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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from York County

Honorable William A. McKinnon, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

MICHAEL LINDSAY FAILE,

APPELLANT

APPELLATE CASE NO. 2023-001055

RECORD ON APPEAL

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INDEX

INDEX	i
TRIAL TRANSCRIPT DATED JUNE 20, 2023	1
TESTIMONY	
MONICA DOTSON (IN CAMERA)	35
DARIN SWIGER (IN CAMERA)	54
OPENING STATEMENT BY MR. ANDERSON	106
OPENING STATEMENT BY MR. STEVENS	109
TESTIMONY	
MONICA DOTSON	112
TRIAL TRANSCRIPT DATED JUNE 21, 2023	157
TESTIMONY	
DAMIEN WILLIAMS (IN CAMERA)	163
PETER BOWKER (IN CAMERA)	164
MONICA DOTSON (CONTINUED)	169
DAMIEN WILLIAMS	188
DARIN SWIGER	254
THE STATE RESTS	298
MOTION FOR DIRECTED VERDICT	300
RULING OF THE COURT	303
COLLOQUY WITH THE DEFENDANT REGARDING HIS RIGHT TO TESTIFY	303
CHARGE ON THE LAW	309
CLOSING ARGUMENT BY MR. ANDERSON	321

CLOSING ARGUMENT BY MR. STEVENS	333
VERDICT	346
SENTENCING HEARING TRANSCRIPT DATED JUNE 22, 2023.....	351
SENTENCING	362
STATE’S EXHIBIT #10-A (LINEUP INSTRUCTIONS).....	365
STATE’S EXHIBIT #10-B (PHOTOGRAPHIC LINEUP).....	367
INDICTMENT	369
SENTENCE SHEET.....	371
ARREST WARRANT	373
CERTIFICATE OF COUNSEL	375

State of South Carolina	)	
	)	Circuit Court
<u>County of York</u>	)	2022-GS-46-03416

State of South Carolina	)	
	)	
vs.	)	Transcript of Record
	)	Volume I of III
Michael Lindsey Faile	)	Pages 1 - 156

June 20, 2023
York, South Carolina

B E F O R E:

The Honorable William A. McKinnon, Judge.

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

William Anderson, Assistant Solicitor
Dan Porter, Solicitor
Attorney for the State

Roger Stevens, Public Defender
Attorney for the Defendant

Khaleelah Gantt
Transcriber

1		<u>I N D E X</u>		
2	<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u> <u>RECROSS</u>
3	Monica Dotson			
4	Mr. Anderson	35		52
5	Mr. Stevens		46	52
6	Darin Swiger			
7	Mr. Stevens	54		69
8	Mr. Anderson		69	70
9	Monica Dotson			
10	Mr. Anderson	112		
11				
12	Opening statement by Mr. Anderson			106
13	Opening statement by Mr. Stevens			109
14				
15				
16				
17				
18				
19				
20				
21				
22				
23				
24				
25				

1	<u>E X H I B I T S</u>			
2	NO.	DESCRIPTION	ID.	EV.
3	S-1	Ms. Dotson's report of incident	117	117
4	S-2(a)-2(d)	Still images from CCTV footage	125	125
5	S-3	Cell phone video footage	126	128
6	S-4(a)-4(c)	Still shots from cell phone video	129	129
7	S-6	Surveillance footage 3/24/22	136	137
8	S-7(a)-7(b)	Still images from CCTV 3/24/22	138	138
9	S-8(a)-8(d)	Images from April 2022 incident	141	142
10	S-9	Body camera footage interview	148	149
11	S-10(a)	Photo lineup affidavit	150	150
12	S-10(b)	Photo lineup	150	150
13	C-5	Ms. Dotson's report	36	
14	C-4	Det. Swiger body cam	43	
15				
16				
17				
18				
19				
20				
21				
22				
23				
24				
25				

1 THE COURT: As I said downstairs, this process will be
2 the actual jury selection process, so we will select 12 jurors
3 and 2 alternates. The purpose of the alternate jurors is in
4 case someone on the main jury gets sick or has a family
5 emergency during the trial, they can leave and the alternate
6 juror can step in. So there will be 14 people selected in
7 total.

8 Again, it's very important that you answer my questions
9 honestly. And the questions don't have wrong answers. The
10 attorneys are just trying to find out if they know about you,
11 and there will be questions like, do you have any close
12 friends that work as police officers, things like that. It's
13 not a right or wrong answer; the attorneys and I are just
14 trying to find out some more about you, okay?

15 Ladies and gentlemen, this is the case of the State of
16 South Carolina v. Michael Lindsay Faile. Mr. Faile is charged
17 with shoplifting, so that is a charge; it's not proof. The
18 jurors selected in this case, it'll be their job to prove
19 or -- I'm sorry, decide whether or not the State has proven
20 their case beyond a reasonable doubt. So I'm going to ask you
21 in just a second if you know anything about the case. The
22 State alleges or the State believes on May the 17th of 2022,
23 Mr. Faile shoplifted some purses at the Belk on Dave Lyle in
24 Rock Hill.

25 So is there anyone who knows anything about this case?

1 Read anything about it, heard anything about it, has any
2 preconceived notions about this case? If so, please stand up.

3 All right. Ladies and gentlemen, has anyone made up
4 their mind about any issue in this case already? If so,
5 please stand up.

6 All right. Ladies and gentlemen, I'm going to ask the
7 defendant to stand.

8 Mr. Faile, if you'll face the jury pool.

9 Ladies and gentlemen, this is the defendant, Mr. Michael
10 Lindsay Faile. So my question is, does anyone know Mr. Faile
11 socially or are you related to him by blood or marriage? If
12 either of those things applies, please stand.

13 All right. Thank you, Mr. Faile. You can have a seat.

14 Ladies and gentlemen, now the attorneys for the State,
15 the prosecution, Mr. Will Anderson and Mr. Dan Porter, the
16 same question: does a member of the jury panel have a close
17 personal or social relationship with either of these attorneys
18 or are you related to them by blood or marriage? If that
19 applies to you, please stand.

20 Thank you, Counsel.

21 And ladies and gentlemen, representing Mr. Faile for the
22 defense is Mr. Roger Stevens. Same question: does any member
23 of the jury panel related to Mr. Stevens by blood or marriage
24 or have a close personal or social relationship with him?

25 Thank you, ladies and gentlemen.

1 Ladies and gentlemen -- Juror 125, I think you had
2 someone ride with you, and the Clerk said your friend needs
3 your car keys.

4 PROSPECTIVE JUROR 125: That's okay. He can wait on me.

5 THE COURT: Thank you.

6 PROSPECTIVE JUROR 125: Is that okay?

7 THE COURT: Thank you, sir.

8 All right.

9 PROSPECTIVE JUROR 125: Thank you, Judge.

10 THE COURT: You bet. Thank you. All right.

11 Ladies and gentlemen, is any member of the jury panel
12 aware of any bias or prejudice towards either the State or the
13 defense in this case? If so, please stand.

14 Has any member of the jury panel -- I know I asked this
15 question downstairs, and I'm going to ask it again to be sure.
16 Is any member of the jury panel served on the York County
17 Grand Jury in the last five years?

18 Ladies and gentlemen, is any member of the jury panel a
19 member of or a contributor to any group that has a primary
20 concern the promotion of law enforcement or victim's rights?
21 Groups like Mothers Against Drunk Driving, Students Against
22 Drunk Driving, any -- South Carolina Law Enforcement Officers
23 Association. If you're a member of any group like that --
24 Fraternal Order of Police -- please stand. All right, no
25 response.

1 Ladies and gentlemen, is any member of the jury or their
2 immediate family been represented by the 16th Circuit Public
3 Defender's Office? If you or a member of your immediate
4 family been represented by the public defender's office, if
5 so, please stand. All right.

6 Is any member of the jury close personal friends or
7 related to a criminal defense attorney? If so, please stand.

8 Has any member of the jury or a member of their immediate
9 family ever been prosecuted by the York County Solicitor's
10 Office?

11 Ladies and gentlemen, has any member of the jury panel
12 ever been arrested for a crime like theft, fraud, or
13 shoplifting, even if you were not convicted? If so, please
14 stand.

15 All right. Ladies and gentlemen, does any member of the
16 jury have religious or philosophical objections to sitting in
17 judgement of another person?

18 All right. Ladies and gentlemen, is any member of the
19 jury panel or a member of your immediate family ever worked
20 for or volunteered with a law enforcement agency of any kind?
21 Sheriff's office, police office, you know --

22 Yes, ma'am, in the light blouse. Will you tell me your
23 juror number?

24 PROSPECTIVE JUROR 36: 36.

25 THE COURT: Okay. And who was it, ma'am?

1 PROSPECTIVE JUROR 36: My grandson is currently with the
2 sheriff's department (indiscernible).

3 THE COURT: Okay. And tell me again your juror number.

4 PROSPECTIVE JUROR 36: Juror number 36.

5 THE COURT: Okay. And what sheriff's department?

6 PROSPECTIVE JUROR 36: (Indiscernible).

7 THE COURT: Thank you, ma'am. And I'm sorry. I should
8 ask you. Ma'am, can you still be fair and impartial to both
9 sides in this case?

10 PROSPECTIVE JUROR 36: Yes.

11 THE COURT: Thank you, ma'am.

12 Yes, ma'am.

13 PROSPECTIVE JUROR 110: 110 is my number.

14 THE COURT: Okay.

15 PROSPECTIVE JUROR 110: And my son-in-law is with York
16 County.

17 THE COURT: Is currently York County Deputy Sheriff?
18 Okay. And ma'am, can you still be impartial to both sides?

19 PROSPECTIVE JUROR 110: (Indiscernible).

20 THE COURT: Thank you, ma'am.

21 Yes, ma'am.

22 PROSPECTIVE JUROR 91: Jury number 91.

23 THE COURT: Yes, ma'am.

24 PROSPECTIVE JUROR 91: And my brother's is with York
25 County Sherrif's Department.

1 THE COURT: Okay. And can you still be fair and
2 impartial to both sides?

3 PROSPECTIVE JUROR 91: (Indiscernible).

4 THE COURT: Thank you, ma'am. All right.

5 Yes, sir.

6 PROSPECTIVE JUROR 176: My number's 176. I am a former
7 police officer.

8 THE COURT: Okay, you yourself. Okay, and what do you do
9 now?

10 PROSPECTIVE JUROR 176: I'm (indiscernible).

11 THE COURT: Okay. Could you still be fair impartial to
12 both sides in this case?

13 PROSPECTIVE JUROR 176: Yes.

14 THE COURT: Thank you, sir. Okay.

15 Yes, ma'am.

16 PROSPECTIVE JUROR 178: I am Jury number 178.

17 (Indiscernible) in York County?

18 THE COURT: No, it could be anywhere in the country.

19 (Indiscernible) for Sumter.

20 THE COURT: Okay, for Sumter, okay. And ma'am, could you
21 still be fair and impartial to both sides in this case?

22 PROSPECTIVE JUROR 178: (No audible response).

23 THE COURT: Thank you ma'am.

24 Yes, ma'am?

25 PROSPECTIVE JUROR 263: My husband is a detective, sworn

1 officer (indiscernible).

2 THE COURT: Okay. And ma'am, could you still be fair and
3 impartial to both sides?

4 PROSPECTIVE JUROR 263: (No audible response).

5 THE COURT: Thank you, ma'am.

6 Yes, sir.

7 PROSPECTIVE JUROR 185: 185.

8 THE COURT: Okay.

9 PROSPECTIVE JUROR 185: I'm a police officer.

10 THE COURT: Okay. And currently working?

11 PROSPECTIVE JUROR 185: Yes.

12 THE COURT: Okay. And could you still be fair and
13 impartial to both sides?

14 PROSPECTIVE JUROR 185: (No audible response).

15 THE COURT: Yes, sir, in the black.

16 PROSPECTIVE JUROR 257: 257. I am a current police
17 officer for (indiscernible) years, and my brother-in-law is
18 retired.

19 THE COURT: Okay. And could you still be fair and
20 impartial to both sides?

21 PROSPECTIVE JUROR 257: (No audible response).

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

23 Yes, sir.

24 PROSPECTIVE JUROR 120: (Indiscernible) to your previous
25 question.

1 THE COURT: Yes, sir.

2 PROSPECTIVE JUROR 120: I was arrested for shoplifting,
3 but it was dismissed.

4 THE COURT: Okay. So the -- the prosecutor dropped the
5 charges?

6 PROSPECTIVE JUROR 120: (Indiscernible).

7 THE COURT: Okay. Thank you, sir. And sir, could you
8 still be fair and impartial to both sides?

9 PROSPECTIVE JUROR 120: Yes.

10 THE COURT: Okay. And tell me your juror number one more
11 time.

12 PROSPECTIVE JUROR 120: 120.

13 THE COURT: Thank you, sir.

14 All right, ladies and gentlemen, the same question, but
15 involving the prosecutor's office. So is any member of the
16 jury panel or a member of their immediate family ever worked
17 for or volunteered for a prosecutor's office of any kind?
18 District attorney or solicitor's office. All right.

19 Is any member of the jury panel close personal friends
20 with anyone who works for or volunteered with a prosecutor's
21 office?

22 Yes, sir. Tell me your juror number.

23 PROSPECTIVE JUROR 245: 245.

24 THE COURT: Okay.

25 PROSPECTIVE JUROR 245: I have a friend who is a DA --

1 Assistant DA in Charlotte.

2 THE COURT: Okay. And could you still be fair and
3 impartial to both sides?

4 PROSPECTIVE JUROR 245: Yes, sir.

5 THE COURT: Thank you, sir.

6 All right. Ladies and gentlemen, has any member of the
7 jury panel ever given money to an organization like the
8 Fraternal Order of Police or the Law Enforcement Officers
9 Association? If so, please stand. Okay.

10 Yes, sir, in the yellow shirt, what's your jury number
11 again, sir?

12 PROSPECTIVE JUROR 176: 176.

13 THE COURT: Okay. And sir, could you still be fair and
14 impartial to both sides?

15 PROSPECTIVE JUROR 176: Yes, sir.

16 THE COURT: Thank you, sir.

17 PROSPECTIVE JUROR 176: I also have one additional
18 question.

19 THE COURT: Yes, sir.

20 PROSPECTIVE JUROR 176: My wife is a lawyer in North
21 Carolina. That's what I was going to ask you about it.

22 THE COURT: Okay. Does she practice criminal defense?

23 PROSPECTIVE JUROR 176: No, sir. She specializes in -- I
24 believe it's (indiscernible).

25 THE COURT: Thank you, sir. That'll be fine. I

1 appreciate that. Yes, sir.

2 Ma'am, tell me your juror number.

3 PROSPECTIVE JUROR 180: 180.

4 THE COURT: Okay. And would you still be fair and
5 impartial to both sides?

6 PROSPECTIVE JUROR 180: (No audible response).

7 THE COURT: Okay. Yes, sir.

8 PROSPECTIVE JUROR: (No audible response).

9 THE COURT: And could you still be fair and impartial to
10 both sides?

11 PROSPECTIVE JUROR: (No audible response).

12 THE COURT: Thank you, sir.

13 Yes, ma'am.

14 PROSPECTIVE JUROR: (No audible response).

15 THE COURT: And could you still be fair and impartial to
16 both sides?

17 PROSPECTIVE JUROR: (No audible response).

18 THE COURT: Thank you.

19 Ladies and gentlemen, is any member of the jury panel
20 ever had a thin blue line or other law enforcement support
21 sticker on their vehicle or house or place of business?

22 Again, ladies and gentlemen, nothing wrong with doing these
23 thing; the attorneys just want to find out about you, okay?

24 And ma'am, I know you've told me several times, but tell
25 me for the record. Tell me your juror number again.

1 PROSPECTIVE JUROR: (No audible response).

2 THE COURT: And ma'am, could you still be fair and
3 impartial to both sides?

4 PROSPECTIVE JUROR: Yes.

5 THE COURT: Okay. Yes, sir.

6 PROSPECTIVE JUROR 211: My juror number is 211.

7 THE COURT: And could you still be fair and impartial to
8 both sides?

9 PROSPECTIVE JUROR 211: (No audible response).

10 THE COURT: Yes, ma'am.

11 PROSPECTIVE JUROR: And ma'am, could you still be fair
12 and impartial to both sides?

13 PROSPECTIVE JUROR: Yes.

14 THE COURT: Thank you, ma'am.

15 Yes, ma'am.

16 PROSPECTIVE JUROR 91: 91.

17 THE COURT: Okay. And could you still be fair and
18 impartial to both sides?

19 PROSPECTIVE JUROR 91: (No audible response).

20 THE COURT: Okay. And sir, your juror number?

21 PROSPECTIVE JUROR 85: 85.

22 THE COURT: 85. And sir, could you still be fair and
23 impartial to both sides?

24 PROSPECTIVE JUROR 85: Yes sir.

25 THE COURT: Thank you, sir.

1 All right. Ladies and gentlemen, if you did not answer
2 yes to the previous question about bumper stickers and things
3 like that, same question, but about social media. Has any
4 member of the jury panel posted support, thin blue line, or
5 kind of a pro-police message on their social media, Facebook,
6 Twitter, Instagram, TikTok, anything like that? Okay.

7 Yes, ma'am. Tell --

8 PROSPECTIVE JUROR 228: 228.

9 THE COURT: Okay. And ma'am, could you still be fair and
10 impartial to both sides?

11 PROSPECTIVE JUROR 228: (No audible response).

12 THE COURT: Thank you, ma'am.

13 Okay, ma'am. I'm sorry. I need you to answer out loud.

14 PROSPECTIVE JUROR: (No audible response).

15 THE COURT: Thank you. I appreciate that, ma'am.

16 All right. Ladies and gentlemen, does any member of the
17 jury panel have law enforcement or legal training? Like you
18 yourself worked as a police officer or you went to law school
19 or you took some classes in college like in business law?
20 Anyone you yourself have any law enforcement or legal
21 training? If so, please stand. Okay.

22 Yes, sir. And your juror number, sir?

23 PROSPECTIVE JUROR 176: 176.

24 THE COURT: Okay. And you were a former officer,
25 correct, sir?

1 PROSPECTIVE JUROR 176: Yes.

2 THE COURT: And could you still be fair and impartial to
3 both sides?

4 PROSPECTIVE JUROR 176: Yes sir.

5 THE COURT: Thank you, sir.

6 Yes, sir, in the navy blue shirt.

7 PROSPECTIVE JUROR 24: 24.

8 THE COURT: Okay.

9 PROSPECTIVE JUROR 24: I took some business law.

10 THE COURT: Took some business law classes in -- could
11 you still be fair and impartial to both sides?

12 PROSPECTIVE JUROR 24: Yes, sir.

13 THE COURT: Thank you, sir.

14 Yes, ma'am.

15 PROSPECTIVE JUROR 211: It was (indiscernible) for
16 program manager.

17 THE COURT: Okay. What kind of courses were they?

18 PROSPECTIVE JUROR 211: It was for criminal justice.

19 THE COURT: Okay.

20 PROSPECTIVE JUROR 211: (Indiscernible).

21 THE COURT: Okay. And ma'am, tell me your juror number.

22 PROSPECTIVE JUROR 211: 211.

23 THE COURT: And ma'am, could you still be fair and
24 impartial to both sides?

25 PROSPECTIVE JUROR 211: Yes.

1 THE COURT: Thank you, ma'am.

2 Yes, ma'am.

3 PROSPECTIVE JUROR 298: Juror number 298.

4 (Indiscernible).

5 THE COURT: Okay. Okay. And ma'am, could you still be
6 fair and impartial to both sides?

7 PROSPECTIVE JUROR 298: Yes.

8 THE COURT: Thank you, ma'am.

9 Yes, sir.

10 PROSPECTIVE JUROR: (Indiscernible).

11 THE COURT: Okay.

12 PROSPECTIVE JUROR: (Indiscernible) in college.

13 THE COURT: Okay. And could you still be fair and
14 impartial to both sides?

15 PROSPECTIVE JUROR: Yes.

16 THE COURT: Thank you, sir.

17 Yes, sir.

18 PROSPECTIVE JUROR 85: (Indiscernible).

19 THE COURT: Okay. And could you still be fair and
20 impartial to both sides?

21 PROSPECTIVE JUROR 85: Yes.

22 THE COURT: Okay. Now, excluding the gentleman who said
23 he actually worked as a police officer, has anyone else ever
24 applied for a job as a police officer and didn't get hired?

25 All right. No response.

1 All right. Ladies and gentlemen, is any member of the
2 jury panel follow the Rock Hill City Police, the York County
3 Sheriff's Office, or any other law enforcement organization on
4 social media? Anybody follow any of those organizations on
5 social media? All right. Okay.

6 Ma'am, I'll start with you in the denim jacket.

7 PROSPECTIVE JUROR: (Indiscernible).

8 THE COURT: Yes, ma'am. Could you still be fair and
9 impartial to both sides?

10 PROSPECTIVE JUROR: (No audible response).

11 THE COURT: Thank you.

12 Yes, sir.

13 PROSPECTIVE JUROR 125: 125.

14 THE COURT: Could you still be fair and impartial to both
15 sides?

16 PROSPECTIVE JUROR 125: Yes.

17 THE COURT: Thank you, sir.

18 Yes, ma'am.

19 PROSPECTIVE JUROR 184: (Indiscernible).

20 THE COURT: That's okay.

21 PROSPECTIVE JUROR 184: 184.

22 THE COURT: Ma'am, can you still be fair and impartial to
23 both sides?

24 PROSPECTIVE JUROR 184: (No audible response).

25 THE COURT: Thank you.

1 Yes, ma'am, in the back.

2 PROSPECTIVE JUROR 165: 165.

3 THE COURT: Ma'am, could you still be fair and impartial
4 to both sides?

5 PROSPECTIVE JUROR 165: (No audible response).

6 THE COURT: Okay. Ma'am, in the black jacket.

7 PROSPECTIVE JUROR 205: 205.

8 THE COURT: Ma'am, could you still be fair and impartial
9 to both sides?

10 PROSPECTIVE JUROR 205: Yes, I can.

11 THE COURT: Thank you, ma'am.

12 Yes, ma'am, in the green.

13 PROSPECTIVE JUROR 232: 232.

14 THE COURT: Ma'am, can you still be fair and impartial to
15 both sides?

16 PROSPECTIVE JUROR 232: Yes.

17 THE COURT: Yes, sir, in the black shirt.

18 PROSPECTIVE JUROR: (Indiscernible).

19 THE COURT: And could you still be fair and impartial to
20 both sides?

21 PROSPECTIVE JUROR: Yes, sir.

22 THE COURT: Okay. Yes, ma'am.

23 PROSPECTIVE JUROR: (Indiscernible).

24 THE COURT: And could you still be fair and impartial to
25 both sides?

1 PROSPECTIVE JUROR: Yes, sir.

2 THE COURT: Okay. Yes, sir.

3 PROSPECTIVE JUROR 107: 107.

4 THE COURT: And sir, could you still be fair and
5 impartial to both sides?

6 PROSPECTIVE JUROR 107: Yes.

7 THE COURT: Okay. Yes, sir, in the navy shirt.

8 PROSPECTIVE JUROR 44: 44.

9 THE COURT: And could you still be fair and impartial to
10 both sides?

11 PROSPECTIVE JUROR 44: Yes, sir.

12 THE COURT: Okay. Yes, ma'am.

13 PROSPECTIVE JUROR 139: 139.

14 THE COURT: Ma'am, could you still be fair and impartial
15 to both sides?

16 PROSPECTIVE JUROR 139: Yes.

17 THE COURT: Okay.

18 PROSPECTIVE JUROR 101: 101.

19 THE COURT: And ma'am, could you still be fair and
20 impartial to both sides?

21 PROSPECTIVE JUROR 101: Yes.

22 THE COURT: Okay. Yes, ma'am. Could you still be fair
23 and impartial to both sides?

24 PROSPECTIVE JUROR 90: Yes.

25 THE COURT: And tell me your juror number. I forgot to

1 ask you.

2 PROSPECTIVE JUROR 90: 90.

3 THE COURT: Okay. And sir, tell me your juror number.

4 PROSPECTIVE JUROR 85: 85.

5 THE COURT: And could you still be fair and impartial to
6 both sides?

7 PROSPECTIVE JUROR 85: Yes, I can.

8 THE COURT: All right. Ladies and gentlemen, is anyone
9 in the jury panel related by blood or marriage or a close
10 personal friend of Monica Dotson who works at Belks (sic). If
11 so, please stand.

12 All right. Does anyone have any other person you're
13 related to by blood or marriage or a close friend who
14 currently works at Belks (sic)? Anybody who works at Belks
15 (sic) is a close personal friend or you're related to them by
16 blood or marriage? If so, please stand.

17 All right. Ladies and gentlemen, does any member of the
18 jury panel related to by blood or marriage or a close personal
19 friends with an employee of the Flock Safety Corporation, the
20 Flock, F-L-O-C-K, safety corporation?

21 All right. Ladies and gentlemen, has anybody in your
22 immediate family ever been convicted or arrested for -- not
23 asking about you -- anyone in your immediate family ever been
24 arrested or convicted of shoplifting or similar property
25 crimes? If so, please stand.

1 Okay. Sir, one more time, tell me your juror number.

2 PROSPECTIVE JUROR: (Indiscernible). I'm sorry.

3 THE COURT: Okay. It's okay. No worries. All right.

4 No response.

5 Any additional questions the State would like me to ask?

6 MR. ANDERSON: Nothing from the State, Your Honor.

7 THE COURT: Any additional questions the defense would
8 like me to ask?

9 MR. STEVENS: Nothing, Your Honor.

10 THE COURT: Thank you. All right.

11 Ladies and gentlemen, this is kind of my final catch-all
12 question. Is there any member of the jury panel, for any
13 reason at all, thinks you could not be fair and impartial to
14 both sides in this case? If so, please stand. All right.
15 Thank you, ladies and gentlemen.

16 What's now going to happen is the actual juror selection
17 process. So you may have seen this process on TV or in the
18 movies, or maybe you read books about the law and you've read
19 about it in a book. Every state does it a little bit
20 differently. What we do in South Carolina is the clerk's
21 office has printed out a computer listing here of you all in
22 random order, not in alphabetical order. We're going to call
23 you up one at a time. Okay.

24 If your name is called out by the clerk's office, come on
25 up, bring with you your purse or anything you have with you,

1 and you're going to stand up here and you're going to face the
2 lawyers. And the clerk is going to ask each side about you.
3 And if -- if both sides say, present the juror or seat the
4 juror, that means you've been selected and the bailiff's going
5 to direct you to have a seat in the jury box. If that
6 happens, you have been selected as a juror. If either side
7 says, please strike the juror or please excuse the juror, that
8 means you have not been selected as a juror and just have a
9 seat back on the benches. That make sense to everybody?

10 All right. Counsel, does everybody have the random
11 strike sheet?

12 MR. ANDERSON: Yes, sir.

13 MR. STEVENS: Yes, Your Honor.

14 THE COURT: All right. Madam Clerk, whenever you're
15 ready.

16 THE CLERK: Juror number 211, Claudia Quinn. What say
17 you for the State?

18 MR. ANDERSON: Please present Ms. Quinn.

19 THE CLERK: And for the defense?

20 MR. STEVENS: Please seat the juror.

21 THE CLERK: You may have a seat in the jury box.

22 Juror number 180, Kaitlin Morris (phonetic).

23 What say you for the State?

24 MR. ANDERSON: Please present Ms. Morris.

25 THE CLERK: And for the defense?

1 MR. STEVENS: Please excuse the juror.

2 THE CLERK: You're excused from this case.

3 Juror number 36, Glennis Brown (phonetic).

4 What say you for the State?

5 MR. ANDERSON: Please present Ms. Brown.

6 THE CLERK: And for the defense?

7 MR. STEVENS: Please excuse the juror.

8 THE CLERK: You're excused from this case.

9 Juror number 225, Arthur Twain (phonetic).

10 What say you for the State?

11 MR. ANDERSON: Please present Mr. Twain.

12 THE CLERK: And for the defense?

13 MR. STEVENS: Please excuse the juror.

14 THE CLERK: You're excused from this case.

15 Juror number 8, Oliver Aschenbrenner.

16 What say you for the State?

17 MR. ANDERSON: Please present Mr. Aschenbrenner.

18 THE CLERK: And for the defense?

19 MR. STEVENS: Please seat the juror.

20 THE CLERK: You may have a seat in the jury box.

21 Juror number 233, Megan Smith (phonetic).

22 What say you for the State?

23 MR. ANDERSON: Please present Ms. Smith.

24 THE CLERK: And for the defense?

25 MR. STEVENS: Please seat the juror.

1 THE CLERK: You may have a seat in the jury box.
2 Juror number 10, Nicholas Ayers (phonetic).
3 What say you for the State?
4 MR. ANDERSON: Please present Mr. Ayers.
5 THE CLERK: And for the defense?
6 MR. STEVENS: Please seat the juror.
7 THE CLERK: You may have a seat in the jury box.
8 Juror number 34, David Brooks.
9 What say you for the State?
10 MR. ANDERSON: Please present Mr. Brooks.
11 THE CLERK: And for the defense?
12 MR. STEVENS: Please seat the juror.
13 THE CLERK: You may have a seat in the jury box.
14 Juror number 125, Justin Hood.
15 What say you for the State?
16 MR. ANDERSON: Please present Mr. Hood.
17 THE CLERK: And for the defense?
18 MR. STEVENS: Please seat the juror.
19 THE CLERK: You may have a seat in the jury box.
20 Juror number 195, Jamie Oaks (phonetic).
21 What say you for the State?
22 MR. ANDERSON: Please present Mr. Oakes.
23 THE CLERK: And for the defense?
24 MR. STEVENS: Please excuse the juror.
25 THE CLERK: You're excused from this case.

1 Juror number 106, Corey Arden-McCoy (phonetic).
2 What say you from the State?
3 MR. ANDERSON: Please present Mr. Arden-McCoy.
4 THE CLERK: And from the defense?
5 MR. STEVENS: Please seat the juror.
6 THE CLERK: You may have a seat in the jury box.
7 Juror number 89, Kimberly Freeman (phonetic).
8 What say you for the State?
9 MR. ANDERSON: Please present Ms. Freeman.
10 THE CLERK: And for the defense?
11 MR. STEVENS: Please seat the juror.
12 THE CLERK: You may have a seat in the jury box.
13 Juror number 113, Hade Hayes (phonetic).
14 What say you for the state?
15 MR. ANDERSON: Please present Ms. Hayes.
16 THE CLERK: And for the defense?
17 MR. STEVENS: Please seat the juror.
18 THE CLERK: You may have a seat in the jury box.
19 Juror number 228, Elise Saynor (phonetic).
20 What say you for the State?
21 MR. ANDERSON: Please present the juror.
22 THE CLERK: And for the defense?
23 MR. STEVENS: Please seat the juror.
24 THE CLERK: You may have a seat in the jury box.
25 Juror number 44, Joseph Cartledge (phonetic).

1 What say you for the State?

2 MR. ANDERSON: Please present Mr. Cartledge.

3 THE CLERK: And for the defense?

4 MR. STEVENS: Please seat the juror.

5 THE CLERK: You may have a seat in the jury box.

6 Juror number 199, Jonathan Pearsall.

7 What say you for the State?

8 MR. ANDERSON: Please present Mr. Pearsall.

9 THE CLERK: And for the defense?

10 MR. STEVENS: Please seat the juror.

11 THE CLERK: You may have a seat in the jury box.

12 THE COURT: I believe that's 12, Madam Clerk. Is your
13 count the same as mine? All right. First alternate, one
14 strike per side. I'm sorry, two strikes for the defense for
15 alternate.

16 THE CLERK: Juror number 205, Candace Beasley (phonetic).

17 What say you for the State?

18 MR. ANDERSON: Please present Ms. Beasley.

19 THE CLERK: And the defense?

20 MR. STEVENS: Please excuse the juror.

21 THE CLERK: You're excused from this case.

22 Juror number 167, Michael McGardall (phonetic).

23 What say you for the State?

24 MR. ANDERSON: Please present Mr. McGardall.

25 THE CLERK: And for the defense?

1 MR. STEVENS: Please seat the juror.

2 THE CLERK: You may have a seat in the jury box.

3 Juror number 85, Larry Foley (phonetic).

4 What say you for the State?

5 MR. ANDERSON: Please present Mr. Foley.

6 THE CLERK: And for the defense?

7 MR. STEVENS: Please excuse the juror.

8 THE CLERK: You're excused from this case.

9 Juror number 238, Hannah Stevens (phonetic).

10 What say you for the State?

11 MR. ANDERSON: Please present Ms. Stevens.

12 THE CLERK: And for the defense?

13 MR. STEVENS: Please seat the juror.

14 THE CLERK: You may have a seat in the jury box.

15 THE COURT: All right. Any objections or motions

16 regarding juror qualification or selection from the State?

17 MR. ANDERSON: No objections.

18 THE COURT: From the defense?

19 MR. STEVENS: Nothing for the defense, Your Honor.

20 THE COURT: All right. Any objection to releasing the

21 remainder of the panel from the State?

22 MR. ANDERSON: No, Your Honor.

23 THE COURT: From defense?

24 MR. STEVENS: No objection, Your Honor.

25 THE COURT: All right. Ladies and gentlemen, if you are

1 all sitting back there on those benches, you have not been
2 chosen as a juror in this case. You are 99 percent sure
3 you're not going to be needed this week. So I very much
4 appreciate your service. There's a tiny chance if like five
5 of these jurors went out to lunch and got food poisoning or
6 something like that -- there's a tiny chance we'd have to
7 start the trial all over again. So the only way you're going
8 to get a call is we have to start the trial all over. So the
9 clerk's office will explain to you -- they may have already
10 explained how to call in at night and check the status. But
11 it is very, very unlikely we'll need you. So on behalf of the
12 State of South Carolina and York County, thank you for your
13 willingness to serve. Y'all are all set for today. Make sure
14 you call in at night.

15 All right. Ladies and gentlemen, you are all our 12
16 jurors and 2 alternates. Thank you for your willingness to
17 serve. I have some pre-trial motions I have to deal with with
18 the lawyers that you don't have to be here for, so in just a
19 moment, I'm going to let you go and ask you to be back at 3
20 o'clock this afternoon to start the trial of this case, okay?
21 Before I do that, though, I do need to give you some rules.

22 You now know a little bit about the case. You know it's
23 a shoplifting charge; you know that it involved Belks (sic).
24 So you know, please don't do any outside research. Don't go
25 home and Google the laws of South Carolina or look up the

1 attorneys or try to Google the defendant. You'll hear the
2 evidence in the courtroom. Don't do any outside research.
3 Similarly, if you go home and you eat lunch with your husband
4 or your wife or your kids, they're going to want to know what
5 happened in court today. All you can tell them is you got
6 picked as a juror in a criminal case.

7 Now, once the case is over, you're free to tell them as
8 much or as little as you want. You have no restrictions at
9 all. Though until there is a verdict in the case, you cannot
10 discuss the case with anyone outside the courtroom. You
11 cannot even discuss the case with each other until the end of
12 the case. Now, obviously at the end of the case, you'll be
13 deliberating in the jury room. But until that point, even
14 amongst yourselves, you can't talk about the case. So y'all
15 can -- some of you can choose to go out to lunch together
16 today; that's totally fine, but you have to talk about sports
17 or the politics or the weather or something like that, okay?

18 Similarly, the attorneys in this case are not allowed to
19 talk to you outside the courtroom setting. That's one of the
20 reasons you wear juror badges. And York is a pretty small
21 town; it's possible you could run into one of these lawyers at
22 lunch today or in the elevator or in the bathroom. If that
23 happens, they are not going to speak to you. And that's not
24 them being rude; that's just them respecting the rules of the
25 court, okay?

1 I think that's -- oh, yeah, one last thing. You never
2 know what's going to make the news these days, so in the event
3 there's some mention of this case on the internet news or a TV
4 news or a radio news, just change the channel or read
5 something else, okay? Don't read or watch anything about the
6 case. Any questions about those instructions? Yes, sir.

7 UNKNOWN JUROR: I'm not sure I fully understood.
8 (Indiscernible).

9 THE COURT: That is my suggestion. I mean, obviously I
10 can't make you keep them on if you go eat at Italian Garden or
11 something, but I would prefer you keep them on because just in
12 case one of these attorneys is eating at the same place,
13 they'll know not to speak to you. Okay. So I would ask you
14 to do that.

15 UNKNOWN JUROR: Did you say 3:30?

16 THE COURT: 3 o'clock.

17 UNKNOWN JUROR: Okay.

18 THE COURT: 3 o'clock. And anything else? All right.
19 Ladies and gentlemen -- yes, sir.

20 UNKNOWN JUROR: Just back here or --

21 THE COURT: You'll follow the Bailiff out and he'll tell
22 you where to go and where to come back. All right, ladies and
23 gentlemen. Thank you very much. We'll see you at 3 o'clock.

24 (Whereupon, the jury exited the courtroom at 11:49 a.m.)

25 THE COURT: All right. Motions from the State.

1 MR. ANDERSON: Yes, sir. I don't believe there's going
2 to be any alibi witnesses, but we just ask that if the defense
3 were to put up any alibi witnesses, that those be not allowed.
4 I've never gotten any alibi notice. We'd also ask that the
5 defense proffer any third-party guilt evidence they intend to
6 present --

7 THE COURT: Let me stop you there. Any alibi evidence or
8 third-party guilt arguments?

9 MR. STEVENS: No, Your Honor.

10 THE COURT: Thank you, Mr. Stevens.

11 All right. Go ahead.

12 MR. ANDERSON: Also, we have to pick up a Neil v. Biggers
13 issue. I don't know if you want to do that now or if you want
14 to hear my 404 motion first.

15 THE COURT: Is the 404 related to the Neil v. Biggers?

16 MR. ANDERSON: I think they necessarily go hand-in-hand,
17 yes, Judge.

18 THE COURT: Okay. Well, let's wait on that, then, until
19 the 404. Okay.

20 MR. ANDERSON: (Indiscernible) case necessarily involves
21 three separate incidents. Incident number 1, March 24th, the
22 defendant pulled up in a Chevy truck -- a white Chevy truck to
23 the Dave Lyle Belk parking lot.

24 THE COURT: Actually, Mr. Anderson, give me a second.
25 You've taken the time to give me a nice memorandum. Let me

1 read it. It'll just take a couple of minutes. Let's just
2 take a short break.

3 MR. ANDERSON: Absolutely.

4 THE COURT: We'll be at ease while I read this.

5 (Recess.)

6 THE COURT: (Audio begins mid-sentence) defense under
7 common scheme or plan under Liles.

8 MR. STEVENS: There's also -- number one, it's
9 prejudicial. I think it's highly prejudicial to the point to
10 instances of uncharged conduct --

11 THE COURT: Well, remember all evidence is prejudicial or
12 the State wouldn't want it. It's got to be unfairly
13 prejudicial. Why is it unfair?

14 MR. STEVENS: I have a hard time saying that it's unfair,
15 but I do believe that it's prejudicial.

16 THE COURT: Okay.

17 MR. STEVENS: Also, he's never been convicted on any of
18 these two prior incidents. I believe that is an element here
19 that we need to consider.

20 THE COURT: All right. Okay. Let me pull up the rule to
21 make sure I'm not misquoting it.

22 MR. ANDERSON: I believe the State would just have to
23 prove by clear and convincing evidence that he was the one who
24 shoplifted on the prior incidents.

25 THE COURT: Yeah, I'm going to permit it as a common

1 scheme or plan. And I'm not going to permit it under the
2 identity theory, and I think -- I understand the State
3 believes is the same person in all three, but I don't see -- I
4 mean, the charged conduct is incident 3. I don't think -- I
5 don't understand how there's anything separate in incident 1
6 or 2 that makes it more likely that Mr. Faile was again in
7 incident 3. I think it's what the State's got to show for --
8 but I'm going to allow it under the common scheme or plan.

9 All right. So and then you said there's a Neil v.
10 Biggers identity issue?

11 MR. ANDERSON: I guess, just reading the case law, I
12 think for 403 purposes, do we need to do an on-the-record
13 analysis?

14 THE COURT: We do. We're talking about the six-pack
15 lineup, I assume.

16 MR. ANDERSON: No, I'm sorry. I'm talking about the
17 common scheme or plan for Liles.

18 THE COURT: I'm sorry. The question is, do we need to do
19 on the record?

20 MR. ANDERSON: Yes, sir.

21 THE COURT: Like, testimony?

22 MR. ANDERSON: Not testimony, just a balancing test on
23 the record for why it passes 403.

24 THE COURT: Well, it passes 403. I thought Mr. Stevens
25 said he couldn't identify any unfair prejudice. I thought --

1 that was the basis for the Court's ruling.

2 MR. ANDERSON: Yes, sir. And then for the Neil v.
3 Biggers, the State calls Ms. Dotson to the stand.

4 THE CLERK: Please raise your right hand.

5 MONICA DOTSON, after being duly sworn, testified as
6 follows:

7 THE COURT: All ears.

8 DIRECT EXAMINATION

9 BY MR. ANDERSON:

10 Q Morning, Ms. Dotson. Can you state your name for the
11 record?

12 A Monica Dotson.

13 Q Can you spell your last name as well?

14 A D as in dog, O-T as in Tom, S-O-N.

15 Q And what is your current occupation?

16 A I'm currently a claims adjuster for auto insurance.

17 Q And where were you working on May 17th, 2022?

18 A I was working as an asset protection manager for Belk at
19 Rock Hill location.

20 Q Do you recall a shoplifting incident that occurred at
21 Belk that day?

22 A I do.

23 Q Do you remember approximately what time that occurred?

24 A Evening time. I -- I don't recall the direct time.

25 Q If I showed you your report you wrote for Belk, would you

1 be able to remember that?

2 A (No audible response).

3 MR. ANDERSON: May I approach the witness, Your Honor?

4 THE COURT: You may approach.

5 And Mr. Anderson, I want to double-check. Your memo has
6 been -- it's an exhibit.

7 MR. ANDERSON: I have not made it an exhibit yet.

8 THE COURT: Okay.

9 MR. ANDERSON: I can make that Court's Exhibit 1.

10 THE COURT: You can. You can take my copy if you want.
11 Yep.

12 MR. PORTER: Your Honor, just to make the record clear.
13 Dan Porter on behalf of the State, that's going to be Court's
14 Exhibit 5. The State has four that's already marked by the
15 court reporter.

16 THE COURT: All right.

17 (WHEREUPON, Court's Exhibit No. 5 was marked for
18 identification only.)

19 Q So reviewing that report, does that help refresh your
20 memory?

21 A It does.

22 Q Okay. So when did that shoplifting occur that day?

23 Q Around the hours of 6:30 p.m.

24 Q Okay. Was anybody with Mr. Faile that day?

25 A There were people who got in the vehicle, yes. But no

1 one directly.

2 Q When did you first notice Mr. Faile?

3 A Approximately 6:15 on our monitors -- the cameras.

4 Q How many monitors do you have in that office?

5 A We have at least four that operate the CCTV and then one
6 is just a computer system.

7 Q And what did he look like on those monitors?

8 A He had on a white button-up shirt, medium build,
9 approximately five-seven, salt and pepper hair. I believe he
10 had a medical mask on at the time.

11 Q Okay. Did you notice any particular physical
12 characteristics, anything that stuck out to you in particular?

13 A Yeah. I mean, it was a distinct hairstyle as well as the
14 eyes and (indiscernible) eyebrows around them.

15 Q About how long do you think the shoplifting incident
16 lasted?

17 A A total of, I believe, around 15 minutes.

18 Q So you got a pretty good look at him over that time?

19 A I did.

20 Q Okay. What did he do once he was in the store?

21 A Initially, you know, when I -- I first saw him in our
22 handbag department, and that's where I saw him clip the
23 security cable on a handbag. At that point, in which he then
24 took the bag and went to the back wall, past our men's
25 department. And I believe he then circles back with a black

1 bookbag and then also goes to the back of the store again.

2 Q And what did he do after getting that backpack?

3 A He had something in his hands prior. I -- I didn't see
4 what. But something was concealed in the bags. And then
5 the -- the actual purses themselves were just openly carried
6 out the front door of the store.

7 Q Did he get into a vehicle?

8 A He did.

9 Q All right. What vehicle did you see him get into?

10 A It was a white Chevrolet pickup truck.

11 Q What seat?

12 A Driver's seat.

13 Q Were you able to tell license plate of the truck said?

14 A Part of it, yes. The first two letters I could tell; the
15 rest was -- it appeared there was black tape over it,
16 something covering the remainder of the plate.

17 Q Did Belk have surveillance cameras?

18 A Yes, we do.

19 Q So that whole interaction was captured on surveillance?

20 A Yes.

21 Q How good's your eyesight, Ms. Dotson? I see you wear
22 glasses.

23 A I rotate between glasses and contacts, but corrected with
24 glasses and contacts is 20/20.

25 Q Okay. Were you wearing your glasses or contacts that

1 day?

2 A I don't recall which ones, but yes.

3 Q How do you know that you were wearing either one?

4 A I could see.

5 Q So assuming you can't see without them?

6 A That is correct.

7 Q Do you ever leave your house without your contacts or
8 glasses?

9 A (Indiscernible).

10 Q What was your state of mind during the incident? Were
11 you well rested? Were you hung over? What was your state of
12 mind like?

13 A Normal, very alert. In -- when I was working that kind
14 of line of work, I made sure to be well rested. I wouldn't go
15 to work if I had, you know, any sort of -- any sort of thing
16 messing with me.

17 Q So what was your level of attention then?

18 A Normal, fully alert.

19 Q And what did you focus on while you were watching the
20 shoplifting incident?

21 A My main focus was really just kind of case building,
22 making sure that I could kind of get steps in and see, you
23 know, him fully on camera as best as I could.

24 Q And what were the conditions like in the store? How's
25 the lighting?

1 A It's a very well-lit store. The floors are very
2 polished, so it kind of reflects very bright store.

3 Q So how and when did you report the incident?

4 A I called 911 while he was still in the store to report
5 it.

6 Q Do you remember what you told the dispatcher?

7 A I -- yes. I let them know that there was someone who I
8 had suspected from prior incidents was in the store. And I
9 was kind of walking them through what I was seeing on camera
10 because sometimes that police department, they respond really
11 quickly to where they'll be outside before someone exits the
12 store (indiscernible) seeing.

13 Q Do you remember what your initial description was on that
14 911 call of the suspect?

15 A I was probably just describing, like, his shirt, his
16 build, hairstyle, hair color, stuff like that.

17 Q I know I asked you this earlier, but any distinguishing
18 features that you really honed in on?

19 A Yeah. I mean, the brow bone, kind of that bushier
20 eyebrows, and just the distinct hairstyle at the time.

21 Q And had you seen him before that day?

22 A I did.

23 Q How many times had you seen him before?

24 A I believe two -- two times prior.

25 Q So he'd come into the store twice before?

1 A Uh-huh, that is correct.

2 Q That same Belk at Dave Lyle?

3 A Yeah, the same location.

4 Q Did you speak to a Det. Swiger in this case?

5 A I did.

6 Q Do you remember how many days after you spoke to Det.
7 Swiger?

8 A I believe it was within the week.

9 Q So within a week?

10 A Within the week. I believe three days, if I recall
11 correctly.

12 Q Okay. And what was the purpose of your meeting with Det.
13 Swiger?

14 A He had put together a photo -- or was showing me a photo
15 lineup for that incident.

16 Q Who was present during that?

17 A It was just me and him.

18 Q And how did he -- do you remember how he conducted the
19 lineup?

20 A Yeah. It was -- he read to me kind of, you know --
21 basically it says, you know, don't guess, the person may not
22 be in that lineup, that (indiscernible), the page. And then
23 handed me a sheet of paper that had six photos on it where I
24 identified him through that. And then after that I signed
25 the -- the photo I chose.

1 Q So were you able to pick Mr. Faile out of that lineup?

2 A I was.

3 Q Do you remember how quickly you picked him out?

4 A I believe it was within the first 15, 20 seconds.

5 Q What was your reaction upon seeing that photo lineup and
6 then seeing Mr. Faile in that photo lineup?

7 A My interaction was immediately there was a picture that
8 looked like him. He looked a little bit -- from the recent
9 incident, he had lost some weight to the DMV picture that was
10 in that lineup. Same head shape, very obviously him.

11 Q So it was deemed you thought he was a little heavier than
12 he was (indiscernible). Did you identify anyone else besides
13 Mr. Faile as the shoplifter?

14 A Huh-uh.

15 Q How sure were you that the person you picked in the
16 lineup was the shoplifter?

17 A 100 percent sure.

18 Q Did you have any doubt whatsoever?

19 A I did not.

20 Q I know you touched on this a little bit, but how did his
21 appearance differ from his lineup photo to how he appeared in
22 the store?

23 A So in the store that day, he appeared to have lost some
24 weight. He appeared a little bit, I guess smaller than the
25 DMV picture.

1 Q Do you remember if Det. Swiger was wearing a body cam?

2 A He was.

3 Q Did that record the interview?

4 A It did.

5 Q And if I showed you a copy of that disk, would you
6 recognize it?

7 A I would.

8 Q I guess we're going to get the disk after. Did you watch
9 a copy of that interview?

10 A I did.

11 Q Was that a true and accurate depiction of your
12 interview --

13 A It was.

14 Q -- with Det. Swiger?

15 MR. ANDERSON: At this time, the State's going to publish
16 Det. Swiger's body cam. Court's 4.

17 (WHEREUPON, Court's Exhibit No. 4 was marked for
18 identification only.)

19 THE COURT: All right.

20 MR. ANDERSON: Just give me one second. Can I have
21 permission to publish, please?

22 (Pause.)

23 MR. ANDERSON: Yes. Permission to publish, Judge?

24 THE COURT: You may publish.

25 (Thereupon, the visual recording was played but not

1 transcribed herein.)

2 Q So in that audio we just heard, why did you say that
3 number 2 looked like him, but only heavier?

4 A Because it looked like him. I mean, it wasn't -- there
5 wasn't really any other photos on the page that looked even
6 similar -- it was.

7 Q And so why did you ask Det. Swiger if that was the only
8 sheet?

9 A As you can see in the video, there's three pages.

10 Q Uh-huh.

11 A I hadn't done a photo lineup before, but there was three
12 pages, and that third page I didn't know what was on it, and I
13 didn't -- you know, it was just kind of, I guess, instinctual
14 to ask.

15 MR. ANDERSON: Can you pull up the (indiscernible),
16 please?

17 Q Do you recognize that?

18 A Uh-huh, I do.

19 Q What is it?

20 A That is my signature for the photo lineup.

21 MR. ANDERSON: Okay. And the State is showing the
22 witness -- I believe it's -- what will be marked the Court's
23 3. This is the first page of the photo lineup, and now we
24 are -- State's entering the Court's exhibit of the lineup,
25 Exhibit 6. And we're also now making sure the witness -- what

1 will be the Court's 7, which is the actual photos.

2 Q Do you recognize that?

3 A I do.

4 Q Okay. Which photo did you pick out as Mr. Faile?

5 A Number 2.

6 Q Okay. And how do you know that's the photo you picked?

7 A I signed and dated it on that right side of it.

8 Q Did Det. Swiger tell you who to pick?

9 A No.

10 Q Did he pressure you in any way?

11 A Nope.

12 Q Did he threaten you?

13 A Nope.

14 MR. ANDERSON: No further questions. Please answer any
15 questions the defense has.

16 THE COURT: Mr. Stevens?

17 MR. STEVENS: I think I -- before we continue, Your
18 Honor, I think I'd like to play the rest of the photo lineup
19 video that we just saw.

20 THE COURT: Sure. That'd be fine.

21 (Thereupon, the visual recording was played but not
22 transcribed herein.)

23 MR. STEVENS: Let me back up a few seconds. Basically
24 where he got into the quick change.

25 (Thereupon, the visual recording was played but not

1 transcribed herein.)

2 MR. STEVENS: All right, Judge.

3 THE COURT: Okay.

4 MR. STEVENS: Okay.

5 (Counsel confer.)

6 CROSS-EXAMINATION

7 BY MR. STEVENS:

8 Q How's it going Ms. Dotson?

9 A Good, how are you doing?

10 Q We've had a chance to talk before, before you came in to
11 testify today.

12 MR. STEVENS: If you could bring up a copy of the lineup.

13 Q So I'm going to ask you to point -- the first thing is
14 point to the lineup when it gets up there. Point to the
15 person that you told Det. Swiger about the eyebrows that were
16 pointed in a similar fashion, please. Is this the lineup that
17 you remember?

18 A It is; it's the same one. I don't recall which one I was
19 referencing. I don't think I said a number in that video, I
20 believe.

21 Q But you pointed at somebody in the video, right?

22 A Yes. Well --

23 Q I think you said something to the effect of, the only
24 thing that threw me off is that this guy's eyebrows are
25 pointed like his. So whose eyebrows are pointed like number

1 2's?

2 A Number 1, possibly.

3 Q Possibly number 1. And can you see photo 1 very clearly?

4 A I can.

5 Q The shadows don't cause an issue with you seeing the face
6 in that photograph?

7 A They do not.

8 Q Let's go back into the first part of this. You
9 specifically asked Det. Swiger if there was another sheet in
10 the lineup?

11 A That is correct.

12 Q Why'd you do that?

13 A I had not completed a photo lineup before. In the video
14 you can see there's three pages, and he had went over the
15 first page with me and the second one. That I was kind of
16 unsure if there was going to be a third page, just to kind of
17 cover my bases to be 100 percent sure.

18 Q And you're sure you weren't looking for additional
19 photographs?

20 A No. I mean, I was making sure there was no other
21 options, I guess. Again that third page just had me, I guess,
22 wondering what was on it.

23 Q Because you asked for that after you had already kind of
24 pointed to somebody, right?

25 A That is correct.

1 Q And then you mumbled something after you made your
2 initial identification. You said number 2, but -- and then
3 you mumbled something. What was it that you said?

4 A I don't recall. I can't hear it on the video. I've
5 tried to make it out, but --

6 Q Because it sounded like you weren't as confident. And
7 that's when you had said, is there another sheet?

8 A Yeah, that's correct.

9 Q So you weren't really as confident about number 2?

10 A No. I mean, I was nervous. It was my first photo
11 lineup.

12 Q Okay. And that's why you asked for the extra sheet,
13 because you weren't really sure if you saw a number 2 or not.
14 Whether you saw the suspect in the lineup that you just saw.

15 A I wasn't asking for sheet number 3 because I was unsure.
16 It was more so for clarity to, again, make sure that I was
17 covering all my options, make sure I wasn't missing something.

18 Q Because you weren't completely confident?

19 A Yes, that's correct.

20 Q And you spoke to Det. Swiger earlier that day, right?

21 A I believe so, to -- because I would have had to know what
22 time he was coming in the store.

23 Q And what did Det. Swiger tell you? What'd you talk about
24 on the phone? Do you remember?

25 A I don't recall. It probably was just him telling me the

1 time he was going to be there to do it. We have to arrange
2 when I'm at the store.

3 Q Do you recall Det. Swiger -- or telling him or giving him
4 a description of the individual that you saw in the store?

5 A I don't recall.

6 Q Do you recall telling Det. Swiger that you had any sort
7 of up-close, physical contact with this individual you saw at
8 the Belk store?

9 A It's possible I may have.

10 Q So it's possible you may have discussed that and it's
11 possible you may have given him a discussion -- or a
12 description of who you saw?

13 A I believe so, in order to pull photos. I don't know -- I
14 don't recall.

15 Q Okay. And then, I'm not trying to belabor the obvious
16 because we've talked about it already, but you specifically
17 pointed out to Det. Swiger that there was a problem with the
18 weight in the picture of -- on number 2; is that right?

19 A Yeah, that's correct.

20 Q So what was it about the weight that you found was
21 problematic in that picture?

22 A He just appears heavier in that photo than at the time of
23 the incident.

24 Q And how would you gauge that? Would you gauge that from
25 the surveillance videos and photos that you saw or some other

1 (indiscernible) interaction with the suspect on the Belk
2 floor?

3 A Because surveillance and in person at the time of the
4 incident.

5 Q So let's explore that a little bit. Did you have any
6 interaction with the suspect at any sort of point before this
7 photo lineup?

8 A Yes. I don't recall the date; it was the second incident
9 with him where he clipped a handbag, and it was recovered. An
10 employee entered the area. I went off of cameras, entered the
11 area as well and was in the area when an employee had customer
12 serviced him. Sometimes I'll say, hey, how are you. I don't
13 recall if I did that day, but I did see him in person within
14 20, 30 feet.

15 Q So you were within 20 to 30 feet?

16 A I would say so.

17 Q And how far do you -- in this courtroom, how far do you
18 think is 20 to 30 feet?

19 A I would say from here to -- I would say about where
20 you're standing now, if you took a few steps back.

21 Q I'm standing right here, that's roughly 20 to 30 feet in
22 your approximation?

23 A Yeah.

24 Q Okay. But this is roughly how far you were standing
25 apart. And what was this individual wearing at that time?

1 A I don't recall. I -- there was an incident where he was
2 wearing, like, a khaki utility shirt. I don't know if that
3 was this incident or the first one.

4 Q Was the suspect wearing anything that obscured any part
5 of his face?

6 A He was wearing a medical mask.

7 Q So what could you actually see of the suspect's face?

8 A Kind of upper half of the nose, the eyes and brow bone,
9 and then his hairstyle.

10 Q But nothing else in the face?

11 A Nothing else in the face.

12 Q Couldn't see the nose? Couldn't see the mouth?

13 A Yeah.

14 Q Couldn't see any facial features below what was in that
15 surgical mask, right?

16 A Correct.

17 Q And you didn't see the suspect on any other occasion in
18 that close physical proximity? As far away as that was, no
19 other time did you have actual physical contact with the
20 suspect?

21 A All your other interactions were over surveillance camera
22 video?

23 A Yes.

24 Q Or by still photo taken from surveillance video until
25 Det. Swiger showed you this photo lineup and then immediately

1 thereafter showing you a driver license photograph?

2 A Yes.

3 MR. STEVENS: Okay. That's all I have, Your Honor.

4 THE COURT: All right. Any redirect from the State?

5 MR. ANDERSON: Very briefly.

6 REDIRECT EXAMINATION

7 BY MR. ANDERSON:

8 Q Was there any doubt in your mind whatsoever that the
9 shoplifter you saw on three occasions was number 2, the person
10 you picked?

11 A No.

12 MR. ANDERSON: No further questions, Your Honor.

13 THE COURT: Mr. Stevens?

14 MR. STEVENS: It's all I -- just one question, Your
15 Honor.

16 RECROSS-EXAMINATION

17 BY MR. STEVENS:

18 Q You said you weren't confident. Now you're saying
19 there's no doubt. So before you said -- you specifically
20 asked for page 3 because you weren't confident.

21 A I can be not confident and still be okay with what I
22 choose. If there as any -- like, if I believed that he wasn't
23 in that photo, I wouldn't have chosen him.

24 Q But you had never seen a photo lineup before?

25 A No, I had never seen a photo lineup.

1 Q Other than what you see on TV? Or some other kind of
2 training.

3 A Just that one incident.

4 Q You ever seen a photo lineup administered to anybody
5 else?

6 A I don't believe so.

7 MR. STEVENS: No further questions, Your Honor.

8 THE COURT: Mr. Anderson?

9 MR. ANDERSON: I have no further questions for her.

10 THE COURT: Thank you, ma'am. You can step down.

11 All right. Argument, Mr. Anderson?

12 MR. ANDERSON: Yes, sir.

13 THE COURT: Actually, in this case, let me hear from the
14 defense first because it would be the defense motion to
15 exclude the evidence. Let me hear from Mr. Stevens.

16 MR. STEVENS: Your Honor, I'd actually like to call a
17 couple -- another witness.

18 THE COURT: Okay.

19 MR. STEVENS: Det. Swiger.

20 THE COURT: Okay. That'd be fine.

21 MR. STEVENS: Your Honor, we had moved for sequestration
22 of witnesses, and to prevent any other further issues,
23 probably should --

24 THE COURT: Any objection from the State?

25 MR. ANDERSON: No objection.

1 THE COURT: Okay. Ladies and gentlemen, I've granted the
2 sequestration motion, which means anyone who is going to be a
3 trial witness needs to wait out in the hall or somewhere else
4 when the other testimony is on the stand, with the exception
5 of the State's case agent. Okay.

6 MR. STEVENS: Okay, Det. Swiger. Well, actually I got to
7 stand over here. I don't get to go approach. All right. So
8 these questions will be nicer, I think.

9 DIRECT EXAMINATION

10 BY MR. STEVENS:

11 Q Det. Swiger, have you ever read the Rock Hill Police
12 Department policy on conducting photo lineups?

13 A Yes, I have.

14 Q And when's the last time you read it?

15 A General orders come out on a periodic basis with updates
16 and refreshes, so I can't specifically remember the exact date
17 I read the last -- the last -- that specific general order.
18 But I have read general orders as recently as four or five
19 days ago.

20 Q Okay. And then going back to last year, roughly, had you
21 read the Rock Hill Police Department policy on conducting
22 photo lineup prior to conducting this?

23 A Yes, I had.

24 Q Okay. Have you ever received training on conducting
25 photo lineups?

1 A Verbal discussion with peers, you know, as a patrol
2 officer from my sergeants as well as from, you know, fellow
3 detectives.

4 Q So you've never received any formal training of any kind
5 on how to conduct a photo lineup?

6 A There's not a formal training, per se. It's a discussion
7 of what the photo lineup affidavit is about and how to
8 describe, you know, how the procedure's going to go and then
9 making a presentation without presenting any biases.

10 Q Have you ever trained other officers or other police
11 officers -- other law enforcement officers on conducting photo
12 lineups?

13 A I have not.

14 Q And how'd you identify the suspect in this case?
15 Briefly, not too -- basically for insert into this lineup.

16 A Yes, sir. When the -- the vehicle that had the tag
17 obscured. When we located a vehicle that matched that
18 description, saw the rest of the tag, through DMV, we found
19 the registered owner of it. The -- I knew from the report
20 that the driver of the vehicle or the person -- the suspect
21 was the driver of the vehicle. So a logical assumption at
22 that point would be, you know, the driver might be the owner.
23 And you know, I ran a DMV photo just to get the information
24 put with my packet.

25 Q But you didn't know at this point if --

1 A No.

2 Q -- the registered owner was the driver?

3 A No, I did not know.

4 THE COURT: Detective, I have a question. I'm just
5 curious. What did the Flock database have that you couldn't
6 get from the DMV? See, because at the time you had -- I mean,
7 it was a white -- you believed it to be a white Chevy
8 Silverado, correct?

9 THE WITNESS: Yes, sir.

10 THE COURT: With the VM as the first two -- could you not
11 search the DMV database for a white Chevy Silverado with VM as
12 the first two digits?

13 THE WITNESS: You can do that, and that takes a longer
14 period of time.

15 THE COURT: Oh, it's just how long it takes?

16 THE WITNESS: Well, it's -- when I say a longer period of
17 time, it could be as short as a week. It's just you're kind
18 of up to the mercy of the DMV when you hand that to them.

19 THE COURT: Okay. So you can't execute that search from
20 your office; you have to send a request in to the DMV?

21 THE WITNESS: That's correct.

22 THE COURT: It's primarily a convenience would be the
23 reason you went with the Flock.

24 THE WITNESS: Actually, in the process of investigating
25 this, a crime analyst came up with that image, presented it to

1 me, and showed me, said, hey, I found a match on that vehicle.

2 THE COURT: Okay. Thank you for that.

3 BY MR. STEVENS:

4 Q So the suspect identification resulted directly from the
5 Flock camera photographs that you were --

6 MR. STEVENS: I was leading right into that question,
7 Judge.

8 Q -- that you got from the intelligence analyst?

9 A It gave me one lead.

10 Q One lead. Did you have any other leads?

11 A Other than the fact that -- in regards to the truck or in
12 regards to the registered owner?

13 Q Any of the above.

14 A No other leads with the truck because of -- you know, the
15 obscured tag turned out to be a match, so I was confident in
16 that. And after I saw the DMV photo and the still pictures
17 that I had seen, you know, in the case file I said, well,
18 similar appearance as far as hair color. Maybe this is a
19 match. So at this point, it's a lead to work on, but not a --
20 not a foregone conclusion.

21 Q I appreciate that. But you made no other efforts to
22 track down -- through any other means, to track down the
23 license plate tag, other than the Flock camera?

24 A I had -- yeah, I had no need to -- I had no need other
25 than the flock camera.

1 Q Okay. But you didn't, right?

2 A I did not. I did not, correct.

3 Q And who created the photo lineup for you in this case?

4 A South -- well, actually, there is an email process that
5 we submit to. I -- I believe it's the DMV that puts that
6 together, but it's an online form that we, you know, list our
7 suspect's name and date of birth, submit it to them on this
8 form, and they randomize a series of photos based upon similar
9 characteristics.

10 Q And how long did it take SLED -- I'll just shorten it to
11 SLED. Otherwise it will take forever to say it. But how long
12 did it take SLED to create that photo lineup for you?

13 A I don't remember the exact date, but it's relatively
14 quick. It could come back in 24 hours; it could be two or
15 three days, but --

16 Q So within a couple of hours?

17 A It's relatively quick, yes.

18 Q Did you review that lineup prior to showing it to Ms.
19 Dotson?

20 A Yes, I did.

21 Q And are you trained on how to review a lineup for
22 fairness?

23 A When you say trained -- I had his DMV photo, and I saw
24 the photo lineup, and I could see that the correct DMV photo
25 was inserted in to that lineup, so I made a determination the

1 photo lineup would be an accurate photo lineup, including a
2 possible suspect, but I would not say I was trained to do
3 that.

4 Q So you don't know how to review a lineup for fairness?

5 A No. I -- I do -- I do know how to do a photo lineup for
6 fairness.

7 Q Okay. And do you know what a suggestive police
8 identification procedure is as it pertains to a lineup?

9 A I'm sorry. Restate that.

10 Q That's a lot of words, but first, do you know what
11 suggestive police identification procedure is? Do you know
12 what sequence of words is?

13 A Never -- never heard of that term.

14 Q Never heard that sequence?

15 A Never heard that term.

16 Q Not in any training of any kind?

17 A Not that I can recall.

18 Q In your entire law enforcement career.

19 A Not that I can recall.

20 Q So you've never received any training on how to review a
21 lineup for problems with physical characteristics?

22 A No, I have not.

23 Q Problems with height?

24 A No.

25 Q Problems with weight?

1 A No.

2 Q Age?

3 A No.

4 Q Hairstyle?

5 A No.

6 Q Race?

7 A No.

8 Q Clothing?

9 A You're asking about training, no.

10 Q And for other factors such as lighting and shadows?

11 A No.

12 Q Never received any training on that?

13 A No, sir.

14 MR. STEVENS: Can we -- could you put up the photo lineup
15 for me? You're okay with me asking for that, Judge --

16 THE COURT: Sure.

17 MR. STEVENS: -- directly?

18 THE COURT: As long as the State's okay doing it, I mean,
19 yeah.

20 MR. STEVENS: We talked ahead of time. We've been trying
21 to make this as easy as possible.

22 THE COURT: Yeah, that's fine.

23 Q Detective, take a look at this lineup and tell me if you
24 see anything in there that might be a problem as per -- if you
25 were looking for a problem with shadows on photos.

1 A The top left photo does have a shadow across it, or
2 lighting from one side of the individual's face.

3 Q But you never received training on how to deal with photo
4 lineups that have shadows on them, do you?

5 A No, I have not.

6 Q Did you request a lineup from SLED that superimposed a --
7 actually, before I get to that -- you reviewed Ofc. Bowker's
8 police report before you asked for this lineup?

9 A Yes, sir.

10 Q You reviewed any surveillance video before you asked for
11 this lineup?

12 A I remember looking at stills, but I do not recall if I
13 watched a moving video.

14 Q But you saw some stills of a suspect?

15 A Yes.

16 Q And you saw that the suspect was wearing a surgical mask?

17 A Yes, sir.

18 Q So where's the lineup that includes a surgical mask on
19 the photographs?

20 A That would not be possible to obtain through the SLED
21 program -- SLED process because none of the identifications
22 would have a face mask.

23 Q Okay. So SLED doesn't, but do you have a procedure for
24 adding a surgical mask?

25 A No, we do not.

1 Q Have you asked?

2 A No. We -- we don't -- we don't try to alter images that
3 come to us for photo lineups, so we wouldn't try to change an
4 image by adding something to it.

5 Q So you've never had a situation like this where someone
6 wore a mask during, say, a robbery and you had to do a photo
7 lineup that included a series of images that have a mask on
8 them?

9 A I have not had a previous case with masks involved.

10 Q Did you talk to any of your peers and see if they had?

11 A No, I did not.

12 Q So you made no effort to match the suspect photo to the
13 evidence that you had at hand, which was the fact that the
14 suspect was wearing a surgical mask?

15 A Say that again. I'm --

16 Q You made no effort to match the lineup to what you knew
17 as the suspect?

18 A It was not possible to do a lineup with a mask.

19 Q Well, it is possible; you just didn't do it, right?

20 A No, sir, it is not possible. I have no data --

21 Q Not possible.

22 A -- I have no database of photos with masks on them. So
23 it's not possible for me to put a photo lineup together with
24 six randomized pictures with masks?

25 Q Can the FBI do it?

1 A I'm not aware.

2 Q Not aware?

3 A Not aware.

4 Q Did you ask them?

5 A No, I did not.

6 Q Did Monica Dotson ever see the full face of the suspect
7 without a surgical mask?

8 A I -- you'd have to ask her. I don't know.

9 Q You don't -- so did you ask her that before you showed
10 her this lineup?

11 A Don't recall if I did in that discussion.

12 Q And if you had known that Monica Dotson hadn't seen a
13 full face photograph -- or full face of your suspect, would
14 you have tried to get a lineup that had a surgical mask on it?

15 A No, I would not.

16 Q Why not?

17 A Because that would be an altered photo. I would have to
18 digitally put a mask on a face of a photo, and that would be
19 an inaccurate image of what was in a official photo of
20 somebody.

21 Q I mean, you're throwing out a lot of accuracy words, but
22 that's -- okay. So you're basically saying that you can't
23 modify what SLED gives you; is that right?

24 A That's correct.

25 Q But you could have gone elsewhere to get help with that,

1 right?

2 A As far as getting a photo lineup?

3 Q Yeah.

4 A I could generate one internally with our own system, yes.

5 Q And so you could have asked questions about whether
6 somebody could have helped you with generating a photo lineup
7 with a surgical mask on it, right?

8 A I could have asked questions -- no, not with a surgical
9 mask, no.

10 Q But some kind of mask. Something that's blocking below
11 what was shown -- what Monica Dotson knew. You could have
12 done that, right?

13 A I -- I've never been aware of a situation where we've
14 tried to block somebody's face in a photo lineup.

15 Q Never had a bank robbery where somebody wore a mask?

16 A Not that I'm aware of.

17 Q Not ever?

18 A Not that I'm aware of.

19 Q You didn't ask anybody else for help?

20 A Didn't -- no, I did not.

21 Q Did you review the photo lineup instructions with Monica
22 Dotson?

23 A Yes, I did. It's a photo lineup affidavit.

24 Q And I think you read it out to her on -- we watched it
25 and I think you read it to her, right?

1 A That's correct.

2 Q Is that how you were trained?

3 A Yes.

4 Q But you didn't receive training, right?

5 A When I say training, it's verbal discussion with peers
6 and --

7 Q Verbal discussion with peers.

8 A -- through my FTO training as a patrol officer.

9 Q Are you aware of best practices in conducting photo
10 lineups?

11 A In general, yes.

12 Q You know what double-blind administration is?

13 A No, I do not.

14 Q So you've never heard of the concept of double-blind
15 administration of a photo lineup?

16 A No, I have not.

17 Q Because this is pre-trial, I'll go ahead and ask you a
18 little bit more of a direct question, but -- so you've never
19 heard of a situation where the individual that creates the
20 lineup is not the person who actually shows the lineup to the
21 witness?

22 A Okay. That -- you're saying that is the definition of a
23 double-blind?

24 Q Roughly.

25 A Okay.

1 Q Have you ever heard of that?

2 A Prior to today, no, not that term.

3 Q Never heard of double-blind administration?

4 A Not that term, no. Can I elaborate a little bit?

5 Q Say again?

6 A May I elaborate a little bit?

7 Q Oh, absolutely, please. This is for the Court's -- yeah.

8 A What you just described is the process that we use when
9 we go through SLED to do that, because they generate it. I'm
10 not the one that generated that -- that image, so that is --
11 sounds like a double-blind process.

12 Q And here's where -- and because this is pre-trial I can
13 add a little bit more if the judge permits. But double-blind
14 means that the person who submit -- like, you knew who was in
15 that lineup.

16 A I knew --

17 Q You knew that number 2 was Michael Faile.

18 A I knew a registered owner of a vehicle was in that
19 lineup, but I didn't know if he was a suspect.

20 Q But you knew that number 2 was the individual that you
21 received back, right?

22 A That's correct. That's correct.

23 Q So in other words, you already knew who number 2 was in
24 the lineup?

25 A I would have to know that -- I would have to know if she

1 picked a person if it was the person that was on our lead. So
2 yes.

3 Q And bear with me, though. But you already knew who it
4 was, right?

5 A That's correct.

6 Q You knew if she picked 2, boom, you got it, right?

7 A That's correct.

8 Q So that's not double-blind. Double-blind means that the
9 person showing the lineup doesn't know if the person's even in
10 the lineup.

11 A Got you. Okay.

12 Q And you know -- and the reason we do that is so that you
13 don't tip off the witness with subtle clues, tips, reminders,
14 maybe of a specific -- maybe as you're handing it to her you
15 just happen to bump number 2, right?

16 A Uh-huh.

17 Q Do you know what sequential presentation is?

18 A No, I do not.

19 Q Never heard of that --

20 A Not heard --

21 Q -- in the context of photo lineups? Have you ever heard
22 of the concept of showing each picture in the lineup one at a
23 time?

24 A Can't say that I have. I've always done a six-up on a
25 photo --

1 Q Always done a six-pack on a photo lineup. Well, let's
2 move on to procedure. Did Monica Dotson know the name of the
3 suspect before you told her?

4 A Not that I'm aware of.

5 Q And I mean, you were in here and you heard the discussion
6 that we had with Ms. Dotson. She had some initial problems
7 with that lineup, didn't she?

8 A I wouldn't characterize them as a problem.

9 Q You don't characterize them, though, right?

10 A Yeah.

11 Q She saw -- and we can play your body camera footage
12 again. But do you recall her saying something to the effect
13 of number 2 looks like him, but -- and then some kind of
14 unintelligible words. Do you remember that?

15 A Uh-huh.

16 Q She asked you if there was another sheet in the lineup?

17 A Uh-huh.

18 Q And you heard her testify; it's because she wasn't as
19 confident, right?

20 A At that point in the -- at that point in our exchange,
21 she was not, you know, 100 percent confident.

22 Q Not 100 percent confident, was she?

23 A I would agree with that. At the end of our exchange, she
24 was much more confident.

25 Q And then you were in here, so you got to see her talk

1 about how she actually pointed to someone else and said, I was
2 real worried because -- or something to that effect -- because
3 that other individual's eyebrows were pointed the same way.

4 Do you remember that?

5 A Uh-huh.

6 MR. STEVENS: All right. I think that's all I have for
7 you, Det. Swiger. Thank you very much.

8 THE COURT: Mr. Anderson?

9 MR. ANDERSON: Your Honor.

10 CROSS-EXAMINATION

11 BY MR. ANDERSON:

12 Q Det. Swiger, did you ever implicitly or explicitly
13 suggest to Monica Dotson who she should pick?

14 A I did not.

15 MR. ANDERSON: Okay. No further questions.

16 THE COURT: Anything else, Mr. Stevens?

17 MR. STEVENS: I think -- oh, one more thing. If we could
18 put that lineup one more time, and I --

19 REDIRECT EXAMINATION

20 BY MR. STEVENS:

21 Q Do you notice something odd about the photograph in
22 number 2? See that line going through it?

23 A Okay, I do now. It also extends through number 5 at the
24 bottom.

25 Q I see it extends through number 5, too. But you reviewed

1 this photo lineup?

2 A Yes, I did.

3 Q You look for anything that might be suggestive or
4 problematic when a victim looked at it -- or a witness of some
5 kind?

6 A Yes, I do.

7 Q And you didn't think that line was a problem?

8 A That line didn't stand out as being problematic.

9 Q Right through --

10 A Item that I look for are, are they similar in hair color
11 and age and type of facial hair, you know, stuff like that
12 that if anyone individual is wearing a different colored
13 clothing such as -- sometimes some photos have jail attire
14 where they would have bright orange or bright yellow.

15 Q Yes, sir.

16 A Exclude those types of images, so. I did review this for
17 randomness, but I did not notice that that printer had left a
18 line down the page.

19 MR. STEVENS: Okay. That's all I have, thank you.

20 THE COURT: All right. Mr. Anderson?

21 MR. ANDERSON: Just one.

22 RECROSS-EXAMINATION

23 BY MR. ANDERSON:

24 Q So just so we're clear, that's -- that line goes through
25 the whole sheet and it's also through number 5?

1 A That's correct.

2 Q And like you said, what do you think that line was?

3 A It looks like some problem with the printer cartridge or
4 the toner in the printer that printed that out.

5 MR. ANDERSON: No further questions.

6 THE COURT: Mr. Stevens?

7 MR. STEVENS: I think I have no further witnesses, Your
8 Honor. But we do have some -- I think we have some space for
9 argument (indiscernible).

10 THE COURT: All right. Thank you, Detective. You can
11 step down.

12 All right. Mr. Stevens.

13 MR. ANDERSON: I believe what we're looking at here is a
14 two-prong test, Judge. State v. Wyatt --

15 THE COURT: Uh-huh.

16 MR. ANDERSON: -- it tells us that prong I ask that the
17 ID procedure is suggestive. And then if you deem it
18 suggestive, we proceed to the next test and determine if the
19 suggestive procedure was necessary under the circumstances.
20 And I would argue here that, one, the detective is not aware
21 of modern policing standards and best practices when it comes
22 to photo lineups. Doesn't know how to review the photo lineup
23 for fairness, didn't do so in this case, doesn't know what a
24 double-blind administration is, doesn't know what sequential
25 administration of a photo lineup is, has never received formal

1 training on photo lineups, has only discussed this among
2 peers. So literally -- and I believe has never received any
3 formal training whatsoever in how to conduct a photo lineup.

4 THE COURT: I think that's a fair summary of the
5 testimony, but I don't think it's the same as saying it's
6 suggestive.

7 MR. STEVENS: Yes, sir. I would say that the most -- one
8 of the most problematic things also is that the suspect in
9 this case was wearing a surgical mask. And that isn't present
10 at all in this photo lineup. And the problem with not
11 including that surgical mask is that you're not actually
12 giving the victim or the witness the exact same look at the
13 face that they actually saw. And I think Ms. Dotson testified
14 that at no point did she ever see -- or somebody testified
15 that at no point did Ms. Dotson ever see the full face of Mr.
16 Faile until probably she was shown this photo lineup.

17 THE COURT: Well, and I -- that's certainly good cross-
18 examination material for trial. I'm not sure that's
19 suggestive because all six of the pictures, none of them have
20 masks on. I'm not sure -- how is that suggestive?

21 MR. STEVENS: It's not necessarily suggestive, but it's
22 problematic. And granted, I mean, it's tough for me to
23 overcome this, but there are significant problems with the way
24 that this photo lineup was administered.

25 THE COURT: Again, I'm with you. I'm familiar with

1 double-blind administration, and I actually have never heard
2 of the sequential thing, but again that makes sense. But
3 again, you have to show it's suggestive, and I haven't heard
4 anything so far that makes me think it was suggestive.

5 MR. STEVENS: I think those are the three things I would
6 say, Your Honor. I'd say that the detective used a lineup
7 with photos without surgical masks, did not use double-blind,
8 and did not use sequential administration. I think that's
9 what I have to say, Your Honor.

10 THE COURT: Okay. Mr. Anderson?

11 MR. ANDERSON: Yes, Your Honor. I'll be brief. So
12 lineup procedure was not unduly suggestive in this case. It's
13 a standard six-pack photo, comparable size and composition;
14 all the subjects are similar in appearance, age, physical
15 characteristics; no photos stick out. They're all middle aged
16 white men with similar features, no evidence Det. Swiger
17 explicitly or implicitly suggested that Ms. Dotson who to
18 pick, random sample.

19 THE COURT: And in fact, unlike a lot of cases, we have
20 on body cam video of the presentation of the lineup, so we
21 have a pretty good account.

22 MR. ANDERSON: The state argues that it is not
23 unnecessary and suggestive, and given if the Court were to
24 find that it was unnecessary and suggestive, the Court can
25 still find that the ID was nevertheless, quote, so reliable

1 that no substantial likelihood of misidentification existed.
2 So in this case, Monica had watched the defendant the entire
3 time he was inside the store; it was a lengthy period. She'd
4 seen him before, that there were prior incidents. She knew
5 she would have to identify him later. High level of
6 attention, identified him in less than 30 seconds; high level
7 of certainty, the lineup was conducted within three days of
8 the incident in question. As much as two weeks between the
9 incident and the lineup has been held reliable under South
10 Carolina law.

11 She didn't identify anyone else. The witness was even
12 able to note his fluctuation in weight. Yes, she did mention
13 at first that number 2 looked like the defendant was heavier.
14 She asked if that was the only sheet; like she said on the
15 stand, that was only because she saw a third sheet in the
16 detective's hand and just wanted to make sure that there
17 wasn't another set of photos. And I guess going towards
18 entering the lineup into evidence in trial as well, that goes
19 in there, the State has a demonstrative need to introduce the
20 photographs, and the photographs themselves, if shown to the
21 jury, do not imply that he has a prior criminal record. DMV
22 photo is not a mugshot.

23 THE COURT: Right.

24 MR. ANDERSON: And the manner of introduction at the
25 trial will not be such that the State won't call particular

1 attention to the source or implication of the source.

2 THE COURT: The ruling of the Court is I have not heard
3 any evidence of it being a suggestive identification
4 procedure. I understand that there are arguments that maybe
5 not -- the best practice right now would have been to do a
6 sequential lineup done by an officer who's not aware of who
7 the suspect is, but that's not the same thing as saying it's
8 suggestive. Nothing to me -- so we have the body cam footage
9 of the presentation of the six-pack to the witness. I don't
10 see anything at all suggestive in that presentation. So I'm
11 going to deny the motion.

12 MR. STEVENS: And then, Your Honor, just so that I can
13 put this on the record, because I didn't say this when I
14 said -- I just wanted to move to suppress out-of-court
15 identification procedure and testimony, which you've already
16 overruled that. And then I also want to move to suppress any
17 in-court identification as being tainted by said suggestive
18 and unreliable identification procedure.

19 THE COURT: Yeah. I'm going to deny the motions for the
20 reasons that I've stated.

21 MR. STEVENS: Thank you, Your Honor.

22 MR. ANDERSON: Nothing further from the State, Judge.

23 THE COURT: All right. Mr. Stevens, let me turn to your
24 motions. Okay, sequestration's already been dealt with. What
25 criminal convictions does State want to put in?

1 MR. ANDERSON: So if the defendant were to testify, we
2 have certified copies of a number of prior convictions. So
3 I've got -- and defense should have a copy of all these as
4 well. I've got a burglary nonviolent second degree from
5 February 14th of 2020. I've got another burglary second
6 nonviolent degree from February 14th of 2020. I've got a
7 third burglary second nonviolent from February 14th of 2020.
8 I've also got a number of property crimes, receiving stolen
9 goods valued 2,000 or less enhanced, also from February 14th,
10 2020. I've got a larceny enhanced from the same date as well.
11 And then I've got a shoplifting 2,000 or less, from January of
12 2016.

13 THE COURT: Also enhanced.

14 MR. ANDERSON: That one is not, actually; that was 2,000
15 or less. As to the shoplifting and the receiving stolen goods
16 cases, State believes those are admissible without a balancing
17 test and without regard to punishment because they're crimes
18 of dishonesty. And as to the burglary cases, I can go through
19 the whole factors if you would like me to.

20 THE COURT: Well, I'll ask Mr. Stevens.

21 So you want to make an argument on any of the six
22 convictions the State believes it can present to the jury?

23 MR. STEVENS: I mean, Your Honor, if my client doesn't
24 testify, I think those would be unduly prejudicial --

25 THE COURT: Oh, absolutely not. They're not coming in if

1 he doesn't testify.

2 MR. STEVENS: I think that -- unfortunately, I don't
3 think that we have a choice that they get to see them because
4 they are his prior record and they would be admissible if
5 you --

6 THE COURT: Only if he decides to testify.

7 MR. ANDERSON: Only if he decides to testify.

8 THE COURT: Okay. All right. Okay. Let's see.

9 And Mr. Stevens, basically the same motion as far as
10 convictions of any witnesses the State intends to call.

11 MR. ANDERSON: To my knowledge, none of our witnesses
12 have criminal records. I don't believe I have run Ms.
13 Dotson's rap sheet. I can in the meantime while we're --

14 THE COURT: Why don't we go ahead and do that on the
15 lunch break.

16 MR. ANDERSON: Yes, sir.

17 THE COURT: All right. Any material that would call into
18 question the credibility of any witnesses?

19 MR. ANDERSON: Not to the State's knowledge, Judge.

20 THE COURT: Okay. Number 5 is a State redact hearsay or
21 unduly prejudicial statements from any audio and/or video it
22 intends to introduce. Is there anything, Mr. Stevens, in
23 particular you want me to direct my attention to?

24 MR. STEVENS: Your Honor, I'm putting that in there for
25 the record.

1 THE COURT: Okay.

2 MR. ANDERSON: The State and the defense have already
3 worked on that, and we've already done those redactions to our
4 joint satisfaction.

5 THE COURT: Perfect.

6 MR. ANDERSON: That's correct, Judge. We talked over the
7 weekend. We've got what we want redacted redacted, Your
8 Honor.

9 THE COURT: Okay. Number 6, the State redact or suppress
10 any mention of any charges for which the defendant is not
11 currently accused. So granted, with the exception that I've
12 already ruled under the -- I'm going to allow in the other two
13 shoplifting incidents as part of a common scheme or plan, and
14 if the defendant chooses to testify, his prior convictions
15 will come in, the one -- the six that we've talked about. All
16 right.

17 Flock safety, we'll save that until last. Okay, we've
18 already done Neil v. Biggers. Okay. So we're up to the Flock
19 motion.

20 MR. ANDERSON: Yes, Your Honor.

21 THE COURT: And I've been thinking this through
22 throughout the whole trial; that's why I asked the question of
23 the witness. Because I would just say that I think you have
24 an interesting argument in the sort of regular use of the
25 Flock camera where the State has, like, a suspect in an armed

1 robbery and they want to use the Flock camera to see if his
2 car was near the robbery location. That is a lot closer to,
3 like, Carpenter. This case it sounds like, they basically
4 used it just like the DMV database, but Flock is faster to
5 respond. All they did was say, do you have any white Chevy
6 Silverados that start with VM in the plate number. That does
7 not seem to implicate the privacy concerns that cases are
8 talking about. Just -- that's what I'm thinking.

9 MR. STEVENS: Would you be open to having the argument
10 (indiscernible)?

11 THE COURT: Yeah. You can do whatever you'd like. I'm
12 open. But I'm just saying as I'm thinking about this case,
13 this case, in my mind, doesn't implicate the kind of privacy
14 interest that would be implicated if it was used -- like I
15 said, show me where so and so was on such and such a date and
16 the Flock cameras say, well, he went to this restaurant, he
17 was on that road. I mean, does that make sense?

18 MR. STEVENS: Yes, Your Honor. And I have a bit of a
19 nuance argument --

20 THE COURT: Okay.

21 MR. STEVENS: -- under both federal and state
22 constitutions.

23 THE COURT: Okay.

24 MR. STEVENS: So I'll go ahead and give a short -- I've
25 got four exhibits also, Your Honor. I can go ahead and give

1 you a copy or I can give that to you --

2 THE COURT: Sure, pass them up. You mean cases to look
3 at?

4 MR. STEVENS: I've got a couple cases, Carpenter v. U.S.,
5 State v. Weaver. I've got a couple of photographs I'm going
6 to use and --

7 THE COURT: Sure.

8 MR. STEVENS: -- then also a article from Flock Safety.

9 THE COURT: Sure.

10 MR. ANDERSON: I need to see it also.

11 MR. STEVENS: Yeah, you can -- may I approach, Your
12 Honor?

13 THE COURT: You may approach.

14 MR. STEVENS: So these are all marked as Court exhibits.

15 THE COURT: All right.

16 MR. STEVENS: Judge, this is a motion to -- and I've
17 written this out myself, and I will try not to speak for the
18 whole time. But if you just interrupt me, Judge.

19 THE COURT: Sure.

20 MR. STEVENS: This is a motion to suppress the Flock
21 camera images as the fruit of an unreasonable search in
22 violation of the Fourth Amendment of the U.S. Constitution and
23 Article I, Section 10 of the South Carolina Constitution.
24 Just by way of introduction, I'm just going to give you a
25 short introduction, give you what the issue is, talk about

1 some rules, do a little bit of analysis, and then give the
2 State some time.

3 I'm going to -- I've got two cases. I've got U.S. v.
4 Carpenter and I've got, I believe, State v. Weaver. The
5 Carpenter case is going to be a U.S. Supreme Court case that
6 discusses CSLI data and which is cell site location
7 information. It's basically whenever you turn on a cell
8 phone, the third-party cell phone company collects a
9 significant number of data that shows exactly where you are
10 within a certain error percent, some sort of error location-
11 wise. So the cell phone company always knows where you are
12 because it needs to know where you are for purposes of
13 operating the cell phone. That's what that cell site location
14 data --

15 THE COURT: Yeah, I understand cell site location data.
16 I understand Carpenter. But again, I don't see it's analogous
17 here. I mean, this was just a database query for white
18 Silverados with that plate.

19 MR. STEVENS: We'll get there, sir, I promise.

20 THE COURT: Yeah, I just -- do that first because that's
21 what I'm struggling with the most.

22 MR. STEVENS: Here's what I think it is, sir. It is
23 basically the -- let me go to this right here. And I'll give
24 you some quotes out of Carpenter as to why.

25 THE COURT: Okay.

1 MR. STEVENS: So one, deeply revealing nature of CSLI,
2 it's depth, breadth, and comprehensive reach compares right to
3 Flock Safety. They're already in 2,500 communities around the
4 United States. I can't tell you how many cameras they have
5 right now, but I can tell you in the City of Rock Hill,
6 there's at least 23 in operation right now covering most key
7 avenues of approach into and out of the city. I can tell you
8 in the City of Tega Cay, there's roughly six cameras as of a
9 few years ago. And I've got the article up there, number 4,
10 that actually quotes the Tega Cay police chief that basically
11 says there's no way in and out of the City of Tega Cay, if
12 driving a motor vehicle, that you would not be detected by a
13 Flock Safety device that was installed on behalf of the City
14 of Tega Cay. So number one, we're approaching the level where
15 no matter where you go, you can't escape it.

16 THE COURT: Maybe I'm not communicating this. I
17 understand that is an issue, but it doesn't seem to be an
18 issue in this case. This case, all that was done was, do you
19 have any white Silverados that start with VM. It has nothing
20 to do -- cameras didn't enter into it.

21 MR. STEVENS: Right.

22 THE COURT: It's just a database of South Carolina plates
23 and vehicle. The same data could be obtained from the DMV,
24 but the detective said, I can get it faster from Flock.

25 MR. STEVENS: Right.

1 THE COURT: I understand that there are other
2 implications with regard to privacy, but in this case, it's
3 just a database query, isn't it? It has nothing to do with
4 location data.

5 MR. STEVENS: Yes, sir. So is CSLI. So CSLI is a third-
6 party database that is owned and controlled by a third party.

7 THE COURT: Correct. But a database of where the phone
8 is.

9 MR. STEVENS: Well, that's --

10 THE COURT: Or where it was. That's very different, in
11 this case, where you're just finding out is there a white
12 Silverado. Give me a list of white Silverados with VM plates.

13 MR. STEVENS: I'd actually argue it's the exact same
14 thing because you're basically searching in that -- so for
15 example, if I wanted to know a certain -- some of them do GPS,
16 some of them do lat/long. So let's say lat/long. Let's say I
17 want to search a specific lat/long in a third-party cell phone
18 provider's database and figure out exactly who was at that
19 location. They can tell me that.

20 THE COURT: That's hugely different. That's massively
21 different.

22 MR. STEVENS: But I can get a search warrant for that.

23 THE COURT: You can get a search warrant, but it's
24 massively -- in this case, this is information that is
25 entirely already in the possession of the DMV, completely. I

1 mean, the detective could have not involved Flock at all and
2 gotten the exact same answer. He just used Flock database
3 because it's faster.

4 MR. STEVENS: Well, the difference actually, Judge, is
5 that -- and I've done searches like this using -- not in South
6 Carolina, but in Florida. It is actually exhaustive, and it's
7 exhausting because I can't tell you right now how many trucks
8 are registered in the state of South Carolina that are white
9 Chevy trucks that start with VM. I can't tell you that, but
10 DMV can. So here's what you'd have to do next. You get that
11 list, and then you're going to have to go out and find every
12 single one of those trucks, and you're going to have to look.
13 And we haven't really seen the photographs yet, but we will.
14 And you're going to have to look on the back of that truck and
15 verify that it has the same distinctive damage in that bumper
16 on every single lead that South Carolina DMV gave you. So
17 they might give you 2 trucks; they might give you 15 trucks;
18 they might give you more than that. But you're going to have
19 to actually go out and do significant amount of work to find
20 those trucks, physically look at them, compare them to the
21 picture that you have. So it's not as simple as just going
22 into the Flock database --

23 THE COURT: So the argument is because Flock also
24 provides you with a photo of the vehicle, it's different?

25 MR. STEVENS: Yes, sir. And that is why it combines --

1 it's much closer -- it's much more analogous to CSLI data
2 because CSLI data is giving you more than just, here's the
3 phone's identification and it was on April 3, 2022, or
4 whatever. Here I have -- and not only that, I can search for
5 all kinds of characteristics, damage on the truck, stickers on
6 the window, color of the truck. I could probably even search
7 for tape on the truck in a specific area. So it's actually
8 far more invasive. And this is all collected on private
9 citizens every single day without a warrant, and it's
10 maintained in that database for approximately 30 days.

11 Now, if the police want to use that database, then they
12 should have to ask for a search warrant for that, just like
13 any other database. It's no different than when we use GPS
14 slap on trackers. Used to be that you could just go up to a
15 car, slap a tracker onto it; you didn't need anything. But
16 the court ruled -- and I can't remember the exact Supreme
17 Court case, but it ruled that that is actually an
18 unconstitutional search because of the breadth of the location
19 data that was being collected and that you had -- and that the
20 court said you need a warrant.

21 THE COURT: This isn't location data or any -- I just --

22 MR. STEVENS: But it is, sir, and here's why. So in this
23 specific case -- and you'll hear it. There was two photos
24 taken in this case. The first photo you see -- and you don't
25 see it yet, but --

1 MR. STEVENS: Can we put those photos up?

2 MR. ANDERSON: I think there should be a copy in the
3 motion, the 404 motion.

4 THE COURT: Yes.

5 MR. STEVENS: Yes.

6 THE ANDERSON: Handed mine -- we used mine for -- yeah,
7 so.

8 MR. STEVENS: So you'll see two photos in there, Judge.
9 The first photo -- and this was taken at I-77 and Dave Lyle.
10 And if you look at the photo set that I gave you there, the
11 two color photos, that's actually the camera. So where that
12 camera is situated is if you can imagine driving southbound on
13 I-77 --

14 THE COURT: Yeah, the little thing with the solar panel
15 and stuff.

16 MR. STEVENS: Yes, sir. That is a Flock camera.

17 THE COURT: Uh-huh. Let me see it. Thank you.

18 MR. STEVENS: So that first photograph, that is basically
19 a zoomed-in photo of the actual white truck. That actually
20 came from that camera as far as -- I mean, we still have to
21 hear testimony on that, but I believe there will be testimony
22 that will state that that photo was taken from Flock camera.

23 THE COURT: You're talking about Exhibit 13, right?

24 MR. STEVENS: Yes, sir. It should be, like, a zoomed
25 in --

1 THE COURT: This picture?

2 MR. STEVENS: Yes, sir.

3 THE COURT: Okay.

4 MR. STEVENS: Yes, sir. I think so.

5 MR. ANDERSON: No, no, the previous one.

6 MR. STEVENS: The previous one, sir. That one is
7 actually -- and that's going to get to my argument right
8 there. So that photo that you have in your hand, that one
9 right there was taken, we believe -- and we still need to hear
10 some testimony on that. But we believe that photograph was
11 taken on the I-77 southbound exit. Anyone that takes that
12 exit gets their photograph taken of their license plate,
13 regardless of whether they want to or not. It's involuntary.
14 No signs on it. No warnings, nothing that says you're under
15 24-hour video surveillance, nothing.

16 THE COURT: I mean, Belks (sic) already had the same
17 picture.

18 MR. STEVENS: Yes, sir. But the difference is that Belk
19 didn't know who it was. And DMV --

20 THE COURT: But Exhibit 12 doesn't tell you who it is
21 either.

22 MR. STEVENS: No, but the next exhibit does. And this is
23 the power of the Flock camera. So this photograph was taken
24 57 miles away from the scene of the shoplifting the very next
25 day at 4 p.m. in Camden, just around Camden on U.S. 521. So

1 it's demonstrating that regardless of where you are, if we
2 have one bread crumb, they can find you anywhere. And that's
3 not just combined to South Carolina. That's combined to
4 anywhere there's a Flock camera.

5 THE COURT: I just -- I don't think this is anywhere
6 close to Carpenter. I mean, this photo is not even the same
7 day.

8 MR. STEVENS: Right.

9 THE COURT: This is not an argument that this camera shot
10 shows that Mr. Faile committed the crime because, whoa, we got
11 him, he's right there at the crime scene. That's the use of
12 the Flock cameras that I think implicates the concerns you're
13 talking about. This is just a picture of his truck that, I
14 mean, any officer could have gotten by going by his driveway
15 with a camera.

16 MR. STEVENS: But the problem, sir, is that that's the
17 only lead they have, and that's how they got the DMV
18 registration data, and that's how they put it in the photo
19 lineup. And the only evidence the State has to put on as to
20 how Mr. Faile was identified is that photograph right there.
21 And it came out of what I believe is an unconstitutional
22 search.

23 THE COURT: So assume there's no picture.

24 MR. STEVENS: Yes, sir.

25 THE COURT: Assume the Flock database just came back with

1 here's a list of Chevy Silverados that are white in color with
2 VM as the first two plate digits. Would that be
3 unconstitutional?

4 MR. STEVENS: I think it would. It's a third --

5 THE COURT: Really?

6 MR. STEVENS: Yes.

7 THE COURT: Any time the State queries the DMV database,
8 you think that's a search?

9 MR. STEVENS: No, Your Honor. The difference there is
10 that this is a third-party database, and that's what they
11 talked about in Carpenter. If it's a government database,
12 it's different.

13 THE COURT: But it's the exact same data.

14 MR. STEVENS: But again, the State isn't offering any
15 evidence that they've actually conducted that search. We
16 don't know what the fruits of that search would be. We don't
17 know if -- how many trucks would have come up had they done
18 that or how long it would have taken to find that or if they
19 would have even found that truck. We don't know that. All I
20 can tell you --

21 THE COURT: But that just means it's a labor shortcut.

22 MR. STEVENS: Yes.

23 THE COURT: It's very different than tracking someone's
24 location with cell site data, which is not something that the
25 government can do in any other way.

1 MR. STEVENS: Well, then we would go into saving time is
2 also something the Supreme Court has taken a look at because
3 the whole point with GPS trackers is that the government is
4 trying to argue that the whole reason we want to use GPS
5 trackers is because it saves time and effort. If you want to
6 do a constant 24/7 search -- and I've done them myself, with a
7 vehicle -- you're going to need at least three teams of
8 investigators on a daily basis to do eight-hour shifts. And
9 that's just for one 24-hour period. If a GPS tracker's there,
10 you don't need --

11 THE COURT: You need multiple vehicles, right, because
12 you can't have --

13 MR. STEVENS: Yes, sir, as far as --

14 THE COURT: You can't -- I mean --

15 MR. STEVENS: You need at least -- and there's best
16 practices on how to conduct a surveillance like that, but
17 significant resource intensive, and it's not that easy. And
18 you could lose them at any time or lose your case. That's why
19 the government wanted to use -- slap on GPS trackers without a
20 warrant, and the Supreme Court said that that is
21 unconstitutional search.

22 THE COURT: Well, let me hear from Mr. Anderson.

23 MR. ANDERSON: Yes, sir. I'll try and keep it brief
24 here. So the State's belief is that there has been no
25 invasion of a constitutionally protected area; therefore,

1 there has not been a search. The defendant does not have a
2 reasonable expectation of privacy in the exterior of his motor
3 vehicle. The State would point to United States v. Knotts,
4 which is 460 U.S. 276. Quote, Supreme Court fourth amendment
5 jurisprudence has long recognized that a person traveling in a
6 vehicle on public streets does not have a reasonable
7 expectation of its privacy and its movements from place to
8 place. And then I'll quote again, New York v. Class, 475 U.S.
9 106, with respect to vehicle information specifically, the
10 Supreme Court has specifically stated that, quote, the
11 exterior of a car, of course, is thrust into the public eye,
12 and thus to examine it does not constitute a search. Another
13 case, United States v. Ellison, 462 F.3d 557. The very
14 purpose of a license plate number is to provide identifying
15 information to law enforcement and others.

16 So the State's position is that there has not been a
17 search, and even if Your Honor were to find that there were a
18 search, the State believes that good faith exception to the
19 warrant requirement would apply here, relying on existing
20 precedent. Carpenter is distinguishable from the case at bar;
21 law enforcement in good faith relied on existing precedent.
22 They got this information without a warrant; therefore, it
23 shouldn't be suppressed.

24 And as for distinguishing Carpenter from the case at bar,
25 I would point to United States v. Bowers, which is 2021

1 Westlaw 4775977. It's a Western District case out of -- may I
2 approach, Judge? Western District of Pennsylvania. It's
3 almost exactly the case at hand. I understand that it's
4 persuasive, it's not binding on this Court, but the court in
5 that case does a great job of going through the Fourth
6 Amendment precedent. Some quotes here, unlike the all-
7 pervasive cell site location data collection in Carpenter and
8 its all-encompassing and near-perfect surveillance users'
9 comings and goings, the ALPR technology at issue captures only
10 the public movements of vehicles that happen to pass by
11 locations on public street in view of an ALPR camera.
12 Moreover, the cameras capture a snapshot of the rear of the
13 vehicles as they pass and cannot follow the vehicles or record
14 their every movement. Even in the aggregate, the ALPR
15 camera's inability to capture multiple shots of a single
16 vehicle and/or store historical data does not approach the
17 near-constant surveillance of cell phone users' public and
18 private moves that so concern the court in Carpenter. Rather,
19 the technology is more akin to the conventional surveillance
20 methods, such as security cameras, that the Carpenter court
21 was careful not to call into question.

22 In short, Carpenter is distinguishable from the case at
23 bar. I know defense counsel talked a little bit about the
24 privacy clause. I just want to make sure the State makes a
25 record in regards to that argument as well. There are a

1 number of South Carolina criminal cases that involve our state
2 constitution's privacy clause, for example Singleton v. State.
3 The privacy clause was held to be violated when the state
4 (indiscernible) inmate. State v. Forrester, privacy clause
5 did not require informed consent to government searches. But
6 the drafters of the Constitution were concerned with the
7 (indiscernible) of new technology. State v. Weaver, once
8 officers have probable cause to search a vehicle, state
9 constitution's requirement that the invasion of one's privacy
10 is reasonable will be met. State v. Counts, that's the
11 reasonable suspicion before conducting a warrantless knock and
12 talk. State v. German, a case from April of this year, court
13 held warrantless blood draw violated South Carolina privacy
14 clause again. Planned Parenthood, a case from this year --
15 South Carolina case, the Supreme Court held that abortion law
16 violated the South Carolina's privacy clause.

17 So all the above privacy clause cases in South Carolina
18 deal with much more serious invasion of privacy, forcibly
19 medicating a person, law enforcement approaching your home,
20 forcibly drawing blood from your person, bodily integrity, and
21 some the state also did not violate the privacy clause of the
22 South Carolina Constitution, in addition to the not violating
23 the Fourth Amendment.

24 THE COURT: I'll give you the last word, Mr. Stevens.

25 MR. STEVENS: And I hadn't even had a chance to argue my

1 South Carolina argument, Judge, so.

2 THE COURT: You're right. You are right.

3 MR. STEVENS: First of all, we aren't in Pennsylvania and
4 we're not in federal court, so that might be interesting, but
5 it doesn't really hold you to anything. And in state of South
6 Carolina, we actually have a higher protection of privacy
7 than -- and we're rare among states. And I'm not exactly sure
8 why that is. I'm going to do some more research on exactly
9 why we do, but we're a number of states that actually afford
10 greater protection, and it's enshrined in the actual
11 Constitution. And unreasonable search and seizure actually in
12 the State of South Carolina can have greater protection than
13 that that is given by the federal constitution, and this is a
14 great case for that. And I would actually argue that Weaver
15 supports what I'm trying to say here.

16 Weaver says that the -- and it's a quote, and I'm not
17 sure -- I'm going to point to page 322. The focus in the
18 state constitution is on whether the invasion of privacy is
19 reasonable, regardless of the person's expectation of privacy
20 in the vehicle to be searched. Once the officers have
21 probable cause to search a vehicle, the state constitution's
22 requirement that the invasion of one's privacy be reasonable
23 will be met. And quite frankly that actually makes my
24 argument, in my opinion, because number one, was the invasion
25 of privacy reasonable? You don't have to worry about

1 expectation of privacy. Number two, once they have probable
2 cause to search, you don't worry about privacy because they
3 can go get a search warrant, which is what Weaver points out.
4 So if you have probable cause, go get a search warrant. You
5 can literally get one on the phone from the court, literally
6 by phone.

7 Article on your desk, sir -- or on the bench. As the
8 Tega Cay police chief showed us -- and there's a quote in
9 there -- and I think it's -- the quote in there. I'm just
10 going to read this quote out. This is -- for the record, I
11 believe this is Court's exhibit -- Defense Court's Exhibit
12 number 4, and it's entitled Flock Safety secures the South
13 Carolina, quote, beautiful peninsula, with a virtual gate.
14 And there's a quote on the second page of this print out by --
15 this is dated March 10, 2020. And this is a quote by then
16 Chief Parker of Tega Cay. I'm not sure if he's still the
17 police chief, but this is what he said. Quote, there are only
18 four or six ways to get inside the city limits. We placed the
19 Flock Safety cameras at those entrances, and we immediately
20 saw fruit. We saw stolen cars; we identified an individual
21 wanted for strangulation, an escaped criminal that had come
22 into our community. We would not have known about those
23 things.

24 THE COURT: But that's not how it was used in this case.

25 MR. STEVENS: No, sir, but what I want to point out in

1 this case is that the point that this makes is that you can't
2 get in without having your privacy unreasonably violated.
3 Every single person that goes in there doesn't commit a crime.
4 I don't commit a crime every single time I enter the city of
5 Tega Cay, so why is my license plate being recorded by a
6 third-party that the police can have access to at any time to
7 dig around to see whether I committed a shoplifting at Belk
8 two days prior? If they want to do that, they can go to a
9 magistrate and get a search warrant.

10 It's very simple, and that's why we have a higher
11 standard of protection in the South Carolina Constitution,
12 because it's -- once you meet that probable cause -- and the
13 interesting thing is is I think they actually met the burden
14 of probable cause in this case. So had they gone and secured
15 a warrant, I would not be here arguing, but they did not. And
16 I believe under South Carolina Constitution they were required
17 to get a search warrant once they determined that they had
18 probable cause to search that third-party database. And that
19 ties back into Carpenter as well with searching third-party
20 databases.

21 Again, it's not necessarily the crime that they are
22 investigating. The crime is the violation of the
23 constitution, the federal and state, every single time the
24 police look at this database without a search warrant.
25 Originally, when there were maybe five cameras it wasn't that

1 big of a deal. But now they're everywhere. You probably
2 drove by one on the way here. There's two outside south park
3 mall when I walk around it now. They're everywhere, and they
4 know you're here, and the police can search it without a
5 warrant, and I believe that's a violation of South Carolina
6 Constitution at a minimum, and a I don't think it's that far
7 of a strike to say that it's a violation of the federal
8 constitution as well.

9 THE COURT: I'm going to deny the motion, and the basis
10 for the Court's reasoning is that, Mr. Stevens, you raised
11 very interesting issues regarding use of Flock cameras to
12 determine people's location. Even the case the state hands up
13 went against you, but the Bowers case the state handed up --
14 in this case the DAs Office wanted -- from the Flock people,
15 they got everywhere the defendant's car was for a period of
16 two days. They basically said, give us a printout, every
17 Flock hit for two days with this license plate, and they used
18 that to make -- this case doesn't say what the defendant was
19 charged with. But trying to tie the defendant to some
20 location.

21 That is not how this case used the data. This case was
22 just a query for white Silverados with VM as the first two
23 license plate digits. It's the exact same data in the state
24 DMV database. The only difference is in this case is it came
25 back with a photo of a truck that had nothing to do with this

1 case. It wasn't the same day; it wasn't in the Belks (sic)
2 parking lot. So I just -- although there are interesting
3 issues about using -- tracking people's location data, they're
4 not -- in the Court's opinion, they are not implicated in this
5 case where the State merely queried the Flock database for
6 trucks matching this description with this license plate. And
7 the fact that the picture came back as well.

8 In the Court's view, there's no privacy interest in the
9 exterior appearance of your vehicle. So for those reasons,
10 the Court's going to deny the motion.

11 MR. STEVENS: Thank you, Your Honor.

12 THE COURT: Anything else?

13 MR. ANDERSON: Not from the State, Judge.

14 THE COURT: From the defense?

15 MR. STEVENS: No (indiscernible) from the defense, Your
16 Honor.

17 THE COURT: All right. Counsel, I appreciate it. We'll
18 see everybody at 3 o'clock for opening.

19 (Thereupon, a luncheon recess was taken.)
20
21
22
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25

1 A F T E R N O O N S E S S I O N

2 THE COURT: Defense ready to proceed?

3 MR. STEVENS: Yes, Your Honor.

4 THE COURT: All right. Let's bring them in.

5 (Court and clerk confer)

6 (Whereupon, the jury came into open court at

7 approximately 3:06 p.m.)

8 THE COURT: All right. Welcome back, ladies and
9 gentlemen. I am going to give you now kind of a general
10 introduction to what's going to happen in this case. This is
11 not an explanation of the law, which is called the charge to
12 the jury. That will happen at the end of the case, but this
13 is just kind of some general introductions.

14 Ladies and gentlemen, in this case the defendant, Mr.
15 Faile, is charged by indictment with the crime of shoplifting.
16 I'm about to read you this indictment, but before I do that, I
17 need to make sure you understand this is just the charging
18 document; it's an accusation. It's not proof and whether or
19 not the state has proved their case will be for you, the jury,
20 to determine after you've heard the evidence at the end of the
21 trial, okay? This is not evidence; this an accusation made by
22 the State.

23 So that said, the State alleges that this defendant,
24 Michael Lindsay Faile, did on or about May the 17th, 2022, in
25 York County, take possession of or carry away or transfer from

1 one person to another or from one area of the store to another
2 or cause to be carried away any merchandise valued less than
3 2,000 dollars which was displayed, held, stored, or offered
4 for sale by the Belk department store, with the intent to
5 deprive the Belk department store of its possession, use, or
6 benefit of the merchandise without paying the full retail
7 value, and this is against the peace and dignity of our state
8 and contrary to the laws of South Carolina.

9 Again, ladies and gentlemen, that's just an accusation.
10 Your job is to determine whether or not that's been proven
11 beyond a reasonable doubt. Ladies and gentlemen, your job as
12 jurors is to determine the facts in this case. You are the
13 sole judge of the facts, and if at any time I make any comment
14 that suggest I have a view of the facts, you should disregard
15 it. I'm not permitted as a judge to have any view on what the
16 facts are; that's your job. You should determine the facts
17 from the testimony that you hear on the witness stand and
18 other evidence introduced in court. And it's especially
19 important that you carry out your duty conscientiously because
20 ordinarily there's no way to correct an erroneous
21 determination made by jury about the facts in the case.

22 On the other hand and with equal emphasis, the law that
23 makes you the judge of the facts makes me the judge of the
24 law. The law as I explain it to you is the only law which you
25 may consider. You must accept and follow the law even if you

1 disagree with it. I am not allowed to tell you what the facts
2 are, and you are not allowed to disagree with me about what
3 the law is or what you think it ought to be. Your job is to
4 take the law as I explain it to you and apply it to the facts
5 that you find them from the witness testimony and other
6 evidence and then render your verdict.

7 Ladies and gentlemen, as I mentioned earlier, until it is
8 time to begin juror deliberations -- which will be in a room,
9 I will tell you it's time to begin deliberations -- you are
10 not permitted to discuss this case with anyone, including each
11 other. And as I said before, the attorneys and the parties in
12 this case are not allowed to speak to you, so don't be
13 frustrated and think that they're being rude. And as I said
14 earlier ALSO, don't read or watch any news reports, just
15 change the channel. Do not do any outside research in the
16 case. Don't Google anybody or look up anything. You'll hear
17 the evidence in the courtroom.

18 Ladies and gentlemen, please -- now, I trust that you're
19 going to follow these rules. If someone in the jury is not
20 following my instructions, you have to tell me because if I
21 find out during trial, I can probably fix it. If I find out
22 after the trial that a juror was not following my
23 instructions, we'll likely have to do the whole trial all over
24 again, okay? So please let me know. I expect you all to
25 follow my instructions, BUT please let me know if someone is

1 not doing that.

2 Ladies and gentlemen, please keep an open mind and don't
3 decide any issue in the case until you have heard all the
4 evidence and the arguments of the lawyers. Speaking of
5 hearing the arguments, we have pretty good microphones and
6 speakers in the courtroom, but if you are ever having trouble
7 hearing, please raise your hand. It's very important that you
8 as jurors hear everything. If you're having trouble,
9 someone's speaking too quietly or they're not close enough to
10 the microphone, please raise your hand and tell me that you
11 can't hear, all right?

12 Ladies and gentlemen, it is your solemn responsibility to
13 determine the guilt or innocence of the defendant, and your
14 verdict must be based solely on the evidence as its presented
15 to you and on the law as I instruct you. In just a second,
16 the attorneys will make opening statements, but I will remind
17 you of these -- this is not evidence. The attorneys are going
18 to speak to you and introduce their cases, and they may talk
19 to you about what they think the evidence is going to show,
20 but that's not the same thing as evidence, all right?

21 From time to time in the trial, you may hear the
22 attorneys make an objection or say, Your Honor, I have a point
23 of law, or something like that. Sometimes in those
24 situations, I will tell the lawyers to come up to the judge's
25 bench, and I will speak to them briefly, and then I'll make a

1 ruling and send them back. If I think it's going to take
2 longer than that, I will excuse you to go back to the jury
3 room so you don't have to sit in the courtroom while I debate
4 a legal point with the lawyers, okay? So that's what's
5 happening if we have to do that.

6 Let's see. Ladies and gentlemen, I do not permit jurors
7 to take notes during the trial. The reason for that is some
8 people based on their education or their job they have or
9 training are better note-takers than other people. And I
10 don't want what happens in the jury room to become a battle of
11 who has the best notes, okay? So just pay close attention and
12 listen and we have a court reporter here. Everything in the
13 courtroom is also being recorded with the microphones. So if
14 you get back to the jury room and you begin deliberation and
15 there's some critical piece of evidence that you can't agree
16 about what a witness said, we can replay it for you. We can
17 bring you back in the courtroom and play the recording back
18 for you.

19 Ladies and gentlemen, in determining what the facts are,
20 you have to decide whether or not what a witness says is
21 believable. It's my job as a judge to determine whether or
22 not a witness is allowed to testify. But once I allow a
23 witness to testify, whether to believe their testimony in
24 whole or in part is solely a question for you as jurors to
25 determine. In deciding whether you should believe what a

1 witness says, you have the right to consider any possible
2 interest or bias or prejudice, Whether the witness had the
3 opportunity to see or hear the things about which they're
4 testifying, and the way the act on the witness stand.

5 Ladies and gentlemen, please pay close attention, try not
6 to let your attention wander. Focusing on testimony for long
7 periods of time can be mentally exhausting, so if you need a
8 break, tell me. Say, Judge, we've been going at this for an
9 hour and a half; can you give us ten minutes to stretch our
10 legs? I'm happy to do that, okay? Same thing if you need a
11 bathroom break; raise your hand and we'll take a break for you
12 to use the restroom. We don't want to torture anyone, okay.

13 Ladies and gentlemen, I am also going to ask you on your
14 first break to elect a foreperson, what used to be called the
15 foreman of the jury. And everyone in South Carolina, every
16 juror has an equal vote; it's one person, one vote. The
17 foreperson does have two additional jobs, though. The first
18 job is to communicate with me if there's any issues that I
19 need to take care of. If you're having trouble hearing or if
20 there's no coffee in the jury room or it's too hot or too cold
21 or anything at all there's an issue, you can write it on a
22 piece of paper. The bailiffs will give you pen and paper, and
23 you can pass me a note, and I will try to address whatever the
24 issue is.

25 The second job of the foreperson is when it becomes time

1 to deliberate at the end of the case, when you've heard all
2 the evidence -- it's the foreperson's job to make sure that
3 everybody has a chance to speak and give their opinion and no
4 one person is dominating the discussion back in the jury room.
5 So once you get back on your first break, just elect your
6 foreperson and write their name on a piece of paper and give
7 it to the bailiff, and let me know who that is.

8 All right. So ladies and gentlemen, that's the end of my
9 opening remarks. I'm about to turn it over to the lawyers.
10 Before I do that, I'm going to ask the clerk to swear in you
11 as jurors.

12 THE CLERK: Ladies and gentlemen of the jury, please
13 stand and raise your right hand before the Court.

14 (Jury sworn)

15 THE COURT: All right. Ladies and gentlemen, that
16 concludes my opening remarks. So the last thing, just in case
17 I've said something I shouldn't have, I'm going to give the
18 attorneys a chance to object to anything I said, and once
19 we're done with that, I'll turn it over for opening
20 statements.

21 Any objections from the State to my opening remarks?

22 MR. ANDERSON: No objections, Your Honor.

23 THE COURT: Thank you.

24 From the defense?

25 MR. STEVENS: No objections, Your Honor.

1 THE COURT: All right. Ladies and gentlemen, the State
2 has the burden of proof, so they go first.

3 MR. ANDERSON: May it please the Court.

4 THE COURT: Yes, sir.

5 OPENING

6 MR. ANDERSON: Good afternoon, ladies and gentlemen. On
7 May 17th, 2022, Michael Faile, the defendant, was in the
8 shoplifting business, and business was good. He backed his
9 truck into the Belk parking lot, Dave Lyle in Rock Hill,
10 walked into the store with a surgical mask, COVID style mask
11 on his face, made a beeline for the handbag department. He
12 takes a pair of wire cutters out of his pocket, and he cuts
13 the wire -- the alarm wires on a Brahmin purse that holds the
14 purse to the stand and prevents people from walking off with
15 it. He goes to the back of the store, circles around, comes
16 back. He snips another wire to a Michael Kors backpack, and
17 he does another lap around the store. Comes back, tries to
18 snip another wire, but this wire, the battery wasn't dead, so
19 it started chirping. He gets scared and makes a beeline for
20 the exit.

21 You're going to hear testimony from Belk's loss
22 prevention, Monica Dotson, who was watching the entire
23 shoplifting unfold from back in her security room. She's got
24 lots of monitors on the wall in there, and you're going to
25 hear testimony from her that she always leaves those handbags

1 up on one of the monitors because people love to steal the
2 handbags because it's a high dollar item; it's easy to steal.
3 You're going to hear that she recognized Mr. Faile because
4 she's seen him in the store on two prior occasions, March 24th
5 and April 6th. Michael Faile comes into the store and does
6 the same thing. And that's how she was able to recognize him,
7 because she's seen him before.

8 And so she uses her cameras to track Mr. Faile walking
9 out of the store without paying, in the parking lot. He's got
10 the backpack on his back; he's got the purse on his arm. He
11 hasn't paid for them; he's running out the store. She's using
12 the surveillance cameras to look at his truck. She looks at
13 his license plate because she knows she's got to be able to
14 identify the gentleman who just came into her store, took a
15 couple hundred dollars' worth of items. She zooms in on his
16 license plate. You're going to hear testimony from her that
17 it's covered. Mr. Faile had put what appeared to be a piece
18 of tape over his license plate, and she could only make out
19 two letters, V and M, and that's it. Michael Faile gets in
20 his truck and drives away.

21 You're going to hear testimony from an analyst at the
22 Rock Hill Police Department, Damien Williams, that he takes
23 that information -- that's the only lead they've got. They've
24 got a license plate that's covered with two letter visible, V
25 and M. It's a white Chevy Silverado, four-door pickup truck.

1 That's all they've got.

2 What does he do? He uses traffic cameras in Rock Hill
3 city to find a photo of the defendant as he's coming off the
4 I-77 southbound at the Dave Lyle exit into Rock Hill. He gets
5 that traffic camera photo, and it's a perfect photo of the
6 defendant's truck, Michael Faile, with that piece of tape on
7 the license plate, VM uncovered, right before the theft
8 occurs. So now he's got another photo of the defendant's
9 truck.

10 And what does he do? He uses his investigative
11 techniques and traffic cameras around this state to find a
12 photo of Michael Faile's truck with the license plate totally
13 uncovered. And he uses that photo and he looks at the photo
14 and he sees that the truck is registered to none other than
15 that man right there, Michael Faile.

16 And he passes that information along to Det. Swiger with
17 Rock Hill PD, and Det. Swiger takes Mr. Failes DMV photo and
18 sends it off the SLED. SLED puts it into what we call a six-
19 pack photo lineup. Det. Swiger takes that photo lineup to
20 Monica Dotson at Belk, gives it to her. Monica picks Mr.
21 Faile's photo out of that lineup within less than 30 seconds.

22 And that's why we're here today, ladies and gentlemen.
23 We're here because Mr. Faile was in the shoplifting business.
24 And at the end of this trial, I'm going to ask you to follow
25 the evidence, the one conclusion in this case, and that is

1 that Mr. Faile is guilty of shoplifting. Thank you.

2 THE COURT: All right. Mr. Stevens?

3 OPENING

4 MR. STEVENS: Good afternoon. You know after hearing
5 that, you think they've got it all sewn up. It's just so
6 easy, isn't it? Just walked into the store, took some stuff;
7 they knew who it was the whole time, right? The picture of a
8 license plate, tracked it through a license plate database,
9 and then they just simply tied it up with a bow, end of story,
10 right? That's what that just was. But that's not what this
11 case was.

12 Bottom line was they still don't know who did those
13 shopliftings. They still don't know. And you know why they
14 didn't know? Because the Rock Hill Police Department did a
15 sloppy job investigating this case. They wanted to arrest
16 someone, anyone, so they did. But that doesn't mean that the
17 person they arrested is the person that did this crime. The
18 State needs to prove that to you. It's not as simple as
19 they're saying.

20 I want you to look for three things. I want you to look
21 for sloppy police report. And when I say sloppy police
22 reports, I want you to look for material inconsistencies.
23 Material means, are they telling the truth. You're going to
24 see all the evidence, so let's see if the police write their
25 reports properly. Let's see. Who do we believe? Do we

1 believe the police? Okay, let's see. Let's find out. Who
2 can we believe?

3 Bad photo lineup. You're going to see testimony that
4 police might not even know how to actually conduct a photo
5 lineup. Let's find out. Might not even know when a photo
6 lineup is fair. Might not even know how to actually conduct a
7 photo lineup. Basic police work, right? Let's find out.

8 And then I want you to look for a rush for judgement. I
9 want you to see what else they should have done, what they
10 didn't do, what they could have done, and what they did. And
11 I want you to evaluate that. Did they do the right thing?
12 Did they follow the procedures? Did they follow the steps
13 that they were supposed to follow from A to Z? Because when
14 you're making an arrest and you're making an accusation where
15 someone can end up in prison for a long time --

16 MR. ANDERSON: Objection.

17 THE COURT: Objection's sustained.

18 MR. STEVENS: Better make sure you get it right. You're
19 going to see there's no crime scene investigations. You all
20 know that from TV; that's CSI. There's none of it; there's no
21 CSI, no DNA, no fingerprints, not even an effort to collect
22 it.

23 No white Chevy truck, either. You're going to see some
24 pictures from a license plate camera, but you're never going
25 to see an actual police officer say they actually found the

1 truck and touched it and looked at it and made sure it was the
2 one that was used. Never going to see it. Look for that.

3 And then I want you to, again, look at that photo lineup.
4 Look at what the suspect in this investigation is wearing when
5 they're conducting all of these shopliftings. And I'm going
6 to call it that, suspect, because they don't know who it is
7 yet that did it. Look what they're wearing, look what the
8 suspect is wearing, and look if that is in the photo lineup,
9 because it's not. The suspect in the case was wearing a
10 surgical mask. But the faces in the photo lineup aren't.

11 And this case is also about surveillance, Big Brother.
12 Big Brother watching you. From the minute you leave the
13 highway all the way around your house and anywhere else around
14 here, you're under constant surveillance. That's what this
15 case is about, too.

16 My name is Matt Stevens, and I represent Mr. Michael
17 Faile. That's who's sitting right there. I want you to keep
18 an open mind about this case. Wait until you see the
19 evidence. Don't make any preconceived notions about what you
20 think it's going to show. Look at it, examine it, think about
21 it, go over it in your mind, think about it objectively, and
22 see whether the police did the right thing here. And at the
23 conclusion of this case, I'm going to ask you to return a
24 verdict of not guilty for Mr. Michael Faile. Thank you.

25 THE COURT: Thank you, Mr. Stevens.

1 Mr. Anderson, state and call your first witness.

2 MR. ANDERSON: Yes, sir. The state calls Monica Dotson.

3 DIRECT EXAMINATION

4 BY MR. ANDERSON:

5 Q Afternoon. Can you state your name and spell your last
6 name for the record, please?

7 A It is Monica Dotson. Last name is spelled D-O-T-S-O-N.

8 Q And what is your current occupation, Ms. Dotson?

9 A I am currently an auto claims adjuster.

10 Q What education level do you have?

11 A I have a bachelor's of science. Major is psychology;
12 minor is criminal justice.

13 Q Have you ever testified in court before?

14 A I have not.

15 Q Where were you working on May 17th of 2022?

16 A I was working at Belk at the Rock Hill location. My
17 title was asset protection manager, and I had a structural
18 (indiscernible) as organized crime captain.

19 Q And what county is that store located in?

20 A York.

21 Q And what were your duties? You said asset protection.
22 What did asset protection entail?

23 A So part of it is, you know, trying to prevent theft,
24 whether that be, you know, monitoring your cameras, making
25 apprehensions if someone is confirmed as shoplifting, also

1 just kind of inventory control and monitoring high theft
2 areas, things like that.

3 Q Do you recall a shoplifting incident that occurred at
4 Belk that day on May 17th?

5 A I do.

6 Q Do you remember approximately what time around roughly
7 that shoplifting occurred?

8 A Yeah, around 6:30 p.m.

9 Q And can you describe -- try and give the jury a little
10 bit of a description about how the store's laid out, what that
11 particular Belk location looked like?

12 A Yeah. So there is an entrance at the very front of the
13 store and there's an entrance at the very back that goes into
14 the mall. There's only two main entrances, you know, not
15 including emergency exits. So when you walk in, your
16 registers are to your right, there's a cosmetics department,
17 and then a little bit in and to the left is the handbag
18 department. That department's kind of laid out in a big
19 rectangular pad. I would estimate from there to the back
20 wall. And then there's one big wall in the middle that has
21 handbags -- handbags on both sides.

22 Q When did you first notice the suspect that day, May 17th?

23 A I believe approximately 6:15 p.m. We keep our handbag
24 department on a monitor at that store because it's a high
25 theft area. So any time there's movement on those cameras,

1 I'm going to kind of take a look and see what's going on
2 there.

3 Q So you're always looking out for that area?

4 A Yeah.

5 Q Okay. How many monitors did you have?

6 A Four or five. There's two on each side and then at least
7 two in front. I can't remember on this date if there was
8 another one. Kind of rotated through because sometimes, you
9 know, equipment doesn't work and you have to replace it.

10 Q I hear you. I hear you. Do you remember what direction
11 he came from when he entered the handbag department?

12 A He would have come from kind of underneath the camera, so
13 kind of toward the front of the store. But there's also a
14 shoe department there as well on a different camera.

15 Q Do you remember what the person you saw that day looked
16 like?

17 A Yes. White male, in his 50s, average build, I would say
18 average height, about five-feet-seven, five-eight. Salt and
19 pepper hair, kind of longer on the top, not longer on the
20 bottom. Had a medical mask on, kind of grey, bushy eyebrows
21 with a prominent browbone. He was wearing a white button-up
22 shirt. I think it had some light pink stripes on it; it
23 depended on the camera. It was hard to see, but white button-
24 up at least.

25 Q And what did you see him do when he walked to the handbag

1 department that first time?

2 A I initially saw him go to a Brahmin fixture, which is,
3 you know, luxury handbag cabled down. The lanyards that are
4 holding it together, I saw him clip that and take the bag.

5 Q And what did that tell you, seeing him clip the --

6 A So normally you would get a store associate to unlock it.
7 So anytime they're clipped, that kind of is a red flag
8 indicating theft because you have to have a device and go out
9 of your way to clip it.

10 Q Did you happen to see what he used to --

11 A It looked like a tool, just like -- I don't know what the
12 technical name is, but like wire cutters. They almost looked
13 like wires, kind of.

14 Q So after he cut that first cord, wire, security wire,
15 what did he do next?

16 A I believe he took the handbag and went toward the back of
17 the store, kind of towards the men's and home department,
18 which is kind of forward and to the left from the handbag
19 department. And he kind of went back there. I believe he
20 came back, got a black Michael Kors bookbag that was also
21 cabled down, had to cut the cable on that. And then he took
22 both of them to the back home department. From there he did
23 not conceal the merchandise. He had it carried on his -- the
24 purse was on his shoulder; the bookbag was on his back. And
25 he exited through the front of the store.

1 Q When he exited, what direction did you see him go?

2 A Out and about two rows over, kind of one two to the
3 right.

4 Q Did he get into a car? Was he walking away on foot? How
5 did he leave?

6 A He got into a white Chevrolet pickup truck that was
7 backed in the first -- closest parking spot to the store.

8 Q So it was backed in?

9 A Yes.

10 Q What seat in that car did he get in?

11 A The driver's seat.

12 Q Were you able to tell what the license plate said on that
13 truck?

14 A Part of it. I could see the first two letters; the rest
15 was blocked out by -- it looked like maybe black tape,
16 something -- it looked like tape on it, but only the first two
17 letters were visible.

18 Q What were those two letters again?

19 A V as in Victor and M as in Mary.

20 Q Okay. Did Belk have surveillance cameras that would have
21 captured this incident?

22 A Yes.

23 Q Would they have captured him during the actual
24 shoplifting and then him getting into the truck?

25 A Yes.

1 MR. ANDERSON: I am handing the witness what has been
2 previously marked as State's Exhibit 1.

3 Q Do you recognize that, Ms. Dotson?

4 A I do.

5 Q Okay. And what is it?

6 A It is the surveillance footage from May 17th.

7 (WHEREUPON, State's Exhibit No. 1 was marked for
8 identification only.)

9 Q And how do you know that that's surveillance footage?

10 A It is signed by me.

11 Q Is that a fair and accurate depiction of the events that
12 occurred that day?

13 A Yes.

14 MR. ANDERSON: At this time, Your Honor, the State would
15 move to admit and publish State's Exhibit 1 to the jury.

16 THE COURT: Any objection?

17 MR. STEVENS: I have no objections.

18 THE COURT: Into the evidence without objection. You may
19 publish.

20 (WHEREUPON, State's Exhibit No. 1 was received into
21 evidence.)

22 (Pause.)

23 Q So while we're waiting on this to get cued up, when
24 you're looking at your surveillance footage, can you describe,
25 like, these different angles for the jury?

1 A Yes. So the top left is that handbag department. As I
2 mentioned, there's a wall dividing the handbags. So the right
3 is going to be the main, like, kind of, I guess, aisle that
4 goes throughout the store. And that's going to be the other
5 side of it. To the right of that in the top middle is going
6 to be our parking lot camera, same with that top right.
7 One's, like, kind of toward the mall entrance at the Rock Hill
8 mall, and then the other is the other side, kind of toward the
9 employee parking lot. Both parking lot cameras, though, do
10 move, so you can move them with a joystick.

11 Q And so when you're watching the handbag department, which
12 one of these screens are you watching?

13 A The top left. The one underneath it is also the handbag
14 department, but that is on the side that's closest to
15 employees, so a lot of the higher theft is going to be that
16 top left camera on the other side of that wall.

17 Q Okay. We're going to skip ahead just a little bit to
18 18:17:49.

19 (Counsel confer.)

20 Q Okay. Who do you see walking into the handbag department
21 right now?

22 A Mr. Faile.

23 MR. STEVENS: Objection, Your Honor.

24 THE COURT: Counsel, approach.

25 MR. ANDERSON: Yes, sir.

1 (Whereupon, a bench conference was held off the record in
2 the presence of the jury, but out of the hearing of the
3 jury.)

4 (Thereupon, counsel returned to counsel tables and the
5 following ensued:)

6 (Open court.)

7 THE COURT: The objection's overruled.

8 MR. STEVENS: Just for the record, Your Honor, I just
9 wanted to object and preserve my pre-trial objection regarding
10 identification.

11 THE COURT: Yes, sir.

12 MR. STEVENS: Thank you, Your Honor.

13 THE COURT: Uh-huh.

14 Q So who did you see walking into the frame here?

15 A The suspect.

16 Q And what is he doing right here?

17 A This is where he was seen clipping the cable on the
18 handbag. You can see the tool coming in and out of the
19 pocket, and then the handbag is now loose. Normally, they are
20 completely secured down.

21 Q So you wouldn't be able to pull that handbag away from
22 that display, unless the cable was snipped?

23 A No. They are checked multiple times a day. You wouldn't
24 be able to pull that away.

25 Q We're skipping to 18:20:30, the same frame, top left.

1 And who is walking back into the handbag department here?

2 A The suspect -- same suspect.

3 Q Can you tell what that is in his left hand as well?

4 A It appears to be women's bras.

5 Q And what is he doing right here?

6 A This, again, is -- you can see the tool come out of his
7 pocket, and he's clipping a handbag, that black Michael Kors
8 bookbag.

9 Q Pause again. Now, is there a reason that an alarm didn't
10 go off?

11 A So it depends on the kind. There is the longer cables;
12 that is usually what's utilized for the first handbag. It
13 does have an alarm; it's just -- they're not super loud, so
14 sometimes employees will hear them, but they only alarm for 60
15 to 90 seconds, and that's if, you know, the battery's not
16 dead. And then the second one is a bungee cable, so it
17 doesn't alarm until the actual, like, sensor is removed. So,
18 like, a bungee cable and a smaller sensor is connected to the
19 bag.

20 Q Okay. And so like you said with the first one, if the
21 battery is dead, it wouldn't have alarmed?

22 A That's correct.

23 Q And while this whole incident is going on, where are you?

24 A I am on camera.

25 Q Okay. When you say "on camera", do you mean watching it?

1 A Yes. So I am in the asset protection office watching
2 cameras as this is happening.

3 Q So you're seeing him do this whole thing?

4 A I am.

5 MR. ANDERSON: Okay. Would you skip to 18:22:42, please.

6 Q Okay. So what are you doing right here with the cameras
7 right now?

8 A I am trying to locate a vehicle.

9 Q Did you know which vehicle to look for?

10 A I did.

11 Q Okay. Why is that?

12 A From prior incidents, there was a truck that was involved
13 that was similar make and model to what I had seen in the
14 parking lot this day.

15 Q And so you're searching for that same truck?

16 A Yeah. I'm searching for, like, any, you know, pretty
17 much vehicles involved in prior thefts, and in this case, I'm
18 looking for a white truck.

19 MR. ANDERSON: Can we skip to 18:24:30. Top left frame.

20 So for the record, the State's skipping to 18:24:30, the
21 top left frame of the surveillance.

22 Push play, please.

23 Q And so what's Mr. Faile doing here, again?

24 A Walking through the handbag department. Kind of looks
25 like he's just looking through the handbags, I guess. He

1 still has that Brahmin bag on his shoulder and bookbag on his
2 back.

3 MR. STEVENS: Objection, Your Honor. I wanted to
4 reiterate my pre-trial objection regarding identification.

5 THE COURT: Overruled.

6 MR. STEVENS: Thank you.

7 Q And what does he appear to be doing here?

8 A It looks like he's checking to see what cables are on
9 bags.

10 MR. ANDERSON: Pause it.

11 Q Do you have any reason for seeing him run around the
12 corner like that? He just appeared startled.

13 A So I don't recall if that bag was clipped, but again,
14 that's kind of a behavior that we teach employees to look for
15 is if someone's pulling on handbags like that. And then the
16 person you see pushing the shopping cart in that aisle was an
17 employee. It could have been like her radio was going off;
18 you know, they have radios. Something that kind of deterred
19 him. Maybe he knew she was an employee.

20 MR. ANDERSON: Go to 18 (indiscernible) --

21 Q Okay. So now the middle left frame is moving. Why --
22 what are you doing here?

23 A I'm following him as he is going to exit the store. That
24 is that camera that will show. It's again one of the one's
25 that move; you can move it with a joy-con.

1 Q So you're actively following him as he's moving
2 throughout the store?

3 A Yeah, I'm actively following him on this camera as he
4 exits.

5 Q Does he ever got to a register and pay for those items?

6 A No. In that back corner, there is no registers at all.

7 Q And so what are you doing there in the top middle camera?

8 A I am looking to see if there's anyone else around that
9 vehicle, checking to see if that's the vehicle that he's going
10 to.

11 Q And so here again, why are you zooming in and looking at
12 the plate here?

13 A Trying to build a case, seeing if that plate is visible.

14 Q And were you able to identify the whole plate?

15 A I was.

16 Q The whole plate?

17 A No, sorry. Part of it, the first two letters.

18 Q And what were those first two letters again?

19 A V and M, I believe.

20 Q Okay. And were you able to follow his car as he left the
21 parking lot?

22 A Somewhat yes. These trees kind of obstruct the view a
23 little bit, but you can see at least what direction. I was
24 trying to see what direction he's traveling.

25 Q So do you recall exactly what was stolen?

1 A It was one brown Brahmin handbag and one black Michael
2 Kors bookbag.

3 Q Okay. Do you remember approximately how much those were
4 together?

5 A I don't recall off the top of my head right now.

6 Q Would it help you memory if I showed you a report you'd
7 written about the incident?

8 A It would.

9 Q So did that help refresh your memory?

10 A It did.

11 Q Okay. So approximately how much were the items together?

12 A 5 to 600, now I've already -- the first one is 325, is
13 that brown Brahmin handbag, it's about an average retail, and
14 then the second one was 258 dollars.

15 Q Okay. And was there a reason you didn't stop him?
16 Because you were watching him, was there a reason you didn't
17 try and apprehend him?

18 A At that point, we -- I was just trying to get good
19 footage of him, and when it -- it was just me working that
20 day, and you have to have certain steps in order to apprehend
21 someone. And sometimes when you go from cameras to sales
22 floor, you may lose someone for a couple of minutes, and
23 that's kind of the fear there. I didn't want to risk it
24 because it was just me working at the time.

25 Q So you were just trying to get as much footage of him as

1 you can?

2 A Yes. That is correct.

3 Q I'm going to hand you a series of photos; they're State's
4 exhibits previously marked 2(a) through 2(d). Take a look at
5 those and tell me if you recognize them.

6 A Yes. These are still shots from the same CCTV footage we
7 just watched, the same date.

8 (WHEREUPON, State's Exhibits No. 2(a) through 2(d) was
9 marked for identification only.)

10 Q Okay. And are they true and accurate depictions of that
11 surveillance footage?

12 A They are.

13 MR. ANDERSON: The State, at this point, would move to
14 admit and publish State's 2(a) through 2(d).

15 THE COURT: Any objection?

16 MR. STEVENS: Can I take a look at them first, Your
17 Honor?

18 THE COURT: You may.

19 MR. STEVENS: I have no objection, Your Honor.

20 THE COURT: Into evidence without objection, and you may
21 publish.

22 (WHEREUPON, State's Exhibits No. 2(a) through 2(d) was
23 received into evidence.)

24 Q So what is State's 2(a) here? What is that a photo of?

25 A The suspect entering the store.

1 Q Okay. And what is that screenshot of? Exhibit 2(b) for
2 the record.

3 A It is the suspect clipping a handbag, cutting the cables
4 on a black Michale Kors bookbag.

5 Q 2(c)?

6 A That is the suspect walking through the handbag
7 department.

8 Q And 2(d)?

9 A This is a still shot of the parking lot cameras that
10 shows that partial plate.

11 Q Is that the truck that you had seen the defendant in
12 before?

13 A It is.

14 Q Was anyone at the store able to take cell phone videos or
15 photos of the suspect that day?

16 A They were. A store employee was able to obtain that.

17 MR. ANDERSON: I'm approaching the witness with what has
18 been previously marked as State's Exhibit 3.

19 Q Do you recognize that?

20 A I do.

21 Q And what is that?

22 A That is the -- I think it's a DVD copy of the cell phone
23 video from that date.

24 (WHEREUPON, State's Exhibit No. 3 was marked for
25 identification only.)

1 Q And is that cell phone video a true and accurate
2 depiction of the events from the parking lot at Belk that day?

3 A It is.

4 MR. ANDERSON: At this time, Your Honor, State would move
5 to admit and publish State's 3.

6 THE COURT: Any objection?

7 MR. STEVENS: I have an objection matter of law, Your
8 Honor.

9 THE COURT: All right. Counsel approach, please.

10 (Whereupon, a bench conference was held off the record in
11 the presence of the jury, but out of the hearing of the
12 jury.)

13 (Thereupon, counsel returned to counsel tables and the
14 following ensued:)

15 (Open court.)

16 THE COURT: Objection sustained.

17 Q Where was that footage taken?

18 A At the store entrance. I do not recall if it was outside
19 or inside because the doors open, and sometimes they even get
20 stuck so there's just an open door. There is a vestibule
21 where you walk through one set of sliding doors, and it goes
22 to regular pull doors, and so it appears that it was kind of
23 in that.

24 Q Are you familiar with what the Belk parking lot looks
25 like?

1 A I am.

2 Q Are you familiar with the vestibule and what that part of
3 the store looks like?

4 A I am.

5 Q Are you familiar with what Michael Faile's truck looked
6 like?

7 MR. STEVENS: Objection, Your Honor. Just objecting on
8 (indiscernible).

9 THE COURT: Overruled.

10 MR. ANDERSON: At this time, the State would move to
11 admit State's 3 into evidence.

12 MR. STEVENS: I have no objection, Your Honor.

13 THE COURT: Into evidence without objection.

14 (WHEREUPON, State's Exhibit No. 3 was received into
15 evidence.)

16 (Thereupon, the visual recording was played but not
17 transcribed herein.)

18 Q What did we just see in that video? Can you kind of
19 explain?

20 A It is a cell phone video of a truck leaving the parking
21 lot.

22 MR. ANDERSON: Approaching the witness with exhibits that
23 have been previously labeled 4(a) through 4(c).

24 Q Take a look at those and tell me if you recognize those.

25 A I do. These appear to be still shots of that same video.

1 (WHEREUPON, State's Exhibit No. 4(a) through 4(c) was
2 marked for identification only.)

3 Q Are they true and accurate depictions?

4 A They are.

5 MR. ANDERSON: At this time, the State would move to
6 admit State's 4(a) through (c) into evidence.

7 THE COURT: Any objection?

8 MR. STEVENS: I have no objection.

9 THE COURT: Into evidence without objection.

10 (WHEREUPON, State's Exhibit No. 4(a) through 4(c) was
11 received into evidence.)

12 Q So what is 4(a)? What do you see in this photo?

13 A This is a photo and I don't know if this is a still shot
14 from the video or just a photo from the cell phone, but it is
15 a photo of the suspect at the driver's side.

16 Q And what does he have on his back there?

17 A That is that same black Michael Kors bookbag.

18 Q And what is 4(b)? Can you explain that to the jury?

19 A Appears to be a still shot of the video of the truck
20 leaving the parking lot.

21 Q Anything on his truck stick out to you?

22 A Yes. The rear driver's side wheel appears to have a hub
23 cap on it that's different from the other three wheels on the
24 truck.

25 Q And what about 4(c) here?

1 A This is also a still shot from that cell phone video of
2 the truck exiting the parking lot. You can see a dent in the
3 rear bumper passenger side. And you can also see the partial
4 plate with the tape covering part of it.

5 Q Okay. So Ms. Dotson, I see you wearing glasses. How
6 good is your eyesight?

7 A Corrected with glasses or contacts 20/20.

8 Q Okay. Were you wearing your contacts or glasses that
9 day?

10 A I was.

11 Q How do you know?

12 A I wouldn't leave the house without them. I can't -- at
13 the time I was driving 45 minutes to work. I can't even see
14 to drive, so.

15 Q So you never leave the house without them, fair to say?

16 A That is correct.

17 Q What was your state of mind during the incident?

18 A Normal, alert. If I'm sick or I'm -- anything's going on
19 that's going to prevent me from doing my job, I typically
20 would not go to work because of that job.

21 Q And what was your level of attention like during the
22 incident?

23 A Fully alert.

24 Q Why is that?

25 A Again, I -- with that job, I mean, you're interacting

1 with a lot of people. You know, you kind of have to be alert
2 at all times while watching camera. It wouldn't be safe to go
3 to work and not be alert.

4 Q Absolutely, absolutely. So what did you focus on while
5 you were watching Mr. Faile?

6 MR. STEVENS: Objection, Your Honor. I just want to
7 raise my pre-trial objection.

8 THE COURT: Overruled.

9 Q When you're watching Mr. Faile, what are you focusing on?

10 MR. STEVENS: Objection, Your Honor.

11 THE COURT: Overruled. Okay.

12 MR. STEVENS: Renewing my pre-trial objection regarding
13 identification.

14 Q So what are you focusing on during the incident?

15 A I'm trying to case build, get good photos of the suspect.
16 In instances like this, in order to case build, it's important
17 to get good video so you can document what's going on.

18 Q So you're looking in the future, essentially?

19 A Yes.

20 Q Okay. What were the conditions like in the store that
21 day? How is the lighting in Belk?

22 A Lighting is good. It's very, like, bright fluorescent
23 lighting. Flooring has a glossy, like, overlay to where it
24 kind of reflects. It's a very like well-lit store to the
25 point where we -- I would go into the asset protection office

1 sometimes to turn off the lights because it was so bright out
2 there.

3 Q So you got a pretty good look at him that day?

4 A I did.

5 Q How and when did you report the May 17th incident?

6 A I had called 911 while he was still in the store.

7 Q Do you remember what you told the dispatcher?

8 A Yes. I had recognized the suspect from previous
9 incidents, so I called and let them know that he was in the
10 store and kind of narrated what he was doing. That police
11 department has a pretty quick response time; sometimes they're
12 there before a subject exits the store. So I'm trying to
13 narrate kind of what's going on so that way if there's anyone
14 outside or staging outside, they can be aware of what's going
15 on.

16 Q Do you remember what your initial description of the
17 suspect was to police that day?

18 A Average build, white male in his 50s, approximately five-
19 seven, five-eight, salt and pepper hair.

20 MR. ANDERSON: I'm approaching the witness with what has
21 previously been labeled State's Exhibit 5.

22 Q Tell me if you recognize that.

23 A I do.

24 Q Okay. And what is it?

25 A It is the 911 call from May 17th.

1 Q And how do you know that's the 911 call?

2 A I initialed it.

3 Q And is that a true and accurate depiction of your
4 conversation with the 911 dispatcher?

5 A It is.

6 MR. ANDERSON: At this time, Your Honor, the state would
7 move to admit State's Exhibit 5 into evidence and publish.

8 THE COURT: Any objection?

9 MR. STEVENS: Objection. Matter of law, Your Honor.

10 THE COURT: All right. Counsel approach, please.

11 (Whereupon, a bench conference was held off the record in
12 the presence of the jury, but out of the hearing of the
13 jury.)

14 (Thereupon, counsel returned to counsel tables and the
15 following ensued:)

16 (Open court.)

17 THE COURT: The objection has been made to
18 authentication; that objection is overruled.

19 (Thereupon, the audio recording was played but not
20 transcribed herein.)

21 Q Had you ever seen that same suspect before May 17th,
22 2022, the shoplifting incident for which Mr. Faile is on
23 trial?

24 MR. STEVENS: Objection, Your Honor. I'm going to
25 reiterate my pre-trial objection to identification.

1 THE COURT: Overruled.

2 A I had.

3 Q Were you working at that same Belk on March 24th, 2022,
4 two months earlier?

5 A I was.

6 Q Did that same suspect come into your store that day as
7 well?

8 A He did.

9 Q Was that the first time you saw him?

10 A I believe so.

11 Q Do you remember approximately what time he came into your
12 store that day?

13 A I remember it was in the evening time. I don't remember
14 the exact time.

15 Q Would it help if I showed you your report from that day?

16 A It would.

17 THE COURT: Let me stop you, Mr. Anderson.

18 Ladies and gentlemen, you're hearing some testimony about
19 a prior shoplifting incident at this Belk store. The
20 defendant is only charged in this court with a single incident
21 of shoplifting on the 17th. And so the State is offering this
22 other evidence because they think it supports their theory as
23 to who the person was, okay? But you can only consider this
24 as to the identification of the defendant. You're not to --
25 the only alleged shoplifting you're concerned with is the one

1 on the 17th and not the other ones, okay? Does that make
2 sense? And the only reason the State's even allowed to talk
3 about this is because they believe there's a common scheme and
4 it is evidence of the identification of the defendant, okay?

5 Q Did that help refresh your memory?

6 A It did.

7 Q So approximately what time did he enter -- or the suspect
8 enter the store on March 24th?

9 A At approximately 6:30 p.m.

10 Q Is that around the same time he entered the store on May
11 17th as well?

12 A It was.

13 Q Okay. What did he do when he entered the store on March
14 24th?

15 A Do you mind if I --

16 Q Nope.

17 A So I was notified later on and reviewed footage. He
18 entered the store and had clipped a handbag, again the cable
19 on the handbag. He then went to the back of the men's
20 department, and when he reappears, he has a Belk bag with him,
21 and then he is seen in that same handbag department putting
22 the bag inside of the Belk bag -- into the Belk shopping --
23 the brown -- the -- the handbag goes into the Belk shopping
24 bag.

25 Q So he puts a handbag into a plastic shopping bag?

1 A That is correct.

2 Q Is that common in your line of work? Do you see
3 people --

4 A Yeah. The majority of -- well, I won't say the majority.
5 A lot of the times you do see (indiscernible) conceal into
6 other shopping bags, purses, stuff like that.

7 Q Did Belk have surveillance footage that captured that
8 incident as well?

9 A We did.

10 MR. ANDERSON: Okay. I am approaching the witness with
11 what has been previously marked as State's Exhibit 6.

12 Q Do you recognize that, Ms. Dotson?

13 A I do.

14 Q And what is it?

15 A It is the surveillance footage from same date, March
16 24th.

17 (WHEREUPON, State's Exhibit No. 6 was marked for
18 identification only.)

19 Q And how do you know that?

20 A I signed it.

21 Q Is that a true and accurate depiction of the events that
22 occurred in Belk that day?

23 A It is.

24 MR. ANDERSON: Your Honor, at this time, the state would
25 move to enter State's Exhibit 6 into evidence and publish to

1 the jury.

2 THE COURT: Any objection?

3 MR. STEVENS: No objection.

4 THE COURT: Into evidence without objection.

5 (WHEREUPON, State's Exhibit No. 6 was received into
6 evidence.)

7 MR. ANDERSON: And the State is skipping ahead, for the
8 record, to 18:25:50.

9 Q And what is the gentleman doing right now?

10 A He's concealing the handbag into the Belk shopping bag.

11 Q And is that the same individual who came into the store
12 on May 17th?

13 A It is.

14 Q And what did he just pick up off the floor? Did you see
15 that?

16 A Yeah. It appears to be the tool used to clip the cables.
17 Again, it's kind of out of that same pocket, (indiscernible)
18 same.

19 Q And do you remember exactly what he shoplifted that day?

20 A It was also a Brahmin handbag.

21 Q Do you remember approximately how much that handbag was
22 worth?

23 A I need to refresh to get the exact -- they're usually
24 within the same range, but (indiscernible). Same -- yeah,
25 same price. Yeah, 325 dollars.

1 Q Did he pay for that handbag?

2 A He did not.

3 Q I'm approaching the witness with what has been previously
4 marked as Exhibit 7(a) and 7(b). Do you recognize those?

5 A I do.

6 Q Okay. And what are they?

7 A They are still shots of the CCTV footage from that same
8 date, March 24th.

9 (WHEREUPON, State's Exhibit No. 7(a) and 7(b) was marked
10 for identification only.)

11 Q Are they true and accurate depictions?

12 A They are.

13 MR. ANDERSON: At this time, the State would move into
14 evidence State's Exhibit 7(a) and (b).

15 THE COURT: Any objection?

16 MR. STEVENS: No objection.

17 THE COURT: Into evidence without objection. You may
18 publish.

19 (WHEREUPON, State's Exhibit No. 7(a) and 7(b) was
20 received into evidence.)

21 MR. ANDERSON: Okay.

22 Q In looking at 7(a), can you describe what the suspect is
23 doing there?

24 A Yeah. He is looking at the handbags in that department.

25 Q Is there anything distinct that allows you to recognize

1 that that's the same individual when you're looking at this
2 photo?

3 A Yeah. He has a distinct hairstyle, same build, posture,
4 as prior incidents.

5 Q And what do you see in -- looking at 7(b) here for the
6 record. What do you see in the defendant's right hand there?

7 A It appears to be clippers. You can see the handles. It
8 appears to be the same wire cutters that were in the right-
9 hand pocket.

10 MR. STEVENS: Objection, Your Honor. I just want to
11 reiterate my pre-trial objection to identification.

12 THE COURT: Objection's overruled.

13 Q Were you working at that same Belk at Dave Lyle on April
14 6th of 2022?

15 A I was.

16 Q Did that same suspect come into your store that day as
17 well?

18 A He did.

19 Q Okay. Was that the second time you saw him?

20 A It was.

21 Q Do you remember approximately what time he entered the
22 store that day?

23 A Not the exact time. I again, just remembering evening
24 time. I'd say after 6:30.

25 Q Okay.

1 A 6:30 or later.

2 Q In the evening?

3 A That is correct.

4 Q Okay. Do you remember what he did when he entered the
5 store that time?

6 A He clipped a cable on a Frye bag. Different brand, same
7 department. It was a red handbag that was cabled down to the
8 fixture.

9 Q So you -- the same type tool, though?

10 A Yes.

11 Q Okay. Was he able to get anything that day?

12 A No, he was not.

13 Q Okay. Why not?

14 A So I initially saw it on camera, and I think an employee
15 was in the area as well. It was at a slow time of the evening
16 where they are able to kind of watch that department more.

17 Q Once I saw him on camera, I went to the sales floor, and
18 by the time I got out there, an employee was interacting with
19 him.

20 Q So this time, you actually came out of your office?

21 A I did.

22 Q Okay. Do you remember how close you got to suspect?

23 A I would say approximately 20 feet, 20 to 30 feet.

24 Q Okay. Was he -- could you see his face?

25 A I -- yes, I could.

1 Q Did he have a mask on?

2 A He did.

3 Q And did he say anything?

4 A Not that I recall. A lot of times during these
5 interactions, I call it kind of nervous mumbling. You can
6 hear someone saying something, but you can't make out what's
7 being said.

8 Q Did you say anything to him?

9 A I don't believe so. If I did, it was very passing --
10 hey, how are you -- but I know an employee spoke with him. I
11 do not recall speaking directly to him.

12 MR. ANDERSON: Showing opposing counsel State's Exhibit
13 8(a) through 8(d).

14 Q Can you take a look at these and let me know if you
15 recognize them?

16 A Yes. These are from that same April incident.

17 (WHEREUPON, State's Exhibit No. 8(a) through 8(d) was
18 marked for identification only.)

19 Q Okay. Are they true and accurate depictions?

20 A Yes, they are.

21 MR. ANDERSON: Okay. At this time the State would move
22 to admit and publish State's Exhibit 8(a) through (d) into
23 evidence.

24 THE COURT: Any objection?

25 MR. STEVENS: No objection.

1 THE COURT: Into evidence without objection.

2 (WHEREUPON, State's Exhibit No. 8(a) through 8(d) was
3 received into evidence.)

4 Q Looking at 8(a), what is the suspect doing here?

5 A Walking through that same handbag department.

6 Q Is there anything in this photo that sticks out that
7 allowed you to recognize it's the same suspect in each of the
8 three incidents?

9 A Yeah, same -- same build, same distinct hairstyle, as
10 well as kind of the same brow bone, brow shape that you see.
11 I would say bushier eyebrows kind of with that brow bone.

12 Q Thank you. And what's he -- what do you see in the
13 suspect's right hand there?

14 A It appears to be the same pair of clippers.

15 Q And what does he appear to be doing?

16 A It is where those red Frye bags were. It appears that he
17 is taking clippers out or putting them back in his pocket.

18 Q And what is that a photo of?

19 A So those are the bungee cables that I was talking about
20 earlier. They -- those themselves do not alarm when they are
21 cut. There is a separate tag that -- they have a loop on the
22 end.

23 Q Uh-huh.

24 A And so you put the tag through the loop on that end of
25 the merchandise to keep them together.

1 Q So is that kind like when you walk out of the store and
2 it starts beeping? Is that --

3 A (No audible response).

4 Q Okay. And what is -- for the record, that was 8(c) we
5 were looking at then. 8(d).

6 A Yeah. So the device that you see that says 3 Alarm on
7 it, that's the actual sensor itself that does make the alarm.
8 And then the lighter silver loop that is attached to it, you
9 can see it's cut at the bottom. And that is part of -- that's
10 the end piece of that bungee cable we just saw.

11 Q And that's just -- 8(e) is the same thing?

12 A Yeah. The handbag shows the price tag on it.

13 Q So before the suspect shoplifted on May 17th, how many
14 times had you seen him in the store?

15 A Two times prior to that.

16 Q Once in person?

17 A Once in person, yes.

18 Q And if you can just please tell the jury, what allowed
19 you to recognize that it was the same person that came into
20 the store all three times?

21 A Same build, same -- you know, appeared to be the same
22 age. Again, that prominent kind of brow bone and that
23 prominent distinct hairstyle where it's center part, longer on
24 the top, but still short on the bottom. Also the behaviors,
25 it's -- with the clipping the handbags, going back to the

1 men's department, coming back up, approximately same time,
2 same motive (sic), everything.

3 Q Do you recognize his vehicle as well?

4 A I did.

5 Q Do you remember speaking with a Rock Hill detective in
6 this case?

7 A I do.

8 Q Do you remember why that detective came and spoke to you?

9 A After -- are we discussing after the May?

10 Q Yes. I should be specific. I apologize. After the May
11 17th incident, do you remember speaking with a Rock Hill
12 detective?

13 A Yes. Yeah. (Indiscernible) me arrange those for a
14 discussion about that.

15 Q Do you remember what procedure the detective engaged in?
16 Like what he did when he came to meet with you?

17 A Yes. So he came into Belk, (indiscernible) met me at my
18 store. He had a sheet that kind of read off, you know, the
19 guidelines of it, pretty much saying don't guess, the person
20 may not be in the lineup. A longer paragraph (indiscernible)
21 basis of it.

22 Q Do you remember how soon after the May 17th incident Det.
23 Swiger came to conduct a lineup?

24 A I believe it was three days, absolutely within
25 (indiscernible).

1 Q So pretty soon?

2 A Yes.

3 Q Do you remember who was present during that lineup?

4 A It was just me and the detective.

5 Q Okay. Were you able to pick the defendant out of a
6 lineup?

7 A I was.

8 Q Do you remember --

9 MR. STEVENS: Objection, Your Honor.

10 THE COURT: Overruled.

11 Q Do you remember how quickly you were able to pick him
12 out?

13 MR. STEVENS: Objection, Your Honor. Matter of law.

14 THE COURT: You may approach.

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

18 (Thereupon, counsel returned to counsel tables and the
19 following ensued:)

20 (Open court.)

21 THE COURT: Objection's overruled.

22 MR. STEVENS: Just for the record, Your Honor, I would
23 just -- for the record, I was objecting to the foundation
24 that -- not in a foundation was made on how the lineup was
25 developed before it was shown to the witness.

1 THE COURT: Thank you, Mr. Stevens.

2 Q So Ms. Dotson, how quickly, do you remember, if you
3 picked him out?

4 A I know within the first, like, 5 to 10 seconds, I had a
5 picture in mind and then completely, like, finalized within
6 20.

7 Q Did the detective tell you who to pick?

8 A No.

9 Q Okay. Did he suggest that you should pick somebody or a
10 certain photo?

11 A No.

12 Q Okay. Did he threaten or pressure you in any way?

13 A No.

14 Q Okay. What was your reaction to seeing the suspect in
15 the lineup?

16 A Initially, I saw it was him. I do know I took a few more
17 seconds to kind of look over everything. I hadn't done a
18 photo lineup before, so I was just kind of needing reassurance
19 to solidify my answers by looking through. And then once I
20 knew, I just let him know.

21 Q Okay. Did you ever identify anyone else in this case
22 other than Michael Faile?

23 A No. I think I acknowledged, you know, someone had
24 similar eyebrows, but I never -- they were never a candidate
25 where I thought that it was --

1 Q So you only picked one person?

2 A I only picked one person.

3 MR. STEVENS: At this time, Your Honor, I just want to
4 make my pre-trial objection again for (indiscernible).

5 THE COURT: Objection's overruled.

6 MR. STEVENS: Thank you, Your Honor.

7 Q How sure were you that the person you picked in the
8 lineup was the shoplifter from each incident?

9 A So initially, like I said, I had to look it over again
10 because I had never done a photo lineup before. But once I
11 submitted and signed, I was 100 percent at that point.

12 Q Did you have any doubt whatsoever after you signed the
13 lineup?

14 A No. Nervousness, yes. Any genuine doubt that it was not
15 him.

16 Q How did the -- Mr. Faile's appearance differ in the
17 lineup photo from seeing him in person and seeing him on
18 surveillance?

19 A So the photo lineup -- the photo in that compared to him
20 on the incidents -- or the incident on -- in May, he appeared
21 heavier in the photo lineup. The photo was a little heavier.

22 Q So he was thinner, essentially, in person?

23 A Yeah.

24 Q And do you remember if Det. Swiger was wearing a body cam
25 during your interview?

1 A He was.

2 Q Did that record your interview together?

3 A It did.

4 Q Okay.

5 MR. ANDERSON: I am approaching the witness with what has
6 been previously marked State's Exhibit 9.

7 Q Do you recognize that?

8 A I do.

9 Q And what is it?

10 A It is the body camera from the photo lineup.

11 (WHEREUPON, State's Exhibit No. 9 was marked for
12 identification only.)

13 Q Okay. And how do you know?

14 A I initialed it.

15 Q Is that a true and accurate depiction of your photo
16 lineup that you did with detective?

17 A It is.

18 MR. ANDERSON: At this time, Judge, the State would move
19 to enter State's 9 into evidence.

20 THE COURT: Any objection?

21 MR. STEVENS: The only objection I have is my standing
22 pre-trial objection to the identification process, Your Honor.

23 THE COURT: Understood. Is it --

24 MR. STEVENS: Otherwise, no.

25 THE COURT: Thank you, sir. It's overruled. Thank you.

1 You may publish. It's into evidence.

2 (WHEREUPON, State's Exhibit No. 9 was received into
3 evidence.)

4 (Thereupon, the visual recording was played but not
5 transcribed herein.)

6 Q So in that interview, why did you say that number 2
7 looked like the suspect, but only heavier?

8 A Because I -- it appeared to be the same suspect to me,
9 but his neck -- just generally everything looked a little bit
10 heavier.

11 Q And why did you ask Det. Swiger if there was only one
12 sheet, if that was the only sheet?

13 A So I hadn't done a photo lineup before, so I wasn't,
14 like, 1000 percent sure how they went. Also I did see like a
15 third sheet behind that, so I was kind of curious if it had
16 more photos, just to make sure I was looking at all the
17 options that was being given to me.

18 Q And then why did you sound so excited at the end, when
19 Det. Swiger showed you who the truck was registered to?

20 A I was nervous. It was a big sigh of relief because of,
21 you know, case building and stuff like that. It was good to
22 know that (indiscernible) he figured it out, I guess,
23 breakthrough.

24 MR. ANDERSON: Absolutely. I am going to show opposing
25 counsel Exhibits 10(a) and 10(b).

1 Q Let me know if you recognize those?

2 A I do. The first page is my signature on the photo
3 lineup. The second page is the photo lineup itself.

4 (WHEREUPON, State's Exhibit No. 10(a) and 10(b) was
5 marked for identification only.)

6 Q Are those true and accurate depictions of the lineup and
7 your signature and the (indiscernible).

8 A Yeah, they are.

9 MR. ANDERSON: At this time, the State would move to
10 admit State's 10(a) and 10(b) into evidence.

11 THE COURT: Over objection?

12 MR. STEVENS: Over objection, Your Honor. My pre-trial
13 indication.

14 THE COURT: Objection's overruled. They're admitted into
15 evidence.

16 (WHEREUPON, State's Exhibit No. 10(a) and 10(b) was
17 received into evidence.)

18 MR. STEVENS: Thank you.

19 THE COURT: Yes, sir.

20 Q So can you describe for the jury what 10(a) is there?

21 A Yes. So it's the first page of that photo lineup. The
22 paragraph is, I believe -- yeah, the -- the spiel that was
23 given to me before the photo lineup. And then there is my
24 signature underneath that.

25 MR. ANDERSON: Sure. And skip to 10(b), please.

1 Q And looking at State's Exhibit 10(b), which number in
2 this lineup did you identify --

3 A That's 2.

4 Q -- as the suspect? Number 2. And whose signature is
5 that next to number 2?

6 A That is mine.

7 Q How do you know?

8 A I signed it and I dated it.

9 Q (Indiscernible). And who is number 2 a photo of?

10 A The suspect involved.

11 Q Okay. So is number 2 a photo of the same individual who
12 came into the store on March 24th, April 6th, and the same
13 person who shoplifted on May 17th?

14 A It is.

15 Q Did the suspect at any point, in any three incidents,
16 attempt or make an attempt to pay for the items?

17 A He did not.

18 Q Do you see the person who committed the shoplifting on
19 May 17th in the courtroom today?

20 A I do.

21 MR. STEVENS: Objection, Your Honor.

22 THE COURT: Objection's overruled.

23 MR. STEVENS: Just objecting to court identification.

24 THE COURT: Yes, sir. It's overruled, yep.

25 Q Can you point that individual out to the jury and state

1 what he is wearing for the record, please?

2 A Yes. He is sitting over there to my left in a plaid
3 button-up shirt -- it's checkered, plaid.

4 Q Has his appearance changed in any way since you saw him
5 last year?

6 A I don't believe so. Nothing has changed to me.

7 MR. ANDERSON: No further questions. Please answer any
8 questions the defense may have.

9 THE COURT: Counsel, will you approach, please?

10 MR. ANDERSON: Yes, sir.

11 (Whereupon, a bench conference was held off the record in
12 the presence of the jury, but out of the hearing of the
13 jury.)

14 (Thereupon, counsel returned to counsel tables and the
15 following ensued:)

16 (Open court.)

17 THE COURT: So ladies and gentlemen, what I just talked
18 to the attorneys about, it's now the defense's turn to cross-
19 examine this witness, but it's already 4:35 and we stop the
20 court at 5. So rather than starting that and interrupting it
21 and finishing it tomorrow, we're just going to start it first
22 thing tomorrow, okay? So ladies and gentlemen, that'll
23 conclude the proceedings for today. Remember what I have told
24 you. Please don't discuss the case with anyone else or
25 including each other. Don't read or watch any news reports,

1 and please don't do any outside research. Other than that, I
2 hope y'all have a great evening. I can tell you're playing
3 close attention, and I appreciate that. We'll see you back at
4 9:30 tomorrow morning. Y'all have a great evening.

5 (Whereupon, the jury exited the courtroom at 4:34 p.m.)

6 THE COURT: Let's stay on the record.

7 Counsel, Mr. Hughes (phonetic) has been working
8 diligently on jury charges. Does the State intend to
9 introduce any alleged statements by the defendant?

10 MR. ANDERSON: Yes, sir.

11 THE COURT: All right. So he will get a draft sent to
12 you as soon as he gets it done. All right. Anything else?
13 Yes, sir.

14 MR. ANDERSON: No, I was just saying thank you, sir.

15 THE COURT: Yes, sir. Anything else from the State
16 before we break for today?

17 MR. ANDERSON: Nothing from the State.

18 THE COURT: From the defense?

19 MR. STEVENS: No.

20 THE COURT: All right. Any objection to the defendant
21 remaining out on bond?

22 MR. ANDERSON: Your Honor, should we remove the witnesses
23 or does it matter?

24 THE COURT: I don't think there are any witnesses here,
25 except for your case agent.

1 MR. ANDERSON: Ms. Dotson.

2 THE COURT: Oh, Ms. Dotson, I'm sorry. Thank you. I
3 apologize.

4 Ms. Dotson, you can go ahead -- you're still under oath,
5 so don't discuss your testimony. But otherwise, we'll see you
6 back at 9:30 tomorrow.

7 Thank you for the reminder. She was outside of my field
8 of vision. I appreciate that, so.

9 MR. ANDERSON: As to bond, Your Honor, in lieu of moving
10 or revoking Mr. Faile's bond because of the number of charges
11 he's gotten -- accrued since this incident, the State just put
12 it on the trial docket because I didn't think a judge was
13 going to revoke his bond just given that most of the other
14 pending charges were out of other counties and other circuits.
15 But currently right now, he has a pending ab hand and a
16 pending shoplifting enhanced in Lancaster. He picked up --
17 that was before this incident.

18 THE COURT: Before the May 17th?

19 MR. ANDERSON: Yes, before the May 17th. So before that
20 he had a -- while out on bond for an ab hand and a shoplifting
21 enhanced in Lancaster, picks up these shoplifting charges.
22 And then after that, he picks up, in August of 2022, a
23 shoplifting from Belk in Richland and then, in September of
24 '22, another grand larceny enhanced out of Lancaster. And
25 then in February of this year, just a few months ago, he

1 picked up a nonferrous metals, petty larceny enhanced, and
2 obtaining nonferrous metals. So just since these charges,
3 he's picked up one, two, three, four, five property crimes.
4 And he was already out on bond for an ab hand and a
5 shoplifting enhanced when he picked up these charges. So the
6 state believes he's a flight risk. He has no incentive to
7 show up tomorrow, to come back --

8 THE COURT: Well, but the same incentive he had to show
9 up today, correct?

10 MR. ANDERSON: True. I mean -- I'll be honest.

11 THE COURT: No, I think the defendant's demonstrated good
12 faith by showing up for court today.

13 MR. ANDERSON: Yes, sir.

14 THE COURT: Mr. Faile, just so you understand that if you
15 don't appear back tomorrow, the trial will continue in your
16 absence, and then I can sentence you without you even being
17 here. Do you understand that? So you need to come back
18 tomorrow. All right.

19 Thank you, Counsel. We'll see you tomorrow morning.

20 MR. STEVENS: Thank you, Your Honor.

21 MR. ANDERSON: Thank you, Your Honor.

22 (End of Transcript of Record)

23

24

25

CERTIFICATE OF TRANSCRIBER

State of South Carolina)
)
County of York)

I, KHALEELAH GANTT, a court-approved transcriber, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for York County, South Carolina, on the 20th day of June, 2023.

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

September 5, 2023



Khaleelah Gantt, CDT-285
Transcriber

State of South Carolina	)	
	)	Circuit Court
<u>County of York</u>	)	2022-GS-46-03416

State of South Carolina	)	
	)	
vs.	)	Transcript of Record
	)	Volume II of III
Michael Lindsey Faile	)	Pages 157 - 350

June 21, 2023
York, South Carolina

B E F O R E:

The Honorable William A. McKinnon, Judge.

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

William Anderson, Assistant Solicitor
Attorney for the State

Roger Stevens, Public Defender
Attorney for the Defendant

Tamara Bentzur
Transcriber

1		<u>I N D E X</u>		
2	<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u> <u>RECROSS</u>
3	Monica Dotson			
4	Mr. Stevens		169	187
5	Mr. Anderson			185, 31
6	Damien Williams			
7	Mr. Anderson	188, 219		252
8	Mr. Stevens		224	
9	Darin Swiger			
10	Mr. Anderson	254		294, 142
11	Mr. Stevens		263	296
12				
13	Charge of the Court			309
14	Closing argument by Mr. Anderson			321
15	Closing argument by Mr. Stevens			177
16				
17				
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1	<u>E X H I B I T S</u>			
2	NO.	DESCRIPTION	ID.	EV.
3	S-11,12	Flock camera photos		219
4	S-13,14	Flock camera photos		222
5	S-15	DMV photo of defendant		260
6	C-1,2	Surveillance videos		168
7	C-4	Detective's bodycam on lineup		168
8	C-5-A, 5-B	Photo Lineup		168
9				
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1 THE COURT: Let me start real quick. My understanding is
2 that your client, Mr. Stevens, was using his cell phone
3 yesterday. So I want to caution him that if he does that,
4 this deputy's going to take his cell phone. He's not
5 permitted to do that yet.

6 I'll give him a warning, but -- he can have it. And if
7 he's got to make -- on a court break, he can go out there and
8 make a call. But he can't -- yeah, he can't have it out. And
9 I understand you can't control him. You can just explain to
10 him.

11 MR. STEVENS: And then also he's run into some issues
12 with the weather. So he -- I know about five minutes ago he
13 was at the Dollar General on 5.

14 THE COURT: Okay.

15 MR. STEVENS: So he's very close.

16 THE COURT: Okay.

17 MR. STEVENS: And I know some people from our office were
18 late. I think there was a tree down.

19 THE COURT: I was late. Yeah, so --

20 MR. ANDERSON: So it did come to the State's attention
21 last night with my co-counsel Dan Porter and I were walking
22 out of the courtroom. A bailiff approached and told us that
23 the viewing room volume was on, and that the witnesses could
24 hear in the hallway. And I know Mr. Porter just talked to
25 them and asked them what they could hear. They could hear the

1 videos playing. I went to that yesterday and muted it, so
2 hopefully that's not an issue going forward.

3 The only witness that was sitting out there that the
4 State has yet to call, Damien Wilson, who is the analyst for
5 Rock Hill. And all his testimony revolves around the Flock
6 camera not really anything that Monica was testifying to, what
7 she saw in the store and that kind of thing. So the State's
8 position is --

9 THE COURT: I mean, his only role in the case was to
10 query the database. Correct?

11 MR. ANDERSON: Yes, sir. He had no -- he didn't know
12 what the guy looked like, anything. All his testimony
13 revolves around what -- I had a partial tag, VM. Looking for
14 a white Chevy. I plugged that into the Flock system, and I
15 get a truck back.

16 THE COURT: Mr. Stevens.

17 MR. STEVENS: Your Honor, I believe Ofc. Bowker's also
18 out there. And if the State doesn't call him, I think I'm
19 going to have to call him.

20 THE COURT: What is Ofc. Bowker? Was he the officer that
21 showed up?

22 MR. ANDERSON: He was one of the responding officers at
23 (indiscernible).

24 THE COURT: On the 17th?

25 MR. ANDERSON: Correct, on the 17th. I'm not going to

1 call him because I feel like his testimony's redundant. Most
2 of what he's going to say is what Monica told him, and the
3 State believes obviously that would be hearsay. And he
4 obviously had no other role than to ask her what happened
5 there.

6 THE COURT: Are you going to ask for a mistrial, Mr.
7 Stevens?

8 MR. STEVENS: I think that -- I think the best remedy --
9 I'm not going to ask for a mistrial.

10 THE COURT: Okay.

11 MR. STEVENS: From what the State's told me, I don't
12 think they heard anything beyond the video. But I think in
13 the abundance of caution we could ask the witnesses what they
14 heard on the record. I don't know what you think.

15 THE COURT: Which witness? Now is the perfect time for
16 that if they're out there because the jury can't -- we were
17 not ready to start -- if you would like me to do -- what?

18 MR. STEVENS: The witnesses are here.

19 THE COURT: Bring them in. Let's do it. I'll do it
20 right now.

21 MR. STEVENS: That way if we do that -- one at a time?

22 THE COURT: Yeah, one at a time, yes, sir. Yeah. Just
23 the ones that would have ever heard anything yesterday.

24 Good morning. These nice ladies here will swear you in.

25 THE CLERK: Raise your right hand.

1 DAMIEN WILLIAMS, after being duly sworn, testified
2 as follows:

3 THE COURT: Just have a seat there. And just tell me
4 your name please?

5 THE WITNESS: Damien Williams.

6 THE COURT: Mr. Williams, or is it Det. Williams, or
7 what's the --

8 THE WITNESS: Analyst Williams.

9 THE COURT: Analyst Williams. I just -- the Court's been
10 informed that the volume was on in the viewing room yesterday.
11 And that folks in the hallway could hear some of what was
12 going on in the court. What were you able to hear?

13 THE WITNESS: Just muffling and noise. You could tell it
14 was being played in there, but no clear --

15 THE COURT: You couldn't make out what people were
16 saying?

17 THE WITNESS: No clarity, no sir.

18 THE COURT: Okay. Thank you.

19 Any questions from the State?

20 MR. ANDERSON: No questions.

21 THE COURT: From the defense?

22 MR. STEVENS: No, Your Honor.

23 THE COURT: That's all. Thank you, sir.

24 MR. STEVENS: On your way out, would you send Ofc. Bowker
25 in? Thanks.

1 THE COURT: Ofc. Bowker, come on up, and these ladies
2 will swear you in.

3 PETER BOWKER, after being duly sworn, testified as
4 follows:

5 THE COURT: All right. Just have a seat right there.
6 All right. Ofc. Bowker, just tell me your full name please.

7 THE WITNESS: My name is Peter Bowker.

8 THE COURT: Okay. Ofc. Bowker, and the reason we
9 brought you in is I was informed that the viewing room volume
10 was turned up yesterday, and folks in the hall could hear some
11 of what was going on in court. Were you able to hear
12 anything?

13 THE WITNESS: I was.

14 THE COURT: What were you able to hear?

15 THE WITNESS: So initially it sounded like a -- you know,
16 like a shopping mall. You hear like someone over the speaker.
17 So I wasn't sure what was kind of going on. I tried to figure
18 out where the sound was coming from. I went up over next to
19 the viewing room door, and that's when I could hear. And it
20 sounded at that time -- I guess it was like the 911 audio what
21 I believe to have been hearing.

22 THE COURT: So other than a portion of the 911 audio, did
23 you hear anything else?

24 THE WITNESS: As soon as I knew that's what it was, I
25 knew I wasn't like hearing things, I went and sat back down.

1 THE COURT: Okay. Understood.

2 Any questions from the State?

3 MR. ANDERSON: No questions.

4 THE COURT: From the defense?

5 MR. STEVENS: No, sir.

6 THE COURT: Thank you, Officer. I appreciate it.

7 Counsel, by the way, the jury sent me a note. Their
8 foreperson is Jade Hayes (phonetic), juror 113.

9 MR. ANDERSON: And the other few things, just to put on
10 the record, State ran Ms. Dotson's rap sheet this morning.
11 There was nothing on it.

12 THE COURT: Thank you, sir. I appreciate that.

13 MR. ANDERSON: Yes, sir. And the only other thing is Mr.
14 Stevens and I had agreed to stop Det. Swiger's bodycam at a
15 certain point.

16 THE COURT: Okay.

17 MR. ANDERSON: The rest of the audio is on there. So if
18 the jury wants to watch only Det. Swiger's bodycam, then I
19 feel like we probably would have to bring them back out there.

20 THE COURT: That's fine. That's what we'll do. We won't
21 send that DVD back. If they want to see it, we can bring them
22 in, and we'll cut it off at the right spot.

23 MR. ANDERSON: That's everything from the State.

24 THE COURT: Mr. Stevens, you emailed my law clerk about
25 an identity charge. I'm open to that. I've never seen on

1 before. Do you have one that you want to suggest?

2 MR. STEVENS: We also talked about that this morning too,
3 Judge. And I found one that (indiscernible). But that was --
4 I believe that was reversed.

5 THE COURT: Okay.

6 MR. STEVENS: We're not (indiscernible) affirmed. So
7 that's actually not good to use. So I gave one sentence in
8 there that I thought was --

9 THE COURT: Did you kind of craft that yourself, or was
10 it from a case?

11 MR. STEVENS: I found that on a (indiscernible) jury
12 instruction checklist.

13 THE COURT: Okay.

14 MR. STEVENS: On how to ask for identification.

15 THE COURT: Okay. Let me --

16 MR. STEVENS: I can't tell you the case.

17 MR. ANDERSON: So I also did some research on that. I
18 know the South Carolina Supreme Court and Court of Appeals has
19 explicitly held that the defendant is not entitled to a
20 Telfaire charge. That's State v. Patterson, 337 S.C. 215.

21 My understanding of that case is that basically the
22 language should be something similar to what Mr. Stevens did
23 where the State has to prove every element of the crime, and
24 that includes the identity of the defendant beyond a
25 reasonable doubt.

1 THE COURT: Okay. I'm fine charging it. Any objection
2 to the language you just stated?

3 MR. ANDERSON: No objection.

4 THE COURT: So we'll charge. Okay.

5 MR. ANDERSON: I actually have a charge from -- or if
6 Your Honor wants to take a look at it. It's from State v.
7 Green.

8 THE COURT: Yeah, Matthew's got it right here. Let me
9 see. I think we're -- okay. So this is what our -- Matthew
10 was on top of it as always, so that the proposed charge is the
11 State must prove beyond a reasonable doubt that every element
12 of the charged offense was committed, including that the
13 person who committed the crime was the defendant.

14 MR. ANDERSON: Fine with me.

15 THE COURT: Mr. Stevens.

16 MR. STEVENS: Good.

17 THE COURT: All right. That's what we'll charge.

18 MR. STEVENS: I've added that right before the definition
19 (indiscernible). Judge, can I take this? It's from Mr.
20 Faile.

21 THE COURT: Sure, absolutely.

22 (Pause.)

23 MR. ANDERSON: May it please the Court. The State just
24 handed the court reporter State's -- Court's Exhibits 1 and 2,
25 which were the surveillance videos from yesterday. And

1 Court's Exhibit 4, which was the detective's bodycam on the
2 lineup. The State did not end up entering Court's 3, which is
3 the 911 call. And State entered Court's Exhibits 5-A and B,
4 which was the photo lineup

5 THE COURT: Thank you, sir.

6 (WHEREUPON, Court's Exhibit Nos. 1, 2, 4, 5-A, and 5-B
7 were received into evidence.)

8 THE COURT: Mr. Faile, I understand your attorney's
9 already talked to you about this, but just so there's
10 absolutely no doubt. You understand that the only people
11 allowed to use a phone in a courtroom are law enforcement
12 officers and court employees, okay, and attorneys? So you can
13 have it.

14 There's nothing wrong with having it, but it's got to be
15 turned off. And if the deputies or the bailiffs see you with
16 the phone out and turned on, they're going to take it. Okay?
17 And I can --

18 THE DEFENDANT: (Indiscernible).

19 THE COURT: Okay. Just telling you because I don't want
20 to have to do anything, so just keep in in your pocket. If
21 you need to make a call on the break or bathroom break, that's
22 fine. You can go out in the hall and make a call. But in the
23 courtroom, it's got to be turned off. All right?

24 THE DEFENDANT: I want to apologize I was a little late.
25 I was already pushing it, and I apologize.

1 THE COURT: Well, I was a little bit late to court today
2 too, so I understand. All right?

3 State ready to proceed?

4 MR. ANDERSON: Yes, sir.

5 THE COURT: All right.

6 Defense ready?

7 MR. STEVENS: Yes, sir.

8 THE COURT: All right. Let's bring them in.

9 (Whereupon, the jury came into open court at
10 approximately 10:14 a.m.)

11 THE COURT: All right. Ladies and gentlemen, welcome
12 back. I thank y'all for your patience this morning with us
13 getting started. Were y'all able to follow the rules I gave
14 you overnight? Thank you very much. I appreciate that.
15 Ladies and gentlemen, you remember yesterday we had finished
16 the direct examination by the State of Ms. Dotson. So she is
17 still under oath, and we're going to start this morning with
18 cross-examination by the defense.

19 MR. STEVENS: May it please the Court.

20 THE COURT: Yes, sir.

21 MONICA DOTSON, after being previously sworn,
22 testified as follows:

23 CROSS-EXAMINATION

24 BY MR. STEVENS:

25 Q Good morning, Ms. Dotson.

1 A Good morning.

2 Q How are you today?

3 A I'm good.

4 Q All right. I think I'm going to speak -- I'm going to
5 try not to speak so loud. I already speak loud, so I'll step
6 back a little bit. Let's get started. You were an asset
7 protection officer at Belk in March, April, and May of 2022?

8 A That is correct.

9 Q And you and I had a chance to speak before trial. Right?

10 A Yes.

11 Q And you had a chance to speak before trial a couple of
12 times with the State?

13 A Yes.

14 Q And but you and I, we had just a chance to talk -- I had
15 a chance to ask you some questions, talk about your
16 background, talk about what you saw, things like that. So you
17 and I have had a discussion before?

18 A Yes.

19 Q You had an important job at Belk.

20 A Yes.

21 Q And it's mostly important because you help put together
22 pieces of a puzzle.

23 A Yes.

24 Q You find the -- you help find the missing pieces in the
25 puzzle.

1 A Yes.

2 Q But you're just part of a larger process. Right?

3 A Yes.

4 Q Because there's lots of other pieces of the puzzle that
5 have to be filled in that you may not have control of.

6 A That is correct.

7 Q And everyone has a responsibility to fully investigate,
8 especially the police. Right?

9 A Yes.

10 Q Let's move to the --

11 THE COURT: Ms. Dotson, I'm not sure the mic is picking
12 you up. Can you maybe bend it or sit a little closer? You're
13 a little --

14 THE WITNESS: Is this better?

15 THE COURT: That's much better. Yes, ma'am, thank you.

16 MR. STEVENS: Watch what happens when I talk too loud.
17 I'll try not to drown you out.

18 BY MR. STEVENS:

19 Q Okay. Let's go to the shoplifting incident on March
20 24th, 2022. Do you remember that?

21 A I do.

22 Q Roughly what time was that again?

23 A Approximately 6:30 p.m.

24 Q And you never actually approached the suspect?

25 A No.

1 Q You didn't speak to the suspect?

2 A I don't recall.

3 Q And you never interacted with the suspect in any way
4 really.

5 A I don't recall.

6 Q And you didn't really realize that a shoplifting was in
7 process until after the suspect left the store?

8 A This is for March 24th?

9 Q Yeah.

10 A That is correct.

11 Q And your only impression of what the suspect looked like
12 came from the surveillance video that Belk uses?

13 A At that time, yes.

14 Q And you testified that in that -- during that incident,
15 the suspect used a specific tool.

16 A Yes.

17 Q And that that tool looked similar to what some subsequent
18 incidents looked like.

19 A That is correct.

20 Q Was it the same tool?

21 A Unsure, same utilization of it. Don't know if it was the
22 same exact tool.

23 Q But in your direct testimony you said that the tool in
24 the suspect's hand was the same one that was used.

25 A Yeah, same type. Again, I don't know if it was the same

1 exact one every single time but same kind of tool.

2 Q Okay. So when you said same tool, you just said it was
3 used in a similar fashion.

4 A Yes.

5 Q All right. Let's go to the shoplifting incident on April
6 6th. Do you remember that shoplifting incident?

7 A I do.

8 Q Also at a Belk store, the one that you worked at?

9 A Yes.

10 Q And during that incident you were monitoring video
11 surveillance?

12 A Yes.

13 Q That's because that's what you do at work?

14 A Yeah. That is one of my job --

15 Q Or one of your responsibilities. I'm sorry. And you saw
16 someone you recognized.

17 A I did.

18 Q And you went to the sales floor.

19 A I did.

20 Q And when you sent to the sales floor, you actually
21 initiated interaction with a suspect. Right?

22 A I did not myself, that I recall. When I got to the sales
23 floor, a manager was interacting with him.

24 Q So you weren't the one that actually first initiated
25 interaction with the suspect?

1 A I did not initiate interaction.

2 Q And at some point, do you recall speaking to the suspect
3 face to face?

4 A I don't recall.

5 Q In your pre-trial testimony you said that you did have
6 interaction with the suspect.

7 A I believe I could have, yes. I don't remember if it
8 would have been what I said to him. Usually, I'll say hey,
9 how are you or something like that.

10 Q Do you remember saying in pre-trial that you stood
11 between 20 and 30 feet of the suspect face to face?

12 A I do. Standing between him. I don't recall saying face
13 to face.

14 Q So you did interact with the suspect that day?

15 A I don't recall if I verbally interacted with him. No,
16 but I was within 20 or 30 feet of him that day.

17 Q And could you describe the suspect for us?

18 A Yes. I would say medium build, approximately five-seven,
19 five-eight, 50 years old around there, salt-and-pepper hair,
20 physically longer on top, shorter on the bottom, prominent
21 browbone, bushier eyebrows.

22 Q And you were standing about 20 to 30 feet from the
23 suspect?

24 A I would say so.

25 Q And could you -- and you can't demonstrate, but could

1 you --

2 THE COURT: The witness can get up if you want her to.

3 Q If you want to get up, and you can estimate roughly how
4 far or I can move back, whatever is best for you. Like, how
5 far were you from the suspect?

6 A It's hard for me to like specifically recall without
7 being, you know, in the store. But I would estimate from me
8 to you.

9 Q Okay.

10 A I would estimate around that distance.

11 MR. STEVENS: So we'll let the record reflect that it's
12 basically from where I'm standing at the cross-examination --
13 I don't know, station to the witness booth. I don't know how
14 many feet that is.

15 Q But that's how close you were standing?

16 A I would say so.

17 Q So close enough to see like from me to you, it's close
18 enough to see facial features, what someone's wearing,
19 actually have a conversation with them without a microphone.

20 A It is.

21 Q And what else was the suspect wearing?

22 A I would have to see the footage to recall what
23 specifically as far as like a shirt goes. I know it was
24 probably either a white T-shirt or khaki utility shirt and
25 then a medical mask. I don't remember what color.

1 Q So he had a surgical mask on?

2 A Yes.

3 Q And so describe what you could actually see on the face
4 of the suspect.

5 A Kind of halfway up the nose and up I could see his eyes,
6 his browbone, and again that distinct hair style.

7 Q So you couldn't see the full nose?

8 A I could not.

9 Q Couldn't see the mouth?

10 A I could not.

11 Q Couldn't see the cheekbones.

12 A I could not.

13 Q Couldn't see any facial features such as the chin?

14 A I don't believe so.

15 Q So all you could see are the eyes -- and we've all --
16 well, some of us. Almost most of us have worn a surgical mask
17 at this point. So a surgical mask is basically you see the
18 forehead and the eyes.

19 A Yes.

20 Q That's it, a little bit of the nose and of course the
21 hairstyle.

22 A That is correct.

23 Q I think your report was placed into evidence. Is that
24 right?

25 A I think so.

1 MR. ANDERSON: That's not correct.

2 MR. STEVENS: No? Okay.

3 Q Well, let's talk about that report for a moment. And I'm
4 talking about the report that you submit to Belk. Do you
5 remember writing that report?

6 A I do remember writing it. I don't fully remember the
7 contents of it.

8 Q Would it surprise you to know that there's nowhere in
9 that report that mentions that you actually interacted with
10 the suspect?

11 A That wouldn't surprise me.

12 Q It wouldn't surprise you that you wrote nothing like that
13 in your report?

14 A No. I recall writing an interaction between the employee,
15 the manager, and the suspect.

16 Q But not you, nothing in your report that you remember?

17 A Not -- no, no verbal interaction. That was not -- I
18 don't think it was written in the report.

19 Q Actually, no interaction at all. Do you remember that?

20 A No.

21 Q And this is still the April 6th event. Was the suspect
22 carrying anything in his hand?

23 A No. Not -- are you -- like carrying something in his
24 hand around the store?

25 Q Yes.

1 A Not that I recall.

2 Q Was he -- did he use a tool during this incident?

3 A He did.

4 Q And in your direct testimony you said that the tool was
5 the same one used in different incidents.

6 A Yes, the same utilization of it.

7 Q Same utilization, not necessarily the same tool. Right?

8 A That's correct.

9 Q All right. Let's move to the shoplifting incident on May
10 17th. Again, same thing, the interact -- there was no
11 interaction.

12 A No, no physical interaction.

13 Q Between you and the suspect. And the only way you
14 actually saw the suspect was over a video.

15 A That is correct.

16 Q And you never approached the suspect?

17 A I did not.

18 Q You never spoke to the suspect?

19 A I did not.

20 Q You never interacted with him in any way?

21 A I did not.

22 Q And your only impression of what he looked like was from
23 that surveillance video?

24 A That is correct.

25 Q So there is no upfront interaction, no faraway, no close,

1 no talking, no interaction of any kind with the suspect?

2 A Just the -- just the surveillance footage.

3 Q Okay. Let's move to May 20th, 2022. That's the date
4 that you were shown the photo lineup. Do you call that?

5 A Yes, I do.

6 Q And Det. Swiger from Rock Hill Police Department called
7 you that day.

8 A I would think so, yes.

9 Q Before he came out to visit you?

10 A I would think so because he would have to arrange a time
11 to make sure that I was at my store at that time.

12 Q Makes sense. And you told him you had spoken directly to
13 an older white male with gray hair on a previous shoplifting
14 event.

15 A I don't recall.

16 Q You don't recall saying that?

17 A I don't.

18 Q But you may have?

19 A It's possible.

20 Q And you never knew the name of any suspect before Det.
21 Swiger told you.

22 A I did not.

23 Q And you actually were not confident of who -- when you
24 were initially shown the lineup?

25 A Initially when I was shown it, no, I was nervous. I'd

1 never been shown a lineup before.

2 Q And when you looked at the lineup, you initially said to
3 Det. Swiger, and I quote, "Number 2 looks like him, but I'm
4 not sure."

5 A I don't think that's what I said. I can't make out the
6 second part. I do say number 2 looks like him.

7 Q But --

8 A Possibly, yeah.

9 Q Would it help you if we played that again so you could
10 listen to it?

11 A Yeah, that's fine.

12 MR. STEVENS: Would you play at 13:41:39.

13 Is that okay, Judge?

14 THE COURT: It is.

15 MR. STEVENS: If we could play the video as well.

16 Madam clerk could you please publish?

17 THE COURT: There we go. Well, yeah, it's working.

18 THE CLERK: Mr. Stevens, would you like me to go back?

19 MR. STEVENS: Yes, sir. If we could back up to 13:41:39
20 roughly. There we go. That's fine. Thank you very much. If
21 you could hold up and back up. I think we've seen this part.
22 Let's just back up to 13:41:35.

23 (Thereupon, the video recording was played but not
24 transcribed herein.)

25 MR. STEVENS: Let's stop right there.

1 Q You heard that part. Right?

2 A I did.

3 Q And what did you hear?

4 A It sounded like I said number 2 looks like him but only
5 heavier.

6 Q Okay.

7 A Or but heavier.

8 Q And if we could -- do you remember saying what you kind
9 of said right after that?

10 MR. STEVENS: Did you hear what she said right after
11 that?

12 Q Did you hear the words I don't know?

13 A Possibly.

14 Q Do you want to hear it again?

15 A Yeah.

16 MR. STEVENS: Could we back it up about -- let's go with
17 8 seconds, roughly 35. And let's listen to that one more
18 time.

19 (Thereupon, the visual recording was played but not
20 transcribed herein.)

21 MR. STEVENS: We can stop right there.

22 Q Did you hear that?

23 A Yeah, I did.

24 Q So you kind of said faintly I don't know because you
25 weren't confident.

1 A Yeah. I was not confident at the time.

2 Q And then we were able to listen to some more video, so we
3 already heard you say -- ask Det. Swiger if there was another
4 sheet in the lineup. Right, because you wanted to see if
5 there was some additional photographs. Right?

6 A I did -- yeah, I saw a third sheet. I wasn't fully sure
7 if it would have additional photographs, so I was curious just
8 to make sure that I was looking at all the options. Again,
9 kind of due to nerves needed reassurance with that.

10 Q Right.

11 A For my only option, I guess.

12 Q And you just wanted to make sure that there weren't more
13 photos that the detective was going to show you.

14 A That is correct.

15 Q Because you weren't confident.

16 A I was not confident at the time.

17 Q And you told Det. Swiger that there was an issue with the
18 weight of the person shown in photo 2. And you actually just
19 said that. Right?

20 A Um-hum.

21 Q And then you pointed to another photograph in the lineup
22 and said that that other individual's eyebrows were pointed in
23 a similar way.

24 A Yes.

25 MR. STEVENS: And let's see if we could -- and I'm sorry

1 for asking. Could you put up a copy of the lineup?

2 THE CLERK: Sure.

3 MR. STEVENS: Forget what Court exhibit that was.

4 THE CLERK: I believe it's 11.

5 MR. STEVENS: It's State's Exhibit 11?

6 Q So we're going to show -- I think we're going to show the
7 photo lineup, which we think is State's Exhibit 11.

8 A Okay.

9 THE CLERK: 10A and 10B.

10 MR. STEVENS: Oh, 10A and 10B. If we could show the
11 actual photos, 10B. Thank you very much.

12 Q Do you recognize this?

13 A I do.

14 Q And this is the photo lineup that you signed?

15 A That is correct.

16 Q Can you point to the other photograph in the lineup where
17 you said the other individual's eyebrows were pointed in a
18 similar fashion to the suspect that you saw?

19 A I don't recall which photo it was. If I'm looking at it
20 now, 1 or 4 is similar but a different browbone.

21 Q You said 1 or 4?

22 A I would say so. That would possibly be what I was
23 referring. I don't know.

24 Q And there's a shadow in number 1.

25 A Yes. I would say a bit.

1 Q So even after you made an identification you weren't
2 completely sure about the person you identified. Right?

3 A Initially, I was not sure. After knowing that -- taking
4 a closer look at those six photos, I was sure.

5 Q And the reason I asked that is because in your direct
6 testimony you said you were 100 percent sure of that
7 identification, but that's not true. Right?

8 A It is true. At the time that I signed it I was 100
9 percent.

10 Q But not initially?

11 A Not initially.

12 Q And what we said previously, right around that time when
13 you were looking at the photos, something to the effect of I
14 don't know.

15 A That is correct.

16 Q And I think you also testified that at the end of the
17 photo lineup process that you felt more confident?

18 A Yeah, when I signed it off, yeah, I was more confident.

19 Q I think you testified to that effect also. Right, that
20 you felt more confident?

21 A Right.

22 Q You said you needed reassurance.

23 A Yeah, to make sure there wasn't a third page I guess. I
24 was curious about it.

25 Q But you also said you needed reassurance to solidify your

1 identification.

2 A Yes.

3 Q And Det. Swiger gave you that reassurance by telling you
4 who the individual in number 2 was.

5 A Yes, after signing off.

6 MR. STEVENS: That's all I have. Thank you, Judge.

7 THE COURT: Any redirect?

8 MR. ANDERSON: Briefly.

9 REDIRECT EXAMINATION

10 BY MR. ANDERSON:

11 Q Good morning, Ms. Dotson.

12 A Good morning.

13 Q So how many times did Mr. Faile come into your store
14 overall?

15 A Three.

16 Q And did you --

17 MR. STEVENS: Your Honor -- I'm sorry, Your Honor. I
18 just want to reiterate my objections to the identification
19 process.

20 THE COURT: Overruled. Thank you.

21 MR. STEVENS: Thank you, Judge.

22 THE COURT: Yes, sir.

23 Q Did you recognize him on April 6th when he came into the
24 store?

25 A I did.

1 Q Did you recognize him again as the same person when he
2 came into the store on May 17th?

3 A I did.

4 Q When you signed your name next to number 2, were you 100
5 percent confident when you signed your name that the person in
6 that photo lineup was the person who shoplifted from Belk on
7 those three occasions?

8 A I was at the time.

9 Q Would you have signed the lineup if you weren't 100
10 percent sure?

11 A No, absolutely not.

12 Q Did Det. Swiger tell you who to pick?

13 A No.

14 Q Did he give you any reassurance before you picked number
15 2?

16 A Before I signed off, no, before I picked, no.

17 Q So that was after.

18 A Yes.

19 Q And just for the record, do you see the person who came
20 into your Belk store on March 24th, April 6th, and May 17th in
21 the courtroom here today?

22 A I do.

23 Q Would you point him out for the jury, and for the record,
24 would you state what he's wearing please?

25 A Yes. He is over here to my left in a blue button-up

1 shirt.

2 MR. ANDERSON: No further questions.

3 THE COURT: All right. Any recross, Mr. Stevens?

4 MR. STEVENS: Just very briefly, Judge.

5 THE COURT: All right.

6 RECROSS-EXAMINATION

7 BY MR. STEVENS:

8 Q Until May 17th, 2022, you had no idea who the suspect
9 was?

10 A That's correct.

11 Q Matter of fact, you didn't know who it was on any one of
12 those dates.

13 A That is correct.

14 Q March, April, and May, none of those dates you knew who
15 this person was?

16 A I did not.

17 Q No idea? You didn't know until Det. Swiger told you.

18 A That is correct.

19 MR. STEVENS: That's all I have. Thank you.

20 THE COURT: Any redirect?

21 MR. ANDERSON: One question.

22 FURTHER REDIRECT EXAMINATION

23 BY MR. ANDERSON:

24 Q So you didn't know his name then. Right?

25 A I did not know his name.

1 Q But you know what he looked like?

2 A Yeah, from prior incidents.

3 THE COURT: Mr. Stevens, any recross?

4 MR. STEVENS: No, Your Honor.

5 THE COURT: Okay. Any objection to excusing this
6 witness?

7 MR. ANDERSON: No objection.

8 THE COURT: Mr. Stevens?

9 MR. STEVENS: I have no objection.

10 THE COURT: Thank you, Ms. Dotson. You can step down and
11 you're excused from your subpoena.

12 State can call your next witness.

13 MR. ANDERSON: Yes, sir. The State calls Analyst Damien
14 Williams to the stand. Mr. Williams.

15 DAMIEN WILLIAMS, after being duly sworn, testified
16 as follows:

17 DIRECT EXAMINATION

18 BY MR. ANDERSON:

19 Q Good morning.

20 A Good morning.

21 Q Could you state your name and spell your last name for
22 the record please?

23 A Sure. Damien Williams, W-I-L-L-I-A-M-S.

24 Q And what is your occupation?

25 A I am the research data analyst for Rock Hill Police

1 Department.

2 Q And how long have you been a research data analyst for
3 Rock Hill?

4 A For Rock Hill, a little over 19 years, so since about
5 2005.

6 Q And what are your duties as an analyst at Rock Hill?

7 A Generally speaking, looking for patterns and trends for
8 crime, calls for service, any sort of data that we collect,
9 citations, arrests, managing some of those databases as well
10 as helping detectives investigate cases or leads, whether it's
11 a shooting, shoplifting, fraud, auto theft, any sort of crime-
12 related cases.

13 Q So a follow-up investigation basically?

14 A Pretty much, yeah, so generally speaking every day one of
15 my duties, I'll look through all the reports, incident reports
16 looking for information that I can help follow up with
17 detectives or patrol officers as far as investigative
18 purposes.

19 Q Can you give the jury just basically like a 10,000-foot
20 brief overview of how you became involved in this particular
21 case?

22 A So I was reviewing reports. So generally speaking, the
23 reports that come in from the previous day I'll look over all
24 the reports, whether it's a car break-in, DUI. In this case
25 it was a shoplifting. And so based on the information in the

1 report that the officer had written down from the loss
2 prevention officer, her investigation, the initial calls for
3 service. Looked in that information.

4 Noticed that the suspect vehicle was a white truck, and
5 they had mentioned that the vehicle had been partially covered
6 with a piece of black tape. So partially you could see the
7 tag, so I looked at that information and kind of filled in a
8 little bit more to see if I could come up with as far as a
9 investigative lead for the officer at the time before it got
10 passed along to Det. Swiger.

11 Q So basically you had a suspect vehicle essentially.

12 A Exactly. And so using criminal investigative databases
13 and resources that we have, in this case license plate reader,
14 a camera. We were able to find that vehicle prior to the
15 actual crime taking place. And so kind of passed that
16 information along to the original reporting officer to say
17 hey, this is the probable suspect vehicle, based off the
18 information we had in the criminal report.

19 Q So you mentioned the license plate reader. Can you tell
20 the jury a little bit more about those readers and those
21 cameras, how they work, that kind of thing?

22 A Sure. So in the City of Rock Hill we have generally
23 speaking about 24 cameras. Those are locations that were
24 picked because of high crime areas or areas in the past, such
25 as that particular area the Belk and all the businesses in

1 that area. There's a high amount of shoplifting, fraud, as
2 well as vehicle thefts and other property-related crimes.

3 And so this particular camera that I looked at catches
4 vehicles that come off the interstate coming from Mecklenburg
5 County, North Carolina southbound. And they come off the exit
6 ramp at Dave Lyle I-77. So that camera is kind of used for
7 investigative purposes because we have so many thefts in that
8 area.

9 So generally speaking, based on the report, if I recall,
10 they know the time of the theft was from 6:15 to 6:30 in the
11 evening. So I kind of went back and said okay, I'm going to
12 look and just scan all the vehicles and look for what stood
13 out as far as the tape on a tag. And I was able to find that
14 particular white truck at the time.

15 And so looking at the tag a little bit closer, we were
16 able to investigate and kind of get specific information from
17 the tag.

18 Q And I guess as part of job as an analyst, how often do
19 you use those camera systems?

20 A About probably once a day at least. A lot of the cameras
21 as well the system is primarily used for -- to locate related
22 to NCIC, so that's National Crime Information Center. So
23 officers in their car they can run NCIC checks. But the
24 camera system itself, it'll alert our dispatch to missing
25 persons or a stolen vehicle or a wanted person. That's the

1 primary application of the camera system as well as lead
2 generations for previous crimes or -- well, obviously previous
3 crimes.

4 So a lot of times we use those cameras for, say, a stolen
5 vehicle was stolen the night prior. So we'll look for that
6 tag going either northbound or southbound or out of the city
7 to kind of say okay, it's probably headed to Charlotte. Maybe
8 we can contact Charlotte Mecklenburg Police Departments and
9 see if they can be on the lookout for our stolen vehicle.

10 Q Like, say for example there's a missing kid or something,
11 there's an Amber Alert.

12 A Sure.

13 Q Would those cameras help?

14 A Those cameras alert on those, and so it tells the officer
15 hey, this vehicle hit this camera at this certain time. And
16 so they'll be in that area looking for that particular
17 vehicle, you know, Honda Accord or, you know, white Ford F-150
18 or whatever the camera is.

19 And so again there's the aspect of it's a system where it
20 reads a tag, but it still takes human intervention to say
21 okay, look at that image. Verify that's the tag, the correct
22 tag that it read.

23 Q So you're verifying the information you get from a Flock
24 system?

25 A Absolutely. So it's one of those things where hey, this

1 was -- you know, you always get the hey, it read this tag.
2 But you're going to look at the image and make sure, okay, it
3 read it correctly. Sometimes it doesn't read it correctly,
4 but most of the time it's pretty consistent to say hey, that
5 was the tag it read. Visually looking at it, that was the
6 information that matched up.

7 Q And how do you -- how do you access the system? You
8 mentioned a database.

9 A Yes. So the system is login and password sensitive, law
10 enforcement sensitive, so there's no ability for like a
11 citizen, a random citizen to use it. We use it specifically
12 for hey, this was related to a criminal offense, whether it's
13 shoplifting, you know, auto theft, a shooting. These cameras
14 again -- this particular camera is on city property. I think
15 it's public right of way, and it catches all vehicles that are
16 coming off the interstate at that particular exit.

17 Q And so it's like a database. Like what kind of search
18 parameters -- what can you -- how do you -- how can you search
19 through that database?

20 A There's a variety of different ways to search it. You
21 can search by like a specific tag, if we had a specific
22 suspect vehicle or something, a missing person, a shooting
23 investigation that we're looking for a specific tag.

24 We also can search generally speaking, so it has some
25 like color, vehicle type, North Carolina versus South Carolina

1 tag, paper tag, those types of things.

2 So again, when you're doing those searches, it pulls it
3 back. It's not a perfect system in the sense, so if you're
4 trying to search for white vehicles, again, visually you would
5 want to say okay, confirming that's a white vehicle, or a
6 white Honda Accord, or whatever you're looking for to kind of
7 make sure, hey, this is the information I was looking for.
8 This is the information I got. And then go forward with the
9 investigation.

10 Q So I know you went into this a little bit earlier in your
11 testimony, but can you kind of walk through how you utilized
12 the system to find the vehicle in this case?

13 A In this case, yeah, so again, it was kind of from the
14 patrol officer narrative, very specific. The loss prevention
15 person had mentioned that she had seen the individual commit
16 the crime allegedly. And they walked out to a vehicle, and it
17 was a white truck, and she said that she got a partial tag. I
18 believe maybe two characters, and then she said the rest of it
19 was covered by a black piece of tape.

20 So that really stuck out to me because, generally
21 speaking, vehicles that hit any camera or driving around don't
22 have a piece of tape covering their vehicle. So just
23 basically going back just a little bit, I think I found the
24 tag. It was about 6 p.m., 6:01 coming off the interstate.
25 And I found a white truck, and it was partially covered with a

1 black piece of tape. And that kind of stood out, and that was
2 information that was like this is probably the vehicle to pass
3 along to the patrol officer at the time who was -- had the
4 initial investigation.

5 Q And so were you able to confirm that the photo you got of
6 the Flock camera off of Dave Lyle matched the suspect vehicle
7 description?

8 A Yeah. So looking a little bit further, I wanted to find
9 a photo in the system that didn't have the black piece of tape
10 over it to say, okay, this is the tag that zooming in it looks
11 like these characters. And so looking into the tag, searching
12 the tag, okay, I came back to this tag. I wanted to find a
13 vehicle that was that tag and show that it was the same
14 vehicle with the piece of tape over the top of it and without
15 the piece of tape over the top of it.

16 Q Approaching the witness with what has been previously
17 marked State's 11 and State's 12. Can you take a look at
18 those and let me know if you recognize them.

19 A So this is where the camera's located off the interstate.
20 And then this is the vehicle that was shown on the camera at
21 the 6:01 p.m. coming off the interstate. And as you can see,
22 it's talking about -- that's how I noticed it right off the
23 bat was it had the piece of tape over the top or covering most
24 of the tag as what was in the report narrative.

25 Q Is those true and accurate depictions of the locations in

1 the Flock camera in location of the photo that was taken at
2 that Flock camera location?

3 A Yes.

4 MR. ANDERSON: At this time, the State would move to
5 admit State's 11 and 12 into evidence.

6 THE COURT: Any objection?

7 MR. STEVENS: Objection. Matter of law, Your Honor.

8 THE COURT: You may approach.

9 (Whereupon, a bench conference was held off the record in
10 the presence of the jury, but out of the hearing of the
11 jury.)

12 (Thereupon, counsel returned to counsel tables and the
13 following ensued:)

14 (Open court.)

15 THE COURT: Ladies and gentleman, I have a matter of law
16 I need to take up with the attorneys, so I'm going to ask you
17 to get back to the jury room. This would be a great time to
18 use the restroom or get a cup of coffee, or whatever you'd
19 like to do.

20 (Whereupon, the jury exited the courtroom at 10:47 a.m.)

21 MR. STEVENS: May I approach, Judge?

22 THE COURT: You may approach.

23 MR. STEVENS: Your Honor, is it okay if I go ahead?

24 THE COURT: Sure. Yeah, go.

25 MR. STEVENS: I'm making two objections, Your Honor. The

1 first one is Rule 803(6). And I'm saying that this photograph
2 is essentially hearsay as the Rule in 803(6) specifically says
3 that a --

4 THE COURT: Mr. Stevens, a photo can't be hearsay.

5 MR. STEVENS: I'm going to get to that, Judge.

6 THE COURT: Okay.

7 MR. STEVENS: A records custodian or other qualified
8 witness needs to authenticate it.

9 THE COURT: Okay. Let's take it one step at a time. Is
10 your objection to authenticity or admissibility?

11 MR. STEVENS: Admissibility and authenticity.

12 THE COURT: Okay. Let's take it one step at a time. So
13 the analyst said this is a photo he pulled off the Flock
14 system.

15 MR. STEVENS: Yes, sir.

16 THE COURT: Why is that not enough?

17 MR. STEVENS: One is that that photograph was taken by an
18 automated system. And as such, we need to be able to -- a
19 Flock Safety records custodian to certify that that camera
20 that they owned at the I-77 exit was operating accurately at
21 the time that that photograph was taken.

22 You'll notice that on that photograph it does not contain
23 any identifying information. We can show you the other
24 photograph that was taken in this case.

25 THE COURT: Authenticity is a really low bar, Mr.

1 Stevens. I think it's been authenticated. This isn't like a
2 Datamaster or DUI. This is just a photograph. And it's
3 been -- he testified that he pulled it off the Flock system.

4 MR. STEVENS: So the reason I gave you State v. Brown,
5 sir, is that -- and I'm going to quote this one. This case
6 specifically says that "The records custodian or the
7 individual that testifies should have experience with the
8 electronic monitoring system used and provide testimony
9 describing the monitoring system, the process of generating or
10 obtaining the records, and how this process has provided
11 accurate results for the particular device or data at the" --

12 THE COURT: Sure, but this is for a GPS, not for a
13 photograph.

14 MR. STEVENS: Right. But in this case, this is an
15 automated system that triggered at a specific date and time at
16 a specific location. And we can ask the witness, but he has
17 no idea whether that system date and time was accurately done.
18 And I will also say that there was a question that we had
19 about when that photograph was actually taken by the system
20 because that photograph is not the original from the Flock
21 Safety system. It's a blow up of what was originally taken.

22 THE COURT: Okay.

23 MR. STEVENS: And so that's not the exact record that
24 came from Flock Safety. And we can compare that photograph
25 with the next one that the State wants to show. It was taken

1 the next day on I believe it was May 18th at 4:04 p.m. In
2 Camden. And that image is actually from the Flock Safety
3 system. It shows the camera. It shows the time. It shows
4 the location and the date. That's not present on this photo.

5 THE COURT: Mr. Stevens, I just think -- I mean,
6 authenticity is a very low bar. I just -- I think you're
7 trying to add requirements that aren't there. I mean, you can
8 cross them on all this stuff in front of the jury.

9 MR. STEVENS: Yes, sir.

10 THE COURT: But I mean, the witness has testified he
11 pulled it off the Flock system. I don't think he needs to be
12 able to explain technically how the system works to get a
13 photo in.

14 MR. STEVENS: And so further along that line is that
15 there is actually a -- I also have a chain-of-custody issue
16 with this specific photo because the -- this photo -- and this
17 shows it right here.

18 THE COURT: Chain of custody applies to fungible evidence
19 like blood or something like that, that could be mixed up.
20 Chain of custody doesn't apply to a photograph.

21 MR. STEVENS: But I'm -- a little bit of a stretch
22 because I think that photographs can be modified, and this is
23 an exact -- this shows exactly what I'm talking about. If you
24 look at the photo that was -- that they're trying to put in
25 evidence. I can't remember what the number is --

1 MR. ANDERSON: 11 and 12.

2 MR. STEVENS: So if you take a look at the difference
3 between -- let's go to 12. And you compare this photo right
4 here, it's modified. It's zoomed in. It's got a circle
5 around it, and it's not actually what came from the Flock
6 camera. What came from the Flock is that.

7 THE COURT: Okay.

8 MR. STEVENS: And it's just -- so --

9 THE COURT: No, this is a different picture.

10 MR. STEVENS: This is a different -- yes. Correct.

11 THE COURT: Right.

12 MR. STEVENS: But what I'm trying to do, sir, is to show
13 you that these actually are fungible, and that image was
14 changed, and it was zoomed in and added. And we don't know
15 what the original photo from Flock looked like because we
16 don't have it.

17 THE COURT: Okay. Mr. Stevens, I appreciate the
18 argument, but photographs come in routinely. And yes,
19 photographs can be digitally manipulated, but absent any
20 evidence that the photographs have been manipulated it's going
21 to come in.

22 MR. STEVENS: And that's the reason why I'm asking for a
23 records custodian because there's nobody in this courtroom
24 today that can say that that is actually what came from the
25 Flock Safety system.

1 THE COURT: But Mr. Stevens, that's not necessary. Maybe
2 you have a witness that's going to testify this image has been
3 manipulated. You're welcome to call the witness. But you
4 can't -- I mean, this is just a photograph. I mean, then you
5 can make the same argument with any photograph. How do we
6 know that's the image that came from the camera?

7 MR. STEVENS: But there's more to it because it's not
8 just a photograph. It's also a date and time, and that's
9 something that they're exactly trying to get out of this
10 witness that it was taken 30 minutes before the shoplifting
11 incident. It's basically saying that this photograph was
12 taken at -- I think they're going to testify around 6:01 p.m.,
13 18:01.

14 And it was taken roughly 30 minutes before the incident.
15 So what they're trying to do is they're trying to say this was
16 the exact truck that was used in this specific shoplifting
17 incident. And if you're going to do that, it's got to be the
18 original photograph that shows the original time and the
19 original location. And they --

20 THE COURT: Give me a case that tells me that. I don't
21 think you're right, but if you have a case that says that
22 I'll -- I could be wrong.

23 MR. STEVENS: I mean, that's why I rely on State v. Brown
24 on this one, sir, because it basically says we need --

25 THE COURT: Brown is totally different. We're talking

1 about a photograph. This is -- you're talking about GPS
2 testimony here.

3 MR. STEVENS: What I'm getting to --

4 THE COURT: Give me a case with a photograph that tells
5 me -- I mean, there's a time stamp on the security video.
6 That's not necessary to have a witness come in and testify
7 about the time stamp; is it?

8 MR. STEVENS: Well, we have a witness that actually
9 testified it's a fair and accurate depiction.

10 THE COURT: This witness testified it was a fair and
11 accurate depiction.

12 MR. STEVENS: But it's not the original from Flock
13 Safety, and that's where he got it from. I'll also say that
14 there is a built-in integration from Flock Safety where, if
15 you click that little three button on that bottom-right image
16 so what Flock Safety has done is to prevent this kind of
17 situation right here from happening is there is a direct API
18 integration between Flock Safety and Evidence.com. so that you
19 can effectively click that three little button, transfer it
20 over to Evidence.com, and assign it to a specific case. That
21 way people like me cannot ask where did this photograph come
22 from. Now if --

23 THE COURT: You've lost me, Mr. Stevens. So when you
24 click the button it does what -- it transfers it to
25 Evidence.com.

1 MR. STEVENS: Yes, sir, so what Flock Safety has done is
2 they have seen what I'm trying to do here today, and they have
3 actually implemented a technical procedure to ensure that the
4 original photograph, the original document that was taken by
5 Flock gets transferred electronically to Evidence.com where it
6 can be uploaded security into the Evidence.com databased owned
7 by Axon, which is used by the Rock Hill Police Department.

8 Now, if that was done, I would have -- they'd be able to
9 say hey, I clicked that three button. It was automatically
10 transferred from Flock Safety over to Axon.com's Evidence.com
11 that we use. I assigned it to my specific case investigation
12 that Ofc. Peter Bowker initiated. And now it is part of the
13 evidence of this case. That's typically how evidence is done.
14 Matter of fact -

15 THE COURT: Why does that prove it wasn't altered?

16 MR. STEVENS: Because it's a --

17 THE COURT: The system could still alter it.

18 MR. STEVENS: Because it's a direct -- because here's the
19 problem. Flock Safety routinely deletes all photographs after
20 30 days. So that actual photograph no longer exists in any
21 database owned by Flock Safety. And they do that because
22 they're selling that we're protecting peoples' safety.

23 So what Flock Safety has done is because they routinely
24 delete all photographs -- like if you went to Flock Safety
25 today and tried to find that, it's gone. You'll never be able

1 to get a records custodian from Flock to come in here and say
2 that that photograph ever existed. Unless you use this
3 specific Flock Safety to Evidence.com integration that they
4 developed to specifically prevent what I'm saying right now.

5 MR. ANDERSON: May I reply, Judge, just to get the
6 State's argument on the record?

7 THE COURT: You may.

8 MR. ANDERSON: So I believe that the case counsel's
9 referring to is State v. Brown. That was a machine-generated
10 record GPS case. And I believe the court had issues with that
11 because the only foundation the State laid was basically the
12 probation agent saying well, we use it in court all the time.
13 That clearly doesn't meet the authentication bar, but State v.
14 Brown is distinguishable. Clearly that deals with GPS
15 records.

16 This is a photo. I know it's a super low bar. The State
17 believes that this falls under 901(b)(4), distinctive
18 characteristics like appearance, contents, substance, internal
19 patterns, or other distinctive characteristics taken in
20 conjunction with circumstances. The truck in question --
21 would you put that back in, the 12? Thank you.

22 So the truck in question has distinct characteristics of
23 the white Chevy Silverado with a tonneau-covered four door,
24 four-by-four stickers, running boards, step-up footholds on
25 the bumper. There's a ding in the chrome at the back bumper on

1 the right side, South Caroline license plate starting with VM.

2 Circumstances surrounding the photo, witness testified
3 the photo was taken at Dave Lyle Boulevard before the theft
4 occurred. Located within a mile of the theft location.
5 Circumstances taken with the same distinct characteristics of
6 the truck, a jury could reasonably find the evidence is
7 authentic. The State believes we've met that bar under
8 901(b)(4), but not only there.

9 Also 901(b)(9), a processor's system -- evidence
10 describing a processor's system used to produce a result and
11 showing that the processor's system produces an accurate
12 result. The witness testified he has experience with the
13 Flock camera views. He knows how the traffic cameras work.
14 He described what the cameras are able to locate, what you can
15 search for. He described the process he used to locate the
16 photo he needs. And then he also confirmed that he manually
17 visually confirms the accuracy of the results that shows it's
18 a reliable process.

19 Additionally, it's not hearsay. A photo can't be
20 hearsay. There is no assertion. There is no statement.

21 (Pause.)

22 THE COURT: I'm looking, Mr. Stevens, at State v. Green,
23 which is a -- oops. This is -- actually (indiscernible).
24 Hold on. Let me pull up the Supreme Court case. That was a
25 court of appeals case.

1 Okay. So the court of appeals -- the Supreme Court
2 didn't address the issue of authentication, so back to the
3 court of appeals case. So this is 427 S.C. 223. It's a case
4 involving social media. The court just goes to great pains to
5 say this is a very low bar for authentication. It doesn't
6 mean the State doesn't have to prove it's authentic.

7 I'll read you -- let's see. Hold on. In this case it
8 was talking about printouts of Facebook messages that were
9 admitted over the defendant's objection. And the court
10 wrote -- let's see. What's necessary is a reasonable juror
11 could find the evidence is what the party claims. That's all
12 you've got to do. I mean, I don't see how you could possibly
13 say a reasonable juror couldn't find this was what it purports
14 to be.

15 MR. STEVENS: I would just say -- and I understand,
16 Judge. And we can ask the witness but that's not the original
17 photograph --

18 THE COURT: You can get into that, absolutely.

19 MR. STEVENS: -that came off of Flock and --

20 THE COURT: Yeah, absolutely. You can absolutely get
21 into all that, yeah.

22 MR. STEVENS: And then I just also want to reiterate too
23 because I did some research into this too. I don't think this
24 witness can actually testify to the reliability of the Flock
25 Safety camera system because he's use and end user of it. So

1 all he can do is say that when I access the database and I
2 conducted a search there's a bunch of pictures on there, no
3 different than if I search some other kind of Westlaw database
4 and I find a case in there.

5 But Westlaw isn't actually certifying that the -- matter
6 of fact, they put disclaimers on most of these cases that say
7 if you really want to see the original you've got to go find
8 the original. This isn't the original. We're just compiling
9 them and putting them into the database. If you want to know
10 who actually produced that record and make sure that it was --
11 that the system was operating, that the database was
12 operating --

13 THE COURT: I think we're conflating two different
14 things. Reliability is not a subpart of authentication. You
15 can attack the reliability in cross-examination, but the State
16 doesn't have to prove it's reliable.

17 MR. STEVENS: Yes, sir.

18 THE COURT: The State just has to prove it's authentic,
19 that it came from the Flock system.

20 MR. STEVENS: And I don't think they can. And that's why
21 all he can say is I accessed the database, but that's not even
22 the picture that came from there. If you look at the other
23 photograph, that's what came from the Flock.

24 THE COURT: Okay.

25 MR. STEVENS: That's been modified, adjusted, and zoomed

1 in.

2 THE COURT: That doesn't mean it's not admissible.

3 MR. STEVENS: Understood, sir, but we don't know what the
4 original looked like.

5 THE COURT: Ask away.

6 MR. STEVENS: And I would just say, like I said though,
7 you can't tell us whether the system was operating properly.
8 Automated process.

9 THE COURT: Yeah. I just don't think that's necessary.
10 Do you have any case law where --

11 MR. STEVENS: That's why I pointed out State v. Brown
12 because it's the -- I know you say it's about GPS, but --

13 THE COURT: Totally different.

14 MR. STEVENS: Yes, but I don't consider it because this
15 is actually also -- it's very similar because it's a specific
16 location. And --

17 THE COURT: Was it the time stamp you're questioning?

18 MR. STEVENS: Yes. That's the critical part because we
19 know where it is, but we want to make sure it's the time. And
20 there's literally no time stamp on that photo, none. Unlike
21 the next one -- now, the next exhibit I think I'm going to
22 have a harder time because I know that's what Flock stuff
23 comes from. But I don't know what time that was from because
24 it actually --

25 THE COURT: Well, Mr. Stevens, I mean, I'm not sure where

1 all this is going. I mean, the end -- the key piece of
2 evidence is that they found out who owned the vehicle. I
3 mean, the Belk already had this photo basically.

4 MR. STEVENS: Yes, sir.

5 THE COURT: So --

6 MR. STEVENS: Here's the problem though, sir. Without
7 that photo they have no case. That's the only evidence that
8 they have that actually ties what they say is Mr. Faile to
9 this incident is that photograph.

10 THE COURT: But the State could have used Belk's photo to
11 run the Flock search and get the second photo.

12 MR. STEVENS: No, I mean the Flock system generally.
13 Both of these photos are what they used.

14 THE COURT: Right.

15 MR. STEVENS: They needed to get --

16 THE COURT: But you just told me -- they don't care about
17 the time stamp. All they need is who owns the truck.

18 MR. STEVENS: Yes.

19 THE COURT: And so that's why I don't see where we're
20 going with any of this.

21 MR. STEVENS: They can't authenticate it.

22 THE COURT: Let's assume you're right and they can't
23 authenticate the time of this. It doesn't matter. All they
24 need is testimony that we pulled the truck, we figured out the
25 VM white truck was this defendant's vehicle. They don't

1 need -- they don't even need to put the photos in for that.

2 MR. STEVENS: But at the end of the day the only way they
3 got to that photo lineup was accessing this Flock Safety
4 system.

5 THE COURT: It doesn't matter. But again, we've already
6 gone through with the Flock system. I've overruled your
7 objection to the use of the Flock system.

8 MR. STEVENS: And I have an obligation to argue this as
9 hard as I can because --

10 THE COURT: Okay. I think I've heard enough on this. So
11 again, for the record, your objection to this photo is that
12 it's inauthentic. And because the time stamp can't be --
13 well, this doesn't have a time stamp.

14 MR. STEVENS: Right.

15 THE COURT: All right. Well, let's -- ask the questions
16 you want to ask of the witness. And then I'll make a ruling.

17 MR. ANDERSON: Can I approach, Judge?

18 THE COURT: Please. Yeah.

19 MR. ANDERSON: I'm going to -- actually, I don't need to.
20 I'm going to stay right there.

21 VOIR DIRE EXAMINATION

22 BY MR. STEVENS:

23 Q You've already testified that you conducted a search of
24 the Flock database. And then you found -- is this the
25 original photograph that you downloaded?

1 A So that image it would be me clicking on the image. So
2 you can click on the image, which will zoom it in. Zooming in
3 on my computer screen to focus on the camera -- or the tag and
4 the vehicle and kind of getting a better image for myself to
5 say okay that's the tag. That's the vehicle.

6 Q So it's a modified version of what the original was?

7 A Yes. You could say that.

8 Q And let's see here. Are you familiar with that -- when I
9 asked the judge earlier, are you familiar with this direct
10 integration between Flock Safety and Evidence.com?

11 A Just recently. I've spoken with our -- she is over our
12 Evidence.com system in a sense, and so she mentioned something
13 about what you were speaking of earlier.

14 Q And it's a best practice to directly transfer digital
15 evidence into Evidence.com?

16 A I would say it would be a good practice for now knowing
17 about the connection, yes, sir.

18 Q From now on. Right?

19 A Yes, sir.

20 Q And had you known at this time, you would have done that?

21 A It's hard to say. My -- generally, when I've followed up
22 on leads and looking at reports and such, generally I like to
23 use my email as far as either grabbing a photo or saving it to
24 my local hard drive, attaching it to an email, a direct
25 message to an officer or detective to say, hey, here's what I

1 found because not always -- I'm a user of Evidence.com, but as
2 not an officer or detective I'm not constantly uploading
3 information to Evidence.com. So it's not kind of my general
4 weekly, daily wheelhouse of this is what I do. Email
5 communication or in-person communication is kind of what an
6 analyst generally does.

7 Q And you -- and I think that you had an email
8 communication with the State regarding how to verify the
9 actual time the photograph was taken by the Flock Safety
10 system. Right?

11 A I believe so. So from my recollection, when we first got
12 the system we did some testing as far as using police vehicles
13 to say okay the timing. A lot of the information is dependent
14 on -- so that it'll take the image, the date and the time.
15 That's when it took it. When it comes into dispatch, they get
16 it when they get it. But the image, like you said, is time
17 stamped in their system a time. So the accuracy of that is
18 what we know Flock the cameras recorded the information as
19 being. So like you said, I'm an end user of that product.

20 Q Right.

21 A So basically, I'm looking at the system. If I do a
22 search or a date or time range, I'm assuming that basically
23 that the system has the date and time they recorded for that
24 image when I do a search.

25 Q Like you talked about with the State, you have no idea

1 what -- whether the time that's on the -- whether the time on
2 these photographs is actually the time that it was taken.

3 A Yes. I would -- I would think that it's probably from
4 some satellite system like our watches are, cell phones, and
5 that type. But I can't say obviously 100 percent certain that
6 I would be sure of that -- how they got that information.
7 Absolutely.

8 Q And are you aware of any other instances where the Flock
9 Safety database had malfunctions where photographs from
10 different cameras were saved and -- where Flock Safety
11 incorrectly categorized a photograph as taken on a specific
12 date and time as an error?

13 A Yeah, not from a date/time perspective. Like I said,
14 because I would be -- thinking of similar to a cell phone or
15 any other digital device that's coming from some sort of
16 satellite image, so not from a date/time perspective, no sir.

17 Q But you have no independent means of verifying exactly
18 what time these photographs were taken because you don't work
19 for Flock Safety?

20 A Yeah. That would be correct.

21 Q And you don't actually have access to the maintenance
22 records of the camera?

23 A No, sir.

24 Q You don't know if it was actually operating properly at
25 the time this photograph was taken?

1 A That would be correct in that sense, yeah.

2 Q You don't know if there was some kind of delay with how
3 the system took the photograph and then uploaded it to the
4 system, whether there might have been some kind of translation
5 error in the transfer of the photo from the camera into the
6 Flock system database. Right?

7 A Sure.

8 Q Because you don't work for them, so you do not know how
9 the process works. You can't testify to whether their service
10 was operating properly, and you can't testify how that
11 photograph came from that camera and ended up in the database
12 that you searched?

13 A That's correct.

14 Q All you can really testify to is that you downloaded a
15 photo from Flock that looked similar to the other photograph,
16 right, the one that's from the 18th?

17 A Yeah. So my testimony would be that I pulled the
18 information from the system, didn't manipulate the image
19 outside of zooming into that particular image or visibility
20 aspect, no intention of changing the image, altering the image
21 other than zooming in. And as you can see from the image, a
22 little quick circle to say this is the tag, based on the
23 incident report, the piece of tape covering from the -- you
24 know, the information that I had to kind of show, hey, this is
25 possible suspect vehicle.

1 Q And last question. You're going to use that API
2 integration in the future to transfer directly from Flock into
3 Evidence.com?

4 A I could say -- I mean, quite possibly, yeah.

5 MR. STEVENS: Thank you.

6 THE COURT: Mr. Anderson.

7 MR. ANDERSON: Sounds like great cross-examination,
8 Judge.

9 THE COURT: Mr. Stevens, we're talking about
10 authentication of this photo. The witness has testified he
11 created this photo. He pulled it off the database. He blew
12 it up. He circled it. That's authenticate. I mean, I don't
13 think you can attack it by saying he doesn't know the
14 technical specifications of how Flock transfers data. If
15 you've got a case that says that's necessary for a photo, I
16 will be happy to listen to you, but I just don't think that's
17 required for authenticity.

18 MR. STEVENS: And I'd say just my last thing, sir, so I
19 don't belabor it. To me, it's a confrontation clause issue
20 because I can't -- I'm not actually confronting the company
21 that actually took the photo in question here. I'm talking to
22 an end user of the company. So because I can't actually ask
23 the Flock Safety Corporation individual that's responsible for
24 this was the system operating properly, did it -- did you
25 download it and --

1 THE COURT: Okay. So is it the time stamp? Is that the
2 issue?

3 MR. STEVENS: Yes.

4 THE COURT: Because I mean --

5 MR. STEVENS: Time stamp -- well, there's several issues.
6 But there's the time stamp but also the authenticity of it.

7 THE COURT: Okay. But as far as the system operating
8 properly, like the truck was really blue but the camera made
9 it white, that's -- I'm not going to go down that road. You
10 can say that about any camera. Is the Canon EOS camera
11 operating properly or is it really changing the color? That's
12 not required, but the time stamp -- I don't think the time
13 stamp matters at all in this case, not one whit. So if it'll
14 make you happy for me to tell the witness they can't discuss
15 the time stamp, I'm likely to do that.

16 MR. STEVENS: I'll take what I can get, Judge.

17 THE COURT: Okay.

18 MR. ANDERSON: And in response to that, I feel like he
19 just testified that, when they first got them, they ran police
20 cars by in order to check the reliability of the time stamps.
21 I think that goes to -- I would say that's an admissibility
22 versus a weight question. And the weight of whether or not
23 the jury should believe that, they're reliable goes to the
24 weight of the evidence not whether or not it's admissible.
25 There is some -- there will be some testimony as to the

1 reliability of the cameras and that Rock Hill did initially --

2 THE COURT: Yeah, and this case, from the Court's point
3 of view, it's further authenticated because it's the exact
4 same vehicle that's in the Belk camera, which is clearly
5 date/time authenticated by the witness. It's clearly the same
6 vehicle.

7 MR. STEVENS: And I'll get into that part on cross, sir,
8 but nobody -- maybe from the photograph, but nobody actually
9 touched the truck to verify whether that's what it looks like.
10 All we have are some surveillance photos. Nobody actually
11 went and found the truck. Nobody's going to testify today
12 that they actually found that truck, looked at it, verified
13 that there's a triangular-shape damage in the bumper.
14 Nobody's going to testify to that.

15 MR. ANDERSON: That's a closing argument.

16 MR. STEVENS: I agree with you, but the problem is it's
17 not apples and apples. We've got somebody from Belk that came
18 in and said that this is a fair and accurate thing. I use
19 this camera all the time. I manipulate the cameras. I'm the
20 one that downloaded the video to a CD. I'm the one that gave
21 it to the State. The State then puts it into evidence and
22 asked are you the one that created this evidence.

23 THE COURT: That's exactly what this witness testified
24 to.

25 MR. STEVENS: But he isn't -- he isn't the one that's

1 responsible. He doesn't work for Flock Safety. He works for
2 the Rock Hill Police Department.

3 THE COURT: The Belk witness didn't work for the company
4 that put that system in.

5 MR. ANDERSON: I would say that the officers who use Axon
6 bodycams don't work for Axon.

7 THE COURT: Yeah. This is just a camera system. I mean,
8 it's not -- there's no -- this is -- okay. I think I've heard
9 enough on this issue. I'm going to deny the motion. I
10 appreciate you argued it very -- with a lot of fervor, but I
11 just -- to me, authentication in the case law is a very low
12 bar. This witness has testified he created this video from a
13 still shot he pulled off the camera. What he did, he said he
14 blew it up, and he circled the license plate. I think it's
15 authentic. It's admissible.

16 MR. ANDERSON: Can we take a quick bathroom break?

17 THE COURT: Yes. Absolutely.

18 (Recess.)

19 THE COURT: Are you ready to proceed?

20 MR. ANDERSON: Yes, sir, we are.

21 THE COURT: Okay. Defense ready?

22 MR. STEVENS: Yes, Your Honor.

23 THE COURT: Okay. So when the jury comes back in, I'm
24 going to overrule the objection as to the first two photos,
25 admit those, and then we'll rule as we need to on the later

1 ones.

2 MR. STEVENS: Yes, sir.

3 THE COURT: Okay. Let's bring them in.

4 (Whereupon, the jury came into open court at
5 approximately 1:23 p.m.)

6 THE COURT: All right. I've overruled the objection.
7 The two photos are into evidence.

8 (WHEREUPON, State's Exhibit Nos. 11-12 were received into
9 evidence.)

10 RESUMED DIRECT EXAMINATION

11 BY MR. ANDERSON:

12 Q Mr. Williams, can you kind of help orient the jury to
13 this map? Kind of help them explain what they're looking at?

14 A Sure. So this is an aerial photo of the Dave Lyle I-77
15 interchange or corridor. The circled image is a location
16 where the Flock license plate reader camera is noted on the
17 map, just for a visual to say, okay, this is the location
18 where it's at for visual purposes.

19 Q That's the southbound Dave Lyle exit?

20 A Southbound Dave Lyle exit, right when you're getting off
21 the interstate there. To the left is the Hilton Garden Inn,
22 and you've got the Chili's, Wendy's, gas station.

23 Q Can you tell the jury in relation to this photo where is
24 Belk? How close is Belk?

25 A Belk would probably be about a quarter mile to the right

1 or to the east of that -- of this image. We've got some
2 hotels in this image, and then to the right of that is the
3 Galleria Mall. Belk is not too far off the image.

4 Q For the record, that was State's 11. Looking at State's
5 12, can you walk the jury through what they're seeing here?

6 A Sure. So this is the image from Flock that I found
7 during the search based on the information we had from the
8 incident report that described the suspect -- alleged suspect
9 vehicle with the partially covered license plate tape over the
10 top. This particular image I grabbed. It's a zoomed-in image
11 so in the system you have the data aspect of it, the
12 date/time, the location of the image.

13 Since I was familiar with that, I click on that image to
14 zoom in. So I zoomed in for the officer to provide him the
15 information in the email. Say this is a zoomed in picture.
16 Basically used the editing tool in a sense of just circling
17 the tag to say this is what we found, based on the incident
18 report, to kind of say this the tag. Sent him that image in
19 an email with the time being 6:01 p.m. from the -- from the
20 image.

21 Q So how did you know that this particular image from the
22 Flock camera at the Dave Lyle exit matched the suspect
23 vehicle?

24 A Again, just from the incident report review. And the
25 incident report -- also reviewing the calls for service log,

1 which I do that from time to time, and the call -- 911 call,
2 the description the dispatchers put in, and the information
3 that's being stated describes the vehicle itself and the
4 partial tag. And so just reviewing images prior to the
5 alleged incident of the crime, the date and the time. I found
6 that vehicle that matched the suspect.

7 Q Were there a lot of four-door white Chevy Silverados with
8 a covered tag?

9 A No. And based on my prior experience, sir, there's not a
10 lot of images that I review that have that partially tag
11 covered.

12 Q And you visually inspect this yourself?

13 A Yes. I mean, when I found this image, you know, again,
14 just going image by image and looking for the possible suspect
15 vehicle based on the description. And this one stood out very
16 distinctly as a possible suspect vehicle.

17 Q Approaching the witness with State's 13 and 14. Would
18 you take a look at these and let me know if you recognize
19 them.

20 A Yes.

21 Q And what are those two photos of, starting with 13?

22 A One photo is a aerial photo of a camera that is from
23 another county, Lancaster County, Camden, South Carolina their
24 police department. Same system, Flock license plate reader,
25 the location of that. And the next image is a image of the

1 vehicle, the alleged suspect vehicle, the same make and model,
2 same wheels and style of the vehicle with the actual tag
3 not -- uncovered, without the piece of tap over it.

4 Q And are those true and accurate depictions of the Flock
5 camera location you said in Camden as well as the photo that
6 was taken from that location?

7 A Yes.

8 MR. ANDERSON: At this time, the State would move to
9 enter State's 13 and 14 into evidence.

10 THE COURT: Objection?

11 MR. STEVENS: Yes, Your Honor. I just want to re-raise
12 my previous objections as to admissibility and authenticity of
13 the photographs from the Flock Safety Corporation.

14 THE COURT: Objection is overruled.

15 MR. STEVENS: Thank you.

16 (WHEREUPON, State's Exhibit Nos. 13-14 were received into
17 evidence.)

18 MR. ANDERSON: Would you publish 13 please?

19 Q Can you kind of -- same thing like you did with the Dave
20 Lyle photograph. Can you help orient the jury in this photo?

21 A Yes. This is an aerial photo from the map that focuses
22 on the location of that particular camera at a particular
23 intersection. You can see Highway 521, Timberline Drive. So
24 just a similar aerial photo of the location of the camera.

25 Q So other counties have Flock cameras as well?

1 A Yes. Yeah, various law enforcement agencies use the same
2 system.

3 MR. ANDERSON: Will you publish State 14 please?

4 Q Looking at State's 14, can you tell the jury what's in
5 this photo?

6 A Again, this is an image in the same license plate reader
7 Flock system of the alleged suspect vehicle from the Camden,
8 South Carolina camera. This photo was grabbed just due to the
9 proximity of it being around the same date as the alleged
10 shoplifting incident.

11 So this was I believe the day afterwards, and pulled this
12 photo as comparison to say okay this is the same alleged
13 vehicle without the license plate covered with a piece of
14 tape. Same make and model, same accessories, same image on
15 this camera as well.

16 Q So you compared this photo with the license plate
17 uncovered to the photo you got earlier where the license plate
18 was covered?

19 A Yes.

20 Q What was your conclusion?

21 A That they were the same vehicle. And like I said, I made
22 a further analytical -- went further as far as my lead
23 investigation to say this is a similar vehicle, the same
24 vehicle in the photo with the -- with the covered tag versus
25 not covered to kind of give the -- this is what we're looking

1 for as a possible lead.

2 Q And once you confirmed that you had found the truck with
3 the license plate uncovered, what was your next step in your
4 investigation?

5 A For my side it was just to pass along that information
6 further. At that time, I think I noticed that Det. Swiger may
7 have been assigned the case, so Ofc. Bowker was getting that
8 information, but, at that point, was starting to pass along
9 information to Det. Swiger in the early -- early stages of his
10 investigation.

11 MR. ANDERSON: No further questions for you. Any
12 questions defense counsel might have.

13 THE COURT: Cross-examination.

14 MR. STEVENS: Thank you, Your Honor.

15 CROSS-EXAMINATION

16 BY MR. STEVENS:

17 Q Good morning, Mr. Williams.

18 A How are you, sir?

19 Q I'm going to keep this over here, so I don't get in
20 trouble. You're an intelligence analyst at the Rock Hill
21 Police Department?

22 A Yes, sir.

23 Q And you and I had a chance to speak before trial.

24 A That's correct.

25 Q Talked about what you're going to testify about what you

1 did during this investigation. And I also had a chance to
2 understand your role with the Rock Hill Police Department.
3 You have an important job.

4 A Yes.

5 Q Because you help put together missing pieces of a puzzle.
6 And basically, without you, this case probably wouldn't have
7 happened. Right?

8 A Again, I just provided a lead to go on for the initial
9 officer and initial investigations.

10 Q But it's the only lead in the case. Right? So you were
11 a key part in this whole investigation. That's a yes?

12 A Yes.

13 Q Okay. Let's turn -- before I get to that. But you're
14 part of a larger team. Right?

15 A When you say larger?

16 Q Larger investigative team?

17 A Well, you know, again, a lot of my role is to work with
18 various detectives, various officers. It could be up to from
19 the chief to a patrol officer.

20 Q Right. And you've access to lots of different databases,
21 not just law enforcement databases. And those can be private
22 databases that you have to pay for, opensource databases that
23 are free that you can just access, just lots of different
24 tools that you can access to do your job, to fill in missing
25 pieces of a puzzle. And that's what you did here?

1 A That's what I did.

2 Q You work the night shift at Rock Hill Police Department?

3 A Generally speaking I'm a Monday through Friday 8 to 5,
4 but depending on personal life, what's going on, I could work
5 a second shift.

6 Q Okay. And you review new police reports daily as part of
7 your role?

8 A That's correct.

9 Q And you're looking at these reports to see if you can
10 assist ongoing investigations that are conducted by Rock Hill
11 Police Department?

12 A Yes.

13 Q And on May 18th you noticed Ofc. Bowker's police report.

14 A Correct.

15 Q And it was regarding a shoplifting incident that happened
16 the previous day at Belk in Rock Hill, which is the one we're
17 looking at, or one of the ones we're looking at today. And
18 you noticed a line in his report that mentioned a partial
19 vehicle tag. And really, you didn't know anything else about
20 the case. You just kind of read that report, saw that, and
21 said I can -- I can help here.

22 A That's right.

23 Q And nobody told you to do this? You sua sponte
24 independently began your investigative search.

25 A That's correct.

1 Q And you began searching a number of databases. What
2 other databases did you look at as part of this case?

3 A Well, in this case again, initial investigation was to
4 immediately say we had a good lead on a suspect vehicle. A
5 lot of times we may have a partial tag, we may have just, you
6 know, a white Honda Accord or something very vague. In this
7 case, it was pretty specific in the sense of partially covered
8 tag with a piece of tape.

9 So based on my prior experience, immediately decided to
10 say okay, Flock camera, Dave Lyle I-77. Based on my
11 experience over the years with shoplifters, fraud suspects,
12 auto theft suspects, that was a camera, a good first check to
13 say okay, did this vehicle hit the camera prior to the alleged
14 theft. And so started digging into that and looking at images
15 on the --

16 Q Did you review anything else other than the Flock system
17 database?

18 A For the initial, no sir, not right off the bat.

19 Q Nothing else -- nothing else initially, you went right to
20 Flock?

21 A As far as I know.

22 Q And is this -- and what do you call it exactly, this
23 database that you use from Flock?

24 A So the license plate reader system, their company's
25 called Flock. And again, so the city has a certain number of

1 cameras throughout the city that we pay for access to, to use.
2 Again, we mentioned earlier, NCIC hits that come in to our
3 dispatchers, so we can find a missing person or a wanted
4 person as well as an investigative-lead tool to use in
5 investigations like this particular case.

6 Q So it only records criminals then?

7 A No.

8 Q So who else does it record?

9 A So again, it's an image system that collects images of
10 vehicles that pass the camera.

11 Q So in other words anybody that passes in front of that
12 photograph, whether they're under investigation nor not,
13 automatically a photograph is taken?

14 A That's my belief, yes, sir.

15 Q And that gets put into a database that's owned by Flock
16 Safety Corporation, which is not connected to Rock Hill Police
17 Department. And Rock Hill Police Department either -- do you
18 get free access to that, or do you have to pay for it?

19 A It's paid access, sir.

20 Q Paid access, so Rock Hill Pays Flock Safety to access
21 that database. And that database contains how many
22 photographs would you think on a daily basis from Rock Hill --
23 from Rock Hill, the City of Rock Hill?

24 A Again, I couldn't say specifically, so it would just be a
25 guess.

1 Q Go ahead, like how many photographs do you think go in
2 that system every day from Rock Hill?

3 A Thousands.

4 Q Thousands? So thousands of people get their photographs
5 taken basically against their will.

6 A Vehicle.

7 Q Vehicles against their will, regardless of what happens,
8 just because they're driving down the road?

9 A Against their will, I can't say that. I mean, the
10 vehicle's photo is taken.

11 Q So if I was -- if I drove my car on Exit I-77 right now,
12 and all I was trying to do was go to McDonald's, a
13 photograph's going to get taken of my license plate as I'm
14 exiting on to Dave Lyle from southbound I-77.

15 A Yes.

16 Q No ill intent, well, unless you consider McDonald's ill
17 intent. Right? Okay. All right. So I do like McDonald's.
18 Don't worry. So the database allows you to search it for a
19 number of different things. Right, not just cars?

20 A Not just cars -- the system is set up to focus on vehicle
21 tags. And so again, it's focused on taking a picture of the
22 vehicle, so it wouldn't take a picture of a person walking
23 down the street or a bicycle. It's focusing on tags and
24 looking for images of tags.

25 Q So it takes pictures of cars.

1 A Yes.

2 Q SUVs.

3 A Trucks.

4 Q Trucks, vans, semi-trucks, buses, motorcycles, golf
5 carts, anything imaginable that goes in front of that camera,
6 even bicycles. Right?

7 A I can't say for bicycle wise. Like I said, from my
8 knowledge and experience working with it, it's looking for --

9 Q Mostly vehicles.

10 A Yeah, a vehicle that has a tag.

11 Q And it's the system though is -- there's an artificial
12 intelligence aspect to the system. Right?

13 A I can't say for certain. Again, just being a end user, I
14 can't speak for artificial intelligence or any sort of --

15 Q Because you don't actually know what the system does.

16 A End user.

17 Q Right. All you're accessing is a photograph, and you're
18 plugging in something into like a search box. Right? So what
19 did you plug into the search box in this case?

20 A This case, very -- really nothing to be honest with you.
21 The plug for this one was the date/time range based on the
22 information we had on the incident report. So very general
23 search because based on what I knew about the case, the tag
24 was covered. So it wasn't going to be partial search of the
25 tag or a tag itself because that was probably not going to be

1 found.

2 Q Right.

3 A So it was a time range and just visually looking at every
4 photo to -- that was a black Camaro, that was a green truck.
5 It was a white truck in this case, white truck with a
6 partially covered tag with tape on it.

7 Q So time is essential.

8 A In this case, yes, sir.

9 Q But you can also look at other things in this database.
10 You can look at the make, the model, the color. It can even
11 determine whether there's a specific sticker in a specific
12 place on a vehicle and track that vehicle. Right?

13 A Yes.

14 Q So for example, if that truck had a distinctive bumper
15 sticker in the bottom-right bumper, you could literally search
16 for that in the Flock system database and find it.

17 A I understand -- possible, yes.

18 Q Possible. And you can look at -- like you demonstrated
19 here, you can look at partial plates. You could look at
20 covered plates. You can look at all kinds of different
21 things, just to try to see whether you can identify the
22 specific vehicle. Each one of these Flock cameras covers
23 about one-and-a-half lanes of traffic?

24 A Yeah. My understanding is yeah, one and a half to two,
25 yes, sir.

1 Q So that's -- it's an ideal placement for an exit off of
2 the interstate.

3 A Ideal for image gathering, is that what you're asking?
4 I'd say yes.

5 Q It's ideal right, because there's just one lane, and it's
6 going to get everybody that goes through. Okay. And you'd
7 need another -- for example, down in Camden on 521, if you
8 only had one camera there you might need another one to cover
9 the other side. Right?

10 A That's my understanding, yes.

11 Q So in order to cover both lanes of traffic, you need a
12 Flock camera on either side of the road, one covering
13 northbound, for example, and one covering southbound.

14 A If you're suggesting the Camden one, yeah, I think that
15 would probably be one coming in each direction.

16 Q And we'll cover that in a minute. You don't look at just
17 the Flock cameras that are in the City of Rock Hill. Right?

18 A That's correct.

19 Q You look at -- what else do you look at? What other
20 cameras do you look at?

21 A We have access to -- so agencies can share their camera
22 information, law enforcement agency to law enforcement agency,
23 so it's whatever various agencies have given us access to. We
24 may have shared our camera images. So locally, City of Camden
25 for example or something like that.

1 Q So you can look at whatever cameras are in the system.
2 You can look at them.

3 A Correct.

4 Q And you're aware that this is not just for law
5 enforcement. Right?

6 A The way I use it it's just for law enforcement, so the
7 only access I have is through a sheriff's office or law
8 enforcement-related agencies and their cameras.

9 Q Right. And I think you had testified that there is no
10 ability for a citizen to look at the Flock Safety database.

11 A Not that I'm aware of. Like I said, it's login and
12 password setup, so again, from my aspect, and for how we use
13 it in the police department, it would be law enforcement only
14 for us.

15 Q But you wouldn't be surprised to know that citizens can
16 purchase Flock Safety cameras?

17 A I would be -- I'm not surprised as I've heard of HOAs and
18 those types of places using that, but again, it's -- for our
19 aspects of what we do, it's law enforcement only.

20 Q For you.

21 A For what we do, yes, sir.

22 Q But you have access to more than just city or police-
23 owned cameras. Right?

24 A I do not. We do not. Again, ours -- our agency only
25 uses --

1 Q Your own cameras.

2 A Yeah. We use ours and a law enforcement agency.

3 Q Law enforcement cameras.

4 A Camden Police Department in this specific instance.

5 Q And you're aware that if a HOA or homeowner's association
6 buys one of these cameras any citizen can actually -- that's
7 part of that HOA can actually get an account and look at the
8 images taken by that HOA's Flock Safety camera?

9 A Yes. I've read some articles on similar stuff, yes, sir.

10 Q And you're aware that any HOA or private individual that
11 owns one of these cameras or leases it from Flock Safety can
12 actually authorize the police to access those cameras through
13 the same database that you have access to. Right?

14 A That's correct.

15 Q Now, you're right that -- I think you're right that
16 citizens can't access the City of Rock Hill Flock cameras, or
17 the City of Tega Cay cameras, but they can access their own,
18 and you can access the citizen-owned ones as long as citizens
19 allow you to. Right?

20 A That's my understanding, yes, sir.

21 Q So it is possible for citizens to actually access the
22 Flock system database.

23 A Again, my interpretation of what you were asking me was
24 can citizens access our images.

25 Q Got you.

1 A The way that we're using them for this case.

2 Q But citizens can't access actual -- got you.

3 A I got your point. I got your point.

4 Q And okay, we covered that. I think we covered this. You
5 get access to all the cameras in Tega Cay too. Right?

6 A Yes, sir.

7 Q And how many cameras are there in Tega Cay?

8 A I do not know.

9 MR. ANDERSON: Objection. Relevance.

10 THE COURT: Overruled.

11 A To be honest with you. I'd say five or six, but I'd say
12 less than what we have, yes, sir.

13 Q Would you be surprised if there's 100 cameras alone in
14 Charlotte?

15 A It would surprise me on that particular.

16 Q And in -- and I think you said something about 23 or 24
17 cameras are in the City of Rock Hill?

18 A Approximately 24, yes, sir.

19 Q And I know you said that they cover what you say are
20 high-crime areas. Right?

21 A Sure, yes.

22 Q But what they really cover are roads.

23 A That's correct.

24 Q Because we need roads to get to these high-crime areas.
25 Right?

1 A Correct.

2 Q So in other words, you're just covering a road.

3 A Yes.

4 Q So you're not covering a road because you're trying to
5 cover a high-access area. You're covering a road because
6 you're trying to detect everything that's traveling on that
7 road.

8 A One of the things, as you know about crime, is criminals
9 travel in vehicles. So I think the aspect of license plate
10 reader cameras is criminals travel from jurisdictions within
11 the jurisdiction or from another jurisdiction. So capturing
12 that, you know, criminal -- potential criminal element would
13 be the aspect of how the license plate reader system, you
14 know, would want to work.

15 Q But it probably got me too today when I came to court.
16 And I'd like to think I'm not a criminal. Maybe in another
17 life, but not today. Right? It would have gotten me too.
18 Right?

19 A It's possible.

20 Q Regardless of what I did, as long as I drove by in front
21 of it. Right, because there's no criminal on, criminal off
22 feature on these cameras. It just gets it all.

23 A Yeah.

24 Q So after you begin reading Ofc. Bowker's report, you
25 search for white trucks in the Flock Safety database. You're

1 looking for white trucks that start with VM and have some kind
2 of tape or some other obstruction on that license plate.

3 Right?

4 A Yes, except for the part about looking for white trucks
5 with a VM. In my case, I was aware of that information but I
6 kind of kept my search as a visual general search of white
7 trucks.

8 Q Okay. And did you notice anything else specific about
9 this -- the truck that was involved in this May 17th,
10 shoplifting incident, other than that obscured plate?

11 A No, that was my primary focus I would say, just from the
12 information I had from the incident report.

13 Q And we'll look at it later, but do you recall seeing some
14 distinctive bumper damage on the right side of the vehicle,
15 the right -- I think it is bumper or fender? Whatever the
16 back thing is, do you remember seeing distinctive damage on
17 that back-right bumper?

18 A Initially, that wasn't my initial focus, so probably
19 after looking at the images and -- and finding the other
20 images, could probably have got my attention at some point,
21 but really the piece of tape --

22 Q Was it for you.

23 A It stood out, yes, sir.

24 MR. STEVENS: And if we could -- could we show Exhibit
25 11, State's Exhibit 11?

1 Q So I believe State's Exhibit 11, which is this one. No,
2 that's 12.

3 MR. STEVENS: Is this 11 or 12? Okay. I meant 12.
4 Sorry.

5 Q Can you see that?

6 A Yes. Thanks.

7 Q I wrote that down wrong. So this photograph was taken by
8 a Flock camera that's leased by the City of Rock Hill. Right,
9 from Flock Safety? They own it?

10 A Yes. They own the equipment, sir,

11 Q And you just lease it -- well, I mean the City does.

12 A Yes.

13 Q And you said the exact time this photograph was taken was
14 6:01 p.m.?

15 A Yes.

16 Q Can you point out on this photograph where 6:01 p.m. can
17 be found?

18 A It's not on this photograph.

19 Q And why is that?

20 A At the time I took -- grabbed this image, I was in the
21 system. The system has the date and time and the location
22 where it occurs. But in the system you can click on the
23 particular image to get a zoomed-in image. So for the
24 officer, based on being an analyst, went ahead and zoomed into
25 that image. Focused on the vehicle tag based on the report,

1 and you know, cropped that image. Put it in an email. Sent
2 it to the officer.

3 Q And you don't know if the date and time was accurate for
4 that photo?

5 A Based on what I observed in the system, that was
6 documented with that image, it listed the image as that
7 particular date, which was the 17th I believe of the crime, or
8 the crime in question. The time that they had for that was
9 16:0 -- or 18:01, which was 6:01 p.m. So that's what I
10 documented in my email.

11 Q Okay. But Rock Hill doesn't own those cameras. Right?

12 A We don't.

13 Q You don't own the database, and you don't know if it was
14 operating properly at the time this photograph was taken.

15 A Correct.

16 Q And you can't actually say without a shadow of a doubt
17 that there wasn't a problem when this photograph was taken.

18 A No, sir.

19 Q Because like I said, you don't own it or access it. You
20 just get to look at the product. Right? Okay. So after you
21 find this photo, you expand your search in the Flock Safety
22 database.

23 A Yes.

24 Q And do you expand it nationally or state, regionally,
25 what -- how did you -- what did you do next?

1 A So again, through the investigation, kind of looked at
2 the tag closer. Determined okay, that's the numerical or
3 alphabetical of it, and so I put that tag in the system. Did
4 a broad search for any tag hits for that in the system. And
5 then that's when I found the Camden image.

6 The reason why I used that image moving forward as far as
7 the for the information for Det. Swiger was it was a image of
8 the day after. So it wasn't an image of three weeks ago or a
9 long period of time. It was -- this was the image of the
10 alleged suspect vehicle the day after. And then it didn't
11 have the piece of tape over the tag, so it was just another
12 image of the same vehicle. Here's the vehicle tag on a
13 different camera in the system, yes, sir.

14 Q So how many white Chevy trucks are there in the State of
15 South Carolina that start with the tag VM?

16 A That's a good question. I'm not sure.

17 Q So you don't know?

18 A Not right offhand.

19 Q Did you try to find that out?

20 A Not in this case. I can't recall. I don't think so.

21 Q So you made no effort. So I'm sure there's more than
22 just one Chevy Silverado in the State of South Carolina.

23 A Sure. It's possible that I did -- and again, I don't
24 recall specifically, but you know, looked at the tag and said
25 okay, it looks like this. Used NCIC to say okay, let me run

1 this tag and see if it matches the make and model.

2 South Carolina DMV information doesn't always have the
3 color of the vehicle, so that's something that I wouldn't find
4 right off the bat. I would just have make and model, a year
5 in a sense. But in this case, it would be Chevrolet and
6 applying that make and model that had that tag or similar tag,
7 yes, sir.

8 Q And we'll get to that in a minute on the DMV and how to
9 search it. So you essentially did a national search looking
10 for a tag that started with VM.

11 A I don't know if I'd say national in a sense. I knew it
12 was a South Carolina tag. So (indiscernible) --

13 Q So basically you're confining yourself. Right?

14 A -- look for Indiana tag or (indiscernible).

15 Q Okay. And you came up with this -- actually no.

16 MR. STEVENS: Could you publish State Exhibit 14? Thank
17 you very much.

18 Q I hope I got that right. Okay, yeah. And you came up
19 with that. Right?

20 A That's correct.

21 Q And that's -- and you testified that that came from the
22 Flock camera where?

23 A I believe it was Camden off Highway 521.

24 Q And this was on May 18th, 2022, this photograph?

25 A Yes.

1 Q Taken at 4:04 p.m. And I'm not familiar with Camden, so
2 I didn't -- I had to look where Peck Woods subdivision is
3 because I didn't know where that was.

4 MR. ANDERSON: Objection. Counsel is testifying.

5 THE COURT: It's cross-examination. I'll overrule.

6 Q And it's like 50 miles away from here. Right?

7 A Possibly. I'm not sure. I'm not sure on distance.

8 Q But it's not like --

9 A It's not Rock Hill.

10 Q Camden isn't Rock Hill.

11 A Correct.

12 Q So this was taken a day later, 50 miles away from the
13 shoplifting incident.

14 A Correct.

15 Q And you have no idea how many Chevy white trucks there
16 are in the State of South Carolina that start with the tag VM?

17 A I do not.

18 Q But you found that one.

19 A Based off the information that I already had searched,
20 looked into, found this vehicle as again -- this was a lead,
21 possible suspect based on the information we had.

22 Q Right.

23 A It was an image that -- it was the first image after the
24 incident had occurred.

25 Q Right.

1 A I don't know how many images necessarily were collected
2 of this vehicle after our incident or criminal incident that
3 occurred. This was one, again, day afterward. This happened
4 to be in Camden, and that was the image that was found. And
5 again, that's the one that I passed along to say this is the
6 tag, based off the information we had.

7 Q And that was it. That's your lead.

8 A That's a lead, sir.

9 Q But you didn't know who was driving this vehicle on May
10 17th?

11 A No, sir.

12 Q No idea.

13 A That's correct.

14 Q And you had no idea who was driving this truck in May
15 18th at 4:04 p.m. In Camden?

16 A Correct.

17 Q All you have is a photograph of someone heading somewhere
18 on U.S. 521. Right?

19 A Correct.

20 Q And you -- all you did was review Ofc. Bowker's report.
21 Right?

22 A Correct.

23 Q And you hadn't seen any surveillance footage from Belk?

24 A Correct.

25 Q Okay. Let's go back to that Flock Safety database one

1 more time. How -- I think Flock Safety stores them for 30
2 days.

3 A Correct.

4 Q And that's for what -- I think that's for the purpose of
5 privacy?

6 A I can't speak for them. That's a possible reason.

7 Q You can't speak for them because they're the ones that
8 actually own this data. Right?

9 A Correct.

10 Q And would it surprise you if I told you that all data and
11 photographs in the Flock Safety database are automatically
12 deleted by Flock Safety on a rolling basis every 30 days.

13 A It wouldn't surprise me. That's my understanding of the
14 system as a user.

15 Q And I think we talked about this. Right, and you told me
16 that you are aware that you can't really search outside of the
17 30-day window. Right?

18 A Yes, that's how their system is set up, yes, sir.

19 Q So essentially, if you search outside of that 30-day
20 period, there's nothing there. All you get to see is what
21 they -- what Flock Safety gives you, that 30-day window. So
22 essentially, if you looked on May 18th, you wouldn't get like
23 31 days. You'd only get a 30-days' picture from the past.
24 Right?

25 A You're saying --

1 Q Sorry. That's a confusing question.

2 MR. STEVENS: We'll strike that one.

3 Q So you wouldn't get anything outside of the 30-day period
4 immediately preceding May 18th at 4:04 p.m.

5 A So you're --

6 Q Like say January 1st, 2022.

7 A Oh, okay.

8 Q You wouldn't get anything then. Right?

9 A Yes, sir.

10 Q That's like six months before. Right? Well, five months
11 before roughly. Okay. So you manually downloaded the two
12 Flock Safety photographs that you located to your computer?

13 A I think in this case, from my recollection, it was a
14 screen grab copy.

15 Q Okay.

16 A Pasted into an email, so the email would be the
17 documentation that I had, passed along to the case agents,
18 yes, sir.

19 Q So when you say a screen grab, you're using -- I think
20 there's a screen grab function in Windows computers where you
21 can actually kind of draw with a mouse on the screen, and cut
22 a snippet of that photograph, and then cut and paste it. Is
23 that what you're referring to?

24 A I can't remember which exhibit it is, the first one, 11
25 maybe, that one. Yes, that would have probably been the tool

1 or the technique that I used at that point.

2 Q Okay.

3 A And again, it's just for kind of a quick information
4 passalong system. The second one, may have been -- like I
5 said, a right click save as function in that case, but I'm not
6 100 percent sure.

7 Q Okay.

8 A I can definitely say based on my recollection the first
9 photo, the one from our camera, would be a screen grab.

10 Q Screen grab.

11 A Yes, sir.

12 Q And on your camera, the one in Rock Hill that you use on
13 I-77, you don't know if it was operating properly that day.

14 A I can't speak to that, yeah.

15 Q You don't know if the automated camera system was
16 properly calibrated. And you don't know if the automated
17 camera system properly took and stored the photograph.

18 A Will you ask that again?

19 Q You don't know if the automated camera system actually
20 took and stored the photograph properly.

21 A Properly? No. We know it was stored. I can't speak on
22 properly.

23 Q And you don't know if the automatic camera system
24 recorded the proper date and time the photograph was taken.

25 A I can't -- again, I can't speak on properly.

1 Q And you don't have a reliability or an accuracy history
2 of that particular camera from Flock Safety Corporation.

3 A No, not from Flock.

4 Q And you don't know if that -- if the Flock Safety
5 database has generated accurate results for the data that you
6 pulled up.

7 A You're speaking for this case or?

8 Q This case or any other case where you use Flock Safety
9 photographs.

10 A When you say accurate, can you rephrase that?

11 Q Yes.

12 MR. STEVENS: We'll just strike that.

13 Q And the same thing on the -- the same line of
14 questioning, right, about especially in the Camden photograph.
15 You don't know if that camera was operating properly that took
16 that photograph. And you don't know if it was calibrated
17 properly. And you don't know if the date and time stamp was
18 recorded accurately by that system either. Right?

19 A Correct.

20 Q Because you don't own that system, and you don't know how
21 it's maintained. You have no reliability records for that
22 camera either.

23 A I don't.

24 Q And did you manually upload these two photographs into
25 Evidence.com?

1 A I did not, not in this case.

2 Q And but do you habitually do that, or is that somebody
3 else's job?

4 A It's not in my normal routine in a sense.

5 Q Okay.

6 A Discussion earlier, one of mine is either a verbal
7 conversation with someone in our department or email exchange
8 of some sort. My -- well, you can continue if you have --

9 Q It would be a sworn officer that would have to take that
10 data and upload it to Evidence.com or sometimes other people
11 have that role?

12 A Yeah, from my understanding any user, generally speaking
13 it's an officer because they've got on body camera and those
14 things.

15 Q Right.

16 A My access with Evidence.com generally speaking is viewing
17 photos, surveillance photos of some sort for a case or
18 whatever.

19 Q Okay.

20 A But yes.

21 Q So it would have been somebody else's job to upload this
22 stuff.

23 A Job wise, possibly, yes. Generally my role as an analyst
24 passing information along to someone else to kind of further
25 that, so you've got your case agent which would be initially

1 Ofc. Bowker and Det. Swiger. So in their normal business
2 practice they may upload something based on their case
3 investigation.

4 Q And are you aware that Flock Safety has a direct
5 integration with Evidence.com, where you could actually
6 directly transfer Flock Safety generated photographs directly
7 to Evidence.com?

8 A Recently made aware of that myself.

9 Q And almost done here. Once you identified that full
10 license plate in May 18th, right there, right, because you did
11 that search for VM in Flock.

12 A Yes.

13 Q And then you ended up with this specific truck
14 photograph.

15 A Yes.

16 Q And you got that license plate from that photograph.

17 A So rephrasing a little bit.

18 Q Yeah.

19 A I think you'd asked previously, so the initial search
20 when I was -- when I searched for this, I had the full tag.
21 And that was from --

22 Q Okay.

23 A -- investigation. Yes, so it wasn't a partial search.
24 It was -- and it wasn't even a -- in the system as you
25 mentioned earlier searching for a white truck. It was I had

1 the tag, the suspect vehicle tag that we thought it was, and
2 ran that tag in Flock and found this image.

3 Q So how'd you find that tag?

4 A So again, this was from looking at the image, zooming in
5 on the partial that was covered up, and saying okay, it looks
6 like -- we had the VM. Looks like this. Doing some NCIC
7 searches to say okay, let me run this tag.

8 Q Okay. So you actually did do some NCIC searches, and
9 NCIC is a database owned by the FBI. Right?

10 A Yes, and I also don't know -- at that point when Det.
11 Swiger got the case, what day it was. He may have already
12 made some initial looks at the photo as well and done some
13 initial searching on his end as well. So I can't recall if it
14 was a verbal conversation we had had with him to say it looks
15 like this tag and running it, checking it in the system and
16 saying yes, it comes back to a Chevy truck in a sense.

17 Q So how many white Chevy trucks with VM did you get out of
18 NCIC before you decided that it was VMJ392? How many trucks
19 did you go through on NCIC?

20 A I can't -- I don't recall there being that many, based on
21 again the ability to use the image and kind of zoom in a
22 little bit and of say it can't be that character, it can't be
23 this. You know, narrowing it down, so I can't say -- it
24 didn't take too long, if many searches, to kind of find where
25 it was a Chevy truck.

1 Q So roughly how many tags did you get?

2 A I can't recall.

3 Q It was more than one. Right?

4 A It could have been. I can't recall that, to be honest
5 with you.

6 Q More than ten?

7 A Definitely not that, not that many.

8 Q Somewhere between one and ten tags that you found and
9 then narrowed it down to locate that tag?

10 A Yeah. I would say that's accurate.

11 Q And you never physically went and looked at these other
12 trucks?

13 A I did not, not in this case, based on the initial camera
14 we had, the image of that truck. When I found this truck,
15 which was a image the next day, not three weeks before or
16 anything like that. It was hey, this was lining up as the
17 most probable license tag based on the information we had and
18 the photos.

19 Q And did you search Flock for those other potential tags,
20 those one -- those roughly between one and ten tags?

21 A I can't recall that, to be honest with you.

22 Q So you only searched for one?

23 A Possibly, yeah. May have searched one other one, but I
24 can't -- I can't recall because, once I did that search that
25 found it was a Chevy truck, that's kind of where I was like --

1 the lead kind of was going in that direction to find a photo
2 without the license plate cover.

3 Q So you just decided this is the truck?

4 A I wouldn't say decided. It was just, you know, based on
5 the information I had and the incident report, that's the
6 direction it went, yes, sir.

7 MR. STEVENS: Thank you very much.

8 THE COURT: Redirect?

9 MR. ANDERSON: Very brief, Your Honor.

10 REDIRECT EXAMINATION

11 BY MR. ANDERSON:

12 Q Do you visually confirm the photo hits you get from the
13 database before you pass them on to a detective?

14 A I do.

15 Q How did you visually confirm that the Flock photos you
16 got matched the suspect vehicle description in this case?

17 A Again, just zooming into the photo, looking at it a
18 little bit closer. Again, all I had was the information from
19 the initial incident report, so the description that loss
20 prevention officer had given: white, Chevy truck, partially
21 covered the partial plate, the -- covering, you know, sticker
22 or whatever was described in the incident report. So that's
23 kind of the focus of the initial search.

24 Q You made sure the photos match?

25 A Yeah. I mean, that's narrowing it down, saying hey,

1 that's what we have. Going further -- going further with it,
2 you know, it was finding that vehicle that we thought was the
3 suspect vehicle on another photo that was not covered, the tag
4 wasn't covered. And then looking at the photos and being like
5 it's got some very similar characteristics, multiple, similar
6 characteristics to me feel confident that that was the
7 information that I should pass along to in this case the
8 detective that had the case assigned to them now.

9 MR. ANDERSON: Thank you. No further questions, Your
10 Honor.

11 THE COURT: Recross?

12 MR. STEVENS: No, Judge.

13 THE COURT: All right. Any objection to excusing this
14 witness?

15 MR. ANDERSON: No objection from the State.

16 MR. STEVENS: No objection, Your Honor.

17 THE COURT: Thank you, sir. You can step down. You're
18 excused from your subpoena.

19 Counsel, you all want to approach?

20 MR. STEVENS: Yes, sir.

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

24 (Thereupon, counsel returned to counsel tables and the
25 following ensued:)

1 (Open court.)

2 THE COURT: All right. State can call your next witness.

3 MR. ANDERSON: State calls Det. Swiger.

4 DARIN SWIGER, after being duly sworn, testified as
5 follows:

6 DIRECT EXAMINATION

7 BY MR. ANDERSON:

8 Q Please state your name for the record and spell your last
9 name as well.

10 A I'm Det. Darin Swiger; last name is S-W-I-G-E-R.

11 Q And what is your occupation, Detective?

12 A I'm a detective on the property crimes division at Rock
13 Hill Police Department.

14 Q And how long you been I guess in law enforcement in
15 general?

16 A Almost 15 years.

17 Q And what are your duties as a detective with the Rock
18 Hill Police?

19 A To investigate crimes, property-related crimes in
20 contract to crimes against persons. Property crimes would be
21 burglaries to vehicles, burglaries to homes, shoplifting,
22 vehicle thefts, involving property.

23 Q Can you give the jury just kind of a brief overview how
24 you became involved in this case?

25 A On a day-to-day basis as officers are submitting their

1 reports that they take, our lieutenant looks at those reports
2 and assigns them out to the various detectives in our
3 division. And I got this report based upon the information
4 that my lieutenant saw and sent it to me, feeling that this
5 would be a case that I could handle.

6 Q So once you got assigned the case, what led you to Mr.
7 Faile as a suspect?

8 A The very day that I received this case, before I had
9 actually had a chance to dig into it deeply, I received the
10 image from our crime analyst Damien. He said, you know, email
11 basically said something to the effect of here's a possible or
12 interesting image or possible suspect. I pulled up the
13 report, kind of reviewed it, and then just kind of built from
14 there.

15 Q Who is the truck with South Carolina plate VMJ392
16 registered to?

17 A To Michael Faile.

18 Q So that was his truck?

19 A That was his truck.

20 Q Registered in his name?

21 A Yes, sir.

22 Q So once you had a name, what did you do next?

23 A Once I had the name -- well, the name came from DMV. And
24 once I had the DMV information, I saw that he had a Camden,
25 Kershaw address. The second image that Damien was able to

1 provide to me was, you know, an image of a truck with a full
2 tag exposed that was registered -- that was found or seen in
3 the Camden Kershaw area, so I thought well, there's an
4 interesting tie that brings it a little closer. Then I
5 started kind of focusing in on that piece of information and
6 going further with that.

7 Q So did you eventually conduct a photo lineup in this
8 case?

9 A I did. Once I saw the DMV photo, and I saw the image
10 that came, you know, on that, I could say well, here's a
11 person who's similar in age, similar in hair color, similar in
12 hairstyle from what I saw in the images. I said this is close
13 enough that I put a photo lineup together to present that to
14 the loss-prevention person.

15 Q And where'd you get the lineup from?

16 A SLED provides a service to law enforcement where you can
17 submit a form to them with name and date of birth, and then
18 they randomize the pictures and send a six-pack lineup back to
19 us.

20 Q And SLED is the South Carolina --

21 A South Carolina Law Enforcement Division, that's correct.

22 Q Do you remember how long it took until you took that
23 lineup to loss prevention at Belk to Ms. Dotson?

24 A Very short period, not specific to the days but a very
25 short period of time because, once I had it, I had no reason

1 to delay. And I contacted her and arranged to take them to
2 meet.

3 Q Less than a week?

4 A Oh, easily, yes.

5 Q And who was present during the lineup?

6 A Just Ms. Dotson and myself.

7 Q And what did you tell Monica, or what did you read to her
8 before you showed her the lineup?

9 A Our process at the police department and our general
10 orders is that you provide them with what we call a photo
11 lineup affidavit. And we read the statements of that saying,
12 you know, the suspect may or may not be in this image. We
13 tell them the process is if they're able to identify somebody
14 their signature will be required at the top half of the
15 portion. If they're unable to identify somebody, they sign
16 the bottom half of the portion, and then, you know, we keep
17 that as a record of how we presented the photo lineup.

18 Q Did you ever influence or suggest to Monica who she
19 should pick?

20 A I did not.

21 Q Did Monica select a photo out of the lineup?

22 A Yes, she did.

23 Q Do you remember like I guess -- you touched on this a
24 little bit earlier, but did you follow Rock Hill policy when
25 you conducted that lineup?

1 A Yes, I did.

2 Q And how long approximately did it take Monica to pick
3 out?

4 A I would say the time it took her -- from the time she
5 started viewing the photos to the time that she made a
6 positive identification was 20 seconds probably.

7 Q Do you remember which photo she selected?

8 A Number 2.

9 Q Do you see that person in the courtroom today?

10 A Yes, I do.

11 Q Would you point him out and say what he's wearing for the
12 record please?

13 A The defendant in the blue shirt.

14 Q What's his name?

15 A Michael Faile.

16 MR. STEVENS: I just want to object, Your Honor and
17 reiterate my pre-trial objections regarding the identification
18 in court.

19 THE COURT: Objection is overruled. You can answer.

20 MR. STEVENS: Thank you.

21 Q Do you recall what Monica's reaction was regarding who
22 she picked out of the lineup?

23 A You're referring to following her identification of it?

24 Q Correct.

25 A I would describe it as, you know, kind of a little

1 relieved, maybe a little bit excited because, you know, her
2 memory was what she thought it was. Happy that she could find
3 the next step in the process because she wants to help resolve
4 issues for Belk.

5 Q Did Monica ever identify anyone else besides Mr. Faile?

6 A No, she did not.

7 Q So Michael Faile is the only person that was ever picked
8 out as a suspect in this case?

9 A That's correct.

10 Q Did anyone else associated with this case identify
11 someone besides Michael Faile?

12 A No.

13 Q Do you know approximately how close that Camden Flock
14 photo is to the defendant's registered address?

15 A Approximately 10 miles, I don't know, maybe 15. I mean,
16 I haven't measured it but just looking at the general scope of
17 the state and seeing where Kershaw and Camden is and where his
18 address is, an estimation.

19 MR. ANDERSON: Court's indulgence.

20 Q Approaching the witness with what has been previously
21 marked as State's 15. Would you take a look at that and tell
22 me if you recognize that?

23 A Yes, this is a color image or color photo of the
24 defendant's DMV photo.

25 Q Is that a true and accurate depiction of his DMV photo?

1 A Yes, it is.

2 Q At this time, the State would move to enter State's
3 Exhibit 15 into evidence.

4 MR. STEVENS: I have no objection, Your Honor.

5 THE COURT: It's in evidence without objection.

6 (WHEREUPON, State's Exhibit No. 15 was received into
7 evidence.)

8 MR. ANDERSON: Permission to publish.

9 THE COURT: You may publish.

10 Q And looking back at I believe it's State's 12, so do you
11 recognize that photo as well?

12 A Yes.

13 Q And looking at State's 14, do you recognize that photo?

14 A Yes, I do.

15 Q Were you -- or in your opinion, were you able to link
16 those two cars together as well?

17 A Yes, I was.

18 Q How were you able to do that?

19 A The image that had the tape covering -- the VM was
20 visible, but the tops of the other characters were still
21 exposed. And after seeing a full tag in an open picture, you
22 could see that, yes those images do match those digits on that
23 vehicle.

24 We also had confirmation for us that the image with the
25 tape over it was an image of a truck with a dent in the rear

1 bumper. And this truck with the exposed tag had a dent in the
2 same location on the rear bumper.

3 Q And not only that, who was the registered owner?

4 A It was registered through the DMV back to the defendant.

5 MR. ANDERSON: No further questions. Please answer any
6 questions the defense may have.

7 THE COURT: Mr. Stevens.

8 MR. STEVENS: Your Honor, may we approach?

9 THE COURT: You may approach.

10 (Whereupon, a bench conference was held off the record in
11 the presence of the jury, but out of the hearing of the
12 jury.)

13 THE COURT: All right. Ladies and gentlemen, given that
14 it's 12:20, we're going to go ahead and break for lunch today.
15 I'm going to ask you to be back at 2 o'clock. Until then,
16 remember don't discuss the case with each other or with anyone
17 else. Don't read or watch anything about the case, and don't
18 do any outside research. Other than that, enjoy your lunch,
19 and we'll see you at 2 o'clock.

20 (Whereupon, the jury exited the courtroom at 12:20 p.m.)

21 THE COURT: All right. Anything from the State before we
22 break?

23 MR. ANDERSON: Not from the State, Judge.

24 THE COURT: From the defense?

25 MR. STEVENS: No, Your Honor.

1 THE COURT: See y'all at 2. Thank you, counsel.

2 (Thereupon, a luncheon recess was taken.)

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1 A F T E R N O O N S E S S I O N

2 THE COURT: Defense ready?

3 MR. STEVENS: A couple of minutes, Judge.

4 THE COURT: I do see you're missing your client.

5 MR. STEVENS: He's getting his glasses. We're almost
6 ready.

7 THE COURT: Okay. All right.

8 (Pause.)

9 THE COURT: All right. State ready to proceed?

10 MR. ANDERSON: We are.

11 THE COURT: Defense ready?

12 MR. STEVENS: Yes, sir.

13 THE COURT: Let's bring them in.

14 (Whereupon, the jury came into open court at
15 approximately 2:12 p.m.)

16 THE COURT: Cross-examination.

17 MR. STEVENS: Thank you, sir.

18 CROSS-EXAMINATION

19 BY MR. STEVENS:

20 Q Good afternoon, Det. Swiger.

21 A Good afternoon.

22 Q How are you, sir?

23 A Good.

24 Q Is that the right way to pronounce your name?

25 A Yes, it is.

1 Q Make sure I get that right. You've been a detective with
2 the City of Rock Hill Police Department for about two and a
3 half years?

4 A That's correct.

5 Q And before that -- and you investigate property crimes?

6 A Yes, I do.

7 Q And before that you were a patrol officer for about 12
8 years?

9 A That's correct.

10 Q So you've been a police officer for a while.

11 A Yes, sir.

12 Q And you're also different because you did that later in
13 life. Right?

14 A That's correct.

15 Q So you had a previous life.

16 A Yes, I did.

17 Q And in your previous life you worked in private industry.

18 A That's correct.

19 Q Manufacturing processes.

20 A Yes, sir.

21 Q Operations management.

22 A Um-hum.

23 Q Process improvement. Change management, so you're well
24 suited for the police department. And you know how to follow
25 procedures because, if you don't in the private industry,

1 where you were, that's a problem.

2 A Correct.

3 Q And if you don't do that in the police department that's
4 a problem too.

5 A Can be, yeah.

6 Q And you're aware of the importance of accurately
7 documenting what you see in a police report.

8 A True, yes.

9 Q And you're also aware of the importance of accurately and
10 compiling collected evidence.

11 A True. Correct.

12 Q And you keep that evidence and those reports in a case
13 file.

14 A Correct.

15 Q Or something to that effect. Right?

16 A Digital file, yes.

17 Q We've moved past manila folders at this point. And that
18 evidence, if it's not properly stored, you could have chain-
19 of-custody problems. Right?

20 A Correct.

21 Q And that's why you have to make sure that you follow
22 procedures and processes and make sure all your I's are dotted
23 and your T's are crossed.

24 A That's correct.

25 Q And if you don't do that right, there's a potential that

1 innocent people could be implicated in a crime that they
2 didn't commit.

3 A That's correct.

4 Q And I know we talked about this, but you're aware of the
5 critical importance of writing and submitting accurate,
6 truthful statements as a law enforcement officer.

7 A Yes, sir.

8 Q And that submitting a false or inaccurate police report
9 could seriously damage your criminal case.

10 A Intentionally, yes.

11 Q Because it basically causes someone to question the
12 credibility of the officer and of the entire investigation.
13 Right?

14 A Yes.

15 Q And that it's your job and the job of your supervisors to
16 make sure that your reports are truthful. Right?

17 A That's correct.

18 Q Fair, accurate, truthful. Let's move on to -- well,
19 let's get started. Let's talk about what intelligence analyst
20 Damien Williams -- I think we just had him today, what he
21 emailed you about on May 20th at about 8:20 a.m.

22 MR. ANDERSON: Objection. Hearsay.

23 THE COURT: Counsel, approach.

24 (Whereupon, a bench conference was held off the record in
25 the presence of the jury, but out of the hearing of the

1 jury.)

2 (Thereupon, counsel returned to counsel tables and the
3 following ensued:)

4 (Open court.)

5 MR. ANDERSON: State will withdraw its objection.

6 THE COURT: Thank you, Mr. Anderson.

7 Q And you received that email after you were assigned to
8 investigate this case. Right?

9 A I don't remember if I received the email prior or after
10 because Damien will share information with all the detectives.

11 Q Okay.

12 A It kind of goes out sometimes as a group, sometimes it
13 goes out as an individual. I can't remember specifically how
14 he sent that out.

15 Q Okay. But you just got an email regarding the case in
16 question. Right?

17 A Correct.

18 Q And he told you he did some research.

19 A Well, I knew by looking at the picture that he'd searched
20 Flock to find some images.

21 Q Because he sent you some pictures. Right?

22 A Correct.

23 Q And as part of that early research, he identified -- Mr.
24 Williams identified about one to ten suspect license plate
25 tags that he found in the FBI NCIC database.

1 A He may have. He didn't tell me directly that he'd
2 searched and found ten.

3 Q So he never told you that he had found a possible -- up
4 to ten possibly suspects?

5 A No. I remember receiving the email showing the one
6 image. I don't know what his thoughts were or what he saw
7 beforehand.

8 Q Okay. And he didn't send you those other license --
9 suspect license plate tags?

10 A No.

11 Q And you never conducted any investigation into those
12 other suspect license plate tags?

13 A I had no need to.

14 Q But you didn't conduct an investigation into them; did
15 you?

16 A No, I did not.

17 Q And what happened to those other license plate tags?

18 A I couldn't tell you. I have no knowledge on that.

19 Q So 90 percent of -- well, roughly 90 because we don't
20 know exactly. It's up to ten, but roughly 90 percent of the
21 suspects that Mr. Williams identified you never saw?

22 A I don't know if that's an accurate question.

23 Q But did you see any of the up-to ten tags that Mr.
24 Williams found?

25 A I did not.

1 Q So back to my question. What happened to the other ones
2 that you didn't see?

3 A I don't know.

4 Q So ten percent's good enough for you while you're
5 conducting an investigation?

6 A When you find a match on the information the other 90
7 percent, if there was 90 percent, becomes a moot point. You
8 have -- you have the information in front of you that matches.

9 Q Because you just picked someone and that's it. Right?

10 A No, we don't pick someone. We look at the information
11 provided in that image to see if there's a match.

12 Q But you don't know if there's a match in the other
13 potentially nine other suspects. Right?

14 A South Carolina -- I've never run across a situation where
15 a license plate was a duplicate in South Carolina with the
16 same digits. So when we find a match that matches, you match.

17 Q I didn't say license plate duplicates. I just said he
18 identified nine other suspects that you never looked at.
19 Right?

20 A I'm not aware of him -- when you talk suspects, I thought
21 we were talking tags.

22 Q Nine other suspect license plate tags that you never saw.
23 Right?

24 A That's all we would have would be a license plate. But I
25 never saw nine others. I never saw --

1 Q You never saw them?

2 A Never saw them.

3 Q Never did any other investigation.

4 A No, I did not need to.

5 Q And then he told you he identified a suspect vehicle.

6 A I'm sorry?

7 Q Then he told you that he found one specific suspect
8 vehicle he was going to send you. Right?

9 A That's correct.

10 Q Out of those maybe ten.

11 A Yes.

12 Q And he found a registered owner for that specific vehicle
13 that he picked. Right?

14 A I think I found the registered owner.

15 Q You found the registered?

16 A I think I did the DMV search.

17 Q Okay.

18 A I was the one to do the DMV search, but I don't know if I
19 did the only DMV search.

20 Q Okay. And then you received the photographs.

21 A From the DMV?

22 Q No, of the Flock camera -- Flock camera photographs from
23 Mr. Williams. You received those by email?

24 A Yes, I did.

25 Q And we've seen them several times today. It's the

1 zoomed-in photo with the orange circle around the license
2 plate. Right? That's one of the ones you found or received?

3 A Correct.

4 Q And that was taken at roughly 6:01 p.m.?

5 A Yes. I understand that'd be correct.

6 Q On May 17th.

7 A Correct.

8 Q So roughly 30 to 45 minutes before the Belk shoplifting
9 took place. Right?

10 A Correct.

11 Q And then the other one was of a white truck with -- the
12 other Flock photos put into evidence was of a white Chevy
13 truck with a full tag. Right?

14 A That's correct.

15 Q And that one was taken on May 18th at 4:04 p.m. Right?

16 A Yes.

17 Q Do you need to see it again or is --

18 A No. I mean, I trust the information with the dates and
19 times that you're giving me would be correct.

20 Q Okay. So that photograph was taken by the Flock Safety
21 Corporation on May 18th at 4:04 p.m. And you're aware that
22 all data and photographs that are in the Flock Safety system
23 database get deleted after 30 days?

24 A I am aware of that.

25 Q And did you make sure that these two photos were uploaded

1 into the Evidence.com database for the City of Rock Hill?

2 A I cannot say on that. The reason I say that is because
3 depending on how the files come to me, I may scan the printed
4 copy and attach it directly to the report within a software
5 called CentralSquare, which is our report-writing software.

6 Q Right.

7 A So those items would be scanned directly into the report
8 there. And based upon circumstances, they may or may not get
9 uploaded directly into Evidence.com.

10 Q Okay. And then we covered it with Mr. Williams. Did you
11 know that there was a direct integration between the Flock
12 database and Evidence.com, where you could transfer direct
13 evidence from Flock to Evidence.com?

14 A I was not aware of that at that time. I am now though.

15 Q But it wasn't used in this specific case?

16 A No, it was not.

17 Q All right. Let's move on to -- back to the scene of the
18 May 17 shoplifting at Belk. Now, granted, you weren't -- you
19 became the investigating detective on what date again?

20 A I believe it was the 18th.

21 Q The 18th.

22 A The date that I received the emails from Damien.

23 Q So you weren't there for the initial investigation at the
24 actual Belk store?

25 A No, I was not.

1 Q Did you request any crime-scene investigations, or I
2 think you call it something different, forensic services unit
3 to respond to the Belk?

4 A No, I did not.

5 Q Are you aware that anyone else called CSI or forensic
6 services to go out to the Belk?

7 A Nobody from forensic services responded to the scene.

8 Q Okay. And no fingerprints were collected on any of the
9 evidence that was shown?

10 A Due to the environment, it would be impossible and
11 inappropriate to obtain fingerprints.

12 Q So let's see here.

13 (Counsel confer.)

14 Q But back to fingerprints, no fingerprints were collected.
15 Right?

16 A No, they were not.

17 Q There were alarm devices that were cut off of bags in
18 this case.

19 A That's correct.

20 Q You've seen that while you've been in the courtroom. Any
21 fingerprints collected on those?

22 A No, sir.

23 Q Any DNA collected at Belk?

24 A No, there was not.

25 Q Were any of the surfaces or anything that the suspect

1 touched -- were those swabbed for DNA?

2 A No, they were not.

3 Q Were any of the stolen bags ever recovered?

4 A Not that I'm aware of.

5 Q So basically there's no forensic evidence whatsoever in
6 this case?

7 A That's correct.

8 Q And did you actually locate the white Chevy truck that
9 was used in the shoplifting on May 17th?

10 A We did not.

11 Q So you never went and looked at it physically?

12 A Did not look at it physically.

13 Q Never took any photographs of it?

14 A Did not need to.

15 Q But you didn't. Right?

16 A No, I did not.

17 Q Never compared the truck to what you believe you were
18 given in the Flock camera photographs?

19 A From the image that I had seen on the Flock cameras, it
20 matched.

21 Q Did you ever try to compare that truck to what you saw in
22 the Belk surveillance photos?

23 A No.

24 Q So you never found that truck?

25 A Never did find that truck.

1 Q And since you never found the truck, you never found out
2 whether there was any tape residue on his license plate.
3 Right?

4 A That's correct.

5 Q Because you never physically touched it.

6 A Correct.

7 Q And you never made any attempt to verify if Mr. Faile's
8 license plate was stolen at that time?

9 A When you run a DMV search on a tag, if it's reported as
10 stolen, it would flag within the DMV system. In the time --
11 in the days following when we had the Flock images, it was not
12 listed as stolen. So before that date and time, the
13 assumption could be it was not stolen before because it was
14 not stolen at the time I did the search.

15 Q But you've seen cases where stolen items weren't put into
16 NCIC until days later. Right?

17 A In some cases could be.

18 Q Let's go to the lineup six pack. You've read the Rock
19 Hill Police Department policy on conducting photo lineups?

20 A Yes, I have.

21 Q And you've received training on conducting photo lineups?

22 A Yes, I have.

23 Q And was that formal training?

24 A Formal training in the form of your field-training
25 officer training a new officer, and then ongoing training by

1 talking to peers and comparing notes and doing best practices.

2 Q But no -- best practices. You say best practices for
3 Rock Hill Police Department?

4 A Correct.

5 Q But no formal training?

6 A No off-site seminar-type training.

7 Q No formal classroom training?

8 A That's correct.

9 Q And you've actually had the opportunity to train other
10 officers on photo lineups?

11 A In the basics, yes.

12 Q And I think you testified that you received this photo
13 lineup using this -- in this case from SLED. Right, South
14 Carolina Law Enforcement?

15 A Correct.

16 Q And you received that photo lineup roughly two hours
17 after you requested it. Right?

18 A It was returned very quickly, yes.

19 Q And how soon -- and I can't remember this, but how soon
20 was it that you received that lineup before you actually went
21 out and talked with Ms. Dotson?

22 A I do not recall the exact period of time, but it was a
23 very short period.

24 Q Okay.

25 A Within a day or two.

1 Q Pretty quick.

2 A Yes.

3 Q Because I think you went out and saw her on the 20th.

4 Right?

5 A Yeah. Correct.

6 Q And you reviewed that lineup prior to showing it to Ms.

7 Dotson.

8 A Yes, I did.

9 MR. STEVENS: I'm just going to go ahead and publish the
10 State's exhibit that shows the lineup because we're going
11 to -- I'm going to ask you some questions about that photo
12 lineup.

13 Q You reviewed this lineup prior to showing it to Ms.

14 Dotson?

15 A Yes, I did.

16 Q And are you aware of what a suggestive police
17 identification procedure is?

18 A I've not heard that term, no.

19 Q You've never heard that term before?

20 A Nope.

21 MR. ANDERSON: Objection. Matter of law.

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

25 (Thereupon, counsel returned to counsel tables and the

1 following ensued:)

2 (Open court.)

3 THE COURT: Objection's overruled.

4 Q So that last question, you reviewed the lineup for
5 suggestive police identification procedures?

6 A Your original question was I aware of what that process
7 was.

8 Q Right. You're aware of what a suggestive police
9 identification procedure is?

10 A No, I am not.

11 Q You're not?

12 A That's a term I've not heard.

13 Q Okay. So we'll go over some potential issues that we can
14 find with photo lineups. You reviewed this photo lineup for
15 problems with physical characteristics?

16 A That's correct.

17 Q You reviewed it for issues such as height?

18 A I don't see height in this photo lineup.

19 Q I guess that's probably not the biggest problem, but
20 that's one of the things you can look for when you're
21 reviewing a lineup. Right?

22 A Correct.

23 Q For weight.

24 A Correct.

25 Q For age.

- 1 A Yes.
- 2 Q Hairstyle?
- 3 A Yes.
- 4 Q Race?
- 5 A Not hairstyle, hair color.
- 6 Q Hair color.
- 7 A But not style.
- 8 Q Not style. Clothing?
- 9 A No.
- 10 Q And for other factors such as lighting or shadows?
- 11 A Correct.
- 12 Q And after that, you determined this was a fair lineup?
- 13 A Correct.
- 14 Q And did you ever request a lineup from SLED that
- 15 requested a mask superimposed over the faces?
- 16 A Never have.
- 17 Q And did you ask any other law enforcement agency for such
- 18 a lineup?
- 19 A Never have.
- 20 Q Did you ask the FBI to provide you with one of those
- 21 lineups?
- 22 A Nope, never have.
- 23 Q No other attempts to get a photo lineup that had a
- 24 surgical mask superimposed over the faces?
- 25 A Nope.

1 Q Even though the suspect in the May 17th one and in the
2 other two wore surgical masks?

3 A I'm not aware of presenting photo lineups with the faces
4 covered. The purpose of a photo lineup is to identify a
5 person. You need to see the person to make the
6 identification, so I have never requested it. I'm not aware
7 if it's possible. I can't say it's never been done but I've
8 never tried to obscure a person's face in a photo.

9 Q Even if the person's wearing a mask?

10 A Even if the person's wearing a mask.

11 Q Even if that's the best way that the -- even if that's
12 the exact way that the witness or the victim saw the suspect?

13 A Correct.

14 Q So you've never done that?

15 A I've never done that.

16 Q Never made an attempt to do it.

17 A No. You're referring to obscuring their face.

18 Q Right.

19 A I've never done that.

20 Q No lineups with a surgical mask, even though the suspect
21 had one on?

22 A Correct.

23 Q But the witness in this case never saw the full face of
24 the suspect in this case. Right?

25 A That's correct.

1 Q So you're asking the victim to look at something that she
2 had never seen before.

3 A I would disagree. She saw part of the face.

4 Q Okay. Right, so she saw part of the face. Right? So if
5 it would have had a surgical mask you would see only the part
6 that she actually saw.

7 A True.

8 Q But you didn't do that in this case.

9 A As a practice, we don't try to alter or modify the
10 pictures that are on file. We present the pictures as they
11 come from SLED or if we did our own internal six-pack lineup
12 or potentially if we request them from FBI. I've never known
13 of a situation where we would obscure their face.

14 Q But you've never received any classroom training on photo
15 lineups. Right?

16 A No classroom training.

17 Q No formal training on how to conduct a lineup or even to
18 create one?

19 A This topic has never been a topic of discussion. That's
20 correct.

21 Q Right. So maybe that's why you've never heard of a mask
22 in a photo lineup.

23 A Possible. Yeah.

24 Q So as part of the lineup procedure, you read Ms. Dotson
25 the photo lineup instruction, the viewer?

1 A It's the photo lineup affidavit. That's correct.

2 MR. STEVENS: Could we go to that? Thank you so much.

3 Q Is that it right there?

4 A Yes, sir, that is the photo lineup affidavit that we use.

5 Q So what you read to her is essentially the first
6 paragraph, right, where it starts with viewer? And I know
7 that's small to read.

8 A That's correct.

9 Q Okay. Before you presented this lineup to Ms. Dotson,
10 you actually knew who the suspect was in the lineup. Right?

11 A I knew the location in the lineup. Yes.

12 Q But Ms. Dotson didn't.

13 A She did not, no.

14 Q And you're aware that best practices in police lineups is
15 to use double-blind administration?

16 A It's not what's specified in our general orders, but from
17 prior information I have learned that that is a process that
18 makes it robust.

19 Q And the reason that you would use a double-blind
20 administration is because the first blind is that the lineup
21 is blind, that you don't actually know where the -- if the
22 suspect or the photo is even in the lineup. And then the
23 second blind is that the person giving the lineup has not
24 actually -- doesn't know either. So that's why it's double
25 blind.

1 A That's what I understand.

2 Q And you didn't use that. Right?

3 A I did not use that, no.

4 Q And you're aware that the reason that you use double-
5 blind administration is because if you know what the suspect
6 is then you might give of a subtle cue to the person that
7 you're showing that lineup to. That you might not even intend
8 to do.

9 A If you're not careful, yes.

10 Q Right. But that's why you use double blind. Right, so
11 you don't have to be careful.

12 A That would be one -- that would be one advantage --

13 Q Because nobody --

14 A -- of using that, yes.

15 Q Sorry. Because nobody's perfect. Right?

16 A That's correct.

17 Q And we make mistakes, even if we don't intend to. And
18 essentially it means that the reason you do that is because
19 you don't want to tip off that witness with any clues,
20 movements, indicators that would tip that person off as to
21 what you know to be the case. Right?

22 A That's correct.

23 Q And you're also aware that another best practice to use
24 in photo lineups is sequest -- is sequential. I almost said
25 sequestration. I got sequestration on the brain. Sorry.

1 Sequential administration. Right?

2 A Our general order allows either process to be used. But
3 I've used just six-pack lineups. I've never presented
4 sequential.

5 Q And what -- can you explain what happens in a sequential
6 administration?

7 A One photo at a time is shown to the witness. They're
8 given an opportunity to say yes, that's him, no, that's not.
9 And then that picture is removed and a second picture is put
10 down.

11 Q But you didn't do that in this case.

12 A I did not, no.

13 Q And the reason you do that is because it encourages a
14 selection based on memory and not on a comparison to other
15 photos in the lineup. Right?

16 A Must be. I mean, I'm not familiar with sequential so if
17 that's the specific answer I'm not sure.

18 Q But it could be.

19 A It could be, correct.

20 Q Probably is. But you didn't do that. Right?

21 A No, I did not.

22 Q Even though it's in your general orders for the City of
23 Rock Hill?

24 A It's an option.

25 Q It's an option? And circling back, again, before she was

1 shown the lineup Ms. Dotson never knew who the suspect was?

2 A That's correct.

3 Q And you know this because you called her prior to

4 administering the lineup. Right?

5 A Correct.

6 Q And I think you wrote something in your report regarding

7 this. Do you remember what you wrote in your report?

8 A I would have to refresh my memory if you're referencing

9 something from it.

10 MR. STEVENS: May I approach the witness, Your Honor?

11 THE COURT: You may approach.

12 Q I'm just giving this to refresh your memory.

13 A Thank you, sir. Okay.

14 Q And so after you've refreshed your memory from the

15 report, do you recall what Ms. Dotson told you? And you can't

16 read from the report. Sorry.

17 A Do I recall what she -- restate your question.

18 Q Do you remember how she described the suspect that she

19 saw on May 17th?

20 A Yes, I do.

21 Q And she described that suspect as an older white male

22 with gray hair?

23 A That's correct.

24 Q No other -- no other identifying marks of any kind, no

25 description of what the eyes were, or the eyebrows, or the

1 hair?

2 A No, not to me.

3 Q And that conversation wasn't recorded. Right?

4 A Other than -- no, it was not. I was trying to think if I
5 had any discussion about -- following the photo lineup that I
6 presented to her, but --

7 Q And when you initially showed the lineup to Ms. Dotson,
8 she had some problems with the lineup.

9 A I disagree. I don't think she had any problems with it.

10 Q Well, let me rephrase the question. How confident was
11 she when she first saw the lineup?

12 A I viewed her response to looking at that photo lineup as
13 very thoughtful. She wasn't too quick or too slow. Her
14 response was -- I kind of visually saw her eyes scan back and
15 forth across the page, so she did look at others. And you
16 know, answered in a relatively quick period of time in
17 comparison to some other photo lineups I've done, but I
18 wouldn't view that she -- I wouldn't have the opinion that she
19 had a problem with it.

20 Q And after attempting identifying initially, she told you
21 number 2 looks like him but I'm not sure?

22 A That's correct.

23 Q And then she said I don't know directly after that?

24 A I believe I heard that on the recording.

25 Q And then she asked you if there was another sheet in the

1 lineup?

2 A That's correct.

3 Q And that's when she identified the person in number 2.

4 Right?

5 A Correct.

6 Q But she still wasn't completely sure. Right?

7 A When she provided her answer to me, I feel she was sure.

8 Q Okay.

9 A At what point she went from I'm confident this is it to
10 be very sure, I couldn't tell you.

11 Q Okay. And just two more issues that she saw with it.
12 She had said something about whether there was an issue with
13 the weight of the person. Right, in number 2?

14 A Correct.

15 Q And then she also pointed to another person in the lineup
16 and said that person's eyebrows look real similar to who I
17 saw. Right, or something to that effect?

18 A Um-hum.

19 Q And I think you pointed out that the driver's license
20 photograph was roughly two years old or less?

21 A I don't recall the date of the -- age of the photograph.
22 When you renew your license, sometimes your photograph is
23 updated. Sometimes it's not, so I couldn't tell you how old
24 that photograph was on the driver's license.

25 Q And just to recap this particular part of it. You never

1 created any additional lineups with the registered owners of
2 the other suspected vehicles that Mr. Williams identified?

3 A I did not.

4 Q And you never showed any additional lineups to Ms.
5 Dotson.

6 A I did not.

7 Q So she had no idea that other license plates had been
8 potentially located?

9 A That's correct.

10 Q And that's because the decision was made that Mr. Faile
11 was going to be your suspect? Right?

12 A The decision had been made that this was a likely
13 suspect.

14 Q Let's -- you still have your police report? I'm going to
15 ask you some questions about that police report.

16 MR. STEVENS: You guys still have that? I gave you a
17 copy, or did I just show it to you?

18 MR. ANDERSON: You showed it to us.

19 MR. STEVENS: Can I approach, Your Honor?

20 THE COURT: You may approach.

21 Q I've highlighted a particular section in your report. If
22 you could read that for me, but not to the jury please.

23 A Okay.

24 Q So like we discussed earlier, you're aware of why it's
25 important to submit accurate, truthful police reports. Right?

1 A Um-hum.

2 Q And you wrote and submitted a supporting report in this
3 investigation on May 20th at 2:46 p.m. Right?

4 A Correct.

5 Q And I think I showed you a copy of your report. Right,
6 so you've had a chance to refresh your memory? The photo that
7 was taken by the Flock camera was taken on May 18th at
8 4:04:25. Right?

9 A I believe that's correct.

10 Q But that's not what's in your report. Right?

11 A I didn't specify a time on this report.

12 Q Not a time, but did you specify a date?

13 A Not in the highlighted section that you're referring to.

14 MR. STEVENS: Can I approach, Your Honor?

15 THE COURT: You may approach.

16 Q Let me point it out for you in the highlighted section.
17 So that's not what's in your police report; is it?

18 A That would be a mistake on my part, yes. If the dates
19 are different from the Camden or the Highway 521 that would be
20 a -- as I was typing a summary report to update information
21 that was coming to me, that would have been a -- I can't say
22 typo because it's spelled correctly, but it'd be an incorrect
23 piece of information.

24 Q So your police report's wrong?

25 A I have an incorrect statement in the middle of a

1 sentence, yes. But I wouldn't say the report is wrong.

2 Q But it's not accurate?

3 A A type would make it not accurate, but as we were sharing
4 images back and forth, as I'm typing I probably just hit same
5 day thinking it was the same day without having that photo
6 directly in front of me as I was typing. It's an honest
7 mistake on my part. But it is not accurate.

8 Q Did you review your report before you submitted it?

9 A I did. I probably still missed it.

10 Q And there was other police reports written during this
11 investigation. Right?

12 A Other summaries and primary narratives from the reporting
13 officer, yes.

14 Q And as the lead investigator, you review all the evidence
15 and all the reports in the case. Right?

16 A I do.

17 Q And you had a chance to read Ofc. Peter Bowker's police
18 report, the primary narrative?

19 A Yes, I did.

20 Q And you habitually review all the evidence collected in a
21 case because you're the lead detective. Right?

22 A That's correct.

23 Q You've read the reports. You've watched the body camera
24 video. Right?

25 A That's correct.

1 Q You've watched the surveillance video. Right?

2 A Um-hum.

3 Q And including your own body camera video recordings.

4 Right?

5 A Correct.

6 Q And you reviewed the police report of Ofc. Bowker that
7 was written on May 17th. Right?

8 A Correct.

9 MR. ANDERSON: Your Honor, can we approach?

10 THE COURT: You may approach.

11 (Whereupon, a bench conference was held off the record in
12 the presence of the jury, but out of the hearing of the
13 jury.)

14 (Thereupon, counsel returned to counsel tables and the
15 following ensued:)

16 (Open court.)

17 MR. STEVENS: May I approach, Your Honor?

18 THE COURT: You may approach.

19 Q Just let me know when you're done, Detective.

20 A Okay.

21 Q And you've had a chance to review Ofc. Bowker's report?

22 Is it right?

23 A The section that you highlighted does have an error in
24 it.

25 Q Is it a substantial error?

1 A At the preliminary phase of this investigation I would
2 say no. The reason I say that -- I'm referring to where he
3 said that the first two letters being VW. I know from
4 personal experience, as you're writing notes in a notepad in
5 the field, you're scratching, scribbling, talking, I've
6 misread my own personal note. I can't say what Ms. Doton
7 initially had told Ofc. Bowker. She might have said W. I
8 know -- I remember it from hearing on the 911 call Ms. Dotson
9 did state it correctly. So again, I don't know how the
10 translation got switched around.

11 Q But then two sentences down, if you could review that
12 without communicating to the jury; is that right?

13 A It's not correct.

14 Q Why? Why is the report inaccurate?

15 A Because as how he states the suspect got into the vehicle
16 was different than what was seen on video.

17 Q So it's false?

18 A Inaccurate. Correct.

19 Q Inaccurate. Not true.

20 A That's correct.

21 Q And that's a problem. Right?

22 A In the early phases of an investigation, that might have
23 been the assumption of how it went, not knowing what videos he
24 viewed or didn't view. But as more information became -- came
25 forward later, those details do get worked out. We don't go

1 back and change these reports because once they're submitted
2 they're frozen. There's no way we can go back and modify
3 those.

4 Q But you can actually submit a follow-up supporting
5 narrative that corrects any inaccuracies or problems. Right?

6 A My supporting narrative does list the correct tag number.

7 Q But it doesn't correct what's in the rest of the stuff
8 that's in Ofc. Bowker's report. Right?

9 A Not specifically by noting it, no.

10 Q So it was never corrected.

11 A I don't know that I would agree with that because --

12 Q In that report, that report was not corrected.

13 A The correct information is in the report.

14 Q Some correct information but there's also some false or
15 inaccurate information. Right?

16 A Initially, yes.

17 Q Not initially.

18 A Initially.

19 Q It is. Right? That report's wrong.

20 A This is the initial --

21 Q That report's false.

22 A The primary is the initial.

23 Q That report's inaccurate. Right?

24 A Yes, it had some inaccuracies, yes.

25 MR. STEVENS: That's all I have for you. Thank you.

1 THE WITNESS: Thank you.

2 THE COURT: All right. Redirect.

3 MR. ANDERSON: Yes, sir.

4 REDIRECT EXAMINATION

5 BY MR. ANDERSON:

6 Q All right, Det. Swiger, I just want to clear something
7 up. I believe opposing counsel misspoke. So when you were
8 conducting the lineup with Ms. Dotson, she actually said --
9 Monica said number 2 looks like him only heavier. Is that
10 your recollection?

11 A That's correct.

12 Q Okay. I just wanted to clear that up. Did you follow
13 Rock Hill procedure when you conducted that lineup?

14 A Yes, I did.

15 Q Did you deviate from Rock Hill's lineup procedure at all
16 when you were conducting that lineup?

17 A Upon review of the procedure, it's a guideline. It's not
18 a hard and fast rule. There's one part of our general order
19 that states that the six-pack lineup would be placed face down
20 in front of a person and then they would turn it over
21 themselves. Due to the layout of her office area, I could
22 tell it was kind of a tight personal workspace. We were both
23 standing at that time. We were standing as I read the
24 affidavit. When she finished with that, I just handed her the
25 form with conscious awareness of, you know, I'm not going to

1 give her any clues or any tips. Just hand her that document.
2 There was not a chair for me to sit at. There was not a table
3 where I could be opposing her or anything like that. It was
4 just a natural way to have a conversation with someone.

5 Q Did you implicitly or explicitly -- do you ever tell her
6 who to pick?

7 A No.

8 Q Point somebody out?

9 A No.

10 Q How could you tell that the truck at Belk matched Michael
11 Faile's truck?

12 A Several factors. You know, the damage to the rear
13 bumper, the tonneau cover, the running boards, the four doors,
14 the photo with the tape over it was in close proximity both
15 location and time from it. The probability of having the same
16 truck with the same features with a tag with a piece of tape
17 over the tag is extremely low. So that became the lead that
18 we worked on.

19 Q And just to doublecheck, you confirmed that Michael Faile
20 does, indeed, own a white four-door Chevy Silverado ending in
21 license plate VMJ392?

22 A Yes, I did.

23 MR. ANDERSON: Beg the Court's indulgence. No further
24 questions.

25 THE COURT: All right. Any recross?

1 MR. STEVENS: Yes, Your Honor.

2 RECROSS-EXAMINATION

3 BY MR. STEVENS:

4 Q Just a few, Detective. You don't know for sure if
5 there's another plate out there that could be similar. Right?

6 A I'm fairly confident.

7 Q But you don't know.

8 A I would have to -- there is that part of you that says
9 the State could make an error and have a duplicate tag out
10 there.

11 Q I'm not talking about a duplicate tag. There could be
12 other -- because there were up to ten suspects generated.
13 Right?

14 A Restate your question. I'm sorry.

15 Q There were up to ten suspects generated. Right, by Mr.
16 Williams, like we already talked about.

17 A You're using the phrase suspect, and I think --

18 Q Suspect license plates.

19 A Can I expand a little bit on the reason I'm asking that
20 question?

21 Q Nope. You know that there were --

22 A Restate the question then.

23 Q Okay. You know that there were -- like we already talked
24 about, you knew that there was a potential of one to ten
25 additional total suspect license plates that Mr. Williams

1 generated. Right?

2 A As I stated before, I didn't know at the time that he had
3 ten.

4 Q Didn't know?

5 A I heard it in discussions today that there were ten, but
6 at that time I did not know there were ten.

7 Q But you know now?

8 A Correct.

9 Q So it's totally possible that there's other suspects out
10 there.

11 A I don't believe so.

12 Q But there could be. Right?

13 A I don't know. That's a question I can't answer.

14 Q You don't know?

15 A I don't know.

16 Q But there could be.

17 A My level of confidence would say no.

18 Q So you had a low level of confidence.

19 A That there was other suspects.

20 Q And you never saw that white truck that Mr. Faile drove.
21 Right?

22 A I did not find it.

23 Q Never touched it, never looked at it.

24 A Correct.

25 Q Never found it. Never made an effort. Right?

1 A That's correct.

2 MR. STEVENS: Thank you.

3 THE COURT: Any redirect?

4 MR. ANDERSON: One question, Judge.

5 FURTHER REDIRECT EXAMINATION

6 BY MR. ANDERSON:

7 Q So were there any other white, four-door, Chevy Silverado
8 trucks, four-by-four with VMJ392, with a dent in their lower
9 bumper, a tonneau cover, and a trailer hitch anywhere near
10 this time? Did any of those other vehicles match that
11 specific suspect's truck?

12 A No.

13 MR. ANDERSON: No further questions.

14 THE COURT: Any recross?

15 MR. STEVENS: No, sir.

16 THE COURT: Okay. Thank you, sir. You can step down.

17 State may call your next witness.

18 MR. ANDERSON: State rests, Your Honor.

19 THE COURT: All right. Ladies and gentlemen, the State
20 has rested their case. There's a legal matter I've got to
21 take up with the lawyers. Take a restroom break, and I'll
22 call you back in a few minutes.

23 (Whereupon, the jury exited the courtroom at 2:55 p.m.)

24 THE COURT: Mr. Stevens, do you have a motion?

25 MR. STEVENS: I do, Your Honor.

1 THE COURT: Okay.

2 MR. STEVENS: Your Honor, first I'd like to renew all of
3 my pre-trial motions and objections. And I'll go through them
4 if that's okay.

5 THE COURT: That'll be fine.

6 MR. STEVENS: The first is I want to renew my pre-trial
7 motion to suppress an unconstitutional Fourth Amendment
8 search. As a federal constitutional argument, in reference to
9 the Flock Safety camera evidence that was admitted into this
10 case.

11 And two, I want to renew my pre-trial motion to suppress
12 an unconstitutional search in violation of Article I Section
13 10 of the South Carolina Constitution in reference to the same
14 photographs.

15 Two, I wanted to renew my pre-trial motion to suppress
16 the State's identification procedure as having been -- I can't
17 remember the right words, unduly suggestive or unnecessarily
18 suggestive police identification practices.

19 I'd like to renew my pre-trial objection to the admission
20 of 404(b) evidence as inadmissible because the State did not
21 provide -- did not prove the prior crime or bad acts by clear
22 and convincing evidence. And I would renew my objection to
23 the admission of the same 404(b) evidence as prejudicial under
24 Rule 403.

25 THE COURT: All right. I deny those motions for the

1 reasons stated previously.

2 MR. STEVENS: Thank you, sir. I also want to reiterate
3 my 803(6) -- South Carolina Rules of Evidence 803(6) and 901
4 trial objections regarding the State's failure to subpoena a
5 Flock Safety records custodian regarding the authenticity and
6 then the admissibility of the same Flock camera photographs.

7 THE COURT: The motion's overruled for the same reasons
8 the Court stated earlier.

9 MR. STEVENS: Thank you, sir. And then I would do a
10 motion for a directed trial verdict, and bear with me, sir,
11 but what I'm going to say is that the reason I'm asking for a
12 directed verdict is because this case hinges on the
13 identification of a specific suspect in three -- in three
14 shoplifting events, one the charged offense, and then the two
15 404(b) admissions.

16 The way that I see this case is that if the Flock camera
17 photos had not been admitted the foundation could not have
18 been built to generate the actual photo lineup, where the --
19 because the only way -- and we have seen lots of testimony
20 today that the only way the police identified Mr. Faile was
21 through the search of Mr. Damien Williams identifying his
22 truck near Camden.

23 THE COURT: I want to be precise for the record. I just
24 want to make sure what you said just now I think was if the
25 photos had not been admitted. Is that correct.

1 MR. STEVENS: Yes.

2 THE COURT: It seems to me that the State didn't have to
3 admit the photos. They could have chosen to present the case
4 by having the detective say I checked the Flock database, and
5 I located a truck that matched the description and then
6 pulled -- I mean, it might not have been as effective a
7 presentation.

8 MR. STEVENS: Yes, sir.

9 THE COURT: But they -- I'm not sure it's correct to say
10 that the admission of the photos was necessary for the State's
11 case.

12 MR. STEVENS: And that's why this is difficult of how I'm
13 trying -- but basically, I'm saying that it's fruit of the
14 poisonous tree. Basically, it's a unconstitutional search
15 that led to a -- which was the only lead that led to the
16 identification of my client.

17 THE COURT: To clarify, so I think what you're saying;
18 it's not necessarily the photos. It's the use of the
19 database.

20 MR. STEVENS: Yes, sir.

21 THE COURT: Okay. That's what I wanted to clarify.

22 MR. STEVENS: Yes, sir.

23 THE COURT: Okay.

24 MR. STEVENS: And I believe that because it's an
25 unconstitutional search in the federal and as well as the

1 state, that anything that stems from that unconstitutional use
2 of those photographs is fruit of the poisonous tree and should
3 be suppressed. And if there's no identification evidence
4 there's no case. And therefore, I would ask that you make a
5 directed verdict in this case, Your Honor.

6 THE COURT: Now, the directed verdict, the question is
7 not the quantity of the evidence, but is there any evidence --
8 have to see everything in the light most favorable to the
9 State. I think there's enough to send this case to the jury,
10 and I'm going to deny the motion again. Basically, we went in
11 detail on this issue earlier, but, basically, my view is
12 there's no expectation of privacy in the exterior of the
13 vehicle or the license plate.

14 The license plate, in fact, exists for the purpose of law
15 enforcement and to identify vehicles. That's the reason we
16 have license plates. There's certainly no privacy interest in
17 your license plate. I don't think there's a search. I don't
18 think there's a privacy interest. And there's no issue here
19 with tracking people in the sense -- now, I'm not saying the
20 Flock system -- could it not be used this way in a different
21 case.

22 But in this case, there's no issue with tracking people.
23 It's just the database was queried to look for the vehicle in
24 question. And that was used to connect it to the full plate,
25 to the driver's license, and that was the way the

1 investigation worked. But it wasn't that the system was used
2 in a way to track the defendant's movements all over South
3 Carolina. So for those reasons, the Court's going to deny the
4 motion.

5 Mr. Stevens, have you had a chance to speak to your
6 client about whether he's going to testify?

7 MR. STEVENS: I would ask for a quick recess, Your Honor,
8 so we can have a conversation and talk about that.

9 THE COURT: That'd be fine.

10 (Recess.)

11 THE COURT: Let me get my script here and make sure I
12 don't miss anything. All right. Mr. Faile, I'm going to ask
13 the clerk to swear you in.

14 THE CLERK: Please raise your right hand.

15 MICHAEL LINDSAY FAILE, after being duly sworn,
16 testified as follows:

17 THE COURT: All right. Mr. Faile, at this time, I'm
18 going to explain to you some of your rights. If you don't
19 understand anything I say, please let me know. If you want me
20 to explain anything in more detail, please let me know. Do
21 you understand?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Okay. We've now reached the stage of the
24 trial where you may present your defense. You have the right
25 to claim the protection given to you by the Fifth Amendment to

1 our Constitution, which says, in part, no person can be
2 compelled in a criminal case to be a witness against himself.
3 This means you cannot be required to testify in this case.
4 You do have the right to testify if you want to.

5 However, no one can make you testify. This is a personal
6 right, and no one can waive or invoke this right except for
7 you. If you do decide to testify, you'll be subject to the
8 same rules that govern other witnesses, and you can be
9 examined and cross-examined on any relevant issue in the case.

10 In addition, if you have criminal convictions involving
11 dishonesty or false statements or for crimes punishable by
12 more than a year in prison, and the Court determines the
13 probative value of this evidence outweighs and unfair
14 prejudice, the solicitor will be able to introduce your record
15 to attack your credibility.

16 If you do decide to testify, that decision must be
17 freely, voluntarily and knowingly and intelligently made,
18 including knowledge of the protections given to you by the
19 Fifth Amendment and the consequences of your decision to
20 testify.

21 If you decide not to testify, I will instruct the jurors
22 that they cannot give the fact you did not testify any
23 consideration whatsoever, and there should be absolutely no
24 prejudice to you because you did not testify. In fact, I will
25 instruct the jurors they may not even mention the fact you did

1 not testify in the jury room.

2 It is left entirely up to you whether or not you testify.
3 You can talk with your attorney or any family or friends or
4 anyone else to get advice, but the final decision is entirely
5 up to you. Do you understand what I have explained to you?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Do you have any questions about what I
8 explained to you?

9 THE DEFENDANT: No, sir.

10 THE COURT: Have you discussed with Mr. Stevens your
11 lawyer where you should testify or not?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Do you need any more time to talk to Mr.
14 Stevens?

15 THE DEFENDANT: I think we're pretty clear on that, sir.

16 THE COURT: Okay. Do you want to testify?

17 THE DEFENDANT: I think I'm not.

18 THE COURT: Okay. Thank you, sir. All right.

19 State ready to proceed?

20 MR. ANDERSON: Yes, sir.

21 THE COURT: Defense?

22 MR. STEVENS: Yes, sir.

23 THE COURT: Let's bring them in. Oh, hold on.

24 MR. STEVENS: If you could give me one more second.

25 THE COURT: Oh, go right ahead.

1 (Pause.)

2 MR. STEVENS: Thank you, sir.

3 THE COURT: I think I just caught -- the section about
4 the defendant not testifying got left out inadvertently, so
5 we'll get that added in, but that will be the only addition.
6 Anything from the State regarding the charge or verdict form?

7 MR. ANDERSON: Nothing from the State.

8 THE COURT: And Mr. Stevens you said, other than that,
9 you're okay?

10 MR. STEVENS: That's what I was looking for, yes.

11 THE COURT: All right. So that'll get added back in.
12 All right. Let's bring them in.

13 (Whereupon, the jury came into open court at
14 approximately 3:21 p.m.)

15 THE COURT: All right. Mr. Stevens, you can call your
16 first witness.

17 MR. STEVENS: Your Honor, the defense does not intend to
18 call any witnesses. We will rest our case.

19 THE COURT: Okay. Ladies and gentlemen, I know this
20 seems really weird, but I'm going to send you right back to
21 the jury room. Hold on one second. The defense has rested,
22 which means the evidence in the case is over. And there's
23 some things I need to talk about with the lawyers at each
24 stage of the case, and so now, as kind of another stage, I got
25 to speak to the lawyers again. So I'm sorry to make y'all

1 come back and forth.

2 But what that does mean though is the only things that
3 are remaining in the case are my instructions to you on the
4 law, what's called the charge, and then the closing arguments
5 of the attorneys. And so those things will happen this
6 afternoon. So there's a very good chance we will go after 5
7 o'clock today for you to reach your verdict.

8 So I'm going to send you back to the jury room. If you
9 have any family or anybody that you need to contact, now would
10 probably be a good time to call people and tell them you may
11 not be leaving here at 5 o'clock. I'm not going to keep you
12 to midnight tonight. If it gets late tonight, and you don't
13 have a verdict, we can come back tomorrow.

14 But we'll keep you -- the county will purchase dinner for
15 y'all tonight, so you don't have to worry about that.
16 Typically, we order pizza, so we'll take care of that for
17 y'all for dinner. But go on and head back to the jury room.
18 It'll just be a couple of minutes, but if you have family you
19 need to let them know you won't be home at a little after 5.
20 You should let them know now.

21 (Whereupon, the jury exited the courtroom at 3:23 p.m.)

22 MR. STEVENS: Your Honor, at this time, now that the
23 defense has rested, I just want to renew all of my pre-trial
24 motions and objections, the two constitutional arguments, the
25 identification procedure, the 404(b) evidence is inadmissible

1 because of clear and convincing evidence, and the 404(b)
2 evidence is prejudicial under Rule 403. Also wanted to
3 reiterate my trial objections to the 803(6) and 901 regarding
4 the records custodian for Flock. And I also wanted to renew
5 my motion for a directed verdict.

6 THE COURT: All right. I appreciate you being concise.
7 Since there's no evidence and nothing's changed since the last
8 time the motions were made, so the motions are denied for the
9 reasons previously stated.

10 MR. STEVENS: Thank you.

11 THE COURT: Ready for charge and close?

12 MR. ANDERSON: Yes, sir.

13 MR. STEVENS: Yes, sir.

14 THE COURT: Okay. The jurors may be on the phone, so
15 just tell them --

16 THE BAILIFF: We don't have a phone back there, so I
17 don't know how that would be carried out, Your Honor.

18 THE COURT: Never mind. Tell them we'll bring them back
19 in then. Okay.

20 THE BAILIFF: We've got four who had to pay to use the
21 telephone.

22 THE COURT: That's fine.

23 THE BAILIFF: We've got four of them that had to pay to
24 use the telephone.

25 THE COURT: That's fine. No worries. Okay. Let's just

1 take a ten-minute recess then.

2 (Recess.)

3 THE COURT: State ready to proceed?

4 MR. ANDERSON: Yes, sir.

5 THE COURT: Defense ready?

6 MR. STEVENS: Yes, sir.

7 THE COURT: All right. Let's bring them in.

8 (Whereupon, the jury came into open court at
9 approximately 3:40 p.m.)

10 CHARGE OF THE COURT

11 THE COURT: All right. Ladies and gentlemen, as I said,
12 we have reached the conclusion of the evidence in this case.
13 So what is left for me now is to give you my instruction on
14 the law and then that'll be followed by the closing arguments
15 of the attorneys.

16 Ladies and gentlemen, after I have explained the law, and
17 you've heard the arguments, you'll go back, and you'll
18 begin -- to the jury room and begin your deliberations. I'm
19 going to give you a written copy of these instructions to take
20 back with you to the jury room. During your deliberations,
21 you may refer to the instructions to guide your decision
22 making.

23 You must consider these instructions as a whole and not
24 follow some and ignore others. Your decision must be based
25 only on the evidence presented here in court. You must not be

1 influence in any way by either sympathy for or prejudice
2 against anyone.

3 The indictment in this case charges the defendant,
4 Michael Faile, with the crime of shoplifting. As I said, the
5 indictment is simply the written document which contains the
6 charge made against the defendant. I'll remind you the fact
7 the defendant was arrested and charged, an indictment is not
8 evidence and cannot be considered by you as evidence of guilt
9 in this case. Nor does it create any presumption of inference
10 of guilt.

11 Mr. Faile has pled not guilty, and that plea puts the
12 burden on the State to prove him guilty beyond a reasonable
13 doubt. A person charged with committing a crime in South
14 Carolina is never required to prove himself innocent. I
15 charge you that as an important rule of law that the defendant
16 in a criminal trial, no matter what the seriousness of the
17 charge is, is always presumed to be innocent of the crime for
18 which the indictment was issued, unless guilt has been proven
19 by evidence satisfying you of their guilt beyond a reasonable
20 doubt.

21 This presumption of innocence does not end when you begin
22 deliberations, but accompanies the defendant throughout the
23 trial until you reach a verdict. The presumption of innocence
24 is not just a legal theory or legal phrase. It is a
25 substantial right to which every defendant is entitled, unless

1 you the jury are satisfied from the evidence of their guilt
2 beyond a reasonable doubt.

3 So what is reasonable doubt? Some of you may have served
4 as jurors in a civil case where someone is suing someone else,
5 where you were told it was only necessary to prove a fact is
6 more likely true than not true. Like by the greater weight or
7 the preponderance of the evidence.

8 In a criminal case, the State's proof must be more
9 powerful than that. It must be beyond a reasonable doubt.
10 Proof beyond a reasonable doubt is proof that leaves you
11 firmly convinced of the defendant's guilt.

12 Now, there are very few things in the world we know with
13 absolute certainty. And in criminal cases, the law does not
14 require proof that overcomes every possible doubt. If, based
15 on your consideration of the evidence, you are firmly
16 convinced the defendant is guilty of the crime charged, you
17 must find him guilty.

18 If, on the other hand, you think there's a real
19 possibility that the defendant is not guilty, you must give
20 him the benefit of the doubt and find him not guilty. Put
21 another way, a reasonable doubt is the kind of doubt that
22 would cause a reasonable person to hesitate to act.

23 Duties of the jury and the judge. I'll remind you that
24 during this trial you and I have had certain jobs or duties to
25 perform. As the trial judge, it is and was my responsibility

1 to preside over the trial of this case. And I also have the
2 duty to rule on the admissibility of evidence. You should
3 consider only the evidence before you. If I ordered any
4 testimony stricken from the record, you must disregard that
5 testimony. You should only consider the testimony presented
6 from the witness stand, and any exhibits which are a part of
7 the record.

8 I have the additional duty to charge you on the law
9 applicable to this case, which I am doing now. As the
10 presiding judge, I am the sole judge of the law in this case.
11 And it is your job as jurors to accept and apply the law as
12 I'm now explaining it to you.

13 If you already have any idea what you think the law is,
14 or what you think it ought to be, and your idea does not agree
15 with what I'm now telling you, you must abandon your idea
16 because you are sworn to accept the law and apply it exactly
17 as I state it to you.

18 In every case tried in this court before a jury, you the
19 jury are the sole and exclusive judge of the facts in a case.
20 As a trial judge, I can't intimate, state, comment on, or make
21 any statement to a trial jury about the facts in the case.
22 Since you are the sole judge of the facts, you should not
23 infer from anything I've said in the trial, in making any
24 rulings, or anything I'm now saying that I have any opinion
25 about the facts in this case.

1 The law does not allow me to have an opinion on the
2 facts. That is a matter solely for you the jury to determine.
3 As jurors, it is your duty to determine the effect, the value,
4 the weight, and the truth of any evidence presented during the
5 trial.

6 Objections. From time to time you heard the attorneys
7 make objections. In reaching your verdict, do not consider
8 the objections or my rulings on them. You should not hold any
9 objections made against either party.

10 As I said before, you must consider only the evidence I
11 have admitted. That includes the witness testimony and
12 exhibits. Please do not assume from anything I've said that I
13 have any opinion about factual issues in this case.

14 In fact, except for my instructions right now, you should
15 disregard anything I've said during the trial in arriving at
16 your own decision on the facts. Your own recollection and
17 interpretation of the evidence is what matters. In
18 considering the evidence, you should use your reason and
19 common sense to make deductions and reach conclusions.

20 Now, ladies and gentlemen, during the presentation of
21 this case, you may have noticed that certain sections of the
22 audio or video were redacted or edited out -- or from
23 documents. This is due to the rules of court, and that was a
24 decision made by me. Please do not speculate or guess as to
25 what may or may not be contained in these portions. And do

1 not hold those portions against either party.

2 Direct and circumstantial evidence. There are two types
3 of evidence generally presented during a trial: direct and
4 circumstantial. Direct evidence is the testimony of a person
5 who claims to have actual knowledge of a fact like an
6 eyewitness. It is evidence which immediately establishes the
7 main fact trying to be proved.

8 Circumstantial evidence is proof of a chain of facts and
9 circumstances indicating the existence of some other fact. It
10 is evidence which establishes collateral facts from which the
11 main fact could be inferred. Circumstantial evidence is based
12 on inference and not on personal knowledge or observation.

13 The law makes absolutely no distinction between the
14 weight or value to be given to either direct or circumstantial
15 evidence. Nor is a greater degree of certainty required of
16 circumstantial evidence than of direct evidence.

17 However, to the extent the State relies on circumstantial
18 evidence, all the circumstances must be consistent with each
19 other and, when taken together, point conclusively to the
20 guilt of the accused beyond a reasonable doubt. If
21 circumstances merely portray the defendant's behavior as
22 suspicious, the State's proof has failed.

23 The State has the burden of proving the defendant, beyond
24 a reasonable doubt -- guilty beyond a reasonable doubt. That
25 burden rests with the State regardless of whether the State

1 relies on direct evidence or circumstantial evidence or a
2 combination of the two. You should weigh all the evidence.
3 And, if you are not convinced of the guilt of the defendant
4 beyond a reasonable doubt, you must find him not guilty.

5 Defendant not testifying. Ladies and gentlemen, I
6 instruct you and emphasize to you the fact the defendant in
7 this case did not testify is not a factor to be considered by
8 you in any way in your deliberations and your consideration of
9 Mr. Faile's guilt or innocence. It must not be considered by
10 you in any manner whatsoever.

11 In our country, a defendant has the constitutional right
12 to remain silent. And the use of this right cannot be
13 considered by you in your deliberations. I repeat, under your
14 oath as jurors, you are to draw no conclusion whatsoever from
15 the fact the defendant did not testify. And you may not even
16 discuss the fact the defendant did not testify at all in the
17 jury room.

18 Arguments of counsel. Arguments of the attorneys are a
19 very beneficial part of every trial. Please remember that the
20 statements made by the attorneys are not evidence. In
21 presenting their arguments, the attorneys often refer to the
22 evidence. However, you should base your verdict on the
23 evidence as you remember it. So if there are any conflicts
24 between the recollection of the attorneys about the evidence
25 and your own recollection, you should rely on your own

1 understanding.

2 Believability of witnesses. When I say you must consider
3 all the evidence, I don't mean you have to accept it all as
4 true or accurate. You should decide whether to believe what
5 each witness had to say, and how important their testimony
6 was. In making those decisions, you can believe or disbelieve
7 any witness in whole or in part. And the number of witnesses
8 testifying about a particular point doesn't necessarily
9 matter.

10 To decide whether you believe a witness, I suggest you
11 ask yourself a few questions. Did the witness impress you as
12 one telling the truth? Did they have any particular reason to
13 not tell the truth or have a personal interest in the outcome
14 of the case?

15 Did the witness seem to have a good memory? Did they
16 have the opportunity and ability to accurately observe the
17 things that they're talking about? Did the witness appear to
18 understand the questions clearly and answer them directly?
19 Did their testimony differ from any other testimony or other
20 witnesses or other evidence?

21 However, please keep in mind that a simple mistake made
22 by a witness doesn't mean they weren't telling the truth as he
23 or she remembers it. People naturally tend to forget some
24 things or remember them inaccurately. If a witness misstated
25 something, you must decide whether it was because of an

1 innocent lapse in memory, or an intentional deception. The
2 significance of your decision may depend on whether the
3 misstatement was about an important fact or unimportant
4 detail.

5 Additional bad acts. Ladies and gentlemen, you have
6 heard evidence in this case of other alleged bad acts beyond
7 the May 17th, 2022 alleged shoplifting. You must consider
8 this additional evidence only as it relates to the identity of
9 the perpetrator of the May 17th shoplifting. The evidence is
10 limited to those purposes and uses and is not to be used for
11 any other purpose. This kind of evidence must not be
12 considered in any other fashion.

13 The burden of proof is on the State to prove every
14 element of the crime charged. If you find, after reviewing
15 all the evidence, the State has proved the defendant was only
16 present at the scene of a crime, and the State has not proved
17 beyond a reasonable doubt any participation in the crime, you
18 are required to find him not guilty.

19 Identity must be proved. The State must also prove
20 beyond a reasonable doubt that every element of the crime
21 charged was committed, including that the person who committed
22 the crime is the defendant.

23 Shoplifting. The defendant is charged with shoplifting.
24 The State must prove beyond a reasonable doubt the defendant
25 took possession of or carried away or transferred from one

1 person to another or from one area of the store to another or
2 caused to be carried away or transferred merchandise with the
3 intent to deprive the merchant of the possession, use, or
4 benefit of the merchandise without paying full retail value.

5 Full retail value means the merchant's stated or
6 advertised price for the merchandise. Merchandise means goods
7 or chattels or foodstuffs or wares of any kind or description,
8 regardless of their value. The merchant means the owner or
9 operator of the store or any agent, employee, lessee,
10 consignee, director, franchisee, or independent contractor of
11 the owner or operator.

12 The intent means willful, intending the result which
13 actually occurs, not accidentally or involuntarily. Intent
14 may be shown by the acts and conduct of the defendant and
15 other circumstances from which you may naturally and
16 reasonably infer intent.

17 If the defendant willfully concealed unpurchased goods
18 and merchandise or merchandise on the premise, outside the
19 premises of the store, on their person, among their
20 belongings, or on the person of another, or among the
21 belongings of another, you may consider this as evidence the
22 defendant has concealed the merchandise with the intent to
23 convert it to his own use without paying.

24 Conceal means to hide the merchandise on the person or
25 among the belongings of a person so that, although there may

1 be some notice of its presence, it is not visible through
2 ordinary observation.

3 Ladies and gentlemen, madam foreperson, as you begin your
4 deliberations, I wish to express the hope that each of you
5 will be mindful of the importance of your responsibility. You
6 are not called to serve as jurors very often. And the proper
7 performance of this duty requires you to reach the height of
8 freeing your mind of all improper influences.

9 As the presiding officer of this court, I am very
10 concerned that whatever verdict you find will be the result of
11 your going into that jury room and confining your
12 consideration to the evidence and the law which you have heard
13 in the courtroom, weighing it fairly and impartially as I've
14 every confidence you will do.

15 Your verdict in this case cannot be based on sympathy,
16 compassion, prejudice, or emotion, or any other consideration
17 not in the evidence. Remember that your verdict must be
18 unanimous, meaning all 12 of you must agree. I will now
19 explain the verdict form and the possible verdicts.

20 There are two possible verdicts in this case: guilty or
21 not guilty. There is no significance whatsoever in the order
22 in which I just listed those possible verdicts. One simply
23 must be listed first.

24 Ladies and gentlemen, this is the verdict form. After
25 you hear the closing arguments, you're going to go back to the

1 jury room and begin your deliberations. And then once you
2 have reached a unanimous verdict, the foreperson's going to
3 check either guilty or not guilty and then sign and date the
4 verdict form. And then you'll let the bailiff know you've
5 reached a verdict.

6 Once again, ladies and gentlemen, your verdict must be
7 unanimous. Also, ladies and gentlemen, don't begin your
8 deliberations until they bring the pictures and other exhibits
9 back to you. That'll be your signal to begin deliberations.
10 Further, you're not permitted to deliberate if you're all not
11 in the room. So it's perfectly okay if somebody's got to go
12 to the bathroom, but, while someone's in the bathroom, the
13 other folks cannot be deliberating about the case. All of you
14 have to be present.

15 So madam foreperson, once you agree on the verdict, check
16 the box. Sign your name and date it, and then knock on the
17 door. Inform the bailiff you have reached a verdict. And we
18 will bring you back to the courtroom.

19 Ladies and gentlemen, thank you very much for your
20 attention. I'm now going to direct your attention to the
21 closing arguments of the attorneys.

22 Any objections to my charge from the State?

23 MR. ANDERSON: No objections.

24 THE COURT: From the defense?

25 MR. STEVENS: No, sir.

1 THE COURT: Okay. Ladies and gentlemen, once again, the
2 State has the burden of proof, so they go first.

3	CLOSING

4 MR. ANDERSON: Thank you, Judge. May it please the
5 Court.

6 Good afternoon, ladies and gentlemen. I appreciate y'all
7 paying attention the past two days. Like I said at the
8 beginning of this trial, Michael Faile, the defendant, was in
9 the shoplifting business. And business was good.

10 But that was until he got greedy and kept coming back to
11 the same store, doing the same thing, three different times in
12 less than two months. And he got sloppy. He didn't cover his
13 license plate.

14 Let's talk about shoplifting. So you heard the judge
15 just tell you what the law is. And breaking that down,
16 shoplifting is taking possession of, carrying away merchandise
17 displayed, held stored, or offered for sale in a store with
18 the intent to deprive the merchant of the possession, use, or
19 benefit of the merchandise without paying full retail value.

20 And that's a mouthful, so I like to kind of break it down
21 even further. Shoplifting in a nutshell. Right? You take
22 goods out of a store with the intent of not paying for them.
23 Thereby, depriving the merchant of the goods. How do we know
24 that Mr. Faile took possession and carried away goods out of
25 Belk?

1 Well, on May 17th, we saw the surveillance video. You
2 saw Mr. Faile snip not only the Broomen handbag, you also saw
3 him use the cutters to snip the Michael Kors backpack as well
4 before carrying it out of the store and getting in the
5 driver's side of that truck in the parking lot. You heard
6 Monica testify that at no point in any of these incidents, and
7 especially not the May 17th incident, did Mr. Faile attempt to
8 pay for those items.

9 How do we know he never intended to pay for them? Well,
10 he used wire cutters to cut the security cables. He clearly
11 wasn't intending to take those to the checkout. He quickly
12 left the store when spotted by another Belk associate on the
13 17th. You heard that through Monica's testimony.

14 Not only that, he tried to avoid detection. On each of
15 the three incidents, he wore a surgical mask. And specifically
16 on May 17th, he covered his license plate. And he did that
17 because he knew law enforcement could track him through that
18 license plate. He just didn't do a very good job of it.

19 Further proof, so the judgment of the law on burden of
20 proof, the State has to have proof beyond a reasonable doubt
21 that Mr. Faile shoplifted. I'd like to go into both of these
22 definitions a little bit because they are different. And
23 there's a couple of things I want you to keep in mind when you
24 think about this.

25 So the way number one to describe reasonable doubt, the

1 kind of doubt that would cause a reasonable person to hesitate
2 to act. I want you to keep in mind that going back in the
3 jury room and deliberating and speaking about the verdict
4 amongst yourselves, that's not hesitating. You're just
5 talking it out like you're supposed to. You took an oath as
6 jurors to go back there, and to deliberate. That's not
7 hesitating. That's just doing your job.

8 And way number two is proof beyond a reasonable doubt is
9 proof that leaves you firmly convinced of the defendant's
10 guilt. I want to point a few things out here. The State is
11 not required to answer every question in the case. It's
12 impossible. It can't be done. There are some questions that
13 are going to be left unanswered. And the law does not
14 require, nor is the State held to a burden, to prove a case
15 beyond every doubt.

16 That's not what reasonable doubt is. That's not the
17 standard the State is held to. It's a reasonable doubt. We
18 just have to leave you firmly convinced.

19 So how do we know that Michael Faile is the shoplifter
20 from March 24th, April 6th, and specifically May 17th? Let's
21 start with the identity of the truck in the Belk parking lot.
22 State's Exhibit 2-D, y'all saw, you heard the testimony from
23 Monica. That's the surveillance closeup from Belk of the
24 license plate that starts with VM.

25 And you heard testimony from Monica, and you actually

1 heard her 911 call where she narrates exactly what Mr. Faile
2 was doing in the store. And as she's watching those monitors,
3 she's on the phone with 911 dispatch with Rock Hill City. And
4 she tells them license plate starts with Victor-Mary, VM.

5 Somebody else at Belk, you saw Exhibit 4-C, took a photo
6 of the truck as it was driving away. It's another angle. VM,
7 the only letters that are visible because somebody, Mr. Faile,
8 decided to put a piece of tape over his license plate to try
9 and prevent law enforcement from tracking him.

10 Let's go over Damien Wilson's (sic) testimony. You heard
11 Mr. Wilson testify that the City of Rock Hill has some Flock
12 cameras around the city that are used to primarily look for
13 things like stolen vehicles. He talked about how if there's a
14 missing child and an Amber Alert goes out, they can plug that
15 license plate of the suspected kidnapper in and they can find
16 vehicles.

17 That Flock camera you heard Mr. Wilson testify is right
18 off of the I-77 Dave Lyle exit. The Belk is located just
19 around the corner. And that photo was taken at 6:01 p.m. And
20 what is that photo of? That photo is of a white Chevy, four
21 door, four-by-four with a tonneau cover, a dent in the lower-
22 right bumper in the chrome. It's got a trailer hitch in it.
23 It's a very distinct truck. It's got running boards, it's got
24 step bumpers you use to get into the back of the bed. And
25 it's got a covered license plate just like the truck in Belk.

1 And in reality, when that photo was taken, doesn't matter
2 one bit. And the way our rules of court work, I have to go
3 first, and I have to anticipate what defense counsel's going
4 to say. And I know during testimony and cross-examination of
5 the officer defense counsel made a big deal about you don't
6 know the time stamps. You don't know when that photo was
7 taken.

8 It doesn't matter. Who cares when that photo was taken?
9 It doesn't matter. That photo is clearly the same truck that
10 was in the Belk parking lot on May 17th, 2022. You can look
11 at those. Every single one of you in that jury can look at
12 those photos and see that they're identical.

13 You look at the State's Exhibit 2-D, there's a dent.
14 State's Exhibit 12 there's a dent. Both have a tonneau cover.
15 Both have a covered license plate that starts with VM.
16 They're both Chevys, Chevy Silverado. You can even see the
17 trim level of the cab, LT.

18 But that just shows that that specific truck was in the
19 area. How do we know that that truck is Michael Faile's
20 truck? Keep going with Mr. Wilson's testimony. You heard
21 that the City of Camden also has some traffic cameras. And
22 law enforcement shares information amongst one another. And
23 Mr. Wilson was -- had a partial tag to go off of. And he told
24 you that he could search that Flock camera database for white
25 trucks, license plates starting with VM, and he gets a hit.

1 He gets a couple hits. But he only gets one hit that
2 really matters. There was only one of those trucks or
3 vehicles that came back -- comes even close to Michael Faile's
4 truck.

5 Excuse me. Williams. That was a typo. I apologize.

6 So that photo comes back. We have the white truck, four
7 door, Chevy four-by-four. It's got a dent; it's got a tonneau
8 cover. It's got a trailer hitch, and it's got a license
9 plate -- South Carolina license plate VTJ392.

10 That truck with the uncovered license plate is the truck
11 that was in the Belk parking lot that day. You heard Det.
12 Swiger testify to that. And you can see it with your own
13 eyes. You can compare those two trucks, and you can see
14 they're identical. It's the same truck.

15 And just like with the Flock camera at the Dave Lyle
16 exit, who cares when that photo was taken? Completely
17 irrelevant. But it actually helps because it shows that -- we
18 know that photo was taken the next day, but even then, it
19 doesn't matter. You can look at those two photos and see
20 they're identical.

21 And you can compare the photo of the truck from the Dave
22 Lyle Flock camera with the photo from the Camden Flock camera.
23 And it's an even closer -- it's even easier to compare them
24 because they're both traveling the same direction. The
25 photo's taken from the same angle.

1 What else do we know? Det. Swiger, SCVMJ392 registered
2 to that man right there, Michael Faile. That's his truck.
3 Det. Swiger also testified Michael Faile lives near the Camden
4 location where the photo of his truck was taken by the Camden
5 Flock camera.

6 Let's talk about Monica's testimony a little bit more and
7 her identity of Mr. Faile through the lineup. She saw Mr.
8 Faile on three occasions. She saw him on March 24th. She
9 testified that she didn't watch the incident live as it
10 happened. Another associate came to her, told her that
11 somebody had clipped a couple of purses. So she went and
12 reviewed footage.

13 And she knows that she's going to later have to try and
14 identify somebody. She knows she's going to have to turn this
15 information over to law enforcement. That's her job. She's
16 asset protection at Belk. Her whole job revolves around
17 identifying and helping prosecute people who shoplift from
18 Belk. She's paying attention.

19 And that's why on April 6th, two weeks later, she's
20 manning the cameras in the Belk asset protection office. And
21 she immediately recognizes Mr. Faile. And she said she
22 recognized him even though he had a mask on because he had a
23 distinct hairstyle. And if you look at those photos that are
24 in evidence, and you'll see them here in a minute again, he
25 has the same exact hairstyle in every single one of them,

1 including his DMV photo.

2 So she's seen him. And she goes to the floor that day.
3 And she said she even got as close as right here I think was
4 her testimony. She got this close to him. So not only did
5 she see him multiple times on video; she saw him in person.
6 She got up close and personal with him.

7 She also said she recognized him -- was able to recognize
8 him from each incident because of the pattern, his behavior,
9 the way he acted. He wore a COVID mask. Defense makes a big
10 deal about not being able to recognize somebody because they
11 have a COVID mask on. Well, I would argue that COVID-19
12 taught everybody that that's not the case.

13 You can recognize somebody if they have a mask on. If my
14 co-counsel had a mask on, and I saw him in public, I'd
15 recognize him. You're not going to not recognize somebody
16 simply because they have a COVID mask on.

17 She testified that his MO, his modus operandi, he would
18 come into the store. He'd make a beeline for the purses. He
19 would take some wire clippers, or what she testified appeared
20 to be some kind of wire trimmers. And he'd clip the purses.

21 She testified that not only was he doing the same type
22 of -- using the same procedure or method of shoplifting; she
23 recognized his truck. You can hear her on the 911 call
24 talking about he usually drives a white work truck. Looks
25 like a white truck. I'm looking for it in the parking lot

1 right now, so she even knows what he drives.

2 And there's another common thread here for each incident.
3 In each time, he hits the store in the late evening, around 6
4 o'clock, 6:30. He does the same thing. He didn't deviate at
5 all, and that's part of the reason why he got caught.

6 Let's talk about the photo lineup, procedure for the
7 photo lineup. You heard Det. Swiger testify he followed Rock
8 Hill's -- Rock Hill Police's procedure when he conducted the
9 lineup. He didn't tell Monica who to select, implicitly or
10 explicitly. He said he handed her the photo lineup. You can
11 watch that whole process if you need to back there.

12 Defense makes a big deal about the level of confidence
13 that Ms. Dotson displayed, about her comment about well,
14 number 2 looks like him but only heavier. You know, I'm not
15 sure. And I would argue that that shows she was being
16 thoughtful. That she's taking time to look at all the photos.
17 You heard the detective testify that he saw her eyes scanning
18 through all the photos. She's checking through all of them,
19 making sure that she gets it right.

20 And you heard her testify that when she signed her name
21 next to number 2, Michael Faile, she had zero doubt. She had
22 no doubt whatsoever that the person she picked in that lineup
23 was the individual who shoplifted from her store on May 17th,
24 2022.

25 And I also want to point out Monica has no dog in this

1 fight. I mean, yes, she's asset protection for Belk. She
2 doesn't even work there anymore. I mean, what does she have
3 to gain by coming in here and saying that that's the person
4 who shoplifted from Belk? There's no reason for her to be
5 biased.

6 I think it becomes even more apparent when you look at
7 photos side by side. State's Exhibit 7-B, 8-A, and 2-C, the
8 three incidents side by side, March 24th, April 6th, May 17th.
9 Anybody can look at those photos and see that's the same
10 person.

11 Let's go over some of defense's arguments more in detail
12 because I've got a pretty good idea what he's going to get up
13 here and say, but he says that Rock Hill PD did a sloppy job.
14 I would argue the complete opposite. I would say they
15 followed the evidence exactly where it led them. And that was
16 to Mr. Faile.

17 They followed the one good lead that they had and came to
18 a logical conclusion that the individual who owned the white
19 Chevy truck with VMJ392 that that truck was registered to --
20 Michael Faile, that man right there.

21 Defense pointed out that the detective made a typo, or
22 the officer made a typo. He put VW in the report instead of
23 VM. Who cares? Monica's on the 911 call saying the truck in
24 the parking lot is a South Carolina plate, starts with Victor-
25 Mary. It doesn't matter that the officer made a typo writing

1 his report. We're all human. We all make mistakes.

2 And you can even see it with your own eyes in the Belk
3 photo it's VM. I kind of liken it to a game of telephone when
4 your kids are on the playground. The officers are writing
5 down what someone tells them. They may not always take the
6 best notes. They may not be able to read their handwriting
7 sometimes. It happens. I do that. I take sloppy notes
8 sometimes. But what matters is the evidence. And the
9 evidence shows that the truck that was in the Belk parking lot
10 that day started with VM.

11 Defense argues it's a bad, it's an unfair photo lineup.
12 We talked about that a little bit, but when you look at that
13 lineup you see similar-looking photos of older white men with
14 gray hair. They all look fairly similar. There's no photo
15 that sticks out. There's no other races in the photo.
16 There's nobody with blonde hair in the photo. They're all
17 older white males with gray hair.

18 Defense made a big deal about there not being any crime-
19 scene analysis. Of what? We didn't recover the purses. You
20 can't dust for prints on purses you don't have. You can't
21 dust for prints on an automatic door. You watched the
22 surveillance videos. He never touches a door. That's because
23 they're automatic. There is nothing to fingerprint. There is
24 nothing to get DNA off of.

25 And also how many people probably touched those displays

1 at Belk? How many fingerprints would they have found if they
2 did that? Hundreds? Thousands?

3 Defense makes a big deal about not recovering the truck.
4 Who cares? We know it's his truck. It's registered to him.
5 It matches the truck that was in the parking lot at Belk that
6 day. Who cares we didn't recover it? We've got a photo of
7 his truck. We know that it's his truck. We got video of his
8 truck in the parking lot. It doesn't matter.

9 Defense counsel in opening made a statement about big
10 brother, like big brother is always watching you. Well, that
11 camera didn't tell the police anything that the South Carolina
12 DMV didn't already know. And that's that Michael Faile owned
13 a white Chevy Silverado four-by-four with South Carolina
14 VMJ392.

15 So how we know Michael Faile is guilty of shoplifting on
16 May 17th, 2022. I like to say that we put the puzzle pieces
17 together. And defense wants you to look at each piece of
18 evidence individually in a vacuum. But that's not what we do.
19 And of course, you can't tell what a puzzle looks like when
20 you just look at one piece by itself.

21 You can't tell what the big picture is. You put one
22 piece next to another, and then another, and another until you
23 can see what the photo is. And you actually might even be
24 missing a few pieces. But you can still see what the puzzle
25 (indiscernible).

1 And so I want to leave you with a question. What are the
2 odds? What are the odds that Michael Faile just happens to
3 own a four-door Chevy Silverado with a VM plate that just
4 happens to have a dent in the same spot as the truck that was
5 at Belk, just happened to have a tonneau cover just like the
6 truck at Belk, happened to have a trailer hitch just like the
7 truck at Belk, running boards, bumpers, four-by-four stickers,
8 and that truck just happened to be in Belk's parking lot on
9 May 17th, 2022? What are the odds?

10 Well, the only logical conclusion in this case is that
11 when you put the puzzle pieces together and you look at the
12 evidence, there's only one logical conclusion. And that
13 conclusion is that Michael Faile shoplifted from Belk on May
14 17th, 2022. And that is why you should find him guilty.
15 Thank you.

16 THE COURT: Mr. Stevens.

17 MR. STEVENS: Thank you, sir.

18 Could you switch over to my computer? Thank you.

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19         I'm going to test my remote out real fast to make sure my
20 technology works if that's okay.  All right.  We're good to
21 go.
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22 CLOSING

23 MR. STEVENS: Right off the bat, ladies and gentlemen,
24 you know what the prosecutor just said, the solicitor in this
25 case? They're not saying there's no chance. That's what he

1 just said. They didn't say there's no chance. So that means
2 there's a chance that it's not Michael Faile. That's what I
3 have said all along.

4 You can't stand up here and say there's no chance because
5 there is a chance that it's not Michael Faile. And that's
6 called reasonable doubt. Because the police picked who they
7 wanted as a suspect in this case. That's what the evidence
8 shows. They picked what suspect they wanted, and they took it
9 all the way to the end. They had one good lead.

10 That's not true. They actually had one to ten good
11 leads. But they picked one. One. That's why he can't say
12 there's no chance because there is that they have the wrong
13 guy here. And they do.

14 Remember when I told you that -- or I didn't tell you to
15 do anything. Remember what I asked you to look for at the
16 beginning? Sloppy police work. And when I say sloppy police
17 work, that's a whole bunch of things.

18 False reports. What's the last thing Det. Swiger said?
19 That's a false report. Right? It's an inaccurate report.
20 That's sloppy police work.

21 What else did I ask you to look for? That's just one
22 example. We'll go for some more. Bad photo lineup. How
23 confident was Monica Dotson? She told you she wasn't very
24 confident. But when Det. Swiger told her who it was, she was
25 all of a sudden real happy about it. We talked about that

1 too.

2 And rush to judgment. They had more than one good lead.
3 I told you to look for that. They had up to ten. They picked
4 one. Ofc. Bowker reported the suspect got into the backseat
5 of the white truck. That's what Det. Swiger said. Right?
6 He's the lead detective. The suspect got into the backseat of
7 the white truck. Wait a minute. I thought the suspect was
8 the driver? So which one is it? Was he getting into the
9 backseat of the white truck or was he the driver? Actually,
10 there's an unknown person in the driver's seat. We don't
11 know, according to Ofc. Bowker, as communicated to us by Det.
12 Swiger.

13 And the State never called Ofc. Bowker to testify, but
14 he's been out there for two days. He's been sitting out there
15 just waiting to talk to you, and I know Ofc. Bowker. I've
16 worked with him on some other cases before. Not on the same
17 side.

18 MR. ANDERSON: Objection. Vouching.

19 THE COURT: Sustained.

20 MR. STEVENS: But he's been out there for two days.
21 Never called him to testify. Why? Why not? He's right
22 there. His report was false, inaccurate. But they didn't
23 call him.

24 Is it okay for you to make a decision without Ofc.
25 Bowker's testimony? I don't think so. What are they hiding?

1 Why not? Don't you have a right to know? I think so.

2 The intelligence analyst Damien Williams, he identified
3 between one and ten potential suspect vehicles. Sorry, ladies
4 and gentlemen, there's more than one truck out there. There's
5 up to ten. But they only have one good lead. Right? False.
6 They had up to ten. That's what he testified to right there
7 today. Picked only one. Right? He picked one.

8 Det. Swiger didn't even pick that one. He didn't even
9 know there were other suspects. He just went with it because
10 that's sloppy police work. That's what that is.

11 Where are the other 90 percent of those leads? That's a
12 huge number, if it's up to ten, which is what he said. That's
13 a big number.

14 It's a rush to judgment. They had their suspect. They
15 had their one good lead, and they're going to hunt that one
16 down.

17 You know, we live in an age where there's cameras
18 everywhere. They know exactly where we drive. So that means
19 that you can roughly figure out where our house is, and that
20 means they can roughly figure out where all these trucks are.
21 But they never did. Why?

22 That's what they get paid for. They get paid for to find
23 those trucks. Make sure it's the right one. Make sure, but
24 he didn't do it. Sloppy police work. Didn't do it but he
25 could have, but he didn't. And now you have to wonder why.

1 Crime scene investigation matters. There's no
2 fingerprints. And we live in a modern age. 1,000
3 fingerprints don't matter. You know why? Because there's an
4 automated fingerprint database system out there called CODIS,
5 run by the FBI that we can run lots of prints through there.
6 Now, it's an invasive, laborious process where we might have
7 to rule out some things manually, but the system will do it on
8 its own. So you collect some prints, you submit it to CODIS,
9 and they'll tell you what to look for.

10 MR. ANDERSON: Objection. Argument. Facts not in
11 evidence.

12 THE COURT: Sustained.

13 MR. STEVENS: They have no DNA evidence. They have
14 nothing. They have no CSI whatsoever. What is that? Sloppy
15 police work. Again. They didn't do it. Why? Because they
16 could have.

17 Suspect wore a surgical mask. It's not a COVID-19 mask.
18 It's a surgical mask. That's what we saw in that picture. So
19 let's just dispense with this COVID-19 crap. People wear
20 surgical masks every day. It's called hospital workers. They
21 wear it every day to protect themselves.

22 But not in the lineup, and he could have. He could ask
23 the FBI to create a lineup for him. But he didn't. Talked
24 about that with him; didn't we? We did. Bad photo lineup.
25 It's not how the suspect was portrayed in the video. It's not

1 the suspect. It's a bad photo lineup.

2 Remember what Ms. Dotson told you. And these are quotes
3 because she said it right there in that witness box to all of
4 us. She's not confident. I don't know. You hear that on the
5 body camera video. I don't know. I don't know. I don't know
6 either. And she's not completely sure. You remember when she
7 testified about that? Now, she went back and forth a couple
8 of times. Now, pre-trial she said she was 100 percent sure.

9 MR. ANDERSON: Objection.

10 THE COURT: Sustained.

11 MR. STEVENS: She said she wasn't completely sure.
12 Right? But then in here she said well, I was 100 percent sure
13 at one point, but then I had no doubt, but then I wasn't also
14 completely sure. Right?

15 MR. ANDERSON: Objection. Mischaracterization of the
16 evidence.

17 MR. STEVENS: Actually, she did say that.

18 MR. ANDERSON: May we approach, Your Honor?

19 THE COURT: Counsel approach please. Yeah.

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

23 (Thereupon, counsel returned to counsel tables and the
24 following ensued:)

25 (Open court.)

1 MR. STEVENS: All right. Let's continue. That's a
2 faulty photo lineup process. She wasn't confident when she
3 initially picks up the lineup. Listen to the video. It's
4 right there. Ask for it. Listen to it again. She wasn't
5 confident. She testified to that.

6 But she was confident at the end of the lineup process.
7 That's what the State is real adamant about me saying. She
8 was confident at the end. She told us that. She testified
9 about that. She did.

10 And you know why she did? Because Det. Swiger told her
11 that she was right. Because he didn't follow police best
12 practices. Now, maybe the Rock Hill Police Department doesn't
13 care if you do double-blind administration, but I tend to care
14 about it. And Detective --

15 MR. ANDERSON: Objection. (Indiscernible) the evidence.

16 THE COURT: Sustained.

17 MR. STEVENS: And remember that. Det. Swiger told her
18 that she was right. They had a photo lineup. How does it
19 feel when someone tells you you're right? Think about that.
20 How does it feel when someone says you look nice? Feels good.
21 Feels good. Because you're right and you look nice. And that
22 matters.

23 I'm going to throw some technical stuff up there. Bear
24 with me. I apologize. That's a definition. The tendency to
25 interpret new evidence as confirmation of one's existing

1 beliefs or fears. That's called bias. It's confirmation
2 bias. That's what this is. Think about it. Telling her what
3 she wants to hear. You're right.

4 And the Flock camera, I've talked a lot about Flock
5 cameras. I don't really like Flock cameras. I think you all
6 know that now. I don't like Flock cameras because they're
7 watching us all the time.

8 Proof of nothing. It's proof that you're on the road at
9 a designated time and time matters. Time matters a great
10 deal. Proof of nothing.

11 Shoplifting at Belk was on May 17th. The man in a mask.
12 Flock camera shows a white truck driving in Camden on May
13 18th, 2022. But that's not a crime. Driving in Camden on May
14 18th, 2022? Not only that, it's the next day, 50 miles away.
15 You remember that Det. Swiger had a false police report
16 because he said that this happened on May 17th? Well, that's
17 false. Happened on May 18th.

18 Driving on Highway 521 near Camden is not a crime, unless
19 you don't like Camden. Then it might be. But really, it's not
20 a crime.

21 And to recap what I just said, no physical evidence, bad
22 photo lineup, questionable police reports, false and
23 inaccurate police reports. That comes right out of Det.
24 Swiger, false and inaccurate. Rush to judgment. What I asked
25 you to look at and think about the whole time. Ask yourself

1 one out of ten is good enough? That's good enough, ten
2 percent? That's all you need? Not completely sure, that's a
3 quote. Not confident, also a quote. I don't know, also a
4 quote.

5 MR. ANDERSON: Objection. Mischaracterization.

6 THE COURT: I'm going to overrule that objection.

7 MR. STEVENS: Because she said -- she said every single
8 one of those things except for the ten percent part because
9 she didn't know about that. She only knew what the police
10 showed her. She couldn't know about the ten percent is good
11 enough because they just said here you go. Here it is. But
12 she didn't know there was a possibility of other people.

13 And who cares about all this? You should. When the
14 prosecutor says who cares, you should. Who cares is wrong.
15 That's wrong. Every single one of you should care about this.
16 That's why you're here. It's not the way our judicial system
17 should be that we only get to look at one out of ten. That we
18 shouldn't care. That's wrong.

19 Michael Faile's here because the police picked one out of
20 possibly ten. They picked one. That's why he's here. That's
21 the only reason he's here. And that's not the way our
22 judicial system should be. I ask you to return a verdict of
23 not guilty for Michael Faile, not guilty. Thank you very
24 much.

25 THE COURT: All right. Ladies and gentlemen, that brings

1 us to the end of the arguments and the evidence in the case.
2 I'm going to ask you to retire to the jury room. Don't begin
3 your deliberations quite yet. Your signal to begin
4 deliberations will be when the bailiff brings you the exhibits
5 and the verdict form and my instructions. Okay?

6 And then one thing, there's a technical issue. You'll
7 have the videos back there and a computer to watch them on
8 with one exception. The video of the lineup where the
9 detective went out to Belk's. If you want to watch that, you
10 have to watch it in the courtroom. So it's perfectly okay.
11 Just let us know if you want to watch it. But all the other
12 videos you'll have back there in the jury room.

13 All right? Thank you, ladies and gentlemen. I need my
14 alternates to stay please.

15 (Whereupon, the jury begins to deliberate at 4:35 p.m.)

16 THE COURT: Any objection from the State to releasing the
17 alternates?

18 MR. ANDERSON: No objection.

19 THE COURT: From the defense?

20 MR. STEVENS: No objection, Your Honor.

21 THE COURT: Okay. Mr. McCartle (phonetic) and Ms.
22 Stevens (phonetic). Ladies and gentlemen, I appreciate your
23 patience and your attention. I can tell you paid very close
24 attention. It's been two long days, and we really appreciate
25 it. I know this is kind of frustrating. You've been here all

1 the two days and you don't get to see the verdict.

2 But nevertheless, your service is complete. You are
3 welcome to stay if you want to. If you want to see what the
4 verdict -- you can have a seat out there and wait for the
5 verdict like the attorneys. But you're also -- if you want to
6 head home and see your family, I totally understand. You are
7 free to go. Your service is complete.

8 So on behalf of the State of South Carolina and York
9 County, thank you very much. You're now released from all
10 those restrictions. If you want to talk to people at home or
11 whoever about what happened in court, you're free to do so.
12 Thank you very much, ladies and gentlemen.

13 Counsel, I think y'all have already checked on the
14 exhibits. Right? That's everything.

15 MR. STEVENS: Checked and doublechecked.

16 THE COURT: Okay. I have got the verdict form here, and
17 clip the --

18 (Counsel checking exhibits.)

19 THE COURT: All right. On top. If you could hand them
20 to the bailiff.

21 And if you'd just tell them when you bring them back
22 there they may begin deliberations. Thank you, sir.

23 MR. STEVENS: I put them in order, Matt.

24 MR. ANDERSON: I don't have any objection.

25 THE COURT: All right. We will be at ease.

1 (Recess.)

2 THE COURT: Yes, sir.

3 MR. ANDERSON: I did not realize until I walked out in
4 the hallway that one of the alternate jurors was a witness on
5 a case that I prosecuted. I did not recognize him when I
6 seated him as an alternate. The State's position is there's
7 no prejudice to the defendant because he is --

8 THE COURT: For the record, that would be Mr. McCartle,
9 juror 167.

10 MR. ANDERSON: That's correct.

11 THE COURT: Okay. Anything you want to put on the
12 record, Mr. Stevens?

13 MR. STEVENS: Yes, Your Honor. I'd actually ask that you
14 inquire if the juror didn't understand the question about
15 whether you knew the prosecutor. I think there was a clear
16 question in voir dire. I'm just curious why that answer --

17 THE COURT: Well, I mean the question though is do you
18 have a close personal or social relationship or related by
19 blood or marriage, or have you been prosecuted or been
20 represented by. And it would not be any of those questions.

21 MR. STEVENS: I think there's something else though in
22 there. And I don't have those with me, Judge.

23 THE COURT: I don't ask anything like have you ever met.

24 MR. STEVENS: But there's no -- because I know -- maybe
25 you took out the acquainted part or that you'd met them

1 before.

2 THE COURT: I never ask acquaintance because that --
3 yeah.

4 MR. STEVENS: Well then if that wasn't asked then I have
5 nothing -- I don't think it's prejudicial because it is an
6 alternate but, if it was the jury panel, I think we'd have a
7 problem.

8 THE COURT: I agree. If it was on the jury panel it
9 would be a -- we'd be all pulling out Westlaw. All right.
10 All right, so no motion from the defense?

11 MR. STEVENS: No, Your Honor.

12 THE COURT: All right. We'll be back at ease. Thank
13 you.

14 (Recess.)

15 Pizza's been ordered? The clerk's office are on their
16 way back upstairs, and it'll be just a second. I see we're
17 waiting for Mr. Faile as well.

18 (Pause.)

19 (Whereupon, the jury came into open court at
20 approximately 5:37 p.m.)

21 THE COURT: All right. Madam foreperson, I understand
22 you've reached a verdict. If you don't mind, fold that in
23 half and hand it to the bailiff please.

24 Thank you, sir.

25 Defendant please rise.

1 And madam clerk, publish the verdict please.

2 THE CLERK: State of South Carolina v. Michael Lindsay
3 Faile, indictment number 2022-GS-46-03416, we the jury by
4 unanimous consent find the defendant Michael Lindsay Faile, as
5 to the charge of shoplifting, guilty. Dated and signed by the
6 foreperson.

7 THE COURT: Ask the jurors if it's still their verdict.
8 Do the farther first. Then I'll ask you.

9 THE CLERK: Is this still your verdict?

10 THE JURY FOREPERSON: Yes.

11 THE COURT: Okay. Mr. Stevens, would you like the jurors
12 polled individually?

13 MR. STEVENS: Yes, I would.

14 THE COURT: All right.

15 Ladies and gentlemen, I'm going to ask you to stand up.
16 And what's going to happen now is the clerk is going to ask
17 you one at a time is that your -- do you agree with the
18 verdict basically. So go ahead and stand up, and then once
19 she asks you, you can sit down. Just make sure we don't miss
20 anybody. Okay?

21 THE CLERK: Juror Number 8, is this still your verdict?

22 JUROR NO. 8: Yeah.

23 THE CLERK: Please be seated.

24 Juror Number 10, is this still your verdict?

25 JUROR NO. 10: Yes, ma'am.

1 THE CLERK: Please be seated.
2 Juror Number 34, is this still your verdict?
3 JUROR NO. 34: Yes, ma'am.
4 THE CLERK: Juror Number 44, is this still your verdict?
5 JUROR NO. 44: Yes, ma'am.
6 THE CLERK: Please be seated.
7 Juror Number 89, is this your verdict?
8 JUROR NO. 89: Yes, ma'am.
9 THE CLERK: Please be seated.
10 Juror Number 106, is this your verdict?
11 JUROR NO. 106: Yes, ma'am.
12 THE CLERK: Please be seated.
13 Juror Number 113, is this still your verdict?
14 JUROR NO. 113: Yes, ma'am.
15 THE CLERK: Please be seated.
16 Juror Number 125, is this still your verdict?
17 JUROR NO. 125: Yes, ma'am.
18 THE CLERK: Please be seated.
19 Juror Number 199, is this still your verdict?
20 JUROR NO. 199: Yes, ma'am.
21 THE CLERK: Please be seated.
22 Juror Number 211, is this still your verdict?
23 JUROR NO. 211: Yes, ma'am.
24 THE CLERK: Please be seated.
25 Juror Number 228, is this still your verdict?

1 JUROR NO. 228: Yes, it is.

2 THE CLERK: Please be seated.

3 Juror Number 233, is this still your verdict?

4 JUROR NO. 233: Yes, ma'am.

5 THE CLERK: Please be seated.

6 Thank you.

7 THE COURT: All right. Thank you, ladies and gentlemen.

8 All right. Ladies and gentlemen, that concludes your service.

9 I know y'all worked very hard. You paid close attention, and

10 I really appreciate that. So on behalf of the State of South

11 Carolina and York County, thank you very much. Your service

12 is complete for the week. You're released from all those

13 restrictions now, so if you would like to talk to anyone about

14 the case, you're free to do so. It's possible the lawyers may

15 contact you in some way. Lawyers want to get better at their

16 jobs like anyone else, and they may ask you what they said

17 that you liked or didn't like. You're under no obligation to

18 talk to them, but if you want to, you can. You can talk to

19 anyone else, friends, family, anybody. You're under no

20 restrictions anymore. All right? Any questions, ladies and

21 gentlemen? All right.

22 I'm going to do sentencing tomorrow morning at 9:30. So

23 if any of you want to come back to see the sentencing, you are

24 welcome to do that, but you don't have to. Your service is

25 complete. Thank you very much, ladies and gentlemen.

1 Oh, I'm sorry. Madam foreperson, if could approach,
2 please. I just need you on the indictment there, you just
3 need to write guilty and sign it and date it. All right. Can
4 I see the -- all right. Yeah. All right. Looks great.

5 Ladies and gentlemen, thank you very much. Just follow
6 the bailiff out. I appreciate your service. Now, if you'd
7 like to come back tomorrow at 9:30, you're welcome to do that.

8 (Whereupon, the jury exited the courtroom at 5:41 p.m.)

9 THE COURT: Mr. Faile, I'm going to ask the deputies to
10 take you into custody. We'll do sentencing at 9:30 tomorrow.

11 Anything from the defense? All right. It's a well-tried
12 case on both sides, gentlemen. I appreciate that. We'll see
13 you back at 9:30 tomorrow for sentencing.

14 (End of Transcript of Record)

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CERTIFICATE OF TRANSCRIBER

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State of South Carolina)
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I, TAMARA BENTZUR, a court-approved transcriber, do
hereby certify that the foregoing is a true, accurate and
complete Transcript of Record of the proceedings had and
evidence introduced in the trial of the captioned case,
relative to appeal, in the Court of General Sessions for York
County, South Carolina, on the 21st day of June, 2023.

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

September 5, 2023



Tamara Bentzur, CET-824
Transcriber

State of South Carolina	)	
	)	Circuit Court
<u>County of York</u>	)	2022-GS-46-03416

State of South Carolina	)	
	)	
vs.	)	Transcript of Record
	)	Volume III of III
Michael Lindsey Faile	)	Pages 351 - 364

June 22, 2023
York, South Carolina

B E F O R E:

The Honorable William A. McKinnon, Judge.

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

William Anderson, Assistant Solicitor
Attorney for the State

Roger Stevens, Public Defender
Attorney for the Defendant

Heidi Jolliff
Transcriber

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I N D E X

Sentence 362

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E X H I B I T S

NO.	DESCRIPTION	ID.	EV.
C-6	Certified shoplifting conviction		354
C-7	Certified grand larceny conviction		354
C-8	Certified receiving stolen goods conviction		354

1 MR. ANDERSON: Sir, may it please the Court. We're here
2 for a sentencing of Mr. Faile. And first things first, the
3 State would like to make a couple of certified convictions
4 court's exhibits.

5 THE COURT: All right.

6 MR. ANDERSON: So I believe it will be Court's Exhibits
7 6, 7, and 8. And Court's Exhibit 6 is four pages. Court's
8 Exhibit 7 is two pages. And Court's Exhibit 8 is two pages.
9 And just for purposes of the record, Court's Exhibit 6 is the
10 certified shoplifting conviction, Court's Exhibit 7 is a
11 certified petty larceny conviction, and Court's Exhibit 8 is a
12 certified receiving stolen goods conviction.

13 Do you want to look at these, (indiscernible)?

14 MR. STEVENS: You already supplied those.

15 MR. ANDERSON: Yeah, you've got (indiscernible), right?

16 MR. STEVENS: Yeah. Yeah. No, I've seen those in
17 discovery.

18 MR. ANDERSON: May I approach, Judge?

19 THE COURT: Please.

20 MR. ANDERSON: Thank you, sir.

21 (WHEREUPON, Court's Exhibit Nos. 6-8 were received into
22 evidence.)

23 THE COURT: All right. Yes, sir, Mr. Anderson?

24 MR. ANDERSON: Actually, Judge, can I have one minute?

25 THE COURT: Yes, sir.

1 (Pause.)

2 MR. ANDERSON: Yes, sir. May it please the Court. So I
3 know I handed up a copy of Mr. Faile's prior criminal history.
4 That's been provided to the defense.

5 The State would just like to point out a few things for
6 Your Honor's consideration. It looks like he has a little bit
7 of a prior record going pretty far back within around 2012.
8 He starts to pick up a string of burglaries and property
9 crimes. He gets put on probation a couple times, and he does
10 about two years in the Department of Corrections in 2012 for a
11 burglary conviction.

12 And then in 2020, the Court would like to point out that
13 Mr. Faile was in front of Your Honor in Lancaster County on
14 three burglary counts, a petty larceny enhanced, and a
15 receiving stolen goods enhanced. You sentenced Mr. Faile at
16 that time to ten years concurrent on those charges. He did
17 have a large amount of time served credit. I don't know if
18 that was due to COVID. But then once he gets released from
19 the Department of Corrections in 2021, he picks up an ABHAN
20 fairly quickly after that in Lancaster County. I believe that
21 was a stabbing after speaking with Assistant Solicitor Mike
22 Burch from Lancaster. That's still pending.

23 He picked up these two -- I guess these three incidents
24 in this case. The shoplifting's from Belk. He then in --
25 while out on bond for these shopliftings, in August of 2022,

1 he picks up a shoplifting enhanced out of Richland County.
2 I've seen those three incident reports. I provided them to
3 defense counsel as well. Those dates are 6/1, 6/22, and
4 6/27/22. And I think that -- my understanding is I think
5 Richland just charged him one shoplifting enhanced, very
6 similar to the cases here.

7 He does the same kind of thing that he does in -- he did
8 in York County. He walked into the store, he snipped some
9 purses, and walked out with them. So very similar facts. And
10 while out on bond for those shopliftings, he picked up a grand
11 larceny enhanced in Lancaster. That's pending. And then in
12 this year, in February of this year, he picked up some charges
13 relating to cutting off some catalytic converters.

14 So the State would just like to point out that he's
15 continuously kind of a revolving door of charges. When he
16 bonds out, he immediately kind of goes back to his same ways.
17 I would like to --

18 THE COURT: I don't think I can take that into account at
19 sentencing, though.

20 MR. ANDERSON: Yes, sir.

21 THE COURT: Those are pending charges.

22 MR. ANDERSON: Yes, sir. I understand.

23 THE COURT: It has to be (indiscernible).

24 MR. ANDERSON: Yes, sir. The State would like to point
25 out that is a parole-eligible offense, as Your Honor knows.

1 He'll be parole-eligible at a quarter. He'll max out at 50
2 percent. So even though -- whatever you sentence him to, he
3 will be parole-eligible fairly quickly, and the State would
4 just ask that you'd give him the maximum sentence you think is
5 appropriate, because he clearly will continue -- the State's
6 position is he will continue to shoplift and pick up violent
7 crimes.

8 THE COURT: And what are you asking for (indiscernible)?

9 MR. ANDERSON: I mean, Your Honor, looking at his prior
10 record, it's the State's position that ten years is
11 appropriate.

12 THE COURT: Okay. Mr. Stevens?

13 MR. STEVENS: This is difficult, Judge. I -- you're -- I
14 believe that you're correct that the pending charges can't be
15 held against him, because he hasn't been convicted of those
16 charges. So while they're -- it's interesting, it can't be
17 held against him, because he hasn't been convicted.

18 He does have a criminal history, and he's -- he'd like to
19 address the Court as well, about his own -- about himself and
20 his life and his family.

21 THE COURT: I -- and of course, most of the time you see
22 people commit crimes as younger people, and then they kind of
23 gradually mellow out. And it looks like he had a possession
24 of marijuana and a public disorderly conduct in '82. And his
25 next conviction was 19 years later. Well, and then there was

1 some string of burglaries.

2 MR. STEVENS: And I'd like to give my client a chance to
3 speak to you about that. And I just also want to point out on
4 the record that the State and I discussed it, and the State's
5 willing to dismiss the other shoplifting charge in this case
6 because of the -- and we appreciate that.

7 MR. ANDERSON: Yeah, that's correct.

8 MR. STEVENS: I appreciate that. And I also want to
9 point out that my client is a caretaker of his 83-year-old
10 mother. She was here in court on Monday, but she couldn't
11 stay because the process made her ill. And I can understand
12 that. But he wants me to point out that she was here and he
13 does have responsibilities for his mother. And then I'd like
14 to have -- I'll let him get a chance to speak, if that's okay.

15 THE COURT: How much time-served credit on this one?

16 MR. STEVENS: My understanding is very little. We'll
17 double-check on that, though, because I'm pretty sure he
18 bonded almost immediately. And then one more thing before I
19 let Mr. Faile speak. This is a -- I believe -- what was the
20 loss figure in this case, 700 dollars?

21 MR. ANDERSON: Something like that, yeah.

22 MR. STEVENS: With a loss figure of 700 dollars, I don't
23 see how -- I understand that the State of South Carolina
24 determines property thefts to be significant. I'm not saying
25 that this is not significant, especially considering the

1 record that Mr. Faile has. However, I find it difficult to
2 stand here and advocate or support that kind of sentence for
3 700 dollars. And I would ask the Court to take that into
4 consideration. I know this is a difficult process, but I'd
5 ask you to take into consideration whether ten years is an
6 appropriate sentence for 700 dollars. Nobody was hurt during
7 this process. And the other things that were mentioned, he's
8 not been convicted of. And I'm -- me, personally, and as
9 advocate for my client, I can't see how ten years is an
10 appropriate sentence for 700 dollars. And with that, I'd like
11 to give Mr. Faile an opportunity to speak.

12 MR. ANDERSON: Before Mr. Faile speaks, can I reply to
13 this 700 dollar remark, briefly?

14 THE COURT: Well, let -- we'll let Mr. Faile --

15 MR. ANDERSON: Okay.

16 THE COURT: -- speak, and then you can reply to
17 everything (indiscernible).

18 THE DEFENDANT: Your Honor, I know I've made some
19 mistakes in my life, and I had a bad head injury back in '03.
20 I spent 29 days in a coma, and I had feeding tubes, throat cut
21 (indiscernible). And I -- I know sometimes I feel like my
22 brain don't work like it used to. And I make -- I make some
23 decisions, and I don't realize that they're as bad as they are
24 until I'm already in trouble. And I've had -- I've had
25 problems with -- with drugs off and on in -- in my life. But

1 mostly my brain injury, it's got me crippled. I'm on
2 disability. I'm not allowed to work anymore. And it's all I
3 can do to take care of my mama. She lives with me.

4 THE COURT: Sir, you said the brain injury was in 2003?

5 THE DEFENDANT: Yeah.

6 THE COURT: That was two years after your first burglary
7 conviction. What caused you -- I mean, you must have been
8 nearly 40 years old when you got that first burglary. What
9 happened?

10 THE DEFENDANT: I -- I don't even remember that, Judge,
11 to be honest with you. I mean, I don't even remember barely
12 as which ones --- what you're talking about, and I'm serious;
13 I don't remember it.

14 THE COURT: Two counts of burglary in the third degree,
15 and you got probation back in 2001.

16 THE DEFENDANT: I forgot.

17 THE COURT: Wasn't it the first time you'd ever been
18 arrested for anything other than small possession of
19 marijuana? Do you remember that?

20 THE DEFENDANT: No, I don't. My brain injury, Judge,
21 I -- I -- I don't. But I think I'd take care of my mom. My
22 mom just almost -- almost died. I mean, she has no one else.
23 And I'm scared something's going to happen to her if I'm not
24 there. And I just ask the Court to have mercy.

25 THE COURT: Anything else, Mr. Stevens?

1 MR. STEVENS: No, sir.

2 THE COURT: Reply from the State?

3 MR. ANDERSON: Yes, sir, just briefly. So I know -- I
4 don't know how much Your Honor can consider of this, but I did
5 have lengthy discussions; I know Mr. Stevens had discussions
6 with Ms. Allison (phonetic) outside of court as well. Mr.
7 Faile was part of a larger ring of shoplifters that had taken
8 Belk for thousands of dollars in the aggregate. So this --
9 and I know there were only three instances in this case --
10 that dealt with this case specifically, but if you look at
11 the -- that and the State's proved by clear and convincing
12 evidence the other two priors, it was a much more significant
13 amount than just the --

14 THE COURT: I don't (indiscernible) that into account.

15 MR. ANDERSON: Yes, sir. I understand that.

16 THE COURT: (Indiscernible). Appreciate it.

17 MR. ANDERSON: Yes, sir. And then the State's conflicted
18 because Mr. Faile's is asking for mercy here in this case, but
19 the State's position is that he still hasn't taken
20 responsibility for his actions. I mean, he's just making
21 excuses.

22 THE COURT: Do you all have time served calculated?

23 MR. ANDERSON: Yes, sir. Four days is what I --

24 THE COURT: (Indiscernible)?

25 MR. STEVENS: No, sir, no objection.

1 THE COURT: I've given this matter considerable thought,
2 including during the trial just in case Mr. Faile was
3 convicted. I mean, Mr. Faile, I mean (indiscernible) you have
4 an unusual record because for almost 20 years as an adult, you
5 didn't have any problems at all. And then you started
6 committing property theft, property crime, and you got a ten-
7 year sentence in 2020. It looks like you had a significant
8 amount of time-served credit. You were released pretty
9 quickly on that.

10 And this, I mean, it -- the State' sentence
11 (indiscernible) is zero to ten years for shoplifting with your
12 kind of history. And it is -- I mean, it -- I mean, this was
13 not a spur of the moment decision. You came in the store with
14 wire cutters, clipped the stuff (indiscernible). Taking all
15 that into account, but also taking into account that it is --
16 in the end, what you're convicted of is stealing less than
17 1,000 dollars.

18 SENTENCE

19 THE COURT: Sentence of the Court's going to be four and
20 a half years, 54 months. The State of South Carolina v.
21 Michael Lindsey Faile, indictment 2022-GS-46-3416, charged
22 with shoplifting, property crimes enhancement. Sentence of
23 the Court is Mr. Faile is committed to the custody of
24 Department of Correction for 54 months, that's 5-4 months,
25 with credit for four days already served.

1 MR. ANDERSON: Thank you, Judge.

2 MR. STEVENS: Okay. Well, take care of yourself.

3 (End of Transcript of Record)

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Heidi Jolliff, CDLT-292
Transcriber

**ROCK HILL POLICE
PATROL DIVISION PHOTOGRAPHIC LINE-UP**

VIEWER: You will be asked to look at a group of photographs. The fact that photos are shown to you should not influence your judgment in any way. You should not conclude nor guess that the photographs contain the picture of the person who committed the crime. You do not have to identify anyone. It is just as important to free innocent persons from suspicion as to identify guilty parties. Keep in mind that hair styles, beards and mustaches are easily changed. Please do not indicate to other witnesses that you have or have not made an identification.

I have freely and voluntarily, without threats or promises, viewed a photographic line-up as shown by the officer listed below. The officer in no way suggested any particular photograph, and I was advised the line up may not contain the responsible party. I am positive, without a doubt, that the person I picked is the responsible party. I have initialed the attached photographic line-up.

Witness: Monica Dotson Monica Dotson
Signature Print Name

Officer: Darin Swiger Darin Swiger
Signature Print Name

After viewing the photographic line-up, I was unable to positively identify any particular photo as being the person responsible for the crime committed. I have initialed the attached photographic line-up documenting my review for possible responsible parties.

Witness: _____
Signature Print Name

Officer: _____
Signature Print Name

Case Number: _____

Date: _____

Time: _____



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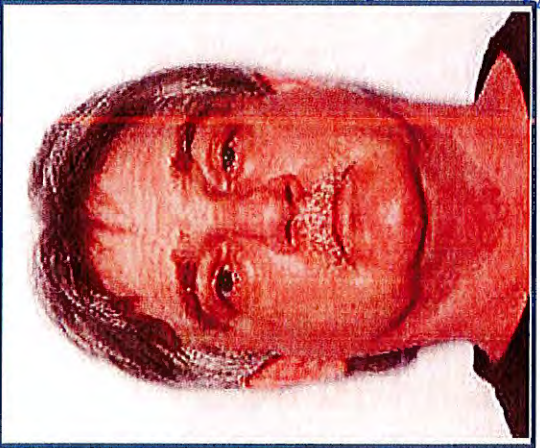
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DOCKET NO. 2022-GS-46-03416

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

AUGUST 18, TERM 2022

THE STATE

VS.

MICHAEL LINDSEY FAILE

INDICTMENT FOR

SHOPLIFTING - ENHANCEMENT

SC Code: § 16-13-0110(A) and 16-1-57
CDR Code: 2877

WITNESSES

RHPD

Witnessing Officer: Price

ARREST WARRANT NUMBER

2022A4620301274

ACTION OF GRAND JURY

TRUE BILL

Heather Bochimski

Foreperson of Grand Jury

Date: 8/18/2022

VERDICT

Guilty

Debra J. Jager

Foreperson of Petit Jury

Date: 6/21/2023

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA
COUNTY OF YORK

INDICTMENT

CERTIFIED TRUE COPY
2023 JUN 27 AM 8:54
DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC

At a Court of General Sessions, convened on August 18, 2022, the Grand Jurors of York County present upon their oath:

SHOPLIFTING - ENHANCEMENT

The defendant, Michael Lindsey Faile, did on or about May 17, 2022, in York County, take possession of, carry away, transfer from one person to another or from one area of a store to another area, or cause to be carried away or transferred any merchandise valued at less than two thousand dollars (\$2,000) displayed, held, stored, or offered for sale by Belk Department Store with intent to deprive Belk Department Store of the possession, use, or benefit of the merchandise without paying full retail value, and said defendant has been convicted of two or more offenses for which the term of imprisonment is contingent upon the value of the property involved, all in violation of Sections 16-13-0110(A) and 16-1-57, *Code of Laws of South Carolina* (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


WILLIAM S. ANDERSON
ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF YORK

STATE

VS.

ORIGINAL

IN THE COURT OF GENERAL SESSIONS

INDICTMENT CASE#: 2022-GS-46-03416MICHAEL LINDSEY FAILE

AKA:

Race: W Sex: M Age: 59DOB: [REDACTED] SS# [REDACTED]Address: [REDACTED] Kershaw Camden HighwayCity, State, Zip: Kershaw, SC 29067DL#* [REDACTED] SID# SC00375618A/W#: 2022A4620301274Date of Offense: 05/17/2022S.C. Code §: 16-13-0110(A) and 16-1-57CDR Code #: 2877

SENTENCE SHEET

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the above indictment comes now the Defendant who was

☒ CONVICTED OF or ☐ PLEADSTO: Shoplifting - Enhancement (NMT 10 years)In violation of § 16-13-0110(A) and 16-1-57 of the S.C. Code of Laws, bearing CDR Code # 2877

☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ § 17-25-45
(CSC w/minor 1st or CSC w/minor 3rd)

The charge is: ☒ As indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (def.'s initials)

The plea is: ☐ Without Negotiations or Recommendation. ☐ Negotiated Sentence. ☐ Recommendation by the State.

ATTEST:

s William S. Anderson	104590	s Michael Lindsey Faile	s Roger M. Stevens	105863
Solicitor	SC Bar #	Defendant	Attorney for Defense	SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Correction ☐ County Detention Center,for a determinate term of 54 days/months/years/Time Served ☐ Youthful Offender Act not to exceed ___ years

and/or to pay a fine of \$____; provided that upon the service of ___ days/months/years/Time Served 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.

The sentence shall run

☐ 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 SCDOC☐ days/months☐ To include time spent on monitored house arrest prior to trial and sentencing.☐ The Defendant Shall be Released from County Detention Center.

Pursuant to 18 U.S.C. § 922 and § 16-25-30 it is unlawful for a person convicted of a violation of § 16-25-20 or § 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ PTUP after _____ months/years

And Other Terms Listed Below:

- ☐ Substance Abuse Counseling ☐ Completion of GED ☐ Random Drug/Alcohol Testing
- ☐ Attend Voc. Rehab. Or Job Corp ☐ No Contact with Victim ☐ Domestic Violence Intervention Program
- ☐ Mental Health Counseling ☐ May serve W/E beginning: _____
- ☐ Sex Offender Registry pursuant to S.C. Code § 23-3-430 ☐ Public Service Employment _____ days/hours
- ☐ Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.
- ☐ Other: _____

☐ RESTITUTION ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total \$ _____ plus 20% fee: _____ \$ _____

Payment Terms: _____ ☐ Set by SCDPPPS

Recipient: _____

*Fine:

Fine may be pd. in equal consecutive weekly/monthly pmts. of	\$ _____ Beginning	\$ _____
§14-1-206 (Assessments 107.5%)		\$
§14-1-211 (A)(1)(Conv. Surcharge)	\$100	\$ 100
§14-1-211 (A)(2)(DUI Surcharge)	\$100	\$
§56-5-2995 (DUI Assessment)	\$12	\$
§56-1-286 (DUI Breath Test)	\$25	\$
§14-1-212 (Law Enforce. Funding)	\$25	\$ 25
§14-1-213 (Drug Court Surcharge)	\$150	\$
§34-11-70(b)and(c), and 34-11-90(c)and(d) (Admin Fraud Check Court Costs)	\$41	\$
§50-21-114 (BUI Breath Test Fee)	\$50	\$
§56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
3% to County (if paid in installments)	TBD	\$
☐ Appointed PD or appointed other counsel, Proviso requires \$500 be paid to Clerk during probation and shall be collected before any other fees	\$500	\$
☐ § 17-3-30(B) Unpaid Application Fee to be paid to the Public Defender Fund	TBD	\$
TOTAL		\$ 125.00

Clerk of Court/Deputy Clerk: David Hamilton

Court Reporter: DCRP

Presiding Judge:

Judge Code:

Sentence Date:

McKinnon 2761

June 24, 2023

ARREST WARRANT
2022A4620301274
FILED-RECEIVED
JUN 28 AM 9:25
C.C.P. & GS
YORK COUNTY, SC

STATE OF SOUTH CAROLINA
☐ County/ ☒ Municipality of
ROCK HILL

THE STATE
against

FAILE, MICHAEL LINDSEY
Address: KERSHAW CAMDEN HWY
KERSHAW SC 29067
Phone: 000-000-0000 SSN:
Sex: M Race: W Height: 507 Weight: 180
DL State: SC DL#:
DOB:
Agency ORI #: 460300
Prosecuting Agency: RHPD
Prosecuting Officer: DARIN SWIGER
Offense: SHOPLIFTING 2ND (\$2000 OR LESS) -

Code/Ordinance Sec. 16-13-0110(B) (1)
This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality of
is to be arrested and brought before me to be
dealt with according to law.

Signature of Judge
Date: (L.S.)

RETURN
A copy of this arrest warrant was delivered to
defendant Michael Faile
on 6/3/22
Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:
ROCK HILL MUNICIPAL COURT
ROCK HILL SC 29730

STATE OF SOUTH CAROLINA
☐ County/ ☒ Municipality of
ROCK HILL

Personally appeared before me the affiant DARIN SWIGER
being duly sworn deposes and says that defendant FAILE, MICHAEL LINDSEY
did within this county and state on 05/17/2022 violate the criminal laws of the

State of South Carolina (or ordinance of ☐ County/ ☒ Municipality of ROCK HILL)
in the following particulars:

DESCRIPTION OF OFFENSE:
SHOPLIFTING 2ND (\$2000 OR LESS) - 16-13-0110(B) (1) 2022

I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:

On May 17, 2022 at 6:15 p.m., while at the Belk Store at 2251 Dave Lyle Boulevard, which is in the city limits of Rock Hill, South
Carolina and the county of York, the defendant did willfully and unlawfully violate South Carolina Code of Laws, Sec. 16-13-110,
Shoplifting 2nd Offense less than \$2,000, by cutting the security cords and stealing a Brahmim purse and a Michael Kors backpack
with a total value of \$538.00. The defendant left the store without paying for these items and fled. The defendant was identified in
a photo lineup by the complainant.

**The above offense also violate statute 16-1-57, Property Crimes Enhancement, in that the defendant has 5 prior convictions for
Shoplifting 1st on 01/11/16, Petty Larceny on 02/18/20, Receiving Stolen Goods on 02/18/20, Petty Larceny on 10/12/20, and
Receiving Stolen Goods on 10/12/20.**
2205170547

Signature of Affiant
STATE OF SOUTH CAROLINA
☐ County/ ☒ Municipality of
ROCK HILL
Affiant's Address ROCK HILL MUNICIPAL COURT
Affiant's Telephone 00000
803-329-5695

ARREST WARRANT
TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:
It appearing from the above affidavit that there are reasonable grounds to believe that
on 05/17/2022 defendant FAILE, MICHAEL LINDSEY
did violate the criminal laws of the State of South Carolina (or ordinance of ☐ County/ ☒ Municipality of ROCK HILL) as set forth below:
DESCRIPTION OF OFFENSE:
SHOPLIFTING 2ND (\$2000 OR LESS) - 16-13-0110(B) (1)

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said
defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to
the defendant at the time of its execution, or as soon thereafter as is practicable.

Sworn to and subscribed before me
on 5-20-2022
Signature of Issuing Judge
Judge Code: 8340
Judge's Address ROCK HILL MUNICIPAL COURT
ROCK HILL SC 29730
Judge's Telephone 803-329-5695
Issuing Court: ☐ Magistrate ☒ Municipal ☐ Circuit

ORIGINAL

ENTERED

2022 JUN 27 AM 8:57
DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC

BAIL set by

Judge _____
 on _____
 Type and Amount: _____
 Name of Surety: _____

PRELIMINARY HEARING held by

Judge _____
 on _____
 Defense Attorney: _____
 Decision: _____

DISPOSITION before

Judge _____
 on _____
 by _____
 (indicate jury trial, bench trial, plea, nol. pros., etc.)

Disposition: _____
 Sentence: _____

JURORS

WITNESSES

Name: _____
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 Telephone: _____
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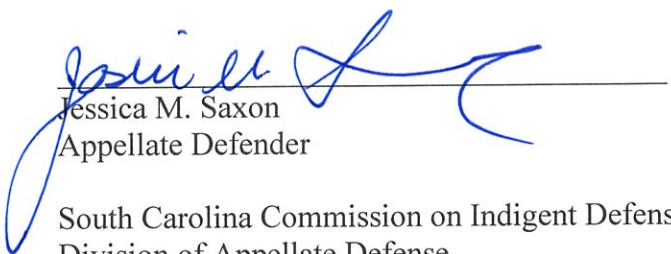
CODEFENDANTS

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with 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."

RECEIVED**Mar 12 2024****SC Court of Appeals**

Respectfully Submitted,



Jessica M. Saxon
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

ATTORNEY FOR APPELLANT

This 12th day of March, 2024.

RECEIVED

Mar 12 2024

SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from York County

Honorable William A. McKinnon, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

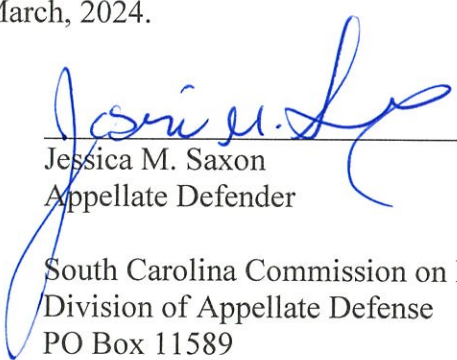
MICHAEL LINDSAY FAILE,

APPELLANT

APPELLATE CASE NO. 2023-001055

CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Record on Appeal in the above-referenced case has been served upon Mark Farthing, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS); and on Michael Lindsay Faile, #382387, at Wateree River Correctional Institution, PO Box 189, Rembert, SC 29128-0189, this 12th day of March, 2024.



Jessica M. Saxon
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

ATTORNEY FOR APPELLANT