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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Sumter County

Honorable DeAndrea G. Benjamin, Circuit Court Judge

WILBERT FRANKLIN, JR.

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2018-000845

APPENDIX

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State of South Carolina	)	Court of General Sessions
	)	Third Judicial Circuit
County of Sumter	)	Case No. 2015-GS-43-00714

State of South Carolina,

Plaintiff,

-vs-

Wilbert Franklin Jr.,

Defendant.

Transcript of Record

November 9, 10 & 12, 2015
Sumter, South Carolina

B E F O R E:

The Honorable Maite' Murphy, Judge

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

John Meadors, Esquire
Attorney for the Plaintiff

Stephen Story, Esquire
Attorney for the Defendant

Krystal J. Smith
Court Reporter

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1 NOVEMBER 9, 2015

2 (WHEREAS this matter was scheduled for a trial, the
3 defendant appeared along with his counsel of record. The
4 trial began at 1:54 p.m.)

5 THE COURT: Thank you, everyone. You may have a seat.

6 THE CLERK: Ladies and gentlemen, it is my pleasure to
7 introduce to you this morning the Honorable Maite' Murphy, at-
8 large judge from Circuit Fifteen in St. George, from North
9 Charleston, South Carolina. Welcome back to Sumter, Your
10 Honor.

11 THE COURT: Thank you, sir. Welcome, ladies and
12 gentlemen of the jury. It's a pleasure to be holding court
13 here in Sumter this week. We're now ready to begin the jury
14 selection process in our next case. Solicitor, you may call
15 your case.

16 MR. MEADORS: May it please the Court?

17 THE COURT: Yes, sir.

18 MR. MEADORS: Your Honor, at this time, the State of
19 South Carolina does call the State versus Wilbert J. Franklin
20 Jr., Sumter County true-billed Indictment 2015-GS-43-0714, an
21 indictment for armed robbery. Mr. Franklin Jr. is with his
22 attorney, Mr. Stephen Story.

23 THE COURT: Ladies and gentlemen of the jury panel, we're
24 about to begin the trial of the case of the State of South
25 Carolina versus Wilbert J. Franklin Jr. Before we select a

1 jury, I'm going to read the indictment to you to ensure that
2 -- to see if you've heard anything about the case or know
3 anything about the case, and then we'll proceed with specific
4 questions about this particular case for you.

5 The indictment states that on or about August 16th, 2014,
6 in Sumter County, South Carolina, the defendant, Wilbert J.
7 Franklin Jr., at 660 W. Liberty Street, Sumter, South
8 Carolina, by use of force, threats or intimidation did while
9 armed with a deadly weapon or while alleging either by action
10 or words he was armed while using a present representation of
11 a deadly weapon or other object which a person present during
12 the commission of the robbery reasonably believed to be a
13 deadly weapon, did take and carry away goods and/or monies
14 from the person or immediate presence of Chaunise Carter, an
15 employee of Kangaroo, with the intent of criminally depriving
16 the victim of possession thereof. This is in violation of the
17 South Carolina Code of Laws as amended.

18 Ladies and gentlemen, I'm first going to ask the
19 solicitor to stand up and introduce himself and the members of
20 his office.

21 MR. MEADORS: May it please Your Honor?

22 THE COURT: Yes, sir.

23 MR. MEADORS: My name is John Meadors. I work for your
24 elected solicitor, the Honorable Ernest A. "Chip" Finney III.
25 Thank you.

1 THE COURT: Ladies and gentlemen of the jury panel, is
2 anyone related by blood or marriage or a close personal or
3 social relationship with the solicitor or anyone in his office
4 or has ever been represented by any of the attorneys in the
5 Solicitor's Office? If so, please stand.

6 I find that there is no one standing.

7 Mr. Story, I'll allow you to stand up and introduce
8 yourself and the members of your office.

9 MR. STORY: Thank you, Your Honor. My name is Stephen
10 Story. I work for Jack Howle, Third Circuit Solicitor [sic].
11 Cotch McKinley [phonetic]. We also work for the Public
12 Defender's Office and he may be helping me out a little bit
13 throughout the course of this trial.

14 THE COURT: Thank you, counsel. Ladies and gentlemen of
15 the jury panel, the same question applies. Is any member of
16 the jury panel related by blood or marriage or a close
17 personal or social relationship with Mr. Story or the members
18 of his office or has ever been represented by any of the
19 attorneys in the Public Defender's Office? If so, please
20 stand.

21 I find that there is no one standing.

22 Ladies and gentlemen of the jury panel, I'm going to read
23 to you a list of potential witnesses in this case and after I
24 read you the list of potential witnesses, I'll ask you the
25 same question as before, if you're related by blood or

1 marriage or a close personal or social relationship with any
2 of the following people. And if you are in the courtroom, if
3 you would, please stand so the jury can see you.

4 Chaunise Carter. This is Ms. Carter here. Thank you,
5 ma'am.

6 Detective Matthew Yates. Thank you, Detective.

7 Detective Jacob Mitchell, Officer Michael Braga, Walter
8 Robertson, Jim Allsbrook, and Cameron Jackson.

9 Anyone related by blood or marriage or any close personal
10 or social relationship with any of the potential witnesses
11 that I just listed? If so, please stand.

12 I find that there is no one standing.

13 Anyone related by blood or marriage or a close personal
14 or social friend of Mr. Wilbert J. Franklin Jr., who is seated
15 at counsel table with his attorney here? Anyone related by
16 blood or marriage or a close personal or social relationship
17 with Mr. Franklin? If so, please stand.

18 I find that there is no one standing.

19 Has any member of the jury panel ever been either charged
20 or their close personal or immediate family member been a
21 victim of a violent crime? A violent crime would, of course,
22 include some things such as murder, armed robbery, kidnapping
23 or a potential sexual assault. If so, if you would please
24 come forward.

25 I find that there is no one standing.

1 Has any member of the jury panel formed or expressed an
2 opinion about any issue or matter involved in this case? If
3 so, please stand.

4 I find that there is no one standing.

5 Is there any member of the jury panel that was a member
6 of the grand jury which issued the indictment in this case?
7 If so, please stand.

8 I find that there is no one standing.

9 Is there any member of the jury panel who is a member of
10 or a contributor to any group which has as its primary concern
11 the promotion of law enforcement or victim's rights? These
12 groups would include but are not limited to MADD, SADD or
13 Citizens Against Violent Crime. If so, please stand.

14 I find that there is no one standing.

15 Does any member of the jury panel know of any reason
16 whatsoever why he or she should not serve as a juror in this
17 case with a particular emphasis being placed on your ability
18 to be fair and impartial to both the State and to the defense?
19 If so, please stand.

20 I find that there is no one standing.

21 Does any member of the jury panel have previously heard
22 anything or read anything about this case, either today or
23 before today? If so, please stand.

24 I find that there is no one standing.

25 Any additional voir dire, counsel?

1 MR. MEADORS: Nothing from the State, Your Honor.

2 MR. STORY: Nothing from the defense.

3 THE COURT: Ladies and gentlemen, that will conclude the
4 list of questions before we begin to select this jury. Do we
5 need a second?

6 THE CLERK: No, ma'am.

7 THE COURT: Okay. All right. Ladies and gentlemen, if
8 your name is called to be listed as a potential juror, if you
9 would, please come forward and face the back. The attorneys
10 then will then either excuse you or place you in the jury. If
11 you please, bring your personal belongings with you as if
12 you're selected, we will go ahead and seat you in the jury
13 box.

14 MR. MEADORS: Judge, can we approach?

15 THE COURT: Yes, sir.

16 (WHEREUPON, a bench conference was held off the record.)

17 THE CLERK: May it please the Court?

18 THE COURT: Yes, sir.

19 THE CLERK: Ladies and gentlemen, as the judge has
20 instructed, when your name and number is called, just come to
21 the front. Stand and face the back of the courtroom. Number
22 107, Brooke Kirkland.

23 (WHEREUPON, a white female came forward.)

24 THE CLERK: What says the State?

25 MR. MEADORS: Please present the juror.

1 THE CLERK: What says the defense?

2 MR. STORY: Please seat the juror.

3 THE CLERK: Have a seat in the jury box up there, ma'am.

4 Number 97, Geraldine Jones.

5 (WHEREUPON, a black female came forward.)

6 THE CLERK: What says the State?

7 MR. MEADORS: Please present the juror.

8 THE CLERK: What says the defense?

9 MR. STORY: Please seat the juror.

10 THE CLERK: Have a seat in the jury box, ma'am. Number

11 116, Sean Lynch.

12 (WHEREUPON, a white male came forward.)

13 THE CLERK: What says the State?

14 MR. MEADORS: Please present the juror.

15 THE CLERK: What says the defense?

16 MR. STORY: Please seat the juror.

17 THE CLERK: Have a seat in the jury box, sir. Number 73,

18 Robert Henderson.

19 (WHEREUPON, a white male came forward.)

20 THE CLERK: What says the State?

21 MR. MEADORS: Please present the juror.

22 THE CLERK: What says the defense?

23 MR. STORY: Please excuse the juror from the trial in
24 this case.

25 THE CLERK: Have a seat back in the panel, sir. You've

1 been excused from this trial at this time. Number 130, Sallie
2 Neal.

3 (WHEREUPON, a black female came forward.)

4 THE CLERK: What says the State?

5 MR. MEADORS: Please present the juror.

6 THE CLERK: What says the defense?

7 MR. STORY: Please seat the juror.

8 THE CLERK: Have a seat in the jury box, ma'am. Number
9 137, William Phillips.

10 (WHEREUPON, a white male came forward.)

11 MR. MEADORS: What was that number? I'm sorry.

12 THE CLERK: Number 137. What says the State?

13 MR. MEADORS: Please present the juror.

14 THE CLERK: What says the defense?

15 MR. STORY: Please excuse the juror from the trial of
16 this case.

17 THE CLERK: Have a seat back in the panel, sir. You've
18 been excused from this trial at this time. Number 60, Marek
19 Francis.

20 (WHEREUPON, a black male came forward.)

21 THE CLERK: What says the State?

22 MR. MEADORS: Please excuse the juror.

23 THE CLERK: Have a seat back in the panel, sir. You've
24 been excused from this trial at this time. Number 192,
25 Okereda Choice.

1 (WHEREUPON, a black female came forward.)
2 THE CLERK: What says the State?
3 MR. MEADORS: Please present the juror.
4 THE CLERK: What says the defense?
5 MR. STORY: I apologize. What's her number again?
6 THE CLERK: 192.
7 MR. STORY: 192?
8 THE CLERK: Yes, sir.
9 MR. STORY: I beg the Court's indulgence.
10 THE COURT: Yes, sir.
11 MR. STORY: Please seat the juror.
12 THE CLERK: Have a seat in the jury box, ma'am. Number
13 193, Merrie Kiggins.
14 (WHEREUPON, a white female came forward.)
15 THE CLERK: What says the State?
16 MR. MEADORS: Please excuse the juror.
17 THE CLERK: Have a seat back in the panel, ma'am. You've
18 been excused from this trial at this time. Number 1, Shaneka
19 Adger.
20 (WHEREUPON, a black female came forward.)
21 THE CLERK: What says the State?
22 MR. MEADORS: Please present the juror.
23 THE CLERK: What says the defense?
24 MR. STORY: Please excuse the juror from the trial in
25 this case.

1 THE CLERK: Have a seat back in the panel, ma'am. You've
2 been excused from this trial at this time. Number 103, Rachel
3 Katorkas.

4 (WHEREUPON, a white female came forward.)

5 THE CLERK: What says the State?

6 MR. MEADORS: Please present the juror.

7 THE CLERK: What says the defense?

8 MR. STORY: Please seat the juror.

9 THE CLERK: Have a seat in the jury box, ma'am. Number
10 118, Sherry Maple.

11 (WHEREUPON, a black female came forward.)

12 THE CLERK: What says the State?

13 MR. MEADORS: Please present the juror.

14 THE CLERK: What says the defense?

15 MR. STORY: Please seat the juror.

16 THE CLERK: Have a seat in the jury box, ma'am. Number
17 61, Cheryl Franklin.

18 (WHEREUPON, a white female came forward.)

19 THE CLERK: What says the State?

20 MR. MEADORS: Please present the juror.

21 THE CLERK: What says the defense?

22 MR. STORY: Please seat the juror.

23 THE CLERK: Have a seat in the jury box, ma'am. Number
24 157, Melissa Smith.

25 (WHEREUPON, a white female came forward.)

1 THE CLERK: What says the State?

2 MR. MEADORS: Please present the juror.

3 THE CLERK: What says the defense?

4 MR. STORY: Please seat the juror.

5 THE CLERK: Have a seat in the jury box, ma'am. Number

6 102, Kimberly Junious-Burns.

7 (WHEREUPON, a black female came forward.)

8 THE CLERK: What says the State?

9 MR. MEADORS: Please present the juror.

10 THE CLERK: What says the defense?

11 MR. STORY: Please excuse the juror from the trial in

12 this case.

13 THE CLERK: Have a seat in the panel, ma'am. You've been

14 excused from this trial at this time. Number 150, Patricia

15 Sanders.

16 (WHEREUPON, a black female came forward.)

17 THE CLERK: What says the State?

18 MR. MEADORS: Please present the juror.

19 THE CLERK: What says the defense?

20 MR. STORY: Please seat the juror.

21 THE CLERK: Have a seat in the jury box, ma'am. Number

22 111, John Kruger.

23 (WHEREUPON, a white male came forward.)

24 THE CLERK: What says the State?

25 MR. MEADORS: Please present the juror.

1 THE CLERK: What says the defense?

2 MR. STORY: Please excuse the juror from the trial in
3 this case.

4 THE CLERK: Have a seat back in the panel, sir. You've
5 been excused from this trial at this time. Number 140,
6 Anthony Rembert.

7 (WHEREUPON, a black male came forward.)

8 THE CLERK: What says the State?

9 MR. MEADORS: Please present the juror.

10 THE CLERK: What says the defense?

11 MR. STORY: Please seat the juror.

12 THE CLERK: Have a seat in the jury box, sir. Number
13 158, Debra Spain.

14 (WHEREUPON, a black female came forward.)

15 THE CLERK: What says the State?

16 MR. MEADORS: Please present the juror.

17 THE CLERK: What says the defense?

18 MR. STORY: Please seat the juror.

19 THE CLERK: Have a seat in the jury box, ma'am. One
20 alternate?

21 THE COURT: Let's have two.

22 THE CLERK: Two alternates. Alternate juror, Number 44,
23 Jessica Curry.

24 (WHEREUPON, a white female came forward.)

25 THE CLERK: What says the State?

1 MR. MEADORS: Please present the juror.

2 THE CLERK: What says the defense?

3 MR. STORY: Please excuse the juror from the trial in
4 this case.

5 THE CLERK: Have a seat back in the panel, ma'am. You've
6 been excused from this trial at this time. Number 131,
7 Miranda Oglesby.

8 (WHEREUPON, a white female came forward.)

9 THE CLERK: What says the State?

10 MR. MEADORS: Please present the juror.

11 THE CLERK: What says the defense?

12 MR. STORY: Please seat the juror.

13 THE CLERK: Have a seat in the jury box, ma'am. Number
14 43, Gary Cundiff.

15 (WHEREUPON, a white male came forward.)

16 THE CLERK: What says the State?

17 MR. MEADORS: Please present the juror.

18 THE CLERK: What says the defense?

19 MR. STORY: Please seat the juror.

20 THE CLERK: Have a seat in the jury box, sir.

21 THE COURT: Would counsel please approach?

22 (WHEREUPON, a bench conference was held off the record.)

23 THE COURT: Any exceptions or objections to the selection
24 of this jury from either the State or from the defense?

25 MR. MEADORS: No, ma'am.

1 MR. STORY: Not from the defense.

2 THE COURT: All right. Ladies and gentlemen of the
3 remainder -- ladies and gentlemen of the jury panel, it's my
4 understanding that you are to call -- is it after six o'clock?
5 After six o'clock this evening to check whether or not you
6 need to return and what time. You can get the number from the
7 clerk's office if you don't have it already, but please call
8 after six o'clock for further instructions. You may be
9 excused at this time. Have a nice afternoon.

10 (WHEREUPON, the jury panel was released at 2:18 p.m.)

11 THE COURT: Ladies and gentlemen of the jury that was
12 selected for the trial of this case, we have some other
13 matters that we must take care of that do not require your
14 presence this afternoon; so I'm going to excuse you until in
15 the morning. The bailiff will show you where your jury room
16 will be in the morning. If you would, please report there a
17 few minutes before 9:45. That way, we can get everyone
18 together so we can start the trial right at 9:45 and make sure
19 we have a timely start to this trial.

20 And I understand, Ms. Jones, that you need to leave by
21 five. Where is Ms. Jones? So we'll make sure that you leave
22 by five on each evening. Of course, other than if you're
23 deliberating at some point.

24 Again, if you would, please be in your jury room a little
25 bit before 9:45, I'd appreciate that. Please remember that

1 it's very important -- you have not heard this case. Please
2 do not do any independent research about this case. Don't
3 talk about this case, even amongst yourselves or with your
4 family members because it is very important that you're not
5 influenced by any outside sources. You must make your
6 determination based on what you hear in this courtroom only.
7 So again, please do not discuss this case with anyone or allow
8 anyone to discuss this case with you. Have a good evening and
9 we'll see you in the morning.

10 (WHEREUPON, the jury exited the courtroom at 2:20 p.m.)

11 THE COURT: Counsel, I understand that we have some pre-
12 trial matters we need to take care of.

13 MR. MEADORS: Your Honor, may we have five minutes? And
14 I think I can shorten up the whole process.

15 THE COURT: Sure.

16 MR. MEADORS: We may be down to just one.

17 THE COURT: Okay.

18 MR. MEADORS: If you'll just give us five minutes,
19 please?

20 THE COURT: Sure. Just let me know when you're ready.

21 MR. MEADORS: Thank you.

22 (WHEREUPON, there was a break in the proceedings from
23 2:21 p.m. until 2:33 p.m.)

24 THE COURT: Thank you, everyone. You may have a seat.
25 Yes, sir?

MATTHEW YATES - DIRECT BY MR. MEADORS

1 MR. MEADORS: May it please the Court?

2 THE COURT: Yes, sir.

3 MR. MEADORS: Your Honor, we'd call Detective Matthew
4 Yates to the stand.

5 THE COURT: Is this a Jackson v. Denno?

6 MR. MEADORS: Yes, ma'am.

7 THE COURT: All right.

8 MR. MEADORS: I'm sorry.

9 THE COURT: That's okay. Come on up, Detective.

10 THE CLERK: Place your left hand on the Bible and raise
11 your right hand. State your name, please.

12 THE WITNESS: Matthew Miguel Yates.

13 THE CLERK: Do you solemnly swear or affirm the testimony
14 you give to this Court will be the truth, the whole truth, and
15 nothing but the truth, so help you God?

16 THE WITNESS: I do.

17 THE CLERK: Thank you. Come around, sir. State your
18 name and spell your last for the record.

19 THE WITNESS: Matthew Miguel Yates. Y-a-t-e-s.

20 THE COURT: Your witness.

21 MR. MEADORS: May it please the Court?

22 THE COURT: Yes, sir.

23 MATTHEW YATES, being first duly
24 sworn, testified as follows:

25 DIRECT EXAMINATION

MATTHEW YATES - DIRECT BY MR. MEADORS

1 BY MR. MEADORS:

2 Q: Good afternoon, Detective Yates.

3 A: Good afternoon, sir.

4 Q: How long have you been in law enforcement?

5 A: Eighteen years.

6 Q: And what are the different agencies you've worked at --

7 or for? Excuse me.

8 A: DJJ out of Columbia, Mental Health out of Columbia,

9 Columbia Airport, Metropolitan Airport, all as a police

10 officer.

11 Q: And you've had training and education in talking to

12 individuals and suspects and defendants; correct?

13 A: Yes, sir.

14 Q: I am going to show you what's marked for these purposes

15 as Court's Number 1. Do you recognize this?

16 A: Yes, sir, I do.

17 Q: What is that?

18 A: That's a Miranda interview form, which we here at Sumter

19 -- City of Sumter Police Department -- we have them before us

20 when we have an individual there that we're Mirandizing.

21 Q: That's your standard Miranda form that y'all use at the

22 Sumter Police Department?

23 A: Yes, sir.

24 Q: Detective Yates, for these purposes today this afternoon

25 in front of Her Honor, I'm going to ask you exclusively about

MATTHEW YATES - DIRECT BY MR. MEADORS

- 1 when you had the opportunity to talk to the defendant, Wilbert
2 Franklin Jr..
- 3 A: Yes, sir.
- 4 Q: And tell the judge where -- where did you talk to Wilbert
5 Franklin Jr.?
- 6 A: I spoke with Mr. Wilbert Jr. in the -- at our police
7 department in the interview section of our department.
- 8 Q: And where is the police department?
- 9 A: 107 East Hampton.
- 10 Q: Right across the street?
- 11 A: Right across the street.
- 12 Q: All right.
- 13 A: Next to the library.
- 14 Q: And what -- on what date did you talk to the defendant?
- 15 A: The date was August 17th, 2014.
- 16 Q: And who was present when you talked to Wilbert Franklin
17 Jr., Detective?
- 18 A: Myself. At this time, I really can't remember what other
19 officer was on the scene with me. They called me in after he
20 was arrested and I interviewed -- I interviewed him at that
21 time. I'm not sure. I think we had some detectives in the
22 hallway, but in the room itself it was me.
- 23 Q: You?
- 24 A: Yes, sir.
- 25 Q: All right. And describe the room for Her Honor?

MATTHEW YATES - DIRECT BY MR. MEADORS

1 A: Probably about -- probably about ten by -- about ten by
2 eleven, one door, one way in. You have a -- you have a glass
3 to your left where we normally store cameras, but during this
4 interview we don't have -- at this time, we don't have cameras
5 or audio. So I interviewed him one-on-one at the time.

6 Q: And at this -- at this point, was he a suspect in the
7 armed robbery at the Kangaroo?

8 A: Yes, sir, he was.

9 Q: At the intersection or near the intersection of Guinyard
10 and --

11 A: Yes, sir.

12 Q: -- Liberty?

13 A: Yes, sir.

14 Q: Okay. And did you have an occasion to read Wilbert
15 Franklin Jr. his Miranda rights?

16 A: Yes, I did, sir.

17 Q: And did you use Court's 1?

18 A: Yes, sir.

19 Q: And could you read them like -- as you did to the
20 defendant for Her Honor, please?

21 A: As every suspect that's before me, I normally read it
22 according to the form. You have the right to remain silent.
23 And then I'll pause to make sure that the suspect understands
24 that -- understands his rights. And I also ask them do you
25 understand after I'm finished with that -- with that statement

MATTHEW YATES - DIRECT BY MR. MEADORS

- 1 -- with that line. And then I --
- 2 Q: Detective --
- 3 A: -- go to the next one.
- 4 Q: Okay. And I apologize for interrupting you.
- 5 A: Yes, sir.
- 6 Q: When you read the first line to the defendant --
- 7 A: Yes, sir.
- 8 Q: -- you have the right to remain silent, did he appear to
- 9 understand that?
- 10 A: Yes, sir.
- 11 Q: And did he tell you that he understood it?
- 12 A: He said he understood it.
- 13 Q: Okay. And did you have any trouble understanding him
- 14 when he said I understood it?
- 15 A: No, sir.
- 16 Q: And did he appear to have any trouble understanding you
- 17 when you asked the question?
- 18 A: No, sir.
- 19 Q: Was his response to you timely and subject matter
- 20 appropriate?
- 21 A: Yes, sir.
- 22 Q: And after that, you read him the next right?
- 23 A: Yes, sir. Anything that you say can be used against you
- 24 in court.
- 25 Q: And did he indicate to you he understood that?

- 1 A: Yes, sir.
- 2 Q: Okay. What's next?
- 3 A: You have the right to talk to a lawyer or advise before
4 we ask you any questions and to have him or her with you
5 during the questioning.
- 6 Q: And did you read it like you just did?
- 7 A: I read it just like I just did.
- 8 Q: And did he tell you he understood that right?
- 9 A: He understood it.
- 10 Q: What's next? What did you do next?
- 11 A: After he acknowledged that he understood, I went to the
12 next line, which reads if you cannot afford a lawyer, one will
13 be appointed for you before any questioning if you wish.
- 14 Q: And did he tell you he understood that right?
- 15 A: Yes, sir.
- 16 Q: And again, are you having any trouble understanding him?
- 17 A: No, sir.
- 18 Q: And what's next, Detective?
- 19 A: If you decide to answer any questions now without a
20 lawyer present, you still have the right to stop answering at
21 any time until you talk to a lawyer.
- 22 Q: And did he appear to understand that?
- 23 A: Yes, he did, sir.
- 24 Q: And did he tell you he did?
- 25 A: Yes, sir.

MATTHEW YATES - DIRECT BY MR. MEADORS

1 Q: Now, next on your form what's Court's 1 for today's
2 purposes, do you have in there before any questioning I was
3 furnished the above statement of my rights at 1850 on August
4 17th, 2014, at LEC? Is that Law Enforcement Center?

5 A: Law Enforcement Center. Yes, sir.

6 Q: By Officer/Detective M.M. Yates?

7 A: Yes, sir.

8 Q: Of the Sumter Police Department? Did you fill that out?

9 A: Yes, I did, sir.

10 Q: Okay. And that's basically saying you just did what you
11 told the judge you did?

12 A: Yes, sir.

13 Q: Didn't you?

14 A: Yes, sir.

15 Q: After that, is there what's known as a waiver of rights?

16 A: Yes, sir.

17 Q: Can you read that like you did to Mr. Franklin, as was
18 read to him?

19 A: I have read or had read to me -- have read to me the
20 statement of my rights. I understand what my rights are. I
21 am willing to answer -- answer questions at this time without
22 a lawyer present. No promise or threats have been made to me
23 and no pressure has been used against me.

24 And that's the end of that paragraph, and at that time I
25 asked the subject do he understood and he said yes. And I

MATTHEW YATES - DIRECT BY MR. MEADORS

1 asked him would he sign it. He signed it, dated it, and timed
2 it. And in the witness form of this section of this form, I
3 also signed it as a witness.

4 Q: So after you read him his rights and then his waiver of
5 rights, did he indicate to you orally I understood it?

6 A: He said he understood it.

7 Q: And then did he sign it?

8 A: Yes, sir, he did.

9 Q: Did you force him to sign that, Detective?

10 A: No, sir.

11 Q: All right. And you signed as a witness here?

12 A: Yes, sir.

13 Q: Did he have any trouble signing his name?

14 A: No, sir.

15 Q: And this waiver of rights actually includes no promises
16 or threats have been made to me and no pressure has been used
17 against me. Did you threaten him or coerce him or hold out
18 any hope of promise of reward in exchange for giving you a
19 statement?

20 A: No, sir.

21 Q: Okay. And I'm not saying he did or that he asked, but if
22 he had to use the bathroom or if he wanted something to eat,
23 would you have provided that to him?

24 A: Yes, sir.

25 Q: And do you know did he ask or do you remember?

MATTHEW YATES - DIRECT BY MR. MEADORS

1 A: I don't remember him asking to use the restroom or not,
2 but --

3 Q: But it's your practice if somebody needs to use the
4 bathroom --

5 A: Use the bathroom.

6 Q: -- or wants something to eat, you're going to let them do
7 it?

8 A: Yeah. We always do. Yes, sir.

9 Q: Would you describe -- how would you describe the
10 atmosphere between the two of you down at the law enforcement
11 center as you were taking -- attempting to get a statement
12 from him?

13 A: I think we had a -- I know he was -- you may not know a
14 situation like that and I don't want to speak, you know, for
15 him, but I know he was a little nervous. But we got a rapport
16 real quick. We started talking and everything kind of
17 smoothed out and then he opened up to me and he gave a
18 statement.

19 Q: So it wasn't confrontational?

20 A: No, sir, not at all. He was very cooperative.

21 Q: Are you telling the judge that Wilbert Franklin Jr.
22 appeared to be under the influence of alcohol, drugs or any
23 other intoxicants when you were talking to him?

24 A: I can't remember. Not at that time. He appeared to come
25 across as educated and understood what he was into and being

1 remorseful about what he was talking about.

2 Q: But he didn't appear to be under the influence of
3 anything --

4 A: No, sir.

5 Q: -- that you remember?

6 A: No, sir.

7 Q: And do you remember even smelling anything on him or
8 anything, alcohol or anything?

9 A: Not at that time.

10 Q: Okay. And for these purposes, you won't be able to -- if
11 His Honor let's this go forward, you won't be able to say it
12 in front of the jury, but for these purposes, you were aware
13 of his criminal background?

14 A: Yes, sir.

15 Q: And his involvement in the criminal justice system, is
16 that a further indicator he understood?

17 A: Yes, sir.

18 Q: He'd kind of been down this road before basically?

19 A: Yes, sir.

20 Q: Okay. After you'd read him his rights and you've
21 testified he understood his rights and waived his rights, did
22 you -- we're not going to go into it, but did you get a
23 statement from him?

24 A: Yes, I did, sir.

25 Q: And for these purposes, did he sign at the bottom of the

MATTHEW YATES - DIRECT BY MR. MEADORS

1 page indicating that he has read or had read to him this
2 statement consisting of two pages and that he attests that it
3 is a true and accurate account to the best of his knowledge of
4 the events that took place?

5 A: Yes.

6 Q: And that he's received a copy of it?

7 A: Yes, sir.

8 Q: And he signed that at the bottom of page 1 on Court's
9 Number 2 -- I apologize -- that I'm referring to?

10 A: Yes, sir.

11 Q: And did you also sign? -----

12 A: I did, sir.

13 Q: And I notice there's a big X on the back of --

14 A: Yes.

15 Q: -- page 2 of Court's 2. Why do you do that?

16 A: Well, that's so no one else can add or subtract anything
17 from the statement that the suspect has written.

18 Q: Okay. So you both signed page 1; correct?

19 A: Yes, sir.

20 Q: And the information that you've got here, Wilbert

21 Franklin of [REDACTED] Drive, did you know where he
22 lived?

23 A: I didn't. No, sir.

24 Q: Okay. So did he have to provide you that information?

25 A: Yes, sir.

1 Q: Okay. Did you have any trouble understanding him --

2 A: No.

3 Q: -- when he --

4 A: He wrote -- he wrote that in there.

5 Q: Okay. So he actually wrote this?

6 A: Yes, sir.

7 Q: And he wrote his Social Security number?

8 A: Yes, sir.

9 Q: Did he have any trouble remembering his Social Security

10 number or was he able to write it right then?

11 A: Not to my knowledge, no, sir.

12 Q: Okay. At any time during the reading of his rights,

13 taking of his statement, did he say, Matthew, I don't want to

14 talk to you?

15 A: No, he didn't, sir.

16 Q: Quit talking to me?

17 A: No, sir.

18 Q: Get me a lawyer? Did he ever do that?

19 A: No, sir.

20 Q: If he had, what would you have done?

21 A: Stopped immediately.

22 Q: And is the individual that you read his rights to and

23 you've told His Honor he understood his rights, in your

24 opinion it was a voluntary statement and the person that you

25 took the statement from, is that individual in the courtroom?

MATTHEW YATES - DIRECT BY MR. MEADORS

1 A: Yes, sir. He is.

2 Q: Please point him out for Her Honor.

3 A: Sitting over to my left, the African-American gentleman.

4 Q: Next to Mr. Story?

5 A: Next to Mr. Story.

6 Q: Okay.

7 MR. MEADORS: We'd ask the record to reflect. And that's
8 all we have. Thank you.

9 THE COURT: Mr. Story?

10 MR. STORY: Thank you.

11 CROSS-EXAMINATION

12 BY MR. STORY:

13 Q: Detective Yates?

14 A: Yes, sir.

15 Q: It's your testimony that you actually saw him write the
16 statement?

17 A: Yes, sir.

18 Q: Okay.

19 A: In and out.

20 Q: In and out?

21 A: I was -- he was writing a statement in the room. I gave
22 him a little time and I stepped outside the door. Come back
23 in and make sure he's okay.

24 Q: So -- but -- so did you actually see him write the
25 statement?

- 1 A: I seen him -- he's the only one was in the room. I left
2 him with a pen and a paper and he started it. Once he started
3 it, I stepped out and came back.
- 4 Q: Okay. You left him with a pen and a blank sheet of
5 paper?
- 6 A: Well, I'm standing right by the door. Yes, sir.
- 7 Q: Okay. And when you came back in, he had written a
8 statement that the solicitor just showed you?
- 9 A: Yes, sir.
- 10 Q: You just --
- 11 A: He's completed it. He completed it. I'm sorry. Go
12 ahead, sir.
- 13 Q: Oh, go ahead. What did you want to say? He completed
14 what?
- 15 A: He completed the statement while I was there. Yes, sir.
- 16 Q: So you saw him complete the statement?
- 17 A: Yes, sir.
- 18 Q: And you saw him sign it?
- 19 A: Yes, sir.
- 20 Q: Now, you stated before he wrote the statement that he was
21 kind of nervous when y'all were talking; right?
- 22 A: I said what? I said that normally you would be -- be
23 nervous if you were in that situation.
- 24 Q: And so it's not your testimony that he was nervous?
- 25 A: I don't know if he -- I don't know if he actually was

MATTHEW YATES - CROSS BY MR. STORY

1 nervous or not. I said it would appear to be that he would be
2 nervous.

3 Q: Okay. He appeared to be nervous?

4 A: Right.

5 Q: Okay. What type of things did y'all talk about before he
6 wrote the statement?

7 A: I can't remember that much --

8 Q: Okay.

9 A: -- back then.

10 Q: So you don't remember anything y'all talked about before
11 you took the statement?

12 A: Well, probably where was he during the -- during the time
13 of this incident, where was he. How did he get here, because
14 he's not from Sumter. He indicated to me that he was from
15 Williamston. He was from out of town. He wasn't from here.
16 We went into that. He went into how he -- I think he went
17 into how he and his wife had some issues and that's the reason
18 he ended up here, and he was incarcerated for approximately
19 two weeks or twenty days or something like that.

20 Q: Okay.

21 A: But anyway, we talked about -- what we normally -- sir,
22 what we -- what I normally do, I normally try to get a rapport
23 with the person I'm speaking with. Okay? And try to find out
24 why -- and in this case, tried to find out why he was here.
25 Because he was saying that he was here because he had a

1 problem or he had a divorce or was going through a divorce
2 with his wife. That's what I can remember, as far as I can
3 remember.

4 Q: So did you describe the incident that you were
5 investigating before he took -- before he gave the statement?

6 A: Well, I think I mentioned -- I mentioned -- I asked him
7 why -- do he know why he was here with me and he agreed that
8 he knew. And at that time, I think I told him that we do have
9 -- I do have him on surveillance camera. Yes, I did.

10 Q: You didn't tell him that you had his DNA?

11 A: I told them that we -- there's a possibility for us to
12 get -- we can get DNA because he placed his hand on a chair
13 that I saw on the video.

14 Q: Did you have any reason to believe that he had a drug or
15 alcohol problem?

16 A: From what he was telling me -- well, we talked and from
17 what he told me, that he told me that he had a problem with
18 alcohol and drugs.

19 Q: Okay. But he didn't -- to you, did he look like he was
20 under the influence of any sort of intoxicant?

21 A: He didn't, not at the time.

22 Q: All right.

23 MR. STORY: Thank you, Your Honor. No further questions.

24 THE COURT: Any further redirect?

25 REDIRECT EXAMINATION

MATTHEW YATES - REDIRECT BY MR. MEADORS

1 BY MR. MEADORS:

2 Q: Did he write the whole statement out? Was his -- that's
3 his handwriting?

4 A: That's his handwriting all the way through, sir.

5 Q: Okay.

6 A: Yes.

7 MR. MEADORS: Thank you. That's all.

8 THE COURT: You may step down, Detective. Thank you.

9 THE WITNESS: Thank you, ma'am.

10 MR. MEADORS: That's all we have, Your Honor.

11 THE COURT: Anything from your side, Mr. Story?

12 MR. STORY: No, Your Honor.

13 THE COURT: Based upon the testimony by Detective Yates,
14 the Court does find that the statement was voluntarily given
15 and taken in compliance with Miranda, and it will be
16 admissible.

17 MR. MEADORS: Judge, I was here Friday for a fair amount
18 of time with IT after our last time together and my closing
19 argument. So I didn't certainly want anything to happen like
20 that, and I think we've got it worked out. Mr. Story and I
21 are going to kind of do a run through with -- I think somebody
22 from the clerk's office will stay here with us just to -- the
23 case really is the video and it's not that long, but there are
24 two or three different angles.

25 So we were going this afternoon without Your Honor just

1 to make sure we've got it up and running. I did it Friday.
2 It worked, but I just want to be sure before you come back in
3 the morning because it will go up with the first witness.

4 THE COURT: Okay. That's probably a wise move to make
5 sure we have everything running smoothly. Any other pre-
6 trial?

7 MR. MEADORS: That's all I have.

8 THE COURT: Okay. How about you, Mr. Story?

9 MR. STORY: No, Your Honor. Is it okay if my defendant
10 watches you play the video and stays in here for however long
11 it takes?

12 THE COURT: Sure. As long as security is okay with that,
13 I'm -- I'm happy to let him stay.

14 MR. MEADORS: I can go get it and be back in five
15 minutes. Judge, there is an issue with transportation.
16 Obviously, the Department of Corrections has custody of Mr.
17 Franklin. My intent was to ask Your Honor to sign an order
18 just keeping him here until this case was over. I don't know.
19 Mr. Story may have an objection to that. I don't know.

20 MR. STORY: I do. My defendant would rather -- he
21 doesn't want to stay in Sumter I believe. He would rather go
22 back to SCDC.

23 THE COURT: Is there a particular reason?

24 MR. STORY: I think -- I think they have some more legal
25 research resources at the prison he's staying at and so he

1 wanted to do some -- he wanted to work on some of those
2 things.

3 THE COURT: Where in SCDC is he at?

4 THE DEFENDANT: McDougall.

5 THE COURT: Okay.

6 MR. MEADORS: Judge, my only -- usually we have to give
7 -- I know this sounds crazy, but we have to give them forty-
8 eight hours to transport. I know that's impossible now.

9 THE COURT: Uh-huh.

10 MR. MEADORS: You know, I hate to put these guards out,
11 but whatever Your Honor rules, I'm fine with. I'm sure they
12 -- they are not going to mind traveling, but we just want to
13 make sure he's here in the morning.

14 THE COURT: And I understand that. Considering he wants
15 to do some legal research, if he can assist his counsel, I
16 think out of caution I will allow him to be transported back
17 and forth. If you need an order signed, I would be happy to
18 sign an order for y'all.

19 MR. STORY: Thank you, Judge.

20 MR. MEADORS: I beg the Court's indulgence. Judge, we'll
21 try to get something prepared.

22 THE COURT: Okay.

23 MR. MEADORS: Thank you.

24 THE COURT: Do you need a -- I'll wait in chambers until
25 you get it prepared.

1 MR. MEADORS: Yes, ma'am. Unless you -- I'll have
2 somebody draw it up real quick.

3 THE COURT: Okay. Perfect.

4 MR. MEADORS: Thank you.

5 THE COURT: Thank you.

6 MR. MEADORS: I'll be right back.

7 THE COURT: All right. So we'll be at ease until 9:45 as
8 far as the Court is concerned.

9 MR. STORY: Thank you, Judge.

10 MR. MEADORS: Thank you, Your Honor.

11 (WHEREUPON, the proceedings were adjourned for the day at
12 2:52 p.m.)

13 NOVEMBER 10, 2015

14 (WHEREUPON, the proceedings resumed at 9:54 a.m.)

15 THE COURT: Good morning, everyone. Thank you. You may
16 have a seat. Are there any issues we need to address before
17 we bring the jury out?

18 MR. MEADORS: Nothing from the State.

19 MR. STORY: Your Honor, I do have a few issues I need to
20 bring up.

21 THE COURT: All right, sir.

22 MR. STORY: The first one that came to my attention
23 yesterday was when we watched the video again that there are
24 some statements made after the incident. So the video shows
25 the incident in question. The defendant runs out. She comes

1 back in on the phone. I don't know who she's talking to at
2 that point. It might be 9-1-1. It might be somebody else.

3 But after that, people come in. They start coming in the
4 store and they start having a back and forth conversation. My
5 argument to that is it's -- I haven't had a chance to cross-
6 examine those witnesses. I'm not going to have a chance to
7 cross-examine those witnesses today. Anything they say will
8 be a violation of confrontation. So I would ask that the
9 video be stopped before those people come in and start talking
10 on video.

11 THE COURT: Mr. Meadors?

12 MR. MEADORS: May it please the Court. Your Honor, right
13 after the incident, the victim, Ms. Carter, follows the
14 defendant outside. You then see her coming back in on the
15 phone. You can actually see her on the phone. She's talking
16 to 9-1-1. She's going to testify to that. She's telling them
17 he had a gun and somewhat describes what they're wearing.

18 We think that comes under 803, present sense impression,
19 excited utterance, several exceptions to the hearsay rule and
20 non-testimonial because she's literally talking with 9-1-1 --
21 to 9-1-1.

22 In addition to that, it's about three or four minutes I
23 think after the incident where there are conversations in
24 there and she says he had a gun. He had a gun. And somebody
25 in response to that goes he had a gun. Y'all don't go out

1 there. It's -- it's real and we think it's excited utterance
2 and present sense impression, and we'd like to play the whole
3 thing.

4 THE COURT: Well, let me ask you this. I think certainly
5 her portion of it where she's talking to 9-1-1 and her excited
6 utterances is one thing. The person that comes in after the
7 fact, how does that become an excited utterance?

8 MR. MEADORS: I don't -- just because I think it is. I
9 think it's her response to the victim, which is an excited
10 utterance in and of itself, no matter who it is. I mean
11 that's clearly responding to her. He's got a gun. And I
12 think that's what the rule calls for. I don't think you're
13 necessarily -- it's not testimonial.

14 THE COURT: Can I see that portion of the video?

15 MR. MEADORS: Yes, ma'am. Your Honor, I'll just speed it
16 up to where --

17 (WHEREUPON, State's Exhibit Number 16, the surveillance
18 video was played in court and was then stopped.)

19 MR. MEADORS: Judge, there's several different angles.
20 This is the only audio that worked. So there won't be any
21 showing of any of the others that we'll show because there's
22 no audio.

23 I guess our argument respectfully is that the issue is
24 did he have a gun. That's one of the elements, and her
25 impression whether he had a gun, and we think this first

1 behind-the-scenes video and the audio shows she thought he had
2 a gun. That was her impression, her present sense if you
3 will, and we'd respectfully ask to play the whole thing.

4 MR. STORY: Your Honor, the other people that come in
5 afterwards, they didn't have the opportunity to perceive the
6 exciting event. What they are responding to is the cashier's
7 statements and -- and her excitement in this situation. So I
8 don't believe that meets the hearsay objection -- I mean
9 exception.

10 THE COURT: Thank you, Mr. Story. Clearly by listening
11 to the video and looking at it, it's clearly the victim under
12 the exciting and startling event that she's stating he had a
13 gun, he had a gun. I don't think that's a confrontation issue
14 at all because of the fact that she is going to testify.

15 Regarding what other people may have come in and said,
16 they're merely repeating what she just said. They're not
17 testifying. It's not -- it doesn't go to the truth of the
18 matter asserted. It's her credibility. I think the probative
19 value outweighs the prejudicial effect and it's coming in.
20 Anything else before we bring the jury out?

21 MR. STORY: Yes, Your Honor. Two more brief motions. My
22 client is in custody of SCDC right now. They're in the
23 courtroom today. I would make a motion that they either be
24 required to stand outside the courtroom in some of the smaller
25 rooms or as far away as possible.

1 THE COURT: Well, Mr. Story, I think we somewhat
2 addressed that yesterday. I understand it's their protocol
3 when your client is an inmate of SCDC that they're responsible
4 for his custody and security in the courtroom. They're in the
5 gallery. They're not sitting right behind him over his
6 shoulder. They certainly don't appear to be overbearing in
7 any way, shape or form.

8 This is an open courtroom. Certainly, I can instruct the
9 jury if you would like for me to that, sure, there is security
10 in this case as there is in every case, and I don't think it's
11 to the point where it draws any kind of unwarranted attention
12 to your client. They're not -- they're sitting actually,
13 like, two or three rows behind him in the gallery.

14 MR. STORY: Okay. And lastly, Your Honor, I would ask
15 that all the witnesses be sequestered except for the lead
16 investigator.

17 THE COURT: And the victim, of course. She's -- pursuant
18 to the Victim's Rights Act, she has the right to stay in the
19 courtroom, but otherwise your motion is granted.

20 MR. STORY: Thank you, Your Honor.

21 MR. MEADORS: And I think that's all we have in here,
22 with the exception of the evidence custodian, which I don't
23 even know if we're going -- he's not a fact witness.

24 Judge, we have marked State's 1 through 15, and Mr. Story
25 has looked at them. I don't believe he's got any objection to

1 these photos.

2 THE COURT: Is that correct, Mr. Story?

3 MR. STORY: Yes, Your Honor.

4 THE COURT: So 1 through 15 are in by stipulation based
5 on the proper foundation being laid; is that correct?

6 MR. STORY: Based on the proper foundation being laid.

7 THE COURT: Okay.

8 MR. STORY: Yes, Your Honor.

9 (WHEREUPON, State's Exhibits Number 1 through 15, all
10 color photographs, were admitted into evidence.)

11 MR. MEADORS: And 16 is the DVD, Your Honor.

12 THE COURT: All right.

13 (WHEREUPON, State's Exhibit Number 16, the surveillance
14 video, was admitted into evidence.)

15 THE COURT: And then the only other matter we didn't put
16 on the record yesterday was that one of our jurors, I believe
17 it was Ms. Smith, had indicated to Judge James that she needs
18 protection on Friday and he had granted her that protection.
19 Both parties were aware of that and she's actually on the
20 jury. When I asked both parties after jury selection before
21 any motions were made, both parties had indicated that if this
22 case goes into Friday, both were okay with going with the
23 first alternate. Is that correct?

24 MR. MEADORS: Yes, ma'am.

25 MR. STORY: Yes, Your Honor.

1 THE COURT: All right. Anything before I bring our jury
2 out now?

3 MR. MEADORS: No, ma'am. Thank you.

4 THE COURT: All right. Let's have our jury, please.

5 (WHEREUPON, the jury entered the courtroom at 10:07 a.m.)

6 THE CLERK: All the jurors are back in the courtroom,
7 Your Honor.

8 THE COURT: Thank you. Good morning, ladies and
9 gentlemen. Welcome back. Thank you for your patience this
10 morning. Mr. Prince, if you would, please swear in our jury.

11 THE CLERK: Ladies and gentlemen, please stand and raise
12 your right hand. The State of South Carolina, in the County
13 of Sumter in the Court of General Sessions, Indictment Number
14 2015-GS-43-0714, the State versus Wilbert J. Franklin Jr. You
15 show well and truly try and a true deliverance make between
16 the State of South Carolina and Wilbert J. Franklin Jr., whom
17 you have in charge, and a fair and just verdict give according
18 to the evidence, so help you God. Please respond by saying I
19 will.

20 THE JURY: I will.

21 THE CLERK: Thank you. You may be seated.

22 THE COURT: Ladies and gentlemen of the jury, thank you
23 for accepting the important responsibility of jury service and
24 for your contribution today to our system of justice. What I
25 will now say to you is intended to serve as an introduction to

1 the trial of this case. These remarks are not a charge on the
2 law in this case. I will instruct you on the law applicable
3 to this case before you retire to consider your verdict. This
4 is merely an explanation of the procedure that we will follow
5 during the trial so that you may better understand what is
6 happening. You may not take notes during the trial.

7 The defendant in this case is charged by an indictment
8 filed with this court with the crime of armed robbery, the
9 elements of which will be explained to you at a later time.
10 The indictment is simply the charge by which the case is
11 brought into court. It is not in any sense evidence of the
12 allegations that it contains.

13 The defendant has pled not guilty to this indictment and
14 the State, therefore, has the burden of proving each of the
15 elements of the indictment beyond a reasonable doubt. And it
16 will be your duty, ladies and gentlemen, to decide whether the
17 State has met that burden.

18 Your purpose as jurors is to find and determine the
19 facts. You are the sole judges of the facts. If at any time
20 I make any comment regarding the facts, you must disregard it.
21 You are to determine the facts from the testimony you hear and
22 the other evidence that is introduced in court. It is up to
23 you to determine the inferences which you feel may be properly
24 drawn from the evidence. It is especially important that you
25 perform your duty of determining the facts diligently and

1 conscientiously because ordinarily there's no way to correct
2 an erroneous determination of the facts by a jury.

3 On the other hand and with equal emphasis, the same law
4 that makes you the judges of the facts makes me the judge of
5 the law. The law as given by the Court is the only law that
6 you may consider. You must accept it and follow it even
7 though you may disagree with it. I cannot tell you what the
8 facts are and you cannot disagree with me about what the law
9 is or what the law should be.

10 Your job is to take the law as I give it to you and apply
11 it to the facts as you find them from the testimony of the
12 witnesses and any other evidence that is properly introduced
13 into the trial. After doing that, you will render your
14 verdict, a true and just verdict, under the solemn oath that
15 you just took as jurors.

16 Until I advise you to begin your deliberations, you must
17 not discuss this case with anyone, including your fellow
18 jurors, your family members, your friends, and anyone involved
19 in the case. This includes discussions face-to-face, and any
20 of those by telephone, email, text, blogs or any other method
21 of communication.

22 You may not use a computer, a cell phone or any other
23 electronic device with communication capabilities at any time
24 while in the courtroom or during your deliberations. During
25 your breaks for meals or overnight, if necessary, you may use

1 these devices. However, you may not at any time use these
2 devices to get or send information about the case. This
3 includes any information about a party, a witness, an
4 attorney, a court officer, any news accounts about the case,
5 any research on any topics that may be raised or any topics
6 that you may think would be helpful in deciding the case or
7 any testimony that is presented by a witness.

8 During the trial, do not read, listen to, watch or
9 anything -- or any news reports about this case. That
10 includes anything that may be in the newspapers, on the TV,
11 Internet, radio. And you must not consider anything that you
12 may have heard -- read or heard about this case outside of the
13 courtroom, whether before or during this trial.

14 After the case is submitted to you, you must discuss it
15 only in the jury room with your fellow jurors. The attorneys
16 and the parties in this case have been informed not to talk to
17 you at all. So if you see anyone involved in the trial of
18 this case during breaks or coming in and out and they don't
19 speak to you, they are not being rude. They're just following
20 the Court's instructions.

21 It is important that you keep an open mind and not decide
22 any issue in this case until all of the evidence has been
23 presented, the parties have made their closing arguments, and
24 I have instructed you on the law in this case. It is your
25 solemn responsibility to determine the guilt or innocence of

1 the defendant, and your verdict must be based solely on the
2 evidence that is presented to you during this trial and on the
3 law as I instruct you during and -- during the trial and at
4 the close of the trial.

5 In just a moment, the solicitor will make what is called
6 an opening statement in which the solicitor will explain to
7 you what the issues in the case are or at least what the
8 solicitor thinks the issues in the case are. The attorney for
9 the defendant may also make an opening statement, although he
10 is not required to do so.

11 What the attorneys tell you during their opening
12 statements is not evidence in this case. It is only their
13 contention as to what the issues are. The evidence in this
14 case will be presented to you by the testimony of sworn
15 witnesses from the witness stand and/or by any exhibits that
16 are properly introduced into the trial as evidence.

17 From time to time during the trial, you may hear one of
18 the lawyers say something like, Your Honor, I have a question
19 of law or a matter of law to discuss with you or may we
20 approach the bench or sometimes I myself might find it
21 necessary to excuse you from the courtroom for a short while
22 so the attorneys and I can discuss a matter of law. The
23 reason for this is because you are the judges of the facts in
24 this case and sometimes when I'm discussing matters of law
25 with the attorneys, it is sometimes necessary for me to make

1 some comment as to the facts in connection with ruling as to
2 whether or not a particular law applies. I'm not supposed to
3 tell you what I think the facts are; so I will excuse you from
4 the courtroom while these discussions take place so that in no
5 way I would influence you by anything that I say or do in
6 connection with the facts of the case.

7 In determining what the true facts are in this case, you
8 must decide whether or not the testimony of witnesses is
9 believable. It will be my responsibility to rule as a matter
10 of law whether certain testimony is admissible or not, but
11 once the testimony is admitted, whether or not you believe it
12 is solely for you to determine.

13 In deciding whether to believe a witness, you have a
14 right to consider the interest of any witness, the bias of any
15 witness, the prejudice of any witness, the opportunity for the
16 witness to have seen the matters and things about which the
17 witness may testify, and the way the witness acts on the
18 witness stand. You have a right to consider anything that is
19 in the record that will help you evaluate the testimony of the
20 witnesses, but it means that it is your duty to pay close
21 attention to these witnesses, to observe the witnesses, to
22 listen to the witnesses, to pay close attention to the
23 attorneys and to the Court.

24 Don't let your thoughts wander, but give strict attention
25 to the testimony in this case so that at the end of the

1 testimony after the arguments of counsel and after you've been
2 charged on the law by the Court, you will then be in a
3 position to determine what the true facts are and apply the
4 law to those facts and render a true and just verdict under
5 the solemn oath that you just took.

6 Later during the trial, I will appoint a foreperson and
7 that foreperson is actually the liaison to the Court. So if
8 you have any questions during your deliberations or if you
9 need anything or have any concerns, it then will be the
10 foreperson's responsibility to relay that to the Court.

11 The foreperson will also be responsible for writing the
12 verdict on the verdict form and on the indictment. The
13 foreperson, of course, doesn't have any greater weight than
14 any of the other jurors. It's merely someone that can
15 communicate with the Court if there are any questions or
16 concerns.

17 In order to preserve everyone's rights, are there any
18 objections from either the State or from the defense to the
19 opening remarks?

20 MR. MEADORS: Nothing from the State.

21 MR. STORY: Nothing from the defense.

22 THE COURT: All right. Solicitor, you may proceed.

23 MR. MEADORS: May it please the Court?

24 THE COURT: Yes, sir.

25 (WHEREUPON, counsel for the State picked up a plastic

1 grocery bag and put his hand inside of it.)

2 OPENING STATEMENT ON BEHALF OF THE STATE

3 MR. MEADORS: Open the cash register. Open the cash
4 register right now. Open the cash register right now. Open
5 the cash register right now. You better open that damn cash
6 register.

7 That's what Wilbert Franklin Jr. did and presented to
8 Chaunise Carter, an employee of the Kangaroo, on August 16th,
9 2014, before he robbed her and robbed the store of some money
10 during the middle of the day at about 2:45, and took off out
11 of the Kangaroo and ran.

12 He pointed a bag at her and said give me the dang money
13 and robbed her. That's what this case is about, an armed
14 robbery of Chaunise Carter.

15 Good Morning. Good morning.

16 THE JURY: Good morning.

17 MR. MEADORS: Thank you all for being here. Thank you
18 for the attention you're going to give this case. Being a
19 juror is not an easy job, but without y'all, the whole system
20 would fail. Thank you for being here and thank you for your
21 attention I know you're going to give this case.

22 I was introduced earlier. My name is John Meadors. I
23 work for your elected solicitor, Ernest A. "Chip" Finney III.
24 I'm here today representing the people of the State of South
25 Carolina, the people of the County of Sumter, against the

1 defendant, Wilbert Franklin Jr., who is represented by Mr.
2 Stephen Story.

3 You're going to decide this case based on what you hear
4 from that witness stand and what evidence comes from that
5 witness stand, and that's all you can decide it on. And
6 you'll decide it using your common sense, those attributes and
7 skills and abilities you've gained through your whole life of
8 just living, dealing with folks, interacting with people at
9 work or socially, and you'll make a decision what the truth
10 is, what's credible, what's believable that comes from that
11 stand.

12 And isn't that -- that's pure. That's the way it should
13 be. You're a judge of sorts. Her Honor is the judge of the
14 law, but you're a judge of the facts. You decide what the
15 facts are. You come in from the community, you sit down, you
16 take your oath to follow the law and do what's right, and you
17 decide what's credible and believable and you decide what the
18 facts are. You decide.

19 And then Her Honor at the end of the trial will tell you
20 all this is the law. She is the law. There's no question
21 about it. She is the law in this courtroom and she will tell
22 you what law governs. You will then go back in your jury room
23 and say here's what we think the facts are. We'll take the
24 law Her Honor gives us and we're going to come back with a
25 verdict. And it's the same everywhere in this country and

1 that's why this country is so great. It's a beautiful, pure
2 system.

3 All we can ask you is to use your common sense and pay
4 attention, as I know you will. The burden on the State in
5 this case -- y'all know it as well as I do I'm sure. You've
6 seen it on TV. It's beyond a reasonable doubt.

7 We have to prove that the defendant on August 16th, 2014,
8 went to the Kangaroo. It's on Guinyard and Liberty. It's not
9 there anymore. It's another Fast Fare now. Some of y'all
10 probably know where it is. That he went to that store, robbed
11 Ms. Carter, and that he did it while he was armed with a
12 weapon or alleged that he was armed and she reasonably
13 believed he was armed. And I'll get back to that in a minute.

14 But the burden is beyond a reasonable doubt. That's it.
15 We don't have to prove beyond all doubt. You can't do that.
16 If that was the case, we didn't need to build this courthouse
17 because nothing can be proved beyond all doubt. And the law
18 doesn't require that and the judge will tell you that. Beyond
19 a reasonable doubt. Beyond a doubt that would make reasonable
20 folks hesitate to act.

21 What's he charged with? He's charged with armed robbery.
22 What is that? Well, it's the taking and carrying away from
23 the person or presence of another -- in this case Ms. Chaunise
24 Carter, who worked for Kangaroo, an employee there. That he
25 took and carried away the property of another, Kangaroo via

1 Ms. Carter. That he did it with the intent to deprive the
2 store. He knew what he did. He stole it. And that he did it
3 by means of threats or force or intimidation. You better give
4 me that dang money. You better give me that dang money. And
5 that he did it while armed with a deadly weapon.

6 Now, does the State have to show you a picture of the gun
7 that showed him holding a gun out? No, sir. No, ma'am. The
8 law says, as Her Honor will tell you, armed with a deadly
9 weapon, either had a gun or his actions or words indicated to
10 another -- in this case Chaunise Carter -- that he had a gun.
11 He made her believe he had a gun. He presented himself by
12 actions or words with a hand in a bag. You better give me
13 that dang money. And did she reasonably believe -- would a
14 person reasonably believe that he was armed with a deadly
15 weapon? We would gladly say yes, ma'am. Yes, sir.

16 And listen to the law as the judge charges at the end.
17 Armed with a deadly weapon or by actions or words indicated to
18 the victim that she thought he was armed with a deadly weapon.
19 I don't think there's an issue in the case. If there is any
20 small one, maybe that's it, but watch Ms. Carter when she
21 testifies. That's what this case is about.

22 You're going to hear Ms. Carter testify and some other
23 witnesses, and that's called direct evidence. It's when a
24 witness is a witness of a crime. A victim of a crime comes in
25 here and tells y'all this is what happened to me. This is

1 what I saw, what I heard, what I felt. That's called direct
2 evidence. You gather it through one of your senses. You
3 touch it, you feel it, you smell it, and you just get up here
4 and take an oath and you say, jurors, this is what I saw, what
5 I heard, what I felt. That's direct evidence.

6 You'll have that. You'll have circumstantial evidence,
7 proof of a chain of facts and circumstances indicating another
8 fact.

9 If we got up this morning and there's snow on the ground
10 and there wasn't snow on the last night, well, we know it
11 snowed. Thank goodness it's not that cold yet, but that's an
12 example of circumstantial evidence. You didn't see it happen,
13 but you know if you take it with all the other facts, there
14 wasn't snow the night before, there's snow up here today, it
15 snowed last night, even if you didn't see it. And the law
16 says that's just as strong as direct evidence if you believe
17 it to be true.

18 We're going to have some documents, some pictures. What
19 else are we going to have, ladies and gentlemen? We're going
20 to have a video. It seems like the whole world is videoed now
21 and I'm glad to have a video. You're going to have a video to
22 see what transpired in the Kangaroo on August 16th, 2014.
23 You're going to be able to watch from every camera angle the
24 best they could what happened. There's audio on one of them.
25 The audio wasn't working on the other ones, but there's audio

1 on one of them. We're going to play them all for you and
2 you're going to get to see them for this trial.

3 What happened? Folks, this isn't going to be a long
4 trial, but I'm going to tell you something. That does not
5 take away from the importance of this trial. I really believe
6 this. This is as important a trial as will be tried in this
7 state, in this country. It is. It's important to the
8 defendant. It's important to Ms. Carter. This is an
9 important case no matter how long it takes, and I like stuff
10 to take time. I don't like to rush. But I know we'll be
11 finished by Thursday at least, if not before probably.

12 What else? Ms. Carter is going to tell you that she'd
13 been working at this Quick Way about four years. She loved
14 this job. She got to know her regular customers. You know,
15 everybody's got a Quick Way they go to. But she loved working
16 here and she loved her customers.

17 And she's going to tell you I was working this day like I
18 always do, talking to one of the customers that came in.
19 You're going to see it on the tape. And the next thing you
20 know, she's back sitting in the chair. It's going close to --
21 I think they're changing their shifts. She'll tell you.

22 And she's sitting back there and then you'll see the
23 defendant come in and you'll see him with a bag to start with,
24 coming in with a bag, and then you're going to see him go
25 around and kind of go up beside Ms. Carter. She's sitting

1 here. You're going to see it.

2 And then you're going to see a motion here. I don't
3 know, but then you see this bag up and you see his hand in the
4 bag and that's where he said open that cash register. Open
5 the cash register right now. Open the cash register right
6 now. And you'll see them walk over to the cash register.
7 Open the cash register right now. Open that dang cash
8 register.

9 And you'll see from the back -- you don't see everything
10 a hundred percent clear, but you'll see it from the back where
11 he's gathering the money, gathering the money, and then he
12 leaves. He goes out the back and he's trying to cover his
13 face too with a cloth, and you'll see him go out. Ms. Carter
14 follows him out, sees him go. He leaves. Flees.

15 And then she gets on the phone and starts calling 9-1-1.
16 You're going to even hear her on the phone to 9-1-1. I got
17 robbed. Yeah, he had a gun in a bag. She tells 9-1-1 that on
18 the phone. She describes what he's wearing. Listen to her.
19 Listen to that tape as her excited -- her present sense of
20 what's happening right afterwards.

21 Now, the defendant had stayed at the Samaritan House, the
22 wonderful facility we have here in Sumter. It's a fantastic
23 facility for most folks that need a place to stay. The
24 defendant had stayed there during this time period for a night
25 or two.

1 After this had happened, this is what law enforcement
2 does. They're looking for somebody that committed a robbery.
3 They put out on the television a description, part of this
4 video that you're going to see. Mr. Walter Robertson of the
5 Samaritan House sees the video and says I know that guy. I
6 just washed his clothes. I recognize him from the video. I
7 know who it is. He calls the police department and calls
8 Matthew Yates. The defendant is arrested and charged with
9 armed robbery.

10 You're going to hear from Mr. Robertson, probably after
11 our first break this morning. What he saw, how he knows that
12 it's the defendant that committed this robbery. That's what
13 this case is about. Armed robbery of Chaunise Carter on
14 August 16th, 2014. There's not a more important case that's
15 going to be tried this week.

16 When we get through, we'll be allowed to come back and
17 tell you what we believe the evidence is and the reasonable
18 inferences is -- are -- excuse me -- from the evidence that's
19 presented. Again and finally, just please pay attention as I
20 know you will. Thank you again for being here, all of you.

21 At the close of the case, I will respectfully ask you to
22 consider and to find the defendant guilty of going into the
23 store, putting what he wanted Ms. Carter to believe was a gun
24 up against her, and saying give me your money. He robbed her
25 and we're going to ask you to find him guilty of armed

1 robbery. Thank you.

2 THE COURT: Mr. Story?

3 MR. STORY: May it please the Court?

4 THE COURT: Yes, sir.

5 OPENING STATEMENT ON BEHALF OF THE DEFENDANT

6 MR. STORY: Opposing counsel. Members of the jury, on
7 August 16th, 2014, Wilbert Franklin, my client, walked in the
8 Kangaroo convenience store at West Liberty Street and he
9 robbed it. He did it. He walked in the store and he told the
10 cashier to open up the cash register and he took money away.

11 So what are we doing here? Why are we here? Why are we
12 having this trial? Because while he may have committed a
13 robbery, while he committed a robbery, he did not do it armed
14 because when he walked in that store, he was armed not with a
15 gun, not with a knife, not with a weapon of any kind, but with
16 a clear plastic Piggly Wiggly bag.

17 Now, the judge is going to tell you that you are the
18 judges of the facts and you are going to apply the evidence
19 that you see here today, what you see on the video, what you
20 hear from the witness stand, you're going to apply that to the
21 law. That's going to be your decision. It's going to be up
22 to you to decide what Wilbert Franklin is or is not guilty of.

23 When you see that video, you're going to see that it's
24 not like what the solicitor just described. Now, he told you
25 that the person makes a representation of a weapon and makes

1 someone believe that they have or have a reasonable belief
2 that they had a weapon. That's -- that's not wrong.

3 But, ladies and gentlemen, they have to prove beyond a
4 reasonable doubt that not only did she believe that it was a
5 weapon, but that belief has to be reasonable. And who gets to
6 decide whether or not that belief was reasonable? Y'all do.
7 All y'all will make the decisions based on the evidence that
8 you see and hear whether or not she actually believed it and
9 whether or not it was a reasonable belief.

10 There's -- there's a big difference between robbery and
11 armed robbery under the law and I'm going to talk to y'all a
12 little bit more about that later. But this trial this week is
13 going to be a little bit like going to shop for a new car.
14 Bear with me. Okay?

15 I'm going to be somebody who kind of -- or just imagine
16 me as somebody who goes along with you shopping for a car, and
17 we've talked about what your needs are, what kind of thing
18 you're looking for. You need something that will get you to
19 and from work or maybe just going around Sumter to see your
20 friends and family, go to the grocery store, things like that.

21 So we go to the car lot and I say, hey, come look at this
22 2011 Honda Civic. It's not flashy, but you know what? It'll
23 get you where you need to go. Or check out this midsized
24 American-made truck. Okay? It gets pretty good gas mileage
25 and you know what? If something goes wrong, you can get it

1 serviced right here in Sumter.

2 But as we walk onto the lot, here comes the car salesman.
3 Okay? I got nothing against used-car salesmen. When I was
4 really little, my dad was a used-car salesman. So I'm not
5 making fun of them, but sometimes there's some that they just
6 want to sell you the most expensive thing on the lot.

7 So the salesman takes you to a flashy sports car and they
8 tell you all about the features. Look, it can get up to 200
9 miles an hour. Or it's got a pushbutton start. You know?
10 You don't need a key. You just have the little key fob and
11 vroom, vroom, it starts up. Okay? It's a pretty exciting
12 car.

13 You see, the salesman wants you to make a decision not
14 based on what you need, not based on what's reasonable, but
15 they want you to make a decision based on emotion. They want
16 you to make a decision based on the fact that you're excited.
17 Okay? That car stirs something in you.

18 The State is going to try to argue here for armed robbery
19 and they're going to try to appeal to your emotion. Folks,
20 I'm not going to lie to you. When you see that video, you're
21 probably going to be angry. Okay? That's a natural reaction.
22 I understand that. You're going to see a robbery and you're
23 going to get mad.

24 But don't make any decision on that. I'm asking you
25 please don't make a decision just based on that, just based on

1 emotion. Look at the evidence. Evaluate it. And then apply
2 that evidence that you see and hear to the law, to what the
3 facts are. I'm confident that if you do that, you will find
4 him not guilty of armed robbery.

5 And one last thing. There's a very important way that
6 this trial is not going to be like buying a car and that your
7 decision is not going to be like buying a car and that's that
8 if you get a car, you might want to take it back. You might
9 then sell it and get something else. You might lose some
10 money, but you can get a new car.

11 Wilbert Franklin is going to have to live with the
12 decision you make this week for the rest of his life. And as
13 the judge just told you, it is not easy to overturn an
14 erroneous decision of the facts by a jury.

15 The decision you make isn't temporary. It's going to
16 last. And I'm asking you if you have any doubts, resolve them
17 in favor of the defendant. Make sure that the State proves
18 their case beyond a reasonable doubt to whatever decision you
19 make. Don't make it with emotion. Make it based on your
20 common sense, what you see, what you hear, and come to a true
21 and just verdict. Thank you.

22 THE COURT: Solicitor, you may call your first witness.

23 MR. MEADORS: May it please the Court?

24 THE COURT: Yes, sir.

25 MR. MEADORS: The State would now call Ms. Chaunise

CHAUNISE CARTER - DIRECT BY MR. MEADORS

1 Carter.

2 THE CLERK: Good morning. Place your left hand on the
3 Bible and raise your right hand. State your name, please.

4 THE WITNESS: Chaunise Carter.

5 THE CLERK: Do you solemnly swear or affirm that the
6 testimony you give to this Court shall be the truth, the whole
7 truth, and nothing but the truth, so help you God?

8 THE WITNESS: Yes, I do.

9 THE CLERK: Thank you. Come around, please. State your
10 name and spell your last for the record.

11 THE WITNESS: My name is Chaunise Carter. You said spell
12 the last?

13 THE COURT: Your last name.

14 THE WITNESS: Spell Carter?

15 THE COURT: Yes.

16 THE WITNESS: C-a-r-t-e-r.

17 THE COURT: Thank you, ma'am. Your witness.

18 MR. MEADORS: Thank you, Your Honor. May it please the
19 Court.

20 THE COURT: Yes, sir.

21 CHAUNISE CARTER, being first
22 duly sworn, testified as follows:

23 DIRECT EXAMINATION

24 BY MR. MEADORS:

25 Q: Good morning, Ms. Carter.

- 1 A: Good morning.
- 2 Q: Ms. Carter, tell these ladies and gentlemen of this jury
- 3 about you, please, ma'am. Where were you born?
- 4 A: I was born here in Sumter.
- 5 Q: And where were you raised?
- 6 A: Here in Sumter.
- 7 Q: Where did you go to school, Ms. Carter?
- 8 A: Sumter High School.
- 9 Q: And what year did you get out of Sumter High?
- 10 A: I graduated in 2006.
- 11 Q: Okay. What did you do after that?
- 12 A: After I graduated there, I went to South Carolina State
- 13 University in Orangeburg. And then I came back home due to
- 14 financial issues and I received my associates from Saint Leo
- 15 University.
- 16 Q: And when was that, Ms. Carter?
- 17 A: In 2012.
- 18 Q: 2012?
- 19 A: Yes.
- 20 Q: And what did you do after that?
- 21 A: After -- well, I worked at the Kangaroo. While working
- 22 at Kangaroo, I pursued my Bachelors in human services.
- 23 Q: And where were you doing that?
- 24 A: At Saint Leo University as well.
- 25 Q: I'm sorry. I apologize. When did you start working at

CHAUNISE CARTER - DIRECT BY MR. MEADORS

1 Kangaroo?

2 A: In September 2011.

3 Q: And where is the Kangaroo that you were working at in
4 September 2011? And the Kangaroo where this happened, where
5 is it?

6 A: On the corner of Liberty and Guinyard.

7 Q: Liberty and Guinyard? And that's in Sumter County;
8 correct?

9 A: It is.

10 Q: So you started in September of 2011. Tell these folks
11 what was your job then?

12 A: I was an assistant manager. Lead assistant.

13 Q: What does that mean?

14 A: I pretty much -- everything that my manager didn't do, I
15 took on her role. When she was absent on the weekends, I
16 worked. I opened the store, closed the store. I was in
17 charge of taking money to the bank, disciplinary actions,
18 training coworkers, pretty much in a nutshell.

19 Q: So you were there approximately roughly three years?

20 A: Yeah. The month after would have been three years.

21 Q: Three years?

22 A: Uh-huh.

23 Q: Did your job or position at Kangaroo change from
24 September 2011 until this happened? What were you doing?
25 Were you doing -- were you holding a different position?

1 A: When I first started, I went in as a regular cashier, but
2 three months later I got promoted to assistant manager.

3 Q: And when this happened, what were you doing?

4 A: I was an assistant manager at the time of the incident.

5 Q: And how many employees did y'all have in September of --
6 excuse me -- August of 2014?

7 A: I believe about six. It was about six of us including
8 the manager.

9 Q: Did you like working at Kangaroo?

10 A: I loved my job.

11 Q: Why?

12 A: I've always worked in customer service and when I started
13 there, I actually had two jobs at the start. I worked there
14 and I worked at Golden Corral. I just like to be around
15 people. Pretty much all I knew was customer service and I got
16 comfortable working there, meeting all the people in the
17 neighborhood. They always came in, checked on us. They
18 would, you know, bring us dinner if we worked late. Like, I
19 really enjoyed working at Kangaroo.

20 Q: And you said you also worked at Golden Corral?

21 A: I did.

22 Q: When you first started? Do you -- I mean I've got my
23 favorite convenience store.

24 A: Uh-huh.

25 Q: But you've got your regulars?

CHAUNISE CARTER - DIRECT BY MR. MEADORS

1 A: Our regular customers that come in every morning, we know
2 them by name.

3 Q: In August of 2014, Ms. Carter, not to this incident yet,
4 but were you working a certain -- a specific shift?

5 A: I worked morning shift.

6 Q: Okay. Tell these folks what is that?

7 A: I go in at five a.m. From five to seven, the doors are
8 locked. That's when I pretty much excuse the person from
9 night shift. I would count down their register. I would
10 count the money in the safe. Pretty much prepare for the day,
11 make coffee before I open my doors.

12 Q: And then your shift would end when?

13 A: At three o'clock. So I worked a ten-hour shift.

14 Q: When you would get in at five -- five a.m.; correct?

15 A: Uh-huh.

16 Q: You said the doors were locked at first. Can customers
17 come up and buy something from the store prior to seven
18 o'clock?

19 A: Uh-huh. From five to seven, we use what's called the
20 window. And they come up to the window and they let us know
21 what they want. If we can fit it through the box -- it's a
22 small box. If we can fit it through there, then we can sell
23 it to them because we're not allowed to open the doors as long
24 as the safe is open. And it takes about an hour to count the
25 money, but we excuse our night shift so we're back and forth,

- 1 you know, counting the money and ringing up customers at the
2 same time. So they give us two hours to do everything that we
3 need to do.
- 4 Q: So the store is 24/7; right?
- 5 A: It's a 24-hour store, yes.
- 6 Q: So what time does the door -- does the door close at five
7 in the morning to seven?
- 8 A: The door is locked at ten at night, and we don't open it
9 up until seven in the morning.
- 10 Q: So from ten at night until seven in the morning, if a
11 customer was wanting something, they'd have to go buy
12 something from the outside?
- 13 A: From the window.
- 14 Q: If it fits in the hole?
- 15 A: Yes.
- 16 Q: Okay. And did y'all have pretty good clientele from ten
17 to seven?
- 18 A: Uh-huh. We did.
- 19 Q: Let's go right to August 16th of 2014, please, ma'am.
- 20 A: Okay.
- 21 Q: What time did you get to work that day?
- 22 A: At five o'clock.
- 23 Q: And how long does the person that you relieve stay?
- 24 A: Probably about fifteen minutes.
- 25 Q: And what's the first thing you -- well, what did you do?

CHAUNISE CARTER - DIRECT BY MR. MEADORS

1 You said earlier generally, but this day what did you do?

2 A: I came into the store, started to check out my third-
3 shift person, making sure that they did their shift duties
4 from the night before. I proceeded to put the key in the safe
5 to unlock it because it has to count down.

6 Q: And why are you doing that?

7 A: Just to get ready to open it. We put the key in and it
8 starts to count down from a thousand. Whenever it gets in-
9 between zero and a hundred, you can open it. And that's,
10 like, a security issue that they use so that, you know, if
11 someone came in and tried to get us to open the safe, it would
12 take time for it to open.

13 Q: And why are you opening the safe at that point?

14 A: To count the money from the night before. We drop money.
15 We're supposed to drop every time we get a hundred or more in
16 the safe. So I have to count all the drops that were in the
17 safe to prepare it to be taken to the bank, and we drop our
18 money at the bank on Liberty Street. So it's right up the
19 street.

20 Q: What time is that?

21 A: I usually do it around 6:30 to 6:45 so that I can get
22 back to the store.

23 Q: And who's at the store when you're gone?

24 A: Nobody. We have to put up a be back in fifteen minutes
25 sign.

1 Q: And did you do that this morning?

2 A: I sure didn't.

3 Q: I mean not this morning. On the 16th.

4 A: Oh, the morning of the --

5 Q: Right.

6 A: No, sir.

7 Q: Okay. Why not?

8 A: I didn't have time to. I didn't have time to get out of
9 the store because we were kind of busy. So I locked my safe
10 back and I prepared to open it up around 2:30 that afternoon
11 so that I could take it when I got off.

12 Q: Okay. And what time was the person who was going to
13 relieve you -- what time were they coming in?

14 A: They were scheduled to come in at three o'clock, but they
15 usually arrived probably, like, five minutes before.

16 Q: And you didn't get to take it that afternoon, did you?

17 A: No. I never got the chance to.

18 Q: Well, let's go through -- what time did this happen?

19 A: The incident occurred around 2:45.

20 Q: So shortly before shift change?

21 A: That's correct.

22 Q: And prior to this, had anything unusual happened that
23 day?

24 A: Prior to the incident as far as the defendant?

25 Q: Well, just in general. Did anything else happen that

CHAUNISE CARTER - DIRECT BY MR. MEADORS

1 day? No other robberies or anything?

2 A: No. No other robberies.

3 Q: We're going to see it on the video, but there's an
4 individual you're talking to right before the defendant comes
5 in the store. Who was that?

6 A: One of the guys -- one of our regulars. He works across
7 the street, and he comes in quite often. He pretty much just
8 checks on us. It was all girls working in the store. So the
9 guys across the street, they will come in and, like, make sure
10 that we were fine. So he came in pretty often. He would come
11 in for coffee, drinks, soda, you know. It was convenient for
12 them and it made us feel, you know, comfortable.

13 Q: Checking on you?

14 A: Absolutely.

15 Q: And after he left, can you tell these ladies and
16 gentlemen what happened?

17 A: After he left, that's when the defendant came in.

18 Q: And tell these folks what happened, Ms. Carter?

19 A: He came in and he kind of looked like, you know, an
20 average customer. I was doing my paperwork at the time behind
21 the computer; so I was looking up and looking down. He
22 walked, like, as if he was going to find something, and then
23 he came in back by my desk. And that's when he proceeded to
24 tell me to give him the money out of the register.

25 MR. MEADORS: Can I approach?

1 THE COURT: You may.

2 BY MR. MEADORS:

3 Q: If you -- let's assume you're sitting where you were

4 sitting that day.

5 A: Uh-huh.

6 Q: Where did he come up on you?

7 A: On the left side of me.

8 Q: And what do you remember? What did he say to you?

9 A: Get up and open the cash register.

10 Q: And do you know what, if anything, what -- could you see

11 his hands?

12 A: I saw his hand inside of a white bag.

13 Q: And where was that white bag?

14 A: He had it on the left side of me. Yes, sir.

15 Q: Put my hand where it was.

16 (WHEREUPON, the witness complied.)

17 Q: And you say the hand was inside of the bag?

18 A: Yes, it was.

19 Q: And you're sure about that?

20 A: I'm absolutely sure.

21 Q: And after he had the bag with his hand inside of it right

22 beside you, was he this close?

23 A: Yeah. He was close.

24 Q: What happened next?

25 A: I proceeded to get up as he told me. Well, he kind of

CHAUNISE CARTER - DIRECT BY MR. MEADORS

- 1 pushed my chair and I got up.
- 2 Q: He pushed your chair?
- 3 A: Uh-huh.
- 4 Q Did the chair fall?
- 5 A: It did. And I got up as he walked behind me. I could
- 6 feel him right behind me. And I'm pretty much -- like, all
- 7 I'm thinking about is trying to keep my job and keep calm. He
- 8 followed me over to the register and at this -- I was still
- 9 pleading with him, like, are you really going to do this, and
- 10 he told me to open the register and he repeated it a couple of
- 11 times to open the register.
- 12 Q: Was he grabbing you or anything?
- 13 A: No.
- 14 Q: And where was -- where was -- his hand was where?
- 15 A: Inside of a white bag.
- 16 Q: And what did you -- what did you think about -- what did
- 17 you think his hand was or what did you think was in that bag
- 18 or did you know?
- 19 A: I believed it to be a gun.
- 20 Q: Say it again?
- 21 A: I believed that there was a gun in the bag.
- 22 Q: Was he holding the bag up with his hand inside?
- 23 A: Yes. His arm was up.
- 24 Q: Inside a bag?
- 25 A: Inside of a bag.

1 Q: What did you do?

2 A: I did what he told me to do.

3 Q: Which was what?

4 A: Opened the register.

5 Q: Describe to these folks right here what you were feeling
6 like then, Chaunise?

7 A: To be honest, at the moment I had so many different
8 emotions going through my head. I was just trying to keep it
9 together. When I had started there -- well, pretty much I was
10 never trained on what to do if someone robbed me while I was
11 working. And even if I was trained, that would have went all
12 out the window because I'm just thinking how to handle the
13 situation, you know, for the time being.

14 But that's it. I was pleading with him, hoping that he
15 wouldn't do it because I didn't want to lose my job because of
16 a robbery. At the time, I was living by myself. All I'm
17 thinking about is trying to keep my job. So I did what he
18 told me to do. I'm sorry.

19 Q: Were you scared?

20 A: Yes.

21 Q: Had you seen that individual before?

22 A: That morning. His face looked so familiar when he came
23 back into the store, which is why I wasn't alarmed when I saw
24 him walking up because he looked just like a guy that came
25 there that morning that I rang up from outside through the

CHAUNISE CARTER - DIRECT BY MR. MEADORS

1 window.

2 Q: So you recognized him from that morning?

3 A: Uh-huh.

4 Q: Had he bought something that morning?

5 A: I believe he did.

6 Q: And you didn't want him to rob you, did you?

7 A: Absolutely not.

8 Q: He took that stuff without your permission; right?

9 A: Yes.

10 Q: And he left the store with it; right? How much money did

11 he take?

12 A: Sir?

13 Q: Do you know how much money he took?

14 A: It had -- I know it was under a hundred. So probably

15 sixty to a hundred.

16 Q: What did you do afterwards?

17 A: I called 9-1-1. I was dialing 9-1-1 as I was walking out

18 of the store.

19 Q: It actually shows you on the video talking to 9-1-1,

20 doesn't it?

21 A: Uh-huh.

22 Q: And what did you tell them?

23 A: That I had just been robbed and they asked me to describe

24 him and I told them -- well, before that, I told them that --

25 she asked me was he armed and I told them he had a gun in a

1 bag.

2 Q: Why did you tell her that?

3 A: Because that's what I believed.

4 Q: Go on.

5 A: She asked me to describe him. Was he black? White? I
6 told her that he was a black male. She asked me to describe
7 what he was wearing. Then I told her -- and I was so worried
8 about it. I just remember I was on the phone with them for
9 quite some time.

10 Q: Chaunise, when did you quit working at the Kangaroo?

11 A: After talking to the officers, our DM finally called and
12 he told me that there was nobody that could cover my shift for
13 the next day; so I had to come to work. And I had to go in
14 the next day and I couldn't do it. I stayed there for about
15 two hours and I told them that I couldn't do it.

16 The only reason that I went in was because at this point
17 I'm thinking how am I going to be able to survive. Like, I
18 need this job. So I went into work because it was -- that's
19 what I was instructed to do. And I couldn't do it; so I left
20 after about two hours and told them that I just couldn't do
21 it. I asked them if they would give me some time off and they
22 said that they couldn't. So that was my last day working
23 there.

24 Q: So the job you had for three years and loved, you quit
25 the next day?

CHAUNISE CARTER - DIRECT BY MR. MEADORS

1 A: Uh-huh.

2 Q: After this?

3 A: Yeah.

4 Q: I'm going to show you what's marked State's 1, 2, 3, 4,
5 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, and 15. Do you recognize
6 these and do they relate to your testimony that you just gave?

7 A: Every last one.

8 Q: Every last one?

9 A: Yes.

10 MR. MEADORS: Your Honor, we'd offer State's 1 through
11 15.

12 THE COURT: Any objection?

13 MR. STORY: May I see them, Your Honor?

14 THE COURT: Certainly.

15 MR. MEADORS: I've shown them to him previously.

16 (WHEREUPON, there was a pause in the proceedings.)

17 MR. STORY: No objection at this time, Your Honor.

18 THE COURT: All right. 1 through 15 are in.

19 (WHEREUPON, State's Exhibits 1 through 15, all color
20 photographs, were admitted into evidence.)

21 BY MR. MEADORS:

22 Q: What is that? This is State's 1.

23 A: That's the parking lot of my old job.

24 Q: Parking? That's the Kangaroo?

25 A: Uh-huh.

- 1 Q: But what is it now?
- 2 A: I can't remember, but I know they closed probably about
- 3 six to seven months ago.
- 4 Q: But another store reopened --
- 5 A: Uh-huh.
- 6 Q: -- as far as you know?
- 7 A: Yes.
- 8 Q: State's 2, is that another picture of the Kangaroo?
- 9 A: It is.
- 10 Q: 3?
- 11 A: Uh-huh. That's the parking lot.
- 12 Q: And after you went out after this happened, which
- 13 direction did the defendant go?
- 14 A: He ran -- that's my car actually right there and he ran,
- 15 like, behind my car through -- through the bushes, which would
- 16 be -- that's Liberty Street heading towards downtown Sumter.
- 17 Q: It would have been around this?
- 18 A: Uh-huh.
- 19 Q: State's Number 4?
- 20 A: Yes.
- 21 Q: So he went out and ran around the Kangaroo this way?
- 22 A: Yes.
- 23 Q: Now, I believe you testified earlier that before seven
- 24 o'clock customers would be able to come up to an outside
- 25 window?

CHAUNISE CARTER - DIRECT BY MR. MEADORS

- 1 A: Uh-huh.
- 2 Q: I'm showing you what's State's 5.
- 3 A: That's the window that they would walk up to.
- 4 Q: That's the window they would walk up? And is -- where
- 5 would you put the stuff you buy?
- 6 A: There's a box right here behind this garbage can and
- 7 actually you can push it out so we can put the stuff in it and
- 8 push it out.
- 9 Q: So like a bank -- bank drive-through or something?
- 10 A: Yeah, kind of like that. Uh-huh.
- 11 Q: State's Number 6?
- 12 A: Front doors.
- 13 Q: Front door? State's Number 7 and 8, what do they show a
- 14 picture of?
- 15 A: Behind the counter and in the front lobby.
- 16 Q: Behind the counter and the front lobby are State's 7 and
- 17 8. This is your store? Was your store? State's Number 9?
- 18 A: Behind the counter.
- 19 Q: And this is as it was that day; correct?
- 20 A: Yes, it is.
- 21 Q: 10, 11, and 12, I think even 13, what are those a picture
- 22 of?
- 23 A: Of the cash register.
- 24 Q: Who actually -- State's 10.
- 25 MR. MEADORS: I'm showing the jury, Your Honor. With

1 your permission? I apologize.

2 THE COURT: Yes, sir.

3 BY MR. MEADORS:

4 Q: State's 11. Who actually got the money out of the cash
5 register? I mean when he was robbing you.

6 Q: He did.

7 Q: State's 12. State's 13. How did the drawer get open?

8 A: He made me open it.

9 Q: He what you? He made you?

10 A: Yes.

11 Q: And State's 14, do you know what that's a picture of?

12 A: That's a picture of him outside.

13 Q: And State's 15?

14 A: That's him walking in the store.

15 Q: And was this shortly before the crime?

16 A: Seconds before.

17 Q: You have -- or have you -- excuse me -- looked at the
18 video that shows the defendant coming in the store and you
19 getting robbed? Have you looked at it before?

20 A: Yes.

21 Q: I might sound like Dr. Seuss, but you were you, truer and
22 true. Is that you in there in the video?

23 A: That's definitely me.

24 Q: That's you; right?

25 A: Yes.

CHAUNISE CARTER - DIRECT BY MR. MEADORS

1 Q: And that's you as you were you back on August 16th;
2 correct?

3 A: Yes, sir.

4 Q: 2014?

5 A: Yes.

6 Q: And does that accurately reflect what happened and what
7 you did and was done on that day?

8 A: Yes, sir.

9 Q: Okay.

10 MR. MEADORS: Your Honor, State's 16.

11 THE COURT: Any objection?

12 MR. STORY: I renew my previous objection, Your Honor.

13 THE COURT: Yes, sir. Subject to your objection, it's
14 in.

15 (WHEREUPON, State's Exhibit Number 16, the surveillance
16 video, was admitted into evidence.)

17 MR. MEADORS: Thank you, Your Honor. And I have four --
18 and we've both viewed it and everybody's viewed it. I put it
19 on my computer and IT downloaded it; so it will show it in
20 evidence as the original.

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

22 (WHEREUPON, State's Exhibit Number 16, the surveillance
23 video, began playing and was then stopped. NOT
24 TRANSCRIBED HEREIN.)

25 BY MR. MEADORS:

1 Q: Ms. Carter, just for clarification purposes, is this a
2 camera from behind the register shooting out?

3 A: Yes. Uh-huh.

4 Q: And there are several different camera angles; correct?

5 A: Yes.

6 Q: And it's your understanding too that this was the only
7 one that the audio was working on?

8 A: Uh-huh.

9 Q: This particular view?

10 A: Yes.

11 (WHEREUPON, the video resumed playing and was then
12 stopped.)

13 BY MR. MEADORS:

14 Q: Who is that?

15 A: I believe that's the guy from across the street.

16 Q: Who was checking on you?

17 A: Uh-huh.

18 Q: Okay.

19 (WHEREUPON, the video resumed playing and was then
20 stopped.)

21 BY MR. MEADORS:

22 Q: Now, Ms. Carter, you were not referring to the defendant
23 then, were you?

24 A: No, sir.

25 Q: Okay.

CHAUNISE CARTER - DIRECT BY MR. MEADORS

1 (WHEREUPON, the video resumed playing and was then
2 stopped.)

3 BY MR. MEADORS:

4 Q: Who is that?

5 A: Let me see. Who was it?

6 Q: I'm sorry. Yes, ma'am. Let me go back a second.

7 (WHEREUPON, the video resumed playing and was then
8 stopped.)

9 BY MR. MEADORS:

10 Q: Who was that?

11 A: That's the defendant.

12 (WHEREUPON, the video resumed playing and was then
13 stopped.)

14 BY MR. MEADORS:

15 Q: Where did you go?

16 A: I walked out into the parking lot.

17 (WHEREUPON, the video resumed playing and was then
18 stopped.)

19 BY MR. MEADORS:

20 Q: And you just said I got robbed up here on Liberty. Were
21 you on the phone with 9-1-1?

22 A: Yes.

23 (WHEREUPON, the video resumed playing and was then
24 stopped.)

25 BY MR. MEADORS:

1 Q: What did you just say?

2 A: I told the dispatcher that he had a gun in a bag.

3 (WHEREUPON, the video resumed playing and was then

4 stopped.)

5 BY MR. MEADORS:

6 Q: Did you believe he had a gun?

7 A: Yes, I did.

8 Q: Did he appear to you to be representing that he had a

9 gun?

10 A: Yes, sir.

11 Q: And you said on here that you think you saw him earlier;

12 correct?

13 A: Uh-huh.

14 Q: And is there a video from the outside?

15 A: Uh-huh.

16 Q: That shows the outside?

17 A: There's a camera that shows the outside.

18 (WHEREUPON, the video resumed playing a different view

19 without sound and was then stopped.)

20 BY MR. MEADORS:

21 Q: And again, the store is not open at this time; correct?

22 The main door is not open?

23 A: The main door is not open.

24 Q: Do you see the defendant there at this -- outside the

25 window?

CHAUNISE CARTER - DIRECT BY MR. MEADORS

- 1 A: Yes, I do.
- 2 Q: Is that what you were talking about when you'd seen him
3 earlier that morning?
- 4 A: Uh-huh.
- 5 Q: You have to say yes or no for the record.
- 6 A: Yes.
- 7 (WHEREUPON, the video resumed playing and was then
8 stopped.)
- 9 BY MR. MEADORS:
- 10 Q: Is he holding a bag?
- 11 A: Yes, he is.
- 12 Q: Can you tell what's in that bag?
- 13 A: Huh-uh. I can't tell.
- 14 Q: You have to say yes or no for the court reporter, please.
- 15 A: Oh, no. I can't tell from when he walked up to the
16 window.
- 17 Q: Do you remember what he purchased?
- 18 A: I can't remember.
- 19 Q: Was that the first time you had seen him?
- 20 A: Yes.
- 21 Q: As far as you know ever?
- 22 A: Yes. I've never seen him before that day.
- 23 Q: So you had a look at him then; correct?
- 24 A: Uh-huh.
- 25 Q: Was anything obstructing your view? I know there's a

1 window there, but could you see through?

2 A: No. It's a clear window. It's very clear.

3 Q: It looks like it's light outside?

4 A: It is.

5 Q: Did you have any trouble seeing him then?

6 A: No.

7 Q: Now, is there also a video from the back of the store?

8 A: Yes. We have about sixteen cameras in our store.

9 Q: And again, is the audio not on any of the other ones but
10 the first one?

11 A: Correct.

12 (WHEREUPON, the video resumed playing and was then
13 stopped.)

14 BY MR. MEADORS:

15 Q: Now, showing the jury as this is going through, is that
16 the same fellow we saw from the --

17 A: Uh-huh. From across the street. He works there.

18 Q: Okay. Who is this right here?

19 A: That's me.

20 Q: That's you?

21 A: Uh-huh.

22 (WHEREUPON, a colored dot appeared on the video screen.)

23 MR. MEADORS: Your Honor, I think I've got too close; so
24 I'm going to try to get that off. I beg the Court's
25 indulgence.

CHAUNISE CARTER - DIRECT BY MR. MEADORS

1 (WHEREUPON, there was a pause in the proceedings.)

2 MR. MEADORS: I think we've got it.

3 (WHEREUPON, the video resumed playing and was then

4 stopped.)

5 BY MR. MEADORS:

6 Q: Okay. So this is you down here; correct?

7 A: Yes.

8 (WHEREUPON, the video resumed playing and was then

9 stopped.)

10 BY MR. MEADORS:

11 Q: Ms. Chaunise, why are you sitting down there now?

12 A: At the end of our shift, we have to key in lottery

13 numbers and I was just, like, preparing myself to get off so I

14 was keying in my paperwork.

15 Q: But your replacement is not here yet?

16 A: No, she wasn't. She was supposed to come at three, but

17 she didn't arrive yet.

18 (WHEREUPON, the video resumed playing and was then

19 stopped.)

20 BY MR. MEADORS:

21 Q: Who is that entering the store?

22 A: That's the defendant.

23 Q: Does it appear he's trying to cover his face there?

24 A: Uh-huh.

25 Q: Are you saying yes or no, please, for the court reporter?

1 A: Yes.

2 Q: I'm sorry.

3 (WHEREUPON, the video resumed playing and was then
4 stopped.)

5 BY MR. MEADORS:

6 Q: What position is his arm right there? His left arm?

7 A: It's, like, up.

8 Q: Put my arm where his left arm is. What position is it?

9 A: It looks up like this.

10 Q: Like that?

11 A: Uh-huh.

12 Q: And where was his hand?

13 A: Inside of a bag.

14 Q: Inside a bag?

15 A: Uh-huh.

16 (WHEREUPON, the video resumed playing and was then
17 stopped.)

18 BY MR. MEADORS:

19 Q: Ms. Carter, that shows you going out; correct?

20 A: Yes.

21 Q: I'll just play a little bit more to where it shows you
22 come in.

23 (WHEREUPON, the video resumed playing and was then
24 stopped.)

25 BY MR. MEADORS:

CHAUNISE CARTER - DIRECT BY MR. MEADORS

1 Q: And is that you on the phone with 9-1-1?

2 A: Yes.

3 (WHEREUPON, the video resumed playing and was then
4 stopped.)

5 BY MR. MEADORS:

6 Q: And each one of these -- I'll just show you from -- is
7 one of these the morning shots of every one of them and then
8 the afternoon shots? That's what these videos are as far as
9 you know; correct?

10 A: Uh-huh.

11 Q: Okay.

12 (WHEREUPON, the video resumed playing and was then
13 stopped.)

14 BY MR. MEADORS:

15 Q: Is that another view of the defendant coming in?

16 A: Yes, it is.

17 (WHEREUPON, the video resumed playing and was then
18 stopped.)

19 BY MR. MEADORS:

20 Q: Does it appear there's numerous items in that bag to you?

21 A: Yes. It appears there's something in the bag.

22 (WHEREUPON, the video resumed playing and was then
23 stopped.)

24 BY MR. MEADORS:

25 Q: And I was asking as he came in there is what I -- from

1 you viewing the bag then?

2 A: Yes.

3 Q: Okay.

4 (WHEREUPON, the video resumed playing and was then
5 stopped.)

6 BY MR. MEADORS:

7 Q: Of course, the robber is going off to the right; correct?

8 A: It is.

9 (WHEREUPON, the video resumed playing and was then
10 stopped.)

11 BY MR. MEADORS:

12 Q: You said this was 2:45 in the middle of the day?

13 A: Uh-huh.

14 Q: Are there customers outside getting gas?

15 A: They were actually pulling up to come inside.

16 Q: Are there other cars out there though getting gas? I'm
17 just looking at the picture.

18 (WHEREUPON, the video resumed playing and was then
19 stopped.)

20 MR. MEADORS: Your Honor, I just got a couple more that I
21 think I can narrow right down to it.

22 (WHEREUPON, the video resumed playing and was then
23 stopped.)

24 BY MR. MEADORS:

25 Q: Does that show the defendant coming in at the bottom

CHAUNISE CARTER - DIRECT BY MR. MEADORS

1 left?

2 A: Yes, it does.

3 Q: This is the soda fountain view?

4 A: Sir?

5 Q: Are those the soda fountains and drinks back in the back?

6 A: Yes.

7 (WHEREUPON, the video resumed playing and was then
8 stopped.)

9 BY MR. MEADORS:

10 Q: Was that the defendant?

11 A: Yes, it was.

12 (WHEREUPON, the video resumed playing and was then
13 stopped.)

14 BY MR. MEADORS:

15 Q: And finally, Ms. Carter, we have one final outside.

16 (WHEREUPON, the video resumed playing and was then
17 stopped.)

18 BY MR. MEADORS:

19 Q: That's your friend leaving from across the street;
20 correct?

21 A: Uh-huh. That is.

22 (WHEREUPON, the video resumed playing and was then
23 stopped.)

24 BY MR. MEADORS:

25 Q: Is that the defendant coming there on the side?

1 A: I don't think so.

2 (WHEREUPON, the video resumed playing and was then
3 stopped.)

4 BY MR. MEADORS:

5 Q: Does that appear to be the defendant leaving?

6 A: That is him leaving, yes.

7 Q: And is that you?

8 A: Yes.

9 Q: Ms. Carter, as far as you know, is that all the video
10 from the Kangaroo that day?

11 A: Yes.

12 Q: Okay. And this was downloaded and given to Detective
13 Jacob Mitchell; correct?

14 A: Yes.

15 Q: With the Sumter Police Department?

16 MR. MEADORS: I beg the Court's indulgence.

17 BY MR. MEADORS:

18 Q: You didn't want to be robbed, did you?

19 A: Absolutely not.

20 Q: Is the person in the courtroom that you -- came to your
21 window before seven o'clock at Kangaroo?

22 A: (No verbal response.)

23 Q: And just a couple of final questions. When he came back
24 around to you and said give me the money, open the drawer, I
25 mean he was close to you; right?

CHAUNISE CARTER - DIRECT BY MR. MEADORS

1 A: He was.

2 Q: Was there anything obstructing your view seeing him?

3 A: No.

4 Q: Did you get to see his face?

5 A: I saw his face.

6 Q: And was it light outside?

7 A: Yes, it was.

8 Q: Was it light inside? I mean we see the video.

9 A: Yes, it was.

10 Q: Was there anything obstructing your view of Wilbert

11 Franklin Jr.?

12 A: Not at all.

13 Q: And the person that came back in and robbed you, was that

14 the same person you'd seen that morning?

15 A: Yes.

16 Q: Did you tell law enforcement that?

17 A: I absolutely did.

18 Q: Did you say that to 9-1-1?

19 A: Yes.

20 Q: Did you describe him to them?

21 A: I did.

22 Q: Did you tell them he had a gun in a bag?

23 A: I did.

24 Q: And is that person in the courtroom that came in and said

25 open the dang drawer, open it right now, that had what you

1 believed a gun in that bag, is that person in this courtroom?

2 A: Yes, he is.

3 Q: Would you please point him out?

4 A: (Indicating)

5 Q: Sitting next to Mr. Story?

6 A: Yes.

7 MR. MEADORS: Your Honor, we'd like the record to reflect

8 she's pointed out Mr. Wilbert Franklin Jr.

9 THE COURT: The record -- the record will reflect that.

10 MR. MEADORS: Ms. Carter, that's all. Thank you, Judge.

11 THE COURT: Cross-examination?

12 MR. STORY: Thank you, Your Honor.

13 CROSS-EXAMINATION

14 BY MR. STORY:

15 Q: Ms. Carter?

16 A: Yes.

17 Q: This happened about two o'clock in the afternoon;

18 correct?

19 A: About 2:45.

20 Q: About 2:45?

21 A: Uh-huh.

22 Q: It was -- it's your testimony today that his hand was in

23 a bag?

24 A: Yes.

25 Q: I'm going to pull up the video you've already seen.

CHAUNISE CARTER - CROSS BY MR. STORY

1 You've -- you've previously stated when he walked in --

2 A: Uh-huh.

3 Q: -- he had a plastic bag; correct?

4 A: Yes.

5 Q: And we can see that on the video?

6 A: Yes.

7 Q: And there was a few items in the plastic bag?

8 A: Yes.

9 Q: And you couldn't tell what those items were; correct?

10 A: No. I couldn't tell what they were when he walked in.

11 Q: So he -- and I'm just going to go through this video and
12 ask you some questions. Can you see the video?

13 A: Yes.

14 MR. STORY: I'm going to speed it up a little bit.

15 (WHEREUPON, the video resumed playing and was then
16 stopped.)

17 BY MR. STORY:

18 Q: Now, Ms. Carter, it's your testimony that this is the
19 defendant walking in the door right there?

20 A: Yes.

21 Q: And at this point, could you see him in the store?

22 A: Yes. I could see him.

23 Q: So you can see him and you could see him holding the bag;
24 correct?

25 A: Uh-huh.

1 (WHEREUPON, the video resumes playing and was then
2 stopped.)

3 BY MR. STORY:

4 Q: So at this point, he comes up behind you; correct?

5 A: Correct.

6 Q: And we can see him reaching in the bag?

7 A: Yes.

8 Q: And this is the point now -- I'm going to back up just a
9 little bit. But this is the point about now is where he tells
10 you to open up the cash register; correct?

11 A: Yes.

12 Q: And at this point, as we can see on the video, you look
13 back at him; correct?

14 A: Yes.

15 Q: And you could see his hands?

16 A: Yes. I can see one of his hands.

17 Q: You can see the position of that hand?

18 A: Yes.

19 (WHEREUPON, the video resumes playing and was then
20 stopped.)

21 BY MR. STORY:

22 Q: And this is you getting up?

23 A: Yes.

24 Q: And at this point, is he holding his left arm up?

25 A: His right arm is the arm that's hanging. His left hand

CHAUNISE CARTER - CROSS BY MR. STORY

1 was inside of the bag.

2 Q: So it's your testimony that his left hand at this point
3 was inside of the bag?

4 A: Uh-huh.

5 Q: So he wasn't covering -- he wasn't using that hand to
6 cover his face up?

7 A: The right hand is the hand that he was using to cover his
8 face.

9 Q: But in this shot, it's hanging down; correct?

10 A: As he was walking off?

11 Q: In what we see on the screen right now --

12 A: Uh-huh.

13 Q: -- where is the position of his right hand?

14 A: His right hand is currently covering his face. So he's
15 behind me in this shot.

16 Q: His right hand?

17 A: Uh-huh.

18 Q: What's his left hand doing?

19 THE COURT: Ms. Carter, if you could remember to say yes
20 or no rather than uh-huh or huh-uh.

21 THE WITNESS: I'm sorry.

22 THE COURT: It's hard for our court reporter to take that
23 down.

24 THE WITNESS: I'm sorry.

25 THE COURT: Thank you.

1 BY MR. STORY:

2 A: What did you say, sir?

3 Q: Okay. So it's your testimony that he's using his right

4 hand to cover his face?

5 A: Yes.

6 Q: What's his left hand doing?

7 A: His left hand is inside of the bag.

8 Q: Okay. So we don't -- didn't you just say that his right

9 hand is hanging?

10 A: As he was walking, he lifted his hand up to cover up his

11 face. He --

12 Q: His right hand?

13 A: His right hand.

14 Q: Okay. So in this shot, we don't see him covering his

15 face with his left hand and with his right hand hanging free;

16 correct?

17 A: In the shot right here, it appears that his hand is up

18 over his face.

19 Q: His right hand?

20 A: His right hand.

21 Q: Not his left hand?

22 A: No.

23 Q: I'm not -- I'm not --

24 A: He never covered --

25 Q: I'm not --

CHAUNISE CARTER - CROSS BY MR. STORY

- 1 A: He never covered his face with his left hand.
- 2 Q: Okay. What -- and just so we get clear, what hand is
3 this on me that I'm holding up?
- 4 A: That's your right hand.
- 5 Q: This is my right hand?
- 6 A: Yes.
- 7 Q: And what hand is this?
- 8 A: Your left hand.
- 9 Q: And say you're looking at me from the back -- as we see
10 in this video; correct?
- 11 A: Uh-huh.
- 12 Q: What hand is this?
- 13 A: That's your right hand.
- 14 Q: This is my right hand? And what hand is this?
- 15 A: Your left hand.
- 16 Q: So it's your testimony that he is not -- he's covering
17 his face with his right hand?
- 18 A: Yes.
- 19 Q: It's not hanging free?
- 20 A: At a certain time, it was hanging. Then he put it over
21 his face.
- 22 Q: In this picture right now, is his right hand hanging
23 down? I'm sorry.
- 24 A: It's covering his face.
- 25 Q: His right hand is covering his face? And his left hand

1 is doing what?

2 A: His left hand is inside of a bag.

3 Q: It's inside of the bag?

4 (WHEREUPON, the video resumes playing and was then
5 stopped.)

6 BY MR. STORY:

7 Q: So now you're opening up the cash register; correct?

8 A: Yes.

9 Q: What hand does he use to reach in the cash register?

10 A: It looks like his right hand.

11 Q: He's using his right hand? But you just testified his
12 right hand was covering his face; correct?

13 A: Of course, he took his hand down to get the money out of
14 the register.

15 Q: His right hand?

16 A: Yes.

17 Q: So did he switch hands with the bag?

18 A: He probably was switching hands.

19 Q: You don't recall?

20 A: I mean he -- I'm pretty sure he was switching hands to
21 maneuver to do what he had to do.

22 (WHEREUPON, the video resumes playing and was then
23 stopped.)

24 BY MR. STORY:

25 Q: And now he's walking out of the store; correct?

CHAUNISE CARTER - CROSS BY MR. STORY

- 1 A: Correct.
- 2 Q: And what is he doing with his left hand? Can you see
3 that?
- 4 A: Uh-huh. Covering his face.
- 5 Q: And what else is in his left hand?
- 6 A: The bag.
- 7 Q: And what's his right hand doing?
- 8 A: I can't really tell on this.
- 9 Q: Let's back up a little bit. Is it free?
- 10 A: Yes.
- 11 Q: And now he's walking out of the store; correct?
- 12 A: Yes.
- 13 Q: And you're walking after him; correct?
- 14 A: Yes.
- 15 Q: And this is the point where you -- I believe you say are
16 you really going to come up here and rob me and walk away;
17 correct?
- 18 A: I said that when he was behind the register.
- 19 Q: You didn't say it as you were following him out of the
20 store?
- 21 A: When we got out the store, I said you really robbed us
22 and walked away?
- 23 Q: You -- you previously testified you were scared; right?
- 24 A: Yes.
- 25 Q: Were you angry?

1 A: Was I angry? Yes.

2 Q: You were angry? I'm going to play another video from
3 part of this thing.

4 (WHEREUPON, the video with sound resumed playing and was
5 then stopped.)

6 BY MR. STORY:

7 Q: Is this the first video that the solicitor showed you?

8 A: Yes.

9 (WHEREUPON, the video resumed playing and was then
10 stopped.)

11 BY MR. STORY:

12 Q: Now, is this the defendant walking in?

13 A: Yes.

14 (WHEREUPON, the video resumed playing and was then
15 stopped.)

16 BY MR. STORY:

17 Q: Is he holding the bag with his left hand?

18 A: It appears that it's on his wrist.

19 (WHEREUPON, the video resumed playing and was then
20 stopped.)

21 BY MR. STORY:

22 Q: And at this point, he demands that you open up the cash
23 register?

24 A: Yes.

25 Q: And this is the part where you turned and looked at him

CHAUNISE CARTER - CROSS BY MR. STORY

1 from behind; correct?

2 A: Yes.

3 Q: And you could see the bag up?

4 A: Yes. And that's when I saw the bag up.

5 (WHEREUPON, the video resumed playing and was then
6 stopped.)

7 BY MR. STORY:

8 Q: At that point when you were behind the cash register
9 before you opened it up, you asked him are you really going to
10 come up here and try to rob me?

11 A: Yes.

12 (WHEREUPON, the video resumed playing and was then
13 stopped.)

14 BY MR. STORY:

15 Q: And right now, after he takes the money, you follow him
16 out; correct?

17 A: Yes.

18 (WHEREUPON, the video resumed playing and was then
19 stopped.)

20 BY MR. STORY:

21 Q: And you yell at him as he's leaving are you really going
22 to come rob my store and walk out?

23 A: Yes.

24 Q: Now, it's your previous testimony that he had his -- just
25 -- just so we're making sure, he had his left hand in the bag

1 the whole time?

2 A: Yes.

3 Q: Did you -- do you recall officers responding to the scene
4 right after this?

5 A: Yes.

6 Q: And do you remember speaking with them about the
7 incident?

8 A: I do.

9 Q: Didn't you tell the officers then that he was covering
10 his face?

11 A: I don't recall exactly what I said that day --

12 Q: Okay.

13 A: -- to the officers. I just remember them coming up and I
14 was telling them what happened.

15 Q: Okay. But you remember speaking with Officer Michael
16 Braga; correct?

17 A: I don't remember any names from that day.

18 Q: But you remember speaking with a --

19 A: I spoke with --

20 Q: -- Sumter city police officer?

21 A: I spoke with several officers.

22 Q: With several? Okay. Thank you. Would it be about 3:04
23 p.m.?

24 A: Yes.

25 Q: Okay.

CHAUNISE CARTER - CROSS BY MR. STORY

1 MR. STORY: I beg the Court's indulgence for a moment.

2 BY MR. STORY:

3 Q: At any point during this altercation, did Mr. Franklin
4 say I have a gun?

5 A: No, he didn't.

6 Q: Did he say I have a knife?

7 A: No, he didn't.

8 Q: Did he say if you don't comply, I'm going to shoot you?

9 A: No, he did not.

10 Q: He never threatened you with physical harm, did he?

11 A: No, he did not.

12 Q: He just simply got very close to you; correct?

13 A: And he implied that he had a gun by the way he held his
14 hand in the bag.

15 Q: In the bag?

16 A: Yes.

17 Q: Not covering his face most of the time?

18 A: He had his hand in the bag and a few times he covered his
19 face. He covered his face so that the cameras wouldn't pick
20 him up. He knew what he was doing when he was putting his
21 hand over his face.

22 Q: But he never said he had a gun?

23 A: He never said that he had a gun.

24 Q: And you got a look at the bag at least three times;
25 correct?

- 1 A: Correct.
- 2 Q: When he was walking in the store, you saw it?
- 3 A: Correct.
- 4 Q: When he came up behind you, you turned and you saw him
- 5 then?
- 6 A: Yes.
- 7 Q: And then after he reached in the cash register, you got
- 8 to step back and see him again; correct?
- 9 A: Yes.
- 10 MR. STORY: Thank you. No further questions.
- 11 THE COURT: Any redirect?
- 12 MR. MEADORS: Very briefly.
- 13 REDIRECT EXAMINATION
- 14 BY MR. MEADORS:
- 15 Q: You've never testified before today; correct?
- 16 A: No, sir.
- 17 Q: I mean today's the first time?
- 18 A: Yes.
- 19 Q: When he said go open that drawer, go open that drawer
- 20 right now, and you turned, where was his hand?
- 21 A: When I was sitting in the chair?
- 22 Q: Yes, ma'am.
- 23 A: Right beside me.
- 24 Q: And where was his hand?
- 25 A: He was kind of like diagonal to me.

CHAUNISE CARTER - REDIRECT BY MR. MEADORS

1 Q: Where was his hand?

2 A: Inside of the white bag.

3 Q: Inside the white bag? At that moment, what did you
4 think?

5 A: I believed that it was a gun in the bag.

6 Q: And what did you do after that?

7 A: I got up and did what he said.

8 Q: You did what he said?

9 A: (No verbal response.)

10 MR. MEADORS: Thank you. That's all.

11 THE COURT: You may step down, ma'am. Thank you. Ladies
12 and gentlemen, it's about 11:40. We're going to do one more
13 witness before we take our lunch break, but do you need a
14 brief restroom break or are you okay to go forward with one
15 more witness?

16 A JUROR: Go forward.

17 MR. MEADORS: Judge?

18 THE COURT: Sir?

19 MR. MEADORS: I hate to disagree with the jury. I need
20 to use the bathroom.

21 THE COURT: Okay. Well, we want to make sure everybody
22 is comfortable; so let's take a brief restroom break. Go to
23 your jury room. Do not discuss this case, even amongst
24 yourselves. Thank you.

25 (WHEREUPON, the jury exited the courtroom at 11:40 a.m.)

1 THE COURT: We'll be at ease for a few minutes. Let us
2 know when you're ready.

3 MR. MEADORS: Thank you, Your Honor.

4 (WHEREUPON, there was a break in the proceedings from
5 11:41 a.m. until 11:53 a.m.)

6 THE COURT: Thank you everyone. You may have a seat.

7 MR. MEADORS: The State is ready, Your Honor.

8 THE COURT: Is everyone ready?

9 MR. MEADORS: Yes, ma'am.

10 THE COURT: All right. Are you ready?

11 MR. STORY: Yes, ma'am.

12 THE COURT: All right. Let's have our jury, please.

13 (WHEREUPON, the jury entered the courtroom at 11:53 a.m.)

14 THE CLERK: All the jurors are back in the courtroom,
15 Your Honor.

16 THE COURT: Thank you, sir. Welcome back, ladies and
17 gentlemen of the jury. We're now ready to proceed with our
18 next witness. You may call your next witness, Solicitor.

19 MR. MEADORS: May it please the Court?

20 THE COURT: Yes, sir.

21 MR. MEADORS: The State of South Carolina would call Mr.
22 Walter Robertson.

23 THE CLERK: All right, sir. Place your left hand on the
24 Bible and raise your right hand. State your name, please.

25 THE WITNESS: Walter Robertson III.

WALTER ROBERTSON - DIRECT BY MR. MEADORS

1 THE CLERK: Do you solemnly swear or affirm the testimony
2 you give to this Court will be the truth, the whole truth, and
3 nothing but the truth, so help you God?

4 THE WITNESS: I do.

5 THE CLERK: Thank you. You can come around, sir. State
6 your name and spell your last for the record.

7 THE WITNESS: Walter Robertson III. That's R-o-b-e-r-t-
8 s-o-n.

9 THE COURT: Your witness.

10 MR. MEADORS: Thank you, Your Honor. May it please the
11 Court.

12 THE COURT: Yes, sir.

13 WALTER ROBERTSON, being
14 first duly sworn, testified as follows:

15 DIRECT EXAMINATION

16 BY MR. MEADORS:

17 Q: That afternoon, Mr. Robertson.

18 A: Good afternoon.

19 Q: I do this with every witness. So with your permission,
20 would you please tell the ladies and gentlemen about Mr.

21 Walter Robertson, where you're from, your background, your
22 education, and a little bit about your life, please?

23 A: I was born and raised in Sumter, South Carolina. What
24 else about my life? I graduated from Sumter High School.

25 Q: You're a young man. When did you graduate?

1 A: In 1988.

2 Q: Okay. What did you do after that?

3 A: I went into the United States Marine Corps. Following
4 getting out of the Marine Corps, I came back to Sumter and
5 worked in --

6 Q: How long were you in the Marines?

7 A: Four years.

8 Q: Where were you?

9 A: Wow. Kaneohe Bay was my duty station, but I was deployed
10 to Fatima in Okinawa, Japan.

11 Q: So after those four years, what did you do, Mr.
12 Robertson?

13 A: I came back home. For a few years, I worked at Yuasa
14 Exide battery plant. After working about six or seven years
15 in manufacturing, I went into retail management for Rex TV
16 stores. Following Rex, I did a little stint selling
17 manufactured housing for Patriot Homes. Then became a retail
18 manager with several other companies, Champ Sports, Rue 21,
19 and following that, I became the director at Sumter United
20 Ministries Emergency Shelter, formerly known as the Samaritan
21 House.

22 Q: And you've been working your whole life?

23 A: Yes, sir.

24 Q: And when did you start that with the ministries?

25 A: Wow. I've been -- I've been a licensed minister for

WALTER ROBERTSON - DIRECT BY MR. MEADORS

1 sixteen years. I started with Sumter United Ministries about
2 four -- 4 1/2 years ago. Also during that time, I became a
3 certified substitute teacher for the Sumter school district,
4 as well as pastor of Union Baptist Church out of Rembert,
5 South Carolina, and a counseling student at South Carolina
6 State University.

7 Q: And you said formerly it was the Samaritan House?

8 A: Correct.

9 Q: And what is that?

10 A: It's a homeless shelter located at 320 West Oakland.

11 Q: Okay. Mr. Robertson, Reverend, I want to take you to
12 Thursday, August 14th of 2014. Did you have an occasion to
13 come in contact with the defendant?

14 A: Yes, sir.

15 Q: And can you tell these folks how that came about?

16 A: Okay. About -- probably about ten p.m. that night, the
17 defendant arrived at the homeless shelter. When he got there,
18 I remember checking him in that night. We have individuals
19 that can come in anytime. For the most part when they come in
20 that late, it's normally following a phone call. We did have
21 an individual call us and tell us that he would be arriving.

22 When he got there, I checked him in. Normal process.

23 And during the check-in process, you normally hang out in the
24 lobby for just a little bit. If you -- if you haven't eaten,
25 we'll feed you, whatever it may be, but we just give you an

1 opportunity to get comfortable while we get you checked in.

2 We provide you with the bedding that you need, as well as
3 hygiene products, and if you need clothes laundered, it is our
4 normal process to launder your clothes. We actually have an
5 ongoing policy if you come in with bags of clothes, everything
6 has to be laundered before it goes into the sleeping area.

7 Q: And on this night, you said it was Thursday, August 14th,
8 2014. Did the defendant ask you to wash his clothes?

9 A: Yes, sir, he did.

10 Q: And that's part of the service y'all provide?

11 A: Yes, it is.

12 Q: And, Mr. Robertson, did you yourself, in fact, wash his
13 clothes?

14 A: Yes, I did.

15 Q: Okay. And what did you do?

16 A: I just made sure they got into the washing machine and
17 because he got there at ten o'clock, which is lights-out time
18 during the week, I was the one that would get up in the middle
19 of the night and make sure the clothes get in the dryer so
20 that they're available for the next morning.

21 Q: I actually wash my own clothes. And did you -- when
22 you're actually just -- when you're washing the clothes, you
23 got them yourself, put them in, put them in the detergent?

24 A: Yes, sir.

25 Q: And that's when you first came in contact with his

WALTER ROBERTSON - DIRECT BY MR. MEADORS

1 clothes?

2 A: Correct.

3 Q: I mean you recognized them because you actually washed
4 them?

5 A: Correct.

6 MR. STORY: Your Honor, I ask him not to lead the
7 witness. He could just ask the questions.

8 BY MR. MEADORS:

9 Q: Whose clothes were they?

10 A: They were the defendant's clothes.

11 Q: And on Friday, August 15th, did you have an occasion to
12 see the defendant? I'm not asking if you did or didn't, but
13 did you?

14 A: Correct. Yes, sir.

15 Q: And where was that?

16 A: That was again at the shelter because I was on shift that
17 night.

18 Q: And can you describe what clothes the defendant was
19 wearing on Friday, August 15th?

20 A: He was wearing the same blue T-shirt and jeans with white
21 sneakers.

22 Q: Okay. Were those the same ones you'd see the day before?

23 A: Yes, sir.

24 Q: Had he spent the night there Thursday night?

25 A: Yes.

1 Q: At the shelter?

2 A: Yes.

3 Q: How about Friday?

4 A: Friday night, I think he did as well.

5 Q: Okay. Had you ever seen the defendant prior to this, Mr.
6 Robertson?

7 A: No, sir.

8 Q: When you're not at the shelter, obviously you have a
9 home; correct?

10 A: Yes, sir.

11 Q: On Saturday night of August 16th, 2014, did you have an
12 occasion to be watching TV?

13 A: Yes, sir.

14 Q: And could you tell the ladies and gentlemen of this jury
15 what, if anything, you saw on TV, specifically WLTX?

16 A: I remember -- it's one of my habits to watch the news
17 every night, the eleven o'clock report. I remember sitting
18 there watching the news and the story came on about a robbery
19 at a convenience store not too far from the shelter.

20 And what I saw on the video was the defendant and I
21 recognized him, one, based upon the clothes that he was
22 wearing, as well as I guess the manner he was standing, the
23 way he was -- just his mannerisms in the photograph. That
24 made him stand out to me.

25 Q: And explain that to the jury. Do you -- you deal with

WALTER ROBERTSON - DIRECT BY MR. MEADORS

1 different folks in and out as a part of your job?

2 A: Yes. We deal with a lot of different people, and one of
3 the habits and the things that they teach us in counselor
4 education is to read body language because people do
5 communicate with you nonverbally. So I have a tendency to
6 watch nonverbal cues and remember the different things people
7 do, whether it's their mannerisms or whatever. They have a
8 tendency to stick out, and just the way he was standing
9 slightly hunched over, it stood out to me.

10 Q: So you recognized that person as whom?

11 A: As the defendant, Mr. Franklin.

12 Q: You recognized his clothes?

13 A: Yes, sir.

14 Q: And his mannerisms?

15 A: Yes, sir.

16 Q: Mr. Robertson, I'm going to show you the videos marked
17 State's 16.

18 (WHEREUPON, State's Exhibit Number 16, the surveillance
19 video, was played in court and then stopped.)

20 BY MR. MEADORS:

21 Q: Is that the individual you recognized?

22 A: Yes, it is.

23 Q: And, Mr. Robertson, once you saw that and recognized
24 that, what did you do?

25 A: I immediately picked up the phone and called the number

1 they had on the screen and -- well, first of all, I called the
2 shelter and got his personal information. I got his name, the
3 correct spelling of his name, his date of birth, his Social
4 Security number. Then I called the number off the screen and
5 provided them the information and let them know that I
6 recognized him.

7 Q: Okay. And that -- you gave that information to law
8 enforcement?

9 A: Yes, sir.

10 Q: And that included his name?

11 A: Yes.

12 Q: Let's talk very briefly about when -- if I were to come
13 to the shelter and ask to spend the night. What -- do you
14 search me or do you -- do you know what personal belongings I
15 might bring with me?

16 A: No, sir. We don't search you. All we require is if you
17 have a bag or something with you, we require you to launder
18 those items. You pack your own stuff back in your bag. If
19 it's left in the washing machine overnight, that's the only
20 time we'll handle your stuff to put it in the dryer to make
21 sure it's dry for you in the morning. But other than that,
22 you're responsible for your own belongings. We don't go
23 through your belongings. We don't search you at all.

24 Q: Did the defendant come back to the shelter on August 16th
25 of 2014, after this incident I guess is my question?

WALTER ROBERTSON - DIRECT BY MR. MEADORS

1 A: That would be Saturday?

2 Q: Yes, sir.

3 A: I was not working, but I was told yes.

4 Q: Okay. And law enforcement was called after that by you?

5 A: Correct. Well, not by me. By the staff member that was
6 working because I kind of gave him an advance notice that if
7 the individual showed up to call -- to contact law
8 enforcement.

9 Q: And that's what happened?

10 A: Correct.

11 Q: Mr. Robertson, just finally, the individual that stayed
12 at your shelter and asked you to wash his clothes on August
13 14th and the individual you saw on August 15th wearing the same
14 clothes according to your testimony and the individual that
15 you saw on WLTX committing this robbery and that you later
16 informed the police about, is he in the courtroom?

17 A: Yes, sir.

18 Q: And would you please point him out for these ladies and
19 gentlemen of the jury?

20 A: (Indicating) The defendant.

21 Q: Sitting next to Mr. Story?

22 A: Yes, sir.

23 MR. MEADORS: We'd ask the record to reflect he's
24 indicated the defendant, Wilbert Franklin Jr.

25 THE COURT: Yes, sir.

1 MR. MEADORS: Thank you for being here, Mr. Robertson.

2 THE WITNESS: Thank you.

3 THE COURT: Cross-examination?

4 MR. STORY: Briefly, Your Honor.

5 CROSS-EXAMINATION

6 BY MR. STORY:

7 Q: Good morning, Mr. Robertson.

8 A: Good morning.

9 Q: So it's your testimony that you washed clothes for Mr.
10 Franklin; correct?

11 A: Correct.

12 Q: That was the night of the 14th?

13 A: Correct.

14 Q: And you checked him in the night of the 14th?

15 A: Correct.

16 Q: Did he have anything with him that night besides the
17 clothes he was wearing?

18 A: I don't recall him having anything else.

19 Q: Okay. You don't recall him having a bag?

20 A: Not on that Thursday night. On that Friday night, yes.

21 Q: On the Friday night, he had a bag?

22 A: Correct.

23 Q: And it's been your testimony that you don't -- you don't
24 search bags when people come in?

25 A: Correct.

WALTER ROBERTSON - CROSS BY MR. STORY

1 Q: So where did the bag stay if someone stays at the
2 shelter?

3 A: We do provide them with storage space. We give them --
4 depending on your bed number, you get either the top two
5 drawers or the bottom two drawers in a dresser, as well as one
6 drawer in a nightstand.

7 Q: And you don't look through those drawers?

8 A: No, sir.

9 Q: You don't search them when they come in?

10 A: No, sir.

11 Q: So presumably they could have drugs or anything else in
12 those things?

13 A: Yes, sir.

14 Q: Okay. What -- briefly, you -- you recognized the
15 defendant from watching the news that night; correct?

16 A: Correct.

17 Q: Now, is the video that's up on the screen right now -- is
18 that the video you saw that night?

19 A: I recall the portion of the video that I recognized him
20 from was really a still shot where he kind of showed his front
21 view of him.

22 Q: Okay.

23 A: Not him walking by the cash register.

24 Q: So it's not to his back like this that we just saw?

25 A: Correct.

1 Q: It was completely different --

2 A: Correct.

3 Q: -- picture? Okay. And it's your testimony -- I mean you
4 checked him in?

5 A: Yes.

6 Q: Right? And you don't recall what he had?

7 A: As far as his possessions in his hands?

8 Q: Yeah. If he had anything.

9 A: No, I don't recall.

10 Q: Okay. But you recognized him having a plastic bag the
11 night after?

12 A: Correct.

13 Q: All right.

14 MR. STORY: Thank you. No further questions.

15 THE COURT: Any redirect?

16 MR. MEADORS: Just very briefly.

17 REDIRECT EXAMINATION

18 BY MR. MEADORS:

19 Q: Specifically, what you saw on TV --

20 (WHEREUPON, State's Exhibit Number 16, the surveillance
21 video, was played in court and then stopped.)

22 BY MR. MEADORS:

23 Q: Was it that piece?

24 A: Right up -- right up in there. It was a -- it was a
25 front shot I guess when he was coming in the store.

WALTER ROBERTSON - REDIRECT BY MR. MEADORS

1 Q: And I'll show you what's marked State's 15.

2 A: There it is.

3 Q: There it is. That's what you recognized?

4 A: That's what I recognized.

5 MR. MEADORS: Thank you. Your Honor, we would ask that
6 he be excused.

7 THE COURT: Any objections?

8 MR. STORY: No objection.

9 THE COURT: You may be excused, Mr. Robertson. Thank
10 you.

11 THE WITNESS: Thank you.

12 THE COURT: Ladies and gentlemen of the jury, if you're
13 okay, that was a pretty short witness. So we're going to go
14 forward unless y'all are ready for your lunch break. Are you
15 okay to go forward? All right.

16 MR. MEADORS: Can we approach?

17 THE COURT: You may.

18 (WHEREUPON, a bench conference was held off the record.)

19 THE COURT: Well, ladies and gentlemen, it's actually a
20 good time for us to take our lunch break. It's about --
21 almost 12:15. We do have a couple of other things we have to
22 take care of.

23 So if you would be back in your jury room at 1:30, we
24 then will resume with the trial of the case. Have a nice
25 lunch. Again, please remember my instruction not to discuss

1 this case with anyone, and that includes amongst yourselves.

2 Have a nice lunch.

3 (WHEREUPON, the jury exited the courtroom at 12:11 p.m.)

4 THE COURT: All right. It's my understanding, counsel,
5 Mr. Story, that your client is still considering whether or
6 not he wants to testify. So what I'll do is I'll allow him
7 that opportunity to consider that during the lunch break and
8 we'll -- before we bring the jury back, I'll put him under
9 oath so that it will run smoothly after the State rests.

10 MR. STORY: Okay. Thank you.

11 THE COURT: And your 609 issues regarding his prior
12 record? You want to go ahead and address that or do you want
13 to wait to see if he's going to testify?

14 MR. STORY: I believe there are some.

15 THE COURT: All right. Solicitor, have you gone through
16 the defendant's record with the defense as to what you intend
17 on using just in case he does wish to testify?

18 MR. MEADORS: We haven't in detail. Would Your Honor
19 like us to do that and we can just agree on it when you come
20 back?

21 THE COURT: Sure. That would probably be the easiest
22 thing. Why don't you all do that during the lunch break and
23 we'll -- we will reconvene at 1:15. That way, by the time the
24 jury gets back, we'll be ready to start on time when they get
25 all back.

1 MR. MEADORS: Thank you.

2 THE COURT: Thank you.

3 (WHEREUPON, there was a break in the proceedings from
4 12:13 p.m. until 1:39 p.m.)

5 MR. MEADORS: May it please the Court?

6 THE COURT: Yes, sir.

7 MR. MEADORS: Judge, as far as the defendant's prior
8 record, he has a couple of things from Baltimore, assault with
9 intent to rob and attempted robbery with a deadly weapon,
10 which I believe are outside the ten-year limit.

11 THE COURT: Okay.

12 MR. MEADORS: There's a court date of 9/27/1995 for a
13 burglary second and a strong-armed robbery for a total of
14 eighteen-year sentence. I've checked with probation. It was
15 Lynchburg Police Department. It appears he got out of all
16 custody and control on November 19th of '04 and I -- I just
17 want to make sure I'm right. I guess the date of the offense
18 or when he testifies, whichever is the latest, the ten years
19 -- and if that's the case, I think that would just be a little
20 bit outside the ten years too.

21 THE COURT: That's correct.

22 MR. MEADORS: I think I'm right. And then there is a
23 court date of January 10th of 2007 of an armed robbery that he
24 either pled or was convicted of strong-armed robbery and ABHAN
25 when he got five years on. We do think and we respectfully

1 ask Your Honor to consider that as one of the impeachment
2 offenses.

3 In addition to that, he's got numerous fraudulent checks,
4 ten counts in '05 and another count in '08. We'd argue those
5 are crimes of dishonesty, and I have gone over this with Mr.
6 Story and I think he's in agreement those would be the
7 potential ones that would be available.

8 THE COURT: Mr. Story?

9 MR. STORY: Your Honor, I would just object to the
10 strong-armed robbery. That the prejudicial effect would
11 outweigh the probative value.

12 THE COURT: And I think considering it's very similar
13 obviously to the charge on the defendant, I think the
14 probative value would be outweighed by the prejudicial effect.
15 However, Mr. Meadors, you can ask him if he has a conviction
16 of -- you can't say the type, but if he has a conviction
17 involving dishonesty or false statement regarding the strong-
18 armed robbery. You can, of course, go into the fraudulent
19 checks. I think those are clearly admissible, but don't refer
20 to the strong-armed robbery by name.

21 MR. MEADORS: And, Your Honor, specifically if that
22 happens, you've also been convicted of a crime of dishonesty
23 on January 10th, 2007?

24 THE COURT: Yes, sir.

25 MR. MEADORS: Okay. Thank you.

1 THE COURT: Anything else?

2 MR. MEADORS: No, ma'am.

3 THE COURT: And, Mr. Meadors, are you intending to call
4 the police officer? The detective?

5 MR. MEADORS: No, ma'am.

6 THE COURT: All right. Mr. Story, is your client ready
7 to be placed under oath regarding his right to testify?

8 MR. STORY: Yes, Your Honor.

9 THE COURT: All right. Mr. Franklin, if you'd please
10 stand?

11 (WHEREUPON, the defendant complied.)

12 THE COURT: Mr. Prince?

13 THE CLERK: Place your left hand on the Bible and raise
14 your right hand. State your name, please.

15 THE DEFENDANT: Wilbert J. Franklin Jr.

16 THE CLERK: Do you solemnly swear or affirm your
17 testimony you give to this Court will be the truth, the whole
18 truth, and nothing but the truth, so help you God?

19 THE DEFENDANT: Yes, sir.

20 THE CLERK: Thank you.

21 THE COURT: Mr. Franklin, at this point, I'm going to
22 explain to you certain of your rights. If you don't
23 understand anything that I say, please let me know. And if
24 you want me to explain anything in any more detail, please let
25 me know. Do you understand that?

1 THE DEFENDANT: Yes, ma'am.

2 THE COURT: All right, sir. We have now reached the
3 stage of the trial where you may present your defense. You
4 have the right to claim the protections given to you by the
5 Fifth Amendment of the Constitution of the United States.

6 This amendment states in part that no person shall be
7 compelled in any criminal case to be a witness against
8 himself. This means that you cannot be required to testify in
9 this case. You have the right to testify on your own behalf.
10 However, no one can make you testify. This is a personal
11 right and no one can waive this way right except for you.

12 If you decide to testify, you will be subject to the same
13 rules that govern other witnesses and you may be examined and
14 cross-examined on any relevant issue in this case. In
15 addition, if you have any convictions involving dishonesty or
16 false statement or crimes punishable by imprisonment for more
17 than one year and the Court determines that the probative
18 value of admitting this evidence outweighs its prejudicial
19 effect to you, the solicitor will be able to introduce your
20 record to attack your credibility.

21 If you decide to testify, this decision on your part must
22 be freely, voluntarily, and intelligently made, with the
23 knowledge of the protections given to you by the Fifth
24 Amendment and the consequences of your decision to testify.

25 If you decide not to -- yes, sir?

1 THE DEFENDANT: I want to know when they want to
2 establish my credibility --

3 THE COURT: Yes, sir.

4 THE DEFENDANT: -- and the things that happened in my
5 past, will I be able to explain the circumstances and the
6 things that led up to --

7 THE COURT: To those convictions?

8 THE DEFENDANT: Yes, ma'am.

9 THE COURT: And you were obviously just listening as the
10 solicitor was telling me what portions --

11 THE DEFENDANT: Yes, ma'am.

12 THE COURT: -- of your record would be admissible.

13 THE DEFENDANT: Yes, ma'am.

14 THE COURT: I ruled that the strong-armed robbery,
15 although they can't name it as that --

16 THE DEFENDANT: Yes.

17 THE COURT: -- you'd be questioned on that crime -- maybe
18 not the specifics of that crime because it's so similar to
19 this crime -- and the fraudulent checks. So you would be
20 questioned on those instances of basically the crimes that are
21 punishable by more than one year and/or involve dishonesty.

22 THE DEFENDANT: Yes, ma'am.

23 THE COURT: You can answer yes, no, or what, and then
24 explain your answer, but if you open the door with your
25 answers, you may open the door to the solicitor being able to

1 go into the specifics of the crime if you're going in there to
2 explain what that is. But that's something that you need to
3 talk to your attorney about to ensure whether or not you wish
4 to testify or not.

5 THE DEFENDANT: Yes, ma'am.

6 THE COURT: Does that answer your question?

7 THE DEFENDANT: Yes, ma'am.

8 THE COURT: All right, sir. If you decide not to
9 testify, I will instruct the jurors that they cannot give the
10 fact that you did not testify any weight or consideration
11 whatsoever. That there is absolutely no prejudice to you
12 because you did not testify. It is left entirely up to you
13 whether or not you wish to testify. Again, you may talk to
14 your attorney, your friends, your family, but the ultimate
15 decision as to whether or not you want to testify is up to
16 you. Do you wish to testify?

17 THE DEFENDANT: Yes.

18 THE COURT: You do? Okay. Have you had enough time to
19 talk to your attorney about that?

20 THE DEFENDANT: Uh-huh. We spoke briefly.

21 THE COURT: Sure. Do you need to step outside for a
22 second or are you okay at the table?

23 THE DEFENDANT: Yeah. I would want to go outside for a
24 second.

25 THE COURT: All right, sir. Is there a spot back there

1 where he can talk to him real quick?

2 THE BAILIFF: Yeah. Sure. He can go back in the
3 anteroom.

4 THE COURT: Yes, sir.

5 MR. STORY: And -- okay. Has the State rested yet?

6 THE COURT: Not yet.

7 MR. STORY: Okay.

8 THE COURT: But I wanted to kind of smooth --

9 MR. STORY: Okay.

10 THE COURT: So we don't have to call the jury out here,
11 the State rests, and we put them out.

12 MR. STORY: Thank you. Okay. Thank you, Your Honor.

13 THE COURT: But it's my -- I anticipate that the State is
14 going to rest.

15 MR. MEADORS: Unless I change my mind in the next one
16 minute.

17 THE COURT: All right, sir. I was just trying to make it
18 run more smoothly. Of course, Mr. Franklin, this would be
19 after the State rests. That's when we reach that portion of
20 the trial that you have the right to present your defense and
21 whether or not you wish to testify, sir.

22 So that -- that remains the same. I was just trying to
23 go ahead and advise you of this right before we bring the jury
24 back out and send them right back out again to go through
25 this. Does that make sense?

1 THE DEFENDANT: Okay. Let me -- let me see if I
2 understand what you're saying. You're saying that before I
3 have to let you know whether or not I want to actually testify
4 that the State has to rest first?

5 THE COURT: Yes, sir.

6 THE DEFENDANT: And you said you already wanted to
7 proceed with that to kind of keep things moving?

8 THE COURT: Right. Just to kind of keep things moving.
9 It's my understanding the State is going to rest as soon as
10 the jury comes back and then we'll hear briefly some motions
11 and we'll hear motions and then it will be your turn to
12 present your defense if you choose to present one, but again,
13 that decision as to whether or not you wish to testify is
14 entirely up to you. So if you need a couple minutes, that's
15 fine. I'm happy to give you that time --

16 THE DEFENDANT: Yeah.

17 THE COURT: -- if you need to talk to your attorney.

18 THE DEFENDANT: Okay. Thank you.

19 THE COURT: All right.

20 MR. MEADORS: Judge, can I get one clarification for
21 myself?

22 THE COURT: Yes, sir.

23 MR. MEADORS: I know that recent case. I'm sorry I don't
24 have it with me. It came out after State v. Hollomane
25 [phonetic] that automatically robbery is -- I think the new

1 case said that they weren't a crime of dishonesty per se. So
2 we'd have to go through what we did in the balancing act.

3 Should I refer to it as a felony instead of a crime of
4 dishonesty? I don't know if that case actually said it isn't
5 a crime. I'm just going through it in my mind. I just didn't
6 want to --

7 THE COURT: I think before you do that, you may want to
8 pull that case up.

9 MR. MEADORS: Okay.

10 THE COURT: I think it's a crime involving dishonesty or
11 one that provides more than a year.

12 MR. MEADORS: That is I'm sure of it, but that case I
13 think said robberies weren't anymore a crime of dishonesty,
14 but I'll check it.

15 THE COURT: Let's double check that before we get started
16 on that.

17 MR. MEADORS: Okay.

18 MR. STORY: Thank you, Your Honor.

19 THE COURT: Do you have the name of that case, Solicitor,
20 by any chance?

21 MR. MEADORS: I'll go find it by the time we get back.

22 THE BAILIFF: Mr. Story, you want to talk to him now?

23 MR. STORY: Yeah.

24 THE COURT: Okay. We found the case, Solicitor. We'll
25 look at it.

1 (WHEREUPON, there was a pause in the proceedings.)

2 THE COURT: All right. Solicitor, I've reviewed the case
3 that you're referring to. It's State versus Broadnax. It's
4 not been published yet, but apparently it was -- it came down
5 last month or the month before.

6 It basically states that armed robbery did not involve --
7 is not a crime of dishonesty or false statement. So the Court
8 then must go into the balancing factors because it is a crime
9 that's punishable by more than one year. And when considering
10 the centrality of the credibility issue in this case,
11 obviously that's the main issue is whether or not he had a gun
12 or not.

13 The Court does find that the probative value outweighs
14 the prejudicial effect, and you can ask him if he has a
15 conviction involving something that carries more than one year
16 as a possible punishment, but again, don't go into the
17 description of that conviction or that it involved false
18 statement or dishonesty.

19 MR. MEADORS: Am I allowed to say felony or just say more
20 than one year?

21 THE COURT: The opinion doesn't state felony or not. So
22 why don't we --

23 MR. MEADORS: I'll stay --

24 THE COURT: -- stay on the -- on the clean side and just
25 keep it as carries more than one year.

1 MR. MEADORS: Yes, ma'am.

2 THE COURT: All right. Mr. Story, have you had an
3 opportunity to discuss further with your client whether or not
4 he wishes to testify?

5 MR. STORY: I have.

6 THE COURT: All right. Mr. Franklin, have you had enough
7 time to talk with your attorney as to whether or not you wish
8 to testify?

9 THE DEFENDANT: Yes, ma'am.

10 THE COURT: And do you wish to testify?

11 THE DEFENDANT: Yes.

12 THE COURT: All right, sir. All right. Anything further
13 before I bring the jury in?

14 MR. MEADORS: No, ma'am.

15 MR. STORY: Your Honor, I have two motions, if the State
16 has already rested.

17 THE COURT: They haven't technically.

18 MR. MEADORS: I'm going to.

19 THE COURT: You're going to?

20 MR. MEADORS: So if he wants to argue them now, we can do
21 that.

22 THE COURT: Okay. Any objection to that, Mr. Story?

23 MR. STORY: No.

24 THE COURT: We could go ahead and hear the motions and
25 he's just formally going to rest in front of a jury as soon as

1 they come in. He's technically rested already as what he's
2 just informed the Court. So I'll be happy to hear your
3 motions.

4 MR. STORY: Okay. Yes, Your Honor. First, I'd make --
5 I'd like to make a motion for a directed verdict as to the
6 armed robbery. I don't -- there's no scintilla of evidence
7 that he had a weapon, and clearly the video shows that he
8 reaches in the bag, but does not make a representation of a
9 weapon. Therefore, that element of armed robbery -- there's
10 no way a reasonable jury could find him guilty of armed
11 robbery because that element is missing.

12 THE COURT: All right. Solicitor?

13 MR. MEADORS: Your Honor, Ms. Carter has testified she
14 believed it was a gun. She saw his hand the bag, thought it
15 was a gun, felt threatened. And when she turned around, she
16 saw his hand or fist in the bag and she thought that was a
17 weapon, thought that was a gun. We think that's enough
18 respectfully at this point.

19 THE COURT: Yes, sir. Mr. Story, I'm going to
20 respectfully deny your motion. You know at this point that
21 the Court is concerned with the existence or nonexistence of
22 evidence tending to establish the guilt of the defendant. The
23 victim's testimony does establish those elements and that will
24 be a question of fact for the jury to determine.

25 MR. STORY: And I have one more motion, Your Honor.

1 THE COURT: Yes, sir.

2 MR. STORY: Your Honor, Officer Michael Braga was the --
3 he was an officer who wrote the incident report and he
4 responded to the scene of the Kangaroo after the incident. He
5 was on the State's witness list. My assumption was that he
6 was subpoenaed and that he would testify on behalf of the
7 State and I would have the opportunity to cross-examine him.
8 His report, in my opinion, is -- contains in it a prior
9 inconsistent statement that the cashier, Ms. Carter, made to
10 him.

11 I had the Sheriff's Department -- when I found out that
12 the State was not intending to call any more witnesses, I had
13 the Sheriff's Department go serve a subpoena on the police
14 department. Through the sheriff's deputy, they informed me
15 that Mr. Braga is no longer with the Sumter City Police
16 Department. They believe he works at Schneider Electric,
17 which is on 378 going toward Columbia.

18 I would ask the Court for at least some time to go find
19 him so we could have him served with a subpoena and bring him
20 in and testify as to what he did or did not hear.

21 THE COURT: Mr. Meadors?

22 MR. MEADORS: I'm sorry. If you want to call him -- I
23 don't know what I was going to say. I have no objection to
24 whatever you decide. I never was planning on calling him.

25 THE COURT: Mr. Story, I think the correct term that you

1 made was assumption that they would call him. I don't think
2 the State -- they put him on this witness list. So I think if
3 you wanted to call him, you should have subpoenaed him in a
4 timely manner prior to trial. If you were wanting that type
5 of testimony, you could have called him as your own witness.
6 At that point, you call him. I'm not going to hold this trial
7 up at this stage of the game for you to subpoena a witness
8 that could have been previously subpoenaed.

9 MR. STORY: And, Your Honor, I was unaware of what any of
10 these witnesses were going to say beforehand except what I was
11 given in the Rule 5. And I didn't have any written statement
12 from Ms. Carter. All I had -- the only indication of what she
13 said was in the incident report written by the officer.

14 THE COURT: You're not saying that they violated Rule 5
15 by not giving you complete discovery, are you?

16 MR. STORY: No, Your Honor, I'm not saying that. But I
17 -- I did not -- I was not aware of what this witness was going
18 to testify to.

19 THE COURT: Well, Mr. Story, I can't help that. I think
20 that's incumbent upon you prior to trial and not during the
21 middle of the trial.

22 MR. STORY: It's -- I just think the burden is too high
23 to have us subpoena every possible witness in every case. I
24 mean I don't know who the State is going to put up and who
25 they're not going to put up.

1 THE COURT: Well, Mr. Story, I'm certain that this
2 Solicitor's Office, probably just like all solicitor's
3 offices, has an open file policy. I'm quite certain that they
4 would sit down and talk to you about the case if you wanted to
5 and I'm certain that your office probably has a private
6 investigator to go out and talk to folks or you can make phone
7 calls to the listed witnesses.

8 So what you're telling me now at this stage of the game
9 really is -- it's a little disturbing that while the State is
10 resting, you're now wanting to talk to witnesses or subpoena
11 witnesses. That's -- that's not the State's burden to try
12 your case for you. You have the discovery. You have the
13 ability to go talk to folks and get ready for trial. It
14 doesn't sound like there's any discovery violations. So to
15 hold up the trial after the State has rested is not going to
16 happen today.

17 MR. STORY: Okay. Thank you, Your Honor.

18 THE COURT: Anything further?

19 MR. MEADORS: Your Honor, just for the record, I think
20 he's referring to an incident report that's got -- one, two,
21 three, four -- five lines. That's been provided and it's just
22 a -- I guess a summary of Michael Braga. I don't know what
23 he's talking about a prior inconsistent statement, but he's
24 had this. It mentions that there's a cloth rag that he put
25 over his face, but other than that it's really kind of bland.

1 So I don't -- we've turned over everything.

2 THE COURT: Is that correct?

3 MR. STORY: Yes, Your Honor. I'm not arguing with Rule
4 5. I'm just -- I mean the officer had to have been under
5 subpoena if he was on the witness list. I'd like to refer to
6 the witness list -- I mean Michael Braga was on it.

7 THE COURT: Well --

8 MR. STORY: I mean that's the crux of my argument.

9 THE COURT: Well, the crux of your argument is you're
10 assuming who he was going to call. They can put who they
11 think they might need on the witness list and then after the
12 testimony comes out decide that they may not need that
13 witness. Out of an abundance of caution, they listed him as a
14 potential witness. That does not mean that they have to call
15 the witness. Certainly, looking at the incident report, if
16 you felt that testimony was necessary to your defense, you
17 should have subpoenaed him and not the State.

18 MR. STORY: Thank you.

19 THE COURT: Anything further?

20 MR. STORY: No.

21 THE COURT: All right. Let's have our jury, please.

22 (WHEREUPON, the jury entered the courtroom at 2:06 p.m.)

23 THE CLERK: All the jurors are back in the courtroom,
24 Your Honor.

25 THE COURT: Thank you, Mr. Prince. Welcome back, ladies

1 and gentlemen of the jury. We're now ready to proceed with
2 the trial of the case. Solicitor?

3 MR. MEADORS: May it please Your Honor?

4 THE COURT: Yes, sir.

5 MR. MEADORS: Your Honor, at this time, the State of
6 South Carolina rests.

7 THE COURT: Thank you, sir. Counsel for the defense?
8 Does the defense care to present a defense?

9 MR. STORY: Yes, Your Honor, we would.

10 THE COURT: All right, sir. You may call your first
11 witness.

12 MR. STORY: Your Honor, the defense calls Wilbert
13 Franklin Jr.

14 THE CLERK: Place your left hand on the Bible and raise
15 your right hand. State your name, please.

16 THE DEFENDANT: Wilbert Jones Franklin Jr.

17 THE CLERK: Do you solemnly swear or affirm the testimony
18 you give to this Court will be the truth, the whole truth, and
19 nothing but the truth, so help you God?

20 THE DEFENDANT: So help me God.

21 THE CLERK: Thank you. Have a seat up there. State your
22 name and spell your last for the record.

23 THE DEFENDANT: Wilbert J. Franklin Jr., F-r-a-n-k-l-i-
24 n.

25 THE COURT: Your witness.

1 MR. STORY: Thank you.

2 DIRECT EXAMINATION

3 BY MR. STORY:

4 Q: Mr. Franklin, I'm going to stand back here and I'd like
5 for you to direct all your answers to this jury. Okay?

6 A: Yes, sir.

7 Q: If there's something you don't understand, just please
8 ask me to repeat it.

9 A: Okay.

10 Q: Let's start off by telling the jury where you're from
11 originally.

12 A: I'm originally from Baltimore, Maryland.

13 Q: And when did you -- when did you move to South Carolina?

14 A: I moved to South Carolina in 1994.

15 Q: And where were you living then?

16 A: I was living in Lynchburg, South Carolina.

17 Q: And how old are you?

18 A: Fifty-two.

19 Q: Okay.

20 A: Fifty -- yes, fifty-two.

21 Q: You're fifty-two years old?

22 A: Yes, ma'am. Yes, sir.

23 Q: Do you want something to drink?

24 A: I'm good.

25 Q: Okay. And what type of work do you normally do?

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- 1 A: I did all different type of work. I usually work in a
2 warehouse. When I lived here in Sumter, I worked for
3 Caterpillar. And then recently I had started my own business.
4 I had my own business for a while just before a lot of things
5 went wrong. I started my own business. I was an employer. I
6 employed people and did pretty good. I took care of my wife
7 and my family and took care of my household. Bought my wife a
8 house. Everything was all right.
- 9 Q: I'm going to fast-forward a little bit to the year 2014.
- 10 A: Yes, sir.
- 11 Q: Where were you living at the time?
- 12 A: In 2014, it was kind of a rocky time. Excuse me. It was
13 pretty rocky for me.
- 14 Q: And, Mr. Franklin, right now I'm just asking where were
15 you living in 2014?
- 16 A: I was living -- I was living in Spartanburg and then I
17 moved to Greenwood. Excuse me.
- 18 Q: And right before the events of August, were you married?
- 19 A: I was divorced from my wife.
- 20 Q: When did you get divorced?
- 21 A: Maybe about four months before.
- 22 Q: So about four months before August 2014, you were going
23 through a divorce. What type of business were you in then?
- 24 A: I started a cleaning business. I did commercial and
25 residential cleaning and cleaned carpets. I did floor care

1 work.

2 Q: Just generally, tell the jury about the time before that
3 that brought you to Sumter.

4 A: I -- I was working and I had my own business and had
5 started drinking. Things were going good and I figured I
6 could take a drink.

7 Q: But you figured you could take a drink?

8 A: Yeah.

9 Q: Would you describe yourself as having an alcohol problem?

10 A: Well, before I wasn't drinking. So I really didn't think
11 I had a problem with drinking, but once it started, I couldn't
12 stop. I didn't know anything about alcoholism at the time.
13 So I usually was able to start thinking I could stop, but I
14 just couldn't stop. And my wife asked me to leave.

15 Q: When did your wife ask you to leave?

16 A: It was that summer, early that summer around -- around
17 the end of May, beginning of June, somewhere around there.

18 Q: And did you, in fact, leave?

19 A: Yes.

20 Q: Where did you go?

21 A: I went to the place in Greenwood where it was almost like
22 a halfway house, but I went there and I had to -- I closed the
23 doors of my business because I couldn't run it. I couldn't
24 run my business; so I subbed my employees out. I allowed -- I
25 worked out deals with people so that they could stay working

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1 because I didn't want my mistakes to hurt my employees. So I
2 made some arrangements for them to stay working and everything
3 and I just stepped out of the way because I couldn't manage
4 from a distance.

5 Q: When did you leave Greenwood?

6 A: Sir?

7 Q: When did you leave Greenwood?

8 A: The day that I got -- the day that I came to Sumter.

9 Q: And -- okay. Why were you -- why were you in Sumter?

10 A: Well, I had just got finished talking to my wife and she
11 had told me that --

12 MR. MEADORS: Objection. Hearsay.

13 A: -- she was thinking about --

14 THE COURT: Sustained.

15 BY MR. STORY:

16 Q: And I'm not asking you to go into what anybody else told
17 you, but I'm just asking you about the circumstance of you
18 coming to Sumter.

19 A: Okay. Well, I had just had a conversation with my wife
20 and I just jumped in my car and just started driving. I don't
21 even know where I was headed. I think I was headed to Myrtle
22 Beach or something, and I just saw the Sumter exit and said
23 I'm just going to buy some liquor or something. I was just
24 riding through the area and just riding through just to see my
25 old neighborhood, and then I was planning on getting back on

1 the road and just drive. I don't even know where I was going
2 at. So I stopped and went to sleep in my car in a parking
3 lot, and the police arrested me for sleeping in my car.

4 Q: And let me stop you. Do you remember what day this was?

5 A: It was -- I don't even know. I think it was in July or
6 something. It was in July. I don't know the exact date.

7 Q: Well, how long -- how long were you staying? Did you --
8 did you just arrive in Sumter when you were arrested for
9 sleeping in your car?

10 A: Not that minute, no. I came and stopped at the Walmart
11 and was just out in the Walmart parking lot and just wanting
12 to answer myself how did I get here. Then I got something to
13 eat and I came back and then it just got hot out there in that
14 car. So I wanted to sit somewhere where there was some shade
15 at. So I went in the parking lot where there was a little bit
16 of shade and I went to sleep, and that's when they woke me up
17 and arrested me for sleeping in my car.

18 Q: What happened after they arrested you for sleeping in
19 your car?

20 A: They arrested me and I told the officer --

21 Q: And I'm not asking you about that incident. I'm just
22 asking did you go to jail?

23 A: Yes.

24 Q: Okay.

25 A: I went to jail.

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- 1 Q: Were you released from jail?
- 2 A: No. I wasn't released. I had to stay there for twenty-
- 3 something days before I could go to court.
- 4 Q: And -- well, were you eventually released from jail?
- 5 A: I was eventually released.
- 6 Q: And where was your car at this time?
- 7 A: It was in the -- my car got impounded when they arrested
- 8 me and it was in there all of that time. So I had a bill to
- 9 get my car out of there. It was going to be an astronomical
- 10 amount. I know I didn't have the money to get my car.
- 11 Q: So where did you go after that?
- 12 A: I got out that night and I went to the Samaritan House.
- 13 They were good people there.
- 14 Q: And did you stay there that night?
- 15 A: Yes.
- 16 Q: Do you recall what day that was?
- 17 A: I don't know the date, but it was that Thursday night.
- 18 Q: It was Thursday? It was on a Thursday night?
- 19 A: Yes.
- 20 Q: Okay. Now, tell us about some of the policies of the
- 21 Samaritan House.
- 22 A: Well --
- 23 Q: Did you stay there that night?
- 24 A: I stayed there that night, but six o'clock in the morning
- 25 I had to get out of there. They don't let you just stay in

1 the house. I ain't had nowhere to go. I didn't really know
2 nobody in Sumter. So I had to leave at six o'clock in the
3 morning.

4 Q: Where did you go that morning?

5 A: Just walked around Sumter, mainly stayed downtown because
6 I didn't know my way around Sumter. I just walked around
7 downtown.

8 Q: And did you go back to the Samaritan House that night?

9 A: That night, yes, I went back to the Samaritan House.

10 Q: What about the next day? What did you do?

11 A: That day I got up at six because I had to get out of
12 there at six o'clock in the morning, and the same thing. Just
13 walking around Sumter. I ain't had nowhere to go. It was hot
14 outside. I needed to get somewhere where there was shade. I
15 was just thinking about a lot of different things. I don't
16 know. I just kind of gave up.

17 Q: What did you do that night? And was this Saturday?

18 A: Yes.

19 Q: Okay. What did you do Saturday morning?

20 A: I got up. I knew that I had to just walk around. So I
21 don't know. I made a bad decision and went and got some beer.

22 Q: Where did you get the beer from? Let me stop you there.

23 A: I got it from that store off Liberty, the place that got
24 robbed -- the place that I robbed.

25 Q: And that was that morning that you are purchasing beer?

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- 1 A: Yeah. I just wanted to kind of get my mind off of my
2 circumstances. So I got some beer, started drinking, which
3 was a bad move because once you start drinking and start
4 impairing your thought process and you're making bad decisions
5 and all that. So that's what happened.
- 6 Q: So what did you do after you got the beer?
- 7 A: I just went to some park. I think I went downtown. I
8 don't even think it was a park. I just walked downtown and
9 found a bench and sat on the bench and drank the beer.
- 10 Q: And what did you do after that?
- 11 A: There really wasn't anything to do. You know, I couldn't
12 loiter in front of people's places of business. So I just --
13 just -- you know, I sat there for a while and got tired of
14 sitting there. So I walked and it was extremely hot outside
15 around that time of the year; so I was trying to find
16 somewhere to get out of the heat.
- 17 Q: Did you have an occasion to go back to the Kangaroo that
18 you bought the beer from?
- 19 A: Yeah. Later on that day, I was -- I don't know. I just
20 gave up. I drunk enough beer to make me give up. And I had a
21 check from my job that I was working the month before I got
22 arrested and I was trying to get in touch with somebody that I
23 could get my check because I knew my check wasn't enough to
24 get my car out of the impound, but I was, you know, trying to
25 call my wife to see if she would help me to get my car out the

1 impound along with my check. It just wasn't working. It
2 wasn't happening. And I can't walk from Sumter. So I was
3 trying to wait to get my check so I could probably get a bus
4 ticket to get myself back up to Greenwood.

5 Q: What did you do when you -- when you went back to the
6 Kangaroo? And let me -- what did you have with you at that
7 time?

8 A: I had -- I had a bag on my arm and in that bag I had my
9 release papers from when I got out of the Sumter County
10 Detention Center and I think I might have had some paperwork
11 from the Samaritan House and I had a water bottle. It was
12 some bottled water I had and I had an empty water bottle in my
13 bag when I went in there.

14 Q: What clothes were you wearing that day? Do you remember?

15 A: Yeah. I was wearing a -- I think a gray shirt and some
16 jeans.

17 Q: So you had your paperwork from jail, an empty water
18 bottle. Did you have anything else in the bag?

19 A: I might have had a T-shirt because the Samaritan House
20 gave me another shirt to change into once my shirt got dirty.
21 So I think I might have had another shirt in my bag. I'm not
22 sure about that. And then I walked around with my bag because
23 I didn't know those people down at the Samaritan House and I
24 ain't wanted to just leave my personal papers with my name and
25 Social Security number and stuff where anybody could have

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1 gotten it. So I was just carrying my stuff around with me
2 everywhere I went. So that's why I had the bag with me.

3 Q: Okay. What kind of bag did you have?

4 A: I think it was a Piggly Wiggly bag. I walked from
5 downtown. I walked all the way up Broad Street to Piggly
6 Wiggly -- no. Yeah. I walked all the way up Broad Street to
7 Piggly Wiggly, got me something to eat, set out in front of
8 there for a little while, and walked back downtown. I just
9 had plenty of time to kill.

10 Q: What -- you were in the courtroom when the State played
11 the video; correct?

12 A: Yes.

13 Q: From the convenience store? Do you recall that incident?

14 A: Yes, I do.

15 MR. STORY: And I'm going to bring up a video that's
16 already been shown and ask the witness about it. I'm going to
17 speed it up just a little bit.

18 (WHEREUPON, State's Exhibit Number 16, the surveillance
19 video, was played in court.)

20 BY MR. STORY:

21 Q: Mr. Franklin, can you see the video on your screen?

22 A: Yes.

23 Q: Okay. What are you looking at right now?

24 A: The inside of the store.

25 Q: Okay.

1 A: Me coming in.

2 Q: Who's coming in?

3 A: That's me.

4 Q: Okay. And what were you doing?

5 A: I had my bag with me and I was going to try to hide my
6 face because I knew what I was getting ready to do.

7 Q: How were you trying to hide your face?

8 A: I had the bag in front of my face. And when I walked
9 over there where she was at, I turned my head so she wouldn't
10 see my face, but I don't even know why I did that because I
11 was there earlier that morning. So I just -- I was
12 intoxicated at the time.

13 Q: And I'm going to stop the video. What are you doing
14 right now?

15 A: I think I was either pulling my rag out of the bag or
16 messing with my -- I don't recall exactly what it was, but I
17 had a telephone in my bag too I believe and I can't even
18 really say why I did that, but I think I was just moving my
19 papers around or something or getting a rag out of the bag.

20 Q: Okay.

21 (WHEREUPON, the video resumed playing and was then
22 stopped.)

23 BY MR. STORY:

24 Q: And what are you doing right now?

25 A: I think I'm telling her to open the cash register.

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1 Q: Did you have a gun with you?

2 A: No, sir.

3 Q: Did you have a knife?

4 A: No.

5 Q: Did you have anything besides what you previously told
6 the jury was in the bag?

7 A: No, I didn't.

8 Q: Okay.

9 A: That's it.

10 Q: And I'm going to -- I'm going to play a little bit more
11 of the video. I just want -- please describe what were you
12 doing to the jury.

13 (WHEREUPON, the video resumed playing and was then
14 stopped.)

15 BY MR. STORY:

16 Q: And I'm going to ask you specifically what were you doing
17 with your left hand?

18 A: Hiding my face like that because I thought they might
19 have had surveillance cameras in there, which they did, and I
20 didn't want my face to be seen. So I was holding the bag -- I
21 had one of the straps of the bag over my arm and I was hiding
22 my face right there.

23 Q: And what were you doing with your right hand in this
24 picture?

25 A: It was just -- I wasn't doing anything with it.

1 (WHEREUPON, the video resumed playing and the questioning
2 resumed as the video continued playing.)

3 BY MR. STORY:

4 Q: Please describe what you're doing right now.

5 A: I'm asking her to open the cash register.

6 Q: Okay. And where is your left hand?

7 A: It's up in front of my face.

8 Q: Where is your right hand?

9 A: Hanging down.

10 Q: What are you doing with your right hand now?

11 A: Getting money out of the cash register.

12 Q: And where is your left hand?

13 A: Still hiding my face.

14 Q: And what are you doing now?

15 A: I'm walking out still hiding my face with my left hand.

16 And she followed me out of the store and she was asking me,
17 you know, you're just going to come up in here and rob me like
18 that, and I didn't even run really. I just walked out of the
19 place. I don't even know what I was thinking about, but I
20 kind of just gave up hope at that point and was just trying to
21 get out of Sumter.

22 Q: Where did you go after that?

23 A: I walked around for a little while and I met somebody and
24 we started drinking and they allowed me to come to their house
25 and sit down on their porch and drink beer.

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1 Q: And let me back up a little bit back to the incident.

2 Did you stand behind her and push her with your hand or
3 anything like that?

4 A: No. I never -- I never touched her at all.

5 Q: And -- okay. So you went back to a friend's porch and
6 drank beer. Where did you go after that?

7 A: Just walking around Sumter. I walked downtown all the
8 way up to Walmart on Broad Street and then just hung around in
9 Walmart parking lot and back in Walmart, and then I walked
10 back in town. And by the time I got down there, it was late
11 and so I didn't even bother about going to the Samaritan House
12 that night because it was late. So I just found me a bench
13 and set out there and went to sleep outside.

14 Q: Did you have an occasion to go back to the Samaritan
15 House that night?

16 A: No. I didn't go back there that night.

17 Q: When, if at all, did you ever go back to the Samaritan
18 House?

19 A: The next day. It was that next day. I was just walking
20 around Sumter.

21 Q: Do you recall being arrested?

22 A: Yes, I did.

23 Q: What's that?

24 A: Yes, I did. I was arrested.

25 Q: Do you remember who arrested you?

1 A: It was a female officer and a male officer. The lady
2 looked like she might have been Spanish or something, and they
3 came to the Samaritan House. Somebody at the Samaritan House
4 had called the police on me and they came there and arrested
5 me.

6 Q: Do you recall about what time that was?

7 A: They was already open so it had to be after six, maybe.
8 Somewhere after six. I don't really know what time it was.

9 MR. STORY: Your Honor, may I approach the witness?

10 THE COURT: Yes, sir.

11 BY MR. STORY:

12 Q: Before I do that, do you recall speaking with Detective
13 Yates?

14 A: Oh, yes. I recall speaking to him.

15 Q: Okay. Is he in the courtroom?

16 A: Yes, sir.

17 Q: Okay. And where is he at?

18 A: Sitting at the table with the solicitor.

19 Q: And I'm showing --

20 MR. MEADORS: Your Honor, he knows he's already missing
21 one of the rules.

22 BY MR. STORY:

23 Q: I'm showing the witness what's been previously marked as
24 Court's Exhibit Number 1. Do you recognize this?

25 A: Yeah.

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- 1 Q: Okay. Describe what it is.
- 2 A: It's a Miranda -- a Miranda rights waiver -- a waiver of
3 my rights.
- 4 Q: Okay. And let me ask you about your conversation with
5 Detective Yates. Did he -- and he talked to you; right?
- 6 A: Yes.
- 7 Q: Where did y'all talk at?
- 8 A: That -- in the -- he had an office. I guess you would
9 call it an interrogation room.
- 10 Q: Okay. And did you -- let's talk a little bit about your
11 conversation with Detective Yates. Did he tell you what you
12 were under arrest for?
- 13 A: Yes.
- 14 Q: Okay. What did he tell you --
- 15 A: Well, first he told me I wasn't even under arrest, but I
16 guess he had to establish, you know, whether I was actually at
17 the scene or what. I don't know why he told me I wasn't under
18 arrest.
- 19 Q: Well, before that, the two officers that arrested you,
20 did they tell you what you were under arrest for?
- 21 A: Yes.
- 22 Q: Okay.
- 23 A: Yes, they told me.
- 24 Q: And did you know what they were talking about?
- 25 A: Yeah, I knew what they was talking about.

1 Q: Okay. And did Detective Yates ask you if you wanted to
2 give a statement?

3 A: Yes, he did. And -- but he also told me, you know, that
4 if I cooperated with them that, first, it would show that I
5 had remorse for what happened and that I -- you know, that
6 they would see that I'm cooperating and they wouldn't be as
7 hard on me when I went to court or whatever.

8 Q: And did you agree to talk about the incident?

9 A: Yes. I did.

10 Q: Did you write a statement?

11 A: Yes.

12 Q: Okay.

13 MR. STORY: And I'm showing the witness what's been
14 marked as Court's Exhibit Number 2.

15 BY MR. STORY:

16 Q: Do you recognize this?

17 A: Yes.

18 Q: Okay. What is the date on that?

19 A: August the 17th.

20 Q: Did you write this in your own hands?

21 A: Yeah.

22 Q: Okay. And just -- just describe what it says. Just
23 describe what you wrote for Detective Yates.

24 A: Well, I told him about when I got arrested for sleeping
25 in my car. The car got impounded. And I told him about me

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1 and my wife getting a divorce and I was under a lot of stress,
2 drinking, trying to get rid of my problems, and I told him I
3 was sorry about what I had done. I told him I was sorry and
4 -- but I also told him, you know, I didn't have no gun.

5 So I said I don't know why y'all are charging me with
6 armed robbery when I didn't have a gun. So he said, well, we
7 charged you with armed robbery right now, and I couldn't
8 understand why he could charge me with armed robbery. So he
9 made it so he -- and then I talked to his lieutenant, the guy
10 that was over him. I think it was his lieutenant, and I was
11 asking the lieutenant why are they charging me with armed
12 robbery. And as I --

13 MR. MEADORS: Your Honor, I would object to any hearsay.

14 THE COURT: Sustained.

15 BY MR. STORY:

16 Q: Yeah. Without talking about what anybody else talked to
17 you about --

18 A: Okay.

19 Q: And I'm asking you about your statement.

20 A: Okay.

21 Q: Do you describe your alcohol problem in that?

22 A: Yes.

23 Q: Do you admit to committing the robbery?

24 A: Yes.

25 Q: Did you tell them that you were unarmed?

1 A: Yes. I was unarmed.

2 Q: And is this your signature?

3 A: Yes.

4 Q: Okay. Take a look at this statement. Is this the
5 statement that you wrote?

6 A: Yes, it is.

7 Q: To the police?

8 A: Uh-huh.

9 MR. STORY: And, Your Honor, I don't know if this is in
10 evidence or not, but I would move to put Court's Exhibit
11 Number 2 into evidence.

12 THE COURT: Any objection?

13 MR. MEADORS: No, ma'am.

14 THE COURT: It's in.

15 (WHEREUPON, Court's Exhibit Number 2, the statement, was
16 admitted into evidence as Defendant's Exhibit Number 1.)

17 BY MR. STORY:

18 Q: So just briefly, again, why did you write this statement?

19 A: Because I know what I done; so I just told them the
20 truth.

21 Q: And let's be honest with the jury. You have a little bit
22 of a checkered past with the law?

23 A: Yeah. Yes, I do.

24 Q: Okay. And have you been convicted of a crime that
25 carries more than a year?

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1 A: Yes, I have.

2 Q: All right. Thank you.

3 MR. STORY: That's all the questions I have.

4 THE COURT: Cross-examination?

5 MR. MEADORS: May it please the Court?

6 THE COURT: Yes, sir.

7 CROSS-EXAMINATION

8 BY MR. MEADORS:

9 Q: Good afternoon, Mr. Franklin.

10 A: Good afternoon.

11 Q: Do you admit to this jury that you took from the person
12 or presence of Chaunise Carter -- Ms. Carter, come up here,
13 please, ma'am. That you took from this lady by means of force
14 or intimidation the goods of hers and Kangaroo's without her
15 permission by threatening or forcing her with the intent to
16 keep those goods for yourself? Do you admit to doing it?

17 A: Yeah, I do.

18 Q: I mean there's no question about that?

19 A: No. There's no question about it. I did it.

20 Q: When did you decide to go in Kangaroo and rob them?

21 A: I don't know. It was sometime after me drinking a few
22 beers.

23 Q: And you said you got the first beer that morning. That's
24 you -- as a matter of fact, I want to go to that real quick.

25 I believe it's at 4:45.

1 (WHEREUPON, State's Exhibit Number 16, the surveillance
2 video, was played in court. The questioning resumed as
3 the video played.)

4 BY MR. MEADORS:

5 Q: Can you see on your monitor, please, sir?

6 A: Yes, sir.

7 Q: All right.. Look. Is that you right there?

8 A: Yes. That's me.

9 Q: And that's not the same bag we've got here that you had
10 there, is that?

11 A: That's the same bag. All I had was that bag.

12 Q: Now, what's going on right here?

13 A: I'm waiting for the people to get served. They can buy
14 stuff out of the store.

15 Q: Now, what did you order here?

16 A: Some beer.

17 Q: What kind of beer?

18 A: Maybe some cigarettes too. I'm not sure. I don't know.
19 Maybe a --

20 Q: You don't know what kind of beer you drink?

21 A: I'm thinking maybe it was a Budweiser.

22 Q: You got a favorite beer, don't you?

23 A: Not really.

24 Q: So it might have been a Budweiser?

25 A: Yeah.

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1 Q: And you said you'd been working somewhere? You said you
2 had gotten paid. I thought you told Mr. Story that you had
3 been working and you got some money from somewhere?

4 A: No. I was telling him -- I think you misunderstood what
5 I was saying. I was saying that while I was at the Samaritan
6 House I was trying to figure out -- because I was working
7 before I got arrested and --

8 Q: Where were you working?

9 A: I was working at -- I was working for a temporary agency
10 at this place called The Scent [phonetic] up in Greenwood.

11 Q: So you had not gotten a paycheck recently?

12 A: No. I had gotten my paycheck for that -- for that week
13 that I had worked and so I was trying to figure out how I
14 could --

15 Q: What is that right there in your left hand?

16 A: Sir?

17 Q: Right where your two hands -- you pulled out of your
18 pocket here.

19 A: That's money, sir.

20 Q: And is that -- how much money was that?

21 A: It wasn't that much money. I don't know. When I had got
22 out of the Sumter County jail, I didn't have no money with me.
23 I had some food stamps on my food stamp card; so I sold about
24 \$25 worth of food stamps just so I could get me some
25 cigarettes and have some money in my pocket.

- 1 Q: Had you had any beer prior to this?
- 2 A: No. That was like six or seven in the morning.
- 3 Q: So the answer is no?
- 4 A: No.
- 5 Q: Okay. And I believe you testified you got some beer
- 6 after that too?
- 7 A: I got some beer.
- 8 Q: Where did you get that from?
- 9 A: I think up on Broad Street. I think I went to -- I don't
- 10 know whether it was CVS or Walgreens or one of them. It was
- 11 not that far from downtown.
- 12 Q: And this was on what day? What day was this when you did
- 13 this?
- 14 A: That's I believe that Saturday morning. Was it Saturday
- 15 morning? It might have been Saturday morning. Yeah, it was
- 16 Saturday morning.
- 17 Q: Had you been to that Kangaroo before, Mr. Franklin?
- 18 A: Before that in the morning?
- 19 Q: Yes, sir. Had you ever been there before?
- 20 A: I don't think I have.
- 21 Q: Did you know Ms. Carter before?
- 22 A: No. I had never seen her before.
- 23 Q: And the time you spent in Sumter -- I think at one point
- 24 you said you rode through just to look at some different
- 25 places and then you said later that you really didn't know

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1 where you were when you were walking around downtown. How
2 long have you lived in Sumter?

3 A: I lived in Sumter about -- maybe about seven or eight
4 months. Something like that.

5 Q: And again, you talked to Mr. Story about your business
6 and you said it went south. You were taking care of your
7 employees. What was your business?

8 A: I had a cleaning business.

9 Q: Okay. And that -- was that here in Sumter?

10 A: No, it wasn't. It was in Spartanburg.

11 Q: Okay. Now, when you looked in that morning, what we just
12 saw on here, before seven o'clock, did you know you were going
13 to rob Ms. Carter then?

14 A: No. I had no idea I would do something -- anything like
15 that. I didn't have no intentions of it when I got up that
16 morning to do anything remotely like that.

17 Q: So when you were there looking that morning in at her,
18 did you observe where she was and observe the cash register?
19 You weren't casing the thing out, were you? Or casing it out?

20 A: No.

21 Q: At what point did you decide I'm going to go rob
22 Kangaroo?

23 A: I really can't even say when. I just made a conscious
24 decision to do it, but I guess I was -- like I said, I was
25 walking around and I came back in the area where the Samaritan

1 House was at. You know, I was, you know, just trying to hang
2 around where that place was at. So I don't know, man. I just
3 walked in and did it.

4 Q: You had enough money to buy some beer in the morning?

5 A: Yes.

6 Q: And I'm not fussing about beer drinking. I have a little
7 bit myself. I'm not judging you on that. But you had enough
8 money to drink beer in the morning; right?

9 A: Uh-huh.

10 Q: And then you said you got some more beer after that at
11 CVS; correct?

12 A: Yes.

13 Q: And then where did you go after CVS?

14 A: Well, where the CVS at, they have, like, a little parking
15 -- a little parking lot behind it right on Broad. There's a
16 hotel across the street and they had a couple little houses or
17 something and they had a parking lot. They had a parking lot
18 back there behind the houses. So they had a little curb and I
19 was just sitting out there drinking beer and smoking
20 cigarettes.

21 (WHEREUPON, the video with sound resumed playing and was
22 then stopped.)

23 BY MR. MEADORS:

24 Q: That's you; correct?

25 A: Yes, sir.

WILBERT FRANKLIN JR. - CROSS BY MR. MEADORS

- 1 Q: And at this point, you knew you are going to rob Ms.
2 Carter, didn't you?
- 3 A: Yes, I did.
- 4 Q: As a matter of fact, when you were heading up to the
5 Kangaroo, you knew you were going to rob her?
- 6 A: I was coming down -- I mean yeah.
- 7 Q: You're thinking about it?
- 8 A: Yes.
- 9 Q: I mean you're thinking about it. You're thinking about
10 I'm going to going in and rob this person; right?
- 11 A: No, I didn't say this person.
- 12 Q: But were you thinking about robbing the store?
- 13 A: Yes, sir.
- 14 Q: And you know that's wrong?
- 15 A: Yes, sir.
- 16 Q: But you're physically -- your mind is thinking about it
17 and your body is actually walking. I mean you're walking a
18 while thinking about this. I mean you don't have a car;
19 right?
- 20 A: No. I didn't have a car.
- 21 Q: It's like a project or something where you're thinking
22 about how you're going to do this as you're going? I mean
23 you're thinking -- I mean --
- 24 A: Well, actually, I didn't really think about it until I
25 seen the store. And I thought I could probably get my car and

1 I went in there and did it.

2 Q: Was that the first time or the second time?

3 A: What do you mean?

4 Q: When you said when you saw the store. Was that when you
5 came back the second time?

6 A: Yes.

7 Q: Okay. Well, why did you think I could probably go in
8 there and do it?

9 A: I don't know. It was open.

10 Q: Well, weren't they -- didn't you pass a bunch of them on
11 the way there?

12 A: No, I didn't.

13 Q: So the fact it was open and you're walking and you say
14 what? You know, I think I can go get some money and what?

15 A: Possibly get my car out of the impound.

16 Q: And you didn't want to use that money you had with you?

17 A: It wasn't nowhere near enough to get the car out of the
18 impound.

19 Q: So at some point as you're walking, you decide I'm going
20 -- I'm going to rob this place?

21 A: Yes. At some point.

22 Q: Because it was -- because it was open?

23 A: Yeah.

24 Q: And it hadn't been open at seven; correct? Prior to
25 seven when you went out there?

WILBERT FRANKLIN JR. - CROSS BY MR. MEADORS

1 A: Yeah. I never been inside of the store. That was the
2 first time I had been in the inside of the store.

3 Q: Did you have an occasion to look in there then and see
4 where the cash register was?

5 A: No. I wasn't really paying no attention to it I mean
6 because it wasn't my intention that morning to anything.

7 Q: So you didn't think about it that morning?

8 A: No. It didn't even cross my mind.

9 (WHEREUPON, the video resumed playing and was then
10 stopped.)

11 BY MR. MEADORS:

12 Q: Is that you? Open that cash register. Open that cash
13 register right now.

14 A: Yes, sir.

15 Q: You're telling Ms. Carter to go do that?

16 A: Yes, sir.

17 Q: Okay.

18 (WHEREUPON, the video resumed playing and was then
19 stopped.)

20 BY MR. MEADORS:

21 Q: Are you having any trouble understanding yourself right
22 then?

23 A: No.

24 Q: Okay. You were coherent?

25 A: Yes.

1 Q: She appeared to understand you when you were telling her
2 to open that cash register?

3 A: Yeah. She was understanding me.

4 Q: Her response to you was appropriate? I mean, like, you
5 said open that cash register and she starts moving that way.
6 I guess my point is you understood her and she understood you
7 based on your interaction; correct?

8 A: Yeah.

9 Q: I mean you weren't drunk?

10 A: No. I wasn't falling down drunk, but I was a little
11 intoxicated.

12 Q: A little intoxicated? But you didn't have any trouble
13 communicating?

14 A: No.

15 Q: You didn't have any trouble walking in there?

16 A: No.

17 Q: You didn't have any trouble telling her to open that cash
18 register?

19 A: No.

20 (WHEREUPON, the video resumed playing and was then
21 stopped.)

22 BY MR. MEADORS:

23 Q: Did you say dang?

24 A: I got to hear it.

25 (WHEREUPON, the video resumed playing and was then

WILBERT FRANKLIN JR. - CROSS BY MR. MEADORS

1 stopped.)

2 BY MR. MEADORS:

3 Q: Now, you stole that money, didn't you?

4 A: Yes, sir, I did. That's never been -- I never denied
5 that from the day I got arrested. I never denied me doing
6 anything, but I mean I would rather accept the responsibility
7 for what I've done, but I don't want to accept responsibility
8 for something that I didn't do. I don't have a problem
9 accepting responsibility for what I've done, but that's not
10 why we're here. We're here because they want me to accept
11 responsibility for something I didn't do.

12 (WHEREUPON, the video resumed playing and was then
13 stopped.)

14 BY MR. MEADORS:

15 Q: You know you affected her life? You know that?

16 A: Yes, sir. And I -- I hurt.

17 Q: You do what?

18 A: I hurt for that and I saw her get up here and testify.
19 The only thing I can say is I'm sorry for putting her in that
20 position, but I didn't have a gun. I didn't threaten her with
21 a gun. She didn't -- I know she didn't see a gun because I
22 never had a gun. So I mean I know when people are afraid and
23 they're in a situation, they might think anything when they
24 didn't see anything, but I know she didn't see a gun because I
25 didn't have one and I didn't present myself as having one. I

1 didn't never put my hand in the bag and point the bag at her
2 and say give me the money. I didn't do that. My whole --
3 that whole time my face -- my bag was in my hand and I was
4 covering my face. That's all I did. I didn't have no gun.
5 I'm telling my side of the story.

6 Q: How did you know to go in the store and nobody else would
7 be in there?

8 A: I didn't even -- I wasn't sitting out there. It just
9 happened like that. I mean I wasn't out there just looking at
10 the store waiting for -- I don't think I was. I think -- I
11 don't know whether it just was coincidental that it happened
12 like that or whether I stood out there and waited. I'm not a
13 hundred percent sure about that, but the way this is, I know I
14 couldn't see inside of the store when I was outside to see
15 whether anybody was in there.

16 So I don't think I just stood out there and waited until
17 the coast was clear, so to speak, and go in there. Maybe it
18 just happened like that. I don't know. I can't really
19 recollect every single detail about what happened that day,
20 but I told them. I told them exactly what I'd done.

21 Q: So you could have waited until the person came out and
22 gone in?

23 A: I don't think I did.

24 Q: Okay. So it's just a coincidence he comes out. Well,
25 where were you when he -- coincidentally, he came out and you

WILBERT FRANKLIN JR. - CROSS BY MR. MEADORS

- 1 went in?
- 2 A: I don't really know exactly how it happened unless you've
3 got a video. The video should be able to tell it all.
- 4 Q: Well, I'm asking what's in your mind when you went in
5 there. Did you want people to be in there as witnesses? You
6 were trying to cover your face when you went in to do the
7 robbery or would you rather do a robbery without people --
8 witnesses being in there?
- 9 A: Definitely without somebody in there.
- 10 Q: So did you check to see if anybody was in there before
11 you went in? Did you look in the store?
- 12 A: No. That's what I'm saying. I don't know if I looked in
13 there or not, but y'all got surveillance video. So the video
14 should be able to tell you whether or not I was standing out
15 there waiting for somebody to come out or not.
- 16 Q: But when you went in, you actually went to the right when
17 you got in the store, didn't you? I mean you've seen this
18 video. You were there. I mean you did it.
- 19 A: Yeah. I was there.
- 20 Q: You went in and you kind of went to the right to see if
21 anybody else was in the store, didn't you, Mr. Franklin?
- 22 A: No. I don't know if I was looking to see if anybody else
23 was in the store or not, but --
- 24 Q: Well, then you --
- 25 A: I think I just wanted to walk past her so she wouldn't

1 see my face.

2 Q: If some other people had been in there buying something,
3 would you have still done the robbery?

4 A: Probably so. I don't know. I don't know if I would have
5 did it if somebody else was in there or not. It might have
6 been a deterrent for me not to do it.

7 Q: But you had made -- you had made your mind up, had you
8 not, when you came around that corner back to Kangaroo you
9 were robbing it? I mean that's not in dispute; right?

10 A: No. That's not in dispute.

11 Q: Now, you've looked at this. I think Mr. Story showed it
12 to you and I'll try to speed it up a little bit.

13 (WHEREUPON, the video resumed playing and was then
14 stopped.)

15 BY MR. MEADORS:

16 Q: And you say you're sorry and you're sorry it happened,
17 but after this you didn't go to the police and say I'm sorry I
18 did this, did you?

19 A: No. No, I didn't do that.

20 Q: So you weren't sorry when you did it? And you weren't
21 sorry when you left? As a matter of fact, you said you met
22 somebody and y'all started drinking. You were celebrating
23 this robbery. Did you buy the beer with the money you got
24 from that robbery?

25 A: No.

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1 Q: Were you worried about Ms. Carter then?

2 MR. STORY: Your Honor, he's testifying. I'd ask him to
3 not testify.

4 BY MR. MEADORS:

5 A: I don't think I was celebrating.

6 Q: Well, you were out drinking after the robbery?

7 THE COURT: You can ask a question.

8 BY MR. MEADORS:

9 A: I was drinking before the robbery.

10 Q: Okay. And you're out drinking afterwards with the money
11 you got from it. Is that what you used to buy the beer?

12 A: Yes.

13 Q: You didn't go put that on your car or try to get your car
14 out of the impound, did you, Mr. Franklin?

15 A: It wasn't even enough to do anything with it.

16 Q: How much beer did y'all get after the robbery?

17 A: I don't know exactly how much beer we got.

18 Q: Were you drinking all night?

19 A: No. I didn't have enough money for to drink all night.

20 Q: How much money did you get?

21 A: I can't even tell you. I didn't sit -- I didn't even
22 count it. It wasn't much money though.

23 Q: You headed out afterwards and you went around the side of
24 the building, didn't you? Around the Kangaroo?

25 A: Yes.

- 1 Q: And you said you weren't running, but you didn't want to
2 draw attention to yourself. You got out of there, didn't you?
- 3 A: I walked out of the building.
- 4 Q: Well, you left; right?
- 5 A: Of course, I did.
- 6 Q: You didn't want to get caught?
- 7 A: No, I didn't. I don't think anybody would want to get
8 caught after doing some robbery.
- 9 Q: And they don't want to own up to everything after they
10 got caught, do they?
- 11 A: I owned up for it. I owned up for it and I'm still
12 owning up for it while I'm sitting right here in court. There
13 ain't never been a question of whether I'm owning up for it or
14 not.
- 15 Q: I'm questioning you whether you're owning up for it right
16 now. That's what we're here about. I'm questioning you.
- 17 A: You have a right.
- 18 MR. STORY: Objection, Your Honor.
- 19 THE COURT: Rephrase, please.
- 20 (WHEREUPON, the video resumed playing and was then
21 stopped.)
- 22 BY MR. MEADORS:
- 23 Q: Where are you going right now?
- 24 A: Where am I going?
- 25 Q: Yeah. Why did you go back to the right when you came in?

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1 A: I don't know. I think I might have been just wanting to
2 hide my face from her.

3 Q: That's clearly you going away from her at that point;
4 correct?

5 A: Right. Yes, sir.

6 Q: You're actually going to the back of the store; correct?

7 A: Yes.

8 Q: You're going to tell this jury you're not going back
9 there to see if there were other witnesses or customers back
10 there?

11 A: No. I don't think I was.

12 (WHEREUPON, the video resumed playing and was then
13 stopped.)

14 BY MR. MEADORS:

15 Q: What's in that bag?

16 A: I had my papers there from the Sumter County jail, my
17 release papers. I had my bottle in there. I think I had a T-
18 shirt and a rag.

19 Q: It's kind of heavy looking. That must -- it's got
20 something -- what weighs heavy in there?

21 A: What was that?

22 Q: I said it looks like it's hanging down. It is -- was it
23 pretty heavy?

24 A: No. I just had my papers in there. My papers was in a
25 packet and the packet might have -- it had a little weight to

1 it, but the little bag right there don't take much to weigh it
2 down or something.

3 (WHEREUPON, the video resumed playing and was then
4 stopped.)

5 BY MR. MEADORS:

6 Q: What are you -- what did you reach in your pocket for
7 right there for?

8 A: What's that?

9 Q: Did you reach in your right pocket?

10 A: I'm not sure. Could you play it again? I don't think I
11 --

12 Q: Well, sitting back right now, forget that video. When
13 you're there, did you reach in your right pocket?

14 A: I said I don't recall reaching in my pocket. I said can
15 you rewind it because the video will tell you everything?

16 Q: But you can't remember?

17 A: No. I can't remember, but the video will tell
18 everything.

19 (WHEREUPON, the video resumed playing and was then
20 stopped.)

21 BY MR. MEADORS:

22 Q: Right there, were you reaching for something?

23 A: No.

24 Q: What are you looking at in your right hand?

25 A: Nothing. I don't remember what it was. It wasn't no

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1 gun. I can tell you that.

2 Q: Do you think this is funny? You're laughing it wasn't a

3 gun. You think that's funny?

4 A: I'm not laughing. Because you're trying to put something

5 in my hand that's not there.

6 Q: No, sir. That's exactly what you did to Chaunise Carter.

7 You made her think there was a gun in that bag in your hand.

8 MR. STORY: Objection, Your Honor. Testifying.

9 A: No, I didn't.

10 THE COURT: Are you going to follow up with a question,

11 Solicitor?

12 MR. MEADORS: No, ma'am.

13 BY MR. MEADORS:

14 Q: Would you please watch this, sir?

15 (WHEREUPON, the video resumed playing and was then

16 stopped.)

17 BY MR. MEADORS:

18 Q: Is that your hand going in your bag?

19 A: Uh-huh.

20 Q: Sir, you have to say yes or no, please, for the court

21 reporter.

22 A: Yes. Uh-huh. Yes, sir.

23 (WHEREUPON, the video resumed playing and was then

24 stopped.)

25 BY MR. MEADORS:

- 1 Q: Now your left hand is in that bag?
- 2 A: No, sir.
- 3 Q: Your left hand is not in that bag?
- 4 A: No, sir.
- 5 Q: Your right hand is out?
- 6 A: Right.
- 7 Q: You see the handles to the bag are to the right. Do you
- 8 see that?
- 9 A: See what?
- 10 Q: The bag. The handles are to the right between you and
- 11 Ms. Carter.
- 12 A: Uh-huh.
- 13 Q: Your back -- you have to say yes, please, sir, not just
- 14 for me.
- 15 A: Yes, sir.
- 16 Q: But for the court reporter.
- 17 A: Yes. I can see the bag.
- 18 Q: Your hand is inside that bag?
- 19 A: No. The other handle to the bag was draped over my arm
- 20 and you can see that.
- 21 Q: Where is your hand right now?
- 22 A: As you can see, the bag is draped over my arm, the second
- 23 handle. The other handle is wide open. She can look right in
- 24 the bag.
- 25 Q: Let me ask you something, Mr. Franklin. When you came up

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1 --

2 MR. MEADORS: Do you mind if I approach, Your Honor?

3 THE COURT: You may.

4 BY MR. MEADORS:

5 Q: Do you mind if I come up here?

6 A: No, sir. You can come up.

7 Q: Okay. Was it fair to say you are -- if you'd be Ms.

8 Carter for a minute, can I just straighten you up a little bit
9 like this here? Do you admit that's where she's sitting right
10 there?

11 A: Yes.

12 Q: Would you admit you came up behind her?

13 A: Yeah.

14 Q: Correct?

15 A: On the side of her.

16 Q: Why did you do that?

17 A: On the side of her.

18 Q: Why didn't you go around and go in the front?

19 A: Why didn't I go in the front?

20 Q: Yeah. Why didn't you go around and look at her in the
21 front? Why did you come up behind her?

22 A: I guess I wanted to surprise her.

23 Q: To surprise her?

24 A: Uh-huh.

25 Q: To scare her; correct?

- 1 A: Uh-huh.
- 2 Q: And did you ever grab her?
- 3 A: No, sir.
- 4 Q: Did you ever grab her and say go on over and get to that
5 drawer?
- 6 A: No, sir.
- 7 Q: Okay. When you said to go open that drawer and you had
8 your hand in the bag and she looked -- she looked back at you,
9 didn't she?
- 10 A: Yeah.
- 11 Q: She looked back at you?
- 12 A: No. I never had my hand in the bag.
- 13 Q: She looked back at you, didn't she?
- 14 A: Yes. She looked at me.
- 15 Q: And after that, you said you didn't touch her; right?
- 16 A: No.
- 17 Q: You didn't push her? She just left, didn't she?
- 18 A: Yes.
- 19 Q: She was scared, wasn't she?
- 20 A: I imagine she was.
- 21 Q: I imagine she was. And at that point, she looked around
22 and saw you with your hand inside that bag?
- 23 A: No. She didn't see my hand inside of the bag. My hand
24 never went inside of my bag other than what you just showed
25 right there. That was the only time my hand -- and that

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- 1 wasn't my left hand. That was my right hand that went in the
2 bag.
- 3 Q: No, sir. Respectfully, look back here again. Your right
4 hand is out, isn't it?
- 5 A: I said when my hand went in the bag, I went in my bag
6 with my right hand.
- 7 Q: That's to get the mask, wasn't it?
- 8 A: See that?
- 9 Q: The cloth?
- 10 A: Go ahead. Keep on playing it.
- 11 Q: I am. But that's to get the cloth, isn't it? Forget
12 this for a minute. You went in there to get that to cover
13 your face up; right? Is that why you went in the bag to start
14 with? Or were you putting something in there from your
15 pocket?
- 16 A: I'm not sure. But I think it was to get the cloth out of
17 my bag to cover my face. Okay. I went in the bag with my
18 right hand.
- 19 Q: That's correct. You got your cloth and then where's your
20 -- where does your left hand go?
- 21 A: My left hand is up here. My left hand is not in the bag.
22 My left hand is up to my face.
- 23 Q: Where's your left hand right now?
- 24 A: Holding the bag.
- 25 Q: You can't see it, can you?

- 1 A: No. Can you?
- 2 Q: No. That's the whole point. Neither could she because
- 3 it was in the bag, wasn't it?
- 4 A: It wasn't in the bag.
- 5 Q: And that's when you're walking her this way, wasn't it?
- 6 A: You can't see it because my body is blocking the camera.
- 7 That's why.
- 8 Q: I thought you couldn't remember all this?
- 9 A: I'm looking at the video. The video is not showing where
- 10 my hands are. That's why you can't see my hands, but I'm
- 11 telling you my hands -- the bag was draped around my left hand
- 12 while I was -- while I was hiding my face.
- 13 Q: Right there, she's looking at your --
- 14 A: Right there.
- 15 Q: She's looking at your hand?
- 16 A: She's looking at it.
- 17 Q: Is she looking at your hand?
- 18 A: Yeah. She could see inside of the bag too because only
- 19 one handle was over my hand. The other handle was wide open;
- 20 so she could see right in the bag.
- 21 Q: She is looking at your hand in that picture in the bag.
- 22 She's looking at your left hand in the bag?
- 23 A: No. She's not. Because my hand never went in the bag.
- 24 That's what I'm trying to tell you.
- 25 Q: You're trying to tell us that, a man that goes in and

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1 robs somebody and took it from her without her permission by
2 threatening her, strong-armed robbery, I did that, but --

3 MR. STORY: Objection, Your Honor.

4 Q: -- I didn't do this; correct?

5 MR. STORY: He's testifying again. I'd ask that he ask a
6 question.

7 THE COURT: It's cross-examination. He can finish his
8 question. You may finish your question.

9 BY MR. MEADORS:

10 A: Could you repeat the question again?

11 Q: You intimidated her, you threatened her, you took the
12 money without permission; right? In her presence?

13 A: Of course.

14 Q: But you didn't have a weapon?

15 A: That's right.

16 Q: But she thought you had a weapon?

17 MR. STORY: Objection.

18 A: I can't --

19 MR. STORY: Speculative.

20 BY MR. MEADORS:

21 A: I can't -- I can't say what she thought. I mean she --
22 she could -- you know, she could think anything was in the
23 bag, but the fact of the matter was there was no -- I didn't
24 have a gun and there wasn't a gun in the bag.

25 Q: And you made a representation like you had something,

1 didn't you?

2 A: No, I didn't.

3 Q: So she's just going to get up and go just because you
4 said get up and go?

5 A: That's when she got up, sir.

6 Q: She's just going to get up and go open the drawer. Okay.

7 A: That's what she done.

8 Q: Without you showing anything?

9 A: That's right.

10 Q: You got all your hands out?

11 A: That's right. That's exactly what happened. I already
12 admitted to it.

13 Q: Did you throw that chair back?

14 A: You see it. Hold up. Did you see -- could you rewind it
15 just a little bit?

16 THE COURT: No. Sir, you don't ask the questions. He
17 asks the questions.

18 THE WITNESS: Okay.

19 THE COURT: You can answer yes, no, and then you can
20 explain. You may proceed.

21 BY MR. MEADORS:

22 Q: Is that where you want to stop it?

23 A: No. A little bit further. Right there. Do you see?
24 The bag is draped over my arm.

25 Q: And your fist is in the bag?

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- 1 A: No. It's draped.
- 2 Q: Look right here. Where's your arm right there, Mr.
- 3 Franklin? Your arm is still like this, isn't it? Your arm is
- 4 still like that?
- 5 A: No.
- 6 Q: Where's your elbow?
- 7 A: Could you rewind it? You can -- you can -- you can see
- 8 it in the video. Okay. A little bit. You see that? Right
- 9 there.
- 10 Q: Yeah, I see it.
- 11 A: Yeah. You don't see my hand in no bag either, did you?
- 12 Q: Look at your elbow.
- 13 A: My elbow is not my hand.
- 14 Q: Look where your elbow is.
- 15 A: Okay. That's when I'm covering my face. My hand is like
- 16 this. That's why my elbow is staying stationary.
- 17 Q: Why did you have a bag with you?
- 18 A: I just told you. I had just got out of Sumter County
- 19 jail and I had a bag to carry my things around in. I had the
- 20 same bag when I got arrested. I had the same bag when I was
- 21 at the Samaritan House.
- 22 Q: So you're saying this is the same bag. You're saying
- 23 this is the same bag?
- 24 A: If that's the bag that he got from me, that's the same
- 25 bag.

1 Q: I don't know. You tell me. This is the bag they said
2 they took after they took some of your clothes. Was this the
3 same bag?

4 A: I'm not sure, sir. I don't know if that's the same bag
5 or a different bag. I don't know if that's the same bag.

6 Q: If I've got a bunch of stuff in here -- well, that's the
7 bag there on State's 15, isn't it?

8 A: Uh-huh.

9 Q: That's your bag? If I've got a bunch of stuff in here
10 and I put a piece of evidence in here or something else and I
11 do like this to you and I say open the drawer, you don't know
12 what's in that bag, do you? Forget that. I'm asking you. If
13 I come up to you and I say open the drawer and I got a bag
14 pointed at you, I'm going to rob you, you think there might be
15 a weapon in there, don't you?

16 A: If somebody had it like that.

17 Q: Okay.

18 A: I didn't have the bag like that.

19 Q: If somebody had it like that with the bag and they're
20 saying I'm going to rob you, you better open that drawer, you,
21 Wilbert Franklin Jr., would think they might have a weapon?

22 A: Uh-huh. If somebody had a bag like that.

23 MR. MEADORS: Can I mark this?

24 A: The fact of the matter, I didn't have a bag like that.

25 (WHEREUPON, the plastic bag was marked as State's Exhibit

WILBERT FRANKLIN JR. - CROSS BY MR. MEADORS

1 Number 17 for identification.)

2 BY MR. MEADORS:

3 Q: You want them to find you guilty of strong-armed robbery,

4 don't you?

5 A: I want to be found guilty of what I -- what I done.

6 Q: Which is what?

7 A: I robbed the store with no gun.

8 Q: So that's strong-armed robbery?

9 A: Whatever.

10 Q: Well, no. Is that what you want them to find you guilty

11 of?

12 A: I want them to find me guilty of what I -- what I done.

13 Q: And was that strong-armed robbery?

14 A: If that's what the -- if that's what the charge is,

15 that's what it is.

16 MR. STORY: Your Honor, I would object to the relevance

17 of this line of questioning.

18 THE COURT: Your Honor, it's his whole defense.

19 THE COURT: Overruled.

20 BY MR. MEADORS:

21 Q: Why did you push that chair down, Mr. Franklin?

22 A: Sir?

23 Q: Why did you pull the chair down?

24 A: To get it out of my way.

25 Q: That was intimidating, wasn't it?

1 A: I wouldn't know. I wasn't trying to intimidate by
2 pushing it. I was just moving the chair out of my way and it
3 just fell.

4 MR. MEADORS: I beg the Court's indulgence.

5 THE COURT: Yes, sir.

6 BY MR. MEADORS:

7 Q: When you were -- Mr. Story was asking you about the
8 picture where the chair is down. He asked you why you went in
9 there and you said I was moving my papers around. I can't
10 really say what I was doing. Do you remember that?

11 A: Uh-huh.

12 Q: Is that still true?

13 A: Pretty much. I mean I can't really --

14 Q: I mean --

15 A: -- tell what my body was thinking at that particular
16 time, but I know I didn't have a weapon.

17 Q: And I guess that's the issue, isn't it? What your mind
18 was thinking and what she thought, my point being you're going
19 up there to rob her; right? At that point, clearly -- well,
20 blocks away you decided, your body is telling you and your
21 mind telling you to go there. And right before you -- you're
22 down messing with your stuff in your bag; right?

23 A: Uh-huh.

24 Q: And you're not really sure why?

25 A: Right.

WILBERT FRANKLIN JR. - CROSS BY MR. MEADORS

1 Q: She turns around at that point. She's -- her testimony
2 is your hand was in the bag. You're saying it wasn't?

3 A: Right.

4 Q: But if it was and you said -- and you were a victim,
5 you'd think somebody had a gun too; right? If it was there?
6 Right? Correct?

7 A: Would I -- would I think that?

8 Q: Yes, sir. You just a minute ago --

9 A: I mean the way the scenario is that you're bringing forth
10 to the jury with your hand in the bag and pointing it at
11 somebody, that never happened on this video. That never
12 happened on this video.

13 Q: Mr. Story asked you and I believe you've been convicted
14 of a crime that carries more than a year in October 2007. You
15 also have assault and battery of a high and aggravated nature
16 conviction of October 2007; correct?

17 A: Yes.

18 MR. MEADORS: Your Honor, just one second, please.

19 THE COURT: Yes, sir.

20 MR. MEADORS: Can we approach?

21 THE COURT: Yes, sir.

22 (WHEREUPON, a bench conference was held off the record.)

23 MR. MEADORS: Thank you.

24 THE COURT: Redirect?

25 MR. STORY: Briefly.

REDIRECT EXAMINATION

1
2 BY MR. STORY:

3 Q: The solicitor asked you about when you were living in
4 Sumter. You said you were living in Sumter about seven or
5 eight months; right?

6 A: Uh-huh.

7 Q: What -- when was that?

8 A: It was 2004.

9 Q: Now, the solicitor also asked you -- he showed you this
10 bag marked State's 17 and he put his hand in it like this;
11 right?

12 A: Yes.

13 Q: Let me ask you what arm did he do that with?

14 A: I think he did it with his right hand. I don't know if
15 he had his right hand or his left hand. I don't know.

16 Q: Did he have it on the hand that I have it on now?

17 A: I believe he did.

18 Q: And did he do it like this?

19 A: Yes.

20 Q: Did you at any time ever do this?

21 A: No.

22 Q: Okay. Did you -- when you had -- was this the bag you
23 had?

24 A: It could be. I don't know. They sell like a million
25 Piggly Wiggly bags. They give away a million Piggly Wiggly

WILBERT FRANKLIN JR. - REDIRECT BY MR. STORY

- 1 bags every day probably. I don't know if that's the same bag
2 or not.
- 3 Q: Well, take a look at it. Does it look similar to the bag
4 you had?
- 5 A: It could be the bag. It could be.
- 6 Q: Is it similar?
- 7 A: Yeah.
- 8 Q: Okay. Did you ever put your hand in it like this?
- 9 A: No, sir.
- 10 Q: Okay. Did you have it instead -- did you hold it by the
11 handles?
- 12 A: Yes.
- 13 Q: And you had some things in it; correct?
- 14 A: Yeah.
- 15 Q: And at one point when you walk up next to her, you reach
16 into it; right?
- 17 A: Uh-huh.
- 18 Q: And you -- do you pull something out?
- 19 A: I believe I pulled a rag out or something.
- 20 Q: And are you holding that in your left hand?
- 21 A: Yes.
- 22 Q: And you walk like this; correct?
- 23 A: Yes.
- 24 Q: Do you at any point shove her, touch her, act like you
25 have a gun?

1 A: No, I didn't.

2 Q: Okay.

3 MR. STORY: Thank you. That's all I have.

4 THE COURT: You may step down, Mr. Franklin. Thank you.

5 You may call your next witness.

6 MR. MEADORS: Thank you, Your Honor. The defense calls
7 Detective Yates.

8 THE CLERK: Place your left hand on the Bible. State
9 your name, please.

10 THE WITNESS: Matthew Miguel Yates.

11 THE CLERK: Do you solemnly swear or affirm the testimony
12 you give to this Court will be the truth, the whole truth, and
13 nothing but the truth, so help you God?

14 THE WITNESS: I do.

15 THE CLERK: Thank you. Come around and have a seat.

16 MR. STORY: Your Honor?

17 THE COURT: Yes, sir?

18 MR. STORY: Briefly, may I take the -- I don't know if
19 anything is on the juror's -- I just want them to be able to
20 pay attention to the witness.

21 THE CLERK: State your name and spell your last for the
22 record.

23 THE WITNESS: Matthew Miguel Yates.

24 MR. STORY: Take everything off their monitors, Your
25 Honor.

MATTHEW YATES - DIRECT BY MR. STORY

1 THE COURT: You want to turn off the monitors?

2 MR. STORY: Yes, Your Honor.

3 THE COURT: Okay. You may proceed.

4 MR. STORY: Thank you.

5 MATTHEW YATES, being first duly
6 sworn, testified as follows:

7 DIRECT EXAMINATION

8 BY MR. STORY:

9 Q: Detective Yates, let's start off -- who do you work for?

10 A: Sumter Police Department. City of Sumter Police
11 Department.

12 Q: Okay. And let's talk about your credentials a little
13 bit, if you don't mind.

14 A: I don't mind.

15 Q: How long have you been with Sumter Police Department?

16 A: Since 2010.

17 Q: And so you've been with Sumter Police Department since
18 2010?

19 A: Yes, sir.

20 Q: Okay. Did you have the occasion to investigate an armed
21 robbery that happened at the Kangaroo gas station?

22 A: Yes, I did.

23 Q: And were you the lead detective on that case?

24 A: I was on call at that time.

25 Q: You were on call? Do you -- do you recall when you got

- 1 the call?
- 2 A: I cannot recall the exact time, but we got a call on that
- 3 day that occurred on the current date that you have in front
- 4 of you. I got that call I'd say about three -- it was after
- 5 three o'clock when I got that call.
- 6 Q: And what day was that?
- 7 A: It was August 14th I think.
- 8 Q: August 14th of 2000 --
- 9 A: '14.
- 10 Q: '14?
- 11 A: I think so.
- 12 Q: August 14th?
- 13 A: I think that's what it was, sir. I'm not -- I'm not
- 14 sure.
- 15 Q: Okay. So you're not sure what day you investigated this?
- 16 A: I'm not sure. I'm not -- I cannot recollect exactly what
- 17 time and date it was. No, sir.
- 18 Q: Do you recall speaking with Mr. Wilbert Franklin?
- 19 A: Now, I do recall that.
- 20 Q: And do you recall taking his statement?
- 21 A: Yes, sir.
- 22 Q: And do you recall investigating this case?
- 23 A: Yes, sir.
- 24 Q: Did you have an occasion to go to the Samaritan House?
- 25 A: Yes, I did.

MATTHEW YATES - DIRECT BY MR. STORY

1 Q: And you spoke with some individuals at the Samaritan
2 House?

3 A: Yes, sir, I did.

4 Q: Did they direct you to items that belonged to Mr. Wilbert
5 Franklin?

6 A: Yes, sir.

7 MR. STORY: May I approach the witness?

8 THE COURT: You may.

9 BY MR. STORY:

10 Q: Detective Yates?

11 A: Yes, sir.

12 Q: Do you recognize what I've just placed in front of you?

13 A: Yes, sir.

14 Q: Okay. And describe to the jury what that is?

15 A: This is -- this is an evidence inventory chain of
16 custody.

17 Q: Okay.

18 A: This is -- that's what it says. From our police
19 department.

20 Q: Okay. And is that your name at the bottom?

21 A: Yes, sir, it is.

22 Q: Okay. And is that your signature too?

23 A: Yes, sir, it is.

24 Q: Okay. And what's the date on that?

25 A: August 17th, 2014.

1 Q: So did you write that inventory?

2 A: Yes, I did.

3 Q: Okay. And what are the -- how many items are listed in
4 that inventory?

5 A: Let's see. Five. Five items.

6 Q: Okay. And what do those items include?

7 A: White plastic Piggly Wiggly bag, South Carolina
8 Department of Motor Vehicles registration card in the name of
9 Dorothy Diane Lesean, [REDACTED] N. Lafayette Drive, Apartment [REDACTED],
10 one Piggly Wiggly receipt, one large white T-shirt, one clear
11 plastic Smart water bottle, which was empty.

12 Q: Okay.

13 A: Yes, sir.

14 Q: Thank you.

15 MR. STORY: That's all the questions I have for Detective
16 Yates.

17 THE COURT: Cross-examination?

18 CROSS-EXAMINATION

19 BY MR. MEADORS:

20 Q: Do you know what happened to the clothes he did the
21 robbery in?

22 A: No, I don't. No, I don't, sir.

23 Q: Were any other contents from the bag -- do you know what
24 happened to those?

25 A: Those -- those are the items that I retrieved from the

MATTHEW YATES - CROSS BY MR. MEADORS

1 Samaritan House and that's what I placed into evidence at the
2 time.

3 Q: And this happened on August 16th; correct? The robbery?

4 A: The robbery, August 16th; correct.

5 Q: 2014?

6 A: Yes, sir.

7 Q: And you talked to the defendant on August --

8 A: 17th.

9 Q: 17th; correct?

10 A: Yes, sir.

11 Q: And that was at the -- excuse me. I'm sorry. That was
12 at the law enforcement center next door?

13 A: Yes, sir.

14 Q: And that's when you gave him his rights?

15 A: Yes, sir.

16 Q: He indicated to you he understood his rights?

17 A: Yes, sir.

18 Q: Did you have any trouble understanding him at that point?

19 A: Not at all, sir.

20 Q: Did he have any trouble understanding you?

21 A: No, sir.

22 Q: And you actually went over all his Miranda rights;
23 correct?

24 A: I did, sir.

25 Q: And that's what you do; correct?

- 1 A: That's what I do.
- 2 Q: And did he sign the form saying he understood them?
- 3 A: He did, sir.
- 4 Q: Okay. And did you also sign the form?
- 5 A: I did also.
- 6 Q: Okay. And he admitted to doing the robbery; correct?
- 7 A: Yes, he did.
- 8 Q: He admitted to going in, robbing?
- 9 A: Yes, sir.
- 10 Q: As a matter of fact, he told you he had a drug and
- 11 alcohol problem?
- 12 A: He did.
- 13 Q: But did you have any trouble understanding him during
- 14 this process of taking his statement?
- 15 A: No, I didn't, sir.
- 16 Q: Did he appear to be under the influence of alcohol or
- 17 drugs or any other intoxicant to you?
- 18 A: As far as I could understand, no, sir.
- 19 Q: Okay. Well, did you have any trouble understanding his
- 20 answers when he talked?
- 21 A: No, sir.
- 22 Q: Did he --
- 23 A: He was very articulate.
- 24 Q: Did he -- very articulate?
- 25 A: Yes, sir.

MATTHEW YATES - CROSS BY MR. MEADORS

1 Q: Did he -- did he appear to understand your questions
2 based on his answers?

3 A: Yes, sir.

4 Q: When you asked him the question, was it content
5 appropriate or subject matter appropriate?

6 A: Yes, sir.

7 Q: Okay. Did you ever find a gun?

8 A: No, sir, I did not.

9 Q: And is that unusual in your practice?

10 A: No, sir.

11 Q: All right. And have you had armed robberies where there
12 aren't guns used?

13 A: Yes.

14 Q: Real guns?

15 A: Real guns.

16 Q: And you don't know if he had a gun or not, do you?

17 A: I don't know.

18 MR. MEADORS: Thank you. That's all.

19 THE COURT: Any redirect?

20 MR. STORY: No, Your Honor.

21 THE COURT: You may step down, Detective. Thank you.

22 THE WITNESS: Thank you, ma'am.

23 THE COURT: You may call your next witness.

24 MR. STORY: Your Honor, I'd like to call Jim Allsbrook of
25 the City of Sumter Police Department.

1 THE CLERK: State your name, please.

2 THE WITNESS: James Allsbrook.

3 THE CLERK: Do you solemnly swear or affirm your
4 testimony here to this Court will be the truth, the whole
5 truth, and nothing but the truth, so help you God?

6 THE WITNESS: I do.

7 THE CLERK: Thank you. Come around, sir. State your
8 name and spell your last for the record.

9 THE WITNESS: James Allsbrook. A-l-l-s-b-r-o-o-k.

10 THE COURT: Your witness.

11 MR. STORY: Thank you.

12 JAMES ALLSBROOK, being first
13 duly sworn, testified as follows:

14 DIRECT EXAMINATION

15 BY MR. STORY:

16 Q: Mr. Allsbrook, briefly tell the jury -- where do you
17 work?

18 A: I'm currently employed by the City of Sumter Police
19 Department.

20 Q: And what is your job title and your role there?

21 A: My job title is evidence technician. My role is to
22 maintain the care, custody, and control of any and all
23 evidence that is collected by an officer on the scene, to
24 maintain it for court purposes, to have it processed as
25 required, and to bring it to court if necessary.

JIM ALLSBROOK - DIRECT BY MR. STORY

1 Q: Were you in court when Detective Yates just testified?

2 A: I was.

3 MR. STORY: May I approach the witness?

4 THE COURT: You may.

5 BY MR. STORY:

6 Q: Mr. Allsbrook, do you recognize this?

7 A: Yes, sir.

8 Q: And briefly describe to the jury what it is.

9 A: It is a standard form that the police department uses for
10 a chain of custody showing any items that are collected by an
11 officer that are brought in and are to be maintained for court
12 purposes.

13 Q: Is that the -- is that the chain of custody form for the
14 Wilbert Franklin case?

15 A: It is.

16 Q: Okay. Did you have an occasion to bring any evidence
17 with you today?

18 A: I did.

19 Q: And is that in this box?

20 A: That's correct.

21 MR. STORY: I ask permission to go get the box that he's
22 described.

23 MR. MEADORS: No objection.

24 THE COURT: All right, sir. You may do so.

25 BY MR. STORY:

1 Q: And, Mr. Allsbrook, is this the evidence box you brought
2 with you today?

3 A: It is.

4 Q: Okay. And could you describe to the jury what's in it?

5 A: You left something that's over there against -- by the
6 chair.

7 Q: Where is that?

8 A: The paper bag.

9 Q: What's in the -- what's in this paper bag?

10 A: The paper bag contains the white T-shirt.

11 Q: Okay. Can you take it out and look at it?

12 (WHEREUPON, the witness complied.)

13 Q: Okay. Thank you.

14 MR. STORY: And, Your Honor, at this time I move that the
15 white T-shirt be placed into evidence.

16 THE COURT: Any objection?

17 MR. MEADORS: No.

18 THE COURT: It's in.

19 (WHEREUPON, Defendant's Exhibit Number 2, a white t-
20 shirt, was admitted into evidence.)

21 BY MR. STORY:

22 Q: Mr. Allsbrook, what else is in that box?

23 A: An empty Smart water bottle, a South Carolina Department
24 of Motor Vehicles registration card as noted on the chain of
25 custody by Detective Yates, and a Piggly Wiggly receipt.

JIM ALLSBROOK - DIRECT BY MR. STORY

1 MR. STORY: Your Honor, at this time, I move that those
2 items also be placed into evidence.

3 THE COURT: Any objection?

4 MR. MEADORS: No, ma'am.

5 THE COURT: It's in.

6 MR. STORY: Thank you.

7 (WHEREUPON, Defendant's Exhibit Number 3, the box of
8 evidence, was admitted into evidence.)

9 MR. STORY: That's all the questions I have, Mr.
10 Allsbrook.

11 THE COURT: Any cross-examination?

12 MR. MEADORS: Very briefly.

13 CROSS-EXAMINATION

14 BY MR. MEADORS:

15 Q: What do you do?

16 A: Pardon?

17 Q: What do you do?

18 A: I maintain all the evidence that is collected by officers
19 for court purposes.

20 Q: And there's been some testimony I believe by the
21 defendant that some of his maybe jail records he was in there
22 on for the sleeping in his car -- did you find any of those in
23 there?

24 A: No, sir.

25 Q: Okay. So that wasn't in the bag that you got in

1 inventory?

2 A: It was not.

3 Q: Any other papers in there besides that one paper you're
4 talking about?

5 A: No, sir.

6 Q: And this was collected the 17th; is that correct?

7 A: It was.

8 Q: So this would have been the day after the incident;
9 correct?

10 A: That is correct.

11 Q: But we don't know where Mr. Franklin was the day after
12 the incident before you got this stuff, do you?

13 A: No, sir, I don't.

14 MR. MEADORS: Thank you.

15 THE COURT: Anything further, Mr. Story?

16 MR. STORY: Nothing further.

17 THE COURT: You may step down. Thank you. You may call
18 your next witness.

19 MR. STORY: Your Honor, at this time, the defense rests.

20 THE COURT: Ladies and gentlemen of the jury, it's about
21 3:30 in the afternoon. What we have left in the trial is the
22 closing arguments of counsel and instructions of the law to
23 you. I know tomorrow is Veterans Day, and typically closing
24 arguments and instructions on the law take a little bit of
25 time; so I don't want to rush anyone. I know we have one

1 juror that needs to get home before five o'clock so she can
2 drive and another juror that needs to pick up her grandchild.
3 So I certainly don't want to risk us going over and
4 inconveniencing you any further.

5 So I'm going to ask that you have a nice Veterans Day
6 tomorrow. If any of you are veterans, thank you for your
7 service. And you're Mr. Rembert?

8 JUROR NUMBER 140: Yes, ma'am.

9 THE COURT: All right, sir. You're sitting in the
10 foreperson's chair; so I'm going to appoint you as our
11 foreman. And when you come back again, please remember my
12 instructions to you to not discuss this case with anyone or
13 allow anyone to discuss the case with you. That includes
14 amongst yourselves or your family or friends or anyone
15 whatsoever because you have not completed the process of
16 hearing the closing arguments and the instruction on the law
17 before the case is properly submitted to you.

18 If you would, please return to your jury room on Thursday
19 morning at 9:45 and then we will resume with the trial of the
20 case. Have a nice day tomorrow.

21 (WHEREUPON, the jury exited the courtroom at 3:32 p.m.)

22 THE COURT: Yes, sir?

23 MR. MEADORS: Can we go ahead and talk about charges now?

24 THE COURT: Absolutely. I think we've got them almost
25 ready. I think we've got most of the standard charges. We

1 added voluntary intoxication to that.

2 MR. MEADORS: That's what I was going to ask.

3 THE COURT: Armed robbery, strong-armed robbery.

4 Anything else out of the ordinary?

5 MR. STORY: The only request I had was strong-armed
6 robbery.

7 THE COURT: That's in. And I believe there's a prior
8 record of the defendant also in there.

9 MR. STORY: In evidence, Your Honor?

10 THE COURT: Pardon?

11 MR. STORY: It's just been testified to. Oh, in the
12 charge. Okay.

13 THE COURT: Right, in the charge. In the charge.

14 MR. STORY: I'm sorry.

15 THE COURT: If y'all want, we can email it to you.

16 MR. MEADORS: That would be great.

17 THE COURT: Great.

18 MR. STORY: Okay.

19 THE LAW CLERK: I can do that.

20 MR. MEADORS: Thank you.

21 THE COURT: So we'll email that to both and you can
22 review that tomorrow and we'll reconvene on Thursday.

23 MR. MEADORS: Thank you.

24 THE COURT: We'll be at ease until Thursday morning.

25 (WHEREUPON, the proceedings were adjourned for the day at

1 3:33 p.m.)

2 NOVEMBER 12, 2015

3 (WHEREUPON, the proceedings resumed at 10:08 a.m.)

4 THE COURT: Good morning, everyone. Thank you. You may
5 have a seat.

6 MR. MEADORS: Good morning.

7 THE COURT: It's my understanding that the parties have
8 had an opportunity to review the jury instructions and both
9 parties are okay with the proposed instructions; is that
10 correct?

11 MR. STORY: That's correct, Your Honor.

12 MR. MEADORS: Yes, ma'am.

13 THE COURT: Anything further before we bring the jury
14 out?

15 MR. MEADORS: Nothing from the State.

16 MR. STORY: Nothing from the defense, Your Honor.

17 THE COURT: All right. Let's have our jury, please.

18 MR. STORY: Oh, briefly, Your Honor?

19 THE COURT: Uh-huh?

20 MR. STORY: All of the monitors in the courtroom are on.
21 I understand I'm going to be closing first. I'd like all the
22 monitors to be turned off while I am closing.

23 THE COURT: I certainly don't have an objection to that.
24 Can you do that, Mr. Meadors? The Court certainly is not
25 capable of that, but --

1 MR. MEADORS: I think the volume might be a little
2 difficult for Your Honor too. We brought our internal IT guy
3 just to help.

4 (WHEREUPON, there was a pause in the proceedings.)

5 (WHEREUPON, the jury entered the courtroom at 10:10 a.m.)

6 THE CLERK: All of the jurors are back in the courtroom,
7 Your Honor.

8 THE COURT: Thank you, Mr. Prince. Good morning, ladies
9 and gentlemen of the jury. Welcome back. I hope you had a
10 nice Veterans Day. We're now ready to proceed with the
11 closing arguments. Please pay close attention to the parties.
12 You may proceed.

13 MR. STORY: May it please the Court?

14 THE COURT: Yes, sir.

15 CLOSING ARGUMENT ON BEHALF OF THE DEFENDANT

16 MR. STORY: Members of the jury, when Wilbert Franklin
17 walked in the Kangaroo on Liberty Street, he intended to take
18 money, but he did not have a weapon. He used his body to
19 intimidate and he used his voice to demand that the cashier
20 open the cash register, but he did not have a weapon. And
21 then he used a plastic grocery bag and an old T-shirt to cover
22 his face from the cameras to make his escape, but he did not
23 have a weapon. And that's what this case is all about,
24 members of the jury.

25 Now, I came out and told y'all at the very beginning that

1 Wilbert Franklin committed the robbery. I've never told y'all
2 any different. Excuse me. That he committed a robbery.
3 There's two separate crimes, and that's the important part of
4 this. There's armed robbery and there's robbery. As y'all
5 can see, sometimes even I get mixed up, but there's a very,
6 very important difference.

7 And he's charged with armed robbery. Now, a robbery is
8 when somebody uses violence or intimidation in somebody else's
9 presence to take property that is not theirs. And Her Honor
10 is going to charge you on that.

11 But armed robbery is very different. It's where somebody
12 has a weapon or a representation of a weapon, and that's what
13 Wilbert Franklin has been charged with.

14 And the State -- in order to find a person guilty of
15 armed robbery, the State must prove them guilty beyond a
16 reasonable doubt. They have to prove that they had a weapon
17 beyond a reasonable doubt or given the circumstances that a
18 person intended to make a representation of a weapon. There
19 has to be intent there. It cannot be by accident. You cannot
20 make somebody believe just by accident that they had a weapon.

21 Second of all, under the circumstances that belief had to
22 have been reasonable. If somebody, in fact, did believe they
23 had a weapon, that belief must have been reasonable. And
24 that's what the State had to prove to y'all beyond a
25 reasonable doubt, and they have failed to do that.

1 Let's talk about the State's case. Now, the first
2 witness was, of course, the cashier, Ms. Carter. And that's
3 when the video was played and y'all saw the video and you'll
4 have the opportunity to see the video again.

5 And there's a few indications we can tell from her
6 testimony and from the video that that belief was not
7 reasonable under the circumstances. We believe that was not
8 reasonable.

9 First of all, she got a good opportunity to look at the
10 defendant as he was walking in the store and she said that on
11 the stand at least four times she had several opportunities to
12 take a look. And what did he have? He had a clear plastic
13 grocery bag and that's what he was carrying. He had a white
14 T-shirt. It could be described as a rag. He had some papers,
15 he had a Smart water bottle, and that's what he had. That's
16 what was in the bag.

17 Now, she said she believed he had a gun. But first of
18 all, she got a chance to see this clear plastic grocery bag.
19 She got several opportunities -- an opportunity to look at it
20 when he was coming in, and then he comes up close to her and
21 he says open the cash register and for a brief moment he
22 reaches in and he adjusts -- he adjusts the bag and holds it
23 up and he holds it up high. He doesn't hold it out, he
24 doesn't hold it like a gun or even like that. He holds it up
25 high.

1 And so she says, okay, I'm going to comply. She has
2 another opportunity to look back and see him. Then she gets
3 up and she walks. She starts walking toward the cash register
4 and opens it up, and then she steps back and she sees him
5 again. And he has -- with his free hand, with his right arm
6 reaches in and grabs some money. And so she had the
7 opportunity to view what he had in his hand.

8 And then she was probably scared and she starts getting a
9 little bit angry too. She says are you really going to come
10 in here and rob me. That's not the type of thing you say to
11 somebody who you think is holding a weapon who can turn around
12 and shoot you.

13 And then he takes the money and he starts to leave and
14 what does she do? She follows him. She starts following him
15 because she's angry and then she starts following him out the
16 store and then she yells are you really going to come in here
17 and rob me. Again, not something you say to a person who you
18 believe has a weapon who can turn around and shoot you.

19 And then we see in the video she comes back in and she's
20 talking on the phone, and that's when she mentions the gun.
21 And then other people come in and they start milling around
22 and they start talking. If I'd have known he had a gun, I
23 would have done something. Nobody else saw the gun. It was
24 three o'clock in the afternoon or close around three o'clock
25 in the afternoon on a Saturday and nobody else saw a weapon.

1 They saw a guy exiting the store with a bag.

2 And that's basically the State's case. And if they had
3 rested then, there's a reasonable doubt. We have some
4 problems with the State's case. The State has not proven
5 their case. And if that had been all, we could have rested
6 and you must find him not guilty on armed robbery.

7 But we didn't do that. We took it a step further, so to
8 speak, in a few ways, and this was a very unusual case I'd
9 have to say because I called law enforcement. I called law
10 enforcement to come here to the stand and to talk about their
11 investigation. And the reason I did that is because I wanted
12 y'all to hear all the facts and all the evidence that was
13 gathered in this case.

14 And what did Detective Yates testify to? During the
15 course of his investigation, he went back to where Wilbert
16 Franklin was staying at the homeless shelter and went through
17 his things and, lo and behold, what did he find? Did he find
18 a weapon? No. He found a plastic bag with a T-shirt, a Smart
19 water bottle, some papers. That's what he found.

20 And then he arrested Wilbert Franklin and he starts
21 talking to him and he tells him what he's charged with. And
22 he says, you know, we got you essentially. You should come
23 clean. And so Wilbert Franklin did that. Whatever his
24 motive, whatever the reason, he did it. He told them what
25 happened. He said I did it. I was unarmed. I didn't mean to

1 hurt anybody and I'm sorry, so sorry.

2 Now, one thing I want to make clear. Like I told y'all
3 in the beginning, y'all are going to see the video and it's
4 going to make you angry, and that's totally natural and I'm
5 not trying to get up here and excuse what Wilbert Franklin did
6 and I'm not trying to make excuses for him.

7 But we have to hold people to what they do and not what
8 they didn't do. The solicitor said something that disturbed
9 me a little bit in his opening. He said if there's one little
10 issue in the case, it's about whether or not he had a gun and,
11 folks, that is not a little issue. This is the law. This is
12 why we have two separate charges for just this type of
13 occasion, for just these type of acts. And the law should
14 treat everybody the same. No matter what they did, you should
15 be held responsible for what you did, but not what you didn't
16 do.

17 So -- and then, of course, Wilbert Franklin took the
18 stand. He did not have to do that. He did not have to take
19 the stand, but he wanted to. He wanted to tell all y'all his
20 side of the story. He wanted to tell you how he told law
21 enforcement and what he told law enforcement.

22 So that's what the evidence shows. We have gone a step
23 further and we have actually put on a case and we have told
24 y'all what the evidence actually does show. Of course, like I
25 told you, you can see the video. You can see what happened.

1 Wilford Franklin goes in. He'd been in jail. His car
2 had been impounded. He had a drinking problem. And he goes
3 in. You can see him enter the store, walk around, and then
4 get close. Open up the bag and hold it up. She goes over to
5 the cash register and he's holding it up to try to hide his
6 face, not to represent a weapon. He's trying to hide his face
7 and he's carrying it up high. And then you can also see him
8 turn around and he clearly has a rag over his face when he
9 exits and walks out of the store. And that's what happened.

10 Now, you don't have to necessarily believe that a hundred
11 percent and you don't have to believe Wilbert Franklin in
12 order to find him not guilty. If you think it could've
13 happened that way and the evidence shows it did happen that
14 way, you must find him not guilty under the law. You must
15 find him not guilty of armed robbery.

16 And it's not like -- you know, like I said, it's not like
17 he's going to get off scot-free. There's a charge for this
18 and y'all will be charged on it. But he did not have a weapon
19 and he did not make a representation of a weapon and he did
20 not commit armed robbery.

21 I told y'all at the beginning not to make a decision
22 based on emotion and I know this is an emotional case and I
23 know people got emotional. And I know the solicitor is going
24 to get up here and act offended at something I said or
25 something I didn't say or something Mr. Franklin said, but you

1 know what? It's like President Harry Truman once said. I
2 don't give people hell. I just tell the truth and they think
3 it's hell.

4 And that's what we've been doing this whole case. We've
5 come straight out and told y'all what happened. We've
6 admitted what we did, but not what we didn't do. And that's
7 all I'm asking y'all to do today is to find a true and just
8 verdict, and to find Wilbert Franklin not guilty of armed
9 robbery. Thank you. /

10 THE COURT: Solicitor?

11 MR. MEADORS: May it please the Court?

12 THE COURT: Yes, sir.

13 CLOSING ARGUMENT ON BEHALF OF THE STATE

14 MR. MEADORS: Mr. Story. Mr. Foreman, ladies and
15 gentlemen, good morning.

16 He admits what he cannot deny and he denies what we
17 cannot see. He admits what he cannot deny and he denies what
18 we cannot see. But she saw it.

19 Chaunice Carter saw it. This lady right here saw it.
20 She saw and believed that he had a gun. When she turned and
21 looked at him, she believed he had a gun based on his
22 representation and his actions.

23 And what did she do? She acted on it. You think she
24 didn't think he had a gun? A woman who had been there and
25 loved -- loved this store, loved this job and interacting with

1 people, do you think she's just going to go and give away the
2 money of that store, that place that she loved, just because
3 somebody said so? No, sir. No, ma'am.

4 She thought he had a gun and she reacted to it. Her body
5 instinctively reacted to it and she started walking. And you
6 remember that word when we first started and I said, man, I
7 don't know if that sounds right, but she said okay. Okay.
8 It's like I know you're serious. Okay. And she started
9 moving.

10 You think she didn't think there was a gun in there? And
11 she starts moving and he's got his arm up and I'm going to go
12 over and talk to you about that a little bit more. I'm going
13 to show the tape one more time. And he starts moving behind
14 her with an arm up I submit trying to make her believe he's
15 got a gun.

16 She believes it. She walks to the cash register. He
17 admits what he cannot deny and he denies what we cannot see.
18 And you remember what he said on there? He said my body is
19 blocking it and I know y'all can't see that. That's where my
20 body is blocking it. You can't see what's happening there.
21 Well, you're right. We can't, but she saw it. She saw it.
22 She believed it. And that's what this case is about. She
23 believed it and she acted on it.

24 It's really like every case is about when you come up
25 here. That's why we all come in this courtroom and people

1 take the stand and put their hand on the Bible. It's
2 credibility, believability. Every case is, no more so than
3 this case.

4 Who do we have here? We've got the teller, the cashier,
5 the employee versus the admitted thief and robber. And I can
6 say that. He got on the stand and said I'm a thief. I'm a
7 robber. It's his credibility versus hers. That's what it
8 boils down to. Is he going to try to put himself in the best
9 light he can under the circumstances? Of course, he is. Is
10 he credible? I say no, ma'am. No, sir.

11 It's the gentle art of confessing error. I admit what I
12 cannot deny; I deny what we cannot see. It's the gentle art
13 of confessing error. Well, they got me. I'm on tape.
14 There's no question I'm guilty of this. I know it. It's on
15 tape. Mr. Robertson from the Samaritan House -- what a great
16 witness. He comes in here. His whole life is helping people,
17 washing their clothes, taking care of people. God bless him.
18 God bless Mr. Robertson, wherever you are today, for taking
19 care of people.

20 But he also knows when he sees it on the TV, well,
21 something's wrong. I recognize that guy who did that robbery.
22 I washed his clothes. I know his body movements. And he
23 calls the police and says, look, I know who that is. I know
24 who that is. The point being it's a slam-dunk case. Okay?
25 He's got him on tape. He's got his clothes. He's ID'd.

1 So then he starts mitigating. He was doing that before
2 he went down to see Mr. Yates. There weren't any games on
3 this. This is a self-serving statement. I made a decision
4 not to put it in. He comes in. When he took the stand, no
5 objection. That's the way the rules are. A mitigating self-
6 serving statement. He says I've got a drug problem. I've got
7 an alcohol problem. Even in here it says I might've been
8 insane. He blames his wife. I got a divorce.

9 He blames everybody except Wilbert Franklin. He blames
10 everybody but Wilbert Franklin. Yeah, I did it. I did it,
11 but I didn't mean to. I didn't want to hurt anybody. Open
12 that drawer right now, dang it. I didn't want to. I didn't
13 mean to. Yeah, I'm guilty of strong-armed robbery, but not
14 robbery. Credibility? Believability?

15 I beg the Court's indulgence.

16 THE COURT: Yes, sir.

17 MR. MEADORS: Based on his actions, his representations,
18 she started moving her body instinctively on what she believed
19 was a gun based on his actions. I'm going to show you with
20 the help of Mr. Corbett the audio that we hear while we run
21 the picture from behind where she's sitting. We're going to
22 run the audio from the cash register while at the same time
23 showing the picture from the back. You can hear the audio and
24 watch the picture when she's sitting down. Everybody know
25 what I'm talking about? The back picture where she's sitting.

1 (WHEREUPON, State's Exhibit Number 16, the surveillance
2 video was played in court and was then stopped.)

3 MR. MEADORS: She tells 9-1-1 she thought he had a gun
4 right after it happened. You talk about present sense
5 impression. What's in her mind? He had a gun.

6 (WHEREUPON, the video resumed playing and was then
7 stopped.)

8 MR. MEADORS: You know this is pretty close in time to
9 that door opening. You hear that sound.

10 (WHEREUPON, the video resumed playing and was then
11 stopped.)

12 MR. MEADORS: Intent is something the judge will instruct
13 you on. There's no question what his intent is. He's
14 admitted to it. You see it.

15 (WHEREUPON, the video resumed playing and was then
16 stopped.)

17 MR. MEADORS: Minutes after it happened, he had a gun in
18 a bag, talking to 9-1-1. That's real. Describing them.

19 (WHEREUPON, the video resumed playing and was then
20 stopped.)

21 MR. MEADORS: ID is not an issue. He'd been in there
22 earlier that day. Mr. Robertson ID'd him. He ID'd himself.

23 (WHEREUPON, the video resumed playing and was then
24 stopped.)

25 (WHEREUPON, an easel with paper was set up in the

1 courtroom before the jury.)

2 MR. MEADORS: Thank you. Besides murder -- besides
3 murder and rape -- besides murder and rape, the most up-close
4 -- I'm sorry about this. The most up-close and personal crime
5 is robbery, armed robbery, when somebody takes control of you,
6 literally takes control of you, and demands and directs what
7 you're going to do.

8 And none of us can stand to be told what to do. We have
9 to from our spouses and judges and bosses. And I don't mean
10 that bad, but if you don't know somebody and you're up and
11 you're told what to do, they literally take hold of your body
12 and say give me what you've got. That's what this is about.

13 He comes in. He doesn't know her. Decides at some point
14 when he's walking around that day the intent. He's thinking
15 about it and walking. Yeah, I'm going to rob it. I'm going
16 to rob it. Got it in my mind thinking about it, planning it,
17 going in.

18 You tell me he doesn't wait until there's nobody in there
19 and goes back in the store and sees that nobody's in there and
20 he's staking the place out. He sees that there's a female in
21 there and he goes in and decides, hey, I'm going to take this.
22 You're going to do what I say.

23 He thinks you can't believe he had a gun? And when he's
24 right there -- Mr. Story asked him on direct what are you
25 doing right there. This is right when he's fixing to commit

1 the robbery. He tells her -- what's his first answer? I was
2 -- I don't know what I was doing. I was looking through my
3 papers. Are you kidding me? Right before you're going to
4 commit a robbery, you're sitting there looking through your
5 papers? No, ma'am. No, sir.

6 He's starting to act like he has a gun. She thinks he
7 has a gun. He's fooling with the bag right before he says go
8 open the drawer. Go open the drawer right now and he's
9 fiddling in with the bag? And then he starts -- she turns
10 around. Okay. And she says -- credibility. She says --
11 Chaunise Carter says I thought he had a gun. That's why I got
12 up and moved. Okay. Okay. She tells 9-1-1 I got a gun. He
13 had a gun in a bag. You can't make that up. That's real.
14 She thought that.

15 And then he starts moving with the bag. You look at that
16 video. He said, oh, my body blocked it. Y'all don't know
17 what happened then. Believe me. I'm a robber. I stole, but
18 you got to believe me on this one. No, sir. No, sir, they
19 don't.

20 And then she starts walking like this and it hit me
21 yesterday sometime. I can't remember. It was a big deal on
22 cross or he brought it up. He said, see, my bag is up here.
23 My bag is up here on my arm. See, I couldn't have done it.
24 My bag is up here. And you'll see this other thing right
25 here.

1 It finally hit me last night. How is your bag up there?
2 You're fiddling with this hand. It may have been on cross he
3 finally said, well, I might have been getting something to
4 cover my face. But if you're holding a bag like this, why
5 isn't it still like this when we see it? No, it is down like
6 this. I'll give you that. You know why? He reached in here
7 to move something. That's why it's off. It hit me last
8 night. It's the only thing that made sense. Otherwise, he'd
9 still be holding the bag like this.

10 He went in here and he -- it looks like when he comes up,
11 he's got something in his -- I don't know. You look at that
12 tape as much as you want to. But he's in with this bag and
13 she turns around and sees it. He's trying to make her think
14 he's got a weapon by his actions and his representations, and
15 the law says that's enough if she reasonably believes it. And
16 she did and she started walking and then she gave him the
17 money.

18 We don't have to prove beyond all doubt. You can't get
19 it done. He's going to give you everything except a gun.
20 Well, I did it. Convict me of strong-armed robbery, not
21 armed. No, I didn't do that.

22 Folks, this isn't the bag. Okay? When you get back
23 there and see this, this is not the bag. He said he wasn't
24 sure. You know how I know it's not the bag? You can look on
25 that video and the bag is bigger and it's not as clear.

1 Here's a receipt from Piggly Wiggly at 3:45 after this
2 robbery. This is the bag. He went shopping afterwards. He
3 robbed somebody. He went shopping and got a Mountain Dew and
4 something else. This isn't the bag he used.

5 But then what does he do? Does he go to try to pay the
6 car? He says it's impounded trying to get a little sympathy
7 there from y'all. Well, my car was impounded. I've had all
8 this trouble. He didn't give her any sympathy. He didn't
9 give her a bit of sympathy, but he wants to get it from y'all.
10 Did he go and save and go and try to get his car out of the
11 impound? No, ma'am. No, sir. What did he do? He went and
12 got drunk. He went and met somebody and got drunk.

13 I'm almost through.

14 The judge is going to tell you you've got three options.
15 I submit and I submit everybody submits you've only got two.
16 I submit -- not because it's a little issue because I don't
17 think it's an issue at all. Based on the evidence that
18 there's only one, armed robbery, but you're practically going
19 to have these two options.

20 I submit not guilty is not an option. Mr. Story agrees
21 with that. The defendant agrees with that. He's telling you
22 I'm guilty. He said I'm just guilty of this. Mitigating.

23 What have we got to prove? What is Her Honor going to
24 tell you? There doesn't have to be a gun. If you get back
25 there and decide it wasn't a gun that we found, well, you

1 heard the officer. They don't always find a gun.

2 And in armed robbery, there doesn't have to actually be a
3 gun. It could be a fake gun. It could be no gun. The law
4 says if someone makes an allegation either by action or words
5 that they have a gun -- and in this case it would be actions
6 with his bag, with his hands. If they make an action they
7 have a gun and they make a representation that they have a gun
8 -- and in this case, it's almost one in the same. It's almost
9 one in the same, an action and a representation with the bag.

10 And if that person, that person who is there in the
11 presence, that victim, that -- Chaunice Carter, if she
12 reasonably believes that he has -- is armed with a deadly
13 weapon based on his allegations and actions and his
14 representation in the bag, the law says that's enough. If she
15 reasonably believed he was armed and you believe that, you
16 must find him guilty of armed robbery if you believe those
17 facts. You're telling me she didn't believe it? She didn't
18 believe he was armed? Okay. I'm calling 9-1-1. He was
19 armed. He had a gun in a bag. That's what the case is about.

20 And then strong-armed. Taking away from the person or
21 presence of another by means of force or intimidation the
22 goods. He's admitted to that. He's admitted to that and he
23 wants you to stay down here.

24 I submit to you the evidence takes you here. You know it
25 really is about control. It really is about control. Wilbert

1 Franklin Jr. wants to control everything. He controlled that
2 interview with Detective Yates. Man, I've had a terrible --
3 it's been -- things are bad. It wasn't my fault. He blames
4 everybody. I must have been crazy. He blames everybody but
5 himself.

6 He's in control or wants to be in control or is in
7 control of Chaunice Carter. He takes control of her body and
8 marches her over there in control. He takes the stand
9 yesterday and he tries to take control of the cross-
10 examination. I let him go. He wants to be in control. No,
11 no, no. That's not -- no, no, yeah, yeah. Then it was no,
12 no, you can't see that. I'm telling you. You've got to
13 believe me. I didn't try to make a representation. My body
14 is blocking it. Credibility? No, sir. No, ma'am.

15 Well, ladies and gentlemen, let me get my glasses out.
16 Ladies and gentlemen -- ladies and gentlemen, he's not in
17 control anymore. He is not in control anymore. You are.
18 You're in control.

19 And Her Honor is going to give you the law right now on
20 armed robbery and strong-armed robbery, and you're going to
21 take that law with the facts and the evidence that you've
22 heard here from this witness stand and all these evidence and
23 all these pictures and you're going to go back there and
24 you're going to reach a verdict, either armed robbery or
25 strong-armed robbery.

1 And I respectfully -- I really do respectfully ask you to
2 consider and think about Chaunce Carter and did she
3 reasonably believe that he was armed with a weapon when he had
4 her back there. He was fooling around. She turned around and
5 said she saw his hand in the bag and didn't know what it was,
6 but she thought it was a weapon. And then he robbed her.

7 If you believe that, if you believe she believed that and
8 it's reasonable, then I'm respectfully going to ask you with
9 your verdict to say, Mr. Franklin, we're in control now and
10 the facts and the law in this case say you're guilty of armed
11 robbery and we're going to find you so. Thank you, all.

12 THE COURT: Ladies and gentlemen of the jury, both
13 parties have given their closing arguments. We're going to
14 take just a very brief recess at this time. I'm going to ask
15 you to go to your jury room. Again, please do not discuss
16 this case amongst yourselves as I have not instructed you on
17 the law. This will be a very brief recess. We'll be right
18 back with you.

19 (WHEREUPON, the jury exited the courtroom at 10:49 a.m.)

20 (WHEREUPON, there was a break in the proceedings from
21 10:49 a.m. until 10:54 a.m.)

22 THE COURT: Thank you, everyone. You may have a seat.

23 MR. MEADORS: Judge --

24 THE COURT: Do you need to gather folks?

25 MR. MEADORS: I think both parties are in agreement that

1 State's Number 17 will be admitted without objection. We just
2 meant to do it before we rested and forgot.

3 THE COURT: Yes, sir. Is that correct, Mr. Story?

4 MR. STORY: That's correct.

5 THE COURT: All right. It is admitted.

6 (WHEREUPON, State's Exhibit Number 17, the plastic bag,
7 was admitted into evidence.)

8 THE COURT: Anything further before we bring the jury
9 out?

10 MR. MEADORS: Not from the State.

11 THE COURT: All right. Let's have our jury, please.

12 (WHEREUPON, the jury entered the courtroom at 10:55 a.m.)

13 THE CLERK: All the jurors are back in the courtroom,
14 Your Honor.

15 THE COURT: Thank you. Welcome back, ladies and
16 gentlemen of the jury. Thank you for your patience. It is
17 now time for me to instruct you on the law of this case.

18 CHARGE ON THE LAW

19 THE COURT: The indictment charges the defendant with
20 armed robbery. I remind you the fact the defendant was
21 arrested, charged, and indicted in this case is not evidence
22 in this case. It cannot be considered by you as evidence of
23 guilt in this case, nor does it create any presumption or
24 inference of guilt.

25 The document is simply the formal written instrument

1 which contains the charge made against the defendant. It's a
2 formal document by which the case is brought into this court.

3 The defendant has pled not guilty to this indictment and
4 that plea puts the burden on the State to prove the defendant
5 guilty. A person charged with committing a criminal offense
6 in South Carolina is never required to prove himself innocent.
7 I charge you that it is an important rule of the law that the
8 defendant in a criminal trial, no matter what the seriousness
9 of the charge may be, will always be presumed innocent of the
10 crime for which the indictment was issued unless that guilt
11 has been proven by evidence satisfying you of that guilt
12 beyond a reasonable doubt.

13 This presumption of innocence does not end when you begin
14 your deliberations, but it accompanies the defendant
15 throughout the trial until you reach a verdict of guilt based
16 on the evidence satisfying you of that guilt beyond a
17 reasonable doubt.

18 The presumption of innocence is like a robe of
19 righteousness placed about the shoulders of the defendant
20 which remains with the defendant until it has been stripped
21 from the defendant based on the evidence satisfying you of the
22 defendant's guilt beyond a reasonable doubt. The presumption
23 of innocence is not a mere legal theory. It's not just a
24 legal phrase. It is a substantial right to which every
25 defendant is entitled to unless you, the jury, are satisfied

1 from the evidence of the defendant's guilt beyond a reasonable
2 doubt.

3 What is a reasonable doubt in the law? A reasonable
4 doubt is the kind of doubt that would cause a reasonable
5 person to hesitate to act. The State has the burden of
6 proving the defendant guilty beyond a reasonable doubt.

7 Some of you may have served as jurors in civil cases
8 where you were told that it is only necessary to prove that a
9 fact is more likely true than not true, such as by the greater
10 weight or the preponderance of the evidence. In criminal
11 cases, the State's proof must be more powerful than that. It
12 must be beyond a reasonable doubt.

13 Proof beyond a reasonable doubt is proof that leaves you
14 firmly convinced of the defendant's guilt. There are very few
15 things in this world we know with absolute certainty. In
16 criminal cases, the law does not require proof that overcomes
17 every possible doubt.

18 If based on your consideration of the evidence you are
19 firmly convinced that the defendant is guilty of the crime
20 charged, you must find the defendant guilty. If on the other
21 hand you think there is a real possibility the defendant is
22 not guilty, you must give the defendant the benefit of the
23 doubt and find him not guilty.

24 I remind you that during this trial you and I have
25 certain duties to perform. As the trial judge, it is my

1 responsibility to preside over the trial of this case and I
2 also have the duty to rule on the admissibility of the
3 evidence offered during this trial.

4 You are to consider only the competent evidence before
5 you. If there was any testimony stricken from the record in
6 this case, you must disregard that testimony. You are to
7 consider only the testimony which has been presented from the
8 witness stand, any exhibits which have been made a part of the
9 record in this case, and any stipulations of counsel.

10 I have the additional duty to charge you the law
11 applicable to this case. As the presiding judge, I'm the sole
12 judge of the law in this case and it is your duty as jurors to
13 accept and apply the law as I know state it to you. If you
14 already have an idea as to what the law is or what the law
15 ought to be and it does not agree with what I now tell you the
16 law is, you must abandon this idea because you are sworn to
17 accept the law and apply the law exactly as I state it to you.

18 In every case tried in this court before a jury, the jury
19 becomes the sole and exclusive judges of the facts in the
20 case. A trial judge cannot intimate, state, comment on or
21 make any statement to a trial jury about the facts in a case.

22 Since you, the jury, are the sole judge of the facts in
23 this case, you are not to infer from what I have said during
24 the progress of this trial in ruling upon the admissibility of
25 evidence or otherwise or anything that I say now during the

1 course of this instruction to you that I have any opinion
2 about the facts in this case. The law does not allow me to
3 have an opinion about the facts in this case. This matter is
4 solely for you, the jury, to determine. As jurors, it is your
5 duty to determine the effect, value, weight, and the truth of
6 the evidence presented during this trial.

7 There are two types of evidence which are generally
8 introduced and presented during a trial, direct evidence and
9 circumstantial evidence. Direct evidence is the testimony of
10 a person who claims to have actual knowledge of a fact, such
11 as an eyewitness. Circumstantial evidence is proof of a chain
12 of facts and circumstances indicating the existence of a fact.

13 The law makes absolutely no distinction between the
14 weight or value to be given either to direct or circumstantial
15 evidence, nor is a greater degree of certainty required of
16 circumstantial evidence than of direct evidence. You should
17 weigh all of the evidence in this case. After weighing all
18 the evidence if you are not convinced of the guilt of the
19 defendant beyond a reasonable doubt, you must find the
20 defendant not guilty.

21 Necessarily, you must determine the credibility of the
22 witnesses who have testified in this case. Credibility simply
23 means believability. It becomes your duty as jurors to
24 analyze and to evaluate the evidence and to determine which
25 evidence convinces you of its truth.

1 In determining the believability of witnesses who have
2 testified in this case, you have -- you may believe one
3 witness over several witnesses or several witnesses over one
4 witness. You may believe a part of the testimony of a witness
5 and reject the remaining part of the testimony of that same
6 witness.

7 You may believe the testimony of a witness in its
8 entirety or reject the testimony of a witness in its entirety.
9 You may consider whether any witness has exhibited to you any
10 interest, bias, prejudice or other motive in this case. You
11 may also consider the appearance and manner of a witness while
12 on the witness stand.

13 In order to establish criminal liability, criminal intent
14 is required. For example, the mental state required to be
15 proven by the State for a particular crime might be purpose,
16 intent, knowledge, recklessness or criminal negligence.
17 Criminal intent must be proven by the State beyond a
18 reasonable doubt. Criminal intent is always a matter that
19 must be determined by the jury from the circumstances
20 surrounding the situation.

21 There's no way to prove intent to a mathematical
22 certainty. There's no way medical science can dissect a
23 person's brain and determine what the person had in mind; so
24 the law says a criminal intent may be inferred from the
25 circumstances shown to have existed. This is how you make a

1 determination of whether or not the element requiring intent
2 was present.

3 It is not necessary to establish intent by direct and
4 positive evidence, but intent may be established by inference
5 in the same way as any other fact by taking into consideration
6 the acts of the parties and all of the facts and circumstances
7 of the case.

8 Criminal intent is a mental state, a conscious
9 wrongdoing. It is up to you to determine what the defendant
10 intended to do based upon the circumstances shown to have
11 existed.

12 Criminal intent can arise from action or from the failure
13 to act. It may arise from the negligence, recklessness or an
14 indifference to duty or to consequences that is considered by
15 the law to be the equivalent of criminal intent.

16 You have heard evidence that the defendant was convicted
17 of a crime other than the one for which the defendant is now
18 on trial. The evidence must be -- may be considered by you,
19 if you conclude that it's true, only in deciding whether the
20 defendant's testimony is believable and for no other purpose.
21 You must not consider the defendant's prior record as any
22 evidence of the defendant's guilt of the charge we are trying
23 here today.

24 The defendant is charged with armed robbery. In order to
25 prove this offense, the State must first prove beyond a

1 reasonable doubt that the defendant took personal property
2 from the person or presence of another person. Property is in
3 the presence of a person if it is within the person's reach,
4 inspection, observation or control so that the person could,
5 if not overcome with violence or presented by fear, keep
6 possession of the property.

7 The State must also prove beyond a reasonable doubt that
8 the defendant carried the property away, intending to
9 permanently deprive the owner of the property and to keep the
10 property for the defendant's own use. The slightest removal
11 of the property or the complete possession of the property,
12 even for an instant, by the defendant is sufficient to show a
13 taking and carrying away of the property. The taking and
14 carrying away of the property must have been done with
15 violence or by putting the owner of the property in fear of
16 violence.

17 Finally, the State must prove beyond a reasonable doubt
18 that the defendant was armed with a deadly weapon during the
19 robbery. A deadly weapon is any article, instrument or
20 substance which is likely to cause death or great bodily harm.
21 Whether an instrument has been used as a deadly weapon depends
22 on the facts and circumstances of each case.

23 The following are examples of instruments which may be
24 deadly weapons: a pistol, a shotgun, a rifle, a dirk, a
25 dagger, a knife, a slingshot, metal knuckles, a razor,

1 gasoline, a firebomb or a Molotov cocktail, and lighter fluid.
2 A gun may be a deadly weapon even if it's not operating.

3 A hand or a fist is not normally considered a deadly
4 weapon. However, under some circumstances depending on the
5 manner and the means of its use, the wounds inflicted and
6 other relevant facts, a hand or fist may be considered to be a
7 deadly weapon. It is for you to decide in this case beyond a
8 reasonable doubt whether or not a hand or fist is a deadly
9 weapon.

10 Ordinary objects may become deadly weapons when the facts
11 show that they have been used to inflict serious bodily harm
12 or death. Whether a toy gun was -- which has the appearance
13 of and/or is believed to be a real gun is a deadly weapon is a
14 factual question for you to determine. Whether a BB gun is a
15 deadly weapon is a factual question for you to determine.

16 If you find the State has failed to prove the defendant
17 was armed with a deadly weapon, you may then consider whether
18 the State has proved beyond a reasonable doubt that the
19 defendant committed strong-armed robbery.

20 In order to prove strong-armed robbery, the State must
21 prove beyond a reasonable doubt all of the elements that I
22 have just explained. The violence must be the actual personal
23 violence or the threat of it. The degree of force is
24 immaterial so long as such force or threat of force is
25 actually sufficient to overcome the victim's resistance. This

1 violence or intimidation must either perceive or be
2 contemporaneous with the taking. The State need not have
3 proven that the defendant was armed with a deadly weapon.

4 Insanity caused by the use of drugs or alcohol may be a
5 defense if the insanity is permanent and destroys the
6 defendant's ability to know right from wrong. However, when
7 voluntary intoxication has not produced permanent insanity, it
8 is not a defense to a crime. A person who voluntarily becomes
9 intoxicated -- intoxicated is just as responsible for the acts
10 committed while intoxicated as when the person is not
11 intoxicated.

12 There are several possible verdicts which you may find in
13 this case and, Mr. Foreman, you will have the indictment back
14 in the jury room with you, as well as the verdict sheet. Your
15 verdict must be a unanimous one. The verdict form is rather
16 self-explanatory. It states as to the charge of armed
17 robbery, we, the jury, unanimously find the defendant -- and
18 you circle the appropriate verdict, whether it's not guilty or
19 guilty.

20 If you determine that the defendant is not guilty of
21 armed robbery, then you must then consider the second charge.
22 And it states as to the charge of strong-armed robbery, we,
23 the jury, unanimously find the defendant not guilty or guilty.

24 When you come to a verdict, Mr. Foreman, if you would,
25 sign your name. Also on the indictment, on the front of the

1 indictment it has a section right here where it says verdict.
2 If you would, write the jury's verdict and sign your name and
3 date it.

4 When you reach a verdict, if you would, please knock on
5 the door. Then we will welcome you back into the courtroom to
6 receive your verdict. I'm going to ask you to please step
7 back into your jury room and for the last time I'm going to
8 ask you not to discuss this case quite yet until you receive
9 all the exhibits and the bailiff brings them to you along with
10 the verdict form and the indictment. Then you may begin your
11 deliberations.

12 (WHEREUPON, the jury exited the courtroom at 11:08 a.m.)

13 THE COURT: Any exceptions or objections to the charge on
14 the law from either the State or from the defense?

15 MR. STORY: None from the defense.

16 MR. MEADORS: Was it in there about the allegation --
17 actions or words that weren't actually --

18 THE COURT: Would the definition of --

19 MR. MEADORS: Or representation?

20 THE COURT: There was a representation regarding the hand
21 and then it says that they must make a factual determination
22 based on the facts of the case.

23 MR. MEADORS: Thank you.

24 THE COURT: Anything else.

25 MR. MEADORS: No, ma'am. Thank you.

1 (WHEREUPON, there was a pause in the proceedings as the
2 evidence was checked by counsel.)

3 THE CLERK: Are y'all ready?

4 MR. STORY: Yes, sir.

5 THE CLERK: Okay.

6 (WHEREUPON, jury deliberations began at 11:11 a.m.)

7 (WHEREUPON, there was a break in the proceedings from
8 11:11 a.m. until 11:38 a.m.)

9 THE COURT: Thank you, everyone. You may have a seat.
10 It's my understanding that we have a verdict. Anything before
11 we bring the jury out?

12 MR. MEADORS: No, ma'am.

13 MR. STORY: Nothing, Your Honor.

14 THE COURT: Let's have our jury, please.

15 (WHEREUPON, the jury entered the courtroom at 11:38 a.m.)

16 THE CLERK: All the jurors are in the courtroom, Your
17 Honor.

18 THE COURT: Mr. Foreman, has the jury reached a verdict?

19 THE FOREMAN: Yes, ma'am.

20 THE COURT: All right, sir. If you would, please hand it
21 to Mr. Prince.

22 (WHEREUPON, there was a pause in the proceedings for the
23 Court to review the verdict form.)

24 THE COURT: Sir, if you would, please publish the
25 verdict.

VERDICT

THE CLERK: State of South Carolina, the County of Sumter, in the Court of General Sessions, Indictment Number 2015-GS-43-0714.

As to the charge of armed robbery, Indictment Number 2015-GS-43-0714, we, the jury, unanimously find the defendant not guilty.

As to the charge of strong-armed robbery, we, the jury, unanimously find the defendant guilty.

Signed by Anthony Rembert, November the 12th, 2015. Mr. Foreman, ladies and gentlemen of the jury, is this your verdict, so say you all? Signify by raising your right hand.

(WHEREUPON, all jurors complied.)

THE CLERK: Thank you.

THE COURT: Thank you, ladies and gentlemen of the jury. You may now retire to your jury room. I'll be in there in just one minute to excuse you.

(WHEREUPON, the jury exited the courtroom at 11:41 a.m.)

THE COURT: All right. Solicitor, if you would, please prepare the sentencing sheets and I'll speak to the jury.

MR. MEADORS: Are you going to give them an opportunity to come listen to the sentencing?

THE COURT: Absolutely.

MR. MEADORS: Thank you.

(WHEREUPON, there was a break in the proceedings from

1 11:41 a.m. until 11:46 a.m.)

2 THE COURT: Thank you, everyone. You may have a seat.
3 We're just going to wait one second. The jury wanted to be
4 present for sentencing; so I'm allowing them the opportunity
5 to come into the courtroom.

6 (WHEREUPON, the jurors entered the back of the courtroom
7 at 11:46 a.m.)

8 THE COURT: Solicitor, are we now ready to proceed with
9 the sentencing?

10 MR. MEADORS: May it please Your Honor?

11 THE COURT: Yes, sir.

12 MR. MEADORS: First of all --

13 THE COURT: Mr. Franklin, would you please stand?

14 MR. MEADORS: I want to thank Detective Yates and the
15 police department and the victim advocates for their help here
16 and Ms. Carter too. She obviously went through a lot. It
17 truly affected her, Judge. She actually quit the job she
18 loved the next day and has had trouble since. She's actually
19 moving up to another state Friday and is staying there wanting
20 to get this behind her, but she is quite a wonderful person
21 and I want to thank her for helping me get this ready and for
22 her patience.

23 His prior record, please, Judge?

24 THE COURT: Yes, sir.

25 MR. MEADORS: Your Honor, he has a court date 9/27/1995

1 of burglary second, strong-armed robbery, which he got
2 eighteen years on.

3 He was charged with armed robbery, but he either pled or
4 was convicted of strong-armed robbery on January 10th of 2007.
5 Also assault and battery of a high and aggravated nature. I
6 think he got five years on those.

7 Several fraudulent checks, about ten of them in April
8 2005. Some more in April it looks -- excuse me -- some more
9 in May of 2008.

10 Assault with intent to rob in Baltimore, January of '85.
11 It looks like he got five years suspended to five years on
12 that.

13 And in March 1988, intent to rob with a deadly weapon
14 from Baltimore that he got five years on that.

15 A handgun violation conviction from February of 1990.

16 Judge, with all due respect, this is what he does. I
17 think he's just -- if he had a business card, it would say
18 robber. He goes and robs and I believe he tries to indicate
19 he has a weapon. A lot of these were charged armed robbery,
20 but he was convicted of strong-armed on all of those, and the
21 jury found that today.

22 I don't know if anybody else wants to say anything. We
23 just ask Your Honor to sentence accordingly. Thank you.

24 THE COURT: Thank you.

25 MR. MEADORS: And he is currently serving time right now.

1 THE COURT: What is he serving time for right now?

2 MR. STORY: It's -- it's the same. Your Honor, he's
3 currently serving a seven-year sentence for attempted armed
4 robbery.

5 THE COURT: And when was that conviction?

6 MR. STORY: He informs me it was last year.

7 THE COURT: Solicitor, can you get that indictment number
8 for me on the sentence that he's currently serving? Not right
9 now obviously --

10 MR. MEADORS: Yes, ma'am.

11 THE COURT: -- but to add to the sentencing sheet.
12 Anything else from the State?

13 MR. MEADORS: No, ma'am.

14 MS. CARTER: I just --

15 MR. MEADORS: Ms. Chaunce Carter wants to briefly
16 address the Court.

17 THE COURT: Yes, ma'am, Ms. Carter?

18 MS. CARTER: I would never want to be responsible for
19 somebody being behind bars; however, I feel like y'all got to
20 see this tape. Y'all got to see what I went through on that
21 video, but you didn't get to see what I have dealt with the
22 day I quit my job, the day I lost my apartment because I
23 couldn't pay my rent, the day I had to move to another state
24 with family because I could no longer feel comfortable working
25 for the public.

1 Y'all didn't get to see the breakdowns immediately after.
2 I didn't know that I could stop running my register. I
3 figured I had to continue doing this to keep my job. You know
4 what I mean? I kept taking my customers completely after I
5 was told to stop. I had -- I didn't know what was going on
6 when the situation was happening and that's when it hit me
7 what happened.

8 I mean I don't want to be responsible for anybody being
9 behind bars, but if this is a pattern, when are you -- when
10 are you going to learn you affect people by the things that
11 you do, and this really affected me. I have not worked
12 anywhere since. I lost my sense of -- my sense of me working
13 with the public and I've been doing this since I was fifteen.
14 I worked at Arby's. I worked at Kmart. I loved working
15 around people. I love people. That's just who I am. It's
16 been my dream to work in human services. I want to help
17 people, but when are we going to take responsibility for our
18 actions and the things that we do that affect other people?

19 THE COURT: Thank you, Ms. Carter. I appreciate you
20 being here. Certainly, I'm sorry for what you went through.
21 I've got to tell you that I can assure you that you're not
22 responsible as a victim for anybody going to prison. The
23 defendant's actions are what causes his punishment, not yours
24 in any way, shape or form. So I certainly don't want you to
25 feel responsible for that, but I want you to take pride in the

1 fact that you were strong enough to come to court and testify
2 and help the State in prosecuting their case. Thank you for
3 being here.

4 MR. MEADORS: Thank you, Your Honor.

5 THE COURT: Mr. Story?

6 MR. STORY: Thank you, Your Honor. First of all, I would
7 like to thank Your Honor for overseeing the trial and I'd like
8 to thank the State for their conduct in the trial, Mr. Meadors
9 and everybody else. And then I'd like to thank the jury for
10 their time and attention, their time taken away from family
11 and from work to be here and to pay attention to this trial.

12 Just briefly, Your Honor, Mr. Wilbert Franklin is a
13 native of Baltimore, Maryland. He's fifty-two years old. You
14 heard some of his story. He's currently serving a sentence
15 for something that I believe happened around the time -- the
16 same time frame after he left the upstate and made a lot of
17 very, very foolish decisions. And as I told you or as he told
18 you -- and I guess we'll get the indictment number later.
19 He's serving a sentence for attempted armed robbery right now.

20 He has a GED. He has some college education. And, Your
21 Honor, we would -- we would have obviously pleaded guilty to
22 strong-armed robbery if we had had the opportunity, and so we
23 just ask you to take that into consideration and to sentence
24 him to a concurrent sentence to what he's currently serving.
25 And I believe he would like to briefly address the court.

1 THE COURT: Mr. Franklin?

2 THE DEFENDANT: Thank you, Your Honor. First, I just
3 want to apologize to Ms. Carter for what I took her through.
4 I applaud her, her educational achievement, her testimony, and
5 I just want to apologize to her for putting her through that
6 emotional anguish where she had to quit her job and
7 everything. I know how important a job is. I've been there
8 and I know how important it is to go to work in the field that
9 you love. So I pray that she will find the strength and maybe
10 she can ask God to give her strength to be able to return back
11 to the field that she wanted to go into.

12 You heard my record. Every time I got in -- when I got
13 in trouble first in Baltimore, I had just lost my mother and
14 father. Both of my parents died eight months apart. I didn't
15 have no other grown-ups. I was young at the time, eighteen
16 years old.

17 I was young at the time and I didn't have family members
18 to come in and step in and try to help guide me and direct me.
19 So I didn't have any place to say. I was out there in the
20 streets with people that were committing crimes and I was, you
21 know, very distraught at the time. You know, I guess you
22 probably can imagine how it feels when you lose both of your
23 parents to cancer and watch them deteriorate and die.

24 And every other time I got in trouble, it was always
25 somebody dying in my family or a close friend dying. Even

1 this time, the best man who was at my wedding -- he passed
2 away maybe about a week or two before all this happened right
3 along with the breakup of me and my wife.

4 I never felt close to anybody like I did my mother, but
5 when I met my wife, she was the only person that could really
6 love like that. And when we broke up, then I just wasn't
7 emotionally -- I didn't -- you know, I just reverted back to
8 it.

9 My father was an alcoholic; so I grew up around drinking.
10 And so to cope with my problems and deal with my problems, I
11 would revert back to drinking. And every time I keep telling
12 myself I'm not going to let this take me there no more.

13 And since I've been incarcerated, I've had the
14 opportunity to go to AA, and AA taught me about the disease of
15 alcoholism and let me know that I can't take not one drop
16 again because I was truly a real alcoholic. And how you weigh
17 whether or not you're an alcoholic is that if you seriously
18 try to stop and you find that you can't do it, regardless of
19 the circumstances, regardless of the conditions, regardless of
20 the consequences, you don't have the ability to make that
21 decision to stop unless you get help.

22 And another thing about the disease of alcoholism is that
23 you always think that you can just take one drink, but it
24 don't ever work out like that. It's almost like being in a
25 boxing ring and you get knocked down twenty times and you

1 think you can get back up and keep fighting, but it don't ever
2 work like that.

3 But, you know, I just really want to apologize to
4 everybody and, you know, I ask for mercy and I ask for grace.
5 Since I've also been in there, I've accepted Christ as my
6 personal Savior and I know you probably hear that a lot in
7 court, but I seriously -- I've wrote a book since I've been
8 incarcerated on -- because I asked God questions. Why do I
9 keep going back and doing this? And what he told me created a
10 book inside of me and I wrote that book and it's called *The*
11 *Principle of the Truth*. And I just ask for your mercy and
12 grace and that you will be lenient on my sentencing, Judge.
13 Thank you, Your Honor.

14 THE COURT: Anything further, Mr. Story?

15 MR. STORY: No, Your Honor.

16 THE COURT: Mr. Franklin, I've watched you throughout the
17 week and we've had some interactions, and obviously you're an
18 eloquent man. You're capable of doing good things.

19 What I find troubling is -- certainly, I understand the
20 problems with alcoholism and what that can cause in a family
21 and losing family members, but that's the cycle of life. We
22 all lose people that are close to us and we don't make
23 conscious decisions to go rob people of the things that belong
24 to them.

25 Your attorney said something about this was a foolish

1 mistake. I can see that and I see that every day when I get
2 people that come before me and said I made a foolish mistake.
3 I'll do better.

4 But you don't get it. This is a pattern, and a pattern
5 that we really can't tolerate in society. You scare people.
6 You take their money, their hard-earned money, and you cause
7 them to lose their job or place to live because you wanted
8 some money, and that's not fair.

9 SENTENCE

10 THE COURT: On Indictment 2015-GS-43-0714, you're hereby
11 committed to the State Department of Corrections for a period
12 of fifteen years, and that's consecutive to your current time.

13 MR. MEADORS: Thank you, Your Honor.

14 MR. STORY: Thank you, Your Honor.

15 (WHEREUPON, the proceedings ended at 12:00 p.m.)
16

17 --- END REQUESTED TRANSCRIPT ---
18
19
20
21
22
23
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25

I, the undersigned, Krystal J. Smith, Notary Public and Official Court Reporter for the Twelfth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing pages, numbered 1 through 249 constitute a true, accurate, and complete Transcript of Record of all the proceedings had and evidence introduced in the hearing of the above captioned case, relative to appeal, in the Court of General Sessions for Sumter County, South Carolina, on the 9th through 12th days of November, 2015.

14 I do further certify that I am neither of kin, counsel,
15 nor interest to any party hereto.

17 s/ Krystal J. Smith

18	Court Reporter

20	Florence, South Carolina

21	February 15, 2016

STATE OF SOUTH CAROLINA **RECORDED** IN THE COURT OF COMMON PLEAS
 County of SUMTER 2017 OCT 26 AM 12:02

WILBERT FRANKLIN, JR. JAMES CAMPBELL
 Full name and prison number (if any) of Applicant
 CLERK OF COURT
 SUMTER COUNTY, S.C.

2017-CP-43-2043

v.

State of South Carolina

CERTIFIED TRUE COPY
 OF ORIGINAL FILE
 APPLICATION FOR
Barbara Harper
 POST-CONVICTION REVIEW COURT
 SUMTER COUNTY
 SOUTH CAROLINA

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention McCormick Correctional Institution, 386
Redemption Way, McCormick, SC 29899
2. Name and location of Court which imposed sentence Sumter County General
Session Court.
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) 2015-GS-43-0714) Common Law Robbery
 (b) _____

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 11/12/15 11/12/15
- (a) _____
- (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?
 yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. South Carolina Court of Appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. affirmed
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. May 2017
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. none
- 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:
- (a) unconstitutional sentence
- (b) ineffective assistance of counsel for failure to have
- (c) a competency test for his client
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) Consecutive sentence
- (b) incompetent at the time of the crime
- (c) See attached sheet
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? _____
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:

n/a

i.

ii.

iii.

iv.

(d) the date of each such disposition:

n/a

i.

ii.

iii.

iv.

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

n/a

i.

ii.

iii.

iv.

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

no

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

(a) which grounds have been presented:

n/a

i.

ii.

iii.

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

n/a

i.

ii.

iii.

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

(a) 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? yes
 (c) your sentencing? yes
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? yes
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?
no

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

(a) the name and address of each attorney who represented you:
 i. Stephen Story, Esquire Sumter County Public Defender
 ii. Robert Pachak, Appellate Defender
 iii. _____
 (b) the proceedings at which each such attorney represented you:
 i. trial and sentencing
 ii. appeal
 iii. _____

19. State clearly the relief you seek in filing this application:
sentence Correction
a new trial for failure to get a competency hearing
20. Are you now under sentence from any other court that you have not challenged?
no

STATE OF SOUTH CAROLINA)
)
 County of MCCORMICK)

VERIFICATION

I, Wilbert Franklin, 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.

Wilbert Franklin

SWORN to and subscribed before me this 04
 day of October, 2017.

J. Franklin (L.S.)
 Notary Public

My Commission Expires: 12-16-2019

RECORDED

APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT

IN SUPPORT OF JAMES E. GIBBS

CLERK OF COURT
SUMTER COUNTY, S.C.

I, Wilbert Franklin, 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.

Wilbert Franklin
Applicant

SWORN or affirmed to and subscribed before me this

04 day of October, 2017.

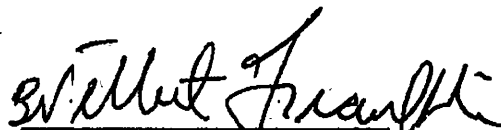
J. Franklin
Notary Public

My Commission Expires: _____

RECORDED
CERTIFICATE OF SERVICE

2017 OCT 26 AM 12:02

The undersigned hereby certify that he mail PCR application to
Sumter County Clerk of Court to ~~James O. Campbell~~ ^{James O. Campbell} of October 2017 by
depositing same in the U.S. mail ~~postage~~ ^{postage} prepaid.


Wilbert Franklin, Jr

RECORDED

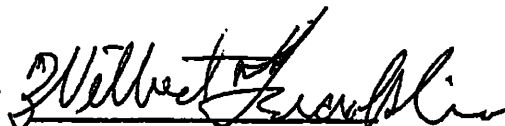
Attached sheets

2017 OCT 26 AM 12:02

JAMES C. CAMPBELL
CLERK OF COURT
SUMMIT COUNTY, CO

1. Counsel was ineffective during the sentencing phase of the trial, because counsel didn't file motion or object when the Court sentenced ^{applicant} me to 15 yrs consecutive to ~~your~~ current time.
2. Counsel was ineffective for his failure to investigate the facts surrounding ^{applicant's} plea and whether the initiation of the plea violate the Due Process Clause of the 14th Amendment of the United STATES Constitution and it violates fundamental fairness of the criminal justice system.

Dated
October 4 2017


Wilbert Franklin, Jr.

RECORDED

2017 OCT 26 AM 12:01

JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

Sumter County Clerk of Court
James C. Campbell, Clerk
141 N. Main St.
Sumter, S.C. 29150

RE: Post Conviction Application for filing

Dear Mr. Campbell:

Enclosed please find a PCR application for filing, please return
a stamp filed copy to me.

Very truly yours

Walter J. Campbell

STATE OF SOUTH CAROLINA
COUNTY OF SUMTER

IN THE COURT OF COMMON PLEAS
THIRD JUDICIAL CIRCUIT

Wilbert Franklin, Jr., #229450,

Case No.: 2017-CP-43-2043

Applicant,

**RETURN AND PARTIAL
MOTION TO DISMISS**

v.

State of South Carolina,

Respondent.

Respondent, making its Return to the application for Post-Conviction Relief ("PCR") filed on October 26, 2017, would respectfully show this Court:

I.

Wilbert Franklin, Jr. ("Applicant") is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Sumter County Clerk of Court. In July 2015, the Sumter County Grand Jury indicted Applicant for armed robbery (2015-GS-43-0714). The charge stemmed from an August 16, 2014 robbery of a Kangaroo gas station in Sumter County. ROA 52. Victim Chaunise Carter was working as an assistant manager at the gas station when Applicant came into the store, approached her, and told her to give him the money out of the cash register. ROA 72. Applicant had his hand inside a white bag and held it up, and the victim believed it was a gun. ROA 74. The victim followed Applicant's instructions, opened the cash register, and gave him the cash inside. ROA 75-76. Applicant was identified by witness Walter Robertson, who encountered Applicant that evening at a homeless shelter, after the robbery was reported on the news. ROA 115. Robertson recognized Applicant's clothing and mannerisms, and immediately gave his personal information to law enforcement. ROA 116-17.

Stephen Story, Esquire, represented Applicant. John P. Meadors, Esquire, prosecuted the case. On November 9-12, 2015, Applicant proceeded to a jury trial before the Honorable Maité Murphy. The jury found Applicant not guilty of armed robbery, and guilty of the lesser included offense of strong-armed robbery. Judge Murphy sentenced Applicant to imprisonment for fifteen years, to be served consecutively to the seven year sentence he was already serving for a prior conviction of attempted armed robbery, 2014-GS-24-1815.

Applicant filed a timely notice of appeal, and an appeal was perfected. Robert M. Pachak, Esquire, of the South Carolina Commission on Indigent Defense, filed an Anders¹ brief on Applicant's behalf. After a review, the South Carolina Court of Appeals dismissed Applicant's appeal in an order filed May 24, 2017. The remittitur was issued June 13, 2017.

Attached to this Return and incorporated by reference are the records of the Sumter County Clerk of Court regarding the subject conviction, Applicant's records from the South Carolina Department of Corrections, the Record on Appeal, direct appeal records, and the application. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

In his application for post-conviction relief, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Unconstitutional Sentence
 - a. Consecutive sentence
2. Ineffective Assistance of Counsel
 - a. Failure to have Applicant evaluated for competency; Applicant was incompetent at the time of the crime
 - b. Counsel was ineffective during the sentencing phase of the trial, because counsel didn't file motion or object when the Court sentenced Applicant to 15 years consecutive to current time.

¹ Anders v. California, 386 U.S. 738 (1967).

- c. Counsel was ineffective for his failure to investigate the facts surrounding Applicant's plea and whether the initiation of the plea violate the Due Process Clause of the 14th Amendment of the United States Constitution and it violates fundamental fairness of the criminal justice system.

III.

Respondent submits 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). 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 (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 v. Washington, 466 U.S. 668. First, Applicant must prove that counsel's performance was deficient. Id.; 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). The Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable

probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, 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 (1985).

Respondent submits Applicant can satisfy neither requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Respondent moves to dismiss Applicant's allegation of “Unconstitutional Sentence.” A trial court has broad discretion in imposing criminal sentences within the limits prescribed by law. State v. Franklin, 267 S.C. 240, 226 S.E.2d 896 (1976); Clark v. State, 259 S.C. 378, 192 S.E.2d 209 (1972). Likewise, whether multiple sentences should run consecutively or concurrently is a matter left to the sound discretion of the trial judge. State v. Barton, 325 S.C. 522, 531-32, 481 S.E.2d 439, 444 (Ct. App. 1997) (citing 21 Am.Jur.2d Criminal Law § 552 (1981) (trial court has power to order sentences be served consecutively)).

The courts normally have no discretion to correct a sentence given within statutory limits. To be entitled to relief, Applicant must prove that the alleged excessive sentence was the result of partiality, prejudice, oppression or corrupt motive, or that the sentence constitutes cruel and unusual punishment per se. Clark, Id.; State v. Cogdell, 273 S.C. 563, 257 S.E.2d 748 (1979). Applicant has failed to show his sentence was a result of any of these factors. Accordingly, this Court should summarily dismiss with allegation as being without merit.

V.

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. Any claims not specifically laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing pursuant to §§ 17-27-10 to -160 of the South Carolina Code of Laws and Rule 71.1 of the South Carolina Rules of Civil Procedure. See also Rules 15(a)-(b), SCRCP. All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. See Rule 11, SCRCP. Pro se filings will not be considered at the PCR hearing. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent. See Rule 15(a), SCRCP.

Pursuant to § 17-27-150 of the South Carolina Code of Laws, Applicant may not invoke formal discovery processes to issue subpoenas or otherwise obtain discovery materials unless granted leave from the Court upon a showing of good cause. Furthermore, Respondent requests that all potential exhibits and materials used to produce expert witness testimony be sent to Respondent well in advance of the evidentiary hearing. Respondent 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 Respondent.

VI.

Respondent therefore requests that this Court convene an evidentiary hearing on the allegations of ineffective assistance of counsel. As to all other allegations, Respondent moves for summary dismissal pursuant to § 17-27-70 of the South Carolina Code of Laws on the basis that

there is no genuine issue of material fact which would necessitate an evidentiary hearing and that those allegations should be dismissed as a matter of law.

VII.

Each and every allegation contained within the application not expressly admitted, qualified, or explained in this Return is hereby denied.

VIII.

WHEREFORE, Respondent requests that an evidentiary hearing be held on the claims of ineffective assistance counsel.

Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

JULIE A. COLEMAN
Assistant Attorney General

By 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

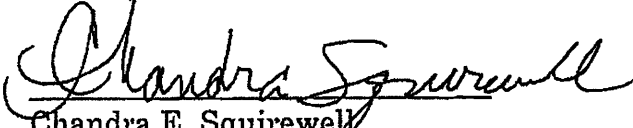
January 31, 2018

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF SUMTER	)	
	)	
	)	2017-CP-43-2043
WILBERT FRANKLIN, JR., #229450)	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Return and Partial Motion to Dismiss in the above-captioned matter on the following person(s) by depositing same in the United States mail, postage prepaid:

Lance S. Boozer, Esquire
 1400 Laurel Street, Suite 4A.
 Columbia, SC 29201

DATED this 31ST day of January, 2018.


 Chandra E. Squirewell
 Legal Assistant For Respondent

STATE OF SOUTH CAROLINA

COUNTY OF SUMTER

Wilbert Franklin, #229450,

Applicant,

v.

State of South Carolina,

Respondent.

RECORDED

IN THE COURT OF COMMON PLEAS
THIRD JUDICIAL CIRCUIT
C/A NO: 2016-CP-43-1875JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.**FIRST AMENDMENT TO PRIOR
APPLICATION FOR PCR**

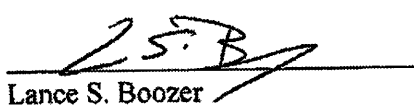
The Applicant makes the following additional claim and amendment to his prior application for post-conviction relief:

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(i) Applicant believes counsel was ineffective for failing to explain the possibility Applicant could be convicted of strong arm robbery at trial. Had Applicant known he could have been convicted of a lesser-included offense at trial, he would have accepted an initial plea offer.

(ii) Applicant alleges counsel failed to explain trial strategy prior to trial and was ineffective for requesting a jury charge for lesser-included offenses.

THE BOOZER LAW FIRM, LLC


Lance S. Boozer

Attorney for Applicant

1400 Laurel Street, Suite 4A

Columbia, SC 29201

Phone: (803) 608-5543

February 15, 2018

RECORDED

2018 FEB 21 PM 4: 28

STATE OF SOUTH CAROLINA

COUNTY OF SUMTER

Wilbert Franklin, #229450,

Applicant,

v.

State of South Carolina,

Respondent.

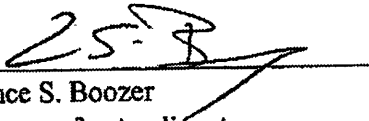
JAMES C. CAMPBELL
 CLERK OF COURT
 SUMTER COUNTY, SC
 COURT OF COMMON PLEAS
 THIRD JUDICIAL CIRCUIT
 C/A NO: 2016-CP-43-1875

CERTIFICATE OF SERVICE

I, the undersigned of the Boozer Law Firm, LLC, Attorney for Applicant, do hereby certify that I served the foregoing First Amendment to Prior Application for PCR upon the persons below-listed by placing a copy, postage prepaid, in the United States Mail, addressed as follows:

Julie Coleman
 Assistant Attorney General
 P.O. Box 11549
 Columbia, SC 29211

THE BOOZER LAW FIRM, LLC


 Lance S. Boozer
 Attorney for Applicant
 1400 Laurel Street, Suite 4A
 Columbia, SC 29201
 Phone: (803) 608-5543
 Fax: (803) 926-3463

Columbia, South Carolina
 February 15, 2018

STATE OF SOUTH CAROLINA)
COUNTY OF SUMTER }

COURT OF COMMON PLEAS

WILBERT FRANKLIN, JR.)
229450

PETITIONER,)

v.)

TRANSCRIPT OF RECORD
17-CP-43-02043

STATE OF SOUTH CAROLINA,)

RESPONDENT.)

March 27, 2018
Sumter, South Carolina

B E F O R E :

THE HONORABLE DEANDREA G. BENJAMIN, JUDGE

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

LANCE S. BOOZER, ESQ.
Attorney for the Petitioner

JULIE COLEMAN, ESQ.
Attorney for Respondent

FRANCES B. RAY, RPR
Circuit Court Reporter

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Closing remarks by Ms. Coleman	37

(There were no exhibits submitted.)

1 MS. COLEMAN: The last case for today is
2 Wilbert Franklin, Jr.

3 THE COURT: All right.

4 MS. COLEMAN: This is Wilbert Franklin,
5 Jr., versus The State of South Carolina, docket
6 number 2017-CP-43-2043. Applicant is presently
7 confined in the South Carolina Department of
8 Corrections pursuant to orders of commitment of the
9 Sumter County Clerk of Court. In July of 2015 the
10 Sumter County grand jury indicted applicant for
11 armed robbery. Stephen Story, Esquire, represented
12 the applicant. John P. Meadors, Esquire, prosecuted
13 the case. On November 9th through the 12th, 2015,
14 applicant proceeded to a jury trial before the
15 Honorable Maite Murphy. The jury found applicant
16 not guilty of armed robbery and guilty of the lesser
17 included offense of strong armed robbery. Judge
18 Murphy sentenced applicant to imprisonment for 15
19 years to be served consecutively to the seven year
20 sentence he was already serving per prior conviction
21 of attempted armed robbery, 2014-GS-24-1815.

22 Applicant filed a timely notice of appeal
23 and an appeal was perfected. Robert M. Pachak,
24 Esquire, of the South Carolina Commission on
25 Indigent Defense filed an Anders brief on

1 applicant's behalf. After review, the South
2 Carolina Court of Appeals dismissed Applicant's
3 appeal in an order filed May 24, 2017. The
4 remittitur was issued June 13th, 2017. Applicant
5 filed a timely application for post-conviction
6 relief on October 26th, 2017, alleging that he was
7 being held in custody unlawfully based on the
8 following allegations: Unconstitutional sentence,
9 consecutive sentence, ineffective assistance of
10 counsel, failure to have applicant evaluated for
11 competency, applicant was incompetent at the time of
12 the crime. Counsel was ineffective during the
13 sentencing phase of the trial because he didn't
14 object when the Court sentenced applicant to 15
15 years consecutive to his current time, and counsel
16 was ineffective for his failure to investigate the
17 facts surrounding his plea.

18 The State filed its return on
19 January 31st, 2018. Applicant filed an amended
20 application on February 15th, 2018, alleging
21 ineffective assistance of counsel for failing to
22 explain the possibility that applicant could be
23 convicted of the lesser included offense of strong
24 arm robbery at trial. Had he known this, he would
25 have accepted an addition plea offer. And

PW - W. FRANKLIN - DIRECT

1 ineffective assistance of counsel for failure to
2 explain trial strategy prior to trial and requesting
3 a jury charge for the lesser included offense.
4 Applicant is present today and is represented by
5 Mr. Lance Boozer.

6 THE COURT: All right.

7 Yes, sir, Mr. Boozer.

8 MR. BOOZER: Thank you, Your Honor, if it
9 pleases the Court, we go ahead and call Mr. Franklin
10 to the stand.

11 THE CLERK: Place your left hand on the
12 Bible, raise your right hand. State your name.

13 THE WITNESS: Wilbert Franklin.

14 WHEREUPON,

15 **WILBERT FRANKLIN,**
16 having been duly sworn by the Clerk, testified
17 as follows:

18 THE CLERK: Thank you much. Step around,
19 watch your step coming up the ramp. State your name
20 and spell your last name for the record.

21 THE WITNESS: Wilbert Franklin,
22 F-R-A-N-K-L-I-N.

23 **DIRECT EXAMINATION**

24 BY MR. BOOZER:

25 Q Mr. Franklin, how are you doing today?

PW - W. FRANKLIN - DIRECT

1 A Fine.

2 Q All right. If you would, please just keep your
3 voice up and speak clearly so that everyone can hear
4 you and madam court reporter can take down
5 everything you're saying, okay?

6 A Okay.

7 Q All right. Mr. Franklin, do you know why we're
8 here today?

9 A Yes.

10 Q All right. Why is that?

11 A I filed for post-conviction relief.

12 Q Okay. Now you're currently serving a 15 year
13 sentence for strong arm robbery consecutive to a
14 prior attempted robbery sentence?

15 A Yes, sir.

16 Q All right. And originally you were charged with
17 armed robbery?

18 A Yes.

19 Q Now you and I have certainly had discussions
20 about what this court can do for you; is that right?

21 A Yes, sir.

22 Q All right. And you understand that the only
23 thing that this Court can do for you is to grant you
24 a new trial on this strong arm robbery, on the
25 strong arm robbery?

PW - W. FRANKLIN - DIRECT

1 A Yes.

2 Q All right. And you understand that you would go
3 back and potentially face a trial on that charge and
4 that you can be found not guilty, or of course
5 there's always a risk you can, you can get either
6 the same sentence you got before or more time than
7 what you have left to serve on your sentence now.

8 A Yes.

9 Q And knowing that, do you still wish to go forward
10 with your PCR?

11 A Yes.

12 Q Okay. Who represented you back in the trial?

13 A Stephen Story.

14 Q All right. And you did have a trial, is that
15 what you said?

16 A Yes.

17 Q Now you filed, let's just kind of frame your
18 allegations here. You originally filed your
19 application stating that you received an
20 unconstitutional sentence and that your lawyer was
21 ineffective for failing to have you evaluated, I
22 guess, to determine your competency at the time of
23 the crime. Are those some of your allegations?

24 A Yes, sir.

25 Q All right. And you've heard Madam Attorney

PW - W. FRANKLIN - DIRECT

1 General indicate that you filed an amendment through
2 me that you believe your lawyer was ineffective for
3 failing to explain the possibility you can be
4 convicted of strong arm robbery at trial. Is that
5 one of your allegations?

6 A Yes, sir.

7 Q All right. And had you known you could have been
8 convicted of that lesser included offense you would
9 have accepted an initial plea offer?

10 A Yes.

11 Q All right. You've also got an allegation that
12 your lawyer failed to explain the trial strategy to
13 you and was ineffective for requesting a lesser
14 included. Is that an allegation?

15 A Yes.

16 Q All right. How many times did you meet with
17 Mr. Story prior to your trial?

18 A Twice.

19 Q All right. Where did you meet with him?

20 A In this building right here.

21 Q Okay. Were you out on bond or, tell me about
22 that.

23 A No, I wasn't out on bond, I was in custody.

24 Q All right. Prior to your trial ---

25 A I met him --- excuse me.

PW - W. FRANKLIN - DIRECT

1 Q Go ahead.

2 A But I met him at the county. I think he came to
3 the county jail to meet me one time and then he met
4 me over here the second time.

5 Q Okay. Prior to your trial was there a plea
6 offer?

7 A Yes.

8 Q What was the plea offer?

9 A It was, they wanted me to plead guilty to armed
10 robbery and they were supposed ten years, run it
11 concurrent with the time that I was already serving.

12 Q All right. So what — the time that you were
13 already serving, what sentence was that?

14 A That was on another charge for attempted armed
15 robbery.

16 Q And how much time does that sentence carry?

17 A Seven years.

18 Q So you would have gotten ten on pleading on the
19 armed robbery?

20 A Right.

21 Q And it would have run concurrent with the seven?

22 A Right.

23 Q As it stands right now with your sentence that
24 you received as a result of the trial, when is your
25 max-out date?

PW - W. FRANKLIN - DIRECT

1 A As a result of the trial my max-out date is
2 September 2027.

3 Q Okay. Had you taken the plea offer to the armed
4 robbery that you indicated was ten years, what would
5 your — do you know about when your max-out date
6 would have then been?

7 A It would have been around 2021, 2022, one of
8 those, somewhere around there.

9 Q Okay. And did you reject that plea offer?

10 A Yes, sir.

11 Q Why did you reject that plea offer?

12 A Because I — I knew that I could beat the charge
13 that I was charged with. I was charged with armed
14 robbery so I really couldn't figure out why they
15 wanted me to go to trial for armed robbery, but I
16 knew that I could beat that charge. And I asked my
17 attorney can I just go to trial for armed robbery
18 'cause I knew I could beat, I knew that they didn't,
19 they really didn't have any evidence on me for the
20 armed robbery charge so that's why I asked him could
21 I go to trial just for armed robbery; he told me
22 yes.

23 Q Okay. Prior to the trial were you under the
24 impression that you were going to trial just for
25 armed robbery, that the only option the jury could

PW - W. FRANKLIN - DIRECT

1 consider was you're either guilty or not guilty of
2 armed robbery?

3 A Right.

4 Q Did you understand, or did you have any
5 information that you could be convicted of strong
6 armed robbery?

7 A No.

8 Q Okay. Had you known you could be convicted of
9 strong arm robbery which is what you got convicted
10 of, would you have gone to trial or would you have
11 taken that initial plea offer?

12 A I wouldn't have went to trial for strong arm
13 robbery because I already admitted doing it.

14 Q Okay. Let's talk about this. Have you reviewed
15 a copy of your trial transcript ever?

16 A I got one in the mail; I hadn't really.

17 Q Do you recall what happened at your trial?

18 A Yes.

19 Q Okay.

20 MR. BOOZER: Your Honor, I'm gonna look at
21 page 60 of the trial transcript.

22 THE COURT: Yes, sir.

23 BY MR. BOOZER:

24 Q And Mr. Franklin, at trial do you recall your
25 lawyer in his opening statement indicating, "My

PW - W. FRANKLIN - DIRECT

1 client walked in the Kangaroo Convenience Store at
2 West Irby Street and he robbed it, he did it. He
3 walked in the store and told the cashier to open up
4 the register, and he took away the money." And then
5 he says, "So what are we doing here, why are we
6 here, why are we having this trial? Because while
7 he may have committed a robbery, he did not do it
8 armed because when he walked in that store he was
9 not armed with a gun, knife, or any other kind of
10 weapon but a plastic bag." Did you know that prior
11 to trial your lawyer was going to admit to the jury
12 that you had robbed the convenience store?

13 A No.

14 Q Y'all had never had any sort of discussion?

15 A No, he ain't tell me he was gonna say nothing
16 like that.

17 Q Okay.

18 MR. BOOZER: Your Honor, the next page I'm
19 gonna reference, page 224 beginning at line 20.

20 BY MR. BOOZER:

21 Q On Page 224 the Solicitor in their closing, they
22 say, "I submit not guilty is not an option.

23 Mr. Story agrees with that. The defendant agrees
24 with that, he's telling you I'm guilty. He said,
25 I'm just guilty of this." So it was clear — at

PW - W. FRANKLIN - DIRECT

1 that point didn't it become clear that you could
2 also be convicted of strong arm robbery, that it
3 couldn't be all or nothing?

4 A No.

5 Q Let me ask you that again. At this point, and
6 you took the stand actually at trial, right?

7 A Yes.

8 Q Did you feel you needed to take the stand?

9 A Yeah, I felt that I had to take the stand.

10 Q Why is that?

11 A Because my attorney just got finished telling the
12 people that I just, got finished telling the jury
13 that I did the crime, that I was, that I was on
14 trial for. Well, you know, you never know how a
15 jury gonna think; but when he said that, I did it, I
16 felt like I had to go up there and say something.

17 Q Had he not said you did it and admitted you did
18 it, would you have taken the stand?

19 A No.

20 Q Okay. Did your attorney prior to trial explain
21 to you that you could be convicted of strong arm
22 robbery at trial and not just either the armed
23 robbery or not guilty?

24 A No, he didn't.

25 Q Well, do you know, did you have any discussion

PW - W. FRANKLIN - DIRECT

1 with your attorney about what the trial strategy
2 would be?

3 A No.

4 Q Okay. Do you have any idea prior to trial, or
5 did you have any idea what, how the case would go
6 and what your lawyer would present?

7 A No.

8 Q Okay. So had you known at the time that you
9 could be convicted of the lesser included, the
10 strong arm robbery, you would have accepted that
11 initial plea offer?

12 A It wouldn't have been no point in me going to
13 trial for a strong arm robbery.

14 Q Okay. Let's touch on your allegations that you
15 felt like — well, let me ask you this, did your
16 lawyer explain to you that if you went to trial and
17 you were convicted, that you can get a consecutive
18 sentence?

19 A No, only thing we really discussed was when I
20 asked him could I just go on trial for armed
21 robbery, he said yes. So I told him, well, I want
22 to go to trial, so he told me that he didn't want to
23 see me get 30 years 'cause the armed robbery carry
24 30 years. So I was like, well, I don't, I don't
25 think I get convicted of that so I'll go to trial.

PW - W. FRANKLIN - DIRECT

1 So that's how, basically how we end up going to
2 trial.

3 Q Okay. Let's touch on your other allegations, if
4 these are still ones you want to go forward on. As
5 far as you believe your lawyer should have
6 investigated about your competency at the time of
7 the crime, explain that to the Court.

8 A You know, at the time I told him that I was, that
9 I had a drug problem and so my actions affected
10 my — actually, the drugs affected my
11 decision-making process so. After I had somebody to
12 help me with my post-conviction application I really
13 don't, didn't know too much about. I don't know
14 nothing about the law so I had somebody to help me
15 and so they figured that because I was on drugs at
16 the time that I should have had a competency test to
17 see was I competent enough to stand trial.

18 Q Okay. Now obviously we've covered the part about
19 you going to trial and not being aware you could be
20 convicted of the lesser included and this, obviously
21 your day in court. Is there anything else that we
22 haven't talked about that is included in your PCR
23 application that you want Her Honor to know about?
24 I think we've covered everything. I just want to
25 make sure you're comfortable as well.

PW - W. FRANKLIN - DIRECT

1 A Yeah. I can't bring up nothing that's not in the
2 PCR application, right, the application?

3 Q Well, tell — let's see, tell me what you're
4 about to tell the Court.

5 A Well, really what I was wondering, I think I
6 might have told, talked to you about this too, about
7 me being indicted for a armed robbery charge when
8 there was really no evidence to point to armed
9 robbery charge. I was, you know, I think I talked
10 to you about that and...

11 Q So you believe that you weren't properly
12 indicted?

13 A I don't know if I can say properly indicted; but
14 I don't know how they can get an indictment, you
15 know, because you know, I think that in order for
16 you to be indicted on something they got to have
17 some evidence to support the charge, right, so.

18 MS. COLEMAN: Your Honor, I'd object to
19 that. It's outside the scope of his allegations.

20 THE COURT: All right. I'll overrule the
21 objection.

22 MR. BOOZER: Thank you, Your Honor.

23 BY MR. BOOZER:

24 Q Anything else, though, as far as your PCR
25 application?

PW - W. FRANKLIN - DIRECT

1 A That's all.

2 Q Is that it?

3 A Yes, sir.

4 Q Please answer any questions the State may have
5 for you.

6 A Yes.

7 **CROSS-EXAMINATION**

8 BY MS. COLEMAN:

9 Q Good morning.

10 A Good morning.

11 Q You gave a written statement to law enforcement
12 admitting that you robbed the store; is that right?

13 A Yeah.

14 Q Okay. And you testified at trial and told the
15 jury that you robbed the store, right?

16 A Yes.

17 Q And you told them that you didn't have a gun,
18 right?

19 A Yes.

20 Q Okay. So you got to tell your side of the story
21 at trial?

22 A Yes.

23 Q And you told the jury that you were a little
24 intoxicated at the time of the robbery; is that
25 right?

PW - W. FRANKLIN - DIRECT

1 A Yes.

2 MS. COLEMAN: Judge, that's on page 169
3 just for your reference.

4 BY MS. COLEMAN:

5 Q But you admitted that you were not falling down
6 drunk when you robbed the store, right?

7 A Right.

8 Q Okay. But you testified today that you were on
9 drugs at the time as well?

10 A Yes.

11 Q What drugs were those?

12 A I was on cocaine and alcohol.

13 Q When did you take the cocaine before the crime,
14 do you remember?

15 A That day.

16 Q Okay. And you did that voluntarily?

17 A Yes.

18 Q Nothing further. Thank you.

19 THE COURT: Yes, sir.

20 MR. BOOZER: Nothing further, Judge.

21 THE COURT: All right, you may step down.

22 MR. BOOZER: Nothing further on behalf of
23 applicant, Your Honor.

24 THE COURT: All right, thank you.

25 MS. COLEMAN: The State calls Stephen

RW - S. STORY - CROSS

1 Story.

2 THE CLERK: State your name.

3 THE WITNESS: Stephen Russell Story.

4 WHEREUPON,

5 **STEPHEN R. STORY,**

6 having been duly sworn by the Clerk, testified
7 as follows:

8 THE CLERK: Thank you much, step around
9 please. State your name for the record and spell
10 your last name please.

11 THE WITNESS: Stephen Story, S-T-O-R-Y.

12 **DIRECT EXAMINATION**

13 BY MS. COLEMAN:

14 Q Good morning, Mr. Story.

15 A Good morning.

16 Q How long have you been practicing law?

17 A Almost five years.

18 Q I think that question trips people up the most.

19 Do you recall when you were appointed or retained in
20 this case?

21 A Not exactly. I believe it was, if you'll allow
22 me to consult my notes very quickly. It was prior
23 to October of 2014.

24 Q Okay. And were you appointed to the case?

25 A Yes, I was.

RW - S. STORY - CROSS

1 Q Okay. How many times did you meet with the
2 applicant before his trial?

3 A Before trial I believe it was three times, once
4 in September which was at this courthouse, and then
5 another time prior to the trial again at the
6 courthouse. And then I do believe we met at the
7 Lex— I mean, in Sumter County Detention Center,
8 Sumter-Lee.

9 Q Did the applicant cooperate with you during the
10 course of your representation?

11 A Yes.

12 Q Okay. Did you file any Brady or Rule 5 motions?

13 A I did.

14 Q And did you review the discovery material with
15 the applicant?

16 A Yes, I did.

17 Q Did he seem to understand the discovery against
18 him, the State's evidence against him?

19 A To me he did, yes.

20 Q Okay. What was the State alleging that applicant
21 had done?

22 A The State alleged that he went into the gas
23 station and had removed, had essentially made a
24 representation of a weapon in a plastic bag that he
25 was holding when he went into the store and that the

RW - S. STORY - CROSS

1 victim, I guess, reasonably believed was a gun and
2 so they charged him, they were alleging armed
3 robbery.

4 Q And what was the State's evidence against him, or
5 what evidence did they present at the trial?

6 A Well, there was the victim, the cashier's
7 testimony. She testified essentially that she
8 believed that he came into the store with a plastic
9 bag, that he had a gun in a plastic bag. There was
10 a video of the store, surveillance video, that had
11 several different angles as well as audio and that
12 was pretty much it. That was all the evidence that
13 the State presented in that case.

14 Q Did the applicant confess, give a confession to
15 law enforcement?

16 A He did.

17 Q Okay. Was that used at trial?

18 A Not by the State.

19 Q Okay. What was your trial strategy?

20 A It was, very simply, to have him found not guilty
21 of the armed robbery and to essentially concede the
22 lesser included offense of a strong arm robbery.

23 Q Did you discuss this trial strategy with the
24 applicant?

25 A Yes, I did.

RW - S. STORY - CROSS

- 1 Q Before the trial?
- 2 A Yes, I did.
- 3 Q Did he seem to understand that discussion?
- 4 A He did.
- 5 Q Did he agree with that decision?
- 6 A Yes, I did.
- 7 Q Okay. In your opinion were you successful in
- 8 your trial strategy?
- 9 A Yes.
- 10 Q Okay. And why is that?
- 11 A Well, because he was found, he was acquitted of
- 12 the armed robbery.
- 13 Q What were the applicant's version of the facts?
- 14 A Well, they were pretty similar to our trial
- 15 strategy, that he admitted that he went in the store
- 16 and told the cashier to open the cash register and
- 17 he took money out. And he gave a statement to law
- 18 enforcement that was, and that's essentially what he
- 19 told me as well.
- 20 Q Did you explain to applicant before the trial the
- 21 elements of the lesser included offense of strong
- 22 arm robbery?
- 23 A Yes, I did.
- 24 Q Did he understand those?
- 25 A I believe he did.

RW - S. STORY - CROSS

1 Q And did you explain the difference between strong
2 arm robbery and armed robbery?

3 A As far as the elements go?

4 Q Yes.

5 A Yes, I did.

6 Q Was there, if any, discussion about not
7 requesting a lesser included offense?

8 A No.

9 Q Did you discuss any other possible defenses with
10 the applicant?

11 A We -- yes, we -- I essentially proposed based on
12 after we had reviewed all the discovery and we had
13 discussed it anyway. I said, look, you're on video
14 and you gave a statement, but I think we have a very
15 strong case essentially to find you, you know, for
16 the jury to acquit you of the armed robbery. And I,
17 you know, I did say you could be found guilty of
18 this lesser included strong arm robbery. You know,
19 and I want it to be your decision, but you know, I
20 felt strongly that we would not be successful if we
21 tried to get a straight acquittal. I think, I hope
22 that answers your question.

23 Q Yes. And how would you characterize the State's
24 evidence against him on the armed robbery charge?

25 A There was some evidence, but it was pretty weak.

RW - S. STORY - CROSS

1 Q And what about the evidence against him for
2 strong arm robbery?

3 A It was overwhelming.

4 Q Okay. What kind of investigating did you do in
5 this case?

6 A Besides talking to my client, not very much.

7 Q Okay. And why did you feel the need to not
8 investigate much?

9 A Well, it was, the entire time I was reviewing the
10 evidence and talking with my client I thought we
11 would eventually get a plea offer that he would be
12 satisfied with, that the State would offer him a
13 strong arm robbery of some kind and we would get the
14 case resolved that way. I really, I mean I, you
15 know, was thinking about trial of course, but my
16 strategy was to try to plead this case out before it
17 went to trial.

18 Q Was there ever a plea offer from the State?

19 A Not that I recall.

20 Q Okay. The applicant testified a moment ago about
21 a plea offer for concurrent time for ten years. Is
22 that, did you hear his testimony on that?

23 A I did.

24 Q Do you recall a plea offer?

25 A I don't recall that.

RW - S. STORY - CROSS

1 Q Okay. If you had received a plea offer of that
2 nature from the State, what would you have done?

3 A I would have communicated it to my client.

4 Q And have you looked through your file today?
5 Have you brought your file with you?

6 A Yes, I have.

7 Q Are you aware of any notes in your file
8 indicating a plea offer of that nature?

9 A No.

10 Q Did you have enough time to prepare for trial?

11 A Yes.

12 Q Applicant alleges in his application that you
13 should have had him evaluated for mental competency
14 because he was not competent at the time of the
15 trial or was not criminally responsible. Did you
16 have him evaluated?

17 A No, I did not.

18 Q Why not?

19 A I did not -- simply talking to him I didn't feel
20 like an evaluation was necessary or appropriate.

21 Q Did he express to you, or did he communicate to
22 you any information about him being intoxicated at
23 the time of the crime?

24 A I don't specifically remember him saying he was
25 intoxicated at the time of the crime. We did

RW - S. STORY - CROSS

1 discuss that at the time the incident he was
2 drinking and using drugs heavily. I just don't
3 recall him saying that he was intoxicated that
4 morning or anything like that.

5 Q Okay. Did he ever mention using cocaine that
6 day?

7 A No, not that I recall.

8 Q Okay. If you had some kind of evidence that he
9 was intoxicated with alcohol or cocaine at the time
10 of the crime, would that have aided in your defense
11 at the trial?

12 A No, I don't believe so.

13 Q Why not?

14 A I don't believe that voluntary intoxication is a
15 defense to that crime.

16 Q Okay. Were you ever concerned about his
17 competency to stand trial?

18 A No.

19 Q Were there ever any indications that he didn't
20 comprehend or understand your discussions on the
21 case?

22 A No.

23 Q Thank you, nothing further.

24 **CROSS-EXAMINATION**

25 BY MR. BOOZER:

RW - S. STORY - CROSS

1 Q Mr. Story, how are you?

2 A I'm doing well.

3 Q Good. You indicated that you don't believe that
4 there was a plea offer. Is that your recollection?

5 A That's my recollection.

6 Q Okay. Did you bring your file with you today?

7 A I did.

8 Q If you wouldn't mind just taking a moment and
9 looking through that and see if you can find
10 anything that maybe reflects whether or not there
11 was a plea offer.

12 A So I looked through my notes from our meeting in
13 September and then in our discussion in November
14 prior to trial, and I don't have any notes about any
15 sort of plea offer in this case.

16 Q Okay. Had he been offered a ten year offer for
17 armed robbery concurrent to his current sentence, is
18 that something you would have recommended he accept?

19 A I'm not sure. I certainly would have discussed
20 it with him and talked about the possibilities of
21 being found guilty of a lesser included or, you
22 know, I would have had some discussions about parole
23 eligibility and a violent serious crime, that sort
24 of thing; and I would have, I mean, hypothetically
25 speaking I would have left that decision up to him.

RW - S. STORY - CROSS

1 Q Okay. You'd indicate the trial strategy, I
2 think, was to get a not guilty on the armed robbery
3 and concede to strong arm robbery. Was that the
4 strategy?

5 A Correct, yes.

6 Q All right. And you said that applicant agreed
7 with that?

8 A He did, yes.

9 Q What was — what was the exact discussion with
10 him, if you can recall?

11 A I mean, I can't tell you exactly the words that
12 would have been exchanged. When we initially met in
13 September we didn't have a plea offer, but I did
14 explain to him the elements of armed robbery and I
15 went ahead and explained to him what a strong arm
16 robbery was and told him the sentencing ranges for
17 both of those. And I think at the time to the best
18 of my recollection we, you know, discussed him and
19 what was going on in his life a good bit and we
20 discussed trying to get a plea offer and because he
21 had sent me letters basically saying he wanted to
22 get this case resolved, you know, that he was
23 already doing a sentence and to see if we could come
24 to a resolution that way. I, and I had him, this is
25 right prior before we actually went to trial in

RW - S. STORY - CROSS

1 November, basically sign a release saying that I
2 could concede in my opening statement that he had
3 committed a robbery and that was so we could get him
4 acquitted of the armed robbery.

5 Q You're certain that there was never any sort of
6 written plea offer?

7 A I'm, as far as my recollection and my notes, no.
8 I mean, there was never a plea offer.

9 Q Do you have any recollection, and I obviously
10 probably know the answer to this based on that
11 answer, but do you have any recollection as to
12 having a discussion with Mr. Franklin in that if you
13 don't take this plea offer we're gonna have to go to
14 trial, right before the trial occurred? Do you
15 remember anything like that?

16 A No, I don't.

17 Q Okay. You had indicated that earlier on direct
18 examination that you thought there was a good chance
19 he could be acquitted of the armed robbery and that
20 he could be found guilty of the strong arm robbery?

21 A Yes.

22 Q Okay. I mean, it was based on how the case was
23 presented, it was stronger than he could be found
24 guilty of strong arm robbery. Essentially it was
25 either he was gonna be found guilty of armed robbery

RW - S. STORY - CROSS

1 or strong arm robbery, right?

2 A Sure, yeah.

3 Q Okay. Based on the way the case was presented,
4 was there any way the jury could have found him not
5 guilty of anything?

6 A I think the chances of, I mean, do you mean if we
7 had just gone for straight acquittal if I had —

8 Q No, as presented and requesting a lesser included
9 and the judge charging the jury with that, that
10 really there were three options: Guilty of strong
11 arm robbery, guilty of armed robbery, or not guilty.
12 Do you think there was any way the jury could have
13 found him just completely not not guilty based on
14 the presentation of the case in conceding that a
15 robbery did occur?

16 A Well, I've seen some juries do crazy things, but
17 the chances were extremely slim.

18 Q Okay. Do you think he was under the impression
19 going into trial that it was either guilty of armed
20 robbery or not guilty?

21 A No.

22 Q Why do you think that?

23 A Because we had, we had discussed the trial
24 strategy at length.

25 Q Did you discuss with him that he could receive

RW - S. STORY - CROSS

1 potentially a consecutive sentence to what he was
2 currently doing time for?

3 A Yes, I did.

4 Q Okay. Did you ever approach the solicitor's
5 office with, hey, let's try and work something else?

6 A Yes, I did.

7 Q Okay. What did you go to the solicitor's office
8 with?

9 A Well, initially Mr. Franklin had written me a
10 letter saying that he would take anything under
11 eight years was what I remember. And he wanted the
12 strong arm, he wanted basically eight years or less
13 on a strong arm robbery, try to get me the best
14 offer you can. So that's what I went to the
15 solicitor with first, told me no. So then my
16 strategy was basically, well, let's try to get him
17 an, you know, to offer us a strong armed robbery,
18 and I don't recall ever getting that plea offer
19 either.

20 Q Okay. Did you advise Mr. Franklin to take the
21 stand, or what was your advice regarding that?

22 A Well, the only way we can get his discussion with
23 law enforcement in, because with law enforcement he
24 gave a statement where he essentially said, yes, I
25 did, but I didn't have a gun, I didn't mean to hurt

RW - S. STORY - CROSS

1 anybody, that sort of thing. The State wasn't going
2 to present that, they didn't. So the only way we
3 could get that statement in was for him to take the
4 stand so we discussed that he could be impeached
5 with prior felonies and that sort of thing, but I
6 believe I did encourage him to take the stand.

7 Q On page 2 of 7 of the transcript the Court asked
8 armed robbery, strong arm robbery, anything else out
9 of the ordinary; and you indicate, the only request
10 I had was strong arm robbery. And this is, I guess,
11 in discussion with the jury charges. Was there any
12 way to have the jury only consider the armed robbery
13 that you know of, were they gonna get a strong arm
14 charge whether you objected or not?

15 A I mean, you're talking hypothetically. I guess
16 if the Solicitor had forgotten to ask for it, or —
17 I mean, they sent us, I think, the judge's clerk
18 sent us her proposed charges. And I guess if it had
19 been left out or, I don't know, something like that,
20 just theoretically I guess it was possible. So
21 hopefully that answers your question.

22 Q Theoretically you could have asked the judge,
23 hey, we only want you to charge the jury on armed
24 robbery and that's it.

25 A I could have asked that, but it would have been

RW - S. STORY - REDIRECT

1 very disingenuous given my opening statement and
2 closing statement too at that point I think.

3 Q Okay.

4 MR. BOOZER: Beg the Court's indulgence,
5 Your Honor.

6 Thank you, Mr. Story, that's all the
7 questions I have.

8 **REDIRECT EXAMINATION**

9 BY MS. COLEMAN:

10 Q Mr. Story, do have a copy of the trial transcript
11 in front of you?

12 A I have a copy of the trial transcript, yes.

13 Q Okay. Would you please turn to page 245 and
14 starting on line 20 of page 245. This is during
15 your mitigation and sentencing of the court. And
16 you address the court and you say, "And Your Honor,
17 we would have obviously pleaded guilty to strong arm
18 robbery if we had had the opportunity and so we just
19 ask you to take that into consideration and to
20 sentence him to a concurrent sentence to what he's
21 currently serving." Do you recall saying this to
22 the court during sentencing?

23 A Yes, I do.

24 Q And based on this does, do you recall any other,
25 any plea offers at all from the State before the

RW - S. STORY - RECROSS

1 trial?

2 A No.

3 Q Okay. And did you ask the court for a concurrent
4 sentence?

5 A Apparently I did, yes.

6 Q Okay. Was there any reason to object when the
7 trial court chose to sentence him consecutively
8 rather than concurrently?

9 A No.

10 Q Okay. And why not?

11 A Because there were facts in evidence that he had
12 committed a strong arm robbery.

13 Q Okay.

14 A Oh, I'm sorry, you said to object when she had,
15 when sentenced him consecutively.

16 Q Yes.

17 A I apologize. No, there was no reason in my mind
18 to object.

19 Q Thank you. Nothing further.

20 MR. BOOZER: Just briefly, Judge.

21 **RECROSS-EXAMINATION**

22 BY MR. BOOZER ATTORNEY:

23 Q As Madam Attorney General points out, you told
24 the court: "Your Honor, we would have obviously
25 pleaded guilty to strong arm robbery if we had the

RW - S. STORY - RECROSS

1 opportunity." Were you in the courtroom today for
2 Mr. Franklin's testimony?

3 A Yes, I was.

4 Q Is it, based on that testimony there's an
5 allegation out there that there was an offer for
6 armed robbery, not strong arm robbery, are you aware
7 of that?

8 A I heard that, yes.

9 Q Okay. So in here in your colloquy with the Court
10 you're stating, if we had the opportunity to plead
11 guilty to strong arm robbery we would have. That
12 doesn't preclude that there was maybe an offer out
13 there for armed robbery, does it?

14 A No, it does not.

15 Q Because if that were the case you would have said
16 we would have had an opportunity to enter a plea, we
17 would have done it as to concurrent time, is that
18 safe to say?

19 A Probably.

20 Q Okay. Does that change your mind that there may
21 have been an armed robbery offer out there
22 initially?

23 A Not in my mind, no.

24 Q Okay. Thank you. No further questions.

25 THE COURT: All right, any other

1 questions?

2 You may step down.

3 MS. COLEMAN: No other questions. The
4 State has no further witnesses.

5 MR. BOOZER: Nothing further, Your Honor.

6 THE COURT: I'll be glad to hear from you
7 all. Yes, sir.

8 MR. BOOZER: Just briefly, Your Honor. If
9 it pleases the Court, I'll confine sort of my
10 argument to really the narrow issue of the
11 allegation about conceding guilt to strong arm
12 robbery and the allegation with regard as it relates
13 to, I guess, not accepting initial plea offer.
14 Obviously based on the testimony there's a bit of a
15 controversy about whether there was a plea offer or
16 not. Interestingly, Mr. Franklin had a very
17 specific recollection of a ten year offer to armed
18 robbery concurrent with his sentence that he's also
19 currently serving now. It was not an offer to
20 strong arm robbery; it was an offer to armed
21 robbery. Counsel indicates there was no offer.
22 Your Honor, we find the applicant's testimony
23 credible. That would kind of line up to why he
24 would have declined that and gone to trial and risk
25 an all or nothing sort thing, armed robbery or

1 nothing, which is what he said he was under the
2 impression he would be facing.

3 Your Honor, I think that my client's
4 position would be he didn't understand that he could
5 be found guilty of strong arm robbery at trial. Had
6 he known that, he indicates he would have taken that
7 initial plea offer and that's the reason he believes
8 his application should be granted. Thank you.

9 THE COURT: Thank you.

10 Yes, ma'am.

11 MS. COLEMAN: Your Honor, I think the
12 testimony today from trial counsel was credible and
13 showed that there never was a plea offer from the
14 State. If there had been, he indicated he would
15 have communicated it and discussed it with his
16 client and given him the opportunity to accept that
17 or not. The trial strategy, the trial counsel
18 testified about today and presented at the trial I
19 believe is a valid strategy. He indicated that he
20 thought the evidence for armed robbery was very weak
21 and they could easily win; but in order to do that,
22 he believed it was best to concede to strong arm
23 robbery and he believed that the State's evidence of
24 strong arm robbery was overwhelming. So this was a
25 valid trial strategy that he presented. The

1 testimony shows that he discussed this trial
2 strategy with the applicant and the applicant agreed
3 and was aware of everything that he was going to do.

4 And Your Honor, regarding the criminal
5 responsibility, I don't think applicant has proven
6 that he was not criminally responsible at the time
7 of the crime or trial counsel should have had him
8 evaluated for that. If anything, he was voluntarily
9 intoxicated at the time of the crime which is not a
10 valid defense in criminal law to this charge. We
11 would ask Your Honor to deny post-conviction relief.
12 Thank you.

13 THE COURT: All right. I will take a look
14 at the transcript and get something back to you all
15 shortly.

16
17 * * * END OF REQUESTED TRANSCRIPT * * *

18
19
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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 5th day of August, 2018.

Frances B. Ray

FRANCES B. RAY, RPR

RECORDED

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF SUMTER 2018 APR 16 PM 4:10) 3RD JUDICIAL CIRCUIT

Wilbert Franklin, Jr., #229450, JAMES C. CAMPBELL 2017-CP-43-2043
CLERK OF COURT

SUMTER COUNTY, S.C.

Applicant,)

v.)

ORDER OF DISMISSAL

State of South Carolina,)

Respondent.)

This matter comes before the Court by way of a post-conviction relief (PCR) application filed on October 26, 2017. Respondent submitted its Return and Partial Motion to Dismiss on January 31, 2018. An evidentiary hearing was held March 27, 2018, at the Sumter County Courthouse. Applicant was present at the hearing and was represented by Lance S. Boozer, Esquire. Respondent was represented by Assistant Attorney General Julie A. Coleman of the South Carolina Attorney General's Office.

At the evidentiary hearing, Applicant testified on his own behalf. Respondent presented testimony from Stephen Story, Esquire ("Trial Counsel"). This Court had before it the records of the Sumter County Clerk of Court regarding the subject convictions, Applicant's records for the Department of Corrections, appellate records, the Record on Appeal, and the pleadings. The Court finds as follows:

I. PROCEDURAL HISTORY

The records before this Court indicate Wilbert Franklin, Jr. ("Applicant") is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Sumter County Clerk of Court. In July 2015, the Sumter County Grand Jury indicted Applicant for armed robbery (2015-GS-43-0714). The charge stemmed from an August 16, 2014

robbery of a Kangaroo gas station in Sumter County. ROA 52. Victim Chaunise Carter was working as an assistant manager at the gas station when Applicant came into the store, approached her, and told her to give him the money out of the cash register. ROA 72. Applicant had his hand inside a white bag and held it up, and the victim believed it was a gun. ROA 74. The victim followed Applicant's instructions, opened the cash register, and gave him the cash inside. ROA 75-76. Applicant was identified by witness Walter Robertson, who encountered Applicant that evening at a homeless shelter, after the robbery was reported on the news. ROA 115. Robertson recognized Applicant's clothing and mannerisms, and immediately gave his personal information to law enforcement. ROA 116-17.

Stephen Story, Esquire, represented Applicant. John P. Meadors, Esquire, prosecuted the case. On November 9-12, 2015, Applicant proceeded to a jury trial before the Honorable Maité Murphy. The jury found Applicant not guilty of armed robbery, and guilty of the lesser included offense of strong-armed robbery. Judge Murphy sentenced Applicant to imprisonment for fifteen years, to be served consecutively to the seven year sentence he was already serving for a prior conviction of attempted armed robbery, 2014-GS-24-1815.

Applicant filed a timely notice of appeal, and an appeal was perfected. Robert M. Pachak, Esquire, of the South Carolina Commission on Indigent Defense, filed an Anders¹ brief on Applicant's behalf. After a review, the South Carolina Court of Appeals dismissed Applicant's appeal in an order filed May 24, 2017. The remittitur was issued June 13, 2017.

¹ Anders v. California, 386 U.S. 738 (1967).

II. ALLEGATIONS

In his current application, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Unconstitutional Sentence
 - a. Consecutive sentence
2. Ineffective Assistance of Counsel
 - a. Failure to have Applicant evaluated for competency; Applicant was incompetent at the time of the crime
 - b. Counsel was ineffective during the sentencing phase of the trial, because counsel didn't file motion or object when the Court sentenced Applicant to 15 years consecutive to current time.
 - c. Counsel was ineffective for his failure to investigate the facts surrounding Applicant's plea and whether the initiation of the plea violate the Due Process Clause of the 14th Amendment of the United States Constitution and it violates fundamental fairness of the criminal justice system.

Applicant filed an amended application on February 15, 2018, adding the following allegations:

- (i) Applicant believes counsel was ineffective for failing to explain the possibility Applicant could be convicted of strong arm robbery at trial. Had Applicant known he could have been convicted of a lesser-included offense at trial, he would have accepted an initial plea offer
- (ii) Applicant alleges counsel failed to explain trial strategy prior to trial and was ineffective for requesting a jury charge for lesser-included offenses.

III. SUMMARY OF RELEVANT TESTIMONY PRESENTED

Applicants' testimony

At the evidentiary hearing, Applicant testified that he met with Trial Counsel two times before the trial while he was in custody. He stated the State offered him a plea offer for armed robbery for a ten year sentence, which would run concurrently to his prior sentence for another crime. He testified that he rejected the offer because he knew he could beat the armed robbery charge at trial. Applicant testified he thought he was only going to trial on armed robbery, and he

did not know that he could be convicted of strong-armed robbery. He stated he was surprised with Trial Counsel admitted to the jury in his opening statement at trial that Applicant robbed the store, and he did not know Trial Counsel was going to do that. He testified he felt like he had to take the stand at trial and testify because his attorney just told the jury he did it. He stated he would not have testified at trial if his attorney had not done so.

Applicant testified there was no discussion about the trial strategy with his attorney before the trial. He stated Trial Counsel did not explain that he could get a consecutive sentence if convicted at trial. Applicant stated he told Trial Counsel that he only wanted to go to trial on armed robbery, but Trial Counsel told him he did not want to see Applicant get thirty years in prison. Applicant testified he was on drugs at the time he committed the crime, and he told Trial Counsel he did not have good decision making abilities at the time of the crime. He stated before the crime, he voluntarily did cocaine.

Trial Counsel's testimony

Trial Counsel testified he was appointed to this case sometime before October, 2014. He stated he met with Applicant three times before the trial. He testified he reviewed the discovery materials with Applicant and Applicant understood the evidence against him, which included the testimony of the victim cashier, a video of the robbery at the store with audio, and a statement Applicant gave to law enforcement admitting that he robbed the store but he did not have a gun. Trial Counsel explained that part of this statement was self-serving, so under the rules of evidence, the only way they could get the statement into evidence at trial was to have Applicant testify, which is part of the reason he chose to take the stand at trial. Trial Counsel opined that the State had overwhelming evidence against Applicant for strong-armed robbery, but he

believed the evidence against him of armed robbery was weak and Applicant had a very strong case against it. He stated he discussed this with Applicant.

Trial Counsel testified his strategy was to admit to the jury that Applicant was guilty of strong-armed robbery but argue that he was not guilty of armed robbery because it was unreasonable of the victim to believe Applicant had a gun while he robbed her. He stated he discussed this with Applicant and Applicant agreed, and he had Applicant sign a release stating that he conceded strong-armed robbery so he could be acquitted of armed robbery. Trial Counsel testified he and Applicant discussed the trial strategy at length. He stated there was never any discussion with Applicant of not requesting the lesser included offense, and Applicant always agreed that they would request the lesser-included offense of strong-armed robbery.

Trial Counsel testified he discussed with Applicant the fact that he could get a consecutive sentence to his prior sentence. He stated there was never a plea offer from the State in this case. Trial Counsel testified he approached the Solicitor's Office about a plea and told them Applicant wanted eight years or less for strong-armed robbery, but the State never offered a plea deal. He stated that if there had been a plea offer, he would have communicated it to Applicant, discussed it with him, and left the decision up to him to make. However, after checking his file, Trial Counsel testified he had no recollection and no notes in his file about a plea offer. He stated he was not sure if he would have recommended Applicant take a plea offer if there had been one offered.

Trial Counsel testified he did not have Applicant evaluated for mental competency because he did not feel it was necessary. He stated he did not remember Applicant telling him he was intoxicated at the time of the crime, and Applicant never told him he was on cocaine during the crime. He stated that he could not use this as a defense even if Applicant had told him he was

intoxicated on cocaine during the crime because in South Carolina, voluntary intoxication is not a defense to a crime.

IV. APPLICABLE LAW

In a post-conviction relief action, the applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, (1984); Butler, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813 (1985). The applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

V. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

As a matter of general impression, this Court finds Applicant's testimony and assertions to be not credible. In contrast, this Court finds Trial Counsel's testimony to be credible and persuasive. These credibility findings have been applied to the Court's findings and conclusions set forth below.

INEFFECTIVE ASSISTANCE OF COUNSEL

Applicant has asserted several allegations of ineffective assistance of counsel. This Court finds these claims to be meritless and they should be denied and dismissed with prejudice. After considering the testimony, judging the credibility of the witnesses, and reviewing the materials presented to the court, this Court finds Applicant has failed to meet his burden of proof. Accordingly, post-conviction relief is denied. Each individual allegation is addressed below.

Failure to have Applicant evaluated for mental competency

Applicant alleges Trial Counsel was ineffective for failing to have him evaluated for mental competency before his trial because he did cocaine before the crime and was intoxicated during the commission of the crime and did not understand what he was doing. This allegation is meritless. Trial Counsel credibly testified he did not think it was necessary to have Applicant evaluated for mental competency, and Applicant understood their discussions about the trial and evidence against him. Trial Counsel further testified Applicant did not tell him he was

intoxicated with cocaine during the trial, so he had no reason to investigate this. Finally, Trial Counsel correctly testified that voluntary intoxication is not a defense to the crime of armed robbery in South Carolina. See State v. Vaughn, 268 S.C. 119, 232 S.E.2d 328 (1977) (adopting the rule that voluntary intoxication, where it has not produced permanent insanity, is never an excuse for or a defense to crime, regardless of whether the intent involved be general or specific, because reason requires that a man who voluntarily renders himself intoxicated be no less responsible for his acts while in such condition.).

Furthermore, the record before this Court shows Applicant testified at trial that he had been drinking alcohol before the crime, and that he was "a little intoxicated" at the time of the robbery. ROA 169, line 10-11. Applicant admitted to the jury in his testimony that he was not "falling down drunk" at the time of the robbery. ROA 169, line 10-19. Because there is no evidence that Applicant was not criminal responsible or was mentally incompetent at the time of the crime, this Court finds Trial Counsel was not deficient in choosing not to have Applicant evaluated for mental competency.

This Court further finds Applicant has failed to meet his burden of proving prejudice because he has not presented any evidence that he was mentally incompetent at the time of the crime. The South Carolina Supreme Court "has repeatedly held a PCR applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice from the witness' failure to testify at trial." Bannister v. State, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998). "The applicant's mere speculation what the witnesses' testimony would have been cannot, by itself, satisfy the applicant's burden of showing prejudice." Glover v. State, 318 S.C. 496, 498-99, 458

S.E.2d 538, 540 (1995). Applicant did not present any testimony or other evidence to show that he was not criminally responsible for the armed robbery, thus he has not proven prejudice.

Accordingly, because Applicant has failed to prove deficiency and prejudice under Strickland, this allegation is denied and dismissed with prejudice.

Failure to object to consecutive sentence

Applicant alleges Trial Counsel was ineffective for failing to object to the trial court's imposition of a sentence consecutive to the sentence he was serving for a prior conviction. This allegation is meritless. Whether multiple sentences should run consecutively or concurrently is a matter left to the sound discretion of the trial judge. State v. Barton, 325 S.C. 522, 531-32, 481 S.E.2d 439, 444 (Ct. App. 1997) (citing 21 Am.Jur.2d Criminal Law § 552 (1981) (trial court has power to order sentences be served consecutively)). Trial Counsel credibly testified that he discussed with Applicant that he could receive a consecutive sentence. While Applicant claims he would have accepted a prior plea offer for a concurrent sentence if he had known he could have received a consecutive sentence at trial, this Court finds this testimony not credible, as the testimony shows there was no plea offer from the State. The record shows Trial Counsel asked the trial court during sentencing for a concurrent sentence to what he was currently serving. ROA 245, line 20-24.

Applicant has failed to prove Trial Counsel was deficient for failing to object, as there was no legal basis for an objection, and he did request a concurrent sentence from the trial court. Applicant has further failed to prove that an objection by Trial Counsel would have been successful or changed his sentence, and has thus failed to prove prejudice. Therefore, because neither prong of the Strickland test is met, this allegation is denied and dismissed with prejudice.

Failure to investigate plea offer

Applicant alleges Trial Counsel was ineffective for failing to investigate the facts surrounding a prior plea offer from the State. This allegation is meritless. Trial Counsel inspected his entire defense file on the stand during the evidentiary hearing and found no record of a plea offer from the State. Trial Counsel credibly testified that, although he approached the State to ask for and negotiate a plea deal, the State never offered a plea agreement. He testified he had no notes and no recollection of a plea offer from the State. The trial transcript further evidences this lack of a plea offer during sentencing, when Trial Counsel informed the plea court that he and Applicant "would have obviously pleaded guilty to strong-armed robbery if we had had the opportunity," and this Court finds this to be strong evidence that there was at least never a plea offer to strong-armed robbery. ROA 245, line 21-22. Accordingly, because credible evidence shows there never was a plea offer from the State to investigate, this Court finds Applicant has failed to meet his burden of proving either prong of the Strickland test, and this allegation is denied and dismissed with prejudice.

Failure to explain lesser-included offense of strong-armed robbery

Applicant alleges Trial Counsel was ineffective for failing to explain to him the fact that he could be convicted of the lesser-included offense of strong-armed robbery, and if he had known this he would have accepted a prior plea offer from the State and, alternatively, he would not have testified at trial. At the evidentiary hearing, Trial counsel credibly testified he discussed the lesser-included offense of strong-armed robbery and his trial strategy to request and concede strong-armed robbery with Applicant at length. This Court finds this testimony very credible and convincing. Trial Counsel further credibly testified there was no plea offer from the State in this

case. Accordingly, this Court finds Applicant's assertions to be not credible and finds he failed to prove either prong of the Strickland test. This allegation is denied and dismissed with prejudice.

Failure to explain trial strategy

Applicant alleges Trial Counsel was ineffective for failing to explain the trial strategy to request a jury instruction on the lesser-included offense of strong-armed robbery and concede his guilt to this crime. This allegation is meritless. Trial Counsel credibly testified he discussed this strategy with Applicant at length before the trial, and he understood the discussion. He explained that there was never a discussion about not requesting the lesser-included offense, and Applicant agreed with his decision and was aware of what would happen at trial. This Court finds this testimony to be credible and finds Trial Counsel was not deficient in this regard. Even if Trial Counsel had been deficient in this manner, Applicant can prove no prejudice, as explaining the trial strategy to Applicant would not have changed the result of the trial, especially in light of the fact that Trial Counsel was successful in his trial strategy, and Applicant was acquitted of armed robbery.

Applicant further alleges Trial Counsel was ineffective for requesting the lesser-included offense of strong-armed robbery instead of going to trial only on armed robbery. Trial Counsel credibly testified he made a strategic decision to defend this case in this manner because the evidence against Applicant was overwhelming of his guilt of strong-armed robbery, but he believed Applicant had a very strong case against the armed robbery charge. He stated he believed their best strategy was to admit Applicant's involvement in the crime to the jury, but argue to them that he was not guilty of armed robbery, to give him the opportunity for a conviction on a lesser charge and a smaller sentence.

This Court finds Trial Counsel articulated a valid trial strategy in choosing to request and concede the lesser-included offense to avoid a higher punishment. Strickland requires that trial counsel must be given leeway to make reasonable strategic decisions. No particular set of detailed rules for counsel's conduct can satisfactorily take account of the variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how best to represent a criminal defendant. Strickland, 466 U.S. at 688-689. "Representation is an art, and an act or omission that is unprofessional in one case may be sound or even brilliant in another." Id. at 691. Therefore, judicial scrutiny of counsel's performance must be highly deferential. Id. at 689. Where counsel articulates a valid strategic reason for his action or inaction, counsel's performance should not be found ineffective. Roseboro v. State, 317 S.C. 292, 454 S.E.2d 312 (1996); Underwood v. State, 309 S.C. 560, 425 S.E.2d 20 (1992); Stokes v. State, 308 S.C. 546, 419 S.E.2d 778 (1992). Courts must be wary of second guessing counsel's trial tactics; and where counsel articulates a valid reason for employing such strategy, such conduct is not ineffective assistance of counsel. Whitehead v. State, 308 S.C. 119, 417 S.E.2d 529 (1992).

Therefore, because Trial Counsel articulated a valid trial strategy in requesting the lesser-included offense, and because Applicant has failed to prove deficiency or prejudice in failing to explain the strategy to him, these allegations are denied and dismissed with prejudice.

DUE PROCESS VIOLATION

Applicant alleges a violation of his due process rights because he received a sentence that runs consecutively with a sentence he is serving for a prior conviction. This allegation is meritless. A trial court has broad discretion in imposing criminal sentences within the limits prescribed by law. State v. Franklin, 267 S.C. 240, 226 S.E.2d 896 (1976); Clark v. State, 259 S.C. 378, 192 S.E.2d 209 (1972). Likewise, whether multiple sentences should run consecutively

or concurrently is a matter left to the sound discretion of the trial judge. State v. Barton, 325 S.C. 522, 531-32, 481 S.E.2d 439, 444 (Ct. App. 1997) (citing 21 Am.Jur.2d Criminal Law § 552 (1981) (trial court has power to order sentences be served consecutively)).

The courts normally have no discretion to correct a sentence given within statutory limits. To be entitled to relief, Applicant must prove that the alleged excessive sentence was the result of partiality, prejudice, oppression or corrupt motive, or that the sentence constitutes cruel and unusual punishment per se. Clark, Id.; State v. Cogdell, 273 S.C. 563, 257 S.E.2d 748 (1979). Applicant has failed to show his sentence was a result of any of these factors. Accordingly, this allegation is denied and dismissed with prejudice.

VI. CONCLUSION

Based on all the foregoing, this Court finds and concludes 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 notes Applicant must file and serve a notice of appeal within thirty 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 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. Applicant must be remanded to the custody of Respondent.

AND IT IS SO ORDERED this 12 day of April, 2018.



DEANDREA G. BENJAMIN
Presiding Judge
Third Judicial Circuit

Columbia, South Carolina

WITNESSES

M. Yates

Sumter Police Dept.

DOCKET NO. 2015-GS-43-0714

The State of South Carolina

County of SUMTER

COURT OF GENERAL SESSIONS

July

TERM

2015

THE STATE

vs.

WILBERT J. FRANKLIN JR.

ARREST WARRANT NUMBER

2014A4310200884

ACTION OF GRAND JURY

True B:11

Foreperson of Grand Jury

Date: 7-9-15

VERDICT

Strong Armed Robbery

Foreperson of Petit Jury

Date:

11-12-2015

Indictment for

Armed Robbery

Ernest A. Finney III

ERNEST A. FINNEY, III, SOLICITOR

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SUMTER)

INDICTMENT FOR
 Armed Robbery

CERTIFIED TRUE COPY
 OF ORIGINAL FILE

Barbara Shaper
 JUDICIAL CLERK OF COURT
 SUMTER COUNTY
 SOUTH CAROLINA

At a Court of General Sessions, convened on July 9, 2015 the Grand Jurors of
 SUMTER County present upon their oath:

COUNT ONE
ARMED ROBBERY

That on or about August 16, 2014, in Sumter County, South Carolina, the Defendant, Wilbert J. Franklin Jr., at 660 West Liberty Street, Sumter, South Carolina, 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 Chaunise Carter, an employee of Kangaroo, with the intent to permanently deprive the victim of possession thereof, in violation of Section 16-11-330(A) of the South Carolina Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

Solicitor

Ernest A. Finley III

STATE OF SOUTH CAROLINA

COUNTY OF
STATE

Sumter

VS.

Wilbert J. Franklin Jr.

AKA:

Race: Black Sex: M Age: 52

DOB: -1963 SS#: 2-602

Address:

City, State, Zip: Roebuck, SC 29376

DL#: SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Robbery / Common law robbery, strong arm robbery

in violation of § 16-11-0325

of the S.C. Code of Laws, bearing CDR Code # 0137

☒ 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

Meadors, John P

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 15 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: current SLDC time on 2014 GS 24 18 15☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ 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 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

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 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ca	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$5.00
3% to County (if paid in installments)		\$3.90
TOTAL		\$133.90

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

IN THE COURT OF GENERAL SESSIONS

325

INDICTMENT/CASE#: 2015-GS-43-0714

A/W#: 2014A4310200884

Date of Offense: 8/16/2014

S.C. Code § : 16-11-0330(A)

CDR Code #: 0139

CERTIFIED TRUE COPY
OF ORIGINAL FILE

SENTENCE SELECT

DEPUTY CLERK OF COURT

SUMTER COUNTY

☒ CONVICTED OF or SOUTH CAROLINA

Presiding Judge

Judge Code: 2166

Sentence Date: 11-12-15

ARREST WARRANT

2014A4310200884

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Sumter

THE STATE 14119035
against

Wilbert Johnson Franklin, Jr

Address: **Drive**
Roeback, SC 29376-

Phone: **SSN: 2**
Sex: **M** Race: **B** Height: **5 8** Weight: **180**
DOB: **SC** DL #: **1963** Agency ORI #: **SC0430100**

Prosecuting Agency: **Sumter Police Department**
Prosecuting Officer: **M M Yates - 2624**
Offense: **Robbery / Armed Robbery, robbery while armed or allegedly armed with a deadly weapon**

Offense Code: **0139**
Code/Ordinance Sec: **16-11-0330(A)**

This warrant is **CERTIFIED FOR SERVICE** in the
☐ County/ ☐ Municipality of

The accused
is to be arrested and brought before me to be
dealt with according to the law.

(L.S.)

Signature of Judge

RETURN

A copy of this arrest warrant was delivered to
defendant **WILBERT JOHNSON FRANKLIN JR**
on **8-18-2014**

Signature of Court Clerk/Law Enforcement Officer

RETURN WARRANT TO:

General Sessions
215 N. Harvin St.
Sumter, SC 29150

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA
☒ County/ ☐ Municipality of
Sumter

AFFIDAVIT

ORIGINAL

From Approved by
S.C. Attorney General
April 21, 2009
SCCA 518

Personally appeared before me the affiant **M M Yates** who
being duly sworn deposes and says that defendant **Wilbert Johnson Franklin, Jr** **RECORDED**
did within this county and state on or about **8/16/2014** violate the criminal laws of the
State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of **Sumter**)
in the following particulars: **2014 AUG 19 PM 12:00**

DESCRIPTION OF OFFENSE: **Robbery / Armed Robbery, robbery while armed or allegedly armed with a deadly weapon**

ANNIE B. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:

That on August 16, 2014, in the city of Sumter, one Wilbert Johnson Franklin Jr did take an undetermined amount of money from
the Kangaroo with intent to deprive while armed with an unknown weapon. Said offense having occurred at Kangaroo located at
660 W. Liberty St. The defendant was observed by surveillance cameras and positively identified by an eye-witness. The defendant
admitted to law enforcement in a written statement that he did commit the above stated offense. Law enforcement will attest to same.

STATE OF SOUTH CAROLINA
☒ County/ ☐ Municipality of
Sumter

Defendant's Address **107 East Hampton Avenue**
Sumter, SC 29150-
Defendant's Telephone **(803)436-2790**

Signature of Affiant **M M Yates**
Signature of Judge **Bryan Keith Griffin**
Signature of Court Clerk **ANNIE B. CAMPBELL**

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about **8/16/2014** defendant **Wilbert Johnson Franklin, Jr**
did violate the criminal laws of the State of South Carolina (or ordinance of **Sumter**) as set forth below:
☒ County/ ☐ Municipality of

DESCRIPTION OF OFFENSE: **Robbery / Armed Robbery, robbery while armed or allegedly armed with a deadly weapon**

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or
her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as
soon thereafter as is practicable.
Sworn to and subscribed before me
on **8/18/2014**

Signature of Issuing Judge **Bryan Keith Griffin** (L.S.)
Judge Code: **5043**

Judge's Address **190 E. Canal Street**
Sumter, SC 29151-1428
Judge's Telephone **(803)436-2280**

Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

ORIGINAL

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