

NO. _____

IN THE SUPREME COURT OF THE UNITED STATES

ADAM PATTON, PETITIONER

V.

STATE OF ARKANSAS, RESPONDENT

On Writ of Certiorari to the
Arkansas Supreme Court

PETITION FOR WRIT OF CERTIORARI

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I. QUESTION PRESENTED

Whether a criminal defendant, who has not knowingly and intelligently waived his Sixth Amendment right to counsel and who clearly requests the assistance of counsel, can forfeit the right to counsel without violent or egregious behavior.

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III. PETITION FOR WRIT OF CERTIORARI

Adam Patton respectfully petitions this Court for a writ of certiorari to review the judgment of the Arkansas Court of Appeals affirming the trial court's decision to deny counsel to Mr. Patton, who was on trial for rape and incest. Despite Mr. Patton's attempts to secure private counsel and numerous requests for appointed counsel, he was forced to represent himself at trial against his wishes. On appeal, the Arkansas Court of Appeals held that Mr. Patton had forfeited his constitutionally protected right to counsel.

IV. OPINION BELOW

The opinion of the Arkansas Court of Appeals is published as Patton v. State, 569 S.W.3d 906 (Ark. App. 2019), and is attached as Appendix A-1.

V. JURISDICTION

Following the February 6, 2019 decision by the Arkansas Court of Appeals, the Arkansas Supreme Court denied Mr. Patton's petition for review on April 18, 2019. *See* Appendix A-10. Accordingly, jurisdiction is conferred on this Court pursuant to 28 U.S.C. § 1257(a).

VI. CONSTITUTIONAL PROVISIONS INVOLVED

The Sixth Amendment to the United States Constitution provides, in relevant part, "in all criminal prosecutions, the accused shall enjoy the right ... to have the Assistance of Counsel for his defence."

The Fourteenth Amendment to the United States Constitution provides, in relevant part: "No state ... shall deprive any person of life, liberty, or property,

without due process of law; nor deny any person within its jurisdiction the equal protection of laws."

VII. STATEMENT OF THE CASE

The Trial

Mr. Patton was arrested on rape and incest charges on July 31, 2016. Although he appeared without counsel at initial appearance, shortly thereafter, Mr. Patton retained private counsel. Having eventually made bond, he was released prior to his trial and while out, received lottery winnings of approximately six hundred eighty thousand dollars (\$680,000).

On September 1 2017, Patton’s retained attorney filed a motion to withdraw. The trial court granted the motion due to a breakdown in communication, and the court offered Mr. Patton time to retain new counsel, which he accepted. After four months of searching, Mr. Patton informed the court that he was unable to secure counsel and asked for appointed counsel. He reported that he had very little of his lottery winnings left and that he had been quoted “astronomical” prices that he could not pay. Although the court acknowledged that, due to the community’s awareness of his lottery winnings, Mr. Patton “might be getting quoted some high fees,” it made no additional inquiry into Mr. Patton’s financial means beyond the fact that he had won the lottery over a year ago. The court summarily declared him “not indigent,” accused him of trying to take advantage of the system, and advised him that he would go to trial in two weeks with or without an attorney. It is uncontested that Mr. Patton never made a voluntary and intelligent waiver of his Sixth Amendment right to counsel.

Representing himself just a couple of weeks later at his February 7, 2018 trial, Mr. Patton failed to assert any of the protections provided him by the state and federal constitutions, rules of procedure, or rules of evidence. Upon arriving at court and confronted with a motion in limine filed by the State, he was unable to articulate any argument in opposition to the motion. During jury selection, he did not ask a single question. At the conclusion of voir dire, the court prompted the State to make motions for cause to some jurors, and Mr. Patton was not allowed an opportunity to rehabilitate any of the potential jurors that the State struck for cause.

The situation did not get better once the jury was selected. Early on, the State called Mr. Patton's wife and elicited hearsay testimony from her. Mr. Patton failed to object to her testimony and it was not curtailed by the court. Mr. Patton's attempts at cross examination (where he was chastised twice for asking improper questions) were met with multiple sustained objections until, finally, he gave up in frustration. The State introduced two statements at trial, both arguably the product of a custodial interrogation. Yet Mr. Patton made no challenge to these incriminating statements. Notwithstanding any constitutional challenges, in one of the statements, Mr. Patton's drug use was referenced multiple times without objection or any curative instruction by the court. Based on the tenor of his questioning, it appears that Mr. Patton was not privy to discovery in the case.

At the close of the State's case, Mr. Patton made no challenge to the sufficiency of the State's case on any of the charged offenses. During closing arguments, Mr. Patton admitted that he would have liked to introduce some evidence, but without

the assistance of counsel, he was unable to do so. When he began to explain to the jury why he was without counsel, he was stopped by objection. At the bench, he maintained ignorance of the court's procedures. But the court's position was resolute—Mr. Patton had failed to secure new counsel, so he had to bear the burden of representing himself, regardless of the fact that he had requested appointed counsel.

Not surprisingly, the jury convicted Mr. Patton of two counts of rape and two counts of incest. It sentenced him to ten years on each count of rape and three years on each count of incest, with the sentences to run consecutively for a total sentence of twenty-six years in the Arkansas Department of Correction.

The Appeal

Mr. Patton filed a hand-written untitled document requesting an appeal. A partial record and motion for appointment of counsel was lodged with the Arkansas Supreme Court, and thereafter, counsel was appointed and the case was briefed and considered at the Arkansas Court of Appeals.

Despite Mr. Patton's contention that the trial court erred in allowing his retained counsel to withdraw without making sure that Mr. Patton had new counsel (retained or appointed) or had knowingly and intelligently waived his right to counsel, a conclusion well founded on established state law, the appellate court chose instead to rely on the concept of forfeiture, holding that Mr. Patton had forfeited his right to counsel by not retaining an attorney. This decision by the Arkansas Court of

Appeals became a final decision of the highest court in the State of Arkansas when the Arkansas Supreme Court denied review.

VIII. REASON FOR GRANTING THE PETITION

A. THIS COURT SHOULD GRANT CERTIORIARI TO ANSWER THE QUESTION OF WHETHER A CRIMINAL DEFENDANT CAN FORFEIT HIS SIXTH AMENDMENT RIGHT TO COUNSEL.

This case is an ideal vehicle for the Court to address, as an issue of first impression, the question of whether a criminal defendant can forfeit his right to counsel. Of the state and federal courts that have addressed forfeiture of the right to counsel, there is no consensus on the process. The only commonality among the holdings of the various courts is that to forfeit the right to counsel, the defendant must engage in extreme conduct or misbehavior. Nevertheless, Arkansas has firmly established itself as an outlier, finding an accused—in this instance, Mr. Patton, whose behavior was not extreme or violent—can forfeit the right to counsel in even ordinary circumstances.

This Court should grant Mr. Patton's petition for writ of certiorari, address the issue of whether a criminal defendant can forfeit the right to counsel, and hold that Arkansas's standard for Sixth Amendment forfeiture is untenable.

1. The constitutional right to counsel may be knowingly and intelligently waived, but this Court has not addressed whether it may be implicitly waived or forfeited due to a defendant's egregious conduct.

The Sixth Amendment to the United States Constitution guarantees that [i]n all criminal prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his Defence." The right to the aid of counsel is of such a fundamental nature that it is embraced within the due process clause of the Fourteenth

Amendment to the United States Constitution. Powell v. State of Alabama, 287 U.S. 45, 67–68 (1932).

The key to the Sixth Amendment’s counsel provision is that it provides for the “assistance” of counsel. “The language and spirit of the Sixth Amendment contemplate that counsel, like the other defense tools guaranteed by the Amendment, shall be an aid to a willing defendant.” Faretta v. California, 422 U.S. 806, 820 (1975). “Compliance with [the Sixth Amendment’s] constitutional mandate is an essential jurisdictional prerequisite to a federal court’s authority to deprive an accused of his life or liberty.” Johnson v. Zerbst, 304 U.S. 458, 477–78 (1938).

When this right is properly waived, the assistance of counsel is no longer a necessary element of the court’s jurisdiction to proceed to conviction and sentence. If the accused, however, is not represented by counsel and has not competently and intelligently waived his constitutional right, the Sixth Amendment stands as a jurisdictional bar to a valid conviction and sentence depriving him of life or his liberty.

Id.; see also Gideon v. Wainwright, 372 U.S. 335 (1963) (extending the right to counsel to state defendants). In Johnson, the Court required that a defendant “competently and intelligently waive his right to counsel.” 304 U.S. at 469.

While a defendant can waive his right to the assistance of counsel, forfeiture of the right to assistance of counsel has never been formally recognized by this Court. Moreover, at least four justices have concluded that while “[s]ome rights may be forfeited by means short of waiver . . . others may not,” and identified the right to counsel as one that can only be relinquished intentionally. Freytag v. Comm’r of Internal Revenue, 501 U.S. 868, 894 n. 2 (1991) (Scalia, J., concurring) (citing Johnson, 304 U.S. 458, 464).

2. **There is significant disagreement among state and federal courts as to whether a criminal defendant can forfeit his right to counsel and, if so, under what circumstances.**

State and federal courts have not reached a consensus on whether or not an accused can forfeit his constitutional right to counsel, and if so, what type of conduct gives rise to such a forfeiture. The only consistent theme among the courts that have affirmatively found a defendant can forfeit the right to counsel is egregious misbehavior on behalf of the defendant. However, the degree of conduct that qualifies for forfeiture greatly varies.

For instance, in State v. Hampton, the Arizona Supreme Court reasoned that a defendant may forfeit his right to counsel if he engages in “severe misconduct” or “a course of disruption aimed at thwarting judicial proceedings.” 92 P.3d 871, 874 (Ariz. 2004). A finding that one has forfeited his right to counsel is reserved for the most severe cases and should be made only when less restrictive measures are inappropriate. Id. Likewise, in adopting a forfeiture rationale, the Delaware Supreme Court found that a defendant may forfeit his right to appointed counsel if he engages in “extremely serious misconduct … intended to prevent the trial from going forward.” Bultron v. State, 897 A.2d 758, 763 (Del. 2006). In Maine, a defendant may forfeit his right to counsel if he engages in “serious misconduct that directly undermines the integrity and effectiveness of that right or frustrates the judicial process in a substantial way.” State v. Nisbet, 134 A.3d 840, 857 (Me. 2016). A finding of forfeiture requires a determination that “there are no lesser judicial responses that can be

reasonably be expected to prevent or ameliorate the ongoing effects of the defendant's misconduct." Id.; see also People v. Kammeraad, 858 N.W.2d 490, 510 (Mich. App. 2014) (defendant may forfeit his right to counsel if he engages in "purposeful tactics and conduct that were employed to delay and frustrate the orderly process of the lower court's proceedings"); State v. Lehman, 749 N.W.2d 76, 82 (Minn. App. 2008) (defendant may forfeit his right to counsel if he engages in "outrageous" and "manipulative conduct," such as violence); Commonwealth v. Staton, 120 A.3d 277, 285 (Pa. 2015) (defendant may forfeit his right to counsel through either "extremely serious misconduct" or "extremely dilatory conduct"); State v. Carruthers, 35 S.W.3d 516 (Tenn. 2000) (where a defendant engages in serious misconduct, or uses the right to counsel as a ploy to delay trial, a finding of forfeiture is appropriate even though the defendant was not warned of the potential consequences of his or her actions); State v. Suriano, 893 N.W.2d 543, 552 (Wis. 2017) (defendant who acts in a voluntary and deliberate way that frustrates "the orderly and efficient progression of the case" forfeits his right to counsel).

Other states have acknowledged that extraordinary circumstances may result in the forfeiture of the right to counsel, but those states have limited the mechanism of forfeiture to protect a defendant's right to due process. For example, in California and Massachusetts, a forfeiture hearing must be held prior to depriving a criminal defendant of his right to counsel. King v. Superior Court, 132 Ca. App. 4th 929 (Cal. Ct. App. 2003); Commonwealth v. Means, 907 N.E.2d 646 (Mass. Sup. Jud. Ct. 2009). Other states require the defendant be warned that his right to counsel may be lost if

he continues to engage in serious misconduct. See, e.g., Brickert v. State, 673 N.E.2d 493 (Ind. Ct. App. 1996) (holding that fundamental right to counsel may be waived by conduct after warning but not subject to outright forfeiture); McCollum v. State, 186 So.3d 948 (Miss. Ct. App. 2016) (holding that there was no basis for finding of implied waiver or forfeiture unless defendant has been warned that conduct such as physical violence may result in loss of right to counsel); State v. Montes, 442 P.3d 1247 (Utah Ct. App. 2019) (holding that threats to attorney were not sufficiently egregious to rise to the level of forfeiture and without adequate warning, could not result in waiver of right to counsel).

In contrast, the United States Court of Appeals for the Fourth Circuit has refused to recognize that a defendant, even an uncooperative one, forfeited the right to counsel. United States v. Ductan, 800 F.3d 642 (4th Cir. 2015). Other federal circuits have disagreed where a defendant's behavior was considered egregious. In United States v. Leggett, the court held that a defendant may forfeit the right to counsel if he engages in "extremely serious misconduct." 162 F.3d 237, 250 (3d Cir. 1998); see also United States v. Goldberg, 67 F.3d 1092 (3d Cir. 1995). Although the court in Gilchrist v. O'Keefe found that habeas relief was not warranted where the state court found that defendant had forfeited his right to counsel after physically assaulted counsel, it did not suggest that acts of physical violence toward counsel automatically justify a finding of forfeiture. 260 F.3d 87 (2nd Cir. 2001). Notwithstanding, in other cases, violent or threatening behavior toward counsel is a prerequisite for forfeiture. See Carruthers v. Mays, 889 F.3d 273 (6th Cir. 2018)

(denying habeas relief where state court found that defendant had forfeited his right to counsel after filing complaints and threatening violence against multiple court-appointed attorneys); United States v. Thompson, 335 F.3d 782 (8th Cir. 2003) (allowing forfeiture where defendant engaged in abusive behavior toward counsel); Vreeland v. Zupan, 906 F.3d 866 (10th Cir. 2018) (denying habeas relief where state court found forfeiture after defendant threatened counsel, filed numerous meritless motions, and fired counsel in an attempt to delay trial); United States v. McLeod, 53 F.3d 322 (11th Cir. 1995) (holding that under certain circumstances, a defendant who is abusive toward his attorney may forfeit his right to counsel).

State and federal courts, which have come to various conclusions on this issue, would benefit from guidance from this Court regarding whether a defendant can forfeit the right to counsel and under what circumstances.

3. Arkansas has embraced an extreme understanding of the concept of forfeiture of the right to counsel.

By its holding in Mr. Patton's case, Arkansas adopted a radical and dangerous precedent for forfeiture of the right to counsel. Arkansas's position is out of line with all of the other courts—state and federal—that have addressed forfeiture. Because of Arkansas's extreme position, this case presents a model medium for this Court to address forfeiture of the right to counsel.

The Arkansas appellate court held that Mr. Patton, who never acted violent or abusive toward his counsel and, at most, took four months off the trial calendar in an attempt to procure private counsel, forfeited his right to counsel without warning or process. By all accounts, Mr. Patton made no overt attempts to thwart the court or

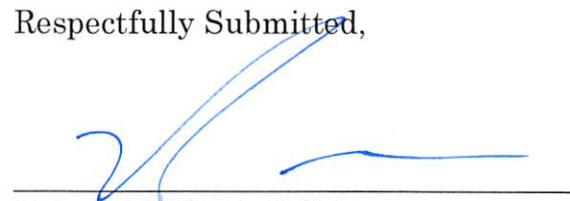
its process. He was neither belligerent or disobedient. While his retained counsel was allowed to withdraw (several months prior to trial) because the two were not communicating well, there was no allegation that Mr. Patton acted inappropriately or violently. See Transcript of Proceedings at A-11. The record is devoid of any evidence that Mr. Patton established a pattern of delay or dilatory practices. In fact, the record establishes that he dutifully looked for a second lawyer, was unable to afford one, and was appealing to the trial court for counsel to be appointed. Prior to the deprivation of his right to counsel, Mr. Patton was never warned that his right could be sacrificed if he did not find an attorney, and he had no redress it was. Significantly, Mr. Patton never knowingly and intelligently waived his right to counsel on the record. In the end, he was forced to proceed without an attorney and represent himself at trial, where he was ill-prepared and woefully ignorant of the legal process, resulting in a conviction and prison sentence.

This Court should grant the writ of certiorari to answer the question of whether a criminal defendant can forfeit the right to counsel and whether Mr. Patton's circumstances, which can hardly be classified as extreme or extraordinary, qualify.

IX. CONCLUSION

For the foregoing reasons, Mr. Patton's petition for writ of certiorari should be granted.

Respectfully Submitted,



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X. APPENDIX

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2. April 18, 2019 denial of Mr. Patton's petition for review to the Arkansas Supreme Court.....A 10
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Cite as 2019 Ark. App. 63

ARKANSAS COURT OF APPEALS

DIVISION I

No. CR-18-224

ADAM PATTON

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

OPINION DELIVERED: FEBRUARY 6, 2019

APPEAL FROM THE DESHA
COUNTY CIRCUIT COURT
[NO. 21ACR-16-65]

HONORABLE SAM POPE, JUDGE

AFFIRMED

ROBERT J. GLADWIN, Judge

On February 7, 2018, Adam Patton was convicted in the Desha County Circuit Court of rape and incest.¹ On appeal, he argues that the circuit court violated his Sixth Amendment right to assistance of counsel. We affirm.

I. Procedural History

Appellant was charged by information filed on August 19, 2016, with the rape of his son, JP. The information was amended on May 16, 2017, to include three counts of rape and two counts of incest involving the same victim.

At the pretrial hearing on September 18, 2017, the circuit court granted defense counsel's motion to withdraw, which was based on appellant's failure to contact him. Appellant alleged that he had tried to contact his lawyer but agreed that they had not

¹The original sentencing order was filed on February 7, 2018, and the amended sentencing order was filed on February 16, 2018.

spoken prior to the pretrial hearing. When the circuit court told appellant that it was inclined to grant counsel's motion to withdraw, appellant asked the court to give him time to find another lawyer. The circuit court granted the motion to withdraw and continued appellant's case until January 22, 2018, which was the pretrial date. The circuit court told appellant that he needed a lawyer on his case within the next month to two months. The trial date was reset to February 6-9, 2018.

At the pretrial hearing on January 22, appellant told the court he had not hired another attorney because he could not find anyone he "could come to an agreement on, moneywise, financially." The following colloquy occurred:

THE COURT: Mr. Patton is here for pretrial. The State has charged him with the offenses of rape, which allegedly occurred between 2012 and 2016. He was formerly represented by Mr. Robinson, his firm, which filed a motion to withdraw which I granted in September. He was to hire another lawyer. [Appellant], have you done that?

APPELLANT: No, sir, Your Honor. I haven't, I guess, found somebody that we could come to an agreement on, moneywise, financially. I was here today to ask you for, if maybe the courts would appoint me one, to say the evidence and all that the courts have against me, I guess I'm unprepared. You know, I have spoke to a few different lawyers. We just can't come to an agreement, Your Honor, so I'm kind of at your mercy.

THE COURT: What is your income?

APPELLANT: Right now, Your Honor, not a lot. You know, I ran across a little stroke of luck a little while back with the lottery, and all that I've been living off of, me and my family. As far as income weekly, there isn't any.

THE COURT: How much money do you have left from your winnings?

....

APPELLANT: Well, there was remodeling of my mother's home, vehicles for my wife and my oldest son, one for me, one for my mother. So

....

THE COURT: You're not indigent. I'm not going to appoint you a lawyer. It's clear to me that you are trying to take advantage of the system. Now, you're going to trial in two weeks with or without a lawyer. I don't care.

....

THE COURT: Well, I'm not going to appoint him counsel. He is not indigent. And that's what I, the Constitution requires is me to appoint indigent counsel. Now, if he wants to go to trial without a lawyer, he's made that choice as far as I'm concerned. Just his statements regarding his disposition of his lottery winnings is clear to me that he had not taken care of his personal business and he's putting himself in this position. I so find. So, we'll just go from there. You're ordered back to court for jury trial February 6th—we're going to set that date right now—at 8:30 a.m. You can be dismissed until then.

Prior to the commencement of the trial on February 6, the State requested as follows:

PROSECUTOR: Judge, the only other issue—and the court may have done this on the pretrial date that we had, you know, a little over two weeks ago and I may have missed it. But—So if the court has done this, I'll withdraw the request.

With the situation we're in with [appellant] being deemed not to be indigent, I didn't know if there was a record made as the fact that he did win the lottery, he acknowledged that, the amount that he won and when that was. I think—I don't think the record reflects that. And I would ask that, the court would inquire as to that so that the record would reflect that, that winnings and earnings.

APPELLANT: I believe it was around the first of March or so, Your Honor. It was a little over six hundred and eighty thousand (\$680,000) is what I left there with.

THE COURT: Okay. So around March 1st of 2017?

APPELLANT: Yes, sir.

THE COURT: You received how much?

APPELLANT: Six hundred and eighty thousand dollars (\$680,000) is what I deposited into an account.

THE COURT: From the Arkansas Lottery? That was after taxes?

APPELLANT: Yes, sir.

THE COURT: Okay.

PROSECUTOR: And that was while this case was pending?

THE COURT: Yes.

APPELLANT: While I was out on bond.

THE COURT: Of course, you've had a lawyer in this case before.

APPELLANT: Yes, sir. And, Your Honor, I did search for counsel, you know. And, like I say, everybody has heard about the lottery and since they know, you know, the number they threw out there is just astronomical and I couldn't you know, *I couldn't justify paying somebody those five digits*, you know, numbers to talk about something they had no idea. I mean, I understand they are more knowledgeable about, your, the way things go in here. But as far as what me and my son went through . . . (emphasis added).

THE COURT: Well, you've got some serious charges, [appellant].

APPELLANT: Yes, sir.

THE COURT: I tried to talk to you about this and I've tried to encourage you to get your own lawyer. I realize that the fact of your lottery winnings may be knowledge, public knowledge, so that, you know, maybe people try to gouge you or whatever. I don't know. But it would seem to me that if you look long and hard enough, you could find somebody to represent you for a reasonable sum of money. Because of the serious nature of the charges . . .

APPELLANT: Yes, sir.

THE COURT: . . . you might be getting quoted some high fees. I don't know. I don't know all that's involved in it. But you certainly have resources to hire counsel and that's the reason I ruled the way I did.

The State presented four witnesses—appellant's wife, two police officers, and the victim, JP. Appellant and his mother testified for the defense. At the conclusion of evidence, the State dismissed one count of rape. The jury convicted appellant of two counts of rape and two counts of incest, and he was sentenced to a total term of 312 months' imprisonment. Appellant filed a timely notice of appeal.

II. *Applicable Law and Standard of Review*

The Sixth Amendment to the United States Constitution, made obligatory on the states by the Due Process Clause of the Fourteenth Amendment, guarantees an accused the right to have the assistance of counsel for his defense. *Gideon v. Wainwright*, 372 U.S. 335, 342-44 (1963). Article 2, section 10 of the Arkansas Constitution provides that an accused in a criminal prosecution has the right to be heard by himself and his counsel. A criminal defendant has a right to represent himself at trial when his waiver of the right to counsel is knowingly and intelligently made. *Faretta v. California*, 422 U.S. 806 (1975).

Arkansas Rule of Criminal Procedure 8.2(a) (2017) provides that a judicial officer shall determine whether the defendant is indigent and, if so, appoint counsel to represent him or her at the first appearance, unless the defendant knowingly and intelligently waives the appointment of counsel. In the instant case, the circuit court found that appellant was not indigent.

On appeal, the standard of review is whether the trial court abused its discretion in finding that petitioner was not indigent. *Burningham v. State*, 342 Ark. 95, 27 S.W.3d 351 (2000). The criteria to be used in determining the indigency of a defendant are set out in *Burningham*. Indigency is considered on a case-by-case basis, and the burden of establishing his status as a pauper is on the defendant claiming indigent status. *Id.* Although there is no set test for indigency, which is a mixed question of fact and law, some of the factors to be considered are (1) income from employment and governmental programs such as social security and unemployment benefits; (2) money on deposit; (3) ownership of real and personal property; (4) total indebtedness and expense; (5) the number of persons dependent on the appellant for support. *Id.* The ability of bystanders such as friends and family members to assist with expenses is not a factor in determining a petitioner's indigency, although an exception may be made if the petitioner has control or complete discretionary use of funds raised by others. *Id.*

Berger v. Kelley, 2018 Ark. 381, at 3, ____ S.W.3d, ____.

III. Argument

Appellant argues that the circuit court violated his Sixth Amendment right to assistance of counsel. He argues that the court erred by granting defense counsel's motion to withdraw before assuring that new counsel had been retained, indigent counsel had been appointed, or the accused voluntarily and intelligently waived the assistance of counsel. *Tollett v. U.S.*, 444 F.2d 622 (8th Cir. 1971). He argues that the law in Arkansas is that an accused cannot be tried without the assistance of an attorney unless such right is

voluntarily and intelligently waived. *Murdock v. State*, 291 Ark. 8, 9, 722 S.W.2d 268, 269 (1987). Appellant argues that new counsel was not retained, counsel was not appointed, and the record does not indicate that he made a voluntary and intelligent waiver of counsel.

Appellant contends that the circuit court twice made a finding that he was not indigent and declined to appoint counsel. He contends that he desired counsel and did not waive his right. He claims that he was never given the opportunity to execute an affidavit of indigency for the court's review, and he argues that the lottery winnings that were referenced had been spent and he did not have any current income.

Appellant claims that, even assuming a developed factual basis for declining to find him indigent, the circuit court deprived him of his right to counsel because a voluntary and intelligent waiver was not established on the record. He cites *Scott v. State*, 298 Ark. 214, 766 S.W.2d 428 (1989), for the proposition that the record must show that an accused intelligently and understandably rejected counsel. In *Scott*, the Arkansas Supreme Court reversed and remanded the defendant's DWI conviction because there was no record on the defendant's waiver of counsel. Appellant contends that the record here establishes that he desired the assistance of counsel. Further, he claims that his trial performance exhibited a lack of rational understanding of the rules of evidence or the natural stages of a trial.

The State contends that the circuit court did not abuse its discretion because appellant had abundant means and time to hire counsel but decided not to. The State

contends that this is not a waiver case but a forfeiture case. We agree that while there is not a voluntary and intelligent waiver on the record, appellant forfeited his right to counsel. In *Robinson v. State*, 2017 Ark. App. 377, 526 S.W.3d 20, this court held:

We note that, even in the absence of a voluntary and intelligent waiver of the right to counsel, the right to counsel may be forfeited by a defendant who engages in conduct that prevents a fair and orderly exposition of the issues. The right to counsel of one's choice is not absolute and may not be used to frustrate the inherent power of the court to command an orderly, efficient, and effective administration of justice. Once competent counsel is obtained, the request for a change in counsel must be considered in the context of the public's interest in the prompt dispensation of justice. The constitutional right to counsel is a shield, not a sword, and a defendant may not manipulate this right for the purpose of delaying trial or playing "cat-and-mouse" with the court. Appellant had access to competent counsel, and he was obviously attempting to prevent the scheduled trial and thwart the court system.

Id. at 20, 526 S.W.3d at 33–34 (citations omitted).

The State claims that appellant's refusal to hire counsel despite abundant means and opportunity to do so frustrated the orderly administration of justice. *See, e.g., Philyaw v. State*, 288 Ark. 237, 704 S.W.2d 608 (1986) (noting that Philyaw was only allowed to use the telephone at night and could not reach an attorney during the week he was given to secure counsel), *overruled on other grounds by Oliver v. State*, 323 Ark. 743, 918 S.W.2d 690 (1996). Appellant was free on bond during the relevant time period. Further, appellant had won the lottery, taking home \$680,000 during the pendency of the case. He established on the record that he did not want to hire a lawyer because he could not justify spending the money. Thus, the circuit court did not abuse its discretion in determining that appellant preferred not to hire a lawyer. Accordingly, the circuit court's ruling that

appellant forfeited his right to counsel by refusing to hire counsel for his defense was not an abuse of discretion.

Affirmed.

VAUGHT, J., agrees.

GLOVER, J., concurs.

DAVID M. GLOVER, Judge, concurring. Patton was charged with rape and incest of one of his sons. He retained counsel; counsel was later discharged, after hearing, by the circuit court, at counsel's request. Patton was told by the circuit court to get a new lawyer within the next two months. While out on bond for the charges of which he was eventually convicted, Patton won \$1,000,000 in the Arkansas lottery, netting \$680,000 after taxes.

As the State argues and the majority confirms, this case is a forfeiture issue and can be affirmed as such. I write simply to express very strong concerns about how the trial court handled Patton's Sixth Amendment right to assistance of counsel. No member of the bar or our judiciary should be under any illusion that the manner in which this case played out is to be considered the norm in dealing with such an important constitutional right as assistance of counsel.

Robert M. "Robby" Golden, for appellant.

Leslie Rutledge, Att'y Gen., by: Christian Harris, Ass't Att'y Gen., for appellee.

FORMAL ORDER

**BE IT REMEMBERED, THAT A SESSION OF THE SUPREME COURT
BEGUN AND HELD IN THE CITY OF LITTLE ROCK, ON MAY 24, 2018, AMONGST
OTHERS WERE THE FOLLOWING PROCEEDINGS, TO-WIT:**

SUPREME COURT CASE NO. CR-18-224

ADAM PATTON
APPELLANT

V. APPEAL FROM DESHA COUNTY CIRCUIT COURT - 21ACR-16-65

STATE OF ARKANSAS APPELLEE

APPELLANT'S PRO SE PETITION FOR LEAVE TO PROCEED IN FORMA
PAUPERIS AND MOTION FOR APPOINTMENT OF COUNSEL ARE GRANTED.

TENDERED PARTIAL RECORD FILED THIS DATE. ROBERT M. GOLDEN
APPOINTED AS COUNSEL FOR APPELLANT.

IN TESTIMONY, THAT THE ABOVE IS A TRUE COPY OF THE ORDER OF SAID SUPREME COURT, RENDERED IN THE CASE HEREIN STATED, I, STACEY PECTOL, CLERK OF SAID SUPREME COURT, HEREUNTO SET MY HAND AND AFFIX THE SEAL OF SAID SUPREME COURT, AT MY OFFICE IN THE CITY OF LITTLE ROCK, THIS 24TH DAY OF MAY, 2018.

Tracey Lectol CLERK

BY: _____

DEPUTY CLERK

ORIGINAL TO CLERK

CC: ADAM PATTON
ROBERT M. "ROBBY" GOLDEN
DAVID R. RAUPP, SENIOR ASSISTANT ATTORNEY GENERAL
HON. SAM POPE, CIRCUIT JUDGE

11
PROPERTY OF ARKANSAS SUPREME COURT/COURT OF APPEALS

SUPREME COURT CR-18-224

ADAM PATTON

APPELLANT(S)

V. DESHA COUNTY CIRCUIT COURT

SAMUEL B POPE

21ACR-16-65

STATE OF ARKANSAS

APPELLEE(S)

4 VOLUME COMPLETE RECORD ~~TENDERED~~
COUNSEL *Lodged*

ADAM PATTON APPELLANT PRO SE
ADC# 169395 EARU
P.O. BOX 970
MARIANNA AR 72360

Motion to supplement the record granted;
transferred to Court of Appeals August 2, 2018

ATTORNEY GENERAL APPELLEE COUNSEL
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COMPLETE RECORD ~~TENDERED~~ JUNE 13, 2018
Filed August 2, 2018
STACEY PECTOL, CLERK

BY RENEE R. HERNDON, EXECUTIVE ASSISTANT TO THE CLERK

VOLUME 1

1 MR. ROBINSON: 18th, Your Honor.

2 THE COURT: Yes.

3 He may be excused until then.

4 MR. ROBINSON: Thank you, Your Honor.

5 That's all I have, Your Honor. May I stand
6 aside?

7 | THE COURT: You may.

8 (Whereupon, hearing concluded.)

10 September 18, 2017 Arkansas City, Arkansas

11 THE COURT: Adam Patton.

12 (Whereupon, the Defendant and Defense Counsel
13 approached the Bench.)

14 THE COURT: Mr. Patton is here with his counsel,
15 Mr. Robinson, for pre-trial. Mr. Robinson also has a
16 pending motion to withdraw.

17 Does that need to be considered today?

18 MR. ROBINSON: Yes, Your Honor.

19 THE COURT: Okay.

20 Mr. Patton, Mr. Robinson has indicated in his
21 motion to withdraw that he is asking to be relieved
22 from the responsibility for representing you because
23 of your failure to keep him updated on your
24 whereabouts and you won't contact him about your case
25 as he needs to be to do his job.

1 Do you have anything you wish to say about this
2 allegation?

3 THE DEFENDANT: Well, yes, sir. I have tried to
4 be in contact with Mr. Greg.

5 Whoever is relaying our messages hasn't done it
6 for us, but I have tried to be in contact with you
7 every week since the last time actually.

8 MR. ROBINSON: When we left the courthouse, Adam
9 wouldn't talk to me, got upset with me, walked off.
10 I told -- That was, of course, on a Monday, Your
11 Honor. I told his mother I am not available
12 tomorrow, but Wednesday, Thursday or Friday. He and
13 I need to talk. I never heard back from anybody.

14 I then got a phone call from somebody in the
15 family about a collateral matter that had nothing at
16 all to do with this case. I have received one phone
17 call from Adam. I signed a -- At the end of that
18 Friday, I signed a motion to be relieved and couldn't
19 figure out why I hadn't heard back from the Court.

20 I was down here with Judge Porch. When I left,
21 I walked across the hall and found out that we never
22 filed that motion, which is why I hadn't heard from
23 the Court. So I filed one considerably later.

24 I got a phone call from Adam which was about two
25 days later. I wasn't in the office. I assume that's

1 what he wanted to talk to me about, why I filed the
2 motion to get out.

3 THE DEFENDANT: Also, Mr. Greg, I did stop by
4 your office once or twice on my way to Dumas.

5 I'm sorry, Your Honor. Me and him, you know,
6 just didn't -- Wasn't no one -- Just stopped by,
7 cause, again, I had, did try to call a few times, you
8 know. I agree we hadn't spoke, but there was an
9 attempt.

10 MR. PURYEAR: Your Honor, I actually left here
11 on May 15th believing that Mr. Robinson was being
12 relieved as counsel. And, like him, I lost track of
13 it and just checked a few weeks ago to see if that
14 order had been entered and realized it had not. I
15 didn't know if we were waiting on the motion or not,
16 but I left here in the 15th of May believing he was
17 to be relieved as counsel.

18 THE COURT: Well, y'all may have talked about
19 it, but there was no motion filed until September
20 1st.

21 MR. ROBINSON: I cannot explain to the Court why
22 my motion was not filed. I have a distinct
23 remembrance of signing it. But until I checked with
24 the Circuit Clerk's office here roughly a month ago
25 and found that it had not been filed, was unaware

1 that we hadn't filed it.

2 THE COURT: Well, here's where we are. Mr.
3 Patton, when the Court had you here, I believe it was
4 on September the 19th, you were given an information,
5 personal information sheet. You filled it out.

6 THE DEFENDANT: Yes, sir.

7 THE COURT: You indicated to the Court your
8 mailing address and residence was 209 South May
9 Drive, Dumas.

10 THE DEFENDANT: Yes, sir.

11 THE COURT: This Court entered an order setting
12 your case for trial October 3rd through the 5th and
13 for today's hearing at that time. And we mailed that
14 to you at that address and the mail's came back. I
15 don't even know how you got notice of today's
16 hearing.

17 THE DEFENDANT: In the mail.

18 THE COURT: Okay.

19 At what address?

20 THE DEFENDANT: 209 South May.

21 THE COURT: Well, what Mr. Robinson's got here
22 today with me is credibility because he's came to
23 court as ordered always. He's always, as far as I
24 can tell, been honest with me in his dealings.

25 THE DEFENDANT: Yes, sir.

1 THE COURT: And if he's been unable to
2 communicate with you, I take him at his word.

3 THE DEFENDANT: Well, I mean, I agree with him.
4 I've tried, too, Your Honor. I mean, I concur with
5 that.

6 THE COURT: Okay.

7 So -- And I know he can't do his job that he has
8 professionally if he can't communicate with you.

9 THE DEFENDANT: I totally agree.

10 THE COURT: So, you know, I'm inclined to grant
11 his motion for that reason.

12 THE DEFENDANT: Yes, sir.

13 THE COURT: But when I do that, that leaves you
14 without counsel.

15 THE DEFENDANT: Yes, sir.

16 THE COURT: And I still have the responsibility
17 to get you counsel or give you time to get counsel.

18 THE DEFENDANT: Yes, sir. I was going to ask
19 the Court --

20 THE COURT: Which one you need?

21 THE DEFENDANT: Going to ask the Court if you
22 can give me a little bit to find me another lawyer.
23 I don't know what the process is with that.

24 THE COURT: Mr. Robinson, you're relieved. Your
25 motion is granted.

1 MR. ROBINSON: Thank you, Your Honor.

2 MR. PURYEAR: Judge, may I approach?

3 THE COURT: Yes.

4 (Whereupon, the following Bench discussion was
5 had out, to wit:)

6 MR. PURYEAR: Judge, when we discussed this in
7 May, I was concerned about the victim. I subpoenaed
8 him. He's here today. I don't know if the Court can
9 orally instruct him to appear on the trial date today
10 so there's, I can get that on the record so there's
11 not any issues and it's part of the record. I just
12 want to Court to instruct him of that date.

13 I assume you will set this after the first of
14 the year to give him time to find counsel.

15 (Whereupon, the following was had in open court,
16 to wit:)

17 THE COURT: Okay.

18 Mr. Patton, I'm going to continue your case next
19 until January 22nd. That will be for pre-trial. You
20 need a lawyer on your case within the next month,
21 month and a half, two months.

22 THE DEFENDANT: Do I need to get in contact with
23 the Court and let them know that I have found --

24 THE COURT: Well, yes, sir. And the lawyer
25 needs to contact the Court, as well.

1 I'm going to exclude the period of time from
2 today's date, September 18th, until January 22nd from
3 the running of the speedy trial to allow you time to
4 hire counsel.

5 THE DEFENDANT: All right.

6 THE COURT: I'm going to reset your trial date
7 to February 6th through the 9th.

8 Mr. Puryear advised there may be witnesses who
9 have been subpoenaed for trial that's presently, or
10 was set for October 3rd through the 5th present in
11 the courtroom today. I'll order them to appear for
12 court February 6th through the 9th. We'll extend
13 their subpoenas to those dates. It is so ordered.

14 MR. PURYEAR: Your Honor, can I have -- I don't
15 know how the Court can acknowledge that he is
16 actually here, but --

17 THE COURT: I don't know who it is.

18 MR. PURYEAR: Oh. Jett Patton.

19 THE COURT: Is Mr. Jett Patton present?

20 MR. JETT PATTON: (Indicating)

21 THE COURT: Okay. Mr. Patton, you've been
22 subpoenaed for that trial, so you're order back for
23 that court date.

24 MR. JETT PATTON: Yes, sir.

25 THE COURT: February 6th through the 9th.

1 We'll pick one particular day among those days
2 as we get closer. Probably at the pre-trial date
3 we'll have a better idea. Stay in touch with Mr.
4 Puryear so you will know when to be here
5 specifically.

6 MR. JETT PATTON: Yes, sir.

7 THE COURT: Okay.

8 I'll excuse you, Mr. Patton, until January 22nd.

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Okay. Thank you.

11 | THE DEFENDANT: Yes, sir.

12 (Whereupon, hearing concluded.)

14 January 22, 2018 Arkansas City, Arkansas

15 THE COURT: Adam Patton.

16 (Whereupon, the Defendant approached the Bench.)

17 THE COURT: Mr. Patton is here for pre-trial.

18 The State has charged him with the offense of rape,
19 which allegedly occurred between 2012 and 2016. He
20 was formerly represented by Mr. Robinson, his firm,
21 which filed a motion to withdrawn which I granted in
22 September. He was to hire another lawyer.

23 Mr. Patton, have you done that?

24 THE DEFENDANT: No, sir, Your Honor. I haven't,
25 I guess, found somebody that we could come to an

1 agreement on, moneywise, financially. I was here
2 today to ask you for, if maybe the Courts would
3 appoint me one, to say the evidence and all that the
4 Courts have against me, I guess I'm unprepared.

5 You know, I have spoke to a few different
6 lawyers. We just can't come to an agreement, Your
7 Honor, so I'm kind of at your mercy.

8 THE COURT: What is your income?

9 THE DEFENDANT: Right now, Your Honor, not a
10 lot. You know, I ran across a little stroke of luck
11 a little while back with the lottery, and all that
12 I've been living off of, me and my family. As far as
13 income weekly, there isn't any.

14 THE COURT: How much money do you have left from
15 your winnings?

16 THE DEFENDANT: Not -- Not a lot to put my hands
17 on actually. Like I say, not --

18 THE COURT: Well, that doesn't answer my
19 question.

20 THE DEFENDANT: Well, yes, sir. I can't really
21 tell you. Honestly, cash money in my pocket, none.
22 Don't have --

23 THE COURT: Where is the winnings at?

24 THE DEFENDANT: Well, there's, there was
25 remodeling of my mother's home, vehicles for my wife

1 and my oldest son, one for me, one for my mother. So

2 --

3 THE COURT: You're not indigent. I'm not going
4 to appoint you a lawyer. It's clear to me that you
5 are trying to take advantage of the system. Now,
6 you're going to trial in two weeks with or without a
7 lawyer. I don't care.

8 THE DEFENDANT: Okay.

9 THE COURT: So that's where you're at.

10 Mr. Puryear, you want to say anything?

11 MR. PURYEAR: No, Your Honor.

12 THE COURT: Okay.

13 You want to try him without a lawyer?

14 MR. PURYEAR: If the Court, if that's what the
15 Court --

16 THE COURT: Well, I'm not going to appoint him
17 counsel. He is not indigent. And that's what I, the
18 Constitution requires is me to appoint indigent
19 counsel. Now, if he wants to go to trial without a
20 lawyer, he's made that choice as far as I'm
21 concerned. Just his statements regarding his
22 disposition of his lottery winnings is clear to me
23 that he had not taken care of his personal business
24 and he's putting himself in this position. I so
25 find. So we'll just go from there.

1 You're ordered back to Court for jury trial
2 February 6th -- we're going to set that date right
3 now -- at 8:30 a.m.

4 You can be dismissed until then.

5 (Whereupon, hearing concluded.)

6 _____
7 February 7, 2018 Arkansas City, Arkansas

10 THE COURT: Okay. We'll be on the record in
11 Chambers prior to jury selection in the State against
12 Adam Patton.

13 Mr. Puryear is here as the Deputy Prosecutor for
14 the State; Mr. Patton is here pro se.

15 Mr. Puryear, you had wanted to be heard on a
16 motion in limine?

1 THE COURT: When did you file the amended
2 information.

3 THE COURT REPORTER: May 16th, I believe, Judge,
4 or thereabouts.

5 THE COURT: Of 2017?

6 MR. PURYEAR: '17.

7 THE COURT: So you want to amend to allege that
8 between July, excuse me, January 1st, 2012, and July
9 31st, 2016?

10 MR. PURYEAR: That's correct.

11 THE COURT: You are alleging on three separate
12 occasions?

13 MR. PURYEAR: Yes, Your Honor.

14 THE COURT: You want to amend to say that?

15 MR. PURYEAR: I do, Your Honor.

16 THE COURT: I mean, you say there are three
17 instances, but --

18 MR. PURYEAR: Yes. That's correct, Your Honor.

19 THE COURT: Okay.

20 And then you've got two counts of incest?

21 MR. PURYEAR: That's correct.

22 THE COURT: And that's that he did in the one
23 hundred and eighty-day period preceding December
24 31st, 2015, being sixteen years of age or older,
25 engage in deviate sexual activity with J.L.P. --

1 MR. PURYEAR: Yes, Your Honor.

5 MR. PURYEAR: That's correct.

6 THE COURT: Okay. Very well.

7 Motion to amend will be granted as far as the
8 insertion of the word "between."

9 Okay. Anything else preliminary?

10 MR. PURYEAR: Yes, Your Honor. On the motion in
11 limine, this week, Monday afternoon, I actually
12 received some information. And I don't know, but
13 based upon that information, I believe that today at
14 trial the Defendant, Mr. Patton, may attempt to
15 introduce or put on testimony of prior sexual conduct
16 of his son, J.L.P..

17 And any specific acts, I believe, are precluded
18 pursuant to the rape shield statute, 16-42-101(B);
19 specifically states that in a criminal prosecution
20 for rape or attempt to commit or solicitation to
21 commit or conspiracy to commit, opinion evidence,
22 reputation evidence or specific instances of the
23 victim's prior sexual conduct with the Defendant or
24 any other person, whether true or not, is not, should
25 not be admissible by the Defendant.

1 And I've cited a case, M.M. versus State of
2 Arkansas, 350 Ark. 328, that says when consent is not
3 an issue, whether the victim had sexual relations
4 with another person is entirely collateral. And it's
5 our position that the way this is charged, the rape
6 counts, being a guardian of J.L.P. and J.L.P. being
7 under the age or being a minor at the time, did
8 engage in some deviate sexual activity. Therefore,
9 consent is not an element or issue.

10 THE COURT: And what cause do you have to
11 believe that Mr. Patton would attempt to introduce
12 that into evidence?

13 MR. PURYEAR: Just in discussions with the
14 victim, the victim's mother and other potential
15 witnesses. When I was interviewing them, they said
16 that had been discussed or the Defendant has
17 mentioned that before. And even in his interview,
18 mentioned, I believe, if I'm not mistaken, mentioned
19 that. But I may be in correct on that.

20 THE COURT: So your concern is an attempt to
21 introduce evidence of J.L.P.'s prior sexual contact
22 with another person.

23 MR. PURYEAR: That's correct.

24 THE DEFENDANT: I don't have any intentions of,
25 you know, putting my son out there. I really haven't

1 tried anything but to protect him.

2 THE COURT: That would violate the, the statute
3 that Mr. Puryear has referred to. It's called the
4 rape shield statute. And it's not prohibited.

5 THE DEFENDANT: Okay.

6 THE COURT: I mean, it's prohibited.

7 THE DEFENDANT: Yes, sir.

8 THE COURT: So I'll order you not to do it.

9 Is there anything else?

10 MR. PURYEAR: Judge, the only other issue -- And
11 the Court may have done this on the pre-trial date
12 that we had, you know, a little over two weeks ago
13 and I may have missed it. But -- So if the Court has
14 done this, I'll withdraw the request.

15 With the situation we're in with Mr. Patton
16 being deemed not to be indigent, I didn't know if
17 there was a record made as to the fact that he did
18 win the lottery, he acknowledge that, the amount that
19 he won and when that was. I think -- I don't think
20 the record reflects that. And I would ask that, the
21 Court would inquire as to that so that the record
22 would reflect that, that winnings and earnings.

23 THE DEFENDANT: I believe it was around the
24 first of March or so, Your Honor. It was a little
25 over six hundred and eighty thousand (\$680,000.00) is

1 what I left there with.

2 THE COURT: Okay.

3 So around March 1st of 2017?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: You received how much?

6 THE DEFENDANT: Six hundred and eighty thousand
7 dollars (\$680,000.00) is what I deposited into an
8 account.

9 THE COURT: From the Arkansas Lottery? That was
10 after taxes?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Okay.

13 MR. PURYEAR: And that was while this case was
14 pending?

15 THE COURT: Yes.

16 THE DEFENDANT: While I was out on bond.

17 THE COURT: Of course, you've had a lawyer in
18 this case before.

19 THE DEFENDANT: Yes, sir.

20 And, Your Honor, I did search for counsel, you
21 know. And, like I say, everybody has heard about the
22 lottery and since they know, you know, the number
23 they threw out there is just astronomical and I
24 couldn't, you know, I couldn't justify paying
25 somebody those five digits, you know, numbers to talk

1 about something they had no idea.

2 I mean, I understand they are more knowledgeable
3 about, your, the way things go in here. But as far
4 as what me and my son went through --

5 THE COURT: Well, you've got some serious
6 charges, Mr. Patton.

7 THE DEFENDANT: Yes, sir.

8 THE COURT: I tried to talk to you about this
9 and I've tried to encourage you to get your own
10 lawyer. I realize that the fact of your lottery
11 winnings may be knowledge, public knowledge, so that,
12 you know, maybe people try to gouge you or whatever.
13 I don't know. But it would seem to me that if you
14 look long and hard enough, you could find somebody to
15 represent you for a reasonable sum of money.

16 Because of the serious nature of the charges --

17 THE DEFENDANT: Yes, sir.

18 THE COURT: -- you might be getting quoted some
19 high fees. I don't know. I don't know all that's
20 involved in it. But you certainly have resources to
21 hire counsel and that's the reason I ruled the way I
22 did.

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Okay.

25 Anything else?

1 MR. PURYEAR: Not from the State, Your Honor.

2 THE COURT: Okay.

3 Thank y'all. Go to the courtroom and we'll
4 start -- We're going to show a video. Y'all can
5 watch that, and then we will open court after that is
6 done.

7 (Recess)

8 (Whereupon, after court being opened by the
9 Clerk, the following was had in open court in the
10 presence of the prospective jurors, to wit:)

11 THE COURT: Be seated.

12 Good morning, ladies and gentlemen. I want to
13 thank y'all for reporting for jury service this
14 morning in Desha County. The first thing we will do
15 this morning, after we have taken care of watching
16 that film, is call the roll of jury. Please answer
17 "present" or "here" as your names are called.

18 Madame Clerk, you may call the roll.

19 THE CLERK: Larry Standridge.

20 PROSPECTIVE JUROR: Here.

21 THE CLERK: Sydney Branch.

22 (No response)

23 THE CLERK: Paul Morara.

24 (No response)

25 THE CLERK: Alisha Wilson.