

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Florence County

Michael G. Nettles, Circuit Court Judge

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S.C. Supreme Court

DAVID MYERS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-000910

APPENDIX

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STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE) COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA)
STATE,)

v.

DAVID MYERS,)
DEFENDANT.)

TRANSCRIPT OF RECORD
11-GS-21-0981
June 29, 2011
Florence, South Carolina

BEFORE:

THE HONORABLE THOMAS A. RUSSO, JUDGE; AND JURY

APPEARANCES:

JOHN C. JEPERTINGER, ESQ.
Attorney for the State

SCOTT P. FLOYD, ESQ.
Attorney for Defendant

FRANCES BAKIS-RAY, RPR
Circuit Court Reporter

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(There were no exhibits submitted.)

1 (WHEREUPON, counsel approached the Bench
2 for an off-the-record discussion.)

3 MR. JEPERTINGER: 2011-981, we're trying State
4 versus David Myers for shoplifting. On the indictment
5 Mrs. Parr prepared it has it listed as shoplifting third
6 or subsequent offense. Without us having to establish the
7 jurisdiction of this Court, since the value of the items
8 were only 42 dollars I would wonder if he would stipulate
9 to the jurisdiction of this Court to hear this case.

10 MR. FLOYD: Sure.

11 THE COURT: Okay. And the Defense has agreed ---

12 MR. FLOYD: Yes.

13 THE COURT: ---to stipulate to that? All right.

14 MR. JEPERTINGER: Thank you.

15 THE COURT: Good morning, ladies and gentlemen of
16 the jury, I didn't have the pleasure to meet you on
17 Monday. My name is Tommy Russo. I'm a circuit court
18 judge here in Florence and you met Judge Brown on Monday
19 and I was holding court on the 10th floor, General
20 Sessions Court. And so I didn't have the pleasure to meet
21 you on Monday, but it's good to be here with you this
22 morning. We had you brought back because we need your
23 assistance on another case.

24 And so Mr. Jepertinger, if you would call that case
25 for trial, sir.

1 MR. JEPERTINGER: Yes, sir. The State would call
2 State versus David Myers on 2011-981 charging him with
3 shoplifting.

4 THE COURT: All right. Ladies and gentlemen, you
5 heard Mr. Jepertinger call this case of the State of South
6 Carolina versus David Myers. This indictment, indictment
7 2011-GS-21-981, is simply a piece of paper that brings
8 this case into court. An indictment is simply an
9 allegation. To this allegation or to these allegations
10 Mr. Myers has pled not guilty, and that plea of not guilty
11 places the burden of proof on the State to prove the
12 elements of the crime that is alleged. The indictment in
13 no way is evidence of the allegations that it contains.
14 It is simply the piece of paper that brings this case into
15 court.

16 Now as I indicated, because Mr. Myers has pled not
17 guilty that places the presumption of innocence on him,
18 and the State must carry their burden of proof. I am
19 going to review with you the allegations contained in this
20 indictment. It is alleged that David Myers did in
21 Florence County on or about February the 8th of the 2011
22 take possession of, carry away, transfer to another area
23 of the store, or cause to be carried away or transferred,
24 altered, transferred or moved the price label or tag on,
25 and/or did transfer from its container to another

1 container merchandise displayed, held, stored, or offered
2 for sale by Wal-Mart: To wit: eight bottles of car wax
3 valued at 42-dollars in violation of Section 16-13-110(a)
4 action of the South Carolina Code of Laws as amended. Now
5 I went through a lot of language there and that's the
6 language of the statute. There's any number of ways that
7 shoplifting can be alleged. And of course, whatever
8 evidence is presented during the trial of this case would
9 guide you with regards to what of those -- what of that
10 language applies. But those are the allegations against
11 Mr. Myers. He's alleged to have shoplifted eight bottles
12 of car wax from Wal-Mart.

13 Based on the information that I've just given you,
14 is there any member of the jury panel who knows anything
15 about this case, if so, please stand.

16 (There was no response.)

17 THE COURT: Thank you. There are none.

18 Mr. Jepertinger, if you would introduce yourself,
19 sir.

20 MR. JEPERTINGER: Once again, ladies and gentlemen.
21 My name is John Jepertinger, I'm deputy solicitor here in
22 the Twelfth Circuit. That's Florence and Marion Counties.
23 I didn't lose my job since Monday and look forward to
24 trying this case.

25 THE COURT: Is there any member of the jury panel

1 related by blood, connected by marriage, or is a close
2 personal friend or acquaintance of Mr. Jepertinger or who
3 has been represented by Mr. Jepertinger in the past, if
4 so, please stand.

5 Yes, ma'am, your name please.

6 THE POTENTIAL JUROR: Sharon Jarman.

7 THE COURT: All right.

8 MR. JEPERTINGER: I know Mr. Jepertinger. We
9 attend the same church.

10 THE COURT: All right, ma'am. The fact that you
11 have that relationship with Mr. Jepertinger, would that in
12 any way affect your ability to be fair and impartial?

13 THE POTENTIAL JUROR: No, sir.

14 THE COURT: Thank you very much, ma'am. You may
15 have a seat.

16 Anyone else?

17 (There was no response.)

18 THE COURT: Mr. Floyd, if you would introduce
19 yourself and your client, sir.

20 MR. FLOYD: Thank you, Your Honor. Good morning,
21 I'm Scott Floyd. I'm an assistant public defender here in
22 Florence County, and this is Mr. David Myers.

23 THE COURT: All right. Thank you, Mr. Myers.

24 Mr. Floyd.

25 Ladies and gentlemen, is there any member of the

1 jury panel who's related by blood, connected by marriage,
2 or has any close business or personal relationship with
3 Mr. Floyd or who has been represented by Mr. Floyd in the
4 past, if so, please stand.

5 (There was no response.)

6 THE COURT: Thank you. There are none. Ladies and
7 gentlemen, you just met Mr. David Myers. Is there any
8 member of the jury panel who's related by blood, connected
9 by marriage, or has any close business or personal
10 relationship with Mr. Myers, if so, please stand.

11 (There was no response.)

12 THE COURT: Thank you. There are none. Now ladies
13 and gentlemen, I'm gonna call out some names. These folks
14 are possible or potential witnesses in this case. The
15 question that I just asked you regarding Mr. Myers, that
16 is, if you're related by blood, connected by marriage, or
17 have any close business or personal relationship, that the
18 question that I'm gonna be asking you as it relates to
19 these possible witnesses.

20 Now there are several names I'm gonna call out. If
21 that — if you hear a name and that question applies to
22 that witness, go ahead and stand. Please continue to
23 listen, however, because it may be that you know more than
24 one of these folks. Following are possible or potential
25 witnesses that may testify during this case. And if

1 you're in the courtroom I'd ask the witness to please
2 stand and face the jury and for just a moment and then
3 have a seat. Sandy Thompson, Roger Tilton, Ron or Ronnie
4 Coltrane, Charles Hall, Jr., Frankie McCown, Fran Springs.
5 Any member of the jury panel related by blood, connected
6 by marriage, or have any close business or personal
7 relationship with any of those folks, if so, please stand.

8 (There was no response.)

9 THE COURT: Okay. Ladies and gentlemen, is there
10 any member of the jury panel or a member of your immediate
11 family or close friend who has ever been prosecuted by the
12 Twelfth Judicial Circuit Solicitor's Office? And the
13 Twelfth Circuit is Florence and Marion Counties. If so,
14 please stand.

15 Yes, ma'am, your name please.

16 THE POTENTIAL JUROR: My name is Myrtle Edwards.

17 THE COURT: All right. Ms. Edwards, the fact that
18 you've had that experience in your family with the Twelfth
19 Circuit Solicitor's Office -- that's juror number 47 --
20 would that in any way affect your ability to be fair and
21 impartial, ma'am?

22 THE POTENTIAL JUROR: No, sir.

23 THE COURT: Thank you very much, Ms. Edwards. You
24 may have a seat.

25 Anyone else?

1 (There was no response.)

2 THE COURT: Is there any member of the jury panel
3 or member of your immediate family who has ever been
4 involved in any type of conflict or litigation with
5 Wal-Mart, if so, please stand.

6 Yes, sir, your name please.

7 THE POTENTIAL JUROR: Steven Camlin, juror 15.

8 THE COURT: All right, sir.

9 THE POTENTIAL JUROR: I had a sister-in-law that
10 had a lawsuit.

11 THE COURT: All right. Sir, the fact that you've
12 had that experience in your family, would that in any way
13 affect your ability to be fair and impartial if you were
14 selected for this case?

15 THE POTENTIAL JUROR: No, sir.

16 THE COURT: Thank you very much. You may have a
17 seat.

18 Is there any member of the jury panel who is a
19 contributor either financially or with your time through
20 volunteer work, is a contributor to any organization such
21 as: The Fraternal Order of the Police, South Carolina
22 Troopers Association, South Carolina Sheriff's
23 Association, MADD, Mother's Against Drunk Driving, SADD,
24 Students Against Drunk Driving, CAVE, Citizens Against
25 Violence, any of those types of organization? Is there

1 any member of the jury panel who is a contributor either
2 financially or through volunteer time to any of those
3 organizations, if so, please stand.

4 All right, and this is juror 13, Mr. ---

5 THE POTENTIAL JUROR: Juror 15.

6 THE COURT: 15, I'm sorry, Mr. Camlin.

7 THE POTENTIAL JUROR: My brother is a city
8 policeman and I take pictures for him and I go to
9 charities where I take pictures for them.

10 THE COURT: Sir, would that in any way affect your
11 ability to be fair and impartial if you were selected to
12 be on this case?

13 THE POTENTIAL JUROR: No, sir.

14 THE COURT: Thank you very much. You may have a
15 seat.

16 Ladies and gentlemen, obviously the purpose in
17 these questions -- you can tell by the way they're asked
18 -- is where our intent is to impanel a jury that can be
19 fair and impartial, that can take this case, listen to the
20 evidence in this case, and apply the law to that evidence
21 putting aside any outside influence. That's what we're
22 looking to do. We want twelve folks that can give both
23 the State and the Defense a fair trial. I could ask
24 questions all afternoon to try to figure out where if
25 anybody has a problem with that, but maybe the best way to

1 ask you is simply this: Is there any member of the jury
2 panel who knows of any reason why if you were selected as
3 a member of this jury panel that you would not be able to
4 give both the State and the Defense a fair and impartial
5 trial? If there's anyone that has any reason why you
6 think you could not do that I would ask that you please
7 stand.

8 (There was no response.)

9 THE COURT: Thank you. There are none.
10 Are there any further questions or voir dire from
11 the State?

12 MR. JEPERTINGER: No, sir.

13 THE COURT: Anything further from the Defense?

14 MR. FLOYD: Nothing further, Your Honor.

15 THE COURT: All right. Ladies and gentlemen, we'll
16 -- you know the drill. You did it on Monday I believe it
17 was. If you hear your name called, come forward, come
18 through the swinging door here, or the swinging gate, and
19 then stand by this microphone and face the back of the
20 courtroom. If your name is called please bring anything
21 you brought to the courtroom with you today.

22 Madam clerk will go through the questions with both
23 the State and the Defense. They will either excuse you,
24 and if either one excuses you you'll go back and have a
25 seat; or they'll present you or seat you. If the State

1 presents you you'll remain standing. If the Defense seats
2 you then you'll come have a seat in the jury box. And
3 we'll go through that process until we have selected our
4 jurors.

5 State ready to strike?

6 MR. JEPERTINGER: State is ready?

7 THE COURT: Is Defense ready?

8 MR. FLOYD: Defense is ready, Your Honor.

9 THE COURT: All right, five and five. All right,
10 ladies and gentlemen, if you'd please give Ms. O'Hara your
11 attention.

12 CLERK OF COURT: 119, Gloria McFadden (black
13 female). What say the State?

14 MR. JEPERTINGER: Please present the juror.

15 CLERK OF COURT: What say Defendant?

16 MR. FLOYD: Please swear the juror.

17 CLERK OF COURT: Please have a seat in the jury
18 box, ma'am.

19 99, Christopher Jordan (white male). What say the
20 State?

21 MR. JEPERTINGER: Please present the juror.

22 CLERK OF COURT: What say Defendant?

23 MR. FLOYD: Please swear the juror.

24 CLERK OF COURT: Please have a seat in the jury
25 box.

1 9, Kevin Briggs (black male). What say the State?

2 MR. JEPERTINGER: We'd excuse this juror for
3 purposes of this trial only.

4 CLERK OF COURT: You've been excused for this trial
5 only, sir.

6 132, Michael Page (white male). What say the
7 State?

8 MR. JEPERTINGER: Please present the juror.

9 CLERK OF COURT: What say Defendant?

10 MR. FLOYD: Please excuse the juror for purpose
11 of this trial.

12 CLERK OF COURT: You've been excused for this trial
13 only, sir. You may return to your seat.

14 117, Lisa McBride (white female). What say the
15 State?

16 MR. JEPERTINGER: Please present the juror.

17 CLERK OF COURT: What say Defendant?

18 MR. FLOYD: Please excuse the juror for purpose of
19 this trial.

20 CLERK OF COURT: You've been excused for this trial
21 only.

22 6, Rebecca Berry (white female). What say the
23 State?

24 MR. JEPERTINGER: Please present the juror.

25 CLERK OF COURT: What say Defendant?

1 MR. FLOYD: Please swear the juror.
2 CLERK OF COURT: Please have a seat in the jury
3 box.
4 17, Brenda Cannon (white female). What say the
5 State?
6 MR. JEPERTINGER: Please present juror.
7 CLERK OF COURT: What say Defendant?
8 MR. FLOYD: Please swear the juror.
9 CLERK OF COURT: Please have a seat in the jury
10 box.
11 114, Amy Lovett (white female). What say the
12 State?
13 MR. JEPERTINGER: Please present the juror.
14 CLERK OF COURT: What say Defendant?
15 MR. FLOYD: Please excuse the juror for purpose of
16 this trial.
17 CLERK OF COURT: You've been excused for this trial
18 only, ma'am.
19 170, Anthony Tanner (white male). What say the
20 State?
21 MR. JEPERTINGER: Please present the juror.
22 CLERK OF COURT: What say Defendant?
23 MR. FLOYD: Please swear the juror.
24 CLERK OF COURT: Please have a seat in the jury
25 box.

1 59, Heather Gantt (white female). What say the
2 State?
3 MR. JEPERTINGER: Please present the juror.
4 CLERK OF COURT: What say Defendant?
5 MR. FLOYD: Please swear the juror.
6 CLERK OF COURT: Please have a seat in the jury
7 box.
8 140, Kip Purvis (white male). What say the State?
9 MR. JEPERTINGER: Please present the juror.
10 CLERK OF COURT: What say Defendant?
11 MR. FLOYD: Please swear the juror.
12 CLERK OF COURT: Please have a seat in the jury
13 box.
14 2, Devon Anderson (black male). What say the
15 State?
16 MR. JEPERTINGER: Please present the juror.
17 CLERK OF COURT: What say Defendant?
18 MR. FLOYD: Please swear the juror.
19 CLERK OF COURT: Please have a seat in the jury
20 box, sir.
21 97, Sharon Jarman (black female). What say the
22 State?
23 MR. JEPERTINGER: Please present the juror.
24 CLERK OF COURT: What say Defendant?
25 MR. FLOYD: Please excuse the juror for purpose of

1 this trial.

2 CLERK OF COURT: You've been excused for this trial
3 only.

4 72, John Gregg (white male). What say the State?

5 MR. JEPERTINGER: Please present the juror.

6 CLERK OF COURT: What say Defendant?

7 MR. FLOYD: Please excuse the juror for purpose of
8 this trial.

9 CLERK OF COURT: You've been excused for this trial
10 only, sir.

11 74, C. R. Guajardo (white male). What say the
12 State?

13 MR. JEPERTINGER: Please excuse this juror for
14 purpose of this trial only.

15 CLERK OF COURT: You've been excused for this trial
16 only, sir. You may return to your seat.

17 38, Lakeshia R. Davis (black female). What say the
18 State?

19 MR. JEPERTINGER: This was juror number 38,
20 correct?

21 CLERK OF COURT: Correct.

22 MR. JEPERTINGER: Please present the juror.

23 CLERK OF COURT: Does defendant wish to challenge
24 juror for cause?

25 MR. FLOYD: No.

1 CLERK OF COURT: Please have a seat in the jury
2 box.

3 152, Catherine Sanderson (white female). What say
4 the State?

5 MR. JEPERTINGER: Please present the juror.

6 CLERK OF COURT: Does Defendant wish to challenge
7 this juror for cause?

8 MR. FLOYD: No.

9 CLERK OF COURT: Please have a seat in the jury
10 box.

11 64, Pamela Glasscho (black female). What say the
12 State?

13 MR. JEPERTINGER: Please present the juror.

14 CLERK OF COURT: Does defendant wish to challenge
15 juror for cause?

16 MR. FLOYD: No.

17 CLERK OF COURT: Please have a seat in the jury
18 box, ma'am.

19 179, Paiglyn Washington (black female). What say
20 the State?

21 MR. JEPERTINGER: Please present the juror.

22 CLERK OF COURT: Does Defendant wish to challenge
23 this juror for cause?

24 MR. FLOYD: No.

25 CLERK OF COURT: Please have a seat in the jury

1 box, ma'am.

2 THE COURT: One and two on the alternate.

3 CLERK OF COURT: 147, Lindsay Robinson (black
4 female). What say the State?

5 MR. JEPERTINGER: Please present the juror.

6 CLERK OF COURT: What say Defendant?

7 MR. FLOYD: Please swear the juror.

8 CLERK OF COURT: Please have a seat in the jury
9 box.

10 THE COURT: All right. Any motions regarding jury
11 selection from the State?

12 MR. JEPERTINGER: Not from the State.

13 THE COURT: Anything from Defendant?

14 MR. FLOYD: Not from Defendant, Your Honor.

15 THE COURT: Those of you that were fortunate enough
16 to make the first team here I'm gonna get you to step back
17 into the jury room for just a little bit. I'm going to
18 take up some matters. I need to take up some matters with
19 the attorneys before we begin the trial. I'm gonna give
20 you an instruction when you go back there, and that is an
21 instruction you'll have with you every time you leave the
22 courtroom. And that is, to have no conversation about the
23 case. At this point you really don't know anything. You
24 just know about the allegations that the indictment
25 alleges, but you don't really know any facts or any

1 evidence about the case. And even if you did, it's not
2 appropriate to discuss the case until you've heard all of
3 the evidence and the lawyers have had an opportunity to
4 argue to you their final remarks and that I've charged you
5 on the law. Once you have all of those ingredients, then
6 you're ready to deliberate so until that time it would be
7 inappropriate to have any conversation about the case. So
8 when you go back into the jury room in a moment, if you
9 need anything we've got some snacks and some soft drinks
10 or whatever, coffee, whatever you might want, just let
11 Ms. Joe know. But have no conversation about the case.
12 You can get to know each other, but don't talk about the
13 case. And I'll take care of a few matters that I need to
14 deal with, and then I'll bring you out and we'll get
15 started, okay? So if you would, please step back into the
16 jury room.

17 (WHEREUPON, the jury was removed from the
18 courtroom at 10:43 a.m., and the following proceedings
19 commenced in open court.)

20 THE COURT: We're going to be in recess just a few
21 minutes.

22 (WHEREUPON, a recess was taken from the
23 proceedings.)

24 MR. JEPERTINGER: At this time, Your Honor, I
25 understand that the Defense has a motion.

1 THE COURT: All right. Mr. Floyd.

2 MR. FLOYD: Your Honor, I understand there's some
3 identification issues particularly out-of-court
4 identification by at least one of the witnesses, maybe
5 two. We would just ask that we conduct a hearing to
6 determine whether or not testimony on that should be
7 allowed.

8 THE COURT: All right. Mr. Jepertinger, are you
9 prepared to go forward on that?

10 MR. JEPERTINGER: Yes, sir. I call Ms. Fran
11 Springs to the stand.

12 THE COURT: All right, Ma'am, if you would come
13 around to be sworn.

14 CLERK OF COURT: If you will, ma'am, go to the
15 witness stand. Stop right there. Place your left hand on
16 the Bible, raise your hand.

17 WHEREUPON,

18 **FRAN SPRINGS,**
19 having been duly sworn by the Clerk of Court, testified as
20 follows:

21 CLERK OF COURT: Please be seated. State your full
22 name for the record.

23 THE WITNESS: Fran Springs.

24 **DIRECT EXAMINATION**

25 BY MR. JEPERTINGER:

1 Q Ms. Springs, where do you work?

2 A I work for Wal-Mart in Lake City.

3 Q Okay. What are your responsibilities there?

4 A I am the manager of asset protection.

5 Q And were you so employed doing the same thing on
6 February 8th, 2011?

7 A Yes, sir.

8 Q Okay. Did you come in contact with David Myers, the
9 defendant in this case, on that date?

10 A Yes, sir.

11 Q Tell His Honor how you came in contact with David Myers
12 on that date and what you saw and what you were doing just
13 immediately preceding coming in contact with him?

14 A When myself and my in-store, which is Frankie McCown,
15 we were walking up towards automotive and stuff. We had
16 noticed that David Myers had came in the store, went
17 straight to where the automotive aisle was, and then when
18 he selected the Armor All spray and stuff it was eight
19 bottles he'd put inside of his coat.

20 Q Was that turtle wax?

21 A It's turtle wax.

22 Q Okay, go ahead.

23 A Put those inside his coat, left straight from the
24 aisle, went straight out the lawn and garden door.

25 Myself, along with Frankie McCown and another assistant

1 manager, were standing at the gate at the sidewalk. And I
2 asked David to stop and actually come back in and that's
3 when he actually just took off running.

4 Q Now let me ask you this, let's stop right there. You
5 keep using the name David. Did you know David Myers
6 before?

7 A I did.

8 Q And he's been in Wal-Mart before?

9 A Correct.

10 Q And I know we can't say this in front of the jury, but
11 was it dealing with shoplifting before at the Wal-Mart
12 that you've had to deal with David?

13 A I've dealt with David at Wal-mart for shoplifting and
14 also at one time I was a full-time officer with Lake City
15 Police Department. I am a part-time officer now.

16 Q Okay. And you know him from the community; is that
17 correct?

18 A Correct.

19 Q No question in your mind that was David Myers?

20 A Correct.

21 Q And how long have you known him, would you say, over
22 the years?

23 A Right about nine years.

24 Q All right. And you used his name David?

25 A Correct.

1 Q What did you tell him?

2 A I'd asked him to stop and come back in and David took
3 off going running one way, so I walked behind him 'cause I
4 knew my in-store was actually on the phone with the police
5 department. So he's going that way. I just steadily
6 walked behind David, and I got in contact -- I called
7 Frankie's cell phone, told him. I knew he was with the
8 other officer. I could see him at Kelly Street to tell
9 him that he was walking straight past the Cato point
10 behind the IGA and had cut around and he was back behind
11 the next shopping center which is where the Piggly Wiggly
12 and stuff is at.

13 Q Did you lose eye contact with him at all?

14 A I never lost eye contact since the point I saw him in
15 the store all the way to the end till the officers
16 actually arrived.

17 Q All right. And at that point once the officers arrived
18 did you see him?

19 A Correct.

20 Q Okay. And did you walk up to behind the Piggly Wiggly?

21 A Correct.

22 Q And when you walked up behind the Piggly Wiggly did the
23 officer ask you any question whether this was the
24 individual that was in the store shoplifting?

25 A Right. They asked me and I said that was him. I said

1 he had had a coat on, which the coat he had threw in the
2 dumpster would be here. By the time the officers pulled
3 around the back of building the Piggly Wiggly, he's
4 probably just a few hundred feet from away from the
5 dumpster where he had threw his coat with the Armor All
6 stuff into the dumpster.

7 Q Did you see him throw the turtle wax and the coat into
8 the dumpster?

9 A I saw when he actually walked up to it, around it,
10 'cause his coat was black and I saw when he come back out
11 he did not have his coat back on. And by the time he
12 walked out just a little bit of footage-wise, the officers
13 were coming around the side of the building and met him.

14 Q Okay. How sure are you of your identification of David
15 Myers being the perpetrator of this shoplifting?

16 A I'm absolutely sure.

17 Q A hundred percent?

18 A A hundred percent.

19 Q All right. That's all I have in terms of for
20 Ms. Springs.

21 THE COURT: All right. Mr. Floyd, any cross on
22 that?

23 MR. FLOYD: Your Honor, just a few questions.

24 **CROSS-EXAMINATION**

25 BY MR. FLOYD:

1 Q You followed him for, or you went through the garden
2 and lawn exit out of the store and out on to the sidewalk?

3 A Correct.

4 Q Okay. And you were standing there, and there's some
5 apartment complex right there?

6 A That would be on the other side.

7 Q On the other side.

8 A That would be to the left.

9 Q To the left?

10 A Right.

11 Q And he went to ---

12 A The right.

13 Q ---the right, okay. Towards the IGA?

14 A Right.

15 Q Okay, I got you. And the police had already been
16 called by your ---

17 A Correct.

18 Q ---coworker ---

19 A Correct.

20 Q ---at that point? Is that correct? Okay. And so you
21 actually saw him being arrested in the parking lot?

22 A Correct.

23 Q Okay. Is that where the arrest took place in the
24 parking lot?

25 A Not in the parking lot. If you leave from Wal-Mart,

1 just say this would be the Wal-Mart building right here,
2 you can cut down the sidewalk. There's a cut-through that
3 goes here, and this will actually go back behind where
4 like the nail place is, the IGA.

5 Q Okay.

6 A And then actually you can step up over and then there's
7 another cutaway that would go back behind the other little
8 strip mall that has the Piggly Wiggly and stuff.

9 Q Okay, all right. That's where the arrest took place?

10 A Correct.

11 Q And you walked over towards that direction --

12 A Right.

13 Q --when -- okay. And you say you never lost sight of
14 him --

15 A Right.

16 Q --during this whole thing?

17 A Correct.

18 Q Okay. Do you know another David Myers in Lake City?

19 A Not right offhand I don't think I do.

20 Q Okay. You don't know anybody that's related to him
21 named David Myers?

22 A Huh-uh.

23 Q Okay. Thank you very much.

24 A You're welcome.

25 THE COURT: All right. Thank you very much, ma'am.

1 You may step down.

2 MR. JEPERTINGER: I will call Frankie McCown to the
3 stand.

4 THE COURT: Sir, if you'd please come and be sworn.

5 CLERK OF COURT: Place your left hand on the Bible,
6 raise your right hand.

7 WHEREUPON,

8 **FRANKIE MCCOWN,**

9 having been duly sworn by the Clerk of Court, testified as
10 follows:

11 CLERK OF COURT: Please be seated and state your
12 full name for the record.

13 THE WITNESS: My name is Frankie McCown.

14 BY MR. JEPERTINGER:

15 Q Thank you. Who do you work for?

16 A Lake City Wal-Mart.

17 Q How long you been employed there?

18 A Going on 13 years in September.

19 Q What do you do for them please?

20 A I am asset protection associate.

21 Q And you work with Ms. Springs who just testified?

22 A Yes, sir.

23 Q And you were so working in that capacity on February
24 the 8th, 2011?

25 A Yes, sir.

1 Q Okay. And did you have a chance to come in contact
2 with David Myers, the defendant in this case?

3 A Yes, sir.

4 Q Can you tell His Honor, the ladies -- excuse me, His
5 Honor. I was about to call you ladies and gentlemen of
6 the jury but we're not there yet. Can you tell His Honor
7 how you know David?

8 A I've known him on previous occasions being in the
9 store, but on that particular day me and Ms. Springs was
10 coming back from walking in from garden center walking
11 back into automotive and back to the office in the back.
12 And at that time we passed David Myers coming in the
13 garden center that passed me. And at that time he went
14 down the automotive aisle to the turtle wax, air
15 freshener, where he stand at, wearing a black coat and
16 stole eight bottles of turtle wax and placed them inside
17 his coat.

18 Q And what did you do in response to him doing that?

19 A After seeing the selection and concealment of the
20 merchandise I informed Ms. Springs on what actually what I
21 did saw and who he was, which she also knew who he was.
22 At that time we automatically went ahead and reported it
23 and called the police station at that time and that --

24 Q Did you call the cops?

25 A I called the cops, yes, sir.

1 Q And at that point what did you do?

2 A After calling the cops and everything he -- after he
3 done concealment he then left out the store right back out
4 of garden center.

5 Q Did y'all confront him about it?

6 A We stopped him at the land point of sale outside the
7 lawn and garden gate.

8 Q And did you talk to him?

9 A Ms. Springs talked to him to tell him to step back in
10 and step back inside.

11 Q No question in your mind this was David Myers that
12 she's talking to?

13 A No question in my mind.

14 Q Okay, all right. And at that point what did you do?

15 A At that time after he refused to step back inside and
16 follow and cooperate with Ms. Springs he decided to ran so
17 at that time I was still on the phone with the police
18 station giving the description of the subject.

19 Q What was the subject description you gave to the
20 officers?

21 A Bravo Mike wearing a black coat, a/k/a David Myers.

22 Q Bravo Mike would be black male I take it?

23 A Yes, sir.

24 Q And you used the name David Myers; is that correct?

25 A Yes, sir.

1 Q And at that point did you give any clothing description
2 at all?

3 A Give the black coat that was very distinctive on him
4 and the dark pair of jeans he had on 'cause he was wearing
5 -- he had a bicycle but he left the bicycle at the store.

6 Q All right. And at that point what did you do?

7 A I continued to walk and try to follow him then till the
8 second officer came and to let me, when Officer Sandy was
9 also in pursuit of him. And once a pursuit was taking
10 place Officer Sandy was the one that arrested him behind
11 the Piggly Wiggly where I came up with Officer Cook at
12 that time and ride in his patrol car to identify and to
13 try to find the merchandise that was taken from us.

14 Q Okay. Now the person that Officer Sandy Thompson
15 stopped behind the Piggly Wiggly, who was that individual?

16 A David Myers.

17 Q No question in your mind?

18 A No question.

19 Q All right. Was he dressed any differently when the
20 officers stopped him?

21 A Only thing he was dressed differently there was no
22 coat.

23 Q Okay. And did y'all find a coat?

24 A We found the coat and stuff inside the trash can.

25 Q And what was inside the coat or near the coat?

1 A What was inside the coat was the eight bottles of
2 turtle was placed inside the coat sleeves.

3 Q Okay. And I think that's all I have.

4 MR. JEPERTINGER: Thank you, Judge.

5 THE COURT: All right. Anything, Mr. Floyd?

6 **CROSS-EXAMINATION**

7 BY MR. FLOYD:

8 Q Mr. McCown, how long have you known Mr. Myers seated
9 here in the courtroom?

10 A Going on six years.

11 Q About six years? Do you know him outside of being a
12 patron of Wal-Mart or being in Wal-mart?

13 A Other than knowing him inside Wal-mart I have seen him
14 around the community. Other than that that's basically
15 inside Walmart.

16 Q Okay. Do you live in Lake City?

17 A No, sir.

18 Q Okay. Do you know another David Myers from Lake City?

19 A No, sir.

20 Q You don't? Okay. Thank you very much.

21 THE COURT: Thank you, sir. You may step down.

22 MR. JEPERTINGER: And just finally quickly Officer
23 Thompson.

24 THE COURT: All right, sir. Now let me ask, for
25 Officer Thompson for purposes of this hearing ---

1 MR. JEPERTINGER: Just that he conducted the
2 show-up identification in terms of presenting him to --

3 THE COURT: Okay, all right. Thank you, sir.

4 MR. JEPERTINGER: That's the only purpose, Judge.
5 WHEREUPON,

6 **SANDY THOMPSON,**
7 having been duly sworn by the Clerk of Court, testified as
8 follows:

9 CLERK OF COURT: Please be seated. State your name
10 for the record.

11 THE WITNESS: Sandy Thompson.

12 **DIRECT EXAMINATION**

13 BY MR. JEPERTINGER:

14 Q Okay. Officer Thompson, you arrested David Myers on
15 February 8th, 2011; is that correct?

16 A That's correct.

17 Q And it was behind the Piggly Wiggly?

18 A That's correct.

19 Q All right. And both Ms. Springs and Mr. McCown arrived
20 there?

21 A That's correct.

22 Q Okay. And did you ask them, is this the individual
23 that say did the crime?

24 A Yes, I did. Probably tentatively identified Mr. Myers,
25 yes, sir.

1 Q How sure were they in their identification?

2 A A hundred percent.

3 Q Thank you. That's all I have.

4 THE COURT: Anything?

5 MR. FLOYD: I don't have any questions of the
6 officer. Thank you.

7 THE COURT: Thank you, sir.

8 MR. JEPERTINGER: That's all I have in terms of
9 this issue, Your Honor. I don't know if the Defense has
10 anything.

11 MR. FLOYD: I don't have anything further, Your
12 Honor.

13 THE COURT: All right.

14 MR. JEPERTINGER: Judge, by way of argument I know
15 that single person showups (ph) are disfavored. They're
16 suggestive by nature. However, an identification may be
17 relied upon the totality of circumstance even if the
18 procedure was suggestive. And I believe that we have
19 shown that the identification was reliable and no
20 substantial likelihood of misidentification existed in
21 this case.

22 THE COURT: All right. Mr. Floyd, do you have
23 anything to -- anything contrary to that?

24 MR. FLOYD: Your Honor, I don't have anything
25 further to add.

1 THE COURT: And I would agree, Mr. Jepertinger,
2 that based on the situation in this case, and I agree that
3 typically those are disfavored; but in this case I think
4 it is appropriate and I think that the reliability of it
5 is sufficient and so certainly would allow that testimony.
6 Now having said that though, let me caution -- and I know
7 Mr. Jepertinger, I don't need to tell you but you might
8 want to talk with the witnesses 'cause you did breach the
9 issue with --

10 MR. JEPERTINGER: Ms. Springs.

11 THE COURT: --Ms. Springs but, you know, they can
12 say that they know Mr. Myers from their contact in the
13 community but in no way are they to indicate or give any
14 indication that it's been based on any prior illegal
15 activity so.

16 MR. JEPERTINGER: Right. I, you know, and what I
17 have told Mr. McCown and I think this would be proper,
18 that they've seen him at Wal-Mart. I think Mr. McCown
19 asked him to leave from the Wal-Mart before.

20 THE COURT: I don't think that's gonna be necessary
21 to go into that.

22 MR. JEPERTINGER: Okay.

23 THE COURT: I think you're gonna get into some
24 prior issues. I think it's sufficient that they know him.

25 MR. JEPERTINGER: From the Wal-Mart.

1 THE COURT: From Wal-mart as well as know him, if
2 they know him, you know, in the community, they have seen
3 him in the community. I think that's sufficient.

4 MR. JEPERTINGER: That's fine. You understand,
5 folks? Okay, that will work.

6 THE COURT: Anything else before we bring the jury
7 out?

8 MR. JEPERTINGER: No, sir.

9 THE COURT: Anything from the Defense before we
10 bring the jury out?

11 MR. FLOYD: Nothing further at this time, Your
12 Honor.

13 THE COURT: All right. Ms. Joe, if you would
14 please ask the jury to join us.

15 (WHEREUPON, the jury was returned to the
16 courtroom at approximately 11:11 a.m., and the
17 following proceedings commenced in open court.)

18 THE COURT: All right, ladies and gentlemen, let me
19 before we begin tell you that it's important that you're
20 comfortable. There are no assigned seats in the jury box
21 other than two. There's this very first seat where this
22 young lady is sitting and that will be for the foreperson
23 when you do, in fact, have a foreperson. And then the
24 back seat there is for the alternate. The rest of you can
25 sit anywhere where you naturally flow as you come in and

1 out of the courtroom. Also, it's important that you're
2 comfortable so that if at any time during the trial anyone
3 needs a break or needs to be excused, if you'll get my
4 attention, it doesn't matter what we're at in the trial we
5 will stop, take that break, and allow you to go back and
6 take that break, okay? So just let me know, you know,
7 what's going and I'll certainly try to meet that need.

8 Ladies and gentlemen, we're about to begin the
9 trial of this case of the State of South Carolina versus
10 David Myers. What I'm gonna tell you before we begin this
11 trial is that most folks don't have an opportunity to sit
12 in on real jury trials. Most folks' experience regarding
13 jury trials are what they've read in books, what they've
14 seen on television, or what they've seen maybe in the
15 movies. And obviously those trials are typically fiction.
16 They're full of high drama, intense action, rivetting
17 circumstances. They're designed to entertain you. This
18 trial, ladies and gentlemen, even though any one of those
19 things may occur during the course of this trial, what's
20 important for you to understand is this trial is not for
21 your entertainment. This trial is a fundamental part of
22 our democracy. It is a search for the truth in an effort
23 to make sure that justice is done between the parties that
24 appear before the Court. In searching for the truth and
25 making sure that justice is done oftentimes can be slow.

1 It can be somewhat methodical, deliberate. Sometimes it
2 can be repetitive. In other words, it's very different
3 from what you've seen on television or read in books or
4 seen in the movies. This courtroom is a place of honor
5 that is dedicated to the preservation and to the
6 protection of citizens' rights through what many have
7 called the greatest system of justice ever created. The
8 attorneys that appear before you are advocates for the
9 sides that they represent; but first and foremost, they
10 are officers of the court and they're sworn to uphold the
11 integrity of our judicial system. You should expect them
12 to be professional, competent, and ethical in the
13 performance of their duties as they assist you in your
14 search for the truth.

15 Now in just a moment Ms. O'Hara is going to place
16 you under oath for your role as jurors in this case; and
17 so you are also expected to be professional, reasonable,
18 and ethical in the performance of your duties which I have
19 absolutely no doubt you will. I want to thank you for
20 your contribution to our system of justice here in
21 Florence County and in the State of South Carolina by your
22 service here today in this case. Now before we go any
23 further I'm going to ask Ms. O'hara to give you your oath
24 for your role as jurors in this case. So if you would
25 please stand while she does that.

1 CLERK OF COURT: Please stand, raise your right
2 hand to be sworn.

3 (WHEREUPON, the jury was sworn.)

4 CLERK OF COURT: You may be seated.

5 THE COURT: What I'm gonna share with you right
6 now, ladies and gentlemen, is to serve as an introduction
7 to the trial of the case. This is not a charge on the
8 law. I will, in fact, charge you on the law when the case
9 is over or when we've gotten to the end of all the
10 evidence and the lawyers have had an opportunity to
11 address you at their closing remarks. What I'm going to
12 do right now is just kind of go over the trial with you so
13 that you can better follow along with what's going on and
14 what's happening. Now as you know, as I told you earlier,
15 Mr. Myers is charged by an indictment which was filed with
16 this court, and he's charged with the crime of
17 shoplifting. As I said to you earlier, the indictment is
18 simply the charge which brings this case into court and it
19 is not in any sense evidence against Mr. Myers. He has
20 pled not guilty to these charges, to this allegation, and
21 that plea of not guilty places the burden of proving each
22 and every element of the crime on the State of South
23 Carolina, and they must prove those elements beyond a
24 reasonable doubt. It is gonna be your duty, ladies and
25 gentlemen, to decide whether or not the State has met that

1 burden. Your purpose as jurors is to find and to
2 determine the facts. You are the sole judges of all facts
3 in this case, ladies and gentlemen. If at any time during
4 the course of this trial I make any comment regarding the
5 facts I need for you to just disregard those comments
6 because only you, the jury, can decide the facts in this
7 case. You are to determine the facts from the testimony
8 that you hear as well as any other evidence that may come
9 in during the course of this trial. It is going to be up
10 to you to determine what inferences that you feel may be
11 properly drawn from the evidence in this case. It is
12 especially important that you perform your duty of
13 determining the facts diligently and conscientiously
14 because ordinarily there's no way for us to correct an
15 erroneous determination of facts by a jury.

16 Now, with equal emphasis, the same law that makes
17 you the judges of the facts makes me the judge of the law.
18 The law that I give to you is the only law that you may
19 consider. You must accept and follow it even though you
20 may disagree with it. I'm not allowed to tell you what I
21 think about the facts in this case; and you on the other
22 hand, are not allowed to disagree with me about what the
23 law is or what you think it should be. What you are asked
24 to do is to determine what the facts are in this case,
25 apply the law to those facts as I give it to you in

1 reaching your verdict in this case. You're not to begin
2 your deliberations until I instruct you that it is proper
3 to do so. It is very important that you not begin any
4 discussion about the trial until you have all of the
5 evidence in the case. It's important that you keep an
6 open mind and that you do not decide any issues in this
7 case until all of the evidence has been presented, the
8 parties have had an opportunity to address you with their
9 closing remarks, and then I've charged you on the law that
10 is applicable to this case. It is your solemn
11 responsibility to determine the guilt or innocence of the
12 defendant, and your verdict must be based solely on the
13 evidence as it is presented during the course of this
14 trial.

15 Now in just a moment I'm going to recognize Mr.
16 Jepertinger and he's gonna have an opportunity to address
17 you with what we call an opening statement. In that
18 statement he will explain to you what the issues in this
19 case are, or at least what he believes the issues in this
20 case are. Once he concludes his remarks, then Mr. Floyd
21 will have an opportunity to address you with his opening
22 remarks if he chooses to do so, although he's not required
23 to making a opening statement. What's important for you
24 to understand is this, what the lawyers say to you in
25 their opening statements is not evidence. They're not

1 placed under oath; they're just making their opening
2 remarks. And so what they tell you is not evidence. It
3 is merely their belief as to what they believe the
4 evidence will show. The evidence in this case is gonna be
5 presented to you by witnesses who are placed under oath,
6 take the witness stand, and then testify, and then any
7 other evidence which may come in during the course of this
8 trial.

9 Now during the course of trial from time to time,
10 ladies and gentlemen, one of the attorneys may say
11 something along these lines: Judge, we've got a matter of
12 law we need to take up with the court; or, Your Honor, may
13 we approach the Bench. When I'm dealing with attorneys
14 on matters of law or matters of admissibility sometimes it
15 may be necessary for me to make a comment about some
16 testimony or about a fact in this case. Well, as I told
17 you earlier, I'm not to have any influence over you
18 regarding the facts so I may ask you to step back into
19 your jury room because sometimes in deciding on a ruling
20 in whether or not a thing is admissible or not, it might
21 require me to make comments regarding the facts in the
22 case. And so to protect you from that I may ask you to
23 step into your jury room so that I don't influence you as
24 fact finders in this case. It's not that I'm trying to
25 hide anything from you. It's just that I'm not supposed

1 to influence you regarding the facts in the case and so to
2 protect you from that I may find it necessary to ask you
3 to step into your jury room.

4 In determining what the true facts are in this case
5 you have to decide whether or not the testimony of
6 witnesses is believable or not. It's gonna be my job to
7 determine whether certain testimony is even allowed into
8 evidence. But once it is allowed into evidence, whether
9 or not you believe it is gonna be solely up for you to
10 decide. In deciding whether to believe a witness you have
11 the right to consider the interest of any witness, the
12 bias of any witness, the opportunity for the witnesses to
13 have seen the matters that they testify about, the
14 opportunities for the witnesses to hear the things that
15 they testify about, the way a witness acts on the witness
16 stand. You have the right, ladies and gentlemen, to
17 consider anything that's in this record in helping you to
18 evaluate the testimony of the witnesses. That's why it's
19 very important that you listen carefully to the witnesses,
20 observe the witnesses, watch them as they testify, listen
21 to the attorneys and to the Court. Please try not to let
22 your thoughts wander but give close and strict attention
23 to all of the testimony and the evidence in this case so
24 that once the case is done, the evidence is closed, and
25 the attorneys have addressed you with their closing

1 remarks, and then I've given you the law, once you have
2 all of that, you will then be in a position go into the
3 jury room and to reach a verdict in this case.

4 Now before I turn it over to the attorneys let me
5 inquire first, from the State, are there any objections or
6 exceptions to the Court's opening remarks?

7 MR. JEPERTINGER: Not from the State, Your Honor.

8 THE COURT: Anything from Defense?

9 MR. FLOYD: Nothing from Defendant, Your Honor.

10 THE COURT: All right. Thank you, gentlemen.

11 So ladies and gentlemen, please, if you would give
12 the lawyers your undivided attention as they address you
13 with their opening remarks.

14 Mr. Jepertinger.

15 MR. JEPERTINGER: Yes, sir, if it please the Court.

16 THE COURT: Yes, sir.

17 MR. JEPERTINGER: Mr. Floyd, ladies and gentlemen
18 of the jury. My name is John Jepertinger once again. On
19 February the 8th, 2011, during the cooler part of the
20 year, David Myers about 5:00 p.m. went to the Walmart in
21 Lake City. It's on Kelly Street. You'll hear about that.
22 He went over to the automotive section there, and he had a
23 large black jacket on. And he took eight bottles of
24 turtle wax and he stuck them in his coat. Now how do we
25 know this all happened? Because watching him like two

1 hawks were both Ms. Fran Springs, who is the asset
2 protection manager at the Wal-Mart, and her assistant
3 Frankie McCown. And they observed him take the turtle wax
4 and shove it in his jacket. As he's trying to leave the
5 lawn and garden section of the Wal-Mart, they confronted
6 him. They knew him from the Wal-Mart, from the community,
7 and they confronted him about taking the turtle wax. He
8 ran. Frankie called the police. Fran eyeballed him all
9 the way from point A to point Z. She saw him go behind a
10 dumpster, and when he got out from behind the dumpster he
11 no longer had the black coat on. Within a matter of
12 minutes Officer Frankie Thompson from the Lake City Police
13 Department caught him behind the Piggly Wiggly there in
14 Lake City where she saw him run. And both Fran and
15 Frankie came up there and identified him, this is the guy
16 that stole the turtle wax. And within a short distance
17 they went back to the dumpster, and low and behold, what
18 do they find in that dumpster but a black coat with turtle
19 wax. Now those are the facts.

20 In each and every case the State has to prove this
21 person guilty beyond a reasonable doubt and the Court is
22 going to tell you that at the end of this trial. And what
23 is a reasonable doubt? It's that doubt that leaves you,
24 in determining and weighing the proof, are you firmly
25 convinced that the State has proven him guilty. If the

1 proof leaves you firmly convinced that this is the guy
2 that on February 8th, 2011 took that turtle wax, committed
3 retail theft, shoplifting, then you find guilty. If, on
4 the other hand, there's a real possibility that he didn't
5 do it you must find him not guilty. That's the way this
6 thing works. In this case I think the evidence is going
7 to be overwhelming that that gentleman, for whatever
8 reason, stole eight bottles of turtle wax in Lake City.
9 Please listen and judge the credibility and the demeanor
10 of the witnesses in this case, and at the end I'm sure you
11 will do the right thing. Thank you.

12 THE COURT: Thank you, Mr. Jepertinger.
13 Mr. Floyd.

14 MR. FLOYD: Thank you, Your Honor. May it please
15 the Court.

16 THE COURT: Yes, sir.

17 MR. FLOYD: Mr. Jepertinger.

18 MR. JEPERTINGER: Yes, sir.

19 MR. FLOYD: Good morning, ladies and gentlemen. My
20 name is Scott Floyd and I'm assistant public defender here
21 in Florence. I represent Mr. David Myers. He's seated
22 beside me at the defense table over here in the blue
23 shirt. Mr. Jepertinger alluded to the way this works; and
24 of course, a defendant comes into a courtroom accused of
25 something, accused of a crime of course, whether it's a

1 speeding ticket or murder, he's entitled to what we call
2 presumption of innocence. Our constitution was designed
3 that way to protect people from too much government power
4 and basically the State calls you in here, they're gonna
5 have to prove everything they say and that's the way it
6 should be. 'Cause the State of course, has the resources
7 behind them to, with paid law enforcement officers, crime
8 labs, all sorts of things that they have at their disposal
9 to accumulate evidence and bring it into court.
10 Oftentimes a regular citizen doesn't have those kind of
11 resources so it makes sense, doesn't it, that the State
12 has the burden of proof in any case to prove what they
13 say. And that's only fair and right.

14 And of course, Mr. Jepertinger alluded to the
15 standard of proof, which is beyond a reasonable doubt.
16 And we would ask that you just listen to the evidence as
17 it's presented in this case, the witnesses, the evidence
18 they present to you, and also evidence that you may not be
19 presented in this case and just make a determination at
20 the end after you consider everything. Thank you very
21 much.

22 THE COURT: Thank you, Mr. Floyd.

23 MR. FLOYD: Thank you, Your Honor.

24 THE COURT: Mr. Jepertinger, you may call your
25 first witness, sir.

SW- F. SPRINGS - DIRECT

1 MR. JEPERTINGER: I would call Ms. Fran Springs to
2 the stand please.

3 THE COURT: Ms. Springs, if you'd come around
4 please.

5 CLERK OF COURT: If you will, ma'am, place your
6 left hand on the Bible, raise your right hand.

7 WHEREUPON,

8 **FRAN SPRINGS,**
9 having been duly sworn by the Clerk of Court, testified as
10 follows:

11 CLERK OF COURT: Please be seated and state your
12 full name for the record.

13 THE WITNESS: Fran Springs.

14 **DIRECT EXAMINATION**

15 BY MR. JEPERTINGER:

16 Q Okay. Ms. Springs, for whom do you work?

17 A Wal-Mart in Lake City.

18 Q And can you tell the ladies and gentlemen of the jury
19 where Wal-Mart is located?

20 A It's at 230 Kelly Street.

21 Q All right. And I'm gonna ask you a very stupid
22 question but gonna get it out of the way. Lake City,
23 which county is that in please?

24 A That's in Florence County.

25 Q Thank you so much. What do you do for them please?

SW- F. SPRINGS - DIRECT

1 A I am the loss prevention manager.

2 Q And how long have you been the loss prevention manager
3 for the Wal-Mart in Lake City?

4 A Five years.

5 Q Okay. And you were so employed on February the 8th,
6 2011?

7 A Correct.

8 Q All right. And do you have anybody that works with you
9 in loss prevention over at the Wal-Mart?

10 A Yes, sir, I do.

11 Q And who would that individual be?

12 A That would be Frankie McCown.

13 Q And that's the gentleman with the white shirt on,
14 correct, —

15 A Correct.

16 Q ---in the courtroom? Okay. Can you tell the ladies
17 and gentlemen of the jury what you were doing at
18 approximately 5 p.m. on February the 8th, 2011 there at
19 Wal-Mart?

20 A Myself and Frankie were walking through like from lawn
21 and garden going back towards through the back of the
22 store on the action alley and that would be passing like
23 toys and sporting goods and automotive.

24 Q All right. And did you see anything that kind of
25 caught your attention?

SW- F. SPRINGS - DIRECT

1 A Yes, sir.

2 Q Tell the ladies and gentlemen what caught your
3 attention?

4 A When we were coming through, both of us walking side by
5 side, we made eye contact with David Myers in the store.

6 Q All right. And did you know David Myers previously?

7 A Yes, sir.

8 Q Okay. You knew him from -- how did you know him?

9 A From like -- from the Wal-Mart and community wise.

10 Q Okay. And when you made eye contact with David Myers
11 did you observe David Myers after that?

12 A Yes, sir.

13 Q And what were you observing about David Myers at that
14 point?

15 A When he had went to the automotive section where the
16 turtle wax was, which would be to the far side of this
17 side of the store, I went to the aisle that would be
18 separate. Action alley here, I went to the aisle that's
19 right beside there.

20 Q And do you know where Mr. McCown went?

21 A Right. He was on the other side of me.

22 Q All right. He was right there with you?

23 A Correct.

24 Q Okay. And then what did you observe?

25 A I observed David Myers select the eight bottles of

SW- F. SPRINGS - DIRECT

1 turtle wax and put them inside of his coat.

2 Q And what type of coat was it?

3 A A large black coat.

4 Q All right. And at that point when you saw that what
5 was your response and what did you do?

6 A Response was, by Wal-Mart's policy, when it comes to
7 actually their policies with your selection, the
8 concealment, your constant eye contact, for the last part
9 they have to exit out past all points of purchase. And at
10 that time when he had selected the turtle wax he went
11 straight to lawn and garden and exited out of the lawn and
12 garden gate.

13 Q And what -- what did you guys do? Did you follow him
14 or what did you do?

15 A Correct, yes, sir. We followed him to the gate.

16 Q Okay. And did you confront him at the gate?

17 A Yes, sir. I confronted him and asked him by name,
18 David, to step back inside the store so we could discuss
19 the turtle wax.

20 Q And what was his response either in words or actions to
21 your request?

22 A Not words, but actions were he just took off at a very
23 fast pace running, going down to the front line of the
24 store going towards where it would be IGA and Catos goes
25 towards that end.

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1 Q Okay. What did you do at that point in terms of
2 dealing with Mr. McCown and your response?

3 A Mr. McCown, he had already got on his cell phone, had
4 actually already called the police department. He was
5 walking more towards out of the parking lot this way
6 observing him while he's going this way. It's a way we
7 keep a safe distance. We're still able to see, but it's a
8 safe distance. When he goes this way I went behind
9 Mr. Myers this way behind him.

10 Q And what did you do?

11 A I followed behind him all the way past the front of
12 Wal-Mart all the way in between the buildings back behind
13 the others till he cut right behind the ones that would be
14 Piggly Wiggly.

15 Q And could you tell the ladies and gentlemen of the jury
16 at any point did he go near a dumpster?

17 A Yes, he did.

18 Q Okay. And tell them how that transpired please, what
19 happened there, what you observed?

20 A When you actually go in front of the Wal-Mart you
21 actually have a cut-through that's by Catos, then you can
22 round the back of another shopping center which is like
23 our IGA. If you can cut over the curve part there's
24 another strip of shopping centers that actually faces US
25 52. Behind that shopping center is a big dumpster. I

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1 observed him when he was cutting through. He went back
2 behind the dumpster. When he came right back out he no
3 longer had his coat on. And at that time I was on my cell
4 phone with my APA, Frankie McCown, telling him exactly
5 what had just transpired and exactly where he was at.

6 Q All right. And then what did you do?

7 A At that point after I'd already gotten in contact with
8 Frankie, it was actually the point that the officer was
9 around in the corner side of the building so when the
10 officers rounded the building they're facing David because
11 he's still walking towards the direction the patrol car is
12 coming in at.

13 Q Okay. And then what happened, what did you observe?

14 A I observed Officer Thompson actually get out with the
15 subject and started talking with him, and at that point I
16 was already walking up to them.

17 Q All right. And at what point did Officer Thompson ask
18 you anything in terms of identification of the individual?

19 A Correct, he did.

20 Q And what did you tell Officer Thompson?

21 A I told Officer Thompson this was the gentleman that was
22 David Myers, and this was who had just taken the turtle
23 wax.

24 Q All right. And at that point what did you do in
25 relation to in terms of the dumpster, or did you tell the

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1 officer anything?

2 A I explained to the officer what I observed, where he
3 had rounded behind the dumpster. Then when he came out he
4 no longer had his coat on. And if you round that side of
5 the dumpster there was an opening to the dumpster.

6 Q And what did -- did you go to that dumpster ---

7 A Yes, sir.

8 Q ---with the officer?

9 A Right. It's all in a very close proximity where all
10 this took place between the patrol car here and the
11 dumpster here. It's very close together.

12 Q And what did you observe in the dumpster?

13 A The black coat and the Armor All, I mean, the turtle
14 wax.

15 Q Turtle wax, all right. And was the turtle wax in the
16 coat?

17 A There was some that would still be in the coat, but
18 actually I -- to the point of actually chunking in there,
19 eight bottles would have been probably hard to stay in
20 there.

21 Q Right.

22 A But it was all the bottles that we had witnessed him
23 conceal inside the store.

24 Q All right. Now is it safe to say that you observed him
25 from point A to point Z in this case?

SW- F. SPRINGS - DIRECT

- 1 A Correct, yes, sir, a hundred percent.
- 2 Q Now was there any other individual that he would have
- 3 run with?
- 4 A No, sir.
- 5 Q Okay. Was there anything that impeded your vision?
- 6 A No, sir.
- 7 Q Now as asset protection manager I believe that your
- 8 store has a video; is that correct?
- 9 A Yes, sir.
- 10 Q Okay. And what is Wal-Mart's policy in terms of
- 11 maintaining these videos?
- 12 A For this store the capability of holding it is usually
- 13 every 30 days. After 30 days it's taped over again.
- 14 Q And was this tape or videotape of possibly Myers inside
- 15 the store, was that taped over in this case?
- 16 A Yes, sir.
- 17 Q All right. And if the police had requested the tape
- 18 you would have provided it to them?
- 19 A Correct, yes, sir.
- 20 Q Okay. So we don't have a videotape inside the store?
- 21 A Correct.
- 22 Q Okay. Now when Officer Thompson stopped him behind the
- 23 Piggly Wiggly -- and let me ask you, what is -- when you
- 24 talk behind the Piggly Wiggly, is it an alley way or how
- 25 does that?

SW- F. SPRINGS - DIRECT

1 A Right, because there is some other businesses or in
2 that strip part, and that's actually where some of them's
3 loading docks may be like the furniture store. Their
4 dumpsters are back there.

5 Q But it's not a place for where people walk generally

6 ---

7 A No, sir.

8 Q ---for customers going into the Wal-Mart?

9 A No, sir, it's strictly for business wise.

10 Q All right. Now this whole scenario of seeing him at
11 the automotive section to the point of the officer getting
12 him at beyond the Piggly Wiggly, how long in time would
13 you say this would have lasted?

14 A Around about maybe ten minutes or a little less,
15 somewhere around in that time frame.

16 Q All right, okay. And once again, can you identify to
17 the ladies and gentlemen of this jury the person on
18 February 8th, 2011, that came into the Wal-Mart and took
19 eight bottles of turtle wax?

20 A Yes, sir.

21 Q Would you point him out to the jury please?

22 A It would be David Myers (indicating) in the blue shirt.

23 MR. JEPERTINGER: Okay. Let the record reflect
24 that she has identified the defendant David in this
25 particular case.

SW - F. SPRINGS - CROSS

1 Thank you. Please answer any questions that
2 Mr. Floyd may have for you.

3 THE COURT: Mr. Floyd.

4 MR. FLOYD: Thank you, Your Honor.

5 **CROSS-EXAMINATION**

6 BY MR. FLOYD:

7 Q Ms. Springs, the video system that you have in
8 Wal-Mart, it covers all areas of the store pretty much or?

9 A Not so much areas, it covers a lot of just our main
10 issues that would be more towards some of the internal or
11 safety issues.

12 Q Okay. But you, in fact, had video of the incident that
13 you refer to as far as turtle wax being taken and putting
14 in the coat?

15 A The only video that would have actually applied to this
16 would be maybe entering the store and leaving the store
17 and maybe like when it's going through the parking lot
18 phase.

19 Q Okay. So it may not have actually shown anything in
20 the aisle itself?

21 A Correct.

22 Q Okay, but just exiting and entering.

23 A Correct.

24 Q So to speak, okay. And after the arrest was made at
25 the store is, your policy is not to make copies of the

SW - F. SPRINGS - CROSS

1 videos in a case like that or unless they're requested or?

2 A Unless a request or if it's actually to the point that
3 they would not be somebody that would have got
4 apprehended.

5 Q Okay. No copy was made?

6 A Correct; yes, sir.

7 Q And so the video was eventually just recorded over? Is
8 that what happens?

9 A Correct, yes, sir.

10 Q The tapes are recycled or --

11 A Right.

12 Q --or whatever the case may be? Okay. How many times
13 had you seen Mr. David Myers here prior to this in your
14 life that you recall?

15 A Numerous occasions.

16 Q I mean, you --

17 A Also community wise, Wal-Mart wise. I live in Lake
18 City, and Lake City is kind of a smaller area so it's like
19 just like hometown community.

20 Q Sure. Okay. So you'd seen him a number of times?

21 A Yes, sir.

22 Q But mostly in the store or --

23 A Actually could be --

24 Q --outside?

25 A Evenly amounts.

SW - F. SPRINGS - CROSS

- 1 Q Right?
- 2 A Probably more so outside the store.
- 3 Q Okay. How long have you lived in Lake City?
- 4 A I've been in Lake City for right at nine years.
- 5 Q Nine years, okay. And did you work at the police
- 6 department one time there?
- 7 A Correct. I was employed at the police department
- 8 full-time. I am full actually part-time now.
- 9 Q Okay. And were you part-time then during this incident
- 10 ---
- 11 A Yes, sir.
- 12 Q ---February 8 of 2011? And do you know another David
- 13 Myers in Lake City?
- 14 A Not right offhand, no, sir. I can't think of one that
- 15 I would.
- 16 Q Okay. You said Mr. Myers was wearing a black coat; is
- 17 that correct?
- 18 A Correct.
- 19 Q What was he wearing when you saw him after the police
- 20 apprehended him? Do you know what he had on then?
- 21 A It would have been like a darker like burgundy, reddish
- 22 color. I believe that would have been up under the black
- 23 coat.
- 24 Q Okay. A shirt or a sweater?
- 25 A Yes, sir.

SW - F. SPRINGS - CROSS

- 1 Q And after you saw an arrest made did you have any
2 further contact with the person who was arrested after he
3 was taken by the police?
- 4 A No, sir.
- 5 Q Okay. So at the point he was arrested you went back to
6 the store?
- 7 A Correct.
- 8 Q And then he went wherever he went?
- 9 A Correct.
- 10 Q Okay. And that was the last contact that you had?
- 11 A Yes, sir.
- 12 Q Okay. Now the turtle wax itself, was it in like a
13 bottle or was it one of those that has a screw stop can
14 ---
- 15 A It's like the bottle container.
- 16 Q Bottle that you can squirt or kind of or ---
- 17 A Or spray.
- 18 Q ---or spray?
- 19 A Yes, sir.
- 20 Q Okay, I see. And you said you located those things in
21 a dumpster?
- 22 A Correct.
- 23 Q Okay. What did you do with those items? Did the
24 police take them or did you get them?
- 25 A Those items, actually after the police had saw they

SW - F. SPRINGS - CROSS

1 recovered, they turned those back over to us. We had took
2 those back to the store with us.

3 Q Okay. And that was done immediately?

4 A Correct, yes, sir.

5 Q Okay. So you returned -- you just returned those into
6 the merchan-- or into the inventory in the store?

7 A Right.

8 Q I mean, you didn't save them for evidence or anything
9 like that?

10 A No, sir.

11 Q Okay. So as far as you know they weren't tested for
12 prints or anything of that nature?

13 A No, sir.

14 Q Okay, all right. Thank you very much. I appreciate it.

15 A Thank you.

16 THE COURT: Anything further?

17 MR. JEPERTINGER: Nothing on redirect, Your Honor.

18 THE COURT: Thank you very much, ma'am. You may
19 step down.

20 MR. JEPERTINGER: We call Mr. McCown.

21 THE COURT: Come around please, sir.

22 WHEREUPON,

23 **FRANKIE MCCOWN,**

24 having been duly sworn by the Clerk of Court, testified as
25 follows:

SW - F. MCCOWN - DIRECT

1 CLERK OF COURT: Please be seated and state your
2 full name for the record.

3 THE WITNESS: My name is Frankie McCown.

4 DIRECT EXAMINATION

5 BY MR. JEPERTINGER:

6 Q Mr. McCown, where do you work?

7 A Lake City Wal-Mart.

8 Q And how long have you been employed for Lake City
9 Wal-Mart?

10 A Going on 13 years.

11 Q And what are your responsibilities there at the Lake
12 City Wal-Mart?

13 A I'm asset protection associate.

14 Q And I take it you work with Ms. Springs?

15 A Yes, sir.

16 Q Okay. And you were so employed doing that February
17 8th, 2011?

18 A Yes, sir.

19 Q Can you tell the ladies and gentlemen of the jury if
20 anything unusual happened around 5 p.m. on February
21 the 8th, 2011?

22 A As the date in question, that day me and Ms. Springs
23 were walking back in from garden center and walking action
24 alley between toys and sporting goods and headed back to
25 the action alley of the store. At that point in time we

SW - F. MCCOWN - DIRECT

1 observed and we saw Mr. David Myers coming entering the
2 store. Right behind us we made eye contact with him which
3 he then headed into sporting good department on the car
4 washing aisle.

5 Q Let me ask you, did you know David Myers?

6 A Yes, sir.

7 Q Did you know him from -- how did you know him?

8 A Know him from previous at times seen him in the store.

9 Q Okay, all right. And at that point when you saw him
10 come in the store did you observe where he went?

11 A Yes, sir. We observed him as he went and turned down
12 the car care aisle, and at that time we observed him from
13 two different points of view to make -- to see if any
14 suspicious activity would have been attempted at that
15 time.

16 Q Okay. How was he dressed?

17 A He was dressed with a dark shirt and a black coat on
18 and dark colored jeans.

19 Q All right. And what did you personally observe?

20 A I observed him selected eight bottles of turtle wax and
21 then place them inside his coat liner, all eight bottles,
22 then exiting out the garden center, exiting out the garden
23 center, exiting out the garden center patio.

24 Q How far were you away from him when you saw him take
25 the turtle wax?

SW - F. MCCOWN - DIRECT

1 A Less than a hundred feet away from him.

2 Q Okay. And at that stage you said he went towards the
3 - exited the garden center?

4 A Yes, sir.

5 Q And what did you do in response to that?

6 A At that time myself and Ms. Springs, we followed behind
7 him and whenever he passed the last point of sales
8 Ms. Springs asked him to step back inside to deal with the
9 turtle wax matter.

10 Q How far were you away from David Myers when she asked
11 him to do that?

12 A Less than -- probably less than 15 feet away from him
13 'cause when we -- when he passed the gates. We asked him
14 after he passed the gates, and after that he decided just
15 instead of dealing with us he decided to ran.

16 Q Did you have a chance to talk to him at that point?

17 A I didn't. Ms. Springs did.

18 Q And did you have a chance to look at him?

19 A Yes, sir.

20 Q No doubt in your mind that it was David Myers?

21 A No, doubt in my mind, sir.

22 Q And at that point what did you do?

23 A At that time I was already on the phone with the police
24 at that time, and after that we was on the way describing
25 him and pinpointing the direction he was traveling to, or

SW - F. MCCOWN - DIRECT

1 walking to, and running to.

2 Q What did you do after you went through that process?

3 A I walked in -- I walked into the parking lot to keep
4 visual inside the parking lot. And after he was going
5 straight down front of the store while Ms. Springs was
6 walking down the store behind him keeping eye contact. At
7 that time I was taked up with the Lake City officer at
8 that time to go around the store while Ms. Springs was
9 still keeping contact on him.

10 Q And that other Lake City officer would have been
11 Officer Cook, correct?

12 A Yes, sir.

13 Q And tell us what you did with Officer Cook.

14 A While in Officer Cook patrol car I was also on the
15 phone with Fran which was giving the direction where David
16 Myer had went to and was at that point in time in. And
17 with being in the car with Officer Cook he also
18 communicated with Officer Sandy Thompson which way to go.

19 Q Okay. And then what happened?

20 A After that Officer Sandy Thompson was -- went behind
21 the Piggly Wiggly building where Fran Springs also met him
22 and to identify to the officer what he was -- also
23 apprehended.

24 Q Okay. Did you -- did you go there?

25 A Yes, sir, I went there with Officer Cook. Me and

SW - F. MCCOWN - DIRECT

1 Ms. Springs identified him.

2 Q All right. And approximately the length of time from
3 the first time you saw him with the turtle wax in the
4 store to the point of you identifying him was about how
5 long?

6 A Give or take 10 or 15 minutes, give or take.

7 Q Okay. And was he dressed any differently when you saw
8 him at the apprehension?

9 A At apprehension he was without his black trench coat --
10 black long coat at that time.

11 Q All right. What did you do at that point after you
12 identified him?

13 A After identifying and Officer Sandy had him in custody
14 and everything, we observed the area and tried to
15 reconcile the area where he could have done disarm the
16 coat. And by looking in the trash can we saw the coat
17 thrown in the trash can along with the bottle eight turtle
18 wax.

19 Q And did you or Ms. Springs or the officer retrieve the
20 turtle wax out of the dumpster?

21 A Myself jumped inside the dumpster and retrieved the
22 turtle wax and the black coat out of the trash can.

23 Q Okay. That's the difference between the manager and
24 the associate. You got to jump in the dumpster, correct?

25 A A little.

SW - F. MCCOWN - CROSS

1 Q Okay, I got you. And you did get the eight bottles of
2 turtle wax; is that correct?

3 A Yes, sir.

4 Q And you returned them to the store, correct?

5 A Yes, sir.

6 Q And the coat?

7 A The coat was given to him when he was put in the patrol
8 car.

9 Q He didn't refuse the coat, did he?

10 A No, sir.

11 Q All right. Okay, at that point what did you do?

12 A After we collected the eight bottles of turtle wax me
13 and Ms. Springs, we took him back and we -- after the
14 police left we walked back to the store and we took them
15 back and cleaned them out.

16 Q Okay. And that's your only involvement in this case?

17 A Yes, sir.

18 Q All right. And I think that's all I have. Please
19 answer any questions Mr. Floyd may have.

20 THE COURT: Mr. Floyd.

21 MR. FLOYD: Thank you, Your Honor.

22 CROSS-EXAMINATION

23 BY MR. FLOYD:

24 Q Mr. McCown, how long have you known Mr. Myers?

25 A Throughout the community and throughout Lake City I

SW - F. MCCOWN - CROSS

1 would probably say about six years.

2 Q About six years, okay. Do you live in Lake City?

3 A No, sir.

4 Q Have you ever lived there?

5 A No, sir.

6 Q You've just known him from, I assume you've been
7 employed Wal-Mart?

8 A Yes, sir. I was employed —

9 Q Going on six years?

10 A 13, and going on 13 years and from the 6 years knowing
11 him I seen him constant time throughout the area.

12 Q And that's been through your employment in Lake City?

13 A Yes, sir.

14 Q Have you worked for that particular Wal-Mart store for
15 13 years?

16 A Yes, sir.

17 Q Okay. Now do you remember what he had on after he was
18 arrested?

19 A After he was arrested it was a dark colored shirt and
20 dark colored jeans.

21 Q And after the arrest was made you went back to the
22 store; is that correct?

23 A Correct.

24 Q Okay. So you didn't have any further contact with —

25 A No, sir.

SW - T. MCCOWN - REDIRECT

1 Q ---anybody after the arrest was made?

2 A No, sir.

3 Q Okay. Do you recall anything else about the clothing
4 he was wearing as far as shoes or anything like that?

5 A Not shoe-wise, no, sir.

6 Q Do you know anybody else in Lake City named David
7 Myers?

8 A No, sir.

9 Q You do not? Okay. Do you know Mr. Myers' family?

10 A No, sir.

11 Q Did you ever tell the Solicitor's Office or anybody you
12 associated with that you did?

13 A No, sir.

14 Q You never said that out here in this building?

15 A Only thing that was said here of anything was that he
16 said he might have a brother that looked like him, but I
17 don't know of it myself and don't know none of his family.

18 Q Okay. Thank you very much.

19 **REDIRECT EXAMINATION**

20 BY MR. JEPERTINGER:

21 Q Have you ever seen any kin of his —

22 A No, sir.

23 Q ---that you're aware of? The individual that was
24 arrested behind the Piggly Wiggly in close proximity to
25 that jacket and turtle wax, who is that individual?

SW - T. MCCOWN - REDIRECT

1 A That will be David Myers sitting to my left.

2 Q And next to Mr. Floyd?

3 A Yes, sir.

4 Q All right. Thank you.

5 THE COURT: Anything further?

6 MR. FLOYD: I don't have anything.

7 THE COURT: Thank you very much, sir. You may step
8 down.

9 MR. JEPERTINGER: Your Honor, may Mr. McCown
10 be excused? Apparently he has another engagement that he
11 has to get to.

12 THE COURT: Any objection, Mr. Floyd?

13 MR. FLOYD: I don't have any objection, Your Honor.

14 THE COURT: Thank you, Mr. McCown, you're free to
15 go, sir.

16 MR. JEPERTINGER: I would call Officer Sandy
17 Thompson from the Lake City Police Department.

18 WHEREUPON,

19 **SANDY THOMPSON,**
20 having been duly sworn by the Clerk of Court, testified as
21 follows:

22 CLERK OF COURT: Please be seated. State your name
23 for the record.

24 THE WITNESS: Sandy Thompson.

25 **DIRECT EXAMINATION**

SW - S. THOMPSON - DIRECT

1 BY MR. JEPERTINGER:

2 Q Officer Thompson, you work for the Lake City Police
3 Department?

4 A Yes, sir.

5 Q How long have you been an officer with the Lake City
6 Police Department?

7 A Going on six years.

8 Q All right. And would it be safe to say that you'd be
9 what's called a patrol officer?

10 A That's correct.

11 Q And how long have you been a patrol officer?

12 A Six years with law enforcement in Lake City.

13 Q And sometimes, you know, I think ladies and gentlemen
14 — well, tell them what a patrol officer does. Sometimes
15 I think, you know, I think they know the term. They may
16 not know what a patrol officer does.

17 A We answer calls that come through dispatch. If they
18 get a call with reference to a wreck, shoplifting,
19 whatever it maybe. We answer calls, house calls, wrecks,
20 whatever, that's what we do.

21 Q So you guys are normally what are the initial
22 responding officers, correct?

23 A That's correct.

24 Q Okay. So when we call a police officer to come to our
25 house for whatever reason we'd see a patrol officer first?

SW - S. THOMPSON - DIRECT

1 A Patrol officer, first response officer, yes, sir.

2 Q All right. And you were working on 5:00 on
3 February 8th, 2011?

4 A That's correct.

5 Q And were you dispatched out to the Wal-Mart on Kelly
6 Street?

7 A Yes, sir.

8 Q And can you tell what the dispatch was about?

9 A We received call from dispatch stating there was a
10 shoplifting at Wal-Mart.

11 Q Okay. And were you provided any information about who
12 might be involved in that?

13 A Yes, sir. They give a description of the subject and
14 told us what direction he was going in.

15 Q Did they provide the name?

16 A Yes, sir.

17 Q And which name was provided to you?

18 A David Myers.

19 Q All right. How long did it take you to get from where
20 you were to the Wal-Mart?

21 A Three, probably three to five minutes.

22 Q Okay. And tell the ladies and gentlemen what you did?

23 A I received information that Mr. Myers was running
24 behind the Piggly Wiggly. They was watching him. I went
25 around to the opposite side of Piggly Wiggly and came up

SW - S. THOMPSON - DIRECT

1 to the back of Piggly Wiggly. I observed Mr. Myers
2 walking away from the trash dumpster.

3 Q All right. And did you see anybody else behind that
4 strip mall of stores?

5 A No, sir, not at that time.

6 Q All right. And then what did you do?

7 A I spoke with Fran and Frankie. They came to where I
8 was at and they identified Mr. Myers. I looked in the
9 trash can after that IN the dumpster and I seen the black
10 coat and the wax.

11 Q And you gave the coat back to Mr. Myers?

12 A Mr. Myers, yes, sir.

13 Q All right. And they got the turtle wax; ---

14 A That's correct.

15 Q ---is that correct?

16 A Yeah.

17 Q And he was arrested and taken to jail, I take it, at
18 that point?

19 A Yes, sir.

20 Q All right. And that was your only involvement in this
21 case other than writing a small report?

22 A That's correct.

23 Q Okay. And you never asked for the video; is that
24 correct?

25 A Excuse me?

SW - S. THOMPSON - CROSS

1 Q You never asked for the store video; is that correct?

2 A No, sir.

3 Q All right. I thank you so much. Please answer any
4 questions that Mr. Floyd may have for you.

5 THE COURT: Mr. Floyd.

6 MR. FLOYD: Thank you, Your Honor.

7 **CROSS-EXAMINATION**

8 BY MR. FLOYD:

9 Q Officer Thompson, you did the -- you completed an
10 incident report after you made an arrest in this case; is
11 that right?

12 A Yes, sir.

13 Q Okay. You mind taking a look at this and telling me if
14 that's the report that you completed?

15 A Yes, sir, this appears to be my report. I signed the
16 bottom of it.

17 Q Okay, thanks. You noted here that, I believe that, you
18 got a complaint and you basically went there and found
19 items and you returned them to the complainant. Do you
20 know -- do you normally not note when you make an arrest
21 in your report?

22 A Can I see that a minute?

23 Q Certainly.

24 A If you look on the left hand side right here.

25 Q Yes, sir.

SW - S. THOMPSON - CROSS

- 1 A It's marked arrest, right there, suspect arrest. Right
2 there.
- 3 Q All right.
- 4 A I don't have to put --
- 5 Q But you don't put a narrative ---
- 6 A No, sir, not all the time, no, sir.
- 7 Q ---that you made an ---
- 8 A No, sir.
- 9 Q So it was just a brief detail that you actually went to
10 a location and you found items and ---
- 11 A Right.
- 12 Q But you didn't actually detail the arrest itself?
- 13 A No, sir.
- 14 Q Okay. Would you have transported the person to
15 booking?
- 16 A Excuse me?
- 17 Q Would you have transported the person at booking?
- 18 A Yes, sir, he was in my patrol car.
- 19 Q And would you have handled that process yourself?
- 20 A Yes, sir.
- 21 Q Okay. And would you have taken a photograph there?
- 22 A Yes, sir, there would have been one taken, yes, sir. I
23 wouldn't have done it. Dispatch would have done it.
- 24 Q Somebody ---
- 25 A Yes, sir.

SW - S. THOMPSON - CROSS

1 Q And I assume you would have gone through the
2 fingerprinting process and all that sort of thing as well.

3 A Yes, sir.

4 Q Okay. All that is pretty standard. As far as the
5 items themselves that were alleged to be taken from the
6 store you gave those back to the store?

7 A Gave them back to Frankie, yes, sir.

8 Q And once again, you didn't request any video or
9 anything from the store ---

10 A No, sir, I did not.

11 Q ---to confirm the allegations, okay? All right.

12 That's all I have. Thank you very much.

13 MR. JEPERTINGER: Thank you, Your Honor. And that
14 would be the State's case.

15 THE COURT: Thank you, Officer. You may step down.

16 All right. Ladies and gentlemen, the State has
17 rested their case. Hold on.

18 MR. JEPERTINGER: They were asking if he could be
19 excused. He worked all night last night.

20 THE COURT: Any objection, Mr. Floyd?

21 MR. FLOYD: I don't have any objection, Your Honor.

22 THE COURT: Thank you very much, sir. You are free
23 to go.

24 Ladies and gentlemen, the State has rested their
25 case and so I need to take up some matters of law with the

1 attorneys before we proceed any further so I'm gonna get
2 you to step back into your jury room. I'm gonna get you
3 to do me a favor while you're back there, if you would
4 please. I'm gonna get you to elect a foreperson to serve
5 as the foreperson of the jury, and I'll tell you a little
6 bit about that. The foreperson of a jury is simply the
7 person who communicates between the jury panel and the
8 Court. When you have 12, 13 folks who are on a panel it's
9 just not efficient to have to deal with -- if anyone has a
10 question or whatever, it's just not efficient to deal with
11 folks individually. It's easier to have one person who
12 represents the jury panel convey or converse with the
13 Court so. One of the main reasons, purposes for the
14 foreperson, is to be the communicator between the jury
15 panel and the Court so that if anybody has a question the
16 foreperson would write that question out on a sheet of
17 paper and pass it out to me. I would review the question,
18 and depending on what the question is, I may have just the
19 foreperson come out and answer and I'll give the answer.
20 Or I may have you come out as a panel and give the answer.
21 It just depends on what the question is. But that's the
22 main role of the foreperson.

23 Another role that the foreperson has is, when you
24 do finally get the case for your consideration and your
25 deliberations, then the foreperson would be the one who

1 starts and stops the deliberations. I'll tell you now
2 that when you do deliberate and discuss the case, when you
3 get to that point everyone must be present for those
4 conversations so that if one of you has to excuse
5 yourselves to use the restroom or whatever, the foreperson
6 would then say, okay, let's stop talking, let's stop the
7 deliberations until they return. Then that person comes
8 back then the foreperson would say, okay, let's go ahead
9 and start back.

10 What you need to understand is this, your verdict
11 in this case must be unanimous. You must all agree on the
12 verdict. I tell you that for a couple of reasons.
13 Obviously because it's important that you know that. But
14 the other thing is to tell you, to emphasize to you that,
15 you are all equal members of the jury panel. Not --
16 there's no one person whose opinion or vote carries any
17 more weight than anyone else. And I tell you that because
18 whoever is elected as the foreperson, they have those
19 roles to fulfill as I just discussed with you; but when it
20 comes to deliberations they're just another member of the
21 jury panel. Their opinion or their vote carries no more
22 weight than any one of you. You are all equal members in
23 the jury room so it's important that you also understand
24 that. The final thing the foreperson does is, when you do
25 finally reach a verdict the foreperson will have the

1 verdict form and they will then reflect what the jury's
2 verdict is on that form, sign it as the foreperson, and
3 then knock on the door and let us know that you've reached
4 a verdict. So that's basically the role of the
5 foreperson. If you would, when -- while I'm taking up
6 these matters with the attorneys I'm gonna ask that you
7 please elect a foreperson to serve in that capacity for
8 this jury. Now everyone is eligible to serve in that
9 capacity other than the alternate. The alternate is the
10 only one that would not be considered as a foreperson,
11 but anyone else could be elected as that individual. When
12 you have elected a foreperson, whoever what person is, if
13 you would just write your name on a piece of paper and
14 pass it out to me so that I'll have that information. And
15 then when you do return to the jury box here, as I said,
16 sit anywhere you're comfortable but I need the foreperson
17 to occupy this first seat and then everyone else can sit
18 wherever you're comfortable, okay? I'm gonna get you to
19 come back and do that for me while I take up these matters
20 with the lawyers.

21 (WHEREUPON, the jury was removed from the
22 courtroom at 12:13 p.m., and the following proceedings
23 commenced in open court.)

24 THE COURT: All right. At this time I will take up
25 any motions at the close of the State's case.

1 MR. FLOYD: Thank you, Your Honor. At this time
2 the Defense would move for a directed verdict on the
3 grounds that there is insufficient evidence to support a
4 conviction in this case on the evidence that's viewing in
5 a light most favorable to the State, Your Honor.

6 THE COURT: All right. I'm gonna respectfully deny
7 the motion, Mr. Floyd. I think it is a factual issue that
8 is appropriate for the jury.

9 MR. FLOYD: Certainly, Your Honor.

10 THE COURT: All right. Have you had a chance to
11 discuss with Mr. Myers what the Defense intends to do?
12 You need some time?

13 MR. FLOYD: Your Honor, if I could have a minute
14 with Mr. Myers.

15 THE COURT: Yeah. But Mr. Myers, I'm gonna get you
16 to talk with Mr. Floyd and y'all can discuss what, if
17 anything, the Defense intends to do. Why don't we take
18 about 10, 15 minutes, and then we'll start back.

19 MR. FLOYD: Thank you, Your Honor.

20 (WHEREUPON, a recess was taken from the
21 proceedings.)

22 THE COURT: All right, back on the record.
23 Mr. Floyd, have you had an opportunity to discuss with
24 Mr. Myers what the Defense's intention is?

25 MR. FLOYD: Yes, Your Honor.

1 THE COURT: All right. Do you intend to -- well,
2 let me ask you first, does Mr. Myers intend to testify or
3 exercise his right to remain silent?

4 MR. FLOYD: He's wanting to exercise his right to
5 remain silent, Your Honor.

6 THE COURT: All right. Mr. Myers, let me just talk
7 to you briefly about that. You certainly have the right
8 to testify if you wanted to, but you also, as I've
9 instructed juries before that you have the right to remain
10 silent. You've discussed that with your lawyer Mr. Floyd?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: All right. And have you -- is that, in
13 fact, your desire to not testify?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: All right, sir. And has anyone forced
16 you or coerced you into making that decision or has that
17 been your decision?

18 THE DEFENDANT: My decision.

19 THE COURT: All right, sir. I will certainly honor
20 that request, and I will instruct the jury that they
21 cannot hold that against you in any way; that that is your
22 constitutional right and that you don't have to prove
23 anything; that it's the State's burden of proof. And I'll
24 instruct the jury of that as well. Thank you, sir.

25 Mr. Floyd, now does the Defense intend to put up

1 any testimony?

2 MR. FLOYD: None, Your Honor. Your Honor,
3 yesterday I was given the names of two possible witnesses
4 that would have been in the nature of an alibi.

5 THE COURT: Okay.

6 MR. FLOYD: I was given those yesterday by
7 Mr. Myers. I sent my investigator Ron Smith to Lake City
8 to locate those individuals who were Ron, or Ronnie,
9 Coltrane and Mr. Charles Hall, Jr. or Charlie Hall, Jr.
10 He did, in fact, locate Mr. Coltrane and spoke to him and
11 actually had a subpoena for him which he delivered.
12 However, after I received the report of what Mr. Coltrane
13 said I did not think he would establish an alibi, and
14 therefore, I'm not going to call Mr. Coltrane. The other
15 individual he was unable to locate.

16 THE COURT: All right. Well, let me suggest this
17 to you then, gentlemen. Let me bring the jury out and
18 excuse them to go to lunch, and then during that -- and of
19 course, I'll give them -- it's 12:30. I'll get them to
20 come back 2:15 and we'll discuss the charge and get that
21 lined up. And then of course, then we'll take lunch and
22 we can just go with argue and charge when we come back.
23 So that's my thought process as far as with this jury.
24 But once I let them go for the lunch break I'd like to go
25 ahead while they're out and go ahead and take up motions

1 at the close of all the evidence so that when we start
2 back we can just let you rest on the record and then move
3 into closing arguments. Okay? So I'm gonna bring the
4 jury out, Ms. Joe, and please ask them to come on out and
5 we'll send them off.

6 (WHEREUPON, the jury was removed from the
7 courtroom at 12:30 p.m., and the following proceedings
8 commenced in open court.)

9 THE COURT: All right. Ms. Berry, I want to thank
10 you for your willingness to serve as forelady of the jury.
11 And ladies and gentlemen, in talking with the lawyers and
12 kind of seeing where we're at with the case, I noticed
13 that we've kind of gotten ourselves into a situation where
14 it's time for lunch. And what I'm gonna do, I'm gonna
15 excuse you at this time. This is a good breaking point in
16 the trial to excuse you and let you go to lunch. It is
17 about 12:30 now. I'm gonna ask if you would please be
18 back at 2:15. That gives you an hour and 45 minutes for
19 lunch. I'm giving you a little bit of extended lunch
20 because I still have some matters I need to take up with
21 the attorneys once we return from lunch before we start
22 back. So I'm gonna give you a little bit extra attention
23 so that we can do that and not bore you in the back there.

24 It's very important now that, 'cause you're gonna
25 be leaving the courthouse. The case is not at the point

1 yet where you can discuss it, and so when you leave here
2 please have no conversation with anyone. Do not allow
3 anyone to talk with you about the case. If anyone does
4 attempt to speak you about the case you just let them know
5 that you're a juror and you're not allowed to talk about
6 it. If they persist though and still try to speak with
7 you, let me know and I'll make sure that that person
8 doesn't do that again. We got a place we can house them.
9 So it's very important that they not in any way try to,
10 anyone try to convey or talk with you about the case. So
11 if you would do that for me, have no conversation. Just
12 enjoy your lunch. Just put this out of your mind for a
13 while and have a good lunch. And then if, you would,
14 please be back in your jury room at 2:15. Then once we
15 get everybody reassembled we'll then proceed with the
16 case, okay?

17 So everyone else just remain in the courtroom, and
18 ladies and gentlemen y'all are free to go to lunch.

19 (WHEREUPON, the jury was removed from the
20 courtroom at 12:32 p.m., and the following proceedings
21 commenced in open court.)

22 THE COURT: Let me go ahead and then take up
23 motions at the close of all the evidence at this time.

24 MR. FLOYD: Thank you, Your Honor. Your Honor, I
25 would just renew my motion for directed verdict that I

1 previously made on the same grounds as I stated before.

2 THE COURT: All right, sir.

3 MR. FLOYD: Thank you.

4 THE COURT: I'm going to respectfully deny that as

5 I indicated. I think it's an issue of fact that the jury
6 must determine, and they are gonna have to judge the
7 credibility or believability of the witnesses so. What
8 we'll do is, are there any specific requests to charge?
9 I'm gonna charge obviously the jury that Mr. Myers right
10 to remain silent and that they cannot hold that against
11 him. I've got a standard charge on the law on shoplifting
12 which -- and I'll, you know, go over this with y'all
13 before we actually start back but. If you have any
14 specific requests or anything that you would like just
15 over the lunch break kind of put that together for me if
16 you would and then you can let me know at that time.

17 Okay?

18 MR. FLOYD: Thank you.

19 THE COURT: Why don't we get back together then in
20 my office at 2:00, and we'll go over the jury charge at
21 that point, okay? Court will be in recess till 2:15 but
22 we'll meet at 2, okay.

23 (WHEREUPON, a lunch break was taken.)

24 THE COURT: We have taken up all the motions at the
25 close of all the evidence. What I would anticipate then

1 is, Mr. Floyd, when we bring the jury back out that I will
2 recognize you on behalf of the Defense and allow you to
3 then rest on the record and then we'll move into closing
4 arguments.

5 MR. FLOYD: Yes, sir.

6 THE COURT: And I'm assuming, I don't believe you
7 put up any testimony or any evidence so ---

8 MR. FLOYD: That's correct.

9 THE COURT: ---you wish to have final argument?

10 MR. FLOYD: Yes, sir.

11 THE COURT: All right. Mr. Jepertinger, is the
12 State ready, sir?

13 MR. JEPERTINGER: The State is ready, Your Honor.

14 THE COURT: All right. And Defense ready?

15 MR. FLOYD: Yes, Your Honor.

16 THE COURT: All right. Ms. Joe, if you would
17 please ask the members of the jury to join us.

18 (WHEREUPON, the jury was returned to the
19 courtroom at approximately 2:25 p.m., and the
20 following proceedings commenced in open court.)

21 THE COURT: All right. Ladies and gentlemen, hope
22 everyone had a good lunch and enjoyed your break and
23 everybody is ready to go back and get to work. If you
24 recall when we adjourned for the lunch break the State had
25 rested their case, and I was taking up various motions at

1 the close of the State's evidence. Then at that point we.
2 broke for lunch. So now I would recognize Mr. Floyd on
3 behalf of the Defense.

4 Mr. Floyd.

5 MR. FLOYD: Thank you, Your Honor. The Defense
6 rests, Your Honor.

7 THE COURT: All right. Thank you, sir. Ladies and
8 gentlemen, the Defense has rested their case and typically
9 what I would do is send you back out and take up motions
10 at the close of all the evidence. Mr. Floyd indicated to
11 the Court during the lunch break that the Defense would be
12 resting and so we have gone ahead and taken those motions
13 up so that we wouldn't waste your time so that's been
14 done. So now we have arrived at the portion of the trial
15 where all the evidence is in. The evidence is closed.
16 But now it is the opportunity for the attorneys to address
17 you with what we call closing arguments or final
18 summation.

19 Ladies and gentlemen, closing arguments are the
20 same as opening statements as far as this goes. What the
21 lawyers tell you in their closing arguments is not
22 evidence. As I told you just a moment ago the evidence is
23 closed. The evidence is what has been presented through
24 the testimony of the witnesses, but it is important that
25 you listen to the attorneys. This is their opportunity to

1 argue to you what they believe the evidence in this case
2 has shown. Once they've concluded their closing arguments
3 I will then charge you on the law that is applicable to
4 this case and then you will then have everything you need
5 to go back into the jury room and to do your job of
6 deliberation and in arriving at a verdict. So having said
7 that, please give the attorneys your undivided attention
8 as they address you with their closing arguments.

9 Mr. Jepertinger.

10 MR. JEPERTINGER: Thank you. If it please the
11 Court, Mr. Floyd, Madam Forelady, and ladies and gentlemen
12 of the jury. I am cognizant that this trial was a short
13 trial in duration, but don't confuse the length of the
14 trial with the lack of its importance. In 1863 President
15 Lincoln gave a small speech at a Pennsylvania battle field
16 called Gettysburg. As children we probably all had to
17 memorize the Gettysburg address. He was not the featured
18 speaker that afternoon. It was a gentleman by the name of
19 Edward Everette who gave a speech that lasted over two
20 hours. Whose speech do we memorize? Because even though
21 it was even though it was short in duration it packed a
22 wallop in terms of importance.

23 This case is important. It's important to the
24 citizens of Florence County primarily. It's important to
25 the representatives of Wal-Mart. And it is important to

1 this defendant. For in this case you, ladies and
2 gentlemen, are sitting as the arbitors, the referees of
3 what's been presented to you in terms of testimony. And
4 as His Honor has already told you, your ultimate goal is
5 to determine the truth of the matter to reach a decision
6 that speaks the truth. And what is the truth in this
7 case?

8 As you've heard from the witness stand, back on
9 February 8th, 2011, on Kelly Street at the Wal-Mart, David
10 Myers went in to the store and stole eight bottles of
11 turtle wax. Now one of the things that we don't have to
12 address as the State is why he did this because, folks,
13 the thing that perplexes me the most about this is why in
14 the world would anybody steal eight bottles of turtle wax.
15 I don't know if he was doing detailing work on the side.
16 I don't know if, you know, I -- and your mind can just
17 imagine anything, that this was six days before
18 Valentine's day which would be a bizarre Valentine's
19 present. You know, I can't answer the why and we're not
20 required to answer the why. But what we are required to
21 prove is the what and the how. And you have two
22 individuals that have worked multiple years. Ms. Springs
23 and Mr. McCown, who came in and testified that both
24 working as loss prevention officers there at the Wal-Mart,
25 observed David Myers, a person they knew from the Wal-Mart

1 and from the community, that that's him and we eyeballed
2 him, we observed him. And we saw him walk over to the
3 automotive section. We saw him grab those bottles of the
4 car wax and we confronted him as he exited the lawn and
5 garden section. In fact, we used his name: David, we
6 need to talk to you about the turtle wax. And Ms. Springs
7 said, I saw him from point A to point Z. He had the coat
8 on, then he went by the dumpster. The coat was thrown in
9 the dumpster. They found the turtle wax in the dumpster
10 that had been in the coat. And he was arrested shortly
11 thereafter by Officer Thompson. And think about where he
12 was arrested. The back of that strip mall where the
13 Piggly Wiggly is, where no one else was at the time, and
14 she observed him from point A to point Z. No one else.

15 And do you remember the one thing that -- I don't
16 know if you caught this -- very quickly, that Mr. McCown
17 the other loss prevention officer said, he said well, you
18 know, I got the turtle wax off. What did they do with the
19 coat? Well, they gave it back to David Myers. He
20 accepted the coat. Don't you think if it'd been anybody
21 else other than David Myers he'd have said, hey man,
22 that's not my coat. Folks, even though the video was
23 taped over what would that video show according -- it
24 would have shown ingress and egress out of the store and
25 some of the parking lot. It wouldn't have shown the

1 automotive section. There's only one verdict that will
2 speak the truth in this case, and it is that this man
3 committed shoplifting on February 8th, 2011. Thank you.

4 THE COURT: Thank you, Mr. Jepertering.
5 Mr. Floyd.

6 MR. FLOYD: Thank you, Your Honor. May it please
7 the Court.

8 THE COURT: Yes, sir.

9 MR. FLOYD: Mr. Jepertering.

10 MR. JEPERTINGER: Yes, sir.

11 MR. FLOYD: Good afternoon, ladies and gentlemen.

12 This is a case of strictly eyewitness identification.

13 There's no question about that. We heard the witnesses
14 who were there at the store, and they said what they said
15 insofar as eyewitness I.D. You know, sometimes people can
16 be mistaken about who it is they think they see. And of
17 course, when we get right down to it and we think about
18 the reasonable doubt and all that sort of thing, what we
19 have to think about is what could have cleared everything
20 up, what was on that video. Mr. Jepertering just asked
21 that question. The person's face was on that video.

22 Regardless of whether it would just show ingress and
23 egress out of the store it would have showed the face.

24 Unfortunately, the video wasn't asked for, okay. It was
25 there at the store. The police were there. They had

1 every opportunity to ask for it and it was available.
2 They didn't do it. So that evidence is gone through no
3 fault of the defendant in this case.

4 Also, there was testimony that another picture was
5 taken, a video. Did we see that? It showed a face,
6 presentably what that person was dressed in. They had
7 testimony about who was wearing what. We could have seen
8 that but that wasn't shown to us either. Again, that's in
9 the custody of the State, not the Defendant. And so when
10 you go back and consider the burden of proof and
11 reasonable doubt in this case just ask yourself what's
12 missing and who had it or who has it and why you didn't
13 see it and resolve any doubts in favor of the defendant.
14 Thank you.

15 THE COURT: Thank you very much, sir.

16 Ladies and gentlemen, when we started this trial I
17 told you that you are the judge of the facts of this case
18 and that I was to have no influence or get involved in
19 that area of the case at all and that was solely your
20 venue. And so it's been appropriate that during the time
21 when the evidence has been presented to you that I be back
22 over on the Bench out of the way while the attorneys are
23 presenting the evidence to you. But we have reached a
24 portion of this trial now where you and I are in this
25 together, you as the judges of the facts and me as the

1 judge of the law, so it's appropriate I think for me to
2 come down and be with you and give you the charge on the
3 law. I'm going to read this charge to you verbatim so
4 that I don't leave anything out and ask that you please
5 give me your undivided attention.

6 Madam forelady and members of the jury, you've
7 heard all of the evidence. You've heard the arguments of
8 both parties. I will now explain to you the law which
9 applies to this action. The indictment charges the
10 defendant David Myers with a charge of shoplifting. I
11 remind you that the fact that the defendant was arrested,
12 charged, and indicted in this case is not evidence in this
13 case and it cannot be considered by you as evidence of
14 guilt in this case, nor does it create any presumption of
15 innocence or inference of guilt. The indictment is simply
16 the formal written instrument which contains the charge
17 made against the defendant, is the formal document by
18 which this case is brought into this court.

19 Now ladies and gentlemen, I will give you a copy of
20 these instructions in written form to have with you in the
21 jury room. During your deliberations you may refer to
22 these instructions to guide you in your decision making.
23 However, you must consider the instructions as a whole,
24 and not follow some and ignore others. The defendant has
25 pled not guilty to shoplifting and that plea puts the

1 burden on the State to prove the defendant guilty. In
2 other words, the burden is on the State to prove each and
3 every element of the crime charged. A person charged with
4 committing a criminal offense in South Carolina is never
5 required to prove him or herself innocent. I charge you
6 that it is an important rule of law that the defendant in
7 a criminal trial, no matter what the seriousness of the
8 charge may be, will always be presumed to be innocent of
9 the crime for which the indictment was issued unless guilt
10 has been proven by evidence satisfying you of that guilt
11 beyond a reasonable doubt. This presumption of innocence
12 does not end when you begin your deliberations, but it
13 accompanies the defendant throughout the trial until you
14 reach a verdict of guilt based on evidence satisfying you
15 of that guilt beyond a reasonable doubt. The presumption
16 of innocence is not a mere legal theory; it's not just a
17 legal phrase. But it is a substantial right to which
18 every defendant is entitled unless you, the jury, are
19 satisfied from the evidence of the defendant's guilt
20 beyond a reasonable doubt.

21 Now as I stated, the State has the burden of
22 proving the defendant guilty beyond a reasonable doubt.
23 Some of you may have served as jurors in civil cases where
24 you were told that it is only necessary to prove that a
25 fact is more likely true than not true such as by the

1 greater weight or the preponderance of the evidence. In
2 criminal cases the State's proof must be more powerful
3 than that. It must be beyond a reasonable doubt. You
4 cannot find the defendant guilty based on suspicion,
5 conjecture, or speculation. Proof beyond a reasonable
6 doubt is proof that leaves you firmly convinced of the
7 defendant's guilt. There are very few things in this
8 world that we know with absolute certainty, and in
9 criminal cases the law does not require proof that
10 overcomes every possible doubt. If based on your
11 consideration of the evidence you are firmly convinced
12 that the defendant is guilty of the crime charged you must
13 find the defendant guilty. If on the other hand you think
14 there's a real possibility that the defendant is not
15 guilty, then you must give the defendant the benefit of
16 that doubt and find him not guilty.

17 I remind you that during this trial you and I have
18 certain duties to perform. As the trial judge it is my
19 responsibility to preside over the trial of this case, and
20 I also have the duty to rule on the admissibility of the
21 evidence offered during this trial. You are to consider
22 only the competent evidence before you. You are to
23 consider only the testimony which has been presented from
24 the witness stand and any exhibits which may have come
25 into this record as part of this case. I have the

1 additional duty to charge you the law that is applicable
2 to this case. As the presiding judge I am the sole judge
3 of the law in this case, and it is your duty as jurors to
4 accept and to apply the law as I now state it to you. If
5 you already have an idea as to what the law is or what the
6 law ought to be and it does not agree with what I now tell
7 you the law is, you must abandon your idea because you are
8 sworn to accept the law and apply the law exactly as I
9 state it to you. In every case tried in this court before
10 a jury the jury becomes the sole and the exclusive judge
11 of the facts of the case. A trial judge cannot intimate,
12 state, comment on, or make any statement to a trial jury
13 about the facts of the case. Since you, the jury, are the
14 sole judge of the facts of this case you are not to infer
15 from what I have said during the progress of this trial
16 and ruling on the admissibility of the evidence or
17 otherwise, or anything that I say now during the course of
18 this instruction to you, that I have any opinion about the
19 facts of this case. The law does not allow me to have an
20 opinion about the facts. This is a matter solely for you,
21 the jury, to determine. As jurors it is your duty to
22 determine the effect, value, weight, and truth of the
23 evidence presented during this trial. So necessarily, you
24 must determine the credibility of witnesses who have
25 testified in this case.

1 And credibility simply means believability. It
2 becomes your duty as jurors to analyze and to evaluate the
3 evidence and determine which evidence convinces you of its
4 truth. In evaluating eyewitness testimony you should
5 remember that the State must prove the identity of the
6 defendant as the person who committed the crime beyond a
7 reasonable doubt. In determining the believability of
8 witnesses who have testified in this case you may believe
9 one witness over several or several over one. You may
10 believe a part of a witness' testimony and reject the
11 remaining part, or you may believe the entirety of a
12 witness' testimony or reject the entirety of that
13 testimony. You may believe the testimony of -- excuse me,
14 you may consider whether any witness in this case has an
15 interest, bias, prejudice or other motive in this case.

16 You must also consider the appearance and the
17 manner in which a witness acts while on the witness stand.
18 Now ladies and gentlemen, I instruct you and I emphasize,
19 that the fact that the defendant in this case did not
20 testify is not a factor to be considered by you in any way
21 in your deliberation and in your consideration on the
22 question of guilt or innocence of the defendant. It must
23 not be considered by you in any manner whatsoever. A
24 defendant has a constitutional right to remain silent, and
25 the assertion of this right must not be considered by you

1 in your deliberations. I repeat, under your oath you are
2 to draw no conclusion whatsoever on the fact that the
3 defendant in this case did not testify. The fact that
4 this defendant did not testify should not even be
5 discussed in the jury room. The burden of proof as I have
6 stated to you is on the State. The defendant is not
7 required to prove his innocence. The burden of proof
8 remains on the State to prove guilt beyond a reasonable
9 doubt.

10 Now Mr. Myers is charged with shoplifting. The
11 State must prove beyond a reasonable doubt that the
12 defendant took possession of, carried away, or caused to
13 be carried away, or transferred merchandise with the
14 intent to deprive the merchant of the possession, use, or
15 benefit of the merchandise without paying the full retail
16 value. Full retail value means the merchant stated or
17 advertised price for the merchandise. Merchandise means
18 any goods, chattels, or wares of any type and description
19 regardless of value. And merchant means the owner or
20 operator of the store, or any agent, employee, officer, or
21 independent contractor of the owner or operator.

22 Intent means willful, intending the result which
23 actually occurs. In other words, not accidentally or
24 involuntarily. Intent may be shown by acts and conduct of
25 the defendant and other circumstances from which you may

1 naturally and reasonably infer intent. If the defendant
2 willfully concealed unpurchased goods or merchandise on
3 the premises, outside of the premises of a store, on the
4 defendant's person or among the defendant's belongings,
5 you may consider this as evidence that the defendant has
6 concealed the merchandise with the intent to convert it to
7 his own use without paying the purchase price. Concealed
8 means to hide the merchandise on the person or among the
9 belongings of a person so that although there may be some
10 notice of its presence, it is not visible through ordinary
11 observation.

12 Now Madam Forelady and members of the jury, as you
13 retire to begin your deliberations I want to express to
14 you the hope that each of you will be mindful of the
15 importance of your responsibility. You're not called upon
16 to serve as jurors very often, and the proper performance
17 of the duty requires each of you to reach the height of
18 freeing your mind of all improper influences. You and I
19 are acting for the community, and that's why we must see
20 to it that this trial is fair and that the verdict is
21 just. You observe that the presiding officer of this
22 court is addressed as Your Honor. Well, the reason is not
23 because of the person wearing this robe, but that this
24 court is entrusted with the honor of this community, the
25 honor of this state, and the honor of this country in

1 seeking that every case tried here receives a fair and
2 impartial justice. Do not get the idea that I'm trying to
3 intimate to you how I think you should decide this case.
4 As I've already told you, under the laws of the State of
5 South Carolina you, the jury, are the sole judge of all
6 questions of fact. It would be highly improper for me to
7 influence you in the performance of that duty. However,
8 as the presiding officer of this court I am vitally
9 concerned that whatever verdict you find will be the
10 result of you going into the jury room, confining your
11 consideration to the evidence that was presented during
12 the course of this trial and to the law that I have given
13 you in this courtroom weighing it fairly and impartially
14 as I have every confidence you will do.

15 Your verdict in this case cannot be based on
16 sympathy, compassion, prejudice, or emotion, or some other
17 consideration that's not found in the evidence. The Court
18 is of the confirmed opinion that whatever verdict you
19 reach will represent truth and justice for all parties
20 involved. Now as I told you earlier, your verdict must be
21 unanimous. All of you must agree on the verdict. And
22 Ms. Berry, the verdict form is in the front of this
23 notebook in the front flap. It's a very simple form.
24 Ladies and gentlemen, it's just simply after your
25 deliberations that you'll either find Mr. Myers either not

1 guilty or guilty. The order in which those verdicts are
2 appearing on the indictment have no significance. It's
3 just when you list more than one item you have to list one
4 in front of the other so there's no significance to the
5 order.

6 But ma'am, when the jury has reached a unanimous
7 verdict you'll take the verdict form, check the
8 appropriate verdict, and then sign as the forelady. Once
9 you have reached a unanimous verdict, then if you will
10 knock on the door and let the bailiff know we'll bring you
11 out and receive your verdict.

12 Ladies and gentlemen, I'm gonna ask you to step
13 back into the jury room. And Ms. Berry, don't begin
14 deliberations yet. I'm gonna just double check with the
15 attorneys to make sure that I've covered everything in the
16 charge. If there's anything that I've left out or
17 anything I need to add, I'll bring you back out and I'll
18 give you that information. But if the charges are good as
19 I've given it to you, I will then send this notebook back
20 into the jury room. When you receive this notebook that
21 will be your cue to begin your deliberations. Okay? So
22 if you would please step back into the jury room, be back
23 with you shortly.

24 (WHEREUPON, the jury was removed from the
25 courtroom at 2:52 p.m., and the following proceedings

1 commenced in open court.)

2 THE COURT: Any exceptions or objections to the
3 charge by the State?

4 MR. JEPERTINGER: No, sir.

5 THE COURT: Anything from the Defense?

6 MR. FLOYD: Nothing, Your Honor.

7 THE COURT: All right. I don't think there are any
8 exhibits; is that correct?

9 MR. JEPERTINGER: That's correct.

10 THE COURT: All right. Ms. Joe, if you would take
11 this back, ask them to begin their deliberations but send
12 the alternate out first.

13 (Alternate is returned to the courtroom.)

14 THE COURT: Ms. Robinson, thank you for your
15 service. I know it's not easy being an alternate because
16 now they're going to get a chance to go back and talk
17 about everything and you can't play. We're having the
18 jury panel call back after six, but there are plenty of
19 folks in the jury panel and I'm not sure if we're gonna
20 have another trial so I'm just gonna go ahead and excuse
21 you for the week. So you're done.

22 (Alternate was excused.)

23 THE COURT: We'll be at ease while the jury is
24 deliberating.

25 (WHEREUPON, a recess was taken from the

1 proceedings.)

2 THE COURT: It's my understanding that the jury has
3 reached a verdict. Is that correct, Ms. Joe?

4 THE BAILIFF: Yes, sir.

5 THE COURT: The State ready to proceed with the
6 jury's verdict?

7 MR. JEPERTINGER: Yes, sir.

8 THE COURT: Defense ready?

9 MR. FLOYD: Yes, Your Honor.

10 THE COURT: All right. Ms. Joe, ask the jury to
11 join us please.

12 (WHEREUPON, the jury was returned to the
13 courtroom at approximately 3:23 p.m., and the
14 following proceedings commenced in open court.)

15 THE COURT: Ms. Berry, has the jury reached a
16 unanimous verdict, ma'am?

17 THE FOREPERSON: Yes, Your Honor.

18 THE COURT: If you'd please hand that to Madam
19 Clerk.

20 (Verdict form tendered to the Court.)

21 THE COURT: If you would please publish the jury's
22 verdict.

23 CLERK OF COURT: State of South Carolina versus
24 David Myers, indictment number 2011-GS-21-981,
25 shoplifting: We, the jury, find the defendant David Myers

1 guilty of shoplifting. Signed, foreperson, Rebecca Berry,
2 dated June 29th, 2011. Members of the jury, if this is
3 your verdict please raise your right hand.

4 (All jurors complied by raising their hand.)

5 CLERK OF COURT: That's everyone, Judge.

6 THE COURT: All right. Ladies and gentlemen, I
7 want to thank you for your service this week. I realize
8 it's not convenient for anybody but obviously there's no
9 way we can do the work of the court without your help. I
10 always tell juries -- and I'm gonna excuse you at this
11 time and you are free to go -- but you worked the case and
12 if you want to be here for sentencing, we're gonna proceed
13 to sentencing in just a moment. I just -- I welcome you
14 to do that if you choose to do that. You worked the case.
15 You were involved throughout the whole thing, and if you
16 want to stay for the sentencing you're certainly welcome
17 to do that. If you want to leave and go about your
18 business you're welcome to do that as well. I'm going to
19 excuse you officially and tell you that you do not have to
20 return. Again, I want to thank you for your service.

21 (WHEREUPON, the jury was removed from the
22 courtroom at 3:27 p.m., and the following proceedings
23 commenced in open court.)

24 THE COURT: Y'all ready to proceed to sentencing,
25 Mr. Floyd?

1 MR. FLOYD: Yes, Your Honor.

2 THE COURT: All right. Mr. Jepertinger, I'll be
3 happy to hear from the State regarding sentencing.

4 MR. JEPERTINGER: Your Honor, obviously since this
5 gentleman did not take the stand we were precluded to go
6 into any sort of record he might have had so I'd like to
7 tell the Court what his record is. It starts back in
8 1979, Your Honor. He pled to assault and threatening,
9 Your Honor. In 1980 he had a housebreaking and grand
10 larceny. He also had a forgery in 1981. He had two
11 counts of housebreaking in 1983. He had a burglary
12 conviction in 1986 for which he received ten years and
13 resisting arrest. He had a possession of crack cocaine at
14 school in 1993. It also looks like he had some sort of
15 distribution of cocaine for which he received in the
16 Department of Corrections. I don't know if that was
17 related to that I would take as a proximity charge, Your
18 Honor.

19 He also in 1996 had a manufacturing distribution of
20 crack cocaine. He was given eight years in '96. He had a
21 criminal domestic violence in 2002. He had a loitering
22 charge in 2003 and a resisting arrest and possession of
23 drug paraphernalia in 2003. He had a criminal conspiracy
24 in 2003. He had a loitering in 2003, a petit larceny in
25 2003, a resisting arrest in 2003. He had a shoplifting in

1 2006, a shoplifting in 2007, an open container conviction
2 in 2007, another shoplifting conviction in 2007, and a
3 resisting arrest. He had another resisting arrest in
4 2008, as well as another shoplifting conviction in 2008.
5 He had another property offense third or subsequent in
6 2009. Another shoplifting in 2010, which he received five
7 years suspended 95 days, time served, with two years
8 probation, Your Honor. I don't know if he'd be on
9 probation now based on that fact, Your Honor.

10 THE COURT: Well, if it was 2010 I would think it
11 would be.

12 MR. JEPERTINGER: Yeah, two years. If he's on —
13 was he revoked?

14 MR. FLOYD: He says he was revoked.

15 MR. JEPERTINGER: Okay.

16 THE COURT: Oh, so that case is over. He got
17 revoked on that case?

18 MR. FLOYD: Yes, Your Honor.

19 THE COURT: You don't have any pending probation
20 cases on Mr. Myers?

21 PROBATION OFFICER: No, sir.

22 THE COURT: Okay.

23 MR. JEPERTINGER: He was trespassing also in 2010.
24 And that brings us to the present. Of course, Your Honor,
25 he took this to trial, Your Honor, even though it was only

1 42 dollars worth of turtle wax that was stolen. His
2 record merits that he gets the maximum sentence, Your
3 Honor, in the State's opinion.

4 THE COURT: All right, sir.

5 Mr. Floyd, I'll be happy to hear from you on behalf
6 of Mr. Myers and then if Mr. Myers would like to address
7 the Court I'll be more than happy to hear from him as
8 well.

9 MR. FLOYD: Certainly, Your Honor. And Your Honor,
10 I understand obviously Mr. Jepertinger's current position
11 as far as maximum sentence. However, he was offered
12 basically four years to plead to this charge, and you
13 know, last week. So I mean, it appears the reason now he
14 wants max sentence because Mr. Myers decided to go to
15 trial. I mean, he does have a right to a trial if he
16 wants one. You know, you may feel he deserves the whole
17 ten years regardless, which is fine, but I don't think he
18 should be penalized --

19 THE COURT: Well, I'm not sure -- I'm not sure with
20 that record I would have offered him four.

21 MR. FLOYD: Certainly, I understand that.

22 THE COURT: I know your position.

23 MR. FLOYD: But my position is he shouldn't be
24 penalized just because he came in here and had a trial.

25 - THE COURT: Correct.

1 MR. FLOYD: That's really all I have to say about
2 that. I mean, obviously his record is his record and it's
3 not good. We understand that. Your Honor, but Mr. Myers
4 is -- he spent a lot of time in jail and he, you know, he
5 told me that he spent about half his life in there I
6 think. And hopefully when he gets this behind him I hope
7 that will be his last time. It's unfortunate that he's
8 put himself in this position again, but I hope that he
9 won't do it after he gets through with this sentence. I
10 don't know if -- do you want to say anything? He wants to
11 speak.

12 THE COURT: Mr. Myers, I'll be happy to hear from
13 you, sir.

14 THE DEFENDANT: Your Honor, I'd like to say I know
15 I made a mistake in life. I made a lot of mistakes. But
16 I ain't never hurt nobody. I made a crime, I make crime,
17 but I ain't never hurt nobody on a crime, you know what
18 I'm saying. I make -- we make that crime trying to eat.
19 You can't get a job. When you get out of prison still
20 can't get no job. I go to prison then I'm -- and I get
21 out, the same thing.

22 THE COURT: I mean, I understand Mr. Myers but --

23 THE DEFENDANT: It wouldn't ---

24 THE COURT: If it was a matter of eating, why
25 didn't you go to the grocery store and steal food. You

1 stole turtle wax.

2 THE DEFENDANT: You know why?

3 THE COURT: No, sir, I don't. I'd like to know.

4 THE DEFENDANT: Detailing trucks, 18 wheelers,
5 trying to make a dollar. That's all I steal it for.

6 THE COURT: Well, let me ask you this. Mr. Myers,
7 you're 44 years of age?

8 THE DEFENDANT: No, I'm 50.

9 THE COURT: 50?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: 50 years old. I don't know this, I
12 feel pretty confident you don't enjoy the Department of
13 Corrections. You don't want be there, right?

14 THE DEFENDANT: No, sir.

15 THE COURT: Why do you keep doing this foolish
16 stuff? I mean, this is one, two, three, four, five, this
17 is your seventh shoplifting offense. And I don't know, it
18 could be that maybe you've done a hundred and you've only
19 been caught seven times so you're taking a risk. But it's
20 a terrible risk to take, sir. If you're detailing
21 vehicles I'm assuming you get paid for that, right?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Well, why couldn't you just buy some
24 turtle wax?

25 THE DEFENDANT: Time ran out. I had no money to

1 get it. I made a stupid mistake; that's all.

2 THE COURT: Mr. Myers, here's -- and I understand
3 what you're telling me and the way you look at it, and the
4 way you think about it. But here's the truth, is what
5 you're doing it hurts a lot of people because we go into
6 the store, these ladies and gentlemen, they go into the
7 store and they purchase items and when they get to the
8 cash register and they bought diapers and clothing for
9 their kids and food for their kids and they get to the
10 cash register and they have to ring it all up, and when
11 they get that total it could be a 160-dollars. If it
12 wasn't for all the folks who shoplift and steal the
13 merchants would be able to charge less for their goods.
14 But because shoplifting and stealing is so prevalent, they
15 kind of raise their prices to make up for what they lose
16 in people who shoplift. So it -- I know what you mean,
17 you didn't hurt anybody physically by doing this. But
18 folks who -- and you got a habit of doing it. Folks who
19 shoplift, all of that comes back to where all of us end up
20 paying higher prices for everything that we have to buy
21 and it does hurt. It also hurts your family, that they
22 lose you. It hurts you obviously.

23 There's, with your record, there's no other option
24 for me other than to give you some type of a jail sentence
25 which means now that the State of South Carolina is gonna

1 pay 60-dollars a day to house you in the Department of
2 Corrections. There's a lot more to it than you're just
3 thinking, I just took eight cans of turtle wax. Anyway...

4 On indictment 2011-GS-21-981, the sentence of the
5 Court is that you be committed the State Department of
6 Corrections for a period of ten years. You're to be given
7 for credit for any time that you have served on this
8 charge. Good luck to you, sir.

9

10 * * * END OF REQUESTED TRANSCRIPT OF RECORD * * *

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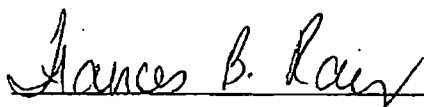
CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA }
COUNTY OF FLORENCE }

I, FRANCES BAKIS-RAY, Registered Professional Reporter (RPR), court reporter for the State of South Carolina, Twelfth Judicial Circuit, do hereby certify that the foregoing proceeding is a stenographic report and was transcribed through computer-aided transcription; that the foregoing transcript contains a true record of the proceedings.

I further certify that I am neither counsel for, nor related to nor employed by any of the parties connected to the action, nor am I financially interested in the action.

Witness my hand at Florence, South Carolina,
this 14th day of August, 2011.



FRANCES BAKIS-RAY, RPR
My Commission Expires: 9-13-2014

FORM 5

STATE OF SOUTH CAROLINA)

County of)

Florence)

Full name and prison number (if any) of Applicant)

v.)

DAVID MYERS #298686)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

APPLICATION FOR

POST-CONVICTION RELIEF

CERTIFIED: A TRUE COPY
 Clerk of Court C.P. & G.S.
 Florence County, S.C.

13-CP-21-418

2013 FEB 18 PM 3:30
 COMM. CLERK
 C.C.P. & G.S.
 FLORENCE COUNTY, SC

FILED

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish answers to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Florence County Detention Center
6719 Friend Field Rd, Effingham S.C 29541
2. Name and location of Court which imposed sentence City-County Complex
Rm 703 180 N Erby St MSC-10 Florence S.C 29501
3. Name(s) of co-defendant(s) (if any) CPA
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2011-GS-21-0981
 - (b) _____

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 (a) 6-29-2011 10 years
 (b) _____
 (c) _____
6. Check whether a finding of guilty was made:
 (a) after a plea of guilty _____
 (b) after a plea of not guilty _____
 (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
yes
8. If you answered "yes" to (7), list:
 (a) the name of each Court to which you appealed:
 i. Florence City-County Complex
 ii. _____
 iii. _____
 (b) the result in each such Court to which you appealed:
 i. still waiting
 ii. _____
 iii. _____
 (c) the date of each such result:
 i. _____
 ii. _____
 iii. _____
 (d) if known, citations of any written opinion or orders entered pursuant to such results:
 i. _____
 ii. _____
 iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
 (a) _____
 (b) _____

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(a) Because my charge is only a thirty day charge
 (b) And was only valued at \$42.00
 (c) _____

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

(a) Pursuant to Brady v Maryland, 373 U.S.
 (b) 83. 83 S.Ct. 1194, 10 L.Ed. 2d. 215 (1963)
 (c) _____

12. Prior to this application have you filed with respect to this conviction:

(a) any petition in a State Court under South Carolina Law? _____
 (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? _____
 (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? _____
 (d) any other petitions, motions or applications in this or any other Court? _____

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

(a) the specific nature thereof:
 i. _____
 ii. _____
 iii. _____
 iv. _____
 (b) the name and location of the Court in which each was filed:
 i. _____
 ii. _____
 iii. _____
 iv. _____

(c) the disposition thereof:

- i. _____
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. _____
- ii. _____
- iii. _____
- iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. _____
- ii. _____
- iii. _____
- iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

- i. _____
- ii. _____
- iii. _____

(b) the proceedings in which each ground was raised:

- i. _____
- ii. _____
- iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) _____
 (b) _____
 (c) _____

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? _____
 (b) your trial, if any? Yes
 (c) your sentencing? Yes
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? _____
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?

18. If you answered "yes" to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:

i. Scott P. Floyd ESQ

 ii. _____

 iii. _____

(b) the proceedings at which each such attorney represented you:

i. 6-29-2011 City County Complex
shoplifting / Enhancement for 3rd
of 2nd offense value 1000 or less
 ii. _____
 iii. _____

19. State clearly the relief you seek in filing this application:

I wished to be release from prison being
I've done two years for this charge.
that I get some type of relief

20. Are you now under sentence from any other court that you have not challenged?

No

STATE OF SOUTH CAROLINA)

VERIFICATION

County of Marlboro)

I, David Myers, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

+ David Myers Jr

SWORN to and subscribed before me this 14th
 day of February, 2013.

Chie J. Hopson (L.S.)
 Notary Public

My Commission Expires: Feb. 9th, 2020

FILED
 2013 FEB 18 PM 3:39
 CORRECTOR GENERAL
 COCP & GS
 FLORENCE COUNTY, SC

Revised 3/2003

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, David Myers, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

David Myers Jr
Applicant

SWORN or affirmed to and subscribed before me this

14th day of February, 2013.

[Signature]
Notary Public

My Commission Expires: Feb. 9th, 2020

FILED
2013 FEB 18 PM 3:39
CONNIE L. SHEARIN
CCCP & GS
FLORENCE COUNTY, SC

Revised 3/2003

State of South Carolina
County of Florence

David Myers, SCDC#298686,

Defendant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS

MOTION TO AMEND
ATTACHMENT

FILED
2013 FEB 25 PM 5:11
CONNIE REEL-SHEARIN
CCCP & CS
FLORENCE COUNTY, SC

Now comes David Myers, along with the under signed Attorney with a Motion to Amend Attachment to PCR Application.

The Defendant ask that his finding of guilt that was entered

6-29-2011 before the Honorable Thomas A Russo

be Relieved due to an error of law as follows:

LEGAL STANDARD

Defendant was denied Motion for Discovery and full inspection of essential elements material to Rule Five (5) of the South Carolina Rules of Criminal Procedure in violation of Defendant's Sixth and Fourteenth Amendment Rights of the United States Constitution, pursuant to Brady v. Maryland, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d. 215(1963).

The Supreme Court held that the failure of the Prosecutor or Attorney to Disclose Evidence that is both favorable to the accused and material to either guilt or punishment violates Due Process, his purpose is to ensure that a miscarriage of justice does not occur by requiring the Prosecutor to Disclose Evidence Favorable to the accused that if suppressed would deprive the Defendant of a Fair Trial. See also United States v. Bagley, 473 U.S. 667-78, 105 S.Ct. 3375, 87 L.Ed.2d. 481(1985).

Marked 3/6/13
cc Myers
Johnson

The Defendant David Myers asserts that he never promptly inspected his Motion Disclosure until after the proceeding of being found guilty by his Peers of a Trial, which was sent from the Public Defender Office and received June 29 2011. The Defendant asserts that his finding of guilt was of a Void Judgment without the acknowledgment of every element to his Case on Trial, that he had not examined to his defense.

The Defendant asserts prior to the Incident Report and Evidence that State claimed to use to their Defense, would showed that if he'd known before his Trial he would not have went to Trial, instead pled guilty, because his material was withheld from him that he lacked knowledge to know the difference between Statue (§16-13-0110(B) and §16-01-0057) which relates to Shoplifting, and Enhancement of Property, in which the State convicted on both essential elements, that would establish an undue process to double jeopardy.

CONSTITUTIONAL ERROR LAW

Chapman stands for the proposition that not all Federal Constitutional errors require automatic reversal of a conviction. Some Constitutional Errors...in the setting of a particular case are so unimportant and insignificant that they may, consistant with the Federal Constitution, be deemed harmless...is this violation of admittedly constitutional proportion subject to the Harmless Error Rule established in Chapman v. California, 386 U.S. 18, 87 S.Ct. 824. See also Delaware v. Van Arsdoll, 475 U.S. 673, 681, 106 S.Ct. 1431, 1436, 89 L.Ed.2d. 674(1986).

Noting the virtually inevitable presence of immaterial error" in a Criminal Trial. However, Constitutional Errors that are basic to a Fair Trial...can never be treated as harmless...Chapman, 386 U.S. at 23, 87 S.Ct. at 827. Some Constitutional Errors require reversal without regard to the evidence in the particular case". Rose v. Clark, 478 U.S. 570,577, 106 S.Ct. 3101,3105, 92 L.Ed.2d. 460(1986) for example, the use of a coerced confession, the complete denial of the right to counsel, adjudication by a biased Judge and the directing of a verdict for the prosecution in a Criminal Trial by Jury are errors that necessary render a Trial Fundamentally Unfair! id. at 577, 106 S.Ct. at 3106, see also Satterwhite v. Texas, 486 U.S. 249, 256, 108 S.Ct. 1972, 100 L.Ed.2d. 284(1988) some constitutional violations, however, by their very nature cast so much doubt on the fairness of the Trial Process that, as matter of law, they can never be considered harmless; Coleman v. McCormick, 874 F.2d. 1280, 1289(9thCir.1989) (5) Constitutional Error in the instant case was of such a fundamental nature. A Trial cannot be fair unless the nature of the charges against a Defendant are adequately made known to him or her in a timely fashion. See Strickland v. Washington, 466 U.S. 668,685, 104 S.Ct. 2052,2063, 80 L.Ed.2d. 674(1984) a Fair Trial is one in which evidence subject to adversarial testing is presented to all impartial Tribunal for resolution of issues defined in advance of the proceeding. Here, the Prosecutor "ambushed" the Defense with a new theory of culpability after the Jury Instructions were settled. This

new theory then appeared in the form of unexpected Jury Instructions permitting the Jury to convict on a theory that was neither subject of adversarial testing, nor defined in advance of the proceeding.

Defendant David Myers asserts that he was in violation of a Constitutional Error, based upon the fact findings of this matter that the nature of the charge and both Statute (§16-13-0110(B) and §16-01-0057) were not made known to him that deprived him of an unfundamental Fair Trial that constituted the error in these proceedings that lacked his ability to consult with the under assigned Public Defender, who withheld Defense as well as the Prosecutor that misled the proceedings to the Court that adopted the decision of State knowing that both Statute's carry a different sentence phrase to both Statute's, meaning basically the same thing that brought forth Double Jeopardy, to be convicted of two allege Statutes that have the indential theory but different sentencing phrase.

The Defendant David Myers so moves before this Honorable Court pursuant to SCRCivP Rule 60(B), to a Constitutional Error of Void Judgment and Due Diligence for Relief from Judgment made by this Court on such date 6-29-2011 Order base the Main Key: Factors that the State/Respondents failed and overlooked, two key important Statutes which would allow for such being Statutory (§16-01-0057) and (§16-13-0110(B)) _____ and as well as subject _____ as Defendant had on Brady issue that was withheld, and Newly Discovered issues that could not have

been diligently discovered in a timely manner and/or fashion, and thereby under Statue _____ would be proper, as Defendant should be given the benefit of doubt/and the holding as held in Land as well as Case as to regarding on a case by case basis, based on Unique Facts which would allow to relitigate, and Land regarding suggestive that, it would allow, for relitigation in the event it could be shown, and/or proven that the Defendant could not litigate, such issue, in the PCR Hearing, or in the proceedings of the Appellate Courts for the State of South Carolina, then a fair subsequent hearing could be held, even as such, the Defendant David Myers, so moves for this Court according to SCRCivP Rule 60(B) that render a Constitutional Error, of Due Diligence, Void Judgment for proper Relief as deemed by the Law of Error in this Court.

Respectfully Submitted,

/s/ David Myers
David Myers, Jr.

State of South Carolina
County of Florence

David Myers, SCDC#298686,

Defendant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS

CERTIFICATE OF SERVICE

I, David Myers, Jr., Defendant, certify and declare under the penalty of perjury that I have served on the following address below, on this day of 6-29-2011 a Notice and Motion To Amend Attachment by depositing such in the Evans Correctional Institution Mailroom.

/s/ David Myers Jr.
David Myers, Jr.

SWORN to and SUBSCRIBED before me

This 10 day of April, 2012

Notary: [Signature]

Expires: 8-18-12

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF FLORENCE) FOR THE TWELFTH JUDICIAL CIRCUIT

David Myers, #298686,) Case No. 2013-CP-21-493

Applicant,)

v.)

RETURN

State of South Carolina,)

Respondent.)

The Respondent, making its Return to the Application for Post-Conviction Relief filed February 18, 2013, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Florence County Clerk of Court. In June 2011, the Florence County Grand Jury indicted Applicant for shoplifting, third or subsequent offense (2011-GS-21-981). Scott P. Floyd, Esquire, represented Applicant. On June 29, 2011, a jury found Applicant guilty as indicted. The Honorable Thomas A. Russo sentenced Applicant to ten (10) years on the shoplifting charge.

Applicant filed a timely notice of appeal. Robert M. Pahak, Esquire, of the Office of Appellate Defense perfected the appeal with the filing of an Anders brief on October 11, 2011. The South Carolina Court of Appeals dismissed the appeal on January 30, 2013. State v. Myers, Op. No. 2013-UP-051 (S.C. Ct. App. filed January 30, 2013). The remittitur was returned to the circuit court on February 28, 2013.

Attached to this Return and incorporated herein are the records of the Florence County Clerk of Court regarding the subject conviction(s), the Applicant's records from the South Carolina Department of Corrections, the trial transcript, and Applicant's appellate records. Any records not attached will be forwarded upon receipt. The State reserves the right to amend this Return upon receipt of any relevant materials.

II.

In his current application, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "Because my charge is only a thirty day charge and was only valued at \$42.00"
 - a. Pursuant to Brady v Maryland 373 U.S 83; 83 S.Ct. 1194, 10 L.Ed.2d. 215 (1963).

On February 25, 2013, Applicant filed a pro se document captioned "Motion to Amend Attachment." In this filing, Applicant alleges that "Defendant was denied Motion for Discovery and full inspection of essential elements material to Rule Five (5) of the South Carolina Rules of Criminal Procedure in violation of Defendant's Sixth and Fourteenth Amendment Rights of the United States Constitution, pursuant to Brady v. Maryland, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d. 215 (1963)."

On June 13, 2013, Applicant filed a second application for PCR, which he requested the clerk of court "merge with PCR Case Number 13-CP-21-495." In this application, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "Ineffective assistance of counsel"
 - a. "Trial counsel for failing to inform Defendant of the nature of charges"
2. "Denial of due process and equal protection of law!"

- a. "Defendant never suppose to went to trial"
- 3. "Prosecutorial misconduct"
 - a. "Solicitor hold Brady material Evidence that could have help defendant"

Any claims not specifically enumerated in the Application or amendments thereto will be opposed by the State at the evidentiary hearing. All amendments should be made well in advance of hearing and should be filed in compliance with Rule 11, SCRPC.

III.

In a post-conviction relief action, the applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (citing Griffin v. Martin, 278 S.C. 620, 300 S.E.2d 482 (1983)). Where the application alleges ineffective assistance of counsel as a ground for relief, the applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Id. (citing Strickland v. Washington, 466 U.S. 668, 686 (1984)).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Id. (citing Strickland, 466 U.S. at 687; Turner v. Bass, 753 F.2d 342 (4th Cir. 1985); Marzullo v. Maryland, 561 F.2d 540 (4th Cir. 1977)). The court strongly presumes that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Id. (citing Strickland, 466 U.S. at 690). The applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of trial counsel. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove that trial

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(Court Reporter's Note: No exhibits were marked or
received into evidence.)

1 (The following proceedings are reported on
2 February 10, 2014.)

3 THE COURT: Call your next case, Mr. Thomas.

4 MR. THOMAS: Thank you, Your Honor. If it
5 please the Court. The next case is David Myers versus
6 the State of South Carolina. It's Case Number
7 2013-CP-21-493.

8 Mr. Myers was indicted in June of 2011 for
9 shoplifting third or subsequent offense. He was
10 represented on that charge by Scott Floyd. He went to
11 trial on June 29th of 2011 and was convicted as
12 indicted.

13 The Honorable Thomas A. Russo sentenced him to
14 ten years on the charge. An appeal was filed by Robert
15 Pachak of the Office of Appellant Defense. It was an
16 Anders brief. The Court of Appeals dismissed it in an
17 unpublished opinion 2013-UP-51.

18 He filed this PCR on February 8, 2013,
19 alleging ineffective assistance of counsel and I believe
20 a Brady violation. He is represented by Tristan
21 Shaffer, and the State is ready to proceed.

22 THE COURT: Very good. All right.

23 MR. SHAFFER: Thank you, Your Honor. The
24 applicant calls Scott Floyd to the stand.

25 (The witness comes forward.)

1 THE COURT: Mr. Floyd, place your left hand on
2 the Bible and raise your right hand as the clerk
3 administers the oath.

4 SCOTT P. FLOYD, being first
5 duly sworn, testifies as follows:

6 THE CLERK: Please be seated and state your
7 full name for the record.

8 THE WITNESS: Scott P. Floyd.

9 THE COURT: Mr. Shaffer, you are recognized.

10 MR. SHAFFER: Thank you, Your Honor.

11 DIRECT EXAMINATION

12 BY MR. SHAFFER:

13 Q Good afternoon, Mr. Floyd.

14 A Good afternoon.

15 Q You represented the applicant, David Myers;
16 correct?

17 A I did.

18 Q And you had referenced it prior to this --
19 correct -- you're familiar with Mr. Myers?

20 A Oh, yes.

21 Q Okay. I'm going to limit most of my questions to
22 your contact with him regarding this charge.

23 A Sure.

24 Q Tell us if you could: When did you first make
25 contact with him after the arrest on this charge?

1 A I believe his -- hang on one second for me. Okay.
2 Let me look at something here. I was actually
3 assigned this case on March the 30th of 2011. Now,
4 he was interviewed by my investigator on March 1,
5 2011. The case was then assigned to me; and then I
6 think I saw him probably, you know, within a month
7 after that.

8 Q Okay. So you think you saw him sometime around the
9 end of April, first of May?

10 A Probably, somewhere in there.

11 Q Okay. The investigator, you said that he was
12 interviewed by your investigator. Was that the
13 standard policy?

14 A Yes. If they are incarcerated, then our
15 investigator would go take their basic information
16 and then bring the information back to our office;
17 and then it would be assigned to an individual
18 lawyer.

19 Q And when the investigator goes and talks to him,
20 does he tell him anything about the charge or does
21 he just ask him -- I mean, does he ask him if he
22 wants to plea or not? What do you generally get
23 back?

24 A Well, generally we get just a little brief summary
25 of the client's position about what happened. I

1 mean, I don't know if he specifically asked him if
2 they are going to plea or not. He just basically
3 asks them: Could you tell me what happened, and
4 then he writes down their response.

5 Q Okay. And the investigator, do you recall what
6 information the investigator provided to you?

7 A Yes, it was very brief. Would you like me to read
8 what he wrote --

9 Q Yeah, if you don't mind.

10 A -- from the interview form.

11 MR. THOMAS: Your Honor, I'd object to him
12 reading it verbatim. He can use it to refresh his
13 recollection or he can enter it into evidence.

14 MR. SHAFFER: I would stipulate to its
15 admissibility if he would like to. I just don't know
16 what it says honestly.

17 THE COURT: Okay. Well, I will allow him to
18 refresh his memory. Take a good look at it and then
19 summarize it for us, Mr. Floyd. If you say something
20 different than that, he can cross examine you from the
21 notes.

22 THE WITNESS: Sure.

23 A Well, it appears that he took his name and his
24 address, his -- he got a phone number from a
25 relative and then whether or not he was employed.

1 As far as the underlying incident, he
2 basically wrote down that the defendant admitted to
3 him that he had taken eight bottles of Turtle Wax
4 from Walmart.

5 Q Okay.

6 A And that he was arrested two days later.

7 Q For taking the Turtle Wax?

8 A Correct.

9 Q And that's the basis of the allegation of the
10 underlying charge; correct?

11 A Stealing -- you're right, shoplifting Turtle Wax
12 from Walmart.

13 Q And those eight bottles, that was about \$42 worth?

14 A I think so.

15 Q Now, you said that you would have seen him about a
16 month later. Do you know if that's the exact
17 amount of time or not?

18 A I don't know if that's an exact amount of time, but
19 at the time Jack Lawson was still the Chief Public
20 Defender. I believe that he would have assigned me
21 this case.

22 At the time when I got assigned cases, I mean,
23 I tried to get down to the detention center
24 certainly within three or four weeks of getting
25 assigned. So I mean, I'm just...

1 Q Okay. And do you recall what you discussed during
2 the first time you met him? Where was it whenever
3 you met him? Were you at the detention center?

4 A You know, I don't have a clear memory of being at
5 the detention center. I do remember talking to
6 him, and I do remember what he told me the first
7 time I met him. It was not at all what was written
8 down by the investigator.

9 Q Okay. What did he tell you?

10 A He told me that he had a cousin named David Myers
11 that looked a lot like him, and that the person
12 they arrested was not him. It was his cousin.

13 Q Okay. He said his cousin was also named David
14 Myers?

15 A That's what he told me.

16 Q At that point did he discuss whether or not he
17 wanted to go to trial?

18 A Well, the solicitor had provided me with a plea
19 offer, and it was -- it appears Ms. Parr offered
20 four years.

21 THE COURT: Was that recommendation or a
22 negotiation?

23 THE WITNESS: Your Honor, she simply wrote
24 four years on the sheet. She didn't say recommendation
25 or negotiation.

1 -But typically in dealing with Ms. Parr over
2 the years, when she just writes four years, that means a
3 recommendation. That's what she is going to recommend
4 his sentence to be. Normally, if she means it to be
5 negotiated, she writes negotiated by it.

6 BY MR. SHAFFER:

7 Q Okay. And you ended up taking this to trial later
8 on; correct?

9 A That is correct.

10 Q When was that?

11 A When was the trial?

12 Q Yeah. I apologize.

13 A I think the trial was...

14 Q June 29th?

15 A I think that's correct.

16 Q Okay. So at that point you had had the case for
17 about three months; is that right?

18 A I think it was something like that, yeah, uh-huh.

19 Q Okay. When did the -- you said that she had
20 recommended a four-year offer or she had an offer
21 for a recommended four years?

22 A That's correct.

23 Q When was that offer given and when did it expire?

24 A She gave it on the 23rd of March or the 22nd of
25 March was when it was delivered to us; and I don't

1 know that it had an expiration, up until when the
2 trial started.

3 Q Okay. When was his next docket appearance after
4 that?

5 A Hang on one second. His initial appearance date
6 was set for the 23rd of March, and his docket
7 appearance was scheduled for May the 5th.

8 Q Okay. Now, at the docket appearance, do you
9 generally talk to the policemen?

10 A At the docket appearance?

11 Q Yeah.

12 A Normally, yes.

13 Q Do you generally tell them whether or not they're
14 going to accept the offer?

15 A Normally, I tell them what I think, yes --

16 Q Okay.

17 A -- that they are going to do.

18 Q Okay. Do they ever close off the offer after that?

19 A You know, I don't recall her giving me a deadline.
20 I mean, I just don't remember that. Normally, you
21 know, with a case like this, they would have
22 probably kept it open very close to the trial time.

23 Q And during the trial term, did you get a chance to
24 speak with him prior to trial about what your
25 strategy was at trial?

1 A Well, yes. I mean, I had a chance to speak with
2 him. After reviewing the case, I mean, I was kind
3 of mystified as to why he didn't want to take the
4 offer.

5 Because, you know, it was not a case where he
6 was identified and picked up a couple days later as
7 it was originally written down by the investigator.
8 According to our investigator, Mr. Myers told him
9 he was arrested two days later.

10 Actually, he was arrested almost immediately
11 upon leaving the store. The witnesses for Walmart
12 were claiming that they never really took their
13 eyes off of him for the most part.

14 So it was like they saw him -- they claimed
15 they saw him actually taking the stuff and then
16 followed him out into the parking lot while they
17 were calling the police.

18 Then he was arrested within a few minutes
19 after that. So under the circumstances I really
20 didn't feel that he had much of a chance of success
21 at trial.

22 Q Okay. Did you warn him of that?

23 A I most certainly did.

24 Q When did you warn him of that; do you recall?

25 A I don't recall exactly; but, I mean, I do remember

1 telling him I thought he was making a mistake going
2 to trial.

3 Q Okay. Now, I'm correct in saying that the Turtle
4 Wax was recovered; correct?

5 A Yes, the Turtle Wax was recovered.

6 Q They essentially found it in a dumpster?

7 A I believe that's right. Yeah, I believe they found
8 the Turtle Wax. If I recall, I think they alleged
9 that the Turtle Wax was stuffed in a coat when he
10 was in the store. He was wearing a coat, and they
11 found the Turtle Wax and the coat in the dumpster.

12 Q Okay. Now --

13 A If I recall.

14 Q How long have you been practicing in Florence
15 County as a criminal defense attorney?

16 A I've been...

17 Q Quite a few years?

18 A Yes.

19 Q Any estimation of how many property crimes or
20 property trials you've done?

21 A I couldn't tell you. I mean...

22 Q What is your -- do you think that his sentence is
23 harsh?

24 THE COURT: What does that have to do with
25 anything?

1 MR. SHAFFER: Your Honor, I'm actually going
2 to make a proportionality claim as well for the
3 sentencing being grossly disproportionate to the crime.

4 MR. THOMAS: If we could take that up at
5 argument.

6 THE COURT: Very good.

7 MR. SHAFFER: Okay.

8 THE COURT: What he views as harsh is probably
9 not --

10 MR. SHAFFER: Yes, sir.

11 THE COURT: -- relevant.

12 MR. SHAFFER: Could I inquire in the past, the
13 past sentences?

14 THE COURT: Yeah, I imagine so.

15 MR. SHAFFER: Thank you, Your Honor.

16 BY MR. SHAFFER:

17 Q In the past is there any sort of estimation you can
18 give on how many property thirds you've done? Say,
19 greater than 50?

20 A I'm sure, yes.

21 Q Okay. How many people in your experience have
22 gotten ten years for it?

23 A I can't recall one.

24 Q Okay.

25 A I mean, off the top of my head, other than

1 Mr. Myers here, I can't recall. I can't really
2 recall in the recent past anybody going to trial.
3 Well, I take that back.

4 But most of the cases that I've had by way of
5 property offenses, shoplifting thirds or, you know,
6 enhancement for property offenses, most of them
7 have been pleas.

8 Q Okay. But you can't recall any of the ones that
9 you've had getting ten years, other than Mr. Myers?

10 A I can't recall, no.

11 MR. SHAFFER: No further questions.

12 THE COURT: All right. Very good.

13 Cross examination.

14 MR. THOMAS: Thank you, Your Honor. May it
15 please the Court.

16 CROSS EXAMINATION

17 BY MR. THOMAS:

18 Q How many meetings would you say you had with
19 Mr. Myers?

20 A Probably, you know, around three.

21 Q And you filed discovery, Rule 5, Brady?

22 A Yes.

23 Q And did you have an opportunity to review the
24 State's response to Rule 5 and Brady to Mr. Myers?

25 A Yes.

1 Q Do you believe the State provided a complete
2 response to that discovery?

3 A I think so. I think they gave me what they had,
4 yes.

5 Q What was -- again, would you just tell me: What
6 was his version? What was his sort of theory of
7 defense?

8 A Well, the theory that he originally gave me was
9 that he had a cousin with his name who he said
10 looked very similar to him and that they had
11 misidentified him and confused him with his cousin.

12 Q Did you know Mr. Myers before you represented him
13 on this charge?

14 A Yes.

15 Q How did you know him?

16 A Well, we're actually about the same age. I think
17 we were both born the same year. So I think when
18 we were very young -- and there was a year maybe I
19 played like Dixie Youth Baseball or something like
20 that. I think we may have been on the same
21 baseball team one time. I've just known him, you
22 know, from Lake City for years.

23 Q Are you familiar with any cousins he may have with
24 the same name?

25 A I don't know of any cousins myself, no.

1 Q But he was arrested on the scene that day? He
2 wasn't arrested two days later?

3 A That was my understanding. That was the testimony
4 given by the police officer, yes.

5 Q And the two witnesses that testified at the scene,
6 the two loss control officers, they were also
7 familiar with him from around Lake City?

8 A Yes. They both testified, if I recall, that they
9 knew him prior to this incident; and I think that
10 was their testimony.

11 Q And let's briefly, if you could, just give me a
12 summary of what the State's evidence was, sort of
13 what the testimony was from those two loss control
14 officers.

15 A Well, if I recall, I believe they said -- at least
16 one of them said -- and I think it was the female
17 officer who testified, and I can't recall her name
18 now; but I believe she said that she actually saw
19 Mr. Myers when he came into the store.

20 She watched him go to the aisle where the
21 Turtle Wax was, and she watched him move Turtle Wax
22 bottles and place them inside of his coat and
23 watched him walk out of the store.

24 Q And then she also testified that she watched him
25 run away from her?

1 A Right.

2 Q And hide behind a dumpster at -- was it an Eagles
3 or a Piggly Wiggly there?

4 A Yeah, there was a grocery store close by, Piggly
5 Wiggly or IGA. Yeah, she testified that she
6 followed him out of the store when he ran. Then I
7 think it might have been the other loss control
8 officer was actually calling the Lake City Police
9 Department while she was following him or
10 attempting to follow him.

11 Q And you had a pretrial Biggers hearing, Neil vs.
12 Biggers hearing, on that identification issue?

13 A I believe -- yes, I think we did.

14 Q Would it be safe to say in your opinion that there
15 was overwhelming evidence of his guilt?

16 A I felt that there was.

17 Q So ultimately whose decision was it to decline the
18 plea offer?

19 A That would have been Mr. Myers's decision.

20 Q Did he ever indicate to you that he wanted to take
21 a plea instead of going to trial?

22 A No.

23 Q The statute, the property enhancement statute,
24 allows for punishment up to ten years?

25 A That is correct.

1 Q That's written in the statute?

2 A Yes.

3 Q And in comparison to -- what's the maximum
4 punishment for, say, a larceny?

5 A For what?

6 Q Like a grand larceny.

7 A A grand larceny? I think it depends on the value
8 of the merchandise, but I think it's up to ten.

9 Q And for a burglary, depending upon -- what's the
10 penalty for burglary third maximum?

11 A Burglary third, if it's a first offense, zero to
12 five.

13 Q That's all the questions I have. Thank you.

14 THE COURT: Very good. Any redirect?

15 MR. SHAFFER: None, Your Honor.

16 THE COURT: All right. Very good.

17 (The witness leaves the witness stand.)

18 THE COURT: Do you have any other witnesses
19 your would like to call?

20 MR. SHAFFER: Yes, Your Honor. The applicant
21 calls Mr. Myers, David Myers, to the stand.

22 THE COURT: Very good, Mr. Myers. Just let
23 Mr. Floyd get his stuff together here.

24 THE WITNESS: I'll clear out.

25 (The witness comes forward.)

1 THE CLERK: Place your left hand on the Bible,
2 and raise your right hand as much as possible.

3 DAVID MYERS, JR., being
4 first duly sworn, testifies as follows:

5 THE CLERK: Please be seated and state your
6 name for the record.

7 THE COURT: Mr. Myers, have a seat in the
8 witness chair. I'm going to ask that you pull up and
9 speak loudly, clearly, and slowly. I'm going to ask
10 that you state your full name for the record.

11 THE WITNESS: My name is David Myers, Jr.

12 THE COURT: Very good. Yes, sir.

13 DIRECT EXAMINATION

14 BY MR. SHAFFER:

15 Q Mr. Myers, you're currently housed in the
16 Department of Corrections; right?

17 A Yes, sir.

18 Q All right. If you could, try to speak just a
19 little bit louder. You're currently serving a
20 ten-year sentence; is that right?

21 A Yes, sir.

22 Q Is this your first time in the Department of
23 Corrections?

24 A No, sir.

25 Q Tell us a little bit about your experiences or how

1 many times have you been in before? And what were
2 you in for?

3 A I've been in several times.

4 Q Okay. Could you tell us for what charges?

5 A Second degree burglary and drugs.

6 Q And you've had a couple of shopliftings as well;
7 haven't you?

8 A Two.

9 Q Two shopliftings prior to this charge?

10 A Yeah.

11 Q Okay. Where were those at?

12 A Different stores.

13 Q I'm sorry?

14 A One of them being IGA.

15 Q What were you sentenced for those?

16 A Thirty days.

17 Q Okay. And what did you -- on those two other
18 offenses, what did you steal?

19 A Some beer.

20 Q Some beer?

21 A Yeah.

22 Q On both offenses or just one of them?

23 A One of them.

24 Q And what was the other one?

25 A Some food.

- 1 Q Okay. So you stole some beer one time. Was that
2 your first shoplifting?
- 3 A Yes.
- 4 Q And then you stole some food another time?
- 5 A Yeah.
- 6 Q Did you have any other shopliftings?
- 7 A No, sir.
- 8 Q Okay. And they say you stole \$42 worth of Turtle
9 Wax this time; is that right?
- 10 A Yes, sir.
- 11 Q Okay. Now, Mr. Myers, you were represented by
12 Scott Floyd; correct?
- 13 A Yes, sir.
- 14 Q When was the first time you met with Mr. Floyd
15 after getting arrested on this charge?
- 16 A He ain't never come saw me.
- 17 Q You never spoke with him?
- 18 A We ain't never spoke like nothing.
- 19 Q Are you saying he never came down to the jail or
20 you never saw him?
- 21 A No, no, the investigator.
- 22 Q What was your conversation with the investigator
23 about?
- 24 A Give my name. That's it.
- 25 Q And do you remember telling him what happened?

1 A I ain't -- he ain't asked about that. He asked me
2 for my warrant.

3 Q Okay.

4 A Can I say one thing?

5 Q Yeah.

6 A They charged me with a property offense third, and
7 then they come back and charge me for a
8 shoplifting. That two different charges. So
9 Mr. Floyd come and told me to plead to the property
10 offense.

11 I tell him I ain't here for a property
12 offense. I'm here for shoplifting. When I went to
13 trial, he ain't never told me nothing about no four
14 years. He told me after the trial. That when he
15 told me about the four years.

16 If he had even told me about the four years, I
17 wouldn't have went to no trial. I would have taken
18 the four years. I would have been at home now. He
19 tricked me with a trial.

20 Q Okay.

21 A The man knew he tricked me. He give my life for
22 nothing. He done me wrong, man. He knew he done
23 me wrong.

24 Q Now, he said that he came in and said to plead to
25 property third?

1 A Right, and I told him I ain't here for property
2 third. I tell him I'm here for shoplifting.
3 Shoplifting, the charge I'm on now, it don't carry
4 but 30 days. I looking all through the law
5 library. It's a 30-day charge.

6 Q Okay.

7 A They ain't never said nothing about no shoplifting
8 being an enhancement. I ain't never been in jail
9 for no property. If he just tell me to plead to
10 shoplifting, I would have plead. He told me to
11 plead to an enhancement third, a third offense. I
12 ain't never got a first offense on an enhancement
13 charge.

14 Q Now, did he ever tell you'll that the shoplifting
15 constitutes an offense that you can get enhanced
16 for?

17 A Nah, he ain't never told me nothing. If he would
18 have told me, I would have plead.

19 Q Okay.

20 A I done plead to seven offenses and went down the
21 road. This my seventh time going down the road. I
22 would have plead to the four years. I would have
23 been home now.

24 Q Are you sure he didn't try to explain it to you?

25 A Mr. Floyd ain't told me nothing, man. He know he

1 ain't told me nothing. He sat right here in front
2 of the judge and lied like that. He said tell the
3 truth, man. That will set you free, the truth,
4 man. I done gave my life to God, man. He done me
5 wrong, man.

6 Q But he didn't tell you that a property crime --

7 A He ain't told me nothing.

8 Q Okay.

9 A I found out when I got down the road.

10 Q Okay.

11 A I asked for my Rule 5. He couldn't never show me
12 my Rule 5. He couldn't never show me no evidence
13 to go to trial, and me having no defense to go to
14 trial. You think I'm going to go to trial with
15 him?

16 Q Now, you had written me some letters stating about
17 jurisdiction. You didn't think the Court had
18 proper jurisdiction?

19 A I ain't had no family. I had no -- if you say I
20 stole this out of the store, why didn't you hold
21 this for evidence? You don't know if I'm going to
22 trial or nothing. You give the evidence back to
23 the store.

24 Q Okay.

25 A That's what they do.

1 Q What do you mean the evidence?

2 A The Turtle Wax.

3 Q The Turtle Wax?

4 A And then it got right here -- I got my paperwork
5 right here. That guy said -- they said it's eight
6 bottles of Turtle Wax. Now they got on this paper
7 right here, they got seven bottles. Then they got
8 five bottles. You see it right here?

9 Q That's the receipt from --

10 A Right here.

11 Q From the --

12 A From the store.

13 Q Okay. Now, if you could -- I don't think we need
14 to introduce that because it's in the record.

15 A Right, it's in the record.

16 Q Now, you mentioned that you were not told that --
17 but he did tell you that you were facing up to ten
18 years; right?

19 A Yeah, he told me I was facing up to ten years.

20 Q Okay.

21 A He supposed to be my lawyer. He supposed to say,
22 Mr. David, we ain't got no defense to go to trial.
23 Take the four years. I'll be seeing you right down
24 here in two or three years. I would have went for
25 it. He ain't told me nothing. He want to go to

1 trial and sink me. That's what he do, too. He
2 give me ten years, man.

3 Q Okay.

4 A You know, I got home boys down the road that got 30
5 or time on shoplifting, 20 or time, 15 or time.
6 Ain't none of them got the time I got, none of
7 them, nobody. I got ten years for \$42. That what
8 they say I took. Ain't nobody seen me took nothing
9 out that store. They ain't got no cameras saying I
10 even been on the cameras.

11 Q They have cameras --

12 A They ain't had no camera in no trial. They ain't
13 had no evidence in the trial, nothing.

14 Q Okay. They just had the word of the people?

15 A And the woman who say she arrested me, she been a
16 cop one time. She got fired for stealing from the
17 evidence room.

18 MR. THOMAS: Objection, Your Honor, relevance.

19 BY MR. SHAFFER:

20 Q Now, with the camera you said that they didn't
21 produce the videotape at trial?

22 A Ain't no video.

23 Q Did your attorney ask for any sort of like --

24 A He didn't ask for nothing. He didn't ask for jack
25 or nothing.

1 Q Okay.

2 A He ain't tried to help me.

3 Q But he didn't try to ask for any sort of spoliation
4 charge?

5 A He didn't ask for nothing.

6 Q Now, I know that we've corresponded a good bit, but
7 is there anything that you would like to say that I
8 haven't covered in the allegations?

9 A Say that again.

10 Q Are there any allegations that you want me to cover
11 that I didn't cover or that I didn't explain to you
12 why I wasn't going to?

13 A No, you done what you supposed to do.

14 Q All right. Thank you very much.

15 MR. SHAFFER: No further questions.

16 THE COURT: Cross examination?

17 MR. THOMAS: Briefly, Your Honor.

18 CROSS EXAMINATION

19 BY MR. THOMAS:

20 Q You said Mr. Floyd never met with you?

21 A No, he ain't never come to the jailhouse or nothing
22 to talk to me. The only person come down there was
23 Mr. Frank White.

24 Q And you said Mr. Floyd didn't review the discovery
25 responses with you?

- 1 A No. Can I say one thing?
- 2 Q I'm asking the questions here. I apologize.
- 3 A I understand.
- 4 Q But he did tell you that you were facing up to ten
- 5 years?
- 6 A Yeah.
- 7 Q And you admit you shoplifted those eight bottles of
- 8 Turtle Wax?
- 9 A No, I ain't admit to that.
- 10 Q But you say you were willing to plead to
- 11 shoplifting eight bottles of Turtle Wax?
- 12 A Uh-huh.
- 13 Q Not to a property offense?
- 14 A I would have plead to shoplifting. He ain't told
- 15 me nothing about no property. He said a property
- 16 offense, that's a new shoplifting law they got out
- 17 now.
- 18 Q But he told you it was ten years?
- 19 A I went down the road. I didn't see nothing like
- 20 that.
- 21 Q But he explained to you beforehand you were facing
- 22 ten years if you were convicted at trial?
- 23 A Yeah, he told me I'm facing ten years if I
- 24 convicted at trial.

25 MR. THOMAS: That's all I have.

1 THE COURT: Any redirect?

2 REDIRECT EXAMINATION

3 BY MR. SHAFFER:

4 Q Mr. Myers, what were you about to say? You asked
5 if you could say something. What were you going to
6 say?

7 A I'm going to ask --

8 THE COURT: I think that's really an
9 inappropriate question to ask: Tell me what you want to
10 say. I think you have got to ask a question in order
11 for him to object to it. You just can't ask for a
12 spontaneous sharing of information. You have to ask a
13 question. He has an opportunity to object to it.

14 MR. SHAFFER: Yes, Your Honor. Thank you. I
15 apologize.

16 BY MR. SHAFFER:

17 Q Did you say on direct that you would have pled to
18 four years if you would have know that it was a
19 proper charge, if you would have know about the
20 plea deal?

21 A Yeah, I would have plead to four years. He came to
22 me and said property offense. I ain't never had no
23 property offense. He comes to me and say you got a
24 third shoplifting. Go ahead and plead to the four
25 years. I would have plead. He ain't never told

1 me.

2 Q Did he explain to you that a shoplifting third was
3 considered a property offense?

4 A Ain't nobody never told me nothing like that, no,
5 sir.

6 MR. SHAFFER: All right. No further
7 questions, Your Honor.

8 THE COURT: All right. Mr. McFadden [sic],
9 there's been evidence presented that you admitted to the
10 police officers at one point in time that you'll stole
11 the Turtle Wax. Did you, in fact, take this Turtle Wax?

12 THE WITNESS: Yes, sir.

13 THE COURT: You did?

14 THE WITNESS: Yes, sir.

15 THE COURT: All right. Thank you so much.
16 Very good. You can have a seat out there.

17 (The witness leaves the witness stand.)

18 THE COURT: Let's deal with each of your
19 allegations one at a time, and I'm going to give the
20 State an opportunity to respond to each.

21 MR. SHAFFER: Your Honor, would you like me to
22 go through them?

23 THE COURT: Yes. What's the first ground?

24 MR. SHAFFER: The first one involves failure
25 to convey the plea offer or failure to explain the plea.

1 Essentially, I think that he was under the impression
2 that Mr. Floyd was trying to get him to plead to a
3 different charge than it actually was. That was his
4 resistance to pleading, Your Honor.

5 I think that if you would have explained -- if
6 he would have explained to him that this is the same
7 charge: You're really pleading to property. You're
8 pleading to an enhanced sentence for a shoplifting. He
9 said he would have taken the four years, Your Honor. So
10 that's the first allegation.

11 THE COURT: Okay.

12 I'll be glad to hear from the State.

13 MR. THOMAS: Your Honor, Mr. Floyd testified
14 that he did, in fact, convey the four-year plea offer.
15 He testified he explained the elements of the charges to
16 Mr. Myers.

17 He also testified Mr. Myers never wanted a
18 plea deal. He was intent on a trial. At the end of the
19 day, Your Honor, it's not the fact that he didn't
20 explain the elements of the crime. He understood it was
21 a shoplifting.

22 The ten years comes from an enhancement. It's
23 a sentencing enhancement, not an element to the crime;
24 and he explained it to Mr. Myers. Mr. Floyd explained
25 to Mr. Myers that he was facing up to ten years if he

1 went to trial.

2 THE COURT: Very good.

3 MR. SHAFFER: Your Honor, just briefly in
4 rebuttal. I mean, obviously you're to determine whether
5 or not he credibly testified. From the time I've known
6 him, he didn't seem to know -- he didn't understand that
7 at first.

8 It took quite a bit of, you know, me talking
9 to him before he actually understood it. I think he --
10 you know, that you could find him easily credible in not
11 understanding exactly the nature of the plea offer that
12 was given.

13 THE COURT: Of course, Mr. Floyd said that he
14 did. We've got a fellow who has at least admitted to --
15 well, he has admitted to shoplifting on two different
16 occasions, pled guilty. He's been convicted of a drug
17 offense, and he admitted to stealing here today.

18 He had a number of different explanations that
19 were given to his defense counsel. He said it was a
20 cousin with the same name who looked just like him. So
21 all of those issues should be considered -- don't you
22 agree -- with regard to who is credible and who is not
23 credible?

24 MR. SHAFFER: Yes, Your Honor, I think that
25 all those are proper for consideration. I don't think

1 that you can necessarily say that applicants always lie
2 because they don't --

3 THE COURT: I don't think that at all.

4 MR. SHAFFER: I think he had some legitimate
5 confusion, Your Honor. He seemed fairly credible
6 whenever he testified to his confusion, Your Honor.

7 THE COURT: Very good. All right. What's
8 your next argument?

9 MR. SHAFFER: The Eighth Amendment argument,
10 Your Honor. I apologize, I did not print off the case
11 for this. It's a U.S. Supreme Court case. I think it's
12 Solem versus Helm. It's a 1983 U.S. Supreme Court case.

13 Obviously, with any sentence regardless of the
14 statute, there has to be an Eighth Amendment
15 determination of whether or not it's proportional to the
16 actual crime that's being committed.

17 Here we have an offense where essentially what
18 happened was eight bottles of Turtle Wax got picked up
19 off of the shelf, taken around back of the Walmart,
20 thrown in the dumpster, and they recovered it.

21 I understand there is the intent to steal and
22 deprive them of it, but that's essentially the conduct.
23 I also understand that it happened on other occasions,
24 but the other occasions include stealing food and
25 stealing beer.

1 Your Honor, I certainly don't think that that
2 warrants, that criminal conduct, even whenever you put
3 it all together, that it warrants a ten-year sentence,
4 Your Honor.

5 THE COURT: Of course, I've never sentenced
6 anybody to ten years for shoplifting regardless of what
7 the circumstances are even when they're tried and
8 convicted.

9 But the fact that I would not do that doesn't
10 mean it's not within the bounds of reason. The South
11 Carolina statute does indeed contemplate recidivism and
12 enhanced penalties. It's clear that it was not an
13 illegal sentence with regard to the statute. Wouldn't
14 you agree?

15 MR. SHAFFER: Yes, Your Honor. Statutorily
16 ten years for that is not illegal.

17 THE COURT: Very good. Anything further on
18 that proportionality argument?

19 MR. SHAFFER: No, Your Honor. That U.S.
20 Supreme Court case, I can give you a site to that if you
21 would like.

22 THE COURT: You can give that to my law clerk.
23 Do you have it with you there?

24 MR. SHAFFER: Yes, Your Honor. I should have
25 it. I'll read it off after he rebuts, Your Honor.

1 THE COURT: Very good.

2 MR. THOMAS: And, Your Honor, I'm vaguely
3 familiar with the case he cited. It's also been
4 clarified somewhat by the Supreme Court in recent years.
5 The most recent case from the South Carolina Supreme
6 Court was State vs. Harrison.

7 It's a case out of Greenwood County. It was
8 about a DUI, leaving the scene of the accident,
9 death-resulting case. In that the Supreme Court
10 basically adopts the standard that the United States
11 Supreme Court adopted.

12 Basically, the first thing is you have to
13 presume that as long as the sentence is within the
14 statute that the legislature has passed, you presume
15 that it's constitutional.

16 You have to -- it has been the person
17 challenging it, their burden to demonstrate evidence
18 that it's disproportional in light of the severity of
19 the offense that is actually admitted.

20 In this case I think we had some testimony
21 from Mr. Floyd that any sort of property offense --
22 burglary, larceny -- those carry varying degrees of
23 penalties.

24 In this case, a shoplifting first offense is a
25 30-day offense, a misdemeanor, similar to a petit

1 larceny. But the reason there's a graduation and a
2 sentencing enhancement once you commit a third or fourth
3 is because those shopliftings add up.

4 There is a cost to society of someone who
5 continually shoplifts, even after they have been caught
6 and convicted of it again. So I think in light of the
7 seriousness of a shoplifting charge, I don't think ten
8 years -- I don't think our legislature did anything
9 unconstitutional when they decided ten years was an
10 appropriate punishment on the upper end of the spectrum.

11 Obviously, the judge has the discretion to
12 sentence to a lesser sentence and most of them do. In
13 this case the ten years is well within what is
14 authorized by the statute. I don't think Judge Russo
15 erred in that respect.

16 THE COURT: All right. Do you think it would
17 be incumbent upon the applicant to show what the
18 sentences are for similar offenses? Or do you think you
19 can argue just with regard to the facts of this case
20 that it's disproportionate?

21 MR. THOMAS: Your Honor, the way I read the
22 Harrison opinion from the State Supreme Court is before
23 you even look at the severity in light of -- there's
24 three steps.

25 It has to be disproportionate in light of the

1 severity of the offense. The sentence has to be grossly
2 disproportionate in light of that severity. If and only
3 if you decide that it is, then you go into the analysis
4 of an intra-jurisdictional analysis.

5 You look at other crimes and similar crimes
6 and other punishment is, and then you look at
7 intra-jurisdiction and look at the other states with
8 similar conduct.

9 I think in this case when we talk about
10 someone who constantly goes into a place of business and
11 removes something that belongs not to them but the
12 owners of that business and they are constantly doing
13 something like that, I don't think ten years is
14 disproportionate in light of that offense.

15 THE COURT: Do you think they met their burden
16 in regard to any of that?

17 MR. THOMAS: No, Your Honor, I don't think the
18 applicant has met his burden in demonstrating it's
19 disproportionate.

20 THE COURT: All right.

21 MR. THOMAS: If we were to get into the
22 intra-jurisdictional analysis, I tried to elicit some
23 testimony on those grounds.

24 It's ten years for a burglary or up to ten
25 years for a burglary, even a third degree, anywhere from

1 ten to fifteen for a grand larceny.

2 So I don't think intra-jurisdictionally this
3 punishment would have been anymore severe than other
4 typical ones that we think of as a property crime.

5 THE COURT: All right. Anything further with
6 regard to other grounds?

7 MR. SHAFFER: Nothing further regarding other
8 grounds, Your Honor. That case that I had mentioned,
9 would you like the cite?

10 THE COURT: Yes.

11 MR. SHAFFER: The cite is 463 U.S. 277. Your
12 Honor, just because the State had mentioned this, it's
13 really comparing apples to oranges to say, Well,
14 burglary carries ten years because burglary isn't the
15 same as shoplifting, Your Honor. It's not the same --
16 you know, grand larceny can carry ten years. Well,
17 grand larceny involves an amount.

18 THE COURT: Yes, but hypothetically a lot of
19 other property crimes, probably the one that gets
20 charged and pled to more, is financial transaction card
21 fraud. It can carry with it the same ten-year penalty
22 as well. Any property offense can.

23 MR. SHAFFER: Yes, Your Honor, and I --

24 THE COURT: That's less dangerous than
25 shoplifting, I think.

1 MR. SHAFFER: Well, I think that whenever you
2 look at the actual conduct here, the conduct is \$42 that
3 was misplaced or taken. He didn't even -- it wasn't
4 even completed, Your Honor.

5 THE COURT: Right.

6 MR. SHAFFER: That conduct alone, I think, is
7 grossly disproportionate to the ten-year sentence, even
8 if you were to your include that.

9 THE COURT: We were talking about a ten-year
10 sentence, but he is actually eligible for parole after a
11 fourth, which is 2.5 years.

12 MR. SHAFFER: Yes, Your Honor.

13 THE COURT: Does that make it more --

14 MR. SHAFFER: He was denied parole though.

15 THE COURT: What?

16 MR. SHAFFER: He was denied parole. I think
17 that he has already been up for parole, Your Honor. He
18 has been denied parole.

19 THE COURT: He has been in jail for how many
20 years now?

21 MR. MYERS: Forty months.

22 THE COURT: Forty months.

23 MR. SHAFFER: Your Honor, placing it in the
24 parole board's hands doesn't make it -- I'm saying that
25 I don't think that necessarily makes it constitutional

1 or proportionate.

2 THE COURT: I think if we look at how much
3 time he's getting for a particular conduct, I think we
4 do need to look at how much time he actually spends in
5 prison.

6 MR. SHAFFER: Yes, Your Honor, I agree with
7 that. I think that -- I've done a couple of parole
8 hearings. I also occasionally look at the chances of
9 him actually getting parole.

10 THE COURT: Do you feel like your presence
11 helped any when you were there?

12 MR. SHAFFER: No, Your Honor I don't.

13 THE COURT: Sometimes they grant it and
14 sometimes they don't.

15 MR. SHAFFER: Yes, Your Honor, and the vast
16 majority they do not grant. I will say that based on my
17 experience with looking over the sheets.

18 THE COURT: That's not so. If they kept
19 everybody for the full max-out time, we would be -- we
20 wouldn't have enough jailhouses or prisons. That's not
21 so.

22 MR. SHAFFER: And my experience is limited,
23 Your Honor. I admit that.

24 THE COURT: Very good.

25 MR. SHAFFER: Thank you.

1 THE COURT: And a max-out date is nowhere near
2 ten years. A max-out date is substantially less than
3 that.

4 MR. SHAFFER: Yes, Your Honor. I can give
5 you --

6 THE COURT: What is his max-out date? I bet
7 he knows.

8 What is your max-out date?

9 MR. MYERS: I max out the beginning of '16.

10 MR. SHAFFER: It's 3/10/16, Your Honor.

11 THE COURT: So if he maxes it out, he will be
12 out absolutely at 2016. How long will he have spent in
13 jail? Six-and-a-half years?

14 MR. SHAFFER: Yes, Your Honor, that's correct.

15 THE COURT: It's a little bit less than ten,
16 not a whole lot less. All right. Anything else from
17 anybody?

18 MR. SHAFFER: Your Honor, I briefly touched on
19 this. I will go ahead and make the argument. Counsel
20 did not request any sort of spoliation charge or adverse
21 inference charge.

22 I believe that essentially the facts of the
23 case from the transcript are they would have had him on
24 video the entire time he was in the store, but they
25 didn't keep the video because they didn't pull it.

1 I think it's reasonable for them to know that
2 that would have been important and perhaps it would have
3 been helpful if an adverse inference charge would have
4 been given, a spoliation charge, Your Honor.

5 I understand there is an unpublished opinion
6 that mentions spoliation in criminal cases, but it might
7 be a published opinion that mentions about spoliation;
8 but I don't think there is any law directly on it, Your
9 Honor.

10 THE COURT: All right. I'll be glad to hear
11 from the State.

12 MR. THOMAS: Your Honor, I would just point
13 out that I'm of the opinion -- and maybe I need to
14 reread that opinion and find whether it was published or
15 not -- but it's not a viable defense in a criminal
16 matter.

17 Regardless, it would have to be -- the
18 evidence is something that it would have to be like a
19 Rule 5 or Brady issue. In this case if there was a
20 tape, then Walmart would have been the custodian of that
21 tape.

22 I don't think there's any evidence presented
23 that the State ever actually had possession of it. So I
24 don't know that there could be a spoliation charge
25 because Walmart wasn't a party to the litigation.

1 At the end of the day, tape or no tape, there
2 were two eye witnesses who testified that they
3 recognized him; that they knew who he was when he walked
4 in the door. They followed him.

5 THE COURT: So there was overwhelming evidence
6 to the contrary.

7 MR. THOMAS: Absolutely, Your Honor.

8 THE COURT: All right. Anything else from
9 anybody?

10 MR. SHAFFER: Nothing, Your Honor.

11 THE COURT: Mr. Myers, you'll receive an
12 order. I'm going to take this into consideration. I'm
13 going to review your transcript, review your motion, and
14 think about what you said here today; and I will render
15 a decision. You will get written notice of that. Does
16 that sound fair?

17 MR. MYERS: Yes, sir.

18 THE COURT: Good luck to you.

19 *** END OF REQUESTED TRANSCRIPT OF RECORD ***
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C E R T I F I C A T E

I, the undersigned L. Coconut Pantsari, Official Reporter for the Twelfth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of all the proceedings had, as reported by Karen Ambroziak, and transcribed by me to the best of my ability, and the evidence introduced in the trial of the captioned cause, relative to appeal, in the Civil Court for Florence County, South Carolina, on the 10th day of February, 2014.

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

July 26, 2014

s/L. Coconut Pantsari
Court Reporter

\$	adopted [1] 35/11	assigned [6] 5/3 5/5 5/17 7/20 7/22 7/25
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2013-CP-21-493 [1] 3/7	allegation [2] 7/9 31/10	20/1 20/3 22/18 23/8 23/23 26/10 26/15 30/9
2013-UP-51 [1] 3/17	allegations [3] 27/8 27/10 30/19	32/16 35/3 35/16 36/5 38/3 39/17 39/18
2014 [4] 1/11 3/2 44/11 44/16	alleged [1] 12/8	39/19 42/2 42/3 42/4 42/20
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undersigned [1] 44/2	whenever [4] 8/2 33/6 34/2 39/1
understand [5] 28/3 32/6 33/21 33/23 42/5	where [5] 8/2 11/5 16/20 20/11 33/17
understanding [2] 16/3 32/11	whether [6] 6/25 8/16 10/13 32/4 33/15
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version [1] 15/6	woman [1] 26/15
versus [2] 3/5 33/12	word [1] 26/14
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viable [1] 42/15	writes [3] 6/4 9/2 9/5
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wanted [3] 8/17 17/20 31/17	yes [41] 4/20 5/14 6/7 10/12 10/15 11/1 12/5
wants [1] 5/22	12/18 13/10 13/20 14/22 14/25 15/4 15/14
warn [2] 11/22 11/24	16/4 16/8 17/13 18/2 18/20 19/12 19/17
warrant [1] 22/2	19/21 21/3 21/10 21/13 29/14 30/12 30/14
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16/6 20/1 20/11 20/15 21/11 25/16 25/17	

STATE OF SOUTH CAROLINA
COUNTY OF FLORENCE

David Myers, # 298686,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
TWELFTH JUDICIAL CIRCUIT

Case No. 2013-CP-21-00493

ORDER

FILED
2014 MAR 10 AM 11:05
COURT OF COMMON PLEAS
FLORENCE COUNTY, SC

This matter comes before the Court by way of an Application for Post-Conviction Relief (PCR) filed by David Myers (Applicant). Respondent made its Return on or around September 16, 2013. The Court convened an evidentiary hearing in Florence County on February 10, 2014, at which time Applicant was present in court and represented by Tristan M. Shafer, Esquire. The Respondent was represented by Joshua L. Thomas, Esquire, of the South Carolina Attorney General's Office.

BACKGROUND

In June 2011, the Florence County Grand Jury indicted Myers for shoplifting, third or subsequent offense (2011-GS-21-00981). Scott P. Floyd, Esquire, represented Myers. On June 29, 2011, a jury found Myers guilty as indicted. The Honorable Thomas A. Russo sentenced Myers to ten years. Myers filed a timely notice of appeal. Robert M. Pahak, Esquire, of the Office of Appellate Defense perfected the appeal with the filing of an *Anders* brief on October 11, 2011. The South Carolina Court of Appeals dismissed the appeal on January 30, 2013. State

CERTIFIED: A TRUE COPY
Clerk of Court
CLERK OF COURT CP & GS
FLORENCE COUNTY, S.C.

v. Myers, Op. No. 2013-UP-051 (S.C. Ct. App. filed January 30, 2013). The remittitur was returned to the circuit court on February 28, 2013.

ISSUES PRESENTED

At his PCR hearing, Myers alleged that he is being held in custody unlawfully for the following reasons:

1. Because my charge is only a thirty day charge and was only valued at \$42.00;
2. Ineffective assistance of counsel...for failing to inform Defendant of the nature of the charges and failing to request a spoliation charge;
3. Denial of due process and equal protection of law;
4. Prosecutorial misconduct for the withholding of evidence.

STANDARD OF REVIEW

The Sixth Amendment of the United States Constitution guarantees a defendant the right to effective assistance of counsel. U.S. Const. amen. VI; Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.E.2d 674 (1984); Holden v. State, 393 S.C. 565, 713 S.E.2d 611 (2011). In a post-conviction relief action, Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland, 80 L.E.2d at 692; Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel

rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. *Strickland*, 80 L.E.2d 674. Applicant must overcome this presumption in order to receive relief. *Cherry v. State*, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." *Cherry*, 300 S.C. at 117, 386 S.E.2d at 625, *citing Strickland*, 80 L.E.2d 674. Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Cherry*, 300 S.C. at 117-18, 386 S.E.2d at 625.

All statutes are presumed constitutional and will, if possible, be construed so as to render them valid. *Davis v. Cnty. of Greenville*, 322 S.C. 73, 77, 470 S.E.2d 94, 96 (1996). A legislative act will not be declared unconstitutional unless its repugnance to the constitution is clear beyond a reasonable doubt. *Westvaco Corp. v. S.C. Dep't of Revenue*, 321 S.C. 59, 62, 467 S.E.2d 739, 741 (1995); *State v. Harrison*, 402 S.C. 288, 292-93, 741 S.E.2d 727, 729 (2013), reh'g denied (Apr. 3, 2013).

SUMMARY OF TESTIMONY

Applicant David Myers testified that he never met with his attorney prior to trial. Myers alleges that his attorney "tricked" him into going to trial, never informed him about the enhancements on shoplifting charges, never showed him any evidence, and only told him about a plea offer to serve four years after the conclusion of his trial. Myers also asserts that he never

admitted to the shoplifting offense. The Court also heard testimony from Myers that he has approximately seven prior convictions, two of which were shoplifting offenses for which he received thirty days for stealing beer and food. Furthermore, Myers averred that if his attorney informed him of the four-year plea offer, he would have accepted.

The Court also heard testimony from Scott Floyd. Floyd testified that he visited Myers in jail within a month of being assigned to represent him. Floyd testified that it was standard procedure for an investigator from his office to visit with inmates prior to an attorney being assigned to their case. Furthermore, Floyd testified that Myers confessed to the investigator that he committed the shoplifting offense. However, when Floyd met with Myers, he testified that Myers claimed he was innocent, that his cousin with the same name was the thief, and that he was arrested two days after the alleged event occurred.

Floyd also testified that after doing his own investigation he discovered that Myers was arrested within moments of the alleged theft and the State had several witnesses who knew Myers and were willing to testify that they saw him shoplift several bottles of turtle wax from Wal-Mart. The Court heard Floyd testify that he related the plea offer of four years to Myers and was mystified when Myers chose to reject that offer. Myer's attorney also stated that he discussed the charges, the elements of that charge, and potential defenses with Myers. In total, Floyd testified that he met with Myers at least three times prior to trial, filed several discovery motions on his behalf, and maintains that Myers was adamant about taking his case to trial.

ANALYSIS

The Court has reviewed the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. The Court has further had the opportunity to observe

witnesses who testified at the hearing and to closely pass upon their credibility. The Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

A. Ineffective Assistance of Counsel

The Court finds that Myers and his attorney, Scott Floyd, met on several occasions prior to trial. During these meetings, Myers and Floyd discussed the charges he faced, the elements and potential defenses to those charges, and all plea offers from the State. The Court finds that Myers chose to reject any plea offer and to proceed to trial. Despite the difficult challenges this case presented, Floyd was diligent throughout the discovery process and filed several pre-trial motions on Myers behalf.

Even assuming *in arguendo*, that Floyd was deficient for failing to request a spoliation charge, the Court further finds Myers cannot satisfy the prejudice prong of the Strickland analysis as to any of his allegations because the record contains overwhelming evidence of his guilt. Hutto v. State, 387 S.C. 244, 249, 692 S.E.2d 196, 198 (2010) ("No prejudice occurs, despite deficient performance, when there is overwhelming evidence of guilt." (citing Rosemond v. Catoe, 383 S.C. 320, 680 S.E.2d 5 (2009))).

At his trial, two loss prevention officers employed by Wal-Mart testified that they witnessed Myers shoplifting. Furthermore, an officer with the Lake City Police Department testified that she noticed Myers running away from the dumpster where she later recovered the stolen items. The Court can discern nothing trial counsel could have done differently to counter this evidence. In sum, this Court finds Applicant's claim for ineffective assistance of counsel fails because counsel was not deficient and the evidence overwhelmingly points to Myers's guilt.

B. Denial of Due Process and Equal Protection

Myers argued during the PCR hearing that the penalty provision of section 16-13-110(B)(1) of the South Carolina Code, and his sentence pursuant to that provision, violates the Eighth Amendment. This Court disagrees.

The Eighth Amendment to the United States Constitution, which applies against the States by virtue of the Fourteenth Amendment, provides, "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." U.S. CONST. amend. VIII. The Eighth Amendment prohibits not only the barbaric punishments, but also sentences that are disproportionate to the crime. Solem v. Helm, 463 U.S. 277, 284, 103 S.Ct. 3001, 77 L.E.2d 637 (1983); State v. Harrison, 402 S.C. 288, 293, 741 S.E.2d 727, 729 (2013).

When analyzing proportionality under the Eighth Amendment, the court must first determine whether the relationship between the sentence and the crime committed gives rise to an inference of gross disproportionality. State v. Harrison, 402 S.C. at 300, 741 S.E.2d at 733. If the court does not find that an inference of gross disproportionality is present, the analysis ends. Id. "In the rare instance that this threshold comparison gives rise to such an inference, intrajurisdictional and interjurisdictional analysis is appropriate." Id.

Under section 16-13-110(B)(1) of the South Carolina Code, a person guilty of shoplifting if he takes possession of or carries away merchandise offered for sale by any store with the intent of depriving that merchant of its benefit without paying the full retail value. In the event that a person is guilty of this offense a third or subsequent time, then he is guilty of a Class E Felony and may be imprisoned for up to ten years. S.C. Code Ann. § 16-1-20(A)(5) (Supp. 1995). The statutory language must be construed in light of the intended purpose of the

statute. State v. Lewis, 325 S.C. 324, 327, 478 S.E.2d 696, 698 (Ct. App. 1996). In Lewis, the court identified the legislative reasoning behind this enhancement as the “three strikes and you’re out” principle. Id.

In the present case, it is clear from the record that Myers conviction for shoplifting was properly enhanced under the South Carolina Code. It appears from the Myers’ record that he has five previous property offenses, four of which led to shoplifting convictions. Additionally, Judge Russo considered the legislative intent behind the enhancement provisions in his colloquy with Myers at the sentencing stage. Prior to this offense, Myers received a sentence of five years suspended upon ninety-five days, time served, and two years of probation for shoplifting. Furthermore, Myers testified at his PCR hearing that he was facing ten years for his shoplifting charge if convicted. Therefore, this Court finds that due to Myers’ repetitive illegal actions, his apparent disregard for the law, and the legislative intent behind the enhancement penalty for this offense, the relationship between the sentence and the crime committed does not give rise to an inference of gross disproportionality. As such, the Court denies Myers allegation that his sentence violates the Eighth Amendment.

C. Prosecutorial Misconduct

Myers also alleges prosecutorial misconduct. Prosecutorial misconduct is not an issue for post-conviction relief. Rather, this allegation is a direct appeal issue that is procedurally barred by S.C. Code Ann. § 17-27-20(b). Post-conviction relief is not a substitute for an appeal. Simmons v. State, 264 S.C. 417, 423, 215 S.E.2d 883, 885 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on appeal. Drayton v. Evatt, 312 S.C. 4, 8, 439 S.E.2d 517, 520 (1993). Myers could have raised the issue of

prosecutorial misconduct on appeal. The failure to do so has waived this allegation as grounds for relief. Regardless, it is the applicant's burden to prove actual prosecutorial misconduct. Alabama v. Smith, 490 U.S. 794 (1989). It appears that Myers only alleged prosecutorial conduct during his PCR application. At the PCR hearing, Myers did not articulate how this misconduct occurred, nor has he shown what information was not provided to defense counsel. Therefore, the Court finds that Myers has failed to meet his burden as it relates to this allegation.

D. All Other Allegations

As to any other allegations raised in the application or at the hearing in this matter and not specifically addressed in this order, the Court finds Myers failed to present sufficient evidence regarding such allegations. Accordingly, the Court finds Myers has abandoned any such allegations.

CONCLUSIONS

Based on the foregoing, the Court finds and concludes Applicant David Myers has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

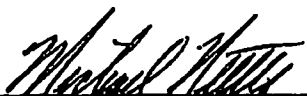
The Court notes that Myers must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), an applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a notice of appeal on the

applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

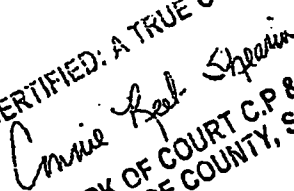
1. That the Application for Post-Conviction Relief is DENIED.
2. That Applicant be remanded to the custody of the Department of Corrections to complete the remainder of his sentence.

AND IT IS SO ORDERED this 7 day of March, 2014.



Michael G. Nettles
Presiding Judge, Twelfth Judicial Circuit


_____, South Carolina

FILED
2014 MAR 10 AM 11:05
CONNIE REEL-SHEARIN
CCCP & GS
FLORENCE COUNTY, SC
CERTIFIED: A TRUE COPY

CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

WITNESSES

Sandy Thompson Lake City Police Department

DOCKET NO. 2011-GS-21-0981

The State of South Carolina

County of

FLORENCE

COURT OF GENERAL SESSIONS

JUNE TERM 2011

THE STATE

PATRICIA S. PARR

vs.

ARREST WARRANT NUMBER

DAVID MYERS

1332933

ACTION OF GRAND JURY

TRIAL

Indictment for
SHOPLIFTING THIRD OR SUBSEQUENT
OFFENSE

Donald H. Dale
Foreperson of Grand Jury
Date: 6-9-11

VERDICT

Foreperson of Petit Jury

Date

CERTIFIED: A TRUE COPY
Wm. H. Spivey
CLERK OF COURT
FLORENCE COUNTY, SC

2011 JUN -9 PM 2:53
CLERK'S OFFICE
FLORENCE COUNTY, SC

STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE)

INDICTMENT FOR

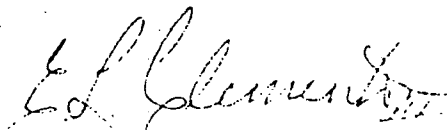
SHOPLIFTING THIRD OR SUBSEQUENT OFFENSE

At a Court of General Sessions, convened on JUNE 9, 2011 the Grand Jurors of FLORENCE County present upon their oath:

COUNT ONE- SHOPLIFTING THIRD OR SUBSEQUENT OFFENSE

That DAVID MYERS did in Florence County on or about February 8, 2011, take possession of, carry away, transfer to another area of the store, or cause to be carried away or transferred, alter, transfer, or remove the price label or tag on, and/or did transfer from its container to another container, merchandise displayed, held, stored or offered for sale by WALMART, to wit: 8 bottles of car wax valued at forty two dollars (\$42.00) , in violation of Section 16-13-110(A), S.C. Code of Laws, 1976, as amended, such being the defendant's third or subsequent offense for which the penalty is contingent upon the value of the property involved, in violation of Section 16-01-0057, S.C. 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.



E.L. Clements, III
TWELFTH CIRCUIT SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF Florence
STATE VS.

David Myers

AKA:

Race: B Sex: M Age: 50

DOB: SS#:

Address:

City, State, Zip: Lake City, SC 29560

DL#: SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

☒ CONVICTED OF or ☐ PLEADS

TO: Shoplifting / Enhancement for 3rd or sub. offense. Value \$1000 or less (see 16-01-0057)

in violation of § 16-13-0110(B)(1) of the S.C. Code of Laws, bearing CDR Code # 2877

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC §17-25-45 w/minor 1st or Lewd Act)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)

The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

PARAGRAPHS

9826

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,

for a determinate term of 10 days/months/years or ☐ under the Youthful Offender Act not to exceed years

and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment

of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:

☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ 5.00
3% to County (if paid in installments)	\$	\$
TOTAL	\$	\$ 105.00

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2011-GS-21-0981

A/W#: I332933

Date of Offense: 2/8/2011

S.C. Code § : 16-13-0110(B)(1)

CDR Code #: 2877

SENTENCE SHEET

Presiding Judge

Judge Code:

Sentence Date:

☐ Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.