

TO: OFFICE FILE

FROM: UKEME OFFIONG; 00543570

DATE: 30 APRIL 2026

RE: DWAYNE WAYNE LEGAL EXPOSURE

### **QUESTION PRESENTED**

Whether the defendant is liable for the use of a firearm in the commission of a felony under *VA. CODE ANN § 18.2- 53* when the firearm was not in display, in a threatening manner, while committing or attempting to commit burglary?

Whether or not the defendant can have a reduced criminal liability under *VA. CODE ANN § 18.2-48*: Abduction for pecuniary benefit or immoral purpose, when there was an abduction (i) of any person with the intent to extort money or pecuniary benefit, if the defendant never interacted with the workers?

Whether the defendant is liable is under the *VA. CODE ANN. § 18.2-58*: Robbery, any person who commits robbery by using or displaying a firearm when the defendant stood at the front entrance the entire time the robbery was occurring?

### **BRIEF ANSWER**

The answer to the first issue presented above is yes. Wayne, the defendant, was standing by the front entrance of the crime scene when the crime was happening. (Record at ¶ 3). The handgun was never in his possession as he stayed towards the front entrance the whole time. (Rec. at ¶ 3). But he was counted as an accessory to the crime because he knew about it and went with Johnson to the crime. (Record at ¶ 2).

The answer to the second issue presented above is yes. While Johnson was the one who made Gaines take the money from his safe, Wayne stood by the front entrance the entire time the crime was being committed (Rec. at ¶ 3). His actions make him fall under *VA. CODE ANN. § 18.2-18*, principal in the second degree. Since he was there and actively participated in watching for customers, that makes him an accessory. (Rec. at ¶ 2).

The answer to the third issue presented above is also yes. While Wayne was posted outside the front office (Rec. at ¶ 3), the crime was actively occurring, and he also knew about it. He would be considered an accessory to the crime.

### SUMMARY OF FACTS

On May 3, 2024, Ron Johnson was speaking to Dwayne Wayne about needing some money. (Rec. at ¶ 2). He brought up robbing the Pit with Wayne. Wayne refused at first, then Johnson told him that he would only need to keep watch for customers and stand near the entrance while Johnson robbed the register. (Rec. at ¶ 3). At 6:18 pm, security cameras captured Johnson and Wayne, wearing dark clothing and masks, entering the pit. (Rec. at ¶ 3)

Johnson had a nickel-plated handgun and pointed it at the cashier. (Rec. at ¶ 3). Johnson ordered the cashier to hand over the money in the register. (Rec. at ¶ 3). Wayne was by the front entrance and looked out the front windows. (Rec. at ¶ 3). Mr. Gaines, the owner of the Pit, had an office located approximately eight feet behind the register area. (Rec. at ¶ 3). Johnson saw him, he pointed a gun and demanded that he open the second register. (Rec. at ¶ 3). Mr. Gaines opened the register, and Ron took the money and put it in the plastic bag. (Rec. at ¶ 3). Johnson demanded access to the restaurant's safe, and it required a key. (Record at ¶ 4).

Johnson and Gaines went to the safe, and Gaines unlocked it. (Rec. at ¶ 4). Johnson took the money from the safe and told Gaines to stay in the storage room with the safe. (Rec. at ¶ 4). Johnson left with Wayne at the front entrance. (Rec. at ¶ 4). Wayne and Johnson left the front entrance of the Pit together at 6:22 p.m. (Rec. at ¶ 4). Police officers responded to a silent alarm in both Johnson and Wayne, which were three blocks away. (Record at ¶ 5). Police took a handgun that was located in Ron's waistband. (Rec. at ¶ 5). Johnson's DNA was the only DNA on the firearm. (Rec. at ¶ 5). Police found \$427 in the plastic bag from Johnson's backpack. (Rec. at ¶ 5). Wayne was charged with two counts of second- degree robbery, two counts of abduction for pecuniary benefit, and one count of using a firearm in the commission of a felony.

### **DISCUSSION**

For the questions stated above, Gilbert wants to see if Wayne's criminal liability can be reduced, whether the defendant is liable for the use of a firearm in the commission of a felony under *VA CODE ANN § 18.2- 53* when the firearm was not in display, in a threatening manner, while committing or attempting to commit burglary?

Whether or not the defendant can have a reduced criminal liability under *VA. CODE ANN § 18.2-48*: Abduction for pecuniary benefit or immoral purpose, when there was an abduction (i) of any person with the intent to extort money or pecuniary benefit, if the defendant never interacted with the workers?

Whether the defendant is liable is under the *VA. CODE ANN. § 18.2-58*: Robbery, any person who commits robbery by using or displaying a firearm when the defendant stood at the front entrance the entire time the robbery was occurring?

*Rule of Law:*

During a previous case, in the *Wiggins V. Commonwealth* case, 47 VA. App. 173, 622 S.E. 2d 774 (2005), Corey Wiggins, the defendant, robbed a Hardee's restaurant with a mask and a gun covered by a sock and went with the supervisor to get the money out of the safe in 2002. *Wiggins, 47 Va. App. at 1*. Then, in 2003, he robbed a different Hardee's restaurant, with a mask and a gun with a sock over it, but was unable to take money out of the safe and could only take it from the register because he ran out of time. *Wiggins, 47 Va. App. at 1*. Lastly, he robbed a Subway with a mask and with a gun with a sock over it later in the year of 2003, but was only able to take from two of the cash registers as he ran out of time. *Wiggins, 47 Va. App. at 2*.

But that time, he could only take what was from the first register because he ran out of time. *Wiggins, 47 Va. App. at 2*. Wiggins was initially charged with three counts of robbery, three counts of abduction with intent to extort money, six counts of using a firearm in the commission of a felony, and three counts of wearing a mask in public. *Wiggins, 47 Va. App. at 2*. Then the grand jury indicted him for three counts of wearing a mask in public. *Wiggins, 47 Va. App. at 2*. Later, the court decided to reverse two of Wiggins' three convictions for the abduction with intent to extort money and reverse two of his other convictions for using a firearm in the commission of a felony, and the court ended up dismissing the fourth indictment. *Wiggins, 47 Va. App. at 8*.

*Analysis:*

With the original question being posed, is it possible to reduce the defendant's criminal liability? Wayne was charged with two counts of second-degree robbery, two counts of abduction for pecuniary benefit, and one count of use of a firearm in the commission of a felony. Firstly, the main reason why Wayne was charged was that he was an accomplice. Wayne was outside for the

entire act of the crime. (Rec. at ¶ 4). Wayne stood near the entrance and looked out the front windows (Rec at ¶ 4). So while Wayne never set foot inside the restaurant, he could still be charged with an accessory to a crime in Virginia. Under the *VA CODE ANN. § 18.2-18*: every principal in the second degree and every accessory before the fact may be indicted, tried, convicted, and punished in all respects as if a principal in the first degree.

Wayne can be seen as an accessory to a crime because he knew about it. (Record at ¶ 2). Ronald Johnson complained about needing money urgently and suggested robbing “the Pit” (Rec. at ¶ 2). Then Wayne and Johnson arrived together at the Pit, Ron and Dwayne changed into dark clothing and walked to “The Pit” wearing masks (Rec. at ¶ 3).

At approximately 6:18 p.m. (Rec at ¶ 3). With this statute, *VA CODE ANN. § 18.2-18*, Dwayne could be seen as an accomplice because he also left the scene of the crime with Johnson. Ron and Dwayne left “The Pit” together at approximately 6:22 p.m. (Record at ¶ 2). Wayne would be considered a principal in the second degree because he not only knew about the crime, but also accompanied Johnson to the crime, stood watch, and left with Johnson after the robbery was complete. (Rec. at ¶ 3). The only time he refused any part of that robbery was at the beginning, when Johnson had the idea in the first place, and he flatly refused. (Record at ¶ 2). He reconsidered when Johnson told him all he had to do was stay at the front entrance and keep watch for the customers that go through.

Secondly, two counts of second-degree robbery under the *VA CODE ANN. § 18.2-58*: Robbery, Any person who commits robbery by using or displaying a firearm, as defined in § 18.2-308.2:2, in a threatening manner, is guilty of a second-degree felony. Johnson, who had the nickel-plated handgun and pointed it at the worker, and Gaines; Johnson's actions would fall under this statute, as he showed the gun and pointed it at them. (Rec. at ¶ 3). Johnson not only

robbed the registers but also the safe, so even if Wayne didn't interact with them, Johnson did, and that would fall underneath this statute. (Rec.at ¶ 3) (Rec.at ¶ 4)

The next charge is two counts of abduction for pecuniary benefit or immoral purpose. Under *VA. CODE ANN. § 18.2-48*: having the intent to extort money by force and intimidation, i.e., Johnson then demanded access to The Pit's safe (Rec at ¶ 4), When Ron saw Mr. Gaines, he pointed the gun toward him and demanded that he open the second register located directly beside the first register (Rec. at ¶ 3), Ron immediately pulled out a nickel-plated handgun and pointed it at the cashier standing behind the front register (Rec. at ¶ 3). Johnson also walked with Gaines to the safe, and similarly, like in the *Wiggins, 47 Va. App. In 7*, Johnson could control Gaines' movements by following him with the gun. (Rec at ¶ 4)

In the *Wiggins* case, it was argued that he could have controlled the workers' movements by saying specific phrases. *Wiggins, 47 Va. App. At 7*. For example, he told the victim to give him the money in the registers, and *Wiggins* was able to control her movements. *Wiggins, 47 Va. App. At 7*. The same could be said for Johnson, as he told the worker to hand over the money from the register. (Rec at ¶ 4). All four of these details would have made the defendant liable even if he didn't go near the workers, the register, or the safe. His actions fall under this statute in the second degree.

The last charge was according to the statute of *Virginia. CODE ANN. §§18.2-53*: Use of a firearm in the commission of a felony, it is unlawful for any person to use any pistol, shotgun, rifle, or other firearm or display such a weapon in a threatening manner while committing or attempting to commit murder, rape, forcible sodomy, robbery, carjacking, burglary, or malicious wounding as defined in § 18.2-51. Johnson, during the robbery, pulled out a nickel-plated handgun and pointed it at the cashier standing behind the front register (Rec. at ¶ 3).

He later saw Mr. Gaines, who pointed the gun toward him and demanded that he open the second register located directly beside the first register (Rec. at ¶ 3). Lastly, Ron followed him while still holding the gun (Rec. at ¶ 4). This was the only time in the account given that Johnson used the gun. He used it in a threatening manner when he pointed the gun at the worker to put the money in the bag, and then later threatened Gaines to put the money from the second register in the bag. (Rec at ¶ 3). *Wiggins, 47 Va. App. At 5*. In the *Wiggins* case, when the crimes were occurring, *Wiggins* also did not use a lot of force when demanding that the workers cooperate with him, and didn't make them leave with him and do anything else besides assisting him with the robbery. *Wiggins, 47 Va. App. At 5*. Neither did Johnson in this case.

*Counter Analysis:*

To counter the statements made above, could Wayne be off the hook for being an accomplice? With the events that were stated above, some could argue that Wayne barely had any involvement, and some of the charges could be appealed. As we saw in the *Wiggins* case, the courts were able to argue about some of his charges. For example, he was originally charged with three counts of using a firearm in the commission of a felony. *Wiggins, 47 Va. App. At 8*. The court removed two out of three of his convictions for using a firearm in the commission of a felony. *Wiggins, 47 Va. App. At 8*. By using the argument that he only did what was necessary to rob the restaurant and didn't take it a step further towards anything else, like tie them up or use the gun to actually harm them. He just threatened them. *Wiggins, 47 Va. App. At 5*.

The same could be said about Wayne, since he stayed out of the front entrance the entire time the robbery was happening. (Rec at ¶ 3). Johnson, who was the one threatening the workers, made them put cash in the bag and took Gaines to the safe to take the money out of it. (Rec at ¶

4). Johnson, the only time that he used force was when he demanded to be taken to the safe and flashed his handgun, and told the worker to put money from the register into the bag, and told Gaines to stay in the office of the storage closet where the safe was located, and closed the door behind him. (Rec at ¶ 4). (Rec at ¶ 3). Johnson didn't use a lot of force, and since Dwayne would be considered an accomplice, even though he didn't commit the crime, he would be charged as if he were the one threatening the workers and taking cash out of the safe. (Rec at ¶ 3).

He was present, and he, while he initially said no to begin with, he later agreed to just stand by the front entrance while Johnson committed the crime. (Rec at ¶ 2). With those facts, Dwayne would be considered under *VA. CODE ANN. 18.2-18*: principal in the second degree, but he could possibly argue to lessen his counts since Johnson, the person who committed the crime, didn't use a lot of unnecessary force, and didn't force Gaines to stay in the storage closet after he left, and didn't force the other worker to empty the register. (Rec at ¶ 4). Wayne also didn't speak to any of the workers and never held the firearm or threatened them. This could help Wayne possibly reduce some of his criminal liability.

### CONCLUSION

To answer the original question posed by Whitley Gibert about the possible reduction of Dwayne Wayne's criminal liability in the robbery of "The Pit" with Ronald Johnson. He was charged with two counts of second-degree robbery, two counts of Abduction for Pecuniary Benefit, and one count of the use of a firearm in the commission of a felony.

His actions make him fall under the *VA. CODE ANN. 18.2-18*: Principles in the second degree and accessories before the fact, as he actively participated in keeping watch for customers and was seen leaving with Johnson after he committed the crime and walked up with him as he

was about to commit the crime. (Rec at ¶ 2). With the *Wiggins* case, the defendant was able to get some of his counts reduced because he did not use a lot of force when committing the crimes. *Wiggins*, 47 Va. App. At 5. The same could be said about Johnson, as he didn't use a lot of force in his robbery. So while he is liable for the robbery of "The Pit", Wayne might be able to reduce some of his criminal liability.