

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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Certiorari to Sumter County

Honorable Edward W. Miller, Circuit Court Judge

MICHAEL VANDRELL JOHNSON,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2025-002413

APPENDIX

WANDA H. CARTER
Chief Appellate Defender

ALAN WILSON
Attorney General

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

ZACHARY W. JONES
Assistant Attorney General
P.O. Box 11629
Columbia, SC 29211
(803) 734-1680

ATTORNEY FOR PETITIONER

ATTORNEYS FOR RESPONDENT

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STATE OF SOUTH CAROLINA))
COUNTY OF SUMTER) COURT OF GENERAL SESSIONS
STATE OF SOUTH CAROLINA)
STATE,)
v.) TRANSCRIPT OF RECORD
19-GS-43-0414
MICHAEL V. JOHNSON,)
DEFENDANT.)

September 29-30, 2020
Sumter, South Carolina

B E F O R E :

THE HONORABLE R. FERRELL COTHRAN, JR., JUDGE;
AND JURY

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

TYLER B. BROWN, ESQ.
Assistant Solicitor

MICHAEL ROUTZONG, ESQ.
Attorney for Defendant

FRANCES B. RAY, RPR
Circuit Court Reporter

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E X H I B I T S

STATE'S:

No.	Description	I.D./EVD.
1	911 call	3/10
2	Body worn camera	3/16
3	Enlarged map showing scene of crime	3
4	CAD report	3

1 (WHEREUPON, State Exhibits Nos. 1, 2,
2 3, and 4 were marked for identification only.)

3 THE COURT: All right. My
4 understanding that, Mr. Routzong, this is the
5 State v. Michael Johnson. Mr. Routzong has handed
6 up a motion to suppress the evidence in this case.
7 We have discussed this in chambers. And,
8 Mr. Routzong, if you would, how about stand up for
9 the record and at least tell me your grounds why
10 you think this evidence should be suppressed.
11 Explain your motion on the record please, sir.

12 MR. ROUTZONG: Judge, this is under
13 the Fourth Amendment of the United States
14 Constitution and Article I, Section 10 of the
15 South Carolina Constitution. I'll read from my
16 motion. I know you're familiar with the Fourth
17 Amendment. But just for the record, Fourth
18 Amendment states the right of the people to be
19 secure in a person's house, his papers, and
20 effects against unreasonable searches and seizures
21 shall not be violated.

22 Judge, this is an unconstitutional
23 stop. The information that the police knew when
24 they stopped Mr. Johnson was that they had a
25 telephone call, a 911 call, from the Family

1 Dollar. The description by that person, Bryanna
2 Dennis, was it was a black man in a tan and black
3 jacket in black pants. She wasn't sure if she
4 [sic] had a gun, black mask, and that she didn't
5 know which direction that the person went. She
6 didn't know if they left in a vehicle or not. On
7 the way in responding to the call, Patrol Officer
8 Sinkler sees Mr. Johnson cross Manning Avenue
9 which is, my estimate would be, probably 150 yards
10 maybe from the incident location. He has on a tan
11 jacket, a brown jacket. It's not mixed colors. I
12 guess it's kind of brown or tan depending on how
13 you look at it. His pants, his trousers are dark
14 blue, really dark blue. He doesn't have a mask on
15 his face. There's no evidence that he was
16 running. There was no one that's telling Patrol
17 Officer Sinkler that, hey, that's the guy right
18 there. When she reports what she sees, the
19 dispatcher even corrects her. She says, be
20 advised it's a black and tan jacket. She
21 disregards that. She focuses on Mr. Johnson as he
22 crosses the street. She says he cuts through -- I
23 think she calls it an alley way. There's, there's
24 like a little cut that goes between the African
25 American Cultural Center and there's some trees

1 over there, but it leads to Harvin. The next
2 thing I know from looking at the video is I think
3 it's Officer Jones comes up behind him. He's
4 walking; he's not running. He looks over his
5 back, with my recollection, a couple of times. He
6 crosses the street. The patrolman stops his car,
7 gets out of the car, starts yelling at him to get
8 on the ground, show your hands, get your hands out
9 of your pocket, get on the ground, with guns
10 drawn. And then the other officers swoop in.

11 Judge, this does not even amount to
12 reasonable suspicion. Based on what the evidence
13 that they -- or the description that they were
14 given, they didn't know which way the person was
15 going. They stopped him because he was a black
16 guy in the area. Judge, under the Fourth
17 Amendment, that's not even reasonable suspicion.
18 And under Terry, Ohio v. Terry, not even
19 reasonable suspicion. How can they say based on
20 that, that they can articulate the facts and
21 circumstances that would lead them to think he was
22 the person that did it.

23 THE COURT: Okay.

24 MR. ROUTZONG: And under our
25 constitution, Judge, Article I, Section 10, State

1 v. Weaver says that really what you're looking at
2 while we read our -- before I go into that, our
3 constitution here in South Carolina says the right
4 of the people to be secure in their persons,
5 house, his papers and effects against unreasonable
6 searches and seizures and unreasonable invasions
7 of privacy shall not be violated. No warrants
8 shall issue, shall issue but upon probable cause
9 supported by oath or affirmation partic-- so on
10 and so forth.

11 Judge, our case law says that the
12 Constitution of South Carolina gives us greater
13 protections. The part about where it says against
14 unreasonable searches and seizures and the
15 addition to the -- the addition in our
16 constitution to the Fourth Amendment, the
17 similarity is the addition is unreasonable
18 searches and seizures and unreasonable invasions
19 of privacy. And in Weaver, Judge, the court held
20 that that amounts to probable cause. This is
21 important because you have to think about what
22 Terry says. Terry says reasonable suspicion. But
23 unreasonable invasions of privacy, our courts say
24 we have a higher protection and it amounts to
25 probable cause. That's a higher standard than

1 Terry, just the reasonable articulable suspicion
2 and criminal -- criminal activities.

3 Our courts, or various courts have
4 said that probable cause -- if I can find it here,
5 Judge. Now I'm quoting from U.S. v. Brineger.
6 "The substance involved the definitions of
7 probable cause is a reasonable ground for belief
8 of guilt. The pertinent circumstances of those of
9 the moment, the actual one. Probable cause for a
10 warrantless arrests exists when the circumstances
11 within the arresting officer's knowledge are
12 sufficient to lead a reasonable person to believe
13 that a crime has been committed by the person
14 being arrested." Under our constitution, Judge,
15 those are the kinds of things that they have to do
16 to make this stop, and they didn't have it at the
17 time.

18 THE COURT: Okay. Well, maybe -- and
19 I understand you make a legal argument to me, but
20 maybe I need to get the facts on the record where
21 I'll know what, you know, how to apply the
22 arguments you have to the facts before me. So if
23 the State wants to put up any, or you -- somebody
24 put up some evidence of facts or either y'all
25 stipulate to what the facts are, but I need some

1 factual basis where I know what law to apply.

2 MR. BROWN: Your Honor, I -- based on
3 what he's now said, I can almost guarantee you we
4 can't stipulate to the facts. We're ready to call
5 witnesses.

6 THE COURT: Okay.

7 MR. BROWN: Your Honor, we start by
8 calling Detective Jones, or Investigator Jones.
9 This is Randy Jones, for our court reporter.

10 THE CLERK: Sir, raise your right
11 hand. State your name.

12 THE WITNESS: Randy Jones.

13 WHEREUPON,

14 **RANDY JONES,**

15 having been duly sworn by the clerk, testified
16 as follows:

17 THE CLERK: Thank you, sir.

18 MR. BROWN: May it please the Court,
19 Your Honor.

20 **DIRECT EXAMINATION**

21 BY MR. BROWN:

22 Q Investigator, just briefly tell His
23 Honor, and briefly, because this is only a
24 hearing, who you work with and what your -- what
25 your role is.

1 A Okay. My name is Randy Jones. I'm a
2 criminal investigator with the Clarendon County
3 Sheriff's Office. I've been there since February
4 of 2019. Prior to that I worked here at the
5 Sumter Police Department. I was a lead corporal
6 on shift. I was a shift supervisor. And I worked
7 for the police department for eight years before
8 going to the sheriff's office in Clarendon County.

9 Q Were you working as a shift supervisor
10 and specifically as a one of the road officers on
11 the night of January 21st, 2019?

12 A I was, yes, sir.

13 Q And on that particular night was there
14 a point in time where a dispatch was made
15 regarding a robbery that occurred at Family Dollar
16 on Manning Avenue?

17 A There was.

18 Q Okay. Have you prior to coming into
19 this hearing today had an opportunity to listen to
20 that 911 dispatch and hear what's said on it?

21 A I have, yes, sir.

22 Q And was it accurate to what you heard
23 that particular night?

24 A Yes, sir.

25 MR. BROWN: Your Honor, I've already

1 premarked State's No. 1. Your Honor, I'd offer to
2 publish it.

3 THE COURT: Okay. Any objection from
4 Defense?

5 MR. ROUTZONG: No objection, Your
6 Honor.

7 THE COURT: Okay. It's in without
8 objection.

9 (WHEREUPON, State Exhibit No. 1 was
10 admitted into evidence.)

11 BY MR. BROWN:

12 Q Investigator Jones, I'm going to play
13 that for you real quick and then afterwards I'm
14 going to ask you some questions.

15 A Okay.

16 (State's Exhibit No. 1 was published.)

17 BY MR. BROWN:

18 Q Do you recall that?

19 A I do, yes, sir.

20 Q Tell me what was the description that
21 went out by dispatch. It was a little staticky,
22 but what was the description that went out of
23 dispatch of the person y'all were looking for that
24 night?

25 A The first description was a bravo mike,

1 tan and black jacket with a mask.

2 Q To be clear, "bravo mike," you mean
3 black male?

4 A Black male, yes, sir.

5 Q All right. So say that again.

6 A Black male, a tan and black jacket
7 with a mask ---

8 Q Okay.

9 A --- was the initial description that
10 we got.

11 Q Was there a secondary description that
12 went out?

13 A There was. Black sweat pants, black
14 and tan jacket.

15 Q Okay. How far away were you from --
16 well, actually, did they also tell y'all where the
17 location of the robbery was?

18 A Well, it was a Family Dollar which is
19 on the corner of Manning Avenue and Fulton Street
20 here in the city of Sumter.

21 Q About how far away were you from this
22 location when you made initial contact with Mr.
23 Michael Johnson?

24 A When Patrolman Sinkler said he was
25 cutting through, I was actually at the

1 intersection of Manning Avenue and Fulton Street.

2 Q Can I pause there for a second?

3 A Yeah.

4 Q I'm going to show you what's marked as
5 State's No. 3.

6 MR. BROWN: Any objection, Mr.
7 Routzong? You need to see this?

8 MR. ROUTZONG: I see it.

9 BY MR. BROWN:

10 Q All right. You recognize this?

11 A I do, yes, sir.

12 Q What are we looking at here?

13 A This right here would be Manning
14 Avenue.

15 Q Okay.

16 A This right here would be the Family
17 Dollar.

18 Q And we're talking about the purple
19 building that is -- I think actually mapping is
20 highlight that purple, but that's the Family
21 Dollar right there?

22 A Yeah, with the purple/reddish roof on
23 top, metal roof, yes, sir.

24 Q Okay. And what's this intersection
25 right here?

1 A This would be Fulton Street.

2 Q All right. Based on the dispatch,
3 where was first contact made with Michael Johnson
4 that particular night?

5 A I got out to Mr. Johnson -- if you --
6 I think that's -- I'm pretty sure I spun around
7 right here in this intersection.

8 Q Okay.

9 A Came back down Fulton.

10 Q Okay.

11 A Come to the next intersection is
12 Harvin Street.

13 Q Okay.

14 A And I made a right on to Harvin
15 because he was down Harvin Street walking across
16 the road in the middle of the road.

17 Q Okay. So would it be fair to say less
18 than a quarter of a mile from the location was
19 where you actually made contact specifically with
20 Mr. Johnson?

21 A Yes, sir.

22 Q And the spot where you turned around
23 and were investigate-- or Patrolman Sinkler first
24 made contact at this intersection right across the
25 street, would it be fair to say that's 100 yards?

1 A From?

2 Q From the Family Dollar?

3 A It's probably less than 100 yards, but
4 yeah. 100 yards at the most.

5 Q Tell me what you saw when you made
6 contact with Mr. Johnson. Tell me what you
7 observed on his person.

8 A When we initially made contact with
9 him, it was a black male in the roadway, black
10 sweat pants, a tan jacket. He did have a dark in
11 color black hat on his head like a fabric or a
12 toboggan or an item like that. Exited my vehicle,
13 gave him loud verbal commands to get on the
14 ground, take his hands out of his pocket, show me
15 his hands. We were able to get him detained. I
16 asked him did he have any weapons on him. He
17 said, no, he did not have any weapons on him. I
18 said, do you mind if I search you. He said, no,
19 you can search me. So I was on one side of him.
20 I was on his left-hand side. Patrolman Sinkler
21 was on his right-hand side. While searching I
22 searched his left-hand pocket on the tan jacket
23 that he was wearing which actually had a black
24 liner in it.

25 Q Okay.

1 A So when the description came out tan
2 and black jacket, that makes sense. Outer side is
3 tan, the inside liner is black, which to me
4 matched his description.

5 Q Okay.

6 A In his pocket I believe there was a
7 set of keys in his left jacket pocket and also a
8 black flashlight.

9 Q Okay. Do you remember,
10 Investigator -- or I'm sorry, Patrolman Sinkler
11 took anything out of his pocket?

12 A Yes. Patrolman Sinkler was on his
13 right-hand side and I could see throughout the
14 corner of my eye, and she had grabbed a large
15 amount of money out of his right jacket pocket
16 which would be consistent to possibly money from
17 the store.

18 Q Now as an officer with the Sumter
19 Police Department, does your agency -- well, your
20 former agency -- do they wear body worn cameras?

21 A They do. We do.

22 Q As a patrol officer did you regularly
23 have a body worn camera on?

24 A Yes, sir, all the time.

25 Q And prior to coming in this courtroom

1 today, did I give you the opportunity to view your
2 body worn camera to see whether or not it matched
3 what occurred that particular day, refresh your
4 recollection?

5 A You did, yes, sir.

6 Q Was it accurate what you saw that
7 night?

8 A Yes, sir.

9 Q All right.

10 MR. BROWN: State's No. 2, permission
11 to publish.

12 THE COURT: Any objection?

13 MR. ROUTZONG: I don't hear what it
14 is, Judge, but ---

15 MR. BROWN: This is his body worn
16 camera.

17 MR. ROUTZONG: Okay. I don't have any
18 objection.

19 THE COURT: Okay. It's in without
20 objection.

21 (WHEREUPON, State Exhibit No. 2 was
22 admitted into evidence.)

23 BY MR. BROWN:

24 Q Real quick, can you see that on your
25 camera right there?

1 A It's not up.

2 Q Can you see it well enough on that or
3 do we need to make some ---

4 A No, I think that should be alright.

5 Q Let me real quickly just see if I can.

6 (Pause.)

7 BY MR. BROWN:

8 Q You see that?

9 A You're good.

10 MR. BROWN: Your Honor, is yours
11 turned on?

12 THE COURT: Yes, it is.

13 MR. BROWN: Are you ready, Mr.

14 Routzong?

15 MR. ROUTZONG: Yes.

16 BY MR. BROWN:

17 Q Are you ready, sir?

18 A Yeah.

19 MR. BROWN: May it please the Court?

20 THE COURT: Yes, sir.

21 (Publishing of State's Exhibit No. 2 began.)

22 BY MR. BROWN:

23 Q She said, "He's taking off"?

24 A Uh-huh.

25 Q Did you run him?

1 A Taking off, he can -- me running at a
2 fast pace, yes, sir, so he was -- he was leaving
3 the area.

4 Q And real quick, was it -- was there
5 enough light where y'all got a good visual on this
6 guy?

7 A Yeah, it was -- I'm trying -- it's
8 hard to read that time up there.

9 Q Just look at the skylight. You can
10 see pretty good?

11 A Yeah, yeah. It's late afternoon,
12 early evening, but there was enough light out
13 where you could see.

14 Q So when y'all got this description and
15 you called it back in, you were able to get a good
16 look at him?

17 A Yes, sir.

18 Q Okay.

19 (Publishing of State's Exhibit No. 2 continued.)

20 BY MR. BROWN:

21 Q Is this where you were turning around
22 right here?

23 A It is, yes, sir.

24 Q Time marked 56 seconds?

25 (Publishing of State's Exhibit No. 2 continued.)

1 BY MR. BROWN:

2 Q You referenced earlier black lining in
3 the jacket.

4 A Yeah.

5 Q Is that what you're seeing right there
6 and the hood?

7 A Yeah, the black lining and the hood.

8 Q And it's kind of gotten out of frame a
9 little bit, but you also mentioned a cap. Can you
10 tell us about that.

11 A Yeah, it was a white, like a -- I
12 mean, some people call them toboggan and some
13 people call them skull caps, but he was wearing
14 one on his head.

15 Q You've been working law enforcement
16 for eight years by this point in time?

17 A Yeah. Yes, sir.

18 Q And had you ever seen those become
19 something that you can pull down as a mask?

20 A Yes, sir, possibility.

21 Q All right. Did that factor in your
22 decision?

23 A Yes, sir.

24 (Publishing of State's Exhibit No. 2 continued.)

25 BY MR. BROWN:

1 Q You can see the pants there. It kind
2 of got a little fuzzy as I paused it, but what
3 color are those pants?

4 A They appear black to me.

5 Q If I were to represent to you a
6 closeup they appear more navy blue, would you have
7 reason to disagree?

8 A I can't -- I'm sorry, can you repeat.

9 Q If I were to represent to you up close
10 they are actually more navy blue, would you have
11 reason to disagree?

12 A No.

13 Q That particular night, did they look
14 black?

15 A Uh-huh.

16 (Publishing of State's Exhibit No. 2 continued.)

17 BY MR. BROWN:

18 Q Is that what you're talking about with
19 the consent that he gave -- specifically for our
20 court reporter, at 2 minutes and 29 seconds?

21 A Yes, the consent to search. Yes, sir.

22 Q You asked if he had any weapons on
23 him, and he said you could search him?

24 A He -- that was actually Lead Corporal
25 Miller who asked for the weapons. I was trying to

1 get it out the same time; and then that's when I
2 said, well, you don't mind if I search you if you
3 don't have anything. And he said, no, go ahead
4 and search me.

5 Q Had y'all received indications this
6 was an armed robbery?

7 A Yes.

8 Q And, and in those circumstance is it
9 unusual for y'all to believe there might be a
10 weapon involved?

11 A Yes.

12 Q You want to make sure for officer
13 safety about that?

14 A Yes, sir.

15 (Publishing of State's Exhibit No. 2 continued.)

16 BY MR. BROWN:

17 Q What is Patrolman Sinkler holding in
18 her hand?

19 A That is a hand full of money, cash.

20 (Publishing of State's Exhibit No. 2 continued.)

21 BY MR. BROWN:

22 Q And one more question. What all did
23 you take out of his pockets?

24 A I took out of the left hand pocket was
25 that set of keys which appeared to be on some kind

1 of long key chain ---

2 Q Uh-huh.

3 A --- and that black in color
4 flashlight.

5 (Publishing of State's Exhibit No. 2 continued.)

6 BY MR. BROWN:

7 Q At this point did y'all detain him?

8 A Yes, he was -- he was in custody. He
9 was detained, yes, sir.

10 Q Tell this Court as you pulled up on
11 the location where you initially made contact with
12 Mr. Johnson, what were the things that you were
13 seeing based on what dispatch called out to you
14 that led you to believe that y'all needed to take
15 custody of him?

16 A Clothing description, the tan jacket,
17 the dark in color black sweat pants what I saw,
18 and the skull cap that was on his head.

19 Q Now this jacket, as you got closer to
20 him did you see any more descriptions?

21 A Yes, it had a black lining in it.

22 Q Okay. Once you made contact with him
23 and once you had consent to search his person,
24 were there items that y'all found that further
25 aroused your suspicion that he might have been

1 involved in this crime?

2 A Yes, the large amounts of cash, the
3 black flashlight that was in his pocket that in a
4 manner when he was in the store could have been
5 presented as a weapon if he had it concealed. The
6 store clerk could have believed it was a weapon,
7 it was a gun, so we want to make sure everybody on
8 the scene is safe and everybody goes home at the
9 end of the day.

10 Q So on this particular night on January
11 29th, I think, 2020 ---

12 A January 21st.

13 Q 21st, my apologies. You saw the black
14 pants?

15 A Yes.

16 Q That was called out over dispatch?

17 A Yes, sir.

18 Q He was wearing a cap that could
19 potentially be a mask?

20 A Uh-huh.

21 Q You saw the tan jacket that when you
22 got closer had a black lining?

23 A Uh-huh.

24 Q After you actually searched him, you
25 found large quantities of cash on his person?

1 A Uh-huh.

2 Q And he also had an item that could be
3 used to depict a weapon in an armed robbery?

4 A Yes, sir.

5 Q And he also fled right before this?

6 A Yes. He had fled the area that
7 Patrolwoman Sinkler had seen fleeing.

8 Q Did y'all even arrest him at this
9 point?

10 A My decision at that time is he was
11 going to be arrested for everything -- everything
12 lined up with what happened at the store, him
13 being in the area, him being noncooperative, not
14 wanting to stop until we finally did get him
15 stopped and placed him in handcuffs.

16 Q Did Detective Melton make the ultimate
17 final call, though, when to arrest him?

18 A Yeah.

19 Q Please answer any of Mr. Routzong's
20 questions.

21 MR. BROWN: You need it left up, sir?

22 **CROSS-EXAMINATION**

23 BY MR. ROUTZONG:

24 Q Good afternoon, sir.

25 A Good afternoon, sir.

1 Q I've just got a couple of questions.

2 A Okay.

3 Q I'm concerned about the couple of
4 times you said he was fleeing. When you pulled
5 up -- and it's on your dash cam video. You've
6 seen your dash cam video I guess, right?

7 A Yes.

8 Q And you recall then when you pulled up
9 behind him?

10 A Uh-huh.

11 Q He wasn't running, was he?

12 A Not at that point. I mean, he really
13 -- he had nowhere to go because officers were on
14 the other side of him. I was on one side, and he
15 had nowhere to go.

16 Q You never saw him running anywhere,
17 did you? Never saw him running?

18 A No, I didn't. I didn't see him
19 running but...

20 Q Then you can't say he was fleeing, can
21 you?

22 A Based on my experience that he was
23 fleeing the scene, he just had nowhere to go. He
24 was caught; he was boxed in.

25 Q Sir, your experience comes about

1 through your perception of the event, not
2 vicariously through somebody else.

3 A But ---

4 Q You didn't see him running, did you?

5 A Officer relayed on the radio that he
6 was fleeing the scene.

7 Q That's not what they said. You -- I
8 can play it again if you want me to. She said
9 he's not stopping. At that point in time you
10 don't know -- you don't know what she meant by
11 that. I mean, it's not like an automobile where
12 somebody has to stop because there's a blue light
13 behind them, right?

14 A Uh-huh.

15 Q So you don't -- you don't have
16 anything right there in terms of he's running away
17 from you, in your experience?

18 A I mean, he wasn't running; but, I
19 mean, he matched the description to a tee.

20 Q Well, let's go to the description.
21 You were looking for somebody in a black and tan
22 jacket. You heard the call. When Patrolwoman
23 Sinkler said a tan jacket and black pants, ---

24 A Uh-huh.

25 Q --- you heard the dispatcher even

1 correct her, black and tan jacket. That's what
2 you heard, right?

3 MR. BROWN: Your Honor, I pause just
4 one second just to protect the record. My officer
5 keeps saying huh-uh. We need to make sure he
6 knows to say yes or no.

7 THE WITNESS: I got you, yes, sir.

8 MR. BROWN: I just want to make sure

9 ---

10 THE WITNESS: You're good.

11 Can you say that again, sir? I'm
12 sorry.

13 BY MR. ROUTZONG:

14 Q You heard the dispatcher correct
15 Patrolwoman Sinkler because she said, yeah, I see
16 a guy with a tan jacket.

17 A Uh-huh.

18 Q She didn't say tan and black. She
19 said a tan jacket and black pants.

20 A Uh-huh.

21 Q And the dispatcher came back and
22 corrected her, or tried to correct her, no, he
23 advised it's a tan and black jacket.

24 A Okay.

25 Q You heard that, right?

1 A Uh-huh.

2 Q So that's who you should be looking
3 for.

4 A But you can look at tan and black as a
5 few different things. It could be a two tone
6 jacket. It could be, you know, a tan jacket with
7 a black lining. That's a good description by the
8 store clerk. If she saw tan and black and it
9 registered, that's what she gave out to our
10 dispatchers, okay. It doesn't mean it's tan and
11 black on the outside. It could be tan on the
12 inside -- outside and black on the inside.

13 Q Well, how are you -- you know, that
14 doesn't even make any sense, sir, because if
15 you're going to describe what somebody is wearing,
16 you describe what you see on the outside. And I
17 know that you said that you mentioned the jacket
18 so if you got a description where it was gray and
19 blue, you know.

20 A Uh-huh.

21 Q It wouldn't make sense for you to stop
22 somebody with just a gray jacket. You can't -- it
23 wouldn't make sense for somebody to look for
24 something that's not in the description. I notice
25 a minute ago you testified that he could have

1 turned the jacket inside out. You hadn't seen the
2 video at that time, right? Have you ever seen the
3 video?

4 A From the store?

5 Q Yes, sir.

6 A I think I have. I think I have seen
7 it.

8 Q When you stopped him you had never
9 seen it, right?

10 A The video from the store at that time?

11 Q That's correct.

12 A No, sir, because I was in my car.

13 Q So you can't -- it's not really
14 relevant to what happened, your interaction with
15 him. All these hypotheticals is not really
16 relevant to what you saw at that moment and the
17 reason that you stopped him. It's not relevant.
18 Right?

19 A I mean, I -- I think it's a good stop
20 and I had enough to stop him, and I'll stand by
21 that.

22 Q Okay, I'll ask the question again.
23 Whatever happened in the store, you hadn't seen
24 the video, so that's not relevant to the reason
25 why you stopped Mr. Johnson on that night.

1 That's -- none of that is relevant.

2 A Okay.

3 Q Yes or no?

4 A I really don't understand what you're
5 trying to get at.

6 Q Okay. You testified about a
7 hypothetical. You said he might have turned his
8 jacket in and out, inside out, which is what the
9 State's going to allege happened here. That's
10 what you testified earlier, I think. And the
11 point is, you hadn't seen the video so the only
12 description that you can rely on is from the
13 dispatch and the other officers. But the reason
14 you know about this case, the description from the
15 Family Dollar was from the dispatch only.

16 A Uh-huh. But ---

17 Q You hadn't seen the video so none of
18 that matters to why you stopped Mr. Johnson,
19 right?

20 A I stopped him based on the description
21 that was given to us by dispatch. Patrolwoman
22 Sinkler gave a description as well.

23 Q I got a question. I know you just saw
24 a second ago -- so he's in handcuffs, right?

25 A Uh-huh.

1 Q So he's, he's under arrest at that
2 point, right?

3 A I mean, he's detained.

4 Q Well, let me ask you, what does a
5 Terry stop mean to you? What's a typical Terry
6 stop? You've been an officer for a long time now.

7 A A typical Terry stop?

8 Q Yes, sir. What do you do on a Terry
9 stop?

10 A I mean, it's a frisk for weapons, pat
11 down for weapons.

12 Q And they're not always in handcuffs,
13 right?

14 A No, they're not always in handcuffs.

15 Q And you asked him if he, if he had any
16 weapons on him?

17 A He was asked that, yes, sir. I mean,
18 he said -- I have to go back and replay it, I
19 mean, but he gave us consent to search.

20 Q You asked specifically if you could
21 search him for weapons. He said -- somebody said,
22 I guess it was you, do you have any weapons on you
23 and he says no, and you -- and I believe you said,
24 you testified, you said, well then, you don't mind
25 if I search you.

1 A Uh-huh.

2 Q And that's in -- so his response was
3 to your question about whether he had weapons on
4 him?

5 A Uh-huh.

6 Q So that would be what you constitute
7 as a typical Terry search, right?

8 A Uh-huh.

9 Q That doesn't mean going in his
10 pockets, right?

11 A Well, that was -- at that point from
12 what I -- I asked him, I said, you don't mind if I
13 search you. No. So that's consent to search
14 right there.

15 Q He's answering the question that you
16 asked him, do you have any weapons.

17 A I didn't ask him if he had any
18 weapons. That was Lead Corporal Miller asking him
19 if he had any weapons.

20 Q Okay.

21 A And I said, well, you don't mind if I
22 search you then and he said, no, ---

23 Q You said ---

24 A --- go ahead.

25 Q He said search me in response to the

1 question, do I have any weapons. Did you have
2 consent -- did he say to you that you had -- that
3 anyone had consent to go into his pockets or was
4 it just to check for weapons like a normal Terry
5 stop?

6 A I asked him, if you don't mind if I
7 search you, and he said, no, go ahead. So a
8 search to me is you search the person.

9 Q In response to the question, do you
10 have any weapons?

11 MR. BROWN: Your Honor, asked and
12 answered at this point.

13 MR. ROUTZONG: I don't know that I've
14 actually got an answer.

15 THE COURT: Okay.

16 BY MR. ROUTZONG:

17 Q The question I have for him is, you
18 searched -- his answer was to the question, do you
19 have any weapons. That's what you heard, right?

20 A Yeah, that's what --that's what was
21 asked; and then I said, well, you don't mind if I
22 search you, okay.

23 Q Right.

24 A At that point in my mind, that gave me
25 consent to search his person.

1 Q When you rolled up on Mr. Johnson --
2 everybody keeps talking about a mask but you
3 couldn't see a mask at that time, right? There
4 was nothing pulled over his face, right?

5 A They weren't pulled over his face, but
6 he had a dark in color, black in color watch cap,
7 toboggan, whatever you want to call it, on his
8 head.

9 Q It's January, right?

10 A Yes, sir.

11 Q Is it cold?

12 A Yeah, I think that day it wasn't -- it
13 wasn't that cold that day.

14 Q At the time you didn't know whether he
15 was homeless, right? People stay outside all day
16 in January. Maybe they keep their clothes on,
17 right? It's cold. It's cold for you.

18 A I mean, most people wear clothes in
19 January.

20 Q There we go. So there's nothing
21 unusual about that. Somebody having a hat, that
22 doesn't really clue you in that they're up to
23 something, right?

24 A I mean, it could be. I mean, it's --
25 I mean, it's in January, I mean, yeah. I mean, I

1 get what you're saying. But I mean, he had a
2 black in color toboggan, stocking cap on his head.

3 Q What was his response when somebody
4 asked him about the wad of cash that he had? What
5 -- did you hear what he responded? What did he
6 say?

7 A I believe he answered that question as
8 he works.

9 Q Give me just a second. No gun was
10 recovered, right?

11 A No, sir, not to my knowledge.

12 Q So what we have is somebody in dark --
13 your testimony -- dark blue pants, not sweat
14 pants. They're cargo pants, right?

15 A I believe I said black pants when I
16 called out his description.

17 Q But they're dark blue, right?

18 A Okay.

19 Q Tan jacket?

20 A Uh-huh. Yes, sir.

21 Q No mask covering his face, right?

22 A No, sir, not at that time.

23 Q You didn't know which direction the
24 person was going to, right? Nobody told you from
25 the store, hey, he went down Harvin Street. No

1 report like that?

2 A No, sir.

3 Q No gun.

4 A No, sir.

5 Q That's it, right? That's the reason?

6 That's all we know when you stopped him, ---

7 A Uh-huh.

8 Q --- right?

9 A Yes, sir.

10 Q Thank you, sir.

11 MR. BROWN: May it please the Court.

12 THE COURT: Yes, sir.

13 **REDIRECT EXAMINATION**

14 BY MR. BROWN:

15 Q Everyone that pertains to Mr. Routzong
16 just now named as what we knew, they can be said
17 differently too; can't they?

18 A They can be.

19 Q When Mr. Routzong asked you about
20 whether we knew what direction they went in, we
21 also actually made initial contact less than 100
22 yards away from the store, correct?

23 A We did, yes, sir.

24 Q When he said that it was blue pants,
25 did they -- what color did they appear to you when

1 you first got out?

2 A To me they appeared black.

3 Q You were asked about the black and
4 tan -- that was a big point for Mr. Routzong, the
5 fact that it's a black and tan jacket. What color
6 was the jacket?

7 A It was tan with a black liner.

8 Q When y'all got the call from
9 dispatch -- we can listen to it -- did dispatch
10 ever say the jacket is 33 percent black and I
11 guess that'd be 66.6 percent tan?

12 A No, sir.

13 Q Did you have any idea what percentage
14 either one of them would be?

15 A No, sir.

16 Q When you actually made contact with
17 the defendant, what color was the jacket he was
18 wearing?

19 A It was a tan jacket with black liner.

20 Q You were asked about the fact he
21 wasn't wearing a mask. Have you ever seen the
22 toboggans like what he had where they can pull
23 down and be a mask?

24 A I have, yes, sir.

25 Q And, in fact, this one that he was

1 wearing can pull down and be a mask?

2 A Uh-huh, yes, sir.

3 Q You got a good look at him that night?

4 A Yes, sir.

5 Q Less than a minute after hearing the
6 dispatch about the description of the person
7 you're looking for, you see this person? Did he
8 match the description?

9 A Yes, sir.

10 Q When y'all checked his pockets -- did
11 he give you consent to search?

12 A He did, yes, sir.

13 Q When y'all checked his pockets, did he
14 have items in there that further aroused y'all's
15 suspicion that he was involved in this crime?

16 A Yes, sir, he did.

17 Q And based on that, did y'all continue
18 to detain him?

19 A Yes, sir.

20 Q Thank you.

21 MR. BROWN: Your Honor, I have no
22 further questions of this witness. We're ready to
23 call another.

24 THE COURT: You can step down.

25 THE WITNESS: Thank you, Your Honor.

1 MR. BROWN: May it please the Court.

2 THE COURT: Yes, sir.

3 MR. BROWN: Next witness is Officer
4 1st Class Ronisha Sinkler. Your Honor, I would
5 just ask as she takes her seat to spell her first
6 and last name for the court reporter.

7 THE COURT: Okay.

8 THE CLERK: Ma'am, raise your right
9 hand. State your name.

10 THE WITNESS: Ronisha Sinkler.

11 WHEREUPON,

12 **RONISHA SINKLER,**
13 having been duly sworn by the clerk, testified
14 as follows:

15 MR. BROWN: May it please the Court.

16 THE COURT: Yes, sir.

17 **DIRECT EXAMINATION**

18 BY MR. BROWN:

19 Q Officer 1st Class, I guess as a
20 preliminary matter, can you please tell this Court
21 very briefly because it's just a suppression
22 hearing: What your name is, spell your first and
23 last name for our court reporter, and tell His
24 Honor where you work and what your duties are.

25 A My name is Ronishia Sinkler. It's

1 spelled R-O-N-I-S-H-I-A. Last name is S as in
2 Sam, I-N-K-L-E-R. I work with the City of Sumter
3 Police Department where I am on patrol.

4 Q Okay. And were you working on patrol
5 on the night of January 21st, 2019?

6 A Yes, sir.

7 Q Did you have the occasion to respond
8 to a report of an armed robbery at Family Dollar
9 on Manning Avenue?

10 A Yes, sir.

11 Q All right. And in hopes that we can
12 move this along, were you in the courtroom
13 listening to the 911 dispatch for the last
14 witness, as well as the video camera on his body
15 camera? Were you able to see all these items?

16 A Yes.

17 Q Okay. So I don't need to play those
18 for you in open court?

19 A No, sir.

20 Q All right. Tell these — or tell His
21 Honor where you were when you first got that call,
22 and specifically, where you first came in contact
23 with Michael Johnson on January 21st, 2019?

24 A I was driving down Manning Avenue
25 headed south. As I passed the Family Dollar

1 crossing over near Fulton Street and Manning
2 Avenue, I saw a suspect -- well, a individual
3 matching the description of a tan jacket and black
4 pants.

5 Q Okay. Do you remember about how long
6 this was after -- after dispatch radioed out to
7 you that you first saw him?

8 A I'm not certain of the time frame.

9 Q Do you know how to read CAD report?

10 A Yes.

11 MR. BROWN: Permission to approach.

12 THE COURT: Yes, sir.

13 BY MR. BROWN:

14 Q I show you State's No. 4. If you
15 looked at that, would that be able to tell you
16 what time the initial call went out and what time
17 you first made contact with Michael Johnson? Or
18 when you first saw him, not when you made contact,
19 when you first saw him.

20 A The call was dispatched out at 6:07
21 p.m. And I first -- correction. I saw him at
22 5:53. The call came out at 5:49.

23 Q 5:49 to 5:53?

24 A Yes, sir.

25 Q Approximately four minutes later?

1 A Yes, sir.

2 Q All right. I'm going to show you
3 what's marked as State's No. 3. You recognize
4 this?

5 A Yes, sir.

6 Q All right. What are we looking at
7 here?

8 A We're looking at Manning Avenue and
9 West Fulton Street and the Family Dollar in the
10 purple building, purple building.

11 Q Okay, all right. Where were you in
12 your patrol car when you first saw Michael
13 Johnson?

14 A I first saw him after passing over
15 West Fulton Avenue.

16 Q Okay.

17 A In this area right here.

18 Q Which direction were you coming from?
19 Which direction were you heading?

20 A I was heading south down Manning
21 Avenue coming from -- coming from Main Street
22 going down Manning Avenue.

23 Q So if we're looking at the map, you're
24 coming from the left. You were going towards the
25 right, and you had just crossed over West Fulton

1 Street when -- when you first saw him?

2 A Yes.

3 Q All right. Tell me when you saw
4 Mr. Johnson, what were your observations?

5 A I saw a tan jacket and black pants and
6 then I got on the radio to confirm what the
7 individual was wearing.

8 Q Okay. Is there anything else that was
9 going on or that you observed him doing that
10 caught your attention?

11 A He was walking as if he was leaving
12 something, he was leaving something that he has
13 done in a suspicious manner.

14 Q Is there anything that occurred once
15 you got closer to him or once you became in his
16 line of sight that further caught your attention?

17 A Yes. He looked at me and he sped up
18 his walk and as we -- as he continued walking, he
19 started walking into the field here where the
20 African building is which is in this area right
21 here.

22 Q Okay. And just for our court
23 reporter, if you look at the intersection of
24 Fulton and Manning, it would be -- if Green Street
25 is above you, it will be the bottom left field

1 that you're talking about. It looks like an empty
2 lot right there, correct?

3 A That's correct.

4 Q And what is -- what is in this empty
5 lot, or what do y'all know that lot as?

6 A It's -- it's a empty lot; it's just
7 grass. But it's a building that has a sign that
8 says it's African Society building.

9 Q Is it this building right here?

10 A I believe it's over like in this area
11 somewhere. It's pretty much just a sign.

12 Q Okay. It says around number 341. You
13 see that right there?

14 A Yes.

15 Q All right. So he began crossing over
16 into that area and you noted he began walking more
17 quickly?

18 A Correct.

19 Q What did you do upon seeing the person
20 wearing the tan jacket/black pants who once they
21 saw you began walking away more quickly?

22 A I turned into the driveway entering
23 the empty lot, ---

24 Q Okay.

25 A --- and I attempted to exit the

1 vehicle and told him to stop and he looked back at
2 me and then he sped up walking and then he
3 continued to run. He started to run.

4 Q So you said the word "stop"?

5 A Yes.

6 Q Did he stop?

7 A No, he did not stop.

8 Q All right. And he continued to walk
9 away?

10 A Correct.

11 Q And at some juncture he began to run?

12 A Correct.

13 Q All right. Which direction did he run
14 in?

15 A He ran through -- I call it the alley
16 way. But he ran through the empty lot into this
17 wooded area right here towards Harvin Street.

18 Q Okay. And, unfortunately, it looks
19 like I printed my map off so it doesn't show the
20 next street, but what's our next street right down
21 here?

22 A Harvin Street.

23 Q Is that the street where y'all were
24 ultimately able to take custody of Mr. Johnson?

25 A Yes, sir.

1 Q All right. Were you on the phone with
2 dispatch during this?

3 A Yes.

4 Q Okay. Were you able to get a good
5 visual on Mr. Johnson when all this occurred?

6 A Yes.

7 Q And were you able to maintain visual
8 on him as he ran away from you?

9 A After he ran through the woods, the
10 wooded area, I was not able to see him anymore.

11 Q Okay. What did you do to try finding
12 him or to make contact further?

13 A I got back in my vehicle and turned
14 back around to head down West Fulton Street.

15 Q Okay. And when you turned on Harvin
16 Street down here, were you able to re-establish
17 contact with Mr. Johnson?

18 A Yes, sir.

19 Q Okay. Please tell the Court about
20 that.

21 A At that point, once I got back on
22 to -- once I got on to Harvin Street, Lead
23 Corporal Jones had already made contact with him
24 and had him detained.

25 Q Okay.

1 MR. ROUTZONG: I'm sorry, Your Honor,
2 I couldn't hear that.

3 THE WITNESS: Once I turned back down
4 West Fulton Street and turned on to Harvin Street,
5 upon that time Lead Corporal Jones had Mr. Johnson
6 detained.

7 BY MR. BROWN:

8 Q You talking about Randy Jones who we
9 just now heard from?

10 A Yes, sir.

11 Q Okay. Were you there as Mr. Johnson
12 was placed into handcuffs?

13 A I wasn't there just yet. I believe I
14 was shortly just pulling up.

15 Q Okay. And were you there when the
16 search occurred of Mr. Johnson?

17 A Yes, sir.

18 Q Okay. Did you take part in that
19 search?

20 A Yes, sir.

21 Q You were present and we've all heard
22 the video, but was it your understanding that he
23 was consenting to a search of his person at that
24 point?

25 A Yes, sir.

1 Q All right. What did you find when you
2 searched him?

3 A A large amount of cash.

4 Q Okay. Do you remember anything about
5 the denominations or anything particular about
6 that?

7 A As in the amount of currency like?

8 Q Or the type of bills it was. Were
9 there any large bills in there?

10 A I don't recall correctly at this time.

11 Q Okay. But you found that in his right
12 pocket?

13 A Yes, sir.

14 Q Was it just a couple of bills or was
15 it a large amount?

16 A It was a large amount.

17 Q Did you get a better look as you got
18 closer to him on the jacket he was wearing?

19 A Yes, sir.

20 Q All right. And tell us about that.

21 A It was a tan jacket with the black
22 liner. I saw the black liner inside of the hood
23 of the jacket.

24 Q Okay. Did you have a chance to
25 observe anything further of the — matched the

1 description of what had gone out over dispatch?

2 A Yes, sir, the black sweat pants.

3 Q Okay. Anything else?

4 A No, sir.

5 Q Okay. Following that, did Officer
6 Jones eventually take him and place him into the
7 patrol car?

8 A Yes, sir.

9 Q Did you take custody of that money and
10 ultimately later count it and place it into
11 evidence?

12 A Yes, sir.

13 Q Okay. This all happened in Sumter?

14 A Yes, sir.

15 Q All right. Please answer any of
16 Mr. Routzong's questions.

17 **CROSS-EXAMINATION**

18 BY MR. ROUTZONG:

19 Q Did you turn over your dash cam to
20 Mr. Brown? Does that still exist?

21 A Mr. Brown?

22 Q Yes, ma'am, Tyler Brown there. Did
23 you ever turn over your dash cam?

24 A It should all be in the system.

25 Q So it still exists?

1 A Yes, sir, it should. I'm not certain.
2 It should be.

3 Q Okay. Because you're specifically
4 saying that you saw him run away from you, right?

5 A Yes.

6 Q And you said you told him to stop?

7 A Yes.

8 Q You heard the radio broadcast. You
9 just said he ain't stopping.

10 A Yes, upon me asking him to stop.

11 Q That's all you broadcast to your
12 fellow police officers. You didn't say, oh, my
13 God, he's running away after I told him to stop.
14 You didn't say that, right?

15 A No, I didn't.

16 Q You just said he's not stopping?

17 A Yes.

18 Q And there's no reason for somebody to
19 stop if they didn't do anything, right?

20 A You're right.

21 Q So that's not suspicious?

22 A Is that a question?

23 Q Yes, ma'am.

24 A Then no.

25 Q It's not suspicious. Do you have a

1 body cam?

2 A Yes, I do.

3 Q Does that still exist?

4 A Yes.

5 Q You know, I've looked at these
6 pictures and the video. You can't see the liner
7 in that jacket when somebody is standing up, can
8 you?

9 A You can see in the hood of the jacket.

10 Q Assuming you're correct and you can
11 see it, if somebody is describing something to you
12 and there's a little tiny area of black at the top
13 of somebody's hood, that's not what you would
14 stick -- that would not be what would stick in
15 your mind, right? The fact is, you were told on
16 the radio by the dispatcher, twice at least, that
17 you're looking for somebody with a black and tan
18 jacket, right?

19 A Initially she provided the description
20 of a tan and black jacket. Upon me seeing the
21 suspect running, walking across Manning Avenue, I
22 asked her to repeat the description of the jacket
23 and she said it was a tan -- to repeat the
24 description of the suspect. She advised that it
25 was a tan and black jacket. At that point I saw

1 the tan jacket, as well as the black pants and
2 inside of the hood which is very visible, so which
3 gives me grounds to say that he's matching that
4 description.

5 Q I can play it again, but that's not --
6 that's not what happened. That's not what we all
7 heard. What we heard was you said, I see a black
8 man and a black and tan jacket walking across
9 Manning Avenue, and then the dispatcher came back
10 and specifically said "Be advised. Black and" --
11 you said a tan jacket, and she said, "Be advised,
12 a black and tan jacket." That's what you heard,
13 right?

14 A No, sir. I asked her to repeat the
15 description; and upon me asking her to repeat the
16 description, I gave out what I saw, and then she
17 repeated it back to me.

18 Q So, I won't belabor the point because
19 the Court can hear what happened. You didn't find
20 any gun, right?

21 A No, sir.

22 Q And you heard Mr. Johnson's response
23 to a question and the question was, "Do you have
24 any weapons on you?" And then he said, no. And
25 you also heard that officer say, "Well, then, you

1 don't mind if I search you." That's what you
2 heard. And he said search me. It was in response
3 and in the context of a search for weapons; wasn't
4 it?

5 A I can't say what his perception of the
6 question was. I don't know.

7 Q But you heard the question?

8 A I heard the question, yes.

9 Q So I'm asking you what was your
10 perception?

11 A To search him.

12 Q Search for weapons, right?

13 A To search him, period. To search his
14 person.

15 MR. ROUTZONG: I don't have any other
16 questions, Judge.

17 THE COURT: Okay. Anything further
18 from the State?

19 MR. BROWN: Nothing further for this
20 witness, Your Honor.

21 THE COURT: You can step down. Thank
22 you, ma'am.

23 THE WITNESS: Thank you.

24 MR. BROWN: This will be my last
25 witness for this hearing, Your Honor.

1 THE COURT: Okay.

2 Raise your right hand.

3 WHEREUPON,

4 JOHN MELTON,

5 having been duly sworn by the Court, testified as
6 follows:

7 THE COURT: If you will take a seat
8 and give the court reporter your full name please,
9 sir.

10 THE WITNESS: Yes, Your Honor. My
11 name is John, J-O-H-N, Melton, M-E-L-T O N.

12 MR. BROWN: May it please the Court.

13 THE COURT: Yes, sir.

14 **DIRECT EXAMINATION**

15 BY MR. BROWN:

16 Q Detective Sergeant John Melton,
17 correct?

18 A Yes, sir.

19 Q Detective, were you involved in the
20 investigation regarding Michael Johnson for the
21 armed robbery on January 21st, 2019?

22 A Yes, I was.

23 Q Tell us how you became involved in
24 this investigation.

25 A I was traveling in my vehicle. The

1 call came out. I proceeded toward Manning Avenue
2 and arrived on scene. My initial first location
3 was at the intersection of Fulton and Manning
4 Avenue. When I heard the radio traffic, I staged
5 up right there in case somebody doubled backed or
6 things of that nature.

7 Q All right. And did you become aware
8 at some point early into the dispatch coming out
9 that a suspect had been captured?

10 A Yes, I did.

11 Q Please tell this Court what actions,
12 if any, you then took.

13 A The first actions I took was to secure
14 my scene at the Family Dollar and make sure
15 everybody was okay at that scene. Life safety is
16 utmost to us in law enforcement. Make sure my
17 scene was secure. Then I radioed back over to the
18 people who had the individual stopped to give me a
19 phone call. I wanted to see what they had on the
20 other end.

21 Q Okay. Without saying what they said,
22 did you have information that they had someone
23 matching the general description?

24 A Yes. That's what I wanted to see, if
25 they did, in fact, have somebody matching the

1 general description.

2 Q Okay. Were you also made aware of the
3 money and the other items found in the pockets?

4 A Yes. Yes. And understand, when we
5 arrive to a scene like that it's quite chaotic so
6 part of my job is trying to get everything
7 basically to start flowing, to start working. I'm
8 thinking about calling out forensics detectives,
9 what supervisor needed, make sure officers are
10 okay. It becomes a process. I kind of start
11 chipping at the process piece by piece.

12 Q All right. What actions, if any, did
13 you take once you had gotten off the phone with
14 your patrol officers?

15 A I contacted the patrol officers,
16 learned that they felt that they had a suspect
17 matching the description. I then spoke very
18 briefly with the clerk who was there.

19 Q Bryanna Dennis?

20 A Yes, I believe that's her name.

21 Q Okay. And I'll give our court
22 reporter the spelling in a little bit.

23 A I then arranged to do a show-up, which
24 I did. I took her over there. We did a show-up.
25 She neither confirmed or denied. Essentially, you

1 know, and I don't want to take all of her words,
2 but, you know, yes, he fits the bill, etc.,
3 different jacket, and I didn't really get a super
4 good look at his face under the circumstances. So
5 I didn't take that as a, no, he's not; or a, yes,
6 he was.

7 Q When you say under the circumstances
8 not getting a view of his face, you're talking
9 about because of the mask situation?

10 A That's correct, yes.

11 Q All right.

12 A So, yes, she couldn't be sure of that.

13 Q All right.

14 A And generally speaking, you know,
15 usually this is a yes or no: Yes, it's him or,
16 no, it's not. In this case it was more
17 undetermined, to be determined at a later moment.
18 So I then went back to the store where I was able
19 to view some video footage.

20 Q Okay.

21 MR. BROWN: Court's indulgence. Your
22 Honor, I should have premarked this. My apologies
23 to the court reporter. If I can get this
24 premarked real fast.

25 (WHEREUPON, State Exhibits No. 4 and 6

1 were marked for identification only.)

2 MR. BROWN: Permission to approach.

3 THE COURT: Yes, sir.

4 BY MR. BROWN:

5 Q So you went back and looked at the
6 surveillance footage from -- from the store that
7 depicted the robbery?

8 A I did.

9 Q All right. I'm going to show you
10 what's marked as State's Exhibit No. 5. I've
11 taken a screen capture of one of those. Did you
12 see this as part of the surveillance footage you
13 observed?

14 A Yes, I did.

15 Q Okay. And show us what -- tell us
16 what is depicted in that full picture.

17 A What's depicted in this is -- and I've
18 seen this before in my career. A -- looks like
19 clothing is turned inside out. You can see a tag
20 on the back of it below the hood; but more
21 importantly, and something that I think is very,
22 very unique in this case, is the belt. I don't
23 know whether you call that bright blue or purple
24 and then the red pants. Essentially what I'm
25 looking at -- and when I say red pants, they're

1 the ones that are under -- I know there's been
2 some dispute about whether they're navy blue or
3 black in here today, but it's the layers of
4 clothing. I can tell you officially in my 15
5 years, I've never seen somebody with this exact
6 layer of clothing on, so I found that to be very
7 distinct and specific.

8 Q Upon seeing all of this, did you then
9 have the occasion to go back prior to making the
10 official decision to make an arrest or not and
11 look at the clothes that Mr. Michael Johnson was
12 wearing?

13 A I did.

14 Q This is taken at the jail, but is this
15 an accurate -- this showing State's No. 6 -- an
16 accurate reflection of the clothes that he was
17 wearing that evening?

18 A Yes, it is. And I, in fact, did look
19 at the tag on the back of the jacket as well.
20 And, again, you can see the layers of clothing
21 that he has on which are distinct and specific.
22 Another thing I also did was ---

23 MR. BROWN: Permission to approach.

24 THE COURT: Yes, sir.

25 THE WITNESS: During this I did speak

1 with Lead Corporal Jones to find out what items he
2 had on his person.

3 BY MR. BROWN:

4 Q Okay. Now just to be clear, on No. 6
5 he doesn't have a hat on. Did he have a hat on
6 when y'all got to that location?

7 A When I saw him, he did not actually
8 have the hat on at that point.

9 Q Okay.

10 A It had been taken off.

11 Q I got you. So you had already, by
12 this point, talked to Detective Jones -- well, he
13 is an investigator now -- Investigator Jones,
14 about what was found on his person?

15 A That's right.

16 Q You had visually looked at the store
17 footage and compared it to what he was wearing on
18 location?

19 A That's right.

20 Q And when you got there, could you see
21 black in his jacket in addition to the tan?

22 A At the video? No, sir.

23 Q No, at the scene where they made the
24 arrest?

25 A Yes, but I actually pulled his jacket

1 to look at the tag on the back so I absolutely
2 could see the black.

3 Q Okay. And he had the money on his
4 person?

5 A Uh-huh.

6 Q He had the flashlight in his pocket?

7 A Yes, sir.

8 Q He's wearing dark colored pants that
9 someone could easily mistake for black but were
10 dark blue?

11 A That's correct.

12 Q He had the bright blue belt?

13 A That's correct.

14 Q He had the red/black flannel pajama
15 pants?

16 A That's correct

17 Q He had the tan jacket with black in
18 it?

19 A That's right.

20 Q He had the mask on?

21 A That's right.

22 Q Based on all of this, did y'all make a
23 decision to make a decision to make an arrest that
24 day?

25 A Absolutely.

1 Q And is that when he was arrested?

2 A Yes, and I do want to add a caveat to
3 that as well.

4 Q Sure.

5 A He's seen by Patrolwoman Sinkler who I
6 have every reason to believe of fleeing from that
7 area when she tries to stop him he takes off.

8 Q Thank you. Final question, showing
9 you the CAD report marked as State's No. 4, from
10 the time that the dispatch initially went out to
11 the time that he was placed in the car to be taken
12 to the jail, how much time lapsed?

13 A Give me just a second to review this.

14 Q Sure.

15 A It's several pages. At 17:54:49 alpha
16 79 and alpha 24 are out with the subject. Then at
17 18:33:43 alpha 58 has one 1067 -- that would be an
18 arrested male -- on the way to the jail. Now I
19 would like to add this as well. Instructions were
20 provided before he went to the jail that we needed
21 his clothing. It's seen in specifics on video
22 surveillance footage. Those instructions had to
23 be relayed so that may be off by a minute or two
24 to the officer who was transporting.

25 Q It's fair to say somewhere in the 30,

1 30 to 36 minutes is all it lasts between the time
2 that he was taken into custody, that y'all
3 finished investigations and he was arrested?

4 A That will be fair.

5 Q Okay.

6 MR. BROWN: Court's indulgence.

7 BY MR. BROWN:

8 Q Did y'all take a hat into evidence?

9 A I instructed the officer who collected
10 things to put them into evidence. I'd have to
11 review the chain of custody, but I do believe that
12 we did.

13 Q Have you had a chance to go look at
14 that hat to see whether or not it does pull down
15 as a mask?

16 A I have not actually physically done
17 that myself.

18 Q Okay. Thank you.

19 MR. BROWN: No further questions.

20 **CROSS-EXAMINATION**

21 BY MR. ROUTZONG:

22 Q Good afternoon, sir.

23 A Afternoon.

24 Q Help me understand the timeline here
25 for you, not for anybody else. I just want to

1 know what you do. About what time did you come to
2 the understanding that there was an armed robbery?

3 A Well, first I heard it over the radio.
4 I can't tell you exact time I heard it. But when
5 I got to the store ---

6 Q What time did you get to the store? I
7 didn't mean to interrupt you.

8 A Can I see the CAD? It very well may
9 say it on the CAD.

10 Q Yes, sir.

11 A I apologize, sir.

12 Q That's okay.

13 A Thank you. It says I got to the store
14 at 17:55:47, and I signed up in route to the store
15 at 17:54:07.

16 Q So you got to the store about 5:55 in
17 the evening, I guess, right?

18 A That will be general, yes, sir.

19 Q Okay.

20 A Now can I say something about that
21 though?

22 Q Sure.

23 A I may have come on scene and heard
24 Patrolwoman Sinkler on the radio; and due to the
25 nature of the call being an armed robbery, for

1 officer safety, sometimes we will wait until
2 things calm down or till somebody is detained
3 before we sign up that we are here.

4 Q Okay.

5 A It depends -- it's circumstantial and
6 I can't tell you exactly which way or another I
7 did that that day.

8 Q What time do you reckon that
9 Patrolwoman Sinkler and all our fine officers
10 arrested Mr. Johnson, about what time, I mean,
11 detained him? What time did that happen?

12 A At 17:54:49 radio traffic, according
13 to the CAD, says they are out with a male subject.
14 At 17:55 it says 1069, which is someone detained
15 based on our -- our lingo.

16 Q Okay. So at that point in time he'd
17 been detained by, you reckon, about 11 minutes,
18 17:44 to 17:55?

19 A No, sir. 17:55 is what time he's
20 detained. At 17:54 they get out with him. That
21 is not 11 minutes. That is -- it's actually 11
22 seconds according to this CAD report.

23 Q I'm sorry, you'll have to help me.
24 What time did they detain him?

25 A They detained him at 17:55. They got

1 out with him at 17:54:49.

2 Q What time did you arrive at the store?

3 A I arrived at the store, as I said,
4 when I pulled up I took a perimeter position.
5 It's actually at Lafayette and Fulton. You can
6 hear Lead Corporal Jones say on the radio, Melton,
7 he's over here because he has seen me sitting
8 there in my vehicle. I took up a perimeter
9 position based on what Patrolwoman Sinkler had
10 said that he wasn't stopping.

11 Q What time did you take up the
12 perimeter, that thing you just described? What
13 time did you do that?

14 A Once, again, I responded to the store.
15 I heard the stuff going on the radio. I took up a
16 perimeter position. I can't tell you what time I
17 broke my perimeter position and walked into the
18 store like, you know, moved over to the store; but
19 as soon as I arrived on scene I did that. Now,
20 based on a case-by-case basis, once again for
21 officer safety, sometimes we sign up immediately,
22 sometimes we leave the radio clear. In this case
23 we are responding to an armed robbery. She sees a
24 suspect that is not stopping. I'm not going to
25 sign up right then and say I'm sitting right here.

1 Now I may have, but I can't tell you the exact
2 time because I don't -- you know, I didn't sit
3 there and write my time stamp.

4 Q I understand. It's a difficult
5 question, but it's an important question. About
6 17:55 you're somewhere. You're aware -- you're
7 aware that something is going on. You've set up
8 this perimeter position and that coincides with
9 your understanding of when he was detained?

10 A That's right.

11 Q So that's fair to say, right?

12 A Yes.

13 Q Around 17:55, okay. You don't know
14 what time you went to the store exactly, right?

15 A I can tell you I was in route to the
16 store at 17:54:07 and that they have me on scene
17 at 17:55:47. Now I can tell you that I arrived in
18 the time frame to take up a perimeter position
19 because that's what I first did.

20 Q Okay. And what I'm really interested
21 in is what time you actually walked through the
22 door of the store. You got any idea about when
23 that happened?

24 A I can't tell you that because I
25 don't -- I don't have an exact idea.

1 Q Okay. I know you have a pretty good
2 understanding of time and all that so.

3 Approximately how long were you waiting in your
4 perimeter position before you actually went to the
5 store and walked through the door? About how much
6 time elapsed?

7 A I would be guessing here, but I would
8 say it would be minutes. I'd say five minutes, if
9 that.

10 Q So you should -- you should be walking
11 through the door at approximately 6:00 in the
12 evening?

13 A Sometime in there, yes, sir.

14 Q Okay. What's the first thing you did
15 when you went to the store?

16 A I don't exactly remember my first move
17 in the store; but I, generally speaking, when we
18 go to things like this, the very first thing I do
19 is make sure everybody is okay.

20 Q Fair enough. After everybody is
21 okay -- just to cut to the chase -- did you talk
22 to Bryanna Dennis first of all?

23 A I did have a conversation with her.
24 I'm sure it was very, you know, limited because
25 we're trying to figure out is this the guy, is

1 this not the guy, what we got going on. And in
2 there somewhere I do call forensics, I know that.

3 Q About how long -- so from 1800 when
4 you walked in the door to your conversation with
5 Ms. Dennis concluded and you're leaving Family
6 Dollar with Ms. Dennis, I guess that happened
7 next, right?

8 A I don't know exactly what happened
9 next. I didn't do a time by time, you know,
10 minute by minute, second by second thing if that's
11 what you're asking.

12 Q Let me ask you the question this way.
13 Once you went in the store, when you left the
14 store you had Ms. Dennis with you, right?

15 A Yes.

16 Q Okay. And so how long between the
17 time you went in the store and the time you left
18 the store with Ms. Dennis, how long was that
19 approximately?

20 A I can't exactly tell you that. I'm
21 going to see if it's listed in the CAD. It is not
22 listed in the CAD. I can tell you generally
23 speaking, it takes a few minutes. We step away,
24 we contact the officers on the other end, arrange
25 for a show-up, and then we generally will get the

1 witness or the victim and move that way. It does
2 take a few minutes to arrange.

3 Q So when you leave the store with
4 Ms. Dennis, you had talked to her briefly for a
5 few minutes, right?

6 A Uh-huh.

7 Q So about how long was that? When --
8 just approximately.

9 A I mean, I don't know. It could be ten
10 minutes after I walked in the store. It could
11 have been 5. It could have been 15. I can't
12 answer that; I don't know.

13 Q Well, it's your call because you're
14 the one that was there so what do you think?

15 A Thinking and knowing are two different
16 things. Procedurally, I went through all my
17 steps. And as soon as I could get it done safely,
18 efficiently, by the books, that's what we did.

19 Q Fair enough. About how long did it
20 take you to do all that?

21 MR. BROWN: Your Honor, I think this
22 is ---

23 THE WITNESS: You keep asking me the
24 same thing over and over.

25 MR. BROWN: Objection, Your Honor.

1 MR. ROUTZONG: I'm asking for an
2 approximation, Judge. It's important in terms of
3 timeline.

4 MR. BROWN: And, Your Honor, he has
5 said he can't ---

6 THE COURT: I know, but he can't
7 answer. He can't answer. I mean, he's telling
8 you he didn't -- my understanding from his prior
9 testimony, from the time he stopped him from the
10 time they took him to jail was 33 to 36 minutes so
11 it had to happen in sometime in that timeframe;
12 doesn't it?

13 MR. ROUTZONG: Okay. Thank you, Your
14 Honor.

15 THE COURT: Isn't that -- I mean, am I
16 missing something?

17 MR. ROUTZONG: I don't know. That's
18 why I'm trying to -- that's what I'm trying to
19 actually dig it out here.

20 THE COURT: He testified earlier based
21 on prosecutor's question -- and I may have
22 misunderstand it, that if from 17:54:49 is when
23 they got out on the suspect. And 18:33:43, he was
24 on the way to jail. So you're talking about
25 that's 5:54 to 6:33. And in all -- so he had to

1 do all that in that process and he's on the way to
2 jail in basically 33 to 36 minutes, right? So I
3 assume it's important you're trying to show a
4 timeframe from the time he was detained till the
5 time he was arrested, and it appears to be
6 somewhere between 33 and 36 minutes.

7 MR. ROUTZONG: Yes, Your Honor, but
8 part of that is evidently based on his testimony
9 he's making two trips. He's got Ms. Dennis going
10 up there with a show-up and then I believe he
11 testified he went back and he looked at the video.

12 THE COURT: Okay.

13 MR. ROUTZONG: And so that's an
14 important factor, I think, for the Court to
15 consider in terms of the length of this detention
16 and how reasonable it was.

17 THE COURT: All right. But
18 assuming -- so you're telling me that you don't
19 think the CAD report is correct, that they -- that
20 it wasn't 33, 36 minutes longer than that?
21 Because I think the radio transmission said they
22 were on the way to the jail with him at 18:33:43.
23 Is that not correct?

24 MR. ROUTZONG: I would say --

25 THE WITNESS: 18:33:43 off of 58 has

1 one ma-- or one -- one arrested male is in route
2 to signal 12.

3 THE COURT: Right. That's the jail,
4 right?

5 THE WITNESS: Yes, sir, that is the
6 jail, I apologize.

7 THE COURT: So he's on the way to jail
8 in 33, 36 minutes.

9 MR. ROUTZONG: Yes, sir.

10 THE COURT: So the whole detention,
11 even though he made two trips, is only 33 to 36
12 minutes.

13 MR. ROUTZONG: If the CAD report is
14 correct, that sounds about right, Judge.

15 THE COURT: Okay.

16 MR. ROUTZONG: But then, you know, you
17 have to throw into the mix here that he brought a
18 witness to the scene, and his testimony was that
19 she couldn't identify that person.

20 THE COURT: Right.

21 MR. ROUTZONG: And the question is how
22 much longer -- you know, if that happened at five
23 minutes, you know, we don't have a CAD report
24 saying when he was there.

25 THE COURT: Oh, I got you.

1 THE WITNESS: Can I correct something?

2 MR. ROUTZONG: Yes, sir.

3 THE WITNESS: My testimony was not
4 that she didn't identify. It's that she didn't
5 confirm or deny that it was him.

6 BY MR. ROUTZONG:

7 Q Well, that's a nullity, isn't it,
8 because that's a zero. So it's not an
9 identification.

10 A Right.

11 Q Identification, I know you, I've known
12 you for a couple of years.

13 A Right.

14 Q I know you're not her.

15 A I understand what you're getting at
16 there. I looked at it like a double edge sword.
17 She didn't directly say it's not him, and she
18 didn't directly say it was him.

19 Q And I understand your reasoning on
20 that, but it's not an identification.

21 MR. ROUTZONG: Judge, the question is
22 really -- and why I'm digging this out. Once he's
23 been identified or -- there's a lack of
24 identification, they're continuing to hold him for
25 some reason and that should go into your

1 consideration. They don't have an identification.

2 THE COURT: Yeah, but, but that is --
3 to go into consideration into this, if she would
4 have said that is definitely not him, then you're
5 right, then they should have let him go then. But
6 she doesn't know whether it's him or whether it's
7 not him, so they got a right to continue their
8 investigation to determine whether they got the
9 right guy or not. If she'd have said that's not
10 him, that's not the man that robbed me, my
11 information is she can't say I'm not sure, I can't
12 tell you whether that's him or whether that's not
13 him, so at that point they don't know whether they
14 got the right guy or not so he goes back to do
15 further investigation. Goes back and looks at the
16 video, looks at his picture, identifies the
17 pajamas, the belt, and the jacket turned inside
18 out with the tag. Goes back to the scene, looks
19 at the suspect's clothes, says that's him and
20 arrest him. Is that not what happened?

21 THE WITNESS: That's exactly what
22 happened, Your Honor. To be combined with the
23 fact that he has money ---

24 THE COURT: Right.

25 THE WITNESS: --- on him, the

1 flashlight which is presented as the weapon, and
2 the fact -- I'll go back to that Officer Sinkler
3 tried to stop him -- fleeing from the generalized
4 area of the store.

5 THE COURT: And I got all that and
6 that's what I got to decide it on, and it's -- and
7 if I'm missing something or if I'm wrong on any of
8 it, you can correct it. And if there's any other
9 things, but I got -- those are the things that
10 he's testified to and other witnesses testified
11 to. That's my understanding of the facts. Now,
12 and so that's what I'm going to base my ruling on
13 unless you tell me I got the facts wrong.

14 MR. ROUTZONG: I don't -- I wouldn't
15 say the Court's got all the facts wrong, but I
16 would say that we don't know a very important
17 fact. And the important fact is how long the
18 detention -- I don't think ---

19 THE COURT: Detention is 33 to 36
20 minutes.

21 MR. ROUTZONG: Right, yes, sir, I
22 understand. But the detention after there's no
23 identification. What did they have after that?

24 THE COURT: They got -- I don't think
25 they got to have an-- the fact that they don't

1 have identification, they still -- he's still --
2 he's still a suspect and that they have detained
3 him and gone back and looked further. And the
4 question is whether that 33 minutes is excessive.
5 If she had said that is not him, that is not the
6 man that robbed me, then any seizure after that
7 may be suspect. The question is whether the
8 seizure of the person for 33 to 36 minutes is that
9 excessive based on the investigation. And in most
10 of the cases that deal with traffic stops and the
11 Supreme Court is basically saying any seizure
12 after -- whatever reason you stop the person, once
13 you have completed that investigation, unless you
14 have created an articulate reasonable suspicion to
15 detain him any longer, you got to let him go.

16 They're in the process of completing
17 their investigation. They have not completed the
18 investigation yet. If he'd have gone back, looked
19 at the video and the clothing in the video did not
20 match the subject's clothing at all, then they got
21 a suspect that can't be identified by a woman and
22 the clothing doesn't match, then they should have
23 let him go. The question is whether the detention
24 was too long. They're still investigating the
25 reason for the stop. They had an armed robbery.

1 They got a suspect who had at least at some point
2 meets that description. I know you make a big
3 issue about the black and tan; but after he looks
4 at the video, it matches. And so I don't think 33
5 to 36 minutes is unreasonable because they hadn't
6 completed their investigation.

7 If the woman had said that's not him,
8 I'd agree with you; but I think they right to
9 continue. I don't think the 33 minutes to 36
10 minutes is excessive based on all the law in this
11 state. And once he has this and this man has his
12 own, it goes from an articulate suspicion to stop
13 him to probable cause. At this point I think they
14 got probable cause to arrest him for the armed
15 robbery based on his clothing and the money in his
16 pocket, as well as the flashlight that would --
17 could be considered because based on the testimony
18 that you put in your brief, the woman wasn't sure
19 he had a gun, he had some object. And the
20 flashlight I saw in the picture turned around
21 backwards could clearly, you know, hell write up
22 as an object she could may decide is a gun so.

23 But I'll be glad -- I just don't think
24 that the timeframe is excessive, that they're
25 continuing to investigate this, and they had

1 probable cause within 36 minutes and biggest
2 stretch from the time they stopped him. So
3 anything else you need to tell me? And if I'm --
4 if I don't have any of those facts right, you can
5 ask if we can go further, but I thought that was
6 the facts testified to.

7 BY MR. ROUTZONG:

8 Q Detective Melton, I guess the bottom
9 line here is you're not going to -- you're not
10 able to testify as to when you brought Ms. Dennis
11 over there, how long that was. You can't testify
12 to that?

13 A I can't testify to exact timeframe,
14 but I can tell you it was just quick as I possibly
15 could work through what I needed to do to get
16 there.

17 Q 15 minutes or less?

18 A I couldn't even begin to tell you. I
19 mean, it -- I go to so many different scenes, sir,
20 I'd be lying if I took a shot at it on this one.

21 Q But it's fair to say you had to make
22 two trips?

23 A That is fair.

24 Q You brought her over there once and
25 then you went back, and you testified you viewed

1 the video?

2 A That's correct.

3 Q And was he still at the scene when you
4 went back and viewed the video?

5 A Yes, he was. Where they stopped him,
6 he was there where they had still -- they still
7 had him at the same location they had stopped him.

8 MR. ROUTZONG: I don't have any other
9 questions, Judge.

10 THE COURT: Okay. Thank you.

11 Anything else from the State?

12 MR. BROWN: I don't have anymore
13 questions. We ask he be able to step down.

14 THE COURT: All right. You got any
15 witnesses?

16 MR. ROUTZONG: No, sir.

17 THE COURT: Okay. Anything -- I think
18 based on what I've heard and the case law of this
19 state, that they had an articulate reasonable
20 suspicion to stop Mr. Johnson in this case and
21 that the whole time they had detained him, which
22 is outside of 36 minutes, they were investigating
23 this case which and they had probable cause to
24 arrest him. I think, I think the arrest is valid
25 and, therefore, I deny your motion to suppress the

1 evidence.

2 MR. ROUTZONG: As you've already ruled
3 Judge, I'm prohibited from arguing any further,
4 but that -- I just want to bring to the Court's
5 attention ---

6 THE COURT: I'll be glad -- even
7 though that is the rule, I'll let you argue a few
8 minutes; but I'm not staying here till 6:00 unless
9 you got something I've missed.

10 MR. ROUTZONG: No, sir. I'm just
11 saying that the arg-- you're making a Fourth
12 Amendment argument, and the argument was both
13 under the South Carolina Constitution which
14 requires probable cause. According to Weaver,
15 probable cause when they stopped him, not
16 reasonable suspicion.

17 THE COURT: I didn't think Weaver said
18 that. I mean, it depends on -- I think you can
19 stop somebody -- there's a litany of cases that
20 say that you can stop -- you can stop somebody on
21 mere suspicion.

22 MR. ROUTZONG: There is ---

23 THE COURT: You can't arrest somebody
24 unless you have probable cause.

25 MR. ROUTZONG: There is under ---

1 THE COURT: But Illinois -- United
2 States case of Illinois v. Wardlow, which is a
3 2000 case; and basically under that United States
4 Supreme Court said officer must be able to
5 articulate more than -- must be able to articulate
6 a reasonable suspicion and not a hunch or a gut
7 feeling. And I don't think -- I'll look at Weaver
8 again, but State v. Moore and probably a litany of
9 cases with stopping cars on the interstate, all of
10 them say you can stop of reasonable suspicion of
11 criminal activity. They had a reasonable
12 suspicion based on what was in this record to
13 detain him and then they developed probable cause
14 to arrest him.

15 MR. BROWN: And, Your Honor, if I may,
16 ask, I completely agree with your analysis on
17 which cases to cite. I also just ask the Court to
18 take and consider, for instance, State v.
19 Blassingame in your decision. Quoting directly
20 from it, a police officer -- and for our court
21 reporter that's 525 S.E.2d 535. Police officer
22 may stop, briefly detain, and question a person
23 for investigative purposes without treading upon
24 Fourth Amendment rights. It further states if the
25 officer's suspicions are confirmed or further

1 aroused, the stop may be prolonged and scope
2 enlarged as required by the circumstances. We
3 think that's probably what happened here and we
4 agree with the Court's ruling.

5 THE COURT: And I will read Weaver
6 again tonight and I'll read these other cases, and
7 if I'm wrong I'll change my mind in the morning.
8 But right now, we'll go forward.

9 MR. ROUTZONG: I just want to point
10 out, all those cases, those federal cases, that's
11 a Fourth Amendment question. And some of the
12 State's cases that you indicated, those are Fourth
13 Amendment questions and that's not the issue here.
14 The issue for you to decide is in Weaver is on
15 point. Weaver says that extra added protection
16 that South Carolina citizens have under our
17 constitution requires probable cause.

18 THE COURT: Okay, I'll look at Weaver.
19 And if you're right, I'll reconsider it in the
20 morning.

21 MR. ROUTZONG: Yes, sir. Thank you.

22 THE COURT: If not, I'll see you at
23 9:30 in the morning.

24 MR. BROWN: Your Honor, we want to
25 address the indictment issue very briefly. I

1 think I can handle that just from a true bill
2 standpoint.

3 THE COURT: Okay.

4 MR. BROWN: All right. And Your
5 Honor, just for the record, Your Honor, this case
6 was originally indicted, I believe, back in March
7 of 2019. Your Honor, I submitted an amended
8 indictment in March of 2020, specifically because
9 I originally said that Family Dollar was robbed
10 and I added language to say Family Dollar and/or
11 its employee Bryanna Dennis, just because I'm
12 paranoid. Your Honor, the grand jury considered
13 that on March 12th, 2020. Your Honor, they did --
14 the foreperson did sign the back of the indictment
15 and date it. Your Honor, we've run into an issue
16 where sometimes the true bill stamp isn't put on
17 there, but I'm prepared to call our member of the
18 Clerk of Court's office, Ms. Pam to -- Ms. Pam
19 Haynesworth to just put in the grand jury report
20 which did obtain in the regular course of
21 business.

22 THE COURT: Okay.

23 WHEREUPON,

24 **PAM HAYNESWORTH,**

25 having been duly sworn by the Court, testified as

1 follows:

2 **DIRECT EXAMINATION**

3 BY MR. BROWN:

4 Q Tell us about it.

5 A Okay. What I have is the grand jury
6 report from March the 12th. This indictment
7 2019-414 was submitted to the grand jury on May
8 2nd, 2019, and it was stamped true bill. It was
9 submitted again and amended on March the 12th,
10 2020, and the foreman signed it but did not stamp
11 it but it's on the grand jury report as -- and it
12 says the following indictments are reported as
13 true bill.

14 THE COURT: Okay. And on that report
15 from the grand jury, did the members of the grand
16 jury who heard that case sign the report?

17 THE WITNESS: Yes, sir.

18 THE COURT: And are they in excess of
19 12?

20 THE WITNESS: Yes, sir, it's 16.

21 THE COURT: Okay, all right.

22 MR. BROWN: Your Honor, we need to
23 mark that as a Court exhibit, or is that the
24 original copy?

25 THE WITNESS: This is our original

1 copy.

2 MR. BROWN: Your Honor, I'm going to
3 ask for her to cop-- I'll ask by the morning to
4 have a certified copy so we can put it as a Court
5 exhibit, but we will be offering it.

6 THE COURT: Okay, but it will all go
7 to the court anyway. It's court -- that will be
8 fine.

9 Okay, you got any questions for her?

10 **CROSS-EXAMINATION**

11 BY MR. ROUTZONG:

12 Q How many indictments were submitted?

13 A A total of 94 on that day.

14 Q Does it say anywhere that this
15 indictment refers to him? Is that on there?

16 A Yes, it's the second one.

17 MR. ROUTZONG: I don't have any other
18 questions, Judge.

19 THE COURT: Okay. Thank you.

20 The Court so finds that he's been
21 indicted. A true bill indictment has been
22 presented to the grand jury here in Sumter County.
23 As a matter of fact ---

24 MR. ROUTZONG: You've already
25 ruled ---

1 THE COURT: Huh?

2 MR. ROUTZONG: You've already ruled,
3 but just briefly, Judge.

4 THE COURT: Okay.

5 MR. ROUTZONG: Under Voltron there was
6 all kinds of folks. There was a docket
7 coordinator that had to testify. There was a
8 court reporter that testified. There was at least
9 two or three people that had to testify that a
10 normal procedure was followed, that the grand jury
11 acted on every bill. All this was in person
12 testimony, Judge, and it didn't rely on a report.
13 It appears to me under Voltron, Judge, it says
14 that because it's evident from the record, they
15 put all these reasons why they found the
16 indictment was good; but they also included all
17 these people that they found to be necessary to
18 testify to what happened at that grand jury
19 proceeding. I think under Voltron, Judge, he's
20 entitled to have those people come and testify:
21 The jury foreman, all those people to come and
22 testify about what happened at the grand jury
23 proceeding.

24 THE COURT: Okay. Well, at that -- my
25 understanding in that case, they did not have a

1 report that was given in open court to the judge.
2 This report was given in open court to the judge
3 that listed this indictment and the foreman of the
4 grand jury informed the court at that time that,
5 in fact, that indictment had been true billed.
6 And in Vol, that didn't happen. They didn't have
7 the report or, you know, in place. So I don't
8 think it's necessary for the court reporter and
9 everybody to come testify because this is, you
10 know, a document signed by the members of the
11 grand jury that lists this on there as being true
12 billed so. And the fact that it's just not
13 stamped on the particular indictment is a
14 scrivener's error, but it -- but that's sufficient
15 evidence to prove to this Court that, in fact, it
16 was heard by the grand jury, that 16 members
17 signed it listing this true billed, and that
18 indictment number is on that list, so I don't
19 think it's necessary. If I'm wrong, those guys in
20 Columbia will correct me. But we'll go forward.

21 MR. ROUTZONG: Just a couple of things
22 for the record, Judge, briefly. That was pursuant
23 to a motion to quash the indictment; I never said
24 that. And all those things that I probably --
25 it's probably not necessary -- all those items

1 that were presented and marked, and I didn't
2 object to, that was for purposes of this hearing
3 only, Your Honor.

4 THE COURT: I understand.

5 MR. BROWN: We intend to reintroduce
6 them for ---

7 THE COURT: I understand. You can
8 have the evidence back. Okay. Anything before we
9 recess?

10 MR. BROWN: Your Honor, tomorrow after
11 jury selection we'll have -- we may need a brief
12 Neil v. Biggers, Jackson v. Denno hearing. I
13 don't think either one will take long at all.
14 You've already kind of heard a little bit of a
15 Neil v. Biggers issue. Jackson v. Denno, it
16 really -- he wasn't being questioned, but I want
17 to make sure the record is protected but, but
18 we'll deal with those briefly tomorrow before
19 their testimony.

20 THE COURT: All right. Anything
21 before we go home?

22 (Court adjourned and resumed on September 30,
23 2020.)

24 MR. BROWN: The State of South
25 Carolina at this time calls the case of State of

1 South Carolina v. Mr. Michael Vandrell Johnson,
2 Your Honor, which is true billed indictment
3 2019-GS-43-0414. He has been indicted by -- for
4 the offense of armed robbery. The State is
5 prepared for trial and we have our proposed
6 witness list, as well as the indictment. May I
7 approach?

8 THE COURT: Yes, sir.

9 Ladies and gentlemen of the jury, if
10 you'll give me your attention. We're about to
11 begin the case of the State of South Carolina v.
12 Michael Vandrell Johnson. Is there any member of
13 the jury panel who is connected by blood or
14 marriage, close personal friends or social
15 relations, with Mr. Johnson, if so, please stand.

16 (There was no response.)

17 THE COURT: Okay. I'm going to read
18 out a list of potential witnesses, and I need to
19 know the same information. Any member of the jury
20 panel connected by blood or marriage, close
21 personal friends or social relations, with any of
22 these potential witnesses: Herbert McDowell,
23 Bryanna Dennis, Shirlene Skipper, Jacob Cannon,
24 Ronisha Sinkler, Nicholas Sporinsky, Randy Jones,
25 Matthew Yates, John Melton, Howie Austin. Any

1 member of the jury panel connected by blood or
2 marriage or close personal friends with any of
3 those potential witnesses, if so, please stand.

4 Yes, sir.

5 THE POTENTIAL JUROR: Mr. Jones and I
6 served together with the Sumter Fire Department.

7 THE COURT: Okay. Give me your number
8 again.

9 THE POTENTIAL JUROR: 63.

10 THE COURT: Okay. The fact that
11 you -- how long were y'all serving the fire
12 department?

13 THE POTENTIAL JUROR: Ten, ten years
14 ago.

15 THE COURT: How long?

16 THE POTENTIAL JUROR: Maybe ten, ten
17 years ago.

18 THE COURT: Ten years ago? Would the
19 fact he may be a potential witness in this case,
20 would that affect your ability to be fair and
21 impartial?

22 THE POTENTIAL JUROR: No, sir.

23 THE COURT: Thank you, sir.

24 Anyone else?

25 (There was no response.)

1 THE COURT: The attorneys in this case
2 representing the State is Tyler Brown; the Defense
3 is Michael Routzong. Any member of the jury panel
4 connected by blood or marriage, close personal
5 friends or social relations, with either two of
6 these attorneys or have ever been represented by
7 them, if so, please stand.

8 (There was no response.)

9 MR. ROUTZONG: Your Honor, Mr. Barnes
10 will be sitting with us as well.

11 THE COURT: Okay. And Mr. Jack Barnes
12 as well. Anybody close personal friends or social
13 relations represented by Mr. Barnes? If so,
14 please stand.

15 (There was no response.)

16 THE COURT: This event ---

17 THE BAILLIFF: Your Honor.

18 THE COURT: Oh, I'm sorry.

19 THE POTENTIAL JUROR: I know Mr.
20 Barnes. I am friends with the Barneses.

21 THE COURT: And would that affect your
22 ability to be fair and impartial?

23 PROSPECTIVE JUROR: No, Your Honor.

24 THE COURT: Okay. And you're number
25 39?

1 THE POTENTIAL JUROR: Yes, sir.

2 THE COURT: Okay. Thank you. This
3 event allegedly occurred on or about January the
4 21st of 2019 at the Family Dollar store on Manning
5 Avenue. Does any member of the jury panel know
6 anything about this case at all?

7 (There was no response.)

8 THE COURT: Any member of the jury
9 panel formed or expressed an opinion about any of
10 the matters or issues involved in this case? If
11 so, please stand.

12 Yes.

13 THE POTENTIAL JUROR: Your Honor, I'm
14 not sure if this addresses; but back in 2008 my
15 brother was murdered, and I just feel like I'm not
16 gonna be able to be fair. I'm still very angry
17 with the system here in Sumter, South Carolina,
18 and so I don't want to inflate any of my
19 bitterness and my hurt about this case and feel
20 like our family was done unjust, so I just ask to
21 not be part of the jury.

22 THE COURT: Okay. And what is your
23 number please, ma'am?

24 THE POTENTIAL JUROR: 106.

25 THE COURT: So based on the fact that

1 your brother was murdered, you don't think you can
2 be fair and impartial to the State or Defense?

3 THE POTENTIAL JUROR: No, sir, I ---

4 THE COURT: Okay.

5 (WHEREUPON, counsel approached the
6 bench for an off-the-record discussion.)

7 THE COURT: Ms. James, I appreciate
8 you letting me know. I'm going to excuse you for
9 this case, okay, so you can go.

10 Any member of the jury panel served on
11 the grand jury that heard this case, if so, please
12 stand?

13 (There was no response.)

14 THE COURT: Any member of the jury
15 panel a member or a financial contributor to any
16 organization that promotes law enforcement or
17 victim advocates' rights, if so, please stand.

18 Okay. Yes, sir. Give me your number.

19 THE POTENTIAL JUROR: Juror number 98.

20 THE COURT: Okay.

21 THE POTENTIAL JUROR: I'm a member of
22 Sumter County Crime Stopper.

23 THE COURT: And will that affect your
24 ability to be fair and impartial?

25 THE POTENTIAL JUROR: No, sir.

1 THE COURT: Thank you, sir.

2 Yes, ma'am.

3 THE POTENTIAL JUROR: I'm a member of
4 the -- my husband works for the sheriff's office
5 and we sign up for FOP.

6 THE COURT: Okay. And the fact that
7 your husband works for the sheriff's office --
8 give me your number again please, ma'am.

9 THE POTENTIAL JUROR: 86.

10 THE COURT: Will that affect your
11 ability to be fair and impartial?

12 THE POTENTIAL JUROR: Yes.

13 THE COURT: It would?

14 (Juror shakes head.)

15 THE COURT: Okay. Then I'm going to
16 excuse you.

17 Anyone else?

18 (There was no response.)

19 THE COURT: Any member of the jury
20 panel due to religious or moral religious unable
21 to sit in judgment of your fellow man, if so,
22 please stand.

23 (There was no response.)

24 THE COURT: Any member of the jury
25 panel so concerned or fearful of being exposed to

1 the Coronavirus that you don't believe you'd be
2 able to pay full attention to the issues involved
3 in this trial due to your concerns of the virus?

4 (There was no response.)

5 THE COURT: Okay. Any member of the
6 jury panel ever worked in a retail establishment
7 as a clerk or someone who confronted customers in
8 retail establishments? If that applies to you
9 please stand.

10 THE POTENTIAL JUROR: I'm an overnight
11 stocker so.

12 THE COURT: Walmart?

13 THE POTENTIAL JUROR: Yes.

14 THE COURT: What was your number
15 again?

16 THE POTENTIAL JUROR: 186.

17 THE COURT: Okay. Would that
18 affect -- the fact that this case, this defendant
19 is charged with a crime of armed robbery, would
20 that affect your ability to be fair and impartial?

21 THE POTENTIAL JUROR: No, sir.

22 THE COURT: Thank you, sir.

23 Yes, ma'am.

24 THE POTENTIAL JUROR: I'm a bank
25 teller.

1 THE COURT: Okay. And would the fact
2 that you're a bank teller and this is an armed
3 robbery case, would that affect your ability to be
4 fair and impartial?

5 THE POTENTIAL JUROR: No, sir.

6 THE COURT: Thank you. Give me your
7 number.

8 THE POTENTIAL JUROR: 211.

9 THE COURT: Okay, thank you.

10 Yes, ma'am.

11 THE POTENTIAL JUROR: I'm 111 and I
12 was a cashier in high school.

13 THE COURT: Okay. Say that again.

14 THE POTENTIAL JUROR: I was a cashier
15 in high school.

16 THE COURT: Oh, okay. Would that
17 affect your ability to be fair and impartial in
18 this case?

19 THE POTENTIAL JUROR: No.

20 THE COURT: Thank you.

21 Yes, ma'am.

22 THE POTENTIAL JUROR: I'm a branch
23 banker.

24 THE COURT: Would that affect your
25 ability to be fair and impartial trial in this

1 case?

2 THE POTENTIAL JUROR: Huh-uh.

3 THE COURT: What was your number?

4 THE POTENTIAL JUROR: 144.

5 THE COURT: Thank you.

6 MR. ROUTZONG: I'm sorry, what was the
7 number?

8 THE COURT: 144.

9 MR. BROWN: Your Honor, may I approach
10 real quick for the next question?

11 THE COURT: Okay.

12 (WHEREUPON, counsel approached the
13 bench for an off-the-record discussion.)

14 THE COURT: Has any member of the jury
15 panel ever been a victim or accuser of an armed
16 robbery, please stand.

17 THE POTENTIAL JUROR: I've been in
18 four robberies.

19 THE COURT: You what?

20 THE POTENTIAL JUROR: Four robberies
21 at the bank.

22 THE COURT: You've been in four
23 robberies at the bank? You were personally
24 present?

25 THE POTENTIAL JUROR: Yes, all of

1 them.

2 THE COURT: Would that affect your
3 ability to be fair and impartial?

4 THE POTENTIAL JUROR: No.

5 THE COURT: Thank you, ma'am.

6 THE CLERK: 144.

7 THE COURT: 144. Has anybody seen
8 anything, newspaper reports, television reports,
9 any -- any news, anything about this case? Does
10 anybody know anything about this case at all or
11 read anything in the newspaper, anything?

12 (There was no response.)

13 THE COURT: Any member of the jury
14 panel a friend on Facebook or social media with
15 any of the potential witnesses or parties or
16 attorneys in this case, if so, please stand.

17 THE POTENTIAL JUROR: Friends with
18 Mr. Jones.

19 THE COURT: You're friends with
20 Mr. Jones on Facebook?

21 THE POTENTIAL JUROR: Yes, sir.

22 THE COURT: Okay. The fact that
23 you're friends with potential witnesses on
24 Facebook, has anything appeared on Facebook about
25 this case at all?

1 THE POTENTIAL JUROR: No, sir.

2 THE COURT: Would that affect your
3 ability to be fair and impartial?

4 THE POTENTIAL JUROR: No, sir.

5 THE COURT: Okay. Any member of the
6 jury panel know of any reason whatsoever why they
7 can't give the State of South Carolina and this
8 Defendant a fair and impartial trial? If so,
9 please stand.

10 (There was no response.)

11 THE COURT: Any further questions from
12 the State?

13 MR. BROWN: No, sir, Your Honor.

14 THE COURT: From Defense?

15 MR. ROUTZONG: No, sir.

16 THE COURT: Okay, give me a jury.

17 THE CLERK: Ladies and gentlemen of
18 the jury ---

19 THE COURT: It's five and ten.

20 THE CLERK: Simply stand where you
21 are. Juror number 241, Daryl White (black male).
22 What says the State?

23 MR. BROWN: Please present Mr. White.

24 THE CLERK: What says the Defendant?

25 MR. ROUTZONG: Please excuse

1 Mr. White.

2 THE CLERK: Have a seat, sir.

3 Juror number 148, James McQuiller
4 (black male). What says the State?

5 MR. BROWN: Please present
6 Mr. McQuiller.

7 THE CLERK: What say the Defendant?

8 MR. ROUTZONG: Please seat
9 Mr. McQuiller.

10 THE CLERK: Have a seat, sir.

11 Juror No. 200, Phillip Skidmore (white
12 male.

13 THE POTENTIAL JUROR: Phillip
14 Skidmore.

15 THE CLERK: What says the State?

16 MR. BROWN: Please present
17 Mr. Skidmore.

18 THE CLERK: What says the Defendant?

19 MR. ROUTZONG: Please excuse
20 Mr. Skidmore.

21 THE CLERK: Have a seat, sir.

22 Juror No. 103, Craig Hunt (white
23 male). What says the State?

24 MR. BROWN: Please present Mr. Hunt.

25 THE CLERK: What says the Defendant?

1 MR. ROUTZONG: Please seat Mr. Hunt.

2 THE CLERK: Thank you. Please return
3 to your seat.

4 Juror No. 102, William Hudson (black
5 male). What says the State?

6 MR. BROWN: Please present Mr. Hudson.

7 THE CLERK: What says Defendant?

8 MR. ROUTZONG: Please seat Mr. Hudson.

9 THE CLERK: Have a seat, sir.

10 Juror No. 211, Chanel Stewart black
11 female). What says the State?

12 MR. BROWN: Please present
13 Ms. Stewart.

14 THE CLERK: What says the Defendant?

15 MR. ROUTZONG: Please excuse Ms...

16 THE CLERK: Juror No. 54, Chris
17 Divindo (Asian male). What says the State?

18 MR. BROWN: Please present
19 Mr. Divindo.

20 THE CLERK: What says Defendant?

21 MR. ROUTZONG: Please seat
22 Mr. Divindo.

23 THE CLERK: Have a seat.

24 Juror No. 183, Latonya Roach (black
25 female). What says the State?

1 MR. BROWN: Please excuse Ms. Roach
2 just for this case.

3 THE CLERK: Thank you, sir. You may
4 return to your seat please, ma'am.

5 Juror No. 191, Carol Sanders (black
6 female).

7 MR. BROWN: Please present
8 Ms. Sanders.

9 THE CLERK: What says Defendant?

10 MR. ROUTZONG: Please seat
11 Ms. Sanders.

12 THE CLERK: Have a seat back.

13 Juror No. 39, Nancy Clinkscales (white
14 female). What says the State?

15 MR. BROWN: Please present
16 Ms. Clinkscales.

17 THE CLERK: What says Defendant?

18 MR. ROUTZONG: Please excuse
19 Ms. Clinkscales.

20 THE CLERK: Return to your seat
21 please, ma'am.

22 Juror No. 236, Julie Watts (white
23 female).

24 SOLICITOR FINNEY: What number,
25 Mr. Clerk?

1 THE CLERK: 236.
2 SOLICITOR FINNEY: Thank you.
3 THE CLERK: What says the State?
4 MR. BROWN: Please present Ms. Watts.
5 THE CLERK: What says Defendant?
6 MR. ROUTZONG: Please seat Ms. Watts.
7 THE CLERK: Thank you. You may return
8 to your seat.
9 Juror No. 186, Travis Robinson (black
10 male). What says the State?
11 MR. BROWN: Please present
12 Mr. Robinson.
13 THE CLERK: What says the Defendant?
14 MR. ROUTZONG: Please excuse Mr.
15 Robinson.
16 THE CLERK: Thank you. Return to your
17 seat.
18 Juror No. 249, Ella Wright (black
19 female). What says the State?
20 MR. BROWN: Please present Ms. Wright.
21 THE CLERK: What says Defendant?
22 MR. ROUTZONG: Please seat Ms. Wright.
23 THE CLERK: Thank you, ma'am. Have a
24 seat.
25 Juror No. 153, Kelsey Miller (white

1 female). What says the State?

2 MR. BROWN: Please present Ms. Miller.

3 THE CLERK: What says Defendant?

4 MR. ROUTZONG: Please seat Ms. Miller.

5 THE CLERK: Have a seat, ma'am.

6 Juror No. 144, Lisa McLean (white

7 female). What says the State?

8 MR. BROWN: Please present Ms. McLean.

9 THE CLERK: What says Defendant?

10 MR. ROUTZONG: Please excuse

11 Ms. McLean.

12 THE CLERK: You can return to your

13 seat.

14 Juror No. 30, Gina Carter (black

15 female). What says the State?

16 MR. BROWN: Please present Ms. Carter.

17 THE CLERK: What says the Defendant?

18 MR. ROUTZONG: Please seat Ms. Carter.

19 Thank you.

20 Juror No. 193, Evan Sanders (black

21 male). What says the State?

22 MR. BROWN: Please present

23 Mr. Sanders.

24 THE CLERK: What says the Defendant?

25 MR. ROUTZONG: Please seat

1 Mr. Sanders.

2 THE CLERK: Have a seat, sir.

3 Juror No. 111, Natalie Johnston (white
4 female). What says the State?

5 MR. BROWN: Please present
6 Ms. Johnston.

7 THE CLERK: What says Defendant?

8 MR. ROUTZONG: Please excuse
9 Ms. Johnston.

10 THE CLERK: Have a seat please, ma'am.
11 Juror number 152, Barbara Mickins
12 (black female). What says the State?

13 MR. BROWN: Please present
14 Ms. Mickens.

15 THE CLERK: What says the Defendant?

16 MR. ROUTZONG: Please seat
17 Ms. Mickens.

18 THE CLERK: Have a seat please, ma'am.
19 Juror No. 92, Lakeia Hastie (black
20 female). What says the State?

21 MR. BROWN: Please present Ms. Hastie.

22 THE CLERK: What says Defendant?

23 MR. ROUTZONG: Please seat Ms. Hastie.

24 THE CLERK: Have a seat please, ma'am.
25 Alternate, Juror No. 6, Lucille

1 Anthony (black female). What says the State?

2 MR. BROWN: Please present

3 Ms. Anthony.

4 THE CLERK: What says Defendant?

5 MR. ROUTZONG: Please seat

6 Ms. Anthony.

7 THE CLERK: Have a seat please, ma'am.

8 Juror No. 227, Tyrel Turner, Jr.

9 (black male).

10 MR. BROWN: Please excuse Mr. Turner
11 just for this case.

12 THE CLERK: Yes, sir.

13 Juror No. 166, Terry Peeler (black
14 male). What says the State?

15 MR. BROWN: Please present Mr. Peeler.

16 THE CLERK: What says the Defendant?

17 MR. ROUTZONG: Please seat Mr. Peeler.

18 THE CLERK: Thank you, sir.

19 THE COURT: Any matters of law
20 pertaining to construction of the jury on behalf
21 of State?

22 MR. BROWN: Not from the State, Your
23 Honor.

24 THE COURT: On behalf of Defense?

25 MR. ROUTZONG: No, Your Honor.

1 THE COURT: Okay. If you'd have those
2 selected stand.

3 THE CLERK: Yes, sir, Your Honor.

4 When your name is called, stand where
5 you are. Juror No. 148, James McQuiller (black
6 male); Juror No. 103, Craig Hunt (white male),
7 Juror No. 102, William Hudson (black male); Gina
8 Carter (black female); Juror No. 193, Evan Sanders
9 (black male); Juror No. 152, Barbara Mickens
10 (black female); Juror No. 92, Lakeia Hastie (black
11 female). And the alternates jurors are Juror No.
12 6, Lucille Anthony (black female), and Juror No.
13 166, Terry Peeler (black male).

14 THE COURT: Okay. Those of you who
15 are not selected, you're free to go and ask you to
16 call back after 6:00 tonight. Thank you.

17 Okay. The rest of you, we need you to
18 report to courtroom 3-B. We're going to move
19 everything and set up in courtroom B, and then I
20 will bring you in into 3-A and we'll start the
21 trial. The jury rooms are not big enough for you
22 to deliberate in so when you ultimately decide
23 this case, where we will stage you is always going
24 to be in courtroom 3-B. So if you'd go in 3-B
25 we'll get everything moved up there and then we'll

1 start the trial.

2 (WHEREUPON, a recess was taken from the
3 proceedings.)

4 THE COURT: Anything before we move
5 upstairs?

6 MR. ROUTZONG: Judge, at some point in
7 time before you swear them in I've got to object
8 to the indictment.

9 THE COURT: Okay. We'll do all that
10 on the record and I'll finish ruling on the
11 hearing yesterday. I've read the Weaver case and
12 all the other cases, and I will put the rest of
13 that on the record.

14 MR. ROUTZONG: Yes, sir.

15 THE COURT: See y'all upstairs.

16 (WHEREUPON, a recess was taken from the
17 proceedings.)

18 THE COURT: I read the Weaver case
19 last night which, which basically deals with the
20 search of an automobile on a murder case in
21 Williamsburg County. And part of the issues in
22 that case was the United -- the South Carolina
23 Constitution requires probable cause to search,
24 just U.S. Constitution is and the argument is
25 whether you have more protection under the South

1 Carolina Constitution. But I don't think the
2 Weaver case necessarily applies in this case. In
3 this case the police had an articulate suspicion
4 to stop and detain the defendant in this case
5 based on a radio dispatch of an alleged armed
6 robbery that occurred at the Family Dollar store.
7 The description given from dispatch was similar
8 enough to the description observed by the law
9 enforcement officers and the defendant in this
10 case, and so I think they had a reasonable
11 articulate suspicion to detain him. And as a
12 result, they were detaining him from the alleged
13 armed robbery; therefore, under the Terry stop,
14 they had a right to search for weapons because
15 there was a reasonable belief that in an armed
16 robbery case that someone may be armed.

17 They approached him. It is clear on
18 the body cam they asked him about weapons; he
19 denied having them. They asked him if they had
20 any problem searching him. And the search, patted
21 down in his front pockets of the jacket, one side
22 there appeared to be a flashlight and a set of
23 keys; on the other side, a wad of money. The --
24 so -- and they asked him if they can, if he
25 could -- if they could search him and he

1 consented. There's a whole line of cases on
2 consent searches in this state; and the issue on
3 those was whether -- if somebody's been unlawfully
4 detained, if you had seized them unlawfully, then
5 the consent to search is not valid. In this case,
6 I don't think the seizure was unlawful, nor did
7 it -- they were investigating an armed robbery.
8 It did not extend past the unreasonable term; it
9 lasted at the most 36 minutes. During that
10 detention the officer returned to the store,
11 observed the video, observed the defendant in this
12 case, the clothing that he was wearing, and the
13 fact that the jacket was turned wrong side
14 outwards and the tag was exposed, as well as the
15 dark pants, the red pajamas that he had on and
16 that unusual purple belt that I think the officers
17 had sufficient probable cause based on that, and
18 that the search was lawful under Terry. It was
19 also a lawful consent search, and therefore, I
20 think the search was valid and I think they had
21 probable cause based on what they observed at the
22 scene, as well as what -- when they detained the
23 suspect in this case. So I'm going to deny your
24 motion. I think that it was a valid stop, a valid
25 seizure, and a valid search. Okay?

1 MR. ROUTZONG: Can I just ask for
2 clarification on one issue, Judge?

3 THE COURT: Sure.

4 MR. ROUTZONG: I just want to make
5 sure. Your ruling is that they had probable cause
6 to seize him un---

7 THE COURT: No, they didn't -- I
8 didn't say that. They didn't have to have
9 probable cause to seize him. They just got to
10 have probable cause to detain him. They had an
11 articulate reasonable suspicion to stop him and
12 detain him. And that deten -- and in that seizure
13 or in that stopping of him, they were
14 investigating an armed robbery. If the purpose of
15 that investigation had lapsed, then it may have
16 become an unlawful seizure. If it becomes an
17 unlawful seizure, then it becomes an unlawful
18 search. In this case I'm saying that didn't
19 happen. In a whole litany of cases that Supreme
20 Court has decided, usually dealing with a traffic
21 stop, and the question is if you stop somebody for
22 speeding and once you have completed your
23 investigation for the reason you stopped him, if
24 you detain him any longer than that without a
25 articulate reasonable suspicion that criminal

1 activity is going on, you have to have that during
2 the lawful stop. If you don't have that, then any
3 detention after that is unlawful. In this
4 situation they seized him. At that point they may
5 not have had probable cause or they may have, but
6 the seizure was lawful. It did not extend to an
7 unlawful seizure when he gave consent to search or
8 to Terry frisk him.

9 MR. ROUTZONG: And once, again, Judge,
10 and I don't mean to ---

11 THE COURT: I understand. I ---

12 MR. ROUTZONG: --- waive this. I just
13 want to make sure we got a clear record. It's our
14 argument that under the South Carolina
15 Constitution there's a prohibition against an
16 unreasonable invasion of a person's privacy. And
17 you're -- and in Weaver it says that you have to
18 have probable cause to do that, and your ruling
19 today is that they had probable cause to evade his
20 privacy on Harvin Street.

21 THE COURT: My, my interpretation of
22 Weaver it says you have to have probable cause to
23 search, and I agree with that. You have to have
24 probable cause to search somebody or you have to
25 have consent. You can't search somebody unless

1 you got probable cause or consent, except under
2 Terry. You have a right for the officer
3 protection to pat somebody down for weapons. He
4 has a right to pat this guy down for weapons. And
5 even in Terry you just -- you can't randomly stop
6 somebody and pat them down for weapons. You have
7 to have a reason to stop him and then you have to
8 have some reason to believe that he may be armed.
9 In this case they had a reason to believe that he
10 may be armed because they were investigating an
11 armed robbery so they had the reason to believe he
12 was armed under Terry, so they could have stopped
13 and patted him down for weapons under Terry. They
14 did that, and it's clear on the video when they
15 patted him -- it wasn't like they took his shoes
16 off and found something between his toes. When
17 they patted him down for a weapon, he had bulges
18 in both front pockets. One side was a set of keys
19 and a flashlight. The other side was a wad of
20 money which under a Terry stop and frisk, they had
21 a right to reach in those pockets and see what
22 that was. So I think they were lawful even if
23 they did have consent under Terry to do that.

24 In this case they also had consent.
25 They asked him and he said he didn't have any

1 weapons. They said, well, you don't have any
2 problem with me searching? He said no. So they
3 had consent to search. After that consent to
4 search and they found the money, they established
5 probable cause by going back to the scene, looking
6 at the video; and once you saw the clothing that
7 the person in the store had on the video that
8 robbed the place, in his store, his clothing, they
9 had probable cause at that point to arrest him.

10 So my whole is, under Weaver you had
11 to have probable cause to search or you had to
12 have a consent. In this situation they had a
13 Terry stop, they had consent, and they developed
14 probable cause to arrest him after they went to
15 the store, okay. Have I left something out you
16 don't understand?

17 (Defendant raising his hand.)

18 MR. ROUTZONG: Yes, sir. I think you
19 — it appears that you made an analysis under the
20 Fourth Amendment; and I was trying to really focus
21 on Article 1, Section 10, invasion of privacy, but
22 I think you answered that question.

23 THE COURT: And, but basically in the
24 Weaver case it dealt with a search, and the
25 argument was that the constitution, the South

1 Carolina Constitution requires probable cause to
2 search and it was argument whether it fell under
3 the, you know, automobile exception. And the
4 difference between -- you got to have probable
5 cause to search an automobile. The question is
6 whether you can do it without a warrant or with a
7 warrant. Normally you got to have a warrant by a
8 neutral detached magistrate to conduct a search.
9 You take probable cause to the magistrate, you get
10 a warrant, you come back. They had a warrant in
11 Weaver because the return wasn't there. But the
12 automobile exception is because an automobile is a
13 movable object, that if you establish probable
14 cause on the road, you don't have to go get a
15 warrant. The automobile exception says you can
16 search the car once you have probable cause. I
17 don't think the South Carolina Constitution
18 requires any greater than that based on my
19 interpretation of Weaver, that they got to have
20 probable cause to search.

21 In this case they had consent to
22 search and they -- and they had a right to pat him
23 down under Terry. So they -- they may not have
24 had probable cause at the time they found the
25 stuff in his pocket; but it was, it was consensual

1 and it was a Terry pat-down. They got -- and they
2 may have had prob-- it's a close call based on the
3 reading that they had that they had prob-- it was
4 clearly after he went to the store and looked at
5 the video and came back and looked at his
6 clothing, they had probable cause to charge him
7 with armed robbery. So once, once he gets back to
8 the store and they arrest him, there's clear
9 probable cause.

10 When he was stopped, they had an
11 articulate suspicion based on the dispatch that
12 they were looking for a black male with a brown
13 jacket and dark pants on. And you made analogy it
14 was brown or black jacket, but he had a liner.
15 And once you look at the video and realize he had
16 the jacket turned wrong side out, I think that
17 they had articulate suspicion to detain him. I
18 don't think the detention was unlawful. They had
19 a right to Terry search him for weapons. They
20 did. He gave consent. So the keys, the
21 flashlight, and the money I think come in, and I
22 don't think it was an unlawful search based on
23 that. Okay.

24 THE DEFENDANT: Can I speak, Your
25 Honor?

1 THE COURT: You have to ask your
2 attorney.

3 THE DEFENDANT: May I speak to -- I
4 want to make it known for the record that all the
5 evidence that they said for the stop wasn't there.
6 The body camera from -- from Officer Sinkler that
7 stated that she recognized me come from anywhere,
8 even from that store, coming from that store. I
9 wasn't seen coming from that store. I was -- she
10 was behind me so she couldn't see the inner lining
11 of my clothing. Your Honor, I want to state for
12 the record that they had the evidence to produce
13 these -- these cameras to show that any way that
14 she tried to stop me in whichin she didn't, Your
15 Honor. For them to say that that was a reasonable
16 stop, Your Honor, it wasn't right because they
17 didn't have the evidence to backup her
18 allegations.

19 THE COURT: Okay. My understanding of
20 her testimony is she's in the area looking for a
21 suspect with a brown and black jacket on. She
22 sees you with a ---

23 THE DEFENDANT: All brown jacket on,
24 sir.

25 THE COURT: I understand that, ---

1 THE DEFENDANT: And then she ---

2 THE COURT: --- but that's close
3 enough for her to stop you, ---

4 THE DEFENDANT: She quotes ---

5 THE COURT: --- at least for
6 questioning.

7 THE DEFENDANT: She quotes also that
8 she tries to stop me, Your Honor. I was coming
9 from the liquor store trying to cash a check.
10 They -- the rest of the -- the rest of the
11 incident, they don't want to put that out because
12 that's the facts in the case. They asked me where
13 I was coming from. I showed them the check and I
14 told them from the liquor store, Your Honor, so
15 all that evidence is not in record here.

16 THE COURT: And you certainly have a
17 right to put it in if you want to.

18 THE DEFENDANT: Yes, sir, we want to
19 add that to the record, sir.

20 THE COURT: Is there anything else,
21 Mr. Routzong?

22 MR. ROUTZONG: Well, just probably one
23 other matter. I did ask Solicitor Brown, I guess
24 it was a couple of weeks ago or maybe longer than
25 that, about the dash cam video for Patrolwoman

1 Sinkler and body cams, and he tells me that it's
2 not there. And I asked her yesterday, she thought
3 it was. But just for the record, Mr. Brown
4 diligently tried to get that stuff at my request
5 and apparently it doesn't exist anymore. That's
6 just for the record, sir.

7 THE COURT: Okay. You want to respond
8 to that?

9 MR. BROWN: Just to continue the
10 record, and he's absolutely right. We did what we
11 could. I contacted Detective Melton. He checked
12 in on it and he did everything. We couldn't find
13 it. We could not find any dash cam or body cam.
14 I don't know if it got turned off or didn't get
15 turned on or got corrupted; sometimes those things
16 happen. I'd simply point out that with all the
17 dash cam we did provide so there's maybe 30
18 seconds of interaction with Mr. Johnson that isn't
19 on somebody's dash cam so I -- we've done
20 everything we possibly can, and it's just we
21 cannot find it.

22 THE COURT: Okay. Thank you.

23 MR. ROUTZONG: Could Mr. ---

24 MR. BROWN: And I have no doubt they
25 will bring up the fact we can't find it, and I'm

1 fine with that.

2 MR. ROUTZONG: Can Mr. Brown and I
3 have a moment with you in chambers, Judge?

4 THE COURT: Okay. We got -- the jury
5 happy back there, okay?

6 THE BAILLIFF: Yes, sir.

7 THE COURT: All right. I'll see y'all
8 in chambers.

9 (WHEREUPON, a recess was taken from the
10 proceedings.)

11 MR. BROWN: May it please the Court.
12 Your Honor.

13 THE COURT: Yes, sir.

14 MR. BROWN: May it please the Court.
15 Your Honor, before you is the State of South
16 Carolina vs. Michael Vandrell Johnson. Your
17 Honor, this morning at about 10:00 this morning we
18 finished picking a jury on the case versus the
19 defendant. This was for the offense of armed
20 robbery. Your Honor, I'm handing the plea sheet
21 now to Ms. Lily Britt and she will hand it up to
22 you; but, Your Honor, at that time he'd indicated
23 he wished to go to trial. Your Honor, following
24 your ruling where you indicated you would not be
25 suppressing the evidence and that the State would

1 be going to trial, indications were given to us
2 from defense counsel that he was wishing to change
3 his posture to a guilty plea. Your Honor, he is
4 now here to plead guilty to the offense of armed
5 robbery. Your Honor, the State is making no
6 recommendations or negotiations as a part of his
7 plea.

8 THE COURT: Okay.

9 Mr. Johnson, how about raise your
10 right hand please, sir.

11 WHEREUPON,

12 MICHAEL VANDRELL JOHNSON,
13 having been duly sworn by the Court, testified as
14 follows:

15 THE COURT: You want to plead guilty?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Have you had enough time
18 to talk to your lawyer about your decision?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Are you satisfied with his
21 representation?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Anybody promise you
24 anything or threaten you in any way?

25 THE DEFENDANT: No, sir.

1 THE COURT: Are you under the
2 influence of alcohol or drugs today?

3 THE DEFENDANT: No, sir.

4 THE COURT: Do you have any mental
5 diseases that would keep you from understanding
6 what you're doing here today?

7 THE DEFENDANT: I'm on medication for
8 hallucinations and things like that; but when I'm
9 taking it, it got me to a level so I understand
10 what's going on.

11 THE COURT: Okay. How long have you
12 been on this medication?

13 THE DEFENDANT: About a year or two
14 years now.

15 THE COURT: Okay. So you're clear
16 headed today and you understand exactly what's
17 going on?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Okay. You understand this
20 carries from 2 to 30 years in jail. It is a
21 violent and most serious offense so if you get two
22 most -- serious offenses, if you get two serious
23 offenses against you, you're looking at life
24 without the possibility of parole. You understand
25 that?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: And this is a no parole
3 offense. You understand that?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: So you to have to serve at
6 least 85 percent of whatever this sentence is.

7 THE DEFENDANT: Yes, sir.

8 THE COURT: By pleading you're giving
9 up your constitutional right to remain silent
10 because you're telling me you're guilty. You
11 understand?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: You're also giving up your
14 right to a jury trial. We got a jury sitting
15 there ready to go. In that trial you'd be
16 presumed innocent. The State would have the
17 burden of proving you guilty beyond a reasonable
18 doubt to all 12 jurors. You'd be able to sit in
19 this courtroom and confront each witness that
20 would testify against you. Your lawyer could
21 cross-examine those witnesses, and he can subpoena
22 witnesses to testify on your behalf. You
23 understand that?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: He could put up any

1 defenses you have to this crime. When you plead
2 guilty you give that up. You understand?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: If you want to appeal this
5 guilty plea today, you or your lawyer must file
6 that appeal with the Clerk of Court within ten
7 days of today's date or you give that up as well.
8 You understand?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Okay. Solicitor, I've
11 seen the facts and I heard them from the body cam,
12 but you can put brief statement of facts on the
13 record.

14 MR. BROWN: Your Honor, I would like
15 to just -- because there was a lot that went on
16 that you haven't heard yet, I would like to put
17 the full facts on the record.

18 THE COURT: Sure.

19 MR. BROWN: "If you want to see your
20 family and kids again, bitch, give me the money.
21 I'll fucking kill you." Those are the first words
22 that Bryanna Dennis heard from the defendant on
23 January 21st, 2019, as he walked into the Family
24 Dollar located on Manning Avenue here in the city
25 of Sumter and presented what he represented to be

1 a weapon to her, what we later believe was a
2 flashlight, and demanded money. He at that time
3 stayed in the store for 45 seconds. He was able
4 to take all the cash out of the register while
5 presenting this weapon at her, and he also jerked
6 the cash register on the second cash register out
7 of the drawer and walked out of the store.

8 Your Honor, Ms. Dennis on that day
9 after hearing those words made a call to 911 in
10 which she indicated to law enforcement that they
11 had just been robbed, that a man wearing dark
12 black in colored pants and a tan and black jacket
13 along with a mask had just now left the store.
14 She didn't know what direction they went. Your
15 Honor, Officer Sinkler with Sumter Police
16 Department was one of the first people on scene.
17 Your Honor heard the testimony yesterday from her
18 that she saw a person matching this description.
19 When she tried to make contact, he attempted to
20 flee and ran away from her. Fortunately, other
21 officers quickly conversed in that same location,
22 including Randy Jones, Officer Cannon. They all
23 converged on location. They were able to take the
24 defendant in custody about five minutes after the
25 robbery. He was at that time wearing a tan

1 jacket. As they were able to determine later, he
2 had been wearing the jacket inside out during the
3 commission of the robbery.

4 Investigator Melton with the Sumter
5 Police Department investigated this case. That
6 night he went to the store. You've already seen
7 pictures of the clothing that he was wearing; but
8 the defendant was wearing notable clothes that
9 indicated that he was the person that perpetrated
10 this crime, most notably the belt that he was
11 wearing which we have in evidence. The pajama
12 pants that he had underneath his black pants which
13 we, also we have in evidence. He was wearing the
14 mask, and he was also wearing the black and tan
15 jacket that we suspected. We have all those items
16 in evidence.

17 Your Honor, when Mr. Johnson was taken
18 to the police department, he fought very hard not
19 to have his clothes taken and to be photographed.
20 He actually threatened the life of Officer Cannon
21 on multiple occasions while at the jail telling
22 him that he would kill him when he got out of the
23 jail. And the next day when the arrest warrant
24 were served on him by Detective Melton the
25 defendant, upon leaving the room where the

1 warrants were served asked him, engaged why they
2 were fucking with him, it wasn't a real gun, and
3 they could not charge him with armed robbery.

4 Your Honor, the State believes this
5 defendant needs a significant prison sentence. He
6 has a long criminal history. In 1999 he was
7 convicted to resisting arrest. In 2003, he was
8 convicted of common law strong armed robbery.
9 This was originally charged as an armed robbery.
10 He received seven years suspended to time served
11 and two years probation. Your Honor, in 2005 he
12 was convicted of common law strong armed robbery.
13 Again, I believe that was off an armed robbery he
14 received one year. In 2006 and -7 he picked up
15 breaking and entering motor vehicles. In 2008 he
16 had a malicious injury, 1 to \$5,000. He received
17 a one year prison sentence at that time. 2010 it
18 appears he was violated on his strong armed
19 robbery, his previous one. He was sent to prison
20 for two years at that time. Your Honor, he has an
21 assault and battery in the second degree from 2012
22 where he received three years suspended to time
23 served and six months probation. Your Honor, in
24 2014 a domestic violence. 2016, a fraudulent
25 check. And Your Honor, just prior to this event

1 on October 8th, 2018, he was convicted of burglary
2 in the third degree where he received three years
3 suspended to time served and two years probation.
4 We believe he was on probation at the time this
5 event occurred.

6 Your Honor, Investigator Melton worked
7 very hard on this case. All of our officers did a
8 phenomenal job putting it together. I hate that
9 you didn't get to hear the testimony of Bryanna
10 Dennis. She is as impressive of a victim as I've
11 ever seen and someone who never stepped foot in
12 that store again after this event. She was a
13 college student at the time. She was attempting
14 to just earn some extra funds to put herself
15 through college, and she's honestly as impressive
16 as you could ever ask for. I would ask the Court,
17 if she wishes to address the Court, to be able to
18 talk.

19 THE COURT: I'll be glad to hear from
20 her.

21 THE VICTIM: Hello.

22 THE COURT: Hello.

23 THE VICTIM: My name is Bryanna
24 Dennis. I just want to say it sucks that I got
25 put in this situation.

1 I wish you the best. I'm sorry for
2 anything that you went through, but...

3 I appreciate you giving me the chance
4 to talk. Thank you for making our community safe,
5 and I just hope that justice will be served today
6 and that this doesn't happen again.

7 And here for you, I know, I don't know
8 your situation at the time and I really hope and
9 wish you the best. I really hope that you do your
10 sentence and that you get the help you need and
11 that you stay out of someone's harm's way and
12 that's all I have to say.

13 THE COURT: Thank you, ma'am.

14 MR. BROWN: Let me just check to see
15 if Detective Melton wants to add anything else.

16 THE INVESTIGATOR: Your Honor, could I
17 please just make one real quick addressment?

18 THE COURT: Yes, sir.

19 THE INVESTIGATOR: I appreciate the
20 time and the consideration that you gave this
21 case, and I would also like to say that it's my
22 belief -- I've investigated several of these --
23 and I know Mr. Brown presented the criminal
24 history that, you know, unfortunately it's almost
25 like what I refer to as beating the system twice.

1 And I'm just glad that we're here today and that
2 the system is finally what I refer to as caught up
3 with the defendant, and I hope that he gets a fair
4 sentence and I also hope that he turns it around.
5 That's all I have to say, Your Honor.

6 THE COURT: Thank you, sir.

7 Anything else from the State?

8 MR. BROWN: Nothing further from the
9 State at this time, Your Honor.

10 THE COURT: Mr. Routzong. Yes, sir.

11 MR. ROUTZONG: Thank you, Your Honor.

12 I'm compelled, Your Honor, to say right off the
13 bat how gracious and I appreciate the remarks of
14 Ms. Dennis and her well wishes. I'm also
15 compelled to point out that all those things that
16 the solicitor told you, knowing all that, he found
17 it was appropriate to make an offer originally of
18 15 years.

19 MR. BROWN: Your Honor, I'm sorry, I'm
20 going to object to that.

21 THE COURT: Okay.

22 MR. BROWN: I've withdrawn that plea
23 offer and, further, I said -- and I told you in
24 chambers -- I wasn't aware of him threatening the
25 life of Deputy Cannon, or Officer Cannon, when I

1 made that plea offer. We are not making any
2 recommendation of 15 years, and I don't want to
3 represent that we are.

4 THE COURT: Okay.

5 MR. ROUTZONG: I apologize if I
6 misrepresented my understanding of the case. But
7 still, Judge, knowing all the things other than
8 what he just said, that was his offer. Judge,
9 he's a 39 year old man. He has three children as
10 young as 3 and as old as 19. The middle one is 6.
11 He's got an 11th grade education. He's a resident
12 of Columbia. He's been very forthcoming with me,
13 Judge, about his situation just prior to these
14 events. He was at Tuomey Hospital. His mother,
15 as turns out, was on her death bed; he knew that.
16 And he went -- she had given him a check. She
17 went to Boney's Liquor Store which is, I don't
18 know, it's not in Stonesville, but it's pretty
19 close to the Family Dollar. They wouldn't cash
20 the check. He tells me was seeking drugs, and
21 this is the end result. He's got a bad drug
22 problem.

23 He was very despondent at the time and
24 he's already alluded to some of his, maybe some of
25 the mental health issues. I don't have any

1 concerns about his competency; I never have. I
2 think we can look at the video; and at least my
3 interaction with him, I'm comfortable to say he's
4 not incompetent. But he does have these issues,
5 Judge, about clearly he was depressed on that day.
6 He sought to get money to get drugs.

7 One of the most important things I
8 think the Court can consider is the fact everybody
9 knows there wasn't a gun. Ms. Dennis clearly has
10 been frightened very severely, and he's going to
11 get punished by that, Judge, but nobody got
12 physically hurt. And I'd ask the Court to take
13 that into consideration.

14 THE COURT: Okay. Thank you.

15 MR. ROUTZONG: I think Mr. Johnson
16 would like the Court to hear from him.

17 THE COURT: Yes, sir.

18 THE DEFENDANT: Your Honor, first I'd
19 like to thank you -- excuse me for a second.
20 Don't look at her? Can I speak to the victim,
21 Your Honor?

22 THE COURT: Yeah, just don't get --
23 you stand back here and talk to her.

24 THE DEFENDANT: Ms. Bryanna Dennis,
25 I'm sorry for what happened and putting you

1 through so much. You know, it was, it was all a
2 bad decision on my part, you know, but I had no
3 intentions for putting your life in harm's way in
4 any way no how, you know. I apologize, you know.
5 I got nieces and nephews your age and they're
6 coming up in the community and they're productive
7 citizens. I'm sorry for having to intervene (ph)
8 and what you asked me and I want to apologize.
9 Would you forgive me?

10 THE VICTIM: Yes, I do now.

11 THE DEFENDANT: Your Honor, I just
12 want to ask the Court to forgive me for the
13 intrusions of any citizens. Sorry for wasting any
14 time. I did had some issues going on back to
15 background issues, and it turned me to a bad way.
16 It turned me to addiction of drugs, to a drug I
17 couldn't handle. I lost my wife. I had -- I took
18 mental guidance counseling. It kind of mess me
19 up. The drugs I was using was methamphetamine and
20 crack cocaine, and I was in the hospital for
21 abusing and started seeing things and things like
22 that. And then I met my sister in a store off
23 I-20 in -- off Exit 44 in Batesburg and Leesville,
24 and she told me my mother was dying. So I came
25 down here and I witness they cut her leg off and,

1 you know, she told me she love me and they told me
2 there was nothing they could do about it, sir.
3 So, you know, I was, I was depressed. I was under
4 the influence, sir, and I committed these crimes.

5 I'm standing here because I did these
6 crimes, sir, and I had a long time to think about
7 it when I sit down in my cell and I thought about
8 it. I'm not gonna try to fight this because it's
9 something I done, you understand. I want to make
10 it right. But, you know, I don't want to spend
11 the rest of my life looking from up here, sir.
12 You know, if you can be any way considerate, you
13 know, thank you, Mr. Cochran.

14 THE COURT: Okay.

15 THE DEFENDANT: I would have to -- you
16 know, I do want the Court to know that, you know,
17 I'm not a bad person at all, you know. I made
18 some -- some bad decisions and I'll pay for them.

19 THE COURT: Okay. Thank you.

20 MR. ROUTZONG: Judge, just one other
21 thing. What we're asking -- well, to begin with,
22 I met his niece. She came to the courthouse
23 yesterday. I met her for the first time. She's
24 in the Air Force, beautiful young lady, sweet as
25 she can be. And she was concerned about this man

1 right here, Judge, and I reflected on that. And I
2 thought to myself this sweet person has seen
3 another side to Mr. Johnson that maybe I haven't
4 seen. Mr. Johnson and I have had our ups and
5 downs about this case. But I know that she knows
6 that person and that's the man, Judge, I would ask
7 you to consider while you're sentencing. We'd ask
8 the Court, in light of all these things, to
9 sentence Mr. Johnson to the minimum sentence, Your
10 Honor, of ten years.

11 THE COURT: All right. Mr. Johnson.

12 THE DEFENDANT: Yes, sir.

13 THE COURT: I hope -- you made some
14 bad choices in your life, and you chose -- I
15 understand drugs are a huge problem in our
16 society, but you made some choices when you got
17 hooked on drugs. You made some choices the day
18 you walked in the store and robbed this lady.

19 THE DEFENDANT: Yes, sir, I did.

20 THE COURT: And you got a bad record
21 for doing that. And I hope, you know, that when
22 you finish this sentence you'll come out a better
23 person, and I hope it has a positive impact on
24 you. I sit here every day trying to separate the
25 wayward from the wicked and trying to figure out

1 what's fair for society and what -- the
2 legislature has made this a serious crime and they
3 passed substantial punishment for it. I've tried
4 to fashion a sentence based on your record and the
5 facts in this case that's fair; I don't know
6 whether it is or not, but I hope when you get out
7 you won't ever get involved with illegal activity
8 again.

9 The sentence of the Court is you're
10 committed to the State Department of Corrections
11 for a term of 17 years. I've given you credit for
12 whatever time you served toward that.

13 THE DEFENDANT: Thank you, Your Honor.

14 MR. ROUTZONG: Thank you, Your Honor.

15 THE COURT: Thank you, sir.

16 THE DEFENDANT: I want to say thank
17 y'all. Law enforcement, y'all was on time, but
18 you know, it was my decision. I made bad
19 decisions, forgive me. Like I say, forgive me
20 please. Have a nice one.

21
22
23 * * * END OF REQUESTED TRANSCRIPT OF RECORD * * *
24
25

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 FLORENCE)

I, FRANCES B. RAY, Registered Professional Reporter (RPR), court reporter for the State of South Carolina, Third Judicial Circuit, do hereby certify that the foregoing proceeding is a stenographic report and was transcribed through computer-aided transcription; that the foregoing transcript contains a true record of the proceedings.

I further certify that I am neither counsel for, nor related to nor employed by any of the parties connected to the action, nor am I financially interested in the action.

Witness my hand at Florence, South Carolina, this 4th day of February, 2022.

Frances B. Ray

FRANCES B. RAY, RPR

STATE OF SOUTH CAROLINA

RECORDED IN THE COURT OF COMMON PLEAS

County of Sumter

2021 SEP 13 PM 2:41

Michael Vandrell Johnson
Full name and prison number (if any) of ApplicantJAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.2021 CP-43-1588
CERTIFIED TRUE COPY
OF ORIGINAL FILE

v.

State of South Carolina

APPLICATION FOR
Debra L. Mayes
DEPUTY CLERK OF COURT
POST-CONVICTION RELIEF
SOUTH CAROLINAINSTRUCTIONS - 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 Evans Inst 610 Hwy 9 West ~~Bennettsville~~
Bennettsville SC, 29512
2. Name and location of Court which imposed sentence Sumter County
Court of General Sessions
3. Name(s) of co-defendant(s) (if any) None
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2019-65-43-0414 / armed robbery
 - (b) _____

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) 9-30-2020 / 17 years - 85%
- (b) _____
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty ✓
- (b) after a plea of not guilty _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
- NO
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. N/A
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. N/A
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. N/A
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. N/A
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) N/A
- (b) _____

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully: Chronic V. State
- (a) Strickland V. Washington / Ineffective Assistance of Counsel
- (b) Fourth amendment Violated / Sixth amendment Violated
- (c) Involuntary Guilty plea
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) Failure to raise objections to rights violated, (etc.)
- (b) Lack's probable cause / lack reasonable suspicion, (etc.)
- (c) Lack of effective Assistance of Counsel, (etc.)
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? NO
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
- (d) any other petitions, motions or applications in this or any other Court? NO
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. N/A
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. N/A
- ii. _____
- iii. _____
- iv. _____

(c) the disposition thereof:

- i. N/A
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. N/A
- ii. _____
- iii. _____
- iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. N/A
- ii. _____
- iii. _____
- iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

NO

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

- i. N/A
- ii. _____
- iii. _____

(b) the proceedings in which each ground was raised:

- i. N/A
- ii. _____
- iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) N/A

(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? _____

(c) your sentencing? yes

(d) your appeal, if any, from the judgment of conviction or the imposition of sentence? _____

(e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? _____

18. If you answered "yes" to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:

i. Michael D. Rutzog of the Sumter County
public defender's office

ii. _____

iii. _____

(b) the proceedings at which each such attorney represented you:

i. Guilty plea

ii. Sentencing

iii. Violation of the fourth amendment motion to
suppress evidence

19. State clearly the relief you seek in filing this application:

Dismiss case do to the fourth amendment violation,
new trial

20. Are you now under sentence from any other court that you have not challenged?

NO

STATE OF SOUTH CAROLINA)

County of Sumter)

VERIFICATION

I, Michael Vandrell Johnson, 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.

Michael Johnson

SWORN to and subscribed before me this 9th
 day of September, 2021

S. Outlaw (L.S.)
 Notary Public

My Commission Expires: 2/17/24

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, Michael Johnson Michael Johnson, 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.

Michael Johnson
Applicant

SWORN or affirmed to and subscribed before me this

9th day of September, 2021

J. Outata
Notary Public

My Commission Expires: 2/17/24

RECORDED
2021 SEP 13 PM 2:41
CLERK OF COURT
SUMTER COUNTY, S.C.

STATE OF SOUTH CAROLINA)
COUNTY OF SUMTER)

MICHAEL V. JOHNSON, # 3090430,)
Applicant,)

v.)
STATE OF SOUTH CAROLINA,)
Respondent.)

IN THE COURT OF COMMON PLEAS
FOR THE THIRD JUDICIAL CIRCUIT

Case No.: 2021-CP-43-01588

**RETURN AND MOTION FOR A MORE
DEFINITE STATEMENT TO THE
APPLICATION FOR POST-
CONVICTION RELIEF**
(Counsel Already Appointed)

In response to Applicant Michael V. Johnson's post-conviction relief application filed on September 13, 2021, Respondent makes the following return¹ to the application and requests Applicant, through appointed counsel, file an amended return with specific allegations and supporting facts in compliance with the Uniform Post-Conviction Procedures Act (S. C. Code Ann. § 17-27-10 et seq.) and the South Carolina Rules of Civil Procedure before an evidentiary hearing will be held on his claims of ineffective assistance of counsel as vaguely set forth in his application.

I. Procedural History

Applicant is presently confined in the South Carolina Department of Corrections. On January 21, 2019, Applicant entered a Family Dollar store in Sumter, brandished a firearm, and

¹ Respondent's return was due to be filed within sixty days of receipt. See Rule 12(a), SCRCF ("[T]he State of South Carolina shall answer or otherwise respond to an application for post-conviction relief within 60 days after service of the application, if it arises out of a guilty plea, and 90 days if it arises out of a trial."). However, on the date the return was due to be served, the court reporter had not yet delivered the requested transcript for Applicant's trial and plea proceedings to the State. Since receipt and review of this transcript was necessary for the drafting and submission of a return, Respondent requested an extension to file this return. This Court granted Respondent an extension of thirty days from the receipt of the transcript to serve its return to the application. See S.C. Code Ann. § 17-27-70(a) (establishing that the Court may fix the time in which the State must respond and that "respondent shall file with its answer the record or portions thereof that are material to the questions raised in the application."); *Guinyard v. State*, 260 S.C. 220, 195 S.E.2d 392 (1973) (holding the trial court may extend the time for filing and that the time limit prescribed by the statute is not mandatory, but discretionary with the trial court.). The transcript was received on February 8, 2022, and, according, this return is due to be served today.

demanding monies from store employees, who complied with his demands. The encounter was captured on surveillance video. Applicant then fled the store on foot and was apprehended while in possession of the items consistent with what was presented as a handgun during the robbery and the monies taken. He was subsequently arrested and charged with armed robbery. Thereafter, the Sumter County Grand Jury indicted Applicant for armed robbery (2019-GS-43-0414).

Applicant was represented by Assistant Public Defender Michael Routzong of the Third Circuit Public Defender's Office. Assistant Solicitor Tyler Brown of the Third Circuit Solicitor's Office prosecuted the case. On September 29, 2020, Applicant proceeded to a jury trial before the Honorable R. Ferrell Cothran, Jr., circuit court judge. However, following pre-trial motions and the striking of a jury, Applicant elected to forgo his right to a jury trial and changed his plea to guilty. Following a through plea colloquy, Judge Cothran accepted Applicant's guilty plea and sentenced him to seventeen years of imprisonment. Applicant did not pursue a direct appeal or otherwise challenge his plea or sentence until the filing of this instant post-conviction relief action.

II. Current Action before the Court

In his application for post-conviction relief, Applicant alleges he is entitled to relief based on the following grounds:

(a) Ineffective assistance of counsel: "Chronic v. State" and "Strickland v. Washington"

- "failure to raise objections to rights violated, etc."

(b) "Fourth Amendment Violated/Sixth Amendment Violated"

- "lack probable cause/lack reasonable suspicion, etc."

(c) Involuntary Guilty Plea

- lack of effective assistance of counsel

As requested relief, Applicant states he is seeking, “dismiss[al] [of the] case d[ue] to the fourth amendment violation, new trial.”

Based on these vague allegations, all which reference ineffective assistance of counsel (including the Sixth Amendment of the United States Constitution of effective representation by competent counsel), Respondent interprets these claims as general ineffective assistance of counsel. However, all of these claims are vague and lack sufficient specificity. Based on this, Respondent addresses ineffective assistance of counsel generally, but also moves for a more definite statement and requests that Applicant, through his appointed counsel, file an amended application clearly delineating the specific grounds for relief with supporting facts as required under the applicable rules and statutes.

Attached herewith and incorporated herein are the records of the Sumter County Clerk of Court regarding the underlying general sessions proceedings, the transcript from Applicant’s trial and plea proceeding, and Applicant’s records from the South Carolina Department of Corrections. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

III. Response to Allegations of Ineffective Assistance of Counsel

In his application, Applicant raises generic claims of ineffective assistance of counsel without any specificity or facts to support such allegations. Accordingly, Respondent addresses this general allegation and Respondent submits the record establishes Applicant will not be able to prove any ineffectiveness of counsel as to these claims. However, as set forth below, Respondent requests that Applicant, through his counsel, file an amended application with specific grounds for relief so that Respondent may file an amended return specifically addressing all claims.

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. See generally S.C. Code Ann. § 17-27-20(A) (enumerating allegations cognizable in PCR actions). The allegation of denial of such representation sets forth a prima facie violation of this constitutional right, and raises a question of fact that can only be determined by an evidentiary hearing. Rogers v. State, 261 S.C. 288, 291, 199 S.E.2d 761, 762 (1973).

In a post-conviction relief action, the applicant bears the burden of proving the allegations by a preponderance of the evidence—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 to determine whether counsel’s conduct “was so ineffective as to require reversal” of the applicant’s conviction or sentence. 466 U.S. at 687. First, the applicant must show that counsel’s performance was deficient; and second, that the deficient performance prejudiced the applicant. Id. at 668; Butler, 286 S.C. at 442, 334 S.E.2d at 814.

The first prong—constitutional deficiency—is “necessarily linked to the practice and expectations of the legal community.” Padilla v. Kentucky, 559 U.S. 356, 366 (2010). In order to prove deficient performance, the applicant must show counsel’s representation fell below an objective standard of “reasonableness under prevailing professional norms.” Cherry v. State, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814.

Strickland, however, “does not guarantee perfect representation[—]only a ‘reasonably

competent attorney.” Harrington v. Richter, 562 U.S. 86, 110 (2011) (quoting Strickland, 466 U.S. at 687). 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. Strickland, 466 U.S. at 686. Just as there is “no expectation that competent counsel will be a flawless strategist or tactician, an attorney may not be faulted for a reasonable miscalculation or lack of foresight or for failing to prepare for what appear to be remote possibilities.” Harrington, 562 U.S. at 110.

Accordingly, “[j]udicial scrutiny of counsel’s performance must be highly deferential, as it is all too tempting for a defendant to second-guess counsel’s assistance after conviction or an adverse sentence, and it is all too easy for a court, examining counsel’s defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable.” Strickland, 466 U.S. at 689; see also Yarborough v. Gentry, 540 U.S. 1, 6 (2003) (“The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight.”). Unlike a later reviewing court, the attorney observed the relevant proceedings; knew of materials outside the record; and interacted with the client, opposing counsel, and the judge. Thus, the question is whether an attorney’s representation amounted to incompetence under “prevailing professional norms,” not whether it deviated from best practices or most common custom. Id. (quoting Strickland, 466 U.S. at 690).

Thus, a fair assessment of attorney performance requires every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel’s challenged conduct, and to evaluate the conduct from counsel’s perspective at the time. Id. Because of the difficulties inherent in making such an evaluation, the reviewing court must indulge in a “strong presumption that counsel’s conduct falls within the wide range of reasonable professional

assistance.” Butler, 286 S.C. at 445, 334 S.E.2d at 816. The applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625.

Reviewing courts “must judge the reasonableness of counsel’s challenged conduct on the facts of the particular case, viewed at the time of counsel’s conduct.” Strickland, 466 U.S. at 690. An applicant making a claim of ineffective assistance “must identify the acts or omissions of counsel that are alleged not to have been the result of reasonable professional judgment.” Id. 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.” Id.

The Strickland standard must be applied with scrupulous care, lest “intrusive post-trial inquiry” threaten the integrity of the very adversary process the right to counsel is meant to serve. 466 U.S. at 689-690; see also Harrington, 562 U.S. at 105 (cautioning that an ineffective assistance of counsel claim could potentially function as a way to escape rules of waiver and forfeiture and raise issues not presented at trial). Even under *de novo* review, the standard for judging counsel’s representation is a most deferential one. Harrington, 562 U.S. at 105. Unlike a later reviewing court, the attorney observed the relevant proceedings; knew of materials outside the record; and interacted with the client, opposing counsel, and the judge. Thus, the question is whether an attorney’s representation amounted to incompetence under “prevailing professional norms,” not whether it deviated from best practices or most common custom. Id. (quoting Strickland, 466 U.S. at 690) (emphasis added).

The second, or “prejudice” prong of Strickland is rooted in the very purpose of the Sixth Amendment guarantee of counsel—to ensure a defendant has the assistance necessary to justify reliance on the outcome of the proceeding. Id. at 691–92. In order to prove prejudice, an applicant must demonstrate counsel’s deficient performance prejudiced the applicant such that “there is a

reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. A reasonable probability is a probability “sufficient to undermine confidence in the outcome.” Strickland, 466 U.S. at 694. Thus, it is not enough “to show the errors had some conceivable effect” on the outcome of the proceeding—counsel’s errors must be “so serious as to deprive the defendant of a fair trial.” Id. at 687 (emphasis added).

Because the Sixth Amendment right to counsel also applies to a defendant entering a guilty plea, Hill v. Lockhart extended the two-part Strickland test to challenge guilty pleas based on ineffective assistance of counsel.” Hill, 474 U.S. 52; cf. Padilla, 559 U.S. at 373 (recognizing the guilty plea process is a “critical phase of litigation” for purposes of the Sixth Amendment right to effective assistance of counsel). A claim of ineffective assistance of guilty plea counsel requires the applicant present evidence satisfying two prongs: first, evidence that counsel’s performance was deficient; and second, evidence that counsel’s deficient performance prejudiced the defendant by causing him to plead guilty rather than go to trial. Hill, 474 U.S. 52.

The analysis of counsel’s performance under the first prong of Strickland remains unchanged—the applicant must show counsel’s representation fell below the objective standard of reasonableness demanded of attorneys in criminal cases. Hill, 474 U.S. at 58–59; accord Thompson v. State, 340 S.C. 112, 115, 531 S.E.2d 294, 296 (2000). An applicant alleging his plea was induced by ineffective assistance of counsel must prove counsel’s advice to plead guilty was not “within the competence demanded of attorneys in criminal cases.” Hill, 474 U.S. at 56.

The second, or “prejudice” prong, however, “focuses on whether counsel’s constitutionally ineffective performance affected the outcome of the plea process.” Id. at 58–59. Specifically, when an applicant claims counsel’s deficient performance caused him to accept a plea, the applicant

“must show that there is a reasonable probability that, but for [plea] counsel’s [alleged] errors, he would not have pleaded guilty and would have insisted on going to trial.” Id. at 59. This inquiry “focuses on a defendant’s decision making” and does not turn on the outcome of a defendant’s actual criminal proceeding or potential outcome had a defendant chosen to proceed to trial. Lee v. United States, 582 U.S. ___, 137 S. Ct. 1958, 1966 (2017). However, an applicant must convince the court that a decision to reject the plea bargain would have been rational under the circumstances. Padilla, 559 U.S. at 372. The question here is whether the applicant, if correctly informed of circumstances surrounding the plea, would have pleaded guilty—not whether counsel would have still advised him or her to plead guilty. Turner v. State, 335 S.C. 382, 385, 517 S.E.2d 442, 444 (1999).

Surmounting Strickland’s high bar is never an easy task, and the strong societal interest in finality has “special force with respect to convictions based on guilty pleas.” Lee, 582 U.S. ___, 137 S. Ct. at 1967 (internal citations and quotation marks omitted); cf. Hill, 474 U.S. at 58 (“[R]equiring a ‘prejudice’ showing from defendants who seek to challenge the validity of their guilty pleas on the ground of ineffective assistance of counsel ‘will serve the fundamental interest in the finality of guilty pleas.’”). Reviewing “[c]ourts should not upset a plea solely because of post hoc assertions from a defendant about how he would have pleaded but for his attorney’s deficiencies. Lee, 582 U.S. ___, 137 S. Ct. at 1967. Rather, judges should “look to contemporaneous evidence to substantiate a defendant’s expressed preferences. Id. In determining whether a guilty plea was taken in accordance with constitutional standards, the reviewing judge must analyze and consider the entire record, including the transcript of the plea and the evidence presented at the PCR hearing. Harres, 282 S.C. at 134, 318 S.E.2d at 361.

The performance and prejudice standards, however, “do not establish mechanical rules;

[t]he ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged.” *Id.* at 696. Moreover, “there is no reason for a court deciding an ineffective assistance claim to approach the inquiry in the same order or even to address both components of the inquiry if the defendant makes an insufficient showing on one.” *Id.* at 697. The court “need not determine whether counsel’s performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies. *Id.* If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, the court may evaluate the prejudice prong only. *Id.*

As set forth above, it is impossible to discern what specifically Applicant is raising on post-conviction relief based on his generic claims of ineffectiveness without specific allegations or supporting facts. Respondent submits Applicant cannot satisfy either requirement of the *Strickland* test, as the record establishes he was represented by competent counsel who diligently represented him. However, without specific allegations of ineffective assistance of counsel, it is impossible to respond to the claim of ineffective assistance of counsel precisely. Accordingly, Respondent requests Applicant, through his appointed counsel, amend his application to include the specificity required to support an allegation of ineffective assistance of counsel.

IV. Motion for More Definite Statement

In his application, Applicant fails to list specific allegations or any facts to support such allegations, but, instead, lists generic, vague allegations of ineffectiveness. *See* PCR Application (question #10 and #11).

The Uniform Post-Conviction Procedure Act requires that the Applicant must “. . . specifically set forth the grounds upon which the application is based.” S.C. Code Ann. Section 17-27-50. In an application for post-conviction relief, it is incumbent upon Applicant to make at

least a prima facie showing which would entitle him to relief before an evidentiary hearing will be scheduled and held. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965). See also Rule 8(a)(2), SCRCP (requiring all civil pleadings to include “a short and plain statement of the facts showing that the pleader is entitled to relief”); Rule 71.1(d), SCRCP (“Counsel shall insure that all available grounds for relief are included in the application and shall amend the application if necessary.”). “[M]ere allegations of incompetency or ineffectiveness of counsel will not ordinarily suffice as grounds for a new trial under the Post-Conviction Procedure Act. The bare assertion by the [applicant] that he was deprived of adequate and effective assistance of counsel is insufficient.” Coardes v. State, 262 S.C. 493, 497, 206 S.E.2d 264, 265 (1974).

Applicant has failed to state with any specificity the allegations he wishes to pursue on post-conviction relief beyond vague allegations. Respondent moves pursuant to Rule 12(e), SCRCP, to require Applicant, through his appointed counsel, to provide a more definite statement of his allegations by filing an amended application before the scheduling of any hearing(s) in this matter. If Applicant fails to file a timely and responsive amended application setting forth specific allegations for relief, Respondent reserves the right to move to dismiss the application.

V. 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 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. See Id. at 245, 834 S.E.2d at 203 (Kittredge, J., dissent) (“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.”).

Pursuant to section 17-27-150 of the South Carolina Code, 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. Further, Respondent 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. As noted above, 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. See Love, 428 S.C. 231, 834 S.E.2d 196.

VI. Response to Any and All Other Allegations

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied.

VII. Request for an Evidentiary Hearing

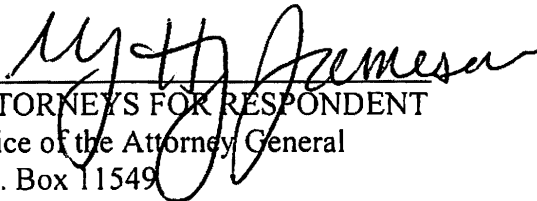
WHEREFORE, Respondent respectfully requests Applicant, through appointed counsel, file an amended application with specific allegations and supporting facts, prior to the scheduling of any evidentiary hearings in this matter so that Respondent may file an amended return specifically responding to these amended, specific allegations.

Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

By: 
ATTORNEYS FOR RESPONDENT
Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

March 10, 2022

STATE OF SOUTH CAROLINA

RECORDED

COUNTY OF SUMTER

2022 MAR 14 AM 7:40

IN THE COURT OF COMMON PLEAS

JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

2021-CP-43-1588

MICHAEL V. JOHNSON, #309430

Applicant,

vs

CERTIFICATE OF SERVICE BY MAIL

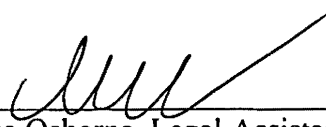
STATE OF SOUTH CAROLINA,

Respondent,

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Return and Motion for More Definite Statement to the Application for Post-Conviction Relief in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Mr. Timothy Lee Griffith, Esquire
2338 Mount Vernon Drive
Sumter, South Carolina 29154

DATED this 10th day of March, 2022.



Joshua Osborne, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA) IN THE CIRCUIT COURT 3
COUNTY OF SUMTER) DOCKET NO. 2021-CP-43-01588

STATE OF SOUTH CAROLINA,	)
Plaintiff,	)
versus	)
	)
MICHAEL VANDREL JOHNSON,	)
Defendant.	)

H E A R I N G

PRESENT: Michael Vandrel Johnson
DATE: November 3, 2022
LOCATION: South Carolina Circuit Court 3
JUDGE: Edward W. Miller
TRANSCRIBED BY: Jeanne Meldrim

LEGAL EAGLE
Post Office Box 5682
Greenville, South Carolina 29606
864-467-1373
depos@legaleagleinc.com

1 APPEARANCES:

2 Zachary William Jones, Esquire

3 S.C. Attorney General's Office

4 PO Box 11549

5 Columbia, SC 29211-1549

6 Attorney for the Plaintiff

7

8

9 Timothy Lee Griffith, Esquire

10 Timothy L. Griffith, Attorney At Law

11 2338 Mount Vernon Dr

12 Sumter, SC 29154

13 Attorney for the Defendant

14

15

16

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12 Mr. Routzong	36	44			

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14

15

16 EXHIBITS

17 (No exhibits marked)

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19

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23 (THIS TRANSCRIPT MAY CONTAIN QUOTED MATERIAL. SUCH MATERIAL

24 IS REPRODUCED AS READ OR QUOTED BY THE SPEAKER.)

25

Proceedings

1 THE COURT: Mr. Johnson.

2 MR. JOHNSON: Yes, sir.

3 THE COURT: How you doing?

4 MR. JOHNSON: I'm doing all right.

5 UNIDENTIFIED SPEAKER: Stand up, sir.

6 THE COURT: I understand you want to --- tell me
7 what you want.

8 MR. JOHNSON: Sir, last time I was here they granted
9 us an extension for --- for --- for my attorney here, I
10 guess --- I never met him --- for him to come down to
11 the --- to the --- to the jailhouse in a video
12 conference, something like that, so we can go over the
13 details of this case which I'm filing my PCR for.

14 He hasn't done any of that, sir. And he really
15 don't know what's --- what --- what I want to present in
16 my case. And if --- if --- if so I would ask that you
17 get him off my case and give me somebody else, sir.
18 Because he's being --- he's being ineffective. And
19 I'm --- I'm not going to fool ineffective counsel to Mr.
20 Routzong he's been ineffective.

21 THE COURT: Well, he's filed an amended application
22 for you.

23 MR. JOHNSON: That application, he stated that he
24 would have come down and at least see me or --- or --- or
25 set up any kind of conference so we can sit down and

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1 explain --- and --- and go over the case. He ---

2 (Simultaneous speaking)

3 THE COURT: How about we do this? You want to take
4 30 minutes, 45 minutes and meet with him now?

5 MR. JOHNSON: I mean, like that --- that's not
6 enough --- that's not even an effective enough time for
7 me to even talk to him what I got going on with this
8 case. I need to go over them with everything in this
9 case, sir, and 30 minutes is not enough time.

10 THE COURT: What --- what --- what are you doing
11 time for?

12 MR. JOHNSON: Armed robbery, sir.

13 THE COURT: How much time are you doing?

14 MR. JOHNSON: I got 17 years.

15 THE COURT: Okay. Well, what's the State's
16 position?

17 (Simultaneous speaking)

18 MR. JONES: --- I don't like to continue things.

19 MR. JOHNSON: I understand, sir. But, you know,
20 it --- it's --- it's the attorney that --- that ---
21 that --- that was appointed to me and he's not doing his
22 duty, sir.

23 MR. GRIFFITH: Well, that's your --- your own
24 opinion. The State's position is that, you know, we have
25 this amended application. It raises half a dozen issues

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1 which I think based on my exposure to the record is
2 pretty comprehensive especially for a guilty plea. And
3 the --- the State is ready. We have our witness here, we
4 have everything that we need. So we oppose any further
5 continuances, but it's up to Your Honor.

6 THE COURT: Yeah.

7 MR. JONES: But that's the State's position.

8 THE COURT: I'll tell you what. He's been up here
9 all week doing this kind of work. He does a fair amount
10 of it. Why don't --- y'all got a place where they can
11 sit down and talk for a few minutes and see if they
12 can --- if Mr. Griffith can assuage Mr. Johnson's
13 concerns? I mean, just see --- see if you can't talk to
14 him for a few minutes.

15 MR. JOHNSON: I mean, Your Honor ---

16 THE COURT: You sent this amended application?

17 MR. JOHNSON: Yeah, I understand that, Your Honor.
18 But this application right here this has nothing to do
19 with what's going on in this case here.

20 THE COURT: That's why I'm saying ---

21 MR. JOHNSON: He --- he ---

22 THE COURT: Let --- let me just say --- talk to him
23 for a few minutes. Sit down face-to-face with him. See
24 if you don't --- and then we'll come back and talk about
25 what --- whether or not you want to go forward or how you

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1 want to do it.

2 MR. JOHNSON: Okay. I can to state for the Court
3 that this is --- this is very important for the case,
4 sir.

5 THE COURT: It's --- it's important for every ---
6 every individual up here.

7 MR. JOHNSON: I understand, sir.

8 THE COURT: I understand that.

9 MR. JOHNSON: But I do have the right for effective
10 assistance of counsel. And he hasn't come down there and
11 seen me at all. He hasn't discussed nothing with me. I
12 don't understand.

13 (Simultaneous speaking)

14 MR. JOHNSON: --- PCR to be sanitized with a lack of
15 somebody doing their duty.

16 THE COURT: Okay. Well, you know, talk for a few
17 minutes, see if you can't --- I mean, he has proven that
18 he's an effective advocate for --- for PCR applicants.
19 I've seen that this week. I'm not from here. And you
20 talk to him see if there's some issues that --- I mean,
21 you just --- if you're not happy because you haven't seen
22 him face-to-face or talked to him on the phone ---

23 MR. JOHNSON: I mean but still that same, Your
24 Honor, I don't even know that even that was the only one
25 (unintelligible) I never met him.

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1 THE COURT: Well, you're meeting him now.

2 MR. JOHNSON: Yeah, that's what I'm saying that this
3 is the 30 minutes is not --- it is not enough time
4 for ---

5 THE COURT: Well, see what you ---

6 MR. JOHNSON: --- me to discuss this case, Your
7 Honor.

8 THE COURT: --- take --- take that time. See where
9 you are and we'll see if you need more time. Okay?

10 MR. JOHNSON: Yes, sir.

11 THE COURT: Give it a shot. Hey, just put aside
12 you're --- you're upset right now, talk to him
13 objectively and see what you think. Okay?

14 MR. JOHNSON: Yes, sir.

15 THE COURT: Y'all got a spot for them?

16 MR. JONES: Yes, Your Honor, we do.

17 THE COURT: Okay. All right. Good. Thank you.
18 We'll just be in recess for 30 minutes or so.

19 (Off the record)

20 MR. JONES: All right. Your Honor, this is the
21 matter of Michael Vandrel Johnson versus the State of
22 South Carolina. My name is Zach Jones for the State.
23 Mr. Johnson is here with his attorney, Tim Griffith.
24 Case number is 2021-CP-43-1588. Mr. Johnson was
25 sentenced based on indictment from the Sumter County

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1 grand jury for armed robbery. That's indictment number
2 2019-GS-43-414.

3 Initially he requested a jury trial and proceeded
4 before one on September 29, 2020, before the honorable R
5 Ferrell Cothran Jr.

6 However, following pretrial motions and the striking
7 of the jury, Mr. Johnson elected to forgo his right to a
8 jury trial and changed his plea to guilty.

9 Judge Cothran accepted applicant's guilty plea and
10 sentenced him to 17 years in prison.

11 He did not file a direct appeal in South Carolina
12 Court of Appeals and filed this post conviction relief
13 application on September 13, 2021.

14 Your Honor, I will now turn it over to ---

15 THE COURT: All right. Yes, sir.

16 MR. WILSON: Thank you, Your Honor. If it please
17 the Court. We call Mr. Michael Vandrel Johnson to the
18 stand.

19 THE COURT: All right. Mr. Johnson.

20 (WITNESS SWORN)

21 MICHAEL VANDREL JOHNSON, HAVING BEEN DULY SWORN,
22 TESTIFIED AS FOLLOWS:

23 BAILIFF: State your full name and spell your last
24 name for the record, please, sir.

25 THE WITNESS: Michael Vandrel Johnson,

Direct Exam Johnson

1 J-O-H-N-S-O-N.

2 MR. WILSON: Please the Court.

3 DIRECT EXAMINATION

4 BY MR. WILSON:

5 Q. Mr. Johnson, how long have you been incarcerated?

6 A. A little under two years. Four years shy of ---
7 four months shy of two years.

8 Q. Okay.

9 A. I mean --- hold on. You talking about county jail
10 or ---

11 Q. All together.

12 A. I've been incarcerated since 2019, January the 21st.

13 Q. Okay. And where are you incarcerated now?

14 A. I'm at Evans Correctional Institution. SCDC ---
15 Department of Corrections.

16 Q. And who was your attorney ---

17 A. Mr. Michael Routzong.

18 Q. Did you have an attorney before that?

19 A. Ms. Kathryn McGrady.

20 Q. And so do you --- do you know why your attorney was
21 changed? Do you have any idea?

22 A. I don't --- I have not --- no --- no clue at all. I
23 know it sabotaged. It --- the --- my alibi, you know,
24 the place I was at during all this --- when --- when it
25 was going on. You know, when --- when --- when I ---

Direct Exam Johnson

1 when I heard that she was my attorney, she sent a letter
2 to me. And she --- she said in the letter that she filed
3 for a preliminary hearing. And that was the last I ever
4 heard of her.

5 And then maybe roughly, what? Six months later,
6 June, I think somewhere, and then they --- they ---
7 they --- they gave me Mr. Michael Routzong.

8 Q. Did you ever ---

9 A. Eight months after that. Eight months after that,
10 I --- I told him about the incident where I was eight
11 months after that. And he did try to go and send
12 somebody to that place, but --- but they didn't remember.
13 You talking about a --- a --- a --- a convenience store
14 that if --- if --- if --- if somebody would have gone
15 in --- in --- in --- in --- in a matter of time that I
16 told them, they would understand they got the --- the
17 video footage, the phone call from the store that I made
18 from the store to the hospital. You know, my mother was
19 in the hospital and that's the only reason I was in
20 Sumter County.

21 But, you know, being that it --- it was so long
22 that, you know, that the people forgot all about it. I
23 mean, that's ---

24 Q. Okay. And did you ever have your preliminary hearing?

25 A. No, I never did. Mr. Routzong told me that it

Direct Exam Johnson

1 wasn't important. That I --- I don't have to have a
2 pre --- preliminary hearing.

3 Q. Okay.

4 A. You ever see --- the reason why it was preliminary
5 hearing was because at the arresting --- at the --- when
6 I was arrested --- that night that I was arrested, I was
7 arrested for being in possession of a weapon during a
8 violent crime, and also armed robbery.

9 One of the --- the warrants wasn't even signed. It
10 was just another of the --- the --- being in possession
11 of a deadly weapon. Wasn't signed by a Judge, but I was
12 given a bond on it.

13 And I think he used that as --- as a grounds to hold
14 me for the armed robbery, because they brought somebody
15 to the scene of the crime that couldn't identify me.

16 Q. And so you were --- you were in the Sumter detention
17 center for a while; did you get out on a bond?

18 A. No, I --- I couldn't afford it.

19 Q. Okay. So you stayed there the whole time until your case
20 came to trial?

21 A. Yeah.

22 Q. Did either of your attorneys, Ms. McGrady, or Mr.
23 Routzong, send in a motion or a notice of alibi?

24 A. No. They haven't. I asked about it, but he said he
25 wasn't going to do it. He talking about --- was about

Direct Exam Johnson

1 five motions that I asked him to file for me, and he said
2 he wanted going do to it. I would have filed one, and
3 that was the suppressing motion. Suppressing hearing
4 motion that was the only one he filed for me in this
5 case.

6 Q. What were the others that you wanted him to file?

7 A. I want him to have a judge --- summary of the case
8 to --- to see what kind of evidence they had against me.
9 I had a --- a --- I ask him to file a --- a --- a --- a
10 motion for the fingerprints, so --- so ---

11 Q. Let me just stop you for a second. The fingerprints on
12 what?

13 A. On --- on the money that they say I took from the
14 store.

15 Q. Okay.

16 A. And that would have proved that either the --- the
17 clerk's handprint would have been on the money that was
18 in my pocket. You know, that would have --- that would
19 have showed them that it wasn't even me. You know. They
20 have --- he haven't done that.

21 I asked him to file for a motion to --- to --- to
22 pull the police body cam. That had --- that haven't
23 happened because in the --- in the motion, they only used
24 one body cam and not the --- not the arresting officer,
25 not the persecuting officer.

Direct Exam Johnson

1 See, I was just walking down the street and she
2 stopped and pulled me over and wrestled me to the ground
3 saying I fit the description of the suspect. So I don't
4 understand how they get probable cause even --- to even
5 do that to me.

6 You know, I filed a --- a --- a --- a --- I wanted
7 him to -- to file a motion for the lesser offense
8 included. Because in --- in --- in the motion discovery,
9 in --- in --- I --- I believe, it's the police statement,
10 that they have stated that --- how she's put --- she was
11 in fear of her life or realized that it wasn't a weapon.

12 So I want --- I'm --- I'm --- I ask --- ask him to
13 do all these for me. I --- he have --- he have not
14 investigated this case properly. And if he have, I would
15 have never took a --- a guilty plea. I was scared for my
16 life 30 years.

17 Q. Okay. And so how many times did you see your first
18 attorney, Ms. ---

19 A. I never seen her.

20 Q. Okay. She just sent you a letter. So then how many
21 times did you see Mr. Routzong.

22 A. Well, I don't --- I don't --- 20 months, I might
23 have seen him four times. And three of those times was
24 just trying to ask me if I want to take a plea. I mean,
25 this --- this --- was during the time with the COVID, so,

Direct Exam Johnson

1 you know ---

2 Q. Oh, yeah. That makes it harder.

3 A. Yeah.

4 Q. They won't let us in.

5 A. They wouldn't let them in.

6 (Simultaneous speaking)

7 Q. We have a real hard time getting in prisons even now.

8 (Unintelligible)?

9 MR. JONES: Your Honor ---

10 BY MR. WILSON:

11 Q. You ever been locked down?

12 MR. JONES: Yeah. Objection, Your Honor. These
13 questions regarding his original attorney before Mr.
14 Routzong, we've had no notice that that was a witness in
15 this case.

16 THE COURT: He's just laying the foundation. That's
17 all right.

18 (Simultaneous speaking)

19 THE COURT: Objection noted for the record, but go
20 ahead.

21 BY MR. WILSON:

22 Q. So how many times do you think you saw him?

23 A. Maybe four.

24 Q. Did you talk to him on the telephone?

25 A. Never. None.

Direct Exam Johnson

1 Q. Did you talk to him on video? Because I know we were
2 using that here for quite a while.

3 A. I mean, those times, he came to the --- came to the
4 jail.

5 Q. Okay.

6 A. Yeah, he came to the jail. But he --- they --- it
7 was --- it was always he had to go somewhere or, you
8 know, I never seen some of the evidence. I never seen
9 the video footage of the --- of the crime scene because
10 of the --- the equipment he brought didn't work. None of
11 that stuff.

12 Q. Okay.

13 A. It was --- it was like three or four times he came
14 and checked on me see if I still want do the same, which
15 is go to the trial or take a plea. And I never took ---
16 I never want to take the plea. I wanted him to --- to
17 sit down and see what's going on in --- in this case.

18 Q. So you're saying that you didn't actually get to see all
19 of your discovery; is that ---

20 A. No, I have not. I ---

21 Q. Did you get to see it later?

22 A. Yeah. I seems --- yeah, I --- I --- I never
23 heard --- I never thought that the --- that the victim
24 had came to the scene of the crime until the --- the ---
25 the motion to --- to exclude evidence. The suppression

Direct Exam Johnson

1 hearing motion. I never know that what she said. I
2 always ask for the --- for the --- for the --- for the
3 statement of the victim. I never got that.

4 And also there's --- there's --- there's video
5 footage that I never seen the --- the --- the --- camera
6 footage. I only seen still pictures, and I got half of
7 those. I never seen the ones that they gave --- they
8 mailed to me at the jailhouse --- they mail to me in the
9 prison. I never seen those ones.

10 Q. Now, what about --- you're talking about the statement
11 from the victim; did you get that after the trial or before
12 the trial?

13 A. I --- I --- I never got it.

14 Q. Oh. Okay. I thought you said you did get the ---

15 A. I never --- I never got it. All I heard was in
16 a --- in a suppressing hearing I heard that what they
17 saying --- what --- what it was saying. They never gave
18 me the statement.

19 Q. Okay. So you heard about the evidence, but you never saw
20 it?

21 A. I never saw it.

22 Q. Okay. And when --- when Mr. Routzong was talking to you,
23 did --- did he go over any of the evidence with you at any
24 time?

25 A. The only thing he kept going over with me was the

Direct Exam Johnson

1 description. He said I keep --- I fit the description.
2 That was it. Because there was no evidence. There was
3 no --- no --- no victims, no --- no, I mean, no
4 witnesses. No statements, no nothing. I was asking for
5 all this, but it --- it never came out.

6 Q. Okay. So when he was having these conversations with
7 you, did he talk to you about whether he thought you would be
8 convicted or not, or --- or what your chances were?

9 A. He's been --- he's been very persuasive in ---
10 in --- in --- in telling me he couldn't win this case.
11 You know, he's saying that the evidence that they had
12 against me was a lot. So I'm --- you know, I'm --- I'm
13 scared. I'm like, you --- so you --- I'm going to get
14 convicted.

15 You know, the date of trial, he --- you know, said
16 we had --- we need a lawyer conference and he told me,
17 you know, I said, I'm going to ask the question. I said,
18 man, do you think we got a good chance? I don't know
19 this other guy they had beside him was saying she's all
20 pretty and stuff like that. They going to --- they going
21 to eat that up.

22 You know, and so I --- I --- I'm listening to this
23 and he's saying, just --- you're going to plead, just be
24 very persuasive. And, you know, I'm --- he ain't --- he
25 ain't helping me, so I'm --- I'm --- I'm --- I'm thinking

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1 that I --- I don't want to take no 30 years. You know,
2 with --- with --- take that chance of taking 30 years
3 somebody's not going to fight for my rights.

4 And --- and --- yeah. That's --- that's what
5 happened, sir.

6 Q. Okay. All right. So let's talk about the plead. At the
7 time of the plead, you were on some medications, right?

8 A. Yeah, I was on Seroquel and Remeron.

9 Q. Are those prescribed medications for you?

10 A. Yes. Yes, sir. For depression disorder. Because I
11 was under a lot of the stress. You know ---

12 (Simultaneous speaking)

13 Q. Go ahead.

14 A. Being that, you know, my mother died and I was going
15 through this case.

16 Q. Now, tell me what --- you told me that the reason you
17 were down there was because your mother had died ---

18 A. Yeah, that's ---

19 (Simultaneous speaking)

20 Q. --- is that right?

21 A. I took a week off from work, and I came to Sumter.
22 And she was in the hospital. And she gave me a check to
23 go cash. And that's when all --- when all this took
24 place.

25 Q. And so you told me also though that the medications you

Direct Exam Johnson

1 were taking when you did the plea were the wrong medications;
2 what --- explain that to me.

3 A. I mean that I can't say that I --- that what ---
4 that what I was prescribed, Remeron and Seroquel.

5 Q. Okay.

6 A. You know, that's the medications I was on.

7 Q. Well, you were telling me that they were the wrong
8 medications. What ---

9 A. I mean, they --- I couldn't think. I --- it had me
10 down. You know, I --- so --- yeah.

11 Q. Okay. Did --- did they change your medications later for
12 some reason?

13 A. No. They took me off. I asked them to take me off
14 of them.

15 Q. Oh, they took you off of them?

16 A. Yeah.

17 Q. Okay. You feel better now?

18 A. Yeah.

19 Q. Feel like you're more yourself?

20 A. Yeah.

21 Q. So basically, when you did your plea, you didn't really
22 understand everything that was happening?

23 A. I --- I --- because I wasn't --- I wasn't
24 clear-minded. I was thinking about, you know, I'm saying
25 all --- my mother she --- she passed away. You know,

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1 and --- and --- and the cases I got, I had no help in it.
2 So, you know, all that nonsense. I want to go to trial,
3 but I'm scared because I --- I'm --- I step out there and
4 then get 30 years for --- for somebody not helping me.

5 Q. Okay. And --- and let's talk about one more thing.
6 You --- well, a couple more things. Well, first of all ---
7 you do you think your attorney investigated your case?

8 A. No, he hasn't.

9 Q. Explain to us why you don't think he did the
10 investigation.

11 A. Like in the --- in the beginning of the case, like I
12 said, I --- I asked him to retrieve the --- the --- the
13 footage from the --- from the police from the body cam.
14 You know. He hasn't done that. You know, the ---
15 the --- the --- the statements for the victims. He
16 haven't done that. He haven't even tried to even see if
17 this --- this offense was a lesser included offense, or
18 it could go that way because of the statement she made.

19 He never investigated that --- that --- that when I
20 got arrested the --- the warrants that --- that I showed
21 him like --- like this is what he --- is what he doing
22 here. He arrested me for --- for being in possession
23 of --- of a firearm, and I wasn't in possession of a
24 firearm.

25 And I went --- went in front of a judge for these

Direct Exam Johnson

1 warrants, one that --- that the judge didn't sign. So I
2 believe that that --- that --- I was trying to told him,
3 well, I believe he --- he tried to use this to ---
4 for --- he --- the detective was trying to use that
5 warrant to further the investigation for the armed
6 robbery. They had nothing on me. I did nothing.

7 You know. They --- the --- the victim came to the
8 statement --- to the scene of the crime and couldn't
9 point me out, say I did anything. You know. Only thing
10 was --- was --- what was had what --- was --- was
11 clothing match. I mean, like I --- you know, like I
12 don't think they --- they stopped making the clothes, you
13 know.

14 Like it was a --- it was a number of things. You
15 know, like --- like I asked --- I asked him to --- would
16 he --- would he go, you know, I'm saying? And ---
17 and --- and pull the telephone footage from the --- from
18 the liquor store that I was at, and the --- the --- the
19 video footage. He didn't do it. You know, that would
20 have proved where I was at during this --- during the
21 time everything that was going on. You know what I'm
22 saying? And I asked him --- hold on --- take a second.
23 I have some --- the --- he had to file certain motions,
24 you know, the --- the fingerprint motion. Because he
25 want the --- the pictures I see in the --- the suspect

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1 had a --- had a --- had a --- had a hand out, you know.
2 And --- and --- and --- and he had his hand on
3 merchandise. So I know they could have pulled a
4 fingerprint from somewhere. You know, he didn't do that.
5 You know. Certain things like that would have --- would
6 have proved that I did that wasn't me. You know.

7 So he --- with him not doing none of this --- these
8 things here, and he told me he flat out say, I'm not
9 going to file these motions, but I will file the
10 suppression motion. And that was it. So, you know. And
11 I --- that's not --- that's --- that's not a hundred
12 percent right. You know. I mean, like, if --- if --- if
13 I'm on life --- live --- my life --- 30 years of my life,
14 why not file these motions and --- and it's not going to
15 hurt him. You know. That's --- that's for me. That's
16 for the defendant.

17 Q. Now, the trial sort of start, you guys picked a jury and
18 there was a suppression hearing. And so things were moving
19 along. And then you decided to plea. What made you decide to
20 plea at that time?

21 A. Because I was thinking about --- you know what I'm
22 saying? What I asked him. I mean, he's --- you would
23 think that a good chance blank --- point out blank told
24 me no, you know, you going to get 30 years. So I said
25 I'm not jump out there get no 30 years. I got kids.

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1 Q. Yeah. So do you think --- well, you know, an experienced
2 attorney might be able to look at the evidence and --- and
3 have a pretty good idea of how you're going to do in trial?
4 Do you think so or not?

5 A. I mean, anybody could have been --- could have been
6 (unintelligible) to say. I mean, it's not --- it ---
7 it --- it's what the (unintelligible) at. That, you
8 know, I'm saying some people might wear the same color,
9 or --- or anything like that. I mean, they didn't really
10 have nothing. I mean, you know.

11 Q. So you think the --- the evidence was all just, like,
12 circumstantial?

13 A. It was --- that what it --- exactly what it was. I
14 told me it was circumstantial when he's saying he would
15 lose the trial. So --- you know, he scared me off on
16 top. And then I'm asking him to file these motions and
17 things like that. He wouldn't do them for me.

18 Q. Okay. And so after you were convicted, you had time to
19 look through all this and ---

20 (Simultaneous speaking)

21 Q. --- you've been through it all and had the opportunity to
22 give it more of your attention, are you saying that you would
23 have gone ahead and gone to trial?

24 A. Yeah, I would have. I even tried. I even tried
25 the --- the (unintelligible) Court informed me on trying

Direct Exam Johnson

1 to take this -- this --- these pleads back. Trying
2 to --- trying to grant a appeal.

3 Q. Okay. So now let's talk about an appeal. Did Mr.
4 Routzong file an appeal for you?

5 A. No, he never did. Never even mention it.

6 Q. I was going to say, did you ask him to file an appeal?

7 A. No I --- I --- I mean, when I --- when I was
8 thinking about filing an appeal, I was already in the
9 penitentiary. They ship me the next day. So and then,
10 you know, the --- the court system --- I mean, the mail
11 system of --- Kirkland Institution during the pandemic,
12 it --- it stopped everything. So I did the best of
13 could. I tried to write the clerk of court, but he
14 wouldn't forward it to Mr. Michael Routzong.

15 Q. Well, I --- I know that it's difficult to get things in
16 and out of the jail's mail system, that's for sure.

17 And so did you yourself try to get an appeal?

18 A. Yeah, I tried. I mean, yeah, I didn't know what
19 else to do.

20 Q. What did you do?

21 A. I wrote a letter --- I wrote a letter to the clerk
22 of court on the second of October and then again on the
23 8th of October. And he --- he --- he sent two of them
24 back telling me that can't file a court --- you can't
25 file a appeal in this court, you have to go to ---

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1 the --- the courts --- the I guess the appeal courts.
2 And then he just --- he wrote one telling me that I
3 couldn't just --- just take this --- this couldn't say
4 you not guilty and go --- go --- go to trial.

5 Q. Okay. Well ---

6 MR. JONES: May I approach, Your Honor?

7 THE COURT: Sure.

8 BY MR. WILSON:

9 Q. Okay. I got a couple of letters that came from the clerk
10 of court to you. Can identify these for me?

11 A. Yes, sir. Those are --- those are his responses.

12 Q. Okay. Why don't you --- so there are two of them, but
13 they're both responses from the clerk of court from letters
14 you wrote?

15 A. Yes, sir.

16 Q. Okay. What do you think that the --- he was trying to
17 tell you?

18 A. I don't know, really. Basically, I mean, I'm
19 thinking that he's trying to tell me I can't appeal.

20 Q. Well, I --- why don't you read --- why don't you read
21 this top one here. Can you read that okay?

22 A. Yes.

23 Q. Okay.

24 A. Once you have plead guilty, and have been sentenced,
25 you just can't request a jury trial. There are --- there

Direct Exam Johnson

1 are other actions that you can take like file an appeal
2 or a PCR. You have ten days from the date you were
3 sentenced to file --- to file an appeal, and it looks
4 like you have missed the time.

5 Q. Okay. And read that next one.

6 A. You must file --- file your appeal with the South
7 Carolina Court of Appeals, not with the court you were
8 sentenced in.

9 Q. Okay. So let me see those. So these were in response to
10 letters that you sent to the clerk of court asking for an
11 appeal; is that correct?

12 A. That's correct.

13 MR. WILSON: I have shown these to the assistant
14 Attorney General, Your Honor. And I would enter these if
15 the Court would allow as exhibit ---

16 MR. JONES: Objection. We'd just like a copy of
17 them.

18 MR. WILSON: Yes. And I --- I would ask if we
19 can --- I only have these --- this copy. We get a copy
20 of ---

21 THE COURT: Mr. Brown, would you make a couple of
22 copies of that.

23 MR. WILSON: Thank you, Mr. Brown.

24 BY MR. WILSON:

25 Q. So Mr. Johnson, you would have appealed if you knew how,

Direct Exam Johnson

1 right?

2 A. Yes, sir.

3 Q. And ---

4 A. That was --- that was my intention.

5 Q. And you tried to appeal?

6 A. I tried.

7 Q. You --- you sent a letter to the clerk, but by the time

8 it got to him and got --- they said your ten days was up;

9 isn't that correct?

10 A. That's correct.

11 Q. But when --- do you know the day you were sentenced?

12 A. Yeah, I was sentenced on --- on the 29th of

13 September if I wasn't mistaken.

14 Q. And do you know when you sent the letter to the clerk?

15 A. I --- yeah, I --- October the 2nd.

16 Q. Okay.

17 A. I asked for them to the clerk stamp it and mail it

18 back to me. He --- he just sent me those back.

19 Q. Okay. All right. So you sent it within those ten days,

20 but ---

21 A. Yeah. I sent both --- I sent one October the 2nd,

22 and one on October the 8th.

23 Q. And since then you may have found out that you don't send

24 them to the clerk, you send it to ---

25 A. Yeah, that's ---

Direct Exam Johnson

1 (Simultaneous speaking)

2 A. --- well he --- he sent back to me.

3 Q. Okay. Those are replies.

4 Now, would you have sent an appeal if you had known
5 to --- your attorney would need to file with the Appeals
6 Court?

7 A. Yeah. I would --- I would ---

8 (Simultaneous speaking)

9 A. Yeah. I mean if I'd have known then in court that I
10 could have appealed, you know, if you would have asked me
11 yeah, I file what is --- took the appeal then. But the
12 17 years downing on me something I didn't do.

13 Q. Okay. And so would you appeal now if you had the
14 opportunity?

15 A. Yes. Yes, I would.

16 (Copies of documents distributed)

17 BY MR. WILSON:

18 Q. Okay. Mr. Johnson, I want to give you this opportunity
19 now. We've gone over the things that we put in your
20 application. Is there anything else that you would like to
21 add so the Court would know what you feel --- why you feel you
22 would need either a new trial or the opportunity to appeal?

23 A. Yes, sir. Because I didn't do the crime.

24 Q. You didn't ---

25 A. I didn't commit this crime.

Cross-Exam Johnson

1 Q. Oh, you didn't commit the crime. Oh, okay. I
2 understand. Is there anything else you want to add?

3 A. That's --- I said it.

4 Q. You think we've covered it?

5 A. Yes, sir.

6 MR. WILSON: Okay. I have no further questions,
7 Your Honor.

8 THE COURT: Okay. From the State?

9 CROSS-EXAMINATION

10 BY MR. JONES:

11 Q. Thank you, Mr. Johnson. I only have a few brief
12 questions.

13 So you say that prior to your entering the guilty plea,
14 you had not seen video footage or photographs from the crime
15 scene; is that correct?

16 A. I seen only still photos.

17 Q. All right. But ---

18 (Simultaneous speaking)

19 Q. --- you hadn't seen the video footage?

20 A. I haven't seen it all.

21 Q. Have you seen that now?

22 A. No, I haven't seen it still yet.

23 Q. All right. So you don't know what it shows?

24 A. I don't know what it is.

25 Q. All right. Now, the --- do you have a copy of the

Cross-Exam Johnson

1 transcript up there with you?

2 A. I just talked to the --- the --- what the ---
3 the --- the --- the suppression transcript.

4 Q. The combination transcript of the suppression motions and
5 all the way through your ---

6 (Simultaneous speaking)

7 A. I've just gotten --- just got all any transcripts,
8 sir. I never received any of that.

9 Q. Okay.

10 THE COURT: You can borrow mine.

11 MR. WILSON: He just got it today. I --- I gave it
12 to him. He's got a copy here. You want this? You want
13 him to have it?

14 MR. JOHNSON: You can put it out right here.

15 THE COURT: Yeah, bring him his materials.

16 MR. WILSON: All right. Go ahead.

17 BY MR. JONES:

18 Q. Now, if you would, just go through that and see if you
19 can find the transcript of the proceeding before Judge
20 Cothran, dated September the 29th to the 30th, 2020.

21 A. All right. Numbered. I don't mean --- don't have
22 no dates on it.

23 Q. Oh, they don't?

24 MR. JONES: Your Honor, may I just approach and
25 show ---

Cross-Exam Johnson

1 THE COURT: Yeah. Sure.

2 MR. JONES: Thank you.

3 BY MR. JONES:

4 Q. So this is a transcript of your guilty plea proceeding.
5 And on --- on here at page 123, at the top of that, the Court
6 asked you if you're under the influence of any drugs or
7 alcohol today. And you said no, sir; is that correct?

8 A. Yeah. Mr. Routzong, he --- he also informed me you
9 must say these things. You must say no --- no for them
10 and take the guilty plea.

11 Q. All right. And --- and the next line the Court says, do
12 you have any mental diseases that would keep you from
13 understanding what you're doing here today? And you replied
14 that you're on medication, but when you're taking it, it gets
15 you to a level so you that understand what's going on.

16 A. No, I never said that, because the medication slowed
17 me down. (Unintelligible).

18 Q. So you dispute that the --- the accuracy of the
19 transcript?

20 A. I wouldn't --- I wouldn't say I dispute it, but I
21 probably wasn't even in my right mind when I'm saying
22 that. I know, because it disputed with ---

23 Q. Okay.

24 A. --- always have me down. I'm not thinking when I'm
25 (unintelligible) --- the Remeron. If you ask any ---

Cross-Exam Johnson

1 any --- any psychiatric doctor, they'll tell you that
2 Seroquel and Remeron alters your brain.

3 Q. And so the later on when the Court asks if you're
4 clear-headed today and understand exactly what's going on, and
5 you say yes, sir; is that not correct?

6 A. I mean, yeah. I say those things.

7 Q. Okay.

8 A. Yeah, I said those things.

9 Q. All right.

10 A. But I was persuaded to do it. He said the only way
11 they took the --- the plea if you say these things he
12 just might ask you certain --- certain questions, you ---
13 yeah, you answer ---

14 Q. Right. So the next thing is when the Court on page
15 20 --- 125, the Court asks if you --- there states, if you
16 want to appeal this guilty plea today you or your lawyer must
17 file that appeal with the clerk of court within ten days of
18 today's date. And so you indicate that you understand that?

19 A. Yes. I --- I said those things.

20 Q. All right.

21 A. Yes, I do. But like I say, I wasn't in my right
22 mind. I mean, I'm taking a --- a guilty plea with
23 something I didn't do.

24 Q. Okay.

25 A. I wasn't thinking about nothing that was at that

Cross-Exam Johnson

1 point when he told me he couldn't win the case.

2 Q. Thank you. Now, you mentioned the identification based
3 on your clothing match; do you recall what you were wearing,
4 roughly?

5 A. I know I had on a --- a --- a Carhartt jacket, a ---
6 a brown Carhartt jacket, I think some blue fatigue pants.

7 Q. Okay.

8 A. Yeah.

9 Q. Were you wearing a belt; do you remember?

10 A. Yeah, I remember I had a belt. I had a blue belt
11 on, and I had a face mask. It was January.

12 Q. Okay.

13 A. It gets kind of told, so you know, I --- I work with
14 bricks so ---

15 Q. Uh-huh.

16 A. --- you know.

17 Q. And now these letters from the Sumter County clerk of
18 court that were introduced by Mr. Griffith, the one dated
19 October the 12th, would that have been the first one that you
20 received?

21 A. Yes. That --- that been the first one I think in
22 response. I think it's --- when I --- when I wrote both
23 of them letters, I haven't got any response. That's why
24 I wrote ---

25 Q. Right.

Cross-Exam Johnson

1 A. --- I wrote both of them back-to-back like that.

2 Q. I believe you said ---

3 (Simultaneous speaking)

4 A. --- no letter was ---

5 Q. Right.

6 A. --- came back. Any response. Because I didn't want
7 the time. So I want --- want him to have something on
8 file.

9 Q. So you --- you wrote the first letter, I believe your
10 testimony was on the 2nd of October?

11 A. On the 2nd of October.

12 Q. The second one on the 8th of October.

13 A. Yes, sir.

14 Q. And the first letter from the Sumter County clerk of
15 court was dated October the 12th, which would have been after
16 the 8th, correct?

17 A. Yeah.

18 Q. Now, that letter says that once you have pled guilty and
19 have been sentenced, you can't just request a jury trial.
20 There are other actions you can take like filing an appeal or
21 a PCR. So was the document you attempted to file with the
22 clerk of court, was that a request for a jury trial, or was
23 that an appeal?

24 A. An appeal. I meant for an appeal.

25 Q. All right. And you did not request a jury trial?

Direct Exam Routzong

1 A. No.

2 (Simultaneous speaking)

3 A. I wouldn't --- I wouldn't --- I had ten days to
4 appeal the sentence and that's what I was trying to do.

5 Q. Now, when the --- you got the letter back on October
6 the 29th that said you must file your appeal with the South
7 Carolina Court of Appeals, did you attempt to file that?

8 A. Yes, I did. The court saying that didn't have
9 the --- the --- the --- the court said they don't have no
10 appeal of mine on document --- on document.

11 MR. JONES: All right. Thank you. That's all the
12 questions I have for you at this time.

13 THE COURT: Anything else?

14 MR. WILSON: Nothing else, Your Honor.

15 THE COURT: All right. Thanks, sir. You may step
16 down.

17 (WITNESS SWORN)

18 Michael David Routzong, HAVING BEEN DULY SWORN,
19 TESTIFIED AS FOLLOWS:

20 MR. GRIFFITH: If it please the Court, Your Honor.

21 THE COURT: Yup.

22 DIRECT EXAMINATION

23 BY MR. GRIFFITH:

24 Q. State your full name and spell your last name for the
25 record, please, sir.

Direct Exam Routzong

1 A. Michael David Routzong. R-O-U-T-Z-O-N-G.

2 Q. Mr. Routzong, how long have you been practicing law?

3 A. I think I received my license in 2005.

4 Q. And have you been with the Public Defender's Office all
5 that time?

6 A. Since 2007, I was in the Aiken Public Defender's
7 Office, and I've been in Sumter since 2017, I believe.

8 Q. So quite a while you've been a defender.

9 Let me ask you then, were you able to --- it was during
10 the pandemic, and so were you able to show Mr. Johnson any of
11 his discovery in person or ---

12 A. Yes, sir. I have notes that I --- that I showed him
13 the discovery. He had --- I think I sent the discovery
14 actually twice to him. I think he said he lost it one
15 time, I notice that in my notes today. That discovery
16 would not have included videos. I can't --- I have to go
17 to the jail and show folks the videos, because I can't
18 send discs. At that time, though don't --- they didn't
19 have any means of --- of watching them. I don't know if
20 the tablets they have now enables them to --- to view
21 those.

22 Q. Okay. So --- so he didn't get to see any of the videos
23 or anything like that?

24 A. I was looking through my notes to see if I
25 specifically said that I showed him a video. I haven't

Direct Exam Routzong

1 found any notes that specifically showed him the videos.
2 I feel confident that I would have shown him everything
3 though, at least because I was out there several times.
4 You have to go through a procedure to --- you have to
5 request permission to bring a computer in there, as you
6 know. And my recollection is I --- I showed him
7 everything. But I did --- he is correct. I sent him
8 still photos, which I found to be the most relevant.

9 Q. Okay. I do that myself.

10 Did you notice --- were you able to communicate with Mr.
11 Johnson very clearly?

12 A. I had no concerns about Mr. Johnson's competence or
13 any aspects of his mental welfare that I can observe
14 being a --- not being somebody who is a --- a
15 psychiatrist or a psychologist, but just another person.
16 I --- I never had any concerns about any of that.

17 Q. Did you realize he was on medications?

18 A. I --- I --- I feel like I recall that. I don't know
19 that I've ever --- I don't know that he shared that with
20 me or not. I --- but it sounds familiar. I don't have a
21 specific note on it.

22 Q. Okay. Did you have any opportunity at all to --- to do
23 any kind of investigating for the case?

24 A. We hired an investigator. I went out with him. We
25 went to the Family Dollar, the incident location. We

Direct Exam Routzong

1 spoke with the manager in there. The manager said
2 that --- I think he said that lady was no longer --- the
3 person that was actually behind the counter --- when I
4 say, "that lady," that's what I mean. I don't --- I
5 don't think she actually worked there anymore, but they
6 knew how to get in contact with her, but they wouldn't
7 tell us. And so we asked them to let her know that we'd
8 like to speak to her. She never contacted us.

9 And we went to Boney's Liquor Store. That was the
10 store that Mr. Johnson told me that, you know, he was at
11 when he first noticed there were police lights down the
12 street. Boney's is probably a couple blocks away from
13 that. Maybe three blocks, something like that.

14 And we went to Boney's Liquor Store and we spoke
15 with the person in there. It's my recollection --- I ---
16 I found the note that happened in August of 2019, but I
17 didn't go into details about what we found out except
18 that my recollection is that person told us that they
19 weren't aware of any of those events. And it's also my
20 recollection that they don't have a --- a working camera
21 in that store at that time. I --- I had no way of
22 verifying whether or not that --- that was true. I
23 took --- took him as his word.

24 In addition, we actually kind of walked the ---
25 the --- the facts of this case showed that the person who

Direct Exam Routzong

1 left the store, they went out a side door, they would
2 have been carrying a --- a cash register drawer,
3 something like that. And I think it had a top on it,
4 though, but it allegedly had money in it.

5 And that person went out the side door, went around
6 the back of the store. Now, this had happened as you
7 noted before, this happened a couple months before ---
8 well, several months before we actually got to that
9 store. But we actually walked around. We looked to see
10 if there was anyplace that like there are houses that
11 have spaces underneath it, you could --- you might throw
12 a --- a cash box. Of course you could throw it just
13 about anywhere.

14 But we tried to --- we tried to compare that to what
15 we knew about the street layouts and how if --- if Mr.
16 Johnson was at Boney's, we walked the streets there
17 trying to figure out how all this could have happened.
18 Would it have made sense that somebody to go that way.
19 Why did they try to go --- we were just trying to figure
20 out something.

21 I was specifically trying to find the cash box,
22 because presumably, that might have been some
23 evidence --- I can't recall from the --- I have the
24 pictures here. I can't recall if Mr. --- if the
25 perpetrator of this was actually wearing gloves. I have

Direct Exam Routzong

1 the pictures right here if I can find them. It's hard to
2 tell from the pictures whether the person is wearing
3 gloves or not. So I don't know.

4 You know, if we found it and we had gotten it
5 fingerprinted, it probably would have been to our
6 disadvantage. Or maybe we wouldn't have --- we would
7 have left it right there. I don't know. But we did try
8 to do the best we could in terms of speaking to people,
9 trying to find people, going to the incident location,
10 going to the liquor store to see if there was any
11 evidence we could find that would be favorable for Mr.
12 Johnson.

13 Q. Was it your opinion that if Mr. Johnson went to trial
14 that he would be convicted?

15 A. The evidence tends to show in a very unique way that
16 Mr. Johnson was the perp who did this armed robbery. And
17 I say that based on the photographs of the person who did
18 it, the uniqueness of the clothing they were wearing, and
19 the photographs of Mr. Johnson that were taken --- taken
20 by the police, I think at the detention center, or at
21 the --- at the --- at the police department headquarters.
22 I think it was at the detention center. Those unique
23 items were a very distinctive blue belt, very distinctive
24 undergarments, and a very distinctive jacket.

25 The person who did this crime as they left over ---

Direct Exam Routzong

1 they tried to leap over to --- to get the cash box,
2 exposed their undergarments. And by doing that the
3 undergarments were kind of black and red plaid, identical
4 to the black and red plaid that Mr. Johnson was wearing
5 when he was apprehended. He had on a blue belt that was
6 identical in color to the blue belt that Mr. Johnson was
7 wearing.

8 Q. So --- so the answer to my question is --- what was the
9 answer to my question? Did you feel that he would be
10 convicted if he went to trial?

11 A. I --- I didn't have any doubt based on the ---
12 similarities. If we could not get that evidence
13 suppressed ---

14 Q. Okay.

15 A. --- I felt that was --- then the --- to fully answer
16 your question, then the strategy would have been to argue
17 as Mr. Johnson did today, that he was not armed. I don't
18 have --- I think the evidence tends to show he was not
19 armed, and that would have been something that we could
20 have addressed in terms of a lesser included jury charge
21 or verdict. You know, a submission to the jury as a
22 charge.

23 Q. Okay. And so did you tell Mr. Johnson that you felt that
24 if he went to trial he would be convicted?

25 A. I would be --- I --- the answer to your question is

Direct Exam Routzong

1 yes. I believe he would have been either convicted of
2 armed robbery, or perhaps strong-armed robbery. I did
3 not think he would not be convicted unless we could get
4 that evidence suppressed.

5 Q. Your job is to help him understand the process and put
6 is --- and to protect his rights, and to help him make good
7 decisions, correct?

8 A. That's correct.

9 Q. Okay. Well now I'm just going to pass over to one final
10 thing about the appeal. Did he ask you to appeal his
11 conviction?

12 A. No, sir. I'm not aware of any time he asked me to
13 appeal.

14 Q. Did he --- are you aware whether or not he tried to
15 communicate with you about an appeal afterwards?

16 A. I don't have any notes on that. And I don't recall
17 that at all.

18 Q. Okay. You didn't actually claim that he had --- had
19 tried to talk to you because --- but are you aware that he was
20 taken right to SCDC afterward or whether or not he was?

21 A. I --- I our staff put a note in our computer on
22 that, but I don't --- I don't specifically recall that,
23 No, sir.

24 MR. JONES: Okay. I have no further questions, Your
25 Honor.

Cross-Exam Routzong

1 THE COURT: Cross.

2 CROSS-EXAMINATION

3 BY MR. WILSON:

4 Q. Thank you, Mr. Routzong. So just to go over the video
5 footage from the actual holdup at the --- at the incident
6 location, you reviewed that? You saw that footage?

7 A. Yes, sir.

8 Q. And were you able to take still photographs from that
9 footage?

10 A. Yes, sir.

11 Q. And present those to Mr. Johnson ---

12 A. Yes, sir.

13 Q. --- during the review of the discovery? All right.
14 The --- and the --- would those photographs have been the
15 photographs showing that the suspect in the robbery was
16 wearing the items of clothing you described?

17 A. Yes, sir. He received the --- the still shots that
18 I created from the video. He also received the
19 photographs that the police took that were of the same
20 items of clothes. One thing I neglected to mention, I
21 think the person who --- who did this armed robbery was
22 wearing a black jacket and it had a very distinctive
23 white tag on the back of it. If you reverse the jacket
24 that Mr. Johnson was apprehended in, you will find that
25 it is identical to the jacket that was --- that he was

Cross-Exam Routzong

1 wearing and the person that did this armed robbery ---
2 this robbery was wearing. And that was also a factor
3 encouraging him to not take a chance.

4 And the State had previously offered 15 years on
5 armed robbery. Well, the State exclusively said that he
6 had had a couple prior armed robbery charges that were
7 evidently pled down to common law robbery, and that was
8 not going to happen this time. So we tried to talk Mr.
9 Brown into common law robbery again, that was to no
10 avail. And that was the reason he gave me.

11 But to fully answer your question, that jacket was
12 identical, the clothing was identical. I did encourage
13 him to plead guilty, because it was pretty clear that if
14 that didn't get suppressed, that was going to be a likely
15 result.

16 Q. So the --- the --- the distinctive white tag that was
17 visible on the jacket, in your interpretation that suggested
18 that the jacket was reversible and was reversed?

19 A. It was reversed. And it was --- the jacket --- when
20 he was actually apprehended, it was turned right side out
21 and it was brown.

22 And went to --- I went to the evidence locker ---
23 that's another --- that's another thing we did to try to
24 investigate it, we went to the evidence locker. We had
25 them pull the evidence out.

Cross-Exam Routzong

1 At that time, I don't think people were really
2 thinking about this case too deeply, because no one
3 mentioned it, I don't think, in the --- in the report.
4 But when I looked at it, I could --- and I --- I recall
5 with the pictures, you could --- the jacket was shown to
6 me and I could clearly see it was black on the inside and
7 had that --- a white tag that was consistent with what I
8 saw on the video. So I knew what had happened at that
9 point.

10 Q. Was there a check among the evidence from Mr. Johnson's
11 mother?

12 A. I think there was. I think --- I think the things
13 he said are consistent. There was --- my recollection is
14 there was a lot of cash. Not in --- not really in terms
15 of amount, but in once --- I think there was a lot of
16 once. There were a --- there was a lighter probably
17 something along the lines of maybe that a person would
18 like a barbecue with. It was something like that. I
19 think there was a check. There were other items, I don't
20 really remember, but those were all in evidence, yes,
21 sir.

22 Q. Now, the --- do you have an inkling of why the State
23 charged him with armed robbery based on the --- on the video
24 footage; was there any indication of a weapon?

25 A. Yes, there was some object that was pointed at ---

Cross-Exam Routzong

1 at the person behind the counter. And what I noticed was
2 that person --- there was probably a divider maybe about
3 the height of the --- the Court's bench here. And that
4 person leapt over that divider to get away from the
5 person who robbed the store. The --- the counter is kind
6 of long and one would have to --- there's only one way to
7 get behind the counter. Well, for her to exit behind the
8 counter, she would have had to go closer to the person
9 who did this. So she actually leapt over a divider that
10 I felt was --- I felt that was an indication that she was
11 very frightened.

12 But Mr. Johnson is correct, it --- the report
13 reflects that she realized at some point in time that it
14 was not a gun. And that would have been something we
15 could have brought out had Mr. Johnson chosen to go
16 through the trial and not plead guilty.

17 Q. And had he chosen to go through the trial, were you
18 prepared to request a lesser included offense instruction?

19 A. Yes, sir. We were --- we were prepared to do that.

20 Q. All right. And the --- and just to clarify, you did make
21 a motion from prior to the trial to have the evidence
22 suppressed; is that correct?

23 A. Yes, sir. Because it strikes me and it struck Mr.
24 Johnson as well, that they --- they stopped him and they
25 didn't really --- he didn't --- what he was wearing at

Cross-Exam Routzong

1 that time did not correspond to what the --- the police
2 department knew. He wasn't really that --- he was in the
3 general area, but I don't think he was --- it wasn't like
4 he was just a hundred yards or so away. I think it was,
5 you know, a couple blocks away on a different street that
6 he was apprehended. The description they got was a black
7 jacket. I think it was black sweatpants, something like
8 that. And it was a black man.

9 But when the --- when the officer who was responding
10 to this call --- at least one of them just happened to
11 ride up on Mr. Johnson and --- and she stopped him.
12 And --- but he was not wearing the --- he was not
13 wearing --- or did not appear --- could not have appeared
14 to that officer to be wearing what the person that they
15 had described that had done this --- this crime was
16 wearing.

17 Q. That was the thrust of your argument for suppression was
18 that ground that the --- the lack of reasonable suspicion to
19 seize him at that point; is that correct?

20 A. Well --- well, it's actually a little worse than
21 that, because I --- I --- I think I argued under the
22 South Carolina Constitution that the people have a right
23 to privacy, which our courts upheld is --- amounts to
24 probable cause. And I argued that they didn't have
25 probable cause at that point to stop Mr. Johnson. And

Cross-Exam Routzong

1 but for this unconstitutional seizure, they would not
2 have discovered the other things that they discovered,
3 like money, the lighter, so on and so forth.

4 Q. Do you recall how the court ruled on your suppression
5 motion?

6 A. They ruled against me and Mr. Johnson.

7 Q. All right. Now, the --- the other videos that --- or the
8 videos Mr. Johnson alleged he didn't receive from one of the
9 body cameras and from the liquor store, were you able to
10 obtain those videos?

11 A. I --- I had all those. I can actually probably tell
12 you when I received them. But I had those for a long
13 time.

14 Q. By the liquor store, I mean Boney's Liquor Store.

15 A. I'm sorry. I --- I misunderstood your question. I
16 don't think Boney's had a --- a camera that was working.
17 At least that's what --- no, I didn't specifically write
18 that down.

19 But I think I was with Investigator Davis, our
20 investigator on this case, and I remember we both went in
21 there. We spoke to the --- the person that was behind
22 the counter, an Indian gentleman --- a gentleman from
23 India. And he said that he knew nothing about these
24 events. Did not recall any --- at any time that there
25 was anything going on with Family Dollar. Well, that of

Cross-Exam Routzong

1 course means he would not have recalled Mr. Johnson being
2 there.

3 And my recollection was there was no camera.
4 They --- I'm certain that we asked him that. At least I
5 would think it would be unusual for a liquor store not to
6 have a camera. Or was it --- I wish I had written a
7 note. It's really speculation and I don't want to ---

8 Q. All right. I understand.

9 A. But I feel --- I know we would have asked that
10 question, because that --- and I was with the
11 investigator of course, and he was much more skilled at
12 investigating than I am. I just kind of tag along. I
13 don't know whether it was that --- it wasn't working or
14 maybe it records over --- it just records over itself.
15 You have to get it within a certain period of time. But
16 there was no camera footage for us to obtain in August of
17 2019.

18 Q. Okay. And do you --- whose decision ultimately, was it
19 to plead guilty?

20 A. That was Mr. Johnson. That was --- I do have a note
21 on that. I've got to get back in my computer. But my
22 recollection is we were in --- we were in the attorney's
23 office on this floor and he made it clear that he wanted
24 to --- this was after the motion was denied for
25 suppression. And then he made it clear that he wanted to

Cross-Exam Routzong

1 plead guilty. I went in chambers to --- went to the
2 solicitor --- went in chambers. I tried to find out what
3 Judge Cothran would do if he did do that. He would
4 not --- he wouldn't tell me.

5 Mr. Johnson signed the sentence sheet. We came back
6 out. I did the same argument I did on a case that we
7 discussed earlier this morning. I said the original
8 offer was from the State was 15 years, Your Honor. They
9 felt that was appropriate. We asked that you consider
10 not doing more than that is probably the way I said it.
11 Something like that. And the same result happened as in
12 the earlier case. The person received a couple years
13 longer. I think it was --- because his original offer
14 was 15 and I think he got 17.

15 Q. All right. And but were you prepared to go forward with
16 the trial if Mr. Johnson had insisted on one?

17 A. Yes, sir.

18 MR. JONES: All right. I think that's all the
19 questions I have for you. Thank you.

20 THE COURT: Anything else?

21 MR. WILSON: No further questions, Your Honor.

22 THE COURT: All right. Thank you. You may step
23 down. Thank you.

24 THE WITNESS: Thank you, Your Honor.

25 MR. WILSON: I have no further witnesses, Your

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1 Honor.

2 THE COURT: Okay. Anything from the State?

3 MR. JONES: Your Honor, the State has nothing
4 further.

5 THE COURT: Okay. Anything y'all want to tell me?

6 MR. WILSON: Your Honor, Mr. Johnson at the --- at
7 least --- at the very least, I believe that his right to
8 file an appeal was either denied or --- or basically,
9 he --- he should have an opportunity to appeal. And of
10 course ---

11 THE COURT: What grounds?

12 MR. WILSON: In that he tried to appeal, Your Honor,
13 and he --- he mailed it to the --- oh, you mean on what
14 grounds of this appeal?

15 THE COURT: Yeah. You know ---

16 (Simultaneous speaking)

17 MR. WILSON: Since there was a plea ---

18 THE COURT: --- South Carolina Supreme Court has
19 tightened up on appeals from guilty pleas.

20 MR. WILSON: Yes.

21 THE COURT: And they would not --- I'll let the
22 State describe that when the time comes. But what
23 grounds would he have alleged?

24 MR. WILSON: I have --- I'm not his appeal attorney,
25 Your Honor. I ---

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1 THE COURT: Yeah.

2 MR. WILSON: --- what he'd do. His --- his right
3 to --- to appeal is what I'm pointing at.

4 THE COURT: Yeah. Okay. Well, I mean that ---
5 there's certainly --- all right. Let's hear from the
6 State on that.

7 MR. JONES: Beg the Court's indulgence for one
8 moment.

9 THE COURT: Yes. Take --- take your time.

10 MR. JONES: Thank you, Your Honor. This question
11 should Your Honor construe it as an Austin question, the
12 Austin v State of course concerned ineffective assistance
13 of counsel in failing to prepare a guilty plea on behalf
14 of an applicant who requested one.

15 It's clear that the applicant in this case did not
16 request Mr. Routzong to file a guilty plea on his behalf.
17 The letters sent to the clerk of court office, the
18 initial one which was dated from the --- for the --- the
19 one sent back from --- which was dated from October
20 the 12th, represents in the first sentence that he is not
21 able to request a jury trial, which suggests that what he
22 ended up filing since we don't have a copy of that, but
23 it suggests that it was not actually an appeal.

24 And regardless to appeal from a guilty plea, he
25 would have to file an explanation in accordance with the

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1 requirements of Rule 203(d)(1)(d)(4), I believe is the
2 convoluted citation to that section, representing that
3 there is an issue which can be reviewed on appeal and if
4 there is one, Your Honor, I haven't heard it here.

5 So in the interest of judicial economy, if nothing
6 else, I don't think Austin relief is warranted in this
7 case. But specifically, for the reason that Austin v
8 State, which is the --- the only authority I'm aware of
9 for granting a delayed appeal in this case, contemplates
10 that it's because of ineffective assistance of counsel in
11 failing to request an appeal that the applicant has
12 requested, or had a reason to discuss with his counsel.
13 And that was clearly not the case he in this matter.

14 THE COURT: Okay. Thank you. It's a little bit
15 curvy there, Mr. Johnson, but understand you don't like
16 the result of what happened. And but that's not the
17 issue here. And the burden is on the moving party to
18 prove their case. And I just don't find in this case
19 that you've done that. And it's not from any lack of ---
20 of --- of preparation or diligence in pursuing the
21 grounds, but just there aren't any ground here that I
22 think would warrant granting the relief that you're
23 requesting.

24 So I'm going to --- I mean, that the record's pretty
25 clear about the entering of the guilty plea, and I'm

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1 going to find that that testimony given on that day is
2 more credible than what I heard today. So I am going to
3 deny the relief. Wish you the best of luck.

4 MR. JONES: Thank you, Your Honor. The State will
5 prepare an order to that effect.

6 THE COURT: Thank you very much.

7 MR. WILSON: Thank you, Your Honor.

8 (PROCEEDINGS CONCLUDED)

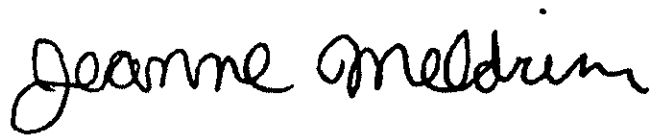
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CERTIFICATE OF TRANSCRIBER

I, JEANNE MELDRIM, a court-approved transcriber, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of CIRCUIT COURT 3 for SUMTER COUNTY, South Carolina, on the 3rd Day of November, 2022.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

January 19, 2026

A handwritten signature in black ink that reads "Jeanne Meldrim". The signature is written in a cursive, flowing style with a small dot above the 'i' in Meldrim.

Jeanne Meldrim

Transcriber

STATE OF SOUTH CAROLINA
COUNTY OF SUMTER

Michael Vandrell Johnson, #3090430

Applicant,

 $\mathbf{v}_i$

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE THIRD JUDICIAL CIRCUIT

) Case No.: 2021-CP-43-01588

ORDER OF DISMISSAL

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SUMTER COUNTY
SOUTH CAROLINA

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RECORDS

This matter comes before the Court by way of an application for post-conviction relief (“PCR”) filed by Michael Vandrell Johnson (“Applicant”) on September 13, 2021, and amended on June 27, 2022. The Court convened an evidentiary hearing into the matter on November 3, 2022, at the Sumter County Courthouse. Applicant was present at the hearing and represented by Timothy L. Griffith, Esq. Zachary W. Jones, of the South Carolina Attorney General’s Office, represented Respondent.

Applicant testified on his own behalf at the evidentiary hearing. Applicant's trial counsel, Michael Routzong, Esq. ("Counsel"), also testified. After reviewing all records and evidence before the Court, this Court finds Applicant has not met his requisite burden of proof of establishing he is entitled to post-conviction relief and denies and dismisses this application with prejudice. The Court finds as follows:

I. PROCEDURAL HISTORY

Applicant is currently confined in the South Carolina Department of Corrections. The Sumter County Grand Jury indicted Applicant for armed robbery (2019-GS-43-0414). Applicant was represented by Assistant Public Defender Michael Routzong of the Third Circuit Public

Defender's Office. Assistant Solicitor Tyler Brown of the Third Circuit Solicitor's Office prosecuted the case. On September 29, 2020, Applicant proceeded to a jury trial before the Honorable R. Ferrell Cothran, Jr., circuit court judge. However, following pre-trial motions and the striking of a jury, Applicant elected to forgo his right to a jury trial and changed his plea to guilty. Following a through plea colloquy, Judge Cothran accepted Applicant's guilty plea and sentenced him to seventeen years of imprisonment. Applicant did not pursue a direct appeal or otherwise challenge his plea or sentence until the filing of this instant post-conviction relief action.

Factual Summary

On January 21, 2019, Applicant entered a Family Dollar store in Sumter, brandished what appeared to be a firearm, and demanded monies from store employees, who complied with his demands. The encounter was captured on surveillance video. Applicant then fled the store on foot and was apprehended while in possession of the items consistent with what was presented as a handgun during the robbery and the monies taken. He was subsequently arrested and charged with armed robbery.

Present Application

In his application for post-conviction relief, Applicant alleges he is entitled to relief based on the following grounds:

(a) Ineffective assistance of counsel: "Chronic v. State" and "Strickland v. Washington"

- "failure to raise objections to rights violated, etc."

(b) "Fourth Amendment Violated/Sixth Amendment Violated"

- "lack probable cause/lack reasonable suspicion, etc."

(c) Involuntary Guilty Plea

- lack of effective assistance of counsel

As requested relief, Applicant states he is seeking, “dismiss[al] [of the] case d[ue] to the fourth amendment violation, new trial.”

On June 27, 2022, Applicant amended his application to include the following allegations of ineffective assistance of counsel:

1. Applicant’s attorney told him he would be convicted at trial and pressured him to take the plea.
2. His attorney only visited him a few times, and Applicant did not feel he had enough time to speak with his attorney.
3. He did not get to see all of his discovery, which he received only after the plea.
4. His attorney did not appeal his plea. He himself sent a letter to the Sumter Clerk of Court saying he wanted to appeal, but he received a reply after the ten days saying he had sent it to the wrong court. He was denied his right to appeal.
5. His attorney failed to fully investigate the case and could have found witnesses or information to clear him.
6. At the time of the plea, he had been on the wrong medications and was not really thinking clearly.

At the evidentiary hearing, Applicant proceeded on the allegations raised in his amended application.¹

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, and weighed the testimony accordingly. Before the Court are Applicant’s records from the South Carolina Department of Corrections, the transcripts of Applicant’s trial and plea proceedings, the records of the Sumter County Clerk of Court regarding the subject convictions, and the original and amended applications for post-conviction relief. This Court has reviewed the records submitted to it by the parties, the legal arguments made by the

¹ Applicant clarified that he was waiving ineffective assistance claims against any attorney other than Michael Routzong.

attorneys, and the pleadings. Pursuant to S.C. Code Ann. § 17-27-80, this Court makes the following findings based upon all of the probative evidence presented:

Ineffective Assistance of Counsel

Applicant's allegations of ineffective assistance of counsel are without merit. In a PCR action, Applicant bears the burden of proving the allegations in his application. *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). Applicant must prove his factual allegations by a preponderance of the evidence. Rule 71.1(e), SCRCP. Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." *Strickland v. Washington*, 466 U.S. 668, 686 (1984); *Butler*, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in *Strickland*. First, Applicant must prove that counsel's performance was deficient. *Strickland*, 466 U.S. at 686; *Cherry v. State*, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." *Cherry*, 300 S.C. at 117, 386 S.E.2d at 625 (quoting *Strickland*, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. *Butler*, 286 S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." *Id.* (citing *Strickland*, 466 U.S. at 690). "When counsel focuses on some issues to the exclusion of others, there is a strong presumption that he [or she] did so for tactical reasons rather than through sheer neglect." *Yarborough v. Gentry*, 540 U.S. 1, 5 (2003) (citing *Strickland*, 466 U.S. at 690).

The Court, in determining deficiency, must affirmatively entertain the range of possible reasons counsel may have had for proceeding as they did. *Cullen v. Pinholster*, 563 U.S. 170, 196 (2011); *Harrington v. Richter*, 562 U.S. 86, 109–10 (2011). “[E]ven if an omission is inadvertent, relief is not automatic. The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight.” *Yarborough*, 540 U.S. at 6; *see also* *Murphy v. Davis*, 901 F.3d 578, 592 (5th Cir. 2018) (“[C]ounsel’s performance need not be optimal to be reasonable.”).

Second, counsel's deficient performance must have prejudiced Applicant such that “there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.” *Cherry*, 300 S.C. at 117–18, 386 S.E.2d at 625. “This does not require a showing that counsel’s actions ‘more likely than not altered the outcome,’ but the difference between *Strickland*’s prejudice standard and a more-probable-than-not standard is slight and matters ‘only in the rarest case.’” *Harrington*, 562 U.S. at 111–12 (quoting *Strickland*, 466 U.S. at 697). “The likelihood of a different result must be substantial, not just conceivable.” *Id.* at 112. “The prejudice analysis requires the court deciding the ineffectiveness claim to consider the totality of the evidence before the judge or jury.” *United States v. Basham*, 789 F.3d 358, 371–72 (4th Cir. 2015) (quoting *Elmore v. Ozmint*, 661 F.3d 783, 858 (4th Cir. 2011)).

In the context of a guilty plea, Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pleaded guilty and would have insisted on going to trial. *Hill v. Lockhart*, 474 U.S. 52, 59 (1985). Because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual, the PCR applicant’s right to contest the validity of such a plea is usually, but not invariably, foreclosed. *See Blackledge v. Allison*, 431 U.S. 63, 73–74 (1977) (“Solemn declarations in open court carry a strong presumption of verity. The subsequent presentation of conclusory allegations unsupported by specifics is subject to

summary dismissal, as are contentions that in the face of the record are wholly incredible.”). Statements made during a guilty plea should be considered conclusive, unless an applicant presents valid reasons why he or she should be allowed to depart from the truth of his statements. *Dalton v. State*, 376 S.C. 130, 137–38, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing *Crawford v. United States*, 519 F.2d 347, 350 (4th Cir. 1975)).

Allegation 1: Counsel pressured Applicant into pleading guilty

Applicant argues Counsel pressured him into pleading guilty by telling him he would likely be convicted at trial. The Court finds this allegation is meritless. The record includes the transcript of Judge Cothran’s plea colloquy with Applicant, in which Applicant agreed that he wanted to plead guilty, that he was not promised anything or threatened in any way, that he understood he was facing up to 30 years in prison, and that he understood the rights he would be waiving by pleading guilty. (Tr. pp.122–25). Applicant also told the court he had enough time to consult with Counsel and he was satisfied with Counsel’s representation. (Tr. p.122, lines 17–22).

Applicant’s sworn statements during the plea colloquy “carry a strong presumption of verity,” and he bears the burden to show valid reasons why he should now be permitted to depart from the truth of those statements. *Blackledge*, 431 U.S. at 73–74; *Dalton*, 376 S.C. at 137–38, 654 S.E.2d at 874.

At the evidentiary hearing, Counsel explained Applicant was caught on the store’s surveillance video committing the crime. Although the figure on the video was wearing a mask, he could be identified by his distinctive clothing, which included a blue belt, blue pants, red-and-black plaid underpants that were visible when he reached over the store counter, and a black jacket with a distinctive white tag on the back (suggesting it was being worn inside-out). Applicant was arrested a short time later, and Counsel was able to examine the clothes he was wearing when he

was arrested, which included red-and-black plaid underpants, a blue belt and blue pants, and a Carhart jacket, which when reversed looked identical to the jacket in the security video. Applicant also had a large amount of cash in his possession when he was arrested.

Counsel testified that, based on these facts, he believed Applicant would be convicted at trial unless he could suppress the evidence obtained during the arrest.² He moved for suppression on the ground that law enforcement lacked probable cause to arrest Applicant because he did not match the description of the suspect, who was described as wearing a black jacket. Counsel recalled telling Applicant he would likely be convicted if the evidence was not suppressed. Ultimately, Counsel's suppression motion was denied. (Tr. pp.109–17). Counsel testified that, after the suppression motion was denied, Applicant made it clear he wished to plead guilty.

The Court finds Applicant's testimony at the evidentiary hearing, to the extent it contradicts his sworn statements during the plea colloquy, is not credible. The Court further finds Counsel credibly testified that the ultimate decision to plead guilty was made by Applicant. To the extent Applicant's decision to plead guilty was influenced by Counsel's advice that he would likely be convicted if he went to trial, the Court finds Counsel's advice was reasonable in light of the strength of the State's evidence. Therefore, Applicant has not met his burden of proving either deficiency or prejudice as to this allegation. Accordingly, the Court finds this allegation must be denied and dismissed with prejudice.

Allegation 2: Failure to adequately visit and consult with Applicant

² Counsel also testified he was prepared to argue at trial that Applicant was not armed when he robbed the store, but he noted that the video showed Applicant pointing an object at the person behind the counter, who appeared genuinely frightened and even jumped over a divider to get away from Applicant.

Applicant argues Counsel was ineffective for failing to sufficiently visit with him and discuss his case. The Court finds this allegation is meritless. At the plea proceeding, Applicant testified he had had enough time to meet with his attorney and he was satisfied with Counsel's representation. (Tr. p.122, lines 17–22). Counsel testified at the evidentiary hearing that he met with Applicant multiple times at the jail and went over all the discovery with him in person prior to trial. The Court finds Applicant's sworn statements at the plea colloquy are more credible than his contrary statements at the evidentiary hearing. The Court further finds, based on Counsel's credible testimony at the evidentiary hearing, that Counsel met with Applicant a sufficient number of times and adequately went over the case with him; therefore, Counsel was not deficient. In addition, Applicant has not explained how the outcome of his case would have been different had Counsel met with him more often or discussed the case with him more thoroughly. Therefore, Applicant has not met his burden of proving he was prejudiced by Counsel's conduct. Accordingly, this allegation is denied and dismissed with prejudice.

Allegation 3: Failure to provide discovery to Applicant

Applicant claims he was not shown all his discovery prior to entering his guilty plea. The Court finds this allegation meritless. Counsel testified he provided all the discovery to Applicant, except that he had to provide still photos instead of videos because the detention center did not have facilities for inmates to watch videos. However, he was able to show Applicant the videos during his visits with him to go over the discovery. Counsel testified he met with Applicant multiple times and went over all the discovery with him. The Court finds Counsel's testimony credible and Applicant's testimony not credible as to this issue.

In addition, to prove prejudice from failure to review discovery, a PCR applicant must present some new evidence or defenses that could have been discovered by counsel's further

review of the discovery. *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)), *abrogated on other grounds by Smalls*, 422 S.C. 174, 810 S.E.2d 836. Furthermore, an applicant must also show how the new evidence or defenses would have resulted in a different outcome. *Id.* (citing *David 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.*, 377 S.C. at 75, 659 S.E.2d at 145 (citing *Glover v. State*, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995)). Here, Applicant did not present any new evidence or defenses that purportedly could have been discovered by further review of the discovery. Accordingly, the Court finds Applicant has not met his burden of proving either deficiency or prejudice as to this claim, and this allegation is denied and dismissed with prejudice.

Allegation 4: Failure to appeal

Counsel has a constitutionally-imposed duty to consult with a defendant about an appeal only when there is reason to think (1) that a rational defendant would want to appeal (for example, because there are non-frivolous grounds for an appeal), or (2) that this particular defendant reasonably demonstrated to counsel that he was interested in appealing. *Roe v. Flores-Ortega*, 528 U.S. 470, 480 (2000). A highly relevant factor in this analysis is whether the conviction follows a guilty plea, because a guilty plea reduces the scope of appealable issues and indicates that the defendant seeks an end to further judicial proceedings. *Id.* In addition, where the sentencing court clearly instructs a defendant about his appeal rights, counsel might reasonably decide he need not repeat that information. *Id.* at 479–80.

Applicant argues Counsel was ineffective for failing to file an appeal from his guilty plea despite Applicant's desire to appeal. In support of this claim, Applicant submitted a letter from

the Sumter County Clerk of Court, dated October 12, 2020 (more than ten days after his conviction and sentence), which stated as follows:

Dear Mr. Johnson,
Once you have pled guilty and have been sentenced, you can't just request a jury trial. There are other actions you can take like filing an appeal or a PCR. You have ten (10) days from the date you were sentenced to file and [sic] appeal and looks [sic] like you have missed that time. However, you can file a PCR anytime. We have enclosed a PCR application for your convenience.

Applicant claims this letter indicates that he expressed a desire to appeal within the ten-day period for filing a notice of appeal. On the contrary, the most natural reading of this document suggests that Applicant requested a *jury trial*, which the Clerk of Court explained was not available because Applicant had entered a guilty plea. The Clerk of Court then mentioned “other actions” Applicant could have taken, including filing an appeal—again suggesting that what Applicant requested was something *other* than an appeal.³ Moreover, there is no indication in the letter that Counsel was ever informed of Applicant’s supposed desire to appeal.

At the evidentiary hearing, Counsel testified he did not recall Applicant asking for an appeal at any time. He also testified he had no records or notes in his file of any communications from Applicant about an appeal. The Court finds Counsel’s testimony credible. Furthermore, Applicant admitted that he never asked Counsel to file an appeal.

The Court finds this allegation is meritless. Applicant has admitted that he never demonstrated to Counsel an interest in appealing. Moreover, Applicant has not met his burden of proving that a rational defendant would want to appeal; he has not shown that there were any non-

³ Applicant introduced a subsequent letter from the Clerk of Court, dated October 29, 2020, informing him that any appeal must be filed with the court of appeals. Applicant testified that this letter was sent in response to a letter he sent attempting to file a notice of appeal within the ten-day filing period, but he did not introduce a copy of the letter he sent. The Court finds Applicant’s testimony on this point not credible.

frivolous grounds for appeal, and the fact that he was convicted after a guilty plea significantly reduced the possible scope of appealable issues and suggested he was seeking an end to judicial proceedings. Finally, the plea court explained Applicant's appeal rights during the plea colloquy, and Applicant indicated he understood. (Tr. p.125, lines 4–9). Accordingly, the Court finds Counsel was not deficient for allegedly failing to advise Applicant of his appeal rights or to file a notice of appeal on his behalf. Therefore, this allegation is denied and dismissed with prejudice.

Allegation 5: Failure to adequately investigate

Applicant argues Counsel failed to adequately investigate his case. Applicant claims that, if Counsel had more thoroughly investigated the case, he would have uncovered exculpatory evidence. The Court finds this allegation meritless.

Counsel credibly testified that he hired an investigator and went to the scene of the robbery. Because the robber left the store carrying a cash register drawer, Counsel and the investigator looked for the drawer in the vicinity. Counsel testified he was hoping to find the drawer in a location that would prove the robber went in the opposite direction from where Applicant was arrested. In addition, he was hoping there might be fingerprint evidence on the drawer that could have exonerated Applicant. Ultimately, however, they were not able to find the cash register drawer. Counsel also recalled that they were not able to locate the woman who was behind the counter during the robbery.

Counsel also testified that Applicant's explanation for the cash in his possession at the time of his arrest was that he had just cashed a check at a nearby liquor store. In an attempt to corroborate this story, Counsel went to the liquor store and questioned the clerk, but the clerk did not remember what happened on the date of the crime. Counsel recalled that the store's security camera either wasn't working or had recorded over the footage of the night of the robbery.

Counsel testified he went to the evidence locker and examined the clothing Applicant was wearing when he was arrested. Based on the clothing and other items in Applicant's possession at the time of arrest, as well as the surveillance video from the store that was robbed, Counsel believed Applicant would likely be convicted if he were unable to suppress the evidence.

The Court finds Counsel conducted a thorough investigation of the case and pursued several potential theories for the defense. The mere fact that Counsel's investigation did not yield any exculpatory evidence does not mean the investigation itself was inadequate. Therefore, the Court finds Counsel's performance was not deficient.

In addition, Applicant failed to introduce any evidence at the evidentiary hearing that purportedly would have been discovered by a more thorough investigation. Therefore, he has failed to meet his burden of proving prejudice. *See, e.g., Martin v. State*, 427 S.C. 450, 455, 832 S.E.2d 277, 279–80 (2019) (holding a PCR applicant who claims trial counsel was ineffective for failing to call certain witnesses must produce those witnesses or their testimony at the PCR hearing); *Taylor v. State*, 258 S.C. 369, 378, 188 S.E.2d 850, 854 (1972) (holding a PCR applicant's allegation that his trial counsel failed to adequately investigate his case was unsupported where the applicant failed to point out any beneficial evidence which could have been discovered by further investigation). Therefore, this allegation is denied and dismissed with prejudice.

Allegation 6: Applicant was on medication at the time of his plea

Applicant alleges he was on medications at the time of his plea that prevented him from thinking clearly. The Court finds this allegation meritless. At the plea proceeding, the following exchange occurred:

THE COURT: Do you have any mental diseases that would keep you from understanding what you're doing here today?

THE DEFENDANT: I'm on medication for hallucinations and things like that; but when I'm taking it, it got me to a level so I understand what's going on.

THE COURT: Okay. How long have you been on his medication?

THE DEFENDANT: About a year or two years now.

THE COURT: Okay. So you're clear headed today and you understand exactly what's going on?

THE DEFENDANT: Yes, sir.

(Tr. p.123, lines 4–18). In addition, Applicant's statements throughout the transcript of his trial and guilty plea indicate that he was alert, communicative, and able to formulate and express clear ideas. Furthermore, Counsel testified that he never had any concerns about Applicant's competency and observed no evidence of mental impairment.

The Court finds Counsel's testimony, and Applicant's sworn statements during the plea proceeding, credible. The Court finds Applicant's contrary testimony at the evidentiary hearing not credible. Accordingly, the Court finds Applicant has failed to meet his burden of proof as to this issue.

III. 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.

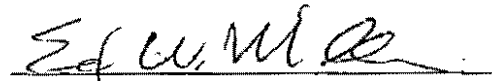
This Court notifies the Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. *See* Rule 203, SCACR. Pursuant to *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate

review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant's attention is directed to Rule 243, SCACR, for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief be denied and dismissed with prejudice; and
2. That Applicant be remanded to the custody of the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 17 day of November, 2025.



EDWARD W. MILLER
Presiding Judge
Third Judicial Circuit

Greenville, South Carolina

WITNESSES

John D. Melton
Sumter Police Dept.

ARREST WARRANT NUMBER

2019A4310200058

ACTION OF GRAND JURY

Eric Hutchinson
Foreperson of Grand Jury
Date: 3-17-20

VERDICT

Foreperson of Petit Jury
Date:

**AMENDED INDICTMENT
DOCKET NO. 2019-GS-43-0414**

The State of South Carolina

County of SUMTER

COURT OF GENERAL SESSIONS

MARCH TERM 2020

THE STATE

vs.

MICHAEL VANDRELL JOHNSON

Indictment for

Armed Robbery

Ernest A. Finney III

ERNEST A. FINNEY, III, SOLICITOR

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SUMTER)

AMENDED INDICTMENT FOR

Armed Robbery

At a Court of General Sessions, convened on March 12, 2020 the Grand Jurors of SUMTER County present upon their oath:

COUNT ONE – ARMED ROBBERY

CERTIFIED TRUE COPY
OF ORIGINAL FILE

Barbara Shaper
 CLERK OF COURT
 SUMTER COUNTY
 SOUTH CAROLINA

That on or about **January 21, 2019**, in **Sumter County, South Carolina**, the Defendant, **Michael Vandrell Johnson**, at **338 Manning Avenue**, by use of force, threats or intimidation and while armed with a deadly weapon, or while alleging, either by action or words, he was armed while using a representation of a deadly weapon or other object which a person present during the commission of the robbery reasonably believed to be a deadly weapon, did take and carry away goods and/or monies from the person or immediate presence of **Family Dollar** and/or it's employee, **Bryanna Dennis** with the intent to permanently deprive the victim of possession thereof, in violation of §16-11-330(A) South Carolina Code of Laws, 1976, as amended.

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

Solicitor

Ernest A. Finney III

WITNESSES

John D. Melton
Sumter Police Dept.

ARREST WARRANT NUMBER

2019A4310200058

ACTION OF GRAND JURY

VERDICT

TRUE BILL

Foreperson of Petit Jury
Date:

Amended 3/12/20
DOCKET NO. 2019-GS-43-0414

The State of South Carolina

County of SUMTER

COURT OF GENERAL SESSIONS

MAY TERM 2019

THE STATE

vs.

MICHAEL VANDRELL JOHNSON

Indictment for

Armed Robbery

Ernest A. Finney III

ERNEST A. FINNEY, III, SOLICITOR

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SUMTER)

INDICTMENT FOR

Armed Robbery

At a Court of General Sessions, convened on May 2, 2019 the Grand Jurors of SUMTER County present upon their oath:

CERTIFIED TRUE COPY
 OF ORIGINAL FILE

Barbara Mager
 DEPUTY CLERK OF COURT
 SUMTER COUNTY
 SOUTH CAROLINA

COUNT ONE – ARMED ROBBERY

That on or about **January 21, 2019**, in **Sumter County, South Carolina**, the Defendant, **Michael Vandrell Johnson**, at **338 Manning Avenue**, by use of force, threats or intimidation and while armed with a deadly weapon, or while alleging, either by action or words, he was armed while using a representation of a deadly weapon or other object which a person present during the commission of the robbery reasonably believed to be a deadly weapon, did take and carry away goods and/or monies from the person or immediate presence of **Family Dollar** with the intent to permanently deprive the victim of possession thereof, in violation of §16-11-330(A) South Carolina Code of Laws, 1976, as amended.

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

Solicitor

Ernest A. Finley III

STATE OF SOUTH CAROLINA

COUNTY OF Sumter
STATE VS.

Michael Vandrell Johnson

AKA:

Race: Black Sex: M Age: 39

DOB: [REDACTED]-1980 SS# [REDACTED]

Address: [REDACTED] Olive Street

City, State, Zip: Sumter, SC 29150

DL#: [REDACTED] SID#: [REDACTED]

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Armed Robbery

in violation of § 16-11-0330(A)

of the S.C. Code of Laws, bearing CD # 0139

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC

w/minor 1st or Lewd Act)

☐ \$17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST: [Signature] 78316 [Signature] [Signature] 11861

Clerk of Court

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 17 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 Services 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 SCDOC.☐ The Defendant is to be placed on the 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: \$ _____

Payment Terms: _____

☐ 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. Probation) \$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) \$ 3.75

TOTAL \$ 128.75

Clerk of Court/ Deputy Clerk James C. Campbell

Court Reporter: Francis B. Ray

SCCA:217 (04/2018)

IN THE COURT OF GENERAL SESSIONS

233

10-30
y13.

INDICTMENT/CASE#: 2019-GS-43-0414

A/W#: 2019A4310200058

Date of Offense: 1/21/2019

S.C. Code § 16-11-0330(A)

CDR Code #: 0139

CERTIFIED TRUE COPY
OF ORIGINAL FILE☐ CONVICTED OF or ☒ PLEADS

DEPUTY CLERK OF COURT

SUMTER COUNTY
SOUTH CAROLINA

CD # 0139

w/minor 1st or Lewd Act)

(defendant's initials)

Recommendation by the State.

Attorney for Defendant

SC Bar#

Routzong, M. Chu

Obtain GED ☐

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

Judge Code: 2144

Sentence Date: Sept. 30, 2020