

ORIGINAL

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY

C. Victor Pyle, Jr., Circuit Court Judge

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SC Court of Appeals

THE STATE,

RESPONDENT,

V.

EVERETTE M. JENKINS,

APPELLANT

APPELLATE CASE NO. 2013-002513

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA,)
)
 PLAINTIFF,)
)
 -VS-)
)
 EVERETTE M. JENKINS,)
)
 DEFENDANT.)
 _____)

2013-GS-23-04280

TRANSCRIPT OF RECORD

NOVEMBER 14, 2013
GREENVILLE, SOUTH CAROLINA

BEFORE:

THE HONORABLE C. VICTOR PYLE, JR.

APPEARANCES:

ATTORNEY FOR PLAINTIFF:

JENNIFER TESSITORE, ASSISTANT SOLICITOR

ATTORNEY FOR DEFENDANT:

TIMOTHY SULLIVAN, ESQUIRE

SUSAN W. HUDGINS
CIRCUIT COURT REPORTER

OPENING STATEMENTS - MS. TESSITORE

25

1 **THE COURT:** All right. Swear the jury.

2 **MADAME CLERK:** Would you please stand and raise your
3 right hand for the oath. The proper response is I will.
4 You shall well and truly try the case 2013-GS-23-4280, the
5 State versus Everette Martin Jenkins, indicted for
6 shoplifting and a true verdict rendered according to the law
7 and the evidence so help you God? I will?

8 **THE JURY:** I will.

9 **MADAME CLERK:** Thank you. Please be seated.

10 **THE COURT:** All right. Brief opening statements,
11 solicitor.

12 **MS. TESSITORE:** Yes, sir. It's still morning. Good
13 morning, ladies and gentlemen of the jury. My name is
14 Jennifer Tessitore. And it's my privilege and duty to
15 represent the State of South Carolina and the County of
16 Greenville in this case here today.

17 This case is as simple as simple can be. It's a one,
18 two, three, connect the dots. And as soon as you do that,
19 those dots will form a line that will point to the Defendant
20 in this case.

21 You're going to hear from probably three witnesses at
22 most in this case. And they're going to tell you what they
23 saw that day on March 17th of 2013 out at the Advance Auto
24 Store in Greenville County.

25 And if you just listen carefully to their testimony,

OPENING STATEMENTS - MR. SULLIVAN

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1 listen carefully to what they tell you what they saw, what
2 they heard, that's going to be the evidence in this case.
3 We're not talking about a, you know, it's not CSI
4 Greenville. We don't have fingerprints. We don't have any
5 of that kind of fancy stuff.

6 It's going to be probably the last case of the week. I
7 know you feel that you're just so lucky to be here and that
8 you were able to serve today in this term of court.

9 And basically you just need to use your common sense
10 and your own life experience in whatever you do and wherever
11 you've been in life. You just put those things together
12 and, like I said, just simple one, two, three, connect the
13 dots. And at the end of this case I will ask you to find
14 this Defendant, Everette Jenkins, guilty of the crime
15 charged, shoplifting. Thank you.

16 **THE COURT:** Mr. Sullivan.

17 **MR. SULLIVAN:** May it please the Court, Ms. Tessitore.
18 I'm Tim Sullivan, and I represent Mr. Jenkins. I'm going to
19 be brief. This case is simple.

20 The only thing is is once a mistake is made it puts
21 reasonable doubt or doubt in your mind. Certain mistakes
22 made somewhere in this case, how much is the case permeated
23 or affected by that mistake? And that's going to be for you
24 to decide.

25 What you decide today -- and it's kind of the myth,

OPENING STATEMENTS - MR. SULLIVAN

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1 everybody says, well, you're seeking the truth. You're not
2 seeking the truth. Sometimes the only person that'll know
3 that would be the defendant and a victim of something.

4 Your duty is to see if the State can prove to you
5 beyond a reasonable doubt what they have alleged happened.
6 That's your duty. You may think it's true. You may think,
7 well, I think it happened, but I don't - - they missed
8 something. They didn't do something right. Your job is to
9 find him guilty beyond a reasonable doubt from the evidence
10 that's presented, nothing that you think.

11 So it's technically not the truth. Maybe in most cases
12 it is, but not always. Sometimes a person will get off for
13 some reason, I think they did it, but they couldn't prove
14 it.

15 So that's your burden today. There's not just some
16 absolute truth, but whether they could prove it or not. And
17 remember, once a mistake's made, how far does that affect
18 the whole case? Thank you.

19 **THE COURT:** All right. Ladies and gentlemen, I'll give
20 you a short recess. I have a matter I need to take up with
21 the jury who is - - which is now deliberating. So if you'll
22 go to your jury room. Thank you. I'll be back with you
23 shortly, I hope.

24 (Whereupon, the jury exited the courtroom at 11:15 AM)

25 **THE COURT:** They've got a question I need to take up

1 with this other jury.

2 (Whereupon court was in recess at 11:15 AM)

3 (Whereupon court resumed at 11:26 AM)

4 **THE COURT:** All right. Bring this other jury, please.

5 **MS. TESSITORE:** Your Honor, did you want to go ahead
6 and address the prior convictions just for jurisdiction?

7 **THE COURT:** Sure. Hold them up just a minute. All
8 right. Let's go ahead and do that.

9 **MS. TESSITORE:** Your Honor, the State has the prior
10 convictions, a shoplifting conviction, October of 2012 here
11 in Greenville County. And then there are also prior
12 convictions from the State of North Carolina, a larceny
13 conviction in - - December 1st of '89. There's a forgery
14 conviction from 8/31/1990. And there are others, but for
15 jurisdictional purposes, I think we just need two priors.

16 **THE COURT:** All right. And you intend to use those for
17 impeachment purposes?

18 **MS. TESSITORE:** These as well as others, Your Honor.

19 **MR. SULLIVAN:** There are probably more - - -

20 **THE COURT:** Excuse me?

21 **MR. SULLIVAN:** There are probably more - - -

22 **THE COURT:** For enhancement?

23 **MR. SULLIVAN:** - - - for impeachment. That's enough
24 for enhancement, but there's more if he takes the stand.

25 **THE COURT:** All right.

1 **MR. SULLIVAN:** He's aware of that. He's got a copy of

2 - - -

3 **THE COURT:** Okay.

4 **MR. SULLIVAN:** - - - his record. I gave him that in
5 our conference.

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

7 **MS. TESSITORE:** Do you want to go ahead and make those
8 a Court exhibit or ...

9 **THE COURT:** Do you need to make them, I mean, do you
10 contest the fact that - - -

11 **MR. SULLIVAN:** I think the Court has jurisdiction.
12 I've explained that - - -

13 **THE COURT:** All right.

14 **MR. SULLIVAN:** He said he - - -

15 **THE COURT:** All right. Go ahead and mark them for the
16 record.

17 **MR. SULLIVAN:** Okay.

18 **MS. TESSITORE:** Yes, sir. Thank you.

19 **MR. SULLIVAN:** He had told me he had three prior
20 shoplifting's and two - - I said that these are property
21 offences, not necessarily shoplifting. I explained to him
22 the larcenies, forged checks, anything that involved
23 property, not personal injury, but - - -

24 **THE COURT:** Certainly.

25 **MS. TESSITORE:** Okay. Your Honor, we will submit for

SERBANDO GARCIA - DIRECT EXAMINATION BY MS. TESSITORE

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1 purposes of the record all of his prior property convictions
2 from South Carolina and North Carolina.

3 **THE COURT:** Okay.

4 (Whereupon Court's exhibit 1 was marked)

5 **THE COURT:** All right. Bring the jury in.

6 **MS. TESSITORE:** Thank you, Your Honor.

7 (Whereupon the jury entered the courtroom at 11:30 AM)

8 **THE COURT:** All right. Solicitor, you may proceed.

9 **MS. TESSITORE:** Thank you, Your Honor. The State calls
10 Serbando Garcia.

11 **MADAME CLERK:** Mr. Garcia, please come forward.

12 **Serbando Garcia,** being
13 duly sworn testifies as follows:

14 **MADAME CLERK:** Thank you. Please be seated. Please
15 state your name for the record.

16 **MR. GARCIA:** Serbando Garcia.

17 **Direct Examination by Ms. Tessitore:**

18 Q. Mr. Garcia, can you tell the jury -- how old are you?

19 A. Nineteen.

20 Q. And where do you work?

21 A. Advance Auto Parts.

22 Q. How long have you worked there?

23 A. Today, a year and a month.

24 Q. Okay. And when you first started working there, in
25 what capacity did you work? What was your position?

SERBANDO GARCIA - DIRECT EXAMINATION BY MS. TESSITORE

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1 A. Just retail sales.

2 Q. And as a retail salesman - - you said this was the
3 Advance Auto Parts. Is that - - what's the address there?

4 A. 3507 West Blue Ridge Drive.

5 Q. And is that in Greenville County?

6 A. Yes, ma'am.

7 Q. Okay. And what is your position there now?

8 A. Assistant manager.

9 Q. So when were you promoted?

10 A. Three months ago.

11 Q. Okay. Just tell the jury first when - - since this
12 case arose back in March, that was when you were - - before
13 you were assistant manager?

14 A. (Affirmative nod).

15 Q. Okay. And tell the jury what your duties were in your
16 first position.

17 A. My duties were just to be a salesperson and stock up
18 merchandise and do inventory.

19 Q. Okay. And when you say do inventory, what does that
20 mean?

21 A. When the truck arrives with all the merchandise, I have
22 to account for what has arrived and what hasn't and see what
23 we have out on the sales floor.

24 Q. And how many hours a week would you typically work
25 there around that time?

SERBANDO GARCIA - DIRECT EXAMINATION BY MS. TESSITORE

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1 A. At that time it was thirty-five, thirty-two.

2 Q. Thirty-two hours? Thirty-five hours?

3 A. Thirty-two to thirty-five max.

4 Q. Okay. And what else -- now did you graduate from high
5 school?

6 A. Yes, ma'am.

7 Q. What high school did you graduate from?

8 A. Greenville Senior High.

9 Q. And what did you do after you graduated?

10 A. Went for one year of Greenville Tech and I enlisted
11 myself in the Marine Corps. And right now I'm just waiting
12 for them to process my paperwork so I can actually do my
13 thirteen weeks of boot camp.

14 Q. Bet you're really looking forward to that, huh?

15 A. Yes, ma'am.

16 Q. So in addition to working at Advance Auto Parts you're
17 also -- do you do anything for the Marine Corps now?

18 A. Right now it's just physical training, PT, trying to
19 understand what I need to have to be a Marine, not just
20 present myself and show up and one day become one. I have
21 to bring my paperwork, be physically fit and that's pretty
22 much about it.

23 Q. Okay. So between that and your job at Advance Auto
24 Parts, that keeps you pretty busy?

25 A. Yes, ma'am.

SERBANDO GARCIA - DIRECT EXAMINATION BY MS. TESSITORE

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1 Q. All right. Now, taking you back to March 17th of 2013,
2 were you working that Sunday afternoon?

3 A. Yes, ma'am.

4 Q. And how many other employees were working there that
5 day, that afternoon?

6 A. At that time it was three employees.

7 Q. Okay.

8 A. Four employees.

9 Q. What were your hours that Sunday just so we can get
10 some boundaries?

11 A. Normally I'm closing. So it was between the hours of
12 one to nine.

13 Q. Okay. So you close at nine PM on Sundays?

14 A. Um-hum (affirmative).

15 Q. All right. And this was March 17th. So what was the,
16 if you recall, just generally, what kind of day was it
17 weather-wise?

18 A. Sunny day. Just sunny. It wasn't really hot, it was
19 around mid 60s.

20 Q. Okay. And now when you were working that day what kind
21 of work were you doing? Were you on the floor? Were you in
22 the back? What were you doing that afternoon?

23 A. At that moment I was assisting customers and I was
24 gathering the parts that he needed for his - - for doing his
25 services.

SERBANDO GARCIA - DIRECT EXAMINATION BY MS. TESSITORE

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1 Q. Okay. So do you have a little bit of automotive
2 background, I'm guessing?

3 A. Yes, ma'am.

4 Q. Okay. When -- just to give the jury a little bit of
5 an idea of where this Advance Auto Parts is, just generally
6 describe what is in that area. What part of Greenville is
7 it and what's in the area as far as major stores that they
8 might be familiar with?

9 A. It's West Blue Ridge and it intersects Whitehorse Road.
10 It's near a Wal-mart, McDonald's. It's right across the
11 street from a McDonald's.

12 Q. Okay. And would you say that that Sunday afternoon --
13 what was the traffic like as far as customer traffic?

14 A. It was mildly heavy. There was more people than
15 salespersons. So we had about two or three person for --
16 per salesman.

17 Q. Okay. And in that -- during that afternoon around
18 four PM or so what did -- did you notice anything unusual?

19 A. Once I was helping my customer, I went to go get his
20 air filter, which was located where the gentleman was. And
21 once I always go to a customer and ask them if they need
22 help or looking for anything or assistance to find the
23 correct thing.

24 I asked him and he told me that, no, he said -- he
25 didn't move or look at me or anything. And I found that

SERBANDO GARCIA - DIRECT EXAMINATION BY MS. TESSITORE

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1 kind of odd. And I got my part and proceeded.

2 Q. I'm sorry. Let me back you up just a second. You said
3 you were helping a customer so you went to go get an air
4 filter?

5 A. Um-hum (affirmative).

6 Q. Okay. And then there was a gentleman. Can you
7 describe what drew your attention to that gentleman?

8 A. Other than wearing a really heavy jacket on a sunny
9 day, he didn't move or, you know, be like excuse me, sorry.
10 The part that I was getting was literally right behind him.
11 And he was halfway between the walkway, which is really
12 wide. So I tried to kind of reach around behind him to get
13 the part that I needed.

14 Q. Okay. Did he say anything to you?

15 A. No. When I asked him if he needed any help, he's like
16 - - didn't acknowledge me.

17 Q. Okay. Did you make eye contact with him?

18 A. I saw him. I saw his face. I looked at him and he
19 just stood straight. And I walked around him to get the
20 part and proceeded to go back to the customer. And he
21 didn't move from the spot.

22 Q. And describe just generally what did you observe as far
23 as like the color of the coat and what type of coat it was.

24 A. Like I said, it was a heavy, like winter kind of
25 jacket, long-sleeved, black in color, wearing light blue

SERBANDO GARCIA - DIRECT EXAMINATION BY MS. TESSITORE

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1 pants. That's pretty much about it.

2 Q. Okay. Did he -- is that the first time you noticed
3 him?

4 A. Yes, ma'am.

5 Q. Okay. And did he -- at any point did you observe him
6 shopping or talking to any of the other employees that were
7 on the floor?

8 A. He was just minding his own, he was looking around.
9 When I first encountered him he was just at the end of --
10 at the end of the hallway looking at oil. And once I walked
11 back to my counter, I looked around to see how many more
12 people we had in the store, and I noticed he wasn't at the
13 same spot. He had moved down to the end of the last aisle,
14 which was the same walkway where the exit is.

15 And I noticed him glancing at me two or three times.
16 And I just tried to pretend like I was noticing the customer
17 over here, but at the same time look at him -- looking at
18 him in my peripheral vision.

19 Q. Okay. And did you ever -- when you first saw him
20 where were his hands? Was he holding anything? Could you
21 see his hands?

22 A. His hands were in his pockets. He just stood straight
23 up, didn't move much. Once --

24 Q. Was he with anyone?

25 A. He was by himself.

SERBANDO GARCIA - DIRECT EXAMINATION BY MS. TESSITORE

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1 Q. Okay. And at any time did you see him coming in or
2 going out with anybody else?

3 A. No, ma'am.

4 Q. Okay. And do you -- how long did you watch him for
5 approximately while you were helping the other customers?

6 A. About five minutes.

7 Q. During that time how would you describe as far as the
8 lighting in the store there?

9 A. Excellent lighting.

10 Q. Okay. No problem seeing the inventory that you have?

11 A. No.

12 Q. All right. And did -- while you were watching him
13 what happened?

14 A. I had to have my attention towards the customer that I
15 was priorly helping, too. I had to gather all of the stuff
16 that he needed.

17 At one moment I walked to the back and grabbed some
18 parts and came back to the front counter. And that's when I
19 saw him move further down near the exit. But at the same
20 time he kept on -- he had an item in his hand, just looking
21 at it, but at the same time looking at me. And every time I
22 looked away and looked back a little bit, he would like see
23 that I saw him and just put it down.

24 Q. And did you suspect anything at that point?

25 A. At that point I suspected something. I let my manager

SERBANDO GARCIA - DIRECT EXAMINATION BY MS. TESSITORE

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1 know. And I told my manager to just keep an eye out to see
2 if anything else is - - anything unusual is going on. And
3 he said, okay. He's like, what's going on? I was like, I
4 just see that one of the gentlemen is just staring at us.

5 Q. Okay. And at that point did you - - what did you do
6 with the other customer?

7 A. I was proceeding to the last item that we were going to
8 get. He didn't know what the name of it was. So he said it
9 looks like some sort of odd shaped item. And I said, you
10 got the vehicle outside? He said, yeah. We went outside to
11 see what he needed.

12 And once I slipped outside - - he was already outside
13 walking across the - - it's a restaurant on the side of the
14 building, it's called Daytona. And I noticed he didn't have
15 a vehicle, he was just walking across the parking lot - - -

16 Q. Now are you talking about the customer or are you
17 talking about the gentleman that you observed?

18 A. The gentleman that I observed.

19 Q. Okay.

20 A. And he was walking across the Daytona Bar and Grill.
21 And I noticed he didn't have a vehicle stationed at our
22 store. So he was just walking. He had a toolbox in his
23 left hand that I noticed.

24 When I finished with my customer, rang him out and
25 everything, I asked my manager if he'd sold a toolbox. He

SERBANDO GARCIA - DIRECT EXAMINATION BY MS. TESSITORE

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1 told me no. And since one of my duties is to check
2 inventory, I proceeded to do that. And we haven't received
3 any of them, we haven't sold none in days or weeks, and we
4 didn't have one where it was supposed to be located at.

5 Q. Okay. Is that a fairly -- how long would that process
6 take just to check as far as whether there was something
7 missing?

8 A. Fifteen to thirty seconds.

9 Q. Okay. And what -- how do you do that?

10 A. A bar code number or a part number is located where the
11 item is supposed to be at.

12 Q. And did you know where that particular item was that
13 you saw him holding?

14 A. Yes, ma'am.

15 Q. Okay. So did you go to that area?

16 A. I went to the area, got the part number, and noticed it
17 wasn't there. So I looked it up on the computer to see if
18 we have sold it, and we hadn't sold none. So that's what
19 raised my suspicion that, you know, this gentleman walked
20 out with an item without purchasing it.

21 Q. Okay. Now, you keep talking about this gentleman. Do
22 you see him in the courtroom today?

23 A. Yes, ma'am.

24 Q. All right. And where is he?

25 A. Sitting beside the other lawyer.

SERBANDO GARCIA - DIRECT EXAMINATION BY MS. TESSITORE

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1 Q. Okay. And what is he wearing?

2 A. A white collared shirt.

3 Q. Okay. Let the record reflect that the witness
4 identified the Defendant, Mr. Jenkins. Now, tell the jury
5 what you did - - well, first of all, do you have any loss
6 prevention employees that work in your store there?

7 A. We do.

8 Q. Okay. Were there any working that day?

9 A. No, ma'am.

10 Q. And so at that point what did you do once you saw him
11 walking out with - - and pull up the toolset?

12 A. Like I said, I went back into the store and looked up
13 the part number to see if we have sold one at the moment,
14 which we haven't. And I went to go to the location where it
15 was supposed to be at, and it wasn't there. I asked my
16 manager and my coworker if they sold it, and they said no.

17 Q. And so what did you do?

18 A. I asked my manager when I had lunch, he told me it was
19 five minutes ago. So what I had done is just got in my
20 vehicle - - clocked out, got in my vehicle to see where this
21 gentleman was going.

22 Q. Okay. When he was walking away from your store when
23 you saw him, describe how he produced the item that you saw.

24 A. Can you repeat the question?

25 Q. When you saw him walking out where did he - - where did

SERBANDO GARCIA - DIRECT EXAMINATION BY MS. TESSITORE

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1 he produce the toolset from?

2 A. Just - - he had it in his hand once I saw him.

3 Q. Okay.

4 A. He was already across the restaurant beside us. He was
5 halfway through their parking lot and he just had the
6 toolset in his hand.

7 Q. Okay. Now, did you see him come out of the door at
8 Advance Auto Parts while you were working with that
9 customer?

10 A. Um-hum (affirmative).

11 Q. Did he have it in his hand then?

12 A. No, ma'am.

13 Q. Okay. And so as far as punching out and heading out,
14 what did you do at that point?

15 A. At the moment I thought I wasn't going to find him, but
16 once I pulled out of our store's driveway and into the main
17 road, I saw him walking in between the Subway and between
18 Walgreens. And I saw the same guy, same toolbox. And
19 that's when I pulled up to the red light and called the
20 police.

21 Q. Were you alone?

22 A. I was alone.

23 Q. Okay. And how was the lighting outside?

24 A. It was a sunny day.

25 Q. Okay. And did - - what kind of pace was he walking at?

SERBANDO GARCIA - DIRECT EXAMINATION BY MS. TESSITORE

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1 A. Just a casual pace. He wasn't speed walking, wasn't
2 running or anything.

3 Q. Okay. Did he know that you had seen him with the
4 toolbox out of his jacket?

5 A. I don't think he noticed that I saw him.

6 Q. Okay. Did you make any gestures, or sounds or any kind
7 of motions that would alert him to you following him while
8 you were in your vehicle as he was walking?

9 A. Nothing at all.

10 Q. Okay. What did he do -- which direction did he walk?
11 And just tell the jury generally -- just generally, and
12 then I'm going to show you a photo and then you can describe
13 a little bit more in detail. So just generally tell the
14 jury what direction did he travel and where did you see him
15 go.

16 A. Well, when he walked out of our store he turned right
17 and that's where the restaurant, Daytona, right beside there
18 is a car wash and a Subway and a Walgreens. And that's the
19 end of West Blue Ridge and the corner of Whitehorse Road.
20 So he proceeded to walk down Whitehorse Road.

21 Q. Okay. And what did you do?

22 A. At that moment, that's when I called the police. And I
23 didn't honk at him, I just went straightforward and parked
24 at a church in front of a church and I gave my information
25 to the police station. And they told me - - -

SERBANDO GARCIA - DIRECT EXAMINATION BY MS. TESSITORE

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1 Q. Were you doing that on the phone?

2 A. Um-hum (affirmative).

3 Q. Okay.

4 A. That's when they told me they were going to send
5 someone out. I just stayed there to keep an eye on him. He
6 crossed the street from one side to the other and proceeded
7 to go to a Li'l Cricket where he pulled out the toolbox and
8 showed it to somebody. And this person just raised their
9 hands. So I assume that he was trying to like sell it or
10 give it away or something.

11 The person just walked into the store to the gas
12 station and he proceeded to walk over the bridge. I started
13 to lose sight of him. So I pulled out of the church and
14 went straightforward again and parked at another location
15 just to keep an eye on him.

16 That's when I saw the two police cars pull - - coming
17 from opposite directions. And they turned on their lights
18 and pulled over beside him. And I just did a - - got in the
19 median, went around and came and parked.

20 Q. Okay. So you maintained visual contact? You could see
21 him all the way until the time that the police arrived?

22 A. Yes, ma'am.

23 Q. Okay. And what did you see the police do when you got
24 there?

25 A. They got - - -

SERBANDO GARCIA - DIRECT EXAMINATION BY MS. TESSITORE

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1 Q. When they got there. Sorry.

2 A. Well, obviously, they had their lights on. The
3 gentleman stopped and he - - he let go of the toolbox and
4 put it on the ground. And that's when the police proceeded
5 to question him and arrested him. And I just parked. And I
6 was going to get out of my vehicle, but the officer told me
7 just to wait right there.

8 Q. Okay. Was that a good stopping point as far as getting
9 out and talking with the officers?

10 A. Um-hum (affirmative).

11 Q. Okay. Was it - - did you remain in that position or in
12 that location to then talk to the police or did you go
13 somewhere else?

14 A. We proceeded - - to get out of traffic, we went to a
15 Li'l Cricket, back to the Li'l Cricket and we parked in
16 their parking lot.

17 Q. Okay. And that's the same Li'l Cricket where you saw
18 him approaching a man outside?

19 A. Yes, ma'am.

20 Q. Okay. Did he seem to know that man at that Li'l
21 Cricket?

22 A. Not that I know of.

23 Q. Okay. Just one minute.

24 (Pause)

25 Q. Okay. I'm going to go ahead and ask you to look at

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1 this.

2 (Whereupon State's exhibit 1 was marked for
3 identification)

4 Q. I'm going to show you State's exhibit number 1. And
5 it's kind of cumbersome, but bear with me. And if you'd
6 just take a look at that. What is that?

7 A. It's an aerial view of the location where I worked at
8 and where the location of the man that got apprehended.

9 Q. Okay. And have you had an occasion to look at that
10 before trial today?

11 A. Um-hum (affirmative).

12 Q. Okay. Would that help you in just explaining to the
13 jury where you were when you first started and where you all
14 ended up?

15 A. Yes, ma'am.

16 Q. Okay.

17 **MS. TESSITORE:** At this time the State would move that
18 this be entered into evidence.

19 **THE COURT:** Any objection?

20 **MR. SULLIVAN:** No objection.

21 **THE COURT:** Without objection.

22 (Whereupon State's exhibit 1 was admitted into
23 evidence)

24 **MS. TESSITORE:** Okay.

25 Q. All right. As we get the easel in here, tell me, did

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1 you - - when you were there at the intersection with the
2 police and they were talking with him, did you remain in
3 your vehicle?

4 A. I stepped out of my vehicle. And I was going to walk
5 towards them, but the officer told me to wait beside my
6 vehicle.

7 Q. Okay.

8 A. So I just stood outside my vehicle.

9 Q. Okay. And when you saw him was he wearing the same
10 clothing that you had seen him minutes before?

11 A. Um-hum (affirmative). Same clothing, same shoes, same
12 shirt, same - - -

13 Q. Anything change?

14 A. Nothing at all.

15 Q. Okay. I just need you to go ahead and step down. And
16 if you could, just stay right there maybe, and just speak
17 loud enough so the court reporter can hear you. And just
18 identify for the jury where the building is, the Advance
19 Auto Parts store.

20 A. The store location is right here.

21 Q. Okay. And just name the larger businesses there.

22 A. Advance Auto Parts, Daytona Bar and Grill, Subway, I
23 mean, car wash, Subway, Walgreens, the church that I parked
24 at, Li'l Cricket, and the location where they apprehended
25 the man.

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1 Q. Okay. And so approximately how far are we talking
2 about between the Advance Auto Parts and where the police
3 intercepted him?

4 A. A quarter to half a mile.

5 Q. Okay.

6 A. Or so.

7 Q. All right. And what I'm going to do is just get a
8 marker and have you just mark -- if you could, just put an
9 X where the store is and then an X where they apprehended
10 him.

11 A. (Whereupon the witness marked on the exhibit)

12 Q. Okay. And then where the Li'l Cricket is.

13 A. (Whereupon the witness marked on the exhibit)

14 Q. Okay. And if you could, just show the jury just kind
15 of using your finger the path that he took on this map from
16 point A to point B to point C, roughly.

17 A. He was walking in front of the Daytona Bar and Grill.
18 And --

19 Q. Can you speak up just a little bit.

20 A. He walked in front of Daytona Bar and Grill and
21 proceeded to walk across to the Subway and the car wash.
22 When I got in my vehicle I pulled out and went
23 straightforward and I saw him walking behind Walgreens. I
24 had to wait at the light, but I still maintained visual
25 contact.

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1 And he walked around the building and back onto the
2 sidewalk. That's when I called the police, proceeded to go
3 forward. And I went down Whitehorse Road and pulled into
4 this church right here, went straight, pulled in and
5 stationed right there at this location.

6 Q. Why don't you go ahead and just put your initials right
7 there where you were waiting.

8 A. (Whereupon the witness marked on the exhibit)

9 Q. Okay. Let's see. Can you put your initials - - your
10 full initials.

11 A. (Whereupon the witness marked on the exhibit)

12 Q. Okay. So you were right there. And then while you
13 were there describe for the jury his path.

14 A. He just followed along the sidewalk. And at that
15 moment he - - I was already done talking to the police. So
16 he was around this location.

17 He decided to cross the road and he literally walked
18 right in front of me and went on the other side of the road,
19 opposite direction. He went straight down and crossed this
20 road into the Li'l Cricket where he showed the toolbox to
21 another person.

22 Q. Okay.

23 A. Once the person said no, he continued to walk along the
24 sidewalk across the bridge. And that's when I started to
25 - - I was going to lose visual contact. So I pulled out and

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1 went straight down and stationed myself a little bit further
2 down the map. But once I got there the police were coming
3 the opposite direction.

4 Q. Okay. Is there an entry and exit off of Whitehorse
5 Road right here?

6 A. Um-hum (affirmative).

7 Q. Okay. So these are - - -

8 A. It's a U-turn down this way and an on-ramp coming up
9 this way.

10 Q. Okay. Very good. And at any point in time did he
11 become aware of you watching him or calling the police or
12 anything like that?

13 A. Nothing at all.

14 Q. Okay. If you could, just resume the witness stand.

15 A. Okay.

16 Q. Thank you. Okay. And when the officers had you go
17 back to the Li'l Cricket there was a parking lot there where
18 you could all pull in. And what happened there?

19 A. That's when they took my information and proceeded to
20 write the report, I guess.

21 Q. Okay. Did they show you any items that - - -

22 A. They took - - -

23 Q. - - - they had found?

24 A. He took a lot more items than I at first had saw in his
25 hand. He had about five or six items, seven items.

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1 Q. Okay. And were you able to get the items that they
2 produced - - did they show them to you there at the Li'l
3 Cricket?

4 A. Well, I saw them at first when they arrested him and he
5 put the suitcase down, I mean, the toolcase down. That's
6 when I saw the first item. And I noticed him having more
7 and more items coming out of his pocket.

8 Q. Okay. And did you at that point - - how long did you
9 spend at the Li'l Cricket?

10 A. We were there about ten minutes, five minutes.

11 Q. Okay. Then where did you go from there?

12 A. Back to the store so we could see what the value of the
13 items were.

14 Q. Okay. And did you provide a value for each of those
15 items and a list?

16 A. Yes, ma'am.

17 Q. Okay.

18 **MS. TESSITORE:** One moment, please.

19 (Whereupon State's exhibit 2 was marked for
20 identification)

21 Q. Okay. I'm going to show you State's exhibit number 2.
22 If you could take a look at that. Do you recognize that?

23 A. Yes, ma'am.

24 Q. What is that?

25 A. It was a release form that I had to sign so the officer

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1 could give the items back to me or to the store.

2 Q. Okay. If you could, just lean a little bit more into
3 the microphone because I think you're a little bit soft-
4 spoken. And were you able to determine whether those items
5 came from your store?

6 A. They all had our store brand.

7 Q. Okay. And could you tell the jury what those items
8 were?

9 A. A toolbox. It was a 73 piece socket set, the first one
10 that I saw. After that they had a ratchet, a socket set,
11 another socket set and a ratchet and bolt set.

12 Q. Okay. And does your signature appear on that form?

13 A. Yes, ma'am.

14 Q. State's exhibit number 2? And once you signed that
15 what happened to that property?

16 A. It came back to me, technically back to the store.

17 Q. Okay. And what was - - approximately what was the
18 value of these items altogether?

19 A. About a hundred and forty dollars worth.

20 Q. Okay. Is this a fair and accurate, number 2, is that a
21 fair and accurate copy of the document that you signed for
22 the records purposes?

23 A. Yes, ma'am.

24 Q. All right.

25 **MS. TESSITORE:** At this time the State would move

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1 State's exhibit number 2 into evidence.

2 **THE COURT:** Any objection?

3 **MR. SULLIVAN:** No objection, Judge.

4 **MS. TESSITORE:** Okay.

5 (Whereupon State's exhibit 2 was admitted into
6 evidence)

7 (whereupon State's exhibits 3 and 4 were marked for
8 identification)

9 Q. Okay. Now I'm showing you State's exhibit number 3.
10 If you could take a look at that. And what does that show?

11 A. The items or pictures of the items that he had in his
12 possession.

13 Q. Okay. Did - - are those the actual items or the - -
14 that are in that photograph?

15 A. No, they're not the actual items.

16 Q. Okay. But you were able to locate those items in order
17 to at least have a - - -

18 A. Photocopy of them?

19 Q. A record of the items?

20 A. Um-hum (affirmative).

21 Q. Okay.

22 A. Yes, ma'am.

23 Q. And are they packaged in the same way that they would
24 have been packaged back in March?

25 A. Yes, ma'am.

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1 Q. Okay. If you could just take a look at that and - - -

2 MS. TESSITORE: Well, at this point the State would
3 move State's exhibit number 3 into evidence.

4 THE COURT: Any objection?

5 MR. SULLIVAN: Judge, if they're not the actual items
6 they took off the Defendant, and they picked them out of the
7 store, I would object to that. They're not the real items.

8 THE COURT: He's identified them, I think, as the same,
9 has he not?

10 MS. TESSITORE: I believe he has, Your Honor. He
11 indicated that they were - - -

12 THE COURT: Overruled. Go ahead.

13 MR. SULLIVAN: Thank you, Your Honor.

14 MS. TESSITORE: Okay.

15 (Whereupon State's exhibit 3 was admitted into
16 evidence)

17 Q. And I'm showing you State's exhibit number 4. And take
18 a look at that. And what is that?

19 A. That's the 73 piece socket set.

20 Q. Okay. When you say the 73 piece socket set, is that
21 - - -

22 A. The item that I saw him with first when he walked
23 across the bar that he had in his hand.

24 Q. Okay. And approximately, if you could, just show the
25 dimensions to the jury just about how big it is before you

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1 show the picture. Just tell them kind of - - -

2 A. About yay big.

3 Q. So a little bit bigger than a lunch-box?

4 A. Much more bigger than a lunch-box.

5 Q. Okay. All right. And is that a fair and accurate
6 depiction of what that item looked like as far as the
7 packaging, and the size and the specific item as far as the
8 model, and the make and all that?

9 A. Yes, ma'am.

10 Q. Okay.

11 **MS. TESSITORE:** At this time the State would move
12 State's number 4 into evidence.

13 **THE COURT:** Any objection?

14 **MR. SULLIVAN:** No, Your Honor, in lieu of your prior
15 ruling.

16 **THE COURT:** All right.

17 (Whereupon State's exhibit 4 was admitted into
18 evidence)

19 Q. Now, Mr. Garcia, once you identified these items and
20 they were returned to you did you have any other involvement
21 in this case?

22 A. No, ma'am.

23 Q. Okay. Do you have video surveillance in your store?

24 A. Yes, ma'am, we do.

25 Q. Did - - was it working that day?

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1 A. At the moment, no, because we were having an update to
2 the counter system.

3 Q. Okay. So you weren't able to retrieve any video
4 evidence of this?

5 A. No, ma'am.

6 Q. Okay. Was there any question in your mind of the
7 individual that you saw in the store and followed until the
8 police got there is the same individual who had stolen those
9 items?

10 A. It is the same individual.

11 Q. Okay. And is he the same individual - - and you
12 identified the Defendant as that individual today?

13 A. Yes, ma'am.

14 Q. Is there any question in your mind?

15 A. No, ma'am.

16 Q. Okay.

17 **MS. TESSITORE:** Just one moment.

18 (Pause)

19 Q. All right. I'm just going to show you a few more
20 pictures and then we'll move along.

21 (Whereupon State's exhibits 5 - 11 were marked for
22 identification)

23 Q. Okay. I'm going to show you what's been marked as
24 State's exhibits 5 through 11 and ask you just to take a
25 look at those one by one. And you can just flip them over

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1 as you go through them.

2 (Pause)

3 Q. Okay. Have you looked at all of those?

4 A. Yes, ma'am.

5 Q. And are those fair and accurate depictions of the way
6 that the store appeared on the outside and on the inside on
7 that day in question on March 17th?

8 A. Yes, ma'am.

9 Q. Okay.

10 **MS. TESSITORE:** The State would move these to be
11 admitted into evidence, State's exhibits - - -

12 **THE COURT:** Any objection to these photographs?

13 **MS. TESSITORE:** - - - 5 through 11.

14 **MR. SULLIVAN:** None, Your Honor.

15 **THE COURT:** Without objection.

16 **MS. TESSITORE:** Okay.

17 (Whereupon State's exhibits 5 - 11 were admitted into
18 evidence)

19 Q. If you could, just briefly describe what number 5
20 shows.

21 A. It's a front picture of our store.

22 Q. Okay. And there's no question that it's Advance Auto
23 Parts, right?

24 A. Yes, ma'am.

25 Q. Okay. And State's exhibit number 6?

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1 A. That would be the point of view where I would be at my
2 register looking towards the - - kind of the front entrance.

3 Q. Okay. And maybe the easiest thing is if I put them up
4 on that. Okay. That way the jury can see them all while
5 you're going through them. If you could just step down
6 briefly. Okay. Can you see that okay, Mr. Garcia?

7 A. Yes, ma'am.

8 Q. Okay. Can you just point out for the jury - - and if
9 this laser pointer would help you, just press this little
10 button with the red dot and you can use that to point. And
11 if you want to step back here just a little bit so that the
12 jury can see.

13 A. Okay.

14 Q. And just use that pointer to just show the jury what
15 you were talking about.

16 A. This doesn't work.

17 Q. You've got to aim and point.

18 A. This is the computer that I use - - -

19 **THE COURT:** Can you speak up a little louder, please,
20 sir.

21 A. This is the computer that I use. And this would be the
22 point of view where I would be looking at towards this door.

23 Q. Okay. And when you - - would you have been able to see
24 him from where you were right there?

25 A. Yes, ma'am.

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1 Q. Okay. And where was he when you first saw him?

2 A. Down around this area right here.

3 Q. Okay. All right. I'm going to change to -- that's
4 State's exhibit number 6. And number 5 is just the -- what
5 part of the store is that?

6 A. That's the entrance, the front view of the store.

7 Q. Okay. That's State's number 5. And I'm going to show
8 you State's number 7. Tell the jury what that shows.

9 A. This is the location where the gentleman was standing
10 at when I first encountered him.

11 Q. Okay. And is that from -- what perspective, the back
12 of the store looking --

13 A. That would be from the side looking towards the front
14 view.

15 Q. Okay. State's exhibit number 8, what does that show?

16 A. The same picture, but the front view looking towards
17 the back of the building.

18 Q. Okay. And when you went to get the filter -- are we
19 able to see that area --

20 A. Yes, ma'am.

21 Q. -- where the Defendant was standing?

22 A. He was standing right at this location.

23 Q. Okay. And where did you go, around him?

24 A. Went right back here.

25 Q. Towards the back, okay. And State's exhibit number 9,

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1 which aisle is that?

2 A. That's the tool aisle that we carry our stuff.

3 Q. Okay. And so that's where those items are usually
4 held?

5 A. Yes, ma'am.

6 Q. For sale there?

7 A. Yes, ma'am.

8 Q. Okay. And is there a similar case that - - where that
9 case would have been taken from?

10 A. The case location is right here in that empty spot
11 area.

12 Q. Okay. So that's where the bigger items - - -

13 A. That's the bigger case that he took. The other items
14 - - two of them are right here in this area. One is in this
15 area and the last ones are down here in the very, very end.

16 Q. Okay. So all the items that were taken came from this
17 aisle?

18 A. Yes, ma'am.

19 Q. And State's exhibit number 10?

20 A. It's the same aisle, but the other point of view
21 towards the registers.

22 Q. And then State's number 11, what does that show?

23 A. The entrance of our store, also the exit.

24 Q. So there's only one way in and one way out for
25 customers?

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1 A. Yes, ma'am.

2 Q. Okay. And that faces out to which road?

3 A. West Blue Ridge.

4 Q. Okay. Very good. Okay. Just have a seat, please.

5 Thank you. Now -- okay. So you had no other involvement
6 after retrieving the items and restocking those?

7 A. No, ma'am.

8 Q. Okay. Just give me one moment.

9 (Pause)

10 Q. Had you ever seen this Defendant in the store before?

11 A. No, ma'am.

12 Q. Okay. Please answer any questions that Mr. Sullivan
13 may have. Thank you.

14 **THE COURT:** Mr. Sullivan.

15 **MR. SULLIVAN:** Just a couple.

16 **Cross Examination by Mr. Sullivan:**

17 Q. Okay. This is your store?

18 A. Yes, sir.

19 Q. This is the front door?

20 A. Yes, sir.

21 Q. Okay. He went out the door?

22 A. Yes, sir.

23 Q. And then you conferred with your manager?

24 A. Yes, sir.

25 Q. And then you went back and checked some stock?

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1 A. Yes, sir.

2 Q. So you didn't have him under observation the whole
3 time?

4 A. No, not the whole time, but he didn't walk far. So
5 there's - - -

6 Q. How do you know where he walked out here if you were in
7 here? When you pulled out where did you first see him?
8 Tell me on here. This is the - - -

9 A. When I first walked out to help the customer, I was
10 right - - -

11 Q. When you came out to find him? You talked to your
12 boss.

13 A. Uh-huh (affirmative).

14 Q. Let me check, have we sold anything? Then did you go
15 look for him?

16 A. Yeah.

17 Q. Okay. You came out. Where was he?

18 A. Moved down further to that building. He was right
19 there.

20 Q. Right at the corner. You could see him when you walked
21 out?

22 A. Yes, sir.

23 Q. Then where did he go - - you were in your truck then?

24 A. Yes, sir.

25 Q. So you weren't watching him while you got in your

SERBANDO GARCIA - CROSS EXAMINATION BY MR. SULLIVAN

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1 truck?

2 A. My truck is in the same area. So you can kind of see
3 where he was going.

4 Q. Your truck pulled in this way?

5 A. My truck is pulled to pull out.

6 Q. You were backed in?

7 A. Yes, sir.

8 Q. So you were getting in on the other side looking
9 through the window?

10 A. Yes, sir.

11 Q. Then where did he go?

12 A. Proceeded to walk in front of Subway, which is that
13 building.

14 Q. Car wash?

15 A. The car wash is the one behind it. Go back one. That
16 one's the car wash.

17 Q. And this is Walgreens?

18 A. Yes, sir.

19 Q. He went in here?

20 A. Yes, sir.

21 Q. Okay. And then he went here. How did you see him for
22 all that time? Where were you?

23 A. I was at the light to - - -

24 Q. Here?

25 A. Yes, sir.

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1 Q. He was back - - you couldn't see him this whole time.

2 You saw somebody go here and come out here, correct?

3 A. The same person came out.

4 Q. You assumed it was the same person, correct?

5 A. The same jacket, the same - - -

6 Q. And then you went - - when he started this way, you
7 went and parked down here by the church?

8 A. Yes, sir.

9 Q. And then you watched him come down and they stopped
10 this person on the bridge?

11 A. Yes, sir.

12 Q. And usually you have a video in the store?

13 A. Yes, sir.

14 Q. We have no video today, do we?

15 A. No, not at the moment.

16 Q. Okay. When the policeman stopped him did they turn on
17 their blue lights? Did anybody ever turn on their blue
18 lights?

19 A. Yes, sir.

20 Q. So the policeman blue-lighted the guy like they wanted
21 him to stop, correct?

22 A. Yes, sir.

23 Q. Okay. One more question. The officer had you do a
24 statement. Do you recognize that?

25 A. Yes, sir, I do.

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1 Q. What's the date on it?

2 A. 3/17/13.

3 Q. And this is your narrative of the events?

4 A. Yes, sir.

5 Q. Okay. This is your name?

6 A. Yes, sir.

7 Q. Where does it say you work?

8 A. On the paper it says that I work at AutoZone, 3507 West
9 Blue Ridge Drive.

10 Q. So you have on here that you work at AutoZone and this
11 is Advance Auto Parts?

12 A. A common mistake.

13 Q. We have a big picture of it. The jury saw it. It's up
14 here. Advance Auto, and you put AutoZone?

15 A. I did not write the statement, the officer did.

16 Q. Did you read it and say that's wrong, officer?

17 A. I read the information, but I overlooked that one item.

18 Q. So you didn't notice the mistake?

19 A. No, sir.

20 Q. But you admit this was a mistake made?

21 A. Just the AutoZone and Advance Auto Parts mix-up.

22 Q. Okay. Thank you, Mr. Garcia.

23 A. Yes, sir.

24 (Pause)

25 **THE COURT:** All right. Anything further?

25 A. Patrol officer.

JOHN WHITE - DIRECT EXAMINATION BY MS. TESSITORE

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1 Q. And what do you do as a patrol officer?

2 A. We answer 911 calls and prevent, deter crime.

3 Q. Okay. And 911 calls of any nature?

4 A. If they call, we go.

5 Q. Okay. And did you have the occasion to respond in that
6 capacity back on March 17th of 2013, this year, out to the
7 Advance Auto Parts?

8 A. I did.

9 Q. Okay. Could you tell the jury just generally what the
10 nature of the call was and what you were looking for as a
11 result of that call?

12 A. I received a call about a shoplifting that just
13 occurred. The dispatch advised that there was a black male
14 wearing a black jacket and blue jeans carrying a toolbox
15 walking down Whitehorse Road and he was actively being
16 followed by the complainant.

17 Q. When you said complainant, that's - - -

18 A. Mr. Garcia.

19 Q. Okay. And what time of day was this approximately?

20 A. About 4:30.

21 Q. All right. And how is the lighting at 4:30 in the
22 middle of March?

23 A. It's very bright.

24 Q. So what did you observe when you got out there?

25 A. When I got on-scene I observed the Defendant walking

JOHN WHITE - DIRECT EXAMINATION BY MS. TESSITORE

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1 across the 124 overpass on Whitehorse Road. He was walking
2 southbound on the northbound side.

3 Q. Okay. And what did you observe about him?

4 A. He had a black jacket, blue jeans and he was carrying a
5 toolbox.

6 Q. Is that a - - as far as his clothing?

7 A. It was the exact description that the dispatch gave for
8 the person we were looking for.

9 Q. Okay. And what did you do at that point?

10 A. I made a u-turn, I met the Defendant at the very end of
11 the overpass. I activated my emergency equipment because I
12 was in six lanes of traffic and there's a merge ramp right
13 there, so traffic that was coming up around the corner could
14 not see me. And another deputy was behind me with his blue
15 lights activated as well.

16 Q. Okay. So you were the first officer on the scene right
17 there?

18 A. Yes, ma'am.

19 Q. And when you say your emergency equipment, just tell
20 the jury - - what does that mean?

21 A. The overhead lights, blue lights and hazards.

22 Q. Okay. Did you - - what did you do when you - - after
23 you had activated your emergency lights?

24 A. I exited my vehicle and approached the Defendant and
25 told him I needed to speak with him for a few minutes.

JOHN WHITE - DIRECT EXAMINATION BY MS. TESSITORE

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1 Q. Okay. Without getting into the conversation, could you
2 tell the jury what he did in response to your presence at
3 that point?

4 A. He stopped and placed the toolbox down by his feet.

5 Q. Okay. Did -- what did you do after -- well, let me
6 just back up one second. Did another officer arrive?

7 A. Yes, Deputy Ford.

8 Q. All right. And where was Mr. Garcia at the time that
9 you approached the Defendant?

10 A. I didn't know where he was. I wasn't focused on him, I
11 was focused on the Defendant at the time.

12 Q. Okay. And what -- did you conduct any other kind of
13 pat-down or anything like that at that time and that
14 location?

15 A. At that time? No.

16 Q. Okay. And why didn't you do it at that time?

17 A. Because at that time it wasn't positive that this was
18 the subject that we were working -- looking for. I wanted
19 to get further information before I started placing my hands
20 on him.

21 Q. Okay. And did he identify himself?

22 A. He never gave me his name.

23 Q. Okay. Did you place him into your patrol car?

24 A. After I interviewed him, yes, ma'am.

25 Q. Okay. And, again, without getting into the hearsay,

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1 just as a result of talking with him did you place him into
2 your patrol car?

3 A. I eventually placed him in handcuffs and put him in the
4 patrol car, yes.

5 Q. All right. And then where did you take him from there?

6 A. We went from the overpass about a hundred yards up to
7 the Li'l Cricket, which is at the intersection of Whitehorse
8 and Page.

9 Q. Okay. Did Mr. Garcia - - when you were - - at any
10 point in time from the first point when you saw the
11 Defendant and saw Mr. Garcia, was he able to identify the
12 Defendant?

13 A. Prior to me placing the handcuffs on him, Mr. Garcia
14 showed up on the scene. We confirmed with him that this was
15 the subject that he was following.

16 Q. Okay.

17 A. After he confirmed that this was the subject, put the
18 handcuffs on him and then moved him to a safe location.

19 Q. All right. And so the safe location was the Li'l
20 Cricket?

21 A. Yes, ma'am.

22 Q. And when you got to the Li'l Cricket what did you do
23 there?

24 A. I talked to Mr. Garcia, he confirmed that this was the
25 subject that he saw leaving the store carrying what he

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1 believed to be the stolen merchandise.

2 Q. Okay. And what did you do after - - based on that?

3 A. That was when Deputy Horne arrived. It was almost
4 shift change. I briefed Deputy Horne what was going on.
5 Deputy Horne took over the investigation there.

6 Q. Okay. Were you able to - - did you search the
7 Defendant before Deputy Horne arrived?

8 A. We searched him back on the bridge prior to putting him
9 in our car. It's a policy that we check them for weapons
10 and - - -

11 Q. Okay. And did you find any other items?

12 A. Yes, ma'am. There was numerous tools that were found
13 in his jacket pockets.

14 Q. Okay. I'm going to show you State's exhibit 2 and ask
15 you to just take a look at that. Are those the items that
16 you observed?

17 A. Yes, ma'am.

18 Q. Okay. And they're listed out. Were there - - I'm
19 going to show you State's exhibit number 3 and 4 and just
20 ask you to - - see if you recognize those particular models.
21 Do those appear to be the - - -

22 A. They appear to be the same.

23 Q. Okay. And did you have any other involvement after - -
24 you said this was shift change?

25 A. Yeah. On Sundays we get off at 6:45.

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1 Q. Okay. So when a shift change occurs and you're in the
2 middle of a call, is that why, I mean, - - -

3 A. So we don't get held over doing reports and being at
4 the detention placing prisoners in.

5 Q. Okay.

6 A. We have a swing shift that comes in and starts taking
7 those calls for us.

8 Q. So that's when Deputy Horne came in. And what was his
9 shift, if you know?

10 A. He works Echo Platoon. He works two to two.

11 Q. Okay. So he was going to be working until two in the
12 morning?

13 A. Yes, ma'am.

14 Q. Okay.

15 A. I was getting off in an hour or so.

16 Q. All right. And was the direction of travel of the
17 Defendant when you first observed him, was he heading
18 towards or away from the area where the Advance Auto Parts
19 was?

20 A. Away. He was heading southbound.

21 Q. Okay. Did the Defendant have any shopping bags with
22 him?

23 A. No, ma'am.

24 Q. Did he have any receipts with him?

25 A. No, ma'am.

JOHN WHITE - CROSS EXAMINATION BY MR. SULLIVAN

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1 Q. Was he - - was there anyone else with him or around him
2 when you observed him?

3 A. No, ma'am, he was by himself.

4 Q. Okay. And did you have any other involvement after - -
5 well, from the Li'l Cricket, did you transport the Defendant
6 or what happened from the Li'l Cricket back to Advance Auto
7 Parts?

8 A. He was in the back of my car, we went back to the
9 incident location. I transported him from the Li'l Cricket
10 back to Advance Auto and sat with him while Deputy Horne
11 went in and did his paperwork.

12 Q. Okay. And then after he finished the paperwork what
13 did you do?

14 A. I turned him over to Deputy Horne and that was the end
15 of my involvement.

16 Q. Okay. All right. Please answer any questions that Mr.
17 Sullivan may have.

18 **THE COURT:** Mr. Sullivan.

19 **MR. SULLIVAN:** Just a couple.

20 **Cross Examination by Mr. Sullivan:**

21 Q. You didn't make a written report of your own?

22 A. I did not.

23 Q. Okay. So all the written report is by Officer Horne?

24 A. Yes, sir.

25 Q. Now, let me ask you this, when you activate, and I'm

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1 being educated here, when you activate the blue light,
2 doesn't it activate the in-car video?

3 A. It does.

4 Q. Do you have a copy of that with you today so we can
5 see? Wouldn't it have a picture of him with you stopping
6 him?

7 A. I don't have it.

8 Q. You've never looked at the video? The car would have
9 had video in it?

10 A. The car does have video.

11 Q. And it would activate it automatically and the blue
12 lights come on?

13 A. Yes, sir.

14 Q. And you don't have that with you?

15 A. No, sir.

16 **MR. SULLIVAN:** Nothing further, Your Honor.

17 **THE COURT:** Thank you. You can step down.

18 **MS. TESSITORE:** We'd ask that this witness be excused.

19 **THE COURT:** Any objection?

20 **MR. SULLIVAN:** No objections, Your Honor.

21 **MS. TESSITORE:** The State would call Deputy Horne.

22 **Jonathan Horne,** being
23 duly sworn testified as follows:

24 **MADAME CLERK:** Thank you. Please be seated. Please
25 state your name for the record.

JONATHAN HORNE - DIRECT EXAMINATION BY MS. TESSITORE

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1 **DEPUTY HORNE:** Deputy Jonathan Horne.

2 **Direct Examination by Ms. Tessitore:**

3 Q. Deputy Horne, how long have you worked for the
4 Sheriff's Office?

5 A. Almost five years.

6 Q. And what's your position there?

7 A. Deputy in uniform patrol.

8 Q. So just like Deputy White?

9 A. Yes, ma'am.

10 Q. All right. And did you respond also to a 911 call from
11 Mr. Garcia?

12 A. Yes, ma'am, I did.

13 Q. And can you tell the jury on that day, March 17th, what
14 you did in response to that call?

15 A. I was leaving another call. And so Deputy White
16 wouldn't be held over for the upcoming shift change, I
17 responded and met them at the Li'l Cricket, him and Deputy
18 Ford, located at Whitehorse and Page Drive.

19 Q. Okay. So you met them at Li'l Cricket?

20 A. Yes, ma'am.

21 Q. All right. And when you got there, who was there?

22 A. When I got there Deputy White was there, the Defendant
23 was in the back of Deputy White's patrol car. Deputy Ford
24 was on-scene and the employee, Mr. Garcia, was also there in
25 his vehicle in the parking lot.

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1 Q. All right. Did you -- what did you do when you got
2 there?

3 A. I spoke to Deputy White. He briefed me thus far on
4 what they had learned in that short time of getting out the
5 Defendant and bringing him back to the Li'l Cricket. And
6 then I -- from that point on, I took over the
7 investigation.

8 Q. Okay. When you say took over the investigation, does
9 that include collecting the items that were recovered by
10 Deputy White?

11 A. Yes, ma'am. He placed them, if I recall correctly, I
12 believe on the trunk or hood of the patrol car. And those
13 were identified by Mr. Garcia as being the items from his
14 store.

15 Q. Okay. And did you prepare a list of those items?

16 A. Yes, ma'am, I did.

17 Q. And I'm going to show you State's exhibit number 2. If
18 you can just identify that.

19 A. Yes, ma'am. That's my handwriting and the form that I
20 completed.

21 Q. Okay. Just briefly tell the jury why you fill out that
22 form and if that does accurately reflect the one that you
23 filled out that day.

24 A. This form is called a property and evidence form. And
25 whenever we turn property back over to an owner, or in this

JONATHAN HORNE - DIRECT EXAMINATION BY MS. TESSITORE

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1 case, an employee of the store, to protect the chain of
2 evidence, we complete and list the property that we take off
3 maybe a defendant or someone else. And then we list the
4 property on here.

5 And then we have the owner of the property or a store
6 employee sign that they're receiving the property back. And
7 it just shows - - so there's no question about property that
8 we take and give back to someone.

9 Q. Okay. And does that have your handwriting on it?

10 A. Yes, ma'am, it does.

11 Q. So did you feel that form out?

12 A. I did. And Mr. Garcia signed under box twenty here
13 saying that he is receiving the property back.

14 Q. Okay. So you personally returned that property back to
15 Advance Auto Parts?

16 A. Yes, I did.

17 Q. Okay. Did - - what did you do other than the property
18 report?

19 A. After I did the property report Deputy White
20 transported the Defendant back to Advance Auto Parts. And I
21 also went back there. I went inside with Mr. Garcia. We
22 got a price list of the items. And then I also completed a
23 written statement about the - - what he saw take place and
24 his actions.

25 Q. Okay. So you did prepare the - - let me just show you

JONATHAN HORNE - DIRECT EXAMINATION BY MS. TESSITORE

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1 the statement that Mr. Sullivan had showed to Mr. Garcia.

2 Is that his statement that Mr. Garcia made?

3 A. It is, yes, ma'am.

4 Q. Okay. And as far as why you take a statement like that
5 on the scene, tell the jury why you do that.

6 A. The reason we take a statement like this, it will give
7 us our probable cause. And it helps us put down on paper
8 exactly what was seen to make sure we meet the elements of a
9 crime.

10 Q. And did you personally talk with Mr. Garcia about the
11 events?

12 A. Yes, ma'am, I did.

13 Q. Okay. Whose handwriting is that statement in?

14 A. That's my handwriting.

15 Q. So you wrote it out for him?

16 A. Yes, ma'am.

17 Q. All right. And that's based on - - where do you get
18 that information from?

19 A. As he was talking to me telling me what happened, I was
20 writing the information out.

21 Q. Okay. And Mr. Sullivan brought attention to the fact
22 that it says that he works at AutoZone - - -

23 A. Yes, ma'am.

24 Q. - - - as just part of the introductory information and
25 in the body of it saying I'm an employee at AutoZone. Was

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1 that your writing that in there?

2 A. Yes, that was my error. I incorrectly wrote down
3 AutoZone instead of Advance Auto Parts.

4 Q. So we can assume that you shop at AutoZone and not
5 Advance Auto Parts.

6 A. (Affirmative nod).

7 Q. All right. So that was your mistake?

8 A. Yes, ma'am.

9 Q. But there's no question in your mind that you were at
10 Advance Auto Parts?

11 A. No, ma'am, there's not.

12 Q. Okay. And that information that Mr. Garcia related to
13 you, that was the basis for you seeking the warrant in this
14 case?

15 A. Yes, ma'am.

16 Q. Did - - so Mr. Garcia was able to identify the
17 Defendant, is that correct?

18 A. Yes, ma'am.

19 Q. He was able to identify the items that were taken from
20 Mr. Jenkins' jacket and his - - -

21 A. That's correct.

22 Q. - - - hands?

23 A. Yes, ma'am.

24 Q. Okay. And based on that did you also indicate in the
25 warrant that it was the AutoZone instead of Advance Auto

JONATHAN HORNE - DIRECT EXAMINATION BY MS. TESSITORE

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1 Parts - - -

2 A. Yes, ma'am, that was my error. I did.

3 Q. Okay. This business that the Defendant was in, Advance
4 Auto Parts, is that in Greenville County?

5 A. Yes, ma'am, it is.

6 Q. And did you have any other involvement after - - well,
7 sorry. After you got the statement and everything that you
8 needed as far as collecting the evidence and documenting
9 them, and returning them, what did you do at that point?

10 A. From that point I took custody of the Defendant from
11 Deputy White.

12 Q. Okay.

13 A. And I then transported him to the detention center
14 where a judge issued a warrant for shoplifting.

15 Q. And did you have any other further involvement?

16 A. No, ma'am. After turning him over to detention, that
17 concluded my involvement.

18 Q. Okay. And did you - - when you were out at the
19 incident location did you talk with any other employees
20 there?

21 A. I spoke with Mr. Garcia's - - I believe it was the
22 manager on duty at the time.

23 Q. Okay. Did you try to obtain any video surveillance
24 that there might be?

25 A. I did. And he told me at the time it was not

JONATHAN HORNE - CROSS EXAMINATION BY MR. SULLIVAN

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1 functioning.

2 Q. Okay. So you did try?

3 A. Yes, ma'am.

4 Q. And did any other employee seem to have any kind of
5 information to pass on to you regarding this incident?

6 A. No, ma'am.

7 Q. Okay. All right. Please answer any questions that Mr.
8 Sullivan may have.

9 **THE COURT:** All right. Mr. Sullivan.

10 **MR. SULLIVAN:** Just a couple.

11 **Cross Examination by Mr. Sullivan:**

12 Q. Deputy Horne, - - -

13 A. Yes, sir.

14 Q. - - - when you approached the scene did you activate
15 your blue lights?

16 A. No, sir, because they were already at the Li'l Cricket,
17 and I did not turn my blue lights on.

18 Q. And in fairness to you, on the statement you did make
19 the mistake in saying AutoZone?

20 A. Yes, sir, that was my mistake.

21 Q. And then in the warrant that was served on him that day
22 it says AutoZone?

23 A. Yes, sir, that was my mistake.

24 Q. And in fairness to you, though, your incident report
25 says Advance Auto?

JONATHAN HORNE - CROSS EXAMINATION BY MR. SULLIVAN

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1 A. Yes, sir.

2 Q. There's some confusion here, right?

3 A. Okay.

4 Q. Okay.

5 MR. SULLIVAN: Nothing further, Your Honor.

6 THE COURT: Thank you. You can step down.

7 MS. TESSITORE: Your Honor, we'd ask that this witness
8 be excused.

9 THE COURT: Any objection?

10 MR. SULLIVAN: No objections, Your Honor.

11 THE COURT: Thank you, sir. You're excused.

12 MS. TESSITORE: Your Honor, the State rests.

13 THE COURT: All right. Take the jury out, please.

14 (Whereupon the jury exited the courtroom at 12:36 PM)

15 THE COURT: All right. Any motions, Mr. Sullivan?

16 MR. SULLIVAN: Judge, I'd move, due to the confusion
17 whether it's AutoZone or Advance Auto and the fact that the
18 video, which would have been the best evidence, was not
19 working in the store, and the officer did not attempt to
20 look at it or obtain it and bring to court the auto - - the
21 video from the car, which comes on automatically when it
22 activates, which he admits it does, that this charge be
23 dismissed because of the confusion and the lack of evidence.
24 The best evidence has not been presented.

25 THE COURT: I'd have to deny that motion.

1 **MR. SULLIVAN:** Thank you, Your Honor.

2 **THE COURT:** All right. Now, will you have some
3 testimony?

4 **MR. SULLIVAN:** That's up to - - you may want to
5 question - - the only witness I'd have would be potentially
6 Mr. Jenkins.

7 **THE COURT:** All right. Mary, put him under oath.

8 **MADAME CLERK:** Please stand up and raise your right
9 hand. Do you promise to tell the truth, the whole truth and
10 nothing but the truth so help you God?

11 **MR. JENKINS:** Yes, ma'am.

12 **MADAME CLERK:** Thank you.

13 **THE COURT:** You can sit down now, Mr. Jenkins. Mr.
14 Jenkins, we've reached a point in your trial where you need
15 to make a decision as to whether or not you, yourself, will
16 take the stand and testify. Do you understand that?

17 **MR. JENKINS:** Yes, sir.

18 **THE COURT:** Okay. Now, I want to tell you that you
19 don't have to take the stand and testify, that's because
20 it's your constitutional right. You have no burden in this
21 case. You don't have to testify or produce any evidence.
22 The reason for that is that the burden is on the State to
23 prove you guilty beyond a reasonable doubt. Do you
24 understand that right?

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

1 **THE COURT:** And if you don't take the stand and
2 testify, I would so advise the jury that that's your right
3 and the burden would be on the State to prove you guilty.
4 Okay? You understand that?

5 **MR. JENKINS:** (Affirmative nod).

6 **THE COURT:** Sir?

7 **MR. JENKINS:** Yes, sir.

8 **THE COURT:** Now, with that understanding I'll tell you
9 that you have a perfect right to take the stand and tell the
10 jury your side of the story. Okay?

11 **MR. JENKINS:** Yes, sir.

12 **THE COURT:** Sir? You understand that?

13 **MR. JENKINS:** I understand that, yes, sir.

14 **THE COURT:** If you take the stand and testify, then you
15 become like any other witness in a case subject to cross
16 examination by the State, okay. You understand that?

17 **MR. JENKINS:** Yes, sir.

18 **THE COURT:** Whatever criminal record that's subject to
19 the rule for impeachment purposes can be used against you.
20 You understand that?

21 **MR. JENKINS:** Yes, sir.

22 **THE COURT:** Now, with that understanding have you made
23 a decision as to whether or not you, yourself, will take the
24 stand and testify?

25 (Whereupon Mr. Jenkins was conferring with his

1 attorney)

2 **THE COURT:** All right. Sir, have you made a decision?

3 **MR. JENKINS:** Yes, sir.

4 **THE COURT:** And what is that decision?

5 **MR. JENKINS:** Not to testify.

6 **THE COURT:** You will not testify?

7 **MR. JENKINS:** No, sir.

8 **THE COURT:** All right. Are you under the influence of
9 any alcohol, drug or any other substance right at this
10 moment?

11 **MR. JENKINS:** No, sir.

12 **THE COURT:** You're sober, you know what you're doing
13 and you've made the decision not to testify, is that
14 correct?

15 **MR. JENKINS:** Yes, sir. Based upon talking to my
16 attorney, yes, sir.

17 **THE COURT:** All right. Now, he hasn't put any pressure
18 on you not to testify, has he?

19 **MR. JENKINS:** No, sir.

20 **THE COURT:** In other words, this is your decision,
21 right?

22 **MR. JENKINS:** He just said it would be in my best
23 interest not to testify, sir.

24 **THE COURT:** Okay. All right. And you're satisfied
25 with that advice?

1 **MR. JENKINS:** Yes, sir.

2 **THE COURT:** Okay. All right. And I will inform the
3 jury and because you present no testimony, then your lawyer
4 will have the last argument in this case. You understand
5 that?

6 **MR. JENKINS:** Yes, sir.

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

8 **MR. SULLIVAN:** Judge, just for the record, I explained
9 to him that they could use his record against him. Right
10 now the jury knows nothing about his record, that the record
11 mentioned is only in front of you. So right now he's clean
12 as a sheet and that if he did testify he had to do something
13 to combat what they said, - - -

14 **THE COURT:** Okay.

15 **MR. SULLIVAN:** - - - and they could bring his record
16 out at that point. And if he didn't testify, I would get
17 the last argument. And if he didn't, you would tell them
18 they could not use it against him. Now, he wants to write
19 some thoughts down for my final argument. So I would ask
20 for about a five minute break.

21 **THE COURT:** Well, I've got some more to do with this
22 other jury deliberating.

23 **MR. SULLIVAN:** Okay.

24 **THE COURT:** It's going to take a while to do that. So

25 - - -

1 **MR. SULLIVAN:** Okay.

2 **THE COURT:** - - - we're going to suspend for lunch as
3 far as you're concerned. So that'll give you time to talk
4 to him, okay?

5 **MR. SULLIVAN:** Okay. That'll be fine.

6 **THE COURT:** All right. Okay. Bring this jury right
7 now, this jury.

8 (Whereupon the jury entered the courtroom at 12:47 PM)

9 **THE COURT:** Ladies and gentlemen, in the trial of a
10 criminal case a defendant has absolutely no burden. That's
11 because the burden is always on the State to prove a
12 defendant guilty beyond a reasonable doubt. The Defendant
13 in this case has exercised his constitutional right not to
14 take the stand and testify in his defense. I will charge
15 you more thoroughly on that right during the course of my
16 charge.

17 So insofar as you're concerned, I'm going to excuse you
18 for lunch. I've got some other matters I need to take up
19 with the jury that's now deliberating.

20 So during the lunch recess do not talk about this case
21 among yourselves or with anyone else. If anybody contacts
22 you and tries to talk to you about this case, get their
23 names and addresses and report that to me.

24 Please keep your badges on during the lunch recess. I
25 ask that you do that so that everyone involved with the case

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1 will know that you are a juror on the case and it would be
2 highly improper for them to talk about their case or this
3 case in your presence.

4 So with that, I'll excuse you and ask that you be back
5 in your jury room at 2:30, 2:30 at which time we'll have the
6 final arguments by the attorneys and then my charge on the
7 law. So please be back at 2:30. Thank you.

8 (Whereupon the jury exited the courtroom at 12:49 PM)

9 **THE COURT:** All right. Please be back at 2:30.

10 **MS. TESSITORE:** Thank you, Your Honor.

11 (Whereupon court was in recess at 12:50 PM)

12 (Whereupon court resumed 2:47 PM)

13 **THE COURT:** All right. Solicitor, you ready to talk to
14 the jury?

15 **MS. TESSITORE:** Yes, sir.

16 **THE COURT:** Okay. Bring them on.

17 (Whereupon the jury entered the courtroom at 2:48 PM)

18 **THE COURT:** Okay. Solicitor.

19 **MS. TESSITORE:** May it please the Court, Mr. Sullivan,
20 Mr. Jenkins. Ladies and gentlemen of the jury, when I first
21 stood up here I told you it was going to be a simple case.
22 It's a simple case, hopefully you agree, but it's also an
23 important case.

24 And I know I was moving swiftly through some of the
25 pictures and things like that, but you're going to have all

CLOSING ARGUMENTS - MS. TESSITORE

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1 that to take back with you in the jury room just to get a
2 visual of what the store looked like and get an idea, kind
3 of put together what Mr. Garcia told you from the witness
4 stand and be able to see where this happened and have some
5 familiarity with that.

6 At the end of the case after I finish my closing
7 statement and Mr. Sullivan does, the Judge is going to
8 instruct you about the law in this case. Again, a simple
9 charge of shoplifting. And I think you all can probably
10 figure that out, it's taking the merchandise from the
11 merchant without paying for it.

12 In this case the State's burden is to prove that this
13 Defendant, Mr. Jenkins, went into Advance Auto Parts on
14 March 17th of this year in the afternoon and that he
15 concealed those items and carried them out and did not pay
16 for them, the same items that he was caught with just down
17 the road. And, obviously, the issue that he is the person
18 who did it, his identity is crucial in this case.

19 And really what it comes down to in this case is
20 credibility because you don't have the fingerprints, and the
21 hair strands, and the, you know, hypertechnical forensic
22 evidence that you might get in a different kind of case.
23 But like I said, this is still an important case. So the
24 State presented to you what we thought was the most
25 pertinent, the most efficient and that which would leave you

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1 firmly convinced of the Defendant's guilt beyond a
2 reasonable doubt.

3 So the Judge is going to tell you all the legal
4 definitions. And I'm not going to go through those because
5 Your Honor will give you the law as it is. I am just going
6 to tell you that - - I told you the checklist about what
7 shoplifting is and what I have to prove.

8 And as I told you in the beginning of the case, all you
9 need to do is apply your common sense to the evidence that
10 you heard from this witness stand right here and put it
11 together, and with that simple formula you should come up
12 basically with the answer being - - it's a simple equation
13 that leads to guilty.

14 Basically what did the evidence show? Very simply it
15 showed that this Defendant went in that store on March 17th
16 wearing a dark heavy coat on a nice springtime afternoon,
17 which kind of alerted Mr. Garcia to kind of think, huh,
18 well, it's not in itself, not a major thing, but as he was
19 watching him he was very suspicious in the way that he was
20 acting, moving around the store, not asking for help, just
21 kind of lurking. He was lurking, he was watching Mr.
22 Garcia, keeping eye contact here and there, watching his
23 moves while Mr. Garcia was starting to notice him.

24 And he didn't just watch him for a very brief time
25 before Mr. Jenkins went out the door, Mr. Garcia told you he

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1 even went up and he went down that aisle where Mr. Jenkins
2 was standing right behind an end cap where he wouldn't be
3 seen by the people at the register. And he stood in close
4 proximity to the Defendant.

5 He even spoke to the Defendant, can I help you? He was
6 getting a filter off the shelf. So he turned to this
7 Defendant and he looked at him and he said, can I help you,
8 sir? He wasn't even responsive. He was just trying to keep
9 a low profile.

10 He's got his dark jacket on and he wouldn't move, which
11 is something that I think is particular to the fact that the
12 reason he wouldn't move, he's wearing the jacket, he's
13 concealed heavy tools in his jacket pockets, and he has
14 maybe at that point, it's not clear, whether he had this
15 large socket set, which is - - Mr. Garcia told you, I mean,
16 it's not like a little lunch-box, it's a big box.

17 So he's got this in his jacket. And you can see he's a
18 fairly big guy. And he's holding these items in his jacket.
19 Maybe he was afraid if he moved when Mr. Garcia was close to
20 him he'd hear the jingle of the metal or he would drop
21 something and he would give himself away. So it's not a
22 coincidence that he didn't move, he didn't communicate when
23 he saw Mr. Garcia getting that close to him.

24 Now, Mr. Garcia told you, he's working there, he's
25 trying to be diligent and attend to customers, but his

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1 attention was drawn to this man. He described what he was
2 wearing.

3 He got that - - and the lighting in the store, which
4 you can see in the pictures, they have lighting all above
5 here and it's a nice well lit store. It was daytime. So
6 you have the daylight coming in. There's no issue about
7 identification. He saw this guy and he followed him with
8 his eyes until he saw him leaving.

9 And notice that he didn't have anything in his hands
10 and he was walking away from the store. And that's when Mr.
11 Garcia did not jump to conclusions. And that's another
12 interesting thing. Mr. Garcia could have just run out the,
13 you know, run towards him and said, stop, you know, and
14 concluded that he was shoplifting.

15 The interesting thing is Mr. Garcia didn't do that. He
16 went right back into the store, very diligently, very
17 conscientiously and he said, did he pay for anything, you
18 know? He wanted to confirm that he had not paid for
19 something.

20 And then especially when he saw the toolset come out of
21 his jacket as he got off the property. At that point, you
22 know, Mr. Garcia is saying, hum, something's not right, I
23 want to check it out before I jump to conclusions. So he
24 went in there and took that extra measure where he checked
25 the inventory real quick.

CLOSING ARGUMENTS - MS. TESSITORE

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1 He did the inventory. So he was familiar with what was
2 on the shelves. You can see on the shelves - - he testified
3 about the shelf where these larger items were kept. So it
4 was an easy thing to do is to look there and see, okay,
5 there might be one missing, I'm going to check the computer.
6 And he sees, yeah, there is one missing. And he didn't pay
7 for it, and he's walking away with one.

8 So, I mean, it didn't take much, two plus two, he
9 figures, I think I'd better follow this guy. So he gets in
10 his vehicle, he follows him. Mr. Jenkins doesn't know that
11 he's being followed. So there's no reason to rush. There's
12 no reason to run and hide. He thinks, I got away with it,
13 you know. And he's walking out. He was by himself. He
14 never took his jacket off. He kept walking.

15 And what did Mr. Garcia tell you? He said he followed
16 him - - let me get something to write with. He followed him
17 from the store, which was right here, and he saw him pull
18 out the toolset somewhere in the parking lot of this
19 restaurant, the bar area.

20 And when he went back in and confirmed, he came out,
21 well, Mr. Jenkins is still walking. He's not running, he's
22 not jumping in a car. He had no car to buy anything for at
23 this auto parts store. He didn't indicate that he needed
24 any help there. Okay.

25 So he's walking away with this item and Mr. Garcia gets

CLOSING ARGUMENTS - MS. TESSITORE

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1 in his car or pickup truck and starts following him and sees
2 him walking all the way down the sidewalk until he gets down
3 to the Li'l Cricket. And he says - - then he crosses the
4 street right in front of the church area where Mr. Garcia
5 was. So, again, he gets a closer view of him again outside,
6 well lit, and then he sees him walking down.

7 Now, Mr. Garcia isn't just following him to take the
8 law into his own hands. He's calling 911 and he says, okay,
9 we've got this guy, this is what he looks like, he's walking
10 down the road carrying a 73 piece socket set that has the
11 brand of the Advance Auto Parts on it, the Auto Craft model.
12 And he recognizes that. And he says he's carrying this. So
13 it's kind of unusual when the police get the call, they're
14 looking for this black male who's going down the street with
15 a dark jacket carrying this socket set.

16 Now, Mr. Garcia sees him at the Li'l Cricket, this is
17 where he puts the other X, while he's in his vehicle over
18 here in the church parking lot somewhere. And he sees the
19 Defendant walk up to some guy who's just there to get his
20 gas or whatever, and he walks up and he holds the set out to
21 him.

22 What is he doing there? Well, he's trying to get rid
23 of it. He's trying to trade it for some quick money on the
24 street. It's kind of going to give him away, obviously, if
25 he's carrying it down the road much further and the police

CLOSING ARGUMENTS - MS. TESSITORE

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1 see him, which is ultimately what happened.

2 So rather than continuing to try to conceal it in his
3 coat, he's just trying to turn it for quick cash, for
4 whatever he was looking for. And that man at the Li'l
5 Cricket is just like, oh, no, man, he puts his hands up like
6 this. We don't know what the conversation was, but I think
7 you can infer from that that he was trying to get rid of
8 that item and walk away with the other tools concealed on
9 his jacket - - in his jacket.

10 So then he leaves from there and Mr. Garcia sees him.
11 At this time the police are arriving and they see him on the
12 bridge. He gets on the bridge, the police confronts him.
13 The only way he can get away is to jump off the bridge. He
14 doesn't do that, and they catch him there. He puts the item
15 down on the ground.

16 Mr. Garcia is there. He says, that's the guy I've been
17 watching, following, talking to 911. And, I mean, it's just
18 - - so you have point one, point two and point three. And
19 all the way he's, you know, he loses sight of him in this
20 area in here while he's confirming that he should follow
21 this man. So he did not presume anything and did not jump
22 to any conclusions.

23 And then when we get there he's caught by the police.
24 He's wearing the same jacket. He's wearing the same pants.
25 He hasn't changed anything about his face or anything else.

CLOSING ARGUMENTS - MS. TESSITORE

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1 He's got the items from the store. So it's pretty simple.

2 Connect the dots.

3 And all of those things lead to today, his day in court
4 where he sits here. And Mr. Garcia said, that's the guy, I
5 saw him, and there's no question in my mind. So if you
6 connect those dots, they lead straight to being firmly
7 convinced of his guilt.

8 Now, just very briefly, Mr. Sullivan is going to talk
9 to you a little bit about - - well, I'm sure he's going to
10 point to the fact, as you heard, there's no video. They
11 tried to get a video. Deputy Horne, who admitted
12 immediately that he screwed up and put the wrong name of the
13 auto store as AutoZone instead of Advance Auto Parts. Is
14 that a reason to have a doubt about his guilt? I submit
15 it's not.

16 Deputy Horne was credible, he admitted his error. He
17 completed the case helping out the other deputy who was
18 coming off his shift and he kind of finishes up with the
19 case. He is able to return all of the items that were found
20 in the pockets and give them back to the store. They were
21 not opened or anything like that. So they were able to get
22 those back.

23 Mr. Garcia is - - he is the video. So he's going to
24 talk - - Mr. Sullivan's going to talk about, well, you know,
25 there's no video from the store. But Deputy Horne tried to

CLOSING ARGUMENTS - MS. TESSITORE

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1 get it, it just wasn't working because of the update.

2 That's technology. But do you say there's no video, so,
3 therefore, it didn't happen? That would defy common sense.

4 You have a man, Mr. Garcia, who has told you that he's
5 going into the Marines, that he's working hard, he's a high
6 school graduate, he did a little bit of college work. He's
7 not only diligent, persistent, and conscientious, but he did
8 not jump to conclusions. He checked before he pursued and
9 called for law enforcement to come out.

10 So that should tell you something about the quality and
11 the character of the witness that you heard from. So you
12 don't need a video, you have Mr. Garcia. And it would be
13 great if we had the video, but it would simply be frosting
14 on the cake at this point.

15 You also may wonder, well, geez, there were these other
16 stores out there, maybe they had video, you know. And so
17 it's this expectation, I think, that our society has that
18 everything - - if it's not on video, it didn't happen.

19 This is a shoplifting case. So if the officers spent
20 all their time scouring all of the local businesses getting
21 videos and downloads, then people who are calling for more
22 serious cases are going to be - - obviously, have to get in
23 line. That's just not the way that this case was handled or
24 should be handled.

25 The one thing is you can make no mistake that you have

CLOSING ARGUMENTS - MR. SULLIVAN

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1 the best evidence possible here, and that is Mr. Garcia.
2 And, you know, even if it was the wrong store name or
3 whatever it was that Deputy Horne talked about, that is not
4 a reason to have a doubt about this Defendant's guilt.

5 You can look at the list of the items that were taken
6 out of his pockets. You can see the pictures of the items
7 that are available for you to look at. And you can take all
8 this and this back there with you and if you apply your
9 common sense, very simply connect the dots and find this
10 Defendant guilty. Thank you.

11 **THE COURT:** Mr. Sullivan.

12 **MR. SULLIVAN:** May it please the Court, Ms. Tessitore.
13 It sounds like a shut and dry case, shut and open, whatever,
14 but like I said when I started, there's some mistakes that
15 are made. And what I'm always interested in sometimes is
16 not what they bring into court, but what they don't bring
17 into court. Now we know there was a mistake made on the
18 name of the store. The fellow who signed said he worked at
19 the wrong store.

20 We also know that Deputy White was in a hurry to get
21 off, the shift changed. So he had the car video. They
22 didn't have to go to all those stores. There's stores all
23 over the place. And I can see why they wouldn't be able to
24 find a video. But he had video in his car. It would be
25 undisputed. He could've had him on - - he could have had

CLOSING ARGUMENTS - MR. SULLIVAN

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1 the suspect, assuming if you want it's Mr. Jenkins or
2 whoever, on the dash-cam video with whatever he had on.

3 I don't know how heavy his jacket was or had -- any
4 pockets he had. But they didn't bring the jacket in here.
5 They didn't bring the tools because if you look at these
6 pictures, they testified they were huge, not like a lunch-
7 box, but big.

8 But he had several things. Where are you going to put
9 all that stuff in a coat unless we know what kind of -- how
10 big it was? Can I put that in here? Or was it a huge coat?
11 Did it have many pockets? I don't know.

12 But if you look at the pictures -- and the best thing
13 would be if they'd brought the tools in here. They've got
14 -- still had these kind of tools there. But if they could
15 have made the pictures, see they could have -- and that's
16 not the ones he took. They admitted that.

17 Whoever took them, they were returned and sold. These
18 are pictures made later of a similar item. They could have
19 brought those items in here and you could have seen how big
20 they were. And he had several sets -- you have a 6 piece,
21 6 piece, 72, 73, 3 piece. Where are you going to hide all
22 that stuff and walk down the street?

23 He didn't have him under constant surveillance. He
24 said he saw him leave, he went back in to see what may be
25 missing, not missing or whatever. He was gone, whoever it

CLOSING ARGUMENTS - MR. SULLIVAN

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1 was, for a while. Went out and got in his truck and claimed
2 he was on this side looking through and looking at somebody,
3 who went behind Walgreens, again he loses contact.

4 When he stopped - - we don't know what was said at the
5 market. As I recall the testimony, he said he saw him hold
6 something up, he didn't know what they were talking about.
7 The guy held up his hands and went inside. I don't remember
8 anything about holding something up or even talking to him.
9 The guy did like this.

10 But the best evidence in this case would be what they
11 didn't bring in, the coat, the video from the car. That's
12 not hard to get. We're not talking CSI and this kind of
13 thing - - they bring it for everything else they want to.
14 They pick and choose. They bring it for DUIs, they bring it
15 for wrecks. They could have brought it in for this. It's
16 right there already recorded, just take it out and give it
17 to them.

18 So they don't have the coat, they don't have him under
19 constant surveillance the whole time, and they don't have
20 the in-camera video. We don't have the tools. We don't
21 have the jacket.

22 So you're not going to find him innocent. I think the
23 better thing in the European system, one country had is
24 proven and not proven. So you're not saying he's innocent,
25 you're saying they either proved their case to your

CHARGE OF THE COURT

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1 satisfaction beyond a reasonable doubt or there's something
2 missing that gives you hesitation to say he may have done
3 it, but I don't think they proved it. And that's what I
4 want you to consider. Have they proved it to you or have
5 they not? Thank you.

6 **THE COURT:** Ladies and gentlemen, the Defendant in this
7 case, as you know, is indicted for shoplifting. This is a
8 statutory offense. And section 16-13-110 of our code of
9 laws provides in part as follows; a person is guilty of
10 shoplifting if he takes possession of, carries away,
11 transfers from one person to another or from one area of the
12 store or other retail mercantile establishment to another
13 area or causes to be carried away or transferred any
14 merchandise displayed, held, stored or offered for sale by
15 any store or other retail mercantile establishment with the
16 intention of depriving the merchant of the possession, use
17 or benefit of the merchandise without paying the full retail
18 value. That is shoplifting.

19 Now, ladies and gentlemen, this statute that I read to
20 you is designed to prohibit the larceny or stealing from a
21 mercantile establishment. And I'll tell you again that
22 larceny is defined as the taking and carrying away by any
23 person of the goods or things personal of another with the
24 intent to permanently deprive that person or owner of its
25 property and to convert it to the taker's own use.

CHARGE OF THE COURT

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1 Now, the elements of this offense, each of which the
2 State must prove, first of all, that one must take
3 possession of, carry away or transfer from one place to
4 another merchandise of a store. Next, it must be the
5 property of a mercantile establishment offered for sale.
6 And third, there must be an intention of depriving the
7 merchant of its property without paying the full value
8 thereof. That, ladies and gentlemen, is shoplifting.

9 Now, as jurors in this case you have a function or a
10 responsibility that is entirely separate and distinct from
11 my function as the trial judge. The Constitution of our
12 State does not allow me to charge you on the facts of this
13 case or to discuss the facts with you or in any way or
14 manner let you know what my personal feelings, if any, are
15 about this case. That's because you and you alone are the
16 judges of the facts.

17 Therefore, if during the course of this trial or during
18 the course of my charge you have a feeling or you have been
19 left with the impression that I have a personal feeling
20 about this case one way or another, then you disregard that
21 feeling or that impression. It's your duty and your duty
22 alone to weigh the testimony and evidence presented in this
23 case and to pass upon the credibility or the believability
24 of the witnesses you heard testify.

25 In this connection you have the right to believe all

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1 that a witness told you or disbelieve all a witness told
2 you. You can believe a part of what a witness told you and
3 disbelieve a part of what a witness told you. You can
4 believe one witness as against several or several against
5 one. You also have the right to take into consideration any
6 bias, or prejudice or interest you feel a witness in the
7 case might have.

8 As I told you, I am the judge of the law in this case.
9 And I'm required to charge you the law applicable to the
10 facts in this case. It's not a question of what you feel
11 the law might be or what it should be. It is not
12 necessarily what the lawyers may have told you it is because
13 under your oath you are required to take the law as I give
14 it to you, apply that law to the facts as you determine
15 those facts to be and to write your verdict accordingly.

16 In this case, as in all criminal cases, this Defendant
17 comes into the courtroom presumed to be innocent. And this
18 presumption continues and carries through the entire trial
19 until and unless it is removed by evidence that satisfies
20 you of his guilt beyond a reasonable doubt. The burden is
21 on the State in this case to prove this Defendant guilty and
22 to prove each and every element of the offense with which he
23 is charged beyond a reasonable doubt.

24 Some of you may have in the past served as jurors on
25 civil cases. And if so, you were most likely told that it

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1 was only necessary to prove that a fact was more true than
2 not. But in criminal cases the State's proof must be more
3 powerful. As I told you, it must be beyond a reasonable
4 doubt.

5 Now, proof beyond a reasonable doubt is proof that
6 leaves you firmly convinced of the Defendant's guilt. There
7 are very few things in this world that we know with absolute
8 certainty. And in the trial of criminal cases our law does
9 not require proof that overcomes every possible doubt.

10 If from the evidence you have in this case you believe
11 this Defendant is firmly guilty, then you must find him
12 guilty. If, on the other hand, you think there's a real
13 possibility that he is not guilty, then you must give him
14 the benefit of that doubt and find him not guilty.

15 Now, ladies and gentlemen, as I've told you earlier,
16 our law does not compel a defendant in a criminal case to
17 take the witness stand and testify. And no presumption of
18 guilt may be raised and no inference of any kind can be
19 drawn from this Defendant's decision not to testify.

20 Our law never imposes upon a defendant in a criminal
21 case the burden or duty of calling any witnesses, or
22 producing any evidence or of testifying. Therefore, the
23 decision of this Defendant not to take the stand and testify
24 in his behalf cannot be taken, held, discussed or considered
25 against him in any manner at all.

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1 Now, ladies and gentlemen, under the oath you've took
2 in this case you've swore to try this case based only and
3 solely on the testimony and evidence presented in this
4 courtroom. I tell you that it is your duty to lay aside all
5 outside opinions, bias, or prejudice or sympathy you may
6 have in reaching your verdict.

7 The word verdict is taken from the Latin word
8 *veredicto*. It means to speak the truth. You have no
9 friends to reward in this case or enemies to punish. I
10 charge you to abide by your oath and return a verdict that
11 speaks the truth.

12 Now, you will have in the jury room with you the
13 indictment in this case. It does not constitute evidence.
14 It simply sets forth the facts alleged by the State. And
15 this is the legal document that brings this case into the
16 courtroom and presents it to you for your determination.

17 Ladies and gentlemen, there are one of two possible
18 verdicts in this case, guilty or not guilty. And whatever
19 that verdict is it must be unanimous, that is all twelve of
20 you must agree.

21 Madame Foreman, whatever the verdict is, guilty or not
22 guilty, you'll find a place on the back of the indictment
23 where it says verdict. Please write out the verdict and
24 then sign your name on the line where it says Foreperson of
25 the petit jury. All right.

VERDICT OF THE JURY

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1 At this time I'm required to go over my charge with the
2 lawyers. And I need you to go back into the jury room, but
3 don't begin deliberating until I send word in for you to do
4 so. Thank you.

5 (Whereupon the jury exited the courtroom at 3:15 PM)

6 **THE COURT:** Anything further from the State?

7 **MS. TESSITORE:** Nothing from the State, Your Honor.

8 **THE COURT:** From the Defendant?

9 **MR. SULLIVAN:** Nothing, Your Honor.

10 **THE COURT:** All right. We got all the exhibits
11 together?

12 (Pause)

13 (Whereupon the jury began deliberating at 3:17 PM)

14 (Whereupon the alternate juror entered the courtroom
15 and was released at 3:19 PM)

16 (Whereupon court was in recess at 3:19 PM)

17 (Whereupon court resumed at 3:34 PM)

18 **THE COURT:** All right. Anything before I bring the
19 jury?

20 **MS. TESSITORE:** Nothing from the State, Your Honor.

21 **MR. SULLIVAN:** Nothing for the Defense, Your Honor.

22 **THE COURT:** Bring them on.

23 (Whereupon the jury entered the courtroom at 3:35 PM)

24 **THE COURT:** Madame Foreman, if you've reached a
25 verdict, would you hand it to the bailiff, please, ma'am.

VERDICT OF THE JURY

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1 (Pause)

2 **THE COURT:** Okay. Would you, please, publish the
3 verdict.

4 **MADAME CLERK:** Your Honor, in the case of
5 2013-GS-23-4280, the State versus Everette Martin Jenkins,
6 he's indicted for shoplifting, the verdict is guilty. This
7 is signed by Patricia Riordan, our Foreperson. Ladies and
8 gentlemen, if you agree this is the verdict you reached in
9 your deliberation room, would you please raise your right
10 hand.

11 (Whereupon all jurors raised their right hand)

12 **MADAME CLERK:** Thank you.

13 **THE COURT:** Anything further from the jury?

14 **MS. TESSITORE:** Nothing from the State, Your Honor.

15 **MR. SULLIVAN:** Nothing from the Defense, Your Honor.

16 **THE COURT:** Thank you, ladies and gentlemen, for your
17 service on this case and also for the week. You don't have
18 to come back today or tomorrow. So thank you so much for
19 coming and serving.

20 I want you to know I'm well aware of the fact that jury
21 service is a burden to you. I know that it's difficult for
22 you to take time off from your jobs and families and spend
23 it with us on jury duty, but I do hope you understand the
24 importance of being here this week. Without your presence
25 we could not get off from our docket the cases that we do.

SENTENCE OF THE COURT

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1 It's a very important service that you've performed, and I
2 thank you very much for that service.

3 Now, if you'll report to the jury assembly room, Judy
4 will have a voucher to give to you for your service this
5 week. And attached to that will be a slip for you to give
6 to your employer if you need that. Does anyone have any
7 question I can try to answer for you before letting you go?

8 (No response)

9 **THE COURT:** Okay. I've enjoyed working with you.
10 Thank you so much. You're free to go.

11 (Whereupon the jury exited the courtroom at 3:37 PM)

12 **THE COURT:** Any motions?

13 **MR. SULLIVAN:** None from the Defense, Your Honor.

14 **MS. TESSITORE:** None from the State - - -

15 **THE COURT:** All right. Come around, please. Okay. He
16 has a record, I believe.

17 **MS. TESSITORE:** Yes, Your Honor.

18 **THE COURT:** Can you tell me what that is.

19 **MS. TESSITORE:** Yes, Your Honor. In South Carolina,
20 2010, failure to stop for a blue light, 2012, shoplifting.
21 In North Carolina in 1983, assault, 1989, larceny, 1991,
22 eight counts of forgery, three counts of worthless checks,
23 1993, assault with a deadly weapon, 1994, robbery and
24 breaking and entering, felony child abuse, 2005, damage to
25 coin machine times five, two counts of felony larceny and

SENTENCE OF THE COURT

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1 possession of burglary tools, 2006, robbery, and eluding
2 arrest by a motor vehicle with aggravation.

3 **THE COURT:** Anything further, now, Mr. Sullivan?

4 **MR. SULLIVAN:** Judge, Everette had a right to a trial,
5 but we had a basic disagreement, which we covered earlier at
6 the pretrial situation. And he still disagrees with me on
7 certain things. But the jury has spoken and you have a
8 range of zero to ten. You've heard his record. And he's
9 been in jail constantly sense March 17th of 2013, the day
10 this happened. He's not been out.

11 Now, originally - - I know you're not bound by it, but
12 they offered three years with ATU. He's almost done enough
13 to do that, but he did not want to take that, Your Honor. I
14 communicated it to him. He said because of technicalities
15 he thought he should be set free, dismissed.

16 **THE COURT:** Okay. Now, Mr. Jenkins, you've exercised
17 your constitutional right not to testify. At this time you
18 have a perfect right to address the Court concerning your
19 sentence. Anything you'd like to say now before I sentence
20 you?

21 **MR. JENKINS:** Yes, sir. I just, you know, whatever - -
22 I'd like for you to take into consideration, you know, I've
23 got a mama seventy-nine years old, I've got a family, I've
24 got three kids, and I've always had a job and worked. And,
25 you know, maybe, you know, you could be as lenient as you

SENTENCE OF THE COURT

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1 can, possibly some probation or something, you know,
2 intensive treatment or whatever.

3 **THE COURT:** I can't do that with this record that you
4 have, which is long and so old.

5 **MR. JENKINS:** Yeah, well I understand that, but I'm in
6 prison, you know, I served my time, I did my time. And in
7 society, I mean, you know, regardless if you go to prison
8 for however length of time for a charge, you know, you do
9 your time and then you come back, you know, every time you
10 do something they still keep bringing it up. So I guess you
11 never pay your debts to society, you know. I can't keep
12 - - -

13 **THE COURT:** Unless you - - -

14 **MR. JENKINS:** - - - paying for the same thing - - -

15 **THE COURT:** - - - stop doing crime.

16 **MR. JENKINS:** - - - over and over. Yes, sir.

17 **MR. SULLIVAN:** Judge, he did tell me his mom has a
18 hundred acre farm over there - - -

19 (Whereupon Mr. Sullivan's cell phone started ringing)

20 **MR. SULLIVAN:** God Almighty, I'm going to be put in
21 jail, too. That was my timer. His family has a farm. I
22 told him to get over there and work once he gets out and it
23 would help him to stay out of trouble.

24 **THE COURT:** All right. Mr. Jenkins, the sentence of
25 the Court is you be committed to the Department of

SENTENCE OF THE COURT

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1 Corrections for a period of eight years.

2 **MR. SULLIVAN:** Thank you, Your Honor.

3 **MS. TESSITORE:** Thank you, Your Honor.

4 **MR. SULLIVAN:** Wait a minute. For the record, he wants
5 me to file an appeal. If I drop dead out here or something,
6 have somebody from the Public Defender's Office file his
7 appeal for him.

8 **THE COURT:** Okay. You've advised him of his rights.

9 **MR. SULLIVAN:** I advised him of his rights to appeal.

10 **THE COURT:** Okay.

11 **MR. SULLIVAN:** You've got ten days to file it. And if
12 that's turned down, he's got a PCR within a year.

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

14 **MS. TESSITORE:** Thank you, Your Honor.

15 (Whereupon court was in recess at 3:42 PM)

16 (End of requested transcript of record)

WITNESSES

ACS

Jonathan A Horne

Greenville County Sheriffs Office

3/17/2013

ARREST WARRANT NUMBER

2013A2330202177

ACTION OF GRAND JURY

TRUE BILL

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Guilty

Veronica Purcell

Foreperson of Petit Jury

Date: November 14, 2013

DOCKET NO. 2013-GS-23-
JRT

004280

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

May

TERM 2013

11-14-13

THE STATE

VS.

EVERETTE MARTIN JENKINS

Indictment for

2877

SHOPLIFTING PURSUANT TO § 16-1-0057

VIOLATION § 16-13-0110

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
SHOPLIFTING PURSUANT TO § 16-1-0057

MAY 21 2013

At a Court of General Sessions, convened on

the Grand Jurors of Greenville

County present upon their oath:

That EVERETTE MARTIN JENKINS did in Greenville County, on or about the 17th day of March, 2013, willfully and unlawfully take possession of, carry away, transfer to another person or from one area of a store to another area; alter, transfer, or remove the label or price tag or any other marking which aids in determining value affixed to any merchandise; transfer from its container to another container; and or willfully conceal certain merchandise to wit: several packs of tool sets by Auto Craft and/or Tool Works: a 6 piece offset wrench set, a 6 piece XL combo wrench set, a 72 tooth offset quick release ratchet, a 73 piece socket set and a 3 piece ratcheting box set, valued at less than Two Thousand Dollars displayed, held, stored, or offered for sale by ADVANCE AUTO PARTS, with the intent of depriving said merchant of the possession, use, or benefit of such merchandise without paying the full retail value. This is in violation of §16-13-0110 and §16-1-0057 of the South Carolina Code of Laws (1976) as amended.

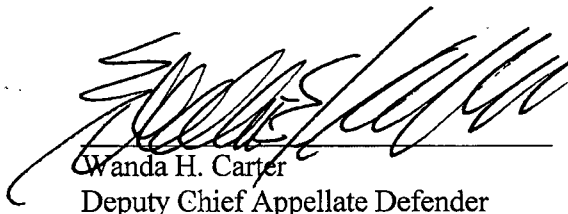
Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


SOLICITOR

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

July 11th, 2014



Wanda H. Carter
Deputy Chief Appellate Defender

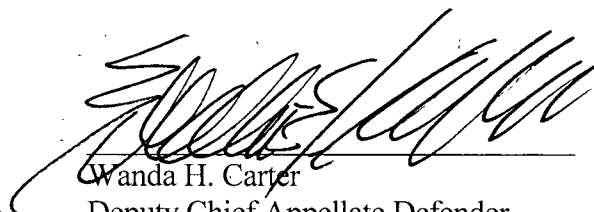
South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

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Wanda H. Carter
Deputy Chief Appellate Defender

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ATTORNEY FOR APPELLANT

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Greenville County

C. Victor Pyle, Jr., Circuit Court Judge

ORIGINAL

RECEIVED
JUL 11 2014
SC Court of Appeals

THE STATE,

RESPONDENT,

V.

EVERETTE M. JENKINS,

APPELLANT

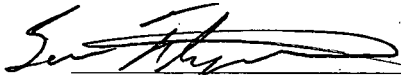
CERTIFICATE OF SERVICE

I certify that a true copy of the Record on Appeal in the above referenced case has been served upon Salley W. Elliott, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 11th day of July, 2014.


Brandon Hall

Administrative Specialist

SUBSCRIBED AND SWORN TO before me
this 11th day of July, 2014.

 (L.S.)

Notary Public for South Carolina

My Commission Expires: October 30, 2022