

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

Certiorari to Saluda County

Honorable Debra R. McCaslin, Circuit Court Judge

DEMARCUS L. ROBINSON,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2021-000626

APPENDIX

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1 State of South Carolina

Court of General Sessions

2 County of Saluda

3
4
5 State)

)

6) Transcript of Record

v.)

16-GS-41-310

7 Demarcus L. Robinson)

16-GS-41-311

16-GS-41-312

8)
9 Defendant.)

10 November 6 - 8, 2017

11 Saluda, South Carolina

12
13 B E F O R E:

14 The Honorable Robert E. Hood, Judge; and a
15 jury.

16
17 A P P E A R A N C E S:

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25 Official Court Reporter

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4	S-2	Photograph	158	159
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3	S-22	Men's Gray Underwear	261	266
4	S-23	U.S. Currency	264	266
5	S-24	U.S. Currency	264	266
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2	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
3	S-45	Photograph	297	301
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1 (The following proceedings were held on
2 November 6, 2017.)

3 **THE COURT:** All right. We're on the record in
4 2016-GS-41-3 -- what are the indictment numbers?
5 The numbers that are on here say that he has 11
6 charges, but I think he only has three.

7 **MR. FENDER:** Judge, I've got him on
8 2016-GS-41-312 for possession of a firearm during a
9 violent crime. I've got him on 2016-GS-41-310 for
10 kidnapping and 2016-GS-41-311 for armed robbery.

11 **THE COURT:** Okay. And you are Demarcus
12 Robinson; is that right?

13 **DEFENDANT:** Yes, Your Honor.

14 **THE COURT:** Okay. And Ms. Zmroczek's your
15 attorney; is that right?

16 **DEFENDANT:** Yes, sir.

17 **THE COURT:** Okay. All right. And there were
18 some pretrial matters we need to take up,
19 Ms. Zmroczek?

20 **MS. ZMROCZEK:** That's correct, Your Honor.

21 **THE COURT:** All right. You have the floor.

22 **MS. ZMROCZEK:** Thank you.

23 Your Honor, so the major thing that I have
24 filed in this case was a motion to compel. And by
25 way of background, this case was not originally

1 assigned to Mr. Fender. On March 8th of 2017, I
2 sent a letter detailing the items of discovery that
3 I was -- that I had been requesting. He has two
4 separate cases. He has a felony DUI, which that's
5 not why we're here today.

6 Correct?

7 **MR. FENDER:** Here on the armed robbery.

8 **MS. ZMROCZEK:** Yeah, we're here on that. And
9 they just have provided me stuff on that. So this
10 is all on the case that's on the trial docket for
11 this week, which is armed robbery, kidnapping and
12 possession of a weapon.

13 **THE COURT:** Is that one incident?

14 **MR. FENDER:** That's correct, Judge.

15 **THE COURT:** Okay.

16 **MS. ZMROCZEK:** And so, on March 8th of 2017, I
17 sent a letter to both Mr. Fender and Mr. Maye,
18 because Mr. Fender had the felony DUI and Mr. Maye
19 had this case. Mr. Fender was the only one who
20 responded, and he responded that he didn't have
21 anything to do with the armed robbery case, but he
22 would get me what he could on the felony DUI.

23 Some months go by, Your Honor, and there is
24 some communication, and I still don't have what I
25 was looking for. And then there was a change in the

1 guard with the assistant solicitor of going, and I
2 understand that this case kind of got moved to
3 Mr. Fender.

4 And so on July 25th -- or, actually, it was
5 technically filed July 28th. It was e-mailed on
6 July 25th. I sent all of these motions because time
7 was just going and going and going. And one of the
8 things that I know is not in the Court or the
9 solicitor's control is that there are only so many
10 terms of court in Saluda. We were attempting to try
11 to have these things heard out of county but still
12 within the circuit, and our schedules, being as they
13 were, could never line up.

14 But even as of the date of today, Your Honor,
15 with regard to the motion to compel, I was handed
16 some of the evidence this morning. And this is
17 what's concerning, Your Honor, and I know that I
18 argue this in every county, so you're not new to
19 this argument, but I've been asking for the bench
20 notes from SLED, and Mr. Fender handed them to me
21 this morning. And I understand that he may have
22 just got them this morning, but the date on these
23 pages is May 26, 2017. So, again, I don't know why
24 I'm getting them the morning right before we're
25 supposed to go to trial. That being said, I can

1 cross that off the list.

2 I do have copies of the 9-1-1 call, so over the
3 last couple of weeks they have been provided to me.
4 In August -- August 17th of this year, so just a few
5 months ago, they did provide me a big portion of
6 discovery, but there are still some things that are
7 missing.

8 They indicate to me on 3A5 that there are no
9 body cameras. And as long as they put that on the
10 record, that'll be a different pretrial motion once
11 they can confirm that.

12 I still don't have the color lineups where the
13 two people were selected. They tell me that there
14 are no in-car cameras.

15 I don't have any of the K-9 information. And,
16 Your Honor, this is extremely important. When I say
17 K-9 information, what I'm looking for are the
18 training records, the proficiency testing. And
19 there's a very -- I just got in the August
20 supplement. There's a very detailed kind of
21 supplemental incident report from the Saluda County
22 Sheriff's Department that talks about how Deputy
23 Hicks and Lieutenant Padgett started to track with
24 Deputy Hallman's K-9, Copper. And they detail where
25 they go. It's written down.

1 But what I don't have, Your Honor, are any of
2 the proficiencies. What -- if they were -- they say
3 they stopped at a fence, but they don't indicate
4 whether the dog indicated that there was something.
5 I just need the information with the K-9 because it
6 seems to be something that they're heavily relying
7 on. So that was 3A8.

8 They tell me that I have all of the statements
9 and officer notes. As long as they put that on the
10 record, then we can deal with that later.

11 3A10, the Circle K loss report and claims. So
12 -- I know Your Honor just heard about an armed
13 robbery at a Circle K. This is actually the same
14 Circle K. This incident happened August 1st of
15 2016, so a few months after the one that you just
16 pled, but they're not related, to my knowledge. But
17 I've asked for the loss report.

18 There was some money that was collected
19 outside. Just -- the evening of November 2nd, I
20 received an e-mail from Mr. Fender with some
21 pictures that were taken, I'm assuming, by Saluda
22 County. They never said who they were taken by.
23 But there's some money on the ground, and then
24 there's some money in another place that's found.
25 What I'm looking for is what the total loss that was

1 claimed.

2 All SLED crime -- I have 11.

3 12, I do have the inside videos. There are
4 three cameras that are positioned outside of this
5 Circle K. I have been continuously asking for the
6 outside videos and have not received the outside
7 videos of 3A12.

8 I did receive a property list recently. I do
9 not have a chain of custody. I don't have a copy of
10 the chain.

11 I do have 15. I do have 16. I do have 17 and
12 18. Those were recently provided.

13 And, Your Honor, when I sent out these initial
14 discovery requests, obviously all of this was
15 encompassed. I sent out, pursuant to the rules,
16 letters requesting these specific items. I even
17 sent copies of Kyles v. Whitley and the other
18 applicable case law.

19 Your Honor, I still have also not received any
20 Giglio material regarding officer -- or, I guess,
21 Sergeant or Captain or Chief Raffield at the time,
22 and I know that there's -- some exist, Your Honor,
23 and as well as any other officers that were
24 involved. And the reason I know that something
25 exists is because he was previously employed in

1 Edgefield and was terminated there, so I know that
2 there's at least something in his file that may have
3 to do with -- that goes to his credibility.

4 So, Your Honor, those were the things that I --
5 the things that I outlined are the things that I'm
6 still specifically missing. I don't know how I'm
7 supposed to go to trial tomorrow when I've been
8 requesting and requesting and requesting these
9 items. If they can provide them to me this week, I
10 think I can go to trial next week.

11 The problem is is, as I keep telling them, I
12 need it. And I've been telling them this not just
13 recently, but I filed these back in July, and this
14 is the first opportunity that we've had to have this
15 heard.

16 **THE COURT:** All right. Mr. Fender.

17 **MR. FENDER:** May it please the Court, Your
18 Honor. If I may, I'm just going to try to respond
19 to each of these allegations.

20 **THE COURT:** First thing she said she's missing
21 are the color photo lineups.

22 **MR. FENDER:** Judge, I've got a e-mail where
23 they were sent to her on October the 24th, 2017.
24 Again, they were previously sent in black and white.
25 I've got an e-mail showing that they had been sent

1 in color.

2 **MS. ZMROCZEK:** I've printed out all the
3 e-mails, Your Honor, so I can hand it up -- I can
4 show them what I have.

5 (Pause.)

6 **MR. FENDER:** Judge -- and, again, Judge, we
7 take the position that these were turned over. This
8 lineup is actually not in any relationship to this
9 defendant. It was a co-defendant that was ID'd in
10 the lineup.

11 And, Judge --

12 **THE COURT:** Hold on. Stay on one thing at a
13 time.

14 He says he sent them to you via e-mail. Did
15 you get them or not?

16 **MS. ZMROCZEK:** I did not. And also, Your
17 Honor, it says --

18 **THE COURT:** So this is impossible. What y'all
19 are saying is impossible, either they weren't sent
20 or they were sent and you received them and you're
21 still talking about them; which one is it?

22 **MS. ZMROCZEK:** I received the co-defendant. I
23 have not received the one of the defendant.

24 **THE COURT:** Is there one on the defendant?

25 **MR. FENDER:** There was not a lineup done on the

1 defendant, Judge.

2 **MS. ZMROCZEK:** Okay. And if that's their
3 position, then I'll deal with that in the trial.

4 **THE COURT:** Okay. Color photo lineups dealt
5 with.

6 K-9 records of the dog named Copper.

7 **MR. FENDER:** Judge, there's no K-9 records on
8 this dog that's been provided to us. I don't think
9 there is.

10 **THE COURT:** What does the dog do in the case?

11 **MR. FENDER:** Judge, if I may, can we allow law
12 enforcement to expand upon that?

13 **THE COURT:** Yeah. Sure. Somebody just tell
14 me.

15 You swear everything you're about to tell me is
16 the truth?

17 **CORPORAL RAFFIELD:** I do, Your Honor.

18 **THE COURT:** Okay. Tell me what the dog does in
19 the case.

20 **CORPORAL RAFFIELD:** Your Honor, the dog
21 basically catches a last scent from the point where
22 the money is located in the front of the business.
23 It tracks around the same side of the building that
24 the witness told them the defendant ran. It
25 continues down the sidewalk for about probably 40

1 yards, comes across some more money in the front
2 yard, tracks around the corner of the house, comes
3 across a black-in-color T-shirt, goes over a fence
4 into the woods, an animal of some type jumped up
5 which startled the dog, and that was the end of it.
6 The dog could not get back on track.

7 **THE COURT:** So did the dog ever find anybody?

8 **CORPORAL RAFFIELD:** It did not, Your Honor.

9 **MR. FENDER:** Judge, it did find a trail of
10 money. And it is of probative value to the State,
11 but it's not, you know, per se a K-9 tracking dog
12 in, like, that kind of traditional sense. You know,
13 if it facilitates the trial, I mean, we're fine
14 going without that because we do have independent,
15 you know, ways to get from point A to point B.

16 **THE COURT:** How does that dog affect your
17 client?

18 **MS. ZMROCZEK:** Well, Your Honor, because the
19 track that it follows is going away from my client's
20 house. The T-shirt that is found does not come back
21 with any DNA. In fact, my client is excluded from
22 that, so --

23 **THE COURT:** So what's the issue?

24 **MS. ZMROCZEK:** It's potential exculpatory
25 evidence, Your Honor, that I should have access to.

1 **THE COURT:** What are you talking about?

2 **MS. ZMROCZEK:** I'm talking about a dog tracking
3 whoever robbed this convenience store and it not
4 coming back to my client.

5 **THE COURT:** Okay. I would consider that to be
6 beneficial to your client.

7 **MS. ZMROCZEK:** Right.

8 **THE COURT:** So if they don't have any records
9 to establish the history of the dog, then under
10 State versus White, even if you tried to present
11 that, it would be inadmissible.

12 **MS. ZMROCZEK:** Right.

13 **THE COURT:** So that would hurt your client.

14 **MS. ZMROCZEK:** Right, but --

15 **THE COURT:** So I don't know why we're going
16 down this rabbit trail.

17 **MS. ZMROCZEK:** If it's their position that this
18 is not a tracking dog and they're not going to
19 mention it, then we won't -- then we will waive that
20 issue.

21 **THE COURT:** All right. Next is the loss
22 report, total loss. What about that?

23 **MR. FENDER:** Judge, there's not a loss report.
24 I believe that's been previously articulated.

25 And I would further provide, Judge, I've

1 attempted to be in contact with Ms. Zmroczek's
2 office. And I've got an e-mail, again, from, you
3 know, October 27th, a couple weeks before this
4 trial, just kind of articulating everything that's
5 been turned over and also offering to meet with
6 Ms. Zmroczek so that she can review my file, as well
7 as meet with law enforcement to review the physical
8 evidence. None of those phone calls were returned.
9 None of these e-mails were returned.

10 Judge, here we are the morning of the trial --

11 **THE COURT:** I'm not fussing at you, Mr. Fender.
12 You'll will know when I'm fussing at you. I'm not
13 fussing at you. I'm just asking for an explanation.
14 Okay?

15 Now, she says there's something about there's
16 pictures of money; is that right?

17 **MR. FENDER:** That's correct, Judge.

18 **THE COURT:** And who took those pictures?

19 **MR. FENDER:** I believe it notes -- if you
20 actually, you know, open the file, it says on each
21 picture -- or at least as far as the file, which
22 deputy took which picture.

23 **THE COURT:** What about it, Ms. Zmroczek?

24 **MS. ZMROCZEK:** Your Honor, if they can't give
25 me a loss report, that's fine. We'll deal with it

1 during trial.

2 **THE COURT:** What about the pictures? He says
3 the pictures are self-authenticating with who took
4 them. You stood up and told me that I have pictures
5 of money, but I don't know who took the pictures.

6 **MS. ZMROCZEK:** Correct.

7 **THE COURT:** He tells me that on the files
8 themselves, they say who took the pictures.

9 **MS. ZMROCZEK:** Well, Your Honor, I will gladly
10 meet with him afterwards, and he can show me on the
11 picture where it says their name. I can do that.

12 **THE COURT:** Okay. What about the outside
13 cameras? What exists with that, Mr. Fender?

14 **MR. FENDER:** Again, Judge, if law enforcement
15 can briefly --

16 **THE COURT:** Go ahead.

17 **CORPORAL RAFFIELD:** Your Honor, I was very
18 familiar with the system. I was responsible for
19 security for the Town of Ridge Spring. And, at the
20 time, their outside cameras were not operating. And
21 I continued to assist them to get them fixed. They
22 finally have.

23 **THE COURT:** All right. The outside cameras
24 were not operating.

25 **MS. ZMROCZEK:** Thank you.

1 **THE COURT:** Okay. And what about chain of
2 custody? What nonfungible items do you need a -- or
3 what fungible items do you need a chain of custody
4 on?

5 **MS. ZMROCZEK:** I believe there's a gun.

6 **THE COURT:** A gun is a nonfungible item. It's
7 self-authenticating. What drug or DNA or swab or
8 something that can be altered --

9 **MS. ZMROCZEK:** From the shirt, Your Honor.

10 **THE COURT:** The what?

11 **MS. ZMROCZEK:** The shirt.

12 **THE COURT:** Okay. And was there evidence
13 collected from the shirt?

14 **MS. ZMROCZEK:** There was.

15 **THE COURT:** And what does that evidence show?

16 **MS. ZMROCZEK:** That it does not match my
17 client.

18 **THE COURT:** Okay. So why do you need a chain
19 of custody on that?

20 **MS. ZMROCZEK:** As long as they'll stipulate to
21 it, Your Honor, then that's fine.

22 **THE COURT:** Do y'all agree that the shirt that
23 was collected doesn't match her client?

24 **MR. FENDER:** Judge, we take some exception to
25 the scientific finding there. It's my understanding

1 from SLED, and I don't want to testify for them,
2 but --

3 **THE COURT:** I'm not asking you to testify, just
4 tell me what the report says.

5 **MR. FENDER:** That basically they shut down the
6 testing after they found multiple strands of DNA on
7 the same garment.

8 **THE COURT:** Okay. All right. And so do you
9 have a chain of custody on the shirt?

10 **MR. FENDER:** Judge, I believe they write,
11 physically, on the piece of evidence, you know, in
12 the evidence locker of Ridge Spring. And we
13 provided opportunity for her to view that, which she
14 didn't take advantage of.

15 **THE COURT:** Y'all write it on the Best Kit?

16 **CORPORAL RAFFIELD:** Your Honor, we had clear
17 bags at the time with the labels of information. I
18 filled all that out. The stuff that was sent to
19 SLED, I did the chain of custody going to SLED.
20 SLED does their own processing and sends it back to
21 us.

22 **THE COURT:** All right. Do you have the SLED
23 chain of custody?

24 **MR. FENDER:** Judge, I don't know that off the
25 top of my head. I'm not contesting it. I don't

1 know if, you know, Ms. Zmroczek is wanting to talk
2 about it or not wanting to talk about it.

3 **THE COURT:** Are you attempting to introduce the
4 shirt?

5 **MR. FENDER:** I'm not.

6 **THE COURT:** Okay. Are you going to object to
7 her introducing the shirt?

8 **MR. FENDER:** No objection.

9 **MS. ZMROCZEK:** Then that's settled, Your Honor.

10 **THE COURT:** And then the Giglio information
11 about any of the officers.

12 **MR. FENDER:** Judge, before we address that
13 issue, just for clarification on the shirt and the
14 DNA, if we are going to go down that route, I would
15 like the opportunity to have the chemist just kind
16 of come and further explain, you know, as part of
17 the State's case in chief, not entering the shirt
18 itself, but having a chemist explain what was done
19 in this case.

20 **MS. ZMROCZEK:** I won't have an objection.

21 **THE COURT:** Okay. All right. And what about
22 the Giglio information?

23 **MR. EARGLE:** Your Honor, is there someone
24 specific?

25 **THE COURT:** I have no clue. I don't know who

1 -- I know about two people in this room. I don't
2 know anybody. I don't have any history with
3 anybody. I don't have any dog in this fight.

4 What Mr. -- excuse me -- what Ms. Zmroczek is
5 asking for is any Giglio information, which would be
6 any, essentially -- I'm not quoting the case
7 directly obviously; I'm just going off the general
8 premise of what it stands for is -- if there's
9 something in an officer's file or personnel record
10 that would go towards his or her credibility, it has
11 to be turned over. Have I succinctly stated that --

12 **MS. ZMROCZEK:** That's correct.

13 **THE COURT:** -- in a one-sentence explanation of
14 a very lengthy U.S. Supreme Court case?

15 **MR. EARGLE:** We would be happy to get -- if
16 she's referring, like, Deputy Raffield now who is
17 the former chief of police for Ridge Spring, who at
18 one time was a deputy for the Edgefield Sheriff's
19 Office, I'll be happy to get whatever they have and
20 bring it to you in a sealed envelope. We'd prefer
21 you to look at it and make a judicial determination
22 if there's anything in there that would be Giglio
23 material.

24 **MS. ZMROCZEK:** I think that goes with any
25 officer.

1 **THE COURT:** That's exactly how I would ask,
2 yeah. That's exactly how I would prefer to do it.

3 **MR. EARGLE:** And you want that for each law
4 enforcement officer?

5 **MS. ZMROCZEK:** Everyone that's going to
6 testify.

7 **THE COURT:** Well, I mean, if it exists.

8 **MR. EARGLE:** If it exists, correct.

9 **THE COURT:** I mean -- yeah, if there's
10 something in there that goes directly towards
11 somebody's credibility, put it in a file, give it to
12 me, and I can review it and then determine what, if
13 any of it, is discoverable.

14 **MR. EARGLE:** Yes, sir.

15 **MS. ZMROCZEK:** And then lastly, Your Honor,
16 they turned over a bunch of still photos -- going
17 back to the SLED issue -- some still shots that were
18 taken from the video, and then they also took some
19 pictures of my client's various tattoos. I've seen
20 no report. I don't know who at SLED isolated the
21 videos. I don't know if they're intending on having
22 somebody come and testify that they can make a match
23 from tattoos to these pictures. And if so, I need
24 that report, their CV and any information regarding
25 that.

1 **THE COURT:** All right. Yes, sir.

2 **CORPORAL RAFFIELD:** Your Honor, Joe West with
3 SLED, he is their guru for audio/visual. He's the
4 one that prepared the video. I took the information
5 to him. He did all the still photographs. And from
6 what I understand, is that he's planning to come and
7 testify.

8 **THE COURT:** Okay. Does he have a report?

9 **MR. FENDER:** Judge, we'd have to look at what
10 was Bates Stamped, but I believe we turned over a
11 receipt from SLED, but outside of that, it's my
12 understanding there's no report from him.

13 **THE COURT:** Okay.

14 **MS. ZMROCZEK:** I would say if they attempt to
15 proffer him as an expert or to give an opinion of
16 some sort, I think I'm entitled to know what that
17 opinion is before the trial starts.

18 **THE COURT:** Yes, she is.

19 **MR. FENDER:** Judge, I don't think we intend to
20 offer him as an expert. You know, it's our
21 contention, you know, we would be laying the
22 foundation for these matters by asking people who
23 were there, law enforcement, the victim, does this
24 fairly and accurately depict? You know, SLED is
25 more --

1 **THE COURT:** So, hold on. Do you plan on Joe
2 West testifying as an expert that the tattoos match?

3 **MR. FENDER:** That's a jury question.

4 **THE COURT:** Yeah. You don't plan on offering
5 him as an expert in matching tattoos, right?

6 **MR. FENDER:** Right.

7 **THE COURT:** You plan on showing the pictures
8 and then letting the jury determine whether or not
9 they match or not, right?

10 **MR. FENDER:** Yes, sir.

11 **THE COURT:** Okay. I'm not trying to tell you
12 how you -- I'm just walking you through it.

13 What Ms. Zmroczek's worried about is somebody
14 coming up here and professing to be an expert and
15 matching tattoos and rendering an opinion and the
16 first time she's ever heard about that is while the
17 guy's on the witness stand, so -- but that's not
18 where you're going with it.

19 But Joe West is the person who took the videos,
20 cut out the photos or whatever, I don't know all
21 that terminology, but created it into a still shot.
22 And he can certainly testify as to what he went
23 through to create that into that still shot, but --

24 **MS. ZMROCZEK:** And I would just ask for his CV,
25 Your Honor.

1 **THE COURT:** Yeah, if he has a CV, turn it over
2 to Ms. Zmroczek.

3 What else?

4 **MS. ZMROCZEK:** Your Honor, those are all of
5 the, I believe, items on my motion to compel. I
6 will look at the physical evidence. Today,
7 obviously, I've seen pictures of everything. I
8 think that we'll have pretrial -- I'll have more
9 pretrial specific motions in the morning based on
10 missing evidence and things like that, which should
11 take probably an hour in the morning.

12 **THE COURT:** Why can't we do it this afternoon?

13 **MS. ZMROCZEK:** Or we can do it this afternoon.

14 **THE COURT:** And if we need to take a break so
15 you can go --

16 **MS. ZMROCZEK:** I mean, I'll need a break.

17 **THE COURT:** Yeah. I mean, you're not ready to
18 make your pretrial motions today?

19 **MS. ZMROCZEK:** I will be, Your Honor. I can do
20 them this afternoon.

21 **THE COURT:** Okay. All right. What else?

22 What's the plea offer in this case?

23 **MR. FENDER:** Judge, there's an offer of a plea
24 to armed robbery with a cap of 20 years. He'll be
25 looking at 10 to 20.

1 **THE COURT:** You understand that's your plea
2 offer?

3 **DEFENDANT:** Yes, Your Honor.

4 **MS. ZMROCZEK:** I did relay that to him.

5 **THE COURT:** You understand that's your plea
6 offer?

7 **DEFENDANT:** Yes, sir.

8 **THE COURT:** Okay. All right.

9 **MR. FENDER:** And, Judge, for clarification when
10 we discussed that plea, that was not in the context
11 of trial. You know, if Ms. Zmroczek would like us
12 to reopen that, we'd certainly do that, but, you
13 know, that doesn't hang out there in perpetuity.

14 **THE COURT:** Right.

15 **MS. ZMROCZEK:** He's aware of that. I mean,
16 we'll discuss it again.

17 **THE COURT:** If you're going to plea, you need
18 to plea today to get that deal. You understand
19 that?

20 **DEFENDANT:** Yes, Your Honor.

21 **THE COURT:** Okay. I'm not telling you to. I'm
22 just saying once the trial starts, you know, they're
23 not going to offer you that deal anymore.

24 Okay. What else? What else do we need to take
25 up?

1 **MS. ZMROCZEK:** I guess, any rap sheets on any
2 witnesses.

3 **THE COURT:** You got rap sheets on any
4 witnesses, Mr. Fender, that show something that is
5 admissible under Rule 60 -- whatever it is?

6 **MR. FENDER:** Nothing, Judge.

7 **THE COURT:** Nothing. Okay.
8 All right. What else?

9 **MS. ZMROCZEK:** That's it.

10 **THE COURT:** All right. So let's take a break
11 for an hour, then we'll come back, and whatever the
12 couple pleas y'all got, we can do those.

13 All right. Let's take a break for an hour.
14 We'll come back and do those pleas, and then we'll
15 go ahead and knock out the pretrial in this case
16 this afternoon.

17 (A recess transpired.)

18 **THE COURT:** All right. We're back on the
19 record in 2016-GS-41-310, 311 and 312, State of
20 South Carolina versus Demarcus Robinson. The State
21 is present and the defendant is present, represented
22 by Ms. Zmroczek.

23 Okay. What else do we need to take up prior to
24 jury selection tomorrow?

25 **MS. ZMROCZEK:** And, Judge, just because I know

1 that sometimes I tend to work late, but, actually,
2 I'm a little more prepared this time, and I was
3 going to e-mail the voir dire questions for
4 tomorrow, but I'm having trouble getting online,
5 I've told your law clerk that I will have them to
6 her and to the State before 8:00 P.M. this evening.

7 **THE COURT:** Just bring them in paper form
8 tomorrow.

9 **MS. ZMROCZEK:** And I'll bring them in paper
10 form as well.

11 So the first thing, Your Honor, is I'm looking
12 at the indictments. There are three indictments,
13 2016-GS-41-312, and I don't have any issues with
14 that indictment, but I'm looking at now
15 2016-GS-41-310 and it's just -- there are a few
16 things on the back of that indictment, Your Honor.
17 It says --

18 **THE COURT:** Can I see it? Somebody got a --
19 where is the original or is there a copy somewhere?

20 **MS. ZMROCZEK:** I'm sorry. I thought you had
21 them, Your Honor.

22 **THE COURT:** No, ma'am.

23 (Pause.)

24 **THE COURT:** Thank you, ma'am.

25 **THE CLERK:** You're welcome.

1 **THE COURT:** Okay. So we're not doing the DUI,
2 right?

3 **MS. ZMROCZEK:** Correct.

4 **THE COURT:** Okay. So you want me to look at
5 310?

6 **MS. ZMROCZEK:** 310. So on the back, obviously,
7 just one thing -- well, the first thing is there's a
8 scrivener's error. It's William Houston. I don't
9 know that that matters so much, but I thought that
10 the Court would certainly like to correct -- make
11 sure it has his correct name.

12 **THE COURT:** Is that right, Mr. Fender?

13 **MR. FENDER:** It's in the body of the
14 indictment; that's correct.

15 **THE COURT:** And how does Mr. Houston spell his
16 name?

17 **MR. FENDER:** H-o-u-s-t-o-n.

18 **THE COURT:** All right. Any objection to me
19 amending the indictment to say that?

20 **MR. FENDER:** No objection.

21 **THE COURT:** Okay.

22 All right. Ms. Zmroczek.

23 **MS. ZMROCZEK:** And then the other issue, Your
24 Honor, it says, Did -- Without authority of law and
25 without consent by the following means, to wit: The

1 defendant, with the use of physical force, did
2 unlawfully seize and confine -- it says by physical
3 force and battery on the victim. It's the "and
4 battery" on the victim that we would like stricken
5 from this indictment. It's not part of an element
6 that needs to be proved.

7 We agree that the "seized and confined by
8 physical force" is appropriate language, but I have
9 the EMS records, Your Honor, that shows that there
10 was no physical injury and -- so we would object to
11 the battery of the victim language being as part of
12 the indictment.

13 **THE COURT:** What about it, Mr. Fender?

14 **MR. FENDER:** Judge, I think you can see him
15 physically kind of grab the victim as he's stocking
16 the shelves, and then he kind of puts a gun to his
17 back and walks him over to the cash register.

18 Judge, I think there's a factual basis for it
19 so that there would be a trial. And I wouldn't
20 oppose "or battery", amending "and" to "or".

21 **MS. ZMROCZEK:** Well, I think they would have to
22 elect. I mean, I think physical force would include
23 putting a gun to somebody and forcing them to the
24 cash register.

25 **MR. FENDER:** Judge, I'd ask the Court to leave

1 it as is. This is a factual issue and we'll see
2 video of this.

3 **THE COURT:** Well, I'm going to explain to them
4 what kidnapping is, so -- and my definition will
5 control. So I think the indictments puts the
6 defendant on sufficient notice of what he's charged
7 with and what he's accused of doing and the factual
8 circumstances surrounding it, so I'm going to leave
9 that one alone.

10 **MS. ZMROCZEK:** I just wanted to make sure that,
11 you know, that they don't think that there has to be
12 some battery, and I know that you'll explain that to
13 them.

14 **THE COURT:** Okay.

15 **MS. ZMROCZEK:** And then on 311, the indictment
16 for armed robbery, Your Honor, it says, The taking
17 of goods and/or money described as approximately \$69
18 in currency and/or a carton of cigarettes and/or a
19 carbonated beverage or carbonated beverages, I think
20 that there needs to be an election if it was money
21 or cigarettes or all of it. I don't -- if it's
22 "and", then we can take the "or" out, but I think
23 they need to elect what he's being accused of
24 taking.

25 **THE COURT:** Why? Where is the case that says

1 that?

2 **MS. ZMROCZEK:** Your Honor, I didn't -- I mean,
3 I believe it falls under corpus delicti. They have
4 to -- they have to determine or they have to say --
5 if he took all of them. If they want to say "and",
6 that's fine, but what they're trying to prove is
7 that he took money or -- and/or cigarettes and/or
8 carbonated beverages.

9 **THE COURT:** All right. The indictment is a
10 notice document. This is putting the defendant on
11 notice of anything that the State would be alleging
12 that he potentially stole in the allegations of this
13 armed robbery. And, therefore, I find the currency
14 and/or the cigarettes and/or the carbonated
15 beverages to be appropriate elements of what the
16 State can allege to prove, either they can prove he
17 stole all of those things or they can attempt to
18 prove that he stole one of those things or some
19 combination of the three of those things.

20 And I believe that's the State's attempt to put
21 the defendant on notice of what he allegedly stole
22 during the robbery, and I find that proper inside
23 the indictment. It actually aids the defendant in
24 putting him on notice of what they are alleging that
25 he stole.

1 **MS. ZMROCZEK:** The next motion, Your Honor, is
2 just our general motion to sequester witnesses. We
3 know that the lead investigator, who I believe is
4 Raffield, and the victim certainly have a right to
5 be present. We would ask that any and all other
6 witnesses be sequestered. And we understand that
7 that's reciprocal, so we would have any of our
8 witnesses sequestered.

9 **THE COURT:** Any objection, Mr. Fender?

10 **MR. FENDER:** No objection.

11 **THE COURT:** Okay. So the way -- here's -- now,
12 listen, I realize I've never held court in this
13 building before, so I don't know who all these
14 people are. Okay? So I don't know who y'all's
15 witnesses are. Likewise, I don't know who your
16 witnesses are, if any. So I need y'all to do your
17 best to internally monitor those people coming in
18 and out.

19 If somebody -- and somebody could walk in, for
20 all I know, you know, they could be the Mayor of the
21 Town of Saluda or they could be the next witness. I
22 don't know who these people are, so if you see
23 somebody walk in and you know they're not supposed
24 to be in here, just say, hey, Judge, can we
25 approach? And then we can ask the person to slide

1 out without making a scene.

2 So that sequestration will be reciprocal, that
3 means it'll be on the State and on the defense. It
4 will not apply to the lead investigator. It will
5 also not apply -- is there more than one victim or
6 is there just one victim?

7 **MR. FENDER:** Just one victim.

8 **THE COURT:** Okay. It will not apply to the
9 victim in the case, and, of course, sequestration
10 does not apply to expert witnesses. But I don't
11 know who these people are, so if y'all see them,
12 somebody waive at me or say, Let's approach, so we
13 can ask them to be excused.

14 Next?

15 **MS. ZMROCZEK:** The next is kind of a question,
16 Your Honor. So I have a Neil v. Biggers down with a
17 question mark. So -- by way of background, the
18 victim in the case says that he thinks it's
19 Mr. Robinson, not because he can see his face or
20 anything, but because he felt like it was the same
21 build as him. So -- and now they're saying that
22 there's no selection of a photo lineup, but his name
23 is given by the victim. So I guess we need to flesh
24 that out if there's going to be any in-court
25 identification.

1 **THE COURT:** Okay. What's the State's intention
2 on the victim making an in-court identification of
3 the defendant?

4 **MR. FENDER:** Judge, what we attempt to show is
5 that Ridge Spring is actually a pretty small area.
6 And the clerk, he knew the defendant. They live in,
7 somewhat, about a half a mile or so, something like
8 that.

9 You know, additionally, this defendant, he
10 takes his shirt off, puts it around his head, he had
11 very distinctive marks on his shoulders, as well as
12 tattoos and stuff like that, and also he was a
13 regular customer at this gas station.

14 And just to clarify, he didn't say he knows --
15 or he didn't say he thought, he said he knew. We
16 have audio recording of that. You can hear him say
17 that he's 99 percent sure within just moments of
18 this happening, and then he later reviews it and
19 says, Yes, that's Demarcus.

20 **THE COURT:** Does he see a photo lineup?

21 **MR. FENDER:** He does not, not of Demarcus.

22 **THE COURT:** Okay. So the victim is prepared to
23 testify that he has prior knowledge of the
24 defendant?

25 **MR. FENDER:** That is correct.

1 **THE COURT:** That he knows who he is, that he
2 knows him from the community, that he recognizes him
3 when he sees him. Does he know his name?

4 **MR. FENDER:** I don't know that, but law
5 enforcement is indicating that he does. And just
6 additionally, like, this happened back in August,
7 and you'll hear about them playing basketball and
8 him seeing him and seeing the shoulder and that kind
9 of stuff shirtless.

10 **THE COURT:** Well, there's no -- I don't know
11 that we need to do a Biggers hearing, but he would
12 certainly need to lay that foundation before I would
13 let him make an in-court identification.

14 **MS. ZMROCZEK:** And then also I think the other
15 part of this, which goes into a motion in limine, is
16 so Mr. Robinson was accused of shoplifting in the
17 same store in June of --

18 **THE COURT:** Tell me when this allegedly
19 occurred.

20 **MS. ZMROCZEK:** August 1st.

21 **THE COURT:** Of what year?

22 **MS. ZMROCZEK:** 2016.

23 **THE COURT:** Okay.

24 **MS. ZMROCZEK:** And so in June of 2016, there
25 was an arrest of Mr. Robinson. It was maybe never

1 effectuated. I think they effectuated the arrest
2 actually after -- I think they effectuated the
3 arrest on August 1st for that shoplifting, but --
4 so, obviously, we would move to keep out that
5 shoplifting and that's how he...

6 **THE COURT:** All right. Mr. Fender.

7 **MR. FENDER:** Judge, just for clarification, the
8 shoplifting incident was two to three weeks before
9 he robbed the store, so they had an active warrant
10 for the shoplifting because they didn't immediately
11 apprehend him.

12 You know, where this comes into this case,
13 we've talked about this, you know, if Your Honor
14 instructs us not to mention that, you know, that's
15 fine, but we --

16 As a matter of law, you know, they did arrest
17 this defendant. And part of the whole process was
18 the active warrant for arrest for the shoplifting,
19 you know, after they -- after they identified him as
20 Demarcus, you know, by using the dogs and by knowing
21 where he stayed, law enforcement went to his house
22 with that active warrant, and also based on the
23 evidence that they collected in this case, they
24 stopped and then they got an additional warrant to
25 search that area, but legally --

1 **THE COURT:** I certainly wouldn't let the --
2 what is -- Mr. Houston, is that the alleged victim's
3 name?

4 **MS. ZMROCZEK:** Yes.

5 **THE COURT:** I certainly wouldn't let him say
6 that Mr. Robinson or somebody that fits
7 Mr. Robinson's description committed a shoplifting
8 at the same store three weeks earlier. At this
9 point, I would leave -- I think, you know, I don't
10 know why we -- I don't know why the police would
11 need to say he has an active warrant for
12 shoplifting.

13 I'm not, you know, certainly, they're allowed
14 to go to his house and that kind of thing, but we
15 need to leave any incident -- instance of a prior
16 shoplifting out of the mix. So make sure you tell
17 Mr. Houston that, that he knows he doesn't need to
18 go into that.

19 I'm not saying that could become relevant later
20 based upon cross-examination or any potential
21 defense case, but, at this point, in the State's
22 case in chief, we need to leave the shoplifting out.

23 **MR. FENDER:** So just for clarification, Your
24 Honor, you're asking us, basically, to have law
25 enforcement to testify that they went to a known

1 place that he stayed --

2 **THE COURT:** Yes.

3 **MR. FENDER:** -- leaving out the act of
4 shoplifting?

5 **THE COURT:** Right.

6 **MR. FENDER:** Thank you.

7 **MS. ZMROCZEK:** And I know that he mentioned
8 dogs again and I thought we had covered that
9 earlier.

10 **MR. FENDER:** No dogs.

11 **THE COURT:** He was just explaining to me what
12 was going on with them, right?

13 **MR. FENDER:** It's just, you know, we've got
14 kind of three different ways of getting from point A
15 to point B, but it sounds to me like, in keeping
16 with Your Honor's instruction, just going on --

17 **THE COURT:** Yeah. I think they can say, you
18 know, we, you know, we went to where he was; we
19 knew, you know, we had information about where he
20 lived or something of that nature without going into
21 he had an active warrant for shoplifting at the same
22 exact store. I think that will clearly fall under
23 404(b) and -- he's not even convicted of it probably
24 at this point, is he?

25 Even if he is, you know, if he testifies or

1 something like that, we can revisit all that, but at
2 this point, on the State's case in chief
3 presentation, that will need to stay out.

4 **MS. ZMROCZEK:** And then also along that same
5 line of the 404(b) evidence, on the -- and I'm sure
6 that they're not going to introduce the radio
7 traffic, but there's radio -- on the radio traffic,
8 there's talk about him possibly being involved in an
9 Aiken burglary and them looking for a vehicle. So I
10 just wanted to make sure that they understand that I
11 want -- unless he gets on the stand, obviously
12 that's fair game, but --

13 **THE COURT:** Are you good with that?

14 **MR. FENDER:** Judge, we're good with leaving out
15 the Aiken stuff, but if she's gets into trying to
16 hem them up on the different times and stuff like
17 that, that may open the door to stuff relevant just
18 to this particular incident.

19 **THE COURT:** Okay. What I'm talking about is on
20 direct. If she opens some door on cross, then we
21 can take a break and flesh it out.

22 **MR. FENDER:** Yes, sir.

23 **THE COURT:** But no one needs to be saying, We
24 think he's involved in a burglary in Aiken, or, you
25 know, he's got warrants out of Aiken, or, the car's

1 wanted from Aiken, or anything like that.

2 **MS. ZMROCZEK:** And then the next thing I have,
3 Your Honor, is a motion to suppress any evidence
4 gathered as a result of a search warrant.

5 **THE COURT:** Okay.

6 **MS. ZMROCZEK:** I was provided a search warrant
7 and a return. And my first concern, Your Honor, is
8 it said, Supplemented by oral testimony of the
9 affiant. So I think -- and I can hand up a copy so
10 Your Honor can see that; it will probably be
11 helpful. And it's pages 95 through 99 of 117.

12 (Pause.)

13 **THE COURT:** Okay. What's your motion on the
14 search warrant?

15 **MS. ZMROCZEK:** Well, Your Honor -- well, I
16 guess my first question is what was the -- and I
17 forwarded the Court a case. I e-mailed it to you,
18 as well as your clerk and to Mr. Fender. It's State
19 v. Alphonso Chaves Thompson. It's filed February
20 22nd, 2017.

21 So I think that, Your Honor, what we need is
22 testimony to see -- I think, based on just the very
23 limited information that was given in the written
24 affidavit, which was -- since I don't have it in
25 front of me, bear with me -- but I believe it says

1 that the reason that they had the probable cause to
2 search his house was because he was found wearing
3 gray boxers and that you can partially see some gray
4 boxers in the video. And if I'm misspeaking, please
5 correct me, but I think that's what it said.

6 **THE COURT:** Okay.

7 **MS. ZMROCZEK:** And then it says, but -- and
8 that, in and of itself, I think the case law is
9 pretty clear that that --

10 **THE COURT:** Well, what the affidavit says is
11 that the officer was sworn and states that the
12 defendant did, on August the 1st, 2016 -- there's an
13 extra 5 at the end of 2016, that's probably a typo
14 -- did commit the criminal offense of armed robbery
15 at the Circle K, 300-A East Main Street, Ridge
16 Spring, within Saluda County.

17 The defendant, after the robbery, fled to the
18 address of 212 Merritt Avenue and was located within
19 the same. The defendant was still wearing partial
20 clothing from the armed robbery, which was observed
21 on the store video security video. The store clerk
22 also advised that he knows the defendant personally
23 and identified the subject during the robbery.
24 That's what it says.

25 **MS. ZMROCZEK:** Okay. And our concern is the

1 "fled to 212 Merritt". I don't know that there was
2 any -- any evidence that I could find of that. And
3 so, I guess, our question is what's the basis for
4 that information?

5 **THE COURT:** And what's your client's standing
6 to challenge the search warrant?

7 **MS. ZMROCZEK:** Well, it was his family's -- it
8 was his mother's house. He was staying there. And
9 so, Your Honor, we believe that that gives him
10 standing. He had a room, he had his stuff in a room
11 and was a part-time resident there, at least an
12 overnight resident.

13 **THE COURT:** Okay.

14 **MR. FENDER:** Judge, just for clarification,
15 this is all within a very small area. You know, law
16 enforcement was acting on the defendant, you know,
17 running back to Pecan Grove, I think, was the name
18 -- you know, he's a regular customer to and from
19 there -- actually went to that house with an active
20 arrest warrant for shoplifting, knocked on the door,
21 talked to mama, I believe, and she says, Yeah, he's
22 upstairs.

23 Judge, that legally gave them the right to go
24 up there just based on the warrant alone. But
25 outside of that warrant, they called a time out.

1 They said, hey, we're seeing cash, we're seeing a
2 gun --

3 **THE COURT:** We need to take testimony on all of
4 that so that the record's clear. I'm not saying
5 that what you're saying is not accurate, but the
6 best way to do it is to take testimony.

7 **MR. FENDER:** I call Mike Raffield to the stand.

8 **THE COURT:** Okay. Come on up here and be
9 sworn, and we'll get this in through testimony and
10 then we can make sure the record's clear.

11 MICHAEL JAMES RAFFIELD,
12 having been duly sworn, testified as follows:

13 DIRECT EXAMINATION

14 BY MR. FENDER:

15 **Q** Just getting right to it --

16 **MR. FENDER:** Judge, can I go forward with
17 direct?

18 **THE COURT:** Yes, sir, absolutely.

19 BY MR. FENDER:

20 **Q** Can you please identify yourself for the
21 record?

22 **A** I'm Michael Raffield, currently with the Saluda
23 County Sheriff's Office, former Chief of Ridge
24 Spring Police Department.

25 **Q** Did you have the opportunity to apprehend

1 Demarcus Robinson in August of 2016?

2 **A** I did.

3 **Q** Can you -- where did you apprehend him at?

4 **A** At 212 Merritt Street. I was familiar with
5 that location. I had been there before.

6 **Q** What led you to that location?

7 **A** I was doing another investigation involving
8 Demarcus Robinson. I knew that his family lived
9 there and spoken with them.

10 **Q** Is that in relation to an armed robbery?

11 **A** Part of it, yes.

12 **Q** What happened at the scene at the Circle K?

13 **A** On the incident date, in this incident, was an
14 armed robbery.

15 **Q** But outside of that, did you know Demarcus from
16 other incidents and from your law enforcement
17 activity in a small area?

18 **A** I did.

19 **MS. ZMROCZEK:** And, Your Honor, we would object
20 to that being in front of the jury.

21 **THE COURT:** We're not in front of a jury.

22 **MS. ZMROCZEK:** I understand.

23 **THE COURT:** Keep going.

24 BY MR. FENDER:

25 **Q** What led you from the gas station to the house?

1 **A** The initial information I had received from the
2 first responding units was that the victim had
3 already identified the subject as Demarcus Robinson.
4 I was already familiar that Demarcus had stayed at
5 212 Merritt Avenue. And I went straight to that
6 location because the officers, at that time, were
7 tracking parallel to Main Street going westbound
8 back toward that residence and were not far from it.

9 **Q** Just to tell us a little bit about that gas
10 station, is there kind of a trail or a cut-through
11 with a fence?

12 **A** There was a fence and there was a trail, but
13 not one that people would normally travel. But the
14 direction from that point where the officers entered
15 the woods, they were going straight to the back of
16 212 Merritt Avenue to some wooded -- a wooded area
17 in a field.

18 **Q** A trail to the defendant's neighborhood?

19 **A** Correct.

20 **Q** Did you also recover loose bills?

21 **A** Loose what?

22 **Q** Loose bills.

23 **A** Correct. The victim told us that the defendant
24 had ran around the Pecan Grove side of the business,
25 so there was money in the front parking lot. As we

1 went around the business going down Pecan Grove,
2 just off the sidewalk in the front yard at 111 Pecan
3 Grove, there was a single five-dollar bill. In
4 relationship to the little single-wide there, it was
5 maybe a third of the way down in front of it.

6 Further progression just around the corner of
7 the single-wide in the grass, there was a black
8 T-shirt.

9 **Q** What happened when you got to that residence?

10 **A** I made contact -- or attempted to make contact
11 by knocking on the door and didn't get anybody to
12 the door initially. I contacted our dispatch and
13 got the -- Demarcus Robinson's mother's cell phone
14 number from prior calls, got her on the phone, asked
15 her to meet me at the front door.

16 Once she met me at the front door, I asked her
17 if Demarcus was there. She turned her body sideways
18 and said, What's going on? I explained to her there
19 was an armed robbery. She turned her head, put it
20 down, walked the hallway and started going up the
21 stairs and started calling Demarcus' name. I
22 followed in behind her, went upstairs, located
23 Mr. Robinson.

24 **Q** At this point, as well as this armed robbery,
25 you also had an active arrest warrant for

1 shoplifting?

2 **A** I did.

3 **Q** What did you observe upstairs?

4 **A** He was secured. He was not laying on a bed.
5 He was laying on, like, a sleeping bag with clothing
6 underneath that. I immediately saw fives and ones
7 folded. So I went ahead and secured him in
8 handcuffs, asked, at that time, Lieutenant Padgett
9 to stand by so I could do a search warrant. He
10 agreed to stand by and not let anybody in or out of
11 the room that he was discovered in.

12 I went and conducted a search warrant, I
13 believe it was through Judge Horne, returned and got
14 Evan Garris to execute a search warrant.

15 **Q** What did you find as a result of that search
16 warrant?

17 **A** The money that was underneath the bedding -- I
18 can give you the exact total if I look in the
19 report. Located was 41 U.S. dollars, 5 in five
20 bills, 16 in ones, located underneath the sleeping
21 bag. Two pair of black shorts were also located
22 underneath the sleeping bag.

23 A camo backpack was located in the closet
24 within the same room, which contained a box of
25 Magtech .38 Special bullets containing 35

1 cartridges. And I remember seeing a blue Rubbermaid
2 top on the bottom of the closet -- the closet didn't
3 have any clothes or nothing that I remember hanging
4 in it -- underneath that was a silver or
5 gray-in-color revolver with five rounds in it.

6 And I noticed on the top shelf, there was
7 Newport cigarettes and a, what I call, a cigarillo,
8 but it's the foil that a cigar comes in. And after
9 looking at the video, I had seen the defendant
10 holding a carton of cigarettes -- I couldn't make
11 out the brand at that time -- and the single cigar.
12 So those are the items that we discovered after
13 obtaining the search warrant.

14 **Q** And these are the same items from the crime
15 scene?

16 **A** It is.

17 **MR. FENDER:** Thank you.

18 CROSS-EXAMINATION

19 BY MS. ZMROCZEK:

20 **Q** Is it deputy now?

21 **A** It's corporal.

22 **Q** Corporal. Thank you.

23 **A** Corporal Deputy.

24 **Q** Really? Is it okay if I just call you
25 corporal?

1 So, Corporal, when you -- you responded to the
2 Circle K?

3 **A** Uh-huh.

4 **Q** At what time was that?

5 **A** I don't have the actual CAD sheet. The exact
6 time that I signed on the radio and told dispatch
7 I'd be en route would be on a CAD sheet.

8 **Q** Okay.

9 **A** I can tell you the incident occurred,
10 approximately, 2:42, and I would imagine that I was
11 en route within probably 20 to 30 minutes. But,
12 again, to be accurate, I'd have to see the CAD
13 sheet.

14 **Q** Okay. And then you went straight from the
15 Circle K to 212 Merritt?

16 **A** I went straight from my residence, because I
17 was off duty at the time, in the direction of the
18 Circle K, was able to communicate with units on
19 scene. And their preliminary investigation was
20 conducted by, at that time, Captain Grenier with the
21 Ridge Spring Police Department along with Saluda
22 County Sheriff's Office.

23 Based on the information they had already
24 received, I went straight to 212 Merritt Avenue
25 because I had knowledge that Demarcus Robinson lived

1 there, and they were already tracking in that
2 direction. And he was already identified by the
3 clerk that was on duty that night.

4 **Q** And you said that his mother went in and you
5 followed her?

6 **A** When I first made actual contact with the
7 mother, I asked where Demarcus was at. She asked me
8 what was going on. I explained to her there had
9 been an armed robbery and that Demarcus had been
10 identified. She turned, dropped her head and
11 started walking away and calling Demarcus' name
12 going up the steps, and that's when I entered the
13 residence and followed her up.

14 **Q** Okay. When you got to the steps, you
15 immediately put him in handcuffs, so he was secured?

16 **A** He was laying on a bedding of like a, best I
17 can remember, like a sleeping bag with clothing and
18 stuff up underneath it. The first thing I did was
19 secure his hands, looked for immediate weapons right
20 in the general area, that's when I observed the
21 money and then he was handcuffed.

22 **Q** Okay. And so, at that time, he's -- at that
23 point, he's in custody?

24 **A** Correct.

25 **Q** And you take him out of the house at that

1 point?

2 **A** I actually got Captain Grenier to transport him
3 to the Saluda County Detention Facility.

4 **Q** Okay. And did you remain in the house?

5 **A** I did.

6 **Q** Okay.

7 **A** For a very short period of time.

8 **Q** But you didn't do any searching while you were
9 in there?

10 **A** Oh, no, no. I immediately asked Lieutenant
11 Padgett to stand by to -- because the family was
12 trying to walk through that room, and hold that room
13 for me secure so I can go obtain a search warrant.

14 **Q** And who is -- when you're on the call radios,
15 who is 300? When it says 300 and they call into
16 dispatch, who is that?

17 **A** 300 is the identifier for the chief of police
18 of Ridge Spring, which, on that date, was myself.

19 **Q** Was you. Okay.

20 And so there were other people there as well in
21 addition to you, correct?

22 **A** Correct.

23 **Q** Okay. And -- so then you left the premises?

24 **A** Once I asked Lieutenant Padgett to stand by and
25 secure that room, I did. I went back to my office

1 and quickly typed up a search warrant and drove
2 across the county to meet with Judge Horne.

3 **Q** And judge who?

4 **A** Judge Horne.

5 **Q** Okay. He's a magistrate?

6 **A** He's one of the two magistrates, correct.

7 **Q** And what time did he sign that search warrant?

8 **A** I would have to look at the CAD sheet.

9 **Q** Would it also be on the search warrant?

10 **A** It possibly could be. I don't remember a time
11 being on it. It's probably going to be reflected on
12 the CAD sheet.

13 There's generally not a time identifier on the
14 search warrant that I can remember ever seeing, but
15 it was shortly after the armed robbery within, just
16 speculating, an hour and a half, two hours. But,
17 again, to be specific, we need to look at the CAD
18 sheet. We tried to get our dispatcher to --

19 **MS. ZMROCZEK:** Your Honor, I can show him -- if
20 I may see it, then I can show him and then show you
21 as well.

22 **Q** I'm going to show you the search warrant. And
23 on page 98 of 117, is that the affidavit that you
24 filled out? Is that your signature?

25 **A** It is. And that is my initials, and that's my

1 handwriting for the date and the time, which is
2 8/1/16 at 0700 hours.

3 **Q** And that means -- that's what time that that
4 was signed and presented to the judge?

5 **A** The one line through is on a Deputy Clark,
6 which would have not been correct. I believe that's
7 why I initialled it, dated and timed, but I'm not
8 sure exactly when I actually put that on there. I
9 would imagine I put the 0700 when I made that
10 correction, but I can't tell you for sure that it
11 was done at the time that I met with the magistrate
12 or if it was an hour or two later. Again, I'd have
13 to defer to the CAD sheet.

14 **Q** It also says that it was supplemented by oral
15 testimony, your search warrant. Do you recall that?

16 **A** I'm familiar. What's your question is what I'm
17 waiting for?

18 **Q** Okay. My question is what -- what oral
19 supplement did you provide to the magistrate?

20 **A** The general language that we normally -- when
21 we present a search warrant is we hand the search
22 warrants to the judge. In this case, it was Judge
23 Horne. I handed him three copies. Generally, he
24 asks, Is this truthful -- or whatever a judge
25 normally asks -- Raise your right hand. I submit,

1 Yes, it is. And the judge, after reviewing it,
2 signed it, handed it back.

3 Q So you did not provide him any additional
4 testimony?

5 A Not that I recall.

6 Q Okay. So it was just what's on the search
7 warrant?

8 A Correct.

9 Q You said that in the search warrant, that it
10 was -- that person had been identified, but also
11 that they were wearing gray boxers that had been
12 seen on the video. When did you watch that video?

13 A That morning along with the manager and the
14 regional manager who had arrived before this was
15 over.

16 Q And that was prior to going to 212 Merritt?

17 A That would be after going to 212 Merritt, but
18 that warrant you're referring to is a second
19 warrant, which was effected at the jail on
20 Mr. Robinson's clothing.

21 MS. ZMROCZEK: Your Honor, I have no further
22 questions.

23 THE COURT: Redirect?

24 *****

25 *****

1 REDIRECT EXAMINATION

2 BY MR. FENDER:

3 **Q** Just to clarify for the record, you didn't do a
4 photo lineup on Demarcus, right?

5 **A** I believe I actually sent one off to SLED, but
6 I don't remember presenting one to anyone,
7 specifically the victim, William Houston. I know
8 that I showed him the one of the co-defendant, but
9 I'm confident I did not show one of Demarcus because
10 of the fact that he had already identified Demarcus.

11 **Q** So you did a photo lineup of Terrell?

12 **A** Of Terrell, correct.

13 **MR. FENDER:** Thank you. Nothing further.

14 **THE COURT:** Okay. Thank you.

15 All right. Ms. Zmroczek.

16 **MS. ZMROCZEK:** Your Honor, in addition to the
17 case that I sent you, I understand that -- I
18 understand the difference between a search incident
19 to a lawful arrest. We're not arguing that there
20 wasn't a reason to arrest him, but the case law,
21 specifically, State v. McTier, M-c-T-i-e-r, which
22 is, 264 S.C. 475, 215 S.E.2d 908, it's a 1975 case,
23 and there are several that follow that, but that's
24 the seminal case, Your Honor, it says that when --
25 when searching incident to a lawful arrest, once a

1 person is in -- is in custody, that his immediate
2 person and surrounding can be available.

3 The testimony that was given today is based on
4 what the search warrant says. And as a basis for
5 the search warrant, Your Honor, there's obviously
6 some discrepancy between what is in the search
7 warrant and what was testified to today because, as
8 I believe you read in the testimony, it's stated
9 that defendant was seen wearing gray boxers just
10 like on the video.

11 **THE COURT:** The word gray boxers never came out
12 of my mouth. The only person --

13 **MS. ZMROCZEK:** Oh, sorry, clothing.

14 **THE COURT:** The only person who says the word
15 gray boxers is you. It says, The defendant was
16 still wearing -- was found still wearing partial
17 clothing from the armed robbery, which was observed
18 on the store video security video.

19 **MS. ZMROCZEK:** Right. Sorry.

20 So the partial clothing is what I'm focusing on
21 and observed on the store video, that that affidavit
22 for the search warrant was based on watching the
23 store video, which officer -- Corporal Raffield
24 testified that he didn't watch that until after
25 applying for the search warrant. So that's where my

1 concern lies, Your Honor, is the veracity of what
2 was sworn out to the magistrate at that time.

3 **THE COURT:** Mr. Fender.

4 **MR. FENDER:** Judge, again, he can rely on
5 hearsay for that purposes.

6 Judge, he had a -- he had to get an arrest
7 warrant to go there. Mom says he's there. They go
8 up there. They see stuff used in the crime. They
9 don't immediately search, they stop to get another
10 warrant.

11 You know, Judge, I think law enforcement
12 followed the proper procedure, you know, given the
13 facts and circumstances of this case, especially
14 considering there is, you know, this is pretty hot
15 here. We're talking about the course of an hour or
16 two when this whole thing went down.

17 And another officer did see the video and then
18 this officer relied in part on that and other
19 independent facts in regards to the warrant issue.

20 **THE COURT:** Anything else, Ms. Zmroczek?

21 **MS. ZMROCZEK:** That's all we have, Your Honor.

22 **THE COURT:** Okay. I find the search warrant to
23 be permissible and it should not be suppressed and
24 the contents of the search should not be suppressed.
25 The officer went to a duly-appointed magistrate, a

1 fair and impartial magistrate, and presented him
2 with this affidavit which he swore to be the truth
3 to the magistrate. And the affidavit contains a
4 sufficient probable cause for the basis that the
5 defendant had committed a crime and that he was in
6 the incident location.

7 And one of the -- I guess, one of the unique
8 things about this that sets this apart from the
9 case, the 2017 case, and Ms. Zmroczek quoted it, is
10 the -- the time difference, because in this
11 situation, we're looking at an incident that had
12 just occurred, an officer that was just made aware
13 of information. We're dealing with very close
14 proximity between incident location, officer
15 responding in place to be searched.

16 And it just flows logically that he was seen --
17 that the defendant was seen committing the crime by
18 a person that he knew. They were given the
19 direction that he was running. His -- the home, the
20 place where he admits that he was staying overnight,
21 was in close proximity, that's the position in which
22 they were looking for him. Officer Raffield --
23 Corporal Raffield knew that's where he stayed, and
24 he had authority to search the defendant and the
25 surrounding area just based upon the law search

1 incident to arrest. But they went above and beyond
2 that and took the time to secure the premises to
3 make sure that the defendant was secure and the
4 location was secure and go get a search warrant.

5 So I think it flows naturally that based upon
6 the evidence that they were given that the defendant
7 committed an armed robbery, which would mean armed
8 with a weapon and/or the presentation or the
9 representation of what appeared to be a weapon, that
10 evidence would flow from the location he's at within
11 a very short period of time of when the incident
12 allegedly occurred, and I find the search to be
13 appropriate based upon the relevant case law.

14 Next?

15 **MS. ZMROCZEK:** And, Your Honor, just so we can
16 clear up a few -- I know that today there was no
17 jury --

18 **THE COURT:** Okay. So we need to be careful
19 when these officers, and we're -- for the record,
20 we're in a pretrial hearing. We're outside the
21 presence of the jury. There's not even a potential
22 juror sitting in here.

23 And I understand why you took the steps that
24 you took, Corporal Raffield, that makes perfect
25 sense to me. You knew where he lived, you knew that

1 he was accused of -- or he had a warrant for him
2 previously robbing the store, and I -- the way that
3 your mind works and flowed and the things that you
4 did made perfect sense to me. Some of the things I
5 need you to not say.

6 So you say, at one point, I called dispatch to
7 get his mom's phone number because we had the number
8 on record. I think you can, you know, switch that
9 around to, you know, we -- using information sources
10 that are available to us, we were able to obtain his
11 mom's phone number.

12 You know -- you know, I don't want you saying
13 anything, well, I knew -- what I don't want you to
14 create the impression -- let me say it in the big
15 picture better -- is that I knew who Demarcus
16 Robinson was because he was a menace to the society
17 of Ridge Spring and everybody knew who he was
18 because we all thought he was going around
19 shoplifting and robbing. And I understand that may
20 be your position, even though you haven't said that,
21 but I don't want to give off the impression that
22 he's just a known menace to the society of Ridge
23 Spring, and so that the jury thinks that has
24 anything to do with whether or not he committed this
25 armed robbery, you know.

1 So just -- Mr. Fender, probably whoever is
2 going to handle his testimony, just when you walk
3 through it this afternoon or tonight, just kind of
4 walk through it and so he's, you know, can kind of
5 practice how he wants to say those things without
6 saying that.

7 Now, the flip side of that is -- and,
8 Ms. Zmroczek, you know exactly what I'm about to say
9 -- you know, don't open the door to it on
10 cross-examination or I may let him say exactly, you
11 know, how he knows who he is or where he's going.

12 **MS. ZMROCZEK:** I'm familiar with that.

13 And, also, just -- he said that officers were
14 tracking, and so I just have to -- I believe that
15 what they testified to earlier is that this dog, who
16 isn't really a tracking dog, was the one that they
17 were following, so maybe if we can sort of somehow
18 clean that up.

19 **THE COURT:** I think it's fair to say that there
20 were officers on scene looking for Mr. Robinson. Is
21 that a fair way to put it?

22 **CORPORAL RAFFIELD:** Looking in the direction
23 that the victim told us he ran.

24 **THE COURT:** That's right. And my understanding
25 is Mr. Houston says, you know, he robbed me or

1 whatever he says -- of course, I haven't heard him
2 testify -- but he basically goes out and goes this
3 way and, you know, the officers, whether they be
4 City of Ridge Spring or Saluda or SLED or whoever,
5 show up and go in that general direction, which is
6 -- that's perfectly fine to say. I don't want them
7 to think they have some court-qualified dog
8 tracking, you know, expert kind of thing. But it's
9 perfectly fine to say, They showed up and they went
10 in that direction because they're, you know, they're
11 trying to apprehend somebody. Make sense?

12 **CORPORAL RAFFIELD:** Yes, sir.

13 **THE COURT:** Thank you.

14 What else?

15 **MS. ZMROCZEK:** And, Your Honor, I believe, at
16 this time, those are all of the -- those are all the
17 pretrial motions I have.

18 **THE COURT:** Anything from the State that we
19 need to take up pretrial?

20 **MR. EARGLE:** Your Honor, the only thing was
21 before lunch about the Giglio material.

22 **THE COURT:** Okay.

23 **MR. EARGLE:** Just for the record, I've spoken
24 with the Saluda County Sheriff's Office, the
25 Johnston Police Chief and former Chief of Ridge

1 Spring's Mike Raffield, any officers that are
2 testifying, to their knowledge, has no Giglio
3 credibility issues.

4 This came sealed from the Edgefield County
5 Sheriff's Office where Corporal Raffield was
6 formerly employed.

7 **THE COURT:** All right. Thank you very much.

8 **MR. EARGLE:** Yes, sir.

9 **THE COURT:** Okay. So the State has about how
10 many witnesses? I'm not holding you to this number;
11 I'm just trying to get a ballpark.

12 **MR. FENDER:** I would estimate a maximum of six
13 to eight.

14 **THE COURT:** Okay. And is there a video to be
15 seen?

16 **MR. FENDER:** There is a brief video, Your
17 Honor.

18 **MS. ZMROCZEK:** Actually, I'm glad you brought
19 that up, Your Honor. That's why you get paid the
20 big bucks.

21 So they provided me a DVD last week of a body
22 cam interview with someone who's been arrested as a
23 co-defendant. And on that body cam, officer --
24 Corporal Raffield keeps saying, There's audio and
25 video, we got it all, there's audio and video, which

1 gave me some pause for concern, Your Honor, because
2 the video that I have has no audio. And I
3 understand that officers can lie, they're allowed to
4 do that, but I wanted -- I asked Mr. Fender if his
5 DVD had audio and he said, no. So I just wanted to
6 make sure that that was just some investigation
7 manipulation tool as opposed to there's audio that I
8 don't have.

9 **MR. FENDER:** Judge, it's my understanding that
10 the video from the scene does have audio. And just
11 for clarification, that was with Terrell Lockett,
12 who's, like, the co-defendant. They were trying to
13 interrogate him. He's not related to this case. I
14 mean, the State may or may not call him.

15 **THE COURT:** Does she have the video that has
16 the -- whatever the audio is on it?

17 **MR. FENDER:** We've provided her with the same
18 stuff that we have, so I don't know if there's some
19 issue with getting it to play or that kind of thing.

20 **MS. ZMROCZEK:** And I'll meet with him
21 afterwards.

22 **THE COURT:** Okay. All right. What else?

23 So you've got about six witnesses and there is
24 a video?

25 **MR. FENDER:** Yes, sir.

1 **THE COURT:** Okay. And how are we playing the
2 video?

3 **MR. FENDER:** Judge, we're probably going to be
4 playing it from a laptop directly to a TV screen.
5 And we also have some photos and just a couple
6 pieces of physical evidence.

7 **THE COURT:** And you have all the equipment that
8 you need to do that?

9 **MR. FENDER:** Yes, sir.

10 **THE COURT:** Okay. And what time does the jury
11 panel come in in the morning, Madame Clerk?

12 **THE CLERK:** They're coming in at 9:30. We'll
13 be ready by 10:00.

14 **THE COURT:** Okay. So y'all will be ready to
15 start jury selection at 10:00?

16 **THE CLERK:** Yes, sir.

17 **THE COURT:** All right. What else,
18 Ms. Zmroczek?

19 **MS. ZMROCZEK:** I think that's it, Your Honor.
20 I think that if they have some photographs and we
21 can look at this video, we can do that, obviously,
22 now that we have some time. And I will have my voir
23 dire questions in the morning. It's the same that
24 you've seen.

25 **THE COURT:** Okay. Yeah, whatever voir dire and

1 witness list that you have, go ahead and get those
2 to us in paper form, make sure Madame Court Reporter
3 has a copy of your witness list so she knows exactly
4 who they are.

5 And anything else from you, Mr. Fender?

6 **MR. FENDER:** Nothing from the State.

7 **THE COURT:** From Ms. Zmroczek?

8 **MS. ZMROCZEK:** Nothing.

9 (The proceedings were concluded for November
10 6, 2017.)

11 (The following proceedings were held on
12 November 7, 2017.)

13 **THE COURT:** All right. Ladies and gentlemen,
14 as I explained to you this morning, you are here for
15 a term of criminal court, and we will now proceed
16 with that.

17 Is the State ready to proceed?

18 **MR. FENDER:** Yes, Judge. We do have a matter
19 of law. May we approach?

20 **THE COURT:** Yes.

21 (Whereupon, a bench conference was held off
22 the record in the presence of the jury panel, but
23 out of the hearing of the jury panel.)

24 **THE COURT:** All right. Is the State ready to
25 proceed?

1 **MR. FENDER:** Yes, Judge.

2 **THE COURT:** All right. You may call your case.

3 **MR. FENDER:** State calls State versus Demarcus
4 Robinson on 2016-GS-41-311, true-billed indictment
5 armed robbery; 2016-GS-41-310, kidnapping; and
6 2016-GS-41-312, possession of a firearm during the
7 commission of a violent offense.

8 **THE COURT:** All right. Ladies and gentlemen,
9 the State has called its case. This is the State of
10 South Carolina versus Demarcus L. Robinson.
11 Mr. Robinson has been indicted by the Saluda County
12 Grand Jury for one count of armed robbery, one count
13 of possession of a firearm during the commission of
14 a violent offense and one count of kidnapping. And
15 I hold in my hand his indictments.

16 Now, the fact that Mr. Robinson was indicted in
17 this case is not proof of anything. It is not
18 evidence of anything. These indictments are simply
19 the documents that give this Court the authority to
20 hear this case. They are not proof or evidence to
21 these indictments.

22 Mr. Robinson has pled not guilty. That plea
23 puts the burden of proof on the State to prove his
24 guilt to a jury beyond a reasonable doubt.

25 I'm now going to read the indictments to you.

1 Again, these are allegations at this point. And the
2 first indictment is for armed robbery. It alleges
3 that Demarcus Robinson, along with others, on or
4 about August the 1st of 2016, in Saluda County, at
5 the Circle K, located at 300 East Main Street, Ridge
6 Spring, South Carolina, while armed with a firearm
7 described as gray in color, feloniously take from
8 William Houston, the store clerk, the victim, by
9 means of force or intimidation, the goods and/or
10 monies of the victim, and that he, along with
11 others, did threaten the victim with the
12 representation of a firearm taking goods and/or
13 monies being described as follows: approximately,
14 \$69 in U.S. currency and/or a carton of Newport
15 cigarettes and/or carbonated beverages, with the
16 intent to deprive the owner permanently of the
17 property.

18 The second indictment, again, which is an
19 allegation at this point -- excuse me -- which is an
20 allegation, is that Demarcus Robinson did, in Saluda
21 County, on or about August the 1st of 2016,
22 willfully and unlawfully display a firearm during
23 the commission of a violent crime of armed robbery
24 in violation of the South Carolina Code of Laws.

25 And the third indictment, which is, again, an

1 allegation, is that Mr. Robinson did, in Saluda
2 County, on or about August the 1st of 2016,
3 unlawfully seize, confine, inveigle, decoy, kidnap,
4 abduct or carry away one William Houston without
5 authority of law and without consent by the
6 following means, to wit: The defendant, with the
7 use of physical force, did unlawfully seize and
8 confine, by physical force and battery, the victim,
9 William Houston, in violation of the South Carolina
10 Code of Laws.

11 Again, ladies and gentlemen, these indictments
12 are not evidence of anything. They are not proof of
13 anything. They're merely the documents which give
14 this Court the authority to hear this case. So I am
15 now going to ask you questions about this case.
16 And, again, as I told you this morning, you are
17 under oath, and it is very important that you answer
18 truthfully to the questions that I'm about to ask
19 you.

20 All right. So, Mr. Fender, if you and the
21 other solicitors will please stand up and introduce
22 yourselves to the jury.

23 **MR. FENDER:** Good morning. My name's Doug
24 Fender. This is Al Eargle.

25 **MR. EARGLE:** Good morning.

1 **THE COURT:** All right. Ladies and gentlemen,
2 the question is are you related by blood or
3 marriage, close personal friends with, have any
4 connection to, business, personal, social or
5 otherwise, either Assistant Solicitor Fender or
6 Assistant Solicitor Eargle? Have you ever been
7 represented by them or on the other side of a case
8 from them or do you have any connection to anyone at
9 the Eleventh Circuit Solicitor's Office? The
10 Eleventh Circuit Solicitor's Office accompanies
11 Edgefield County, McCormick County, Saluda County
12 and Lexington County. If so, please stand.

13 (Juror stands.)

14 **THE COURT:** And tell me your name, sir.

15 **JUROR:** My name is Lewis Quattlebaum.

16 **THE COURT:** And who do you know,
17 Mr. Quattlebaum?

18 **JUROR:** My son is an investigator with the
19 solicitor's office.

20 **THE COURT:** All right. And would this affect
21 your ability to be fair and impartial?

22 **JUROR:** No, sir.

23 **THE COURT:** Are you willing to base your
24 decision off the evidence and the law?

25 **JUROR:** Yes, sir.

1 **THE COURT:** And will you do so?

2 **JUROR:** Yes, sir.

3 **THE COURT:** Thank you very much.

4 Anybody else?

5 (There was no response.)

6 **THE COURT:** All right. The defendant in this
7 case is Mr. Demarcus Brown. And his attorney
8 Ms. Aimee Zmroczek from Columbia.

9 Ms. Zmroczek, if you'd please stand up and
10 introduce yourself and your client.

11 **MS. ZMROCZEK:** Thank you. I'm Aimee Zmroczek.
12 My main office is in Columbia. I do practice
13 throughout the state and federally.

14 This is my client -- this is my client,
15 Demarcus Robinson, who is from Ridge Spring -- or --
16 yeah, Ridge Spring.

17 **THE COURT:** All right. Is anybody related by
18 blood or marriage, close personal friends with, have
19 any connection to, business, personal, social or
20 otherwise, either Mr. Robinson or Ms. Zmroczek? As
21 to Ms. Zmroczek, have you ever been represented by
22 her or on the other side of a case from her? If so,
23 please stand.

24 (There was no response.)

25 **THE COURT:** All right. The next thing I'm

1 going to do, ladies and gentlemen, is read you a
2 list of potential witnesses in this case. And if
3 you hear a name that you know or if it's somebody
4 that you think you know, I want you to please stand,
5 and then we'll gather that information from you once
6 I'm finished with the list.

7 All right. So the list is William Houston --
8 (Juror stands.)

9 **THE COURT:** Oh, yes, sir.

10 **JUROR:** My son --

11 **THE COURT:** Tell me your name.

12 **JUROR:** My name is Terrence Lockett, Sr.

13 **MS. ZMROCZEK:** Your Honor, may we approach?

14 **THE COURT:** Yes. Y'all come on up.

15 (Whereupon, a bench conference was held off
16 the record, in the presence of the jury panel, but
17 out of the hearing of the jury panel.)

18 **THE COURT:** Mr. Lockett, you're excused from
19 jury service in this case. Thank you very much.

20 Okay. So the next thing I'm going to do is
21 read a list of potential witnesses. If you hear a
22 name you know or if it's somebody you think you
23 know, please just stand up where you are.

24 If any of these witnesses are present in the
25 courtroom, they don't all have to be right now, but

1 some of them may be, I would ask that they stand
2 when their name is called:

3 William Houston, Mike Raffield with the Saluda
4 County Sheriff's Office -- y'all turn around and
5 face out -- Russ Padgett with Saluda County -- thank
6 you -- Gary Hitt with Saluda County, Evan Garris
7 with the department of corrections, Cathern Leisy
8 with SLED, Geri or Gary Grenier with Ridge Spring
9 Police Department, Gary Hitt, Joe West with SLED,
10 Ashley Turner with the Saluda County Sheriff's
11 Office, Tyrell Lockett, Chuck Padgett with Saluda
12 Police Department, John Hicks with the sheriff's
13 office, Catherine Robinson, Jasime Yi with SLED,
14 Shannon Molina, Kim Darnell with the detention
15 center, Lee Shorter with the police department,
16 Brittany Cyrus, Derrick Cyrus, Alexis Young,
17 Catherine Robinson, another Katherine Robinson,
18 Shannon Molinda and Chris Watkins with Watkins
19 Digital Forensics.

20 The question is is anybody related by blood or
21 marriage, close personal friends with, have any
22 connection to, business, personal or social or
23 otherwise, any of the witnesses that I just named?

24 The witnesses can be seated.

25 Don't raise your hand now; stand up.

1 (Jurors stand.)

2 **THE COURT:** Tell me your name.

3 **JUROR:** Shirley Gibson, Juror 64.

4 **THE COURT:** And who do you know, Ms. Gibson?

5 **JUROR:** Catherine Robinson, Derrick Cyrus, and
6 I know all of his family.

7 **THE COURT:** Okay. And will this affect your
8 ability to be fair and impartial?

9 **JUROR:** I don't think so.

10 **THE COURT:** Okay. That's a yes or no question.

11 **JUROR:** No.

12 **THE COURT:** Are you willing to base your
13 decision off the evidence and the law?

14 **JUROR:** Yes.

15 **THE COURT:** And are you willing to follow my
16 instructions?

17 **JUROR:** Yes.

18 **THE COURT:** And will you do so?

19 **JUROR:** Yes.

20 **THE COURT:** Thank you very much.

21 All right. Right behind her, tell me your
22 name, ma'am.

23 **JUROR:** Beverly Major, Juror 106.

24 **THE COURT:** And who do you know, Ms. Major?

25 **JUROR:** I live in Ridge Spring, and so I know

1 Geri Grenier, the police officer.

2 **THE COURT:** Okay. And would this affect your
3 ability to be fair and impartial?

4 **JUROR:** No.

5 **THE COURT:** Are you willing to base your
6 decision off the evidence and the law?

7 **JUROR:** Yes.

8 **THE COURT:** And will you do so?

9 **JUROR:** Yes.

10 **THE COURT:** Thank you.

11 All right. Coming right across, tell me your
12 name.

13 **JUROR:** Tiffany Pearson, 129.

14 **THE COURT:** And who do you know, Ms. Pearson?

15 **JUROR:** Ashley Turner.

16 **THE COURT:** And will this affect your ability
17 to be fair and impartial?

18 **JUROR:** No.

19 **THE COURT:** Are you willing to base your
20 decision off the evidence and the law?

21 **JUROR:** Yes, sir.

22 **THE COURT:** And will you do so?

23 **JUROR:** Yes, sir.

24 **THE COURT:** All right. Right across, what's
25 your name, ma'am?

1 **JUROR:** Tammy Horne, Number 80.

2 **THE COURT:** Number 80?

3 **JUROR:** 80.

4 **THE COURT:** Ms. Horne, who do you know?

5 **JUROR:** Ashley Turner.

6 **THE COURT:** And will this affect your ability
7 to be fair and impartial?

8 **JUROR:** No, sir.

9 **THE COURT:** Are you willing to base your
10 decision off the evidence and the law?

11 **JUROR:** Yes, sir.

12 **THE COURT:** And will you do so?

13 **JUROR:** Yes, sir.

14 **THE COURT:** All right. Right behind her, yes,
15 ma'am, your name?

16 **JUROR:** Sherrie Wilson.

17 **THE COURT:** Ms. Wilson?

18 **JUROR:** 204.

19 **THE COURT:** 204. Who do you know, Ms. Wilson?

20 **JUROR:** I know Russ Padgett.

21 **THE COURT:** Okay. And will this affect your
22 ability to be fair and impartial?

23 **JUROR:** No, sir.

24 **THE COURT:** Are you willing to base your
25 decision off the evidence and the law?

1 **JUROR:** Yes, sir.

2 **THE COURT:** And will you do so?

3 **JUROR:** Yes.

4 **THE COURT:** Okay. Right next to her, tell me
5 your name, ma'am.

6 **JUROR:** Patricia Matthews, Juror Number 113. I
7 know Russ Padgett...

8 **THE COURT:** Speak up for me now. You know who?

9 **JUROR:** Russ Padgett and Geri from Ridge
10 Spring. I really know some of these other cops,
11 too.

12 **THE COURT:** Okay. And will this affect your
13 ability to be fair and impartial?

14 **JUROR:** No, sir.

15 **THE COURT:** Are you willing to base your
16 decision off the evidence and the law?

17 **JUROR:** Yes, sir.

18 **THE COURT:** And will you do so?

19 **JUROR:** Yes, sir.

20 **THE COURT:** All right. Mr. Bobby, I don't
21 remember your last name, but what's --

22 **JUROR:** Corley.

23 **THE COURT:** Mr. Corley, that's right. I
24 apologize. And who do you know, Mr. Corley?

25 **JUROR:** I know Russ Padgett.

1 **THE COURT:** Okay. And will this affect your
2 ability to be fair and impartial?

3 **JUROR:** No.

4 **THE COURT:** Are you willing to base your
5 decision off the evidence and the law?

6 **JUROR:** Yes.

7 **THE COURT:** And will you do so?

8 **JUROR:** Yes.

9 **THE COURT:** Okay. And last, what's your name,
10 ma'am?

11 **JUROR:** Sheila Hopkins.

12 **THE COURT:** Ms. Hopkins is Juror Number 79.
13 Who do you know?

14 **JUROR:** Deidra Robinson, Catherine Robinson,
15 also Mr. Demarcus Robinson.

16 **THE COURT:** Okay. And will this affect your
17 ability to be fair and impartial?

18 **JUROR:** No.

19 **THE COURT:** Are you willing to base your
20 decision off the evidence and the law?

21 **JUROR:** Yes.

22 **THE COURT:** And will you do so?

23 **JUROR:** Yes.

24 **THE COURT:** Okay. Anybody else think they know
25 or may know or could know any of the potential

1 witnesses?

2 (There was no response.)

3 **THE COURT:** All right. The next question is
4 this: Has any member of the jury panel formed or
5 expressed any opinions about any issues or matters
6 involved in this case?

7 (There was no response.)

8 **THE COURT:** Has any member of the jury panel or
9 -- excuse me -- is any member of the jury panel
10 aware of any bias or prejudice that you may have
11 towards the State or the defendant in this case?

12 (There was no response.)

13 **THE COURT:** Is there any member of the jury
14 panel who is a member of or a contributor to any
15 group which has, as its primary concern, the
16 promotion of law enforcement or victims' rights?
17 This would include, but is not limited to, MADD,
18 SADD or defendants' rights, such as the Innocence
19 Project. If so, please stand.

20 (There was no response.)

21 **THE COURT:** Does any member of the jury panel
22 know of any reason whatsoever why he or she should
23 not serve as a juror in this case? Is there anyone
24 in the room who believes they cannot be fair and
25 impartial to both the State and to the defendant?

1 (There was no response.)

2 **THE COURT:** All right. Is anybody in the room
3 related to someone who is in law enforcement, a
4 member of your immediate family is involved in law
5 enforcement, please stand?

6 (Jurors stand.)

7 **THE COURT:** All right. Ms. Horne, who are you
8 related to?

9 **JUROR:** Toby Horne.

10 **THE COURT:** Okay. And where does he or she
11 work?

12 **JUROR:** He's right there. He's in the
13 sheriff's department.

14 **THE COURT:** Okay. And will this affect your
15 ability to be fair and impartial?

16 **JUROR:** No.

17 **THE COURT:** Are you willing to base your
18 decision off the evidence and the law?

19 **JUROR:** Yes, sir.

20 **THE COURT:** And will you do so?

21 **JUROR:** Yes, sir.

22 **THE COURT:** Yes, ma'am, your name?

23 **JUROR:** I'm Evelyn Shell. My niece is married
24 to Donovan Shealy.

25 **THE COURT:** Okay. Tell me your last name

1 again.

2 **JUROR:** Shell.

3 **THE COURT:** Okay. And will this affect your
4 ability to be fair and impartial?

5 **JUROR:** No.

6 **THE COURT:** Are you willing to base your
7 decision off the evidence and the law?

8 **JUROR:** Yes.

9 **THE COURT:** And will you do so?

10 **JUROR:** Yes.

11 **THE COURT:** All right. Yes, ma'am, your name?

12 **JUROR:** Cathy Stone, 182.

13 **THE COURT:** And who are you related to?

14 **JUROR:** My sister's a magistrate judge.

15 **THE COURT:** Is what?

16 **JUROR:** A magistrate judge.

17 **THE COURT:** Okay. Will that affect your
18 ability to be fair and impartial?

19 **JUROR:** No.

20 **THE COURT:** Are you willing to base your
21 decision off the evidence and the law?

22 **JUROR:** Yes.

23 **THE COURT:** And will you do so?

24 **JUROR:** Yes.

25 **THE COURT:** Okay. Yes, ma'am.

1 **JUROR:** Terri Rodgers. First cousin to Sheriff
2 Perry.

3 **THE COURT:** And will this affect your ability
4 to be fair and impartial?

5 **JUROR:** No.

6 **THE COURT:** Are you willing to base your
7 decision off the evidence and the law?

8 **JUROR:** Yes.

9 **THE COURT:** And will you do so?

10 **JUROR:** Yes.

11 **THE COURT:** All right. Yes, ma'am, tell me
12 your name again.

13 **JUROR:** Patricia Matthews, Juror 113. My
14 nephew works for the Irmo Police Department.

15 **THE COURT:** Okay. And will this affect your
16 ability to be fair and impartial?

17 **JUROR:** No, sir.

18 **THE COURT:** Are you willing to base your
19 decision off the evidence and the law?

20 **JUROR:** Yes, sir.

21 **THE COURT:** And will you do so?

22 **JUROR:** Yes.

23 **THE COURT:** Okay. Yes, ma'am, your name?

24 **JUROR:** Margaret Huggins, 82.

25 **THE COURT:** Number 82. And who are you related

1 to, Ms. Huggins?

2 **JUROR:** My daughter's a policeman.

3 **THE COURT:** And will this affect your ability
4 to be fair and impartial?

5 **JUROR:** No.

6 **THE COURT:** Are you willing to base your
7 decision off the evidence and the law?

8 **JUROR:** Yes.

9 **THE COURT:** And will you do so?

10 **JUROR:** Yes, sir.

11 **THE COURT:** Okay. What's your name, sir?

12 **JUROR:** Damon Thompson, 185. My
13 brother-in-law's a policeman in Alabama.

14 **THE COURT:** And will this affect your ability
15 to be fair and impartial?

16 **JUROR:** No, sir.

17 **THE COURT:** Are you willing to base your
18 decision off the evidence and the law?

19 **JUROR:** Yes, sir.

20 **THE COURT:** And will you do so?

21 **JUROR:** Yes, sir.

22 **THE COURT:** Thank you very much.
23 Just one second.

24 (Pause.)

25 **THE COURT:** All right. Is there anyone in the

1 room who knows anything about the case? This is an
2 incident that allegedly occurred on or about August
3 the 1st of 2016, at the Circle K in Ridge Spring,
4 South Carolina. So what I'm -- the question is --
5 and, again, those are allegations. I'm not saying
6 that that's evidence. Those are the allegations in
7 the case.

8 Does anyone know anything about the case? Has
9 anyone heard anything about the case? Has anyone
10 read anything about the case? Does anyone have any
11 knowledge about the case or anyone involved in the
12 case in any way, shape or form? If so, please
13 stand.

14 (There was no response.)

15 **THE COURT:** Has anyone formed or expressed an
16 opinion about any issue or matter involved in the
17 case? If so, please stand.

18 (There was no response.)

19 **THE COURT:** Has anyone or a member of their
20 immediate family ever worked at that Circle K in
21 Ridge Spring?

22 (There was no response.)

23 **THE COURT:** So the next question is what I call
24 a reciprocal question. There's going to be two
25 parts to it. So what I want to know is have you or

1 a member of your immediate family ever been the
2 victim of a burglary, a kidnapping or a robbery?
3 Or, you or a member of your immediate family ever
4 been accused of or the defendant in a burglary,
5 kidnapping or robbery case? If so, please stand.

6 (Jurors stand.)

7 **THE COURT:** Okay. You three come right over
8 here to one of these ladies in the red jackets.

9 (Whereupon, the following bench conferences
10 were held on the record, in the presence of the jury
11 panel, but out of the hearing of the jury panel.)

12 **THE COURT:** All right. Mr. Martinez, you're
13 first. Is it you or a family member?

14 **JUROR:** Family member.

15 **THE COURT:** Okay. And what happened?

16 **JUROR:** My mother and father were held as
17 hostages at their home.

18 **THE COURT:** They were what?

19 **JUROR:** Held as hostages and got robbed;
20 somebody broke into their home.

21 **THE COURT:** And when was that?

22 **JUROR:** About four or five years ago.

23 **THE COURT:** Okay. And would this affect your
24 ability to be fair and impartial?

25 **JUROR:** No, sir.

1 **THE COURT:** Are you willing to base your
2 decision off the evidence and the law?

3 **JUROR:** Yes, sir.

4 **THE COURT:** And will you do so?

5 **JUROR:** Yes, sir.

6 **THE COURT:** Okay. Next.

7 **BAILIFF:** Number 166.

8 **JUROR:** My son had a --

9 **COURT REPORTER:** Had a what? I'm sorry.

10 **THE COURT:** Four-wheeler, ATV.

11 And would this affect your ability to be fair
12 and impartial?

13 **JUROR:** No.

14 **THE COURT:** Are you willing to base your
15 decision off the evidence and the law?

16 **JUROR:** Yes.

17 **THE COURT:** Thank you.

18 **BAILIFF:** 95.

19 **THE COURT:** Yes, sir, go ahead.

20 **JUROR:** My son was accused of kidnapping, but
21 it was throwed out.

22 **THE COURT:** Okay. And would this affect your
23 ability to be fair and impartial?

24 **JUROR:** No, sir.

25 **THE COURT:** Are you willing to base your

1 decision off the evidence and the law?

2 **JUROR:** Yes, sir.

3 **THE COURT:** And will you do so?

4 **JUROR:** Yes, sir.

5 **THE COURT:** Thank you.

6 **BAILIFF:** Number 4.

7 **JUROR:** My father was robbed at gunpoint in his
8 home.

9 **THE COURT:** And will this affect your ability
10 to be fair and impartial?

11 **JUROR:** No, sir.

12 **THE COURT:** Are you willing to base your
13 decision off the evidence and the law?

14 **JUROR:** Yes, sir.

15 **THE COURT:** And will you do so?

16 **JUROR:** Yes.

17 **THE COURT:** Thank you.

18 **BAILIFF:** 164.

19 **JUROR:** I had a chain saw stolen from my house
20 last year.

21 **THE COURT:** And will this affect your ability
22 to be fair and impartial?

23 **JUROR:** No, sir.

24 **THE COURT:** Are you willing to base your
25 decision off the evidence and the law?

1 **JUROR:** Yes, sir.

2 **THE COURT:** And will you do so?

3 **JUROR:** Yes, sir.

4 **THE COURT:** Thank you.

5 **BAILIFF:** Number 68.

6 **THE COURT:** Go ahead.

7 **JUROR:** My sister owned a convenience store in
8 another county. There was a murder in her parking
9 lot out there, been about five or six years ago.

10 **THE COURT:** Was she murdered?

11 **JUROR:** Oh, no. It was individuals in a car.
12 It was a drug deal gone bad.

13 **THE COURT:** And will this affect your ability
14 to be fair and impartial?

15 **JUROR:** No, sir.

16 **THE COURT:** And are you willing to base your
17 decision off the evidence and the law?

18 **JUROR:** Yes, sir.

19 **THE COURT:** And will you do so?

20 **JUROR:** Yes, sir.

21 **THE COURT:** Thank you.

22 **BAILIFF:** 162.

23 **JUROR:** Morning. Not sure if it counts, I had
24 an enclosed trailer stolen out of my yard in Saluda
25 County, never recovered or anything, about -- I'm

1 not really sure what information you're looking for.

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

4 **JUROR:** No.

5 **THE COURT:** Are you willing to base your
6 decision off the evidence and the law?

7 **JUROR:** Yes.

8 **THE COURT:** And will you do so?

9 **JUROR:** Yes, sir.

10 **THE COURT:** Okay.

11 (The bench conferences were concluded.)

12 **THE COURT:** All right. Anybody else on that
13 question?

14 (There was no response.)

15 **THE COURT:** I need Juror Number 196 to come
16 forward, please.

17 (Whereupon, the following bench conferences
18 were held on the record, in the presence of the jury
19 panel, but out of the hearing of the jury panel.)

20 **THE COURT:** Do you understand you're under
21 oath?

22 **JUROR:** (No response.)

23 **THE COURT:** Yes or no?

24 **JUROR:** (Juror shook head.)

25 **THE COURT:** You do not understand that you're

1 under oath?

2 **JUROR:** I don't know what this is. This is my
3 first time being here.

4 **THE COURT:** Do you understand what being under
5 oath means?

6 **JUROR:** Huh-huh.

7 **THE COURT:** That means you swear to tell me the
8 truth.

9 **JUROR:** Yes, sir.

10 **THE COURT:** You understand what that means?
11 How far did you go in school?

12 **JUROR:** The tenth grade.

13 **THE COURT:** Okay. And you don't understand
14 what being under oath means?

15 **JUROR:** No, sir.

16 **THE COURT:** Okay. And it's my understanding
17 that you were in the hallway talking about the
18 police.

19 **JUROR:** Yes, sir. I had got convicted of a
20 crime yesterday, public disorderly conduct.

21 **THE COURT:** Okay. And were you in the hallway
22 talking to other jurors about the police and police
23 misconduct?

24 **JUROR:** Oh, no, sir. I was talking to, like,
25 one of my friends about it.

1 **THE COURT:** That's here?

2 **JUROR:** Yes, sir.

3 **THE COURT:** Okay. And where did this
4 conversation take place?

5 **JUROR:** Outside in the waiting room.

6 **THE COURT:** Okay. And what did you tell him or
7 her?

8 **JUROR:** It was a dispute that went on
9 yesterday, and I thought it went against me with
10 public disorderly conduct.

11 **THE COURT:** And who did you have this
12 conversation with?

13 **JUROR:** A girl that's in here.

14 **THE COURT:** What's her name?

15 **JUROR:** Kira.

16 **THE COURT:** Kira what?

17 **JUROR:** I don't know her last name.

18 **THE COURT:** Okay. And where is she?

19 **JUROR:** She's sitting over there with the
20 glasses.

21 **THE COURT:** In the black and pink sweater?

22 **JUROR:** Yes, sir.

23 **THE COURT:** So you don't believe that you have
24 any bias or prejudice against the police?

25 **JUROR:** Oh, no, sir. I just said that the

1 police had got caught on me yesterday for a dispute
2 that went on with public disorderly conduct. And I
3 tried to tell the police what happened, but they
4 took me to jail.

5 **THE COURT:** Okay. So do you have a bias
6 against them?

7 **JUROR:** No, sir.

8 **THE COURT:** You don't. So you weren't in the
9 hallway talking trash about the police in front of
10 other jurors?

11 **JUROR:** Huh-huh.

12 **THE COURT:** So if somebody tells me --

13 **JUROR:** But I was just talking about the girl
14 that did it, that called the police on me.

15 **THE COURT:** Is she here?

16 **JUROR:** Oh, no, sir.

17 **THE COURT:** Okay. I don't want you discussing
18 your personal situations with anybody else. Do you
19 understand that?

20 **JUROR:** Yes, sir.

21 **THE COURT:** Okay. You can have a seat.
22 Right here. Yes, ma'am. Come forward.
23 What's your name?

24 **JUROR:** Kira Dozier, Number 41.

25 **THE COURT:** And did you have a conversation

1 with the young lady that just came up here in the
2 hallway?

3 **JUROR:** Yes.

4 **THE COURT:** And what was the substance of that
5 conversation?

6 **JUROR:** About what happened yesterday.

7 **THE COURT:** And what did she tell you?

8 **JUROR:** She got into it with somebody at the
9 store.

10 **THE COURT:** Okay. And what did she say about
11 the police?

12 **JUROR:** That they had arrested her.

13 **THE COURT:** And did she say anything negative
14 towards them?

15 **JUROR:** No.

16 **THE COURT:** She didn't?

17 **JUROR:** Not that I know of.

18 **THE COURT:** And do you have any bias or
19 prejudice against the State or the police department
20 or the sheriff's department?

21 **JUROR:** No.

22 **THE COURT:** In any way, shape or form?

23 **JUROR:** No.

24 **THE COURT:** You can sit here fairly and
25 impartially?

1 **JUROR:** Yes.

2 **THE COURT:** You can set aside whatever comments
3 you learned from Ms. Watson and base your decision
4 off the evidence and the law?

5 **JUROR:** Yes.

6 **THE COURT:** And will you do so?

7 **JUROR:** Yes.

8 **THE COURT:** Okay.

9 (The bench conferences were concluded with
10 the jurors. And the following bench conference was
11 held with the attorneys, out of the hearing of the
12 jury panel.)

13 **MR. FENDER:** Could you instruct her not to
14 talk?

15 **THE COURT:** I already did.

16 **MR. FENDER:** She's continuing to talk.

17 (The bench conference was concluded.)

18 **THE COURT:** Okay. Ladies and gentlemen, is
19 there anybody else -- I'm going to ask this question
20 one more time, and I mean this, this is real, this
21 is real life. Okay? So if anybody has any bias or
22 prejudice against either the State or the defendant
23 now is the time to tell me.

24 (There was no response.)

25 **THE COURT:** I promise you what we want on this

1 jury is 12 people who have nobody to reward and
2 nobody to punish. We want 12 people who will sit
3 fairly, who will sit impartially, that sit without
4 bias and without prejudice towards either side, they
5 will listen to the evidence in the case, they will
6 determine what the facts are in the case, they will
7 then apply those facts to the law that I will give
8 them and ultimately reach a verdict. Is there
9 anybody in the room who believes they cannot do that
10 fairly and impartially?

11 (Jurors stand.)

12 **THE COURT:** All right. Please come forward.

13 (Whereupon, the following bench conferences
14 were held on the record, in the presence of the jury
15 panel, but out of the hearing of the jury panel.)

16 **THE COURT:** What's your name?

17 **JUROR:** Julius Stewart.

18 **THE COURT:** What do you want to say?

19 **JUROR:** I know some of the people from Ridge
20 Spring, so I don't want to have nothing to do with
21 it.

22 **THE COURT:** Just have a seat. Don't discuss it
23 with anybody else.

24 180's out.

25 What's your name, ma'am?

1 **JUROR:** Sheila Hopkins, Number 79. My son and
2 him are real close friends.

3 **THE COURT:** It's too close?

4 **JUROR:** Yeah.

5 **THE COURT:** That's fair. Just don't discuss it
6 with anybody. Just go back and have a seat.
7 She's out.

8 **JUROR:** I got a question. Can I be excused or
9 exempt from this?

10 **THE COURT:** Why?

11 **JUROR:** Because this is my first time being
12 here. I feel nervous. I don't want to be here.

13 **THE COURT:** Okay. Do you have a bias?

14 **JUROR:** I just don't want to be here.

15 **THE COURT:** Why not?

16 **JUROR:** Because I just got -- I just got
17 charges. I'm just not comfortable being here in the
18 courtroom.

19 **THE COURT:** Do you have a bias or prejudice one
20 way or the other for either side?

21 **JUROR:** No, sir. I just don't want to be here.

22 **THE COURT:** Okay. Have a seat.

23 **JUROR:** 33. I don't think I'll be fair with
24 the lawyers nowadays.

25 **THE COURT:** You're fine. Just have a seat and

1 don't discuss it with anybody.

2 33 is out.

3 (The bench conferences were concluded with
4 the jurors. And the following bench conference was
5 held with the attorneys, out of the hearing of the
6 jury panel.)

7 **THE COURT:** What's your position on Ms. Watson?

8 **MS. ZMROCZEK:** I don't know if she understands
9 what the words bias or prejudice means, but I think
10 that, clearly, she has exhibited bias.

11 **THE COURT:** So you're okay with her being
12 struck for cause?

13 **MS. ZMROCZEK:** Yes.

14 **THE COURT:** Okay. 196 is out.

15 (The bench conference was concluded.)

16 **THE COURT:** Okay. So what we're going to do
17 now, ladies and gentlemen, is -- so there's about
18 60-some-odd of you in here. What's going to happen
19 now is the computer is going to create a randomly
20 generated list to select from. Okay? So they're
21 going to -- they're going to take all of you,
22 they're going to put you in the computer system, and
23 the computer system is going to pop you out in the
24 order that I don't get to pick, that the clerk's
25 office doesn't -- that no one gets to pick in the

1 room, and then that's how you'll be selected. Okay?

2 The way we used to do it is we used to have
3 this big wheel and it had, like, all these little,
4 almost like, bingo balls in them, and they had a
5 blind person that would literally spin the wheel and
6 then draw them out. I'm not making this up. So now
7 we have a computer system that Court Administration
8 created that will take the names and then put them
9 in a randomly generated list. Okay?

10 So if your name is called, what I want you to
11 do -- where do y'all like them to come, Madame
12 Clerk?

13 **THE CLERK:** Right here.

14 **THE COURT:** So if your name is called, I want
15 you to come stand right in front of this microphone
16 right here and I want you to face out, face towards
17 the jury -- I mean, yeah, face towards your peers.
18 Okay? And then they're going to ask the State do
19 they want to seat you or excuse you, and then
20 they'll ask the defense do they want to seat you or
21 excuse you. So if either side says excused, you'll
22 just go to the back of the room. If both sides say
23 seat or swear, then you're going to come over here
24 and we will -- you'll have a seat. So bring all of
25 your belongings with you if your name is called.

1 Okay?

2 (Pause.)

3 **THE COURT:** Strikes are five and ten, and two
4 alternates, one and two on each.

5 All right. Here we go. So if your name is
6 called, gather all of your belongings, walk right up
7 here to this microphone and face out. Okay? If you
8 get -- if one side says excuse or strike, don't get
9 your feelings hurt. Okay?

10 Are you ready, Madame Clerk?

11 **THE CLERK:** Yes.

12 Juror Number 195, Robert M. Watson.

13 (Whereupon, Robert M. Watson, a white male,
14 was called forward.)

15 **THE CLERK:** What say you for the State?

16 **MR. FENDER:** Please seat.

17 **THE CLERK:** What say you for the defense?

18 **MS. ZMROCZEK:** Please seat this juror.

19 **THE CLERK:** Please take a seat.

20 Juror Number 41, Kira G. Dozier.

21 (Whereupon, Kira G. Dozier, a black female,
22 was called forward.)

23 **THE CLERK:** What say you for the State?

24 **MR. FENDER:** Please excuse.

25 **THE CLERK:** You may take your seat.

1 Juror Number 68, Wayne E. Grice.

2 (Whereupon, Wayne E. Grice, a white male,
3 was called forward.)

4 **THE CLERK:** What say you for the State?

5 **MR. FENDER:** Please seat.

6 **THE CLERK:** What say you for the defense?

7 **MS. ZMROCZEK:** Please excuse the juror for this
8 trial.

9 **THE CLERK:** You may take your seat.

10 Juror Number 82, Margaret E. Huggins.

11 (Whereupon, Margaret E. Huggins, a white
12 female, was called forward.)

13 **THE CLERK:** What say you for the State?

14 **MR. FENDER:** Please seat.

15 **THE CLERK:** What say you for the defense?

16 **MS. ZMROCZEK:** Please excuse the juror for this
17 trial.

18 **THE CLERK:** You may take your seat.

19 Juror Number 119, Kathy W. Miles.

20 (Whereupon, Kathy W. Miles, a white female,
21 was called forward.)

22 **THE CLERK:** What say you for the State?

23 **MR. FENDER:** Please seat.

24 **THE CLERK:** What say you for the defense?

25 **MS. ZMROCZEK:** Please seat the juror.

1 **THE CLERK:** Take a seat in the jury box.

2 Juror Number 167, Evelyn K. Shell.

3 (Whereupon, Evelyn K. Shell, a white female,
4 was called forward.)

5 **THE CLERK:** What say you for the State?

6 **MR. FENDER:** Please seat.

7 **THE CLERK:** What say you for the defense?

8 **MS. ZMROCZEK:** Please swear the juror.

9 **THE CLERK:** Take a seat in the jury box,
10 please.

11 Juror Number 110, Jose M. Martinez.

12 (Whereupon, Jose M. Martinez, a Hispanic
13 male, was called forward.)

14 **THE CLERK:** What say you for the State?

15 **MR. FENDER:** Please excuse.

16 **THE CLERK:** You may take your seat.

17 Juror Number 148, Terri S. Rodgers.

18 (Whereupon, Terri S. Rodgers, a white
19 female, was called forward.)

20 **THE CLERK:** What say you for the State?

21 **MR. FENDER:** Please seat.

22 **THE CLERK:** What say you for the defense?

23 **MS. ZMROCZEK:** Please excuse the juror for this
24 trial.

25 **THE CLERK:** You may take a seat.

1 Juror Number 20, Cressie B. Brooks.

2 (Whereupon, Cressie B. Brooks, a black
3 female, was called forward.)

4 **THE CLERK:** What say you for the State?

5 **MR. FENDER:** Please seat.

6 **THE CLERK:** What say you for the defense?

7 **MS. ZMROCZEK:** Please swear the juror.

8 **THE CLERK:** You may take a seat in the jury
9 box.

10 Juror Number 106, Beverly S. Major.

11 (Whereupon, Beverly S. Major, a white
12 female, was called forward.)

13 **THE CLERK:** What say you for the State?

14 **MR. FENDER:** Please seat.

15 **THE CLERK:** What say you for the defense?

16 **MS. ZMROCZEK:** Please excuse the juror from
17 this trial.

18 **THE CLERK:** You may take your seat.

19 Juror Number 120, Chaquita Minick.

20 (Whereupon, Chaquita A. Minick, a black
21 female, was called forward.)

22 **THE CLERK:** What say you for the State?

23 **MR. FENDER:** Please seat.

24 **THE CLERK:** What say you for the defense?

25 **MS. ZMROCZEK:** Please swear the juror.

1 **THE CLERK:** Please take a seat in the jury box.

2 Juror Number 7, Rendie H. Anderson.

3 (Whereupon, Rendie H. Anderson, a white
4 female, was called forward.)

5 **THE CLERK:** What say you for the State?

6 **MR. FENDER:** Please excuse.

7 **THE CLERK:** You may take your seat.

8 Juror Number 113, Patricia R. Matthews.

9 (Whereupon, Patricia R. Matthews, a white
10 female, was called forward.)

11 **THE CLERK:** What say you for the State?

12 **MR. FENDER:** Please seat.

13 **THE CLERK:** What say you for the defense?

14 **MS. ZMROCZEK:** Please excuse the juror for this
15 trial.

16 **THE CLERK:** You may take your seat.

17 Juror Number 179, Monik J. Stevens.

18 (Whereupon, Monik J. Stevens, a black
19 female, was called forward.)

20 **THE CLERK:** What say you for the State?

21 **MR. FENDER:** Please excuse.

22 **THE CLERK:** You may take your seat.

23 Juror Number 13, Lisa W. Berry.

24 (Whereupon, Lisa W. Berry, a white female,
25 was called forward.)

1 **THE CLERK:** What say you for the State?

2 **MR. FENDER:** Please seat.

3 **THE CLERK:** What say you for the defense?

4 **MS. ZMROCZEK:** Please excuse the juror for this
5 trial.

6 **THE CLERK:** You may take your seat.

7 Juror Number 35, Bobby L. Corley.

8 (Whereupon, Bobby L. Corley, a white male,
9 was called forward.)

10 **THE CLERK:** What say you for the State?

11 **MR. FENDER:** Please seat.

12 **THE CLERK:** What say you for the defense?

13 **MS. ZMROCZEK:** Please excuse the juror for the
14 trial.

15 **THE CLERK:** You may take your seat.

16 Juror Number 121, Brandon L. Morris.

17 (Whereupon, Brandon L. Morris, a black male,
18 was called forward.)

19 **THE CLERK:** What say you for the State?

20 **MR. FENDER:** Please excuse.

21 **THE CLERK:** You may take your seat.

22 Juror Number 204, Sherrie G. Wilson.

23 (Whereupon, Sherrie G. Wilson, a white
24 female, was called forward.)

25 **THE CLERK:** What say you for the State?

1 **MR. FENDER:** I believe we used our strikes.

2 **THE COURT:** Does the State move to strike for
3 cause?

4 **MR. FENDER:** Present.

5 **MS. ZMROCZEK:** Please excuse the juror.

6 **THE CLERK:** You may take your seat.

7 Juror Number 197, Kenneth West.

8 (Whereupon, Kenneth A. West, a white male,
9 was called forward.)

10 **THE CLERK:** What say you for the State?

11 **MR. FENDER:** Please present.

12 **THE CLERK:** What say you for the defense?

13 **MS. ZMROCZEK:** Please swear the juror.

14 **THE CLERK:** Go ahead and take your seat in the
15 jury box.

16 Juror Number 107, Casey J. Maloney.

17 (Whereupon, Casey J. Maloney, a white male,
18 was called forward.)

19 **THE CLERK:** What say you for the State?

20 **MR. FENDER:** Please present.

21 **THE CLERK:** What say you for the defense?

22 **MS. ZMROCZEK:** Please swear the juror.

23 **THE CLERK:** Go ahead and take a seat in the
24 jury box, please.

25 Juror Number 66, Delfuni Glover.

1 (Whereupon, Delfuni Glover, a black female,
2 was called forward.)

3 **THE CLERK:** What say you for the State?

4 **MR. FENDER:** Please present.

5 **THE CLERK:** What say you for the defense?

6 **MS. ZMROCZEK:** Please swear the juror.

7 **THE CLERK:** Please take a seat in the jury box.
8 Juror Number 64, Shirley Diane Gibson.

9 (Whereupon, Shirley Diane Gibson, a black
10 female, was called forward.)

11 **THE CLERK:** What say you for the State?

12 **MR. FENDER:** May we approach?

13 **THE COURT:** Sure.

14 (Whereupon, a bench conference was held off
15 the record, in the presence of the jury panel, but
16 out of the hearing of the jury panel.)

17 **THE CLERK:** What say you for the State?

18 **MR. FENDER:** Please present.

19 **THE CLERK:** What say you for the defense?

20 **MS. ZMROCZEK:** Please swear the juror.

21 **THE CLERK:** Go ahead and get in the jury box.
22 Juror Number 166, James R. Shealy.

23 (Whereupon, James R. Shealy, a white male,
24 was called forward.)

25 **THE CLERK:** What say you for the State?

1 **MR. FENDER:** Please present.

2 **MS. ZMROCZEK:** Please swear the juror.

3 **THE CLERK:** Take a seat in the jury box,
4 please.

5 Juror Number 151, Jonathan M. Roof.

6 (Whereupon, Jonathan M. Roof, a white male,
7 was called forward.)

8 **THE CLERK:** What say you for the State?

9 **MR. FENDER:** Please present.

10 **THE CLERK:** Defense?

11 **MS. ZMROCZEK:** Please swear the juror.

12 **THE CLERK:** You can take a seat in the jury
13 box.

14 Juror Number 6, Gerald D. Amick.

15 (Whereupon, Gerald D. Amick, a white male,
16 was called forward.)

17 **THE CLERK:** What say you for the State?

18 **MR. FENDER:** Please present.

19 **THE CLERK:** What say you for the defense?

20 **MS. ZMROCZEK:** Please excuse the juror for this
21 trial.

22 **THE CLERK:** You can have a seat.

23 Juror Number 102, Gary H. Lott.

24 (Whereupon, Gary H. Lott, a white male, was
25 called forward.)

1 **THE CLERK:** What say you for the State?

2 **MR. FENDER:** Please present.

3 **THE CLERK:** What say you for the defense?

4 **MS. ZMROCZEK:** Please excuse the juror for this
5 trial.

6 **THE CLERK:** You may have your seat.

7 Juror Number 5, Ovidio Aguirre.

8 (Whereupon, Ovidio Aguirre, a Hispanic male,
9 was called forward.)

10 **THE CLERK:** What say you for the State?

11 **MR. FENDER:** Please present.

12 **THE CLERK:** What say you for the defense?

13 **MS. ZMROCZEK:** Please swear the juror.

14 **THE CLERK:** You may take your seat.

15 **THE COURT:** Two alternates. Strikes will be
16 one and two on each.

17 **THE CLERK:** Juror Number 157, Jessie M.
18 Salters.

19 (Whereupon, Jessie M. Salters, a white male,
20 was called forward.)

21 **THE CLERK:** What say you for the State?

22 **MR. FENDER:** Please present.

23 **THE CLERK:** What say you for the defense?

24 **MS. ZMROCZEK:** Please swear the juror.

25 **THE CLERK:** Have a seat in the jury box.

1 Juror Number 130, Denise C. Pound.

2 (Whereupon, Denise C. Pound, a white female,
3 was called forward.)

4 **THE CLERK:** What say you for the State?

5 **MR. FENDER:** Please present.

6 **THE CLERK:** What say you for the defense?

7 **MS. ZMROCZEK:** Please excuse the juror for this
8 trial.

9 **THE CLERK:** You may take your seat.

10 Juror Number 149, Cerrato Amanda Rodriguez.

11 (Whereupon, Cerrato Amanda Rodriguez, a
12 Hispanic female, was called forward.)

13 **THE CLERK:** What say you for the State?

14 **MR. FENDER:** Please present.

15 **THE CLERK:** What say you for the defense?

16 **MS. ZMROCZEK:** Please swear the juror.

17 **THE CLERK:** Take a seat in the jury box.

18 **THE COURT:** All right. Any exceptions to the
19 jury selection process from the State?

20 **MR. FENDER:** Nothing from the State, Judge.

21 **THE COURT:** From the defense?

22 **MS. ZMROCZEK:** Nothing from the defense, Your
23 Honor.

24 **THE COURT:** Okay. All right. Ladies and
25 gentlemen, if you are in the audience, I want to say

1 thank you very much for your willingness to serve
2 this week and thank you very much for being here.
3 You do not --

4 Sit down.

5 I want to say thank you very much for your
6 willingness to be here and thank you very much for
7 your willingness to serve. I know there are many
8 other places that you would rather be and things
9 that you would rather be doing. We cannot do what
10 we do at this courthouse without good people like
11 you being willing to come up here and serve and give
12 of their time. I know that it's a sacrifice, and I
13 appreciate that.

14 I do want to let you know, as a visiting judge,
15 that your courthouse staff is very well equipped.
16 They do a great job. You have a great Clerk of
17 Court. She knows how to take care of the judges as
18 they come in. And they're very professional and
19 very competent and have their act together.

20 It's a pleasure to go into small counties and
21 see how things are running truly efficiently and
22 running very well. They only have very few weeks
23 here in Saluda County, whereas, in Richland County,
24 we run about 46 weeks of criminal court with two
25 judges there full time. They probably have, what,

1 six or seven terms here throughout the year?

2 **THE CLERK:** Eight.

3 **THE COURT:** Eight terms a year. And so it's
4 nice to come into these small counties and see how
5 efficiently these things are running. And your
6 clerk's office does a great job, and they're very
7 professional.

8 You do not need to call back in. You do not
9 need to come back in. You are excused for the rest
10 of the week. If you get called for jury duty in the
11 next two years, you can tell them you served this
12 week. Thank you very much and have a nice day.

13 (The remaining jury panel was excused.)

14 **THE COURT:** Let me get all of these people out
15 of this room and then give me about five minutes,
16 then I'm going to release you for lunch and tell you
17 when to come back. So just let me get all of these
18 people out, and then I'll give you some
19 instructions. Okay?

20 (Pause.)

21 **THE COURT:** All right. Ladies and gentlemen,
22 give me about five minutes of your undivided
23 attention, then I'm going to release you for lunch.
24 And when you come back this afternoon, we'll roll
25 straight into the trial. Okay?

1 Now, again, as I told you this morning, my name
2 is Robert Hood and I'm from Columbia. It's a
3 pleasure to be with you. I've been assigned by
4 Court Administration to this term of court in Saluda
5 County, and you have been selected as a jury in this
6 case.

7 Now, before I release you for lunch, I need to
8 give you one brief bit of cautionary advice while
9 you're out of the courtroom. I know that right this
10 minute that you don't know anything about this case
11 because you've all told me, because I've asked you,
12 do you know anything about this case, and so it
13 would be difficult for you to talk about the case,
14 but you know what the issues are and you know what
15 the charges are, and if so, it's improper for you to
16 discuss any aspect of this case amongst yourselves
17 or with anyone else not only between now and this
18 afternoon, but at any time during the course of this
19 trial.

20 I'll give you more specific information and
21 instructions right after lunch, but I wanted to bind
22 you over between now and then so that you won't slip
23 and start talking about the case or anyone involved
24 in the case or things that you think might be
25 involved in this case between now and then.

1 Now, you can't talk about it amongst
2 yourselves, and you also can't let anybody else talk
3 to you about it. So if somebody tries to talk to
4 you, tell them that you're a juror and that I've
5 told you not to discuss the case, that should end
6 the matter right there. If it doesn't, and for some
7 reason, that person continues to try to talk to you,
8 find out who they are, separate yourselves from that
9 person and let me know when you come back to court
10 and I'll take care of that matter myself.

11 Now, during this course of this trial, you
12 can't expose yourself to any information about this
13 case. Now, I know of no news media. I don't even
14 know what the local paper in Saluda is called, but
15 no news media has asked to be in here or there's no
16 recording, there's no TV cameras, nothing like that.
17 Okay? But if, for some reason, you're watching the
18 news tonight and this case comes on, which would be
19 completely foreign to me, you should turn it off.
20 You're not to look at any news accounts or do any
21 research or Google anything to try to figure out
22 what this case is about or anything like that.

23 Now, everything that we've gone through this
24 morning since we started this jury selection process
25 has been to ensure that you would be able to make

1 your decision based upon what you hear in this
2 courtroom and nothing else. Once we -- we want to
3 make sure that the integrity of the process remains
4 intact throughout this trial, and if you follow
5 these instructions, it will.

6 So here's rule number one: Rule number one is
7 you're not allowed to discuss this case with anyone,
8 including each other, in any way shape or form. You
9 can't talk to your spouse, your boyfriend, your
10 girlfriend, your children, your employer, your
11 employee, your best friend, your mama, your daddy,
12 your cousin. I don't care who it is, you're not
13 allowed to discuss this case with anyone in any way,
14 shape or form. Okay?

15 Here's why: What if you start talking about
16 the case, especially in a small community like this,
17 and somebody says, I know all about that case, let
18 me tell you about it, or, let me tell you about
19 this, or, let me tell you about that, all of that
20 would be outside influences which you are not
21 allowed to have. You're going to base your decision
22 on the testimony that comes in, the evidence that's
23 admitted and the law that I give you and your common
24 sense and nothing else. Okay? So don't talk about
25 the case with anyone including each other.

1 Y'all can talk about whether Clemson's going to
2 pull it out with FSU this weekend or how South
3 Carolina barely held in against Georgia or you can
4 talk about why it's November and it's 80 degrees
5 outside. You can talk about anything you want to,
6 but you can't talk about this case. Okay? And that
7 means you can't talk about a party, a witness. You
8 can't say, I like his tie, or, I don't like his tie,
9 or, you know, what is that crazy Judge talking
10 about, nothing like that. Okay? You can talk about
11 anything else.

12 Rule number two, you can't let anybody else
13 talk to you about the case. So if someone tries to
14 talk to you about the case, you need to say, stop,
15 I'm a juror, I can't talk about it, and remove
16 yourself from that situation and report it to me.
17 Okay?

18 Number three, you're not allowed to do any
19 research on this case. Okay? So you can't go home
20 and, you know, or -- now, I live in 2017. When you
21 leave here, you're all going to get on your phones,
22 right? You're going to text somebody, call
23 somebody, check Facebook, check Twitter, check
24 Instagram, check some app that I don't even know
25 what it is, but you can't use anything to go get or

1 send information about this case. So if I say, you
2 know, if I say a word today that you don't know what
3 it means, you can't go look it up. Okay? You have
4 to base your decision on what happens here in the
5 courtroom. So you're not allowed to do any research
6 on the case.

7 If you don't have to go through Ridge Spring to
8 go home, then don't go through Ridge Spring to go
9 home. Okay? Because you don't know that what Ridge
10 Spring looks like today is what Ridge Spring looked
11 like when this incident allegedly occurred. Make
12 sense? Okay?

13 All right. Now, last thing is this: In
14 Richland County, this is pretty simple because when
15 people go to lunch, there's all these places for
16 them to go to lunch, right? In Saluda and smaller
17 counties, I deal with this a lot in Kershaw County,
18 there's only so many places to eat. Okay? So
19 you're allowed -- I'm going to release you for
20 lunch, and you're allowed to go eat lunch. You can
21 go home and eat lunch, you can go eat lunch
22 somewhere here in town, wherever you want to, but if
23 you see somebody involved in the case, and that
24 means basically anybody that's sitting in the
25 courtroom at this very moment, they are all going to

1 ignore you. Okay? If you see me at lunch, I'll say
2 hey to you or, you know, something like that. If
3 you see anybody other than me, they're going to
4 ignore you. Okay?

5 The lawyers and the parties and the witnesses
6 in this case have been told not to talk to you, not
7 to have any contact with you. So as you came back
8 in the building, if you see them, they're going to
9 ignore you. As you leave to go to lunch, if you see
10 somebody, they're going to ignore you. Okay?
11 Because they're not allowed to have any contact with
12 you. I promise you an innocent good morning or good
13 afternoon seen by the other side is always
14 misconstrued. Okay?

15 Now, I live in the real world and we're in
16 Saluda, right? Okay. And there's only so many
17 places to go eat, but you need -- if you go eat,
18 either keep to yourself or, you know, stay with
19 other jurors, but do not discuss the case in any
20 way, shape or form. Okay?

21 So those are your basic rules. When you come
22 back for -- after lunch, I'll give you a lot more
23 rules to kind of detail how the trial will work, but
24 when you come back, we're going to jump right into
25 it.

1 Now, I like to start on time. Okay? Some
2 judges are famous for not being on time to anything.
3 That's not me. So if we're not starting on time,
4 that's because I'm dealing with something I have to
5 deal with before I bring you in, otherwise, I like
6 to start on time.

7 So if you're somebody that usually doesn't show
8 up to things on time, you need to convince yourself
9 that we're starting 15 minutes before I say so that
10 you're here on time. Okay? Don't make me send
11 somebody in a car with blue lights on the top of it
12 to find you because you didn't show up on time. You
13 with me? Okay? Everybody good? Everybody
14 following me?

15 Okay. My two alternates, you're required to
16 sit on the back row. Okay?

17 And, Mr. Watson, you're going to be the foreman
18 of this jury. So when we come back in, you're going
19 to sit right where this gentleman in the Polo shirt
20 is seated. Anyone else can sit wherever they want
21 to. Okay?

22 I don't allow note taking, but I'll explain all
23 that to you later. But right now I want you to --
24 it's almost noon -- it's a couple minutes after
25 noon. We're going to start back at 1:15. 1:15, I

1 want you to be in your jury room, ready to go. The
2 bailiffs will show you how to come in and how to go
3 out, and then I'll tell you -- walk you through who
4 everybody is and how the trial is going to work.
5 1:15, ready to go. We're going to push right into
6 this case and get going today. Okay? Everybody
7 with me?

8 Okay. 1:15. Thank you very much. Everyone
9 else remain seated.

10 (The jury was excused for lunch.)

11 **THE COURT:** All right. Anything from the State
12 before we break?

13 **MR. FENDER:** Nothing from the State, Judge.

14 **THE COURT:** From the defense?

15 **MS. ZMROCZEK:** Nothing, except, Your Honor, I
16 believe -- I think it was on the record, but with
17 Juror 196, we did agree that she had some bias or
18 prejudice.

19 **THE COURT:** Okay. I think she -- she clearly
20 was conflicted about something with somebody in some
21 way, shape or form. So, yeah, I think that was the
22 right decision.

23 **MS. ZMROCZEK:** And I think she heard it, but I
24 wanted just to make sure.

25 **THE COURT:** Okay. 1:15, 1:15. See you then.

1 (Whereupon, there was a luncheon recess.)

2 **THE COURT:** State ready?

3 **MR. FENDER:** Yes, Judge.

4 **THE COURT:** Defense ready?

5 **MS. ZMROCZEK:** Yes, Your Honor.

6 **THE COURT:** All right. Bring them in.

7 (The jury returns to the courtroom.)

8 **THE COURT:** Welcome back. Thank you very much
9 for being on time. The first thing that we're going
10 to do this afternoon is you're going to be sworn in.

11 Now, this morning you took an oath and that
12 oath was you promised me to tell me the truth to the
13 answer to the -- to the questions that I asked.
14 This oath that you're going to take this afternoon
15 is different. This oath has been used in the -- has
16 been used in our court systems for over a hundred
17 years.

18 And what this oath does, it embodies your duty
19 and responsibility to be fair and impartial and to
20 sit without any bias or prejudice towards either
21 side, to listen to the evidence in the case, to
22 determine what the facts are and to follow the law
23 that I'm going to give you. And what you are doing
24 is you are essentially making a promise to me and to
25 the parties in this case and to the lawyers in this

1 case and to each other and to yourself that you will
2 follow my instructions and you will follow the law
3 that I give you and try this case fairly and
4 impartially as if you are a judge yourself wearing
5 your own black robe sitting there fairly and
6 impartially. So if you will please rise and the
7 clerk will swear you in.

8 (The jury was duly sworn at 1:20 P.M.)

9 **THE COURT:** Okay. Thank you very much.

10 All right. Now, Mr. Foreman, we're not going
11 to allow any note taking, so you don't need to bring
12 that notebook back out with you again. And I'll
13 explain why I do not allow note taking in just a few
14 moments.

15 But just to start, before we begin the actual
16 trial of this case, I thought it might be helpful to
17 explain to you how the trial will work. First, the
18 State, or the solicitor's office, will be allowed to
19 make an opening statement. Now, this opening
20 statement is not evidence. It's simply an outline
21 to help you understand what that party expects the
22 evidence to show. The defendant may, if he chooses,
23 present an opening statement, but he does not have
24 to for reasons that I will explain to you in just a
25 moment.

1 Now, as I go through this opening charge, I
2 want you to listen for the word evidence. The word
3 evidence is a defined term, so I'm going to explain
4 to you what is evidence and what is not evidence.
5 Okay?

6 Following the opening statements, you will hear
7 testimony, and you will hear the evidence in the
8 case. So the evidence will consist of testimony
9 from the State's witnesses, as well as any physical
10 exhibits which will be introduced into evidence.

11 Following the completion of the testimony, the
12 attorneys will, again, have an opportunity to make
13 what is called closing statements or closing
14 arguments to you. This is an opportunity for the
15 attorneys to summarize the case from their
16 respective points of view. Again, the opening
17 statement and the closing arguments by the attorneys
18 are not evidence.

19 Following the closing statements, I will tell
20 you or instruct you on what the law is in South
21 Carolina as it pertains to the issues that have
22 arisen in the case. Once I've done that at the very
23 end of the case, you will then be permitted to begin
24 your deliberations in order to reach a verdict.

25 You are now the jury in this case, and I need

1 to take a few minutes to tell you about your duty
2 and to give you some instructions. In a nutshell,
3 your responsibility is this: It is your duty to
4 decide from the evidence what the facts are. You
5 and you alone are the judges of the facts. You will
6 hear the evidence, decide what the facts are and
7 then apply those facts to the law that I will give
8 you at the end of the case. That's how you'll reach
9 a verdict. In doing so, you must follow the law
10 that I give you whether you agree with it or not.

11 Evidence will consist of the testimony of the
12 witnesses who will come right here and be sworn in
13 and testify, any documents or any photos or anything
14 received into evidence as an exhibit, and any facts
15 on which the lawyers agree or anything that I tell
16 you to accept.

17 So, basically, the way I like to look at it is
18 there's a line in the courtroom. On that side of
19 the line, you control the facts. On this side of
20 the line, I control the law. You can't tell me what
21 the law is and I can't tell you what the facts are,
22 unless all the parties agree.

23 So, in some cases, the lawyers will say, We all
24 agree or we all stipulate that on that day the sky
25 was blue -- I'm just making that up; you understand

1 that -- and so I would tell you, The lawyers agree
2 or stipulate the sky was blue that day. Otherwise,
3 you won't hear me talk about the facts. Okay? So
4 you should not take anything that I say or do during
5 the trial as indicating what I think of the evidence
6 or what I think your verdict should be.

7 Now, this is a criminal case that's been
8 brought by the State of South Carolina. And the
9 State has charged the defendant with armed robbery,
10 kidnapping and possession of a weapon during the
11 commission of a violent crime.

12 Now, the charges against the defendant are
13 contained in the indictments which I read to you
14 this morning. Now, these indictments are not
15 evidence of anything. They are not proof of
16 anything. They're simply the description of the
17 charge made by the State against the defendant.

18 To these charges, the defendant has pled not
19 guilty. And he is presumed to be innocent unless
20 and until proven guilty beyond a reasonable doubt.
21 Proof beyond a reasonable doubt is proof that leaves
22 you firmly convinced of the defendant's guilt.

23 A defendant has the right not to testify, and
24 he never has to prove his innocence or present any
25 evidence at all. The burden of proof is always upon

1 the State of South Carolina.

2 Now, some things that you will hear during this
3 trial are not evidence, and you must not consider
4 them as evidence in the case: Number one, the
5 statements and the arguments of the attorneys are
6 not evidence. Number two, the questions and the
7 objections of the attorneys are not evidence.
8 Number three, anything that I tell you to disregard.

9 So in almost every single case I do, somebody
10 says something and I have to tell the jury to
11 disregard that statement. If I tell you to
12 disregard that statement, you are to treat it as if
13 it never happened. Okay?

14 Now, there are two types of evidence which you
15 may hear in this case, one is called direct and one
16 is called circumstantial. So direct evidence is
17 what somebody saw, heard, did, touched, smelled,
18 something of that nature. Circumstantial evidence
19 is indirect evidence. It is proof of one or more
20 facts from which you can find another fact. You are
21 to consider both direct and circumstantial evidence.
22 The law permits you to give equal weight to both,
23 but it is for you to decide how much weight to give
24 any evidence at all.

25 Now, throughout this trial and during these

1 proceedings, there are rules that determine how
2 everything works. From who gets to go first, to who
3 gets to go second, to how witnesses are questioned,
4 there are rules. This book -- notebook you see
5 right here {indicating}, this is my rules book.
6 Okay? And there are rules on evidence.

7 So this is how it'll work: So when a lawyer
8 asks a question or offers an exhibit into evidence
9 and a lawyer on the other side thinks it's not
10 permitted by the rules, the lawyer on the other side
11 may object. So they'll stand up and say, Objection,
12 hearsay; objection, relevance; objection, whatever.
13 Okay? And then I'll rule.

14 So if I say the objection is overruled, then
15 the question can be answered or the exhibit can be
16 received into evidence. If I sustain the objection,
17 if I say, Sustained -- they'll say, Objection;
18 leading. I'll say, Sustained, or something of that
19 nature. If I sustain the objection, then the
20 question cannot be answered or the exhibit cannot be
21 received into evidence. Whenever I sustain an
22 objection to a question or deny a motion to admit an
23 exhibit into evidence, you must ignore the question
24 or the existence of the potential exhibit, and you
25 must not guess what the answer would have been or

1 what the exhibit would have shown.

2 Now, it will be necessary during this trial
3 that I ask you to leave the courtroom while I
4 discuss legal matters with the lawyers that come up
5 during the trial. This happens in every single
6 trial in the state of South Carolina, and, for that
7 matter, for the entire country. When this occurs,
8 do not speculate about what we are discussing or why
9 you were asked to leave the room. This is simply a
10 procedure that the law requires when some legal
11 issues come up.

12 Now, there will also be occasions when I ask
13 the attorneys to approach the bench or one of them
14 may stand up and say, Your Honor, may we approach?
15 Okay? So when that happens, usually I'm talking
16 about scheduling. I'm trying to figure out, it's
17 the end of the day, how long is your next witness,
18 or something like that. But sometimes when I ask
19 them to approach the bench, it's to decide legal
20 issues.

21 Now, I will do this as often as possible to
22 keep you from walking back and forth and back and
23 forth in between your jury room and here. So when
24 this happens, don't think anybody's trying to keep
25 anything from you or hide something from you. This

1 is a procedure used by all lawyers and by all courts
2 to decide legal questions. Okay?

3 And to -- to decide the facts of this case, you
4 have to decide which witnesses to believe and which
5 witnesses not to believe. Here are the rules: You
6 can believe everything a witness says, you can
7 believe none of what a witness says, or you can
8 believe part of what a witness says.

9 Some things you are to consider, but you're not
10 limited to, are: What was the witness' ability to
11 see, hear or know what they testified to; how good
12 was the witness' memory; what was the witness'
13 demeanor or manner like while they were on the
14 witness stand; does the witness have an interest in
15 the outcome of the case or do they have any motive
16 or bias or prejudice; was the witness contradicted
17 by anything they said or wrote before the trial or
18 by other evidence that you believe; how reasonable
19 was the witness' testimony when considered in light
20 of the other evidence you believe?

21 The bottom line is this: We all judge people's
22 credibility every single day. And we do it, and you
23 don't even realize that you're doing it. Okay? The
24 best example in my house is before we go to the bus
25 stop, the question is, Did you brush your teeth?

1 Right? And if you're a parent, you know that
2 because you've asked that question to a child,
3 right? And so you make a decision on whether to
4 believe that child or not. You make a credibility
5 decision. You probably already made multiple ones
6 today. Okay?

7 And so your decision may be based upon the
8 child's breath, if you see food in the child's teeth
9 or their teeth are still pink or red from some kind
10 of cereal they ate, or your history with the child
11 in knowing that, you know, it's a teenage girl and
12 she wouldn't go anywhere without brushing her teeth,
13 but you make those decisions based upon your common
14 sense.

15 When you came back in the building this
16 afternoon, you didn't leave your common sense at the
17 metal detector. They believe in you. The lawyers
18 believe in you, that's why they selected you for
19 this case, and so we ask that you use your common
20 sense. Okay?

21 Now, until I advise you that you are allowed to
22 begin deliberating, you are not allowed to discuss
23 this case with anyone, including each other,
24 friends, family members and anyone involved in the
25 case. This includes discussions face-to-face, by

1 telephone, e-mail, text message, blog, Facebook,
2 Twitter, some other kind of app that I don't even
3 know what it is. Whatever it is, you can't use it
4 to get information about the case, to send
5 information about the case or to discuss anything
6 about the case.

7 You're not allowed to use electronic devices
8 while in the courtroom or in your jury room. You
9 will be permitted to have these devices on your
10 lunch breaks and for overnight, but you are not
11 allowed to get or send information or do any
12 research about this case on any electronic device or
13 any other research.

14 Again, I know of no news media about this case,
15 but if, for some reason, you're reading the
16 newspaper or you're watching TV and you realize it's
17 this case, please turn it off or put it away.

18 Once the case is submitted to you, you can only
19 discuss it with each other.

20 The attorneys and the parties have been advised
21 they are not to talk to you at all. So if they see
22 you in the hall and they don't even say hello,
23 they're not being unfriendly, they're just following
24 my instructions.

25 It is important that you keep an open mind, not

1 decide any issue in this case until all of the
2 evidence has been presented, the lawyers have made
3 their closing arguments and I've instructed you on
4 the law in this case. It is your responsibility to
5 determine the guilt or the innocence of the
6 defendant and your verdict must be based solely on
7 the evidence that is presented to you and on the law
8 that I give you during and at the close of the
9 trial.

10 Mr. Foreman, it'll be your added duty to
11 preside in the jury room. You will be the presiding
12 juror, and you will also be the jury spokesperson
13 here in court. It will also be your duty to write
14 the verdict, but I'll give you further instructions
15 on that at the end.

16 I do not allow note taking. The reason I do
17 not allow note taking is when you start taking
18 notes, you stop listening and the testimony
19 continues on. Your notes are not the official
20 record of what occurred in here; the court
21 reporter's transcription is. So your notes would
22 not be valid during your jury deliberations, and
23 that's why I do not allow notes.

24 Now, let me make sure you know who everybody
25 is. So this is Bailey Davis, and she works for me.

1 She is my law clerk. So she has graduated from law
2 school, taken the bar exam. She passed the bar
3 exam. We're very excited about that. She's
4 actually getting sworn in to be an attorney on
5 Monday. So she will spend her first year of
6 practicing law working for me. So you'll see her
7 walking in and out and working on her computer,
8 that's pretty normal.

9 You know your Clerk of Court, Ms. Coleman,
10 right here. And this is Ms. Davis, the Deputy Clerk
11 of Court right here. They'll be with us this week.

12 And then this is Ms. Sheppard, who has her back
13 to you at the moment, and she is our court reporter.
14 And I like to say she is the most important person
15 in the room. She's smiling at me. That's right.

16 So Ms. Sheppard is the only person who is
17 always working. And she is literally taking down
18 every single word we say. Okay? So if somebody
19 starts talking real fast, you'll hear me tell them
20 to slow down.

21 Sometimes witnesses and attorneys talk over
22 each other, that's just the nature of a trial. When
23 that happens, you'll hear me say stop or time out or
24 be quiet or everybody stop talking. Okay? I'm not
25 doing that to be rude or to be mean to anybody, but

1 she can only take down one single voice at a time,
2 and we want her record of what she creates in here
3 to be accurate.

4 So if people are talking over each other, you
5 will hear me tell them, Stop talking, let him
6 finish, let her finish. And I have to do that so
7 that the record is correct and that people's words
8 can be accurately recorded. Okay? So I'm not
9 trying to be mean or rude to anybody, but I have to
10 make sure the record of what happens here is
11 correct.

12 So when she needs a break or she tells me, you
13 know, I need to take a break, I always take a break
14 because our court reporters do a great job and they
15 are always working in the courtroom. Okay?

16 So that's just kind of a basis of who everybody
17 is. And we will start now with opening statements.

18 State ready to proceed?

19 **MR. FENDER:** Yes, Judge.

20 **THE COURT:** Okay. The floor is yours.

21 OPENING STATEMENT

22 **MR. FENDER:** Good afternoon.

23 First of all, I just want to thank all of you
24 for being here today. I know it probably already
25 feels like a long day, but what you're doing here is

1 really important, though. This isn't TV. This is
2 real life Saluda County. And the case that you're
3 going to hear about today happened just a few miles
4 from where you're sitting this afternoon at the
5 Circle K Gas Station in Ridge Spring. And I just
6 want to get right to why we're all here.

7 This case is about the defendant going into
8 that gas station, middle of the night, pulling out a
9 gun, pointing it at the victim, taking money, taking
10 cigarettes before he ran away. And that's why we're
11 here.

12 Ladies and gentlemen of the jury, you're going
13 to hear from witnesses in this case, people who were
14 there, people who can tell you what happened, the
15 law enforcement who investigated the case. You're
16 going to hear from Willie Houston. He's the victim
17 in this case. He was working that night, working
18 the cash register, stocking the shelves when the
19 defendant came in, pointed that gun at him, made him
20 walk over to the cash register, took the bills, took
21 the cigarettes and ran away.

22 Now, Demarcus, the defendant, he didn't have a
23 shirt on. And you'll see on a video that,
24 basically, he took some kind of piece of clothing
25 and wrapped his face up, you know, trying to cover

1 up his identity and everything like that.

2 But, you know, Ridge Spring, kind of like
3 Saluda, is a small town. It's a place where people
4 know each other, they know of each other. And
5 Willie Houston, the victim, the clerk, the cashier,
6 in this case, well, he recognized Demarcus. He knew
7 him from the neighborhood. He knew him as somebody
8 who came in and out of that store quite frequently.

9 Again, this is middle of the night after the
10 defendant came in, pointed that gun at Willie, ran
11 away with the money. Willie called 9-1-1 and all
12 the police, all the law enforcement in the area,
13 well, they rushed over to the gas station to stop
14 the bad guy, to secure the scene, to investigate.
15 And you know what? They found the defendant just a
16 couple hours later about half a mile from the crime
17 scene that he had just robbed. And what did he have
18 with him? The gun, cash, cigarettes.

19 Ladies and gentlemen of the jury, you're going
20 to get to hear from law enforcement in this case.
21 I'd ask you to just pay close attention to what they
22 have to say. They're going to tell you about the
23 investigation. They're going to tell you about the
24 evidence that they found. And we're really lucky,
25 really lucky, in this case, too, today because we

1 have video, surveillance video, from the Circle K.

2 Now, this isn't like a Hollywood movie or
3 anything like that, but if you'll pay close
4 attention to the video that you get to see up on the
5 screen and listen to these witnesses, you'll get a
6 really good idea of what happened that night.
7 You'll see the defendant. You'll see him pointing a
8 gun, a handgun, a gray or silver revolver with a
9 black handle. You'll see him take the money, take
10 the cigarettes, the same items that law enforcement
11 later found with him just a couple hours later.
12 What's your common sense tell you, folks?

13 Ladies and gentlemen of the jury, this isn't
14 going to be a TV crime drama, it's not going to be a
15 Hollywood whodunit, there's not going to be any
16 dramatic plot twist. This is real life Saluda
17 County. This is a real case. This is going to be a
18 straightforward case. This is going to be a case
19 based on facts, a case based on evidence, evidence
20 that proves that the defendant is guilty beyond a
21 reasonable doubt, eyewitness identification, video
22 evidence, police investigation, the defendant found
23 just hours later with the items from the crime
24 scene.

25 Now, I told you about the facts. I just want

1 to speak briefly about the law. The defendant
2 committed three crimes under our South Carolina law,
3 robbery, kidnapping and possession of a weapon
4 during a crime. The Judge will tell you more about
5 what each of these means at the end of the trial.
6 Your Honor is an expert on the law, and I would just
7 ask you to pay close attention to what he has to
8 say.

9 Right now you may be thinking, I don't really
10 know much about the law. But the fact of the matter
11 is you don't have to to decide this case, to know
12 that what the defendant did was wrong.

13 You know, we all have our own sense of right
14 and wrong, maybe we got it from our parents in
15 church, from our family, our friends or in school,
16 and you all brought that sense of right and wrong
17 with you to court this morning. You brought your
18 sense of right and wrong, you brought your sense of
19 common sense, and I would ask you to use those two
20 things as you decide this case.

21 Again, you'll see this video. You'll know that
22 what the defendant did was wrong. He broke the law.

23 Seizing or confining Willie Houston, the
24 victim, against his will, under the law, that's
25 kidnapping. Taking money by intimidation, under the

1 law, that's robbery. Using or carrying a gun to
2 commit those crimes, under our law -- South Carolina
3 law, that's possession of a weapon during that
4 crime.

5 The other legal concept that I just wanted to
6 briefly mention is this idea of reasonable doubt.
7 You may have heard about that on TV. I'm sure the
8 defense attorney's going to make a big deal about
9 it, but it's not beyond all doubt, it's not without
10 a doubt, it's all about being reasonable.

11 The fact of the matter is you're all reasonable
12 people. I'm sure that you have to make reasonable
13 decisions in your business and family lives every
14 day, and today's not going to be any different.
15 You're going to be asked to make a decision based on
16 facts, a decision based on evidence. What you'll
17 see in this case is evidence that proves the
18 defendant is guilty beyond a reasonable doubt.

19 I don't know if any of you have ever served on
20 a jury before, but there's really only one thing
21 that you need, and you all brought it with you to
22 court this morning, that's your common sense. All
23 you need is your common sense to look at this
24 evidence. All you need is your common sense to see
25 who's telling you the truth. And all you need is

1 your common sense to find the defendant, Demarcus
2 Robinson, guilty. Thank you.

3 **THE COURT:** All right. Thank you very much,
4 Mr. Fender.

5 All right. Ms. Zmroczek, would you like to
6 make an opening statement?

7 **MS. ZMROCZEK:** Yes, Your Honor. May it please
8 the Court.

9 **THE COURT:** Yes, ma'am.

10 **MS. ZMROCZEK:** If a picture is worth a thousand
11 words, then a video is worth a million. But what
12 matters is mainly what we're looking for when we
13 view these items.

14 Ladies and gentlemen, thank you for your
15 service. It's going to be hard. It's going to be
16 boring. You're going to want to ask questions, but
17 that's why we're here. We're here to ask those
18 questions. We ask the questions, and some of them
19 are going to be tough. That doesn't make our job
20 easy. It's so that you can individually decide what
21 the facts are in this case.

22 Now, if you'll come with me back to August 1st,
23 2016, 300 East Main Street, Circle K in Ridge
24 Spring, bright florescent lights, music playing and
25 Willie Houston is working. He's stocking items in

1 the front row, and his back is to the door. You'll
2 see this on the video. About 2:39, the door alarm
3 goes off. Mr. Houston turns and sees a person come
4 in. That person's also been arrested and not here
5 on trial today. That person has a conversation
6 about a beer special. He's in the store for
7 approximately 30 seconds when you see the door open,
8 you hear the quick beam.

9 At this time, Mr. Smith -- Mr. Houston has gone
10 back to stocking, looking carefully at his items,
11 bending over. And you'll see this. And from that
12 door, comes this friend of the person who entered,
13 face covered completely, walks straight up to
14 Mr. Houston, who is still on his knees, and puts a
15 gun to his back, forces him to the cash register,
16 takes the money. And you'll see -- you'll see
17 Mr. Houston, hands up, looking away. Because I
18 assure you that he will tell you that's probably the
19 longest minute of his life, because it lasts one
20 minute, and you'll see how much of an identification
21 he gets to make.

22 Ridge Spring is a small town. The last census
23 was 823 residents, 1.9 square miles. I grew up in a
24 small town east of Baton Rouge, in Louisiana, with
25 my six sisters. And as a caveat, one of my sisters

1 lives here now and switched shoes with me without
2 telling me, so my shoes are a little bit big today.
3 If you see me trip, I promise I'm not that clumsy.

4 But the beauty of growing up in a small town
5 also comes with the drama. I had six sisters. We
6 fought, and apparently are still fighting over
7 clothes. We fought over boys. We fought over
8 athletics. We fought over everything. We had
9 neighbors. Sometimes those neighbors would see us
10 come in late, tell on us, but they would also
11 protect us.

12 My parents used to force us to watch this every
13 Sunday night, Paul Harvey, The rest of the story.
14 Ladies and gentlemen, what you're going to hear is
15 the rest of the story.

16 When Willie Houston calls 9-1-1, and you'll
17 hear it, he says, I was just robbed by a person five
18 nine to six foot, had a gun. That's what he says,
19 because that's what he knows. Thirteen minutes
20 later, it takes the police 13 minutes to get there,
21 and in that 13 minutes, he gives the name -- as soon
22 as the police get there, he gives the name Demarcus
23 Robinson. Demarcus Robinson, 20 years old, lives in
24 Ridge Spring, grew up there.

25 Ladies and gentlemen, the rest of the story

1 comes now. Why would he give that name? Because
2 you'll see what he could and couldn't see. Well,
3 because as with a lot of small town living, comes
4 drama. Demarcus grew up really close with a family
5 named Derrick Cyrus. Derrick was his friend. They
6 grew up together. They played together. They
7 fought together. They matured together. And as
8 they matured, they both developed an interest in the
9 same girl. And that girl, Alexis Young, has a child
10 by each of them now. That friendship has been
11 broken.

12 You told us we'd hear the rest of the story;
13 where does Mr. Houston come in? Here is where
14 Mr. Houston comes in: Mr. Houston dates Brittany
15 Cyrus, the sister of Derrick. After this falling
16 out, the name that he comes up with is Demarcus
17 Robinson. Was it malicious? Probably not. Was it
18 accurate? Absolutely not.

19 But the police have a name and they go to
20 Demarcus' house and they find some items that
21 they're going to try to make you put this square peg
22 into a round hole. Oh, well, we found some money.
23 We found a gun. We found black shorts. If finding
24 black shorts in a 20 year old's bedroom is enough to
25 link him to a crime, then our justice system is

1 failing.

2 You get to weigh this evidence. You get to see
3 what makes sense, see what adds up and see what
4 doesn't add up. Because, ladies and gentlemen, what
5 you'll see doesn't add up is they're missing several
6 key pieces of items.

7 The person who robbed Mr. Houston at gun point
8 had a bandanna and a T-shirt over their whole entire
9 top of their body. You'll see it. And
10 Investigator, at the time Chief, Raffield finds that
11 shirt -- finds that shirt, that very shirt that
12 you're going to see in that video.

13 Ladies and gentlemen, this is what you won't
14 find: There's no DNA. There are no fingerprints.
15 There's nothing that comes back to Demarcus Robinson
16 except for the jilted word of Mr. Houston given in a
17 time of extreme despair.

18 We chose you, as the Judge said, because you
19 have an awesome responsibility. You're going to
20 decide the facts and the evidence and apply the law
21 to determine whether or not Demarcus Robinson is
22 guilty of three very serious felonies. It's not --
23 it's not a job you take lightly, and it's a job we
24 know you won't take lightly, that's why we selected
25 you. And at the end of this case, ladies and

1 gentlemen, when you listen and you see -- you see
2 what you look for and you apply it to the law, each
3 and every one of you, individually and collectively,
4 will be proud to say the government has not proved
5 their case. Demarcus Robinson has not committed
6 this crime. We cannot speculate, and you will find
7 him not guilty. Thank you.

8 **THE COURT:** All right. Thank you,
9 Ms. Zmroczek.

10 All right. You may call your first witness.

11 **MR. FENDER:** The State calls William Houston.

12 **THE COURT:** All right. Mr. Houston, please
13 come forward and be sworn.

14 WILLIAM HOUSTON,
15 having been duly sworn, testified as follows:

16 **THE COURT:** All right. Now, you hear that air
17 conditioning?

18 **THE WITNESS:** Yes, sir.

19 **THE COURT:** Okay. So I need you to stay close
20 to that microphone so that everybody can hear what
21 you say. Okay?

22 **THE WITNESS:** Okay.

23 **THE COURT:** Okay. Mr. Fender, your witness.

24 **MR. FENDER:** Thank you, Judge.

25 *****

1 DIRECT EXAMINATION

2 BY MR. FENDER:

3 Q Good afternoon, Mr. Houston.

4 A Good afternoon.

5 Q Before we get started, can you tell the jurors
6 just a little bit about who you are and where you're
7 from?

8 A My name is William Houston. I'm originally
9 from Augusta, Georgia. I moved to Ridge Spring,
10 South Carolina, maybe like three years ago, November
11 1st. So I worked at Circle K for roughly about a
12 year. I work at U.S. Fibers now. And, also, I work
13 a pecan orchard. So that's about the sum of it.

14 Q So you now work for U.S. Fibers?

15 A Yes, sir.

16 Q And you previously worked for the Circle K?

17 A Yes, sir.

18 Q Is that the gas station there in Ridge Spring?

19 A Yes, sir.

20 Q Were you working there on August the 1st of
21 2016?

22 A Yes, sir.

23 Q What shift were you working?

24 A I was working night shift.

25 Q What hours are that?

1 **A** It's normally 8:00 to 6:00 in the morning -- or
2 10:00 to 6:00, excuse me.

3 **Q** Do you recall what happened that night?

4 **A** Yes. I was -- I was working night shift. I
5 went to clean the shelves, one guy walked in. And a
6 few seconds later, I felt somebody -- somebody came
7 in, and I felt him put a gun to my head. And they
8 lifted me up, walked me behind the counter. And he
9 made me empty the drawer, asked me could I open the
10 safe. And after that, he ran, left out the door.
11 And that's a quick summary of what happened.

12 **Q** Do you recall what that gun looked like?

13 **A** Yes. It was silver, a small handgun or
14 revolver, silver with a black handle.

15 **Q** About what time did this happen?

16 **A** It was, I want to say maybe after 2:30, maybe
17 2:40 to be exactly.

18 **Q** What were you doing when he first came into the
19 store?

20 **A** I was cleaning the shelves, kneeling down.

21 **Q** So you were kind of bent down; is that fair to
22 say?

23 **A** Yes, sir.

24 **Q** And then he came up behind you with a gun?

25 **A** Yes, sir.

1 **Q** What happened next?

2 **A** He told me to get up. And -- from what I can
3 remember, he told me to get up and open the drawer
4 and give him the money.

5 **Q** So he walked you from the shelves over to the
6 cash register?

7 **A** That's correct, yes, sir.

8 **Q** Then you opened the cash register and gave him
9 the money?

10 **A** Yes, sir. I did as he complied.

11 **Q** Tell us a little bit about the money that you
12 gave him and kind of how the cash register works
13 late at night at the gas station. Can you please
14 share that with us?

15 **A** Yes. Basically, when we're the cashiers at
16 Circle K, you have to -- you have to drop all your
17 20s, 10s and 50s and 100s. So we're not allowed to
18 have anything over, at that time, was \$50. We're
19 not allowed to have anything over that, so we make
20 our drops regularly. And that's about how it works
21 as far as the money -- dropping our money. We keep
22 nothing but ones and fives in the drawer, that's
23 preferable for management.

24 **Q** One and five-dollar bills?

25 **A** Yes, sir.

1 **Q** So you keep low bills in that cash register at
2 night?

3 **A** Yes, sir.

4 **Q** Is that what you gave the defendant in this
5 case?

6 **A** Yes, sir. Yes, sir.

7 **Q** One and five-dollar bills to the best of your
8 recollection?

9 **A** That's the best of my recollection, yes, sir.

10 **Q** And that was the man with the silver revolver?

11 **A** Yes, sir.

12 **Q** Now, did you get a good look at the gun?

13 **A** Yes.

14 **Q** Did you get a good look at the person who
15 robbed you?

16 **A** Yes. Besides from him having the mask on, I
17 got a good look at everything else.

18 **Q** Tell us what you remember he looked like.

19 **A** Well, he was -- he had long curly hair -- well,
20 an afro, curly afro, brown skin. He had a scar on
21 his back. He had a tattoo on his arm, something
22 like stars, I'm assuming. It's kind of foggy about
23 the tattoos, but I remember stars on his arm. He
24 had on shorts, no shirt. That's the best
25 description I can give you right now.

1 **Q** Now, these star tattoos, what body part was
2 that on; do you recall?

3 **A** It was on one of his arms.

4 **Q** But the main thing you were focused on was the
5 gun?

6 **A** Yes, the gun that was in my face at the time.

7 **Q** And you testified that the robber was
8 shirtless?

9 **A** Yes.

10 **Q** And that he had a scar on his shoulder?

11 **A** Yes.

12 **Q** As well as possibly additional tattoos?

13 **A** Yes.

14 **Q** But you can't say, specifically, what those
15 tattoos are, you're just testifying that he did have
16 tattoos?

17 **A** Yes.

18 **Q** Did you know who this person was who had the
19 gun at you?

20 **A** Initially, I didn't, but maybe after a few
21 minutes, I got -- after I gathered my bearings, I
22 realized who it was fairly quickly.

23 **Q** Who was it?

24 **A** Demarcus.

25 **Q** Is he seated with us in the courtroom today?

1 **A** Yes, sir.

2 **Q** Can you point him out to us? Describe what
3 he's wearing.

4 **A** He's over there, the defendant, with the gray
5 shirt and a black tie.

6 **Q** So you're testifying that you actually knew
7 Demarcus before the night that he robbed you?

8 **A** Yes.

9 **Q** All right. Tell us about how you knew him,
10 please.

11 **A** Well, Demarcus is one of the first people I met
12 when I -- when I came around and I met my fiancée,
13 he was one of the first people I met, so -- and,
14 also, I know him from the neighborhood and from the
15 store. He was a regular in the store.

16 **Q** So he's in and out of that store a lot?

17 **A** Yes.

18 **Q** And you testified that you all live in the
19 neighborhood?

20 **A** Yes. He stay -- his mother and he stay right
21 around the corner from me.

22 **Q** At that time, were you walking to work every
23 day?

24 **A** Yes.

25 **Q** Did you see Demarcus on your walks?

1 **A** Yes. He -- him and a few other guys used to
2 play football right in the yard, you know, on my way
3 to work right behind the store, two houses behind
4 the store. So, yeah, I mean, that's just one time.
5 I've seen him several -- countless times.

6 **Q** Tell me about what did you see when he was
7 playing football.

8 **A** When guys out there playing football, you know,
9 they have on shirts or no shirts and they'd be, you
10 know, playing tackle or whatever.

11 **Q** So you're kind of familiar with Demarcus'
12 build, that sort of thing?

13 **A** Yeah, that's how I noticed the scar on his --
14 from, you know, him playing football in the front
15 yard with the guys.

16 **Q** And he was the one that robbed you that night?

17 **A** Yes.

18 **Q** Mr. Houston, at the Circle K Gas Station, do
19 you all have surveillance video?

20 **A** Yes.

21 **Q** Was it in proper working order, to your
22 knowledge, that night?

23 **A** Yes, it was.

24 **Q** Have you had the opportunity to review the
25 video of what happened?

1 **A** Yes, I have.

2 **Q** Mr. Houston --

3 **MR. FENDER:** Judge, may I approach the witness?

4 **THE COURT:** Yes, sir.

5 BY MR. FENDER:

6 **Q** Have you had an opportunity to review this
7 disk?

8 **A** Yes, I have.

9 **Q** Is this the surveillance video from that night?

10 **A** Yes.

11 **Q** And you're testifying that this is a fair and
12 accurate depiction?

13 **A** Yes.

14 **Q** Is that your initials on there as well?

15 **A** Yes.

16 **MR. FENDER:** Judge, at this time, I'd enter
17 State's Exhibit 1, the surveillance video, ask to
18 publish it to the jurors.

19 **MS. ZMROCZEK:** Your Honor, I didn't hear what
20 number he said.

21 **THE COURT:** Number 1.

22 **MS. ZMROCZEK:** Sure.

23 **THE COURT:** State's Exhibit Number 1 admitted
24 without objection.

25 (State's Exhibit Number 1, video, marked and

1 admitted into evidence.)

2 **MS. ZMROCZEK:** Your Honor, may I get up just so
3 I can see?

4 **THE COURT:** Sure.

5 **MS. ZMROCZEK:** Thank you.

6 **THE COURT:** Y'all got it set up to play.

7 **INVESTIGATOR QUATTLEBAUM:** It's going to take
8 just a minute, Your Honor.

9 **THE COURT:** Okay. That's fine.

10 (Pause.)

11 (Whereupon, State's Exhibit Number 1 was
12 played for the jury. During the playing of the
13 video, the following occurred.)

14 BY MR. FENDER:

15 **Q** This is for clarification, Mr. Houston, there's
16 multiple cameras inside that store, correct?

17 **A** That's true.

18 **Q** What we just saw was a video of the cash
19 register portion?

20 **A** (Witness nodded head.)

21 **Q** Can you see the TV, sir?

22 **MR. FENDER:** Judge, may he step around?

23 **THE COURT:** You may. Keep your voice up if
24 they ask you questions. Okay?

25 **THE WITNESS:** All right.

1 (Witness leaves the witness stand.)

2 BY MR. FENDER:

3 Q Mr. Houston, the video that's on the screen
4 now, does that show where the soda is, the candy and
5 that kind of stuff is?

6 A Yes. The front door, right there at the
7 entrance.

8 Q Who's in the frame right now?

9 A That's me in the frame right now.

10 Q What are you doing?

11 A Cleaning and stocking the shelves and doing the
12 front face for the day shift.

13 Q Okay. And just for clarification, you know, we
14 saw one video and now we're seeing the same video of
15 the same stuff but from a different angle; is that
16 fair to say?

17 A I believe so.

18 Q Thank you.

19 A (Witness resumes the witness stand.)

20 Q So, for clarification, Mr. Houston, you're over
21 there working on those shelves, the defendant comes
22 up behind you with a gun and then that's the two of
23 you walking over to the cash register?

24 A Yes.

25 Q And that's where he demanded the cash?

1 **A** Yes.

2 **Q** Did he take anything else other than the one
3 and five-dollar bills that you testified to?

4 **A** Yeah. I seem to remember him grabbing a case
5 of cigarettes and maybe grabbed some cigars off the
6 shelf.

7 **Q** And his face was covered; is that correct?

8 **A** Yes, from down here {indicating}, from his nose
9 down.

10 **Q** Could you see his hair?

11 **A** Yes.

12 **Q** What did his hair look like?

13 **A** He had a curly afro.

14 **Q** You reviewed the videos. Have you also had an
15 opportunity to look at the still photos from this
16 video?

17 **A** Yes, I have.

18 **THE COURT:** Get a little closer to that
19 microphone.

20 **THE WITNESS:** Yes, I have.

21 **THE COURT:** Thank you.

22 BY MR. FENDER:

23 **Q** Do they also fairly and accurately depict what
24 happened?

25 **A** They do.

1 **MS. ZMROCZEK:** Your Honor, I think we're going
2 to need to approach about some of these.

3 **THE COURT:** Okay.

4 (Whereupon, a bench conference was held off
5 the record, in the presence of the jury, but out of
6 the hearing of the jury.)

7 (State's Exhibit Numbers 2 through 11,
8 photographs, marked for identification.)

9 BY MR. FENDER:

10 **Q** Mr. Houston, I'm going to show you, at this
11 time, what's been marked for identification purposes
12 as State's 2 through 11. Can you please review
13 these photographs?

14 **A** Yes, sir.

15 **Q** Are these fair and accurate descriptions of
16 what happened that day?

17 **A** Yes.

18 **Q** Mr. Houston, at this time, I'm going to direct
19 your attention to State's Exhibit 2, and State's
20 Exhibit 2 only. Can you please tell us what's going
21 on in that picture?

22 **A** That picture, he's ordering me to get the money
23 out of the drawer, so I'm putting my code in and
24 taking the money out of the drawer.

25 **MS. ZMROCZEK:** I'm sorry, Your Honor, I can't

1 hear.

2 **THE WITNESS:** He's ordering me to get money out
3 of the drawer, so I'm putting my code in and doing
4 as he ordered.

5 **THE COURT:** Do you want to move to admit that
6 one?

7 **MR. FENDER:** Judge, I'd move to publish this.
8 This is as we discussed at the bench.

9 **THE COURT:** Any objection?

10 **MS. ZMROCZEK:** Not to Number 2.

11 **THE COURT:** All right. State's Exhibit Number
12 2 admitted without objection.

13 **MR. FENDER:** This and this alone at this time,
14 Judge.

15 (State's Exhibit Number 2, photograph,
16 admitted into evidence.)

17 BY MR. FENDER:

18 **Q** Mr. Houston, whose hands are those there?

19 **A** Do I need -- can I get up?

20 **THE COURT:** You can step down. Keep your voice
21 up, please.

22 **A** (Witness leaves the witness stand.)

23 Whose hands are those right there?

24 **Q** Yes, sir.

25 **A** Those seem to be Demarcus' hands.

1 **Q** And he was pointing the gun at you?

2 **A** Yes, that's correct.

3 **Q** Do you recall what that gun looked like?

4 **A** Silver with a black handle.

5 **Q** Did he also have tattoos?

6 **A** I remember some stars on one of his arms. I'm
7 not sure which arm it was.

8 **Q** So he had star tattoos on his arm and he had a
9 gun pointed at you?

10 **A** Yes.

11 (Witness resumes the witness stand.)

12 **Q** So, Mr. Houston, after you'd been robbed, we
13 saw on the video that you called 9-1-1; is that
14 correct?

15 **A** That's correct.

16 **Q** Do you recall about how much time it took
17 before the police got there?

18 **A** I don't. It seemed like forever, maybe 20
19 minutes -- 10 or 15, 20 minutes. I don't recall.

20 **Q** What happened once the police got there?

21 **A** Once the police got there, they asked me --
22 when they got there, they asked me was I okay with,
23 you know, what happened. And I told them that the
24 defendant, Demarcus, was the one that robbed me
25 because I had -- I gained my senses and I was able

1 to evaluate what happened at that time, so I told
2 them exactly what happened.

3 **Q** How did you know it was Demarcus?

4 **A** From the tattoos -- well, the scar on his --
5 mainly, from the scar on his shoulder and the
6 tattoos and, you know, his body build, you know.

7 **Q** So he had -- are you saying that he has a
8 unique body build?

9 **A** I guess I'm somewhat familiar with it because,
10 like I said, I used to see him when I walked to the
11 store, you know, playing football. So, you know,
12 yes, from my perspective, yes.

13 **Q** So when you're walking back and forth to work
14 every day, a lot of times you saw the defendant
15 shirtless?

16 **A** Sometimes, sometimes.

17 **Q** Out there playing football, basketball?

18 **A** Yes.

19 **Q** So you have a good idea of what he looks like
20 without his shirt on because of the scar and because
21 of the tattoos?

22 **A** Yes.

23 **Q** And this is the man who robbed you that night?

24 **A** Yes.

25 **MR. FENDER:** For the record, Your Honor, at

1 this time, the State has entered State's Exhibit 1
2 and State's Exhibit 2. This witness has, for
3 identification purposes, testified in regards to
4 State's Exhibit 3 through 11. I've got no further
5 questions for him at this time, but I would ask
6 leave of the Court to recall him, if needed.

7 **THE COURT:** All right.

8 Ms. Zmroczek, cross-examination?

9 **MS. ZMROCZEK:** Thank you, Your Honor.

10 CROSS-EXAMINATION

11 BY MS. ZMROCZEK:

12 **Q** Mr. Houston?

13 **A** Yes, ma'am.

14 **Q** Do you remember talking to Earl Ballentine this
15 morning?

16 **A** I do not.

17 **Q** You don't remember that?

18 **A** This morning?

19 **Q** Yeah.

20 **A** No, I do not.

21 **Q** Talked to him last night?

22 **A** Yes, I did.

23 **Q** Told him last night you didn't want to come
24 testify, right?

25 **A** That's not true.

1 **Q** Okay. Tell this jury who Brittany Cyrus is.

2 **A** That's my fiancée.

3 **Q** You and Brittany have a child together?

4 **A** That's correct.

5 **Q** You and Brittany live together?

6 **A** That's correct.

7 **Q** Brittany is a sister of Derrick?

8 **A** That's correct.

9 **Q** Derrick and Demarcus used to be friends?

10 **A** That's correct.

11 **Q** And when I say used to be friends, we're
12 talking the closest of friends, right?

13 **A** Yes, ma'am.

14 **Q** Everything they did together?

15 **A** Yes, ma'am.

16 **Q** And they had a fallen out?

17 **A** Yes, ma'am.

18 **Q** Over a female?

19 **A** I'm not sure why they fell out.

20 **Q** You're not sure why they fell out?

21 **A** No, ma'am.

22 **Q** But you picked a side, right?

23 **A** That's not correct.

24 **Q** Okay. You don't have a loyalty to the Cyruses?

25 **A** I don't know how my loyalty would play in this,

1 but with family, yes, I have loyalty to the family,
2 but this had nothing to do with loyalty.

3 Q Okay. I want to talk about a few different
4 things that you testified to. Okay? So I'll try to
5 keep it clear. If you don't understand my question,
6 let me know. Okay?

7 A Yes, ma'am.

8 Q All right. How old are you?

9 A I'm 34.

10 Q How far did you go in school?

11 A I finished the 11th grade. And I got my GED at
12 DeKalb Technical.

13 Q Okay. Have any eye problems?

14 A I do not.

15 Q Good vision?

16 A From my point of view, yes, ma'am.

17 Q What do you mean from your point of view?

18 A I'm not an eye doctor, so -- but I can see
19 clearly.

20 Q Okay. You can see things in front of you?

21 A Yes, ma'am.

22 Q You can't see things behind you?

23 A No, ma'am.

24 Q Okay. You testified that -- that the person
25 that robbed you, and I believe you said put a gun to

1 your face, right?

2 **A** To my head.

3 **Q** To your head.

4 **A** Yes, ma'am.

5 **Q** Which part of your head?

6 **A** To the back of my head.

7 **Q** Okay. You didn't see the gun then?

8 **A** Not at that moment, no, ma'am, that's correct.

9 **Q** Okay. And they had a curly afro. Is that what
10 you said?

11 **A** Yes. I saw the hair through the edges of
12 whatever he had on, yes.

13 **Q** You saw the hair through the edges of what he
14 had on?

15 **A** Yes. And when he leaned down, you could see --
16 when he would lean down or when I left the cash
17 register, you could see the back of his head and
18 it's kind of curly afro.

19 **Q** Okay. And how far down his back did it go?

20 **A** I wouldn't say it went on his back. I would
21 say it was on his neck.

22 **Q** On his neck?

23 **A** Yes.

24 **Q** Neck wasn't covered?

25 **A** No, ma'am. His head was covered, though.

1 Q Completely covered?

2 A Yes, ma'am, almost completely covered.

3 Q Okay. What part wasn't covered?

4 A His face, a little bit of his hair right there
5 {indicating}, and right there at the back of his
6 neck.

7 Q Okay. And this shoulder scar --

8 A Yes, ma'am.

9 Q -- was it on the front of his shoulder, side of
10 his shoulder or the back of his shoulder?

11 A I seem to remember it somewhere towards his
12 back. I don't recall specifically where it was.

13 Q Right or left?

14 A I don't recall specifically where it was.

15 Q How long?

16 A I don't know the -- I couldn't give you that.

17 Q Okay. This was the distinctive scar --

18 A Yes.

19 Q -- that you relied upon to identify Demarcus?

20 A It was almost a keloid. You know, you could
21 tell it was an old scar. I have one on my arm like
22 that somewhere. So, yes, I'm familiar with those
23 kind of --

24 Q You have one on your arm?

25 A Yes. It was somewhat like this scar, but it

1 was much bigger and identifiable.

2 Q Okay. So it's bigger than yours?

3 A Yes, ma'am.

4 Q You said tattoos?

5 A Yes. I vaguely remember the star. I remember
6 the stars, but I don't remember the entire tattoo,
7 but it was more than the initial stars that I -- but
8 I can only remember what I told you.

9 Q Which arm?

10 A I can't recall.

11 Q Top of the arm -- and by top, I mean where the
12 back of the hand is -- or inside of the arm?

13 A To the best of my knowledge, I just know I saw
14 the stars. I don't even remember -- a lot of things
15 are foggy around that time, so my -- it was over a
16 year ago, so a lot of stuff is kind of foggy, and I
17 want to be completely honest. So I just remember
18 the stars, I can remember -- and the scar. I can
19 tell you that I remember that from my memory.

20 Q You remember that from your memory?

21 A Yes, vaguely the stars because I wasn't able to
22 remember the entire tattoo, but I know I remember
23 the star.

24 Q And when did you see that?

25 A When he took me to the cash register and he had

1 a gun pointed to my face.

2 Q Okay. So it was in his gun hand?

3 A I don't recall. I just recall that I remember
4 seeing the stars on his arm.

5 Q Okay. And you said, Took me to the cash
6 register, gun pointed to my face, correct?

7 A To my head.

8 Q To your head?

9 A Yes.

10 Q Front of your head or back of your head?

11 A I know he had the gun pointed at me, maybe it
12 was -- at some points, it was maybe to the back of
13 my head, some points it was maybe to the front of my
14 face. At different points, the gun was to my front
15 or to the back of my --

16 Q When the gun was to your front, what were you
17 focused on?

18 A Living.

19 Q Let me rephrase that. It was a poorly asked
20 question. When I say focused, I mean with your
21 eyes, what were you looking at?

22 A Primarily, the gun.

23 Q Okay. So I don't have a gun, okay, but I'm
24 going to make my hand like a gun. All right? So is
25 that fair to say --

1 **MS. ZMROCZEK:** May I approach, Your Honor?

2 **Q** All right. So was this person taller than you
3 or shorter than you?

4 **A** Height, the only thing I could remember at the
5 time that I was getting robbed, I wasn't equating
6 height. I really didn't pay attention to the -- I
7 really couldn't even tell you what gun he had in the
8 hand even though I saw the video, because, you know,
9 a lot of stuff is foggy. I just remember specific
10 things that helped me identify him when the police
11 got there.

12 **Q** And what were those specific things? That's
13 what I'm asking you.

14 **A** The tattoos, I remember the star. I don't
15 remember the entire tattoo; I remember the star.
16 And I can remember the scar on his back. And I can
17 remember the body build. And I can remember seeing
18 a little bit of his hair from the back of his neck
19 and on the sides like I told you.

20 **Q** How tall are you?

21 **A** Five eleven, approximately.

22 **Q** Was he taller or shorter?

23 **A** I cannot remember, ma'am, because he got me
24 from the back, and I didn't have a chance to -- he
25 wasn't standing right next to me. He had a gun to

1 my head and he was standing at a distance, so I
2 couldn't equate -- again, I can't equate the height.
3 I couldn't tell you whether he was taller or
4 shorter.

5 Q Okay. When the gun's pointed at your face, at
6 your front --

7 A Yes.

8 Q -- and you're looking at the gun, right?

9 A Yes.

10 Q Okay. And you're looking at the hand and arm
11 that's holding the gun, right?

12 A No. I was just looking at the gun and I'm
13 looking at the actual body, so the gun and the body.
14 I'm not paying specifics to the hand.

15 Q Okay. When -- we watched the video?

16 A Yes.

17 Q And the first person comes in?

18 A Yes.

19 Q And -- let's talk about the store for a minute.
20 Actually, let's back up. Okay? I want to talk
21 about the Circle K.

22 A Okay.

23 Q Okay. There were lots of cameras?

24 A That's correct.

25 Q How many inside, approximately? How many did

1 you watch? Let me ask that.

2 **A** How many cameras did I watch? I didn't
3 watch -- I didn't watch the video till sometime
4 after it happened. So that night, I didn't watch
5 any cameras. And at the time I watched the video, I
6 couldn't tell you how many cameras I watched, but I
7 know I watched the video or whatever, so.

8 **Q** So the camera, the first one that we saw, was
9 facing the cash register. Are there two registers?

10 **A** Yes, there were.

11 **Q** Okay. And we're going to help the jury here.
12 So where this TV is, okay, that's where -- let's say
13 that's where the cash register was that you were at,
14 correct?

15 **A** Yes, ma'am.

16 **Q** And that is -- backs up to a window, right?

17 **A** That's correct.

18 **Q** That looks out into the parking lot?

19 **A** Yes, ma'am.

20 **Q** The Circle K is 24 hours?

21 **A** Yes, ma'am.

22 **Q** And people come and get gas?

23 **A** Yes, ma'am.

24 **Q** And there are three -- at least three cameras
25 outside, correct?

1 **A** No, there are two.

2 **Q** Two cameras?

3 **A** Yes.

4 **Q** In working order?

5 **A** Yes, ma'am.

6 **Q** That night in working order?

7 **A** From the best of my knowledge, I'm assuming.

8 **Q** Okay. And, actually, you have a little screen

9 that -- on the inside that you can see the cameras

10 outside?

11 **A** In the office, yes.

12 **Q** In the office?

13 **A** Yes.

14 **Q** Okay. There is a door that you had your back

15 to, I believe, right?

16 **A** That's correct.

17 **Q** Okay. So you had your back to the door. Is

18 there another door or is that the only entrance and

19 exit?

20 **A** That's the only entrance and exit.

21 **Q** So two -- the video you watched and

22 authenticated, correct?

23 **A** Correct.

24 **Q** The time stamps are accurate?

25 **A** Correct.

1 **Q** Haven't been changed?

2 **A** To the best of my knowledge.

3 **Q** So if the time stamp says 2:39 somebody walks
4 in, you would agree with 2:39?

5 **A** I would be compelled to agree, yes.

6 **Q** And you turned around and greeted them?

7 **A** Yes.

8 **Q** And did you know who that person was?

9 **A** Yes.

10 **Q** Who is that person?

11 **A** That was Terrell.

12 **Q** Terrell?

13 **A** Lockett.

14 **Q** And you told the police that that night?

15 **A** I don't recall what I told the police about
16 Terrell. He wasn't the focus of anything. I didn't
17 even know he was supposedly a part of this, so I
18 didn't even -- he wasn't something I talked about
19 until they told me they saw him waving at Demarcus,
20 telling him to come on.

21 **Q** So they told you that?

22 **A** Yes, my manager as he viewed the tape the next
23 day.

24 **Q** So you didn't see that with your own eyes?

25 **A** Until I viewed the tape. Yes, I did see it --

1 no, I didn't see it at that moment. When I viewed
2 the tape, I saw it.

3 Q Okay. So we have these cameras, and you
4 identified yourself -- I'm going to hand you State's
5 Exhibit 2.

6 A Okay.

7 Q Which one are you?

8 A I'm at the cash register in the black shirt.

9 Q I have my little green laser. Am I accurately
10 pointing to you?

11 A A little bit farther. Yes, ma'am, that's
12 accurate.

13 Q A little bit further?

14 A Yes, ma'am.

15 Q So you were all the way up in the corner?

16 A That's correct.

17 Q Okay. And are those your hands?

18 A Yes, ma'am, those are my hands.

19 Q Up like this {indicating}?

20 A Actually, they're on the cash register, putting
21 my numbers in. As far as I can recall by that
22 picture, I'm putting -- they're not up.

23 Q Okay. And you were putting money where?

24 A I was putting my code into the computer, trying
25 to get the drawer open.

1 **Q** Okay. And you never left from that spot?

2 **A** That's not correct.

3 **Q** Okay. When did you leave from that spot?

4 **A** Sometime after I called 9-1-1.

5 **Q** So let's talk about that call to 9-1-1. Okay?

6 **A** Okay.

7 **Q** You called 9-1-1 around 2:42?

8 **A** I assume, yes.

9 **Q** Right when they left?

10 **A** Yes.

11 **Q** Now, you watched them walk out?

12 **A** No, I didn't watch them walk out. I watched
13 somebody -- the only thing I remember watching was
14 somebody running around -- the defendant running
15 around in the parking lot two or three times
16 dropping money, and that's when I looked out the
17 window.

18 **Q** You saw the person running around the parking
19 lot?

20 **A** Yes. He ran back and forth. He was trying to
21 figure out which way do he go, which way was
22 feasible for him to run.

23 **Q** You saw that before you called 9-1-1 or after?

24 **A** I may have had the phone in my hand in the
25 process of dialing 9-1-1, but I was watching him

1 while he was doing that.

2 Q And were you watching him on camera or were you
3 looking out the window?

4 A I was looking out the window at him.

5 Q So here's the front doors, right?

6 A Yes.

7 Q Let's say, so it's easier for you, here are the
8 front doors. This is the parking lot.

9 A Correct.

10 Q Okay. Where was -- where did you see this
11 person running around?

12 A He ran from -- well, he ran from the pump one
13 to halfway past the other pump that's directly on
14 the other side of pump one, which would be three or
15 four, the middle pump.

16 Q So when he ran, this person, he ran straight
17 out or to the right or to the left?

18 A He initially ran straight out. Then he started
19 running right to left, and he did that two or three
20 times. Then he finally started to run towards Pecan
21 Road.

22 Q So Pecan Road, is that to the right or to the
23 left?

24 A Depending on which way -- from my cash
25 register, where I was standing, it would have been

1 to the left, going towards the door this way
2 {indicating}.

3 Q And you saw that from your cash register?

4 A Well, I saw that from the window by the cash
5 register, yes, ma'am; the window at the cash
6 register, yes, ma'am. I didn't see him actually
7 running around the building, but I know he went that
8 way. And I got on the phone to call the
9 authorities.

10 Q You didn't see it, but you know it?

11 A Well, yes, I know he didn't run this way
12 because I was looking out the window the whole time.
13 So he had to either run down the highway or around
14 the building towards Pecan Road.

15 Q The video -- the second video that we watched,
16 remember that one?

17 A Yes, ma'am.

18 Q Do you recall going to the floor?

19 A I recall being kneeling there, yes, working
20 when he came in.

21 Q No, no. At the end of the video -- we can
22 watch it again. You want to watch it again?

23 A That's fine.

24 THE WITNESS: Can I get up, Your Honor?

25 BY MS. ZMROCZEK:

1 **Q** Absolutely. Just make sure you keep your voice
2 up. Okay?

3 **A** Yes, ma'am.

4 (Witness leaves the witness stand.)

5 (Whereupon, State's Exhibit Number 1 was
6 played.)

7 **Q** Am I accurately pointing you out?

8 **A** Yes, ma'am.

9 **Q** That's you right there?

10 **A** Yes, ma'am.

11 **Q** Can you read the time on that for me?

12 **A** The time stamp says 40 -- 2:42:58 A.M.

13 **Q** 2:42:58 A.M.?

14 **A** Yes, ma'am.

15 **Q** That's you on the ground?

16 **A** That's correct.

17 **Q** Okay. Have a seat.

18 **A** (Witness resumes the witness stand.)

19 **Q** You called 9-1-1?

20 **A** Yes, ma'am.

21 **Q** You told them you'd been robbed?

22 **A** Yes, ma'am.

23 **Q** They asked you for a description?

24 **A** Yes, ma'am.

25 **Q** You told them someone was five nine to six

1 foot?

2 **A** Yes, ma'am.

3 **Q** You said their face had a cover?

4 **A** That's correct.

5 **Q** You said they had on shorts?

6 **A** Yes, ma'am.

7 **Q** And they had a gun?

8 **A** Yes, ma'am.

9 **Q** You said, in fact, he had some type of scarf
10 over his head?

11 **A** Yes, ma'am. He had a scarf on his -- I don't
12 know if I said head, but, yes, he had a scarf on his
13 head and his face.

14 **Q** A scarf on his head and his face?

15 **A** Yes, ma'am.

16 **Q** The woman that answered the 9-1-1 call, the
17 dispatcher.

18 **A** Yes, ma'am.

19 **Q** Stayed on the phone with you?

20 **A** Yes, ma'am.

21 **Q** Spoke with you frequently?

22 **A** From what I can remember, yes, ma'am.

23 **Q** Asked you if you had locked the door?

24 **A** Yes, ma'am.

25 **Q** You told her you were afraid to go lock the

1 door or you didn't know how to lock the door; is
2 that right?

3 **A** I didn't know where the keys were. I was not
4 -- but I wasn't familiar with everything, so I
5 didn't know where the keys were, yes, ma'am, that's
6 correct.

7 **Q** And you had been at the Circle K for one year?

8 **A** No, ma'am. I don't recall how long I was
9 there, maybe four months, four to six months at that
10 time.

11 **Q** Four to six months?

12 **A** At that time, yes, ma'am.

13 **Q** You actually lived a half a mile from the
14 Circle K?

15 **A** Yes, ma'am.

16 **Q** You would walk to work?

17 **A** Yes, ma'am.

18 **Q** Down Pecan Grove Road?

19 **A** Yes, ma'am.

20 **Q** Take you 11 minutes or so?

21 **A** Yes, ma'am, roughly.

22 **Q** And that's where you saw Demarcus every day or
23 frequently?

24 **A** Yes, ma'am, sometimes. I wouldn't say
25 frequently, but I seen him a few times over there

1 playing ball.

2 Q Okay. Define a few times for me.

3 A Maybe like six, seven.

4 Q Six, seven times in four to six months?

5 A We'll say before -- I'm equating everything to
6 maybe a few weeks or the time that I can remember
7 just before the robbery, but I've seen him over
8 there way more than that. But going to the point to
9 where him with his shirt off playing ball, yes,
10 maybe like six or seven times, yes, ma'am.

11 Q Football or basketball?

12 A Football.

13 Q Not basketball?

14 A Not basketball.

15 Q It was football?

16 A Yes, ma'am.

17 Q Who was he playing?

18 A A guy that stayed there at the house, Sammy
19 Davis. I don't recall the other individuals.

20 Q Okay. And you saw this as you would walk to
21 work.

22 A Yes, ma'am, a few times.

23 Q You worked third shift?

24 A Yes, sometimes.

25 Q That began at 10:00 P.M.?

1 **A** Yes, ma'am, but I was also on other shifts
2 periodically sometimes that would have me come in
3 and do backup and dump the trash. So it wasn't like
4 -- my job was a little bit more than just third
5 shift, yes.

6 **Q** Okay. You told the dispatcher you needed an
7 ambulance?

8 **A** That's correct.

9 **Q** You didn't have any physical injuries?

10 **A** No.

11 **Q** The dispatcher kept you on the phone?

12 **A** Yes.

13 **Q** Asked if you'd seen them -- a little bit -- a
14 few minutes later, she asked, Have you seen him,
15 right?

16 **A** I don't recall.

17 **Q** Which officer did you speak with when you --
18 when they got there?

19 **A** I don't recall.

20 **Q** How many officers did you speak with?

21 **A** I spoke with just about every officer that came
22 out there that night, so I don't recall how many
23 officers came out there, maybe it was more than two.

24 **Q** Okay. And you told them right away Demarcus
25 Robinson?

1 **A** Yes.

2 **Q** And do you remember meeting with, at the time,
3 Chief Raffield?

4 **A** Yes.

5 **Q** Met with you that morning?

6 **A** He was one of the officers that showed up
7 there, yes, ma'am.

8 **Q** Asked you to write a statement?

9 **A** Yes, ma'am.

10 **Q** Asked you to put down everything you could
11 remember?

12 **A** Yes, ma'am.

13 **Q** I know that it's been a year.

14 **A** Yes, ma'am.

15 **Q** Things are foggy now?

16 **A** Yes.

17 **Q** Things were not foggy then?

18 **A** I wouldn't go that far. I mean, I had just got
19 robbed at gunpoint, so I was trying -- I knew
20 Demarcus robbed me and I was trying to give Raffield
21 the best information I could, you know, about the
22 situation, yes, ma'am. And, also, the statement
23 that I wrote, it was -- I had to go back and rewrite
24 it because I couldn't -- I could barely write
25 because -- that's because I was going through some

1 type of anxiety attack, that's why I called the
2 ambulance.

3 Q Okay. So you went back and rewrote the
4 statement?

5 A Well, I had to go back and make spelling
6 corrections, yes, ma'am.

7 Q Okay. When you're making those spelling
8 corrections, you were told to make sure that every
9 important detail was in there, right?

10 A Nobody told me to make sure every important --
11 they told me to write down everything that happened,
12 so, you know, I wrote down everything that I could
13 remember at that time.

14 Q And what you could remember at that time --
15 now, I'm talking about you had a chance to calm
16 yourself down and go back and make changes, right?

17 A Spelling changes, yes, ma'am.

18 Q Well, had something been incorrect because of
19 your anxiety, you would have changed it, right?

20 A I assume so, yes, ma'am.

21 Q Okay. In that statement, you say, An
22 individual grabbed me from behind?

23 A If that's what my statement says, yes.

24 Q Would it refresh your recollection to see your
25 statement?

1 **A** Yes, ma'am, it would.

2 **MS. ZMROCZEK:** Your Honor, may I approach?

3 **THE COURT:** Yes, ma'am.

4 **THE WITNESS:** Yes, ma'am, that's correct.

5 BY MS. ZMROCZEK:

6 **Q** That's your -- accurate?

7 **A** Yes, ma'am, that's my handwriting.

8 **Q** That's your handwriting?

9 **A** Yes, ma'am.

10 **Q** With the corrections?

11 **A** Yes, ma'am.

12 **Q** And what you wrote was true?

13 **A** Yes, ma'am, to the best of my recollection.

14 **Q** Accurate?

15 **A** Yes, ma'am, to the best of my recollection.

16 **Q** And complete?

17 **A** Yes, ma'am.

18 **Q** Tell this jury whose name is in this piece of
19 paper.

20 **A** Whose name is in there?

21 **Q** On what line does it say Demarcus Robinson?

22 **A** I don't know if I put his name in there, but
23 before I wrote that statement, I already had told
24 Mike Raffield and the office -- whichever one of the
25 officers that I spoke to, that I believe it was

1 Demarcus that robbed me at the store. So me
2 neglecting to put his name on the paper, I was just
3 trying to give them a basic overview, so it wasn't
4 me being specific, you know.

5 Q But you were specific about an individual. In
6 fact, you said that three times?

7 A Yes. I wanted to be -- I wanted to be legally
8 correct when I was talking to them.

9 Q Right. You wanted to be legally correct?

10 A Yes.

11 Q And so you called the person individual and
12 suspect?

13 A That's right.

14 Q Okay. You even put in this statement that
15 there was also an individual asking for ice --
16 asking for ice, seen on camera asking him to hurry
17 up?

18 A Yes.

19 Q Okay. And this statement was written on August
20 1st, 2016. So the date of the incident?

21 A That's correct.

22 Q At 4:46 in the morning?

23 A Yes, ma'am, to the best of my knowledge.

24 Q You watched the video by that point?

25 A No, I didn't watch it. Everyone else was

1 watching it in the store around there at that time.

2 Q And you stated that that individual --

3 A The one getting ice?

4 Q -- had been in the store several times before
5 the robbery?

6 A Yes, ma'am. The one getting ice, correct,
7 ma'am.

8 Q Did we see the one getting ice on the video?

9 A Yes, ma'am.

10 Q And you told all of that information that
11 night?

12 A To the best of my knowledge, yes, ma'am.

13 Q Have you spoken with the investigators since
14 that night?

15 A Yes.

16 Q Provided any other statements?

17 A I mean -- yes. Yes, I provided statements to
18 them -- well, other statements pertaining to...

19 Q Handwritten statements?

20 A I don't remember writing any other handwritten
21 statements, but if I did and it's in my handwriting,
22 I don't remember.

23 Q After -- you said you knew Demarcus well?

24 A Yes.

25 Q Where did he live?

1 **A** He stayed -- I don't recall the specific name
2 of the street, but he stayed maybe like just around
3 the corner from me. Yeah, just around the corner
4 from me.

5 **Q** Ever go to his house?

6 **A** No.

7 **Q** Never hung out with him?

8 **A** No, not at his house. He came to my house
9 because him and my brother-in-law, they were
10 friends. So by hanging out, if you mean he came
11 where I was and was he in the vicinity where I was,
12 I guess you can deem that hanging out because he was
13 in the vicinity where I was, but as far as hanging
14 out and going places, no.

15 **Q** Just a few more questions.

16 **A** Okay.

17 **Q** You said vicinity, right?

18 **A** Like, yard or a street or sidewalk, yes.

19 **Q** Okay. So let's talk about when you're walking
20 to work and he's playing football.

21 **A** Yes.

22 **Q** How far apart were you?

23 **A** I mean, they were right on the sidewalk, so --
24 in the yard, so I mean -- and then I stopped and I'd
25 go in the yard and talk, you know, to the guy who

1 stayed there because I also knew him. So maybe
2 sometime we were less than two feet from each other
3 or maybe sometime we were 20 feet from each other.
4 There's no way to just put a measurement on it.

5 **Q** Sometimes two, sometimes 20?

6 **A** Yes, ma'am, that's a rough...

7 **Q** Approximately six times?

8 **A** I wouldn't say approximately with anything. I
9 told you I said roughly. It's an estimate.

10 **Q** Okay. Not more than six?

11 **A** It's an estimate. It could have been.

12 **Q** You knew about the fight with Brittany's
13 brother, Derrick?

14 **A** I do not know about a fight.

15 **Q** You don't know about the friendship breaking
16 up?

17 **A** Yes, I do know they had issues before I was
18 robbed at the store. Yes, I do know they had
19 issues.

20 **Q** How long before?

21 **A** I can't give you a specific.

22 **Q** Not too long before, right?

23 **A** Yeah, it was right around the time I was
24 robbed.

25 **Q** Right around the time?

1 **A** Maybe a day or two, maybe a week. I can't go
2 right to the specific time.

3 **Q** And Derrick, your future brother-in-law, was
4 mad?

5 **A** I don't know how he -- no. As far as his --
6 his mentality on the situation, I tried to, you
7 know, stay out his business, but I know that they
8 have an encount -- a few encounters around that
9 time.

10 **Q** Okay. Last thing I want to talk about is the
11 money drop.

12 **A** Okay.

13 **Q** You did them frequently?

14 **A** Yes.

15 **Q** When was the last time you did a money drop
16 before 2:40 in the morning?

17 **A** I don't remember. I think I had just dropped
18 that -- made that drop. I don't recall, but I made
19 the drop shortly before they came in or whatever.

20 **Q** And that means that you only had, per your
21 rules, only had \$50 in the register?

22 **A** No. At that time, the rules -- the rules
23 changed after that robbery. The rules changed. We
24 weren't supposed to keep anything over 50, but given
25 the fact before they -- before I was robbed in that

1 store, I had a lot of traffic, so I made my drop
2 with my big bills, but I did have a lot of small
3 ones and fives. So my manager told me I had \$110
4 missing out of my drawer that night, so -- and I
5 heard it was 76. So I got 70 from them originally
6 from -- but it was nothing but ones and fives in my
7 drawer.

8 **Q** \$110 in ones and fives?

9 **A** That's what my manager said. I've heard a
10 different number since then, so, yes.

11 **Q** Do they keep paperwork on that?

12 **A** Yes, I assume Circle K does, yes, ma'am.

13 **Q** Did you have to sign any statement for work?

14 **A** I don't know. I may have. I don't recall. I
15 don't recall.

16 **MS. ZMROCZEK:** Beg the Court's indulgence.

17 (Pause.)

18 **Q** I want to be real specific with this football
19 playing area.

20 **A** Yes, ma'am.

21 **Q** What street was it on?

22 **A** Pecan Grove.

23 **Q** It was on Pecan Grove?

24 **A** Yes, ma'am.

25 **Q** And what house number?

1 **A** I don't know the exact house number. It's a
2 white trailer right next to a church that's directly
3 behind the store.

4 **Q** White trailer right next to a church directly
5 behind the store?

6 **A** Yes, ma'am.

7 **Q** Who lived there?

8 **A** A guy by the name of Sammy.

9 **Q** Sammy lived there?

10 **A** Yeah.

11 **Q** And the football was played, you said, on the
12 sidewalk?

13 **A** No. They played close to the sidewalk. It was
14 played in the yard, but sometimes I walked in the
15 yard to talk to them on my way to work or sometimes
16 I just walked straight on the sidewalk, you know.
17 So, I mean, is there a specific -- something
18 specific you wanted me to answer from this question,
19 ma'am?

20 **Q** I just want to make sure that you were clear
21 and honest with the 9-1-1 operator.

22 **A** Yes. I was clear and honest with everything
23 I've said, yes, ma'am.

24 **MS. ZMROCZEK:** Thank you. No further
25 questions.

1 **THE COURT:** Redirect?

2 **MR. FENDER:** Judge, may we approach?

3 **THE COURT:** Yeah.

4 All right. Ladies and gentlemen, let's take a
5 break. Do not discuss your -- do not discuss the
6 case in any way, shape or form, keep an open mind.
7 We'll be back with you in about ten minutes. Do not
8 discuss the case, keep an open mind and retire to
9 your jury room.

10 (The jury retires to the jury room.)

11 (The defendant leaves the courtroom.)

12 **THE COURT:** Get him back in here.

13 You can step down, but you're not allowed to
14 discuss your testimony with anyone, but you can go
15 to the restroom, get a drink of water, whatever you
16 want to. In ten minutes, be seated right there.
17 Okay?

18 **THE WITNESS:** Okay.

19 (The defendant enters the courtroom.)

20 **THE COURT:** Don't take him out again until I
21 take a break. Okay? Got it?

22 All right. Go ahead.

23 **MR. FENDER:** Judge, at this time, I'm going to
24 be asking the defendant to show his tattoos to the
25 jurors concerning State v. Hart.

1 **THE COURT:** Are you going to do a redirect?

2 **MR. FENDER:** I will redirect as well.

3 You know, at this time, Judge, you know, we've
4 laid foundation during our direct in regards to the
5 -- into identification, as well as you've heard a
6 lot on cross about the tattoos. So, you know,
7 again, under State v. Hart, this will be the
8 appropriate time to show --

9 **THE COURT:** You got a copy of that case?

10 **MR. FENDER:** I do.

11 And I can, you know, do redirect --

12 **MS. ZMROCZEK:** I need the cite, too, Your
13 Honor.

14 **MR. FENDER:** -- if you want me to do that
15 before State v. Hart, but we do intend to make that
16 motion.

17 **THE COURT:** All right. Let's take a break. Be
18 back in ten minutes.

19 (Brief Recess.)

20 **THE COURT:** All right. What's your position on
21 State versus Hart, Ms. Zmroczek?

22 **MS. ZMROCZEK:** Your Honor, I couldn't pull it
23 up. I need the cite.

24 **THE COURT:** 304 S.C. 344.

25 What do you want him to display, Mr. Fender?

1 **MR. FENDER:** Judge, I'd like to take his shirt
2 off and show his arms, chest and back area.

3 **THE COURT:** All right.

4 **MS. ZMROCZEK:** Your Honor, there's no reason
5 for him to disrobe. They have photos.

6 **THE COURT:** They have photos of what?

7 **MS. ZMROCZEK:** They have photos of all these
8 tattoos.

9 **THE COURT:** Where are they?

10 **MR. FENDER:** Judge, it's a matter of law.

11 **THE COURT:** Are there photos of him?

12 **MR. FENDER:** There are photos.

13 **THE COURT:** And when were they taken?

14 **MR. FENDER:** Just the night that he was booked
15 in, so they're contemporaneous.

16 **THE COURT:** Okay. All right. Where are those?

17 **MR. FENDER:** I've got them.

18 **THE COURT:** Let me see those.

19 **MR. FENDER:** Judge, if I may, just briefly on
20 the record, you know, again, we take the position
21 that State v. Hart is good law. We have every right
22 to do it. You know, if it helps the trial
23 efficiency-wise, we're fine with entering those as
24 an alternative to that, but, again, that's the
25 State's position.

1 **THE COURT:** What State versus Hart says is, It
2 is well-settled law that the State's exhibition of a
3 defendant's physical characteristics does not
4 implicate his privilege against self-incrimination
5 because such an exhibition is not testimonial,
6 quoting Schmerber versus California, United States
7 Supreme Court, 1966.

8 **MS. ZMROCZEK:** Your Honor, I agree that that's
9 what the case says. If they want to have him
10 disrobe in front of the jury and show all of his
11 tattoos, as long as I get to cross-examine him on
12 that without putting in evidence, then --

13 **THE COURT:** You don't get to cross-examine him
14 on it. The law doesn't say that. If he wants to
15 testify, he can, but that's a different story.

16 **MS. ZMROCZEK:** All right. So, just so they're
17 clear, they're going to have him take his -- stand
18 in front of the jury, take his shirt off and he's
19 not to say a word and they're not going to ask him
20 any questions, correct?

21 **THE COURT:** Right.

22 **MS. ZMROCZEK:** Okay.

23 **MR. FENDER:** Just to make this -- pursuant to
24 the best evidence rule, you know, we're not
25 opposing, if we just want to avoid doing that, just

1 using these photographs, if that's not objected to
2 by the defense.

3 **THE COURT:** Which one do you want?

4 **MS. ZMROCZEK:** Your Honor, he'll take his shirt
5 off.

6 **THE COURT:** Okay. All right. We're not going
7 to do it now. We're right in the middle of
8 somebody's testimony.

9 Okay. Who's the second witness?

10 **MR. FENDER:** Joe West, Your Honor.

11 **THE COURT:** Okay. And is he here?

12 **MR. FENDER:** Yes, sir.

13 **THE COURT:** All right. Let's go and finish
14 this witness, then we'll go into Joe West. And then
15 once we take a break, I'll let him -- he can take
16 his shirt off. He doesn't need to disrobe in front
17 of them. He can take his shirt off and then we can
18 -- he can go back somewhere and redress properly.

19 I'm not going to make him, you know, I'm not
20 going to make him disrobe in front of the jury, but
21 I'll allow him -- pursuant to that case, I will
22 allow them to see him with his shirt off, front and
23 back, but, you know, I'm not going to make him make
24 a spectacle of himself and disrobe and have to put
25 his shirt and pants and all that back on. We'll

1 bring the jury out, let them see it and then take
2 him somewhere else so he can get dressed properly.

3 Okay. Bring them in.

4 (The jury returns to the courtroom.)

5 **THE COURT:** All right. Welcome back. Sorry
6 about the extended break. Our computer systems and
7 the Internet are not communicating with each other
8 very well, so we were trying to get that issue
9 worked on.

10 All right. We're on redirect with Mr. Houston.
11 Does the State have any?

12 **MR. FENDER:** Just very briefly, Your Honor.

13 REDIRECT EXAMINATION

14 BY MR. FENDER:

15 **Q** Mr. Houston, what were your emotions like when
16 this happened?

17 **MS. ZMROCZEK:** Your Honor, I believe that's
18 outside the scope of --

19 **THE COURT:** Overruled.

20 You can answer the question.

21 **THE WITNESS:** When it happened, just like some
22 extreme anxiety. Felt like I was having a heart
23 attack is a good way to explain it.

24 BY MR. FENDER:

25 **Q** Did you ask for an ambulance?

1 **A** Yes, I did.

2 **Q** What do you remember specifically?

3 **A** I just remember, you know, once I gathered my
4 bearings, just shaking really bad and, you know, my
5 chest hurting really bad because of, you know, the
6 situation.

7 **Q** Do you remember a gun?

8 **A** Yes, I do.

9 **Q** Do you remember tattoos?

10 **A** Yes, I do.

11 **Q** Do you remember Demarcus Robinson?

12 **A** Yes, I do.

13 **Q** How many times did you look down at your watch
14 during this robbery?

15 **A** I didn't have a watch. I looked -- I was -- I
16 don't even remember looking at any time. I just --
17 I know I did, you know, call the phone. You know, I
18 know they had the time on the phone, but I don't
19 remember looking any.

20 **Q** But can you give us a general time? Was it
21 sometime between 2:00 and 4:00 A.M.?

22 **A** Yeah. It was -- I'd say it was after 2:40,
23 after 2:40.

24 **Q** Okay. And did you call 9-1-1 immediately?

25 **A** Yes.

1 **Q** And that's what we observed on the video,
2 correct?

3 **A** That's correct.

4 **Q** And how long did it take before they got there?

5 **A** I don't recall the specific time, maybe 10 to
6 15, maybe 20 minutes. I don't know, seemed like
7 forever.

8 **Q** So during this time period or the next hour or
9 so thereafter, did you leave the Circle K?

10 **A** No, I did not.

11 **Q** So you didn't go to Demarcus' house or anything
12 like that?

13 **A** No.

14 **Q** Okay. As a matter of fact, did you tell the
15 police when you said that it was Demarcus
16 Robinson --

17 **MS. ZMROCZEK:** Objection, Your Honor; leading.

18 **THE COURT:** Sustained. Rephrase your question.

19 BY MR. FENDER:

20 **Q** Did you tell the police where Demarcus Robinson
21 was?

22 **A** I don't recall, but I recall suggesting
23 maybe -- he maybe went to his house or so. I don't
24 know. I don't recall.

25 **Q** Is that the direction the robber ran?

1 **A** No, it's not. The direction he ran was kind of
2 towards my house. It was the exact opposite of his
3 house.

4 **Q** Did you see him running around back and forth
5 in the parking lot with no shirt on?

6 **A** With his shirt on?

7 **Q** With his shirt off?

8 **A** Yes. With his shirt off, yes.

9 **Q** And you've also seen him playing football with
10 his shirt off; is that correct?

11 **A** That's correct.

12 **Q** Is he a regular customer?

13 **A** Yes. He frequents the store regularly. Well,
14 he did.

15 **Q** I know you say frequents. It's fair to say
16 that you know of; is that correct?

17 **A** Yes.

18 **Q** Any idea about putting an exact number or
19 quantity on that word frequent?

20 **A** Over 30 times.

21 **Q** So a regular; is that fair to say?

22 **A** Yes.

23 **MR. FENDER:** May I approach the witness, Your
24 Honor?

25 **THE COURT:** You may.

1 BY MR. FENDER:

2 Q Mr. Houston, is this the statement that you
3 were cross-examined on earlier?

4 A Yes.

5 Q All right. What was -- what was crossed out
6 there? Can you make that out through the crossing
7 out?

8 A I was -- that's -- I was stocking. And I
9 wanted to say, And all of a sudden --

10 MS. ZMROCZEK: Your Honor, I'm going -- I
11 didn't hear the question. I don't know if he's
12 trying to get him to read his statement in. I don't
13 think that's --

14 THE COURT: The question is, What was crossed
15 out?

16 THE WITNESS: As far as what I can -- what's
17 legible, the word "and", you know --

18 BY MR. FENDER:

19 Q Just as far as what's crossed out, did you
20 attempt to spell "and all" as one word?

21 A Yes, I did. My hand was doing what it wanted
22 to do.

23 Q And then you crossed it out and you wrote "and
24 all" as two words?

25 A Yes. I wrote it all as two words. And then I

1 crossed it out. And then I also did the same thing
2 with the word manager, as you can see.

3 **Q** You attempted to spell it m-a-n-i-n-g?

4 **A** Yes, sir.

5 **Q** And then you spelled it m-a-n-a-g-e-r?

6 **A** Yes, sir.

7 **Q** And those are the only two crossed out
8 portions?

9 **A** Yes, sir, that's correct.

10 **Q** And that's what she was asking you about
11 earlier?

12 **A** Yes, sir, about the corrections, yes, sir.

13 **Q** And it's true that you did meet with law
14 enforcement several times?

15 **A** That's correct.

16 **Q** Did they ever tell you what to say?

17 **A** No, they did not.

18 **Q** What did they tell you?

19 **A** Basically, they told me to -- they asked me
20 what happened. They told me to be honest, you know,
21 about what happened, be straightforward about what
22 happened, and I was.

23 **Q** Did they tell you to tell the truth?

24 **A** Yes.

25 **MR. FENDER:** Thank you.

1 **THE COURT:** Recross?

2 RE CROSS-EXAMINATION

3 BY MS. ZMROCZEK:

4 **Q** He asked you about seeing this person run
5 around the parking lot?

6 **A** Yes, ma'am.

7 **Q** You told that to 9-1-1?

8 **A** No, ma'am, I don't recall.

9 **Q** They asked you to give you -- they asked for
10 all the details?

11 **A** I just know they asked -- they asked me -- I
12 assume, I don't recall, the 9-1-1 --

13 **Q** They asked if you'd seen him since he left the
14 store?

15 **A** I assume. I don't recall the --

16 **Q** And you said no?

17 **A** If that's what I said at that time, I was being
18 a hundred percent truthful.

19 **Q** You were a hundred percent truthful?

20 **A** Yes, ma'am.

21 **Q** After you left the store, you didn't see him?

22 **A** That's correct.

23 **Q** Okay. And you were a hundred percent truthful
24 in your statement?

25 **A** That's correct.

1 **Q** And not one time in your statement did you list
2 the name Demarcus Robinson?

3 **A** That's correct.

4 **MS. ZMROCZEK:** Thank you.

5 **THE COURT:** All right. You may step down.

6 Thank you very much.

7 **MR. FENDER:** Judge, just briefly, I'll recross.

8 **THE COURT:** No. Call your next witness.

9 **MR. FENDER:** State calls Joe West.

10 JOSEPH WEST,

11 having been duly sworn, testified as follows:

12 **THE COURT:** State your full name.

13 **THE WITNESS:** Joseph West.

14 DIRECT EXAMINATION

15 BY MR. FENDER:

16 **Q** Mr. West, can you briefly tell the jurors who
17 you work for and what you do?

18 **A** I'm a SLED agent, which is commonly called the
19 South Carolina Law Enforcement Division. I've been
20 there since 1991. I'm assigned to narcotics. And
21 within narcotics, you have a separate division
22 called tech services. And within that division, we
23 do video forensics.

24 **Q** Did you have the opportunity to review a video
25 from the Circle K in Ridge Spring, South Carolina?

1 **A** I did.

2 **Q** Can you please review these items for us?

3 **A** Yes, sir.

4 **Q** Are you familiar with these items?

5 **A** Yes, sir.

6 **Q** Can you tell us about that, please?

7 **A** So these would be photographs that we pull from
8 video images that was obtained from the store.

9 Often agencies will bring in a video --

10 **MS. ZMROCZEK:** Your Honor, I'm sorry. I can't
11 hear.

12 **THE COURT:** This air conditioning unit is like
13 the death of all noise in here. So I'm fine with
14 you turning yourself to the jury, that's fine, just
15 make sure you're talking into the microphone so we
16 can all hear you, Agent West.

17 **THE WITNESS:** Yes, sir.

18 **THE COURT:** Thank you very much.

19 **THE WITNESS:** So, typically, agencies, they
20 bring in a video from a store, a crime scene or
21 somebody's house, and it's a video like we see on
22 TV. And part of a job in tech services is to pull a
23 screen capture from portions of the video that may
24 be relevant that show an incident or an action that
25 occurred during a crime.

1 BY MR. FENDER:

2 Q And what, specifically, did you do with these
3 items?

4 A So, essentially, when we pull the video or we
5 pull the pictures from the video, we will save them
6 as a digital image file, typically a bitmap file,
7 which is something that we see in computers. It'll
8 be saved onto a CD-ROM or a DVD-ROM disk, and then
9 we can print those out as we see here in court.

10 Q Essentially, are you looking for evidence and
11 other defining characteristics?

12 A Yes, sir.

13 MR. FENDER: Judge, at this time, I'd enter
14 these items into evidence and seek to publish them
15 to the jury.

16 THE COURT: All right. Ms. Zmroczek?

17 MS. ZMROCZEK: Without objection.

18 THE COURT: All right. State's Exhibit Numbers
19 3 through 11 admitted without objection.

20 (State's Exhibit Numbers 3 through 11,
21 photographs, admitted into evidence.)

22 BY MR. FENDER:

23 Q Again, is this the item that you testified that
24 you had reviewed?

25 THE COURT: You can get down and look at it on

1 the screen. Just keep your voice up, please.

2 **THE WITNESS:** Yes, sir.

3 (Witness leaves the witness stand.)

4 BY MR. FENDER:

5 **Q** And I'm going to show you now State's Exhibit
6 5, which is in evidence.

7 **A** Yes, sir.

8 **Q** So is it true that there's --

9 **MS. ZMROCZEK:** Objection, Your Honor. May we
10 approach?

11 **THE COURT:** Sure.

12 (Whereupon, a bench conference was held off
13 the record, in the presence of the jury, but out of
14 the hearing of the jury.)

15 **THE COURT:** Overruled.

16 **MR. FENDER:** Judge, may I turn the lights off
17 to fix the glare?

18 **THE COURT:** Sure. I don't know how to do that.
19 I'm sure somebody does.

20 BY MR. FENDER:

21 **Q** What do you see in this picture?

22 **A** So this is one of the pictures we took from the
23 video. And you'll notice there's, like, a
24 discoloration in parts of this picture you see here
25 because we like to put, basically, a circle around

1 what's relevant, so there was a circle on this
2 portion. And this shows a subject behind the
3 counter of the convenience store.

4 **Q** What do you observe on the subject?

5 **A** Well, he appears to be wearing a mask and a
6 head covering. He appears not to have a shirt on.
7 He appears to have something in his left hand and
8 another object in his right hand.

9 **Q** Do you observe any tattoos or distinguishing
10 features?

11 **A** You can see some coloration on the skin. In
12 these pictures, you really can't get the, you know,
13 if it were a picture of Mickey Mouse or something,
14 you couldn't see that because of the way the
15 resolution is in the cameras, but here you can see
16 some coloration on this person's skin.

17 **Q** Let me show you now what's in evidence as
18 State's Exhibit 7. Is this photo similar to the
19 characteristics you testified in the last one?

20 **A** Yes, sir. Again, here we see the circle. And
21 I think my highlight was to show what appears to be
22 a firearm in the subject's hand, you know, holding
23 the gun out and coming behind the counter.

24 **Q** Show you now State's Exhibit 8 in evidence.
25 Does this appear to be similar highlighting as you

1 testified to previously?

2 **A** Yeah. Once again, we see the circle. Rather
3 than show the whole, you know, what's happening over
4 here, the circle was snapping what's really
5 important in the picture. And, again, you see what
6 appears to be a firearm with the subject and another
7 person in front of him kneeling down.

8 **Q** Is that the same on State's 9?

9 **A** Yeah. Once again, you have two subjects in
10 there, one pushing -- or behind the other subject.

11 **Q** And State's 10 also?

12 **A** Again, we see the highlight circle of the
13 portion we're looking at.

14 **Q** And State's 11?

15 **A** So this is a little darker to see. Can we
16 brighten that?

17 So, in this photograph, we'll see an arm. And,
18 again, we see some coloration of the skin there.
19 And we see the top of what appears to be the head
20 with the covering over the head.

21 **Q** So you have arms, tattoos and gun?

22 **A** Yes, sir.

23 **Q** Is there anything else that you want to add
24 about your work in this case?

25 **MS. ZMROCZEK:** Objection, Your Honor.

1 **THE COURT:** Sustained. Ask a question.

2 BY MR. FENDER:

3 **Q** You don't -- do you work in Ridge Spring?

4 **A** No, sir.

5 **Q** You work for SLED, correct?

6 **A** Yes, sir.

7 **Q** And you're sent evidence to perform this kind
8 of work?

9 **A** Typically, the agencies bring it to us at SLED
10 and we work on it when it comes in, but they come
11 from all across the state, yes, sir.

12 **Q** Other than that, you don't know much about this
13 case; is that fair to say?

14 **A** That's correct, yes, sir.

15 **Q** You don't have a dog in the fight other than
16 working on --

17 **MS. ZMROCZEK:** Objection, Your Honor.

18 **THE COURT:** Sustained.

19 **MR. FENDER:** That's all.

20 **THE COURT:** Turn the lights back on.

21 Cross-examination?

22 (Witness resumes the witness stand.)

23 CROSS-EXAMINATION

24 BY MS. ZMROCZEK:

25 **Q** Agent West?

1 **A** Yes, ma'am.

2 **Q** You have no training in computer or video
3 enhancements, correct?

4 **A** So I have training in video enhancement and
5 video forensics I received from private companies
6 and from government agencies.

7 **Q** So you received training on how to get the best
8 quality evidence still shot, correct?

9 **A** Yes, ma'am.

10 **Q** And you received all of the CDs, all of the
11 videos in this case?

12 **A** I believe so, ma'am.

13 **Q** And you were asked to provide the most relevant
14 evidence?

15 **A** Yes, ma'am.

16 **Q** How many pictures did you screen shot of the
17 gun being pointed in the front of Mr. Houston?

18 **A** I don't know that exactly, ma'am. I'll have to
19 look at the photographs and see.

20 **Q** In fact, you watched all of the videos?

21 **A** I watched a video, yes, ma'am.

22 **Q** Just one video?

23 **A** I don't recall, ma'am.

24 **Q** Okay. We don't have any screen shots where
25 Mr. Houston is facing the suspect, correct?

1 **A** Mr. Houston is the clerk, ma'am?

2 **Q** Correct.

3 **A** Other than what we've seen in the pictures
4 right there, no, ma'am.

5 **Q** Okay. And you manipulated these photos?

6 **A** No, ma'am. I capture screen shots.

7 **Q** When you captured the screen shot, it didn't
8 have the circle?

9 **A** No, ma'am.

10 **Q** So you manipulated the photo?

11 **A** We didn't change the photograph.

12 **Q** Okay. But you -- when you screen shot it, it
13 did not have the circle?

14 **A** Yes, ma'am.

15 **Q** You changed the photo by adding the circle?

16 **A** We put the circle on there. We did not add or
17 take anything away from the photograph.

18 **Q** Because that's what you wanted to focus on?

19 **A** Yes, ma'am.

20 **Q** I'm going to hand you State's 6. And you were
21 adding the circle, right?

22 **A** Yes, ma'am.

23 **Q** And you've got that focused right in on --
24 which hand is that?

25 **A** It's the right hand, ma'am.

1 **Q** Can you see the palm -- or the back side of the
2 hand?

3 **A** Yes, ma'am.

4 **Q** You have a clear picture of it, right?

5 **A** Fairly.

6 **Q** Very clear picture?

7 **A** Fairly, yes, ma'am.

8 **Q** Okay. And you blew this up, zoomed in?

9 **A** Yes, ma'am.

10 **Q** Trying to get the best view, right?

11 **A** Yes, ma'am.

12 **Q** These cameras are motion censored?

13 **A** In some cases. I'm not sure how that system
14 was set up. If you'd like me to explain that, I
15 will.

16 **Q** I'm sorry?

17 **A** Should I explain -- I don't know if it was --
18 sometimes there are camera systems in businesses and
19 residences that don't function essentially or record
20 anything unless it detects motion and sometimes they
21 run continuously. And I'm unaware as to what that
22 case was in this video.

23 **Q** You weren't able to tell by watching the video?

24 **A** No, ma'am, I don't recall that.

25 **Q** Okay. Were you -- who was directing you as to

1 what screen shots to pick?

2 **A** No one, ma'am. I was just informed that it was
3 a robbery. And, typically, when a case comes in,
4 you just look at the video. You can see what's
5 occurring in the video. In this case, it was,
6 clearly, a gun and, clearly, a gun pointed at
7 somebody. Clearly, a violent act is occurring, so
8 that's what I was trying to capture when I reviewed
9 the video.

10 **Q** And when you capture, you have to hit pause?

11 **A** In a roundabout way, yes, ma'am.

12 **Q** And if there's movement, that can distort the
13 image?

14 **A** So, you know, basically, we look at a picture
15 -- if you think about it, you've seen pictures on
16 TV. You've seen really good video and you've seen
17 video that's not so great. Typically, in commercial
18 stores and in older systems, the resolution or the
19 not-so-great part of the video is not good, so, you
20 know, you're going to see some distortion of
21 anything. Especially when you zoom in on it, you
22 get really small pixels in the beginning and big
23 pixels when you zoom in really close.

24 **Q** And you talked about pixels. In fact, the
25 pixels on these videos, the dimensions recorded on

1 the video were 352 by 240, correct?

2 **A** They were prettily low, yes, ma'am.

3 **Q** Tell the jury what you mean when you say pretty
4 low.

5 **A** So, again, when we speak of resolution,
6 essentially, the higher the number, the better the
7 resolution. If you think of your TV set that you
8 had ten years ago versus now -- you know, the latest
9 thing is 4K; there's always a new thing coming out
10 -- the picture looks better because there's more
11 little small pixels or pictures on the screen that
12 just make it look better.

13 **Q** But this was the lowest quality?

14 **A** It's pretty low, yes, ma'am.

15 **Q** In fact, it's a three to two aspect ratio,
16 right?

17 **A** Yes, ma'am.

18 **Q** Which is the lowest quality video that can be
19 recorded on a standard CCTV video?

20 **A** It's low. I would imagine it could go a little
21 bit lower, but you wouldn't have anything really
22 good then.

23 **Q** And you don't know what setting this equipment
24 had?

25 **A** No, ma'am.

1 **Q** The frame per second of the video, are you
2 familiar with that?

3 **A** Yes, ma'am.

4 **Q** What was the frames per second?

5 **A** So, again, when she speaks of frames per
6 second, essentially, when you watch a movie or a TV
7 screen or something, like, on your phone, it may be
8 30 frames a second. And, essentially, that's enough
9 pictures that fool the eye into thinking something's
10 moving, especially the more frames, the better it
11 is, you know, looks smoother.

12 So what we see is in video systems in stores
13 and houses, people will lower or the manufacturer
14 will lower the frames per second, 25, 20, 15 or some
15 cases even lower than that, you know, one per
16 second. So what you're doing is you're not
17 capturing great images, but you're able to store
18 more stuff on there.

19 **Q** The video frames per second in this case was
20 two?

21 **A** I don't know that, ma'am. It was not great.

22 **Q** You don't know that?

23 **A** No, ma'am.

24 **Q** Okay. Because it's the lowest possible
25 quality, when you zoom in, that causes distortion?

1 **A** So, again, distortion, being the thing that we
2 start out from a picture that's far away and you
3 have all these little pixels that make it look like
4 a real thing, and when you zoom in -- like, if it
5 were a picture of a dog and you zoom in, the
6 pictures become bigger and you really can't tell,
7 the closer you get, if it's a dog anymore. If you
8 zoom on his ears, it's just a bunch of square
9 blocks. So farther sometimes is better. When you
10 zoom in, it just makes it look worse.

11 **Q** So the answer is yes?

12 **A** What was the question?

13 **Q** The question was when you zoom in, it distorts
14 the image?

15 **A** It doesn't look as good sometimes as it does
16 from a distance.

17 **Q** Heavy pixelation can cause darkening or
18 lightening of an image?

19 **A** Again, the video quality, yes.

20 **Q** So the answer's yes?

21 **A** Yes, ma'am.

22 **Q** Okay.

23 **MS. ZMROCZEK:** I have no further questions,
24 Your Honor.

25 **THE COURT:** Redirect?

1 REDIRECT EXAMINATION

2 BY MR. FENDER:

3 Q How much would it cost to set a gas station
4 up --

5 MS. ZMROCZEK: Objection, Your Honor.

6 THE COURT: Sustained.

7 BY MR. FENDER:

8 Q How many frames per second did you say that
9 this is?

10 A It was low, sir. I'm not sure -- Ms. Zmroczek
11 said two per second, but, you know --

12 Q Is that unusual, though?

13 A No, sir.

14 Q Is it so slow that you can't see defining scars
15 and tattoos?

16 A So, you know, again, it's not going to be as
17 clear as you want it to be. Like, if we took a
18 picture with our telephone and when you watch the
19 video play, it's going to be real choppy. Like,
20 it's not a smooth motion of the arm, it's just kind
21 of choppy. So that's what we'd see in the low
22 frames per second.

23 MR. FENDER: Thank you.

24 THE COURT: Recross?

25 MS. ZMROCZEK: Just one brief question.

1 RECROSS-EXAMINATION

2 BY MS. ZMROCZEK:

3 Q Agent West, let me have you pull the picture
4 out that shows a scar.

5 A So -- I mean, you got one particular you want
6 me to pull out or -- did you say star, ma'am?

7 Q Scar, s-c-a-r, scar.

8 A So I don't think that we have the resolution on
9 this camera to see a scar, unless it was something
10 really significant on this person's body.

11 MS. ZMROCZEK: Thank you.

12 THE COURT: Okay. Have a nice day. Thank you
13 very much.

14 Call your next witness.

15 MR. FENDER: Judge, may we approach?

16 THE COURT: Sure.

17 (Whereupon, a bench conference was held off
18 the record, in the presence of the jury, but out of
19 the hearing of the jury.)

20 THE COURT: All right. Ladies and gentlemen,
21 step back to your jury room, do not discuss the
22 case, keep an open mind. We'll be back with you in
23 just a few moments. It's not going to be a long
24 break, just two or three minutes.

25 (The jury retires to the jury room.)

1 **THE COURT:** All right. Take him back to the
2 bathroom and let him take off his shirt, please.

3 (The defendant leaves the courtroom.)

4 **THE COURT:** Who is your next witness?

5 **MR. FENDER:** Dale Hallman.

6 **THE COURT:** Mr. Hallman's not on the witness
7 list.

8 (The defendant enters the courtroom.)

9 **MS. ZMROCZEK:** Your Honor, may I give him --
10 how long is he going to --

11 **THE COURT:** Well, I'm trying to figure out how
12 exactly I want to do it. What I'm thinking about
13 saying is, Mr. Robinson has a constitutional right
14 to remain silent, but the State also is given the
15 authority to exhibit his physical characteristics,
16 and they've asked that he remove his shirt for the
17 jury.

18 And so -- then I'm going to give them a moment
19 to view him and for him to turn around so they can
20 see the front and the back, and then probably just
21 not say anything else. I mean, I would say less
22 than 60 seconds. I'm not going to allow him to
23 stand up there and be paraded around, you know, like
24 that. And then once that happens, I'm going to send
25 them back to the jury room and then allow him to get

1 redressed in a private setting.

2 **MS. ZMROCZEK:** Thank you.

3 **THE COURT:** What's Mr. Hallman supposed to
4 testify to?

5 **MR. FENDER:** Judge, we would call Shannon
6 Molina as our next witness.

7 **THE COURT:** Okay. Shannon Molina.
8 All right. Okay. You okay?

9 **DEFENDANT:** Yes, sir.

10 **THE COURT:** Okay. So when they come back in --
11 and, for the record, Mr. Robinson has been nothing
12 but polite and respectful and dressed appropriately
13 for court and has been paying attention and
14 following along and acting very appropriately. So
15 when they come back in, I'm going to say basically
16 that, you know, you don't -- you have the right not
17 to testify and you don't have to say anything. This
18 isn't, you know, isn't making you say anything, but
19 the law allows the State to show your physical
20 characteristics.

21 And so I'm just going to have you come up, just
22 get up and just walk right over here kind of to
23 where the jury -- the jury table is and then come --
24 kind of stand right over here in front of the --
25 kind of in front of the witness stand. Then once

1 you stand there for a few seconds, just turn around
2 so they can see you from the back side. And then
3 after that, you can just walk right back over to the
4 table. Okay?

5 **DEFENDANT:** Yes, sir.

6 **THE COURT:** Okay. I'm not saying you have to
7 like doing it, but you understand what we're doing?

8 **DEFENDANT:** Yes, sir.

9 **THE COURT:** Okay. All right. Good.
10 Okay. Let's bring them back in.

11 (The jury returns to the courtroom.)

12 **THE COURT:** Okay. Welcome back, ladies and
13 gentlemen.

14 Mr. Roof, come on down here on the front row.

15 Okay. Ladies and gentlemen, as I explained to
16 you at the beginning of this trial, the defendant
17 doesn't have to prove anything. The defendant
18 doesn't have to say anything. The defendant doesn't
19 have to testify. And that's because the burden of
20 proof in this case is upon the State. And it's
21 their responsibility to prove to you beyond a
22 reasonable doubt the elements of the offense.

23 One thing that the law allows is the law allows
24 the State to exhibit the defendant's physical
25 characteristics, characteristics. Okay? And so, at

1 this time, Mr. Robinson, and he knows he's going to
2 come on over --

3 Come on over, Mr. Robinson.

4 We've asked Mr. Robinson to take off his shirt,
5 and he's done that. He's done that in a private
6 setting. And he's going to come over in front of
7 you, right here in front of --

8 Come on over just a little bit more.

9 I'm going to allow him to stand -- stand facing
10 them. And then after a few seconds, here in just a
11 little bit -- all right. Mr. Robinson, and if you
12 could please turn around for them. Okay. Going to
13 have him turn around. Okay. All right. Thank you
14 very much.

15 **MR. FENDER:** Judge, and we'll be asking for the
16 tops of his hands.

17 **THE COURT:** Yeah. Make sure they can see both
18 sides of your arms, tops and bottoms of your hands.

19 (Defendant complies.)

20 **THE COURT:** Okay. Thank you very much,
21 Mr. Robinson.

22 We're going to send you back to your jury room.
23 I'm going to allow him to get dressed in a private
24 setting, and then we'll bring you right back out and
25 continue. Okay? So do not discuss the case, keep

1 an open mind. Okay? Thank you very much.

2 (The jury retires to the jury room.)

3 **THE COURT:** Okay. You can take him.

4 (The defendant leaves the courtroom.)

5 **THE COURT:** Is there anything else you need her
6 to mark while he's putting his shirt back on?

7 (State's Exhibit Numbers 12 through 16,
8 photographs, marked for identification.)

9 (The defendant enters courtroom.)

10 **THE COURT:** Are you good?

11 **DEFENDANT:** Yes, sir.

12 **THE COURT:** All right. Bring them back in.

13 (The jury returns to the courtroom.)

14 **THE COURT:** All right. Welcome back, ladies
15 and gentlemen. We'll continue with the next
16 witness.

17 The State can call their next witness.

18 **MR. FENDER:** State calls Shannon Molina.

19 SHANNON MOLINA,

20 having been duly sworn, testified as follows:

21 **THE COURT:** All right. Have a seat right
22 there. State your full name for the record, and if
23 you would, please, spell your last name.

24 **THE WITNESS:** Shannon Molina, M-o-l-i-n-a.

25 **THE COURT:** All right. Thank you very much.

1 Now, you hear that air conditioning unit?

2 **THE WITNESS:** Yes, sir.

3 **THE COURT:** Okay. So when you talk like that,
4 no one can hear you. You've got to keep your voice
5 right there on the microphone for me. Okay?

6 **THE WITNESS:** Okay.

7 **THE COURT:** Thank you.

8 DIRECT EXAMINATION

9 BY MR. FENDER:

10 **Q** Ms. Molina, can you tell the jurors just
11 briefly where you work at?

12 **A** Circle K in Ridge Spring, South Carolina.

13 **Q** What's your job there?

14 **A** I'm the manager.

15 **Q** Do y'all have a video surveillance system?

16 **A** Yes, sir.

17 **Q** Can you tell us a little bit about that?

18 **A** It's -- the cameras show the inside, and we can
19 view everything from the inside. And it even has
20 sound on it.

21 **Q** Do you recall August the 1st, 2016?

22 **A** Yes, sir.

23 **Q** Can you tell us about what happened that night?

24 **A** I got a call at three something in the morning
25 from --

1 **MS. ZMROCZEK:** Objection, Your Honor; hearsay.

2 **THE COURT:** Sustained.

3 BY MR. FENDER:

4 **Q** Did you go to the Circle K that night?

5 **A** Yes, sir.

6 **Q** What did you do there?

7 **A** I went in to burn a video for a robbery.

8 **Q** And that was a surveillance video?

9 **A** Yes, sir.

10 **Q** Were all the cameras working?

11 **A** The inside cameras.

12 **Q** So, to your knowledge, the inside camera was
13 working?

14 **A** Yes, sir.

15 **Q** Did you all secure the video?

16 **A** Yes, sir.

17 **Q** Did you all give it to law enforcement?

18 **A** Yes, sir.

19 **Q** Do you recall what was taken during that
20 robbery?

21 **A** Cash.

22 **Q** Approximately how much?

23 **A** A hundred and something. I'm not sure exactly
24 how much. I can't remember.

25 **Q** Were the outside cameras working?

1 **A** No, sir, not at the time.

2 **Q** So you just had video from the inside?

3 **A** Yes, sir.

4 **Q** And you reviewed that?

5 **A** Yes, sir.

6 **Q** Did it show a robbery?

7 **A** Yes, sir.

8 **Q** August the 1st, 2016?

9 **A** Yes, sir.

10 **MR. FENDER:** Thank you.

11 **THE COURT:** Cross?

12 **MS. ZMROCZEK:** No questions.

13 **THE COURT:** Have a nice day. Thank you very
14 much.

15 All right. Call your next witness.

16 **MR. FENDER:** Lee Shorter, Your Honor.

17 JAMES LEE SHORTER,

18 having been duly sworn, testified as follows:

19 **THE COURT:** All right. State your full name
20 for the record.

21 **THE WITNESS:** James Lee shorter.

22 **THE COURT:** Stay close to that mic. Okay?

23 **THE WITNESS:** All right.

24 **THE COURT:** Thank you.

25 *****

1 DIRECT EXAMINATION

2 BY MR. FENDER:

3 Q Before we get into this case, can you tell the
4 jurors a little bit about who you are and who you
5 work for?

6 A I'm James Lee Shorter, and I work for the
7 Saluda Police Department. I've been working for
8 them for about three years.

9 Q Did you have to go through any kind of training
10 and whatnot before you got your law enforcement job?

11 A I had to go to the academy for 12 weeks.

12 Q What did you learn there?

13 A About everything to be a cop, just learned
14 about laws and officer safety.

15 Q And you said you -- where did you say you
16 currently work?

17 A Saluda Police Department.

18 Q What's your rank there?

19 A I'm a patrolman, first class.

20 Q What are your day-to-day duties? What does
21 that entail?

22 A Just run traffic, answer calls.

23 Q Respond to incidents?

24 A That's right.

25 Q Were you working on August the 1st, 2016?

1 **A** I was.

2 **Q** Can you tell us what you remember from that
3 night or early morning?

4 **A** I was sitting next to Deputy Hallman. We were
5 talking. They got a call for an armed robbery in
6 Ridge Spring. He requested that I respond to the
7 scene with him once the call came through.

8 **Q** So y'all went to -- where did you go to?

9 **A** Went to the Circle K in Ridge Spring.

10 **Q** Is that in Saluda County?

11 **A** It is. It's in Saluda County.

12 **Q** What is the first thing you did when you got
13 there?

14 **A** The first thing I did, I exited my patrol
15 vehicle along with Deputy Hallman. We saw money
16 laying in the parking lot. He passed me his camera,
17 asked if I could photograph it while he went and
18 talked to the store clerk, look at the video.

19 **Q** Are any of these items familiar to you?

20 **A** Yes, sir. Yes, sir, all of them.

21 **Q** I've showed you now what's been marked as
22 State's 12 through 16. What are these items? Can
23 you tell the jurors in your own words?

24 **A** Money we found laying in the parking lot.

25 **Q** And these are pictures?

1 **A** They are.

2 **Q** Do they fairly and accurately depict what you
3 observed when the pictures were taken?

4 **A** They do.

5 **Q** Have they been changed or altered in any way?

6 **A** No, sir.

7 **MR. FENDER:** Judge, at this time, I'd seek to
8 enter these items into evidence, State's 12 through
9 16, and publish to the jurors.

10 **MS. ZMROCZEK:** Without objection.

11 **THE COURT:** 12 through 16 without objection.

12 (State's Exhibit Numbers 12 though 16,
13 photographs, admitted into evidence.)

14 **MR. FENDER:** Judge, with leave of the Court,
15 could the witness step down?

16 **THE COURT:** Sure.

17 Now, listen, you're pretty soft spoken, so I
18 need -- that air conditioning makes it hard to hear
19 in here, so make sure you keep your voice up so
20 everybody can hear you. Okay?

21 **THE WITNESS:** Yes, sir.

22 **THE COURT:** Thank you very much.

23 (Witness leaves the witness stand.)

24 BY MR. FENDER:

25 **Q** If you could, direct your attention to the TV

1 there. What are we seeing in this picture?

2 **A** Money we found laying in the parking lot as
3 soon as we arrived on the scene.

4 **Q** That's State's Exhibit 12, which is in
5 evidence.

6 I'm going to show you State's 13 in evidence.
7 Can you tell me what are you observing in this
8 picture?

9 **A** Another pile of money we found laying in the
10 parking lot.

11 **Q** Can you make out the denomination there?

12 **A** I cannot.

13 **Q** Okay. State's Exhibit 14, what are you seeing
14 in this picture?

15 **A** Front door of the Circle K.

16 **Q** State's 15, what about this picture?

17 **A** That's the two roads where the Circle K sits
18 at, corner of Main and Pecan Grove.

19 **Q** Why did y'all take this picture?

20 **A** Just to verify the location of the Circle K
21 Convenience Store.

22 **Q** And, lastly, State's Exhibit 16, can you tell
23 us what we're seeing there?

24 **A** Another pile of money we found laying in the
25 parking lot.

1 **Q** Can you make out the denomination of those
2 bills?

3 **A** One U.S. dollar bills.

4 **THE COURT:** Say that again.

5 **THE WITNESS:** They appear to all be one dollar
6 U.S. currency.

7 **THE COURT:** Okay.

8 BY MR. FENDER:

9 **Q** If you could, just take the witness stand for
10 us.

11 **A** (Witness resumes the witness stand.)

12 **Q** Do you recall, approximately, what time all of
13 this was going on?

14 **A** Early morning hours is all I can recall.

15 **Q** When law enforcement -- when a call like this
16 comes over the radio, what does law enforcement do?

17 **A** We respond as fast and as safely as we can to
18 get to the scene to make sure everybody's okay.

19 **Q** So you secure the scene?

20 **A** We did. As soon as I arrived on scene, we saw
21 the money, Deputy Hallman went inside to talk to the
22 clerk. He asked me to take photos of the money.

23 And I stayed with the money and kept it secure until
24 he was able to come back and secure it himself.

25 **Q** So you're doing scene security, but are you the

1 investigator in this case?

2 **A** I am not.

3 **Q** Who's the investigator?

4 **A** Deputy Hallman was the first person on the
5 scene. Once more units showed up, I left the scene
6 once I knew everybody was safe. And that's as far
7 as I know.

8 **Q** This happened in Ridge Spring?

9 **A** It did.

10 **Q** And what agency were you working for at that
11 time?

12 **A** Town of Saluda.

13 **Q** And did y'all have an agreement to assist them
14 with big stuff like this?

15 **A** Yes, sir.

16 **Q** Do you recall who the chief of police in Ridge
17 Spring was at that time?

18 **A** Mike Raffield.

19 **Q** Was he the chief investigator in this case?

20 **A** I believe he was. He was at the time -- he was
21 the chief at the time of the incident, and I do
22 believe he took it over.

23 **Q** And you provided scene security?

24 **A** Yes, sir.

25 **MR. FENDER:** Thank you. Please answer the

1 defense attorney's questions.

2 **THE COURT:** Cross-examination?

3 **MS. ZMROCZEK:** Thank you. Briefly.

4 CROSS-EXAMINATION

5 BY MS. ZMROCZEK:

6 **Q** Officer, you have a call number?

7 **A** Yes, ma'am.

8 **Q** What was your call number?

9 **A** PDA.

10 **Q** I'm sorry?

11 **A** PDA.

12 **Q** PDA?

13 **A** Yes, ma'am.

14 **Q** What time did you arrive on scene?

15 **A** The same time the deputy did, Deputy Hallman.

16 **Q** So you and Deputy Hallman were the first two
17 there?

18 **A** Yes, ma'am.

19 **Q** Saw money?

20 **A** Yes, ma'am.

21 **Q** Got your camera?

22 **A** Yes, ma'am.

23 **Q** Your camera is issued through the sheriff's
24 department?

25 **A** No, ma'am. I got Deputy Hallman's camera. It

1 was issued to him.

2 Q Okay. When y'all get your issued cameras, do
3 you check the date?

4 A Yes, ma'am.

5 Q And you check the time?

6 A Yes, ma'am.

7 Q And so they were accurate on these photos?

8 A Yes, ma'am.

9 Q Okay. So, on State's Exhibit 14, do you
10 recognize that?

11 A Yes, ma'am.

12 Q Okay. And you recognize Deputy Hallman?

13 A Yes, ma'am.

14 Q And then who's the other person?

15 A I'm having a hard time seeing that. Appears to
16 be the store clerk.

17 Q Store clerk?

18 A Yes, ma'am.

19 Q So he was outside when you got there?

20 A Yes, ma'am.

21 Q And that was time stamped 8/1/2016 at 3:00
22 A.M., correct?

23 A Yes, ma'am.

24 Q And that was the accurate and correct time?

25 A Yes, ma'am.

1 **Q** State's 12, would that be the clerk?

2 **A** Yes, ma'am, that's him.

3 **Q** Sitting outside?

4 **A** Yes, ma'am.

5 **Q** Did you do a report in this case?

6 **A** I did not.

7 **Q** Said that Officer Hallman went in to view the
8 video with the clerk?

9 **A** Yes, ma'am.

10 **Q** Is this the clerk in State's 12 that you're
11 referring to?

12 **A** Yes, ma'am.

13 **Q** You also said that you went to the academy?

14 **A** I did.

15 **Q** Received training?

16 **A** Yes, ma'am.

17 **Q** As a first responder?

18 **A** Yes, ma'am.

19 **Q** Were you running code to get to the location?

20 **A** I was.

21 **Q** Okay. And tell the jury what running code
22 means.

23 **A** It means you're running lights and sirens,
24 trying to get to a scene as fast as you can, but as
25 safely as possible.

1 **Q** With the town -- in your Town of Saluda
2 vehicle?

3 **A** Yes, ma'am.

4 **Q** Is it equipped with a camera?

5 **A** It is.

6 **Q** A dash cam?

7 **A** Yes, ma'am.

8 **Q** Is that dash cam started when the lights come
9 on?

10 **A** Yes, ma'am, it is.

11 **Q** Did you turn your dash cam in for this?

12 **A** No, ma'am.

13 **Q** Were you ever requested to?

14 **A** No, ma'am.

15 **Q** Was it running?

16 **A** Yes, ma'am.

17 **Q** Your dash cam have audio?

18 **A** Yes, ma'am, it does.

19 **Q** In addition to video?

20 **A** Yes, ma'am.

21 **Q** And is that the condition that you found the
22 clerk when you got to the scene?

23 **A** Excuse me?

24 **Q** Is that the condition, the physical condition,
25 that you saw the clerk when you got to the scene?

1 And I'm referring to State's 14 and 12.

2 **A** Yes, ma'am.

3 **Q** Was there an ambulance there?

4 **A** Not that I recall.

5 **Q** As a first responder and road deputy, are you
6 trained to know when people require ambulances?

7 **A** Yes, ma'am. If they're stating that they're
8 hurting or in any type of pain, we'll call one for
9 them.

10 **Q** Did you call one?

11 **A** No, ma'am, I didn't.

12 **MS. ZMROCZEK:** Thank you.

13 **THE COURT:** Redirect?

14 **REDIRECT EXAMINATION**

15 **BY MR. FENDER:**

16 **Q** If the time code was off, would that affect the
17 contents of the picture?

18 **A** No, sir, it wouldn't.

19 **MR. FENDER:** Nothing further.

20 **THE COURT:** All right. Have a nice day.

21 **MR. FENDER:** Judge, did you ask for the next
22 witness?

23 **THE COURT:** Yes.

24 **MR. FENDER:** Michael Raffield, Your Honor.

25 **THE COURT:** All right. We need to take up one

1 issue, ladies and gentlemen. Step back to your jury
2 room. Do not discuss the case. We'll be back with
3 you in just a few moments. Thank you very much.

4 (The jury retires to the jury room.)

5 **THE COURT:** Okay. For the record, yesterday I
6 was provided a sealed envelope which appears to be
7 from somebody with the Edgefield County Sheriff's
8 Office in reference to potential Giglio material in
9 reference to Chief Raffield. And I have reviewed
10 the information that was contained in that
11 information. And I find -- make a finding of fact
12 that none of it goes directly towards his
13 credibility on the witness stand.

14 I have reviewed the incident reports. There
15 are a couple of employee warnings and some memos to
16 the files. And none of them have anything to do
17 with -- that would affect his credibility as a
18 witness. And I will not allow him to be
19 cross-examined on it nor will I allow it to be
20 turned over.

21 **MR. EARGLE:** Thank you, Your Honor.

22 **THE COURT:** I had not ruled on that issue and I
23 needed to.

24 **MS. ZMROCZEK:** Thank you, Your Honor.

25 **THE COURT:** Okay. Let's take about -- I want

1 to try to get Raffield done today. How long do you
2 think you're going to be on direct?

3 **MR. FENDER:** Judge, this is going to be pretty
4 substantial as the chief investigating officer.

5 **THE COURT:** Yeah, I know. I want to try to get
6 him done today. So let's take a quick five-minute
7 break and then we'll jump right back into him.
8 Okay?

9 **MS. ZMROCZEK:** Will that include
10 cross-examination, too?

11 **THE COURT:** Yeah.

12 (Brief Recess.)

13 **THE COURT:** All right. Chief Raffield, you
14 remember what we talked about yesterday about the
15 things you're not going to say while on the witness
16 stand?

17 **CORPORAL RAFFIELD:** Your Honor, I do remember.

18 **THE COURT:** Thank you. And I appreciate that.
19 All right. Let's bring them in.

20 (The jury returns to the courtroom.)

21 **THE COURT:** All right. Welcome back, ladies
22 and gentlemen. And we will continue with the next
23 witness.

24 Mr. Fender, you may call your next witness.

25 **MR. FENDER:** Michael Raffield, Your Honor.

1 **THE COURT:** All right. Please come forward and
2 be sworn, sir.

3 MICHAEL JAMES RAFFIELD,
4 having been duly sworn, testified as follows:

5 **THE COURT:** If you would, state your full name
6 and spell your last name for us, please.

7 **THE WITNESS:** Yes, sir. Michael James
8 Raffield. Last name is R-a-f-f-i-e-l-d.

9 DIRECT EXAMINATION

10 BY MR. FENDER:

11 **Q** Mr. Raffield, what's your current rank?

12 **A** I am a corporal with the Saluda County
13 Sheriff's Office Patrol Division.

14 **Q** Corporal Raffield, before we get started in
15 this case, can you tell the jurors a little bit
16 about who you are, your background, your training,
17 your law enforcement experience?

18 **A** Yes, sir. Currently, today, I have 25 years of
19 law enforcement. I started with the municipal
20 public safety, which is police and fire, was a
21 national registry paramedic in addition to that. I
22 was a federal agent after 9/11 for approximately
23 eight years, served in that capacity, came back to
24 local law enforcement, was with the sheriff's office
25 from the year of 2012. I took the chief of police

1 position with Ridge Spring prior to running for
2 sheriff in Edgefield County. It was a two-year
3 contract. I did not win, unfortunately. And at the
4 end of that contract, I came back to Saluda.

5 In my career, I've been a part of numerous
6 investigations personally, murder, kidnapping, armed
7 robberies, and, unfortunately, involving adults and
8 juveniles.

9 **Q** So your background is in police work and in
10 investigation?

11 **A** Correct.

12 **Q** Were you working on August the 1st, 2016?

13 **A** I was employed as chief of police. At that
14 time, I had one other officer working for me, but,
15 essentially, all the responsibilities fell on my
16 shoulders, that would be administrative stuff
17 required by SLED to keep a police department open,
18 plus all the calls for service, anything from a
19 barking dog to, in this case, an armed robbery. I
20 was the person that was responsible to go out,
21 answer the call, gather all the evidence, do
22 interviews and get everything ready for court.

23 My department's unique, small, tiny
24 municipality. The way it worked was I worked 40
25 hours a week. Obviously, I can't work 24 hours a

1 day. So, in addition to my schedule, the Saluda
2 County Sheriff's Office covered the calls when I was
3 not working or actually on duty, with the exception
4 if it was an emergency, something of great
5 magnitude, such as a murder or armed robbery, I
6 would be notified.

7 Once I came on duty to respond to the scene and
8 take it over to be, I guess you'd say, the chief
9 investigator, Saluda County agreed to be a support
10 agency to assist me in the investigation. And
11 that's what occurred on this day.

12 **Q** Just briefly, you're the chief investigator and
13 these outside agencies just come in and help the
14 small town of Ridge Spring when they need it?

15 **A** Correct.

16 **Q** Okay. Going to August 1st of 2016, what do --
17 what do you recall from that night?

18 **A** That night I was actually off, sleeping very
19 soundly at home, found out that there had been an
20 armed robbery at the Circle K. So I immediately got
21 up, got dressed and responded in an emergency
22 capacity with the lights and sirens, as it was just
23 discussed, to the scene.

24 While en route, I ensure that the scene had
25 been locked down by law enforcement there to protect

1 the integrity of any evidence or witnesses that,
2 potentially, could come out of it, made sure that,
3 you know, if there was any medical assistance
4 needed, that that was covered, and most importantly,
5 a perimeter, if they had additional manpower that
6 could help set up a perimeter based on the
7 information that was communicated to me.

8 While I was en route, I was informed that the
9 armed robbery occurred at the Circle K and the
10 subject had ran on foot -- and the subject had
11 already been identified as Demarcus Robinson, who is
12 sitting in here today {indicating} -- at 300-A East
13 Main street, which is the address for Circle K.

14 **Q** What's the importance of setting up that
15 perimeter and the initial law enforcement response?

16 **A** The perimeter is set up that way if they're --
17 the first thing we try to do is make sure that the
18 scene is secure in itself to prevent people,
19 customers, from coming in after an armed robbery
20 occurred, that way we don't have evidence that's
21 disturbed or missing.

22 The perimeter is set up when we know for a fact
23 that the person did not leave in a car, but they
24 left on foot. And based on the timeframe from the
25 time the incident occurs until we can get the first

1 officer on the scene, we can kind of estimate that
2 we need to do a perimeter of several blocks, several
3 tenths of a mile, up to a mile based on just, you
4 know, common sense, but that would be important so
5 that way if somebody did leave on foot, we would
6 have enough of an area contained to try to actually
7 capture them soon after the incident occurred.

8 **Q** So you're trying to catch the bad guy and
9 preserve evidence?

10 **MS. ZMROCZEK:** Your Honor, objection.

11 **THE COURT:** Sustained.

12 BY MR. FENDER:

13 **Q** What happened when you got to Ridge Spring once
14 you responded to that call?

15 **A** While en route, the information that I had
16 obtained was that Demarcus Robinson had been
17 identified as the armed robbery suspect. At that
18 time, I went to 212 Merritt Avenue, which is
19 approximately two to three-tenths of a mile from the
20 incident location.

21 **Q** If I may, did you talk to anyone at the scene
22 of the Circle K?

23 **A** I talked to people that had been at the scene
24 of the Circle K to gain information as I was
25 responding in an emergency capacity.

1 **MR. FENDER:** Your Honor, may I approach the
2 witness?

3 **THE COURT:** Yes.

4 (State's Exhibit Numbers 17 through 19,
5 aerial photographs, marked for identification.)

6 BY MR. FENDER:

7 **Q** Corporal Raffield, what do these items appear
8 to be?

9 **A** These are topographical pictures of the
10 geography within the Ridge Spring area, specifically
11 the Circle K up to the residence where I located and
12 arrested Demarcus Robinson that morning.

13 **MR. FENDER:** Judge, at this time, I'd like to
14 enter these into evidence and allow Corporal
15 Raffield to step down and use the projector to show
16 what he's talking about.

17 **MS. ZMROCZEK:** Without objection, Your Honor.

18 **THE COURT:** Without objection.

19 (State's Exhibit Numbers 17 through 19,
20 aerial photographs, admitted into evidence.)

21 **THE COURT:** Keep your voice up. Okay?

22 **THE WITNESS:** Yes, sir.

23 (Witness leaves the witness stand.)

24 BY MR. FENDER:

25 **Q** If you could, just in your own words and with

1 these exhibits, can you explain to us what you're
2 telling us about the Circle K Gas Station and these
3 location events and whatnot?

4 **A** Absolutely. Do you mind if I step up to the
5 actual photograph?

6 This {indicating} is Main Street in Ridge
7 Spring, South Carolina, also Saluda County. This is
8 Pecan Grove Road. This is the Circle K Gas Station
9 and the parking lot outlined. That's the cover over
10 the top of the pumps. Directly behind it is a
11 church and directly behind that here is a
12 single-wide that faces Pecan Grove, which is 111.

13 **Q** So what -- when you went away from the gas
14 station to the residence, explain what happened.

15 **A** Okay. Let me change pictures, if you don't
16 mind.

17 **Q** State's 17.

18 **A** Let me have just one second so I can look at
19 the original.

20 I apologize. The railroad here actually is
21 confusing me. This {indicating} is actually Main
22 Street. This is the intersection of Pecan Grove
23 Road and Main Street. And, again, this is the gas
24 station in its entirety, the church and 111 Pecan
25 Grove.

1 If we come back westbound, which will be toward
2 Edgefield from Ridge Spring in that direction, this
3 is Merritt Avenue right here going back into the
4 neighborhood. And where these trees are at right
5 here {indicating} is 212 Merritt Avenue, which is a
6 house. Laundry mat is right here, if you're
7 familiar with the Soap and Suds. You can basically
8 access it by going down Merritt. And then you can
9 turn to the right, and that's 212 Merritt Avenue.

10 As far as at the scene, the investigation
11 revealed that the money was in the front parking
12 lot. Additionally, money -- a five-dollar bill was
13 located directly in front of the single-wide trailer
14 right here {indicating}, which I actually obtained
15 and photographed before moving it for evidence
16 today. At that point --

17 (Witness resumes the witness stand.)

18 At that point, based on the communication that
19 I had received -- like I said, I was trying to gain
20 information en route trying to assess what was going
21 on, what needed to be done immediately -- I
22 identified that I needed to go to 212 Merritt
23 Avenue. At that point, I asked other officers to
24 come in to, basically, pull the perimeter in on that
25 house believing that Demarcus Robinson was there,

1 made contact with his mother. She inquired --

2 **MS. ZMROCZEK:** Objection, Your Honor; hearsay.

3 **THE COURT:** Overruled. Go ahead.

4 **THE WITNESS:** My investigation revealed that
5 Demarcus was there. I explained to his mother why I
6 was there. At which point, I observed her to drop
7 her head and turn away from me while calling out his
8 name, trying to get his attention.

9 Investigation revealed he had only been home
10 for, approximately, an hour and a half based on the
11 information I received from family, which put
12 approximately a 30-minute window, according to
13 information, from the time of the actual armed
14 robbery. It had been, approximately, two hours, but
15 it's supposed to be that he had been there maybe 30
16 minutes longer than that because it was an
17 estimation.

18 As I located Mr. Robinson, he was upstairs in a
19 bedroom that really didn't have any furniture. He
20 was laying on top of what appeared to be a sleeping
21 bag that had, like, clothing underneath it. The
22 room, at that time, was dark. So the first thing I
23 did for safety of myself and other officers and
24 Mr. Robinson himself was secured his hands,
25 immediately searched around the area of his

1 waistband and where the clothing was at to make sure
2 there wasn't a weapon, because this was an armed
3 robbery, so we're anticipating, potentially, running
4 into a deadly threat.

5 At that point, pulling up the corner of the
6 sleeping bag, again, looking for a weapon, I
7 observed -- and I want to give you the exact
8 figures, if y'all will give me just a second --
9 which investigation later revealed was 41 U.S.
10 dollars, five five-dollar bills and one -- I'm sorry
11 -- and 16 one-dollar bills, which was consistent
12 with the information that I had received that the
13 denomination of the money, which was unique, was the
14 fact that it was only fives and ones. It was \$41.
15 At that point, Mr. Robinson was stood up and secured
16 in handcuffs.

17 To prevent any legal matter, I asked Lieutenant
18 Padgett with the Saluda County Sheriff's Office, who
19 was on scene at that time and the highest ranking
20 member of Saluda County that was there at that time,
21 if he would physically take control of that room.
22 And the purpose behind that was to protect any
23 evidence that, potentially, was in that room. And I
24 knew, based on my training through the South
25 Carolina Criminal Justice Academy, that I had to get

1 a search warrant.

2 So, at that time, Investigator Padgett --
3 Lieutenant Investigator Padgett stood by for me. I
4 went and completed a search warrant and took it to
5 the magistrate judge, which is required, and
6 received a signature from the judge authorizing the
7 search and responded back to the scene. This
8 process took probably an hour to probably an hour
9 and a half. I can't give you an exact time.

10 Once I returned back to the scene, I'm not
11 allowed, legally, to execute my own search warrant
12 that I prepared and got the judge to sign, so I
13 asked Deputy Evan Garris to execute that search
14 warrant. Investigation revealed, upon the execution
15 of that search warrant, that underneath that
16 bedding, which I was just speaking about, was 41
17 U.S. dollars in denominations of ones and fives.
18 Additionally, underneath the mattress in the same
19 area as the money were two pair of black shorts,
20 which, again, based on the information that had been
21 communicated to me, was consistent with what other
22 officers had observed in the video that they had
23 seen prior to me getting there.

24 I was, basically, given a play-by-play of what
25 was seen on that video by Deputy Hallman, who was

1 the first responding unit there. Based on that, I
2 knew that the defendant was believed to be Demarcus
3 Robinson, what his clothing description was at the
4 time, additionally, that there was a silver-in-color
5 or gray-in-color revolver with black handles, which
6 is very specific.

7 So, as the investigation unfolded in the room
8 that Demarcus Robinson was located and arrested in,
9 in that closet, I don't remember anything hanging,
10 like clothing, but what I do distinctly remember was
11 at the top, there was several packs of Newport
12 cigarettes. I believe it's five. There was also a
13 Vega cigarillo packet with one of the cigars in it.
14 There was a camo bookbag resting on the floor in
15 that closet, and inside that, there was located a
16 box of .38 bullets. I believe it was 35 -- a 35
17 count.

18 Additionally, I locate a silver or
19 gray-in-color revolver with black handles. The
20 handles are familiar to, like, Pachmayr. It's just
21 -- it's a brand name that's been around for years.
22 The cylinder was open. It was found to be loaded.
23 Of course, the gun was made rendered safe.

24 And the items I just described were then
25 secured. I packaged everything, took possession of

1 everything and did the proper chain of custody on
2 the package.

3 Again, I told you earlier, I'm not currently
4 with Ridge Spring. My former employee, who was
5 hired intentionally to replace me, when he took over
6 as chief, he took over all of the evidence and
7 maintained it in his possession, locked in a secure
8 evidence locker that belongs to Ridge Spring until
9 today where he brought it to court.

10 (State's Exhibit Number 20, Revolver with
11 five .38 Special Rounds, marked for identification.)

12 **MR. FENDER:** May I approach, Judge?

13 **THE COURT:** Yes.

14 BY MR. FENDER:

15 **Q** Tell the jury about this, please.

16 **A** Yes, sir.

17 Being a small department, our budget's not, you
18 know, padded with extra money. This is, basically,
19 an evidence bag. It's law enforcement grade. It's
20 the same type material that you'd find at any
21 grocery store. But on the outside, it's got
22 specific information, such as evidence or property
23 description, the agency case number, the item
24 number, who the suspect is, the victim, location,
25 date, time, who it was recovered by, and then an

1 area for the description. And at the top, you can
2 see that -- the evidence tape. And this was sealed
3 completely till just a few hours ago when myself and
4 the two counsels looked over the evidence.

5 This is actually the firearm that I collected
6 that night. It is secured and was rendered safe. I
7 put the lock on it so it can't be closed and loaded.
8 This is a Charter Arms Shelton, Connecticut, made
9 Revolver .38 Special. It has five cylinder holes
10 for bullets. And at that time of the morning when
11 it was discovered, it was loaded with five rounds in
12 it. The five rounds -- these are .38 Special
13 rounds. That's what the gun was loaded with.

14 All the evidence was taken, again, by myself.
15 The money that was located in front of the store in
16 the parking lot, that's the only evidence that was
17 not collected by myself. The wind was blowing.
18 Deputy Hallman, being the first on the scene, to
19 prevent that evidence from being ran over or blown
20 away, after he went inside and talked to the victim,
21 came back outside after it was photographed and
22 picked that money up and he hand transferred that
23 money to me.

24 The five-dollar bill that was located in the
25 front of 111 Pecan Grove, I collected that and

1 photographed it. All the evidence that was
2 discovered in the room and in the closet where
3 Mr. Robinson was located and arrested, I
4 photographed and I took possession of it.

5 **Q** During the course of your investigation, did
6 you determine that gun to be consistent with the one
7 used in the robbery?

8 **A** I did. The gun -- the information that I had
9 received en route, as well as the video that I
10 viewed after the arrest was made, I had, at that
11 time, Officer Grenier -- Captain Grenier
12 transport --

13 **MS. ZMROCZEK:** Your Honor, I'm going to object
14 to -- there's some gun comparison that's not been
15 provided to me.

16 **THE COURT:** Overruled. Go ahead.

17 **THE WITNESS:** Once Mr. Robinson was located,
18 because I'm the chief investigator, I asked my other
19 officer, my only other officer, to transport him to
20 the detention facility, and I really got into the
21 meat of the investigation.

22 Upon viewing the video myself, I observed this
23 gun to match the gun that was in the video. It was
24 described to us by the victim as a gray or
25 silver-in-color revolver with black handles, and

1 that's what I observed in the house and when I took
2 this weapon, because I do believe it to be the
3 weapon that was used in the crime in conjunction
4 with the Newport cigarettes that I observed in the
5 video. Because as the robbery's occurring, and
6 you've seen the photographs of the subject with his
7 arms extended, you can see in one hand that he's
8 holding something other than a gun. And in that
9 hand, to me, it appeared to be a box of cigarettes,
10 as well as a silver packet, which is the Vega cigar
11 cigarillo, which was also discovered in the closet
12 right beside the cigarettes.

13 So, you know, at the location where he was at,
14 we recovered a gun that was consistent with the
15 video and the victim's description; we found
16 cigarettes consistent with what was taken out of the
17 store; we found money that was specifically in the
18 denominations, the denomination of one and fives as
19 the clerk or the victim had told us; and we had
20 recovered some clothing from under the bedding
21 exactly where the money was at that met the
22 description that was in the video and as was
23 communicated to me.

24 **MR. FENDER:** Judge, I'd move that firearm into
25 evidence. I believe it's State's 20.

1 **MS. ZMROCZEK:** Without objection.

2 **THE COURT:** State's 20 without objection.

3 (State's Exhibit Number 20, revolver with
4 five .38 Special Rounds, admitted into evidence.
5 State's Exhibit Number 21, Newport 100 cigarettes
6 and Garcia y Vega cigar, marked for identification.)
7 BY MR. FENDER:

8 **Q** Corporal Raffield, what does this item appear
9 to be?

10 **A** I'm sorry. I started having to use reading
11 glasses about three years ago.

12 This, again, is an evidence bag that I actually
13 filled out. And it is four packs of Newport
14 cigarettes 100-size boxes and one Garcia Vega silver
15 cigar.

16 At 212 Merritt Avenue within the closet, the
17 upstairs room that Mr. Robinson was located in,
18 these were actually sitting on top of the shelf
19 along with the cigar. When you look at the video
20 and the pictures, you can actually see the cigarette
21 box extended out in the left hand with the Vega
22 cigar, basically, on top with the box running
23 through like so {indicating}. They were recovered
24 by myself, packaged and brought today.

25 **Q** Through the course of your investigation, did

1 you determine that to be consistent with what was
2 taken?

3 **A** Correct.

4 **Q** And if you could, just touch briefly, what's
5 the purpose of law enforcement sealing things up
6 and, you know, writing all this stuff on there?

7 **A** We're required to have a, what they call, a
8 proper chain of custody. And, basically, it just
9 ensures that -- who the person was that took
10 possession of whatever the evidence was and that a
11 proper chain was completed, showing that the
12 evidence has been protected from the time that it
13 was discovered and secured until a day that it can
14 be adjudicated in court, as we are here today.

15 **Q** So the stuff we have here is what was taken
16 from the defendant?

17 **A** Correct.

18 **MR. FENDER:** And, Judge, at this time, I would
19 enter the cigarettes as State's 22.

20 **MS. ZMROCZEK:** Without objection.

21 **THE COURT:** 21 admitted without objection.

22 (State's Exhibit Number 21, Newport 100
23 cigarettes and Garcia y Vega cigar, admitted into
24 evidence.)

25 BY MR. FENDER:

1 **Q** And, Corporal Raffield, did you also take
2 clothing items from that bedroom as well?

3 **A** I did. I took, like I said, two pair of black
4 shorts.

5 I executed another search warrant at the jail.
6 What I discovered during the investigation, on the
7 video, you can see that the defendant, Demarcus
8 Robinson, had on a gray-in-color pair of underwear.
9 And the reason you can tell is the underwear was
10 riding higher than the shorts were in the picture in
11 the video, similar to the term of sagging, but it
12 wasn't to that extreme, but it was enough that you
13 could tell it was gray in color.

14 When Mr. Robinson was located asleep, the only
15 thing he had on at that time was underwear that was
16 gray in color. Based on legal procedures, I had to
17 obtain a search warrant because he had already been
18 processed into the jail, which triggered me having
19 to get a search warrant for that. A search warrant
20 was obtained, his underwear was then taken because
21 it was consistent with the video showing that,
22 again, Demarcus Robinson was the one that was
23 involved in this.

24 **MS. ZMROCZEK:** Objection, Your Honor. He's
25 making a legal conclusion.

1 **THE COURT:** Sustained. He can't -- he's not
2 allowed to give his opinion.

3 **MS. ZMROCZEK:** And I would ask that that be
4 stricken.

5 **THE COURT:** All right. That's stricken from
6 the record.

7 **THE WITNESS:** In the video, it was determined
8 that the person who completed this armed robbery was
9 wearing a pair of black shorts, but above the black
10 shorts, you can see that they were wearing a gray in
11 pair {sic} of what appeared to be underwear. When
12 Mr. Robinson was arrested, he was wearing underwear
13 meeting that description. It was taken as evidence
14 to present to you, the jury, today so you can make a
15 decision.

16 **MS. ZMROCZEK:** Objection, Your Honor.

17 **THE COURT:** Overruled.

18 (State's Exhibit Number 22, men's gray
19 underwear, marked for identification.)

20 BY MR. FENDER:

21 **Q** I'm not going to ask you to take it out, but
22 can you tell the jurors what this is?

23 **A** This is my handwriting. It's Item Number I
24 that I had placed in -- on this chain of custody
25 inside this bag. It was obtained at the Saluda

1 County Detention Center at 4:20 on the same date,
2 4:20 P.M. This investigation continued for quite
3 some time, being a one-man department. It has
4 inside one pair of gray-in-color underwear taken
5 from Demarcus Robinson's property bag at the Saluda
6 County Detention Facility by use of a warrant.

7 **Q** Through the course of your investigation, did
8 you determine that to be consistent with what the
9 robber was wearing?

10 **A** Correct. Again, the video itself depicted that
11 the robber had on something covering the upper
12 portion of his head, something covering the lower
13 portion of his jaw and mouth. This part, basically,
14 was open {indicating}.

15 The video also depicts that the person had on
16 no shirt exposing their entire chest, back, arms,
17 neck. The person did have on a pair of black
18 shorts, and, again, riding above those black shorts
19 inside was what appeared to be gray underwear. The
20 defendant in the video had on no socks or shoes.

21 **Q** Just to be clear on the timeline, Corporal
22 Raffield, approximately, what time, through the
23 course of your investigation, did you determine the
24 robbery happened?

25 **A** I don't want to come to court and not appear to

1 be precise, so what I rely on is what I refer to as
2 our CAD sheet. It's not exact because everybody
3 gets busy when we have a major event like this,
4 whether it's an armed robbery or whatever the thing
5 is.

6 Our dispatcher, every time we call in, if they
7 believe it's something significant, they stamp it
8 basically, they put a time with it. So, based on
9 the CAD and not just speculating, it shows that the
10 original call was dispatched at 2:43 A.M. on the 1st
11 -- on 8/1 of 2016. They tried to make contact with
12 me, as I had stated earlier, but I was asleep. I
13 did not get notified until the second call, which
14 woke me up. It shows that I made -- that they made
15 contact with me at approximately four -- I'm
16 sorry -- somewhere between 3:30 and a little after
17 4:00.

18 **Q** And what time did you apprehend Demarcus?

19 **A** On the CAD sheet, it shows that he was actually
20 transported from the scene of 212 Merritt Avenue to
21 the jail at 4:42. So, based on my past 20 years'
22 experience and, unfortunately, having to arrest
23 people, generally, it's about a ten-minute delay or
24 so barring any kind of exigent circumstances. So I
25 would imagine he would have been arrested maybe

1 right around 4:20 to 4:25, somewhere in that
2 timeframe.

3 **Q** So he was apprehended with items consistent
4 with the robbery within a couple hours?

5 **A** Correct.

6 **Q** And you said that the -- that the gray
7 underwear was later that afternoon?

8 **A** Correct, based on information -- and, again,
9 the arrest was actually made based on the
10 communication that I had with officers and what they
11 observed in the video.

12 Once he was arrested and I didn't have to worry
13 about him any longer because another officer had
14 transported him to the jail, I was able to actually
15 go and really get into the investigation, view the
16 video for myself, interview the victim and collect
17 the evidence. And then based on that, it was the
18 discovery in the video that the defendant had on
19 what appeared to be gray underwear that was riding
20 about an inch above black-in-color shorts.

21 (State's Exhibit Numbers 23 through 25, U.S.
22 currency, marked for identification.)

23 **Q** I'm handing you now what's been marked 23, 24,
24 25. Can you tell the jurors about these, please?

25 **A** Yes, sir.

1 This package here is \$23. It's my handwriting
2 with inside it's three five-dollar bills, and, I
3 believe, it's eight one-dollar bills. This was
4 located at Circle K in the front parking lot. And
5 it's U.S. currency, one and fives.

6 This package, also completed by myself as far
7 as the writing on the outside, it's \$41. It was
8 five five-dollar bills and 16 one-dollar bills. And
9 what's unique about this, this is what was found
10 under the bedding folded up along with the two pair
11 of black shorts. The denominations were consistent
12 with what had been reported as stolen from the
13 Circle K during the armed robbery.

14 The last package is a single five-dollar bill.
15 This is significant because the five-dollar bill was
16 located in the front yard of 111 Pecan Grove Road.
17 In reference that I had shown earlier, this is the
18 single-wide, basically, that is directly behind
19 Circle K. There's a church and then that
20 single-wide. This was found in the front yard. The
21 reason it's significant is because the victim had
22 relayed to law enforcement that upon the defendant
23 exiting the store, he ran to the left or toward
24 Pecan Grove.

25 So we have the money in the front parking lot.

1 And then as you go around continuation, just a short
2 distance down the sidewalk within inches of the
3 sidewalk in the grass in the front yard of 111, we
4 find a five-dollar bill.

5 **THE COURT:** Are you moving those in?

6 **MR. FENDER:** Judge, at this time, I'd enter 22,
7 23, 24 and 25.

8 **MS. ZMROCZEK:** Without objection.

9 **THE COURT:** Without objection.

10 (State's Exhibit Numbers 22 through 25
11 admitted into evidence. State's Exhibit Numbers 26
12 and 27 marked for identification.)

13 BY MR. FENDER:

14 **Q** Corporal Raffield, will you please explain
15 these items to the jury?

16 **A** Both of these are filled out by me. As I
17 described earlier in the closet, after executing the
18 search warrant, this camo backpack was found laid,
19 basically, resting on the floor. And as I said
20 earlier, there were some .38 rounds found. This is
21 a 50-round box, but with inside is only 35 rounds,
22 which is what is written on the outside of the bag.

23 Based on the fact that these bullets were
24 similar or actually the same brand, it's not just
25 similar, to the five that were inside the revolver

1 that was located in the same room, I obtained it as
2 evidence.

3 **Q** Let me stop you briefly. Corporal Raffield,
4 are those what you would use to load this?

5 **A** Correct. The five that I showed you that were
6 singular a few minutes ago likely came out of the
7 same box because it's the same brand, same caliber.

8 **Q** And you did find this revolver loaded with the
9 defendant, correct?

10 **A** Correct.

11 **Q** Please continue.

12 **A** Again, this is filled out by myself. When I
13 reached underneath the bedding looking for weapons,
14 because of the fact this was an armed robbery, in
15 addition to the \$41 I just described a few minutes
16 ago, these are the pair of two black shorts that
17 were also found. From looking at the shorts and
18 looking at the video, it was consistent, so it was
19 secured as evidence to present.

20 **Q** Consistent with the crime scene?

21 **A** With the video from the crime scene what the
22 defendant was wearing.

23 **MR. FENDER:** Judge, at this time, I'd enter 26
24 and 27.

25 **MS. ZMROCZEK:** No objection.

1 **MR. FENDER:** And I'd ask the record to reflect
2 that in evidence now is State's 1 through State's
3 27.

4 **THE COURT:** Without objection.

5 **MR. FENDER:** Beg the Court's indulgence, Your
6 Honor.

7 (State's Exhibit Numbers 26 and 27 admitted
8 into evidence. State's Exhibit Numbers 28 through
9 36 marked for identification.)

10 **MS. ZMROCZEK:** Without objection, Your Honor.

11 **MR. FENDER:** Judge, at this time, I'd like to
12 go ahead and enter these in that case, 28 through
13 36.

14 **THE COURT:** Admitted without --

15 **MR. FENDER:** And I'd ask leave of the Court for
16 -- for Corporal Raffield to come down and use the
17 projector at this time.

18 **THE COURT:** All right.

19 (Witness leaves the witness stand.)

20 (State's Exhibit Numbers 28 through 36,
21 photographs, admitted into evidence.)

22 **THE WITNESS:** Okay. These first three
23 photographs are pictured in the room that
24 Mr. Robinson was located in. The red material that
25 you see in the picture is a fair representation of

1 what appeared to be a sleeping bag when he was first
2 located on top of it.

3 Again, there was clothing and other items under
4 it, kind of like padding, what appeared to be like
5 it was padded, to lay on. Also, that's where the
6 money that I described earlier, I believe it was \$41
7 in fives and ones, along with the two pair of black
8 shorts were tucked underneath in the same area.

9 This next picture is, again, the material --

10 **MS. ZMROCZEK:** Your Honor, I would ask if he
11 can identify the number just so I can keep track.

12 **THE COURT:** Please.

13 **THE WITNESS:** The first was 28. This one is
14 34.

15 **THE COURT:** Thank you.

16 **THE WITNESS:** And the last one of this one is
17 29. And it shows some of the clothing in part of
18 the floor.

19 The rest of the photographs that I'm presenting
20 are photographs that was discovered inside a closet
21 in the same room. That is the camo bag that I just
22 showed while on the stand with the Magtech .38
23 Special rounds.

24 **MS. ZMROCZEK:** Which number? I'm sorry.

25 What number, please?

1 **THE WITNESS:** 33. This one is 32. This is a
2 picture of the firearm I was just holding and it's
3 showing the five rounds that was discovered inside
4 the cylinder at the time the gun was located.

5 This is the bottom portion of the closet. I
6 had stated earlier that it didn't appear anything
7 was hanging clothes in that closet, but what I did
8 notice is this blue Rubbermaid top and underneath
9 that was the firearm, which was in the top right
10 corner.

11 **MS. ZMROCZEK:** Number, please.

12 **THE WITNESS:** 31.

13 30 is another picture depicting the same.

14 35 is a profile of the right side of the gun
15 that says Charter Arms. It shows the serial number
16 of 113347, which is what's documented on my initial
17 incident report and what I was just holding a few
18 minutes ago. That was 35.

19 36 is a left-side profile of the firearm. This
20 is before it was opened. And the cylinder, it looks
21 like it's in the closed position. Sorry, I'm having
22 to manipulate it to get some light.

23 On the front of the barrel, it stipulates it's
24 a .38. And I believe it's stating it's a Charter
25 Arms on the top of that, but I can't see because of

1 the lighting. And that's all the photographs.

2 BY MR. FENDER:

3 **Q** Just for clarification, you found the defendant
4 with these items?

5 **A** That's correct. All these items that I just
6 showed while sitting on the witness stand and just
7 talked about were items that were found in the same
8 room that Demarcus Robinson was located and
9 arrested.

10 **Q** And this is consistent with what was found --

11 **A** Yes, it was consistent. The clothing, the
12 money, the gun, everything that I just presented was
13 consistent with the armed robbery and what was
14 depicted in the video.

15 (Witness resumes the witness stand.)

16 **Q** Was anybody else in that room other than
17 Demarcus?

18 **A** No. He was the only one in the room when he
19 was discovered. Again, there was no furniture in
20 there. He was laying on top of what appeared to be
21 some type of sleeping bag with clothing underneath
22 it for padding.

23 **Q** But you knocked on the door and the mother came
24 to the door?

25 **A** Correct.

1 **Q** What was her reaction?

2 **A** When I -- when she had actually --

3 **MS. ZMROCZEK:** Objection, Your Honor; asked and
4 answered.

5 **THE COURT:** Sustained. Let's move forward.

6 **MR. FENDER:** Judge, may we approach briefly?

7 **THE COURT:** Sure.

8 Y'all stand up and stretch your legs while they
9 approach.

10 (Whereupon, a bench conference was held off
11 the record, in the presence of the jury, but out of
12 the hearing of the jury.)

13 **MR. FENDER:** Please answer the defense
14 attorney's questions.

15 **THE COURT:** Cross-examination?

16 CROSS-EXAMINATION

17 BY MS. ZMROCZEK:

18 **Q** Twenty-five years in law enforcement?

19 **A** This year, yes, ma'am.

20 **Q** This year. Received training through the
21 Criminal Justice Academy?

22 **A** (Witness nodded head.)

23 **Q** Yes?

24 **A** Yes.

25 **Q** You received training with the FBI?

1 **A** No.

2 **Q** You didn't receive any training? You just
3 worked there?

4 **A** I didn't work for the FBI.

5 **Q** Okay. Federal agents?

6 **A** I worked for a federal agency, correct.

7 **Q** Which federal agency?

8 **A** Federal Air Marshals.

9 **Q** Federal Air Marshals. Received training there?

10 **A** I went to FLETC and then I went to an academy
11 that was designed specifically for the Air Marshal
12 program.

13 **Q** You would agree with me, Officer Raffield, that
14 you are a professional?

15 **A** I try to be.

16 **Q** That you -- as you eloquently stated earlier,
17 you want this jury to have all the information so
18 that they can make the informed decision, correct?

19 **A** Absolutely.

20 **Q** So, Agent Raffield, why haven't you introduced
21 all the evidence that you collected?

22 **A** (No response.)

23 **Q** What evidence did you leave out that you
24 collected?

25 **MR. FENDER:** I'd object. I think this is

1 outside the scope of his direct.

2 **THE COURT:** She's asked the question; he can
3 answer it.

4 I think you may need to ask it more
5 specifically.

6 BY MS. ZMROCZEK:

7 **Q** Let me be more specific. Did you recover an
8 item of clothing outside of 111 Pecan Grove Road?

9 **A** Absolutely, I did.

10 **Q** What was that item of clothing that you
11 recovered?

12 **A** It was a black-in-color T-shirt that was
13 consistent with what the defendant was wearing
14 across his face in the video.

15 **Q** And you collected that?

16 **A** Absolutely. Photographed and collected it and
17 sent it to SLED for analysis.

18 **Q** Okay.

19 **MR. FENDER:** Judge, again, I'd object to the
20 characterization that it's not in evidence. I
21 believe it is in evidence.

22 **THE COURT:** Is it?

23 **MR. FENDER:** I'll withdraw to allow the
24 question.

25 **THE COURT:** Okay. Go ahead.

1 BY MS. ZMROCZEK:

2 Q Do you have that in front of you?

3 A I have a pair of black -- two pair of black
4 shorts. I do not have it in front of me. I have
5 the paperwork where I sent it to SLED for analysis
6 and then can explain that.

7 Q Sure.

8 A Okay. Trying to do a match of DNA with a
9 suspect is always additional evidence to present. I
10 sent the information or the black T-shirt to SLED
11 trying to get a comparison based on the defendant's
12 DNA. I don't work for SLED, don't know their
13 policies, but what I was informed is when they do
14 testing, if they find more than one strand of DNA on
15 any item, that's the end of the test. For whatever
16 purposes, that's their policy.

17 Basically, it was inconclusive is what SLED
18 told me. It didn't -- it didn't necessarily
19 indicate that it was Mr. Robinson's DNA, but it
20 didn't say it was not his DNA, but that's their
21 policy, for whatever reason. I submitted it in good
22 faith hoping to get a match or for it to not be a
23 match, but based on the fact that it had more than
24 one DNA sample on it, that's their policy.

25 Basically, it was explained to me by SLED that

1 any item that anybody wears that is washed in
2 clothing -- with other people's clothes, like most
3 families do, is going to have more than one -- one
4 item of DNA on it.

5 So that's the short story behind what occurred
6 with the black T-shirt, but what was important to me
7 was where it was located. Where the five-dollar
8 bill was located in front of 111 Pecan Grove, if you
9 go around the corner of that trailer into the wooded
10 area is where -- right before you get to the fence
11 that was observed freshly knocked down, that's where
12 the black T-shirt was on. And if you draw a line
13 straight from that black T-shirt through the woods,
14 two-tenths of a mile down the road, you end up at
15 the back door of 212 Merritt Avenue, which is where
16 the defendant was located and arrested.

17 **Q** Agent Raffield, is it your testimony here on
18 the stand under oath that in your 25 years of law
19 enforcement and several years within this state,
20 that you've never received an item or an analysis
21 from SLED that has more than one DNA a major or a
22 minor contributor?

23 **A** I'm trying to think of what DNA evidence I've
24 actually submitted.

25 **Q** In 25 years.

1 **A** Well, I can explain the 25 years. Eight years
2 I was a federal agent, I didn't deal with DNA; I was
3 dealing with terrorists. I had one job at that
4 time, that was to prevent another 9/11.

5 When I was with the City of North Augusta,
6 which was the first ten years of my career, I was a
7 low-level officer and a traffic officer. I did all
8 kind of stuff, but I was not an investigator at that
9 time.

10 When I came to Saluda, we kind of do a little
11 bit of everything. We still have an investigation's
12 division, so my need to actually fill something out
13 to send to SLED was less because we had an
14 investigation's division that did that.

15 But when I became chief, which is for a
16 two-year period, everything fell on my shoulders.
17 So the only evidence that I remember sending to SLED
18 in those two years was that black T-shirt.

19 **Q** Agent Raffield, is it your testimony that
20 you've never received a report from SLED that has an
21 item with a major contributor and a minor
22 contributor? Is that your testimony?

23 **A** I don't understand what you're saying, a major
24 contributor and a minor contributor.

25 **Q** You never received evidence from SLED that

1 showed more than one DNA on a piece of evidence
2 ever?

3 **A** Not other than this case.

4 **Q** I want to talk about your involvement because
5 I'm a little bit confused, so help me out. You were
6 awoken?

7 **A** Correct. I was off duty. It was somewhere
8 around 3:30 in the morning when I was notified that
9 there had been an armed robbery. I was asleep.

10 **Q** Okay. And, at that point, you get in your
11 vehicle and run code?

12 **A** Correct.

13 **Q** With your lights?

14 **A** Uh-huh.

15 **Q** Yes?

16 **A** Yes.

17 **Q** And your dash cam?

18 **A** I don't remember if we had a dash cam in that
19 car at the time.

20 **Q** Okay. And you go where?

21 **A** I would start responding to the scene, as I
22 stated earlier, started communicating with officers
23 that had information, which was vital for me to make
24 decisions since everything, ultimately, fell on my
25 shoulders. And I'm --

1 **Q** So you went --

2 **A** I'm trying to answer your question, Counselor.

3 **Q** Sure.

4 **A** I went to 212 Merritt Avenue based on the
5 information that I had received from the first
6 on-scene officer, which was Dale Hallman.

7 **Q** So you did not go to Circle K, you went to 212
8 Merritt?

9 **A** Initially, I went to 212 Merritt Avenue. I did
10 go to Circle K minutes later after the arrest was
11 made.

12 **Q** Okay. One of your duties as a lead
13 investigator is to make sure that you gather all the
14 information from the officers that assisted you,
15 right?

16 **A** We try to obtain information to what each
17 officer did in a major crime. A lot of times what
18 we ask an officer to do is to complete a supplement.
19 Sometimes it occurs where you're able to get all the
20 moving parts and information, and sometimes you
21 don't.

22 Again, I was asleep when it occurred. I was
23 off duty. I had to rely on what the officers told
24 me as I responded and what I could personally
25 observe. And then the CAD sheet kind of explains

1 who responded, what time they got there, anything
2 significant. So, to the best of my ability, I tried
3 to capture everything that I knew about the
4 incident.

5 **Q** And then you said that this investigation was
6 ongoing?

7 **A** Correct. When this thing started and I was
8 awoken, I did not go home till late -- later that
9 day. I had to do followups. I went back to the
10 scene after the arrest and met with the manager
11 Ms. Molina, who was here earlier, and her regional
12 manager. At that point, I got a chance to view the
13 video for myself, got a determination of
14 approximately \$106, which is on my initial report,
15 which was believed to be the dollar amount that was
16 stolen that morning with the recovery of
17 approximately \$69 that was located in the parking
18 lot, Pecan Grove residence and inside the Merritt --
19 212 Merritt house.

20 From there, I spoke with Mr. Houston who
21 appeared to be very distraught to the point of
22 hyperventilation, just classic signs of shock. I
23 tried to obtain a statement from him. This went on
24 for several hours because I wasn't trying to rush
25 him. Based on his state of mind, I could tell that

1 he was visibly upset.

2 Q When you went to the academy, they trained you
3 to write reports?

4 A They gave us some basic guidelines to answer
5 the who, what, where, when and why, try to stay away
6 from opinions and, basically, just state, you know,
7 factual information.

8 Q All the important information?

9 A Everything that you're aware of, correct.

10 Q In your report -- do you have a copy in front
11 of you?

12 A I do.

13 Q Can you tell me which page you indicated that
14 Mr. Houston was very upset and visibly shaken to the
15 point of signs of, I believe you said -- what was
16 the word?

17 A Hyperventilate?

18 Q Yes.

19 A On page ten, as I depict what I was doing
20 during the investigation, part of my responsibility
21 is also to attend to the victim, I advised the
22 victim of the arrest, which I'm required by law to
23 do under victims' rights, notified him what time the
24 bond hearing would approximately occur.

25 Mr. Houston, at that time, advised me that he did

1 not wish to attend and that he did want assistance
2 from the victim advocate, meaning that he knew he
3 was going to need counseling.

4 I did not write specifically in the report that
5 I observed him hyperventilating. And his demeanor
6 is readily available on the video for you to make
7 your own decision.

8 **Q** You testified that when you spoke with the
9 residents of 212 Merritt, that they gave you a time
10 at which they saw Demarcus?

11 **A** It was very specific. I remember that clearly.
12 I was told that he had been home for approximately
13 an hour and a half, which is very close to the time
14 of the armed robbery occurring. I was told that he
15 did a play kick to his sister who was an adult in
16 the house -- I guess she was laying down, I don't
17 know, but that's what she had told me -- and that he
18 had warmed up a bowl of, like, macaroni and cheese
19 or something to that effect I believe, which is all
20 in my report that was written soon after this
21 incident, before going upstairs and lying down and
22 my arrival.

23 **Q** And, in fact, they told you 2:30 A.M., correct?

24 **A** No, ma'am.

25 **Q** Do you have a copy of your report in front of

1 you?

2 **A** What page?

3 **Q** (Indicating.)

4 **A** I apologize. It's in my report.

5 **Q** I'm sorry?

6 **A** I said, I apologize; it's in my report. It
7 says, During the time spent at 212 Merritt Avenue,
8 Mr. Robinson's mother and sister, Ms. Kathleen
9 Robinson, both stated that Mr. Robinson came home
10 that morning at approximately 2:30.

11 And as I stipulated earlier, there was about a
12 30-minute variance between the time that they stated
13 he got home and the time the actual armed robbery
14 occurred.

15 **Q** I'm going to show you State's Exhibit -- when
16 you say 30-minute period, you mean it occurred 30
17 minutes after he was home?

18 **A** After he was alleged to be home.

19 **Q** I'm going to show you State's 34.

20 **A** Okay.

21 **Q** And you took that picture?

22 **A** Uh-huh.

23 **Q** And can you identify what this is?

24 **A** It appears to be a cup of some type of food
25 with some residue and a spoon or something in it.

1 **Q** Okay. You don't recall what type of food that
2 is?

3 **A** I don't recall the photo -- being in the
4 photograph, but I don't dispute that it appears to
5 be a bowl of maybe what the mother had stipulated.

6 **Q** Which would have been macaroni and cheese?

7 **A** From the best of my memory, that's correct.

8 **Q** Okay. One of the things when you take -- the
9 reason you take pictures is you want to show what
10 the scene looked like before you collect the
11 evidence, right?

12 **A** The great thing about photographs and video, I
13 can lie, a defendant can lie, but photographs and
14 video, they don't lie. They tell it just as it is.
15 That's why I think it's very important that you
16 photograph anything before you touch it and secure
17 it. And if there is video available, that you bring
18 it forth as evidence in a trial.

19 **Q** I'm going to hand you all your photographs
20 again. Will you please tell the jury which picture
21 depicts the cigarettes?

22 **A** I don't see one, but I can tell you, based on
23 the report that I wrote soon after this incident,
24 long before today, that the cigarettes were located
25 in the closet on the top shelf along with the Vega

1 cigar wrapper. I don't want to speculate, but I can
2 kind of give you an explanation of probably why
3 there's not a photograph, if you like.

4 **Q** I don't have any questions as far as that goes.

5 The shorts that you collected you said were
6 located underneath where Mr. Robinson was asleep?

7 **A** Two pair of black shorts located underneath the
8 sleeping bag Robinson was sleeping on when arrested.

9 **Q** Sleeping on when arrested.

10 **A** And that was 8/1/2016 at 0730 hours is when I
11 packaged it.

12 **Q** 0730 hours?

13 **A** When I actually filled it out and sealed it.
14 Again, one-man department. I was conducting the
15 investigation. It was secured personally by me
16 until the time that I was able to put it in the bag,
17 seal it and actually mark it. I try to mark stuff
18 as the time that it occurred. Sometimes it happens,
19 sometimes it's not.

20 **Q** And you had several other officers assisting
21 you?

22 **A** No. I was the only officer working this case
23 as far as it comes to evidence and doing the report.

24 The supporting agencies, which was Saluda
25 County Sheriff's Office, Saluda Police Department,

1 helped me with securing the scene, doing a
2 perimeter, looking for the suspect. They stood by
3 for me at 212 Merritt Avenue while I went to get the
4 search warrant. They legally executed the search
5 warrant where the evidence was discovered.

6 Beyond that, I collected evidence, I
7 photographed it, I packaged it, this is all my
8 handwriting. The followup investigation with me
9 seeing the video, speaking with the manager, Shannon
10 Molina, and her regional manager, speaking with
11 William, I did.

12 I did have assistance from other agencies in
13 the totality of the investigation. It was a big
14 part and a big help. But because I was a one-man
15 guy when it came to the paperwork -- everybody likes
16 to play, but no one wants to do the paperwork -- it
17 took me hours to get this completed that day to a
18 point where I could stop, safely stop, and know that
19 I had the bulk of what I needed to move forward.

20 **Q** You made another arrest?

21 **A** I did.

22 **Q** In this case?

23 **A** I did.

24 **Q** You -- I want to talk briefly about you said --
25 you used words like preserve the scene and preserve

1 the integrity of the scene.

2 **A** Uh-huh.

3 **Q** Correct?

4 **A** Uh-huh.

5 **Q** And that's so that any -- any evidence can be
6 gathered?

7 **A** It's made with the attempt to try not to
8 disturb anything at the scene so nothing gets
9 brought into the scene or nothing gets taken away
10 from the scene, that way we can present it to a jury
11 at a day like today as unfettered as possible to be
12 fair.

13 **Q** And you also -- in addition to doing DNA, you
14 can collect other types of scientific evidence,
15 correct? Fingerprints?

16 **A** If you have a surface that is consistent with
17 something you can capture fingerprints from, you
18 could. In this case, looking at the video as fast
19 and as what little was touched, there wasn't really
20 anything to fingerprint other than the items that I
21 took from the possession of the subject, which
22 wouldn't make sense to me to fingerprint it if he
23 was the one that was in possession of it.

24 **Q** In fact, money is a very good collector of
25 fingerprints, correct?

1 **A** No, because there's so many hundreds and
2 thousands of people that touch currency. It's
3 constantly exchanged, so you're going to have
4 fingerprint layer on top of fingerprint layer. The
5 chances of getting probably a clear fingerprint off
6 of money, I would -- and I'm not an expert for
7 latent prints, just basic information I learned at
8 the academy -- I would think it would be pretty
9 hard. There's probably thousands, if not millions,
10 of DNA on any individual bill.

11 **Q** You're familiar with touch DNA?

12 **A** I am familiar now because with this case and
13 learning from SLED that it is almost impossible to
14 get touch DNA off money or cash drawers and the best
15 thing to do was to steer completely clear of that.

16 **Q** Do you have a copy of SLED's policy and Calea
17 manuals?

18 **A** I do not. This was what was relayed to me
19 after my experience with trying to do the buccal
20 swabs on Mr. Robinson and submitting that and the
21 black T-shirt that you brought up a few minutes ago.

22 **Q** So you never read the standards for law
23 enforcement agencies in your 25 years?

24 **A** I'm not a SLED employee. I don't know their
25 policies or procedures.

1 **Q** Not for SLED, for law enforcement?

2 **A** I haven't seen what you're talking about, no.

3 **Q** Okay.

4 **A** We do yearly training through the academy after
5 our initial appearance, we do legal updates, they
6 advise us on any kind of changes with the
7 Constitution and the rights of individuals. The
8 agency is responsible to send officers to advanced
9 training and stuff as that, but I'm not familiar
10 with what you're referring to.

11 **MS. ZMROCZEK:** Beg the Court's indulgence.

12 (Pause.)

13 **Q** You watched the video?

14 **A** I did.

15 **Q** You lined up the time stamps? You would agree
16 that the time stamps are correct on the video?

17 **A** I would agree that whatever the time stamp on
18 any of the pictures, video is a fair and true
19 representation of what was taken that night, but
20 with time change and that kind of stuff -- I can
21 tell you nothing was changed or altered. However it
22 recorded at the time is how we're presenting it
23 today.

24 **Q** So the suspect that had his face completely
25 covered with a black T-shirt, which you found, and a

1 red bandanna, which you did not find, was in that
2 store for exactly one minute and one second?

3 **A** I don't agree with your statement because the
4 video shows just the opposite. His face was not
5 completely covered. His face was actually exposed
6 from about his eyebrows to his nose. He had two
7 different pieces of apparel on his head. He had
8 something over the top of his head that did not
9 appear to be red in color to me and a black, what
10 looked like, a T-shirt around the lower part of his
11 mouth -- so, basically, this is how much was showing
12 {indicating} -- and a pair of shorts. But the video
13 itself depicts that.

14 **Q** And you said that you sat down with Mr. Houston
15 to take a statement?

16 **A** Correct.

17 **Q** And you gave him the opportunity to make sure
18 that that statement was complete?

19 **A** I did, but, again, it appeared to me, based on
20 my experience, that he was under severe distress.
21 And again -- and as an officer and having to not
22 only protect the rights of a person that we charged,
23 we're now tasked with protecting the rights of
24 victims. It's under the Victims' Compensation Bill
25 Act that was passed by South Carolina Legislature.

1 So it was my duty, as a chief and only member of the
2 department, other than my part-time guy, I don't
3 have my own victim advocate like the sheriff's
4 office has or a General Sessions Solicitor's Office
5 has or Saluda PD has, so that's my role.

6 So I stayed in contact with Mr. Houston over
7 several months, really over a year. Found out he
8 wasn't getting the services he needed through Circle
9 K, got him in touch with the victim advocate with
10 Saluda County who agreed to help my agency and the
11 victim trying to get him some mental health help,
12 because that's how severe this affected him.

13 **Q** And never once did he have an opportunity to
14 expand on his statement?

15 **A** I went -- if you looked at the report that you
16 have, it shows that I went back by his house --
17 since you brought up the other suspect being
18 arrested on the same charges -- and presented a
19 photo lineup of the other suspect. He and I talked
20 often. It wasn't always about the case; it was more
21 or less checking on him. I tried to obtain a
22 statement, but this is something, again, that
23 adversely affected his ability to communicate with
24 me. It was very emotional for him. I did not hound
25 him for that reason.

1 The video to me, again, I can lie, the victim
2 can lie, a defendant can lie, but a video tells the
3 truth. You can't -- you can't hide the truth with
4 video. The video is there for you to view.

5 **Q** Agent Raffield -- excuse me -- Corporal
6 Raffield, in your report, you didn't make any
7 notation of any tattoos?

8 **A** No, I did not, but, again, as the video --

9 **MR. FENDER:** Judge, I would ask to approach and
10 I would object to that.

11 **THE COURT:** All right. Step up.

12 (Whereupon, a bench conference was held off
13 the record, in the presence of the jury, but out of
14 the hearing of the jury.)

15 BY MS. ZMROCZEK:

16 **Q** In your report, you did not make any notation
17 of any tattoos?

18 **THE WITNESS:** Am I free to discuss it, Your
19 Honor?

20 BY MS. ZMROCZEK:

21 **Q** It's a yes or no question and then you can
22 explain.

23 **THE COURT:** You can answer yes or no and then
24 you're allowed to explain yourself. So the question
25 is, In your report, did you make a notation of any

1 tattoos?

2 **THE WITNESS:** I would have to reread the
3 report. I don't remember putting anything in the
4 report specifically, but I do remember the
5 investigation. I painstakingly went over the
6 evidence, including the video, myself, slowing the
7 video down, looking at it, trying to figure out
8 what, if anything, I could see on the individual
9 because of the fact that he wasn't covered
10 completely in the face and he only had a pair of
11 shorts on.

12 I could tell, by looking at the video with my
13 own eyes, that there appeared to be tattoos on the
14 individual. That's the reason I took the video to
15 Joe West with SLED. And I asked him to enhance
16 those photographs to the best of his ability so I
17 could do a comparison between that video and
18 Demarcus Robinson's tattoos, because I -- I can see
19 on the video what is the outline of stars on the
20 left arm, which is consistent with what's in that
21 video in the still photographs that I asked Joe West
22 to try to enhance so it could be seen better.

23 BY MS. ZMROCZEK:

24 **Q** You didn't ask Joe West to enhance any video of
25 the open face?

1 **A** I'm not an audio guy. I told Joe to try to
2 enhance the tattoos or anything that he could find
3 that would be beneficial to the case.

4 **Q** You would agree with me that enhancing a
5 picture of someone's face --

6 **A** I would agree --

7 **Q** -- would be beneficial?

8 **A** -- but I also stipulated earlier that you can
9 see this for yourself in the video. It doesn't
10 matter what I say, it's readily available in the
11 video.

12 **MS. ZMROCZEK:** Your Honor, I have no further
13 questions.

14 **THE COURT:** All right. We'll do redirect in
15 the morning.

16 Ladies and gentlemen, we're going to go ahead
17 and break there for the evening. It's about 5:40.
18 We pushed -- y'all have been through a long day
19 today.

20 Now, Corporal Raffield, you will not be allowed
21 to discuss your testimony with anyone in any way,
22 shape or form. Tomorrow morning you'll be the first
23 witness up and we'll start at 9:30. We'll start
24 with his redirect at that time.

25 All right. So, ladies and gentlemen, I'm going

1 to let you break for the evening.

2 Go ahead and step down, Corporal Raffield,
3 while I give the jury some instructions for tonight.

4 All right. First of all, I was doing -- I'm
5 doing my best -- I was trying to get through that
6 witness tonight, so I apologize for running late.

7 We're about to break for the night. So, at
8 this point in time -- this is, really, your first
9 break for overnight -- what I want to do is I want
10 to remind you of your oath. So you took an oath
11 when we started this case and that's your promise to
12 yourself, to me, to each other, to the parties, to
13 the lawyers in the case that you will not discuss
14 this case with anyone in any way, shape or form.
15 You will not go do any research on this case in any
16 way, shape or form.

17 Go home tonight, enjoy your evening. I
18 apologize for keeping you late. I take full and
19 complete and total responsibility for that. Enjoy
20 your evening, relax. Tomorrow morning come back
21 refreshed, ready to go.

22 We're going to start right at 9:30. We'll be
23 leaving from Columbia bright and early to make sure
24 we're over here and don't have any traffic issues
25 and we're ready to go at 9:30. We'll jump right

1 back into the testimony.

2 I appreciate everybody stayed awake today and
3 paid attention. I sincerely appreciate that. I
4 know the parties do. But as I leave you for the
5 evening, you are not allowed to discuss this case
6 with anyone in any way, shape or form. You are
7 still to keep an open mind about the case. And
8 we'll see you bright and early tomorrow morning at
9 9:30, ready to go. Okay? Thank you very much.

10 Everyone else remain seated.

11 (The jury was excused for the day.)

12 **THE COURT:** All right. Anything from the State
13 before we break?

14 **MR. FENDER:** Nothing from the State, Judge.

15 **THE COURT:** From the defense?

16 **MS. ZMROCZEK:** Nothing.

17 **THE COURT:** All right. Anymore exhibits that
18 you have, I want you to give them to Stacy before
19 you leave and mark them tonight, tonight. Let me
20 say that again, tonight. Okay? We spent about 15
21 minutes or maybe 20 minutes today marking exhibits.
22 Let's get all those marked. I'm not saying they're
23 admissible, just get a number on them so we don't
24 have to stop to put a sticker on them and get a
25 number on them.

1 Show them to Ms. Zmroczek. She may not even
2 have an objection. We may be able to move even
3 faster through them. Okay?

4 All right. 9:30, 9:30, 9:30. Thank you very
5 much.

6 (State's Exhibit Numbers 37 through 45,
7 photographs, marked for identification.)

8 (The proceedings were concluded for November
9 7, 2017.)

10 (The following proceedings were held on
11 November 8, 2017.)

12 **THE COURT:** All right. We're back on the
13 record. Anything from the State before we start?

14 **MR. FENDER:** Nothing from the State.

15 **THE COURT:** From the defense?

16 **MS. ZMROCZEK:** Nothing, Your Honor.

17 **THE COURT:** All right. Jury's all here?

18 **BAILIFF:** Yes, Your Honor.

19 **THE COURT:** Very well. Would you bring them
20 in, please?

21 And come on back up, Chief Raffield.

22 (Witness resumes the witness stand.)

23 (The jury enters the courtroom at 9:30 A.M.)

24 **THE COURT:** All right. Welcome back. Thank
25 you very much for being on time. We're ready to go.

1 So we are on Chief Raffield's redirect.

2 And, Mr. Fender, you may question him.

3 **MR. FENDER:** Thank you, Judge.

4 REDIRECT EXAMINATION

5 BY MR. FENDER:

6 **Q** Good morning, Corporal Raffield. Just briefly,
7 the defense attorney asked you yesterday if you made
8 any documentation of tattoos in your booking report
9 or incident report. Is that -- do you recall that
10 question?

11 **A** I do.

12 **Q** And how did you respond to that question?

13 **A** Yesterday or during the actual investigation?

14 **Q** Yesterday, and you can explain --

15 **MS. ZMROCZEK:** Your Honor, I mean, I think
16 that --

17 **THE COURT:** Just ask him what he did.

18 **THE WITNESS:** Okay. During the investigation
19 and reviewing the video myself, I could tell that
20 the person in the video had tattoos that appeared to
21 be stars on one arm, certain characteristics. Based
22 on that, I directed photographs to be taken of
23 Demarcus Robinson's tattoos. I was present when
24 they were taken.

25 The reason I took these is I thought it was

1 absolutely necessary, as a comparison to the video,
2 to show that the person in the video had tattoos
3 consistent with what Demarcus Robinson has. To me,
4 they're unique.

5 **MS. ZMROCZEK:** Objection, Your Honor.

6 **THE COURT:** Sustained.

7 Don't give your opinion. Okay? You can go
8 through what you did or you told somebody to take
9 some pictures, but don't give your opinion.

10 **THE WITNESS:** Okay.

11 **MS. ZMROCZEK:** I move to strike that.

12 **THE COURT:** Yeah, disregard that testimony.

13 BY MR. FENDER:

14 **Q** Corporal Raffield, what do these items appear
15 to be?

16 **A** The first one, Number 37, is a tattoo of,
17 appears to be, flames on the inside right arm of
18 Mr. Robinson. On the right hand, the letters T-T-C.
19 On the left arm, it's kind of like waves with stars,
20 flames coming off the hand with the number 803. On
21 the neck line, the letters L-G-G-B or 1-G-G-B,
22 depending on -- it's kind of hard to tell what it's
23 supposed to be.

24 43 shows a scar on the shoulder of
25 Mr. Robinson, on his right shoulder, along with a

1 discoloration of the pigment, which is a lot darker
2 than his skin tone.

3 These are the pictures that I directed to be
4 taken. As I was stating, during the investigation,
5 as I reviewed the evidence, I did observe in the
6 video the person to have tattoos. They appeared to
7 be consistent with the tattoos that I observed on
8 Mr. Robinson. And based on that, I wanted to make
9 sure I had a comparison between his tattoos and the
10 video.

11 **Q** And these were the photographs that you
12 testified were taken as part of booking that day?

13 **A** That's correct.

14 **Q** Do they fairly and accurately depict what you
15 observed?

16 **A** They do.

17 **Q** Do they appear to be altered or changed in any
18 way?

19 **A** They do not.

20 **MR. FENDER:** Judge, at this time, the State
21 would move to enter into evidence what's previously
22 been marked as State's 36 through 45.

23 **MS. ZMROCZEK:** No objection.

24 **THE COURT:** Without objection.

25 **MR. FENDER:** Excuse me. 37 through 45.

1 **THE COURT:** 37 through 45 admitted without
2 objection.

3 (State's Exhibit Numbers 37 through 45,
4 photographs, admitted into evidence.)

5 BY MR. FENDER:

6 **Q** And just going back to your cross-examination
7 yesterday, Corporal Raffield, you found a T-shirt
8 outside in the grass outside of the gas station; is
9 that correct?

10 **A** That's correct.

11 **Q** And you submitted that to SLED for DNA testing?

12 **A** I did.

13 **Q** And that was just outside of the gas station?

14 **A** Based on the witness' testimony, the
15 investigation took us around the corner of the
16 store, which is perpendicular at the intersection of
17 Main Street and Pecan Grove. The money's in the
18 front. We had money of a single five laying in the
19 yard of 111 Pecan Grove Road just off the sidewalk
20 in the grass just around the -- and that was in
21 front of the single-wide.

22 As you went around the corner of the
23 single-wide, that's where the black T-shirt was
24 found just before you got to a fence that appeared
25 to be freshly knocked down.

1 **Q** When you're doing your investigation, I mean,
2 you collect all pieces of evidence that you find?

3 **A** Correct.

4 **Q** And what did you find at the house?

5 **A** When Demarcus Robinson was located in the
6 house --

7 **MS. ZMROCZEK:** Objection, Your Honor. This has
8 been asked and answered.

9 **THE COURT:** Sustained.

10 BY MR. FENDER:

11 **Q** Just going back to your cross-examination
12 yesterday, the defense attorney asked, you know,
13 about your interaction with the mother. And what --
14 approximately, what time did she say Demarcus got
15 home that night?

16 **A** Let me look back at the report. I got that
17 wrong yesterday.

18 **Q** I believe the defense attorney had directed
19 your attention to page eight on cross, and that's
20 what we want to address here on redirect.

21 **A** Yes, at 2:30.

22 **Q** And that was, approximately, 2:30?

23 **A** It was.

24 **Q** Through the course of your investigation, what
25 time did you determine this robbery approximately

1 happened?

2 **A** At 2:42.

3 **Q** And so -- but she did testify -- or your
4 interaction led you to believe that he was out that
5 night?

6 **A** Yes, based on what I was able to determine,
7 based on the investigation at the house --

8 **Q** He had gotten home recently?

9 **A** Yeah. He had been out and he had just gotten
10 home.

11 **Q** And her word's, approximately, 2:30?

12 **A** Correct.

13 **Q** Did she give you an alibi then?

14 **A** No. She said he had just gotten home,
15 explained that he had play kicked his sister and
16 cooked some kind of food and went upstairs.

17 **Q** Has she given you an alibi since then?

18 **A** She has not.

19 **Q** Has anybody given you an alibi?

20 **A** No, sir.

21 **MR. FENDER:** Thank you.

22 **THE COURT:** Ms. Zmroczek?

23 RECROSS-EXAMINATION

24 BY MS. ZMROCZEK:

25 **Q** She said he was there at 2:30 A.M.?

1 **A** She said he was there at, approximately, 2:30
2 when I asked.

3 **Q** A.M.?

4 **A** Yeah.

5 **Q** Okay. And you stated that this occurred around
6 2:45?

7 **A** 2:42, 2:43, looking at the CAD.

8 **Q** 2:42 A.M.?

9 **A** But she said he was there, approximately, at
10 2:30.

11 **Q** Got you.

12 All right. You took these pictures?

13 **A** They were taken at my direction during the
14 booking process.

15 **Q** They were taken at your direction?

16 **A** Correct.

17 **Q** When?

18 **A** At the jail.

19 **Q** When?

20 **A** At sometime that day. I can't tell you the
21 exact time.

22 **Q** Sometime that day?

23 **A** Correct.

24 **Q** Okay. So that means that all of these tattoos,
25 hands, neck, everything, were there that day?

1 **A** Correct.

2 **Q** Okay. That day, he, Mr. Robinson, wasn't
3 afforded a haircut?

4 **A** I don't understand your question.

5 **Q** This is how he looked that day?

6 **A** Correct.

7 **Q** Okay. And I want to -- we don't have any
8 pictures of the T-shirt or where it was located or
9 the fence, right?

10 **A** I'm confident we don't have a picture of the
11 fence. I believe we have a picture maybe of the
12 T-shirt. I'm not a hundred percent sure.

13 **Q** In evidence?

14 **A** I haven't seen it entered into evidence in the
15 courtroom.

16 **Q** All right. So you haven't seen it in evidence,
17 right?

18 **A** I took a photograph.

19 **Q** Okay. But you didn't put it in evidence. I
20 want to show you --

21 **A** I turned everything over to the solicitor's
22 office that I took. And one of the pictures I took
23 was the T-shirt, but I don't have control over
24 what's entered in here or not entered.

25 **Q** Okay. I'm showing you -- and I'll put it up

1 here, maybe you can step down. Just make sure you
2 keep your voice up.

3 **A** (Witness leaves the witness stand.)

4 **Q** I'm going to show you what's first State's 19.
5 Are you familiar with State's 19?

6 **A** Yes, ma'am.

7 **Q** Okay. So this is the Circle-K?

8 **A** That's the parking lot.

9 **Q** That's the parking lot, right? This is the
10 Circle-K?

11 **A** Correct.

12 **Q** This is the church?

13 **A** That is correct.

14 **Q** And this is the single-wide?

15 **A** That is the 111 Pecan Grove Road address.

16 **Q** 111 Pecan Grove Road that way, right? This is
17 Pecan Grove Road right here {indicating}?

18 **A** That's correct.

19 **Q** Okay. This is?

20 **A** That's Main Street.

21 **Q** Okay. I'm going to now put on -- oh, and the
22 T-shirt you said was found -- and the money were
23 found somewhere around here {indicating}?

24 **A** No, ma'am. I'll point because your laser thing
25 is bouncing off all over the place.

1 The five-dollar bill -- the money that was in
2 the front parking lot was here {indicating}. The
3 five-dollar bill was right at the edge of the
4 sidewalk, approximately a third, which is right
5 there. And then the T-shirt was found on the corner
6 of the house here. And the fence line, which was
7 here, is where the fence was pushed down.

8 My investigation revealed that whoever it was
9 was going back in this direction, which is back
10 toward 212 Merritt Avenue.

11 **Q** Okay. And State's 18, show the jury where
12 Merritt Avenue is.

13 **A** Merritt Avenue is right here {indicating}. It
14 runs perpendicular to Main Street.

15 **Q** Show them where 212 Merritt Avenue is.

16 **A** This is the laundry mat. These are trees,
17 large trees. 212 Merritt Avenue is right here in
18 this area {indicating}.

19 **Q** And show them on that map where the T-shirt was
20 found.

21 **A** The T-shirt was found right about on the side
22 of this single-wide, along with the fence that was
23 pushed down, the person going in this direction
24 {indicating}.

25 **Q** Thank you.

1 All right. You have -- and one of the
2 important things that --

3 **A** Sit down?

4 **Q** Sure.

5 **A** (Witness resumes the witness stand.)

6 **Q** One of the important things that you do -- he
7 said that I asked you about the documentation of the
8 tattoo. So you took the pictures, right?

9 **A** They were taken at my direction.

10 **Q** Taken at your direction. They weren't put in
11 your report. Nothing in your report, written
12 report, says anything about tattoos, correct?

13 **A** I'll have to reread the report. It's like 12
14 pages long.

15 On page nine -- hold on. I'm sorry. On page
16 13, the first sentence, 8/4/2016 at 6:30 P.M., RO,
17 which is me, sent the SLED photo -- it's a reference
18 to a photo lineup, which was obtained from the
19 Saluda County Detention Facility computer, and
20 that's the time that the pictures were taken. I
21 don't see where I wrote in the report that I had
22 obtained the tattoos from the jail, but they were
23 the tattoos -- the video that I took to Mr. West.

24 **Q** Thank you.

25 **MS. ZMROCZEK:** Nothing further, Your Honor.

1 **THE COURT:** All right. Have a nice day. You
2 can step down.

3 Call your next witness.

4 **MR. FENDER:** Cathern Leslie -- or Leisy from
5 SLED.

6 CATHERN LEISY,
7 having been duly sworn, testified as follows:

8 DIRECT EXAMINATION

9 BY MR. FENDER:

10 **Q** Can you please just state your name for the
11 record and tell us a little bit about your
12 education, background and experience?

13 **A** Sure. My name is Cathern Leisy. I'm a
14 forensic scientist assigned to the DNA case work
15 department at the South Carolina Law Enforcement
16 Division, more commonly referred to as SLED. I've
17 been with SLED for a little over 11 years. I was
18 trained inhouse by other court-qualified analysts in
19 all the different types of tests and analyses that I
20 am required to perform.

21 And prior to my time at SLED, I spent,
22 approximately, four years at a private testing
23 facility known as Orchid Cellmark that was located
24 in Germantown, Maryland, where I ran the same types
25 of tests and analyses that I perform at SLED.

1 **Q** Have you testified in court before?

2 **A** I have.

3 **Q** Have other courts found you to be an expert?

4 **A** Yes, sir.

5 **Q** What subjects?

6 **A** In forensic DNA identification testing.

7 **MR. FENDER:** Judge, at this time, I'd offer
8 this witness as an expert in forensic DNA.

9 **THE COURT:** Voir dire?

10 **MS. ZMROCEK:** I have no objection, Your Honor.

11 **THE COURT:** Okay. All right. Ladies and
12 gentlemen, normally, when a person testifies, that
13 person is not allowed to give their opinion.
14 Normally, when a person testifies, they have to
15 testify as to what they saw, they heard, they did,
16 they touched, they smelled, something of that
17 nature.

18 There is an exception under the rules when
19 someone is qualified because of education or
20 experience, that person is permitted to give their
21 opinion in certain areas if the Court qualifies them
22 in that way. So this witness will be qualified as
23 an expert in the area of -- say it again.

24 **THE WITNESS:** Forensic DNA identification
25 testing.

1 **THE COURT:** Forensic DNA identification
2 testing. She will be allowed to give opinion
3 testimony in that area.

4 Now, that does not mean that you have to accept
5 her opinion, but it is evidence for you to use in
6 any way that you see fit and give it the weight and
7 credibility that you believe is appropriate as you
8 are required to do with each and every witness that
9 appears before you.

10 BY MR. FENDER:

11 **Q** Did you have the opportunity to examine a
12 T-shirt that was found in the grass outside a gas
13 station in Ridge Spring?

14 **A** I performed DNA testing on items that were
15 collected from that T-shirt. I was forwarded a swab
16 that was taken from a scraping done on the inside
17 collar and underarm area of the shirt, as well as a
18 hair that was collected from that item.

19 **Q** Can you tell us about the process and what your
20 examination in this case entailed?

21 **A** For particular items such as a T-shirt, what we
22 do is perform what we call ownership testing. What
23 we're trying to determine is who may have worn that
24 particular article of clothing.

25 So once it's submitted to the laboratory, one

1 of our evidence processing technicians process the
2 shirt. So she took a sterile, basically a plastic
3 spatulata, ran it along the inside collar area of
4 the shirt and the underarm area of the shirt trying
5 to remove any cells that may have been left by an
6 individual who wore it. A sterile swab is then used
7 to swab both the spatula or scraper, as well as the
8 area that was underneath that T-shirt to try and
9 collect any cells that may have been removed during
10 the scraping.

11 Using that material, I tried to develop a DNA
12 profile that could have been used to compare to the
13 profile of the known individual to determine whether
14 or not their DNA may have been present on that
15 shirt.

16 There was also a hair collected from the item
17 that was forwarded for the same purpose, to try and
18 develop a DNA profile suitable for comparison.

19 **Q** Can you tell us about what the results were or
20 how that examination was?

21 **A** What was identified as SLED item 1.1 was the
22 swab from the scraping of the interior of the shirt.
23 From that item, a partial DNA profile was developed
24 that was a mixture of at least two individuals. And
25 due to the inability to calculate a statistic, no

1 further interpretation will be offered.

2 And, unfortunately, no DNA profile was
3 developed from the hair, which was identified as
4 SLED item 1.2.1.

5 **Q** So if the sample's mixed, you can't say with
6 scientific certainty either way?

7 **A** Well, for the swab from the scraping of the
8 shirt, again, there is a mixture, and that's just an
9 indication that there's DNA from more than one
10 individual present. This particular mixture was
11 very low level, meaning there was not much DNA
12 there. And based on the guidelines and protocols
13 that I'm required to follow, it's not suitable for
14 any type of comparison to any known individual. So
15 I can't make a determination as to who may have been
16 in contact with that item.

17 **Q** So you can't say that it was or it wasn't?

18 **A** That's correct.

19 **Q** Is that unusual?

20 **A** It's not. This is really very typical. When
21 we test items of clothing for ownership, we do
22 typically see mixtures. And if we're just looking
23 for who may have been in contact, it's not unusual
24 for there to be such a limited amount of DNA that we
25 can't make a determination.

1 **Q** I mean, essentially, you're looking to confirm
2 or deny; is that fair to say?

3 **A** We're just looking for the presence of a known
4 individual, some type of identification that can be
5 made. And, again, with this particular profile,
6 it's just not suitable for that type of
7 interpretation.

8 **Q** Why do you have such rigorous standards?

9 **A** We are required to have guidelines and
10 protocols set in place that meet accreditation
11 requirements. And accreditation is a voluntary
12 program that we participate in to show that we meet
13 standards and guidelines that have been set forth to
14 ensure quality and consistency in forensic testing.
15 And we're required to follow those guidelines and
16 protocols with all of our testing to ensure that
17 it's, again, consistent and that it's done
18 correctly.

19 **MR. FENDER:** Thank you.

20 **THE COURT:** Cross-examination?

21 **MS. ZMROCZEK:** Thank you.

22 CROSS-EXAMINATION

23 BY MS. ZMROCZEK:

24 **Q** Good morning, Agent.

25 **A** Good morning.

1 **Q** You work at SLED?

2 **A** Yes, ma'am.

3 **Q** You have accreditation?

4 **A** Yes.

5 **Q** You have rules that you're supposed to follow?

6 **A** Correct.

7 **Q** How evidence is submitted?

8 **A** Correct.

9 **Q** How it's tested?

10 **A** That's correct.

11 **Q** Agent, you test items for DNA?

12 **A** I do.

13 **Q** You find DNA on multiple different items?

14 **A** We do test a wide variety of items, yes.

15 **Q** If a shirt was given to you that has more than
16 one DNA profile on it, you're not going to test it?

17 **A** Well, this is the typical testing that we do
18 for ownership. We scrap or swab either the interior
19 of the collar or the armpit area, which is most
20 common.

21 **Q** Okay. That was my question.

22 **A** Yes, ma'am.

23 **Q** So there's possible that more than one DNA can
24 be on an item?

25 **A** That's correct.

1 **Q** And you test that?

2 **A** We do test the item and we can sometimes
3 interpret mixtures. It depends on the amount of
4 information present and the quality of the profile.

5 **Q** Okay. And so you get an item, you get a
6 T-shirt, you find two DNAs on it. Sometimes,
7 sometimes, you can have a major contributor and a
8 minor contributor, right?

9 **A** That's correct.

10 **Q** And the way that you were able to determine
11 that is that you have alleles. You have 17
12 different alleles that you test, correct?

13 **A** This particular item's actually tested at 23
14 different locations in the DNA, in addition to a
15 gender marker that helps determine whether male or
16 female DNA is present.

17 **Q** And when you do that in the 23 -- the only time
18 that you can find a match is if the 23 and 23 have
19 the same numbers, right?

20 **A** That's correct. To determine a match, if the
21 entire DNA profile at all of those locations from
22 the evidence profile matches the information that's
23 the known standard profile, then we can develop a
24 match and make an identification to the contributor.

25 **Q** And if any number of those -- if the numbers

1 that you have on your questioned item and the
2 numbers that you have on your known DNA sample, if
3 any of those don't match, you're going to have to
4 exclude somebody, right?

5 **A** That's correct.

6 **Q** Okay. You got your report?

7 **A** Yes, ma'am.

8 **Q** Fantastic.

9 The first allele that you tested, D3S1358, do
10 you have that in front of you?

11 **A** Yes.

12 **Q** What was the allele marker to Mr. Robinson?

13 **A** The allele marker at that particular location
14 for Mr. Robinson was a 15.

15 **Q** What was the allele markers found on the shirt?

16 **A** Developed from the shirt, there was a 14 and a
17 16.

18 **Q** So no 15?

19 **A** No, ma'am.

20 **Q** Scrolling down to D2S441 allele.

21 **A** Yes, ma'am.

22 **Q** What was Mr. Robinson's allele?

23 **A** He's a 10.

24 **Q** Okay. What were the alleles on the shirt?

25 **A** 11 and 12.3.

1 **Q** Scrolling down to allele FTA, what was
2 Mr. Robinson's allele?

3 **A** Mr. Robinson's a 24, 25.

4 **Q** And what was found on the shirt?

5 **A** 20.

6 **Q** Scrolling down to D7S820 what was
7 Mr. Robinson's allele?

8 **A** He's a 10.

9 **Q** What was the shirt's allele?

10 **A** 8.

11 **Q** So in at least four of these, no match, right?

12 **A** That's correct.

13 **MS. ZMROCZEK:** Thank you.

14 REDIRECT EXAMINATION

15 BY MR. FENDER:

16 **Q** What would happen if a family washed all of
17 their clothes together in the same washing machine?

18 **A** You could potentially have some mixture of DNA
19 because you have different contributors on different
20 articles of clothing. And as those articles of
21 clothing come in contact with each other, you could
22 have transfer.

23 **Q** And you couldn't make a determination with
24 scientific certainty in this case; is that correct?

25 **A** Again, the mixture developed in this case does

1 not meet what our protocol sets forth as being
2 suitable for interpretation. I can't make a formal
3 comparison using this mixture to any known
4 individual because it doesn't meet our guidelines.

5 **Q** So is real life like CSI?

6 **A** Not quite, no.

7 **MR. FENDER:** Thank you.

8 **MS. ZMROCZEK:** Just briefly, Your Honor.

9 RECROSS-EXAMINATION

10 BY MS. ZMROCZEK:

11 **Q** Does your report indicate that that shirt was
12 found in a washing machine?

13 **A** It does not.

14 **MS. ZMROCZEK:** Thank you.

15 **THE COURT:** All right. Have a nice day. Thank
16 you very much.

17 You may call your next witness.

18 **MR. FENDER:** The State's case, Your Honor.

19 **THE COURT:** All right. Ladies and gentlemen,
20 the State has rested its case. I have some matters
21 of law that I have to take up outside of your
22 presence. You are still not allowed to discuss the
23 case. You are still to keep an open mind. We'll be
24 back with you in just a few moments. Retire to your
25 jury room, please.

1 (The jury retires to the jury room.)

2 **THE COURT:** Motions?

3 **MS. ZMROCZEK:** Your Honor, at this time, we
4 would move for a directed verdict on -- on all three
5 charges, actually, Your Honor. I know that the
6 evidence standard used to be scintilla of the
7 evidence, but I know that that's changed over the
8 last few years.

9 And, Your Honor, under Rule 19 and the case
10 law, what it -- what it asks you to do is to examine
11 the evidence to see not only what was submitted --
12 actually -- only what is submitted to the jury and
13 what you are to consider. Your Honor, we say that
14 in this case, the State has not met their burden
15 under the -- under the rule and we would seek a
16 directed verdict on all three.

17 **THE COURT:** All right. Mr. Fender.

18 **MR. FENDER:** Just very briefly, Your Honor.
19 You've heard officers testify that this was in
20 Saluda, in Ridge Spring to be specific, at the
21 Saluda K -- Circle K. You know, you've got your --
22 that for you. And we've got kidnapping, armed
23 robbery and possession of a weapon. You can see on
24 the video, as well on the stills, you know, the
25 victim, you know, being confined. You can see using

1 the gun for intimidation purposes to take the money.
2 And you can also see the gun, possession of that
3 weapon.

4 In the light most favorable to the State, you
5 know, we've presented evidence of a description of
6 somebody matching the characteristics of the
7 defendant, additionally items recovered from the
8 crime scene -- or from the defendant that matched
9 what was used in the crime scene.

10 **THE COURT:** All right. Taking the evidence in
11 the light most favorable to the State, which is the
12 standard before me at this point, under Rule 19 of
13 the South Carolina Rules of Procedure, also
14 considering the existence of the evidence and not
15 the weight of the evidence, the State has presented
16 more than sufficient evidence for this case to go
17 forward to the jury.

18 There is direct evidence by testimony of the
19 victim in this case as to the fact that Mr. Robinson
20 is the accused and that he committed an armed
21 robbery, which is, essentially, entirely captured on
22 video. Furthermore, the testimony of law
23 enforcement and the proximity to where they found
24 him and the items that they found him which -- which
25 would corroborate the video and corroborate the

1 victim's testimony. The evidence, at this point,
2 given the standard that's before me is considered in
3 the light most favorable to the State. The evidence
4 to go forward to the jury is more than sufficient.

5 All right. Mr. Robinson, stand up, please.

6 DEMARCUS L. ROBINSON,

7 having been duly sworn, testified as follows:

8 **THE COURT:** Okay. Have you understood
9 everything I've said throughout this trial?

10 **DEFENDANT:** Yes, Your Honor.

11 **THE COURT:** Do you understand me okay?

12 **DEFENDANT:** Yes, sir.

13 **THE COURT:** Okay. Great. I'm going to have a
14 conversation with you. Okay? And anytime that you
15 don't understand something or you want to ask a
16 question, you just let me know. Okay? It won't
17 bother me at all. All right?

18 **DEFENDANT:** Yes, sir.

19 **THE COURT:** Okay. At this time, I need to
20 explain to you some of your rights. If you do not
21 understand anything that I say, just let me know.
22 If you want me to explain anything in more detail,
23 just let me know. Do you understand?

24 **DEFENDANT:** Yes, Your Honor.

25 **THE COURT:** Okay. We have now reached the

1 stage of the trial where you may present your
2 defense. You have the right to claim the
3 protections given to you by the Fifth Amendment to
4 the Constitution of the United States. This
5 amendment states in part that no person shall be
6 compelled in any criminal case to be a witness
7 against himself.

8 What that means is that you cannot be required
9 to testify in this case. You have the right to
10 testify on your own behalf; however, no one can make
11 you. This is a personal right, and no one can waive
12 or give up this right except you.

13 If you decide to testify, you'll be subject to
14 the same rules that govern other witnesses, and you
15 may be examined and cross-examined on any relevant
16 issue in this case. In addition, if you have a
17 conviction for a crime that involves dishonesty or
18 false statements or for crimes that are punishable
19 by imprisonment for more than one year and I
20 determine that the probative value of admitting this
21 evidence outweighs its prejudicial effect, the
22 solicitor will be able to introduce your record to
23 attack your credibility.

24 If you decide to testify, this decision on your
25 part must be made freely, voluntarily and

1 intelligently with the knowledge of the protections
2 given to you by the Fifth Amendment and the
3 consequences of your decision to testify. If you
4 decide not to testify, I will tell the jurors that
5 they cannot give the fact that you did not testify
6 any consideration whatsoever and that there is to be
7 absolutely no prejudice to you because you did not
8 testify.

9 It is left entirely up to you whether or not
10 you testify. You may talk with your attorney or
11 your family or anyone else, but the final decision
12 is entirely yours.

13 Do you understand what I have explained to you
14 so far?

15 **DEFENDANT:** Yes, Your Honor.

16 **THE COURT:** Do you have any questions about
17 what I have explained to you so far?

18 **DEFENDANT:** No, Your Honor.

19 **THE COURT:** All right. Prior to today, and I
20 don't need to know the details of the conversation,
21 but prior to today, have you and your attorney
22 discussed whether or not you should testify?

23 **DEFENDANT:** Yes, Your Honor.

24 **THE COURT:** Okay. And do you wish to talk to
25 your lawyer anymore at this time?

1 **DEFENDANT:** No, Your Honor.

2 **THE COURT:** Okay. And do you want to testify?

3 **DEFENDANT:** No, Your Honor.

4 **THE COURT:** Okay. Thank you very much.

5 All right. And, Ms. Zmroczek, do you have

6 witnesses to call or what's the plan?

7 **MS. ZMROCZEK:** No, Your Honor. The plan is to
8 rest when the jury comes out.

9 **THE COURT:** All right. Is everybody ready to
10 go forward into closing arguments?

11 **MS. ZMROCZEK:** We are, Your Honor. May we
12 discuss charges?

13 **THE COURT:** Uh-huh. All right. I'm listening.

14 **MS. ZMROCZEK:** Thank you.

15 Your Honor, I never mentioned the word alibi.
16 The solicitor brought it up five times today. The
17 testimony was, is that a witness states that my
18 client was home at 2:30, that came from the witness
19 stand. The evidence is that the crime occurred at
20 2:42.

21 Your Honor, we believe that the State has
22 established the -- they're the ones who brought it
23 up. They have introduced the concept of alibi. I
24 think we are now entitled to an alibi. The rules
25 say that -- that, you know, any -- any testimony.

1 And I believe that with the testimony that they
2 brought out today, that that qualifies, so we would
3 ask that charge be added.

4 In addition to your standard charges, the only
5 changes, Your Honor -- not changes -- we would ask
6 -- I know that Your Honor charges the Logan
7 circumstantial evidence charge, so we would --

8 **THE COURT:** That's the new one.

9 **MS. ZMROCZEK:** The new one. We would ask that
10 you do that.

11 **THE COURT:** That's in.

12 **MS. ZMROCZEK:** And the multiple counts, the
13 multiple charges.

14 **THE COURT:** That's in.

15 **MS. ZMROCZEK:** I believe that there's
16 eyewitness and credibility, but I believe there's a
17 separate charge on identification. Your Honor, we
18 would ask that that be added.

19 **THE COURT:** Okay. The identification charge is
20 in the standard charge, but is completely and
21 totally appropriate, so that's in.

22 **MS. ZMROCZEK:** And then stricken testimony, I
23 think is the only --

24 **THE COURT:** I tell them that.

25 **MS. ZMROCZEK:** And then you have the expert

1 witness, failure to testify, I'm sure. Those are
2 all the specific ones.

3 (Pause.)

4 **MS. ZMROCZEK:** And under Beaty, Your Honor, we
5 would like to exercise our right to open in full and
6 then rebut -- or close in full and then they close
7 and then we rebut.

8 **THE COURT:** I don't think that's what Beaty
9 says.

10 **MR. FENDER:** I think it's the opposite, Judge.

11 **THE COURT:** Hold on. We'll deal with Beaty in
12 a second.

13 **MR. FENDER:** Judge, I'd like to be heard on the
14 alibi --

15 **THE COURT:** Hold on. Calm down. I'm reading.

16 (Pause.)

17 **THE COURT:** Did the State serve a reciprocal
18 Rule 5 in this case?

19 **MS. ZMROCZEK:** They did not, Your Honor.

20 **MR. FENDER:** We didn't, Judge.

21 **THE COURT:** Why not?

22 **MR. FENDER:** During the cross-examination, she
23 directed --

24 **THE COURT:** No. My question is why did the
25 State not serve a reciprocal Rule 5?

1 **MR. FENDER:** I don't have a good answer for
2 that, Judge.

3 **THE COURT:** All right. So what do you want to
4 say on alibi, Mr. Fender?

5 **MR. FENDER:** Judge, during the
6 cross-examination, the defense attorney directed
7 Michael Raffield's attention to page eight and
8 that's where the approximately 2:30, that she opened
9 the door in regards to where he had been in the
10 mother's testimony. That's not something that we
11 brought out on direct. So alibi's been open by the
12 defense and we're --

13 **THE COURT:** Right. But she asked a question
14 which elicited hearsay, which you didn't object to.
15 I mean, she asked a question that elicited what the
16 defendant's mother told him and there was no
17 objection. The objection was hearsay. She's
18 offering it to prove the truth of the matter
19 asserted because she's offering it to prove he was
20 home at 2:30, and the State never objected. And
21 then the State got back up on redirect and went
22 through all of it with him this morning.

23 **MR. FENDER:** Judge, I'd object to her drawing
24 stars and stuff on her hands.

25 **THE COURT:** What?

1 **MR. FENDER:** Her, like, drawing tattoos on
2 herself for purposes of closing. That's not in
3 evidence. That's unfairly prejudicial. The State
4 has a right to a fair trial.

5 **THE COURT:** We're on jury charges. Stay on one
6 thing at a time.

7 Okay. All right. The State did not serve a
8 reciprocal Rule 5; therefore, the defense was not
9 required to put anybody on notice of an alibi
10 defense because the State failed to follow its
11 responsibilities under the South Carolina Rules of
12 Criminal Procedure in filing a reciprocal Rule 5.

13 If they had filed a reciprocal Rule 5 and
14 Ms. Zmroczek had not given the proper notice under
15 Rule 5, I would not be giving the alibi charge. But
16 since they did not, I will be giving the alibi
17 charge because, at this point, there is evidence in
18 the record, considering the existence of the
19 evidence and not the weight of the evidence, that
20 his mama said he was home at 2:30 and that the crime
21 occurred at 2:42. So I will be giving the alibi
22 charge.

23 Now, what is this about drawing tattoos on your
24 arms?

25 **MS. ZMROCZEK:** Your Honor, I'm entitled to use

1 demonstrative evidence.

2 **THE COURT:** Actually, no, you're not. You have
3 abused that in Richland County repeatedly and no one
4 in Richland County has objected to it, but you
5 drawing tattoos on yourself is not admissible.

6 **MS. ZMROCZEK:** All right. I will make sure
7 that they are not available. So I need to use the
8 restroom, obviously, if we can take a break
9 before --

10 **THE COURT:** Okay.

11 All right. The verdict form will say -- it
12 will just list the three crimes of guilty or not
13 guilty under each.

14 All right we're going to need to print this,
15 Madame Clerk. So can we e-mail it to you and get it
16 printed?

17 **THE CLERK:** Yes, sir.

18 **THE COURT:** All right. Let me look at it one
19 more time, and then we'll take a break so everybody
20 can get set up.

21 **MR. FENDER:** Judge, can you clarify Beaty for
22 us?

23 **THE COURT:** Yeah. I'm about to. I've got to
24 pull it up.

25 **MS. ZMROCZEK:** While you do that, Your Honor,

1 may I step to the restroom?

2 **THE COURT:** Yeah.

3 (Pause.)

4 **MR. FENDER:** Judge, may I examine what's in
5 evidence?

6 **THE COURT:** Yes, sir, you may. Y'all review
7 the evidence.

8 (Pause.)

9 **THE COURT:** So failure of the defendant to
10 testify is in.

11 **MS. ZMROCZEK:** Thank you.

12 **THE COURT:** Statement of the defendant is out
13 because there's no evidence that he gave any
14 statement to law enforcement. Everybody agree with
15 that?

16 **MS. ZMROCZEK:** That's correct.

17 (Pause.)

18 **MR. FENDER:** Judge, may I step out briefly?

19 **THE COURT:** Yes, sir.

20 (Brief Recess.)

21 **THE COURT:** All right. What's your position on
22 Beaty?

23 **MR. FENDER:** Judge, I defer to Your Honor.

24 **THE COURT:** And you wouldn't rather just have
25 them open and then you just give one --

1 **MS. ZMROCZEK:** I can do that, that's fine.

2 **THE COURT:** I mean, I'm just saying --

3 **MS. ZMROCZEK:** I mean, I don't -- I've never
4 done it this way because, as you know, I generally
5 put up a case.

6 **THE COURT:** Right.

7 **MS. ZMROCZEK:** And so I don't know, but --

8 **THE COURT:** Well, I mean, I guess my thought
9 process is wouldn't you rather just give one instead
10 of have to worry about whether or not it's in reply
11 to something and you be able to reply to anything
12 they said?

13 **MS. ZMROCZEK:** Yeah. And if I go --

14 **THE COURT:** Because if I made them give one
15 closing argument and then give you the last closing
16 argument, then it's over, and then you can -- you'll
17 have a full opportunity to reply to everything they
18 say and we won't have to get into, She can't bring
19 that up or she can bring that up or anything like
20 that.

21 **MS. ZMROCZEK:** No, I think that that's -- I
22 think that's appropriate, Your Honor.

23 **THE COURT:** Okay.

24 **MR. FENDER:** Judge, for clarification, what are
25 you asking us to do?

1 **THE COURT:** You're going to get to give one
2 closing argument and you're going first.

3 **MR. FENDER:** But no reply?

4 **THE COURT:** No. You, clearly, do not get a
5 reply. The law on that is clear as day.

6 **MR. FENDER:** Judge, if I could get a moment
7 just to --

8 **THE COURT:** Yeah. We're going to take a break
9 so I can get this printed off and y'all can put
10 together your thoughts and get everything set up the
11 way you want to, but you'll need to open -- you'll
12 need to do your full closing argument and then you,
13 Ms. Zmroczek, will get to go second. She'll get to
14 kind of -- the way we used to do it when there was
15 no defense up and that way the State will not be
16 allowed any reply.

17 **MS. ZMROCZEK:** Okay. And, Your Honor, as far
18 as a ruling on demonstrative evidence, am I allowed
19 to at least use a big giant notepad to write stuff
20 on?

21 **THE COURT:** Yes. Marking up your body and
22 bringing in other items that are not in evidence,
23 but using a board to go through what is in evidence
24 is, you know, makes sense.

25 Okay. All right. Let's take about a

1 ten-minute break.

2 (Brief Recess.)

3 **THE COURT:** All right. Let's go back on the
4 record real quick. One thing on the charge, one
5 thing I want to go through -- and I charge Victor
6 versus Nebraska for the State, just so you know
7 that.

8 One thing on the charge, on the armed robbery
9 charge, instead of saying a pistol, a shotgun, a
10 rifle, a dirk, a dagger, a knife, a slingshot, metal
11 knuckles, a razor, gasoline, a fire bomb, Molotov
12 cocktail or lighter fluid, I'm just going to say, A
13 pistol is an instrument which may be -- which may be
14 a deadly weapon. A gun may be a deadly weapon even
15 if it is not operating. I'm not going to go through
16 all of those 15 different kinds of deadly weapons.

17 **MS. ZMROCZEK:** Thank you.

18 **THE COURT:** And then on the verdict form, what
19 I had changed on it, so number one will be armed
20 robbery, number two will be kidnapping. And then
21 I've added a line that says, Only if you find the
22 defendant guilty of question one and/or question two
23 are you allowed to proceed to question three.

24 So under the law, they cannot find him guilty
25 of a firearm charge if they find him not guilty of

1 both armed robbery and kidnapping. So I put that in
2 there to make sure that's clear.

3 Okay. Anything else from the State?

4 **MR. FENDER:** Judge, can you clarify that last
5 point?

6 **THE COURT:** Yeah. So on the weapons charge, he
7 cannot be convicted of the weapons charge if he's
8 found not guilty on both the armed robbery and the
9 kidnapping. So what I don't want to do is to get --
10 they go in there and they say, Well, he's not guilty
11 on these two, but he's guilty of the gun. The way
12 the gun is charged, a -- he cannot be guilty of that
13 unless he's guilty of either armed robbery or
14 kidnapping or both. That's all it says.

15 **MR. EARGLE:** And/or?

16 **THE COURT:** Yes, sir. If I didn't say and/or,
17 it does. It says, Only if you find the defendant
18 guilty of question one and/or two, either one. And
19 I'll explain that to them when I --

20 **MR. EARGLE:** And I apologize. I just don't
21 hear the "or".

22 **THE COURT:** That's okay.

23 Then you can go to question three and make that
24 determination. And I'll explain that to them when I
25 come to that part.

1 Okay. Anything else from the State before we
2 start?

3 **MR. FENDER:** Nothing from the State, Judge.

4 **THE COURT:** From the defense?

5 **MS. ZMROCZEK:** Nothing, Your Honor. So I'm not
6 distracting, I understand he's going to use some
7 stuff, so I'm just going to go ahead and position
8 myself.

9 **THE COURT:** That's perfectly fine.

10 (Pause.)

11 **THE COURT:** Let's bring them in. When they
12 come back in, just rest.

13 **MS. ZMROCZEK:** Yes.

14 (The jury returns to the courtroom.)

15 **THE COURT:** All right. Ladies and gentlemen,
16 welcome back. Thank you very much.

17 Ms. Zmroczek, do you wish to call any
18 witnesses?

19 **MS. ZMROCZEK:** We do not, Your Honor. The
20 defense rests.

21 **THE COURT:** Okay. Ladies and gentlemen, the
22 defense has rested its case. At this point, we are
23 ready for closing arguments.

24 Now, as with every single thing that happens in
25 this courtroom, there's an order into which things

1 go. So the order of the arguments will be that the
2 State will be required to give their closing
3 argument first, and then the defense will be allowed
4 to give their closing argument second. When that
5 finishes, I will then charge you on the law in South
6 Carolina as it pertains to the issues that have
7 arisen in this case.

8 Now, I don't put time limits on attorneys.
9 Okay? Sometimes I wish I did, but some judges do,
10 but I do not. This is their case and they've lived
11 with this case and they know this case. This is
12 their opportunity to present the case to you from
13 their respective points of view. And I want you to
14 give them your undivided attention.

15 You all have done very well during this trial
16 staying awake, staying with us, paying attention.
17 And this is the attorney's final opportunity to
18 speak to you, so I ask that you, please, give them
19 your undivided attention.

20 Depending on how long their arguments take, we
21 may take a break in between them; we may not. We'll
22 just kind of play it by ear. Okay? But, please,
23 give the attorneys your undivided attention.

24 Mr. Fender.

25 **MR. FENDER:** Thank you, Judge.

1 CLOSING ARGUMENT

2 MR. FENDER: Good morning. First of all, I
3 just want to thank you again for your jury service.
4 I know that this is not fun. You've probably been
5 bored at times. You've gone through days that may
6 have felt long, but what you're doing is very
7 important. You know, this is real life Saluda
8 County.

9 And, you know, I've watched and each of you has
10 been paying attention to the witnesses, you all have
11 been looking at the evidence, and I really
12 appreciate that. You couldn't ask for more when it
13 comes to a jury.

14 In a few minutes, you're going to be asked to
15 give a verdict. And verdict is just a really old
16 Latin word, and all it means is to speak the truth.
17 The job as a juror is to speak the truth about the
18 facts and to speak the truth about the evidence.
19 But if you could, just give me a few minutes, I'm
20 not going to need a time limit or anything like
21 that, but if we can just look back briefly on the
22 evidence, you know, what you saw in this case.

23 Now, let's think about the first witness that
24 you heard from, Mr. William Houston. He was the
25 cashier. He was the clerk. He was working that

1 night at the Circle K. You know, he was bent over
2 at the shelf, stocking, cleaning, that kind of
3 stuff.

4 And then what happened? Well, in comes a man
5 with a gun. What did he describe it as? Gray or
6 silver with this black handle. What did that man
7 do? Well, he pointed it at Mr. William. He walked
8 him over to that cash register, emptied it out, took
9 the money, ones and fives, took the cigarettes and
10 then he took off on foot.

11 Now, if you think back to Mr. Houston's
12 testimony, his major focus was this gun that was
13 pointed at him. He was scared, he was afraid, and
14 rightfully so. But let's think about some of the
15 other stuff that he said.

16 He talked about how that cash register worked
17 at the Circle K. You know, it's late night, they're
18 not going to keep hundred dollar bills or anything
19 like that in there. They had a policy where they're
20 putting those large bills in a secure box, and
21 they're keeping in the drawer ones and fives, ones
22 and fives, ones and fives. What was found with the
23 defendant? Think about it.

24 And what were the other things that, you know,
25 that Mr. Houston observed? He talked about seeing

1 this unique scar on the shoulder of that arm that
2 had a gun pointed at him. A scar or a
3 discoloration, I believe, is how he described it. I
4 think he may have said a dark spot or something
5 along those lines.

6 Well, let's look back at these pictures. And,
7 you know, the great thing about this is you're going
8 to get to take all of this back into the room with
9 you so you can take a really close look at it, you
10 know, looking for things like that dark scar on the
11 shoulder, comparing that to that dark scar on the
12 defendant.

13 And then there were these tattoos. You know,
14 you can -- this isn't 4K. I think we -- 4K 1080p.
15 It's not that, right? But if you look closely at
16 these photos, you're seeing them. You're seeing
17 them. Folks, these discolorations, these tattoos,
18 that matches what Mr. William Houston had to say,
19 that matches what you got to see right here with
20 your own eyes on the defendant.

21 And, additionally, we also have these photos
22 that were taken of him from that day that show these
23 tattoos, that show these things that Mr. William
24 Houston described, discolorations on the hand, the
25 hand that held that gun, the gun that he pointed at

1 him.

2 Ladies and gentlemen of the jury, I'm asking
3 you to consider all of the evidence in this case,
4 take a look at everything, because everything here
5 is pointing towards one truth. Remember that word
6 verdict, looking for truth. And there's one truth
7 in this case and that's a verdict of guilty.

8 Now, just to tell you a little bit more, you
9 know, Mr. Houston, he described the robber as
10 someone who matched the description of William
11 Houston or -- excuse me -- of Demarcus Robinson.
12 You see Demarcus here in these, matching
13 description, matching, matching, matching. Video,
14 you can watch that as well as part of your
15 deliberations.

16 But, you know, what else did he tell you?
17 Well, he said, Hey, I know Demarcus. This is a guy
18 that I met when I first moved to Ridge Spring. You
19 know, the defendant, Demarcus, he was in and out of
20 that store.

21 Our victim, he knew him because he was a
22 regular customer. He knew him because when he
23 walked to work sometimes, he saw him out there
24 playing football with no shirt on.

25 Folks, why do you think he covered his face up?

1 Use your common sense, folks. That's, you know,
2 more or less what we've heard from William Houston
3 in this case. We've got videos. We've got
4 pictures.

5 And I want to, you know, go back to what we
6 heard from Corporal Raffield, who's with us today in
7 court. And I know it was pretty late in the day
8 yesterday, but let's just think back to what he
9 testified to and this evidence that he entered in to
10 you and to the courtroom.

11 You know, Corporal Raffield, he's a veteran law
12 enforcement guy. You heard him, over 20 years
13 experience, decorated law enforcement officer. He
14 does investigation, and he did an investigation in
15 this case, a thorough one, one that found the
16 defendant just hours after the crime was committed.
17 But let's look back at what he had to say.

18 So he goes there to Demarcus' house. It's
19 about a half a mile away, give or take, from the
20 crime scene, knocks on the door and there's mom.
21 How does she respond? Well, with a shrug. Yeah,
22 he's upstairs. Demarcus has been out that night,
23 hadn't been home long. There was testimony,
24 approximately 2:30 A.M.

25 You know, approximately is a give or take

1 thing, it's not a term of art. But the bottom line
2 is he'd been out, he had recently gotten home, home
3 to a place very close to where this happened, home
4 to a place where he had these items.

5 So what does Corporal Raffield do? Well, he
6 goes upstairs and that's where he finds the
7 defendant, Demarcus, in the bedroom. And what's he
8 find in there, in that bedroom? Ones and fives,
9 folks, ones and fives, small bills. What did our
10 clerk testify was taken? What did Corporal Raffield
11 find with the defendant? Follow the money. Simple
12 as that.

13 What else did he find, folks? It's right here.
14 This gun with Demarcus. Take a look at these
15 photos. They're not 4K. They're not 1080p. You'll
16 see a gun that matches what was found with the
17 defendant, match, match, match.

18 We've also got these cigarettes that if you
19 look closely on that video, you can have a look at
20 these as well taken from the store.

21 What does your common sense tell you? What
22 does the trail of evidence tell you? What does your
23 sense of right and wrong tell you? Evidence points
24 to one truth, points to one conclusion and that is
25 of guilty of robbery. The clerk's ID, Demarcus

1 found just hours later, mom said, Yeah, been out
2 that night, just got home, with the cash, with the
3 cigarettes, with the gun.

4 Ladies and gentlemen of the jury, you know, you
5 took an oath yesterday and that oath was to decide
6 this case, you know, based on the facts, not based
7 on speculation, not based on theory, but facts and
8 evidence. And the evidence in this case, that came
9 from this witness stand right here {indicating}.
10 The evidence in this case comes from these items
11 that you're looking at today, that you'll have the
12 opportunity to take with you back into that jury
13 room.

14 But if you would hear me out for a moment, I
15 know you've heard some different points from the
16 defense attorney and whatnot, I just kind of wanted
17 to talk about those defense arguments. You heard a
18 lot of big deal about this timing, the timing, the
19 timing, the timing, but why are we hearing about
20 this timing? There's misdirection here.

21 The defense wants you to focus on the time of
22 that statement not the content, saying
23 approximately, but approximately is not exactly.
24 Think about that when someone says approximately,
25 but it was around the same time of the robbery. But

1 what's the content of it, though? The content is
2 that he was out, that he'd recently gotten home,
3 half a mile from the scene of the crime.

4 Folks, this is real life Saluda County. What
5 you're doing is tremendously important.

6 And then we've got, you know, this random shirt
7 that was found out in the grass, right? You heard
8 about it. DNA. You know, and that's true, you
9 know, there's that shirt out there.

10 You know, when you listen to Corporal Raffield,
11 he's not trying to hide anything from you. You
12 know, the State presented our SLED expert about what
13 happened with this shirt. And, you know, you heard
14 testimony that, you know, this shirt was found
15 outside the gas station. They tested it. There was
16 multiple samples of DNA in there, so they really
17 couldn't say anything one way or the other. They
18 couldn't say that it did match. They couldn't say
19 that it didn't. They couldn't even say that this
20 was even related to this robbery or was just perhaps
21 some random piece of litter. So I just would,
22 please, ask you, don't get distracted by this shirt.

23 This is real life. This is not CSI. This is
24 not a gas station with a 4K 1080p high resolution
25 deal, but this is good evidence. This is evidence

1 that you'll have the opportunity to examine. You'll
2 find consistencies.

3 Like I said in opening, it's not a Hollywood
4 movie, but we are very lucky because we do have
5 these photos, things that show that the defendant
6 was there, things that show that the defendant is
7 guilty. But, again, what does your common sense
8 tell you? You've got eyewitness identification.
9 You've got the defendant found briefly after with
10 the same items from the crime scene. Folks, use
11 your common sense here.

12 The defense is going to try to tell you that
13 this is some personal vendetta about Demarcus and
14 William Houston, but did you hear any witness on
15 this stand testify to that? She talked about it in
16 her opening. Did you hear any witness talk about
17 some personal beef? No, you didn't. Did William
18 Houston say, yes, law enforcement, it was Demarcus;
19 he's over here, go find him? No, he didn't. All he
20 said was that it was Demarcus, and then they found
21 Demarcus just shortly after. Do you think he was
22 able to go plant all of this, this elaborate
23 conspiracy theory?

24 Folks, it's not. There's no conspiracy.
25 There's no crazy aluminum foil hat and stuff. This

1 is evidence. This is real life. Put these pieces
2 of evidence together, put them together to reach
3 that verdict, guilty. What you've got here is
4 match, match, match, match.

5 I think that -- just a little bit more to that
6 -- what Your Honor, you know, told us about
7 yesterday, he talked about the toothbrush business.
8 Remember that? He was talking about, you know,
9 having a kid, your son or your daughter, and it's
10 your job to decide whether or not they brushed their
11 teeth. Now, you weren't in there in the bathroom
12 with them. You weren't standing beside the sink,
13 but you -- it's, ultimately, it's up to you to make
14 that decision. And this is the same thing in many
15 ways.

16 What did the Judge ask you to do? How did he
17 ask you to make your decision? Well, he asked you
18 to look at clues. You know, did you see any pieces
19 of teeth -- or pieces of food in the toddler's
20 teeth? Was the mouth, you know, red from candy or
21 blue or anything like that, you know?

22 Even though you weren't there standing at the
23 sink, you look for clues like that and you also look
24 for credibility, credibility of witnesses. You
25 know, do you have a kid that fibs a little bit or do

1 you have a child who's very vain who would never
2 leave the house without brushing their teeth?

3 So it goes down to evidence and it goes back to
4 credibility. You know, in life, we don't know
5 anything -- there's very few things that we know
6 towards an absolute certainty, but like determining
7 if our child brushed their teeth, we look at clues,
8 we look at evidence, and that's how we reach
9 conclusions.

10 You know, the fact of the matter is you're all
11 reasonable people. You had to go through quite a
12 selection process just to even get put on this jury.
13 But you were put on this jury for a reason, because
14 you are reasonable, because you care, you care about
15 this community, you care about the truth. And you
16 all make reasonable decisions in your personal and
17 family life every day whether you realize it or not.
18 You do them based on your common sense, based on
19 evidence, what you observe, what you see.

20 Today's no different. You'll be making this
21 decision based on what you observed, what you saw
22 right here on this witness stand, these items right
23 here that you're going to take back with you into
24 the jury room.

25 Where was this found? Where was this found?

1 Where was this found? What did the Circle K people
2 testify was taken out of there? Ones and fives,
3 ones and fives. And you've got a bedroom with this
4 loose cash.

5 Ladies and gentlemen of the jury, what does
6 your common sense tell you? You're putting one and
7 one together and that's how you reach your verdict,
8 that's how you reach your conclusion, that's how you
9 reach the truth.

10 Again, I submit to you that while none of you
11 may have ever served on a jury before, you all
12 brought with you the only tool that you need, that's
13 your common sense. All you need is your common
14 sense to look at this evidence. All you need is
15 your common sense to know what happened. And all
16 you need is your common sense to find the defendant
17 guilty of all of these counts.

18 Armed robbery. What does that mean under the
19 law? Your Honor's going to instruct you on it, but,
20 basically, using something like this, a gun, to take
21 money by force or threat or intimidation.

22 Kidnapping. What does that mean? Well, that's
23 when you take somebody, you force them against their
24 will, you confine them. You see here in these
25 pictures that gun against his back, he's telling him

1 what to do. You can see it on the video.

2 And then lastly, possession of this weapon
3 during these crimes. Ladies and gentlemen, this
4 video shows you the defendant with this gun in his
5 hand.

6 These are the laws that he has broken. Under
7 our law, justice requires that you return a guilty
8 verdict on them. Again, I would ask you to base
9 your decision on all of this evidence. I would ask
10 you to find the defendant guilty of these charges.
11 Thank you.

12 **THE COURT:** All right. Thank you very much,
13 Mr. Fender.

14 **MS. ZMROCZEK:** Your Honor, I need just a few
15 minutes to clear off...

16 **THE COURT:** Okay. We're going to take a real
17 quick break, under five minutes. Do not discuss the
18 case, keep an open mind. We'll be back with you in
19 just a couple minutes. Okay? All right. Thank you
20 very much.

21 (The jury retires to the jury room.)

22 (Brief Recess.)

23 **THE COURT:** All right. Let's bring them back
24 in.

25 (The jury returns to the courtroom.)

1 **THE COURT:** All right. Thank you. Welcome
2 back.

3 Ms. Zmroczek, the floor is yours.

4 **MS. ZMROCZEK:** Thank you. May it please the
5 Court.

6 **THE COURT:** Yes, ma'am.

7 **MS. ZMROCZEK:** Good morning. Just yesterday I
8 said a picture is worth a thousand words, video must
9 be worth a million, but what we see depends mainly
10 on what we are looking for. And how I've broken
11 down my closing arguments, I want to first talk a
12 little bit about the law -- excuse me, let me get
13 some water.

14 **THE COURT:** Do you need some water?

15 **MS. ZMROCZEK:** I apologize for that.

16 **THE COURT:** No problem.

17 **MS. ZMROCZEK:** But how I've tried to break down
18 my arguments is like this: I want to talk about the
19 law. Obviously, the Judge is going to charge you on
20 the law. What the Judge says the law is, the law
21 is.

22 I want to talk about -- a little bit about the
23 testimony and what inferences can be made from that.
24 You rely specifically on what you heard from each
25 witness. So if I say something different, it's what

1 you've said, it's what you heard, it's what you
2 believe. Individually each of -- all 14 of you and
3 the 12 that will deliberate, you rely on what you
4 hear. And then I want to talk a little bit -- I
5 want to respond a little bit to the State's
6 arguments. And then I want to close with just a few
7 common sense.

8 There's one thing that Mr. Fender and I agree
9 on and that is common sense, and so I'm going to
10 talk about that.

11 So, first, I want to talk about the law, and
12 the Judge will charge you about elements and how
13 each element has to be required. There are three
14 separate charges in this case that you'll consider.
15 And he'll tell you that you'll have to consider the
16 kidnapping and the armed robbery, and those are
17 considered violent crimes.

18 So you have to determine, individually, on each
19 of those charges before you can even get to the gun
20 charge. And that's important because, sure, there
21 was a gun found at the house where Demarcus Robinson
22 stayed. And if you recall the testimony from
23 Mr. Houston, he said silver gun, he didn't say
24 revolver. But what they want you to do is make
25 those in -- those -- not inferences, they want you

1 to speculate that it's the same gun.

2 I want to tell you that if you don't find him
3 guilty because they have not proven him guilty of
4 the kidnapping and the armed robbery, then you can't
5 even get to the gun charge. And the Judge will
6 explain that to you.

7 He'll talk to you about direct and
8 circumstantial evidence. Direct evidence is
9 evidence presented to you directly, eyewitness
10 testimony, actual physical items. And then he'll
11 talk about circumstantial evidence, things that can
12 be inferred.

13 But the important thing about what can be
14 inferred, and he's going to instruct you that this
15 is the law, to the -- to the degree that the
16 government relies on circumstantial evidence, all of
17 those circumstances have to point conclusively to
18 the guilt of Demarcus. The Judge will tell you the
19 law says if it just raises the suspicion of guilt or
20 portrays his behavior as suspicious, the proof has
21 failed. The proof has failed in every ounce of this
22 case.

23 One thing that Mr. Fender said in his opening,
24 and I was going to object, I did not take exception
25 to because I wanted to address it in closing, and he

1 said, The Judge is going to tell you about this
2 legal theory of beyond a reasonable doubt.

3 Beyond a reasonable doubt is not a legal
4 theory. It is the law. It is not defined. It's
5 going to be defined as we can't know things to all
6 certainty, but there's no 50 percent, 60 percent.
7 There's no percentage. But beyond a reasonable
8 doubt is the highest requirement of proof in a
9 criminal case, and it's done that way for a very
10 good reason. You're here today to decide important
11 questions of fact, apply the appropriate law to make
12 a determination on what happened.

13 Well, how do you define a reasonable doubt?
14 The Judge will give you the legal definition. This
15 has been a struggle, I think, since our system began
16 about how I define it or how you define it. So when
17 I look at words, I say, Reasonable doubt. So what
18 that says to me is can I list a reason to doubt? So
19 your job as jurors is to ask yourselves individually
20 and then discuss collectively what reasons do we
21 have to doubt guilt in this case? And I want to
22 talk about those at the end.

23 First, I want to talk a little bit about the
24 State's presentation. They, you know, said match,
25 match, match, match, match, match. And the

1 beauty of this is is that you'll get to take these
2 back there. You recall yesterday Officer -- or
3 Corporal Raffield said, Pictures can't lie, video
4 can't lie, people can lie. Those were his words,
5 which I typically don't like to call people liars.
6 I like to -- I like to assume and presume that most
7 people are telling the truth.

8 And when we talk about presumption, the Judge
9 is going to talk to you about presumption of
10 innocence. So it's a really hard concept to grasp
11 and people also call that a legal theory, but it's
12 the best part of our system. It means that
13 Mr. Robinson is not guilty until all 12 of you
14 decide that all of this evidence proves beyond a
15 reasonable doubt, so you have no reason to doubt,
16 that he's guilty. And that presumption is important
17 because it's something that should be applied in the
18 way that we investigate a case.

19 You recall Corporal Raffield, who was Chief
20 Raffield at the time, said they're in charge of
21 everything, dog cases, murder cases, burglary, armed
22 robbery -- I think he said murder and armed robbery,
23 those were his big cases -- and that he's been in
24 law enforcement for 25 years, so he knows what he's
25 doing. I submit, ladies and gentlemen, that when

1 Mr. Hollaway {sic} gives a name and it's three in
2 the morning, that Officer Raffield doesn't have to
3 bother doing any investigation because he's going to
4 make things fit.

5 The fact that -- that they put in these two
6 pair of black shorts and they want to say, Oh, but
7 that matches, there's been no testimony. They just
8 want you to make that determination, as you should.
9 And if you can't make that determination beyond a
10 reasonable doubt, then it doesn't match. But it's
11 fascinating to me that two pairs of black shorts in
12 a 20 year old's room is what makes him guilty of
13 this crime.

14 Oh, but there was a gun, a revolver found in
15 his closet, but it matches. You heard from SLED.
16 SLED has DNA experts. Oh, you heard from the video
17 expert -- or not expert, but a video technician that
18 works at SLED. Is it reasonable to assume that SLED
19 does gun analysis or fingerprints or any of that?
20 But that wasn't done in this case.

21 And an argument that Corporal Raffield kept
22 making was, Well, we're just a small town. The
23 beauty of small town America is that the
24 Constitution still applies, the rules apply.

25 And you heard the SLED agent up here today.

1 And one thing that was prevalent in the State's
2 closing was match, match, match, match, match, but
3 then you heard the alleles that she did run against
4 the shirt, and there were four that didn't match.
5 That was not a complete profile, but had it been a
6 complete profile, any one of those would have
7 excluded him.

8 I want to talk a little bit -- and I know that
9 the TV is there. We're going to watch the video in
10 just a moment because -- and you'll -- the good
11 thing is is you'll get to take, what we call, a
12 clean computer. So you'll get to take a computer
13 back there and you'll get to watch all of the video,
14 because, really, this case boils down to the video,
15 because the testimony that we heard was that you can
16 see face, you can see him pointing the gun at my
17 face.

18 And I want to talk about this, the tattoos and
19 the gun and -- I'm not pointing this at anybody.
20 But let's say that the gun was pointed at me and I
21 said, what was your focus? The gun. Well, a hand
22 holds the gun. Mr. Robinson stood up here in front
23 of you. And these pictures show these very dark
24 tattoos on his hand, and you get to look at the
25 pictures. And he said, Oh, I want you to compare,

1 you know, I want you to compare the pictures to the
2 images. And do that.

3 At this very low pixelation, I would submit
4 that you're not going to be able to find any match.
5 In fact, the distortion is so low that you can't
6 speculate that those are tattoos.

7 But what was really important is the only
8 tattoo that Mr. Houston kept saying was star, saw
9 star or stars. But he could see his neck. I was
10 very clear about that. You've got a tattoo. You
11 saw it. There's pictures of it, but he stood up
12 here and he showed you his tattoo on his neck. He
13 showed you the tattoos on his hand and both arms,
14 but we didn't hear about any of that.

15 Reports -- and I got on people about their
16 reports and their statements. And I'm not doing
17 that to attack people or to make people appear that
18 they're being untruthful, but I do that for a
19 reason. It's a year later, you heard, Well, I can't
20 remember; I have to look back at my report or I need
21 to see my statement.

22 The reason that those statements and those
23 reports are important is because you write them as
24 soon as they happen. You put everything that's
25 important in them. And not one time did they

1 identify all these tattoos. They did reference that
2 they went to the jail, did a photo lineup or took
3 some pictures.

4 If y'all don't mind turning your chairs and I
5 -- I want to make sure y'all can all see. If you
6 can't, please let me know.

7 So I've done a little timeline from the
8 testimony. All right. 10:00 P.M. is what time
9 third shift starts. So this is in August at 10:00
10 P.M. And remember Mr. Houston testified that he
11 walks to work, and he walks to work because he lives
12 within a half mile. And he goes down Piney {sic}
13 Grove Road. Okay? And some time before -- he said
14 it probably takes 11, 15 minutes, guesstimation.

15 But the point is -- so some time between 9:00
16 and 10:00, from 2 or 20 feet away, he's watching
17 Demarcus play football. And you'll get to look at
18 the aerial pictures to see if there are any light
19 poles or where the sidewalks are. And you -- and
20 the Judge is going to charge you on credibility
21 because this case really does boil down to
22 credibility, consistency and corroboration.

23 You heard the word alibi, alibi, alibi. The
24 Judge is going to instruct you what the word alibi
25 means. And a lot of times the word alibi comes with

1 a real negative connotation, and -- and -- and it's
2 not. Today, 14 of you have an alibi for why you're
3 not at work or not doing the laundry or not going to
4 kid's doctors or not doing your homework. You have
5 an alibi. Your alibi is you are somewhere else.
6 That's what that word means, somewhere else.

7 2:30 A.M., that was a number that was important
8 enough to make it into this report. 2:30 A.M., she
9 tells him, Macaroni, play kicks his sister and goes
10 upstairs.

11 So I said corroboration is an important -- I
12 think, an important element in this case. So you
13 get to make that determination. If that's a
14 container of macaroni, does that support or
15 corroborate what the alibi is?

16 2:40, the robber enters the store. And we're
17 going to watch the video because, if you recall, I
18 asked Corporal Raffield, You would agree with me
19 that this is one minute? And the beauty of these
20 videos is that they're time stamped and the time
21 clicks and clicks and it clicks and you get to see
22 what happens. So if I'm wrong about him being in
23 the store for a minute and one second, the video
24 will show that. Okay?

25 And recall that it will also show you the

1 angles where Mr. Houston was faced the whole time.
2 It'll show you his hands up in the air. And
3 remember, I used kind of this corner area as where
4 the cash register was, and I did that for a reason
5 because there's a window there.

6 And so he -- and you'll get to see him and hear
7 him on the phone with 9-1-1 and see if he's looking
8 out the window to see people running around, tossing
9 money and then going down Pecan Grove where -- which
10 to me is interesting because when you get these back
11 there, and the store is right here and he lives over
12 here, Merritt Avenue, and Pecan Grove Road is this
13 way.

14 But more importantly than that, Pecan Grove
15 Road is this way, so if you're looking -- you don't
16 leave the store and you're looking out the window,
17 how are you going to know that somebody goes down
18 Pine {sic} Grove Road?

19 2:41, you'll see the robber leaves the store.
20 You'll see him call 9-1-1 and then you'll see him
21 squat down. Okay? And then we hear about how
22 distraught and shook he was, but you get to see him
23 outside the store talking to an officer, getting the
24 video and then he calls 9-1-1. We didn't get to
25 hear the 9-1-1 call, but he did admit that he

1 described somebody as five nine to six foot. Well,
2 is he taller or shorter than you is my question.
3 Well, I don't know. Well, he knows Demarcus.

4 2:57 to 3:00 A.M., they arrive; Houston gives
5 that name. We don't have to worry about dog cases
6 or any other cases because now we just know where to
7 go, and whatever we find, we're going to make it
8 fit.

9 3:00 to 4:00 A.M., they find the money and the
10 shirt. And they say that I'm going to make a big
11 deal about the shirt. Well, yeah, I'm going to make
12 a big deal about the shirt because the person that
13 you're going to see on the video has their head
14 wrapped in a bandana, which is never found even
15 though a perimeter is established immediately, and
16 this shirt is wrapped around somebody's face where
17 DNA comes, saliva, neck where people wear shirts,
18 underarms where people are sweating. They have this
19 around their face.

20 And -- and it was stated in the government's
21 closing that it's not a big deal, but remember, to
22 the officer, it was a very big deal because it was
23 in the line of where someone would have hopped the
24 fence to go to their house.

25 This picture is important too, State's 14,

1 because here's the window. You'll get to see where
2 the window is, and this is the -- and Pecan Grove
3 Road is here. So from this vantage point, he sees
4 somebody turn left down Pecan Grove Road.

5 Then we have going to the house of Demarcus and
6 his mom. And his mom lowers his {sic} head, but his
7 mom says 2:30. So now what they want you to assume
8 or speculate is that mom knows that a robbery has
9 been committed at 2:42, but happens to give him an
10 alibi ahead of time. But because a lot of planning
11 is going into this, they have to also make sure that
12 he eats some macaroni and falls asleep before the
13 police get there. He takes money and he folds it
14 up, hides the gun, supposedly hides a carton of
15 cigarettes.

16 You'll get to take these pictures back here,
17 because that testimony from that stand was, I
18 photograph every piece of evidence before I move it.
19 Look for those cigarettes, look for the carton,
20 because he had to have gotten rid of the carton
21 along with the bandanna, taken the shirt, put it in
22 the washing machine, washed it with some other DNA,
23 taken it back to the thing and made it up to his
24 room and in bed before the police got there. Is it
25 reasonable that it wasn't him?

1 They talked about being a small agency. We had
2 SLED availability, we had Town of Saluda, we had the
3 County of Saluda. This isn't a one-man show. And
4 even if it were a one-man show, it doesn't lessen
5 the requirements and the integrity, their words, of
6 the investigation.

7 All right. So I want to talk a little bit, as
8 I finish -- I want to talk a little bit about two
9 scenarios:

10 One, let's say that Demarcus {sic} is right,
11 that he has this ideal body type, even though he
12 can't remember what side the scar was on and even
13 though the scar was in the back and he's pointing
14 the gun at his face, that he can identify that,
15 let's say that that's true and let's interject some
16 common sense.

17 If this is someone who goes into a store, I
18 think the testimony was, at least 30 times,
19 frequents the store frequently -- that's what it
20 was, frequently -- frequently in the store, lives a
21 half a mile away and knows the cashier, has a body
22 full of tattoos, but they're going to cover their
23 face and leave all of their tattoos exposed, does
24 that make any sense? You get to answer that.

25 He has to hide the carton. Remember, we have a

1 perimeter that's been set up by all of these
2 additional agencies and they're finding money on the
3 ground and in fields, at 111 Pine Drive {sic} and
4 somewhere they find the shirt. But Mr. Robinson is
5 so good that he somehow destroys the carton and the
6 other cigarettes that were in there, tosses a few
7 dollars here, a five dollar here, and then organizes
8 the money and folds it politely and puts it where
9 he's sleeping, but also makes sure to get rid of the
10 other money somewhere, because it was \$110 that was
11 testified to that was lost.

12 They want you to convict Demarcus because he's
13 a 20-year-old boy that has shorts -- black shorts
14 and underwear and a gun in his house and some
15 cigarettes. And they want to take all that evidence
16 and make you make it fit and just disregard the
17 stuff that doesn't make sense.

18 Consistently -- consistency, credibility and
19 corroboration. You'll get to watch this -- these
20 videos several, several different times, as many as
21 you want the Judge will tell you.

22 (Pause.)

23 **MS. ZMROCZEK:** I can't get it to play. You
24 will.

25 Look at all the camera angles, look at the

1 times, test the evidence. They've given you clear
2 instructions on how to run the computer, and make
3 sure that each of you gets to see it. And you watch
4 it from all angles because the State showed you two,
5 but there are four different angles into evidence.
6 And look at them closely and watch where Mr. Houston
7 is looking, where his hands are, where he's
8 positioned and how long it takes.

9 He said that he -- it was fuzzy after a year,
10 which is why I asked him about that statement. And
11 then he got to go back and make some corrections.
12 And there was nothing in there about a tattoo in
13 those statements. This tattoo theory comes after
14 they want to look at these pictures, after they've
15 arrested Mr. Robinson, and they want to try to make
16 this fit. Okay?

17 So let's just make it fit. Each of you look at
18 this picture individually, holding the gun in your
19 hand and see where the tattoo is, because they say
20 it's clear, but you get determination on what's
21 clear because what we see depends mainly on what we
22 look for. And the law requires you not to look in a
23 box, but to look at all the evidence.

24 Growing up in Louisiana with my sisters, and I
25 was the oldest, I would get blamed for everything

1 because I'm the oldest. You range from 45 to 22.
2 My dad just wanted a boy, so we all do sports. I
3 did swimming. My sister did gym -- one of my
4 sisters did gymnastics, but we were in and out all
5 over the place.

6 My mom said, after the first three years of all
7 of us being able to be in different events, That's
8 it. I am not a short-order cook. Dinner is made.
9 Plate, plate, plate, plate, plate. You come home,
10 you eat it. That's how it's going to work.

11 So -- and we would come home at different times
12 depending on who could drive, who could ride. And I
13 came home early one day from swim practice, ate my
14 dinner. And you have to eat all your dinner to get
15 to the dessert because that's the best part. And
16 I'm talking spinach and things that I just wouldn't
17 eat, but if I didn't eat it, I couldn't have my
18 dessert. And I fed the dog spinach sometimes. This
19 dog, I'm surprised that she lived this long because
20 she ate so much food.

21 But I always loved banana pudding, my favorite
22 dessert, especially when I got home early because
23 the vanilla wafers weren't squishy yet, they had
24 just been put on. Got home, I ate mine. And I was
25 like, Oh, my gosh. And all six of everybody else's

1 desserts are sitting in that fridge. And I'm like,
2 Man. But I didn't do it.

3 Allison comes home from basketball practice.
4 And then she says, I left my shoes at the gym; I'll
5 be right back. So she goes to the gym. April comes
6 home from gymnastics practice. April eats her food,
7 eats her dessert. And she was like, I'm eating
8 another dessert. She eats Allison's dessert. And
9 I'm sitting back laughing because I know this time
10 I'm not getting in trouble.

11 And then my crafty sister takes the second bowl
12 that has a tiny little bit of the banana pudding
13 right at the bottom, she calls Lucy at the table and
14 she squishes it on her face, on her nose. This dog
15 is trying to lick it off, but she can't lick it all
16 off.

17 Allison comes home and she says, Where's my
18 dessert? With a straight face, I watch April say,
19 The dog ate it. Well, the dog's got banana pudding
20 all over his -- all over her face. And my sister
21 was like, Mom. And the dog gets in trouble, she
22 gets her dessert, April gets off scot-free.

23 Ladies and gentlemen, that's what the
24 government's trying to do. They're trying to take
25 these tiny items, these common household items --

1 and I say household. You get to make the
2 determination if this revolver is a commonly gun
3 used in self-defense. You get to make that
4 determination. You get to hear that it was a silver
5 gun with a black handle. He never said revolver,
6 they said revolver because that's what matched. You
7 get to make the determination if these cigarettes,
8 only four or five, but not the ten that are in a
9 carton, corroborate beyond a reasonable doubt their
10 theory.

11 Because, ladies and gentlemen, what they're
12 trying to do is what April did to that dog and
13 that's take that pudding, smear it on their face and
14 ask that you not follow the law, and the Judge will
15 instruct you that you can't do that.

16 I talked at the beginning about how important
17 this duty was. It's important for the government,
18 it's important for the defense, but it's important
19 to us as United States Citizens because when we're
20 talking about determinations, that's life and
21 liberty, that burden is beyond a reasonable doubt.

22 And when you go back there and you discuss what
23 your individual thoughts are, ask yourselves what
24 doubts are reasonable? Is it reasonable that
25 Mr. Houston, who testified that he has a child by

1 somebody who just few days earlier had gotten into a
2 friend-altering fight, would name somebody? Is it
3 reasonable? Is it reasonable that a 20 year old,
4 who plays football apparently, would have black
5 shorts and gray underwear? Is gray underwear not
6 common? Is there any possibility that he was home
7 at 2:30 when this crime was committed at 2:45?

8 You make those determinations, ladies and
9 gentlemen, and I submit when you do and when you
10 test the evidence that's been presented to you
11 against the facts, that you will be proud to render
12 your verdict of not guilty because they have not
13 proven this case beyond a reasonable doubt. Thank
14 you.

15 CHARGE OF THE COURT

16 **THE COURT:** All right. Ladies and gentlemen,
17 you have heard the closing arguments and it is now
18 my responsibility to charge you the law in the case
19 that is applicable to the case.

20 Now, I will tell you that jury charges are not
21 the most exciting thing in the world. Okay? No one
22 really wants to hear me listen -- or hear me talk
23 for this long, but I do ask that you give me your
24 undivided attention as I'm going to explain the law
25 to you that you must apply to this case.

1 So the indictments have charged the defendant
2 with armed robbery, kidnapping and possession of a
3 firearm during the commission of a violent crime. I
4 remind you that the fact that the defendant was
5 arrested, charged and indicted in this case is not
6 evidence, and it cannot be considered by you as
7 evidence of guilt nor does it create any presumption
8 or inference of guilt.

9 The indictments, as I told you yesterday, are
10 just the documents that allow this Court to hear
11 this case. They're the formal documents by which
12 the case is brought into court.

13 Now, you have three charges before you, so the
14 indictments have alleged several different offenses
15 against the defendant, armed robbery, kidnapping and
16 possession of a weapon during the commission of a
17 violent crime. So each indictment charges a
18 separate and distinct offense. You must decide each
19 indictment separately on the evidence and the law
20 applicable to it uninfluenced by your decision on
21 any other indictment.

22 The defendant may be convicted or acquitted on
23 any or all of the offenses charged. You will be
24 asked to write a separate verdict of guilty or not
25 guilty for each indictment, and I'll explain that to

1 you at the very end.

2 Now, during this trial, you and I have had
3 certain duties to perform. It has been my
4 responsibility to preside over the trial of the
5 case, and I've also had the duty to rule on the
6 admissibility of the evidence. You are to consider
7 only the competent evidence before you. If there
8 was any testimony that was ordered stricken in this
9 case, you must disregard it.

10 You are also only to consider the testimony
11 which has been presented from this witness stand and
12 any exhibits which have been made a part of the
13 record in the case.

14 I have the additional duty to charge you the
15 law. As the presiding judge, I am the sole judge of
16 the law. And it is your duty, under your oath, to
17 accept the law and apply the law as I now give it to
18 you. If you have an idea as to what you think the
19 law is or what you think the law ought to be and it
20 does not agree with what I now tell you the law is,
21 you must abandon your own idea because, under your
22 oath, you are sworn to accept the law and apply it
23 exactly as I give it to you.

24 Now, in every case tried in this court before a
25 jury, the jury becomes the sole and exclusive judge

1 of the facts. I cannot state, comment on or make
2 any statement to you about the facts in a case. You
3 are the sole judge of the facts.

4 You are not to infer from anything that I have
5 said during the progress of this trial or anything
6 that I say now that I have any opinion about the
7 facts. You and you alone control the facts. The
8 law does not allow me to have an opinion about the
9 facts. This is a matter for you to determine. It
10 is your duty to determine the effect, the value and
11 the weight of the evidence presented during this
12 trial.

13 Now, to these charges, the defendant has pled
14 not guilty. This plea puts the burden of proof upon
15 the State to prove the defendant guilty. A person
16 charged with a criminal offense in South Carolina is
17 never required to prove himself innocent.

18 I charge you that it is an important rule of
19 law that the defendant in a criminal trial, no
20 matter what the seriousness of the charge may be,
21 will always be presumed to be innocent for the crime
22 for which the indictment was issued unless guilt has
23 been proven by evidence that satisfies you of that
24 guilt beyond a reasonable doubt.

25 This presumption of innocence doesn't end when

1 you begin your deliberations, but it accompanies the
2 defendant throughout the trial until you reach a
3 verdict of guilt based upon evidence that satisfies
4 you of that guilt beyond a reasonable doubt.

5 The presumption of innocence is like a robe of
6 righteousness placed about the shoulders of the
7 defendant which remains with the defendant until it
8 has been stripped from the defendant by evidence
9 that satisfies you of the guilt beyond a reasonable
10 doubt.

11 The presumption of innocence isn't just a mere
12 legal theory. It's not just some legal phrase that
13 we say. It is a substantial right to which every
14 single defendant is entitled, unless you are
15 convinced from the evidence of the defendant's guilt
16 beyond a reasonable doubt.

17 So what is beyond a reasonable doubt? The
18 State has the burden of proving the defendant guilty
19 beyond a reasonable doubt.

20 Some of you may have served as jurors in civil
21 cases where you were told that it is only necessary
22 to prove that a fact is more likely true than not
23 true, such as by the greater weight or the
24 preponderance of the evidence. In criminal cases,
25 the State's proof must be more powerful than that;

1 it must be beyond a reasonable doubt.

2 Proof beyond a reasonable doubt is proof that
3 leaves you firmly convinced of the defendant's
4 guilt.

5 There are very few things in this world that we
6 know with absolute certainty and, in criminal cases,
7 the law does not require proof that overcomes every
8 possible doubt. If, based upon your consideration
9 of the evidence, you are firmly convinced that the
10 defendant is guilty, you must find the defendant
11 guilty. If, on the other hand, you think there is a
12 real possibility that the defendant is not guilty,
13 you must give him the benefit of the doubt and find
14 him not guilty.

15 Now, some things that you have heard during
16 this trial are not evidence, and you are not allowed
17 to consider them as evidence: Number one, the
18 statements and the arguments of the attorneys are
19 not evidence. Number two, the questions and the
20 objections of the attorneys are not evidence.
21 Number three, anything that I told you to disregard.

22 As I told you yesterday, there are two types of
23 evidence, direct evidence and circumstantial
24 evidence. Direct evidence directly proves the
25 existence of a fact and does not require any

1 deduction. Circumstantial evidence is proof of a
2 chain of facts and circumstances that indicate the
3 existence of a fact.

4 Crimes may be proven by circumstantial or
5 direct evidence. The law makes no distinction
6 between the weight or the value to be given to
7 either one.

8 To the extent -- however, to the extent that
9 the State relies on circumstantial evidence, all of
10 the circumstances must be consistent with each
11 other, and when taken together, point conclusively
12 to the guilt of the accused beyond a reasonable
13 doubt. If the circumstances merely portray the
14 defendant's behavior as suspicious, the proof has
15 failed.

16 The State has the burden of proving the
17 defendant guilty beyond a reasonable doubt. This
18 burden rests with them regardless of whether they
19 rely on direct evidence, circumstantial evidence or
20 some combination of the two.

21 Now, let me give you an example of
22 circumstantial evidence. Okay? So let's say we're
23 not in November and it was 80 degrees this week, but
24 let's say we're in January. Okay? We're in January
25 or February and at nine or ten o'clock at night, you

1 look outside and the sky is perfectly clear, and you
2 look out upon your grass, which is all brown because
3 it's in the middle of winter, and there's nothing on
4 your grass. Okay? You go to bed and you wake up
5 the next morning and the ground outside is covered
6 with snow. All right?

7 So did you see it snow? No. Did you hear it
8 snow? No. But can you wake up the next morning and
9 say it snowed during the night? Yes. Right? You
10 went to bed with no snow and you woke up in the
11 morning with snow. That's circumstantial evidence.
12 Okay?

13 Now, credibility of the witnesses. So you must
14 determine the credibility of the witnesses.
15 Credibility just means believability. It becomes
16 your duty to analyze and to evaluate the evidence
17 and consider which evidence convinces you of its
18 truth.

19 So in determining the believability of the
20 witnesses, you may believe one witness over many or
21 many over one; you may believe a part of the
22 testimony of a witness and reject the rest of that
23 witness' testimony; you may believe testimony of a
24 witness entirely or reject it entirely; you may
25 consider whether the witness has exhibited to you

1 any interest or bias or motive or prejudice in the
2 case; you may also consider the appearance and the
3 demeanor of the witness stand while on -- of the
4 witness while on the witness stand.

5 Now, you've heard from an expert witness in
6 this case. The rules of evidence ordinarily do not
7 permit witnesses to give opinions or conclusions.
8 An exception to this rule exists for expert
9 witnesses. This is a witness who, by education and
10 experience, has become an expert in some art,
11 science or profession or calling. They're allowed
12 to give their opinion as to relevant and material
13 matters in which they claim to be an expert and they
14 can state their reasons for their opinion.

15 You should consider any expert opinion received
16 in this case, and like any other evidence, give it
17 the weight that you believe is appropriate.

18 If you decide that the opinion is not based
19 upon sufficient education and experience or if you
20 conclude that the reasons given in support of the
21 opinion are not sound or that the opinion is
22 outweighed by other evidence you believe, you can
23 disregard the opinion entirely.

24 An expert witness' testimony is to be given no
25 greater weight than that of another witness -- than

1 that of other witnesses simply because they're an
2 expert. Further, you are not required to accept an
3 expert's opinion even though it's not contradicted.

4 Now, I instruct you and emphasize to you that
5 the fact that the defendant did not testify is not a
6 factor to be considered by you in any way in your
7 deliberation and in your consideration on the
8 question of the guilt or the innocence of the
9 defendant. It must not be considered by you in any
10 manner whatsoever. A defendant has a constitutional
11 right to remain silent, and the assertion of this
12 right must not be considered by you in any way,
13 shape or form.

14 I repeat, under your oath, you are to draw no
15 conclusion whatsoever from the fact that the
16 defendant in this case did not testify. The fact
17 that this defendant did not testify should not even
18 be discussed in the jury room.

19 The burden of proof, as I have told you from
20 the very beginning of this trial, is on the State.
21 The defendant is not required to prove his
22 innocence. The burden of proof remains on the State
23 to prove guilt beyond a reasonable doubt.

24 Now, an issue in this case is the
25 identification of the defendant as the person who

1 committed the crime. The defendant has -- excuse
2 me, strike that. The State has the burden of
3 proving identity beyond a reasonable doubt. You
4 must be satisfied beyond a reasonable doubt of the
5 accuracy of the identification of the defendant
6 before you may convict.

7 Identification testimony is an expression of
8 belief or impression by a witness. You must
9 determine the accuracy of the identification of the
10 defendant. You must consider the believability of
11 each identification witness in the same way as any
12 other witness. You may consider whether the witness
13 had an adequate opportunity to observe the offender
14 at the time of the offense. This will be affected
15 by things like how long or how short a time was
16 available, how far or how close the witness was, the
17 lighting conditions, and whether the witness had the
18 chance to see or know the person in the past.

19 Once again, I instruct you the burden of proof
20 on the State extends to every element of the crimes
21 charged. And this specifically includes the burden
22 of proving beyond a reasonable doubt the identity of
23 the defendant as the person who committed the
24 crimes. If, after examining the testimony, you have
25 a reasonable doubt as to the accuracy of the

1 identification, you must find the defendant not
2 guilty.

3 Now, we're going to talk about the crimes that
4 are charged. So the -- in order to establish
5 criminal liability, criminal intent is required.
6 For example, the mental state required to be proven
7 might be purpose, intent, knowledge, recklessness or
8 criminal negligence.

9 Criminal intent must be proven by the State
10 beyond a reasonable doubt.

11 Criminal intent is always a matter that must be
12 determined by the jury from the circumstances
13 surrounding the situation.

14 There's no way to prove it to a mathematical
15 certainty. There is no way medical science can
16 dissect a person's brain and determine what that
17 person had in mind. So the law says that you may
18 infer criminal intent from the circumstances that
19 existed. This is how you make a determination of
20 whether or not the element that requires intent was
21 present.

22 It is not necessary to establish intent by
23 direct and positive evidence, but intent may be
24 established by inference in the same way as any
25 other fact by taking into consideration the acts of

1 the parties and the facts and circumstances of the
2 case.

3 Criminal intent is a mental state. It is a
4 conscious wrongdoing. It is up to you to determine
5 what the defendant intended to do based upon the
6 circumstances shown to have existed.

7 Criminal intent can arise from an action or a
8 failure to act. It may arise from negligence,
9 recklessness or an indifference to duty or to
10 consequences that is considered by the law to be the
11 equivalent of criminal intent.

12 So the first charge that you are to consider is
13 armed robbery. The defendant is charged with armed
14 robbery. In order to prove this offense, the State
15 must prove beyond a reasonable doubt that the
16 defendant took personal property from the person or
17 the presence of another person.

18 Property is in the presence of a person if it
19 is within the person's reach, inspection,
20 observation or control so that the person could, if
21 not overcome with violence or prevented by fear,
22 keep possession of the property.

23 The State must also prove beyond a reasonable
24 doubt that the defendant carried the property away
25 intending to permanently deprive the owner of the

1 property and to keep the property for the
2 defendant's own use. The slightest removal of the
3 property or the complete possession of the property
4 even for an instant by the defendant is sufficient
5 to show a taking and carrying away of the property.
6 The taking and carrying away of the property must
7 have been done with violence or by putting the owner
8 of the property in fear of violence.

9 Finally, the State must prove beyond a
10 reasonable doubt that the defendant was armed with a
11 deadly weapon during the robbery. A deadly weapon
12 is any article, instrument or substance which is
13 likely to cause death or great bodily harm.

14 Whether an instrument has been used as a deadly
15 weapon depends on the facts and circumstances of
16 each case. A pistol is an instrument which may be a
17 deadly weapon. A gun may be a deadly weapon even if
18 it is not operating.

19 Second offense charged, kidnapping. The
20 defendant is charged with kidnapping, so the State
21 must prove beyond a reasonable doubt that the
22 defendant knowingly and unlawfully seized, confined,
23 inveigled, decoyed, kidnapped, abducted or carried
24 away another person without authority of law.

25 To do a thing unlawfully is to do it willfully

1 against the law. Knowingly means with knowledge,
2 consciously, not accidentally. Seize means to take
3 hold of suddenly or forcibly. Confine means to
4 limit or restrict or enclose within bounds,
5 imprisoned or shut or keep in. Inveigle means to
6 lure, entice or lead astray by false
7 representations, promises or other deceitful means.
8 Decoy means to lure by or as if by. A decoy is
9 something to entice a person into a trap. Kidnap is
10 to remove a person against his will by unlawful
11 force or fraud. Abduct means to carry off secretly
12 or by force for an illegal purpose. Carry away
13 means to remove.

14 Now, the State does not have to prove that the
15 defendant did all of these things; instead, if you
16 find beyond a reasonable doubt that the defendant
17 did any of these things, you may find the defendant
18 guilty of kidnapping.

19 Something done without authority of law is
20 something which the law does not sanction, permit,
21 allow, condone or provide justification for. The
22 kidnapping does not have to be for any personal or
23 monetary gain, for any illegal purpose, but may be
24 for any reason whatsoever.

25 The last crime charged is possession of a

1 weapon during the commission of a violent crime. So
2 the defendant is charged with possession of a weapon
3 during the commission of or attempt to commit a
4 violent crime. The State must prove beyond a
5 reasonable doubt that the defendant was in
6 possession of a firearm or visibly displayed what
7 appeared to be a firearm during the commission of a
8 violent crime.

9 A firearm means any machine gun, automatic
10 rifle, revolver, pistol or any weapon which will or
11 is designed to or may be readily converted to expel
12 a projectile.

13 In order to find the defendant guilty of this
14 charge, you must first find the defendant guilty of
15 either committing a violent crime or attempting to
16 commit a violent crime. Armed robbery, kidnapping
17 are both violent crimes. The State must prove
18 beyond a reasonable doubt that the weapon furthered,
19 advanced or helped in the commission of the crime.

20 The defendant has raised the defense of alibi.
21 In order to establish an alibi, it must be shown
22 that the defendant was at another specified place at
23 the time the crime was committed and that it was,
24 therefore, impossible for the defendant to have been
25 at the scene of the crime. Mere denial or presence

1 at the scene of a crime does not constitute an
2 alibi.

3 There is no burden on the defendant to prove an
4 alibi. The burden is on the State to prove beyond a
5 reasonable doubt that the defendant was actually
6 present at the scene of the crime, actually
7 participated in it and was not somewhere else. In
8 other words, the State has the burden of disproving
9 the defendant's alibi defense.

10 All right. I'm almost done. Let me talk to
11 you about deliberating. Deliberation is defined as
12 a careful consideration weighing up with a view to a
13 decision. The genius of this system is that it
14 allows 12 good men and women from 12 totally
15 different backgrounds, life experiences and
16 perspectives to consider the evidence, talk about it
17 and reach a verdict.

18 We call them deliberations for a reason. You
19 are to consider the evidence in this case carefully
20 and deliberately and discuss it in a calm, thorough
21 and courteous manner. You are not a partisan. You
22 are not an advocate for either side. You do not
23 favor one side or the other. You are a judge. You
24 are a judge of the facts.

25 Listen to the views of your fellow jurors,

1 consider other people's points and points of view
2 and talk through and discuss the evidence. And
3 remember, if you're doing something deliberately,
4 you're not in a big hurry, and you should not be in
5 a hurry here. This case is very important to both
6 sides. This is their only day in court to resolve
7 this matter.

8 When you retire to the jury room, you should
9 discuss the case with each other to reach agreement,
10 if you can. Your verdict must be unanimous. Each
11 of you must decide the case for yourself, but only
12 after you have impartially considered the evidence,
13 discussed it fully and listened to each other's
14 views.

15 Do not be afraid to change your opinion if the
16 discussion persuades you that you should, but do not
17 come to a decision simply because everyone else
18 thinks it's right. It's important that you attempt
19 to reach a unanimous verdict, but only if each of
20 you can do so after having made your own decision.
21 Do not change an honest belief about the weight and
22 the effect of the evidence simply to reach a
23 verdict. In other words, don't change your opinion
24 simply solely for the sake of reaching a unanimous
25 verdict.

1 Okay. I'm going to explain this verdict form
2 to you and then I'm going to send you back to your
3 jury room. Okay?

4 So rule number one, your verdict must be
5 unanimous. That means you all 12 must agree. Okay?

6 When I send you back to your jury room here in
7 just a minute, you're still not allowed to discuss
8 the case. Okay? The sign that you may begin
9 deliberating is when the evidence, the exhibits,
10 come in. So when the bailiffs bring in the
11 exhibits, that is your cue, Mr. Foreman, that the
12 deliberations can begin. So the alternates will
13 come out, the exhibits will go in, then you can
14 start deliberating. Okay?

15 Your lunch -- I told them to have your lunch
16 here between 12:00 and 12:30. When your lunch
17 comes, if you want to deliberate and eat, you can.
18 If you want to stop and start again after you eat,
19 you can. That's entirely up to you. Okay?

20 Don't tell me the count. So you never need to
21 send me a note that says the count is X. Your count
22 is your count, and I don't ever need to know it.
23 Okay?

24 Next thing: Now, there are some videos in this
25 case, so we'll provide what we call a clean computer

1 to you to play those videos on if you want to watch
2 them. If you have technical difficulty in using
3 that, just send out a note that says, We need some
4 help playing the videos. I'll send in my law clerk,
5 and she can get them running for you. Okay?

6 Now, the other thing is you all 12 must be in
7 the room to deliberate. So if somebody needs to go
8 call home or if somebody needs to go to the restroom
9 or if somebody needs to go take a smoke break,
10 deliberations have to stop unless all 12 people are
11 in the room. Okay?

12 All right. So this is your verdict form. I
13 tried to make this as simple as possible. So what
14 it says is: We, the jury, by unanimous consent,
15 find the defendant -- and that's his name -- number
16 one, as to the charge of armed robbery, guilty or
17 not guilty; number two, as to the charge of
18 kidnapping, guilty or not guilty.

19 Now, the next line is: Only if you find the
20 defendant guilty of question one and/or question
21 number two can you consider question number three,
22 which is the weapons charge. Okay?

23 There is no significance to guilty being first
24 and not guilty being second. I have to put one
25 first; I have to put one second. So I usually

1 switch it up every jury trial I do as to which goes
2 first and which goes second. Okay?

3 This is your verdict form. I'm going to send
4 you back to your jury room. You're still not
5 allowed to discuss the case. When the evidence
6 comes -- the exhibits come in, you can then begin.
7 Okay? Thank you very much.

8 (The jury retires to the jury room.)

9 **THE COURT:** All right. Any exceptions to the
10 charge from the State?

11 **MR. FENDER:** Nothing from the State, Judge.

12 **THE COURT:** From the defense?

13 **MS. ZMROCZEK:** None from the defense.

14 **THE COURT:** All right. Do we know what's going
15 back? Make sure the right stuff goes back. We got
16 a computer to go back?

17 **MR. EARGLE:** Yes, sir.

18 **THE COURT:** Okay. We've got a computer to go
19 back.

20 And then make sure -- if you're going to leave
21 this general area, make sure the clerk has your
22 phone number. So when the evidence goes in, pull
23 the two alternates out, and I'll come out there and
24 talk to them, please.

25 (The Judge excused the alternates off the

1 record.)

2 (The jury commences its deliberations at
3 12:20 P.M.)

4 (A recess transpired.)

5 **THE COURT:** All right let's bring them in.

6 (The jury returns to open court to report
7 its verdict at 1:48 P.M.)

8 **THE COURT:** All right. Welcome back, ladies
9 and gentlemen.

10 Mr. Foreman, it's my understanding you have a
11 verdict; is that correct?

12 **FOREMAN:** Yes, sir.

13 **THE COURT:** All right. Would you hand it to
14 Madame Clerk right here? Thank you very much.

15 (The Clerk hands the verdicts to the Judge.)

16 **THE COURT:** All right. I find the verdict is
17 in its proper format, and the Clerk may publish.

18 VERDICT OF THE JURY

19 **THE CLERK:** The State of South Carolina, County
20 of Saluda in the Court of General Sessions. The
21 State of South Carolina versus Demarcus L. Robinson,
22 indictments number 2016-GS-41-310, as to the charge
23 of kidnapping, on indictment -- we find the
24 defendant guilty.

25 As to the charge of armed robbery, on

1 indictment 2016-GS-41-311, we find the defendant
2 guilty.

3 As to the charge of possession of a firearm
4 during the commission of a violent offense, on
5 indictment 2016-GS-41-312, we find the defendant
6 guilty. Foreperson, Robert Michael Watson. Dated
7 November 8th, 2017.

8 **THE COURT:** All right. Mr. Foreman, is this
9 your verdict and the verdict of the jury?

10 **FOREMAN:** Yes, sir.

11 **THE COURT:** All right. Does either side
12 request polling?

13 **MS. ZMROCZEK:** We do, Your Honor.

14 **THE COURT:** Okay. Ladies and gentlemen, what
15 we're going to do is we're going to call out your
16 juror numbers and the question -- as your juror
17 number is called, the question will be, Is this your
18 verdict and is it still your verdict? And just
19 answer out loud for us. Okay?

20 **THE CLERK:** Mr. Robert Watson, is this your
21 verdict and still your verdict?

22 **FOREMAN:** Yes, ma'am.

23 **THE CLERK:** Ms. Kathy Miles, is this your
24 verdict and still your verdict?

25 **JUROR:** Yes, it is.

1 **THE CLERK:** Ms. Evelyn Shell, is this your
2 verdict and still your verdict?

3 **JUROR:** Yes, it is.

4 **THE CLERK:** Ms. Cressie Brooks, is this your
5 verdict and still your verdict?

6 **JUROR:** Yes, it is.

7 **THE CLERK:** Ms. Chaquita Minick, is this your
8 verdict and still your verdict?

9 **JUROR:** Yes, it is.

10 **THE CLERK:** Kenneth West, is this your verdict
11 and still your verdict?

12 **JUROR:** Yes, it is.

13 **THE CLERK:** Mr. Casey Maloney, is this your
14 verdict and still your verdict?

15 **JUROR:** Yes, it is.

16 **THE CLERK:** Ms. Delfuni Glover, is this your
17 verdict and still your verdict?

18 **JUROR:** Yes, it is.

19 **THE CLERK:** Ms. Shirley Diane Gibson, is this
20 your verdict and still your verdict?

21 **JUROR:** Yes, it is.

22 **THE CLERK:** Mr. James R. Shealy, is this your
23 verdict and still your verdict?

24 **JUROR:** Yes, it is.

25 **THE CLERK:** Mr. Jonathan M. Roof, is this your

1 verdict and still your verdict?

2 **JUROR:** Yes, ma'am.

3 **THE CLERK:** And, Mr. Ovidio Aguirre, is this
4 your verdict and still your verdict?

5 **JUROR:** It is.

6 **THE COURT:** All right. The jury's been polled.

7 All right. Ladies and gentlemen, I want to say
8 thank you very much for your service this week. I
9 know this was not a rather lengthy case, but it was
10 an important case. And I want to say on behalf of
11 all the parties and the lawyers in the case, thank
12 you very much for your service.

13 I know there are a million other places you
14 would rather be this week. I hope this week was
15 educational for you so that you can see what we do
16 up here each time that we hold court. And you
17 realize that trials are not like TV and they're not
18 like movies and they're not like books -- books that
19 you may read. This is real life with real witnesses
20 and real things that happen. And I just want to say
21 thank you very much for your service this week.

22 You have all been very attentive. You have all
23 been very prompt. You've all been very
24 professional. And I want to say a personal thank
25 you to you.

1 I travel all over this state and try cases.
2 And you all have been a great jury. And everybody's
3 been on time, and we just have had no issues at all.
4 And I want to say a personal thank you to you.

5 You have a jury exemption for all of next year
6 and for the following year. So if you get called
7 again for jury duty in circuit court, just tell them
8 that you served this week with me and they will go
9 ahead and excuse you from that term of court.

10 Now, the prohibition about discussing the case
11 with anyone is hereby lifted from you. You are free
12 to discuss the case with anyone that you want to.
13 Sometimes attorneys like to call jurors and say,
14 Hey, what did we do wrong; what did we do right;
15 what made sense; what didn't make sense? If you
16 want to speak with them, you can. If you don't want
17 to, just politely tell them you don't want to and
18 they'll leave you alone and not bother you.

19 But I wanted to say thank you very much for
20 your service. You'll retire to your jury room.
21 Does anyone need a work excuse?

22 Okay. We've got some work excuses and we'll
23 get -- the Clerk can get those for you. And let's
24 send them back into your jury room, you can gather
25 your belongings and we'll take your name tags from

1 you. Okay? Thank you very much.

2 (The jury was excused.)

3 **THE COURT:** Okay. I'll be right back for
4 post-trial motions and sentencing.

5 (Pause.)

6 **THE COURT:** All right. Post-trial motions?

7 **MS. ZMROCZEK:** Your Honor, at this time, we
8 would renew all of our previous motions and move to
9 set aside the verdict just based on the short time
10 of deliberation.

11 **THE COURT:** All right. I find -- I'm going to
12 deny those motions. I find that my rulings upon the
13 previous motions, I stick with those rulings and the
14 reasons that I stated forth at that time.

15 Further, I find that the jury spent, you know,
16 almost, from my calculation, probably about an hour
17 to an hour and a half in actual deliberations. This
18 was, essentially, a six-witness case. And I find
19 that there was no significant issues that would have
20 caused a long period of delay in deliberations. So
21 I will deny the motion for a new trial based upon
22 that.

23 All right. Have y'all got sentencing sheets?

24 **MR. FENDER:** Judge, we're completing that right
25 now.

1 **THE COURT:** Okay. All right. And does
2 Mr. Houston need to be heard from?

3 **MR. FENDER:** Judge, can I beg the Court's
4 indulgence?

5 **THE COURT:** Sure.

6 **MR. FENDER:** And, Judge, just briefly, if we
7 would allow Corporal Raffield to address the Court
8 just a little bit on sentencing and also his prior
9 record as well?

10 **THE COURT:** Sure.

11 **MR. FENDER:** Did you want to do that at this
12 time, Judge?

13 **THE COURT:** Please.

14 (Pause.)

15 **THE COURT:** And does the defendant have any
16 criminal history?

17 **CORPORAL RAFFIELD:** Yes, sir, Your Honor, a
18 former assault and battery third degree, petit
19 larceny, receiving stolen goods, and shoplifting.

20 Your Honor, I have personal knowledge of
21 Mr. Robinson being that I was the chief there for
22 the two-year period. Shannon Molina, the manager,
23 and I have conferred. Mr. Robinson had been in the
24 store numerous times, issues with shoplifting. Two
25 to three weeks prior to this, there was another

1 incident.

2 This incident, being the fact that Ridge Spring
3 is such a small town, a lot of elderly people,
4 caused a lot of stress not only to the victim that
5 actually had the gun pointed at him, but the
6 residents within Ridge Spring itself. So I'd like
7 just to convey that to you. Thank you.

8 **THE COURT:** Thank you very much. And thank you
9 for being here.

10 **MR. FENDER:** Judge, if I could just reiterate
11 for the record just how dangerous these situations
12 are. I mean, we saw someone who was shot earlier
13 this week. We have a defendant here who went in
14 there, loaded handgun, pointed it at the clerk.
15 Again, Judge, I just ask that you take all of that
16 into account as you hand down sentencing.

17 **THE COURT:** Okay. Thank you.

18 Ms. Zmroczek.

19 **MS. ZMROCZEK:** Thank you.

20 Your Honor, my client is 20 years old. He is a
21 -- he finished 11th grade, but he did get his GED,
22 Your Honor. His family is from here. They are
23 hardworking people.

24 He is a young man. Obviously, there's no
25 questions about his competence, but the Court's

1 familiar with, Your Honor, with the formation of an
2 adolescent brain and just making poor decisions.

3 I know they did make another arrest in this
4 case, and I can't say what -- how that affected this
5 case, Your Honor. My client has always maintained
6 his innocence with me and so I can't say anything.
7 We respect the jury's verdict, but I can't say
8 anything that could possibly affect his case later
9 on except for, with me, Your Honor, he has always
10 been respectful and polite.

11 And, obviously, he has these minor issues on
12 his record, but, Your Honor, we would certainly
13 think that a sentence in between a 10 and 20 range
14 would be appropriate. Obviously, 10 is the
15 mandatory minimum for armed robbery anyway. We
16 would ask the Court to consider all of those things
17 in its assessment.

18 **THE COURT:** All right. Mr. Robinson, you
19 certainly do not have to say anything if you do not
20 want to, but you are given the opportunity to if you
21 would like to address the Court. Is there anything
22 that you would like to say?

23 **DEFENDANT:** No, Your Honor.

24 **MS. ZMROCZEK:** And I've advised him not to.

25 **THE COURT:** That's fine, but I have to give you

1 the opportunity to if you want to, and I just wanted
2 to give that opportunity to you. I understand that
3 you don't want to speak, and I respect that.

4 You will have ten days from today's date to
5 appeal this charge. If you want to do that, you
6 need to let your attorney know that. Okay?

7 **DEFENDANT:** (Defendant nodded head.)

8 **THE COURT:** All right. You got your sentencing
9 sheets?

10 **MR. FENDER:** Yes, sir.

11 **THE COURT:** And I am going to make a specific
12 finding that he is not to be placed on the South
13 Carolina Sex Offender Registry that comes with a
14 kidnapping charge. I saw no elements or intent of
15 any type of sexual nature or any type of sexual
16 behavior in the incident. Does the State agree with
17 that?

18 **MR. FENDER:** Yes, Judge.

19 **THE COURT:** Okay. All right. So one thing
20 that usually happens automatically, Mr. Robinson, is
21 because of a kidnapping charge, the legislature has
22 seen fit to make that automatic sex offender
23 registry unless I make a specific finding that there
24 is no element of any type of sexual nature in the
25 offense. I am going to make that specific finding,

1 so you should not be placed on the sex offender
2 registry.

3 I will write that on the sentencing sheet, but
4 I am making that specific finding on the fact in
5 case the department of corrections messes that up,
6 you do have a record of me saying it and I do it on
7 this written order that states that. Okay?

8 **DEFENDANT:** Yes, Your Honor.

9 (Pause.)

10 **THE COURT:** Do you know how long he's been in
11 jail, Ms. Zmroczek?

12 **MS. ZMROCZEK:** Your Honor, he has been in since
13 August 1st, 2016.

14 **THE COURT:** Since August 1st, 2016?

15 **MS. ZMROCZEK:** Correct.

16 **MR. FENDER:** If I may, Judge?

17 **THE COURT:** Yes.

18 **MR. FENDER:** He also has a pending felony DUI.
19 And I wouldn't be opposed, if he wanted to plea to
20 that today, to running that in with whatever
21 sentence Your Honor holds.

22 **THE COURT:** Do you represent him on that,
23 Ms. Zmroczek?

24 **MS. ZMROCZEK:** I do.

25 **THE COURT:** Do you want to talk about it with

1 him tonight and have him brought back over tomorrow
2 if he wants to do it?

3 **MS. ZMROCZEK:** If he wants to do -- yeah.

4 **THE COURT:** I don't know that he has enough
5 information to make that decision right on the spot.

6 **MS. ZMROCZEK:** I don't either.

7 **THE COURT:** But if you want to talk about it
8 with him afterwards and he wants to do that, I'll be
9 over here tomorrow morning at 9:30. I'm going to
10 have one plea and one bond setting, so be here at
11 9:30 if you want to do it and we can get it done.

12 **MS. ZMROCZEK:** Thank you.

13 **THE COURT:** Do you have victim notification
14 issues on that?

15 **MR. FENDER:** We would need to get the victim,
16 Judge. The victim's local, though.

17 **THE COURT:** All right. Well, you and
18 Ms. Zmroczek discuss that later today. If y'all
19 want to do it tomorrow, I'll be here and happy to do
20 it. And if not, I understand. No harm, no foul.

21 SENTENCE OF THE COURT

22 **THE COURT:** All right. The sentence of the
23 Court on the possession of a weapon charge is five
24 years. The sentence on the armed robbery and the
25 kidnapping is 25 years. They're all to run

1 concurrent. He's to be given credit for time
2 served. He's to have no contact with the victim.
3 He is not to be placed on the South Carolina Sex
4 Offender Registry. And he's to be given credit back
5 to August the 1st of 2016. Thank you very much.

6 **MS. ZMROCZEK:** Thank you, Your Honor.

7 **MR. FENDER:** Thank you, Judge.

8 END OF PROCEEDINGS

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1 C E R T I F I C A T E

2

3 STATE OF SOUTH CAROLINA

4 COUNTY OF SALUDA

5

6 I, the undersigned, Stacy L. Sheppard, Official
7 Court Reporter for the Eleventh Judicial Circuit of
8 the State of South Carolina, do hereby certify that
9 the 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 Saluda County, South Carolina, on the 6th
14 - 8th of November, 2017.

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

17

18

May 7, 2018

19

20

s/Stacy L. Sheppard

21

22

Stacy L. Sheppard, RPR
Official Court Reporter

23

24

25

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Saluda County

Honorable Robert E. Hood, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

DEMARCUS L. ROBINSON,

APPELLANT

APPELLATE CASE NO. 2017-002624

ANDERS BRIEF OF APPELLANT

LARA M. CAUDY
Appellate Defender

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

ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Did the trial judge err by denying Appellant's motion to suppress evidence seized during the execution of a search warrant at his house when the affidavit in support of the search warrant failed to provide the magistrate with a substantial basis for finding probable cause?

STATEMENT OF THE CASE

A Saluda County Grand Jury indicted Appellant on November 1, 2016 for armed robbery, kidnapping, and possession of a weapon during the commission of a violent crime. R. 405-410. His case was called to trial on November 6, 2017 before the Honorable Robert E. Hood, and a jury. R. 1. Assistant Solicitors Doug Fender and Alton Eargle represented the state, and Aimee Zmroczek represented Appellant. R. 1.

On November 8, 2017, the jury found Appellant guilty as indicted. R. 391, l. 18 – 392, l. 10. He was sentenced to twenty-five years' imprisonment for armed robbery, twenty-five years for kidnapping, and five years for the weapons offense. All sentences were ordered to be served concurrently. R. 402, l. 21 – 403, l. 1.

This appeal follows.

STANDARD OF REVIEW

“The admission of evidence is within the discretion of the trial court and will not be reversed absent an abuse of discretion. An abuse of discretion occurs when the trial court’s ruling is based on an error of law or, when grounded in factual conclusions, is without evidentiary support. When reviewing a Fourth Amendment search and seizure case, an appellate court must affirm if there is any evidence to support the ruling. The appellate court will reverse only when there is clear error.” State v. Wright, 391 S.C. 436, 442, 706 S.E.2d 324, 326 (2011) (internal citations and quotation marks omitted). This deference does not bar appellate courts from conducting their own review of the record to determine whether the trial judge’s decision is supported by the evidence. State v. Tindall, 388 S.C. 518, 521, 698 S.E.2d 203, 205 (2010) (internal citation omitted).

STATEMENT OF THE FACTS

During the early morning hours of August 1, 2016, the Circle K in Ridge Spring was robbed by an armed man. R. 147, l. 20 – 148, l. 11. The robber pointed a pistol at the clerk and demanded the clerk open the register. R. 148, ll. 4-10. He stole an undetermined amount of cash consisting exclusively of five and one-dollar bills, along with a case of cigarettes and a cigar. R. 149, l. 1 – 150, l. 9; R. 157, ll. 2-5. The robber was wearing black shorts and gray underwear. However, he did not have a shirt on. R. 150, ll. 18-24. His face and head were “almost completely covered” and he was carrying a silver revolver with a black handle. R. 165, l. 9 – 166, l. 6; R. 148, ll. 12-14.

The clerk gave the 911 operator a general description of the perpetrator. R. 178, l. 19 – 179, l. 15. However, when law enforcement arrived at the store, the clerk for the first time identified Appellant as the robber. R. 182, l. 17 – 183, l. 1. He claimed that, while he initially did not recognize the man, he later “realized” the robber was Appellant “after [he] gathered [his] bearings” and “gained [his] senses.” R. 151, ll. 18-24. The clerk knew Appellant “from the neighborhood and from the store.” Appellant was allegedly “a regular” at the Circle K and visited the store frequently. R. 152, ll. 9-17. The clerk also claimed that on several occasions, while walking to work, he observed Appellant playing football in a neighbor’s yard without a shirt on. R. 152, l. 18 – 153, l. 17. He allegedly identified Appellant as the robber based on Appellant’s body build and because he recognized a scar on Appellant’s shoulder and a star tattoo on his arm. R. 160, l. 20 – 161, l. 24.

While en route to the store to assist in the investigation, Ridge Spring Chief of Police Michael Raffield learned Appellant had been named as a suspect and responded to Appellant’s house, which was less than a mile from the Circle K. R. 47, ll. 1-8. Appellant’s mother greeted

Raffield at the door and ultimately led Raffield upstairs to a bedroom. R. 48, ll. 9-23. Raffield found Appellant asleep on top of a sleeping bag on the floor of the bedroom. R. 49, ll. 3-6; R. 250, ll. 18-21. He allegedly observed numerous five and one-dollar bills in the immediate area around Appellant. R. 49, ll. 5-6; Tr. 251, ll. 5-14. After Appellant was secured, Raffield obtained a search warrant to search the remainder of Appellant's bedroom. R. 49, ll. 3-14; R. 53, l. 3 – 54, l. 6; R. 252, ll. 2-7. During the execution of the search warrant, officers found forty-one dollars in cash underneath the sleeping bag. R. 49, ll. 17-19. Specifically, officers found five five-dollar bills and sixteen one-dollar bills. R. 49, ll. 10-21; R. 251, ll. 5-14. They also found two pairs of black shorts underneath the sleeping bag, and a silver revolver with a black handle, a box of ammunition, several packs of Newport cigarettes, and a cigarillo all in the bedroom closet. R. 49, l. 15 – 50, l. 13; R. 252, l. 18 – 253, l. 23.

Chief Raffield later seized Appellant's gray underwear from his property at the detention center, which allegedly matched the underwear worn by the robber. R. 260, ll. 5-23.

Appellant established an alibi. Chief Raffield testified that Appellant's mother and sister reported that, while Appellant had been out that morning, he returned home around 2:30 am, which was at least ten minutes before the robbery occurred. R. 282, l. 8 – 284, l. 7; R. 302, l. 11 – 304, l. 10. Accordingly, the trial judge instructed the jury on alibi. R. 385, l. 20 – 386, l. 9.

ARGUMENT

The trial judge erred by denying Appellant's motion to suppress evidence seized during the execution of a search warrant at his house when the affidavit in support of the search warrant failed to provide the magistrate with a substantial basis for finding probable cause.

Appellant moved pretrial to suppress the evidence seized from his bedroom, during the execution of the search warrant arguing the affidavit in support of the search warrant failed to provide the magistrate with a substantial basis for finding probable cause. Defense counsel also stated she was concerned with “the veracity of what was sworn out to the magistrate” when the warrant was obtained. R. 57, l. 16 – 59, l. 2. Counsel emphasized the affidavit alleged Appellant was found still wearing partial clothing from the armed robbery, clothing which had been observed on the store surveillance video, but that Chief Raffield, the affiant, had not seen the surveillance footage at the time he applied for the search warrant. R. 58, l. 3 – 59, l. 2.

The trial judge ultimately found the affidavit in support of the search warrant contained sufficient evidence to establish probable cause that Appellant had committed an armed robbery and was located at the place to be searched. The judge concluded the evidence seized during the execution of the search warrant was admissible. He emphasized that Appellant was identified by the clerk as the perpetrator, who was seen running in the direction of Appellant's house, which was in close proximity to the Circle K, after the robbery, and the incriminating evidence Chief Raffield observed during the search incident to Appellant's arrest. R. 59, l. 22 – 61, l. 13.

Discussion

“The Fourth Amendment protects against unreasonable searches and seizures.” State v. Kinloch, 410 S.C. 612, 616, 767 S.E.2d 153, 155 (2014) (citing U.S. Const. amend. IV.)

“A search or seizure does not violate the Fourth Amendment if it is authorized by a warrant that

is supported by probable cause.” *Id.* (citing U.S. Const. amend. IV and State v. Baccus, 367 S.C. 41, 50, 625 S.E.2d 216, 221 (2006)). “A warrant is supported by probable cause if, given the totality of the circumstances set forth in the affidavit, there is a fair probability that contraband or evidence of a crime will be found in a particular place.” *Id.* at 617, 767 S.E.2d at 155 (citing Baccus, 367 S.C. at 50, 625 S.E.2d at 221); *See Illinois v. Gates*, 462 U.S. 213, 238 (1983).

“In reviewing a magistrate’s probable cause determination, circuit court judges must determine whether the issuing magistrate had a substantial basis upon which to conclude that probable cause existed.” *Id.* (citing Baccus, 367 S.C. at 50, 625 S.E.2d at 221); *See State v. Bellamy*, 336 S.C. 140, 143-145, 519 S.E.2d 347, 348-349 (1999).

“The veracity and the basis of knowledge of persons supplying the information in a search-warrant affidavit are considerations in the determination of whether there is probable cause to issue a search warrant.” State v. Robinson, 415 S.C. 600, 605, 785 S.E.2d 355, 357 (2016) (citing State v. Johnson, 302 S.C. 243, 395 S.E.2d 167 (1990)).

The trial judge erred by denying Appellant’s motion to suppress the evidence seized from his bedroom during the execution of the search warrant because the affidavit supplied by Chief Raffield in support of the warrant failed to provide the magistrate with a substantial basis for finding probable cause. Moreover, the affidavit claimed Appellant was found wearing partial clothing that matched the clothing worn by the robber as observed on the store’s surveillance video, yet Chief Raffield had not watched the video at the time he submitted the affidavit and applied for the warrant.

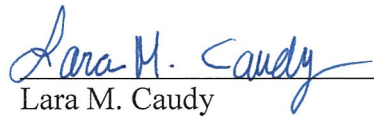
Chief Raffield also relied on the unreliable identification made by the clerk. The clerk’s identification was not reliable where he initially gave the 911 operator a mere general description of the robber and, only after having time to develop a story, identified Appellant as the perpetrator.

Consequently, Appellant respectfully requests this Court hold the trial judge erred by failing to suppress the evidence seized from his bedroom, reverse his convictions and sentence, and remand for a new trial.

CONCLUSION

Based on the foregoing argument, Appellant respectfully requests this Court reverse his convictions and sentence and remand for a new trial.

Respectfully submitted,



Lara M. Caudy
Appellate Defender

ATTORNEY FOR APPELLANT

This 4th day of June, 2018.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Saluda County

Honorable Robert E. Hood, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

DEMARCUS L. ROBINSON,

APPELLANT

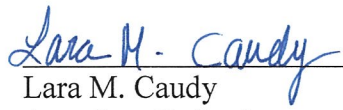
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Demarcus L. Robinson states:

1. She is an appellate defender for the South Carolina Office of Appellate Defense, and was appointed to represent Appellant.
2. She has reviewed the record of Appellant's trial before the Honorable Robert E. Hood, which was held on November 6-8, 2017, and, in her opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. She has, pursuant to Anders v. California, 386 U.S. 738 (1967), briefed an arguable legal issue which arose during the course of the trial.

WHEREFORE, she asks the Court to relieve her as counsel for Demarcus L. Robinson.

Respectfully Submitted,



Lara M. Caudy
Appellate Defender

ATTORNEY FOR APPELLANT

This 4th day of June, 2018.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Saluda County
Honorable Robert E. Hood, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

DEMARCUS L. ROBINSON,

APPELLANT

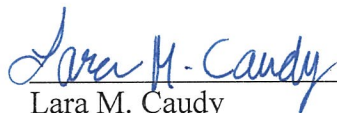
**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

Appellant proposes the following be included in the Record on Appeal:

- (1) True-Billed Indictments:
- (2) Complete Trial Transcript Dated November 6-8, 2017.

I certify that this designation contains no matter which is irrelevant to this appeal.

June 4, 2018



Lara M. Caudy
Appellate Defender

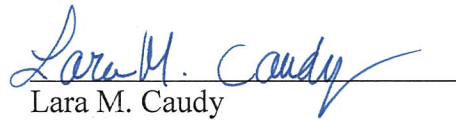
South Carolina Commission on Indigent
Defense
Division of Appellate Defense
P.O. Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Anders Brief of Appellant complies with Rule 211(b), SCACR, and the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

June 4, 2018.


Lara M. Caudy
Appellate Defender

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

ATTORNEY FOR APPELLANT

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Saluda County

Honorable Robert E. Hood, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

DEMARCUS L. ROBINSON,

APPELLANT

CERTIFICATE OF SERVICE

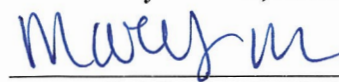
The undersigned hereby certifies that a true copy of the Anders Brief of Appellant, Designation of Matter, and Record on Appeal in the above referenced case has been served upon J. Benjamin Aplin, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Anders Brief of Appellant, Designation of Matter, and Record on Appeal has been served upon Demarcus L. Robinson, #374512, at Lee Correctional Institution, 990 Wisacky Highway, Bishopville, SC 29010, this 4th day of June, 2018.



Lara M. Caudy
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 4th day of June, 2018.

 (L.S)

Notary Public for South Carolina
My Commission Expires: May 12, 2027.

**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.

Demarcus L. Robinson, Appellant.

Appellate Case No. 2017-002624

Appeal From Saluda County
Robert E. Hood, Circuit Court Judge

Unpublished Opinion No. 2019-UP-334
Submitted September 1, 2019 – Filed October 9, 2019

APPEAL DISMISSED

Appellate Defender Lara Mary Caudy, of Columbia, for
Appellant.

Attorney General Alan McCrory Wilson and Senior
Assistant Deputy Attorney General William M. Blitch,
Jr., both of Columbia, for Respondent.

RECEIVED
OCT 09 2019
APPELLATE DEFENSE

PER CURIAM: Dismissed after review pursuant to *Anders v. California*, 386 U.S. 738 (1967). Counsel's motion to be relieved is granted.¹

APPEAL DISMISSED.

SHORT, THOMAS, and GEATHERS, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

STATE OF SOUTH CAROLINA)

County of Saluda)

IN THE COURT OF COMMON PLEAS

Demarcus Robinson 37456)

Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

2019-CP-41-00263

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Saluda county
2. Name and location of Court which imposed sentence Saluda county
Detention Center 205 east church St. Saluda 29138
3. Name(s) of co-defendant(s) (if any) NO ONE
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2016 GS4100312
 - (b) 2016 GS4100311

RECEIVED

DEC 06 2019

Referred to

Answered

(c) 2016 GS41 00310

5. The date upon which sentence was imposed and the terms of the sentence:

(a) 8/1/16

(b) _____

(c) _____

6. Check whether a finding of guilty was made:

(a) after a plea of guilty _____

(b) after a plea of not guilty yes

(c) after a plea of nolo contendere _____

7. Did you appeal from the judgment of conviction or the imposition of sentence?

yes

8. If you answered "yes" to (7), list:

(a) the name of each Court to which you appealed:

i. South Carolina Court of Appeals

ii. _____

iii. _____

(b) the result in each such Court to which you appealed:

i. got dismissed

ii. _____

iii. _____

(c) the date of each such result:

i. October 9 2019

ii. _____

iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. No

ii. _____

iii. _____

9. If you answered "no" to (7), state your reasons for not so appealing:

(a) _____

(b) _____

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Based on the improper testimony from Sled Agent
- (b) counsel to use demonstrative evidence during
- (c) closing. My lawyer fail to call alibi ~~witnesses~~ witnesses.
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) improper testimony was in my defense.
- (b) demonstrative evidence could have had an
- (c) impact on the jury's verdict
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? _____
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? _____
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? _____
- (d) any other petitions, motions or applications in this or any other Court? _____
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. _____
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. _____
- ii. _____
- iii. _____
- iv. _____

(c) the disposition thereof:

- i. _____
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. _____
- ii. _____
- iii. _____
- iv. _____

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

- i. _____
- ii. _____
- iii. _____
- iv. _____

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

NO

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

(a) which grounds have been presented:

- i. _____
- ii. _____
- iii. _____

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

- i. _____
- ii. _____
- iii. _____

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

(a) MY appeal was dismissed
 (b) _____
 (c) _____

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? _____
 (b) your trial, if any? Yes
 (c) your sentencing? _____
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? _____
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?

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

(a) the name and address of each attorney who represented you:
 i. A.J.L Law Firm, LLC P.O. Box 11961
Columbia, SC 29211
 ii. _____
 iii. _____
 (b) the proceedings at which each such attorney represented you:
 i. _____
 ii. _____
 iii. _____

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

OK

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

NO

STATE OF SOUTH CAROLINA)

County of Saluda)

VERIFICATION

I, Demarcus Robinson, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Demarcus Robinson

SWORN to and subscribed before me this 18th

day of NOV, 2019.

James McLike (L.S.)
Notary Public

My Commission Expires: 09/04/2029

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

I, Demarcus S Robinson, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Demarcus Robinson
Applicant

SWORN or affirmed to and subscribed before me this
18th day of Nov, 2019.

Jenna McJike
Notary Public

My Commission Expires: 09/04/2029

STATE OF SOUTH CAROLINA
COUNTY OF SALUDA

Demarcus Robinson, SCDC #374512,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE ELEVENTH JUDICIAL CIRCUIT

Case No. 2019-CP-41-0263

**RETURN AND MOTION FOR A MORE
DEFINITE STATEMENT
(COUNSEL APPOINTED)**

In response to the post-conviction relief (PCR) action commenced by Demarcus Robinson (Applicant) on December 3, 2019, the State makes this return:

I. FACTS & PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections. During its November 2016 term, the Saluda County Grand Jury indicted Applicant for kidnapping (2012-GS-41-0310); armed robbery (2016-GS-41-0311); and possession of a weapon during the commission of a violent crime (2016-GS-41-0312). On November 6, 2017, Applicant proceeded to a jury trial before the Honorable Robert E. Hood. Aimee Zmroczek, Esquire (Counsel) represented Applicant. Assistant Solicitors Douglas Wayne Fender, II, and Alton H. Eargle, Jr., prosecuted the case.

A. Summary of Evidence Adduced at Trial

During the early morning hours of August 1, 2016, Applicant robbed the Circle K in Ridge Spring. (R. 147–48). Applicant pointed a pistol at the clerk and demanded the clerk open the register. (R. 148). He stole an undetermined amount of cash consisting exclusively of five and one-dollar bills, along with a case of cigarettes and a cigar. (R. 149–50, 157).

The clerk gave the 911 operator a general description of the perpetrator. (R. 178–79).

However, when law enforcement arrived at the store, the clerk for the first time identified Applicant as the robber. (R. 182–83). While he initially did not recognize the man, the clerk later realized the robber was Applicant, who was “a regular” at the Circle K and visited the store frequently. (R. 152). The clerk also claimed that on several occasions that while walking to work he observed Applicant playing football in a neighbor’s yard without a shirt on. (R. 152–53). The clerk recognized a scar on Applicant’s shoulder and a star tattoo on his arm. (R. 160–62).

While en route to the store to assist in the investigation, Ridge Spring Chief of Police Michael Raffield learned Appellant had been named as a suspect and responded to Applicant’s house, which was less than a mile from the Circle K. (R. 47). Applicant’s mother greeted Chief Raffield at the door and led him upstairs to Applicant’s bedroom. (R. 48). Applicant was asleep on top of a sleeping bag on the floor of the bedroom. (R. 49, 250). Chief Raffield observed numerous five and one-dollar bills in the immediate area around Applicant. (R. 49, 251).

After securing Applicant, Chief Raffield obtained a search warrant to search the remainder of Applicant’s bedroom. (R. 49, 53–54, 252). During the execution of the search warrant, officers found two pairs of black shorts and forty-one dollars in cash underneath the sleeping bag, all of which consisted of five and one-dollar bills. (R. 49, 251). Officers also found a silver revolver with a black handle, a box of ammunition, several packs of Newport cigarettes, and a cigarillo in the bedroom closet. (R. 49–50, R. 252–53). Chief Raffield later seized Appellant’s gray underwear from his property at the detention center, which matched the underwear worn by the robber. (R. 260).

B. Verdict & Subsequent Proceedings

On November 8, 2017, the jury returned a verdict of guilty on each indictment. Judge

Hood sentenced Applicant to concurrent terms of twenty-five years' imprisonment for armed robbery, twenty-five years for kidnapping, and five years for the weapons charge.

Applicant filed a timely notice of appeal. Appellate Defender Laura M. Caudy perfected Applicant's appeal by filing an *Anders*¹ brief with the Court of Appeals. On October 9, 2019, the Court of appeals issued an unpublished opinion affirming Applicant's conviction and sentences. *State v. Robinson*, 2019-UP-334 (S.C. Ct. App. filed Oct. 9, 2019). The case was returned to the circuit court on October 25, 2019. Applicant commenced this PCR action on December 3, 2019.

II. CURRENT APPLICATION

In his application for post-conviction relief, Applicant alleges he is being held in custody unlawfully based on:

1. "Based on the improper testimony from SLED agent."
 - a. "Improper testimony in my defense."
2. "Counsel to use demonstrative evidence during closing."
 - a. "Demonstrative evidence could have had an impact on the jury's verdict."
3. "My lawyer fail to call alibi witnesses."

Applicant requests relief as follows:

"OK"

Attached herewith and incorporated by reference are the Saluda County Clerk of Court records regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, Applicant's appellate records, including the trial transcript, and the records of the current PCR action. The State reserves the right to amend this return upon receipt of any relevant materials.

¹ *Anders v. California*, 386 U.S. 738 (1967).

III. RESPONSE TO ALLEGATIONS OF INEFFECTIVE ASSISTANCE OF COUNSEL

A. Motion for a More Definite Statement

The State interprets Applicant's allegations as claims of ineffective assistance of counsel, which are without merit. However, it is impossible for the State to adequately respond to Applicant's allegations because Applicant has completely failed to provide any specific facts to support such claims. The State requests Applicant, through counsel, provide specific claims and facts to support these vague allegations. *See* S.C. Code Ann. § 17-27-50 (2014) (requiring an applicant to "specifically set forth the grounds upon which the application is based"); *see also Welch v. MacDougall*, 246 S.C. 258, 260, 143 S.E.2d 455, 456 (1965) (stating it is incumbent upon an applicant to make at least a *prima facie* showing entitling him to relief before an evidentiary hearing will be scheduled and held); Rule 8(a)(2), SCRCP (requiring all civil pleadings to include "a short and plain statement of the facts showing that the pleader is entitled to relief"); Rule 71.1(d), SCRCP ("Counsel shall insure that all available grounds for relief are included in the application and shall amend the application if necessary."). Thus, the State moves to require Applicant to provide a more definite statement of his allegations of ineffective assistance of counsel pursuant to Rule 12(e), SCRCP.

B. Ineffective Assistance of Trial Counsel, Generally

The Sixth and Fourteenth Amendments to the United States Constitution guarantee Applicant, like all other defendants, the right to "assistance by an attorney, whether retained or appointed, who plays the role necessary to ensure that the trial is fair." *Strickland v. Washington*, 466 U.S. 668 (1984). Ordinarily, PCR allegations are centered upon an allegation that the applicant did not receive *effective* assistance of counsel guaranteed by the Sixth Amendment. *See generally* S.C. Code Ann. § 17-27-20(A) (enumerating allegations cognizable in PCR actions). The

allegation of denial of such representation sets forth a *prima facie* violation of this constitutional right, and raises a question of fact that can only be determined by an evidentiary hearing. *Rogers v. State*, 261 S.C. 288, 291, 199 S.E.2d 761, 762 (1973).

In a post-conviction relief action, the applicant bears the burden of proving the allegations by a preponderance of the evidence—a mere allegation of ineffective assistance is not sufficient to warrant granting relief. Rule 71.1(e), SCRCP; *Butler v. State*, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). The reviewing court applies the two-part test outlined in *Strickland* to determine whether counsel’s conduct “was so ineffective as to require reversal” of the applicant’s conviction or sentence. 466 U.S. at 687. To obtain reversal of a conviction, the applicant must prove that (1) their attorney’s performance fell below an objective standard of reasonableness (the performance prong) and (2) the deficient performance prejudiced the defense to the degree that it deprived the defendant of a fair trial (the prejudice prong). *Id.* at 690–95; *Butler*, 286 S.C. at 442, 334 S.E.2d at 814. The defendant’s burden for proving both of these components is heavy in light of the strong presumption that counsel’s conduct fell within the range of reasonable professional legal assistance. *Strickland*, 466 U.S. at 690. Failure to make the required showing of either deficient performance or sufficient prejudice defeats the ineffectiveness claim. *Id.* at 700.

The first prong—constitutional deficiency—is “necessarily linked to the practice and expectations of the legal community.” *Padilla v. Kentucky*, 559 U.S. 356, 366 (2010). In order to prove deficient performance, the applicant must show counsel’s representation fell below an objective standard of “reasonableness under prevailing professional norms.” *Cherry v. State*, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. *Butler*, 286 S.C. at 442, 334 S.E.2d at 814.

Strickland, however, “does not guarantee perfect representation[—]only a ‘reasonably competent attorney.’” *Harrington v. Richter*, 562 U.S. 86, 110 (2011) (quoting *Strickland*, 466 U.S. at 687). Representation is constitutionally ineffective only if counsel’s conduct “so undermined the proper functioning of the adversarial process” that the defendant was denied a fair proceeding. *Strickland*, 466 U.S. at 686. Just as there is “no expectation that competent counsel will be a flawless strategist or tactician, an attorney may not be faulted for a reasonable miscalculation or lack of foresight or for failing to prepare for what appear to be remote possibilities.” *Harrington*, 562 U.S. at 110.

Accordingly, “[j]udicial scrutiny of counsel’s performance must be highly deferential, as it is all too tempting for a defendant to second-guess counsel’s assistance after conviction or an adverse sentence, and it is all too easy for a court, examining counsel’s defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable.” *Strickland*, 466 U.S. at 689; see also *Yarborough v. Gentry*, 540 U.S. 1, 6 (2003) (“The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight.”). Thus, a fair assessment of attorney performance requires every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel’s challenged conduct, and to evaluate the conduct from counsel’s perspective at the time. *Strickland*, 466 U.S. at 689. Because of the difficulties inherent in making such an evaluation, the reviewing court must indulge in a “strong presumption that counsel’s conduct falls within the wide range of reasonable professional assistance.” *Butler*, 286 S.C. at 445, 334 S.E.2d at 816. The applicant must overcome this presumption to receive relief. *Cherry*, 300 S.C. at 118, 386 S.E.2d at 625.

A reviewing court “must judge the reasonableness of counsel’s challenged conduct on the facts of the particular case, viewed at the time of counsel’s conduct.” *Strickland*, 466 U.S. at 690.

An applicant making a claim of ineffective assistance “must identify the acts or omissions of counsel that are alleged *not* to have been the result of reasonable professional judgment.” *Strickland*, 466 U.S. at 690 (emphasis added). The reviewing court must then “determine whether, in light of all the circumstances, the identified acts or omissions were outside the wide range of professionally competent assistance.” *Id.*

The *Strickland* standard must be applied with scrupulous care, lest “intrusive post-trial inquiry” threaten the integrity of the very adversary process the right to counsel is meant to serve. 466 U.S. at 689-690; *see also Harrington*, 562 U.S. at 105 (cautioning that an ineffective assistance of counsel claim could potentially function as a way to escape rules of waiver and forfeiture and raise issues not presented at trial). Even under *de novo* review, the standard for judging counsel’s representation is a most deferential one. *Harrington*, 562 U.S. at 105. Unlike a later reviewing court, the attorney observed the relevant proceedings; knew of materials outside the record; and interacted with the client, opposing counsel, and the judge. Thus, the question is whether an attorney’s representation amounted to incompetence under “prevailing professional norms,” *not* whether it deviated from best practices or most common custom. *Id.* (quoting *Strickland*, 466 U.S. at 690) (emphasis added).

The second, or “prejudice” prong of *Strickland* is rooted in the very purpose of the Sixth Amendment guarantee of counsel—to ensure a defendant has the assistance necessary to justify reliance on the outcome of the proceeding. *Id.* at 691–92. In order to prove prejudice, an applicant must demonstrate counsel’s deficient performance prejudiced the applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” *Cherry*, 300 S.C. at 117-18, 386 S.E.2d at 625. A reasonable probability is a probability “sufficient to undermine confidence in the outcome.” *Strickland*, 466

U.S. at 694. In determining prejudice, the reviewing court must consider the totality of the evidence before the jury. *Id.* at 695.

Thus, it is not enough “to show the errors had some conceivable effect” on the outcome of the proceeding—counsel’s errors must be “so serious as to *deprive the defendant of a fair trial.*” *Id.* at 687 (emphasis added). “An error by counsel, even if professionally unreasonable, does not warrant setting aside the judgment of a criminal proceeding if the error had no effect on the judgment.” *Id.* at 668. Moreover, the South Carolina Supreme Court has repeatedly held a PCR applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice. *Bannister v. State*, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998).

The performance and prejudice standards, however, “do not establish mechanical rules; [t]he ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged.” *Strickland*, at 696. Moreover, “there is no reason for a court deciding an ineffective assistance claim to approach the inquiry in the same order or even to address both components of the inquiry if the defendant makes an insufficient showing on one.” *Id.* at 697. The court “need not determine whether counsel’s performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies. *Id.* If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, the court may evaluate the prejudice prong only. *Id.*

Applicant contends Counsel was ineffective for failing to object to certain “improper testimony” from a SLED agent, for failing to use “demonstrative evidence” in his defense, and for failing to call alibi witnesses. However, Applicant fails to provide any reasons why he believes the SLED agent’s testimony was improper. Applicant further fails to identify the “demonstrative

evidence” that would have benefited him at trial and fails to provide the names of the alleged alibi witnesses Counsel failed to call.

C. Conclusion and Action Requested

The State submits Applicant can satisfy neither requirement of *Strickland*. However, as discussed above, it is impossible for the State to adequately respond to Applicant’s allegation of ineffective assistance of counsel because Applicant has failed to provide any specific facts to support his allegation. *See Sharper v. State*, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (providing an evidentiary hearing shall be held when a PCR application “alleges specific instances of ineffective assistance of counsel which are not conclusively refuted by the record before the [PCR] court”). Thus, the State moves to require Applicant to provide a more definite statement of his allegations pursuant to Rule 12(e), SCRPC.

IV. ANY FUTURE AMENDMENTS AND INVOCATION OF DISCOVERY PROCESS

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. *See* Rule 11, SCRPC. *Pro se* filings will not be considered at the PCR hearing. The State reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to the State pursuant to *Love v. State*, Op. No. 27921 (S.C. Sup. Ct. filed Oct. 2, 2019) (Shearouse Adv. Sh. No. 39 at 14), or, alternatively, the State will request a continuance in the matter. *See Love*, at 24 (Kittredge, J., dissent) (“If, however, the proposed amendment . . . would truly prejudice the State, the better course of action would be to continue the matter and thus remove any possibility of prejudice resulting from the belated amendments.”).

If Applicant fails to file a timely and responsive amended application setting forth specific allegations for relief, the State reserves the right to move to dismiss this allegation or claim. S.C. Code Ann. §§ 17-27-10 to -160; Rule 71.1, SCRCRCP. *See also* Rules 15(a)-(b), SCRCRCP. The State reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to the State. *See* Rule 15(a), SCRCRCP.

Pursuant to S.C. Code Ann. § 17-27-150, Applicant may not invoke formal discovery processes to issue subpoenas or otherwise obtain discovery materials unless granted leave from the Court upon a showing of good cause. Furthermore, the State requests that all potential exhibits and materials used to produce potential expert witness testimony be sent to the State well in advance of the evidentiary hearing. The State reserves the right to request a continuance and oppose witness testimony and exhibits that are withheld until the last minute resulting in undue prejudice to the State.

V. GENERAL DENIAL

Each and every allegation contained within the application not expressly admitted, qualified, or explained in this return is hereby denied.

[Conclusion and signature on following page]

VI. CONCLUSION

WHEREFORE, the State respectfully requests this Court grant its motion for a more definite statement as set forth in section III, and thereafter convene an evidentiary hearing on the allegations of ineffective assistance of counsel.

Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
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By: _____
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Columbia, S.C. 29211

April __, 2020

VI. CONCLUSION

WHEREFORE, the State respectfully requests this Court grant its motion for a more definite statement as set forth in section III, and thereafter convene an evidentiary hearing on the allegations of ineffective assistance of counsel.

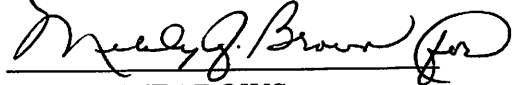
Respectfully submitted,

ALAN WILSON
Attorney General

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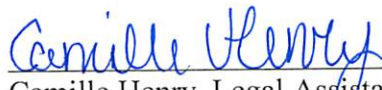
April __, 2020

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF SALUDA	)	
	)	
	)	2019-CP-41-0263
	)	
DEMARCUS ROBINSON, #374512	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	
_____	)	

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return and Motion for a More Definite Statement** in the above-captioned matter on the following person by hand delivery at the following address:

Ashley A. McMahan, Esquire
 McMahan & Taylor, Attorneys, LLC
 Post Office Box 5501
 West Columbia, South Carolina 29169

DATED this 1st day of April, 2020.


 Camille Henry, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	FOR THE 11 th JUDICIAL CIRCUIT
COUNTY OF SALUDA	)	Case No.: 2019-CP-41-0263
	)	
Demarcus Robinson, #374512	)	
	)	
Applicant,	)	AMENDED POST-CONVICTION
	)	RELIEF APPLICATION
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

The Applicant, by and through his undersigned attorney, hereby amends his PCR application filed on or about December 03, 2019, to add the following:

1. Ineffective Assistance of Counsel as to Aimee Zmroczek, Esquire
 - a. Failure to call witnesses to support Applicant's alibi
 - b. Failure to request a charge on strong arm robbery.

Furthermore, the Applicant requests that he be permitted to amend his PCR application to conform to the evidence presented at the PCR hearing should any new or unaddressed issues arise during the course of the hearing that have not been specifically addressed in the Application. See Simpson v. Moore, 367 S.C. 587, 627 S.E.2d 701 (2006).

Respectfully submitted,



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SC Bar No. 71676

ATTORNEY FOR APPLICANT

April 22, 2021

CERTIFICATE OF SERVICE

I certify that I have served this document via email to:

Lillian Meadows
Assistant Attorney General
lillymeadows@scag.gov

This 22nd day of April, 2021.



ASHLEY A. MCMAHAN, ESQUIRE
Attorney for Applicant

1 State of South Carolina) Court of Common Pleas
2 County of Saluda) Eleventh Judicial Circuit
3
4 Demarcus L. Robinson,) Transcript of Record
5)
6 Applicant,)
7 vs.) 2019-CP-41-00263
8 State of South Carolina,)
9)
10 Respondent._____)
11

12
13
14 April 30, 2021
15 Columbia, South Carolina

16 B E F O R E:

17 The Honorable Debra R. McCaslin, Judge

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

19 Ashley A. McMahan, Esquire
20 On behalf of the Applicant

21 Lillian L. Meadows, Assistant Attorney General
22 On behalf of the State of South Carolina

23

24

25 Proceedings recorded by DCRP

26

27 Transcribed by: Stacy S. Johnson,
28 Circuit Court Reporter

29

30

31

32

I N D E X

WITNESS	PAGE
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Cross-Examination by Ms. Meadows	13
Redirect Examination by Ms. McMahan	15
Aimee Zmroczek	
Direct Examination by Ms. McMahan	16
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E X H I B I T S

NO EXHIBITS WERE INTRODUCED

1 (The following proceedings were held April 30,
2 2021, beginning at 11:34 AM.)

3 THE CLERK: 2019-CP-41-00263, Demarcus Robinson
4 versus the State of South Carolina.

5 THE COURT: You can swear him in.

6 THE CLERK: Oh, yes, Your Honor.

7 If you'd stand and raise your right hand.

8 (Whereupon, Demarcus L. Robinson was duly sworn by
9 the clerk.)

10 THE CLERK: Thank you.

11 THE COURT: All right. Mr. Robinson, before we --
12 that bar is hitting at right in the middle and I can't
13 see you. That may be because I'm too short.

14 Before we begin, we're here for your post-conviction
15 relief hearing. You understand that?

16 MR. ROBINSON: Yes, ma'am.

17 THE COURT: And you understand that only two things
18 can happen. If I deny it, you're gonna serve out the
19 rest of your sentence, okay? If I grant it, the only
20 thing that can happen is that we send your case back down
21 for a new trial and all your original charges would be
22 restored and you might face more time than what you're
23 serving now, and I want to make sure that you understand
24 that.

25 Do -- do you understand?

1 MR. ROBINSON: Yes, ma'am.

2 THE COURT: Knowing all that, do you wish to go
3 forward?

4 MR. ROBINSON: Yes, ma'am.

5 THE COURT: Okay. Then we're gonna go.

6 Ms. McMahan, I've -- I've read the Application. It
7 looks like we've got three issues; improper testimony,
8 the use of demonstrative evidence and failure to call
9 alibi witnesses.

10 MS. McMAHAN: Your Honor, there's an amended
11 application.

12 THE COURT: What -- still got those three grounds?

13 MS. McMAHAN: No, it's two different ones. It's a
14 failure to request strong arm robbery as a lesser and a
15 failure to call an alibi witness.

16 THE COURT: I got the alibi witness.

17 Were any of these taken away though? The
18 demonstrative evidence?

19 MS. McMAHAN: (No verbal response recorded.)

20 THE COURT: Okay. Yeah, we're not gonna do that
21 one.

22 MS. McMAHAN: (No verbal response recorded.)

23 THE COURT: Okay.

24 MS. McMAHAN: (No verbal response recorded.)

25 THE COURT: That's good.

1 Okay. Then I'm gonna let you proceed and call
2 your first witness.

3 MS. McMAHAN: Your Honor, the Applicant calls
4 Mr. Robinson.

5 THE COURT: Mr. Robinson, stop right here by the
6 Clerk and --

7 THE CLERK: He's already been sworn in.

8 THE COURT: Oh, you're already sworn in.

9 And I'm gonna remind you you're under oath.

10 And when you take the stand, Mr. Robinson, if you
11 can just at least remove your mask a little bit, if you
12 can, just so we can hear you.

13 DEMARCUS L. ROBINSON,
14 having been previously sworn, testified as follows:

15 DIRECT EXAMINATION

16 BY MS. McMAHAN:

17 Q. Would you please state your name for the record.

18 A. Demarcus Robinson.

19 Q. And did you file this PCR action?

20 A. Yes, ma'am.

21 Q. Okay. And who was your prior attorney?

22 A. Aimee Zmroczek.

23 Q. And was she appointed or retained?

24 A. Retained.

25 Q. Did you -- you had an appointed attorney before?

1 A. No, ma'am.

2 Q. Okay. And how many times would you say you met with
3 her?

4 A. In person?

5 Q. Yeah.

6 A. It was like --

7 Q. In person.

8 A. -- twice, three.

9 Q. Did you talk on the phone or anything else?

10 A. I talked to her on the phone.

11 Q. How many times did you discuss your case?

12 A. Maybe over a dozen times.

13 Q. Did she explain to you what you were charged with?

14 A. I mean, I knew what I was charged with.

15 Q. Okay. What -- what did she tell you about the charges
16 that you were facing?

17 A. Really I was supposed to have been -- I was supposed
18 to be going for a bond or something like that.

19 Q. So the day of your trial? Is that what you're talking
20 about?

21 A. Yes, ma'am.

22 Q. So the day of the trial you -- you were supposed to be
23 going to court for a bond hearing?

24 A. Yes, ma'am.

25 Q. Were you in the detention center the whole time before

1 your trial?

2 A. Yes, ma'am.

3 Q. And how many times had you been for a bond hearing?

4 A. None.

5 Q. Just the initial one with the magistrate?

6 A. Yes, ma'am.

7 Q. And how long were you in the detention center?

8 A. Maybe like fourteen months maybe.

9 Q. Okay. So after six months you didn't have another
10 bond hearing?

11 A. I didn't have no bond hearing.

12 Q. Okay. And how did you guys hear of Ms. Zmroczek to
13 hire her?

14 A. It was somebody in the detention center.

15 Q. Were they represented by her, too?

16 A. Yes, ma'am.

17 Q. And were -- did you guys ever discuss any possible
18 plea offers or anything like that?

19 A. We did not quite --

20 Q. Like what did you guys talk about?

21 A. I mean, I just got in there on the date when I came
22 back from Laurens county --

23 Q. Uh-huh.

24 A. -- it was more like they were offering like ten to
25 twenty, but I was like not gonna take that.

1 Q. On the armed robbery is what they were offering you
2 ten to twenty on?

3 A. I think it was all of them.

4 Q. Okay. And just so everybody understands here, why
5 were you in the Laurens detention center?

6 A. Ma'am?

7 Q. Just so everybody understands here, why were you in
8 the Laurens detention center?

9 A. A little trouble in Saluda.

10 Q. So Saluda was housing you in Laurens?

11 A. Yes, ma'am.

12 Q. So you didn't have Laurens charges, you were just
13 being kept --

14 A. I had no Laurens charges.

15 Q. Okay. And so you said you met with Ms. Zmroczek in
16 person two times. What did you guys talk about when you
17 were together?

18 A. She was just asking me -- basically telling like she
19 about to get an investigator just to check things out or
20 whatnot.

21 Q. Did you ever meet with an investigator?

22 A. No, ma'am.

23 Q. What did she talk about your best defense was?

24 A. I -- I really don't remember.

25 Q. So the day you went to trial, did you want to go to

1 trial?

2 A. No, ma'am.

3 Q. What -- what did you want?

4 A. Anything was better than what it is now.

5 Q. I'm sorry. Repeat that.

6 A. Anything was better than what it is now.

7 Q. Okay. So were you wanting to try to make -- strike a
8 plea deal with the sol -- solicitor or not or...

9 A. Depending if it was reasonable.

10 Q. But ten to twelve wasn't reasonable to you? Or ten to
11 twenty. I'm sorry.

12 A. Ten years?

13 Q. Okay. Well, hindsight it is now?

14 A. Ma'am?

15 Q. Looking back it is reasonable or...

16 A. I mean, it was then, but, I mean, they didn't ask me
17 did I want it.

18 Q. Oh, that's just what you guys were talking about?

19 A. Yeah. They didn't ask me did I want to take that or
20 not.

21 Q. I got you. That was just Ms. Zmroczek talking to you
22 like hey, maybe we can get ten to twenty?

23 A. Yeah.

24 Q. Okay. Okay. Talk about the improper testimony from
25 the SLED agent.

1 A. I mean, he got up there for the State. He was
2 testifying for the State, but he testified that the
3 evidence that he got off the scene it wasn't mine.

4 Q. Okay. So he testified that the evidence he got from
5 the scene was not yours?

6 A. Yes, ma'am.

7 Q. How was that improper?

8 A. I mean, he telling that the evidence that he found on
9 the scene wasn't mine.

10 Q. Was or was not?

11 A. It wasn't.

12 Q. Okay. And so how was that improper in the whole grand
13 scheme of things?

14 A. I mean, like...

15 Q. What did you think Ms. Zmroczek should have done with
16 that? Should she have objected or...

17 A. Yes.

18 THE COURT: All right. Wait a minute. I'm confused.
19 On the improper testimony, the evidence from the scene was
20 not his and that's what the SLED agent said?

21 MS. McMAHAN: Yes, Your Honor.

22 THE COURT: Okay.

23 BY MS. McMAHAN:

24 Q. And, oh, did she use any demonstrative evidence during
25 your trial at all?

1 A. What's that?

2 Q. Demonstrative evidence. Did she use like any -- you
3 know, like any pieces of paper to write stuff on while she
4 was doing her closing or...

5 A. Yes, ma'am. She did.

6 Q. She did use a piece of paper? Was there any other
7 type of demonstrative evidence she was trying to use that
8 -- for you -- to help you out?

9 A. I can't remember.

10 Q. Was one of the issues that you had some tattoos that
11 the clerk thought that they saw that kind of ID'd you out
12 of the...

13 A. Yes, ma'am.

14 Q. Okay. Was she trying to kind of show that it wasn't
15 you through the use of other tattoos?

16 A. Yes, ma'am.

17 Q. Okay. And was that what she was trying to do in
18 closing?

19 A. Yes, ma'am.

20 Q. Okay. And what was -- who were the alibi witnesses
21 that you wanted her to call?

22 A. My mother.

23 Q. And your mom actually told one of the deputies that
24 you had just gotten in prior to this incident; isn't that
25 right?

1 A. Yes, ma'am.

2 Q. And that deputy testified about that?

3 A. Yes, ma'am.

4 Q. Did you feel if mom had been called that it would have
5 been a stronger argument for the jury?

6 A. Yes, ma'am.

7 Q. Okay. Did you guys ever talk about strong arm robbery
8 versus armed robbery?

9 A. No, ma'am.

10 Q. You never had a discussion about whether or not this
11 jury instruction should come up on that lesser charge?

12 A. We never discussed it.

13 Q. When you guys did talk on the phone, what would you
14 talk about?

15 A. I mean, like my next court date or like for a bond
16 hearing and whatnot.

17 Q. Okay. How often did Saluda have court?

18 A. Every three months.

19 Q. So four times a year?

20 A. Yes, ma'am.

21 Q. And you'd been sitting there for fourteen months, so
22 were you trying -- trying to talk to her to see if you
23 could get a bond to get out since you'd already been
24 sitting there for fourteen months?

25 A. Yes, ma'am. That was supposed to have been the plan.

1 Q. But instead it ended up being a trial?

2 A. Yes, ma'am.

3 Q. Is there anything else you'd like the Court to know
4 today --

5 A. Not really.

6 Q. -- about your case or about Ms. Zmroczek or anything
7 that you had problems with her about?

8 A. Not really.

9 Q. Okay.

10 MS. McMAHAN: Answer any questions Ms. Meadows has
11 for you.

12 CROSS-EXAMINATION

13 BY MS. MEADOWS:

14 Q. Okay. Mr. Robinson, you said that you believed the
15 testimony from the SLED officer was improper?

16 A. Yes, ma'am.

17 Q. Okay. And that was because he said some of the
18 evidence he collected was not yours?

19 A. Yes, ma'am.

20 Q. Okay. And do you recall reviewing the discovery and
21 discussing the State's evidence with Ms. Zmroczek?

22 A. No, ma'am.

23 Q. So she never went over the evidence against you?

24 A. No.

25 Q. Okay. And about how many times did you meet with her

1 before your trial?

2 A. In person?

3 Q. Either one. On the phone or in person, how many times
4 did you talk to her?

5 A. I mean, I talked to her multiple times on the phone.

6 Q. Okay. And did she go over your charges and the
7 potential sentence you were facing?

8 A. Yes, ma'am, but I already knew --

9 Q. Okay.

10 A. -- what my charges were.

11 Q. Okay. And do you recall discussing any possible
12 defenses or -- or trial strategy?

13 A. No, ma'am.

14 Q. Okay. And do you know if Ms. Zmroczek talked to your
15 mother since you claim she could have been an alibi witness
16 if Ms. Zmroczek talked to her?

17 A. I don't know.

18 Q. Then you also said -- or Ms. McMahan said that the
19 deputy testified that when he arrived at your house your
20 mom said you had just gotten home. How would that have
21 supported your alibi if she said you just got home?

22 A. No, she stated that I was home already prior to the
23 robbery.

24 Q. She did? Okay. And so -- so y'all discussed the
25 possibility of a ten to twelve year plea, but she never

1 told you that there were any plea offers?

2 A. I never heard nothing about no plea.

3 Q. Okay. Did you tell her you were interested in a plea?

4 A. No, ma'am. I didn't tell her that, but I didn't hear
5 nothing about no deals. I got there on probably I think a
6 Wednesday, if I ain't mistaken, and like that Thursday I
7 was in trial.

8 Q. Okay.

9 MS. MEADOWS: I believe that's all I have, Judge.

10 THE COURT: Thank you, Ms. Meadows.

11 Anything, Ms. McMahan, on redirect?

12 REDIRECT EXAMINATION

13 BY MS. MCMAHAN:

14 Q. So you and Ms. Zmroczek didn't discuss any trial
15 strategy. Why was that?

16 A. I mean, that wasn't the plan to go to trial.

17 Q. Because the plan was to have a bond hearing?

18 A. Yes, ma'am.

19 Q. And you never asked her about a plea offer other than
20 the time that you guys discussed the ten to twenty?

21 A. No, ma'am, because it was supposed to have been for a
22 bond hearing. Once again, like I think I got there like
23 that Wednesday and like that Thursday morning I was going
24 to pick a jury.

25 Q. So had you known that you were imminently about to be

1 tried, you would have probably said hey, has there been any
2 plea offers or anything like that?

3 A. Yes, ma'am.

4 Q. Okay.

5 MS. McMAHAN: I have nothing further, Your Honor.

6 THE COURT: Okay. Thank you.

7 Ms. Meadows.

8 MS. MEADOWS: Nothing further, Judge.

9 THE COURT: All right. Can Mr. Robinson step down
10 then?

11 MS. McMAHAN: Yes, Your Honor.

12 THE COURT: Mr. Robinson, you can step down. Thank
13 you.

14 (Witness excused.)

15 MS. McMAHAN: Your Honor, at this time the Applicant
16 would call Ms. Zmroczek to the stand.

17 (Whereupon, Aimee Zmroczek was duly sworn by the
18 clerk.)

19 THE CLERK: Thank you. Please be seated in the
20 witness stand.

21 THE COURT: You're good taking that off.

22 AIMEE ZMROCZEK,

23 having been duly sworn, testified as follows:

24 DIRECT EXAMINATION

25 BY MS. McMAHAN:

1 Q. Did you represent Mr. Robinson?

2 A. I did.

3 Q. Well, let's back up a little bit. State your name for
4 the record and maybe spell your last name for the court
5 reporter.

6 A. It's Attorney Aimee Zmroczek. My first name is
7 A-i-m-e-e. Last name is Z-m-r-o-c-z-e-k.

8 Q. I just want to state for the record that I spelled
9 your name correctly when I wrote it down.

10 And you represented Mr. Robinson as you indicated?

11 A. I did.

12 Q. Were you appointed or retained?

13 A. Allegedly I was retained. I had quoted him a \$15,000
14 fee and throughout the course of my representation I was
15 paid \$1,000, so there is a \$14,000 balance.

16 Q. So you went to trial on only being paid a thousand
17 bucks?

18 A. Yep.

19 Q. And how many times would you say you would have talked
20 to him or met with him?

21 A. I -- I know I met with him every time that I was in
22 Saluda, but, I mean, we talked numerous times on the phone.
23 And not only that, but I would speak with his dad, Gary
24 Smith, I would speak with occasionally his mother. I think
25 her name is Katherine. I had numerous females that were --

1 sometimes they'd say they were sisters, sometimes they'd
2 say they were his girlfriends, so I had -- I had numerous
3 telephone calls with a lot of people.

4 Q. With some extended family members?

5 A. Yes.

6 Q. And when you guys would talk, what were you talking
7 about?

8 A. So -- so he didn't want a plea and didn't want to go
9 to trial and I was trying to let him know that -- you know,
10 I didn't get hired right when he was arrested. I was hired
11 after he had spent some time in jail and so I was, you
12 know, getting the discovery, going through the discovery,
13 talking with him. He would tell me that, you know, people
14 wanted to talk to me and -- and so I was just trying to get
15 information, but his defense was always that he wasn't
16 there, so -- or that it wasn't him. And so as I told him
17 numerous times, you know, we have to -- I have to have
18 these -- these witnesses to -- to present in court and even
19 in trial nobody would -- would show up. No one would ever
20 show up and -- they would call, speak with me. Nobody ever
21 said that they were -- nobody ever provided me an alibi and
22 then nobody ever showed up to testify period.

23 Q. Did he give you an address or anything so you could
24 subpoena them?

25 A. He would not -- he couldn't give me an address. Like

1 I said, all I had was phone calls and as we got closer to
2 the trial date, the people just stopped answering their
3 phones as well.

4 Q. Was the best you could do was to get Raffield to say
5 that the mom had told him all this?

6 A. Yeah. I mean, the evidence was -- was pretty, I
7 think, circumstantial and that was just, you know...

8 Q. Can you describe -- describe how it was circumstantial
9 and what your problem was.

10 A. So there was a co-defendant and there was a lineup for
11 the co-defendant. There was -- there was never a lineup
12 for the defendant. There were -- there was a video that
13 was put in.

14 And I'm gonna preempt one of your questions about
15 the strong arm robbery. So strong arm robbery is -- is
16 something that doesn't involve the use of a gun, but there
17 was a video with a -- a person pointing a gun, and so that
18 charge wasn't appropriate to request based on the evidence.

19 And also it -- it would have been counterintuitive for
20 me to argue to the jury well, even if it was him, then he
21 should only be guilty of strong arm robbery, which I think
22 lessened our -- our trial strategy position which was that
23 it wasn't him.

24 So it was just the witness testi -- you know, there
25 was just witness testimony from the clerk, the video,

1 things like that, but there was no like DNA or
2 fingerprints or anything that connected the defendant
3 to the scene.

4 Q. Let me just reiterate what you just kind of said.
5 So as far as the strong arm robbery goes, your strategy
6 was hey, I'm not gonna ask for it, one, because of the
7 video of the person with a gun and, two, your entire
8 defense was it wasn't him, it was somebody else, it was
9 a misidentification?

10 A. Right. Right.

11 Q. So you were kind of just having an all or nothing kind
12 of thing?

13 A. Uh-huh.

14 Q. Did you discuss that with him?

15 A. We did. I mean, that was -- and that's what he told
16 me. He was the one who kept saying it wasn't me, look at
17 the tattoos, look at the tattoos, so that was a big...

18 Q. So what was the deal with the tattoos?

19 A. So especially -- so on his hand I recall implicitly
20 there's like a star and it was on the hand that would have
21 held -- so it's -- he's right-handed. It would have been
22 on his right hand, which if it were him it's the hand that
23 would have had the gun, so it would have been in view of
24 the person. And so I tried to really hit that home so
25 much so that I was attempting to use demonstrative evidence

1 in closing by -- by actually having a star on my hand
2 amongst other tattoos to show that they were super-visible
3 when you're looking at them. The judge said that was
4 inappropriate, although I disagree with him...

5 Q. Okay. So in the video, how -- what kind of video is
6 this? Are we talking this is like a 4K kind of video or
7 this is kind of grainy? Like --

8 A. Circle K survei -- yeah, it's a surveillance video
9 from a --

10 Q. Black and white, some color?

11 A. No, no, no. It was color.

12 Q. Could you hear sound on it at all?

13 A. No.

14 Q. Was it like crystal clear, like HD or are we talking
15 like --

16 A. Oh, no, no. It wasn't H --

17 Q. -- when you think of -- when you think of a
18 surveillance video?

19 A. I mean, it wasn't HD, but it also wasn't -- it wasn't
20 like grainy either. The -- the best thing that we had
21 going for us is that it was obviously mounted in the
22 ceiling so it didn't have zoom-in properties.

23 Q. Was the video -- like the tattoo blatantly obvious in
24 the tat -- in the video?

25 A. No. No.

1 Q. And that was the whole point. You're like look --

2 A. Right.

3 Q. -- no tattoo on the hand?

4 A. Right.

5 Q. So it was kind of if the glove don't fit, you must
6 acquit kind of thing?

7 A. Right.

8 Q. What -- did you use any other type of demonstrative
9 evidence in your closing besides the tattoos that were
10 quashed by the judge?

11 A. I -- I believe I had like a -- a timeline on -- I had
12 a giant like -- I carry around giant sticky pads. I'm very
13 visual, so -- so I like to think that jurors like to also
14 be visual, you know, and then I alluded to a lot of the
15 evidence that didn't -- that was presented that just didn't
16 have any connection to the defendant.

17 Q. And what was that evidence that didn't have any
18 connection to him?

19 A. Again, just the fact that there was no lineup, the
20 fact that there was no -- no forensic evidence,
21 fingerprints, DNA, those kind of things.

22 Q. Was this a situation where the clerk all of a sudden
23 was talking to the cops and goes I remember who it is now?

24 A. Yeah. Yeah.

25 Q. Did you discuss that during the trial?

1 A. No, because I didn't want to highlight that. The
2 problem with Saluda -- let me rephrase. That could be a
3 long answer. So Saluda's a small town and, you know, there
4 aren't that many places that people go to the gas stations
5 and so I -- what I didn't want to happen, especially since
6 the -- the clerk was like having epiphanies with the police
7 is for him to be able to expand that on the stand; oh,
8 yeah, he comes in every Tuesday, Thursday, whatever, and I
9 was trying to be very cautious to limit what I felt was the
10 -- the worst testimony against him, which this, you know...

11 Q. With the clerk?

12 A. Right.

13 Q. That was a strategic thing would you say?

14 A. Absolutely.

15 Q. Whose testimony was the most helpful do you think?

16 A. Oh, man, I think definitely the -- the SLED agent that
17 couldn't -- that couldn't connect any of the foren --
18 jurors love forensic evidence, so I thought that, you know,
19 the agent that couldn't connect the defendant forensically
20 to the crime I thought was the most helpful evidence.

21 Q. So did you call the SLED agent or did the State call
22 the SLED agent?

23 A. I believe -- you know, I don't recall.

24 Q. Because I -- if I recall from reading the transcript,
25 you made a comment Your Honor, I don't normally present a

1 case.

2 A. Oh, yeah, yeah. I think that's what it -- yeah, I
3 believe I called him.

4 Q. Were there any plea offers or any discussions of plea
5 offers? I know you had indicated earlier that Mr. Robinson
6 probably wasn't interested in having one.

7 A. Right. No, I -- in fact, as he was -- as he was
8 testifying, I just scrolled back through my e-mails to
9 see, and I can't remember exactly what they were. The
10 problem was the charges or the specific charge of armed
11 robbery is it carries a minimum of ten and so -- so the
12 State I recall -- I don't even recall exactly what the
13 offers were. You know, if any offers were made, they were
14 extended, but it was situation where the client was just
15 not interested. And I believe ten to twelve is what I was
16 trying to negotiate with the assistant solicitor at the
17 time.

18 Q. Was there any discussion of possibly allowing him to
19 plead to the lesser of strong arm robbery?

20 A. The -- the State was not interested in letting him
21 plea at all --

22 Q. Okay.

23 A. -- much less to anything lower.

24 Q. Did he have like a prior record or anything?

25 A. I know he had a pending DUI and I believe that he

1 possibly had at least one thing -- there was a reason that
2 he didn't get on the stand.

3 Q. Okay.

4 A. Uh-huh.

5 Q. What happened to the co-defendant?

6 A. Actually I have no idea.

7 Q. Did that person try or plea; do you remember?

8 A. I have -- I honestly have no independent recollection.

9 Q. And is -- I'm trying to remember all the issues off
10 the top of my head before walking back to the table. We
11 talked about the alibi, we talked about the SLED agent, the
12 demonstrative evidence, strong arm robbery.

13 Go back and discuss kind of the facts of it. Like
14 what was the evidence that they did have that was
15 circumstantial.

16 A. So the video obviously was the -- the most concrete
17 circumstantial evidence, if that makes sense. I mean,
18 there was a video of the incident, so they had that. And
19 I believe -- I can't remember about the co-defendant's
20 testimony, but there were --

21 Q. Were there two guys in the video or just one?

22 A. Just one.

23 Q. How was the co-defendant involved?

24 A. And I -- I should have read that before. I can't
25 remember exactly, so there may have been -- so there was

1 one with a gun. That's what I remember. Yeah, there was
2 only one gun, so.

3 Q. What was it -- I'm sorry I'm jumping around a little
4 bit. My apologies.

5 A. Uh-huh.

6 Q. That's kind of how my brain works. The issue with the
7 search warrant.

8 A. Well, so the problem was is that when the police went
9 to go serve the search warrant on the defendant's house, I
10 believe -- I mean, his mom just -- I know they were looking
11 for him. I remember his mom just opening the door and
12 telling the police that he was up in his room. And so it
13 was her house, not his house, so the standing issue was
14 obviously problematic. And, again, I -- mom never came to
15 court.

16 Q. What did she -- did she tell you anything about that,
17 about opening up the door or anything?

18 A. We -- I know that we would speak about it and then,
19 like I said, as the trial date got closer, it -- all
20 communications with anybody really started to fall off.

21 Q. Mr. Robinson indicates that he thought he was going
22 for a bond hearing. What can you tell me about that?

23 A. No, and I -- I know that we -- that that was
24 discussed, you know, many times before, but -- but they had
25 put it -- they, the solicitors, had put it on the trial

1 roster and, I mean, there's a -- I had extensive pretrial
2 motions as I was re-reading the trial transcript, but I had
3 extensive pretrial motions and that didn't even come up
4 because like it wasn't even an issue at that time, like he
5 was aware we were going to trial and like never once was it
6 said wait, I'm just here for a bond, I don't know about
7 trial.

8 Q. Did you ever file for bond motions after like six
9 months or a year?

10 A. Oh, yeah.

11 Q. Were they always denied or just set it at something
12 that he couldn't afford?

13 A. They, I believe, were denied. And I know -- well, he
14 had -- because he had -- you know, he had the DUI charge.
15 There were -- there were different charges. He had bond on
16 some, I believe.

17 Q. He was already out on bond on another -- at least one
18 other charge?

19 A. Yeah.

20 Q. So you think you adequately conveyed to him that you
21 were going to court for a trial and not -- not a bond
22 hearing?

23 A. Oh, absolutely.

24 Q. And he stated -- said he was housed in Laurens for
25 part of this time. Did you ever talk to him in Laurens or

1 see him in Laurens?

2 A. I didn't go see him in Laurens. I did talk to him
3 on the phone. I mean, we had mul -- I mean, multiple,
4 multiple phone conversations, but when I did meet with him
5 in person I did show him the video and that's when he was
6 really adamant about pointing out the tattoos because they
7 -- they were distinctive, as distinctive as they can be,
8 but, you know -- I mean, I felt like they were distinctive,
9 so.

10 Q. I mean, a star on your hand or a tattoo on your hand's
11 pretty obvious.

12 A. Right. Right. Exact -- especially when it's the hand
13 that would have been holding a gun.

14 Q. And he didn't have a shirt on, correct?

15 A. Correct. And, in fact, that -- yeah, that was...

16 Q. So when they went to the house, my understanding is
17 that the chief of police en route to the scene went to the
18 house of Mr. Robinson's mom and Mr. Robinson, asked if he
19 was upstairs -- asked where he was, mom points upstairs,
20 chief goes in there and sees him laying, I guess, asleep on
21 a beanbag or something to that effect?

22 A. Right.

23 Q. And then he gets a search warrant or did he go ahead
24 and try to search the house at that time?

25 A. It's my understanding that he went and got a search

1 warrant later, but, you know, again, that was things that,
2 I think, were subject to challenge, which the Court just
3 disagreed with, you know --

4 Q. Your opinion on that?

5 A. -- with my interpretation, yes.

6 MS. McMAHAN: Court's indulgence, Your Honor.

7 BY MS. McMAHAN:

8 Q. Would you dispute if the tattoo's more of a flame than
9 a star?

10 A. I'm sorry?

11 Q. Would you dispute it if the tattoo's more of a flame
12 than a star?

13 A. I wouldn't, but at the time I believe -- I thought it
14 was a -- at least a star with some -- probably with some
15 enhancements or --

16 Q. Okay.

17 A. But whatever it was, it was significant enough to try
18 to make an issue of it.

19 MS. McMAHAN: Answer any questions the State has.

20 CROSS-EXAMINATION

21 BY MS. MEADOWS:

22 Q. I would also like to state for the record that I had
23 your name correctly, so.

24 So, Ms. Zmroczek, how -- you said you weren't
25 retained, you know, right after he was arrested, so how

1 long before his trial; if you remember?

2 A. I mean, it was a -- it -- it was a sig -- at least --
3 it was over six months before.

4 Q. Okay. And then you told Ms. McMahan earlier that
5 during closing argument you kind of gave the jury a
6 timeline?

7 A. Uh-huh.

8 Q. Do you remember kind of what the timeline was?

9 A. I don't recall.

10 Q. Okay.

11 A. Sorry.

12 Q. Okay. But his -- his mother told the deputy that he'd
13 just gotten home, correct, when the deputy showed up?

14 A. Right. Right.

15 Q. Okay. So did you -- did you really think there was a
16 -- a basis for bringing her in to testify about an alibi?

17 A. I mean, I would have loved to have anybody come in and
18 -- in support. Anybody. Anybody.

19 Q. Right.

20 A. Any of the girlfriends, any of the sisters or whomever
21 they were, the dad, the -- the mom. I would have loved
22 anybody if they could have been helpful, but --

23 Q. Right.

24 A. -- as I said, as it got closer, I mean, people -- it
25 was a ghost town trying to get somebody.

1 Q. Okay. Right. So you couldn't really get ahold of
2 them?

3 A. No.

4 Q. Okay. And then were there ever any formal plea offers
5 or did you kind of discuss it with him and he just said I
6 don't want a plea?

7 A. I believe that that was the -- the State was really
8 not interested in pleading this case. I -- I -- it's my
9 opinion that they -- I believe that the -- when the chief
10 of police or whomever like detoured to his house, I think
11 they were investigating a different, separate crime for
12 Mr. Robinson, so I believe that they felt like he was a
13 menace.

14 Q. Okay. And then what type sort of investigation did
15 you do in this case? Did you just view the discovery or
16 did you pursue anything else?

17 A. I mean, I absolutely went through all the discovery
18 and, in fact, if you look at the pretrial motions I was
19 continuing to try to demand discovery, Giglio, confirmation
20 on lineups, confirmation on all kinds of information.
21 Typically I go really overboard into discovery because I --
22 I think it's important. And then additionally, like I
23 said, trying -- trying to talk to any of his people to get
24 them to come stand up for him --

25 Q. Right.

1 A. -- was what we were trying to do.

2 Q. Right. Okay. So is that something you sort of wish
3 could have been part of your trial strategy?

4 A. Absolutely.

5 Q. Okay. And then, let's see, did you review the
6 discovery with him and the evidence?

7 A. Yeah.

8 Q. Okay. And did you sort of explain, you know, the
9 strengths and weaknesses of your case to prepare him?

10 A. Oh, oh, yeah.

11 Q. Okay. And then his version of facts was just that he
12 wasn't -- he wasn't there, correct?

13 A. Right. So he really couldn't assist with --

14 Q. Right.

15 A. -- any of the particulars and -- and then just kept
16 pointing out that, you know, his tattoos did not match
17 the --

18 Q. Right. Okay.

19 A. -- perpetrator.

20 Q. And it was the clerk who ID'd him, right?

21 A. Yeah.

22 Q. Okay. And they said that he was -- that Mr. Robinson
23 was a regular --

24 A. Right.

25 Q. -- correct? Okay. And do you feel like you had

1 enough time to meet with him and prepare for trial?

2 A. Yeah.

3 Q. Okay. You spoke with him a lot and his family?

4 A. Yes.

5 Q. Okay. And so the SLED agent that you called, his
6 testimony helped Mr. Robinson, correct?

7 A. Right. I mean, there was no -- yeah, there was just
8 no match, too.

9 Q. Right. Okay. So you -- you testified earlier that
10 you did not request a strong arm robbery charge because he
11 -- he had a -- had a gun or --

12 A. That the video showed a person with a gun, right.

13 Q. Right. So what sort of circumstantial -- and that --
14 I'm sorry -- that he said he wasn't there, so that was kind
15 of --

16 A. That -- well, so that was part of the trial strategy.

17 Q. Right.

18 A. Like the -- so I -- I've tried a lot of cases in front
19 of that judge and as -- as you can read, I think somewhere
20 he was like you try to pull this off, nobody objects, bla
21 bla bla, but -- but -- so the judge was familiar with --
22 with all my -- with all my trial strategies --

23 Q. Right.

24 A. -- but also with my trial knowledge. I've been doing
25 this since 2000 and -- I was sworn in in 2008 and have been

1 -- I think I've tried more cases than anybody in the state
2 at this point --

3 Q. Right.

4 A. -- and so I just -- you know, A, looking at the charge
5 first, it -- it wasn't applicable because you would have --
6 I mean, the -- the whole premise of strong arm robbery is
7 you don't have a weapon --

8 Q. Right.

9 A. -- and -- and that just wasn't the case here. And
10 then also it would be counterintuitive to our trial
11 strategy to say well, even if you believe that he -- even
12 if you don't believe me that he wasn't there, then --

13 Q. He didn't have a gun.

14 A. -- he didn't have a gun and just ignore the video. So
15 it -- it just wasn't -- it just wouldn't have been I think
16 any more beneficial.

17 Q. Right. Right.

18 A. And, in fact, probably less beneficial --

19 Q. Right.

20 A. -- than just arguing he wasn't there at all.

21 Q. Right.

22 MS. MEADOWS: All right. I think that's I have
23 for Ms. Zmroczek.

24 THE COURT: Any redirect?

25 MS. McMAHAN: Just briefly.

1 REDIRECT EXAMINATION

2 BY MS. McMAHAN:

3 Q. Did you think that even if you asked or presented to
4 the judge a request for strong arm robbery you would have
5 gotten it?

6 A. I do not believe so.

7 Q. And how many cases do you think you've tried in front
8 of Judge Hood?

9 A. More than fifteen.

10 Q. Do you always take felony cases and stuff or is that
11 the majority of your cases?

12 A. Yeah. Yeah. Yes. Mostly -- mostly violent crimes is
13 what...

14 Q. So were -- these trials then, were they violent,
15 nonviolent, were they murders, armed robberies?

16 A. All -- all of the above. Drugs. Yeah. But, I mean,
17 I've tried -- I've tried -- I think in November -- or the
18 end of October or November I got my tenth acquittal on a
19 murder, so. And I've -- and I've lost a lot of them, too,
20 so I know I've tried at least ten murder cases.

21 Q. So have you asked for strong arm robbery before in a
22 case?

23 A. When it -- when it's appropriate I always ask for a
24 lesser included.

25 Q. What other -- was he just on trial for the armed

1 robbery for this case or was it other things?

2 A. It was armed robbery, kidnapping. Everything just
3 associated with this incident, so --

4 Q. The kidnapping was of the clerk?

5 A. Right. Right. Right. And then I think possession
6 of a weapon during the commission of a violent crime.

7 Q. Do you recall if -- in kidnapping if you still have
8 to request it to be noted that it's not sexual in nature
9 or is it --

10 A. I mean, I think that the determination is made based
11 on the fact -- I mean, clearly that was not --

12 Q. An issue in --

13 A. -- right. Not at all. And I don't believe that it
14 was reflected on his sentencing sheet. Yeah. In fact,
15 on the senten -- I'm looking at the sentencing sheet in
16 the record and it -- and it says in stars no sex offender
17 registration requirement.

18 Q. Have you had acquittals other than murder trials?

19 A. I'm sorry?

20 Q. You said you had ten murder acquittals.

21 A. Yeah.

22 Q. Have you had acquittals in any other type of trials?

23 A. I have, yeah. I've had CSC, yeah, criminal sexual
24 conduct, and then a lot of my drug trials have resulted in
25 lesser included offenses, but -- still guilties, but just

1 the lesser included.

2 Q. Okay.

3 MS. McMAHAN: I don't believe I have anymore
4 questions, Your Honor. One moment.

5 THE COURT: Sure.

6 MS. McMAHAN: No further questions, Your Honor.

7 MS. MEADOWS: I have nothing further and the
8 State rests at this time.

9 THE COURT: All right.

10 MS. McMAHAN: And the Applicant rests.

11 MS. MEADOWS: Oh. Sorry.

12 THE COURT: Before I let Ms. Zmroczek go, I've got
13 a couple of questions.

14 EXAMINATION

15 BY THE COURT:

16 Q. I want to make sure, was it your client -- was it
17 Mr. Robinson that held this gun to her head or is she
18 saying that was the co-defendant?

19 A. No. No, I be -- she was saying that it was --

20 Q. It was him?

21 A. Right.

22 Q. On top of that she goes a little bit further and --
23 and testifies I remember the star, talking about the
24 tattoo. I don't remember the entire tattoo, I remember the
25 star. I can also remember the scar on his back and I can

1 remember the body build.

2 A. Right.

3 Q. So she did a pretty good identification of
4 Mr. Robinson. She was detailed. On top of that, he
5 held a gun to her head, if I'm not mistaken.

6 A. That was certainly her testimony.

7 Q. Well, that would certainly not be a strong arm
8 robbery; would you agree?

9 A. Right. Right.

10 Q. I don't think a judge would let it be a strong arm
11 robbery with that kind of testimony involved. That is the
12 definition of an armed robbery.

13 And let me ask you about the mom because I know you
14 had several conversations with her. At any time did she
15 ever tell you that she would be an alibi witness and --
16 and testify that he was at home during this whole time?

17 A. She never did.

18 Q. In fact, she told the police officer upon entering
19 that he just got home, he's upstairs, y'all can go get him?

20 A. Right. That's exactly what she told them.

21 Q. Okay. And just one other thing just to -- I got to
22 thinking about it. The co-defendant, did they ever catch
23 the co-defendant?

24 A. To my knowledge, I -- I don't -- I don't have any
25 knowledge of if they caught him or if he was -- what hap

1 -- I have -- I have no idea what happened.

2 Q. Okay. So like in discovery there was no co-defendant
3 statement that --

4 A. No.

5 Q. -- implicated Mr. Robinson or anything like that?

6 A. No.

7 Q. Hang on.

8 A. I mean, honestly, the -- the main problem was the
9 clerk and just the problem that with Saluda being a small
10 town and -- and people knowing people and -- and her
11 testimony I thought was pretty compelling.

12 Q. All right. And this demonstrative evidence, I've seen
13 you try a case, so you had a tattoo on your hand, the judge
14 said inappropriate, but let me ask you this. This case was
15 appealed?

16 A. It was and that -- and I -- and what I was -- because
17 I was quite -- quite honestly, I was angry that he didn't
18 let me do it because I believe it's well within the rules,
19 and so I asked --

20 Q. I mean, it's making a point.

21 A. -- so I -- so I -- I remember specifically when --
22 because I didn't do the appeal, but I had to send
23 everything over to appellate defense, including his
24 application for an appellate defender, and I recall noting
25 that make sure y'all brief this or make sure that this

1 issue --

2 Q. Did they?

3 A. I believe that they did. I think that the Court said
4 there was overwhelming evidence.

5 Q. And -- and it was -- this case was affirmed?

6 A. Right.

7 Q. They upheld it; is that correct?

8 A. That's correct.

9 THE COURT: All right. That's all I have.

10 May I excuse Ms. Zmroczek?

11 MS. McMAHAN: Yes, Your Honor.

12 MS. MEADOWS: Yes, Judge.

13 THE COURT: You may be excused.

14 (Witness excused.)

15 THE COURT: Ms. Meadows.

16 MS. MEADOWS: The State rests.

17 THE COURT: Anything in closing?

18 MS. McMAHAN: Judge, can I recall my client?

19 THE COURT: You may.

20 DEMARCUS L. ROBINSON,

21 having been previously sworn, testified as follows:

22 REBUTTAL EXAMINATION

23 BY MS. McMAHAN:

24 Q. Mr. Robinson, please remember you're still under oath.

25 What was your co-defendant's name?

1 A. Tyrell Lockett, if I ain't mistaken.

2 Q. Tyrell what?

3 A. Lockett.

4 Q. And where's he now?

5 A. Home.

6 Q. Was he charged with anything?

7 A. I think he was originally charged with everything I
8 was charged with.

9 Q. Do you remember if he went to trial or had a plea or
10 anything?

11 A. He went home after I had my trial.

12 Q. Okay.

13 MS. McMAHAN: Nothing further.

14 MS. MEADOWS: Just one.

15 SURREBUTTAL EXAMINATION

16 BY MS. MEADOWS:

17 Q. Mr. Robinson, what did you tell Ms. Zmroczek about
18 your co-defendant?

19 A. Nothing.

20 Q. You -- you didn't tell her anything about him?

21 A. No, ma'am.

22 MS. MEADOWS: Okay. Nothing further.

23 THE COURT: Okay. You may step down, Mr. Robinson.

24 (Witness excused.)

25 MS. McMAHAN: Your Honor, the Applicant rests and

1 we'd ask that you review the record in whole before
2 issuing your decision.

3 THE COURT: Anything, Ms. Meadows?

4 MS. MEADOWS: That's all from the State.

5 THE COURT: Okay. I will take it under advisement.
6 Thank you so much.

7 Mr. Robinson, your lawyer will be in touch with you
8 to let you know of my decision, okay?

9 MR. ROBINSON: All right.

10 THE COURT: Thank y'all.

11 (Whereupon, the proceedings were concluded at
12 12:20 PM.)

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C E R T I F I C A T E

I, Stacy S. Johnson, Official Court Reporter
for the Eleventh 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 case in Circuit Court
on the 30th day of April, 2021, recorded by the Digital
Court Reporter Program, and transcribed by me to the
best of my ability.

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

August 30, 2021

/s/ Stacy S. Johnson
STACY S. JOHNSON
CIRCUIT COURT REPORTER

STATE OF SOUTH CAROLINA
COUNTY OF SALUDA

IN THE COURT OF COMMON PLEAS
FOR THE ELEVENTH JUDICIAL CIRCUIT

Demarcus L. Robinson, SCDC #374512,

Case No. 2019-CP-41-0263

Applicant,

v.

ORDER OF DISMISSAL

State of South Carolina,

Respondent.

The matter before this Court is an action for post-conviction relief (PCR) commenced by Demarcus Robinson (Applicant) on December 3, 2019. The State requested an evidentiary hearing through its return and motion for a more definite statement on April 1, 2020. Applicant, through PCR counsel, thereafter filed an amended application on April 22, 2021.

On April 30, 2021, a hearing into the matter convened at the Lexington County Judicial Center before the undersigned. Applicant was present and represented by Ashley McMahan, Esquire. Assistant Attorney General Lillian L. Meadows represented the State. Applicant testified on his own behalf at the hearing, as did his trial counsel, Aimee Zmroczek, Esquire.

In addition to the pleadings in this action, this Court had before it a copy of the Saluda County Clerk of Court records regarding the subject conviction; Applicant's records from the South Carolina Department of Corrections; a full and complete record of Applicant's direct appeal, including the trial transcript; and the records of the current PCR action.

After hearing the testimony at the PCR hearing and reviewing the record, this Court finds Applicant's allegations of ineffective assistance of counsel are without merit. Therefore, for the reasons discussed below, this Court denies relief and dismisses this action with prejudice.

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections. During its November 2016 term, the Saluda County Grand Jury indicted Applicant for kidnapping (2012-GS-41-0310); armed robbery (2016-GS-41-0311); and possession of a weapon during the commission of a violent crime (2016-GS-41-0312). On November 6, 2017, Applicant proceeded to a jury trial before the Honorable Robert E. Hood. Aimee Zmroczek, Esquire (Counsel) represented Applicant. Assistant Solicitors Douglas Wayne Fender, II, and Alton H. Eargle, Jr., prosecuted the case.

A. Summary of Evidence Adduced at Trial

During the early morning hours of August 1, 2016, Applicant robbed the Circle K in Ridge Spring. (R. 147–48). Applicant pointed a pistol at the clerk and demanded the clerk open the register. (R. 148). He stole an undetermined amount of cash consisting exclusively of five and one-dollar bills, along with a case of cigarettes and a cigar. (R. 149–50, 157).

The clerk gave the 911 operator a general description of the perpetrator. (R. 178–79). However, when law enforcement arrived at the store, the clerk for the first time identified Applicant as the robber. (R. 182–83). While he initially did not recognize the man, the clerk later realized the robber was Applicant, who was “a regular” at the Circle K and visited the store frequently. (R. 152). The clerk also claimed that on several occasions that while walking to work he observed Applicant playing football in a neighbor’s yard without a shirt on. (R. 152–53). The clerk recognized a scar on Applicant’s shoulder and a star tattoo on his arm. (R. 160–62).

While enroute to the store to assist in the investigation, Ridge Spring Chief of Police Michael Raffield learned Applicant had been named as a suspect and responded to Applicant’s house, which was less than a mile from the Circle K. (R. 47). Applicant’s mother greeted Chief

Raffield at the door and led him upstairs to Applicant's bedroom. (R. 48). Applicant was asleep on top of a sleeping bag on the floor of the bedroom. (R. 49, 250). Chief Raffield observed numerous five and one-dollar bills in the immediate area around Applicant. (R. 49, 251).

After securing Applicant, Chief Raffield obtained a search warrant to search the remainder of Applicant's bedroom. (R. 49, 53–54, 252). During the execution of the search warrant, officers found two pairs of black shorts and forty-one dollars in cash underneath the sleeping bag, all of which consisted of five and one-dollar bills. (R. 49, 251). Officers also found a silver revolver with a black handle, a box of ammunition, several packs of Newport cigarettes, and a cigarillo in the bedroom closet. (R. 49–50, R. 252–53). Chief Raffield later seized Applicant's gray underwear from his property at the detention center, which matched the underwear worn by the robber. (R. 260).

B. Verdict & Subsequent Proceedings

On November 8, 2017, the jury returned a verdict of guilty on each indictment. Judge Hood sentenced Applicant to concurrent terms of twenty-five years' imprisonment for armed robbery, twenty-five years for kidnapping, and five years for possession of a weapon during the commission of a violent crime.

Applicant filed a timely notice of appeal. Appellate Defender Lara M. Caudy perfected Applicant's appeal by filing an *Anders*¹ brief with the Court of Appeals. On October 9, 2019, the Court issued an unpublished opinion affirming Applicant's convictions and sentences. *State v. Robinson*, 2019-UP-334 (S.C. Ct. App. filed Oct. 9, 2019). The case was remitted to the circuit court on October 25, 2019. Applicant commenced this PCR action on December 3, 2019.

¹ *Anders v. California*, 386 U.S. 738 (1967).

II. ISSUES BEFORE THIS COURT

In his original application for post-conviction relief, Applicant alleges he is being held in custody unlawfully based on the following reasons:

1. "Based on the improper testimony from SLED agent."
 - a. "Improper testimony in my defense."
2. "Counsel to use demonstrative evidence during closing."
 - a. "Demonstrative evidence could have had an impact on the jury's verdict."
3. "My lawyer fail to call alibi witnesses."

Pursuant to Rule 71.1, SCRCP, Applicant, through PCR counsel, amended his application to include the follow allegations:

1. Ineffective Assistance of Counsel as to Aimee Zmroczek, Esquire
 - a. Failure to call witnesses to support Applicant's alibi
 - b. Failure to request a charge on strong arm robbery.

At the outset of the evidentiary hearing, PCR counsel stated Applicant was proceeding only on the claims pled in the amended PCR application. To the extent the allegations set forth in Applicant's original application can be construed as separate grounds for relief from the grounds stated at the PCR hearing, this Court finds those claims were voluntarily waived and abandoned, and those claims are therefore denied and dismissed with prejudice. S.C. Code Ann. § 17-27-90.

III. STANDARD OF REVIEW

An applicant may seek PCR upon the following types of allegations:

1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
2. That the court was without jurisdiction to impose sentence;
3. That the sentence exceeds the maximum authorized by law;

4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
5. That his sentence has expired, his probation, parole or conditional release unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or
6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy[.]

S.C. Code Ann. § 17-27-20(A).

Ordinarily, PCR allegations are centered upon an allegation that the applicant did not receive *effective* assistance of counsel guaranteed by the Sixth Amendment. The allegation of denial of such representation sets forth a *prima facie* violation of this constitutional right, and raises a question of fact that can only be determined by an evidentiary hearing. *Rogers v. State*, 261 S.C. 288, 291, 199 S.E.2d 761, 762 (1973).

The reviewing court applies the two-part test outlined in *Strickland v. Washington* to determine whether counsel's conduct "was so ineffective as to require reversal" of the applicant's conviction. 466 U.S. 668, 687 (1984). To obtain relief, a PCR applicant must prove (1) counsel's performance fell below an objective standard of reasonableness, and (2) the applicant sustained prejudice as a result of counsel's deficient performance. *Id.* at 687-88; *accord. Cherry v. State*, 300 S.C. 115, 117-18, 386 S.E.2d 624, 625 (1989). Failure to make the required showing of either deficient performance or sufficient prejudice defeats the ineffectiveness claim. *Strickland*, 466 U.S. at 700; *see also Bell v. Cone*, 535 U.S. 685, 695 (2002) (explaining that "[w]ithout proof of both deficient performance and prejudice to the defense, . . . it could not be said that the sentence or conviction resulted from a breakdown in the adversary process that rendered the result of the proceeding unreliable" (citation and internal quotation marks omitted)).

The first prong—constitutional deficiency—is “necessarily linked to the practice and expectations of the legal community.” *Padilla v. Kentucky*, 559 U.S. 356, 366 (2010). An applicant making a claim of ineffective assistance “must identify the acts or omissions of counsel that are alleged *not* to have been the result of reasonable professional judgment.” *Strickland*, 466 U.S. at 690 (emphasis added). The reviewing court must then “determine whether, in light of all the circumstances, the identified acts or omissions were outside the wide range of professionally competent assistance” demanded of attorneys in criminal cases. *Id.* Because of the difficulties inherent in making such an evaluation, the reviewing court must indulge in a “strong presumption that counsel’s conduct falls within the wide range of reasonably professional assistance.” *Butler v. State*, 286 S.C. 441, 445, 334 S.E.2d 813, 816 (1985). The applicant must overcome this presumption to receive relief. *Cherry*, 300 S.C. at 118, 386 S.E.2d at 625.

Review of counsel’s actions is hallmarked by deference, as “it is all too tempting for a defendant to second-guess counsel’s assistance after conviction or an adverse sentence, and it is all too easy for a court, examining counsel’s defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable.” *Strickland*, 466 U.S. at 689; *see also Yarborough v. Gentry*, 540 U.S. 1, 6 (2003) (“The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight.”). No particular set of detailed rules for counsel’s conduct can satisfactorily take account of the variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how best to represent a criminal defendant. *Strickland*, 466 U.S. at 688–89; *see id.* at 691 (“Representation is an art, and an act or omission that is unprofessional in one case may be sound or even brilliant in another.”). Thus, a fair assessment of attorney performance requires every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel’s challenged conduct,

and to evaluate the conduct from counsel's perspective at the time. *Id.* at 689. The ultimate question is not whether counsel's actions were reasonable, but whether there is any reasonable argument counsel satisfied *Strickland's* deferential standard.

The second, or "prejudice" prong of *Strickland* is rooted in the very purpose of the Sixth Amendment guarantee of counsel—to ensure a defendant has the assistance necessary to justify reliance on the outcome of the proceeding. *Id.* at 691–92. In order to prove prejudice, an applicant must demonstrate counsel's deficient performance prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Cherry*, 300 S.C. at 117–18, 386 S.E.2d at 625. A reasonable probability is a probability "sufficient to undermine confidence in the outcome." *Strickland*, 466 U.S. at 694; *see id.* at 695 (explaining that, where a defendant challenges his conviction, he must show that there exists "a reasonable probability that, absent the errors, the factfinder would have had a reasonable doubt respecting guilt").

In determining prejudice, the reviewing court must consider the totality of the evidence before the jury. *Id.* at 695. It is not sufficient "to show [counsel's] errors had some conceivable effect" on the outcome of the proceeding—counsel's errors must be "so serious as to *deprive the defendant of a fair trial.*" *Id.* at 687 (emphasis added). "An error by counsel, even if professionally unreasonable, does not warrant setting aside the judgment of a criminal proceeding if the error had no effect on the judgment." *Id.* at 691. Moreover, the South Carolina Supreme Court has repeatedly held a PCR applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice. *Bannister v. State*, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998).

The *Strickland* standard must be applied with scrupulous care, lest “intrusive post-trial inquiry” threaten the integrity of the very adversary process the right to counsel is meant to serve. 466 U.S. at 689–90. Courts must be wary of second guessing counsel’s trial tactics; and where counsel articulates a valid reason for employing such strategy, such conduct is not ineffective assistance of counsel. *Whitehead v. State*, 308 S.C. 119, 122, 417 S.E.2d 529, 531 (1992). The applicant’s burden of proving both *Strickland* components is heavy in light of the strong presumption that counsel’s conduct fell within the range of reasonable professional legal assistance. 466 U.S. at 690; Rule 71.1(e), SCRPC. Representation is constitutionally ineffective only if counsel’s conduct “so undermined the proper functioning of the adversarial process” that the defendant was denied a fair proceeding. *Id.* at 686; see *Nix v. Whiteside*, 475 U.S. 157, 175 (1986) (noting that under *Strickland*, the “benchmark” of the right to counsel is the “fairness of the adversary proceeding”); cf. *United States v. Morrow*, 977 F.2d 222, 229 (6th Cir. 1992) (“[T]he threshold issue is not whether [the applicant’s] attorney was inadequate; rather, it is whether he was so *manifestly* ineffective that defeat was snatched from the hands of probable victory.”).

IV. FINDINGS OF FACT & CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the PCR hearing, observed the witnesses, passed upon their credibility, and weighed their testimony accordingly. After hearing the testimony presented and considering the legal arguments by counsel, as well as the record in this action incorporated by way of the State’s return, this Court proceeds to the claims raised in the amended application and finds each to be without merit. Pursuant to S.C. Code Ann. § 17–27–80, this Court makes the following findings of facts and conclusions of law based upon all of the probative evidence presented.

A. Failure to Call Alibi Witnesses

Applicant first contends Counsel was ineffective for failing to investigate and call witnesses to support Applicant's alibi. Specifically, Applicant argues his mother could have testified he was home at the time the robbery occurred. This Court disagrees, and finds Applicant failed to present any evidence or testimony indicating that his mother's testimony would have affected the outcome of his trial. *See generally Glover v. State*, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995) (holding trial counsel's failure to contact an alleged alibi witnesses did not prejudice the applicant where the applicant failed to show the witness's testimony would have established an alibi defense). This Court finds credible and persuasive the testimony of Counsel, who presented well-recalled testimony of the events leading up to Applicant's trial.

1. Trial Testimony

At trial, the only testimony presented involving Applicant's mother was from Chief Raffield, who testified she greeted him at the door and led him upstairs to Applicant's bedroom. (R. 48, 249–50). Chief Raffield further testified that Applicant's mother and sister stated Applicant got home the morning of the robbery at approximately 2:30 AM. (App'x 283, 302). Crucially, Chief Raffield testified that neither Applicant's mother nor anyone else had ever provided an alibi for Applicant. (App'x 303).

2. PCR Testimony

At the PCR hearing, Applicant testified he did not know if Counsel ever spoke to his mother. He was asked how his mother's testimony would have helped him given that she told Chief Raffield he had just gotten home. Applicant disagreed, and stated his mother said he was home at the time the robbery occurred. Applicant stated he thought "it would have been stronger" had his mother been called as a witness.

Counsel testified Applicant told her from the beginning that he did not commit the robbery and he was not there. Counsel told him she would need to have witnesses in court testify about his whereabouts at the time of the robbery. She further testified that several women identifying themselves as either Applicant's sister or girlfriend would call her office and ask about his case. However, none of them ever provided her with an alibi. Counsel also stated that none of the witnesses ever showed up to court, and that they stopped answering her calls as soon as the trial date got closer. Applicant did not provide her with addresses for any witnesses.

Counsel agreed that Applicant's mother told Chief Raffield he had just gotten home, and it was therefore questionable whether her testimony would have been helpful. She further testified she spoke with Applicant's mother several times about his case. Applicant's mother never told Counsel that she would be an alibi witness or that Applicant was home at the time of the robbery. Counsel nonetheless stated she would have loved to have his mother or anyone testify on Applicant's behalf. She stated again that she could not get ahold of anyone—including Applicant's mother—as the trial date approached.

3. Discussion

"A criminal defense attorney has the duty to conduct a reasonable investigation to discover all reasonably available mitigation evidence and all reasonably available evidence tending to rebut any aggravating evidence introduced by the State." *McKnight v. State*, 378 S.C. 33, 46, 661 S.E.2d 354, 360 (2008). "[W]hile the scope of a reasonable investigation depends on a number of issues, at a minimum, counsel has the duty to interview potential witnesses and to make an independent investigation of the facts and circumstances of the case." *Ard v. Catoe*, 372 S.C. 318, 331–32, 642 S.E.2d 590, 597 (2007) (internal quotation marks omitted) (emphasis omitted). However, counsel need only interview potential witnesses "when it is reasonable to do so." *Edwards v. State*, 392

S.C. 449, 457, 710 S.E.2d 60, 65 (2011). “In other words, counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary.” *Strickland*, 466 U.S. at 691.

This Court finds Applicant failed to establish Counsel was ineffective for failing to investigate and present testimony from alibi witnesses. Our Supreme Court has repeatedly held a PCR applicant must “produce the witnesses at the PCR hearing or otherwise introduce the witnesses’ testimony in a manner consistent with the rules of evidence” to prevail on this type of claim. *Glover v. State*, 318 S.C. at 498–99, 458 S.E.2d at 540 (citing *Underwood v. State*, 309 S.C. 560, 425 S.E.2d 20 (1992); see *Bannister*, 333 S.C. at 303, 509 S.E.2d at 809; see also *Ard*, 372 S.C. at 331, 642 S.E.2d at 596 (“A PCR applicant cannot show that he was prejudiced by counsel’s failure to call a favorable witness to testify at trial if that witness does not later testify at the PCR hearing or otherwise offer testimony within the rules of evidence.”). “Mere speculation” by the applicant as to what the witness’s testimony would have been “cannot, by itself, satisfy the applicant’s burden of showing prejudice.” *Glover*, 318 S.C. at 499, 458 S.E.2d at 540; see *Clark v. State*, 315 S.C. 385, 434 S.E.2d 266 (1993) (explaining that pure conjecture as to what a witness’s testimony would have been is not sufficient to show a reasonable probability the result at trial would have been different).

Here, Applicant did not present testimony from his mother or any other witness who could have supported an alibi defense. However, even had Applicant’s mother testified, Chief Raffield’s testimony refutes Applicant’s claim that his mother stated he was home at the time of the robbery. Rather, she stated Applicant had gotten home shortly before Chief Raffield knocked on the door looking for him. *Cf. Thomas v. State*, 308 S.C. 123, 417 S.E.2d 531 (1992) (finding that the applicant showed uncalled witness’ testimony would have made a difference in the trial because it

would have cast doubt on the sole witness' identification of the petitioner). She also never indicated to anyone, including Counsel, that she could provide an alibi for Applicant. *See State v. Robbins*, 275 S.C. 373, 271 S.E.2d 319 (1980) (since an alibi derives its potency as a defense from the fact that it involves the physical impossibility of the accused's guilt, a purported alibi which leaves it possible for the accused to be the guilty person is no alibi at all).

Accordingly, Applicant's claims pertaining to Counsel's failure to investigate and call witnesses to support Applicant's alibi are **DENIED**.

B. Failure to Request Strong Arm Robbery Charge

Applicant next contends Counsel was ineffective for failure to request a jury charge on the lesser-included offense of strong arm robbery. This Court disagrees, and finds Applicant failed to present any evidence or testimony indicating either the judge would have agreed to charge the jury on strong arm robbery or that the jury would have convicted him of strong arm robbery rather than armed robbery had the charge been given.

1. PCR Testimony

At the PCR hearing, Applicant testified Counsel never discussed the possibility of requesting a strong arm robbery charge. Counsel testified she did not consider asking the judge to charge the jury on strong arm robbery because the surveillance video from the Circle K clearly showed the perpetrator putting a gun to the store clerk's head. She stated strong arm robbery does not apply where the person is armed with a deadly weapon.² She further testified it would have

² Counsel's understanding of strong arm robbery as opposed to armed robbery is correct under South Carolina Law. *See* S.C. Code Ann. § 16-11-330(A) (defining armed robbery as the commission of a "robbery while armed with a pistol, dirk, slingshot, metal knuckles, razor, or other deadly weapon, or while alleging, either by action or words, he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon . . ."); *Abney v. State*, 408 S.C. 41, 45, 757 S.E.2d 544, 546 (Ct. App. 2014) ("Strong arm robbery is defined under common law 'as the

been counterintuitive to argue a lesser-included offense to the jury because her defense strategy was that Applicant was not the perpetrator. Counsel further testified she had tried several cases before Judge Hood, and she was confident he would not have agreed to charge the jury on strong arm robbery had she requested it. However, she again testified she believed a strong arm charge would have hurt Applicant's case given her strategy that he was misidentified as the perpetrator.

2. Discussion

The trial court is required to charge a jury on a lesser included offense "if there is any evidence from which it could be inferred the lesser, rather than the greater, offense was committed." *State v. Gourdine*, 322 S.C. 396, 398, 472 S.E.2d 241, 241 (1996). However, the trial court should refuse to charge on a lesser-included offense where there is no evidence that the defendant committed the lesser rather than the greater offense. *Suber v. State*, 371 S.C. 554, 559, 640 S.E.2d 884, 886 (2007).

This Court finds Applicant failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case." *Ard*, 372 S.C. at 331, 642 S.E.2d at 596. When counsel articulates a strategy, it is measured under an objective standard of reasonableness. *Ingle v. State*, 348 S.C. 467, 470, 560 S.E.2d 401, 402 (2002). "[S]trategic choices made after thorough investigation of law and facts relevant to plausible options are virtually unchallengeable; and strategic choices made after less than complete investigation are reasonable precisely to the extent

felonious or unlawful taking of money, goods, or other personal property of any value from the person of another or in his presence by violence or by putting such person in fear.'" (quoting *State v. Rosemond*, 356 S.C. 426, 430, 589 S.E.2d 757, 758 (2003)); *State v. Tasco*, 292 S.C. 270, 272, 356 S.E.2d 117, 118 (1987) ("[W]hen a person perpetrates a robbery by brandishing an instrument which appears to be a firearm . . . in the absence of any evidence to the contrary, the law will presume the instrument to be what his conduct represents it to be . . ." (quoting *State v. Thompson*, 254 S.E.2d 526, 528 (N.C. 1979))).

that reasonable professional judgments support the limitations on investigation.” *Strickland*, 466 U.S. at 691.

Here, Counsel’s credible testimony indicates she did not request a charge on strong arm robbery because (1) strong arm robbery was not applicable in Applicant’s case; (2) she did not believe the trial judge would have agreed to give a strong arm robbery charge; and (3) arguing strong arm robbery would have been inconsistent with her trial strategy—that Applicant was not the perpetrator. Counsel’s strategy was objectively reasonable in this regard, particularly in light of the surveillance video, which clearly depicted Applicant holding a gun to the clerk’s head. See *Abney v. State*, 408 S.C. 41, 48, 757 S.E.2d 544, 547 (Ct. App. 2014) (finding trial counsel articulated a valid reason for failing to request an instruction on the lesser-included offense of strong arm robbery where trial counsel felt the trial was going well and believed his client would be acquitted of armed robbery).

Accordingly, Applicant’s claim pertaining to Counsel’s failure to request a jury charge on strong arm robbery is **DENIED**.

V. ALL OTHER ALLEGATIONS

As to any and all allegations raised in the application or at the hearing in this matter and not specifically addressed in this order, this Court finds Applicant failed to present any evidence regarding such allegations. Accordingly, this Court finds those claims were voluntarily waived and abandoned, and those claims are therefore denied and dismissed with prejudice. S.C. Code Ann. § 17-27-90.

VI. CONCLUSION

Based on the evidence presented at the PCR hearing and a thorough review of the record, this Court finds and concludes Applicant has not established any constitutional violations or

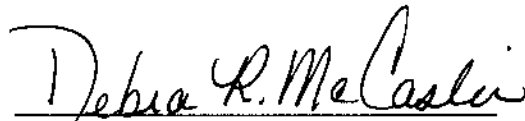
deprivations that would require this Court to grant his application for post-conviction relief. This Court finds Counsel was not deficient in any manner, nor was Applicant prejudiced by Counsel's representation. Therefore, based on the foregoing, this Court denies relief on all allegations and dismisses this PCR action with prejudice.

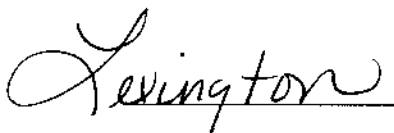
Applicant must file and serve a notice of appeal within thirty days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review pursuant to Rule 203, SCACR. Applicant has a right to appellate counsel's assistance in seeking review of the denial of PCR. *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991). Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to Rule 243, SCACR, for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. The application for post-conviction relief be denied and dismissed with prejudice; and
2. Applicant be remanded to the custody of the State.

AND IT IS SO ORDERED this 24th day of May, 2021.


 DEBRA R. MCCASLIN
 Presiding Circuit Court Judge
 Eleventh Judicial Circuit

, South Carolina

WITNESSES

RSPD

RAFFIELD

ARREST WARRANT NUMBER

2016A4110100116

ACTION OF GRAND JURY

FILED

Foreperson of Grand Jury

Date:

NOV 01 2016

VERDICT

GUILTY

Foreperson of Petit Jury

Date:

11/8/2017

DOCKET NO. 2016-GS-41- 310

The State of South Carolina

County of SALUDA

COURT OF GENERAL SESSIONS

NOVEMBER TERM 2016

THE STATE

vs.

DEMARCUS L. ROBINSON

CDR#0095

Indictment for

KIDNAPPING

DONALD V. MYERS, SOLICITOR

ATTEST: TRUE COPY

Shirley C. Coleman

Clerk of Court
Saluda, S. C.

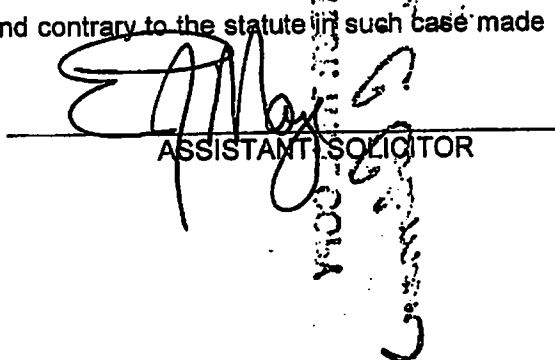
STATE OF SOUTH CAROLINA)
COUNTY OF SALUDA)

INDICTMENT FOR
KIDNAPPING

At a Court of General Sessions, convened on November 1, 2016, the Grand Jurors of Saluda County present upon their oath:

That DEMARCUS L. ROBINSON, did in Saluda County on or about August 1, 2016, unlawfully seize, and confine, inveigle, decoy, kidnap, abduct, or carry away one William ~~Huston~~ ^{Houston of Consent Pelt} without authority of law and without consent, by the following means, to wit: the defendant, with the use of physical force did unlawfully seize and confine by physical force and battery the victim, William ~~Huston~~ ^{Houston of Consent Pelt}, in violation of §16-3-910, 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.


ASSISTANT SOLICITOR

6-30415.

STATE OF SOUTH CAROLINA

COUNTY OF
STATE

Saluda

VS.

Demarcus L. Robinson

AKA:

Race: B Sex: M Age: 21DOB: 7 SS#: Address: veCity, State, Zip: Ridge Spring, SC 29129DL#: SID#: *CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Kidnappingin violation of § 16-3-0910 of the S.C. Code of Laws, bearing CDR Code # 0095
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45
(CSC w/minor 1st or Lewd Act)The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

DH
Solicitor65363
SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 25 days/months/years or ☐ under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
of \$; plus costs and assessments as applicable*; the balance is suspended with probation for months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State
Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic
Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS

No Sex offender Registry☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ OrderedTotal: \$ plus 20% fee: \$ Payment Terms: ☐ Set by SCDPPPS Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ <u>100.00</u>
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$ <u></u>
§ 56-5-2995 (DUI Assessment)	\$12	\$ <u></u>
§ 56-1-286 (DUI Breath Test)	\$25	\$ <u></u>
Proviso 61.6 (Public Def/Probation)	\$500	\$ <u></u>
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ <u>25.00</u>
§ 14-1-213 (Drug Court Surcharge)	\$150	\$ <u></u>
§ 50-21-114 (BUI Breath Test Fee)	\$50	\$ <u></u>
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$ <u></u>
3% to County (if paid in installments)	\$	\$ <u>37.5</u>

TOTAL

\$ 128.75

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (07/2016)

Cheri C. Coleman
Stacy Shepherd

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2016GS4100310A/W#: 2016A4110100116Date of Offense: 8/1/2016S.C. Code § : 16-03-0910CDR Code #: 0095

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS days/hours Public Service EmploymentObtain GED ☐

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ beginning \$ paid to Public Defender FundOther: ☐ Appointed PD or appointed other counsel,
§Proviso 61.6 requires \$500 be paid to Clerk
during probation and shall be collected before
any other fees.

Presiding Judge

Judge Code: 2164Sentence Date: Nov 8, 2017

RECEIVED

DEC 28 2017

SC Court of Appeals

No Contact w/ victim

WITNESSES

RSPD

RAFFIELD



ARREST WARRANT NUMBER

2016A4110100114

ACTION OF GRAND JURY

TRUE BILL

Joseph S.

Foreperson of Grand Jury

NOV 01 2016

Date:

VERDICT

Guilty

Robert Michael W.

Foreperson of Petit Jury

Date: 11/8/2017

DOCKET NO. 2016-GS-41- 311

The State of South Carolina

County of SALUDA

COURT OF GENERAL SESSIONS

NOVEMBER TERM 2016

THE STATE

vs.

DEMARCUS L. ROBINSON

CDR#0139

Indictment for

ARMED ROBBERY

DONALD V. MYERS, SOLICITOR

ATTEST: TRUE COPY
Sheri C. Coleman
Clerk of Court
Saluda, S. C.

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SALUDA)

INDICTMENT FOR
 ARMED ROBBERY

At a Court of General Sessions, convened on November 1, 2016, the Grand Jurors of Saluda County present upon their oath:

That DEMARCUS L. ROBINSON, (ALONG WITH OTHERS) on or about August 1, 2016, in Saluda County at Circle-K located at 300 East Main Street, Ridge Spring, South Carolina, while armed with a firearm, described as grey in color, feloniously, take from William Houston, store clerk, the victim, by means of force or intimidation the goods and/or monies of the victim in that he along with others did threaten the victim with the representation of a firearm, taking goods and/or monies being described as follows: approximately \$69.00 in US currency and/or a carton of Newport cigarettes and/or carbonated beverages with intent to deprive the owner permanently of such property, in violation of § 16-11-330(A), South Carolina Code of Laws, 1976, as amended.

ATTEST: TRUE COPY

Sherril C. Coleman
 Clerk of Court
 Saluda, S. C.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

[Signature]
 ASSISTANT SOLICITOR

SOUTH CAROLINA

OF: Saluda
VS.
Demarcus L. Robinson

Age: 21 Sex: M SS#:

City, State, Zip: Ridge Spring, SC 29129

DL#: SID#:

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2016GS4100311
A/W#: 2016A4110100114
Date of Offense: 8/1/2016
S.C. Code §: 16-11-0330(A)
CDR Code #: 0139

SENTENCE SHEET

CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐
In disposition of the said indictment comes now the Defendant who was
FO: Armed Robbery

☒ CONVICTED OF or ☐ PLEADS

In violation of § 16-11-330(A) of the S.C. Code of Laws, bearing CDR Code # 0139
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ §17-25-45
(CSC w/minor 1st or Lewd Act)

The charge is: ☒ As Indicted ☐ Lesser Included Offense ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)
The plea is: ☒ Without Negotiations or Recommendation ☐ Negotiated Sentence ☐ Recommendation by the State.
ATTEST: [Signature] 10/19/17 Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
or a determinate term of 25 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
if \$ _____, plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:
☒ This Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State
Department of Corrections.
☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.
Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic
Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP
Total: \$ _____ plus 20% fee: \$ _____
Payment Terms: _____
☐ Set by SCDPPPS

Recipient: _____
Fine: \$ _____
§14-1-206 (Assessments 107.5%) \$ _____
§14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00
§14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____
§6-5-2995 (DUI Assessment) \$12 \$ _____
§6-1-286 (DUI Breath Test) \$25 \$ _____
§Proviso 61.6 (Public Def/Probation) \$500 \$ _____
§14-1-212 (Law Enforce. Funding) \$25 \$ 25.00
§14-1-213 (Drug Court Surcharge) \$150 \$ _____
§50-21-114 (BUI Breath Test Fee) \$50 \$ _____
§6-5-2942(D) (Vehicle Assessment) \$40/ea \$ _____
% to County (if paid in installments) \$ 3.75

TOTAL \$ 128.75

Clerk of Court/ Deputy Clerk [Signature]

Court Reporter: [Signature]

COA 11/07/01/0

_____ days/hours Public Service Employment

Obtain GED ☐
Attend Voc. Rehab. or Job Corp. ☐
May serve W/E beginning _____

Substance Abuse Counseling ☐ DEC 28 2017

Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly or monthly
pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

No Contact w/ victim

☐ Appointed PD or appointed other counsel,
§Proviso 61.6 requires \$500 be paid to Clerk
during probation and shall be collected before
any other fees.

Presiding Judge [Signature]

Judge Code: 2164

Sentence Date: Nov 8, 2017

RECEIVED

DEC 28 2017

SC Court of Appeals

WITNESSES

RSPD

RAFFIELD

ARREST WARRANT NUMBER

2016A4110100115

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date:

NOV 01 2016

VERDICT

Guilty

Foreperson of Petit Jury

Date:

11/8/2017

DOCKET NO. 2016-GS-41-312

The State of South Carolina

County of SALUDA

COURT OF GENERAL SESSIONS

NOVEMBER TERM 2016

THE STATE

vs.

DEMARCUS L. ROBINSON

CDR#0549

Indictment for

POSSESSION OF FIREARM DURING
COMMISSION OF VIOLENT OFFENSE

DONALD V. MYERS, SOLICITOR

ATTEST: TRUE COPY

Sheri C. Coleman

Clerk of Court
Saluda, S. C.

STATE OF SOUTH CAROLINA)
COUNTY OF SALUDA)

INDICTMENT FOR
POSSESSION OF FIREARM DURING
COMMISSION OF VIOLENT OFFENSE

At a Court of General Sessions, convened on November 1, 2016, the Grand Jurors of Saluda County present upon their oath:

That DEMARCUS L. ROBINSON, did in Saluda County on or about August 1, 2016, willfully and unlawfully displayed a firearm, during the commission of the violent crime of armed robbery, in violation of and with penalties provided for in §16-23-490, South Carolina Code of Laws, 1976, as amended.

ATTEST: TRUE COPY

Sheri C. Coleman

Clerk of Court
Saluda, S. C.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

E. May

ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF
STATE

Saluda

VS.

Demarcus L. Robinson

AKA:

Race:

Sex: M

Age:

21

DOB:

SS#:

Address:

City, State, Zip:

Ridge Spring, SC 29129

DL#:

SID#:

360213368

*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 Commission of a Violent Crime

in violation of § 16-23-1 of the S.C. Code of Laws, bearing CDR Code # 549
☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45
(CSC w/minor 1st or Lewd Act)The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Solicitor

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment

of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. 8/1/16☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$

§ 56-5-2995 (DUI Assessment) \$12 \$

§ 56-1-286 (DUI Breath Test) \$25 \$

Proviso 61.6 (Public Def/Probation) \$500 \$

§ 14-1-212 (Law Enforce. Funding) \$25 \$ 25.00

§ 14-1-213 (Drug Court Surcharge) \$150 \$

§ 50-21-114 (BUI Breath Test Fee) \$50 \$

§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$

3% to County (if paid in installments) \$ 3.75

TOTAL \$ 128.75

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (07/2016)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2016GS4100312

A/W#: 2016A4110100115

Date of Offense: 8/1/2016

S.C. Code § : 16-23-0490

CDR Code #: 0549

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

of a Violent Crime

in violation of § 16-23-1 of the S.C. Code of Laws, bearing CDR Code # 549
☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45
(CSC w/minor 1st or Lewd Act)The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Solicitor

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment

of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. 8/1/16☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$

§ 56-5-2995 (DUI Assessment) \$12 \$

§ 56-1-286 (DUI Breath Test) \$25 \$

Proviso 61.6 (Public Def/Probation) \$500 \$

§ 14-1-212 (Law Enforce. Funding) \$25 \$ 25.00

§ 14-1-213 (Drug Court Surcharge) \$150 \$

§ 50-21-114 (BUI Breath Test Fee) \$50 \$

§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$

3% to County (if paid in installments) \$ 3.75

TOTAL \$ 128.75

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (07/2016)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2016GS4100312

A/W#: 2016A4110100115

Date of Offense: 8/1/2016

S.C. Code § : 16-23-0490

CDR Code #: 0549

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

of a Violent Crime

in violation of § 16-23-1 of the S.C. Code of Laws, bearing CDR Code # 549
☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45
(CSC w/minor 1st or Lewd Act)The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Solicitor

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment

of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. 8/1/16☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$

§ 56-5-2995 (DUI Assessment) \$12 \$

§ 56-1-286 (DUI Breath Test) \$25 \$

Proviso 61.6 (Public Def/Probation) \$500 \$

§ 14-1-212 (Law Enforce. Funding) \$25 \$ 25.00

§ 14-1-213 (Drug Court Surcharge) \$150 \$

§ 50-21-114 (BUI Breath Test Fee) \$50 \$

§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$

3% to County (if paid in installments) \$ 3.75

TOTAL \$ 128.75

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (07/2016)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2016GS4100312

A/W#: 2016A4110100115

Date of Offense: 8/1/2016

S.C. Code § : 16-23-0490

CDR Code #: 0549

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

of a Violent Crime

in violation of § 16-23-1 of the S.C. Code of Laws, bearing CDR Code # 549
☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45
(CSC w/minor 1st or Lewd Act)The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Solicitor

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment

of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. 8/1/16☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$

§ 56-5-2995 (DUI Assessment) \$12 \$

§ 56-1-286 (DUI Breath Test) \$25 \$

Proviso 61.6 (Public Def/Probation) \$500 \$

§ 14-1-212 (Law Enforce. Funding) \$25 \$ 25.00

§ 14-1-213 (Drug Court Surcharge) \$150 \$

§ 50-21-114 (BUI Breath Test Fee) \$50 \$

§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$

3% to County (if paid in installments) \$ 3.75

TOTAL \$ 128.75

Clerk of Court/ Deputy Clerk

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