

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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Certiorari to Aiken County  
J. Derham Cole, Circuit Court Judge

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**RECEIVED**

JAN 14 2015

S.C. Supreme Court

Opinion No. 2014-UP-447 (S.C. Ct. App. filed 12/10/2014)

13-GS-02-000063

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THE STATE,

RESPONDENT,

V.

CAROLYN POE,

PETITIONER

---

APPENDIX

---

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**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE  
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING  
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA  
In The Court of Appeals**

The State, Respondent,

v.

Carolyn Poe, Appellant.

Appellate Case No. 2013-000356

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Appeal From Aiken County  
J. Derham Cole, Circuit Court Judge

---

Unpublished Opinion No. 2014-UP-447  
Submitted October 1, 2014 – Filed December 10, 2014

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**AFFIRMED**

---

Appellate Defender Benjamin John Tripp, of Columbia,  
for Appellant.

Attorney General Alan McCrory Wilson and Assistant  
Attorney General Mark Reynolds Farthing, both of  
Columbia; and Solicitor James Strom Thurmond, Jr., of  
Aiken, for Respondent.

---

**PER CURIAM:** Affirmed pursuant to Rule 220(b), SCACR, and the following  
authorities: *State v. McEachern*, 399 S.C. 125, 137, 731 S.E.2d 604, 610 (Ct. App.

2012) ("[T]he scope of cross-examination is within the discretion of the trial court, and the court's decision will not be reversed on appeal absent a showing of prejudice."); *State v. Sapps*, 295 S.C. 484, 486, 369 S.E.2d 145, 145-46 (1988) ("It is improper for the solicitor to cross-examine a witness in such a manner as to force him to attack the veracity of another witness."); *Burgess v. State*, 329 S.C. 88, 91, 495 S.E.2d 445, 447 (1998) ("[I]mproper pitting constitutes reversible error only if the accused is unfairly prejudiced."); *id.* (holding the petitioner was not prejudiced by improper witness pitting in light of the other evidence presented in the case); *State v. Pradubsri*, 403 S.C. 270, 280, 743 S.E.2d 98, 104 (Ct. App. 2013) ("[T]he materiality and prejudicial character of [an] error must be determined from its relationship to the entire case." (internal quotation marks omitted)).

**AFFIRMED.**<sup>1</sup>

**WILLIAMS, GEATHERS, and McDONALD, JJ., concur.**

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<sup>1</sup> We decide this case without oral argument pursuant to Rule 215, SCACR.

## THE STATE OF SOUTH CAROLINA

## IN THE COURT OF APPEALS

THE STATE,

RESPONDENT,

V.

CAROLYN POE,

APPELLANT

APPELLATE CASE NO. 2013-000356

Appeal from Aiken County

J. Derham Cole, Circuit Court Judge

Opinion No. 2014-UP-447

## PETITION FOR REHEARING

Appellant respectfully petitions the Court for a rehearing of its Unpublished Opinion No. 2014-UP-447 pursuant to Rule 221(a), SCACR based upon the following points overlooked or misapprehended by the Court.

The Opinion cites *Burgess v. State*, 329 S.C. 88, 91, 495 S.E.2d 445, 447 (1998), for the proposition that pitting constitutes reversible error only if unfair prejudice results and *State v. Pradubsri*, 403 S.C. 270, 280, 743 S.E.2d 98, 104 (Ct. App. 2013) for the proposition that the prejudicial character of pitting must be determined from its relationship to the entire case.

The South Carolina Supreme Court has held that unfair prejudice results when the credibility of a pitted witness is a critical issue in the case. *State v. Sapps*, 295 S.C. 484, 486, 369 S.E.2d 145, 146 (1988); *State v. Bryant*, 316 S.C. 216, 221, 447 S.E.2d 852, 855 (1994). In this case, Appellant's credibility was a critical issue. The State's evidence consisted of Lawrence's testimony that he saw Appellant put the DVDs on her person and leave the store and Corporal Priester's testimony that he observed in Appellant's truck the same eight DVDs that the store reported missing. Appellant testified that although she did pick up the DVDs, she later put them away. Thus, the issue Appellant's credibility was material to one-half of the State's evidence in the case. The other half of the evidence was circumstantial. Furthermore, the wording of the solicitor's pitting of Appellant added a second layer of prejudice because the solicitor impliedly asserted that Appellant was claiming the witnesses intentionally gave false accounts in order to frame her. The wording constituted a measured attempt to negatively portray Appellant to the jury as dissident and unscrupulous. Accordingly, unfair prejudice resulted from the pitting, and this Court should reverse Appellant's conviction and remand for a new trial.

Respectfully submitted,

  
\_\_\_\_\_  
Benjamin John Tripp  
Appellate Defender

This 11th day of December, 2014.

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

---

Appeal from Aiken County

J. Derham Cole, Circuit Court Judge

---

THE STATE,

RESPONDENT,

V.

CAROLYN POE,

APPELLANT

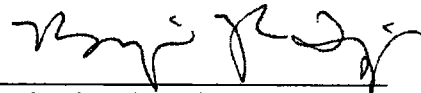
APPELLATE CASE NO. 2013-000356

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CERTIFICATE OF SERVICE

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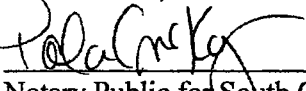
The undersigned attorney hereby certifies that a true copy of the Petition for Rehearing in the above-entitled case has been served upon Mark R. Farthing, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 11th day of December, 2014.



Benjamin John Tripp  
Appellate Defender

ATTORNEY FOR APPELLANT

SWORN TO BEFORE ME this 11th day  
of December, 2014.



(L.S.)

Notary Public for South Carolina

My Commission Expires: July 24, 2022.

# The South Carolina Court of Appeals

The State, Respondent,

v.

Carolyn Poe, Appellant.

Appellate Case No. 2013-000356

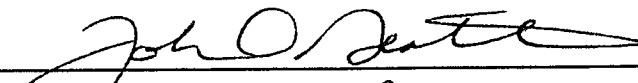
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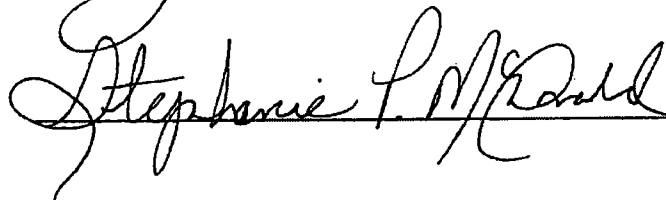
## ORDER

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After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

 J.

 J.

 J.

Columbia, South Carolina

cc:

Alan McCrory Wilson, Esquire  
Benjamin John Tripp, Esquire  
Mark Reynolds Farthing, Esquire  
James Strom Thurmond, Jr., Esquire  
The Honorable J. Derham Cole

**FILED**

December 17, 2014

STATE OF SOUTH CAROLINA

In The Court of Appeals

**RECEIVED**

JAN 14 2015

APPEAL FROM AIKEN COUNTY

J. Derham Cole, Circuit Court Judge

S.C. Supreme Court

THE STATE,

RESPONDENT,

V.

CAROLYN POE,

APPELLANT

APPELLATE CASE NO. 2013-000356

RECORD ON APPEAL

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**THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:**

**STATE'S EXHIBIT #1 (DVD)**

**STATE'S EXHIBIT #2 (PHOTOGRAPH)**

State of South Carolina                    )  
County of Aiken                            ) Court of General Sessions  
                                                  2013-GS-02-00063

State of South Carolina                    )  
                                          Plaintiff                                                )  
                                          vs.                                                        )  
Carolyn Poe                                                )  
                                          Defendant                                                ) Transcript of Record

February 12, 2013  
Aiken, South Carolina

**B E F O R E:**

The Honorable J. Derham Cole, Judge; and a jury.

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

Jeffrey A. Slocum, Jr. Asst. Solicitor  
Kevin N. Molony, Asst. Solicitor  
Attorney for the Plaintiff

Michael D. Routzong, Esq.  
C. David Hayes, Esq.  
Attorney for the Defendant

Lisa H. Davenport, RPR  
Official Court Reporter

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## STATE EXHIBITS

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NODESCRIPTIONIDEV

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## COURT EXHIBITS

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1           (Whereupon, on February 12, 2013 the following  
2 proceedings were held:)

3           MR. SLOCUM: The State calls the case of the State  
4 versus Carolyn H. Poe, indictment 2013-GS-02-00063, a  
5 true-billed indictment for shoplifting.

6           THE COURT: All right. Mr. Routzong, this is the  
7 Defendant Carolyn H. Poe?

8           MR. ROUTZONG: Yes, sir.

9           THE COURT: Are y'all ready for jury selection?

10          MR. ROUTZONG: Yes, sir.

11          THE COURT: All right. Ladies and gentlemen, the  
12 first case that we have that's going to require the  
13 participation of some of you jurors is the case of the  
14 State versus Carolyn H. Poe. Mrs. Poe has been accused by  
15 the prosecutor with having committed the crime of  
16 shoplifting. When a person is charged with a crime that  
17 comes to this court they're charged by way of a document  
18 called an indictment. The indictment sets forth the  
19 charge brought against the Defendant. It serves to put  
20 them on notice as to what crime the state claims they have  
21 committed. It's not evidence of anything. It's not proof  
22 of anything, but it is the manner by which any person is  
23 formally accused of a crime in the court of General  
24 Sessions in South Carolina.

25          In this case Mrs. Poe is charged with shoplifting and

1 the State alleges by way of this indictment that she did  
2 on or about May 23 of 2012 take possession of, carry away,  
3 or transfer from one person to another or from one area of  
4 the store to another or she did alter, transfer, or remove  
5 the price label or tag of an item or did transfer an item  
6 from one container or another or conceal merchandise that  
7 was displayed or held or offered for sale by the store  
8 with the intention of depriving the merchant of use and  
9 possession of and benefit the merchandise without paying  
10 the full retail price thereof. They specifically allege  
11 that Mrs. Poe did shoplift eight DVDs valued at 2000 or  
12 less from the Walmart store located on Knox Avenue in  
13 North Augusta, South Carolina.

14 Now, as to those allegations and as to that charge  
15 Mrs. Poe has entered a plea of not guilty. A plea of not  
16 guilty places upon the state the burden of proving the  
17 allegations that they've set forth in that indictment.  
18 The burden of proving each of the essential elements of  
19 the crime alleged against the Defendant and, therefore,  
20 the burden is upon the State to establish her guilt to the  
21 satisfaction of 12 jurors beyond a reasonable doubt before  
22 a verdict of guilty could be returned.

23 Now, before we begin with the jury selection in the  
24 case I've got some questions that I am going to be asking  
25 you and the purpose of the question is to determine

1           THE COURT: We're back to the trial of Carolyn Poe.  
2   The defendant is present with counsel. Prosecutor is  
3   present. We've had a discussion in chambers. I  
4   understand that the state and the Defense have reached an  
5   agreement as to a stipulation; the stipulation being that  
6   they agree that jurisdiction is properly before the court;  
7   that if the defendant is convicted by this jury of  
8   shoplifting it will be a third or subsequent offense. She  
9   would be subject to sentencing pursuant to Section 16-1-57  
10   and jurisdiction is proper in this court.

11           Are we agreed on that, gentlemen?

12           MR. SLOCUM: Yes, sir, Your Honor.

13           MR. ROUTZONG: Yes, Your Honor.

14           THE COURT: Okay. Anything else we need to state for  
15   the record?

16           MR. SLOCUM: Nothing from the State.

17           MR. ROUTZONG: Nothing from the Defense, Your Honor.

18           THE COURT: All right. Bring the jury in and ask  
19   Mrs. Gibbs to take the foreperson's seat.

20           (Whereupon, the jury came into open court at  
21   approximately 10:14.)

22           THE COURT: Good morning, ladies and gentlemen. Now  
23   we are ready to begin with the trial of the case for which  
24   each of you have been selected, and, Mrs. Gibbs, I would  
25   ask you to serve as the foreperson of the jury. As the

1 of attention so that you can properly assess their  
2 credibility when you go back to begin with your  
3 deliberations in the case and you'll be able to assess it  
4 as I say in light of all of the evidence that has been  
5 received during the course of the trial, and, of course,  
6 it's important that you keep an open mind throughout the  
7 course of the trial and that simply means that you are not  
8 to begin making up your minds or formulating your opinions  
9 as to what you think the ultimate decision in this case  
10 ought to be until all of the evidence has been received,  
11 until I have instructed you on the law that's applicable  
12 in the case, and until you've been asked to go back and  
13 begin with your deliberations in order to arrive at your  
14 decision. That is the process that is designed for you  
15 twelve jurors to arrive at a fair and just decision in  
16 this case.

17 So, I do want to thank you in advance for your  
18 participation as well as for your careful attention. I  
19 would ask that you please give the lawyers your attention  
20 now as they give you their opening statements.

21 Solicitor?

22 MR. SLOCUM: Thank you, Your Honor. May it please  
23 the court, Mr. Routzong.

24 OPENING STATEMENT

25 MR. SLOCUM: Ladies and gentlemen of the jury, my

1 name is Jay Slocum and Kevin Molony and I represent the  
2 state in this matter. This will be a short trial. You  
3 won't hear but from a couple of witnesses, but it's  
4 serious. It is a serious matter. I brought y'all in here  
5 yesterday and asked you all of those questions to make  
6 sure that we can find twelve of y'all that were fair --  
7 fair and impartial for the State and for Mrs. Poe. This  
8 is important to both of us. Whether we're in here trying  
9 a shoplifting, assault and battery, larceny or attempted  
10 murder, it is twelve. We have twelve people on each trial  
11 and it's serious. It is a serious matter. I am going to  
12 be brief. The state is going to be brief. We ask that  
13 you take all the evidence as you see it.

14       Going back to shoplifting, we all know what  
15 shoplifting is. This is not a difficult charge and  
16 difficult case, but, like I said earlier, it is serious.  
17 We learn from mamas, daddies, grandmas, grandpas, church,  
18 school, somebody, what shoplifting is at an early age.  
19 You can't take something of value that somebody sells in a  
20 store and walk out the store with it. You can't not pay  
21 for something.

22       That can come in many forms. You can just run out of  
23 the store with something. You can hide something in your  
24 pocket. You can conceal it as you heard the Judge read  
25 earlier today. I just ask that you look at all the

1 evidence presented and at the end of this trial you will  
2 be firmly convinced that Mrs. Poe did shoplift from  
3 Walmart on May 23, 2012. I thank you for your  
4 service.

5 THE COURT: Mr. Routzong?

6 MR. ROUTZONG: May it please the court, Mr. Slocum,  
7 Mr. Molony.

8 OPENING STATEMENT

9 MR. ROUTZONG: This is a case about shopping, not  
10 shoplifting. This is a case against fright, not flight.  
11 This is a case about right and what's not quite right.

12 My name is Michael Routzong. That's Mr. David Hayes.  
13 We represent Mrs. Poe. The Solicitor is quite correct and  
14 the Judge instructed you we really would appreciate it if  
15 you pay attention and actually go back and consider the  
16 evidence and if you do we think you'll find that Mrs. Poe  
17 is not guilty. Thank you.

18 THE COURT: All right. Mr. Slocum.

19 MR. SLOCUM: The State calls Mr. Timothy Lawrence to  
20 the stand.

21 TIMOTHY LAWRENCE, after being duly sworn,  
22 testified as follows:

23 THE CLERK: Please have a seat in the witness box.  
24 State your full name for the court and spell your  
25 last.

1 THE WITNESS: My name is Timothy Lawrence.

2 DIRECT EXAMINATION

3 BY MR. SLOCUM:

4 Q Spell your last name, please.

5 A L-A-W-R-E-N-C-E.

6 Q Mr. Lawrence, how are you doing today?

7 A Good.

8 Q Who do you work for, Mr. Lawrence?

9 A Walmart.

10 Q And how long have you been at Walmart?

11 A Ten years.

12 Q What is your job title and duties at Walmart?

13 A Asset protection, to detect theft, to protect Walmart  
14 assets, internal and external.

15 Q Okay. And which Walmart do you work at?

16 A The one at 1201 Knox Avenue in North Augusta.

17 Q Is that in Aiken County?

18 A Yes, it is.

19 Q Were you working at that Walmart on Knox Avenue on  
20 May 23, 2012?

21 A Yes, sir, I was.

22 Q Do y'all sell items at Walmart to purchase?

23 A Excuse me?

24 Q Does Walmart sell items?

25 A Yes, sir, they do.

1 Q Clothing, food?

2 A Yes, sir.

3 Q Electronics?

4 A Yes, sir.

5 Q Do they sell DVDs?

6 A Yes, sir, they do.

7 Q Going back to May 23, 2012 what led you to become  
8 involved in this matter?

9 A On May twelve -- I'm sorry, May 23, 2012 as I was  
10 walking the floor doing my duties I observed two females  
11 in the electronics department. They were selecting DVDs.  
12 On top of the shopping cart they had some stuffed animals  
13 where they were placing the DVDs as they were concealing  
14 them under the stuffed animals.

15 Q So they had -- I'm sorry for interrupting. They had  
16 other items inside this cart?

17 A Yes, sir.

18 Q And they were bringing DVDs to this cart?

19 A Yes, sir, they was.

20 Q What was suspicious about it to you?

21 A The suspicious part was them putting the DVDs under  
22 the stuffed animals as if they was hiding them for the  
23 amount that they was getting.

24 Q About how long did you watch this happen?

25 A Until they exited the department, probably maybe 20

1 minutes I would say.

2 Q And what all did you observe as you were watching it?

3 A I observed both females selection of DVDs, both  
4 females place DVDs inside the cart under the stuffed  
5 animals.

6 Q And what happened after that?

7 A After that they exited the department.

8 Q Okay. Where -- did they go to another area of the  
9 store?

10 A Yes, sir. They went to fabrics and crafts which is a  
11 couple of aisles down from the electronics department.

12 Q Do you see one of those females in the courtroom  
13 today?

14 A Yes, sir, I do.

15 Q Could you please point her out?

16 A She's sitting at the end over here with the glasses.

17 MR. SLOCUM: Your Honor, would the record reflect  
18 that the witness has pointed out the Defendant?

19 THE COURT: It shall.

20 Q Getting back to your question, what did you observe  
21 them do after they left the electronics department?

22 A I observed them in the fabrics and crafts department  
23 as they parked the shopping cart there. One female was  
24 standing like behind the shopping cart and the other one  
25 standing off to the side. Both females was interacting

1 with opening the DVDs -- one female passing it to the  
2 other one. Then that female was placing it into her left  
3 short pockets.

4 Q Were they taking the DVDs out of the cases?

5 A Out of the cases placing the cases on to the shelf,  
6 placing the actual DVD inside her pocket, the shorts  
7 pocket.

8 Q Inside whose pocket?

9 A The Defendant.

10 Q Mrs. Poe's?

11 A Yes.

12 Q How far away from the Defendant were you during this  
13 entire time you were viewing it? How close did you get?

14 A Probably from where I am to maybe the middle of the  
15 benches out there.

16 Q Now, how were you -- what were you watching them do  
17 at that distance?

18 A From that distance I was -- usually, what I do is  
19 post up behind an end cap and I bend down and I peek  
20 through the end cap as I watch the person; therefore, they  
21 can't see me as I'm doing that.

22 Q At any time during this time did you get close to  
23 them within closer range than that or was it always from a  
24 distance?

25 A It was from a distance.

1 Q Did you have a good view --

2 A Yes, sir, I did.

3 Q -- of the Defendant? And that individual you saw on  
4 May 23, 2012 is the same individual that is sitting at  
5 that table?

6 A Yes, sir, it was the same individual that was putting  
7 the DVDs inside.

8 Q After you viewed this in the crafts section, what  
9 happened after that?

10 A After that they proceeded towards the lawn and garden  
11 department. They stopped at the register where they  
12 purchased the items that they had inside of the cart which  
13 was the stuffed animals. No purchase of the DVDs was made  
14 at that time.

15 Q Okay. And after they left the garden section what  
16 happened?

17 A After they left the garden section passing all points  
18 of sale on the outside of the patio that's when I  
19 approached them.

20 Q And did you -- what did you do?

21 A I approached them. I presented myself as asset  
22 protection for the store and asked to speak with Mrs. Poe  
23 about the unpaid-for merchandise.

24 Q And did they speak to you? Did they accompany you  
25 back to the store? What happened?

1 A When I did that Mrs. Poe said she didn't -- Excuse  
2 me -- she didn't know what the fuck I was talking about.

3 Q And then did you -- what was your next step after  
4 that?

5 A My next step was immediately to get law enforcement  
6 on the phone. They -- She proceeded to walk off in a fast  
7 pace and she told the other defendant she was with to go  
8 and get in the truck.

9 Q So from the time y'all actually approached the  
10 Defendant on the patio and she said she didn't know what  
11 you were talking about you called law enforcement at that  
12 point?

13 A Yes, sir. I was on the phone with law enforcement.

14 Q And what transitioned after that?

15 A I just continued to keep eyesight on her just in case  
16 she was probably trying to get rid of the merchandise. At  
17 that point in time the truck went forward which it went  
18 like half-way ---

19 Q The truck -- let me stop you there. What truck?

20 A There was a red truck they came in.

21 Q Who went to that vehicle?

22 A Mrs. Poe. Mrs. Poe.

23 Q Mrs. Poe. You testified earlier there were two  
24 females --

25 A Yes, sir.

1 Q -- in the store? Was this other female with  
2 Mrs. Poe during --

3 A Yes, sir.

4 Q -- all of this?

5 A Yes, sir.

6 Q Was that the one who went to the truck?

7 A That's the one that she told to go get in the truck.  
8 She ran and crunk [sic] the truck up, but she pulled away  
9 at a fast pace but she stopped in the middle of the  
10 parking lot and waited for Mrs. Poe.

11 Q And where were you during all of this?

12 A I was still had eye contact with Mrs. Poe and she  
13 continued to walk towards the red truck.

14 Q Were you relaying all of this to law enforcement at  
15 that time?

16 A Yes. Yes.

17 Q Who did you call? The police department, sheriff's  
18 office?

19 A The police department; the City of North Augusta  
20 Police Department.

21 Q Did that truck -- did you say Mrs. Poe got into that  
22 vehicle?

23 A Yes, she did.

24 Q Did that truck leave the premises of Walmart?

25 A Yes.

1 Q And you were on the phone with North Augusta --

2 A Yes, I was.

3 Q -- Police Department? What did you do after the  
4 truck left the parking lot?

5 A I continued to maintain a visual. I was able to get  
6 a tag number from the truck, give them the description of  
7 the truck, the color, the make, the model as it was  
8 leaving and I continued to maintain the truck until it  
9 exited the lot.

10 Q So you're on the phone following this?

11 A Yes, sir.

12 Q How far did you follow it?

13 A I followed it until North Augusta arrived which was  
14 right at the red light.

15 Q So within a matter of seconds, maybe a minute --

16 A Yes, sir.

17 Q -- you saw them be pulled over?

18 A Yes, sir, I did.

19 Q When you got up to that location what did you  
20 observe?

21 A When I got up to the location I was able to identify  
22 both Defendants as them being in the store. I was able to  
23 describe to the officer what took place and the DVDs that  
24 they had taken [sic] from the store.

25 Q Was Mrs. Poe in that truck?

1 A Yes, sir.

2 Q Where was she seated?

3 A She was on the passenger side.

4 Q Passenger side? Do you recall if she was in the  
5 front seat, back seat?

6 A She was in the front passenger.

7 Q Did you notice anything else when you got up to the  
8 truck? Was there anything inside the truck? Or did you  
9 even get that far?

10 A Yes, sir. I was right there.

11 Q Okay. Was there anything from Walmart in that truck?

12 A Yes, sir, it was.

13 Q What was that?

14 A DVDs that I observed her taking from the store.

15 Q The ones you saw testified to earlier being taken out  
16 of the case?

17 A Yes, sir.

18 Q Did you get all of those back?

19 A Yes, sir, I did.

20 MR. SLOCUM: Permission to approach, Your Honor?

21 THE COURT: You may.

22 Q Mr. Lawrence, I am showing you now what's been  
23 previously marked for identification purposes only as  
24 State's Exhibit No. 2. Do you recognize that?

25 A Yes, I do.

1 Q Without testifying to it, what is it?

2 A DVDs that was removed from the store on May 23.

3 Q Do these fairly and accurately represent the DVDs  
4 from May 23, 2012?

5 A Yes.

6 Q Has this picture been changed or altered in any way?

7 A No, it hasn't.

8 MR. SLOCUM: Your Honor, the State at this time moves  
9 to put Exhibit No. 2 into evidence.

10 MR. ROUTZONG: I don't have any objection, Your  
11 Honor.

12 THE COURT: It's admitted.

13 (Whereupon, State's Exhibit No. 2 was admitted into  
14 evidence.)

15 MR. SLOCUM: May I publish to the jury?

16 THE COURT: You may.

17 Q Mr. Lawrence, these eight DVD cases, were they found  
18 in the arts and crafts section of Walmart?

19 A Yes, sir, it was.

20 Q And those eight DVDs that you found in the truck  
21 where Mrs. Poe was located, were they the ones that  
22 matched those eight DVD cases?

23 A Yes, sir, it was.

24 MR. SLOCUM: Permission to approach, Your Honor?

25 THE COURT: You may.

1 Q Mr. Lawrence, let me show you what's been marked as  
2 State's Exhibit 3 for identification purposes only. Do  
3 you recognize this?

4 A Yes, sir.

5 Q What is it?

6 A It's what we call a training receipt that we get to  
7 get the price of the merchandise.

8 Q Is this the receipt for May 23, 2012?

9 A Yes. That's the receipt that I made.

10 Q Does it fairly and accurately depict the receipt of  
11 that date for May 23, 2012?

12 A Yes, sir.

13 Q Has it been changed or altered?

14 A No, sir, it hasn't.

15 MR. SLOCUM: The State moves to enter Exhibit 3 into  
16 evidence, Your Honor.

17 MR. ROUTZONG: I don't object, Your Honor.

18 THE COURT: It's admitted.

19 (Whereupon, State's Exhibit No. 3 was admitted into  
20 evidence.)

21 Q Could you testify to -- could you please tell the  
22 jury -- they look like titles. Could you please read  
23 those titles and the actual amount at the bottom of that  
24 receipt?

25 A The first title like would be Mission Impossible

1    which would be 14.96. The second one is Don't Be a Menace  
2    To Society which was four dollars. The third one would be  
3    Breaking Dawn which would be 12.96. The fourth one would  
4    be Happy Feet which is 14.96, Joyful Noise which is 14.96,  
5    Underworld which is 17.96, Alvin and The Chipmunks which  
6    is 14.96, and Immortal which is 14.96 coming to a total of  
7    \$109.

8    Q     \$109. So those DVDs were stole at Walmart?

9    A     Yes, sir, it was.

10   Q     And you said you got those DVDs back?

11   A     Yes, sir.

12   Q     This incident on May 23, was all of this recorded?

13   A     Yes, sir, it was.

14   Q     How so?

15   A     With a DVR system that we have at the store.

16   Q     And is this based on cameras inside and outside of  
17   Walmart?

18   A     Inside of it, yes. Inside and outside rooftop  
19   cameras.

20   Q     This footage, how is it kept? Is it on a server?  
21   How do y'all maintain it?

22   A     We usually burn it to a hard drive where it's saved.

23   Q     So it stays in your possession?

24   A     Yes, sir, it does.

25   Q     And who has access to it?

1 A No one but asset protection.

2 Q Just those in asset protection?

3 A Yes.

4 Q And how do those files from the hard drive -- how are  
5 they maintained? Are they -- do you keep them? Do you  
6 put them on a disk? What do you do with them after  
7 something like this happens?

8 A They only go out through law enforcement if they  
9 request a video.

10 Q Did law enforcement request a video in this?

11 A Yes, sir.

12 Q Did you provide it to them?

13 A Yes, sir, I did.

14 MR. SLOCUM: Permission to approach, Your Honor?

15 THE COURT: You may.

16 Q Do you recognize -- I'm showing you State's Exhibit 1  
17 for ID purposes. Do you recognize this?

18 A Yes, sir.

19 Q And what is this?

20 A A DVD of the incident that happened.

21 Q And have you had a chance to view it?

22 A Yes, sir, I did.

23 Q Does it fairly and accurately depict the events on  
24 May 23, 2012?

25 A Yes, sir, it does.

1 Q Has it been changed or altered in any way?

2 A No, sir.

3 MR. SLOCUM: Your Honor, the State moves to enter  
4 Exhibit 1 into evidence.

5 MR. ROUTZONG: Without objection, Your Honor.

6 (Whereupon, State's Exhibit No. 1 was admitted into  
7 evidence.)

8 MR. SLOCUM: Your Honor, may the State publish  
9 relevant parts to the jury?

10 THE COURT: You may. Is that where y'all usually  
11 show those from?

12 MR. SLOCUM: Yes, Your Honor.

13 THE COURT: Is there some reason you can't put it in  
14 the middle?

15 MR. SLOCUM: Our extension cord.

16 THE COURT: Y'all let me know if you can't see it and  
17 we'll make other arrangements.

18 MR. SLOCUM: Your Honor, once these videos play may  
19 the witness step down and answer some questions I have  
20 next to the television?

21 THE COURT: Yes, he may, but he'll need to take your  
22 position so that the Court Reporter can see him as he  
23 testifies.

24 MR. SLOCUM: Yes, sir.

25 Mr. Lawrence, if you would step down and stand

1 basically where I just was, please.

2 (Whereupon, the witness leaves the witness stand and  
3 the video begins to play.)

4 Q What does this mean down here, this DLEC computers?

5 A Electronic computers.

6 THE COURT: Mr. Slocum, you can't stand between him  
7 and the Court Reporter.

8 MR. SLOCUM: Yes, sir. May I stand over here on this  
9 side?

10 THE COURT: You can go ahead.

11 Q Okay. What does that mean? Was that the name of the  
12 camera?

13 A Yes, sir.

14 Q So it's in electronics?

15 A Actually, the computers were just right here telling  
16 me what I have on that aisle.

17 Q Okay. And is this on 5/23/2012? Is that the date of  
18 this footage?

19 A Yes, sir.

20 Q Okay. And what are you observing right here? You're  
21 in the store; correct?

22 A Yes, sir.

23 Q What is it about this video that you're watching at  
24 this point?

25 A Here is Mrs. Poe with the stuffed items on the top

1 and I am over here.

2 Q Okay. So you're within --

3 A Yes, sir.

4 Q -- view watching her interact with the other female?

5 A Yes, sir.

6 Q And what are you witnessing at this time?

7 A She making selection of DVDs.

8 Q Okay. How is it taking place? Is Mrs. Poe doing it?

9 A Both.

10 Q Okay. So are they bringing them back to the cart?

11 A Yes.

12 Q Okay. And about how long do you watch this take

13 place?

14 A About maybe about 20 minutes.

15 Q And you're not on camera, correct, during this

16 footage?

17 A Not in this footage.

18 Q All right. But you're still watching all this

19 happen?

20 A Yes, sir.

21 Q Okay. Can you pause that?

22 This individual here with the black hood on, was that

23 the other individual with Mrs. Poe --

24 A Yes, sir.

25 Q -- that day? She was helping with the DVDs?

1 A Yes, sir, she was.

2 Q Whenever you see the Defendant come back in the frame  
3 will you point that out, please?

4 A She's right here.

5 Q In the white shirt?

6 A Yes. This is the other.

7 Q Is that her on the left-hand side of the screen?

8 A Yes, sir. As you can see none of the DVDs are  
9 present actually in visual sight inside of the cart.  
10 They're all up under the stuff.

11 Q That was the initial suspicion that kind of --

12 A Yes, sir.

13 Q -- alerted your attention; correct? We're going to  
14 show you another video.

15 THE COURT: Let me -- before you go further, let me  
16 remind the witness. Now, you're aware from the stand; so  
17 I need you to speak up a little bit so all of us can be  
18 sure to hear.

19 THE WITNESS: Yes, sir.

20 Q Now this video here, would you please tell the jury  
21 what BLEC music means?

22 A It is actually being a shot of that aisles which is  
23 DVDs -- I mean, CDs, music CDs.

24 Q In electronics department?

25 A Yes, sir.

- 1 Q And that date 5/23/2012 is accurate?
- 2 A Yes, sir.
- 3 Q This is the same timeframe but a different view of
- 4 the incident; correct?
- 5 A Yes, sir.
- 6 Q Who do we have in the video?
- 7 A Mrs. Poe which is seen up there.
- 8 Q Again, in the white shirt?
- 9 A Yes, sir.
- 10 Q Could you please point out where on the -- where you
- 11 are in the store? Right side, left side?
- 12 A I'm to your right.
- 13 Q Okay. That round carousel, does that contain DVDs in
- 14 the electronics department? This right here, what is
- 15 that?
- 16 A DVDs in the center right here. Okay.
- 17 Q Speak up.
- 18 A It contains DVDs in the center.
- 19 Q A few more videos. What does GC pos 7172 mean?
- 20 A Garden center point of sale; 71 and 72 is the
- 21 register numbers.
- 22 Q And May 23, 2012, is that the accurate date of those
- 23 videos?
- 24 A Yes, sir.
- 25 Q Where are you? How far are you from these cash

1 registers?

2 A Probably about from right here to the end which is  
3 some aisles located behind the cash register. I'm hiding  
4 behind one of the aisles.

5 Q Okay. What do you observe at this point that day  
6 from your location?

7 A I observed the defendant about to check out paying  
8 for the stuffed items.

9 Q Items that were in the cart?

10 A Yes, sir, the stuffed animals that she had in the  
11 cart.

12 Q Did she pay for the DVDs?

13 A No, sir, she did not.

14 Q The ones you saw her put in her pocket she didn't pay  
15 for them?

16 A She didn't purchase them. As you can see only the  
17 stuffed animals only went across the register. This is  
18 the second defendant that was with her just walked up  
19 here.

20 Q What did you do after they left the store right here?

21 A Well, I actually waited until they cleared the patio  
22 before I went out and stopped them.

23 Q Made sure they exited the store?

24 A Yes, sir.

25 Q Okay. And was that where you asked to speak to them?

1 A Yes. Once they exit the store past the patio that's  
2 when I approached, made the approach.

3 Q And what did you ask them?

4 A I asked to speak about the unpaid-for merchandise,  
5 the DVDs.

6 Q And did they come back in the store with you?

7 A No, sir, they didn't.

8 Q What view is this?

9 A That view is a rooftop camera which is the front  
10 drive of the garden center.

11 Q Okay. At what point do you come on the scene?

12 A I am coming right now to approach.

13 Q Could you point out please here?

14 A This is me right here making an approach. As you can  
15 see how she's throwing up her hands, I don't know what the  
16 fuck you're talking about, and she continued to walk off.

17 Q Are you in the white shirt and blue jeans?

18 A Yes, sir. This is me and this is my partner Tara.

19 Q Okay. And who are the other two individuals?

20 A The two Defendants; Mrs. Poe and the other defendant.

21 Q Please tell us what's happening here.

22 A This is ---

23 Q This is another rooftop camera --

24 A Yes, sir, it is.

25 Q -- on May 23, 2012?

1 A That's the female running as she told her to run and  
2 jump in the truck which is a red truck.

3 Q Where ---

4 A This is Mrs. Poe running. This is me running behind  
5 Mrs. Poe just to see -- make sure she didn't throw -- get  
6 rid of the DVDs. If she did, I would know the location  
7 where she threw them.

8 Q Is this another rooftop camera on May 23, 2012 --

9 A Yes, sir, it is.

10 Q -- at Walmart?

11 A Yes, sir.

12 Q 1201 Knox Avenue?

13 A Yes, sir.

14 Q This is the defendant running and getting into the  
15 red truck right here.

16 Q Is that Mrs. Poe?

17 A That's not Mrs. Poe. This is Mrs. Poe right here.  
18 This is me getting the tag number of the truck and  
19 everything that she was pulling off in. This is Mrs. Poe  
20 right here cutting through the cars. This is me still and  
21 you can see as I said the truck stopped in the middle of  
22 the parking lot.

23 Q And you're still on the phone with North Augusta  
24 through all of this?

25 A Yes, sir, I am.

1 Q Is that the red truck you testified to exiting the  
2 parking lot?

3 A Yes, sir, and you can see me still making visual on  
4 the truck and I will all the way until they get stopped by  
5 North Augusta.

6 Q So you never lose sight of the vehicle?

7 A No, sir, I never lose sight of the vehicle.

8 Q Did you ever see anything fly out of the vehicle?

9 A Never seen anything fly out and that's one of the  
10 purposes of trying to keep a visual on the defendant to  
11 make sure they don't throw anything as they...

12 Q That's all for now. You can take your seat back up  
13 on the witness stand.

14 (WHEREUPON, the witness goes back to the witness  
15 stand.)

16 Q Mr. Lawrence, was that red truck on the video the  
17 same red truck that had the DVDs in it when you got up  
18 there?

19 A Yes, sir, it was.

20 Q The same truck that Mrs. Poe was in?

21 A Yes, sir.

22 Q How do you know that individual taking those DVDs was  
23 the same individual that got in that truck was Mrs. Poe?  
24 Why didn't we have video from the fabric section?

25 A Why didn't we have video?

1 Q Uh-huh. What was the reason behind that?

2 A The reason behind it is because we didn't have any  
3 cameras in that department.

4 Q So there was none specifically on the section where  
5 she was?

6 A No, sir, there wasn't.

7 Q But you saw that -- testified earlier that you saw  
8 them take the DVDs out; correct?

9 A Yes, sir. Usually that's my job is to -- I walk the  
10 floor in regular clothing and I sort of blend in with the  
11 crowd. Sometimes I tote items in my hands as if I'm  
12 shopping.

13 Q So to blend in?

14 A Yes, sir.

15 Q Permission to approach Your Honor. I just want to  
16 clarify something real quick. This Exhibit 3 the property  
17 receipt, that's not an actual purchase receipt is it?

18 A No, sir.

19 Q What is that?

20 A It's a training receipt we have for our records  
21 giving us the UPC of the items, the description of the  
22 items, the amount of the items. We have what we call an  
23 APIS. We put every one that we apprehend into our APIS  
24 system.

25 Q Were those -- kind of a list of those eight DVDs

1 packages, empty packages that you found in the arts and  
2 crafts section?

3 A Yes, it was.

4 Q And did they match the eight DVDs you found in the  
5 truck?

6 A Yes.

7 MR. SLOCUM: I beg the Court's indulgence, Your  
8 Honor. Nothing further from the State. Please answer any  
9 questions that Mr. Routzong may have for you.

10 CROSS-EXAMINATION

11 BY MR. ROUTZONG:

12 Q Good morning, Mr. Lawrence.

13 A Good morning, sir.

14 Q You testified that when you followed that vehicle and  
15 that vehicle was stopped you walked up and from a distance  
16 you identified those CDs that you saw in the vehicle as  
17 being Walmart merchandise?

18 A Yes, sir, I did.

19 Q Where were they?

20 A They was in the back seat.

21 Q Now, Mr. Lawrence, you work in the loss prevention?

22 A Yes, sir, I do.

23 Q All of us have been in Walmart no doubt many times.  
24 You're going to testify here today that there was no  
25 camera in the section that she happened to go where you

1 allege she took these things out of the cases and put them  
2 on a shelf? That's the only section in Walmart that  
3 doesn't have a camera? That's your testimony?

4 A No, sir. There is other sections in Walmart that  
5 does not have cameras.

6 Q But your testimony -- and we've all been in Walmart.  
7 Walmart doesn't cover every square foot of ground inside  
8 of the Walmart. They cover every square foot outside?

9 A I wouldn't say every square foot, but they cover the  
10 majority.

11 Q And they don't cover every square foot inside?

12 A No, sir, it doesn't.

13 Q And your testimony is you're the person that has  
14 control over the video that you turned over to the police?

15 A Yes, sir.

16 MR. ROUTZONG: I beg the Court's indulgence. I don't  
17 have any other questions, Your Honor.

18 REDIRECT EXAMINATION

19 BY MR. SLOCUM:

20 Q Mr. Lawrence, do you control the placement of the  
21 cameras in Walmart like where they go on the ceilings?

22 A The placement of them?

23 Q Do you place the cameras up on the ceiling?

24 A No, sir, I don't. We have an outside contractor.

25 MR. SLOCUM: Nothing further from the State.

1 THE COURT: You may step down.

2 Ladies and gentlemen, we're going to take a short  
3 break; so I'll ask you to please go to your jury room with  
4 the bailiff. Don't talk about the case. I'll bring you  
5 back in a few minutes.

6 (Whereupon, the jury exited the courtroom at 11:09.)

7 THE COURT: We'll be at ease for 15 minutes.

8 (Whereupon, a break was taken.)

9 MR. SLOCUM: Judge, before the jury comes back we  
10 would -- the State would like to add a witness to its  
11 witness list.

12 THE COURT: Who is it?

13 MR. SLOCUM: I'll do my best with this:  
14 Quejayteavonna Hoguesmayo, the co-Defendant of Mrs. Poe.

15 MR. ROUTZONG: Your Honor, of course, we would  
16 object. This is the co-Defendant. I don't know how they  
17 can compel her to testify. She ---

18 THE COURT: Well, they can't compel her to testify.

19 MR. SLOCUM: Right. Your Honor, she would have the  
20 right to plead the Fifth should she so choose.

21 THE COURT: Have you talked to her?

22 MR. SLOCUM: No, sir, Your Honor.

23 THE COURT: Oh, you're were just going to call her  
24 and let her take the Fifth or not take the Fifth.

25 MR. SLOCUM: We were going to ask her some questions

1 not pertaining -- we were going to ask her relationship  
2 with the Defendant was all.

3 MR. ROUTZONG: Even that, Your Honor, is a Fifth  
4 Amendment issue. She has the right to remain silent.

5 THE COURT: I agree.

6 MR. SLOCUM: Thank you, Your Honor.

7 All right. Ready for the jury? Bring them in.

8 (Whereupon, the jury came into open court at  
9 approximately 11:28.)

10 THE COURT: All right, Ladies and gentlemen. We'll  
11 continue with the State's case.

12 MR. SLOCUM: Thank you, Your Honor. The State calls  
13 Corporal Josh Priester with the North Augusta Department  
14 of Public Safety.

15 JOSHUA R. PRIESTER, after being duly sworn,  
16 testified as follows:

17 THE CLERK: Please have a seat in the witness box.  
18 State your name for the court and spell your last.

19 THE WITNESS: Joshua Ray Priester.

20 DIRECT EXAMINATION

21 BY MR. SLOCUM:

22 Q Corporal Priester, how are you doing today?

23 A Good, sir.

24 Q Where are you employed?

25 A North Augusta Public Safety.

1 Q And in what capacity?

2 A I'm Corporal within the patrol division assigned to  
3 C-shift.

4 Q How long is you been with North Augusta?

5 A I have been with North Augusta since 2010. It is  
6 actually March of 2010.

7 Q And have you had training with North Augusta?

8 A Yes, sir.

9 Q Were you working on May 23 of 2012?

10 A Yes, sir, I was.

11 Q And what led you to become involved in this case?

12 A We received a call about a shoplifting in progress  
13 from Walmart.

14 Q What Walmart?

15 A The one at 1201 Knox Avenue in North Augusta.

16 Q In Aiken County?

17 A Yes. We received a call for shoplifting in progress  
18 at the Walmart in North Augusta. Units responded to the  
19 area. Our dispatchers advised us that the subjects were  
20 leaving in a red-colored Dodge truck and they did give us  
21 the tag over the radio. The tag on the vehicle was a  
22 Georgia tag. It was .

23 Officer Clark actually noticed the vehicle actually  
24 pulling from the Walmart entrance of Knox Avenue traveling  
25 north up Knox Avenue in the direction of Chick-fil-a. He

1    went ahead and initiated a traffic stop on the vehicle.  
2    In a matter of seconds I was there and pulled behind his  
3    vehicle. We were stopped in the number one lane of Knox  
4    Avenue in traffic.

5    Q    So you didn't pull the vehicle over yourself when you  
6    showed up --

7    A    Right.

8    Q    -- right after that? What color was the truck?

9    A    It was red. It was a red truck.

10   Q    Did it have the same tag that matched dispatch?

11   A    Yes, sir.

12   Q    That they gave you?

13   A    Yes, sir.

14   Q    What did you do? What did you observe when you got  
15   there?

16   A    We met with the subjects inside the vehicle and  
17   identified them. Mr. Lawrence responded to the scene. We  
18   met with him. We met with the subjects inside the  
19   vehicle. We identified them and we went ahead and  
20   detained them.

21   Q    Do you see --

22   A    We met ---

23   Q    I'm sorry. I didn't mean to stop you. Go ahead.

24   A    We met with Mr. Lawrence as to what he observed as  
25   for the incident.

1 Q Do you see one of those individuals in this courtroom  
2 today?

3 A Yes, sir, I do.

4 Q Would you please point them out for the court?

5 A She's sitting at the end of the Defense table wearing  
6 a brown jacket, glasses, and red lipstick.

7 MR. SLOCUM: Your Honor, may the record reflect that  
8 Mr. Priester has pointed out the Defendant Mrs. Poe?

9 THE COURT: It shall.

10 Q And did you ascertain the identities of these two  
11 individuals?

12 A Yes, sir, I did.

13 Q Is it in your report?

14 A Yes, sir.

15 Q Could you please read the name of the individual who  
16 was driving the vehicle?

17 A Okay. The individual driving was a Quejayteavonna.  
18 Hoguesmayo is her last name.

19 Q And how old was that individual at that time?

20 A Seventeen years old.

21 Q And you said there was another individual in the  
22 vehicle with Mrs. Poe; correct?

23 A Yes, sir.

24 Q Where was she -- was she inside the vehicle as well?

25 A Yes, sir, she was. She was a passenger in the

1 vehicle.

2 Q Was there anything else inside the vehicle?

3 A I did locate stuffed animals in the rear passenger  
4 area of the vehicle along with some DVDs that were out of  
5 their cases. It was approximately -- it was exactly eight  
6 DVDs.

7 Q How were the DVDs laying inside the truck?

8 A They were not in the packaging; just located loose  
9 inside of the vehicle.

10 Q And did you -- at some point during your  
11 investigation did you determine any relationship, if any,  
12 between the driver and Mrs. Poe?

13 A I did determine that the driver of the vehicle was  
14 Mrs. Poe's granddaughter.

15 Q Did you take any pictures of the DVDs in the back of  
16 the truck?

17 A No, sir.

18 Q Why is that?

19 A Just judging from where the vehicle was parked in  
20 traffic with two subjects detained, we just did not take  
21 pictures at that time.

22 Q Is that normal protocol for y'all on a shoplifting  
23 case?

24 A Yes, sir.

25 MR. SLOCUM: I beg the Court's indulgence, Your

1 Honor.

2 What did you do with the DVDs? What, if anything,  
3 did you do with the DVDs?

4 THE WITNESS: They were taken from the vehicle. They  
5 were identified by Mr. Lawrence. They were turned back  
6 over to him.

7 Q And in your report, correct me if I am wrong, but  
8 there is no mention of teddy bears or DVDs in the actual  
9 writing?

10 A Right.

11 Q Why was that?

12 A That was just a thing that we left out in the report,  
13 but I'm testifying today to tell you that I did observe  
14 the DVDs and the stuffed animals located in the back of  
15 the vehicle.

16 Q And through your investigation did you determine  
17 those eight DVDs were the same ones that were taken from  
18 Walmart?

19 A Yes, sir, they were.

20 Q And were both the driver and passenger Mrs. Poe  
21 charged with shoplifting?

22 A Yes, they both were.

23 Q And do you know the disposition, if any, of the  
24 co-defendant's case?

25 A No, sir.

1 Q So to your knowledge is it still pending?

2 A Yes, sir.

3 MR. SLOCUM: Nothing further from the State. Please  
4 answer any questions Mr. Routzong may have for you.

5 CROSS-EXAMINATION

6 BY MR. ROUTZONG:

7 Q Good morning, Officer Priester.

8 A Good morning, sir.

9 Q Your testimony is that you didn't take any photos?

10 A No, sir, I did not.

11 Q And your testimony is that you didn't inventory the  
12 CDs that you took into your possession and write a report  
13 on?

14 A The incident report was completed. The DVDs -- it  
15 was not listed into into the narrative of the report.

16 Q So you're depending on what Walmart told you as to  
17 what you put on the report because what is in your report  
18 is a receipt from Walmart?

19 A That's correct, but I am testifying that I visually  
20 observed the DVDs inside of the back of the vehicle.

21 Q But your testimony is based on what Walmart told you?

22 A Yes, sir.

23 Q Can you tell me the results of the fingerprint  
24 forensic investigation that was performed on this?

25 A We did not perform a fingerprint investigation. Due

1 to the charge, where we were, we did not take any  
2 fingerprints from the scene.

3 Q You didn't take any fingerprints on the empty DVD  
4 cases?

5 A No, sir, we did not.

6 Q You didn't put anything into evidence? Nothing was  
7 dropped in an evidence locker?

8 A Not as far as the DVDs, no, sir.

9 MR. ROUTZONG: I don't have any other questions, Your  
10 Honor.

11 MR. SLOCUM: Briefly, Your Honor.

12 REDIRECT EXAMINATION

13 BY MR. SLOCUM:

14 Q Corporal Priester, do you always fingerprint  
15 shoplifting cases?

16 A No, sir.

17 Q Did you feel the need to when you had someone  
18 observed taking the DVDs and never lost sight of them and  
19 apprehended within minutes?

20 A No, sir, we did not feel there was need to.

21 Q No further questions.

22 THE COURT: You may step down.

23 MR. SLOCUM: Your Honor, may Corporal Priester be  
24 released?

25 THE COURT: He may be.

1 MR. SLOCUM: The State rests at this time, Your  
2 Honor.

3 THE COURT: All right. Ladies and gentlemen, that is  
4 all of the testimony or other evidence to be offered by  
5 the state at least in the case in chief. Before we go  
6 further I got a couple of legal matters that I need to  
7 address with the lawyers. It should take only a few  
8 minutes and I'll bring you back to continue with the  
9 trial. Please go to your jury room, but don't talk about  
10 the case as of yet.

11 (Whereupon, the jury exited the courtroom at 11:39.)

12 THE COURT: All right. Motions or other matters to  
13 address?

14 MR. ROUTZONG: Your Honor, at this time we move for a  
15 -- Defense moves for a directed verdict. Viewing the  
16 evidence in the light most favorable to the State we do  
17 not believe the State has presented evidence that would  
18 prove their case beyond a reasonable doubt. The only  
19 witness that the State has provided was Mr. Lawrence and  
20 Mr. Lawrence's testimony is not corroborated by any video  
21 evidence and we believe at this time, Your Honor, there is  
22 not enough evidence for the jury to consider.

23 THE COURT: On what element do you feel that they are  
24 lacking?

25 MR. ROUTZONG: If they're lacking on anything, Your

1 Honor, the element that they lack would actually be  
2 concealing it and moving it -- concealing it with an  
3 intent to defraud or deprive Walmart of the use or value  
4 of that property, Your Honor.

5 THE COURT: All right. Mr. Slocum?

6 MR. SLOCUM: Your Honor, the State has provided more  
7 than adequate testimony. Mr. Lawrence testified he  
8 witnessed the Defendant take the DVDs out of the casing  
9 and conceal them in her left front pocket and with intent  
10 to deprive. Her passing all points of sale was no mere  
11 accident.

12 THE COURT: Okay. Yes, Mr. Routzong, I don't think I  
13 am going to be able to ignore the testimony of  
14 Mr. Lawrence in this case; so considering the evidence  
15 that has been presented I find there is sufficient  
16 evidence to establish the Defendant's guilt to the  
17 satisfaction of this jury beyond a reasonable doubt  
18 assuming they find that evidence to be credible. Okay.  
19 Any other matters to address?

20 MR. ROUTZONG: The Defendant does wish to testify,  
21 Your Honor.

22 Okay. Mrs. Poe?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Your lawyer says that you're going to  
25 testify in this trial of this case.

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Do you understand that you don't have to?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Do you understand that when you're  
5 charged with a crime as you are you have an absolute right  
6 to remain silent which simply means that nobody can  
7 require that you take the witness stand and testify. No  
8 one can require that you make any statements. No one can  
9 require that you answer any questions that relate to the  
10 charge brought against you. You have an absolute right to  
11 remain silent and to rest upon the state's burden to  
12 establish your guilt to the satisfaction of this jury  
13 beyond a reasonable doubt.

14 You never have to assist them in their efforts of  
15 proving your guilt by your taking the witness and  
16 answering questions that might tend to prove your own  
17 guilt. Do you understand that you have an absolute right  
18 to remain silent and not testify in this case?

19 THE WITNESS: Yes, sir.

20 THE COURT: You understand that if you elect to take  
21 the witness stand and testify you've got to answer not  
22 only your lawyer's questions, but you'll have to answer  
23 the questions of the prosecutor to the extent those  
24 questions are relevant even if the responses to those  
25 questions might tend to prove you guilty of this crime for

1 which you stand charged?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Do you understand if you elect to remain  
4 silent that I'll instruct the jury they can't hold that  
5 against you?

6 THE DEFENDANT: Say that again.

7 THE COURT: Do you understand that if you make a  
8 decision not to testify that I am going to instruct the  
9 jury that they can't hold that against you? They can't  
10 consider in any way in their determination as to whether  
11 or not your guilt has been proven by the evidence in the  
12 case.

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Have you and your lawyers discussed the  
15 advantages and disadvantages of testifying as well as not  
16 testifying?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: And do you have an appreciation for what  
19 those advantages and disadvantages are?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: And have you made a decision about  
22 whether or not you'll testify?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: What is your decision?

25 THE DEFENDANT: I need to testify.

1 THE COURT: Well, is that a decision that you made of  
2 your own free will and accord?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Has anybody suggested that's what you  
5 ought to do?

6 THE DEFENDANT: No, sir.

7 THE COURT: Has anybody pressured you into that  
8 decision?

9 THE DEFENDANT: No, sir.

10 THE COURT: You made that decision on your own after  
11 careful reflection?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: And you're satisfied with it?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Okay. Any other matters we need to  
16 address before the jury is brought in?

17 MR. SLOCUM: I'm sorry, Your Honor?

18 THE COURT: Any other matters we need to address?

19 MR. ROUTZONG: I'm not aware of any unless it would  
20 be some issue about what the State intends to elicit from  
21 her in terms of a prior record.

22 MR. SLOCUM: Your Honor, the State -- we understand  
23 she has two prior shopliftings; however, they are outside  
24 of the 10-year range. One is from 2001 and one from 1994;  
25 so we would stay away from those.

1 THE COURT: Okay. They're not going to ask her about  
2 them unless she opens the door in some fashion.

3 MR. ROUTZONG: Yes, sir.

4 THE COURT: Anything else?

5 MR. ROUTZONG: I don't have anything, Your Honor.

6 THE COURT: Okay. Bring the jury back.

7 (Whereupon, the jury came into open court at  
8 approximately 11:44.)

9 THE COURT: All right. Ladies and gentlemen, as you  
10 know the State has concluded with their presentation.  
11 We'll now proceed with any to be offered by the Defense.

12 Mr. Routzong?

13 MR. ROUTZONG: The Defense calls Mrs. Carolyn Poe.

14 CAROLYN POE, after being duly sworn, testified  
15 as follows:

16 THE CLERK: Please have a seat in the witness box.  
17 State your full name for the court and spell your last.

18 THE WITNESS: Carolyn Poe.

19 DIRECT EXAMINATION

20 BY MR. ROUTZONG:

21 Q Good morning, Mrs. Poe.

22 A Good morning.

23 Q Mrs. Poe, let me take you back to the day of May 23  
24 last year. Where were you on that day?

25 A After I left my home I went to the bank and withdrew

1 out \$200 so I can go shopping and I went to Walmart to  
2 shop. I went there to get some charcoal grills they had  
3 on sale and another telephone and when we got to Walmart  
4 we went through the main door.

5 My granddaughter that was with me Quejayteavonna --  
6 when we went in we got by the clothes and she started  
7 asking me to buy some clothes for her. So me and her  
8 picked out what she wanted and after that we went to check  
9 out the telephone and after we got -- helping getting the  
10 phone we asked the man for some help because the phone we  
11 was looking for we didn't see it and when we asked him  
12 they didn't have the phone.

13 So then we left the phone. We went to the DVDs and  
14 my granddaughter started asking me to buy some DVDs and  
15 she picked out some and I picked out some and after we  
16 picked out the DVDs we went to the fan area to get a fan  
17 for the house and after we got the fan we went to the  
18 cloth area because I saw and I picked out some material to  
19 make some clothes for my children and we went to the  
20 garden center to get -- to get the charcoal grills and the  
21 ones we was looking for that was on sale they didn't have  
22 them no more, but the man told me he was going to check to  
23 see if did they have any left. He told me to come back  
24 over there.

25 So me and my granddaughter walked around the store

1 again and I -- when I got ready to come back to go into  
2 the store we stopped and got a water hose. When we got  
3 the water hose we went further on back in the store and  
4 then I told her let's go back where the fans was because I  
5 was thinking about putting the fans back and we looked at  
6 another fan. We changed the fan that I -- the first fan I  
7 had and got another fan and we still walked around in the  
8 store looking at different stuff.

9       Then I got -- went back to the fan section again  
10 because I still wasn't satisfied with the fan I had picked  
11 out. Then I picked out a higher fan that was like  
12 60-something dollars. It was a much bigger fan and when I  
13 got the bigger fan I told my grandbaby that I didn't  
14 really want to get the DVDs. So I took the DVDs and some  
15 of the clothes she had picked out and I put them back on  
16 the shelf because me and her start having words back and  
17 forth because I told her I really didn't want the DVDs and  
18 I told her I really didn't want to get the clothes because  
19 she didn't really need it and I was telling her that I  
20 didn't want to get the clothes because all I do is fuss at  
21 them about picking up clothes out the floor and I ain't  
22 want them to, you know -- I said I don't want to fuss at  
23 you about no clothes no more; so I throwed some of the  
24 clothes back and we went back to the garden center to ask  
25 the man for -- about the charcoal and then he said, no,

1 they didn't have no more. All of them was gone.

2 Then we went back. I told her -- I said I forgot to  
3 get the pillow for my 7-year-old granddaughter, my  
4 10-year-old granddaughter because I had promised I was  
5 going to buy them one and I had called home to my husband  
6 to ask him to find the paper that the sale paper was on  
7 and check for the charcoal grills to make sure I had the  
8 right bag in mind and when he called me back we -- me and  
9 him talked and I told him, I said, well, they didn't have  
10 no more charcoals anyway; so it really didn't matter and  
11 we picked out -- we picked out the pillows.

12 We went through probably about 10 or twelve pillows  
13 going through them and looking at them, unzipping them  
14 because they were pillow pets. They are pets made with a  
15 pillow to it. We had been in the store over an hour  
16 walking around looking and shopping and after we got the  
17 stuffed animals I went back to the garden center and I  
18 seen one of the ladies that was at the cash register that  
19 I knew. We go to church together and she started telling  
20 me that they was going to get in some more charcoals and I  
21 gave her -- I wrote my phone number down and gave to her  
22 and I told her to call me when they got them in. She told  
23 me -- she said when you come -- when I call you got to  
24 come get them right then. I said I'll be over here.  
25 It'll take me about 15 minutes if you can hold them that

1 long.

2       So then we checked out. After we checked out I just  
3 got the two stuffed pillows and I told my grandbaby, I  
4 said, I don't want to get this stuff in the buggy because  
5 this is really not what I came for; so I pushed the buggy  
6 over. Then I told my granddaughter to push the buggy back  
7 out into the store and she pushed it about far as from  
8 here to that TV. I said, no, don't leave it right here.  
9 I said, push it out in the store so they can put the stuff  
10 back, and after we cashed out I stood there probably about  
11 10 more minutes talking to the cash register lady because,  
12 like I said, I know her from church, and after we got  
13 through talking I went on -- proceeded out the door  
14 through the garden section.

15       Me and my grand daughter stopped. We looked at the  
16 gazebo and while we was looking at the gazebo we was just  
17 talking about the features that was on the gazebo. Then  
18 when we got through looking at that it probably took about  
19 six or seven minutes for us looking at that then we went  
20 on. Just before we got to the door it was a lady at the  
21 door and I stopped her and started talking to her about  
22 her outfit she had on and after we got through talking to  
23 her about two minutes we went on out the door and we  
24 walked from probably -- from that wall to that wall or a  
25 little bit further going to the car because we was parked

1 on this end of Walmart, but we came out on this end and  
2 when we walked about that far, a little bit further, it  
3 was a lady and Mr. Lawrence. They came behind us and  
4 Mr. Lawrence had a cam recorder and the lady asked me  
5 could she search me and I got mad and I cussed and I told  
6 her no.

7 She said, well, don't you have some DVDs on you that  
8 belong to Walmart? I cussed again and I told her no. I  
9 said if I had some DVDs on, I said as tight as my clothes  
10 is you would see the DVDs on me, and I looked back and  
11 when I looked back I just seen some people and I seen more  
12 than two people and I got scared and I told my  
13 granddaughter Quejayteavonna -- I called -- she was  
14 walking on the left side of me and I called her up to me.

15 I gave her my car keys. I told her, I said, Go open  
16 up my door and crank up my car, I said, because these  
17 people are scaring me and I have been jumped on before by  
18 polices and stuff and I didn't want to get in no  
19 confrontation, but when my granddaughter went to the car  
20 she got in the car, cranked up, and pulled off, and I  
21 yelled out to her and asked her, I said, Where the hell  
22 are you going? I said it real loud and she stopped and I  
23 tried to run to her. Well, I wasn't trying. I did run to  
24 her, but when I got to her I was so nervous and my legs  
25 had started trembling and she got nervous and somehow she

1 locked the front door and I just went -- you know, I  
2 couldn't open up the door. She couldn't open up the door.

3 She had accidentally turned around and hit the lock  
4 with her arm and I couldn't -- I was so upset I couldn't  
5 even find the lock on the door. So I got in the back seat  
6 and when I got in the back seat and shut the door I pulled  
7 my phone out my pocket and when I pulled my phone -- one  
8 of my phones out of my pocket -- I was trying to call home  
9 and my granddaughter got ready to go to the right and she  
10 jerked the car because -- I don't know why she jerked the  
11 car and then started going to the left, but then when she  
12 started going to the left she jerked back going to the  
13 right.

14 She said, Grandmama, which way to go? I said, I  
15 don't know. I said, Go straight; there go the road right  
16 there. And when she was jerking I dropped my phone. I  
17 got another phone. I had four phones with me that day.  
18 When I pulled out my other phone -- the two smalls ones I  
19 have in the pocket together and when I got them and she  
20 jerked again when she was going out into the road from on  
21 the main highway -- I think it was Knox Avenue. I really  
22 don't know the name of the road -- remember it -- and it's  
23 a little dip right there and when she went out she almost  
24 hit a car and when she almost hit that car I went up  
25 because I was already going like this and when she went

1 out into the traffic I dropped those two phones and I had  
2 my fourth phone in my pocket on this side over here in a  
3 wallet and when I pulled my wallet out I got that phone  
4 and by that time with her pulling out into the traffic she  
5 stopped and the police on this side, police on that side,  
6 and the police on that side.

7 The police from this side, he came on this side. The  
8 police from that side came on that side. He opened up the  
9 front door and the police on this side opened up the front  
10 and back door on this side and the police on this side  
11 told them, Take the phone from her. Don't let her call.  
12 Don't let her use the phone.

13 So, the police on this side -- I think it was him. I  
14 am not sure. He reached in and was fixing to grab the  
15 phone from me and I put it down on the front console.

16 Q Let me take you back to inside the store. Your  
17 testimony, I believe, was that you went in there searching  
18 for charcoal bricks?

19 A Yes, sir.

20 Q Why would you be picking up all of this other stuff?

21 A Because I'm a woman. I go to the store. When I go  
22 to the store I shop and I mean shop, not shoplifting. I  
23 buy what I want, not steal it.

24 Q How much money did you have in your pocket?

25 A I had just drew \$200 out the bank before I got over

1 there and I still had 200-something dollars left on my  
2 bank card.

3 Q Mrs. Poe, the state says that you walked out. I  
4 actually should rephrase that. Walmart says that you  
5 walked out of that store with DVDs in your pocket. Where  
6 were those DVDs?

7 A I didn't walk out of Walmart with DVDs. The officer  
8 got DVDs. He lift up my back seat. They were searching  
9 my car. They lift up my back seat and my son -- he let me  
10 keep his DVDs for my kids to watch when they're in the car  
11 with us and DVDs was under the car seat, not all over the  
12 car.

13 Q What else did you have in your car -- in that truck?

14 A We had just bought the teddy bears. I had jewelry  
15 that was missing after we got our car back. It was  
16 jewelry. It was two card cases what you carry business  
17 cards in. I had bought two of them years back and I never  
18 used them because my son was going to make cards for  
19 business -- business cards because I do sewing and  
20 alterations and he never did make the cards.

21 Q How did your kids watch -- I'm sorry to interrupt  
22 you, but how did your kids watch DVDs?

23 A How did they watch them? We had a DVD player under  
24 the seat also which that was missing when we got the car  
25 back, also.

1 Q Why would you have a DVD player in your truck?

2 A Because I have a 2-year-old and a 4-year-old and a  
3 7-year-old and a 10-year-old and when they go around with  
4 me they keep a ruckus; so when I turn the DVD player on  
5 for them to watch that will keep them quiet.

6 Q How often do you keep that DVD player in the truck?

7 A I don't take it out.

8 Q Who do those DVDs that the police found in your  
9 truck, who do those belong to?

10 A The DVDs and the DVD player belong to my son.

11 Q Mrs. Poe, everybody is going to want to know  
12 something, I think. What they're going to want to know is  
13 why in the world did you take off running across that  
14 parking lot?

15 A I took off running because when I looked back I seen  
16 a lot of people behind me and I got scared and I got  
17 nervous because I have been beaten by polices before.

18 Q When did that happen?

19 A I have been beaten by polices in our home. We went  
20 to church one day and came back and they had an open  
21 search warrant.

22 MR. SLOCUM: Your Honor, the State objects to  
23 relevance.

24 THE COURT: Sustained.

25 THE WITNESS: I have been beaten by polices.

1 THE COURT: Excuse me, ma'am. I have sustained that  
2 objection; so you can't respond to it.

3 Q Without referring to any previous incidences, why  
4 were you running?

5 A Because I got scared and I didn't want to be in no  
6 confrontation with nobody.

7 Q Mrs. Poe, the State says -- actually, Walmart says  
8 you left that store with DVDs in your pocket and you  
9 didn't pay for it. What do you have to say about that?

10 A I did not steal nothing from Walmart and I did not  
11 steal no DVDs from Walmart and they did not find DVDs in  
12 my car that came from no Walmart.

13 MR. ROUTZONG: I don't have any other questions.  
14 Mrs. Poe, please answer any questions Mr. Slocum has.

15 MR. SLOCUM: Your Honor, the State has a matter of  
16 law before we cross Mrs. Poe we need to take up outside of  
17 the presence of the jury.

18 THE COURT: All right. Let me ask the jury to please  
19 go to your jury room. Don't talk about the case. I'll  
20 bring you back in just a few minutes.

21 (Whereupon, the jury exited the courtroom at 12:02.)

22 MR. SLOCUM: Your Honor, Mrs. Poe just testified that  
23 when she goes into the store, "I shop. I don't shoplift."  
24 The State would argue that directly puts her character  
25 into evidence and at issue which would allow us under the

1 403 analysis to question her about the 1994 and the 2001  
2 convictions for shoplifting based on her testimony just  
3 now.

4 MR. ROUTZONG: Obviously, Your Honor, I would  
5 disagree with that. What she was testifying to was this  
6 day. I went into that shop -- I went into that Walmart to  
7 shop. I wasn't shoplifting. She didn't make any  
8 reference to saying anything about I have never done it.  
9 She specifically said on this day and that's the context  
10 she's speaking of. This day I went in there to shop, not  
11 to shoplift.

12 MR. SLOCUM: Your Honor, if we could read it back her  
13 response.

14 THE COURT: Let me ask the Court Reporter to read  
15 that section back, please.

16 MR. SLOCUM: Furthermore, Your Honor, she's alleged  
17 she attends church on multiple occasions again referencing  
18 character.

19 THE COURT: Are you saying that if somebody says  
20 they're going to church you can introduce their record  
21 that you have not noticed the Defense that you're going to  
22 introduce for some other purpose?

23 MR. SLOCUM: No, sir. Just in conjunction with the  
24 testimony when I go into the store I shop, I don't  
25 shoplift -- that added with testifying she goes to church

1 would assume she wants people to think she is a moral,  
2 decent human being. The State would allege that in  
3 conjunction just bolsters.

4 MR. ROUTZONG: I guess the State would also have to  
5 agree that if a person doesn't go to church that would be  
6 an indication of immoral character?

7 THE COURT: I don't think he's making that assertion.  
8 Would you like to make it?

9 MR. ROUTZONG: No, sir.

10 (WHEREUPON, the Court Reporter read back a portion of  
11 the testimony.)

12 THE COURT: That sounds like she's not talking about  
13 that day shoplifting. She's talking about when she goes  
14 shopping. She goes to shop and not shoplift which seems  
15 to be her assertion to the jury that's she's not committed  
16 the crime of shoplifting before. I think she has opened  
17 that door.

18 MR. ROUTZONG: Do you want me to respond, Your Honor,  
19 or is that a ruling?

20 THE COURT: If you'd like to.

21 MR. ROUTZONG: Okay. Your Honor, I think if the  
22 court looks at it like that the way you're looking at it  
23 would be that once a person has committed a crime that  
24 they have never rehabilitated themselves. They have never  
25 ever -- it would be different, Your Honor, if she had said

1 I have never done this in my life. Then she would have  
2 opened the door. This she's ---

3 THE COURT: No, no, no. Mr. Routzong, she didn't say  
4 when I went to Walmart that day I went to shop, not  
5 shoplift which is what she's accused of today. What she  
6 said was when I go shopping I go to shop, not to shoplift.  
7 She has been convicted of shoplifting. That's a generic  
8 shopping. That's not shopping on this day at Walmart.  
9 That's not what she was referring to. That's the reason I  
10 asked the Court Reporter to play it back. If she was  
11 referring to May 23 of last year and she said, well, I  
12 went to Walmart that day to shop, not to shoplift, I would  
13 agree with you. That's not what she said. Maybe I  
14 misunderstood it. Do you think I have?

15 MR. ROUTZONG: I believe that's a wrong  
16 interpretation, Your Honor.

17 THE COURT: Well, are you saying that I misunderstood  
18 what she testified to?

19 MR. ROUTZONG: I believe you're -- I believe you're  
20 misinterpreting what her intent was when she was saying  
21 that.

22 THE COURT: Oh, I think I know what her intent was.  
23 I heard the language. Anyway, go ahead and continue.

24 MR. ROUTZONG: It just seems to me, Your Honor, that  
25 a person -- we have to also take into consideration the

1 remoteness of her prior shoplifting. Apparently, now, of  
2 course, I cannot say this for sure -- Mrs. Poe probably  
3 can -- but apparently since 2001 she has not been  
4 convicted of any shoplifting. People look at things, Your  
5 Honor, in terms of that was in my past. This is who I am  
6 now.

7 To say that she opened the door, Your Honor, based on  
8 what she just said I would assert is a misinterpretation  
9 and it's actually -- it is a misacknowledgment [sic] of  
10 how people actually behave psychologically. She's talking  
11 about a point in time. Today. The person that I am; not  
12 the person I was 10 years ago in 2001. The person I am  
13 now, I go into the shop to shop. I don't shoplift.

14 THE COURT: Are you saying that's what she told this  
15 jury?

16 MR. ROUTZONG: I think that -- I believe that's what  
17 she told this jury, yes, Your Honor. I believe that's ---

18 THE COURT: She didn't tell the jury that because  
19 they don't know anything about her prior shopliftings.  
20 That was the whole point when I said before she took the  
21 witness stand and the state said they weren't going to  
22 introduce that evidence and I said, well, they're not  
23 going to introduce it unless she opens the door.

24 MR. ROUTZONG: Yes, sir.

25 THE COURT: So, I mean, y'all were well aware and on

1 notice of the fact that she could open that door and I  
2 believe she has.

3 THE WITNESS: Can I say something?

4 THE COURT: No, ma'am.

5 MR. ROUTZONG: I guess -- I don't know -- I guess the  
6 Court has not ruled yet, but I guess the Court would also  
7 in your consideration of this matter, Your Honor, even if  
8 the Court finds that she's opened the door the Court would  
9 need to make a judgment and weigh the prejudice to the  
10 client versus the probation nature of what she -- the  
11 testimony, I believe.

12 THE COURT: I will. All right. Mr. Routzong, as I  
13 understand it, Rule 609 South Carolina Rules of Evidence  
14 provides that evidence that the witness -- that any  
15 witness, which includes the Defendant, has been convicted  
16 of a crime shall be admitted if it involved dishonesty or  
17 false statement, regardless of the punishment. Obviously,  
18 shoplifting is dishonesty and what has to be established  
19 is that the probative value of admitting that evidence  
20 outweighs its prejudicial effect.

21 In this case as we already know the State had no  
22 intention of offering that evidence, not even for  
23 impeachment purposes pursuant to 609, but the Defendant  
24 herself has opened that door by trying to give the jury in  
25 this case the impression that she's an honest, law-abiding

1 person who goes to stores to shoplift [sic] and not to  
2 shoplift when, in fact, she knows that that is not the  
3 case because she's been convicted of shoplifting on more  
4 than one occasion. So, I clearly think it's probative on  
5 her credibility in this case because she is giving the  
6 jury an impression that she is not the type of person that  
7 would commit the crime of shoplifting when, in fact, we  
8 know that she is and that's a false statement to this jury  
9 and a false impression.

10 I recognize that these convictions are remote in time  
11 and that is perhaps a reason the State chose not to  
12 introduce them for impeachment purposes, but once she  
13 opens that door and gives the jury an impression that  
14 she's an honest and law-abiding citizen, then that's  
15 certainly subject to impeachment and prior convictions  
16 would serve as that impeachment evidence.

17 So, I have considered all of the State versus Green  
18 factors: Impeachment value of the crime, the point in  
19 time of conviction and her subsequent history, the  
20 similarity between the past conduct and charged crime and  
21 the importance of her testimony in the centrality of the  
22 credibility issue and in this case certainly her  
23 credibility is central in the case because she's denying  
24 against a lot of evidence that she was not the person who  
25 shoplifted anything. She denies even that DVDs were found

1 in the vehicle that belonged to Walmart.

2 So, obviously, her credibility is most definitely of  
3 much importance and is central in this case and,  
4 therefore, her giving the impression to a jury that she's  
5 not the type of person who would commit a shoplifting is a  
6 false impression. So I find it admissible.

7 MR. SLOCUM: Thank you, Your Honor.

8 THE COURT: All right. While we got a break here,  
9 let me see the lawyers in chambers for just a minute.

10 Mrs. Poe, you can step down. Have a seat at the  
11 Defense table. Do not discuss your testimony with any  
12 person at all.

13 THE WITNESS: Yes, sir.

14 (Whereupon, a break was taken.)

15 THE COURT: Mrs. Poe, you can come back around and  
16 have a seat on the stand, please.

17 (Whereupon, the jury came into open court at  
18 approximately 12:30.)

19 THE COURT: All right. You may continue.

20 CROSS-EXAMINATION

21 BY MR. SLOCUM:

22 Q Mrs. Poe, I am going to ask you some questions and if  
23 you could answer yes or no. If you have trouble  
24 understanding me, just ask me and I'll rephrase the  
25 question. Okay?

1 A Yes, sir.

2 Q You just testified earlier after being sworn and  
3 under oath that you said when I go to the store I shop; I  
4 don't shoplift. You testified to that; correct?

5 A Yes, sir.

6 Q We know that's not true; is that right?

7 A That is true.

8 MR. ROUTZONG: Objection, Your Honor.

9 THE COURT: Overruled.

10 Q Were you not convicted of shoplifting on December 1  
11 -- December 7, 2001? Were you not Carolyn Poe?

12 A Yes, I was.

13 Q Were you not also convicted of shoplifting on  
14 July 14, 1994?

15 A Say those dates again.

16 Q July 19 -- July 14, 1994 and December 7, 2001 out of  
17 Richmond County. Were you not convicted of shoplifting?

18 A I was charged with shoplifting.

19 Q So these certified convictions are not true?

20 A One of them I did shoplift and the other one I didn't  
21 shoplift, but I was found guilty of shoplifting.

22 Q You were convicted of two shopliftings?

23 A Yes, sir.

24 Q Yes, ma'am. Okay. Now, who was with you that day?  
25 Your granddaughter?

- 1 A May 23?
- 2 Q Yes, ma'am, 2012.
- 3 A Yes, sir.
- 4 Q Is she in the courtroom today?
- 5 A Yes, sir, she is.
- 6 Q Will you point her out, please?
- 7 A She is the female sitting on the back row.
- 8 Q She's the one you asked to go turn the truck on
- 9 and ---
- 10 A I asked her to turn the truck on and open up my door.
- 11 I did not ask her to drive away in it.
- 12 Q And you said you were nervous?
- 13 A Yes, sir.
- 14 Q That's why you asked her to do that. Why were you
- 15 nervous?
- 16 A Because I -- when I looked back and I seen a lot of
- 17 people, I looked back from my right side and I seen a lot
- 18 of people and I got scared and I panicked.
- 19 Q What do you mean a lot of people?
- 20 A I seen like seven, eight people and I thought all of
- 21 them was together and I didn't know what they was going to
- 22 do. I have been jumped on by polices before and ---
- 23 Q Mrs. Poe, you've seen the video, hadn't you?
- 24 A No, sir, I have not.
- 25 Q Your attorney hadn't showed you the video?

1 A No, sir.

2 Q So if I were to tell you there were only two people  
3 chasing you, you would have thought it was seven?

4 A Well, when I looked back wasn't nobody chasing me at  
5 the time. I hadn't started running.

6 Q You said that they were police in uniform, but it was  
7 just two loss prevention agents.

8 A I did not say they were police in uniform. I didn't  
9 say anything about a uniform.

10 Q Okay.

11 A I just said people.

12 Q Well, if you didn't steal anything, why did you run?

13 A I panicked. I got scared. Like I told you, when I  
14 looked back over my right shoulder --

15 Q Yes, ma'am?

16 A -- I seen a lot of people -- seven, eight people --

17 Q Yes, ma'am.

18 A -- and I got scared and I ran.

19 Q You testified earlier about some picking up fans,  
20 taking back fans. How many fans did you buy that day?

21 A I didn't buy nary [sic] one of them. I didn't get  
22 either one of them. I left it in the buggy.

23 Q What did you buy that day?

24 A I brought pillow pets.

25 Q Those are stuffed animals in a pillow?

1 A Stuffed animals that are a pillow.

2 Q Okay. But you didn't buy my DVDs; right?

3 A No, sir. I threw them back up on the shelf with  
4 some clothes in the fan section.

5 Q You threw the cases back up on the shelves?

6 A The cases that was with the DVDs still inside of  
7 them.

8 Q All right. Well, Mrs. Poe, it's an amazing  
9 coincidence that the same eight DVDs that were missing  
10 from Walmart were found in the truck you were in. How do  
11 you explain that?

12 A I can't explain that, but I know the DVDs that they  
13 took out of my truck was not the DVDs that came out of  
14 Walmart.

15 Q So it is just a miraculous coincidence those eight  
16 stolen from Walmart were the same eight that were in the  
17 truck you were in? You can't explain that?

18 A They took more than eight DVDs out of my truck.

19 Q Okay.

20 A They took the DVD player, the DVDs, and other items.

21 Q I understand. I just asked about the DVDs. And you  
22 said you have four phones on you?

23 A Yes, sir.

24 Q You always carry four phones?

25 A Yes, sir.

1 Q What for?

2 A Because that's what I want.

3 Q Just to have four phones?

4 A Yes, sir.

5 Q And you testified when the officers pulled over the  
6 car you were in the backseat where the DVDs were; is that  
7 right?

8 A My DVDs was under the seat.

9 Q But there were eight DVDs -- at least eight of them  
10 in the truck and eight of them matched Walmart; right?

11 A It is more than 8 DVDs that was in my truck --

12 Q Okay.

13 A -- and when they took the DVDs out they just went and  
14 made up a cash receipt for what they wanted out of those  
15 DVDs.

16 Q Mrs. Poe, do you know of any reason why Mr. Lawrence  
17 would want to frame you for eight DVDs?

18 MR. ROUTZONG: Objection, Your Honor. How could she  
19 possibly know why Mr. Lawrence would be interested in  
20 lying in this case?

21 THE COURT: Overruled.

22 THE WITNESS: I don't know why he want to frame me,  
23 but I know he did sit here and lie.

24 Q Okay. And why would Mr. Priester -- Officer Priester  
25 make up a story that he ---

1 MR. ROUTZONG: Objection, Your Honor. He is pitting  
2 the witnesses.

3 THE COURT: Well, he is just asking if they would  
4 have a reason to. He's asking her if she knows of any  
5 reason that they might have. That's an appropriate  
6 question. Overruled.

7 Q Any reason why Officer Priester would say that he saw  
8 teddy bears and eight DVDs matching the ones stolen from  
9 Walmart in the back of your truck? Does he have a reason  
10 to say that?

11 A I don't know why he would say that. I guess he is  
12 trying to make a name for himself.

13 MR. SLOCUM: I beg the Court's indulgence, Your  
14 Honor.

15 Mrs. Poe, real quickly, you said that when you got  
16 your truck back you were missing a DVD player and some  
17 jewelry?

18 THE WITNESS: Yes, sir, and other items.

19 Q When did you make a report of that to police?

20 A I didn't make a report.

21 Q You didn't?

22 A I was too upset and I was crying. I was scared.

23 Q Okay. Mrs. Poe, do you have any idea how those eight  
24 DVDs that were taken from Walmart ended up in your car?

25 A They was not in my car. The DVDs that was in my car

1 belonged to my son. They did not belong to Walmart.

2 Q So are you telling this jury that Mr. Lawrence and  
3 Officer Priester just made this up?

4 A They had to make it up.

5 MR. ROUTZONG: Objection.

6 THE COURT: Sustained. Sustained. That's pitting.

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

8 REDIRECT EXAMINATION

9 BY MR. ROUTZONG:

10 Q Whose DVDs are those in your car?

11 A The DVDs that was in my car belonged to my son back  
12 there on that back seat.

13 Q The State has pointed out that in your past you've  
14 been convicted of crimes?

15 A Yes, sir.

16 Q Are you the same person today or on May 23 as the  
17 person who committed those crimes?

18 A No, sir.

19 Q Did you steal any DVDs from Walmart?

20 A No, sir. I did not steal DVDs from Walmart.

21 MR. ROUTZONG: Thank you, Mrs. Poe. I don't have any  
22 other questions.

23 THE COURT: You may step down.

24 MR. SLOCUM: No recross, Your Honor? Two quick  
25 questions.

## 1 RECROSS-EXAMINATION

2 BY MR. SLOCUM:

3 Q Mrs. Poe, how old is your son?

4 A My son is 40.

5 Q Do you know if he watches Happy Feet, Joyful Noise,  
6 Alvin and the Chipmunks or Twilight movies?

7 A My son is a cartoon nut.

8 Q So ---

9 A I fuss at him all the time about watching cartoons.

10 Q Okay. What about Immortal or Mission Impossible that  
11 aren't cartoons?

12 A He loves action movies, also.

13 MR. SLOCUM: No further questions.

14 THE COURT: You may step down.

15 MR. ROUTZONG: The Defense rests, Your Honor.

16 THE COURT: All right. Ladies and gentlemen, you got  
17 any reply?

18 MR. SLOCUM: None from the State, Your Honor.

19 THE COURT: All right. That's all the testimony or  
20 other evidence to be offered in the trial of the case,  
21 and, therefore, what remains to be done are the lawyers'  
22 final summations after which I'll instruct you on the law.  
23 We're going to do that after lunch.24 Keep in mind you can't discuss the case during the  
25 lunch recess. Don't talk about it with anyone, not even

1 among yourselves. You're only permitted to discuss it  
2 during your deliberations. The trial is not concluded  
3 yet.

4 Do have a good lunch. Please report at 2:30 -- 2:30  
5 this afternoon at which time we'll conclude. Have a good  
6 lunch.

7 (Whereupon, the jury exited the courtroom at 12:41.)

8 THE COURT: Motions or other matters?

9 MR. ROUTZONG: At this time, Your Honor, the Defense  
10 would renew -- moves to renew its directed verdict motion,  
11 Your Honor, based on the prior argument.

12 THE COURT: All right. That motion is denied. Do  
13 either of you have jury instruction requests?

14 MR. SLOCUM: Your Honor, just in terms of reasonable  
15 doubt, I don't know if it is firmly convinced or hesitate  
16 to act. The State would move for firmly convinced.

17 THE COURT: I do the Manning charge. I always have.  
18 Any other requests?

19 MR. ROUTZONG: I don't have any requests, Your Honor.

20 THE COURT: Okay. The court is in recess until  
21 2:30. The jury has been sworn. Is the bondsman for the  
22 Defendant present in court?

23 MR. ROUTZONG: I don't believe so, Your Honor. It's  
24 not usual that they do -- that they are.

25 THE COURT: Well, it's usual that if they want to

1 stay out on bond that the bondsman has to be in court to  
2 tell me they're willing to continue the obligation because  
3 my view of it is once the jury is sworn they have no  
4 further obligation because the Defendant -- they've had a  
5 Defendant present and so now that obligation is  
6 extinguished unless they're willing to continue it; so if  
7 they're not here to continue it, then she's in custody.

8 MR. ROUTZONG: Yes, sir.

9 MR. SLOCUM: Thank you, Your Honor.

10 THE COURT: Court is in recess until 2:30.

11 (Whereupon, a lunch break was taken.)

12 THE COURT: All right. Are we ready for the jury?

13 MR. SLOCUM: Yes, sir, Your Honor.

14 MR. ROUTZONG: Yes, sir.

15 THE COURT: All right. Bring them in, please.

16 (Whereupon, the jury came into open court at  
17 approximately 2:41.)

18 THE COURT: Good afternoon, ladies and gentlemen. As  
19 you know all of the evidence has been received and,  
20 therefore, what remains to be done are the lawyers' final  
21 summations after which I instruct you on the law and then  
22 you can begin with your deliberations on the case. So  
23 please give the lawyers your attention now as they give  
24 you their final summation.

25 Mr. Routzong?

## 1 CLOSING STATEMENT

2 MR. ROUTZONG: If it please the Court, Mr. Slocum,  
3 Mr. Molony. At the beginning of this trial I said for all  
4 of you that this was about whether this was shopping or  
5 shoplifting. Was it fright or was it flight? And what is  
6 right and what is not quite so right? What is a little  
7 strange?

8 There's really five, I'll call them, pieces of  
9 evidence because some of them are people and people --  
10 their testimony can be evidence as well. There's really  
11 five of them. There's the video that you'll get a chance  
12 -- you've already seen it. You'll get a chance to see  
13 it's in evidence. There's the picture. There's the  
14 testimony of Mr. Lawrence, the testimony of Officer  
15 Priester, and the testimony of Mrs. Poe.

16 I'd like to kind of go -- as we go through the story  
17 again I am going to be forced to go back and forth between  
18 pieces of evidence, but we started out pretty much with  
19 Mr. Lawrence and the thing that strikes me about his  
20 testimony and I wonder if it hit anybody else this way.  
21 He said I became suspicious because she put the DVDs under  
22 the pillow -- these pillows that she purchased. If you  
23 look at the video you have to ask yourself is it Walmart's  
24 policy to put it on top of the pillow if you're going to  
25 stack up DVDs? Where else would you put them? Why can't

1 you put them under the pillow? That that's why he said he  
2 became suspicious.

3 Then he testified he followed her. He kept his eyes  
4 on her. You can see the video. He watched her, was  
5 peeking around the end caps, staying out of the camera, by  
6 the way. He knows where the cameras are at. He told us  
7 that. He is staying out of all of the way of all that and  
8 he follows her he says into where they have the fabrics  
9 and that's where he says that Mrs. Carolyn took the DVDs  
10 out of their cases and stuck them in her pocket. And you  
11 remember what I asked him? I said you mean to tell me  
12 that Walmart doesn't have any cameras back there?

13 Now, he's the loss prevention control. He knows  
14 where the cameras are at. You got to ask yourself this,  
15 ladies and gentlemen, I think to fairly assess this case,  
16 and that's what you have to do. You got to look at the  
17 evidence. You have to consider the arguments. You can't  
18 just go back there and just say, well, it's this, that, or  
19 the other thing. You have to discuss it.

20 Here's the loss prevention guy who knows there is no  
21 cameras back there and he sees folks go back there and the  
22 first thing that's in his mind because he knows there is  
23 no camera that's the perfect place to do something.  
24 That's where she did it or she's going to do it. The  
25 trouble is, ladies and gentlemen, none of the rest of us

1 knew that. I didn't know that until today. He knows it.  
2 He is probably run it over in his mind a couple of times  
3 if I were going to do that or if somebody is going to do  
4 that, those areas are the best place to go.

5 So now he's suspicious that's where it's at. That's  
6 where she's going to do it at, but you guys need to look  
7 at that video -- the first part of the video. What do you  
8 see on there? You guys have already seen it. Go back and  
9 look at it again. The only thing you see on the first  
10 part of that video are people shopping. You don't see any  
11 of the things that Mr. Lawrence says he saw because they  
12 are not on there and they don't have any evidence of it  
13 except for what he says.

14 Moving forward, you heard Mrs. Poe and Mr. Lawrence  
15 and everybody is testifying pretty much the same. They go  
16 out there. They're outside. Mr. Lawrence confronts  
17 Mrs. Poe. You heard her say I don't know what you're  
18 talking about, basically. I won't repeat exactly what she  
19 said. And she took off. She asked her granddaughter to  
20 go get in the car and she took off.

21 Ladies and gentlemen, you cannot discount her  
22 testimony up there. You have to consider her credibility.  
23 What did she look like? The State can't really argue what  
24 was in her mind beyond a reasonable doubt. They can float  
25 an idea but the only people who can assess the credibility

1 of why she took off and what did she tell you? She said  
2 she had been abused by police before and she also  
3 testified she had been wrongly convicted one other time.

4 You have to take that into consideration. You can  
5 judge her credibility. They don't know what was in her  
6 mind. The only thing they can try to do is spin it. You  
7 actually saw her testify. You can make an assessment  
8 directly. They get in the car and then they're stopped by  
9 law enforcement.

10 Ladies and gentlemen, every criminal defense course  
11 you ever take they always tell you when you get a case  
12 find the one thing that irritates you and go with that.  
13 Ladies and gentlemen, at this point I have to be honest  
14 with you. This is where I get irritated with this case.  
15 I know it's just a shoplifting, apparently. Mr. Slocum  
16 characterized it as a serious thing.

17 Let's talk about how serious North Augusta took it.  
18 They stopped her in that car. They took her into custody.  
19 Mr. Lawrence was there and he said from a distance he  
20 could look in there and he knew those were the CDs that  
21 belonged to Walmart. The officer takes him into custody.  
22 And did he do this one simple thing? Maybe he doesn't  
23 have a camera. We don't know. Did he do this one simple  
24 thing? Did he list anywhere in his report what he took  
25 out of the car?

1           You've heard conflicting testimony on this.  
2       Mrs. Carolyn Poe says those DVDs that they took out of the  
3       car belonged to her son. She has a DVD player in her car  
4       to keep her children occupied and her grandchildren  
5       occupied. I do a lot of driving because I live in  
6       Columbia. I am all the time behind people in SUVs and  
7       trucks and cars and everything else. I know it's true --  
8       one thing. There are DVD players in cars to occupy  
9       children.

10           He could have taken those CDs and just written down  
11       the name of them and put it in his report. Then you'd  
12       know. We would all know what was taken out of the car,  
13       but they didn't do that. The State's investigation  
14       stopped right there, and now we have to go on to the other  
15       thing Officer Priester told you -- because I asked him the  
16       rest of this investigation you relied on Walmart and what  
17       they said? You remember I kept saying the State did this  
18       or that. I said what I really mean to say is Walmart. I  
19       wasn't doing that on purpose. As a criminal defense  
20       attorney I am always used to saying the state says this or  
21       the State says that. I kept having to change it because  
22       the State can't say that.

23           That man and Walmart are alleging it. That's it.  
24       That's the evidence you have before you. You don't have a  
25       video. You don't have a picture from the car. You don't

1 have any details in the report from a police officer who's  
2 obligated to investigate a case and come up here and tell  
3 you we're not supposed to be relying on Walmart for our  
4 investigations. No fingerprints. No photographs.

5 How hard would it have been, ladies and gentlemen?  
6 You go into Walmart; I'm officer so-and-so, whatever,  
7 detective, officer. It's not that hard. Okay. This is  
8 what I took out of here. Let's lay them all out and take  
9 the pictures and I want you to show me the DVD cases and  
10 I'll take a picture of it all together and they'll  
11 correspond one to one. You have testimony that they did.

12 You also have a picture entered by the State. Take a  
13 good look at it. See the wrapper still on it? See the  
14 stickers are still on it? Can you say from this picture  
15 that those things were opened -- that these are the DVD  
16 cases that Walmart says were stolen or are these just DVD  
17 cases that Walmart is putting up? Because we don't know.  
18 The state stopped their investigation out on the street  
19 somewhere on Knox Avenue or wherever it was. Take a look  
20 at this stuff back there.

21 It's really tempting to say this is a he-said  
22 she-said. You know, when you begin to listen to the  
23 testimony that the state elicits and things really start  
24 to get skewed one way. You say, wow, this is not really  
25 looking good or anything, but when you dig into it, when

1 you actually think about it with common sense -- whether  
2 you're from Edgefield or Georgia, common sense still  
3 holds. The commonsensical thing to do would actually be  
4 to investigate it and not rely on Walmart.

5 You haven't heard any testimony other than  
6 Mr. Lawrence about any one-to-one relationship. You don't  
7 have any clue what was taken out of the car. You weren't  
8 even presented an inventory of what was in the car.  
9 Mrs. Poe told you.

10 Ladies and gentlemen, I don't know -- I don't really  
11 know exactly what the motivation would be for any of this.  
12 That's up to you and I am not going to get into that, but  
13 when you have a he-said she-said situation what you depend  
14 on, what you hope you can rely on is the State coming in  
15 with corroborating evidence. Did they really do that this  
16 time? I'm arguing that they didn't. You got Mr. Lawrence  
17 and that's it. You don't have a video. You don't have a  
18 picture. You don't have a list of what was taken out of  
19 the car. All you got is reasonable doubt.

20 Remember, was it shoplifting or was it shopping? Was  
21 it fright or was it flight? Think about the things that  
22 are not quite right about this case. You heard her  
23 testimony. You saw the tears. You got to take that into  
24 consideration and make a judgment from Mrs. Poe. You  
25 can't just go back there and just whatever. I know you

1 won't.

2 When you do -- when you take all of these things into  
3 consideration you should come back finding that there was  
4 reasonable doubt because they didn't do anything. They  
5 relied on Walmart. Thank you.

6 MR. SLOCUM: May it please the Court, Mr. Routzong.

7 THE COURT: Yes, sir.

8 CLOSING STATEMENT

9 MR. SLOCUM: Ladies and gentlemen of the jury, what  
10 Mr. Routzong just spoke to y'all about, how he spoke to  
11 you was just doing his job as a defense attorney. It is  
12 to try to make y'all to look over here or down here --  
13 actually, not at what happened. He referenced the State  
14 trying to spin things and we try to spin things and tell  
15 you the facts.

16 The main issue here is shoplifting. It has nothing  
17 to do with the suspicions of Mr. Lawrence which were  
18 actually confirmed when he followed the Defendant out,  
19 watched her jump into the car, and actually found the DVDs  
20 in her car -- the same eight that just so happened to be  
21 missing from Walmart that he saw her take. What a bad  
22 day. What an unlucky day for Mrs. Poe that those eight  
23 DVDs just happened to be in there.

24 I ask that you weigh the credibility that  
25 Mr. Routzong is talking about of the witnesses. Who has

1 something to lose here? Who has a motive? What reason  
2 does Mr. Lawrence have to make this up? He was just doing  
3 his job. What is the motive behind that? Officer  
4 Priester. What motive does he have? What reason does he  
5 have to make up this story about finding these DVDs in the  
6 car?

7       Going and addressing what Mr. Routzong was discussing  
8 about fingerprints, well, that's just how it works for the  
9 Defense. If we took a picture, why did you take a  
10 picture? If you didn't take a picture, well, why did you  
11 take the picture? If you didn't do fingerprints, why did  
12 you do fingerprints? What did you need for them? If it's  
13 not one thing, it's another. Well, you did fingerprints;  
14 why didn't you swab for DNA? We didn't need to. Officer  
15 Priester didn't need to.

16       The DVDs that were taken Mr. Lawrence saw them  
17 taken -- saw Mrs. Poe take them -- were the same DVDs that  
18 were found minutes later in the car that she was in. I  
19 ask you to use your common sense. What is reasonable?  
20 What makes sense? Look at all of it combined together.  
21 You saw the video. You heard the testimony, and I am  
22 going to be quick. I don't want to stand up here for a  
23 long time because, quite frankly, we don't need to go back  
24 through everything that just happened. Y'all seen it.

25       What I would like to say is Mrs. Poe wants you to

1 believe she was having a bad day -- just wrongful  
2 accusations and that law enforcement even stole some  
3 jewelry and DVD players out of her car. Well, after the  
4 fact she didn't file a report.

5 This wasn't a bad day when she went to Walmart on May  
6 23. This wasn't a bad day when Mr. Lawrence saw her take  
7 those DVDs out of that case and put them in her pocket.  
8 This wasn't a bad day when she just so happened to pass  
9 registers and not pay for it. It wasn't a bad day when  
10 she fled through the parking lot and jumped into this car.  
11 It was not a coincidence the same eight DVDs from Walmart  
12 Mr. Lawrence saw her take it were the same eight DVDs in  
13 the car. It's not a bad day.

14 I told y'all in the beginning we all know what  
15 shoplifting is. We learn from our moms, our dads, aunts,  
16 uncles, churches, schools, grandpas, and grandmas. We  
17 know what it is. It is a bad day in Aiken County when we  
18 have grandmothers teaching granddaughters how to shoplift.

19 MR. ROUTZONG: Objection, Your Honor.

20 THE COURT: Overruled.

21 MR. SLOCUM: I ask that when y'all go back into that  
22 jury room you look at all the evidence. The evidence  
23 shows guilty. I ask you to return a verdict of guilty in  
24 this case. Thank you.

25 JURY CHARGE

1           THE COURT: Madam forelady and ladies and gentlemen  
2 of the jury, you, of course, have heard and seen all the  
3 evidence in the case. You've now heard the final  
4 summations of the lawyers, and, therefore, now it becomes  
5 my duty and obligation to instruct you on the law that's  
6 applicable in the case and then you'll be asked to go back  
7 and begin with your deliberations and through that process  
8 you're simply going to be called upon through the exercise  
9 of good judgment through common sense conscientiously  
10 applied to the testimony and the evidence in the case to  
11 decide what you believe to be the true facts as they  
12 relate to these allegation and then once you decide those  
13 facts you apply the law that I will have provided you and  
14 you'll determine whether or not the defendant has been  
15 proven guilty of the crime of shoplifting beyond a  
16 reasonable doubt.

17           It is your exclusive duty to determine what the facts  
18 are and you do that through your own common sense  
19 examination and evaluation of all the testimony and other  
20 evidence received during the trial of the case. You  
21 twelve jurors alone will decide what weight, value, and  
22 effect to give to any particular testimony or other  
23 evidence in the case. Your sole objective is to decide  
24 the case fairly and impartially based solely upon the  
25 evidence and the law that is applicable.

1           In this case as you know the State through the  
2 prosecutor has charged the Defendant Carolyn Poe with the  
3 crime of shoplifting. The allegations are set forth in  
4 the indictment that I referred to prior to your selection  
5 and after your selection as jurors. As I told you the  
6 indictment is not evidence of anything. It's not proof of  
7 anything. It does not establish anything, but it does  
8 state the charge brought against the Defendant and the  
9 Defendant is charged with having committed the crime of  
10 shoplifting on May 23 of 2012.

11           Now, as to that charge and as to those allegations  
12 the Defendant has entered a plea of not guilty and as I've  
13 told you that plea of not guilty has placed upon the State  
14 the burden of proving the allegations that they've set  
15 forth in the indictment, the burden of proving each of the  
16 essential elements that constitutes the crime of  
17 shoplifting, and, therefore, the burden is upon the State  
18 to establish the Defendant's guilt to the satisfaction of  
19 you twelve jurors beyond a reasonable doubt.

20           The burden is never upon a defendant or person  
21 accused of a crime to prove that they're not guilty or to  
22 prove that they're innocent because in some cases that  
23 might not be possible. The burden is always on the State  
24 because they brought the charge against another to  
25 establish that person's guilt beyond a reasonable doubt.

1 You are instructed that it is a vital important and  
2 cardinal rule of law that every defendant in a criminal  
3 trial, no matter how serious might be the offense for  
4 which that person stands charged, a person accused of a  
5 crime is always presumed innocent of that charge and that  
6 presumption of innocence remains with any defendant as it  
7 does with this Defendant from the time that she's placed  
8 under arrest and throughout the course of the criminal  
9 process and even throughout the course of the trial and as  
10 I told you that presumption of innocence will be with  
11 Mrs. Poe even as you go back to begin with your  
12 deliberations in this case and that presumption of  
13 innocence will be with her in that jury room and it will  
14 be with her forever unless you twelve jurors determine  
15 that she's no longer entitled to that presumption of  
16 innocence.

17 In other words, after you've carefully considered all  
18 the evidence in the case and from that evidence you've  
19 decided what you believe to be the true facts as they  
20 relate to these allegations and after deciding those facts  
21 you apply the law that I have provided you if you twelve  
22 jurors unanimously determine that her guilt has been  
23 proven beyond a reasonable doubt, then she will no longer  
24 be entitled to that presumption of innocence, but it's  
25 only if, unless, and until you are satisfied of her guilt

1 beyond a reasonable doubt that the presumption of  
2 innocence would no longer be applicable.

3 Now, while the State does have the burden of proving  
4 the Defendant's guilt to your satisfaction beyond a  
5 reasonable doubt that doesn't mean that they have to prove  
6 her guilt to your satisfaction beyond all doubt or beyond  
7 any possible doubt, but it does require the State to prove  
8 her guilt to your satisfaction beyond a reasonable doubt.  
9 The term reasonable doubt should be given its plain and  
10 ordinary meaning. A reasonable doubt is the kind of doubt  
11 that would cause a reasonable person to hesitate to act  
12 upon the information provided.

13 The Defendant is entitled to any reasonable doubt  
14 that arises from the evidence or lack of evidence in the  
15 case and if upon any factual issue essential to a finding  
16 of a verdict of guilty you have some reasonable doubt as  
17 to how that issue should be resolved, it is your duty to  
18 resolve that reasonable doubt in favor of the defendant,  
19 and, therefore, if upon your consideration of the whole  
20 case you have a reasonable doubt as to her guilt, you must  
21 resolve that reasonable doubt in her favor and return a  
22 verdict of not guilty.

23 At the same time after you've carefully considered  
24 all the evidence and you've decided the facts and apply  
25 the law, if you have no reasonable doubt as to her guilt

1 it would be your corresponding duty to find her guilty of  
2 a crime where it has been proven to your satisfaction  
3 beyond a reasonable doubt.

4 The same law that provides that you are the judges of  
5 the facts also provides that I am the judge of the law and  
6 that simply means that nobody is going to tell you how to  
7 arrive at your determination of fact in this case. You do  
8 that as I've already stated through the exercise of good  
9 judgment and common sense conscientiously applied to the  
10 testimony and evidence received during the course of the  
11 trial.

12 You must, however, under your oath as a juror accept  
13 the law as I provide it to you as being the law that you  
14 are to apply in this case. In other words, you're never  
15 to concern yourself with what you thought the law was  
16 before you came to serve as a juror this week or what you  
17 think the law ought to be. Under your oath as a juror you  
18 must simply accept the law as I provide it to you as being  
19 the law that you are to apply in the case and then you  
20 simply take that law and you apply it to the facts as you  
21 twelve jurors determine those facts to be based upon your  
22 common sense examination of all the evidence in the case.

23 Because you are the sole judges of the facts in this  
24 case you are, therefore, necessarily the sole judges of  
25 the credibility or the believability of each witness that

1 has testified during the course of this trial. You twelve  
2 jurors alone will decide what weight, value, and effect to  
3 give to any particular witnesses' testimony or other  
4 evidence in the case, but there are a number of factors  
5 which you should consider in arriving at your assessment  
6 as to a particular witness' credibility and I am going to  
7 list those factors for you.

8       You should consider the demeanor of the witness; that  
9 is, how the witness appeared to you when the witness  
10 testified from the witness stand. Was the witness  
11 straightforward in responding to questions or was the  
12 witness hesitant or evasive in responding to questions  
13 that were asked of the witness? Simply put, did the  
14 witness appear to you to be telling the truth and to have  
15 knowledge to the facts for which that witness has  
16 testified? You should also consider whether or not the  
17 testimony of a witness is consistent or is it inconsistent  
18 with that witness' own testimony or other testimony or  
19 other evidence received during the course of the trial?

20       You should also consider how the witness came to know  
21 the facts to which a witness has testified. In other  
22 words, what was that witness' opportunity and ability to  
23 perceive the existence of those facts to which that  
24 witness has testified by having previously used his or her  
25 senses and then what is that witness' ability to be able

1 to come into court and to accurately recollect to you as  
2 to what they have previously seen or heard or felt for  
3 that matter?

4 You should also consider any bias or prejudice or  
5 interest that you find a witness has with regard to a  
6 case. In other words, do you find some reason that a  
7 particular witness would come into court and would testify  
8 one way or another to help or hurt one side or the other  
9 and you may consider any interest that a witness might  
10 have in the outcome of the case if you determine that a  
11 witness does have such an interest and you find that that  
12 interest would bear upon that particular witness's  
13 credibility, and you may also consider whether or not the  
14 testimony of a witness is strengthened or is it weakened  
15 by other testimony or other evidence received during the  
16 course of the trial.

17 Now, during the course of this trial you have heard  
18 certain evidence relating to the Defendant having prior  
19 convictions for crimes involving dishonesty. Ordinarily,  
20 evidence of any prior conviction of a defendant or any  
21 other witness is not admissible in the trial of the case  
22 because it's not relevant to any issue that a jury has to  
23 decide. Where, however, a defendant who testifies or  
24 other witness has a record of convictions for a crime  
25 involving dishonesty, such evidence may be introduced

1 during their testimony for the purpose of impeaching the  
2 credibility of the defendant's or other witness'  
3 testimony.

4 Where such evidence has been introduced you may  
5 consider such evidence as it may relate to the issue of  
6 the credibility of the defendant's testimony if you  
7 determine that that evidence is credible and probative on  
8 that particular point, but you may not consider it for any  
9 other purpose. You may not consider such evidence as  
10 evidence of bad character; nor may you consider it as  
11 evidence that the defendant may have acted in accordance  
12 with prior conduct.

13 Such evidence is not being offered as evidence of the  
14 Defendant's guilt of the crime for which she now stands  
15 charged and you may not under your oath as jurors consider  
16 such evidence as proof of her guilt. It may only be  
17 considered by you, if at all, as it relates to the issue  
18 of the credibility or the believability of the Defendant's  
19 testimony if you determine such evidence is probative on  
20 that point.

21 You as the finders of the fact and you as the judges  
22 of the credibility of each witness that has testified  
23 during the course of this trial are permitted to believe  
24 as much or as little of what a witness has testified to as  
25 you deem appropriate. Therefore, you may believe

1 everything that a witness testified to. You may choose to  
2 believe none of it. You may believe some portion of a  
3 witness' testimony and reject some other portion of that  
4 same witness' testimony. You may believe one witness as  
5 opposed to several or several as opposed to one, but  
6 whatever your good judgment and common sense tells you is  
7 the most believable and credible testimony is the  
8 testimony you should accept and you should reject any  
9 testimony or other evidence that you find not to be  
10 credible or believable. Again, your sole objective is to  
11 simply render a fair and impartial verdict based upon the  
12 law and the evidence in the case.

13 Now, in this case as you know the State has charged  
14 the Defendant with the crime of shoplifting. Shoplifting  
15 is a statutory offense and that just means it's codified  
16 in the South Carolina Code of Laws which are these blue  
17 volumes. I don't know if you can see them or not, but  
18 every year from January to June the legislature meets and  
19 they pass certain laws, rules, regulations that govern our  
20 conduct in a variety of ways. Some of those statutes they  
21 pass are criminal statutes. In other words, they prohibit  
22 us in engaging in certain kind of conduct. They define  
23 what that conduct is and they provide for a penalty where  
24 a person engages in conduct in violation of a particular  
25 statute.

1           Please understand, however, that you are never to be  
2 concerned with punishment or penalty. That's not  
3 something that a jury decides. Your sole obligation and  
4 duty is to determine whether or not a person's guilt has  
5 been proven beyond a reasonable doubt and you do that  
6 without regard to any consequence that your decision may  
7 bring by way of punishment or penalty, but shoplifting is  
8 set forth in Section 16-13-110 of the Code of Laws of  
9 South Carolina and that statute provides that a person is  
10 guilty of the crime of shoplifting if the person takes  
11 possession of, carries away, transfers from one person to  
12 another or from one area of a store to another or causes  
13 to be carried away or transferred any merchandise which is  
14 displayed, held, stored, or offered for sale by any store  
15 with the intention of depriving the merchant of the  
16 possession, use, or benefit of the merchandise and without  
17 paying the full retail value of the merchandise to the  
18 merchant.

19           Section 16-13-120 of the Code of Laws also provides  
20 that you are permitted to infer a person's intent to  
21 convert property to his or her own use without paying the  
22 full retail purchase price thereof from proof of a  
23 person's willful concealment of unpurchased merchandise  
24 either on the premises or outside of the premises of a  
25 store. Now, within the meaning of the statute willful is

1 defined as knowing and intentional and with a bad purpose  
2 in contrast to an act that's done mistakenly,  
3 accidentally, or inadvertently. Concealment means the  
4 hiding of merchandise on the person or the belongings of a  
5 person and the full retail purchase price means was stated  
6 or advertised price of the merchandise.

7       An inference -- or when you're permitted to infer a  
8 fact, those are simply evidentiary facts that you are to  
9 take into consideration with all of the other evidence in  
10 the case and you can give those permissible inferences  
11 such weight, if any, that you determine they should  
12 receive, if any. You're never required to infer a fact  
13 from another just because you're permitted to do so. You  
14 simply do that based upon your own good judgment and  
15 common sense if you find it appropriate to make that  
16 particular inference.

17       Now, ladies and gentlemen, I am not in any way  
18 concerned with what your decision is, but I do tell you  
19 that the verdict or the decision of the jury must be  
20 unanimous. All twelve of you must be in agreement.

21       Madam forelady, as you know you're going to be called  
22 upon to preside over the jury deliberations simply to  
23 ensure that those deliberations are carried out in some  
24 orderly fashion, but all are expected to participate in  
25 those deliberations because as you know the verdict has to

1 be unanimous. All twelve of you must be in agreement  
2 before any decision may be rendered and returned to the  
3 court.

4 Madam forelady, as I indicated to you earlier once  
5 you and your fellow jurors have deliberated the case and  
6 you decided the facts and you apply the law and you've  
7 arrived at your decision, I am going to ask that you  
8 indicate that decision on the back of this indictment in  
9 the lower left-hand corner. You'll see the word verdict.  
10 It is beneath that word that you will indicate the jury's  
11 decision.

12 In this particular case you have two possible verdict  
13 forms. Those possible verdict forms are guilty and not  
14 guilty. So whatever that decision is, indicate it in the  
15 space provided and you'll sign your name as the  
16 foreperson. You're the only juror that needs to sign the  
17 verdict form, and, also, there is a place for the  
18 appropriate date.

19 Now, during your deliberations there may come a time  
20 where you have a question about the facts of the case or  
21 the evidence or even the lack of evidence. Understand  
22 that all of the evidence that's going to be introduced in  
23 this case has already been introduced. So, if you think  
24 there is something else out there or you wonder if it is  
25 and you wonder if you can have it to help you, no

1 additional evidence can be received now that you're going  
2 back to begin deliberations. So, even if it does exist,  
3 you can't have it; so don't inquire about it. It's not  
4 permitted for you to have it once the evidence has been  
5 closed.

6 If, however, you have a question about testimony and  
7 you think that that question can be answered by having a  
8 witness' testimony replayed in whole or in part you are  
9 permitted to come back into the courtroom and we can have  
10 the Court Reporter replay a witness' testimony for your  
11 benefit if that will assist you in resolving any question  
12 you have about that testimony. I don't have transcripts  
13 to send back to the jury room. You'll have to come back  
14 here to listen to the testimony and you can listen to all  
15 of it or just some portion of it if that's all you need.

16 If at any time you have a question about the law that  
17 is applicable, I am always permitted to answer those  
18 questions. So, should you need a re-instruction on the  
19 law, I'm happy to do that. Should you need an explanation  
20 or a clarification of some point of law that I have  
21 already provided, I'll be happy to give you that  
22 additional explanation or make that clarification.

23 Madam forelady, if at any time you need to direct  
24 some matter or question to me if you'll write it on a  
25 piece of paper, give it to the bailiff, and he'll provide

1 it to me and I'll respond to your question or any issue  
2 that you might have. The video will be sent back with you  
3 so you can have that in the jury room to look at it as  
4 much or as little as you'd like. So it will be available  
5 for your benefit in the jury room along with any other  
6 exhibits which have been introduced.

7 I think that covers everything, but if it doesn't,  
8 one of these lawyers will remind me that I neglected  
9 something and if I neglected it I'll bring you back and  
10 provide you with an additional instruction. Right now I  
11 am going to ask the twelve primary jurors to please go  
12 with the bailiff to your jury room. Do not yet, however,  
13 begin your deliberations. I'll send you word by way of  
14 the bailiff when you may begin those deliberations and in  
15 that event he'll bring to the jury room all of the  
16 exhibits which have been introduced and you, Madam  
17 forelady, he'll also bring the indictment which will serve  
18 as the verdict form.

19 I'm going to ask Ms. Hobbs and Mr. Jefferson to stay  
20 here in the courtroom with me while the twelve original  
21 jurors retire to the jury room.

22 (Whereupon, the twelve jurors exited the courtroom at  
23 3:19.)

24 THE COURT: Now, Ms. Hobbs and Mr. Jefferson, as you  
25 know you can't participate in jury deliberations because

1 the original twelve jurors are able to perform their  
2 function; so that's going to conclude your service in the  
3 trial of this case and that means you're going to be  
4 excused for the balance of the afternoon. I am going to  
5 ask if you'll call back after 6 o'clock this evening in  
6 order to receive further reporting information. Okay?  
7 But you are excused for the balance of the afternoon.  
8 Thank you again for your participation.

9 (Whereupon, the alternate jurors exit the courtroom.)

10 THE COURT: Are there any exceptions taken to the  
11 instruction or requests for additions to the instruction  
12 taken by the state?

13 MR. SLOCUM: None from the State, Your Honor.

14 THE COURT: By the Defendant?

15 MR. ROUTZONG: No, sir.

16 THE COURT: Let me ask y'all to verify the exhibits  
17 please before they go back. There are just three.

18 MR. SLOCUM: Yes, sir.

19 THE COURT: Is the computer -- did y'all use a  
20 computer?

21 MR. SLOCUM: Yes, sir. The ---

22 THE COURT: Is that a clean computer?

23 MR. SLOCUM: No, sir, it's not.

24 THE COURT: You don't have one?

25 MR. SLOCUM: If they want to view it usually we bring

1    them back out and view it on the big screen. We don't  
2    have one to send back.

3           THE COURT: Why not?

4           MR. SLOCUM: I do not know the answer to that  
5    question, Judge.

6           THE COURT: They don't cost more than \$300. Can we  
7    get a clean computer for it? Is it a ---

8           MR. SLOCUM: It's a disk, Your Honor. The only issue  
9    we would have is we played pertinent parts of the DVD, not  
10   it's entirety.

11          THE COURT: Well, I know, but the whole thing is in.

12          MR. SLOCUM: Okay. I can see about obtaining a clean  
13   computer but we've had this problem in the past and just  
14   brought them back out.

15          THE COURT: Well, I know, but that -- the problem  
16   with that is, you see, that precludes the jury from being  
17   able to talk about things --

18          MR. SLOCUM: Yes, sir.

19          THE COURT: -- while they're looking at it. That's  
20   why we need to have it.

21          MR. SLOCUM: Yes, sir. We'll see what we can do.

22          THE COURT: See what you can do about that.

23          MR. ROUTZONG: Your Honor, at the appropriate time I  
24   would like to put on some reasons why I objected to  
25   something he said on his closing argument. You overruled

1 it, but I just wanted to preserve the record, Your Honor.

2 THE COURT: Okay.

3 MR. ROUTZONG: And I also have a motion.

4 THE COURT: You can send the exhibits back with the  
5 verdict form and tell them they may begin their  
6 deliberations and notify us when they conclude and inform  
7 the jury that we are attempting to locate a computer for  
8 the purpose of playing the video and if we can't find  
9 one -- but I'm sure we can -- we'll have to bring them  
10 back to the courtroom if they want to look at the video  
11 again.

12 MR. SLOCUM: Judge, for the record that verdict form  
13 going back does not reference to two prior convictions; is  
14 that correct?

15 THE COURT: That is correct.

16 MR. SLOCUM: Okay. Thank you, sir.

17 THE COURT: All right. Mr. Routzong, you got a  
18 couple of matters you want to address?

19 MR. ROUTZONG: Yes, Your Honor. As to the objection  
20 I made during the State's closing argument, there is  
21 really two good reasons I can think of that is  
22 objectionable, Your Honor. The first one would be it's,  
23 obviously, calculated only to ---

24 THE COURT: Before you do that, tell me what the  
25 statement was and then tell me why it was objectionable.

1 MR. ROUTZONG: The statement was the State alleged  
2 that the Defendant -- the grandmother -- was teaching her  
3 granddaughter how to steal.

4 THE COURT: Right. I understand. What's  
5 objectionable about that?

6 MR. ROUTZONG: It is objectionable for two reasons.

7 THE COURT: I mean, what's objectionable about it  
8 being introduced as evidence? I know it's objectionable,  
9 but, I mean, there is evidence in the case.

10 MR. ROUTZONG: I don't think it was ever introduced  
11 as evidence in the case. It was part of his closing  
12 argument. That is one good reason. That was nothing that  
13 was in evidence. There was no allegations in the evidence  
14 that Mrs. Poe was actually teaching her granddaughter  
15 anything. Moreover, Your Honor, it was calculated, I  
16 believe, obviously, to inflame the jury.

17 THE COURT: Well, there was evidence that Mrs. Poe  
18 and her granddaughter were in Walmart shoplifting  
19 merchandise. There is evidence of that and so what the  
20 Solicitor said was a reasonable inference to make, I  
21 think. So, I don't find it inappropriate. That's why I  
22 overruled your objection.

23 MR. ROUTZONG: And I have a motion, Your Honor, for a  
24 mistrial for the same reason.

25 THE COURT: All right. Solicitor, you want to be

1 heard?

2 MR. SLOCUM: Your Honor, in terms of the mistrial the  
3 State feels like it abided by its parameters with the  
4 evidence and the testimony and made nothing outside of  
5 what was presented to the jury in its closing. If that's  
6 the basis for the mistrial, that would be my response.

7 THE COURT: Motion for mistrial is denied.

8 MR. ROUTZONG: Thank you.

9 THE COURT: We'll take 10 minutes.

10 (Whereupon, a break was taken.)

11 (Whereupon, Court's Exhibit No. 1 was marked for  
12 identification only.)

13 THE COURT: All right. The Defendant is present. I  
14 am told the jury has reached a decision. Are we ready to  
15 receive the verdict?

16 MR. SLOCUM: The State is ready, Your Honor.

17 MR. ROUTZONG: Yes, sir.

18 THE COURT: Okay. Bring them in, please, sir.

19 (Whereupon, the jury came into open court at  
20 approximately 4:58.)

21 THE COURT: Madam forelady, have you and your fellow  
22 jurors reached a unanimous decision?

23 THE FOREPERSON: Yes, sir, we have.

24 THE COURT: Have you reflected that decision on the  
25 back of the indictment as requested?

1 THE FOREPERSON: Yes, sir.

2 THE COURT: Did you sign your name and date it?

3 THE FOREPERSON: Yes, sir.

4 THE COURT: If you'll please hand that up. Thank  
5 you. You may publish the verdict.

6 THE CLERK: Thank you, Your Honor. Your Honor, we  
7 have 2013-GS-02-00063, the State of South Carolina versus  
8 Carolyn H. Poe. The verdict is guilty of shoplifting,  
9 Foreperson, Patricia S. --

10 THE FOREPERSON: Gibbs.

11 THE CLERK: -- Gibbs. I'm sorry. Today's date,  
12 February 12, 2013. If this is still your verdict, would  
13 you please indicate by the raising of your right hand?

14 All hands are raised, Your honor.

15 THE COURT: Does the Defendant wish to have the jury  
16 polled?

17 MR. ROUTZONG: No, sir.

18 THE COURT: All right. Thank you, ladies and  
19 gentlemen, for your participation in the trial of the  
20 case. You're excused for the remaining 30 seconds of the  
21 day. Please call back after 6 o'clock this evening to  
22 receive further reporting information. Thank you again  
23 for your participation.

24 (Whereupon, the jury exited the courtroom at 5:00.)

25 THE COURT: Any matters to address prior to the

1 imposition of sentence?

2 MR. SLOCUM: None from the State, Your Honor.

3 MR. ROUTZONG: Your Honor, at this time the Defense  
4 moves for a new trial based on the prior objections and  
5 motions, Your Honor, and also it's the Defense's position,  
6 Your Honor, that no reasonable jury based on the evidence  
7 presented here at trial could have concluded that the  
8 State has proven this case beyond a reasonable doubt.

9 THE COURT: Mr. Slocum, do you wish to be heard?

10 MR. SLOCUM: Nothing from the State, Your Honor. We  
11 would just argue that the evidence was more than adequate  
12 for the jury to find the Defendant guilty beyond a  
13 reasonable doubt.

14 THE COURT: All right. I agree. Motions are denied.  
15 Do we have a sentencing sheet?

16 MR. SLOCUM: We do, Your Honor.

17 THE COURT: All right. Anything further on behalf of  
18 the State?

19 MR. SLOCUM: Nothing from the State, Your Honor.

20 THE COURT: Two prior convictions for shoplifting:  
21 One in 1994 and one in 2001?

22 MR. SLOCUM: That's correct, Your Honor.

23 THE COURT: Okay. You're in agreement with that?

24 MR. ROUTZONG: Yes, sir.

25 THE COURT: And, Mrs. Poe, you're in agreement with

1 that, too?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: All right. I'll be glad to hear from  
4 you.

5 MR. ROUTZONG: Your Honor, Mrs. Poe is 54 -- I'm  
6 sorry; 58 years old and a resident of Georgia. Your  
7 Honor, I guess the things that I would ask the Court to  
8 consider in sentencing, you've heard the evidence, Your  
9 Honor. You know what the defense theory -- and I'd have  
10 to tell the Court that Mrs. Poe has always been the same.  
11 Every time I have ever met her she's always told me that  
12 she was not guilty. We disagreed with the jury's verdict.  
13 I would ask the Court to consider what you've heard in  
14 terms of evidence, Your Honor, and also her lack of  
15 convictions within the last 10 years.

16 THE COURT: Okay. Mrs. Poe, anything you want to  
17 add?

18 THE DEFENDANT: No, sir.

19 MR. ROUTZONG: Your Honor, I neglected one thing.  
20 She currently has living with her and that she takes care  
21 of four children, Your Honor. I think the oldest one is  
22 probably 10 years old or 16? 18. Some of them, Your  
23 Honor, I think there's as young as 7 and one is 10. So  
24 she -- I would ask the Court to take that into  
25 consideration as well.

1 THE COURT: Whose children are they?

2 MR. ROUTZONG: One of them is hers and I think the  
3 rest of them are grandchildren. I think the 7-year-old is  
4 hers and the 10-year-old is the grandchild.

5 THE COURT: The 7-year-old is her biological child?

6 THE DEFENDANT: My adopted child.

7 THE COURT: Adopted child. And who did you adopt the  
8 child from? Was it a relative?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: What happened to that connection?

11 THE DEFENDANT: What you mean?

12 THE COURT: What happened with the child's own  
13 parents? Why was it that you felt the need to adopt the  
14 child?

15 THE DEFENDANT: Because she didn't know who the daddy  
16 was and I told her to let me adopt him.

17 THE COURT: Is this your daughter?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Well, why couldn't she -- how old was  
20 she?

21 THE DEFENDANT: She'll be 38 years old this year.

22 THE COURT: Why can't she take care of the child?

23 THE DEFENDANT: She have five.

24 THE COURT: And what about the parents of these other  
25 children that you ---

1 THE DEFENDANT: They're hers, too. I have custody.  
2 She have a drinking problem. I have custody of them.

3 THE COURT: Did you ever tell her that if you can't  
4 reasonably take care of a child you probably shouldn't  
5 bring them into the world?

6 THE DEFENDANT: I have told her that a lot of times.

7 THE COURT: She doesn't listen to you, does she?

8 THE DEFENDANT: No, sir.

9 THE COURT: How old is she?

10 THE DEFENDANT: She'll be 38 in August.

11 THE COURT: Thirty-eight?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Have you talked to your granddaughter  
14 about that, too?

15 THE DEFENDANT: I beg your pardon?

16 THE COURT: Have you talked to your granddaughter  
17 about that, too?

18 THE DEFENDANT: About what?

19 THE COURT: Does she have children?

20 THE DEFENDANT: No, sir.

21 THE COURT: She doesn't have any children?

22 THE DEFENDANT: No, sir.

23 THE COURT: She was just with you, but she wasn't  
24 buying anything for the children?

25 THE DEFENDANT: They're not her children. They are

1 my grandchildren by my daughter and the courts give me  
2 custody of them.

3 THE COURT: I must have misunderstood. I thought you  
4 were with your granddaughter with the shoplifting took  
5 place and she was wanting you to buy clothes for her  
6 children.

7 THE DEFENDANT: No. She wanted me to buy something  
8 for her.

9 THE COURT: Oh, clothes for her?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Oh, okay. Anything else y'all would like  
12 to tell me?

13 MR. ROUTZONG: She is a high school graduate, Your  
14 Honor. I think she does have many physical conditions.  
15 She probably would be the best person to tell the Court  
16 about that. I know that she had her granddaughter bring  
17 up a bag of medicine and I saw that there was probably  
18 eight, nine, or ten bottles of medicines of different  
19 kind. I think it is part of this degenerative bone  
20 disease she's made me aware of. There may be some kidney  
21 ailment as well as blood pressure, that type of thing.

22 THE COURT: Anything else you'd like to tell me,  
23 Mrs. Poe?

24 THE DEFENDANT: I just -- I have gout. I have the  
25 disease in my wrist and stuff. I have spondylitis. I

1 have acid reflux. I have to take medicine for all of  
2 that. I don't have -- I have 10 percent worth of kidneys.  
3 They're trying to keep me off of dialysis.

4 THE COURT: Anything else?

5 THE DEFENDANT: No, sir.

6 THE COURT: All right. Indictment 2013 number 63 the  
7 indictment for shoplifting wherein you have been found  
8 guilty by the jury for that offense, sentence of the Court  
9 is you Carolyn H. Poe be confined to South Carolina  
10 Department of Corrections for a period of 10 years. That  
11 sentence is suspended upon the service of three and  
12 payment of \$100 plus the costs and assessments; probation  
13 for three following your incarceration. Conditions of  
14 probation are pay \$500 for your appointed lawyer, no  
15 contact with any Walmart store.

16 You have a right to appeal the verdict of the jury  
17 and the sentence of the court. You can file any notice of  
18 your intention to appeal those decisions within ten days  
19 of today's date. Mr. Routzong can assist you with that.

20 MR. ROUTZONG: Thank you, Your Honor.

21 MR. SLOCUM: Thank you, Your Honor.

22 MR. ROUTZONG: Will she get credit for the time she  
23 served?

24 THE COURT: How much time has served?

25 MR. ROUTZONG: I don't know. I don't think it's that

1 much.

2 THE COURT: She automatically gets credit for it.

3 (Whereupon, Court's Exhibit No. 2 was marked for  
4 identification only.)

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|--------------|--------------|--------|-----------|
| ST# 1270     | OP# 00006450 | TE# 21 | TR# 09351 |
| MISSIONI DVD | 003242911440 |        | 14#96 X   |
| DONTBEAM DVD | 009600976209 |        | 4#00 X    |
| TSBRKDN DVD  | 002519213586 |        | 12#96 X   |
| HAPPY FE DVD | 088392915645 |        | 14#96 X   |
| JOYFUL N DVD | 088392923952 |        | 14#96 X   |
| UNDRWRLD DVD | 004339639805 |        | 17#96 X   |
| ALVINCHI DVD | 002454380536 |        | 14#96 X   |
| IMMORTAL DVD | 002454380197 |        | 14#96 X   |
|              | SUBTOTAL     |        | 109#72    |
| TAX 1        | 7.000 %      |        | 7#68      |
|              | TOTAL        |        | 117#40    |
|              | CASH TEND    |        | 117#40    |
|              | CHANGE DUE   |        | 0#00      |

**# ITEMS SOLD 8**

\*\*\*\*\*  
\*\*\*\* INVALID RECEIPT - TRAINING \*\*\*\*  
\*\*\*\*\*  
New! Place your order at [Walmart.com](http://Walmart.com)  
and pay with cash at your store.  
05/23/12 11:35:38

STATE'S  
EXHIBIT

**3** 2-12-13  
LD

WITNESSES

North Augusta Dept. of Public Safety

Josh Priester

Law Enforcement Case #: 12-013962

JAS

ARREST WARRANT NUMBER

M041572

FILED

January 14 2013

*Shirley Godard*  
C.C.P. & G.S.  
*Shannon D. Rosenkrantz*  
Deputy Clerk

ACTION OF GRAND JURY

TRUE BILL

*Ronnie M. Hall*

Foreperson of Grand Jury

Date: January 14, 2013

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2013GS0200063

The State of South Carolina

County of Aiken

COURT OF GENERAL SESSIONS

JANUARY TERM 2013

THE STATE  
vs.

CAROLYN H. POE

CDR #: 2877

Indictment for

SHOPLIFTING

§ 16-13-0110(A) (16-1-57)

J. STROM THURMOND, SOLICITOR

STATE OF SOUTH CAROLINA  
COUNTY OF AIKEN

I, Shirley Godard, Clerk of Court of Common Pleas and General Sessions for Aiken County, South Carolina do hereby certify that the foregoing constitutes a true and correct copy of the original documents which have been filed in my office this

15 day of Feb 2013

*Shirley Godard*  
C.C.P. & G.S., Aiken County, S.C.

*Sherry Langley*  
Deputy Clerk

STATE OF SOUTH CAROLINA     )  
                                          )  
COUNTY OF AIKEN                )  
                                          )

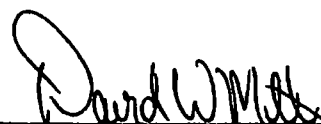
INDICTMENT FOR  
SHOPLIFTING

§ 16-13-0110(A) (16-1-57)

At a Court of General Sessions, convened on January 14, 2013, the Grand Jurors of Aiken County present upon their oath:

That CAROLYN H. POE in Aiken County, South Carolina, on or about May 23, 2012, previously having been convicted of at least two offenses for which the term of imprisonment is contingent upon the value of the property involved, did take possession of or carry away, transfer from one person to another or from one area of a store to another; did alter, transfer, or remove the price label or tag; or did transfer from its container to another container or conceal merchandise displayed, held or offered for sale by a store with the intention of depriving the merchant of the possession, use or benefit of the merchandise without paying the full retail value; to wit: eight (8) DVD's with an estimated value of Two Thousand (\$2,000.00) Dollars or less from Wal-Mart, located at 1201 Knox Avenue, North Augusta, South Carolina, South Carolina; all in violation of Section 16-13-110 and Section 16-1-57 of the Codes of Law of South Carolina, (1976, as amended)

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



J. STROM THURMOND, SOLICITOR

Verdict form \* Sentencing Indictment \*

WITNESSES

DOCKET NO. 2013GS0200063

North Augusta Dept. of Public Safety

The State of South Carolina

Josh Priester

County of Aiken

Law Enforcement Case #: 12-013962

JAS

COURT OF GENERAL SESSIONS

ARREST WARRANT NUMBER

JANUARY TERM 2013

M041572

THE STATE

vs.

CAROLYN H. POE

ACTION OF GRAND JURY

CDR #: 2877

Foreperson of Grand Jury

Date: January 14, 2013

Indictment for

VERDICT

SHOPLIFTING

§ 16-13-0110(A) (16-1-57)

J. STROM THURMOND, SOLICITOR

*Patricia J. Gibbs*

Foreperson of Petit Jury

Date: 2-12-13

STATE OF SOUTH CAROLINA  
COUNTY OF AIKEN  
I, Liz Godard, Clerk of Court of Common Pleas and General  
Sessions for Aiken County, South Carolina do hereby certify  
that the foregoing constitutes a true and correct copy of the  
original documents which have been filed in my office this  
15 day of Feb 2013  
*Liz Godard*  
C.C.C.P. & G.S. Aiken County, S.C.  
*Sherry L. Langley*  
Deputy Clerk

STATE OF SOUTH CAROLINA     )  
                                          )  
COUNTY OF AIKEN                )  
                                          )

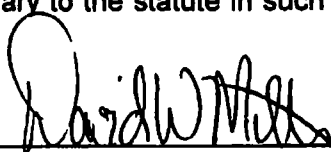
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Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

  
\_\_\_\_\_  
J. STROM THURMOND, SOLICITOR

## STATE OF SOUTH CAROLINA

## IN THE COURT OF GENERAL SESSIONS

COUNTY OF Aiken  
STATE VS.Carolyn H PoeINDICTMENT/CASE#: 2013GS0200063A/W#: M041572Date of Offense: 5/23/2012S.C. Code §: 16-13-0110(A) (16-1-57)CDR Code #: 2877

AKA: \_\_\_\_\_

Race: B Sex: F Age: 58DOB: [REDACTED] SS#: [REDACTED]Address: [REDACTED]City, State, Zip: Augusta, GA 30906DL#: [REDACTED] 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 \$2000 or less (see 16-01-0057)SENTENCE SHEET 0-10 yearsin violation of § 16-13-0110(A) (16-1-57) 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.ATTORNEY: [Signature] 100236 Defendant [Signature] 71861  
Silbum, Jeffrey Alan SC Bar# [REDACTED] Attorney for Defendant SC Bar# [REDACTED]WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,  
for a determinate term of 10 days/months/years ☐ under the Youthful Offender Act not to exceed \_\_\_\_\_ years  
and/or to pay a fine of \$ 100; provided that upon the service of 3 days/months/years and/or payment  
of \$ 100; plus costs and assessments as applicable\*; the balance is suspended with probation for 3months/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 § 17-25-13  
Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-20 or 16-25-20 (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:                                 |         | \$ 100.00 |
| § 14-1-206 (Assessments 107.5 %)       |         | \$ 107.50 |
| § 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   | \$ 500.00 |
| § 14-1-212 (Law Enforce. Funding)      | \$25    | \$ 25.00  |
| § 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) |         | \$ 25.13  |
| TOTAL                                  |         | \$ 862.63 |

Clerk of Court/ Deputy Clerk

Court Reporter: [Signature]

PTUP \_\_\_\_\_

\_\_\_\_\_ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. \_\_\_\_\_

May serve W/E beginning \_\_\_\_\_

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ \_\_\_\_\_ beginning \_\_\_\_\_

\$ \_\_\_\_\_ paid to Public Defender Fund

Other: no contact w/ any Wal-Mart store

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

☒ Appointed PD or appointed other counsel,

§ 47.12 requires \$500 be paid to Clerk

during probation.

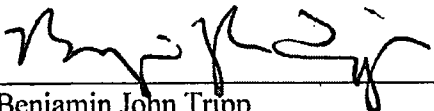
\_\_\_\_\_

Presiding Judge [Signature]Judge Code: 2093Sentence Date: February 12, 2013

## CERTIFICATE OF COUNSEL FOR APPELLANT

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

May 20, 2014

  
Benjamin John Tripp  
Appellate Defender

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

ATTORNEY FOR APPELLANT

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

---

Appeal from Aiken County

J. Derham Cole, Circuit Court Judge

---

THE STATE,

RESPONDENT,

V.

CAROLYN POE,

APPELLANT

APPELLATE CASE NO. 2013-000356

---

FINAL BRIEF OF APPELLANT

---

BENJAMIN JOHN TRIPP  
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(803) 734-1343

ATTORNEY FOR APPELLANT

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### **STATEMENT OF ISSUE ON APPEAL**

Whether reversible error occurred when the Solicitor during cross-examination of Appellant asked her to explain why the security guard and police officer called by the State would lie falsely about the alleged crime.

### **STATEMENT OF THE CASE**

On January 14, 2013, the Aiken County Grand Jury indicted Appellant Carolyn Poe on one count of shoplifting. R. 115 – R. 118. On February 12, 2013, Appellant proceeded to trial before the Honorable J. Derham Cole and a jury. Jeffrey A. Slocum and Kevin N. Molony represented the State, and Michael D. Routzong represented Appellant. R. 1. At the end of the trial, the jury found appellant guilty as charged. R. 106, ll. 6-8. The trial judge sentenced her to ten years incarceration suspended upon the service of three years imprisonment and three years of probation. R. 112, ll. 6-15.

## ARGUMENT

**THE SOLICITOR WAS NOT PERMITTED TO ASK APPELLANT TO EXPLAIN TO THE JURY WHY THE STATE'S WITNESSES WOULD LIE AND FALSELY TESTIFY AGAINST HER, AND DOING SO CONSTITUTED REVERSIBLE ERROR.**

## FACTS

At trial, the State presented evidence that on May 23, 2012, Appellant opened, concealed, and carried DVDs out of a Wal-Mart store in North Augusta. R. 10, l. 1—R. 33, l. 9. The State's only direct evidence of the incident was testimony from the store's undercover agent, Timothy Lawrence, who stated that he saw Appellant take a number of DVDs from the electronics department to another department, where she opened the packaging and hid the disks on her person. He claimed she then checked out a few other items in her cart and exited the store without paying for the disks. R. 10, ln. 1—R. 14, ln. 14. The State presented to the jury security video of Appellant in the store placing unopened DVDs in her buggy and later checking out at a cashier stand without the DVDs, but it had no video of Appellant actually opening and concealing the DVDs on her person. R. 33, l. 11—R. 34, ln. 12. The State also called Corporal Joshua Priester with the North Augusta Department of Public Safety, who testified that he responded to a call from the store during the incident. Upon arriving, he stopped Appellant leaving the scene in her truck, in which he observed the same eight DVDs that the store reported missing. R. 36, l. 19—R. 42, ln. 2.

Appellant testified in her own defense, explaining that although she did pick out some DVDs from the store that day, she later decided she did not want them and put them away on a shelf before she left. R. 49, l. 20—R. 59, l. 12. Appellant also explained that she always kept a number of DVDs in the truck for her kids to watch on a portable DVD player.

R. 57, ln. 7—R. 58, ln. 10. On cross-examination, the solicitor asked Appellant what motives Timothy Lawrence and Officer Priester would have to untruthfully contradict her account:

Q: Mrs. Poe, do you know of any reason why Mr. Lawrence would want to frame you for eight DVDs?

MR. ROUTZONG: Objection, Your Honor. How could she possibly know why Mr. Lawrence would be interested in lying in this case?

THE COURT: Overruled.

THE WITNESS: I don't know why he want to frame me, but I know he did sit here and lie.

Q: Okay. And why would . . . Officer Priester make up a store that he—

MR. ROUTZONG: Objection, Your Honor. He is pitting the witnesses.

THE COURT: Well, he is just asking if they would have a reason to. He's asking her if she knows of any reason that they might have. That's an appropriate question. Overruled.

Q: Any reason why Officer Priester would say that he saw . . . eight DVDs matching the ones stolen from Walmart in the back of your truck? . . .

A: I don't know why he would say that. I guess he is trying to make a name for himself.

R. 71, ln. 16—R. 72, ln. 12.

#### DISCUSSION

The solicitor was not permitted to ask Appellant to explain to the jury why the State's witnesses would lie falsely testify against her, and doing so constituted reversible error. "It is improper for the solicitor to cross-examine a witness in such a manner as to force him to attack the veracity of another witness. This error is reversible if the accused is

unfairly prejudiced thereby.” *State v. Bryant*, 316 S.C. 216, 221, 447 S.E.2d 852, 855 (1994) (quoting *State v. Sapps*, 295 S.C. 484, 369 S.E.2d 145 (1988)). In *Bryant*, the solicitor improperly pitted witnesses by asking the defendant why the officer who made a failed attempt to stop the defendant with blue lights was giving differing testimony about the incident:

[Solicitor]: You were perfectly sober and you didn't see that police car parked in the Jamestown Baptist Church parking lot and you had to go right by it?

[Bryant]: There wasn't no policeman in the Jamestown parking lot.

[Solicitor]: He couldn't be telling the truth about that, could he?

[Bryant]: Who?

[Solicitor]: The police officer. Where do you think it came from?

[Bryant]: He must be lying because I didn't see no police car at no Jamestown Church. If he want to stop-

*Id.* at 219-20, 447 S.E.2d at 854. The pitting was prejudicial because “[c]redibility was a critical issue in this case as Bryant and the officer were the only two witnesses present during the entire incident.” *Id.* at 221, 447 S.E.2d at 855.

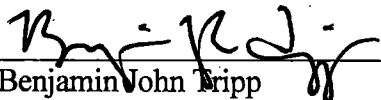
Here, the State called Lawrence to testify that he saw Appellant covertly take the DVDs from the store without paying. The State also called Corporal Priester to testify that he observed in Appellant's truck the same eight DVDs that the store reported missing. During her direct examination, Appellant explained that although she did pick out some DVDs from the store that day, she later decided she did not want them and put them away on a shelf. On cross-examination, just like in *Bryant*, the solicitor manifestly pitted

Appellant against Lawrence and Corporal Priester by calling out the conflicting accounts and asking Appellant to explain the discrepancy. Also like in *Bryant*, the pitting was prejudicial because, as Appellant and Priester were the only two witnesses present during the incident, credibility was a critical issue. Indeed, the prejudice here was greater than in *Bryant* insofar as the solicitor impliedly asserted that Appellant was claiming the witnesses intentionally gave false accounts in order to frame her. The questioning was doubtless a measured attempt to negatively portray Appellant as dissident and unscrupulous, and the trial court should have therefore excluded the testimony.

#### CONCLUSION

For the foregoing reasons, Appellant Carolyn Poe respectfully requests that this court reverse her conviction and remand for a new trial.

Respectfully submitted,

  
\_\_\_\_\_  
Benjamin John Tripp  
Appellate Defender

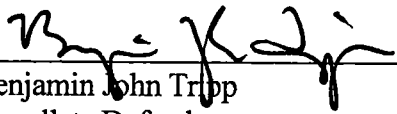
ATTORNEY FOR APPELLANT

This 9th day of June, 2014.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final Brief of Appellant complies with Rule 211(b), SCACR, and the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

June 9, 2014

  
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STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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Appeal from Aiken County  
J. Derham Cole, Circuit Court Judge

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THE STATE,

RESPONDENT,

V.

CAROLYN POE,

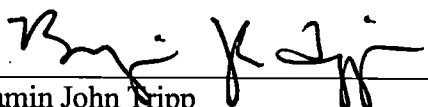
APPELLANT

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CERTIFICATE OF SERVICE

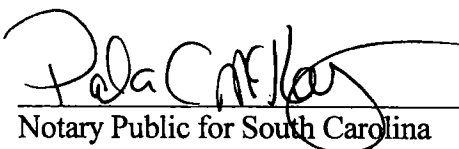
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The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon Mark R. Farthing, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 9th day of June, 2014.

  
\_\_\_\_\_  
Benjamin John Nipp  
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me  
this 9th day of June, 2014.

  
\_\_\_\_\_  
(L.S.)  
Notary Public for South Carolina  
My Commission Expires: July 24, 2022.

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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Appeal from Aiken County  
Honorable J. Derham Cole, Circuit Court Judge  
Appellate Case No. 2013-000356

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THE STATE,

Respondent,

vs.

CAROLYN H. POE,

Appellant.

---

**FINAL BRIEF OF RESPONDENT**

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## STATEMENT OF ISSUE ON APPEAL

The trial judge did not abuse his discretion regarding the scope of the solicitor's cross-examination of Appellant because defense counsel opened the door to the objected-to questioning by directly pitting Appellant against the State's witnesses during his direct examination of her. However, even assuming that the door was not opened and that the objected-to questioning constituted improper witness pitting, any error resulting from that questioning was entirely harmless in light of the evidence and testimony presented during trial conclusively establishing Appellant's guilt coupled with the facts that Appellant pitted herself against the State's witnesses during her own testimony, that Appellant personally impeached her own credibility by testifying untruthfully, and that the jury's attention was properly called to the absence of any motive or reason for the State's witnesses to testify untruthfully against Appellant.

## **STATEMENT OF THE CASE**

On May 23, 2012, Appellant Carolyn H. Poe was arrested after she was seen shoplifting items from a store and unsuccessfully attempted to flee with those items. In January of 2013, the Aiken County grand jury indicted Appellant for one count of shoplifting in violation of S.C. Code Ann. § 16-13-110 and S.C. Code Ann. § 16-1-57. On February 12, 2013, a jury trial was commenced in the Aiken County court of general sessions with the Honorable J. Derham Cole, circuit court judge, presiding. At the conclusion of trial, the jury convicted Appellant as indicted. Following the verdict, the trial judge sentenced Appellant to a ten-year term of imprisonment suspended to a three-year term of imprisonment, a \$100 fine, and a three-year term of probation. Appellant then timely filed a notice of appeal.

## STATEMENT OF FACTS

On May 23, 2012, Timothy Lawrence, an asset protection and theft detection specialist employed by Walmart, was patrolling a Walmart store located in North Augusta, South Carolina, when he observed Appellant Carolyn H. Poe and Appellant's seventeen-year-old granddaughter, Quejayteavonna H., in the electronics department of the store concealing D.V.D.s in their shopping cart underneath stuffed animals that had been placed at the top of the cart. (R. pp. 10-12; p. 39). Believing their actions to be suspicious, Lawrence decided to monitor the women and watched as they left the electronics department and moved to the fabric and crafts department several aisles away.<sup>1</sup> (R. pp. 11-12). As Lawrence continued to look on, the women removed the D.V.D.s from their cart, took the discs out of the D.V.D. cases, put the empty cases back onto a shelf, and concealed the discs in the pockets of Appellant's shorts. (R. pp. 12-13). Appellant and her granddaughter then pushed their cart to the lawn and garden department, went to a register, purchased the stuffed animals in their cart, passed the last point of sale before the exit, and left the store without paying for the D.V.D.s concealed in Appellant's pockets. (R. p. 14; p. 28).

After observing Appellant and her granddaughter leave the store with the concealed merchandise, Lawrence approached the women outside of the store, identified himself to them, and informed them that he wanted to speak with them about stolen merchandise. (R. p. 14; p. 29). In response, Appellant stated that she "didn't know what the fuck [Lawrence] was talking about," began quickly walking away, and told her granddaughter to get their truck. (R. p. 15). Appellant's granddaughter then ran to a red

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<sup>1</sup> Although cameras were placed throughout the inside and outside of the store, there were no cameras located in the fabric and crafts department of the North Augusta Walmart. (R. p. 21; pp. 31-32).

truck, rapidly pulled the vehicle out of a parking space, drove towards the exit of the store's parking lot, and stopped to let Appellant inside before driving away. (R. pp. 15-16; State's Ex. # 1 (D.V.D.)). As Appellant and her granddaughter sped off, Lawrence notified the North Augusta Public Safety Department of the crime in progress, described Appellant and her granddaughter's truck to law enforcement, and continued to watch Appellant and her granddaughter to ensure that Appellant did not try to discard any evidence of the crime. (R. p. 15-17; p. 30).

Seconds later, Appellant and her granddaughter's truck was stopped by law enforcement officers directly after it exited the store's parking lot.<sup>2</sup> (R. p. 17; pp. 37-38). Corporal Joshua Priester of the North Augusta Public Safety Department then quickly responded to the scene of the automobile stop and detained Appellant and her granddaughter, who were inside the truck. (R. pp. 36-38). Moments later, Lawrence arrived on the scene and advised the officer of what had transpired. (R. p. 17; p. 38). Corporal Priester then looked into the truck, found stuffed animals and eight D.V.D. discs without cases in the rear passenger area of the vehicle, and showed the items to Lawrence. (R. p. 18; p. 33; pp. 40-41). Lawrence quickly identified them as the ones taken from the store, and Appellant and her granddaughter were arrested for shoplifting. (R. p. 18; p. 41). Thereafter, Lawrence looked in the arts and craft department of the store, found eight empty D.V.D. cases matching the discs found in Appellant and her granddaughter's truck, and determined that the merchandise was valued at \$109 in total.<sup>3</sup> (R. p. 19; p. 21; pp. 32-33). Subsequently, Appellant was indicted for shoplifting as a

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<sup>2</sup> Appellant and her granddaughter's red truck matched the description and license tag number of the vehicle identified by Lawrence as being involved in the theft of the Walmart merchandise. (R. pp. 37-38).

<sup>3</sup> The D.V.D.s stolen by Appellant and her granddaughter were Mission Impossible, Don't Be a Menace to Society, Breaking Dawn, Happy Feet, Joyful Noise, Underworld, Alvin and the Chipmunks, and Immortal. (R. pp. 20-21).

third or subsequent property crime, and she proceeded to trial. (R. p. 4; p. 6; pp. 115-116).

During trial, Lawrence testified about his observations during the incident, recounted that he personally saw Appellant shoplift the merchandise from the store before fleeing, and identified Appellant in court as one of the women involved in the incident. (R. pp. 11-20). Additionally, during Lawrence's testimony, a video recording of the portions of the incident that were able to be recorded was admitted into evidence and played for the jury. (R. pp. 23-24; pp. 31-32; State's Ex. # 1). Thereafter, following Lawrence's testimony, Corporal Priester testified about the automobile stop of Appellant and her granddaughter's truck and the discovery of the stolen merchandise inside of the vehicle. (R. pp. 37-41).

Subsequently, the State rested its case, and Appellant elected to testify in her own defense. (R. p. 44; p. 49). During her testimony, Appellant claimed that she withdrew \$200 from the bank and went to the North Augusta Walmart with her granddaughter with the intention of buying a bag of charcoal and a phone. (R. pp. 49-50; p. 56). Upon arriving at the store, Appellant asserted that she picked up some clothes for her granddaughter, tried unsuccessfully to find a phone, picked up some D.V.D.s, got a fan and some fabric, went to the lawn and garden department to get a bag of charcoal, found that there were no bags left, asked an employee to check and see if there were any more bags available, and continued to shop while she waited for a response. (R. pp. 50-52). Appellant claimed that she then got a hose, switched the fan in her cart for a different one, decided not to get the clothes and D.V.D.s, put them back after an argument with her granddaughter, and returned to the lawn and garden department. (R. pp. 50-52). Once there, Appellant asserted that she found out that there were no more bags of charcoal so

she continued to shop and got some pillow pets for her other granddaughter.<sup>4</sup> (R. p. 52). After that, Appellant claimed that she saw an acquaintance working at a cash register, left her number with the acquaintance so that she could be contacted if the store received more bags of charcoal, purchased only the pillow pets, and left the remainder of the merchandise she had selected in her shopping cart. (R. pp. 52-53). Appellant asserted that she then talked with her acquaintance for ten more minutes, left the store with her granddaughter, looked at a gazebo outside, and talked with a woman at the door for several more minutes. (R. p. 53). Once she finished speaking with the woman, Appellant claimed that she and her granddaughter continued walking towards their vehicle before they were confronted by Lawrence, who allegedly had a camcorder, and a woman who asked to search her. (R. pp. 53-54). Appellant stated that she then became angry, cussed at the woman, and refused to allow herself to be searched. (R. p. 54). After that, Appellant asserted that the woman asked her if she had any D.V.D.s and she responded to the woman that they would be visible in her tight clothing if she did. (R. p. 54). Appellant then claimed that she became scared because she saw several more people, gave her granddaughter her keys, told her to get their truck, and ran to the truck along with her granddaughter. (R. p. 54). After that, Appellant asserted that she pulled out a phone to call home, dropped it as her granddaughter drove them away from the store, pulled out two more phones, dropped those as well when her granddaughter almost drove into another vehicle, and got out a fourth phone. (R. pp. 54-56). When she got out the fourth phone, Appellant indicated that she realized that her granddaughter had stopped and that they were surrounded by police. (R. p. 56). Appellant claimed that an officer

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<sup>4</sup> Later during her testimony, Appellant explained that pillow pets were stuffed animals that could be used as pillows. (R. pp. 69-70).

then opened her door and tried to take her fourth phone and she responded by hiding it in the front console of the truck. (R. p. 56). She further denied stealing anything from Walmart, asserted that she goes to shop and not to shoplift when she goes to a store, claimed that the D.V.D.s found in the truck belonged to her son and were there to entertain his children, and stated that a D.V.D. player and jewelry were missing from the truck when it was returned to her.<sup>5</sup> (R. pp. 56-59). Then, at the conclusion of her testimony on direct examination, the following exchange occurred:

**[Defense Counsel]:** Mrs. Poe, the State says – actually, Walmart says you left that store with DVDs in your pocket and you didn't pay for it. What do you have to say about that?

**[Appellant]:** I did not steal nothing from Walmart and I did not steal no DVDs from Walmart and they did not find DVDs in my car that came from no Walmart.

(R. p. 59).

Thereafter, on cross-examination, Appellant admitted that she had previously been convicted of shoplifting on two earlier occasions while claiming that she was guilty of one of the offenses and not guilty of the other. (R. p. 67). When asked if she could explain how the specific eight discs missing from the store were the same discs found in her truck, Appellant admitted that she could not while claiming that there were more than eight D.V.D.s found in her truck. (R. p. 70). Then, the following exchange occurred:

**[Solicitor]:** Mrs. Poe, do you know of any reason why Mr. Lawrence would want to frame you for eight DVDs?

**[Defense Counsel]:** Objection, Your Honor. How could she possibly know why Mr. Lawrence would be interested in lying in this case?

**[Trial Judge]:** Overruled.

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<sup>5</sup> Appellant indicated that her son's children were two years old, four years old, seven years old, and ten years old. (R. p. 58).

**[Appellant]:** I don't know why he want to frame me, but I know he did sit here and lie.

**[Solicitor]:** Okay. And why would Mr. Priester – Officer Priester make up a story that he –

**[Defense Counsel]:** Objection, Your Honor. He is pitting the witnesses.

**[Trial Judge]:** Well, he is just asking if they would have a reason to. He's asking her if she knows of any reason that they might have. That's an appropriate question. Overruled.

**[Solicitor]:** Any reason why Officer Priester would say that he saw teddy bears and eight DVDs matching the ones stolen from Walmart in the back of your truck? Does he have a reason to say that.

**[Appellant]:** I don't know why he would say that. I guess he is trying to make a name for hisself.

(R. pp. 71-72). As the solicitor's cross-examination of Appellant continued, the solicitor asked Appellant if she reported the alleged theft of items from her truck after her arrest, and Appellant indicated that she did not because she was scared, upset, and crying. (R. p. 72). The solicitor then asked how the discs from the store ended up in Appellant's vehicle, and Appellant claimed that the discs found in her vehicle belonged to her son. (R. pp. 72-73). Finally, the solicitor asked Appellant if she was telling the jury that Lawrence and Corporal Priester were making up the allegations, and Appellant asserted that "[t]hey had to make it up." (R. p. 73). Following that question and response, defense counsel objected, and the trial judge sustained the objection after finding the question to be witness pitting. (R. p. 73).

Subsequently, the defense rested its case, the parties presented their closing arguments to the jury, and the trial judge instructed the jury on the applicable law.<sup>6</sup> (R. p.

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<sup>6</sup> During his closing argument, the solicitor asked the jurors to consider the witnesses' motivations for testifying when they were assessing the credibility of the witnesses during their deliberations, stating: "I ask you to weigh the credibility that [defense counsel] is talking about of the witnesses. Who has something to lose here? Who has a motive? What reason does Mr. Lawrence have to make this up? He

74; pp. 77-101). Thereafter, at the conclusion of trial, the jury convicted Appellant as indicted. (R. p. 106). Following the verdict, the trial judge sentenced Appellant to a ten-year term of imprisonment suspended to a three-year term of imprisonment, a \$100 fine, and a three-year term of probation. (R. p. 112).

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was just doing his job. What is the motive behind that? Officer Priester. What motive does he have? What reason does he have to make up this story about finding these DVDs in the car?" (R. pp. 84-85).

## ARGUMENT

**The trial judge did not abuse his discretion regarding the scope of the solicitor's cross-examination of Appellant because defense counsel opened the door to the objected-to questioning by directly pitting Appellant against the State's witnesses during his direct examination of her. However, even assuming that the door was not opened and that the objected-to questioning constituted improper witness pitting, any error resulting from that questioning was entirely harmless in light of the evidence and testimony presented during trial conclusively establishing Appellant's guilt coupled with the facts that Appellant pitted herself against the State's witnesses during her own testimony, that Appellant personally impeached her own credibility by testifying untruthfully, and that the jury's attention was properly called to the absence of any motive or reason for the State's witnesses to testify untruthfully against Appellant.**

Appellant contends that the trial judge erred in permitting the solicitor to allegedly improperly pit Appellant against the State's witnesses. Appellant further maintains that the alleged witness pitting was unfairly prejudicial to her and constituted "a measured attempt to negatively portray [her] as dissident and unscrupulous[.]" (App. Br. p. 8). Initially, the trial judge did not abuse his discretion in regard to the scope of the solicitor's cross-examination of Appellant and did not err in overruling defense counsel's objections to the solicitor's questions. That is true because, even if the solicitor's questioning constituted witness pitting, defense counsel opened the door to the objected-to questions by pitting Appellant against the State's witnesses during his direct examination of her. However, even if the door was not opened and the objected-to questioning constituted improper witness pitting, any error resulting from that questioning did not result in any unfair prejudice to Appellant and was entirely harmless in light of the evidence and testimony presented during trial conclusively establishing Appellant's guilt coupled with the facts that Appellant pitted herself against the State's witnesses during her own testimony, that Appellant personally impeached her own credibility by testifying untruthfully, and that the jury's attention was properly called to

the absence of any motive or reason for the State's witnesses to testify untruthfully against Appellant. Appellant's conviction should be affirmed.

### **STANDARD OF REVIEW**

In criminal cases, the appellate court sits to review errors of law only. State v. Wilson, 345 S.C. 1, 5, 545 S.E.2d 827, 829 (2001). However, errors of law that are not prejudicial do not warrant reversal. State v. King, 367 S.C. 131, 136, 623 S.E.2d 865, 867 (Ct. App. 2005). For that reason, "[t]he burden is upon the appellant to satisfy [the appellate] court that there has been **prejudicial** error." State v. Smith, 230 S.C. 164, 168, 94 S.E.2d 886, 887 (1956) (emphasis added).

### **ANALYSIS**

During a trial, the scope of cross-examination is a matter falling within the discretion of the trial judge. State v. Colf, 337 S.C. 622, 625, 525 S.E.2d 246, 247-248 (2000); see State v. Avant, 85 S.C. 570, 575, 67 S.E. 908, 910 (1910) ("The conduct of the case in respect to cross-examination must be left, in large measure, to the sound judgment of the presiding Judge[.]"). However, a trial judge should not permit a solicitor or defense counsel to cross-examine a witness in such a manner as to force that witness to attack the veracity of another witness. State v. Bryant, 316 S.C. 216, 221, 447 S.E.2d 852, 855 (1994); see State v. Sapps, 295 S.C. 484, 486, 369 S.E.2d 145, 145-146 (1988) ("It is improper for the solicitor to cross-examine a witness in such a manner as to force him to attack the veracity of another witness."); State v. Benning, 338 S.C. 59, 63, 524 S.E.2d 852, 855 (Ct. App. 1999) ("It is improper to cross-examine in a way that requires a witness to attack another witness's credibility."). Such "argumentative questioning" constitutes improper witness pitting. Burgess v. State, 329 S.C. 88, 91, 495 S.E.2d 445, 447 (1998).

Importantly though, improper witness pitting “constitutes reversible error only if the accused is unfairly prejudiced” as a result of the pitting. Id. “If it appears from the record that the conviction is clearly correct on the merits, that the accused had a fair trial, and that no other verdict could reasonably have been returned on the evidence, [an appellate court] is disposed to regard the [witness pitting] error as harmless.” Thrift v. State, 302 S.C. 535, 538, 397 S.E.2d 523, 525 (1990); see also Smith, 230 S.C. at 168, 94 S.E.2d at 887 (“The burden is upon the appellant to satisfy [the appellate] court that there has been prejudicial error.”). Even in cases where witness pitting occurs, “[i]t is a rule of practically universal application in appellate procedure that an accused cannot avail himself of error as a ground for reversal where the error has not been prejudicial to him.” State v. Hariott, 210 S.C. 290, 298, 42 S.E.2d 385, 388 (1947).

In the case sub judice, aside from asking a question to which an objection was sustained, the solicitor did not directly ask Appellant to comment on the credibility of any of the other witnesses during trial.<sup>7</sup> See Burgess, 329 S.C. at 91, 495 S.E.2d at 447 (“No matter how a question is worded, anytime a solicitor asks a defendant to comment on the truthfulness or explain the testimony of an adverse witness, the defendant is in effect being pitted against the adverse witness.”). However, the solicitor did ask Appellant if she was aware of any reason for either Lawrence or Corporal Priester to make up the allegations against her, which indirectly led to Appellant commenting on the credibility

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<sup>7</sup> To the extent that Appellant is complaining about the question and answer to which defense counsel’s witness pitting objection was sustained by the trial judge, that issue was not preserved for appellate review because the objection was sustained and defense counsel did not ask the trial judge to strike Appellant’s response to the question. See State v. Wingo, 304 S.C. 173, 177-178, 403 S.E.2d 322, 325 (Ct. App. 1991) (instructing that any error in the admission of improper testimony is not properly preserved for appellate review if an objection to the testimony is sustained and there is no motion made to strike that testimony); see also State v. Thompson, 304 S.C. 85, 87, 403 S.E.2d 139, 140 (Ct. App. 1991) (“[T]he trial judge sustained defense counsel’s objections to the testimony of which [Thompson] complains. No motion to strike, no request for instruction that the jury disregard the testimony, nor a motion for a new trial based on the admission of the testimony was made at trial. Appellant has failed to preserve this issue. He obtained the only relief he sought and this court, therefore, has no issue to decide.”).

of those witnesses. Importantly though, the solicitor only questioned Appellant in that regard **after** defense counsel opened the door to such an inquiry by first asking Appellant what her direct response was to what “Walmart” said she did. See State v. Kennedy, 143 S.C. 318, 321-322, 141 S.E. 559, 560 (1928) (finding that previously inadmissible testimony elicited during redirect examination was properly admitted in response to questioning of the same witness along similar lines during cross-examination by the appellant). Accordingly, because the solicitor was merely asking questions of Appellant directly related to a topic discussed during her own testimony, the trial judge did not err in permitting that questioning to occur. See State v. Beam, 336 S.C. 45, 52, 518 S.E.2d 297, 301 (Ct. App. 1999) (“[W]hen a party introduces evidence about a particular matter, the other party is entitled to explain it or rebut it, even if the latter evidence would have been incompetent or irrelevant had it been offered initially.”); see also State v. Rice, 375 S.C. 302, 329, 652 S.E.2d 409, 422 (Ct. App. 2007) (“[A]n appellant cannot complain of prejudice resulting from the admission of evidence to which she opened the door.”).

However, even if the door was not opened and the challenged questions constituted improper witness pitting, any error stemming from that questioning did not result in any unfair prejudice to Appellant under the specific facts and circumstances of her case. See Burgess, 329 S.C. at 91, 495 S.E.2d at 447 (“[I]mproper pitting constitutes reversible error **only** if the accused is **unfairly prejudiced**.” (emphasis added)); see also State v. Wyatt, 317 S.C. 370, 372, 453 S.E.2d 890, 891 (1995) (“While we agree there was error, appellant cannot show sufficient prejudice from it to warrant reversal.”). As a result, any error that occurred was entirely harmless and did not warrant the reversal of Appellant’s conviction. See United States v. Hastings, 461 U.S. 499, 509 (1983) (“[T]he [United States Supreme] Court has consistently made clear it is the duty of a reviewing

court to consider the trial record as a whole and to ignore errors that are harmless, including most constitutional violations[.]”).

Turning to the particular facts and circumstances of Appellant’s case, Appellant’s own actions greatly diminished any prejudice that could have resulted from the allegedly improper witness pitting **before** the solicitor even asked the objected-to questions. Regarding those actions, Appellant impeached her own credibility by lying to the jury when she claimed that she only goes to shop when she goes to the store, which opened the door for the solicitor to soundly refute her claim by questioning her about her prior shoplifting convictions. Cf. State v. Black, 400 S.C. 10, 29, 732 S.E.2d 880, 891 (2012) (“[W]e note, in considering the overall strength of the State’s case, that Petitioner’s *own* credibility was seriously impeached at trial as well by testimony that he had a criminal record that included two prior offenses for CSC with a minor.” (italics in original)). Furthermore, as previously noted, defense counsel stated to Appellant on direct examination that “Walmart [said she] left that store with DVDs in [her] pocket and [she] didn’t pay for [them]” and asked her what her response to that accusation was. (R. p. 59). Thus, prior to any witness pitting that occurred on cross-examination, defense counsel directly pitted Appellant against the State’s witnesses, and Appellant responded by indicating that the allegations against her were untruthful. See State v. Carlson, 363 S.C. 586, 595, 611 S.E.2d 283, 287 (Ct. App. 2005) (“A party cannot complain of an error which his own conduct induced.”); see also State v. Blackburn, 271 S.C. 324, 329, 247 S.E.2d 334, 337 (1978) (“Under settled principles, the admission of improper evidence is harmless where it is merely cumulative to other evidence.”). Accordingly, through her own testimony, Appellant damaged her own credibility and directly pitted herself against the State’s witnesses.

Additionally, notwithstanding Appellant's own witness pitting and own damaging testimony adversely reflecting on her credibility, the other evidence presented during trial conclusively established Appellant's guilt. Regarding that evidence, the surveillance footage from the store, which was played for the jury, showed Appellant and her granddaughter filling their shopping cart with D.V.D.s that they did not subsequently purchase and then showed them taking extreme actions to flee from the store after being confronted about the stolen property. See Town of Hartsville v. Munger, 93 S.C. 527, 529, 77 S.E. 219, 219 (1913) ("False and conflicting statements and attempts to run away have always been regarded as some evidence of guilty knowledge and intent."); see also State v. Orozco, 392 S.C. 212, 218, 708 S.E.2d 227, 230 (Ct. App. 2011) ("[A]ny guilty act or conduct on the part of the accused is admissible as some evidence of consciousness of guilt."). Moreover, testimony was presented establishing that eight D.V.D.s were discovered in Appellant's truck after she was apprehended by the officers and that eight empty cases matching those same D.V.D.s were discovered in the store after Appellant was arrested, and Appellant specifically informed the jury that she had no explanation for how that could have occurred.<sup>8</sup> (R. p. 70).

Finally, notwithstanding Appellant's personally-damaging testimony and the substantial evidence of Appellant's guilt presented during trial, the jury's attention was properly called during the closing arguments to the complete lack of any evidence of a motive or reason for Lawrence and Corporal Priester to fabricate their testimony against Appellant. Specifically, the solicitor asked the jurors to consider what reasons either Lawrence or Corporal Priester would have had to testify untruthfully when they were

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<sup>8</sup> Specifically, on cross-examination, the solicitor noted to Appellant that it was an amazing coincidence that the empty cases to the eight D.V.D.s found in Appellant's truck were found in the store and asked Appellant how she could explain that. (R. p. 70). Appellant responded: "I can't explain that, but I know the DVDs that they took out of my truck was not the DVDs that came out of Walmart." (R. p. 70).

assessing the credibility of the witnesses. See State v. Raffaldt, 318 S.C. 110, 115, 456 S.E.2d 390, 393 (1995) (“The solicitor has the right to give his version of the testimony and to comment on the weight to be given to the testimony of the defense witnesses. Therefore, although the State cannot ‘pit’ witnesses during questioning, it may comment on the credibility of the witnesses in argument.” (citation omitted)). As a result, any potential prejudicial impact that could have resulted from the challenged questioning was eliminated in much the same way that prejudice resulting from the introduction of inadmissible evidence is eliminated by the introduction of cumulative evidence. Cf. State v. McFarlane, 279 S.C. 327, 330, 306 S.E.2d 611, 613 (1983) (“It is well settled that the admission of improper evidence is harmless where it is merely cumulative to other evidence.”).

In conclusion, the trial judge committed no error in regard to the scope of the solicitor’s cross-examination because defense counsel opened the door to the challenged portions of the solicitor’s questioning. However, even if the questioning constituted improper witness pitting, the two objected-to questions asked of Appellant by the solicitor could not have had any impact on the outcome of Appellant’s case in light of the evidence and testimony presented during trial conclusively establishing Appellant’s guilt coupled with the facts that Appellant personally pitted herself against the State’s witnesses on her own accord, that Appellant’s untruthful testimony greatly diminished her own credibility, and that the jury’s attention was properly called to the absence of any articulable reason for the State’s witnesses to lie during Appellant’s trial. See Burgess, 329 S.C. at 91, 495 S.E.2d at 447 (“In light of the evidence presented, this error does not undermine confidence in the outcome of this case.”); see also Thrift, 302 S.C. at 538, 397 S.E.2d at 525 (“If it appears from the record that the conviction is clearly correct on the

merits, that the accused had a fair trial, and that no other verdict could reasonably have been returned on the evidence, [an appellate court] is disposed to regard the error [in permitting witness pitting to occur] as harmless.”); cf. State v. Arther, 290 S.C. 291, 296-297, 350 S.E.2d 187, 190 (1986) (holding that a solicitor’s references to Arther’s silence were harmless beyond a reasonable doubt after reviewing the entire record and concluding that the challenged comments were “miniscule in the record”). Accordingly, any error that resulted from the solicitor’s questioning of Appellant was entirely harmless and did not deprive Appellant of a fair trial. See State v. Wiley, 387 S.C. 490, 497, 692 S.E.2d 560, 564 (Ct. App. 2010) (“No definite rule of law governs this finding; rather, the materiality and prejudicial character of the error must be determined from its relationship to the entire case.”); see also Calderon v. California, 525 U.S. 141, 146 (1998) (“The social costs of retrial or resentencing are significant. . . . The State is not to be put to this arduous task based on mere speculation that the defendant was prejudiced by trial error; the court must find that the defendant was actually prejudiced by the error.” (citations omitted)); see, e.g., State v. Bonneau, 276 S.C. 122, 126, 276 S.E.2d 300, 302 (1981) (“The defendant was entitled to a fair trial, but not necessarily one satisfactory to him. This he has had.”); State v. Weaver, 361 S.C. 73, 89, 602 S.E.2d 786, 794 (Ct. App. 2004) (“[A] criminal defendant is entitled to a fair trial, not a perfect one.”). Appellant’s conviction should be affirmed.

## CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

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May 21, 2014

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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Appeal from Aiken County  
Honorable J. Derham Cole, Circuit Court Judge  
Appellate Case No. 2013-000356

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THE STATE,

Respondent,

vs.

CAROLYN H. POE,

Appellant.

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**CERTIFICATE OF COUNSEL**

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The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

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**PROOF OF SERVICE**

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I, Ellen R. DuBois, certify that I have served the within Final Brief of Respondent on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

Benjamin John Tripp, Esquire  
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I further certify that all parties required by Rule to be served have been served.  
This 21st day of May, 2014.

  
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