that.

5 Q Blackwell, was it your brother that called the tip
6 line and ID'ed you to police?

7 A I don't know how he came about IDing me. I know at
8 trial he said he thought it was me. That's all he said. He
9 thought it. I mean, that's all he could say. He wasn't
10 there. He saw the video.

11 Q Was it your testimony that you had a toy gun that you
12 took ---

13 A I didn't testify to that. I never told him I had a
14 weapon. I never told him I was in the store. I said if it
15 was me. I never admitted to me being in the store. The
16 whole time, Garrett, he's the one that kept saying it. I
17 never said it was me in the store. Never did I tell him it
18 was me. And I didn't tell him I had any weapons.

19 Q Mr. Blackwell, did you not just testify on direct that
20 a woman was being harassed and that you entered the store to
21 confront them about it?

22 A Yeah, I went in there to confront them.

23 Q But did you not just testify just now that you did not
24 go into the store, that you never admitted to it?

25 A I just told you that. I said I didn't ever tell

1 Garrett that.

2 Q And who is Garrett?

3 A Garrett was the investigator that I gave my testimony
4 to. I never told him the whole time that it was me that
5 went in that store. I said if it was me. I never said it
6 was me. I said if it was me. I don't remember. I don't
7 even remember doing it really, honestly. And if you see the
8 video she showed me, you would understand. I was out of my
9 mind. I didn't have no idea. I'd been doing drugs.
10 Actually, I'd been up for about three weeks.

11 Q Last question, Mr. Blackwell. I just want to be
12 clear. You said that you were doing drugs while you were
13 bonded out and that you could have been shown stuff, but you
14 don't remember it.

15 A Like I said, I can't remember a lot of what went on in
16 that time because I was so out of my mind.

17 Q And that was while you were bonded out?

18 A Yeah. I've gotten clean since I've been in lock up.
19 I've been clean five years. Five years and ten months I've
20 been clean. But it took me going. And God set me in a cell
21 where he could teach me, and talk to me, and correct me, and
22 love me, and bless me. I'm blessed today. You know, I made
23 a mistake. The only thing I'm saying is, had I seen that
24 video and they came to me with that seven-year plea, it
25 would have been a whole different story. I would have took

1 that plea instantly. But me not seeing the video and seeing
2 a different video and never seeing a weapon, I think that's
3 wrong. I was just living off of what I saw and what I
4 believed of the video. I'm not lying. I'm just saying I
5 never saw a weapon in my hand in that video.

6 MR. BARLOW: Your Honor, nothing further from the
7 state.

8 THE COURT: Any redirect?

9 MS. ROSS: No, Your Honor.

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

11 THE APPLICANT: Ma'am?

12 THE COURT: You can step down. Thank you.

13 THE APPLICANT: I would like to say that I'm sorry for
14 what happened. I told them I hate it happened, but it
15 didn't occur like it looks. I just don't know how to
16 explain. Drugs is an awful thing.

17 MS. ROSS: No further witnesses.

18 THE COURT: Thank you.

19 MR. BARLOW: Your Honor, if I could have a second to
20 step out and grab my witness.

21 (WHEREUPON, there was a brief pause in the hearing.)

22 MR. BARLOW: Your Honor, the State would call Hadden
23 Lucas.

24 MR. LUCAS: Does anybody have an objection to me
25 having my file when I testify? Is that okay?

Hadden Lucas-Direct Examination

24

1 MS. ROSS: No objection.

2 MR. BARLOW: None from the State.

3 WHEREUPON, Hadden Lucas, having first
4 been duly sworn, testified as follows:

5 DIRECT EXAMINATION

6 BY MR. BARLOW:

7 Q Good morning, Mr. Lucas. How are you doing today?

8 A I'm okay, thank you. How about you?

9 Q I'm doing well, thank you. How long have you been
10 practicing law?

11 A It will be ten years in November.

12 Q And how much of that has been in criminal law?

13 A I would say about eight of that. I've been in the
14 Public Defender's office almost seven years now.

15 Q Were you appointed or retained to represent Mr.
16 Blackwell?

17 A I was appointed. Although I came into the case rather
18 late. I was actually his fourth appointed counsel.

19 Q And during the time after you were appointed, did you
20 receive discovery in this case?

21 A Well, actually by the time I got appointed, the case
22 was, I think, about a year and a half to two years old. So,
23 when I got the file, it actually had all the discovery. And
24 Mr. Blackwell's prior lawyer, Austin McClain, had already
25 reviewed all of that. There had been a plea offer. It had

1 been rejected. But I, of course, got the discovery as well.
2 Went over that. Went over all that with Mr. Blackwell at my
3 office. My file shows that I met with him at least four
4 times. Honestly, my notes kind of indicate there was a
5 fifth as well. And my memory is that we met for just hours
6 at a time, watching the videos and me trying to persuade him
7 to take a very favorable plea offer.

8 Q Did you review the evidence in this case with the
9 Applicant?

10 A Pardon me?

11 Q Did you review the video evidence with the Applicant
12 in this case?

13 A Yes, at length and at least two separate occasions is
14 my memory.

15 Q And it's my understanding that you provided Mr.
16 Blackwell's attorney with, I guess, the video is in question
17 today?

18 A Yes, that's correct.

19 Q And would those videos be the videos that you -- are
20 those the same videos you reviewed with Mr. Blackwell?

21 A Yeah, actually I have in my file, I've got notes
22 regarding each video as well. So, I know I went through and
23 watched them, have notes concerning each one. I definitely
24 met with Mr. Blackwell and reviewed those with him. And to
25 the extent that anybody is saying I didn't do that, that's

1 just not true.

2 Q Let me get kind of into some of his allegations. One
3 of which is the statement that he gave to law enforcement.
4 Was there a *Jackson v Denno* hearing?

5 A I believe so, yeah. And I just, you know, I leafed
6 through the transcript. I definitely remember we tried to
7 suppress the statement and were unsuccessful in doing so.

8 Q And did you have a competency evaluation performed?

9 A I did not, but his prior attorney, Austin McClain,
10 did. It's in my file actually. I didn't bring with me. He
11 was both competent and -- or he was found competent and
12 criminally responsible. So that was, kind of -- when I
13 represented him, he wanted to assert an insanity defense.
14 And based upon that evaluation, I told him we were not able
15 to do that. And if you want my, you know, personal opinion,
16 based upon his statement I think he was probably suffering
17 from some drug intoxication when this crime was committed.
18 Which of course, is different from being insane under the
19 law.

20 Q In one of their allegations it's standard failure to
21 review discovery, which you've already testified to, but
22 failure to advise him that the still photographs taken from
23 the video could be admitted into evidence.

24 A Well, that's kind of an odd one, because we didn't
25 have any still photographs. So, those were actually

1 provided, I think, on the first or second day of the trial.
2 So, we had not received those when we were reviewing
3 discovery. What I can tell you is two things. One, stills
4 were taken from the video. Well, actually, let me tell you
5 three facts. Two, Mr. Blackwell and I reviewed all the
6 video. And three, when you watch the video, it is just
7 plainly apparent that it's Mr. Blackwell on the video. And
8 the way I would kind of describe it is, it's like, I know
9 it's video, but it's like school yearbook quality. It's
10 just hard to imagine that a video.

11 Q Were you here for Mr. Blackwell's testimony?

12 A I actually was not. I was outside working.

13 Q Well, Mr. Blackwell testified here today that he does
14 not recall ever reviewing those videos, or at least the
15 video that plainly showed him.

16 A That's just not true, and I don't know what else to
17 say. I reviewed it with him a couple of times and just
18 looking back at my file with his prior attorney, Austin
19 McClain, had a note in the file that I'm happy to read to
20 the Court. This is from back when, before I took the case
21 on. So this is November 9, 2017. Austin says, "I've met
22 with client on multiple occasions and reviewed all discovery
23 with him, including video, multiple times. His daughter was
24 present last time. Reviewed video with us. Mr. Blackwell,
25 against my advice wants a trial. The Solicitor has a great

1 video of the armed robbery and, in general, a solid case.
2 Mr. Blackwell didn't disagree with that. He just doesn't
3 want to enter a plea." So, that's actually Allison
4 McClain's note from Defender Data. But I can go ahead and
5 tell you that that was exactly my advice to Mr. Blackwell.
6 We sat down and looked at the video a bunch of times and,
7 you know, it's him. There's just no doubt about it. And
8 you know, I certainly was not advising him to have a trial
9 in this case.

10 Q Well, what was Mr. Blackwell's inclination in this?

11 A Well, so I can tell you. So, his inclination was that
12 he was not going to plead to anything involving prison time.
13 And what I remember, and also what is in my notes on a
14 number of occasions, is any time that we discussed his plea
15 offer, which ultimately got down to be quite favorable, he
16 would say, "God will not let me go to prison." And he also
17 repeatedly told me that he was looking for a miracle. And I
18 remember that very well because it's, you know, kind of a
19 memorable statement. And also it was just plainly apparent
20 to me that he was making a terrible decision. And I imagine
21 he's come to realize that as well.

22 Q Let me ask you. Another allegation was failure to
23 advise Mr. Blackwell of the elements of armed robbery and
24 that a toy gun could still be used to charge him with armed
25 robbery.

1 A I definitely advised him of that. So, let me back up
2 just a little bit. At this point, when I started
3 representing Mr. Blackwell, I'd been at the Public
4 Defender's Office for just a matter of months. My practice
5 was to print every statute and review it with the clients.
6 In my file I see where I've got the armed robbery statute
7 printed. It's got my name underneath that, so I know I
8 printed it from WestLaw. I definitely reviewed that, but
9 I'm just a hundred percent confident of that.

10 Q Another allegation that Mr. Blackwell makes is that
11 there were State witnesses that could have testified for
12 him, but they didn't, and you did not explain to him that if
13 they did not testify, the State could still present an
14 overwhelming case of guilt using the video and recorded
15 statements only.

16 A Well, so I'm not quite sure what he's getting out
17 there. So, this trial was somewhat unusual in the sense
18 that the lead investigator was not present. Which, if I
19 remember correctly, we either learned right at the start of
20 the trial, or maybe a day or two before. I'm frankly a
21 little hazy on that. And then, in addition, the store clerk
22 did not testify. Although, looking back at my file, their
23 name is actually on the witness list. So, we were expecting
24 that they would testify, and then the State rested without
25 calling them and essentially just, you know, they based

Hadden Lucas-Direct Examination

30

1 their case on the video. And then Mr. Black was the brother
2 identifying him from that idiot.

3 Q I want to jump back real quick because I may have
4 missed this, but on the photograph stills. Let me jump back
5 to that.

6 A Sure.

7 Q Did you object on the record to the photographs coming
8 in?

9 A Yes. So, I went back and looked at the transcript and
10 I objected to those as being, you know, a discovery
11 violation in the sense that they were trying to use
12 something that had not been provided to us. And I think
13 that was the appropriate objection. The Court actually
14 overruled that and basically finding that since they were
15 you know, they were taken directly from the video, there
16 wasn't really a problem.

17 Q And there is an argument or an allegation that you
18 fail to argue the use of the photo stills of the knife,
19 taken from the store video, violated the best evidence rule.

20 A Yeah, I certainly didn't argue that. I concede that.
21 I mean, I went back and looked at the rule and I'm really
22 not sure that it applies, quite frankly. But no, I mean, I
23 certainly would concede that I just objected on discovery
24 grounds.

25 Q Mr. Lucas, do you stand by your representation of Mr.

1 Blackwell?

2 A What do you mean exactly?

3 Q Do you feel that you did a good job as an attorney?

4 A So, you know, I look back at this case with, you
5 know, six years later, with hindsight, as a more experienced
6 lawyer and a trial lawyer, and quite frankly, I don't really
7 know what I was supposed to do differently. My general
8 approach has been when a client tells me that they want a
9 trial, I'll advise them as to, you know whether I think
10 that's a good idea. Then if they want to have that trial,
11 we just go ahead and try it. I begged Mr. Blackwell in this
12 case not to have a trial and he disregarded my advice. So
13 yeah, I guess I did everything that I could do. I think he
14 made a really poor decision and is having to live with that,
15 and it's unfortunate.

16 Q Thank you, Mr. Lucas. Nothing further from the State,
17 Your Honor.

18 THE COURT: Ms. Ross?

19 MS. ROSS: Thank you, Your Honor.

20 CROSS-EXAMINATION

21 BY MS. ROSS:

22 Q Mr. Lucas, you sent me video portions, and it sounded
23 like there were about three that were in the store videos?

24 A That sounds about right. I'm happy to get my notes
25 out and speak as to those if you want. I just briefly

Hadden Lucas-Cross-Examination

32

1 perused one or two of them last week, but I'm happy to
2 review my notes and go through them if you want.

3 Q Well, if you recall from your brief review last week,
4 weren't each video probably 20 minutes or so long?

5 A I was thinking a little bit shorter, maybe like ten to
6 twelve, but I'm not certain. You could certainly be right.

7 Q Okay. And so, it's your testimony that you reviewed
8 each one of those videos with Mr. Blackwell?

9 A So, it's my testimony that I reviewed every second of
10 those videos, and I'm certain that I sat in my office with
11 Mr. Blackwell and looked at those videos with him. Because,
12 let's put it this way, I spent hours with him at the office.
13 And it wasn't just for the pleasure of his company. We were
14 going through his file and I was trying to convince him to
15 take a plea offer for strong armed robbery, which would have
16 been quite a bit more favorable than where he's sitting
17 today.

18 Q And there was one particular video that, I think it
19 was camera eleven, which showed him jumping over, knocking
20 things over and jumping over into the area.

21 A Yeah, kind of halfway on top of the counter.

22 Q And your testimony is that you reviewed that with him
23 and pointed out what was in his hands during the review of
24 that video?

25 A Yes, ma'am. My testimony is that I clearly told him

1 that it showed, you know, a gun in his hand on video. I
2 never remember being quite as confident of the video showing
3 a knife. And frankly, it doesn't really make sense to hold
4 a gun and a knife. You know, it's kind of overkill.

5 Q Correct. Now, going back to just argument. In your
6 opening, did you do anything to try to force an opening or
7 closing, the State to present their investigator or the
8 victims in their case?

9 A I think if you went back and looked at my opening, I
10 talk a lot about the right to a jury trial and the jury's
11 duty to hold the government to their burden of proof.
12 That's really what you talk about when you don't have
13 anything to hang your hat on. I think that I argued at the
14 end of the case that basically the jury ought to account for
15 the fact that there had been, you know, fact witnesses who
16 were present and weren't called to testify. I think that's
17 kind of what I really went with. Because it's frankly just
18 more than I expected to be able to argue, because my
19 expectation was that the store clerk was going to testify.

20 Q Right. And that's because they were listed on the
21 witness list?

22 A Yeah, that's correct. And I think I, one, made an
23 assumption that if you have a victim who's available,
24 they're going to testify. And then two, they're on the
25 witness list. And my memory -- you know, it's been six years

1 ago. Maybe I'm mistaken, but my memory is that nobody told
2 me that the clerk wasn't going to testify and being pretty
3 surprised when they weren't called.

4 Q And was that part of any of the plea negotiations or
5 discussions with Ms. Huey? Did you ask or go into whether
6 the availability of the victims.

7 A Yeah, a little bit, if I can just refer to my file.
8 So, the plea offer that's been alluded to is an April 30,
9 2018 email from the Solicitor, Stan Overby, saying, "It's
10 come to our attention the victim in this case has moved out
11 of state. He'll return, but it's going to require a date
12 certain." So, in light of that, we'd have a trial. They
13 offered, you know, a 15-year sentence suspended to seven
14 years active time, followed by probation. So, that was
15 certainly, I think that offer was being affected by the
16 difficulty they might have getting the clerk back. And I
17 will also tell you, and I hired an investigator, and we
18 weren't able to locate the clerk in the immediate Anderson
19 area. So I guess you could say it was probably influenced,
20 to a degree, by their possible unavailability. If that makes
21 sense.

22 Q It does. Did you ever discuss with Mr. Blackwell that
23 Ms. Huey conveyed to you that while the clerks may not be
24 available in Anderson county, that they were in contact and
25 could be presented at trial if necessary?

1 A I really don't remember. I mean, I certainly told
2 him that -- and this is my memory, is that the evidence
3 against him was just absolutely overwhelming and he was
4 going to get drilled if we went to trial. I don't have a
5 specific memory of talking about, you know, the possible
6 unavailability of the clerk or whether they would testify or
7 not. Maybe we did. You know, at this time, I really can't
8 tell you.

9 MS. ROSS: All right, thank you. I have no further
10 questions.

11 MR. BARLOW: Beg the Court's indulgence. Briefly, Your
12 Honor.

13 REDIRECT EXAMINATION

14 BY MR. BARLOW:

15 Q Hadden, did you object to Mr. Garrett, the portions of
16 the video with Mr. Garrett in it, coming in at trial?

17 A I believe so. So again, I'm going from memory and a
18 brief review of the transcript. My memory is that the
19 Solicitor was redacting the questions that Mr. Garrett was
20 posing from basically the Defendant's, or Mr. Blackwell's,
21 recorded statement. And then when I found out that he was
22 not going to be testifying, we then objected on -- So
23 basically, we went back on that agreement and objected on
24 hearsay and confrontation clause grounds. That's my memory
25 of it. Again, it's been a long time. I may not be

Hadden Lucas-Recross-Examination

36

1 remembering right. And basically, Judge Nicholson's ruling
2 was, "Well, you know, it's all recorded. I don't really
3 care."

4 MR. BARLOW: Thank you. Nothing further, Your Honor.

5 MS. ROSS: One quick question that just for my
6 clarification.

7 RECROSS-EXAMINATION

8 BY MS. ROSS:

9 Q As far as the video portions from the inside of the
10 store, were they fully played for the jury or at all?
11 Because I can't tell from the transcript.

12 A So, my memory is that the video was played for the
13 jury. I went back and looked at the transcript, because I
14 just kind of had the same question myself. And again, it
15 was, like, skimmed it. But if you look at the closing
16 argument, it sure seemed to me that Ms. Huey was referencing
17 the video. That's my memory. And I certainly, again, it's
18 been six years, but my memory is that they played the video
19 for the jury. And to be totally frank with you, I didn't
20 remember the issue of the screenshots at all until seeing
21 the PCR application, looking back at the transcript. So in
22 my mind, the video is kind of the main evidence against Mr.
23 Blackwell, the key to the problem.

24 Q So, do you recall them playing the video and then
25 coming in with this kind of blow up of a portion of video.

1 A Well, I sure didn't play video.

2 Q I'm saying, at trial, the video was played and then
3 this blow up of the video was submitted into evidence? Over
4 your objection.

5 A Yeah. Exactly. Just again, thinking back to it, I
6 don't -- And again, maybe I'm wrong, but I don't remember it
7 being like really like blow up or an enhanced picture. I
8 just remember it being, you know, a six-by-ten or something
9 like that. Just to, kind of, you know, it'd be easier for
10 the jury to review than just pausing it. And you know,
11 frankly, that's something I've done myself in other cases,
12 although not this one of course.

13 MS. ROSS: All right, I've got no further questions.

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

15 MR. BARLOW: Your Honor, I have Mr. Dudek, who was
16 appellate defense, who was given permission to appear
17 virtually by Judge McFadden. He is waiting in the virtual
18 courtroom. May I have just a moment to confer with Ms.
19 Ross?

20 THE COURT: Yes.

21 MR. BARLOW: Your Honor, there's one appellate issue,
22 and it's going to be at least just one question for me and
23 maybe from Ms. Ross. If we could bring him in through that.
24 And I will shift my computer over to Ms. Ross.

25 MS. ROSS: That's fine.

1 THE COURT: Sure. Why don't we take just a short
2 break while we move the computers around, and then we'll
3 come back with Mr. Dudek on the record. So, let's take ten
4 minutes.

5 (WHEREUPON, the Court took a ten minute recess.)

6 WHEREUPON, Robert Dudek, having first
7 been duly sworn, testified as follows via WebEx virtual
8 courtroom.)

9 DIRECT EXAMINATION

10 BY MR. BARLOW:

11 Q Mr. Dudek, we're here today on Mr. Darrell Blackwell.
12 Do you recall that case?

13 A Yes, I do.

14 Q And how do you recall that case?

15 A Well, this is a very unusual case, kind of, to say the
16 least actually. There was a video of the Defendant's robbery
17 and videotape of his statement to the police. So, I remember
18 raising the two issues that I did for Mr. Blackwell.

19 Q Mr. Dudek, the allegation is that you failed to brief
20 the issue that the Judge erred in allowing Deputy Craig
21 Holbrook to testify that a photo still, allegedly taken from
22 the in-store video, showed a bladed object. You did not
23 brief that issue, correct?

24 A That's correct.

25 Q Is there any reason you would not or would have

1 briefed that issue?

2 A Well, I'm trying to identify the issues, the legal
3 issues, that I think provides my client the best chance to
4 win, and I did not think that that was one of them. I was
5 looking back on my notes and I have the objection on my
6 notes. All I can say, right or wrong, looking back on it,
7 I've lost on that issue in the past. Meaning where a law
8 enforcement officer had been allowed to even narrate a
9 surveillance tape of what was going on on the surveillance
10 tape was essentially the same objection that at least the
11 speculation and best evidence rule, if you will, there was
12 no reason to allow. It's unnecessary to have a law
13 enforcement officer to say what's on the film. And I've
14 just never got anywhere with that issue in the past. So,
15 right or wrong, I thought these two issues I raised for Mr.
16 Blackwell gave him the best chance of winning.

17 MR. BARLOW: Thank you, Mr. Dudek. Nothing further
18 from the State, Your Honor.

19 CROSS-EXAMINATION

20 BY MS. ROSS:

21 Q Hi there. I just have one further question. Had
22 counsel objected or argued that the photo still from the
23 video was not best evidence, and the jury should stand on
24 the video alone without the photo still, would you have
25 briefed that issue?

Robert Dudek-Cross-Examination

40

1 A I frankly, I mean, looking back on it, I don't think
2 that the lack of best evidence objection was probably what
3 kept me from arguing. What I'm thinking is just that there
4 was this dispute, as you know from reading my brief. I put
5 that the officer, they had claimed this was a knife Mr.
6 Blackwell had at the time. And as I put in my brief, I
7 didn't think that was clear. But we had the video. The
8 jury could take that and the photograph for what they
9 thought it was. And I just -- the State's position was that
10 it was a knife. And so, I don't think this was the only
11 place that that came up. So, I guess, my answer would be
12 right or wrong I think for one thing it would be cumulative
13 to other evidence. And if I'm mistaken in that, then I'm
14 mistaken. But I just don't remember this issue, warming to
15 this issue at all at the time. And if I was wrong, I was
16 wrong.

17 MS. ROSS: Thank you. I've got no further questions.

18 THE COURT: So, no more questions for this witness and
19 any objection to him being excused?

20 MS. ROSS: No, Your Honor.

21 THE COURT: Thank you, Mr. Dudek. That's all we need
22 from you today. Anything further from the State?

23 MR. BARLOW: Nothing further from the State.

24 THE COURT: And Ms. Ross, anything further for the
25 Applicant?

1 MS. ROSS: No, Your Honor. You've heard the testimony
2 and I'll let it stand on that.

3 THE COURT: Anything you all want to say in the nature
4 of a closing statement?

5 MS. ROSS: Well, Judge, you heard the testimony here
6 in what was said. I'm seeing this more and more where
7 trials are based on just the video without witnesses,
8 without lead investigators, going forward with that. I put
9 in my application, sort of, the fact that I think this
10 brings up some due process issues, especially in this AI
11 age, where they're not backing up a case with anything more
12 than videos without the actual witnesses who are available
13 there. So, I would make that argument, as well as the
14 arguments I've put in the amended application.

15 You heard what Mr. Blackwell says. Just talking to
16 him, he has hearing issues. I have no doubt that his
17 recollection, he did not recall or understand the
18 implications of the video that he reviewed, and probably has
19 very little recollection of reviewing that. But his
20 testimony was that he didn't recall seeing the video that I
21 showed him this morning, and that had he seen it, he would
22 have accepted that plea. Because everyone who's testified
23 today who has seen it understands that it was a strong
24 video, but it was not authenticated by the in store people
25 who ran the video, who had that surveillance. It was just

1 the investigator who testified to it. So for that basis,
2 we'd ask you to grant him relief in this case.

3 THE COURT: Yes, sir.

4 MR. BARLOW: Thank you, Your Honor. Your Honor, the
5 State's position, with regard to the confrontation clause or
6 due process in this case, this was addressed in the Court of
7 Appeals. It was raised as the first allegation in Mr.
8 Dudek's brief. It was argued, and the Court of Appeals
9 affirmed, based on the fact that even if there were error in
10 the admission of the video evidence of the investigator, I
11 believe it was Investigator Garrett, I believe at the time.
12 But even if there was error, that the error was harmless
13 because there was no reasonable -- it could not have
14 reasonably affected the result of trial. And of course,
15 they affirmed his conviction on that based off the
16 overwhelming evidence of Mr. Blackwell's guilt. Mr. Hadden
17 (SIC), he did object a trial to this. Your Honor, he did
18 his job. The Court overruled him, and the Court of Appeals
19 affirmed his conviction. As to the other allegations, Your
20 Honor, I believe that it's going to come down to a
21 credibility issue on many of the things that were raised as
22 a testimony that was given today.

23 THE COURT: Thank you. I will take a closer look at
24 the transcript and entire record before I give my ruling.

25 ***END OF REQUESTED TRANSCRIPT OF RECORD)***

Certificate of Reporter

I, the undersigned, Tara T. Scott, CVR, Official Court Reporter for the Tenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial/hearing of the captioned case, relative to appeal, in the Court of Common Pleas for Anderson County, South Carolina, on the 16th day of September, 2024.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

Tara T. Scott, CVR
Official Court Reporter
October 28, 2024

25 JUL 8 PM 4:15:21
Anderson, SC COC, CP/68

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF ANDERSON	)	FOR THE TENTH JUDICIAL CIRCUIT
	)	
Darrell E. Blackwell, #325994,	)	CASE NO. 2022-CP-04-00877
	)	
Applicant,	)	
	)	
v.	)	ORDER OF DISMISSAL
	)	WITH PREJUDICE
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

Presiding Judge:	Hon. Kristi F. Curtis
Applicant's Attorney:	Susannah C. Ross, Esq.
Respondent's Attorney:	D. Russell Barlow, II, Esq.
Trial Counsel:	A. Hadden Lucas, Esq.
	Gordon A. Senerius, Esq.
Appellate Counsel:	Robert M. Dudek, Esq.
Solicitors:	Catherine T. Huey, Esq.
	Stan L. Overby, Esq.
Date of Hearing:	September 16, 2024
Court Reporter:	Tara T. Scott

This matter comes before the Court by way of Darrell E. Blackwell's (Applicant) application for post-conviction relief (PCR) filed on April 20, 2022.¹ Respondent, the State of South Carolina, filed its Return and Partial Motion to Dismiss on February 15, 2024, requesting an evidentiary hearing on the claims of ineffective assistance of counsel. Applicant, through his appointed counsel Susannah C. Ross, Esquire (Attorney Ross), subsequently filed an Amended application for PCR on September 13, 2024.

An evidentiary hearing was convened on September 16, 2024, at the Anderson County Courthouse before the Honorable Kristi F. Curtis. Applicant was present and represented by

¹ On November 26, 2022, Susannah C. Ross, Esquire, was appointed to represent Applicant in this action.

Attorney Ross. Senior Assistant Deputy Attorney General D. Russell Barlow, II, represented Respondent. Applicant testified on his own behalf at the evidentiary hearing. Respondent presented testimony from A. Hadden Lucas, Esquire, and Robert M. Dudek, Esquire (Appellate Counsel).

Following a thorough review of the record in its entirety, along with the testimony and evidence presented at the evidentiary hearing, this Court finds Applicant has failed to establish any constitutional violations or deprivations entitling him to relief and, accordingly, denies and dismisses this action with prejudice.

PROCEDURAL HISTORY

The records before this Court establish that Applicant is presently confined in the South Carolina Department of Corrections (SCDC) pursuant to orders of commitment from the Anderson County Clerk of Court. In 2016, Applicant was arrested for taking \$2,500 in cash, a MacBook valued at \$1,300, and approximately \$500 in cigarettes from Shop Rite on Sayre Street in Anderson, South Carolina, while armed with a deadly weapon (2016A0410100033). Applicant was identified as the robber by surveillance video. During its March 2016 term, the Anderson County Grand Jury indicted Applicant on the charge of Armed Robbery (2016-GS-04-0043).

On October 8, 2018, Applicant proceeded to a jury trial before the Honorable J.C. "Buddy" Nicholson. Applicant was represented by Assistant Public Defenders A. Hadden Lucas (Trial Counsel) and Gordon A. Senerius of the Tenth Circuit Public Defender's Office. Deputy Solicitor Catherine T. Huey and Assistant Solicitor Stan L. Overby, Jr., of the Tenth Judicial Circuit prosecuted the case. At the conclusion of the trial, the jury found Applicant guilty as indicted. Judge Nicholson sentenced Applicant to eighteen (18) years imprisonment, with credit for thirty-three (33) days.

Applicant filed a timely notice of appeal on October 18, 2018. Applicant's appeal was perfected by Chief Appellate Defender Robert M. Dudek (Appellate Counsel) of the South Carolina Commission on Indigent Defense. Applicant asserted two (2) issues in his Initial Brief before the South Carolina Court of Appeals:

- I. Whether the court erred by admitting appellant's recorded statement into evidence, where the interrogating Detective, Garrett, did not testify, and was not subject to cross-examination, since this violated appellant's right to Confrontation and admitted hearsay evidence including Garrett repeatedly telling appellant that the videotape showed him robbing the store, and asserted that appellant was using a knife during the robbery, and insinuated the robbery was an "inside job" between appellant and the clerk who was supposed to be working that night?
- II. Whether the court erred by refusing to instruct the jury on the lesser-included offense of strong arm robbery, where there was no testimony appellant was armed with a deadly weapon, appellant denied using a knife, where the videotape was inconclusive on the knife, and where there was no evidence the clerk working at the store thought the toy gun was represented as being a real gun, since appellant was entitled to that lesser-included offense instruction under the "any evidence" standard?

In an unpublished opinion, the Court of Appeals dismissed the appeal and affirmed Applicant's sentence and conviction. State v. Blackwell, Op. No. 2021-UP-144 (S.C. Ct. App. filed May 5, 2021). The Remittitur was returned to the lower court on June 1, 2021.

FACTS GIVING RISE TO THE CONVICTION

This incident occurred on January 9, 2016, at Shop Rite on Sayre Street in Anderson County, South Carolina. The store was robbed, and Officer Rhonda Phillips (Officer Phillips) responded to the scene. The officer spoke to two (2) witnesses, who reported that a bearded white male left the scene of the crime in a white van. Officer Phillips also collected a copy of the surveillance video for the investigation. Deputy Craig Holbrooks (Deputy Holbrooks) watched the video that night and placed it into storage at the Anderson County Sheriff's Office. Additionally, he made a copy of it for the trial and confirmed the video used by the State was the

same one he reviewed the night of the robbery. Deputy Holbrooks noted that the person in the video was shown holding a knife and a gun in the recording. (Trial Tr. pp. 79, ll.4 – 102, ll. 15; St. Ex. 4-11).

Lieutenant Robert Gebing (Lieutenant Gebing) noted that after other officers could not identify the suspect in the video, the Sheriff's office reached out to local media to generate potential tips. Applicant's brother, Mark Steven Blackwell, recognized him in the surveillance video and informed police of his identity. Following the tip, Lieutenant Gebing and Detective Garrett went to the homes at 202 and 203 Gilbert Street, which they were told were residences occupied by Johnnie Taylor (Taylor), Applicant's mother, and Applicant. Upon arriving, officers observed a white van outside, which matched the description of the vehicle used in the robbery. Taylor spoke with the officers and showed them around her home, during which time they saw several items of clothing similar to those worn by the suspect in the surveillance video. Taylor permitted officers to collect the clothing. (Trial Tr. pp. 104, ll. 17 – 116, ll. 13; Trial Tr. pp. 134, ll. 6 – pp. 134, ll. 11; Trial Tr. pp. 169, ll. 20 – pp. 173, ll. 23; St. Ex. 15 – 19).

Investigator Kenneth Pigman (Investigator Pigman) accompanied Investigator Garrett while executing search warrants on the 202 and 203 Gilbert Street homes. Again, the white van was observed outside the home, and the investigators photographed it. The investigators also located a brown stocking cap behind the 203 Gilbert Street residence. At 202 Gilbert Street, the investigators found two unopened packs of Seneca cigarettes—the brand of cigarette stolen from Shop Rite—and a black jacket with an attached gray hood. The hat and jacket matched those the suspect wore in the surveillance video. (Trial Tr. pp. 15, ll. 17 – pp. 168, ll. 8; St. Ex. 22, 26).²

² At the conclusion of trial, Trial Counsel requested a charge on the offense of strong-arm robbery because during Applicant's interview, he did not recall having a knife with him and claimed the gun he used was not a lethal firearm, but rather an expensive toy gun that he found sometime

PRE-TRIAL JACKSON V. DENNO HEARING

Prior to trial, an audio recording of Applicant's interview with police was proffered by the State during a Jackson v. Denno³ hearing. Investigator Scotty Hill (Investigator Hill) testified at the hearing that he was present during the entirety of Applicant's interrogation, although Detective Garrett primarily interacted with Applicant. Investigator Hill testified that Applicant agreed to the questioning. Investigator Hill testified that Detective Garrett never misled Applicant about the information in law enforcement's possession. During the interview, Applicant admits to robbing the store that day, confirming that it was him captured on surveillance cameras within the store and claiming that the gun he used was a toy gun he found. (Trial Tr. pp. 53, ll. 1 – pp. 69, ll. 15; St. Ex. 2-A).

Trial Counsel objected to the admission of the audio recording on the grounds that the statement was not voluntarily given, arguing it should be suppressed based on the grounds that Applicant was not a "sophisticated man" and that he was "led along through a confession" without first viewing the surveillance video of the robbery. Based on this limited objection, the trial court denied the motion to suppress. (Trial Tr. pp. 69, ll. 17 – pp. 70, ll. 25). Investigator Hill testified he was one of the two officers present at Applicant's interview and was there for the entirety of it. Investigator Hill noted Applicant's statements to police were intelligently, knowingly, and voluntarily made. (Trial Tr. pp. 57, ll. 5 – pp. 64, ll. 15).

before the crime. Trial Counsel moved for a renewed directed verdict on the basis of insufficiency of evidence, specifically on the grounds that "the State did not prove beyond a reasonable doubt that the defendant was armed." The solicitor argued the video surveillance of the crime clearly demonstrated Applicant possessed a knife and that he did not dispute using a toy gun during the crime, rendering a strong-arm robbery charge inappropriate for jury consideration. The trial judge denied trial counsel's motion. (Trial Tr. pp. 219, ll. 19 – pp. 223, ll. 1; Trial Tr. pp. 247, ll. 17 – pp. 249, l. 5).

³ Jackson v. Denno, 378 U.S. 368 (1964).

Trial Counsel further objected to the statement's admission, claiming Detective Garrett's failure to testify at trial violated Applicant's Sixth Amendment right to confront his accusers, citing State v. Brewer, 411 S.C. 401, 768 S.E.2d 656 (2015). Trial Counsel claimed that any statement made by Detective Garrett during the interrogation was hearsay and was "clear[ly]" offered for the truth and not for non-hearsay purposes. Trial Counsel also claimed it was essential to exclude Detective Garrett's statements because they were "offered for context" regarding Applicant's statements to the police. (Trial Tr. pp. 183, ll. 5 – pp. 189, ll. 13).

The State disagreed with Trial Counsel's objection and explained that the facts of its case were opposite to those in Brewer because it redacted Detective Garrett's statements in which he referenced what any other person, including Applicant's mother, said to officers. The remaining portion of the recording only included Detective Garrett's questions to Applicant and his explanations of what officers found, including the content of the security footage played at trial. The State further explained that the recording was not being admitted for the "truth" in Detective Garrett's unredacted comments on the tape. Detective Garrett's statements were merely to provide context for Applicant's admissions to police. (Trial Tr. pp. 186, ll. 3 – pp. 192, ll. 23).

Trial Counsel noted that he had gone over the recording with the State and agreed upon portions that needed redaction to avoid the confrontation clause and hearsay issues. Trial Counsel clarified its position was that the video, in general, should be inadmissible because "all statements by [Detective] Garrett [were] inadmissible hearsay," violating the confrontation clause, and the statement was not freely and voluntarily given. The trial judge, noting Detective Garrett's hearsay statements were redacted, found Brewer did not apply and denied Trial Counsel's motion. (Trial Tr. pp. 189, ll. 14 – pp. 197, ll. 12; St. Ex. 2-A).

CURRENT ACTION BEFORE THE COURT

In his original application for post-conviction relief filed April 20, 2022, Applicant alleged he is being held in custody unlawfully for the following reasons:

- 1) Denied 6th Amendment Rights
 - a. "Interrogating Detective Garret who also took [Applicant's] statement was not made available at trial and was therefore not subject to cross examination".
- 2) Ineffective Assistance of Appellate Counsel
 - a. Appellate Counsel failed to raise issue on direct appeal of Trial Court's denial of trial counsel's motion for directed verdict.
 - b. Appellate Counsel failed to raise issue on direct appeal of trial judge making unestablished statements.
 - c. Appellate Counsel failed to raise issues on direct appeal of Trial Court error in allowing Investigator Hill to testify on truthfulness of investigation.

Applicant requested relief as follows:

"Sentence reversed and vacated sentence."

On September 13, 2024, Applicant filed an amended application alleging the following additional allegations:

- 3) Ineffective Assistance of Trial Counsel
 - a. Failing to review discovery with Applicant and advise him that still photographs could be taken from the video and admitted as evidence showing the presence of a knife and gun;
 - b. Failing to advise Applicant that a toy gun was "a representation of a deadly weapon" that satisfied the elements of armed robbery;
 - c. Failing to advise Applicant that the absence of available State witnesses to testify against him did not prevent the State from presenting an overwhelming case of guilt using the video and recorded statements only; and
 - d. Failing to argue that the use of photo stills of a knife allegedly taken from the store video violated the best evidence rule. (R. p. 90, 1.21 & SCRE 1002).
- 4) Ineffective Assistance of Appellate Counsel
 - a. Failing to brief the issue that the judge erred in allowing deputy Craig Holbrooks to testify that a photo still allegedly taken from the in-store video showed a bladed object. (R. p. 102, 1.4).
 - b. Failing to brief the issue of the trial judge's error in his denial of a directed verdict.

- c. Failing to brief the issue of the trial judge's error in making unestablished statements.
- 5) Denied 6th Amendment Rights
 - a. The absence of testimony from the State's available witnesses violated Applicant's Constitutional right to confront his accusers.

At the outset of the hearing, Applicant indicated he wished to withdraw his allegations of trial court error and proceed on the remainder of his allegations from his original and amended application. (PCR Tr. p. 5).

Before this Court are the Anderson County Clerk of Court records regarding the subject convictions and sentences; Applicant's records from the South Carolina Department of Corrections; a full and complete record of Applicant's direct appeal, including the trial transcript; and the records of the current PCR action.

STANDARD OF REVIEW

INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL

The Uniform Post-Conviction Procedure Act⁴ (the Act) provides that any person who has been convicted of a crime may seek post-conviction relief based upon the following types of allegations:

- 1) That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
- 2) That the court was without jurisdiction to impose sentence;
- 3) That the sentence exceeds the maximum authorized by law;
- 4) That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
- 5) That his sentence has expired, his probation, parole or conditional release unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or
- 6) That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy[.]

⁴ S.C. Code Ann. §§ 17-27-10 to -160.

S.C. Code Ann. § 17-27-20(A).

The Sixth and Fourteenth Amendments to the United States Constitution guarantee Applicant, like all other defendants, the right to effective assistance of counsel. Strickland v. Washington, 466 U.S. 668 (1984); Taylor v. State, 404 S.C. 350, 359, 745 S.E.2d 97, 101 (2013). Ordinarily, PCR allegations are centered upon an allegation that the applicant did not receive *effective* assistance of counsel guaranteed by the Sixth Amendment. The allegation of denial of such representation sets forth a *prima facie* violation of this constitutional right and raises a question of fact that can only be determined by an evidentiary hearing. Rogers v. State, 261 S.C. 288, 291, 199 S.E.2d 761, 762 (1973).

In a post-conviction relief action, the applicant bears the burden of proving the allegations by a preponderance of the evidence—a mere allegation of ineffective assistance is not sufficient to warrant granting relief. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). The reviewing court applies the two-part test outlined in Strickland v. Washington to determine whether counsel's conduct "was so [ineffective] as to require reversal" of the applicant's conviction. 466 U.S. 668, 687 (1984). To obtain relief, a PCR applicant must prove (1) counsel's performance fell below an objective standard of reasonableness, and (2) the applicant sustained prejudice as a result of counsel's deficient performance. Id. at 687–88; Cherry v. State, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989). Failure to make the required showing of either deficient performance or sufficient prejudice defeats the ineffectiveness claim. Strickland, 466 U.S. at 700; see also Bell v. Cone, 535 U.S. 685, 695 (2002) (explaining that "[w]ithout proof of both deficient performance and prejudice to the defense, . . . it could not be said that the sentence or conviction resulted from a breakdown in the adversary process that rendered the result of the proceeding unreliable." (citation and internal quotation marks omitted)).

Regarding the deficiency prong of the Strickland analysis, the proper measure of performance is whether counsel provided representation within the reasonable range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. When analyzing counsel's performance, the reviewing court will strongly presume counsel provided adequate assistance, and the applicant is responsible for rebutting that presumption "by proving that his attorney's representation was unreasonable under prevailing professional norms and that the challenged action was not sound strategy." Kimmelman v. Morrison, 477 U.S. 365, 384 (1986); cf. Cullen v. Pinholster, 563 U.S. 170, 189 (2011) (explaining a defendant must show defense counsel failed to act reasonably considering all the circumstances in order to overcome the presumption of adequate representation).

Furthermore, the reviewing court will scrutinize counsel's performance in a highly deferential manner, make every effort "to eliminate the distorting effects of hindsight," and "evaluate the conduct from counsel's perspective at the time" in light of then-existing circumstances. Strickland, 466 U.S. at 689. In order to establish counsel's performance was deficient, the applicant must demonstrate "counsel made errors so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment." Id. at 687. Accordingly, counsel's performance will be considered deficient only when it was objectively incompetent under prevailing professional norms and *not* when it simply "deviated from best practices or most common custom." Harrington v. Richter, 562 U.S. 86, 105 (2011).

Beyond satisfying the burden required by the deficiency prong, an applicant also bears the burden of establishing prejudice in order to be entitled to relief as "[a]n error by counsel, even if professionally unreasonable, does not warrant setting aside the judgment of a criminal proceeding if the error had no effect on the judgment." Strickland, 466 U.S. at 691. To meet this burden,

counsel's deficient performance must have prejudiced the applicant to such an extent, there is a reasonable probability the result of the proceeding would have been different but for counsel's unprofessional errors. Cherry, 300 S.C. at 117–18, 386 S.E.2d at 625; see Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) ("To establish a claim of ineffective assistance of trial counsel, a PCR applicant has the burden of proving counsel's representation fell below an objective standard of reasonableness and, but for counsel's errors, there is a reasonable probability the result at trial would have been different."). Importantly, "[t]he likelihood of a different result must be *substantial*, not just conceivable." Richter, 562 U.S. at 112.

Finally, the Strickland standard must be applied with scrupulous care, lest "intrusive post-trial inquiry" threaten the integrity of the very adversarial process the right to counsel is meant to serve. 466 U.S. at 689–90. Courts must be wary of second-guessing counsel's trial tactics, and where counsel articulates a valid reason for employing such strategy, such conduct is not ineffective assistance of counsel. Whitehead v. State, 308 S.C. 119, 417 S.E.2d 529 (1992). The applicant's burden of proving both Strickland components is heavy in light of the strong presumption that counsel's conduct fell within the range of reasonable professional legal assistance. 466 U.S. at 690. Representation is constitutionally ineffective only if counsel's conduct "so undermined the proper functioning of the adversarial process" that the defendant was denied a fair proceeding. Id. at 686; see Nix v. Whiteside, 475 U.S. 157, 175 (1986) (noting that under Strickland, the "benchmark" of the right to counsel is the "fairness of the adversary proceeding"); cf. United States v. Morrow, 977 F.2d 222, 229 (6th Cir. 1992) ("[T]he threshold issue is not whether [the applicant's] attorney was inadequate; rather, it is whether he was so *manifestly* ineffective that defeat was snatched from the hands of probable victory.").

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Applicant has alleged and elected to pursue various claims of ineffective assistance of counsel through the post-conviction relief action presently before this Court. In analyzing these claims, this Court has considered the legal arguments by counsel and thoroughly reviewed the record in its entirety. This Court additionally heard evidence presented at the evidentiary hearing and observed the witnesses, which allowed the Court to evaluate and scrutinize their credibility. See, e.g., State v. Mercer, 381 S.C. 149, 166, 672 S.E.2d 556, 565 (2009) ("In this post-trial setting, our jurisprudence recognizes the gatekeeping role of the trial court in making a credibility assessment."); Clemons v. Mississippi, 494 U.S. 738, 766 (1990) (Blackmun, J., concurring in part and dissenting in part) ("The trial judge who hears the witnesses live, observes their demeanor and in general smells the smoke of the battle is by his very position far better equipped to make findings of fact which will have the reliability that we need and desire.").

Upon conducting and completing its analysis, this Court finds that Applicant has failed to establish any constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief. See Rule 71.1(e), SCRCF (stating that in a post-conviction relief action, "[t]he applicant has the burden of establishing his entitlement to relief by a preponderance of the evidence."); Lucero v. State, 414 S.C. 238, 244, 777 S.E.2d 409, 412 (Ct. App. 2015) ("In a PCR proceeding, the applicant bears the burden of establishing that he or she is entitled to relief."); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) ("The burden of proof is on the Applicant in post-conviction proceedings to prove the allegations in his application.").

Accordingly, set forth below are the relevant findings of facts and conclusions of law as required by section 17-27-80 of the South Carolina Code:

INITIAL FINDINGS

As a matter of general impression, this Court finds applicable the strong presumption that at all stages of Trial Counsel's and Appellate Counsel's representation of Applicant, they both rendered adequate assistance and exercised reasonable professional judgment in both of their representations. Ard v. Catoe, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007) (citing Strickland, supra). The United States Supreme Court has cautioned that "every effort be made to eliminate the distorting effects of hindsight" and evaluate counsel's decisions at the time they were made. Strickland, 466 U.S. at 689, 104; see Whitehead v. State, 308 S.C. 119, 122, 417 S.E.2d 529, 531 (1992).

INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL ALLEGATIONS

Allegation 4(a): Failing to review discovery with Applicant and advise him that still photographs could be taken from the video and admitted as evidence showing the presence of a knife and gun.

Applicant alleges that Trial Counsel was constitutionally ineffective for failing to review the discovery with him. Specifically, Applicant avers that Trial Counsel was ineffective for failing to review video discovery with Applicant, and for failing to advise him that still photographs could be taken from the video surveillance and be admitted into evidence to show Applicant was in possession of a weapon during the crime. This Court disagrees and finds this allegation without merit.

"[S]trategic choices made after thorough investigation of law and facts relevant to plausible options are virtually unchallengeable; and strategic choices made after less than complete investigation are reasonable precisely to the extent that reasonable professional judgments support the limitations on investigation." Strickland, 466 U.S. at 690-91. "In other words, counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular

investigations unnecessary." Id. at 691. "In any ineffectiveness case, a particular decision not to investigate must be directly assessed for reasonableness in all the circumstances, applying a heavy measure of deference to counsel's judgments." Id.

"The reasonableness of counsel's actions may be determined or substantially influenced by the defendant's own statements or actions." Id. "Counsel's actions are usually based, quite properly, on informed strategic choices made by the defendant and on information supplied by the defendant." Id. "In particular, what investigation decisions are reasonable depends critically on such information." Id.

In order to prevail upon a claim that counsel did not adequately prepare or investigate a case, an applicant must present evidence of what counsel could have discovered or what other defenses the applicant could have requested counsel develop and present had counsel been more prepared. Harris v. State, 377 S.C. 66, 75-76, 659 S.E.2d 140, 145-46 (2008) (citing Jackson v. State, 329 S.C. 345, 353-54, 495 S.E.2d 768, 772 (1998)). Furthermore, an applicant must also present evidence to show how the discoverable matters or defenses would have resulted in a different outcome. Id. (citing Davis v. State, 326 S.C. 283, 288, 486 S.E.2d 747, 749 (1997); Skeen v. State, 325 S.C. 210, 214, 481 S.E.2d 129, 132 (1997)). Mere speculation as to how the alleged lack of preparation prejudiced an applicant is not sufficient to support a grant of relief. Id. at 75, 659 S.E.2d at 145 (citing Glover v. State, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995)).

PCR Evidentiary Hearing

On direct examination, Applicant testified that Trial Counsel never showed him the entire video, and he turned down the plea because the footage that Trial Counsel showed him did not show Applicant holding a weapon. (PCR Tr. p. 10). Applicant testified that the video did not show

him holding a weapon, and he was so high at the time of the crime that he could not recall whether he had a weapon or not. (PCR Tr. p. 10). Applicant testified that a girl who lived behind the store came out of the store crying and told him the people in the store had harassed her. (PCR Tr. p. 11). Applicant testified he went into the store to confront the man who harassed the girl. (PCR Tr. p. 11). Applicant testified that he had never seen the part of the video that showed him with a weapon in his hand. (PCR Tr. p. 12). Applicant testified he would have taken the plea had he known about the video. (PCR Tr. p. 12). Applicant testified that in his statement to Investigator Garrett, he told him that he had found a toy gun the morning of the robbery, but he never told Investigator Garrett that he had a weapon or went into the store. (PCR Tr. p. 13). Applicant testified that he never saw the part of the video with him holding a knife, but a still photo from the video with Applicant holding a knife was shown at trial by the solicitor. (PCR Tr. p. 16). Applicant testified that the still photo of him holding a knife was never provided in discovery. (PCR Tr. p. 16). Applicant testified that had he known that he had a weapon, he would have taken the State's offer of seven years. (PCR Tr. p. 16).

On cross-examination, Applicant testified that he could not say what he and Trial Counsel discussed. (PCR Tr. p. 19). Applicant testified that he could not remember, as he was still on drugs at the time, and he was high when Trial Counsel advised him of the seven-year offer. (PCR Tr. p. 19). Applicant testified that he recalled Trial Counsel showing him a video of him entering the store, but it was not the video he saw the morning of the hearing. (PCR Tr. p. 19). Applicant testified he did meet with Trial Counsel and Trial Counsel believed him, but Applicant never saw the video, so he cannot testify to what happened. (PCR Tr. pp. 19–20). Applicant testified he met with Trial Counsel when he was out on bond, but he cannot recall his meetings with him because of his drug use. (PCR Tr. p. 20). Applicant testified that Trial Counsel could have shown him

discovery, and he might not remember because of the drugs and possible memory loss from a previous head injury. (PCR Tr. pp. 20–21). Applicant testified he did not recall committing the crime as he was on drugs, and he could not recall what happened during that time because he was “out of his mind”. (PCR Tr. p. 22). Applicant testified he has been clean while imprisoned. (PCR Tr. p. 22).

On direct examination, Trial Counsel testified that he was Applicant's fourth appointed attorney, and Applicant's case was almost two years old when he was appointed. (PCR Tr. p. 24). Trial Counsel testified that when he received Applicant's case file, it already had all the discovery, and Applicant's previous attorney had reviewed the discovery with Applicant. (PCR Tr. p. 24). Trial Counsel testified that he reviewed the discovery with Applicant at his office and met with him at least four times. (PCR Tr. p. 25). Trial Counsel testified that they met a few hours at a time, watching the videos during that time. (PCR Tr. p. 25). Trial Counsel testified that he reviewed the video evidence with Applicant at length on two separate occasions. (PCR Tr. p. 25). Trial Counsel testified he provided the video to Applicant before the PCR evidentiary hearing, and he is certain, based on his notes, that he reviewed the videos with Applicant. (PCR Tr. p. 25–26).

Trial Counsel testified that he was not provided still photographs before trial, and the stills were pulled from the video he reviewed with Applicant. (PCR Tr. p. 27). Trial Counsel testified that the video clearly showed Applicant. (PCR Tr. p. 27). Trial Counsel testified that he reviewed the entirety of the video with Applicant a couple of times. (PCR Tr. p. 27). Trial Counsel testified to the notes in Applicant's defense file made by Applicant's previous attorney, Austin McClain, as follows:

This is from back when, before I took the case on. So this is November 9, 2017. Austin says, "I've met with client on multiple occasions and reviewed all discovery with him, including video, multiple times. His daughter was present last time. Reviewed video with us. Mr. Blackwell, against my advice wants a trial. The

Solicitor has a great video of the armed robbery and, in general, a solid case. Mr. Blackwell didn't disagree with that. He just doesn't want to enter a plea."

(PCR Tr. p. 27, ll. 20 – p. 28, ll. 3).

Trial Counsel testified that he had the same advice for Applicant and told him there was no doubt about who it was in the video. (PCR Tr. p. 28). Trial Counsel testified that Applicant advised him that he was not going to plead to anything that involved prison time, and that Applicant told him, "God will not let me go to prison." (PCR Tr. p. 28). Trial Counsel testified that Applicant advised him repeatedly that he was looking for a miracle. (PCR Tr. p. 28).

On cross-examination, Trial Counsel testified that there were three videos, each about ten to twenty minutes long, and he reviewed every second of each video with Applicant. (PCR Tr. p. 32). Trial Counsel testified that he spent hours with Applicant reviewing the video, attempting to convince Applicant to accept the plea offer for strong-armed robbery. (PCR Tr. p. 32). Trial Counsel testified he reviewed the part of the video showing Applicant jumping over the counter, and it clearly showed a gun in Applicant's hand in the video. (PCR Tr. pp. 32–33). Trial Counsel testified he does not recall being confident about the video showing Applicant with a knife. (PCR Tr. p. 33).

On recross-examination, Trial Counsel testified that the video was entirely played for the jury based on his recollection and a brief review of the trial transcript. (PCR Tr. p. 36). Trial Counsel testified that the video was the primary evidence against Applicant. (PCR Tr. p. 36). Trial Counsel testified that he recalls an approximately six-by-ten picture given to the jury to review, rather than pausing the video. (PCR Tr. p. 37).

Findings

As an initial matter, this Court finds Applicant's testimony **not credible**. This Court further finds the combination of the record and Trial Counsel's **credible** testimony that Applicant has

failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case." Ard v. Catoe, *supra*. This Court additionally finds that Applicant has failed to overcome his burden of proving Trial Counsel's representation was deficient and any resulting prejudice from that alleged deficiency. See Butler, *supra*. Trial Counsel credibly testified that he reviewed discovery with Applicant prior to trial, including the challenged portions of the videos. Trial Counsel credibly testified that he advised Applicant that the footage clearly depicted him committing the armed robbery and that it was in his best interest not to go to trial, but to plead guilty for a more favorable sentence.

Additionally, this Court finds that though Trial Counsel did not specifically review the photo stills of the video admitted at trial, those stills were taken from the footage Trial Counsel fully reviewed with Applicant and were part of Applicant's discovery. Notably, Applicant testified repeatedly that he did not clearly recall the armed robbery or his meetings with Trial Counsel due to drug use and an issue with his memory, and admitted it was possible he reviewed the entire video. Therefore, Trial Counsel was not deficient.

Moreover, Applicant failed to provide what could have been discovered or what other defenses he could have requested had Trial Counsel spent more time reviewing the videos with him, and how that would have changed the outcome of his trial. See Harris, 377 S.C. at 75-76, 659 S.E.2d at 145-46. Trial Counsel credibly testified that Applicant did not want to plead guilty to anything that involved prison time, and that Applicant was looking for a miracle. Additionally, Trial Counsel credibly testified there was overwhelming evidence of guilt, as the video clearly identified Applicant committing the armed robbery. See Smalls v. State, 422 S.C. 174, 188, 810

S.E.2d 836, 843 (2018) ("[T]he PCR court should consider the strength of the State's case in light of all the evidence presented to the jury.").

Notably, Trial Counsel credibly testified it was clear from the video that Applicant committed the robbery with a weapon, testifying the video was "yearbook quality." Further, Applicant's brother identified him as the one in the video (Trial Tr. p. 173), Applicant made a statement acknowledging it was him in the video going into the store that was robbed at the time of the robbery (Trial Tr. pp. 197 – 198), the items stolen from the store were found in Applicant's mother's residence (Trial Tr. pp. 162 – 166), and the vehicle used and clothing worn during the commission of the robbery were found in Applicant's residence (Trial Tr. pp. 159 – 161, 164 – 165). Therefore, Applicant is unable to show prejudice, that a different outcome would have resulted but for Trial Counsel's performance.

Based on the foregoing, this Court finds the Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test—that Trial Counsel failed to render reasonably effective assistance under prevailing professional norms. Furthermore, Applicant has failed to present specific and compelling evidence that Trial Counsel committed either errors or omissions to prove the second prong of Strickland—that he was prejudiced by Trial Counsel's performance.

Accordingly, this Court finds Applicant has failed to establish any deficiency by Trial Counsel or any prejudice flowing therefrom. Thus, this allegation must be **DENIED** and **DISMISSED WITH PREJUDICE**.

Allegation 4(b): **Failing to advise Applicant that a toy gun was 'a representation of a deadly weapon' that satisfied the elements of armed robbery.**

Applicant alleges Trial Counsel was constitutionally ineffective for failing to advise him on the elements of Armed Robbery. Specifically, Applicant avers that Trial Counsel was ineffective for failing to advise him that a toy gun was "a representation of a deadly weapon" that properly satisfied the elements of Armed Robbery. This Court disagrees and finds this allegation without merit.

"Armed robbery occurs when a person commits robbery while either armed with a deadly weapon or alleging to be armed by the representation of a deadly weapon. S.C. Code Ann. § 16–11–330 (2003)." State v. Mitchell, 382 S.C. 1, 4, 675 S.E.2d 435, 437 (2009). In State v. Bailey, the Supreme Court held that "a gun used in a robbery is a deadly weapon regardless of its alleged inoperability." 273 S.C. 467, 257 S.E.2d 231 (1979). In Tasco, the Supreme Court cited the North Carolina Supreme Court's opinion in State v. Thompson, 297 N.C. 285, 254 S.E.2d 526, 528 (1979), where they said, "when a person perpetrates a robbery by brandishing an instrument which appears to be a firearm ... in the absence of any evidence to the contrary, the law will presume the instrument to be what his conduct represents it to be, a firearm" State v. Tasco, 292 S.C. 270, 272, 356 S.E.2d 117, 118 (1987).

PCR Evidentiary Hearing

On direct examination, Applicant testified that he never discussed a gun with Trial Counsel, because he did not see the gun in the video. (PCR Tr. p. 14). Applicant testified he honestly believed he did not have a weapon in his hand, but having reviewed the whole video prior to the PCR evidentiary hearing, Applicant testified he would have pled guilty. (PCR Tr. p. 14).

On direct examination, Trial Counsel testified that he definitely advised Applicant of the elements of armed robbery and that a toy gun could be used to charge Applicant with armed robbery. (PCR Tr. pp. 28 – 29). Trial Counsel testified that his practice is to print every statute

and review it with his client, and in reviewing Applicant's defense file, it included a printout of the armed robbery statute with Trial Counsel's name printed on it from WestLaw. (PCR Tr. p. 29).

Findings

This Court further finds from the combination of the record and Trial Counsel's credible testimony that Applicant has failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case." Ard v. Catoe, supra. This Court additionally finds Applicant has failed to overcome his burden in proving Trial Counsel's representation was deficient and any resulting prejudice from that alleged deficiency. See Butler, supra. Trial Counsel credibly testified that he reviewed the elements of armed robbery with Applicant and advised Applicant that he could be charged with armed robbery, even considering that he used a toy gun. Trial Counsel credibly testified that Applicant's defense file contained a copy of the printed statute, which he reviewed with Applicant. See S.C. Code Ann. § 16–11–330 (2003) (Armed robbery occurs when a person commits robbery while either armed with a deadly weapon or alleging to be armed by the representation of a deadly weapon.). Applicant merely alleged that he did not discuss the existence of a gun with Trial Counsel, which this Court addressed *supra* in its findings that Trial Counsel reviewed the entirety of the videos with Applicant. Therefore, Trial Counsel was not deficient.

Additionally, Applicant failed to show how the result of his proceeding would have been different but for Trial Counsel's performance. As noted *supra*, Applicant did not want to accept any plea that involved prison time and was hoping for a miracle. Importantly, Applicant was not only in possession of a toy gun during the commission of the robbery, but a knife, as well. (Trial Tr. pp. 101 – 102, 221). Therefore, Applicant cannot establish prejudice.

Based on the foregoing, this Court finds the Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test—that Trial Counsel failed to render reasonably effective assistance under prevailing professional norms. Furthermore, Applicant has failed to present specific and compelling evidence that Trial Counsel committed either errors or omissions to prove the second prong of Strickland—that he was prejudiced by Trial Counsel's performance.

Accordingly, this Court finds Applicant has failed to establish any deficiency by Trial Counsel or any prejudice flowing therefrom. Thus, this allegation must be **DENIED** and **DISMISSED WITH PREJUDICE**.

Allegation 4(c): Failing to advise Applicant that the absence of available State witnesses to testify against him did not prevent the State from presenting an overwhelming case of guilt using the video and recorded statements only.

Applicant alleges Trial Counsel was constitutionally ineffective for failing to advise Applicant that the State was not prevented from presenting an overwhelming case of guilt against Applicant where certain State's witnesses did not testify. Specifically, Applicant stated Trial Counsel failed to advise him that the absence of the victim and investigator did not help him at trial. This Court disagrees and finds this allegation without merit.

Trial

Prior to the introduction of Applicant's video-recorded statement, Trial Counsel objected to the statement based on hearsay and the confrontation clause because Investigator Garrett was not available to be cross-examined. (Trial Tr. pp. 148–149). Specifically, Trial Counsel argued that Investigator Garrett asked Applicant all the questions, and the absence of Investigator Garrett's

testimony raises issues of hearsay and violation of the confrontation clause. (Trial Tr. p. 148). Regarding hearsay, Trial Counsel argued there were hearsay-within-hearsay concerns and suggested only playing the portions where Applicant was making his statements. (Trial Tr. pp. 148–149).

The State advised the trial court that Detective Scotty Hill (Investigator Hill), who was present during Applicant's statement, would be testifying. (Trial Tr. p. 149). The State argued for the admission of Applicant's statement through Detective Hill and stated they had redacted portions of the statement that made references to Applicant's drug use. (Trial Tr. p. 151). In response, Trial Counsel argued that though Detective Hill was present, he did not pose any of the questions to Applicant. (PCR Tr. p. 151). The trial court responded that Detective Hill was present and listened to the questions, but that an in camera hearing could take place prior to Detective Hill giving his testimony before the jury to ascertain if he was present throughout the entirety of Applicant's statement. (Trial Tr. pp. 151–152).

Upon the State moving the audio of Applicant's statement into evidence, Trial Counsel renewed his objection. The trial court heard arguments from Trial Counsel and the State, and Trial Counsel questioned Investigator Hill outside the presence of the jury. (Trial Tr. pp. 183–192). The trial court ultimately denied Trial Counsel's motion to suppress portions of the video, reasoning that potential hearsay statements had been redacted and the right to confrontation in State v. Brewer⁵ was related to the hearsay statement and not applicable in Applicant's case. (Trial Tr. p. 192).

In his closing argument, Trial Counsel argued to the jury about the importance of having eyewitnesses in a case like this, and highlighted the absence of the store clerks, the lead

⁵ 411 S.C. 401, 768 S.E.2d 656 (2015).

investigator, and other witnesses from the crime scene. Trial Counsel further advised the jury of the State's burden of proof to convict Applicant of Armed Robbery, and how establishing the element requiring possession of a weapon can be difficult without any eyewitnesses. (Trial Tr. pp. 229, ll. 8 – pp. 230, ll. 10).

PCR Evidentiary Hearing

On direct examination, Applicant testified as follows concerning this allegation:

- A. They wasn't at trial or my investigator. He wasn't at trial either. They had no witness. My brother testified he thought it was me from a video.
- Q. And had someone told you about the State's chances of proceeding and winning at trial if the victims and investigator weren't there to testify against you?
- A. Yeah, I talked to the attorney. I had to go to, roll call is what they called it, at the courthouse. And I talked to a lawyer in the elevator and told him that the two witnesses had been extradited. And he said, well, they can't try you if they don't have any witnesses. That's what he told me. And I believed that. And that was another reason I turned down the seven years. I said, well, surely he knows what he's talking about.
- Q. Did you and your trial attorney ever discuss that matter? Whether they could still convict you without victims testifying?
- A. Really, I was still getting high. I don't even – really couldn't tell you what me and my lawyer talked about. That's the honest truth.

(PCR Tr. pp. 14 – 15).

On cross-examination, Applicant testified that he stayed in the county detention center thirty-five days after his arrest and was released out on bond for the next two years. (PCR Tr. p. 19). Applicant testified he met with Trial Counsel prior to trial, but he does not recall their conversations because Applicant was using drugs during that time. (PCR Tr. pp. 19–20). Applicant testified he had an evaluation during this time, and the doctor told him he had short-term and long-term memory loss from a previous blow to the head. (PCR Tr. pp. 20–21). Applicant testified that he cannot remember a lot of stuff that happened between his arrest and trial because he was "out of his mind". (PCR Tr. p. 22).

On direct examination, Trial Counsel testified that Applicant's prior attorney had Applicant evaluated, and he was found criminally responsible and competent to stand trial. (PCR Tr. p. 26). Trial Counsel testified that the video clearly showed Applicant committing the armed robbery. (PCR Tr. p. 27). Trial Counsel testified that the trial was "unusual" because the lead investigator, Detective Jamie Garrett (Investigator Garrett), was not present to testify. (PCR Tr. p. 29). Trial Counsel testified that they learned of Investigator Garrett's absence either right at the start of the trial or a couple of days prior. (PCR Tr. p. 29). Trial Counsel testified that the store clerk, a victim in this case, did not testify at Applicant's trial, either. (PCR Tr. p. 29). Trial Counsel testified that both Investigator Garrett and the store clerk were included on the State's witness list, but the State rested without calling them. (PCR Tr. pp. 29). Trial Counsel testified that the State relied on the video and the Applicant's brother, Mr. Black, to identify Applicant. (PCR Tr. pp. 29–30).

On cross-examination, Trial Counsel testified that in his opening statement, he emphasized the jury's duty in holding the government to their burden; and he argued in closing that the jury should consider that certain fact witnesses were present but did not testify. (PCR Tr. p. 33). Trial Counsel testified that he had more to argue in closing than he anticipated, because he had expected the store clerk to testify, and he didn't. (PCR Tr. p. 33). Trial Counsel testified that he assumed that since the store clerk was on the witness list and was available to testify, the State would have called him. (PCR Tr. p. 33). Trial Counsel testified that he did not recall anyone telling him the store clerk would not be called to testify, and it surprised him when the store clerk did not testify. (PCR Tr. p. 34). Trial Counsel testified that the availability of the store clerk was discussed during plea negotiations, and his notes indicate that the State advised him that the store clerk had moved out of the state. (PCR Tr. p. 34). Trial Counsel testified that the plea offer might have been influenced by the store clerk's possible unavailability. (PCR Tr. p. 34). Trial Counsel testified that

he does not have a specific memory of discussing the potential unavailability of the clerk with Applicant. (PCR Tr. p. 35).

On redirect-examination, Trial Counsel testified that once he learned that Investigator Garrett was not testifying, he objected to portions of the video of Applicant's statement that included Investigator Garrett. (PCR Tr. p. 35). Trial Counsel testified that he objected based on hearsay and the confrontation clause. (PCR Tr. p. 35).

Findings

This Court further finds the combination of the record and Trial Counsel's **credible** testimony establishes that Applicant has failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case." *Ard v. Catoe, supra*. This Court additionally finds that Applicant has failed to overcome his burden of proving Trial Counsel's representation was deficient and any resulting prejudice from the alleged deficiency. *See Butler, supra*. Trial Counsel **credibly** testified that he advised Applicant of the overwhelming evidence of guilt against him and advised Applicant that a trial was not in his best interest. Further, Trial Counsel **credibly** testified that he received little to no advance notice before trial that the store clerk and Investigator Garrett may not be available to testify, and therefore, he could not advise Applicant of this possibility. Applicant testified indicating that a separate attorney, rather than Trial Counsel, advised him in an elevator that the State could not initiate a trial in the absence of witnesses. Consequently, Trial Counsel cannot be deemed deficient in this respect.

Regardless, as found *supra*, Applicant was not inclined to accept the plea offer, and it is improbable that knowing these witnesses would not have testified would have changed his decision to plead, rather than proceed to trial. Notably, the absence of the store clerk's and Investigator

Garrett's testimony only served to benefit Applicant's defense, and still the jury convicted Applicant based on the evidence the State presented. Therefore, Applicant cannot establish prejudice, that but for Trial Counsel's performance, the outcome of the proceeding would have been different.

Based on the foregoing, this Court finds the Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test—that Trial Counsel failed to render reasonably effective assistance under prevailing professional norms. Furthermore, Applicant has failed to present specific and compelling evidence that Trial Counsel committed either errors or omissions to prove the second prong of Strickland—that he was prejudiced by Trial Counsel's performance.

Accordingly, this Court finds Applicant has failed to establish any deficiency by Trial Counsel or any prejudice flowing therefrom. Thus, this allegation must be **DENIED** and **DISMISSED WITH PREJUDICE**.

Allegation 4(d): Failing to argue that the use of photo stills of a knife allegedly taken from the store video violated the best evidence rule.

Applicant alleges that Trial Counsel was constitutionally ineffective for failing to argue that the use of still photographs taken from video surveillance of the crime violated the best evidence rule. This Court disagrees and finds this allegation to be without merit.

The "best evidence rule" requires that "To prove the content of a writing, recording, or photograph, the original writing, recording, or photograph is required, except as otherwise provided in these rules or by statute." See Rule 1002, SCRE. The underlying purpose of the best evidence rule is to avoid the implicit danger that arises where "secondary" evidence is provided in place of "primary" evidence, allowing for the possibility of error in translating and interpreting the

evidence. See United States v. Chavez, 976 F.3d 1178, 1194 (10th Cir. 2020) (The best evidence rule "minimizes the risk of human error that inheres from the production of so-called 'secondary' evidence—that is, evidence other than the original offered to prove all or part of the original's contents; the original, of course, constitutes 'primary evidence' of its own contents."); See also United States v. Alexander, 326 F.2d 736, 742 (4th Cir. 1964) ("Moreover, the original may contain, and the copy will lack, such features of handwriting, paper, and the like, as may afford the opponent valuable means of learning legitimate objections to the significance of the document."). However, where the original is provided, the fear of error "wholly disappears." See Alexander, 326 F.2d at 742 ("As between a supposed literal copy and the original, the copy is always liable to errors on the part of the copyist, whether by wilfulness or by inadvertence"—a problem that "wholly disappears when the original is produced." (quoting 4 John Henry Wigmore, Evidence § 1179 (3d ed. 1940))).

Trial

When the State moved to enter the photo stills into evidence, Trial Counsel objected to the photo stills as they were not provided to him in discovery. (Trial Tr. p. 90). Trial Counsel argued that he had made a Rule 5 and Brady motion in 2016 and requested that the State provide weekly materials. (Trial Tr. p. 91). Trial Counsel argued that he was entitled to the photo stills because he is entitled to whatever the State intends to present. (Trial Tr. pp. 91–92). Trial Counsel argued that his motion covered photographs, citing request three from his discovery motion. (Trial Tr. pp. 92 – 93). Additionally, Trial Counsel argued that the photo stills were cumulative, as the video had already been published to the jury. (Trial Tr. pp. 93–94).

In response, the State stated that the photo stills were pulled from a disk that was provided in discovery, and the stills were printed from that disk. (Trial Tr. p. 96). The trial court took a

brief recess for the parties to assess whether the disk with the stills had been provided. (Trial Tr. p. 98). After the recess, the State advised the trial court that the disc, which included three of the stills, was provided to Trial Counsel on September 20, 2018. (Trial Tr. p. 98). The State argued that they did not realize the stills were not provided, but they were pulled straight from the video. (Trial Tr. pp. 98–99).

The trial court denied Trial Counsel's motion and admitted the photo stills. (Trial Tr. p. 99). The trial court reasoned that the purpose of discovery was to know what the State had, and Trial Counsel knew the State had pictures showing the Applicant's face. (Trial Tr. p. 99). The trial court stated that it would have been convenient if the State had provided the stills, but the stills had come from the video, which was provided. (Trial Tr. p. 99). Additionally, the trial court ruled the stills were not cumulative. (Trial Tr. pp. 101–102).

PCR Evidentiary Hearing

On direct examination, Trial Counsel testified to the following concerning this allegation:

Q. Did you object on the record to the photographs coming in?

A. Yes. So, I went back and looked at the transcript and I objected to those as being, you know, a discovery violation in the sense that they were trying to use something that had not been provided to us. And I think that was the appropriate objection. The Court actually overruled that and basically finding that since they were you know, they were taken directly from the video, there wasn't really a problem.

Q. And there is an argument or an allegation that you fail to argue the use of the photo stills of the knife, taken from the store video, violated the best evidence rule.

A. Yeah, I certainly didn't argue that. I concede that. I mean, I went back and looked at the rule and I'm really not sure that it applies, quite frankly. But no, I mean, I certainly would concede that I just objected on discovery grounds.

(PCR Tr. p. 30).

On recross examination, Trial Counsel testified that, based on his memory, the video of the armed robbery was played for the jury. (PCR Tr. p. 36). Trial Counsel testified that he does not

recall the photo stills being "blown up" or enhanced. (PCR Tr. p. 37). Trial Counsel testified that he recalled a six-by-ten photo that was provided to the jury to review, rather than pausing the video and having the jury review it that way. (PCR Tr. p. 37).

On cross-examination, Appellate Counsel testified that the failure of Trial Counsel to argue the best evidence rule was not what kept him from briefing the issue on appeal. (PCR Tr. p. 40). Appellate Counsel testified that, based on his review, he believed the evidence of the stills was cumulative to other evidence

Findings

This Court finds that Applicant has failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case." *Ard v. Catoe, supra*. This Court additionally finds that Applicant has failed to overcome his burden in proving Trial Counsel's representation was deficient and any resulting prejudice from that alleged deficiency. *See Butler, supra*. The evidence on record, along with the **credible** testimony of Trial Counsel, demonstrates that Trial Counsel exercised sound judgment in the decision-making processes pertaining to his representation. While Trial Counsel did not object to the entry of the photographs on the grounds of a best evidence rule violation, he did object to the photographs being admitted on the grounds that they were not provided to the defense in discovery. Appellate Counsel **credibly** testified that based on his review, it seemed as if the stills were cumulative, and he did not see the best evidence rule as relevant. Further, Trial Counsel **credibly** testified that he did not believe the best evidence rule applied in these circumstances. This Court agrees, considering the purpose of the best evidence rule and the fact that the original video, from which the photo stills were pulled, was published to the jury at trial. Therefore, Trial Counsel was not deficient, and Applicant cannot show he suffered prejudice

from Applicant's performance. See Miller v. Keeney, 882 F.2d 1428, 1434 (9th Cir. 1989) (noting that if a petitioner challenges a futile objection, he fails both Strickland prongs); U.S. ex rel. Link v. Lane, 811 F.2d 1166, 1170 (7th Cir. 1987) (finding there is no prejudice from the failure to object unless there is a legally supportable argument for exclusion of the evidence).

Based on the foregoing, this Court finds the Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test—that Trial Counsel failed to render reasonably effective assistance under prevailing professional norms. Furthermore, Applicant has failed to present specific and compelling evidence that Trial Counsel committed either errors or omissions to prove the second prong of Strickland—that he was prejudiced by Trial Counsel's performance.

Accordingly, this Court finds Applicant has failed to establish any deficiency by Trial Counsel or any prejudice flowing therefrom. Thus, this allegation must be **DENIED** and **DISMISSED WITH PREJUDICE**.

INEFFECTIVE ASSISTANCE OF APPELLATE COUNSEL ALLEGATIONS

Allegation 5(a): **Failing to brief the issue that the judge erred in allowing Deputy Craig Holbrooks to testify that a photo still allegedly taken from the in-store video showed a bladed object.**

Applicant alleges Appellate Counsel was constitutionally ineffective for failing to brief the issue on appeal that the trial judge erred in admitting certain testimony. Specifically, Applicant avers that Appellate Counsel was ineffective for failing to brief the issue on appeal that the trial judge erred in allowing Deputy Craig Holbrooks (Deputy Holbrooks) to testify about the photo stills that showed Applicant holding a bladed object. This Court disagrees and finds this allegation to be without merit.

In a post-conviction relief action, an applicant has the burden of proving the allegations in his or her application. Rule 71.1(e), SCRPC; Butler v. State, 286 S.C. 441, 441, 334 S.E.2d 813, 814 (1985). A defendant is constitutionally entitled to effective assistance of appellate counsel. Evitts v. Lucey, 469 U.S. 387, 396-97 (1985) (citing Douglas v. California, 372 U.S. 353 (1963)). "However, appellate counsel is not required to raise every non-frivolous issue that is presented by the record." Thrift v. State, 302 S.C. 535, 539, 397 S.E.2d 523, 526 (1990). Rather, appellate counsel has a professional duty to choose among potential issues according to their merit. Jones v. Barnes, 463 U.S. 745, 752-53 (1983). Where the strategic decision to exclude certain issues on appeal is based on reasonable professional judgment, the failure to appeal all trial errors is not ineffective assistance of counsel. Tisdale v. State, 357 S.C. 474, 476, 594 S.E.2d 166, 167 (2004) (quoting Jones v. Barnes, 463 U.S. 745, 754 (1983) ("For judges to second-guess reasonable professional judgments and impose on . . . counsel a duty to raise every 'colorable' claim suggested by a client would disserve the very goal of vigorous and effective advocacy")).

Generally, in analyzing a claim of ineffective assistance of appellate counsel, the courts apply the Strickland test just as they would when analyzing a claim of ineffective assistance of trial counsel: an applicant must show that appellate counsel's performance was deficient and that he or she was prejudiced by the deficiency. Bennett v. State, 383 S.C. 303, 309, 680 S.E.2d 273, 276 (2009). When a claim of ineffective assistance of counsel is based upon failure to raise viable issues, the presumption of effective assistance of counsel will be overcome only when the allegedly ignored issues are clearly stronger than those actually raised on appeal. Smith v. Robbins, 528 U.S. 259, 288 (2000) (citing Gray v. Greer, 800 F.2d 644, 646 (7th Cir. 1986)).

PCR Evidentiary Hearing

On direct examination, Appellate Counsel testified that he did not brief the issue that the trial judge erred in allowing Deputy Craig Holbrooks to testify at Applicant's trial that a photo still taken from the in-store video footage showed a bladed object in Applicant's hand. (PCR Tr. p. 38).

Appellate Counsel's testified as follows concerning his reasoning for not appealing this issue:

Well, I'm trying to identify the issues, the legal issues, that I think provides my client the best chance to win, and I did not think that that was one of them. I was looking back on my notes and I have the objection on my notes. All I can say, right or wrong, looking back on it, I've lost on that issue in the past. Meaning where a law enforcement officer had been allowed to even narrate a surveillance tape of what was going on on the surveillance tape was essentially the same objection that at least the speculation and best evidence rule, if you will, there was no reason to allow. It's unnecessary to have a law enforcement officer to say what's on the film. And I've just never got anywhere with that issue in the past. So, right or wrong, I thought these two issues I raised for Mr. Blackwell gave him the best chance of winning.

(PCR Tr. p. 39, ll. 2-16).

On cross-examination, Appellate Counsel was asked whether his strategy for briefing the issue on appeal would have changed if Trial Counsel had objected or argued that the photo still from the video violated the best evidence rule, and that the jury should stand on the video alone. (PCR Tr. p. 39). Appellate Counsel testified that the lack of a best evidence objection was not what kept him from arguing this photo still issue on appeal. (PCR Tr. p. 40). Appellate Counsel testified he did not remember this issue standing out to him. (PCR Tr. p. 40).

Findings

This Court finds Applicant has failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all

significant decisions in [his] case". Ard v. Catoe, *supra*. This Court additionally finds Applicant has failed to overcome his burden in proving Counsel's representation was deficient and any resulting prejudice from that alleged deficiency. See Butler, *supra*. Appellate Counsel **credibly** testified that he considered that issue, but did not see it as a winning issue. Therefore, Appellate Counsel was not deficient for failing to raise this issue.

Additionally, Appellate Counsel **credibly** testified that the failure of Trial Counsel to object to the photo stills based on the "best evidence rule" would not have prompted him to raise this issue. As noted *supra* (**Allegation 1d**), the best evidence rule would not have been a meritorious objection based on the availability of the original video, which the photo stills were copied from, and therefore, this issue would not have been successful on appeal. See Alexander, 326 F.2d at 742 ("As between a supposed literal copy and the original, the copy is always liable to errors on the part of the copyist, whether by wilfulness or by inadvertence"—a problem that "wholly disappears when the original is produced." (quoting 4 John Henry Wigmore, Evidence § 1179 (3d ed. 1940))).

Based on the foregoing, this Court finds the Applicant has failed to present sufficient evidence to prove that Appellate Counsel's performance was deficient as measured by the standard of reasonableness under professional norms. Furthermore, Applicant failed to prove that, because of Appellate Counsel's deficient performance, there is a reasonable probability that, but for Appellate Counsel's unprofessional errors, the result of the appeal would have been different.⁶

Accordingly, this Court finds that Applicant has failed to establish any deficiency by Appellate Counsel or any prejudice flowing therefrom. Thus, this allegation must be **DENIED** and **DISMISSED WITH PREJUDICE**.

⁶ Southerland v. State, 337 S.C. 610, 524 S.E. 2d 833 (1999).

- Allegation 3(c):** Failing to brief the issue of the trial judge's error in allowing Investigator Hill to testify to the truthfulness of the investigation.
- Allegation 5(b):** Failing to brief the issue of the trial judge's error in his denial of a directed verdict.
- Allegation 5(c):** Failing to brief the issue of the trial judge's error in making unestablished statements.

above

Applicant alleges Appellate Counsel was ineffective for failing to raise the following issues on direct appeal. Applicant failed to present any evidence, testimony, or legal authority regarding this allegation at the evidentiary hearing. "When a party provides no legal authority regarding a particular argument, the argument is abandoned, and the court will not address the merits of the issue." Palmer v. State, 427 S.C. 36, 37, 829 S.E.2d 255, 261 (Ct. App. 2019) (citing State v. Lindsey, 394 S.C. 354, 363, 714 S.E.2d 554, 558 (Ct. App. 2011)). Therefore, this Court deems the allegations abandoned.

[THIS SPACE INTENTIONALLY LEFT BLANK]

VIOLATION OF DUE PROCESS AND CONFRONTATION CLAUSE ALLEGATION

- Allegation 2(a):** Interrogating Detective Garrett, who also took Applicant's statement, was not made available at trial and was therefore not subject to cross-examination.
- Allegation 6(a):** Denial of 6th Amendment Rights when an audio recording of the Applicant's statement was played even though the interrogating investigator was not made available for cross-examination at trial.

Applicant alleges that his constitutional rights under the Sixth Amendment Confrontation Clause were violated when Investigator Garrett, who took Applicant's statement, was not made available by the State at trial for cross-examination. This Court finds that these allegations were raised separate and apart from the ineffective assistance of counsel claims; therefore, these allegations are not cognizable PCR claims in which this Court can provide relief. An applicant may commence a post-conviction relief action on the following grounds:

1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
2. That the court was without jurisdiction to impose sentence;
3. That the sentence exceeds the maximum authorized by law;
4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
5. That his sentence has expired, his probation, parole or conditional release [was] unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or
6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy.

S.C. Code Ann. § 17-27-20(A). However, because an application for post-conviction relief is not a substitute for a direct appeal of trial court error, and because of the modern simplification of criminal jurisdiction jurisprudence in South Carolina, the *overwhelming* majority of cognizable claims fall under the broad umbrella of "ineffective assistance of counsel," based on the provisions of the Sixth Amendment to the Constitution of the United States. See Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001) ("Allegations of trial court error are not cognizable on PCR.").

Applicant's allegations regarding the violation of his due process and his right to confront his accusers does not support a cognizable claim for post-conviction relief under any of the statutory grounds. Post-conviction relief is only proper when the application collaterally attacks the validity of the conviction or sentence. Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000). Applicant Application offers no collateral attack upon the conviction or sentence itself. Notably,

Trial Counsel argued this very issue before the trial court and the trial court did not agree, denying Trial Counsel's motion. (Trial Tr. pp. 148 – 152, 183 – 192).

Therefore, this Court **DENIES** and **DISMISSES** these allegations for failure to state a cognizable claim for which this Court can provide relief.

[CONCLUSION PAGE FOLLOWS]

CONCLUSION

Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be **DENIED and DISMISSED WITH PREJUDICE.**

This Court notifies the Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991), an Applicant has the right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCR, provides that PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf if the Applicant wishes to seek appellate review. Your attention is directed to South Carolina Appellate Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 13th day of May, 2025.

Kristi F. Curtis

KRISTI F. CURTIS
Presiding Judge
Tenth Judicial Circuit

Santee, South Carolina

'25 JUL 8 PM 4:15:29
Anderson, SC COC, CP/GS

DOCKET NO. 2016-GS-04-00433

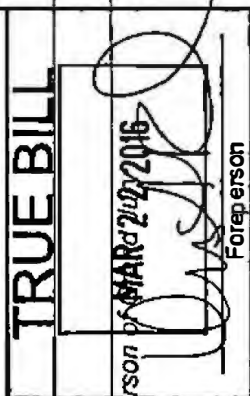
The State of South Carolina

County of Anderson

ARREST WARRANT NUMBER

2016A0410100033

ACTION OF GRAND JURY

Foreperson of Grand Jury
Date:

VERDICT

Guilty

Foreperson of Grand Jury
Date: 10/9/18

WITNESSES

Anderson Co. Sheriff's Office
Jeremy A. Garrett

COURT OF GENERAL SESSIONS

MAR 22 2016, TERM

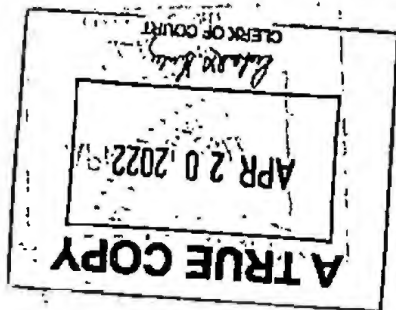
THE STATE

VS.

DARRELL EUGENE BLACKWELL

INDICTMENT FOR

ARMED ROBBERY

SC Code: § 16-11-0330(A)
CDR Code: 0139

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

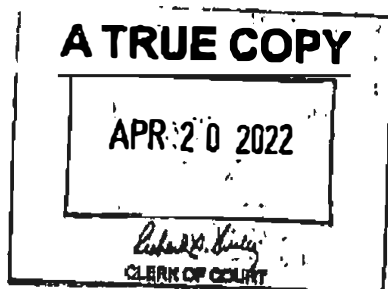
INDICTMENT

At a Court of General Sessions, convened on MAR 22 2016, the
Grand Jurors of Anderson County present upon their oath:

ARMED ROBBERY

The defendant, Darrell Eugene Blackwell, did on or about January 9, 2016 in Anderson County, South Carolina, while armed with a deadly weapon or while displaying what a person present during the robbery would reasonably believe to be a deadly weapon, take by means of force, threats, or intimidation, goods or monies described as \$2500.00 in cash, a laptop computer and cigarettes from the person or presence of Roshan Patel of Shop Rite. All in violation of 16-11-0330(A) of the South Carolina Code of Laws (1976), as amended.

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



Rame L. Campbell
RAME L. CAMPBELL
DEPUTY SOLICITOR

COUNTY OF ANDERSON

STATE VS.

DARRELL EUGENE BLACKWELL

AKA: _____
 Race: White Sex: M Age: 53
 DOB: _____ SS#: _____
 Address: 202 Gilbert St
 City, State, Zip: Anderson, SC 29625-4060
 DL# _____ SID# _____

INDICTMENT/CASE#: 2016GS0400433
 AAW: 2016A0410100033
 Date of Offense: 01/09/2016
 S.C. Code §: 16-11-0330(A)
 CDR Code #: 0139



SENTENCE SHEET

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADSTO: Armed Robbery (10-30)In violation of § 16-11-0330(A) of the S.C. Code of Laws, bearing CDR Code # 0139
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45
(CSC w/minor 1st or CSC w/minor 3rd)The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. _____ (def.'s initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Catherine T. Huey 68416 Defendant 101794 Attorney for Defendant SC Bar #
 WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center,
 for a determinate term of 18 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
 and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and or payment
 of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____
 months/years and subject to South Carolina Department of Probation, Parole and Pardon Service standard conditions of probation, which
 are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____

☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by SC
 Department of Corrections 5 30 days
☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____

☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by SC
 Department of Corrections 5 30 days

☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic
 Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP _____
 Total: \$ _____ plus 20% fee: \$ _____ days/hours Public Service Employment

Payment Terms: _____ Obtain GED ☐☐ Set by SCDPPPS _____

Recipient: _____

*Fine: _____ \$ _____

§14-1-206 (Assessments 107.5%) \$ _____

§14-1-211 (A)(1)(Conv. Surcharge) \$100 \$ 100.00

§14-1-211 (A)(2)(DUI Surcharge) \$100 \$ _____

§56-5-2995 (DUI Assessment) \$12 \$ _____

§56-1-286 (DUI Breath Test) \$25 \$ _____

Proviso (Public Def/Prob) \$500 \$ _____

§14-1-212 (Law Enforce. Funding) \$25 \$ 25.00

§14-1-213 (Drug Court Surcharge) \$150 \$ _____

§50-21-114 (BUI Breath Test Fee) \$50 \$ _____

§56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____

3% to County (if paid in installments) \$ 3.75TOTAL \$ 128.75Clerk of Court/Deputy Clerk: Richard S. ShirleyCourt Reporter: L. SCOTT

SCCA/217 (04/2018)

Attend Voc. Rehab. Or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol Testing ☐

Fine may be pd. in equal consecutive weekly/monthly

pmts. of \$ _____ Beginning _____

\$ _____ Paid to Public Defender Fund

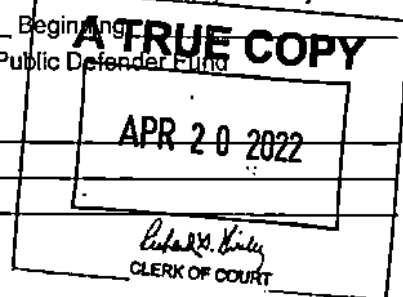
Other: _____

☐ Appointed PD or appointed other counsel,

Proviso requires \$500 be paid to Clerk

during probation and shall be collected before any

other fees.

Presiding Judge: J. A. FurberJudge Code: 7017Sentence Date: 10/9/18

ORIGINAL

AFFIDAVIT

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Anderson

Personally appeared before me the affiant J A Garrett,

being duly sworn deposes and says that defendant Darrell Eugene Blackwell

did within this county and state on or about 1/9/2016

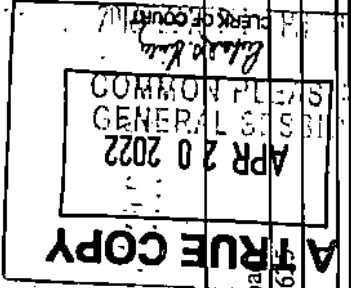
State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of Anderson

in the following particulars:

DESCRIPTION OF OFFENSE: Robbery / Armed Robbery, robbery while armed with a deadly weapon

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth, and that probable cause is based on the following facts:

That on January 9, 2016, in the county of Anderson, one Darrell Eugene Blackwell did take \$2500.00 cash, a MacBook lap top computer valued at \$1300.00 and approximately \$500.00 in cigarettes from Shop Rite 714 Sayre St. Anderson, SC with intent to deprive while armed with a pistol, a deadly weapon. The defendant has been identified by video.



Signature of Affiant

RL

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Anderson

Affiant's Address

305 Camson Road

Anderson, SC 29621

Affiant's Telephone

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 1/9/2016

defendant

Darrell Eugene Blackwell

did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/ ☐ Municipality of Anderson

) as set forth below:

DESCRIPTION OF OFFENSE: Robbery / Armed Robbery, robbery while armed or allegedly armed with a deadly weapon

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable

Sworn to and subscribed before me

on 1/13/2016

Ronald Warren Whitman

Signature of Issuing Judge (L.S.)

Ronald Warren Whitman (Magistrate)

Judge Code: 5954

Judge's Address

2404 N. Main St.

Anderson, SC 29621-

Judge's Telephone

(864)260-4156

Issuing Court:

☒ Magistrate

☐ Municipal

☐ Circuit

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ARREST WARRANT

2016A0410100033

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Anderson

2016-00515

THE STATE

against

Darrell Eugene Blackwell

Address: 202 Gilbert St

Anderson, SC 29625-4060

Phone:

SSN:

Sex: M Race: W Height: 5 8 Weight: 177

DL State: SC DL #: [REDACTED]

DOB: [REDACTED] Agency ORI #: SC0040000

Prosecuting Agency: Anderson County Sheriff

Prosecuting Officer: J A Garrett - 607

Offense: Robbery / Armed Robbery, robbery while armed or allegedly armed with a deadly weapon

Offense Code: 0139

Code/Ordinance Sec: 16-11-0330(A)

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality of

The accused

is to be arrested and brought before me to be

dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to

defendant Darrell Blackwell

on

Jan. 16, 2016

Michael L. Canale

Signature of Certified Law Enforcement Officer

RETURN WARRANT TO:

General Sessions

100 South Main Street

Po Box 8002

Anderson, SC 29622

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL



WITNESSES

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

BAIL set by

Judge Richard M. Delane
on 11/17/2016
Type and Amount \$20,000.00
Name of Surety: _____

PRELIMINARY HEARING held by

Judge _____
on _____
Defendant Attorney: _____
Decision: _____

DISPOSITION before

Judge _____
on _____
by _____ (Indicate jury trial, bench trial, plea, not pros., etc.)

Disposition: _____
Sentence: _____

JURORS

CODEFENDANTS

