

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM LANCASTER COUNTY

D. Craig Brown, Circuit Court Judge

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SC Court of Appeals

THE STATE,

RESPONDENT,

V.

INDIA SOWELL,

APPELLANT

APPELLATE CASE NO. 2012-213675

RECORD ON APPEAL

LANELLE CANTEY DURANT
Appellate Defender

ALAN WILSON
Attorney General

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

DEBORAH R.J. SHUPE
Senior Assistant Deputy Attorney General
Office of the Attorney General
PO Box 11549
Columbia, SC 29211

Attorney for Appellant

(803) 734-3727

Attorneys for Respondent

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STATE OF SOUTH CAROLINA
COURT OF GENERAL SESSIONS
COUNTY OF LANCASTER
2012-GS-29-902

State of South Carolina
vs.
India Sowell

Lancaster, South Carolina
August 15-16, 2012

Before the Honorable D. Craig Brown

APPEARANCES

For the State: Bill Nowiki
For the Defendant: Mark Grier

Reported by: Michael C. Watkins
Official Court Reporter

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PRETRIAL MOTIONS

1 THE COURT: All right. Mr. Nowiki?

2 MR. NOWIKI: Your Honor, this is in reference to case
3 number 2012-GS-29-902, State versus India Sowell, it's an
4 indictment for shoplifting and this is the case that will be
5 coming up for trial next. The first issue is notice, we
6 wish to try her in her absence. Ms. Sowell has been on our
7 trial list for this particular case for the July terms of
8 courts as well as this term of court and she has not shown
9 up for either term. Her bond paperwork, which I can submit
10 a copy to the Court --

11 THE COURT: All right.

12 MR. NOWIKI: There are actually three charges on the
13 bond, we're going forward on the M742807.

14 THE COURT: Is that on the first page?

15 MR. NOWIKI: Yes. Right under it says offense charged
16 1, it has it handwritten and then underneath, that it has the
17 M742807. On the second page it does have the acknowledgment
18 by the defendant, India Sowell, in particular the second
19 line is where it indicates that I understand and have been
20 informed that I have a right and obligation to be present at
21 the trial and should I fail to attend the court the trial
22 will proceed in my absence. And also it's my
23 understanding that -- let me go back. And also the bondsman
24 which is on the bond, Alliance Security Bail, that they were
25 contacted and were informed that Ms. Sowell was supposed to

PRETRIAL MOTIONS

1 be here today for trial and my understanding is that today
2 Ms. Sowell had contacted the public defender's office.

3 THE COURT: Today?

4 MR. NOWIKI: Today. I don't know if anybody talked to
5 her but she did contact the public defender's office.

6 THE COURT: Okay.

7 MR. NOWIKI: I believe also that Ms. Sowell has
8 actually met with Mr. Grier, I'm not exactly sure, I know it
9 was prior to the July term. It is our argument that she did
10 have prior notice on her bond, through her bailers as well
11 as discussions with her attorney. And I've had the bailiff,
12 Carl Knight, call her name out and.

13 THE COURT: Well, if you have done that, Mr. Knight,
14 why don't you come around here and be sworn.

15 (The bailiff was sworn.)

16 THE COURT: Go ahead and ask him whatever you want to
17 ask him, Mr. Nowiki.

18 MR. NOWIKI: Yes, sir. Mr. Knight, can you just tell
19 us your position here?

20 THE WITNESS: Court bailiff.

21 MR. NOWIKI: And did you have an opportunity to call
22 the name of India Sowell?

23 THE WITNESS: I did.

24 MR. NOWIKI: Where did you do that?

25 THE WITNESS: Three times outside in the courtroom

PRETRIAL MOTIONS

1 corridor.

2 MR. NOWIKI: Did you get any response?

3 THE WITNESS: No, sir.

4 THE COURT: When was that done? Today?

5 THE WITNESS: Just a few minutes ago, sir.

6 THE COURT: Being August 15th of 2012?

7 THE WITNESS: Yes, sir.

8 THE COURT: It's now approximately five after 1:00, so
9 about 15 minutes ago?

10 THE WITNESS: Yes, sir.

11 MR. GRIER: Well, Judge, the State has issued a bench
12 warrant and I certainly -- I'm asking it to be continued to
13 allow me to meet with her in jail.

14 THE COURT: That's not what I'm asking now. Do you
15 have any questions of Mr. Knight.

16 MR. GRIER: I'm sorry, Your Honor, I have none. I went
17 out and called myself.

18 THE COURT: Okay. Thank you, Mr. Knight. All right.
19 Now, I'll and happy to hear from you.

20 MR. GRIER: Your Honor, no bench warrant has been
21 issued. We have notified our client through the regular
22 channels of sending her notice of the trial list. I have
23 not met with her since she was released on bond I believe in
24 June, she hasn't contacted our office. We have attempted to
25 have her come in until today. We did -- my office been

PRETRIAL MOTIONS

1 attempting to call her, our only contact is through an aunt
2 and Ms. Sowell did call me today and I told her she needed
3 to come immediately.

4 THE COURT: And?

5 MR. GRIER: And I just went and looked for her, Your
6 Honor. Notwithstanding that, Judge --

7 THE COURT: Did you tell her we were picking a jury in
8 her case today?

9 MR. GRIER: Yes, sir. I told her that the trial was
10 scheduled and I needed her immediately to come up and speak
11 with me prior to.

12 THE COURT: And what was her response?

13 MR. GRIER: She said, "I'm coming," but I haven't heard
14 from her, Your Honor, and I don't know that perhaps there's
15 been some catastrophe. But going back to -- Judge, I would
16 just ask that you issue a bench warrant and allow me to give
17 her the most vigilant representation that I would be able to
18 give her and properly prepare using information she may
19 have, because I have not had the opportunity to discuss
20 defenses with her and go through the regular routine that I
21 think a client should have before they are tried. I'm
22 asking you to issue a bench warrant and allow me the
23 opportunity to meet with her prior to her being tried.

24 THE COURT: I don't know that I've ever had a defense
25 lawyer move for a bench warrant.

PRETRIAL MOTIONS

1 MR. GRIER: Your Honor, I don't think I have any other
2 remedy to. Certainly I'm asking that it be continued to
3 allows us, but most certainly if that's not going to be a
4 remedy that the Court sees as a possibility of a bench
5 warrant was issued, perhaps I could meet with her prior to
6 that being executed and get her in to court and deal with
7 this matter.

8 THE COURT: Anything else, Mr. Nowiki?

9 MR. NOWIKI: No, Your Honor.

10 THE COURT: Is the State moving for a bench warrant?

11 MR. NOWIKI: The State would move for a bench warrant
12 but we would probably wait to see what happens at the end if
13 you are --

14 THE COURT: Well, I'm going to issue a bench warrant if
15 she has been notified to be in court and she is not here.
16 Now, I'm going to issue a bench warrant right now. If at
17 the conclusion of the case, Mr. Grier, she is found not
18 guilty you certainly need to make a motion to have it lifted
19 and I will so grant it unless there are pending charges
20 which it appears that there are some other pending charges
21 against her which the odds are at that point I wouldn't, but
22 you can certainly make a motion. Now, with regards to us
23 going forward here today, under South Carolina law of State
24 versus Ravenele, 387SC449, the trial court is required to
25 make two findings, one is that the defendant received

PRETRIAL MOTIONS

1 notice, received notice of his right to be present, and two,
2 the warning that he would be tried in his absence should he
3 fail to attend. In State v. Ferry, which is 374SC92, that
4 particular case stands for the proposition that a bond
5 notice, which we have here as Court's Exhibit Number 1, that
6 a bond notice that provides notice of defendant to be tried
7 in his absence may serve as a reference of warning. So
8 first of all I do find that the defendant has been warned
9 that she will be tried in her absence, and that is related
10 to the second prong to what the Court must find, the first
11 prong about receiving notice of her right to be present and
12 it also advises to be present as well the bond advises him
13 on both. And I think under the law the bond notice is
14 sufficient notice to a defendant of his right -- or her
15 right to be present and that her failure to appear the case
16 will go forward and she will be tried in her absence.

17 MR. GRIER: Your Honor, to clarify the record because
18 you make a good point, it is novel for a defense attorney to
19 ask that a bench warrant be issued.

20 THE COURT: I know you weren't moving for it, I know
21 you weren't, and I certainly understand your position.

22 MR. GRIER: I think that will give me the best
23 opportunity to represent her were it continued.

24 THE COURT: My problem is if it were a situation
25 wherein continuances were granted in situations such as this

PRETRIAL MOTIONS

1 nobody would ever appear, bench warrants would be issued
2 left and right and it would jam up the court system more so
3 than it's already backlogged, and therefore while I
4 understand and if I were in your position today I would be
5 asking for the same thing and therefore grant the State's
6 request to move forward in her absence. And furthermore
7 with her contacting your office today and being informed
8 that her case was up for trial -- I don't know when you said
9 she contacted you.

10 MR. GRIER: We met at 11:15 in your office and when I
11 got back to my office she was on the phone and I spoke with
12 her at 11:20 to 11:25.

13 THE COURT: So it has been approximately two hours or
14 hour and 45 minutes ago. I just don't think there is
15 anywhere in Lancaster County that it would take an hour and
16 45 minutes to get here and therefore I grant the State's
17 motion to move forward with a trial in her absence. The
18 next matter is the Jackson vs. Denno.

19 MR. NOWIKI: And my officer is not here yet. He has
20 been contacted several times, had John Poovey here from the
21 sheriff's office made contact, had somebody go out to his
22 house, his car is not there, I'm assuming he's on his way.
23 I talked to him yesterday, I told him when to be here and
24 I'm sure he's going to be here as that I talked to him; I
25 just don't know what else to say right now. I don't think

PRETRIAL MOTIONS

1 the Jackson v. Denno would take very long.

2 THE COURT: It's not going to take long.

3 MR. NOWIKI: No, it's not, and I don't know what else I
4 can --

5 THE COURT: Well, advise me when he gets here.
6 Deputies, please see if you can get in touch with him.

7 MR. GRIER: Judge, may I respond to that information as
8 well?

9 THE COURT: Yes, sir.

10 MR. GRIER: Judge, I think I would under the
11 circumstances have a duty ask you to rule in favor of the
12 defense and suppress the evidence in this case as far as the
13 statements go and the fruit of the poisonous tree that was
14 obtained as the result of that. I think the State -- and
15 this is no fault on Mr. Nowiki, I believe he has been
16 diligent and this has been out of respect, but given that we
17 were summoned and my client didn't show up and there's
18 consequences for that, Your Honor, I think the State, you
19 know, has the same standard of following the instructions of
20 the Court. We were told that we would conduct this hearing
21 at 1:00 and we're present, ready willing and able to conduct
22 that hearing. I don't think the State due to no fault of
23 Mr. Nowiki is prepared to go forward and I'm asking you to
24 dismiss the case because the evidence that was obtained is
25 the result I believe of non-mirandized statements that were

PRETRIAL MOTIONS

1 fruit of the poisonous tree and I'm asking you to suppress
2 the evidence in this case and suppress all statements.

3 THE COURT: Mr. Nowiki, anything you would like to tell
4 me?

5 MR. NOWIKI: Your Honor, we have -- besides the officer
6 we do have the manager who was at the store who actually saw
7 the defendant put items into her purse and would testify
8 about that. I don't necessary think that would be -- I
9 still would like to have the opportunity for the officer to
10 come here and be able to do the hearing, but we do have the
11 manager who pretty much saw everything and can testify all
12 about that.

13 THE COURT: At this time I am going to respectfully
14 deny your request at this time. I'm not going to make a
15 decision about that until I hear the evidence. The case has
16 not been officially called, we are having pretrial matters.

17 (A recess was taken.)

18 THE COURT: All right. State ready to proceed?

19 MR. NOWIKI: State is ready Your Honor. State calls
20 Deputy Charles McKinnon from the Lancaster County Sheriff's
21 Office.

22 The witness, CHARLES MCKINNON, was first duly
23 sworn and testified as follows, on:

24 DIRECT EXAMINATION

25 BY MR. NOWIKI:

PRETRIAL MOTIONS

- 1 Q. Can you state your name for the record, please?
- 2 A. Charles McKinnon.
- 3 Q. And what is your occupation?
- 4 A. Deputy sheriff, Lancaster County.
- 5 Q. And how long have you been a deputy sheriff?
- 6 A. Three years.
- 7 Q. Any prior law experience, law enforcement experience
- 8 prior to being with the sheriff's office?
- 9 A. No, sir.
- 10 Q. What shift do you work?
- 11 A. A-shift.
- 12 Q. And were you working A-shift on April 11th of 2012?
- 13 A. Yes, sir.
- 14 Q. And A-shift, what time is that?
- 15 A. We work a swing shift so it's 6:00 in the morning until
- 16 6:00 in the evening on that particular day.
- 17 Q. On that day, April 11th, did you have an opportunity to
- 18 go to the Family Dollar?
- 19 A. Yes, sir. We responded there, got a call and responded
- 20 there on a shoplifting call.
- 21 Q. Okay. I'm going to show you what we have marked as
- 22 State's Exhibit 1 for identification. Let me show you that.
- 23 Do you recognize that?
- 24 A. Yes, I do.
- 25 Q. And what is it?

PRETRIAL MOTIONS

1 A. It's a picture of India Sowell.

2 Q. As far as India Sowell -- let me back up. You went
3 there for a shoplifting, right?

4 A. Yes, sir.

5 Q. Is the person on there, is that who you dealt with?

6 A. Yes, sir.

7 Q. All right. So you got to the Family Dollar, and what
8 did you come upon?

9 A. When I first arrived I spoke with the manager,
10 Chantelle Stewart, who pointed out Ms. Sowell as the one who
11 had the items, and when I approached I asked Ms. Sowell if
12 she had anything on her and at that point she pulled some
13 items out of her purse.

14 Q. Did she give a verbal response?

15 A. At that time she said, "Yeah," and started pulling some
16 items out.

17 Q. Who is present, you know, when you were asking the
18 question?

19 A. At that time it was me, Ms. Sowell and my lieutenant at
20 the time, Lieutenant Price.

21 Q. Was Ms. Sowell under any sort of influence of any drugs
22 or alcohol?

23 A. Not that I know of.

24 Q. Did she show any -- like signs of any sort of
25 disability or anything where she would be impaired in any

PRETRIAL MOTIONS

1 way from understanding what you were trying to do?

2 A. No, sir.

3 Q. Did you make any -- were there any threats or promises
4 or anything made to her?

5 A. No, sir.

6 Q. Was she read her Miranda rights?

7 A. No, sir.

8 Q. Did she say anything else?

9 A. No, sir. She identified herself as Nichole Sowell, she
10 was later identified as India Sowell.

11 Q. Were you able to confirm that that was India Sowell?

12 A. Yes, I was, when I got to the detention center.

13 Q. All right. After -- I guess you say she was taking
14 items out of you said her purse?

15 A. Yes, sir.

16 Q. And at what point did she get placed under arrest?

17 A. Once I was able to confirm the items she brought out of
18 her purse were from the store from the manager she was then
19 placed under arrest.

20 Q. Did you place her under arrest inside Family Dollar or
21 outside?

22 A. I handcuffed her and placed her under arrest inside
23 Family Dollar.

24 Q. Did she -- you transported her then to the detention
25 center?

PRETRIAL MOTIONS

1 A. Yes, sir.

2 Q. Any statements or anything or did she say anything all
3 of the way there?

4 A. No, she did not.

5 Q. And so you never mirandized her at all?

6 A. No, sir.

7 Q. And obviously -- well, you were wearing a badge and she
8 knew you were a law enforcement officer.

9 A. Yes, sir. I identified myself when I approached her,
10 "I'm Deputy McKinnon," when I approached her.

11 Q. As far as the statement, did she say anything other
12 than, "Yeah?"

13 A. No, not that I recall.

14 Q. And she started pulling items out?

15 A. Yeah. She pulled items out of her purse at that point.

16 Q. Did she pull out any items from any other place?

17 A. She also pulled I believe it was two quarts of oil out
18 of her bra.

19 MR. GRIER: Okay. That's all of the questions I have.

20 THE COURT: Mr. Grier?

21 MR. GRIER: May it please the Court?

22 CROSS EXAMINATION

23 BY MR. GRIER:

24 Q. Deputy, you were called by Family Dollar?

25 A. The manager of Family Dollar.

PRETRIAL MOTIONS

1 Q. Was that Ms. Stewart?

2 A. Yes.

3 Q. Were you in the area?

4 A. I was close to the area, yes.

5 Q. I've got a copy of the report and it says that when you
6 arrived you spoke to Ms. Stewart?

7 A. Yeah. Ms. Stewart was at the front of the store when I
8 walked in.

9 Q. And she gave you information about the reason you had
10 been called --

11 A. Yes, sir.

12 Q. -- Ms. Stewart did.

13 A. Yes, sir.

14 Q. Well, where was Ms. Sowell at?

15 A. She was actually at the counter paying for some items,
16 she was paying for some items.

17 Q. How quick was your response?

18 A. It was -- the call came in at 11:41, I actually arrived
19 on scene at 11:44.

20 Q. So once you spoke with Ms. Stewart you were prepared to
21 arrest Ms. Sowell.

22 A. I had to speak with Ms. Sowell first.

23 Q. Well, Ms. Stewart already had told you incriminating
24 things about Ms. Sowell, hadn't she?

25 A. She had told me she taken some items, yes.

PRETRIAL MOTIONS

1 Q. I think you testified that you went directly to
2 Ms. Sowell and you asked her if she had had items.

3 A. Only thing I asked her was, "Do you have anything on
4 you?" And that's when she started pulling some items out of
5 her purse.

6 Q. Well, you were in uniform obviously on duty, pulled up
7 in your car and everything?

8 A. Yes, sir.

9 Q. And so you believe she felt like she was free not to
10 answer you?

11 A. I'm not sure, I can't answer that question.

12 Q. Well, did you consider her under arrest at that time?

13 A. No, I did not consider her under arrest at that time.

14 Q. But you don't know whether she felt free to leave or
15 not.

16 A. No, I do not.

17 Q. But when you go up and ask people do they normally walk
18 off?

19 A. No, they do not.

20 Q. They don't feel like they're free to leave, do they?

21 A. I'm not sure, I can't answer for them.

22 Q. I understand. Now, but I'm reading the report, deputy,
23 and you say -- it says, "Deputy McKinnon spoke with the
24 suspect Nichole Sowell later identified as India Sowell."
25 Now, you didn't know her at all?

PRETRIAL MOTIONS

1 A. No, I did not.

2 Q. So you learned her identification as the result of this
3 meeting with her at the time Family Dollar Store.

4 A. Yes, sir.

5 Q. Or your contact with her resulted in you identifying
6 her at a later date?

7 A. No. She identified she's -- later on after she told
8 you she didn't have an ID on her, she told us her name was
9 Nichole Sowell first, then later on she identified herself
10 as India Sowell.

11 Q. Right. But her telling you that she's India Sowell
12 does not mean she is India Sowell, does it?

13 A. I understand that, right.

14 Q. You've had plenty of times where people tell you
15 somebody is one person and it turns out she's not.

16 A. Yes.

17 Q. The report says you spoke with the suspect who admitted
18 taking items. So you asked her if she had items.

19 A. Well, I asked her if she had anything on her and she
20 said yes and started bringing stuff out of her purse.

21 Q. And then she -- you say she admitted to taking the
22 items, so she did respond verbally to you?

23 A. She said, yes, and started bringing stuff out.

24 Q. Okay. And all of the items that were recovered she
25 volunteered those after you had asked her if she had the

PRETRIAL MOTIONS

1 items?

2 A. Yes, she volunteered the items.

3 MR. GRIER: That's all of the questions I have.

4 THE COURT: Anything else, Mr. Nowiki?

5 MR. NOWIKI: Briefly.

6 REDIRECT EXAMINATION

7 BY MR. NOWIKI:

8 Q. Did you have a chance to know how old Ms. Sowell is?

9 A. Thirty-five years of age.

10 MR. GRIER: I didn't understand that response, I
11 apologize.

12 THE WITNESS: Thirty-five years of age.

13 Q. And again, no coercion?

14 A. No, sir.

15 Q. She just said, "Yes," and that's all you asked her?

16 A. Yes, sir.

17 Q. And she wasn't under arrest.

18 A. No, not at that time.

19 Q. Not in custody?

20 A. Not at that time.

21 MR. NOWIKI: That's all?

22 MR. GRIER: Nothing else, Your Honor.

23 THE COURT: All right. Anything by way of argument,
24 Mr. Grier?

25 MR. GRIER: Yes, Your Honor. Judge, it's clear that

PRETRIAL MOTIONS

1 Ms. Sowell was confronted by law enforcement under
2 circumstances that would lead one to believe they were not
3 free to leave, which I think in effect is an arrest in terms
4 of what a reasonable person would believe. The officer has
5 stated he has never seen anybody walk off once they've
6 approached and started questioning them. I believe that
7 that was tantamount to an interrogation asking do you have
8 the items, as a result of her responses there were items
9 that were recovered and as a result of her response she was
10 taken and the identification flowed from the unlawful, I
11 believe, interrogation, Your Honor. I'm asking that you
12 exclude all of the evidence in the case, exclude the
13 identification through the officer, exclude any of the
14 statement that was made by Ms. Sowell or alleged to have
15 been made because I believe those were statements that --
16 that that is evidence that was generated by an interrogation
17 that should have been mirandized prior to her being
18 questioned about a crime, an alleged crime.

19 THE COURT: Mr. Nowiki, anything in response?

20 MR. NOWIKI: Your Honor, the officer had arrived on the
21 scene to a shoplifting, was informed of who potentially was
22 the suspect, all he did was go up to her and ask her a
23 simple question and her response was, "Yes," and she's the
24 one who started taking things out. It would be our position
25 it was voluntary, she was not being interrogated and there

PRETRIAL MOTIONS

1 was no need for her to be mirandized at that time.

2 THE COURT: Based upon what I've heard here today I do
3 not believe that this defendant was in custody based on the
4 testimony that was elicited from this witness stand. The
5 defendant was not in custody at the time that she was posed
6 with the question of whether or not she had anything on her,
7 her response was simply, "Yes." I do not believe that
8 her -- I believe her statement was voluntary, I do not
9 believe that it was obtained through any threats, force,
10 pressure or coercion and therefore I'm going to respectfully
11 deny the suppression motion, Mr. Grier.

12 (Start of Voir Dire.)

13 THE COURT: Ladies and gentlemen, we are going to pick
14 a jury in a case the state is ready to call. Mr. Nowiki,
15 are you ready to proceed at this time?

16 MR. NOWIKI: Yes, Your Honor.

17 THE COURT: Defense counsel, are you ready to proceed
18 as well?

19 MR. GRIER: Yes, sir, Your Honor.

20 THE COURT: Call your case, Mr. Nowiki.

21 MR. NOWIKI: Case 2012-GS-29-902, State vs. India Koren
22 Sowell, it's an indictment for shoplifting.

23 THE COURT: All right. Ladies and gentlemen, the State
24 of South Carolina is calling the case of the State versus
25 India Koren Sowell. The indictment in this case, ladies and

VOIR DIRE

1 gentlemen, reads that India Koren Sowell did in Lancaster
2 County on about April 11th, 2012 take possession of and
3 carry away, transfer from one person to the other or from
4 one area of the store or other retail mercantile
5 establishment to another area and cause the same to be done
6 merchandise, to wit; soap, mouthwash, transmission fluid
7 valued at \$2,000 or less, displayed, held, stored or offered
8 for sale by the Family Dollar with the intention of
9 depriving the merchant of the possession, the use and the
10 benefit of the merchandise without paying the full retail
11 value in violation of South Carolina Code of Laws 16-13-110.
12 The indictment, ladies and gentlemen, in this matter is
13 simply the charging document by which this case is brought
14 into this court, it is by no way evidence in this case. It
15 is by no way evidence in this case. The defendant,
16 Ms. Sowell, has pled not guilty to this offense, she has
17 pled not guilty to this offense, therefore the State of
18 South Carolina bears the burden of proving her guilt beyond
19 a reasonable doubt. Mr. Nowiki, I need a witness list.
20 Before we proceed with selecting a jury, ladies and
21 gentlemen, there is a few question I need to ask of you,
22 please listen very carefully. Is there any member of the
23 jury panel related by blood, connected by marriage, had a
24 close personal or social relationship with India Koren
25 Sowell? If so, please stand. The following is a list of

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1 potential witness in this case, they include Chantelle
2 Stewart, Charles McKinnon of the Lancaster County Sheriff's
3 Office. Could the attorneys approach a minute, please?

4 (Break in proceedings.)

5 THE COURT: Those individuals are a list of potential
6 witnesses in the case. Is there any member of the jury
7 panel related by blood, connected by marriage, have a close
8 personal or social relationship with any of the potential
9 witnesses in this case? If so, please stand. All right,
10 Mr. Nowiki, if you would stand and introduce yourself
11 followed by you, Mr. Grier.

12 MR. NOWIKI: My name is Bill Nowiki, I'm an assistant
13 solicitor here in Lancaster County.

14 MR. GRIER: My name is Mark Grier, I have been
15 practicing law in Lancaster and the surrounding area since
16 1990.

17 THE COURT: Is there any member of the jury panel
18 related by blood or connected by marriage or have a close
19 personal, social or business relationship with any of the
20 attorneys involved in this case? If so, please stand. Has
21 any member of the jury panel formed or expressed an opinion
22 about any issue or matter involved in this case? If so,
23 please stand. Is there any member of the jury panel aware
24 of any bias or prejudice toward either the State or the
25 defendant in this case that would prohibit you from being

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1 fair and impartial to both the State and the defendant? If
2 so, please stand. Has any member of the jury panel or their
3 immediate family been civilian or military law enforcement
4 agency, or related by blood or connected by marriage to
5 anybody in law enforcement? If so, please stand. Yes, sir,
6 your name and number?

7 THE JUROR: I'm juror 31, Sara Daily. My son is with
8 the Lancaster County Sheriff's Department.

9 THE COURT: I'm going to set you aside for the trial of
10 this case. He's not involved in this case but I will set
11 you aside, thank you, ma'am. What was her number again?

12 THE CLERK: Thirty-one.

13 THE COURT: Is any member of the jury panel or their
14 immediate family a member of or contributor to any group
15 which has as its primary concern the promotion or law
16 enforcement or victim's rights? These groups might include
17 MADD, SADD, or CAVE, Citizens Against Violent Crime? If so,
18 please stand. Is there any member of the jury panel or
19 their immediate family currently or previously employed with
20 Family Dollar? If so, please stand. Does any member of the
21 jury panel know of any reason whatsoever why they should not
22 serve as a juror in this case with particular emphasis being
23 placed on their ability to be fair and impartial to both the
24 State and the defendant? If so, please stand. Any further
25 voir dire from the State?

VOIR DIRE

1 MR. NOWIKI: No, Your Honor.

2 THE COURT: Defense counsel?

3 MR. GRIER: I have submitted mine, Your Honor, you have
4 reviewed those.

5 THE COURT: Do you want to make them part of the
6 record? Are you requesting that I read some that I didn't?

7 MR. GRIER: Yes, Your Honor.

8 THE COURT: All right. I have reviewed your request of
9 voir dire, I have asked the questions that I thought were
10 pertinent and I will make part of the record your list a
11 court's exhibit, it will be made part of the record.

12 MR. GRIER: Thank you, Your Honor.

13 THE COURT: Anything else from the State before we move
14 forward in selecting a jury?

15 MR. NOWIKI: No, Your Honor.

16 THE COURT: Defense counsel, anything further?

17 MR. GRIER: Nothing, Your Honor.

18 THE COURT: All right. Five and five on strikes.

19 THE CLERK: Jury 71, Richard Huynett. What say the
20 State?

21 MR. NOWIKI: Please present the jury.

22 THE COURT: Defendant?

23 MR. GRIER: Please excuse the juror.

24 THE CLERK: Juror 117, Judy Rogers. What say the
25 State?

VOIR DIRE

1 MR. NOWIKI: Please present the juror.

2 THE CLERK: Defendant?

3 MR. GRIER: Please swear the juror.

4 THE CLERK: Juror 106, Deborah Plyler. What say the
5 State?

6 MR. NOWIKI: Please present the juror.

7 THE CLERK: Defendant?

8 MR. GRIER: Please swear the juror.

9 THE CLERK: Juror 27, Blade Cole. What say the State?

10 MR. NOWIKI: Please present the juror.

11 THE CLERK: Defendant?

12 MR. GRIER: Please swear the juror.

13 THE CLERK: Juror 108, Ronald Rawdon. What say the
14 State?

15 MR. NOWIKI: Please present the juror.

16 THE CLERK: Defendant.

17 MR. GRIER: Please swear the juror.

18 THE CLERK: Juror 74, Carolyn Khomyak. What say the
19 State?

20 MR. NOWIKI: Please present the juror.

21 THE CLERK: Defendant?

22 MR. GRIER: Please swear the juror.

23 THE CLERK: Juror 47, Karen Fenty-Steward. What say
24 the State?

25 MR. NOWIKI: Please present the juror.

VOIR DIRE

1 THE CLERK: Defendant?

2 MR. GRIER: Please swear the juror.

3 THE CLERK: Juror 82, Dana Mager. What says the State?

4 MR. NOWIKI: Please present the juror.

5 THE CLERK: Defendant?

6 MR. GRIER: Please swear the juror.

7 THE CLERK: Juror 20, Brandon Caskey. What say the
8 State?

9 MR. NOWIKI: Please present the juror.

10 THE CLERK: Defendant?

11 MR. GRIER: Please swear the juror.

12 THE CLERK: Juror 99, Carla Palmer. What say the
13 State?

14 MR. NOWIKI: Please swear the juror.

15 THE CLERK: Defendant?

16 MR. GRIER: Please excuse the juror.

17 THE CLERK: Juror 87, April McIntyre. What say the
18 State?

19 MR. NOWIKI: Please present the juror.

20 THE CLERK: Defendant?

21 MR. GRIER: Please swear the juror.

22 THE CLERK: Juror 90, Sharon Miller. What say the
23 State?

24 MR. NOWIKI: Please present the juror.

25 THE CLERK: Defendant?

VOIR DIRE

1 MR. GRIER: Please excuse this juror.

2 THE CLERK: Juror 101, Anthony Patterson. What say the
3 State?

4 MR. NOWIKI: Please present the juror.

5 THE CLERK: Defendant?

6 MR. GRIER: Please swear the juror.

7 THE CLERK: Juror 92, Vickie Moten. What say the
8 State?

9 MR. NOWIKI: Please excuse the juror.

10 THE CLERK: Juror 107, Alvin Pruitt. What say the
11 State?

12 MR. NOWIKI: Please present the juror.

13 THE CLERK: Defendant?

14 MR. GRIER: Please excuse the juror.

15 THE CLERK: Juror 84, Janice McCloud. What say the
16 State?

17 MR. NOWIKI: Please present the juror.

18 THE CLERK: Defendant?

19 MR. GRIER: Please swear the juror.

20 THE CLERK: Juror 79, Herbert McCue. What say the
21 State?

22 MR. NOWIKI: Please excuse the juror.

23 THE CLERK: Juror nine, Lawrence Bernard. What say the
24 State?

25 MR. NOWIKI: Please present the juror.

VOIR DIRE

1 THE CLERK: Defendant?

2 MR. GRIER: Please excuse the juror.

3 THE CLERK: Juror 23, Lucille Cicero. What say the
4 State?

5 MR. NOWIKI: Please present the juror.

6 THE CLERK: Any challenge for cause?

7 MR. GRIER: No challenge for cause.

8 THE COURT: One alternate, please.

9 THE CLERK: Juror 111, Peggy Richardson. What say the
10 State?

11 MR. NOWIKI: Please excuse the juror.

12 THE CLERK: Juror 148, Robbie Wright. What say the
13 State?

14 MR. NOWIKI: Please present the juror.

15 THE CLERK: Defendant?

16 MR. GRIER: Please swear the juror.

17 THE COURT: Any matters of law that we need to take up
18 with regard to jury selection from the State?

19 MR. NOWIKI: No, Your Honor.

20 THE COURT: Defense counsel?

21 MR. GRIER: No, Your Honor.

22 THE COURT: Can the lawyers approach?

23 (Back in the courtroom.)

24 THE COURT: All right. Ladies and gentlemen, you all
25 have been selected as fair and impartial jurors in this

1 case. What we are going to do is I am going to excuse you
2 all for the balance of the day, there's a matter I need to
3 address and take up outside of your presence and I don't
4 want to keep you in that jury room and make you wait, I'm
5 going to let you go back home for the balance of the day.
6 What I'll ask you to do is be back here in the jury room
7 tomorrow morning at 9:30 a.m. and we will begin the trial of
8 this case at that time. During your overnight break you
9 don't know much about it other than what I've told you thus
10 far, but you're not to discuss this case with anybody. Do
11 not discuss this case with your family, friends, coworkers
12 or anyone until you're instructed to do so. You're not, and
13 I don't think -- you're not going to see anything on TV or
14 hear anything on the radio or on the news, but you are not
15 to go out and do any independent investigation of this case.
16 You are to decide this case based solely upon the evidence
17 presented in here and the testimony from this witness stand
18 and that's what you are to decide this case on. If anybody
19 during the overnight break attempts to contact you or talk
20 to you about this case you let Mr. Knight, the bailiff, know
21 immediately upon your return here in the morning and we will
22 deal with you appropriately? Anything from the State before
23 I release the jury for the balance of the day?

24 MR. NOWIKI: No, Your Honor.

25 THE COURT: Defense?

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1 MR. GRIER: No, Your Honor.

2 THE COURT: Please be here at 9:30 a.m. in the morning
3 and we can start up at that time. Thank you.

4 (The jury left the courtroom.)

5 THE COURT: All right. It's my understanding that the
6 stipulation needs to be put on the record with regards to
7 this case. It's my understanding that the defendant has
8 been indicted for shoplifting third or subsequent offense
9 and I will allow the attorneys to put whatever stipulations
10 they so desire on the record.

11 MR. NOWIKI: Your Honor, the stipulation is that
12 Ms. Sowell has at least two prior property crimes, and we
13 have as a forgery less than \$5,000. I believe there were --
14 well, there were three of them but those would constitute a
15 property crimes. And she also has -- I believe in 2007 had
16 already had a third or subsequent property crime where she
17 ended up getting six months for that. So we are stipulating
18 to that that she has at least two priors.

19 THE COURT: Is that correct, Mr. Grier?

20 MR. GRIER: I have reviewed her rap sheet, Your Honor,
21 and discussed that with her as well and we would stipulate
22 to that to avoid any evidentiary need on the part of the
23 State to prove the two priors.

24 THE COURT: The stipulation so noted for the record.

25 (Court adjourned for the evening and resumed at

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1 9:30 a.m., on August 16th, 2012.)

2 THE COURT: I want to go through this, Mr. Nowiki, with
3 Mr. Grier before this, I know I'm putting the cart before
4 the horse a little bit but I want to make efficient use of
5 time here. What I want to do very briefly and we will talk
6 about it again before the conclusion, and I want to go
7 through this charge in this case. Got the charge, arrest
8 and indictments not being evidence, presumption of
9 innocence, reasonable doubt, direct and circumstantial
10 evidence, duties of the judge and jury, police officer
11 charge about their testimony not to be given any more weight
12 just because he is an officer. Here is what kind of -- I'm
13 not sure whether or not to charge or not, I will read over
14 it again. The statement of a defendant, you know, does that
15 come in here or not? I've already ruled the officer can
16 testify to the fact that she said, "Yeah," that's what she
17 said when he asked her if she had anything on her but does
18 that constitute a statement as defined by law? She
19 testified she wasn't in custody. I think based upon his
20 testimony he had probable cause to make an arrest. As we
21 all know I think the next step would have been had she not
22 said anything would have been a pat down for protection
23 purposes wherein at least the two quarts of oil or whatever
24 allegedly she pulled out of her shirt would have been found.
25 MR. GRIER: Judge, if I --

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1 THE COURT: Go ahead, I will be happy to hear from you.

2 MR. GRIER: I suppose the gist of that if I would be
3 requesting that charge that I would be wanting to argue the
4 law to the jury about whether or not they needed to consider
5 that statement or setting up my arguments about that.

6 THE COURT: Yeah.

7 MR. GRIER: I thought about that and tactically, Judge,
8 I thought that would be counterproductive to the defense,
9 because intent is really --

10 THE COURT: You're exactly right, that's the bottom
11 line in this case, and the portion of the charge of the
12 shoplifting talks about intent, with the intent to deprive
13 and you certainly have the intent portion of the charge. I
14 just don't know that this statement of the defendant charge
15 needs to be in there.

16 MR. GRIER: Judge, I am not asking for it, I think it
17 would be confusing at this point. If I were going to -- if
18 my intention and if I thought it would be beneficial to my
19 client I would certainly argue that. But quite frankly I
20 think that would be construed by the jury of being some
21 veinal technicality that they wouldn't give any
22 consideration and it would be more potential for prejudice
23 somehow in this situation than benefit of my client is the
24 way I see it.

25 THE COURT: Well, had she said -- had the police

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1 officer gotten on the stand and the testimony was that she
2 said, "Yeah, I took so and so and so and so from this store
3 and here it is," then certainly you're talking a different
4 spectrum at that point than what we have right now.

5 MR. GRIER: And I think if I don't win that on the law
6 then all it does is reinforces an absurdity to the jury is
7 the way I see it, Your Honor, so I'm not requesting it.

8 THE COURT: Okay. Mr. Nowiki?

9 MR. NOWIKI: Can the officer say that, though, on the
10 stand?

11 THE COURT: Say what?

12 MR. NOWIKI: Say what the defendant said?

13 THE COURT: All she said was, "Yeah." Can he say that
14 on the stand?

15 MR. NOWIKI: Yeah.

16 THE COURT: I'm going to allow him to say that, I've
17 ruled that that can come in so I don't think -- I'm not --
18 I'm going to take that portion of the charge out. I'm not
19 going to put it in there about statement of the defendant.

20 MR. GRIER: Judge, do you have another specific charge
21 for intent as far as --

22 THE COURT: Yeah, let me go through and I will get to
23 it.

24 MR. GRIER: Yes, sir.

25 THE COURT: Next portion is absent defendant, she's

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1 obviously not here and unfortunately she's not here.

2 MR. GRIER: Could I address that, too, at this point?
3 Would that be some -- would you make some instruction up
4 front about that?

5 THE COURT: I can do that. I can certainly tell the
6 jury that, you know, under our laws an individual can choose
7 not to be in attendance at their trial.

8 MR. GRIER: Because if the prejudice is going to be
9 done it's going to be done up front and that impression is
10 probably going to be incurable if that's not done up front
11 to the extent that it is helpful at all and should be done.
12 I don't believe -- I believe that if it's not done up front
13 then it would be very difficult for that really to have any
14 meaning if the impression has already been formed.

15 THE COURT: I can certainly tell them what the law is
16 on that and the Court made a finding that she received
17 notice to be here and that she chose not to be here. The
18 next part is failure of the defendant to testify. The next
19 part is intent which is a separate charge. And in that in
20 order to establish criminal liability criminal intent is
21 required. For example, mental state is required to be
22 proven by the State for proof of a crime, intent, knowledge,
23 recklessness or criminal negligence. Criminal intent must
24 be proven by the State beyond a reasonable doubt. Criminal
25 intent is always a matter that must be determined by the

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1 jury from the circumstances surrounding the situation, and
2 it goes on and talks about more intent. Okay.

3 MR. GRIER: I'm familiar with that and I appreciate
4 that one.

5 THE COURT: And on the shoplifting charge the defendant
6 is charged with shoplifting first. The State must prove
7 identify beyond a reasonable doubt. You must be satisfied
8 beyond a reasonable doubt the accuracy of the identify of
9 the defendant before you may convict her for the offense of
10 shoplifting. The store operator can identify her, that's
11 what started the whole thing, but you don't have to have
12 that in there unless you question the identity issue.

13 MR. GRIER: Well, Judge, I do. I would certainly be
14 challenging the identity. Actually the store clerk --

15 THE COURT: The store clerk reported -- from my
16 understanding -- she obviously has not testified yet, but
17 from what I gathered yesterday from the officer's testimony
18 was the store clerk conveyed to him that that was the
19 individual that took the goods belonging to the store.

20 MR. GRIER: And so I guess my challenge of identity
21 would be is that the person that was arrested, have they
22 proven that.

23 THE COURT: Had stuff not been found on her I think
24 you've got an issue with identity at that point --

25 MR. GRIER: Yes, sir.

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1 THE COURT: -- but she put the stuff, you know, say
2 taking it off of a person and putting it on another shelf
3 once the police arrived, there may be an identity issue at
4 that point. Right now because the stuff is found on her I
5 don't think that's an issue, so I think the bottom line on
6 the shoplifting the State must prove beyond a reasonable
7 doubt that the defendant took possession of, carried away,
8 transferred from one person to another from another area of
9 the store area or caused to be carried away or transferred
10 merchandise with the intent to deprive the merchant of
11 possession, use or benefit of the merchandise without paying
12 full retail value. I think that's the bottom line they have
13 to prove here so I don't think identity issue needs to be in
14 there. Do you agree with that, Mr. Grier?

15 MR. GRIER: I wouldn't challenge identity on the basis
16 was it the right person charged.

17 THE COURT: That's what the identify charge goes to.

18 MR. GRIER: You're right, it does. It would simply be
19 now is the right person being -- have they been properly
20 identified by the State.

21 THE COURT: I am going to take the identification part
22 out. Any objection to that?

23 MR. GRIER: No, Your Honor.

24 THE COURT: And even at the end of my shoplifting
25 charge it says, as I mentioned above, intent means willful,

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1 intending the result which actually occurs, not accidentally
2 or involuntary. Intent may be shown by acts and conduct of
3 the defendant and other circumstances from which you may
4 naturally infer intent. Furthermore if the defendant
5 willingly concealed unpurchased goods or merchandise on the
6 premises, outside the premises of the store, on the person,
7 amongst the defendant's belongings, on the person of another
8 person or among the belongings of another person you may
9 consider this as evidence that the defendant has concealed
10 the merchandise with the intent to convert it to his own use
11 without paying the purchase price, then it goes into the
12 conclusion at that point.

13 MR. GRIER: Judge, I had asked you about this yesterday
14 just to reaffirm on the issue of burden of proof and
15 reasonable doubt, your instruction has the hesitate to act
16 language and the real possibility language in it, I think
17 you indicated that it did.

18 THE COURT: Reasonable doubt is the kind of doubt that
19 would cause a reasonable person to hesitate to act. Proof
20 beyond a reasonable doubt is proof that leaves you firmly
21 convinced of the defendant's guilt. Is that what you're
22 asking? What was that language you said. If you are firmly
23 convinced the defendant is guilty of the crime you must find
24 the defendant guilty, however if on the other hand you think
25 there's a real possibility that she was not guilty --

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1 MR. GRIER: That's what I was checking on before I
2 argued it. I certainly don't want to suggest to the jury
3 that that's the law that they would be instructed and then
4 that not be the results.

5 THE COURT: Okay. You're covered on that. Okay.
6 Anything else at this time? Bring them in.

7 (The jury returned to the courtroom.)

8 THE COURT: I hope you all had a good evening. I have
9 been advised that Ms. Judy Rogers, you have been selected as
10 the foreperson before, the forelady, that will be your seat
11 throughout the trial of this case. Before we begin the
12 trial of this case I'm going to ask the clerk, Mr. Hammond,
13 to go ahead and swear you all.

14 (The jury was sworn.)

15 THE COURT: Now, ladies and gentlemen, let me -- before
16 we begin the Court is going to give you a preliminary
17 instruction. Okay. The Court is going to give you a
18 preliminary instruction before we begin and I want to tell
19 you this before I give you my preliminary instruction, if
20 you notice Mr. Grier is here and he represents the defendant
21 in this case, India Koren Sowell, she's the defendant, if
22 you'll notice that Mr. Grier is seated at that table by
23 himself. Okay. In South Carolina under the law an
24 individual can choose not to attend their trial, an
25 individual can choose not to attend their trial. However,

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1 before a Court can proceed in the absence of the defendant
2 the Court has to make specific findings of whether or not
3 the trial can go forward in their absence. The Court has
4 made specific findings under the law which would warrant the
5 case going forward. I will instruct you now and I will
6 instruct you at the conclusion of this case the fact that
7 this defendant is not here is not in any way, shape or form
8 to be held against her, it's not in any way, shape or form
9 to be held against her. As I've told you from the outset
10 the defendant has pled not guilty of this charge, the
11 defendant has to prove nothing. The burden of proof rests
12 entirely, entirely on the State of South Carolina to prove
13 guilt beyond a reasonable doubt. Now, having said that what
14 I'm going to do is give you a preliminary instruction. We
15 are going to begin this case in the State of South Carolina
16 vs. India Koren Sowell but before we begin this trial I want
17 to tell you that the trial probably will not be what you
18 would expect, this is not television you will learn as you
19 go throughout. Trials in real life are not things that you
20 may have seen on TV, read in books or that sort of thing, or
21 movies, it's not movies. Watching television or movies and
22 reading books is different, it's a different ballgame so to
23 speak and I hope you'll learn that this week. Trials are
24 not always full of high drama, intense action and riveting
25 circumstances. While those things may be true at times this

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1 trial is not for entertainment, it's not for entertainment,
2 it is a fundamental part of our democracy, it's a
3 fundamental part of our democracy. In searching for the
4 truth it is often slow and deliberate, it's often slow and
5 deliberate and sometimes even repetitive, the opposite of
6 what you have seen on TV or read in books or seen in movies.
7 This courtroom is a place of honor dedicated to the
8 protection and preservation of citizens' rights to what many
9 have called the greatest justice system ever created. The
10 attorneys appearing before you are advocates for the parties
11 that they represent, but first and foremost they are
12 officers of the court sworn to uphold the integrity and
13 fairness of our judicial system and to help you in the
14 search for the truth. You should expect them, ladies and
15 gentlemen, to be professional, competent and ethical in the
16 representation of their clients' interest. Remember that
17 you have just taken an oath and you also are expected to be
18 professional, reasonable and ethical. Thank you, ladies and
19 gentlemen, for accepting this important responsibility and
20 your contribution to the judicial system. And what I will
21 now say to you is intended to serve as an introduction to
22 the trial of this case. These remarks that I'm going to
23 give to you are not a charge on the law in this case, I will
24 instruct you on the law applicable to the case at the end of
25 the trial before you retire to your jury room to begin your

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1 deliberations. This what I'm about to tell you is merely an
2 explanation of the procedure that we will follow so that you
3 may better understand what is going on and what is happening
4 in here. The defendant, ladies and gentlemen, is charged by
5 an indictment with the offense of shoplifting the elements
6 of which will be explained to you at the conclusion in my
7 charge on the law to you. The indictment as I've told you
8 from the outset is not evidence in this case. It is simply
9 the charging document by which a case is brought into this
10 courtroom. The defendant has pled not guilty and as I've
11 told you from the outset and you will hear me say again now
12 and later, the defendant has pled not guilty and the State
13 of South Carolina therefore has the burden of proving her
14 guilt beyond a reasonable doubt. It will be your duty,
15 ladies and gentlemen, to decide whether the State has met
16 that burden. Your purpose as jurors is to find and
17 determine the facts, you are the sole judge of the facts.
18 If at any time I make any comment regarding the facts you
19 must disregard it. You are to determine the facts from the
20 testimony that you hear introduced from this witness stand
21 and any other evidence introduced during the course of this
22 trial. It is up to you to determine the inferences which
23 you feel may properly be drawn from the evidence. It is
24 especially important that you perform your duty of
25 determining the facts diligently and conscientiously because

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1 ordinarily there is no way to correct an erroneous
2 determination of the facts. On the other hand and with
3 equal emphasis, the same law that makes you the judge of the
4 facts makes me the judge of the law. The law as given by
5 the Court is the only law that you may consider. You must
6 accept it and follow it even though you may disagree with
7 it. I cannot tell you what the facts are and you ladies and
8 gentlemen cannot disagree with me about what the law is, or
9 what the law should be. Your job is to take the law as I
10 give it to you and apply it to the facts that you find from
11 the testimony of the witnesses and any other evidence that
12 is introduced and after doing that you will render your
13 verdict, a true and just verdict under the solemn oath that
14 you just took as jurors. Now, until I advise you to begin
15 your deliberations you must not discuss this case with
16 anyone including your fellow friends, jurors, family members
17 and anyone involved in this case, this includes discussions
18 face to face and those by telephone, e-mail, text, blogs or
19 any other method of communication. You may not use a
20 computer, cellphone or electronic device with communication
21 capabilities at any time while in this courtroom or during
22 your deliberations. During your breaks for meals, again,
23 you are not to discuss the case period until you are
24 instructed to do so by this Court. Furthermore if we take a
25 break for lunch today during the break for lunch you are not

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1 to use any of those devices, any electronic devices,
2 computers, et cetera, to do any kind of personal research
3 about individuals in this case, about topics that may arise
4 in this case, about any of the witnesses, attorneys, court
5 officers or anything. You're to decide this case based
6 solely upon the evidence as presented in this courtroom.
7 Now, during the trial -- and I doubt -- you're not going to
8 have the opportunity unless it's over lunch, you're not to
9 go out and do any independent investigation, I think I made
10 myself abundantly clear on how you are to decide this case
11 and that's based on the testimony and evidence produced in
12 this courtroom. After the case is submitted to you ladies
13 and gentlemen you must discuss it only in the jury room with
14 your fellow jurors. The attorneys and parties in this case
15 and I think I said this when you all came in Tuesday, it's
16 kind of a preliminary instruction, in this case the
17 attorneys in this case have been instructed they're not to
18 talk to you at all and likewise you all are not to speak or
19 talk to them while you're serving up here on jury duty this
20 week. If anyone involved in this case tries to talk to you,
21 you let Ms. Rogers know, your forelady and she will let
22 Mr. Knight know and they will let me know. Okay. It's
23 important ladies and gentlemen during this trial that you
24 open an open mind and not decide any issue in this case
25 until all of the evidence has been presented, the parties

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1 have made their closing arguments and I have instructed you
2 on the applicable law in this case. It is your solum
3 responsibility to determine the guilt or innocence of this
4 defendant and your verdict must be based solely on the
5 evidence as it is presented to you in this trial and on the
6 law as I instruct you at the close of this trial. Now, in
7 just a moment the prosecutor, the solicitor, will make what
8 is called an opening statement in which the solicitor will
9 explain to you the issues in case, or at least what the
10 solicitor thinks the issues are in this case. The attorney
11 for the defendant may also make an opening statement
12 although he is not required to do so. What the attorneys
13 tell you, ladies and gentlemen, during their opening
14 statements is not evidence in this case, is not evidence in
15 this case, it is only their contention as to what the issues
16 are. The evidence in this case will be presented to you by
17 testimony, sworn witnesses, from this witness stand and/or
18 by exhibits that may be introduced into evidence during the
19 course of this trial. Now, from time to time during the
20 trial you may hear one of the lawyers say something like,
21 "Your Honor, I believe that we have a question of law or a
22 matter of law that we need to discuss," or, "Your Honor, may
23 we approach the bench," or sometimes I myself might find it
24 necessary to excuse you from the courtroom for a short while
25 so the attorneys and I can discuss a matter of law. The

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1 reason for this is because you will be the judge of the
2 facts in this case and sometimes when I'm discussing matters
3 of law it may necessitate me to make some comment as to the
4 facts in connection with rulings to whether or not a
5 particular law applies. I am not supposed to tell you what
6 I think the facts are so I will excuse you from the
7 courtroom so that in no way will you be influenced by
8 anything that I might say or do in connection with the
9 facts. Now, in determining what the true facts are in this
10 case, ladies and gentlemen, you must decide whether or not
11 the testimony of the witness is believable. It will be my
12 responsibility to rule as a matter of law as to whether
13 certain testimony is admissible or not, but once the
14 testimony is admitted whether or not you believe it is
15 solely for you to determine. In deciding whether to believe
16 a witness you have the right to consider the interest of any
17 witness, the bias of any witness, the prejudice of any
18 witness, the opportunity for the witness to have seen the
19 matters and things about which the witness may testify and
20 the way the witness acts on the witness stand. You have a
21 right to consider anything that is in the record that would
22 help you evaluate the testimony of the witnesses. That
23 means that it is your duty, ladies and gentlemen, to pay
24 close attention to these witnesses, to observe the witnesses
25 to listen to the witnesses and to pay close attention to the

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1 attorneys and to the Court. Please don't let your thoughts
2 wonder but give strict attention to the testimony in this
3 case so that at the end of all of the testimony after the
4 arguments of counsel and the charge of the law by the Court
5 you will then be in a position to determine what the true
6 facts are and to apply the law to those facts and thus
7 render a true and just verdict. It will be your added duty,
8 Madam Forelady, to preside in the jury room and be the jury
9 spokesperson here in court. It will also be your duty to
10 write the verdict that I will give you further instructions
11 about that at the conclusion of this case. Now, in order to
12 preserve everyone's rights I will give the parties an
13 opportunity to object to anything that I have said. Any
14 exceptions or objection to anything said by the Court from
15 the State?

16 MR. NOWIKI: No, Your Honor.

17 THE COURT: By defense counsel?

18 MR. GRIER: None, Your Honor.

19 THE COURT: All right, ladies and gentlemen, we will
20 now begin the trial of this case. Mr. Nowiki, you are
21 recognized for opening statements.

22 MR. NOWIKI: Thank you. May it please the Court? Mr.
23 Grier? Ladies and gentlemen, my name is Bill Nowiki and I'm
24 the assistant solicitor here in Lancaster County and we are
25 here today for a shoplifting charge against Ms. India

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1 Sowell. Getting into the facts of this case, it was on
2 April 11th of 2012, it was at the Family Dollar on Great
3 Falls Highway here in Lancaster County. The manager of the
4 store had seen a black female, it was on camera, you will
5 hear what aisle she was on, she was on an aisle, the manager
6 saw her put things in her purse, and at that time the
7 manager called the Lancaster County Sheriff's Office.
8 Deputy McKinnon who you will hear from today, he came to the
9 store and the manager basically pointed out who the person
10 was. She had already gone through, or was at the cashier's
11 line and she actually paid for some items but the manager
12 still saw items in her purse. When the officer shows up and
13 confronts her she pulls out items out of her purse that she
14 didn't pay for and also pulled out an item out of her shirt
15 that she didn't pay for. That is basically the facts of the
16 case. And the items that she had were concealed, she didn't
17 pay for them, there you go, and at that time she was charged
18 with the shoplifting. It's not going to take very long
19 today to go through everything, but just a couple of more
20 things before I sit down. You will hear witnesses and they
21 will be testifying right up there, you'll hear everything
22 about the case and what happened and so forth, but the big
23 thing is is before you make any decision as to the results,
24 please listen to everything and to consider all of the
25 evidence before you make a decision. You will have time at

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1 the end to go back to the jury room and deliberate and
2 that's the time where you all need to make that decision.
3 Really finally we just want to thank you for being here, and
4 I know it is Thursday -- I believe it's Thursday, I lose
5 track of time -- but anyway we do appreciate you being here
6 and hopefully won't be too much of an inconvenience. But
7 y'all are doing a very important job and we do appreciate
8 that. And you will be hearing from me again at the end of
9 the trial, and at that point I'm going to come back and say
10 basically that we have proved -- the State has proved our
11 standard which is to prove beyond a reasonable doubt that
12 the defendant did shoplift, and at that point I'm going to
13 ask you for a verdict of guilty. Thank you.

14 THE COURT: Mr. Grier?

15 MR. GRIER: May it please the Court?

16 THE COURT: Yes, sir.

17 MR. GRIER: Mr. Nowiki, ladies and gentlemen of the
18 jury. I have been introduced to you but I'll reintroduce
19 myself, I am Mark Grier, I represent India Sowell in this
20 case. And I too want to thank you for serving as jurors.
21 It is not convenient, it's not probably something that you
22 are real excited about doing as far as judging your fellow
23 citizens, but it's very important. And the sacrifice when
24 you think about it, it's really one of the only things that
25 we're asked to do as citizens. Pay our taxes, yeah, but as

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1 far as what the State asks you to do in terms of a service
2 it's about the only thing we are asked to do. When you
3 think about all of the sacrifices that have been made by
4 people that give us the rights that we enjoy I think it's a
5 pretty small sacrifice. Now, of course, I'm getting paid to
6 be here and y'all are too, you won't be able to retire on
7 your compensation that you will get from your mileage here.
8 We do appreciate your service as jurors and, you know,
9 Mr. Nowiki, me, Judge, most of the people sitting in this
10 room, we are all officers of the court. And you have taken
11 an oath so I think that -- I don't know, I think that makes
12 you an officer of the Court as well when you take an oath.
13 So we are all officers of the Court and we've all got jobs
14 to do, and my job is to represent India Sowell. India
15 Sowell is charged with a crime and when you're charged with
16 a crime you're entitled to a defense and to a lot of
17 constitutional protections. People when they find out I'm a
18 lawyer and what I do for a living, the question I get asked
19 is, "You're a criminal defense lawyer? How can you do that?
20 You're just trying to get people off." There's this
21 misconception out there, and I say misconception, you read
22 in the paper that something has happened and I think often
23 times we jump to conclusions based on the first thing that
24 is presented to us, and that's human nature, I do it too,
25 everybody I think has this impulse that you read something

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1 terrible happened, somebody has got to pay, there's a
2 picture in there, boom. But when people ask me about how
3 can I do what I do, you know what I tell them? I tell them
4 this, I've got a little book here and it is the
5 Constitution, all right, of the United States. And I'm a
6 constitutional officer, and the Constitution has a lot of
7 stuff in it, and not a whole lot of it is really about the
8 criminal justice system. But the things that are in it I
9 think are the lynch pin of what makes our society even work
10 at all. Because the people that wrote this Constitution,
11 they had experiences and they were scholars and they were
12 students of history and they realized that the State -- the
13 King, there had been come experiences in democracy, nothing
14 like we've got now, but when the State is powerful, we as
15 individuals are not very powerful when we're confronted with
16 the State. The State has awesome powers to arrest you, and
17 if the individuals isn't given certain protections the power
18 of the State is easily corruptible. And I think all of us
19 are familiar enough with the world that that problem exists
20 in a lot of countries as we're sitting here today or we're
21 standing here or whatever we're doing, and you know, there
22 are a lot of countries that don't have a system. They might
23 have a constitution but they don't have the protections that
24 Americans have as individuals, and when that happens the
25 whole engine of our country and the freedom that this

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1 Constitution and that right to a trial, that right to
2 confront accusers, when you don't have that everything else
3 in our Constitution is comprised and corrupted if we don't
4 have freedom. So you're in the trenches of this document
5 this morning. There are thousands of people sitting around
6 in courtrooms in this country probably this morning doing
7 what you're doing, they're in the trenches of the
8 Constitution of making sure that the roots of this document
9 are protected. I was 32 when I went to law school, 35 when
10 I graduated, I was a fire fighter before I went, I thought I
11 wanted to be in conservation and protection, work for the
12 nature conservancy, but when I got to law school and I took
13 constitutional law and, you know, I realized how important
14 it was my whole thought about what I wanted to do as a
15 lawyer, my whole process changed. And I'm lucky enough to
16 kind of do both of those things, I'm vice president of a
17 land trust and I love that work but I also love being a
18 criminal defense lawyer. Because when the State confronts
19 the individuals if there are not people there to police the
20 State to make sure it's done right the whole system is
21 eroded. That's where I see myself, it's not arrogant, it's
22 not grandiose, I don't feel like I've got any awesome power,
23 I'm still just an individual, but I am an advocate for India
24 Sowell in this courtroom today. And a couple of things and
25 I will shut up that I want you to keep in mind is the things

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1 that this document -- these rights that I'm telling you
2 you're in the trenches to guard and to make sure those are
3 protected for anybody accused of a crime. And there's what
4 is called a presumption of innocence, I think the Judge will
5 ultimately tell you, and he may have already, that the
6 defendant is cloaked in this presumption of innocence. It's
7 one of the greatest and most important presumptions and
8 rights that we have as a protection for the overreach of the
9 State. And, you know, I think it's called a cloak but I
10 think of it more as a wall because the State has hundreds of
11 officers in this county, we've got lawyers that are
12 appointed just to prosecute cases. The individual has a
13 wall around them that's required to be breached for them to
14 be convicted of a crime, and that's not a get out of free
15 card, that's simply a protection for the State against the
16 individual and the corruption of power really is all that it
17 is. And that's not to say that the State is corrupt, this
18 system works, and surely there are incidents of it, but it
19 works better than any other system as the Judge has said
20 earlier. But the presumption of innocence is -- only you
21 can remove that presumption of innocence, only you through
22 your determinations and your deliberations can breach that
23 wall if you find that the evidence is proved beyond a
24 reasonable doubt that Ms. Sowell is guilty of the crime that
25 she's accused of. The State has the burden of proof and the

OPENING STATEMENTS

1 Judge will ultimately tell you, I think, that -- and he'll
2 charge you on the presumption of innocence again and on the
3 burden of proof, but the State has to prove guilt beyond a
4 reasonable doubt. Now, the Judge is going to instruct you
5 later, I think, that a reasonable doubt is doubt that would
6 cause you to hesitate to act, that's what our courts -- how
7 they've interpreted reasonable doubt. And likewise he'll
8 instruct you that if upon hearing the evidence you're firmly
9 convinced beyond a reasonable doubt of the guilt of the
10 defendant then you must convict, however if you find that
11 there is the real possibility of innocence then you must
12 acquit. And so the ultimate question that you will be asked
13 to decide is I think going to go to the issue of the intent
14 of the defendant in this case. And you're going to hear all
15 of the evidence and after you've heard all of the evidence
16 you might think that she's guilty, well, might is not proof
17 beyond a reasonable doubt. You may think that she's
18 probably guilty, well, probably guilty is not proof beyond a
19 reasonable doubt. The real test is is there the real
20 possibility that she may not be guilty, not the whimsical,
21 just is it possible? Yeah. Aliens could be controlling her
22 or have put the stuff on her, not something that is just a
23 fantasy but rather is there a real possibility that she may
24 be innocent. I'll ask you as The judge has told you and I
25 think the solicitor as well, ask you to withhold -- listen

OPENING STATEMENTS

1 to all of the evidence before you come to a conclusion.
2 Each of you in a sense is really kind of a jury in your own
3 right because you have to deliberate within yourself to come
4 up with your own decisions, and if you -- certainly you must
5 consider what your other fellow jurors have to say about the
6 evidence, but ultimately you have to reach your own
7 conclusion, and if you reach your own conclusion, you know,
8 when you put your head -- and you vote and deliberate and
9 you vote and you put your head on your pillow tonight you
10 will have done what you have been charged to do. If you
11 just simply adopt the opinions of someone else then you have
12 not done what you're going to be asked to do and what your
13 duty is to protect the Constitution and the rights that we
14 all enjoy in this country. So we just ask that you give --
15 use your common sense, be fair, listen to what the Judge
16 instructs you on the law and I believe that after you've
17 heard all of the evidence that you're going to find that the
18 State has not proved its case and that you will acquit India
19 Sowell. Thank you.

20 THE COURT: Mr. Nowiki, call your first witness.

21 MR. NOWIKI: Yes, Your Honor. State calls Chantelle
22 Stewart.

23 The witness, CHANTELLE STEWART, was first duly
24 sworn and testified as follows, on:

25 DIRECT EXAMINATION

TESTIMONY OF CHANTELLE STEWART

1 BY MR. NOWIKI:

2 Q. Can you state your full name, please?

3 A. Chantelle Stewart.

4 Q. And, Ms. Stewart, how old are you?

5 A. I'm 24.

6 Q. Do you live here in Lancaster County?

7 A. No, I do not, I live in Great Falls.

8 Q. That's in Chester County?

9 A. Yes, sir.

10 Q. Are you employed anywhere?

11 A. Yes, sir, Family Dollar.

12 Q. And which location are you at?

13 A. The Lancaster store.

14 Q. And what address is that, do you know?

15 A. 1847 Great Falls Highway.

16 Q. And that is here in Lancaster County?

17 A. Yes, sir.

18 Q. How long have you been working at the Lancaster
19 location?

20 A. Eight and a half months.

21 Q. I'm sorry?

22 A. Eight and a half months.

23 Q. What is your position there?

24 A. Store manager.

25 Q. On April 11th of 2012, were you working on that day?

TESTIMONY OF CHANTELLE STEWART

1 A. Yes, sir.

2 Q. And anything in particular happen on that day?

3 A. Yes, sir.

4 Q. What was that?

5 A. The black woman entered the store, started walking down
6 the aisle. We have a big problem with shoplifting so when I
7 see people come in with like a big purse or just staring at
8 me, seeing if I'm watching them, I kind of have an intent to
9 follow them around to see if they're going to lift anything,
10 and as I was observing her she was putting stuff into her
11 purse.

12 Q. Do you know what kind of items?

13 A. Yes. It was a thing of Listerine, a thing of Dove soap
14 and she had two things of motor oil on her.

15 Q. All right. So do you physically like follow them, or
16 how do you --

17 A. No. The way my store is set up I can look down the
18 aisles and see down every aisle, and the aisles that I can't
19 see down I drilled holes through the walls where I could see
20 through the aisles because we have a really big problem with
21 shoplifting.

22 Q. I'm going to show you something that's marked as
23 State's Exhibit 1 for identification. Let me show you this.
24 Do you recognize that person?

25 A. Yes. That's the lady that went into my store.

TESTIMONY OF CHANTELLE STEWART

1 Q. Do you know her name?

2 A. No, not offhand.

3 Q. But this is the person that you dealt with.

4 A. Yes, sir.

5 Q. Once you saw her putting the things in her -- did you
6 say her purse?

7 A. Yes.

8 Q. Did everything go in the purse?

9 A. I think she had one thing down her shirt. I think she
10 had the Listerine down in her shirt and the rest of it was
11 in her purse.

12 Q. Once you saw that what did you do?

13 A. I automatically -- I've got both sheriffs on my speed
14 dial on my cellphone, so I automatically called them before
15 she was able to get out of the store.

16 Q. And did she ever go through the cash register line?

17 A. Yeah. When she was checking out that's when the
18 officer actually pulled up and I told the officer when he
19 entered the store that that was the lady that I seen putting
20 the stuff in her purse.

21 Q. Now, when she was going through the cash register line,
22 did she -- was she buying anything or --

23 A. Yeah, she bought some stuff. Like a lot of times what
24 they do is if they've got food stamps but don't have any
25 cash on them they'll buy with food stamps to look like they

TESTIMONY OF CHANTELLE STEWART.

1 are buying something and not walking out of the store
2 without buying anything, so she did purchase some things off
3 of the food stamps.

4 Q. Okay. Did she actually -- once she purchased the
5 items, well, that she purchased, did she start leaving?

6 A. I think she was just swiping her EBT.

7 Q. And that's when --

8 A. -- the officer pulled up and asked her.

9 Q. Okay. Do you -- when the officer arrived, did you see
10 what he did?

11 A. Yeah. He asked her if she had anything on her and she
12 said she did, and then she's actually the one that started
13 pulling the stuff out of her purse.

14 Q. And you saw her pulling the items out?

15 A. Yes, sir.

16 MR. NOWIKI: I think that's all of the questions at
17 this time. Answer any questions Mr. Grier has.

18 THE COURT: Mr. Grier, cross examination.

19 MR. GRIER: Thank you, Your Honor.

20 CROSS EXAMINATION

21 BY MR. GRIER:

22 Q. Ms. Stewart, are you the manager of the Family Dollar?

23 A. Yes, I am.

24 Q. And you were the manager on this day as well?

25 A. Yes, sir.

TESTIMONY OF CHANTELLE STEWART

- 1 Q. You had a cashier?
- 2 A. Yes, sir.
- 3 Q. But you're not the cashier.
- 4 A. No, I was not.
- 5 Q. Now, do you have cameras?
- 6 A. Yes, we do.
- 7 Q. Do you have videotape?
- 8 A. We don't have it down the aisles, we just have it at
- 9 the front door and the back door.
- 10 Q. How are you set up? Where is your position in the
- 11 store as far as do you have an office that you're sitting in
- 12 when you're observing people?
- 13 A. We've got an office but I don't never get to sit in it.
- 14 I was on the sales floor when she entered into the store.
- 15 Q. So you're saying you saw her put things in her purse?
- 16 A. Yes, sir.
- 17 Q. Describe that purse if you would.
- 18 A. It was a large -- if I recall a large black purse and
- 19 it was empty when she came in, it had nothing in it.
- 20 Q. How do you know that?
- 21 A. Because it was flat.
- 22 Q. Well, don't people have -- bring bags in to shop?
- 23 A. Yeah, people bring them in all of the time.
- 24 Q. Pardon?
- 25 A. Yes, sir.

TESTIMONY OF CHANTELLE STEWART

1 Q. And put those things in the bag with the intent to
2 purchase them as well?

3 A. No, you're not allowed to.

4 Q. Well, do you have a sign that says that or some kind of
5 notice to people that, you know, that there's -- you say
6 you're not allowed to, what do you mean?

7 A. By law if you conceal something it's considered
8 stealing anyways by law.

9 Q. Well, I would argue with your analysis of that. But
10 you still -- how do you know that someone has the intent is
11 really the issue. But if I put something -- certainly the
12 law says that concealed could be shoplifting, I agree with
13 that. But at any rate you don't know what her intent was.
14 You can't read minds and you don't know what her intent was.

15 A. No, sir.

16 Q. All right. Well, let's -- this isn't going to take
17 long. But as far as the -- do people ever pay cash and use
18 EBT cards simultaneously?

19 A. Yes, sir.

20 Q. Or even credit cards and EBT cards? The EBT -- what
21 you can purchase with EBT is limited, isn't it?

22 A. Yes, it is.

23 Q. Has that got to be food or hygiene?

24 A. It has got to be food.

25 Q. Got to be food only?

TESTIMONY OF CHANTELLE STEWART

1 A. Uh-huh.

2 Q. It can't be hygiene products?

3 A. No, sir.

4 Q. And so none of the things she's alleged to have stolen
5 were food, correct?

6 A. No. She wasn't alleged to have stolen food.

7 Q. All right. So you called the officer prior to her
8 going to the checkout counter.

9 A. Yes.

10 Q. And she was at the checkout counter in the process of
11 purchasing items with her EBT card when the process stopped.

12 A. Yeah. She already put everything she was going to
13 purchase up on the counter and I already had scanned it and
14 gave her her total and she was swiping her EBT.

15 Q. She had put the EBT eligible items on the counter.

16 A. That's all she was purchasing was EBT.

17 Q. Right. Okay. And then she was stopped at that point.

18 A. Uh-huh.

19 Q. As far as approached by the officer --

20 A. Uh-huh.

21 Q. -- at that point.

22 THE COURT: Give me a yes or no, please.

23 THE WITNESS: Yes.

24 THE COURT: Thank you.

25 Q. And just out of curiosity, was she allowed to purchase

TESTIMONY OF CHANTELE STEWART

1 the items that her EBT paid for? Did she take those?

2 A. Yes, she did.

3 Q. All right.

4 MR. GRIER: Thank you, Ms. Stewart.

5 THE WITNESS: You're welcome.

6 THE COURT: Any redirect?

7 MR. NOWIKI: No, Your Honor.

8 THE COURT: Thank you, ma'am, you may step down. Call
9 your next witness, please.

10 MR. NOWIKI: The State calls Deputy Charles McKinnon.

11 The witness, CHARLES MCKINNON, was first duly
12 sworn and testified as follows, on:

13 DIRECT EXAMINATION

14 BY MR. NOWIKI:

15 Q. And can you state your full name, please?

16 A. Charles McKinnon.

17 Q. And what is your occupation?

18 A. Deputy sheriff Lancaster County.

19 Q. And how long have you been doing that?

20 A. Three years.

21 Q. Before working with the Lancaster County Sheriff's
22 Office, any other law enforcement experience?

23 A. No, sir.

24 Q. And what is your -- I know you're a deputy, but do you
25 work a certain shift or anything?

TESTIMONY OF CHARLES MCKINNON

1 A. I work A-shift.

2 Q. And what does A-shift entail?

3 A. Regular patrol. We do patrol, answer calls, calls of
4 service and we work a swing shift so we work days and
5 nights.

6 Q. All right. Do you remember if you were working on
7 April 11th of 2012?

8 A. Yes, I was.

9 Q. Did you have an opportunity to have any dealings with
10 the defendant, India Sowell?

11 A. Yes, I did.

12 Q. Can you tell us about that?

13 A. We got a call for service at the Family Dollar in
14 reference to shoplifting. When I arrived on scene I spoke
15 to the manager, Chantelle Stewart, who advised that a black
16 female was -- that had put some items in her purse. I
17 confronted the individual, asked her if she had anything on
18 her, she said, "Yes," and pulled some stuff out of her purse
19 and also pulled some items out of her bra.

20 Q. We'll get back to that. I want to show you a
21 photograph.

22 A. Okay.

23 Q. This has been marked as State's Exhibit 1 for
24 identification. Do you want to take a look at that? Do you
25 recognize --

TESTIMONY OF CHARLES MCKINNON

1 A. Yes, I do.

2 Q. And do you know -- let me ask you, go back. What does
3 that show meaning the photo? Who is it?

4 A. It is of India Sowell.

5 Q. And how do you know -- well, let me go back, is that
6 the person that you dealt with during this time?

7 A. Yes, sir.

8 Q. How do you know that that is India Sowell?

9 A. She identified herself as India Sowell and she was
10 later confirmed at the detention center as India Sowell.

11 Q. And let me go back again, is this the person that you
12 arrested?

13 A. Yes, sir.

14 MR. NOWIKI: At this time I would like to have what has
15 been marked as State's Exhibit 1 for identification put into
16 evidence.

17 THE COURT: Any objection.

18 MR. GRIER: I don't have any objection?

19 THE COURT: Without objection State's Exhibit Number 1
20 admitted into evidence.

21 (The photograph was received as State's 1.)

22 Q. So you arrive at the Family Dollar, and just kind of
23 put it in little different pieces if you want to say. You
24 arrive at the Family Dollar, where did you see the
25 defendant?

TESTIMONY OF CHARLES MCKINNON

- 1 A. At the checkout counter.
- 2 Q. Do you know how many checkout counters they've got?
- 3 A. If I'm not mistaken it's two.
- 4 Q. And so you went and confronted her?
- 5 A. Yes, sir.
- 6 Q. And what items did she have where?
- 7 A. I believe she had the Dove soap -- she had Dove soap,
8 the Listerine in her purse and I believe she had two quarts
9 of oil or transmission fluid actually in her bra.
- 10 Q. Did you do anything to make her do that, force her to
11 do anything?
- 12 A. No, sir.
- 13 Q. She just voluntarily took the stuff out?
- 14 A. Yes, sir.
- 15 Q. Do you know if there were receipts for those items?
- 16 A. There were no receipts for those items.
- 17 Q. When you were talking with the defendant or dealing
18 with her, was she under the influence of any alcohol or
19 drugs or anything?
- 20 A. Not that I know of.
- 21 Q. How was she acting?
- 22 A. Talking normal, she was very lucid, could talk, very
23 aware of her surroundings.
- 24 Q. Cooperative?
- 25 A. Yeah, she was cooperative.

TESTIMONY OF CHARLES MCKINNON

1 Q. Did she say anything else about the incident?

2 A. No, she didn't.

3 Q. Did you end up talking with Ms. Stewart?

4 A. Say again?

5 Q. Did you talk with Chantelle Stewart, the manager?

6 A. Yes. I spoke to her when I first got there, she
7 pointed out who it was, and I also spoke to her afterwards
8 to get the actual value of the items that she told me that
9 she witnessed Ms. Sowell put the items in her purse.

10 Q. Just by -- do you know what the value of the items
11 were?

12 A. I believe the value of the items, total amount was \$16.

13 MR. NOWIKI: I think that is it. That's all of the
14 questions I have at this time.

15 THE COURT: Thank you. Mr. Grier, cross examination?

16 MR. GRIER: Thank you, Your Honor.

17 CROSS EXAMINATION

18 BY MR. GRIER:

19 Q. Officer McKinnon, you don't know India Sowell.

20 A. No, I did not at that point.

21 Q. Okay. And you still don't really know her, do you?

22 A. Not her, no. I just know her from that day.

23 Q. But you didn't -- you know, if somebody identified
24 themselves as India Sowell, do people always identify
25 themselves correctly?

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1 A. No, they do not.

2 Q. Isn't it common that people give false names?

3 A. Yes. She -- at first she actually gave the name
4 Nichole Sowell.

5 Q. But that's often done, isn't it?

6 A. Some.

7 Q. Okay. Now, she was at the counter literally buying
8 stuff when you went to the counter and --

9 A. She was purchasing items, yes.

10 Q. So that process was interrupted.

11 A. I believe it was finished before I spoke to her, yes.

12 Q. You took her to the detention center and you weren't
13 part of the booking process or anything?

14 A. I'm sorry, I don't understand.

15 Q. Were you part of the booking process or you just
16 delivered her?

17 A. I transported her to the detention center and at the
18 detention center -- she was actually identified at the
19 detention center as India Sowell.

20 Q. But you haven't identified her, you didn't do any of
21 that?

22 A. Well, I confirmed it with the detention center, yes.

23 Q. You're being told by somebody else that that is who it
24 was, correct?

25 A. I was told also after the booking process and

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1 everything, I wouldn't say confirm, it was India Sowell as
2 well.

3 Q. Okay. All right. Have you had any contact with her
4 since then?

5 A. No, I have not.

6 Q. Did you make any observations of Ms. Sowell before you
7 went to speak with her at all? Did you observe her at all
8 shopping in the store before you approached her?

9 A. No, I did not.

10 Q. She was already in line?

11 A. She was already at the cashier, yes.

12 Q. Were there other customers?

13 A. I believe there was a couple of other customers there.

14 Q. And from your viewpoint, your vantage you're able to
15 observe her. How were you looking at her when she was
16 standing in line? Were you behind her or in front of her?

17 A. To the side of her.

18 Q. Were you able to observe her clothing and her, you
19 know, her bosom, I guess is the word, did you see anything
20 abnormal?

21 A. No, not really, until I asked her and she voluntarily
22 brought all of the stuff out.

23 Q. The bag that she had, so the other items were in that
24 bag?

25 A. Yes, sir.

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1 MR. GRIER: I don't have any other questions. Thank
2 you.

3 THE COURT: Anything else, Mr. Nowiki?

4 MR. NOWIKI: No, Your Honor.

5 THE COURT: Sir, you may step down.

6 MR. NOWIKI: Just one moment, Your Honor.

7 (Break in proceedings.)

8 MR. NOWIKI: Your Honor, the State rests.

9 THE COURT: All right, ladies and gentlemen, the State
10 has presented its case. What I am going to ask you to do
11 right now is there's some matters of law I want to take up
12 with the lawyers outside of your presence, I'll ask that you
13 step to the jury room for just a couple of minutes and I'll
14 get you back out here as soon as possible and we will
15 continue the case. Do not discuss the case.

16 (The jury left the courtroom.)

17 THE COURT: Mr. Grier?

18 MR. GRIER: Thank you, Your Honor. I would make a
19 motion for a directed verdict. I would submit to the Court
20 that the State hasn't established the requisite evidence to
21 proceed with the case in that the intent of the -- I think
22 the evidence establishes that the intent of the defendant
23 cannot be determined because the process of her purchasing
24 items and being in line was interrupted by the State before
25 an outcome could be determined as to whether or not she had

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1 the intent to proceed with the shoplifting. I understand
2 that concealing them is enough for a jury to convict someone
3 but I would say that the State interfered with the
4 opportunity for the defendant to clarify her intent by
5 proceeding and moving away from the evidence, was that all
6 of the items that were paid for were EBT eligible items and
7 the items that weren't paid for were not EBT items, so the
8 opportunity to have manifested her intent was interrupted
9 before that could have transpired. And also on my prior
10 motion to suppress the -- I just reassert that you
11 understand my prior motion to suppress the evidence that you
12 ruled on prior. I just --

13 THE COURT: All right. Mr. Nowiki, anything you want
14 to add in response?

15 MR. NOWIKI: Your Honor, I believe the State has made
16 enough for us to go to the jury. We had the testimony about
17 her concealing the items and moving from one part of the
18 store to another. There was no intention of purchase, she
19 voluntarily removed the items from her bag as well as in her
20 shirt. I believe there is enough to go forward to the jury.

21 THE COURT: All right. Thank you. Each of you know
22 the Trial Court is concerned with the existence of evidence,
23 that's all they're concerned with, not its weight, they are
24 concerned with the existence of evidence, not its weight.
25 If there's any direct or circumstantial evidence tending to

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1 prove the guilt of a defendant that may be fairly and
2 logically deduced the case could be dismissed to the jury.
3 I certainly understand your position, Mr. Grier, arguing the
4 intent issue, but under the law -- it's in my charge,
5 criminal intent is always a matter that must be determined
6 by the jury from the circumstances surrounding the
7 situation, therefore I'm going to respectfully deny your
8 motion for a directed verdict, but it is so noted for the
9 record.

10 MR. GRIER: Thank you, Your Honor. Judge, if we're
11 going to go straight into arguments, is that what your
12 intent was? Could we have a couple of more minutes to take
13 a break before we do that? We were very frugal with our
14 presentation of the case, I would ask just for a couple of
15 minutes.

16 THE COURT: How long do you anticipate closing,
17 Mr. Nowiki?

18 MR. NOWIKI: Maybe ten minutes at the most.

19 THE COURT: I'm not ordinarily one to cut lawyers on
20 times of closing but if it takes either one of you more than
21 ten minutes something is wrong. Okay. And it took y'all
22 less than 30 minutes to try this case, and so that's 20
23 minutes of closing, we ain't trying it again in closing all
24 right?

25 MR. GRIER: All right.

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1 THE COURT: Not going to do it. So I'm not going to --
2 I'm not going to jump up but if you start repeating yourself
3 I'm going to let you know it. Okay. All right. I want to
4 give you an opportunity to make your argument but by the
5 same token we are not going to retry the case in closing
6 arguments. Okay. All right, we'll stand down.

7 (A break was taken.)

8 THE COURT: Anything from the State before we bring the
9 jury back in?

10 MR. NOWIKI: No, Your Honor.

11 THE COURT: Defense counsel?

12 MR. GRIER: No, Your Honor.

13 (The jury returned to the courtroom.)

14 THE COURT: Mr. Grier, defense counsel is recognized.

15 MR. GRIER: Thank you, Your Honor. The defense would
16 present no evidence, I would renew all previous motions. I
17 don't know if the Court wants me to articulate them but you
18 are familiar with them, I would renew those and ask for a
19 ruling in favor of the defense on those prior motions.

20 THE COURT: All right. Your prior motions are so noted
21 for the record and for the reasons previously stated they're
22 respectfully denied. Ladies and gentlemen, you have heard
23 all of the evidence and testimony that you're going to hear
24 in this case, what we're going to do now is we're going to
25 move to closing arguments. Mr. Nowiki on behalf of the

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1 State will open and he will be first in closing arguments
2 followed by Mr. Grier. I will remind you, ladies and
3 gentlemen, that closing arguments are not evidence in this
4 case, are not evidence in this case. Mr. Nowiki, you are
5 recognized at this time for closing arguments.

6 MR. NOWIKI: Thank you, Your Honor. May it please the
7 Court? Mr. Grier? Ladies and gentlemen, as I indicated I
8 would be back here talking with you soon. But you've heard
9 all of the evidence, and like I said, it was a pretty cut
10 and dry, simple case. First thing I wanted to show you is
11 this photo right here, that is India Sowell. We've had
12 testimony from both Chantelle Stewart who this is the person
13 that she dealt with at the Family Dollar, and then we've had
14 Deputy McKinnon who said this is the person that he dealt
15 with that was identified as India Sowell, and the person
16 that was arrested for the shoplifting. Again, we had the
17 testimony y'all heard, I'm just going to go over briefly.
18 You heard Chantelle Stewart, she's the manager at the Family
19 Dollar here in Lancaster County, she saw Ms. Sowell put
20 items in her I want to say purse, it was some sort of bag,
21 she also had other items. She went to the cashier. She
22 paid for some items with the EBT card but she didn't pay for
23 the other items and she hid those other items in the purse
24 and made no attempt or had any intent to pay for them, never
25 put them on the cash register, the table thing, whatever you

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1 want to call it. And then you have Deputy McKinnon who was
2 called saying he briefly confronted her, she voluntarily
3 started pulling stuff out, the big thing is she pulled stuff
4 out of her shirt as an item being from Family Dollar. She
5 didn't have any intent to pay for that. Clearly from taking
6 stuff off of the aisle, moving it to another location and
7 concealing it we submit she committed the crime of
8 shoplifting. The Judge will give you instructions as far as
9 the law goes and everything, and so you will hear that. But
10 again, that's what was presented and it is our position that
11 the State has proved beyond a reasonable doubt that the
12 defendant did commit the crime of shoplifting. And I'm not
13 going to hold you up anymore, I'll thank you again for being
14 here. And like I said, you know, consider everything, the
15 evidence and when you start deliberating I'll ask you to
16 come back with the verdict of guilty of shoplifting. Thank
17 you very much.

18 THE COURT: Mr. Grier?

19 MR. GRIER: May it please the Court? Mr. Nowiki?

20 Ladies and gentlemen, thank you for your service as jurors
21 today. This case was mercifully short because there's not a
22 lot of evidence in this case and there was no point in
23 dragging things out beyond -- no rational purpose. Couple
24 of things. I think what the State has proved today is that
25 they had probable cause and I have thrown some legal stuff

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1 at you already and I hope that some of that stuff made
2 sense, but to arrest someone you have -- the State must have
3 a suspicion of guilt and I don't think -- I couldn't argue
4 with a straight face that under these circumstances that the
5 State does not have what is called probable cause, a
6 reasonable suspicious to arrest. Now, if that was all that
7 was needed then we wouldn't need juries because the
8 police -- the only determination we would need is whether or
9 not they had probable cause, we have a process for
10 determining that and that's through when a judge reviews the
11 evidence at a preliminary hearing and determines whether the
12 police have probable cause. If that were the only issue
13 then we wouldn't need juries, because the burden of proof is
14 on the State to prove the elements of the alleged crime
15 beyond a reasonable doubt and that burden is totally on the
16 State, individuals don't have any burden of proof. India
17 Sowell doesn't have to prove anything. Every burden is on
18 the State to prove the elements. And what the State has to
19 prove is intent. I would submit to you in this case a
20 couple of things happened. Certainly, like I said, I don't
21 argue that the things that were observed were suspicious,
22 but I think we all have seen circumstances where we were
23 suspicious of things that people were doing that later when
24 the facts came out our suspicions were not confirmed because
25 there were other circumstances that accounted for the reason

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1 that we had our suspicions. We've all had our experiences
2 and that's part of being a human being is to have
3 suspicions. Well, when the State has the burden of proof
4 they have to remove all doubt that -- and I say all doubt,
5 all reasonable doubt that the State -- that the defendant is
6 innocent. And I already mentioned to you that I think the
7 Judge is going to charge you that a reasonable doubt is the
8 kind of doubt that would cause someone to hesitate to act,
9 that if you're firmly convinced of the defendant's guilt
10 then you must convict, however if there is the real
11 possibility of innocence then you must acquit. And this
12 case really turns on the intent of the defendant. And what
13 you've heard is that a lady, Ms. Sowell, was in the Family
14 Dollar Store and that she had items that were EBT eligible
15 and that she could use her EBT card for and when she got to
16 the counter those -- she had those items and reasonably
17 those would be separated, and that during the process of her
18 checking out she was interrupted and she was arrested
19 because the officer had probable cause because her behavior
20 was suspicious. But what that arrest did was interrupted
21 the process of really determining what her intent was
22 because her EBT eligible items were, of course, paid for.
23 The items that weren't EBT eligible that she had on her were
24 not, she hadn't had an opportunity and never got an
25 opportunity to present those and pay for those separately,

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1 and so the State intervened based on probable cause before
2 her intent could be manifested. Now, of course, you know,
3 there are defenses in any criminal case, and certainly
4 mistake, inadvertence, neglect are all reasons that would
5 excuse a behavior that would be suspicious of being criminal
6 and would take them out of that, would go to someone's
7 defense as to the reason that they engaged in that activity
8 as far as their intent. If it's a mistake or neglect or
9 those sorts of things, criminal negligence, then they're not
10 guilty of a crime, it is the intent. Well, the State has
11 the burden of proof, and what they haven't demonstrated to
12 you is what the intent of the person they allege was India
13 Sowell because they interrupted the process before her
14 intent could ultimately be manifested, before it could be
15 demonstrated. So I think the Judge is going to tell you
16 that you have to look in the light most favorable to the
17 defendant and under those circumstances you don't know what
18 her intent was. The other issue that I think the evidence
19 doesn't show is truly who was that person that was arrested
20 that day. The clerk doesn't know who that was with
21 certainty, the State, Mr. McKinnon, doesn't know who that
22 was with certainty other than what he was told. Well, the
23 State has the burden of proof of demonstrating to you if
24 they got the right person and I submit to you that they
25 haven't met that burden of proof and they haven't

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1 demonstrated beyond a reasonable doubt. The last thing I
2 would say and I'll be done is this a criminal case, we're
3 talking about a person's freedom, we're not talking about
4 their money. In a civil case the burden of proof is merely
5 more likely than not and that is simply tipping the scales
6 in the favor of the person bringing a lawsuit, that would be
7 what we would commonly call a lawsuit, it's a different
8 burden of proof, more likely than not. In this case the
9 burden of proof on the State is beyond a reasonable doubt.
10 I think when you have the opportunity to consider all of the
11 evidence for the reasons that I've mentioned that you will
12 find that India Sowell is not guilty. Thank you.

13 THE COURT: Thank you, Mr. Grier. Ladies and
14 gentlemen, it is now my duty as a trial judge under the
15 Constitution of this State to charge and instruct you on the
16 law applicable to this case. It is your duty as jurors to
17 accept and apply the law as I will now state it to you.
18 Furthermore it is your exclusive duty to decide all of the
19 issue of facts in this case and determine the affect, value,
20 weight and truth of the evidence. Both the State and the
21 defendant have a right to expect that you will carefully
22 consider and evaluate the evidence and apply the law of this
23 case to it so that in the end both the State of South
24 Carolina and the defendant will receive a fair and impartial
25 trial. I want you to understand that when I use -- or when

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1 I refer or use the word defendant I am referring to Ms.
2 India Koren Sowell. Furthermore it's important to
3 understand that the State of South Carolina charges her with
4 the offense of shoplifting, as I have stated previously to
5 this charge she has pled not guilty, therefore the burden of
6 proof is on the State to prove her guilt beyond a reasonable
7 doubt. I remind you that the fact that the defendant was
8 arrested, charged and indicted in this case is not evidence
9 in this case and cannot be considered, cannot be considered
10 by you as evidence of guilt in this case nor does it create
11 any presumption or inference of guilt. The indictment,
12 ladies and gentlemen, is simply a formal written instrument
13 which contains a charge made against the defendant, it is
14 the formal document by which this case is brought into this
15 court. It's vital to understand that the defendant is
16 presumed under the law to be innocent of this charge. The
17 defendant has no obligation to prove her innocence. It is a
18 fundamental rule of our law that a defendant irrespective of
19 the seriousness of the charge against her is always presumed
20 innocent of the charge for which is brought into this Court
21 unless and until, unless and until her guilt has been proven
22 by evidence that satisfies you, the jury, beyond a
23 reasonable doubt. The presumption of innocence is not a
24 mere legal theory or a legal phrase, but the presumption of
25 innocence is very important and you need to understand that

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1 that presumption accompanies the defendant from the time of
2 her arrest and the appearance of her attorney on her behalf
3 in this court and continues with the defendant even after
4 you retire to the jury room to deliberate. In other words,
5 the defendant receives the benefit of the presumption of
6 innocence until the very end of this trial when you, the
7 jury, will deliberate upon the evidence and decide whether
8 the State has proven her guilt beyond a reasonable doubt.
9 Now, ladies and gentlemen, what is a reasonable doubt?
10 Reasonable doubt is the kind of doubt that would cause a
11 reasonable person to hesitate to act. Proof beyond a
12 reasonable doubt is proof that leaves you firmly convinced
13 of the defendant's guilt. Now, there are very few things in
14 the world that we know with absolute certainty so even in
15 criminal cases the law does not require proof that overcomes
16 every possible doubt. However, if based on your
17 consideration of the evidence you are firmly convinced that
18 the defendant is guilty of the crime charged you must find
19 her guilty. If on the other hand you think there is a real
20 possibility that she is not guilty you must give her the
21 benefit of the doubt and find her not guilty. Jurors,
22 please understand that reasonable doubt may arise from
23 evidence which has been presented in the case or from the
24 lack of evidence in the case. It is your responsibility to
25 determine whether or not reasonable doubt exists as to the

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1 guilt of the defendant. I charge you that the defendant is
2 entitled to every reasonable doubt arising in the whole
3 case. If upon any issues of fact essential to conviction
4 and a verdict of guilty you have a reasonable doubt as to
5 how that issue should be resolved it would be your duty to
6 resolve that reasonable doubt in favor of the defendant.
7 Thus in summary it is important to understand that a
8 defendant is not required to prove her innocence, instead
9 the State is required by law to prove every essential
10 element of the offense charged against the defendant by
11 evidence which satisfies you of her guilt beyond a
12 reasonable doubt, only then, only then can you convict the
13 defendant and find her guilty. There are two types of
14 evidence which are generally presented during a trial,
15 direct evidence and circumstantial evidence. Direct
16 evidence is the testimony of a person who claims to have
17 actual knowledge of a fact such as an eye witness. It is
18 evidence which immediately establishes the main fact to be
19 proved. Circumstantial evidence is proof of a chain of
20 facts and circumstances indicating the existence of a fact.
21 It is evidence which immediately establishes collateral
22 facts from which the main fact may be inferred.
23 Circumstantial evidence is based upon inference and not on
24 personal knowledge or observation. The law makes absolutely
25 no distinction between the weight or value to be given to

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1 either direct or circumstantial evidence, nor is a greater
2 degree of certainty required of circumstantial evidence than
3 of direct evidence. You should weigh all of the evidence in
4 this case. If after weighing all of the evidence you are
5 not convinced of the guilt of a defendant beyond a
6 reasonable doubt you must find the defendant not guilty.
7 Now, during this trial you and I have had separate duties.
8 As a trial judge it is my responsibility to preside over
9 this trial and I also have the duty to rule upon the
10 admissibility of evidence offered during the process of this
11 trial. In that regard you are to consider only the
12 competent evidence before you and you are to disregard from
13 your mind any testimony ordered stricken from the record of
14 this case during the progress of this trial if there was
15 any. And you are to consider only the testimony which has
16 been presented from this witness stand together with any
17 exhibits admitted into the record of this case and any
18 stipulation of counsel made into the record if there were
19 any. Furthermore I have the additional duty to charge you
20 on the applicable law of this case, and in that regard I am
21 the sole judge of the law. It is your duty, as I told you
22 at the outset it is your duty to accept and apply the law as
23 I state it to you. If you have any preconceived ideas as to
24 what the law is or what the law ought to be and it does not
25 agree with what I tell you the law is, you are obligated

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1 under your oath to abandon these preconceptions because you
2 are sworn to accept the law precisely as I state it to you.
3 In this trial you are the sole and exclusive judges of the
4 facts and I am the judge of the law. Do not infer that I
5 have any opinion about the facts of this case or anything
6 that I have said during the course of this trial in ruling
7 upon the admissibility of evidence or otherwise or from
8 anything that I say now during this closing -- during this
9 charge to you. In this regard the law simply does not
10 permit me to have an opinion about the facts. As jurors it
11 is your duty alone to determine the effect, value, weight
12 and truth of the evidence that is presented during the
13 course of this trial. In determining what the facts of this
14 case are you must decide the credibility, which simply means
15 the believability of the witnesses and the value or weight
16 to be given to their testimony. You alone must decide the
17 force, effect and truth of the testimony. In making this
18 decision there are many things you may and should take into
19 consideration such as the appearance and manner of the
20 witness on the stand, a characteristic often referred to as
21 the demeanor of the witness. Was the witness forthright or
22 hesitant? Was the witness' testimony consistent or did it
23 contain discrepancies. What was the ability of the witness
24 to know the facts about which he or she testified? Did the
25 witness have any reason or cause to be biased and prejudiced

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1 in favor of the testimony that he or she gave? Was the
2 testimony of the witnesses collaborated or made stronger by
3 other testimony and evidence, or was it made weaker or
4 impeached by such other testimony and evidence. As jurors
5 please understand you have the right to believe a small
6 portion of a witness' testimony and discard the larger
7 portion or vice versa. You may believe all of a witness'
8 testimony or none. You may believe the testimony of a
9 single witness against that of many witnesses or the other
10 way around. In exercising your mental process in attempting
11 to decide the truth the law simply requires that you
12 exercise your good judgment, your common sense, your sense
13 of logic and reason and your experiences in life, you then
14 apply these attributes and evidence and apply it as I state
15 it to you and thus arrive at a verdict. Now, during the
16 course of this trial you heard the testimony, ladies and
17 gentlemen, of a police officer. Please understand that the
18 testimony of a police officer is not entitled to more weight
19 than that of any other witness. You are the sole judge of
20 the credibility of a witness and you are not to give more
21 weight to a police officer's testimony solely because he or
22 she is a police officer, rather you should judge an
23 officer's testimony by the same standards that you apply to
24 all other witnesses. Now, as I told you from the outset or
25 instructed you with regards to the defendant not being here,

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1 a defendant, ladies and gentlemen, may be tried even if the
2 defendant does not attend the trial. But the fact that the
3 defendant is not present may not, and I told you this from
4 the outset, may not be considered against the defendant in
5 any manner whatsoever. I also instruct you ladies and
6 gentlemen and emphasize the fact that the defendant did not
7 testify is not a factor to be considered by you in any way
8 in your deliberations and in your consideration on the
9 question of the guilt or the innocence of the defendant, it
10 must not be considered by you in any manner whatsoever. A
11 defendant has the constitutional right to remain silent and
12 the assertion of this right must not be considered by you in
13 your deliberations. I repeat, under your oath you are to
14 draw no conclusions whatsoever from the fact that the
15 defendant in this case did not testify. The fact that this
16 defendant did not testify should not even be discussed in
17 the jury room. The burden of proof as I have stated from
18 the outset is on the State, the defendant is not required to
19 prove her innocence. The burden of proof remains on the
20 State to prove guilt beyond a reasonable doubt. Now ladies
21 and gentlemen, in order to establish criminal liability
22 criminal intent is required. For example the mental state
23 required to be proven by the State for a particular crime
24 might be purpose, intent, knowledge, recklessness or
25 criminal negligence. Criminal intent must be proven by the

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1 State beyond a reasonable doubt. Criminal intent is always
2 a matter that must be determined by the jury from the
3 circumstances surrounding the situation. There is no way to
4 prove intent to a mathematical certainty. There is no way
5 medical science can dissect a person's brain and determine
6 what the person had in mind. The law says that criminal
7 intent may be inferred from the circumstances shown to have
8 existed, this is how you make a determination of whether or
9 not the element requiring intent was present. It is not
10 necessary to establish intent by direct and positive
11 evidence, but intent may be established by inference in the
12 same way as any other fact, by taking into consideration the
13 acts of the parties and all of the facts and circumstances
14 of the case. Criminal intent is a mental state, a conscious
15 wrongdoing. It is up to you to determine what the defendant
16 intended to do based on the circumstances shown to have
17 existed. Criminal intent can arise from action or a failure
18 to act, it may arise from negligence, recklessness or an
19 indifference to duty or to consequences that is considered
20 by the law to be the equivalent of criminal intent. Now,
21 the defendant is charged, ladies and gentlemen, with the
22 offense of shoplifting. The State must prove beyond a
23 reasonable doubt that the defendant took possession of,
24 carried away, transferred from one person to another or from
25 one area of a store to another, or cause to be carried away

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1 or transferred merchandise with the intent to deprive the
2 merchant of the possession, use or benefit of the
3 merchandise without paying the full retail value. Full
4 retail value means the merchant's stated or advised price
5 for the merchandise. Merchandise means any goods, chattels,
6 food, stuffs or wears of any type in description regardless
7 of value. Merchant means the owner or operator of the store
8 or any agent employee, lessee, consignment, officer, direct
9 or franchise see or independent contractor of the owner or
10 operator. As I mentioned above, intent means willful,
11 intending the result which actually occurs, not accidental
12 or involuntary. Intent may be shown by acts and conduct of
13 the defendant and other circumstances from which you may
14 naturally and reasonably infer intent. Furthermore if the
15 defendant wilfully concealed unpurchased merchandise or
16 goods on the premises outside the premises of the store, on
17 the defendant's person among the defendant's belongings, on
18 the person of another or among the belongings of another you
19 may consider this as evidence that the defendant has
20 concealed the merchandise with the intent to convert it to
21 her own use without paying the purchase price. Conceal
22 means to hide merchandise on the person or among the
23 belongings of a person so that although there may be some
24 notice of its presence it is not visible through ordinary
25 observation. Now ladies and gentlemen, I am now drawing

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1 near the end of my charge and I want you to clearly
2 understand that you are not partisans or advocates for the
3 State of South Carolina or the defendant. You do not serve
4 as jurors to reward your friends and to punish your enemies.
5 In this regard you have been selected by both the State and
6 the defendant to be fair and impartial jurors. It is jury
7 duty by your joint deliberations to determine the truth in
8 this case giving to the defendant the benefit of every
9 reasonable doubt on each and every issue, then to the facts
10 upon which you determine to be the truth you should take and
11 apply the law which has been given to you by this Court and
12 thus arrive at a verdict which speaks the truth in this
13 case. In fact, the word verdict which has a Latin
14 derivative means a true saying, thus when you've
15 accomplished these responsibilities you will have satisfied
16 yours oath as jurors and you will have discharged your duty
17 to this court. Now Madam Forelady, once you retire to the
18 jury room the bailiff will give the verdict form to you.
19 When you the jury arrive at a verdict as to the offense
20 charged in this case you, Madam Forelady, will write the
21 verdict on the verdict form. If the State has failed to
22 prove the guilt of the defendant beyond a reasonable doubt
23 your verdict will be two words, not guilty. Likewise, if
24 the State has proved the guilt of the defendant beyond a
25 reasonable doubt your verdict will be one word, guilty.

JURY CHARGE

1 Now, Madam Forelady, once a decision has been made, in fact,
2 the verdict form reads as follows, as to the charge of
3 shoplifting, we, the jury, find India Koren Sowell not
4 guilty and it's got a box to check, or guilty and a box
5 beside guilty to check. Once you all reach your verdict
6 check whichever box is applicable, knock on the door, and
7 the bailiff here will be outside the door, knock on the door
8 and advise him that you all have reached a verdict and we
9 will get you back in here as quickly as possible. Now, the
10 verdict, ladies and gentlemen, that you render in this case
11 must be the verdict of each and every juror, must be the
12 verdict of each and every juror. In other words it must be
13 your unanimous verdict. All 12 jurors, all 12 jurors must
14 agree on the verdict which you authorize the forelady to
15 write for the jury. I also want you to understand, ladies
16 and gentlemen, that the order in which the choices of
17 verdict appear on the verdict form are not, are not
18 suggestive of any verdict on the part of this Court. The
19 verdict in this case as I've told you is to be determined by
20 you, the jury, not the Court. Furthermore please
21 understand, ladies and gentlemen, even though I'm going to
22 give the verdict form to the forelady it is not her verdict
23 alone, it is the verdict of all 12 of you and I emphasize to
24 you again, it must be unanimous. Also, ladies and
25 gentlemen, I'll give you a copy of these closing

JURY CHARGE

1 instructions that I've given you here today, I will give you
2 a copy in written form for you to have in the jury room and
3 during your deliberations you may refer to the instructions
4 to guide your decision making. You must consider -- in
5 looking at these instructions you must consider them as a
6 whole, as a whole, not following some and ignoring others.
7 At the conclusion of your deliberations after you've reached
8 a verdict please return these instructions to Mr. Knight and
9 he will give them to me. I now ask -- and I will ask you to
10 retire to the jury room in just a minute because the law
11 requires that I consult with the attorneys and make sure
12 that I haven't left anything out of these instructions, once
13 you retire to the jury room do not begin your deliberations
14 until you are instructed to do so. I think there was one
15 piece of evidence that was admitted into evidence during the
16 course of this trial, that piece of evidence will be brought
17 back to the jury room along with a copy of the instructions
18 and along with a verdict form. Once these documents are
19 brought back Mr. Knight will advise you to begin your
20 deliberations, but you're not to do so until you are
21 instructed to do so. Also, should you have any questions
22 during your deliberations there will be a pen and paper back
23 there in the jury room. If you have a question, Madam
24 Forelady, it will be your responsibility to write out that
25 question on that piece of paper, knock on the door, give it

JURY CHARGE

1 to Mr. Knight and he will give it to me. Immediately once
2 you've reached a verdict, same instruction, write your
3 verdict, sign and date the verdict form, Madam Forelady, and
4 after you all have reached a unanimous verdict mark your
5 verdict, sign and date the verdict form, knock on the door,
6 let Mr. Knight know that you've reached a verdict and he
7 will get you back into the courtroom as quickly as possible.
8 Once you've reached a verdict sign the verdict form, you
9 retain that until you come back into the courtroom, at that
10 time once you're brought back in here and your clerk, Mr.
11 Hammond, will get it from you. Anything before I release
12 the jury to the jury room at this time, Mr. Nowiki?

13 MR. NOWIKI: No, Your Honor.

14 THE COURT: Mr. Grier?

15 MR. GRIER: No, Your Honor.

16 THE COURT: Retire to jury room but don't begin your
17 deliberations until you are instructed to do so.

18 (The jury left the courtroom.)

19 THE COURT: The only evidence is this Exhibit Number 1;
20 is that right?

21 MR. NOWIKI: Yes, Your Honor.

22 THE COURT: Is there anything, any exceptions or
23 objections to the jury charge by the State?

24 MR. NOWIKI: No, Your Honor.

25 THE COURT: Defense counsel?

JURY CHARGE

1 MR. GRIER: No, Your Honor.

2 (The jury began deliberations and returned with
3 a question.)

4 THE COURT: Mr. Nowiki, Mr. Grier, I've got a question
5 from the jury albeit it wasn't signed and dated which I will
6 have Ms. Rogers do. The question is, "Did the defendant
7 offer to pay for the concealed items?" I'm going to bring
8 the jury back in here and tell them that they are to
9 consider only the evidence and testimony that was heard from
10 this witness stand and that's it. That's not an issue, that
11 wasn't brought up so therefore I think that's the
12 appropriate instruction. Mr. Nowiki, any response?

13 MR. NOWIKI: None, Your Honor.

14 THE COURT: Mr. Grier?

15 MR. GRIER: No, Your Honor, I agree.

16 THE COURT: Bring in the jury, please.

17 (The jury returned to the courtroom.)

18 THE COURT: Madam Forelady, ladies and gentlemen of the
19 jury, I apologize for keeping you back there after, you
20 know, you sent a note out, we were conducting some business
21 in here while you were back there and I couldn't stop in the
22 middle of that. So I received a note or question from you
23 all, I assume it was from you, which reads "Did the
24 defendant offer to pay for the concealed items?" Is that
25 correct, Madam Forelady?

JURY VERDICT

1 THE JUROR: Yes, ma'am.

2 THE COURT: I would ask -- it has been marked as a
3 Court's exhibit but I will ask that you sign and date that.
4 After having read your question the Court will instruct you
5 again that you are to consider only the evidence presented
6 during the course of this trial and testimony elicited from
7 this witness stand during the course of this trial in
8 determining the guilt or the innocence of the defendant.
9 Having said that I will now ask that you now return to the
10 jury room and continue your deliberations. Thank you.

11 (The jury left the courtroom and returned with
12 a verdict.)

13 THE COURT: I understand you've reached a decision in
14 this case? All right. You may publish the verdict.

15 THE CLERK: Case 2012-GS-29-902, State of South
16 Carolina versus India Koren Sowell, as to the charge of
17 shoplifting we, the jury, unanimously find the defendant,
18 India Koren Sowell, guilty. Signed, Judy Rogers,
19 foreperson, dated 8/16/2012. Ladies and gentlemen of the
20 jury, if this be your verdict so say you all by the raising
21 of your right hands. Let the record reflect all jurors
22 raised their right hands.

23 THE COURT: All right. Anything from the defense
24 counsel?

25 MR. GRIER: Judge, I would ask the jury be polled.

JURY VERDICT

1 THE CLERK: Madam Forelady, Judy Rogers, is this your
2 verdict and is this still your verdict?

3 THE JUROR: Yes, it is.

4 THE CLERK: Deborah Plyler, is this your verdict and is
5 this still your verdict?

6 THE JUROR: Yes, it is.

7 THE CLERK: Blade Cole, is this your verdict and is
8 this still your verdict?

9 THE JUROR: Yes, it is.

10 THE CLERK: Ronald Rawdon, is this your verdict and is
11 this still your verdict?

12 THE JUROR: Yes, it is.

13 THE CLERK: Carolyn Khomyak, is this your verdict and
14 is this still your verdict?

15 THE JUROR: Yes, it is.

16 THE CLERK: Karen Fenty-Steward, is this your verdict
17 and is this still your verdict?

18 THE JUROR: Yes, it is.

19 THE CLERK: Donna Mager, is this your verdict and is
20 this still your verdict?

21 THE JUROR: Yes, it is.

22 THE CLERK: Brandon Caskey, is this your verdict and is
23 this still your verdict?

24 THE JUROR: Yes, it is.

25 THE CLERK: April McIntyre, is this your verdict and is

JURY VERDICT

1 this still your verdict?

2 THE JUROR: Yes, it is.

3 THE CLERK: Anthony Patterson, is this your verdict and
4 is this still your verdict?

5 THE JUROR: Yes, it is.

6 THE CLERK: Janice McCloud, is this your verdict and is
7 this still your verdict?

8 THE JUROR: Yes.

9 THE CLERK: Lucille Cicero, is this your verdict and is
10 this still your verdict?

11 THE JUROR: Yes, it is.

12 THE CLERK: Thank you.

13 THE COURT: Anything further from defense counsel?

14 MR. GRIER: No, Your Honor.

15 THE COURT: Anything further from the State?

16 MR. NOWIKI: No, Your Honor.

17 (At this time the panel was dismissed.)

18 THE COURT: All right. Anything else from the defense
19 counsel at this time?

20 MR. GRIER: Judge, I would think I have a duty to move
21 for a new trial. For the record I would make my motion for
22 a new trial based on our prior objections to the admission
23 of the evidence and my motion -- my Jackson vs. Denno
24 motions that were made subsequent to that hearing and my
25 other motions made concerning the -- my directed verdict

SENTENCING HEARING

1 motion, as well as we ask the Court in its position as the
2 13th juror to grant the defense a new trial based on your
3 own review of the evidence.

4 THE COURT: Anything in response, Mr. Nowiki?

5 MR. NOWIKI: No, Your Honor. You had previously ruled
6 on these things, so --

7 THE COURT: What about his motion for a new trial?
8 What is your argument in contradiction to it? Do you have
9 any --

10 MR. NOWIKI: I don't have any argument against it, I
11 just --

12 THE COURT: I'm going to respectfully deny your motion
13 for a new trial, Mr. Grier. I think there was first and
14 foremost sufficient evidence for a case to go to a jury and
15 it was -- certainly was a jury issue, a jury issue as to
16 what her intent was. And I instructed them within my charge
17 how they were to determine intent, it was their conclusion
18 that there was an intent by your client based upon the
19 evidence which was in this case. There was an intent by her
20 to commit the offense for which she was charged and for
21 which she was found guilty and I will respectfully deny the
22 motion for a new trial. Now, at this time what I will ask
23 you to do, Mr. Nowiki, if you will prepare a sentence sheet,
24 I want some things on the record with regards to her record
25 before I impose a sentence, I will allow you to say anything

SENTENCING HEARING

1 you want to say in mitigation, Mr. Grier, at that time, but
2 I'm going to step back. Any objection to me stepping back
3 and releasing the jury, Mr. Nowiki?

4 MR. NOWIKI: No, Your Honor.

5 THE COURT: Mr. Grier?

6 MR. GRIER: No, Your Honor.

7 THE COURT: We'll stand down for about five or ten
8 minutes.

9 (Break in proceedings.)

10 THE COURT: I will be happy to hear from you,
11 Mr. Nowiki, with regards to anything from the State.

12 MR. NOWIKI: Your Honor, in reference to Ms. Sowell's
13 record, in 1994 had a forgery, 1995 was a shoplifting, also
14 1995 was interfering with a police officer, '96 was a
15 fraudulent check, '96 was a shoplifting, 1997 was another
16 shoplifting and disorderly conduct, 1999 had seven counts of
17 forgery value less than \$5,000 where she got five years
18 suspended to two years of probation. And then had a
19 possession of marijuana in 2000, 2006 petit larceny and a
20 forgery more than \$1,000 but less than \$5,000 which it looks
21 like five years suspended to two years of probation.
22 Shoplifting in '05, 2007 had a forgery less than \$5,000 and
23 a property offense third or subsequent where she got two
24 years on both of those. And that is her record of her
25 convictions.

SENTENCING HEARING:

1 THE COURT: Anything else?

2 MR. NOWIKI: I mean, Your Honor, no. She has pending
3 stuff but that's not a consideration.

4 THE COURT: Mr. Grier, anything you want to tell me?

5 MR. GRIER: Judge, well, I was going to -- Judge, she
6 had 41 days of jail time for that charge. I realized I
7 didn't have -- I needed to figure out what was what. Judge,
8 I met Ms. Sowell I believe initially back in 2009
9 representing her and I can't -- only met with her one time
10 before she bonded out on this charge -- actually two times,
11 one time at the jail and then they brought her in
12 anticipation of a plea I think early on but that didn't
13 happen. But I can tell you she never confided in me of any
14 drug issues, but my -- and you hear it --

15 THE COURT: It appears to be apparent.

16 MR. GRIER: Judge, the digression -- quite frankly I
17 just didn't recognize her this last time, I just could not
18 believe that was the same woman from the woman that I had
19 seen previously. And the most astounding incident of
20 literally a client deteriorating going from I will say a
21 beautiful, articulate woman to being somebody that I
22 couldn't believe it was the same person, astounded so I
23 can't -- she didn't confide in me that she had a drug
24 problem most certainly so I can't speak to that issue. But,
25 you know, I didn't just fall off the turnip truck either and

SENTENCING HEARING

1 with her record it's just one of those situations where some
2 things are pretty evident, that's the conclusion I have as a
3 person who has objectively looked at her. She actually has
4 five children, she has got a ten year old, eight year old,
5 six year old, two year old and a five month old child that
6 was just born. I don't have any evidence of any work
7 history to tell the Court about. She completed the 10th
8 grade. And we did not have any opportunity to really meet
9 about how we were going to try this case, as you know we've
10 been trying to get in touch with her for several months now
11 and haven't been able to do that. But Judge, that's about
12 all I know to tell you about her. She has children, I would
13 beg for mercy on her part. I can't explain it. I don't
14 know what is going on in her head, whether she has got
15 mental health issues, I suspect that she does and those may
16 be induced from a drug problem. But I ask for mercy on her
17 behalf. She was never rude or never saw any evidence of her
18 being violent or someone that was disrespectful in any way.

19 THE COURT: A bench warrant has been issued for her
20 arrest. I will impose the sentence, it will be sealed and
21 she will be brought in here upon her arrest for the sentence
22 to be imposed for whatever judge is here at the time.
23 Anything else from the State on this matter?

24 MR. NOWIKI: Just briefly. We had a lot of -- as you
25 can tell we have a lot of these types of crimes going on

SENTENCING HEARING

1 here and based on her record we are just asking that she get
2 a reasonable sentence for her record and for the property
3 crimes she's doing.

4 (End of trial proceedings.)

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SENTENCING HEARING

1 (Reading of sealed sentence by Judge Burch.)

2 MR. NOWIKI: Your Honor, this is India Sowell. During
3 the August term of general sessions court we had a trial in
4 her absence and that is why we are here for today, she was
5 found guilty. The case number is 2012-GS-29, I believe it
6 is 902; is that right?

7 MR. GRIER: That's correct.

8 MR. NOWIKI: And we are here for sentencing.

9 MR. GRIER: Judge, I think it's a preliminary matter,
10 the defense would appropriately make a motion at the time
11 prior to the issuance of -- the reading of the sentence, if
12 I might, Your Honor? I would move for a new trial, Your
13 Honor. My client was not given the opportunity to be
14 present in trial and to confront witnesses and to assist in
15 her defense. Certainly I understand I have got a burden to
16 overcome in the sense that what the solicitor is going to
17 tell you is that we did attempt to -- and I will just go
18 ahead and put the cards on the table, notwithstanding the
19 fact that we had contact with Ms. Sowell and she was unable
20 to attend her hearing, Your Honor. She was denied the
21 opportunity to present evidence and to confront her
22 witnesses and to be present at the trial.

23 THE COURT: Trial in absence situation. I will have to
24 deny that motion but I will allow you to make further
25 motions after we publish the sentence in case you want to --

SENTENCING HEARING

1 MR. GRIER: Thank you, Your Honor.

2 THE COURT: -- if you want a reconsideration on the
3 sentence.

4 MR. GRIER: Thank you, Judge.

5 THE COURT: Ms. Sowell, good morning. I was not the
6 trial judge here. I'm opening this sealed sentence by Judge
7 Brown if I'm reading that correct. And on the sentence of
8 the Court, 2012-902, shoplifting third or subsequent
9 property crime, that India C. Sowell be confined in the
10 State Department of Corrections for a period of six years.
11 She gets credit for 41 days. Court recommends ATU unit. Is
12 Judge Brown coming back to town?

13 MR. GRIER: We don't have him on the horizon for any
14 reason at this time, Your Honor.

15 THE COURT: All right. You've certainly got at the end
16 of this time for any motions you want to file for any
17 reconsideration.

18 MR. GRIER: Your Honor, you want me to do that at a
19 different time?

20 THE COURT: Y'all can talk about it and just enter it
21 whenever you get ready.

22 (END OF SENTENCE HEARING.)

23


24

25

1 I, the undersigned, Michael C. Watkins, Official Court
2 Reporter for the Sixth Judicial Circuit of the State of South
3 Carolina, do hereby certify that the foregoing is a true,
4 accurate and complete transcript of record of the proceedings
5 had and evidence introduced in the trial of the captioned
6 case, relative to appeal, in the Court of General Sessions
7 for Lancaster County, South Carolina, on the 15th and 16th
8 days of August, 2012.

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

11
12 February 8, 2013

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15 Michael C. Watkins
16 Court Reporter.
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STATE OF SOUTH CAROLINA
COURT OF GENERAL SESSIONS
COUNTY OF LANCASTER
2012-GS-29-00902

State of South Carolina
vs.
India Sowell

Lancaster, South Carolina
September 12, 2012
Before the Honorable Paul Burch

APPEARANCES

For the State: Bill Nowiki
For the Defendant: Mark Grier

Reported by: Michael C. Watkins
Official Court Reporter

1 MR. NOWIKI: Your Honor, this is India Sowell. During
2 the August term of general sessions court we had a trial in
3 her absence and that is why we are here for today, she was
4 found guilty. The case number is 2012-GS-29, I believe it
5 is 902; is that right?

6 MR. GRIER: That's correct.

7 MR. NOWIKI: And we are here for sentencing.

8 MR. GRIER: Judge, I think it's a preliminary matter,
9 the defense would appropriately make a motion at the time
10 prior to the issuance of -- the reading of the sentence, if
11 I might, Your Honor? I would move for a new trial, Your
12 Honor. My client was not given the opportunity to be
13 present in trial and to confront witnesses and to assist in
14 her defense. Certainly I understand I have got a burden to
15 overcome in the sense that what the solicitor is going to
16 tell you is that we did attempt to -- and I will just go
17 ahead and put the cards on the table, notwithstanding the
18 fact that we had contact with Ms. Sowell and she was unable
19 to attend her hearing, Your Honor. She was denied the
20 opportunity to present evidence and to confront her
21 witnesses and to be present at the trial.

22 THE COURT: Trial in absence situation. I will have to
23 deny that motion but I will allow you to make further
24 motions after we publish the sentence in case you want to --

25 MR. GRIER: Thank you, Your Honor.

1 THE COURT: -- if you want a reconsideration on the
2 sentence.

3 MR. GRIER: Thank you, Judge.

4 THE COURT: Ms. Sowell, good morning. I was not the
5 trial judge here. I'm opening this sealed sentence by Judge
6 Brown if I'm reading that correct. And on the sentence of
7 the Court, 2012-902, shoplifting third or subsequent
8 property crime, that India C. Sowell be confined in the
9 State Department of Corrections for a period of six years.
10 She gets credit for 41 days. Court recommends ATU unit. Is
11 Judge Brown coming back to town?

12 MR. GRIER: We don't have him on the horizon for any
13 reason at this time, Your Honor.

14 THE COURT: All right. You've certainly got at the end
15 of this time for any motions you want to file for any
16 reconsideration.

17 MR. GRIER: Your Honor, you want me to do that at a
18 different time?

19 THE COURT: Y'all can talk about it and just enter it
20 whenever you get ready.

21 (END OF SENTENCE HEARING.)

22

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25

1 I, the undersigned, Michael C. Watkins, Official Court
2 Reporter for the Sixth Judicial Circuit of the State of South
3 Carolina, do hereby certify that the foregoing is a true,
4 accurate and complete transcript of record of the proceedings
5 had and evidence introduced in the trial of the captioned
6 case, relative to appeal, in the Court of General Sessions
7 for Lancaster County, South Carolina, on the 12th day of
8 September, 2012.

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

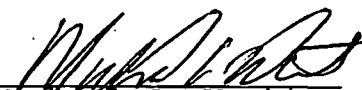
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June 26, 2013

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Michael C. Watkins
Court Reporter

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FILED
OFFICE OF CLERK
OF COURT

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
COUNTY OF LANCASTER) 2012 NOV 28 PM 3: 26 SIXTH JUDICIAL CIRCUIT
CLERK OF COURT) INDICTMENT NO. 2012-GS-29-902
LANCASTER, SC) WARRANT # M742807

State)
vs.) **ORDER DENYING DEFENDANT'S**
) **MOTION FOR NEW AND**
) **RECONSIDERATION OF SENTENCE**
India Sowell,)
Defendant.)

This matter is currently before the Court by way of Defendant's Motion for New Trial or for Reconsideration of Sentence requesting that the Court grant a new trial or in the alternative, reconsider the sentence handed down at the conclusion Defendant's trial.

The Defendant was given adequate notice of the trial date by being noticed by her attorney that she was on the trial list for the August 2012 term of General Sessions Court. Defendant's attorney stated in Court that he contacted the Defendant and informed her to be in Court but the Defendant, of her own volition, failed to appear for her trial.

Additionally, the Defendant's Bond Papers, under "Acknowledgment By Defendant," specifically states, "I understand and have been informed that I have a right and obligation to be present at trial and should I fail to attend the court, the trial will proceed in my absence." The Defendant signed the Acknowledgment therefore having notice that if she did not appear for her trial date, the case would go forward in her absence.

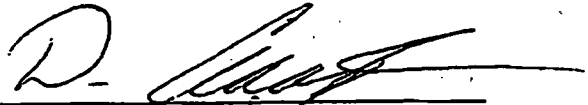
On or about August 16, 2012, this Court heard Defendant's Motions, which were denied. A jury was selected and the trial went forward. The State presented its evidence and the Defendant's attorney had an opportunity to cross examine the State's witnesses and dispute any evidence. The jury heard all the evidence and came back with a verdict finding the Defendant guilty of Shoplifting. Defendant's Constitutional rights were not violated.

After the jury rendered its verdict of guilty on the charge of Shoplifting, during sentencing, the State presented the Defendant's criminal history to the Court. The Court is authorized and allowed to take into consideration a defendant's criminal record prior to sentencing. Based upon the facts presented and the Court's consideration of the Defendant's record the Court imposed a sentence that it deemed appropriate.

THEREFORE, the Defendant's Motion for a New Trial and Defendant's Motion to Reconsider the Sentence is hereby **DENIED**.

AND IT IS SO ORDERED.

November 23, 2012
Florence, South Carolina


The Honorable D. Craig Brown
Presiding Judge
Sixth Judicial Circuit

STATE OF SOUTH CAROLINA)
)
 COUNTY OF LANCASTER)

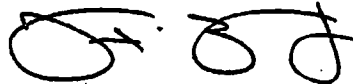
INDICTMENT

At a Court of General Sessions, convened on July 19, 2012, the Grand Jurors of Lancaster County present upon their oath:

Shoplifting 3rd or Subsequent Property Crime

That India Korin Sowell did in Lancaster County on or about April 11, 2012, take possession of and carry away, transfer from one person to another or from one area of the store or other retail mercantile establishment to another area, or cause the same to be done, merchandise, to wit: soap, mouthwash, and transmission fluid, valued at \$2,000.00 or less, displayed, held, stored, or offered for sale by Family Dollar with the intention of depriving the merchant of the possession, use, or benefit of the merchandise without paying the full retail value, the defendant having been twice or more previously convicted of a property crime the term of imprisonment for which was contingent upon the value of the property involved in violation of §16-13-110(B)(1) 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.



 Douglas A. Barfield, Jr., SOLICITOR

WITNESSES

McKinnon - LCSO #12-13187

1.02 hr

ARREST WARRANT NUMBER/DOA

M742807 (DOA-4-12-12)

ACTION OF GRAND JURY

TRUE BILL

Roy Nash
Foreperson of Grand Jury
Date: **JUL 19 2012**

VERDICT

Foreperson of Petit Jury
Date:

112

DOCKET NO. 2012-GS-29-*902*

The State of South Carolina
County of Lancaster

COURT OF GENERAL SESSIONS

JULY TERM 2012

THE STATE
vs.

India Korin Sowell *902-02*

Indictment for

Shoplifting 3rd or Subsequent
Property Crime

SC Code: § 16-13-0110(B)(1), § 16-01-57
CDR Code: 2877
Class: Felony, E.

FILED
OFFICE OF CLERK
OF COURT

2012 JUL 19 PM 3:20

CLERK OF COURT
LANCASTER, SC

CERTIFIED TO BE A TRUE COPY

J. Hammond

JEFF HAMMOND
CLERK OF COURT
LANCASTER COUNTY, SC

STATE OF SOUTH CAROLINA)

IN THE COURT OF GENERAL SESSIONS

COUNTY OF LANCASTER)

STATE VS.)

India Karin Sowell)

AKA:)

Race: B Sex: F Age:)

DOB: SS#:)

City, State, Zip: Kershaw, SC 29067)

DL# SID#)

*CDL Yes No CMV Yes No Hazmat Yes No

INDICTMENT/CASE#: 2012-GS-29-902

AW#: M742807

Date of Offense: April 11, 2012

S.C. Code §: 16-13-110(C)(1), 16-1-57

CDR Code #: 2877

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was CONVICTED OF or PLEADS TO: Shoplifting Third or Subsequent Property Crime

In violation of § 16-13-110(C)(1), 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 Lewd Act)

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury. (def.'s Initials)
The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST: [Signature] 70432

WHEREFORE, the Defendant is committed to the State Department of Corrections County Detention Center, SC Bar #

for a determinate term of 6 days/months/years or under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and or payment of \$ _____; plus costs and assessments as applicable; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on:
 The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections. 71 days TO BE A TRUE COPY

The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135. Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

Set by SCDPPPS

Recipient: _____

*Fine:		\$
§14-1-206 (Assessments 107.5%)		\$
§14-1-211 (A)(1)(Conv. Surcharge)	\$100	\$
§14-1-211 (A)(2)(DUI Surcharge)	\$100	\$
§56-5-2995 (DUI Assessment)	\$12	\$
§56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§14-1-212 (Law Enforce. Funding)	\$25	\$
§14-1-213 (Drug Court Surcharge)	\$150	\$
§50-21-114 (BUI Breath Test Fee)	\$50	\$
§56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$
3% to County (if paid in installments)		\$
TOTAL		\$

Clerk of Court/Deputy Clerk: [Signature]
Court Reporter: [Signature]

PTUP _____ JEFF HAMMOND
_____ days/hours Public Service Employment
LANCASTER COUNTY, S.C.

Obtain GED

Attend Voc. Rehab. Or Job Corp. _____

May serve W/E beginning
Substance Abuse Counseling

Random Drug/Alcohol Testing
Fine may be pd. in equal consecutive weekly/monthly
prmts: of \$ _____ Beginning _____
\$ _____ Paid to Public Defender Fund

Other: ATU

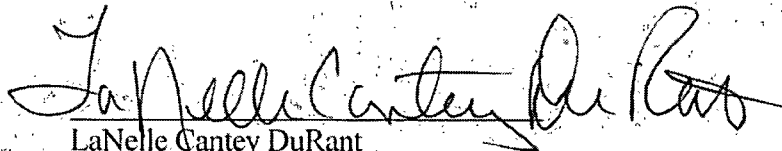
Appointed PD or appointed other counsel, \$47.12 requires \$300 be paid to Clerk during probation.

Presiding Judge: [Signature]
Judge Code: 2160
Sentence Date: 8-16-12

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 August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

February 3rd, 2014



LaNelle Cantey DuRant
Appellate Defender

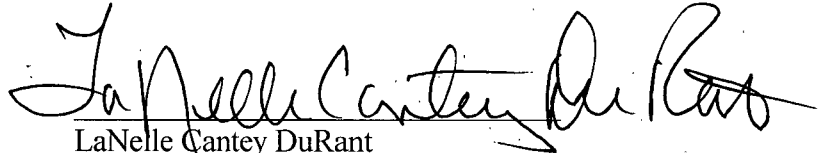
South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

CERTIFICATE OF COUNSEL FOR APPELLANT

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February 3rd, 2014



LaNelle Cantey DuRant
Appellate Defender

South Carolina Commission on Indigent Defense
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PO Box 11589
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ATTORNEY FOR APPELLANT

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

ORIGINAL

Appeal from Lancaster County
D. Craig Brown, Circuit Court Judge

THE STATE,

RECEIVED
RESPONDENT, FEB 03 2014

V.

SC Court of Appeals

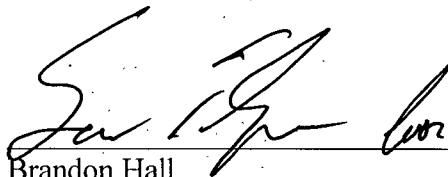
INDIA SOWELL,

APPELLANT

APPELLATE CASE NO. 2012-213675

CERTIFICATE OF SERVICE

I certify that a true copy of the Record on Appeal in the above referenced case has been served upon Deborah R.J. Shupe, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201 this 3rd day of February, 2014.



Brandon Hall
Administrative Specialist

SUBSCRIBED AND SWORN TO before me
this 3rd day of February, 2014.

Marisa Funder (L.S.)

Notary Public for South Carolina
My Commission Expires: July 3, 2023.