

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

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**RECEIVED**

APPEAL FROM ANDERSON COUNTY  
Court of General Sessions  
R. Lawton McIntosh, Circuit Court Judge

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**Jan 08 2021**  
**S.C. SUPREME COURT**

Appellate Case No. 2017-002204  
Unpublished Opinion No. 2020-UP-290

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The State, .....Respondent,

v.

Phillip Wesley Walker, .....Petitioner.

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**APPENDIX**

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## INDEX

|                                                                    |     |
|--------------------------------------------------------------------|-----|
| <i>State v. Walker</i> , Unpublished Opinion No. 2020-UP-290 ..... | 1   |
| Petition for Rehearing .....                                       | 4   |
| Order Denying Petition for Rehearing .....                         | 8   |
| Notice of Submission Without Oral Argument .....                   | 9   |
| Notice of Possible Oral Argument .....                             | 10  |
| Final Brief of Appellant .....                                     | 11  |
| Final Brief of Respondent .....                                    | 24  |
| Final reply Brief of Appellant .....                               | 41  |
| Record on Appeal .....                                             | 50  |
| Supplemental Record on Appeal .....                                | 312 |
| Supplemental Citation Letter .....                                 | 317 |

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE  
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING  
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA  
In The Court of Appeals**

The State, Respondent,

v.

Phillip Wesley Walker, Appellant.

Appellate Case No. 2017-002204

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Appeal From Anderson County  
R. Lawton McIntosh, Circuit Court Judge

---

Unpublished Opinion No. 2020-UP-290  
Heard September 10, 2020 – Filed October 14, 2020

---

**AFFIRMED**

---

E. Charles Grose, Jr., of Grose Law Firm, of Greenwood,  
for Appellant.

Attorney General Alan McCrory Wilson and Senior  
Assistant Attorney General David A. Spencer, both of  
Columbia; and Solicitor David Rhys Wagner, Jr., of  
Anderson, all for Respondent.

---

**PER CURIAM:** After a trial held in his absence, a jury convicted Phillip Wesley Walker of armed robbery and possession of a weapon during the commission of a

violent crime. On appeal, he argues the trial court erred by denying his motion to continue the trial. We affirm.

## I.

An Anderson County grand jury indicted Walker for armed robbery and possession of a weapon during the commission of a violent crime, alleging he stole \$240 from a Family Dollar Store while brandishing a gun at an employee. Before trial, the trial court explained it intended to deny Walker's counsel's motion for a continuance made in chambers and indicated Walker's counsel should renew the motion on the record. On the record, Walker's counsel stated,

I move for a continuance based on that [Walker] is not here. The best alternative is for the State to wait and try him when he is here. And based on that, I've been in contact with him. I don't have any idea why he's not here. I don't understand why he's not here, but I'd ask the Court for a continuance.

The trial court denied the motion.

Right before trial began, Walker's counsel renewed his continuance request based on Walker's absence, which the trial court again denied. The jury found Walker guilty on both indictments, and the trial court sealed his sentence. When Walker was located, the trial court unsealed the sentence and sentenced Walker to concurrent sentences of twenty years' imprisonment for armed robbery and five years' imprisonment for possession of a weapon during the commission of a violent crime.

## II.

Walker contends the trial court erred by denying his continuance motion and trying him in his absence because it did not make findings required by Rule 16, SCRCrimP, that he received: (1) notice of his right to be present at trial *and* (2) a warning he would be tried in his absence if he failed to appear. *See, e.g., State v. Wrapp*, 421 S.C. 531, 535, 808 S.E.2d 821, 823 (Ct. App. 2017). The State asserts Walker failed to raise this issue to the trial court, and it is therefore unpreserved for appellate review. We agree.



Walker's Rule 16, SCRCrimP objection is not preserved because he did not specifically object to a trial *in absentia* or argue to the trial court that he did not receive notice of the trial or was unaware the trial would proceed in his absence. A motion for a continuance is not in itself enough to preserve a Rule 16, SCRCrimP objection. *See State v. Hoffman*, 312 S.C. 386, 393, 440 S.E.2d 869, 873 (1994) (providing a defendant must make a contemporaneous objection on a specific ground to preserve an error for appellate review); *State v. Williams*, 292 S.C. 231, 232, 355 S.E.2d 861, 862 (1987) ("In order to claim the protection afforded by [former] Criminal Practice Rule 3, a defendant or his attorney must object at the first opportunity to do so."); *id.* at 232–33, 355 S.E.2d at 862 (holding "neither appellant nor his attorney objected to the trial having begun in appellant's absence. Any error under [Rule 16, SCRCrimP,] was therefore waived"); *cf. State v. Ravenell*, 387 S.C. 449, 456–57, 692 S.E.2d 554, 558 (Ct. App. 2010) (noting it was "arguable" Ravenell's motion for a continuance was insufficient to constitute an objection to trial in absence but nevertheless addressing merits on appeal and concluding trial court made requisite Rule 16 findings); *Wrapp*, 421 S.C. at 536, 808 S.E.2d at 823 (finding continuance motion coupled with objection "to the trial proceeding due to the lack of adequate notice to Wrapp" enough to preserve objection on appeal). Walker's counsel proposed no good cause for a continuance, and therefore, the trial court's ruling denying his request for one was within the wide bounds discretion sets, and we discern no legal or factual error. *See State v. Lytchfield*, 230 S.C. 405, 409, 95 S.E.2d 857, 859 (1957) ("[R]eversals of refusal of continuance are about as rare as the proverbial hens' teeth."); Rule 7, SCRCrimP (providing continuance may granted "only upon a showing of good and sufficient legal cause").

**AFFIRMED.**

**THOMAS, HILL, and HEWITT, JJ., concur.**

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM ANDERSON COUNTY  
Court of General Sessions  
R. Lawton McIntosh, Circuit Court Judge

Appellate Case No. 2017-002204

**RECEIVED**  
**Oct 29 2020**  
**SC Court of Appeals**

The State, .....Respondent

v.

Phillip Wesley Walker, .....Appellant.

**Petition for Rehearing**

Pursuant to Rule 221, SCACR, Phillip Walker petitions this Court for rehearing. In this Court's opinion dated October 4, 2020, this Court held Mr.

Walker's Rule 16, SCRCrimP objection is not preserved because he did not specifically object to a trial in absentia or argue to the trial court that he did not receive notice of the trial or was unaware the trial would proceed in his absence. A motion for a continuance is not in itself enough to preserve a Rule 16, SCRCrimP objection.

In reaching this conclusion, this Court overlooked the significance of trial counsel arguing, "I move for a continuance based on that my client is not here. The best alternative is for the State to wait and try him when he is here." R. 4. During this appeal, Mr. Walker contended this statement by trial counsel triggered the requirement that trial judge make the findings of fact required by Rule 16, SCRCrimP and our State's caselaw. *E.g.*, Final Brief of Appellant, at 1-2, 5-7, and Final Reply Brief of Appellant, at 3. During oral argument, Mr. Walker argued this statement preserved this issue for appeal.

## CONCLUSION

This Court should grant this petition, rehear this matter, hold the trial judge failed to make the findings of fact necessary to proceed with a trial in Mr. Walker's absence, reverse the convictions and sentences, and remand for a new trial.

IT IS SO MOVED.

Respectfully Submitted,

By s/E. Charles Grose, Jr.

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*Attorney for the Appellant*

October 29, 2020  
Greenwood, South Carolina

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM ANDERSON COUNTY  
Court of General Sessions  
R. Lawton McIntosh, Circuit Court Judge

Appellate Case No. 2017-002204

**RECEIVED**  
**Oct 29 2020**  
**SC Court of Appeals**

The State, .....Respondent

v.

Phillip Wesley Walker, .....Appellant.

**Certificate of Service**

I certify that I have served this pleading on the State of South Carolina, by email,  
on the date reflected below, addressed to:

David A. Spencer, Esquire  
S.C. Attorney General's Office  
PO Box 11549  
Columbia, SC 29211  
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By s/E. Charles Grose, Jr.  
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October 29, 2020  
Greenwood, South Carolina

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October 29, 2020

The Honorable Jenny Abbott Kitchings  
Clerk, South Carolina Court of Appeals  
P.O. Box 11629  
Columbia, SC 29211

**RECEIVED**  
**Oct 29 2020**  
**SC Court of Appeals**

Re: *State of South Carolina v. Phillip Wesley Walker*  
Appellate Case Number 2017-002204

Dear Ms. Kitchings:

Enclosed please find Mr. Walker's petition for rehearing, along with a certificate of service.

Thank you for your attention to this matter. Please let me know if I can answer any questions or provide additional information.

With kindest regards, I am

Yours very truly,

E. Charles Grose, Jr.

cc: David A. Spencer, Esquire

# The South Carolina Court of Appeals

The State, Respondent,

v.

Phillip Wesley Walker, Appellant.

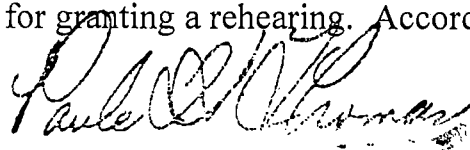
Appellate Case No. 2017-002204

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## ORDER

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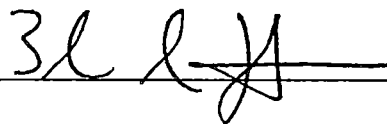
After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

  
\_\_\_\_\_

J.

  
\_\_\_\_\_

J.

  
\_\_\_\_\_

J.

Columbia, South Carolina

cc:

Alan McCrory Wilson, Esquire  
E. Charles Grose, Jr., Esquire  
David A. Spencer, Esquire  
David Rhys Wagner, Jr., Esquire  
The Honorable R. Lawton McIntosh

**FILED**  
**Dec 09 2020**

---



## The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS  
CLERK

V. CLAIRE ALLEN  
CHIEF DEPUTY CLERK

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March 02, 2020

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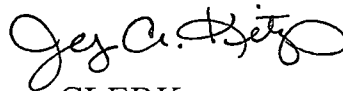
Mr. David A. Spencer, Esquire  
PO Box 11549  
Columbia SC 29211

Re: The State v. Phillip Wesley Walker  
Appellate Case No. 2017-002204

Dear Counsel:

After careful consideration by the Court, this case will be submitted on the record on appeal and briefs during the March 2020 term without oral argument.

Very truly yours,

  
CLERK *Eac*

cc: Alan McCrory Wilson, Esquire  
David Rhys Wagner, Jr., Esquire



## The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS  
CLERK

V. CLAIRE ALLEN  
CHIEF DEPUTY CLERK

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June 05, 2020

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Mr. David Rhys Wagner, Jr., Esquire  
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Anderson SC 29622

Re: The State v. Phillip Wesley Walker  
Appellate Case No. 2017-002204

Dear Counsel:

This case may or may not be considered during September or October 2020. If an argument is held, it may be held on September 9, 10, 14, 15, 22; or 23, 2020; or October 12, 13, 14, or 15, 2020. In the event your case is selected for oral argument, we ask you to advise the Court of the specific nature of any conflict you may have on any of these dates by June 22, 2020.

Very truly yours,

*V. Claire Allen*

CLERK

cc: Alan McCrory Wilson, Esquire  
David A. Spencer, Esquire



THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

---

APPEAL FROM ANDERSON COUNTY  
Court of General Sessions  
R. Lawton McIntosh, Circuit Court Judge

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Appellate Case No. 2017-002204

---

The State,..... Respondent

v.

Phillip Wesley Walker, ..... Appellant.

---

**FINAL BRIEF OF APPELLANT**

---

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Walker*

**RECEIVED**

JUL 29 2019

SC Court of Appeals

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM ANDERSON COUNTY  
Court of General Sessions  
R. Lawton McIntosh, Circuit Court Judge

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Appellate Case No. 2017-002204

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The State,..... Respondent

v.

Phillip Wesley Walker, ..... Appellant.

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**FINAL BRIEF OF APPELLANT**

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## TABLE OF CONTENTS

|                                                                                                                                                                                                                                                                                                                                                                                                                     |    |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----|
| Table of Contents .....                                                                                                                                                                                                                                                                                                                                                                                             | i  |
| Table of Authorities .....                                                                                                                                                                                                                                                                                                                                                                                          | ii |
| Question Presented.....                                                                                                                                                                                                                                                                                                                                                                                             | 1  |
| Statement of the Case.....                                                                                                                                                                                                                                                                                                                                                                                          | 1  |
| Statement of Facts.....                                                                                                                                                                                                                                                                                                                                                                                             | 1  |
| Argument                                                                                                                                                                                                                                                                                                                                                                                                            |    |
| Did the trial judge err by denying trial counsel's motion to<br>continue the trial so Phillip Walker could be present at his jury trial when<br>the trial judge did not make findings of fact regarding whether the Mr.<br>Walker had received notice of his right to be present and whether the Mr.<br>Walker had been warned that the trial would proceed in his absence upon<br>a failure to attend court? ..... | 5  |
| Conclusion .....                                                                                                                                                                                                                                                                                                                                                                                                    | 8  |

## TABLE OF AUTHORITIES

### **Cases**

|                                                                                                 |   |
|-------------------------------------------------------------------------------------------------|---|
| <i>Brewer v. South Carolina State Highway Dept.</i> , 261 S.C. 52, 198 S.E.2d 256 (1973) .....  | 6 |
| <i>City of Aiken v. David Michael Koontz</i> , 368 S.C. 542, 629 S.E.2d 686 (Ct. App. 2006) ... | 5 |
| <i>Gilmore v. Ivey</i> , 290 S.C. 53, 348 S.E.2d 180 (Ct. App. 1986).....                       | 6 |
| <i>Illinois v. Allen</i> , 397 U.S. 337 (1970).....                                             | 5 |
| <i>McManus v. Bank of Greenwood</i> , 171 S.C. 84, 171 S.E. 473 (1933).....                     | 6 |
| <i>State v. Baccus</i> , 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006).....                       | 8 |
| <i>Shinn v. Kreul</i> , 311 S.C. 94, 427 S.E.2d 695 (Ct. App. 1993) .....                       | 6 |
| <i>State v. Fairey</i> , 374 S.C. 92, 646 S.E.2d 445 (Ct. App. 2007).....                       | 6 |
| <i>State v. Jackson</i> , 288 S.C. 94, 341 S.E.2d 375 (1986).....                               | 5 |
| <i>State v. Ravenell</i> , 387 S.C. 449, 692 S.E.2d 554 (Ct. App. 2010).....                    | 7 |
| <i>State v. Ritch</i> , 292 S.C. 75, 354 S.E.2d 909 (1987) .....                                | 5 |
| <i>State v. Simmons</i> , 279 S.C. 165, 303 S.E.2d 857 (1983) .....                             | 6 |
| <i>State v. Spray</i> , 74 S.C. 443, 54 S.E. 600 (1906) .....                                   | 7 |

### **Constitutional**

|                                |   |
|--------------------------------|---|
| S.C. Const. Art. I, § 14 ..... | 5 |
| U.S. Const. Am. VI .....       | 5 |

### **Rules**

|                         |   |
|-------------------------|---|
| Rule 16, SCRCrimP ..... | 5 |
|-------------------------|---|

### **QUESTION PRESENTED**

Did the trial judge err by denying trial counsel's motion to continue the trial so Phillip Walker could be present at his jury trial when the trial judge did not make findings of fact regarding whether the Mr. Walker had received notice of his right to be present and whether the Mr. Walker had been warned that the trial would proceed in his absence upon a failure to attend court?

### **STATEMENT OF THE CASE**

On December 16, 2015, the Anderson Police Department charged Phillip Wesley Walker with armed robbery and possession of a weapon during the commission of a violent crime. On March 22, 2016, the Anderson County Grand Jury returned true bill indictments for these charges. R. 252-53. On December 5 and 7, 2016, the State tried Mr. Walker *in absentia* before the Honorable R. Lawton McIntosh and a jury. Catherine Huey and William Stolarski represented the State. William Yarborough represented Mr. Walker. The jurors convicted Mr. Walker as charged. R. 215-16. Judge McIntosh sentenced Mr. Walker to twenty years imprisonment for armed robbery and five years for possession of weapon during the commission during the commission of a violent crime. The sentences are concurrent. R. 239, 254-55. Judge McIntosh sealed the sentences. R. 222. On October 10, 2017, Judge McIntosh unsealed the sentences and denied Mr. Walker's motion to reconsider the sentence. R. 237-51. This appeal follows.

### **STATEMENT OF FACTS**

On December 5, 2016, during an in chambers meeting prior to the Solicitor calling the case to trial, counsel moved for a continuance so Phillip Walker could be present for his trial, noting "[t]he best alternative is for the State to wait and try him when

he is here.” The trial judge denied the motion without hearing from the State. The trial judge never determined Mr. Walker had actual notice of his trial date or that he had been informed the trial would proceed in his absence. Following the motion, the trial judge addressed the jurors, subject to counsel’s motion for a continuance. R. 4-11. On December 7, 2016, counsel renewed the motion for a continuance, noting neither counsel nor Mr. Walker’s bondsman had been in recent contact with Mr. Walker. R. 56. Counsel renewed the motion for a continuance prior to the jurors being sworn. The Solicitor informed the trial judge, “We certainly noticed the defendant of this trial. We sent a card – a bond card November 18th. We mailed that out to him, his bondsman, and then of course Mr. Yarborough.” R. 69-71. Once again, the trial judge did not determine whether Mr. Walker had actual notice of his trial date or that he had been informed the trial would proceed in his absence. During the initial instructions, the trial judge informed the jurors:

[U]nder the law of this state, a defendant may be tried even if he does not attend the trial. As you see here, the defendant is not here today. But the fact that the defendant is not here may not be considered by you at any time during your deliberations and in any manner because the burden remains on the State of South Carolina to prove his guilt by proof beyond a reasonable doubt.

R. 81-82.

The case proceeded to trial, and the prosecution presented its evidence. On December 16, 2015, Natasha Oliver was running the cash register at the Family Dollar store on River Street in Anderson. She noticed a “brown skinned guy” wearing glasses, a ball cap, “dirty jeans,” and a brown Carhartt jacket with a turquoise t-shirt underneath. He was letting other customers check out before him. The man approached the register and purchased a can of Pringles potato chips and Airheads candy with an EBT card. Ms.

Oliver placed the items in a Family Dollar bag with the receipt. The man asked the price of Newport cigarettes. When Ms. Oliver turned around after getting a package of cigarettes, the man was pointing a small, rusty handgun<sup>1</sup> at her and demanded she “give him all the bills, no change” out of the cash register. After the man left the store, Ms. Oliver “pulled the panic button.” Law enforcement arrived within minutes, and Ms. Oliver provided a description of the robber. R. 88-104.

Anderson Police Department Patrol Officer Joshua Genthner responded to the Family Dollar. Ms. Oliver gave him a written and recorded statement. Officer Genthner determined \$240.00 was missing from the cash register. Another responding officer obtained the surveillance video.<sup>2</sup> Officer Genthner provided the description of the robber to other officers. R. 109-13.

While responding to the Family Dollar, Anderson Police Department Sergeant Trevor Simmons and Lieutenant Joel McKee noticed a man matching the general description of the robber of the robber, except that he was not wearing a brown jacket. After arriving at the Family Dollar and learning more about the description of the robber, they decided the man they passed was “probably” the robber. They located the man, who matched the updated description with the exception of the brown jacket. They identified the man as Phillip Walker. Mr. Walker had a Family Dollar bag which contained the Pringles, Airheads, and the receipt. He also had cigarettes, a wad of cash (\$234.00), a gun, and an EBT card. R. 113-26, 150-74.

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<sup>1</sup> The prosecution conceded the gun did not work. R. 63.

<sup>2</sup> Yoshika Chapman, a store manager at the Family Dollar, is responsible for the surveillance video. She provided the video of the robbery to law enforcement, which was played for the jurors at trial. R. 162-68.

Anderson Police Department Patrol Officer Craig Gardner also responded to the Family Dollar. He transported Ms. Oliver from the Family Dollar to the location where other officers had apprehended Mr. Walker. Ms. Oliver identified Mr. Walker as the robber. R. 102-04, 135-39. Ms. Oliver identified the receipt found with Mr. Walker, which included her cashier number, as the receipt from the transaction during the robbery. R. 93-95.

Sara Smith works for the Anderson Housing Authority, which is located across the street from the Family Dollar. On December 16, 2015, she noticed a “guy taking clothes off and throwing them in the dumpster.” She thought this strange, so she “snapped a picture of him” with her cell phone. She provided the picture to the police officers that responded to the robbery. R. 140-43. Anderson Police Department Detective Tyrone Blackwell recovered a brown jacket and hat from the dumpster. He found a .22 caliber gun underneath the clothing. The gun was not loaded and was not capable of being fired. R. 145-47, 151-60. Ms. Oliver identified Mr. Walker’s gun as being “consistent with the weapon that was pointed at” her during the robbery. R. 95-96.

Sergeant Simmons and Lieutenant McKee interviewed Mr. Walker. Sergeant Simmons recorded the interview on his body camera. Mr. Walker confessed to the robbery. The State played the videotape of the interview for the jurors. Mr. Walker explained he committed the robbery because he did not have money to pay the light bill. Mr. Walker referred to the gun as a “popgun” or “dust buster.” R. 126-35, 240.

After the jurors convicted Mr. Walker as charged, trial counsel asked the judge to consider the facts that Mr. Walker cooperated and was apologetic. R. 221. At the sentencing hearing on October 12, 2017, trial counsel noted Mr. Walker sat “in jail for



about nine months” before being released on bond. Mr. Walker was trying “to get himself together before he had to face” these charges. During that period, “[n]obody heard from him.” Mr. Walker had gone to Texas and “entered a program called the Dallas Life Program,” which is drug rehabilitation program based on Christian values. R. 241-50.

## ARGUMENT

**Did the trial judge err by denying trial counsel’s motion to continue the trial so Phillip Walker could be present at his jury trial when the trial judge did not make findings of fact regarding whether the Mr. Walker had received notice of his right to be present and whether the Mr. Walker had been warned that the trial would proceed in his absence upon a failure to attend court?**

“A criminal defendant has a constitutional right guaranteed by the Confrontation Clause of the Sixth Amendment to be present at trial.” *City of Aiken v. David Michael Koontz*, 368 S.C. 542, 546, 629 S.E.2d 686, 688 (Ct. App. 2006) (citing U.S. Const. Am. VI and *Illinois v. Allen*, 397 U.S. 337, 338 (1970) (“One of the most basic of the rights guaranteed by the Confrontation Clause is the accused’s right to be present in the courtroom at every stage of his trial.”)); *see also* S.C. Const. Art. I, § 14. Rule 16 of the South Carolina Rules of Criminal Procedure provides:

Except in cases wherein capital punishment is a permissible sentence, a person indicted for misdemeanors and/or felonies may voluntarily waive his right to be present and may be tried in his absence upon a finding by the court that such person has received notice of his right to be present and that a warning was given that the trial would proceed in his absence upon a failure to attend the court.

“The proper course of action” before beginning a “trial *in absentia*” is for the trial judge to “make findings of fact regarding 1) whether the [accused] had received notice of [his] right to be present, and 2) whether the [accused] had been warned that the trial would proceed in [his] absence upon a failure to attend court.” *State v. Jackson*, 288 S.C.

94, 96, 341 S.E.2d 375, 375 (1986); *see also State v. Ritch*, 292 S.C. 75, 76, 354 S.E.2d 909, 909 (1987) (“The trial judge failed to find that appellant had received notice of his right to be present at trial and a warning that he would be tried in his absence should he fail to attend.” The trial judge did not make either of these findings of fact before proceeding with Mr. Walker’s jury trial *in absentia*).

The only evidence in the record that the Solicitor’s Office mailed Mr. Walker a “bond card” is the Solicitor’s statement. R. 70. The Solicitor was not under oath, and the State did not provide a copy of the “bond card” to the trial judge. It is well settled “that statements of fact appearing only in argument of counsel will not be considered.” *McManus v. Bank of Greenwood*, 171 S.C. 84, 171 S.E. 473, 475 (1933); *see also Shinn v. Kreul*, 311 S.C. 94, 102, 427 S.E.2d 695, 700 (Ct. App. 1993) (“A court cannot consider facts appearing only in argument of counsel.”); *Gilmore v. Ivey*, 290 S.C. 53, 58, 348 S.E.2d 180, 184 (Ct. App. 1986) (judge “properly disregard” counsel’s statements about content of depositions when depositions not were provided to the court).

“Notice of the term of court for which the trial is set constitutes sufficient notice to enable a criminal defendant to make an effective waiver of his right to be present. However, if the record does not reveal that the defendant was afforded notice of his trial, the resulting conviction in absentia cannot stand.” *State v. Fairey*, 374 S.C. 92, 100, 646 S.E.2d 445, 449 (Ct. App. 2007) (internal quotations and citations omitted). South Carolina precedent establishes an accused is entitled to actual notice of the trial date. *State v. Simmons*, 279 S.C. 165, 303 S.E.2d 857 (1983) (When “the record is in all respects void of evidence to support a finding that appellants were afforded notice of the indictment or trial. . . . the resulting convictions in absentia cannot stand.”); *Brewer v.*

*South Carolina State Highway Dept.*, 261 S.C. 52, 198 S.E.2d 256 (1973) (“The respondent was tried by the magistrate without having given the respondent or his attorney notice of the day of such trial. Such conviction cannot stand.”); *State v. Spray*, 74 S.C. 443, 54 S.E. 600 (1906) (“Defendants were bound over to appear for trial before [one magistrate on a particular date, and another magistrate] undertook to try them in their absence on [a different day], without any notice . . . of any change of day of trial, or of the change of venue. Such a conviction was a denial of due process of law, and cannot stand.”). *State v. Ravenell*, 387 S.C. 449, 692 S.E.2d 554 (Ct. App. 2010) illustrates the factual record required to establish a voluntary waiver of the right to be present at trial. “The record show[ed] Ravenell was subpoenaed to appear for that particular week of court.” Additionally, “Ravenell was present for the first day of trial when his jury was drawn” and [t]he trial judge noted for the record that he specifically informed Ravenell that if he did not appear the next day, the trial would go forward without him.” *Id.* 387 S.C. at 457, 692 S.E.2d at 558. The record here is devoid of any evidence that Mr. Walker had actual notice of his trial date. Nor did the trial judge make a finding of fact that Mr. Walker had been provided actual notice of his trial date.

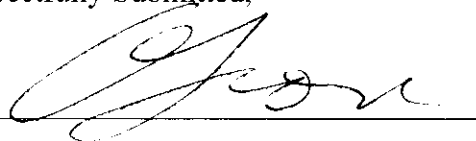
Finally, the record is devoid of any evidence that the State warned Mr. Walker his trial would proceed in his absence upon his failure to attend court. Even if the State had such evidence, *Jackson* requires the prosecution to present that evidence to the trial court so the judge would be in a position to make the appropriate findings of fact. In addition to not finding Mr. Walker had actual notice of his trial date, the trial judge did not make a finding of fact that Mr. Walker had been warned his trial would proceed in his absence if he did not appear.

## CONCLUSION

This Court should reverse Phillip Walker's convictions, vacate the sentences, and remand this case for a new trial because the trial judge did not make findings of fact regarding whether the Mr. Walker had received notice of his right to be present and whether the Mr. Walker had been warned that the trial would proceed in his absence upon a failure to attend court. The trial court, accordingly, committed an error of law this Court must correct. *State v. Baccus*, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006) ("In criminal cases, the appellate court sits to review errors of law only.").

Respectfully Submitted,

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July 24, 2019.

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM ANDERSON COUNTY  
Court of General Sessions  
R. Lawton McIntosh, Circuit Court Judge

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Appellate Case No. 2017-002204

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The State,..... Respondent

v.

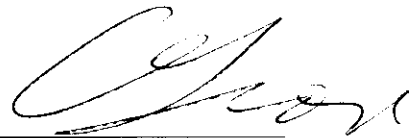
Phillip Wesley Walker, ..... Appellant.

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***Rule 211(b), SCACR Certification***

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The Final Brief of Appellant Complies with Rule 211(b), SCACR.



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JUL 29 2019

SC Court of Appeals

**ORIGINAL**

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

\_\_\_\_\_  
Appeal from Anderson County  
R. Lawton McIntosh, Circuit Court Judge  
\_\_\_\_\_

THE STATE,

Respondent,

vs.

PHILLIP WESLEY WALKER,

Appellant.

Appellate Case No. 2017-002204  
\_\_\_\_\_

**FINAL BRIEF OF RESPONDENT**  
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STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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Appeal from Anderson County  
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THE STATE,

Respondent,

vs.

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Appellant.

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**FINAL BRIEF OF RESPONDENT**

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## TABLE OF CONTENTS

|                                                                                                                                                                                                                                                                                                                       |    |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----|
| TABLE OF AUTHORITIES .....                                                                                                                                                                                                                                                                                            | ii |
| STATEMENT OF ISSUES ON APPEAL.....                                                                                                                                                                                                                                                                                    | 1  |
| STATEMENT OF THE CASE.....                                                                                                                                                                                                                                                                                            | 1  |
| STATEMENT OF THE FACTS .....                                                                                                                                                                                                                                                                                          | 2  |
| ARGUMENTS                                                                                                                                                                                                                                                                                                             |    |
| Defense counsel failed to object on the grounds raised and conceded his client was supposed to be present for trial. The defendant admitted during sentencing he fled to Texas. Appellant was not prejudiced by being tried in his absence. The trial court did not err in denying the motion for a continuance ..... | 4  |
| CONCLUSION.....                                                                                                                                                                                                                                                                                                       | 11 |



## TABLE OF AUTHORITIES

### **Cases:**

|                                                                                        |       |
|----------------------------------------------------------------------------------------|-------|
| <u>Colonial Penn Ins. Co. V. Coil</u> , 887 F.2d 1236 (4th Cir. 1989) .....            | 6     |
| <u>I’On, L.L.C. v. Town of Mt. Pleasant</u> , 338 S.C. 406, 526 S.E.2d 716 (2000)..... | 8     |
| <u>Morris v. State</u> , 371 S.C. 278, 639 S.E.2d 53 (2006) .....                      | 7     |
| <u>State v. Benton</u> , 338 S.C. 151, 526 S.E.2d 228 (2000);.....                     | 8     |
| <u>State v. Castineira</u> , 341 S.C. 619, 535 S.E.2d 449 (2000) .....                 | 9     |
| <u>State v. Colden</u> , 372 S.C. 428, 641 S.E.2d 912 (Ct. App. 2007) .....            | 7     |
| <u>State v. Mitchell</u> , 330 S.C. 189, 498 S.E.2d 642 (1998).....                    | 8     |
| <u>State v. Patterson</u> , 324 S.C. 5, 482 S.E.2d 760 (1997) .....                    | 7     |
| <u>State v. Price</u> , 368 S.C. 494, 629 S.E.2d 363 (2006) .....                      | 7     |
| <u>State v. Ravenell</u> , 387 S.C. 449, 692 S.E.2d 554 (Ct. App. 2010) .....          | 7     |
| <u>State v. Rogers</u> , 361 S.C. 178, 603 S.E.2d 910 (Ct. App. 2004) .....            | 7     |
| <u>State v. Shuler</u> , 344 S.C. 604, 545 S.E.2d 805 (2001).....                      | 9     |
| <u>State v. Sroka</u> , 267 S.C. 664, 230 S.E.2d 816 (1976).....                       | 10    |
| <u>State v. Williams</u> , 292 S.C. 231, 355 S.E.2d 861 (1987).....                    | 9, 10 |
| <u>State v. Wrapp</u> , 421 S.C. 531, 808 S.E.2d 821 (Ct. App. 2017).....              | 9, 10 |
| <u>State v. Wright</u> , 304 S.C. 529, 405 S.E.2d 825 (1991).....                      | 9, 10 |
| <u>State v. Yarborough</u> , 363 S.C. 260, 609 S.E.2d 592 (Ct. App. 2005) .....        | 7     |
| <u>Wise v. Wise</u> , 394 S.C. 591, 716 S.E.2d 117 (Ct. App. 2011) .....               | 6     |

### **Other Authorities:**

|                                                                                       |   |
|---------------------------------------------------------------------------------------|---|
| JEAN HOEFER TOAL ET AL., APPELLATE PRACTICE IN SOUTH CAROLINA 57 (2nd ed. 2002) ..... | 8 |
|---------------------------------------------------------------------------------------|---|

## **STATEMENT OF ISSUE ON APPEAL**

Defense counsel failed to object on the grounds raised and conceded his client was supposed to be present for trial. The defendant admitted during sentencing he fled to Texas. Appellant was not prejudiced by being tried in his absence. The trial court did not err in denying the motion for a continuance.

## **STATEMENT OF THE CASE**

On December 5, 2016, defense counsel and the prosecution selected a jury for Appellant Walker's trial for the armed robbery of a Family Dollar store and held a hearing on the victim's identification of Walker. The Honorable R. Lawton McIntosh presided. Walker was not present and defense counsel did not know why he was not present. The case proceeded to trial on December 7, 2016, and Walker was still nowhere to be found. He was convicted in his absence for both charges – armed robbery and possession of a weapon during the commission of a crime. Judge McIntosh sentenced Walker to twenty years' imprisonment for armed robbery and five years' imprisonment for the weapons charge. The sentence was sealed and after Walker was finally found, the sentence was unsealed on October 12, 2017. Walker admitted fleeing to Texas and counsel admitted Walker knew he was supposed to be at trial. R. pp. 228-30. Walker's motion to reconsider the sentence, made the same day the sentence was unsealed, was denied by written order issued later the same day as the hearing.

## STATEMENT OF FACTS

Appellant Walker loitered about the store, Family Dollar, then purchased Pringles and Airheads with an EBT card. The cashier, Natasha Oliver (Victim), rang up the items. Walker then asked for Newports, and she rang those up also. She turned around to see Walker point a gun at her face. The gun was small and rusty. Walker demanded money and she emptied the bills out of her drawer. He left the store and went down the sidewalk. R. pp. 90-93. She pushed the panic button. R. p. 96. Thirty minutes later, law enforcement took her to see if the person they detained was the robber. She recognized Walker and was certain of the identification. R. p. 103.

Victim testified that when Walker pointed the gun at her, he said if she screamed Walker would pull the trigger. R. p. 104, lines 13-17. She believed Walker, which is why she gave him the money. R. p. 104, lines 18-21. **She assumed the gun worked when he pointed it at her.** R. p. 107, lines 2-4.

Sergeant Trevor Simmons and his partner responded to Family Dollar. On the way they observed a man looking straight ahead, intently ignoring the passing vehicles with sirens blaring. They suspected he was the robber, but he did not have on a brown jacket per Victim's description they received. After speaking with Victim and receiving a more detailed description, they decided that was the robber and went back to find him. R. pp. 116-17. They located him in about three or four minutes. He had a wad of cash in his pockets, cigarettes, a Family Dollar bag with a receipt for Pringles and Airheads, and an EBT card. R. pp. 119-20. Walker was cooperative, admitted to the robbery, and admitted he had what he described as a "pop gun," but also what he referred to as a .22. R. p. 134, lines 6-22; R. p. 238, (published to the jury, R. pp. 132-33).

Sara Smith proved to be a good citizen. She worked across the street from Family Dollar.

She saw a man throwing clothes in a dumpster and found it suspicious enough to take pictures of him. She notified officers gathered at Family Dollar. R. pp. 140-41. Detective Ty Blackwell, based on what she told law enforcement, went to the dumpster and found a brown jacket and brown hat consistent with the clothing Victim described that the robber wore. Underneath the jacket was a small caliber handgun, a .22 type pistol that was empty. It was rusty. R. p. 152, p. 155; p. 158; p. 160.

Defense counsel was not left with much of a defense. He argued the surveillance did not depict a robbery because Walker made a purchase. R. p. 207. The jury reached a verdict in twenty-five minutes. R. pp. 214-15.

## ARGUMENT

**Defense counsel failed to object on the grounds raised and conceded his client was supposed to be present for trial. The defendant admitted during sentencing he fled to Texas. Appellant was not prejudiced by being tried in his absence. The trial court did not err in denying the motion for a continuance.**

Walker alleges the trial court erred in denying the motion for continuance. However, Walker admitted fleeing before trial to Texas, and his counsel admitted Walker knew he was supposed to be present for trial. The defense failed to object to the sufficiency of the showing that he received notice of the trial and that trial would proceed without him. Therefore, the issue is waived and not preserved for review. Further, Walker acknowledged in his bond form that the trial would proceed in his absence, and the record establishes he had notice of the trial. Finally, Walker was not prejudiced by his absence in light of the overwhelming evidence: there was no substantial defense at trial, the evidence was overwhelming, and Walker admitted his guilt again when the sentence was unsealed.

### **How the issue arose below**

On December 5, 2016, the prosecution and defense counsel selected a jury and Judge McIntosh heard a motion challenging Victim's identification of Walker as the robber. Walker was not present. Counsel at the beginning of the hearing moved for a continuance, "based on that my client is not here. The best alternative is for the State to wait and try him when he is here." R. p. 56, lines 11-24. Counsel advised he had been in contact with Walker and did not understand why he was not present in court. R. p. 56, line 25 – p. 57, line 3.

On December 7, counsel advised he still had not heard from his client and his bondsman also had not seen him. Counsel tried unsuccessfully to call Walker that morning. R. p. 56. Counsel renewed his motion for a continuance, which the trial court denied. The trial court observed, "[W]hen we met in chambers on Monday, I believe you told me that you had spoken with your client

several times last week, were supposed to meet with him . . . on the weekend and did show that you were in communication with his father.” R. p. 70, lines 2-9. The trial court mentioned counsel “actually had a call from him last night” and counsel confirmed he did and that he attempted to call him back. R. p. 70, lines 8-16.

The prosecution noted, “[W]e certainly noticed the defendant of this trial. We sent a card – a bond card November 18<sup>th</sup>. We mailed that out to him, his bondsman, and then of course Mr. Yarborough.” R. p. 70, lines 20-24. Following the verdict, reached after twenty-five minutes of deliberations, counsel moved for a judgment of acquittal, but made no other post-trial motions. R. pp. 218-19.

During sentencing, counsel reported, “I don’t know what happened. I was in regular contact with him and, you know, and we – we talked a lot about – about a plea and he was always going to – he wanted to plead to a strong armed robbery.” R. p. 220, lines 18-24. Counsel noted Walker was cooperative when he was apprehended and asked Judge McIntosh for some leniency for his cooperation. Judge McIntosh replied, “[Y]ou’re right, I mean, he just said, ‘Okay. Here I am. I give up. I did it.’ Give him some credit for that.” R. p. 222, lines 20-25.

Walker finally was in Court on October 12, 2017, at which point his sentence was unsealed. Counsel explained, “Because he didn’t have the money to pay his light bill, he robbed the store. He confessed to it.” R. p. 227.

Counsel admitted Walker “knew he was supposed to be here, . . .” R. p. 228, lines 21-23. However, counsel explained, Walker “decided that he was going to try to get himself together before he had to face this sentence.” R. pp. 228-29. Walker came back to South Carolina and went to DSS to meet his children, **even knowing he had the sentence.** R. p. 229, lines 7-10. At this point Judge McIntosh asked Walker where he was and he admitted he was in Texas, supposedly to enter a

rehabilitation program in Dallas. R. pp. 229-30. Walker admitted, “I did something wrong,” but his wife lost her job and Duke Power cut off their electricity. R. p. 231.

Walker explained “I’d gone into Family Dollar and I didn’t go in thinking I’m going to rob it today. It wasn’t like that.” R. p. 232, lines 1-3. He described how he bought a can of Pringles and Airheads and then sheepishly robbed her, apologizing for the robbery as he committed it. R. p. 232, lines 6-18. Walker recounted how he admitted to the robbery to the officers. R. p. 232, lines 19-24. The prosecutor noted Walker had four other robbery convictions in addition to a breaking and entering conviction. R. pp. 235-36.

Counsel agreed with Judge McIntosh when he indicated he was treating the request as a motion to reconsider the sentence. R. p. 236. Note Counsel did not move for a new trial because of a lack of notice or because Walker was not made aware that the trial would proceed in his absence.

On file with the Clerk of Court is the Bail Proceeding form, which specifies the conditions that he appear before court at the designated times, that he not leave the State without the permission of the court, and he shall promptly notify the court if he changes his address. On the second page of the form, Walker’s signature appears as acknowledgement that, in relevant part: “I understand and have been informed that I have a right and obligation to be present at trial and should I fail to attend the court, the trial will proceed in my absence.” R. p. 239. This Court may properly take judicial notice of the form on file with the Clerk of Court. Colonial Penn Ins. Co. V. Coil, 887 F.2d 1236, 1239 (4th Cir. 1989) (Judicial notice of a fact may be raised for the first time on appeal). “[A]n appellate court can take judicial notice of something that was not before the trial court if it is indisputable.” Wise v. Wise, 394 S.C. 591, 601, 716 S.E.2d 117, 122 (Ct. App. 2011).

### **Standard of review**

A trial court abuses its power of discretion when it commits an error of law or when there has

been a factual conclusion without any evidentiary support. State v. Price, 368 S.C. 494, 498, 629 S.E.2d 363, 365 (2006).

A decision on whether to grant or deny a motion for continuance rests in the sound discretion of the trial court. State v. Yarborough, 363 S.C. 260, 266, 609 S.E.2d 592, 595 (Ct. App. 2005). Appellate courts in South Carolina typically show great deference to the trial court regarding these decisions. State v. Colden, 372 S.C. 428, 435, 641 S.E.2d 912, 916 (Ct. App. 2007). The denial of a motion for continuance will not be disturbed on appeal absent a clear abuse of discretion. Morris v. State, 371 S.C. 278, 283, 639 S.E.2d 53, 56 (2006); State v. Ravenell, 387 S.C. 449, 455, 692 S.E.2d 554, 557 (Ct. App. 2010).

### **Error preservation**

Walker's attorney never complained that an insufficient showing was made to hold the trial in Walker's absence; and he never claimed, even when the sentence was unsealed, that Walker did not have notice of the trial or realize that the trial would proceed in his absence. "In order to claim the protection afforded by the rule of law that a criminal defendant may be tried in his absence only upon a trial court's finding that the defendant has received the requisite notice of his right to be present and advisement that the trial would proceed in his absence if he failed to attend, a defendant or his attorney must object at the first opportunity to do so, and failure to so object constitutes waiver of the issue on appeal." Ravenell, 387 S.C. at 456, 692 S.E.2d at 558 (citation omitted); see State v. Patterson, 324 S.C. 5, 19, 482 S.E.2d 760, 767 (1997) ("Appellant is limited to the grounds raised at trial.").

In order for an issue to properly be preserved for appellate review, the issue must be: (1) raised to and ruled upon by the trial court; (2) raised by the appellant; (3) raised in a timely manner; and (4) raised to the trial court with sufficient specificity. State v. Rogers, 361 S.C. 178, 183, 603



S.E.2d 910, 912-913 (Ct. App. 2004); see JEAN HOEFER TOAL ET AL., APPELLATE PRACTICE IN SOUTH CAROLINA 57 (2nd ed. 2002) (identifying the four requirements that must be met in order for an issue to be properly preserved for appellate review). Importantly, those issue preservation requirements are designed “to enable the lower court to rule properly after it has considered all relevant facts, law, and arguments.” I’On, L.L.C. v. Town of Mt. Pleasant, 338 S.C. 406, 422, 526 S.E.2d 716, 724 (2000).

Walker’s counsel never complained that the showing in support of a trial in absence was insufficient. He never complained, even when the sentence was unsealed, that he did not receive notice of the trial and did not realize the trial would proceed in his absence. Accordingly, this issue should not be reviewed because it was incumbent upon him to raise those arguments to Judge McIntosh in order for Judge McIntosh to rule properly. I’On, L.L.C., supra. Because of his failure, or reluctance, to do so, the issue should not be reviewed by this Court.

Further, Walker’s counsel conceded Walker knew he was supposed to be at trial. R. p. 228, lines 21-23. An issue conceded in trial court is not preserved for review. State v. Benton, 338 S.C. 151, 526 S.E.2d 228 (2000); State v. Mitchell, 330 S.C. 189, 498 S.E.2d 642 (1998) (stating a defendant cannot acquiesce in an issue at trial and then complain about it on appeal). He conceded the issue; therefore, this Court should not review the complaint made for the first time on appeal.

#### **Walker’s waiver of the right to be present**

Walker waived his right to be present. He knew he was supposed to be present for trial, as conceded by his counsel. His bond form advised him that the trial would proceed in his absence. He fled to Texas. Therefore, the trial court did not err.

A criminal defendant has the right to be present at any stage of the criminal proceeding that is critical to its outcome if his presence would contribute to the fairness of the procedure.” State v.

Shuler, 344 S.C. 604, 624, 545 S.E.2d 805, 815 (2001) (citations omitted). “A defendant’s exclusion, or absence, will be reviewed in light of the whole record.” Id. (citations omitted). “Although the right to be present is a substantial one, no presumption of prejudice arises from a defendant’s exclusion.” Id. (citations omitted); State v. Williams, 292 S.C. 231, 232, 355 S.E.2d 861, 862 (1987) (absence from trial is subject to harmless error analysis); see State v. Castineira, 341 S.C. 619, 535 S.E.2d 449 (2000) (allegation of error in defendant being tried in his absence is without merit where counsel stipulated that defendant received proper notice).

In State v. Wright, 304 S.C. 529, 531, 405 S.E.2d 825, 826 (1991), Wright was not present for his trial on a charge of distributing cocaine. At the outset of trial, Wright’s defense counsel moved for a continuance, asserting he had recently been in contact with Wright and believed Wright could be located. Id. at 532, 405 S.E.2d at 827. The trial court denied the continuance motion and proceeded with a trial *in absentia*. Id. Following his conviction, Wright appealed, arguing the trial court erred in denying the continuance motion. Id. The Supreme Court affirmed the trial court’s ruling, finding the trial court did not abuse its discretion in denying Wright’s continuance motion because the record reflected Wright was aware of the term of court in which he was set to be tried and knew he would be tried in his absence if he failed to appear. Id.

In the present case, based on counsel’s representations and the notice the prosecution mailed to Walker, Walker was aware of the term of court he was to be tried, differentiating the case from State v. Wrapp, 421 S.C. 531, 808 S.E.2d 821 (Ct. App. 2017). In Wrapp, the defendant signed bond paperwork advising his court date was December 6, 2013. The case was scheduled for trial, but continued at defense counsel’s request, on July 14, 2014. The prosecution told Wrapp the case would go to trial “the next time we could get to it.” The case was called for trial again on September 29, 2014. Counsel moved for a continuance, unaware of why the defendant was not present. Id. at

533-34, 808 S.E.2d at 822. Following the trial court's denial of his motion for continuance, Wrapp's trial counsel explained, "For the record . . . I don't feel like Mr. Wrapp has been adequately noticed and we object to going to trial." Id. at 534-35, 808 S.E.2d at 822-23.

Unlike Wrapp's attorney, Walker's counsel never objected to notice and conceded Walker knew he was supposed to be present. Further, unlike the facts explained in Wrapp, the record is clear Walker knew what term his case was going to be tried, which undoubtedly prompted his flight to Texas. Wright, supra.

For these same reasons, any error by the trial court is harmless and Walker was not prejudiced by the trial in his absence. In Wrapp, this Court refrained from harmless error analysis on the basis that no evidence indicated Wrapp had notice of the term of court during which the case was tried. Id. at 537, 808 S.E.2d 824. However, because Walker's counsel conceded notice and Walker conceded guilt during the motion for reconsideration of his sentence, any error is harmless and Walker was not prejudiced by his absence. Williams, supra; see also State v. Sroka, 267 S.C. 664, 665, 230 S.E.2d 816, 817 (1976) ("Any doubt about the correctness of [affirming the appellant's conviction] is eliminated by the admission of appellant in open court, after conviction and during the pre-sentence inquiry by the trial judge that he had participated in the robbery . . . . Further review of the record, therefore, is rendered unnecessary.").

## CONCLUSION

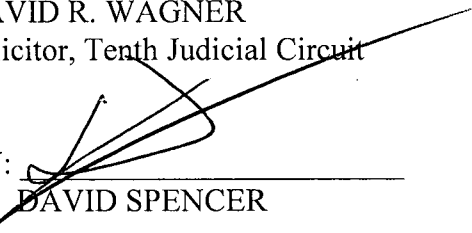
For all of the foregoing reasons, the judgment and conviction of the lower court should be affirmed.

Respectfully submitted,

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July 18, 2019

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

\_\_\_\_\_  
Appeal from Anderson County  
R. Lawton McIntosh, Circuit Court Judge  
\_\_\_\_\_

**RECEIVED**  
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SC Court of Appeals

THE STATE,

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vs.

PHILLIP WESLEY WALKER,

Appellant.

Appellate Case No. 2017-002204  
\_\_\_\_\_

**CERTIFICATE OF COUNSEL**  
\_\_\_\_\_

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and the April 15, 2014, order from the South Carolina Supreme Court entitled “Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings.”

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APPEAL FROM ANDERSON COUNTY  
Court of General Sessions  
R. Lawton McIntosh, Circuit Court Judge

---

Appellate Case No. 2017-002204

---

The State,..... Respondent

v.

Phillip Wesley Walker, ..... Appellant.

---

**FINAL REPLY BRIEF OF APPELLANT**

---

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Walker*

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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## TABLE OF CONTENTS

|                                                        |    |
|--------------------------------------------------------|----|
| Table of Contents .....                                | i  |
| Table of Authorities .....                             | ii |
| Arguments                                              |    |
| I.    Lack of Notice .....                             | 1  |
| II.   Error Preservation.....                          | 3  |
| III.  Harmless Error Analysis is not Appropriate ..... | 3  |
| Conclusion .....                                       | 4  |

## TABLE OF AUTHORITIES

### **Cases**

|                                                                                                 |      |
|-------------------------------------------------------------------------------------------------|------|
| <i>City of Aiken v. David Michael Koontz</i> , 368 S.C. 542, 629 S.E.2d 686 (Ct. App. 2006) ... | 2    |
| <i>Foster v. Ford Motor Credit Co.</i> , 302 S.C. 450, 395 S.E.2d 440 (1990).....               | 1    |
| <i>Gilmore v. Ivey</i> , 290 S.C. 53, 348 S.E.2d 180 (Ct. App. 1986).....                       | 1    |
| <i>McManus v. Bank of Greenwood</i> , 171 S.C. 84, 171 S.E. 473 (1933).....                     | 1    |
| <i>Shinn v. Kreul</i> , 311 S.C. 94, 427 S.E.2d 695 (Ct. App. 1993) .....                       | 1    |
| <i>State v. Jackson</i> , 288 S.C. 94, 341 S.E.2d 375 (1986).....                               | 3    |
| <i>State v. Oxner</i> , 391 S.C. 132, 705 S.E.2d 51 (2011).....                                 | 3    |
| <i>State v. Phillips</i> , 416 S.C. 184, 785 S.E.2d 448 (2016) .....                            | 3    |
| <i>State v. Simmons</i> , 279 S.C. 165, 303 S.E.2d 857 (1983) .....                             | 2    |
| <i>State v. Wrapp</i> , 421 S.C. 531, 808 S.E.2d 821 (Ct. App. 2017).....                       | 2, 4 |

### **Rules**

|                                       |   |
|---------------------------------------|---|
| Rule 4.2, RPC of Rule 408, SCACR..... | 1 |
| Rule 408, SCACR.....                  | 1 |

### **Other**

|                                     |   |
|-------------------------------------|---|
| S.C. Bar Ethics Opinion 91-02 ..... | 1 |
|-------------------------------------|---|

## IN REPLY

Phillip Waller replies to the State of South Carolina's Brief of Respondent as follows.

### **I. Lack of Notice.**

The State relies on the bond card the prosecutor claims the State sent directly to Mr. Walker on November 18, 2016.<sup>1</sup> Brief of Respondent at 5. As pointed out in Mr. Walker's opening brief, at 6, it is well settled "that statements of fact appearing only in argument of counsel will not be considered." *McManus v. Bank of Greenwood*, 171 S.C. 84, 171 S.E. 473, 475 (1933); *see also Shinn v. Kreul*, 311 S.C. 94, 102, 427 S.E.2d 695, 700 (Ct. App. 1993) ("A court cannot consider facts appearing only in argument of counsel."); *Gilmore v. Ivey*, 290 S.C. 53, 58, 348 S.E.2d 180, 184 (Ct. App. 1986) (judge "properly disregard" counsel's statements about content of depositions when depositions not were provided to the court). The record does contain any information that the card was properly addressed or mailed in order to create an inference that Mr. Walker received the mailing. *See Foster v. Ford Motor Credit Co.*, 302 S.C. 450, 452, 395 S.E.2d 440, 441 (1990) (to get inference that letter was received by addressee requires "[e]vidence that a letter is properly addressed and mailed").

The State relies on standard language contained in the Bail Processing Form, that was filed with the Clerk of Court but not presented to the trial judge. Brief of Respondent at 6. Although this form notified Mr. Walker of his right to be present at his trial and the possibility that he could be tried in his absence, this form did not place Mr.

---

<sup>1</sup> This attempt at a direct communication by the Solicitor's Office with Mr. Walker likely violated Rule 4.2, RPC of Rule 408, SCACR. S.C. Bar Ethics Opinion 91-02 (found at <https://www.scbar.org/lawyers/legal-resources-info/ethics-advisory-opinions/eao/ethics-advisory-opinion-91-02/> (last viewed April 4, 2019)).

Walker on actual notice of his trial date. Mr. Walker was arrested on December 16, 2015. His trial was not until December 5 and 7, 2016. This Court can take judicial notice that Court Administration does not publish the Terms of Court a year in advance.

The State relies on statements of counsel during pre-trial matters to argue that Mr. Walker had notice of his trial. *E.g.* Brief of Respondent at 4, 5. A close examination of these statements does not confirm that Mr. Walker had actual notice of his trial date.

Finally, the State relies on statements made at sentencing. Brief of Respondent at 5-6. None of this information was available to the trial judge during the hearings on the motion to continue and, therefore, should not be considered by this Court.

The absence of actual notice of the trial date requires a new trial. *E.g. State v. Simmons*, 279 S.C. 165, 167, 303 S.E.2d 857, 859 (1983) (“[T]he record is in all respects void of evidence to support a finding that appellants were afforded notice of the indictment or trial. Under these facts, the resulting convictions in absentia cannot stand.”); *State v. Wrapp*, 421 S.C. 531, 808 S.E.2d 821 (Ct. App. 2017) (“trial court could not try defendant in absentia without findings regarding whether he received notice of trial and was absent voluntarily”); *City of Aiken v. David Michael Koontz*, 368 S.C. 542, 547, 629 S.E.2d 686, 689 (Ct. App. 2006) (Notice of the term of court for which the trial is set constitutes sufficient notice to enable a criminal defendant to make an effective waiver of his right to be present. If the record, however, does not include evidence to support a finding that the defendant was afforded notice of his trial, the resulting conviction in absentia cannot stand.”).

## **II. Error Preservation.**

The State argues “[d]efense counsel failed to object on the grounds raised” in this appeal. Brief of Respondent at 4, 7-8. Trial counsel, however, objected to the State trying Mr. Walker in his absence. *See State v. Oxner*, 391 S.C. 132, 134, 705 S.E.2d 51, 52 (2011) (“[A]ll this Court has ever required is that the questions presented for its decision must first have been fairly and properly raised to the lower court and passed upon by that court.”). “Simply because a party does not expressly articulate the relevance of a particular case does not excuse the court [] from failing to apply controlling precedent.” *State v. Phillips*, 416 S.C. 184, 194, 785 S.E.2d 448, 453 (2016). Controlling precedent required the trial judge “to make findings of fact regarding 1) whether the appellant had received notice of her right to be present, and 2) whether the appellant had been warned that the trial would proceed in her absence upon a failure to attend court.” *State v. Jackson*, 288 S.C. 94, 96, 341 S.E.2d 375, 375 (1986).

The State’s request to try Mr. Walker in his absence and trial counsel’s motion to continue the trial from Mr. Walker to be present required the trial court to make both of these findings and, therefore, preserved this matter for appeal. The absence of actual notice requires a new trial.

## **III. Harmless Error Analysis is not Appropriate.**

The State argues, “[A]ny error by the trial court is harmless and Walker was not prejudiced by his absence.” This Court rejected that this argument in *Wrapp*, holding:

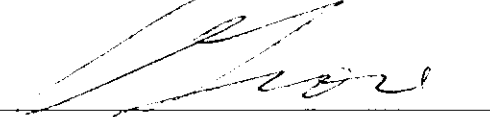
The State urges us to find any error in this process was harmless. However, we need not undertake a harmless error analysis when, as here, the trial court erred in failing to make the requisite findings and the record is devoid of facts allowing us to discern whether Wrapp had notice of the term of court.

421 S.C. at 537, 808 S.E.2d at 824.

### **CONCLUSION**

For the reasons set forth in Mr. Walker's Brief of Appellant and this reply brief this Court should reverse the trial court and order a new trial.

Respectfully Submitted,

By 

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*Attorney for Appellant Phillip Walker*

July 24, 2019.

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In The Court of Appeals

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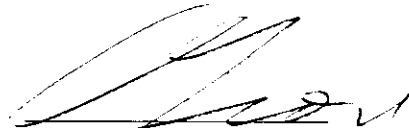
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***Rule 211(b), SCACR Certification***

The Final Reply Brief of Appellant Complies with Rule 211(b), SCACR.



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July 24, 2019  
Greenwood, South Carolina

THE STATE OF SOUTH CAROLINA  
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## INDEX

### Transcript of December 5, 2016

|                                                |    |
|------------------------------------------------|----|
| Transcript Cover Page.....                     | 1  |
| Transcript Index.....                          | 2  |
| Natasha Oliver ( <i>Biggers</i> Hearing)       |    |
| Direct by Mr. Stolarski .....                  | 13 |
| Cross-examination by Mr. Yarborough.....       | 22 |
| Craig Gardner ( <i>Biggers</i> Hearing)        |    |
| Direct by Mr. Stolarski .....                  | 27 |
| Cross-examination by Mr. Yarborough.....       | 32 |
| Roger Trevor Simmons ( <i>Biggers</i> Hearing) |    |
| Direct by Ms. Huey .....                       | 36 |
| Cross-examination by Mr. Yarborough.....       | 38 |

### Transcript of December 7, 2016

|                                            |    |
|--------------------------------------------|----|
| Transcript Cover Page.....                 | 53 |
| Transcript Index.....                      | 54 |
| Trevor Simmons ( <i>Jackson v. Denno</i> ) |    |
| Direct by Ms. Huey .....                   | 58 |
| Cross-examination by Mr. Yarborough.....   | 66 |
| Opening Statements                         |    |
| By Ms. Huey .....                          | 83 |
| By Mr. Yarborough .....                    | 86 |

|                                          |     |
|------------------------------------------|-----|
| Natasha Oliver                           |     |
| Direct by Ms. Huey .....                 | 89  |
| Cross-examination by Mr. Yarborough..... | 105 |
| Joshua Genthner                          |     |
| Direct by Ms. Huey .....                 | 109 |
| Trevor Simmons                           |     |
| Direct by Ms. Huey .....                 | 114 |
| Cross-examination by Mr. Yarborough..... | 134 |
| Craig Gardner                            |     |
| Direct by Mr. Stolarski .....            | 136 |
| Cross-examination by Mr. Yarborough..... | 138 |
| Sara Smith                               |     |
| Direct by Ms. Huey .....                 | 140 |
| Cross-examination by Mr. Yarborough..... | 143 |
| Tyrone Blackwell                         |     |
| Direct by Ms. Huey .....                 | 144 |
| Cross-examination by Mr. Yarborough..... | 159 |
| Yoshika Chapman                          |     |
| Direct by Ms. Huey .....                 | 162 |
| Directed Verdict Motion .....            | 171 |
| Charge Conference .....                  | 172 |
| Charge on the Law .....                  | 179 |

|                                                          |     |
|----------------------------------------------------------|-----|
| Closing Arguments                                        |     |
| By Ms. Huey .....                                        | 203 |
| By Mr. Yarborough .....                                  | 207 |
| Verdict.....                                             | 215 |
| Sentencing (sealed sentence).....                        | 219 |
| Transcript of October 12, 2017 (sentencing hearing)..... | 225 |
| State’s Exhibit No. 2.....                               | 238 |
| Indictment.....                                          | 252 |
| Sentencing Sheets.....                                   | 254 |
| Order Denying Motion to Reconsider Sentence .....        | 256 |
| Rule 210, SCACR Certification.....                       | 257 |

State of South Carolina

Court of General Sessions

County of Anderson

State of South Carolina )

)

Transcript of Record

v. )

2016-GS-04-00594

)

Phillip Wesley Walker )

)

Defendant. )

December 5, 2016

Anderson, South Carolina

B E F O R E:

The Honorable Lawton McIntosh, Judge; and a  
jury.

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

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Attorney for the State

William Stolarski, Assistant Solicitor  
Attorney for the State

William Yarborough, Esquire  
Attorney for the Defendant

Lisa Scott  
Circuit Court Reporter

## I N D E X

| <u>WITNESS</u>                          | <u>PAGE</u> |
|-----------------------------------------|-------------|
| Natasha Oliver (Biggers Hearing)        |             |
| Direct examination by Mr. Stolarski.... | 29          |
| Cross-examination by Mr. Yarborough.... | 38          |
| Officer Craig Gardner (Biggers Hearing) |             |
| Direct examination by Mr. Stolarski.... | 43          |
| Cross-examination by Mr. Yarborough.... | 48          |
| Roger Trevor Simmons (Biggers Hearing)  |             |
| Direct examination by Ms. Huey.....     | 52          |
| Cross-examination by Mr. Yarborough.... | 54          |

- - -

P R O C E E D I N G S

\* \* \* \* \*

THE COURT: Ms. Huey, would you call your case, please?

MS. HUEY: Yes, sir, Your Honor. The State calls *State v. Phillip Wesley Walker*, indicted for armed robbery and possession of a weapon during the commission of a violent crime, 2016-GS-04594, Your Honor.

THE COURT: All right. Ladies and gentlemen, we're about to begin the case or the jury selection in the case of *State v. Phillip Wesley Walker*. I have several questions that are more particularized to this case.

Unless there is absolute necessity, if you would, if you need to respond, unlike the procedure we used before, would you stand up at your -- where you are, give us your jury number, and give us your response. Unless you just have absolute necessity, I'm going to ask if you are back there, and normally we do not give you opportunity at the end of the process to come forward. So if it applies to you, if you would go ahead and stand up.

With that being said, ladies and gentlemen, can everybody still hear me okay?

1 MS. HUEY: And then the victim, Your Honor, is  
2 present, and I think she's allowed to be in the  
3 courtroom.

4 THE COURT: Okay. I'm assuming you're all  
5 right with that.

6 MS. HUEY: But Detective Blackwell and Officer  
7 Genthner and Ms Chapman, if you all would step  
8 outside, please.

9 THE COURT: Sorry.

10 (The witnesses left the courtroom.)

11 THE COURT: All right. Before we proceed, my  
12 understanding was, this is going to be a Biggers  
13 out-of-court identification hearing.

14 But for the record, I met with counsel in my  
15 chambers prior to jury qualification and selection.  
16 I was -- Mr. Yarborough, on behalf of the defendant,  
17 moved for a continuance. I told him I was not going  
18 to grant the continuance; however, to protect him on  
19 the record, you need to go ahead and renew that  
20 motion.

21 MR. YARBOROUGH: Your Honor, I move for a  
22 continuance based on that my client is not here.  
23 The best alternative is for the State to wait and  
24 try him when he is here.

25 And based on that, I've been in contact with



1 him. I don't have any idea why he's not here. I  
2 don't understand why he's not here, but I'd ask the  
3 Court for a continuance.

4 THE COURT: That -- that's denied. Anything  
5 further from the State before we go forward with the  
6 Biggers hearing?

7 MS. HUEY: Your Honor, if I may, I need to  
8 check on one witness for that hearing and make sure  
9 he's outside.

10 THE COURT: Sure.

11 MS. HUEY: And just for the record, I'm  
12 printing off a couple of cases.

13 THE COURT: Okay. Anything further from the  
14 defense while -- before she does that?

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

16 THE COURT: All right. Go ahead.

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

18 THE COURT: Go ahead. I'm going to go ahead  
19 and bring that jury back in right quick. And then  
20 I'm going to excuse them right quick.

21 MS. HUEY: Okay. Is it okay for me to...

22 THE COURT: You think he's right out there?

23 MS. HUEY: I think he should be right outside.

24 THE COURT: Yeah, go ahead.

25 (Brief recess.)

1 MS. HUEY: He should be here in just a minute,  
2 Judge?

3 THE COURT: Ma'am?

4 MS. HUEY: He should be here in just a minute.

5 THE COURT: Okay. Would you bring the jury in,  
6 please?

7 THE BAILIFF: (Complying.)

8 (At 11:10 a.m., jury entered the courtroom.)

9 THE COURT: You are our foreperson?

10 THE FORELADY: Yes, sir.

11 THE COURT: Okay. And you are our alternate;  
12 is that correct?

13 THE ALTERNATE: Yes, sir.

14 THE COURT: If you would, talking to our  
15 alternate, if you would sit one row back, not now.  
16 It's okay. You don't have to do it right now, but  
17 when you come in each time, come in and out of  
18 court, if you'd use that back seat on the far right.

19 And, ma'am, if you would use the front seat on  
20 the far right. Okay. That helps us keep up some  
21 administrative duties. Our forelady can stay there.

22 The rest of you can sit wherever you like,  
23 other than their seats, each time you come in and  
24 out of the courtroom.

25 Again, ladies and gentlemen, we have pretrial

1 matters that are going to take us over into  
2 Wednesday. We'll start opening statements Wednesday  
3 morning at 9:30. So if you could try to be in your  
4 jury room by 9:25, and I'll try to get started as  
5 close to 9:30 as possible.

6 But let me give you a few of the do's and  
7 don'ts before we excuse you for the day.

8 Number one, until such time as I give you  
9 explicit instructions that you may begin your  
10 deliberations about the trial in this matter, you  
11 may not do so. That would include speaking with  
12 significant others, children, friends, each other.

13 I'm married and I have a little girl. And I  
14 can assure you, if I was to say to them I had jury  
15 duty, they'd ask me 20 questions about what the case  
16 is about and this kind of thing. At the end of this  
17 case when you're excused, you can speak with  
18 whomever and however you want to as much as you  
19 like. But until such time, I'm going to ask -- I'm  
20 going to require that you do not so.

21 And that would also include when you take a  
22 break during this trial make any comments about what  
23 you've heard or seen during the case with your  
24 fellow jurors until you're told to begin your  
25 deliberations.

1           For example, if there's an objection and I  
2 sustain it, the fact that you have seen that  
3 objection and it's sustained may not be even spoken  
4 about till you have heard the law about that. And  
5 the reason being, ladies and gentlemen, we want you  
6 to make your decision by the facts of this case are  
7 based on any testimony and the evidence you hear  
8 from this witness stand, any exhibits that I allow  
9 into evidence and according to the law as I give it  
10 to you at the end of this case.

11           And so until such time you've heard all of that  
12 and all of that as testimony and all the evidence  
13 and the law, you may reach a preliminary idea about  
14 what the facts of this case are on a premature  
15 basis. So I'm going to ask the parties not to begin  
16 your deliberations until the end of this case.

17           Also, while you are serving on the trial of  
18 this matter, including when you're excused, you may  
19 not read, hear, or listen to anything that may be in  
20 the media about this case. Whether it be on the  
21 news, radio, or some other form of communication.  
22 It very well may not be in the news, but if it does  
23 happen to be or any other form of communication, I'm  
24 going to ask and require that you not listen to it,  
25 read it, or hear it.

1           Going back, your deliberations are  
2           communicated. It's not only just face to face. It  
3           is also by way of any other form of communication,  
4           e-mail, Twitter, telephone. Any mass -- any mass  
5           form of communication there may be, you're just not  
6           to engage in that.

7           And finally, ladies and gentlemen, our Chief  
8           Justice -- Former Chief Justice has instructed our  
9           trial judges to instruct jurors during the course of  
10          the trial and until such time as you have been  
11          released from the trial in this matter, that you may  
12          not engage in independent jury investigation or  
13          research.

14          What that simply means is, you may not look up  
15          anything during your deliberations or during this  
16          trial, during the break, or during the trial about  
17          any person here in the courtroom, myself, court  
18          reporters, the attorneys for the State or parties,  
19          any issue that you hear during the course of this  
20          trial or any issue that you think may be helpful.

21          And, again, the reason being, the parties and  
22          the attorneys don't have an opportunity to see what  
23          you've seen. We don't want you to be infected by  
24          the outside influences. And, again, we want you to  
25          make your decision based solely on the testimony and

1 evidence that you hear here in this courtroom in  
2 accord with the law that you're being charged with  
3 at the end of this case. Does everybody understand  
4 that?

5 THE JURORS: (Nonverbal responses.)

6 THE COURT: Very good. And I'll ask each  
7 morning if you've heard in trial or if anybody said,  
8 heard, or seen anything about this case or spoken  
9 with anyone about this case, just to put you on  
10 notice.

11 That being said, madam forelady -- or madam  
12 clerk -- or court reporter, how many pads do we  
13 need?

14 THE REPORTER: Eight.

15 THE COURT: Eight. Is that correct, madam  
16 forelady?

17 THE FORELADY: (Nonverbal response.)

18 THE COURT: And finally, madam forelady, if at  
19 any time I ask you to come back into the courtroom  
20 before you are ready or if any of your fellow jurors  
21 are ready, just send a note to the bailiff. This  
22 not an endurance contest. If you ever need a break  
23 during the course of the trial, raise your hand.

24 If you can't see or hear something during the  
25 course of this trial, again, raise your hand and

1 we'll stop and make sure everything is situated so  
2 you can hear or see or we don't bring you back too  
3 soon.

4 Okay. With that being said, ladies and  
5 gentlemen, thank you for your willingness to serve.  
6 We're going to excuse you today and you're to be  
7 back in jury room at 9:25 on Wednesday morning and  
8 we'll begin with opening statements. Thank you very  
9 much.

10 (At 11:16 a.m., jury was excused for the day.)

11 THE COURT: All right. Other than being denied  
12 your motion for a continuance, any additions or  
13 exceptions to my instructions to the jury?

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

15 THE COURT: From the State?

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

17 THE COURT: Are you ready to go forward with  
18 the Biggers hearing?

19 MS. HUEY: Yes, sir. Let me see if they're  
20 here now. I'm sorry, Judge.

21 MR. YARBOROUGH: And I mentioned to her before  
22 and I should've said something to you back there, I  
23 have a sentencing in front of Judge Cain on Thursday  
24 morning that's a little bit complicated. I think it  
25 probably -- I don't think we're going to be in

1 trial ---

2 THE COURT: I think you're right.

3 MR. YARBOROUGH: --- but it may be later in the  
4 morning, we can work around it. I just thought I  
5 better alert the Court.

6 THE COURT: I appreciate that.

7 MR. YARBOROUGH: I'm sorry.

8 MS. HUEY: And, Judge, I'll go check on that  
9 witness, but I did also -- we are going to do the  
10 Jackson Denno hearing first thing Wednesday morning,  
11 I would imagine before nine o'clock. Is that good,  
12 Judge?

13 THE COURT: I'm sorry?

14 MS. HUEY: For the Jackson Denno hearing that  
15 involves the officer who's unable, would you like to  
16 do that at nine o'clock on Wednesday?

17 THE COURT: That'll be good.

18 MS. HUEY: Okay. And I was going say in light  
19 of that, as I said in chambers, Your Honor, it is  
20 recorded, and this has been provided to  
21 Mr. Yarborough, as well. But I thought if you had a  
22 minute, you may want to view it. Let me know if you  
23 have any problems opening that. It worked on Media  
24 Player. And that's a copy of the transcript.

25 May I go check on the witness?



1 THE COURT: Okay.

2 MS. HUEY: Judge, the officer is still a few  
3 minutes out, but we can go ahead and start with the  
4 clerk if that's okay.

5 THE COURT: That'll be good.

6 MR. STOLARSKI: State calls Natasha Oliver.

7 THE WITNESS: (Approaching.)

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

12 THE WITNESS: Yes, sir.

13 THE CLERK: If you would take the witness  
14 stand, please, ma'am.

15 THE WITNESS: All right.

16 THE CLERK: And state your name and spell your  
17 last name for the reporter, please.

18 THE WITNESS: Okay. Natasha Oliver,  
19 O-l-i-v-e-r.

20 NATASHA OLIVER,  
21 having been produced and first duly sworn as a  
22 witness on behalf of the State, then testified as  
23 follows:

24 DIRECT EXAMINATION

25 BY MR. STOLARSKI:

1 Q. Ms. Oliver, have you ever testified in court  
2 before?

3 A. No.

4 Q. Have you ever been a victim or a witness of a  
5 crime?

6 A. No.

7 Q. How far did you go in school?

8 A. Twelfth grade.

9 Q. Okay. And do you work?

10 A. Yes, I do.

11 Q. Okay. Where do you work?

12 A. Family Dollar.

13 Q. Okay. Where were you on December 16, 2015, at  
14 approximately noon?

15 A. Working.

16 Q. Working?

17 A. Yes, sir.

18 Q. And that was at the Family Dollar, right?

19 A. Yes, sir.

20 Q. Briefly describe what happened at the time.

21 A. It was sort of busy. I was running the  
22 register. And then I noticed that the guy was  
23 standing there watching me, and I asked him could I  
24 help him.

25 And then he said he was just looking at buying

1       some toys. Then he also said, do we take EBT? I  
2       told him, yes, we did. And then he said, he was  
3       trying to find him a snack. I said, okay. And at  
4       the time I still was him watching.

5               And then he came up to the counter. He had a  
6       thing of Pringles and some Airhead candy, and I rung  
7       him up.

8               And then he also asked me about how much the  
9       cigarettes was, Newport cigarettes. I told him the  
10      price. And he said he wanted some, so I turned  
11      around. I got the cigarettes out, and then I rung  
12      them up.

13              And then he had the gun pointed at me. And he  
14      told me that, "Give me all the money. No change."  
15      And I gave him the money. And then he told me if I  
16      screamed, he would shoot.

17              So then I told him, "Okay. I'm going to ring  
18      up this lighter and to get the money out the  
19      register." So I gave him the money across the top  
20      of the register, and then he put in the bag and he  
21      exited out the left door.

22      Q.     Okay. About how long was the suspect in the  
23      store?

24      A.     I don't know how long he was in the store.  
25      Like I said, I was busy, but I noticed he was

1 standing at the front and, you know, where the  
2 customers are at. I got finished with a customer,  
3 and he was standing watching me.

4 Q. About how long did you observe him, per se?

5 A. Well, I guess about maybe three minutes he  
6 stood there, you know, just watching me.

7 Q. And about how far away from you was he when you  
8 were observing him?

9 A. Oh, I'd say maybe about -- maybe 3 or 4 feet  
10 maybe.

11 Q. Was he male or female?

12 A. Male.

13 Q. Was he black or white?

14 A. Black.

15 Q. Okay. And where did he come from initially?

16 A. I didn't see where he came from. Like I said,  
17 he was standing and watching me.

18 Q. Did you notice anything about the defendant --  
19 I'm sorry -- about the suspect before he pulled the  
20 gun?

21 A. I noticed what he was wearing. He kept  
22 watching me, so...

23 Q. Did you notice any physical characteristics?

24 A. He had on glasses.

25 Q. Okay. Did you notice ---

1 THE COURT: He had on what, please?

2 THE WITNESS: He had on eyeglasses.

3 BY MR. STOLARSKI:

4 Q. Did you notice anything about his demeanor that  
5 you found attention worthy?

6 A. No. I just noticed he kept watching me.

7 Q. And can you go over what he said one more time?

8 A. He said to give him all the money across the  
9 top of the register. No change.

10 Q. Okay.

11 A. And he said that he would shoot me if I  
12 screamed.

13 Q. All right. And about how attentive were you to  
14 him before he drew the gun?

15 A. I was -- I was watching him.

16 Q. Watching him?

17 A. Uh-huh.

18 Q. And how attentive were you to him after he drew  
19 the gun?

20 A. I was watching him.

21 Q. You were watching him?

22 A. Uh-huh.

23 Q. Okay. What was the lighting like in the store?

24 A. It was well lit.

25 Q. It was well lit?

1 A. Uh-huh.

2 Q. And what was the weather like outside at the  
3 time?

4 A. Sunshine.

5 Q. Okay. And when he drew the gun, was he closer  
6 or farther away?

7 A. He was at the register.

8 Q. At the register?

9 A. Uh-huh.

10 Q. So he was close to you?

11 A. He was close. Uh-huh.

12 Q. Okay. Can you describe approximately how --  
13 the distance being with your hands or the number of  
14 feet?

15 A. He was like standing right in front of me,  
16 yeah.

17 Q. Okay.

18 A. Uh-huh.

19 Q. Were you intoxicated at the time?

20 A. No, I was not.

21 Q. Okay. Was there anything blocking your view at  
22 the time?

23 A. No.

24 Q. Did you have -- do you have good eyesight?

25 A. I do.

1 Q. Did you get -- get a good enough look at him to  
2 be able to identify him?

3 A. Yes.

4 Q. Did the defendant or the suspect have anything  
5 obstructing his face?

6 A. No.

7 Q. How soon did you -- sorry. How did you report  
8 the incident?

9 A. I pulled the panic button.

10 Q. And how soon afterwards did law enforcement  
11 respond?

12 A. It was -- they were there fast.

13 Q. Fast. Do you remember how many minutes?

14 A. Not offhand.

15 Q. Was it under half an hour?

16 A. Yes. It was under half an hour. Yes.

17 Q. Okay. And what did law enforcement ask or --  
18 sorry. What physical description did you give to  
19 law enforcement?

20 A. I told them that he had on brown like Carhart  
21 jacket with a red and turquoise undershirt  
22 underneath it.

23 Q. Okay. Did you list what he looked like  
24 physically? Did you describe him as a ---

25 A. I told them he was a black guy.

1 Q. Okay.

2 A. Yes. Uh-huh.

3 Q. Did the officer -- an officer later take you to  
4 identify a suspect?

5 A. Yes.

6 Q. And about how long after law enforcement  
7 arrived did you go to see the suspect?

8 A. I guess maybe like soon after they -- when they  
9 got there, they took me right on.

10 Q. Okay.

11 A. Yes, sir.

12 Q. So under ten minutes or over ten minutes?

13 A. It didn't take that long. About five minutes  
14 away from the store almost.

15 Q. Okay. Did the officer give you any specific  
16 instructions regarding this identification?

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

18 Q. Okay. Did the detective tell you that the  
19 suspect, the person they detained, was definitely  
20 the person that robbed the store?

21 A. No. They told me -- no.

22 Q. Were you lead to believe that you had to or  
23 that you should identify the suspect as the robber?

24 A. No.

25 Q. Did the officer influence your decision at all?



1 A. No.

2 Q. Okay. Did you feel any pressure that you  
3 should pick out the suspect as the person who robbed  
4 the store?

5 A. No, sir.

6 Q. And how long was the drive in between when you  
7 left the Dollar General and when you got to where  
8 the suspect was being detained?

9 A. It was less than five minutes away.

10 Q. Okay. And when you showed up, did you identify  
11 the suspect?

12 A. Yes, I did.

13 Q. Okay. What caused you to make this decision?

14 A. After he had on the same stuff that I, you  
15 know, told them what he had on. He had the same  
16 thing on, except he didn't have the jacket on.

17 Q. Okay. Did you recognize his face?

18 A. Uh-huh.

19 Q. Was the person that the police detained  
20 definitely the person who robbed the store?

21 A. Yes.

22 Q. Are you absolutely sure of this?

23 A. Yes.

24 MR. STOLARSKI: No further questions.

25 THE COURT: Cross-examination?

## CROSS-EXAMINATION

BY MR. YARBOROUGH:

Q. Ms. Oliver?

A. Yes, sir.

Q. Did you go -- you went with the officer to -- to see someone that they -- they said they had arrested?

A. Uh-huh.

Q. Okay. And how far was that from where you were?

A. It don't take less than five minutes away from the store.

Q. Five minutes?

A. Uh-huh.

Q. And so during that period, were you talking to the police officer?

A. He just asked me, you know, just identify it to the ---

Q. He asked you ---

A. --- say "yes" or "no."

Q. What did he tell you?

A. He just told me, you know, if it's him, just say "yes" or "no."

Q. Okay. And when you got there, was there anybody else there?

1 A. Yes, sir. There was polices all around.

2 Q. Okay. And ---

3 THE COURT: There was what now?

4 THE WITNESS: There were police officers that  
5 were there.

6 BY MR. YARBOROUGH:

7 Q. And was -- was there a person there in  
8 handcuffs?

9 A. Yes, there was.

10 Q. Okay. Was there anybody else there in  
11 handcuffs?

12 A. No.

13 Q. Okay. And you said that -- that you identified  
14 him from when you saw him in the store; is that  
15 right?

16 A. Yes, sir.

17 Q. Did -- did the person in the store have on a  
18 sweatshirt?

19 A. He had on an overcoat. He had an overcoat on.

20 Q. Okay.

21 A. And he had on two, like I said, a t-shirt and  
22 another jacket underneath there.

23 Q. What was underneath there? I'm sorry.

24 A. He had turquoise and a red shirt underneath  
25 there.

1 Q. Okay. But was there a -- was there a hood on  
2 the coat? Did he have the ---

3 A. It was like a Carhart coat.

4 Q. Okay. And was the hood up when he was in the  
5 store?

6 A. No, it wasn't.

7 Q. Okay. And did you give the police a  
8 description of the jacket before you went over  
9 there?

10 A. Yeah, I told them it was a brown Carhart jacket  
11 and it was dirty.

12 Q. Okay. And that was the same jacket that was on  
13 at the -- when you got there?

14 A. No. He didn't have it on.

15 Q. He did not have that jacket on?

16 A. No. He did not have that jacket on.

17 Q. Okay. Did you tell the police how old he was?

18 A. I didn't know how old he was. No.

19 Q. Okay. And when you got there, about how many  
20 police officers were around?

21 A. It was -- I can't remember. It was like there  
22 was polices all over.

23 Q. Okay. And -- but there was only one person in  
24 handcuffs?

25 A. Yes.

1 Q. Okay. And how long did an op -- how long of an  
2 opportunity did you have to view him at the store  
3 when the robbery took place?

4 A. How long?

5 Q. Yeah.

6 A. I noticed -- I noticed him before he robbed me  
7 when he was standing -- standing there, so I got a  
8 look at him.

9 Q. You got a look at him?

10 A. Uh-huh.

11 Q. Okay. And were you -- was there -- were you  
12 scared when you got a look at him?

13 A. I got a nervous feeling, you know, when he, you  
14 know, was talking to me. You know, something didn't  
15 feel right. Until then when I rung his stuff up,  
16 and then he had the gun.

17 Q. Okay. Were you nervous when you saw the gun?

18 A. I was.

19 Q. Okay. And did -- did you give the police a  
20 prior description before going over to where they  
21 showed you him?

22 A. Yes.

23 Q. Okay. And how -- were you ex -- were you  
24 extremely certain when you saw him that that was  
25 him?

1 A. Yes.

2 Q. Okay. And -- and how long was it between --  
3 between then and -- I mean, between the robbery and  
4 the -- the time you went to look at him?

5 A. It wasn't long.

6 Q. A couple of minutes? A couple of --  
7 30 minutes?

8 A. It was just -- it was around 30 minutes.

9 Q. Probably 30 minutes?

10 A. (No response.)

11 Q. And he was there alone?

12 A. Yes.

13 Q. In handcuffs?

14 A. Yes.

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

17 THE COURT: Redirect?

18 MR. STOLARSKI: None, Your Honor.

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

21 THE WITNESS: Okay.

22 THE COURT: Would you call your next witness,  
23 please, ma'am.

24 MR. STOLARSKI: The State would like to call  
25 Craig Gardner, Officer Gardner.

1 THE WITNESS: (Approaching.)

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

6 THE WITNESS: Yes, sir.

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

10 THE WITNESS: My name is Craig Gardner. Last  
11 name is spelled G-a-r-d-n-e-r.

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

16 DIRECT EXAMINATION

17 BY MR. STOLARSKI:

18 Q. Mr. Gardner, what's your occupation?

19 A. I'm a police officer with the City of Anderson.

20 Q. And how long have you been employed with the  
21 City of Anderson?

22 A. I've been with the City of Anderson for about  
23 four years and a couple of months.

24 Q. Do you have any previous law enforcement  
25 experience?

1 A. I do.

2 Q. Can you describe it briefly, please?

3 A. I was a police officer in Greenville for  
4 21-and-a-half years. Thirteen years I was an  
5 investigator with the police department.

6 Q. Okay. And what are your present duties?

7 A. I am a corporal with the Anderson Police  
8 Department. I work in the community action team,  
9 which is a street crimes unit investigating gang  
10 activity and violent street crime.

11 Q. And so one of your duties is to investigate --  
12 assist in investigations?

13 A. That's true.

14 Q. Okay. And were you on duty at noon on  
15 December 16 ---

16 A. I was.

17 Q. --- 2016?

18 A. Yes, sir.

19 Q. Okay. And what were you doing at that time?

20 A. I was on patrol in the area of Cleveland  
21 Street, primarily around Cleveland and Fant due to  
22 some activity going on in that area.

23 And then when this call came out about an  
24 incident on River Street, we responded to the area  
25 to assist.



1 Q. Okay. And when you said you responded to the  
2 area, did you respond to the Dollar General or the  
3 scene where the suspect was being detained?

4 A. Originally, we responded to the immediate area  
5 because of the information that was put on the  
6 radio.

7 And then when I heard other officers caught the  
8 individual on Thomas Street, I circled back and went  
9 back to that area to standby with them.

10 Q. Okay. Can you describe how you ended up --  
11 or sorry. Can you describe what happened after  
12 that?

13 A. While I was on Thomas Street, I can't remember  
14 which officer it was, but someone called and said an  
15 investigator wanted an officer to come back to the  
16 store. I think it was Dollar General or Family  
17 Dollar -- I can't remember which one -- but wanted  
18 me to pick up the clerk that was at the store and  
19 bring her back to Thomas Street to see if she could  
20 identify the individual that they were out with.

21 Q. Okay. Do you remember what the weather was  
22 like that day outside?

23 A. Best I can recall, it was clear. I mean, it  
24 was not raining or anything. It was a normal day.

25 Q. Okay. So sunny? cloudy? Do you remember?

1 A. I couldn't tell you. It was daylight. It  
2 wasn't raining.

3 Q. Okay. And then you picked up the witness,  
4 Ms. Oliver?

5 A. I did.

6 Q. Okay. And then you drove her to -- what did  
7 you -- sorry. What did you do after that, after you  
8 picked her up?

9 A. Once I picked her up at the Family Dollar  
10 store, I transported her over to Thomas Street.

11 Q. Okay. And on the way there, can you briefly  
12 describe your interactions with her?

13 A. Yes. When I first picked her up and introduced  
14 myself, I asked her her name. Then I asked her if  
15 she was the one who was working at the store at the  
16 time the incident occurred.

17 As I drove her over to Thomas Street, I told  
18 her that we had some officers that was out with  
19 someone, and we wanted to take her over there to see  
20 if she could look at this person and tell us whether  
21 he was or was not the individual that had come into  
22 her store.

23 I did tell her this was a single individual  
24 that she was going to be looking at, and I told her  
25 that I did not want her to feel like she had to say,

1       yes, that's him.

2               I told her that it was equally as important for  
3 her to say, no, it is not him, as it is to say, yes,  
4 it is him, because we wanted to make sure that we  
5 got the right guy, but also we wanted to make sure  
6 that we did not detain someone who was not involved  
7 in the incident that she witnessed.

8       Q.     Okay. And did Ms. Oliver give you any physical  
9 descriptions of the suspect or was that somebody  
10 else?

11      A.     I don't recall her giving me any descriptions  
12 of the individual at all.

13      Q.     Okay. I'm sorry. And about what time, if you  
14 remember, did you arrive on scene with Ms. -- on the  
15 scene where you had the suspect detained with  
16 Ms. Oliver?

17      A.     I couldn't give you a specific time. It was  
18 somewhere in the neighborhood of maybe 30, 40  
19 minutes after the initial call.

20      Q.     Okay. Did you attempt to persuade, convince,  
21 or otherwise influence her choice?

22      A.     No, I did not.

23      Q.     Okay. Did Ms. Oliver identify the suspect?

24      A.     She did.

25      Q.     Okay. And did she seem confident in her choice

1 to you?

2 A. Yes. Matter of fact, when I told her that she  
3 was going to be looking at this individual, I told  
4 her that if she could not be 100 percent sure, I  
5 would rather her say, you know, no, or I don't think  
6 that's him, or I just don't know. That I told her  
7 only to say yes if she was 100 percent sure, and she  
8 told me she was.

9 MR. STOLARSKI: Okay. No further questions.

10 THE COURT: Cross-examination?

11 MR. YARBOROUGH: Thank you, Your Honor.

12 CROSS-EXAMINATION

13 BY MR. YARBOROUGH:

14 Q. How long did it -- was it between the time you  
15 got called in and you picked her up?

16 A. How long between which time?

17 Q. Yeah, from when you got a report of the robbery  
18 and when you picked her up?

19 A. I'm estimating 30 or 40 minutes. I can't give  
20 you an exact time.

21 Q. Okay. And before that, did you interview her  
22 and talk to her about what the -- what the guy was  
23 wearing or anything along those lines?

24 A. I was only transporting her from the store to  
25 the location on Thomas Street to see if she could

1 identify him. That was it.

2 Q. So that was your only role?

3 A. Yes -- yes, sir.

4 Q. Okay. Was there anybody else in handcuffs when  
5 you got there?

6 A. No, sir.

7 Q. And there were half a dozen police officers  
8 around?

9 A. There were two police officers.

10 Q. Two?

11 A. That I recall.

12 Q. And was there anybody else that was -- was  
13 there that was -- that was not in police uniform?

14 A. Just the normal sidewalk crew up the street  
15 that's staring at everything going on in the  
16 neighborhood.

17 Q. Okay.

18 A. It was probably a handful of people about a  
19 block away.

20 Q. But there was -- and y'all walked her up and  
21 said, "Is this him?"

22 A. No, sir. They were sitting -- I can't remember  
23 the name of this one side street. They were on  
24 Thomas Street right off of White Street, and  
25 there -- the main block goes up to High Street. But

1 before you get to High, there's another little alley  
2 that cuts through some houses. They were parked at  
3 that intersection. I think it's called like -- it's  
4 some court. I can't remember the exact name.

5 But they were sitting maybe as far as from me  
6 to the back wall from White Street. I pulled up at  
7 the corner of White and Thomas, and I stopped there.

8 That's when I talked with the witness and told  
9 her the importance of either identifying him or not  
10 identifying him. And then I called on the radio and  
11 told them to have him step out. And we sat there,  
12 and she looked from that distance.

13 Q. Okay. How -- how long were you an  
14 investigator?

15 A. For 13 years.

16 Q. Okay. I mean, you could've gotten a photo  
17 spread, couldn't you?

18 A. I'm not an investigator here.

19 Q. But you -- I mean, you -- you know how to do a  
20 photo spread?

21 A. Yes, sir, I do.

22 Q. And what made you decide not to do one in this  
23 case?

24 A. I wasn't asked to. I was only asked to  
25 transport. Like I said, I'm not an investigator

1 here at this department.

2 MR. YARBOROUGH: I don't have any further  
3 questions.

4 THE COURT: Redirect?

5 MR. STOLARSKI: None at this time, Your Honor.

6 THE COURT: May his officer be excused?

7 MR. STOLARSKI: Yes, Your Honor.

8 MR. YARBOROUGH: Yes, sir.

9 THE WITNESS: Thank you.

10 MS. HUEY: We just have one more quick witness,  
11 Judge.

12 THE COURT: Okay.

13 MS. HUEY: The State calls Roger Trevor  
14 Simmons.

15 THE WITNESS: (Approaching.)

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

20 THE WITNESS: I do.

21 THE CLERK: If you'll take the witness stand,  
22 please, sir, and state your name and spell your last  
23 name for Ms. Scott, please.

24 THE WITNESS: Trevor Simmons. Last name is  
25 S-i-m-m-o-n-s.

1                   SERGEANT TREVOR SIMMONS,  
2           having been produced and first duly sworn as a  
3           witness on behalf of the State, testified as  
4           follows:

5                   DIRECT EXAMINATION

6           BY MS. HUEY:

7           Q.     Sergeant Simmons, you work with the Anderson  
8           Police Department; is that correct?

9           A.     Yes, ma'am.

10          Q.     All right. And are you a sergeant?

11          A.     Yes, ma'am.

12          Q.     Were you involved in the case of *State v.*  
13                  *Phillip Walker*, the armed robbery at the Family  
14                  Dollar?

15          A.     Yes, ma'am.

16          Q.     On December 15, 2015?

17          A.     Yes, ma'am.

18          Q.     And were you one of the officers that actually  
19                  detained Mr. Walker?

20          A.     Yes, ma'am.

21          Q.     And do you remember where you detained him?

22          A.     It was at the corner of Thomas and Roadway.

23          Q.     And when you detained him at Thomas and  
24                  Roadway, how close is that to this Family Dollar  
25                  store?



1 A. It's about six-tenths of a mile.

2 Q. So just over half a mile?

3 A. Yes. As you travel down the road. Not a  
4 straight line.

5 Q. And, Sergeant Simmons, what was the reason for  
6 detaining Mr. Walker to begin with?

7 A. He matched the description that the clerk gave  
8 us, the one who was your previous witness.

9 Q. And that -- so she gave you a description at  
10 the store; is that correct?

11 A. Yes. We had the initial description with the  
12 jacket. But then once we got there, we asked about  
13 what he had on under that.

14 Q. And she was able to give you that?

15 A. That's correct.

16 Q. Okay. And that was the reason for detaining  
17 him?

18 A. Yes.

19 Q. And then after that is when she actually  
20 identified him via Officer Gardner?

21 A. Correct.

22 Q. And I'm sorry. Let me back up. And so other  
23 than the physical description that Ms. Oliver was  
24 able to give you, what, if anything, else did he  
25 have on him that also matched the description that

1 she gave?

2 A. She told us what he had purchased and that he  
3 had purchased it with an EBT card. Are you speaking  
4 of what we got after we got out with him?

5 Q. Yes, sir.

6 A. Yes. He was -- we could see clearly before we  
7 got out there, he was carrying a Family Dollar bag.  
8 And in that bag was Airheads and Pringles and the  
9 receipt and cigarettes that she had he had taken.  
10 He had not paid for those.

11 Q. And that was all information that you had  
12 gathered from the store?

13 A. Yes. Once we arrived on scene at the store,  
14 she told us that. We realized we had seen him on  
15 the way in.

16 MS. HUEY: That's all I have, Your Honor.

17 THE COURT: Cross-examination?

18 CROSS-EXAMINATION

19 BY MR. YARBOROUGH:

20 Q. Did you not consider the possibility of getting  
21 a photo spread?

22 A. No, sir. At that time, no. She was very  
23 positive of who she was identifying.

24 Q. Did -- did -- was there a sketch? Did somebody  
25 draw a description of the defendant?

1 A. No, sir.

2 Q. What was the ident -- what was the positive  
3 identification that -- that she had given you?

4 A. She was looking at him in the face when he was  
5 in the store. And so as soon as she came out, she  
6 had already described his clothing to a tee with the  
7 red hoody and the blue shirt under that, what he  
8 looked like. And you put this thing -- seemingly,  
9 let's just bring her out and see if that was him or  
10 not.

11 Q. Okay. And was there -- was there something  
12 about him that just said "this is him" or did  
13 something jump out at you before you had her come  
14 over there?

15 A. Yes, sir. The clothing description. As we  
16 were en route, we had three police cars with blue  
17 lights and sirens coming down the street. Everyone  
18 else looked at us. He did not. He just kept  
19 walking and looked straight ahead as we went by.

20 And once we did determine we believed that that  
21 was him at that point. We weren't positive, but the  
22 description of the clothing and everything matched  
23 and that he had had that Family Dollar bag in his  
24 hand when we first went by.

25 I was driving. Lieutenant McKee was in the car

1       beside me. He was able to take a closer look at  
2       people as we were going than I would've normally  
3       been able to.

4               Once she gave that description and then we came  
5       back to him as soon as had that. He also was  
6       sweating profusely as if he had been running or  
7       whatever. We didn't know. He was just simply  
8       sweating, which was uncommon for that temperature.

9       Q.   Well, wasn't it -- wasn't it later determined  
10       that -- that he had taken his clothes off and put  
11       them in a -- in a dumpster?

12       A.   Yes, sir. He had taken the jacket off.

13       Q.   Okay. So he didn't have the same jacket on?

14       A.   No, sir. That was the description we got as we  
15       were going, which is why we didn't stop with him in  
16       the first place.

17               However, once we got there, she had -- that was  
18       over the radio. Once we got there speaking to her  
19       in person, she gave us the -- the clothing.

20       Lieutenant McKee asked her specifically what other  
21       clothing he had on under his jacket, and she said  
22       the red -- blue -- red hoody and the blue shirt,  
23       which did match what we had seen as we were coming  
24       in, and then as to what he had when we came back to  
25       him.

1 Q. Okay. But -- but the coat he had on was not on  
2 anymore?

3 A. No, sir. That's common.

4 Q. Well, I'm not talking about how common it is.  
5 I'm talking about the identification. I mean, did  
6 that make you think it might've been better to get  
7 a -- a photo spread?

8 A. No, sir. She had had a very clear look at him  
9 before and after he was in the process of robbing  
10 her. Daylight conditions. It had just occurred.

11 Q. Were you there when they identified him?

12 A. Yes.

13 Q. And was there anybody else in handcuffs or  
14 anything like that?

15 A. No, sir.

16 Q. Just the police?

17 A. No, sir. Just us and him.

18 MR. YARBOROUGH: Thank you. I don't have any  
19 further questions.

20 THE COURT: Redirect?

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

22 THE COURT: Thank you, sir. You may step down.

23 THE WITNESS: Thank you.

24 THE COURT: Is that it for the State?

25 MS. HUEY: Yes, sir.

1 THE COURT: Who's going to argue this? Tell me  
2 is it Starsky like in Starsky and Hutch?

3 MR. STOLARSKI: It's -- it's Stolarski.

4 THE COURT: Stolarski?

5 MR. STOLARSKI: It's long and Polish.

6 THE COURT: Mr. Stolarski, let me ask you this,  
7 isn't case law pretty tough on law enforcement about  
8 these one-on-one in person show up identifications?

9 MR. STOLARSKI: Not particularly, Your Honor.

10 --- (cross-talking) ---

11 MR. STOLARSKI: Yes, sir. It's a two-step  
12 process. I'm sorry, sir?

13 THE COURT: Give me a case.

14 MR. STOLARSKI: Oh, *Neil v. Biggers*, *State v.*  
15 *Manfield*, *State v. Stewart*, *State v. Moore*, *State v.*  
16 *Brown*, *State v. Hayward*, and...

17 THE COURT: All right. Well, let me ask you  
18 this, doesn't almost by default a show up one-on-one  
19 identification get you to the second prong of a  
20 Biggers analysis?

21 MR. STOLARSKI: Yes, sir.

22 --- (cross-talking) ---

23 THE COURT: But that's inherently unduly  
24 suggested.

25 MR. STOLARSKI: Inherently suggested, but not

1 unduly.

2 THE COURT: Not unduly suggested?

3 MR. STOLARSKI: Yes, sir.

4 THE COURT: All right. Do you have those cases  
5 with you?

6 MR. STOLARSKI: Yes, sir.

7 THE COURT: Okay. Thank you, sir. All right.  
8 Mr. Stolarski?

9 MR. STOLARSKI: Yes, sir.

10 THE COURT: So does the analysis change at all  
11 from the normal Biggers analysis? Look at it first  
12 and see if the out-of-court identification was  
13 unduly suggested. If it's not, my understanding is  
14 stop there.

15 But if it is, then you go through and look at  
16 the other five factors to determine whether or not  
17 it still has enough liability for it to be  
18 admissible; is that correct?

19 MR. STOLARSKI: Yes. If it's suggested we move  
20 to the second prong where you identify to see  
21 whether there's not a substantial likelihood that of  
22 unreliability. In which case, I can go through the  
23 five factors.

24 THE COURT: Speak up a little bit.

25 MR. STOLARSKI: Oh, sorry. In which case you

1 would go through the five factors. And in this  
2 case, it's under an hour. It's daylight outside.  
3 It's a well lit room both cases. The witness  
4 noticed him beforehand acting suspicious. She was  
5 right next to him. She could see his face very  
6 clearly.

7 The second time he was outside. Also could see  
8 his face very clearly. Gave a clear description of  
9 both his overcoat, as well as his undercoat. And  
10 then the shirt he had underneath that, as well as  
11 the physical items that he had in his bag --  
12 Pringles; Airheads; cigarettes.

13 THE COURT: Well, I didn't hear any testimony  
14 that she identified those items. My understanding  
15 was he was handcuffed and she would not have been  
16 privy to what was in that bag, other than the fact  
17 that she probably loaded it in the front end.

18 Is there any testimony that I overlooked or  
19 just didn't catch where she identified those items  
20 when she went to do this in-person lineup or  
21 identification?

22 MR. STOLARSKI: No, Your Honor. Sorry.

23 THE COURT: All right. Go ahead. Keep going.

24 MR. STOLARSKI: Yeah, that's fine. And so she  
25 could clearly see him because it was daylight



1 outside. It was clear. The incident was still  
2 fresh in her mind.

3 The officer gave her a disclaimer as much as he  
4 could to tell you this is not -- this is not  
5 something, you know, the person that robbed is  
6 definitely not the person that robbed the store.  
7 The person that we stopped is definitely not the  
8 person that robbed the store. Be absolutely sure.

9 So I think he did as much as he could within  
10 his scope of his, you know, power and authority to  
11 try and mitigate that coercive kind of influence in  
12 the case.

13 THE COURT: All right. Thank you, sir.  
14 Mr. Yarborough.

15 MR. YARBOROUGH: Your Honor, first of all, I  
16 think we meet the first criteria that a show up was  
17 unnecessarily suggestive. So I'm going to skip past  
18 that because he was only one there with the cops and  
19 was in handcuffs. They pull her up and they say put  
20 the guy out or however they did it.

21 And so then you go to the witness's opportunity  
22 to view what was going on. I mean, she -- it was  
23 a -- she was there. She got -- she got robbed, but  
24 I think that you have to look at part one and two  
25 kind of together, which is her opportunity to view

1 and her attention. I mean, obviously she was  
2 startled by being -- by being robbed.

3 And so -- but then I think you go to the  
4 accuracy of her -- her prior -- her prior  
5 description of that. And I'm not sure that they  
6 even -- they made much of a description. They  
7 talked about her describing the clothes, but I think  
8 the last officer admitted that those clothes had  
9 been removed -- had been removed and put in -- or at  
10 least the jacket had been removed and put into  
11 the -- into the garbage before that happened. I  
12 don't think that they spent a lot of time on the  
13 level of certainty.

14 And then, Your Honor, there was an hour -- or  
15 say 30 minutes to an hour, depending on the  
16 testimony. There was plenty of time to get a photo  
17 spread. They could've -- could've showed it to her.  
18 There wasn't a necessity to do this. The guy was --  
19 if -- if you believe the -- the police officers,  
20 he's in custody already because he's got a brag -- a  
21 bag of chips and the cigarettes in the bag.

22 And so he's already been arrested. He's in  
23 custody. They don't -- they don't need it. They  
24 could've taken time to take him down to the  
25 police -- he ain't going anywhere -- and have her

1 look at a photo spread and see if that's the  
2 individual.

3 And so I think that if you look at the case  
4 law, and I don't copy of it, but I think it's *State*  
5 *v. Taylor* that talks about ---

6 THE COURT: *State v. Taylor*?

7 MR. YARBOROUGH: Taylor. Yes, sir. South  
8 Carolina.

9 If it's too unnecessarily suggestive and  
10 conducive, it doesn't meet the five prongs and I  
11 think the identification should be thrown out or I  
12 guess not admitted.

13 THE COURT: Mr. Stolarski?

14 MR. STOLARSKI: Yes, sir. The five prongs  
15 aren't a -- a solid checklist where you to have each  
16 and everyone of them in order for it to be not  
17 unduly suggestive.

18 Instead, the Court looks at the totality of the  
19 circumstances. And even if we did go through all  
20 five prongs, I think you find that the -- this case  
21 fulfills each and every one of them absolutely.

22 So witness had a prior chance to identify  
23 the -- the defendant beforehand, both within the  
24 waiting time when he was hanging around her cash  
25 register and also during when he was physically

1 pointing a gun at her.

2 She noticed that he was shifting. Of course,  
3 her attentiveness was high and also when someone is  
4 pointing a gun at you, you tend to be rather  
5 attentive.

6 The accuracy of the witness's prior  
7 description. She saw his face and described a  
8 physical and also not only his jacket, but also his  
9 clothes underneath.

10 The level of certainty. She was absolutely  
11 positive of her identification.

12 And also the time was very short, less than  
13 45 minutes in between when the incident occurred and  
14 then when she identified the suspect.

15 THE COURT: Thank you, sir. My understanding  
16 is the Biggers identification is the first prong is  
17 to determine whether the identification procedure  
18 was unduly suggestive. If it's not, you stop there.  
19 If it is, then you go through the next five factors  
20 to determine the reliability of the identification,  
21 notwithstanding the unduly suggestive nature of the  
22 identification initially.

23 The cases are clear that these one-on-one show  
24 ups are unduly suggestive. And they are not  
25 faulting law enforcement, but that's just the case.

1 And they've been warned against and actually cases  
2 say that they are frowned upon.

3 But that being said, that doesn't end the  
4 analysis here. I mean, I'm going find that the  
5 procedure used, the evidence showed that the first  
6 incident by being a one-on-one show up with this  
7 gentleman handcuffed and locked up surrounded by  
8 various numbers, two or more, law enforcement was  
9 unduly suggestive and unnecessary in this case.

10 You had the guy in custody. You could've gone  
11 through and done a photo just as easy -- well, not  
12 just as easy, but you could've done it. But that  
13 doesn't end it. You go back through and you look at  
14 the five factors to determine reliability.

15 And the first one, this Ms. Oliver, said, if my  
16 notes are correct, she had because of his manner  
17 acting in the store around 10 minutes or so to be  
18 able to view, and that she was actually paying more  
19 attention to the defendant because of the suspicious  
20 nature in which he was acting. She paid more  
21 attention to him.

22 He came within 3 to 4 feet of her at the time  
23 of the actual robbery where she had an unfettered  
24 ability to see and to see what he was doing. The  
25 accuracy of her description seems dead on according

1 to what I've heard from the officers. Somebody said  
2 that they were able to identify him on the street,  
3 even without his jacket because of the kind of  
4 unique coloration of his clothes and he had on a  
5 turquoise and red shirt, if I understand,  
6 underneath. This witness was 100 percent sure of  
7 her identification.

8 The length of time from what I can gather is  
9 anywhere from 30 minutes to an hour, so the cases  
10 are not such that that's unduly protracted so that  
11 she may forget, and it's still fresh in her mind.

12 All this said and done, I'm going to find that  
13 although it was unduly suggestive procedure, that  
14 the identification was so that it comes in anyway.  
15 I note your objection to that ruling and your  
16 objection to my not granting a continuance.

17 MR. YARBOROUGH: Yes, sir.

18 THE COURT: But I'm going to find that this  
19 identification will be admissible during the course  
20 of this trial. Anything further from the State?

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

22 THE COURT: Anything further from the defense?

23 MR. YARBOROUGH: No, sir.

24 THE COURT: All right. Nine o'clock Monday --  
25 Wednesday morning for Jackson Denno?

1 MS. HUEY: Yes, sir.

2 THE COURT: All right. Guys, thank you. We'll  
3 be in recess until Wednesday morning.

4 MS. HUEY: All right. Thank you, Judge.

5 MR. YARBOROUGH: See you Wednesday.

6 (The proceedings concluded at 11:58 a.m.)

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COUNTY OF ANDERSON

I, the undersigned, Lisa Scott, Circuit Court Reporter for the Tenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and the evidence introduced in the hearing of the captioned cause, relative to appeal in the Criminal Court for Anderson County, South Carolina, on the 5th day of December, 2016.

I do further certify that I am neither of kin,  
counsel, nor interest to any party hereto.

July 12, 2018

/s/ Lisa Scott

Lisa Scott  
Circuit Court Reporter



State of South Carolina

Court of General Sessions

County of Anderson

State of South Carolina )

)

)

Transcript of Record

v. )

2016-GS-04-00594

)

2016-GS-04-00595

Philip Wesley Walker )

)

Defendant. )

December 7, 2016

Anderson, South Carolina

B E F O R E:

The Honorable Lawton McIntosh, Judge; and a jury.

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

Catherine Huey, Assistant Solicitor  
Attorney for the State

William Yarborough, Esquire  
Attorney for the Defendant

Lisa Scott  
Circuit Court Reporter

I N D E X

| <u>WITNESS</u>                          | <u>PAGE</u> |
|-----------------------------------------|-------------|
| Sergeant Trevor Simmons                 |             |
| Direct examination by Ms. Huey.....     | 6           |
| Cross-examination by Mr. Yarborough.... | 14          |
| Natasha Oliver                          |             |
| Direct examination by Ms. Huey.....     | 37          |
| Cross-examination by Mr. Yarborough.... | 53          |
| Joshua Genthner                         |             |
| Direct examination by Ms. Huey.....     | 57          |
| Sergeant Trevor Simmons                 |             |
| Direct examination by Ms. Huey.....     | 62          |
| Cross-examination by Mr. Yarborough.... | 82          |
| Officer Craig Gardner                   |             |
| Direct examination by Mr. Stolarski.... | 83          |
| Cross-examination by Mr. Yarborough.... | 86          |
| Sara Smith                              |             |
| Direct examination by Ms. Huey.....     | 88          |
| Cross-examination by Mr. Yarborough.... | 91          |
| Detective Tyrone Blackwell              |             |
| Direct examination by Ms. Huey.....     | 92          |
| Cross-examination by Mr. Yarborough...  | 107         |
| Yoshika Chapman                         |             |
| Direct examination by Ms. Huey.....     | 110         |

- - -

## E X H I B I T S

| <u>NO.</u> | <u>DESCRIPTION</u>                | <u>ID.</u> | <u>EVD.</u> |
|------------|-----------------------------------|------------|-------------|
| 1          | State's - Interview of defendant  |            | X           |
| 2          | State's - Redacted transcript     |            | X           |
| 2(b)       | State's - Non-redacted transcript |            | X           |
| 10         | State's - Family Dollar receipt   |            | X           |
| 3(a)-(f)   | State's - photos                  |            | X           |
| 4(a)-(h)   | State's - photos                  |            | X           |
| 11         | State's - photo                   |            | X           |
| 5(a)-(h)   | State's - photos                  |            | X           |
| 7          | State's - Family Dollar bag       |            | X           |
| 6          | State's - EBT card                |            | X           |
| 8          | State's - Brown jacket and hat    |            | X           |
| 9          | State's - gun                     |            | X           |
| 12(a)-(d)  | State's - surveillance pics       |            | X           |

- - -

1 PROCEEDINGS

2 - - -

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

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

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

14 MS. HUEY: Yes, sir.

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

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

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

23 THE COURT: I hate that for him.

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

1 witness instead, Your Honor.

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

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

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

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

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

10 THE COURT: All right. Go ahead.

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

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

16 MR. YARBOROUGH: I have, Your Honor.

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

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

20 (Exhibits being marked.)

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

23 (Witness approached.)

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

1 THE WITNESS: (Complying.)

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

6 THE WITNESS: I do.

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

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

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

15 DIRECT EXAMINATION

16 BY MS. HUEY:

17 Q. Sergeant Simmons, where do you work?

18 A. Anderson City Police Department.

19 Q. And how long have you been there?

20 A. Eight years.

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

22 A. Yes, ma'am.

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

25 A. I did.

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

3 A. Yes, ma'am.

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

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

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

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

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

17 Q. Okay.

18 A. --- Lieutenant McKee did.

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

21 A. Yes.

22 Q. Now, are you on the video?

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

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

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

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

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

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

6 Q. And that's your specific camera?

7 A. Yes, ma'am.

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

10 A. Yes, ma'am.

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

13 A. He was.

14 Q. And what rights were those?

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

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

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

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

25 Q. Those are general directions?



1 A. General directions. Yes.

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

3 A. He did.

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

6 A. He did.

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

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

11 Q. Okay. And was he seated?

12 THE COURT: Excuse me.

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

18 THE COURT: Overruled. Go ahead.

19 BY MS. HUEY:

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

21 A. Yes.

22 Q. Okay. But was he handcuffed?

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

25 Q. Meaning in front of him?

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

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

5 A. No, ma'am.

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

8 A. No, ma'am.

9 Q. Any intimidation?

10 A. No, ma'am.

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

13 A. Yes.

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

16 A. He did.

17 Q. And did he then do so?

18 A. He did.

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

20 A. It was all recorded. Yes.

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

23 A. Yes, ma'am.

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

1 A. No, ma'am.

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

5 A. Yes.

6 Q. Do you recognize that item?

7 A. I do.

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

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

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

15 A. It does.

16 Q. On December 16th of 2015?

17 A. Yes, ma'am.

18 Q. And was this interview transcribed as well?

19 A. Yes, it was.

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

21 A. I did.

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

25 A. Yes, ma'am.

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

3 A. Yes, it is.

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

7 THE COURT: Any objection?

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

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

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

17 THE COURT: Very good.

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

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

23 THE COURT: Yes, ma'am.

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

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

6 THE COURT: Okay.

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

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

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

15 THE COURT: Okay.

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

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

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

22 THE COURT: All right.

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

25 THE COURT: Okay. Admitted.

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

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

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

6 MR. YARBOROUGH: Briefly, Your Honor.

7 CROSS-EXAMINATION

8 BY MR. YARBOROUGH:

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

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

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

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

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

19 A. He did.

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

22 THE COURT: Any redirect, Ms. Huey?

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

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

1 (Witness excused.)

2 THE COURT: Any other witnesses?

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

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

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

21 That being said ---

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

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

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

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

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

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

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

12 MR. YARBOROUGH: Yeah.

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

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

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

23 MS. HUEY: Yes, sir.

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



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

3 THE COURT: Okay.

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

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

8 MS. HUEY: Okay.

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

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

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

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

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

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

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

24 THE COURT: All right. That is denied.

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

1 for the rest of it as well.

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

7 MR. YARBOROUGH: Sunday.

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

10 MR. YARBOROUGH: I did.

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

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

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

19 MR. YARBOROUGH: Thank you, Your Honor.

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

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

1       guys.

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

3               THE COURT: We do? All right.

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

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

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

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

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

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

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

15              THE BAILIFF: (Complying.)

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

17              THE COURT: Good morning.

18              THE JURORS: (Collectively:) Good morning.

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

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

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

3           THE COURT: Yes, sir.

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

6           THE JURORS: (Complying.)

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

13          THE JURORS: (Collectively:) I do. )

14          THE CLERK: Have a seat.

15          THE JURORS: (Complying.)

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

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

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

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

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

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

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

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

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

14             THE JURORS: (Affirmative responses.)

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 deliberations you don't make a factual error.

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

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

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

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

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

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

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

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

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

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

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

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

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

15 THE COURT: From the defense?

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

17 THE COURT: You want a quick break?

18 MS. HUEY: Just really quickly.

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

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

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

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

24 THE COURT: Bring the jury in, please.

25 THE BAILIFF: (Complying.)

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

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

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

5 THE COURT: Mr. Yarborough, defense?

6 MR. YARBOROUGH: Yes, Your Honor.

7 OPENING STATEMENTS

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

24 THE COURT: Mr. Yarborough.

25 MR. YARBOROUGH: Good morning, ladies and

1 gentlemen.

2 THE JURORS: (Collectively:) Good morning.

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

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

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

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

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

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

4 THE COURT: Are you going use this podium?

5 MS. HUEY: Yes, sir.

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

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

10 (Witness approached.)

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

13 THE WITNESS: (Complying.)

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

18 THE WITNESS: Yes, sir.

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

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

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

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

3 DIRECT EXAMINATION

4 BY MS. HUEY:

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

6 A. Thirty-nine.

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

8 A. Twelfth grade.

9 Q. Where do you work?

10 A. Family Dollar.

11 Q. And which Family Dollar is that?

12 A. On River Street.

13 Q. How long have you been working there?

14 A. Since '07.

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

17 A. Yes, I was.

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

20 A. Running the cash register.

21 Q. And is that what you usually do?

22 A. Yes, ma'am.

23 Q. What happened on this particular day though?

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

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

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

8           A.    He was letting customers ---

9           Q.    --- go ahead of him?

10          A.    Yes, ma'am.

11          Q.    Okay.

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

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

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

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

17                I said, "Okay."

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

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

24                I said, "Yes."

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

1           I told him how much they were.

2           And then when I turned around, he had a gun

3           pointed in my face. He told me to give ---

4           Q.    Slow down for one second.

5           A.    Yes, ma'am.

6           Q.    Okay?

7           A.    Okay.

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

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

10          Q.    Okay.

11          A.    He was wearing glasses. He had on a brown,

12          like, Carhartt jacket, a hoody jacket, and a

13          turquoise t-shirt underneath it.

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

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

16          Q.    Okay. And so you first rang up the Pringles

17          and Airheads; is that correct?

18          A.    Yes, ma'am.

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

20          A.    Yes, ma'am.

21          Q.    All right. And -- and did you give him a

22          receipt for that transaction?

23          A.    I did.

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

25          A.    In a Family Dollar bag.

1 Q. And did the receipt go in the bag as well?  
2 A. Yes, ma'am.  
3 Q. And once you did that, I think you said that he  
4 then asked for cigarettes?  
5 A. Yes, he did.  
6 Q. Now, can you buy cigarettes with an EBT card?  
7 A. No, ma'am.  
8 Q. So he would've had to pay another way ---  
9 A. Yes, ma'am.  
10 Q. --- for those? Okay. So what did you then do  
11 once he asked for the Newport's?  
12 A. I turned around because they were behind me. I  
13 turn around. I got the cigarettes out. And then  
14 when I turned back to the register, he had the gun  
15 pointed at me.  
16 Q. Okay. And what did the gun look like?  
17 A. It was a small little gun, rusty looking.  
18 Q. Okay. And were you able to tell what kind of  
19 caliber you thought it was?  
20 A. No.  
21 Q. Okay. But it was a small gun?  
22 A. Yes, ma'am.  
23 Q. And it looked rusty as well?  
24 A. Yes, ma'am.  
25 Q. And so while he has this gun pointed at you,



1        what is he saying, if anything?

2        A.     He told me to give him all the bills, no

3        change. So I took the cigarette lighter to get the

4        cash out the register. So then I did that, and I

5        gave him the cash. And then when I gave him the

6        cash, he went out the door and down the sidewalk.

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

8        A.     Yes.

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

10       A.     Yes, ma'am.

11       Q.     All right. And did you know how much money was

12       in the drawer?

13       A.     I did not.

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

15       A.     I did. Yes, ma'am.

16       Q.     But no change?

17       A.     No change.

18       Q.     Now, do you have a -- are you familiar with the

19       store receipts?

20       A.     I am.

21       Q.     Okay. And what kind of information is

22       contained on those receipts?

23       A.     It has the day, the time, my ID number, the

24       register, and then the transaction number.

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

1       there?

2       A.     It does.

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

5       A.     Yes, ma'am.

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

9       A.     Yes, ma'am.

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

12      A.     Yes.

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

17      A.     Yes, ma'am.

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

20             THE COURT:  Any objection?

21             MR. YARBOROUGH:  (No objection.)

22             THE COURT:  Admitted.

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

25      BY MS. HUEY:

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

4 A. Yes, ma'am.

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

6 A. It's 567463.

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

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

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

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

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

16 A. Yes, ma'am.

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

18 A. Okay.

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

21 A. Okay.

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

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

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

- 1 A. Yes.
- 2 Q. Could you tell what color it was or anything  
3 like that?
- 4 A. No.
- 5 Q. Okay. I'm going to show you what's been marked  
6 as State's 9. And don't take it out. Just take a  
7 look -- take a look at it.
- 8 A. Okay.
- 9 Q. Does that look familiar?
- 10 A. Yes, ma'am.
- 11 Q. Is that consistent with the weapon that was  
12 pointed at you on December 16th of 2015?
- 13 A. Yes, ma'am.
- 14 Q. Okay. So, Ms. Oliver, you handed him all the  
15 money. Do you know what he did with the money?
- 16 A. I think -- I think he put it in the bag.
- 17 Q. Okay. And then -- and then he walked on out  
18 the store?
- 19 A. Yes, ma'am.
- 20 Q. All right. And then what did you do?
- 21 A. I pulled the panic button.
- 22 Q. And once you pull the panic button, how long  
23 did it take for the police to get there you think?
- 24 A. It wasn't long.
- 25 Q. A matter of minutes?

1 A. Yes.

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

3 anything?

4 A. He went down the sidewalk.

5 Q. Down the sidewalk when he left?

6 A. Yes, ma'am.

7 Q. But did you go outside?

8 A. No, ma'am.

9 Q. All right. You stayed inside?

10 A. Yes, ma'am.

11 Q. All right. I'm going to show you a group of

12 photos, Ms. Oliver, and I want you to take a look at

13 all of them. These are State's 3(a) through (f).

14 A. Okay.

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

16 A. Okay.

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

18 A. Yes, ma'am.

19 Q. All right. And do those photos fairly and

20 accurately depict the Family Dollar on December 16,

21 2015, the day you were robbed?

22 A. Yes, ma'am.

23 MS. HUEY: Okay. Your Honor, at this time we'd

24 admit State's (a) through (f) into evidence.

25 THE COURT: Any objection?

1 MR. YARBOROUGH: No, sir.

2 THE COURT: Admitted.

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

5 BY MS. HUEY:

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

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

11 A. Daytime.

12 Q. Daytime. Around just after lunchtime?

13 A. Yes, ma'am.

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

16 A. It's the store.

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

19 A. It's the store.

20 Q. Okay. And which store is it?

21 A. Family Dollar.

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

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

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

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

2       Q.     And is that the address above it?

3       A.     Yes, ma'am.

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

5       And can you tell the jury what that is?

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

7       Q.     Okay. And that's where you were working on

8       that particular day?

9       A.     Yes, ma'am.

10      Q.     Okay. And then this is State's 3(d). Can you

11      tell the jury what that is?

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

13      Q.     Okay. Does that show you -- if you were

14      standing at the register, does that show you looking

15      out?

16      A.     Yes, ma'am, it does.

17      Q.     Okay. And this is State's 3(e). Can you tell

18      the jury what that is?

19      A.     That's our cash register.

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

21      change.

22      A.     Yes, ma'am.

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

24      money?

25      A.     That is.

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

3 A. That's underneath the change drawer.

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

6 A. No, I didn't.

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

9 A. I did.

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

11 A. I did.

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

13 A. Yes, ma'am.

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

16 A. I did.

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

19 MR. YARBOROUGH: Your Honor, sidebar.

20 (Sidebar discussion.)

21 BY MS. HUEY:

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

25 A. No, ma'am.



1 Q. All right. Were you able to get a good look at  
2 the person who robbed you?  
3 A. Yes, ma'am.  
4 Q. How close do you think you were to him?  
5 A. I guess about maybe three or four feet.  
6 Q. And were you able to see him eye-to-eye?  
7 A. I was.  
8 Q. Was anything blocking your view?  
9 A. No, ma'am.  
10 Q. And do you have good eyesight?  
11 A. I do.  
12 Q. I see you're wearing glasses. Were you wearing  
13 them that day?  
14 A. I was.  
15 Q. And did you get a good enough look at him to be  
16 able to identify him?  
17 A. I did.  
18 Q. Did he have anything obstructing his face?  
19 A. No, ma'am.  
20 Q. And what was the lighting like inside the store  
21 at the time?  
22 A. It was well lit.  
23 Q. And so how attentive were you to the robber  
24 before the actual robbery?  
25 A. I looked at him very good.

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

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

4 Q. Keep an eye on him?

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

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

8 A. No.

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

11 A. Right then.

12 Q. Did you pull that button right away?

13 A. Yes, ma'am.

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

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

19 Q. Underneath that jacket?

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

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

23 A. Yes, ma'am.

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

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

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

4 A. No, ma'am.

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

7 A. No.

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

10 A. No, ma'am.

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

13 A. Yes, ma'am.

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

16 A. I guess about 30 minutes maybe.

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

20 A. Yes.

21 Q. He rather ---

22 A. Yes, ma'am.

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

25 A. I was.

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

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

4 THE COURT: Noted for the record.

5 BY MS. HUEY:

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

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

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

12 A. Yes, ma'am.

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

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

18 Q. And did you believe that?

19 A. I did.

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

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

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

24 THE COURT: Cross-examination?

25 MR. YARBOROUGH: Thank you, Your Honor.

1 CROSS-EXAMINATION

2 BY MR. YARBOROUGH:

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

5 A. Since '07.

6 Q. So about eight ---

7 A. Nine years.

8 Q. --- nine years?

9 A. Yes, sir.

10 Q. And have you been robbed before?

11 A. No, sir.

12 Q. It's the first time?

13 A. Yes, sir.

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

17 A. Yes, sir.

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

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

20 Q. Okay.

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

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

23 It's -- money comes out of the account? Do you  
24 know -- know how it works?

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

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

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

4 A. Uh-huh.

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

9 A. Yes.

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

11 A. Right.

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

14 A. Say what now?

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

18 A. He did have a gun.

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

21 A. Yes. Rusty looking.

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

23 A. Yeah, it looked like it was.

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

1       A.    Yeah.

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

3       it -- it worked?

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

5       Q.    Okay.  Did you know -- did you know the guy

6       that was in the store?

7       A.    No, I did not.

8       Q.    Had he been in there before?

9       A.    I had never seen him before.

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

11      A.    We do.

12      Q.    Now, when -- you said you -- you saw somebody

13      that you identified 30 minutes later.  Was that

14      person standing around police?

15      A.    He was in handcuffs.

16      Q.    He was in handcuff with the police and -- and

17      you were -- were you in the -- the car or were you

18      in the outside the car?

19      A.    I was in the car.

20      Q.    Okay.  So they pulled up and -- and showed you

21      somebody standing with -- with handcuffs?

22      A.    Uh-huh.

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

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

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

1 him before?

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

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

6 A. No, I did not.

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

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

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

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

13 Q. Did you tell them that?

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

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

17 THE COURT: Redirect?

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

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

21 THE WITNESS: (Complying.)

22 THE COURT: May this witness be excused?

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

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



1 witness, please.

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

4 (Witness approached.)

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

7 THE WITNESS: (Complying.)

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

12 THE WITNESS: I do.

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

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

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

22 DIRECT EXAMINATION

23 BY MS. HUEY:

24 Q. Officer Genthner, where do you work?

25 A. Anderson City Police Department.

1 Q. And how long have you been there?

2 A. Four years.

3 Q. In what capacity do you work there?

4 A. Patrol officer.

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

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

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

10 A. Correct.

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

13 A. I did.

14 Q. And where exactly did you respond?

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

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

18 A. It is.

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

20 A. (Nonverbal response.)

21 Q. Yes?

22 A. Yes.

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

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

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

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

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

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

10 Q. Okay. And who would that be?

11 A. Sergeant Simmons and Lieutenant McKee.

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

14 A. Two cars.

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

16 A. We arrived at the same time.

17 Q. Right.

18 A. We were right behind each other.

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

21 A. Correct.

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

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

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

1 otherwise?

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

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

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

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

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

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

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

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

23 A. Correct.

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

1 THE COURT: Cross-examination?

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

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

6 MS. HUEY: Yes, sir.

7 THE COURT: Any objection?

8 MR. YARBOROUGH: No, sir.

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

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

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

15 (Witness approached.)

16 THE CLERK: Raise your right hand.

17 THE WITNESS: (Complying.)

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

22 THE WITNESS: I do, sir.

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

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

2 SERGEANT TREVOR SIMMONS,

3 having been produced and first duly sworn as a  
4 witness on behalf of the State, then testified as  
5 follows:

6 DIRECT EXAMINATION

7 BY MS. HUEY:

8 Q. Sergeant Simmons, where are you employed?

9 A. Anderson City Police Department.

10 Q. And in what capacity?

11 A. Sergeant over Charlie shift.

12 Q. And what does that mean?

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

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

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

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

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

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

24 A. Yes.

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

1 A. Yes.

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

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

6 Q. What happened upon your arrival?

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

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

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

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

22 Q. Okay.

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

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

1       you were driving?

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

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

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

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

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

15      A.     Yes.

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

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

23      Q.     Okay.

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



1 looking for him.

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

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

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

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

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

15 A. Yes.

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

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

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

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

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

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

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

9       A.    Correct.

10      Q.    But he had a red hoody?

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

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

15      A.    Yes.

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

17      A.    That was Philip Walker.

18      Q.    Okay. The defendant in this case?

19      A.    Yes.

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

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

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

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

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

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

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

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

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

23        A.     He did not.

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

25        A.     Yes.

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

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

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

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

13 Q. And a lighter is with the cigarettes?

14 A. I believe so. Yes.

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

19 A. Yes.

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

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

25 Q. Okay.

1       A.     --- until the time ended.

2       Q.     Until he came and collected it?

3       A.     Yes.

4       Q.     And he's with forensics?

5       A.     At Anderson City Police Department.  Yes,

6       ma'am.

7       Q.     Okay.  This is State's Exhibit 7.  Would you

8       just take a look at -- look at that bag and the

9       contents?

10      A.     (Complying.)

11      Q.     Do you recognize those items?

12      A.     Yes.

13      Q.     And are those the items you removed from the

14      defendant on December 16th of 2015?

15      A.     Yes.  In this bag.

16      Q.     Okay.  Now, the money wasn't taken into

17      evidence though.  Was that handled by Detective

18      Blackwell?

19      A.     It originally was taken into evidence by him

20      and then turned back over to the ---.

21      Q.     To the store?

22      A.     Yes, ma'am.

23      Q.     Okay.  I'm going to show you what's been marked

24      as State's 4(a) through 4(h).  If you could take a

25      look at all of those items for me.

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

2 Q. And do you recognize all those items?

3 A. Yes, ma'am.

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

8 A. Yes, ma'am.

9 Q. Have they been altered in any way?

10 A. No.

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

13 THE COURT: Any objection?

14 MR. YARBOROUGH: No, sir.

15 THE COURT: Admitted.

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

18 BY MS. HUEY:

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

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

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

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

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

3 A. Yes.

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

6 A. (Complying.)

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

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

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

11 A. Yes, ma'am.

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

14 THE COURT: Yes, ma'am.

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

17 BY MS. HUEY:

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

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

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

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

1 Q. Underneath?

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

4 Q. Okay. Where you detained him?

5 A. Yes.

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

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

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

12 A. Yes.

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

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

18 Q. And his driver's license?

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

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

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

23 Q. That came out of his wallet?

24 A. Yes, ma'am.

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



1 jury what that is?

2 A. That is a picture of Mr. -- the inside of

3 Mr. Walker's wallet which we took off of him.

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

5 A. No, ma'am.

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

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

8 pockets.

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

10 A. Yes. One in his right jacket pocket and one in

11 his left pants' pocket, front pants.

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

13 A. Yes. That's the receipt from Family Dollar for

14 Airheads and the Pringles.

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

16 bag?

17 A. In the bag with the Airheads.

18 Q. That the defendant was carrying?

19 A. Correct.

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

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

22 Q. Okay.

23 A. --- receipt.

24 Q. And does that indicate the time of the

25 transaction?

1 A. Yes. Time and date I believe.

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

4 A. Yes.

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

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

9 Q. By bills?

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

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

14 A. Correct.

15 Q. --- correct?

16 A. Correct.

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

20 A. Yes.

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

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

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

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

3       A.     Correct.

4       Q.     But you were present the entire time?

5       A.     Yes, ma'am.

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

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

11      Q.     And was this interview recorded?

12      A.     Yes.  On my VIEVU body camera.

13      Q.     And that's your particular camera?

14      A.     Correct.

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

17      A.     Audio and visual.

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

20      A.     Correct.

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

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

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

1 A. Correct.

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

4 A. Yes, he was.

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

7 A. Yes.

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

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

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

14 THE COURT: Noted for the record.

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

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

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

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

4           BY MS. HUEY:

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

7           A.    Correct.

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

10          A.    He did.

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

13          A.    He did not seem to be.

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

16          A.    No, we did not.

17          Q.    Was there any intimidation?

18          A.    No, ma'am.

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

20          A.    He did.

21          Q.    --- and give a statement?

22          A.    Yes, ma'am, he did.

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

25          A.    Yes, ma'am.

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

3 A. No, ma'am.

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

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

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

11 -- (cross-talking) --

12

13 Q. I'm sorry.

14 A. I apologize.

15 Q. December 16th?

16 A. Yes, ma'am.

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

18 A. It has not.

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

23 A. Yes, ma'am.

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

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

3 A. Yes, ma'am.

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

6 A. I did.

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

10 A. Yes, it does.

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

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

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

20 MS. HUEY: Thank you.

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

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

25 THE WITNESS: Yes, sir.

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

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

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

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

9 THE COURT: That would be fine.

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

13 THE COURT: Okay.

14 MS. HUEY: --- line 4.

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

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

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

20 MS. WILSON: Yes, sir.

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

25 MS. HUEY: Yes, sir.



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

3 MS. HUEY: Yes, sir.

4 THE COURT: Mr. Yarborough?

5 MR. YARBOROUGH: Yes, sir.

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

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

11 THE COURT: Okay.

12 MS. HUEY: May I publish?

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

14 MS. HUEY: (Complying.)

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

17 THE JURORS: (Affirmative responses.)

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

19 MS. HUEY: Thank you, Judge.

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

21 BY MS. HUEY:

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

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

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

3 THE COURT: Cross-examination?

4 CROSS-EXAMINATION

5 BY MR. YARBOROUGH:

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

7 A. Yes, sir.

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

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

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

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

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

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

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

24 A. I have no idea.

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

1 further questions.

2 THE COURT: Redirect?

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

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

5 (Witness excused.)

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

8 (Witness approached.)

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

11 THE WITNESS: (Complying.)

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

16 THE WITNESS: Yes, sir.

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

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

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

1 DIRECT EXAMINATION

2 BY MR. STOLARSKI:

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

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

6 Q. And how long have you worked there?

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

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

10 A. Yes, I was.

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

13 A. I did.

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

16 A. Yes, I did.

17 Q. Can you tell me what you said?

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

25 I told her that they would have the individual

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

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

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

15      A.    The what?

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

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

22      Q.    And did Natasha Oliver identify the suspect?

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

25               THE COURT: Noted for the record.

1 BY MR. STOLARSKI:

2 Q. Same question.

3 A. Yes, she did.

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

6 A. Yes, she did.

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

9 THE COURT: Cross-examination?

10 CROSS-EXAMINATION

11 BY MR. YARBOROUGH:

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

14 A. That's correct.

15 Q. And he was in handcuffs?

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

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

20 A. There were two that I recall.

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

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

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

1 else out there?

2 A. Define anyone else.

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

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

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

8 THE COURT: Redirect?

9 MR. STOLARSKI: None, Your Honor.

10 THE COURT: May this officer be excused?

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

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

13 (Witness excused.)

14 MS. HUEY: The state calls Sara Smith.

15 (Witness approached.)

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

18 MS. HUEY: Yes, sir.

19 (Sidebar discussion.)

20 THE COURT: All right. Mr. Clerk.

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

23 THE WITNESS: (Complying.)

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

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

3 THE WITNESS: I do.

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

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

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

12 DIRECT EXAMINATION

13 BY MS. HUEY:

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

15 A. Anderson Housing Authority.

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

17 A. 1335 East River Street.

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

19 A. It's right across the street.

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

21 A. I was.

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

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



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

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

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

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

14 A. That's the picture I took.

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

17 A. Uh-huh.

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

19 A. No.

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

23 A. Yes, ma'am.

24 Q. Putting them in the dumpster?

25 A. Yes, ma'am.

1 Q. And then walking away?

2 A. Yes, ma'am.

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

5 THE COURT: Any objection?

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

7 THE COURT: Admitted.

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

10 BY MS. HUEY:

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

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

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

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

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

19 A. Taking his clothes off.

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

22 A. Yes, ma'am.

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

24 A. Yes, ma'am.

25 MS. HUEY: Can everybody see that?

1 THE JURORS: (Affirmative responses.)

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

4 THE COURT: Cross-examination?

5 CROSS-EXAMINATION

6 BY MR. YARBOROUGH:

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

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

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

10 A. Yes, sir.

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

14 THE COURT: Any redirect?

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

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

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

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

21 (Witness excused.)

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

24 (Witness approached.)

25 THE CLERK: Just need for you to raise your

1 right hand.

2 THE WITNESS: (Complying.)

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

7 THE WITNESS: I do.

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

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

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

17 DIRECT EXAMINATION

18 BY MS. HUEY:

19 Q. Detective Blackwell, where are you employed?

20 A. Anderson City Police Department.

21 Q. And what position do you hold there?

22 A. Forensic detective.

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

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

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

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

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

8 Q. So where did you first respond?

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

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

16 A. Correct.

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

18 A. That's correct.

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

22 A. (Complying.)

23 Q. Do you recognize those?

24 A. Yes, ma'am.

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

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

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

5 A. That is correct.

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

8 A. No, ma'am.

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

11 MR. YARBOROUGH: Without objection.

12 THE COURT: Admitted.

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

15 BY MS. HUEY:

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

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

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

1 if they could find the person in question.

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

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

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

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

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

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

19 A. I did.

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

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

1 was photographed before it came into my possession.

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

5 A. (Complying.)

6 Q. Are you able to recognize that?

7 A. Yes, ma'am.

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

11 A. Yes, ma'am.

12 Q. From the defendant, Philip Walker?

13 A. Yes, ma'am.

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

16 THE COURT: Any objection?

17 MR. YARBOROUGH: No.

18 THE COURT: Admitted.

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

21 BY MS. HUEY:

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

24 A. (Complying.)

25 Q. And are you able to recognize that?



1 A. Yes, ma'am.

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

3 A. This is also taken from the defendant.

4 Sergeant Simmons had taken off his person.

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

6 A. No, ma'am.

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

9 THE COURT: Any objection?

10 MR. YARBOROUGH: No, objection.

11 THE COURT: Admitted.

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

14 BY MS. HUEY:

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

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

18 Q. Which is?

19 A. Philip -- Philip Walker.

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

23 A. Yes, ma'am.

24 Q. And what is that?

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

1 items purchased with an EBT card.

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

5 A. Yes, ma'am.

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

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

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

13 Q. Okay.

14 A. --- back at the dumpster.

15 Q. And ---

16 A. We were ---

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

18 A. Okay.

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

21 A. That's correct.

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

24 A. I believe it was \$234.

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

1 money?

2 A. I actually had Sergeant Simmons sign that over

3 to me as well.

4 Q. Okay.

5 A. And that was taken into evidence.

6 Q. Okay. And we don't actually have that money;

7 is that correct?

8 A. No, ma'am.

9 Q. Where is it?

10 A. It was returned back to the store.

11 Q. And -- but you took photographs of it prior to

12 it being returned?

13 A. That's correct.

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

15 dumpster?

16 A. Yes, ma'am.

17 Q. All right. And what happened at the dumpster

18 then?

19 A. At that time I did -- we did have a suspect. I

20 did enter the dumpster. Umm ---

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

22 A. Yes.

23 Q. All right. And just you? You were the lucky

24 one to do that?

25 A. Yes.

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

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

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

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

11 A. That's correct.

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

14 A. Yes.

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

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

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

21 A. Yes, ma'am.

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

1 to.

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

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

6 A. I don't know.

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

9 A. Yes.

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

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

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

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

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

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

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

22 A. Yes, ma'am.

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

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

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

2 A. Yes, ma'am.

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

5 A. Yes, ma'am.

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

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

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

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

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

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

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

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

23 Q. Okay. Underneath all the clothing.

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

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

1 outside the dumpster?

2 A. No, ma'am.

3 Q. And this is State's 5(h).

4 A. This is a close-up picture of the small caliber  
5 handgun after I picked it up and actually took the  
6 photograph.

7 Q. And the hat, the jacket, and the small caliber  
8 handgun, were those all placed into evidence as  
9 well?

10 A. Yes, ma'am.

11 Q. You can have a seat, Detective Blackwell.

12 A. (Complying.)

13 Q. I'm going to show you what's been previously  
14 marked as State's Exhibit 8. If you could take a  
15 look inside there and tell me if you recognize those  
16 items.

17 A. Yes, ma'am. It's going to be the brown in  
18 color jacket and the brown in color hat.

19 Q. And are those the items you collected from the  
20 dumpster on December 16th of 2015?

21 A. Yes, ma'am.

22 Q. Have they be altered in any way?

23 A. No, ma'am.

24 MS. HUEY: Your Honor, at this time we'd admit  
25 State's 8 into evidence.

1 THE COURT: Any objection?

2 MR. YARBOROUGH: No, sir.

3 THE COURT: Admitted.

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

6 BY MS. HUEY:

7 Q. If you could take it out, if you don't mind  
8 showing the jury.

9 A. (Complying.)

10 Q. So that's the brown jacket you collected from  
11 the dumpster?

12 A. That's correct.

13 Q. And then the other items. And that's the brown  
14 hat you collected from the dumpster?

15 A. Correct.

16 Q. Okay. I'm also going to show you what's been  
17 marked at State's 9. And I would like to instruct  
18 you that this shouldn't be pointed at anybody. And  
19 I believe you told me prior this has been disabled;  
20 is that correct?

21 A. Correct.

22 Q. I'm going to show you then State's 9. If you  
23 could take a look inside that envelope, please?

24 A. (Complying.)

25 Q. And is that the gun you retrieved from the



1 dumpster on December 16th of 2015?

2 A. Yes, ma'am.

3 Q. And, again, it is disabled; is that correct?

4 A. Yes, ma'am.

5 MS. HUEY: At this time we'd like to just show  
6 it to the jury, Your Honor, and admit into evidence.

7 THE COURT: Just make sure that you do not  
8 point it in anybody's direction, okay, sir.

9 THE WITNESS: Yes, sir.

10 MS. HUEY: So that's State's 9 admitted into  
11 evidence, Your Honor.

12 THE COURT: Any objection?

13 MR. YARBOROUGH: No, sir.

14 THE COURT: Admitted.

15 (State's Exhibit No. 9 was received into  
16 evidence.)

17 BY MS. HUEY:

18 Q. Now, Detective Blackwell, what, if anything,  
19 can you tell me about that gun?

20 A. The first of what I can tell you about the gun,  
21 it's a small caliber handgun. It was empty at the  
22 time when I located it. I did secure the gun with a  
23 zip tie just to make sure nothing went wrong.

24 Q. Okay. And so is it an actual handgun?

25 A. Yes, ma'am.

1 Q. All right. And how do you know that?

2 A. With previous experience with guns and  
3 collecting, I was able to determine it was a real  
4 handgun.

5 Q. Okay. So it should have fired at one point?

6 A. That's correct.

7 Q. All right. But you didn't do any testing on it  
8 necessarily?

9 A. No.

10 Q. Okay. And what caliber gun do you believe it  
11 to be?

12 A. A .22.

13 Q. Okay. And -- and can a 20 -- in your  
14 experience, you responded to how many scenes before?

15 A. Countless scenes. Approximately, 20 or more.

16 Q. Okay. Any involving .22-caliber handguns?

17 A. A couple.

18 Q. Okay. And in your experience, can a .22  
19 caliber cause great bodily injury or death?

20 A. Yes, ma'am. It could.

21 Q. What, if any, other involvement did you have in  
22 this case then, Detective Blackwell?

23 A. I actually went inside the store and I actually  
24 photographed inside the store. I actually dusted  
25 the exit door -- inside of the exit door. Was

1           unable to lift any latent prints from the door.

2           Q.     So you attempted to -- to get prints from the  
3           store?

4           A.     Correct.

5           Q.     Okay. But you didn't get -- have any luck with  
6           that?

7           A.     No.

8                   MS. HUEY: That's all I have for this witness,  
9           Judge.

10                  THE COURT: Cross-examination?

11                               CROSS-EXAMINATION

12           BY MR. YARBOROUGH:

13           Q.     Did you actually test that firearm to see if it  
14           would work?

15           A.     No, sir. I'm not a firearm expert.

16           Q.     Okay. Did you look and see if the -- the pin  
17           on that gun had been removed?

18           A.     I'm not a firearm expert.

19           Q.     Had you dusted for prints?

20           A.     No, sir, I did not.

21           Q.     Okay. But you could have?

22           A.     Yes.

23           Q.     Did you check the -- the clothes for any prints  
24           or anything like that?

25           A.     Not fingerprints.

1 Q. Did you check to see if the jacket would've fit  
2 Mr. Walker?

3 A. At that time, no, I did not.

4 Q. How about the hat?

5 A. No, sir.

6 Q. Okay. So you didn't do anything to get the  
7 stuff out of the dumpster?

8 A. That's correct.

9 Q. And you -- you -- to your knowledge, that --  
10 that gun -- you don't -- you don't know if it fires  
11 or doesn't fire, right?

12 A. Not to my knowledge because I'm not a firearm  
13 expert. I did not test the gun.

14 Q. But it's extremely rusty?

15 A. It does have rust on it.

16 MR. YARBOROUGH: I don't have any further  
17 questions. Thanks, Your Honor.

18 THE COURT: Redirect?

19 MS. HUEY: No, sir, Your Honor. May this  
20 witness be excused?

21 THE COURT: Any objections?

22 MR. YARBOROUGH: No, sir.

23 THE COURT: Thank you, sir. You may be  
24 excused.

25 (Witness excused.)

1 MS. HUEY: Judge, may I approach?

2 THE COURT: Yes, ma'am. Mr. Yarborough.

3 (Sidebar discussion.)

4 THE COURT: Madam forelady, let's take a quick  
5 break while they set up the technical aspects and  
6 we'll bring you right back.

7 (At 12:06 p.m., the jury exited the courtroom.)

8 (From 12:06 to 12:12, a recess was taken.)

9 THE COURT: Are you ready to proceed?

10 MS. HUEY: Yes, sir.

11 THE COURT: Mr. Yarborough, are you ready?

12 MR. YARBOROUGH: Yes, sir.

13 THE COURT: Would you bring the jury in?

14 THE BAILIFF: (Complying.)

15 (At 12:15 p.m., jury entered the courtroom.)

16 THE COURT: Ms. Huey.

17 MS. HUEY: The State calls Yoshika Chapman.

18 (Witness approached.)

19 THE CLERK: I just need for you to raise your  
20 right hand.

21 THE WITNESS: (Complying.)

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

1 THE WITNESS: Yes, sir.

2 THE COURT: If you'll take the witness stand  
3 please, ma'am, and state your name and spell your  
4 last name for the reporter, please.

5 THE WITNESS: Okay. Yoshika Chapman,  
6 C-h-a-p-m-a-n.

7 YOSHIKA CHAPMAN,  
8 having been produced and first duly sworn as a  
9 witness on behalf of the State, then testified as  
10 follows:

11 DIRECT EXAMINATION

12 BY MS. HUEY:

13 Q. Ms. Chapman, where are you employed?

14 A. Family Dollar.

15 Q. And what is your title there?

16 A. Store manager.

17 Q. And as the store manager, are you responsible  
18 for the surveillance equipment?

19 A. I am responsible for not only the store  
20 surveillance, but everything in the store.

21 Q. Okay. So were you working on December 16th of  
22 2015?

23 A. I was not working on December 16th. Actually,  
24 I was given that store at 9:00 a.m. that morning.

25 Q. Oh, I see. So -- but nonetheless, did you

1       become aware of the armed robbery that occurred at  
2       that store since it became in your control or  
3       custody?

4       A.    Yes.   Around 12:35 or 12:40, I got a phone  
5       call.

6       Q.    And as a result, did you pull surveillance  
7       video for that?

8       A.    Yes, ma'am.

9       Q.    Okay.  Could you tell the jury a little bit  
10      about the system?

11      A.    Our system is a -- it's a server.  It's a DVR  
12      server.  And we have to go into the server and pull  
13      to do that search a month.  So we have to get the  
14      archives and go to the date and time range and put  
15      that information and it records from there.  And you  
16      can do it on a DVD, a CD, or either a -- those  
17      little...

18      Q.    A jump drive?

19      A.    Yeah, jump drive.  Thank you.

20      Q.    And -- and so was that done in this particular  
21      case?

22      A.    Yes, ma'am.

23      Q.    I'm going to show you what's been previously  
24      marked as State's 12(a) through 12(d).  Could you  
25      take a look at all of these?

1 A. Okay. Yes, ma'am.

2 Q. And do you recognize all those items?

3 A. Yes, ma'am.

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

5 A. I'm able to recognize them because those are  
6 our parent system broke down by screens.

7 Q. And what do your initials and the date indicate  
8 on those?

9 A. The initials are saying that I recorded the  
10 video and that at -- and the times and date frame.

11 Q. And -- and have they been altered in any way?

12 A. We can't alter our information. It comes from  
13 the server.

14 MS. HUEY: Your Honor, at this time we'd admit  
15 State's A through D -- excuse me -- 12(a) through  
16 (d) into evidence.

17 THE COURT: Any objection?

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

19 THE COURT: Admitted.

20 (State's Exhibit Nos. 12(a) through (d) were  
21 received into evidence.)

22 BY MS. HUEY:

23 Q. So, Ms. Chapman, are there various cameras set  
24 up around the store?

25 A. It is. We have camera systems. We actually



1       have 12 operational cameras, 4 of them are blind  
2       sided to us and is only for corporate use only.

3               But with the 12 operation cameras, they're over  
4       register 1; register 2. We have the doorway coming  
5       in; going out. We have the back camera where our  
6       electronics is and where the cooler area,  
7       automotive, and about four other cameras staged  
8       throughout the store to give us a wide variety of  
9       the store.

10              MS. HUEY: I'm going to publish 12(a) at this  
11       time.

12              (State's Exhibit 12(a) was published for the  
13       jury.

14       BY MS. HUEY:

15       Q.     Now, is this just visual or does it have audio  
16       as well?

17       A.     It doesn't have -- you can't hear.

18       Q.     Okay. So can you tell us what register this  
19       is?

20       A.     That's register 1 camera. And what that camera  
21       shows, it shows our register and it shows part of  
22       our cash.

23       Q.     Okay. And is that your employee?

24       A.     Yes.

25       Q.     What register and who is that?

1 A. That was Ms. Natasha Oliver.

2 Q. On the date and time in question?

3 A. That would've been 12/16/2015.

4 Q. Yes, ma'am. And what can you tell the jury  
5 about the panic button, how that works?

6 A. It's on the register. So we have been informed  
7 to actually try to let them leave the building  
8 before we hit the panic button because they don't  
9 want us to hit the panic button while the person is  
10 still in the building and the police pull up and  
11 them get into an altercation with the police  
12 afterward when they go outside.

13 So we've been instructed that as soon as we  
14 can, to get to the button to -- or actually do  
15 anything they're asking us to do.

16 Q. So the training is to wait until the suspect  
17 leaves and then press the button?

18 A. Yes.

19 Q. This is State's 12(b). Now, Ms. Chapman, can  
20 you tell which angle this is?

21 A. Yes. That's actually our door camera on the  
22 out door. It has an individual camera that is  
23 visible to the outer person and it actually records  
24 the weight or the height of the person that's going  
25 out, so it takes a shot of them from a smaller point

1 to being close up. And actually this is our own  
2 checkpoint system, so there's -- there's a little  
3 small camera.

4 Q. Okay. Now, this is 12(c). Can you describe  
5 this angle?

6 A. That angle is actually pointed to the outside  
7 of the door. It's a camera that is staged in the  
8 middle of the door so that we can see actually who's  
9 coming in and who's going out. It's mostly for the  
10 front door footage for the store.

11 On the last video, that captures when they're  
12 leaving. And that one actually videos when they're  
13 coming in.

14 Q. Okay. And this is 12(d). And what angle is  
15 this, Ms. Chapman?

16 A. That camera is our outside camera. It actually  
17 takes footage of our parking lot and our sidewalk,  
18 you know, in front of the storefront.

19 Q. Okay. The sidewalk right in front of the  
20 store?

21 A. Yes, ma'am.

22 Q. And, again, all of these surveillance videos  
23 were obtained from the time frame of the robbery  
24 that occurred on December 16th of 2015?

25 A. Yes, ma'am.

1 Q. Now, as the store manager, do you -- were you  
2 aware of how much money -- about how much money was  
3 removed from the register?

4 A. I am, but it -- I know it was 235 or 45  
5 dollars, in that range somewhere. It's been almost  
6 a year now, so...

7 Q. But somewhere in that range?

8 A. Yeah, somewhere in that range. And it was all  
9 in fives and ones.

10 MS. HUEY: That's all I have for this witness,  
11 Judge.

12 THE COURT: Cross-examination?

13 MR. YARBOROUGH: No questions, Your Honor.

14 THE COURT: Thank you, ma'am. You may be  
15 excused.

16 (Witness excused.)

17 THE CLERK: Your Honor, may I ask you a  
18 question?

19 THE COURT: Madam forelady, would you take the  
20 jurors to the jury room right quick?

21 (At 12:32 p.m., jurors left the courtroom.)

22 (Sidebar discussion.)

23 THE COURT: Just for the record, let's go  
24 ahead, Lisa.

25 THE REPORTER: Yes, sir.

1 THE COURT: Juror No. -- do you have that?

2 THE CLERK: Fifty-five.

3 THE COURT: --- 55, Ms. Gardner ---

4 THE CLERK: Gardiner.

5 THE COURT: --- Gardiner just got notice that  
6 her grandmother died.

7 I met with counsel. What I'm going to do is  
8 excuse her, move the alternate as the primary juror,  
9 and both the State and defense has agreed that I can  
10 go back with the bailiff and knock on the door and  
11 do that.

12 MS. HUEY: Yes, sir.

13 THE COURT: If there's a problem, is there any  
14 way I can get you guys to help her get home if she  
15 needs it?

16 THE BAILIFF: Yes, sir. We'll be able to do  
17 that.

18 THE COURT: Just hold on a second.

19 (From 12:33 to 12:35 p.m., brief recess.)

20 THE COURT: At the bench conference, I asked  
21 State if they -- they rested, but at this point I  
22 figured we'd come back after lunch and say, "Call  
23 your next witness." Well, let's do that now and  
24 I'll excuse the jury for lunch. Did I hear you say  
25 you rested?

1 MS. HUEY: Yes, sir.

2 THE COURT: All right. And I assume you have  
3 no witnesses.

4 MR. YARBOROUGH: I don't have any witnesses  
5 and, Your Honor, I know they're getting ready to  
6 rest. Do you want me to put my directed verdict on  
7 the record?

8 THE COURT: Yeah, we can do that real quick  
9 once they get that all that done. Would you bring  
10 the jury in once they clear and get their stuff?

11 THE BAILIFF: (Complying.)

12 (At 12:37 p.m., jury entered the courtroom.)

13 THE COURT: All right. Madam forelady, just so  
14 you know, one of your juror's grandparents passed  
15 away, and so I went ahead and excused her from the  
16 jury.

17 Our alternate, I'm going to move you over to  
18 the primary juror, okay, so that means you can sit  
19 where you want to, but that's kinda inconsequential  
20 at this point.

21 All right. Would you call your next witness  
22 please, ma'am?

23 MS. HUEY: Your Honor, the State rests.

24 THE COURT: You rest. Okay. Madam forelady,  
25 if you recall when I told you in this case you had

1 opening statements and you had the presentation of  
2 the evidence. The State says it's rest -- they  
3 rest, so that means that they have presented its  
4 case in chief.

5 I have certain administrative matters I need to  
6 take up at this point. I'm going to go ahead and  
7 call a lunch break. And I ask that you be back in  
8 your jury room about ten after 2:00, and we'll try  
9 to proceed at 2:15. If you will leave your pads in  
10 the jury room when you leave, please, ma'am. Thank  
11 you very much.

12 (At 12:38 p.m., the jury was excused for the  
13 lunch recess.)

14 THE COURT: Motions, Mr. Yarborough?

15 MR. YARBOROUGH: Your Honor, at this time I'd  
16 move for a directed verdict of acquittal. I don't  
17 believe the State has met its burden in regards to  
18 the elements of armed robbery or possession of a  
19 weapon during the commission of a violent crime.  
20 I'd ask that the Court dismiss the case at this  
21 point.

22 THE COURT: All right. That's denied. I  
23 really can't think of any more cases where it's met  
24 its burden quite frankly. But all that being said,  
25 I deny.

1 All right. Let's break until 2:15. Do you --  
2 do y'all need to get in the courtroom earlier?

3 MR. YARBOROUGH: I'd -- I'd ask the Court to  
4 charge strong armed robbery in this case just based  
5 on what they saw on the tape, what he said during  
6 his interview that it was a cap gun. I think  
7 looking at the tape, you don't really see -- see a  
8 firearm. I'd ask the Court to consider charging  
9 strong armed robbery.

10 THE COURT: I'll consider it, but I think all  
11 the evidence firmly points to armed robbery. I  
12 don't think there's any evidence in the record that  
13 would support a charge of just common law strong  
14 armed robbery. I will give it consideration, but  
15 I'll tell you, don't plan that on your closing  
16 arguments because I doubt it. Okay?

17 MR. YARBOROUGH: Thank you, Your Honor.

18 THE COURT: Anything further?

19 MS. HUEY: No, sir, Judge.

20 MR. YARBOROUGH: No, sir.

21 THE COURT: All right. Let's break until 2:15.

22 (At 12:40 p.m., the courtroom personnel  
23 recessed for lunch.)

24 THE COURT: Do you want me to charge first, or  
25 do you want to argue first?



1 MS. HUEY: I'm happy to do either. I would  
2 like to address the armed robbery charge if I may.

3 THE COURT: The common law or armed robbery  
4 charge?

5 MS. HUEY: The armed robbery.

6 THE COURT: Oh, okay. Yes, ma'am.

7 MS. HUEY: Your Honor, I would like to include,  
8 the statute reads that armed robbery can be proved  
9 by -- while alleging either by action or words he  
10 was armed while having a representation of a deadly  
11 weapon or any act which a weapon was present during  
12 the commission of a robbery reasonably believed to  
13 be a deadly weapon.

14 My concern is that there has been testimony  
15 that it was rusty, it wasn't loaded, and that the  
16 defense admission that it couldn't even fire. So I  
17 would like that additional language added in the  
18 case so the jury doesn't get hung up on that.

19 THE COURT: Do you have a proposed -- you have  
20 the language you are proposing?

21 MS. HUEY: I have the statute right here,  
22 Judge, I can pass up. And there's a case ---

23 THE COURT: Okay. It makes it easier instead  
24 of me writing it down.

25 MS. HUEY: I understand. Let me pass it up to

1       you.

2               THE COURT: (Reading.) All right.

3       Mr. Yarborough.

4               MR. YARBOROUGH: Your Honor, I'd ask the Court  
5       to charge common law or strong armed robbery. The  
6       felonious or involved taking money, goods, or other  
7       personal property with any value from a person or  
8       another whether expressing by violence or by putting  
9       such a person in fear. I think that's a lesser  
10      included of armed robbery.

11              THE COURT: I asked -- I thought about that.  
12      There's no evidence in the record. If it was, I'd  
13      be glad to charge it, but there's no evidence it was  
14      a common law strong arm robbery.

15              MR. YARBOROUGH: I just -- I think the -- the  
16      video that they put in tends to show -- just so he  
17      asked for money. And then I think his confession, I  
18      guess you would call it, he doesn't have -- he  
19      doesn't say he has the gun. He just says he has  
20      p-zero -- popper or something.

21              THE COURT: Well, I hear you. And that's one  
22      of the reasons I asked earlier is this a real gun  
23      because then he ultimately does say .22 I believe.  
24      There's just no evidence that he didn't have a  
25      weapon in the case, and I still think it's

1       appropriate. So I'm not going to charge the common  
2       law strong armed robbery.

3               I note your objection. Just not -- what about  
4       the language that Ms. Huey asked that I charge in  
5       this case.

6               MR. YARBOROUGH: Your Honor, I -- I had looked  
7       at the -- what you had put together before, and I  
8       thought that that was appropriate. I think that by  
9       adding what she says is calling more attention to --  
10      to the armed robbery part of it and I'd object to  
11      it.

12              Even if you were going to put that in there, I  
13      again go back and ask you to reconsider putting  
14      common law or strong armed robbery in there.

15              THE COURT: All right. I hear you. I'm not  
16      going to do common law robbery.

17              (Brief recess.)

18              THE COURT: All right. I don't know how the  
19      latest statute couldn't be appropriate in this case,  
20      but what I'm going to do is, on the second page of  
21      the armed robbery charge, which says the taking and  
22      carrying away of the property must have been done  
23      with violence or by putting the owner of the  
24      property in fear of violence. I'm going to add that  
25      as by alleging either by action or words, he was

1

1       armed while using a representation of a deadly  
2       weapon or any object which a person present and  
3       reasonably believed to be a deadly weapon.

4               Okay. So there subject to Mr. Yarborough's  
5       objection of course. Other than what's been present  
6       and requested by the State and the defense, any  
7       other requested charge?

8               MR. YARBOROUGH: You're going to charge your  
9       normal reasonable doubt?

10              THE COURT: I was about to go over that with  
11       you right quick. What I was going to do, both of  
12       you have been with me before, but I had my first  
13       part of the jury's duties I'm going to go over. I  
14       am going to tell them what is evidence and what's  
15       not.

16              I'm going to charge the circumstantial and  
17       direct evidence charge, that is *State v. Clarence*.  
18       Credibility of witnesses. There's no expert  
19       testimony in this case, right?

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

21              THE COURT: And then I'm going to remind them  
22       that the indictment is not evidence and then  
23       presumption of innocence, reasonable doubt, intent.

24              Now, from your perspective, Mr. Yarborough, I  
25       don't want to over do it, but I am going to give

1

1.       them the charge about the fact that the defendant is  
2       absent, but I guess I need to also reiterate to them  
3       that the Fifth Amendment on the failure to not show  
4       shall not be discussed at all.

5               MR. YARBOROUGH: Your Honor, I don't know if  
6       there's any need to mention the fact that he's not  
7       here again, I mean...

8               THE COURT: Okay. I mean, well, you tell me.  
9       It's your -- it's your -- I'll do whatever you want  
10      me to do.

11              MR. YARBOROUGH: I just ---

12              THE COURT: You think I'm putting too much  
13      emphasis on it?

14              MR. YARBOROUGH: Well, no. I just -- I mean,  
15      it's mentioned. It's out of the way. It's gone. I  
16      just think that by -- by re-bringing it up, you're  
17      asking the jury to make a comment.

18              THE COURT: Well, I mean, I think that charge  
19      is more for -- it's for the benefit of the defense  
20      in this case anyway.

21              MR. YARBOROUGH: Sure.

22              THE COURT: And so if you don't want it, I  
23      won't give it. Okay?

24              MR. YARBOROUGH: That's good.

25              THE COURT: How about failure to testify, the

1 Fifth Amendment charge? You want me to...

2 MR. YARBOROUGH: The thing about that ---

3 -- (cross-talking) --

4 MR. YARBOROUGH: I know. The thing about that  
5 is he -- he wasn't -- he was here. I mean, you  
6 know, and so...

7 THE COURT: I won't give it if you don't, I  
8 mean...

9 MR. YARBOROUGH: I don't want it. Don't,  
10 please.

11 THE COURT: Okay. I assume that you don't have  
12 any problem with that, do you, Ms. Huey?

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

14 THE COURT: Okay. All right. That's done.

15 Has there been a bench warrant issued for this  
16 guy?

17 MS. HUEY: No, sir.

18 THE COURT: So we need to do that.

19 MS. HUEY: Yes, sir.

20 THE COURT: All right. Now, do you want to  
21 argue first, or me charge first? Whatever you --  
22 whatever your preference. It doesn't matter to me.

23 MR. YARBOROUGH: You know, I think the last  
24 time you did it first, you were the only person I've  
25 seen do it. I like it. Go ahead.

1 THE COURT: Okay. It sounds like a winner to  
2 me. Are we ready to go?

3 MS. HUEY: Yes, sir.

4 THE COURT: You get last argument, right?  
5 There's no evidence.

6 MS. HUEY: Correct. And so I'm sorry. You are  
7 going to charge first then, Judge; is that correct?

8 THE COURT: You agree with that?

9 MS. HUEY: Yes, sir. That's fine. I just want  
10 to make sure ---

11 THE COURT: Yes, let's do that. I'll go ahead  
12 and knock it out and get it done.

13 MR. YARBOROUGH: Because I think my last  
14 co-counsel told me the only time we're ever going to  
15 get the last word in this courtroom.

16 THE COURT: Yeah, it's hard for you without  
17 said counsel, I know.

18 All right. Are y'all ready to go?

19 MS. HUEY: Yes, sir.

20 THE COURT: Would you bring the jury in?

21 THE BAILIFF: (Complying.)

22 (At 2:30 p.m., the jury entered the courtroom.)

23 THE COURT: All right. Ladies and gentlemen of  
24 the jury, all the evidence has been presented that's  
25 going to be presented has been presented.

1           Normally, that would lead us to the next phase  
2           that I talked to you about at the beginning of the  
3           case and that is the closing arguments by the  
4           attorneys. Because these attorneys are well-versed  
5           and they've been around for a long time, what we've  
6           agreed to do is, I'm going to go ahead and charge  
7           you on the law that you must apply. Then the  
8           lawyers will give you their closing arguments.  
9           After that, I'll go ahead and I'll go over the  
10          verdict form with you. Okay?

11           So, ladies and gentlemen, I'm going to charge  
12          you on the law that you must apply, and please  
13          follow with me. Let me apologize in advance, some  
14          of it will be read to you because there are very  
15          important points of law and I'm just not smart or  
16          articulate enough to just do it off the top of my  
17          head.

18           But now that you've heard the evidence in this  
19          case, it's my duty to instruct you on the law that  
20          you must apply. My charge is going to be in three  
21          different parts.

22           The first part will be the duties that  
23          generally define and control your role as jurors.

24           The next will be the law, the substantive law  
25          that the State must prove in order to make its case



1 out against this defendant, and that's the law of  
2 armed robbery and possession of a weapon during the  
3 commission of a violent crime. Then I'm going to  
4 give you some considerations about your  
5 deliberations.

6 If at any time you need a break, madam  
7 forelady, or any of the jurors, let me know and I'll  
8 give you the option to do that about midway through  
9 the charge. Okay?

10 As you'll recall, ladies and gentlemen, I told  
11 you at the beginning of this case it is your duty to  
12 find facts from the evidence that's been presented  
13 here in the courtroom of this case. Now, should the  
14 facts as you find them to be, you must apply the law  
15 as I give it to you now, and you have to follow the  
16 law as I give it to you now and you must not and  
17 shall not be concerned with what you think it should  
18 be, but only what it is.

19 Also, you must not and shall not be influenced  
20 by any personal dislikes or opinions or prejudice or  
21 undue sympathy that you may have for one side or the  
22 other. That means that you are to decide the case  
23 solely on the evidence that's been presented to you  
24 here in this courtroom in accord with the law as I  
25 give it to you now. And if you recall at the

1       beginning of this case, when you took your oath, you  
2       swore or affirmed to do just that.

3               Also, following these instructions now, you  
4       can't pick out parts of it that you say are likely  
5       to agree with that and follow those and not apply  
6       the ones that you may not agree with. All of them  
7       are equally important. Also, I'll remind you that  
8       if I've done anything throughout the course of this  
9       trial that seems to indicate to you the verdict that  
10      you're to reach or the facts that you are to find,  
11      you are to disregard that. I can assure you, I have  
12      no prior knowledge of this matter. I have no  
13      opinion one way or the other. It is up to you  
14      solely to make that decision based on the law as I  
15      give it to you now.

16             And you will determine what the facts are by  
17      evaluating and weighing the evidence. We hear  
18      sometimes people speak of the set of scales of  
19      justice. And that's literally -- that's  
20      not literal. Weighing the evidence is a mental  
21      process that you'll go through on a thorough basis  
22      with one another by using your common sense and your  
23      sound judgments that you brought today with you when  
24      you were sworn in as jurors.

25             Now, again, ladies and gentlemen, the evidence

1       that you may consider as evidence in this case is  
2       the following: It's the sworn testimony of  
3       witnesses, whether it be on direct examination or  
4       cross-examination. Also, the exhibits that have  
5       been received into evidence is evidence. Other than  
6       that, there's no real evidence in this case that you  
7       may consider as evidence.

8               So that leads me to a brief discussion of  
9       what's not evidence. I'll remind you, ladies and  
10      gentlemen, that the arguments by these lawyers,  
11      their statements in opening arguments and in just a  
12      minute their closings, is designed to help you  
13      understand what they contend this case is about and  
14      what their issues are, but it is not evidence.

15             If what either or both of them tell you differs  
16      from your collective memory as that particular issue  
17      or facts, then your memory will control.

18             And, madam forelady, I remind you that just  
19      because something may appear on one of your fellow  
20      jurors' notes, it doesn't mean it trumps somebody's  
21      memory that's at issue. That's why they're called  
22      deliberations. You'll have to hash that out.

23             Also, ladies and gentlemen, the lawyers'  
24      questions to the witnesses are not -- is not  
25      evidence. I will also would point out again that

1 objections are required of the lawyers under their  
2 ethical duty. The fact that there was an objection  
3 or the fact that I let you stay in the courtroom  
4 while I ruled on that objection shall not be  
5 considered by the jury in its deliberations.

6 And, madam forelady, it'll be up to you to make  
7 sure that rule is followed.

8 Finally, ladies and gentlemen, anything that  
9 you might've heard when court was not in session is  
10 not evidence.

11 Now, we follow two types of evidence in South  
12 Carolina. We have direct evidence and  
13 circumstantial evidence. Direct evidence is  
14 evidence that directly proves the existence of a  
15 fact and does not require deduction or inference.  
16 Circumstantial evidence is a proof of a chain of  
17 facts and circumstances -- excuse me -- it's proof  
18 of a chain of facts and circumstances indicating the  
19 existence of a fact.

20 In other words, it does require an inference.  
21 For example, direct evidence, if an issue in the  
22 case was whether or not I ran a stop sign and my law  
23 clerk testified that she saw me run the stop sign,  
24 that would be direct evidence of that point because  
25 it immediately establishes the point at issue.

1           Now, if each of you were to go to bed at night  
2           and have a fresh sheet of snow in your front yard,  
3           if you would wake up in the morning and see tracks  
4           through the snow, you could infer that someone or  
5           something walked through your yard during the night,  
6           although you did not actually see it yourself.  
7           That's circumstantial evidence.

8           Ladies and gentlemen, in South Carolina, crimes  
9           may be proven by circumstantial evidence and direct  
10          evidence. And the law makes no distinction between  
11          the weight or value to be given to either direct or  
12          circumstantial evidence. However, to the extent  
13          that the State relies on circumstantial evidence,  
14          all of the circumstances must be consistent with  
15          each other, and when taken together point  
16          conclusively to the guilt of the accused beyond a  
17          reasonable doubt.

18          If these circumstances merely portray the  
19          defendant's behavior as suspicious, that proof has  
20          failed. The State has the burden of proving the  
21          defendant guilty beyond a reasonable doubt, and this  
22          burden rests with the State regardless of whether  
23          the State relies on direct evidence, circumstantial  
24          evidence, or a combination of both -- of the two.

25          Now, in deciding what the facts are, as I

1       remind you or told at the first of this case, you  
2       have to decide which testimony you wish to believe  
3       and which testimony, if any, you wish not to  
4       believe. And in the vernacular of lawyers, we call  
5       that determining the credibility of the witnesses.  
6       You have a right to disbelieve all or part of any  
7       witness's testimony that you wish to. You have a  
8       right to believe all of any witness's testimony that  
9       you wish to.

10               But in making this determination of the  
11       credibility of the witnesses or the believability of  
12       the witnesses, you may take into consideration the  
13       following factors and this is certainly not an  
14       exhaustive list.

15               You may ask yourself, was the witness able to  
16       hear or see or know the things about which that  
17       witness testified? How well was the witness able to  
18       recall and describe the subject of their testimony?  
19       What was that witness's manner or their demeanor  
20       while they were sitting right here on the witness  
21       stand?

22               You can ask yourself if there's a reason that  
23       the witness would want to help or hurt one side or  
24       the other or do they have an interest in the outcome  
25       of this case. Do they have any bias or prejudice

1       toward any party or any issue involved in this case?

2               You can ask yourself how reasonable the  
3       witness's testimony was in light of all the evidence  
4       in this case, and also whether that witness's  
5       testimony had been contradicted by what that witness  
6       said at another date and time, by other witness's  
7       testimony or evidence in this case.

8               And, ladies and gentlemen, those are some, but  
9       not all the factors you may consider in deciding  
10      which testimony, if any, you wish to believe or not.

11              Certainly, when you're sworn in, you don't  
12      check your good common sense at the door, and you  
13      should not do so in this case. You should use those  
14      things in your day-to-day lives that you find  
15      indicative of truthfulness and indicative of lack of  
16      truthfulness when you decide which testimony you  
17      believe and which you do not wish not to believe.

18              One thing that you may not do, however, is add  
19      up the number of witnesses who appeared in this case  
20      for one side or the other and make that  
21      determination because it doesn't matter for you  
22      where the truth comes from, either on direct or  
23      cross-examination or any witness, but your sole  
24      objective is to try to find the truth from the  
25      testimony and evidence that you have before you in

1       this case.

2               Also remind you, ladies and gentlemen, that  
3       this indictment is not evidence of the defendant's  
4       guilt. It's not -- it doesn't raise a presumption  
5       or an inference of his guilt. It is simply the  
6       mechanism by which the State brings a person before  
7       the Court for a trial and a determination of guilt  
8       or innocence.

9               If you recall, madam forelady, there are two  
10      charges that will be submitted to you. The first  
11      one is armed robbery; the second one is a possession  
12      of a weapon during the commission of a violent  
13      crime. Usually -- usually, you would evaluate each  
14      charge independent of your decision on the other.  
15      In this case because one is related to the other,  
16      you'll have to make a decision on the armed robbery  
17      first.

18              And then depending on what your decision is on  
19      the armed robbery charge, whether or not you'll  
20      consider the possession of a weapon during the  
21      commission of a violent crime charge. And I'll tell  
22      you more about that when I go over the verdict form  
23      with you. Okay?

24              Now, in this case as I've told you, the  
25      defendant has pled not guilty to the charge or



1 charges in this case. Therefore, that puts the  
2 burden on the State to prove the defendant guilty.  
3 A person, ladies and gentlemen, in South Carolina  
4 charged with committing a criminal offense is never  
5 required to prove himself or herself innocent.

6 Now, I charge you that it is an important rule  
7 of law that the defendant in a criminal trial, no  
8 matter what the seriousness of the charge may be,  
9 will always be presumed innocent of the crime or  
10 crimes for which he has been indicted, unless there  
11 is evidence satisfying you of guilt beyond a  
12 reasonable doubt.

13 Now, ladies and gentlemen, this presumption of  
14 innocence does not end when you begin your  
15 deliberations, but it accompanies the defendant  
16 throughout the trial until you reach a verdict of  
17 guilt based on the evidence satisfying you of guilt  
18 beyond a reasonable doubt.

19 It is said that the presumption of innocence is  
20 like a robe of righteousness that's been placed  
21 around the shoulders of the defendant where it  
22 remains until it has been stripped by evidence  
23 satisfying you the jury of guilt beyond a reasonable  
24 doubt.

25 Ladies and gentlemen, the presumption of

1 innocence is not a mere theory. It's not a simple  
2 legal phrase. It is a substantial right which every  
3' jury and which every defendant is entitled to unless  
4 you the jury are satisfied of his guilt by proof  
5 beyond a reasonable doubt.

6 So that leads me to a further or more blown up  
7 explanation or definition of what reasonable doubt  
8 is and this is that, a reasonable doubt is the kind  
9 of doubt that would cause a reasonable, sincere,  
10 honest, and conscientious person to hesitate to act  
11 in an important matter in their own affairs.

12 Proof beyond a reasonable doubt is proof that  
13 leaves you firmly convinced of the defendant's  
14 guilt. There are very few things in this world that  
15 we know with absolute certainty. And in criminal  
16 cases, the law does not require proof that overcomes  
17 every possible doubt.

18 If based on your consideration of the evidence,  
19 you are firmly convinced that the defendant is  
20 guilty of the crime or crimes for which he has been  
21 charged, it is your duty to find him guilty.

22 If on the other hand you think there's a real  
23 possibility that the defendant is not guilty, you  
24 must give the defendant a reasonable doubt -- a  
25 reasonable benefit or a doubt and find him not

1 guilty. A reasonable doubt may arise from the  
2 evidence or from a lack of the evidence.

3 And I further instruct you that the defendant  
4 is entitled to every reasonable doubt that may arise  
5 in the case. And what that simply means is this,  
6 that if upon any issue of fact essential to a  
7 conviction and a verdict of guilty of an offense, if  
8 you have any reasonable doubt as to how that issue  
9 should be resolved, it is your duty to resolve that  
10 in favor of the defendant.

11 And let me apologize, I said -- I meant to say  
12 expanded definition as to blown up definition.

13 Now, ladies and gentlemen, in order to  
14 establish criminal liability, criminal intent is  
15 required. For example, the mental state requiring  
16 proof by the State for a particular crime might be  
17 purpose, intent, knowledge, recklessness or criminal  
18 negligence.

19 Criminal intent must be proven by the State  
20 beyond a reasonable doubt. Criminal intent is  
21 always a matter that must be determined by you the  
22 jury from the circumstances surrounding the  
23 situation.

24 Now, there's no way to prove intent to a  
25 math -- to a mathematical certainty, and there's no

1 way that medical science can dissect a person's  
2 brain to determine what they had in mind. So the  
3 law says that criminal intent may be inferred from  
4 the circumstances shown to have existed.

5 And, ladies and gentlemen, that's how you make  
6 a determination of whether or not the element  
7 requiring intent is present. It is not necessary to  
8 establish intent by direct and positive evidence,  
9 but intent may be established by inference in the  
10 same way as any other fact by taking into  
11 consideration the acts of the parties and all of the  
12 facts and circumstances of the case.

13 Criminal intent is a mental state, a conscious  
14 wrongdoing. It is up to you to determine what the  
15 defendant intended to do based on the circumstances  
16 shown to have existed.

17 Criminal intent can arise from action or a  
18 failure to act. It may arise from negligence,  
19 recklessness, or indifference to duty or to  
20 consequences that's considered by law to be the  
21 equivalent of criminal intent.

22 Now, an issue in this case, ladies and  
23 gentlemen, is the identification of the defendant as  
24 to the person who committed the crime for which he's  
25 being charged. The State has the burden of proving

1       the identity by proof beyond a reasonable doubt.

2               And you must be satisfied beyond a reasonable  
3       doubt of the accuracy of the identification of the  
4       defendant before you may convict the defendant.

5       Identification testimony is an expression of belief  
6       or impression by a witness. You must determine the  
7       accuracy of the identification of the defendant.

8               You must consider the believability of each  
9       identification witness in the same way as any other  
10      witness. You may consider whether the witness had  
11      an adequate opportunity to observe the offender at  
12      the time of the offense.

13              This will be affected by things like how long  
14      or short a time was available, how far or close the  
15      witness was, the lighting conditions, and whether  
16      the witness had the chance to see or know the person  
17      in the past. It's not essential that the witness  
18      himself be free from doubt as to the correctness of  
19      his or her statement.

20              Once again, I charge you the burden of proof is  
21      on the -- on the State. It extends to every element  
22      of the crime charged and this specifically includes  
23      the burden of proof and beyond a reasonable doubt  
24      the identity of the defendant as to person who  
25      committed the crime. If after examining the

1 testimony you have a reasonable doubt as to the  
2 accuracy of the identification, it is your duty to  
3 find the defendant not guilty.

4 Now, madam forelady, those are the general  
5 rules that define and control your duties as jurors.  
6 Would you check with your fellow jurors and see if  
7 y'all want to take a quick break? I imagine that  
8 the rest of my charge is going to take about 12 or  
9 15 minutes, somewhere in that neighborhood, or would  
10 you like to proceed?

11 THE FORELADY: I think we're good, Your Honor.  
12 We can continue.

13 THE COURT: You want to proceed?

14 THE FORELADY: Yes, Your Honor.

15 THE COURT: I knew that's what you were going  
16 to say.

17 Ladies and gentlemen, a statement that has been  
18 alleged to have been made by the defendant has been  
19 admitted into evidence in this case. While the  
20 Court has determined that the statement is  
21 admissible, I instruct you that you make the  
22 ultimate decision of whether or not the defendant  
23 made the statement.

24 If the defendant did make the statement, you  
25 must determine whether the statement was made by the

1       defendant voluntarily and of his own freewill. This  
2       means that the statement was not caused by pressure,  
3       force, fear, threats, coercion, or intimidation or  
4       by hope or a promise of leniency or a reward of any  
5       kind.

6               In determining whether the statement was  
7       voluntary, you should consider both the  
8       characteristics of the defendant and the details of  
9       the questioning.

10              Some of the factors that you must consider are:

11       (1) The age of the defendant, (2) the defendant's  
12       education or lack of education, (3) the defendant's  
13       mental ability or capacity, (4) the defendant's IQ  
14       or intelligence, (5) the defendant's background and  
15       environment, (6) the place and length of detention,  
16       (7) the nature of the questioning, and (8) the  
17       advice or lack thereof to the defendant of his  
18       constitutional rights, including but not limited to  
19       the right to remain silent, that any statement could  
20       be used against him in a court of law, the right to  
21       have a lawyer present, that if he could not afford a  
22       lawyer, a lawyer would be appointed to represent him  
23       without any cost, and that he could stop making a  
24       statement at any time.

25              You must carefully consider all the surrounding

1       circumstances before you give any weight to an  
2       alleged statement. The statement has the burden of  
3       proving beyond a reasonable doubt that the alleged  
4       statement was voluntary.

5             If you determine that it was, you may then give  
6       the statement any further consideration that you  
7       deem is proper. You must decide what weight, if  
8       any, should be given to the alleged statement. If  
9       you determine the alleged statement was not the free  
10      and voluntary statement of the defendant, you should  
11      not consider the statement at all.

12            Ladies and gentlemen, this the law of armed  
13      robbery under our Statute 16-11-330. The defendant  
14      is charged with armed robbery. In order to prove  
15      this offense, the State must first prove beyond a  
16      reasonable doubt that the defendant took personal  
17      property from a person or presence of another  
18      person.

19            Property is in the presence of a person if it  
20      is within the person's reach, inspection,  
21      observation, or control, so that the person could if  
22      not overcome with violence or prevented by fear keep  
23      possession of the property. The statements also  
24      prove beyond a reasonable doubt that the defendant  
25      carried the property away intending to permanently



1       deprive the owner of the property and to keep the  
2       property for the defendant's own use.

3             The slightest removal of the property or the  
4       complete possession of the property, even for an  
5       instant by the defendant is sufficient to show a  
6       taking and carrying away of the property. The  
7       taking and carrying away of the property must have  
8       been done with violence or by putting the owner of  
9       the property in fear of violence, that is by  
10      alleging either by action or words that he was armed  
11      while using a representation of a deadly weapon or  
12      any object which a person present reasonably  
13      believed to be a deadly weapon.

14            Finally, ladies and gentlemen, the State must  
15      prove beyond a reasonable doubt that the defendant  
16      was armed with a deadly weapon during the commission  
17      of the robbery -- during the robbery. A deadly  
18      weapon is any article, instrument, or substance  
19      which is likely to cause death or great bodily harm.  
20      Whether an instrument has been used as a deadly  
21      weapon depends on the facts and circumstances of the  
22      case.

23            Now, the following are examples. They're  
24      aren't a complete exhaustive list of items which we  
25      consider deadly weapons: A shotgun, a rifle, a

1        dirk, a dagger, a knife, a slingshot, metal  
2        knuckles, a razor, gasoline, a fire bomb, a Molotov  
3        cocktail, and lighter fluid. A gun may be a deadly  
4        weapon even if it is not operated.

5                Ladies and gentlemen, in our courts, no  
6        distinction is made between corporations and  
7        individuals. A corporation is a person in the eyes  
8        of the law. A corporation is -- a corporation is  
9        entitled to the same fair and impartial  
10       consideration and to the same justice as any other  
11       person in the state. That is the law of armed  
12       robbery.

13               This is the law of commission of a weapon  
14       during -- the possession of a weapon and commission  
15       of a violent crime. The defendant is charged with  
16       possession of a weapon during the commission of or  
17       an attempt to commit a violent crime. The State  
18       must prove beyond a reasonable doubt that the  
19       defendant was in possession of a firearm or visibly  
20       displayed what appeared to be a firearm during the  
21       commission of a violent crime. A firearm means any  
22       machine gun, automatic rifle, revolver, pistol, or  
23       any weapon which will is designed to or may be  
24       readily converted to expel a projectile.

25               In order to find the defendant guilty of

1       possession of a weapon during the commission of a  
2       violent crime, you must first find the defendant  
3       guilty of either committing a violent crime or  
4       attempting to commit a violent crime.

5             And I'll charge you, madam forelady, that armed  
6       robbery in South Carolina is considered a violent  
7       crime. The State must prove beyond a reasonable  
8       doubt that the weapon further advanced or helped in  
9       the commission of a crime.

10            All right. Ladies and gentlemen, that's the  
11       substantive law that you must apply. In just a few  
12       minutes after these attorneys have given you their  
13       closing arguments, I will send word back with you  
14       and the exhibits and your verdict form and that  
15       tells you to begin your deliberations. Until that  
16       time, please do not begin to do so.

17            However, before and after you the jurors and  
18       you as jurors, we went through the qualification  
19       process, represented yourselves to the State and to  
20       the defense that you could be fair and impartial and  
21       make your decision based on the testimony, based on  
22       the evidence, and according to the law as I give to  
23       you.

24            You do not act as jurors to be partizans or  
25       advocates for one side or the other. Your sole

1       objective is to try to find the truth from the  
2       testimony and evidence presented here in this  
3       courtroom and according to the law as I give to you.

4               When you engage in your deliberations, I'm  
5       going to ask you, but I also will charge you that  
6       you should use your experiences in life, your good  
7       common sense, and your sense of logic and reasoning  
8       in discussing the evidence and hopefully coming up  
9       with a unanimous verdict. Deliberations is defined  
10      as this: It is a careful consideration weighing up  
11      with a view to a decision.

12             Now, regardless what any of you may think about  
13      our judicial system, I will point to you and urge  
14      you to believe that the genius of the system is it  
15      allows 12 men and women such as yourselves who come  
16      from different backgrounds, you have different life  
17      experiences, and you have different perspectives to  
18      listen to the testimony, to listen to the evidence,  
19      to go back and engage in courteous but thorough  
20      deliberations and ultimately to reach a unanimous  
21      verdict as to the issue in this case.

22             Again, you're not partisans or advocates for  
23      one side or the other, but you're judges of the  
24      facts. When you go back, you are to listen to  
25      everyone's points and their points of view, consider

1       them, talk them through, let everyone have their  
2       say, look at and talk about all the evidence that  
3       you need to and all the evidence that's presented to  
4       you.

5               You should not be in a hurry. This is the  
6       parties only day in court. They cannot come back  
7       for a second bite at the apple. Remember this, in  
8       order to come to a decision, you will have to come  
9       to your own opinion as to the facts in this case.  
10       In other words, what your verdict is going to be.

11              However, do not be afraid to change your idea  
12       about what the facts are or what your verdict should  
13       be if your discussion with your fellow jurors  
14       convinces you it is the right thing to do. On the  
15       other hand, do not change a firmly held belief about  
16       what the facts of this case are just to appease your  
17       fellow jurors.

18              Now, madam forelady, if at any time you need to  
19       ask the Court for anything, I ask that you write it  
20       down on a piece of paper, knock on the door, give it  
21       to our bailiff. We'll receive it here in the  
22       courtroom in open court and act accordingly. Okay?  
23       And before I excuse you after closing arguments,  
24       I'll go over the verdict form with you.

25              But right now, I need to have a quick

1 conference with the attorneys to see if they have  
2 any objections to my charge or if I forgot to give  
3 you some relevant information. If you'd go back to  
4 the jury room, we'll bring you back in just a few  
5 minutes for the closing arguments.

6 (At 2:58 p.m., jurors left the courtroom.)

7 THE COURT: Additions or exceptions from the  
8 State?

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

10 THE COURT: From the defense?

11 MR. YARBOROUGH: Just my previous objection  
12 requesting for strong armed robbery.

13 THE COURT: All right. Note that for the  
14 record.

15 Do y'all need a break or are you ready to go?

16 MS. HUEY: Can I just really quickly?

17 THE COURT: Sure. Go right ahead.

18 (From 2:59 to 3:03 p.m., recess was taken.)

19 THE COURT: All right. Are you ready?

20 MS. HUEY: Yes, sir.

21 THE COURT: Are you ready?

22 MR. YARBOROUGH: Yes, sir.

23 THE COURT: Would you bring the jury in please,  
24 ma'am?

25 THE BAILIFF: (Complying.)

1 (At 3:05 p.m., jury entered the courtroom.)

2 THE COURT: Ms. Huey, State ready with its  
3 closing?

4 MS. HUEY: Yes, sir.

5 THE COURT: Mr. Yarborough?

6 MR. YARBOROUGH: Yes, sir.

7 THE COURT: All right. Ms. Huey.

8 CLOSING ARGUMENTS

9 MS. HUEY: Thank y'all for your service. When  
10 we started this case, I told you it was going to be  
11 a short one and I'm not going to belabor this  
12 closing argument either.

13 What I am going to start with is Natasha  
14 Oliver's testimony. She testified that she served a  
15 customer. He wanted to buy Pringles and Airheads.  
16 He used an EBT card. He was wearing a brown jacket  
17 and dark hat. He had on a red shirt, jacket over  
18 that, and a turquoise shirt under that.

19 She rang up those items, the Pringles and the  
20 Airheads. Put them in a Family Dollar bag. Put the  
21 receipt in the Family Dollar bag. She turned around  
22 to get him cigarettes after his second request. And  
23 when she turned back around, he had a gun, a small  
24 caliber rusty gun, but a gun nonetheless. She was  
25 shown this gun, and said this gun is consistent with

1        what was pointed at her on December 16th of 2015.

2                Now, that's a real gun and that was pointed at  
3        her. And on the video you may notice that she does  
4        stay calm because he told her to. He said, "Don't  
5        scream or I'll pull the trigger." And he had a gun  
6        in his hand when he did it. So she did just that.  
7        She stayed calm, she gave him the money, and then he  
8        ran out.

9                As soon as he left, she pushed that panic  
10       button. The police arrive very quickly thereafter  
11       and were able to detain someone shortly thereafter.  
12       Turned out to be this defendant, Philip Walker.

13               In the meantime, Sarah Smith with the housing  
14       authority, noticed a gentleman shedding his clothes,  
15       throwing them in a dumpster behind the Family  
16       Dollar. She takes a picture of that person. And  
17       she pointed it out to you, that's the person who  
18       dumped clothes in the dumpster behind the Family  
19       Dollar and walked away. He has a red shirt on,  
20       possibly a jacket. Walked away.

21               Ty Blackwell with forensics came and testified  
22       that he had to climb in that dumpster. And when he  
23       did, he found a brown working -- a Carhartt-type  
24       jacket, a brown hat, and then he found a .22-caliber  
25       rusty gun in that same dumpster with the jacket and



1 the hat. This gun is a .22 caliber. It is a real  
2 gun. It's considered a deadly weapon because it can  
3 cause great bodily injury and/or death. It's a  
4 deadly weapon.

5 Now, as I mentioned, the defendant was  
6 eventually detained shortly thereafter, and again  
7 had that red jacket on and a turquoise shirt .  
8 underneath. All matching the description that  
9 Natasha Oliver gave.

10 Additionally, what else did he have on? A  
11 Family Dollar bag with Pringles, Airheads, and a  
12 receipt, and he had an EBT card. This was all used  
13 moments before at the Family Dollar when Natasha was  
14 the cashier.

15 He also had two wads of money on him that  
16 equalled about \$234 I believe was the testimony, and  
17 that's, in fact, what the store manager said  
18 thereabouts was missing. She also said it was  
19 mostly in fives and ones, which again this was --  
20 the money found was in fives and ones. And he  
21 didn't have any money in his wallet. It was all in  
22 a wad in his pockets.

23 Now, Natasha Oliver was also brought to where  
24 the defendant was detained, and she said yes  
25 immediately. "That's the guy who robbed me at my

1 store just a little while ago. That's him."

2 Then we have surveillance footage which  
3 matches. If you look at the jacket and the hat that  
4 was found in the dumpster, that matches the  
5 surveillance video.

6 And, finally, you have a confession. And I  
7 believe the defendant in his own words on page 12 of  
8 the transcript said that the gun he used was a .22.  
9 Again, .22 caliber. He also admits to shedding his  
10 clothes in that dumpster. And he ultimately admits  
11 to using a gun, pointing it at Natasha Oliver, and  
12 telling her to give him the money.

13 Now, she has no way of knowing, as the  
14 defendant may be trying to add, that it was rusty,  
15 never worked, wasn't loaded, and all this. She  
16 doesn't know that. She's got a gun pointed at her,  
17 and she believes what he said. "Don't scream, give  
18 me the money, or I'll pull the trigger." And what  
19 does that imply? That it works and that he's  
20 willing to use it.

21 This defendant, Philip Walker, committed armed  
22 robbery. He had a weapon while he did it, a .22  
23 caliber. He is guilty of armed robbery and the  
24 possession of a weapon during the commission of a  
25 violent crime. Thank you.

1 THE COURT: Mr. Yarborough?

2 MR. YARBOROUGH: Thank you, Your Honor.

3 THE COURT: Yes, sir.

4 MR. YARBOROUGH: Ms. Huey.

5 Ladies and gentlemen of the jury, I haven't  
6 asked a lot of questions during the course of this  
7 case because I've always thought this case was about  
8 one thing, and that case is about was there an armed  
9 robbery? Did there an armed robbery take place on  
10 December 16th a year ago?

11 Now, I don't know what happened that day. I  
12 wasn't there, but you've seen the video of what  
13 happened. And what happens on that video does not  
14 appear to be an armed robbery. Okay. It looks like  
15 a very calm reaction to something that happens.

16 The defendant walks in. Something happens with  
17 the cash register. But I'll tell you this, I got a  
18 lot of money here in my hands. I've been around  
19 this business for a long time, but defendant's don't  
20 commit armed robberies by coming there and buying  
21 Pringles and buying little pieces of candy -- I  
22 can't remember what they're called -- with the --  
23 with the card with his name on it. I mean, there's  
24 something to say.

25 The judge says you -- you've got to look at the

1 evidence. You've got to look and use your common  
2 sense, and that's what your job is. And here how  
3 does that make any sense? It doesn't. It doesn't  
4 make any sense.

5 So Your Honor told you you've got to look at  
6 the evidence beyond a reasonable doubt. That's a  
7 hesitance. It's a hesitation. Does it make you  
8 hesitate? Well, I'll tell that right there, that  
9 makes you hesitate. Why would -- why would somebody  
10 go up to a place and give their card and do that?  
11 All right.

12 Now, let me give you another thing to hesitate  
13 about. The police sat down and had a long  
14 conversation with Mr. Walker. They talked to him.  
15 You watched the video. Heard Mr. Walker talk. He  
16 talked about having a hard time and talked about  
17 what was going on, but he never said that he used  
18 anything that was an armed pistol, something that --  
19 he, in fact, said it was something else. You can go  
20 back and look at it and you can listen to it. Did  
21 he shoot a dart thing? I mean, this gun to me does  
22 not look like anything but a toy.

23 Now, that maybe is why you have the reaction  
24 from Ms. Oliver at the counter, is that because you  
25 got to say, what in the world is going on there? Is

1 something wrong? Is -- you know, does this make any  
2 sense? Could this be? Maybe it's a robbery, but  
3 it's not an armed robbery and certainly not a  
4 firearm in the commission of a violent crime.

5 And it's your job to look at -- you've heard  
6 him charged, you know what the evidence is, but it's  
7 your job to look at the evidence. And I'm not  
8 saying that the evidence doesn't present that  
9 something happened that day, that there was some --  
10 some -- some money that was transferred right there  
11 at the counter, that something happened. Why it  
12 happened? I don't know. I'm not there. You don't  
13 know, but the State's obligation is to figure that  
14 out and to bring you evidence to tell you there was  
15 an armed robbery committed.

16 Now, that gun, pistol, pea shooter, whatever  
17 you want to call it, is rusty, it's beat up, but  
18 they never could tie it to Mr. Walker. They never  
19 could tie that gun to him. They could've very  
20 easily that afternoon or evening when they were  
21 talking to him on the -- on the video camera and  
22 said, "Hey, what is this? Is this -- what is this?  
23 Is this a firearm?"

24 He said it wasn't a firearm. They could have  
25 asked him if that was it. I asked the -- the -- the

1 forensic guy, the guy that had the stuff in the  
2 dumpster. I couldn't shoot -- I didn't dust that  
3 thing for fingerprints."

4 "Did you check it?"

5 He said, "No. I didn't bother checking it."

6 It's the State's obligation to prove Mr. Walker  
7 is guilty beyond a reasonable doubt, and there are  
8 reasons here that maybe you hesitate, they make you  
9 say what in the world is going on here?

10 Now, the State has the burden. The burden of  
11 proof in a criminal courtroom comes from that side.  
12 Judge McIntosh told you, we ain't got to prove  
13 nothing. We ain't got to do anything. We don't  
14 have to do anything. It's their obligation to prove  
15 him guilty, to convict him of armed robbery beyond a  
16 reasonable doubt, and they have to do that by giving  
17 you the evidence. If they don't give you the  
18 evidence, then you don't have a choice but to go  
19 back and acquit.

20 And I would submit to you, that there are a  
21 bunch of reasons to wonder why. Wonder why they  
22 didn't show him that gun on that videotape? Wonder  
23 why they didn't dust that thing for prints? Wonder  
24 why Ms. Oliver didn't act anymore upset at the scene  
25 of the crime? Wonder why somebody went there with

1 an EBT card to buy candy and buy potato chips that  
2 had his name on it and then they want to say he  
3 committed an armed robbery?

4 Come on. That's not normal. That's not what  
5 somebody does. That's not what people do. That  
6 doesn't make any sense. And I'm not -- I'm not a  
7 rocket scientist. These guys investigate this stuff  
8 all the time. They should've -- they should've  
9 said, you know, come on, Mr. Walker, what is really  
10 going on here? They had him there. He was  
11 cooperating with them. He told them he was having a  
12 hard time. He told them it was a holiday. He told  
13 him he had kids. He told him there were problems  
14 going on.

15 Could've said, well, did you rob the place with  
16 a gun? Was this the firearm you used? They had it.  
17 He said he found it. But couldn't they have gone  
18 and dusted it for prints? Couldn't they ask him why  
19 did you use your EBT card? I think that's the real  
20 question. Why would somebody use their EBT card  
21 which has got their name on it and prints out a  
22 receipt, the money comes out of their account, and  
23 rob a place?

24 And why does he look so calm walking away? I  
25 mean, it just doesn't make any sense. There's

1 something more to it. And when there's something  
2 more to it, you can -- you can -- you can wonder.  
3 State's obligation to present the evidence and you  
4 can question it. I think there's enough questioning  
5 here that you need to let Mr. Walker go beyond a  
6 reasonable doubt of armed robbery and using a gun --  
7 a gun during the commission of a violent crime.  
8 Thank you.

9 THE COURT: All right. Madam forelady, this is  
10 the verdict form that I'm going to have sent back to  
11 you with the evidence. And let me point out to you,  
12 I have to put the form in some order. I have to put  
13 the options in some order, so the order in which  
14 they appear is of no consequence. It's just that's  
15 just the way it is, but your first option is to  
16 consider the charge of armed robbery.

17 Once the jury makes its decision, you'll check  
18 the appropriate box. The first option you would  
19 have is as to the charge of armed robbery. "We the  
20 jury unanimously find the defendant not guilty." If  
21 that's what your decision is, you'll check, as the  
22 forelady, that box. And then you'll just go on and  
23 sign as to the jury foreperson, and you would not  
24 consider the other charge. Okay?

25 The second option is as to the charge of armed



1 robbery. "We the jury unanimously find the  
2 defendant guilty." If that's what the jury comes up  
3 with unanimously, you'll check that option. If that  
4 is the jury's decision, you would then consider the  
5 second charge of possession of a weapon during the  
6 commission of a violent crime.

7 Again, the order in which your options appear  
8 is of no consequence, but your options are as to  
9 this charge: "We the jury unanimously find the  
10 defendant not guilty" or "We the jury -- we the jury  
11 unanimously find the defendant guilty."

12 Whichever the jury unanimously decides, you'll  
13 check. Then you'll sign off on the verdict form.  
14 If you can remember to try to fold the verdict form  
15 over and crease it, knock on the door, and let the  
16 bailiffs know that you have a verdict. And then  
17 we'll receive you here and have it read in open  
18 court. Okay?

19 Let me point out just a couple things before I  
20 let you go. First, jurors ask all the time for more  
21 information. All the evidence and testimony that's  
22 going to be had has been had. There will be no more  
23 evidence taken in this case.

24 The videos that were played to you in the  
25 courtroom, if you want to view those, we'll need to

1 set them up here in the courtroom because these  
2 computers have other information -- other -- other  
3 information on them other than just this trial. We  
4 have no clean computers, so we got to ensure that  
5 just the videos are played here. So if you want --  
6 that's what you want to do, just let us know and  
7 we'll watch it as often -- as many times as you  
8 want.

9 Finally, the indictment that I've gone over  
10 with you does not go back. It's not in evidence in  
11 this case. Okay?

12 If you would go back to your jury room. I'll  
13 send the verdict form and the exhibits with the  
14 bailiff, and they will tell you to begin your  
15 deliberations.

16 (At 3:22 p.m., jury left the courtroom.)

17 THE COURT: All right. Any additions or  
18 exceptions from the State?

19 MS. HUEY: None from the State.

20 THE COURT: From the defense?

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

22 THE COURT: All right. Let me thank both the  
23 attorneys. Y'all did a fine job as you always do,  
24 especially you're sitting by yourself.

25 All right. Guys, if y'all will go over the

1 exhibits. And once you agree that everything is  
2 accounted for, madam bailiff, would you take the  
3 verdict form and those exhibits and tell the jury to  
4 begin their deliberations?

5 (At 3:27 p.m., jury began deliberating.)

6 (At 3:52 p.m., verdict reached.)

7 (At 3:56 p.m., jury entered the courtroom.)

8 THE COURT: All right. Madam forelady, my  
9 understanding is the jury has reached a verdict; is  
10 that correct?

11 THE FORELADY: Yes, Your Honor.

12 THE COURT: And this is the form you gave to  
13 the bailiff; is that correct?

14 THE FORELADY: Yes, Your Honor.

15 THE COURT: And would you publish the verdict  
16 please, Mr. Clerk?

17 THE CLERK: If the pleases the Court.

18 This is State of South Carolina, County of  
19 Anderson, in the Court of General Sessions, Tenth  
20 Judicial Circuit. This is Indictment No.  
21 2016-GS-04-00594, the case of *State of South*  
22 *Carolina v. Philip Wesley Walker*, defendant, verdict  
23 form.

24 First item on robbery. As to the charge of  
25 armed robbery, Indictment No. 2016-GS-04-00594, we

1 the jury unanimously find the defendant guilty.

2 Number two, possession of a weapon during the  
3 commission of or attempt to commit a violent crime.  
4 As to this charge, Indictment No. 2016-GS-04-0594,  
5 we the jury unanimously find the defendant guilty.

6 It is signed by the foreperson and dated  
7 today's date, December 7, 2016.

8 THE COURT: All right. Ladies and gentlemen,  
9 if that was your verdict in the jury room and that  
10 is your verdict now, would you raise your right  
11 hands?

12 THE JURORS: (Indicating.)

13 THE COURT: Let the record reflect that all 12  
14 jurors responded in the affirmative.

15 All right. Ladies and gentlemen, the Court is  
16 never concerned with the verdict; however, it is  
17 concerned that you follow the process and follow the  
18 trial and follow my instructions. I watched you  
19 variously throughout the trial, and you did just  
20 that. So I want to thank you for your service.

21 Ms. Huey?

22 MS. HUEY: Yes, sir.

23 THE COURT: Do you -- well, I tell you what, if  
24 you would, call back tonight after 6:00. There will  
25 be a message on the voicemail as to whether or not

1 we are going to have any other trials. I think  
2 maybe this will be the only one we're having, but  
3 I'll find out more this afternoon. We'll leave word  
4 for you after six o'clock. Does each one of you  
5 have the form that you would call in with?

6 A JUROR: No.

7 THE COURT: Our clerk will get it for you. And  
8 in the event, ladies and gentlemen, that we are not  
9 going to do other trials or do other matters, let me  
10 thank you for your service. Without people like you  
11 who are willing to do their civic duty and take time  
12 away from their families and their jobs, there's no  
13 way our system could work. All you have to do is  
14 look on the TV each night where countries who do not  
15 have our judicial system in place and do not have a  
16 place to resolve their differences in a civilized  
17 manner what they resort to. So as much as you may  
18 criticize it, I challenge you to find a better  
19 system in the world.

20 That being said, if you'll go back to the jury  
21 room, I will need to get some paperwork signed by  
22 you, madam clerk, and I'll speak to all of y'all for  
23 just one second and then I'll let you go.

24 By the way, what will happen since the  
25 defendant is not here, I will sentence him. I will

1       hear from his attorney. I will sentence him. That  
2       will be sealed. Eventually, they'll catch him.  
3       They always do. Then he'll be brought before some  
4       judge, and then they'll sentence him to whatever I  
5       decide the sentence will be.

6               All right. If you'll go to the jury room,  
7       please.

8               (At 4:00 p.m., jury left the courtroom.)

9               THE COURT: All right. I'll give you ten days  
10       if you want to do post-trial motions, or do you want  
11       to go ahead and do them now?

12              MR. YARBOROUGH: I'll go ahead and do them now.

13              THE COURT: Okay.

14              MR. YARBOROUGH: Your Honor, we request a --  
15       we'll do it like in state court like felony court, a  
16       judgment of acquittal based on the fact that there  
17       was not enough evidence presented. He was  
18       presented. He had a firearm. The firearm was --  
19       was -- was actually something that could be used,  
20       but it -- it -- he was involved in a threatening act  
21       and that the -- Ms. Oliver had actually been scared.

22              And we'd also say that the -- as far as the  
23       second count, that they didn't prove that it -- it  
24       was a -- a violent -- a violent weapon.

25              THE COURT: Okay. Thank you, sir. Those will

1 be denied. If you would prepare me a sentencing  
2 sheet.

3 MS. HUEY: Yes, sir.

4 THE COURT: And I'll be right back.

5 MS. HUEY: Yes, sir.

6 (From 4:01 to 4:06 p.m., brief recess.)

7 THE COURT: Do I understand this boy has no  
8 criminal record?

9 MS. HUEY: No, sir. He has quite the criminal  
10 record.

11 THE COURT: Oh, okay.

12 MS. HUEY: Yes, sir.

13 THE COURT: Let me hear what that record is.

14 MS. HUEY: Yes, sir. He has a 1998, breaking  
15 and entering; 2001, auto breaking, resisting a  
16 public officer, fleeing, eluding arrest with a motor  
17 vehicle. These are from North Carolina, Your Honor,  
18 so they sound a little different.

19 He has four counts of common law robbery from  
20 2001. And then he has two counts of common law  
21 robbery from 2005.

22 THE COURT: So '98 being the auto breaking,  
23 fleeing from law, four counts of common law robbery,  
24 and two counts of common law robbery?

25 MS. HUEY: Yes, sir.

1 THE COURT: Okay.

2 MR. YARBOROUGH: Your Honor, I can tell you  
3 that the story that he told the officers is  
4 basically what he told me. He spent about, what,  
5 six -- six months in jail I think, something along  
6 those lines.

7 MS. HUEY: Yeah, I don't have that.

8 THE COURT: He did.

9 MR. YARBOROUGH: He -- he did here. And he was  
10 going through -- and I get a lot of this second-hand  
11 from his father, but they were -- the two children  
12 that -- that they were talking about on the tape,  
13 the -- those two children, they -- they lost -- were  
14 not with the custody of their mother anymore, and so  
15 the dad got custody and they were trying to get  
16 everybody to move up to North Carolina and try to  
17 help with this until he had to go to prison.

18 And, you know, I don't -- I don't know what  
19 happened. I was in regular contact with him and,  
20 you know, and we -- we talked a lot about -- about a  
21 plea and he was always going to -- he wanted to  
22 plead to a strong armed robbery. He didn't want to  
23 plead to the armed robbery for a lot of reasons.  
24 And he was always helpful with me.

25 I can tell you his dad -- his dad, good Lord,



1 him and his mother got their hands full with those  
2 two small children. I know that he does have a  
3 prior record. The record is -- is somewhat old.

4 I'd ask the Court -- I think 2004 was the last  
5 conviction. I'd ask the Court to be as lenient on  
6 him as possible, based on the fact that he did -- he  
7 did cooperate with the police at the scene. He --  
8 he told them what happened. He was cooperative.

9 THE COURT: I'm listening.

10 MR. YARBOROUGH: He told them where -- he told  
11 them where the stuff was. You know, he -- he was  
12 apologetic. He was -- he was sorry that -- that it  
13 happened. I'd just ask the Court for some -- some  
14 mercy on the sentence.

15 THE COURT: Okay. Anyone from the store?

16 MS. HUEY: Ms. Oliver is still here.

17 THE COURT: You got a manager here? That's  
18 right, Ms. Oliver. And how about the manager? Is  
19 she here?

20 MS. HUEY: I'm not sure if she stayed.

21 THE COURT: I guess my question is, does  
22 anybody want to speak on behalf of the store?

23 MS. HUEY: She said she doesn't want to speak,  
24 Judge.

25 And it looks like if I'm reading correctly from

1 the bond sheet, he served from December 16th of 2015  
2 to August 8th of 2016. Does that sound right?

3 MR. YARBOROUGH: I think that's right. It was  
4 eight months, Judge.

5 MS. HUEY: Mr. Clerk, do you have that fancy  
6 computing ---

7 THE CLERK: No. I can get them ---

8 MS. HUEY: --- to figure out the days. We can  
9 do that.

10 THE COURT: What I'm going to do is just put  
11 these under seal and then they catch him, they'll...

12 Anything else further? Normally, I'd say ten  
13 days to appeal, but I guess you already know that.

14 MR. YARBOROUGH: Thanks, Judge.

15 THE COURT: Umm...

16 MR. YARBOROUGH: Your Honor, I'd just ask that  
17 you give him some credit for the fact that he did  
18 talk to them and he was cooperative with them at the  
19 time.

20 THE COURT: I mean, it was such a blatant  
21 thing, I just don't even know how I'm gonna --  
22 probably one of the more blatant cases that I've  
23 seen. But you're right, I mean, he just said,  
24 "Okay. Here I am. I give up. I did it." Give him  
25 some credit for that.

1 MR. YARBOROUGH: Thanks.

2 THE COURT: Not much. All right. Thank you.

3 Appreciate it.

4 MS. HUEY: Thank you, Judge. I appreciate it.

5 THE COURT: I've issued the bench warrant.

6 MS. HUEY: Yes, sir.

7 THE COURT: I'll give it to the clerk to put  
8 these under seal. Thank you for our law enforcement  
9 members. I appreciate it.

10 MS. HUEY: Thank you, Judge.

11 (The proceedings concluded at 4:10 p.m.)

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## 1           C E R T I F I C A T E   O F   R E P O R T E R

2  
3       STATE OF SOUTH CAROLINA

4       COUNTY OF ANDERSON

5  
6           I, the undersigned, Lisa Scott, Circuit Court  
7       Reporter for the Tenth Judicial Circuit of the State  
8       of South Carolina, do hereby certify that the  
9       foregoing is a true, accurate and complete  
10      transcript of record of all the proceedings had and  
11      the evidence introduced in the trial of the  
12      captioned cause, relative to appeal in the Criminal  
13      Court for Anderson County, South Carolina, on the  
14      7th day of December, 2016.

15           I do further certify that I am neither of kin,  
16      counsel, nor interest to any party hereto.

17  
18                                   April 17, 2018

19  
20                                   /s/Lisa Scott

21                                   Lisa Scott  
22                                   Circuit Court Reporter  
23  
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STATE OF SOUTH CAROLINA     )  
                                           )  
 COUNTY OF ANDERSON         )     COURT OF GENERAL SESSIONS

State of South Carolina,         )  
                                           )  
                                   v.         )     Case No. 16-GS-04-0594  
                                           )  
 Philip Wesley Walker,         )  
                                           )  
                                   Defendant.     )

### TRANSCRIPT OF HEARING

The within Hearing in the above-captioned matter was held on October 12, 2017, before The Honorable R. Lawton McIntosh in the Court of General Sessions; attended by counsel as follows:

#### APPEARANCES:

Catherine T. Huey, Solicitor  
 10<sup>TH</sup> CIRCUIT SOLICITOR'S OFFICE  
 Appearing for State of South Carolina

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## State of South Carolina v. Philip Wesley Walker

2

Case No. 16-GS-04-0594

Hearing of October 12, 2017

Before The Honorable R. Lawton McIntosh

1 (DEFENDANT SWORN)

2 SOLICITOR HUEY: Philip Walker, Your  
3 Honor.

4 THE COURT: Mr. Yarborough.

5 MR. YARBOROUGH: Good morning, Your  
6 Honor.

7 SOLICITOR HUEY: Your Honor, may it  
8 please the Court, before you is Philip Wesley  
9 Walker. He was tried in his absence in front  
10 of Your Honor in December of last year.

11 THE COURT: Okay.

12 SOLICITOR HUEY: So this would be a  
13 sealed sentence, Your Honor. I'm passing up  
14 Indictment 16-GS-04-594.

15 THE COURT: All right. Under Indict-  
16 ment 16-594, armed robbery, the sentence is  
17 twenty (20) years. It is concurrent --  
18 credit for two hundred thirty-six (236) days  
19 -- with Indictment 16-0594 (sic) the sentence  
20 is five (5) years, with credit for two  
21 hundred thirty-six days. You have ten days  
22 to appeal that.

23 MR. YARBOROUGH: Your Honor, could I  
24 address a couple of sentencing issues at this  
25 point?

## State of South Carolina v. Philip Wesley Walker

3

Case No. 16-GS-04-0594

Hearing of October 12, 2017

Before The Honorable R. Lawton McIntosh

1 THE COURT: Yes, you may.

2 MR. YARBOROUGH: That's his father who  
3 is present today. Mr. Walker -- I'd just  
4 like to -- I know that you sat through the  
5 trial.

6 THE COURT: Quite frankly, Mr.  
7 Yarborough, I don't have any independent  
8 recollection of the facts.

9 MR. YARBOROUGH: I'll tell you a bit  
10 and maybe it will help you to remember it a  
11 little bit. There was a gun that didn't have  
12 a pin in it. He didn't show up -- he'd gone  
13 in near Christmas, he'd swiped his care that  
14 had name on it and bought -- food stamp card  
15 that had his name on it. He bought some food  
16 stamp stuff. Because he didn't have the  
17 money to pay his light bill, he robbed the  
18 store. He confessed to it. He did all that  
19 along with ---

20 THE COURT: What store was it that he  
21 robbed?

22 DEFENDANT: Family Dollar.

23 THE COURT: Family Dollar?

24 MR. YARBOROUGH: Yes, sir, and ---

25 THE COURT: Wasn't he brandishing a gun

## State of South Carolina v. Philip Wesley Walker

4

Case No. 16-GS-04-0594

Hearing of October 12, 2017

Before The Honorable R. Lawton McIntosh

1 at employees in the store?

2 MR. YARBOROUGH: Yeah, it was an old  
3 beat up -- I don't know if it was an old beat  
4 up gun but it didn't have a firing pin in it.  
5 And none of that -- I looked at the law. You  
6 know, I was looking for a way to get it into  
7 a strong-armed robbery and just never did.

8 I'd just like to tell you that he robbed  
9 that store, then his dad let him sit in jail  
10 for about nine months, or ever how many days  
11 that it was.

12 THE COURT: Two hundred thirty-six.

13 MR. YARBOROUGH: Then his dad got him  
14 out on bond and said that he could go try to  
15 help -- he's got a six-year-old and a four-  
16 year-old, he was trying to help them so that  
17 they could get out of DSS custody and get  
18 into some kind of circumstance where his  
19 parents or his sister could try to help the  
20 kids.

21 Then right before he was supposed to go  
22 to trial, he knew that he was supposed to be  
23 here, he decided that he was going to try to  
24 get himself together before he had to face  
25 this sentence. It's the darnest thing I've



## State of South Carolina v. Philip Wesley Walker

5

Case No. 16-GS-04-0594

Hearing of October 12, 2017

Before The Honorable R. Lawton McIntosh

1 ever heard. Nobody heard from him, nobody  
2 did anything, uh, and he -- he was out with  
3 -- I don't think that he was staying in  
4 constant contact with his dad but -- but he  
5 came down here and he went to DSS and he --  
6 he met with his six-year-old and his four-  
7 year-old. You know, to try to see what he  
8 could do to help them even knowing that he  
9 had this sentence. This has always been  
10 about trying to help his kids out.

11 It's just -- I just wish you could think  
12 about that sentence again, knowing those  
13 things that you didn't know that day. I  
14 mean, it was -- literally, Judge, it's --  
15 armed robbery is armed robbery, and it's  
16 terrible. You heard the people testify.  
17 They were scared. I mean, I get it.

18 But it's just a -- it's a vicious cycle.  
19 I don't know if they just don't think through  
20 the process or -- his father thinks that he  
21 has had some thought issues. But I'll tell  
22 you this, I've never had any trouble  
23 communicating with him.

24 THE COURT: Except when it came time  
25 for trial.

## State of South Carolina v. Philip Wesley Walker

6

Case No. 16-GS-04-0594

Hearing of October 12, 2017

Before The Honorable R. Lawton McIntosh

1 MR. YARBOROUGH: Except when it came  
2 time for trial, (affirmative nod).

3 And he's sorry. He's before the court  
4 and I -- I just -- I -- it's just a -- you  
5 know, it's just the -- the icing on this cake  
6 is that he came back down here to see those  
7 kids, to try to figure out what he could do  
8 to help them through DSS and to try to ---

9 DEFENDANT: I came ---

10 MR. YARBOROUGH: Go ahead.

11 DEFENDANT: I came back down here to  
12 try to ---

13 THE COURT: Where were you?

14 DEFENDANT: Texas.

15 THE COURT: In Texas?

16 DEFENDANT: Yeah. I had to get myself  
17 together.

18 THE COURT: What did you do to get  
19 yourself together in Texas?

20 DEFENDANT: I entered a program called  
21 the Dallas Life Program, rehabilitation that  
22 helps you get yourself off drugs, substance  
23 abuse, anything that's holding you. They do  
24 it with Christian values, it's a Godly  
25 program. My parents always instilled the

## State of South Carolina v. Philip Wesley Walker

7

Case No. 16-GS-04-0594

Hearing of October 12, 2017

Before The Honorable R. Lawton McIntosh

1 power of religion ---

2 THE COURT: I'm sorry, what was the  
3 last thing?

4 DEFENDANT: My parents always instilled  
5 in me religion. You know what I'm saying?  
6 To put God first. That is something that I  
7 wasn't doing in my life. Losing my kids  
8 probably was (emotional) -- phew -- for the  
9 first time in my life, I'm not worried about  
10 the time but my kids. You know?  
11 (Emotional).

12 I love my parents, I tell them not to  
13 stress.

14 Yeah, I did something wrong, I admit  
15 that, you know, but at the time my wife had  
16 then lost her job. Duke Power cut our power  
17 off like a week. You know, my parents are  
18 seventy-two and seventy-one. I can't keep an  
19 eye on them and on my kids, man. They didn't  
20 even have anything for Christmas. So I was  
21 trying to figure out the best possible way of  
22 doing it, you know, at that time. I was  
23 trying to use a positive frame, you know, at  
24 that time. I went about it the wrong way but  
25 -- and it wasn't something that I had planned

## State of South Carolina v. Philip Wesley Walker

8

Case No. 16-GS-04-0594

Hearing of October 12, 2017

Before The Honorable R. Lawton McIntosh

1 on doing. I'd gone into Family Dollar and I  
2 didn't go in thinking 'I'm going to rob it  
3 today.' It wasn't like that.

4 THE COURT: Well, if you carry a gun  
5 with you, you were planning on doing it?

6 DEFENDANT: Yeah. See, I had it and --  
7 some people just do it, but I actually sat  
8 there and -- I bought me a can of Pringles  
9 and a pack of AirHeads and a soda first and  
10 was eating while, you know, I was talking to  
11 myself. Then I was like, 'Ma'am, I'm so  
12 sorry. I have something that I have to do.  
13 I have something I have to take care of. I'm  
14 sorry.' You know, I just -- I barely showed  
15 it to her, I didn't go swinging it around all  
16 the store, nothing like that. 'Just please  
17 don't panic' -- and I walked out of the  
18 store, walked down the store.

19 When they caught me, you know, I didn't  
20 run. You know what I'm saying? Not like  
21 some people do. I told the officer 'yeah, I  
22 did it.' And he said, like, 'I don't see a  
23 lot of people that admit their wrongdoings.'  
24 I said, 'yeah, I admit that I was wrong.' I  
25 know. It was an old rusty .22 to the point

## State of South Carolina v. Philip Wesley Walker

9

Case No. 16-GS-04-0594

Hearing of October 12, 2017

Before The Honorable R. Lawton McIntosh

1       where you couldn't have even opened it up to  
2       get a bullet in it if you tried. You'd have  
3       to basically clean it maybe five or six  
4       years, you know, to get it back to working  
5       condition. It didn't have a firing pin in  
6       it, the handle was coming off. I had dug it  
7       out of the dirt, it had been in there about  
8       four years, in an old bus.

9           When I left and I got out -- I stayed out  
10       for over a year, focused on getting myself  
11       together because I'm no good to nobody, you  
12       know, when I -- when I'm under the influence  
13       of anything.

14           I told myself -- I said -- once I got  
15       myself together, I come back home and I told  
16       my daddy that eventually I know I have to go  
17       to South Carolina and deal with this. It is  
18       nothing like -- you know, some people keep  
19       running. No, I can't keep running.

20           Yes, I wanted to see my kids. I hadn't  
21       seen my kids in a year. I wanted to see my  
22       kids. They asked me, are you sure you  
23       coming? I said 'yes, I'll be there.' I knew  
24       I had a bench warrant. I showed up. I got  
25       to see my kids. Greatest thing, brought me

## State of South Carolina v. Philip Wesley Walker

10

Case No. 16-GS-04-0594

Hearing of October 12, 2017

Before The Honorable R. Lawton McIntosh

1 joy was to see that smile on my dad's face  
2 when he saw the grandbabies. You know, that  
3 made my day. Even after they arrested me, I  
4 was good. You know, I had a smile. You  
5 know?

6 Yeah, I've done some things a bad person  
7 does. I reacted before I thought about it.  
8 Something some people don't do. I'm not  
9 perfect, far from it.

10 I want to do better. You know what I'm  
11 saying? Given an opportunity, I know that I  
12 can -- you know, I can do better back out in  
13 society because that's the way I am. I'm  
14 working, getting jobs. When I came back home  
15 I had job opportunities, to go to work and  
16 try to take care of my kids, try to get my  
17 kids. That was my goal. It's always been my  
18 goal, you know? That's what I take pride in.

19 I guess I am wrong for what I did, but  
20 I'm trying to do better. I know that I can  
21 do better.

22 THE COURT: Ms. Huey?

23 SOLICITOR HUEY: Yes, sir, Your Honor,  
24 I'd like to remind you of a few things.

25 THE COURT: Please do. I'm trying to

## State of South Carolina v. Philip Wesley Walker

11

Case No. 16-GS-04-0594

Hearing of October 12, 2017

Before The Honorable R. Lawton McIntosh

1 remember.

2 SOLICITOR HUEY: I think that the State  
3 would concede that the gun wouldn't have  
4 necessarily worked. Of course the victim  
5 whose face that was pointed in had no way of  
6 knowing that, especially when it's coupled  
7 with him saying that he would shoot her if  
8 she didn't hand over the money. So he's  
9 leaving that out.

10 I believe that he was under the  
11 influence. I don't know if he was getting  
12 money to pay for any Christmas gifts. It was  
13 probably to further his habit.

14 He has numerous robbery convictions from  
15 North Carolina, Your Honor.

16 THE COURT: How many does he have?

17 SOLICITOR HUEY: He had four at the  
18 time, 2001 and 2006 from North Carolina.  
19 So this isn't his first rodeo either. I  
20 think that's what you took into account,  
21 Your Honor, when you were sentencing him.

22 THE COURT: Other than the four  
23 robberies ---

24 SOLICITOR HUEY: He also has a  
25 breaking-and-entering. It's mostly from

## State of South Carolina v. Philip Wesley Walker

12

Case No. 16-GS-04-0594

Hearing of October 12, 2017

Before The Honorable R. Lawton McIntosh

1 North Carolina.

2 THE COURT: For the record, I'm going  
3 to treat this as a Motion to reconsider the  
4 sentence.

5 MR. YARBOROUGH: Yeah, that's -- I was  
6 going to ask you to do that.

7 THE COURT: I have some memory, besides  
8 the fact that you didn't show up at trial,  
9 besides the fact that you brandished the gun  
10 in the clerk's face as opposed to what you  
11 just said, your prior record belied the fact  
12 that, uh, this was not an isolated incident.  
13 It was more of a routine or practice for you.  
14 That being said, I'll give you an Order and  
15 let you know what I decide.

16 MR. YARBOROUGH: Thank you, Your Honor.

17 THE COURT: You still, once that Order  
18 is issued, you'll have ten days to appeal.  
19 Good luck to you.

20 (HEARING CONCLUDED)

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1

## Appendix 291

1 (Officer Joel McKee asked questions and Phillip  
2 Walker answered those questions as follows, Sgt.  
3 Simmons was also present:)

4 Q All right. Mr. Walker, I'm Lt. McKee. This is  
5 Sgt. Simmons.

6 A I know both you-all.

7 Q You know both of us? How do you know both of us?  
8 From earlier today or before that?

9 A Yeah, earlier. I have never been in trouble.

10 SGT. SIMMONS: You haven't?

11 A (Shakes head from side to side.) My first charge  
12 ever.

13 SGT. SIMMONS: Really. Okay.

14 A (Shakes head from side to side.) my first charge  
15 ever. I don't even have a ticket.

16 Q Let me tell you what we're going to do. It's almost  
17 like TV. Have you ever watched cops on TV and stuff?

18 A I watched every news analyst, CSI program --

19 Q Okay. All right. Some of it's real some of it  
20 ain't. This part is real. I have to read you what your  
21 rights and tell you what your rights are before I can go  
22 any further. And you have to understand what your rights  
23 are. I need to make sure you understand them. Okay?  
24 This is not making fun of you. Did you finish school?

25 A Uh-huh.

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COMMUNITY LEADERS AND  
GENERAL RESOURCES

1 Q Okay. So you, I mean, you're okay with understanding  
2 English and everything, and all that? Reading and writing  
3 and all that?

4 A (Nods head up and down.)

5 Q Okay. I'm going to give you your rights, tell you  
6 what all your rights are, and that you can stop talking at  
7 any time and all that. And I need to make sure you  
8 understand all that. Okay? If there's something you  
9 don't understand, stop me and let me explain it to you.  
10 Okay? But it's just like you see on TV. I've got to do  
11 that before we go any further.

12 A (Nods head up and down.) Mirandize rights. Saves you  
13 and me.

14 Q All right.

15 A You and me.

16 Q Today is Wednesday, and it's December 16. The time  
17 is 8:40 p.m. in the evening. Okay. Present is Lt. McKee  
18 Sgt. Simmons, and state your name for me.

19 A Phillip Walker.

20 Q Phillip Walker.

21 Mr. Walker, you have the right to remain silent.  
22 Anything you say can be used against you in a Court of  
23 law. You have a right to talk to a lawyer and have one  
24 present while you're being questioned if you wish. If you  
25 want a lawyer before or during questioning but cannot

1 afford to hire a lawyer, one will be appointed to  
2 represent you at no cost before any questioning.

3 If you decide to waive your rights, then that means  
4 you're freely and voluntarily going to talk to us about  
5 what happened today. But that's only if you decide to  
6 waive your rights; and that is something you had to  
7 decide. I can't do that for you. Only you can do that.

8 A All right, then.

9 Q So are you waiving your rights? You want to talk to  
10 us about what happened today?

11 A Sure, I will. I told the officer earlier that  
12 arrested me, I said, "Yeah."

13 Q I need you to clearly tell me that you want to talk  
14 to us.

15 A I'll talk. I'll tell you what happened, you know.

16 Q You are waiving your rights? You want to talk about  
17 it today?

18 A Yeah. Yeah.

19 Q I'm taking it that you're saying you want to talk?

20 A Yeah. That's fine.

21 Q Okay. All right. Leading up to us getting out with  
22 you, can you tell me what went on today? You had a bag  
23 that had a receipt in it from Family Dollar.

24 A Yeah. Actually bought my chips.

25 Q Uh-huh.

1 A And cigarette too. My chips, my cigarette, and my  
2 candy.

3 Q Right. We still have it. Yeah, we have all that.  
4 But tell me what happened at Family Dollar.

5 A I mean, I had bought my chips, my drink -- I mean, my  
6 chips, my candy, and cigarettes, you know. And, I mean,  
7 it just been a bad, you know, couple of months.

8 Q Hard times?

9 A Yeah. Old lady lost her job. I lost mine. I have  
10 two young kids, a 4-year-old and 2-year-old. I wanted  
11 them to have something for Christmas. I just been  
12 stressed out, trying to figure out how I'm going to do it.  
13 How I'm going to do it, you know. I ain't never been in  
14 trouble, you know. Sometimes, you know how you see -- you  
15 second guess, like, when I bought the stuff, I second  
16 guessed. Like, I shouldn't do this. Should I do it?  
17 Should I do it? Should I do it? You know, I kept  
18 contemplating. When the lady --

19 Q When somebody is having hard times there's a lot of  
20 things that goes through peoples minds.

21 A Yeah, and the lady was looking at me like, "Sir, are  
22 you okay?"

23 I was just -- I just couldn't say nothing to her at  
24 the time, you know. And I was like (grunting sound). And  
25 she was like, huh? Just I was like (grunting), "Give me a

1 lighter."

2 And when she give me the lighter, I said, "Just give  
3 me the rest of the money out of the register."

4 She was like, "Huh?"

5 I was like, "Yeah."

6 Q So when you told her to give you the lighter, she  
7 gave you the lighter and you said --

8 A No, she had rang up the lighter.

9 Q You said give -- "go ahead and give me the rest of  
10 the money out of register"?

11 A Out of the register. Yeah. And she was like -- I  
12 was like, "Yeah, please don't scream."

13 Q Oh, you told her not to scream?

14 A And I didn't --

15 Q Did she scream or did she not scream?

16 A No. She was like -- she looked at me kind of like,  
17 it's weird. Because some people like, "Don't scream.

18 Shut up," you know. And she was like --

19 Q Tell me about the gun.

20 A You probably be like --

21 Q Well, I mean, just tell me --

22 A You probably slap me in the back of the head.

23 Q No, I mean just -- no, I mean a long time.

24 A Not saying like that. But the type of gun it was, it  
25 wasn't even like, okay. You know you get them guns that

1 shoot the caps out of them?

2 Q Uh-huh.

3 A All right. You know the ones they have nowadays that  
4 are almost like they real; but they shoot, not like the  
5 pellet, but the --

6 SGT. SIMMONS: The air soft stuff?

7 A Yeah.

8 SGT. SIMMONS: Yeah, little white --

9 A I had a small one --

10 Q Okay.

11 A -- I had been shooting for a while.

12 Q Okay.

13 A Little dust buster, what I call a little dust buster  
14 gun.

15 Q Okay.

16 A Kids found out, man, that's it. Man, that's your old  
17 gun. Son, he said, he said, "Dad, I know. I won it."

18 I said, "No, you can't have it." He's too young. He  
19 likes playing with stuff.

20 When I left the house I was like, I don't even know  
21 what the hell I did. I just know when I -- I walked and  
22 then ran and then walked.

23 Q To the Family Dollar or after?

24 A No, after.

25 Q Well, when you went to Family Dollar you had a

1 Carharitt or some kind of brown coat on, right?

2 A Yeah.

3 Q Where was the gun at in the coat when you went in the  
4 store?

5 A In the pocket.

6 Q Like, in the front pocket?

7 A Yeah. In the front pocket.

8 Q So you just went on in, done your thing?

9 A I just bought the stuff that I, you know, I had a  
10 craving for, for me and my kids. Some people like --

11 Q When you asked her for the rest of the money, is that  
12 when you pulled the gun out?

13 A Yeah, I showed it to her. I was like, "Please, just  
14 don't scream."

15 Q You showed it to her?

16 A Yeah. She didn't scream, she was just like -- at  
17 first, like, shocked that it actually --

18 Q That you were pointing a gun at her?

19 A Yeah.

20 Q I know.

21 A And in a way I felt bad. I ain't going to -- I felt  
22 bad as hell. I felt like shit.

23 Most people like, "Why?" Because I know I'm better  
24 than that and I could have done something probably totally  
25 different instead of getting in trouble for the first time



1 doing something stupid like that. In the back of my mind  
2 once I did it, I was like --

3 Q Had second thoughts?

4 A I had second thoughts. I was running. I was like,  
5 you know what? That was the dumbest thing I ever did.

6 Q Well, let me ask you this, Mr. Walker. Did she just  
7 empty the drawers out and give it to you? Is that what  
8 she did when you said "Don't scream"?

9 A Yeah, she just --

10 Q She just emptied it out and gave it to you?

11 A She just took the money, you know. I didn't want all  
12 of it. I said, "Just give me that right there." She just  
13 put it in the bag.

14 Q And then tell me what happened after that.

15 A I walked out the store. I didn't run or nothing.

16 Q Right.

17 A I walked out the store, walked down the street, and  
18 ran and started shedding. Like a turkey.

19 Q Yeah, well, tell me about the shedding. You went  
20 around, tell me -- because I know what you shedded and  
21 where you shed it at. I just need you to tell me where  
22 you shed it.

23 A I knew I -- I started throwing stuff. The bin was  
24 right there. That's the first thing I --

25 Q You talking about the bin you threw it in?

1 A Yeah. I ditched it. I was like, I got to shed it  
2 off, you know. And I said, "I got to walk." I said,  
3 "Maybe if I walk" -- I think I probably passed like three  
4 you-all probably.

5 Q You did. You did. You were smoking a cigarette when  
6 I went by you.

7 A See, just opened up my pack of cigarettes, just  
8 packed them, opened them up, smoking a cigarette walking  
9 by.

10 Q You went straight up River Street and turned left on  
11 White.

12 A And I was like --

13 Q You was just steady, just walking like nothing ever  
14 happened.

15 A And most -- yeah. I mean, and most like, "Why  
16 weren't you running like some people?" I had people when  
17 they took me upstairs, "Man, why didn't you start  
18 running?"

19 I said, because you-all fixing to realize, you-all  
20 don't watch TV like I do.

21 They like, what's that?

22 I'm like, "If you do something, and when you're  
23 running and they see somebody running and they pass you,  
24 they're going to -- the first thing they're going to do,  
25 they're going to send one to that scene. Then they're

1 going to immediately turn around --

2 SGT. SIMMONS: Right.

3 A And chase you. But if you're walking, look casual,  
4 you trying to blend in, you know, they be like, well --

5 Q That's true.

6 A -- maybe, maybe not.

7 SGT. SIMMONS: You see all kind of people.

8 A Yeah, you see all kind of people walking down the  
9 street.

10 Q You have a better chance that way than you do  
11 running.

12 A Yeah.

13 Q Because it makes it not stand out, like you say.

14 A I mean, you know, and --

15 Q So you had several of us pass you. Because, like I  
16 said, I saw you smoking a cigarette because you had your  
17 red hoody, you had it zipped up.

18 A That little bit, where you could see the tie-dyed  
19 shirt.

20 Q Yeah, we passed you.

21 A Yeah, I figure -- I looked back. When I saw, I don't  
22 know if it was you -- I don't know if it was you that  
23 backed up. Or you. I think you backed up that caught me  
24 first. One of you-all passed me when I got to Thomas --

25 Q We both did. We were in the same car together.

1 SGT. SIMMONS: We were in the same car.

2 A Is that what it was?

3 SGT. SIMMONS: Yeah.

4 A I said --

5 Q We turned around. We turned around on Cleveland and  
6 come back down.

7 A I saw y'all when y'all turned. That's why I turned.

8 Q Yeah, you turned --

9 A I was paying attention.

10 Q We turned on Cleveland, you turned Thomas.

11 A I was paying attention. I saw you-all go up. I  
12 said, "Lord, they coming for me." I said, "Well, I might  
13 as well face the traffic." See, most people would have  
14 ran.

15 SGT. SIMMONS: Right.

16 A Most people be like took off, get out of here. You  
17 know, like probably like, "What street is this on?"  
18 You-all trying to probably find it. I said, "Man, nah, I  
19 ain't going to make it so bad." My conscience kicked in.  
20 That's why I --

21 Q You wasn't hardly -- you cooperated fully. I  
22 appreciate that.

23 A I ain't going to -- I have a very strong conscience.  
24 I feel sorry as crap about it. I wanted to go back and  
25 tell the lady, you know, "Look, I'm so sorry. I should

1 have never done that, ma'am." I felt like crap. And I  
2 was going to say, "Could I get a Pringle before I go?"

3 You know, I was like, man, you know, if they know I  
4 paid for this stuff, they'll probably give my Pringle  
5 back.

6 Q Well, we got your receipt with it. So we seen where  
7 you paid with your card.

8 A Yeah. I figured. I said they probably put that, no  
9 problem, when I leave.

10 Q It is.

11 A Bond out or whatever they going to do when I see the  
12 judge tomorrow.

13 Q Yeah, you'll see a judge first thing in the morning.  
14 It was too late. He hadn't even had a chance to -- he  
15 typed the warrants. But you'll see him first thing.

16 Let me ask a question. Will you describe the gun to  
17 me? Tell me what the gun looked like.

18 A Old dust buster .22.

19 Q I mean, color?

20 A It was kind of a white handle and rusted as hell.  
21 You can tell I had it sitting out in my garage for a long  
22 time. Long -- I mean long time.

23 SGT. SIMMONS: Right.

24 A It was messed up. It didn't even work no more. You  
25 know what I'm saying?

1 SGT. SIMMONS: Right.

2 A It was just broke down, ragged, and I knew once I did  
3 it, I was like, crap. But, you know, people -- but you  
4 get upstairs people, "Yeah, man. Hey, that's 25 -- 15 to  
5 25."

6 I said, "Look, dude."

7 Q That's not up to us. That's up to the solicitor.

8 A But you know what I told them? I said, "Really, it's  
9 really past the solicitor."

10 They say, "Why you said that?"

11 I said, "Really, it's up to God first."

12 Q Well, I'll give you that.

13 A I said, "The Man upstairs" -- I said, "The Man  
14 upstairs, He can put on that person's heart whether or  
15 not, you know." You feel me?

16 I said, "I pray. Yeah."

17 Q You see what's hanging over my desk?

18 A Yeah. I got one sitting in my bedroom. Above my  
19 head. And I -- what's why I said, you know, a lot of  
20 people --

21 Q It is past the solicitor, it is up to God.

22 A That's why I say, I just started thinking about a lot  
23 of things, man. I sat there and said -- and I was like, I  
24 did the crime, so I might as well go ahead and finish, do  
25 the time, you know. But I said, hopefully they lenient.

1 Because, you know, they look at people's track record,  
2 history, see if they been in trouble, if they did  
3 anything.

4 SGT. SIMMONS: Right. They certainly do.

R. 252

WITNESSES

Anderson Police Dept.  
Joshua D. Genthner

ARREST WARRANT NUMBER

COUNT ONE 2015A0420701014  
COUNT TWO 2015A0420701015

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury  
Date: MAR 22 2016

Foreperson

VERDICT

Foreperson of Grand Jury  
Date: 12-7-16

DOCKET NO. 2016-GS-04- 00594

The State of South Carolina

County of Anderson

COURT OF GENERAL SESSIONS

MAR 22 2016, TERM

THE STATE

VS.

PHILIP WESLEY WALKER

INDICTMENT FOR

COUNT ONE - ARMED ROBBERY

SC Code: § 16-11-0330(A)  
CDR Code: 0139

COUNT TWO - POSSESSION OF A  
WEAPON DURING THE COMMISSION OF  
A VIOLENT CRIME

SC Code: § 16-23-0490  
CDR Code: 0549



STATE OF SOUTH CAROLINA  
COUNTY OF ANDERSON

## INDICTMENT

At a Court of General Sessions, convened on MAR 22 2016, the  
Grand Jurors of Anderson County present upon their oath:

**COUNT ONE - ARMED ROBBERY**

The defendant, Philip Wesley Walker, did on or about December 16, 2015 in Anderson County, South Carolina, while armed with a deadly weapon or while displaying what a person present during the robbery would reasonably believe to be a deadly weapon, take by means of force, threats, or intimidation, goods or monies described as cash in the amount of \$240.00 from the person or presence of Natasha L. Oliver, an employee of Family Dollar Store. All in violation of 16-11-0330(A) of the South Carolina Code of Laws (1976) as amended.

**COUNT TWO - POSSESSION OF A WEAPON DURING THE COMMISSION OF A  
VIOLENT CRIME**

The defendant, Philip Wesley Walker, did, on or about on or about December 16, 2015, in Anderson County, South Carolina, while committing the crime of Armed Robbery, a crime of violence, have in his possession a firearm. All in violation of 16-23-0490 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

  
CATHERINE T. HUEY  
SR. CAREER PROSECUTOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

R-254

COUNTY OF ANDERSON  
STATE VS.

PHILIP WESLEY WALKER

AKA: Phillip Wesley Walker

Race: Black Sex: M Age: 38

DOB: 07/02/1978

SS#: [REDACTED]

Address: [REDACTED]

City, State, Zip: [REDACTED]

DL# [REDACTED]

SID# SC01999850

\*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Possession Of A Weapon During The Commission Of A Violent Crime

In violation of § 16-23-0490 of the S.C. Code of Laws, bearing CDR Code # 0549

INDICTMENT/CASE#: 2016GS0400594

A/W: 2015A0420701015

Date of Offense: 12/16/2015

S.C. Code §: 16-23-0490

CDR Code #: 0549

RECEIVED

NOV 08 2017

SC Court of Appea

Sentence Sheet  
Sentenced in [REDACTED]

X CONVICTED OF or

☐ PLEADS

X NON-VIOLENT

☐ VIOLENT☐ SERIOUS☐ MOST SERIOUS☐ Mandatory GPS☐ §17-25-45(CSC w/minor 1<sup>st</sup> or Lewd Act)

The charge is:

X As indicted,

☐ Lesser Included Offense:☐ Defendant Waives Presentment to Grand Jury:

(def.'s initials)

The plea is:

☐ Without Negotiations or Recommendation,☐ Negotiated Sentence,☐ Recommendation by the State.

ATTEST:

Catherine T. Huey, Sr. Career Prosecutor 68416

SC Bar #

Defendant

Attorney for Defendant

10271  
SC Bar #WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center,for a determinate term of 3 (three) 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, Pardon and Pardon Service standard conditions of probation, which are incorporated by reference.

X CONCURRENT or ☒ CONSECUTIVE to sentence on: TO 2016GS-04-594

X 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. (236 Days)

☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

## SPECIAL CONDITIONS:

☐ RESTITUTION:☐ Deferred☐ Def. Waives Hearing☐ Ordered

PTUP

Total: \$ \_\_\_\_\_ plus 20% fee: \$ \_\_\_\_\_

days/hours Public Service Employment

Payment Terms: \_\_\_\_\_

Obtain GED ☐☐ Set by SCDPPPS

Attend Voc. Rehab. Or Job Corp.

May serve W/E beginning \_\_\_\_\_

Substance Abuse Counseling ☐Random Drug/Alcohol Testing ☐

Fine may be pd. in equal consecutive weekly/monthly

pmts. of \$ \_\_\_\_\_ Beginning \_\_\_\_\_

\$ \_\_\_\_\_ Paid to Public Defender Fund

Other: \_\_\_\_\_

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 61.6 (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.

\$ \_\_\_\_\_

3% to County (if paid in installments)

\$

\$3.75

TOTAL

\$128.75

Clerk of Court/Deputy Clerk:

Court Reporter:

SCCA217 (07/2016)

Presiding Judge:

Judge Bar ID:

Sentence Date:

Judge Code:

V. Cross (Sentencing) Appendix 308

## STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON  
STATE VS:

PHILIP WESLEY WALKER

AKA: Phillip Wesley Walker

Race: Black Sex: M Age: 38

DOB: 07/02/1978 SS#: [REDACTED]

Address: [REDACTED]

City, State, Zip: [REDACTED]

DL# [REDACTED] SID# SC01999850

\*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Armed Robbery (10 to 30)

In violation of § 16-11-0330(A) of the S.C. Code of Laws, bearing CDR Code # 0139

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2016GS0400594  
A/W: 2015A0420701014  
Date of Offense: 12/16/2015  
S.C. Code §: 16-11-0330(A)  
CDR Code #: 0139

RECEIVED

NOV 08 2017

SC Court of Appeals

## SENTENCE SHEET

Sentenced in Absence 12-7-16

☒ CONVICTED OF or☐ PLEADS☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45  
(CSC w/minor 1<sup>st</sup> or Lewd Act)The charge is: ☒ As indicted, ☐ Lesser-Included Offense;☐ Defendant Waives Presentment to Grand Jury; (def.'s initials)The plea is: ☐ Without Negotiations or Recommendation;☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Catherine T. Huey, Sr. Career Prosecutor 68416  
SC Bar # [REDACTED]

Defendant:

Attorney for Defendant

10271  
SC Bar #WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center,  
for a determinate term of 20 days/months/years or ☐ under the Youthful Offender Act not to exceed \_\_\_\_\_ years  
and/or to pay a fine of \$ \_\_\_\_\_, provided that upon the service of \_\_\_\_\_ days/months/years and/or payment  
of \$ \_\_\_\_\_, plus costs and assessments as applicable\*, the balance is suspended with probation for \_\_\_\_\_  
months/years and subject to South Carolina Department of Probation, Parole and Pardon Service standard conditions of probation, which  
are incorporated by reference.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State  
Department of Corrections. (236 Days)☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic  
Violence) to ship, transport, possess, or receive a firearm or ammunition.

## SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing☐ Ordered PTUP

Total: \$ \_\_\_\_\_ plus 20% fee: \$ \_\_\_\_\_

\_\_\_\_\_ days/hours Public Service Employment

Payment Terms: \_\_\_\_\_

Obtain GED: ☐☐ Scr by SCDPPPS

Attend Voc. Rehab. Or Job Corp.

May serve W/F beginning \_\_\_\_\_

Substance Abuse Counseling ☐Random Drug/Alcohol Testing ☐

Fine may be pd. in equal consecutive weekly/monthly

pmts. of \$ \_\_\_\_\_ Beginning \_\_\_\_\_

\$ \_\_\_\_\_ Paid to Public Defender Fund

Other: \_\_\_\_\_

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

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\$25

\$ \_\_\_\_\_

Proviso 61.6 (Public Def/Prob)

\$500

\$ \_\_\_\_\_

\$14-1-212 (Law Enforce. Funding)

\$25

\$25.00

\$14-1-213 (Drug Court Surcharge)

\$150

\$ \_\_\_\_\_

\$50-21-114 (DUI Breath Test Fee)

\$50

\$ \_\_\_\_\_

\$56-5-2942(J) (Vehicle Assessment)

\$40/ea

\$ \_\_\_\_\_

3% to County (if paid in installments)

\$

\$3.75

TOTAL

128.75

Clerk of Court/Deputy Clerk:

Court Reporter:

SCCA/217 (07/2016)

Presiding Judge:

Judge Bar ID:

Sentence Date:

Judge Code:

V. CROSS (Sentencing) Appendix 309

FILED-CLERK'S OFFICE  
ANDERSON SCIN THE COURT OF  
GENERAL SESSIONS  
OCT 12 PM 4:0410th. Judicial Circuit  
ANDERSON PLEAS AND  
GENERAL SESSIONS

Case No: 2016-GS-04-00594

STATE OF SOUTH CAROLINA )

COUNTY OF ANDERSON )

State of South Carolina )  
Plaintiff, )

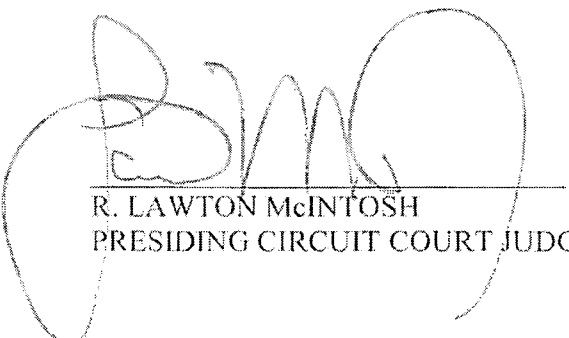
vs. )

Philip Wesley Walker )  
Defendant, )Order on Defendant's  
Motion for Reconsideration

This matter came before me in Anderson County on October 12, 2017 for opening of defendant's sealed sentence and also upon defendant's motion for reconsideration of the sentence imposed upon him in his absense during his trial on December 7, 2016 in Anderson County. William Yarborough, III, Esq. appeared on behalf of the defendant and Catherine Huey, Esq. of the Anderson County Solicitor's office appeared on behalf of the state.

The sentence was unsealed and read before the court. The defendant at that time moved for reconsideration of the sentence. Upon hearing from the defendant and the solicitor as well as reviewing the evidence presented at trial, the court hereby denies the defendant's motion to reconsider.

IT IS SO ORDERED.

Anderson, South Carolina.  
October 12, 2017
  
R. LAWTON McINTOSH  
PRESIDING CIRCUIT COURT JUDGE

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM ANDERSON COUNTY  
Court of General Sessions  
R. Lawton McIntosh, Circuit Court Judge

**RECEIVED**  
JUL 09 2019  
SC Court of Appeals

Appellate Case No. 2017-002204

The State,..... Respondent

v.

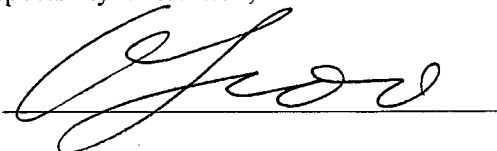
Phillip Wesley Walker,..... Appellant.

**Rule 210, SCACR Certification**

The Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

Respectfully Submitted,

By



E. Charles Grose, Jr.  
S.C. Bar Number 66063  
The Grose Law Firm, LLC  
404 Main Street  
Greenwood, SC 29646  
(864) 538-4466  
(864) 538-4405 (fax)  
Email: charles@groselawfirm.com

*Attorney for Appellant Phillip Walker*

July 1, 2019

**RECEIVED**

**Sep 02 2020**

**SC Court of Appeals**

STATE OF SOUTH CAROLINA  
In the Court of Appeals

---

APPEAL FROM ANDERSON COUNTY  
The Honorable R. Lawton McIntosh, Circuit Court Judge

Appellate Case No. 2017-002204

---

THE STATE,

Respondent,

vs.

PHILLIP WESLEY WALKER,

Appellant.

---

**SUPPLEMENTAL RECORD ON APPEAL**

---

E. CHARLES GROSE, JR.  
S.C Bar Number 66063

The Grose Law Firm, LLC  
404 Main Street  
Greenwood, South Carolina 29646  
(864) 538-4466  
(864) 538-4405 (fax)

ATTORNEY FOR APPELLANT

ALAN WILSON  
Attorney General

DAVID SPENCER  
Assistant Attorney General  
S.C. Bar No. 100108

Post Office Box 11549  
Columbia, South Carolina 29211  
(803) 734-3727

DAVID R. WAGNER  
Solicitor, Tenth Judicial Circuit

Post Office Box 8002  
Anderson, South Carolina 29622  
(864) 260-4064

ATTORNEYS FOR RESPONDENT

BAIL PROCEEDING  
FORM II

STATE OF SOUTH CAROLINA  
COUNTY OF Anderson

IN THE ☒ COURT OF GENERAL SESSIONS  
☐ MAGISTRATE COURT  
☐ MUNICIPAL COURT OF \_\_\_\_\_

STATE OF SOUTH CAROLINA

ORDER SPECIFYING METHODS AND CONDITIONS OF RELEASE

Philip Walker  
NAME OF DEFENDANT

Offense Charged: Armed Robbery, Possession of Weapon during violent crime

At a bail proceeding conducted by the undersigned judge, for the defendant named above, it was determined by the court (check one or both):

- ☒ The release of the defendant on recognizance will not reasonably assure his appearance as required.  
☒ The release of the defendant on recognizance will result in an unreasonable danger to the community.

This determination was based upon the following findings of fact: \_\_\_\_\_

[Considerations: Nature and circumstances of the offense charged, the defendant's family ties, employment, financial resources, character and mental condition, the length of his residence in the community, his record of convictions, and any record of flight to avoid prosecution or failure to appear at other court proceedings.]

THEREFORE, IT IS HEREBY ORDERED:

- That the above named defendant be released from custody on the condition that he will personally appear before the designated court at the place, date and time required to answer the charge made against him and do what shall be ordered by the court and not depart the State without the permission of the court and be of good behavior.
- That the above named defendant be released from custody provided as follows:

CASH IN LIEU OF BOND

☐ The defendant, acknowledges himself to be indebted to the State of South Carolina in the sum of \_\_\_\_\_ to secure his release from custody. Should the defendant fail to comply with all terms and conditions of this Order, this sum of money is subject to being forfeited to the State.

CASH PERCENTAGE IN LIEU OF BOND

☐ The defendant, acknowledging himself to be indebted to the State of South Carolina in the full amount of \_\_\_\_\_, his release to be obtained by payment to the court of \_\_\_\_\_ % (not to exceed 10%) of the full amount of the bond, deposits \_\_\_\_\_ to secure his release from custody. Should the defendant fail to perform the conditions of this Order, the full amount shall be levied on his real and personal property for the use of the State.

APPEARANCE RECOGNIZANCE WITH SURETY

☒ The defendant will provide good and sufficient surety approved by the court, in the form hereinafter set forth in this Order, acknowledging an indebtedness to the State in the amount of \$50,000.

3. That the defendant shall appear at (check one):

☒ the term of \_\_\_\_\_ COURT OF GENERAL SESSIONS beginning on 1/22/16  
at 9 o'clock, A.M. at Anderson County Court House 100 S Main St  
and remain there throughout that term of court. If no disposition is made during that term, the defendant shall appear and remain throughout each succeeding term of court until final disposition is made of his case, unless otherwise ordered by the court.

☐ the session of ☐ MAGISTRATE COURT ☐ MUNICIPAL COURT beginning on \_\_\_\_\_  
at \_\_\_\_\_ o'clock, M. at \_\_\_\_\_  
If no final disposition is made during that session, the defendant shall appear at such other times and places as ordered by the court.

INITIALS OF DEFENDANT PW

4. That the defendant will notify the court promptly if he changes his address from the one contained in this order and he will comply with those conditions described hereinafter in the Order.

[Signature]  
SIGNATURE OF JUDGE

02/17/15  
DATE

### ACKNOWLEDGEMENT BY DEFENDANT

I understand that if I violate any condition of this Order, a warrant for my arrest will be issued.

I understand and have been informed that I have a right and obligation to be present at trial and should I fail to attend the court, the trial will proceed in my absence.

It has been explained to me that if I fail to appear before the court as required, a warrant for my arrest will be issued.

ADDRESS

Andergon, SC 29624

CITY/STATE/ZIP

TELEPHONE

SOCIAL SECURITY NUMBER

DRIVER'S LICENSE OR ID NUMBER

SIGNATURE OF DEFENDANT

DATE

ATTORNEY REPRESENTING ACCUSED (IF KNOWN)

### SPECIAL CONDITIONS OF RELEASE

a. ☐ Placement in custody. The defendant is placed in the custody of:

NAME OF PERSON OR ORGANIZATION

ADDRESS

CITY/STATE

ZIP

TELEPHONE

who agrees (1) to supervise the defendant as set forth by the court, (2) to use every effort to assure the appearance of the defendant at all scheduled hearings before the court, and (3) to notify the court immediately in the event the defendant violates any conditions of his release or disappears.

SIGNATURE OF CUSTODIAN (IF APPROVED)

DATE

b. ☐ Restrictions on Travel, Association or Residence. The defendant will comply with each of the following conditions:

c. ☐ Part-time Release. The defendant will be released from custody from

TIME

o'clock,

AM/PM

to

TIME

o'clock,

AM/PM

on

DATE(S)

on condition that he return to the custody of

NAME OF PERSON OR ORGANIZATION

at

LOCATION

as designated.

d. ☐ Other Conditions. The defendant will comply with the following other conditions of release:

### APPEARANCE RECOGNIZANCE WITH SURETY

On the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, personally appeared before the undersigned judge the surety named below who acknowledged himself indebted to the State of South Carolina, in the sum of \_\_\_\_\_, such sum to be levied on his real and personal property for the use of the State, should named defendant fail in performing the conditions of this Order.

The surety, being duly sworn, says that he is a resident and free holder within the State and is worth the sum acknowledged and underwritten herein, over all his debts and liabilities, and exclusive of property exempt from execution.

NAME OF SURETY BONDSMAN

TELEPHONE

SIGNATURE OF SURETY BONDSMAN

ADDRESS OF SURETY BONDSMAN

CITY/STATE/ZIP

SIGNATURE OF JUDGE

NAME OF INSURANCE COMPANY

DATE

ADDRESS OF INSURANCE COMPANY

CITY/STATE/ZIP



**RECEIVED**

**Sep 02 2020**

**SC Court of Appeals**

STATE OF SOUTH CAROLINA  
In the Court of Appeals

---

APPEAL FROM ANDERSON COUNTY  
The Honorable R. Lawton McIntosh, Circuit Court Judge

Appellate Case No. 2017-002204

---

THE STATE,

Respondent,

vs.

PHILLIP WESLEY WALKER,

Appellant.

---

**Rule 210, SCACR Certification**

---

The Supplemental Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

ALAN WILSON  
Attorney General

DAVID SPENCER  
Assistant Attorney General  
S.C. Bar No. 100108

DAVID R. WAGNER  
Solicitor, Tenth Judicial Circuit

BY: s/David Spencer  
DAVID SPENCER

Office of the Attorney General  
Post Office Box 11549  
Columbia, SC 29211  
(803) 734-3727

ATTORNEYS FOR RESPONDENT

September 1, 2020



ALAN WILSON  
ATTORNEY GENERAL

September 8, 2020

The Honorable Jenny A. Kitchings  
Clerk of Court  
South Carolina Court of Appeals  
PO Box 11629  
Columbia, SC 29211  
**Via AIS**

**RECEIVED**  
**Sep 08 2020**  
**SC Court of Appeals**

Re: State v Phillip Wesley Walker, 2017-002204

Dear Ms. Kitchings:

Oral argument is scheduled in the referenced case for September 10, 2020 at 10:40 a.m.

Pursuant to Rule 208(b)(7), SCACR, I would refer to the following as additional authority:

USAA Prop. & Cas. Ins. Co. v. Clegg, 377 S.C. 643, 651-52, 661 S.E.2d 791, 795-96 (2008) (citing Rule 704(1), SCACR, in presuming counsel was being truthful when she told the circuit court that she filed a motion during the applicable time period).

I am also forwarding a copy of this letter to opposing counsel.

Sincerely,

David Spencer  
Senior Assistant Attorney General

cc: E. Charles Grose, Jr., Esquire  
charles@groselawfirm.com.

## Shana Montgomery

---

**From:** Shana Montgomery  
**Sent:** Tuesday, September 8, 2020 11:15 AM  
**To:** charles@groselawfirm.com  
**Cc:** Shana Montgomery; David Spencer  
**Subject:** State V. Phillip W. Walker; Appellate Case No. 2017-002204  
**Attachments:** 02373050.PDF

Good Morning,

Attached please find the State's Letter Pursuant to Rule 208(b)(7), SCAR referring to additional authority. Please confirm receipt. This document will be uploaded today to the Court of Appeals using our AIS system. A hard copy will also be placed in today's mail as well. Please don't hesitate to contact me should you have any questions or concerns.

Thank You.

Shana Montgomery  
Legal Assistant  
Office of the Attorney General  
Post Office Box 11549  
Columbia, South Carolina 29211  
803-734-7239

**RECEIVED**  
**Sep 08 2020**  
**SC Court of Appeals**